

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Anderson County

Honorable Perry H. Gravely, Circuit Court Judge

CHEVIS JAKE MORRIS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001908

APPENDIX

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**THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:
APPLICANT’S EXHIBIT #3 (DVD)**

1 State of South Carolina In the Court of General Sessions
2 County of Anderson

3
4 State of South Carolina,)
5) 2017-GS-04-00727, 728
6 -vs-) 2018-GS-04-02121
7 Chevis Morris,) August 6, 2018
8 Defendant.)
9 _____) Transcript of Record
Plea & Sentencing

10

11

B E F O R E:

12

The Honorable R. Scott Sprouse, Judge

13

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

15 Danny Nelson Fulmer, Jr., Esquire
16 Tenth Circuit Solicitor's Office
Attorney for the State

17 Elizabeth Jennings Byford, Esquire
18 Attorney for Defendant

19

20

21

Reported by:
Diane L. Marcengill, RPR, CRR, CRC
Circuit Court Reporter

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1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at 11:27 a.m.)

4 MR. FULMER: May it please the Court, Judge,
5 before you is Chevis Jake Morris. He is represented by
6 Ms. Byford. He's here on three indictments. These are
7 Anderson County indictments, Judge. He's waiving venue
8 and agreeing to have this plea heard here in Oconee
9 County.

10 MS. BYFORD: That is correct, sir.

11 MR. FULMER: Indictment 2017-GS-04-0727, that's an
12 indictment for first-degree burglary. He's waiving
13 presentment to the grand jury on that indictment,
14 Judge -- I'm sorry, that's been true billed.

15 He's also here on indictment 2017-GS-04-0728.
16 That's an indictment for murder. He's pleading to the
17 lesser included charge of voluntary manslaughter.

18 He's also here on indictment 2018-GS-04-2121.
19 That's an indictment for armed robbery, which he has
20 waived presentment to the grand jury on that, Judge.

21 These are negotiated pleas, Judge, with a sentence
22 of 30 years.

23 (WHEREUPON, the defendant was sworn.)

24 THE COURT: All right.

25 You are Chevis Jake Morris; is that correct, sir?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And you have three charges before the
3 Court: Voluntary manslaughter, burglary first degree,
4 and armed robbery in which the State is submitting as a
5 negotiated sentence of 30 years.

6 Do you understand that?

7 THE DEFENDANT: Yes, sir, Your Honor. I
8 understand.

9 THE COURT: Meaning if I approve that, 30 years
10 would be the sentence issued.

11 Do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Now, how do you plead to armed
14 robbery?

15 THE DEFENDANT: Guilty.

16 THE COURT: How do you plead to burglary first
17 degree?

18 THE DEFENDANT: Guilty.

19 THE COURT: How do you plead to voluntary
20 manslaughter?

21 THE DEFENDANT: Guilty.

22 THE COURT: Has anyone promised you anything or
23 coerced you into entering those pleas?

24 THE DEFENDANT: No, sir.

25 THE COURT: Are you pleading guilty of your own

1 free will?

2 THE DEFENDANT: Yes, sir, absolutely.

3 THE COURT: Are you under the influence today of
4 any alcohol, drugs, or anything that might affect your
5 judgment?

6 THE DEFENDANT: No, sir.

7 THE COURT: Mr. Morris, when you plead guilty, you
8 give up a number of rights. The first of those is a
9 right to a trial by jury. You would be entitled to
10 have a jury of your peers, a 12-person jury, hear the
11 evidence in these cases. In order for you to be
12 convicted of the charges, that jury would have to be
13 unanimous in finding you guilty.

14 Do you understand that right?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: You have the right to call and
17 subpoena witnesses to testify at trial on your behalf.

18 Do you understand that right?

19 THE DEFENDANT: Yes, sir, I do.

20 THE COURT: You have a right to confront and
21 cross-examine the witnesses who are adverse to you at
22 trial.

23 Do you understand that right?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: You would have a right to remain

1 silent, and if you exercise that right, the judge would
2 instruct the jury that they cannot hold that against
3 you in their deliberations.

4 Do you understand that right?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Mr. Morris, if you went to trial, you
7 also would have the opportunity to present any defenses
8 that you might have to the charges.

9 Do you understand that right?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: You are presumed innocent, and the
12 State would have the burden of proving you guilty
13 beyond a reasonable doubt at trial.

14 Do you understand that right?

15 THE DEFENDANT: Yes, sir, I understand.

16 THE COURT: Now, Mr. Morris, these are Anderson
17 County cases. You would have a right to have these
18 cases heard in Anderson County.

19 Do you waive venue so that they can be heard today
20 in Oconee County?

21 THE DEFENDANT: Yes, sir, I do.

22 THE COURT: Now, Mr. Morris, one of these charges,
23 the armed robbery, has not yet been presented to the
24 grand jury. You would have a right to require the
25 State to present that case to the grand jury. The

1 grand jury would have to render a true bill in order
2 for the case to be before this Court.

3 Do you wish to waive presentment to the grand jury
4 so that we might proceed today?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. You have been represented
7 by Ms. Byford. Have you had enough time to talk to
8 her?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Has she answered your questions?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you have any questions for her now?

13 THE DEFENDANT: No, sir.

14 THE COURT: Are you completely satisfied with her
15 services?

16 THE DEFENDANT: Yes, sir, absolutely.

17 THE COURT: Has she done everything you've asked
18 her to do?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right.

21 Mr. Fulmer, tell me the facts.

22 MR. FULMER: Thank you, Judge.

23 This happened July 30th, 2016, at 106 Russell
24 Drive in Anderson in Anderson County. That's the home
25 of the victim, Ms. Jennifer Poor, and her boyfriend.

1 She was there that evening. This defendant, along
2 with a codefendant named Jordan Hart and some others,
3 came down to her house.

4 By accounts given by the witnesses, they smoked
5 some meth together, and Ms. Poor was asked if she had
6 any meth to sell. She says that she did not have any
7 at that time.

8 During the course of this, some cash was seen that
9 was possessed by Ms. Poor, and the defendant, I think,
10 at that point saw it as an opportunity to take some
11 cash from her. He had a pistol in his possession.

12 According to his statement to police, his intent
13 was to rob her and pistol whip her. However, the gun
14 did discharge. A bullet entered her back, traveled
15 through her torso. She bled to death there, Judge.

16 The defendant fled the scene along with the
17 codefendant named Jordan Hart. They traveled
18 throughout the night. During the course of the
19 evening, they broke into a home where the family was on
20 vacation and stole their car. That's the basis for the
21 burglary charge.

22 Ultimately, he ended up back at his mother's house
23 the next morning. Police came to that location and
24 found him. He ultimately gave himself up, Judge.

25 THE COURT: Mr. Morris, did you hear the

1 solicitor's statement of the facts?

2 THE DEFENDANT: Yes, sir, I did.

3 THE COURT: Do you agree that those are the facts
4 of your cases?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right.

7 Ms. Byford, have you had ample time and
8 opportunity to go over all the facts and applicable law
9 with your client?

10 MS. BYFORD: Yes, sir, I have.

11 THE COURT: And are you satisfied that he
12 understands his rights?

13 MS. BYFORD: Yes, sir, I am.

14 THE COURT: And after having the opportunity to
15 investigate these cases, do you concur in his decision
16 to plead guilty to these charges?

17 MS. BYFORD: Yes, sir, I do.

18 THE COURT: And have you discussed with your
19 client the ramifications of these being violent and
20 most serious offenses?

21 MS. BYFORD: Yes, sir, I have.

22 THE COURT: Mr. Morris, do you have any questions
23 for your lawyer about these being violent and most
24 serious offenses?

25 THE DEFENDANT: No, sir.

1 THE COURT: All right. I will find there is a
2 factual basis for the pleas. I find defendant pleads
3 guilty freely, voluntarily, and intelligently with the
4 advice of competent counsel with whom he indicates that
5 he is satisfied.

6 All right. Mr. Fulmer, let me hear anything the
7 State would like to present. If the representatives of
8 the victim wish to address the Court, I'll hear from
9 them, and then I'm going to turn it over to Ms. Byford.

10 MR. FULMER: I think they have three that would
11 like to speak.

12 THE COURT: Ms. Byford, could you and your client
13 step to the right?

14 Thank you.

15 Yes, ma'am.

16 MS. LUSK: Good morning, Your Honor. My name is
17 Kathy Lusk, and I am Jennifer Poor's mother. Thank you
18 for allowing me to speak here at this proceeding today.

19 At times, unlike most mothers, I have lived with
20 the horror that something terrible would happen to my
21 child. I fretted and I did everything I could do to
22 protect and keep her safe. I've often read that that's
23 Mother Nature's way of protecting our race.

24 That's our job as a mother. We raise them the
25 best we can, place them in God's hands and let them go

1 out into the world.

2 My daughter Jennifer did not have great riches or
3 many possessions. Jennifer had time, her love, and the
4 willingness to help those that the world turns away
5 from. She would often say, "I've got this." She was
6 fearless in her attempts to help others if she could.

7 On July 30th of 2016, Chevis Morris' horrendous
8 act took the life of my beautiful daughter, but he also
9 took away a mother of two girls, a sister, a
10 stepdaughter, a niece, a granddaughter, and a friend to
11 all of us who knew and loved her.

12 At the age of 38 Jennifer had matured and was
13 making plans for a better future, a future that none of
14 us will have the pleasure of sharing with her. We will
15 never be greeted again by that beautiful smile and
16 charismatic personality that always set the world on
17 fire. Never, ever again in this life will we see her.
18 That's what Chevis Morris did.

19 We are all heartbroken and absolutely shattered.
20 I have suffered a tremendous loss and feel I will never
21 fully recover. And let me just say, time does not heal
22 all wounds. My heart is broken forever.

23 It seems that we all have a purpose on this earth.
24 At Jennifer's funeral, I realized her true purpose, and
25 I'm extremely proud of her.

1 Jennifer had so many people in attendance at her
2 funeral such as the likes of a dignitary or someone of
3 extreme importance. You see, she was important to her
4 family and her friends. I heard the testimony of so
5 many young women in attendance that day as they meekly
6 approached me and told their story. How Jennifer
7 encouraged them. How she came to their rescue in times
8 of horrific abuse. How she lifted them up when they
9 had no one to turn to. Some told me they would not be
10 alive today if not for her.

11 Yes, I realized on that day that her purpose here
12 was to administer and help those in need and less
13 fortunate. And Jennifer was thrilled to do it, as I
14 can assure you that many would tell you so. I pray
15 that these young women will carry Jennifer's light and
16 example into the future and help others in her memory.

17 So that's the reason Jennifer answered Chevis
18 Morris' and Jordan Hart's plea for help. She
19 understood their suffering and said she would do
20 whatever she could for them. She was trying to be
21 helpful to people that nobody would help. In return,
22 Chevis Morris bashed in her head with the butt of a
23 gun, shot her, and ended her life forever.

24 She was entitled to her life just as much as
25 anyone else. There is nobody to take her place.

1 Chevis Morris took from her community and her family an
2 important asset, an important person, a loved one.

3 God, our Almighty Father, is the only one that can
4 help Chevis Morris now. Certainly he should be praying
5 for mercy because he will need it in prison and on his
6 day of judgment. I hope my precious Jennifer took her
7 last breath knowing that she was important, loved by
8 all of us, and very much a good person that deserved
9 life to the fullest. Jennifer is in Heaven now, safe
10 where she can never be hurt again. God rest her sweet
11 soul.

12 In closing, I would like to express my
13 appreciation to the Anderson County Sheriff's
14 Department, Anderson County Solicitor's Office, and the
15 victim advocate support and assisting our family
16 through this horrific event and grief. They were just
17 invaluable. Every single one of them were invaluable
18 to us.

19 And on behalf of the victims here today, Your
20 Honor, I respectfully request and would appreciate you
21 accepting this guilty plea as presented to you in your
22 court today. Thank you.

23 THE COURT: Thank you, ma'am.

24 MR. POOR: Your Honor, my name is Gary Poor. I'm
25 Jennifer Poor's father.

1 I can't really add much more than what Kathy so
2 eloquently said. We're all hurt. My life, our lives
3 have been impacted in so many different ways from pain
4 physically, mentally, nonsleep, arguments just about
5 nothingness. But I again say, echo exactly what Kathy
6 has said and appreciate what the solicitor's office has
7 done, the sheriff's department has done there in
8 Anderson County. Thank y'all.

9 I hope Mr. Morris gets his just due. Thank you.

10 THE COURT: Thank you, sir.

11 Yes, ma'am.

12 MS. MORRISON: I am Haley Morrison. I'm her
13 youngest daughter. Like my grandmother and grandfather
14 said, I can't, like he said, add to it, but I just want
15 to say, you know, I was 17 at the time. I'm 19 now. I
16 was getting ready -- I was getting ready to be a
17 senior, and all me and my mom talked about was
18 graduation, pick out a school for sports, getting a
19 scholarship. You know, that was her biggest thing for
20 me.

21 You know, the weekend that I seen her, the last
22 weekend I seen her before the weekend that this
23 happened, she told me that no matter what wrong she did
24 throughout her life, I was one of her biggest
25 accomplishments and that she was proud of me, and that

1 she was ready to see me walk across the stage. And she
2 didn't get to do that because he thought that it was
3 okay to take a life of somebody's mother.

4 And I just hope that, Your Honor, you can take
5 this plea and put him away, that he will never have a
6 chance to do this to anybody else's mother or sister or
7 anything.

8 And, you know, I thought that coming here today, I
9 was going to have a lot of anger. And, you know, I'm
10 crying because I miss her, but I'm not crying because
11 I'm angry, because I have already forgiven him, because
12 that's what the Lord asked me to do. And at the end of
13 the day, he has His hands on everything. He's going to
14 handle the situation, and I just ask that, you know,
15 that no matter how long he's in prison, we're still
16 going to be in pain. We're still going to be hurt.
17 She's not going to be back on this earth in this life,
18 but we know she's in a better place, Your Honor. So I
19 thank you for allowing me to speak today.

20 THE COURT: Thank you, ma'am.

21 MR. FULMER: That's all from the State, Judge.

22 MS. CANDY MORRIS: Your Honor, can I speak? My
23 name is Candy Morris.

24 THE COURT: Ms. Byford.

25 MS. BYFORD: Just give me a minute.

1 Would you like to hear from the defendant's family
2 now?

3 THE COURT: I'm going to let you call anyone you
4 would like to in the order in which you would like to
5 call them.

6 MS. BYFORD: Thank you, sir. We do have, I
7 believe, two members of the defendant's family that
8 would like to speak.

9 I would like to start, before I call them, Your
10 Honor, by just saying on behalf of the family who I
11 spoke with today and on behalf of Mr. Morris, how
12 deeply, deeply sorry everyone is for what has happened.

13 One of the very first things Mr. Morris said to me
14 when I was appointed to represent him was how sorry he
15 was, how he never meant for this to happen, he never
16 meant for any of this to happen, and if he could, that
17 he would go back and undo it. Obviously, Your Honor,
18 that's not within his power, but I did want the Court
19 to know how he felt.

20 We are very grateful to the State and the victim's
21 family for their graciousness in the offer. We know
22 this is a negotiated sentence, Your Honor, so I'm not
23 going to run on too much.

24 I do just want to say before I call the family
25 members of the defendant to speak just that he has

1 736 days in the Department of Corrections.

2 And I know he wishes to address the Court at the
3 end, but I will -- Mr. Craft, Chandler Craft, I
4 believe, he wanted to speak.

5 If you would go ahead.

6 THE COURT: Come over to the microphone there.

7 MR. CRAFT: Yes, Your Honor. My name is Chandler
8 Craft. I'm Mr. Morris' first cousin.

9 I would like to start by saying to the victim's
10 family: We are deeply sorry that you lost a loved one.
11 And nothing will ever bring her back, and I realize
12 that, and I know Mr. Morris realizes that.

13 I also start with our God is an awesome God, and
14 he's a forgiving God. I know from speaking with
15 Mr. Morris that this act wasn't intentional. Is it
16 justified? Absolutely not.

17 And I have two daughters, and my wife is pregnant
18 with our third, and I could only imagine the pain and
19 suffering the victim's family is going through.

20 However, Mr. Morris also has two children of his
21 own that will miss out on a father for possibly many,
22 many, many years. And I know, growing up with him as a
23 kid, he always told me he wanted to be a narcotics
24 officer. And he wanted to be a narcotics officer
25 because he wanted to arrest the guys who sold his

1 family, our family, drugs. And because of drugs, this
2 act has taken away someone's life and now put my cousin
3 away for a long time.

4 And, like, we know this is a negotiated plea, but
5 I want everyone else to know that we are sorry, but it
6 wasn't intentional, and he's not a bad guy, and I pray
7 for forgiveness.

8 Thank you for letting me speak, Your Honor.

9 THE COURT: Thank you, sir.

10 MR. HUNTER HAU: I want to say to my brother right
11 there: I really love you, man.

12 MS. LESTER: I'm Chevis Morris' mother, Tina
13 Lester.

14 So sorry for your loss. I've lost my father too
15 at the age of 20 -- 39 when I was 22, shot through the
16 windshield of a car, killed him. And I do know some of
17 what y'all are going through, and I'm very, very sorry,
18 you know, for your loss.

19 I didn't know Jennifer that well. I met her
20 twice, but we lived right around the curve right there
21 for 13 years around Chris. And I'm very, very sorry.

22 I mean, I know what y'all are going through,
23 honey. I'm so sorry. I'm so, so sorry.

24 MS. CANDY MORRIS: I'm Candy Morris. Chevis is my
25 brother. And I'm sorry for your loss, but I struggle

1 with addiction, and it was methamphetamines. And I
2 know what it makes you do. And that wasn't my brother
3 that committed that crime. It wasn't. It was the
4 drugs. And by the grace of God and the grace of mercy,
5 you know, and, you know, we're washed in the blood of
6 Jesus Christ, and he's already forgave my brother. And
7 if not, you know, we're trusting in God, you know, but
8 God has bigger plans. And I love Chevis. I love you,
9 and I'm sorry for your loss.

10 THE COURT: Mr. Morris, anything you would like to
11 tell me?

12 THE DEFENDANT: Yes, sir, I would.

13 I just wanted to say that, you know, I'm sorry for
14 everything. I just want to start off by saying that
15 I'm sorry for everything that has happened. What
16 happened was an accident, and I'm not a cold-blooded
17 murderer. I'm actually a good guy.

18 If I could take it all back, I would. I don't
19 want the family to think that I wouldn't, because I
20 would take it back, because none of this was
21 intentional. Everything that happened was an accident.
22 And I just want to say that I'm sorry for both families
23 that's going through it, and I hope they can find it in
24 their heart to forgive me.

