

VOLUME TWO OF TWO

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Marlboro County

J. Michael Baxley, Circuit Court Judge

RECEIVED

AUG 14 2013

S.C. Supreme Court

BRANDON L. RAY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000588

A P P E N D I X

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1 And of course, it was returned by the Sheriff's Office. The
2 affidavit indicates they were unable to locate him. So I
3 think he would like for me to mark that as a court exhibit.

4 THE COURT: Yeah, we'll mark that as Court Exhibit
5 Number 2 and make it part of the record.

6 (Court's Exhibit Number 2 was marked
7 and made a part of the record.)

8 THE COURT: All right, we'll be at ease.

9 (WHEREUPON, a recess was taken from the
10 proceedings.)

11 THE COURT: Back on the record with regard to the
12 State versus Brandon Ray, indictments numbers 657 and 658. It
13 is a little after 6:00. The jury has been deliberating about
14 two hours. I asked counsel to come into chambers, and we
15 discussed the matter of -- discussed what the options were.
16 Sending out for dinner, sending the jury to dinner, letting
17 them go home, doing nothing, and just seeing what was the best
18 way to go. After conferring with counsel we decided to ask
19 the foreman to come in to see if he thought they could reach a
20 verdict in the next few minutes in which case we would let
21 them to keep on working or if he thought they would rather go
22 home and come back tomorrow. He indicated that the consensus,
23 he thought, with the jury would be to go home and come back
24 tomorrow so that's what I plan to do. Is there the objection
25 to that procedure and to the discussions we had in chamber on

1 behalf of the State, Ms. Munnerlyn?

2 MS. MUNNERLYN: No, Your Honor.

3 THE COURT: On behalf of Defense, Mr. Holt?

4 MR. HOLT: No, Your Honor.

5 THE COURT: All right. With that then we will send
6 the jury home with instructions not to talk about this matter
7 and have them come back tomorrow and resume their
8 deliberations. Bring the jury in please.

9 (WHEREUPON, the jury was returned to the courtroom
10 at approximately 6:10 p.m., and the following proceedings
11 commenced in open court.)

12 THE COURT: All right, ladies and gentlemen, thank
13 you very much. And I have talked with your foreman and it is
14 about 6:15 in the afternoon and I know it has been a long day
15 and we were trying to determine what was the best way to
16 handle matters, whether to continue working into the evening,
17 get you something to eat and keep on working tonight, or
18 whether it would be better to let the jury go home and get
19 some rest and come back and resume your deliberations
20 tomorrow. With the consent of counsel we have felt -- we feel
21 that the best thing to do is to let you go home and rest and
22 come back tomorrow and begin your deliberations 'cause I know
23 that you have been here all day and it has been a long day.
24 So I am going to excuse you for the evening, allow you to go
25 about your business tonight, come back in your jury room

1 tomorrow morning at 9:30 and resume your deliberations. It's
2 more important than ever now that you not talk to anyone about
3 this case. So over the evening recess be sure and not talk to
4 any of your friends or your family or anyone you may see over
5 the evening recess. Do not allow anyone to talk to you. If
6 anyone should talk, attempt to talk to you, of course get
7 their name and description and report it to me and I will deal
8 with them. In the morning when you come back do not begin any
9 discussion about this case among yourselves until all twelve
10 of you are back in the jury room. Everybody should be
11 participating in it at the same time. As soon as all twelve
12 of you are back in the jury room, if you'll tell the bailiff
13 that you're all there he will tell me and I'll either send
14 word for you to begin resume your deliberations or I'll bring
15 you in if there are any instructions that I feel like that I
16 should give you. But don't begin your deliberations in the not
17 morning until you have the word from me to do so. So with
18 that then I'm going to excuse you tonight, allow you to go
19 about your business, and ask you to please be back in your
20 jury room tomorrow morning at 9:30 and I'll see you at that
21 time. Have a pleasant evening. Get some rest. Thank you.

22 (WHEREUPON, the jury was removed from the
23 courtroom at 6:13 p.m., and the following proceedings
24 commenced in open court.)

25 THE COURT: Any objections to the instruction or

1 procedure on behalf of the State?

2 MS. MUNNERLYN: No, Your Honor.

3 THE COURT: On behalf of Defense?

4 MR. HOLT: No, Your Honor.

5 THE COURT: Thank you, counsel. We'll be in recess
6 until 9:30 tomorrow morning.

7 (Court resumed at 9:33 a.m.)

8 THE COURT: All right, back on the record with
9 regard to the matter of the State versus Brandon Laquan Ray.
10 Let the record reflect the State is present represented by Ms.
11 Munnerlyn. The defendant is present with his counsel,
12 Mr. Holt. I am advised all of the jurors are here. I plan to
13 bring them in and give them a -- ask them a couple of
14 questions, then allow them to resume their deliberations.
15 Anything before I bring the jury in, Ms. Munnerlyn?

16 MS. MUNNERLYN: No, Your Honor.

17 THE COURT: Mr. Holt?

18 MR. HOLT: No Your Honor.

19 THE COURT: All right, bring the jury in please.

20 (WHEREUPON, the jury was returned to the courtroom
21 at approximately 9:35 a.m., and the following proceedings
22 commenced in open court.)

23 THE COURT: All right, good morning, ladies and
24 gentlemen and thank you for your promptness in being back here
25 and we are now ready to resume. And I do need to ask you, as

1 I have asked you each day during the course of this trial,
2 that if anyone has tried to talk with you about this matter in
3 any way make any contact with you about this case over the
4 evening recess I will need to know about it now.

5 (There was no response.)

6 THE COURT: Negative response; that's good. And I
7 appreciate that. Also, I will need to ask you if anybody has
8 read any news stories or listened to any broadcast media
9 regarding this case over the evening recess I will also need
10 to know about that now.

11 (There was no response.)

12 THE COURT: Again, negative response and that is
13 good. All right, ladies and gentlemen, you already have your
14 instructions and you have already been deliberating this
15 matter and I am going to allow you to go back to your jury
16 room to resume your deliberations. Please feel free to take
17 as much time as you need. If I can help you on the law in any
18 way whatsoever I will be glad to do so. I certainly cannot
19 help you with the facts. That is a matter that is totally up
20 to you to resolve, but if there are any matters of law of
21 which I can help you simply give a signed note to the bailiff
22 and I will take care of that. With that then I am going to
23 ask you to go to your jury room, resume your deliberations and
24 knock on this door when you have reached a verdict. Thank you
25 very much. You may return to your jury room.

1 (WHEREUPON, the jury was removed from the
2 courtroom at 9:37 a.m., and the following proceedings
3 commenced in open court.)

4 THE COURT: All right, we'll be at ease on this
5 matter until we hear from the jury.

6 (WHEREUPON, a recess was taken from the
7 proceedings.)

8 THE COURT: All right, Ms. Munnerlyn, I understand
9 we have a verdict in the matter involving Mr. Ray. Let the
10 record reflect that we are back on the record with regard to
11 the matter of the State versus Brandon Laquan Ray charged with
12 murder and possession of a weapon during the commission of a
13 violent crime, and I have been advised that the jury has
14 reached a verdict. Before I bring the jury in I want to make
15 a few statements to all of those that are present here, both
16 to the family of the victim and also to the defendant and
17 the -- and his family. This is a tragedy for everyone
18 involved; there are no winners or losers here. It is a
19 tragedy because a young man lost his life. There is, however,
20 a court of law and I am going to have to require that decorum
21 be maintained when the verdict is read. That means that I
22 would expect everyone to sit impassionedly and without a show
23 of emotion, no clapping, no exclamations, no shows of emotion
24 whatsoever. I am going to have to require that order and
25 decorum be maintained in the courtroom; and if there is anyone

1 in the courtroom who thinks that they cannot sit quietly
2 without expression or without show of emotion when the verdict
3 is read, I would ask that they leave now. All right, thank
4 you.

5 Anything before the jury is brought in,
6 Ms. Munnerlyn?

7 MS. MUNNERLYN: No, Your Honor.

8 THE COURT: Mr. Holt?

9 MR. HOLT: No, Your Honor.

10 THE COURT: All right, bring the jury in please.

11 (WHEREUPON, the jury was returned to the courtroom
12 at approximately 11:34 a.m., and the following proceedings
13 commenced in open court.)

14 THE CLERK OF COURT: Mr. Foreman, have y'all reached
15 a verdict?

16 THE FOREMAN: Yes, we have.

17 THE COURT: If you'd hand it up please.

18 (Document tendered to the Court).

19 THE COURT: All right. From the standpoint of form
20 the verdict appears to be correct.

21 Mr. Holt, would you and your client stand please.

22 And Madam Clerk, you may publish the verdict.

23 THE DEPUTY CLERK OF COURT: On indictment
24 2007-GS-34-657, State of South Carolina versus Brandon Laquan
25 Ray, verdict: We, the jury, by unanimous consent find the

1 defendant Brandon Laquan Ray guilty of voluntary manslaughter.
2 Thomas Cousins, dated September 13th, 2007. Case number
3 2007-GS-34-658, State of South Carolina versus Brandon Laquan
4 Ray, verdict: We, the jury, by unanimous consent on the
5 charge of possession of a weapon during the commission of a
6 violent crime find the defendant Brandon Laquan Ray guilty.
7 Thomas Cousins, Jr., September 13th, 2007.

8 THE CLERK OF COURT: Is this your verdict so say you
9 all by raising your right hand.

10 (All jurors responded by raising their hand.)

11 THE COURT: Thank you, you may be seated.

12 Mr. Holt, anything before the jury is excused?

13 MR. HOLT: If you'd just poll the jury, Your Honor.

14 THE COURT: Like to have the jury polled?

15 MR. HOLT: Yes.

16 THE COURT: All right, Mr. Funderburk.

17 THE CLERK OF COURT: I will call your name. When I
18 call your name stand. I will start with the foreman Tommy
19 Cousin. Was this your verdict and is it your verdict now?

20 THE FOREMAN: Yes, it is.

21 THE CLERK OF COURT: Be seated.

22 Barbara Leviner, was this your verdict and is it
23 your verdict now?

24 JUROR LEVINER: Yes, it is.

25 THE CLERK OF COURT: Lisa Alford, was this your

1 verdict and is it your verdict now?

2 JUROR ALFORD: Yes, it is.

3 THE CLERK OF COURT: Donica McLain, was this your
4 verdict and is it your verdict now?

5 JUROR MCLAIN: Yes.

6 THE CLERK OF COURT: Mary Moore, was this your
7 verdict and is it your verdict now?

8 JUROR MOORE: Yes, it is.

9 THE CLERK OF COURT: Portia Covington, was this your
10 verdict and is it your verdict now?

11 JUROR COVINGTON: Yes, it is.

12 THE CLERK OF COURT: Velvet Williams, was this your
13 verdict and is it your verdict now?

14 JUROR WILLIAMS: Yes, it is.

15 THE CLERK OF COURT: Stacey Herndon, was this your
16 verdict and is it your verdict now?

17 JUROR HERNDON: Yes, sir.

18 THE CLERK OF COURT: Mary Pipkin, was this your
19 verdict and is it your verdict now?

20 JUROR PIPKIN: Yes, it is.

21 THE CLERK OF COURT: Ronnie Poston, was this your
22 verdict and is it your verdict now?

23 JUROR POSTON: Yes, sir.

24 THE CLERK OF COURT: Julia Brown, was this your
25 verdict and is it your verdict now?

1 JUROR BROWN: Yes.

2 THE CLERK OF COURT: Jeff Driggers, was this your
3 verdict and is it your verdict now?

4 JUROR DRIGGERS: Yes, it is.

5 THE CLERK OF COURT: That completes the polling,
6 Your Honor.

7 THE COURT: All right, thank you, sir. The jury has
8 been polled and the verdict stands. Mr. Holt, anything before
9 the jury is excused?

10 MR. HOLT: No, Your Honor.

11 THE COURT: All right. All right, ladies and
12 gentlemen, this will conclude your service in connection with
13 this case and I am going to excuse you at this time. I will
14 tell you that in my view the jury's role in fact finding
15 process is so important that the trial judge should not
16 comment on the verdict of a jury even after a jury has
17 returned a verdict and I make it a policy never to comment on
18 the verdict of the because I think the jury is the ultimate
19 fact finder and the trial judge should not comment on the
20 verdict of the jury. I will say that there was evidence in
21 the record by which you could reach the decision that you
22 reached.

23 In just a few minutes I'm going to excuse you from
24 any further service in this case. And I will tell you that
25 once you have been excused as a juror in this case there is

1 there nothing illegal about your talking with anyone about
2 your service. There's nothing illegal about anyone talking to
3 you about your service. It is a practice of which I strongly
4 disapprove and I strongly discourage, but it is not illegal.
5 You have the right to talk with anyone but you also have the
6 right not to talk with anyone. It's your call, but if any
7 anyone does want to talk to you about your service on this
8 case and you don't want to discuss it with them, and you tell
9 them that and they continue to bother you our harass you about
10 it, you let the court personnel know and I will deal with
11 them. But it is a matter that is solely up to you but I do
12 not -- I strongly discourage any contact with members of the
13 jury after a jury has reached a verdict. This will, as I say,
14 terminate your services in connection with which case and I am
15 going to excuse you from any further service and allow you to
16 go about your business. That's part of the closing
17 instructions that I have to you.

18 Now I know that jurors are always curious to know
19 and like to know the disposition of a case, and as soon as I
20 have discharged you I am going to go into the sentencing phase
21 of this case and this will take us about 15 or 20 minutes or
22 maybe more. But you are welcome to stay for the sentencing
23 phase. What I'll do is discharge you. I'll allow you to come
24 back in. Just have a seat back in the back of the courtroom.
25 And if you would like to stay -- you can leave if you want to.

1 But if you would like to stay while we go through the
2 sentencing phase you certainly have that right, and you can
3 come back around and have a seat in the back of the courtroom
4 if you would like to do that while we go through the
5 sentencing phase. But with that, I am going to excuse you from
6 any further service on this case and from any further service
7 this week with the thanks and appreciation of the State of
8 South Carolina and Marlboro County. Thank you very much and
9 have a pleasant evening.

10 (WHEREUPON, the jury was removed from the
11 courtroom at 11:42 a.m., and the following proceedings
12 commenced in open court.)

