

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

J. Ernest Kinard, Jr., Circuit Court Judge

RECEIVED

JUL 23 2013

S.C. Supreme Court

TERRENCE GREENE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000267

APPENDIX

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INDEX

INDEX	i
GUILTY PLEA HEARING TRANSCRIPT (JANUARY 24 – 25, 2011)	1
APPLICATION FOR POST-CONVICTION RELIEF	66
RETURN	82
SUPPLEMENTAL GROUNDS FOR VACATING CONVICTION AND MEMORANDUM IN SUPPORT THEREOF	90
POST-CONVICTION RELIEF HEARING TRANSCRIPT (DECEMBER 7, 2012)	94
ORDER OF DISMISSAL	161
CLERK OF COURT RECORDS	177

State of South Carolina

Court of General Sessions

County of Richland

2010-GS-40-00137

The State of South Carolina :

-VS-

TRANSCRIPT OF RECORD

Terrence Greene :

January 24 and 25, 2011
Columbia, South Carolina

B E F O R E:

The Honorable Clifton Newman, Judge.

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

Joanna McDuffie, Esquire
Nicole Simpson, Esquire
Attorneys for the State

Nathaniel Roberson, Esquire
Attorney for the Defendant

Daphne D. Helms
Circuit Court Reporter

I N D E X

Witness

^

E X H I B I T S

No.

Description

ID.

EV.

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1 **The Court:** All right. Madam Solicitor?

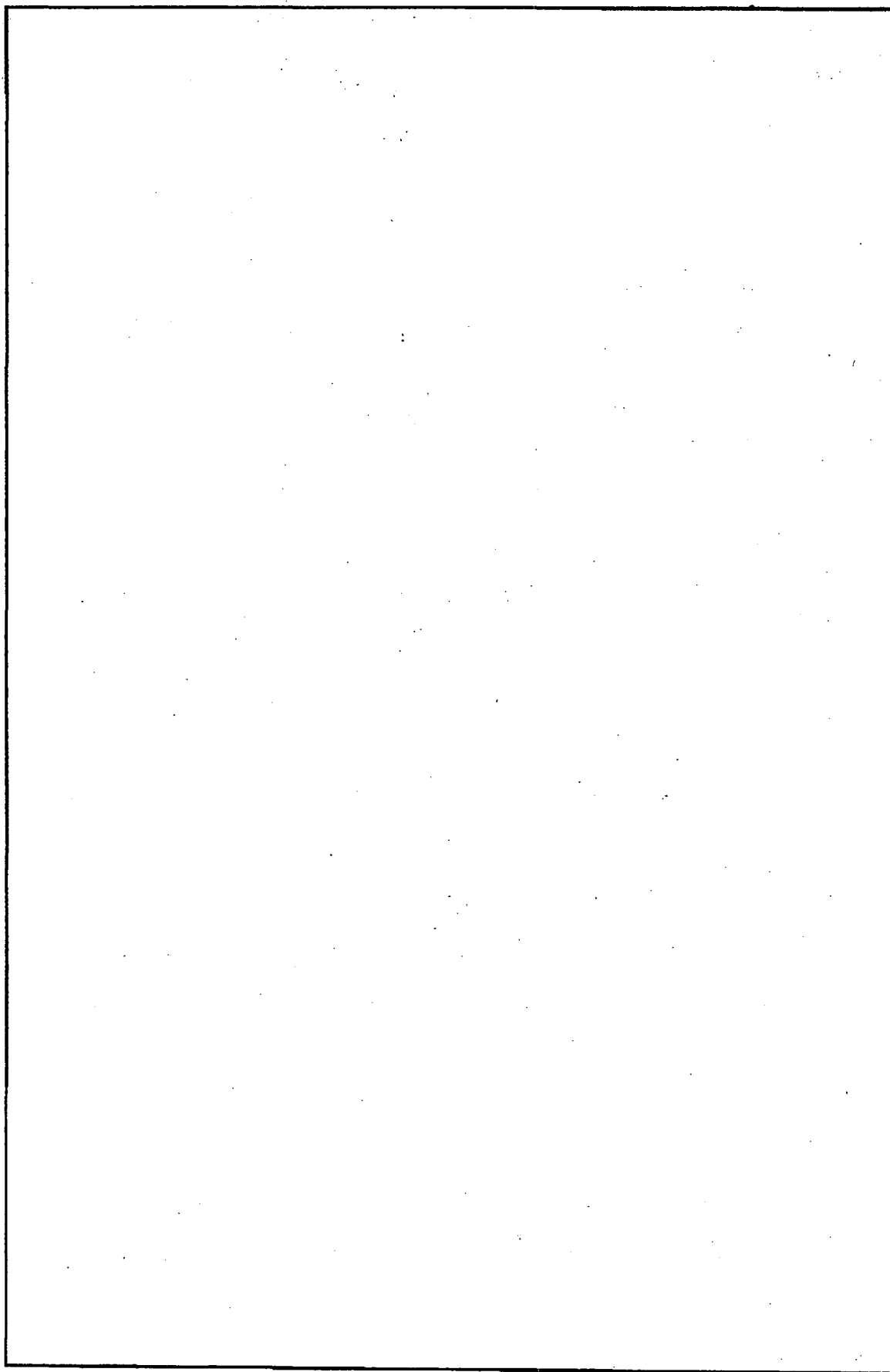
2 **Ms. Simpson:** The State calls Terrence Greene.

3 Terrence Greene, after being duly sworn, testified
4 as follows:

5 **Ms. McDuffie:** May it please the Court, Your Honor?
6 Standing before you is Terrence Greene with his attorney,
7 Nathaniel Roberson of the private bar. We were here today
8 prepared to go to trial against Mr. Greene on the charge of
9 murder. As Your Honor is familiar, on January the 4th of
10 2010 we called the case of his co-defendant, Chamar Scott, on
11 the same charge of murder, Your Honor. Mr. Scott was
12 sentenced to a period of incarceration for 40 years on that
13 murder case, and we were prepared to try Mr. Greene today as
14 well.

15 However, Your Honor, he indicates that he is willing to
16 plead guilty to the charge of voluntary manslaughter. This
17 is a straight-up plea. There are no other offers,
18 recommendations, or negotiations on behalf of the State in
19 this matter, Your Honor. However, we would ask that
20 sentencing be deferred until 2 p.m. tomorrow. The victim's
21 father, Dr. Henry -- Dr. Wayne Henry will be flying into
22 Columbia tomorrow morning, and we would ask that the Court
23 grant us until 2 p.m. tomorrow for sentencing.

24 **The Court:** All right. Do you agree with all that, Mr.
25 Roberson?



1 Mr. Roberson: I do agree, Your Honor.

2 Examination by the Court

3 Q. All right. Mr. Greene, you want to plead guilty to
4 voluntary manslaughter?

5 A. Yes, sir.

6 Q. And do you understand that the law says that a person
7 convicted of manslaughter must be imprisoned for not more
8 than 30 years or less than two years?

9 A. Yes, sir.

10 Q. That means the maximum sentence for this crime is 30
11 years in prison.

12 A. Yes, sir.

13 Q. Do you understand that this offense is classified in the
14 law as being a violent offense and a most serious offense?

15 A. Yes, sir.

16 Q. Do you understand that if you commit another most
17 serious offense that you can be incarcerated for life without
18 the possibility of parole?

19 A. Yes, sir.

20 Q. And has anyone promised you anything as far as a
21 sentence is concerned?

22 A. No, sir.

23 Q. Do you understand that the sentence is up to me and that
24 is whether you're to be sentenced to two years or 30 years or
25 anything in between, that that sentence is up to me?

1 A. Yes, sir.

2 Q. And as you know, the -- you're here this morning for a
3 jury trial. The jury is downstairs ready to come up for jury
4 selection, and you have the right to have a jury trial. Do
5 you understand that?

6 A. Yes, sir.

7 Q. If you were to have a jury trial, the jury would be
8 instructed that you are presumed to be not guilty of the
9 charges. You cannot be found guilty of the charges unless
10 the State can prove guilty and prove guilty to each and every
11 juror by evidence satisfying them of that guilt beyond a
12 reasonable doubt. Do you understand that?

13 A. Yes, sir.

14 Q. And do you understand that if you were to have a trial
15 you'd have the right to confront any witnesses against you,
16 to have your lawyer, Mr. Roberson, cross-examine any
17 witnesses who may testify against you, challenge any of the
18 evidence the State may offer against you, and to present any
19 defense that you may have and any witnesses that you may
20 have? Do you understand that, sir?

21 A. Yes, sir.

22 Q. Do you want to give up each and every one of those
23 rights?

24 A. Yes, sir.

25 Q. And are you guilty of the unlawful killing of the victim

1 in this case, Mr. Andrade Henry?

2 A. Yes, sir.

3 Q. Are you satisfied with the services of your lawyer in
4 this case - Mr. Roberson?

5 A. Yes, sir.

6 Q. Has he done everything that you think he could or should
7 have done to assist you?

8 A. Yes, sir.

9 Q. Is there anything else that you think he can or should
10 do to help you?

11 A. No, sir. I'm satisfied, Your Honor.

12 Q. And do you understand that when you plead guilty you
13 give up your right to remain silent concerning this matter?

14 A. Yes, sir.

15 Q. And from your information that you received as far as
16 the evidence that the State has against you, do you believe
17 that if you were to have a jury trial that you would most
18 likely be found guilty?

19 A. Yes. Yes, sir.

20 The Court: Mr. Roberson, do you believe that this
21 guilty plea is in his best interest?

22 Mr. Roberson: I do, Your Honor. I do think so, Your
23 Honor.

24 By the Court:

25 Q. And, Mr. Greene, are you today under the influence of

1 any drugs?

2 A. No, sir.

3 Q. Any alcohol?

4 A. No, sir.

5 Q. Any medication?

6 A. No, sir.

7 Q. Anything that might affect your ability to understand
8 what you're doing today?

9 A. No, sir.

10 Q. Have you had enough time to make up your mind as to what
11 you want to do concerning this case?

12 A. Yes, sir.

13 Q. And do you understand, sir, that you have the right to
14 appeal your guilty plea and sentence, but if you do so you
15 must do so within 10 days?

16 A. Yes, sir.

17 Q. All right. All right. Is this guilty plea a free and
18 voluntary plea?

19 A. Yes, sir.

20 Q. Has anyone threatened you, pressured you, or done
21 anything to force you to plead guilty?

22 A. No, sir.

23 Q. Have you understood all my questions?

24 A. Yes, sir.

25 Q. Have you answered all of them truthfully?

1 A. Yes, sir.

2 Q. And understanding -- understanding the nature of the
3 charge and the possible punishment, how do you plead to
4 voluntary manslaughter?

5 A. Not guilty -- guilty.

6 Q. Okay. Let me ask you the question again. Understanding
7 the nature of the charge and the possible punishment, how do
8 you plead to voluntary manslaughter?

9 A. Guilty.

10 The Court: All right. Solicitor, the facts.

11 Ms. Simpson: Thank you, Your Honor. May it please the
12 Court? This incident occurred on January 10th of 2010 on
13 Rice Creek Farms Road. That area is an unpaved roadway, a
14 construction site, which was in its initial stages of
15 development. But prior to that night, Your Honor, the night
16 before, Terrence Greene, along with his co-defendant, Chamar
17 Scott, spent the night together. At that time they planned
18 to rob Andrade, the victim in this case. So---

19 The Court: Is that true, Mr. Greene?

20 Mr. Greene: No, sir.

21 The Court: What part is not true?

22 Mr. Greene: Planning the robbery.

23 The Court: All right. Go ahead.

24 Ms. Simpson: Your Honor, the next morning the call was
25 made to Andrade and the meeting was set up. Andrade then

1 went to the location and picked up the defendant, Terrence
2 Greene, as well as his co-defendant, Chamar Scott. At that
3 time Terrence Greene got in the passenger seat side -- front
4 passenger seat, and Chamar Scott got in the back passenger
5 seat behind the victim.

6 The Court: Is that true, sir?

7 Mr. Greene: Yes, sir, but he got on the -- got on the
8 seat behind me. He didn't get into...

9 The Court: All right.

10 Ms. Simpson: Your Honor, once they were in the car,
11 Andrade then drove to the location at Rice Creek Farms Road.

12 The Court: Is that true, sir?

13 Mr. Greene: He wasn't dragged. That was...

14 The Court: She said he drove.

15 Mr. Greene: Oh, yes, sir.

16 The Court: He drove to the location at Rice Creek Farms
17 Road.

18 Mr. Greene: Yes, sir.

19 The Court: Is that true?

20 Mr. Greene: Yes, sir.

21 The Court: All right. Go ahead.

22 Ms. Campbell: When they arrived at that location,
23 according to the defendant's own statement, Andrade began
24 rolling a blunt at which time Chamar Scott pulled out a .22
25 caliber pistol and put it to Andrade's head.

1 The Court: Is that true, sir?

2 Mr. Greene: Yes, sir, but I was -- I was the one who
3 was rolling, but he did -- the .22 part, that is true. Yes,
4 sir.

5 The Court: All right. You were rolling the marijuana.

6 Mr. Greene: Yes, sir.

7 The Court: All right.

8 Ms. Simpson: So as Chamar Scott pulled out the .22
9 caliber pistol, he also grabbed him from behind around his
10 neck, putting him in a chokehold.

11 The Court: Is that true?

12 Mr. Greene: Yes, sir.

13 The Court: All right.

14 Ms. Simpson: And demanded that Andrade give him the
15 money. According to this defendant, Andrade said, "Take
16 whatever you want," but that did not happen. A struggle
17 ensued, Your Honor, at which time Terrence Greene got out of
18 the car. The victim was eventually dragged out of the car.
19 It's the State's---

20 The Court: Is that true?

21 Mr. Greene: Yes, sir.

22 The Court: All right.

23 Ms. Simpson: It would be the State's contention that
24 during that time according -- also according to this
25 defendant, the gun didn't work, but Andrade unarmed likely

1 did not know that and it would not have mattered anyway
2 because the defendants also had a knife. So a struggle---

3 The Court: Is that true?

4 Mr. Greene: She said defendants or defendant?

5 The Court: Well, either one or both of you had a knife.

6 Mr. Greene: Oh, yes, sir.

7 The Court: All right.

8 Ms. Simpson: The struggle continued. Andrade,
9 according to the pathologist in this case, suffered numerous
10 cuts and lacerations and stab wounds as well as defensive
11 wounds about both his body, his face, and his arms and that
12 would be consistent with the use of a knife. The struggle
13 eventually---

14 The Court: Is that true?

15 Mr. Greene: Yes, sir.

16 The Court: All right.

17 Ms. Simpson: The struggle eventually continued down to
18 the rocks which is actually a large bed of granite rocks at
19 this construction site, and we believe that the evidence
20 would have supported that Andrade was beaten in that location
21 numerous times with a large rock or at least a large blunt
22 object consistent with a rock.

23 The Court: Is that true?

24 Mr. Greene: Yes, sir.

25 Ms. Simpson: Your Honor, it would also be the State's

1 contention that that would be Andrade's final resting place.
2 He would be found with his pants down around his ankle. One
3 of his boots had been removed as well as his socks perhaps
4 from where he was trying to get away.

5 The Court: Is that true?

6 Mr. Greene: Yes, sir.

7 The Court: How did his pants get pulled down?

8 Mr. Greene: I don't know. I was in the truck, sir.

9 The Court: All right.

10 Ms. Simpson: Your Honor, his knees were scraped up
11 consistent with him having been kneeling at some point during
12 this beating prior to his death. Once they had beaten
13 Andrade, the defendant actually got into the driver's seat
14 and Chamar Scott, the co-defendant, also got in, but they
15 realized at that time that they forgot to get the money. So
16 this defendant, Terrence Greene, went back to Andrade's body
17 and grabbed at least \$40 from his pockets.

18 The Court: Is that true?

19 Mr. Greene: Yes, sir.

20 Ms. Simpson: According to the defendant, at that time
21 Andrade was still breathing heavily, possibly still alive in
22 the final moments of his death. Having the money, they got
23 back in and they drove to a gas station. Using some of the
24 money they took from the victim, Terrence Greene got some
25 gas.

1 The Court: Is that true?

2 Mr. Greene: Yes, sir.

3 Ms. Simpson: And then took the back roads on the way to
4 Sumter in order to dispose of the vehicle. Your Honor, the
5 evidence would support that this defendant specifically is
6 the one who had ties and connections with Sumter. It was his
7 family, his relatives. He was the one most familiar with the
8 location.

9 The Court: Is that true?

10 Mr. Greene: Yes, sir.

11 Ms. Simpson: On the way to Sumter, he used -- well, he
12 went ahead and called his cousin, Andrew Greene, who would
13 have testified and enlisted his help to dispose of the car.
14 He said that he needed them to follow him and to bring a gas
15 can. Your Honor, Andrew Greene would then call his friend,
16 John White, who you would have also heard from and they met
17 up with the defendants, Terrence Greene and Chamar Scott.

18 Terrence Greene filled up the gas can that John White
19 had in his car, and they paid for it and then they left. At
20 that time John White, I believe, and Andrew Greene were
21 leading the way to Sally Road where this vehicle was burned,
22 Chamar Scott and Terrence Greene following behind them in
23 Andrade's car.

24 They went to this location which was fairly remote, Your
25 Honor, wooded. While there were residences, probably the

1 closest one would have been a mile down the road. And they
2 doused the car with gasoline at that point. Terrence Greene
3 attempted to light it with a cigarette, but that didn't work.

4 The Court: Is that true?

5 Mr. Greene: No, sir.

6 The Court: How did it happen?

7 Mr. Greene: All I know is the truck got on fire. I had
8 got back in the truck once we got to the location.

9 The Court: You don't know how it burned?

10 Mr. Greene: It was gas, yes, sir, but I don't know like
11 -- I didn't---

12 The Court: Did you pour gas on the car?

13 Mr. Greene: No, sir.

14 The Court: Did you light the car?

15 Mr. Greene: No, sir.

16 The Court: Who did?

17 Mr. Greene: It was either -- it was either Chamar or I
18 think it was -- I don't really know. I was in the truck,
19 sir, so I really couldn't tell you.

20 The Court: All right.

21 Mr. Greene: I got in J.R.'s truck. That's how we got
22 back to... That's how we left the scene.

23 The Court: All right.

24 Ms. Simpson: Your Honor, we believe the evidence would
25 have supported that he actually lit the cigarette first. It

1 did not light, and at that time Andrew Greene, his cousin, in
2 an attempt to assist him, lit a towel on fire and threw it
3 into the car. At that point the vehicle did catch fire.

4 The defendants left, along with John White and Andrew
5 Greene. At this point, Your Honor, they did not have a ride
6 back to Columbia, so they called up a friend, I believe, of
7 Andrew Greene's, a Travis Durant, in an effort to get a
8 vehicle to get back to Columbia. They weren't able to do
9 that, Your Honor, but eventually they did make it back to
10 Columbia. And the gun in this case as well as the knife were
11 never found. The victim's personal items also were not
12 located.

13 The Court: Is that true?

14 Mr. Greene: Yes, sir.

15 The Court: What happened to the gun?

16 Mr. Greene: I didn't even have it.

17 The Court: What happened to the knife?

18 Mr. Greene: I never seen -- I never seen a knife. I
19 never knew there was a knife until, you know what I mean,
20 they say there were stab wounds and stuff.

21 The Court: What about to the boy's clothes and the
22 material things?

23 Mr. Greene: I don't know, Your Honor. I don't know.

24 The Court: What happened to the money?

25 Mr. Greene: Well, some of it was spent on gas, and the

1 rest I don't know. I guess it was spent, Your Honor.

2 The Court: On what?

3 Mr. Greene: Probably food. I can't even remember, so I
4 don't want to tell a lie.

5 The Court: All right.

6 Ms. Simpson: Your Honor, they made it back to Columbia,
7 and I'll end up backtracking just a little bit. On -- the
8 evidence will show that Andrade's body was actually found two
9 days later at the construction site by Samuel Rikard who
10 oversaw the project and made rounds that day. At the time
11 investigators did not know the identity of Andrade because
12 the defendants had removed any identification that would have
13 been available.

14 Your Honor, they were able to later identify Andrade
15 through his fingerprints as well as the missing person's
16 report that his stepfather had filed earlier that morning.
17 Finally, having the identity of the victim, law enforcement
18 continued their investigation. Your Honor, they exhausted
19 numerous leads and through I believe even a Crime Stoppers
20 tip they learned that this defendant may be involved as well
21 as another witness, Henry Ellison, explaining that this
22 defendant had spoken to him about the incident essentially
23 and was trying to make efforts to get to Sumter and Georgia
24 where they had connections. Your Honor, there are numerous
25 things that would have---

1 The Court: Is that true?

2 Mr. Greene: No, sir.

3 Ms. Simpson: ---that would have connected this
4 defendant we argue with this murder. Specifically, we would
5 have offered evidence that his cell phone was located in the
6 area of the homicide at the time it should have occurred as
7 well as in Sumter where the car was burned at that time as
8 well. There were various statements that this defendant
9 made, one in which he admitted to his cousin, Andrew Greene,
10 that they had beaten up a guy named Dray with rocks---

11 The Court: Is that true?

12 Mr. Greene: No, sir. No.

13 Ms. Simpson: We would have offered that statement, but
14 in addition to some of the oral statements and the evidence
15 and testimony from some of the lay witnesses, this defendant
16 actually confessed, Your Honor, or at least gave a written
17 statement implicating himself both in the robbery and the
18 planning of the robbery---

19 The Court: Is that true?

20 Mr. Greene: No, sir.

21 The Court: Did you swear this defendant, Ms.
22 Pendergrass?

23 The Clerk: Yes, Your Honor.

24 The Court: All right.

25 Ms. Simpson: Implicating himself in the robbery as well

1 as the death of Andrade. We submit he perhaps would have
2 minimized his role somewhat. However, Your Honor, we would
3 have been proceeding under a theory of hand of one/hand of
4 all, and while this defendant may not have delivered the
5 final blow, we believe that he is responsible for the death
6 of Andrade.

7 The Court: Mr. Greene, what did you do that makes you
8 guilty of manslaughter?

9 Mr. Greene: I was there and I didn't report it. I knew
10 what happened, but I didn't report anything to anybody.

11 The Court: Well, that's not -- that's not going to cut
12 it. Mere presence does not make you guilty.

13 Mr. Roberson: Your Honor---

14 The Court: If that's your defense---

15 Mr. Roberson: ---may I---

16 The Court: ---then the jury is going to have to buy it,
17 not me.

18 Mr. Greene: Yes, sir.

19 Mr. Roberson: May I explain, Your Honor?

20 The Court: To him?

21 Mr. Roberson: Well...

22 The Court: If he's not guilty, we have a trial. I'm
23 not taking -- I'm not taking a guilty plea if he's claiming
24 that he's not guilty. Either he's guilty or not guilty.

25 (An off-the-record discussion takes place between Mr.

1 Roberson and Mr. Greene.)

2 Mr. Greene: Well, there was a robbery. The robbery led
3 up to the death, but I commend the part as guilty as to --
4 because I knew what was---

5 The Court: You don't know anything about the robbery.
6 You all didn't discuss any robbery. You said she didn't --
7 she -- it was not true.

8 Mr. Roberson: Your Honor, that's not accurate. His
9 first statement says that the reason they got together when
10 they got together -- Chamar is the one who was talking about
11 robbing somebody and that he didn't part from Chamar at that
12 point and that Chamar discussed with him that he would give
13 him the proceeds but he wasn't going to participate in a
14 robbery, but he had to know that Chamar was serious about
15 robbing this young man because he's the one who made the
16 contact to get him there.

