

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Richland County

Honorable George M. McFaddin, Jr., Circuit Court
Judge _____

RANDALL GADSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-001463

APPENDIX

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RECEIVED

Jun 09 2023

S.C. SUPREME COURT

INDEX

INDEX	i
GUILTY PLEA TRANSCRIPT DATED MARCH 14, 2018	1
APPLICATION FOR POST-CONVICTION RELIEF	22
RETURN.....	28
AMENDMENT TO PCR APPLICATION	33
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED MAY 23, 2022.....	34
PLAINTIFF’S EXHIBIT #1 (STATEMENT).....	148
PLAINTIFF’S EXHIBIT #2 (LETTER)	155
ORDER OF DISMISSAL.....	156
INDICTMENT.....	195
SENTENCE SHEET.....	197

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF RICHLAND) COURT OF GENERAL SESSIONS
2016-GS-40-00734

3
4 State of South Carolina,)
5 Plaintiff,)
6 vs.) TRANSCRIPT OF RECORD
7 Randall Gadson,)
8 Defendant.)

9 March 14, 2018
10 Columbia, South Carolina
11
12

13 B E F O R E:

14 THE HONORABLE DEANDREA G. BENJAMIN, JUDGE.
15
16

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

18 KATHRYN CAVANAUGH, ASSISTANT SOLICITOR
Attorney for the Plaintiff

19 STEPHEN F. KRZYSTON, ASSISTANT PUBLIC DEFENDER
20 Attorney for the Defendant
21
22
23
24

25 DEBORAH M. McCURDY, RPR
Official Court Reporter

I N D E X O F W I T N E S S E S

(WHEREUPON, no witnesses were called
during these proceedings.)

E X H I B I T S

(WHEREUPON, no exhibits were introduced
during these proceedings.)

JUNE 21, 2018

MS. CAVANAUGH: Randall Gadson.

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

THE DEFENDANT: Yes, ma'am. Yes, ma'am.

THE COURT: All right. This is Randall Gadson, Jr.?

MS. CAVANAUGH: Yes, Your Honor.

MR. KRZYSTON: Yes, ma'am.

THE COURT: All right. Yes, ma'am?

MR. CAVANAUGH: Thank you, Your Honor.

Standing before you is Randall Gadson, Jr., represented by his lawyer, Steven Krzyston, of the Public Defender's Office.

Kathryn Cavanaugh, for the State.

Standing with me is Sergeant John Carwell. He was the lead investigator on this case. Mr. Gadson was originally indicted for murder on Indictment 2016-GS-40-00734. He is pleading guilty today to voluntary manslaughter. And the State and the Defense have negotiated a straight 17-year sentence, Your Honor.

In the courtroom today is the victim's mother, Ms. Lakesha Scott, as well as three of her friends

1 who came from Charlotte this morning for this plea,
2 Your Honor.

3 THE COURT: Is that correct, Mr. Krzyston?

4 MR. KRZYSTON: It is, Your Honor.

5 THE COURT: Have you explained to your client
6 the charges contained in the indictment, the
7 possible punishment, and his constitutional rights?

8 MR. KRZYSTON: I have, Your Honor.

9 THE COURT: And how does he wish to plead?

10 MR. KRZYSTON: Guilty, Your Honor.

11 THE COURT: And do you agree with his decision
12 to plead guilty?

13 MR. KRZYSTON: I do, Your Honor.

14 THE COURT: All right. And you are Randall
15 Gadson, Jr.?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: And, sir, you are pleading guilty
18 to voluntary manslaughter; is that correct?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: And, sir, how old are you?

21 THE DEFENDANT: Twenty-five.

22 THE COURT: How far did you go in school?

23 THE DEFENDANT: Tenth grade.

24 THE COURT: Are you married?

25 THE DEFENDANT: No, ma'am.

1 THE COURT: Do you have children?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Their ages?

4 THE DEFENDANT: Five and two.

5 THE COURT: Are you on probation or parole?

6 THE DEFENDANT: No, ma'am.

7 THE COURT: And within the last 24 hours, have
8 you taken any medication, drugs, or alcohol?

9 THE DEFENDANT: No, ma'am.

10 THE COURT: All right. Listen closely to the
11 Solicitor as she states the facts.

12 MS. CAVANAUGH: Thank you, Your Honor.

13 This shooting occurred at Hunter's Way
14 Apartments outside of Building [REDACTED] off of Percival
15 Road here in Richland County on September 18th of
16 2015.

17 The victim in this case is Paul Coleman. He
18 was 21 years old at the time of his death, Your
19 Honor. He was living in Charlotte, North Carolina,
20 at the time where his family lived, and he came
21 down to Columbia this afternoon on September 18th.
22 He had connections here from living here in
23 Columbia previously.

24 On that afternoon, the victim was on Benedict
25 College's campus waiting for his friend, Devon

1 Owens, to finish with classes. His friend Devon
2 drove him to the apartment complex around 7:00 p.m.
3 that evening where the shooting occurred a short
4 time later.

5 Investigator Carwell learned through his
6 investigation that the victim was actually in town
7 to purchase a gun for his cousin. The victim was
8 planning on buying it from a person named Steven
9 Carswell; however, Mr. Carswell was unable to sell
10 him one. And the victim was eventually connected
11 to Dajuan Minson, who provided the victim with the
12 Defendant's telephone number.

13 A short time after the victim arrived at the
14 apartments, he was shot. And Richland County
15 Sheriff's Department was immediately dispatched to
16 the scene.

17 The victim was found lying in the breezeway of
18 Building ■■■ with a gunshot wound to his face,
19 which was the cause of death. He died at the
20 hospital shortly after arrival.

21 Several neighbors relayed to law enforcement
22 on scene that they saw Begoon, which is the
23 Defendant's nickname, and another individual, who
24 was never identified, running away from the scene
25 immediately after they heard shots. Some neighbors

1 said that they heard one shot. Some neighbors said
2 they heard two.

3 The Defendant was identified in a photo lineup
4 by two individuals as one of the people they saw
5 running. They did mention that he hangs out in the
6 area frequently, but they had never seen the victim
7 at the apartment complex.

8 Devon Owens, the victim's friend, was still on
9 scene. He had driven his car across the street and
10 was parked there when deputies arrived. He told
11 law enforcement that he thought the victim was
12 meeting a girl at these apartments, and has never
13 relayed anything different.

14 As stated, the Defendant was identified by
15 neighbors fleeing the scene. His phone records
16 were obtained by Sergeant Carwell. And at the time
17 of the shooting, the Defendant's phone was hitting
18 off towers close to the apartments.

19 Investigator Carwell identified Dajuan Minson
20 as the person who the Defendant called right after
21 the shooting. Minson was not truthful initially.
22 He was subsequently charged with obstruction of
23 justice in this case, but did admit in his second
24 statement, when confronted with the phone records,
25 that the Defendant called him afterwards and said

1 RIP, in reference to the victim. He said the
2 Defendant told him that he shot him because the
3 victim reached for a gun and so he shot him.
4 Mr. Minson also identified the Defendant in a photo
5 lineup.

6 On October 14th, approximately a month later,
7 an arrest warrant was taken out for Randall Gadson.
8 After being advised of his rights, which he waived
9 in his first statement to Investigator Carwell, he
10 had denied being present. He said he left Columbia
11 earlier in the afternoon with a girl to go to
12 Charleston.

13 He was confronted with the phone records
14 placing him at the scene, and he subsequently
15 confessed to shooting the victim. He said he was
16 at Hunter's Way apartment complex when he saw the
17 victim and his friend. They asked him for
18 marijuana. He said he went to go get the
19 marijuana, and when he came back to the apartment,
20 the victim was outside of the car at that point.

21 He said in his statement that the victim
22 started laughing and said that he didn't have any
23 money and he wasn't going to pay for the marijuana,
24 and that is when the victim's friend came around
25 the corner and started shooting at him.

1 So the Defendant says when the friend came
2 from the left side, he shot the victim, who was
3 standing in front of him.

4 When asked, Why would you shoot in front when
5 the shots were coming from the left, he said he
6 just shot and then ran.

7 Of course, this is inconsistent from what he
8 was telling other lay witnesses that were
9 interviewed during the course of this
10 investigation. He had told at least two
11 individuals that the victim reached for his gun so
12 he shot him.

13 The crime scene investigators and deputies
14 searched the entire area that night and the next
15 day, including the victim's friend's car, which was
16 still at the scene, and the immediate area. There
17 were no additional shell casings located or any
18 other weapon located.

19 Devon Owens, who was the friend with the
20 victim -- of the victim -- who took them there that
21 afternoon, said that he never got out of the car.

22 The gunshot residue kit that was tested on his
23 hands -- of course, that was examined two times in
24 this case, the second by Lieutenant Jennifer
25 Nates -- and there was no gunshot residue on his

1 hands. And this would be the person that Mr.
2 Gadson said was shooting at him.

3 The victim did have one particle of gunshot
4 residue and one particle associated with gunshot
5 residue. Of course, that can also be explained by
6 being in proximity to a gun being fired. And of
7 course the Defendant never said in any of the
8 statements that the victim actually shot a gun.

9 And, Your Honor, those are the extent of the
10 facts in this case that the State has to relay to
11 the Court.

12 THE COURT: All right. Mr. Gadson, you have
13 heard the State's statements of the allegations by
14 the Solicitor. Do you agree with the facts as
15 stated by the Solicitor?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: All right. And is there any
18 portion of that that you do not agree with?

19 THE DEFENDANT: No, ma'am.

20 THE COURT: And, sir, you understand that when
21 you plead guilty you give up certain important
22 constitutional rights.

23 You have the right to a jury trial. At a jury
24 trial the State would have to prove you guilty
25 beyond a reasonable doubt. You and your attorney

1 would have the opportunity to cross-examine any
2 witnesses that they would present. You would not
3 have to testify. The burden would be on the State
4 to prove you guilty beyond a reasonable doubt. If
5 you gave any incriminating statements, you would
6 have the right to challenge the admission of those
7 statements. Sir, you would have an opportunity to
8 present any defenses that you and your attorney may
9 have. However, the burden would be on the State to
10 prove you guilty. And if you decided not to
11 present any defenses and you decided not to
12 testify, I would inform the jurors that they could
13 not hold that against you.

14 The burden is upon the State to prove you
15 guilty beyond a reasonable doubt, but by pleading
16 guilty, sir, you waive your right to have this
17 presented in front of the jury. Is that correct?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: All right. And you give up those
20 other important constitutional rights; is that
21 correct?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: All right. And, sir, you
24 understand that voluntary manslaughter carries a
25 minimum of two years and a maximum of 30 years? Do

1 you understand that?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: You understand that it is
4 classified as a violent most serious offense? Do
5 you understand that?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: More serious means under our
8 two-strike law that you would be looking at, if you
9 were to get another most serious offense, you would
10 be looking at life without parole. Do you
11 understand that?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: All right. Do you understand
14 violent means you have to serve 85 percent of any
15 sentence that you get today; is that correct?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: All right. And, sir, you have
18 been represented by Mr. Krzyston. Are you
19 satisfied with his representation?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: And has he done everything for you
22 that you feel he could have done or should have
23 done?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: And have you met with him for as

1 long as possible and necessary for him to properly
2 represent you?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: And are you completely satisfied
5 with his services?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: All right. And, sir, are you
8 pleading guilty today freely and voluntarily?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Is anyone forcing you to plead
11 guilty?

12 THE DEFENDANT: No, ma'am.

13 THE COURT: Has anyone offered you anything --
14 I understand that you all have negotiated a plea --
15 has anyone offered you anything in exchange for
16 your plea this morning, or today?

17 THE DEFENDANT: No, ma'am.

18 THE COURT: And has anyone threatened you or
19 coerced you into pleading guilty today?

20 THE DEFENDANT: No, ma'am.

21 THE COURT: And are you pleading guilty of
22 your own free will?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: And, sir, have you understood my
25 questions?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Have you answered them truthfully?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: And the answers that you have
5 given today have been your answers; is that
6 correct?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: All right. And you understand you
9 have the right to appeal the guilty plea and the
10 sentence of this Court within ten days of today's
11 date? Do you understand that?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: All right, sir. Do you have any
14 questions of me?

15 THE DEFENDANT: No, ma'am.

16 THE COURT: All right. And, sir, and you wish
17 for me to accept your plea to voluntary
18 manslaughter today; is that correct?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: All right. I find that there is a
21 substantial factual basis for this plea. I also
22 find that the Defendant's decision to plead guilty
23 is freely, voluntarily, knowingly, and
24 intelligently made; that he is represented by
25 counsel to whom he indicates to me he is completely

1 satisfied with. I will accept your plea.

2 Any prior record?

3 MS. CAVANAUGH: Your Honor, he has a 2011
4 conviction for shoplifting, as well as 2013 he was
5 convicted of strong arm robbery. He received a
6 suspended YOA on that. And then on 2014, reckless
7 driving. And it appears that his YOA sentence was
8 revoked at that time.

9 Also, he has a possession with intent to
10 distribute marijuana from 2014 and a failure to
11 stop for a blue light. Those were all under the
12 same plea.

13 MR. KRZYSTON: Thank you, Your Honor. Just
14 with respect to the Youthful Offender sentence, it
15 was activated, meaning that he was on parole, and
16 it is an administrative matter within the
17 Department of Corrections' discretion.

18 THE COURT: All right. Would the victim like
19 to speak?

20 MS. CAVANAUGH: Yes, Your Honor. Ms. Scott
21 would like to address the Court. Obviously this is
22 a very difficult day for her. It has been a
23 difficult two and a half years. We have met with
24 her several times, and while she is upset about the
25 plea, I think that she understands the reasoning

1 behind it.

2 THE COURT: All right. I will be glad --
3 ma'am, if you can state your name for the record.

4 MS. SCOTT: Lakesha Scott.

5 THE COURT: Yes, ma'am. I will be glad to
6 hear from you.

7 MS. SCOTT: Good morning, Your Honor.

8 THE COURT: Can you pull the microphone over?

9 MS. SCOTT: Good morning, Your Honor. My name
10 is Lakesha Scott.

11 First, thank you for the opportunity, you
12 know, for me to speak on behalf of my son. I am
13 not pleased with the outcome of this case or his
14 sentence here today, or his plea deal, but I do
15 understand the reason behind it. And no amount of
16 time that the Court offers this young man, it won't
17 bring my son back. I'm fully aware of that.

18 These last two plus years have been a
19 nightmare for both me and my daughter and my
20 family. It has taken my daughter six months to get
21 out of my bed. She won't -- she wouldn't go
22 upstairs in our home because that is where my son
23 used to greet her at the top of the steps when she
24 came home from school. And my daughter is about to
25 turn from high school to college.

1 I'm now faced with, My brother won't be here
2 and see me walk across the stage and get my diploma
3 like I was there for him when he got his. Mom, I'm
4 scared to go to college now because look what
5 happened to him when he went off to college.

6 All these things that I am enduring all
7 because of this man and the decision that he made
8 to take my son's life.

9 I only hope that this young man, if he can
10 face me, just face me once and just look at me as a
11 mother in the face, just to know that I hope that
12 if God allows you the opportunity to see freedom
13 again on the street that you make a difference in
14 your life and the lives of somebody else, that you
15 repent for everything that you have done and the
16 turmoil that you have caused me and family, that
17 you change the error of your ways. And I pray that
18 God forgive you for what you have done. You have
19 to live with this for the rest of your days. And
20 so do I.

21 Nothing won't bring him back. You have kids
22 of your own. You have to look at them and you have
23 to face them and one day explain to them what you
24 have done to somebody else. I pray that they too
25 will be able to forgive you for what you have done.

1 And one day I pray for peace in my heart that I too
2 will be able to forgive you, because that is what
3 God says I have to do, not what I want to do.

4 THE COURT: Thank you, ma'am. And, ma'am, I
5 am so sorry for your loss. I appreciate you being
6 here and your comments today.

7 Anything else from the State?

8 MR. CARWELL: No, ma'am.

9 THE COURT: Did you put the reasons for the
10 negotiation on the record?

11 MS. CAVANAUGH: Well, Your Honor, while the
12 Defendant did confess to being the shooter, there
13 were -- he kind of already set up either at least
14 the lesser included of the voluntary when he
15 confessed, said that someone else was shooting at
16 him. The victim's friend, who did remain at the
17 scene, and, as I stated, there was no weapon found
18 or any gunshot residue on his hands. And, of
19 course, this is the person that Mr. Gadson says to
20 law enforcement was shooting at him. He has always
21 maintained he knew nothing about why the victim was
22 there other than to meet a girl. He was given a
23 polygraph and deception was indicated, and so we
24 feel like he has more information that should have
25 been -- that could have been provided.

1 Also, there was -- as you are aware, there was
2 an issue with the gunshot residue kit at SLED, and
3 so those kits had to be re-examined because one
4 particular analyst there was not following
5 protocol, and so we believe that the
6 cross-examination of SLED witnesses, you know,
7 might be confusing to a jury to understand, as well
8 as, while we have located and served most of our
9 witnesses because they are on -- this is on the
10 trial docket for March 26th, they are -- they have
11 been served, so they have to show up, but they are
12 not exactly excited about testifying in this case,
13 Your Honor.

14 THE COURT: Okay. All right. Yes, sir?

15 MR. KRZYSTON: Thank you, Your Honor. And may
16 it please the Court?

17 I would note for the record that Mr. Gadson is
18 entitled by statutory means to 882 days of pretrial
19 confinement at the Alvin S. Glenn Detention Center.
20 He has been there for about 30 months. He, an
21 initial request for him, would like for the Court
22 to consider giving him a full 36 months with
23 respect to the justifications for the negotiations.
24 There from a number of physical characteristics and
25 forensic characteristics of the shooting that do

1 support Mr. Gadson's claim. There are also a
2 number of witness credibility issues that, again,
3 tend to support Mr. Gadson's claim. I do think
4 this would have been, from a Defense perspective,
5 an appropriate case for trial, but given the
6 negotiations and kind of all the factors at play,
7 this was something that Ms. Cavanaugh and
8 Mr. Goldberg and I kind of repeatedly negotiated
9 over the course of about the last three months. So
10 this is a hard-thought negotiation. I think it was
11 a tough negotiation for everybody involved. I do
12 think it is a compromise in that all parties are
13 equally unhappy. And, you know, I do think that is
14 something that is worth mentioning.

15 THE COURT: All right. Anything else?

16 MS. CAVANAUGH: No, Your Honor.

17 THE COURT: All right. On Indictment
18 2016-GS-40-734, sir, you will be sentenced to the
19 State Department of Corrections for 17 years. You
20 will be given credit for the -- you said 882 days?

21 MR. KRZYSTON: Yes, ma'am.

22 THE COURT: -- 882 days that you have served.
23 Is that your calculation also?

24 MS. CAVANAUGH: Yes, Your Honor.

25 THE COURT: All right. And, obviously, no

1 contact with the victim's family. No direct
2 contact, no indirect contact, no third-party
3 contact. No contact whatsoever.

4 All right. Thank you.

5 MS. CAVANAUGH: Thank you, Your Honor.

6 MR. KRZYSTON: Thank you, Your Honor.

7 (WHEREUPON, the proceedings were
8 concluded at 12:39 p.m.)
9
10
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25

(END OF TRANSCRIPT)

2018CP400 2998

STATE OF SOUTH CAROLINA

County of Richland.

In the Court of Common Pleas

2018 JUN -7 PM 1:29
JENNIFER W. MCBRIDE
C.C.P. & G.S.
FILED
RICHLAND COUNTY

Randall Gadson, #360616.

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

vs.

State of South Carolina.

Name of Respondent.

APPLICATION FOR
POST-CONVICTION RELIEFINSTRUCTIONS — 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 it clear to which question any such continued answer refers.

Since every application must be sworn to 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 applicant was convicted.

1. Place of detention South Carolina Dept. of Corrections, @ Kirkland
Corr. Inst., A2-, 4344 Broad River Rd., Columbia, SC 29210.
2. Name and location of Court which imposed sentence Court of General Sessions,
(Circuit court) Richland County, Columbia, South Carolina.
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2016 GS-40-00734, Voluntary Manslaughter (§16-3-50.)
 - (b) /
 - (c) /
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) March 14, 2018, 17 (seventeen) years.
 - (b) /
 - (c) /

5. Check whether a finding of guilty was made

- (a) after a plea of guilty Plea (Negotiated) Entered.
 (b) after a plea of not guilty /
 (c) after a plea of nolo contendere /

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

No, per my Attorneys Advice: Pleas are Not Appealable, which I later learned was False. The Attorney Simply Refused To Appeal my case.

7. If you answered "yes" to (6), list N/A.

(a) the name of each Court to which you appealed: N/A.

- i. /
 ii. /
 iii. /

(b) the result in each such Court to which you appealed: N/A.

- i. /
 ii. /
 iii. /

(c) the date of each such result: N/A

- i. /
 ii. /
 iii. /

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

- i. /
 ii. /
 iii. /

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) please see Answer(s) in Number 6 (Six) above.
 (b) /
 (c) /

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

- (a) Violation of Fourteenth Amend. Right To Due Process and Equal protection.
 (b) Fourth Amend Right to unlawful seizure in False Arrest since GSR Report
 (c) and Testing Failed to confirm I Fired weapon. Ineffective Assistance of Plea Counsel.
Conflict of Interest by Attorney and Due to Representing party Making Statement Against

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) See Attached Sheet. Applicant wishes to State on
 (b) the Record He is filing PCR as a Pro se Litigant and would
 (c) pray that Competent Counsel Assigned with AMEND this very
Application For PCR, after Review (Thorough Review) of The
Transcript of The plea and his Rule 5 Motion, of which he only
received some 10% of when by Law Entitled to 100% under BRADY,
and SCrimp. 5.

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof: N/A

- i. /
- ii. /
- iii. /
- iv. /

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

- i. /
- ii. /
- iii. /
- iv. /

(c) the disposition thereof: N/A

- i. /
- ii. /
- iii. /
- iv. /

(d) the date of each such disposition: N/A

- i. /
- ii. /
- iii. /
- iv. /

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

- i. /
- ii. /
- iii. /
- iv. /

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No, it has not.

14. If you answered "yes" to (13), identify: N/A

25

(a) which grounds have been presented: N/A

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

15. If any ground set forth in (9) 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) Please see Question and Answer in Number #6.

(b) /

(c) /

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

(a) your arraignment and plea? Plea.

(b) your trial, if any? /

(c) your sentencing? Sentencing.

(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.

17. If you answered "yes" to one or more parts of (16), list:

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

i. Please see Attached [Sentence Sheet.] ON File
With Richland Cnty. Circuit Court.

ii. /

iii. /

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

i. Plea and Sentencing.

ii. /

iii. /

18. State clearly the relief you seek in filing this application.

(1) To Have My Conviction For Voluntary Manslaughter Reversed
and Vacated Due To A LACK of Evidence Since No Evidence Existed
Applicant Fired Weapon That allegedly Killed Victim
(2) To Have An Appeal Filled
on The Merits.

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

STATE OF SOUTH CAROLINA

County of Richland.

VERIFICATION

I, RANDALL GADSON, Jr. #360616, 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.

✓ RANDALL GADSON JR

SWORN to and subscribed before me this 25

day of May, 15 2018

Melissa Opitz (L.S.)
Notary Public

My Commission Expires: Dec. 1, 2025

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, RANDALL GADSON, Jr. #360616, 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 therefor.

✓ RANDALL GADSON JR
Applicant

SWORN or affirmed to and subscribed before me this

25 day of May, 15 2018

Melissa Opitz
Notary Public

My Commission Expires Dec. 1, 2025

*

Attachment to PCR App.

27

(Randall Gadson, Jr.)
(Applicant)

Ineffective Assistance of Counsel
Denial of Due Process/Equal Protection
Strickland v. Washington, (Supra)
Boykin v. Alabama (Supra)

Applicant Gadson, Respectfully States as follows:

1. That at all Relevant Times he was under Advice of Counsel To Answer "Yes" To Any and All Questions presented by The Plea Judge throughout the Guilty plea stage and that as such his knowledge of the Law was Limited to what Little his Plea Attorney informed and/or Advised him and that as such his Constitutional Rights on the Law or Legal Jurisprudence was [constricted] to his lawyers advice and Instruction and thus He trusted and greatly Depended on Plea Attorneys advice to be Just and True at [All] Relevant times during and [Prior] to entry of Plea on March 14, 2018.
 2. That when he had read over some of the police Reports and Findings he discovered as he had informed his Attorney that the victim Had A Gun and Gunshot Residue (GSR) was found on victims hands demonstrating Victim Fired a Weapon. To Applicant, Gadsons Surprise and SHOCK and Dismay his Attorney said it didnt matter Nor was it significant to take the case to Trial or to Negotiate a sentence of 2 (years) or an open plea with a [Cap] of only 10 (Ten) years, which would have meant the plea Judge Couldn't sentence him above 10 years. From the very Beginning Counsel knew or should have known to move to vacate the Charge of Murder even prior to the Negotiated Plea since the Elements contained in the Narrative and marked in the police Report Did Not Amount to MURDER under South Carolina statutory code 16-3-10. The Attorney was Ineffective For Failing to File pre-emptive Motions or Motions in general to alleviate the Indictment For Murder against me.
- Applicant, Gadson also states for the Record that his plea attorney was Ineffective and created a Significant Conflict of Interest when he was knowingly Representing Someone he knew or should have known wrote Statement Against me in the case working with the prosecution.
- Counsel was Ineffective For Failure to File an Appeal or Motion to Reconsider a Lower sentence than the seventeen (17) years I was given, especially since Vol. Man carries 2-30 yrs and I could have very well gotten Less than 17 yrs or even a 5 year sentence for it.
- Respectfully Submitted,

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Randall Gadson, #360616

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Case No.: 2018-CP-40-2998

RETURN

RICHLAND COUNTY
FILED
2018 AUG 22 PM 1:43
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

Respondent, making its Return to the application for Post-Conviction Relief filed on January 31, 2018, would respectfully show this Court:

I. Procedural History

Randall Gadson (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. In February 2016, the Richland County Grand Jury indicted Applicant for murder (2016-GS-40-0734). The charge stemmed from a September 18, 2015 incident in which Applicant shot and killed the victim, Paul Coleman. Stephen Krzyston, Esquire, represented Applicant. Assistant Solicitor Kathryn Cavanaugh, Esquire, prosecuted the case on behalf of the State. On March 14, 2018, Applicant pleaded guilty to the lesser-included offense of voluntary manslaughter before the Honorable DeAndrea Benjamin. Pursuant to a negotiated sentence between the State and Applicant, Judge Benjamin sentenced Applicant to a term of imprisonment for seventeen years. Applicant did not appeal his conviction or sentence.

Attached to this Return and incorporated by reference are the records of the Richland County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the plea transcript, and the application. Respondent reserves

the right to amend this Return upon receipt of any relevant materials.