13 THE COURT: Motions on behalf of the Defendant,
14 Mr. Holt?

15 MR. HOLT: No motions at this time, Your Honor.

16 THE COURT: All right, Ms. Munnerlyn, you have
17 sentencing sheets?

18 MS. MUNNERLYN: Yes, sir.

19 THE COURT: All right, Mr. Holt, if you and your
20 client would come, and if you've got members of the family who
21 want to say anything in mitigation I'll be glad to hear from
22 them as well or hear from you in the way of mitigation. Come
23 on up, Mr. Ray.

24 All right, Ms. Munnerlyn, before I call on the
25 defendant I'll be glad to hear from you if there's anything

1 you would like to add by way of prior record.

2 MS. MUNNERLYN: Your Honor, you're aware of his
3 prior record. It actually came in and that was the totality
4 of his record which was the assault and battery of high and
5 aggravated nature, the distribution of crack, and distribution
6 of crack within proximity of a school. All those of course
7 were in 2004, and he does not have any other convictions other
8 than that.

9 THE COURT: All right. I don't want to get real
10 involved, but if there are members of the victim's family, one
11 or two, they have a right to address the Court if they or any
12 of the victim's family would like to come up, maybe mother or
13 father or some of his family. If they would like to address
14 the Court I'll be glad to hear from them.

15 (Defendant fell on the floor.)

16 THE COURT: We need to stand him aside, call EMS?

17 MR. HOLT: I'm not sure, Your Honor.

18 (Pause while the defendant was talked to.)

19 THE COURT: Mr. Holt, we need to take a break, maybe
20 get EMS coming or?

21 JEFF LOCKLAIR: Yes, sir, Your Honor, they're on the
22 way.

23 THE COURT: Maybe we better -- we will stand at ease
24 a few minutes till they get here and take care of him. We
25 will resume. If y'all will have a seat. We will be ready to

1 resume as soon as they get here.

2 (WHEREUPON, a recess was taken from the
3 proceedings.)

4 (EMS arrived at 11:52 a.m.)

5 (Court resumed at 12:03 p.m.)

6 THE COURT: 1203. We're back on the record with
7 regard to the matter of State versus Brandon Laquan Ray. The
8 jury has returned a verdict and we were into the sentencing
9 phase. Mr. Ray is present with his counsel, is before the
10 bar. It's perfectly fine, Mr. Holt, for him to remain seated.

11 MR. HOLT: Thank you, Your Honor.

12 THE COURT: I had heard from the State with regard
13 to his prior record. Ms. Munnerlyn, I'll be glad to hear from
14 one or two members of victim's family if they would like to
15 address the Court.

16 MS. MUNNERLYN: Yes, Your Honor. Charles and
17 Patricia McRae are Maurice's parents. Mr. McRae would like to
18 address the Court.

19 THE COURT: Let me tell the victims that under our
20 law and the victim's rights amendment and the implemented
21 legislation you, of course, have the right to be kept advised
22 of everything that is going on in court and I'm sure the
23 solicitor's office has kept you advised of what was going on
24 with this case. You also have the right to be present and I
25 know that you have been here throughout the trial of this

1 matter, and the law also provides that you have the right the
2 address the Court. So I'll be glad to hear from you. If
3 you'll give your name to the court reporter I'll be glad to
4 hear from you.

5 THE FATHER: Charles McRae, Senior. I'm sorry all
6 this took place, and but they can get a phone call and listen
7 to their son. I can't listen to mine until judgment day so
8 I'm sorry all this took place. There's nothing -- it's out of
9 my control or anyone else so I'm sorry.

10 THE COURT: All right, thank you, sir. Anyone else?

11 THE MOTHER: I'm Patricia McRae. And Brandon Ray, I
12 want you to know I don't hate you; I don't hate you. But you
13 hurt me. You took my son from me, but I don't hate you and I
14 never did. Ain't had nothing bad to say about you, but you
15 hurt me. And my son, he was a good son. He was always was a
16 loud talker but he was a good son. And I'm sorry that this
17 took place. I mean it from my heart.

18 THE COURT: Thank you, Ma'am. Anything else,
19 Ms. Munnerlyn?

20 MS. MUNNERLYN: I don't think so, Your Honor.

21 THE COURT: Okay. Mr. Holt?

22 MR. HOLT: May it please the Court, I had a chance
23 to speak with my client. Before we came in and even before
24 the verdict was read we talked about the various scenarios
25 that may occur. And one of the things he wanted me to, in the

1 event that he was found guilty on any of the charges, that it
2 be expressed to the family his regret and sorrow for this
3 whole incident, this whole matter. He also wanted to express
4 to Mr. and Mrs. McRae the dignity which they've handled the
5 proceedings. He knows this has been emotionally charged and
6 difficult for them to lose a son and to have to go through
7 this whole process. Things could have been much more
8 emotional in the courtroom, and we appreciate them allowing us
9 to try the case and have a jury here.

10 I would say on behalf of Brandon is that him being a
11 20 year old young man, his upbringing has been challenged at
12 times and he had -- he had some issues growing up. And I
13 think -- I know that his mother in talking with her I think he
14 has some attention deficit issues that he dealt with. It made
15 him unruly and difficult at school. None of that is an excuse
16 obviously, I want the Court to maybe see him the way I've got
17 to know him. I've had a -- it's been my privilege to
18 represent him. I spent a lot of time on this case, and I
19 think that he is a good person. I think that a tragic thing
20 happened. There's no question I think the verdict is, is that
21 there were other forces at play that led to this. And it
22 wasn't murder; I don't think it ever was. And I think the
23 jury saw that too. I would ask that the Court consider that
24 in sentence. It's -- he's 20. He has much to offer, and I
25 would ask that the Court be as considerate, as lenient with

1 any sentence possible. We had a lot of pretrial discussions
2 and part of that was some of my concern with the charging of
3 manslaughter, but I would ask that the Court give him some
4 consideration. He's had a traumatic young life as visible on
5 the back of his head is a scar that he suffered when he was
6 injured by an assailant and has been victimized in a shooting.
7 So he's been a victim too.

8 THE COURT: All right.

9 MR. HOLT: Thank you, Judge, for the way you have
10 conducted this trial. We appreciate, my client appreciates
11 it, and the dignity and the professionalism that the State
12 showed as well.

13 THE COURT: Thank you very much.

14 Would you like to address the Court? I'll be glad
15 to hear from you. Go ahead and give the reporter your name.

16 MR. HOLT: This is Debra Carter.

17 THE COURT: Yes, ma'am.

18 DEFENDANT'S MOTHER: I'm his mother.

19 THE COURT: Yes, ma'am.

20 DEFENDANT'S MOTHER: And to Mr. and Mrs. McRae, I've
21 never met them till today, and for the loss of your son I can
22 only imagine. For that I do apologize. Brandon is not --
23 he's big now because he's been incarcerated but he's a big
24 kid. He's been through a lot as far as attention deficit and
25 been shot and just and stabbed in the head. He's not a bad

1 person; he's really not. He has a six month old little girl
2 that really does need him as well as his grandmother and his
3 younger brother and sister.

4 THE COURT: Okay.

5 DEFENDANT'S MOTHER: And I ask that you be lenient
6 on him.

7 THE COURT: All right, thank you, Ma'am.
8 Anything else, Mr. Holt?

9 MR. HOLT: No, Your Honor. Janie Ray is the
10 defendant's grand momma. She was present. I'm not sure that
11 she can make it up to say anything. Come forward. And he has
12 lived a substantial part of his life. That's his grandmother,
13 Janie Ray. She may...

14 DEFENDANT'S GRANDMOTHER: Good morning, Your Honor.

15 THE COURT: Yes, ma'am.

16 DEFENDANT'S GRANDMOTHER: I raised Brandon
17 (inaudible) my baby. And some of the problems -- Brandon have
18 a learning problem too.

19 MR. HOLT: Ms. Ray, speak up.

20 THE COURT: I need you to speak up.

21 DEFENDANT'S GRANDMOTHER: I'm sorry you can't hear.
22 I'm very sorry, excuse me. I say Brandon had a learning
23 problem he was small coming up, still does. And I have never
24 took out warrant on nobody. My house was threatened. I had
25 to call Chief Worley. All this was going on, but they're

1 going to kill the family so I had to have my house watched for
2 (inaudible) cops. I don't bother nobody; I'm a Christian
3 woman. I live the best I know how and I stay in church and I
4 mind my business. I had a lot of problems going back and
5 forth, somebody hurting him, here I got to get out my bed to
6 go get him. I certainly did.

7 THE COURT: Thank you, Ma'am.

8 MR. HOLT: Thank you, Your Honor.

9 THE COURT: All right, Mr. Holt, anything else?

10 MR. HOLT: Nothing further, Your Honor.

11 THE COURT: All right. Counsel, let me ask you, I
12 am interested and concerned was matter did not come out but I
13 think I need to know as much as I can about this. Obviously
14 there was an article in the newspaper that referred to gang
15 related. There was also a matter -- there was also a matter
16 with the statement that we wanted to make sure did not make
17 any reference gangs, but you recall in our pretrial conference
18 the State had some difficulty in really relating it to gang
19 related but I'd just like to know what is the State's position
20 as to whether this was involving gangs for these two young
21 men.

22 MS. MUNNERLYN: Your Honor, I think there's
23 certainly have been indications that each of them, the victim
24 and the defendant both, were attempting to affiliate
25 themselves in some sort of fashion to a gang. We could not

1 prove that, of course. There -- the indication in the
2 statement from Rondell Knight was, why'd you bring him to blue
3 town, indicating that that would be the Kryppts, and the
4 defendant being a blood. There was also in the search warrant
5 that was executed at the defendant's house some paperwork
6 gathered which included some gang symbols, some words, people
7 who were associated with gangs, some photographs where -- of
8 him and another boy exhibiting some gang signs. But of course
9 none of that related directly to Maurice McRae or to what
10 happened that particular day. But that was, of course,
11 gathered as part of that search warrant. Other than that I
12 would refer to Tommy Langley. He's the chief of McColl
13 police. He may know more about that. That's what I knew
14 about. But I would ask for him to address that.

15 THE COURT: What can you tell me about that, Chief?

16 CHIEF LANGLEY: Yes, sir, Your Honor. Ms. Munnerlyn
17 said basically that's where the gang part started coming in,
18 and I think basing on the co-defendant making that statement.
19 But during our investigation we were not able to link the gang
20 situation anything to do with this situation, Your Honor.

21 THE COURT: Mr. Holt, you want to address that at
22 all?

23 MR. HOLT: I would like to, Your Honor.

24 THE COURT: Yes, sir.

25 MR. HOLT: I'm concerned about it. I understand the

1 Court's inquiry and I respect that, but I'm concerned about it
2 now being raised as a result of the writings of which
3 Ms. Munnerlyn eluded to I've never had an opportunity to
4 review any of that which is why those issues were not
5 admissible in this court. I know nothing of that except what
6 they have mentioned at different points in our conversations,
7 but I think there's testimony in the record which reflected
8 that he had just -- he was just moving into this residence and
9 to affiliate him to certain writings when there were other
10 people been staying there I think is inappropriate. There
11 was -- the declarant, the victim in this matter, was the one
12 who uttered the words and who exhibited the gang.

13 THE COURT: I recall that, yeah.

14 MR. HOLT: And so it's been frustrating at least on
15 my end at this juncture to have that sort of -- him be colored
16 with that, and I would object to the State wishing to use that
17 to stiffen any penalties at this point.

18 THE COURT: Well, it's a little different I think
19 going before the jury and giving the Court full information
20 for consideration for sentencing purposes, and that of course
21 is their opinion and I'm not necessarily going to accept that.
22 But I do think that -- I inquired about it and I think that
23 the statements made by prosecution were appropriate. All
24 right, Mr. Ray, is there anything you would like to tell me?

25 THE DEFENDANT: I just want to say on my behalf that

1 I apologize for everybody having to go through this, for the
2 family and all. And I ain't mean for this to happen, Your
3 Honor, and I'm very, very sorry. I mean that from the bottom
4 of my heart.

5 THE COURT: All right, thank you, sir. Twelve years
6 ago when I got this job my colleagues that were already on the
7 Bench told me that the most difficult thing that we would have
8 to do would be criminal sentencing. Nothing in the last
9 change -- in the last 12 years has changed that. I completely
10 agree with that statement, and there is nothing that has
11 changed that. It is the most difficult thing that we have to
12 do. As I said before the verdict was read in this case, there
13 are no winners or losers in this matter. There are no
14 winners; everybody is a loser. The victim, the defendant.
15 It's a tragedy for everybody. All the Court can do is to look
16 at everything that has been presented to the Court and try to
17 come up with an appropriate punishment based on the laws of
18 the State of South Carolina. We judges have no crystal ball
19 in doing this. Very often the sentence that we impose most of
20 the time does not satisfy everybody and very often does not
21 satisfy anybody. But all we can do is look at the overall
22 facts as we see it and try to impose a punishment that is fair
23 to the victim's family, to the State, and to the defendant.
24 In imposing sentence in this case I have taken into
25 consideration the charitable attitude of the victim's family

1 and the Court appreciates that. The Court has also taken into
2 consideration the remorsefulness of the defendant in this case
3 because I know that he is remorseful. I would also tell you
4 that I am not considering anything with regard to gang
5 activity because I don't think there is sufficient evidence of
6 that in this case. As the attorneys in this case know, this
7 is a case that with voluntary manslaughter it carries up to a
8 maximum of 30 years in prison and is a no parole offense and
9 requires that the defendant serve 85 percent of whatever
10 sentence he is imposed -- is imposed on him before he is
11 released to any kind of community supervision.

12 The sentence that I'm going to impose, Mr. Ray, is
13 going to mean that you will get out of jail one of these days
14 but it's going to be a long time because there is a death that
15 was involved as a result of your activities. No matter what
16 happened it in any way you look at it the death of another
17 young man resulted has resulted your activities. Therefore,
18 the sentence of the Court is that the defendant is committed
19 to the State Department of Corrections for a term of 22 years.
20 He will be given credit for whatever time he served. That's
21 on the voluntary manslaughter. On the possession of a weapon
22 during the commission of a violent crime sentence of the Court
23 is defendant is committed to the State Department of
24 Corrections for a term of five years to run concurrent. That
25 will conclude the hearing, but I want everyone to remain in

1 the courtroom with the exception of the jurors. I see some of
2 them did come in, and I will give them an opportunity to leave
3 and I don't want to anyone else to leave the building until
4 the jurors have an opportunity to clear the grounds.

