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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the South Carolina Supreme Court

Appeal from Lancaster County
The Honorable Daniel Dewitt Hall, Circuit Court Judge

Appellate Case No. 2023-000404

Michael Brent Gay, Petitioner,

v.

The State of South Carolina, Respondent.

APPENDIX

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INDEX

TRIAL TRANSCRIPT, DECEMBER 10-13, 2018.....	001
GUILTY PLEA TRANSCRIPT, DECEMBER 13, 2018	133
INDICTMENTS	155
SENTENCING SHEETS.....	157
NOTICE OF APPEAL	159
COURT OF APPEALS ORDER.....	164
POST-CONVICTION RELIEF APPLICATION.....	165
STATE’S RETURN	174
AMENDED PCR APPLICATION.....	181
PCR HEARING TRANSCRIPT, SEPTEMBER 2, 2022.....	184
ORDER OF DISMISSAL.....	264
NOTICE OF APPEAL	276

1 STATE OF SOUTH CAROLINA
2 COURT OF GENERAL SESSIONS
3 COUNTY OF LANCASTER
4 2018-GS-29-00377

5 State of South Carolina

6 Vs.

7 Michael Brent Gay

8

9 Lancaster, South Carolina

10 December 10-13, 2018

11 Before the Honorable Brian M. Gibbons

12 APPEARANCES

13 For the State: Randy Newman, Lisa Collins

14 For the Defendant: Dane Phillips, John Delgado

15

16 Reported by: Michael C. Watkins

17 Official Court Reporter

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1	Pretrial Motions:	3
2	Voir Dire:	68
3	Pretrial Matters:	105
4	Opening Statements:	164
5	Janice Ross:	174
6	Raymond Robinson:	196
7	Phillip Hall:	242
8	Brian Small:	252
9	Edward Abbott:	277
10	Ashley McKinny:	293
11	Kerry Aldridge:	300
12	Timothy Ramsey:	321
13	Marcus Heyward:	329
14	James White:	341
15	Wayne Boone:	353
16	Michael "Tony" Broome:	362
17	Stefan Perry:	390
18	Christy Rogers:	472
19	Thomas Craig Bailey:	508
20	Jennifer Rumbaugh:	525
21	Ken Taylor:	546
22	Ann Horton:	599
23	Jeff Steele:	610
24	Ken Taylor:	621
25	Certificate:	634

1 THE COURT: All right. State ready to call the case?

2 MS. COLLINS: Yes, Your Honor. May it please the

3 Court? Your Honor, at this time the State of South Carolina

4 calls the following case for trial, indictment

5 2016-GS-29-377, State of South Carolina versus Michael Brent

6 Gay, a true billed indictment, count one, murder. The

7 second count, count two is a direct indictment for

8 possession of a firearm or knife during the commission of a

9 violent crime. The defendant has not yet been formally

10 arraigned, and unless he wishes to waive formal arraignment

11 we do need to arraign him at this time on count two.

12 THE COURT: All right. Is that your understanding,

13 Mr. Phillips and Mr. Delgado?

14 MR. DELGADO: Yes, sir.

15 MR. PHILLIPS: Yes, Your Honor.

16 THE COURT: Are you ready to proceed with arraignment?

17 MR. PHILLIPS: Yes, sir.

18 THE COURT: All right. If you'll just have your client

19 stand where he is, and Madam Solicitor, go ahead and

20 introduce it and tell me how you wish to have him arraigned.

21 MS. COLLINS: Thank you, Your Honor. Your Honor, I

22 would like to read the indictment to the defendant, I have

23 certified copies for him and counsel.

24 THE COURT: All right.

25 MS. COLLINS: Michael Brent Gay, I hand you at this

1 time a certified true copy of indictment 2016-GS-29-377, and
2 I have another certified true copy for your attorney. The
3 first count, count one, murder, is based upon arrest warrant
4 2015A291200184, that is not a direct indictment, that has
5 been true billed, however, count two is a direct indictment
6 for possession of a firearm or a knife during the commission
7 of a violent crime, that has also been true billed by the
8 grand jury. At this time I will arraign you, therefore, on
9 count two, that the grand jurors of Lancaster County, South
10 Carolina returned a true bill as follows; count two,
11 possession or display of a firearm or a knife during the
12 commission of a violent crime charging that Michael Brent
13 Gay did in Lancaster County, South Carolina on or about
14 December 5th, 2015 possess or visibly display a firearm, to
15 wit, a handgun, during his or her commission of a violent
16 crime, to wit, murder of Joshua Flint McManus in violation
17 of section 16-23-490 of the code of laws of South Carolina,
18 1976 as amended against the peace and dignity of the state
19 in contrary to the statute in such case made and provided.
20 To count two, the direct indictment for possession of a
21 firearm or knife during the commission of a violent crime
22 how do you plead?

23 THE DEFENDANT: Not guilty.

24 MS. COLLINS: And how will you be tried?

25 THE DEFENDANT: By jury.

1 break?

2 MS. COLLINS: No.

3 THE COURT: All right, let's take a quick break. Thank
4 you.

5 (A recess was taken.)

6 THE COURT: All right. Bring the jury back.

7 (The jury returned to the courtroom.)

8 THE COURT: Thank you, ladies and gentlemen. The State
9 can call its next witness.

10 MR. NEWMAN: State calls Raymond Robinson.

11 The witness, RAYMOND ROBINSON, was first duly sworn

12 And testified as follows:

13 DIRECT EXAMINATION

14 BY MR. NEWMAN:

15 Q Please state your name for the record.

16 A Raymond Robinson.

17 Q Mr. Robinson, you'll have to forgive me, I've been
18 battling a cold and I have a cough drop in my mouth, I think
19 I can get by. Do you know the defendant in this case,
20 Michael Brent Gay?

21 A Yes.

22 Q How long have you known him?

23 A Maybe ten or 11 years, something like that.

24 Q How about the victim in this case, Joshua McManus, how
25 long had you known him?

1 A Since like 9th grade, maybe 20 years.

2 Q 9th grade, so y'all went to high school together?

3 A Yes, sir.

4 Q Lancaster High School?

5 A Yes, sir.

6 Q So as of December of 2015, you had known both of them
7 for quite some time?

8 A Yes, sir.

9 Q When did you graduate high school?

10 A Ninety-three.

11 Q Okay. Let's talk specifically about December 5, 2015.
12 Do you remember that date?

13 A Yes, sir.

14 Q What day was that?

15 A I believe it was on a Friday or Saturday -- Saturday.

16 Q Big football day, right?

17 A Yeah, Saturday.

18 Q Clemson versus North Carolina, ACC Championship?

19 A Yeah.

20 Q Where did y'all go to watch the game?

21 A To Brent's house, Brent Gay's house.

22 Q And you and Flint had made plans to go watch the game
23 together?

24 A We was trying to figure out where we could watch it at
25 and Brent said we could watch it over there at his house, so

1 we went over there.

2 Q Who else was there?

3 A Nobody at the time. Stefan, he came maybe like ten or
4 five minutes before it happened.

5 Q But when you get there it's just you, Flint McManus,
6 y'all are together in the same car?

7 A Yes.

8 Q And Mr. Gay?

9 A And his grandmother, I think she was there.

10 Q Okay. His grandmother. All right. Now, earlier in
11 the day how did you and Flint get together?

12 A He had called and said that he wanted to watch the
13 games together and I came back to Lancaster, we hung out for
14 a little bit and decided we would go back to Brent's to
15 watch it.

16 Q Was it common for y'all to hang out?

17 A Yeah.

18 Q Do you remember about what time you got to Brent's
19 house?

20 A It was daylight, I think we were watching the SEC game,
21 so about 2:00 or 3:00.

22 Q So the SEC game would have come on earlier that day,
23 ACC prime time, right?

24 A Yeah.

25 Q Okay. So it's still daylight, so daylight savings time

1 probably gets dark around 5:00. How was Brent acting while
2 y'all were watching the game?

3 A He was all right. He kept going in and out of his
4 closet, I don't know, he kept pulling out stuff like showing
5 stuff like that. Then he all of the sudden started throwing
6 ninja stars at his walls, like a sword and stuff, we was
7 asking why was he tearing his house up. He was putting
8 dents and holes in the wall.

9 Q He was just throwing knives and --

10 A Yeah. And he finally stopped doing that, like it
11 doesn't bother him that it was tearing his house up with it,
12 I don't know.

13 Q At some point did y'all leave the house?

14 A We went to the store.

15 Q Who all went to the store?

16 A All three of us; me, Flint and Brent.

17 Q You, Flint and Brent? What did y'all do at the store?

18 A Bought some stuff like chips and a little bit of beer,
19 and that was it.

20 Q Now, Branch Street, this is right off of Meeting Street
21 here?

22 A Yeah.

23 Q Down towards -- Branch Street is in West Manor; is that
24 right?

25 A West Manor, yes.

1 Q So what store did y'all go to?

2 A I believe that one on Riverside, I think they call it
3 Raceway or something like that.

4 Q So what did y'all get at the store?

5 A Chips and a little bit of beer.

6 Q What kind of beer, do you remember?

7 A Bud Light.

8 Q Were y'all drinking?

9 A Not much of it. I think I had like two and Flint maybe
10 had like two, but Brent don't drink so he didn't drink any.

11 Q You mentioned something in that 911 call about it being
12 Brent's birthday. Can you elaborate on that?

13 A I believe it was the day before or maybe a couple of
14 days before that happened that it was his birthday, I
15 couldn't remember exactly when.

16 Q And you said he'd been staying up?

17 A Seems like he'd been up for awhile or whatever.
18 Because I had asked him one time did he want us to leave
19 because he kept going in and out of his closet the whole
20 time like he was aggravated about something, but he said we
21 was all right to stay so we stayed.

22 Q And you'd been to his house to hang out before?

23 A Yeah.

24 Q No problems.

25 A No.

1 Q He's just in and out of his closet, does he say why?

2 A He said he was looking for something, he kept saying he
3 was looking for something.

4 Q At some point were y'all getting ready to leave the
5 house?

6 A Yeah. Me and Flint was getting ready to leave when
7 Stefan, I believe, called or Brent might have called him,
8 I'm not sure, but he was coming over there. Flint hadn't
9 seen him in awhile so he said he wanted to stay to see
10 Stefan, so we stayed until Droop, or Stefan got there.

11 Q I'm sorry, you said Droop?

12 A That's his nickname, we call him Droop.

13 Q Okay. So at this point is the game over or close to
14 over or --

15 A I believe it was about over with by then.

16 Q It was close to over.

17 A Yeah.

18 Q All right. So walk me through what happens after
19 Stefan gets there.

20 A Him and Flint -- like I said, Flint hadn't seen him in
21 awhile so they started talking and like gave each other a
22 hug or whatever, and then we all sat down. It wasn't long
23 after that that's when Brent shot Flint. He come out of --
24 walked, took like five long steps past us in the chairs and
25 come around and put the gun up to Flint's head said, "Did

1 you take my daddy's watch?" And Flint blinked his eyes and
2 he shot the gun right off in his head.

3 Q What was Flint doing when he got shot?

4 A He was sitting in the chair, and Stefan was on the left
5 side of him and I was on the other side of Stefan.

6 Q So he come out of the closet, gun in his hand?

7 A I didn't see the gun until he like whipped around on
8 Flint's side, like Flint was sitting like this, he just put
9 it up like that. I thought maybe he was kidding and that's
10 when he said did you steal my daddy's or take my daddy's
11 watch, and Flint blinked his eyes and he shot him right
12 there in the head.

13 Q Had you seen the gun prior to that?

14 A Not really. He was showing us all kind of stuff that
15 night, I don't really remember seeing the gun.

16 Q You don't remember him showing you the gun at all.

17 A No.

18 Q Was Flint holding anything in his hand?

19 A No. He was just sitting there watching the game.

20 Q He didn't have a knife in his hand.

21 A No.

22 Q Did Flint say anything right before he got shot?

23 A He just blinked his eyes one time, he didn't give him a
24 chance to even say anything.

25 Q And after he gets shot, what happens to Flint?

1 A It was like as soon as the gun went off his head went
2 down, blood come out of his mouth, and that's when I jumped
3 up and I was like, "Why did you do that?" I don't know, I
4 was scared, it was awful.

5 Q So he didn't fall out of the chair or anything.

6 A No. His head dropped and that was it.

7 Q Did you see blood come out?

8 A Yeah.

9 Q Now, what did Mr. Gay do after he fired the shot?

10 A He like -- that's when I said, "Why did you do that,"
11 when I figured out Flint was dead. I thought maybe he was
12 playing when I seen him pull the gun up to his head because
13 there wasn't no big confrontation about anything for anybody
14 to do anything like that, but then all of the sudden he
15 said, "He stole my daddy's watch." He ordered me and Stefan
16 to the kitchen, that's when I walked to the kitchen, and I
17 walked to the carport instead of going to the kitchen and I
18 kept looking back to see if he was going to shoot us.

19 Q He ordered you to the kitchen?

20 A Yeah.

21 Q Had you seen any watches that night?

22 A He was showing us all kind of stuff like in his closet,
23 so like I don't know if he might have shown it. I wasn't
24 really paying no attention to it.

25 Q What happened when he ordered you to the kitchen?

1 A I was walking toward the kitchen and Stefan was behind
2 me, and I kept glancing back to make sure he wasn't going to
3 shoot one of us. I just walked out on the carport and
4 Stefan followed me and then Brent stepped like on the first
5 step of the carport and he had the gun, like holding the gun
6 like that. And that's when I was like, "Why did you do
7 that?" And he kept saying that about the watch. And I
8 said, "Well, if you think he stole something go like check."
9 And walked back and started patting Flint down like that,
10 and it was like he was mad that there wasn't nothing in his
11 pocket and that's when I left and called 911.

12 Q So you saw him pat his pockets.

13 A Yeah.

14 Q And what other actions did he make after he patted his
15 pockets?

16 A He just like shook his head like he just knew he had
17 something and he was mad that he didn't have nothing.

18 Q So he ordered you to the kitchen but you went to the
19 garage?

20 A Yes.

21 Q Why?

22 A I was scared, I was trying to get out of there really.

23 Q What happened after you went to the garage, after you
24 saw him pat pockets?

25 A He was behind us with the guns, so I just stopped to

1 make sure he wasn't going to shoot Stefan or shoot me, and
2 that's when I was like, "Why did you do that?" That's when
3 he kept saying that he stole his daddy's watch or whatever.

4 Q Is that the point where you left?

5 A When he went back to check Flint's pockets and I seen
6 him pat him down, that's when I left.

7 Q Okay.

8 A Right after I seen that he was --

9 Q Where did you go?

10 A I went to my truck and called 911. I was backing out
11 of the driveway and talking on the phone talking to 911 at
12 the same time.

13 Q So you immediately get in the truck, get the phone, hit
14 reverse, you were getting out of there.

15 A Yeah.

16 Q About how long after this incident would you say he
17 called 911?

18 A I was calling when I was backing out of the driveway,
19 so --

20 Q Immediately.

21 A Yeah.

22 Q Now, you left and you called 911. What happened to
23 Perry?

24 A He was there. I was worried about Brent shooting him
25 and all of the sudden I seen headlights coming up the road,

1 I didn't know if it was him or Stefan, that's when I seen
2 Steven roll the window down and I told him I was on the
3 phone with the law --

4 MR. DELGADO: Your Honor, may I ask the solicitor to
5 ask the witness to raise his voice a bit.

6 THE COURT: Yeah. Please just speak into the
7 microphone, it's not very loud.

8 Q So Stefan comes by you, he's getting out of there too.

9 A Yeah.

10 Q And you tell him you're on the phone with the police,
11 what does he say then?

12 A He was saying -- I think that he said that Brent's
13 grandmom was on the phone, too, like she had called 911
14 herself but I'm not sure.

15 Q So watching this ACC game and it's almost over, was
16 there -- was there an argument over the team?

17 A No, there wasn't never no argument about anything. He
18 just at one time mentioned something was missing.

19 Q He mentioned something was missing. Does he confront
20 him about it?

21 A No, he never confronted him or anything.

22 Q No confrontation.

23 A No.

24 Q No argument whatsoever.

25 A No.

1 Q To your knowledge has there ever been any disagreement
2 between Flint and Brent?

3 A No. Flint was easy to get along with, I thought Brent
4 was too. He just had mentioned something about if somebody
5 ever messes over him again he was going to take care of
6 them, so I don't know what he meant by that.

7 MR. DELGADO: Objection to that.

8 THE COURT: All right, sustained.

9 MR. DELGADO: And not only that, Your Honor, but ask
10 that it be struck and caution the jury about that.
11 That's --

12 THE COURT: The jury will disregard that previous
13 statement, I sustained the objection.

14 MR. DELGADO: Your Honor, may we approach?

15 THE COURT: Just answer what is asked.

16 MR. NEWMAN: Just answer what I ask.

17 MR. PHILLIPS: We have a matter to address.

18 THE COURT: All right. Jury, go back to your room,
19 don't talk about the case.

20 (The jury left the courtroom.)

21 THE COURT: All right. Mr. Phillips?

22 MR. PHILLIPS: Your Honor, at this time we would make a
23 motion for a mistrial. Specifically this is evidence that's
24 never been presented in any of the discovery, a statement --
25 a hearsay statement allegedly made by Mr. Gay that he

1 would -- if somebody did it again they would come back and
2 he would kill them or shoot them in the head. This was
3 addressed through this witness, Ms. Tamara, and they said
4 that they would make sure that it wouldn't go in. There was
5 nothing that this was going to come out with as far as this
6 witness, however this hearsay statement did come out just a
7 second ago, highly prejudicial. Obviously there was no
8 foresight on our part that this statement would be coming
9 from this witness. Certainly at this time we believe that
10 it's appropriate to request a mistrial. And I understand
11 for appellate purposes we have to request a curative
12 instruction, we have to obviously say that the curative
13 instruction doesn't cure the prejudice, that doesn't un-ring
14 the bell and ultimately stand firm on the mistrial. But we
15 do have to ask for the strike for the curative, and then, of
16 course, we believe that it doesn't rise to that level of
17 curative prejudice. And one of the things we just discussed
18 in pretrial was actually -- even an entire different
19 statement about -- or actually I guess the same one, we
20 addressed that this issue may come up with this witness. I
21 was thinking that it was a separate statement, but now
22 putting it together it is the statement that we've
23 discussed, that there was an incident, a shooting with an
24 individual that was in the notes that the solicitor
25 provided. Solicitor said she discussed with this witness

1 that he wouldn't make that statement, that happened I guess,
2 what, an hour ago and said he wouldn't do it, and so we just
3 addressed that it wouldn't come out and it came out.

4 MR. NEWMAN: Your Honor, I believe that's a completely
5 different issue with the mirror. I did not illicit that
6 testimony from Mr. Raymond, I've never heard that before
7 frankly, and his statement was he mentioned if someone
8 messed with me he would take care of it. I don't think
9 that's enough to -- I don't know that the jury actually --
10 you know, we have this Tamara Cameron who did hear Mr. Gay
11 say that if someone ever stole from him again he was going
12 to shoot them in the head, that is not what he just said.

13 THE COURT: Not this witness.

14 MR. NEWMAN: Right, totally separate. And --

15 THE COURT: All right. Well, Mr. Phillips, what about
16 the State's position that this witness just blurted that
17 out, it wasn't in response to any question because that's
18 kind of how I pick up on it as well. What do you say about
19 that?

20 MR. PHILLIPS: Well, the case law on mistrial is not
21 whether the solicitor -- that is a separate form of a
22 mistrial if the solicitor intentionally elicited. But also
23 a witness can cause a mistrial kind of sua sponte on their
24 own, that's kind of part and parcel. In this case when you
25 have essentially this evidence that comes in that taints the

1 trial, now the jury is going to be under the belief that
2 Mr. Gay had been telling people if somebody messed with them
3 he would shoot them in the head and they're going to think
4 that he's a violent person. The prejudice is highly
5 enhanced now that they have this thing in their mind, kind
6 of like a 404B, like a prior act that he'd been telling
7 people that he would shoot somebody or take care of them.
8 And now they're under the belief that he's a violent person,
9 he'd been telling people if somebody messed with him he
10 would kill them essentially. And so -- and yeah, we can ask
11 the court reporter if necessary to get the exact quote
12 because I don't want to misrepresent. It's not in any of
13 the discovery, it's not something we anticipated. A similar
14 prejudicial statement we did address pretrial and the
15 solicitor said she told him not to go into it. Solicitor
16 Newman did just state that he didn't -- frankly the first
17 time he ever heard about it was today just then, so we
18 believe it's highly prejudicial, and I believe that without
19 a doubt it doesn't matter whether the solicitor elicited it.

20 THE COURT: All right. Solicitor?

21 MR. NEWMAN: Your Honor, I believe -- again, I would
22 ask the court reporter to repeat what was just said, the
23 quote, and I believe it could be cured but your instruction.

24 THE COURT: So at this point in time I will ask my
25 court reporter to go back and pull it up.

1 (The testimony was read)

2 THE COURT: Okay. So the question was were you aware
3 of any previous disagreement between the two, which I think
4 is a fair question given the circumstances of what happened,
5 and then the witness answered, no, not that I know of, I
6 always thought they essentially got along, and then he added
7 that last thing. All right. Anything else y'all want to
8 say?

9 MR. PHILLIPS: No, Your Honor.

10 THE COURT: All right. I'm going to deny the defense's
11 motion for a mistrial. I will -- I did read my curative --
12 well, I will instruct the jury again that they are to
13 disregard that last question and answer. I'm not going to
14 repeat it again because I don't want to further taint the
15 jury. I've already charged them that and I've already
16 instructed this witness to only answer the question asked,
17 all right, and that's the best we can do. You're protected
18 in the record. Anything else?

19 MR. PHILLIPS: That's it, Your Honor. It's that kind
20 of shell game with mistrials, just trying to make sure that
21 you can't un-ring the bell.

22 THE COURT: You're protected, got you. All right.
23 Let's bring the jury in.

24 (The jury returned to the courtroom.)

25 THE COURT: All right. All members of the jury are

1 present. Like I told you, the rules of court require any
2 time there's legal matters raised that I need to issue
3 decisions on that outside of your presence since y'all are
4 the judges of facts and I'm the judge of law. I
5 specifically instruct you as I instructed you before, when a
6 lawyer objects to something and I sustain the objection that
7 means the question cannot be asked -- or excuse me, cannot
8 be answered or the thing cannot come into evidence. I
9 previously instructed you concerning an answer that was
10 given to a question earlier that you were to disregard that
11 answer, I'm specifically instructing you now, you're to
12 disregard the answer from this witness to the last question
13 posed by the solicitor. That response is stricken from the
14 record, you are not to consider that response whatsoever,
15 okay? Thank you. Solicitor?

16 BY MR. NEWMAN:

17 Q Thank you, Mr. Robinson. So just to be clear, when
18 Flint got shot he was sitting down.

19 A Yes.

20 Q Sitting in a chair.

21 A Yes.

22 Q Y'all were just sitting there watching the game.

23 A Yeah.

24 Q Nobody is threatening anybody.

25 A No. Like I said, he took those five long steps when

1 came around and pulled the gun.

2 MR. NEWMAN: Your Honor, I've got six photos and one
3 diagram I want to have marked for identification purposes.

4 Q Mr. Robinson, I'm going to show you what's been marked
5 as State's 12. Do you recognize that drawing?

6 A Yes.

7 Q Now, I want you to take this red pen and show me where
8 you were standing when you walked out and you looked back
9 and you saw Mr. Gay patting down his pockets.

10 MR. DELGADO: Your Honor, that's -- the jury can't see
11 what has happened there.

12 THE COURT: All right. Well, are you planning on
13 publishing that, Solicitor?

14 MR. NEWMAN: I do, Your Honor, but frankly I don't know
15 that I can unless they agree until crime scene --

16 THE COURT: Well, just lay a better foundation as to
17 what that is.

18 Q Can you tell me what that's a photo of?

19 A That's like a layout of Brent's house is what it seems
20 to be.

21 Q And is that -- to the best of your knowledge that is
22 a --

23 A I believe so, yes.

24 Q -- clear depiction of the layout of that Gay home?

25 A Yeah.

1 Q All right.

2 MR. NEWMAN: Your Honor, this is a crime scene diagram
3 made by the Lancaster County Crime Scene, they will be here
4 to testify. I mean, I think I can ask him about without
5 publishing it.

6 THE COURT: Sure.

7 Q I want you to take the red pen and show me where you
8 were standing when you looked back and saw Mr. Gay patting
9 down the pockets of Mr. McManus.

10 A I believe that's like the door to the house, that's the
11 garage.

12 THE COURT: Speak up, sir.

13 A If that's the garage right here I was at this door, and
14 he walked back and Flint was sitting -- like I said, he was
15 sitting here.

16 Q Just circle the room that --

17 A Well, that's the room right there.

18 Q That's the room where the shooting happened.

19 A Yeah.

20 Q Okay. And you're standing here.

21 A Yeah, that's after he shot him.

22 Q Ever seen Flint with a green -- any type of green
23 zipper pouch?

24 A No.

25 Q Have you ever seen him with any needles such as like a

1 diabetic would use?

2 A No.

3 Q I'm going to show you what's been marked as State's 9
4 and 10. Have you ever seen either of those?

5 A No.

6 Q Never seen them.

7 A Nuh-uh.

8 Q I show you what's been marked as States 6 and 7. Do
9 you recognize what those are?

10 A Watches.

11 Q Have you ever seen those watches?

12 A No. Not that I remember, no.

13 Q Have you ever seen Flint McManus with those watches?

14 A No.

15 Q I show you what's been marked as State's 8. Do you
16 know what that is?

17 A A knife.

18 Q Have you ever seen that knife?

19 A No.

20 Q Have you ever seen Flint McManus with that knife?

21 A No.

22 Q You did not see Flint McManus with that knife in his
23 hand at all.

24 A No. He never carried a knife.

25 Q I show you what's marked as State's 11. Do you

1 recognize that?

2 A A pistol.

3 Q Is that the pistol that you saw that Saturday night?

4 A That's what it looked like pretty much.

5 Q Have you ever seen Flint McManus handle that pistol?

6 A No.

7 Q Do you recall -- we discussed Flint was sitting down
8 when he got shot, where were his hands?

9 A I believe he was just sitting down so I assume they
10 was --

11 Q Hands in his lap.

12 A Yeah.

13 Q Watching TV. You were there, you saw what went on, was
14 Brent Gay defending himself when he shot this man?

15 A No.

16 Q Just to clarify, sitting down, hands in his lap,
17 anything in his hands?

18 A No.

19 Q Nothing at all?

20 A No.

21 MR. NEWMAN: I have no further questions, please answer
22 anything Mr. Phillips has.

23 THE COURT: All right. Mr. Delgado?

24 CROSS EXAMINATION

25

1 BY MR. DELGADO:

2 Q Flint McManus was your best friend; isn't that right?

3 A Do what?

4 Q That's what you said before to law enforcement; isn't
5 that true?

6 A I didn't hear you, sir, I'm sorry.

7 Q Sure. Flint McManus was your best friend, right?

8 A Yes. He was a good friend, yeah.

9 Q And you said that to law enforcement over the times
10 that you've been interviewed or you've given a statement to
11 law enforcement, right?

12 A Yes, sir.

13 Q In fact, those statements include the 911 call just
14 before midnight, December the 5th into the morning of
15 December the 6th, 2015, right?

16 A Yes.

17 Q That's what's been played here for our jury. You were
18 then -- or you went to the Lancaster County Detention Center
19 or the sheriff's department and you gave a video statement
20 to the investigator, didn't you?

21 A Yes.

22 Q In the early morning of maybe Saturday, December the
23 6th, right?

24 A Yeah, that Sunday.

25 Q You've seen that since then, have you?

1 A Yes.

2 Q Yeah. That same day you even gave a written statement
3 in your own handwriting in addition, so there was three
4 times within 24 hours, correct?

5 A Yes.

6 Q Do you remember that written statement?

7 A I went to the detention center right after it happened
8 and wrote a statement.

9 Q That was you to law enforcement, right?

10 A Yeah, I rode with them.

11 Q Yeah. And the next time you talked to law enforcement
12 about this case of what you saw and what happened was
13 November 21st, 2018, three weeks ago, right?

14 A That sounds about right.

15 Q I'm sorry?

16 A That date sounds about right.

17 Q Yeah. Just tell these folks, at any of those times --

18 MR. DELGADO: And Your Honor, I say this with our
19 pretrial motion, or motion for a mistrial noted and
20 overruled --

21 Q -- when is the first time you ever said anything to law
22 enforcement about him, Brent Gay, taking a gun and
23 threatening somebody and shoot him in the head, when is the
24 first time?

25 MR. NEWMAN: Objection, Your Honor.

1 THE COURT: Overruled.

2 Q When is the first time? It's in this room five minutes
3 ago; isn't that right? It's either a yes or a no,
4 Mr. Robinson.

5 A I thought you was asking the jury.

6 Q No, sir, I'm asking you. See, you're the witness, you
7 answer my questions. When is the first time you ever said
8 anything to law enforcement or the solicitor's office or
9 anybody else about Brent threatening to shoot somebody in
10 the head if they stole anything from him, when was the first
11 time that ever happened?

12 A I didn't say shoot him in the head, I never said that.
13 I said Brent shot Flint in the head when he killed him.

14 Q That he would take care of them by shooting them; isn't
15 that right?

16 A Yeah.

17 Q When is the first time you've ever said that before?

18 A That's what happened.

19 Q No, sir, see, that's not my question. My question is
20 when is the first time you've ever said that before?

21 A I guess that night, I don't know, you've seen the
22 video.

23 Q No, you reckon this afternoon.

24 A Yeah.

25 Q Isn't that right?

1 A Yeah, I said that.

2 Q You've never said that before, have you?

3 A I'm not sure, it was three years ago.

4 Q Let's talk about those statements that you have made,
5 all right? You said in your 911 tape that he was delirious,
6 Brent was delirious, right?

7 A At that time I thought he was after he shot my friend.

8 Q Matter of fact you've often said, I think it was --
9 maybe it was your written statement you said he'd even
10 fallen down once and you'd helped him up; isn't that right?

11 A No, Flint helped him up.

12 Q Okay, I'm sorry. Brent fell down because he was so out
13 of it, right?

14 A He fell down, I don't know if was out of it.

15 Q Didn't you ever say he was on something, too; isn't
16 that right? Didn't you say that?

17 A I'm not sure. He seemed to be.

18 Q I'm sorry?

19 A I said he seemed to be.

20 Q Yeah. In your video statement to the sheriff's
21 department you said Brent was messed up on something, do you
22 remember that?

23 A That was three years ago, I don't remember.

24 Q Would you like to hear that again? Are you denying
25 that you said it?

1 A I may have said it.

2 Q You did, didn't you? You not only said in the 911 --

3 well, let me do it this way, Mr. Robinson, just for my own

4 purposes, I've got Robinson here, there's four different

5 times that you've talked to law enforcement. December the

6 5th, that's on the 911 call. Do you see where my finger is?

7 Right? Just before midnight of the morning of Saturday,

8 December the 6th you make a 911 call from your truck.

9 A Correct.

10 Q Right at the end of the road, right? Branch Road.

11 A Backing out of his driveway is when I made it.

12 Q Fine. Right up from where the house was, correct?

13 A Yeah.

14 Q On the morning of the 6th of December you do an

15 audio/video statement to the sheriff's department.

16 A That was the same night but it fondled over into the

17 morning time, yeah.

18 Q But the point is you did make that statement to them,

19 right? To law enforcement.

20 A Yeah. They took me out there to interview me about the

21 murder.

22 Q Yeah, sure. That's a standard way of doing things,

23 they videotape statements of witnesses, right?

24 A I recognize. That's the first murder I've ever

25 witnessed, I don't remember.

1 Q And on the morning of the 6th of December you also
2 handwrote out a statement in your own handwriting to
3 supplement whatever else you'd seen, heard or already told
4 about, correct?

5 A Yeah, I wrote a statement.

6 Q Yeah. And then three weeks ago here to Ms. Rumbaugh
7 and the solicitor on November 21st -- matter of fact, that
8 was a Tuesday so I guess that's what, two weeks ago today,
9 three weeks ago today, whatever, today then you give another
10 statement to them right, do you remember that?

11 A Yes.

12 Q In the 911 call you said Brent's been up for a couple
13 of days delirious, right?

14 A I thought he was delirious.

15 Q Well, that's what you said.

16 A Yeah.

17 Q That's what you told law enforcement on your 911 call.

18 A When you shoot someone for no reason I just figured he
19 was delirious.

20 Q All I'm saying, sir, is did you say, "I think he's been
21 up for a couple of days?"

22 A Yes, sir.

23 Q "He's out of his mind, he's delirious, oh my God." Do
24 you remember hearing that on the tape?

25 A Yes, sir.

1 Q That was your voice, right?

2 A Yes, sir.

3 Q Sir, let's talk about those four guys that the
4 solicitor told the jury about in opening. One of them is
5 yourself, one of them is Stefan, one is Flint McManus and
6 one is the defendant, right? Okay. And one of those four
7 guys is delirious, been up couple of days and fallen down
8 because he's under the influence something -- he's messed up
9 on something to use your words, right?

10 A I'm not sure when fell, but --

11 Q Do you remember saying in your 911 tape, "The gun went
12 off and blood shot out of Flint's mouth?" Do you remember
13 that?

14 A Brent shot him, yeah.

15 Q And then later on in that same 911 tape you said again
16 "And that gun went off," right?

17 A When Brent shot him the gun went off.

18 Q And then the third time just before the end of the
19 tape, just before the 911 folks say to you all right, you've
20 done everything you can do you said once again "And the gun
21 went off," right? Right, sir?

22 A If that's what I said, that's been three years ago.

23 Q You've heard that 911 tape before today, haven't you?

24 A Yes, sir.

25 Q Did you hear that on the 21st when you interviewed with

1 these folks again?

2 A I can't remember. No, I really didn't.

3 THE COURT: Sir, just back off of the microphone, it's
4 getting kind of muffled. Thank you.

5 Q So you've heard it some other way, some other time,
6 right?

7 A Yeah.

8 Q Today?

9 A Uh-huh.

10 Q Today you heard it before you came in the courtroom?

11 A No, I heard it today. The 911 call?

12 Q Yeah.

13 A Yeah.

14 Q Do you remember saying, sir, in that video statement on
15 the early morning of the 6th, "Brent may have handed Flint a
16 knife to look at." Do you remember saying that?

17 A No.

18 Q Don't remember saying that?

19 A He was handing him and showing all kind of stuff in his
20 closet, I'm not sure what all he showed him.

21 Q Sir, I'm sorry, I'm having a hard time hearing you.

22 A He was showing him -- like pulling stuff out of his
23 closet, I don't know what all he showed.

24 Q You didn't say that Michael -- or Brent may have handed
25 Flint a knife to look at. You don't remember.

1 A No.

2 Q Tell these folks how long you've been knowing Stefan
3 Perry.

4 A Maybe 20 years.

5 Q You've known him so well you even roomed with him for
6 awhile, right?

7 A What?

8 Q You roomed with Stefan Perry, didn't you?

9 A He lived with me for a little while.

10 Q How long was that?

11 A Maybe 15 years ago.

12 Q Not how long ago, how long did you room with him.

13 A Maybe six months, something like that.

14 Q So you know him well, right? Been knowing him almost
15 all of your life.

16 A That's what we was waiting on, for Stefan to come over.

17 Q Yeah, I know. Because as you said on your written
18 statement our friend Stefan comes up or comes over, our
19 friend Stefan.