17 The Court: Well, we've had Chamar's trial and he -- and
18 I sentenced him to 40 years.

19 Mr. Roberson: Right.

20 The Court: And now we're dealing with this defendant's
21 guilt or innocence.

22 Mr. Roberson: Your Honor, this is -- this is in large
23 measure -- in large measure accomplice liability. That is
24 his biggest exposure. He saw Chamar and the fellow get in
25 the fight. He was in there when Chamar pulled a gun. Chamar

1 had told him previous to Andrade - I believe that's how you
2 pronounce it - that he was, in fact, going to rob him. That
3 culpability makes him central to any crime that results
4 thereof, even if his participation in the physical encounter
5 is minimal. The fact that he knew that there were
6 consequences, that it could get out of hand -- there was a
7 possibility of some serious offense happening because of the
8 robbery and he did not vest himself for it -- he went along
9 with it, and all this resulted. The criminal liability is
10 enough to make him guilty of the crime charged or any lesser
11 included offense.

12 **The Court:** I understand the theory, but he has not told
13 me anything that he did that makes himself guilty of
14 manslaughter and that's what I want to know from you. What
15 did you do that makes you guilty?

16 **Mr. Greene:** I witnessed -- I witnessed the crime.

17 **The Court:** All right. That doesn't make you guilty of
18 the crime by witnessing a crime.

19 **Mr. Greene:** Not reporting it.

20 **The Court:** That's a different crime, misprision of a
21 felony, if you see a crime and don't report it.

22 **Mr. Greene:** And I acted and I knew what was going on.
23 I participated in it.

24 **The Court:** You participated in what way?

25 **Mr. Greene:** The disposing of the vehicle and I did -- I

1 got the money out of his pocket, so that means I participated
2 in getting the robbery so...

3 The Court: Mr. Roberson?

4 Mr. Roberson: Your Honor, I think, if I understand the
5 law correctly, the consequences of engaging in a criminal
6 act, all of the acts that occurred therefrom, all persons
7 present in the act are guilty as if he individually committed
8 the offense. I'm not -- I'm not certain that he knew for
9 certain whether or not Chamar was serious about the robbery,
10 but it certainly had been discussed. And I don't know if he
11 knew Chamar to the extent that he understood he had the
12 capacity to do it.

13 The other thing is when Chamar pulled the gun and stuck
14 it to his head and said give it up, my client jumped out and
15 moved around to the driver's side. He should have departed
16 the scene at that time, but I think he probably had full
17 access to the truck at that point. But he stuck around as
18 the fight proceeded. Then he went back to complete what
19 turns out to be one of the consequences of Chamar pulling the
20 gun, that is, to rob him.

21 The death happened as a result of Chamar fighting back
22 and the fight continuing until at some point I guess he was
23 rendered helpless and his death resulted therefrom. I
24 believe even with that minimal contact it's sufficient for a
25 jury to find based on the inferences that I think this Court

1 will charge the jury -- I believe that would be sufficient
2 for a court to find his culpability enough for him to be
3 criminally responsible as if he were a principal in that
4 single act.

5 The Court: Do you agree with that?

6 Mr. Greene: Yes, sir.

7 The Court: All right. The State?

8 Ms. Simpson: Thank you, Your Honor. I believe that's
9 essentially the extent of the facts. This did occur in
10 Richland County. I believe I may have missed that point
11 earlier. And, Your Honor, for purposes -- the injuries that
12 Andrade suffered, the cuts and lacerations and stab wounds,
13 were contributory, but it was the repeated blows to his head
14 that was the actual ultimate cause of death.

15 The Court: And being left to die.

16 Ms. Simpson: Correct, Your Honor.

17 The Court: Without giving any possibility of survival
18 through getting any medical assistance.

19 Ms. Simpson: Correct. And, Your Honor, we have his
20 prior record as well.

21 The Court: All right. What is that?

22 Ms. McDuffie: Your Honor, as a juvenile he was charged
23 with lynching second degree and assault and battery of a high
24 and aggravated nature, and he was adjudicated in family court
25 on the assault and battery of a high and aggravated nature.

1 He was placed on probation on June the 24th of 2009. Your
2 Honor, that is the extent of his prior record.

3 The Court: Was he on probation at the time?

4 Ms. McDuffie: Your Honor, I'm not aware of his
5 probationary -- of how long the probationary period was that
6 he was sentenced to, but he was placed on probation on
7 June 24th of 2009.

8 Mr. Roberson: He was not on probation at the time of
9 this offense, Your Honor.

10 The Court: All right.

11 Ms. McDuffie: Your Honor, the law enforcement and the
12 victims would like to address Your Honor at sentencing at 2
13 p.m. tomorrow.

14 The Court: All right. All right. I will -- I'll
15 accept the guilty plea and will defer sentencing 'til
16 tomorrow at 2.

17 Mr. Roberson: Thank you, Your Honor.

18 Ms. Simpson: Thank you, Your Honor.

19 (Whereupon, the hearing was concluded. The hearing
20 resumed the following day, January 25, 2011, as follows:)

21 The Court: Good afternoon. All right. From the State?

22 Ms. McDuffie: May it please the Court, Your Honor?

23 We're here today for the sentencing of Terrence Greene. He
24 pled guilty yesterday to one count of voluntary manslaughter.
25 Your Honor, the victim's father, Dr. Wayne Henry, would like

1 to address the Court at this time.

2 The Court: Sure.

3 Mr. Henry: Good afternoon.

4 The Court: Good afternoon.

5 Mr. Henry: Good afternoon, Your Honor. My name is
6 Wayne Henry. I'm the father of Andrade Henry, and I'm
7 thankful once again for the opportunity to address the Court.
8 Even though this is something I'm aware of, the decision that
9 Mr. Terrence Greene has made, you know, as to the -- I was at
10 the first trial of Chamar Scott, and here we are again and
11 it's been a roller coaster ride, you know, especially for me
12 traveling as far from New York here. But as I told my family
13 and friends, it didn't matter to me how many times I would
14 have to be here. I would stay -- I would come as often as I
15 need to see justice -- to make sure justice is and was
16 served.

17 In this case, you know, my son is gone under tragic
18 circumstances. It has impacted myself greatly. It has
19 impacted the other children. We've gotten counseling. We're
20 still going for counseling, and I've come to realize one
21 thing: That, you know, when a loved one dies, especially
22 when it's my son, something I would have never dreamed of
23 happening in my wildest years, I always thought that, if
24 anything, my own children would be burying me and not the
25 other way around, but nevertheless, be that as it may, you

1 know, it's very hard. It's very difficult.

2 I think about Andrade night and day. What happened to
3 him didn't have to happen that way. Not only the fact that
4 he was killed, it's just that the manner -- the way he looks,
5 I can't seem to get that out of my head. I have nightmares,
6 dreams about him, you know. I mean, it totally disfigured
7 (sic) -- it wasn't like, okay, an accidental death. It's
8 like basically it would have went to lynching, you know, so
9 to speak, and I just couldn't understand what would go
10 through someone's mind to lead them to take another human
11 being's life.

12 My son was very loved and a very intelligent child. I
13 mean, he would call me when he needed something, especially
14 with his schoolwork, and when I came last year I remember in
15 the summertime when he -- at Midlands Technical College last
16 summer he was supposed to graduate with a degree in auto
17 mechanics and electrical work, and they had his name in the
18 program and everyone else was there and he was missing and it
19 was just so sad, you know, and all we got was his diploma and
20 -- but there's no Andrade. All the tools -- he had gotten a
21 huge tool set that we had got for him to practice his
22 mechanic work once he graduated. All that is still at his
23 mom's house, his clothes and everything. Every time I go
24 over there, I just want to hold on to a piece of him because
25 my son -- if it's a letter he wrote, if it's one of his I.D.

1 cards, whatever it is I'm trying to scoop up every last bit
2 of anything that remind me of him, anything he touched. Part
3 of me wish that I had his voice recorded on my voice message
4 so I could play it over and over again. Unfortunately, I
5 don't have anything with him with his voice actually
6 recorded.

7 Be that as it may, Your Honor, you know, my son is gone
8 and, you know, whatever the decision is in punishing Mr.
9 Terrence Greene, I know that it cannot bring my son back. If
10 I could have done anything to get my son back, I would, but
11 one thing I do know is that as long as there's justice, we
12 will have some closure. We will still be mourning, but at
13 least my son's death would not go unpunished or unpaid. And
14 when I say unpunished, I mean severely punished because he
15 died a violent death, a painful death and, I mean, he was in
16 the prime of his life, had so many dreams, so many goals,
17 ambitions, you know. He dream of marrying, having children,
18 going on to further his education. All that was stolen from
19 him, and it's just wrong and it's unfair and no one has the
20 right to take my son's life.

21 And, you know, the person who has done this who has
22 accepted responsibility for this, you know, I'm just asking
23 you the maximum allowed in this case, you know. I'm not sure
24 where that lies because there's a possibility he may not be
25 able to get a life sentence which would be the best thing for

1 him, but in this case, Your Honor, I'm going to plead with
2 you if life sentencing is not possible, whatever the next
3 best is, if it's 30 years, I'm going to ask for 30 years.

4 I want -- I would love for Mr. Greene to spend his time
5 and think about what happened, you know. Let it bring some
6 closure and relief to the family. Let my son's death not be
7 in vain. It won't bring him back, but at least I can say
8 justice will roll over.

9 You know, I've been here. I've met some wonderful
10 people, and I'm very grateful for that to the State. You
11 know, everyone here in the court has been very grateful.
12 They've helped me, and I'm glad for the people I have met
13 here. I have watched Mr. Greene's dad and, you know, I say,
14 you know, he gets to see his son. He gets to -- he gets to
15 come to court and make sure his son is okay.

16 When I laundered my son's suit, I laundered his suit so
17 he could go under the ground. I don't get to see him again
18 because he's under the ground. Sometimes, you know, I tell
19 my friends and my family that sometimes I call his cemetery
20 and say, "How is my son doing? Can I just go back go by his
21 graveside and make sure it's okay?" I'm sure these people
22 are thinking I'm crazy, but I just can't help it, you know.
23 Sometimes I say weird things like if I could dig him back up
24 and look at him another time again. But be that as it may,
25 again I'm glad to be here under these unfortunate

1 circumstances, Your Honor.

2 Most of the family members are here. Some are outside.
3 Some are back in New York. My mom and my dad, you know, my
4 close friends, his close friends, they all miss him, you
5 know. Dray, as we sometimes called him, was well loved and
6 his death --- it's one year now that he has died, and every
7 time I come to South Carolina I beg his mom and friends:
8 Please go to Rice Creek Farm and put a card or do something
9 just to remember him.

10 And in my heart I am not bitter, but I am angry. I am
11 angry because my son didn't deserve to die like this, and
12 then he was -- he was killed and left there. There was a big
13 cover-up. The jeep was burned. No one would have thought,
14 you know, let me call someone and tell them Mr. Andrade is
15 there. He was accidentally found at the site by a
16 construction worker. You know, I mean, this is just -- I
17 just -- my heart can't understand this.

18 In any event, once again, Your Honor, I may sound as if
19 I'm repeating myself, but I am begging you and pleading with
20 you for justice to please make sure Mr. Terrence Greene gets
21 the maximum sentence which in this case would be 30 years,
22 and in my heart 30 years is not enough. It is not -- it
23 doesn't even cut as close to what I would like, but that's
24 all that's available. I'm asking you to give him that 30
25 years.

1 Let him take time to think. Let him take time to repent
2 of his sins and shortcuts, and I want him and his family to
3 know that when they took my son away, they took me with him
4 because part of my heart is gone and I don't think I could
5 ever recover from that. All I talk about these days -- if
6 I'm hungry and someone say, "Well, have some food," and I
7 say, "Well, why should I eat? My son is in the grave. I
8 don't deserve to eat."

9 You know, even on the job if someone dies, my co-workers
10 take me and say, "You shouldn't stay here and look because
11 you just went through this with your son, so you may not be
12 able to hold up." Thank you, Your Honor, and I look forward
13 for him to getting his just reward which is 30 years in
14 prison with no parole. Thank you.

15 **The Court:** Thank you, sir.

16 **Ms. McDuffie:** Your Honor, the victim's mother, Ms.
17 Natalie Thornforest, would like to address the Court. She
18 was kind of emotional, so she's seated outside. Our victim's
19 advocate is getting her.

20 (Ms. Thornforest enters the courtroom.)

21 **Ms. Thornforest:** Hello.

22 **The Court:** Hello.

23 **Ms. Thornforest:** My name is Natalie. I'm Andrade
24 Henry's mom, and the reason I'm here today is concerning
25 Terrence Greene and the violent and brutal act against my

1 son, Andrade Henry. I just want to state how this has
2 impacted my life. It impacted my life to the point that I
3 can't even function properly. I've spent a whole year of my
4 life not even knowing how old I am. I was 37 last year. I
5 spent that whole year thinking I was 36.

6 We came to the court today, and I was hoping somehow
7 that this would not become a reality, that some way somehow
8 that my son would walk through these doors and the reality of
9 this whole situation would come to a halt and come to an end.
10 But standing here and seeing the young man, seeing his
11 family, seeing my friends, I know that this is real. My son
12 is not coming back today. It's the end.

13 I'm thankful I don't have to come back to the court
14 anymore, but it's the end because one of the people who have
15 been charged creating this act against him is going to be
16 sentenced. So the reality is he's really gone. Andrade is
17 not coming back home. He can beat these two guys, but the
18 way they left him, see, that's what tears me apart. They
19 left him so brutally, so bad, and my son laid there for two
20 days in the cold.

21 It hurts so much. You know, it really, really hurts so
22 much. And I understand that like his parents said that he
23 was only 16 years old when this happened, but you know what?
24 My son was only 19 years old. Does it really make a
25 difference? And he's 16 and he's 19 and they took him

1 anyhow. Does it really make a difference of the age? How
2 could two people so young do something to somebody that much
3 older than them? But everybody said, well, he was 16 years
4 old. The other guy was 17 years old, but my son was 19.
5 Does that make it right because you're young, that you should
6 walk for doing something to somebody and ripping a whole
7 family apart? It doesn't make it right. It's wrong.

8 And when I spoke in Chamar's case, I didn't ask for
9 anything. I did not ask for anything, but I'm speaking in
10 this case and I'm going to ask that Terrence Greene be
11 sentenced to 30 years because of his father's arrogance. He
12 stand up and told me some stuff that he didn't even care
13 about Chamar, and Chamar was really his son, and he looked at
14 me and told me he don't even care what happens to Chamar. I
15 was crying for Chamar because how can his dad -- his father
16 didn't even look at -- he didn't even care what about the
17 family was going through.

18 They were both together at the crime, and I felt like it
19 was wrong -- he is talking about his son is cold-hearted.
20 He's cold-hearted, too, because the two of them was together
21 and he didn't even support the family when I supported that
22 family. I'm asking that Terrence Greene be sentenced to 30
23 years because of what he has done and because of the way the
24 family acts towards everybody who is involved and because
25 they have ripped my family apart. They have ripped my whole

1 life apart. I have no more life. I have no more life. I'm
2 no longer who I used to be because the child that made me a
3 mother is no longer here.

4 **Ms. McDuffie:** Your Honor, finally Investigator Josh
5 Mauldin from the Richland County Sheriff's Department would
6 like to address the Court.

7 **The Court:** All right. Yes, sir.

8 **Investigator Mauldin:** Yes, Your Honor. I've been a
9 police officer with the Richland County Sheriff's Department
10 now for about nine years, and during that time I've worked a
11 number of things: Sex crimes, armed robberies, murders. One
12 of the unfortunate side effects of that and also something
13 that makes us good at what we do is our ability to stay
14 detached and not take things personally, just formulate
15 hypotheses, look at the evidence and the facts and follow
16 them where they go to either prove or disprove.

17 With that said, you know, I wanted it to be clear that
18 I'm here merely as a witness to the facts in this case, and I
19 remember going out to the scene and seeing Andrade Henry at
20 this construction site on a bed of rocks with a number of my
21 fellow investigators, people from our lab. And I remember
22 thinking it's brutally cold out -- it's been cold for several
23 days, and I'm looking at this young man and at the time we're
24 thinking this is a 40-year-old construction worker, a
25 transient, completely unrecognizable. We were shocked when

1 we found out that the victim in this case, Andrade Henry, was
2 only 18 years of age. He was extremely bloody, bruised,
3 scratched, dirty. It was truly a horrendous scene and, yeah,
4 I can only imagine myself or a loved one being out there and
5 being in that position, that feeling of helplessness, as
6 you're beaten to death.

7 We conducted a thorough investigation. We followed the
8 evidence, as I said, and during that investigation we learned
9 a number of things about the involvement of Mr. Terrence
10 Greene and Mr. Chamar Scott. Among those things, our
11 evidence showed that this was crime that was set up by Mr.
12 Greene who is standing here today. He was -- what we learned
13 or our evidence showed that he was actually a friend of Mr.
14 Henry's and it was he who had Mr. Henry's confidence and was
15 able to get him to come out and meet himself and Chamar
16 Scott.

17 We certainly believe that we have evidence that we
18 believe would have supported that he participated in the
19 assault, that this was not a mere -- he wasn't a mere
20 bystander and, you know, a victim of a series of unfortunate
21 events but that he was a willing participant in the assault
22 itself. Whether he did or did not deliver the killing blow,
23 he certainly participated in the events that would ultimately
24 lead to Mr. Henry's death.

25 He certainly played a role in the disposal of the

1 evidence, the vehicle. It was through his ties, family ties
2 in Sumter, that helped him to get rid of the evidence:
3 Clothing, possible murder weapons, the vehicle itself. These
4 are all things that Terrence Greene was -- was instrumental
5 in.

6 The arrest, I myself was not present at the arrest.
7 Sergeant Kevin Isenhoward and Holly Wagner who are in the
8 courtroom today were present when the arrest was effected of
9 Mr. Greene. I remember a conversation I had with Sergeant
10 Isenhoward after the arrest. The first thing he told me is
11 that when he put the handcuffs on Mr. Greene, before he ever
12 told him what he was charged with, that Mr. Greene began to
13 sing a song: "Murder Was The Case That They Gave Me."

14 I spoke to Mr. Greene at headquarters. I interviewed
15 him. I was one of four people who would ultimately interview
16 him, and I sat there and I talked to him just as I'm speaking
17 to you now. And we had a conversation, and during that
18 conversation there were no signs of remorse, sorrow, empathy
19 for Mr. Henry whatsoever. I sat there and I listened to him
20 describe the incidents that happened that day to include Mr.
21 Henry's, for lack of a better term, death rap. The last
22 breaths that Mr. Henry took, he described those in detail to
23 myself and Sergeant Isenhoward, as a matter of fact as
24 someone would describe a dog barking or a child crying.

25 It just bothers me to a great degree that Mr. Henry is

1 left out here in this freezing cold by these two individuals
2 after suffering and enduring a savage - and it was savage -
3 beating. I'm sure -- well, I can't imagine -- I can't
4 imagine what the last thoughts that crossed through Mr.
5 Henry's mind were at that time. As I said, I just can't
6 imagine that feeling of hopelessness that one must have
7 endured in a situation like that.

8 You've got these two people. You can't get them off of
9 you. You can't do anything. Your pants are around your
10 ankles. You've tried to run, and that didn't work. I can't
11 imagine what that's like. But I know what the facts showed
12 in this case and they showed that Mr. Greene was involved in
13 this death. And from my dealings with Mr. Greene, I'm just
14 not sure that there was that -- I mean, never once, "I'm
15 sorry. I wish this hadn't have happened."

16 He set the robbery up. He was there when it came to
17 fruition and there when Mr. Henry was beaten to a pulp.
18 Given the severity of this crime, how bad it was, I would ask
19 that the maximum sentence in this case be imposed.

20 The Court: All right.

21 Ms. McDuffie: Your Honor, on behalf of the State of
22 South Carolina, on the victim's family, and on behalf of law
23 enforcement we would respectfully ask the Court to impose a
24 sentence of 30 years for Mr. Terrence Greene.

25 The Court: Anything else from the State?

1 **Ms. McDuffie:** No, sir, not at this time, Your Honor.

2 **The Court:** All right. Mr. Roberson?

3 **Mr. Roberson:** If Your Honor please, I have been
4 fortunate to be able to practice law in Richland County and
5 throughout the state of South Carolina, and the one thing
6 that I have always avoided at all costs is to try a victim in
7 explaining away my client's conduct. Your Honor, only in
8 this instance I feel so constrained to at least, at least,
9 dispel the notion that Terrence Greene was instrumental in
10 luring Mr. Henry to this area so that he would set in motion
11 what ultimately happened to Mr. Henry.

12 The reason that these three people were together on that
13 day was for the purpose of buying and selling and smoking
14 marijuana. But for that event transpiring, Your Honor, they
15 would not have been together on that night. That is not to
16 make an excuse for what happened. It's simply to explain
17 that there was no motivation on the part of Terrence Greene
18 to lure him to some place where there was some predetermined
19 plan to cause harm to Mr. Henry.

20 Your Honor, I received a call from Terrence's mother
21 telling me that her son had been taken into custody, that he
22 had called her sometime previous to understanding that he
23 had, in fact, been arrested, and she asked me if I would go
24 to the jail and see him and report back, which is what I did.
25 Your Honor, midway of the interview the first thing and the

1 thing that is uppermost in my memory is that Terrence
2 Greene's first explanation to me was, "Andrade was my
3 friend."

4 I saw the kind of remorse in him in explaining to me --
5 let me use the language that he did. The language was from
6 his era is that Andrade was my homeboy. To me that means
7 Andrade was my friend. He attempted to explain to me that
8 there was no intentions on his part to render him in this
9 situation but that he finally realized that he was in
10 something that went beyond all of his expectations.

11 Even during a part of that conversation, it came out at
12 that point that he wanted the truth to come out about what
13 had happened. In addition to the two written statements he
14 gave, he'd also given law enforcement some explanation for
15 which I believe His Honor read in the transcript where they
16 describe it as marginalizing his conduct.

17 Your Honor, I have come to know a young man who is
18 probably a rough-and-tumble young man like most young men
19 are. I've come to know a person who was reared by the Golden
20 Rule. They are members of a Pentecostal faith. Being
21 military families, they have moved from state to state and
22 place to place, and they've always found consolation in the
23 church and the guidance they received therefrom.

24 He is one of four children, one of three boys, one
25 sister who is in college, another brother who is in college,

1 a brother who is here with him today and, of course, there's
2 Terrence. He was a junior at Ridge View High School at the
3 time that this incident took place. While in school, Your
4 Honor, he participated in football, other activities, mainly
5 though athletic events.

6 Your Honor, if you'll allow me, I spend an inordinate
7 amount of time with young people trying to reinforce what I
8 gather from family backgrounds, the teachings of individual
9 responsibility, duty, honor, citizenship, and those kinds of
10 things. What I discovered with Terrence is what happens in
11 so many cases with young people: They fully endorse the idea
12 of personal responsibility. Rarely do I find one who
13 possesses the maturity to understand how that individual
14 responsibility impacts association with other people and how
15 their conduct will invariably impact how they will be viewed
16 in the community and how they will be judged.

17 I don't stand here to say that Terrence Greene should
18 not have had the intelligence and the insight to see that
19 there was trouble brewing with his association with certain
20 kinds of people, and certainly on the day in question they
21 had spent the night before in the home of his co-defendant.
22 The next morning Terrence went home. Then he eventually
23 drifted back to the home of his co-defendant at which point
24 in time the situation came about, what I addressed earlier.
25 He made the call for that sole purpose and, Your Honor, that

1 is the thing that is most, most troubling in his mind, that
2 he does feel some responsibility because he got him into
3 that, for reasons that it turned out to be, not that he
4 wanted to bring him there to cause him some harm.

5 Your Honor, he wanted me to apologize to his friend's
6 family for what had happened, and for legal reasons and for
7 other unknown reasons I'm always reluctant to approach
8 families not knowing what the reaction would be, whether or
9 not they would misinterpret what our intentions are. I also
10 informed his mother and his father who wanted at the same
11 time to meet and speak with Andrade's family.

12 Your Honor, during the course of the first mistrial,
13 during a suppression hearing there was testimony taken where
14 there was complete denial about some statements that were
15 given about what had happened and the circumstances. My
16 client was so incensed about that complete denial, all I
17 could do was to keep him quiet from revealing in open court
18 that the testimony that was being given was just completely
19 false.