5 You are excused.

6 And if everyone else would like to just be seated
7 for a few minutes while I allow them to leave the grounds.
8 And then I'm going to excuse the victim's family first and
9 then the defendant's family after that.

10 (Pause.)

11 THE COURT: At this time I will release the members
12 of the victim's family before I release the defendant's
13 family. I ask, Mr. Holt, if you'd ask all the defendant's
14 family to stay in the courtroom for just a few minutes and
15 I'll release the members of the victim's family at this time.

16

17 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

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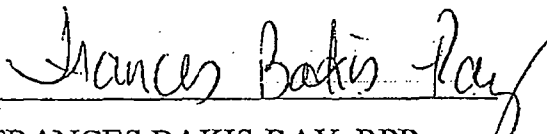
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA }
COUNTY OF FLORENCE }

I, FRANCES BAKIS-RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Twelfth Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 12th day of March, 2008.


FRANCES BAKIS-RAY, RPR
My Commission Expires: 9-13-2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Marlboro County

Howard P. King, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BRANDON L. RAY,

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

ROBERT M. DUDEK
Deputy Chief Appellate Defender for Capital Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred by admitting the statement of alleged accomplice Rondell Knight into evidence where that statement was given to the police hours after the murder and implicated appellant in the shooting, since Knight invoked his Fifth Amendment rights, thereby refusing to testify and to be cross-examined, and the statement should have been excluded under Rule 803, SCRE, and Crawford v. Washington, 541 U.S. 36 (2004)?

STATEMENT OF THE CASE

Appellant was indicted by the Marlboro County grand jury for the offenses of murder and possession of a weapon during the commission of a violent crime. R. 527. Appellant's case was called to trial on September 10, 2007 before the Honorable Howard P. King, and a jury. Michael Holt represented appellant. Elizabeth R. Munnerlyn was the assistant solicitor. R. 1.

The jury found appellant guilty of voluntary manslaughter -- rejecting self-defense -- and possession of a weapon during the commission of a violent crime. R. 509, ll. 4-7. Judge King sentenced appellant to twenty-two years imprisonment for voluntary manslaughter, and he imposed a five year concurrent sentence for the weapons offense. R. 524, ll. 17-24.

This appeal follows.

ARGUMENT

The trial court erred by admitting the statement of Rondell Knight given to the police only hours after the crime into evidence over appellant's objections. Knight invoked his Fifth Amendment right against self-incrimination, and he did not testify. Admission of the statement violated Rule 403, SCRE and it was also should have been excluded under Crawford v. Washington, 541 U.S. 36 (2004), since its admission without the right to cross-examine Knight violated appellant's rights under the Confrontation Clause.

Relevant facts

McColl police officer Tommy Langley testified that on October 14, 2006 he was dispatched to the Apartments in response to a shooting. R. 37, l. 4 – 39, l. 4. Langley testified he arrived at the apartments at 1:51 p.m. R. 39, ll. 7-12. He found the decedent lying in the parking lot in front of Building . R. 39, l. 16 – 40, l. 2.

Langley testified that Rondell Knight and appellant were immediately suspects in the shooting and they were said to be driving a 1998 Gray Dodge Stratus. R. 42, ll. 12-23. Langley remembered that many of the witnesses from the apartments agreed to go to the police station and give statements. However, when these witnesses learned the decedent died hours later in the hospital they all left the police station without finishing their statements. R. 43, l. 16 – 45, l. 23.

Langley recalled that appellant was arrested on November 21, 2006 in Highpoint, North Carolina. Langley told the jurors that he went to Highpoint, North Carolina to bring appellant back to South Carolina: "I read him his rights, he basically said he wanted an attorney he said at that point." Appellant therefore did not give a statement, and heeded his Miranda warnings. There was no objection to this testimony. R. 56, l. 8 – 59, l. 5.

Vula Davis lived in Apartment , Apartments. R. 66, l. 17 – R. 67, l. 17. Davis recalled that as she was looking out her window she saw the decedent walking

towards a car that was backing up in his direction. Davis testified that someone in the car said "I got you. And he [the decedent], yeah man, you got me and he shot him and drove off." R. 69, ll. 14-20.¹ Davis remembered there were two people in the car. However, she could only identify them as "black males." Davis said she saw the passenger shoot the decedent. R. 71, l. 9 - 72, l. 20.

Walter Blake Wilkes claimed to be an eyewitness to the shooting. Wilkes remembered seeing Rondell Knight, appellant and the decedent, Maurice, in the apartment parking lot that afternoon. R. 119, l. 7 - 120, l. 6. Wilkes recalled that the decedent told Knight he needed to get appellant "out of here, take him home [or] somewhere because he pulled a gun on him a couple of weeks before at a football game." R. 120, ll. 1-15.

Wilkes said appellant did not respond to this assertion. Wilkes remembered that the decedent then went to his apartment. Wilkes admitted that before the decedent went back into his apartment he said: "Stay right here because I've got something for your ass upstairs." R. 132, ll. 1-4. However, Wilkes claimed the decedent did not return with a gun. R. 120, l. 4 - 121, l. 12.

Wilkes said appellant and Knight were preparing to leave in the car as the decedent went to his apartment. Wilkes testified that Knight backed the car up with appellant in the passenger's seat. The decedent reappeared in the parking lot, and Wilkes claimed that he heard the decedent say: "Hold on a minute let me holler at you a minute." The car then pulled up next to the decedent. Wilkes then heard a gunshot. R. 122, ll. 16-123, l. 19.

There was evidence that a crowd -- as many as twenty-five to thirty people -- surrounded the decedent after he was shot, and it was undisputed certain items were taken from him, allegedly for safekeeping. R. 140, ll. 1-25. However, no one would acknowledge that a gun was one of the items removed from the decedent's possession.

¹ There was also evidence someone said, "I've got you now," and that the decedent responded, "Yeah, you've got me" before he was shot.

At trial, Knight invoked his Fifth Amendment right against self-incrimination. The state then sought to introduce his statement to the police hours after the shooting into evidence as a statement against penal interest by an unavailable witness. The trial court admitted Knight's statement over appellant's objection. In the statement Knight told the police that the decedent told him he better get appellant – "that slob ass" – out of the apartments. Knight said the decedent told them he was going to get his gun, and that "you better be gone." Knight claimed in his statement that the decedent "never had anything in his hands when he was walking up," and that "I saw Brandon shoot Maurice with the gun." Knight "pulled off fast," and took appellant from the scene. R. 304, l. 8 – 309, l. 2; R. 361, l. 2 – 364, l. 15.

Discussion

In Crawford v. Washington, 554 U.S. 36 (2004), the United States Supreme Court held that out-of-court statements by witnesses that are testimonial are barred, under the Confrontation Clause, unless the witness is unavailable and the defendant had a prior opportunity to cross-examine the witness regardless of whether the statement was deemed reliable by the court. Crawford v. Washington abrogated Ohio v. Roberts, 448 U.S. 56 (1980), which was anchored in the "reliability analysis" for hearsay exceptions. It is undisputed that statements made to police during interrogation are testimonial in nature.

In Crawford v. Washington the state introduced the statement of the defendant's wife to the police that she led the defendant to the victim's apartment, and facilitated the assault on the victim. The state argued her statement to the police after the crime was a statement against her penal interest, and therefore it was admissible against appellant even though his wife would not -- or could not -- testify, and was consequently unavailable.

The defendant argued that notwithstanding the state hearsay exception that this would violate his constitutional right to be confronted with the witnesses against him. The

Supreme Court agreed and held that the admission of the wife's statement to the police implicating the defendant, without the opportunity to cross-examine her, violated the defendant's rights under the Confrontation Clause.

The Court in Crawford v. Washington noted where testimonial statements are involved, the Framers did not mean to leave the Sixth Amendment protection and guarantee of the right to confrontation to what state court rules of evidence deemed to be "reliable statements" in the absence of the right to confrontation.

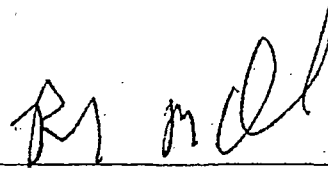
Here, Rondell Knight invoked his Fifth Amendment right against self-incrimination. The state sought therefore to introduce Knight's statement given to the police only hours after his arrest, and *while under questioning*, into evidence under Rule 804 (b)(3), SCRE -- a statement against penal interest. Defense counsel objected to the admission of this statement. The statement was inadmissible under Crawford v. Washington, and it was patent error on the part of the trial court to admit Knight's statement to the police without appellant having the opportunity to confront and cross-examine Knight. See State v. Mitchell, 378 S.C. 305, 662 S.E.2d 493 (Ct. App. 2008).

Knight's statement to the police also should have been excluded under Rule 403, SCRE, since its probative value was substantially outweighed by its unduly prejudicial effect. The statement should have been excluded under Rule 403, SCRE, because Knight had a motive to blame appellant for the shooting and to exculpate himself.

In State v. Gilchrist, 329 S.C. 621, 496 S.E.2d 424 (Ct. App. 1998), this Court found it very significant that the witness who conveyed a statement to the jury was not implicated in the attempted robbery and also that it was corroborated by independent evidence. Here, not only was appellant denied his right to confront and cross-examine Knight, the jury was also given a self-serving statement by Knight where he had a clear motive to clear himself and make the situation look as bad as possible for appellant.

Knight's statement was highly prejudicial and the trial court erred by admitting it into evidence. See State v. McLeod, 362 S.C. 73, 606 S.E.2d 215 (2004). Appellant should be granted a new trial.²

Respectfully submitted,



Robert M. Dudek
Deputy Chief Appellate Defender for Capital Appeals

ATTORNEY FOR APPELLANT

February 24, 2009

² There was no objection to the statement under Crawford v. Washington.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Marlboro County
Howard P. King, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BRANDON L. RAY,

APPELLANT

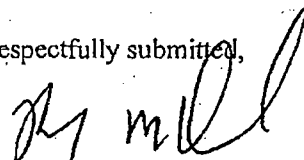
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Brandon L. Ray states:

1. He is Deputy Chief Appellate Defender for Capital Appeals for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Howard P. King, which was held on September 13, 2007, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Brandon L. Ray.

Respectfully submitted,



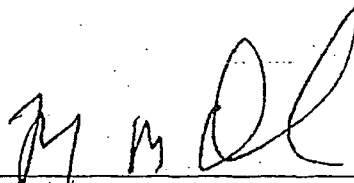
Robert M. Dudek
Deputy Chief Appellate Defender for Capital Appeals

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

February 24, 2009



Robert M. Dudek
Deputy Chief Appellate Defender for Capital Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

Attorney for Appellant

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Marlboro County

Howard P. King, Circuit Court Judge

THE STATE,

RESPONDENT,

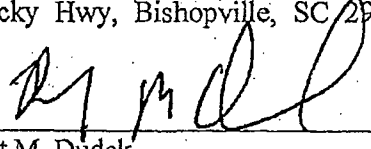
V.

BRANDON L. RAY,

APPELLANT.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and the Final Anders Brief of Appellant and Record on Appeal have been served upon Brandon L. Ray, #305499 at Lee Correctional Institution, 990 Wisacky Hwy, Bishopville, SC 29010, this 24th day of February, 2009.



Robert M. Dudek
Deputy Chief Appellate Defender for Capital Appeals
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 24th day of February, 2009.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 30, 2018.

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Brandon L. Ray,

Appellant.

Appeal From Marlboro County
Howard P. King, Circuit Court Judge

Unpublished Opinion No. 2010-UP-089
Submitted January 4, 2010 – Filed February 3, 2010

APPEAL DISMISSED

Acting Chief Appellate Defender Robert Dudek, of
Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh, and
Assistant Deputy Attorney General Donald J.
Zelenka, all of Columbia; and Solicitor Jay Hodge,
Jr., of Cheraw; for Respondent.

PER CURIAM: Brandon Ray appeals his convictions for voluntary manslaughter and possession of a weapon during the commission of a violent crime. He argues the trial court erred in allowing the State to introduce a statement his co-defendant made to police. After a thorough review of the record and counsel's brief pursuant to Anders v. California, 386 U.S. 738 (1967), and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss¹ the appeal and grant counsel's motion to be relieved.

APPEAL DISMISSED.

SHORT, THOMAS, and KONDUROS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA)

County of Marlboro)

IN THE COURT OF COMMON PLEAS
MARLBORO COUNTY
CLERK OF COURT
10-34-303

Dorinda Louise Ray # 305499
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEF

2500 NOV 1 PM 3 05
WILLIAM D. FURSTBERGER
CLERK OF COURT
MARLBORO COUNTY, S.C.

FILED

INSTRUCTIONS B READ CAREFULLY

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

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

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

1. Place of detention Perry Correctional Institution - 430
Oaklawn Road, Pelzer, S.C. 29669
2. Name and location of Court which imposed sentence Marlboro Court
Court House, Bennettsville, S.C. 29512
3. Name(s) of co-defendant(s) (if any) Rondell Knight
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) Voluntary Manslaughter 2007-05-34-0657

- (b) Possession of Weapon During the Commission of Certain
- (c) Crimes # 07GS 34-0653

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

- (a) 9-13-07 Voluntary Manslaughter - 22 years
- (b) 9-13-07 possession of weapon during the Commission of
- (c) Certain crimes - 5 years

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty _____
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____

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

yes

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

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

- i. S.C. Court of Appeals
- ii. _____
- iii. _____

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

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

(c) the date of each such result:

- i. 2-3-10
- ii. _____
- iii. _____

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

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

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

- (a) N/A

FILED
 2010 NOV 1 PM 3 05
 WILLIAM B. FINDERBURK
 CLERK OF COURT
 MARLBORO COUNTY, S.C.

- (b) NA
- (c) NA

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

- (a) Ineffective Assistance of Counsel
- (b) Prosecutor Misconduct
- (c) _____

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

- (a) The counsel was ineffective for failing to Ackly raise objections under the conf. clause when he objected to the ambivalence of co-defendant statement through a
- (b) lockup.
- (c) It was Prosecutor's Misconduct when she misstated, misled and confused the

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

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

- (a) the specific nature thereof:
 - i. NA
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. NA
 - ii. _____
 - iii. _____

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 WILLIAM B. FUMERBURK
 CLERK OF COURT
 HALLBOROUGH COUNTY, S.C.