II. Allegations Raised and Relief Sought

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
 - a. "At all relevant times he was under advice of counsel to answer 'yes' to any and all questions presented by the plea judge throughout the guilty plea stage and that as such his knowledge of the law was limited to what little his plea attorney informed and/or advised him and that as such his constitutional rights on the law or legal jurisprudence was constricted to his lawyer's advice and instruction and thus he trusted and greatly depended on plea attorneys advice to be just and true at all relevant times during and prior to entry of plea on March 14, 2018."
 - b. "That when he read over some of the police reports and findings he discovered as he had informed his attorney that the victim had a gun and GSR was found on victim's hands demonstrating victim fired a weapon. To applicant Gadson's surprise and shock and dismay his attorney said it didn't matter nor was it significant to take the case to trial or to negotiate a sentence of 20 years or an open plea with a cap of only 10 years which would have meant the plea judge couldn't sentence him above 10 years. From the very beginning counsel knew or should have known to move to vacate the charge of murder even prior to the negotiated plea since the elements contained in the narrative and marked in the police report did not amount to murder under South Carolina statutory code 16-3-10. The Attorney was ineffective for failing to file preemptive motions or motions in general to alleviate the indictment for murder against me. Applicant Gadson also states for the record that his plea attorney was ineffective and created a significant conflict of interest when he was knowingly representing someone he knew or should have known wrote statement against me in the case working with the prosecution. Counsel was ineffective for failure to file an appeal or motion to reconsider a lower sentence than the 17 years I was given, especially since voluntary manslaughter carries 2-30 years and I could have very well gotten less than 17 years or even a 5 year sentence for it."
2. "Violation of Fourteenth Amendment right to Due Process and Equal Protection"
3. "Fourth Amend. Right to unlawful seizure in false arrest since GSR report and testing failed to confirm I fired weapon"

4. “Conflict of interest by Attorney and due to representation party making, statement against applicant”

III. Response to Allegations of Ineffective Assistance of Counsel

Respondent submits Applicant’s allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show there is a reasonable probability that, but for counsel’s alleged

errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV. Any Future Amendments

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

V. Response to 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.

VI. Request for an Evidentiary Hearing

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of plea counsel.

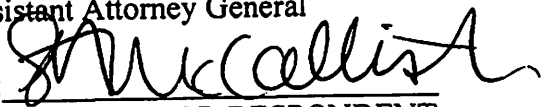
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

LINDSEY MCCALLISTER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

8/15, 2018

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Randall Gadson, #360616

Applicant,

v.

State of South Carolina

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUITC/A NO. ~~2015-CP-40-03331~~

2018

2018

AMENDMENT TO PCR APPLICATION

RICHLAND COUNTY
FILED
2019 OCT 29 AM 8:56
JEANETTE W. McBRIDE
C.C.P., G.S., & F.C.

The Applicant, by and through appointed counsel below, hereby amends his PCR application filed on June 7, 2018, to add the following grounds and/or facts on which Applicant bases his allegations that he is being held in custody unlawfully:

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

Ineffective assistance of counsel for failing to request a competency evaluation for Applicant.

Respectfully submitted,



Nancy C. Fennell
Law Office of Nancy C. Fennell, LLC
P.O. Box 2176
Irmo, South Carolina 29063
(803) 553-1772
nancyfennell1@gmail.com
SC Bar No. 69729
Attorney for Applicant

Columbia, SC
October 29, 2019

1 State of South Carolina) Court of Common Pleas
2 County of Richland) Fifth Judicial Circuit
3
4 Randall Gadson,) Transcript of Record
5 Petitioner/Applicant,) 2018-CP-40-02998
6 vs.)
7 State of South Carolina,)
8 Respondent.)

10 May 23, 2022

11 Columbia, South Carolina

13 B E F O R E:

14 The Honorable George M. McFaddin, Jr., Judge

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

17 Nancy C. Fennell, Esquire
18 On behalf of the Petitioner/Applicant

19 D. Russell Barlow, II, Assistant Attorney General
20 On behalf of the State of South Carolina

23 Reported by: Stacy S. Johnson, RPR
24 Circuit Court Reporter

25

I N D E XWITNESSPAGE

Randall Gadson

Direct Examination by Ms. Fennell

8

Cross-Examination by Mr. Barlow

35

Redirect Examination by Ms. Fennell

43

Rasheid Schoclet

Direct Examination by Ms. Fennell

47

Cross-Examination by Mr. Barlow

56

Stephen F. Krzyston

Direct Examination by Mr. Barlow

60

Cross-Examination by Ms. Fennell

86

Certificate of Reporter

114

1	<u>E X H I B I T S</u>			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
3	P-1	Statements	55	55
4	P-2	Letter	111	111
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1 (The following proceedings were held May 23, 2022,
2 beginning at 1:54 PM.)

3 THE COURT: Are we ready, sir?

4 MR. BARLOW: Yes, sir Your Honor.

5 THE COURT: Will you call it, please.

6 MR. BARLOW: Yes, sir. May it please the Court?

7 THE COURT: Yes, sir.

8 MR. BARLOW: My name is Russ Barlow and I'm here for
9 the State and Ms. Nancy Fennell for the Applicant. The
10 Applicant is present.

11 This is the matter of Randall Gadson versus the
12 State of South Carolina. Docket Number 2018-CP-40-02998.
13 This case stems from a fatal shooting in Richland County
14 in September of 2015. As to the details of that incident,
15 victim, 21-year-old Paul Coleman was fatally shot in the
16 face in the breezeway of a Columbia apartment complex
17 a little bit after 7:00 PM on September 18, 2015. An
18 investigation into the killing was quickly initiated,
19 and through it, investigators discovered the victim
20 may have been at the scene seeking to buy a gun for his
21 cousin.

22 Further investigation resulted in the Applicant
23 being identified as a suspect and he was placed at the
24 scene through, one, his statements from -- or statements,
25 rather, from several people that lived at the apartment

1 complex, two, his phone records and, three, the statement
2 of an individual named DaJuan Minson, who was involved
3 in getting the victim in touch with the Applicant before
4 the shooting and spoke with the Applicant directly after
5 the shooting.

6 After initially lying to investigators, Minson
7 revealed the Applicant told him he shot the victim by
8 stating R-I-P and claimed he did so after the victim
9 reached for a gun. Ultimately, based on all that
10 information, the Applicant was arrested. He then spoke
11 with the investigator and initially claimed he had an
12 alibi; however, when confronted with evidence placing
13 him at the scene, he did admit to shooting the victim,
14 and in his latest version of events, claims he did so
15 during a drug deal gone wrong after victim's friend
16 came around the corner shooting at him.

17 Subsequently, the Applicant was indicted by the
18 Richland County Grand Jury for murder in February of
19 2016. Steven Krzyston, Esquire, from the Fifth Circuit
20 Public Defender's Office was appointed to represent him.

21 Eventually the case was scheduled for trial on
22 March 26, 2018; however, following plea negotiations the
23 Applicant accepted a plea offer to the lesser included
24 offense of voluntary manslaughter with a negotiated
25 sentence of seventeen years.

1 The plea was entered on March 14, 2018, before
2 Judge Benjamin, and she accepted Applicant's plea and
3 imposed a 17-year term of imprisonment after a full plea
4 colloquy. No appeal was subsequently filed.

5 Following that, the Applicant initiated this PCR
6 action through an application filed June 7, 2018. In
7 the application, he has raised several claims, including
8 claims of ineffective assistance of plea counsel, a
9 conflict of interest on the part of plea counsel, and
10 unspecified violations of his constitutional rights to
11 due process and equal protection and a violation of his
12 Fourth Amendment rights stemming from an alleged false
13 arrest.

14 Also, as far as the relief sought in the application,
15 the Applicant stated he was seeking, one, for his voluntary
16 manslaughter conviction to be reversed and vacated due
17 to a lack of evidence and that he was the one that fired
18 the weapon that killed the victim and, two, for him to be
19 permitted to appeal his conviction on the merits.

20 Shortly after the application was filed, Leah Moody,
21 Esquire, was appointed to represent that application;
22 however, in January of 2019 Ms. Moody moved to be relieved
23 and Nancy Fennell, Esquire, was substituted as counsel for
24 the Applicant.

25 On October 29, 2019, Ms. Fennell filed an amendment

1 adding another claim of ineffective assistance of counsel
2 based on plea counsel's failure to request a competency
3 evaluation for the Applicant.

4 Since then this case has been scheduled for an
5 evidentiary hearing a couple of times and it has been
6 continued due to COVID-related issues and issues with
7 witness availability; however, we're here today for an
8 evidentiary hearing and the State is ready to go forward.

9 At this time, the State's understanding of the claims
10 I've previously mentioned is the ones the Applicant's
11 proceeding forward with today; however, before we go any
12 further and with the Court's permission, I would ask
13 counsel for the Applicant to specifically identify for
14 the record the claims the Applicant is currently pursuing
15 just so that it's clear for the record.

16 THE COURT: All right. Ms. Fennell.

17 MS. FENNELL: Thank you, Your Honor.

18 The -- the claims recited are the claims that we
19 are going forward on. I think also in conjunction with
20 ineffective assistance of counsel for failing to provide
21 Applicant with his discovery file, we are also going
22 forward on an allegation of ineffective assistance of
23 counsel for failure to investigate, and those would be
24 the allegations that we're going forward on.

25 THE COURT: All right, ma'am.

1 Are you ready, Mr. Barlow?

2 MR. BARLOW: Yes, sir.

3 THE COURT: All right. Ms. Fennell.

4 MS. FENNELL: Yes, Your Honor.

5 Applicant would call Randall Gadson to the stand.

6 THE CLERK: Just raise your right hand.

7 (Whereupon, the Randall Gadson was duly sworn by
8 the Clerk of Court.)

9 THE WITNESS: Yes, sir.

10 THE CLERK: Please have a seat, sir, and state your
11 full name for the record.

12 THE COURT: Before you start, sir, hold on one
13 second. Whoever switched on the air-conditioning, I
14 really appreciate it.

15 Proceed, sir.

16 THE WITNESS: Randall Gadson, Junior.

17 RANDALL GADSON, JUNIOR,
18 having been duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MS. FENNELL:

21 Q. Mr. Gadson, so we are here today on the PCR
22 application that you have filed. You were indicted
23 for murder and ultimately pled guilty to voluntary
24 manslaughter; is that correct?

25 A. Yes, ma'am.

1 Q. And you were sentenced to seventeen years?

2 A. Yes, ma'am.

3 Q. And you're currently serving that sentence at
4 McCormick?

5 A. Yes, ma'am.

6 Q. Okay. And that was a negotiated sentence?

7 A. Yes, ma'am.

8 Q. And do you understand that if you move forward with
9 your PCR application today and are successful in your
10 application, that you could be looking at a sentence that
11 is greater than the sentence that you're currently serving?

12 A. Yes, ma'am.

13 Q. And that there are no guarantees that you would get a
14 sentence seventeen years or less?

15 A. Yes, ma'am.

16 Q. But knowing that, you still want to go forward with
17 your application?

18 A. Yes, ma'am.

19 Q. Okay. So who -- who represented you in the underlying
20 charges?

21 A. Stephen Kristen -- Stephen Krzyston.

22 Q. Okay. And when was he appointed to represent you?

23 A. When I first got to county in 2015.

24 Q. 2015?

25 A. In October.

1 Q. Okay. And how did you become aware that he was
2 representing you?

3 A. He came to my dorm, to the Yankee dorm, and told me.

4 Q. Okay. And he was appointed to represent you?

5 A. Yes, ma'am.

6 Q. Okay. And so how long were you in the county before
7 you actually pled guilty?

8 A. About three years.

9 Q. Three years. And during that three-year time period,
10 did -- did Mr. Krzyston represent you that entire time
11 period?

12 A. Yes, ma'am.

13 Q. Okay. And did you have an opportunity to meet with
14 him while you were awaiting trial?

15 A. Yes, ma'am.

16 Q. About how many times did you meet with him?

17 A. I'd say about seven times.

18 Q. Seven times?

19 A. Yes, ma'am.

20 Q. During that three-year period?

21 A. Yes, ma'am.

22 Q. And when you met with him, did you meet with him in
23 person or on the phone?

24 A. In person.

25 Q. Were all of your meetings in person?

1 A. Yes, ma'am.

2 Q. Okay. And when you met with him, what did you discuss
3 with him?

4 A. The case.

5 Q. Okay.

6 A. What was going on.

7 Q. Okay. And did you -- did he bring you documentation?

8 A. He brought me documentation, but he didn't bring me
9 all the documentation.

10 Q. Okay. And so the documentation that he brought to
11 you, was that the discovery in your case?

12 A. The only discovery was four statements.

13 Q. Okay. And we'll get -- we'll get into exactly what
14 documentation he brought you. When he brought you this
15 documentation, did he bring it to you all at one time?

16 A. No.

17 Q. At various times?

18 A. Yes, ma'am.

19 Q. Okay. And do you know -- do you recall when was the
20 first time he brought you any documentation?

21 A. I seen some documentation in my prelim hearing about
22 like seven to six months after I been in county --

23 Q. Okay.

24 A. -- but then he brought it like -- probably like two
25 months after.

1 Q. Okay. And so what -- what did he bring you to look
2 at?

3 A. It was statements from DaJuan Minson, Roslin Davis,
4 Abonnish -- Abonnish Belton, and Rasheid Schoclet.

5 Q. Okay. Did he bring you any other documentation other
6 than those statements?

7 A. He brought me a gunshot residue kit, but at that time
8 the gunshot residue kit was negative. It said negative.
9 So it was that and then there was some pictures and the
10 rest of the stuff was like medical records and stuff like
11 that.

12 Q. Okay. What kind of pictures did he bring you?

13 A. It was pictures of the victim.

14 Q. Okay. Post -- post-incident pictures of the victim?

15 A. Yes, ma'am.

16 Q. Okay. Now when he brought you documents, did he let
17 you keep the documents?

18 A. Yes, ma'am.

19 Q. Okay. So he brought them and gave them to you and you
20 kept them?

21 A. Yes, ma'am.

22 Q. Okay. Now you said he brought you statements from
23 DaJuan Minson, Roslin Davis, Rasheid Schoclet and Abbonish
24 Belton?

25 A. Yes.

1 Q. No other statements?

2 A. No.

3 Q. He didn't bring you any other statements?

4 A. No.

5 Q. Okay. Did he bring you all of those statements at
6 one time?

7 A. Yeah.

8 Q. Okay. Now when you discussed with him those
9 statements, do you recall what he -- what he told you in
10 conjunction with the statements that those witnesses had
11 provided?

12 A. He went through the statements and we basically like
13 went through a lot of stuff like from Roslin Davis to
14 different people, but when he said DaJuan Minson, I was
15 like I know of him, like he's a piece of shit, excuse my
16 language, and kept going, went to the victim, say he know
17 the victim, say he's a piece -- you know what, I'm ain't
18 gonna disrespect him, that's what he said, but the stuff
19 that was in the case he basically showed like everything,
20 like it was different, stuff that I was telling him like
21 this happened and he was like na, na, this ain't happened,
22 like I don't have -- like me being here and seeing every
23 statement that I seen, I'm like what's this like? So last
24 time I was here and I seen the whole motion, that's what I
25 was telling you last time, I didn't see no motion, and when

1 I did see the whole motion, I was just -- like there's text
2 messages in there I never seen from different people that I
3 never seen, there's stuff in there I told them - like the
4 detective, I told the detective, like you know this, oh, I
5 don't want to here it. It's like once they got me, there
6 wasn't no more investigation. It was over with.

7 Q. And when you -- when you looked at the statements that
8 he did provide you, did -- did you discuss with him doing
9 his own independent investigation of what those witnesses
10 had -- had put in their statements?

11 A. Yeah, we discussed it, but it wasn't no, you know, go
12 check and see if this statement is accurate or let me go
13 investigate this statement. It was never none of that. It
14 was just oh, they said this, you know, we're fixing to go
15 to trial soon, so -- so at the point of, it was let's just
16 go to trial, but I can't go to trial, you know, I couldn't
17 because of what he was saying. It was -- it was negative
18 like. The stuff he was saying to me, if you'd have went to
19 trial I know I'd probably got thirty or forty years. Like
20 I told him I wanted to go to trial and they offered me
21 seventeen because I wanted to go to trial because the way
22 they was presenting it to the public is oh, I did this to
23 this man, and I -- it was nothing like that. It never
24 happened like that. And I told him the same thing, but
25 he would not go through with nothing. He wouldn't say

1 nothing to them. Like he would -- oh, they said fifteen
2 to twenty-five. I'm like what? Oh, the first -- the first
3 thing he told me oh, forty years, you'll be home. What?
4 Like, no, it didn't happen like that. I like asked him
5 like certain names and everything. Like, say, Steven
6 Carswell. I never seen that statement a day in my life
7 until now.

8 Q. Okay. And so during this case while this PCR
9 application has been pending, you actually got a copy of
10 your entire discovery file?

11 A. Yes, I got my whole discovery file when we was on
12 COVID lockdown, so I -- I took my time and went through
13 the whole -- whole thing of discovery I never saw a day in
14 my life.

15 Q. Okay. And we actually got that file from the
16 solicitor's office; is that correct?

17 A. Yes, ma'am.

18 Q. Okay. And so it was at that point that you first saw
19 your entire discovery file?

20 A. Yes, ma'am.

21 Q. Okay. What -- you know, you said specifically that
22 you hadn't seen text messages that you were able to see
23 just recently. What text messages were you able to see?

24 A. Basically text message between the victim and Steven
25 Carswell.

1 Q. Okay.

2 A. It was different outlets from him to different people
3 in the case, but like I told him there ain't no text
4 message from me and the victim.

5 Q. Okay. Now who is Steven Carswell?

6 A. It's a white dude that's in my case.

7 Q. Okay. And what do you mean a white dude that's in
8 your case?

9 A. A Caucasian dude in my case. Like he's in my case.

10 Q. Okay. How's he involved in your case?

11 A. They charged him with conspiracy of murder in the
12 case.

13 Q. Okay. And was there an issue that arose regarding a
14 conflict of interest?

15 A. Yeah. Like I asked -- let's see. You know, when we
16 went to the preliminary hearing, you know, the names come
17 up and they said the names, so they basically told me
18 names, but he represented him on armed robbery charges, he
19 got him probation for a YOA, so at the time I didn't know
20 what no conflict of interest of was, I barely could read
21 like that, so when I got here and educated myself more and
22 basically learned what it was, that's when I understood
23 what it was and I understood what was going on. So the
24 statements that he had from text messages to everything
25 else, I never saw because he never showed me.

1 Q. Okay. So -- so your attorney Mr. Krzyston represented
2 Steven Carswell previously?

3 A. On previous charges, on an armed -- he got an armed
4 robbery, he had all them charges, and I guess they dropped
5 them down and he got a YOA.

6 Q. Okay. Did you ever bring that to Mr. Krzyston's
7 attention while he was representing you?

8 A. I told him that, but we never went through it, we just
9 kept on with the case, so like basically just kept going.
10 It was oh, I'm gonna try to get you this plea or I'm gonna
11 try to get you that, this and that.

12 Q. And did you ask him and explain to him that you felt
13 like that it was a conflict of interest --

14 A. I wasn't -- I wasn't aware --

15 Q. Well, let me -- let me finish my question. That you
16 felt like it was a conflict of interest for him to continue
17 his representation of you when a former client of his was
18 giving a statement against you in this case?

19 A. Yes. Like towards the end, I wrote him a letter.

20 Q. Okay.

21 A. I wrote him a letter and basically told him like I
22 don't feel like you're working with me, it's like you're
23 working against me and working with them. Like stuff he's
24 saying. Like one time -- one thing he say here and when
25 you get here, you're gonna say the same thing you tell me.

1 So like I kept asking him like, you know, did they send you
2 a paper that says people that are gonna go to trial, I
3 guess, and I felt like if these people are going to trial,
4 they should have statements. Oh, no, they don't have no
5 statements. Like there was never no statement. And I had
6 a warrant -- they served me a warrant and the warrant said
7 Steven Carswell say that I killed somebody and all that,
8 and I never seen that statement, it just said on the
9 warrant. Basically it was backwards. It didn't say the
10 person and everything they said.

11 Q. Okay. So you never saw any statements that
12 Mr. Carswell provided during this case?

13 A. Not until now.

14 Q. Not until you filed your PCR application?

15 A. Yes, ma'am.

16 Q. Okay. And he also -- there were also Facebook
17 messages between Mr. Carswell and another individual in
18 this case?

19 A. Yes, ma'am.

20 Q. Have you had an opportunity to review those?

21 A. Yes, ma'am.

22 Q. And -- and what did those -- what was the impact when
23 you saw those? What was the importance of those?

24 A. Basically I looked at it because at first when I was
25 going through it, you know, I was looking at a message like

1 this ain't me, so who? So then he came back and I looked
2 at the paper and it said his name and so I'm looking at it
3 and it says oh, yeah, I need you to come down here and buy
4 a gun and -- and different stuff that I had no parts of and
5 didn't even know about. Like stuff I'd been asking, oh,
6 these -- this text message, where's the text? Oh, oh,
7 there ain't no text message. Like it's different. So like
8 there's another statement from Makayla Gilmore I never saw.

9 Q. Well, let's -- so the text messages and Facebook
10 messages that you saw, who were those between?

11 A. Mr. Paul Coleman and Steven Carswell.

12 Q. And Mr. Paul Coleman is the victim; is that correct?

13 A. Yes, ma'am.

14 Q. And Mr. Carswell is the individual that Mr. Krzyston
15 previously represented?

16 A. Yes, ma'am.

17 Q. Okay. So you were able -- you've just recently seen
18 those communications between those individuals?

19 A. Yes, ma'am.

20 Q. Did you see other Facebook messages that -- that you
21 had not seen previously?

22 A. I seen Facebook pictures of different people, but I
23 haven't seen -- I didn't see them pictures in my last
24 motion.

25 Q. And did Mr. Krzyston ever provide you any evidence

1 from Facebook?

2 A. No.

3 Q. Okay. So you didn't know any of that existed when
4 you --

5 A. I didn't know none that existed when I pled out.

6 Q. Okay. Now you said there were statements that you
7 have now discovered were made that you did not know existed
8 at the time you entered your guilty plea?

9 A. Yes, ma'am.

10 Q. What statements are those that you didn't know
11 existed?

12 A. Devon Owens.

13 Q. Devon Owens?

14 A. Yes.

15 Q. So who is Devon Owens?

16 A. I guess the person that was with him.

17 Q. The person that was with the victim --

18 A. Yes, ma'am.

19 Q. -- on the night of the incident?

20 A. Yes, ma'am.

21 Q. Okay. And when did you learn about his statement that
22 he had given recently?

23 A. When I got this motion.

24 Q. Okay. And what was -- what was the impact of the
25 statement that he gave in this case?

1 A. It -- it confirmed everything I was saying.

2 Q. And what do you mean by that?

3 A. He said in his statement -- in the statement of
4 everything he was saying, he said that Devon Owens never
5 got in the car. The detective said that he never said
6 that, say he never wrote a statement. In that statement he
7 clearly said that he jumps in the car and drives across the
8 street and jumps out of the car and go back to the victim,
9 but the thing is if my friend got shot, something happened
10 to my friend, I ain't gonna jump back in no car or drive
11 off anywhere, then come back to him. That wouldn't make no
12 sense.

13 Q. And so going -- looking at what he said that -- that
14 happened that night, you also gave a statement explaining
15 what actually happened that night from your perspective?

16 A. Yes, ma'am.

17 Q. What did happen that night from your perspective?

18 A. When I -- when they had arrested me for what I did,
19 I admit everything, so they said that I was there to rob
20 this person. That never happened. I didn't even know him
21 from a can of paint. The thing is when you -- when you go
22 through the case, it says that he had \$300 in his pocket
23 and he had his phone. If it was a robbery, I would have
24 took that if it was a robbery, but clearly in my statement
25 it say I have \$3,200 in my pocket, so what's the -- what's

1 the point of robbing him? There wouldn't be no point. But
2 like I said, from day one they painted a picture of me
3 being just this menace to society, trying to do something
4 to somebody when it never was like that.

5 I met them going down Perci -- I met them walking
6 down Percival. I go -- I go there every day. I be down
7 there every day, no problems with nobody, and everybody
8 know that. I walked to the store, I seen the victim. He
9 was outside the car standing up. Both of them got out.
10 When both of them got out, they came up, hey, do you know
11 where's some weed at, yeah, I do, I sell it, and went
12 through the motion of going through what was going on.
13 The driver, I guess, started doing something. He pulled
14 up. He pulled up like this, the victim started moving his
15 hand, so it wasn't no -- it wasn't no I had a gun. I
16 reacted and ran off.

17 Q. So that was your position, that you actually had --
18 had indicated that you were -- essentially you reacted in
19 self-defense?

20 A. They -- Mr. Krzyston had a gunshot residue kit.
21 Basically the man said that if I was there robbing somebody
22 and put a gun on a person, when I shoot that gun it's gonna
23 leave burn marks on his face. Mr. Paul Coleman never had
24 burns on his face. The gunshot residue kit man said that
25 specifically this was a self-defense shot.

1 Q. Okay. And so you initially were indicted for murder
2 and then a negotiated plea to allow you to plead guilty to
3 voluntary manslaughter?

4 A. Yes, ma'am.

5 Q. And during your plea hearing even the solicitor had
6 mentioned that -- that your version of the facts was
7 actually a big reason that you were getting the negotiated
8 plea deal; is that right?

9 A. Yes, ma'am.

10 Q. Okay. Did you discuss that with Mr. Krzyston and
11 how --

12 A. He told me from day one. He say -- he say that story
13 makes more sense. He say everything you're saying makes
14 more sense --

15 Q. Okay.

16 A. -- and I kept telling him like why you kept trying to
17 let them paint me as a menace, why you letting them say
18 that. I ain't got no violent record. I've got a YOA, a
19 Youthful Offender Act. That's it. I said why do you keep
20 letting them; oh, they just -- you know, they gonna do
21 that, they gonna do that, they gonna do that. But he never
22 did -- he never went to a witness and say did this happen,
23 did Mr. Gadson go through the motions? He never did none
24 of that.

25 Q. Okay. And when you told him you wanted to go to

1 trial -- or did you tell him you wanted to go to trial?

2 A. Yes, ma'am.

3 Q. Okay. And when you told him that, what did he tell
4 you?

5 A. A black man with tattoos ain't gonna get no fair
6 trial.

7 Q. Okay. And did he tell you that multiple times
8 throughout his representation of you?

9 A. Yes, he said they're gonna -- they're gonna paint a
10 picture. He say when you get on the stand and you see the
11 jury, they're gonna paint picture of me. They're gonna
12 already convict me of the crime because this is what I am
13 and what I -- what's on my body and all that. It wasn't no
14 oh, we just gonna go ahead and see if you're innocent or
15 not. I wouldn't even be up here -- I wouldn't be up here
16 playing with nobody if I know I did something I had no
17 business doing. I told her that. I told my attorney I
18 wouldn't be up here disrespecting this courtroom and
19 playing with this courtroom if I knew I did something that
20 I had no business doing.

21 Q. Now were there any other statements that you've now
22 seen that you haven't seen previously?

23 A. Makayla Gilmore.

24 Q. Okay. And that was a statement that he had not
25 provided to you previously?

1 A. No, he didn't.

2 Q. Okay. Any other statements that he did not provide
3 to you?

4 A. No, ma'am.

5 Q. Okay. Now going back to the gunshot residue, there
6 was an issue regarding the gunshot residue kit in this
7 case, and so you were initially scheduled to go forward to
8 trial in March of 2017, I believe; is that right?

9 A. Yes, ma'am.

10 Q. Okay. But then later in May of 2017, an updated
11 gunshot residue kit became available; is that right?

12 A. Yes, ma'am.

13 Q. Okay. And so what was the significance of the gunshot
14 residue kit to you and your decision to enter into a guilty
15 plea?

16 A. Basically the gunshot residue kit said the victim had
17 gunshot residue on his hand.

18 Q. The first kit said he did not?

19 A. The first kit said that there was no gunshot residue
20 on his hands.

21 Q. Okay. But the second kit came back?

22 A. The second kit said he had gunshot residue on his
23 hands.

24 Q. Okay. And that was -- it was retested because of an
25 issue with a SLED employee not following proper protocol;

1 is that right?