20 My client advised me that I should let the government
21 know that he was willing to help them prosecute their case.
22 Your Honor, we were unsuccessful in communicating that in
23 ways that probably broke down in our communications. The
24 point I'm making is my client has never denied that he was
25 involved in this event and that he is truly sorry for having

1 been so involved.

2 Your Honor, I do have present here today some people who
3 have known Terrence over the years. I think you can best
4 determine the kind of person we have by listening to them.
5 Your Honor, first and foremost, this is his father, his
6 mother, his aunt, his brother, and there are people in the
7 community who have known him since they have lived here in
8 Columbia. He's visited some of his relatives in other
9 places, and they've had a chance to observe him and his
10 conduct. And I think eventually Terrence wants to say
11 something to the Court and to this family as well.

12 The Court: All right.

13 Mr. Roberson: Come forward and identify yourself and
14 what your association is with Mr. Greene.

15 Mr. George Greene: Your Honor, I'm George Alonzo
16 Greene, Terrence's father.

17 The Court: Yes, sir.

18 Mr. George Greene: First of all, I'd like to give --
19 it's very hard being here today and hearing the testimony
20 from the deceased's family, and I clearly understand that the
21 emotions are very, very warranted for what's happened to
22 this. Not being a -- unfamiliar with the situation, I, too
23 -- I, too, just went through a hardship with a number one in
24 my life, my mother, and after leaving to attend law officer
25 school on the 6th of January 2010, I was contacted for this

1 situation here in dealing with my son. It's very hard.

2 I was the -- chosen to attend the school around that
3 time when I received this information that my son possibly
4 was involved in the criminal act. Throughout this time, as
5 the other father stated, I've been flying back and forth here
6 in the courtroom, dealing with the situation back and forth,
7 and it's just been a trying time for most of -- what I'm
8 trying to say is just I do feel because I have been -- I
9 spoke to the mother, and I never got a chance to meet the
10 father. But some of the younger ones, we spoke and I think
11 it was a disconnect where the mother said the arrogant thing.

12 As a father, I love my son, and if someone is trying to
13 hurt my son or say something that's not true, I'm going to
14 defend him. Things that were said -- I knew the other young
15 man. He came to my house one day; it was around
16 Christmastime. And I asked the young man, "What are you
17 doing?" I mean, because he looked rather old. "What are you
18 planning on doing with your life?" "Mr. Greene, I've been
19 out of school for a couple of years and..." "You're out of
20 school? You're out of high school?" "Yes, I'm out of high
21 school." "Why are you like hanging around my son?"

22 Your Honor, I'll get to the point of this. My son is 16
23 years old. I told the young man -- I said, "But you know
24 what? You need to get your life together. Stop trying to
25 pull younger kids" -- Terrence has a future. He's like

1 number four in the state. As a freshman he played football
2 ever since, excuse me, varsity football since a freshman in
3 high school. He's trying to do something with his life.

4 I always had -- I never could -- I never could get an
5 answer out of the young man. "You're too old to be hanging
6 around children. You need to go ahead and try to do
7 something with your life," and that's probably why the
8 deceased's mother thought that I was arrogant. I'm not
9 arrogant. That's my son. That's my son.

10 Terrence was raised by a good family. I heard yesterday
11 a statement made that he had a connection in Sumter. No, we
12 have family. That's family. We're a family. We're not a
13 clique; we're family. My son was raised -- when I entered
14 the military after college, we were always there. If I
15 wasn't employed in Iraq in a career journey, I was always
16 there with my son.

17 I'll say it again: I left on the 6th of January. This
18 happened a few days after I left. I wasn't worried because I
19 know the way Terrence was raised. Terrence wouldn't hurt
20 anybody. My daughter was -- my daughter graduated along with
21 the deceased's son, Cherie Nathaniel. I coached football at
22 Ridge View High School for the junior varsity and the B.
23 Team. I'm a mentor at Richland Northeast High School where I
24 run the mentorship for Fort Jackson for the youth that
25 somehow go astray, Your Honor.

1 I deal with young kids every day. We take them
2 throughout Fort Jackson. We take them on little trips, try
3 to, you know, defer them from getting into trouble and things
4 like this. Some of these exact same things I instilled in my
5 son. Terrence -- and I know Terrence - being in the wrong
6 place at the wrong time - but Terrence would not hurt a fly.
7 Terrence would not fight anyone like that. Terrence -- of
8 course, he's not -- he's not like that. Everybody at his
9 high school, they know Terrence. Terrence is not -- not a
10 violent person.

11 And I clearly understand where the deceased has to --
12 they're going through a trying time. That's -- for the last
13 year and a half, that's all I've been going through, and now
14 to go through this with my own son, it's very hard. Terrence
15 has always been a good kid. Terrence has always been very
16 hard-working. Terrence -- he goes through the neighborhood
17 and he cleans up. He goes to the neighbors to cut grass.
18 He's always been a go-getter.

19 This situation, it's not -- it's not Terrence Greene.
20 This is not -- I just ask that you not see him as someone to
21 go out and kill someone and set up a murder and do things
22 like that. That is not my son. First of all, I don't -- I
23 don't think he even has the know-how to do that. This thing
24 transpired over three individuals getting together doing
25 whatever they were going to do and it went wrong, and it went

1 wrong so fast, he couldn't -- he just couldn't react to it.
2 But I would -- I have a few other friends from the
3 neighborhood that I would like -- Ms. Kathy, if you would
4 come up, please -- that have lived in the same neighborhood
5 that would just like to say a few things, Your Honor. And
6 once again, I would just ask that you just give him a chance
7 because the evidence that's trying to be presented against
8 Terrence is -- it's not fact. Ms. Kathy?

9 **Kathy:** Okay. First of all, I haven't been involved
10 with the case. They asked me to come just to speak on
11 Terrence and how I know him and the Terrence that I know, and
12 I'm sorry for y'all's loss. Terrence was real quiet when we
13 first met him in the neighborhood. He was always very
14 respectful when he came over to our house. I have a son
15 that's nine years old, and on a regular basis if we were
16 outside Terrence and his brother, Alonzo, would come out and
17 play with him and I -- I'm sorry, y'all. This is hard.

18 I truly appreciate all the time that Terrence and his
19 brother spend with my son. They've always gone above and
20 beyond to make Saul feel like a big boy in the neighborhood.

21 I had surgery about a year and a half ago and I was on
22 crutches and not able to get around, and the Greene family,
23 Terrence included, came over without me even asking and did
24 numerous things for me just because they're a kind family.
25 Because I got to know the boys so well, they knew when their

1 parents weren't home that they were always welcome at our
2 house if they needed anything. I tried to be there for them.
3 And Terrence is always still welcome at our home.

4 I am real hard -- it's real hard to believe all of this
5 stuff that's been said about him because of the person that I
6 know. I'm very sorry for y'all's loss and what's happened,
7 and I have been praying about everyone involved since this
8 happened. Thank you.

9 The Court: All right.

10 Mrs.. Greene: My name is Cassandra Greene. I'm Terrence
11 Greene's mom. First of all and foremost, from the bottom of
12 my heart, I had the pleasure of meeting Andrade's mom the
13 last time we was here, and I always said that when time
14 present itself to me to just show her how sorry I am for what
15 happened that I would, and I had an opportunity the last time
16 and we embraced each other and I told her how much I cry for
17 her, how much I cry for my son, and how she told me how she
18 cried when Terrence was going over to juvenile how she cried.
19 It was just mother and mother embracing each other.

20 I never had the chance to meet the father because I just
21 didn't know who he was, but I am truly, truly sorry. I just
22 -- if you -- if anybody just would know my son and who he is,
23 he is not that person that people portray he was. I'll never
24 forget that morning.

25 I called up one of the investigators and I told them to

1 come and question my son. I trusted them and I told them to
2 come question my son because I had heard they was going back
3 and forth to Sumter questioning each other, and then I keep
4 -- one of the guys asked me, said, "Ms. Greene, what time do
5 you get off work?" I said, "I get off around 4:30, but I
6 should be home before 5." Before I got home, my son was
7 already taken out of the house, and I felt like for some
8 reason -- I mean, I trusted you guys because one of them told
9 me they would stay there 'til I get---

10 **The Court:** Ms. Greene, I'm going to do the sentencing
11 here today.

12 **Mrs. Greene:** I'm sorry.

13 **The Court:** So whatever comments you have, address them
14 to me.

15 **Mrs. Greene:** I'm sorry. I just -- Your Honor, I just
16 want you to know just the upbringing, what me and my husband
17 always instilled in our children. We have four kids. I have
18 two by my husband and I have two previous, but we have always
19 instilled in all our kids to do the right thing. We've
20 always been law-abiding parents, and I just ask you just to
21 give Terrence a chance because I know my son did not do the
22 things people portray him to be. If you would have just
23 heard everything that came out, how Terrence begged the other
24 young man not to kill him, if you would just hear everything
25 -- a lot of stuff didn't come out, but I just -- I mean,

1 I'm -- I just don't know just... I'm just truly sorry. Just
2 give -- I just want you to just give my son just a chance.

3 The Court: Thank you.

4 Ms. Anderson: Hello, Your Honor. I'm LaSandra
5 Anderson. I'm Cassandra's twin sister but Terrence's aunt,
6 and I'm glad I have this opportunity to address the family
7 and tell you how sorry I am. I'm not from here. I'm from
8 Georgia. My---

9 The Court: We're not going to have any more addressing
10 the family.

11 Ms. Anderson: Okay.

12 The Court: We're going to focus on the issue at hand.

13 Ms. Anderson: Okay. Sorry.

14 The Court: Address me. The funeral was some years ago.

15 Ms. Anderson: That's right. Sorry. My husband and I,
16 we are from Warner Robbins -- Warner Robbins, Georgia, and I
17 wanted to speak on behalf of Terrence. Terrence is my
18 nephew. He's always been a sweet young man, and he's always
19 been somewhat more so like my son than my nephew. And he
20 have a lot spent time in Warner Robbins with my husband and I
21 and with my boys. I do -- I have four boys, Your Honor, and
22 I know that the thing of having -- not necessarily having
23 boys but kids, teenagers, but I stay on bended knees for my
24 kids. I have a 19-year-old, Your Honor. I have a 21-year-
25 old, and I have a set of twins that's 13.

1 And I know sometimes our kids can get caught up with the
2 wrong people and sometimes, Your Honor, it's -- sometimes
3 it's hard. If they get too far out there, sometimes it's
4 hard to try to get away from them, you know, but I know my
5 nephew. He's a sweet kid, a sweet young man, and I know that
6 Terrence wouldn't intentionally hurt anyone and he
7 wouldn't -- and I'm hearing all of this. It's like: That's
8 not my nephew. He wasn't raised that way. We was raised up
9 in a Christian environment.

10 I'm Pentecostal, and when Terrence was in my home with
11 my husband and I, he went to church with us, and we talked to
12 him and talked to my children about Christ, and I'm just so
13 appalled by hearing -- hearing things about my nephew, and I
14 was like: That's not my nephew. Terrence has a big heart,
15 and I just hate that this situation has occurred and he's in
16 this situation, but, Your Honor, I just want to let you know
17 that Terrence -- he's a good young man. Thank you.

18 **The Court:** Thank you.

19 **Brother:** How are you doing, Your Honor?

20 **The Court:** Fine.

21 **Brother:** I'm Terrence's older brother. It's hard for
22 me to talk, but just around -- I guess just around this time
23 last year I was in school and I got a call and they told me
24 everything that happened, and I broke down because deep down
25 inside, me being an older brother and me being the one that

1 Terrence was always around -- because I knew that this wasn't
2 like -- this is not the image or the portrait that they're
3 trying to put on my brother, and I know deep down inside that
4 this is not my brother right here.

5 This is not the image or the portrait that they're
6 trying to put on my brother of him killing someone or having
7 the decency to set something up. I know that's not him. I
8 just -- I know it because Terrence was the one that I -- I
9 always kept Terrence when I was a kid. He went -- everywhere
10 I go -- everywhere I went, he had to go. My mom would not
11 let Terrence go anywhere -- let me go anywhere without
12 Terrence, and it's just like that.

13 We're here today. As to me seeing him like this, it
14 kills me and it crushes me day to day. I dream about it. I
15 have nightmares every time all my friends question me,
16 everybody, family members, but I have -- like I have no
17 words. I don't know what to say. All I can say is God has
18 -- God has everything under control, and I know that deep
19 down everything is -- everything is going to work out, man.

20 It's just -- it's hard for me to talk -- to sit here and
21 talk like this in front of everybody because I'm hurting just
22 like I know the family is hurting, but I mean, the maximum,
23 that ain't -- I just ask that you give my brother a second
24 chance.

25 He has a child, and his child will not be able to see

1 and know who his dad is if you give him the maximum of 30.
2 And that -- and it hurts me every day just when I see my
3 little nephew and all I can see is my brother in his eyes.
4 So I just ask that on behalf of my family and behalf of
5 Terrence that the right decision be made. Thank you.

6 The Court: Thank you.

7 Mr. Alonzo Greene: How are you doing, Your Honor? I'm
8 Alonzo Greene.

9 The Court: Yes, sir.

10 Mr. Alonzo Greene: I'm the middle child, and me knowing
11 my brother, me and him are like -- we're two years apart, all
12 of him. Then me graduating in '09. He's two years younger
13 than me, so we was together. We was like brothers. We was
14 also more like friends, you know. When I was playing
15 football, he was right there along with me. He was always a
16 competition, you know what I'm saying, the one always
17 striving to be the best, you know, the best of our family.

18 We know God opens a lot of doors, but everything --
19 everybody is not perfect, you know. With us being in the
20 household, you know what I'm saying, things went wrong, but
21 everything -- everybody is not perfect, as I said. But me
22 and my brother, we always had a plan. We just wanted to be
23 somebody. You know what I'm saying? We didn't want to be
24 somebody out there on the streets. When you're young and
25 things happen as a kid, you have to be a man and you want to

1 provide ways, you know what I'm saying, for your child and
2 yourself.

3 Like I say, everybody is not perfect, being if they're
4 hanging around with the wrong crowd. When I graduated, I
5 always told my brother it wasn't all about being on the
6 streets and everything. You know what I'm saying? You could
7 chill at home. You would be a good person. You ain't got --
8 you don't have to be popular. Everybody know who you are.
9 Just make sure to get the main things that your parents say
10 you get done in life you get done and, you know, when I
11 graduated I thought -- you know what I'm saying? I thought I
12 would be the perfect example for him because I'm more like
13 his buddy than his brother because I was more side by side
14 with him.

15 When I graduated, I just knew he was going to get there,
16 you know what I'm saying, to go where I was and give him
17 another chance to get back on the football field. When I
18 talk to him, he asks me -- make sure he talk to me like he's
19 my dad because he know if he could ever get that chance
20 again, he knows if he could get out, he would take care of
21 his son and he would be the best father that he could be and
22 he would love to get back on that football field. I think
23 he'll be too old if you give him 30 years. So, Judge, I just
24 hope you show remorse like I know my brother did like -- it's
25 not just these two families that have been hurt. It's

1 multiple families that have been hurt. So everybody does
2 feel the same remorse. Thank you.

3 The Court: Yes, sir. Thank you.

4 Mr. Roberson: Beg the Court's indulgence.

5 The Court: Yes, sir.

6 (An off-the-record discussion takes place between Mr.
7 Roberson and Mr. Greene.)

8 Mr. Roberson: Your Honor, I believe my client would
9 like to speak to the Court.

10 The Court: Yes, sir.

11 Mr. Greene: Your Honor, first and foremost I'd like to
12 apologize to Andre's family, my family, and the community.
13 Your Honor, Andre was a friend of mine. I never thought I
14 would be involved with something that could harm someone's
15 life. I'm truly sorry for what happened.

16 I always have been a person who never harmed nobody or
17 want any harm to nobody. Your Honor -- excuse me. Your
18 Honor, I have self-improved myself this last year I've been
19 incarcerated more than I have ever in my whole 16 years of
20 living. I learned how to respect others' feelings and I
21 always -- I have always been a lender and a giver. Your
22 Honor, I've learned how to surround myself around better
23 people, and I know now that if anybody, no matter who it is
24 around me, talks about attending or planning an unlawful act,
25 my only and best choice is to walk away.

1 Your Honor, I had plans to go to Georgia Military
2 Academy to play football, but if that football doesn't work
3 for me, I plan to join the military like my father. I now
4 have a son, and I'm seeking to be the best father figure
5 there is to be, being there for my eight-month-old son. Your
6 Honor, I would love -- I would like to have a second chance
7 to show not just these people in the courtroom but show
8 everybody who really know me and who think they know me off
9 of this case that I'm a good whole-hearted young man and that
10 I would never harm anybody.

11 Your Honor, over this past year of being incarcerated I
12 have realized the full impact of my actions. From the bottom
13 of my heart, from the bottom of my heart, I'm truly sorry.
14 Please, Your Honor, please give me a second chance. Thank
15 you for allowing me to speak, Your Honor.

16 Examination by the Court (resumed)

17 Q. Mr. Greene, looking at your statement that you gave to
18 the police officers you said, "Me and Chamar were together at
19 his house, and Chamar started talking about about robbing
20 Dray. I told him that I did not want to get into it but that
21 I was cooler with him -- cool with him, so I would drive for
22 him." Is that a statement you gave to the police?

23 A. Your Honor, if there's -- my words was -- my truly
24 honest words was that I couldn't -- I don't want to do --
25 Andre is my friend and you're my friend. You want to rob

1 somebody? Go rob somebody else. You can't rob him. That's
2 my friend.

3 So the first thing he said -- he seen the tension in my
4 eyes. He said basically, no, we're good. We're just going
5 to get the marijuana to smoke. That was my intentions. I
6 know it's an unlawful act. I know it's bad, but that's what
7 my heart was at, to smoke.

8 Q. So the question I have before you is---

9 A. Yes, sir.

10 Q. You said you and Chamar started talking about robbing
11 Dray. Is that correct?

12 A. We didn't -- the only conversation we had about robbing
13 him was me telling him: That's my friend. You can't do
14 that. That's my friend.

15 Q. And -- but that you knew Dray better than he knew him,
16 so you would drive for him but you would not actually do the
17 robbery.

18 A. Your Honor, I did not say that.

19 Q. Well, tell me about it.

20 A. So you want me to tell you about the situation?

21 Q. No. I'm just -- I'm asking -- I'm looking at your
22 statement that you signed.

23 A. Yes, sir.

24 Q. And if you didn't tell the police officers that or
25 that's not the case---

1 A. Your Honor, honestly I don't know what they wrote on
2 that -- I don't know what they typed on that paper. My
3 intention was to hurry up and talk to my family and sign
4 these papers and get back so I could explain to my family
5 because I know that my family hearing this, that I hurt
6 somebody -- my brother know that -- I don't want to try to
7 address the victim's family, but he know Andre was my friend.
8 I could get stuff from Andre that a lot of people couldn't
9 get. All of this, Your Honor, if you mind me to say -- it
10 kills me in the inside to hear them say that they got stuff
11 to say that I acted in physically injuring him. I didn't --
12 I didn't touch anyone.

13 Q. All right. You set up the robbery.

14 A. It wasn't no -- it wasn't supposed to be no robbery,
15 Your Honor.

16 Q. Well, did you rob him?

17 A. No, sir, I did not rob him, Your Honor. As I confessed
18 that I did get out of the car and walk back to get the money,
19 Your Honor.

20 Q. Was that robbery?

21 A. Yes, sir, because he---

22 Q. It says, "I put the car in park and got out of the car.
23 I ran down to the rocks and I saw Dray lying there." Is that
24 part true?

25 A. Yes, sir.

1 Q. "I went into his pockets and took the money."

2 A. Yes, sir.

3 Q. You did that?

4 A. Yes, sir.

5 Q. That's robbery, isn't it?

6 A. Yes, sir, but may I please...

7 Q. Sure.

8 A. See, yes, sir, you're right. I have no intentions to
9 try to deny saying that's not robbery because in reality that
10 is robbery, Your Honor, but the honest truth, Your Honor---

11 Q. Armed robbery, that's 10 to 30. That's the sentence for
12 that.

13 A. Yes, sir, but the truth is when he---

14 Q. Murder committed during the course of the robbery.

15 That's up to life or the death penalty for that.

16 A. Yes, sir, but, Your Honor...

17 Q. Yes, sir.

18 A. When all this was going on, I hopped back in the car. I
19 know I was wrong for even standing around, Your Honor, not
20 even stopping anything and I don't think that I should just
21 be let go free because somebody did lose their life, Your
22 Honor, but honestly out of all my respect, Your Honor, I
23 just -- I just don't want to be labeled as somebody who would
24 murder somebody because that's never been me. That's---

25 Q. Well, he's negotiated a plea to voluntary manslaughter.

1 You're not here to be sentenced for murder.

2 A. Yes, sir.

3 Q. You pled guilty to voluntary manslaughter.

4 A. But my understanding is that's still somebody -- me
5 hurting somebody.

6 Q. Well, it is. It's the unlawful killing of another
7 person without malice.

8 A. Can I ask a question, Your Honor?

9 Q. Yes, sir.

10 A. How am I -- how could I kill somebody without touching
11 them?

12 Q. Because you were with the person who did and you
13 participated in the -- in the crime.

14 A. I didn't participate in the killing. I participated in
15 the disposing of the truck, Your Honor.

16 Q. You participated in causing his death. Of course, you
17 came here yesterday for a trial.

18 A. Yes, sir.

19 Q. And, you know, we talked a long time yesterday. You
20 have the right to have the trial.

21 A. Yes, sir, I understand. But like in South Carolina they
22 got this law saying---

23 Q. If you believe that you're not guilty, do you still want
24 to have a trial?

25 A. Your Honor---

1 Q. Or do you still maintain your guilty plea? I'm not
2 sentence -- I don't sentence people who profess to be not
3 guilty.

4 A. Yes, sir.

5 Q. And in all due respect to all of the family members who
6 can't believe that you would participate in robbing someone,
7 taking something from someone and an act which results in the
8 death of someone, in all due respect to them, that's what I'm
9 sentencing you for. That's what you have admitted to being
10 guilty of.

11 A. Yes, sir.

12 Q. And under the law if you are with someone, helping that
13 person commit a crime and death is caused during the course
14 of that criminal activity, under our law the act of one is
15 the act of all. The hand of one is the hand of all.

16 A. Yes, sir.

17 Q. Even if you went to a bank and you said, well, you know,
18 I'm not going in to rob the bank, but I'll drive the get-away
19 car. I'll sit out right here. I'm not going to go in and
20 rob that bank. You go do it. I'll sit here and drive the
21 car. I'm not going to rob Dray. He's cool with me, but I'll
22 drive for you. I'll make the call for you. I'll set it up
23 for you. And after you beat him to death, I'll go and rob
24 him. I'll take the money out of his pocket.

25 A. Your Honor, may I please...

1 Q. I wasn't there. I have no...

2 Mr. Roberson: Beg the Court's indulgence, Your Honor.

3 The Court: Yeah.

4 (An off-the-record discussion takes place between Mr.
5 Roberson and Mr. Greene.)

6 By the Court:

7 Q. Yes, sir?

8 A. Your Honor, I just -- I don't know if this will mean
9 anything to you, but, yes, sir, you -- I did take money out
10 of his pocket. I did rob him, but I would let you know -- I
11 would like to let you know a true fact that -- how this
12 occurred when this -- when this certain part was---

13 Q. That's why we're here. Go right ahead.

14 A. Yes, sir. When all this was happening, as I said, I
15 jumped back in the car. When my co-defendant came back
16 inside the truck, he started throwing up. He said, "Man, I
17 ain't get no money. We ain't got no gas money. We're going
18 to get -- we're going to get in trouble. Go get some money
19 out of his pocket. We ain't got no gas money. How are we
20 going to leave?" So the only thing in my head is to get away
21 from -- get myself in trouble -- the only thing going through
22 my head was get the money, sir. So I was able to---

23 Q. What did you think about your friend that you said was
24 there laying in the rocks and coughing like he had a cold---

25 A. Your Honor---

1 Q. ---whose head was beaten in?

2 A. So much was -- I didn't -- I didn't take a stop to look
3 at -- literally look at him to see what condition he was in.
4 Yes, sir, I did, Your Honor, hear him breathing like you
5 said, but I know, Your Honor, I know that I'm just as guilty
6 for not reporting or I just -- I just -- Your Honor, I just
7 know I did not touch him. That's just -- that's just all on
8 my heart, Your Honor, to hear somebody say that I helped
9 physically hurt somebody, Your Honor. That's just --
10 that's... I understand being guilty because I was there and
11 acted in the robbery which caused the death but---

12 Q. They don't know. They say that's what they believe
13 based on their investigation.

14 A. They said---

15 Q. They don't know. They weren't there. The only person
16 who was there that's here is you.

17 A. Yes, sir.

18 Q. And you're -- you've pled guilty.

19 A. Yes, sir.

20 The Court: Now, what's the parole eligibility for
21 manslaughter versus -- of course, murder is day for day.

22 Mr. Roberson: Your Honor, I understand that this is a
23 violent offense, and I believe under violent offenses it's 85
24 percent.