- iv. _____
- (c) the disposition thereof:
 - i. _____
 - ii. ~~NA~~ _____
 - iii. ~~NA~~ _____
 - iv. _____
- (d) the date of each such disposition:
 - i. _____
 - ii. ~~NA~~ _____
 - iii. ~~NA~~ _____
 - iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. _____
 - ii. ~~NA~~ _____
 - iii. ~~NA~~ _____
 - iv. _____

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

~~NA~~ _____

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

(a) which grounds have been presented:

- i. ~~NA~~ _____
- ii. ~~NA~~ _____
- iii. _____

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

- i. ~~NA~~ _____
- ii. ~~NA~~ _____
- iii. _____

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 WILLIAM B. FURDERBURK
 CLERK OF COURT
 HALLSBORO COUNTY, S.C.

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

- (a) Ineffective Assistance of counsel/ Because Trial ~~was~~ ^{was} on only 6
months on Direct Appeal.
- (b) Prosecutor's Misconduct ~~was~~ ^{was} Trial Error can only be based on 1
Direct Appeal.
- (c) _____

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

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

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

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

- i. Michael S. Holt 602 West Carolina Avenue,
Hartsville, S.C 29550 → Trial counsel
- ii. Robert M. Dudek P.O. Box 11589 Columbia, S.C. 29211
1589 - Direct Appeal
- iii. _____

2010 NOV 1 3 05
 WILLIAMS, FURBERDURK
 CLERK OF COURT
 MARLBORO COUNTY, S.C.

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

- i. Trial
- ii. Direct Appeal
- iii. _____

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

New Trial, Remanded and Reversed

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA)
County of Marlboro)

VERIFICATION

I, Blondan Lawson Roy, 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.

Blondan Roy

SWORN to and subscribed before me this 29th day of October, 2010.

Alvin M. M... (P.S.)
Notary Public

My Commission Expires: November 7, 2016

2010 NOV 1 PM 3 05
WILLIAM B. FUNDERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

FILED

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

I, Brandon Laquan Ray, 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.

Brandon Ray
Applicant

SWORN or affirmed to and subscribed before me this
29th day of October, 2010.

Steven F. Melantky
Notary Public

My Commission Expires: November 7, 2016

2010 NOV 1 PM 3 05
WILLIAM B. FUNDERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

FILED

STATE OF SOUTH CAROLINA)
)
 COUNTY OF MARLBORO)
)
 Brandon Laquan Ray,)
 S.C.D.C. No. 305499.)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2010-CP-34-0303

RETURN

In response to the post-conviction relief application filed November 1, 2010, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Marlboro County Clerk of Court's orders of commitment. The Marlboro County Grand Jury indicted the Applicant at the July 2007 term of General Sessions for murder (2007-GS-34-0657) and possession of a weapon during commission of a violent crime (2007-Gs-34-0658). Michael S. Holt, Esquire represented the Applicant.

After the State called the case to trial, the Applicant was found guilty of voluntary manslaughter and the weapons charge. On September 13, 2007, the Honorable Howard P. King sentenced the Applicant to concurrent terms of twenty-two (22) years for voluntary manslaughter and five (5) years for possession of a weapon during commission of a violent crime.

A notice of appeal was filed at the South Carolina Court of Appeals. Robert M. Dudek, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of an

Anders¹ brief. The Court of Appeals dismissed the appeal. State v. Ray, Op. No. 2010-UP-089 (S.C. Ct. App. filed February 3, 2010).

Attached herewith and incorporated herein by reference are the records of the Marlboro County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

II.

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

1. Ineffective assistance of counsel:
 - a. Failed to raise a confrontation clause issue.
 - b. Failed to properly challenge the co-defendant's statement.
2. Prosecutorial misconduct.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a criminal defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

¹ Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

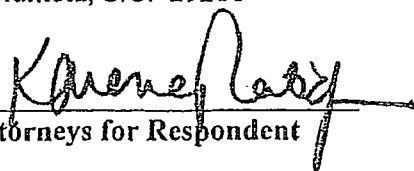
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

March 25, 2011

STATE OF SOUTH CAROLINA)

COUNTY OF MARLBORO)

IN THE COURT OF COMMON PLEAS

2010-CP-34-0303

BRANDON LAQUAN RAY, 305499)

Applicant.)

vs)

AFFIDAVIT OF SERVICE BY MAIL

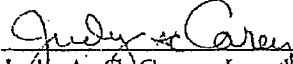
STATE OF SOUTH CAROLINA,)

Respondent.)

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

**Brandon Laquan Ray, 305499
 Perry Correctional Institution
 430 Oaklawn Road
 Pelzer SC 29669**

DATED this 25th day of March, 2011,



 Judy A. C. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
)
 COUNTY OF MARLBORO)
)
 BRANDON L. RAY, 305499)
)
 Applicant)
)
)
)
 STATE OF SOUTH CAROLINA)
)
 Respondent,)
)

IN THE COMMON PLEAS COURT

A CERTIFIED
 DOCKET NO.: 2010-CF-77-0393
 TRUE COPY

AMENDMENT TO POST-
 CONVICTION RELIEF APPLICATION

CLERK OF COURT
 MARLBORO COUNTY

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 WILLIAM B. BUNDEBERG
 CLERK OF COURT
 MARLBORO COUNTY, S.C.

FILED

The Applicant by and through his Attorney respectfully puts this Court and all parties on notice that the following allegation has been amended to his application for Post Conviction Relief pursuant to S.C. Code Ann. 3-17-27-10 et.seq.

GROUND FOR RELIEF

Applicant suffered from ineffective assistance of Counsel at trial inasmuch as Counsel's failure to object to the admissibility of Rondell Knight's statement under Douglas v Alabama 380 U.S. 415 and Crawford v Washington 554 U. S. 36, demonstrated Counsel's ignorance of the Applicable substantive and procedural law. Applicant was deprived of a fair trial and the right to raise this issue on Direct Appeal as a result of Counsel's deficient performance.

RELIEF REQUESTED

Conviction and sentence be vacated and case remanded for new trial.

ARGUMENT AND FACTS IN SUPPORT

McCall police officer Tommy Langley testified that on October 14, 2006, he was dispatched to the Apartments in response to a shooting, Tr. pg. 37 lines 4-39. Langley testified he arrived at the apartments at 1:51 PM tr. pg. 39 lines 7-12. He found the decedent lying in the parking lot in front of Building , tr. pg. 39, lines 16-40.

Langley testified that Rondell Knight and Applicant were immediately suspects in the shooting and they were said to be driving a 1998 Gray Dodge Stratus, tr. pg. 42, lines 12-23. Langley remembered that many of the witnesses from the apartments agreed to go to the police station and give statements. However, when these witnesses learned the decedent died hours later in the hospital they all left the police station without finishing their statements, tr. pg 43, lines 16-45.

Langley recalled that applicant was arrested on November 21, 2006 in Highpoint, N. C. Langley told the jurors that he went to Highpoint, North Carolina, to bring applicant back to South Carolina. "I read him his rights,

he basically said he wanted an attorney at that point". Applicant, therefore did not give a statement and heeded his Miranda warnings. There was no objection to this testimony, tr. pg. 56, line 8 - pg. 59, lines 5.

Volva Davis lives in Apartments, tr. pg. lines 17, pg 67, lines 17. Davis recalled that as she was looking out her window she saw the decedent walking toward a car that was backing up in his direction. Davis testified that someone in the car said "I got you, and he (the decedent), yeah man you got me and he shot him and drove off", tr. pg. 69, lines 14-25. Davis remembered there were two people in the car. However, she could only identify them as "Black males". Davis said she saw the passenger shoot the decedent, tr. pg. 71, lines 9- pg. 72, line 20.

Walter Blake Wilkes claimed to be an eyewitness to the shooting. Wilkes remembered seeing Rondell Knight, applicant and the decedent, Maurice in the apartment parking lot that afternoon, tr. pg. 119-line 7-pg 120, lines 6. Wilkes recalled that the decedent told Knight we need to get applicant out of here, take him home or somewhere because he pulled a gun on him a couple of weeks before at a football game, tr. pg. 120 lines 1-9.

Wilkes said applicant did not respond to this assertion. Wilkes remembered that the decedent then went to his apartment. Wilkes admitted that before the decedent went back into his apartment he said "Stay right here because I've got something for your ass upstairs", tr. pg. 132 lines 1-4. However Wilkes claimed the decedent did not return with a gun, tr. pg. 120, line 4 - pg. 121, lines 12.

Wilkes said applicant and Knight were preparing to leave in the car as the decedent went to his apartment. Wilkes testified that Knight backed the car up with applicant in passenger's seat. The decedent reappeared in the parking lot, and Wilkes claimed that he heard decedent say "Hold on a minute let me holla at you a minute." The car then pulled up next to the decedent. Wilkes then heard a gun shot, tr. pg. 122 line 16 - Tr. pg. 123, lines 19.

There was evidence that a crowd, as many as twenty five to thirty people, surrounded the decedent after he was shot and it was undisputed certain items were taken from him, allegedly for safe keeping, tr. pg 140, lines 1-25. However, no one would acknowledge that a gun was one of the items removed from the decedent's possession.

At trial Knight invoked his Fifth Amendment right against self incrimination. The State then sought to introduce his statement to the police hours after the shooting into evidence as a statement against peril interest by an unavailable witness. The trial court admitted Knight's statement over applicant's objection. In the statement Knight told police that the decedent told him he better get applicant, "that slob ass", out of the apartments. Knight said the decedent told them he was going to get his gun and that "you better be gone!" Knight claims in his statement that the decedent never had anything in his hands when he was walking up, "and I saw Brandon shoot Maurice with the

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CLERK OF COURT
MARLBORO COUNTY, S.C.

Gun. Knight pulled off fast and took applicant from the scene. Tr. pg. 304, line 8 - page 309, lines 2, page 361, line 2 - pg 364 lines 15.

Applicant now argues that he suffered from ineffective assistance of counsel at trial inasmuch as his counsel's failure to object to the admissibility of Rondell Knight's statement under Douglas v Alabama 380 U. S. 415 and Crawford v Washington 554 U.S. 36 demonstrates. Counsel's ignorance of the applicant's substantive and procedural law. Applicant argues that he was prejudiced as a result of Counsel's deficient performance inasmuch as he was denied his right to cross examination secured by the confrontation clause of the U. S. and South Carolina Constitution which deprived him of a fair trial. Applicant contends that he was also prejudiced on direct appeal by trial counsel's ineffectiveness as this issue was not preserved for review due to counsel's failure to object under such grounds during trial.

During trial when the State first tried to introduce the statement, the Court inquired as to what was counsel's position. In relevant post trial counsel said "This is all happening kind of fast. I'm not sure I'd like to be able to at least do a little bit of research on that issue....." tr. pg 301, line 11-16.

It is clear from this statement that trial counsel was ignorant to the applicable law in that area. The next morning at trial the state argued that under CRE 804(A)(1) Rondell Knight is unavailable as a witness and therefore, the statement is admissible and is not hearsay under 804(B)(3), which is a statement against interest, tr. page 304, line 8-21.

Trial counsel argued at trial that the statements were prejudicial to applicant because Rondell Knight was a witness who he planned on calling and to admit the statement would be premature, and also because the statement contained some language that could mislead the jury, tr. pg. 304, line 25- pg 305, lines 13.

Even if Rondell Knight's statement was admissible under the "hearsay exception" rule or even if the probative value of the statement did outweigh the prejudicial effect. The out of Court statement of Rondell Knight was inadmissible under the confrontation clause.

In Crawford v Washington, 594 U. S. 36(2004), the United States Supreme Court hold that out of Court statements by witnesses that are testimonial are barred under the confrontation clause, unless the witness regardless of whether the statement was deemed reliable by the court. Crawford v Washington abrogated Ohio v Roberts 448 U. S. 56 (1980) which was anchored in the "reliability analysis" for hear exceptions. It is undisputed that Statements made to the police during interrogation are testimonial in nature.

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HARRISBORO COUNTY, Pa.

In *Crawford v Washington*, the State introduced the statement of the defendant's wife to the police that she led the defendants to the victims apartment, and facilitated the assault on the victim. The State argued her statement to the police after the crime was a statement against her peril interest and therefore, it was admissible against appellant even though his wife would not, or could not, testify, and was consequently unavailable. The defendant argued that notwithstanding the State hearsay exception that this would violate his constitutional right to be confronted with the witnesses against him. The Supreme Court agreed and hold that the admission of the wife's statement to the police implicating the defendant, without the opportunity to cross-examine her, violated the defendant's right under the confrontation clause.

The court in *Crawford v Washington* noted where testimonial statements are involved the former did not mean to leave the sixth amendment protection and guarantee of the right to confrontation to what state court rules of evidence deemed to be "reliable statements" in the absence of the right to confrontation.

In *Douglas v Alabama* 380 U. S. 415 (1965) the United States Supreme Court reversed a conviction because a confession purportedly made by the defendant's accomplice was read to the jury by the prosecutor. Because the accomplice in that case while called to the witness stand invoked his privilege against self incrimination and refused to answer questions put to him "we held that the defendant's" inability to cross-examine the accomplice as to the alleged confession plainly denied him the right of cross-examination secured by the confrontation clause. See *Bruton v U. S.* 391 U. S. 123 (1968)

Here Rondell Knight invoked his fifth amendment right against self-incrimination. The State sought to introduce Knight's statement given to the police only hours after his arrest, and while under questioning into evidence under Rule 804(b)(3) SCRE - A statement against peril interest. Trial Counsel objected to the admission of this statement, but he did not object under the sixth amendment grounds, *Crawford v Washington* grounds or under *Douglas v Alabama* grounds. The Statement was clearly inadmissible under these grounds, one it was error on the part of trial counsel. Counsel's ignorance of the applicable substantive or procedural law may constitute ineffective assistance of counsel, see, for example, *Murdock v State* 311 S.C. 16 426 S.E. 2d 740 (1992).

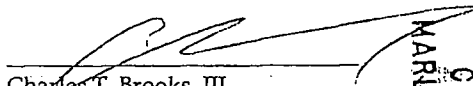
Applicant was prejudiced by counsel's deficient performance in the statement of Knight which was admitted into evidence. Knight stated that Maurice, the decedent, never had anything in his hands when he was walking up tr. pg. 363 lines 24-25. If the jury had accepted this statement as true in the absence of any cross examination of this witness then applicant's self defense claim would have been damaged. To establish self defense in South Carolina, four elements must be present, one of them is "defendant must show that reasonably prudent

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 MARLBOROUGH COUNTY, S.C.

person of ordinary firmness and courage would have entertained the belief that he was actually in eminent danger and that circumstances were such as would warrant a person of ordinary prudence firmness and courage to strike the fatal blow in order to save himself from bodily harm or loss of life. See State v Burkhart 350 S. C. 252, 565 S.E. 2d 298 (2002), State v Slater 373 S.C. 66, 644 S.E. 2d 50 (2007).