2 A. Yes, ma'am.

3 Q. Okay. And so the second kit came back victim has
4 gunshot residue on his hand?

5 A. Yes, ma'am.

6 Q. Did you discuss that with Mr. Krzyston?

7 A. I did.

8 Q. And what did he tell you about that?

9 A. I asked him, I said what about the other gunshot
10 residue kit with SLED done correctly. He had to be
11 shooting a bigger gun if he had that much gun residue kit
12 on his hands -- gunshot residue kit on his hands, so I
13 asked him, I say what does that mean? Like at the time I
14 didn't know what was going on. I ain't no lawyer. I ain't
15 gonna lie to you, I don't know the law, so I'm like what
16 are we gonna do, how can we put that in the case because
17 that's obviously -- everything matched up. He basically
18 told me oh, well, we can get a better plea. It was never
19 we can go to trial and we can do this. It was we can get a
20 better plea.

21 Q. Okay. And when you told Mr. Krzyston that you wanted
22 to go to trial, did you ever feel like he supported that
23 decision or was willing to pursue that option for you?

24 A. I felt like he was -- he was sitting there with me,
25 but after it was over with I just feel dismissed for a loss

1 to the system. That's how it felt.

2 Q. Okay. And going back to his representation of
3 Mr. Carswell, did he ever ask you to sign a conflict
4 waiver?

5 A. I never signed one.

6 Q. Okay. And -- and you didn't understand the full scope
7 of that potential conflict until --

8 A. Now.

9 Q. -- later after you entered your plea?

10 A. It all -- it all started to make sense.

11 Q. Okay.

12 A. Once I got here and got that motion and started going
13 through it and looking at different stuff, it all made
14 sense. Like the statements I didn't see from Mr. Carswell
15 or his text messages, what he been saying. I never seen
16 none of that.

17 Q. Okay. And do you -- why do you believe he never
18 showed you any of that evidence?

19 A. I felt like he knew that he could do some harm to me
20 in the case or I don't really know, but it just made me
21 like -- when I -- when I wanted to go to trial, it just
22 made me uncomfortable. So basically it was to the point
23 of like, you know, I'm just gonna accept -- I knew if I
24 stayed with him, I might get thirty or forty years, so
25 that's the only reason I didn't go to trial.

1 Q. And do you know did Mr. Krzyston ever meet with
2 Mr. Carswell during his representation of you?

3 A. I don't know for sure and I ain't gonna -- I ain't
4 gonna lie and say for sure, but I know he said that he was
5 in Phase 1, we was in the county together. I don't know
6 for sure he went down there, but I know he said he would or
7 he was, but I don't know for sure did he do it.

8 Q. Okay. Did Mr. Krzyston ever discuss with you the
9 validity of any defense you had if you did take this to
10 trial?

11 A. He discussed with me saying, like I said, later on
12 he say he never got in the car. The detective, oh, he
13 never got in the car. I'm telling you that he got in the
14 car. No, he didn't. So he was basically saying once you
15 go to trial, they're gonna blame you and they're gonna
16 convict you and you're gonna get time, so you might as well
17 take this plea and go. So at the time, me being uneducated
18 and don't no nothing, he's right, I'm gonna take the plea
19 and go. Because I know common sense if I go ahead and play
20 with these people, I could get thirty or fifty years or a
21 hundred years or life at the worst.

22 Q. Okay. And then going back, going to your education
23 and your understanding of what was going on during his
24 representation of you, what is your education level?

25 A. Eighth grade level.

1 Q. Eighth grade?

2 A. (Nods head.)

3 Q. Did you complete the eighth grade?

4 A. No.

5 Q. No. And were you on an IEP while you were in school?

6 A. Yes, ma'am.

7 Q. Okay. Did you -- did you understand, you know, what
8 -- what Mr. Krzyston was telling you?

9 A. To a certain extent. I'm gonna say that to a certain
10 extent I understood a little bit, but at the time I didn't
11 understand most of it.

12 Q. Okay. Did you ever discuss with him having a
13 competency evaluation?

14 A. Yeah, but he never got me one.

15 Q. Okay. Did you feel like you needed a competency
16 evaluation?

17 A. Yeah, because I didn't under -- I didn't understand
18 nothing. Like basically the stuff he was saying, like I
19 didn't know what no gunshot residue kit was until I got
20 here and basically learned it, like sit down and learned
21 what was going on. I didn't know what that was until I got
22 here.

23 Q. Did he go over those -- the gunshot residue kit
24 results with you?

25 A. The first one he went over it. He was like it's

1 negative, then he came down with the second -- well, it
2 was two papers. He came down and was like oh, now it's
3 positive, SLED corrected it, and I asked him, I said how
4 did that work? How is it negative and now it's positive?
5 How does it work? Oh, it -- it happens. Stuff like that
6 happens. I ain't never seen that happen like that.

7 Q. Okay. And so the inability to understand the gunshot
8 residue kit, did that impact your decision to enter into a
9 guilty plea?

10 A. He said it happened like that. I basically said you
11 know what, it probably did, so I'm just gonna go with the
12 flow of what's going on, not knowing that I got rights, so
13 I shouldn't even be taking this plea. I should have taken
14 it to trial.

15 Q. And did it make more sense to you when it was negative
16 gunshot to enter a guilty plea versus when you got the
17 second modified results showing he did --

18 A. The negative one -- the negative one made me look' like
19 -- once you're telling me that oh, this person right here
20 ain't do that or they ain't -- there ain't no statement
21 from this person or this gunshot residue kit is negative,
22 yeah, you're right, you're making me look guilty, so I
23 ain't gonna go play in trial again. You tell me all this,
24 I might get slayed, that would be crazy, but I never knew
25 like half of the statements that was here.

1 Q. And knowing what you know now, are you aware of
2 whether Mr. Krzyston ever did an independent investigation
3 of what the witnesses would testify to if you did go to
4 trial?

5 A. No, I didn't. I didn't -- I don't think he ever did
6 that.

7 Q. Okay. Do you have any reason to believe that he did?

8 A. The only thing he did was the gun -- gun analysis,
9 the person coming and examining the shots. That's the only
10 thing he did.

11 Q. And what -- did he hire that person?

12 A. I don't know for sure who hired him, but I know that
13 he got him.

14 Q. And do you know what the purpose of him getting that
15 person was?

16 A. To basically tell was I lying or telling the truth on
17 the shot.

18 Q. Okay. And from what you understand, the person said
19 that you were telling the truth?

20 A. Yeah, he said that there's no way possible to rob
21 somebody when they got a gun to their face or whatever they
22 were saying. That it's not gonna leave burn marks on --
23 on the person's face. That's not possible. He said if I
24 shot, it was a clean shot. He said, you know, it would
25 have to be a self-defense shot.

1 Q. Okay.

2 A. My lawyer, Mr. Krzyston, he know that because he told
3 me out of his mouth that.

4 Q. Okay. And there was no murder weapon ever found; is
5 that right?

6 A. No, ma'am.

7 Q. Okay. I think you've already testified to this
8 potentially, but the theory was that you set up this
9 individual to rob him, but what -- what was found on the
10 victim during the investigation?

11 A. \$300 in cash and a cell phone.

12 Q. Okay. And they found his wallet on him also?

13 A. Yes, ma'am.

14 Q. Okay. So if the theory put forward by the prosecutor
15 was that you were robbing him, did you discuss with
16 Mr. Krzyston the impact of finding those things on the
17 victim?

18 A. I told him that. I told him to find out. I never
19 knew that he even knew that and he didn't find out nothing
20 until I got here and I got my motion and they showed me
21 everything. I went over everything and it said it in the
22 report. I was trying to make him understand if somebody
23 was supposed to rob somebody, you're supposed to take
24 everything, ain't you? That's what I thought.

25 Q. Okay. And your -- your motion was hundreds of pages;

1 is that right?

2 A. Yes, ma'am.

3 Q. Okay. And you've now had an opportunity to go through
4 all of those pages?

5 A. Yes, ma'am.

6 Q. Okay. Now we've also put forward an allegation --
7 well, strike that. Let me go back to Carswell's statements
8 again. Did Mr. Krzyston tell you that Mr. Carswell was
9 gonna take the stand and testify against you?

10 A. If I went to trial, yes.

11 Q. Okay. And what was -- what was Carswell actually
12 charged with?

13 A. He was charged with -- I think they charged him with
14 obstruction of justice. I don't really know, but I know
15 for a fact he got charged with conspiracy and burglary and
16 was granted YOA.

17 Q. Okay. So then the allegation is you allege that
18 defense counsel failed to file an appeal on your behalf?

19 A. I asked --

20 Q. Did you ask him to file an appeal?

21 A. I asked him that when we left court when he came back
22 and he said no. He said I would have to fill out a PCR for
23 myself.

24 Q. Okay. So he told you you couldn't file an appeal?

25 A. Yeah.

1 Q. He told you your option was to file a PCR?

2 A. File a PCR. Yes, ma'am.

3 Q. And so then you filed a PCR?

4 A. Yes, ma'am.

5 Q. And is it your desire to have an appeal?

6 A. Yes, ma'am.

7 Q. Okay. And do you think having viewed your discovery
8 file, now that you've reviewed it, had you had a chance to
9 review it in its entirety before you plead guilty would you
10 have gone forward with pleading guilty?

11 A. No, ma'am.

12 Q. Okay. Do you think that Mr. Krzyston gave you sound
13 advice based on the evidence in this case?

14 A. Advice -- the advice was that he only showed me half
15 the evidence.

16 Q. Okay. And you were relying on Mr. Krzyston and his --
17 his representation of you in deciding to enter into the
18 guilty plea?

19 A. Yeah, because at that point I thought -- I thought he
20 was great. I thought he was a great person. No disrespect
21 of him, none of that, but like it is now that's not what he
22 was.

23 Q. Okay. So after you saw all of the evidence, you
24 realized the advice he was giving you, you were only being
25 provided a limited amount of the evidence that there was?

1 A. Yes, ma'am.

2 Q. Okay. Is there anything else that you would like to
3 tell the Court?

4 A. No, ma'am.

5 Q. Have we covered every -- all of your allegations?

6 A. Yes, ma'am.

7 Q. Okay.

8 MS. FENNELL: Okay. Thank you. I have no more
9 questions. Please answer any questions the AG has for
10 you.

11 THE COURT: Mr. Barlow.

12 CROSS-EXAMINATION

13 BY MR. BARLOW:

14 Q. All right, Mr. Gadson. What were you originally
15 arrested for and charged with in this case?

16 A. Murder.

17 Q. Okay. And are you aware of what the sentence is for
18 murder if you were convicted of that?

19 A. Thirty to life.

20 Q. Okay. And it's day for day, correct?

21 A. Right.

22 Q. Did you request counsel to be appointed after your
23 arrest?

24 A. Ma'am -- sir?

25 Q. Did you request counsel to be appointed?

- 1 A. Yes, sir.
- 2 Q. And who -- who was appointed?
- 3 A. Leah Moody.
- 4 Q. Okay. And who represented you at the plea?
- 5 A. You're talking about the -- him? Stephen Krzyston
- 6 represented me at the plea. I thought you were talking
- 7 about the attorney I got here.
- 8 Q. No, I'm talking about at the -- during the plea.
- 9 A. Steven Krzyston.
- 10 Q. Okay. How often did you meet with your counsel after
- 11 he was appointed?
- 12 A. About seven times. You know, at first I seen him one
- 13 time when he first came. I wasn't really feeling it, so I
- 14 wouldn't even talk to him like that when he first came. So
- 15 I'd say about three to four months after I talked to him
- 16 again and we went to preliminary hearing.
- 17 Q. Did you cooperate with him?
- 18 A. At the preliminary hearing?
- 19 Q. At all of your meetings.
- 20 A. Yes, sir.
- 21 Q. Did you ever have trouble communicating with him?
- 22 A. A couple of times we got into it.
- 23 Q. Did you understand what he said when you met with him?
- 24 A. At the time, no, sir.
- 25 Q. Do you think he understood what you -- let me rephrase

1 that. Did he understand you?

2 A. I couldn't tell you. I don't know. Some persons
3 don't. Probably not, so.

4 Q. Did he discuss the charges you were facing with you?

5 A. Yes, sir.

6 Q. Did he discuss the elements of the offense?

7 A. No.

8 Q. How about the potential sentence?

9 A. The potential sentence he told me I could get is
10 thirty to life.

11 Q. Okay. Did he discuss possible defenses with you?

12 A. No, the defenses -- no, he discussed one defense, and
13 that was self-defense, but after they kept saying about,
14 you know, the other person had got in the car or what,
15 these statements were presented to me, it was we better get
16 our best plea.

17 Q. But he did discuss self-defense with you?

18 A. Yeah.

19 Q. Okay. And did he review the discovery with you?

20 A. He let me look through it. When I was there, he let
21 me look through the front of it, but I basically looked
22 through it myself when I got it back in the room myself.
23 He went over the statements with me. Like, you know, the
24 first statements he sent me, but I was never told the whole
25 thing, no.

1 Q. Did he provide you with a copy of it?

2 A. Yes, sir.

3 Q. All right. Did he ever talk with you about the
4 different statements that had been made?

5 A. Yeah. The four statements he showed me, yeah.

6 Q. Okay. Did he talk with you about your own
7 incriminating statements?

8 A. Yes, sir.

9 Q. And that you initially told investigators you were not
10 even in Columbia on the night?

11 A. Yes, sir.

12 Q. But you eventually admitted you shot the victim when
13 they confronted you with your phone records, correct?

14 A. Yes, sir.

15 Q. So your original alibi was not true?

16 A. Yes, sir.

17 Q. Did he talk to you about the GSR evidence?

18 A. Yeah, he said it was negative, but now it's positive,
19 that was basically it, and SLED -- SLED corrected it.

20 Q. Okay. Do you know what was positive with the GSR,
21 where it was located?

22 A. On his hands.

23 Q. Okay. Fronts or back?

24 A. Front.

25 Q. I'm sorry, palm or backside?

1 A. Palm.

2 Q. So it was on the palm?

3 A. Yeah.

4 Q. Did you discuss any possible defenses with your
5 counsel that you wanted to approach?

6 A. No, because basically it was a plea. It was plea,
7 plea, plea.

8 Q. Did you give him any leads or witnesses to
9 investigate?

10 A. I told him to go look into the witnesses, but it was
11 never looked into.

12 Q. Were there particular witnesses you wanted him to
13 investigate?

14 A. It was -- I told him different witnesses go look at
15 or talk to, but it was never investigated.

16 Q. Did you want to go forward to a trial on the murder
17 charge?

18 A. Yes, sir. Now -- now that I know what I know, yes,
19 sir.

20 Q. Not now.

21 A. Back then?

22 Q. Did you want to go trial?

23 A. Yes, because I still felt like I didn't do nothing
24 wrong.

25 Q. But you confessed to shooting him?

1 A. Yeah.

2 Q. Did you ask counsel to negotiate with the State to get
3 you a plea offer?

4 A. No, he came back with it after the gunshot residue.
5 I'd say after the gunshot residue came back, about six,
6 seven months he came back with a plea. He said this is the
7 best thing you're gonna get.

8 Q. Did you reject any plea offers?

9 A. That was the only plea he ever offered me. He said a
10 plea about forty years, but he never brought it to me.

11 Q. So you -- you eventually pled guilty to voluntary
12 manslaughter as a lesser included offense, correct?

13 A. Yes, sir.

14 Q. And that occurred just a couple of weeks before you
15 were scheduled to go to trial?

16 A. Yes, sir. I think so. Yes, sir.

17 Q. And the plea deal was for a negotiated sentence of
18 seventeen years?

19 A. Yes, sir.

20 Q. By pleading you avoided the risk of being convicted of
21 murder, correct?

22 A. Yes, sir.

23 Q. And that eliminated the possibility of that mandatory
24 minimum sentence of thirty years to life, correct?

25 A. Yes, sir.

1 Q. When you entered the plea deal, did you understand
2 what you were doing?

3 A. No.

4 Q. Okay. Do you recall the plea judge -- or informing
5 the plea judge that you understood her questions and
6 answered them truthfully?

7 A. Judge Benjamin?

8 Q. Right.

9 A. Basically I was going through the motions.

10 Q. But do you recall telling the judge -- the plea judge
11 that you -- that you understood her questions and answered
12 them truthfully?

13 A. I did what he said. Just say yes to everything she
14 say.

15 Q. Okay. Do you recall telling the plea judge the
16 answers you gave her were your answers?

17 A. Yes. Just say yes, like I said.

18 Q. Do you recall telling the plea judge you understood
19 and wished to waive your rights to a trial?

20 A. I didn't know what rights it was then.

21 Q. Do you recall the plea judge -- or telling the plea
22 judge that you were satisfied with your counsel's
23 representation?

24 A. At the time, yeah, I was, but the thing is once I got
25 here and seen everything, no, I'm not.

1 Q. You had an opportunity though to raise any complaints
2 about counsel to the plea judge and did not, correct?

3 A. I didn't know what was going on then.

4 Q. And do you recall telling the plea judge that you were
5 pleading freely and voluntarily?

6 A. Yes, I did.

7 Q. No force of threats or coercion?

8 A. I didn't know nothing then.

9 Q. Do you recall telling the plea judge you agreed with
10 the fact summary of the crime the solicitor presented on
11 the record?

12 A. Yeah, but, like I said, I didn't know nothing then.

13 Q. Do you recall telling the plea judge that you wanted
14 her to accept the guilty plea?

15 A. Yeah.

16 Q. And you were the one that entered the guilty plea,
17 correct?

18 A. Yeah.

19 Q. Who made the choice to enter that guilty plea?

20 A. I signed the paper.

21 Q. During the plea hearing you confirmed to the plea
22 judge that you understood you had a right to appeal,
23 correct?

24 A. Yeah.

25 Q. Did you want an appeal?

1 A. Yes.

2 Q. And what was the issue from the plea hearing that you
3 wanted to appeal?

4 A. It didn't sit right. Like what happened, what they
5 was saying because you had the solicitor say everything
6 added up to what he's saying, so I'm telling him the same
7 thing, but I asked for an appeal. He told me no and I'd
8 get -- he told me to put in a PCR.

9 Q. So did you ask counsel to file an appeal for you?

10 A. Yes, I did.

11 Q. And did you ask counsel to file any post-plea motions?

12 A. No. I didn't even know what that was then, sir. I
13 ain't gonna lie to you.

14 MR. BARLOW: That's all, Your Honor.

15 THE COURT: Ms. Fennell.

16 MS. FENNELL: Thank you, Your Honor.

17 REDIRECT EXAMINATION

18 BY MS. FENNELL:

19 Q. Mr. Gadson, you said that in regard to any
20 difficulties in communicating with Mr. Krzyston that you
21 got into it with him?

22 A. Yeah.

23 Q. What do you mean by that?

24 A. When he first came down there, he say they offered
25 you a plea of -- about the first of the trial forty years.

1 I asked him was he crazy, did he lost his mind. You know,
2 we got into it. I don't know if he got mad or not, but I
3 know Mr. Krzyston turned red a little bit. You know, he
4 left, I went to my room, he came back about -- I think
5 about three weeks later and talked to me again and I told
6 him hey, if they offer me forty years, I might as well
7 go to trial, I'll get that in trial. So I basically tell
8 him that, then he left, you know, I went through the
9 motions and I didn't see him, and I think he was basically
10 communicating with my mom, so he was going through her.
11 He was talking to my mom to tell me what he said, but,
12 yeah, we got into it that day there at the county. It was
13 heated.

14 Q. Okay. And you -- you said that Mr. Krzyston never
15 discussed with you the elements of the offenses, so the
16 elements that the State would have to prove in order for
17 you to be found guilty?

18 A. I never -- I never got that at all. I never
19 understood that. I never -- he never broke it down --
20 he broke it down that I could get thirty to life, you can
21 get that, but he never wrote down what they would have to
22 prove, what they would have to do, you know, in order to
23 get that.

24 Q. Okay. So he was looking at --

25 A. He was just looking at the whole time a plea.

1 Q. Okay. Versus going through with you --

2 A. A trial.

3 Q. -- here is what the State will have to prove?

4 A. Yeah.

5 Q. Okay. So when you entered your guilty plea, you
6 didn't know what the State had to prove; is that right?

7 A. Yeah, I didn't know nothing. I didn't know anything
8 about amendment rights. I didn't know nothing about none
9 of that. I didn't know I have rights. I didn't know what
10 to say, I didn't know what to think, and I could barely
11 pronounce some of the words they had on the paper.

12 Q. Okay. And you said that when asked, you know, during
13 your plea hearing the judge did ask you do you understand
14 or --

15 A. Yeah.

16 Q. -- are you doing this of your own free will?

17 A. Basically he said if I'm your lawyer and I tell you
18 that, go ahead and answer yes to everything, and what are
19 you gonna do?

20 Q. Okay. So you just followed your --

21 A. Yeah.

22 Q. -- the instructions given you?

23 A. Uh-huh. That's it.

24 Q. Okay. And so your plea wasn't really voluntary where
25 you didn't know -- even know at that point what the State

1 had to prove?

2 A. No, I didn't because then I didn't get everything.

3 I didn't get this person's statement or that person's

4 statement. I only got four people's statements and

5 basically the statements from Roslin Davis and DaJuan

6 Minson basically made me look like a menace, and I told

7 him that. I say you don't think nothing's funny about

8 these statements? Yeah, it's just these statements, but,

9 I mean, when get back here I see the whole motion, it's

10 more statements. He told me there were -- he told me

11 Devon Owens didn't write a statement, he told me he never

12 gave a statement, and the whole time the statement's right

13 there and he's got it.

14 Q. Okay. So he specifically told you that --

15 A. Devon Owens never wrote a statement.

16 Q. Okay.

17 A. He said he never said nothing and he clearly wrote a
18 statement.

19 Q. Okay. And that was important because he was the
20 individual --

21 A. Yeah.

22 Q. -- that you claim came out of the car towards you?

23 A. Yeah, but like I told him, I was telling him oh, I

24 -- he said oh, that don't make sense, they ain't gonna

25 understand what you -- how it don't make sense, but now as

1 you see it now, I mean, you sit down and look at it, what
2 person in their right mind is gonna get in a car and pull
3 off and park across the street and then come back to the
4 victim, somebody that's messing with their friend. That
5 don't make sense.

6 Q. Okay.

7 MS. FENNELL: I don't believe I have any further
8 questions.

9 Thank you.

10 THE COURT: Mr. Barlow.

11 MR. BARLOW: Nothing from the State, Your Honor.

12 THE COURT: You may step down, sir. Thank you.

13 (Witness excused.)

14 THE COURT: Ms. Fennell.

15 MS. FENNELL: Applicant would call Rasheid Schoclet
16 to the stand.

17 (Whereupon, Rasheid Schoclet was duly sworn by the
18 Clerk of Court.)

19 THE CLERK: Please have a seat, sir, and state your
20 full name for the record.

21 THE WITNESS: My name is Rasheid Schoclet.

22 RASHEID SCHOCLET,

23 having been duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MS. FENNELL:

1 Q. So you pronounce it Sche-let?

2 A. Yes, ma'am. Sche-let.

3 Q. Sche-let. Okay. I apologize. I've been
4 mispronouncing it.

5 A. That's okay. That's okay.

6 Q. So, Mr. Schoclet, how do you know Mr. Gadson?

7 A. He's -- I knew him since daycare. His family's like
8 my family, so.

9 Q. Okay.

10 A. They always been good people. Especially when my
11 momma was going through her little crisis in life, you know
12 what I'm saying?

13 Q. Okay. So you-all have known each other for a long
14 time?

15 A. Yes, ma'am.

16 Q. All right. Now did law enforcement approach you
17 regarding this incident that occurred with Paul Coleman?

18 A. Yes, ma'am.

19 Q. And when did they approach you?

20 A. You're saying the investigators, right?

21 Q. Yes.

22 A. Well, Carswell -- Steven Carswell was called up there.
23 He came back to my home like in a panic frenzy like. Oh,
24 they gonna call you up there or whatever, whatever. So I'm
25 like okay, I -- I don't even know the victim at all, you

1 know what I'm saying? Like I'll go up there and clear my
2 name because I never had a conversation with this person or
3 nothing. Carswell used my phone to conversate with D.C.
4 That's the victim name, right? Yeah. So I went up there
5 to clear my name, like voluntarily clear my name, on that
6 note.

7 Q. Okay. And did you give a statement to law
8 enforcement?

9 A. Yeah, I gave them a Q and A the first time I was
10 there. They was just asking me like simple questions.
11 Like did I know a D.C. and I'm like no, I didn't. I never
12 met him before, you know. Well, how his number was in my
13 phone? Steve Carswell always conversating with him through
14 my phone because he didn't have a phone at that time and he
15 would always just like be around, you know, like he was
16 always coming by the house and whatnot, so he conversated
17 with Paul Coleman through my phone since his phone was out.

18 Q. Okay. And so --

19 MS. FENNELL: Your Honor, may I approach the witness?

20 THE COURT: Yes, ma'am.

21 MS. FENNELL: Thank you.

22 BY MS. FENNELL:

23 Q. If you'll take a look at these documents and tell us
24 what those documents are.

25 A. Okay. Well, these are the Q and A's and I -- to let

1 you know, I was called in twice. I went in there twice.
2 So this first one -- well, the reason I was going over
3 it is like -- okay. It said yes, I did come up there
4 voluntarily. Why? I said because my phone was involved
5 and I want you-all to know that was the only involvement
6 because, like I say, Steven Carswell was using my phone.
7 They say how long -- like how I knew him. I knew him about
8 three months around that time. His phone was off. I let
9 him make calls to D.C., that's correct, but -- and they
10 asked how did I know -- they asked me did I ever meet Paul
11 Coleman and I had never met him, I never seen him a day in
12 my life. Like I never knew this man. Just -- I just know
13 him as Steven Carswell conversating on my phone. He would
14 call and I would just like hand him the phone. Like hey,
15 here, bro, you know. Or Steve -- well, most -- most times
16 Steven Carswell called him. They said how I found out he
17 was shot? His sister had called my phone by the way. Like
18 she called.

19 Q. Whose sister?

20 A. I don't know his sister. Like --

21 Q. Who's he? Him?

22 A. Oh, Paul Coleman. His sister had called my phone
23 that night and asking where's her brother like then. Her
24 brother got -- that's how I found out, you know, so I
25 personally -- like I never -- I don't know your brother.

1 Like he conversated through my phone to Steve -- Steven
2 Carswell, so. This was just the regular thing, but when
3 it got to -- okay, I'm gonna tell you. The reason, what's
4 going on, there was a -- a photo lineup. Can I speak
5 on this? Can I speak?