25 The Court: Violent offense and most serious offense.

1 Mr. Roberson: And most serious.

2 The Court: It's an 85 percent offense?

3 Mr. Roberson: Yes, sir.

4 The Court: Is that the State's understanding as well?

5 Ms. McDuffie: That's correct, Your Honor.

6 By the Court:

7 Q. Anything else, Mr. Greene?

8 A. Your Honor, one more time I would just like to really
9 apologize to all the families in this courtroom, Your Honor,
10 and just...

11 Q. They have had so many gestures of kindness and
12 condolences and all that and, you know, back a little over a
13 year ago they had the funeral and, you know, today they're
14 not seeking -- they're not seeking those kind of expressions
15 here today. They're seeking justice.

16 A. I'd just like to say in my heart I ain't -- I can't be
17 -- I'm not mad at their statement of what Andre's family is
18 seeking for, but, Your Honor, I just want -- I just -- I just
19 -- that's what's on my heart to say, if they could forgive
20 me. I just want them to know that I don't -- I'm not trying
21 to walk out of this free. I know that I'm just as wrong
22 because I didn't stop anything. I just wanted to make it
23 clear to everybody, even the State, that if I wasn't -- I
24 would never harm anybody, Your Honor---

25 Q. Yes, sir.

1 A. ---physically. I just thank you for this.

2 The Court: Thank you. Anything further, Mr. Roberson?

3 Mr. Roberson: Nothing further, Your Honor.

4 The Court: Anything further from the State?

5 Ms. McDuffie: Not at this time, Your Honor.

6 The Court: Mr. Greene, it's -- it's so unfortunate.
7 You know, I sit here all the time and one jumpsuit after
8 another appear before me and I sentence persons after persons
9 after persons, and I hear all kinds of testimony about how is
10 it that that person ended up in the spot that you're in now,
11 and yours is particularly unfortunate. You know, the -- here
12 we have a victim who's from a great family. His father is a
13 doctor. He said his son was well-loved and quite intelligent
14 and had a very bright future. Got snuffed out on that day.
15 You seem to come from an excellent family and good people,
16 and certainly I'm not here to judge you as a person.

17 Mr. Greene: Yes, sir.

18 The Court: You know, hopefully your life can be full of
19 some productive things, but I must sentence you based on this
20 crime. And sentencing you for a crime is not to judge what's
21 in your heart, but somehow or another for you to have
22 participated in this crime means that -- that you went astray
23 some kind of way. Otherwise, you wouldn't be where you are
24 today. And the moment of truth came regarding this: Somehow
25 or another you would not have been in that car with Chamar

1 Scott there on that road helping to -- this crime to come
2 about, robbing him as he laid there helpless, leaving him to
3 die, taking his money and buying gas, going to Sumter and
4 burning his car that his father bought him, you know, and
5 you -- you went astray and that's why you're standing right
6 there right now despite all that your family have attempted
7 to do and perhaps some things that they failed to do. I
8 don't know what the situation is.

9 Mr. Greene: Yes, sir.

10 The Court: But despite all of that, Mr. Roberson has
11 negotiated a sentence that spares you significantly as
12 compared to your co-defendant, Chamar Scott, who was
13 sentenced to 40 years and who has to be in prison for 40
14 years. You've elected to plead guilty to manslaughter, and
15 I'm going to sentence you for that.

16 Sentence of the Court is that you be committed to the
17 state department of corrections for a period of 28 years.
18 You get credit for whatever time you've served. Good luck to
19 you, sir.

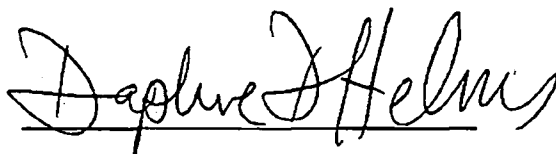
20 Ms. Simpson: Thank you, Your Honor.

21 (Whereupon, the proceedings were concluded. There were
22 no exhibits introduced.)
23
24
25

I, the undersigned Daphne D. Helms; official court reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the circuit court for Richland County, South Carolina, on the 24th and 25th of January, 2011.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

September 14, 2011

A handwritten signature in cursive script, reading "Daphne D. Helms", written over a horizontal line.

Daphne D. Helms, court reporter

FORM 5

STATE OF SOUTH CAROLINA

County of RichlandTerrence Greene #344540

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

2011 NOV 14 PM 3:11
JENNIFER W. HERRID
C.C.P. & G.S.RICHLAND COUNTY
FILEDINSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention McCormick C.I., 386 Redemption Way,
McCormick, S.C. 29899
2. Name and location of Court which imposed sentence Richland County Court
General Sessions
3. Name(s) of co-defendant(s) (if any) Chamar Scott
OTHER:
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2010-GS-40-00137 -Manslaughter
(b) _____

RECEIVED

CLERK OF COURT'S OFFICE

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) Jan 24th and 25th, 2011 - 28 years
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty X
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- no
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. N/A
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Counsel Failed to preserve any issue for appeal
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Lack of Subject Matter Jurisdiction
- (b) Ineffective Assistance of Counsel
- (c) Involuntary Guilty Plea
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See Attachments
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? no
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? no
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. N/A
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. N/A
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____ N/A _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____ N/A _____
- ii. _____
- iii. _____
- iv. _____

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

- i. _____
- ii. _____ N/a _____
- iii. _____
- iv. _____

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

_____ N/A _____

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

(a) which grounds have been presented:

- i. _____
- ii. _____ N/A _____
- iii. _____

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

- i. _____
- ii. _____ N/A _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) Counsel Failed to petition Family Court to review
 (b) Venue Jurisdiction of Juvenile
 (c) _____

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

- (a) your arraignment and plea? Yes
 (b) your trial, if any? no
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? no
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
no

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

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

- i. Nathaniel Roberson, _____

 ii. _____

 iii. _____

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

- i. Guilty Plea

 ii. _____

 iii. _____

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

Vacate Conviction and Remand To Family Court to determine
Jurisdiction Pursuant to § 63-19-1210 and § 63-19-1030

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

No

STATE OF SOUTH CAROLINA)

VERIFICATION

County of McCormick)

I, Terrence Greene, 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.

x Terrence Greene

SWORN to and subscribed before me this 24
 day of October, 2011.

Terrence Greene

J. A. Rankin (L.S.)
 Notary Public

My Commission Expires: 12-16-2019

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

I, Terrence Greene, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

x Terrence Greene
Applicant

SWORN or affirmed to and subscribed before me this

24 day of October, 2011.

J. C. Franklin
Notary Public

My Commission Expires: 12-16-2019

RICHMOND COUNTY
 FILED
 2011 NOV 14 PM 3:24
 JEANETTE W. MCBRIDE
 C.G.P. & G.S.

I. Lack Of Subject Matter Jurisdiction

Applicant contends that the circuit court lacked subject matter jurisdiction to accept his guilty plea based on the fact that the applicant did not waive jurisdiction as required by statute under § 63-19-1030 and § 63-19-1210 Transfer of Jurisdiction of a child. The circuit court failed to transfer the case back to family court to conduct a Kent hearing as required by statute. See Kent v. U.S., 86 S.ct.1045 (1966); State v. Avery, 509 S.E.2d 476 (1998). § 63-19-1210-Transfer of Jurisdiction.

1) If, during the pendency of a criminal or Quasicriminal charge against a child in the circuit court of this state, it is ascertained that the child was under the age of Seventeen Years at the time of committing the alleged offense, it is the duty of the circuit court immediately to transfer the case, together with all the papers, documents, and testimony connected with it, to the family court of competent jurisdiction, except in those cases where the constitution gives the circuit court exclusive jurisdiction or in those cases where jurisdiction had properly been transferred to the circuit court by the family court under the provisions of this section. No waiver of jurisdiction was filed by the applicant and no pre-hearing inquiry was held pursuant to Kent.

The circuit court did not have jurisdiction to sentence the applicant because he was 16 years old at the time of the alleged offense and no waiver was presented to the court to waive jurisdiction of the family court. This sentence must be vacated.

II. Ineffective Assistance of Counsel.

Applicant alleges he made self-incriminating statements based on coercion of law enforcement officers by questioning him without the consent of his mother and by refusing to allow his mother to be present during questioning. Applicant was a 16 year old juvenile and was taken into custody by law enforcement. Applicant requested the presence of his mother before being questioned and was denied. Applicant's mother called the sheriff's dept. after discovering he was taken into custody and requested to be present during his questioning and was denied by law enforcement officials.

Applicant asserts that trial counsel was ineffective for failing to inform applicant prior to his guilty plea that his statements may have been made involuntary, and if so, would be inadmissible at trial. Counsel failed to request a Jackson v. Denno, hearing to determine if his statements were voluntary or in violation of his rights against self-incrimination by refusing him access to his guardian because he was a 16 year old juvenile. Further, counsel failed to inform him that if he was successful at suppressing the statement and if his co-defendant refused to testify then any testimony made by the co-defendant made in a statement could be suppressed because of the confrontation clause of the Sixth Amendment. See Maryland v. Craig, 497 U.S. 836, 846 (1990). Also see Lawson v. Murry, 837 F.2d 653, 656 (4th Cir. 1988).

III. Ineffective Assistance of Counsel

Applicant contends that counsel was ineffective for failing to challenge the self-incriminating statements that applicant made during questioning based on the fact he was coerced by investigators and that they violated section § 63-19-810 (a) by failing to notify his parent or guardian as required by statute and conducted questioning without the presence of his mother after the applicant requested that she be present.

The provisions of section § 63-19-810(a), state :when a child is taken into custody. When found violating a criminal law or ordinance is taken into custody, the taking into custody is not an arrest. The jurisdiction of the court attaches from the time of the taking into custody. When a child is taken into custody, the officer taking the child into custody "shall" notify the parent, guardian, or custodian of the child as soon as possible.

Counsel failed to challenge the statement based on the violation of the provisions of this statute and that the law enforcement officials overbore the will of the applicant and refused to allow his mother to be present before questioning.

Applicant contends that his waiver was not valid because officers claimed he did not need his mother present if they tape recorded the interview which they never did. The investigators initiated the interview and continued to question him after requesting the assistance of his mother. See U.S. v. gomez, 927 F.2d 1530, 1538 (11th Cir. 1991) (waiver not valid because after defendant invoked right to counsel, officers made statements

which were functional equivalent of interrogation and defendant then initiated conversation by asking what crime he was charged because initiation must come before any interrogation. Also see Davis v. U.S., 512 U.S. 452, 458-59 (1994), Miranda, 384 U.S. at 444-45. See U.S. v. Melgar, 139 f.3d 1005, 1014 (4th cir.1998) (Invocation of 6th Amendment right to counsel mandates suppression of defendant's statements regarding alien status under "closely related" exception to otherwise offense-specific limitation because immigration agent knew he was likely to obtain incriminating statements about possession of fictitious alien ID card when asking about alien status.)

Counsel failed to challenge these statements on the grounds that since applicant was a minor and requested the presence of his mother prior to interrogation and was refused was a deliberate refusal of assistance of a custodial parent which was the same as requesting counsel under the sixth Amendment. This statement was subject to suppression based on the child's ignorance of the law and his right to have counsel and his parent present before any interrogation.

IV. Ineffective Assistance of Counsel

Applicant contends that counsel was ineffective for failing to request a Kent hearing pursuant to § 63-19-1210 to request that the family court retain jurisdiction of applicant since he was a 16 year old minor.

Counsel's performance fell below an objective standard of reasonableness and counsel's deficient performance prejudiced applicant in contention with Strickland v. Washington, 466 U.S. 668-687, 104 S.Ct. 2052 (1984). Applicant was prejudiced because he was denied the right to petition the court to retain jurisdiction of his charges and allow the family court to determine if they would sentence the defendant and to determine if his statements were obtained in violation of the law.

V. Involuntary Guilty Plea

Applicant contends that his guilty plea was involuntarily based on counsel's faulty legal advice regarding elements and possible defenses. See U.S. v. Streater, 70 F.3d 1314, 1318 (D.C. Cir. 1995); Neverez-Diaz v. U.S., 870 F.2d 417, 422 (7th Cir. 1989).

Counsel failed to advise applicant he could petition the family court to retain jurisdiction and that he would most likely could have received a lesser sentence and only be confined until he was 21 since he was a 16 year old juvenile at the time of the offense.

Counsel failed to advise applicant that his statements may have been made involuntarily, and if so, would have been inadmissible at trial. Counsel failed to explain to the applicant he could request a Jackson v. Denno hearing to challenge his statements.

Counsel failed to advise the applicant that the state violated the provisions of section § 63-19-810(a) by failing to notify his parent when he was taken into custody and denying him access to his mother during questioning overbearing his will. Further, the mother contacted the sheriff's Dept. requesting that the investigator contact her immediately concerning the questioning of her 16 year old minor son. The sheriff's Dept. investigator Mr. Maudlin failed to return this call and questioned the applicant without the mother's consent and told him he did not need his mother present during questioning. See sworn affidavit of Cassandra Greene and Terrence Greene.

State of South Carolina
County of Richland

Sworn Affidavit of Cassandra Greene:

I, Cassandra Greene, declare under the penalty of perjury that the foregoing facts are true and correct.

That on the 22nd of January 2010 my sister-in-law informed me that an investigator was coming around her father's house asking questions about my son Terrence Greene. So I called my father-in-law to see if he had a name and number of this investigator and that is when he provided me with Mr. Maudlin's name and number. I instantly called the investigator Mr. Maudlin on the same morning of Jan. 22nd at approximately 8:45 A.M.-8:50 A.M. I spoke directly to Mr. Maudlin and I let him know that I am Terrence Greene's mother and I was trying to find out what the sheriff's office was trying to question my 16 year old son and I explained to him that I would be home from work at 4:30 P.M. and that he could question my son in my presence after I got home from work. When I arrived home at 4:28 P.M. my 16 year old son was already taken into custody by the sheriff's office. At this point I was devastated & clueless, & scared wondering how can someone just come into my home and remove my minor child without my permission. I personally informed Mr. Maudlin that my son was a minor and he could talk to him and myself when I came home. And when the prosecutors stated under oath they didn't know how old my son was and they claimed he was an adult when I clearly told them he was a minor and

they had his identification and birthdate.

Sworn and Subscribed, Before Me
This 11th Day of October, 2011

Therese A. McAlister

Notary Public South Carolina
My Commission Expires

11-2-2014

Cassandra Greene
Cassandra Greene
225 Wild Olive Dr.
Columbia S.C. 29229

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THAT TERRENCE GREENE DID MAIL TO THE CLERK OF COURT RICHLAND COUNTY HIS P.R. PLACED IN THE MAIL AND MAILED TO 1701 MAIN ST. COLUMBIA S.C. 29202. ON THIS 24 DAY OF OCTOBER, 2011 WITH POSTAGE PREPAID

SWORN AND SUBSCRIBED BEFORE ME, Terrence Greene
THIS 24 DAY OF OCTOBER, 2011

J. Franklin
NOTARY PUBLIC SOUTH CAROLINA
MY COMMISSION EXPIRES
12.16.2019

TERRENCE GREENE
MC CORMICK C-I-
386 REDEMPTION WAY
MC CORMICK S.C.
29855

Terrence Greene

JEANETTE W. McBRIDE
C.C.P. & G.S.

2011 NOV 14 PM 3:01

RICHLAND COUNTY
FILED

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

GREENE Terrence -
00344540,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2011CP4007771

RETURN

JEANETTE W. McBRIDE
C.C.P. & G.S.

2011 DEC -2 AM 11:29

RICHLAND COUNTY
FILED

The Respondent, making its Return to the application for post conviction relief (PCR) filed November 14, 2011, would respectfully show this Court:¹

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was represented by Nathaniel Roberson, Esquire. On January 25, 2011, following a guilty plea, the Applicant was sentenced by The Honorable Clifton Newman. The Applicant had been indicted and/or convicted of the following:

¹

<http://www4.rcgov.us/publicindex/PICaseDetails.aspx?County=40+&Casenum=2011CP4007771&CourtType=G&CaseType=Civil&CourtAgency=40002>

Offender Type Adult-straight Sentence Offense Voluntary Manslaughter Sentence Start Date 01/20/2010 Sentence Length 28 YRS, 0 MOS, 0 DYS Admission Date 01/27/2011 Committing County Richland Location McCormick Projected Release Date 07/13/2035 Projected Parole Eligibility Not Eligible Supervised Furlough Eligibility Not Eligible Sex Offender Registry No (2010-GS-40-137).² He was indicted for murder, but pled to voluntary manslaughter.

II.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the trial transcript, and the Applicant's applicable direct appeal files.³ The Respondent reserves the right to amend this Return upon receipt of any relevant materials or submit an amended Return to reflect any amended allegations and/or to provide a more detailed procedural history.

Direct Appeal

The Applicant did not appeal his conviction and/or sentence .

The application for post conviction relief (PCR) was filed November 14, 2011.

² <https://sword.doc.state.sc.us/scdc-public/inmateDetails.do?id=+00344540>

³ The Respondent will utilize the Record on Appeal if the direct appeal was an Anders appeal.

III.

For the purposes of this Return, the Respondent interprets each of the Applicant's allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). Even with respect to guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985)

Subject Matter Jurisdiction/Family Court/Waiver

- (1) "Child" or "juvenile" means a person less than seventeen years of age. "Child" or "juvenile" **does not mean** a person sixteen years of age or older who is charged with a Class A, B, C, or D felony as defined in Section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more. However, a person sixteen years of age who is charged with a Class A, B, C, or D felony as defined in Section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more may be remanded to the family court for disposition of the charge at the discretion of the solicitor. An additional or accompanying charge associated with the charges contained in this item must be heard by the court with jurisdiction over the offenses contained in this item.

S.C. Code § 63-19-20 (emphasis added).

Originally this language existed as § 20-7-390 (Supp. 1995). Section 20-7-390 was repealed effective July 1, 1996 by 1996 Act 383 § 2. Section 20-7-390 was then recodified as § 20-7-6605 (Supp. 1999). Then in 2008 § 20-7-6605 was recodified to § 63-19-20 by 2008 Act No. 361, § 2.

The Applicant was charged/convicted/sentenced for violating S.C. Code § 16-3-10, i.e. murder. The potential penalty for § 16-3-10 is greater than fifteen (15) years. For the purposes of this analysis, the potential sentence was the same when the Applicant committed his crime, i.e. LIFE.

Accordingly, the Applicant was not a “juvenile” for the purposes of family court jurisdiction and no waiver was necessary due to the fact that he was charged with a Class A, B, C, or D felony as defined in Section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more.⁴ The Applicant’s allegations should be summarily dismissed.

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

⁴ According to the available records, the Applicant’s date of birth is . The date of the murder was on or about January 10, 2010. The Applicant would have been approximately 16 years, 10 months, 3 days excluding the end date.

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied. The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held. The Respondent will coordinate with the Applicant's attorney who is, according to the Respondent's file, TBT, Esquire regarding when the hearing should be set.⁵

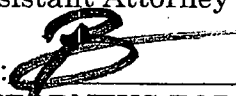
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

BRIAN T. PETRANO
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737
bpetrano@scag.gov

November 21, 2011

⁵ The current PCR Roster for the 5th Circuit is available at <http://www.scag.gov/criminal-litigation/postconvictionrelief>

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

GREENE Terrence -
00344540,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2011CP4007771

CERTIFICATE OF SERVICE

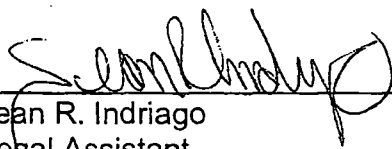
JEANETTE W. McBRIDE
C.C.P. & G.S.

2011 DEC -2 AM 11:30

RICHLAND COUNTY
FILED

1. I am an employee of the Respondent in the above-captioned action.
1. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
2. I have this day served a copy of the a letter in the above-captioned matter on the following person(s) by routing the same to the United States mail, postage prepaid:

**GREENE Terrence, 344540 - McCormick Correctional Institution, 386
Redemption Way, McCormick, SC 29899**

DATED November 28, 2011.

 Jean R. Indriago
 Legal Assistant

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	Civil Action No. 2011-CP-40-7771
COUNTY OF RICHLAND	)	
	)	
State of South Carolina	)	
	)	SUPPLEMENTAL GROUNDS FOR
v.	)	VACATING CONVICTION and
	)	MEMORANDUM IN SUPPORT
TERRANCE GREENE,	)	THEREOF
	)	
Defendant	)	

NATURE OF THE CASE

Comes now the Defendant, Terrance Greene ("Greene"), by and through his undersigned counsel and submits this Supplemental Grounds for Vacating Conviction and Supporting Memorandum ("Memorandum") asking this Court to vacate his conviction and sentence in the above-captioned matter.¹

BACKGROUND

On January 12, 2010, the lifeless body of Andrade Henry ("Henry") was found on Rice Creek Farms Road in Richland County, South Carolina. Subsequent investigation into Henry's death focused on Greene and Chamar Scott ("Scott"). Both Greene and Scott were ultimately charged with Murder. Scott proceeded to trial first, beginning January 4, 2011, and was convicted of Murder and sentenced to forty (40) years incarceration. By all accounts, Scott was directly responsible for Henry's death. Greene's trial was scheduled to begin on Monday, January 24, 2011, but instead of proceeding to trial, the State permitted Greene to plead to the reduced charge of Voluntary Manslaughter. After initially accepting the plea, sentencing was deferred to January 25, 2011. On that date, Greene was sentenced to a term of incarceration of

¹ This Memorandum is in addition to those arguments previously presented in his original *pro se* filing.

twenty eight (28) years.

ARGUMENT

I. Greene's plea was not entered voluntarily, knowingly, or intelligently.

"The Due Process Clause requires guilty pleas be entered into voluntarily, knowingly, and intelligently." *State v. Anderson*, 535 S.E.2d 649, 651 (S.C. 2000)(citing *Boykin v. Alabama*, 395 U.S. 238 (1969)). This requires that the defendant be advised of the constitutional rights he is waiving, as well as the maximum and mandatory minimum (if any) penalties he is facing. *Id.* Before a guilty plea may be accepted, the court must "be certain the defendant understands the charge and the consequences of the plea and that the record indicates a factual basis for the plea." *Id.* When the court attempts to explain those consequences to the defendant, yet misinforms the defendant of those consequences, the plea does not represent a voluntary and intelligent choice among alternative courses. See *Brown v. State*, 412 S.E.2d 399, 401 (S.C. 1991). Thus is one of the problems we are presented with.

During the course of Greene's plea, it was apparent that Greene had significant reservations. As previously noted, Greene was originally charged with Murder and was permitted to plead to Voluntary Manslaughter. Greene, however, had severe difficulties in explaining his conduct and what crime he committed. During this colloquy, the court explained to Greene that if he proceeds to trial on the Murder charge, he is facing up to life in prison, "or the death penalty." Transcript of Hearing, p. 55, ll. 14-15 (*emphasis added*). Shortly thereafter, Greene is again asked by the court whether he wants to proceed to trial. Transcript, p.56, ll. 23-24. Certainly, having only just moments before been advised of possible execution, an individual in Greene's positions would not elect such a course. Such, however, was not the possible

punishment Greene was facing. This misstatement as to the punishment Greene was facing eclipses any knowing or voluntary decision he may have made. This invalidates his plea and justifies vacating his conviction. Furthermore, the failure of Greene's counsel to correct this inaccuracy, especially under these circumstances, constitutes ineffective assistance of counsel.