20 A Uh-huh.

21 Q So Stefan is your friend, he's also Flint's friend and
22 he's also Brent's friend, right? Okay. Sir, let me just
23 ask you this -- sir, if I use the word toxicology, let me
24 see if I can explain that because that's a scientific word
25 that may not be in general use. Toxicology means an

1 evaluation of what's in somebody's blood; alcohol, marijuana
2 metabolite, drugs, prescription or nonprescription, caffeine
3 matter of fact. Your best friend, he had a lot of
4 prescriptions, didn't he?

5 A I think maybe two that I know of.

6 Q Have you seen him do any nonprescription stuff like
7 some street drugs?

8 A No.

9 Q Never had seen him? How does that wind up in his
10 blood, man? That's State's Exhibit Number 4. How does it
11 wind up in his blood just after the shooting? Just the four
12 guys having a good time, right? You said to law enforcement
13 on the 21st of November Flint wanted to wait for Stefan to
14 come, right? Isn't that right?

15 A Yes.

16 Q Stefan is in jail right now, isn't he?

17 A I believe he is.

18 Q Huh?

19 A I believe he is.

20 Q He was just arrested in the county's largest drug bust
21 ever back on the 10th of December; isn't that right?

22 A Yes.

23 Q I think it was heroine, Oxycodone, cocaine,
24 methamphetamine, weed, guns, money, that's our friend
25 Stefan, right?

1 A He's a friend of mine.

2 Q I'm sorry?

3 A He's a friend of mine, yes, sir.

4 Q He's not a friend of yours?

5 A I said he is a friend of mine.

6 Q So that friend, the real friend, that's his real
7 profile is that sort of record, right?

8 A I'm not sure.

9 Q Yeah, I understand. And I'm not saying that you had
10 anything to do with that, please understand, I'm saying that
11 is Stefan, right?

12 A Has he been convicted of it?

13 Q I'm sorry?

14 A Has he been convict of anything?

15 THE COURT: Just answer the question, sir. Thank you.

16 Q Let's talk about Stefan for a second. At the end of
17 Branch Street where Brent and his mama -- that's actually
18 his grandmom, her name is Alice Wallace, she's the lady
19 sitting over there in the kind of checked black and white
20 jacket, do you see her over there on the front row?

21 A Yeah.

22 Q They live on Branch Street here in Lancaster, right?

23 A They did, I'm not sure if she does.

24 Q Yeah, they did on December 5th. And they lived down at
25 the end of Branch Street, you can't go any further than

1 their house; isn't that right?

2 A Yeah.

3 Q Now, after the shooting took place you got in your
4 truck and you left the house and went up to the back -- to
5 the end of where Branch Street is and waited for law
6 enforcement because you had already called 911; isn't that
7 right?

8 A I was on the phone with them when they came.

9 Q Yeah, absolutely, and we've heard that. Stefan leaves
10 the house and has to drive in his jeep right by where you
11 are waiting for the police; isn't that right?

12 A Yes.

13 Q That's what we heard on the 911 tape where you yell off
14 the camera something about "I already called the law;" isn't
15 that right? That was you, right?

16 A I was on the phone with them.

17 Q Yeah. And you're telling Stefan, "I've already called
18 the law," right?

19 A Yes. I said I was on the phone with them.

20 Q Yeah. Do you know when Stefan ever made any statements
21 to law enforcement?

22 A I'm not sure if he has.

23 Q I'm sorry?

24 A I don't know that he ever had.

25 Q But you did, sure, you did three within six or eight

1 hours, right?

2 A Within two hours, yeah.

3 Q What if I tell you Stefan didn't make a statement for
4 almost 23 months later. An eye witness doesn't make any
5 statement to law enforcement at all, would you know that?

6 A I didn't know that.

7 Q Since December the 5th, December the 6th, 2015 up
8 through the time Stefan just got arrested, what, the 10th is
9 what -- today is the 11th. How many times have you seen
10 Stefan around here in Lancaster during that three years?

11 A Maybe a few times.

12 Q A few times? Yeah. Did you hang out with him just
13 buds kind of?

14 A No. I just pretty much just work and go home.

15 Q But you're still friends with him, right?

16 A Yeah.

17 Q I'm sure you told him, "Man, have you gone down and
18 made a statement?" I'm sure you've told him that, haven't
19 you?

20 A No.

21 Q You haven't asked him, "What did you say to law
22 enforcement?"

23 A No, sir.

24 Q Sir, you say now --

25 MR. DELGADO: Your Honor, because I'm a stranger to

1 your courtroom, is this diagram, which is State's Exhibit --

2 THE COURT: For ID only.

3 MR. DELGADO: ID only?

4 THE COURT: Yes, sir. It was not admitted, or hadn't
5 been admitted yet.

6 Q Sir, I've been in that house on Branch Street, okay?

7 And there's a diagram -- you've seen this diagram -- that's
8 right, because you put your red mark around it, right?

9 Let's just see if I can kind of replicate it for our jury,
10 okay? You come into Brent's house, Brent's part of the
11 house you come in through a door, it's a long hallway, you
12 walk up here and there's a door to the left, that's a little
13 living room and beyond that is a kitchen; isn't that right?

14 A I think that's how it is, I'm not sure.

15 Q And then if you go further you go and you turn into
16 Brent's bedroom, don't you?

17 A If you're standing in the garage his bedroom is
18 straight down the hallway.

19 Q And then you kind of turn to the right because that's
20 where the bedroom is, right?

21 A I believe that's how it was.

22 Q Well, do you want to look at it?

23 A I just did.

24 Q You've seen it, right?

25 A Yes, sir.

1 Q You come down and you turn into the bedroom, he's got
2 his own bathroom there, right?

3 A Yeah.

4 Q Now, you're saying today that after Brent shot Flint he
5 ordered you to go to the kitchen, right, but you didn't go
6 to the kitchen, did you?

7 A No.

8 Q Lord God, you wanted to get out of there, didn't you?

9 A Yeah.

10 Q Sure. And you wanted to get out of it the same way you
11 come in, by the door through the garage where your truck was
12 parked, or back out of that paving area outside of that
13 garage, right?

14 A Uh-huh.

15 Q And you wanted to get out of there, right?

16 A Yes, sir.

17 Q But now you're saying that you stalled right here in
18 the doorway and you could see down the hallway to the chair
19 where Brent was looking through his pockets; is that right?

20 A Yeah.

21 Q When is the first time you've ever said that before?

22 A He patted him down.

23 Q Huh?

24 A He patted him down.

25 Q No. My question is when is the first time you've ever

1 said that before?

2 A I believe I said it the night they took me to the
3 county.

4 Q I'm sorry, sir?

5 A I said if I'm not mistaken it was the night they took
6 me to the county.

7 Q The night they took you to the county?

8 A December the 5th, the night he shot him.

9 Q You mean on the videotaped statement?

10 A I reckon.

11 Q Would you like to hear that again, sir?

12 A I believe -- it's been three years, but --

13 Q Yeah. But what I'm saying is would you like to hear
14 that again? Because you don't say that, man. The first
15 time you ever say that is when you meet with the solicitor
16 on November 21st, right?

17 A I'm sure I told the detectives that night.

18 Q Then she's going to get up and testify to that, or he
19 is, right?

20 A I'm not sure.

21 Q Sir, where you are, let's just say the hallway is about
22 the length of this jury box, about right?

23 A Yeah.

24 Q Do I have a pen in either of my hands?

25 A You've got a wall in front you, I can't see.

1 Q I'm sorry?

2 A I can't see through the wall.

3 Q Yeah, I know. What have I got my foot on?

4 A I can't see.

5 Q Yeah. Because the angle don't let you see, right?

6 A If you step over I can see.

7 Q You couldn't see where Brent was because you were down
8 at the far end of the hallway and he's out of your view
9 because of the wall.

10 A No. I could still see --

11 Q And the first time you ever said that was
12 November 21st, right?

13 A No, I told the detectives that night.

14 Q I'm sorry?

15 A I told the detectives that night I was interviewed.

16 Q Well then they would have recorded that then, right?
17 They would have recorded that saying you saw him go through
18 pockets, right?

19 A Uh-huh.

20 Q And you're so scared while Brent supposedly walks away
21 from you with a gun, you're so scared you stay there, right?

22 A Yeah. I was wanting to see him pat him down.

23 Q Because you're so scared and you want to get the devil
24 out of there but you just wanted to make certain he was
25 patting him down.

1 A He had a gun.

2 Q Do you remember, sir -- you've been sitting out here
3 behind Mr. McManus' family out here, right?

4 A Yes.

5 Q You know those folks, don't you? Yeah. You have
6 feelings for them not only because they've lost their son
7 but you knew them before all of this happened; isn't that
8 right?

9 A I know them about as well as I knew Brent's
10 grandmother.

11 Q Sure. And she's a good person, isn't she?

12 A (Nods head yes.)

13 Q Isn't she? And that's where you've been sitting out
14 there with the family?

15 MR. DELGADO: Your Honor, may I just confer with Mr. --

16 THE COURT: Yes, sir.

17 (Break in proceedings.)

18 Q Mr. Robinson, I'm going to hand you something. First
19 of all just take your time, this isn't a test, I just want
20 you to see if you can identify that.

21 A That's the statement that I wrote.

22 Q That's your handwriting.

23 MR. NEWMAN: Your Honor, I would like to see what he's
24 showing him.

25 MR. DELGADO: Sure. I got it from you.

1 Q This, sir, is your handwriting again -- sorry. The
2 morning of December the 6th, 2015 you wrote that, correct?

3 A Yes, sir.

4 Q Did you ever put in here anything about Brent going
5 through his pockets?

6 A I'm not sure, it's been three years ago.

7 Q Well, go ahead and read it because this will help you
8 remember.

9 A I wrote that right before they interviewed me.

10 Q Go ahead and read it. There's nothing in there about
11 Brent patting down pants or trying to put a knife in
12 anybody's hands, there's nothing that is there, sir?

13 A Not that I recall.

14 Q Yeah. But you would recall, I wasn't there. That's
15 your handwriting, right?

16 A Yes, sir.

17 Q Right, sir?

18 A Yes, sir.

19 Q And in the same fashion, sir, there's nothing in here
20 about Brent saying anything about hurting somebody else and
21 getting back at him, is there?

22 A Well, I was just saying what happened like right within
23 that little bit of time.

24 Q Yeah. I mean, but you're not trying to tie it together
25 with anything else Brent supposedly said earlier about I

1 want to hurt somebody and get back with somebody, that's not
2 in this, is it?

3 A No. He mentioned that that day though.

4 Q Sir, it's your statement to law enforcement -- you
5 wanted to be complete and thorough, did you not?

6 A That's what happened right at the time it happened.

7 Q Yeah. And that's the reason you had -- the 911 call
8 you didn't say anything about it then, did you?

9 A I think I did, I'm not sure.

10 Q You didn't say anything about it in the audio statement
11 that Lancaster took from you.

12 A I told them.

13 MR. DELGADO: Thank you, Your Honor.

14 THE COURT: All right. Any redirect?

15 MR. NEWMAN: Your Honor, I would ask that -- I have a
16 clean copy of that voluntary statement, handwritten
17 statement. I also have a disc of the video recording of
18 Mr. Robinson, I would ask that we admit both in evidence and
19 publish the video to the jury.

20 THE COURT: All right. Any objection?

21 MR. DELGADO: No, sir.

22 THE COURT: All right. Without objection introduced as
23 State's next in order as well as -- the written statement
24 will be State's next in order, the video DVD will be after
25 that, whatever that number is. 13 and 14.

1 (At this time the DVD was played.)

2 REDIRECT EXAMINATION

3 BY MR. NEWMAN:

4 Q Now, you mentioned something in the video about him
5 handing a knife to Flint to look at. I show you State's 8.
6 Is that the knife he handed him to look at?

7 A I'm not sure if he even handed it to him. Like I said,
8 he was in and out of his closet.

9 Q Was that the knife that you saw?

10 A No.

11 Q Some of those knives he was handing around, were they
12 like ninja type knives like, almost like swords?

13 A Yeah. He had a lot of swords like ninja stars he was
14 throwing into the walls of his house.

15 Q Was he passing those around for y'all to look at?

16 A He was bragging on stuff like look what I got and all
17 of that.

18 Q But you never saw him pass this knife around.

19 A No, not that knife. It was like long swords or
20 whatever looking.

21 MR. NEWMAN: No further questions.

22 THE COURT: Mr. Delgado?

23 RECROSS EXAMINATION

24 BY MR. DELGADO:

25 Q Did I hear correctly, sir, Brent may have handed Flint

1 a knife to look at? Did I hear that?

2 A Yes, sir.

3 Q So that's how Brent -- excuse me, Flint, handed the
4 knife to him, he handed it to Flint. He didn't put it on
5 the floor, he didn't put it on top of the TV, he handed it
6 to him, right?

7 A I said he may have, I didn't say he did.

8 Q Did I hear correctly, sir, after Brent shot Flint he
9 told Raymond and Stefan to go to the kitchen, "I went on out
10 the door," right?

11 A Yeah.

12 Q That's the door to the garage where your truck was,
13 right?

14 A My truck wasn't in the garage, it was in the driveway.

15 Q Well, sorry. To get to your truck you have to go
16 through the garage to get out to the parking area outside of
17 the garage.

18 A Yes, sir.

19 Q So when you say I went on out the door, you went on out
20 the door towards your truck, right?

21 A No. I stopped at the steps and that's when he come --
22 he was walking behind us with the gun and I stopped at the
23 steps to look back at him and make sure what he was doing,
24 that's when he said -- he walked back in there and patted
25 Flint down.

1 Q And you were so scared that you walked back up into the
2 house with him.

3 A No. I was right there in the carport. The carport to
4 that room is just like a long hallway.

5 Q Yes, sir, I know exactly where it was. But when he
6 walks away from you he turns his back to you, right?

7 A Uh-huh.

8 Q Yes, sir?

9 A Yeah. He still had the gun in his hand.

10 Q Right, and walks out of your sight. And you supposedly
11 have to view him down the hallway, rather than run that's
12 what you did, right?

13 A I reckon I froze, I was scared.

14 Q Rather than run away.

15 A He just shot my friend, I was scared, I didn't know
16 what to do.

17 Q Matter of fact, did I hear you say, sir, that Brent was
18 nodding off?

19 A That may be why he fell down, I don't know.

20 Q Right. Because he was under the influence of some
21 drugs, right?

22 A His birthday was like the day before that, I don't know
23 what all he done for the birthday, I don't know.

24 Q So folks in your circle when you have a birthday you go
25 on a drug binge do you?

1 A I don't know, I don't know what he did.

2 Q I'm saying in your circle.

3 A I ain't got no circle.

4 Q Isn't it true, sir, that you said Robinson -- right
5 here, Robinson asked Brent if he, Brent, checked his
6 pockets. You said that to him, right?

7 A I asked Brent to check his pockets. I said, "If you
8 think he stole your daddy's watch go check his pockets," and
9 when he walked down the hall I watched him pat him down and
10 that's when I left. He got mad because there wasn't nothing
11 in his pockets.

12 Q But you've also said to this jury you could see him go
13 through his pockets.

14 A He patted him down like that.

15 Q From where you were at the end of that hallway.

16 A Yeah.

17 Q So let me just summarize. Four guys, one was one of
18 the biggest drug dealers of this county, one of them has a
19 lot of drugs in his system and another one is nodding off
20 and is delirious, right? And you, correct? Thank you.

21 THE COURT: Thank you, sir, you may step down. Ladies
22 and gentlemen of the jury, let's take a brief recess. Don't
23 talk about the case, we'll reconvene shortly, okay?

24 (The jury left the courtroom and a break was taken.)

25 THE COURT: All right. Anything else before we bring

1 a statement Mr. Perry makes to Ms. Rumbaugh on December the
2 4th there is at the latter stages of that something where
3 Mr. Perry says I want you, Ms. Rumbaugh, to talk to my
4 girlfriend about what Brent said about shooting somebody in
5 the head. If that is played that is the 12/4 statement, we
6 need -- before we play that we need to excise that. It is
7 maybe ten seconds long but I want to make sure that's not
8 inadvertently presented to the jury.

9 MS. COLLINS: We're not playing the December 4th video.

10 MR. DELGADO: Thank you.

11 THE COURT: Thank you, that's addressed and we're ready
12 for the jury.

13 (The jury returned to the courtroom.)

14 THE COURT: All right. Thank you, ladies and
15 gentlemen. The State can call its next witness.

16 MS. COLLINS: Your Honor, our next witness is Mr.
17 Stefan Perry, I do not believe Mr. Perry has yet been sworn
18 in.

19 The witness, STEFAN PERRY, was first duly sworn and
20 Testified as follows:

21 DIRECT EXAMINATION

22 BY MS. COLLINS:

23 MS. COLLINS: Your Honor, as the other witnesses have
24 placed their hands on the Bible I would ask Mr. Perry to do
25 that.

1 (The witness was sworn again.)

2 MS. COLLINS: Thank you, Your Honor. Thank you, Mr.
3 Perry.

4 Q Good afternoon.

5 A Afternoon.

6 Q You'll need to answer out loud so the court reporter
7 can take down everything that you say. Would you please
8 tell us your name?

9 A My name is Stefan Craig Perry.

10 Q All right. And Mr. Perry, do you know the defendant,
11 Michael Brent Gay?

12 A Yes, ma'am.

13 Q About how long have you known Mr. Gay?

14 A Fifteen or 20 years.

15 Q All right. And do you know the deceased, Joshua Flint
16 McManus?

17 A Yes, ma'am.

18 Q How long did you know him before his death?

19 A About the same amount of time, 15 or 20 years. I met
20 them through a good friend of mine named Raymond Robinson.

21 Q Through Raymond Robinson?

22 A Yes.

23 Q Now, Mr. Gay, what name would you refer to him by? You
24 said Michael Brent Gay, was it Brent?

25 A Brent, and I used to call him B.

1 Q B?

2 A Yeah.

3 Q And do you have a nickname?

4 A Yes.

5 Q What is that?

6 A Droop, Droop Dog.

7 Q Droop Dog? Like d-r-o-o-p?

8 A Droop Dog, d-o-g.

9 Q Okay. Thank you. And Flint, did Flint have a
10 nickname?

11 A I just called him Flint.

12 Q By his middle name? Okay. And do you know Raymond
13 Robinson?

14 A Yes, ma'am.

15 Q How long have you known Raymond?

16 A Been knowing him about 20 years.

17 Q Does Raymond have a nickname?

18 A I just call him Big Boy.

19 Q He's pretty big, pretty tall.

20 A Yeah.

21 Q Do you remember the day and night of December 5th,
22 2015?

23 A Yes, ma'am.

24 Q At any point during that day or evening did you have
25 the opportunity or did you go to the home of the Brent Gay?

1 A Yes, ma'am.

2 Q And about what time did you get there?

3 A It was probably about 11:00 maybe.

4 Q All right. And had you seen Brent earlier that day?

5 A No. I had talked to him and Raymond and Flint on the
6 phone earlier that day, they was going to a cookout and I
7 was going to go with them but I couldn't go, I had to
8 babysit my daughter.

9 Q Okay. Had you -- so you had not seen the defendant,
10 Mr. Gay, right, earlier?

11 A No.

12 Q And you had not seen Flint that day; is that correct?

13 A No, ma'am.

14 Q And you had not seen Big R or Big Boy that day,
15 Raymond.

16 A No, ma'am.

17 Q So the first time you saw any of them, was that when
18 you went to the home of the defendant?

19 A Went to the home.

20 Q And you said it was about 11:00 that night?

21 A Yeah.

22 Q And why did you go to the home at that time?

23 A I went by there to see Brent, I owed him a little bit
24 of money so I went by there and paid him his money. Well,
25 they called me before they got back and said they had made

1 it back to Brent's so I took off and went over there. I
2 wasn't there 15 minutes and everything hit the fan.

3 Q Okay. We'll talk about that in just a minute. Why did
4 you owe Brent money?

5 A For some pills.

6 Q And you had received those from Brent?

7 A This was a week before that.

8 Q Okay. And how much money did you owe him?

9 A I owed him \$80.

10 Q And did you pay him all of that that night?

11 A Yeah, I paid him that money.

12 Q When you got there to Brent's house, who let you in?

13 A Brent.

14 Q Okay. Where did you go -- did you go in the front or
15 the back or the side?

16 A Through the side carport door. He let him in and I
17 asked him what he was going to do on his birthday, his
18 birthday had been that night or the night before and he said
19 "I'm probably going to chill out tonight," he said, "I had a
20 long night before." So I said, "Well, that's all right, go
21 on and lay it down." So --

22 Q And when you asked him that, were you still within the
23 hallway from the carport or were you -- where were you?

24 A We was walking down the hallway and talking at the same
25 time, and that hallway led to the bedroom.

1 Q Did you see Ms. Wallace, his grandmother, at that time?

2 A No, I think she was asleep.

3 Q When you went into the bedroom, was it Brent's bedroom?

4 A Yes.

5 Q And was it straight down that hall from the --

6 A Straight down the hall and it opened up in a big old --
7 he had a pretty nice sized house, big ole bedroom.

8 Q Okay. And did he have a bathroom off of that bedroom?

9 A Yes. He had a big walk-in bathroom and had two big
10 walk-in closets.

11 Q Had you been over there before, Mr. Perry?

12 A Oh yeah, me and Brent was friends.

13 Q So you'd been over there several times, or many times?

14 A Yeah, several times.

15 Q When you got into the room, who else was there?

16 A Flint and Raymond.

17 Q Flint and Raymond?

18 A Flint was sitting right there in front of the TV
19 watching the ball game, Raymond was sitting 10 foot from him
20 watching the ball game, and I had a seat right there beside
21 Flint in the recliner.

22 Q Okay. Now, was there a dog around?

23 A Brent had -- he had a dog, I think they might have been
24 in the other bedroom, the front part of the house.

25 Q So at that moment you didn't see a dog?

1 A No.

2 Q But you sat in the recliner?

3 A Yeah.

4 Q And that was beside Flint?

5 A Yeah.

6 Q Now, when you sat in the recliner, did you sit all of
7 the way back or did you sit on the edge? Can you
8 describe --

9 A I was sitting on the edge like this, just sitting on
10 the edge talking to Flint and talking to Raymond, watching
11 the game. I wasn't really watching the game, I was just
12 talking.

13 Q Okay. Now this was a special game, the ACC
14 championship; is that right? Is that right?

15 A Yeah.

16 Q Okay. You just need to answer out loud.

17 A Yes, ma'am.

18 Q Had you watched any of it at home or before you came?

19 A No, ma'am, I sure didn't. I babysat my daughter that
20 evening and wasn't even into it.

21 Q How old is your daughter?

22 A Four years old.

23 Q Okay. And do you remember, was the game still on?

24 A The game was still on when I got there.

25 Q Okay. Was it Clemson and the NC Tar Heels?

1 A Yes.

2 Q And so the game was not yet over?

3 A It was getting ready to be over.

4 Q And when you came in, what did the mood appear to be at
5 that time?

6 A Everything was fine to me. I mean, hell, I thought
7 everybody was in a damn good mood, I mean I was, they were.

8 Q Had you had anything to drink earlier that day?

9 A No, I don't drink.

10 Q Okay. Had you had any pills or any substances whether
11 prescription or otherwise that day?

12 A No, ma'am.

13 Q So you were alert and able to observe everything as it
14 happened?

15 A Oh yeah.

16 Q And just tell us in your own words what did happen.

17 A Well, I was sitting there talking to Flint and Raymond
18 was about 10 foot from me, we was just kind of conversating
19 back and forth, and Brent, he was doing his thing just --
20 looked like he was in the closet looking for something, but,
21 you know, that's his house, it ain't none of my business
22 what he's doing, you know. But he was -- I seen him like
23 straight ahead and through the bathroom like he was looking
24 for something but, you know, wasn't none of my business. So
25 a few minutes later, about five minutes later he come just

1 walking by Raymond, walked by me, walked by Flint, he went
2 by Flint about four foot, turned around and said, "You got
3 my watch," and shot him in the head, cold as ice.

4 Q Had there been any argument or yelling before that?

5 A I ain't heard no argument one.

6 Q And when the defendant said that to Flint and shot him
7 in the head, did he say it as I'm talking to you now or was
8 his voice higher or lower, as in not higher like volume --

9 A He said, "He stole a watch from me," and I said, "Well
10 get it out of his pocket then." He went in his pocket,
11 there wasn't a watch there. Flint had a wallet in his
12 pocket.

13 Q Okay. Let's back up just a little bit. I want to show
14 you a diagram. Mr. Perry, I would like to show you what's
15 been marked on the back now as State's Exhibit Number 31 and
16 ask you, do you recognize what that appears to be? And if
17 you don't that's okay.

18 A This is Brent's house.

19 Q And that's the house at 1239 Branch Street where Brent
20 lived?

21 A Uh-huh.

22 Q It appears to be a diagram of that, of part of it?

23 A Yeah.

24 Q Okay. Do you see on that diagram any area that appears
25 to you to be the bedroom of Brent Gay?

1 A Yeah, right here.

2 Q Okay. And can you take this pen and mark on that and
3 we'll say with a S since your first name is Stefan and put a
4 S where you were seated.

5 A What's this right here?

6 Q Well, I can't answer any questions, but --

7 A Well, is this supposed to be something hanging on the
8 wall? Okay, I've got you.

9 Q Okay. But again, if the diagram is confusing we can
10 just ask you to describe it, would you rather do that?

11 A Yeah.

12 Q Let's have you describe everything, okay?

13 MR. DELGADO: I'm sorry, Your Honor, that's so far away
14 and both of them have a soft voice --

15 MS. COLLINS: I just said let's just describe
16 everything.

17 Q Mr. Perry, if you could just put that pen down and
18 we'll just walk through it, okay? Shall we?

19 A I can go ahead and mark it because I see it now.

20 Q You do see it now? Okay. Can you put a S where you
21 were seated in the recliner?

22 A Uh-huh.

23 Q And can you put a F where Flint was seated? Now, did
24 your recliner face the TV?

25 A Yes, ma'am.

1 Q And did Flint's chair face the TV?

2 A Yes, ma'am.

3 Q And was Flint's chair to your left or to your right?

4 A Me facing the TV it would have been to the right of it.

5 Q Okay. And where was Raymond seated?

6 A He was sitting about eight foot diagonal from me.

7 Q And you're using your left hand, would that be to the
8 left or the right?

9 A Left of me.

10 Q Okay. About eight foot diagonal to your left?

11 A Yes.

12 Q And if I -- if you had to get up and go to the men's
13 room to the bathroom, where would the bathroom have been
14 located?

15 A Straight in front of me.

16 Q All right. So if the TV is there the bathroom would
17 have been to the right or the left?

18 A The left of it.

19 Q And the door exiting the bedroom, would that have been
20 to the right or to the left?

21 A To the right of me. The right of me would have been
22 the hallway.

23 Q Okay. Now, you've described for us where Raymond was
24 sitting, where you were sitting and where Flint was sitting.
25 Can you put a R where you say Raymond was sitting?

1 A Uh-huh.

2 Q Have you done that?

3 A Yes, ma'am.

4 Q Now, where was Flint? Did Flint ever sit down and
5 watch the game while you were there?

6 A Yeah, he sat --

7 Q I'm sorry, I said Flint. Yes, you said where was
8 Flint.

9 A Right beside of me to the right.

10 Q And he was sitting.

11 A Yes.

12 Q I said Flint, I'm getting a little older. Brent, the
13 defendant, where was Brent? Was he sitting and watching the
14 game too?

15 A No. He was in his bathroom, a big old walk-in
16 bathroom, he had a big walk-in closet, and I was facing
17 that bathroom door and he was in that big walk-in closet
18 fiddling through something. Like I said, what a man does in
19 his own house ain't none of my business, I don't know what
20 he was looking for or whatever but I didn't care because we
21 all are here together, friends, I mean, didn't think nothing
22 bad was going to come out of it.

23 Q You were friends with all of those men, correct?

24 A Exactly. I mean, I didn't think I had to watch out for
25 nobody, what he's doing in his own house.

1 Q Okay.

2 A I mean, I ain't going to ask no questions about what a
3 man is doing in his closet or what he's looking for, it
4 ain't none of my business.

5 Q Okay.

6 A So when he come out of that bathroom wasn't doing
7 nothing but talking, you know, as normal until that shot
8 fired.

9 Q When Brent came out -- was it the bathroom or the
10 closet within the bathroom?

11 A Well, he was in the closet, but the way the bathroom
12 and all it was built-in, you know.

13 Q Okay. And when Brent came out, at what point did you
14 see a gun?

15 A Hell, I never did see a gun. I didn't do nothing but
16 see a -- hear a shot, when he come around like this and shot
17 the man in the head. I mean, I didn't do nothing but hear
18 it.

19 Q You've described where he walked out. Did he walk in
20 front of your chair or behind your chair?

21 A No. When he walked out of that bathroom he come by
22 Raymond, come by me, come by Flint, went past Flint four
23 foot, turned around and said, "You've got my watch," and
24 pow, shot him in the head.

25 Q So he walked in front of all three of you?

1 A In front of all three of us. I never did see a gun,
2 wasn't paying attention to look for a gun, you know, I mean
3 just wasn't -- I mean --

4 Q Did Flint have anything in his hands when he was shot
5 by Mr. Gay?

6 A No, he was talking to me.

7 Q What were y'all talking about?

8 A Just old times. Back when I was doing electrical work
9 I had to finish up a job and Raymond and Flint used to come
10 by my house about everyday when I was in layoff, and I mean,
11 just come by the house, shoot shit with me. And I hadn't
12 seen Flint in awhile because I started back working and he
13 said he wanted to wait around for me to get to Brent's, he
14 was wanting to talk to me because we had a pretty good bond,
15 you know.

16 Q So you said after -- so again right before he shot
17 Flint what did Brent Gay say?

18 A I heard him say something about, "You got my watch,"
19 and then that's when the shot fired off.

20 Q All right. And did he say -- the defendant say
21 anything immediately after that?

22 A Who?

23 Q The defendant immediately after that.

24 A Well, I asked him, I said, "What the hell was that
25 about?" And I jumped off the floor about three foot, I

1 mean, just didn't know what was going on. And I said, "What
2 was that about?" And he said, "He stole my watch,"
3 something about a watch his granddaddy had left him, and I
4 said, "Well get it out of his pockets then." So he went in
5 his pockets and didn't come out with no watch. I said --

6 Q And you saw the defendant go into Flint's pockets?

7 A Yeah.

8 Q So --

9 A And he had a wallet in his back pocket.

10 Q And other than the wallet in Flint's back pocket, did
11 Flint have anything else in his pockets?

12 A That's it.

13 Q And what, if anything, did the defendant say after he
14 saw that there was nothing in Flint's pockets other than the
15 wallet?

16 A He said, "Let's go to the kitchen."

17 Q And did you go to the kitchen?

18 A Yeah.

19 Q Why?

20 A Hell, he could have shot me. I mean, I was so
21 hysterical and upset I just kind of done what the order
22 was -- how it was ordered, so me and Raymond go walking up
23 the little hallway. Raymond makes it out to the carport
24 door, I cut to the kitchen, his grandmother was up then and
25 I was kind of informing her what happened, she was upset.

1 She said, "What was that gunshot about?" And I said, "Well
2 Brent shot Flint." So I kind of comforted her a little bit,
3 she was upset, and she told Brent, you know, "Son, you're
4 going to jail." And he said, "No hell I ain't," he said,
5 "I'm getting ready to shoot myself when the police gets
6 here."

7 Q Did he -- I'm sorry, go ahead.

8 A And so I'm standing there in a daze thinking about what
9 I need to do to get the hell out of there. So I asked Brent
10 did he want a cigarette and he said he didn't have none, and
11 I said, "Well, I've got some out there in the jeep," I said,
12 "I'll go get us a cigarette." So when I got out of there I
13 left, I said there's my way out right there.

14 Q So when you went out -- you drove there alone?

15 A I drove there alone, and when I backed out Raymond was
16 up the road and he had done called 911.

17 Q Was he standing outside in the road or in his vehicle?

18 A He was right there -- at the stop sign it's like a road
19 that goes in front of it like a T, he was standing there
20 waiting on the police to get there.

21 Q Was his vehicle there?

22 A Yeah. His vehicle was right there on the side of the
23 road.

24 Q And he was standing by the vehicle?

25 A He was standing right there in the road waiting on the

1 police, he was trying to show them where it was.

2 Q And when you saw Raymond there what did you do?

3 A I said, "Look here man," I said, "If they need to talk
4 to me send them to my house." I didn't have no driver's
5 license. I drove over there, didn't have no license and I
6 said, "If they want to talk to me send them over to my
7 house."

8 Q Okay.

9 A I said -- my nerves was shot.

10 Q Yes, sir. And at that point did you go on home?

11 A I went straight to the house and waited on somebody to
12 call me, I thought somebody might want to talk to me about
13 the incident.

14 Q Okay. All right. And did anybody talk to you that
15 night?

16 A No, ma'am.

17 Q I want to back up just a little bit to the incident
18 itself again. I asked you if Flint had a knife at the time
19 that he was shot by the defendant, do you remember me asking
20 you that?

21 A Yes, ma'am.

22 Q And what was your answer?

23 A Flint didn't have a knife.

24 Q Okay. Did you ever see him with a knife that day?

25 A I ain't never seen Flint with a knife. I think he

1 might have had a knife on him one day when we went fishing.

2 Q Is that the only time you'd seen him with a knife?

3 A Yeah. And I think that might have been in his tackle
4 box.

5 Q I want to show you what's been marked as State's
6 Exhibit 8 and ask you, do you recognize that?

7 A Yeah, I recognize that knife.

8 Q So that's a picture of a knife?

9 A Yeah, that's a knife. I sharpened that knife before.

10 Q You had sharpened that knife before?

11 A That's Brent's knife.

12 Q And because the similarity of the names I want you to
13 say the full name of the person that knife belongs to.

14 A Michael Brent Gay.

15 Q And how do you know that knife belonged to Michael
16 Brent Gay?

17 A It looks like one I give him before. Brent liked
18 watches and he liked knives and I do too, and back when I
19 was doing electrical work I had good knife sharpener, I know
20 how to put an edge on a knife. And yeah, I sharpened that
21 knife before.

22 Q You have to have a sharp knife to do electrical work?

23 A Yeah.

24 Q Did Brent do electrical work some?

25 A Yeah, Brent worked with me before.

1 Q Is that to cut the insulating wire off of the wire?

2 A That or just any kind of utility, you know.

3 Q And so you recognized that as a knife you had given to
4 Brent Gay in the past?

5 A It looks like one I -- I had got a knife -- a pack with
6 two knives in it, like a two-pack special, and I give him
7 one out of that pack.

8 Q All right. And regardless, had you ever seen Flint
9 with a knife like that?

10 A No, Flint didn't carry a knife.

11 Q And that night you didn't see Flint with any type of
12 knife at all?

13 A No, ma'am.

14 Q That night did you see that knife, anyone have that
15 knife at all before?

16 A I didn't see that knife at all that night.

17 Q Okay.

18 A I didn't see much but the shooting.

19 Q Okay. Let me ask you, you said that you were there and
20 I'm going to show you what's been marked as State's
21 Exhibits 6, 7 and 10. Let me show you first Exhibit 6. Do
22 you recognize that?

23 A Yeah, that's one of Brent's watches.

24 Q You've seen that watch before?

25 A Yeah. Brent had ordered quite a few watches off that

1 QVC, and yeah, that looks like one of them right there.

2 Q And what type of watch is that, does it say on there?

3 A Like a Nautica watch.

4 Q Well, when I say type I mean, does it say the brand on
5 there?

6 A Invicta.

7 Q Invicta? And I would like to show you State's Exhibit
8 7 and ask you, do you recognize that?

9 A Yeah.

10 Q What is that?

11 A That's a Fossil watch.

12 Q And have you ever seen that Fossil watch before?

13 A Yeah.

14 Q Where did you see that?

15 A Brent had this watch. Brent had a quite a few watches.

16 Q Had Brent ever shown you a watch that he said -- and
17 you said earlier granddaddy, that he said anyone in his
18 family had ever given him?