6 Q. Go ahead, sir.

7 A. Okay. Well, what made me look into this is because
8 there's a photo lineup that came up with a DaJuan Minson
9 and it had my signature on it. I never was showed a photo
10 lineup when I went to the investigator's office, you know,
11 and the -- the whole -- how it's filled out is not my sig
12 -- like my handwriting or my signature. It's like somebody
13 else did it, you know, and I believe the investigators did
14 it. So what made me look into it, the second time I went
15 I was never even asked -- hold on. I never even -- they
16 never gave me -- I never gave them DNA. They say do you
17 volunteer to give us your DNA. I never gave them DNA. It
18 say when you spoke to D.C. on September 18, 2015, whose
19 number did you text him? It say Streets. I never even --
20 we never even had that conversation for me to even text him
21 that, you know? So, like I say, he would always call the
22 phone for Steven Carswell, so whatever conversation or
23 whatever they had is what they had going on. I never knew
24 like the whole transaction or whatever they had going on,
25 the conversations they had or whatnot until I was the

1 investigator's room and the investigator was like showing
2 me -- they showed me how Steven Carswell and D.C. or Paul
3 Coleman, the conversation and stuff about, you know, gun
4 transactions and whatever, stuff like that and how they
5 used to whatever, and they say why did you not provide us
6 with Streets' phone number. I never provided them with a
7 number. The second time I went I gave a consent to go
8 through my phone. I waited outside because it took a while
9 and Carwell came outside and just basically told me okay,
10 you're good to go. He gave me my phone back and said
11 you're good to go. As far as that to now, that's all I
12 heard from it, you know, so when I got to looking at these
13 statements and stuff, it's like all of the signatures are
14 different. Like it changed. Like you can see an R or S,
15 but this not even how -- my -- my signature, you know what
16 I'm saying? So --

17 Q. And --

18 A. -- I cannot vouch for this. This -- this is not my
19 doing.

20 Q. And so what is the date on the statement? And there's
21 two separate statements, correct?

22 A. The one is 9-22-15 and 9-24-15, so they was like two
23 days apart. And what it was, I guess they called Steven
24 Carswell back in and then they called me back in and when
25 I went in they was like -- basically like oh, you can get

1 accessory to murder. I'm like well, how? I don't even
2 know what's going on, you know, and they -- they're like
3 well, Steven Carswell told them everything and I'm like
4 the only thing he could probably tell you is that he used
5 my phone to talk to Paul Coleman because I don't know what
6 they had -- I never knew what they had going on. That's
7 why -- that's the only reason why I gave consent to search
8 my phone, you know what I'm saying? Because I -- I don't
9 have like nothing to do with whatever they had going on.

10 And if I could say this, back in 2016 I was arrested
11 for a -- a burglary first. Carswell -- Carwell was the
12 same investigator. He came to my momma's house when they
13 came and he brought this back up. He said -- well, before
14 I even get to that, it's a -- my mom had an old voicemail
15 on her phone saying this is a typo and they took -- and
16 they kept it the same.

17 I never -- before I even seen the second statement
18 what they said, it was a -- something that came out saying
19 that oh, Steven Carswell and Rasheid Schoclet wrote sworn
20 statements against Mr. Randall Gadson saying he's the one
21 that did the murder. That was -- I never did that. That
22 was never even said, nothing, you know what I'm saying? So
23 -- and that's what really -- for that -- from that point
24 that's what made me call down to the investigator's office
25 like to see what's going on and I spoke to Crane because

1 Crane and Carwell was the investigators during that time
2 and Crane was like oh, where's the typo, we'll get it
3 fixed. I had -- I just took his word on that. You know, I
4 never thought nothing of it, you know. So when this came
5 out, you know, now when I'm looking at this, that's why I
6 volunteered, you know, because this is bogus. It's false.
7 It's false information to even provide in a case like this,
8 you know. And I have been in trouble before and I read a
9 lot and I have read a lot about false convictions or false
10 stuff that had people locked away. That's why I'm -- well,
11 if this could help, that's why I'm here.

12 But back to what I was saying back in 2016, he brought
13 this back up basically indicating we're here right now,
14 you know what I'm saying? Like oh, yeah, well, we know
15 this and that and I was like hey, man, you're not here for
16 that, you know, but I always -- I took that in just for a
17 -- a situation just like this, you know.

18 Q. Okay. So you -- when you became aware of what was
19 being said about a statement you provided, you contacted
20 the investigator --

21 A. Yeah, at -- at first.

22 Q. Let me -- let me finish. About your concerns about
23 what was being said that you put in your statement?

24 A. Yes, ma'am.

25 Q. Okay. And did -- was that ever corrected?

1 A. Like -- like I said, I just took his word of it over
2 the phone. He said typo, but I'm like how do you typo
3 something like that?

4 Q. Okay. Did Mr. Gadson's defense counsel ever reach out
5 to you?

6 A. No, ma'am. Nobody ever reached out to me, but --

7 Q. But the investigators?

8 A. Yes, ma'am.

9 Q. Okay.

10 MS. FENNELL: I don't believe I have any other
11 questions, but I want to show you these documents.

12 Thank you.

13 Your Honor, we would like to move these documents
14 in as Applicant's Exhibit 1.

15 THE COURT: Any objection, sir?

16 MR. BARLOW: None from the State, Your Honor.

17 THE COURT: Without objection, ma'am.

18 (Plaintiff's/Applicant's Exhibit Number 1,
19 statements, was marked and admitted into evidence.)

20 MS. FENNELL: And I don't have any additional
21 questions for this witness, but please answer any
22 questions the AG has for you.

23 THE WITNESS: Yes, ma'am.

24 THE COURT: Mr. Barlow.

25 MR. BARLOW: I beg the Court's indulgence, Your

1 Honor.

2 THE COURT: Yes, sir.

3 CROSS-EXAMINATION

4 BY MR. BARLOW:

5 Q. Sir, just real quick, could you clarify what part of
6 those documents you are disputing?

7 A. Well, the second -- the second form like when I went
8 in there, all that is like -- all them questions about
9 where they're saying like I gave information on where
10 DaJuan Minson stayed and even Streets' name, that's false.

11 Q. So just to be clear I think for the record, what I
12 want to know is the first day --

13 A. Uh-huh.

14 Q. -- is your statement, but the second is not your
15 statement?

16 A. It's not my statement. Just like they implicated --
17 like they put extra stuff in there. It's just -- when
18 they -- when they asked me did I voluntarily come back in
19 there, that was like yeah, because that -- really it wasn't
20 even voluntarily, he asked me to come back. So whenever
21 I -- even with the DNA test and the name, like, you know,
22 saying did the -- is the number Streets or whatever, I
23 never said anything like that. That's why I gave them
24 clarification to go through my phone, so that's what I'm
25 saying.

1 Q. One second.

2 MR. BARLOW: Your Honor, may I see the signature
3 pages on those two?

4 May I approach?

5 THE COURT: Yes, sir.

6 MR. BARLOW: And show it to the witness?

7 THE COURT: Yes, sir.

8 BY MR. BARLOW:

9 Q. So, sir, on each and every one of these forms there's
10 a signature line that you signed?

11 A. Yeah, yeah.

12 Q. Would you go through each one and let me know if --
13 which ones it is you say you did not sign if that's what
14 you're saying?

15 A. The ones I did not sign is the ones the second time I
16 went there. I did not -- I did not put -- that's what I'm
17 basically saying. I did not sign. I only gave -- I only
18 gave consent to go through my phone. That's what I'm
19 saying.

20 Q. Let's see.

21 A. And all the signatures look -- they're not even the
22 same. I had like one signature I use. For -- for -- what
23 did I say? September 22nd?

24 MR. BARLOW: I beg the Court's indulgence, Your
25 Honor.

1 THE COURT: Yes, sir.

2 MR. BARLOW: (Discussion between counsel.)

3 BY MR. BARLOW:

4 Q. And, sir, just for clarification, these two documents,
5 they are dated the 24th and the 22nd?

6 A. Yeah, I know.

7 Q. And you're saying that the -- which one is not yours?

8 A. This one is not mine.

9 Q. Okay. So the -- so these -- the signature on the 24th
10 is not yours?

11 A. No, that's not me. This is my -- this is the original
12 statement that I be giving. When I went there the second
13 time, they were basically trying to get me to say something
14 I don't have no clue about. Basically they -- they say --
15 I'm -- I'm really trying to reflect everything that day
16 because 2015, it was a while ago, but from my understanding
17 they was telling me I could be charged with accessory to
18 murder and I'm just like how.

19 MR. BARLOW: No further questions, Your Honor.

20 THE COURT: Thank you, sir.

21 Ms. Fennell.

22 MS. FENNELL: No further questions, Your Honor.

23 THE COURT: You may step down. Thank you.

24 MS. FENNELL: And, Your Honor, I would ask that
25 this witness be excused.

1 MR. BARLOW: Your Honor, the State wasn't aware of
2 this witness.

3 MS. FENNELL: Do you want him to stay?

4 MR. BARLOW: No, I don't. I have no objection,
5 but the State didn't know he was a witness.

6 THE COURT: Have a good day, sir.

7 (Witness excused.)

8 THE COURT: Ms. Fennell.

9 MS. FENNELL: I believe at this time Applicant
10 rests, Your Honor.

11 THE COURT: All right. Mr. Barlow would you mind
12 if we take a short break, about fifteen minutes?

13 MR. BARLOW: No, sir. Sure.

14 THE COURT: All right.

15 (Recess taken at 3:06 PM.)

16 (Back on the record at 3:20 PM.)

17 BAILIFF: Remain seated.

18 THE COURT: Thank you, sir.

19 Mr. Barlow.

20 MR. BARLOW: Yes, sir. The State would call
21 Mr. Stephen Krzyston.

22 (Whereupon, Stephen F. Krzyston was duly sworn by
23 the Clerk of Court.)

24 THE CLERK: Please have a seat there. State your
25 full name for the record and you better spell your last.

1 THE WITNESS: I've been doing it thirty-six years.

2 Steven F. Krzyston. K-R-Z-Y-S-T-O-N.

3 THE COURT: Mr. Barlow.

4 STEPHEN F. KRZYSTON,

5 having been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. BARLOW:

8 Q. All right, sir. Where and how are you currently
9 employed?

10 A. I am currently employed as a trial attorney for the
11 law firm of Cavanaugh and Thickens here in Columbia.

12 Q. And what percentage of your current practice is
13 criminal law?

14 A. I'd say between 30 to 40-ish percent, kind of down
15 from 50 percent earlier in the year.

16 Q. Okay. Where did you work prior to that?

17 A. The Richland County Public Defender's Office.

18 Q. And what percentage of your practice was criminal law
19 with the public defender's office?

20 A. 100 percent.

21 Q. When did you get involved with Mr. Gadson's case?

22 A. It would be approximately 2015, 2016, sometime in
23 and around there. Looking at my notes to refresh my
24 recollection, it looks like October of 2015.

25 Q. Okay. And what was he charged with?

1 A. Murder.

2 Q. And how long had you been practicing at that point?

3 A. I think I was barred November 13th of 2012 and started
4 at the public defender's office December 10, 2012. Don't
5 ask me how I remember that, but I do, and so it would have
6 been right at around three years at that point and the
7 prior two years would have been focussing on violent
8 crimes. I think in 2013 Doug switched me over to the
9 violent crimes team that kind of focussed on this sort of
10 thing; burglary first degree, armed robbery, murder, that
11 sort of stuff.

12 Q. Did you have any trial experience prior to being
13 appointed to Mr. Gadson's case?

14 A. I did.

15 Q. And any prior experience with major felony cases?

16 A. Yeah, I believe my first trial was State v. William
17 Wallace, which was a double homicide in Richland that
18 stemmed from a 2011 issue. I believe I had also at that
19 point been involved in the State v. Young -- or State v.
20 Lorenzo Young and State v. Trenton Barnes joint trial,
21 which is commonly referred to as the bakery murder around
22 Columbia. So I had had a relatively significant portion of
23 homicide trial experience by the time I got to Mr. Gadson's
24 case.

25 Q. All right. Do you have any special training or

1 experience?

2 A. Immediately prior to or during -- I can't remember the
3 timeline, but in and around 2015, 2016, I had travelled to
4 the National Forensic School, which was kind of a combined
5 NACDL, educational CLE thing, which kind of focussed on
6 the development of forensic evidence and kind of giving
7 litigators in the community experience confronting the
8 handling of forensic science issues. In addition to that,
9 in or around this time I would have also graduated from the
10 -- I'm blanking on the name of it now, but it's a criminal
11 -- criminal trial school. It's a two-week trial school.
12 Criminal Defense College, NCDC commonly known as.

13 Q. When did you first meet with Mr. Gadson?

14 A. My notes indicate that I would have met him in the
15 Yankee dorm, which would have been Alvin S. Glenn's
16 classification dorm at that time, on the 15th of October.

17 Q. And how many times did you meet with him?

18 A. The notes indicate a minimum of twelve times, which
19 would be representative of once at least every ninety days.
20 Certainly these notes, I could have kept better notes and
21 perhaps should have, but these notes would represent the
22 minimum amount of times that I met with him and, quite
23 frankly, if memory serves, I met with him a couple of times
24 over that.

25 Q. Okay. And how long were these meetings?

1 A. Ranged in length from 15 minutes to 10 minutes,
2 30 minutes, 20 minutes, 20 minutes, 30 minutes, and there
3 are some for which times aren't recorded. I would honestly
4 say between 20 and 40 minutes a time, certainly taking the
5 amount of time necessary to discuss more in-depth issues
6 as required. You know, a lot of these consultations are
7 sort of one way in that, you know, the client's focussed
8 on one or two big issues, and so I spent a bulk of that
9 time addressing that issue to the best of my ability and
10 so something that sounds relatively insignificant is, in
11 fact, significant time.

12 Q. Okay. Was Mr. Gadson cooperative with you during the
13 case?

14 A. Overall I would say, yes. I mean, initially, you
15 know, there was some distrust there and I did have to reach
16 out to Nikita Harris, who was his biological mother. As I
17 understand, they had obtained a consultation from Jack
18 Swerling. I believe Jack had declined to get involved in
19 the case for reasons unknown, but there was an initial
20 period of time there where communication was not bilateral
21 so to speak. It was me going in and saying hey, I've been
22 appointed to represent you, can we engage on these issues.

23 Q. Did you feel like you could work with him?

24 A. Certainly after the first two or three consultations,
25 yes. I mean, beyond the first two or three consultations,

1 beyond us kind of getting to know each other and kind of
2 garnering trust, you know, after those two or three initial
3 consultations I really didn't have a problem communicating
4 with Randall.

5 Q. Okay. Well, there was testimony prior that you two
6 got into it. Do you recall anything like that?

7 A. I don't. That certainly would have been something
8 out of the ordinary for Randall and I. I mean, we always
9 had frank discussions about his case and what I thought
10 his prospects were, as well as the issues that I saw were
11 a problem for him, as well as issues that I saw potentially
12 benefitted his case.

13 Q. But you felt like that he -- Mr. Gadson was willing to
14 work with you?

15 A. Yes, sir.

16 Q. Did you ever have any difficulties communicating with
17 Mr. Gadson?

18 A. Again, with the exception of the aforementioned
19 initial consultations, nothing jumps out to me as having
20 -- or there being kind of huge gap in communication or
21 inability to work together.

22 Q. Did he respond to your questions?

23 A. Certainly.

24 Q. Did he speak coherently?

25 A. Certainly.

1 Q. Did he seem to understand what you were talking about
2 with him?

3 A. Certainly.

4 Q. Did you have any concerns about his capacity to assist
5 you in his defense or rational or factual understandings
6 about the proceedings?

7 A. I did not. In fact, my initial intake notes indicate
8 that he had no prior mental health history, had previous
9 arrest history, had never been to prison and had made it
10 through the ninth grade at Eau Claire High School here in
11 town.

12 Q. Have you ever represented a client that had competency
13 issues?

14 A. Yes, sir.

15 Q. And what did you do in response?

16 A. Depending upon the degree of -- of incapacity, if
17 you will, certainly seek an evaluation. Competency issues
18 are fluid in that sometimes they exist and they kind of
19 seem to pop up out of nowhere, sometimes they're kind of
20 there all the time and in your face, and so my typical
21 course would have been to obtain or petition for a
22 competency evaluation or criminal responsibility evaluation
23 to the extent necessary, but, again, no -- no indicators
24 to me outwardly that -- that Mr. Gadson suffered from any
25 of those issues or incapacities.

1 Q. Did you meet with any of Mr. Gadson's family members?

2 A. I believe that -- we had a number of bond hearings
3 in this case and in the run-up to and during those bond
4 hearings, we certainly would have met in person. I had an
5 open line of communication with Nikita Harris, again, his
6 biological mother, who I understood to be his biological
7 mother. Contact was approved by Mr. Gadson. At a point
8 it was revoked and then restored prior to the end of our
9 representation. And so, yeah, I mean, we met multiple
10 times because I -- I want to say there was at least two or
11 three bond hearings in or around the holiday season that
12 we prepped for, argued, that were ultimately denied.

13 Q. Did any of his family members raise any concerns as to
14 Mr. Gadson's competency?

15 A. No, sir.

16 Q. Did you file any Brady or Rule 5 motions?

17 A. Yes, sir.

18 Q. And were you provided access to or given the evidence
19 in the State's possession?

20 A. To the best of my knowledge. Standard of care in the
21 public defender's office is to file a Rule 5 immediately.
22 I certainly would have done that in this case and I believe
23 we also filed an invocation of his Fifth Amendment right
24 to counsel, which though is not necessary, it's kind of a
25 level of formality that I would engage in in murder cases.

1 Q. Did you review that evidence?

2 A. Absolutely.

3 Q. And did you review and discuss that evidence with
4 Mr. Gadson?

5 A. Certainly.

6 Q. Did you discuss any -- the strength and weaknesses of
7 the evidence?

8 A. Yes.

9 Q. Was there any discovery you did not provide Mr. Gadson
10 or discuss with Mr. Gadson?

11 A. No, to my knowledge.

12 Q. Was there anything Mr. Gadson asked for that you
13 didn't provide?

14 A. No, to my knowledge.

15 Q. In general, what was the evidence against Mr. Gadson?

16 A. There were witness statements, there was the matter
17 of GSR that's been referred to previously in this hearing,
18 there was an issue, though I don't know if it was probative
19 one way or another, with DNA. There was also cell phone
20 tower location or triangulation information, as well
21 Cellebrite extracts of the phone, which is basically a
22 forensic download of the phone, that would have contained
23 text messages, Facebook. Pretty much all of the media that
24 was contained and captured on the device at the time it was
25 downloaded.

1 Q. You spoke about the GSR just now and let me ask you do
2 you remember there being a conflict between one report and
3 the second report?

4 A. I do remember that.

5 Q. Okay. And do you remember what that conflict was?

6 A. Yeah, I can't recall the specific timing, but this
7 was in and around the time when the State crime lab had an
8 issue with its GSR section. Initially the State crime lab
9 analyst, I forget her name, provided a finding or a report
10 that indicated there was no GSR on Mr. Coleman's hands,
11 okay, and in -- you know, at that point I had had enough
12 knowledge and experience to know what -- the three
13 components of GSR, typically lead, barium and, I think,
14 antimony, and it's basically fusing of the particles,
15 those three elements, and so I remember getting the -- the
16 negative test and confronting the prosecutor and saying
17 Kathryn, look, like there's clearly a particle or two, I
18 can't remember if one of the three particles or just one
19 particle, again, a quantitatively low amount of particles,
20 but I said look, it's clear that the evidence is there
21 and that there is some GSR, and confronted her with that.
22 Again, I can't recall if the timing is pre Solicitor
23 Johnson's announcement that there was an issue and a review
24 being done, but I absolutely remember that conflict in
25 reporting.

1 Q. Do you recall which hand the GSR was present on -- the
2 trace GSR?

3 A. No. As I sit here, no.

4 Q. Okay. Do you recall if it was on the palm or the back
5 side of the hand or both?

6 A. I don't. You know, though GSR being present on a --
7 on a gunshot victim wouldn't surprise me or push me one
8 way or the other, certainly a crime lab analyst would tell
9 you that you would expect to see somebody who's shot in
10 intermediate to close proximity, which I believe the
11 autopsy in this matter indicated that was indeterminate
12 to non-determinant range gunshot wounds. But, again, that
13 wouldn't have been something that surprised me because,
14 again, that's something that you would expect to see from
15 what I'm told.

16 Q. Did Mr. Gadson make any incriminating statements?

17 A. With regard to?

18 Q. His -- his action in this murder?

19 A. I don't know that I can rightly answer that. I mean,
20 certainly it's the jury's province to pass judgment on
21 what Mr. Gadson's said his justification for acting so.
22 I think that's about the best answer I could provide.

23 Q. Was there any evidence you thought could help
24 Mr. Gadson's case?

25 A. Oh, certainly. I think there were elements to this

1 case that cut both ways. I think, and I did not hide this
2 fact from Mr. Gadson, that this was a triable case, that
3 his case represented the outer limits of what I thought a
4 jury would accept as a reasonable explanation as to how
5 this killing occurred.

6 Q. Back to the GSR evidence, were you prepared to address
7 that evidence if you had ended up at trial?

8 A. Certainly. We had pretty much evaluated to the extent
9 possible, you know, what SLED had done. We did what I call
10 a soft review with the director of what's the University
11 of West Virginia's -- not crime lab, but forensic science
12 lab. Their -- I think the Department of Justice had at
13 that point established scientific working groups in an
14 effort to improve the quality of forensic science that was
15 coming into courtrooms. It was a mandate that the Obama
16 administration had put down and the lady who ran it, I
17 believe her name is Suzanne Bell, I'm not 100 percent, but
18 she was one of the scientific examiners in the scientific
19 working group. Her credentials were kind of beyond
20 reproach. When we began to get substantive information
21 related to SLED and state crime labs' reanalysis and
22 basically corrective action reports and audit of what
23 occurred, we passed that information along to her, she
24 agreed to review it and provided me a kind of informal
25 consultation based opinion that everything that they were

1 doing was correct in terms of auditing and corrective
2 actions reports. So from an impeachment standpoint, the
3 new results were as good as we were gonna get, and
4 certainly the probative value on both sides of the coin
5 for that issue existed. We were certainly prepared to use
6 that to the best of our abilities.

7 Q. Did you discuss that with Mr. Gadson?

8 A. Certainly. And I think if I were to review my notes,
9 that that would be talked about. 7-24-17, spoke about the
10 case, explained the GSR situation. At that point the State
11 was wanting to go to trial before the audit was complete,
12 we objected to that. Ultimately we won out because I think
13 Solicitor Goldberg and Cavanaugh both realized that that
14 was probably trampling my client's rights in addition to
15 not being in their best interest.

16 Q. Did you speak with any potential witnesses?

17 A. Not personally. It looks like we hired Robert
18 and Chris Watkins, who would have been employed or
19 self-employed with Chris's investigative service, and so
20 I -- again, I don't -- unfortunately, in my notes, there's
21 not a clear indication of the investigator assignment. I
22 think if you-all were to subpoena the paper file that you
23 see my investigator request, as well as petition to the
24 Court highlighting what services we felt were necessary,
25 and then the investigator request would have been an

1 internal defense memorandum, which would have been prepared
2 and tasked with specific tasks. What are in my notes are
3 indications that Chris and Robert were unable to find three
4 witnesses. Abbonish Belton is a name I recall, it's
5 reflected here as Abbonish, Roslin Davis and Latoya Brown,
6 so I am unaware of what other information Chris and Robert
7 -- or Chris and/or Robert would have compiled in assessing
8 the veracity of the other witness statements.

9 Q. Was there anything else you felt you needed to do to
10 prepare or investigate for this trial?

11 A. No. We -- to be -- quite frankly, I'm of the opinion
12 even in private practice that some of the best homicide
13 defense you can get is from the public defender's office
14 because you have pretty much free access so long as the --
15 the means are reasonable and necessary to the defense of
16 the case to obtain, you know, second expert opinions or
17 second and expert opinions, investigations costs;
18 something, frankly, I don't have access to all the time
19 in private practice.

20 Q. Okay. So after reviewing the evidence, did you come
21 to any conclusions regarding the State's ability to prove
22 Mr. Gadson's guilt on the murder charge beyond a reasonable
23 doubt?

24 A. My conclusion would have been that it would have been
25 possible in that it was a realistic possibility if the

1 State went in there with the evidence that they had, if
2 they presented that to the jury, it certainly would have
3 been a realistic possibility of conviction. At the same
4 time depending upon how the jury evaluated the case and
5 whether or not the credibility issues were effectively
6 addressed by the State, you know, Mr. Gadson certainly
7 could have obtained an acquittal, I think.

8 Q. Did you discuss that with Mr. Gadson?

9 A. Certainly. This -- this is a case that -- and, in
10 fact, when Ms. Cavanaugh relayed her initial offer of
11 forty years, I noted that, you know, the client would never
12 accept forty years, it was -- it didn't squarely address
13 the facts. You know, I did not hide from Mr. Gadson that
14 this was a triable case. There were issues certainly on
15 both sides. His credibility, his prior criminal history,
16 and, of course, the victim also had some prior criminal
17 history and kind of both of them had these prior robbery
18 issues and so, again, there were issues all around and I
19 can't predict how those are gonna come out ultimately.
20 You know, Randall's the one who's got to make the decision
21 about what we do, but I did not hide that from a factual
22 standpoint that this at least appeared as a triable case,
23 one in which he had as much of a chance of obtaining an
24 acquittal.

25 Q. All right. So based on your review of the evidence,

1 did you think that there was any basis to challenge the
2 lawfulness of Mr. Gadson's arrest?

3 A. Can you elaborate on -- or can you narrow that
4 question down?

5 Q. Well, in reviewing the evidence, do you think that
6 it was a lawful arrest in terms of the evidence they had
7 against him?

8 A. Well, that's certainly not for me to say, but we did
9 conduct a preliminary hearing in magistrate's court here in
10 Richland County and did evaluate the State's evidence. The
11 charge, as I recall, was bound over or sent forward. It
12 was then subsequently indicted by the Richland County Grand
13 Jury, so I think the people that answered those questions
14 would say yes.

15 Q. All right. So did Mr. Gadson ever ask you to engage
16 in plea negotiations?

17 A. Yes. I mean, I don't know -- well, let me retract
18 that and what I'll say is that I don't know -- he would
19 have never had to ask me to engage in plea negotiations.
20 I routinely explain to my clients that part of my job is to
21 give them options. They can either engage with the State
22 or not. If the State offers them a plea deal, the worse
23 they can say is yes or no, and so that would have been
24 something that I would have done as a matter of course and,
25 you know, we would have handled any plea offer on a case by

1 case basis after review of the evidence and the decision
2 ultimately would have been his.

3 Q. Were there any plea offers made?

4 A. I believe at least three.

5 Q. And did you relay those offers to Mr. Gadson?

6 A. Certainly. And it looks like, referring to my notes
7 to fresh my recollection again, 10-21-16 Kathryn offered
8 forty years, we can get that at trial, there's going to be
9 no way the client accepts that. I then on 10-23 relayed
10 the offer, client rejected the offer without hesitation.
11 I noted that gearing up for trial this could be a decent
12 trial -- or a decent one. Again, in the lead-up to the
13 trial, it looks as if the Government presented negotiated
14 ranges of fifteen to twenty and ten to twenty-five, both
15 of which Mr. Gadson rejected.

16 Q. Was there a final offer?

17 A. A negotiated term of seventeen years on voluntary
18 manslaughter. I'm sorry.

19 Q. And how did that come about?

20 A. Kathryn and Daniel Goldberg and I sat down in a room
21 and talked about the case that we had coming up. You
22 know -- I mean, the relationship between the public
23 defenders and the solicitors is a working relationship. I
24 can't always say it's amicable obviously, but, again, we
25 both -- and all three of us were aware of this case, we

1 had planned to try this case. You know, as part of doing
2 that, we look at evidence, we talk about the case
3 beforehand. You know, I think at some point they said,
4 you know, stop screwing around, tell us what your client
5 will take, if anything, and I told them that the only
6 person that had been screwing around was them because up
7 until, I think, February or March of 2018, the only thing
8 that had been coming out of the State's mouth was a 40-year
9 offer, which we had outright rejected.