II. Greene's plea failed to include a sufficient factual basis, or admission of guilt to the charged offense.

As previously noted, a guilty plea must contain a sufficient factual basis to support the plea. *See Anderson*, 535 S.E.2d at 651. In the instant matter, Greene was proposing to plead guilty to Voluntary Manslaughter. Despite this proposal, when asked what makes him guilty to the offense, Greene responded "I witnessed the crime," "not reporting it," "disposing of the vehicle and I got the money out of his pocket" Transcript, p. 19, l. 12 through p. 20, l. 2. In attempting to explain Greene's responses, and save the plea, counsel attempted to explain the "hand of one" theory and rationale. In so doing, counsel plainly stated "I'm not - - I'm not certain that he knew for certain whether or not Chamar was serious about the robbery, but it certainly had been discussed. And I don't know if he knew Chamar to the extent that he understood he had the capacity to do it." Transcript, p. 20, ll. 4-12.

"Under the 'hand of one is the hand of all' theory, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose." *State v. Mattison*, 697 S.E.2d 578, 584 (S.C. 2010)(citations omitted). Mere presence at the scene is insufficient, however, "presence at the scene of a crime by pre-arrangement to aid, encourage, or abet in the perpetration of the crime constitutes guilt as the principal." *Id.* (citations omitted). "Under accomplice liability theory, 'a

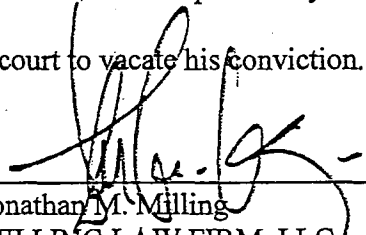
person must personally commit the crime or be present at the scene of the crime and intentionally, or through a common design, aid, abet, or assist in the commission of that crime through some overt act.” *Id.* (citations omitted). “Prior knowledge that a crime is going to be committed, without more, is not sufficient to make a person guilty of that crime.” *See State v. Collins*, 225 S.E.2d 189, 192 (S.C. 1976).

At best, the description by counsel that Greene and Scott had discussed the possibility of a robbery is insufficient to establish guilt. No mention is made as to what overt act Greene committed. No mention is made as to whether, for sure, Greene knew Scott was to rob Henry, or that Greene in any way aided, abetted, or assisted in the commission of that crime. As such, an insufficient factual basis existed to support the plea. Furthermore, counsel’s description of his understanding of the “hand of one” law in this context demonstrates an error of law, as does his omission of the *Collins* case cited above. Such error constitutes the ineffective assistance of counsel during this process. Clearly, considering the transcript as a whole and the inability of Greene to commit to his plea, counsel’s error was prejudicial and warrants a vacating of Greene’s conviction.

CONCLUSION

For the reasons set forth herein, as well as those issues previously raised and heretofore to be argued, Greene would respectfully urge the court to vacate his conviction.

By: _____


Jonathan M. Milling
MILLING LAW FIRM, LLC
1614 Taylor Street, Suite C
Columbia, South Carolina 29201
(803) 451-7700

December 4, 2012
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
County of Richland	)	2011-CP-40-7771
	)	
TERRENCE GREENE	)	
	)	
APPLICANT,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
RESPONDENT,	)	

December 7, 2012
Columbia, South Carolina

BEFORE:

THE HONORABLE J. ERNEST KINARD, JR., JUDGE.

APPEARANCES:

JONATHAN MILLING, ESQ.
Attorney for the Applicant

ROBERT CORNEY, ASSISTANT ATTORNEY GENERAL
Attorney for the Respondent

KAREN AMBROZIAK
Official Court Reporter

C O N T E N T S
INDEX OF WITNESSES:

TERRENCE GREENE

Direct By Mr. Milling 11

Cross By Mr. Corney 25

Redirect By Mr. Milling 28

NATHANIEL ROBERSON

Direct By Mr. Corney 32

Cross By Mr. Milling 56

> > > < < <

CERTIFICATE OF REPORTER 68

1 MR. CORNEY: May it please the Court, Your Honor.

2 THE COURT: Okay.

3 MR. CORNEY: Your Honor, the State calls the Post
4 Conviction Relief action of Terrence Greene, docket number
5 2011-CP-40-7771.

6 Mr. Greene was true bill indicted at the April 2010
7 term of the Richland County grand jury for murder. He
8 pled guilty January 25th, 2011, before Judge Newman to the
9 lesser included voluntary manslaughter, and that was
10 without recommendations or negotiations from the State, I
11 believe.

12 He was sentenced to 28 years imprisonment, did not
13 have a direct appeal. He filed this application timely.
14 You also have -- I'm sure it's part of the record --
15 November 14th, 2011 was filed with the clerk of court,
16 Your Honor.

17 He is represented today by Mr. Jonathan Milling.
18 Mr. Roberson, Nathaniel Roberson, is our witness and
19 representing Mr. Greene on the plea. He is here and
20 prepared to testify, Your Honor.

21 THE COURT: Okay.

22 MR. CORNEY: Thank you very much.

23 MR. MILLING: Thank you, Your Honor. May it please
24 the Court.

25 As I explained to Mr. Corney, the original PCR which

1 was filed in this case pro se by Mr. Greene alleged two
2 claims, essentially: One dealt with the jurisdiction of
3 this court to entertain as a matter -- because he was 16
4 years of age at the times of his offense. The other
5 relates to whether or not Mr. Roberson was ineffective for
6 not having challenged the voluntariness of the statement
7 Mr. Greene gave at the time of his arrest again pursuant
8 to the fact that he was a 16-year-old at the time.

9 I've explained to Mr. Greene and provided him with a
10 copy of the definitions of the statute in the Childers
11 (phonetic) case.

12 Judge, he understands that because he was charged
13 with murder, he would not fall within the definition of
14 child or juvenile. He has advised me this morning that he
15 wishes to waive those claims and only proceed on the two
16 claims that we've raised in the supplemental motions we
17 filed earlier this week, a copy of which was also served
18 on the Attorney General's Office in this case.

19 Essentially, Your Honor, those two claims both deal
20 with due process claims, as well as hybrid ineffective
21 assistance of counsel claims, as I've outlined in the
22 supporting memorandum.

23 The first deals primarily with whether or not
24 Mr. Greene during the part of the plea colloquy made a
25 knowing, voluntary waiver of his right to trial accusing

1 -- plead guilty to voluntary manslaughter as opposed to
2 presenting to the trial in this case on murder.

3 Your Honor, as I've outlined, and I think that the
4 record -- the change of plea was pretty clear on this
5 point. We can find some testimony to supplement it, but I
6 think the record is pretty clear that Judge Newman, after
7 hearing Mr. Greene go back and forth and back and forth as
8 to what exactly his conduct was in this case -- as to
9 whether or not he was, in fact, guilty of murder or
10 voluntary manslaughter even under the hand of one, hand of
11 all theory.

12 Mr. Greene proceeds to continue to challenge that,
13 and the judge looks at it, and I pointed this out in my
14 supplemental memorandum and showed this to Mr. Greene,
15 "You were charged with murder. That was the original
16 charge, and you are here to proceed off the trial docket."

17 He was scheduled to continue to trial on January
18 24th, 2011, and the plea colloquy started on to the 24th
19 and continued on the 25th because the victim's family was
20 unable to be present on the 24th.

21 It's during this colloquy that Judge Newman advised
22 him, Mr. Greene, "Mr. Greene, you're charged with murder.
23 You understand that if we proceed to trial, you understand
24 if you're convicted of murder, you'll be facing 30 years
25 up to life or the death penalty?"

1 Your Honor, it's that reference to the death penalty
2 which took from Mr. Greene a free, voluntary choice
3 consistent with the due process protections, because under
4 no set of circumstances could Mr. Greene have been
5 executed for this crime off of the trial docket. The
6 death penalty statute clearly provides that if the State
7 intends to proceed --

8 THE COURT: Yeah, I've -- I've read it.

9 MR. MILLING: Yes, sir, and so under these
10 circumstances, it was about 30 days before trial. He was
11 on the trial docket. That was an improper position and
12 statement by the Court.

13 It gets somewhat into the ineffective assistance of
14 counsel claim, as well, Your Honor, because Mr. Roberson,
15 at that point, did not object or clarify the record or
16 correct the record in that regard.

17 Your Honor, we would -- after I summarize everything,
18 we will call Mr. Greene to testify as to what influence,
19 or what impact that would have had upon his decision at
20 that stage, but that's essentially the first argument
21 we've got, Your Honor.

22 The second one deals with whether or not the record
23 contains sufficient admissions by Mr. Greene to support a
24 conviction for voluntary manslaughter, and it's clear from
25 the record and again -- and I hate to rehash this, but the

1 record is replete with waffling back and forth as to what
2 exactly Mr. Greene did.

3 The judge does a good job of trying to get Mr. Greene
4 to admit exactly what he did, and -- and there's a
5 colloquy in there where Mr. Greene admitted that he was
6 present.

7 The judge goes through and says mere presence is not
8 enough. He says, "I participated in the robbery of --"
9 Well, robbery has ten to 30. He goes through each of the
10 elements. The judge finally concludes, "Listen, that's
11 not enough. What you have admitted to is not enough."

12 At that point in time, Mr. Roberson comes forward,
13 says, "Judge, this is going to be a hand of one, hand of
14 all theory."

15 At that point in time, Mr. Roberson comes forward and
16 says during the plea colloquy that there was a discussion
17 the night before between Mr. Sharmar Scott and
18 Mr. Terrence Greene as to whether or not the possibility
19 of a robbery.

20 At one point in time, Mr. Roberson does suggest that
21 that was discussed. In another part during the
22 transcript, Mr. Roberson says, "I don't know that I think
23 that Mr. Greene really believed that that was going to
24 take place or whether or not he knew Mr. Scott well enough
25 to know that he had the ability to do this."

1 There were no factual allegations which ever
2 suggested that Mr. Greene struck the victim in this case.
3 The suggestions were that there was a discussion the night
4 before about a robbery that I believe Mr. Greene may have
5 called the victim, and that's when they met.

6 They go to a remote location, and Mr. Roberson puts
7 in the transcript that they were there for the purposes of
8 buying and selling and smoking marijuana; that Mr. Scott
9 then pulls out a gun, puts it up to the victim's head. A
10 struggle ensues, and that my client, Mr. Greene, did
11 nothing to stop it, did nothing to aid the victim but also
12 did nothing to assault the victim in the case; that
13 thereafter, Mr. Greene did admit that he removed from the
14 motionless body of the victim some \$40, I think it was,
15 and that thereafter, they went to Sumter and collectively
16 disposed of the vehicle that was used during this
17 incident.

18 Your Honor, unfortunately again, it gets back to what
19 admissions take place and what actually was done. As I
20 cited in my supporting memorandum, and I think it's the
21 State vs. Collins case cited on page four of my
22 memorandum. The citation is 225 S.E.2d --

23 THE COURT: Well, I don't have any memorandum that
24 you refer to.

25 MR. MILLING: Your Honor, the record will reflect

1 that I just passed up a copy.

2 THE COURT: All right.

3 MR. MILLING: Page four of the memorandum, the
4 Collins case cited as 225 S.E.2d 189. It's a 1976 South
5 Carolina Supreme Court case, and it was a case where the
6 South Carolina Supreme Court found that the trial court
7 erred in not having charged this charge to the jury based
8 upon the facts of the case citing it as a correct
9 proposition of law that prior knowledge that a crime is
10 going to be committed without more is not sufficient to
11 make a person guilty of that crime.

12 That's essentially what the factual recitation was
13 when it comes to the conduct from Mr. Greene in this case,
14 Your Honor, the facts as outlined during the plea colloquy
15 were that at best, the light most favorable to the State,
16 that Mr. Greene and Mr. Scott discussed the night before
17 the possibility of a robbery.

18 But absent from the record is what Mr. Greene did to
19 aid, abet, further this joint enterprise, if you will,
20 sufficient to rise to the level of hand of one, hand of
21 all.

22 Your Honor, those are essentially the arguments that
23 we would present for purposes of today vacating the
24 conviction.

25 At this time, I'd call Mr. Greene to the stand.

1 THE COURT: All right, Mr. Greene. Come around.

2 TERRENCE GREENE, after being duly
3 sworn, testified as follows:

4 THE CLERK: Have a seat and the witness stand. State
5 your full name for the record.

6 THE WITNESS: Terrence Greene.

7 DIRECT EXAMINATION:

8 BY MR. MILLING:

9 Q Say it again.

10 A Terrence Greene.

11 Q Mr. Greene, how old are you?

12 A Nineteen years old.

13 Q In 2010, how old were you?

14 A Sixteen.

15 Q Sixteen years of age?

16 A Yes, sir.

17 Q During your 16th, I guess, birthday year, were you
18 charged with a crime here in Richland County?

19 A Yes, sir.

20 Q What charge was that?

21 A Murder.

22 Q Murder?

23 A Yes, sir.

24 Q Who was the victim in that case?

25 A Andre Johnson.

1 Q Is that what ultimately led to your incarceration
2 right now?

3 A Yes, sir.

4 Q Okay. Prior to that offense, did you know
5 Mr. Nathaniel Roberson who is seated here in the
6 courtroom?

7 A No, sir.

8 Q At some point in time, did you meet Mr. Roberson?

9 A Yes, sir.

10 Q Did he, in fact, represent you in connection with
11 these pending murder charges?

12 A Yes, sir.

13 Q Okay. At any point in time during the course and
14 scope of that representation, did you tell Mr. Roberson
15 that you wanted to plead guilty to murder?

16 A No, sir.

17 Q What did you tell him about that charge or that you
18 would go to trial or plea?

19 A I told him I would go to trial.

20 Q Okay. In fact, was that case placed on the trial
21 docket initially in December 2010?

22 A Yes, sir.

23 Q What happened then?

24 A Well, the first day we were set to go to trial -- if
25 I'm not mistaken, that's the day after, after we done got

1 all of the other stuff like, you know, we came for trial.
2 They separated us and whatnot.

3 Q Okay.

4 A So I don't -- that's the day when they came -- I came
5 to go to trial, scheduled to go to trial. As soon as I
6 came up through the elevator to come to court, my lawyer,
7 Mr. Roberson, had met with me and said look, not me, they
8 come at you with a plea.

9 Q Okay.

10 A That's where they come with a plea.

11 Q And we'll get to that in just a moment. I just want
12 to make sure the record is clear as to how we got that.
13 To begin with, were you going to go to trial with
14 Mr. Scott? Were you and Mr. Sharmar Scott going to be
15 tried together?

16 A Yes, sir.

17 Q Okay. And at some point in time, the cases were
18 split up, correct?

19 A Yes, sir.

20 Q Mr. Scott actually went to trial in January of 2011,
21 correct?

22 A Yes, sir.

23 Q Do you know if he was convicted or acquitted?

24 A He was convicted.

25 Q Do you know what kind of time he got?

1 A Forty years.

2 Q Forty years?

3 A Yes, sir.

4 Q Okay. Did the State at that point in time, right
5 after he was convicted, ask you if you wanted to plead
6 guilty?

7 A No, sir.

8 Q Okay. In fact, what was the next thing that happened
9 to your case? They put it on the trial docket?

10 A Yes, sir. I came up here for trial, yes, sir.

11 Q Okay. And that was -- the trial was scheduled to
12 begin on January 24th, 2011, correct?

13 A Yes, sir.

14 Q Okay. That was a Monday?

15 A Yes, sir.

16 Q Okay. And is that when you were talking about you
17 met with Mr. Roberson?

18 A Yes, sir.

19 Q Okay. Was that the first time that the possibility
20 of a guilty plea had ever been discussed with you?

21 A Yes, sir.

22 Q What was told to you by Mr. Roberson about that
23 guilty plea?

24 A Well, he said -- he was saying it would be in my best
25 interest to take the guilty plea; that he was explaining

1 to me saying that -- saying that -- okay, in my best -- I
2 mean, my best mind to go with the guilty plea because the
3 fact is they just convicted my codefendant. And the fact
4 is that they are shooting for the hand of one, hand of
5 all. So that's what they're planning on trying to convict
6 me with because I was done in all of that and it wasn't...

7 Q Prior to that meeting --

8 A Yes, sir.

9 Q -- on January 24th, how did you feel about your
10 chances at trial?

11 A I felt like -- well, Mr. Roberson had came to see me.
12 They told me that they was going for a directed verdict.
13 It was either murder or nothing lesser.

14 Q Okay.

15 A So the first thing -- I mean, he's looking at, okay,
16 we're straight. That was a good -- that was a good
17 something on my behalf. But when we go to Court, it
18 was -- it wasn't there. It was a plea. We was pleading
19 now.

20 Q Okay. So up until that Monday morning, all signs
21 were go on a trial, correct?

22 A Yes, sir.

23 Q Okay. And based upon the recommendations of
24 Mr. Roberson, you indicated that you felt pretty good
25 about your chances?

1 A Yes, sir.

2 Q In fact, you may have even mentioned a directed
3 verdict?

4 A Yes, sir.

5 Q What did you -- what did you understand a directed
6 verdict to mean?

7 A Well, from my understanding of what I received, it
8 was murder. They had to convict me of murder, nothing
9 more, nothing less.

10 Q Okay. Did you understand that when Mr. Roberson
11 mentioned directed verdict, that that meant the judge was
12 going to find in your favor or the jury was going to find
13 in your favor? Do you know?

14 A I don't know.

15 Q Okay. You didn't think about that?

16 A No, sir.

17 Q Prior to January 24th, 2011, had you and Mr. Roberson
18 discussed the hand of one, hand of all theory?

19 A Yes, sir.

20 Q Okay. Tell me what was mentioned to you about the
21 hand of one, hand of all.

22 A That if I was -- if I was -- if I knew something was
23 going to happen, and I went and I was there and didn't
24 report it to a police officer or a higher authority, that
25 I was just as guilty as the person who committed the

1 crime.

2 Q Okay.

3 A Yes, sir.

4 Q Were you ever advised by Mr. Roberson that you had to
5 have done something to help in that underlying crime to be
6 convicted of the hand of one, hand of all?

7 A No, sir. He said that I was -- it was enough when --
8 the fact that I seen it and didn't report it.

9 Q Okay. So based upon the representation by
10 Mr. Roberson, you understood that if you were there and
11 failed to report it, that was sufficient to be the legal
12 definition?

13 A Yes, sir.

14 Q Okay. Was that a part of your discussion with
15 Mr. Roberson on January 24th?

16 A Yes, sir.

17 Q Based upon that discussion, did Mr. Roberson make a
18 recommendation to you as to whether or not to proceed to
19 trial this morning or enter a guilty plea?

20 A Enter a guilty plea.

21 Q Okay. That was -- was that based upon the
22 recommendation of Mr. Roberson or of your own decision?

23 A No. Mr. Rober--- like I said, Mr. Roberson said it
24 would be best, best in the interest to go for the guilty
25 plea.

1 Q All right. Did Mr. Roberson mention to you what type
2 of a sentence you would be facing if you proceeded to
3 trial on the murder?

4 A No. Being that really, -- I knew but we didn't really
5 discuss anything about the murder like that.

6 Q Okay. What was your understanding of the sentence
7 you would be facing if you went to trial on murder?

8 A Thirty to life, 30 to life.

9 Q Okay. Prior to January 24th of 2011, did you have
10 any idea that you could be facing the death penalty or
11 execution for this crime?

12 A No, sir. It really was never -- that was never part
13 of anything.

14 Q Okay. Prior to January 24th, 2011, did anybody tell
15 you that the State was seeking to execute you if you were
16 convicted of murder?

17 A No, sir, nobody; no, sir.

18 Q When Mr. Sharmar Scott went to trial, did the State
19 seek the death penalty against him?

20 A No, sir.

21 Q Now, what was advised to you regarding what you were
22 facing on a voluntary manslaughter plea?

23 A Two to 30, two to 30 years.

24 Q Okay. Within those outside ranges, did Mr. Roberson
25 provide you any suggestion as to what he thought a likely

1 sentence might be under these circumstances?

2 A Yes, sir, due to the process that my codefendant got
3 convicted of, the actual crime, he said me -- being that I
4 might get six or seven years. You know, that was stated
5 to me by Mr. Roberson.

6 Q Now, did he promise that to you?

7 A I mean, he didn't necessarily say, "I promise you
8 this," but he recommended. He said that's what -- I guess
9 he gets a recommendation. That's what I call it.

10 Q I got you.

11 A He didn't necessarily say that's what they're doing.

12 Q Now, the State was not recommending a sentence
13 against you, correct?

14 A Yes, sir.

15 Q Okay. And just so the record is clear, you're saying
16 yes, sir; that the State is not making a recommendation?

17 A Yes, sir.

18 Q Okay. Did Mr. Roberson, during your plea, request a
19 particular sentence on your behalf?

20 A No, sir.

21 Q Okay. Did you have any prior adult record before
22 this incident?

23 A No, sir.

24 Q Okay. You had a prior juvenile conviction?

25 A Yes, sir. One that happened in a school, a school

1 fight.

2 Q Okay. Okay. During the guilty plea, the judge
3 started asking you questions. Do you recall that?

4 A Yes, sir.

5 Q Do you recall the judge asking you what you did to
6 commit voluntary manslaughter?

7 A Yes, sir.

8 Q Did you have any difficulty in explaining to the
9 judge what you had done?

10 A No, sir.

11 Q Okay. What did you tell the judge that you had done,
12 if you recall?

13 A I told him -- I told him -- he asked me what made me
14 guilty, and I told him I don't deal -- I didn't -- I
15 didn't admit to anybody what happened. Then I told him I
16 went out -- after the whole incident happened, I went back
17 and got the money. That's when we fled with something.

18 Q Okay. Did, at any point in time during this plea,
19 you tell the judge that you knew that Sharmar Scott was
20 going to rob the victim in this case?

21 A No, sir.

22 Q Did you, in fact, know that he was going to rob the
23 victim in this case?

24 A Well, like I had put on the court document back when
25 I went back for the plea, I told him, okay, you're saying

1 -- okay -- he said something about robbing the man out.

2 I cut him straight short point blank. I told him you
3 couldn't do that because I deal with this dude. I mean, I
4 mess with this dude. Me and this dude is all right, so
5 you can't do that.

6 So there wasn't no gun or nothing, no weapon or
7 nothing. So when we went to the person who probably --
8 the smoke, that's when it all happened, so it -- no, sir,
9 I did not know.

10 Q All right. So the night before, Sharmar Scott
11 mentioned something about a robbery of the victim,
12 correct?

13 A Yes, sir.

14 Q And if I understand your testimony correctly, you
15 told him, "No, you can't do that. That's my friend"?

16 A Yes, sir.

17 Q Okay. Did you -- was there any further discussion
18 about robbing the victim?

19 A No, sir, after that, it was over with.

20 Q Okay.

21 A No, sir.

22 Q How big a guy is Sharmar Scott?

23 A No, not too much bigger.

24 MR. CORNEY: I'll object to that, Your Honor, on the
25 relevancy grounds. There's no claims of --

1 THE COURT: All right.

2 BY MR. MILLING:

3 Q I'll move on.

4 If you told Sharmar Scott the night before, "Don't
5 rob him," and you thought it was done, why didn't you tell
6 him not to rob the victim when this was actually
7 happening?

8 A Well, when it happened, there was weapons involved
9 but I ain't -- I'm bare handed. I can't -- what do I look
10 like? I ain't -- that's one thing, I know right from
11 wrong, smart from not smart. I couldn't just, you know --
12 when I felt like it wasn't an option there.