25 Thank you.

1 THE COURT: Anything further?

2 MS. BYFORD: No, sir. Thank you.

3 THE COURT: Is there a prior record?

4 MR. FULMER: He has assault and battery second and
5 an escape.

6 THE COURT: Ms. Byford, how many days, 736?

7 MS. BYFORD: 736.

8 THE COURT: All right.

9 If there's nothing further, I'll say this is a
10 very, very tragic case. It snuffed out a young life,
11 and it's also -- Mr. Morris, you're still alive, but
12 this is affecting your life forever too. And you don't
13 realize the ramifications of actions until you see
14 extended families and how they affect people both up
15 the chain -- parents, grandparents, down to children,
16 and it affects so many people. And I see all this
17 suffering, and it's something that there really isn't
18 any good answer to.

19 I'm going to approve what has been negotiated on
20 these indictments. You will be confined in the
21 Department of Corrections for a term of 30 years. You
22 do get credit for time that you have served, but I
23 would encourage you to make use of the time there so
24 when you do get out at some point in the distant
25 future, that you will have some skills and some ability

1 to make a living for yourself.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: You're a 25-year-old man, and this is
4 a tragic thing. Good luck to you.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And to the victim's family, my heart
7 goes out to you. I know you're suffering. By all
8 indications, this was a bright young lady that had so
9 much to offer, and I'm terribly sorry for your loss,
10 and I wish you all the best in the future. Good luck
11 to everyone.

12 (WHEREUPON, proceedings concluded at 11:55 a.m.)

13 ***END OF REQUESTED TRANSCRIPT OF RECORD***

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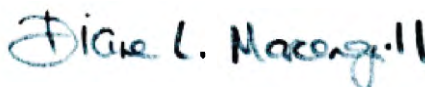
Certificate of Reporter

I, Diane L. Marcengill, Official Court Reporter
for the Tenth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a
true, accurate, and complete transcript of record of a
portion of the proceedings had and evidence introduced
in the trial of the captioned case, relative to appeal,
in the Circuit Court for Oconee County, South Carolina,
on the 6th day of August 2018.

This transcript may contain quoted material. Such
material is reproduced as read by the speaker.

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

May 23, 2019



Diane L. Marcengill, RPR, CRR, CRC
Circuit Court Reporter

WITNESSES

Anderson Co. Sheriff's Office
Franklin E. Culbertson

ARREST WARRANT NUMBER

2016A0410201086

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: MAR 21 2017

Foreperson

VERDICT

Foreperson of Grand Jury
Date:

DOCKET NO. 2017-GS-04-00727

The State of South Carolina
County of Anderson

COURT OF GENERAL SESSIONS

MAR 21 2017, TERM

THE STATE

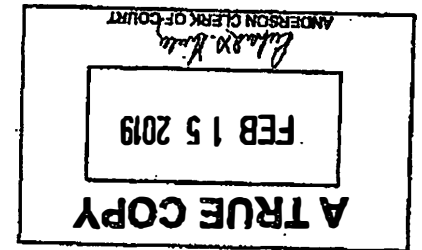
VS.

CHEVIS JAKE MORRIS

INDICTMENT FOR

BURGLARY, FIRST DEGREE

SC Code: § 16-11-0311
CDR Code: 0079



STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

INDICTMENT

At a Court of General Sessions, convened on MAR 21 2017, the
Grand Jurors of Anderson County present upon their oath:

BURGLARY, FIRST DEGREE

The defendant, Chevis Jake Morris, did on or about July 30, 2016, in Anderson County, South Carolina,, willfully and unlawfully enter the dwelling of [REDACTED] located at [REDACTED] Hall Rd., without consent and with the intent to commit a crime therein, and when, in effecting entry or while in the dwelling or in immediate flight, he or another participant in the crime: is armed with a deadly weapon or explosive; and/or causes physical injury to a person who is not a participant in the crime; and/or uses or threatens the use of a dangerous instrument; and/or displays what is or appears to be a knife, pistol, rifle, shotgun, machine gun, or other firearm; and/or the burglary is committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both; and/or the entering or remaining occurs in the nighttime. All in violation of 16-11-0311 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Danny Fulmer

DANNY FULMER
ASSISTANT SOLICITOR

A TRUE COPY

FEB 15 2019

Robert A. Hines
ANDERSON CLERK OF COURT

WITNESSES

Anderson Co. Sheriff's Office
Franklin E. Culbertson

ARREST WARRANT NUMBER

COUNT ONE 2016A0410201084
COUNT TWO 2016A0410201085

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: MAR 21 2017

Foreperson

VERDICT

DOCKET NO. 2017-GS-04-00728

**The State of South Carolina
County of Anderson**

COURT OF GENERAL SESSIONS

MAR 21 2017, TERM

THE STATE

VS.

CHEVIS JAKE MORRIS

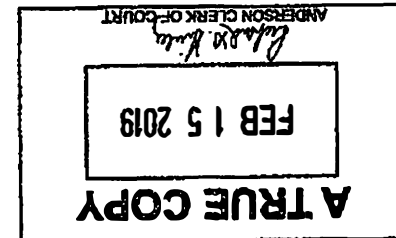
INDICTMENT FOR

COUNT ONE - MURDER

SC Code: § 16-03-0010
CDR Code: 0116

**COUNT TWO - POSSESSION OF A
WEAPON DURING THE COMMISSION OF
A VIOLENT CRIME**

SC Code: § 16-23-0490
CDR Code: 0549



*TIC w/ plea.
Danny Fulmer.*

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

INDICTMENT

At a Court of General Sessions, convened on MAR 21 2017, the
Grand Jurors of Anderson County present upon their oath:

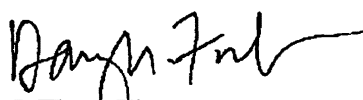
COUNT ONE - MURDER

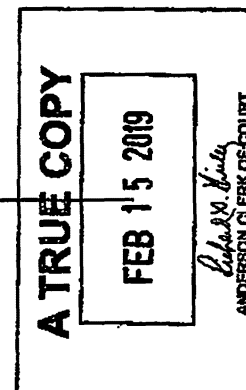
That Chevis Jake Morris did in Anderson County, on or about on or about July 30, 2016, unlawfully and with malice aforethought, either express or implied, kill [REDACTED] by shooting her with a handgun, and the victim died as a proximate result thereof. All in violation of §16-3-10, *South Carolina Code of Laws* (1976, as amended).

COUNT TWO - POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

The defendant, Chevis Jake Morris, did, on or about on or about July 30, 2016, in Anderson County, South Carolina, while committing the crime of Murder, a crime of violence, have in his possession a firearm. All in violation of 16-23-0490 of the *South Carolina Code of Laws* (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


DANNY N. FULMER, JR.
ASSISTANT SOLICITOR



WITNESSES

Anderson Co. Sheriff's Office
Franklin E. Culbertson

ARREST WARRANT NUMBER

Direct Indictment

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Grand Jury
Date:

DOCKET NO. 2018-GS-04-02121

**The State of South Carolina
County of Anderson**

COURT OF GENERAL SESSIONS

TERM

THE STATE

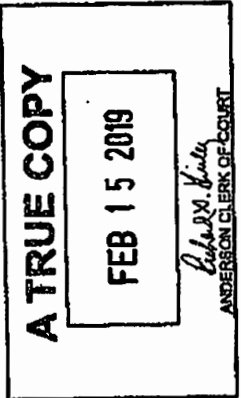
VS.

CHEVIS JAKE MORRIS

INDICTMENT FOR

ARMED ROBBERY

SC Code: § 16-11-0330(A)
CDR Code: 0139



STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

INDICTMENT

At a Court of General Sessions, convened on _____, the
Grand Jurors of Anderson County present upon their oath:

ARMED ROBBERY

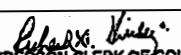
The defendant, Chevis Jake Morris did in Anderson County, on or about July 30 2016, did while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, robbed the victim, [REDACTED], of an amount of U.S. Currency. All in violation of Section 16-11-330, *South Carolina Code of Laws* (1976, as amended)

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


DANNY N. FULMER, JR.
SR. ASSISTANT SOLICITOR

A TRUE COPY

FEB 15 2019


ANDERSON CLERK OF COURT

COUNTY OF ANDERSON

STATE VS.

CHEVIS JAKE MORRIS

AKA: Chevis Morris

Race: White

Sex: M

Age: 25

DOB: [REDACTED]

SS#: [REDACTED]

Address: [REDACTED]

City/State/Zip: [REDACTED]

D#: [REDACTED]

SID# SC01957430

INDICTMENT/CASE#: 2017GS0400727

AW#: 2016A0410201086

Date of Offense: 07/30/2016

S.C. Code §: 16-11-0311

CDR Code #: 0079



SENTENCE SHEET

30 year

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said Indictment comes now the Defendant who was ☐ CONVICTED OF or☒ PLEADS

TO: Burglary, First Degree

In violation of § 16-11-0311, of the S.C. Code of Laws, bearing CDR Code # 0079

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury. (def.'s Initials)The plea is: ☐ Without Negotiations or Recommendation,☒ Negotiated Sentence,☐ Recommendation by the State.

ATTES:

[Signature] 15593
Danny N. Fulmer, Jr., Sr. Assistant Solicitor SC Bar # DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections☐ County Detention Center,

SC Bar #

for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Service 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 SC

Department of Corrections 726 Days 715

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCOPPPS _____

Recipient: _____

*Fine: _____ \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (If paid in installments) \$ \$ 3.75

TOTAL \$ 128.75

Clerk of Court/Deputy Clerk: Beverly H. Whitfield

Court Reporter: Diane Mancengeli

SCCA/217 (04/2018)

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,

Proviso requires \$500 be paid to Clerk

during probation and shall be collected before any

other fees.

Presiding Judge: [Signature]

Judge Code: 2792

Sentence Date: 8/6/2018

A TRUE COPY

FEB 15 2019

[Signature]
ANDERSON COUNTY CLERK

COUNTY OF ANDERSON
STATE VS.

CHEVIS JAKE MORRIS

AKA: Chevis Morris

Race: White Sex: M Age: 25DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED]DL# [REDACTED] SID# SC01957430*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or☒ PLEADSTO: Voluntary ManslaughterIn violation of § 16-03-0050 of the S.C. Code of Laws, bearing CDR Code # 0217☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☐ As indicted, ☒ Lesser Included Offense ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature] 15593 [Signature] 68297
 Danny N. Fulmer, Jr., Sr. Assistant Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detentionfor a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Service 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 SC Department of Corrections 736 Days T/S☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____ Obtain GED ☐☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ 3.75TOTAL \$ 128.75Clerk of Court/Deputy Clerk: Beverly H. WhitfieldCourt Reporter: Diane Marcengue

SCCA/217 (04/2018)

INDICTMENT/CASE#: 2017GS0400728AW#: 2016A0410201084Date of Offense: 07/30/2016S.C. Code §: 16-03-0010CDR Code #: 0116

SENTENCE SHEET

30 years

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: No contact with victim'sfamily.Do not transport to JDC priorto 8-9-18.
☐ Appointed PD or appointed other counsel,
 Proviso requires \$500 be paid to Clerk
 during probation and shall be collected before any
 other fees.
Presiding Judge: [Signature]Judge Code: 2752Sentence Date: 8/6/2018

A TRUE COPY

FEB 15 2019

Anderson Clerk of Court

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON
STATE VS.

CHEVIS JAKE MORRIS

AKA: Chevis Morris
Race: White Sex: M Age: 25
DOB: SS#
Address:
City, State, Zip:
DL# SID# SC01957430

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or

☒ PLEADS

TO: Armed Robbery

In violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury. (def.'s initials)
The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Danny N. Fulmer, Jr. 15593 Chevis Morris 68297
SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,

for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment

of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service 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 SC
Department of Corrections 736 Days TJS

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-85 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

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 _____

Recipient: _____

*Fine: \$ _____
§14-1-206 (Assessments 107.5%) \$ _____
§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00
§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____
§56-5-2995 (DUI Assessment) \$12 \$ _____
§56-1-286 (DUI Breath Test) \$25 \$ _____
Proviso (Public Def/Prob) \$500 \$ _____
§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
§14-1-213 (Drug Court Surcharge) \$150 \$ _____
§50-21-114 (BUI Breath Test Fee) \$50 \$ _____
§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
3% to County (if paid in instalments) \$ \$ 3.75

TOTAL \$ 128.75

Clerk of Court/Deputy Clerk: Beverly H. Whitfield
Court Reporter: Diane Marcegel
SCCA/217 (04/2018)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2018-65-04-02121
AWV: Direct Indictment
Date of Offense: 07/30/2016
S.C. Code §: 16-11-0330(A)
CDR Code #: 0139

SENTENCE SHEET

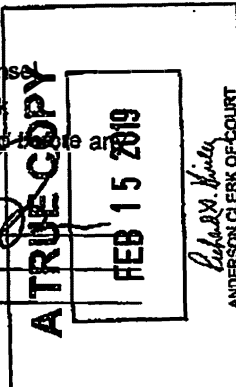
36 mo.



Attend Voc. Rehab. Or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling ☐
Random Drug/Alcohol Testing ☐
Fine may be pd. in equal consecutive weekly/monthly
pmts. of \$ _____ Beginning _____
\$ _____ Paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel
Proviso requires \$500 be paid to Clerk
during probation and shall be collected before any
other fees.

Presiding Judge: [Signature]
Judge Code: 2152
Sentence Date: 8/6/2018



FORM 5

STATE OF SOUTH CAROLINA

County of AndersonChevis Jake Morris
Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2019 CP0400298

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Anderson County Detention Center
2. Name and location of Court which imposed sentence Anderson County Court - Ollenee Court
3. Name(s) of co-defendant(s) (if any) Jordan Hart
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Indictment/Case # - 2017650400728 A/w - 2016A0410201084
 - (b) Indictment/Case # - 2017650400727 A/w - 2016A0410201086

(c) Indictment/Case # - 2018-65-04-02121 A/w - Direct Indictment

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

- (a) 8/6/2018 - 30 Years Do not contact victims family
 (b) 8/6/2018 - 30 years Do not contact victims family
 (c) 8/6/2018 - 30 years Do not contact victims family

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty Guilty Plea
 (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. _____
 ii. _____
 iii. _____

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

- i. _____
 ii. _____
 iii. _____

(c) the date of each such result:

- i. _____
 ii. _____
 iii. _____

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

- i. _____
 ii. _____
 iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

- (a) I did not appeal because I took a guilty Plea
And lawyer said that I couldn't appeal unless PCR.
 (b) My pro bono lawyer said I could only file a
PCR form.

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

(a) Conflict of Interest

(b) _____

(c) _____

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

(a) My victims family is a lawyer in the County in which

(b) I was sentenced and my lawyer failed to

(c) Address that I still had the same solicitor in that County

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

(a) any petition in a State Court under South Carolina Law? no

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no

(d) any other petitions, motions or applications in this or any other Court? no

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

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

It has not been set forth to a court but
to my pro bono lawyer whom failed to address it.

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

(a) which grounds have been presented:

- i. Conflict of Interest with Public defender
- ii. Conflict of Interest with Solicitor which
- iii. has not been Presented to Court only the conflict
of Public defender

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

- i. I was given a pro bono lawyer
- ii. _____
- iii. _____

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

re-sentencing and
sentence reduction
I was given the max on my charge

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

no

STATE OF SOUTH CAROLINA)

County of Anderson)

VERIFICATION

I, Chavis Morris, 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.

Chavis Morris
Chavis Morris

SWORN to and subscribed before me this 31th
 day of January, 2019.

Linda K. Baskin (L.S.)
 Notary Public

My Commission Expires: 6-20-26

FEB 15 AM 10:50:40
 Anderson, SC C00, CP/35

2019CP0400298

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

I, Chris Morris, 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.

Chris Morris
Applicant

SWORN or affirmed to and subscribed before me this
31st day of January, 2019.

John K. Bane
Notary Public

My Commission Expires: 6-20-26

15 FEB 15 AM 10:50:46
Anderson, SC 000, CP/08

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	FOR THE TENTH JUDICIAL CIRCUIT
	)	
Chevis Morris, SCDC #352985,	)	
	)	Case No. 2019-CP-04-0298
Applicant,	)	
	)	
v.	)	RETURN AND MOTION FOR A MORE
State of South Carolina,	)	DEFINITE STATEMENT
	)	(COUNSEL APPOINTED)
Respondent.	)	
	)	
	)	

In response to the post-conviction relief (PCR) action commenced by Chevis Morris (Applicant) on February 15, 2019, the State makes this return:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to the orders of commitment of the Anderson County Clerk of Court. Applicant was arrested on July 31, 2016 following an investigation into the shooting death of Jennifer Poore (Victim) during an incident which occurred the day prior. During its March 2017 term, the Anderson County Grand Jury indicted Applicant for murder (2017-GS-04-0728) and first-degree burglary (2017-GS-04-727). Elizabeth Jennings Byford, Esquire (Counsel) represented Applicant and Assistant Solicitor Danny Fulmer, Jr. prosecuted the case.

On August 6, 2018, Applicant appeared before the Honorable R. Scott Sprouse and pleaded guilty to the lesser-included offense of voluntary manslaughter and as indicted to first-degree burglary. Applicant also waived presentment to the Grand Jury and pleaded guilty to armed robbery (2018-GS-04-2121). Pursuant to negotiations entered into between Applicant and the State, Judge Sprouse sentenced Applicant to concurrent terms of thirty years' imprisonment on each charge. Applicant did not appeal his guilty plea or sentences.

Applicant timely commenced this PCR action on January 31, 2019.

II. STATEMENT OF FACTS

On the night of July 30, 2016, Applicant, Victim, a codefendant, and several others were smoking meth at Victim's home at 106 Russell Drive in Anderson County. (Plea Tr. 6–7). Victim was asked if she had any meth to sell, and she indicated that she did not have any at that time. (Plea Tr. 7). During the course of this exchange, Applicant noticed Victim in possession of some amount of cash. (Plea Tr. 7). It was at this time Applicant saw as an opportunity to take the cash from Victim. (Plea Tr. 7). Applicant had a pistol in his possession. (Plea Tr. 7). According to Applicant's statement to police, his intent was to rob and pistol whip Victim. (Plea Tr. 7). However, the gun did discharge, and Victim was shot in the back, killing her. (Plea Tr. 7).

Applicant and the codefendant, Jordan Hart, fled the scene. (Plea Tr. 7). Later that night, they broke into the home of a family who was on vacation, and stole their car. (Plea Tr. 7). Applicant ended up at his mother's house the next morning, where he was arrested by law enforcement. (Plea Tr. 7).