19 A Well, that night he was stating a watch that I guess he
20 thought Flint stole from him, he was indicating a watch that
21 his granddaddy gave him when he died or he inherited when he
22 died or whatever, but it wouldn't be one of these new ones.

23 Q And did he say what type of watch that was?

24 A Never had seen it, never did hear what kind of watch it
25 was.

1 Q And he had never shown you a watch before saying this
2 is the watch that someone left me or gave me?

3 A No, ma'am.

4 Q I would like to show you what has been marked as
5 State's Exhibit 10, and ask you -- let me -- do you
6 recognize State's Exhibit 10?

7 A Yeah, I know what that is.

8 Q What is that?

9 A That come with his golf cart. He bought a golf cart,
10 that's a little -- holds your manual, your paperwork in a
11 golf cart, that's what that is, Easy Go.

12 Q And it's a little green pouch?

13 A Yeah.

14 Q Had you ever seen that before?

15 A Yeah.

16 Q Who did that belong to?

17 A They belonged to Brent Gay.

18 Q And had you ever seen Flint with that?

19 A No, ma'am.

20 Q Had you ever seen Flint with either of those two
21 watches you just identified?

22 A No, ma'am.

23 Q Okay. Now, when you went to the kitchen, did Ms.
24 Wallace, was she already in there or she came in there after
25 y'all went there?

1 A She was in the process of getting out of bed, she had
2 just made it to the kitchen. Like she was coming out of the
3 bedroom, getting her robe on and to ask what that gunshot
4 was about.

5 Q All right.

6 A And I told her.

7 Q And you've already described the conversation you heard
8 at that time between Ms. Wallace and Mr. Gay and yourself
9 because she asked what had happened.

10 A Yeah.

11 Q And I think you said that you said Brent shot Flint; is
12 that right?

13 A Yeah.

14 Q And you comforted her; is that correct?

15 A Yes, ma'am.

16 Q And after she said something to Brent and he responded
17 as you said, what happened next, do you remember?

18 A He said that -- she said, "Brent, you're going to
19 jail." And he said, "No hell I ain't neither," he said,
20 "When the police gets here I'm going to shoot myself."

21 Q And is that the point that you left and said something
22 about getting the, did you say, smokes or cigarettes?

23 A I said, "Brent, you want a cigarette?" He said he
24 didn't have none. I said, "I've got some out there in the
25 jeep, do you want one?" And he said, "Yeah." So that give

1 me a chance to get out there and get up out of there.

2 Q Okay. And at that point was Brent Gay still holding
3 the weapon?

4 A It was laying on the counter right there beside of him.

5 Q Okay. I want to show you what's been marked as State's
6 Exhibit 11 and ask you, do you recognize that?

7 A Uh-huh.

8 Q What is that?

9 A A .38 Special.

10 Q And have you ever seen that gun before?

11 A Yeah.

12 Q Where did you see that gun?

13 A That's Brent's gun.

14 Q Did you see the gun, that gun that night?

15 A Yeah, that's the one he shot him with.

16 Q Okay. And at the time that you said it was laying on
17 the counter, had Brent Gay unloaded the gun at that point?

18 A Unloaded it?

19 Q Yes.

20 A I didn't see nobody unload it.

21 Q Okay.

22 A If it was unloaded -- if I seen him unload it I
23 probably would have hung around, you know, until the police
24 got there. But I seen that gun sitting right there and I
25 know it had bullets in it, so hell, I left.

1 Q Right.

2 A It could have been my life.

3 Q Yes, sir.

4 MS. COLLINS: One moment. Just a minute, Mr. Perry.

5 (Break in proceedings.)

6 Q Mr. Perry, while you were there, did you see Brent Gay
7 drink anything?

8 A No. He poured some pills out on the counter and
9 crushed them and snorted them.

10 Q When was that?

11 A Right before I left there.

12 Q So that was after the shooting?

13 A That was after the shooting.

14 Q And you said on the counter, was that the counter in
15 the bathroom or where?

16 A No, in the kitchen right there where his grandmother
17 was. He was sitting there crushing them up, I guess, doing
18 what he had to do, but I left.

19 Q Did you see how many he poured out?

20 A I don't know, maybe five.

21 Q Okay. And what color were they, do you remember?

22 A He was on them Opana pills, they was white.

23 Q Okay. And --

24 A But I seen him snort them and then I left.

25 Q And did he do that in front of his grandmother?

1 A Oh yeah.

2 Q One moment.

3 MS. COLLINS: Thank you, Mr. Perry, please answer any
4 questions of the defense attorney.

5 THE COURT: All right. Mr. Delgado?

6 MR. DELGADO: Thank you.

7 CROSS EXAMINATION

8 BY MR. DELGADO:

9 Q Mr. Perry, the reason you would have stayed around if
10 the gun was unloaded was because you had something important
11 to tell them, that would be the police, right?

12 A What's that now? I couldn't hardly hear you.

13 Q If you had known the gun was unloaded you may have
14 stayed around for the police who were coming to the scene,
15 right?

16 A Yes, I probably would have. But considering he had a
17 loaded gun right beside him on the counter that I knowed it
18 was loaded, I was trying to find a way up out of there
19 before I got myself shot.

20 Q I understand.

21 A I mean, I just seen him shoot one man, he could have
22 shot me and the other guy in the bedroom, you know, to get
23 rid of everything, all of the evidence.

24 Q Right.

25 A If, you know -- but I figured I needed to find an

1 escape way before he shot me in the back, you know what I
2 mean?

3 Q I guess what I'm saying is the reason you would have
4 stayed around if there wasn't any danger to you was because
5 you wanted to tell the police what you knew, right?

6 A Yeah. Because me being there on the spot they was
7 going to ask.

8 Q Right.

9 A Yeah.

10 Q Okay. Sir, it's matter of fact, I think there was a
11 statement that you've made that while you were there in that
12 kitchen with Brent and his mama, Ms. Wallace, that you even
13 heard the sirens from the police coming to the scene, do you
14 remember that?

15 A Oh yeah, I heard sirens from a long distance. I heard
16 sirens coming, oh yeah.

17 Q And you figured then that you would get out of there
18 before the police got there, right?

19 A No, it wasn't nothing like that. I figured I would get
20 out of there before I got shot.

21 Q Mr. Perry, let's just talk about this just for a
22 second. My friend, Ms. Collins, didn't ask you about that,
23 ask you about any of this, and I'm not saying there's any --
24 she's ever said anything to you about what offer you may
25 get, I'm not saying the solicitor has said anything to you

1 about any offer you may get. But right now --

2 A I ain't worried about a offer.

3 Q Oh, okay. Well, I guess what I'm talking about is --

4 let me just see if I can make certain I know you mean by

5 that. You are right now -- you have pending charges in

6 Lancaster, correct, sir?

7 A Yes, sir.

8 Q Tell these folks how many charges you have got on you.

9 A I've got six.

10 Q Again, I'm not saying that there's any deal, are you

11 hoping there's maybe some deal?

12 A Why do you ask?

13 Q No, I didn't say that. I'm saying are you hoping

14 there's some deal down the road?

15 A No. I ain't asked about no deal.

16 Q Just kind of the guy you are, right?

17 A What happens happens.

18 Q Now, have you ever -- relating to all of these charges,

19 the six charges -- let me see if I can read them off to you,

20 okay?

21 A Uh-huh.

22 Q Well, actually in June the 9th, 2018, that's less than

23 a year ago, half a year ago, right, matter of fact six

24 months ago you were charged with manufacturing and

25 distributing methamphetamine, right?

1 A Possession.

2 Q Oh, okay. Well, if I said to you that the index says
3 manufacturing and distribution of methamphetamine, would you
4 know that -- is that the same charge, just possession is
5 what you think it is?

6 A It's possession.

7 Q Would you know how much that carries in the way of jail
8 sentence?

9 A Not really.

10 Q What if I told you --

11 A I haven't really thought about it yet.

12 Q Yeah, because that's just the kind of guy you are. You
13 don't care about --

14 A I don't care about it but I have too much going on to
15 really even think about it.

16 Q Right. What if I told you that carries up to 30 years
17 in jail.

18 A I guess I would have to do it if I get it, I mean --

19 Q Well, see, there's a lot more, though, in addition to
20 that, isn't there?

21 A Yes, sir.

22 Q Back on the 30th of November, Lord, that's what, less
23 than two weeks ago, right?

24 A Yeah. I have got some major charges on me now, yes,
25 sir.

1 Q Let me just go through those. One of those is
2 trafficking in methamphetamine, right?

3 A Yes, sir.

4 Q Do you know what that brings in jail?

5 A Yes.

6 Q What?

7 A Damn near life.

8 Q Well, it actually brings only three to ten, okay? If I
9 say to you that you're charged here in Lancaster County by
10 the Lancaster County Sheriff's Department, Ms. Rumbaugh's
11 outfit, going to be prosecuted by the solicitor's office
12 here in Lancaster with trafficking in heroine, that's
13 another one of your charges?

14 A Yes.

15 Q And that carries a minimum of 25, up to 40 years in
16 jail, right?

17 A Yes, sir.

18 Q And then there's another trafficking in heroine that
19 you were arrested for. All of these are at one time, right?

20 A Yeah.

21 Q As a matter of fact when I read the Lancaster News
22 they -- the headline was this is the largest drug bust in
23 the history of the county, right?

24 A Sounds like, yeah.

25 Q That's you, right?

1 A I mean, I hadn't been convicted of it yet.

2 Q I didn't say that, I'm just saying that's what you're
3 charged with.

4 A That's what I'm charged with, yes, sir.

5 Q That's who you are, right?

6 A Yeah.

7 Q Okay. Then you got another trafficking in MDMA, what
8 is that?

9 A Ecstasy.

10 Q Yeah. See, some of these folks may not know what MDMA
11 is but you know what it is, right?

12 A Yeah.

13 Q If I told you that brings a minimum of 25 years in
14 jail, would you know that?

15 A Yes, sir.

16 Q And when the police raided your house back on the 30th
17 they found some smoke there at your house, marijuana, right?

18 A Yeah, a little bit of marijuana. That was mine, that
19 was mine.

20 Q Oh, so the rest of those things weren't yours?

21 A No.

22 Q You were just who holding it for somebody, right?

23 A I was held at gunpoint to hold that.

24 Q I'm sorry, what?

25 A I was held up at gunpoint to hold that.

1 Q Oh, so somebody held you up and made you hold all of
2 that stuff?

3 A Man, I tell you what --

4 Q Man, that's something. I'm certain you reported that
5 to law enforcement and told them, "Lord have mercy, somebody
6 is making me hold all of these drugs."

7 A I ain't had a chance to talk to nobody.

8 Q Oh, you didn't? How long had that stuff been in your
9 house?

10 A I ain't had a bond yet.

11 Q No, no. You said somebody made you hold that stuff,
12 right? How long had that stuff been in your house?

13 A Couple weeks.

14 Q And in those couple of weeks you didn't go Ms.
15 Rumbaugh who you know by name, right? You know her, don't
16 you?

17 A Yeah, I know her.

18 Q She's interviewed you a couple of times in this case,
19 hadn't she? Right?

20 A On what case?

21 Q On the case against Brent that you know about.

22 A Yeah, twice.

23 Q And so for those two months you didn't go to Ms.
24 Rumbaugh and tell her, "Lord, somebody is making me do
25 something illegal, something wrong and I've got all of this

1 dope at my house?"

2 A No.

3 Q They even charged you with possession of a stolen
4 pistol, didn't they?

5 A A stolen pistol?

6 Q Yes, sir.

7 A I didn't have none stolen.

8 Q Possession of a pistol then, right?

9 A Yeah.

10 Q Tell these folks whether or not that pistol --

11 A But it's registered.

12 Q Well, that's registered, there you go. But see, you
13 can't have it because you're a felon; isn't that right?

14 A I'm not a felon.

15 Q Haven't you been convicted and done time in the
16 department corrections already?

17 A I ain't a convicted felon.

18 Q Did you hear what I said to you? Haven't you already
19 been convicted and been to the department of corrections?

20 A Yeah.

21 Q How much time did you do there?

22 A Where, at the department?

23 Q The South Carolina Department of Corrections.

24 A That was a probation violation.

25 Q You've never been in SCDC?

1 A Yeah.

2 Q For what?

3 A Probation violation.

4 Q Probation violation for what?

5 A I violated probation.

6 Q Yeah, I know that. Probation for what underlying
7 charge?

8 A Drugs.

9 Q Yeah. What were those drugs?

10 A It was possession with intent to distribute.

11 Q What kind of drug?

12 A Cocaine.

13 Q See, but that's a felony, brother.

14 A I had a drug habit and I went and got help.

15 Q Yeah, you sure did. Well, you got help and then you
16 got in trouble again, right?

17 A Yeah.

18 Q You've continued that same problem --

19 A Twenty years later.

20 Q -- right to this day?

21 A 20 years later.

22 Q And the folks you hang around with, including Brent
23 Gay, may have also some of that problem too, right?

24 A Some might, some might not. But hey, I know a lot of
25 different people, good people, some bad people.

1 Q Right.

2 A Mid-class.

3 Q Some folks that buy drugs from you and some folks that
4 you distribute drugs to, right?

5 A No.

6 Q You've never distributed any drugs?

7 A Yeah, years ago.

8 Q Oh, years ago? Well --

9 A Not lately.

10 Q Sir, let me just ask this, the house that was raided by
11 the police on the 30th --

12 A Uh-huh.

13 Q -- right, your girlfriend lives at that house with you,
14 doesn't she?

15 A Yeah. That's my house, she lives with me.

16 Q Yeah. Matter of fact your four year old child lives
17 there with y'all, right?

18 A She did.

19 Q Yeah.

20 A She lives with my mom now.

21 Q Matter of fact they charged you and your girlfriend
22 with willful neglect of a child because all of those drugs
23 were in access -- ready access for your baby, right? Isn't
24 that right?

25 A Baby was in the house.

1 Q So my question to you is you were charged because it's
2 easy for a child -- let's say you're not there for some
3 period of time or your girlfriend is not there and you've
4 got a baby there, the baby could get in that drugs; isn't
5 that right?

6 A They wasn't that close.

7 Q Well, let's talk about the number of drugs that you
8 had, okay?

9 A Why have we got to talk about that?

10 Q Because I'm asking the questions and you're not.

11 A Okay.

12 Q You had about eight pounds of Oxycodone, didn't you?

13 A 7.5.

14 MS. COLLINS: Your Honor, at this point I'm going to
15 object. I think the rules do allow Mr. Delgado to question
16 him regarding the name of the charge as well as what it
17 carries, but as far as to the specifics I do not believe the
18 rule permits that.

19 THE COURT: All right.

20 MR. DELGADO: Well, I think so. This is the underlying
21 facts about what he's charged with to be able to get to
22 manufacturing or the trafficking.

23 MS. COLLINS: He's not allowed to ask about the
24 underlying factors.

25 THE COURT: I'm going to sustain the objection.

1 Q Sir, there was powder and there were pills there in
2 your house, correct?

3 MS. COLLINS: Objection. The same objection, Your
4 Honor.

5 THE COURT: I'm going to overrule that objection.

6 Q Correct, sir?

7 THE COURT: Specific quantity and et cetera is the
8 objection that I sustained.

9 Q Correct, sir? In other words there was marijuana, that
10 was in a lump form I guess?

11 A No, it was just --

12 Q Loose?

13 A In small bags.

14 Q Small bags, yeah. All right. The heroine, how was
15 that packaged?

16 A They considered the pills heroine.

17 Q Oh, okay.

18 A They was in bags of a thousand pills in each bag.

19 Q About how many pills overall?

20 MS. COLLINS: Objection.

21 MR. DELGADO: He opened the door, he just opened the
22 door.

23 MS. COLLINS: And he has stated it, but beyond that the
24 question should not be permitted.

25 THE COURT: Sustained.

1 Q What about the ecstasy, the MDMA? How is that
2 packaged? Is it just in a bag somewhere; is that right?

3 A I thought we was done with that.

4 Q No, answer my question. The MDMA, how was that
5 packaged?

6 A That's these pills, that was in a bag.

7 Q That pistol -- I may have asked you this and if I have
8 I apologize, that pistol was loaded?

9 A Which one? There was one gun in my house.

10 MS. COLLINS: Objection to relevance.

11 A There was one gun in my house that was registered --

12 THE COURT: Hang on, sir. Objection overruled.

13 Q The one gun in your house, was it loaded or unloaded?

14 A There was a --

15 Q It's an easy question, sir, it's either loaded or
16 unloaded.

17 A The gun didn't have the clip in it, but the rounds was
18 in the clip but the clip wasn't in the gun.

19 Q Okay. Sitting right beside the gun?

20 A No, it was on top my refrigerator. I told the police,
21 when they come in they asked me if I had any guns, I said I
22 have got one on top of the refrigerator.

23 Q Tell us about the cash money that was seized there at
24 your house, how much money?

25 A Well, I think they said they got \$600, \$400 was my

1 girlfriend's and \$200 was mine. She had just got her
2 paycheck.

3 Q Yeah. Were you holding that money for somebody else?

4 A Yeah. I was holding it for the landlord getting ready
5 to pay the rent.

6 Q Yeah, I understand. Now, the drugs that you were
7 holding for somebody else at gunpoint, right, that's what
8 you've said to our jury.

9 A What about it?

10 Q Well, I just want to make certain that I remembered
11 what you'd said, somebody had forced you to hold the
12 heroine, the Oxycodone, the ecstasy, the weed --

13 A No, not the weed, that was my weed.

14 Q Oh, that was your weed, okay. All right. Well -- but
15 somebody else then had made you hold the heroine and the
16 Oxycodone -- actually that was Fentanyl, wasn't it?

17 A I don't know what it was, they wasn't mine.

18 Q Okay. And the ecstasy, somebody had forced you to hold
19 that.

20 A Uh-huh.

21 Q Right?

22 A Yes, sir.

23 Q I am certain that you've told the police about who that
24 person was, right?

25 A I haven't had a chance, my case ain't come up on it.

1 I'm worried about this case.

2 Q Yeah. Well, there's nothing for you to worry about for
3 this case.

4 A I mean, it's just been going on for three years, I'm
5 ready to get it over with.

6 Q Yeah. Well, let's talk about that for just a second.
7 The shooting takes place on December 5th, 2015, isn't it,
8 right?

9 MS. COLLINS: Your Honor, I would like to see what Mr.
10 Delgado is displaying to the jury.

11 THE COURT: All right.

12 MS. COLLINS: I don't believe that the witness can see
13 it.

14 MR. DELGADO: Sure, I'll be glad, I'll stand right
15 here.

16 MS. COLLINS: I object. I don't believe it's
17 necessary, it's cumulative to the questions being asked and
18 the witness has not yet answered.

19 THE COURT: Objection overruled.

20 MR. DELGADO: May I stand here, Your Honor?

21 THE COURT: Yes, sir. Just talk loud so everybody can
22 hear you.

23 Q Mr. Perry 12/5/15, that's when Flint McManus was shot,
24 right? The first one up here, right?

25 A Yes, sir.

1 Q You drove away from that house on Branch Street and
2 went back to your house, correct?

3 A Yes, sir.

4 Q Tell these folks about the next time that you talked to
5 law enforcement about anything that you knew as the result
6 of being an eye witness.

7 A Well, there was an investigator came by the house about
8 a month after the shooting and I give him a statement.

9 Q Oh really. Who was that investigator?

10 A I had his business cards in my wallet but I don't have
11 my wallet right now, I was going to give it to Rumbaugh.

12 Q But that was one from the Lancaster County Sheriff's
13 Department, was it?

14 A Where?

15 Q Huh?

16 A What, the statement I gave?

17 Q Yeah.

18 A Yes.

19 Q Oh, it was a month later?

20 A Yeah.

21 Q Do you think that's been -- they -- you've given that
22 to them? Have you seen it since then, the statement that
23 you gave?

24 A This was another investigator.

25 Q Sure.

1 A There was three different investigators come by my
2 house and I gave them a statement, okay? But they no longer
3 are investigators for Lancaster County no more.

4 Q But their report would have to be in the file from
5 Lancaster County.

6 A I had nothing to do with holding a file.

7 Q No. Do you understand what I'm saying? What you told
8 them had to be in their file, right?

9 A It must have.

10 Q Was it a man or woman investigator?

11 A Man.

12 Q White or black?

13 A White.

14 Q How old was he?

15 A I don't know, in his fifties.

16 Q Have you seen him out here in the -- since then? If I
17 told you, sir, that that was an investigator that I sent to
18 your house, his name was Pete Skidmore from Rock Hill.

19 A Yeah, I remember Skidmore, I remember him.

20 Q That was the fellow who worked for me and introduced
21 himself as a private investigator working for me.

22 A Okay.

23 Q The first time you ever told Lancaster County Sheriff's
24 Department anything was December the 30, 1917 -- I mean
25 2017, right? That's 23 months later, man, right?

1 A Uh-huh.

2 Q You were so concerned, you were so upset, you had so
3 much information, Lord God, you didn't get down there for
4 almost two years, right, to Ms. Rumbaugh?

5 A Yeah, that's when she come by my house.

6 Q At 10/30/17?

7 A Well, what about it?

8 Q That's the first time that you ever made a statement,
9 that's on that recording that's a video of you at the
10 sheriff's department.

11 A No. What, that?

12 Q Yeah, right there, 10/30 of '17.

13 A He come to my house.

14 Q No, no, she.

15 A I'm talking about Skidmore, he come to my house.

16 Q I understand. Skidmore doesn't work for them, he's a
17 private investigator. The first time you ever said anything
18 to law enforcement was 10/30/17, right?

19 A You got me lost on that one, partner. I had two
20 different investigators come by my house on this shooting
21 right here.

22 Q Sure. One of them met --

23 A I do remember Skidmore because Skidmore knows my
24 girlfriend, my girlfriend knows his daughter, they went to
25 school together.

1 Q Right. So mine --

2 A So he's from York and they got to talking and, I mean,
3 I give him the truth just like I said it right here in the
4 courtroom.

5 Q My question to you, sir, an official representative of
6 the Lancaster County Sheriff's Department, you never made
7 any written statement or oral statement --

8 A Oh, yeah.

9 Q -- until the 30th of October, 2017?

10 A Nuh-uh.

11 Q What did you do? Who did you meet with? Who was it?

12 A I don't know who it was but I met with several others
13 besides Skidmore.

14 Q No. Will you please listen to me? I'm saying forget
15 Mr. Skidmore, I'm talking about a representative of the
16 Lancaster County Sheriff's Department, that is Ms. Rumbaugh,
17 you met with her on October the 30th, right? Right here.

18 A Yeah.

19 Q That was a video recorded statement down at the
20 sheriff's department, right?

21 A Right.

22 Q So for 22 months you had so much information you didn't
23 call them, you didn't go down there, you didn't say anything
24 to them about, "Let me tell you what I know. Let me tell
25 you what happened. I've got to be able to get this off my

1 chest."

2 A Well, look here, I didn't think it was none of my
3 business, I thought they was going to get up with me. I
4 didn't think that was my job.

5 Q That's just the kind of guy you are, right?

6 A No, it's not just the kind of guy I am. I was working
7 ten or 12 hours a day.

8 Q You mean when you weren't dealing drugs, right?

9 A No, I'm an electrician. But --

10 Q Let's move to June 9, 2018. Were you an electrician
11 there when you were arrested for a drug arrest? That was --

12 A No, I was down on my leg. I've been down on my leg two
13 years.

14 Q That's right. So because you were down on your leg you
15 just thought you would fall back to your default position of
16 being a drug dealer, right?

17 A No.

18 Q But that's what you were arrested for, right?

19 A No, just being in my possession.

20 Q I'm sorry?

21 A They was in my possession.

22 Q You got out of jail on a \$10,000 bond, didn't you?

23 A When?

24 Q June 9th, 2018.

25 A Uh-huh.

1 Q Isn't that right?

2 A Yes, sir.

3 Q And the next time you ever said anything about what you
4 saw that night up on Branch Street to the sheriff's
5 department -- oh, I'm sorry, you know what? That 10/30/17,
6 that statement that you made to the sheriff's department,
7 okay, to Ms. Rumbaugh --

8 A Uh-huh.

9 Q -- do you remember? That was because you had a charge
10 of illegal entry into a closed space, do you remember that?
11 You and maybe the girlfriend had gotten into a problem, you
12 were arrested when you made that statement, weren't you?

13 A Arrested?

14 Q Yes, sir.

15 A No. They took me by the -- they took me by to go talk
16 to her and then took me to jail.

17 Q Well see, man, that's what I mean by being under
18 arrest, they being the sheriff's department, right? Isn't
19 that's correct?

20 A Yeah.

21 Q They had you in their custody and took you by to speak
22 to Ms. Rumbaugh, right?

23 A Uh-huh.

24 Q You wouldn't have come down on October the 30th and say
25 anything that you knew about Brent unless you had been under

1 arrest, right?

2 A They didn't ask me to come see them.

3 Q Oh, okay. It's important I guess for good citizens to
4 be able to be asked about eye witness testimony involving a
5 murder a according to you, right?

6 A Well, it's like this, I thought they could call you or
7 come by your residence if they needed you.

8 Q Yeah.

9 A That's how it was told to me. They said if they need
10 me they'll come see me and get in contact with me.

11 Q I guess so it's their fault, right?

12 A It's somebody's fault, it ain't mine.

13 Q And on 11/20/17 you met with Ms. Collins and Ms.
14 Rumbaugh probably up here? Was it in their office?

15 A We come up here and talked to them.

16 Q That was up on the third floor?

17 A Third floor.

18 Q And that's when you made a statement to them, right?

19 A Uh-huh.

20 Q About Brent, right?

21 A Uh-huh.

22 Q I'm going to go into that in just one second. But I
23 just wanted to say to you, so some three days later -- I
24 mean, when you come up here to the solicitor's office and
25 give them a statement about what you say what you know to be

1 true, that doesn't have any impact on Stefan Craig Perry,
2 because three days later you were already holding drugs
3 then, weren't you, at your house?

4 A Yeah, the drugs at my house.

5 Q I'm certain you must have -- upstairs on the third
6 floor in the prosecutor's office for Lancaster County you
7 didn't tell Ms. Collins or Ms. Rumbaugh anything about, "You
8 know, I have got to tell you about some Oxycodone?"

9 A They didn't ask.

10 Q I know, and they didn't ask about that heroine either,
11 did they?

12 A No.

13 Q They didn't ask the about the MDMA either, did they?

14 A Uh-huh.

15 Q Did they?

16 A No, sir.

17 Q They didn't probably ask you about whether or not you
18 had some smoke on you, right?

19 A No.

20 Q Okay. So on the 27th you met with them upstairs, three
21 days later, Lord, you get arrested for the largest drug raid
22 in the history of Lancaster County, right?

23 A Yes, sir.

24 Q Man, today is the 12th, it's a Wednesday, last Tuesday
25 the 4th you made a statement to them once again about what

1 you supposedly know about this case, right?

2 A Yes, sir.

3 Q But you were already in jail for all of those times,
4 right?

5 A I was in jail when she come by there.

6 Q Because if you weren't in jail you're not going to tell
7 them because it's their responsibility to ask you, right?

8 A I feel like it's their responsibility to get in contact
9 with me if they need to talk to me, I mean, the ball is in
10 their hands.

11 Q Sir, if I told you that you were looking at a minimum,
12 a minimum of with all of those charges added together of 78
13 years in jail, would you know that? Has your lawyer
14 explained that to you? That's just the minimum, right?

15 A Yes, sir.

16 Q The maximum, Lord, is 160 years.

17 A Yes, sir.

18 Q Now, I'm not saying there's any deal over here. See,
19 they're not going to say that to you, man, are they?
20 They're not going to say you come and say what you
21 supposedly know about Brent Gay, they're never going to put
22 that down if writing, they're never going to tell you that
23 but that's what you're looking at minimum and that's what
24 you're looking at maximum. As a matter of fact, if they so
25 desire to do it they can do what is known as a LWOP, a life

1 in prison without parole, do you know that?

2 A Yes, sir.

3 Q But it's just their job to come to you and get the
4 truth, right? Right?

5 A Yes.

6 Q Yeah. Sir, let me just ask this, on December the 5th
7 when you came over to Brent's house on Branch Street, you
8 owed him some money for drugs, right?

9 A Yeah.

10 Q So all of this time before you got clean in effect
11 you're still a drug addict, aren't you?

12 A Kind of sort of.

13 Q Well, see, kind of and sort of means that you're not
14 doing it or you are doing it.

15 A I mean, not really. I mean, I do a little bit of pain
16 pills because of my leg, I'm prescribed that though.

17 Q I'm sorry, you're what?

18 A I'm prescribed that.

19 Q Well, you weren't prescribed for the stuff that Brent
20 sold you, right?

21 A No.

22 Q He gave you other pain pills, right?

23 A Yeah.

24 Q Pain pills that he had prescriptions for, right?

25 A Right.

1 Q So he was using and also selling to you, right?

2 A Right.

3 Q He had all kinds of medicine, didn't he?

4 A No, just one kind, pain pills.

5 Q But you've seen lots of other medicines at his house,
6 haven't you?

7 A Pain pills.

8 Q As a matter of fact, he's the face of this national
9 opioid crises, isn't he? I mean, that's what we're talking
10 about, isn't it? He's strung out, isn't he, or was?

11 A Ask him.

12 Q I have, that's exactly what he told me.

13 MS. COLLINS: Objection.

14 THE COURT: Sustained.

15 Q You've used drugs with him, haven't you?

16 A I have before.

17 Q Yeah, before December the 5th, right? Plenty of times.

18 A Way before then, yeah.

19 Q Yeah. Because that's the kind of addict you are,
20 right?

21 A I ain't an addict now.

22 Q No, no. Well, you're not an addict since the 30th,
23 right?

24 A Yeah.

25 Q No. They don't let you have those things down in the

1 jail.

2 A I use what my doctor writes me now.

3 Q Yeah.

4 A Yeah.

5 Q Sir, these charges that you're looking at gosh, what is
6 it, is it -- well, there's six drug charges; stolen pistol,
7 a weapon during the commission of a violent crime and an
8 unlawful neglect of a child, that's nine different charges
9 you're looking at right now, right?

10 A Where you get a stolen pistol from?

11 Q I don't know, this came off the index. Is that a big
12 deal to you?

13 A I didn't have no stolen pistol. I had a registered
14 pistol, it was registered.

15 Q Well, let's talk about the six drug cases that you
16 have.

17 MS. COLLINS: Objection, asked and answered.

18 THE COURT: Sustained, move on.

19 Q Have you ever said that you're not worried about those
20 -- that right there is taken care of on something else? Do
21 you know while talking about? Do you know what I'm saying?

22 A No, sir.

23 Q Well, sir, you know this lady right here, Ms. Jennifer
24 Rumbaugh, she works for the Lancaster County Sheriff's
25 Department, right?

1 A Yes, sir.

2 Q She interviewed you back on October 30th of 2017,
3 right? She interviewed you on December the 4th, 2018,
4 right? Do you ever remember in the interview with her
5 having the charges, your six drug charges and the two pistol
6 charges and the unlawful neglect of a child charge, do you
7 remember having those stuffed into your pocket in the video,
8 do you ever remember that?

9 A Yeah.

10 Q You remember that? But let's talk about that for just
11 a second. Are those your clothes or are those the ones you
12 got at the jail today to wear here?

13 A These right here?

14 Q Yeah.

15 A These are my clothes. Your.

16 Q Yeah. And they put those on for your testimony here
17 today rather than that orange jumpsuit, right?

18 A I requested it.

19 Q Yeah. And in that orange jumpsuit when you were talked
20 to by Ms. Rumbaugh you put all of the charges that you had
21 been listed into your pocket, do you remember that?

22 A Uh-huh.

23 Q Do you ever remember saying to Ms. Rumbaugh that, "That
24 right there" -- and with your left hand you pointed to the
25 papers -- "That right there is taken care of on something

1 else." Do you remember saying that?

2 A No.

3 Q That wouldn't be a deal somewhere as a result of those
4 charges, right?

5 A No. I had them papers in my pocket because I didn't
6 know what I was leaving for.

7 Q I'm sorry?

8 A I didn't know what I was leaving to the jailhouse for
9 so I thought I might need them papers if I was going to --
10 you know. I thought I might be going to talk to a public
11 defender or something.

12 Q Sir, can I just ask this question? Let me just go back
13 to this date again, from the 15th to the 30th, that's almost
14 23 months, either, sir, you didn't care to come down and see
15 them or maybe you hadn't gotten the story right, would that
16 be fair?

17 A There wasn't nobody I had to talk to back then.

18 Q What about between December the 5th and October the
19 30th, how many times did you see Big Raymond?

20 A Couple of times a week.

21 Q Well, that's 22 months times twice a week, that's --
22 that's a couple of hundred times.

23 A He didn't talk to nobody either.

24 Q Oh, that's right. The most important thing that the
25 two of y'all have ever experienced, somebody being shot to

1 death in front of you, y'all didn't even talk about it.

2 A Man, that was a bad experience, I didn't want to talk
3 about it. I mean, we're talking about a good friend of
4 mine, you know, gone.

5 Q Yeah.

6 A Just cold as ice.

7 Q Never talked about anything about what you saw, what
8 you sensed, how it went over, who you talked to.

9 A Didn't like to talk about it, man, just cold as ice. I
10 mean, if there was some kind of fighting going on they
11 should have got together on that.

12 Q I'm sorry, say that again.

13 A If Brent had a problem with Flint, him and Flint should
14 have got together on that.

15 Q Well, let me ask you this about for Flint for one
16 second. Let's go back to the evening of December the 5th,
17 it was called the Dr. Pepper ACC Championship game up here
18 at Charlotte at the Bank of America Stadium, Clemson versus
19 North Carolina State. You didn't even come to Brent's house
20 until about 11:00 that night, right?

21 A Yes, sir. I had been babysitting my little girl all
22 that day and my wife was at work.

23 Q Okay.

24 A She worked in 12 hour shifts.

25 Q Oh really?

1 A Yeah.

2 Q And so when she got off she came home and you then were
3 free to go do whichever you wanted to do, right?

4 A I mean, why not? I was going to go to the cookout with
5 them.

6 Q Yeah. Let's talk about that for just a second. So
7 it's your testimony that Brent and Raymond and Flint went to
8 a cookout, right?

9 A Yeah.

10 Q At a fellow by the name of Cameron's house, right?

11 A Right.

12 Q Where was Cameron's house located?

13 A It was towards Buford.

14 Q Say that again, I'm sorry.

15 A Out towards the Buford area.

16 Q And the three of them went to that, right?

17 A Right.

18 Q And they stayed there for a couple hours --

19 MS. COLLINS: I'm going object to that, Your Honor,
20 that would rely upon hearsay. He said he wasn't there.

21 MR. DELGADO: No, I didn't say he was there. I'm
22 sorry.

23 THE COURT: Just rephrase your question.

24 MR. DELGADO: Sure.

25 Q You knew that Brent and Flint and Raymond left and went

1 to this cookout at Cameron's house, right?

2 MS. COLLINS: Objection. He was not there, he would
3 only know that by hearsay.

4 Q Let me ask you this, on the way back you were called by
5 one of those three fellows and said "We're coming back from
6 the cookout, meet us at the house;" isn't that right?

7 A I didn't say -- I didn't tell nobody to meet me at the
8 house.

9 Q Weren't you invited to go to the cookout too?

10 A I was invited, yeah.

11 Q Yeah, okay.

12 A But I didn't go to the cookout.

13 Q That's right, because you had your child.

14 A They had called me and said they was back from the
15 cookout.

16 Q Right. Okay.

17 A That they was back at Brent's house.

18 Q So they didn't just go up the road to the store to get
19 some chips or anything, they went to an actual physical
20 location and had a cookout with other folks there besides
21 just the three of them, right?