The statement made by Rondell Knight would have disproved applicant's self defense theory, that's why it was so important that trial counsel objected to its inadmissibility on sixth amendment grounds which as shown above would have barred it from being admitted. Moreover on page 9 of applicant's Final Anders Brief his appellate counsel noted in the footnote that counsel made no objection to the statement under Crawford v Washington which is why applicant's direct appeal was without legal merit because the issue of merit was never preserved further prejudicing him. Applicant all in all was denied a fair trial.

RESPECTFULLY SUBMITTED ON BEHALF OF
APPLICANT, Brandon L. Ray.


Charles T. Brooks, III
Attorney for Applicant
309 Broad Street
Post office Box 3512
Sumter, South Carolina, 29150
(803) 418-5708

December 12, 2011

2011 DEC 14 PM 1 29
FILED
WILLIAM B. FUNDERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

THE STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOURTH JUDICIAL CIRCUIT
COUNTY OF MARLBORO)	
)	2010-CP-34-0303
BRANDON L. RAY)	
)	
PLAINTIFF)	PCR HEARING
VERSUS)	
)	
THE STATE OF SOUTH CAROLINA)	SEPTEMBER 10, 2012
)	
DEFENDANT)	
)	
)	
)	

BEFORE

THE HONORABLE J. MICHAEL BAXLEY

APPEARANCES

Charles T. Brooks, Esquire
ATTORNEY FOR THE APPELLANT

T. Andrew Johnson, Sr., Esquire
ATTORNEY FOR THE STATE

Pamela Ozment-Cartee
Circuit Court Reporter

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WITNESSES

WITNESS	DIRECT	CROSS	REDIRECT	RE-CROSS
Brandon L. Ray	05	10		
Michael Holt	21	24		

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Certificate of Reporter Page 33

BRANDON L. RAY V VERSUS THE STATE OF SOUTH CAROLINA

3

1 (Whereupon, this hearing began at 10:22 a.m.
2 on Monday, September 10, 2012.)

3 **THE COURT:** All right. Sir, are you Mr. Brandon L.
4 Ray?

5 **MR. RAY:** Yes, sir.

6 **THE COURT:** All right. Mr. Ray, welcome to the
7 courtroom again. I am Judge Baxley. And we are here today
8 because you filed a post conviction relief claim. Are you
9 ready to go forward, sir?

10 **MR. RAY:** Yes, sir.

11 **THE COURT:** All right. Have you had enough time with
12 Mr. Brooks to prepare for today's hearing?

13 **MR. RAY:** Yes, sir.

14 **THE COURT:** All right. What we are going to do is,
15 we are going to start with a hearing from the State the
16 history, the procedural history of what happened in your
17 case, and how we came to be here today. And then we will
18 turn the matter over for you to put up your case. All
19 right. So, please go ahead, Mr. Johnson.

20 **PROCEDURAL HISTORY**

21 **MR. JOHNSON:** Your Honor, this is Brandon Ray
22 versus South Carolina. It is 2010-CP-34-303. Mr. Ray was
23 indicted for murder, possession of a weapon during a violent
24 crime. And was represented by Michael S. Holt, who I
25 understand is headed to the courtroom now.

BRANDON L. RAY V VERSUS THE STATE OF SOUTH CAROLINA 4

1 He proceeded to trial on September 2007 before Howard
2 P. King, Judge King. And was convicted and sentenced to
3 twenty years concurrent -- I'm sorry, two concurrent terms
4 of twenty-two years. And then five additionally on the
5 firearms charge.

6 THE COURT: And that five-years was consecutive?

7 MR. JOHNSON: That is my understanding, Your Honor.
8 Yes, sir.

9 THE COURT: Very good.

10 MR. JOHNSON: He filed notice of intent to appeal --

11 MR. BROOKS: Object --

12 THE COURT: We will come back to you. Go ahead.

13 MR. JOHNSON: The appeal was dismissed January 4,
14 2010. He filed his PCR action November 1, 2010. And he is
15 represented today by Mr. Charles Brooks.

16 THE COURT: All right. Thank you. And, Mr. Brooks,
17 tell me, is there some objection to the history given?

18 MR. BROOKS: The only thing my client indicated was,
19 his time was concurrent. It wasn't consecutive.

20 THE COURT: All right. Any other objection to the
21 history?

22 MR. BROOKS: No, sir.

23 THE COURT: All right. Then with that understanding,
24 if you are ready to go forward, please call your first
25 witness.

BRANDON L. RAY - DIRECT EXAMINATION

1 MR. BROOKS: We would call Mr. Ray to the stand.

2 THE COURT: Please come forward and take the oath of
3 a witness, Mr. Ray.

4 WHEREUPON, BRANDON L. RAY

5 AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS

6 MR. RAY: I do.

7 MR. BROOKS: Judge, I have some notes for my client.

8 THE COURT: All right. Thank you.

9 DIRECT EXAMINATION BY MR. BROOKS

10 Q. Mr. Ray, how are you today?

11 A. I'm doing alright, sir.

12 Q. I want to make sure you speak up for that lady sitting
13 right there under you. She is the court reporter, and
14 she has to take down everything that you say. So, you
15 can't just nod your head, say uh'huh and uh'huh, like
16 we were sitting back there. You have to speak up and
17 say yes, no, do you understand that?

18 A. Yes, sir.

19 Q. Okay. Now, Brandon, you had Michael Holt represent
20 you; is that correct?

21 A. Yes, sir.

22 Q. And was he court appointed?

23 A. Yes, sir.

24 Q. Okay. Now, do you recall how long you talked to him
25 prior to your case going to trial?

BRANDON L. RAY - DIRECT EXAMINATION

6

1 A. I talked to him like, a hour or so before the trial.

2 Q. Now, do you understand what post conviction relief is.

3 You had the opportunity to talk with me, and you
4 obviously heard the Judge's general explanation at the
5 beginning of this morning; is that correct?

6 A. Yes, sir.

7 Q. And do you understand that if you win your post
8 conviction relief, the remedy is to start over and get
9 a new trial?

10 A. Yes, sir.

11 Q. And, of course, you know that could be good and that
12 could be bad. Do you understand that?

13 A. Yes, sir.

14 Q. And you told me it is still your desire to try to get a
15 new trial; is that correct?

16 A. Yes, sir.

17 Q. Now, you have indicated to me that you have one issue
18 about Mr. Holt's representation; is that correct?

19 A. Yes, sir.

20 Q. Tell the Judge what that was.

21 A. How the appellate above --- I mean --- for a mention a
22 matter respectfully before the honorable court --

23 **THE COURT:** Hang on a second now and let's back up a
24 minute. Let's do this. How about -- Madame Court Reporter,
25 can you push that Mic. a little bit closer, and if you can

1 get closer to the microphone. And rather than reading to
2 me, because I know you may have something prepared that you
3 want to say. What I would like for you to do is, I am going
4 to let you speak from your heart and tell me what you think
5 was wrong, and then we will let your lawyer put it into
6 legal terms. Fair enough?

7 **MR. RAY:** All right.

8 **THE COURT:** All right, sir. Go ahead, and speak up
9 so we can all hear you. Is that microphone on? Can you
10 turn the volume up a little bit, Teresa. All right, sir.
11 Go ahead.

12 A. At trial, my co-defendant Randall Knight, he had plead
13 the fifth against self-incrimination. And, that's what
14 he got on the --- he didn't get on the stand. And the
15 prosecution -- do you know what I'm saying ---
16 therefore sought to introduce the statement into
17 evidence.

18 **THE COURT:** Speak into that microphone. There you
19 go.

20 A. He had basically sought to introduce the statement into
21 evidence upon the like -- upon the hearsay exception,
22 and unavailable as a witness. And at the same time
23 that they read the statement at trial, I didn't have a
24 chance to confront that statement in violation of my
25 civil right sixth amendment to the confrontation

BRANDON L. RAY - DIRECT EXAMINATION

8

1 clause. I never had a chance to confront this
2 statement or anything that was mentioned in this
3 statement, period. Do you know what I'm saying? And
4 it deprived me of a fair trial all in all because my
5 lawyer when he objected to the statement, he objected
6 upon the grounds that was inadmissible to me. Do you
7 know what I'm saying? He didn't objected to the
8 inadmissible --- He objected to the admissibility of
9 the statement, but he didn't object up under the
10 hearsay --- under the hearsay exception.

11 **THE COURT:** All right. Thank you.

12 Q. Let me ask you this. Let me help you out. What was
13 --- What was it that your co-defendant said? What was
14 the statement?

15 A. Well, he said like, that the victim didn't never have
16 anything in his hands when he was walking up which
17 effected my self-defense claim. And he also said some
18 things in there that he --- that stuff that he said
19 that I said, that I couldn't confront, and that made me
20 --- that painted a picture of me as -- as --- as a ---
21 as a bad person. You know what I'm saying? Or, stuff
22 that I wasn't able to confront my end chance at all.

23 Q. Okay. So, the police was able to say what Mr. Knight
24 had said; is that right?

25 A. Yes, sir.

1 Q. And, it is your position that that should have been
2 objected to by your lawyer?

3 A. Upon Crawford v Washington.

4 Q. Which is a sixth amendment?

5 A. That what you said.

6 Q. Because you didn't have the opportunity to cross
7 examine, and confront Mr. Knight, is that correct?

8 A. Yes, sir.

9 Q. Okay. And Mr. Knight, he had plead the fifth and not
10 taken the stand; is that correct?

11 A. Yes, sir.

12 Q. Okay. And, you felt that that prejudiced you in your
13 case; is that correct?

14 A. Yes, sir.

15 Q. And, your argument was not whether or not you did it,
16 but your argument was that it was self-defense?

17 A. Yes, sir.

18 Q. Okay. And you felt that that statement coming in hurt
19 your self-defense argument to the jury?

20 A. Yes, sir.

21 Q. Okay. If that statement had not come in, you feel
22 confident the jury may have agreed with the self-
23 defense; is that correct?

24 A. Yes, sir.

25 Q. Okay. It would have changed the outcome of the trial?

BRANDON L. RAY - CROSS EXAMINATION

10

1 A. Yes, sir.

2 Q. Okay. Now, is that your issue as far as Mr. Holt's
3 representation of you?

4 A. Yes, sir.

5 Q. As a matter of fact, you talked about it, I asked you,
6 is there any other issue, and you said no, that's it.

7 A. That's it.

8 Q. Is that correct?

9 A. Yes, sir.

10 Q. Okay. Now, I want to make sure we get everything out.
11 We are here in front of Judge Baxley and the Attorney
12 General. Is there anything else that you want to tell
13 other than this issue that we just talked about?

14 A. No, sir.

15 Q. Okay.

16 **MR. BROOKS:** No further questions.

17 **THE COURT:** All right. Is there cross examination?

18 **MR. JOHNSON:** Yes, Your Honor.

19 **CROSS EXAMINATION BY MR. JOHNSON**

20 Q. Mr. Ray, based on the questions that your lawyer asked
21 you, it is my understanding that you want a new trial;
22 is that correct?

23 A. Yes, sir.

24 Q. And your max out is currently August of 2025; is that
25 right?

1 A. Yes, sir.

2 Q. And, you are willing to give that up?

3 A. Yes, sir.

4 Q. Why is it that you think a jury would find you not
5 guilty the second time around?

6 A. Because, sir, I think that by my co-defendant statement
7 being introduced and without me having been in jail ---
8 and not being able to confront the statement, and like
9 the language and some of the stuff they mentioned in
10 the statement, I didn't have a proper chance to put up
11 the proper defense. And really, it was unfair to me at
12 trial, and I know --- I know that I feel like in my
13 heart that the jury would have found a different
14 verdict if not my co-defendant statement wouldn't been
15 read to the jury, without my chance to confront.

16 Q. All right. So, the statement came in. And somehow you
17 feel that you didn't have the ability to attack that
18 statement?

19 A. Yes, sir.

20 Q. But, couldn't your lawyer attack that statement as it
21 came in at trial?

22 A. He was not able to attack what my co-defendant said,
23 because he wasn't there himself to able --- do you know
24 what I'm saying, to be able do you understand to answer
25 the question or what he could have been put on cross

BRANDON L. RAY - CROSS EXAMINATION

12

1 examination, and they could have, --- the truth of what
2 he was saying could have been brought out. He could
3 have been cross examined to see what was going on.

4 Q. All right. But now isn't this also the same issue that
5 you raised on appeal when you did your direct appeal?

6 A. I also --- It was raised on direct appeal but it also
7 states to where --

8 Q. I'm sorry, sir. I didn't hear that last statement.

9 A. I say --- I say can I read something off my paper, off
10 my notes?

11 **THE COURT:** Yes, sir. You can. Go ahead.

12 A. The statement made by Randell Knight would have
13 disapproved appellate self-defense on my appellate
14 self-defense theory. That is why it was so important
15 that trial counsel object to the admissibility on the
16 sixth amendment ground which is showed above, would
17 have barred it from being admitted. If appellate filed
18 an Ander's Brief, his appellate counsel noted in the
19 footnote, that counsel made no objection to the
20 statement under Crawford versus Washington, which is
21 why appellate direct appeal was without leave of
22 verdict, because the issue of verdict was never
23 preserved as far as proving him appellate all and all
24 was not a fair trial.

25 Q. I may need you to help me understand, if you could boil

1 that down in your own words, help me understand what
2 you mean.

3 A. Like by my lawyer --- by my lawyer --- by my lawyer
4 objecting --- by my lawyer objecting to the
5 admissibility of the statement, he didn't object to it
6 upon the sixth amendment grounds which would have got
7 their statement acquitted. All in all if he had the
8 statement acquitted all together, then all he did was
9 change like, some of the language that was in the
10 statement, he didn't change like, whether it been under
11 the sixth amendment to the confrontation clause.

12 Crawford versus Washington. Douglas versus Alabama,
13 which would have gotten the statement all the way ---
14 It would have taken the statement all the way out.

15 Q. Now, a couple of the questions that Mr. Brooks asked
16 you were pertaining to self-defense, and you had the
17 defense of self-defense in this case?