III. CURRENT APPLICATION

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

1. Conflict of Interest
 - a. "My victims family is a lawyer in the county in which I was sentenced and my lawyer failed to address that I still had the same solicitor in that county."

Applicant requests relief as follows:

"Re-sentencing and sentence reduction. I was given the max on my charge."

In response to question nine as to why he did not pursue a direct appeal, Applicant states the following:

- a. "I did not appeal because I took a guilty plea and lawyer said that I couldn't appeal unless PCR"
- b. "My pro bono lawyer said I could only file in PCR form."

Based on these responses and Applicant's failure to state this as an enumerated ground for relief, it is unclear whether Applicant is seeking belated appellate review of his guilty plea pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974) (finding that a defendant who did not knowingly and voluntarily waive his right to direct appeal of his conviction is entitled to a belated review of direct appeal issues). Since it is unclear whether Applicant is asserting he did not knowingly or voluntarily waive his right to a direct appeal, the State requests Applicant, through counsel, clarify whether he intends to proceed forward on this allegation. However, out of an abundance of caution, the State is interpreting Applicant's response to question nine as an allegation that plea counsel was ineffective for failing to file a direct appeal on Applicant's behalf.

Attached herewith and incorporated by reference are the Anderson County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, and the records of the current post-conviction relief action. The State reserves the right to amend this return upon receipt of any relevant materials.

IV. RESPONSE TO ALLEGATION OF INEFFECTIVE ASSISTANCE OF COUNSEL

The State submits Applicant can satisfy neither requirement of the *Hill* test. However, it is impossible for the State to adequately respond to Applicant's allegation because Applicant has completely failed to provide any specific facts to support such claim. The State requests Applicant, through counsel, provide specific claims and facts to support this vague allegation. *See* S.C. Code Ann. § 17-27-50 (2014) (requiring an applicant to "specifically set forth the grounds upon which

the application is based”); *see also Welch v. MacDougall*, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (stating it is incumbent upon an applicant to make at least a *prima facie* showing entitling him to relief before an evidentiary hearing will be scheduled and held); Rule 8(a)(2), SCRCPP (requiring all civil pleadings to include “a short and plain statement of the facts showing that the pleader is entitled to relief”); Rule 71.1(d), SCRCPP (“Counsel shall insure that all available grounds for relief are included in the application and shall amend the application if necessary.”). Thus, the State moves to require Applicant to provide a more definite statement of his allegation of ineffective assistance of counsel pursuant to Rule 12(e), SCRCPP.

A. Ineffective Assistance of Plea Counsel, Generally

The Sixth and Fourteenth Amendments to the United States Constitution guarantees Applicant, like all other defendants, the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668 (1984); *Taylor v. State*, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCPP; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); *State v. Pendergrass*, 270 S.C. 1, 4, 239 S.E.2d 750, 751 (1977). The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel’s conduct “was

so ineffective as to require reversal” of the applicant’s conviction or sentence. 466 U.S. at 687. First, the applicant must show that counsel’s performance was deficient; and second, that the deficient performance prejudiced the applicant. *Id.* 668; *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

The first prong—constitutional deficiency—is “necessarily linked to the practice and expectations of the legal community.” *Padilla v. Kentucky*, 559 U.S. 356, 366, 130 S. Ct. 1473, 1482, 176 L. Ed. 2d 284 (2010). In order to prove deficient performance, the applicant must show counsel’s representation fell below an objective standard of “reasonableness under prevailing professional norms.” *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, “does not guarantee perfect representation[—]only a ‘reasonably competent attorney.’” *Harrington v. Richter*, 562 U.S. 86, 110 (2011) (quoting *Strickland*, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. *Strickland*, 466 U.S. at 686. Just as there is “no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities.” *Harrington*, 562 U.S. at 110.

Accordingly, “[j]udicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” *Strickland*, 466 U.S. at 689; see also *Yarborough v. Gentry*, 540 U.S. 1, 6 (2003) (“The Sixth

Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time. *Id.* Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

A reviewing court “must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed at the time of counsel’s conduct.” *Strickland*, 466 U.S. at 690. An applicant making a claim of ineffective assistance “must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment.” *Strickland*, 466 U.S. at 690 (emphasis added). The reviewing court must then “determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance.” *Id.*

The *Strickland* standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; *see also Harrington*, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel’s representation is a most deferential one. *Harrington*, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an

attorney's representation amounted to incompetence under "prevailing professional norms," *not* whether it deviated from best practices or most common custom. *Id.* (quoting *Strickland*, 466 U.S. at 690) (emphasis added).

The second, or "prejudice" prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. *Id.* at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. Thus, it is not enough "to show the errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to *deprive the defendant of a fair trial.*" *Id.* at 687 (emphasis added). Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, *Hill v. Lockhart* extended the two-part *Strickland* test to challenge guilty pleas based on ineffective assistance of counsel." *Hill*, 474 U.S. 52; *cf. Padilla*, 559 U.S. at 373 (recognizing that the guilty plea process is a "critical phase of litigation" for purposes of the Sixth Amendment right to effective assistance of counsel). A claim of ineffective assistance of guilty plea counsel requires the applicant present evidence satisfying two prongs: first, evidence that counsel's performance

was deficient; and second, evidence that counsel's deficient performance prejudiced the defendant by causing him to plead guilty rather than go to trial. *Hill*, 474 U.S. 52.

Thus, the analysis of counsel's performance under the first prong of *Strickland* remains unchanged—the applicant must show that counsel's representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases. *Hill*, 474 U.S. at 58–59; accord *Thompson v. State*, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice to plead guilty was not “within the competence demanded of attorneys in criminal cases.” *Hill*, 474 U.S. at 56.

The second, or “prejudice” prong, however, “focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process.” *Id.* at 58–59. Specifically, when an applicant claims counsel's deficient performance caused him to accept a plea, the applicant “must show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial.” *Id.* at 59.

This inquiry “focuses on a defendant's decisionmaking” and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. *Lee v. United States*, 582 U.S. ___, 137 S. Ct. 1958, 1966 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. *Padilla*, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him or her to plead guilty. *Turner v. State*, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

Surmounting *Strickland*'s high bar is never an easy task, and the strong societal interest in finality has "special force with respect to convictions based on guilty pleas." *Lee*, 582 U.S. ___, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); *cf. Hill*, 474 U.S. at 58 ("[R]equiring a 'prejudice' showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel 'will serve the fundamental interest in the finality of guilty pleas.'"). Reviewing "[c]ourts should not upset a plea solely because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney's deficiencies. *Lee*, 582 U.S. ___, 137 S. Ct. at 1967. Rather, judges should "look to contemporaneous evidence to substantiate a defendant's expressed preferences. *Id.* Thus, in determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the guilty plea and the evidence presented at the PCR hearing. *Harres*, 282 S.C. at 134, 318 S.E.2d at 361.

The performance and prejudice standards, however, "do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." *Id.* at 696. Moreover, "there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." *Id.* at 697. The court "need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. *Id.* If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. *Id.*

Applicant contends Counsel was ineffective for failing to address the following conflicts of interest: (1) that a member of the victim's family is an attorney in Oconee County; and (2) that

Solicitor Fulmer prosecuted his case in Oconee County. As an initial matter, Applicant failed to identify the member of Applicant's family who is allegedly an attorney in Oconee County. Nonetheless, Applicant has failed to articulate any facts showing how these alleged conflicts prejudiced Applicant, especially considering Applicant entered into a negotiated plea agreement. Applicant further failed to show Counsel was aware of any alleged conflicts.

B. Conclusion and Action Requested

The State submits Applicant can satisfy neither requirement of the *Hill* test. However, as discussed above, it is impossible for the State to adequately respond to Applicant's allegation of ineffective assistance of counsel because Applicant has failed to provide any specific facts to support his allegation. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the [PCR] court"). Thus, the State moves to require Applicant to provide a more definite statement of his allegations pursuant to Rule 12(e), SCRPC.

V. ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

The State respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that the State may adequately prepare for an evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments *will be opposed by the State at an evidentiary hearing*. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRPC. *See also* Rules 15(a)-(b), SCRPC; *Mangal v. State*, 421 S.C. 85, 805 S.E.2d 568 (2017). All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and

not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing.

If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss this allegation or claim. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRCP. *See also* Rules 15(a)-(b), SCRCP. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRCP.

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. The State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State.

VI. GENERAL DENIAL

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

VII. CONCLUSION

WHEREFORE, having made its return, the State respectfully requests this Court grant its motion for a more definite statement as set forth in section IV. The State requests Applicant, through counsel, amend the application to provide the required specificity for his allegation of ineffective assistance of counsel. Until Applicant files an amended application, Applicant has not

shown sufficient cause to warrant an evidentiary hearing on this application. The State respectfully requests this Court to only schedule a hearing after an amended application is so filed.

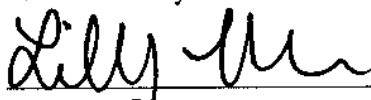
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

LILLIAN L. MEADOWS
Assistant Attorney General

By: 
ATTORNEYS FOR THE STATE
Office of the Attorney General
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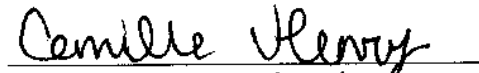
September 27, 2019

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	
	)	2019-CP-04-00298
	)	
CHEVIS MORRIS, #352985	)	
	)	
Applicant,	)	
	)	
vs	)	CERTIFICATE OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent,	)	
_____	)	

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

Linda Vallar Whisenhunt, Esquire
 Linda Vallar Whisenhunt, LLC
 213 South Main Street
 Anderson, South Carolina 29624

DATED this the 27th day of September, 2019.


 Camille Henry, Legal Assistant
 For Respondent

FILED 1 20190927 15
 15 SEP 27 2019



ALAN WILSON
ATTORNEY GENERAL

September 27, 2019

The Honorable Richard A. Shirley
Clerk of Court, Anderson County
Post Office Box 8002
Anderson, South Carolina 29622-8002

Re: Chevis Morris, #352985 v. State of South Carolina
2019-CP-04-00298

Dear Mr. Shirley:

Enclosed please find the **Return** of the Respondent, in the above-captioned case, for filing in your office.

Sincerely,

Lillian L. Meadows
Assistant Attorney General

LLM/ch
Enclosure

cc: Linda V. Whisenhunt, Esquire

RECEIVED
SEP 29 2019

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

CHEVIS MORRIS (352985),
PLAINTIFF,

VS.

STATE OF SOUTH CAROLINA,
DEFENDANT.

IN THE COURT OF
COMMON PLEAS TENTH JUDICIAL
CIRCUIT

DOCKET NO: 2019-CP-04-00298

AMENDED APPLICATION FOR POST
CONVICTION RELIEF

The application is being brought pursuant to South Carolina Code of Laws Sec 17-27-10 et seq. and should be considered along with the original application filed on February 15, 2019.

1. The applicant is presently being held as an inmate at Lieber Correctional Institute.
2. On or about August 6, 2018 Applicant pled guilty in the Anderson County Court of General Session to Burglary 1st, Voluntary Manslaughter, and Armed Robbery.
3. He was sentenced to 30 years in prison for each charge concurrently, and given credit for jail days as computed by SCDC.
4. As part of his plea all of his Murder charge was reduced to Voluntary Manslaughter.
5. The applicant did not file a notice of appeal.
6. The applicant filed his original post conviction relief application in a timely manner.
7. The applicant has filed no action in federal court challenging his convictions.
8. Attorney Elizabeth Byford represented the applicant on these charges.
9. In this application the applicant seeks an order vacating his sentence and remanding him for re-sentencing.
10. The applicant is amending his post conviction relief petition to include the below allegations.

11. The applicant alleges that he was denied effective assistance of counsel on both the above charges and submits the following facts to support his allegation:
 - a. Trial counsel failed to file a timely appeal on Applicant's behalf.

Applicant alleges that he met with his attorney, Elizabeth Byford, on August 8, 2018, two (2) days after the guilty plea. At that meeting Applicant specifically requested that Ms. Byford file an appeal on his behalf. Applicant alleges that Ms. Byford told Applicant that he was not entitled to an appeal, that he could not file an appeal, and that he was only entitled to file a post conviction relief action.
 - b. Trial counsel failed to request and hold a Jackson v. Denno hearing to determine the voluntariness of the Applicant's statement to police prior to the guilty plea. Applicant maintains that he informed Ms. Byford that he was under the influence of drugs during the police interview and that he asked for an attorney during the interview. Applicant alleges that Ms. Byford told him that he could not challenge the statement and he could not recant the statement. Applicant alleges that the statement was not voluntarily given and alleges that he would not have pleaded guilty if he had known he could challenge the statement.
 - c. Trial counsel failed to turn over all of the discovery to Applicant prior to the guilty plea, and failed to investigate that discovery. Applicant had made several requests for copies of his discovery. He received a portion of his discovery early in the case from his attorney, and believed that was all of the discovery. However, after the guilty plea at the August 8, 2019 meeting Ms. Byford dropped off additional discovery that the client had not seen including the following: mountain dew bottles with DNA from third parties recovered from the scene.
 - d. Trial counsel failed to make a motion for a change of venue due to potential conflicts of interest between the victim's family and friends and the solicitor's office. Applicant alleges that Bob Lusk a relative of

the victim was well connected and imbedded in both the public defender's office and the local solicitor's office. According to Applicant, Applicant's original attorney, Jennifer Johnson, was conflicted out of the case because Mr. Lusk was on a board who decided who was appointed as the head public defender.

Respectfully Submitted,

s/Sarah M. Henry
 SC Bar #77907
 406 Pettigru St.
 Greenville, SC 29601
 478-8324/232-9555 (fax)
sarah@sarahmhenrylaw.com
 Attorney for Applicant

February 1, 2021

PROOF OF SERVICE

ON THIS DATE, a copy of this document, Amended Application for Post Conviction Relief, was served by email upon counsel for the State of South Carolina at the following address:

S.C. Attorney General's Office
 Rembert C. Dennis Building
 Post Office Box 11549
 Columbia, South Carolina 29211
 Office: 803-734-0964
lillymeadows@scag.gov

s/Sarah M. Henry
 Date: February 1, 2021

State of South Carolina
County of Anderson

Court of Common Pleas

Chevis Morris	)	
	)	
Plaintiff,	)	Transcript of Record
v.	)	2019-CP-04-00298
	)	
State of South Carolina	)	
	)	
<u>Defendant.</u>	)	

February 28, 2023
Anderson, South Carolina

B E F O R E:

The Honorable Perry H. Gravely, Judge.

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

Sarah M. Henry, Esquire
Attorney for the Applicant

Chelsey Marto, Esquire
Attorney for the State of South Carolina

Lisa Scott
Circuit Court Reporter

I N D E X

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- - -

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
3	Applicant's - DVD		X
2	Applicant's - visitor log		X
4	Applicant's - documents		X

- - -

P R O C E E D I N G S

* * * * *

THE COURT: All right. I'll be glad to hear from the State on this.

MS. MARTO: Good morning, Your Honor. May it please the Court? We're here today in the case of *Chevis Morris v. The State of South Carolina*, 2019-CP-4-298. Presently confined in the South Carolina Department of Corrections; arrested July 2016.

During the March 2017 term, he was indicted for murder, first degree burglary. He was represented by Elizabeth Byford, and Assistant Solicitor Danny Fulmer prosecuted this case.

He pled on August 6, 2018, before Judge Sprouse to the lesser included offense of voluntary manslaughter, and as indicted, first degree burglary. Waived presented and also pled guilty to armed robbery and received a negotiated 30-year sentence.

He then filed an appeal. He commenced this PCR action January 31, 2019. The return was filed September 27, 2019. With that, I'll turn it over to Ms. Henry.

MS. HENRY: Thank you, Your Honor. I think

1 that you have a copy of the amended application for
2 post-conviction relief. Mr. Morris is alleging, I
3 believe, four main issues.

4 One, that trial counsel failed to timely file
5 an appeal on his behalf. That trial counsel failed
6 to request the *Jackson v. -- Jackson v. Denno*
7 hearing to determine the voluntariness of his
8 statement. Prior to the guilty plea, the trial
9 counsel failed to turn over all discovery to
10 Applicant prior to the guilty plea and failed to
11 investigate that discovery. Specifically, chain of
12 custody information to documents related to DNA
13 found on several Mountain Dew bottles at the scene
14 of the incident. And that trial counsel failed to
15 make a motion for change of venue due to potential
16 conflict of interest related to the victim's family
17 and friends and the solicitor's office and the
18 district, specifically relationship between an
19 attorney in the area, Bob Lusk, and his relationship
20 both to the public defender's office and the
21 solicitor's office.

22 Those are the basis for the -- Mr. Morris'
23 post-conviction relief action, and we call Chevis
24 Morris.

25 THE COURT: All right. Mr. Morris, if you'll

1 come forward and be sworn.

2 (Applicant approached.)

3 CHEVIS MORRIS,

4 having been produced and first duly sworn as a
5 witness on behalf of the Applicant, then testified
6 as follows:

7 DIRECT EXAMINATION

8 BY MS. HENRY:

9 Q. All right. Mr. Morris, can you state your name
10 for the record?

11 A. Chevis Morris.

12 Q. Mr. Morris, I kind of want to walk you through
13 what you're doing here. So did you plead guilty to
14 burglary first, voluntary manslaughter, and armed
15 robbery?

16 A. Yes.

17 Q. Okay. And what was plea negotiated?

18 A. Yes.

19 Q. Okay. Was your attorney at that plea Jennifer
20 Byford?

21 A. Yes, ma'am.

22 Q. Okay. Was she your only attorney during this
23 case.

24 A. No, ma'am.

25 Q. Okay. Who was your other attorney?

1 A. I had Jennifer Johnson.

2 Q. Okay. As part of that negotiated plea, was it
3 your understanding that you would receive 30 years
4 and get jail time -- jail time credit?

5 A. Yes, ma'am.

6 Q. Okay. So that was part of your understanding
7 of the negotiated plea?

8 A. Yes, ma'am.

9 Q. Okay. And so when you went in, you knew that
10 if the judge accepted the plea, that you were going
11 to get that sentence?

12 A. Yes, ma'am.

13 Q. Okay. And did she give you any -- did
14 Ms. Byford, did she give you any advice about how to
15 respond to the Court prior to going in to your
16 guilty plea?

17 A. She just told me just to -- we're going to go
18 in, sign some papers, and get this done as quick as
19 possible.

20 Q. Okay. What were your conversations about that
21 negotiated plea with Ms. Byford prior to your plea
22 date?

23 A. Can you repeat the question, please?

24 Q. So can you describe for the Court your
25 conversation about the benefits and what was going

1 on with that negotiated plea that you had with
2 Ms. Byford before the plea date?