22 A I guess, I wasn't there.

23 Q Yeah, you weren't there. But on the way back or when
24 they got there they called you and said they were back --

25 A Uh-huh.

1 Q -- at Brent's house, right?

2 A That's right.

3 Q Did you know, sir, that Flint wanted to wait until you
4 got to the house before he left do you know that?

5 A Yeah, he wanted to talk to me, sure did.

6 Q Raymond says that to the police, doesn't he? Raymond
7 and Flint -- the game was ending or it was just about to end
8 and Raymond said, "Come on Flint, let's go." But Flint
9 says, "No, Stefan is not here yet," right?

10 MS. COLLINS: Objection. Mr. Delgado is asking this
11 witness about something that happened when he was not there.

12 THE COURT: Sustained. Y'all just say objection, I'll
13 make rulings.

14 MR. DELGADO: Thank you, I'm sorry.

15 MS. COLLINS: Yes, sir.

16 Q Mr. Perry, in truth and in fact you did come back to
17 Brent's house, didn't you? Or you came to Brent's house,
18 didn't you?

19 A I didn't come back.

20 Q Sure, I agree, you came, right. And when you came
21 there was Flint and Raymond and Brent, right?

22 A Yes, sir.

23 Q And you paid -- as you're walking down the hall, is
24 that when you paid him the money you owed him for the drugs,
25 Brent?

1 A No. I paid him after he done shot the man. I mean, we
2 was -- when I first got there I talked to Brent going down
3 the hallway and asked him what he was going to do for his
4 birthday and then he said probably go to bed and he said, "I
5 had a rough night last night." So I didn't -- you know,
6 just standing there and say "Hey, I've got your \$80," you
7 know what I mean?

8 Q Let me make sure certain I heard that right now, you
9 paid him the \$80 after Flint McManus was shot; is that
10 right?

11 A Yeah, before I left his house.

12 Q I'm certain you told that to Ms. Rumbaugh, didn't you?

13 A I don't know if I told her I owed him \$80 or not.

14 Q Sir, I have -- you told Ms. Rumbaugh on November the
15 27th that you saw Brent -- that's right, you said you saw
16 Brent -- no, that's way down here. You never said on the
17 27th that you saw Brent take any pills or snort some stuff
18 up, you never said that until the 4th.

19 A What's that?

20 Q That you saw Brent crush some pills up and ingest them
21 through his nose, you never said that until December, did
22 you, last week?

23 A No, before then.

24 Q You never said -- or did you ever say to Ms. Rumbaugh
25 back on the 27th that you had to pay Brent for some pills?

1 A I don't believe I did.

2 Q Yeah. Much less that you paid him after the boy was
3 shot and killed and dead cold like you said, right?

4 A Cold as ice.

5 Q Sir, on the statement to Ms. Rumbaugh on the 27th and
6 the statement to Ms. Rumbaugh on the 4th, both of those were
7 at the sheriff's department, correct?

8 A One was at the sheriff's office, the other one was at
9 the --

10 Q Detention center.

11 A No, they was both at the sheriff's office.

12 Q That's right, they both were and both of them were tape
13 recorded. Did you see that little camera up in the corner,
14 do you know that?

15 A What's that?

16 Q That both of those two statements, that is the 27th of
17 November and the 4th of December were tape recorded, video?

18 A Right.

19 Q Right. Do you ever remember saying back here on
20 December the 4th that after the shooting we spent three
21 minutes in the same room, do you remember that?

22 A The kitchen.

23 Q I'm sorry?

24 A The kitchen.

25 Q Say that again.

1 A The kitchen.

2 Q No, in the same room. Right after Flint was shot we
3 stayed in the same room, we, Raymond, you and Brent, with
4 that boy shot.

5 A Yeah. Because I told him I said, "If he got your watch
6 get it out of his pocket."

7 Q That's right.

8 A And he went in his pockets, pulled his pockets out,
9 wasn't no watch. So --

10 Q You didn't order Raymond and --

11 A What's that?

12 Q -- I mean, Brent didn't order you and Raymond into the
13 kitchen, did he?

14 A He said, "Let's go in the kitchen."

15 Q Well, that's after the three minutes, right?

16 A That's when we was talking about the watch in his
17 pocket.

18 Q Yeah. After that first three minutes that's when he
19 orders you all to go to the kitchen.

20 A The kitchen.

21 Q We're going to get into that and that diagram in just
22 one second, let me just make certain to get something down.
23 After the boy was shot his head went back and then went
24 down, right?

25 A Right.

1 Q Sitting in the same chair.

2 A Same chair.

3 Q Do you have a copy of that diagram? Is that in
4 evidence in front of you? Do you have it up there? If you
5 don't it's here somewhere. Here it is.

6 THE COURT: He's got it.

7 Q Sir, let's talk about this diagram.

8 MR. DELGADO: This is going to be State's Exhibit
9 number 12, Mr. Court Reporter.

10 MS. COLLINS: Your Honor, one moment. There were two
11 diagrams, Mr. Delgado, I think with an earlier with Mr.
12 Robinson. I think Mr. Perry might still have the diagram.

13 MR. DELGADO: I'm sorry, that's fine. Then this is 12
14 and this one is another one. I correct myself, State's
15 Exhibit Number 31, right?

16 Q This is the diagram of Brent's house, right? Is that
17 right?

18 A Yes, sir.

19 MS. COLLINS: And that's not yet in evidence but I
20 would move it into evidence at this time.

21 MR. DELGADO: Oh, okay. Well, so State's Exhibit 31 by
22 the solicitor into evidence.

23 Q This is a diagram of his house, right, on Branch
24 Street, right?

25 A Uh-huh.

1 Q Now, Ms. Alice, you know Ms. Alice, she's sitting up
2 here on the second row right up there.

3 A Yes, sir.

4 Q She lives in another bedroom off this piece of paper.
5 In other words, this isn't the whole house, is it? Her
6 bedroom is down here, isn't it?

7 A Her bedroom is past --

8 Q Down where my finger is, right?

9 A Uh-huh.

10 Q One roof, one house, but she lives in a bedroom on the
11 other side of the house from where Brent lives, right? And
12 the way that you -- because you've been over to that house
13 on Branch Street plenty of times according to what you said,
14 right?

15 A Yeah, I did.

16 Q And the way you get into it is you either park in the
17 garage or park in the parking area outside and come through
18 the garage door entrance.

19 A Yes, sir.

20 Q It's not a garage door, it's an entrance from the
21 garage, right?

22 A Right, yes, sir.

23 Q And when you do that you go down a hallway down to
24 Brent's room; isn't that right?

25 A Yes, sir.

1 Q Okay. So when you come out of this bedroom if you were
2 going to the kitchen you would come back down this way, go
3 here and turn to the right past this little room where Ms.
4 Alice basically kind of watches TV all of the time, right?
5 And go past here into the kitchen, right?

6 A Well, actually -- yeah, it's just right straight --

7 Q Down the hallway to the right --

8 A That little kitchen bar --

9 Q Yeah.

10 A -- it's not from here to that bar right there from the
11 hallway.

12 Q Yeah. What I'm saying is if you were going to go out
13 to the garage you would go straight on down the hall, right?

14 A That's where Raymond went out.

15 Q That's right. So Raymond left, didn't he, when he was
16 supposedly ordered into the kitchen? That would be Raymond
17 and then you with Brent following, instead of going in the
18 kitchen, Lord, he just goes out the door.

19 A He took off, went and dialed 911.

20 Q Yeah. He didn't stick around, did he?

21 A No, he went and called 911.

22 Q Right. Left the house completely, he wasn't standing
23 out here in the garage, was he?

24 A No, he took off. He said, hell, he wasn't going to get
25 shot.

1 Q But you went into the kitchen, right?

2 A Yeah, I did.

3 Q And that's because you still had that \$80 to pay,
4 right?

5 A No, it wasn't nothing like that. That's what I was
6 ordered to do and that's what I done.

7 Q I've got you.

8 A And like I said, I seen the gun, he still had the gun
9 in his hand so I had to make something up to get out of
10 there.

11 Q And while you were in the kitchen --

12 A But like I said, I owed the man \$80 so I give him his
13 \$80.

14 Q You were in the kitchen for maybe five minutes, maybe
15 more and you heard sirens and that's when you --

16 A About five minutes or so, yeah.

17 Q I'm sorry?

18 A Maybe five minutes or a little more.

19 Q Actually I listened to you say it, you said five
20 minutes, maybe a little bit more when you heard sirens.

21 A I was talking to his grandmother trying to comfort her,
22 yeah.

23 Q And you realized then those sirens were probably coming
24 to this house, to Branch Street.

25 A I knew they was coming there, I knew Raymond done

1 called 911.

2 Q Right. And on the way out of the house you passed
3 Raymond while he was standing by his truck or in the truck.

4 A Right there in the road, yeah, waiting on the police to
5 get there.

6 Q And you said to them if they need to talk you tell them
7 to call me or come to my house.

8 A I told him tell them to come to my house, yes, sir.

9 Q Now, you didn't even think about going down to see them
10 at anytime, right, and reporting what you saw.

11 A To see who?

12 Q They being the Lancaster County Sheriff's Department.

13 A No. I figured they would come see me.

14 Q And you never thought about calling them to say hey --

15 A I mean --

16 MS. COLLINS: Objection, Your Honor, this has been
17 asked and answered.

18 THE COURT: Hang on a second. Overruled, answer that
19 question and then move on.

20 A I didn't think it was necessary because I figured they
21 would be getting in contact with me right away, you know
22 what I mean?

23 Q But they didn't, right?

24 A Not right away.

25 Q In fact, they didn't get in touch with you until you

1 got arrested and then you tell them the end of October --
2 first time you ever said anything to law enforcement, end of
3 October of 2017, right?

4 A Well, they knew where I was.

5 Q They what?

6 A If they needed to talk to me they knew where I was,
7 I've had that address for ten years.

8 Q Well, this Kershaw knife that was there, Lord, you gave
9 that to Brent, right?

10 A I gave it to Brent about a year prior to that.

11 Q Right. Had you ever said that to law enforcement
12 before December 4th?

13 A The two investigators that come to my house, I told
14 them that.

15 Q I'm talking about Lancaster County investigators, Ms.
16 Rumbaugh.

17 A When they asked I told them.

18 Q Yeah. Well, they didn't ask you about the -- matter of
19 fact, Ms. Collins asked you about that in November 27th, you
20 didn't see anything to her.

21 A I told her about it.

22 Q Yeah. You told her about the knife but you didn't say
23 you gave it to him, did you?

24 A I told her it looked like a knife that I had given him.

25 Q That is true you did. But on the 4th you said, "No, I

1 now remember I did, I gave that to Brent."

2 A I said it looks like a knife that I did give him, yeah.

3 Q And that's the one that you had sharpened up because
4 that's what you use in skinning wire, right?

5 A Yeah. But back when I sharpened that knife that was a
6 year or so prior to that.

7 Q Sure, I understand.

8 A That was way before the accident happened.

9 Q Sir, let me just see if I can get this right, and you
10 may have said this, Flint and Raymond, sometimes after you
11 got laid off, they would come to your house a couple of
12 times a week?

13 A Yeah.

14 Q Y'all wouldn't smoke anything when they would come to
15 the house, would you?

16 A No, no, didn't do no drugs.

17 Q I'm sorry?

18 A Didn't do no drugs. They didn't do drugs.

19 Q They didn't do drugs?

20 A No. I seen them drink a little bit.

21 Q Who is Cameron, do you know that name? Do you know who
22 that is?

23 A Yeah, he used to work with me. That's the guy's house
24 they went to for the cookout.

25 Q Sir, when -- December the 4th, 2018, last Wednesday a

1 week ago yesterday, right, you were with Ms. Rumbaugh at the
2 sheriff's department and you made a video statement, that's
3 when you took this thing out of your pocket, those were the
4 list of charges that you had on you then, those are the
5 arrest warrants or a copy from the index about all you were
6 charged with, right?

7 A Yeah. I had that paperwork on me, yeah.

8 Q And you remember sitting down there, there's a little
9 table, you were on one side of the table and she's on the
10 other side of the table, right? Again, do you ever remember
11 saying as you're sitting at the table you pointed with your
12 left hand after you had taken those papers out and you
13 pointed to that and you said, "That right there is taken
14 care of on something else," do you remember saying that at
15 all?

16 A Well, I might have but it wasn't nothing to do with
17 this.

18 Q Yeah. But you asked then Ms. Rumbaugh if you could
19 speak to her about what was on those papers, do you remember
20 that?

21 A I was trying to get a public defender then.

22 Q Oh, okay. And you remember her saying something to
23 you, "Well, we can talk about that but let's do that out
24 here," that is in the hallway, do you remember that?

25 A Me and her talked about it, there wasn't going to be

1 any kind of deal made about --

2 Q I agree with that.

3 A -- me being in this case here and a new case, she said
4 we're not going to do no deal about, you know --

5 Q She says she can't promise you anything; isn't that
6 right?

7 A But I wasn't trying to get to that, I mean, I was
8 trying to get to a public defender.

9 Q That's just the kind of guy you are, right?

10 A Yeah.

11 Q You're a man and you'll take it?

12 A Yeah. I'll take it, yeah, if it comes down to it.

13 Q I'm sorry?

14 A If it comes down it I will.

15 MR. DELGADO: Your Honor, may I just confer with --

16 THE COURT: Yes, sir.

17 (Break in proceedings.)

18 Q Sir, one thing Mr. Phillips reminded me I wanted to ask
19 you about. After the boy was shot, after the gun goes off,
20 for those three minutes nobody leaves the room according to
21 what you say on December 4th.

22 A What you mean nobody leaves the room?

23 Q Well --

24 A We were trying to find that watch.

25 Q I understand. I'm simply saying that bedroom -- after

1 the shot goes off for three minutes nobody leaves the room,
2 not you, not Brent, not Raymond, right?

3 A Yeah, that's right.

4 Q And then when everybody leaves it's Raymond first then
5 you and then Brent, and Raymond leaves on out the door out
6 to the garage and he skedaddles, he's gone.

7 A He seen a way -- with his knowledge in his head he seen
8 that was the scapegoat goed (sic) and called 911, and Brent
9 behind me, I take that right -- I seen Raymond was gone, I
10 knew he was going to handle business so I took that right to
11 the kitchen, and I seen Alice and I got to hugging on her
12 telling her --

13 Q And Alice asked -- in your presence Alice asked what
14 had happened. She came from her side of the house down
15 towards to that little sitting room right by the kitchen;
16 isn't that right?

17 A Right. And she said, "What's going on?" And I said,
18 "Brent shot Flint. She said, "What the hell is going on,
19 Brent?"

20 Q She said what the hell?

21 A What the hell is going on?

22 Q She said that.

23 A Yeah.

24 Q I guess what I'm asking is for those three minutes
25 Raymond is in that bedroom, he doesn't leave?

1 A Who?

2 Q Raymond doesn't leave.

3 A All three of us was in the bedroom.

4 Q That's all I wanted to hear. Thank you.

5 A All three of us was in there.

6 MR. DELGADO: Thank you, Your Honor, that's all.

7 THE COURT: All right, thank you. Ladies and
8 gentlemen, I see several of you squirming, I'm squirming
9 myself, before we do redirect we're going to take a recess,
10 about a ten minute recess. Do not talk about the case,
11 Mr. Witness, you stay right here just for a moment, okay?
12 Thank you.

13 (The jury left the courtroom and a recess was taken.)

14 THE COURT: Anything else before we bring the jury back
15 in?

16 MS. COLLINS: No, Your Honor, thank you.

17 THE COURT: All right, bring them in.

18 (The jury returned to the courtroom.)

19 THE COURT: Thank you. Madam Solicitor?

20 MS. COLLINS: Thank you, Your Honor.

21 REDIRECT EXAMINATION

22 BY MS. COLLINS:

23 Q Mr. Perry, we all had a bit of a break. During that
24 break you continued to sit right there in the chair as
25 instructed by the Judge; is that right?

1 A Yes, ma'am.

2 Q And neither I or Mr. Newman or Ms. Rumbaugh or anybody
3 from our table came up and spoke to you; is that right?

4 A No, ma'am.

5 Q Thank you. Now, in fact, no one spoke to you other
6 than perhaps Mr. Steen, right?

7 A Yes, ma'am.

8 Q Thank you. Now, in regard to the raid on your house on
9 November the 30th of this year, 2018, there are others
10 charged in that same drug case; isn't that right?

11 A Yes, ma'am.

12 Q There are two other men charged, correct?

13 A Yes, ma'am.

14 Q And those men don't live with you, right?

15 A No.

16 Q Those meant don't live at your house, right?

17 A One is a neighbor.

18 Q Pardon me?

19 A One is a neighbor.

20 Q One is a neighbor. And so there are others charged as
21 well with those drugs; is that right?

22 A Yes, ma'am.

23 Q Okay. Now, prior to those charges happening after the
24 raid on your house on November 30, 2018, prior to that you
25 spoke to Jennifer Rumbaugh in October of 2017; is that

1 right?

2 A Yes.

3 Q October 30th of 2017; is that right?

4 A Yes, ma'am.

5 Q And before you talked to Ms. Rumbaugh on that day her
6 business card had been left on the door of your house,
7 right?

8 A Yes, ma'am.

9 Q So a few weeks or days before that you knew she was
10 trying to reach out to you.

11 A Yes, ma'am.

12 MR. DELGADO: Your Honor, may I ask her not to lead?

13 MS. COLLINS: Yes, Mr. Delgado, I'll be glad to. Thank
14 you, Your Honor.

15 Q So prior to Ms. Rumbaugh speaking to you in October of
16 2017 you had heard her name before.

17 A Yes.

18 Q Whose business card had been left in your door prior to
19 you speaking with her?

20 A Hers.

21 Q Ms. Rumbaugh's?

22 A Yes.

23 Q And when you ended up speaking with Ms. Rumbaugh on
24 October 30, 2017, had you received a charge at that time?

25 A No.

1 Q Do you remember a city charge that --

2 A It was an old city charge, yeah.

3 Q -- that Mr. Delgado asked you about?

4 A Yeah.

5 Q Some kind of unlawful entry?

6 A Yeah. I had to go to court for that.

7 Q And that was a city charge, right?

8 A Yeah, that was a city charge.

9 Q That had nothing to do with the sheriff's department;
10 is that right?

11 A Nothing to do with it.

12 Q And, in fact, that's in city court, I think just
13 carries up to 30 days or just a fine; is that right?

14 A I paid a fine.

15 Q All right. And so back in October of 2017 when you
16 first spoke with Ms. Rumbaugh none of these other charges
17 had happened, correct?

18 A Correct.

19 Q None from -- as Mr. Delgado's chart showed, from June
20 of 2018, right?

21 A Right.

22 Q And none from November of 2018, right?

23 A That's right.

24 Q And going to the incident itself, you said that Raymond
25 was in the room with you, with Brent, the defendant --

1 A Yes.

2 Q -- and with Flint's body.

3 A Yes.

4 Q -- for about three minutes after it happened; is that
5 right?

6 A Yeah. We had done three minutes of talking, asking him
7 why he did it, said the man stole his watch that his
8 granddaddy give him, and I told him to get the watch back
9 but the man didn't have a watch.

10 Q Is three minutes an estimate or is it exact?

11 A I mean, an estimate. I mean --

12 Q What had just happened was upsetting?

13 A Yeah, it was very upsetting.

14 Q Okay. And so Raymond was in the room when Brent
15 checked the pockets of Flint?

16 A Yes.

17 MS. COLLINS: Thank you. Your Honor, at this time I
18 would like to move into evidence the video statement of
19 Stefan Perry to Ms. Rumbaugh on October 30th, 2017?

20 THE COURT: All right. Any objection?

21 MR. DELGADO: In response to what maybe is what I'm
22 trying to ask?

23 MS. COLLINS: Mr. Delgado not only has inferred that
24 the reason Mr. Perry has given his statement on 12/4/18 as
25 well as testified to this jury is because of a hope for some

1 kind of leniency or deal on those charges even though
2 Mr. Perry has denied that repeatedly, because of that I
3 think it's very important for this jury to hear what he said
4 almost a year before that on 10/30 of 2017.

5 THE COURT: All right. So we have an objection, we
6 have argument from the State, any further argument on your
7 objection?

8 MR. DELGADO: Yes. I hope I didn't say that there was
9 a deal. I said if he hopes there's a deal, he hopes there
10 is some leniency. I didn't say there was, whether it is in
11 2017 or last week.

12 THE COURT: Remember, I remind the lawyers we argue
13 outside the presence of the jury for legal issues, but I
14 have an objection, we have argument, brief argument from the
15 State and I'm going to overrule the objection and I'm going
16 to allow the introduction into evidence of the October 30th,
17 2017 video statement and I will grant the State permission
18 to publish the statement.

19 MS. COLLINS: Thank you, Your Honor. At this time I do
20 move that this be marked then as a State's Exhibit in
21 evidence. Let the record reflect it's State's Exhibit 32.

22 THE COURT: Admitted into evidence.

23 MS. COLLINS: While he does that if we can go back on
24 the record for just a moment -- I think I already did, I
25 moved State's 31 into evidence, the diagram?

1 THE COURT: Right, that was admitted into evidence.

2 (The video was played.)

3 Q Mr. Perry, right there at the end, was that as to the
4 unlawful entry charge?

5 A Yeah. I went to the court and paid a fine.

6 Q All right. On the video we saw you draw a diagram for
7 Ms. Rumbaugh and you dated it and put your name, do you
8 remember that?

9 A Yes, ma'am.

10 Q I you would like to show you, Mr. Perry, what has been
11 marked as State's Exhibit 33 and ask you to take a look at
12 that. Is that a copy of the diagram that you drew for Ms.
13 Rumbaugh on October 30th of 2017?

14 A Yes, ma'am.

15 Q And that's a true and accurate copy?

16 MS. COLLINS: Thank you, I move that into evidence at
17 this time.

18 THE COURT: Any objection?

19 MR. DELGADO: No objection.

20 THE COURT: Without objection admitted into evidence.

21 MS. COLLINS: Thank you.

22 Q Mr. Perry, at the time you were interviewed by Ms.
23 Rumbaugh, had anybody shown you any diagrams of the house?

24 A No. I drew that on my own.

25 Q Okay. You had drawn that on your own.

1 A I drew this, yes.

2 Q And had anybody shown you any of the pictures that
3 you've been shown now?

4 A No. I just scene them pictures, you know, a few weeks
5 back.

6 Q Okay. And let me just ask you, Mr. Perry, you stated
7 that you paid Mr. Gay the money you owed him after Flint was
8 shot; is that right?

9 A Yeah.

10 Q Can you tell us why in the world would you have given
11 money to Mr. Gay after you saw him shoot Flint?

12 A Hell if I know, I owed him the money.

13 Q Did you ever plan to see Mr. Gay again after this?

14 MR. DELGADO: Object to that, Your Honor, it's leading.

15 THE COURT: Overruled, just answer the question.

16 Q Let me just ask you this, when did you ever plan to see
17 Mr. Gay again after this?

18 A Never.

19 Q And when did you ever plan again to enter the home
20 after at 1239 Branch Street after this?

21 A Never.

22 MS. COLLINS: Thank you.

23 THE COURT: All right. Any recross based on redirect?

24 MR. DELGADO: Yes, sir.

25 RECROSS EXAMINATION

1 BY MR. DELGADO:

2 Q Mr. Perry, did I hear correctly when Ms. Rumbaugh asked
3 you on this recording "Well, we can kill two birds with one
4 stone today," right? Do you remember that?

5 A (Shakes head no.)

6 Q Oh, you don't? You didn't hear her ask you that? You
7 know, in other words since you're down here on that other
8 little city charge we'll just go ahead and take a statement.
9 That was the context.

10 A Yeah.

11 Q That's what she meant.

12 A Yeah. You're confusing me, yeah.

13 Q Okay. Yeah. But you were going -- your words were, "I
14 was going to get up with you," right, before she said that.

15 A Yeah.

16 Q Is that funny?

17 A No. I mean, yeah, I was planning on getting up with
18 her.

19 Q Yeah. And if you hadn't been picked up on that city
20 charge we would still be waiting --

21 A I was still going to get up the next day.

22 Q Yeah, right, if we believe you.

23 A I ain't going to do nothing to tell you the truth
24 buddy, I don't lie.

25 Q Well, let's speak about the truth about Flint McManus.

1 He was on pain medication too, wasn't he?

2 A No, sure wasn't.

3 Q Do you know what type of medications he was on
4 prescriptions? You don't know.

5 A No, not really.

6 Q You said you think he's on prescriptions.

7 A Yeah. But I didn't know what kind of prescription he
8 was on, didn't ask.

9 Q Okay. The money that you owed Brent when you just said
10 just a minute ago, "Hell, I just owed him the money," he
11 hadn't threatened you for that, had he?

12 A He didn't threaten me but I owed him so I paid him.

13 Q That's right. So with everything else that just
14 happened you think, you know, I think I will be straight-up
15 and clear off that debt now, right?

16 A Hey, I owed the man, I paid him.

17 Q There you go.

18 A He's still alive.

19 Q Right. I think you said something, sir, that Flint
20 said to you, "I've been meaning to come to your house" --
21 no. "I've been meaning to catch up with you," or "I've been
22 meaning to come to your house to see you." Didn't he say
23 that to you?

24 A Him and Raymond used to come by the house once or twice
25 a week, yeah. He was fascinated with my little girl, he

1 nicknamed my little girl biscuit and my little girl loved
2 him to death.

3 Q Good.

4 A Yeah.

5 Q You said that Flint and Raymond --

6 A And my girlfriend was friends with him also.

7 Q Sure. Flint and Raymond were getting ready to leave,
8 that's Brent's house, but Flint wanted to see you, right?

9 A Yeah.

10 Q There you go.

11 A I hadn't seen him in awhile.

12 Q Sir, let me just ask you this, what we just saw of
13 Stefan Craig Perry on that video on October 30th, when is
14 the last time you had taken any drugs before that day?

15 A I was taking Percocet then because --

16 Q Yeah. You were high then, weren't you?

17 A How do you figure that?

18 THE COURT: No, sir, just answer the question.

19 Q Scraping your head, all your mannerisms, you were high
20 then.

21 A I wasn't really high but that toboggan had my head
22 itching and I was on Oxycodone because I had a surgery done.
23 I done had two surgeries done since that incident.

24 Q And we have you to believe that you have never sold any
25 of your Percocets or your Oxycodone to anybody else for any

1 money, right?

2 A Yeah, I took my Oxycodone.

3 Q Yeah. So you've never sold any Oxycodone.

4 A No, I took my medicine.

5 Q You never sold any Percocets, right?

6 A I took my medicine.

7 Q Right. Sometimes you take your medicine and maybe make
8 some money off of it too?

9 A No, I took my medicine.

10 Q Yeah. We've got you to believe to for that.

11 A Yeah.

12 MR. DELGADO: All right, thank you.

13 THE COURT: Thank you. Ladies and gentlemen of the
14 jury, let's take a brief recess, I'm going to talk some
15 scheduling issues with the lawyers and we'll get you back
16 out here and let you know that in a moment, okay? Don't
17 talk about the case.

18 (The jury left the courtroom.)

19 THE COURT: All right. Thank you, Mr. Perry, your
20 testimony has now concluded, you can take him back into the
21 holding cell and take him back to the detention center, I
22 didn't want to do that in the presence of the jury. As far
23 as scheduling, the State's next witness, how long do you
24 anticipate?

25 MS. COLLINS: Your Honor, our next witness will be

1 I, the undersigned, Michael C. Watkins,
2 Official Court Reporter for the Sixth Judicial
3 Circuit of the State of South Carolina, do hereby
4 certify that the foregoing is a true, accurate and
5 complete transcript of the proceedings had and
6 evidence introduced in the trial of the captioned
7 case relative to appeal in the Court of General
8 Sessions for Lancaster, South Carolina, on the
9 10th-13th days of December, 2018.

10 I do further certify that I am neither of kin, counsel,
11 nor interest to any party hereto.

12

13

February 23, 2019

14

15

16


Michael C. Watkins

17

Court Reporter

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1 STATE OF SOUTH CAROLINA
2 COURT OF GENERAL SESSIONS
3 COUNTY OF LANCASTER
4 2016-GS-29-377

5 State of South Carolina

6 Vs.

7 Michael Brent Gay

8

9 Lancaster, South Carolina

10 December 13, 2018 (Guilty Plea)

11 Before the Honorable Brian M. Gibbons

12 APPEARANCES

13 For the State: Randy Newman, Lisa Collins

14 For the Defendant: Dane Phillips, John Delgado

15

16 Reported by: Michael C. Watkins

17 Official Court Reporter

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25

1 MS. COLLINS: Your Honor, at this time we would like to
2 put on the record a plea. We have prepared sentence sheets
3 and the defendant and his counsel have signed the --
4 actually -- I'm --

5 (Break in proceedings.)

6 MS. COLLINS: Judge, the defendant and his attorney
7 have signed the sentence sheet indicating the defendant's
8 intention to enter the plea of guilt to the lesser-included
9 offense of voluntary manslaughter on count one, and to the
10 charge of possession of a firearm during the commission of a
11 violent crime as charged on count two. I'll hand up the
12 sentence sheets at this time.

13 THE COURT: All right. Any other negotiations or
14 recommendations concerning the plea?

15 MS. COLLINS: No, Your Honor, these are straight-up
16 pleas. The defendant is exposed to the max on each of those
17 two charges.

18 THE COURT: Thank you. Mr. Phillips, is that your
19 understanding of the plea?

20 MR. PHILLIPS: Yes, Your Honor.

21 THE COURT: Mr. Delgado, is that your understanding of
22 the plea?

23 MR. DELGADO: Yes, sir, it is.

24 THE COURT: All right. And gentleman, based upon
25 y'all's discussions with your client and y'all's

1 investigation into this matter as well as everything that
2 has transpired up to this point in this jury trial, do you
3 agree with your client's decision to plead guilty to these
4 charges?

5 MR. PHILLIPS: I do, Your Honor.

6 MR. DELGADO: Yes, sir, Your Honor.

7 (The defendant was sworn.)

8 THE COURT: Mr. Gay, obviously you understand why
9 you're here in court?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: You understand what these two charges are
12 against you as they were presented to me in the sentencing
13 sheets?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. The charge of voluntary
16 manslaughter, that carries up to 30 years in prison, and the
17 possession of a weapon during a violent crime charge, that
18 carries up to five years in prison, do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. So understanding what these
21 charges are as well as the maximum punishment you can
22 receive, how do you plead to these charges?

23 THE DEFENDANT: I plead guilty.

24 THE COURT: Now, Mr. Gay, has anybody forced,
25 pressured, coerced or made you plead guilty against your

1 will?

2 THE DEFENDANT: No, sir, they haven't.

3 THE COURT: Has anybody promised you anything or held
4 out any hope or reward to get to you plead?

5 THE DEFENDANT: No, sir, they haven't.

6 THE COURT: Have you told your lawyers everything you
7 need to tell them?

8 THE DEFENDANT: Yes, sir, I have.

9 THE COURT: And have they answered all of your
10 questions?

11 THE DEFENDANT: Yes, sir, they have.

12 THE COURT: Are you satisfied with their services?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Now, we have been involved in a jury trial
15 obviously since Monday and, of course, you've been here the
16 whole time as the jury trial is proceeding, so you
17 understand when you waive, that means -- excuse me, when you
18 plead guilty you waive, that means you give up those very
19 valuable constitutional jury trial rights that's been going
20 up to this point, do you understand that?

21 THE DEFENDANT: Yes, sir, I understand.

22 THE COURT: That means if you go forward with this plea
23 you will not be entitled to a jury trial any further, do you
24 understand that?

25 THE DEFENDANT: Yes, sir.

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

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Are under the influence of anything today
4 that would make you not understand my questions to you?

5 THE DEFENDANT: No, sir, completely clear.

6 THE COURT: You fully understand what you're doing?

7 THE DEFENDANT: Yes, sir, I do.

8 THE COURT: Lastly do you understand that whatever I
9 sentence you to here today you have ten days from today to
10 appeal any sentence which I may hand down?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: You understand that?

13 THE DEFENDANT: I do.

14 THE COURT: All right. Now, at this point in time I'm
15 going to ask the State to give me a factual basis. Of
16 course, I have sat through this trial the past four days, I
17 understand the facts but for the purpose of the charge of
18 voluntary manslaughter and possession of a weapon during the
19 commission of a violent crime, I'm going to let the State
20 give me a brief factual synopsis to support those two
21 charges against you and then I'll come back to you, okay?

22 THE DEFENDANT: Yes, sir.

23 MS. COLLINS: Your Honor, the State would have
24 presented evidence and did present evidence during this
25 trial from the investigation into these allegations that the

1 defendant, Michael Brent Gay, did take the life of Joshua
2 Flint McManus on December 5th, 2015, in Lancaster County at
3 the defendant's residence, 1239 Branch Street. Further
4 there is -- there would be some testimony presented from
5 some witnesses that the defendant immediately prior to the
6 incident accused the victim of taking a watch that his
7 father had left him, the only memento he had of his father's
8 life. It is our understanding, and I believe there would
9 have been testimony at the remainder of the trial, that the
10 defendant's father and his mother died when the defendant
11 was three years of age, and that that would have caused the
12 defendant to in sudden heat of passion and anger take the
13 life of Joshua Flint McManus. Those would be the facts as
14 presented by the State of South Carolina. And, of course,
15 that he did so with a firearm in shooting the victim in the
16 neck and that therefore would have been also convicted, or
17 evidence of possession of a firearm during the commission of
18 a violent crime.

19 THE COURT: Mr. Gay, did you just hear those facts as
20 related to me by Deputy Solicitor Collins?

21 THE DEFENDANT: Yes, sir, I heard what she said.

22 THE COURT: Is that what happened?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Is that what you did?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: The Court finds that there is a substantial
2 and factual basis for these pleas. The Court further finds
3 that you have knowingly, voluntarily and intelligently
4 waived your right to a jury trial and have entered these
5 guilty pleas, and you're satisfied with competent counsel
6 with whom you say you're satisfied and I will therefore
7 accept your guilty pleas. All right. Mr. Gay, at this
8 point in time I'm going to hear first from the State in
9 regards to sentencing and then I will come back to you and
10 your lawyers in regard -- y'all will have the last say-so
11 before I decide what my sentence is, okay? Thank you.

12 MS. COLLINS: Your Honor, I know the Court also
13 inquires as to whether or not the defendant has a prior
14 record. He does have a prior record of four charges, they
15 are lower level charges but they are as follows; 2001
16 conviction for public drunk, 2003 conviction for false
17 information or giving false age to purchase beer or wine,
18 and two counts of assault and battery third degree. Those
19 convictions were in December of 2016. The incidents were
20 from the time -- were since he's been in the Lancaster
21 County Detention Center. The solicitor has asked that I
22 hand up to the Court -- the jury could not see this, but
23 that State's Exhibit 15 was often referred to by witnesses
24 just showing the condition of the body immediately after the
25 incident and as found by law enforcement. Mr. Newman will

1 be addressing you more fully on behalf of the State, Your
2 Honor. I have been in front of Your Honor many years and
3 appreciate the wisdom of the Court, I do ask for the
4 maximum. Thank you, Your Honor.