13 Q Was that the first time you had seen a gun?

14 A Yes, sir.

15 Q Was that the first time that the mention of a gun had
16 ever come into play?

17 A Yes, sir.

18 Q Was that the reason why you didn't interfere with the
19 robbery?

20 A Yes, sir.

21 Q Okay. Who called the victim that morning to get
22 together?

23 A I called him.

24 Q Okay. What was the purpose of your having called
25 him?

1 A To pay -- well, to purchase some marijuana and smoke
2 before he went to church.

3 Q Okay. The purpose wasn't to set him up to rob him?

4 A No, sir.

5 Q Okay. Did you tell the judge all of this during the
6 guilty plea?

7 A Yes, sir.

8 Q Do you recall having heard anything to -- as to what
9 you did to help during the robbery?

10 A Can you repeat that?

11 Q That was a bad question. Let me rephrase it. Did
12 you do anything to help Sharmar Scott commit this robbery?

13 A Well, after -- after everything was done, I went back
14 and got the money. That was my only -- actually, I took
15 from the crime.

16 Q Okay. That was after the assault had already
17 occurred?

18 A Yes, sir.

19 Q Okay. During the guilty plea, were you having
20 reservations about pleading guilty?

21 A Yes, sir.

22 Q Why?

23 A Because I knew that I didn't hurt nobody. I mean, I
24 was sitting there basically admitting that okay, I was
25 there, but I didn't help any way, any type of physical way

1 or touch the man in any way to commit a murder; yes, sir.

2 Q Okay. There are several times during the guilty plea
3 that you and Mr. Roberson have a conversation off the
4 record. What was Mr. Roberson telling you during those
5 conversations?

6 A Telling me I can't go back and forth with the --

7 MR. CORNEY: He can say what he understood. He
8 can't --

9 THE COURT: That's -- that's what he is saying. I
10 mean, I read the transcript. I mean, I'm reading it. I
11 mean, he waffled so much, he probably shouldn't have taken
12 the plea. He was pleading guilty of armed robbery under
13 any circumstance. I don't know why we're fooling with it.

14 Go ahead.

15 BY MR. MILLING:

16 Q Yes, sir.

17 Judge Newman asked you after having advised you if
18 you proceeded to trial, that you could be facing the death
19 penalty. Shortly after that, he asked you whether or not
20 you wanted to pled guilty or go to trial. Do you recall
21 that?

22 A Yes, sir.

23 Q What impact, if any, did his reference to the death
24 penalty and your potential execution have upon your
25 decision to proceed to trial or to proceed with your

1 guilty plea?

2 A Well, once I heard that, you know, I always -- I
3 ain't got no more, nothing more to say but I'm going to
4 plead guilty. That's all.

5 Q Okay.

6 A Yes, sir.

7 Q Without that reference, what was your -- would you
8 have proceeded to trial or pled guilty?

9 A I would have proceeded to trial.

10 MR. MILLING: Okay. Your Honor, I don't have any
11 further questions.

12 THE COURT: All right.

13 CROSS-EXAMINATION:

14 BY MR. CORNEY:

15 Q Mr. Greene, at the plea hearing, Judge Newman asked
16 you if you understood that you had a right to a jury trial
17 or you have the opportunity to challenge the State's
18 evidence and present your own evidence and any defenses
19 that you had. You said you understood that, correct?

20 A Yes, sir.

21 Q Okay. And you did understand you had that right,
22 correct?

23 A I ain't -- I was going along with what I was told to
24 say.

25 Q All right. And at the end of your plea -- I think

1 it's on page 52, for the Court's reference -- Judge Newman
2 actually went over your statement to the police with you,
3 didn't he?

4 A Yes, sir; yes, sir, about the robbery thing, yes,
5 sir.

6 Q Okay. And he kind of went over it part by part and
7 had you kind of go through it where you admitted that you
8 essentially ran down after the victim was beaten and took
9 his wallet from him, correct?

10 A It wasn't his wallet. It was the money.

11 Q It was his money in his pocket?

12 A Yes, sir.

13 Q And that at that point in time, the victim was still
14 alive at that point in time when you took that from him?

15 A Yes, sir.

16 Q Okay. But then you left him there to die,
17 essentially, got in the car, left and went to dispose of
18 the evidence, correct?

19 A (There was no response).

20 Q I mean, that's what it says in the transcript,
21 correct?

22 A I ain't say -- I don't see none of that. I don't
23 know. That's what they inquired.

24 Q All right. So you entered the court -- you entered
25 the courtroom that day on January 24th, 2011 with the

1 intention of going to trial. Is that your contention;
2 that only Judge Newman saying that he -- that execution
3 was a possible sentence was the reason you ended up
4 pleading guilty?

5 A Yes, sir, on behalf, also, of Mr. Roberson had
6 suggested it.

7 Q Okay. So in the opening sentence right there when
8 the solicitor called the case and says, "Your Honor,
9 Mr. Greene indicates he is willing to plead guilty to the
10 charge of voluntary manslaughter," that's way before Judge
11 Newman said anything about execution, the death penalty,
12 or anything along those lines, correct?

13 A Yes, sir; that's also after the fact that me and
14 Judge Newman, when he said, "Well, what made you guilty?"
15 That was -- that was before that fact, too.

16 Q Okay. And on page three, the very first thing Judge
17 Newman says to you, he says, "Mr. Greene, do you want to
18 plead guilty to voluntary manslaughter?" You said, "Yes,
19 sir," correct?

20 A Yes, sir.

21 Q Long before Judge Newman said a word about the death
22 penalty or execution or anything along those lines,
23 correct?

24 A (Nods in the affirmative.)

25 MR. CORNEY: That's all the questions I have, Your

1 Honor. Thank you very much.

2 MR. MILLING: Your Honor, if I may follow up very
3 briefly.

4 THE COURT: All right.

5 REDIRECT EXAMINATION:

6 BY MR. MILLING:

7 Q Mr. Greene, when you first entered that courtroom and
8 offered to plead guilty, that was based upon the
9 recommendation from Mr. Roberson, correct?

10 A Yes, sir.

11 Q As you got into the guilty plea, the judge asking
12 what you were doing to be guilty of this offense, did you
13 have reservations about your initial decision to plead
14 guilty?

15 A No, sir. Well, can you repeat that?

16 Q I'll repeat that. Procedurally, you walk in the
17 courtroom, "Judge, I'm going to plead guilty."

18 As the State has just asked you, the judge made sure
19 that you knew that you had a right to trial, correct?

20 A Yes, sir.

21 Q And then the judge starts to ask you about the actual
22 offense, correct?

23 A Yes, sir.

24 Q He asked you what you did to make you guilty. Do you
25 recall that?

1 A Yes, sir.

2 Q When he starts asking you what you have done that
3 makes you guilty, was that the first point that you had
4 reservations about your actual guilt?

5 A No, sir. That wasn't the first time.

6 Q Okay. Was that the first time during the guilty plea
7 that you decided or thought, "You know, maybe I shouldn't
8 do this"?

9 A Yes, sir.

10 Q Okay. Now, as that continues on, are you continuing
11 to have reservations about your plea?

12 MR. CORNEY: Your Honor, I know we are given some
13 leeway with nonjury, but I'm going to object to leading.
14 I'd just like to hear Mr. Greene's testimony.

15 THE COURT: Well, I read it. He --

16 MR. CORNEY: I understand.

17 THE COURT: He waffled all the way through the
18 sentencing. I wouldn't have taken it. I would have let
19 him have his trial and got him convicted and let him get
20 40 years like the other guy, but that's neither here nor
21 there.

22 MR. CORNEY: I understand, Your Honor. I'd just like
23 testimony on the witness stand, just yes or no answers
24 without counsel leading.

25 THE COURT: I know but he never -- in his 67-page

1 transcript, and he never admitted to anything other than
2 going back to the car to get some money because he needed
3 gas to get out of there.

4 MR. MILLING: Yes, sir.

5 THE COURT: And he -- he waffles on every answer that
6 he gave.

7 MR. MILLING: Yes, sir.

8 THE COURT: Other than, "I want to plead guilty"
9 because his buddy got 40 years, probably, which is
10 probably a wise decision. He gets tried, he gets
11 convicted of armed robbery, under the best case scenario,
12 it still carries up to 30.

13 MR. MILLING: Yes, sir. Yes, sir, and Mr. Greene has
14 been advised of what the possible ranges are for the
15 underlying offenses so...

16 BY MR. MILLING:

17 Q Mr. Greene, the ultimate decision of whether or not
18 to proceed with the plea or withdraw the plea and proceed
19 to trial, did Judge Newman's reference to the death
20 penalty have anything to do with your decision?

21 A Yes, sir.

22 Q And what -- why?

23 A Because it was -- it was really -- it was really a
24 shocker, something to hear because of the fact he was
25 never -- even before when we was looking at going to

1 trial, there was never anything said about the death
2 penalty.

3 So when I hear "death penalty"; then I know I'm
4 pleading to two to 30, but I ain't even understand where
5 the death penalty came in. I figured that's something the
6 judge would knew [sic] that I just didn't knew.

7 Q When the judge asked you shortly after that if you
8 want to go to trial or plead guilty, you said, "I want to
9 plead guilty." Did that reference to the death penalty
10 impact that decision?

11 A Yes, sir.

12 Q Okay. Would you have pled guilty or maintained your
13 plea if the judge had not referenced the death penalty?

14 A No, sir. I would have insisted on going to trial.

15 MR. MILLING: Okay. Nothing further, Your Honor.

16 MR. CORNEY: No further questions.

17 THE COURT: All right. You can step down.

18 MR. MILLING: That would be the evidence that we will
19 present, Your Honor, other than relying upon the
20 transcript which Your Honor has already noted.

21 THE COURT: All right.

22 MR. CORNEY: Your Honor, at this time the State would
23 call Mr. Nathaniel Roberson.

24 THE COURT: Okay.

25 NATHANIEL ROBERSON, after duly affirming,

1 testified as follows:

2 THE WITNESS: My name is Nathaniel Roberson.

3 MR. CORNEY: May it please the Court, Your Honor.

4 THE COURT: Okay.

5 DIRECT EXAMINATION:

6 BY MR. CORNEY:

7 Q Mr. Roberson, thank you for being here with us today.

8 Do you recall Mr. Greene's case?

9 A Yes, I do.

10 Q Okay. And how did you become involved in this case?

11 A I received a call from, I think it would have been
12 his mother, because his father was in training to be a
13 warrant officer of the United States Army.

14 It was either he or she called and explained that
15 their son had been charged with murder. Of course, I had
16 some previous knowledge of it because it was a high
17 profile case. It was in the news, and it had been going
18 on for some time.

19 They asked me if I would take on the representation
20 of their son, which I agreed to do so.

21 Q Okay. So at that point in time, they retained you to
22 represent Mr. Roberson?

23 A Yes.

24 Q I'm sorry. I apologize, I mean, Mr. Greene.

25 A Yes.

1 Q Okay. Do you recall where the case was at that point
2 in time as far as procedurally after his arrest for the
3 preliminary hearing?

4 A Shortly -- it may have been shortly after his arrest,
5 but it was still within the timeframe of the ten days
6 where you could request a preliminary hearing on that.

7 Q Again, have you had the opportunity to review your
8 file, the representation of Mr. Greene before coming to
9 court today?

10 A Yes, I have.

11 Q Okay. Do you recall meeting with Mr. Greene to
12 discuss the charges he was facing?

13 A Well, let -- let me give you the background because
14 they have -- that first conversation with him, I wanted to
15 affirm what his age was, because I believed it hadn't been
16 publicized in the news the age of the two persons
17 involved, as well as the victim.

18 I believe I had them come to my house, and we sat and
19 talked about not knowing anything about the case other
20 than what I saw in the media and what I read from the
21 newspaper.

22 I always explain to parents or a guardian of some
23 trusted friend -- if a person I'm to represent is facing
24 more than ten years, I make it my business to have
25 somebody who that individual is close to or who would help

1 them make decisions be a part of it so that there can be
2 no confusion about whether or not they understand the
3 nature and procedure and what they are about to face.

4 I believe I had that conversation with them so that
5 they could understand, and I believe I also explained to
6 the person who made the initial contact that even if --
7 even if I meet with the defendant, I would get his
8 permission so that I can discuss the case with them
9 because I'm required to keep my client's affairs
10 confidential and secret.

11 So I get the permission from the defendant, then I go
12 back to the parents. I believe I made that crystal clear
13 is the reason I wanted to talk to them first.

14 I explained to them the basic criminal procedures so
15 that they would have an understanding about how it works.
16 We agreed on that, and I went to the jail. I think I met
17 with him, and I did my initial interview.

18 Of course, at that point, I had no official
19 discovery, but we talked in general about what the process
20 involved, timeframes, possible punishments because he was,
21 in fact, charged with murder at that stage.

22 I believe I also explained to him that I would like
23 to have his mother and father involved, and that I wanted
24 his permission so that I could discuss the case with him.

25 I also made him understand that even with his

1 permission, there are still some things that I would not
2 want to discuss because it involves strategy and plans,
3 and that kind of thing.

4 Q Okay. And you said you were able to review the
5 charges with him and his possible punishments during your
6 meetings with him at the jail?

7 A Yes.

8 Q Okay. During your discussions with him as to the
9 possible punishments he was facing, what did you review
10 with him? What did you tell him at that point?

11 A Well, at that point, he was only charged with murder,
12 and I explained to him what the punishment was for murder.
13 I explained that to the parents when I first met with
14 them, as well, because that is, in fact, what he was
15 charged with.

16 Q Okay. Was there ever any discussions about potential
17 death penalty, execution early on as a result of a murder
18 charge?

19 A Well, I think it's part of my responsibility to
20 engage discussion with the affected persons and whether or
21 not to solicit to help them about the potential, as well,
22 and the information that the press had given -- and,
23 again, without having the discovery and meeting with him
24 for the first time, I probably didn't discuss any
25 additional charge with him, but I believe I discussed with

1 the parents that murder, as well as some other specified
2 offenses is the case for which the death penalty can be
3 sought, and that part of our victory would be if, in fact,
4 the government did not seek the death sentence based on
5 what information was disseminated in the public at that
6 point.

7 So in terms of whether or not I had a specific
8 discussion with him about the death penalty or anything at
9 that point, I believe I did have a discussion with him
10 about what the press said about the victim's pockets or
11 his jeans were turned out, and he had given some
12 statements at that point.

13 I think the press indicated that he had made certain
14 confessions and that kind of thing, so I probably
15 discussed the murder, as well as the armed robbery, and I
16 believe they also took the victim's vehicle, drove it to
17 Sumter, and then burned that.

18 So I think I explained that that was a potential
19 charge, as well as the murder that had not been charged
20 but could have been.

21 Q Okay. That's all prior to you receiving the actual
22 discovery --

23 A Yes.

24 Q -- so that was based on the information you received
25 from the press and what was out there in the public?

1 A Right.

2 Q Now, did you have the opportunity in your preliminary
3 meetings to review with him his constitutional rights,
4 including his right to a jury trial, what that entailed
5 and how that process works?

6 A Well, as part of the first interview, I always
7 explained to them that -- and it's -- it's logistical and
8 it's strategic.

9 Over the years, I've learned that everybody in the
10 jail wants to know what everybody else is charged with,
11 and unfortunately, most people in jails have more
12 solutions for the defendants than their lawyers.

13 So I always advise them that it is in your best
14 interest to keep your mouth shut. The only friends you
15 have in this right now is probably your parents and myself
16 and a few other limited people.

17 I also explained to them that it's my understanding
18 that if you use that phone, both calls will be monitored.
19 So you need to be careful about what you say and who you
20 discuss those kinds of things with.

21 I also explained to him that he has a right to have a
22 preliminary hearing, and at the preliminary hearing, the
23 first stage in which we have someone under oath who can
24 give sworn testimony about what the facts are at that
25 stage and what they could potentially reveal somewhere

1 down the line.

2 I also explained the indictment procedure. I also
3 explained to them what the discovery proceedings are
4 about, and that once I get the discovery, we have a good
5 indication of what the State's case is about and its
6 implications, and if there are some things that stick out
7 that appears to be missing or inconsistent with other
8 things, that we could petition the Court to have them give
9 that material up if, in fact, it does exist and to clarify
10 what the case is about. That is part of what I initially
11 do with every defendant, and it would not have been any
12 different with him.

13 Q Mr. Greene at the time of these charges was 16 years
14 old?

15 A He was, he was.

16 Q Did he ever have -- did you ever have any hesitation
17 about his ability to understand and participate in your
18 discussions as you review these things with him?

19 A No. I never had a question about whether or not he
20 understood, but my impression was that he seems to be very
21 disappointed in the outcome of all of this.

22 He was remorseful and regretful about what had
23 happened, and that's all the more reason why I was
24 cautious to speak with his mother and father just in case
25 he sought their advice or had some conversation with them.

1 They could give him the courage and the strength to do,
2 you know, what he needed to do to protect himself.

3 Q Okay. And do you remember receiving a discovery
4 file?

5 A Oh yes, I did.

6 Q And did you have the opportunity to review that with
7 Mr. Greene?

8 A Well, I also explained to his parents with Terrence
9 giving me the authority to discuss the case with them,
10 once I got the discovery, then I would also discuss it
11 with them. So when I got the discovery, I Xeroxed two
12 copies of it: One for him, and one for his parents.

13 I called his parents, and I think I may have given
14 the discovery to his mother. Again, I think his father
15 was in training in Kansas, and I asked his mother to
16 review the discovery and when her husband came to town,
17 let him review it so that I could discuss with them.

18 The other copy that I made, I took it to the jail to
19 discuss it with him. Now, when I read the discovery,
20 there wasn't very much that I saw at that stage that if
21 someone in the jail got access to it, that they could
22 exploit it to their benefit, because at that stage, there
23 were -- I think there were three statements included in
24 the discovery that he had given.

25 So my theory at that point was given the fact that

1 there was little possibility they could come in and try to
2 give the government some new evidence and benefit from it,
3 I was prepared to leave that with him.

4 So what I normally do is at that first visit, I would
5 give the defendant a copy so that he can read with me the
6 things that I have read that I have outlined as being
7 critical in terms of what the case is all about, and me
8 and Mr. Greene did that.

9 At the end of that session, Mr. Greene was satisfied
10 that he understood, and I did explain to him that the
11 danger of having discovery is that someone could try to
12 take advantage of it.

13 He agreed not to keep the discovery, but then once I
14 did that, I believe his father may have come to town that
15 following weekend, and they came to my house. We took the
16 discovery and sat it on the coffee table and the floor and
17 went through every piece of the discovery so that they
18 would understand, and that's how the process of the
19 discovery and how I gave it to him so that he could
20 understand it.

21 Q And over time, discovery continues to trickle in,
22 typically?

23 A Yes, indeed. I follow the same procedure as the
24 other discovery trickling in.

25 Q Based on your review of the discovery, what was your

1 understanding of the State's case against him, how they
2 sought to prove the elements of the murder and the armed
3 robbery?

4 A The -- based on his statement, his statement would
5 have been sufficient to make it easier for the government
6 to prove that at a bare minimum that this was accomplice
7 liability in that Mr. Greene and his codefendant had a
8 discussion about buying some marijuana, and in the course
9 of that discussion, there was some discussion about
10 robbing the person.

11 Now, Mr. Greene may have had some reservations about
12 it, but it was a clear discussion about robbing somebody.
13 The description went further that the next morning -- and
14 before the victim would go to church -- they would call
15 him and have him deliver the marijuana to him, and that
16 did, in fact, happen.

17 The implication being that the marijuana smoking may
18 have happened there at the house or near where Mr. Greene
19 lived, but when the victim arrived, they fought or they
20 enticed him to go to this secluded area.

21 In the secluded area, I believe Mr. Greene was in the
22 backseat. His codefendant was in the passenger's seat.
23 When they got there, the -- I think they start. They have
24 some conversation.

25 They may or may not smoke one or two joints, whatever

1 the case may be, but the codefendant pulls the gun and
2 demands that the victim give up whatever he had. A
3 struggle ensued, and the struggle continued until the
4 passenger's side door was opened.

5 It continued until they -- well, I think ten or
6 12 feet away from the vehicle, there was a serious fight.
7 Mr. Greene's testimony was that he got out of the car, ran
8 around, got under the passenger's seat, waited until the
9 fight was over.

10 The codefendant came back and got in the vehicle at
11 that point and realized that he had not taken the money.
12 So he got out of the vehicle, went down and got the money,
13 came back.

14 They left and they took numerous back roads to get to
15 Sumter. They called one of their relatives who knew of a
16 secluded area where they could take the vehicle and burn
17 it, asked them to bring some gasoline.

18 He met them at an area not where the vehicle was to
19 be burned, but they met there so that he could take them
20 where it was safe to do so.

21 They proceeded to burn the vehicle, and then he took
22 them to one of their friend's house. There was several
23 other acquaintances who were generally in the area that
24 Mr. Greene or his codefendant knew of -- both of them
25 knew.

1 They called these people to come and pick them up,
2 bring them back to Columbia. There were some statements
3 from those persons in the vehicle at that time that
4 Mr. Greene was continuing to try and talk about what had
5 happened, but his codefendant kept insisting that he keep
6 his mouth shut.

7 So the government had almost an ironclad case of
8 proving this to be a murder and an armed robbery and a
9 grand larceny of a motor vehicle.

10 Q Okay. And based on your discussions with Mr. Greene
11 and the discovery, naturally, were you able to kind of
12 look at it to determine to make sure it wasn't going to be
13 an accessory after the fact -- or to make sure that there
14 was this planning stage that he knew this was going to
15 happen?

16 A There was no evidence that this could be an accessory
17 after the fact based on the fact that the government's
18 theory was that Mr. Greene was the one who initiated the
19 contact to get him there, to bring the marijuana.

20 There was a discussion about a robbery, and they
21 again enticed him to go away from the house. But they
22 were to meet and get the marijuana to a secluded area, and
23 where the robbery took place is when the fight took place.

24 They left the gentleman there mortally wounded, and I
25 believe Mr. Greene's statement was that when he -- when he

1 left him there, he was still moaning and groaning from the
2 assault. They never attempted to call the police and they
3 never called to get anyone to assist this gentleman who
4 was obviously alive when they left him there.

5 Q Okay. Now, it was Mr. Greene, in fact, that was the
6 closer of the two defendants or codefendants with the
7 victim in this case, correct?

8 A There was no question about that.

9 Q Okay. So based on your review of the discovery and
10 discussions with Mr. Greene, was it your understanding
11 that it was Mr. Greene who likely enticed him to this
12 secluded area to have this carried out?

13 A It wasn't enticing him. He called and asked him to
14 come and bring the marijuana.

15 Q Were you able to discuss with Mr. Greene how his
16 reservations or the discussion the night before, how that
17 might play into a finding of guilt at trial, how that
18 could be used at trial to contest his guilt?

19 A Say that again.

20 Q Were you able to discuss with Mr. Greene -- he said
21 he had reservations the night before when he had the
22 discussion with his codefendant about carrying out this
23 robbery. Were you able to discuss with him how that could
24 be, potentially, something he could raise at trial to
25 challenge his guilt under the accomplice liability theory?

1 A At a trial, in a trial, we could try to marbleize it,
2 but the fact of the matter is had he not made the call to
3 get him there, for anything to take place beyond that,
4 whether it was an armed robbery or whether or not it is
5 just a simple fight, he is the one who started the process
6 that ended up with the fight, the armed robbery, the
7 stolen vehicle, the burning of the vehicle, and all of
8 those things that fell into play.

9 Q Is it your testimony today -- and I don't mean
10 belabor the point -- but is it your testimony today that
11 the State had at least sufficient evidence to prove his
12 guilt beyond a reasonable doubt of the charge?

13 A There's no question in my mind.

14 Q Were you able to review with him the theory of
15 accomplice ability, the hand of one is the hand of all?

16 A Yes.

17 Q Okay. Were you able to specifically kind of use his
18 facts to that theory and explain how the State would go
19 about proving his guilt?

20 A As a matter of fact, I think we met some five or six
21 times. You know, when the discovery trickled in, I will
22 always go back to him.

23 I would take the initial discovery, the one that came
24 in and add to it. At some point in time, Mr. Greene just
25 -- he seemed to want to remove himself from the tragedy of

1 what had happened, so that I had to try and find ways that
2 I was able to discuss with him the new discovery and how
3 it either added to or detracted from the State's case.