3 A. That I was going to get the 30 years with the
4 first degree burglary, armed robbery, and
5 manslaughter run concurrent for 30 years.

6 Q. Okay. So she told you that that they -- did
7 she tell you they dropped the plea from the
8 mandatory 30 day-for-day down to an 85 percent?

9 A. Yes, ma'am.

10 Q. Okay. When did she say that?

11 A. She told me that about a week before -- a week
12 before court.

13 Q. Okay. At the beginning of this case, were you
14 charged with armed robbery?

15 A. No, ma'am.

16 Q. Okay. And when did that come up?

17 A. That come at the end, like three days before I
18 went to court.

19 Q. Okay. How did Ms. Byford explain that to you?

20 A. That they was going to hit me with a grand jury
21 indictment, take -- to take the 30 years. And that
22 was part of the negotiation.

23 Q. The -- you pleading guilty to armed robbery was
24 part of the negotiation?

25 A. Yes, ma'am. I didn't understand. I didn't

1 understand it really.

2 Q. Okay. So when you first -- when did you first
3 hear about this negotiated plea?

4 A. We spoke about the negotiated plea after we was
5 trying to get off the mandatory -- the mandatory 30.

6 Q. Okay. How close in time -- so you plead guilty
7 on Monday, August 6th. Do you remember how close it
8 was in time to your plea that you got -- you and Jen
9 Byford first discussed the negotiated sentence?

10 A. It was a week before.

11 Q. A week before. Okay. What was your response
12 when Ms. Byford brought you the negotiated plea?
13 What did you tell her?

14 A. I told her I really didn't understand the armed
15 robbery charge, but I -- that's pretty much what we
16 discussed.

17 Q. Okay. And did you feel comfortable taking the
18 negotiated plea?

19 A. No. No, ma'am.

20 Q. Why?

21 A. Because we -- because I was trying to get a
22 change of venue, a change of solicitor's office
23 being that my victim's family has political
24 relationships in the county.

25 Q. Okay. So you wanted the venue taken care of

1 first, so did you feel rushed with the negotiated
2 plea?

3 A. Absolutely.

4 Q. Okay. Let's talk about the venue issue. Was
5 there anything related to the venue issue that you
6 asked her to -- that you asked Ms. Byford to -- to
7 investigate?

8 A. Yeah. Bob Lusk and his -- his relationship,
9 and I told her that he sat on county counsel seat
10 that determines which public defender get the head
11 jobs. And he actually gave me -- give my public
12 defender her head job, and she held my case for
13 18 months before she passed it off and told me I had
14 a conflict of interest.

15 Q. So when you say you're object -- you're talking
16 about your original attorney, and that was
17 Ms. Johnson, right?

18 A. Yes, ma'am.

19 Q. Okay. So let's take a pause for a second and
20 walk the Court through that. So your initial
21 attorney was who?

22 A. Jennifer Johnson.

23 Q. Okay. And how long was she your lawyer?

24 A. For about 18 months.

25 Q. Okay. And did you -- did the -- did you guys

1 come up with any plea deals or offers or anything
2 like that during that time period?

3 A. No, ma'am.

4 Q. Okay. Did you -- when did your relationship
5 with Ms. Johnson change from -- when did she stop
6 being your lawyer?

7 A. When she come in and told me -- she gave me a
8 letterhead from Danny Fulmer and her, and it stated
9 on there that they may have to get an out-of-town
10 judge to hear the case, that Bob Lusk is a family
11 member and Kathy Lusk worked in the clerk's office.

12 Q. Let's back it up even further. When you say
13 Bob Lusk is a family member, was Bob Lusk somehow
14 related to the victim in this case?

15 A. Yes, ma'am.

16 Q. What's the relationship?

17 A. Stepfather.

18 Q. Very close?

19 A. Yes, ma'am.

20 Q. Okay. And you're saying that Bob Lusk is on
21 the selection committee for the public defender's
22 office appointments?

23 A. Yes, ma'am.

24 Q. Was Jennifer Johnson your lawyer while he was
25 on the committee?

1 A. Yes, ma'am.

2 Q. Okay. Was Jennifer Johnson, during the time
3 that she was your lawyer and Mr. Lusk was on the
4 committee, was she tasked to become the lead public
5 defender?

6 A. Yeah, she was the head public defender.

7 Q. Okay. All right. So is it your allegation --
8 is it your allegations or discussions with
9 Ms. Johnson that you felt there was a conflict of
10 interest there?

11 A. Oh, I told her that from the beginning.

12 Q. Okay. Did she agree with you initially?

13 A. She didn't agree with me initially.

14 Q. When did that change?

15 A. It changed 18 months later. She come in and
16 handed me the letterhead and she said, "We got a
17 conflict in the case, and I have to pass your case
18 off."

19 Q. Okay. And during that time, do you feel like
20 she fully investigated your case?

21 A. No, ma'am.

22 Q. What do you feel like she did to investigate
23 it?

24 A. Nothing really.

25 Q. What did you -- what do you feel like she

1 failed to investigate? What would you -- what did
2 you want her to investigate?

3 A. I just wanted to, you know -- I wanted to get a
4 fair shot. You know, being that Bob Lusk was, you
5 know, the family member, I just wanted to, you know,
6 see what was going on with that.

7 Q. Okay. So it's your testimony that over
8 18 months, you didn't feel like you made much
9 progress with Ms. Johnson as your attorney?

10 A. Oh, no, ma'am. I didn't see her but like three
11 times, three or four times.

12 Q. All right. And you will -- do you -- why do
13 you feel that is?

14 A. She was busy. She had a lot of caseloads or
15 possibly she, you know...

16 Q. So then you ended up with Ms. Byford. Did you
17 retain Ms. Byford? Did you pay her?

18 A. Oh, no, ma'am.

19 Q. Okay. So was she an appointed attorney?

20 A. Yes, ma'am.

21 Q. Was she appointed through the same system that
22 appointed you Ms. Johnson?

23 A. Yes, ma'am.

24 Q. Okay. Did that give you pause?

25 A. Yeah.

1 Q. Did that make you anxious?

2 A. Yeah.

3 Q. Okay. Why?

4 A. Because I knew from the beginning that I had a
5 conflict of interest and I just didn't understand
6 why they're passing my case off now and they didn't
7 pass it off from the beginning.

8 Q. So did you ask Jennifer Johnson for a venue
9 change?

10 A. Yeah.

11 Q. Okay. Did you ask -- and did she -- did she
12 attempt to get one for you? Did she file any
13 motions?

14 A. No, ma'am. She just told me -- she told me,
15 she said, "Mr. Fulmer, he -- he plays fair."

16 Q. Who is Mr. Fulmer for the Court?

17 A. Danny Fulmer, the Solicitor.

18 Q. Okay. And he's the Solicitor that was working
19 with Ms. Johnson and Ms. Byford on your case?

20 A. Yes, ma'am.

21 Q. Okay. Is he the one that issued -- that issued
22 or wanted Ms. Byford to develop this negotiated plea
23 offer?

24 A. Yes, ma'am.

25 Q. Did you talk to Ms. Byford about getting a

1 venue change?

2 A. Yes, ma'am.

3 Q. Okay. Did you discuss with Ms. Byford who Bob
4 Lusk was and why you wanted a venue change?

5 A. Yes, ma'am.

6 Q. Did you do the same with Ms. Johnson?

7 A. Yes, ma'am.

8 Q. Okay. Did either one of them pursue the venue
9 change?

10 A. No, ma'am.

11 Q. Okay. Are you aware of any motions that they
12 filed?

13 A. No, ma'am.

14 Q. Are you aware of any hearings?

15 A. No, ma'am.

16 Q. Okay. All right. How do you feel not getting
17 the change of venue prejudiced your case?

18 A. Because I -- I feel like I didn't get a fair
19 shot.

20 Q. And was the victim also related to other people
21 that were in the court system in Anderson?

22 A. Possibly.

23 Q. I thought you -- I thought you mentioned a
24 member of the clerk of court.

25 A. Oh, yes, ma'am. Kathy Lusk, she worked at the

1 clerk's office.

2 Q. Okay. And what was her relationship with the
3 victim in this case?

4 A. Mother.

5 Q. It was her mother?

6 A. Yes, ma'am.

7 Q. All right. And do you feel that if you
8 received a change of venue, that you would've tried
9 the case instead of accepting a guilty plea?

10 A. Yes, ma'am.

11 Q. Okay. All right. And you gave a statement in
12 this case; is that right?

13 A. Yes, ma'am.

14 Q. Okay. I want to walk you -- I want to walk you
15 through a couple -- a couple of questions. So how
16 old were you at the time of your arrest?

17 A. I was 23.

18 Q. Okay. And at that point in time, how far had
19 you gone in school?

20 A. Tenth grade.

21 Q. Tenth grade at that time. All right. So you
22 made a statement in this case?

23 A. Yes.

24 Q. To the police?

25 A. Yes, ma'am.

1 Q. Okay. And do you remember when you made that
2 statement? Would July 31, 2016, sound accurate?

3 A. Yes, ma'am.

4 Q. Okay. All right. And was that statement made
5 after you'd been arrested, so were you in custody?

6 A. Yes, ma'am.

7 Q. Okay. Was this the same day that you were
8 arrested?

9 A. Yes, ma'am.

10 Q. Okay. Do you remember where the interrogation
11 took place?

12 A. At the Anderson County Sheriff's Department.

13 Q. All right. When you were picked up or
14 originally arrested on this -- on these charges, did
15 you have any drugs or paraphernalia on you?

16 A. Yes, ma'am.

17 Q. What did you have?

18 A. I had a needle on me.

19 Q. Okay. Was there anything in the needle?

20 A. No, ma'am.

21 Q. Why did you have a needle?

22 A. Because I was -- I was doing dope.

23 Q. Okay. What kind of dope?

24 A. Methamphetamine.

25 Q. All right. Methamphetamine. How long have you

1 been using meth?

2 A. Since I was 15.

3 Q. Okay. What drugs had you been taking that day?

4 A. Methamphetamine; Xanax.

5 Q. Okay. Do you remember how much -- how much
6 meth?

7 A. Quarter ounce.

8 Q. Was that a normal amount of meth for you or a
9 lot of meth?

10 A. Yes, ma'am. That was a normal amount.

11 Q. Okay. And how much Xanax?

12 A. Just a couple -- a couple of them.

13 Q. Okay. Can you describe for the Court how you
14 operate or how you function when you're taking those
15 drugs?

16 A. Can't function.

17 Q. All right. What does that mean to you? Are
18 you able to think clearly? Are you able to speak
19 clearly? What's -- what's the affect on you?

20 A. It clouds -- it clouds your mind. It just --
21 it -- you high.

22 Q. Okay. All right. On the date you were
23 arrested and interviewed, did it affect your ability
24 to understand what was going on?

25 A. Oh, yes, ma'am.

1 Q. Okay. How?

2 A. Because I feel like they was -- they were
3 badgering me. They kept on badgering me, and I
4 asked for an attorney.

5 Q. Did they ever ask you during the interview if
6 you were on drugs?

7 A. No, ma'am.

8 Q. Did they take you to the hospital or have you
9 drug tested?

10 A. No, ma'am.

11 Q. Okay. Did they ask you if you were able to
12 understand what you were doing and saying?

13 A. They asked me that. Yes, ma'am.

14 Q. Did they read you your Miranda warnings?

15 A. Yes, ma'am.

16 Q. And during this case, did you sign a release of
17 your Miranda rights and warnings?

18 A. Yes, ma'am.

19 Q. Okay. Did you understand what you were
20 signing?

21 A. No, ma'am.

22 Q. Okay. Did you understand the rights that you
23 were waiving?

24 A. No, ma'am.

25 Q. At any point during that interview, did you

1 request an attorney?

2 A. Yes, ma'am.

3 Q. Okay. Do you remember what you said?

4 A. I said, "I need an attorney."

5 Q. Okay. Your Honor, and if I -- if I played a --
6 if I played a portion of that interview, would you
7 recognize yourself and your statement?

8 A. Yes, ma'am.

9 MS. HENRY: Okay. Your Honor, I'd like to play
10 a portion of the interview to see if he can identify
11 it.

12 THE COURT: All right.

13 MS. MARTO: No objection.

14 MS. HENRY: Okay. And I'm starting the video
15 at -- let me just check this real quick. Okay. I'm
16 starting the police interview on 7/31/16 with
17 Mr. Morris and the Anderson County Sheriff's Office
18 at 17:24, minute 17:24. Mr. Chevis, just let me see
19 if I can -- it should be. Okay. Let me try again.

20 (Playing video.)

21 BY MS. HENRY:

22 Q. Is that the statement you're referring to?

23 A. Yes, ma'am.

24 Q. Okay. And then can you repeat for the Court
25 what you heard yourself say?

1 A. "I need a lawyer."

2 MS. HENRY: Okay. Your Honor, I'd put this --
3 I'd ask to put this in as Applicant's -- Applicant's
4 Exhibit No. 3.

5 MS. MARTO: No objection.

6 THE COURT: What did you say?

7 MS. HENRY: Oh, I'd ask that this be placed
8 into evidence as Applicant -- Applicant's Exhibit
9 No. 3.

10 THE COURT: All right. In without objection.

11 MS. HENRY: Yes, sir.

12 (Applicant's Exhibit No. 3 was received into
13 evidence.)

14 BY MS. HENRY:

15 Q. Okay. All right. So after you ask that
16 question or after you requested an attorney, was an
17 attorney provided to you?

18 A. No. No, ma'am.

19 Q. Okay. Did the interview stop?

20 A. No, ma'am.

21 Q. Okay. And was it after that interview that you
22 made, was it after that request for an attorney that
23 you made incriminating statements to the police?

24 A. Yes, ma'am.

25 Q. Okay. Did you talk to Ms. Byford about the

1 fact that you requested an attorney during your --
2 during this interview?

3 A. Yes, ma'am.

4 Q. Okay. Did you talk with Ms. Johnson about the
5 fact that you requested an attorney during this
6 interview?

7 A. Yes, ma'am. I'm pretty sure.

8 Q. Did both Ms. Byford and Ms. Johnson indicate
9 they had seen this video and had all your discovery?

10 A. Yes, ma'am.

11 Q. Did they talk to you about having a *Jackson v.*
12 *Denno* hearing to contest the voluntary -- the
13 voluntariness of your statement?

14 A. No, ma'am.

15 Q. Did you talk to them about having such -- about
16 having a hearing contesting the voluntariness of
17 your statement to the police?

18 A. No, ma'am.

19 Q. Okay. Was what you said in your statement to
20 police after you request an attorney, was that in --
21 I mean, are you denying the truth of that statement?
22 Are you saying what you told the police is true or
23 not true?

24 A. Yes, ma'am. Not true.

25 Q. Okay. And did you explain that to your

1 attorney, Ms. Byford?

2 A. Yes, ma'am.

3 Q. And how about to Ms. Johnson?

4 A. Yes, ma'am.

5 Q. And what was Ms. Byford's reaction to your
6 asking -- to your asking her to find a way to have
7 this statement declared involuntary and, thus, not
8 used at your trial?

9 A. It was so fast because she didn't have the case
10 but for six months, so I didn't see her much and I
11 didn't see Ms. Johnson much either.

12 Q. Okay. But you guys did discuss it?

13 A. Yes, ma'am.

14 Q. And what did she say?

15 A. That, you know, we were just going to try to
16 get to the 85 percent of the 30 if that's what you
17 wanted.

18 Q. All right. Did you guys -- did you ever have a
19 hearing to see if the statement you signed or the
20 statement that you gave to police could be excluded?

21 A. No, ma'am. I didn't know that.

22 Q. Do you feel like the statement would've been
23 excluded based on your request for an attorney?

24 A. Yes, ma'am. Absolutely.

25 Q. All right. Would you have taken this guilty

1 plea if the statement to -- if you knew that the
2 statement could be used against you?

3 A. No. I wouldn't took the plea.

4 Q. Okay. Would you have tried this case if the
5 statement had ended up being excluded?

6 A. Yes, ma'am.

7 Q. Okay. All right. I'm going to -- Judge, I'm
8 going to move you on to the discovery issues. At
9 any point in time, did you ever ask for a copy of
10 your discovery?

11 A. Yes, ma'am.

12 Q. Okay. How did you do that?

13 A. I just -- I think filed for -- I filed to get
14 the motion with the clerk's office.

15 Q. Okay. Did you ever ask your attorney for a
16 copy of the discovery?

17 A. I think she just voluntarily told me that she
18 had a copy of my motion for discovery, but I wasn't
19 given the whole thing.

20 Q. Okay. And did you ask Ms. Byford for a copy?

21 A. No, ma'am. They just said they had copies of
22 it.

23 Q. Okay. Did Ms. Byford ever give you any
24 additional discovery beyond what you got from
25 Ms. Johnson?

1 A. Yes, ma'am.

2 Q. She did. What did she give you?

3 A. She gave me a chain of custody and some DNA
4 stuff and things like that, so it was pretty thick.

5 Q. Okay. Let's see. Do you remember when she
6 gave it to you?

7 A. Yes, ma'am. After the court date.

8 Q. And by the court date, you mean the guilty plea
9 date on August 6, 2018?

10 A. Yes, ma'am.

11 Q. Okay.

12 A. She come that evening to visit me at the
13 Anderson County Detention Center.

14 MS. HENRY: Okay. All right. Your Honor, may
15 I approach?

16 THE COURT: You may.

17 BY MS. HENRY:

18 Q. All right. Chevis, I'm going to show you
19 Applicant's Exhibit No. 2. If you'll just take a
20 look at it for me and tell me whether or not you
21 recognize that.

22 A. Applicant 2 right here?

23 Q. Uh-huh. Applicant's 2. I'd like point you to
24 the very bottom date.

25 A. That bottom date right there?

1 Q. Uh-huh.

2 A. 8/8/2018.

3 Q. Okay. And does that -- is that -- is this a
4 visitors log of the dates and times that the
5 attorneys visited you?

6 A. Yes, ma'am.

7 Q. Okay. And at the bottom, is that an accurate
8 date of the last time that Jennifer Byford came to
9 see you?

10 A. Yes, ma'am.

11 MS. HENRY: Okay. Your Honor, I'd ask to have
12 this admitted as Applicant's Exhibit No. 2.

13 THE COURT: All right. Any objection?

14 MS. MARTO: No objection.

15 THE COURT: All right. So admitted.

16 (Applicant's Exhibit No. 2 was received into
17 evidence.)