5 THE COURT: Yes, sir?

6 MR. NEWMAN: Thank you, Your Honor. Several family
7 members are here on behalf of Flint McManus. Y'all stand if
8 y'all are here for Flint. Your Honor, several of those
9 would like to speak at the appropriate time. Also
10 Investigator Rumbaugh would like to be heard as to
11 sentencing. Your Honor, on behalf of the State of South
12 Carolina we ask for the maximum sentence allowed by law,
13 which I believe is 35 years. Your Honor, this was a son, a
14 brother, and a father. Mr. McManus had two sons, Jackson
15 Reece McManus, eight years old, and Brady McManus, 15 years
16 old. Your Honor, at this time I ask that you hear from his
17 father, Mr. Frankie McManus.

18 THE COURT: I will. Just have them come over to that
19 microphone right there so I can see them real good.

20 SPEAKER: Thank you, Your Honor.

21 THE COURT: Yes, sir, thank you.

22 SPEAKER: My name is Frankie McManus and I'm Flint's
23 father. He killed our son over a watch that he said his
24 granddaddy gave to him. He took my son's life, so how does
25 he think I feel? How does he think my family feels? When

1 he -- when the solicitor came to us and asked our opinion
2 about him pleading, Your Honor, we didn't take that as a
3 weakness, we took it as a generosity to him, because we feel
4 that the testimony that we heard we should have gotten
5 guilty. And to us from the time we saw him the first time
6 until now he looks like a different man, and that's because
7 when he took somebody else life he was in the jail for three
8 years and he ain't had no drugs. Now, I as a father will
9 never forget this, I never will forgive him and let him know
10 that Flint's family is better than he is by saying it's okay
11 to give this man a break even though he didn't give Flint a
12 break. That's all. I would like the Court to give him the
13 maximum punishment that they can, Your Honor, because he has
14 not only give us mentally emotional but monetary, you know.
15 We had to do a lot of things, and you understand that.

16 THE COURT: Yes, sir, I do.

17 SPEAKER: Thank you.

18 THE COURT: Thank you, sir.

19 MR. NEWMAN: Your Honor, next is Tina Wilcox, mother of
20 Flint McManus.

21 THE COURT: Yes, ma'am?

22 SPEAKER: I've got to breath a little bit.

23 THE COURT: I understand, you take your time.

24 SPEAKER: I'm Tina, I'm Flint's mother. This was a
25 hard decision to make because I wanted him to go to jail for

1 life. I had my child that he murdered, he grew inside of me
2 and he was my best friend. He was a great father, he was a
3 good brother, he loved all of our family more than anything
4 and he was a good, good person. He never met anyone that
5 didn't love him and I beg you for the long sentence. I
6 don't understand this. I don't understand how this person
7 would kill somebody in the neck, shoot him, and I know he
8 didn't take the watch, but over a watch. But in my heart I
9 know he's going to suffer for it and I hope he does. And I
10 know that it says -- God says vengeance is mine, but he's
11 got a hard road ahead of him and that I will be able to know
12 where he is and he is not outside, where my son is in heaven
13 he'll be in a different place. But I do beg you, Your
14 Honor, for my grandchildren, because if he ever gets out
15 they already know that their dad was murdered, but they will
16 have to live with that. And when they -- just like this
17 Christmas, I go visit my son at the grave site, I hope no
18 one ever visits him. So I'm begging you, please give him
19 the 35 years. Thank you.

20 THE COURT: Thank you, ma'am.

21 MR. NEWMAN: Your Honor, Tammy Miller is the aunt of
22 Flint McManus.

23 SPEAKER: I would just like to say that I don't
24 understand why he killed him. And they painted my nephew
25 out to be like a drug addict, I don't even know where my

1 nephew was over there. And it kills me that they -- he is
2 just going to go to jail and my nephew, I know he's in
3 heaven, and the only thing that kills me is the way they
4 kept nitpicking and trying to say my nephew was a drug
5 addict and all of this. He loved everybody and he was a
6 model, he was the most loving man, a church man and he was
7 the best nephew in the world. Now there's two in our family
8 gone. And that thing there, I just don't understand how you
9 can just sit there and shoot him in the neck. I mean, gosh,
10 he wasn't even doing anything but sitting there watching a
11 ball game. And my nephew, he always sees the good, that's
12 like we were raised, to see the good in people. I still
13 don't understand why he would do that. I know Flint
14 wouldn't steal. He was a good, good dad, and he was a good
15 nephew. I just am heartbroken and I'm sorry, but I think he
16 should get the max. I mean, he murdered him in cold blood.
17 I seen the pictures, you know how hard it was seeing him
18 there like that? I mean, I went through the death of my
19 daughter but it was an accident, but that, that is cold a
20 blood killing and it kills me. Would you please just give
21 him the maximum sentence? Thank you.

22 THE COURT: Thank you, ma'am.

23 MR. NEWMAN: Your Honor, Tammy Lance, another aunt of
24 Flint McManus.

25 SPEAKER: My name is Tammy Lance. Since December 2015,

1 December 5th, my family has been torn apart. We have lost
2 so much in our family. My oldest sister here, she has not
3 been the same since her child has been murdered and by him.
4 Why I don't know. Flint has two boys, one 15, one eight. I
5 have a grandson that asks me everyday is Flint ever coming
6 back. No, Flint is not coming back. And the thing about
7 him, he gets to go in prison, and maybe his grandmother
8 maybe gets to go see him, but you know what? This Christmas
9 we light candles and we have to see him in his grave. So I
10 hope and pray that you give him the maximum sentence,
11 because our family deserves closure today, we deserve every
12 bit of closure. You know what? You always see this stuff
13 on TV or you read in the papers, I never thought my family
14 would ever go through this. And December 5th, 2015 you
15 tried to break this family, but you know what? We're going
16 to get justice for Flint today. And I hope God has mercy on
17 your soul, I do. Like God says, vengeance is mine, well
18 we're going to get justice today and I hope you give him the
19 maximum sentence so we can heal today and everyday. Thank
20 you.

21 SPEAKER: My name is John Michael Norton, I'm the
22 brother of Joshua Flint McManus. Flint was a light in our
23 lives. No matter when you saw him, no matter what he was
24 always laughing. And we went through lot of hard stuff in
25 our family. We have people and have gone through hard times

1 and Flint was always there to kind of bring us all together
2 and keep us laughing and keep us happy. Our light got taken
3 away from us unfairly and unjustly. I know you're burdened
4 with having to hear all of the facts and having to decide
5 how long that he's going to get, I ask that you understand
6 that our light is not going to come back for a very long
7 time because of the pain that he felt that we didn't cause,
8 that some other individual did. I ask that you give him the
9 full sentence, because no matter what amount of time that
10 you give him we're always going to hurt, but knowing that
11 he's not out there hurting anybody else, that's going to
12 make us feel a little bit better. Thank you, Your Honor.

13 MR. NEWMAN: Your Honor, Rhonda McManus indicates she
14 does not want to speak at this time. I ask that you hear
15 from Investigator Jennifer Rumbaugh.

16 THE COURT: Yes, ma'am?

17 SPEAKER: As you've heard, you've stated before we even
18 started you've heard everything that's gone on the past four
19 days. There's not really much more I can say other than to
20 add on top of what they've said and what this family has
21 said, on behalf of the sheriff's office we ask for him to
22 get the full maximum.

23 THE COURT: Thank you, ma'am. Anything else from the
24 State?

25 MR. NEWMAN: That's all from the State.

1 THE COURT: Mr. Delgado and Mr. Phillips?

2 MR. DELGADO: As an example, Your Honor, of this man's
3 drug use over the years as he explained it to me, I was so
4 concerned about his organic functioning that I had him
5 evaluated through a neuropsychologist, and then by a
6 psychiatrist to see whether or not there were any overt
7 mental functioning deficits that I needed to bring to the
8 solicitor and perhaps to a jury and if necessary to a court.
9 They found -- they being Dr. James Evans, a
10 neuropsychologist and Dr. Howard Mandell who works with
11 Metrolina Neurological Associates in Rock Hill. Let me just
12 read to Your Honor, and I hope Your Honor -- I would just
13 like to be able to hand that to you and make it a Court's
14 Exhibit.

15 THE COURT: All right.

16 MR. DELGADO: Your Honor, the second paragraph under
17 the black letter history of present illness, the second
18 paragraph reads "When I" -- that would be Dr. Mandell --
19 "Asked Brent specifically about memory he immediately
20 stated, yes, he has had difficulties and the past is a blur.
21 He goes on to tell me that he's been using drugs since his
22 school years and things escalated to the point where he was
23 using ecstasy, LSD, cocaine and alcohol, snorting Oxycontin
24 and injecting heroine, meth, Opana. At the age of two years
25 old, Your Honor, this young man's parents died in a drowning

1 accident. By the time he is a child he's lost the two most
2 important figures in his life, and he is raised by the woman
3 he now calls his mother, it's actually his grandmother,
4 that's Ms. Alice Wallace who is the lady seated back here in
5 the gray. Her husband died December 24th, 2001, so Brent
6 and Alice have lived together since that period of time at
7 the house on Branch Street. But very probably unknown to
8 Alice, Brent's psychological and physiological condition
9 changed as a result of an automobile accident where he broke
10 his back. I'm not trying to say that this is the picture of
11 the American opioid crises but he falls in that area,
12 because after he got the legal prescription he then started
13 to abuse that and added that and concocted that legal
14 prescription with other street drugs. Your Honor, going on
15 with Dr. Mandell's third paragraph, "Since he's been in jail
16 the past few years he really has found himself improved.
17 He, in fact, is able to understand things and found some
18 talents that he really didn't even know he had. He feels so
19 good about himself having been clean for two years." Your
20 Honor, this is 43 years I've been practicing law, I have
21 never had a client on his own start a meditation practice.
22 I try to dabble in that when I have good sense but I could
23 never reach the -- anything in the way of any spiritual
24 reality, but on his own he started this. Ms. Lynn Phillips,
25 who is the social worker that I hired to help me gather

1 evidence about Brent, his background, Alice, the environment
2 which he grew up, she thought so much of him she started
3 sending him meditation books, organized guides to be able to
4 control the things that maybe he found in drugs. Your
5 Honor, he was -- and, of course, no one has to believe this,
6 but he said this from the start, from the very start he
7 doesn't think Perry was at the house that night. Stefan
8 Perry, the person with all of this drug history, he doesn't
9 think he was at the house that night, he said to me from the
10 very first until today, that's because he was so out of it.
11 He remembers Mr. Robinson and Mr. McManus coming to the
12 house. Dr. Mandell concludes that the neuro-psych testing
13 by Dr. Evans shows that Brent has a relatively poor
14 performance as a result of an ECG and some neurological
15 tests such as tactile memory and perception, speech, sounds
16 and perception. The qualitative EEG shows dysregulation in
17 the frontal regions as well as temporal and parietal regions
18 per report, that's on page three at the very bottom. Your
19 Honor, that doesn't mean anything to the family of this poor
20 victim, that's just defense nonsense to them, and they have
21 a complete absolute right to judge that negatively, but the
22 expert says that the qualitative EEG findings were supportive
23 of dysregulation in cortical regions known to mediate
24 memory, auditory and tactical perception related functions.
25 There was also abnormal frontal lobe functioning. There was

1 strong evidence of at least mild to moderate degrees of
2 memory impairment. Dr. Mandell concludes, "I am certain,
3 however, that there are permanent changes in his brain
4 resulting from his drug use and abuse." It does not help,
5 Your Honor, Mr. James White, the gentleman who was here in
6 the gee uniform that had taught and had been the sensei for
7 Brent for all these years said to my investigator, said to
8 Ms. Phillips, "He had a lot of head strikes." I have never
9 talked to Mr. White but that's what he told Mr. Phillips who
10 dictated in a memo to me. He said he was concerned about
11 Brent because of the number of head strikes, either with the
12 hand or the foot or the knee, and that he would not have
13 wanted that if Brent had been his child. When you have the
14 physical impairments and the physical injury along with the
15 automobile accident and then his self-imposed drug regime
16 that made him into a whole different person. Brent and I,
17 the times we've talked at the jail, will talk about the old
18 Brent. I don't get that -- I don't think I've gotten that
19 with many clients if any clients. He now understands who
20 that old Brent was and knows that that is not who he is now.
21 Your Honor, Brent would like to be able to put something on
22 the record pursuant to a conversation I have had with him.

23 THE COURT: Yes, sir.

24 THE DEFENDANT: Yes, sir. I would first like to start
25 off by apologizing to the McManus family. I just want them

1 to know that I'm sorry and I'm terribly sorry about what
2 happened on the night of December 5th. During that time I
3 was a completely different person than the person I am
4 today. During that time I was a drug addict. I mean, we're
5 talking about pills, cocaine, I mean, you name it I did it
6 and it changed the person that I am, and I just want the
7 McManus family to know that I'm deeply sorry and that I
8 never meant to hurt anybody, especially Flint. I wish he
9 could still be here with us today and it tears me up to know
10 what happened. I'm just sorry. And I know that no matter
11 how many times I say it or anything I could do it will never
12 be enough, it will never be enough sorries, I can't say it
13 as many times to do anything to bring him back. But I am,
14 I'm sorry. And, you know, I wish that night would have
15 never happened. And, you know, thank you. I'm sorry.

16 MR. DELGADO: That's all, Your Honor.

17 THE COURT: Mr. Phillips, anything you wish to say?

18 MR. PHILLIPS: Very brief. I've only been involved in
19 this case for a relatively short period of time, it's a
20 three year old case. But everything he said about being
21 incredibly remorseful about what happened, I can go back to
22 the first time I met him, we sat down to watch his interview
23 and he cried like a baby, and the words out of his mouth
24 was, "I don't know who that is, I don't know that person."
25 And so to me from the very first moment that I met him it

1 was clearly illustrated that he was incredibly remorseful
2 for what had happened, and he is in our discussions
3 accepting responsibility for what he's done. He's manning
4 up and taking ownership of this. It has been a long journey
5 for him to get here. As a testament to that transformation
6 as Your Honor -- his mugshot is all you've got to see from
7 day one to now, and so because of that I just wanted to add
8 that from the very first moment I met him his remorse was
9 clearly evident. I wanted to highlight that for you.

10 THE COURT: Thank you, Mr. Phillips. Let me take just
11 a brief moment to speak to the family and, of course, by
12 speaking to the family, Mr. Gay, I'm obviously speaking to
13 you as well. I've been doing this a long time and
14 unfortunately nothing ever surprises me. I have seen enough
15 misery and sorrow in this life to go around ten fold. You
16 know, it's the vocation I chose to do and I question why I'm
17 doing this almost everyday. Don't get me wrong, I love my
18 job, I love the people who I work with and I love having the
19 power sometimes to change a person's life. But there's a
20 lot of sorrow in this world, a lot of sorrow with what we
21 deal with, a lot of things happen, there's a lot of bad
22 people. I cannot imagine nor do I want to imagine sitting
23 where y'all are sitting right now. I frequently say this,
24 you know, if I wasn't a man of faith I would go crazy doing
25 what I do. Why do these things happen? I don't know.

1 Y'all asked it. Why? Why does this have to happen? I wish
2 I knew that answer. Why -- I think back to a trial I
3 presided over several years ago, why does a mama kill her
4 four year old and seven year old little boy and little girl
5 by putting several bullets into their brain? I think of
6 another case, I presided over, why does a man or husband
7 kill his wife of 30 plus years by putting a knife in her
8 heart and then lays in the bed with her while she bleeds
9 out? I hate to be graphic, I'm just telling you the
10 things -- you know, the tough things this system, our
11 justice system, which is imperfect, it's not perfect, but
12 it's the greatest system in the world. These are the things
13 that happen. Why does a man choke a woman to death over
14 \$10? I don't know. Why did you do what you did, you know,
15 in a moment changed forever this family and forever your
16 family? We will all know the answer one day, unfortunately
17 today is not that day. And people talk about closure and
18 people talk about moving on, and I think Flint's brother
19 talked about closure and healing. Sir, there's no closure
20 or healing, there's only time and that's just the way it is.
21 Unfortunately nobody can ever replace Flint, you know? And
22 I'm so sorry for that, I wish there was. There's just --
23 it's just a healing process that goes on and on and on until
24 the Good Lord makes it go away, so my heart hurts for y'all.
25 At the same time my heart hurts for you, young man. And I

1 know the solicitor, I know you met with the family and
2 explained to them, and, of course, y'all have been in here
3 all week, you never know what a jury is going to do, you
4 never know. And, you know, there was enough evidence in the
5 record up to this point as the solicitor described where the
6 jury would have had that option of finding for the lesser
7 offense of voluntary manslaughter, you never know what that
8 possibility is, you never know. One thing I do know, Mr.
9 Gay, is that you do stand before the Court a broken man,
10 okay? And I certainly hope in your time at the South
11 Carolina Department of Corrections that you will grow, you
12 will develop and you will realize if you haven't already the
13 error of what you did. You will hopefully, if you do make
14 it out of prison alive, contribute to society. I'm sorry
15 for your grandmama who is back there weeping right now. You
16 took the life of another person, and based upon these facts
17 as I've learned them to be that does deserve the maximum
18 punishment. As to count one of 16-GS-29-377, the sentence
19 the Court is that you be confined to the South Carolina
20 Department of Corrections for 30 years. As to count two of
21 the indictment the sentence is five years in the South
22 Carolina Department of Corrections, I will run that
23 concurrent. Good luck to you, sir. That concludes this
24 matter.

25 (End of guilty plea.)

1 I, the undersigned, Michael C. Watkins,
2 Official Court Reporter for the Sixth Judicial
3 Circuit of the State of South Carolina, do hereby
4 certify that the foregoing is a true, accurate and
5 complete transcript of the proceedings had and
6 evidence introduced in the trial of the captioned
7 case relative to appeal in the Court of General
8 Sessions for Lancaster, South Carolina, on the 13th
9 day of December, 2018.

10 I do further certify that I am neither of kin, counsel,
11 nor interest to any party hereto.

12

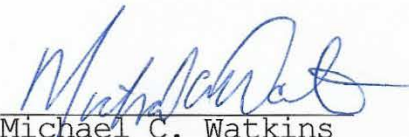
13

February 23, 2019

14

15

16


Michael C. Watkins

17

Court Reporter

18

19

20

21

22

23

24

25

WITNESSES

P. Crawford - LCSO #15-57542

+ Catoe

ARREST WARRANT NUMBER/DOA

Count I IN RE: AW #

2015A2910200184 (DOA-12-6-15)

Direct Indictment -Count II IN RE: AW #

2015A2910200184

ACTION OF GRAND JURY

TRUE BILL

Jan D. Nettles
Foreperson of Grand Jury
Date: MAR 10 2016

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016-GS-29-377

The State of South Carolina

County of Lancaster

COURT OF GENERAL SESSIONS

MARCH TERM 2016

THE STATE

vs.

Michael Brent Gay

Indictment for

COUNT I

Murder

SC Code: §16-3-10

CDR Code: 0116

Class: Felony, EXM

Direct Indictment for

Count II

**POSSESSION OF A FIREARM OR KNIFE
DURING THE COMMISSION OF A
VIOLENT CRIME**

S. C. Code: 16-23-490

CDR Code: 0549

Class: Felony, F

FILED
OFFICE OF CLERK
OF COURT
2016 MAR 10 AM 11:41
CLERK OF COURT
LANCASTER, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

INDICTMENT

At a Court of General Sessions, convened on March 10, 2016, the Grand Jurors of Lancaster County present upon their oath:

COUNT I

MURDER

That Michael Brent Gay did at [REDACTED], in Lancaster County, South Carolina on or about December 5, 2015, feloniously, willfully, and with malice aforethought kill and murder the victim Joshua Flint McManus by shooting the victim in the head with a pistol which constituted as the proximate cause of the death of the victim on December 5, 2015, in violation of Section 16-3-10 of the *Code of Laws of South Carolina*.

COUNT II

**POSSESSION OR DISPLAY OF FIREARM OR KNIFE DURING COMMISSION OF A
VIOLENT CRIME**

That Michael Brent Gay did in Lancaster County, South Carolina, on or about December 5, 2015, possess or visibly display a firearm, to wit: a handgun during his/her commission of a violent crime, to wit: Murder of Joshua Flint McManus, in violation of §16-23-490, *Code of Laws of South Carolina, (1976), as amended*.

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



Randy E. Newman, Jr., SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Lancaster

VS.

Michael Brent Gay

AKA:

Race: WHITE

Sex: M

Age: 35

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS2900377 Count I

A/W#: 2015A2910200184

Date of Offense: 12/5/2015

S.C. Code § : 16-03-0010; 16-03-0020

CDR Code #: 0116

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Manslaughter / Voluntary manslaughter☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-03-0050 of the S.C. Code of Laws, bearing CDR Code # 0217

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Collins, Lisa

SC Bar#

Defendant

Attorney for Defendant

SCB1621

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-03-0010 (Voluntary
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$

TOTAL

\$ 128.75

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

 days/hours Public Service EmploymentObtain 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 FundOther: ☐ Appointed PD or appointed other counsel,
Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge

Judge Code:

Sentence Date: 12/14/16

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Lancaster

VS.

Michael Brent Gay

AKA:

Race: WHITE Sex: M Age: 35

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS2900377 *Cont II*A/W#: 2015A2910200184 *Direct Ind. In Re AW*

Date of Offense: 12/5/2015

S.C. Code § : 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or ☒ PLEADS

TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: *[Signature]* 07892 *[Signature]* Delgado, John SCB1621

Collins, Lisa

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 1665-29-377☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

CERTIFIED TO BE A TRUE COPY

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$

§ 14-1-206 (Assessments 107.5 %) _____ \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 _____ \$

§ 14-1-211(A)(2) (DUI Surcharge) \$100 _____ \$

§ 56-5-2995 (DUI Assessment) \$12 _____ \$

§ 56-1-286 (DUI Breath Test) \$25 _____ \$

Proviso 61.6 (Public Def/Probation) \$500 _____ \$

§ 14-1-212 (Law Enforce. Funding) \$25 _____ \$

§ 14-1-213 (Drug Court Surcharge) \$150 _____ \$

§ 50-21-114(BUI Breath Test Fee) \$50 _____ \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea _____ \$

3% to County (if paid in installments) _____ \$

TOTAL \$ 178.75Clerk of Court/ Deputy Clerk *[Signature]*Court Reporter: *[Signature]*

SCCA/217 (07/2016)

PTUP *[Signature]*

_____ days/hours Public Service Employment

Obtain GED ☐Attend Voc. Rehab. or Job Corp. JEFF HAMMONDMay serve W/E beginning CLERK OF COMMON PLEASSubstance Abuse Counseling AND GENERAL SESSIONS COURTRandom Drug/Alcohol testing LANCASTER COUNTY S.

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,

Proviso 61.6 requires \$500 be paid to Clerk

during probation and shall be collected before

any other fees. *[Signature]*Presiding Judge *[Signature]*

Judge Code: _____

Sentence Date: 12/13/18

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of General Sessions

The Honorable Brian M. Gibbons, Circuit Court Judge

Case Nos. 2016-GS-29-00377

The State,

Respondent,

v.

Michael Brent Gay,

Appellant.

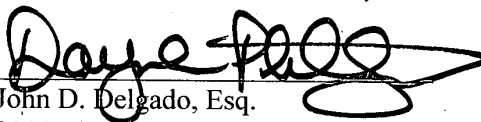
RECEIVED

DEC 27 2018

SC Court of Appeals

NOTICE OF APPEAL

Michael Brent Gay appeals his convictions and sentences imposed by the Honorable Brian M. Gibbons on December 13, 2018. Mr. Gay pleaded guilty after initially proceeding to trial before Judge Gibbons and a jury on December 10, 2018.


John D. Delgado, Esq.
2008 Lincoln Street
Columbia, SC 29201

Dayne C. Phillips, Esq. ✓
1614 Taylor Street, Suite D.
Columbia, SC 29201

December 20, 2018

ATTORNEYS FOR APPELLANT

Other Counsel of Record:

cc:

Randy E. Newman, Jr., Solicitor
Sixth Circuit Solicitor's Office
P.O. Box 607
Lancaster, SC 29721

Jeff Hammond, Lancaster County Clerk of Court
Michael Brent Gay (SCDC)

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of General Sessions

The Honorable Brian M. Gibbons, Circuit Court Judge

Case Nos. 2016-GS-29-00377

The State,

Respondent,

v.

Michael Brent Gay,

Appellant.

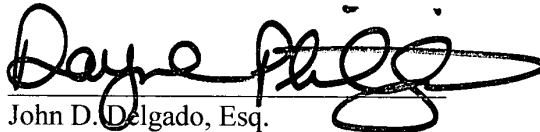
EXPLANATION PURSUANT TO
RULE 203(d)(1)(B)(iv)

RECEIVED

DEC 27 2018

SC Court of Appeals

Pursuant to Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules, the undersigned Counsel is filing this appeal at Mr. Gay's request. *See In re Anonymous Member of the Bar*, 303 S.C. 306, 400 S.E.2d 483 (1991); *see also Wilson v. State*, 348 S.C. 215, 218, 559 S.E.2d 581, 582 (2002). Counsel is unaware of any legal issues from Appellant's guilty plea hearing that are preserved for appellate review.



John D. Delgado, Esq.
2008 Lincoln Street
Columbia, SC 29201

Dayne C. Phillips, Esq. ✓
1614 Taylor Street, Suite D.
Columbia, SC 29201

December 20, 2018

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of General Sessions

The Honorable Brian M. Gibbons, Circuit Court Judge

Case Nos. 2016-GS-29-00377

The State,

Respondent,

v.

Michael Brent Gay,

Appellant.

RECEIVED

DEC 27 2018

SC Court of Appeals

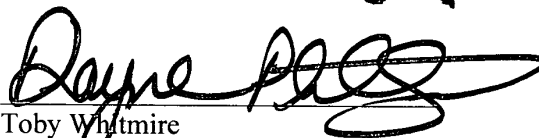
PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Jeff Hammond, Randy Newman, and Michael Brent Gay, by depositing a copy of it in the United States Mail, postage prepaid, on December 20, 2018, addressed to the following parties:

Randy E. Newman, Jr., Solicitor, Sixth Circuit Solicitor's Office
P.O. Box 607, Lancaster, SC 29721

The Honorable Jeff L. Hammond, Lancaster County Clerk of Court
P.O. Box 1809, Lancaster, SC 29721

Michael Brent Gay, Kirkland Correctional Institution,
4344 Broad River Road, Columbia, SC 29210



Toby Whitmire
Law Clerk for Dayne Phillips, Esq.
1614 Taylor Street, Suite D.
Columbia, SC 29201

December 20, 2018

DAVID BENOWITZ
ADMITTED DC, MD & VA

KERRI CASTELLINI
ADMITTED DC & MD

KUSH ARORA
ADMITTED MD & DC

JOHN YANNONE
ADMITTED MD & DC

ADAM ROTH
ADMITTED NY, DC & MD

KAREN GUNDERMAN
ADMITTED MD

SHAWN SUKUMAR
ADMITTED DC

TONY MUNTER
ADMITTED DC & MA

*ROBERT M. SCHWARTZMAN
ADMITTED MD

FARRAL HABER
ADMITTED FL, VA & DC

MOHSEN ZARKESH
ADMITTED DC

MATTHEW WILSON
ADMITTED MD

ELIZABETH THOMPSON
ADMITTED MD

KELLY HITE
ADMITTED VA

MICHELLE KAMINSKY
ADMITTED VA

PRICE BENOWITZ LLP

1614 TAYLOR STREET
SUITE D
COLUMBIA, SC 29201

OFFICE: (803) 272-4503
DIRECT: (803) 807-0234
FAX: (803) 380-8035

DAYNE PHILLIPS
ADMITTED SC

SETH PRICE
ADMITTED DC & NY

GLENN F. IVEY
ADMITTED DC & MD

KARIN RILEY PORTER
ADMITTED VA

STEVEN L. DUCKETT, JR.
ADMITTED VA

JOEL NIED
ADMITTED VA, PA & GA

THOMAS C. SOLDAN
ADMITTED VA

SETH OKIN
ADMITTED MD

OLEG FASTOVSKY
ADMITTED MD

NATALIA SEGERMEISTER
ADMITTED NY

MARY NERINO
ADMITTED VA

NICHOLAS M. BRASWELL
ADMITTED VA

ROCCO COLUMBUS
ADMITTED VA

*ANGIE DIPIETRO
ADMITTED MD

*MEREDITH JIMMERSON
ADMITTED VA

*OF COUNSEL

110 NORTH WASHINGTON STREET, SUITE 303
ROCKVILLE MD 20850

10505 JUDICIAL DRIVE, SUITE 101
FAIRFAX, VA 22030

December 20, 2018

The Honorable Jenny Kitchings
Clerk of Court, S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: State of South Carolina v. Michael Brent Gay
NOTICE OF APPEAL
Case Nos.: 2016-GS-29-00377

Dear Ms. Kitchings:

I have enclosed an original and one copy of the Notice of Appeal, Explanation Pursuant to Rule 203(d)(1)(B)(iv), and Proof of Service in the above-referenced case for filing with the Court of Appeals.

Please file the original and return the clocked-in copy to me in the enclosed self-addressed, stamped envelope. Thank you for your assistance in this matter.

By copy of this letter, I am serving the enclosed Notice of Appeal on Lancaster County Clerk of Court Jeff Hammond, Solicitor Randy E. Newman, Jr., and Appellant Michael Brent Gay.

[Signature page to follow]

WWW.SCCRIMINALLAWS.COM

WWW.PRICEBENOWITZ.COM

State of South Carolina v. Michael Brent Gay

NOTICE OF APPEAL

Case Nos.: **2016-GS-29-00377**

December 20, 2018

Page 2

If you have any questions or concerns, please do not hesitate to contact me.

With best regards, I am,

Yours Sincerely,


Dayne C. Phillips, Esq.

1614 Taylor Street, Suite D.

Columbia, SC 29201

O: 803-272-4503

C: 803-807-0234

F: 803-380-8035

dayne@pricebenowitz.com

Enclosures noted

cc: Jeff Hammond, Clerk of Court
Randy E. Newman, Jr., Esquire
Michael Brent Gay

The South Carolina Court of Appeals

The State, Respondent,

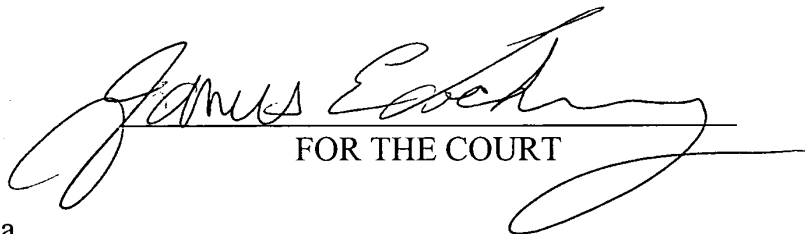
v.

Michael Brent Gay, Appellant.

Appellate Case No. 2018-002262

ORDER

Appellant has failed to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules (SCACR). Accordingly, this matter is dismissed, and the remittitur will be sent as required by Rule 221(b), SCACR.


FOR THE COURT

Columbia, South Carolina

cc:

Michael Brent Gay, 378552
Alan McCrory Wilson, Esquire
John Benjamin Aplin, Esquire
Randy E. Newman, Jr., Esquire
Robert Michael Dudek, Esquire
John Dennis Delgado, Esquire
Dayne C. Phillips, Esquire

FILED

February 28, 2019

FILED
OFFICE OF CLERK
CLERK OF COURT

FORM 5

2019 AUG -6 AM 11:58

STATE OF SOUTH CAROLINA)

COUNTY OF Lancaster)

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

Michael Brent Gay 378552)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

2019CP2900975**INSTRUCTIONS - READ CAREFULLY**

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

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

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

1. Place of detention Lieber Corr. Inst.
2. Name and location of Court which imposed sentence Lancaster County S.C.
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2016 GS 2900377 Count I
 - (b) 2016 GS 2900377 Count II
 - (c)
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 12-13-18 30 years
 - (b) 12-13-18 5 years concurrent

J. Edgar Hoover

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. February 28, 2019
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. South Carolina Appellate Court Rule 203(d)(B)(iv)
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective assistance of Counsel
- (b) Violation of the 6th Amendment of the U.S. Constitution
- (c) Violation of the 14th Amendment of the U.S. Constitution.
Violation of the 5th Amendment of the U.S. Constitution.

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

- (a) See attachment.
- (b) _____
- (c) _____

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

- (a) any petition in a State Court under South Carolina Law? 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 "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. _____
 - ii. _____
 - iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

No

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____

(b) _____

(c) _____

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

Revised 3/2003

- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? 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 "yes" to one or more parts of (17), list:

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

- i. John D. Delgado 2008 Lincoln Street, Columbia S.C. 29201
- ii. Dayne Phillips 1614 Taylor Street, Suite D. Columbia S.C. 29201
- iii.

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

- i. trial
- ii. trial
- iii.

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

See attachment.

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

No

STATE OF SOUTH CAROLINA)

County of Lancaster)

VERIFICATION

I, MBG, 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.

Michael Bryant Gay

SWORN to and subscribed before me this 8th
day of July, 2019.

Luduan Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

Revised 10/2001

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

I, ^{MBG}, 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.

Michael Brent Hay
Applicant

SWORN or affirmed to and subscribed before me this
8th day of July, 2019.

Luduan Bryant
Notary Public

My Commission Expires: May 26, 2026

11. The Applicant was provided deficient representation by his trial counsel, in that the conduct of his counsel was unreasonable under the circumstances. *Strickland v. Washington*, 466 U.S. 668 (1984). The outcome of Applicant's proceeding was prejudiced due to counsel's deficiencies, and it is reasonable and probable that the outcome would have been different had his counsel's performance not been deficient, and had the Applicant's constitutional rights not been violated.

FILED
OFFICE OF CLERK
OF COURT
2019 AUG -6 AM 11:58
CLERK OF COURT
LANCASTER, SC

19. My Conviction and sentencing vacated.

My name and DNA removed and any derogatory files.

Order issued to expunge my record.

All restitution paid returned.

FILED
OFFICE OF CLERK
OF COURT
2019 AUG -6 AM 11:58
CLERK OF COURT
LANCASTER, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LANCASTER	)	FOR THE SIXTH JUDICIAL CIRCUIT
	)	
Michael Brent Gay, #378552,	)	Case No.: 2019-CP-29-0975
	)	
Applicant,	)	
	)	RETURN AND MOTION FOR
v.	)	A MORE DEFINITE STATEMENT
	)	
State of South Carolina,	)	(Counsel Appointed)
	)	
Respondent.	)	
	)	

In response to Michael Brent Gay's (Applicant) action for post-conviction relief (PCR) commenced August 6, 2019, the State makes this return:

I. Procedural History

Applicant is confined in the South Carolina Department of Corrections (SCDC) pursuant to orders of commitment of the Lancaster County Clerk of Court. Applicant was indicted at the March 2016 term of the Lancaster County Grand Jury for one count of murder and one count of possession of a firearm during the commission of a violent crime (2016-GS-29-0377). John Delgado, Esquire, and Dayne Phillips, Esquire, represented Applicant. Deputy Solicitor Lisa Collins prosecuted the case.

On December 13, 2018, Applicant pleaded guilty to the lesser-included offense of voluntary manslaughter, and the weapons charge, before the Honorable Brian M. Gibbons. Judge Gibbons, sentenced Applicant to concurrent terms of thirty years' for voluntary manslaughter and five years' for the weapons charge.

On December 20, 2018, Applicant filed a timely notice of appeal. On February 28, 2019, the Court of Appeals filed an Order dismissing Applicant's appeal pursuant to 203(d)(1)(B)(iv). The case was remitted back to the circuit court March 18, 2019.