10 Q. How did you feel about the offer of seventeen?

11 A. You know, I thought that from a -- at least an
12 objective prospective that, you know, certainly I'd seen
13 offers that were worse. I'd represented clients who hadn't
14 killed somebody who engaged in an armed robbery -- bad
15 armed robberies that received more time and so when you
16 start to look at the overall offer of seventeen years,
17 that puts Mr. Gadson out of the Department of Corrections
18 prior to his fortieth birthday. You take that and you
19 kind of weigh that against what the life tables say is
20 the life expectancy of a black male in the Department of
21 Corrections. If you look at thirty, forty years, you're
22 looking at a realistic possibility on a trial conviction
23 that he's doing natural life and so seventeen years would
24 have been something that I would have counseled Mr. Gadson
25 to really think about because, again, that leaves him

1 plenty of time to get out to be with his family, to have
2 another shot, despite whatever went on here.

3 Q. Do you remember his reaction to the 17-year offer?

4 A. I don't remember a visceral reaction one way or the
5 other. I will say that, you know, I think that initially
6 Mr. Gadson, when we first met, had -- had displayed at
7 least a willingness to accept or evaluate plea offers in
8 the 15-year range.

9 Q. Okay. Did you make sure that Mr. Gadson understood
10 the difference between murder and voluntary manslaughter?

11 A. Certainly that would have been -- that would have been done
12 in spades in the -- in the discussions that we had in the
13 lead-up to trial and then obviously relaying these offers.

14 Q. And did you discuss the significance of the negotiated
15 sentence of seventeen years?

16 A. Certainly. We would have talked about it being, you
17 know, a crime that's commonly tolled at 85 percent. It's
18 not parole eligible, but there's community supervision.
19 We'd talk about thirty to life day for day. You know,
20 typically I also advise my clients at the outset that
21 murder is punishable by death, but this wouldn't have
22 been something that -- you know, the prosecutors office
23 had intimated was he ready to be considered for a death
24 notice, and so that would have been discussed, as well as,
25 you know, just the general sentencing parameters on the

1 charge.

2 Q. And did Mr. Gadson appear to understand those -- those
3 discussions?

4 A. From what I could tell.

5 Q. And prior to the plea hearing, did you discuss
6 Mr. Gadson's constitutional rights with him?

7 A. Certainly.

8 Q. And did he appear to understand those rights?

9 A. Certainly.

10 Q. Did he have any prior experience with the criminal
11 justice system?

12 A. It was my understanding that he did.

13 Q. Did he understand what rights he would have been
14 giving up by entering into a guilty plea?

15 A. Certainly. We would have discussed -- we would
16 have discussed kind of three main areas, one of which
17 was his relinquishment of his right to a jury trial,
18 right of confrontation, and so we would have gone through
19 an exhaustive recitation of the material that would
20 typically be covered in a colloquy because, again, I'm a
21 professional. I don't want my client getting up in front
22 of a judge and not knowing how to answer the questions the
23 judge is posing to him.

24 Q. Did Mr. Gadson ever express any confusion or lack of
25 understanding about anything related to the guilty plea?

1 A. I mean, other than typical confusion regarding what
2 your rights are and having explanations about that.
3 Typical confusion about what GSR purports to show and how
4 that can be used, typical confusion regarding factual
5 allegations. Nothing that was a departure from the normal,
6 nothing that was not remedied by substantive discussion
7 between the two of us.

8 Q. And who made the decision to accept the State's plea
9 offer?

10 A. Randall.

11 Q. Did you do anything to force Mr. Gadson or coerce him
12 into accepting the plea offer?

13 A. No, I did not. And in my closing note, it was my
14 understanding that Randall, you know, just did not have
15 the risk count for trial. I mean, again, he's faced with,
16 you know, a Class A misdemeanor, a conviction either way,
17 and thirty to life is -- is a big dice to roll when you've
18 got seventeen at 85 percent with two or three years off
19 anyway.

20 Q. And so it's your testimony that you were prepared to
21 move forward with trial if an offer was not accepted?

22 A. Certainly. We had, you know, multiple potential
23 experts to use. Although I don't recall what -- again,
24 the timing of this, this is five, six years ago mind you,
25 or feels like five or six years ago, but, you know,

1 certainly we were prepared to go forward with trial. I
2 mean, there's nothing here that makes me even second guess
3 that.

4 Q. Well, did Mr. Gadson ever do anything to indicate that
5 he was having doubts or wished to change his mind about
6 after he decided to accept the plea offer?

7 A. No. The only -- the only thing that he asked, and
8 this is -- again, you know, after we go through sentencing
9 in cases like this, I don't just leave my -- like I don't
10 just -- you know, they don't go out this door and I never
11 see them again. Obviously the gravity of the situation
12 requires that I go back and make additional contact. It
13 looks like Mr. Gadson was asking me to file a PCR. He
14 specifically indicated he did not desire a direct appeal,
15 he had no further questions or requests of my
16 representation. Though, again, he did ask me to file a
17 PCR; something that I told him he would have to do when he
18 got to the Department of Corrections within the one-year
19 period after the ten-day post-trial motion limitation.

20 Q. Did you ever instruct Mr. Gadson to answer yes to all
21 the questions at the plea hearing?

22 A. No, I think the only thing that I would have
23 explained to him is that, you know, when you're going in
24 and answering these questions, one, you need to understand
25 the gravity of your answers, but, two, you know, he was

1 already indicted, so there never had been a waiver of
2 presentment to the grand jury, he didn't have to waive
3 his preliminary hearing right. The only thing that
4 would commonly hang defendants up, and still does, is the
5 factual basis or the factual -- the Government's factual
6 recitation. I counsel my clients in those situations hey,
7 if there's something huge, just a bona fide issue that you
8 have with something that they say, tell me, I'll back us
9 down or we can address it in my mitigation, but I would
10 never just blatantly counsel him to answer yes to every
11 single thing that -- that the judge is asking him.

12 Q. Have you ever instructed a client to just answer yes?

13 A. No.

14 Q. Did Mr. Gadson appear to understand what he was doing
15 during the plea hearing?

16 A. As far as I could tell.

17 Q. Did he respond appropriately to you or the judge?

18 A. To my recollection.

19 Q. Did you agree with his decision to enter the plea?

20 A. I thought from a risk management standpoint it was a
21 smart move. Certainly this is a killing that would have
22 garnered a sentence in a substantial range. Again, we're
23 talking functional life here.

24 Q. All right. Did you ever represent any of the
25 potential witnesses in Mr. Gadson's case?

1 A. I did. As previously alluded to, I had at one point,
2 and I don't know how many years or how many months before,
3 represented, I believe, Donald Steven Carswell.

4 Q. Okay. And do you remember when that occurred?

5 A. Specifically, no. At some time prior to the
6 allegations that were levied here.

7 Q. But the case was resolved before the incident for
8 which Mr. Gadson was charged occurred, right?

9 A. Yeah, that -- there was no concurrent representation
10 issue if that's what you're getting at.

11 Q. Were there any steps taken to determine whether your
12 earlier representation of Mr. Carswell would result in any
13 conflict of interest?

14 A. Yes. The standard of care in the public defender's
15 office would have been that I submit a conflict memo for
16 review by Jen Davis and, I think, Ms. Pringle, Fielding
17 Pringle, of the public defender's office. I think they
18 were the conflict counsel at that time. What we determined
19 after their review and our subsequent meeting was that the
20 only potential conflict that truly existed was my duty of
21 loyalty to Mr. Carswell and that that duty could be guarded
22 by assigning co-counsel to handle the cross-examination
23 and substantive elements of Mr. Carswell's testimony. We
24 -- I'm not gonna say we Chinese walled -- we didn't wall
25 me off, okay, because obviously any witness's testimony

1 is relevant to the case, but Mr. Hawks, Lucas Hawks, I
2 believe, was my co-counsel on this case, was set to handle
3 any testimony or issues that were -- were present. We also
4 thought it prudent to advise Mr. Gadson of the -- of the
5 potential conflict, if you will, and basically obtain his
6 consent to move forward. I remember having that meeting.
7 What I do not remember is if I had him sign a conflict
8 waiver. I think I told you and Ms. Fennell that the paper
9 file may contain a -- a waiver and it did not. I certainly
10 should have done that, but I do -- do specifically remember
11 having a meeting and Mr. Gadson being okay with the issue.

12 Q. Okay. Do you feel that you had any divided loyalties?

13 A. No.

14 Q. And was your representation of Mr. Gadson altered or
15 affected by your prior representation of Mr. Carswell?

16 A. From a probative standpoint, I don't know that -- or
17 really, I guess, materiality is more what I'm looking for
18 here. Steven Carswell, that didn't really play into my
19 analysis of the case insofar as whether or not -- you know,
20 Randall's involvement really was never in question, okay,
21 and so how -- how Mr. Coleman got to be with Mr. Gadson
22 really wasn't all that material in the case. Certainly
23 there were some allegations that there was a setup, but to
24 my recollection, and, again, we're talking four, five, six
25 years ago, I'm not sure, but, you know, there were never

1 any clear communications between Mr. Gadson's side of this
2 thing that this was an out and out planned homicide, a
3 lying in wait type of homicide. And so, you know, to a
4 certain extent while material to a degree and probative
5 to a degree, it was not probative or material to what
6 transpired between Mr. Gadson and Mr. Coleman, and that
7 would have been the focus of the trial.

8 Q. All right. And I believe you've already answered
9 this, but I just want to be clear for the record. Did you
10 discuss any conflict or potential conflicts with Mr. Gadson
11 regarding Mr. Carswell?

12 A. Certainly.

13 Q. Okay. And he was comfortable with you continuing
14 forward on his case?

15 A. Yeah. He would have been given the option to have a
16 new lawyer assigned. That lawyer likely would have been
17 Mr. Hawks, who had already been working on his case at that
18 point.

19 Q. Did he ever seek to have you relieved?

20 A. Not to my recollection.

21 Q. And did he ever express any concern with regards to
22 your ability to represent him?

23 A. No. Again, not to my recollection.

24 Q. And you've already testified that you had plans in
25 place for trial in regard to Mr. Carswell as a witness,

1 correct, because of the conflict?

2 A. Yeah. Again, anything I learned in the course of
3 representing Mr. Carswell, I would not have been able to
4 use, and so, you know, again, as I sit here today, there
5 were no issues with my duty of loyalty to Mr. Carswell and
6 my representation of Mr. Gadson. These were things that
7 were discussed with Ms. Davis and Ms. Pringle and, again,
8 with Mr. Gadson.

9 Q. All right. Did you discuss Mr. Gadson's right to
10 appeal?

11 A. Certainly. Again, in my closing note we clearly
12 consulted about what direct appeal was, that he did not
13 desire a direct appeal. We would have advised him as to
14 the timeframe that he needed to make those trial motions.

15 Q. Did the plea judge also discuss with Mr. Gadson his
16 right to appeal?

17 A. I -- I would assume that she did. That is part
18 of the standard colloquy and Judge Benjamin has handled
19 probably tens of thousands of plea colloquies, and so
20 while I have no independent recollection as I sit here
21 today, fortunately I think you-all provided me with the
22 transcript for reference with the subpoena notice and I've
23 not reviewed it recently, but certainly that would have
24 been something Judge Benjamin would have likely done.

25 Q. Were you aware of any grounds upon which an appeal

1 could have been pursued?

2 A. From a substantive standpoint, no.

3 Q. Were there any post-trial motions discussed?

4 A. No, the client had no further questions or requests.
5 Client does not desire a direct appeal of the guilty plea.

6 Q. In your opinion, was there any viable motion to file?

7 A. I mean, from a viability standpoint you can file a
8 motion for reconsideration of sentencing; though in this
9 case, the sentence was a negotiated term. So, you know,
10 certainly you can make the motion. Procedurally it's
11 allowed. Practically speaking, you know, it would be
12 something for the judge to decide, but, again, the --
13 limited for any value of x-ray.

14 MR. BARLOW: Thank you, sir. Please answer any
15 questions Ms. Fennell has for you.

16 THE WITNESS: Certainly.

17 THE COURT: Ms. Fennell.

18 MS. FENNELL: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MS. FENNELL:

21 Q. Okay. So, Mr. Krzyston, do you recall from your notes
22 when you actually received Mr. Gadson's discovery?

23 A. Can I review?

24 Q. Yeah, certainly.

25 A. I don't recall when exactly. Oh, here. I'm sorry.

1 12-11-15. Three years of practice at that point.

2 Q. So 12-11-15 is when you received his discovery?

3 A. That would have been -- and, again, I've previously
4 described the working relationship between the solicitors
5 and the public defenders, it's a working relationship
6 though, not always the end goal. A lot of that centers
7 around discovery issues and the prosecutor's office does
8 not get discovery to you all in one swoop, right? It's
9 kind of like you get statements, incident reports at the
10 beginning, then you start to get forensic reports and then
11 you have to go in and ask for bench notes, and so discovery
12 is very much a process like in common pleas, very much a
13 process in criminal court, and, you know, that process
14 would have started on December 11th.

15 Q. Okay. And do you know when the process ended?

16 A. The process would have been substantially complete --
17 I mean, I can't put a date on it because, again, we're
18 getting -- you know, there are issues that arose in this
19 case specific to GSR and to DNA, and so it looks like our
20 initial trial dates were in February 2017. Standard
21 practice in this circuit and many others is for prosecutors
22 to begin contacting the State crime lab when they have a
23 trial date to put a rush status on forensic reports and so
24 best guess -- and, again, regrettable that I did not keep
25 that note, but best guess would have been in or around

1 February to March, April of 2017.

2 Q. Okay. And you said that you went over the discovery
3 with Mr. Gadson. How -- how would that process have taken
4 place?

5 A. So typically I give my homicide clients the
6 opportunity to take their discovery. I always counsel
7 against it. If you've ever been to the detention center,
8 you're held with, I don't know, probably fifty to seventy
9 other inmates in the same, you know, pod, if you will.
10 Doors don't always lock, other inmates in worse situations
11 or equally bad situations tend to get ahold of information
12 and they sound like they know more than they do. And, in
13 fact, I think that happened in this case where several
14 inmates in the Alvin S. Glenn Detention Center made late --
15 made late statements in the case. But, yeah, I would give
16 that discovery to them, I would counsel them that they can
17 look at it as long as they'd like, I'll sit here, that they
18 should give it back to me, but if it's their desire, they
19 could keep the contents of the discovery with them and that
20 we can discuss it as we went along.

21 Q. And do you know -- so is it your testimony that
22 Mr. Gadson kept his discovery materials?

23 A. I don't recall whether or not he kept his discovery
24 materials. I know Mr. Gadson requested discovery packets
25 or updated discovery several times throughout the case. I

1 remember giving that to him. I just don't remember if
2 I sat there while he reviewed it and I took it back.
3 Truthfully, I think it was a combination of both, but
4 Mr. Gadson was most interested in the statements and
5 obviously the GSR. I'm sorry.

6 Q. Okay. And so what specifically as far as statements
7 -- in your mind, do you recall which statements were most
8 concerning to you?

9 A. His statement was probably the most concerning to me
10 and then, again, we -- really there were two people there
11 when what -- the most -- the biggest issue happened, right,
12 Mr. Gadson and Mr. Coleman. I don't believe that there
13 are any allegations that anybody was directly rela -- like
14 directly involved in the actual shootout. You can correct
15 me if I'm wrong again, but my primary concern would have
16 been Randall's statements and then beyond that I don't --
17 again, this is four or five years ago, so I don't have a --
18 a great recollection of like which -- which statements, I
19 think, were most harmful.

20 Q. And Mr. Gadson's statement, is that -- would you
21 agree, which enabled you to get him a plea deal on the
22 voluntary manslaughter?

23 A. I think part of it, yes, but what concerned me was
24 the -- I mean, there were basically contradictions there
25 for lack of a better term and so what concerned me was

1 that you're asking the jury to believe Randall after
2 he's already lied to the police and so, you know, that
3 would have been the part that was most concerning to me.
4 You know, I think ultimately that Randall's assertion
5 is basically what I would characterize as imperfect
6 self-defense, did aid in obtaining an offer on the case.
7 I think that offer, and I can't speak for the prosecutor,
8 but I think that offer was made in view of all of the
9 evidence that we had in the case.

10 Q. And do you recall when you received the updated
11 residue kit?

12 A. I don't. Again, I can't recall the exact timing,
13 whether it was just before the issue broke so to speak.
14 And, again, as I recall the way that we were informed was
15 through a news article that first appears I think in
16 FITSNews and so -- though I hate to give them that credit,
17 you know, what we subsequently found out is that Solicitor
18 Johnson had begun mailing defense attorneys a letter
19 advising that his office was in charge of undertaking a
20 review of the GSR section at SLED, and so that is -- you
21 know, I believe Fielding would have gotten that letter. We
22 never received a letter to my knowledge directly informing
23 Randall that his case was one of the affected cases, but,
24 again, just looking at the raw data that we obtained that
25 we would have obtained after the report -- first report was

1 disclosed, again, it slapped me in the face that there was
2 clearly at least one particle there that was fused that
3 appeared to be GSR or what could be GSR and, you know,
4 again, I specifically remember raising this with Kathryn
5 and I think Kathryn and I talked about getting into it.
6 We -- you know, I think it was a vociferous debate about
7 whether or not they had an issue here in this case.
8 Ultimately, we had a reanalysis, so I think, you know,
9 that's when the letter on the law came down.

10 Q. Okay. Now you said that -- that you met with
11 Mr. Gadson approximately twelve times. Do you know after
12 -- after -- you said this case was to be called in May of
13 2017 I believe is what said?

14 A. Again, I can't recall. If you'd just permit me to
15 review my notes. I believe that's right.

16 Q. And do you know how many times from your notes that
17 you met with him after May of 2017?

18 A. Well, he -- oh, you're saying May of 2017? So the
19 initial trial date, I think, would have been February. We
20 had several push-backs after that. I think 5-16-17, that
21 would be informing him that the trial had been moved.
22 7-21-17, a phone call to his mother, three days later,
23 7-24, meeting with investigators, 8-25 -- I certainly would
24 have met with him, you know, at least four-ish times, if I
25 -- you had to put a number on it. Again --

1 Q. So --

2 A. -- I don't have specific -- you'd have to look at the
3 jail records because we sign in and out, they sign us in
4 and out on the computer, but certainly a handful of time in
5 between the first trial date and what was ultimately the
6 plea date --

7 Q. Okay. So do you -- do your notes accurately reflect
8 the dates that you visited with him?

9 A. To the extent that I noted, you know, standard of
10 care visits, that's, again, as I previously indicated, I
11 believe that there are additional visits here that aren't
12 reflected in my notes, but which may be reflected in the
13 detention center records.

14 Q. How many times did you visit with him according to
15 your notes after May 23, 2017?

16 A. All right. So I've got one on 7-21-17 and then
17 the plea note in March of 2018 indicates at the direction
18 of client after several meetings and discussions of
19 substantive evidence, we began negotiating a range of
20 ten to twenty. Various offers in the form of negotiated
21 ranges were presented and rejected by client. Client
22 specifically rejected offers to plead to negotiated ranges
23 of fifteen to twenty and ten to twenty-five. A trial date
24 was set. Prosecution made a final offer to negotiate the
25 terms of seventeen, which client accepted.

1 And so though I don't have specific records. Again, a
2 handful of times -- at least once. Standard of care in the
3 public defender's office was once every ninety days. There
4 were certainly fruitful discussions going back and forth
5 about the disposal of this case and so if I had to guess,
6 which I think I do at this point, I think three to five
7 times.

8 Q. Okay. Now you said that -- you testified that there
9 was nothing that Mr. Gadson asked for that you didn't
10 provide.

11 A. Certainly if I had information that he would have
12 requested, I would have provided it. And if he -- I'm not
13 -- I'm not holding anything back from my clients. This is
14 their life.

15 Q. Okay. So over the three years that he was
16 incarcerated, the total amount of time that you spent with
17 him would have been approximately what?

18 A. You're asking me to guess about how -- the duration of
19 our visits?

20 Q. Yeah. You've testified that your visits were like
21 fifteen, ten, twenty minutes here and there, so what would
22 you estimate as the total amount of time that you spent
23 with him?

24 A. I don't know that I can rightly answer that, but it
25 would have had to have been in the neighborhood of at least

1 ten hours. I mean, we had substantive discussions a number
2 of times about the self-defense issues and the issues that
3 were present there, as well as it looks like we'd gone back
4 and forth on a number of different ranges, and so, I mean,
5 substantive discussions. To put an hour mark or a minute
6 mark on it, I don't think I can rightly do that on the
7 stand. If I had to guess, at least ten hours.

8 Q. So if you met approximately twelve times, that would
9 mean that you would have had to have met with him at least
10 an hour each time; is that fair?

11 A. Not necessarily. I mean, if you're averaging it
12 out, yes, but certainly, you know, saying hello and saying
13 the prosecutor doesn't have anything new on the case is
14 fundamentally different than saying they've offered you a
15 range of fifteen to twenty. So if you want to average it
16 out, I guess you could do that, but I would have visited
17 with Randall for as long as I felt he needed to understand
18 the issues that were before us and if I felt like I needed
19 more time, I certainly had the time to do that. And, you
20 know, I -- I put times on these things to start with and I
21 don't know that that accurately reflects what we actually
22 discussed and the substance of our conversations. I think
23 it can be a bit misleading, but, you know, if you want to
24 put an average on it, ten years -- ten hours.

25 Q. Okay. And do your records reflect when you actually

1 went through his discovery motion with him?

2 A. I mean, insofar as there are clear indications that we
3 discussed discovery, yeah. I mean, we certainly could have
4 discussed it more than what's just in these minimal notes
5 that I've got.

6 Q. Okay. Now you talked about a forensic download of a
7 phone. Whose cell phone was that; do you recall?

8 A. Let's see. I believe it was Randall's. I could
9 be wrong on that, but we had contacted Larry Daniel, as
10 well as Chris Watkins, and Larry is a cell phone examiner
11 out of North Carolina, but I believe as I recall the
12 entire way that the Richland County Sheriff's Department
13 confronted Randall about his first statement was based
14 on triangulation, which obviously doesn't pinpoint a
15 person's location, but offers kind of a circumstantial
16 indication where that person may be in relation to three
17 specific towers, and so I think that was the evidence
18 that the sheriff's department confronted Randall with
19 when he gave his alibi statement, which then yielded the
20 self-defense proclamation.

21 Q. And you told us that you had hired investigators
22 Robert and Chris Watkins?

23 A. Correct.

24 Q. But you were unaware of information they would have
25 compiled. So if you were unaware of that information, then

1 certainly you could not have conveyed that information to
2 Mr. Gadson; is that correct?

3 A. No. I -- what I testified to was that I was unaware
4 as I sat here what the substance of their investigations
5 were. At the time obviously I would have been very much
6 aware because I was lead counsel on a case that was
7 preparing for trial that was a very triable case, again,
8 for a number of issues and so we would have been in
9 fruitful discussion, substantive discussion, about what
10 Robert and Chris were able to obtain. As I recall, it was
11 difficult to get with any witness or get any witness to
12 engage with us regarding the substantive allegations.

13 Q. Okay. And you never spoke to Mr. Schoclet that was
14 here to testify today?

15 A. I don't have anything in my notes. Again, I would
16 never speak to a witness because I don't ever want to
17 make myself a witness to the case. I would only speak to
18 witnesses through an investigator because, again, if
19 somebody tells me something useful one time and then goes
20 and tells an investigator something different, I've created
21 a bad situation for myself in which I'm a witness to my own
22 client's case and I certainly -- with ethics rules and all
23 the rules that cover our practice prohibit that, so I would
24 only communicate with witnesses through investigators.

25 Q. And is it -- would it be the practice of your

1 investigators to let the potential witnesses know that
2 they are contacting them on behalf of defense counsel?

3 A. Oh, certainly. That is one thing -- that is like
4 criminal defense 101. You tell your investigators
5 you clearly and unequivocally state who you're
6 investigating on behalf of, okay? If you start letting
7 your investigators go out there and tell them they're
8 on behalf of the prosecution or misrepresenting the party
9 that they work for, your bar license is in jeopardy, and
10 so certainly any investigator that I hired would have
11 clearly plainly stated I'm working for Mr. Gadson at
12 Mr. Krzyston's direction.

13 Q. So you testified that you -- you said during the plea
14 hearing you -- prior to the hearing you would go through
15 the questions with a client because you would want the
16 client to appear well informed in front of the judge. I
17 don't remember the exact terminology you used, but, you
18 know, you've heard Mr. Gadson testify that you instructed
19 him to just answer yes to all of the questions. Would
20 it be -- in going over that kind of -- giving those
21 instructions to a client, isn't it possible that it would
22 appear to the client that you're telling them just to
23 say yes to the questions and that's how you might have
24 educated them on how to follow through in the hearing?

25 A. I don't think I would agree with that. I think that

1 my recitation of the colloquy and the rights contained or
2 addressed therein would be pretty clear. And, again, I
3 -- it would never be my practice to go in and say say yes
4 to everything to the judge blindly. You know, this is --
5 I'll make clear again this is an opportunity for them to
6 take up any issues they've got with the judge. I mean,
7 I've got no control, right, when the judge is asking him
8 questions and so, again, I would not want him to appear
9 unprepared, right? I would never want to bring my client
10 up on a Class A felony and have the judge look at me with
11 six heads and go why haven't you gone over the material
12 I'm addressing in the colloquy and so I never would have
13 instructed him on a specific answer. I would have, again,
14 addressed the fact that there are frequently issues with
15 the factual recitation and the factual basis as presented
16 by the Government, but that typically we can address
17 factual discrepancies in mitigation, especially in a case
18 like this where we're pleading down from voluntary
19 manslaughter, there's a bona fide genuine issue of material
20 fact as to whether or not this was a justified killing.

21 Q. And then you testified from your notes that
22 Mr. Gadson told you that he did not want an appeal, but
23 that he requested you to file a PCR application for him.
24 Did that occur on the day of the plea hearing?

25 A. That would have been our conclusory meeting at

1 sentencing. Typically I handle the conclusory meeting
2 in holding downstairs. That would have certainly been the
3 practice today. No direct knowledge of what Mr. Gadson
4 actually told me, again, four or five years ago, but my
5 note reads as follows: Client had no further questions or
6 requests. Client does not desire direct appeal of guilty
7 plea. Client confused about PCR, asked me to file.
8 Informed he would have to file PCR paperwork once he
9 arrived at Department of Corrections and he should ask
10 admittance staff and other roommates. Informed client that
11 PCR allege that I did something wrong, meaning that he had
12 to do it. Client understood. Thanked me for my service.
13 No additional questions or requests filed. Closing the
14 case out.

15 Q. So immediately after sentencing he's already asking
16 about a PCR?

17 A. Yeah. Not -- not abnormal for most criminal
18 defendants.

19 Q. Okay. So you said that there were -- you're not aware
20 of any appealable grounds -- that he had any appealable
21 grounds. Have you ever appealed a guilty plea?

22 A. Are you asking about a direct appeal?

23 Q. Yes.

24 A. Yeah, we -- one, yes. As a public defender, I never
25 would have handled a direct appeal. Typically what I

1 would file was a notice of intent to appeal, which would be
2 filed with the clerk of the Court Appeals court within, I
3 believe, ten days. At that point the appeals court clerk
4 would send Mr. Gadson a letter saying hey, we need a more
5 definite statement and the direct appeal issues. If you
6 don't provide it, we will dismiss the appeal.

7 And so, yeah, that would typically be how I would
8 handle -- if I went to trial and I'd been in trial and
9 received convictions on a homicide at this point or murder
10 at this point. So, yes, my office had completed those
11 notices of intent to appeal. That aside, I've also handled
12 in the appellate court a direct appeal for a conviction of
13 murder that I also handled the trial on; that being State
14 v. Mimi Joe Marshall.

15 Q. So even if there are no appealable grounds in your
16 opinion, if a client asks you to file a notice of appeal,
17 you have to file a notice of appeal; is that right?