18 BY MS. HENRY:

19 Q. Okay. And then I'm going to showing you
20 Applicant's Exhibit No. 4. If you'll take a look at
21 that, and, Chevis, let us know if you recognize
22 that.

23 A. Right here?

24 Q. Any of those documents.

25 A. Oh, oh, yes, ma'am. This is -- this is the

1 documents that she give me after I was sentenced.

2 Q. Okay. So those are the chain of custody and
3 DNA documents?

4 A. Yes.

5 Q. She gave you afterwards?

6 A. Yes, ma'am.

7 MS. HENRY: Okay. Your Honor, I'd ask that be
8 admitted as Applicant's Exhibit No. 4.

9 THE COURT: Any objection?

10 MS. MARTO: No objection.

11 THE COURT: All right. So admitted.

12 (Applicant's Exhibit No. 4 were received into
13 evidence.)

14 MS. HENRY: All right. Thank you, Your Honor.

15 BY MS. HENRY:

16 Q. So, Chevis, I'm going to ask you to hold this
17 Applicant's No. 4 exhibit. And I'm going to ask
18 you, have you ever discussed it with Ms. Byford
19 prior to receipt when she gave you a copy of it
20 after you pled guilty?

21 A. No, ma'am.

22 Q. Okay. And then -- so the visitors log shows
23 that Ms. Byford visited you several times prior to
24 the guilty plea. Did she discuss this chain of
25 evidence information or the DNA information prior to

1 the guilty plea with you?

2 A. No, ma'am.

3 Q. Okay. Can you explain to the Court why you
4 feel this DNA information is important to your case?

5 A. Yeah, it -- it's important.

6 Q. Okay. In that packet of DNA information, let
7 me point you to page 3 of 5, to the swabs that were
8 taken from the Mountain Dew cans. Can you explain
9 to the Court why the DNA swabs that were taken from
10 the Mountain Dew cans would've been important to
11 your case?

12 A. Because it would've had DNA on them.

13 Q. Okay. Would that DNA have been yours?

14 A. Could've been somebody else's.

15 Q. Okay. So you felt like that was important and
16 Ms. Byford should've investigated the possibility
17 that there was another person at the crime scene?

18 A. Yes, ma'am.

19 Q. Okay. Did Ms. Byford and you ever discuss
20 that?

21 A. No, ma'am.

22 Q. Okay. And did you and Ms. Johnson ever discuss
23 that?

24 A. No, ma'am.

25 Q. Okay. If this had been fully investigated by

1 your original trial attorneys and -- and they had
2 found -- they had -- they had matched the DNA to
3 another third party, would that have changed your
4 decision to plead guilty?

5 A. Yes, ma'am.

6 Q. Okay. Would you have tried this case?

7 A. Yes, ma'am.

8 Q. All right. And then finally, Chevis, I want to
9 talk to you about appealing this guilty plea. Did
10 you appeal it?

11 A. I tried to.

12 Q. Okay. Can you describe that to the Court?

13 A. I asked Ms. Byford can I get an appeal. She
14 told me I wasn't eligible for an appeal, but she
15 would fill out a PCR application for me, even though
16 that it was against her.

17 Q. Okay. So you pled guilty on August 6, 2018; is
18 that right?

19 A. Yes, ma'am.

20 Q. All right. And you met with Ms. Byford again
21 on August 8, 2018?

22 A. Yes, ma'am.

23 Q. All right. Was it at that meeting that you
24 talked to Ms. Byford about filing an appeal?

25 A. Yes, ma'am.

1 Q. Okay. So when you discussed this with her, it
2 was in person?

3 A. Yes, ma'am.

4 Q. Okay. And you did specifically tell her that
5 you wanted to file an appeal?

6 A. Yes, ma'am.

7 Q. And her response was?

8 A. Not eligible.

9 Q. Okay. Did you attempt to file -- after you
10 received that information, did you attempt to file
11 an appeal on your own?

12 A. No, ma'am.

13 Q. Why not?

14 A. Because she told me I wasn't eligible.

15 Q. Okay. Did you -- did you -- do you want an
16 opportunity to have a direct appeal heard by the
17 South Carolina Court of Appeals?

18 A. Yes, ma'am.

19 Q. Okay. Do you know what issues you would want
20 appealed?

21 A. Several issues. I'd like to appeal about the
22 conflict of interest. All the things we discussed.

23 Q. Okay. All right. Is there anything else that
24 you want the Court to know?

25 A. No, ma'am.

1 MS. HENRY: Okay. No further questions.

2 THE COURT: Cross-examination?

3 MS. MARTO: Yes, Your Honor.

4 CROSS-EXAMINATION

5 BY MS. MARTO:

6 Q. Good morning, sir. So why did you ultimately
7 decide to plead in this case?

8 A. Ma'am?

9 Q. Why did you decide to plead in this case?

10 A. Because I felt like the deck was stacked
11 against me really.

12 Q. Were you afraid to face more time at trial?

13 A. Of course.

14 Q. Were you afraid you would be found guilty at
15 trial?

16 A. Yes, ma'am.

17 Q. Now, you claim a conflict of interest in this
18 case, correct?

19 A. Yes, ma'am.

20 Q. And did you see anything on the State's part
21 that indicated that a conflict existed?

22 A. Anything on what?

23 Q. Anything in the way the State performed their
24 job that indicated a conflict existed?

25 A. Yeah. There was a -- the conflict -- the

1 conflict of interest with Bob Lusk.

2 Q. Okay. And how did that impact the State's
3 performance in your case?

4 A. It impacted it pretty -- it scared me. It
5 scared me.

6 Q. Okay. So the primary role it played was
7 scaring you into pleading? Is that what you're
8 saying?

9 A. It just -- it just scared me because I just
10 felt like, you know, all these people that got
11 political relationships, so they're sitting down
12 probably talking with each other and they're all
13 against me.

14 Q. And Ms. Byford, she wasn't affiliated with the
15 public defender's office, correct?

16 A. Ms. Byford wasn't. No, ma'am.

17 Q. Okay. She was a private attorney, correct?

18 A. Pro bono.

19 Q. Now, at the plea hearing, you waived your right
20 to a trial, correct?

21 A. Yes, ma'am.

22 Q. And you waived your right to assert a defense;
23 is that correct?

24 A. Assert a what?

25 Q. Assert a defense at trial, correct?

1 A. What's that?

2 Q. Where you get to say, "I'm not guilty of this
3 because of this reason." Does that make sense?

4 A. Yes, ma'am.

5 Q. So you waived that at your guilty plea,
6 correct?

7 A. Yes, ma'am.

8 Q. And did counsel talk to you about how you would
9 also be waiving pretrial motions?

10 A. No, ma'am.

11 Q. No? Did you think that a *Jackson v. Denno*
12 hearing would be a defense to use at trial?

13 A. No, ma'am.

14 Q. So you -- do you think that that's independent
15 as to whether or not you went to trial or went to a
16 plea?

17 A. I mean, it would've affected it. It would've
18 affected the outcome.

19 Q. And, again, you stated you didn't talk to
20 counsel about a *Jackson v. Denno*, correct?

21 A. No, ma'am.

22 Q. Did counsel ever indicate to you that the
23 statement could be suppressed?

24 A. No, ma'am.

25 Q. Did the counsel ever tell you as to how it

1 could be used at trial?

2 A. No, ma'am. We ain't never discussed nothing
3 like that.

4 Q. Did you view the statement with counsel?

5 A. You're talking about the statement -- the
6 statement that I made?

7 Q. To the police.

8 A. Oh, yes, ma'am.

9 Q. Okay. Did counsel have any comments on it?

10 A. No, ma'am. We just went through the videos,
11 and then she showed me some pictures, and that was
12 about it.

13 Q. Now, you stated you received discovery from
14 both counsels; correct?

15 A. Yes, ma'am.

16 Q. Now, you also testified on direct that you
17 didn't see the chain of custody or the DNA analysis
18 until after the plea, correct?

19 A. Right.

20 Q. Did you bring this to counsel's attention?

21 A. Yes, ma'am.

22 Q. What -- what was counsel's response or
23 reaction?

24 A. It ain't -- it's -- it's nothing, like, it'll
25 be alright.

1 Q. Did she indicate to you that it wouldn't have
2 made a big difference?

3 A. Yeah.

4 Q. Now, if you felt there was a conflict of
5 interest, why didn't you bring this to the Court's
6 attention at the plea?

7 A. I brought it to the Court's attention. Well, I
8 didn't bring it directly to the Court's attention,
9 but I brought it to the counselor's attention.
10 And -- and then, me and my counselor was supposed to
11 bring it to their attention. They said that Danny
12 Fulmer played fair and that everything would be
13 good, so they really just had me scared up.

14 Q. Now -- and you're seeking a trial on these
15 charges now, correct?

16 A. I mean, I'm seeking to go back. I'm seeking to
17 start over, whether it's trial or another plea,
18 whatever. I just feel like I wasn't -- I was
19 unjustly sentenced.

20 Q. Now, where was the incident location?

21 A. The incident location? I don't -- I don't know
22 exactly where it's at, but...

23 Q. Was it in a home?

24 A. Yeah. Absolutely.

25 Q. And were there multiple people in that home?

1 A. Yes, ma'am.

2 Q. So another person's DNA on a Mountain Dew
3 bottle wouldn't necessarily be surprising, correct?

4 A. Mountain Dew bottle, DNA on other things and
5 beside the Mountain Dew bottle.

6 Q. And, again, you wanted to bring the change of
7 venue issue up on appeal; is that correct?

8 A. Yes, ma'am.

9 Q. Again, why didn't you file a notice of appeal
10 on your own?

11 A. Because the counselor told me that I wasn't
12 eligible for an appeal, that I can only do a PCR.
13 So I took them up myself to fill out a PCR when I
14 got to Lieber Correctional Institution.

15 MS. MARTO: No further questions.

16 THE COURT: Redirect?

17 MS. HENRY: No, Your Honor.

18 THE COURT: All right. You may step down.

19 (Applicant excused.)

20 MS. HENRY: We rest, Your Honor. We have no
21 further witnesses.

22 THE COURT: All right.

23 MS. MARTO: Yes, Your Honor. The State would
24 call Ms. Jennifer Johnson.

25 THE COURT: Ms. Johnson, if you'll come around.

1 (Witness approached.)

2 JENNIFER JOHNSON,

3 having been produced and first duly sworn as a
4 witness on behalf of the State, then testified as
5 follows:

6 DIRECT EXAMINATION

7 BY MS. MARTO:

8 Q. Good morning.

9 A. Good morning.

10 Q. You were Mr. Morris' first attorney on his
11 other criminal charges, correct?

12 A. Correct.

13 Q. And, roughly, how long did you represent him
14 for?

15 A. It looks like about 18 months.

16 Q. And do you recall the reason why the case was
17 passed on to somebody else?

18 A. Yes. So when I initially was appointed to
19 represent him at the time of his arrest, Herbert
20 Young was the Circuit Public Defender at that time.
21 Mr. Young assigned me to represent Mr. Morris, which
22 I continued to do.

23 However, during the time that I was
24 representing Mr. Morris, the Circuit Public Defender
25 position did come open. I applied for it. I was

1 recommended for the job and ultimately took office
2 in February of 2017.

3 Q. And so after you took office, the case was
4 passed on to somebody else?

5 A. That's correct. I did -- I mean, I retained
6 it. I was looking back through my records, and I
7 apologizing for having phone here, but everything is
8 on an electronic device. But, no, I -- I wasn't
9 certain. And to this day, still not certain it's an
10 actual conflict of interest that Bob Lusk being on
11 my selection committee, that that created a
12 conflict, but certainly it was something that
13 troubled Mr. Morris in my discussions with him.

14 Ultimately, I decided it would be better to
15 have a 608 counsel appointed so that he wouldn't
16 have to have any misgivings concerning that.

17 Q. So is it fair to say that that move was made
18 out of an abundance of caution?

19 A. Correct.

20 Q. Now, during the course of your representation
21 of Mr. Morris, were you given any indication that
22 the solicitor's office shouldn't be handling the
23 case because of a conflict of interest?

24 A. No.

25 Q. And throughout the scope of your representation

1 of Mr. Morris, did you see anything that would've
2 indicated that his case was being handled
3 differently because of a potential conflict of
4 interest?

5 A. No. I mean, I was never contacted by Bob Lusk
6 regarding this case or anybody with the victim's
7 family regarding this case. So I'm not aware of
8 what Mr. Fulmer's experience was with that, but
9 there was no indication that there was any undue
10 influence from anybody regarding Mr. Morris' case.

11 Q. And when you were representing Mr. Morris, did
12 you get the initial discovery in the matter?

13 A. Correct.

14 Q. Do you recall whether or not you sent any
15 discovery or DNA reports?

16 A. I don't recall that. I was looking at my
17 notes. The State did ask for us to consent to
18 getting his DNA. I do have a note in my electronic
19 file regarding meeting with him. Telling him that
20 he was entitled to have a hearing regarding that,
21 but, ultimately, I thought that the State could
22 produce sufficient evidence at that hearing to
23 require a DNA sample. He did sign a consent to
24 obtain the DNA sample.

25 Q. And did you procure the police interview during

1 your representation?

2 A. Yes. It was provided during discovery.

3 Q. Did you have any discussions with Mr. Morris
4 about a potential *Jackson v. Denno*?

5 A. I honestly don't recall. We -- we weren't at a
6 sort of trial posture at that point. Naturally,
7 that would've been something we would've explored.
8 And I might have. I just -- I don't have a note
9 about it and I don't have a recollection of it.

10 MS. MARTO: No further questions.

11 THE COURT: Cross-examination?

12 MS. HENRY: No questions, Your Honor.

13 THE COURT: All right. You may step down.

14 THE WITNESS: Thank you, Your Honor.

15 (Witness excused.)

16 MS. MARTO: Judge, our next witness will be
17 Mr. Danny Fulmer.

18 (Witness approached.)

19 DANNY FULMER,
20 having been produced and first duly sworn as a
21 witness on behalf of the State, then testified as
22 follows:

23 DIRECT EXAMINATION

24 BY MS. MARTO:

25 Q. Good morning, sir.

1 A. Good morning.

2 Q. So you were the primary solicitor on this case,
3 correct?

4 A. I was.

5 Q. And before this case's inception, did you have
6 any connection to the victim or his family members?

7 A. No.

8 Q. Okay. Do you have any awareness of any
9 connection you have now with the family members
10 outside the scope of that case?

11 A. I know who Bob Lusk is. He's a defense
12 attorney here in town.

13 Q. Okay. And based upon your connection with
14 Mr. Lusk, did you see any conflict in this case?

15 A. No.

16 Q. Any reason for believing that you could not
17 appropriately handle this case?

18 A. No.

19 MS. MARTO: No further questions.

20 THE COURT: Any cross-examination?

21 MS. HENRY: No, Your Honor.

22 THE COURT: All right.

23 (Witness excused.)

24 MS. MARTO: And then our last witness, Your
25 Honor, is Ms. Elizabeth Byford.

1 THE COURT: Ms. Byford, would you come around
2 to be sworn?

3 (Witness approached.)

4 ELIZABETH BYFORD,
5 having been produced and first duly sworn as a
6 witness on behalf of the State, testified as
7 follows:

8 DIRECT EXAMINATION

9 BY MS. MARTO:

10 Q. Good morning.

11 A. Good morning.

12 Q. You represented Mr. Morris at this plea
13 hearing, correct?

14 A. That is correct.

15 Q. And do you recall roughly how much before the
16 plea hearing you took over the case? How long it
17 had been?

18 A. I was appointed to represent Mr. Morris around
19 April 12th of 2018.

20 Q. Do you recall the reason why you were
21 appointed?

22 A. I was notified by the public defender's office
23 that there was a conflict. I don't know if I was
24 told immediately what the proposed or potential
25 conflict was. I did find that out later, but I

1 don't know that I was told that right away.

2 Q. And in your professional judgment, was there an
3 actual conflict of interest with the solicitor's
4 office in this case?

5 A. No. I don't think so, but I certainly
6 understand why Jennifer Johnson conflicted it out,
7 just to be completely cautious.

8 Q. Now, was this case ever proceeding to trial or
9 was this always going to be plea?

10 A. So when I -- when I took over the case, it
11 already had a good bit of age on it. So when I
12 first met with Mr. Morris very shortly after I was
13 appointed, I told him that we were going to try and
14 do two things at the same time. We were going to
15 prepare our defense like we were getting ready for
16 trial, but we were going to also negotiate pretty
17 heavily to try and get basically out of that murder
18 charge, because that was really our prime -- prime
19 objective was to get out of that 30 to life
20 position. So we worked on both of those things at
21 the same time.

22 Q. Is it fair to say that getting the plea to a
23 lesser included from the murder was the primary
24 reason for the case resulting in a plea?

25 A. Yes. That was our -- he and I discussed

1 almost, if not our very first meeting, our second
2 meeting that voluntary manslaughter was our goal.

3 Q. Did you review Mr. Morris' police interview?

4 A. I did.

5 Q. And did you discuss with him the option of
6 potentially suppressing that interview?

7 A. I did. And we explored -- we have three
8 different theories for suppressing the video of his
9 confession. And he and I discussed quite bluntly
10 that if we could not get that video suppressed, this
11 was a nonstarter for trial. We were in big trouble,
12 because he gives a very detailed confession. He
13 actually stands up and reenacts the crime for the
14 police on the video. It would've been super
15 unhelpful from a defense position. So that was
16 really our prime focus.

17 We watched the video together. I worked him
18 through all of my legal reasoning regarding his
19 first initial request for a lawyer, which you heard.
20 If you play about four more minutes of that video,
21 what you'll also hear is Mr. Morris stand up and
22 start to walk off and he said, "Wait, wait, wait."
23 And they come back, and he says, "If you just let me
24 see my little girl." They say they can't do that
25 because that's giving you something. They'll argue

1 that it's not voluntary.

2 He starts crying, and then I believe at 17
3 minutes and 22 seconds into the video, I think he
4 starts talking. So I explained to him that
5 there's -- the State's going to be able to make a
6 really strong argument that you reinitiated
7 conversation. I think we even discussed some case
8 law on that issue.

9 So we kind of moved on from that to his drug
10 use and also his conviction at the time of that
11 statement. He had -- he had done -- he gave me a
12 list of all the -- all the things he'd done -- he
13 had done some time of the incident up until he gave
14 that statement. There was a good bit of drug use.
15 We -- we talked about that.

16 The problem on that that I discussed with him
17 is that his demeanor on that confession tape is very
18 similar to what you just saw up here on the stand,
19 so it was -- I was worried that we weren't going to
20 meet that threshold.