4 So even if he were reluctant to take his discovery
5 and go through those points with me like we did the first
6 time, I would take the old discovery, the new discovery,
7 and say, "Well, you know, even though you don't want to do
8 this, let me explain to you how this has some impact on
9 what the total case is about," and then I'll do that.

10 That was on every occasion when new discovery came
11 in, and I made it my business to make sure that I did not
12 allow him to not allow me to discuss with him the
13 implication of everything about his case, and I did the
14 same thing with the parents.

15 Q Okay. And based on those discussions, do you believe
16 Mr. Greene fully understood how he could be convicted of
17 these charges, especially the murder charge, even if he
18 didn't physically kill the victim?

19 A Yes.

20 Q Okay. Now, do you recall whether the codefendant
21 ever gave a statement to police in this regard?

22 A If I'm not mistaken, I think the codefendant may have
23 given one statement.

24 Q But the codefendant was prepared to testify against
25 Mr. Greene, had he proceeded to trial, as he was the first

1 one to go forward on the charges, correct?

2 A I don't -- I don't think the State would have used
3 the codefendant. I think they saw him as being, probably,
4 the one who was most progressive in bringing about the
5 death. Then he -- his credibility probably would have
6 been almost zero at the trial had he been found guilty.

7 Q Okay. But there was a cousin involved also to help
8 dispose of the car after the fact. Was that something the
9 State was planning on presenting at trial from your review
10 of the case?

11 A Yes.

12 Q Do you recall entering in plea negotiations with the
13 State?

14 A Well, the State -- the chief investigator was the one
15 I had most communication with because when I had some
16 questions about the discovery, and I knew he was probably
17 most instrumental in putting that together. I could call
18 him.

19 But up until the stage of the pretrial motions when
20 we were prepared to go to trial, there were no serious
21 negotiations.

22 Now, in discussing the case with the chief case
23 agent, we casually talked about, you know, whether or not
24 the government was going to offer us anything, and at that
25 point the government was not prepared.

1 He did make a statement to the effect that, "Well,
2 what you can do, you can plead him guilty to the murder,
3 and after he pleads guilty, depending on what happens, we
4 can work something out."

5 Well, come on. I mean, there's no way in the world
6 any lawyer would plead someone guilty to a murder charge,
7 and then hope that something would be worked out.

8 Let me tell you this: During my discussion with
9 Terrence and his parents, as it became clear that the
10 government could prove their case of murder and armed
11 robbery and the theft of the vehicle, I explained to them
12 what the lesser-included offenses are and how the law
13 works if there's any evidence in the record that the court
14 is dully bound to charge those offenses.

15 Additionally, there are -- even though they are
16 lesser-included offenses, it doesn't necessarily mean that
17 because they are there that evidence will be in the record
18 that would allow for it.

19 It has to be put in the record through the
20 government's case or through the defendant's case, and my
21 discussions with the defendant was that he didn't want to
22 testify at a trial.

23 So there's -- if we were going to get a
24 lesser-included offense, it had to made through the
25 State's case. At that point, I didn't see how we could

1 get a lesser-included offense based on what the
2 government's case would have been about.

3 But I also explained to them what the lesser-included
4 offenses could be as negotiations between the defense and
5 the other, and that's what I explained to them what the
6 elements are of voluntary manslaughter, involuntary
7 manslaughter, and murder.

8 Q Okay. And I think you referenced a minute ago, but
9 just to briefly touch on it, there were pretrial motions
10 made prior to the plea and the suppression, correct?

11 A There was pretrial motions when both defendants were
12 about to go to trial, and during the pretrial motions, the
13 codefendant moved to sever the cases because of
14 antagonistic defenses and the case to suppress the
15 testimony, to suppress the defendants statements.

16 It became clear during the testimony that there was
17 some real hostility. As a matter of fact, the judge was
18 impressed that in order to protect each one of these
19 defendants' rights, then a severance probably was in
20 order, and the judge severed. When the judge granted the
21 severance, the State went forward with the codefendant's
22 case.

23 Q Okay. And there was a -- there was a -- there was a
24 pretrial motion to suppress the statement. It was
25 unsuccessful. That was incorporated as part of his plea

1 hearing on the date of this plea. Do you recall that?

2 A Yes. Mr. Greene testified during the suppression
3 hearing.

4 Q All right. So had he gone to trial, his statement
5 was coming in. The motion was already heard.

6 A It did. Oh, well, whichever one of the three or all
7 three of the statements were going to come in.

8 Q Okay. At some point in time, the State did offer to
9 allow Mr. Greene to plead to voluntary manslaughter, the
10 lesser included?

11 A Yes, they did.

12 Q Now, do you recall when that was?

13 A It was the day we were to come back and strike the
14 jury for trial.

15 Q And did you have the opportunity to meet with
16 Mr. Greene and his family to discuss that plea offer?

17 A Well, we were sitting here in the courtroom, and the
18 court reporter, you know, casually said, "Hey, are y'all
19 trying to work anything out?"

20 I said, "You know, there's nothing on the table." I
21 said, "Well, you know, what can we do about trying?"

22 I believe the chief case agent was coming in the back
23 door. I approached him, and I said, "Look, do y'all have
24 any problem with Terrence pleading to voluntary?"

25 He said, "No. You've got to talk to the solicitor."

1 I believe he did have a conversation with them, and they
2 did tell us at that point that they had no objection to
3 him pleading to voluntary manslaughter.

4 I believe they notified the judge that it was going
5 to be a plea and consistent with still how I do young
6 defendants, I asked the judge's permission to allow the
7 family to have a conversation with Terrence, and the judge
8 granted that.

9 The deputies allowed for Mr. Greene to be brought
10 back to one of the big jury rooms, his mother, his father,
11 his aunt; I think it was two of his brothers and may have
12 been some other relatives who were present in the room.

13 I simply explained to them that the government had
14 offered him a plea to voluntary manslaughter, and that
15 based on what had happened at the other trial, based on
16 the evidence that I saw in the case which I had kept them
17 abreast of and appraised of all along the way that a plea
18 to voluntary manslaughter would probably be the best
19 disposition that he could look forward to in this case as
20 opposed to going to trial and possibly being found guilty
21 of murder.

22 Q And prior to those discussions or during those
23 discussions, were you able to review with him this notion
24 of the death penalty and that the State hadn't served
25 notice of it. They weren't seeking the death penalty.

1 There wasn't a realistic potential sentence at that point.

2 A You know, I -- I'm sure I had that academic
3 discussion with the mother, father and him about there
4 hadn't been any potential for it being a death penalty
5 case, the murder, the armed robbery, the theft from the
6 person.

7 I probably made that a part of the discussion, but
8 there was never a realistic possibility that that was
9 going to happen, because in order for you to seek the
10 death sentence, you must do it by giving us notice at
11 least 30 days before trial.

12 There was never a notice sent out, and there was
13 never a real threat on the part of the State that they
14 would, in fact, seek the death sentence.

15 Q And based on your discussions with Mr. Greene and his
16 family, they were aware of that prior to him accepting the
17 plea at that point in time. The matter had been called to
18 trial. The State wasn't seeking the death penalty.

19 A Exactly.

20 Q All right. Now, during the plea hearing, Mr. Greene
21 obviously showed a little bit of reservation about
22 entering his plea. Do you agree with that, at least based
23 on the transcript and your memory of the plea here?

24 A Yes.

25 Q All right. And there was some off-the-record

1 discussions between you and him that are noted in the
2 record, correct?

3 A There were some discussions when he had -- my
4 impression was he had some question, had some problem
5 understanding what the judge was saying, or he was trying
6 to understand what he felt might have been the judge's
7 motivations.

8 Q Okay. At any point during the plea hearing, did you
9 think that based on your discussions with him, that he
10 wanted to back out, not enter that guilty plea and proceed
11 to trial?

12 A He never indicated to me that he wanted to back out
13 and go to trial.

14 Q Okay. Do you feel that his answers on the record
15 gave a sufficient basis for the Court to accept his guilty
16 plea?

17 A I think so. Again, this was a negotiated plea.

18 Q Beg the Court's indulgence one minute, Your Honor.

19 (Pause.)

20 Did you ever tell Mr. Greene to expect to receive a
21 six- to seven-year sentence on the charge?

22 A There is no way in the world I would have told him
23 that, and I did not tell him that.

24 Q Do you feel that you gave him all the advice and
25 information necessary and spent sufficient time with him

1 for him to make a knowing and intelligent decision for him
2 to enter a guilty plea or proceed to challenge the
3 charges?

4 A Yes, I did.

5 Q Based on your discussions with Mr. Greene, do you
6 feel that he was aware of the rights and ability he was
7 waiving by pleading guilty such as presenting his defense
8 at trial, challenging the State's evidence, all the things
9 he was waiving by pleading guilty?

10 A I'm satisfied he understood it.

11 Q And you heard Mr. Greene's testimony this morning,
12 correct?

13 A Yes.

14 Q Anything else you disagree with that he specifically
15 said based on your discussions or anything that you recall
16 he may have testified to that is not your recollection of
17 how that happened?

18 A I'm trying to remember what all he said.

19 (Pause).

20 Oh, he said I advised him to plead guilty. I make it
21 a practice of explaining to all defendants what the main
22 charge is, what the lesser-included offenses are, what the
23 sentencing ranges are, whatever options are available.

24 I had had enough discussions with Mr. Greene and his
25 parents and some of his other loved ones that if voluntary

1 manslaughter was an offer, that was probably the best
2 disposition they could get. So then there wasn't any --
3 any nuance that they had to deal with when it came to
4 voluntary manslaughter as a disposition when it was
5 offered on the day we were to go to trial.

6 The question was, at that point, whether or not this
7 was the best we could expect. I believe at that stage,
8 that is exactly what it was.

9 Q And after his discussions with his family about
10 accepting this voluntary manslaughter plea offer from the
11 State, did you feel that Mr. Greene had any reservations
12 about entering the plea that day in front of Judge Newman?

13 A You know, let's be candid. Rarely, rarely have I
14 seen any defendant who starts out with a murder charge
15 that gets a lesser-included offense who still doesn't have
16 some remaining questions.

17 The question is whether or not he was sufficiently
18 appraised of what the options were, what the possibilities
19 were, and as long as we had those discussions with him, I
20 was satisfied that Mr. Greene was satisfied that that was
21 the best he was going to get at that stage.

22 Whether or not he had reservations to the extent that
23 he wanted to say no to the voluntary manslaughter and go
24 to trial, I don't think that was the case.

25 Q Do you think that Judge Newman's comments -- did he

1 ever mention to you during the plea hearing about Judge
2 Newman's comments about potential execution on a murder
3 charge to affect his decision to plead guilty?

4 A You know, I was under impression that Judge Newman
5 was basically having the same kind of academic discussions
6 that I had with him after he listened at what some of the
7 testimony would have been revealed.

8 I think what he was saying, what he was trying to
9 imply was that this is a good deal on your behalf from not
10 having, number one, face the death sentence. It's being
11 reduced from murder to voluntary manslaughter.

12 I believe that's what the judge put on him. I don't
13 think the judge was trying to entice him or frighten him
14 or get him to plead and not go to trial.

15 Q But just to be clear, your discussions with him prior
16 to that, he knew the death penalty wasn't on the table?

17 A Of course he knew it wasn't on the table.

18 MR. CORNEY: All right. That's all the questions I
19 have.

20 Thank you very much.

21 MR. MILLING: Very briefly, Your Honor.

22 CROSS-EXAMINATION:

23 BY MR. MILLING:

24 Q Good morning, Mr. Roberson.

25 A How are you, sir?

1 Q Good. You will be better in an hour?

2 A Well, five o'clock would be much better.

3 Q I understand.

4 I want to follow up on some of the questions by the
5 State on this case. Now, let's talk about your last point
6 with the death penalty and what were the possible
7 sentencing options for Mr. Greene. It's clear he was not
8 facing the death penalty in this case, correct?

9 A Exactly.

10 Q The State had not provided notice?

11 A That's right.

12 Q And off of the trial docket, the State, as a matter
13 of law, could not have provided notice and proceeded with
14 the death penalty at trial at that stage, correct?

15 A Well, they could not because, number one, if they had
16 mentioned it, I would have objected to it.

17 Q Right.

18 A And the judge would not allow them to proceed under
19 that theory anyway.

20 Q Why then would the judge have mentioned it?

21 A I just explained to you that the judge was giving him
22 an academic discussion about the case being -- being not
23 brought as a death case, it being brought as a murder case
24 and being reduced to voluntary manslaughter.

25 The judge was giving him appraisal that this is

1 probably a good deal. I mean, that's -- that's the way --
2 in the context of how the judge presented it. That's how
3 I felt what he was trying to do.

4 Q But you don't disagree that that was an inaccurate
5 statement regarding --

6 THE COURT: No. That's an absolute correct
7 statement. It just didn't apply to this case. That's all
8 the judge says.

9 The penalty for somebody getting killed during an
10 armed robbery is 30 to life and can seek the death
11 penalty. He didn't say it was there in this case,
12 although I understand he could have interpreted it that
13 way.

14 MR. MILLING: Yes, sir; yes, sir.

15 THE COURT: But the law as stated was accurate. You
16 know, you're pleading to voluntary. It carries 30; armed
17 robbery resulting in death, whether you pulled the trigger
18 or not carries 30 to life and even the death penalty.

19 BY MR. MILLING:

20 Q Prior to -- the Monday that you were scheduled to
21 pick a trial -- this was going to be a trial?

22 A As far as I'm concerned until the State actually
23 said, "You know, we'll reduce the voluntary," I was
24 prepared to go to trial.

25 Q Okay. And Mr. Greene was prepared to go to trial?

1 A That's my understanding.

2 Q Okay. And prior to that Monday, you and Mr. Greene
3 obviously had talked about what your theory of the defense
4 would have been?

5 A Yes, sir.

6 Q And you had explained to Mr. Greene that under the
7 hand of one, hand of all theory if he actually knew what
8 was about to happen regarding Mr. Sharmar Scott actually
9 robbing this victim, that he could be held responsible for
10 everything that flows from that robbery, correct?

11 A I also explained to him that what would compound his
12 problem was that he is the one who made the call to entice
13 the gentleman to walk into an ambush which was an armed
14 robbery which they had discussed.

15 Q Right.

16 A And that anything that flowed thereafter is if he did
17 it himself.

18 Q If the call was placed for the purpose of buying,
19 selling and smoking marijuana, however, and Mr. Sharmar
20 Scott decided to rob the victim while in the vehicle
21 without -- including Mr. Greene in that discussion, the
22 hand of one, hand of all theory would be inapplicable,
23 correct?

24 A Then you're changing the fact pattern.

25 Q Yes.

1 A That's not what the fact pattern is. They had a
2 discussion about the robbery.

3 Q Your Honor, may I approach the witness?

4 (Indicating).

5 Mr. Roberson, I'm going to point your attention to
6 page 35 of the transcript beginning on line 12.

7 A Can I have my -- my glasses? I think I left them.

8 Q Do you disagree with beginning on line 12, it says,
9 "The reasons that the three people were together on that
10 day was for the purpose of buying and selling and smoking
11 marijuana." Do you see that?

12 A Yes.

13 Q Do you disagree that that's what you represented to
14 the court during the exchange of plea?

15 A That was part of what I said during the exchange of
16 the plea.

17 Q Okay. Following up later in that same paragraph on
18 line 17 that same page, "There was no motivation on the
19 part of Terrence Greene to lure him to some place where
20 there was some predetermined plan to cause harm to
21 Mr. Henry." Is that an accurate characterization of
22 what's in the transcript?

23 A It was not Terrence's plan to harm him, but he was a
24 part of a discussion where Mr. -- the codefendant had
25 agreed that they would rob him, not that they were going

1 to harm him.

2 Q Okay. Looking back to page 20 where you are talking
3 about the conversation that took place beforehand,
4 beginning on line eight. This is, again, your
5 representation to the Court. "I'm not certain that he
6 knew for certain whether or not Sharmar was serious about
7 the robbery, but it certainly had been discussed. And I
8 don't know if he knew Sharmar to the extent that he
9 understood he had the capacity to do it"?

10 A Yes, sir. I stand by that.

11 Q Okay. I'm not going to ask you any more questions
12 about the transcript.

13 A Okay.

14 Q Wouldn't that give rise to a defense to the hand of
15 one, hand of all theory if, in fact, there was a question
16 as to whether or not Mr. Greene knew what Mr. Sharmar
17 Scott's intention was?

18 THE COURT: Yeah, but that's trial -- that's trial
19 strategy.

20 THE WITNESS: Yeah. That's --

21 THE COURT: He could have tried the case and lost,
22 but he could have tried it.

23 Go ahead.

24 BY MR. MILLING:

25 Q That was the discussion you had with Mr. Greene?

1 A My discussion with Mr. Greene and that is -- that's
2 advocacy, you sitting there --

3 Q Right.

4 A -- reading. I'm trying to lessen the judge's --

5 THE COURT: Right.

6 THE WITNESS: I'm -- I'm trying to get the judge to
7 see that even though there's criminal complicity, that the
8 degree to which the criminality happens is not primarily
9 Mr. Greene's thoughts, but Mr. Greene knew that he had a
10 friend who had some potential.

11 Q Right.

12 A And by that friend making reference to some dangerous
13 enterprise, Mr. Greene should have abstained and told him,
14 "You're not going to rob somebody. I ain't going nowhere
15 with you."

16 So given the fact that that had become a possibility,
17 he still participated in it. I don't think I could have
18 convinced a jury that the hand of one is the hand of all
19 was negated.

20 I was trying to get the judge to see that there's
21 some naivety on the part of Mr. Greene that you ought to
22 take into consideration when you're handing down your
23 sentence.

24 Q Was it apparent to you during these two days that
25 Mr. Green was having a hard time admitting his guilt?

1 A He didn't have a hard time admitting it to me.

2 Q During the plea.

3 A Not really.

4 Q Okay. You don't think he had a hard time admitting
5 what exactly he did to violate the statute?

6 A Well, a lot of the defendants don't have the same
7 in-depth understanding about legal theory as we as
8 lawyers.

9 These are lay people who we have to explain to them
10 legal theories that sometimes the more sophisticated
11 people don't grasp, but we had to give them enough of an
12 understanding and correlated with their conduct toward
13 what that theory is so they can see where the liability
14 is.

15 You know, Mr. Greene had some concepts to not know
16 what he did or his application. His problem was that the
17 law was probably being too harsh on him because he wasn't
18 going out there to beat the guy up; that he wasn't certain
19 whether or not he was going to rob; that it wasn't his
20 idea of robbing the guy, but it's their conduct that the
21 law is designed to hold them responsible when you have
22 these kinds of results, and that is the conduct that the
23 law tends to regulate.

24 Q So it's your position that he was having a hard time
25 with the consequences of his actions as opposed to his

1 guilt or innocence?

2 A Well, I think Mr. Greene clearly understood what he
3 was standing in front of the Court to answer to, what his
4 conduct was. He may not have wanted to, but I think
5 Mr. Greene accepted the fact than his conduct was
6 sufficient.

7 MR. MILLING: Beg the Court's indulgence one moment.
8 (Pause).

9 Your Honor, I have no further questions.

10 MR. CORNEY: Nothing from the State, Your Honor.
11 That's the only witness I have.

12 THE COURT: You can step down.

13 Okay. So what do you all want me to do?

14 MR. MILLING: Your Honor, the position we take with
15 the PCR, Mr. Greene has asked that the conviction be
16 vacated and the case be remanded for a new trial.

17 I explained to him that does not mean the charges
18 don't go away, but the murder charge would be restored.
19 He would be facing, if the State alleges to proceed, a
20 sentencing range of 30 to life.

21 THE COURT: Well, even today, even not understanding
22 the hand of one, hand of all, he does not understand it.
23 He will never understand it. He just rejects it. I make
24 no value judgments about it.

25 I obviously don't know it, but it starts all the way

1 back when the investigator talking to the judge says when
2 he interviewed him, he acknowledges that the guy died.
3 You know, I just -- they gave up. I went and took the
4 money, went on about my business.

5 MR. MILLING: Yes, sir.

6 THE COURT: Without acknowledging the consequences at
7 that point and through the whole colloquy with Judge
8 Newman, he keeps asking, you know, but I didn't do it.

9 I'm just paraphrasing, but he says that to
10 everything, "I didn't do it. I didn't do it. I didn't do
11 it," but it's a disservice to him to give him another
12 trial. I can tell you that, because he is clearly on his
13 sworn testimony here of armed robbery. He gets convicted
14 of that, he will definitely get convicted of murder.

15 At best -- I don't think, personally, in a trial he
16 can get an involuntary charge. I don't think he can get a
17 lesser-included charge.

18 What he'll be looking at is guilty of armed robbery,
19 guilty of murder or not guilty, and the sentence for that
20 is day for day.

21 MR. MILLING: Yes, sir.

22 THE COURT: Chances are if he gets convicted, he
23 would not get 40 years like the codefendant because he was
24 not the one that actually beat the guy up, undisputed on
25 that, but then he gets 30 which is more than 28.

1 It's also day for day, not 85, but you can prepare an
2 order granting his relief on that. You can prepare one
3 tonight, but it makes specific that Judge Newman only
4 says -- he is not telling him he is facing death. That is
5 the penalty for armed robbery resulting in death. That's
6 what he says.

7 MR. CORNEY: Absolutely, Your Honor. I'll --

8 THE COURT: I'll also reference that he was not
9 served and so forth. It's really his best interest, and I
10 know it's tough when he knows nobody was going to get
11 killed and didn't really participate in the beating up.
12 It's a tough situation, but law is the law. We've got a
13 victim, prominent family, brutally killed. So I just will
14 look at it.

15 THE DEPUTY: Sit down, ma'am.

16 THE COURT: We'll set it aside, but I'll look at it.
17 The appellate court could easily set it aside saying the
18 jury was misled, and he waffled the whole way through,
19 tipping the balance.

20 MR. MILLING: Yes, sir.

21 THE COURT: He was going in front of Judge Newman who
22 had just tried the week before his codefendant.

23 MR. MILLING: Yes, sir.

24 THE COURT: It's not his best interest to proceed
25 with it, although he didn't understand it. I'm not trying

1 to tell him not to. I might even sign the order giving it
2 to him. You know, but I'm not saying that.

3 MR. MILLING: Right.

4 THE COURT: So don't get your hopes up on that.

5 MR. MILLING: Your Honor, just so the record is
6 clear, he has been advised as to what the ramifications
7 are if he is successful here. If the murder charge would
8 be restored, he would be facing 30 to life on it.

9 THE COURT: He also has 30 years on the armed
10 robbery.

11 MR. MILLING: I don't think he was actually charged
12 with armed robbery.

13 THE COURT: Well, I understand.

14 MR. MILLING: Yes, sir; yes, sir.

15 THE COURT: If he gets back down, don't be shocked if
16 they don't reindict, which they can do. We don't have a
17 statute of limitations on that.

18 MR. MILLING: Yes, sir.

19 THE COURT: Armed robbery and murder.

20 MR. MILLING: Yes, sir. Thank you.

21 MR. CORNEY: I'll prepare an order. Thank you, Your
22 Honor.

23 (Whereupon, the proceedings were concluded.)
24
25

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

I, Karen Ambroziak, Official Court Reporter for the
5th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of Common Pleas for
Richland County, South Carolina, on the 7th day of
December, 2012.

May 26, 2013

Karen Ambroziak

Karen Ambroziak, Court Reporter

My Commission Expires: 04/01/14

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Terrence Greene, #344540,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

2011-CP-40-07771

ORDER OF DISMISSAL

RICHLAND COUNTY
FILED
2013 JAN -7 PM 12:11
JEANETTE W. McBRIDE
C.C.P. & G.S.