18 A. Certainly. I mean, it's not my job to pass muster
19 on the validity of direct appeal challenges. I would
20 file a notice of intent to appeal had I been instructed
21 to do within the window. We'd provide the information
22 that he would have needed to instruct us. We'd provide
23 an opportunity. If we weren't instructed to do so, we
24 wouldn't have done so.

25 Q. Okay. And so moving to the issue of Donald Steven

1 Carswell, when did you represent him?

2 A. Again, I can't recall specifics. You would have to
3 look at the file and that information to narrow down exact
4 dates, but there was an appreciable amount of time between
5 Mr. Caldwell's -- Carswell's, excuse me, plea and the
6 initiation of this case.

7 Q. And so you said at the time that you represented
8 Mr. Gadson you had been practicing law for three years?

9 A. Thereabouts.

10 Q. So it was sometime within that three-year time period?

11 A. I would assume so.

12 Q. Okay. And you said that you recalled advising
13 Mr. Gadson of this potential conflict, but you don't
14 recall whether you actually had him sign a conflict
15 waiver?

16 A. Yeah, again, I don't recall. I -- I remembered
17 creating a conflict waiver. Again, you've told me I think
18 out of court that you-all didn't see any kind of conflict
19 waiver in the file and so it's certainly possible and
20 within the realm of possibility that we didn't do a written
21 record of that, which is regrettable and certainly on me,
22 but I think, again, you-all probably have electronic copies
23 of the file. If you-all pulled the paper file from the
24 public defender archive, you may see that in there.

25 Q. Okay. And did you review all of the evidence in this

1 case?

2 A. When?

3 Q. During your representation of Mr. Gadson.

4 A. Certainly.

5 Q. Okay. So you would have been the person that reviewed
6 the statement given by Mr. Carswell?

7 A. Well, Mr. Hawks and I, yes.

8 Q. Okay. But you just said that you -- you reviewed all
9 the evidence?

10 A. Certainly.

11 Q. Okay. And so you would have also reviewed the
12 Facebook evidence of -- Facebook messages between
13 Mr. Carswell and the victim?

14 A. Yeah, that would be, again, contained within the
15 Cellebrite report that the sheriff's department disclosed.

16 Q. I'm sorry, say that again.

17 A. Those messages would have been contained within the
18 Cellebrite report that the sheriff's department disclosed.

19 Q. And you would have reviewed that?

20 A. Certainly. I mean, I'm not gonna represent somebody,
21 again, on a Class A felony and not review evidence.

22 Q. Okay. And you testified that you had engaged multiple
23 experts in preparation for trial?

24 A. In various, I guess -- yes, I mean, sought review and
25 then formal retention in some respects, I believe.

1 Q. Okay. Do you recall what type of experts that you
2 were going to use in Mr. Gadson's defense?

3 A. We had contracted with Gary Reeny (ph.). He was a
4 crime scene reconstructionist. I believe he was utilized
5 in the officer who shot that fellow in the back down in
6 North Charleston. Do you remember what his name --
7 Michael Slager. I believe Andy Savage used Reeny in
8 that case to opine on reaction times. We consulted with
9 Mr. Reeny on -- about the viability of the self-defense
10 claim and specifically whether there was any forensic
11 information or objective information which could overcome
12 the possibility of a self-defense claim being made. As
13 I recall, Mr. Reeny felt that this was probably a
14 self-defense shooting though, again, his opinion's based
15 on what he's got. We also engaged other experts.

16 Were you wanting a thorough debrief of all the experts
17 we engaged or --

18 Q. Well, would the experts be something that you would
19 discuss with a client?

20 A. Certainly. I mean, again, we're -- we're spending
21 money to basically get a full scale appraisal of the
22 factual things that we can claim and also, you know, look,
23 we want good, bad or ugly when we go to these experts,
24 right, because if it's bad or it's ugly, we need to know
25 how to confront it and so, you know, those would be things

1 that we would be discussing back and forth with Randall
2 and, again, specifically with regard to viability of
3 self-defense.

4 Q. And so would you say that at the time that Mr. Gadson
5 entered his plea that you had a good idea of what your
6 experts would be testifying to?

7 A. Again, I don't recall specifically where we were with
8 what our experts were doing, but, again, I mean, certainly
9 this was a self-defense case and a case that centered upon
10 justification and so they would have presented information
11 that to the extent applicable for the justification area.
12 Chris Watkins and the cellular phone examiners weren't, as
13 I recall, able to make fruitful progress in contending or
14 calling into question triangulation information and so
15 really the case, again, would have fallen to Mr. Reeny if
16 we felt it was necessary. You know, the dual edged sword
17 with experts is that, you know, juries are highly
18 skeptical. All research we have indicates it. Juries
19 are very skeptical of experts and they want to hear what
20 happened from the defendant's mouth and, you know, it would
21 have been a game time decision as to whether or not we
22 called Mr. Reeny or we had Mr. Gadson testify to what
23 happened.

24 Q. Okay. And then during the plea hearing you -- you
25 indicated that -- that this was an appropriate case for

1 trial. What in your mind was the reason that you did not
2 take this case to trial?

3 A. The client didn't have the risk count.

4 Q. Okay.

5 A. I mean, any case -- and just to clarify that comment a
6 little bit, any case is an appropriate case for trial. I
7 mean, the defendant's the ultimate arbiter about whether or
8 not he wishes to go to trial or take a plea, right? The
9 hallmark in the American judicial system is confrontation,
10 especially in the criminal capacity, and so any case is
11 applicable or appropriate for trial, right, but in this
12 case particularly there are factual things that we could
13 have used that would have inured to Mr. Gadson's benefit.
14 There were also factorial issues in the case that would
15 have been a hindrance to his justification defense, but,
16 again, we talked about those and, you know, I did not hide
17 the fact that there was -- there was a colorable path to an
18 acquittal if the jury believed him.

19 Q. Okay. Is there a point in time that it's too late for
20 a defendant to request that their counsel be removed?

21 A. No.

22 Q. So you would --

23 A. Well, I will say this. Let me qualify that, okay? I
24 think the Court -- it's within the Court's inherent power
25 to remove me as public defender or private counsel to the

1 extent that it thinks it's appropriate, okay? I think that
2 there is a point in time where that removal may prejudice
3 the client and so I think that the Court is also -- it's
4 also within its discretion to go in and say look, if we --
5 you know, we want this trial to go forward, the solicitor's
6 office can call this case to trial, it's ripe for trial,
7 and so if we relieve your counsel you're gonna be left at
8 a disadvantage. And so, I mean, I think from an academic
9 standpoint, yeah, there's a point at which the client is
10 gonna be prejudiced worse by the removal, but that
11 certainly would not have been a decision that I would have
12 made. It would have been -- you know, if the client asked
13 me to relieve -- or put in a motion for relief to remove
14 myself as counsel, I would have had no problem doing it.

15 Q. Okay.

16 A. I don't take these cases personally. I probably had
17 a hundred cases on my docket at one time and certainly we
18 rearrange cases in the public defender's office all the
19 time. I could have taken another homicide, another lawyer
20 could have -- could have stepped in. Given enough time,
21 there would be no prejudice to the client.

22 Q. Okay. And you testified that after the first two or
23 three visits you-all had no problems communicating?

24 A. Yeah. I mean, again, I don't recall any outward
25 difficulties communicating back and forth. The initial --

1 Randall was young when this thing started and so the
2 impression I got was that he was intimidated and scared.
3 Look, I mean, Randall doesn't know anybody like me. I
4 mean, I don't -- you know, like I don't expect him to
5 come in and trust me day one, and so from a normality
6 standpoint that's something that in the public defender's
7 office you deal with all the time.

8 Q. Okay. And you testified that you-all got along. You
9 didn't have any -- he testified that -- that you-all got
10 into it, but you testified that's not the case; is that
11 right?

12 A. Yeah. I mean, certainly we could -- like, again, I
13 have certainly a different definition than most people of
14 getting into it. There was never a point where I felt
15 uncomfortable with Randall or that I felt that Randall had
16 an emotional, visceral reaction to my representing him.
17 Could we have bantered back and forth about defenses and
18 the viability of defenses? Again, you can probably tell
19 I'm an emotive person, I'm a trial lawyer, and so, you
20 know, certainly could he have construed me to have said
21 something that we're getting into it maybe, but from my
22 perspective, no fundamental disagreement, no breakdown in
23 communication. A goodhearted dispute about factual issues,
24 maybe, but every attorney/client relationship has that,
25 right? I tell people you don't hire me to be a friend,

1 you hire me to understand the circumstances in front of you
2 and how best for you to effectively confront those. And
3 so, again, there may be issues there where we go back and
4 forth, but in terms of avenues of communication, open,
5 clear, effective.

6 Q. Did you ever get a sense from Mr. Gadson that he was
7 unhappy with your representation?

8 A. No, I got the sense that Mr. Gadson was not happy
9 with the situation, but, again, any time that there was
10 an issue that Mr. Gadson had, we took the time to discuss
11 it, and it was an amicable relationship. I mean, it was
12 probably one of the more amicable relationships I've had
13 as attorney/client.

14 Q. Did you ever get the impression from Mr. Gadson that
15 he didn't feel like you were giving him all of the
16 information he needed?

17 A. No. And, again, I would never have intentionally held
18 anything back from him.

19 Q. Okay. Did Mr. Gadson -- did he write to you
20 frequently?

21 A. Maybe. Again, we get a lot of jail mail. We do our
22 best to screen it. I don't think -- inmates give it to
23 various different attorneys. I mean, it's not abnormal
24 for me to go into a pod and get six or seven letters and
25 it takes me a couple of weeks to get them back into our

1 in-office distribution network. I recall him writing a
2 handful of times, but there are folks that wrote me a bunch
3 and I'd say Randall was medium, okay? Not -- there are
4 clients that never write me, there are clients that write
5 me every week. Randall was kind of just in the middle.
6 Kind of a brain man.

7 Q. Okay.

8 MS. FENNELL: Your Honor, may I approach the witness?

9 THE COURT: Yes, ma'am.

10 BY MS. FENNELL:

11 Q. If you will take a look at this document and see if
12 you recognize that document?

13 A. Yeah. I mean, this is definitely how Randall wrote
14 with like the mixture of letters and numbers to kind of
15 express, but whether or not like I actually -- again, if
16 this was in the file, it's something that I saw, but as I
17 sit here today, you know, you-all haven't provided me with
18 a copy of the file or anything. I did call the public
19 defender's office wanting to get -- I think Theresa runs
20 archives. So, I mean, I couldn't -- I wouldn't swear on
21 my life that this came from the file, but this looks like
22 Randall's writing, it reads how Randall wrote and, you
23 know, if you tell me it came from the file, that's fine.

24 Q. And what is the date of that letter?

25 A. So the letter itself isn't actually dated. There does

1 appear to be stamped date that says received February 8th
2 of 2018 by persons unknown. Again, it's blank.

3 Q. Okay. And is he expressing agitation in that letter?

4 A. He's expressing an indication that he believes I'm
5 working both sides, but from a substantive standpoint he
6 looks to be providing guidance about what kind of offer he
7 might accept.

8 Q. As far as a plea?

9 A. Uh-huh.

10 Q. Okay.

11 A. Because, again, evidence that he thinks his case is
12 messed up. I'm paraphrasing here. Again, this would have
13 prompted a likely visit and discussion and it's clear that
14 we're in the middle of plea negotiations, assuming this
15 letter's authentic and, you know -- and this would have
16 prompted a visit. This would have -- we would have had
17 an in-depth discussion. You know, I don't just let
18 allegations go that I work for both sides. I try to make
19 it painfully clear to my clients that I'm only representing
20 them.

21 Q. Okay.

22 MS. FENNELL: Your Honor, at this time we would like
23 to offer this into evidence.

24 MR. BARLOW: Your Honor, my only question would be
25 where did the letter come from in terms of authenticating

1 it? He says he recognizes the handwriting, but he did not
2 -- he's not aware if he received it or not. Did they take
3 it from the file or --

4 MS. FENNELL: It was -- Mr. Gadson had it in his
5 possession.

6 THE COURT: Do you recognize his handwriting?

7 THE WITNESS: Again, to the -- yeah, I mean, it
8 looks like the writing that I received from him.

9 THE COURT: Go ahead.

10 MS. FENNELL: I would ask that this be marked as
11 Applicant's Exhibit 2.

12 THE COURT: Yes, ma'am.

13 (Plaintiff's/Applicant's Exhibit Number 2, a letter,
14 was marked and entered into evidence.)

15 MS. FENNELL: I beg the Court's indulgence.

16 THE COURT: Yes, ma'am.

17 BY MS. FENNELL:

18 Q. Mr. Krzyston, are you aware that -- you testified that
19 Mr. Gadson went to Eau Claire, but are you aware that he
20 did not actually go to Eau Claire, he went to E.L. Wright
21 and Spring Valley?

22 A. Yeah. I mean, I don't know that we ever obtained his
23 schooling records. That would have been something that
24 the school system had routinely objected to and refused to
25 provide. The information that would be in my notes would

1 be the information that was relayed to me by Mr. Gadson.

2 Q. Okay. And you indicated that -- well, my notes are
3 not clear. Had Mr. Gadson served any time prior to your
4 representation of him?

5 A. It's my understanding he had done some pre-trial
6 arrest time, but he denied in and out of prison history,
7 which in my parlance at the time was that there was no
8 in-state or out-of-state prison confinement.

9 MS. FENNELL: All right. I don't have any further
10 questions. Thank you.

11 THE WITNESS: Yes, ma'am.

12 THE COURT: Mr. Barlow.

13 MR. BARLOW: Nothing from the State, Your Honor.

14 THE COURT: You may step down, sir.

15 THE WITNESS: Thank you, Judge.

16 THE COURT: May he be --

17 MR. BARLOW: No objection.

18 THE COURT: Have a good day, sir.

19 THE WITNESS: Thank you, Judge.

20 (Witness excused.)

21 THE COURT: Mr. Barlow.

22 MR. BARLOW: Nothing else from the State, Your Honor.

23 THE COURT: All right. I have made one finding so
24 far. I find that Ms. Fennell and Mr. Barlow have been
25 exceedingly thorough in their preparation and questioning

1 today.

2 As to the PCR ruling or issues regarding the PCR
3 application, I must, and will, take this under advisement
4 because I have written copious notes. I don't like to
5 issue what I call fast-food rulings or drive-by rulings,
6 so bear with me and I'll get a ruling to you.

7 MR. BARLOW: Okay.

8 MS. FENNELL: Thank you, Your Honor.

9 THE COURT: Thank you-all for your patience so much.

10 MR. BARLOW: Your Honor?

11 THE COURT: Sir?

12 MR. BARLOW: I meant to give you this at the
13 beginning.

14 THE COURT: Good. I'm gonna need it. Thank you,
15 sir.

16 (Whereupon, the proceedings were concluded at
17 4:39 PM.)

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C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter
for the Eleventh Judicial Circuit of the State of
South Carolina, do hereby certify that the foregoing
is a true, accurate and complete transcript of record
of all the proceedings had and the evidence introduced
in the hearing of the captioned case in Circuit Court
on the 23rd day of May, 2022.

This transcript may contain quoted material.
Such material is reproduced as read by the speaker.

I do further certify that I am neither of kin,
counsel, nor have an interest to any party hereto.

March 17, 2023

/s/ Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

Statement

State of South Carolina)
) S. S.
County of Richland)

Personally appeared before me this 9/22/15 at 1505 hrs, an officer duly and legally authorized to administer oaths in the above named county and state aforesaid, comes one Rasheid Schoclet of [REDACTED] Woodstock Drive Cola, SC 29223. Day time telephone number 803-220-[REDACTED]. Night time telephone number _____.

Who makes the following statement under oath to wit:

Questions: Inv. Carwell and Inv. Crane

Answers: Rasheid Schoclet

Q: Did you come to headquarters today voluntarily?

A: Yeah I came here voluntarily.

Q: Why did you come to headquarters today?

A: Because my phone was involved and I only wanted y'all to know that is my involvement. Just that my phone was used.

Q: Who were you letting use your phone to call “DC” Paul Coleman?

A: Stephen Carswell 'Stevo'.

Q: What does Stephen Carswell call you?

A: They call me Fred. I used to walk like Fred Sanford. That's how I got that name.

Q: How long have you known Stephen Carswell?

A: About three months. We met in Folkstone at a kick back.

Q: Why would you let him use your phone?

A: To make calls. His phone was off. To let him make calls to DC, but it wasn't just to DC.

This statement was made in the presence of Carroll & Crane
of the Richland County Sheriff's Department.

I make this statement of my own free will and accord, without reward or intimidation. All of the above is the truth, the whole truth and nothing but the truth.

Sworn to and subscribed before me
this 22 day of September 2015.

Signed: X K. K. K.

Witness: [Signature]

Witness:

Notary Public for South Carolina
My commission expires 9.23.19.



Statement

State of South Carolina)
) S. S.
County of Richland)

Q: Have you ever met DC Paul Coleman?

A: No, I have never met him. I only know him because he calls my phone for Stevo.

Q: Why was he calling for Stevo?

A: I don't know.

Q: How did you find out that DC Paul Coleman was shot?

A: His sister called my phone.

Q: Do you know his sister?

A: No, she got my number from her call log. They share the same plan. She was able to see my number.

Q: Did you talk to DC Paul Coleman on Friday the 18th of September?

A: Yes sir. He was asking for Stevo. I told him that Stevo wasn't around. Well I wasn't around Stevo.

Q: Did you talk to Stevo the night of the 18th after Paul Coleman was shot?

A: Yes sir. I called him and told him that DC sister called me and told me that he was shot and killed.

Q: Did Stevo come to your house the following morning?

A: Yes sir. I told him about DC's older sister said. He took that in and he was silent and he left and went back to work. He was only there for about 10 minutes.

Q: Where was Stevo?

A: I think he was still doing yardwork for his grandmother or his mother.

This statement was made in the presence of Carroll & Crane
of the Richland County Sheriff's Department.

I make this statement of my own free will and accord, without reward or intimidation. All of the above is the truth, the whole truth and nothing but the truth.

Sworn to and subscribed before me
this 22 day of September 2015.

Signed: Xavier S...

Witness: 

Witness: _____

Notary Public for South Carolina
My commission expires 9/23/79.

Statement

State of South Carolina)

) S. S.

County of Richland)

Q: Is it common for DC to call your phone?

A: Yes sir.

Q: Do you know about an argument over the phone between Stevo and DC around September 11th from your phone?

A: No

Q: Did you know about the first gun Stevo sold to Paul Coleman about a month ago?

A: No sir.

Q: Do you know Stevo to have a friend from Aiken Bos Diamond?

A: Yeah, I met him the same night I met Stevo. We were in Folkstone.

Q: Were you aware that DC was trying to buy another gun from Stevo?

A: No sir.

Q: Where were you Friday the 18th of September around 1910 hrs?

A: I was in Folkstone from 1:00 pm to 11:00 pm.

Q: Who was with you during this time?

A: My friend Sherman and Snap.

Q: I showed you a picture, did you recognize this person?

A: Yeah, Randall. I went to middle school and daycare with him.

Q: Why are you friends with him on Facebook?

A: He must have sent me a friend request.

Q: When was the last time you were around Randall?

This statement was made in the presence of _____
of the Richland County Sheriff's Department.

Cornell & Crane

I make this statement of my own free will and accord, without reward or intimidation. All of the above is the truth, the whole truth and nothing but the truth.

Sworn to and subscribed before me
this 22 day of September 2015.

Signed: X Kuma Sava

Witness: [Signature]

Witness:

Notary Public for South Carolina
My commission expires 9-23-19.

Statement

State of South Carolina)

) S. S.

County of Richland)

A: I can't honestly say. I don't know the last time. It's been years. He was in prison. We played ball at Forest Lake.

Q: Did you call Paul Coleman on September 18th at 5:49 pm and 5:51?

A: I pocket dialed him and then I called him back to tell him I didn't mean too.

Q: Did you take part in any way with the shooting death of Paul Coleman?

A: No sir. Hell no.

Q: Do you have any knowledge if Stephen Carswell had anything to do with setting Paul Coleman up?

A: No sir.

Q: Is there anything else you would like to add to your statement?

A: If I come up with information I will call y'all.

Q: Is this statement the truth to your knowledge?

A: Yes sir.

This statement was made in the presence of Carnell + Crane
of the Richland County Sheriff's Department.

I make this statement of my own free will and accord, without reward or intimidation. All of the above is the truth, the whole truth and nothing but the truth.

Sworn to and subscribed before me
this 22 day of September 2015.

Signed: x [Signature]

Witness: [Signature]

Witness: _____

[Signature]
Notary Public for South Carolina
My commission expires 9-22-19.

Statement

State of South Carolina)
) S. S.
County of Richland)

Personally appeared before me this 09/24/2015 at 1300 hrs, an officer duly and legally authorized to administer oaths in the above named county and state aforesaid, comes one Rasheid Schoclet of Woodstock Dr Columbia SC 29223, Day time telephone number 803-220- Night time telephone number 803-220-

Who makes the following statement under oath to wit:

Q: Carwell, Crane

A: Rasheid Schoclet

Q: Did you come to H'Q today voluntarily?

A: Yes

Q: Did you voluntarily give us your DNA?

A: Yes

Q: When you spoke to DC on September 18, 2015 whose number did you text him?

A: Streets

Q: Is the number 200-████ the number that you are saying belongs to Streets?

A: Yes Sir

Q: Why did you give DC Street's phone number?

A: I thought that he would be able to get in touch with SteveO with that number.

Q: One September 18, 2015 you called DC at 5:49 and 5:51 what were these two calls about?

A: I must have pocket dialed him.

This statement was made in the presence of Carroll Crane
of the Richland County Sheriff's Department.

I make this statement of my own free will and accord, without reward or intimidation. All of the above is the truth, the whole truth and nothing but the truth.

Sworn to and subscribed before me
this 24 day of September 2015.

Signed: f. Marie Serrano

Witness: BA

Witness: _____

Notary Public for South Carolina
My commission expires 9-23-19.

Statement

State of South Carolina)

) S. S.

County of Richland)

Q: Why did you not provide us with Streets phone number when you came to HQ on 09/22/2015?

A: I didn't think it was an issue Y'all didn't ask me who number it was.

Q: What was your phone number on September 18, 2015?

A: 803-220- [REDACTED]

Q: Do you know Streets real name?

A: No Sir

Q: Tell me about the conversation between you and DC on September 18, 2015.

A: DC called me and asked for SteveO and I told him he wasn't around. DC asked me about Streets he asked what was up with Streets he said does he have that. I told him that I don't mess with tools. I gave him Streets number. Then I hung up.

Q: What is a "Tool"?

A: Gun.

Q: What were the other two calls between you and DC on September 18, 2015?

A: They must have been pocket dials.

Q: Have you been involved in any discussions about robbing DC?

A: No Hell No.

Q: Who is the individual you identified in the photo lineup we showed you?

A: Streetz. He's in the Reserves.

Q: Is there anything else that you want to add to your statement?

A: No I can't think of anything.

This statement was made in the presence of Carwell, Crane
of the Richland County Sheriff's Department.

I make this statement of my own free will and accord, without reward or intimidation. All of the above is the truth, the whole truth and nothing but the truth.

Sworn to and subscribed before me
this 24 day of September 2015.

Signed: [Signature]

Witness: [Signature]

Witness: _____

[Signature]
Notary Public for South Carolina
My commission expires 9-23-19.

Statement

State of South Carolina)

) S. S.

County of Richland)

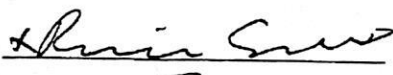
Q: Is this statement the truth to your knowledge?

A: Hell yeah.

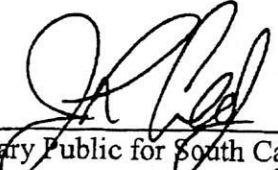
This statement was made in the presence of Carwell, Crane
of the Richland County Sheriff's Department.

I make this statement of my own free will and accord, without reward or intimidation. All of the above is the truth, the whole truth and nothing but the truth.

Sworn to and subscribed before me
this 24 day of September 2015.

Signed: Witness: 

Witness: _____


Notary Public for South Carolina
My commission expires 9-23-19.

FEB 08 2018

Mr. Krzyzton

I WANT TO TELL YOU HOW I FEEL BOUT MY CASE
SIT8UP! I KNOW ITS STUFF YOU NOT TELLING ME
FORREAL, THIS CASE REALLY FUNNY TO ME SIT8UP!
HOW YOU GO FROM 40 YEAR'S TO 15 TO 25, SO I SAY YOU GO
IN ASK FOR A 15 OR 10 OR 12 NEGOTIATE, BUT IT GOT TO BE A
NEGOTIATE FORREAL NOTHING ELSE NO HIGHER THEN 15, CAUSE I KNOW
AND YOU KNOW MY CASE FUCK UP SIT8UP!! I KNOW YOU WORKING
BOTH SIDE'S FEEL ME, I JUST NEED SOMETHING I CAN BOUNCE
BACK FROM FORREAL, 20 YEAR'S AND UP I CAN'T DO NOTHING
WITH AT ALL MIDE AS WELL GO TO TRIAL IF THATS THE
CASE! SO I SAY NEGOTIATE 10 OR 12 OR 15 IM READY
TO PLEA OUT BRING ME THE PAPER TO SIGN IF NOT
LETS GO TO THE DOOR!

So You Tell Me WASSUP?

RANDALL GADSON JR

PLAINTIFF'S
EXHIBIT

2

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Randall Gadson, #360616,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT
)

) CASE NO. 2018-CP-40-2998
)

ORDER OF DISMISSAL

FILED
2022 SEP 26 AM 10:58
C.C.P. G.S.
RICHLAND COUNTY

The matter before the Court is an action for post-conviction relief (PCR) commenced by Randall Gadson (Applicant) on June 7, 2018, asserting various allegations of ineffective assistance of counsel. The State submitted its return on August 22, 2018, requesting an evidentiary hearing.

Before this Court, an evidentiary hearing was convened on May 23, 2022, at the Richland County Courthouse. Applicant was present and represented by Nancy C. Fennell, Esquire, and Assistant Attorney General D. Russell Barlow, II, represented Respondent. Applicant, Rasheid Schoclet, and Stephen Krzyston, Esquire (Plea Counsel), testified at the hearing. After hearing the testimony at the PCR hearing and a full review of the record, the Court finds that Applicant's allegations are without merit, denies relief, and dismisses the action with prejudice.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections (SCDC). In February 2016, the Richland County Grand Jury indicted Applicant for murder (2016-GS-40-0734). Stephen Krzyston, Esquire, represented Applicant. Fifth Circuit Assistant Solicitor Kathryn Cavanaugh, Esquire, prosecuted the case on behalf of the State. On March 14, 2018, Applicant pleaded guilty to the lesser-included offense of voluntary manslaughter before the Honorable DeAndrea Benjamin. Pursuant to a negotiated

sentence between the State and Applicant, Judge Benjamin sentenced Applicant to a term of imprisonment of seventeen years. Applicant did not appeal his conviction or sentence.

Applicant timely commenced this PCR action on June 7, 2018.

SUMMARY OF RELEVANT FACTS¹

The shooting occurred at Hunter's Way Apartments outside of Building [REDACTED] off Percival Road in Richland County on September 18, 2015. The victim, in this case, was Paul Coleman. Victim was twenty-one years old at the time of his death and was living in Charlotte, North Carolina, where his family lived. Victim came to Columbia on the afternoon of September 18th and was on Benedict College's campus waiting for his friend, Devon Owens, to finish with classes. Victim's friend Devon drove him to the apartment complex around 7:00 p.m. that evening where the shooting occurred a short time later.