21 The big thing that we talked about, was he had
22 also been awake for about three days. We talked a
23 good deal about pursuing a sleep deprivation, you
24 know, that that can affect your cognitive ability.
25 We actually talked about retaining an expert on that

1 to talk about that. I want to say that somebody
2 reviewed that video for me. I think it was
3 Dr. Price. I think they kind of indicated that that
4 might be a hard hill to climb. I told him, no, if
5 we go to trial, we'll going to -- we'll throw
6 everything at it.

7 And it was right around the time that we were
8 talking about that and we started to reach out that
9 we had finally got some indication from Danny Fulmer
10 that there might be some movement off the murder.
11 So for the first few months that I represented him,
12 I was getting no movement. It has to be murder. It
13 has to be murder.

14 And then we kind of switched our focus a little
15 bit to try and pursue this potential voluntary
16 manslaughter opportunity at that point.

17 Q. So based upon your review of the video,
18 Mr. Morris reinitiated the interview?

19 A. Yes.

20 Q. And you discussed all of these potential
21 avenues for attacking that interview with
22 Mr. Morris, correct?

23 A. At great length. Yes, ma'am.

24 Q. And you decided not to go forward with the
25 *Jackson v. Denno* because you decided to plead out?

1 A. Because we decided to plea. Yes.

2 Q. Now, you reviewed the discovery in this case
3 beyond the police interview, correct?

4 A. Correct.

5 Q. And did you provide all the discovery you had
6 to Mr. Morris?

7 A. I did. He -- my recollection of it, he had
8 some of it from Ms. Johnson. I don't -- and I
9 remember we kind of went through it to make sure
10 that he had what I had. So there was -- there were
11 some things that I had to give him, but we did have
12 some more discovery coming in. I don't remember the
13 exact talking about it, but we did sit down and go
14 through everything together, including watching the
15 videos of the other folks who gave statements.

16 Q. Do you recall a chain of custody report in this
17 case?

18 A. Not specifically I don't. I'm sorry.

19 Q. Do you recall any DNA evidence being found on
20 Mountain Dew bottles?

21 A. I do remember the discussion about the Mountain
22 Dew bottles. That was something that he really
23 wanted to pursue. Had we gone to trial, we would've
24 asked that those things were tested, but there were
25 so many people in that house. The victim was

1 selling drugs out of that house. There were people
2 constantly coming and going. So even -- and his DNA
3 probably was on those Mountain Dew bottles.

4 Unfortunately, given the great number of people
5 that we knew were going to be established were there
6 even at the time of the incident, I thought the
7 State was going to be able to argue pretty easily
8 that that didn't mean anything. We -- we already
9 knew there were a number of people besides
10 Mr. Morris at that house that evening.

11 Q. And you discussed the DNA evidence prior to the
12 plea?

13 A. We did. Yes, ma'am.

14 Q. Now, do you recall ever discussing an appeal
15 from the guilty plea with Mr. Morris?

16 A. I do.

17 Q. Do you recall roughly what those conversations
18 consisted of?

19 A. I do. I had gone to see him -- after the plea,
20 I always check with folks because in the transport
21 from SCDC, sometimes they don't have a chance to get
22 back before that ten days ran out. I had gone to
23 see him because I did have -- I did give him some
24 stuff after the plea. I don't remember what it was,
25 but we -- I thought he had copies of something he

1 told me he didn't have, so I made additional ones to
2 give them to him.

3 And I went to see him. He was in very good
4 spirits. I mean, I told him, I said, "You're one of
5 the happiest people I've ever seen after a plea." I
6 said, "I just want to check with you. Do you want
7 to file an appeal? We only have ten days."

8 He was pretty happy with the outcome. I think
9 he asked me maybe -- he might've asked me if I knew
10 of any issues. I explained to him that I did not,
11 but that he would get a new lawyer. That was part
12 of the appellate process, and that lawyer would
13 review the file -- review the transcript and review
14 the plea. But he said that he was happy.

15 I said, "Well, you have ten days to file an
16 appeal. You have ten days to PCR. That's against
17 me. I can't help you with that."

18 And he kind of laughed and said, "Maybe I'll do
19 something later." But he thanked me. I mean, he
20 was -- he was joking. He was smiling. He was -- he
21 was happy, so I left.

22 About four months later, his family called and
23 asked me to help fill out the PCR application, and I
24 explained I could not do that because it was against
25 me.

1 Q. So he never affirmatively asked for an appeal,
2 correct?

3 A. No. He did not.

4 Q. And if he had asked for one, would you have
5 filed one?

6 A. Of course.

7 Q. Now, you stated you handed over some discovery
8 even after the plea, correct?

9 A. Yes.

10 Q. And do you recall if any of that discovery was
11 being shown to him for the first time?

12 A. I don't -- I can't imagine that it was. He and
13 I had gone through that file together pretty
14 carefully. I really think it was things he realized
15 that he didn't have copies of and I made him
16 additional copies. That's my recollection. But
17 I'll tell you, I cannot recall exactly what I
18 brought him.

19 Q. Do you recall if any of that discovery would've
20 changed your recommendation as to the plea?

21 A. No. It was things we already had had and were
22 aware of. It wasn't -- it wasn't fresh discovery or
23 new discovery.

24 MS. MARTO: No further questions.

25 THE COURT: Cross-examination?

1 MS. HENRY: Your Honor, one moment. No
2 questions, Your Honor.

3 THE COURT: You may step down.

4 THE WITNESS: Thank you.

5 (Witness excused.)

6 MS. MARTO: No further witnesses.

7 THE COURT: Anything else from the Applicant?

8 MS. HENRY: No, Your Honor.

9 THE COURT: All right. Brief closing.

10 MS. HENRY: No, Your Honor. We would just
11 request you deny relief. I think Ms. Byford's
12 testimony was particularly quite compelling, her
13 telling that the Applicant didn't want an appeal and
14 that she offered to file one on his behalf and he
15 declined, which is also telling. In the discussions
16 she had with Mr. Morris and stating that that
17 would've been their primary avenue for attack at
18 trial, and that they were leading up to trial until
19 a couple of months before the plea actually took
20 place.

21 I think that trial counsel's statement was that
22 discovery she handed over after the plea was all
23 stuff he had seen before and wouldn't change the
24 recommendation as to the plea, that Mr. Morris
25 wanted to plea because of the primary consideration

1 candidly was to ensure that the murder charge was
2 dropped to a lesser included offense.

3 And I think Ms. Johnson, Mr. Fulmer, and
4 Ms. Byford all testified that there was no actual
5 conflict of interest in the case. Which the
6 testimony was if there was a possibility of one, I
7 believe Ms. Johnson relieved herself and had another
8 counsel outside the public defender's office be
9 appointed to allay any concerns of that. And so
10 just for these reasons, we just request that you
11 deny relief. Thank you.

12 THE COURT: Okay. Ms. Henry?

13 MS. HENRY: Your Honor, I would just point out
14 that Ms. Byford also testified that there
15 potentially three bases that she found that could
16 have had Mr. Morris' statement excluded, which I
17 believe also the testimony from both Ms. Byford and
18 the defendant was the primary evidence against him.
19 And I think that probably would've changed the
20 entire guilty plea. And I think that would be
21 enough to give him another bite at the apple.

22 THE COURT: Okay. Well, I believe -- I find
23 that the Applicant has not shown that counsel was
24 deficient or that that would've changed the outcome,
25 so I will deny the petition. Ask the State to

1 submit an order.

2 MS. HENRY: Thank you, Your Honor.

3 (The proceedings concluded at 11:51 a.m.)

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1 C E R T I F I C A T E O F R E P O R T E R

2
3 STATE OF SOUTH CAROLINA
4 COUNTY OF ANDERSON
5

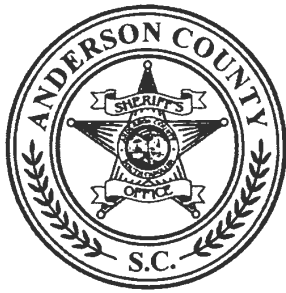
6 I, the undersigned, Lisa Scott, Circuit Court
7 Reporter for the Tenth Judicial Circuit of the State
8 of South Carolina, do hereby certify that the
9 foregoing is a true, accurate and complete
10 transcript of record of all the proceedings had and
11 the evidence introduced in the hearing of the
12 captioned cause, relative to appeal in the Circuit
13 Court for Anderson County, South Carolina, on the
14 28th day of February, 2023.

15 I do further certify that I am neither of kin,
16 counsel, nor interest to any party hereto.
17

18 August 12, 2023
19

20 /s/Lisa Scott
21

22 Lisa Scott
23 Circuit Court Reporter
24
25



ANDERSON COUNTY SHERIFF'S OFFICE CHAIN OF CUSTODY

CASE #: 2016-13414
 SUBMITTED BY: 396 -DUGAN, Ben
 DATE COLLECTED: 09/24/2016
 CASE TYPE: 09A - MURDER & NON-NEGLIGENT MANSLAUGHTER
 RECOVERY ADDRESS: 303 CAMSON RD,
 LOCATION: Forensics Lab



1160924

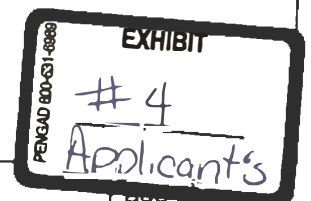
ITEM #: **Swabs (Touch DNA)** from evidence barcode 1159655
 Mt. Dew bottle

<i>Date/Time</i>	<i>Logged in User</i>	<i>Item moved to this Location</i>
9/24/2016 5:18:55PM	Ben Dugan	DUGAN, Ben
9/24/2016 5:26:59PM	Ben Dugan	Evidence Intake
9/26/2016 2:09:49PM	Belinda Lee	2016-13414-2
12/7/2016 8:16:41AM	TODD CARON	Greenville Prep
12/21/2016 3:57:40PM	TODD CARON	Greenville DNA Lab
5/18/2017 1:05:39PM	TODD CARON	2016-13414-2
12/5/2017 11:48:07AM	Jan Robison	2016-13414-2

End Chain of Custody for Item with Barcode #: 1160924 related to Case # 2016-13414

23 MAR 1 PM 2:37:09
 Anderson, SC COC CP/JS

NOTES:





Anderson County Sheriff's Office

2016-13414

Case #	Description	Barcode
The following items are currently in this Location:		2016-13414-2
2016-13414	Purses/Handbags/Wallet handbag with misc. drug paraphenalia from living room	1159637
2016-13414	Miscellaneous sentry safe - Empty	1159640
2016-13414	Miscellaneous box of home smar sadwich baggies and a small electronic scale	1159646
2016-13414	Miscellaneous misc. cups, and bottles found in living room	1159655
2016-13414	Clothes PULL OVER NAVY BLUE SWEAT SHIRT-SIZE MEDIUM	1159739
2016-13414	Swabs (Touch DNA) from evidence barcode 1159655 straw from flyin j pilot cup	1160918
2016-13414	Swabs (Touch DNA) from evidence barcode 1159671 Taurus 40 cal trigger	1160914
2016-13414	Swabs (Touch DNA) from evidence barcode 1159671 Taurus 40 cal barrel open end	1160915
2016-13414	Swabs (Touch DNA) from evidence barcode 1159671 Taurus 40 cal grip	1160916
2016-13414	Swabs (Touch DNA) from evidence barcode 1159655 straw from 7-11 cup	1160917
2016-13414	Swabs (Touch DNA) from evidence barcode 1159655 green cup	1160919
2016-13414	Swabs (Touch DNA) from evidence barcode 1159655 glass cup	1160920
2016-13414	Swabs (Touch DNA) from evidence barcode 1159655 black cup	1160921
2016-13414	Swabs (Touch DNA) from evidence barcode 1159655 red cup	1160922
2016-13414	Swabs (Touch DNA) from evidence barcode 1159655 pepsi bottle	1160923
2016-13414	Swabs (Touch DNA) from evidence barcode 1159655 Mt. Dew bottle	1160924

23 MAR 17 2:37:15
Anderson, SC CDD, CP/GS

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

Chevis Morris, #352985

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
IN THE TENTH JUDICIAL CIRCUIT

Case No. 2019-CP-04-0298

ORDER OF DISMISSAL

A TRUE COPY

NOV 29 2023

C. Beena Thomason

29 NOV 29 PM 4:33:39
Anderson, SC COC, CP/GS

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Chevis Morris (Applicant) on January 31, 2019. On February 28, 2023, an evidentiary hearing on the matter was held before the Honorable Perry H. Gravely. Applicant was present and represented by Sarah M. Henry, Esquire. Assistant Attorney General Chelsey Marto represented Respondent.¹ Following a thorough review of the guilty plea transcript and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant did not meet his burden of proof. This Court denies relief and dismisses this application with prejudice got the following reasons.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving a thirty year sentence. Applicant was arrested on July 31, 2016, following an investigation into the shooting death of Jennifer Poore (Victim) during an incident which occurred the day prior. During its March 2017 term, the Anderson County Grand Jury indicted Applicant for murder (2017-GS-

¹ The PCR Transcript initially indicated on its cover that Taylor Smith and Danielle Dixon represented the State. Taylor Smith was present but did not perform the examinations, and Ms. Dixon was not present that day. Assistant Attorney General Chelsey Marto performed the examinations at the PCR hearing. The transcript was subsequently corrected and provided to this Court.

File

04-0728) and first-degree burglary (2017-GS-04-727). Elizabeth Jennings "Jenn" Byford, Esquire (Counsel), represented Applicant. Assistant Solicitor Danny Fulmer, Jr. prosecuted the case.

On August 6, 2018, Applicant appeared before the Honorable R. Scott Sprouse and pleaded guilty as indicted to first-degree burglary and to the lesser-included offense of voluntary manslaughter. Applicant also waived presentment to the Grand Jury and pleaded guilty to armed robbery (2018-GS-04-2121). Plea Tr.p. 6-7. During the plea, Kathy Lusk, the victim's mother, Gary Poor, the victim's father and Haley Morrison, the victim's daughter made victim impact statements. Plea Tr.p. 9-14. On behalf of the Applicant, the defense presented the Applicant's first cousin Chandler Craft, Hunter Hau, the Applicant's mother Tina Lester, and the Applicant's sister Candy Morris, as well as the Applicant in mitigation. Plea Tr.p. 15-19. Pursuant to sentencing negotiations entered into between Applicant and the State, Judge Sprouse sentenced Applicant to concurrent terms of thirty years' imprisonment on each charge. Applicant did not appeal his guilty plea or sentences.

Applicant timely commenced this PCR action on January 31, 2019.

STATEMENT OF FACTS

The facts and factual basis giving rise to Applicant's plea and conviction were articulated by the State at his guilty plea hearing, as follows:

Thank you, Judge. This happened July 30th, 2016, at 106 Russell Drive in Anderson in Anderson County. That's the home of the victim, Ms. Jennifer Poor, and her boyfriend.

She was there that evening. This defendant, along with a codefendant named Jordan Hart and some others, came down to her house.

By accounts given by the witnesses, they smoked some meth together, and Ms. Poor was asked if she had any meth to sell. She says that she did not have any at that time.

During the course of this, some cash was seen that was possessed by Ms. Poor, and the defendant, I think, at that point saw it as an opportunity to take some cash from her. He had a pistol in his possession.

According to his statement to police, his intent was to rob her and pistol whip her. However, the gun did discharge. A bullet entered her back, traveled through her torso. She bled to death there, Judge.

The defendant fled the scene along with the codefendant named Jordan Hart. They traveled throughout the night. During the course of the evening, they broke into a home where the family was on vacation and stole their car. That's the basis for the burglary charge.

Ultimately, he ended up back at his mother's house the next morning. Police came to that location and found him. He ultimately gave himself up, Judge.

(Plea Tr. pp. 6, ll. 22-25 – 7, ll. 1-24). The Applicant, under oath, agreed that these are that facts of the case. Plea Tr.p. 8.

CURRENT APPLICATION

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

1. Conflict of Interest
 - a. "My victims family is a lawyer in the county in which I was sentenced and my lawyer failed to address that I still had the same solicitor in that county."

In response to question nine as to why he did not pursue a direct appeal, Applicant states the following:

- a. "I did not appeal because I took a guilty plea and lawyer said that I couldn't appeal unless PCR"
- b. "My pro bono lawyer said I could only file in PCR form."

Applicant requests relief as follows:

“Re-sentencing and sentence reduction. I was given the max on my charge.”

On February 1, 2021, Applicant filed an amended application to include the following additional claims for relief:

1. [Plea] counsel failed to file a timely appeal on Applicant’s behalf. Applicant alleges that he met with his attorney, Elizabeth Byford, on August 8, 2018, two (2) days after the guilty plea. At that meeting Applicant specifically requested that Ms. Byford file an appeal on his behalf. Applicant alleges that Ms. Byford told Applicant that he was not entitled to an appeal, that he could not file an appeal, and that he was only entitled to file a post-conviction relief action.
2. [Plea] counsel failed to request and hold a Jackson v. Denno² hearing to determine the voluntariness of the Applicant’s statement to police prior to the guilty plea. Applicant maintains that he informed Ms. Byford that he was under the influence of drugs during the police interview and that he asked for an attorney during the interview. Applicant alleges that Ms. Byford told him that he could not challenge the statement and he could not recant the statement. Applicant alleges that the statement was not voluntarily given and alleges that he would not have pleaded guilty if he had known he could challenge the statement.
3. [Plea] counsel failed to turn over all of the discovery to Applicant prior to the guilty plea, and failed to investigate that discovery. Applicant had made several requests for copies of his discovery. He received a portion of his discovery early in the case from his attorney, and believed that was all of the discovery. However, after the guilty plea at the August 8, 2019 meeting Ms. Byford dropped off additional discovery that the client had not seen including the following: mountain dew bottles with DNA from third parties recovered from the scene.
4. [Plea] counsel failed to make a motion for a change of venue due to potential conflicts of interest between the victim’s family and friends and the solicitor’s office. Applicant alleges that Bob Lusk a relative of the victim was well connected and imbedded in both the public defender’s office and the local solicitor’s office. According to Applicant, Applicant’s original attorney, Jennifer Johnson, was conflicted out of the case because Mr. Lusk was on a board who decided who was appointed as the head public defender.

² 378 U.S. 368, 84 S.Ct. 1774, 12 L.Ed.2d 908 (1964).

Before this Court are the Anderson County Clerk of Court records of the subject conviction; Applicant's records from the South Carolina Department of Corrections; the plea transcript; and the records of the current post-conviction relief action.