18 A. Yes, sir.

19 Q. But, isn't it true that Mr. Holt obtained a self-
20 defense charge for you in the judge's charge to the
21 jury?

22 A. Yes, sir.

23 Q. So, the jury had the ability to consider whether or not
24 this would have been a situation for self-defense to
25 prevail.

BRANDON L. RAY - CROSS EXAMINATION

14

1 A. I'm not --- I'm not saying that --- that my lawyer
2 didn't put up a self-defense claim, or that I'm saying
3 that by that statement being admitted into the
4 evidence, being read to the jury while me being able to
5 properly confront that statement affected my self-
6 defense claim.

7 **MR. JOHNSON:** Your Honor, could I have a brief
8 moment to confer with Judge Holt?

9 **THE COURT:** Yes, sir. Go ahead, please.

10 **(PAUSE.)**

11 **THE COURT:** And while we are doing that, let me ask.
12 There are some members of the McRae family who are present,
13 I believe. Could you give us your names please, so our
14 record will reflect who is here, please? Tell me sir, your
15 name.

16 **MR. MCRAE:** Charles McRae.

17 **THE COURT:** All right, sir. And are you the father
18 of Mr. McRae?

19 **MR. MCRAE:** Yes, sir.

20 **THE COURT:** All right. Welcome to the courtroom.

21 **MR. MCRAE:** Thank you.

22 **THE COURT:** And, ma'am, please tell me your name.

23 **MS. MCRAE:** Patricia McRae, the mother.

24 **THE COURT:** All right, thank you, ma'am.

25 **MS. MCRAE:** Schrae McRae, his sister. (Phonetic.)

1 THE COURT: And tell me your first name, please?

2 MS. MCRAE: Schrae.

3 THE COURT: Ms. Schrae McRae. All right. And,
4 ladies and gentlemen, welcome to the courtroom.

5 (PAUSE.)

6 MR. JOHNSON: Your Honor, if I might proceed?

7 THE COURT: Yes, sir. Go ahead.

8 Q. Mr. Ray, it is my understanding that --- And your claim
9 is that you were prejudiced by the co-defendant's
10 statement. But, your attorney objected to that
11 statement at the time it was offered didn't he?

12 A. Yes, sir. I'm not -- I'm not -- I'm not disputing
13 that, sir.

14 Q. All right. So, he made the objection, yes? And then
15 the Court simply disagreed with him?

16 A. Yes, sir. Can I -- Can I -- Can I speak as far as upon
17 that?

18 Q. Yes, sir. If it will help explain your answer.

19 A. During the trial when the state first tried to
20 introduce the statement, the Court inquired as to what
21 was counsel's position. And really the part the trial
22 counsel said, this is all happening kind of fast. I'm
23 not -- I'd like to be able to do at least a little bit
24 of research on the issue. On transcript page 302 line
25 11 through 16, it is clear from the statement that

BRANDON L. RAY - CROSS EXAMINATION

16

1 trial counsel was ignorant of the appellate law in that
2 area. The morning the state argue under South
3 Carolina Rules of Evidence 804(a)(1) Randall Knight was
4 unavailable as a witness and therefore the statement is
5 admissible, and not hearsay under Rule 804(b)(3), which
6 is statement against interest.

7 Q. So, he was making a legal justification for his
8 objection; is that right?

9 A. Yes, sir.

10 Q. All right. But now on top of objecting to this
11 statement, and being overruled, the judge ruled against
12 him, he also made a motion --- he moved for a direct
13 verdict at the close of the evidence, and thereby
14 renewed his motions and preserved this objection for
15 appeal, didn't he?

16 A. Yes, sir.

17 Q. And this was the basis of your appeal to the Court of
18 Appeals, wasn't it?

19 A. You say -- Can you repeat that one more time for me,
20 sir?

21 Q. Yes, sir. This was the basis for your appeal of this
22 issue to the Court of Appeals, wasn't it?

23 A. Yes, sir.

24 Q. And, the Court of Appeals has ruled on this issue as
25 well; is that right?

1 A. Sir, and that's what --- and that's what I was saying
2 as far --- right there. I don't understand why it was
3 -- I don't understand -- that's when I was saying the
4 statement made by Randall Knight would have to approve
5 my appellate self-defense theory. Do you understand
6 what I'm saying? I'm not saying that he didn't raise
7 an issue or preserve --- What I'm saying --- what I'm
8 saying is, he went about arguing it the wrong way. He
9 didn't --- he didn't --- he didn't object to it up
10 under Crawford versus Washington grounds, my right to
11 confront testimony clause up under the sixth amendment.
12 Or Douglas versus Alabama grounds, he didn't make no
13 sustained and as far as proving me on my direct appeal,
14 because my lawyer could not get on the stand --- Do you
15 know what I'm saying --- To make a proper argument as
16 to obtain what was going on as far as dealing with the
17 issue.

18 Q. All right. So, if I were to agree that there had been
19 some measure of ineffectiveness, would you explain how
20 this could have prejudiced your case, moving on to that
21 second prong. How would this have prejudiced your case
22 at that time?

23 A. It affected the whole outcome of the trial, because it
24 affected my sixth amendment --- it affected my self-
25 defense theory. He saying by my co-defendant, his

BRANDON L. RAY - CROSS EXAMINATION

18

1 statement saying that he never seen the victim have
2 anything in his hand when walking up, and then what you
3 have to prove. Also I got --- do you know what I'm
4 saying --- where the state's appellate proved by
5 counsel's performance --- deficient performance in
6 statement of Knight which was admitted into evidence
7 when Knight stated that Maurice the decedent never had
8 anything in his hands when he was walking up.

9 Transcript page 363 lines 24 through 25. If the jury
10 had accepted this statement as true in the absence of
11 any cross examination of the witness. Then, I, the
12 applicant self-defense claim would have been damaged.
13 To establish self-defense in South Carolina, four
14 elements must be present. One of them is, defendant
15 must show that reasonable prudent person of ordinary
16 firmness and courage would have entertained the belief
17 that he was actually in eminent danger, and that
18 circumstances were such as would warrant a person of
19 ordinary prudence, firmness, ad courage to strike the
20 fatal blow in order to save himself from bodily harm or
21 loss of life. See State --

22 **THE COURT:** Let me stop you there from just reading
23 to us. We are familiar with the elements of self-defense
24 which is what you are talking about.

25 **MR. RAY:** Yes, sir.

1 THE COURT: Any further questions?

2 MR. JOHNSON: Yes, just one or two more, Your Honor,
3 actually.

4 THE COURT: All right, sir. Go ahead.

5 Q. There were many witnesses that testified against you,
6 not just this one witness, not just your co-defendant.
7 So, how would your outcome have been different with
8 this multitude of witnesses who testified against you
9 if you were able to somehow able to change the
10 testimony of the co-defendant through his statement.

11 A. All the witnesses --- Even the witness --- It was
12 another witness by the name of Walter Blake, that was
13 there like when the incident that was there. He even
14 said that I didn't even say nothing. I never said
15 nothing to the decedent. I never acknowledged
16 anything. I never --- I was treated and I left. And
17 my co-defendant statement, in Randall Knight statement,
18 he said that me and the victim was arguing, which
19 started a conflict --- do you understand --- where
20 there was two different testimonies given. Do you
21 understand? So, it is clearly -- clear that he was
22 painting the wrong type of picture at the outcome of
23 the trial.

24 THE COURT: Anything further?

25 MR. JOHNSON: I think that is it, Your Honor.

1 AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS

2 MR. HOLT: I do.

3 THE COURT: Thank you. Welcome, Mr. Holt.

4 DIRECT EXAMINATION BY MR. BROOKS

5 Q. Judge Holt, Mr. Holt?

6 A. Mr. Holt will be fine.

7 Q. All right. Mr. Holt, you represented Mr. Ray, is that
8 correct?

9 A. Yes, sir, I did.

10 Q. Can you give a brief summary of what the state's case
11 was against him?

12 A. A brief summary of the state. They charged him with
13 murder.

14 Q. As far as what the evidence was that you recall?

15 A. Best memory, physical evidence I don't --- if there is
16 something in particular you are referring to, I will be
17 happy to respond to that. But, physical evidence, they
18 do not --- they do not --- I don't believe or my memory
19 is that they did not retrieve a weapon that I recall.
20 The decedent was found at the apartment complex where
21 he died. Does that answer your question?

22 Q. Somewhat. Do you remember the co-defendant in this
23 case, who was also charged, Mr. Knight?

24 A. There was a young man who was the driver of the
25 vehicle, I think he was the co-defendant, yes, sir.

MICHAEL HOLT - DIRECT EXAMINATION

22

1 Q. And do you recall a statement that he had given to law
2 enforcement?

3 A. Yes, sir.

4 Q. And, that individual never testified in court; is that
5 correct?

6 A. That is my understanding.

7 Q. Yet, the police were able to testify about his
8 statement?

9 A. Yes, sir.

10 Q. Okay. Do you recall if you objected to it?

11 A. My memory is that we objected to the statement coming
12 in, yes, sir.

13 Q. Do you recall the grounds that you objected under?

14 A. Specifically, no.

15 Q. So, basically, you would rely on whatever the
16 transcript indicated; is that correct?

17 A. Yes, sir.

18 Q. That statement came in and you guys put up a self-
19 defense case; do you recall that?

20 A. Yes, sir, we argued self-defense.

21 Q. Okay. And, that statement, do you recall that
22 statement being prejudicial to the argument of self-
23 defense?

24 A. It is difficult to remember all of the intricacies of
25 the trial as it was evolving and happening. But, I do

1 believe that the statement we tried to keep it out,
2 because we were concerned that it would nullify or
3 diminish the argument of self-defense.

4 Q. So, you don't recall even objecting to it on sixth
5 amendment rights?

6 A. I don't recall.

7 Q. And again, this case was tried about five years ago?

8 A. I think memory is 2007, roughly about. Maybe summer or
9 fall of 2007.

10 Q. And do you recall most of the other witness' testimony,
11 whether or not that helped or hurt the self-defense
12 argument?

13 A. The other witnesses that testified --- there were a
14 number of witnesses who were at the apartment complex
15 the day of this incident. And, each witness had a
16 different perspective, and it seems like several
17 witnesses, their testimony would have contradicted
18 self-defense. In other words, they didn't help the
19 self-defense argument.

20 Q. Okay. Is it your recollection that some of the
21 statements --- I mean, some of the witnesses
22 contradicted the self-defense argument, or is it all of
23 them, or some of them?

24 A. I can't remember.

25 Q. Okay. But it has been a while. In fairness, it has

MICHAEL HOLT - CROSS EXAMINATION

24

1 been a while. But, obviously, Mr. Knight, his co-
2 defendant that mitigated the problem with self-defense;
3 is that correct? If you recall.

4 A. I think it did effect our argument, but it didn't
5 preclude us from arguing it.

6 MR. BROOKS: Beg the Court's indulgence, Your Honor.

7 (PAUSE.)

8 MR. BROOKS: No further questions.

9 THE COURT: Nothing further. Is there cross
10 examination?

11 MR. JOHNSON: Yes, Your Honor.

12 THE COURT: All right. Go ahead.

13 CROSS EXAMINATION BY MR. JOHNSON

14 Q. Judge Holt, you objected to this statement that you
15 were just asked about at trial; is that correct?

16 A. Yes, sir, that is my memory.

17 Q. And based on your memory of this case, which is several
18 years ago, was there anything else you could have done
19 to exclude this statement from the jury?

20 A. Being so long ago, I don't know what else. I know that
21 we objected and tried to do the best we could with what
22 we had to work with.

23 Q. Did you know that the statement existed before the
24 trial began?

25 A. Yes, sir.

1 Q. And you discussed this with your client?

2 A. Yes, sir.

3 Q. And he was aware of the risks and dangers of this
4 statement?

5 A. I don't remember who the co-defendant's lawyer was, but
6 we were not sure if he would testify or not. I was
7 more concerned about him taking the stand and offering
8 testimony that might create further problems for my
9 client. And in hindsight, the statement was the
10 lesser of two evils, at least from a trial strategy
11 standpoint.

12 Q. Did you develop a trial strategy that would have dealt
13 with either contingency no matter which one occurred?

14 A. Yes, sir, I think with that witness as well as we
15 incorporated all of the anticipated witnesses into our
16 trial strategy.

17 Q. Okay. Was there anything else that you feel that you
18 could have done to keep out this statement?

19 A. I don't know what else we could have done.

20 MR. JOHNSON: All right. Thank you, Your Honor.

21 THE COURT: Any redirect?

22 MR. BROOKS: No more questions, Judge.

23 THE COURT: All right, very good. Any objection to
24 the release of Judge Holt?

25 MR. JOHNSON: No, sir.

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1 **MR. BROOKS:** No, no objection.

2 **THE COURT:** Sir, thank you for being here. You are
3 free to go.

4 **MR. HOLT:** Thank you, Your Honor.

5 **THE COURT:** Have a good day. All right. Are there
6 further witnesses for the applicant?

7 **MR. BROOKS:** That is the applicant's case, Judge.

8 **THE COURT:** All right. Applicant rest. Are there
9 witnesses for the state?

10 **MR. JOHNSON:** Nothing further, Your Honor.

11 **THE COURT:** All right. Let me ask in argument, Mr.
12 Brooks, what evidence, or what law do you have that would
13 take the position to have a Crawford v Washington appeal or
14 objection being raised specifically at the time the
15 statement was introduced that that would have been a
16 successful effort to keep the statement out?

17 **MR. BROOKS:** Judge, I am going to have to ask you.
18 Can you repeat that again?

19 **THE COURT:** Well, what your client has basically
20 raised, Mr. Ray has said that although there was an
21 objection, it was not under Crawford v Washington, and he
22 refers specifically to the footnote, which was raised by the
23 appellate defender who assisted him in prosecuting his
24 appeal. And said, there was no objection under Crawford v
25 Washington. Now, there was an objection to the statement

1 on other grounds. The South Carolina Supreme Court ---
2 excuse me. The South Carolina Court of Appeals did not find
3 that to be a meritorious argument, because the objection was
4 raised. So, what law do you have that would show that the
5 Court of Appeals got that wrong, or that an objection under
6 Crawford v Washington would have been successful in stopping
7 that statement from coming in, had it been specifically
8 raised at trial?

9 **MR. BROOKS:** As opposed to the general objection
10 raised by trial court?

11 **THE COURT:** I am looking for some law that would
12 support your theory that there would have been a difference
13 had a Crawford v Washington objection been raised.