Investigator Carwell learned through his investigation that Victim was actually in-town to purchase a gun for his cousin. Victim was planning on buying it from a person named Steven Carswell; however, Mr. Carswell was unable to sell him one. Victim was eventually connected to DaJuan Minson, who provided Victim with the Applicant's telephone number. A short time after Victim arrived at the apartments, he was shot. Richland County Sheriff's Department was immediately dispatched to the scene. Victim was found lying in the breezeway of Building [REDACTED] with a gunshot wound to his face, which was the cause of death. Victim died at the hospital shortly after arrival.

Several neighbors relayed to law enforcement on the scene that they saw Begoon, which is the Applicant's nickname, and another individual, who was never identified, running away from

¹ The summary of fact were taken directly from the Plea Transcript with minor edits. (Plea Tr. pp. 5, l. 12 – 10, l. 8).

the scene immediately after they heard shots. Some neighbors said that they heard one shot. Some neighbors said they heard two. Applicant was identified in a photo lineup by two individuals as one of the people they saw running. They did mention that Applicant hangs out in the area frequently, but they had never seen the victim at the apartment complex. Devon Owens (Owens), the victim's friend, was still on the scene. Owens had driven his car across the street and was parked there when deputies arrived. Owens told law enforcement that he thought the victim was meeting a girl at these apartments and has never relayed anything different.

Sergeant Carwell obtained Applicant's phone records. At the time of the shooting, the Applicant's phone was hitting off towers close to the apartments. Investigator Carwell identified DaJuan Minson (Minson) as the person the Applicant called right after the shooting. Minson was not truthful initially. Minson was subsequently charged with obstruction of justice in this case but did admit in his second statement, when confronted with the phone records, that the Applicant called him afterward and said RIP, in reference to the victim. Minson said Applicant told him that he shot him because Victim reached for a gun, so he shot him. Minson also identified Applicant in a photo lineup.

On October 14th, approximately a month later, law enforcement sought and obtained an arrest warrant for Applicant. Following his arrest, law enforcement advised Applicant of his rights, and Applicant waived these rights and gave an initial statement to Investigator Carwell where he denied being present. Applicant said he left Columbia earlier in the afternoon with a girl to go to Charleston. Applicant was confronted with the phone records placing him at the scene, and he subsequently confessed to shooting the victim. Applicant said he was at Hunter's Way apartment complex when he saw the Victim and his friend. They asked him for marijuana. He said he went to get the marijuana, and when he returned to the apartment, Victim was outside of the car. Minson

said in his statement that the Victim started laughing and said that he didn't have any money and he wasn't going to pay for the marijuana, and that is when Victim's friend came around the corner and started shooting at him.

Applicant said when Owens came from the left side, he shot Victim, who was standing in front of him. When asked why he would shoot in front when the shots were coming from the left, Applicant said he just shot and then ran. This was inconsistent with what he was telling other lay witnesses that were interviewed during the course of the investigation. Applicant had told at least two individuals that Victim reached for his gun, so he shot him. The crime scene investigators and deputies searched the entire area that night and the next day, including Victim's friend's car, which was still at the scene, and the immediate area. There were no additional shell casings located or any other weapon located. Owens said that he never got out of the car.

Owens, who Applicant claimed shot at him first, was tested for gunshot residue twice and no gunshot residue was found on his hands. Victim did have one particle of gunshot residue, which was explained by being in proximity to a gun being fired. Applicant never said in any of the statements that the victim actually shot a gun.

CURRENT ACTION BEFORE THIS COURT

In his application for post-conviction relief, Applicant alleged he was being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of counsel
 - a. "At all relevant times he was under advice of counsel to answer 'yes' to any and all questions presented by the plea judge throughout the guilty plea stage and that as such his knowledge of the law was limited to what little his plea attorney informed and/or advised him and that as such his constitutional rights on the law or legal jurisprudence was constricted to his lawyer's advice and instruction and thus he trusted and greatly depended on plea attorneys advice to be just and true at all relevant times during and prior to entry of plea on March 14, 2018."

- b. "That when he read over some of the police reports and findings he discovered as he had informed his attorney that the victim had a gun and GSR was found on victim's hands demonstrating victim fired a weapon. To applicant Gadson's surprise and shock and dismay his attorney said it didn't matter nor was it significant to take the case to trial or to negotiate a sentence of 20 years or an open plea with a cap of only 10 years which would have meant the plea judge couldn't sentence him above 10 years. From the very beginning counsel knew or should have known to move to vacate the charge of murder even prior to the negotiated plea since the elements amount to murder under South Carolina statutory code 16-3-10. The Attorney was ineffective for failing to file preemptive motions or motions in general to alleviate the indictment for murder against me. Applicant Gadson also states for the record that his plea attorney was ineffective and created a significant conflict of interest when he was knowingly representing someone he knew or should have known wrote statement against me in the case working with the prosecution. Counsel was ineffective for failure to file an appeal or motion to reconsider a lower sentence than the 17 years I was given, especially since voluntary manslaughter carries 2-30 years and I could have very well gotten less than 17 years or even a 5 year sentence for it."
- c. "Counsel was ineffective for failure to file an appeal or motion to reconsider a lower sentence than the seventeen (17) years I was given, especially since voluntary [sic] manslaughter [sic] carries 2-30 years and I could have very well gotten less than 17 years or even a 5 year sentence for it."
2. "Violation of Fourteenth Amendment right to Due Process and Equal Protection."
3. "Fourth Amend. Right to unlawful seizure in false arrest since GSR report and testing failed to confirm I fired weapon."
4. "Conflict of Interest by Attorney and due to representing party making statement against Applicant."

On October 29, 2019, Applicant, through PCR counsel, amended his application as follows:

1. Ineffective Assistance of Counsel:
 - a. Failure to request a competency evaluation.

At the evidentiary hearing, PCR Counsel stated that the amendments were in addition to the original PCR allegations, and they intended to move forward on those.

SUMMARY OF RELEVANT TESTIMONY

APPLICANT'S TESTIMONY

Applicant testified that Steven Krzyston (Plea Counsel) was appointed in 2015 when he first got to the county jail. Applicant testified that he found out Plea Counsel was representing him when he came to visit him at the detention center and told him. Applicant testified that he was in pre-trial detention for three years and that Plea Counsel represented him the entire time. Applicant testified that Plea Counsel met with him in person seven times over those three years. Applicant testified that he and Plea Counsel discussed what was going on in his case and that Plea Counsel brought him some of the documents but not all the documents from his discovery. Applicant testified that four statements were given to police and that Plea Counsel didn't bring all of them at once. Applicant testified that the first documents he received were at his preliminary hearing six to seven months after detention.

Applicant testified that he received discovery, including negative results from a GSR kit, pictures, medical records, and pictures of the victim, and he was given a personal copy of this discovery. Applicant testified that DeShawn Davis gave a statement to police that he was a "piece of shit" who didn't "show everything." Applicant testified that he was never shown the text messages and that once he was in jail, Plea Counsel did no more investigations; it was over. Applicant testified that Plea Counsel would tell him, "They said this...." Applicant testified Plea Counsel told him that if he went to trial, he would probably receive a sentence of thirty to forty years.

Applicant testified that he never saw the statement regarding Steven Carswell. Applicant testified that he got his entire discovery file during COVID, and there was stuff that he had never seen. Applicant testified he had not seen text messages between the victim and Steven Carswell.

Applicant testified that Steven Carswell was "a white or Asian dude" in his case, and he was charged with conspiracy to murder. Applicant testified that he did not know what conflict of interest was. Applicant testified that Plea Counsel previously represented Carswell in an armed robbery charge. Applicant testified that Plea Counsel never discussed that with him. Applicant testified that he told Plea Counsel that he thought Plea Counsel was working against him. Applicant testified he never saw any statement Carswell provided.

Regarding Facebook messages between Paul Coleman and Carswell, Applicant testified that it said different stuff that he had no part of and didn't know about those things. Applicant testified that he recently saw the Facebook communications for the first time. Applicant testified that he recently saw Facebook pictures of people and never received Facebook evidence when he pled out.

Applicant testified that Devon Owens was with the victim on the night of the shooting. Applicant testified that Owens's statement confirmed everything Applicant was saying that the victim "jumps in car drives across the street jumps back in the car, and it doesn't make sense." Applicant testified that he was in the area where the murder occurred every day. Applicant testified that he did not know the victim. Applicant testified that the victim had money in his pocket, and all Applicant had in his pocket was "\$32." Applicant testified he met the victim walking down the street because he is there every day and saw the victim standing at the car. Applicant testified that the victim asked him if he sold weed, and Applicant replied, "I sell it." Applicant testified that the driver pulled up the victim pulled up his hand, and Applicant had a gun, reacted, and ran off. Applicant testified that Plea Counsel had the GSR kit, that there were no burn marks on the victim's face, and that this was a "self-defense shot." Applicant testified that the solicitors stated that Applicant's version of facts was the reason for a negotiated sentence.

Applicant testified that Plea Counsel never asked witnesses about their statements. Applicant testified that Plea Counsel told him he was a "black man with tattoos and he won't get a fair trial." Applicant testified that he would not be here disrespecting the court if he knew he did something. Applicant testified that in May 2017, an updated GSR kit became available. Applicant testified that there was no GSR present in the first GSR kit. Applicant testified that in the 2nd GSR kit, the victim had GSR on his hand, and it was retested because the SLED employee didn't follow the protocol. Applicant testified that Plea Counsel told him that they could get a better plea. Applicant testified that he felt Plea Counsel would sit with him but would lose at trial. Applicant testified that he never signed a conflict waiver. Applicant testified that he didn't go to trial because he might get thirty to forty years, one hundred years, or life. Applicant testified. Plea Counsel told him that they would convict him once he went to trial.

Applicant testified that he only had 8th-grade education and understood Plea Counsel to a certain extent but didn't understand most of it at times. Applicant testified that he thought he needed a competency evaluation because he didn't understand things like a GSR kit. Applicant testified that he did not know he had rights. Applicant testified that he does not think Plea Counsel conducted an investigation other than the gun analysis. Applicant testified that the gun analysis person said it would have to be a self-defense shot because no GSR was found on the victim's face. Also, Applicant testified that there was no weapon found. Applicant testified that the victim had a wallet with \$300 and a cell phone, and he told Plea Counsel to find out. Applicant testified that Plea Counsel told him that Carswell would testify against him and that Carswell was indicted for conspiracy and murder.

Applicant testified that Plea Counsel did not file an appeal, but he did ask Plea Counsel about an appeal, and Plea Counsel told him he would have to file a PCR application. Applicant

testified that he wanted a belated appeal. Applicant testified that he would not have pled if he had seen the entire discovery file. Applicant testified that at that point, he thought Plea Counsel was a great lawyer and a great person.

On cross-examination, Applicant testified that he met with Plea Counsel seven times. Applicant testified that he and Plea Counsel had trouble communicating a couple of times and got into it. Applicant testified that, at the time, he didn't understand. Applicant testified that Plea Counsel discussed the charges and the elements and that a sentence of thirty years to life was possible. Applicant testified that Plea Counsel did not discuss any defenses other than self-defense. Applicant testified that Plea Counsel let him look through discovery, they discussed for statements, discussed his statements where he eventually admitted to the shooting, discussed the GSR kit, and that it was positive on the victim's hand palm side.

Applicant testified that Plea Counsel always told him it was going to be a "plea plea plea." Applicant testified that he told Plea Counsel to investigate witnesses, but Plea Counsel never investigated those witnesses. Applicant testified that after the GSR kit discussion, it was six to seven months, and Plea Counsel came with a plea and said it was the best you would get. Applicant testified that the plea offer was a negotiated sentence of seventeen years. Applicant testified and agreed that he avoided the risk of murder and thirty years to life. However, Applicant testified that he did not understand what he was doing. Specifically, Applicant testified that he was "going through the motions," and Plea Counsel said, "just say yes to everything."

Applicant testified that he did not know his rights at the time but was also satisfied with the Plea Counsel. Applicant testified that he remembered telling the court that he was pleading freely and voluntarily. Applicant testified that he remembered telling the court that he agreed with the facts but "didn't know nothing." He just told the judge he wanted to plea. Applicant testified

that he recalled the court informing him of his right to appeal. Applicant testified that he wanted to appeal because "it didn't sit right."

On redirect examination, Applicant testified that the State's first plea offer was for a forty-year term of imprisonment, and he got mad and said, "are you crazy." Applicant testified that Plea Counsel returned three weeks later, and Applicant informed Plea Counsel that he wanted to go to trial. Applicant testified that Plea Counsel never discussed the elements of his crime. Specifically, he never broke down what they would have to prove, and he only broke down the potential sentences and didn't know he had rights. Again, Applicant testified that Plea Counsel told him to "just say yes to everything." Applicant testified that Plea Counsel's defense theory didn't make sense.

RASHEID SCHOCLET'S TESTIMONY

Rasheid testified that he and Applicant had been lifelong friends since daycare. Rasheid testified that law enforcement approached him and asked him if he knew the victim. Rasheid testified that Carswell used his phone to speak with the victim, which is why the victim's number was on his phone. Rasheid testified that he went to the police station two times to give statements. Rasheid testified that he had known Carswell for about three months and that he did not know and had never met the victim. Rasheid testified that he was never shown the photo lineup with DeJuan Minson and that that was not his signature on it. Rasheid testified that he never gave the police DNA. Rasheid testified that when the investigator showed him text messages regarding the gun transaction, he replied, "this is not my doing."

Rasheid testified that he gave police statements on September 22, 2015, and September 24, 2015. Rasheid testified that law enforcement told him he could get accessory to murder Rasheid testified that he contacted law enforcement regarding his concerns about his statements and the

dispute surrounding his statements. Rasheid testified that Plea Counsel never reached out to him. Rasheid testified that he did not sign the statements that law enforcement turned over. Rasheid clarified that one of the signatures was his and the other was not. Specifically, Rasheid testified that the signature on the September 22, 2015, statement was his and that the signature on the September 24, 2015, statement was not his signature.

On cross-examination, Rasheid was given one page from each of the statements he gave to law enforcement on September 22, 2015, and September 24, 2015. Rasheid was then asked to verify which page contained his signature, thereby eliminating the other one. Notably, Rasheid chose the signature from the page from the September 24, 2015, statement, which he said was not his signature on direct examination, and did not choose the September 22, 2015, statement, which he said was his signature on direct examination.

PLEA COUNSEL'S TESTIMONY

On direct examination, Plea Counsel testified that per his notes, he met a minimum of 12 times with Applicant and at a rate of about every 90 days. Plea Counsel testified that, on average, he met with Applicant 20 to 40 minutes each time. Plea Counsel testified that while Applicant initially distrusted him, he was cooperative overall during the process. Plea Counsel testified that after the first 2 to 3 meetings, he felt he could communicate and work with Applicant. Plea Counsel testified that he did not recall getting into it with Applicant, but that would not be out of the ordinary for counsel and a defendant. Plea Counsel testified that ultimately he felt like Applicant was willing to work with him. Plea Counsel testified that other than their initial meeting, communications in their subsequent meetings were fine.

Plea Counsel testified that Applicant spoke coherently and seemed to understand their discussions. Plea Counsel testified that he had no concerns regarding Applicant's ability to

understand. Plea Counsel testified that he knew that Applicant had attained a ninth-grade education from Eau Claire. Plea Counsel testified that he had no mental health issues; if he did, he would have petitioned for a competency evaluation. Still, there were no indications that Applicant had capacity issues. Plea Counsel testified that there were several bond hearings that he went to, and he had an open line of communication with the Applicant's mother. Plea Counsel testified that no family members raised competency concerns.

Plea Counsel testified that he filed a Brady motion for discovery, reviewed the evidence, and discussed that with Applicant. Plea Counsel testified that he discussed his case's strengths and weaknesses with Applicant. Plea Counsel testified that he did not withhold discovery from Applicant. Plea Counsel testified that the evidence was witness statements, GSR kit and tests, issues regarding the DNA, cell phone extractions, and cell phone tower information. Plea Counsel testified that there was a GSR testing conflict where the state crime lab had issues with a lab technician. Plea Counsel testified that the first lab technician said no GSR was on the victim's hands. Plea Counsel testified that he confronted the prosecutor with the negative test because it contained some GSR particles. Another GSR test confirmed that there was GSR on the victim, but that was not surprising. Plea Counsel testified that it was an indeterminate to non-determinate range in the autopsy report.

Plea Counsel was asked if Applicant made incriminating statements, to which he did not answer. Plea Counsel was asked whether there was any evidence to help to which he replied that the elements cut both ways and it was a triable case. Still, it was within the outer limits of what the jury would accept regarding the Applicant's story.

Plea Counsel testified that he evaluated to the extent possible what SLED had done. Plea Counsel testified that Suzanne Bell, a forensic scientist at SLED, reviewed the corrective reports

and audits and confirmed that SLED was doing its part correctly. Plea Counsel testified that he discussed this with Applicant on April 24, 2017. Plea Counsel testified that he objected to the state wanting to go to trial before the audit was complete. Plea Counsel testified that he hired two investigators to investigate this case. Plea Counsel testified that the subpoena would be in the file and would show his request. Plea Counsel testified that the Applicant wanted them to include: Abanish(sp?) Belton, Rosalynn Davis, and Latoya Brown. Plea Counsel testified that there was nothing else he needed to do to investigate for trial.

Plea Counsel testified that there was a realistic possibility of conviction if the state defendant did not properly assess the credibility issues and could have obtained an acquittal. Plea Counsel testified that he told Applicant this was a triable case. Plea Counsel testified that both the Applicant and the victim had prior robbery charges. Plea Counsel testified that Applicant never had to ask him to engage in plea negotiations because he would do that as a matter of calls. Plea Counsel testified that there were at least three plea offers. The first was on October 21, 2016, for 40 years which is what Applicant could get at trial. Plea Counsel testified that he relayed that offer to Applicant on October 23, 2016, and Applicant rejected that offer without hesitation. The 2nd offer was in the 15 to 20-year range, and the 3rd offer was in the 10 to 25-year range. Plea Counsel testified that the last was a negotiated term of 17 years.

Plea Counsel testified that he spoke with the solicitors regarding Applicant's case, and they planned to try it. Plea Counsel testified at some point; the solicitors told him to stop screwing around and tell them what the defendant would take. Plea Counsel testified regarding the 17-year offer that he had seen worse offers, but Applicant would be out of SCDC before his 40th birthday. Plea Counsel opined those 30 to 40 years would be akin to a natural life sentence. Plea Counsel testified that when he first met with Applicant to discuss the negotiated 17-year sentence,



Applicant conveyed that a fifteen-year sentence is what he would accept. Plea Counsel testified that he discussed the difference between murder and manslaughter and that it was a day-for-day and up-to-life. Plea Counsel testified that Applicant appeared to understand.

Plea Counsel testified that Applicant understood his constitutional rights because they discussed them and that he understood he waived his right to jury trial and confrontation. Plea Counsel testified that Applicant understood everything conveyed in the colloquy with the plea court. Plea Counsel testified that Applicant decided to plead and did not force them because he was prepared to proceed at trial.

Plea Counsel testified that after Applicant accepted the plea offer, he asked him to file a PCR and expressly indicated he did not want to appeal. Plea Counsel testified that he did not instruct Applicant to answer yes to all of the questions, and he explained to Applicant the gravity of his answers. Plea Counsel testified that he told Applicant to let him know if he had any concerns and would never instruct a client just to answer yes. Plea Counsel testified that Applicant appeared to understand everything regarding his plea. Plea counsel testified that he thought Applicant's decision to the plea was an intelligent move.

Plea Counsel testified that regarding his prior representation of Carswell, he did not recall when the case was resolved prior to Applicant's issue. Plea Counsel testified that the standard of care and the public defender's office is that he would submit a memo regarding the conflict. They found that the only potential conflict was his duty of loyalty to Carswell. Plea Counsel testified that to absolve this issue was to have someone else cross Carswell during the trial. Plea Counsel testified he also advised Applicant of the conflict and obtained his consent however, while Plea Counsel recalls the meeting, he does not recall if Applicant signed a waiver. Plea Counsel testified that he doesn't think he had divided loyalty.



Plea Counsel testified that it wasn't material how Applicant ended up with the victim because there was no indication that this was planned homicide. Plea Counsel testified that he indeed discussed the potential conflict with Applicant and that Applicant would have had the option to get a new attorney, but Applicant never expressed concerns regarding Plea Counsel's representation. Plea Counsel testified that he and Applicant discussed a right to appeal; however, he saw no grounds for an appeal. Plea Counsel further testified from his notes that the defendant appealed. Plea Counsel testified that there was no viable motion because the sentence was negotiated.

On cross-examination, Plea Counsel testified that he received discovery on December 11, 2015. Plea Counsel testified that he allows clients to keep their discovery in jail but advises against it. Plea Counsel testified that he did not recall if Applicant kept discovery, but he knows he discussed discovery with Applicant several times. Plea Counsel testified that Applicant was most interested in the statements and GSR. Plea Counsel testified that Applicant's statement was the most concerning because Applicant's statement helps get the plea, but there was concern that Applicant initially lied to law enforcement. Plea Counsel testified that he did not recall when he received the 2nd GSR kit but learned about it and Fits News that there was one fuse particle that could be GSR.

Plea Counsel testified that he met with Applicant multiple times and that there are visits that are not in his notes that he did not account for. Plea Counsel testified that the public defender's office standard of care was to visit a client at least every ninety days. Plea Counsel testified that he would have provided any information that Applicant requested. Plea Counsel testified that the total amount of time visiting with Applicant was at least 10 hours, and they had substantive discussions regarding self-defense. Plea Counsel testified that he would have visited for as long



as he felt Applicant needed to understand the issues. Plea Counsel testified that when law enforcement confronted Applicant regarding his first statement using triangulation, Applicant of their self-defense.

Plea Counsel testified that he recalls the difficulty in speaking to witnesses, but he does not talk to direct witnesses directly; that is what the investigators are for. Plea Counsel testified that he disagreed that his advice to Applicant could be construed as "say yes to Judge." Plea Counsel further testified that he would never instruct Applicant on any specific answer to any question from the court. Plea Counsel testified that it was a general issue of fact regarding whether this was a justified homicide.

Plea Counsel testified that in his meeting notes, he noted that Applicant did not desire a direct appeal and that Applicant asked about a PCR, and Plea Counsel informed him he would have to ask the Department of Corrections. Plea Counsel testified that he informed Applicant that if he filed a notice of appeal, Applicant would receive a letter regarding a more definite statement. Plea Counsel testified that he would've filed a notice of appeal if Applicant had asked him to.

Plea Counsel testified that he did not recall when he represented Carswell and that he advised Applicant of the potential conflict. Plea Counsel testified that he recalls completing conflict waivers, but it is within the realm of possibility that they did not do that. Plea Counsel testified that he reviewed all evidence when he represented the Applicant. Plea Counsel testified that he met with a crime scene reconstruction expert named Gary Reed and consulted with him regarding the viability of a self-defense claim. Plea Counsel testified that the expert felt that it could probably be a self-defense shooting and that other experts may as well. Plea Counsel testified that he discussed with Applicant specifically concerning the viability of self-defense. Plea Counsel testified that juries are skeptical of experts and want to hear from the Applicant per

research. Plea Counsel testified that they did not go to trial because the client didn't have a risk assessment.

Plea Counsel testified that there were some beneficial and harmful facts. Plea Counsel testified that he discussed this with Applicant and that there was a colorable path to acquittal if the jury believed. Plea Counsel testified that there were no outward difficulties after the first 2 to 3 visits, and his impression was that Applicant was young. Plea Counsel testified that he never thought Applicant had an emotionally visceral response, and they had no fundamental disagreements, breakdowns, or communications; however, they may have sometimes disputed factual analyses. Plea Counsel testified that he got the sense that Applicant was not happy with the situation, but they had an amicable relationship. Plea Counsel testified that he would never withhold information from an Applicant.

Plea Counsel testified that the letter, which he had no independent recall but akin to Applicant's writing with a date of February 28, 2018, in which it expressed views that Applicant believed Plea Counsel was working both sides and that would have prompted a visit or discussion.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court further had the opportunity to observe the witnesses at the evidentiary hearing and evaluate their credibility, and the Court has weighed their testimony accordingly in its discussion below. This Court finds the combined record of the plea transcript, and the testimony and evidence presented at the evidentiary hearing establish Applicant received effective assistance of counsel. Accordingly, this Court denies relief and dismisses this application with prejudice. Set forth below are the relevant findings of facts and conclusions of law as required by § 17-27-80 of the South Carolina Code.

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove that counsel's performance was deficient. Strickland, 466 U.S. at 686; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Applicant must so prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRPC. The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." Padilla v. Kentucky, 559 U.S. 356, 366 (2010). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

"Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect."

Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing Strickland, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. Cullen v. Pinholster, 563 U.S. 170, 196 (2011); Harrington v. Richter, 562 U.S. 86, 109-10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." Yarborough, 540 U.S. at 6; see also Murphy v. Davis, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable."). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "This does not require a showing that counsel's actions' more likely than not altered the outcome,' but the difference between Strickland's prejudice standard and a more-probable-than-not standard is slight and matters' only in the rarest case.'" Harrington, 562 U.S. at 111-12 (quoting Strickland, 466 U.S. at 697). "The likelihood of a different result must be substantial, not just conceivable." Id. at 112. "The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury." United States v. Basham, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting Elmore v. Ozmint, 661 F.3d 783, 858 (4th Cir. 2011)).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel." Hill, 474 U.S. 52; cf. Padilla, 559 U.S. at 373 (recognizing the guilty plea process is a "critical phase of litigation" for purposes of the Sixth Amendment right to effective assistance of counsel). A claim of ineffective assistance of guilty plea counsel requires

the applicant present evidence satisfying two prongs: first, evidence that counsel's performance was deficient; and second, evidence that counsel's deficient performance prejudiced the defendant by causing him to plead guilty rather than go to trial. Hill, 474 U.S. 52.

The analysis of counsel's performance under the first prong of Strickland remains unchanged—the applicant must show counsel's representation fell below the objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58–59; accord Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his plea was induced by ineffective assistance of counsel must prove counsel's advice to plead guilty was not "within the competence demanded of attorneys in criminal cases." Hill, 474 U.S. at 56.

The second, or "prejudice" prong, however, "focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." Id. at 58–59. Specifically, when an applicant claims counsel's deficient performance caused him to accept a plea, the applicant "must show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." Id. at 59. This inquiry "focuses on a defendant's decision making" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. ___, 137 S. Ct. 1958, 1966 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. Padilla, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him or her to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

Surmounting the high bar of Strickland is never an easy task, and the strong societal interest

in finality has "special force with respect to convictions based on guilty pleas." Lee, 582 U.S. ___, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); cf. Hill, 474 U.S. at 58 ("[R]equiring a 'prejudice' showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel 'will serve the fundamental interest in the finality of guilty pleas.'"). Reviewing "[c]ourts should not upset a plea solely because of post hoc assertions from a defendant about how he would have pleaded but for his attorney's deficiencies. Lee, 582 U.S. ___, 137 S. Ct. at 1967. Rather, judges should "look to contemporaneous evidence to substantiate a defendant's expressed preferences. Id. In determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the plea and the evidence presented at the PCR hearing. Harris, 282 S.C. at 134, 318 S.E.2d at 361.

The performance and prejudice standards, however, "do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." Id. at 696. Moreover, "there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." Id. at 697. The court "need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. Id. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. Id.

This Court finds Applicant cannot meet his burden as to his claims of ineffective assistance of plea counsel. The specific claim is addressed below:

Allegation 1(a): Involuntary Guilty Plea

Applicant alleges Plea Counsel was ineffective for advising him to only answer yes to the plea judge's questions rendering his guilty plea involuntary. This Court finds this allegation is without merit.