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for Post-Conviction Relief filed November 14, 2011. An evidentiary hearing into the matter was convened on Friday, December 7, 2012, at the Richland County Courthouse. The Applicant was present at the hearing with counsel, Jonathan Milling, Esquire. The Respondent was represented by Robert D. Corney of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Also testifying was Applicant's former plea attorney, Nathaniel Roberson, Esquire (hereafter "counsel"). This Court also had before it a copy of the transcript of the proceedings against Applicant, the records of the Richland County Clerk of Court, and Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was true bill indicted at the April 2010 term of the Richland County Grand Jury for Murder (2010-GS-40-00137). He was represented by Nathaniel Roberson, Esquire, on the charge. On January 25, 2011, Applicant appeared before the Honorable Clifton

GREENE Terrance #344540 – Order of Dismissal (2011-CP-40-07771)

Page 1 of 16

SCANNED

Newman where he pled guilty to the lesser included Voluntary Manslaughter without recommendations or negotiations. Judge Newman sentenced Applicant to twenty-eight (28) years imprisonment. Applicant did not appeal the plea or sentence.

In the current application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons¹:

I. Greene's plea was not entered voluntarily, knowingly, or intelligently.

During the course of Greene's plea, it was apparent that Greene had significant reservations. As previously noted, Greene was originally charged with Murder and was permitted to plead to Voluntary Manslaughter. Greene, however, had severe difficulties in explaining his conduct and what crime he committed. During this colloquy, the court explained to Greene that if he proceeds to trial on the Murder charge, he is facing up to life in prison, "or the death penalty." Transcript of Hearing, p. 55, ll. 14-15 (*emphasis added*). Shortly thereafter, Greene is again asked by the court whether he wants to proceed to trial. Transcript, p.56, ll. 23-24. Certainly, having only just moments before been advised of possible execution, an individual in Greene's position would not elect such a course. Such, however, was not the possible punishment Greene was facing. This misstatement as to the punishment Greene was facing eclipses any knowing or voluntary decision he may have made. This invalidates his plea and justifies vacating his conviction. Furthermore, the failure of Greene's counsel to correct this inaccuracy, especially under these circumstances, constitutes ineffective assistance of counsel.

¹ At the start of the hearing, Applicant explicitly waived the allegations set forth in his *pro se* PCR application and noted he would only be proceeding on the two allegations above.

II. Greene's plea failed to include a sufficient factual basis, or admission of guilt to the charged offense.

At best, the description by counsel that Greene and Scott had discussed the possibility of a robbery is insufficient to establish guilt. No mention is made as to what overt act Greene committed. No mention is made as to whether, for sure, Greene knew Scott was to rob Henry, or that Greene in any way aided, abetted, or assisted in the commission of that crime. As such, an insufficient factual basis existed to support the plea. Furthermore, counsel's description of his understanding of the "hand of one" law in this context demonstrates an error of law, as does his omission of the *Collins* case cited above. Such error constitutes the ineffective assistance of counsel during this process. Clearly, considering the transcript as a whole and the inability of Greene to commit to his plea, counsel's error was prejudicial and warrants a vacating of Greene's conviction.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*,

466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Involuntary Guilty Plea

Applicant alleges his guilty plea was entered involuntarily and unintelligently as a result of the plea judge's commentary at the plea hearing. Specifically, Applicant contends his plea was rendered involuntary where the plea judge mentioned the death penalty as a possible sentence for conviction on the underlying murder charge.

At the PCR hearing, Applicant testified he was aware the potential sentence for murder was thirty (30) years in prison up to a potential life sentence, but was not aware prior to the January 24, 2011, plea hearing he could potentially face the death penalty as a result of the underlying murder charge if convicted at trial. Applicant went on to say he had reservations during the plea hearing about pleading, but once he heard Judge Newman mention the death penalty felt as though he *had* to plead guilty. On cross-examination, Applicant readily admitted he told the plea judge he wanted to plead guilty to the charge long before any mention of the death penalty in the record.

Counsel testified he recalled being retained by Applicant's family to represent Applicant on the charge and remembered meeting with Applicant numerous times to discuss the case. Counsel noted that because Applicant was only sixteen (16) at the time, he obtained permission from Applicant to incorporate one of his parents in all of their conversations to ensure Applicant understood the talks. Counsel noted he initially discussed the charges in general with Applicant, including the potential sentences Applicant was facing. Prior to his receipt of the discovery materials, counsel said, he was unsure of the extent of the charges and therefore reviewed with Applicant the government's ability to seek the death penalty as a potential sentence for murder under the right circumstances. Counsel said he was "sure" he had discussed with Applicant and his family in advanced of the plea hearing that the state would **not** be seeking the death penalty on the charge, as it would have been required to serve prior notice of such. Counsel stated he believed Judge Newman mentioned the death penalty as a potential outcome of the murder charge only as "academic commentary" to indicate Applicant's plea to voluntary manslaughter was "a good deal".

On cross-examination, counsel again noted the state was not seeking the death penalty for the murder charge as it never served notice of intention to seek such. On re-direct examination, counsel explicitly reiterated that Applicant and Applicant's family were well aware prior to the plea hearing that the death penalty was not a potential sentence on the table as he had explained to them the state would have had to serve notice of such well prior to the hearing.

After a thorough review of the record and the testimony presented at the evidentiary hearing, this Court finds this allegation to be without merit. As a preliminary note, this Court finds counsel's testimony to be very credible, while conversely finding Applicant's testimony to be not credible.

The plea hearing transcript made part of the record is extremely thorough and clear in advising Applicant of his constitutional rights, the nature of the charge he was pleading to, the state's evidence against him, the waiver of rights associated with entry of a guilty plea, the realistic potential consequences carried by the charge, and other relevant matters pertaining to his plea. This Court can see no portion of the plea which fails to meet the requirements of an intelligent and voluntary plea as set forth in Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969).

Further, based on the credible evidence presented, this Court can find no way in which counsel's performance was deficient, or how such an alleged deficiency resulted in prejudice to Applicant. "A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, [he] would not have pled guilty but would have insisted on going to trial." Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 418 (2001). Counsel's credible testimony

reflects he gave Applicant and Applicant's family all of the necessary information and advice necessary to make a knowing, intelligent and voluntary decision whether to enter a guilty plea or otherwise proceed to trial to challenge the murder charge. Included in those discussions was counsel's initial explanation of the death penalty as a possible consequence of a murder charge, and his subsequent notification to them well in advanced of the plea hearing that the state would *not* be seeking the death penalty. Counsel's initial advisement of such a penalty prior to his receipt of any discovery materials was not erroneous. See S.C. Code § 16-3-10, *emphasis added* ("A person who is convicted of or pleads guilty to murder must be punished by **death**, or by a mandatory minimum term of imprisonment for thirty years to life."). Applicant was well aware the state was not seeking the death penalty at the time his case was called to trial, and his plea was entered with this information in mind. Therefore, this contention is without merit.

The record of Applicant's plea only further convinces this Court the plea judge's commentary had no effect on Applicant's decision to waive jury trial by entering the current plea. On January 24, 2011, Applicant appeared before Judge Newman where he proceeded through the entirety of the plea process, acknowledging the ramifications of entering the plea, recognizing the realistic possible punishments he was facing for Voluntary Manslaughter, setting forth his satisfaction with counsel's representation, admitting to his participation in the crime and requesting the court accept his plea. It wasn't until the following day (January 25, 2011) during the sentencing phase of the plea that Judge Newman made the comment now complained of. In particular, after Applicant's statement in mitigation to the plea court, the following colloquy took place between Applicant and Judge Newman:

Court: "Well did you rob [victim]?"

Applicant: "No, sir, I did not rob him, Your Honor. As I confessed that I did get out of the car and walk back to get the money, Your Honor."

Court: "Was that robbery?"

Applicant: "Yes, sir, because he ---"

Court: "It says, 'I put the car in park and got out of the car. I ran down to the rocks and I saw Dray laying there.' Is that part true?"

Applicant: "Yes, sir."

Court: "I went into his pockets and took the money."

Applicant: "Yes sir."

Court: "You did that?"

Applicant: "Yes, sir."

Court: "That's robbery, isn't it?"

Applicant: "Yes, sir, but may I please..."

Court: "Sure."

Applicant: "See, yes, sir, you're right. I have no intentions to try to deny saying that not robbery because in reality that is robbery, Your Honor, but the honest truth, Your Honor ---"

Court: "Armed robbery, that's 10 to 30. That's the sentence for that."

Applicant: "Yes, sir, but the truth is when he ---"

Court: "Murder committed during the course of the robbery. That's up to life or the death penalty for that."

It is clear the commentary by Judge Newman was purely theoretical and of no application to Applicant's case as Applicant was not facing, nor was he ever facing, an indicted charge of Armed Robbery as a result of this incident. Further, this comment was made by the plea judge a full day after Applicant's entry of the plea and, therefore, clearly had no impact on Applicant's decision to plead guilty. For all of the reasons above, this Court finds this allegation to be wholly without merit. Accordingly, it is denied. 

Insufficient Factual Basis for Guilty Plea

Applicant additionally alleges the record of Applicant's guilty plea fails to establish a sufficient admission of guilt to the charges to support the court's acceptance of the plea. Applicant contends while the state was proceeding under the theory of accomplice liability or "the hand of one is the hand of all" to prove Applicant's guilt, the factual admissions by Applicant at the plea hearing are insufficient to support the plea entered.

Applicant testified he never told counsel he wanted to plead guilty to the murder charge, and alleged he in fact told counsel he wanted to go to trial on the charge. Applicant stated initially he was set to go to trial in December of 2010, at which time his case was severed from that of his codefendant. He noted his codefendant was found guilty and sentenced to forty (40) years imprisonment. Applicant said his case was set for trial on January 24, 2011, at which counsel approached him with the state's plea offer for voluntary manslaughter and told Applicant it would be in his best interest to accept it. Applicant testified that prior to that day, counsel said Applicant would be acquitted of the charge through directed verdict.

Applicant said he and counsel had discussed accomplice liability and "the hand of one is the hand of all" during their pretrial meetings. Applicant said he understood that theory to mean if he knew the robbery was going to happen and he didn't do anything to stop it, he was guilty of it. He went on to say counsel advised him if he saw the crime and didn't report it, that was enough for him to be found guilty of the underlying charge. Applicant noted he was aware voluntary manslaughter carried two (2) to thirty (30) years in prison, but alleged counsel told him to expect to receive six (6) or seven (7) years if he pled guilty.

Applicant went on to say he recalled telling the plea judge the facts of the case at the plea hearing. According to Applicant's testimony at the PCR hearing, he and codefendant discussed robbing victim the night before the incident, but Applicant told codefendant not to do it. Applicant said he thought "it was over" after that discussion. He went on to say he called victim the next morning to get marijuana from him before victim went to church, but had no knowledge codefendant was going to rob victim when they made contact with him.

Counsel testified he was retained to represent Applicant by his family shortly after Applicant's arrest. He said he met with Applicant immediately to discuss the charges, but at that

time only knew the information being relayed by the media as it was a high publicity case and he had not yet received any discovery materials. Counsel noted any time he had a client facing more than ten (10) years in prison, he would get permission from the client to incorporate some family members into their discussions to ensure the client understood everything, which was what he did in this case. Counsel said he met with Applicant's family at his house early on, where he was able to review the charges with them and review "basic criminal procedure" with them. From there, counsel said, he reviewed the charges with Applicant, as well as Applicant's constitutional rights, possible punishments he was facing, the indictment procedures, the elements of the crime charged, and other relevant information. Counsel specifically testified Applicant did not have any problems understanding or participating in their discussions, but noted he seemed disappointed and remorseful.

Counsel went on to say after receiving the discovery file, he reviewed the state's evidence with both Applicant and Applicant's parents, as well as gave Applicant's parents a copy of the discovery file. Counsel said Applicant "understood all of" the discovery after the two outlined the entirety of it together, and noted there were three (3) statements from Applicant to law enforcement included in the file. Based on those three statements *alone*, counsel said, there was sufficient evidence for the state to convince a jury Applicant was guilty of the charge based on accomplice liability, as Applicant openly admitted he and codefendant had discussed robbing victim the night prior to the incident and that it was Applicant who called victim to set up the meeting and enticed victim to ride to the secluded location with he and codefendant.

Counsel went on to say statements of witnesses who were with Applicant and codefendant later in the day indicated Applicant continued to talk about the incident and his involvement. He reiterated it was Applicant's phone call to victim that set up the entire incident,

and said the fact that Applicant stole victim's wallet while victim was still alive and moaning on the ground would be detrimental at trial. With all of the evidence that would come out at trial, counsel said he believed the state had "about an iron clad case" against Applicant for murder based on accomplice liability.

Counsel said he explained the lesser included offense of voluntary manslaughter to Applicant, and described how the jury would likely be able to consider guilt to that charge at trial as well if requested by the state. Counsel noted a pretrial hearing on his motion to suppress Applicant's statements was held in December of 2010 prior to the motion for severance being granted, at which the trial court ruled Applicant's statements admissible at trial. This ruling, counsel said, was incorporated by the trial judge when the matter was called to trial on January 24, 2011.

Regarding plea negotiations, counsel testified there were no plea offers extended by the state prior to the case being called to trial, but on the day trial was set to start the state offered Applicant the chance to plead to voluntary manslaughter without recommendations or negotiations. He said he discussed the offer with Applicant and Applicant's family, after which he allowed Applicant and his family to discuss the offer in private for a while. At the end of their meeting, counsel said, both Applicant and his family believed accepting the plea was in Applicant's best interest. Counsel noted he made it clear to Applicant it was *solely* Applicant's decision whether to plead guilty or not, emphasizing that Applicant's family could not make the decision for him.

Counsel said he believed Applicant was well aware of the rights he was waiving by pleading guilty, including the right to challenge the charges against him through jury trial. Counsel also stated he never told Applicant to expect to receive any particular sentence on the

plea and said he had no reason to believe prior to or during the plea hearing that Applicant had any doubts or reservations about entering the plea.

On cross-examination, counsel noted that while the record may or may not reflect Applicant had reservations about admitting his guilt, Applicant "never had a hard time" admitting his guilt to counsel in their pretrial discussions. Counsel finished by saying he believed Applicant was upset because he did not want to accept that he could be guilty of murdering victim in this case without having physically committed the assault himself.

This Court finds this allegation to be without merit. As a preliminary note, this Court finds the contention that the plea court erred in accepting a guilty plea without a sufficient factual basis or admission of guilt in the record to be a direct appeal issue improper for post-conviction relief. Any such alleged trial court error is an issue that could have been properly raised on direct appeal and, therefore, is improperly raised through this action. Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Further, S.C. Code § 17-27-20(b) procedurally bars such issues from being raised through post-conviction relief. Accordingly, to the extent Applicant alleges his plea was improperly accepted by the plea court without a sufficient factual basis or admission of guilt, this Court finds the allegation must be dismissed.

Further, in turning to the merits of the allegation, this Court finds the contention to be wholly without merit. To reiterate, this Court finds counsel's testimony to be credible, while conversely finding Applicant's testimony to be not credible. Applicant contends his admissions on the record at his plea hearing are insufficient to support a finding of guilt to the charge and,

therefore, the plea cannot stand. "As a preliminary matter, it is well-settled that a defendant need not admit guilt in order to enter a valid guilty plea." James v. State, 377 S.C. 81, 84, 659 S.E.2d 148, 150 (2008); citing North Carolina v. Alford, 400 U.S. 25, 31, 91 S.Ct. 160 (1970). "Instead, a guilty plea need only represent a voluntary and intelligent choice among alternative courses of action open to the defendant." Id.

Counsel's credible testimony reflects Applicant was fully and adequately advised of all relevant issues regarding his case, and was given sufficient information and advice to make an informed and intelligent decision whether to plead guilty to the lesser included voluntary manslaughter as offered by the state or to proceed to trial to challenge the murder charge as indicted. Counsel thoroughly explained the theory of accomplice liability to Applicant and reviewed every individual piece of evidence in the discovery file with Applicant to detail how the state would try to convince the jury of Applicant's guilt based on that legal theory. Counsel testified it would have been a factual issue for the jury to decide at trial whether Applicant had sufficient knowledge prior to the incident and sufficiently participated in helping carry out the crime, but said Applicant was aware of such. With all of this in mind, Applicant made the voluntary and informed decision not to "roll the dice" with the murder charge at trial, to rather accept an advantageous plea offer extended by the state for a lesser included offense carrying a guaranteed lesser sentence. Accordingly, it is clear to this Court Applicant made a "voluntary and intelligent choice among alternative courses of action" available to him at the time.

While the record may be read in a way that reflects some hesitancy in Applicant's willingness to admit his wrongful conduct, counsel credibly testified Applicant had no issue admitting his guilt in their pretrial meetings, as well as explicitly noted Applicant never indicated to counsel prior to or during the plea hearing that he did not want to enter the plea. In fact, the

plea judge undertook extensive precautions during the two-day, sixty-two page plea to ensure Applicant gave full and factually sufficient admissions of facts to serve as a sufficient basis for the plea.

In particular, Applicant admitted to the following during the course of the plea hearing: he and codefendant discussed robbing the victim the night prior to the incident; Applicant called victim to orchestrate the meeting with he and codefendant the next day; Applicant sat in victim's car while codefendant and victim struggled outside of the car and victim was bludgeoned to death by codefendant; Applicant went to victim as he lay on the ground severely beaten, moaning and barely breathing, and removed money from his pocket; and Applicant destroyed victim's vehicle and other evidence of the crime on his family's property in Sumter County, thereafter enlisting the assistance of his family to return to Columbia. In the end, Applicant readily admitted to the plea judge he "understood" he was guilty of the crime as charged "because [he] was there and acted in the robbery which caused the death" of victim.

Based on a review of the record and Applicant's testimony at the PCR hearing, it is clear Applicant continues to choose to refuse to accept that he can be guilty of a murder which he did not personally, physically commit. Despite plea counsel, PCR counsel and this Court detailing to Applicant how accomplice liability provides for guilt in precisely such a scenario under the right facts, Applicant continues to ignore his obvious understanding of such in an effort to challenge his plea. "Under the 'hand of one is the hand of all' theory, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose." Barber v. State, 393 S.C. 232, 236, 712 S.E.2d 436, 439 (2011); citing State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010). Clearly, Applicant's admissions in his statements to law enforcement alone created

a substantial likelihood a jury could convict him of murder under an accomplice liability theory, as Applicant admitted to discussing the robbery the night before with codefendant and to being the person who actually initiated contact with victim the following day, seemingly to carry out the robbery which resulted in victim's death. Further, Applicant's admissions on the record at the plea hearing as noted above create a substantial factual basis for the court's acceptance of his guilty plea for voluntary manslaughter. Therefore, even if considered on the merits, Applicant's request for relief based on this allegation must be denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

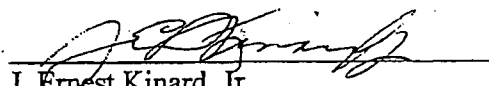
Except as discussed above, this Court finds that the Applicant failed to raise all additional allegations raised in his application at the hearing and has, thereby, waived them. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

This Court notes Applicant must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed **with prejudice**; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 31 day of Dec, 2012.


J. Ernest Kinard, Jr.
Presiding Judge
Fifth Judicial Circuit

Camden, South Carolina.

17

WITNESSES

(S) Wagner - RCSD

Mauldin - RCSD

ARREST WARRANT NUMBER

1938145

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date

APR 14 2010

VERDICT

Foreperson of Petit Jury

Date

DOCKET NO. 2010-GS-40-137

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

April TERM 2010

154

THE STATE

vs.

Terrence Greene

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.

Indictment for

MURDER

SC Code: 16-3-10

CDR Code: 0116

Class FEL/EXM(V)

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Quetta M. Smith
C.C.C. PLS.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

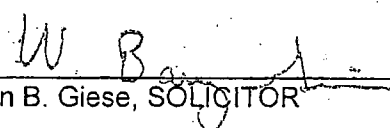
INDICTMENT

At a Court of General Sessions, convened on April 14, 2010, the Grand Jurors of Richland County present upon their oath:

MURDER

That Terrence Greene did in Richland County on or about January 10, 2010, feloniously, willfully and with malice aforethought, kill one Andrade Henry by means of stabbing and/or beating and that the said victim died as a proximate result thereof. All in violation of SC Code of Laws § 16-3-10

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


Warren B. Giese, SOLICITOR

179
ARREST WARRANT
1-938145

STATE OF SOUTH CAROLINA
County: ☒ Richland / Pontiac Municipality of

THE STATE
1001098512

Terrence Davon Greene
Address:

Photo: ☒ SSN: ☒
Sex: M Race: B Height: 5 8 Weight: 185
DL: SC DL #: ☒ Agency ORI #: 04000
Prosecuting Agency: Richland County Sheriff Department
Prosecuting Officer: Holly Wagner - 1209
Offense: Murder / Murder

Offense Code: 0116
Code/Ordinance Sec: 16-03-0010, 0020

This warrant is CERTIFIED FOR SERVICE in the
County: ☒ Municipality of
is to be arrested and brought before me to be
dealt with according to the law. (L.S.)

Signature of Judge

RETURN

A copy of this arrest warrant was delivered to
defendant on 1-22-10

Signature of Constable/Law Enforcement Officer

Pontiac Magistrate
10509 Two Notch Road
Elgin, SC 29045

ORIGINAL ORIGINAL

STATE OF SOUTH CAROLINA
County: ☒ Richland / Pontiac Municipality of
AFFIDAVIT
ORIGINAL

Personally appeared before me the affiant
being duly sworn deposes and says that defendant
did within this county and state on or about 01/10/2010
State of South Carolina (or ordinance of ☒ County: ☒ Municipality of
in the following particulars: Richland / Pontiac

DESCRIPTION OF OFFENSE: Murder / Murder

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

That on January 10, 2010 while at the dead end of Rice Creek Farm Rd in the Pontiac Magisterial District of Richland County, one
Terrence Greene did commit the crime of Murder, Statute Number 16-3-10. It is believed the defendant committed the crime
because he did with malice and aforethought participate in the stabbing and beating of the victim, Andrade Henry, which resulted in
the victim's death. The defendant, Terrence Davon Greene has been implicated in the crime by witnesses, whose statements have
been corroborated.

Affiant and others are witness to prove same.

Signature of Affiant

STATE OF SOUTH CAROLINA
County: ☒ Richland / Pontiac Municipality of

Affiant's Address: 5623 Two Notch Road
Columbia, SC 29223-
Affiant's Telephone: (803)576-3000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY
If appearing from the above affidavit that there are reasonable grounds to believe that

on or about 1/10/2010 defendant Terrence Davon Greene
did violate the criminal laws of the State of South Carolina (or ordinance of
County: ☒ Richland / Pontiac Municipality of

DESCRIPTION OF OFFENSE: Murder / Murder

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me on 01/22/2010

Judge's Address: 10509 Two Notch Road
Elgin, SC 29045

Signature of Issuing Judge

Judge Code: 5039

ORIGINAL ORIGINAL

COUNTY OF Richland
STATE

VS.

Terrance GreeneAKA: R
Race: R Sex: M Age: 17
DOB: 1 SS#: 1

Address:

City, State, Zip:

DL# 7 SID# 7In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: voluntary Manslaughterin violation of § 16-3-50 of the S.C. Code of Laws, bearing CDR Code # 0217☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lowd Act)The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State

ATTEST:

Janna McDuffie 77063 Terrance Greene
Solicitor SC Bar # Defendant Attorney for Defendant SC Bar # 64139WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 28 ~~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. (300 days credit)☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ set by SCDPPPS _____

Attend Voc. Rehab. or Job Corp. _____

Recipient: _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

*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	\$
§56-1-289 (DUI Breath Test)	\$500	\$
§35.13 (Public Def/Prob)	\$25	\$
§73.3, 1B TP (Law Enforce. Funding)	\$25	\$
§33.7, 1B TP (Drug Court Surcharge)	\$100	\$
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$
§90.11 TP (SCCJA Surcharge)	\$5	\$
TOTAL	\$	\$

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ Beginning _____
\$ _____ paid to Public Defender Fund

Other: _____

\$25 \$

☐ Appointed PD or appointed other counsel, §35.13 TP☐ Requires \$500 be paid to Clerk during probation.PRESIDING JUDGE G. WeirCourt Reporter: BelmsClerk of Court/ Deputy Clerk J. WeirJudge Code: 2127Sentence Date: January 25, 2011