II. Facts

Applicant's charges stem from an incident occurring on December 5, 2015. Tr. 164. Applicant shot Joshua Flint McManus in the head and McManus died as a result of his injuries. Tr. 164. During the day of December 5, 2015, Applicant, McManus, and Raymond Robinson were watching college football games at Applicant's home. Tr. 164. Close to the end of the North Carolina versus Clemson game, McManus and Robinson were preparing to leave when Stefan Perry called Applicant. Tr. 201. McManus and Robinson, having not seen Perry in a while, decided to stay to see Perry. Tr. 201. When Perry arrived at the home, Brent let him in. Tr. 395. McManus and Robinson gave him a hug and they all sat down and talked. Tr. 201. Applicant went into his bedroom and appeared to be in the closet looking for something. Tr. 396. Then, without any warning, Applicant walked out of his room, took five strides towards McManus, held a gun to his head, and asked "Did you take my daddy's watch?" Tr. 201–202. Flint blinked, and Applicant shot McManus just below the jaw with a .38 caliber gun. Tr. 202.

III. Current Application

Applicant timely commenced this PCR action on August 6, 2019. Applicant asserts he is being held in custody unlawfully, alleging:

1. Ineffective assistance of counsel
2. Violation of the 6th Amendment
3. Violation of the 14th Amendment
4. Violation of the 5th Amendment

Applicant requests relief in the form of his conviction and sentence vacated, his name and DNA removed from any derogatory files, his record expunged, and all the restitution he has paid to be returned.

Attached to this return and incorporated herein are the Lancaster County Clerk's records, Applicant's SCDC records, the plea transcript, Applicant's appellate records, and the records of this PCR action.

IV. Motion for More Definite Statement

The Uniform Post-Conviction Procedure Act requires applicants to “*specifically set forth the grounds upon which the application is based.*” S.C. Code Ann. § 17-27-50 (1985) (emphasis added). In an application for post-conviction relief, it is incumbent upon the applicant to make a *prima facie* showing entitling them to relief before an evidentiary hearing will be scheduled and held. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). Rule 71.1(d), SCRCP, provides appointed PCR counsel “shall insure that all available grounds for relief are included in the application and shall amend the application if necessary.”

Here, Applicant has failed to state with any specificity the facts giving rise to his allegation of ineffective assistance of counsel and allegations of constitutional violations, as required by section 17-27-50. Additionally, Applicant's allegation that Counsel did not perform in his best interest is not supported by any other additional information in the application. Therefore, the State moves pursuant to Rule 12(e), SCRCP, and Rule 71.1(d), SCRCP, to require Applicant, through PCR counsel, to provide a more definite statement of his allegation of ineffective assistance of counsel.

Furthermore, Rule 8(a), SCRCP, requires all civil pleadings include “a short and plain

statement of the facts showing that the pleader is entitled to relief.” Accordingly, the State moves to require Applicant to file an amended application well in advance of the hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss the application for failure to state a claim.

V. Response to Allegation of Ineffective Assistance of Counsel

Applicant’s allegations of ineffective assistance of plea counsel are without merit. To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel’s performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel’s deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984); *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989).

The test for determining the validity of a guilty plea is “whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.” *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). “[A] defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived.” *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). “The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases.” *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). To prove prejudice, the applicant must show a reasonable probability he would not have pleaded guilty and would have insisted on going to trial absent plea counsel’s alleged deficiency. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

Strickland requires trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel’s conduct can satisfactorily take account

of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688-689. “Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another.” *Id.* at 691. Therefore, judicial scrutiny of counsel’s performance must be highly deferential. *Id.* at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel’s performance should not be found ineffective. *Roseboro v. State*, 317 S.C. 292, 454 S.E.2d 312 (1996); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). In making a fair assessment of attorney performance, a court must make every effort to “eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time.” *Strickland*, 466 U.S. at 689.

Counsel must, at a minimum, make some effort to interview potential witnesses identified by the defendant, and make an independent investigation of the facts and circumstances of the case. *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011); *Walker v. State*, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014). To support a claim that trial 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. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). The applicant’s mere speculation about what the witnesses’ testimony would have been cannot, by itself, satisfy the applicant’s burden of showing prejudice. *Id.*

Applicant cannot satisfy either requirement of *Strickland*. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

VI. Any Future Amendments and Invocation of Discovery

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. *See Id.* at 245, 834 S.E.2d at 203 (Kittredge, J., dissent) ("If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.").

Pursuant to section 17-27-150 of the South Carolina Code, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Further, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. As noted above, the State reserves the right to

request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State. *See Love*, 428 S.C. 231, 834 S.E.2d 196.

VII. Any and All other Allegations

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

VIII. Conclusion

WHEREFORE, the State moves for a more definite statement and the opportunity to respond to the more definite statement if necessary. Once a more definite statement is provided, the State requests an evidentiary hearing be held on the claim of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

MICHAEL D. DAVIDSON
Assistant Attorney General

s/ Michael D. Davidson

By:

ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

_____, 2020

STATE OF SOUTH CAROLINA	)	
COUNTY OF LANCASTER	)	IN THE COURT OF COMMON PLEAS
	)	
Michael Brent Gay, #378552	)	
Applicant,	)	AMENDED APPLICATION FOR
	)	POST-CONVICTION RELIEF
v.	)	
	)	
State of South Carolina,	)	
Respondent.	)	
	)	

[This application conforms to the requirements of South Carolina Rules of Criminal Procedure, Form 5]

1. Michael Brent Gay is currently incarcerated at Lee Correctional Institute.
2. He was convicted in the Lancaster County Court of General Sessions.
3. Name(s) of co-defendant(s) (if any): N/A
4. (a) 16-GS-29-377, Voluntary Manslaughter
(b) 16-GS-29-377, Possession of a weapon during a violent crime.
5. Applicant pleaded guilty to the offenses and received a sentence of 30 years for voluntary manslaughter and 5 years for the firearms offense on December 13, 2018 before the Honorable Brian M. Gibbons.
6. Applicant pleaded guilty.
7. Applicant attempted to appeal his conviction and sentence but the South Carolina Court of Appeals dismissed the appeal.
8. N/A.
9. Applicant did not appeal because he entered a facially valid guilty plea.
10. Applicant alleges the following grounds as the bases upon which he is being held unlawfully:
 - a) Ineffective assistance of trial counsel;
 - b) Involuntary guilty plea;
 - c) Violation of 5th and 14th amendments right to fair trial.

11. Facts in Support of the grounds set out in (10).
- a) Trial counsel's performance fell below professional norms in violation of *Strickland v. Washington*, 466 U.S. 668 (1984) because trial counsel did not perform an adequate investigation into the facts and circumstances of the crime. Applicant was prejudiced by his lawyers' inadequate performance.
 - i. Trial counsel failed to develop and present evidence that the victim's death was the result of an accident and was not voluntary manslaughter or murder.
 - ii. Trial counsel led Applicant to believe he would receive a 12-year sentence and Applicant pleaded guilty based on those assurances.
 - iii. Trial counsel failed to offer mitigating evidence regarding how Applicant came to have his debilitating opioid addiction which would have decreased his sentence had it been presented to the court.
 - iv. Trial counsel failed to object when the state asked the judge to sentence Gay to the maximum possible sentence allowed.
 - v. Trial counsel failed to object when the Solicitor handed the judge State's exhibit 15.
 - vi. Trial counsel failed to explain to Gay the elements of voluntary manslaughter.
 - b) Applicant's guilty plea was not knowingly and voluntarily entered. *See Hill v. Lockhart*, 474 U.S. 52 (1985); *Strickland v. Washington*, 466 U.S. 668 (1984).
 - c) Applicant's 5th Amendment right to a fair trial and 14th Amendment right to due process have been violated.
12. Prior to this application, petitioner has not any other petitions challenging his convictions other than the petition disclosed above.
13. N/A.
14. No ground set forth above has been previously presented to this or any other Court, State or Federal, in any petition, motion or application.
15. N/A.
16. N/A.

17. Petitioner was represented by an attorney for his trial.
18. (a)(b) (c) John Delgado and Dayne Phillips. John Delgado's contact information is 2008 Lincoln Street, Columbia, South Carolina 29201 (803) 814-2826. Dayne Phillips's contact information is 1614 Taylor Street, Suite D, Columbia, South Carolina 29201, (803) 272-4503.
19. Applicant is requesting the court reverse his convictions and remand his case for a new trial.
20. Applicant is not now under sentence from any other court that he has not challenged.

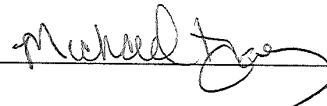
STATE OF SOUTH CAROLINA

County of Lee

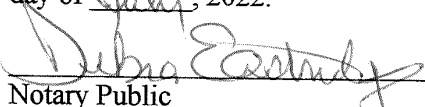
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VERIFICATION

I, Michael Brent Gay, 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.



SWORN to and subscribed before me this 25
day of July, 2022.



Notary Public

My Commission Expires: 5/3/2024

STATE OF SOUTH CAROLINA - COUNTY OF LANCASTER
SIXTH JUDICIAL CIRCUIT

MICHAEL BRENT GAY,
APPLICANT,

V.

STATE OF SOUTH CAROLINA,
RESPONDENT.

)
) Docket No.
) 2019-CP-29-00975
)
)
)
) PCR HEARING
)
)
)

September 2, 2022
Lancaster, South Carolina

B-E-F-O-R-E:

THE HONORABLE DANIEL HALL

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

ELIZABETH FRANKLIN-BEST, ESQ.
Attorney for the Applicant

DANIELLE DIXON, ESQ.
Attorney for the State of South Carolina

Maria DiScioscia, RPR
Official Court Reporter

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I N D E X

<u>WITNESS</u>	<u>EXAMINATION BY</u>	<u>PAGE</u>
MICHAEL BRENT GAY	DIRECT BY MS. BEST	5
	CROSS BY MS. DIXON	25
	REDIRECT BY MS. BEST	38
JOHN DELGADO	DIRECT BY MS. DIXON	39
	CROSS BY MS. BEST	52
	REDIRECT BY MS. DIXON	68
DAYNE PHILLIPS	DIRECT BY MS. DIXON	70
	CROSS BY MS. BEST	71

1 THE COURT: Call your case.

2 MS. DIXON: Your Honor, the State calls the
3 case of Michael Brent Gay versus State. This is Docket
4 Number 2019-CP-12-620.

5 Mr. Gay is serving a cumulative 30-year
6 sentence. He was indicted in March of 2016 by the
7 Lancaster County Grand Jury for murder and possession of
8 a weapon during the commission of a violent crime, that
9 is Indictment Number 2016-GS-29-377.

10 Those charges arose from the fatal shooting of
11 Joshua Flint McManus on December 5, 2015. He proceeded
12 to a jury trial before the Honorable Judge Gibbons on
13 December 10th through 13th, 2018. He was represented by
14 John Delgado and Dayne Phillips. Randy Newman and Lisa
15 Collins prosecuted the case.

16 During the fourth day of trial, after the jury
17 left for lunch, he entered into a guilty plea to have
18 lessor included -- well, I don't know if a "lessor"
19 but -- voluntary manslaughter on the murder indictment
20 and he also plead to the possession charge. He received
21 30 years for voluntary manslaughter and five years for
22 the weapons charge. Those were concurrent.

23 He filed a direct appeal that was dismissed
24 for failure to provide an explanation for an appeal from
25 a guilty plea. The remitter was sent March 18, 2019.

1 He filed this PCR application August 6, 2019. The State
2 filed a return and a motion for a more definite
3 statement, September 11, 2020.

4 He amended his application, I think, most
5 recently, sometime in the past couple of weeks -- about
6 a month ago, to raise the claims and I'm going to let
7 counsel clarify that this is what they're going forward
8 on, but ineffective assistance of counsel based on
9 failure to develop a defensive accident leading him to
10 believe he would receive a 12-year sentence. Failure to
11 offer mitigating evidence regarding his opioid
12 addiction. Failure to object when the State requested
13 the maximum sentence. Failure to object when the State
14 handed the Court, during sentencing, Exhibit 15 which
15 was a picture of the victim's body and failure to
16 explain the elements of voluntary manslaughter.

17 He's also raised involuntary guilty plea and
18 then a generic violation of Fifth Amendment right to
19 fair trial and Fourteenth Amendment right to due
20 process.

21 Your Honor, the State would contend that last
22 allegation fails to set forth any facts to support it
23 and should be stricken under Rule 12(b)(6).

24 THE COURT: All right. Thank you.

25 Ms. Best, I'll be glad to hear from you.

1 MS. BEST: Thank you, your Honor.

2 We would just ask that at the conclusion of
3 the hearing, if we could just have the pleadings conform
4 with the testimony that's been offered as to the claim
5 of striking and not striking.

6 Aside from that your Honor, we're just ready
7 to call our first witness.

8 THE COURT: We will deal with that at the
9 conclusion of the testimony.

10 Call your first witness.

11 MS. BEST: Thank you, your Honor.

12 I would like to call Mr. Brent Gay.

13

14 M-I-C-H-A-E-L B-R-E-N-T G-A-Y, the Witness herein,
15 having been sworn by the Clerk of Court, was examined
16 and testified as follows:

17

18 DIRECT EXAMINATION

19 BY MS. BEST:

20 Q. All right. Brent, can you please put your
21 name and spell your last name for the record please.

22 A. Gay, G-A-Y. Michael, M-I-C-H-A-E-L. Brent,
23 B-R-E-N-T.

24 Q. Excellent.

25 And can you please tell the Court where you're

1 housed right now?

2 A. Lee Correctional Institution.

3 Q. Have you been sentenced to 30 years for
4 voluntary manslaughter?

5 A. I have.

6 Q. And you were -- you were convicted after
7 having begun your trial. In the middle of it, you
8 entered a guilty plea; is that correct?

9 A. Yes, ma'am.

10 Q. We're gonna back up just a little bit and
11 discuss how you got to this place. Can you please tell
12 the Court what you were initially charged with?

13 A. Murder and possession of a firearm or
14 possession of a weapon during the commission of a
15 violent crime.

16 Q. And your position has been that you are not
17 guilty of murder; is that accurate?

18 A. Yes, ma'am.

19 Q. And in fact, your claim is that you
20 accidentally shot and killed the victim --

21 A. Yes, ma'am --

22 Q. -- Flint McManus in this case?

23 A. It was an accident.

24 Q. And before we get into the events of that
25 night, if I can ask you just a few preliminary

1 questions. Was Flint McManus a friend of yours?

2 A. Uh, I knew Flint. But I didn't know him as
3 well as I knew Raymond Robinson. That's who he came to
4 my house with, was with Raymond.

5 Q. About how long do you think you had known
6 Flint McManus?

7 A. Known him? Like, I just seen him around with
8 Ray. That was probably six months to a year. Just
9 periodically.

10 Q. And he just sort of lived in your community.
11 Would that be an accurate characterization?

12 A. Yes, ma'am.

13 Q. Now, on the night that he was killed, who else
14 was present?

15 A. Raymond Robinson.

16 Q. And at the time of his death, had you taken
17 any drugs or medications?

18 A. Yes, ma'am. I -- I had taken an extremely
19 large amount of opioids. It was Opana, oxymorphone.
20 I'd been smoking weed. I had also been doing
21 methamphetamine.

22 Q. Can you just describe the condition that you
23 were in that evening?

24 A. I was -- I was incoherent. I was very out of
25 it. I was heavily intoxicated.

1 Q. Prior to this night, how long had you been
2 using these drugs?

3 A. In 2009, I was in car wreck. It left me with
4 a fractured T-12 vertebrae and from that point, I was
5 prescribed, started out with Morphine. It progressed to
6 OxyContin and then to Opana. So it was on an everyday
7 basis. I was walking up, taking this pain medicine to
8 deal with my back pain. I was also taking Klonopin and
9 Xanax to deal with anxiety. And recreationally, I was
10 smoking weed and -- that one. And cocaine. And the use
11 of methamphetamine.

12 Q. So would it be fair to say you were a drug
13 addict at this point in your life?

14 A. In that chapter in my life, yes, ma'am.
15 That's -- that's what I thought life was, a continuous
16 party where everyday, you know, it was just to see how
17 high one could get, you know. I didn't know what living
18 life was. But that was all because of my addiction.

19 Q. And on that night that Flint McManus was shot
20 and killed, I mean, where there -- the other people who
21 were there with you, had they taken any drugs or
22 medications?

23 A. Yes, ma'am. Raymond, he was drinking. He was
24 take pills. Same thing with Mr. McManus. He was taking
25 pills. He was doing methamphetamine and he was

1 drinking.

2 Q. Where in your house was Flint McManus shot?

3 A. In my bedroom.

4 Q. And can you explain sort of what that bedroom
5 was like.

6 A. That bedroom is where everybody went when they
7 came over to my house. That's where every -- all my
8 friends who came over, that's where we hung out. That's
9 where we got high. That's where we did drugs.

10 Q. And so was it a little bit larger than sort of
11 a regular bedroom?

12 A. Yes, ma'am. It was -- it was a large bedroom
13 combination bathroom, you know, with an open -- no door.
14 It was just a door-frame, you know, so that way people
15 had easy access to use the restroom if they needed to
16 while we were in my bedroom.

17 Q. So it was kind of a social space; is that
18 accurate?

19 A. Yes, ma'am.

20 Q. So you also had a background in martial arts;
21 is that correct?

22 A. I do. It was a huge part of my childhood and
23 teenage years.

24 Q. And can you sort of tell the Court what you
25 learned and trained for as it relates to nonviolence and

1 how to protect yourself?

2 A. Yes, ma'am. So when people think about karate
3 and martial arts, they think about what they see on the
4 movies, people fighting, people, you know, just doing
5 spinning kicks and whatnot, and they also think about
6 MMA, but that's not what I was thought.

7 Q. What is MMA really quickly?

8 A. Mixed martial arts. You know, it's popular.
9 UFC, several other things. But, you know, that's not
10 what I was taught. I was taught discipline,
11 self-respect and respect for others. Along with knowing
12 how to defend myself, you know, and how to deescalate a
13 situation if -- if -- if something were to happen.

14 Q. So it's sort of a peaceful -- I mean, peaceful
15 kind of --

16 A. Yes, ma'am --

17 Q. -- skill set --

18 A. Absolutely.

19 Q. So let's talk a little bit -- tell the Court
20 about how Flint McManus ended up being shot and killed
21 in your bedroom. What all had y'all been doing earlier
22 that day?

23 A. I mean, my birthday was on December the 4th.
24 Earlier that day we had been taking pills, smoking weed,
25 and doing meth. Like, it was our goal to celebrate and

1 party. Like, that's what we done.

2 Q. You had been using drugs for maybe hours that
3 day? I mean, would it be --

4 A. That day, yes, ma'am.

5 Q. And as you testified earlier, you were
6 incredibly intoxicated?

7 A. Yes, ma'am. I was belligerent. Like, as I
8 said before, that's what -- that's what I thought life
9 was, a party. Let's get high. Let's have fun. You
10 know, that was just the lifestyle that I was living at
11 that time.

12 Q. Now, on that day, did you and Flint have any
13 disagreements?

14 A. No, ma'am. We didn't.

15 Q. Do you know if anyone had any disagreements
16 with Mr. McManus that day?

17 A. No, ma'am. No one had any disagreements about
18 anything.

19 Q. Now, please. I mean, in your own words, I
20 mean, can you tell the Court what happened?

21 A. Absolutely. I was talking with my mother.
22 Mr. McManus and Raymond, they were in my bedroom by
23 themselves. So when we concluded our conversation, I
24 went into my bedroom. I went to my closet -- now, as I
25 said before, my bathroom and my bedroom were connected.

1 And immediately, when you walked into my
2 bathroom, on the right was a walk-in closet. Inside
3 this closet is where I kept my pain pills, my jewelry,
4 and my jackets and just -- you know, just random things.

5 So when I go into this closet, I go to the box
6 that had the pain pills, okay. They -- they weren't
7 there. Right beside this box is another box that I kept
8 by jewelry in; necklaces, watches, rings. Two of my
9 watches were gone. Those two watches belonged to my
10 grandfather, okay.

11 So immediately I'm thinking I misplaced it,
12 okay. I'm thinking -- I'm not thinking anyone has
13 stolen anything from me. I want to go through my closet
14 and make sure that maybe they haven't fell behind a -- a
15 suitcase or whatever.

16 So I started taking things out of my closet,
17 going through my closet just to make sure I haven't
18 misplaced it. So as I'm doing this, you know, I've
19 done -- pulled several things out in my bathroom floor,
20 going through bags, you know, just making sure.

21 I look into my bedroom, I see Mr. McManus
22 sitting in front of my TV holding one of my knives. It
23 was a pocketknife. It was in an open blade position.
24 So I'm -- I'm kind of -- I don't know what's going on.
25 My stuff's gone. I just want to get out of this

1 situation. I want to remove myself from this situation
2 so I can get to a position up my hallway and ask Raymond
3 Robinson and Mr. -- Mr. McManus to leave, but I wanted
4 to do it safely.

5 And by doing it safely, I got my gun from my
6 closet. I never pointed my gun at anybody. I never
7 said anything to anybody. But in order for me to make
8 it to my hallway, I have to walk between Mr. Robinson
9 and Mr. McManus, around and behind to exit out of my
10 bedroom door into the hallway.

11 As I was doing this -- see, Mr. McManus was
12 sitting in front of my TV and office chair. This office
13 chair had spokes that came out to wheels, okay. And I'm
14 moving fast and I have my gun by my side. I have on
15 open-toed flip-flops too. So when I'm coming between
16 and around and behind the office chair, I don't remember
17 if I actually tripped over the spokes of the office
18 chair or if like my toe drug on the carpet and that's
19 what caused me to flip -- I mean, fall -- fall and
20 stumble. It happened really fast.

21 But as I was going down, the gun accidentally
22 discharged and, like, out of all places, it hit
23 Mr. McManus in the neck. And like I went into shock.
24 I'm like, I couldn't believe what had just happened.

25 Raymond -- so, like, as I'm still sitting

1 there in shock looking at, like, what had just happened,
2 Raymond jumps up and he runs around -- runs around
3 behind me. The same way I was trying to exit my
4 bedroom, he does. And he goes out, up the hallway and
5 out my garage door. At this time, you know, I'm -- I
6 mean, y'all put y'all self in my situation. A gun just
7 accidentally went off and shot someone. Like, I'm
8 freaking out.

9 So as I'm walking behind -- I'm not -- Raymond
10 is already at the door and to the garage and I walk up
11 that way too because in order for me to get the phone
12 that I called 911 from, it is in this little sitting
13 area to the right.

14 And about this same time is when Stephan Perry
15 pulls up in his white Jeep Grand Cherokee, okay. And
16 like I said, I was in shock at this point. I called 911
17 and like that's -- everything else just is...

18 Q. If I can ask you this question then. How is
19 it that you remember the events of this night so well
20 given how intoxicated you were?

21 A. Because I replayed it over and over in my mind
22 because I felt and still do feel so bad about what
23 happened, you know, and I just try -- I've tried to
24 think to myself if there was any way or what could I
25 have done to change the outcome of this situation. I

1 mean, what -- you know -- that's how I remember, you
2 know, what -- what happened.

3 Q. Can you tell the Court about trigger load on
4 that particular gun?

5 A. Yeah, it was --

6 MS. DIXON: I'm going to object. He's not a
7 ballistic expert.

8 THE COURT: Yeah, I'll sustain the objection.

9 Q. (By Ms. Best) Was Stephen Perry there when
10 this happened?

11 A. No, ma'am, he wasn't. He did not pull up
12 until after. Like, it was like, I'm talking about like
13 a snap of the fingers. Right after it happened, that's
14 when Stephen pulled up in his white Jeep Grand Cherokee.
15 He was not there.

16 Because if you look at the trial testimony and
17 he says in his testimony that he was seated in a
18 chair -- which I did -- I had a La-Z-Boy chair,
19 oversized and it pointed -- it was more in the corner of
20 my bedroom and it pointed where you could see up the
21 hallway.

22 The chair that Mr. McManus was sitting in
23 would have been over to the left in front of my TV. And
24 if Mr. -- Mr. Stephen Perry said that he was talking to
25 Mr. McManus when this incident happened. And if that

1 would have been so, Mr. McManus would have been turned
2 around like this facing Perry, who was back here in the
3 corner which -- which was not what happened.

4 Q. If I can ask sort of another quick question
5 about the gun in this case.

6 Had there been an accidentally discharge of
7 this gun in your house before this?

8 A. Yes, ma'am. There had. And like, after that,
9 I didn't too much even take the gun out of my closet
10 because after that happened, I put that in my closet and
11 that's just where it stayed.

12 Q. Now, if you had been called to testify at your
13 trial, is this what you would have testified to?

14 A. Absolutely. Yes, ma'am.

15 Q. If we can talk just a little bit about the
16 trial itself.

17 Did you and your family retain Mr. Delgado for
18 your case?

19 A. We did.

20 Q. And did you tell him everything that you knew
21 about your case?

22 A. Everything, from start, beginning, middle. I
23 told him.

24 Q. Did you tell him that you accidentally shot
25 the victim in this case?

1 A. From the very beginning I did.

2 Q. Did you hold anything back?

3 A. Nothing.

4 Q. And you did realize how critically important
5 it was to tell your attorney everything there was to
6 know about your case?

7 A. Absolutely. Yes, ma'am.

8 Q. Is that accurate?

9 A. That's why I would -- I would not have held
10 anything back.

11 Q. Now, did you want a trial or did you ask your
12 lawyer to work out a plea deal for you?

13 A. No, ma'am. I wanted a trial. In the
14 agreement that Mr. Delgado and I made, it was a verbal
15 agreement. He told me that he was going to represent me
16 through the course and the stages of an entire jury
17 trial. Not anything to do with a plea bargain.

18 Q. And so at the time that you entered your
19 guilty plea, on that day, I mean, there had been three
20 or four days of trial that had already occurred; is that
21 correct?

22 A. Yes, ma'am.

23 Q. And did you think that the trial was going
24 well for you?

25 A. I did. I thought -- I thought it was going,

1 you know, as good as it could go. Which was very good.

2 Q. And what did you think about Mr. Delgado's
3 cross-examination of Stephen Perry?

4 A. It was good. It was good. I mean, he --
5 he -- that was good. Couldn't have asked for a better
6 cross-examination.

7 Q. And so it was after Stephen Perry and a few
8 other witnesses testified that you entered this guilty
9 plea. Can you please tell the Court why? After it
10 appeared that the trial was going so well for you that
11 you decided to plead guilty?

12 A. I was sitting at that defense table right
13 there. The same one you and I are sitting at. And
14 Mr. Delgado, he leans over and kind of whispering in my
15 ear, he says, "Brent," he says, "This trial can last
16 well into next week." He says, "This is an election
17 year." He says, "You shouldn't want your grandmother to
18 testify." "You seen how long I cross-examined Perry."
19 Which I think was like two hours.

20 So like when he's telling me these things, you
21 know, at no point during this time did I agree to plea,
22 but it's like, in my mind, I can't understand, like,
23 really why he's telling me all this.

24 And then when he gets done, he approaches the
25 bench, him and Solicitor Collins. They speak with the

1 judge and we have a recess. During the recess, we go
2 into the courtroom right there on the other side of the
3 hall. It was as vacant courtroom and him -- and me and
4 Mr. Delgado were talking. Well, mainly, he's doing all
5 the talking and he tells me, in these words, you know,
6 there's some things you just do not forget and this is
7 one of them. He says, "Brent, if I was you, listen to
8 me, I would plea. I have everything worked out for 12
9 years," and he starts shaking his head up and down.

10 So I trusted this guy, you know, I paid him
11 \$100,000 to represent me. I sold my house to cover his
12 fee, all right. So we also -- you know, I was in the
13 county for three years. So during those three years, I
14 thought that I had come to know Mr. Delgado fairly well.
15 Obviously, I was wrong. But I trusted him and I
16 listened to what he told me to do and that was plea.

17 In this 12 years that I thought I was going to
18 receive is the critical factor of why I decided to plea.

19 Q. So let's talk a little bit about what happened
20 after you received your 30-year prison sentence.

21 So after you receive this 30-year sentence,
22 did you ask Mr. Delgado, like, what happened?

23 A. Well, I didn't have time to. He didn't say
24 nothing to me and immediately after the judge sentenced
25 me to 30 years, like, it felt like all the blood drained

1 out of my body. And like the bailiff who was working
2 that day was just pushing me out the courtroom. "Come
3 on. Come on. You've got to go. You've got to go."
4 And I'm in shock. I can't believe what I just heard the
5 judge sentenced me to. So I'm still trying to
6 comprehend what exactly is going on and I'm expecting
7 Mr. Delgado to come out here and like at least try to
8 explain to me what just happened.

9 However, that's not the way it happened. I
10 didn't hear anything from Delgado past that point. I
11 had my grandmother call him and ask him if he was going
12 to file an appeal. And he told her that was the
13 craziest damn thing he had ever heard and immediately
14 resigned from my case.

15 Q. So after you receive this 30-year sentence, I
16 mean, you're still in the courtroom, just prior to the
17 bailiffs removing you from the courtroom. Why didn't
18 you yell out to the Court, "Wait. Wait. Wait. This
19 isn't what I expected to happen. I expected something
20 else."

21 Why didn't you bring --

22 A. I couldn't even talk. Like it felt like
23 everything -- like when I say it felt like the blood
24 drained out of my head, I could feel it from my head
25 down to my toes. Like, everything just went numb and I

1 couldn't say nothing. I was -- I was just -- I couldn't
2 believe it.

3 Q. So is it possible that you had only hoped for
4 the 12-year sentence but that you knew that you could
5 receive the maximum if you pleaded guilty?

6 A. No, ma'am, it's not. Because there's no way
7 that I would have ever entered an open plea and possibly
8 run the risk of receiving a 30-year sentence. That's
9 just -- you know, if that would have been something I
10 had intended on doing, why would I have paid Mr. Delgado
11 \$100,000 to represent me? I could have gotten those
12 same results with a public defender for free.

13 Q. Did you realize prior to entering your guilty
14 plea that the victim's family would be requesting that
15 the Court impose the maximum sentence?

16 A. No, ma'am. I did not know that. Mr. Delgado
17 did not say anything to me about anyone from
18 Mr. McManus' family being able to speak to the Court and
19 ask them to give me the maximum sentence.

20 Q. So you didn't realize the victim's family
21 would be addressing the Court and asking for the
22 maximum?

23 A. No, ma'am. I also didn't realize that the
24 solicitor would ask the Judge to give me the maximum
25 sentence. I also didn't realize that Detective Rumbaugh

1 would ask the Judge to give me the maximum sentence.

2 And I also didn't realize that the other solicitor,
3 Mr. Newman, would ask the Judge to give me the maximum
4 sentence.

5 And I feel like during these three times that
6 Mr. Delgado could have objected, he should have objected
7 and stopped the guilty plea hearing because I would have
8 continued with trial. And that there's a reasonable
9 possibility that the outcome of my trial would have been
10 different if Mr. Delgado was have strategically
11 presented my defense, used the testimony from the expert
12 witnesses that I also paid for to have defend me at
13 trial and the mitigating evidence. All this would have
14 caused the outcome of my trial to be different.

15 Q. And I just have a couple more questions.

16 A. Yes, ma'am.

17 Q. So after you were sentenced, did you speak
18 with either Mr. Delgado or Mr. Phillips?

19 A. No, ma'am. I didn't -- I didn't speak. The
20 only time that I spoke to John Delgado after that was in
21 fee resolution dispute hearing that I had --

22 Q. But that was not --

23 A. -- back in February.

24 Q. That was not related to your case?

25 A. It was not related to my case. No, ma'am.

1 Q. And is it your understanding that you do or do
2 not have parole eligibility?

3 A. That's the thing. During that same meeting
4 that Mr. Delgado advised me to enter a plea to 12 years,
5 he also told me that I would be parole eligible.

6 However, in South Carolina, voluntary
7 manslaughter is a violent crime, most serious offense.
8 And for every most violent crime, most serious offense
9 in South Carolina, you have to do a minimum of 85
10 percent of your sentence before you can be released.
11 There is no parole for a violent crime, most serious
12 offense in South Carolina.

13 Q. Those are the questions that I have for you,
14 but if there's anything else you would like to add at
15 this point, I would just ask you or tell you to do that.

16 A. Could you grab -- I didn't -- I didn't bring
17 it up here. The notebook paper I have.

18 MS. BEST: Your Honor, may I approach the
19 witness please?

20 THE COURT: Yes, you may.

21 A. You know, this is my life and I know that no
22 one cares more about it than me. And because I plead
23 under erroneous advise of Delgado, I've also been
24 wrongfully convicted. You know, it's on me now to go
25 through the ups and downs, the pain and the hurt of my

1 life because I'm the one living it.

2 But when I hired Mr. Delgado, a client hires
3 an attorney because one is not educated and skilled in
4 the practice of law. Especially in the type of
5 complexities of law being entrusted to the lawyer.

6 In most instances, the client is at the mercy
7 of the lawyer, much like the patient is at the mercy of
8 the doctor to do what is necessary and refrain from
9 doing the unnecessary.

10 Mr. Delgado, as an attorney, his duty is to
11 argue. It is for the Court to decide the outcome.

12 MS. DIXON: Your Honor, it seems like he's
13 reading from something.

14 THE COURT: Yeah. It's more of a closing
15 argument.

16 MS. DIXON: If he wants to read it to refresh
17 his recollection and then testify to it, we won't object
18 to that.

19 THE COURT: Let me just -- where we are
20 procedurally at now.

21 I'll give you a couple more minutes. Go
22 ahead.

23 A. Thank you, sir.

24 Lawyers are expected to do the best they can
25 for a client so that the client's case can have the same

1 level of care and attention as the client would himself
2 exert if he had the knowledge and means.

3 94 percent of state convictions are the resort
4 of guilty pleas. Plea bargains have become so essential
5 to todays' criminal justice system that defense counsel
6 must meet the responsibilities and a plea bargain in
7 process to render adequate assist of the counsel that
8 the Sixth Amendment requires at all critical stages in
9 trial.

10 I hope that I've been clear that Mr. Delgado
11 did abandon me at critical point in my trial and all
12 together during my guilty plea hearing. Mr. Delgado has
13 violated my Fifth Amendment right to a fair trial, my
14 Sixth Amendment right to effective assistance of counsel
15 and my Fourteenth Amendment right to due process of law.
16 Thank you.

17 THE COURT: Thank you. Answer any questions
18 the State may have.

19
20 CROSS-EXAMINATION

21 BY MS. DIXON:

22 Q. Mr. Gay, how are you doing today?

23 A. All right. How are you?

24 Q. Doing pretty good. Thank you. Just want to
25 make sure, before we go forward, and I'm a certain your

1 lawyer has discussed this with you already, but we
2 always like to make sure you understand what kind of
3 relief the Court could actually give you today if the
4 Court believes that you're entitled to a relief.

5 So basically all the Court can do, if they
6 vacate these convictions, the charges remain. Do you
7 understand that?

8 A. I do.

9 Q. So basically the State can come back and try
10 you for murder.

11 A. Yes, ma'am. I understand.

12 Q. And do you understand -- do you know the
13 sentence if you were to be convicted of murder?

14 A. Yes, ma'am.

15 Q. What is the sentence?

16 A. The sentence for murder would either be a
17 mandatory minimum or a possible life sentence without
18 parole.

19 Q. And do you know the mandatory minimum?

20 A. 30 years.

21 Q. 30 years. And what are you serving?

22 A. 30 years.

23 Q. 30 years. And if you're granted a new trial,
24 you understand that you could potentially face life?

25 A. I do.

1 Q. And you're still pretty young. You're
2 probably going to get out at a pretty young age.
3 Knowing all that, do you wish to proceed?

4 A. I do.

5 Q. And you do. Okay. So you've raised several
6 claims. I think we're gonna skip the accident for now.
7 We'll come back to that. But you have claimed that your
8 lawyers effectively lead you to believe you were gonna
9 get a 12-year sentence; correct?