"[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced." Reed v. Becka, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). An applicant who pleads guilty with the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pleaded guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994); Lockhart, 474 U.S. at 52). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Lockhart, 474 U.S. at 56.

To find a guilty plea voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by

the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.'" Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (quoting Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)).

In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. Harres, 282 S.C. at 133, 318 S.E.2d at 361. However, statements made during a guilty plea should be considered conclusive, unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir. 1975), overruled on other grounds by United States v. Whitley, 759 F.2d 327 (4th Cir. 1985).

On cross-examination, Applicant testified that the plea offer was a negotiated sentence of seventeen years of imprisonment. Applicant testified and agreed that he avoided the risk of a conviction for murder and a mandatory minimum sentence of thirty years of imprisonment to life. However, Applicant testified that he did not understand what he was doing. Specifically, Applicant testified that he was "going through the motions," and Plea Counsel said, "just say yes to everything."

On redirect-examination, Applicant testified that Plea Counsel told him to "just say yes to everything."

On direct-examination, Plea Counsel testified that he did not instruct Applicant to answer yes to all of the questions, and he explained to Applicant the gravity of his answers. Plea Counsel testified that he told Applicant to let him know if he had any concerns and would never instruct a client just to answer yes. Plea Counsel testified that Applicant appeared to understand everything regarding his plea.

On cross-examination, Plea Counsel testified that he disagreed that his advice to Applicant could be construed as "say yes to Judge." Plea Counsel further testified that he would never instruct Applicant on any specific answer to any question from the court.

At Applicant's plea hearing, the following colloquy occurred between the court and Applicant:

THE COURT: All right. And you are Randall Gadson, Jr.?
 THE DEFENDANT: Yes, ma'am.
 THE COURT: And, sir, you are pleading guilty to voluntary manslaughter; is that correct?
 THE DEFENDANT: Yes, ma'am.
 THE COURT: And, sir, how old are you?
 THE DEFENDANT: Twenty-five.
 THE COURT: How far did you go in school?
 THE DEFENDANT: Tenth grade.
 THE COURT: Are you married?
 THE DEFENDANT: No, ma'am.
 THE COURT: Do you have children?
 THE DEFENDANT: Yes, ma'am.
 THE COURT: Their ages?
 THE DEFENDANT: Five and two.
 THE COURT: Are you on probation or parole?
 THE DEFENDANT: No, ma'am.
 THE COURT: And within the last 24 hours, have you taken any medication, drugs, or alcohol?
 THE DEFENDANT: No, ma'am.
 THE COURT: All right. Listen closely to the Solicitor as she states the facts.
 (Solicitor's facts omitted)
 THE COURT: All right. Mr. Gadson, you have heard the State's statements of the allegations by the Solicitor. Do you agree with the facts as stated by the Solicitor?
 THE DEFENDANT: Yes, ma'am.
 THE COURT: All right. And is there any portion of that you do not agree with?
 THE DEFENDANT: No, ma'am.
 THE COURT: And, sir, you understand that when you plead guilty you give up certain important constitutional rights. You have the right to a jury trial. At a jury trial the State would have to prove you guilty beyond a reasonable

doubt. You and your attorney would have the opportunity to cross-examine any witnesses that they would present. You would not have to testify. The burden would be on the State to prove you guilty beyond a reasonable doubt. If you gave any incriminating statements, you would have the right to challenge the admission of those statements. Sir, you would have an opportunity to present any defenses that you and your attorney may have. However, the burden would be on the State to prove you guilty. And if you decided not to present any defenses and you decided not to testify, I would inform the jurors that they could not hold that against you. The burden is upon the State to prove you guilty beyond a reasonable doubt, but by pleading guilty, sir, you waive your right to have this presented in front of the jury. Is that correct?

THE DEFENDANT: Yes, ma'am.

THE COURT: All right. And you give up those other important constitutional rights; is that correct?

THE DEFENDANT: Yes, ma'am.

THE COURT: All right. And, sir, you understand that voluntary manslaughter carries a minimum of two years and a maximum of 30 years? Do you understand that?

THE DEFENDANT: Yes, ma'am.

THE COURT: You understand that it is classified as a violent most serious offense? Do you understand that?

THE DEFENDANT: Yes, ma'am.

THE COURT: More serious means under our two-strike law that you would be looking at, if you were to get another most serious offense, you would be looking at life without parole. Do you understand that?

THE DEFENDANT: Yes, ma'am.

THE COURT: All right. Do you understand violent means you have to serve 85 percent of any sentence that you get today; is that correct?

THE DEFENDANT: Yes, ma'am.

THE COURT: All right. And, sir, you have been represented by Mr. Krzyston. Are you satisfied with his representation?

THE DEFENDANT: Yes, ma'am.

THE COURT: And has he done everything for you that you feel he could have done or should have done?

THE DEFENDANT: Yes, ma'am.

THE COURT: And have you met with him for as long as possible and necessary for him to properly represent you?

THE DEFENDANT: Yes, ma'am.

THE COURT: And are you completely satisfied with his services?

THE DEFENDANT: Yes, ma'am.

THE COURT: All right. And, sir, are you pleading guilty today freely and voluntarily?

THE DEFENDANT: Yes, ma'am.

THE COURT: Is anyone forcing you to plead guilty?

THE DEFENDANT: No, ma'am.

THE COURT: Has anyone offered you anything -- I understand that you all have negotiated a plea -- has anyone offered you anything in exchange for your plea this morning, or today?

THE DEFENDANT: No, ma'am.

THE COURT: And has anyone threatened you or coerced you into pleading guilty today?

THE DEFENDANT: No, ma'am.

THE COURT: And are you pleading guilty of your own free will?

THE DEFENDANT: Yes, ma'am.

THE COURT: And, sir, have you understood my questions?

THE DEFENDANT: Yes, ma'am.

THE COURT: Have you answered them truthfully?

THE DEFENDANT: Yes, ma'am.

THE COURT: And the answers that you have given today have been your answers; is that correct?

THE DEFENDANT: Yes, ma'am.

THE COURT: All right. And you understand you have the right to appeal the guilty plea and the sentence of this Court within ten days of today's date? Do you understand that?

THE DEFENDANT: Yes, ma'am.

THE COURT: All right, sir. Do you have any questions of me?

THE DEFENDANT: No, ma'am.

THE COURT: All right. And, sir, and you wish for me to accept your plea to voluntary manslaughter today; is that correct?

THE DEFENDANT: Yes, ma'am.

THE COURT: All right. I find that there is a substantial factual basis for this plea. I also find that the Defendant's decision to plead guilty is freely, voluntarily, knowingly, and intelligently made; that he is represented by counsel to whom he indicates to me he is completely satisfied with. I will accept your plea.

(Plea Tr. pp. 4, l. 14 – 15, l. 1) (Solicitor's facts omitted).

The plea transcript reflects Applicant informed the plea court that he was clearheaded and understood what he was doing in entering the guilty plea. The plea court clearly explained Applicant's right to a jury trial, the State's burden of proof, and Applicant's right to present evidence in his defense. Applicant further admitted his guilt by agreeing with the Solicitor's accounting of the facts. The plea court explained in detail the requirements for Applicant to waive his right to an appeal and to parole eligibility, and Applicant told the plea court he understood the waiver, had made the decision to do so of his own free will and did not have any questions of his Plea Counsel or the court. Finally, Applicant stated he was fully satisfied with Plea Counsel, he had enough time to meet with him to discuss his options and make up his mind about what he wanted to do, and there was nothing else he wanted Plea Counsel to do for him on this case.

Accordingly, this Court finds Applicant pleaded guilty freely and voluntarily after discussing his options with Plea Counsel to avoid a trial and avail himself of a lower sentence than he might receive if convicted at trial. This Court further finds Counsel's representation of Applicant was not deficient, nor was Applicant prejudiced by Counsel's representation. The plea transcript reflects Applicant understood the terms of the plea agreement and chose to waive his rights and plead guilty. Notably, this Court finds Plea Counsel did not instruct Applicant to only answer yes to the plea judge's questions.

Accordingly, this Court finds Applicant has failed to establish Plea Counsel's deficiency or prejudice. Thus, this allegation must be denied and dismissed with prejudice.

Allegation 1(b): Failure to File Preemptive Motions or Motions to Alleviate the Indictment for Murder²

Applicant alleges Plea Counsel was ineffective for failing to file preemptive motions or motions to alleviate the indictment for murder. The Court finds this allegation lacks merit.

Initially, this Court finds Applicant has failed to meet his burden proving Plea Counsel's alleged deficiency prejudiced him. Applicant presented no evidence or testimony at the PCR evidentiary hearing regarding this allegation. Therefore, whether pretrial motions would have changed the Applicant's decision to plead and instead go to trial is mere speculation. However, speculation cannot satisfy Applicant's burden of proving prejudice. See Clark v. State, 315 S.C. 385, 388, 434 S.E.2d 266, 267 (1993) (concluding pure conjecture fails to establish prejudice).

Accordingly, this Court finds Applicant has failed to establish Plea Counsel's deficiency or prejudice. Thus, this allegation must be denied and dismissed with prejudice.

Allegation 1(c): Failure to File an Appeal or Motion to Reconsider

Applicant alleges Plea Counsel was ineffective for failing to file an appeal or motion to reconsider. The Court finds this allegation lacks merit.

To waive a direct appeal, a defendant must make a knowing and intelligent decision not to pursue the appeal. Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986); White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). Counsel has a constitutionally imposed duty to consult with a

² This Court is only addressing the failure to file motions claim in Applicant's allegations 1(b) because this Court has addressed the other issues claimed in 1(b) in other sections. Applicant's GSR allegation is addressed in the Allegation 3 section. Applicant's conflict of interest allegation is addressed in the Allegation 4 section. Applicant's failure to file an appeal allegation is addressed in the Allegation 1(c) section.

defendant about an appeal only when there is reason to think either: (1) that a rational defendant would want to appeal or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 120 S. Ct. 1029, 145 L. Ed. 2d 985 (2000).

In determining whether counsel has a duty to consult his client about an appeal, "[o]ne highly relevant factor will be whether the conviction follows a trial or a guilty plea, because a plea both reduces the scope of potentially appealable issues and may indicate that the defendant seeks an end to judicial proceedings." Id. at 480. Though counsel is required to make certain that a defendant is made fully aware of his or her right to appeal after a *trial*, a different standard applies to a guilty plea:

Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea.

Turner v. State, 380 S.C. 223, 224-25, 670 S.E.2d 373, 374 (2008) (citations omitted). Therefore, in a collateral action attacking a guilty plea, the "bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief." Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995).

At the evidentiary hearing, Applicant testified that Plea Counsel did not file an appeal and he asked Plea Counsel about an appeal, but he told Applicant he would have to file a PCR application. Applicant testified that he wanted a belated appeal.

On cross-examination, Applicant testified that he recalled the court informing him of his right to appeal. Applicant testified that he wanted to appeal because "it didn't sit right."

Plea Counsel credibly testified that he and Applicant discussed a right to appeal. Plea Counsel further testified from his notes that the defendant did not want to appeal. Again, Plea Counsel testified that in his meeting notes, he noted that Applicant did not desire a direct appeal and that Applicant asked about a PCR. Plea Counsel testified that he informed Applicant that if he filed a notice of appeal, Applicant would receive a letter regarding a more definite statement. Plea Counsel testified that he would have filed a notice of appeal if Applicant had asked him to.

At the plea hearing, the following colloquy occurred between the plea court and Applicant:

THE COURT: All right. And you understand you have the right to appeal the guilty plea and the sentence of this Court within ten days of today's date? Do you understand that?

THE DEFENDANT: Yes, ma'am.

(Plea Tr. 14, ll. 8 – 12).

The Court finds Applicant has not met his burden of proving that he requested an appeal by a preponderance of the evidence. See Rule 71.1(e), SCRCP. Because Applicant has not shown that he actually requested an appeal, Counsel was not ineffective for failing to file one. See Kinard v. State, 418 S.C. 478, 481, 795 S.E.2d 15, 16 (2016).

Finally, the Court notes the relief requested by Applicant on this ground is "(1) to have [his] conviction for voluntary manslaughter reversed and vacated due to the lack of evidence since no evidence existed Applicant fire weapon that allegedly killed victim. (2) To have an appeal filed on the merits." Neither is appropriate even for a meritorious claim that Applicant was denied his right to a direct appeal. See White, 263 S.C. at 119, 208 S.E.2d at 39 (holding there is no authority for granting either a new trial or a belated appeal as relief for a denial of the right to appeal). The only relief recognized for such a claim is a review of direct appeal issues by the Supreme Court.

See White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974); see also Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986).

For these reasons, the Court finds this allegation is without merit. Accordingly, this allegation is denied and dismissed with prejudice.

Allegation 2: "Violation of Fourteenth Amendment right to Due Process and Equal Protection."

Applicant alleges for Plea Counsel was ineffective and that his "Fourteenth Amendment right to Due Process and Equal Protection" was violated. This Court finds this allegation is without merit.

In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). However, Applicant's assertion that he was denied Due Process and Equal Protection in violation of his Fourteenth Amendment fails to set forth with specificity the grounds upon which this constitutional violation is based. The Uniform Post-Conviction Procedure Act requires Applicant must "specifically set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50 (2003). Applicant did not allege any grounds upon which his Fourteenth Amendment violation claim was based, and this claim was not framed as ineffective assistance of counsel.

Here, Applicant had the opportunity to present testimony and evidence regarding this claim, and Applicant failed to do so. Since Applicant has failed to present any testimony or evidence with respect to this allegation, this Court finds this allegation shall be dismissed for failing to frame the Constitutional issue as one of ineffective assistance of counsel.

For these reasons, the Court finds this allegation is without merit. Accordingly, this allegation is denied and dismissed with prejudice.

Allegation 3: "Fourth Amend. Right to unlawful seizure in false arrest since GSR report and testing failed to confirm I fired weapon."

Applicant alleges his Fourth Amendment rights have been violated and he is unlawfully seized and falsely arrested because the GSR test failed to confirm that he fired a weapon. This Court finds this allegation is without merit.

In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). Here, Applicant averred that his Fourth Amendment rights are being violated because the GSR test did not prove he shot a weapon. This Court finds that Applicant's negative GSR test is not dispositive of whether Applicant did or did not shoot a weapon. The record shows that Applicant gave a statement to law enforcement indicating he fired a weapon because Owens was allegedly shooting at Applicant.³ As well, at the plea hearing, Applicant agreed with the facts as presented by the assistant solicitor:

THE COURT: All right. Mr. Gadson, you have heard the State's statements of the allegations by the Solicitor. Do you agree with the facts as stated by the Solicitor?

THE DEFENDANT: Yes, ma'am.

THE COURT: All right. And is there any portion of that that you do not agree with?

THE DEFENDANT: No, ma'am.

See Plea Tr. pp. 5, l. 13 – 10, l. 19. It is by Applicant's own admissions in the record that this claim fails.

³ This Court notes that Applicant gave statements that Owens came around Applicant's left side and opened fire, so Applicant shot back. Owens remained on scene and was tested for GSR—not once but twice—and no GSR was found on Owens. Applicant was not tested until much later.

Moreover, Applicant had the opportunity to present testimony and evidence regarding this claim and Applicant failed to do so. Since Applicant has failed to present any testimony or evidence with respect to this allegation, this Court finds this allegation shall be dismissed for failing to frame the Constitutional issue as one of ineffective assistance of counsel.

For these reasons, the Court finds this allegation is without merit. Accordingly, this allegation is denied and dismissed with prejudice.

Allegation 4: Plea Counsel's Conflict of Interest

Applicant alleges Plea Counsel had a conflict of interest because Plea Counsel once represented a witness in Applicant's case. Specifically, because the witness made a statement against Applicant. This Court finds this allegation is without merit.

Applicant claims he is entitled to relief because Plea Counsel allegedly had a conflict of interest because he once represented a witness in Applicant's case and that witness gave a statement to police. "To establish a violation of the Sixth Amendment right to effective counsel due to a conflict of interest arising from multiple representation, a defendant who did not object at trial must show an actual conflict of interest adversely affected his attorney's performance." Thomas v. State, 346 S.C. 140, 143, 551 S.E.2d 254, 256 (2001) (citing Jackson v. State, 329 S.C. 345, 354, 495 S.E.2d 768, 773 (1998)). An actual conflict of interest occurs where counsel owes a duty to a party whose interests are adverse to the applicant's interests. Fuller v. State, 347 S.C. 630, 633-34, 557 S.E.2d 664, 665 (2001). Where an applicant demonstrates that counsel actively represented conflicting interests and that an actual conflict of interest adversely affected his lawyer's performance, prejudice is presumed. Gonzales v. State, 419 S.C. 2, 10, 795 S.E.2d 835, 839 (2017) (citing Strickland, 466 U.S. at 692) (emphasis added). However, "[t]he mere possibility

of a conflict of interest is insufficient to impugn a criminal conviction." Fuller, 347 S.C. at 634, 557 S.E.2d at 665.

"The Sixth Amendment right to conflict-free representation, like the right to counsel itself, may be the subject of a waiver." United States v. Swartz, 975 F.2d 1042, 1048 (4th Cir. 1992). "The state can establish a waiver only by proving an intentional relinquishment or abandonment of the right." Hoffman v. Leeke, 903 F.2d 280, 288 (4th Cir. 1990). "To be valid, a waiver of a conflict of interest must not only be voluntary, it must be done knowingly and intelligently." Thomas, 346 S.C. at 144, 551 S.E.2d at 256 (citing Swartz at 1048-49). "Whether there has been a waiver depends on the particular facts of each case and the court must make as thorough and long an inquiry as necessary to determine whether the accused is voluntarily, knowingly[,] and intelligently waiving his right." Hoffman, 903 F.2d at 288.

On direct-examination, Applicant testified that he did not know what conflict of interest was. Applicant testified that Plea Counsel previously represented Steven Carswell in an armed robbery charge. Applicant testified that Plea Counsel never discussed that with him. Applicant testified that he told Plea Counsel that he thought Plea Counsel was working against him. Applicant testified he never saw any statement Carswell provided. Applicant testified that he never signed a conflict waiver.

On direct-examination, Plea Counsel credibly testified regarding his prior representation of Carswell, that he did not recall when the case was resolved prior to Applicant's issue. Plea Counsel testified that the standard of care and the public defender's office is that he would submit a memo regarding the conflict. They found that the only potential conflict was his duty of loyalty to Carswell. Plea Counsel testified that to absolve this issue was to have someone else cross Carswell during the trial. Plea Counsel testified he also advised Applicant of the conflict and

obtained his consent; however, while Plea Counsel recalls the meeting, he does not recall if Applicant signed a waiver. Plea Counsel testified that he did not think he had divided loyalty. Plea Counsel testified that he indeed discussed the potential conflict with Applicant and that Applicant would have had the option to get a new attorney, but Applicant never expressed concerns regarding Plea Counsel's representation.

On cross-examination, Plea Counsel testified that he did not recall when he represented Carswell and that he advised Applicant of the potential conflict. Plea Counsel testified that he recalls completing conflict waivers, but it is within the realm of possibility that they did not do that.

This Court finds that Applicant is not entitled to relief based upon a conflict of interest. Plea Counsel credibly testified that he informed Applicant of the potential conflict and Applicant never asked for a new attorney. Applicant, knowing that his attorney once represented a potential witness in his case, seemingly waived this potential conflict in entering the plea.

Even if this potential conflict was not waived, Applicant has failed to show any prejudicial effect of the potential conflict. There has been no showing that the potential conflict impacted Plea Counsel's performance or Applicant's decision to plead. Applicant has merely acknowledged a possibility of a conflict existing, which does not warrant relief. Furthermore, this Court finds that there was no *actual* conflict because Applicant chose to plea and did not go to trial. Applicant has failed to meet the burden of showing how he was prejudiced.

For these reasons, the Court finds this allegation is without merit. Accordingly, this allegation is denied and dismissed with prejudice.

Allegation 5: Failure to Obtain Competency Evaluation

Applicant alleges Plea Counsel was ineffective for failing to request a competency evaluation. This Court finds this allegation is without merit.

In order for a defendant to be competent to stand trial, he must have "sufficient present ability to consult with his lawyer with a reasonable degree of relational understanding" and must have a "rational as well as factual understanding of the proceedings against him." Ramirez v. State, 413 S.C. 351, 366, 776 S.E.2d 101, 110 (S.C. Ct. App. 2015) (citing Jeter v. State, 308 S.C. 230, 417 S.E.2d 594 (1992)), rev'd on other grounds, Ramirez, at 22, 795 S.E.2d at 845; Dusky v. United States, 362 U.S. 402 (1960) (per curiam) (internal quotations omitted). A defense attorney may reasonably rely upon his own perceptions in determining whether a mental competency evaluation is required. Jeter, at 233, 417 S.E.2d at 596.

If an applicant for post-conviction relief establishes that his counsel's performance was deficient due to counsel's failure to request a mental competency evaluation when one was warranted, the applicant must then demonstrate that there is a reasonable probability he was incompetent at the time of trial in order to be entitled to relief. See Ramirez, at 22, 795 S.E.2d at 845 (applying this prejudice standard in a case in which applicant pleaded guilty but mentally ill after one mental evaluator concluded he was competent to stand trial, but another concluded applicant was severally mentally retarded) (citation omitted).

This Court finds Applicant has failed to show any deficiency in Plea Counsel not requesting a mental competency evaluation because Applicant has not introduced evidence that Plea Counsel's decision fell below an objective standard of reasonableness. At the evidentiary hearing, Applicant testified that he only had 8th grade education and understood Plea Counsel to a certain extent but did not understand most of it at times. Applicant testified that he thought he needed a

competency evaluation because he didn't understand things like a GSR kit. Plea Counsel testified that Applicant spoke coherently and seemed to understand. Plea Counsel testified that he had no concerns regarding Applicant's ability to understand. Plea Counsel testified that he knew that Applicant had attained a ninth-grade education from Eau Claire. Plea Counsel testified that he had no mental health issues; if he did, he would have petitioned for a competency evaluation. Still, there were no indications that Applicant had capacity issues. Plea Counsel testified that there were several bond hearings that he went to, and he had an open line of communication with the Applicant's mother. Plea Counsel testified that no family members raised competency concerns.

This Court finds Plea Counsel reasonably relied upon his own perception that Applicant's mental competency was not disputed and did not warrant a request for an evaluation. See Garren v. State, 423 S.C. 1, 13, 813 S.E.2d 704, 710 (2018) (finding that counsel reasonably relied upon his own perceptions of his client's competency because, based on counsel's interactions with his client, he believed that a competency evaluation was not needed, believed that his client was competent, and continued to believe that his client was competent at his plea hearing). Simply put, Applicant has failed to show any deficiency in Plea Counsel's representation because Applicant has provided no evidence Plea Counsel should have questioned his mental competency at the time of his trial.

Furthermore, this Court finds Applicant has failed to show any resulting prejudice from Plea Counsel's not having Applicant's mental competency evaluated. Applicant has not demonstrated that there was a reasonable probability that he would have been found incompetent if his competency had been evaluated before his plea hearing. Applicant's testimony did not establish that he lacked the sufficient ability at the time to consult with Plea Counsel with a reasonable degree of relational understanding about his criminal case or the consequences of

proceeding with his plea hearing. Applicant's assertion that he suffered prejudice from the lack of a competency examination is purely speculative. See Garren, at 13, 813 S.E.2d at 711 (finding that there was no evidence to support the PCR court's finding that Garren suffered prejudice from his defense attorney's failure to have Garren's mental competency evaluated because Garren did not introduce evidence at his PCR hearing that there was a reasonable likelihood that he would have been found incompetent if the evaluation had been conducted).

This Court finds that Applicant has failed to show that Plea Counsel was constitutionally ineffective for not having Applicant's mental competency evaluated because he has failed to show any deficiency in Plea Counsel's performance and resulting prejudice.

For these reasons, the Court finds this allegation is without merit. Accordingly, this allegation is denied and dismissed with prejudice.

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CONCLUSION

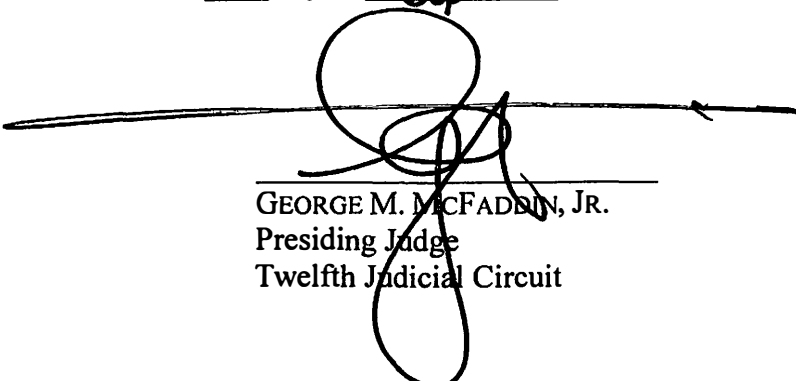
Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. The Court finds Plea Counsel's representation was neither deficient nor prejudicial. Therefore, this application for post-conviction relief **must be DENIED and DISMISSED WITH PREJUDICE.**

The Court notes Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Rule 71.1(g), SCRCR, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. Post-conviction relief is denied, and the application for post-conviction relief be dismissed with prejudice; and
2. Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this 19th day of September, 2022.



GEORGE M. MCFADDEN, JR.
Presiding Judge
Twelfth Judicial Circuit

195

WITNESSES

(S) Inv. John Carwell, Jr.
- RCSD

ARREST WARRANT NUMBER

2015A4010600999

ACTION OF GRAND JURY

TRUE BILL

Kathy Whaley
Foreperson of Grand Jury

Date:

FEB 17 2016

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016-GS-40-00734

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2016

116

THE STATE
vs.

Randall Gadson, Jr.

Indictment for
MURDER

SC Code: 16-03-0010
CDR Code: 0116

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

Defendant

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

Defendant

Witness:

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

CERTIFIED TRUE COPY
OF ORIGINAL FILED
Jeannette White
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on February 17, 2016,
the Grand Jurors of Richland County present upon their oath:

MURDER

That Randall Gadson, Jr. did in Richland County, on or about
September 18, 2015, kill the victim, Paul A. Coleman, with malice
aforethought, either express or implied, by means of a gunshot wound, and
the victim did die as a proximate result thereof. All in violation of Section
16-03-0010, S. C. Code of Laws, (1976, as amended).

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



DAN JOHNSON, SOLICITOR

CERTIFIED TRUE COPY
OF ORIGINAL FILED
James M. Brade
S.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATE VS.Randall Gadson, Jr.

AKA:

Race: BLACK Sex: M Age: 25DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip:

DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Manslaughter / Voluntary manslaughter

IN THE COURT OF GENERAL SESSIONS 9

INDICTMENT/CASE#: 2016-GS-40-00734A/W#: 2015A4010600999Date of Offense: 9/18/2015S.C. Code §: 16-03-0010CDR Code #: 0116SENTENCE SHEET 2-30 years☐ CONVICTED OF or ☒ PLEADSin 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: Kathryn Cavanaugh 77690 X RANDALL GADSON JR SCC 1001010
Cavanaugh, Kathryn 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 17 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. 80 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ 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 \$

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

CERTIFIED TRUE COPY

OF ORIGINAL FILED,

PTUP days/hours Public Service EmploymentObtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

☐ SOUTH CAROLINARandom Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender Fund

Other:

NO contact w/ victim's family☐ Appointed PD or appointed other counsel,
Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge

Judge Code: 2161Sentence Date: 3-14-18