TESTIMONY PRESENTED AT EVIDENTIARY HEARING

APPLICANT'S TESTIMONY

On direct examination, Applicant testified that prior to his guilty plea, it was his understanding that he would receive thirty years of incarceration and get jail time credit. (PCR Tr. p. 7-8). Applicant testified that, about a week before his plea, counsel Byford informed him that the State had dropped the plea deal from the mandatory thirty day-for-day (murder) down to 85 percent (voluntary manslaughter). He also learned three days before the plea that there would also be an armed robbery charge included. (PCR Tr. p. 8). Applicant alleged that he did not feel comfortable taking the negotiated guilty plea because he was attempting to change the venue of the proceedings, and he felt rushed because of this issue. (PCR Tr. pp. 9-10). Applicant indicated that he was concerned because Bob Lusk, the victim's stepfather was on the committee and would determine the public defender. In addition, he learned that the victim's mother, Kathy Lusk, worked in the clerk's office. Applicant felt that there was a conflict of interest issue with his first defense counsel, Jennifer Johnson. (PCR Tr. pp. 11-12). Applicant did not feel that his eighteen months with former counsel Johnson had produced a fully investigated case. (PCR Tr. pp. 12-13). He indicated during that period, counsel Johnson only met with him three or four times. Plea Tr.p. 13. Furthermore, Applicant testified that Johnson did not file a motion to change the venue for this conflict of interest. (PCR Tr. p. 14).

Applicant testified that he discussed the possibility of a venue change with both counsels related to Bob Lusk's influence and that neither pursued the issue. (PCR Tr. p. 15). Applicant also

testified that the mother of the victim was a member of the clerk's office, and that if he had received a change of venue, he would have tried the case rather than accept a guilty plea. (PCR Tr. pp. 15-16).

As to his inculpatory statement, Applicant alleged that he was unable to think clearly because he was intoxicated when he gave a statement to police while in custody. (PCR Tr. pp. 17-18). He stated he was 23 years old at the time of his arrest with a tenth grade education. He stated he was using methamphetamine since he was 15 and had an empty needle on him at the time of his arrest. He claimed his mind was cloudy during the interrogation and he felt badgered which led to his request for a lawyer. PCR Tr.p. 18-19. He stated they never asked if he was on drugs at the time nor took him to a hospital to be tested. He did state that they read him his Miranda warnings and he signed a release of his Miranda warnings, but claimed he did not understand what he was waiving. PCR Tr.p. 19. Applicant identified himself and the statement he gave to the police and recognized that he requested a lawyer in the recording of the interrogation that was played at the PCR hearing. (PCR Tr. pp. 20-21). Applicant's Exhibit 3 @ 17:24. Applicant testified that the interrogation did not stop after his request, and he would go on to make incriminating statements because of this. (PCR Tr. p. 21). Applicant then testified that his attorneys never spoke to him about a Jackson v. Denno hearing to contest the voluntariness of his statement after he had told them his statements were involuntary and untrue. (PCR Tr. pp. 22-23). He claimed counsel Byford only had the case for six months and that we were going to try to get the 85% of the 30. He claimed he was not aware the statement could be excluded. He claimed he would not have pled guilty if the statement had been excluded. PCR Tr.p. 24.

Applicant stated that he filed a motion to receive discovery, and that his attorneys merely told him they had copies of discovery without providing it to him in its entirety. (PCR Tr. p. 24).

Applicant further testified that he was given thick discovery regarding chain of custody and DNA evidence (Applicant's Exhibit 4) after his guilty plea when she visited him on August 8, 2018 which was after the plea on August 6. He supported this with a portion of a visitor's log. Applicant's Exhibit 2. (PCR Tr. pp. 24-26). Applicant testified that counsel Byford did not discuss these items with him during the prior occasions when he met with them prior to the plea. (PCR Tr. p. 27-28). Applicant stated that DNA evidence regarding Mountain Dew cans (Applicant Exhibit 4, DNA info, p. 3 of 5) would have been important to his case because the DNA found on them "could've been somebody else's". (PCR Tr. p. 28).

Applicant testified that he specifically told counsel that he wanted to file an appeal and that her response was that he was not eligible for one. (PCR Tr. p. 30). He claimed this occurred at the meeting after the plea on August 8. He claimed that he would have wanted to appeal the conflict of interest and all things they discussed. PCR Tr.p. 30.

On cross-examination, Applicant stated he decided to plead guilty because he felt like the deck was stacked against him and he would face more time at trial. Applicant testified that the Bob Lusk "conflict of interest" scared him, as he felt that he was being conspired against because of the political relationships that he speculated about. (PCR Tr. pp. 32, 35). However, he recognized that counsel Byford was not associated with the public defender's office. He testified that he went over the video statements and pictures with counsel. PCR Tr.p. 34. Applicant indicated counsel did not comment about it. As to the DNA material, Applicant then testified that counsel suggested that it would not have made a big difference to his case. (PCR Tr. pp. 34-35). Applicant admitted that there were multiple people at the place of the incident. PCR Tr.p. 35-36.

COUNSEL JENNIFER JOHNSON'S TESTIMONY

Counsel Jennifer Johnson testified that she was Applicant's first attorney and worked on

his case for roughly eighteen months. (PCR Tr. p. 37). Counsel Johnson testified that she was assigned by the Circuit Public Defender to Applicant's case shortly after his arrest. During her representation of Applicant, she applied for and received the position of Circuit Public Defender, and Applicant's case was later passed on to someone else. (PCR Tr. pp. 37-38). Counsel Johnson testified that she was not certain if there was an actual conflict of interest because Bob Lusk was on the selection committee, however she recalled Applicant being troubled by the possibility. (PCR Tr. p. 38). Because of his concern and out of an abundance of caution, counsel Johnson decided that seeking a Rule 608 new counsel appointment would be the best course of action. (PCR Tr. p. 38). Counsel Johnson testified that she was unaware of any undue influence from anybody in Applicant's case. (PCR Tr. p. 39). She indicated that Mr. Lusk never contacted her concerning this case. PCR Tr.p. 39.

She testified that she received the initial discovery in the case, but did not recall receiving any DNA reports after he signed a consent to obtain a DNA sample. PCR Tr.p. 39.

Regarding the potential for a Jackson v. Denno hearing, Counsel Johnson testified that she could not recall any discussions with Applicant about that possibility, noting that they were not in a trial posture at that time. (PCR Tr. p. 40).

ASSISTANT SOLICITOR DANNY FULMER'S TESTIMONY

On direct examination, Assistant Solicitor Fulmer testified that he was the primary solicitor on Applicant's case, and that there was no connection to the victim or the victim's family members. (PCR Tr. p. 41). Solicitor testified that he now knows of Bob Lusk, a defense attorney who was on the board that selects the Circuit Public Defender, but that he did not see any conflict in the case and that there was no reason to believe he could not appropriately handle the case. (PCR Tr. p. 41).

COUNSEL ELIZABETH JENNINGS "JENN" BYFORD'S TESTIMONY

On direct examination, counsel Byford testified that she was appointed to Applicant's case on April 12, 2018, over three months before Applicant's guilty plea. (PCR Tr. p. 42). Counsel Byford testified that she was told that there was a conflict regarding the case, and only later did she learn details of the alleged conflict. (PCR Tr. pp. 42-43). In counsel Byford's professional opinion, there was not an actual conflict of interest in the case, but counsel Johnson's actions were understandable. (PCR Tr. p. 43). Counsel Byford testified that her strategy, which was communicated to Applicant, was that they would prepare a trial defense while also attempting to negotiate out of the murder charge to a voluntary manslaughter charge, (PCR Tr. p. 43-44).

Counsel Byford then testified she had three theories related to the suppression of the video of Applicant's statement to the police that had to be suppressed. If the statement could not be suppressed the trial was a nonstarter. She stated if that happened, the defense would be in big trouble because Applicant gave a very detailed confession in the video, including reenacting the crime. A problem for them concerning a request to suppress based upon Applicant's request for counsel was that after the initial request for counsel four minutes later on the video, the Applicant stands up and starts to walk off and then states "wait, wait, wait" and they come back and he states he wants to see his little girl and law enforcement states they cannot do that, he starts crying and then at 11:22 into the video he starts talking which supports that he reinitiated the discussion. This would be a strong argument for admission of the statement by the State. (PCR Tr. pp. 44-45). Counsel Byford testified that based on her review of the video, Applicant had indeed reinitiated questioning. (PCR Tr. p. 46). There were three different legal theories considered by Counsel Byford in suppressing the video evidence, and they were all discussed with Applicant. (PCR Tr. p. 46). According to Byford, they also discussed case law on this assertion.

A second suggested challenge was based upon Applicant's drug use. The Applicant provided counsel with a list of all the drug use he had done leading up to the statement which was a good bit. PCR Tr.p. 45. She saw a problem with that for them based upon his demeanor during the video statement. Contrary, he appeared in the video as she saw him appear on the stand in the PCR hearing. PCR Tr.p. 45. She did not think that this would meet the threshold (of showing that his faculties were too impaired to make a knowing and voluntary waiver of his rights). Id. She learned that he claimed to have been awake for three days and was discussing with him how a lack of sleep deprives a person of cognitive ability. They discussed retaining an expert to assist them. She thinks she had Dr. (David) Price (a known forensic psychologist in Greenville) reviewed the video for her and indicated it would be a hard hill for them as a defense. However, counsel Byford told Applicant that if they went to trial they would throw it all in. PCR Tr.p. 46. All the legal theories were discussed with Applicant. PCR Tr.p. 46. Due to the decision to plead guilty, a Jackson v. Denno claim was not advanced. (PCR Tr. pp. 46-47).

Counsel Byford testified that they received some indication from the prosecutor that there might be movement off the murder charge, after there had been no movement the first few months asserting to them that it had to be murder. This switched their focus to try to pursue the voluntary manslaughter potential. PCR Tr. pp. 46-47

Counsel Byford testified that she provided all the discovery she had to Applicant. (PCR Tr. p. 47). She stated she had received some from counsel Johnson. Byford went through what she had with Applicant to make sure he had what she had. PCR Tr.p. 47. They would sit down and go through the evidence together, including watching the videos. Counsel Byford could not recall a chain of custody report, but did recall that Applicant wanted to pursue an argument regarding the Mountain Dew bottles, but felt that the State could easily argue that DNA on the bottle was

meaningless because there were so many people in the house. She noted they were selling drugs out of the house with people coming and going, and she noted his DNA was probably on the bottles. (PCR Tr. pp. 47-48). Unfortunately, they were aware that a number of people were going to be able to establish that Applicant was there at the time of the incident.

Counsel stated that after the plea she had gone to see him to make sure she had a chance to discuss the possible appeal before the 10 days ran out. PCR Tr.p. 48. Counsel Byford testified that Applicant was in good spirits and pleased with the outcome of the guilty plea. (PCR Tr. p. 49). Counsel Byford testified that she told Applicant she did not know of any appellate issues, but told Applicant that he had ten days to appeal or file a PCR application. (PCR Tr. p. 49). Counsel recalled that the Applicant laughing after they discussed the possibility of filing a PCR later and thanked her.

Counsel Byford testified that if Applicant had affirmatively requested an appeal, she would have filed one. (PCR Tr. p. 50). Counsel Byford testified that she could not recall if any discovery was being shown to him for the first time after the guilty plea, and that it was likely copies of discovery that they had already reviewed together beforehand. (PCR Tr. p. 49-50). Counsel Byford testified that none of the discovery given to Applicant would have changed her recommendation regarding pleading guilty. (PCR Tr. p. 50).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged and elected to pursue various claims of ineffective assistance of counsel through the post-conviction relief action presently before this Court. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally heard the testimony presented at the evidentiary

hearing and was able to observe the witnesses, which allowed the Court to evaluate and scrutinize their credibility.

Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. See Rule 71.1(e), SCRPC (stating that in a post-conviction relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.").

Accordingly, set forth below are the relevant findings of facts and conclusions of law as required by § 17-27-80 of the South Carolina Code:

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL, GENERALLY

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction or sentence. 466 U.S. at 687. First, the applicant must show that counsel's performance was deficient; and second, that the deficient performance prejudiced the applicant. Id. at 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." Padilla v. Kentucky, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel's representation fell below an

objective standard of "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Accordingly, "[j]udicial scrutiny of counsel's performance must be highly deferential[, as] [i]t is all too tempting for a defendant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; see also Yarborough v. Gentry, 540 U.S. 1, 8 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," **not** whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690).

Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Id. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Butler, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

The second, or "prejudice" prong of Strickland is rooted in the very purpose of the Sixth

Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694. Thus, it is not enough "to show that the errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to deprive the defendant of a fair trial." Id. at 693 (emphasis added).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel." Hill, 474 U.S. 52; cf. Padilla, 559 U.S. at 373 (recognizing the guilty plea process is a "critical phase of litigation" for purposes of the Sixth Amendment right to effective assistance of counsel). A claim of ineffective assistance of guilty plea counsel requires the applicant present evidence satisfying two prongs: first, evidence that counsel's performance was deficient; and second, evidence that counsel's deficient performance prejudiced the defendant by causing him to plead guilty rather than go to trial. Hill, 474 U.S. 52.

The analysis of counsel's performance under the first prong of Strickland remains unchanged—the applicant must show counsel's representation fell below the objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58–59; accord Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his plea was induced by ineffective assistance of counsel must prove counsel's advice to plead guilty was not "within the range of competence demanded of attorneys in criminal cases." Hill, 474 U.S. at

56.

The second, or "prejudice" prong, however, "focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." Id. at 58–59. Specifically, when an applicant claims counsel's deficient performance caused him to accept a plea, the applicant "must show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." Id. at 59. This inquiry "focuses on a defendant's decision making" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. 357, 137 S. Ct. 1958, 1966, 198 L. Ed. 2d 476 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. Padilla, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him or her to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

Surmounting Strickland's high bar is never an easy task, and the strong societal interest in finality has "special force with respect to convictions based on guilty pleas." Lee, 582 U.S. 357, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); cf. Hill, 474 U.S. at 58 ("[R]equiring a showing of 'prejudice' from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel 'will serve the fundamental interest in the finality of guilty pleas.'"). Reviewing "[c]ourts should not upset a plea solely because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney's deficiencies. Lee, 582 U.S. 357, 137 S. Ct. at 1967. Rather, judges should "look to contemporaneous evidence to substantiate a defendant's expressed preferences. Id. In determining

whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the plea and the evidence presented at the PCR hearing. Harres v. State, 282 S.C. at 134, 318 S.E.2d at 361 (1984).

This Court finds Applicant has not met his burden as to his claims of ineffective assistance of plea counsel rendering his guilty plea involuntary. The specific claims are addressed below.

INITIAL FINDINGS

As a matter of general impression, this Court finds Counsel Johnson and Counsel Byford's testimony at the evidentiary hearing credible and persuasive, where they presented well-recalled testimony of relevant background, facts, and discussions leading up to and during the plea hearing. This Court further finds applicable the strong presumption that at all stages of counsels' representation of Applicant, they rendered adequate assistance and exercised reasonable professional judgment in their representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689, 104 S.Ct. 2052; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

This Court makes the following findings from the record: 1) Applicant swore on the record to tell the whole truth and nothing but the truth. (Plea Tr. p. 2); 2) Applicant understood he was pleading to voluntary manslaughter, burglary, first degree, and armed robbery for a negotiated sentence of thirty years. (Plea Tr. p. 3); 3) Applicant understood a thirty-year sentence would be imposed if Judge Sprouse accepted the negotiated plea. (Plea Tr. p. 3); 4) Applicant pled guilty to each charge. (Plea Tr. p. 3); 5) No one promised or coerced Applicant into pleadings. (Plea Tr. p. 3); 6) Applicant pled guilty of his own free will. (Plea Tr. pp. 3-4); 7) Applicant was not under the

influence of any drugs, alcohol, or anything else that would affect his judgement in pleadings. (Plea Tr. p. 4); and 8) Applicant understood he had a right to a jury trial, a right to present a defense, a right to confront witnesses against him, a right to remain silent, and that he would be presumed innocent at trial. (Plea Tr. pp. 4-5);

The record further shows: 9) Applicant waived venue for his case to be heard in Oconee County even though his cases were Anderson County cases. (Plea Tr. p. 5); 10) Applicant waived presentment the armed robbery charge. (Plea Tr. pp. 5-6); 11) Applicant testified he had enough time to consult with Counsel Byford, had no questions for Counsel Byford, was completely satisfied with Counsel Byford's services, and Counsel Byford has done everything Applicant has asked her to do. (Plea tr. p. 6); 12) Applicant agreed with the State's recitation of the facts giving rise to his conviction. (Plea Tr. pp. 7-8,); 13) Counsel Byford reviewed the facts and applicable law in Applicant case prior to his plea. (Plea Tr. p. 8); 14) Counsel Byford was satisfied that Applicant understood his rights and Counsel Byford agreed with Applicant's decision to plea. (Plea Tr. p. 8); 15) Counsel Byford explained the consequences of having a violent and most serious offense to Applicant. (Plea Tr. p. 8); 16) Judge Sprouse found there was a factual basis for Applicant plea, and qualified Applicant's plea as given freely, voluntarily, and intelligently with advice of competent counsel. (Plea Tr. p. 9); and 17) Applicant made a statement of guilt at the plea hearing. (Plea Tr. p. 18, ll. 12-25).

Trial Counsel Failed to File a Timely Appeal Claim

Applicant alleges that Counsel failed to file a timely appeal on Applicant's behalf. Specifically, Applicant alleges that he met with his attorney two days after the plea, where he requested an appeal be filed. (PCR Tr. p. 29). An appeal was not filed, and Applicant alleges that Counsel informed him that he was not entitled to an appeal. (PCR Tr. p. 30). The Court finds this

allegation meritless and without credible factual support. To the contrary the appeal was properly discussed with the Applicant, but Applicant indicated he was happy with the outcome and did not requires the filing of an appeal from the guilty plea.

On direct-examination, Applicant testified he did not file an appeal because counsel Byford told him he was not eligible, and if he had an opportunity to appeal, he would appeal the issue of the conflict of interest in his case. (PCR Tr. p. 30). This Court rejects the Applicant's testimony.