10 A. He did. Yes, ma'am.

11 Q. Do you recall being in the Court during your
12 guilty plea?

13 A. Yes, ma'am.

14 Q. Do you recall the solicitor telling the Court
15 there was no negotiations or no recommendations?

16 A. Yes, ma'am.

17 MS. DIXON: And your Honor, that's page 2 of
18 the plea transcript.

19 Q. (By Ms. Dixon) Do you recall the solicitor
20 telling the Court that you were exposed to the maximum
21 on each charge?

22 A. Yes, ma'am.

23 Q. Do you know what the maximum for voluntary
24 manslaughter is?

25 A. I do now.

1 Q. Do you recall the Court informing you that you
2 faced up to 30 years for voluntary manslaughter?

3 A. Yes, ma'am.

4 Q. At the beginning of the guilty plea, prior to
5 you actually pleading guilty, do you recall the Court
6 saying that to you?

7 A. Yes, ma'am.

8 Q. Do you recall the Court informing you that you
9 faced 5 years for the weapon charge?

10 A. Yes, ma'am.

11 Q. And you told the Court no one coerced you?

12 A. Yes, ma'am.

13 Q. No one promised you anything?

14 A. Yes, ma'am.

15 Q. And you also told the Court your lawyers had
16 answered all of your questions?

17 A. Yes, ma'am.

18 Q. And lets's see -- whose decision was it to
19 plead guilty?

20 A. After Mr. Delgado erroneously advised me that
21 I would receive a 12-year sentence, I made that
22 decision.

23 Q. But when you heard the Court say, "You could
24 get 30 years, why didn't you say, "Wait a minute. Wait
25 a minute. I thought it was gonna be 12?"

1 A. Because I answered accordingly with the answer
2 of "yes" because that's what Mr. Delgado advised me to
3 do.

4 Q. Rather than answering truthfully, you just
5 said, "yes" to the Court?

6 A. From Mr. Delgado, I thought the 12 years was
7 set in stone and I didn't want to say anything to
8 jeopardize that.

9 Q. And when the solicitor said, "Your Honor, he's
10 exposed to the max," right at the beginning of this
11 plea, you didn't say, "Wait a minute. Wait a minute. I
12 thought I was getting 12 years?"

13 A. This was the first time I had ever been before
14 the Court entering a guilty plea.

15 Q. I get that.

16 A. So I didn't have any experience with this.
17 And it was my understanding, or from what I thought
18 that, you know, they gonna say what they -- the
19 solicitor would have her list of things that she would
20 say. But at the end of the day, my 12-year sentence
21 that Delgado promised me still applied.

22 Q. But it's your life; right. I realize this may
23 have been your first day in a guilty plea, but this is
24 your life; right?

25 A. It is.

1 Q. And you said earlier, "No one cares more about
2 it than you," correct?

3 A. Yes, ma'am.

4 Q. And you would be the one serving that
5 sentence?

6 A. Yes, ma'am.

7 Q. So when you heard the solicitor say that, why
8 didn't you say, "Wait a minute. Wait a minute. I think
9 it's a 12-year sentence"?

10 A. I trusted my attorney.

11 Q. You trusted your attorney. And when the Court
12 said to you, "You could get 30 years," again --

13 A. I trusted my attorney.

14 Q. And you admitted that Mr. Delgado did an
15 excellent job, a really good job at trial?

16 A. During the trial, he did. Yes, ma'am.

17 Q. That it was going really well?

18 A. Yes, ma'am.

19 Q. And that he did an excellent job
20 cross-examining the witnesses?

21 A. He did.

22 Q. That you couldn't have asked for a better
23 lawyer for that purpose?

24 A. Absolutely not.

25 Q. And let's see. Had the State subpoenaed your

1 grandmother, do you know?

2 A. I don't know.

3 Q. You don't know. Okay.

4 A. She was present, because if she would have
5 needed to testify, she was here.

6 Q. Okay. Going back to your defense or I guess
7 you're alleging that they were ineffective for not
8 developing a defense of "accident."

9 When did you first tell your lawyers this was
10 an accident?

11 A. The first day I met them.

12 Q. The first day you met them?

13 A. Yes.

14 Q. So from day one, you said, I can't believe
15 this happened. This was an accident. The gun
16 discharged?

17 A. Yes, ma'am.

18 Q. I never meant for it to happen, okay. And
19 what evidence would you have presented in support of
20 this defense?

21 A. That would have been left up to my attorney to
22 develop an actual defense.

23 Q. What evidence do you have today that would
24 support that defense?

25 A. My testimony.

1 Q. Your testimony. Okay. Okay. And you admit
2 that prior to this occurring, y'all had not had any
3 disagreements?

4 A. None.

5 Q. No fighting?

6 A. Nothing.

7 Q. And you recall the two witnesses that were
8 there, Raymond Robinson. I know you're contesting that
9 Stephen Perry wasn't there. But you recall both of them
10 testifying at trial; correct?

11 A. Yes, ma'am.

12 Q. And they both testified there was no
13 disagreements?

14 A. Right.

15 Q. In fact, I think I want to go to -- this is
16 page 200 of the trial transcript. Actually, we're gonna
17 go to page 201 at the bottom. Starting around line 22
18 and I guess just for some background. This is Raymond
19 Robinson, your friend; correct?

20 A. Supposedly.

21 Q. Supposed friend. And so Raymond and Flint
22 were hanging out at your house --

23 MS. BEST: Your Honor, if I can ask, if she's
24 gonna refer to the transcript while she's questioning
25 the witness, if she could provide a copy of the

1 transcript to the witness.

2 THE COURT: Let her ask the question first and
3 see what actually --

4 MS. DIXON: If he needs it, I'll be happy to
5 show it to him. I don't --

6 THE COURT: Go ahead and ask your question.

7 Q. (By Ms. Dixon) So y'all were hanging out
8 watching football?

9 A. Yes, ma'am.

10 Q. Having a good time?

11 A. Yes, ma'am.

12 Q. Doing a lot of drugs?

13 A. Yes, ma'am.

14 Q. Nobody's fighting?

15 A. No, ma'am. Nobody is fighting.

16 Q. And you recall Raymond Robinson testified, he
17 came out, walked -- took like five long steps past us in
18 the chairs. Come around, put the gun to Flint's head
19 and said, "Did you take my daddy's watch?" And Flint
20 blinked his eyes and he shot the gun right off in his
21 head.

22 Do you recall that testimony?

23 A. I remember it.

24 Q. How do you think that would support your
25 defense of "accident"?

1 A. Well, obviously, it wouldn't support my
2 defense. But, if you look, I don't have a copy of the
3 transcript.

4 Q. I'll be happy to provide it if you need.

5 A. Mr. Raymond in his 911 call immediately after
6 the incident occurred says to the 911 dispatcher, "The
7 gun just went off. The gun just went off. He did not
8 say what he said at my trial to the 911 dispatcher.

9 Q. It is possible he was just surprised, it
10 happened so fast. No one even expected it. No one was
11 fighting; correct?

12 A. No, ma'am. No one was fighting.

13 Q. No one was arguing?

14 A. Nobody.

15 Q. And tell me this, because you said that you
16 felt the need to get this gun that you never really ever
17 messed with because it had discharge accidentally
18 before; correct?

19 A. Yes, ma'am.

20 Q. So you didn't really mess with it a lot. But
21 on this day, you're hanging out with your friends,
22 watching football, doing drugs, having a good time
23 hanging out, no one is fighting and then you suddenly
24 feel the need to get this gun?

25 A. No, ma'am. It wasn't suddenly feel the need.

1 It was after I saw Mr. McManus sitting in that office
2 chair holding one of my knives in an open blade
3 position. Where I was scared and I just wanted to
4 remove myself from that situation safely. That's why I
5 took my gun from the closet.

6 Q. So you arm yourself with a gun that you know
7 has a tendency to accidentally discharge and walk out,
8 just what? With the intention of just walking by hold a
9 gun? What was your plan?

10 A. My plan was to leave my room --

11 Q. To leave your room --

12 A. -- and go up the hallway so I could ask
13 Mr. McManus and Robinson to leave my house.

14 Q. And going back to the knife that -- you said
15 Flint was holding a knife. Do you recall what the DNA
16 evidence said about that?

17 A. Um.

18 Q. Go ahead.

19 A. No, ma'am, you go ahead.

20 Q. Did SLED -- SLED didn't find his DNA on that
21 knife, did they?

22 A. Are you familiar with STRmix and how
23 unreliable that whole DNA system is. Like anyone could
24 have used it --

25 Q. I'm the -- excuse me. I'm the one asking the

1 questions.

2 THE COURT: Hold on. She asked a question.

3 MR. GAY: Yes, ma'am.

4 THE COURT: Answer her question.

5 MR. GAY: Yes, sir. I got you.

6 THE COURT: Go ahead.

7 Q. (By Ms. Dixon) Did the State find Flint's DNA
8 on that knife?

9 A. I don't have a report. I'm not sure.

10 Q. You're not familiar with the evidence from
11 SLED?

12 A. No, ma'am.

13 Q. And let's see. Going back to -- okay -- the
14 accident. So you're walking through with this gun that
15 just discharges accidentally, has happened in the past
16 and you're walking through -- and are you right-handed,
17 left-handed?

18 A. I'm right-handed.

19 Q. Right-handed. So you're walking through --

20 A. No, ma'am. You have your hand in the wrong
21 position.

22 Q. Okay.

23 A. I had it down by my side.

24 Q. Okay. So you have it by --

25 A. No.

1 Q. Down. Down. Down further? So all the way
2 down --

3 A. Just like that. Yes, ma'am.

4 Q. All the way down. So it's pointing at the
5 floor; correct?

6 A. Yes, ma'am.

7 Q. And you're walking. Okay. You're walking;
8 correct? That was your testimony?

9 A. I'm moving fast.

10 Q. You're moving fast --

11 A. I'm trying to leave my bedroom.

12 Q. Gotcha. And at some point you do trip;
13 correct?

14 A. Yes, ma'am.

15 Q. So you're falling, you're falling, you're
16 falling. Can you tell me, where was your arm when that
17 gun discharged?

18 A. Well, I can't say for certain, because as I'm
19 going down, I'm trying to catch myself from falling.

20 Q. Okay. So you're going down. You're going
21 down. You're going down. Where do you think your
22 hand's going?

23 A. That's hard to say.

24 Q. I mean, is it coming up here like this? Is it
25 coming up here like this? You're going down. Is your

1 arm coming down like this?

2 A. I was falling.

3 Q. You were falling?

4 A. I was intoxicated. I was just trying to catch
5 myself.

6 Q. So really all you remember is falling and
7 trying to catch yourself?

8 A. And the gun accidentally discharging.

9 Q. And the gun accidentally discharged. Do you
10 remember what the ballistic evidence showed?

11 A. I'm not familiar with it.

12 MS. DIXON: No further questions.

13 THE COURT: Any redirect?

14 MS. BEST: Just two small points, your Honor.

15

16 REDIRECT EXAMINATION

17 BY MS. BEST:

18 Q. So your testimony today would have been
19 evidence that would have supported an accident theory;
20 is that correct?

21 A. Yes, ma'am.

22 Q. And do you believe that evidence, that the gun
23 had accidentally discharged on your earlier point, also
24 would have been evidence in support of a theory of
25 accident?

1 A. Yes, ma'am.

2 MS. BEST: No further questions, your Honor.

3 THE COURT: Any recross?

4 MS. DIXON: No, sir.

5 THE COURT: Thank you. You may step down.

6 MR. GAY: Thank you, sir.

7 THE COURT: Do you have another witness?

8 MS. BEST: I do not, your Honor.

9 THE COURT: We'll take five minutes.

10 (Whereupon, a short recess was taken.)

11 THE COURT: Ms. Dixon, call your witness.

12 MS. DIXON: Your Honor, the State calls John
13 Delgado.

14

15 J-O-H-N D-E-L-G-A-D-O, the Witness herein, having been
16 sworn by the Clerk of Court, was examined and testified
17 as follows:

18

19 DIRECT EXAMINATION

20 BY MS. DIXON:

21 Q. How are you doing today?

22 A. Fine. Thank you, ma'am.

23 Q. Mr. Delgado, how many years have you been
24 practicing law?

25 A. This year will be 48.

1 Q. 48. And what percentage of your practice is
2 devoted to criminal law?

3 A. 95 percent of it.

4 Q. 95 percent. And has that be consistent
5 throughout your career?

6 A. Yes, ma'am.

7 Q. Is it fair to say you've had a lot of trials
8 in your day?

9 A. Yes, ma'am.

10 Q. And a lot of murder trials?

11 A. I have.

12 Q. And regarding your representation of Mr. Gay.
13 Do you recall when you were retained, how far in advance
14 of trial?

15 A. Ma'am, I think it was in September of 2016.
16 Maybe nine months, ten months after the incident.

17 Q. Nine to ten months after, okay. Did you feel
18 like -- do you recall about how many times you met with
19 him?

20 A. I met with -- I met with him probably at the
21 Lancaster County Detention Center at least a dozen
22 times. Maybe as many as 15.

23 Q. And do you fell like you've had enough time to
24 talk to him to develop a theory for his case?

25 A. Oh, yes, ma'am.

1 Q. And what evidence, if you recall, did the
2 State have against him?

3 A. I thought it was an overwhelming case of
4 murder. Mr. McManus was shot, according to other
5 witnesses that were present in the room, without any
6 provocation, without any aggravation between the two.
7 He was shot in such a way that he was absolutely
8 blind-sided by the gunshot.

9 One of the things that that the prosecutor
10 used very effectively in opening statement was that
11 Mr. McManus was watching a football game along with
12 Mr. Raymond Robinson and another fella by the name of
13 Stephen Perry, who was in the bedroom along Brent.

14 Mr. McManus was leaning back in a chair and
15 had his feet crossed at his ankles. In other words, a
16 very relaxed position. He was not in an aggressive
17 mood. As a matter of fact, the pictures that were taken
18 at the incident by Lancaster Police Department and
19 Lancaster Sheriff Department showed Mr. McManus still in
20 that position. For whatever reason, the gunshot wound
21 to the head did not discharge him from the chair. His
22 legs were still crossed in that manner at the moment of
23 his death.

24 That seems -- and the solicitor used this in
25 opening statement. That seemed to me to be a damning

1 indication of the events immediately proceeding the
2 gunshot wound. Mr. Gay is not telling the truth about
3 this accident business. He never said anything to me
4 about "accident" until possibly a week to ten days
5 before the trial. Only then, did he say, "John, I
6 stumbled" or "John, the gun discharged while I was
7 falling." He said, "check it out." He said, "The
8 gunshot had to be from below up."

9 In other words, on an angle because I -- the
10 gun discharged as I was falling or as I was coming back
11 up. So within 24 hours or 48 hours, I contacted
12 Dr. Janice Ross, the forensic pathologist who did the
13 autopsy.

14 And she said to me, "Mr. Delgado, the shot was
15 absolutely horizontal, right to left, there was nothing
16 that would indicate that there was an upward trajectory
17 of the shot."

18 That, to me, didn't agree with what Brent was
19 trying to say about an accident.

20 In addition, Mr. Gay made the 911 phone call
21 to Lancaster Sheriff Department. He's never said
22 "accident." His words, your Honor, were that the victim
23 pulled out a blade. "I didn't know what to do. He come
24 at me with a knife now."

25 The 911 operator said:

1 "What did he steal from you?"

2 "My dad's watches. The only thing I had left
3 of him."

4 Mr. Gay said also, "Well, he pulled a knife
5 out on me when I asked to search his damn pockets."

6 Gay went on to say that Mr. McManus said,
7 "There ain't nothing in my damn pockets," and he pulled
8 out the knife. He put it up to my throat and said, "I
9 ain't got to empty my pockets, boy."

10 Well, that's not an accident. He never says
11 that. That's within probably five minutes of the
12 shooting. Accident -- and for the two and-a-half years
13 or three years while he was at the Lancaster Sheriff
14 Department, he never said anything about "accident."
15 That's just not -- that's a fabrication on his part.

16 Q. And what was his initial story?

17 A. I'm sorry, ma'am?

18 Q. What was his initial story about what
19 happened?

20 A. That there was a knife in Mr. McManus' hand
21 and Mr. McManus had gestured and verbally accosted Gay
22 when Gay accused him of stealing the watch.

23 Well, that's opposed by the completed relaxed
24 image of Mr. McManus' body at the moment of the
25 shooting. And the solicitor was going to make very

1 effective use of that in closing argument.

2 As a matter of fact, use that as the guilty
3 part in the sentencing to show the Judge how unprovoked
4 the shooting was and how Mr. McManus had no prior
5 knowledge of it.

6 Q. And do you remember any testimony from law
7 enforcement about the position of the knife in the
8 victim's hand at the time they found him?

9 A. Yes, ma'am. There was as knife in
10 Mr. McManus' hand, I believe it was the right hand.
11 Neither -- as I recall it, neither of the other two
12 witnesses that were in the room, Mr. Stephen Perry or
13 Raymond Robinson said that there was a knife in
14 Mr. McManus' hand.

15 One of the witnesses also said that Brent,
16 after the shooting, Brent went into the pockets of
17 Mr. McManus to try to find the watch. There was no
18 watch found in the pocket until law enforcement got
19 there sometime afterwards and a watch, low and behold,
20 was in the pocket of Mr. McManus, which could lead one
21 to believe that someone staged the evidence after
22 Mr. Perry and Raymond Robinson left the residence.

23 Q. Do you recall any testimony about the position
24 of the hand with the knife that the State submitted?

25 A. Ma'am, I'm sorry. I -- I recall it in some

1 pictures but I don't -- it's not clear to me at this
2 moment. I'm sorry.

3 Q. That's fair. In terms of the two eyewitnesses
4 that were there, do you recall that they -- everyone
5 testified, including the defendant, today, there had
6 been no arguing prior to this incident?

7 A. Absolutely. Both of the them said that there
8 was no arguments. There was nothing about a watch.
9 There was nothing about any contentious disagreement
10 between the defendant, Mr. Gay, and Mr. McManus.

11 That there was no -- nothing about pulling out
12 a knife or nothing about putting it to his neck and
13 nothing about, "I'm not gonna empty my pockets, boy."
14 Nothing like that. Neither of them said that.

15 Q. And just going back just real quick, what was
16 your general strategy for trial?

17 A. Strategy for trial was to attempt to show that
18 Mr. Gay did not have the intent to murder. It was going
19 to be a very difficult uphill battle because of the
20 nature of the photographs. And what the prosecution was
21 going to be able to show very clearly was that it was a
22 staged scene after shooting.

23 There was -- the watch that Mr. Gay
24 supposedly -- or the watch that was found in
25 Mr. McManus' pocket, did not have Mr. McManus' DNA on

1 it. So if McManus put it in his pocket, that should
2 have left some DNA on the watch. There was no DNA on
3 the watch. It was Mr. Gay's DNA that was on the watch.
4 When those types of things are laid out in front of a
5 jury, it was a very difficult thing to be able to show
6 that there -- that this was a case for no intent as to
7 murder.

8 I recommended -- part of our strategy was to
9 attempt to have the last argument in closing. So
10 Mr. Phillips and myself, cocounsel and myself did not
11 put any evidence -- put anything into evidence and were
12 not going to call any witnesses to the stand to attempt
13 to use that as part of our strategy. I found that
14 making the last argument in closing is a positive thing
15 for a criminal defendant.

16 Q. And in terms of that strategy, did Mr. Gay
17 want to testify, did he want to get up and tell the jury
18 his story?

19 A. No, ma'am. When I said to him -- after I came
20 back and told him that the prosecutor -- excuse me, that
21 the pathologist had said that the shot was horizontal as
22 opposed to an upward trajectory. I said, Brent, I don't
23 think it's worth you going on the stand to talk about
24 that. I don't think in light of all of this that
25 putting you up on the stand is worth it. I want to save

1 what we can so that we could make the last closing
2 argument.

3 He was relieved that he didn't -- that I
4 suggested to him that he not take the stand. I remember
5 him, his body showing a relief that he would not have to
6 take the stand.

7 Q. And in terms of his claim that you lead him to
8 believe he'd get a 12-year sentence, do you recall
9 meeting with him prior to his guilty plea?

10 A. Yes, ma'am. Mr. Phillips and I met with him
11 down the hall in another courtroom. It was
12 Mr. Phillips, myself, the defendant and a uniformed
13 officer stationed in the far end of the courtroom.

14 Q. Do you recall how long y'all met?

15 A. It was a good hour and-a-half.

16 Q. And during that time, did you explain to him
17 the sentences he faced?

18 A. Yes, ma'am. We --

19 Q. And did you --

20 A. We said to him that it was an extraordinary
21 risk if he wanted a verdict -- I'm very clear, in my own
22 mind, as to what that verdict would have been. That
23 would have been a verdict of murder. The judge would
24 have sentenced him to life in prison. That -- we
25 explained all of his rights. We were in the fourth day

1 of his trial. He knew his rights for cross-examination
2 and to take the stand and to have the jury decide his
3 guilt. We were exercising those rights in the moment.

4 The question about my promising Brent Gay
5 12-years, I've never done that in 45 years of practicing
6 and I certainly didn't do it in this case. That's just
7 a fabrication by Mr. Gay.

8 Q. And to clarify for the record, were there any
9 negotiations with this plea?

10 A. No, ma'am. It was an open plan. In other
11 words, without a recommendation by the State.

12 MS. DIXON: Just a moment, your Honor.

13 Q. (By Ms. Dixon) He's raised a claim about
14 failure to offer mitigating evidence regarding opioid
15 addiction, his opioid addiction.

16 Do you recall during sentencing giving the
17 Court some background information about him as part of
18 your mitigation?

19 A. Yes, ma'am. I had Mr. Gay evaluated by a
20 neuropsychologist and also by a neurologist, just to
21 attempt to see, if possibly, as a result of his
22 automobile accident, his history of karate as well as
23 his extraordinary drug addiction, whether or not there
24 was any evidence of an organic brain dysfunction.

25 South Carolina recognizes that possibly, if

1 there is an organic dysfunction, that possibly that is a
2 motion to either dismiss the charge of murder or an
3 indictment or to otherwise use it as possible in a
4 guilty plea.

5 The evidence that I was able to uncover
6 through Dr. Jim Evans, the neuropsychologist and
7 Dr. Howard Mandel, the neurologist, was that there was
8 mild no moderate frontal lobe dysfunction that could
9 have come from the automobile accident. That could have
10 come from his years as a karate student.

11 I'm certain that his use of drug exacerbated
12 that but it did not rise to a level of incompetency to
13 stand trial. It did not rise to a guilty but mentally
14 ill standard. It did not rise to not guilty as a result
15 of mental illness standard.

16 What I do with the guilty plea was to pass
17 those documents to the Court and referred him to certain
18 pages that showed that my feeling about the
19 neuro-impairment was something that was verifiable. And
20 hopefully to use that in his sentence, but I did use
21 those at the sentencing. Yes, ma'am.

22 Q. Did you also tell the Court about his opioid
23 addiction and how he became addicted to pain medicines?

24 A. Yes, ma'am. And to my remembrance, as Mr. Gay
25 has testified here today, that he had an automobile

1 accident where he was severely injured and he then was
2 prescribed opioids. Brent used that over the years and
3 expanded on that.

4 He had gotten several prescriptions from
5 physicians, one he told me about in Monroe, North
6 Carolina; one in Rock Hill and one even in Columbia
7 where he was able to parlay those prescriptions into
8 obtaining a lot of pills that he sold. He was dealing
9 drugs, not only taking them. And he was taking all
10 kinds of drugs. He's stated them here in the courtroom
11 and he was taking those as part of his lifestyle. Yes,
12 ma'am.

13 Q. During your meeting, do you recall whether you
14 all discussed the elements of voluntary manslaughter?

15 A. On several occasions at the Lexington -- I'm
16 sorry. At the Lancaster County Detention Center as well
17 as the time down the hall with Mr. Phillips present, we
18 went over the difference between murder and manslaughter
19 and the absence of malice. That was the defining
20 distinction between murder and manslaughter and that it
21 was very clearly explained to him by both Mr. Phillips
22 and myself, both here at the trial before the guilty
23 plea and as well when we met with him at the Lancaster
24 Detention Center.

25 Q. Just real quick, just to wrap it up. He's

1 also alleging y'all were ineffective for not objecting
2 when the State requested a maximum sentence and when the
3 State handed an exhibit to the Court during sentencing.
4 Do you see any basis for an objection?

5 A. No, ma'am. I mean, the guilty plea had been
6 taken. An objection, thought was something you would do
7 to keep evidence out before a jury or a trier of fact.
8 The guilty plea had been taken. I thought that may have
9 made the situation worse for Mr. Gay if we objected to
10 evidence that showed the scene and Mr. McManus as he
11 laid there.

12 I just, I didn't. I don't think there was any
13 basis for it. I don't think there's any basis for it
14 now. I think the State has a right to ask for -- in an
15 open plea, they have the right to ask for whatever they
16 wish.

17 And the McManus family had an absolute right
18 under the victim's witness statute to come and testify
19 as to what the loss of their loved one meant to them and
20 they have a right to express opinion as to sentencing.

21 And I certainly wasn't going to object to
22 that. I thought that would have been demeaning to the
23 profession and to that family and I think the Court
24 would have been upset at my objection to that.

25 Q. And finally, just to wrap it up, this was an

1 open plea?

2 A. Yes, ma'am.

3 MS. DIXON: No further questions.

4 THE COURT: Cross-examination?

5 MS. BEST: Thank you, your Honor.

6

7 CROSS-EXAMINATION

8 BY MS. BEST:

9 Q. Good afternoon, Mr. Delgado.

10 A. Good afternoon, ma'am.

11 Q. So I'd like to just start off with just a
12 couple of general questions about Brent's case. Some of
13 these -- I'm gonna try not to be duplicitous but it does
14 appear that you retained a number of experts in the
15 case?

16 A. Yes, ma'am.

17 Q. If I can just sort of, for the record, kind of
18 go through those with you.

19 A. Yes, ma'am.

20 Q. But you had neuropsychological testing
21 performed by Dr. James Evans?

22 A. Yes, ma'am.

23 Q. You had investigative services performed by
24 Pete Skidmore?

25 A. Yes, ma'am.

1 Q. And you had a psychiatrist, Dr. Howard Mandell
2 of Meltroline of Psychiatric Services?

3 A. Yes, ma'am.

4 Q. Douglas McDonald, a physician for an MRI that
5 was also administered?

6 A. I think he worked with Dr. Mandell. I think
7 they -- one signed off for the other if my memory serves
8 me correctly.

9 Q. Okay. And then you had Evelyn Phillips a
10 clinical social worker?

11 A. Yes, ma'am.

12 Q. And then you also retained Mr. Dayne Phillips
13 as a second chair --

14 A. Yes, ma'am.

15 Q. -- for purposes of trial?

16 A. As well as a private investigator that we
17 hired in this case. This was an important case. This
18 was a big case. I wanted to do it properly. I wanted
19 to do it well. There's just no getting around some
20 extraordinary difficult facts in front of a jury.

21 Q. So when you had discussions with Brent, I
22 mean, you discussed murder and the definition of malice
23 aforethought?

24 A. Yes, ma'am.

25 Q. And you discussed voluntary manslaughter and

1 what those elements are as well?

2 A. Yes, ma'am.

3 Q. Did you talk about involuntary manslaughter
4 and accident?

5 A. The only thing -- I never thought that
6 involuntary manslaughter was an issue that the Court
7 would charge. "Accident," the only way I think accident
8 could have been shown is possibly if the trajectory had
9 been from up -- I mean, from upward -- I mean, downward
10 up. And I would have used that with the
11 cross-examination of Dr. Ross.

12 And then if there was any chance that accident
13 could have been shown physiologically through Dr. Ross,
14 then maybe Brent could take the stand. But I thought
15 that was just a -- I just thought that was not in his
16 best interest to take the stand. He had a lot of
17 explaining to do if he had said that or tried to show
18 accident.

19 Q. And just to be clear. You never really
20 engaged in conversations with him about either
21 involuntary manslaughter or accident; you just did not
22 consider it as a possibility at all?

23 A. No, ma'am. No, ma'am. We explained
24 everything to him. It seemed to me that involuntary
25 manslaughter -- we explained the elements of that. But

1 if we didn't have a guilty plea or if they were going to
2 allow us to plead to that, I'm not certain the Court
3 would have charged it.

4 And so we explained the elements. We talked
5 about that with Brent, both Mr. Phillips and myself,
6 that aspect of accident.

7 As soon as I talked to Dr. Ross about the
8 that, Brent's identification of the gunshot wound is
9 coming trajectory just was not factually provable. And
10 I thought that that was a very difficult case to make
11 under the facts of this case.

12 But yes, ma'am. We discussed it with him.
13 And I went over it with him, both of those issues.

14 Q. So the record will reflect this, but Brent
15 never testified at trial?

16 A. No, ma'am.

17 Q. Now if Brent had taken the stand and he had
18 testified that he had tripped and the gun accidentally
19 misfired, I mean, that would have been some evidence in
20 the record; is that accurate?

21 A. It could have been true.

22 Q. But because he pled guilty, we don't know
23 whether a jury would have believed his claim. I mean
24 clearly there was disputing facts -- disputing --

25 A. Except those facts are coming from an

1 individual on trial for murder contradicted by the only
2 other two liable witness in the room that say that
3 didn't happen, that there wasn't any tripping, there
4 wasn't an accident.

5 Q. Absolutely. But the issue is that the jury
6 gets to be the fact finder; is that accurate?

7 A. Yes, ma'am. In light of returning a verdict
8 of guilty of murder, I thought that was an
9 extraordinarily outside circumstance that I just didn't
10 think was realistic.

11 Q. And just to talk a little bit more, going back
12 to some of your experience. As you've testified, you've
13 practice for about 48 years now?

14 A. I'm sugared in to say that. Yes, ma'am.

15 Q. And how many trials you think you've handled
16 over the years?

17 A. Oh, goodness. I bet you I've handled a
18 hundred murder trials at least.

19 Q. I was gonna say, how many capital cases have
20 you handled?

21 A. To a verdict, I've tried I think 13 death
22 penalty cases and then there have been PCRs and federal
23 habeas' on top of that.

24 Q. So I don't think there's any question that
25 you're an incredibly experienced and successful criminal

1 defense attorney?

2 A. I've been doing this a while. Yes, ma'am.

3 Q. Do you think it's possible that when clients
4 hire you, they do that because you have -- because of
5 the kind of courtroom experience you have?

6 You know, that is -- do you think there's some
7 clients who hire you, kind of, specifically, because you
8 have more trial experience than just about anyone else
9 in the State frankly?

10 A. Hopefully they hire me for -- based on that in
11 part but also because I will tell them the truth about a
12 situation. Sometimes clients hear what they want to
13 hear. And sometimes clients will deny the obvious and
14 clients will -- even though you attempt to show them in
15 good faith and in recognition of their own humanity that
16 there are things that cannot be changed. That sometimes
17 that's not met with the reality that I would give --
18 present it to them.

19 Q. And I do understand that. I just sort of
20 wanted to explore the possibility that when it comes to
21 trial lawyers in the State of South Carolina, your name
22 comes up at the very top.

23 Do you think there's some clients who really
24 want you because of your courtroom skills?

25 A. As I've said, I've been doing this quiet a

1 while now.

2 Q. And I'm not going to get very much into this.
3 There's just really one point I'd like to make. There
4 was a fee dispute in this case, was there not?

5 A. There was a what, ma'am, I'm sorry?

6 Q. I'm sorry. A fee dispute?

7 A. Yes, ma'am.

8 Q. And the resolution of that dispute. Did the
9 panel make a finding that --

10 MS. DIXON: I'm going to object to relevance.

11 THE COURT: Yes. I've sustained the objection
12 and relevance to this particular case.

13 All right. I sustained that objection.

14 MS. BEST: At the conclusion of this, can I
15 make a proffer of that, your Honor?

16 MR. DELGADO: Your Honor?

17 THE COURT: I'm the judge and the jury. I'm
18 not too concerned about -- I'm not sure what you're
19 wanting to do. You just want to enter something to make
20 it as part of the exhibit or the Court's record here,
21 but I find any fee dispute involved in this case has no
22 relevance whatsoever to the issues involved in the
23 Applicant's PCR application. I'm not going to allow it.

24 All right, move on.

25 Q. (By Ms. Best) Let's go back to what you knew

1 about your client --

2 A. Yes, ma'am.

3 Q. -- at the time. What did you recall about his
4 educational level?

5 A. I believe, ma'am, that he dropped out of the
6 11th grade. That's vague in my memory. I'm not precise
7 on that. He could have had a high school education.
8 I'm sorry. I don't recall.

9 Q. But you were aware that he had a very serious
10 drug addiction?

11 A. Yes, ma'am.

12 Q. And you're aware that he had suffered head
13 injuries both in an automobile accident and also from
14 years of taking karate?

15 A. Yes, ma'am.

16 Q. And you're aware of that impairment because
17 you sought out various experts to help you sort of
18 explain this condition?

19 A. Yes, ma'am.

20 Q. And at some point I believe, and please,
21 correct me if I'm wrong, but I think you investigated to
22 raise a challenge to the Voluntary Intoxication Statute
23 in South Carolina?

24 A. Yes, ma'am. That's what I was attempting to
25 show. That if he had organic brain denigration or

1 dysfunction to the extent that that would have precluded
2 a voluntary intoxication challenge. That's what I was
3 looking at. I wanted to explore everything possible.

4 It did not rise to that and I did not believe
5 in good faith that I had a realistic challenge on that.

6 Q. Given that you're aware that Mr. Gay had these
7 limitations and these cognitive issues, does it seem
8 possible to you that maybe he didn't understand, didn't
9 grasp the idea of the plea that he ended up entering in
10 this case?

11 A. No, ma'am. Ms. Best, Brent, as he dried out
12 in the Lancaster County Detention Center, he came --
13 became very clear to him, as he self-evaluated, that
14 that lifestyle kept him -- he would say he was in a fog
15 for a long period of time. Just in the latter part of
16 his life before the shooting. But there was no
17 cognitive disability. He understood everything I would
18 say to him, everything Mr. Phillips would say to him,
19 everything that Ms. Phillips, the private investigator
20 would say to him. There was no question in my mind that
21 he was competent and understand what was said to him.

22 Q. I'd like to talk about some events after the
23 guilty plea at this point.

24 A. Yes, ma'am.

25 Q. What conversations did have you with Brent

1 after he received his 30-year sentence?

2 A. Ma'am, I don't -- I did not speak with him
3 here in the detention -- at the courthouse after that.
4 I was more concerned for his grandmother and trying to
5 explain to her because she was very upset as to what
6 that meant.

7 I felt my first priority was really not to him
8 but to her because she was going to have to bear this
9 burden as well as Brent.

10 I think I had several letters from him that I
11 responded back to him. I think Mr. Phillips had some
12 letters or phone calls back-and-forth after that, but as
13 far as meeting with him here at the courthouse after
14 guilty plea, I did not.

15 Q. Did either he or his mother ask you to file a
16 motion to the judge to reconsider the sentence?

17 A. No, ma'am.

18 Q. How about express a desire to appeal his
19 sentence?

20 A. There is something about that, Ms. Best. I
21 think he did that on his own. I could be wrong about
22 that. Mr. Phillips may have more knowledge about that.
23 I think he did -- I think he filed that on his own. I
24 did not file it in any event.

25 Q. And so Brent, today, has been very adamant

1 that ever since he received his sentence, that he
2 believed he had been promised a 12-year sentence.

3 Do you have any idea where the number 12 comes
4 from? I mean, was this something ever discussed?

5 A. Ms. Best, Mr. Phillips and I met with him for
6 a good hour and a half down the hallway here. I'd say
7 to you, ma'am, as one of your colleagues and as an
8 officer of the court, when he says -- I think his words
9 were, "I have everything worked out for 12 years."