14 **MR. BROOKS:** And, Judge, as far as any specifics to
15 the law as to whether or not the objection should have --
16 the objection would have been sustained, if the trial
17 attorney had made the specific request, I have to tell the
18 Court that I don't have anything specific to show Your
19 Honor. I would say that more often than not, my experience
20 of trying a case in front of Judge King is that he will ask
21 you what is the specific objection that you have. And the
22 trial attorney says, this is my specific objection.
23 Something other than Crawford v Washington, Judge King would
24 not have taken it under consideration. And that is what ---
25 that is what I am relying on, because I have tried many

BRANDON L. RAY VERSUS THE STATE OF SOUTH CAROLINA 28

1 cases in front of Judge King. I know he will ask you, what
2 is your objection? Then he is not going to just basically
3 assume that your objection should be sustained and how do I
4 say it, do the work for you, judge. You have to basically
5 say, I am objecting under the sixth amendment --- the fact
6 that this violates the confrontation clause under the sixth
7 amendment. And from that standpoint from my experience, I
8 know that Judge King would take that into consideration.
9 And it is my client's contention that obviously if that had
10 been raised at the trial level, then it more than likely ---
11 his position is that it would have been granted. And, had
12 it not been granted, it would have been preserved more
13 effectively on appeal.

14 **THE COURT:** All right. Thank you. Just one moment,
15 please.

16 Do you want to be heard on that, Mr. Johnson. The
17 Court doesn't require it, but if you want to respond you
18 may.

19 **MR. JOHNSON:** If I might, Your Honor. The applicant
20 is essentially seeking to be reheard on his appeal, because
21 this was an appeal issue.

22 When counsel made the objection below, under Rule 403,
23 the key argument here is that the prejudice would have
24 outweighed any potential probative value that the statement
25 would have made. And we think this necessarily brings in

1 Crawford. Counsel would not have had to say I object under
2 Crawford. Counsel merely had to say, we object, because
3 this is a prejudicial statement. There is a host of cases
4 that fall under Rule 403. Counsel would never be required
5 to state specifically the case that he or she is referring
6 to. We think that counsel made an effective objection, and
7 the Court simply disagreed. The applicant is here
8 disagreeing with what the trial court, and disagreeing with
9 what the appellate court did.

10 And, further, if you read the appellate opinion, it
11 doesn't say that the counsel below failed to lodge the
12 proper objection. It doesn't say that. And it was an
13 Ander's Appeal. So, the Court very well may have reviewed
14 the record in its entirety, and *sua sponte* may have said, if
15 they had believed this was the case, they could have said
16 that counsel was ineffective, or counsel failed to raise a
17 proper appeal, and this never happened.

18 So, we think this is clearly a case where the
19 conviction should stand, and there is no ineffective
20 assistance of counsel based on the testimony that the Court
21 has heard.

22 **THE COURT:** Very good. Then the Court is prepared
23 to rule at this time, and this is the ruling.

24 What I am going to ask is that the attorney general
25 prepare an order in this matter, and that they do so within

BRANDON L. RAY VERSUS THE STATE OF SOUTH CAROLINA 30

1 thirty days of today's date.

2 And this is the Court's ruling. And Mr. Ray, basically
3 you raised the issue that your lawyer below failed to object
4 under Crawford v Washington, which is a very narrow claim
5 that you have made, because your lawyer did object. That
6 was overruled by the Court. The statement came in. And
7 then that matter taken up on appeal, and the Court of
8 Appeals dismissed your appeal. In other words, what we call
9 an Ander's Brief, another way to say that is, they found
10 there were no meritorious appeal issues before them after
11 reviewing the entire record. In other words, they did not
12 support your argument that if Crawford versus Washington
13 specific objection would have made a difference below. And
14 also, your lawyer today has brought in no law, and the
15 reason he hasn't is, because there is no law that would
16 simply say, had this been raised under this specific case,
17 an objection under the sixth amendment and the confrontation
18 clause, that the outcome would have been different.

19 So, without that law today, the Court finds that you
20 failed on that argument.

21 But there is one other thing that was brought out by
22 Mr. Holt in his testimony, is that there was, and this Court
23 finds that there was a trial strategy in this. And although
24 he objected and then preserved the issue for appeal, he
25 actually got for you the best of both worlds, because had

1 that co-defendant came in and testified, because his own
2 liberty was at risk when he was testifying, he could have
3 done you much more damage than the statement would have
4 done. And, thus, you have got, according to counsel, at
5 least the Court perceives it, you got the best of both
6 worlds. This was cumulative evidence. It was not the sole
7 evidence against you on the issue of self-defense.

8 And for all these reasons, the Court finds that you
9 failed to meet either prong of PCR requirements. Which
10 is number one. That your lawyer's performance was
11 deficient, because I don't find that it was. And
12 secondly, that you were prejudiced, because I don't
13 find that you were.

14 Now, you can appeal this decision. But this is how
15 the process works. I am going to ask the attorney
16 general within thirty days, as I said when I started, to
17 prepare an order and send me a written order. When I sign
18 that written order, which is going to memorialize what I
19 just said to you, and we serve it on your lawyer, you have
20 thirty days from that date to file an appeal. Not from
21 today. So, your times does not even begin to run until that
22 future date. And, do you understand that, Mr. Ray?

23 **MR. RAY:** Yes, sir.

24 **THE COURT:** All right, sir. Then that is the
25 decision of the Court.

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1 And good luck to you, sir. I am going to return you
2 now to the Department of Corrections.

3 (Whereupon, this hearing was concluded at
4 11:02 a.m. on Monday, September 10, 2011.)

5 -- END OF TRANSCRIPT --

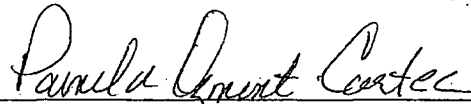
CERTIFICATE OF REPORTER

33

I, the undersigned, Pamela Ozment-Cartee, official Court Reporter for the Fourth Judicial Circuit of South Carolina, do hereby certify, that the foregoing is a true, accurate and complete Transcript of Record in the above captioned case, relative to appeal, in The Court of General Sessions in Marlboro County, South Carolina, on the 10th day of September 2012.

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

April 5, 2013



Pamela Ozment-Cartee
Circuit Court Reporter

STATE OF SOUTH CAROLINA)
)
 COUNTY OF MARLBORO)
)
 Brandon Laquan Ray,)
 S.C.D.C. No. 305499,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOURTH JUDICIAL CIRCUIT

Case No.: 2010-CP-34-0303

**ORDER DENYING
 POST CONVICTION RELIEF**

2012 DEC 6 PM 11:45
 WILLIAM B. FURBER
 CLERK OF COURT
 MARLBORO COUNTY, S.C.

FILED

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed November 1, 2010. Respondent made a timely Return. The Court convened an evidentiary hearing into the matter on September 10, 2012, at the Darlington County Courthouse. Applicant was present at the hearing and represented by Charles T. Brooks, III, Esquire. Tyson Andrew Johnson, Sr., Esquire, of the South Carolina Attorney General's Office represented Respondent.

J.B.

At the hearing, Applicant testified on his own behalf. Also testifying was the Honorable Michael S. Holt, Esquire, now a judge of the Family Court, who served as trial counsel for Applicant. This Court had before it the PCR Application, the State's Return, the records of the County Clerk of Court, the transcript, and Applicant's records from the South Carolina Department of Corrections.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Marlboro County Clerk of Court's orders of commitment. The Marlboro County Grand Jury indicted Applicant at the July 2007 term of General Sessions for murder (2007-GS-34-0657) and

possession of a weapon during commission of a violent crime (2007-GS-34-0658). Michael S. Holt, at that time a practicing attorney, represented Applicant on these charges. For simplicity and clarity, Judge Holt is referred to hereinafter as "counsel."

After the State called the case to trial, Applicant was found guilty of voluntary manslaughter and the weapons charge. On September 13, 2007, the Honorable Howard P. King sentenced Applicant to concurrent terms of twenty-two (22) years for voluntary manslaughter and five (5) years for possession of a weapon during commission of a violent crime.

A notice of appeal was filed at the South Carolina Court of Appeals. Robert M. Dudek, Esquire, of the South Carolina Office of Appellate Defense perfected the appeal in the form of an Anders¹ brief. The Court of Appeals dismissed the appeal. State v. Ray, Op. No. 2010-UP-089 (Ct. App., filed February 3, 2010).

ALLEGATIONS

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

Jr

1. Ineffective assistance of counsel:
 - a. Failed to raise a confrontation clause issue.
 - b. Failed to properly challenge the co-defendant's statement.
2. Prosecutorial misconduct.

FILED
 2012 DEC 6 AM 11 48
 WILLIAM B. FUNDERS
 CLERK OF COURT
 MARLBORO COUNTY, S.C.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. The Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of

¹ Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

law as required pursuant to S.C. Code Ann. § 17-27-80.

Statement of the Law on Ineffective Assistance of Counsel

In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland, supra). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

Applicant's claim that he was not allowed to confront his co-defendant

Applicant testified his counsel was ineffective because he failed to suppress the written statement of co-defendant Rondell Knight that the State sought to introduce into evidence. The statement opined that the victim had nothing in his hands at the time of this incident, allegedly damaging Applicant's claim of self-defense. Applicant argued that as a result, he never had the ability to confront the statement. Applicant further averred that had the statement not been admitted as evidence, a jury would have likely found him not guilty. The Court finds this argument as to what the jury would have done both speculative and self-serving.

On this point, counsel testified regarding the co-defendant's statement, that he objected to its admission; however, the trial court overruled the objection. Applicant further argued counsel's objection to the statement was not sufficiently specific in that counsel failed to cite the case of *Crawford v. Washington*, 541 U.S. 36 (2004) concurrently with his objection. The Court finds this argument unpersuasive.

JB
4

On the issue of the statement of the co-defendant, although he interposed an objection, counsel testified he was more concerned about the possibility of the co-defendant taking the stand, as his proposed testimony was much more damaging than the statement. In this case, Applicant was actually in a better position because the co-defendant did not testify, and counsel did his best to minimize the potential harm from the co-defendant's statement. Moreover, because there were several witnesses who testified against Applicant, the statement of the co-defendant was merely cumulative.

FILED
2012 DEC 6 10 14 AM '12
WILLIAM B. FURBER, JR.
CLERK OF COURT
HARD BORO COURT, S.D.

After full review, this Court finds this PCR claim must be denied. Counsel's objection to introduction of the co-defendant's statement was sufficiently specific in nature to apprise the Court of the nature of the objection. Counsel cannot control the Court's decision on an

objection. Moreover, the South Carolina Court of Appeals dismissed Applicant's appeal on this point.

In examining Applicant's claims, the Court finds that counsel's performance was not deficient and Applicant failed to show evidence that would overcome the presumption of effective assistance of counsel, and has further failed to show prejudice. In reaching this conclusion, the Court finds counsel's testimony credible and gives it great weight. This Court does not find Applicant's testimony credible or persuasive. For these reasons, the Court finds that counsel was not ineffective with regard to any of Applicant's claims. The Court finds that counsel's representation of Applicant was not deficient, nor was applicant prejudiced by any alleged deficiency. Further, the Court finds counsel's trial preparation, performance, and actions were reasonable under prevailing professional norms, and therefore Applicant's claims are denied.

Other Allegations

No other allegations were raised or testified to at the PCR hearing. Therefore, any additional allegations raised in the Application are deemed waived because no evidence was presented.

CONCLUSION

Based on the foregoing, the Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant any of the claims in his application. Therefore, this application for post-conviction relief is denied and dismissed, with prejudice.

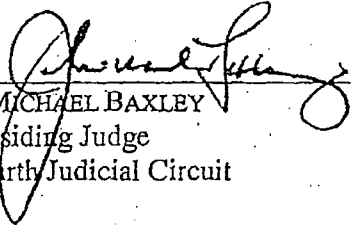
FILED
2012 DEC 6 AM 11 48
WILLIAM B. JUDGE
CLERK OF COURT
MARLBORO COUNTY, S.C.

JB
5

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be DENIED AND DISMISSED WITH PREJUDICE; and
2. The Applicant must remain in the custody of Respondent for the completion of his sentence.

IT IS SO ORDERED this 29th day of November, 2012.



J. MICHAEL BAXLEY
Presiding Judge
Fourth Judicial Circuit

Hartsville, South Carolina

FILED
2012 DEC 6 AM 11 48
WILLIAM B. FURDERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

ARREST WARRANT

H- 290671

STATE OF SOUTH CAROLINA

County/ [X] Municipality of MCCOLL

THE STATE against

BRANDON LAQUAN RAY

Address: BENNETTSVILLE S.C. 29570
SSN:
Race: B Height: 5'11 Weight: 170
DL #:
Agency ORI: 0350200
Scouting Agency: MCCOLL POLICE DEPT
Scouting Officer: T. LANGLEY
Offense Code:
Ordinance Sec. 16-3-10

warrant is CERTIFIED FOR SERVICE in the
County/ [] Municipality of
The accused
to be arrested and brought before me to be
with according to law.

Signature of Judge (L.S.)

RETURN

Copy of this arrest warrant was delivered to
MarLBORO COUNTY, S.C.
12-1-06
WILLIAM B. FUNDERBURK
Signature of Constable/Law Enforcement Officer

URN WARRANT TO:

FILED

STATE OF SOUTH CAROLINA)

County/ [X] Municipality of MCCOLL)

AFFIDAVIT

Form Approved by S.C. Attorney General July 28, 1980 SCCA 518

Personally appeared before me the affiant TOMMY LANGLEY who
being duly sworn deposes and says that defendant BRANDON LAQUAN RAY
did within this county and state on OCT 14, 2006 violate the criminal laws of the
State of South Carolina (or ordinance of County/ [X] Municipality of MCCOLL)
in the following particulars:
DESCRIPTION OF OFFENSE: MURDER

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:
ON OCT 14, 2006 THE DEFENDANT ALONG WITH A CO-DEFENDANT DID
WITH MALICE AFORETHOUGHT SHOOT ONE MARICE MCRAE IN THE
RIGHT CHEST AREA WITH A HAND GUN CAUSING THE VICTIM TO SEEK
MEDICAL ATTENTION. EMS TRANSPORTED SAID VICTIM TO SCOTLAND
MEM. HOSPITAL WHERE SAID VICTIM THEN DIED FROM THE GUN SHOOT.
DEFENDANT HAD A ARGUMENT WITH THE VICTIM. INCIDENT OCCURRED
IN THE PARKING LOT OF A

002067-06

PC. STATEMENT FROM CO-DEFENDANT AND WITNESS

Sworn to and subscribed before me)
on OCT 14, 2006)
Signature of Issuing Judge (L.S.)