This Court finds credible and persuasive the testimony of defense counsel Byford that reflects Applicant knowingly waived his right to appeal. This Court finds as a fact after the plea, but before the ten-day deadline to appeal, counsel met with Applicant to discuss his intent on appealing the guilty plea. (PCR Tr. pp. 48-49). Counsel Byford informed Applicant of his right to appeal, the deadline to appeal, and asked him if he desired to file an appeal. (PCR Tr. p. 49). The Applicant was happy with the outcome of his plea. (PCR Tr. p. 49). Applicant asked if there were any issues he could appeal, and she correctly informed Applicant she did not see any appealable issues, but appropriately advised Applicant he could get a new lawyer to review his case and see if there were any appealable issues. (PCR Tr. p. 49). At the PCR proceeding, the Applicant asserted that he wanted to appeal an issue related to the Robert Lusk conflict of interest specifically and possible change of venue and the statement. PCR Tr.p. 30. However, none of these claims were raised to the plea court before or during the guilty plea so they were not preserved for appellate review at that time. As revealed from a review of the plea, no objections were made at the plea and the sentence was consistent with the negotiated sentence and within the available sentencing range for the crimes. Counsel's advice was legally and factual correct. McCray v. State, 271 S.C. 185, 187-88, 246 S.E.2d 230, 231 (1978) ("A defendant can only raise and argue on the 'belated appeal' those issues which could have been raised and argued on a timely direct appeal."); State

v. Carlson, 363 S.C. 586, 595, 611 S.E.2d 283, 287 (Ct. App. 2005) (“A contemporaneous objection is required to preserve issues for direct appellate review.”); State v. McKinney, 278 S.C. 107, 108, 292 S.E.2d 598, 599 (1982) (“Absent timely objection at a plea proceeding, the unknowing and involuntary nature of a guilty plea can only be attacked through the more appropriate channel of [PCR].”); In re Antonio H., 324 S.C. 120, 122, 477 S.E.2d 713, 714 (1996) (“The proper avenue in which to challenge a guilty plea which is not objected to at the time of its entry is through [PCR].”).

Counsel Byford found that Applicant was happy with the plea and sentence and indicated maybe he would do something later, but did never ask Counsel Byford to appeal his case. (PCR Tr. p. 49). Four months later Applicant’s family called her and asked her to help fill out Applicant’s PCR application. (PCR Tr. p. 49). This court finds Applicant never affirmatively asked for an appeal, joked he might later file a PCR action against her. (PCR Tr. p. 50).

“Following a trial, counsel must make certain the defendant is made fully aware of the right to appeal.” Simuel v. State, 390 S.C. 267, 270, 701 S.E.2d 738, 739 (2010). “However, the standard for a guilty plea differs.” Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008). “Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea.” Id. See Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029, 145 L.Ed.2d 985 (2000); Weathers v. State, 319 S.C. 59, 459 S.E.2d 838 (1995)). “Acts inconsistent with the continued assertion of a right, such as a failure to insist upon the right, may constitute waiver.” Bonnette v. State, 277 S.C. 17, 18, 282 S.E.2d 597, 598 (1981) (citing 92 C.J.S. Waiver, p. 1063 (1955)).

This Court finds Applicant never asked Counsel Byford to appeal his convictions, and no nonfrivolous issues existed that would have prompted Counsel Byford to file an appeal on Applicant's behalf. The Applicant was aware of his right to appeal, the time frame to request an appeal within ten days, and concurred in the decision to not appeal in the discussion with counsel Byford. Counsel's advice was not deficient. Therefore, Applicant's allegation of ineffective counsel for failure to file an appeal is **DENIED** and **DISMISSED** with prejudice.

Trial Counsel Failed to Request a Jackson v. Denno Hearing

Applicant alleges that Counsel failed to request and hold a Jackson v. Denno hearing to determine the voluntariness of the Applicant's statement to the police prior to his guilty plea. The Court finds the Applicant has failed to prove either deficient performance or prejudice. The allegation must be denied.

On cross-examination, Applicant testified Counsel Byford never discussed the fact he waived his right to pre-trial motions when he pled guilty, and he never discussed a Jackson v. Denno hearing with Counsel Byford. (PCR tr. p. 33). Applicant testified he reviewed the video of his statement to law enforcement with Counsel Byford prior to his plea, but Counsel Byford had no comments concerning his statement. (PCR Tr. p. 34).

On direct examination, Counsel Johnson testified she cannot recall discussions concerning a potential Jackson v. Denno hearing. (PCR Tr. p. 40). Counsel Johnson testified she might have explored the issue, and she naturally would explore the issue if they had decided to go to trial, but they were not preparing for trial at the time. (PCR Tr. p. 40).

This Court finds that the counsel acted reasonably in her review of the potential suppression of the Applicant's video statement. Although the Applicant at one point requested counsel, counsel recognized that the State had an argument that after a period of time, he re-initiated contact with

law enforcement to discuss matters, aware of his Miranda right to silence and right to counsel. A criminal suspect's rights are not violated when the suspect, not the police, "initiates further communication, exchanges, or conversations with the police." State v. Howard, 296 S.C. 481, 489, 374 S.E.2d 284, 288 (1988) (citing Edwards v. Arizona, 451 U.S. at 485, 101 S.Ct. 1880 (1981); State v. Binney, 362 S.C. 353, 360, 608 S.E.2d 418, 421 (2005)). Defense counsel reasonably investigated and recognized this re-initiation of communication by him would be an issue of concern for them if they went to trial and tried to suppress the statement.

Counsel also considered whether his drug use around the time impacted whether his will was overborne. The test of voluntariness is whether a defendant's will was overborne by the circumstances surrounding the giving of a confession. Dickerson v. U.S., 530 U.S. 428, 434, 120 S.Ct. 2326, 147 L.Ed.2d 405 (2000). When considering the voluntariness of a statement, the court and jury should consider "not only the crucial element of police coercion; the length of the interrogation; its location; its continuity; the defendant's maturity; education; physical condition; and mental health." Withrow v. Williams, 507 U.S. 680, 693, 113 S.Ct. 1745, 123 L.Ed.2d 407 (1993) (omitting internal citations). Indicia of coherence and an understanding of "what is happening" relate to whether a defendant understands that they are being questioned such that they realize the import of waiving their Miranda rights. For instance, in United States v. Walker, the Fourth Circuit held that the defendant adequately waived his Miranda rights despite seeming "a little bit out of it" because the evidence showed he was "aware of and understood his rights." 607 Fed. Appx. 247, 257 (4th Cir. 2015). And in Montague, the court held that even though a defendant was under the influence of heroin and fell asleep during the interrogation, his waiver was knowing and intelligent because he knew the date and time of the interrogation, which indicated coherency. United States v. Montague, 2022 WL 14915631, at *3 (W.D. Va. Oct. 25, 2022). "Whether a

person is too affected by alcohol or other drugs voluntarily and intelligently to waive his rights is one of coherence, of an understanding of what is happening.” United States v. Smith, 608 F.2d 1011, 1012 (4th Cir. 1979).

Counsel acted reasonably in her investigation concerning Applicant’s state at the time of his statement to determine if there was a defense to the admission of the video statement. She acquired information from the Applicant about the amount and type of drugs he was taking. She learned of his alleged lack of sleep for three nights, but most importantly, she reviewed the video of the statement to determine the impact of the drugs on his coherence and whether it reflected issues that might be successful. She acquired assistance from a forensic psychologist who gave his impression. She understood the applicable test concerning the admissibility of statements and discussed the matters with the Applicant and that if they went to trial, rather than pleading guilty, all these potential arguments would be presented.

Importantly, this Court finds that counsel discussed the potential arguments against admissibility with the Applicant prior to his guilty plea where he expressly confirmed that he was waiving his right to present a defense, implicitly these claims with respect to the statement. Plea Tr.p. 5, l. 6-10 (Morris indicating he understood he was waiving his right to present defense that he might have to the charges).

This Court finds counsel Byford’s testimony credible, and finds Applicant failed to show counsel Byford was deficient in her advice and investigation or any resulting prejudice under the Sixth Amendment. Counsel Byford explored and prepared for the possibility of suppressing Applicant’s post-arrest statements, and discussed the possibility of a suppression hearing with Applicant. The main factor in Applicant’s decision to plead was not whether his statements could be suppressed, but if the State would offer him a reduced charge of voluntary manslaughter.

This Court finds that the Applicant failed in his burden of proof to show either deficient performance or prejudice as it relates to the potential suppression of his statement.

Additionally, Applicant knowingly waived the possibility of a pre-trial suppression hearing when he decided to plea. Whetsell v. State, 276 S.C. 295, 277 S.E.2d 891 (1981) (“guilty pleas, freely and voluntarily entered, act as a waiver of all non-jurisdictional defects and defenses, including the claims of a violation of a constitutional right prior to the plea... counsel’s failure to make the motion to suppress here did not constitute ineffective assistance of counsel rendering the guilty pleas involuntary.”). Accordingly, this Court finds this allegation is **DENIED** and **DISMISSED WITH PREJUDICE**.

Trial Counsel Failed to Turn Over All Discovery to Applicant and Investigate

Applicant alleges that counsel Byford failed to turn over all of the discovery materials to Applicant and that Counsel Byford did not sufficiently investigate discovery in preparing for his case. The Court finds this allegation meritless.

To prove prejudice from failure to review discovery, a PCR applicant must present some new evidence or defenses that could have been discovered by counsel’s further review of the discovery. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836. Likewise, in order to prevail on a claim that counsel did not review discovery with applicant, the applicant must demonstrate prejudice by showing what evidence could have been discovered or what other defenses could have been pursued. Id. Furthermore, an applicant must also show how the new evidence or defenses would have resulted in a different outcome. Id. (citing David v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the

alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

At the evidentiary hearing on direct examination, Applicant testified that he was provided with the entirety of discovery for the first time after his guilty plea. (PCR Tr. p. 25). Applicant testified that this included a chain of custody and DNA analysis regarding DNA found on Mountain Dew bottles, which could have yielded the DNA of other individuals. (PCR Tr. p. 28).

However, counsel Byford credibly testified that she did share and go over the discovery with Applicant prior to the guilty plea. (PCR Tr. p. 47). Further, counsel Byford credibly testified that she recalled discussing the DNA evidence with Applicant prior to his guilty plea. (PCR Tr. p. 48). Counsel Byford also testified that it was already known that there were many people there at the time of the incident, and if the defense brought the DNA evidence in, it would have been easy for the State to argue that the evidence was meaningless due to the evidence that he was there and multiple individuals had been on the scene. (PCR Tr. p. 48). Counsel Byford's testimony also revealed she conducted legal and factual investigation concerning the statement and prepared for a possible pre-trial suppression hearing of Applicant's post-arrest statements. Counsel Byford's efforts eventually led to Applicant receiving a favorable plea deal. (PCR Tr. pp. 44-46).

This Court finds Counsel Byford reviewed Applicant's discovery with him and conducted reasonable and thorough investigations prior to the entry of the guilty plea. The Court finds Applicant failed to show Counsel Byford was deficient under prevailing constitutional standards or any resulting 6th Amendment prejudice on this ground. Additionally, Applicant failed to present evidence or testimony of what additional evidence or defense counsel Byford could have discovered had she further reviewed discovery with him differently. This Court further notes

Applicant's representation to the plea judge that he was completely satisfied with counsel Byford and that counsel Byford had answered all of Applicant's questions. Applicant also represented to the plea court that counsel Byford had done everything she was asked to do., (Plea Tr. p. 6); see Dalton v. State, 376 S.C. 130, 137– 38, 654 S.E.2d 870, 874 (Ct. App. 2007) ("[S]tatements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements."). Moreover, to whatever extent Applicant was not entirely satisfied with counsel Byford's discovery investigation or her time spent reviewing discovery, Applicant was presented an opportunity to express his dissatisfaction to the plea court, knowingly opted not to do so, and instead chose to proceed with his guilty plea.

Accordingly, this Court finds this allegation is **DENIED** and **DISMISSED WITH PREJUDICE**.

Counsel Failed to Motion for a Change of Venue

Applicant alleges that Counsel failed to motion for a change of venue due to a potential conflict of interest relating to Bob Lusk and his connection to both the public defender's office and the solicitor's office. This Court finds this allegation meritless. The Applicant has made no legally correct argument that a change of venue was necessary or appropriate based upon the issue related to Robert Lusk or the victim's mother working in the Clerk's office. Defense counsel Byford did not act deficiently in failing to move for a change of venue due to the relationship of Robert Lusk and Kathy Lusk to the victim. The Applicant has failed to show in any manner that there was a reasonability that a change of venue would have been granted due to this limited relationship among the two and the victim.

A change of venue is generally based upon the ability to have fair and impartial jurors. The moving party bears the burden of establishing his entitlement to a change of venue. Stevens v. Sun News, 267 S.C. 63, 68, 226 S.E.2d 236, 239 (1976). “When a party moves for change of venue based on unfair publicity or substantial influence of an opponent which would deprive it of a fair trial, the burden is formidable. It is universally recognized that a keystone to efficient and responsible adjudication is trial by jury of the vicinage.” Id. “Normally, a party's popularity, influence, or reputation is not an adequate basis, in and of itself, to justify a change of venue.” Id. at 69, 226 S.E.2d at 239. See State v. Evins, 373 S.C. at 413, 645 S.E.2d at 908 (“It is the defendant's burden to demonstrate actual juror prejudice as a result of such publicity.”); id. at 412–13, 645 S.E.2d at 908 (finding defendant did not prove he suffered any prejudice from the denial of his motion to change venue based on pre-trial publicity even where seven of the twelve seated jurors “had some knowledge of the case” because (1) “the trial court and defense counsel conducted a thorough *voir dire* of the jury pool,” (2) all of the jury pool members who had knowledge of defendant or his pending charge in another murder stated they could “put that knowledge aside,” and (3) the defense did not use all of its peremptory challenges); State v. Caldwell, 300 S.C. 494, 502, 388 S.E.2d 816, 821–22 (1990) (finding trial court did not abuse its discretion in denying defendant's motion for a change of venue where “eleven of the seated jurors and two of the alternate jurors were aware of media coverage of the crime,” because “those jurors expressed to the trial judge no doubt or reservation of their ability to impartially serve as a juror and to decide the matter solely on the evidence presented,” and thus, the defendant did not prove prejudice or extraordinary circumstances warranting a change of venue), overruled on other grounds by State v. Evans, 371 S.C. 27, 30, 637 S.E.2d 313, 315 (2006); State v. Stanko, 402 S.C. 252, 277–79, 741 S.E.2d 708, 721–22 (2013) (finding the trial court did not abuse its discretion in

denying defendant's motion to change venue where "seven of the twelve jurors seated had some knowledge of the case," but defendant did not prove prejudice or "present even one juror who stated he or she could not ignore exposure to pretrial publicity prior to serving as a juror").

This assertion is based on Robert Lusk's connection with the Public Defender's office and the victim's mother being employed with the clerk's office and the Applicant's speculation about whether the relationship impacted his case. On direct examination, Applicant testified he informed counsel Johnson from the start of her representation that a conflict of interest existed, because Bob Lusk - the head of the selection committee for the Public Defender's Office - was the victim's stepfather, and he tasked counsel Johnson to become the lead Public Defender in the office during the representation. (PCR Tr. pp. 11-12). Applicant testified counsel Johnson did not agree with him initially that a conflict existed due to Lusk's family relationship with the victim, but eighteen months later she handed Applicant a letter and said a conflict existed and she had to give Applicant's case to someone else. (PCR Tr. p. 12). Applicant testified he asked both counsel Johnson and counsel Byford for a venue change. (PCR Tr. pp. 14-15). Applicant also testified the victim was also related to Kathy Lusk, and Ms. Lusk worked in the Anderson Clerk's Office. (PCR Tr. pp. 15-16). Applicant stated at the PCR that he would have proceed to trial (for murder) rather than plead guilty if he had received a change of venue. (PCR Tr. p. 16). This was not a credible statement under the circumstances he was facing.

On cross-examination, Applicant testified Bob Lusk's involvement in his case scared him because "all these people that got political relationships, so they're sitting down probably talking with each other and they're all against me." (PCR Tr. p. 32, ll. 9-13). However, Applicant acknowledged counsel Byford was not affiliated with the Public Defender's Office. (PCR Tr. p. 32).

Counsel Johnson testified that, during the course of her representation, there was no indication that the Solicitor's office should not have been handling Applicant's case due to a conflict of interest. (PCR Tr. p. 38). Further, Johnson did not see any indication that Applicant's case was being handled any differently due to a potential conflict. (PCR Tr. p. 39).

Solicitor Fulmer credibly testified that he did not see any conflict in Applicant's case and saw no reason to believe he could not have appropriately handled the case. (PCR Tr. p. 41). Out of an abundance of caution, Applicant's case was given to Counsel Byford, who testified that while that was understandable, she saw no actual conflict of interest in Applicant's case. (PCR Tr. p. 43).

This Court finds the testimony of both defense counsel and Solicitor Fulmer credible, and finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland). An actual conflict of interest that would have affected the fairness of Applicant's plea or potential trial did not exist. Though Bob Lusk was related to the victim, counsel Johnson counsel Byford had no relation to the victim and owed no duty to the victim or the victim's family. Staggs v. State, 372 S.C. 549, 551, 643 S.E.2d 690, 692 (2007) (An actual conflict of interest occurs where an attorney owes a duty to a party whose interests are adverse to the defendant's interests). Moreover, even if an actual conflict existed in Johnson's representation, counsel Johnson remedied the potential appearance conflict when she removed herself and the case was re-assigned to counsel Byford, a private attorney not affiliated with the Public Defender's Office. Moreover, Applicant's speculation the Public Defender's Office was conspiring against him is not enough to show he is entitled to relief. State v. Gregory, 364 S.C. 150, 152-3, 62 S.E.2d 449, 450 (2005) ("The mere possibility defense counsel may have a conflict of interest is insufficient to impugn a criminal

conviction.”). Thus, Applicant has failed to establish the existence of an actual conflict of interest that adversely affected the entry of the guilty plea.

Further, the Applicant failed to show that counsel Byford was deficient in any manner in not seeking to move to change venue prior to the plea. The Applicant failed to make any showing that the fact of the relationship of Robert Lusk or Kathy Lusk in the case would have prevented a sufficient jury being drawn from Anderson County. Any change of venue would only be related to the trial jury pool and the case was not being called for trial at that time. No showing had been made that the relationship entitled him to a change of venue.

Accordingly, this Court finds the Conflict of Interest and Change of Venue allegations are **DENIED and DISMISSED WITH PREJUDICE.**

CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not shown that Counsel was deficient or that alternatives suggested by Applicant would have changed the outcome. Thus, this application is denied and dismissed with prejudice.

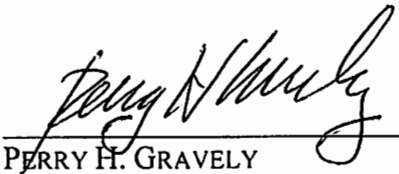
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty days of receipt by counsel of the judgment entry’s written notice to secure appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has the right to 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 Applicant’s behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and

2. Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED THIS 26th day of Nov., 2023.


PERRY H. GRAVELY
Presiding Judge
Tenth Judicial Circuit

Pickens, S.C.