10 Ms. Best, that's -- that's just not so. That's
11 absolutely not so. I don't know where he got 12 years
12 from. I don't have the slightest idea, but that's --

13 Q. Just -- what I mean by that question, I mean,
14 did he ever sort of ask you: Can you work out a plea
15 agreement for 12 years? I mean, 12 just seems like such
16 a number --

17 A. I can't. No, ma'am. I mean, sometimes -- and
18 I can't recall whether this happened this case or not --
19 sometimes clients will say well, could he give me ten
20 years?

21 Well, under the statute, I guess he could give
22 you ten years, but he's not going to give you ten years.

23 I steer very clear and far away from telling a
24 client in any sense, in any shape form or fashion, what
25 the Court is going to say sentence him or her to. It's

1 just not happening. I'm just not going to do that. And
2 it certainly didn't happen in this case.

3 Q. Just sort of a few more questions.

4 A. Yes, ma'am.

5 Q. Did you inform Brent he was would be eligible
6 for parole or do you recall any discussions about that?

7 A. Ma'am, I'm sorry, I do not -- I don't recall
8 conversations about that one way or the other. I'm
9 sorry.

10 Q. And kind of relying on your expertise as a
11 trial lawyer and arguing DNA in cases before, I mean,
12 would you agree with the statement that DNA may be able
13 to show you if somebody does touch an object, but it
14 can't really show you if somebody does not touch an
15 object?

16 A. Well, if you're saying that DNA on the watch
17 was not present, it would have been very different and I
18 think would have been illogical for a jury to construed
19 that if Mr. McManus had put that in his pocket, that DNA
20 would not have resulted on -- had not been found on the
21 watch. It wasn't found on the watch. The only DNA that
22 was found was Mr. Gay's.

23 Q. And it belonged to Mr. Gay; is that accurate?

24 A. I'm sorry, ma'am?

25 Q. And the watch belonged to Mr. Gay?

1 A. Yes, ma'am. Yes, ma'am --

2 Q. But the fact --

3 A. Absolutely.

4 Q. But the fact that there was no DNA on the
5 watch would not have meant that Mr. McManus did not
6 touch the watch?

7 A. Except for the fact that Mr. Perry said that
8 he and Brent went back and checked out Mr. McManus
9 pockets and there wasn't a watch in either pockets. And
10 then when the police got there, there was as watch in
11 Mr. McManus' pocket.

12 Q. When we're talking about Stephen Perry, who
13 was obviously one of the key State's witnesses in this
14 case.

15 A. Yes, ma'am.

16 Q. And of course Mr. Perry would not even speak
17 with law enforcement when these events originally
18 occurred.

19 A. Yes, ma'am.

20 Q. And you remember he was later arrested in what
21 at the time was the largest drug bust in Lexington --
22 I'm sorry, in Lancaster County; that's accurate?

23 A. Yes, ma'am.

24 Q. Even when you had him on the stand, you did a
25 very effective job I think of indicating just how

1 unreliable a witness Mr. Stephen Perry was.

2 A. Sure. And the charge for that, Ms. Best, is
3 that the jury doesn't have to believe everything a
4 witness says. They can believe part of what a witness
5 says. And that was still damning evidence that would
6 conclusively reiterate what law enforcement found in
7 Mr. McManus' pocket.

8 And I thought that was really damning, very
9 hurtful to Mr. Gay because it looks like Mr. Gay set up
10 the victim after the shooting, after he was dead.

11 That's -- that's -- those are horrible things
12 for a jury to have to consider as to whether or not
13 finding him guilty or not guilty of murder. I didn't
14 think that helped Mr. Gay in the slightest.

15 Q. And I've got, sir, two other points.

16 Prior to Brent's guilty plea, I mean, there
17 had been some evidence of voluntary manslaughter in the
18 record. Isn't that what Judge Gibbons actually said
19 during the guilty plea?

20 A. Well -- both Mr. Phillips and I were -- we
21 didn't think we could get a charge on that. I'll be
22 candid with you, Ms. Best. This happened on a Thursday
23 afternoon. The night before, Wednesday night, I was
24 preparing closing argument. And the closing argument
25 wasn't going to have anything to do with voluntary

1 manslaughter. I didn't think we had a shot at getting a
2 charge of that.

3 Q. I guess we would sort of acknowledge that the
4 record says what it says and that Judge Gibbons
5 indicated --

6 A. Well, yes, ma'am --

7 Q. -- that evidence was there?

8 A. It might have occurred if the State had called
9 his mother. He calls her his mother. It's actually his
10 grandmother. But she's the one who raised him. She was
11 under subpoena by the State and they may have called
12 her.

13 And if that were the case, then I might have
14 been able to gotten her to talk about the watch being
15 some sort of heirloom and his only real connection with
16 his father who died in a very tragic incident when Brent
17 was three years old. Maybe, then, we would have had
18 something. But at the time he pled guilty, that
19 evidence was not before the jury.

20 Q. So prior to the beginning of trial, did you
21 sort of reach out to the prosecution and try to get a
22 voluntary manslaughter plea worked out?

23 A. Yes, ma'am.

24 Q. And may understanding, please correct me if
25 I'm wrong, is that the victim's family was not in

1 support of that?

2 A. Well, it was early in the discussions with the
3 solicitor, Ms. Collins -- I mean, Deputy Solicitor
4 Ms. Collins. She was open to considering it, but that
5 was never -- never came to fruition.

6 What I think happened was that the solicitor
7 in court, that being Mr. Newman in communication with
8 the victim's family, decided to terminate those
9 negotiations and -- this was a very strong case for
10 murder. A very strong case of murder and the solicitor
11 had a right to withdraw any negotiations.

12 I had hoped against hope that their voluntary
13 manslaughter charge could have been negotiated. But
14 with that then comes the possibility as he stands
15 convicted of now, the sentence of 30 years. I just
16 didn't see that any judge was going to look at the facts
17 of this case and find much excuse for what happened.

18 MS. BEST: Your Honor, may I have just a
19 moment to confer with my client?

20 THE COURT: Yes, you may.

21 MS. BEST: Thank you.

22 (Whereupon, a brief discussion was held
23 off the record.)

24 MS. BEST: No further questions, your Honor.

25 THE COURT: Any redirect?

1 MS. DIXON: Just a few quick...

2

3 REDIRECT EXAMINATION

4 BY MS. DIXON:

5 Q. Jumping back to the issue of whether you
6 adequately gave the Court mitigating evidence.

7 Do you recall discussing the Dr. Mandell and
8 Dr. Evan's report during mitigation?

9 A. Yes, ma'am. And I quoted some from the report
10 as well as handed it up to Judge Gibbons and pointed out
11 on which page or which paragraph I was referring to.

12 Q. Also do you call discussing his family
13 history?

14 A. Yes, ma'am.

15 Q. The tragedies he had suffered as well as the
16 automobile accident?

17 A. Yes, ma'am. He came from a very tragic
18 traumatic childhood. He was raised by his grandmother
19 as a result of the passing of both his parents in one
20 occasion. And that was certainly a horrific experience
21 for him and I think it's -- it's just a horrific
22 experience for a young child.

23 Q. Do you recall telling the Court that Dr. Evans
24 had found that based on Dr. Evans' studies that Mr. Gay
25 had relatively poor performance and dysregulation in the

1 frontal regions as well as the temporal and parietal
2 regions?

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

4 Q. So the Court had all that information?

5 A. Yes, ma'am.

6 MS. DIXON: And, your Honor, that's pages 16
7 through 18 of the plea transcript.

8 Q. (By Ms. Dixon) Just to clarify, you did
9 explain to him voluntary manslaughter?

10 A. Yes, ma'am. Both Mr. Phillips and I did on
11 several occasions.

12 Q. And you did explain accident, defense of
13 accident?

14 A. Yes, ma'am.

15 Q. As well as why the evidence didn't support it?

16 A. Yes, ma'am.

17 Q. And in your opinion, based on your ample trial
18 experience, if you had presented a defense of accident
19 in light of the fact of the testimony of the two State's
20 eyewitnesses as well as the ballistics evidence, what is
21 the likelihood that the jury would have found him not
22 guilty?

23 A. Not guilty as a result of an accident?

24 Q. Uh-huh.

25 A. One percent.

1 Q. One percent.

2 MS. DIXON: No further questions.

3 THE COURT: Any recross?

4 MS. BEST: No recross, your Honor.

5 THE COURT: Thank you Mr. Delgado. You may
6 step down.

7 State, call your next witness?

8 MS. DIXON: Your Honor, we call Dayne
9 Phillips. I think we'll keep this one pretty quick.

10

11 D-A-Y-N-E P-H-I-L-L-I-P-S, the Witness herein, having
12 been sworn by the Clerk of Court, was examined and
13 testified as follows:

14

15 DIRECT EXAMINATION

16 BY MS. DIXON:

17 Q. Mr. Phillips, how are you doing today?

18 A. Doing well. Thank you.

19 Q. How many years have you been practicing law?

20 A. Eleven or 12.

21 Q. Eleven or 12. What percentage is devoted to
22 criminal law?

23 A. Practically a hundred percent.

24 Q. A hundred, okay.

25 And in this case, what was your role in this

1 case?

2 A. As second chair to assist with preparing
3 motions. And as you can see from the transcript, I did
4 a lot of the pretrial motion hearing arguments,
5 presenting those or filing those motions and arguing
6 them in pretrial hearings and cross -- I did opening
7 statement and some cross-examination.

8 Q. And in terms of a lot of those pretrial
9 motions you were arguing, were y'all kind of also
10 gearing up for an appeal if necessary?

11 A. One of the reasons, my background in appellant
12 defense, I've been able to file, I think, at this point
13 maybe over hundred appeals in my career or something. I
14 don't have the exact number but it's a lot.

15 And with that appellant experience, making
16 sure that these legal issues are preserved for appellant
17 review. A lot of trial lawyers in South Carolina don't
18 quite accurately know how to do that. So one of the other
19 reasons Delgado wanted to bring me along was to ensure
20 we had all the issues preserved for appellant review.

21 Q. And when Mr. Gay decided to plead guilty, what
22 did that do with all those issues?

23 A. Well, ultimately we discussed that as well.
24 We did -- I think it was -- again, I don't know the
25 exact amount of time. It could have been, say, hour and

1 a half or more. It was a long time that we stepped --
2 after we broke, we stepped in the other room and we
3 literally went through everything.

4 I can say as far as that's concerned that no
5 stone was unturned about what we discussed, either from
6 the meeting we had with him at the detention center or
7 again prior to this plea. He certainly had eyes wide
8 open, was fully explained as far as all of his rights,
9 collateral consequences that come with a plea, full
10 sentencing ranges. That was certainly not an issue.

11 I mean it was a -- the reason -- one of the
12 reason why we had to talk to him for so long was, he was
13 certainly upset. He was crying. It was tough. It was
14 a tough pill for him to swallow, for him just to finally
15 accept responsibility for what he had done.

16 I guess I'll just address the one issue about,
17 you know, knowing and voluntarily, intelligently
18 entering a plea. We had no hesitation and I can tell
19 you in our discussions with him as far as his
20 competency. Obviously, if it was, we would have tried
21 to get another evaluation specific to competency or
22 criminal responsibility if we felt like in that moment
23 it was either one of those.

24 We didn't feel competency or capacity was an
25 issue. We had good intelligent discussions as you've

1 seen from his testimony. He is eloquent. And his
2 memory has improved I think since our meetings with him,
3 his memory of what happened that night has improved.

4 Delgado to quote -- that was a quote. He said
5 he was in a fog for many years. He was heavily
6 intoxicated and anybody that watched the video of his
7 interrogation, you couldn't have somebody more
8 intoxicated during that actual interrogation.

9 Without a doubt we reviewed -- it took that
10 long because we went through everything. Every possible
11 outcome. Every possible consequence. And he made the
12 intelligent decision to plead guilty.

13 Q. And by the time of trial, was he still under
14 the influence of all these drugs?

15 A. Absolutely not. And as Delgado said, I think
16 he kind of gotten enlightened in jail in the sense that
17 he started doing yoga. That was one of his things, he
18 was doing yoga. He had lost weight and he was
19 exercising everyday and how much clearly he was
20 thinking.

21 In fact, having that ability in many of my
22 other cases, when somebody has had such a severe drug
23 addiction, when they have that ability to sober up and
24 that clarity that comes with sobriety, that was
25 definitely not an issue. Again, if it was, we certainly

1 would have addressed it.

2 Q. In terms of his constitutional rights, when
3 y'all met with him prior to the plea, did y'all review
4 all of the rights he had, what he was waiving?

5 A. Yes. I mean, going into the trial, he
6 certainly -- that's what he wanted, was a trial.

7 However, by day 4, there was a jail phone call
8 I believe the night before where he talked to his mother
9 and he said some things that were not favorable to him
10 in any way, shape or form.

11 And the prosecutors were very much excited to
12 be able to bring that to our attention and say that -- I
13 believe their intention was to call her as a witness and
14 that weighed very heavily on him as well. He did not
15 want his mother called as a witness and have that jail
16 phone call played which would have destroyed every bit
17 of credibility that we had.

18 I know a lot of issues -- there's inconsistent
19 theories whether it's going to be accident, whether it's
20 no intent. The evidence unfortunately doesn't -- it's
21 not favorable for him either way you look at it.

22 Q. And what about the sentence? Did you promise
23 him he'd get a 12-year sentence?

24 A. No. To just directly go to the point, there
25 was absolutely no guarantee or promise of the sentence.

1 Anybody that's done criminal defense work knows that
2 that comes up all the time. Defendant's want you to try
3 to guarantee something. But any good lawyers -- been in
4 that situation many times as a former public defender
5 and that's the first thing that you address. That
6 there's absolutely no guarantee.

7 I mean, he testified under oath before the
8 judge that there was -- that he knew exactly that he was
9 facing 30 years. There were no promises or threats or
10 recommendations that were given. Nobody -- he might
11 have wanted the 12, but that's not what was promised to
12 him because there were no promises. It was an open
13 plea.

14 Q. And did you hear Mr. Delgado tell him he would
15 get a 12-year sentence?

16 A. No. And we were both the -- I mean, it was a
17 wide open room as you heard. The deputy was 20 feet
18 away in the corner trying to give us as much privacy as
19 possible. We were both -- all three of us were sitting
20 at the table together during the entire conversations.

21 Q. And you did explain to him that he was waiving
22 all of these defenses by pleading guilty?

23 A. Yes. You know, unfortunately, it's not like
24 federal court. In South Carolina, state court, if you
25 plead guilty, you waive all defenses and all legal

1 issues. So really there were not gonna be no appellant
2 issues as the court of appeals, I guess, I heard
3 ultimately ruled because there wasn't any specific
4 objections to the plea itself.

5 Q. And then one last quick question regarding his
6 defensive accident. Do you recall when he first raised
7 that defense?

8 A. Well, you know, I would say, like many
9 defendants, sometimes their memory is fluid. Different
10 facts come out. Like, I think today, I think today's
11 memory was very clear and specific and I don't remember
12 it being that clear and specific. Especially his
13 testimony I think about tripping, the way he described
14 it. There was a discussion about tripping and falling,
15 but the way he described it in such detail with the leg
16 of the chair and all that, that's a little vague to me.
17 His memory definitely improved over time.

18 MS. DIXON: Just one moment, your Honor.

19 No further questions.

20 THE COURT: All right. Thank you.

21 Any cross-examination?

22 MS. BEST: Sorry, your Honor. Can I have a
23 moment?

24 THE COURT: Take your time.
25

CROSS-EXAMINATION

BY MS. BEST:

Q. Just a brief point. So prior to the time that this went to trial, Brent had told you about an accident, that this had happened as an accident. So you were aware of that --

A. Yes --

Q. -- prior to trial?

A. Yes. There were two defenses that he discussed. Self-defense, as far as having the knife pulled on him, as well as accident. That's why I said he was fluid because we had multiple theories and any good defense lawyer knows that you can't go to trial and give a jury two defense theories because there's only one truth and they would know that you're probably lying. So you had to have one theory.

Q. And as an appellant attorney, you surely know that in order to get a jury instruction on a particular legal defense, testimony in the records supporting that theory would have constituted a basis for providing --

A. Sure. Any evidence.

Q. -- any evidence?

A. Of course. Any evidence. That part is undisputed. If he would have testified and his testimony was that it was an accident, sure, he would

1 have been eligible for that.

2 Q. Excellent.

3 MS. BEST: No further questions, your Honor.

4 THE COURT: Redirect?

5 MS. DIXON: No further questions, your Honor.

6 THE COURT: Thank you.

7 Mr. Phillips, you may step down.

8 Ms. Dixon, call your next witness.

9 MS. DIXON: That's all for the State, your
10 Honor.

11 THE COURT: And, Ms. Best?

12 MS. BEST: No additional witnesses, your
13 Honor. That is our case.

14 I still have one issue regarding the
15 information that I was not allowed to get into on the
16 stand. I guess I just want to be heard on that. I've
17 got sort of a document that --

18 THE COURT: Let me hear you on the relevance
19 of fee dispute as a Postconviction Relief Hearing.

20 MS. BEST: So the panel in that case made a
21 finding. And the finding was that Mr. Gay may have
22 reasonably understood that the agreed upon fee was for a
23 full trial of his case to verdict, and that's it. That
24 is the only point I wanted to get out.

25 THE COURT: Okay. Well, that point is now on

1 the record.

2 MS. BEST: Thank you, your Honor.

3 THE COURT: Anything else? I'll take
4 everything that's been presented today as part of --
5 what's been presented to the Court as part of the
6 record, I'll take that into consideration and I'll issue
7 my ruling by the end of next week.

8 MS. BEST: Thank you, your Honor.

9

10 (Whereupon, the hearing in the
11 above-captioned matter was concluded.)

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C E R T I F I C A T E

I, the undersigned Maria DiScioscia, Official Court Reporter for the Sixth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the record of all the proceedings in the captioned case, in the Circuit Court for Lancaster, South Carolina, on the 2nd day of September, 2022.

I do further certify that I am not related, either by blood or marriage, to any of the parties in this action; and that I am in no way interested in the outcome of this matter.

A handwritten signature in cursive script, reading "Maria DiScioscia", written in dark ink. The signature is positioned above a horizontal dashed line.

Maria DiScioscia
Official Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LANCASTER	)	FOR THE SIXTH JUDICIAL CIRCUIT
	)	
MICHAEL BRENT GAY,	)	CASE NO. 2019-CP-29-0975
	)	
Applicant,	)	
	)	ORDER OF DISMISSAL
v.	)	
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Michael Brent Gay (Applicant) on August 6, 2019. On September 2, 2022, an evidentiary hearing convened before the Honorable Daniel Dewitt Hall. Applicant was present and represented by Elizabeth Franklin-Best, Esquire. Assistant Attorney General Danielle Dixon represented Respondent. Following a thorough review of the trial transcript and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections serving a thirty-year sentence. In March 2016, the Lancaster County Grand Jury indicted Applicant for murder and possession of a weapon during the commission of a violent crime (2016-GS-29-377).

On December 10, 2018, a jury trial convened before the Honorable Brian M. Gibbons. John Delgado and Dayne Phillips, Esquires, represented Applicant. Solicitor Randy Newman and Deputy Solicitor Lisa Collins prosecuted the case. During the fourth day of trial, after the jury left for lunch, Applicant pled guilty to the weapon charge and, as to the murder indictment, the lesser-included offense of voluntary manslaughter. Judge Gibbons sentenced Applicant to

concurrent terms of thirty years for voluntary manslaughter and five years for the weapon charge.

Applicant timely filed a direct appeal. On February 28, 2019, the Court of Appeals dismissed the appeal for failure to provide an explanation for appealing from a guilty plea. The remittitur was sent March 18, 2019.

Underlying Facts

Applicant's charges stem from the fatal shooting of Joshua Flint McManus (Victim) on December 5, 2015. During trial, the State presented evidence that Victim was watching a football game at Applicant's home along with Raymond Robinson and Stefan Perry on the day of the shooting. Robinson and Perry testified Applicant unexpectedly shot Victim in the head while they were watching the game. (Tr. 197, 201-03, 395-97). Both witnesses testified no one was arguing prior to the shooting. (Tr. 206, 397).

Current Application

Applicant timely filed this PCR application on August 6, 2019, generally alleging he was being held in custody unlawfully due to ineffective assistance of counsel, violation of the 6th Amendment, Violation of the 14th Amendment, and Violation of the 5th Amendment. Thereafter, Applicant amended his application to allege the following:

- a. Ineffective assistance of counsel:
 - i. Trial counsel failed to develop and present evidence that the victim's death was the result of an accident and was not voluntary manslaughter or murder.
 - ii. Trial counsel led Applicant to believe he would receive a 12-year sentence and Applicant pled guilty based on those assurances.
 - iii. Trial counsel failed to offer mitigating evidence regarding how Applicant came to have his debilitating opioid addiction, which would have decreased his sentence had it been presented to the court.

- iv. Trial counsel failed to object when the State asked the judge to sentence Applicant to the maximum possible sentence allowed.
 - v. Trial counsel failed to object when the Solicitor handed the judge State's Exhibit 15.
 - vi. Trial counsel failed to explain the elements of voluntary manslaughter.
- b. Involuntary guilty plea: Applicant's guilty plea was not knowingly and voluntarily entered.
 - c. Applicant's 5th Amendment right to a fair trial and 14th Amendment right to due process have been violated.

At the PCR hearing, Applicant proceeded on the allegations in his amended application.

Findings of Fact and Conclusions of Law

This Court has had the opportunity to review the plea transcript in its entirety and has heard the testimony at the PCR 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.¹ After a careful review based on the Strickland standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are this Court's findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations. Rule 71.1(c), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). An applicant alleging ineffective assistance of counsel must prove "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 (1984); Butler, 286 S.C. at 441, 334 S.E.2d at 813. "The test for effective assistance of counsel is whether the representation was within the range of competence

¹ This Court will reference the PCR testimony where relevant below.

demanded of attorneys in criminal cases.” Watson v. State, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. at 441, 334 S.E.2d at 813. An applicant must overcome this presumption to received relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

To establish ineffective assistance of counsel, a PCR applicant must prove (1) counsel’s performance fell below an objective standard of reasonableness and (2) the applicant sustained prejudice as a result of counsel’s deficient performance. Strickland, 466 U.S. at 687–88; Cherry, 300 S.C. at 117–18, 386 S.E.2d at 625. “A PCR applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel’s errors, the applicant would not have pled guilty and would have insisted on going to trial.” Dalton v. State, 376 S.C. 130, 136, 654 S.E.2d 870, 873 (Ct. App. 2007). To prove prejudice following a guilty plea, the applicant “must show that there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial.” Hill v. Lockhart, 474 U.S. 52, 59 (1985).

Failed to develop accident defense

At the PCR hearing, Applicant testified he accidentally shot and killed Victim. (PCR Tr. 6). He explained he had “taken an extremely large amount of opioids,” smoked marijuana, and taken methamphetamine that day and was “heavily intoxicated” at the time of the shooting. (PCR Tr. 7). Applicant acknowledged he did not have any disagreements with Victim prior to the shooting; he averred, “No one had any disagreements about anything.” (PCR Tr. 11). Notwithstanding this, Applicant testified he armed himself with a gun that had previously discharged accidentally; he claimed he armed himself because he (1) discovered his grandfather’s watch was missing from his

closet and (2) saw Victim holding a pocketknife. (PCR Tr. 11-13, 16). Applicant stated he walked through his bedroom and tripped; when he fell, the “gun accidentally discharged and . . . hit [Victim] in the neck.” (PCR Tr. 13). Applicant testified he told trial counsel “[f]rom the very beginning” that he accidentally shot Victim. (Tr. 16-17).

In contrast, John Delgado testified Applicant did not mention anything about the shooting being an accident “until possibly a week to ten days before trial.” (PCR Tr. 41-42). He testified during the 911 call, Applicant indicated he shot Victim because Victim “pulled out a blade” and “come at [him] with a knife.” (PCR Tr. 42-43). However, Delgado stated Applicant’s claim of self-defense was refuted by a picture of Victim’s deceased body, which depicted Victim “leaning back in his chair . . . [with] his feet crossed at his ankles” in “a very relaxed position.” (PCR Tr. 41). He testified Applicant’s claim of self-defense was also refuted by the two eyewitnesses who testified for the State. (PCR Tr. 44).

Delgado testified he contacted the pathologist within a day or two of Applicant telling him the shooting was an accident to determine if the evidence supported an accident defense. (PCR Tr. 42). However, the pathologist indicated “the shot was absolutely horizontal, right to left, there was nothing that would indicate that there was an upward trajectory of the shot.” (PCR Tr. 42). As a result of the pathologist’s findings, Delgado testified he concluded the facts did not support Applicant’s story that the shooting was an accident. (PCR Tr. 42).

Dayne Phillips testified Applicant’s memory was “fluid” and much more “clear and specific” during the PCR hearing than during the time he represented Applicant. (PCR Tr. 76). He acknowledged Applicant had raised a defense of accident prior to trial but explained Applicant had also claimed self-defense. (PCR Tr. 77). Phillips testified, “Any good defense lawyer knows that you can’t go to trial and give a jury two defense theories because there’s only one truth and

they would know that you're probably lying. So you had to have one theory." (PCR Tr. 77).

This Court finds **credible** the foregoing testimony by both Delgado and Phillips. In contrast, this Court finds **not credible** Applicant's testimony that he told trial counsel from the beginning that the shooting was an accident. Further, this Court finds counsel articulated a valid reason for not further pursuing a defense of accident in that (1) Applicant initially claimed self-defense but later changed his story to accident, (2) the trajectory of the bullet as reported by the pathologist did not support Applicant's story that the gun accidentally discharged after Applicant tripped and was falling, and (3) a jury will not typically believe a defendant who presents multiple defense theories. Based on the foregoing, counsel has articulated a valid reason for not further pursuing a defense of accident, and Applicant has not shown counsel was deficient in this regard.

Likewise, Applicant has not shown prejudice. This Court finds **not credible** Applicant's testimony that the shooting was an accident. Based on the trajectory of the bullet ("absolutely horizontal, right to left, . . . nothing that would indicate that there was an upward trajectory"); the 911 call wherein Applicant initially claimed he acted in self-defense; the fact the Victim's body was leaning back in a non-confrontational manner at the time of the shooting; and the testimony of the State's two eyewitnesses, this Court finds it is not reasonably likely a jury would have accepted a defense of accident. (Tr. 201-03, 395-97; PCR Tr. 41-42). Thus, Applicant has not shown a reasonable likelihood the outcome of his trial would have been different if counsel had further developed a defense of accident and has not shown prejudice.

Advised Applicant he would receive 12-year sentence

At the PCR hearing, Applicant testified he only pled guilty because he was promised a twelve-year sentence. (PCR Tr. 19). In contrast, Delgado and Phillips both testified they never promised Applicant a twelve-year sentence. (PCR Tr. 48, 62-63, 74). Delgado stated "there was

absolutely no guarantee or promise of the sentence.” (PCR Tr. 74).

This Court finds Delgado and Phillips’s testimony in this regard **credible**, and Applicant’s testimony in this regard **not credible**. Thus, Applicant has not shown deficiency. Further, a review of the plea transcript itself shows Applicant was aware of the sentence he faced when he pled guilty. At the beginning of the plea, the solicitor stated the pleas were “straight up” and Applicant was “exposed to the max on each of those two charges.” (Pl. Tr. 2). Thereafter, the plea court advised Applicant that voluntary manslaughter carried up to thirty years, and the weapon charge carried up to five years; Applicant indicated he understood. (Pl. Tr. 3-4). Critically, Applicant relayed to the plea court that no one had promised him anything for the plea. (Pl. Tr. 4). Based on the foregoing, this Court finds Applicant was fully aware of the sentence he faced when he pled; thus, Applicant has not shown prejudice. See Hill, 474 U.S. at 59 (providing a PCR applicant must show “a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial” to prove prejudice following a guilty plea).

Failed to offer mitigating evidence of Applicant’s opioid addiction

During the PCR hearing, Applicant averred the outcome of his trial would have been different if counsel had presented the expert witnesses he hired to defend him at trial and as mitigating evidence. (PCR Tr. 22). Delgado explained he had Applicant evaluated by both a neuropsychologist and a neurologist to see if there was evidence of an organic brain dysfunction. (PCR Tr. 48). He testified the reports indicated Applicant had a mild to moderate frontal lobe dysfunction, but it did not rise to the level of incompetency or a guilty but mentally ill standard. (PCR Tr. 49). Delgado testified he provided the reports to the plea court at sentencing as part of mitigation. (PCR Tr. 49, 68).

This Court finds the foregoing testimony by Delgado is **credible**. Delgado provided the

mitigation information that he had to the plea court during sentencing and thus was not deficient in this manner. Further, the plea transcript indicates Delgado provided this information to the plea court and discussed Applicant's childhood and background as mitigation. (Pl. Tr. 15-19). Because counsel provided this information to the plea court, and the plea court had this information prior to sentencing, Applicant has not shown any deficiency or resulting prejudice in this regard.

Failed to object when the State requested the maximum sentence

During the PCR hearing, Delgado testified Applicant was entering an open plea, and there were no negotiations with it. (PCR Tr. 48). He averred that because it was an open plea, the State could ask for whatever they wanted. (PCR Tr. 51). Likewise, Phillips testified it was an open plea with no promises, and Applicant knew he was facing thirty years. (PCR Tr. 75).

This Court finds the foregoing testimony by Delgado and Phillips **credible**. Further, because this was an open plea, counsel was not deficient for not objecting when the State requested the maximum sentence. Finally, the plea transcript supports Delgado and Phillips's testimony: at the beginning of the plea, the State indicated Applicant was pleading "straight-up" and was exposed to the maximum sentences. (Pl. Tr. 2). The plea court advised Applicant he faced up to thirty years for voluntary manslaughter and five years for the weapon charge, and Applicant indicated he understood. (Pl. Tr. 3-4). This Court finds Applicant was advised and aware that he faced the maximum sentence of these charges and knew what those sentences could be. (Pl. Tr. 2-4). Knowing this, Applicant chose to plead guilty. (Pl. Tr. 4). Thus, Applicant has not shown prejudice. See Hill, 474 U.S. at 59 (providing a PCR applicant must show "a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial" to prove prejudice following a guilty plea).

Failed to object to Exhibit 15

Applicant contends counsel was ineffective for failing to object when the State presented Exhibit 15 to the plea court during sentencing. Although Applicant did not enter this exhibit into evidence, based on the solicitor's statement at the plea hearing, Exhibit 15 was a picture "showing the condition of the body immediately after the incident and as found by law enforcement." (Pl. Tr. 8). According to Delgado, Victim's body was "leaning back in his chair . . . [with] his feet crossed at his ankles" in "a very relaxed position." (PCR Tr. 41). Delgado testified he did not see any basis to object when the State handed the picture to the plea court. (PCR Tr. 51). He noted Applicant had already pled guilty, the jury was no longer involved, and the State had the right to ask for whatever sentence they wanted in an open plea. (PCR Tr. 51).

This Court finds Delgado articulated a valid basis for not objecting to the picture. Specifically, because it was an open plea, the State could use the picture in sentencing—just as Applicant could use his medical reports as mitigation during sentencing. Applicant has not set forth a valid basis for counsel to object and thus has not shown deficiency. Further, Applicant did not enter this picture into evidence at the PCR hearing—leaving this court to speculate about the picture itself. Thus, Applicant has not shown prejudice. Cf. Gloyer v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995) (providing an applicant must produce witnesses at a PCR hearing to support a claim that counsel was ineffective for failing to interview or call potential witnesses).

Failed to explain the elements of voluntary manslaughter

During the PCR hearing, Delgado testified he and Phillips explained the elements of murder and voluntary manslaughter to Applicant. (PCR Tr. 50, 53-54, 69). Phillips testified generally that they left "no stone unturned" in their conversations with Applicant. This Court finds the foregoing testimony by Delgado and Phillips is **credible**. Based on this testimony, this Court

finds trial counsel explained the elements of voluntary manslaughter with Applicant and thus were not deficient in this regard. Likewise, Applicant has not shown any resulting prejudice.

Involuntary Guilty Plea

“To be knowing and voluntary, a plea must be entered with an awareness of its consequences.” Holland v. State, 322 S.C. 111, 113, 470 S.E.2d 378, 379 (1996). “To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him.” Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007). “

During the PCR hearing, Delgado testified he met with Applicant twelve to fifteen times over the course of his representation. (PCR Tr. 40). He stated prior to the guilty plea, he and Phillips met with Applicant “a good hour and-a-half.” (PCR Tr. 47). Delgado testified they explained to Applicant the sentences he faced, the risk of proceeding with the jury trial, and the constitutional rights Applicant would waive by pleading guilty. (PCR Tr. 47). Delgado explained they were in the fourth day of trial, and Applicant was very aware of his rights to have a jury decide his guilt, cross-examine witnesses, and testify because they had been exercising those rights. (PCR Tr. 47-48). He stated they also explained to Applicant the elements of voluntary manslaughter and murder. (PCR Tr. 50). Delgado stated he believed Applicant was competent and understood their conversations. (PCR Tr. 60).

Likewise, Phillips testified they left “no stone unturned” in their conversations with Applicant. (PCR Tr. 72). He stated Applicant understood that by pleading guilty, he was waiving his right to raise on appeal issues that may have been preserved during trial. (PCR Tr. 71). Phillips stated they explained to Applicant “all of his rights, collateral consequences that come with a plea, [and] full sentencing ranges,” and Applicant entered the plea with “eyes wide open.” (PCR Tr.

72). He testified they reviewed with Applicant all the rights he would be waiving by pleading guilty. (PCR Tr. 74). Phillips averred Applicant was competent and understood their conversations. (PCR Tr. 72-73).

This Court finds the foregoing testimony by Delgado and Phillips is **credible**. Based on the foregoing, Applicant was fully aware of the charges he faced and consequences of pleading guilty. The plea transcript further supports a finding that Applicant was fully aware of the consequences of pleading guilty. During the plea, the Court advised Applicant of the sentence he faced and Applicant stated he understood. (Pl. Tr. 3-4). Likewise, Applicant told the Court he understood the constitutional rights he was waiving by pleading guilty. (Pl. Tr. 5). C.f. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (“[S]tatements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements.”). Based on the testimony of Delgado and Phillips as well as the plea transcript, this Court finds Applicant entered his plea knowingly, voluntarily, freely, and intelligently.

Constitutional Violations

Applicant has not set forth any evidence to support a finding that his 5th Amendment right to a fair trial and his 14th Amendment right to due process was violated. Rather, this Court finds Applicant was represented by counsel who provided effective assistance, and Applicant ultimately pled guilty knowingly, voluntarily, freely, and intelligently. Thus, this claim is denied.

Conclusion

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice.

Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. Pursuant to Rule 71.1(g), SCRCP, if an applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and
2. Applicant must be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 16th day of February, 2023.



DANIEL DEWITT HALL
Presiding Judge
Sixth Judicial Circuit

York, South Carolina

IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

The Honorable Daniel Hall, Circuit Court Judge

Case No. 2019-CP-29-0975

Michael Brent Gay,

Petitioner,

vs.

The State of South Carolina,

Respondent.

NOTICE OF APPEAL

Michael Brent Gay appeals the final order of dismissal of the Honorable Daniel Hall, filed on March 1, 2023 and which counsel became aware of on March 10, 2023. Attached is a copy of the order counsel obtained from the public index. Counsel is retained on this case.

Respectfully submitted,

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March 13, 2023

CERTIFICATE OF SERVICE

Counsel certifies that she has provided a copy of this motion on Megan Jameson of the South Carolina Attorney General's Office via email on this date, March 13, 2023 and Bob Dudek of the Office of Indigent Defense.

/s/ Elizabeth Franklin-Best