Tommy Langley
Signature of Affiant
Affiant's Address: 210 EAST GIBSON AVE.
MCCOLL S.C. 29570
Affiant's Telephone: 1-843-523-5223

STATE OF SOUTH CAROLINA)

County/ [X] Municipality of MCCOLL)

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on OCT 14, 2006 defendant BRANDON LAQUAN RAY
did violate the criminal laws of the State of South Carolina (or ordinance of
County/ [X] Municipality of MCCOLL) as set forth below:

DESCRIPTION OF OFFENSE: MURDER

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before
me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the
defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge (L.S.)
Judge's Address: 210 EAST GIBSON AVE.
MCCOLL S.C. 29570
Judge's Telephone: 1-843-523-5223
Issuing Court: [] Magistrate [X] Municipal [] Circuit

WITNESSES

Chief Tommy Langley

McColl PD

Tommy Langley

FILED

2007 JUL 5 PM 2 36

WILLIAM B. FUNDERS
CLERK OF COURT
MARLBORO COUNTY, S.C.

ARREST WARRANT #:

H290671

Arrested on December 01, 2006

ACTION OF GRAND JURY

534107
Foreman: *C. Decker*
Grand Jury

True Bill

VERDICT

Foreman: _____
Petit Jury

Date: _____

DOCKET #: 07GS34-0657

THE STATE OF SOUTH CAROLINA

County of Marlboro

COURT OF GENERAL SESSIONS

Term: July, 2007

THE STATE

vs.

Brandon Laquan Ray

I N D I C T M E N T F O R

0116

MURDER

16-3-10

BAIL set by

dge Burch

472-07

pe and Amount: Denial

ime of Surety: _____

PRELIMINARY HEARING held by

dge _____

Defense Attorney: _____

Decision: Burch

DISPOSITION before

dge _____

(indicate jury trial, bench trial, plea, nol. pros., etc.)

sposition: _____

ntence: _____

JURORS

WITNESSES

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

CODEFENDANTS

МАРГОВО СОУДЪ СЪ
СЪВЪК ОЪ СОУДЪ
МАГЛАКЪ ВЪ СЪВЪКЪ СЪ

23 JUN 13 PM 5 02

FILED

STATE OF SOUTH CAROLINA)

)

INDICTMENT #07GS34-0657

County of Marlboro)

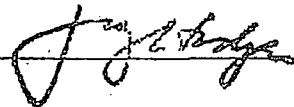
At a Court of General Sessions, convened on July 09, 2007
the Grand Jurors of Marlboro County present upon their oath:

COUNT: MURDER
16-3-10

That Brandon Laquan Ray along with co-defendant in the County of Marlboro on or about October 14, 2006, feloniously, wilfully and with malice and aforethought, kill one Maurice McRae by shooting Maurice McRae in the right chest area with a handgun, and that the said Maurice McRae did die in Marlboro County as a proximate result thereof. This incident occurred in the parking lot of Apartments in McColl, Marlboro County, SC.

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

SOLICITOR: _____



2007 JUL 5 PM 2 36
WILLIAM B. FUNDERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

FILED

STATE OF SOUTH CAROLINA)
COUNTY OF MARLBORO)

IN THE COURT OF
GENERAL SESSIONS
CASE # 07-GS-34-0657

STATE OF SOUTH CAROLINA)
VS)
BRANDON LAQUAN RAY)

VERDICT

WE THE JURY, BY UNANAMEOUS CONSENT, FIND THE DEFENDANT
BRANDON LAQUAN RAY:

_____ GUILTY OF MURDER

_____ GUILTY OF VOLUNTARY MANSLAUGHTER

_____ NOT GUILTY

FILED
2007 SEP 17 AM 9 16
WILLIAM B. FUNDERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

Thomas C. Cousins, Jr.
FOREPERSON

BENNETTSVILLE, SC
September 13, 2007

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Macon
 STATE VS.
Brandon Laquan Ray
 AKA:
 Race: B Sex: M Age: _____
 DOB: _____ S#: _____
 Address:
 City, State, Zip Beaufort, SC 29522
 DL# _____ SID# _____

INDICTMENT/CASE#: 07-GS-34-0657
 AWW#: H-290671
 Date of Offense: 10-19-06
 S.C. Code §: 16-3-10
 CDR Code #: 0111116
 CASE RESTORED
 SENTENCE
 PLEA TRIAL

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

TO: Voluntary Manslaughter
 in violation of § 16-3-50 of the S.C. Code of Laws, bearing CDR Code # 012117
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS 17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:
Elizabeth R. Munnally Solicitor Defendant William B. Junderberg Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 22 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

FILED
 2007 SEP 17 PM 9:16
 WILLIAM B. JUNDERBERG
 CLERK OF COURT
 MACON COUNTY, S.C.

SPECIAL CONDITIONS:
 RESTITUTION: Heard, Waived, Ordered
 Total: \$ _____ plus 20% fee: \$ _____ PTUP _____ days/hours Public Service Employment
 set by SCDPPPS _____ Obtain GED
 Payment Terms: _____ Attend Voc. Rehab. or Job Corp. _____
 set by SCDPPPS _____ May serve W/E beginning _____
 Recipient: _____ Substance Abuse Counseling _____
 *Fine: _____ Random Drug/Alcohol Testing _____
 §14-1-206 (Assessments 107.5%) \$ _____ Fine may be pd. in equal, consecutive weekly/monthly
 §14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00 pmts. of \$ _____ beginning _____
 §14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____ \$ _____ paid to Public Defender Fund
 §56-5-2995 (DUI Assessment) \$12 \$ _____
 § 35.13 (Public Def/Prob) \$500 \$ _____
 §73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00
 §33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____
 §50-21-114(E)UI Breath Test Fee) \$50 \$ _____
 §56-5-2942(J) (Vehicle Assessment) \$40/ea. \$ _____
 3% to County (if paid in installments) \$ 3.75
 TOTAL \$ 138.75

Recipient:	
*Fine:	\$ _____
§14-1-206 (Assessments 107.5%)	\$ _____
§14-1-211(A)(1) (Conv. Surcharge)	\$100 \$ <u>100.00</u>
§14-1-211(A)(2) (DUI Surcharge)	\$100 \$ _____
§56-5-2995 (DUI Assessment)	\$12 \$ _____
§ 35.13 (Public Def/Prob)	\$500 \$ _____
§73.3, 1B TP (Law Enforce. Funding)	\$25 \$ <u>25.00</u>
§33.7, 1B TP (Drug Court Surcharge)	\$100 \$ _____
§50-21-114(E)UI Breath Test Fee)	\$50 \$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea. \$ _____
3% to County (if paid in installments)	\$ <u>3.75</u>
TOTAL	\$ <u>138.75</u>

Appointed PD or appointed other counsel, §35.13 TP Requires \$500 be paid to Clerk during probation.

William B. Junderberg
 Clerk of Court/ Deputy Clerk
 Court Reporter: Swanee Babin-Ray

PRESIDING JUDGE Glenn P. King
 Judge Code: 21110177
 Sentence Date: Sept 13, 2007

ARREST WARRANT

H= 290673

STATE OF SOUTH CAROLINA

County/ [X] Municipality of MCCOLL

THE STATE against

BRANDON LAQUAN RAY

Address: BENNETTSVILLE, SC. 29512

SSN: _____

Race: B Height: 511 Weight: 170

State: _____

Agency ORI#: _____

Executing Agency: MCCOLL POLICE DEPT.

Executing Officer: TOMMY LANGLEY

Offense: POSS. OF FIREARM IN COMM.

VIOL. CRIME Offense Code: _____

Ordinance Sec. 16-23-490 (A)

warrant is CERTIFIED FOR SERVICE in the County/ [] Municipality of _____

The accused to be arrested and brought before me to be dealt with according to law.

Signature of Judge (L.S.)

RETURN

Copy of this arrest warrant was delivered to defendant BRANDON L. RAY

12-1-06

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA

County/ [X] Municipality of MCCOLL

AFFIDAVIT

Personally appeared before me the affiant TOMMY LANGLEY who being duly sworn deposes and says that defendant BRANDON L. RAY did within this county and state on OCT 14, 2006 violate the criminal laws of the State of South Carolina (or ordinance of County/ [X] Municipality of MCCOLL) in the following particulars:

DESCRIPTION OF OFFENSE: POSS. OF A FIREARM IN THE COMMISSION OF A VIOLENT CRIME.

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts: IN THAT THE

DEFENDANT DID USE A HAND GUN TO SHOOT AND KILL ONE MARICEMcRAE AT APARTMENTS IN MCCOLL, SC. IN MARLBORO COUNTY. THE DEFENDANT IS A CONVICTED FELON BASED ON THE DEFENDANTS CRIMINAL RECORD. INCIDENT OCCURRED ON OCT.14,2006. C/N 002067-06

Sworn to and subscribed before me on OCT 14, 2006 Signature of Issuing Judge (L.S.)

Signature of Affiant Tommy Langley Affiant's Address 210 East Gibson Ave. MCCOLL, SC. 29570 Affiant's Telephone 523-5222

STATE OF SOUTH CAROLINA

County/ [X] Municipality of MCCOLL

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on OCT.14,2006 defendant BRANDON L. RAY did violate the criminal laws of the State of South Carolina (or ordinance of

County/ [X] Municipality of MCCOLL) as set forth below:

DESCRIPTION OF OFFENSE: POSS. OF A FIREARM IN THE COMMISSION OF A VIOLENT CRIME.

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge (L.S.) Judge Code: 5718

Judge's Address 210 EAST GIBSON AVE. MCCOLL, SC. 29570 Judge's Telephone 523-5222 Issuing Court: [] Magistrate [X] Municipal [] Circuit

CLERK OF COURT WILLIAM B. FUNDERBURK

FILED

WITNESSES

Chief Tommy Langley
McColl PD

FILED
2007 SEP 17 AM 9 16
WILLIAM B. FUNDERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

ARREST WARRANT #:

H290673

Arrested on December 01, 2006

ACTION OF GRAND JURY

Foreman: _____
Grand Jury

VERDICT

Foreman: _____
Petit Jury

Date: _____

DOCKET #: 07GS34-0658

THE STATE OF SOUTH CAROLINA
County of Marlboro

COURT OF GENERAL SESSIONS

Term: July, 2007

THE STATE

vs.

Brandon Laquan Ray

I N D I C T M E N T F O R

0549

POSSESSION OF WEAPON DURING THE
COMMISSION OF CERTAIN CRIMES 16-23-490

STATE OF SOUTH CAROLINA)
County of Marlboro)

INDICTMENT #07GS34-0658

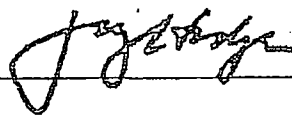
At a Court of General Sessions, convened on July 09, 2007, the Grand Jurors of Marlboro County present upon their oath:

COUNT: POSSESSION OF WEAPON DURING THE COMMISSION OF CERTAIN CRIMES 16-23-490

That Brandon Laquan Ray in the County of Marlboro on or about October 14, 2006, was in possession of and did visibly display a firearm during the commission of a violent crime, to wit: murder of one Maurice McRae, in violation of Section 16-23-490, Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided:

SOLICITOR: _____



FILED
2007 SEP 17 AM 9 16
WILLIAM B. FUNDERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF MARLBORO

WAIVER

Having had my rights explained to me, I Voluntarily waive presentment of the within indictment to the Grand Jury, plead ~~guilty to the charge and consent for said plea to be entered on record against me~~ this 10 day September, 2007

ATTEST

William B. Funderburk Brandon Roy

WILLIAM B. FUNDERBURK
C.C.P.&G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF MARLBORO)

IN THE COURT OF
GENERAL SESSIONS
CASE # 07-GS-34-0658

STATE OF SOUTH CAROLINA)
VS)
BRANDON LAQUAN RAY)

VERDICT

WE THE JURY, BY UNANAMEOUS CONSENT, ON THE CHARGE OF
POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME,
FIND THE DEFENDANT BRANDON LAQUAN RAY:

 ✓ GUILTY
 NOT GUILTY

Thomas C. ...
FOREPERSON

2007 SEP 17 AM 9:16
WILLIAM B. FUNDERBURK
CLERK OF COURT
MARLBORO COUNTY

FILED

BENNETTSVILLE, SC
September 13, 2007

STATE OF SOUTH CAROLINA)
 COUNTY OF Marlboro)
 STATE VS.)
Brandon Laguan Ray)
 AKA:)
 Race: B Sex: M Age:)
 DOB:) SS#:)
 Address:)
 City, State, Zip Beaufortville, SC 29512)
 DL#) SID#)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 07-GS-34-0658
 A/W#: H-290673
 Date of Offense: 10-14-06
 S.C. Code §: 16-23-490
 CDR Code #: 0151419
 CASE RESTORED SENTENCE
 PLEA TRIAL

In disposition of the said indictment comes now the Defendant who was CONVICTED OF, or PLEADS TO: Possession of Weapon during the commission of a violent crime in violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 0151419
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS 17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Elizabeth R. Munnally Solicitor Defendant Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 5 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 07-65-34-065
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, Ordered
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
 set by SCDPPPS _____

Recipient:	
*Fine:	\$ _____
§14-1-206 (Assessments 107.5%)	\$ _____
§14-1-211(A)(1) (Conv. Surcharge)	\$100 \$ <u>100.00</u>
§14-1-211(A)(2) (DUI Surcharge)	\$100 \$ _____
§56-5-2995 (DUI Assessment)	\$12 \$ _____
§ 35.13 (Public Def/Prob)	\$500 \$ _____
§73.3, 1B TP (Law Enforce. Funding)	\$25 \$ <u>25.00</u>
§33.7, 1B TP (Drug Court Surcharge)	\$100 \$ _____
§50-21-114(BUI Breath Test Fee)	\$50 \$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea \$ _____
3% to County (if paid in installments)	\$ <u>3.75</u>
TOTAL	\$ <u>128.75</u>

William B. Zunderbuck Clerk of Court/ Deputy Clerk
 Court Reporter: Jaimee Bahia - Ross

PTUP _____ days/hours Public Service Employment
 Obtain GED _____
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling _____
 Random Drug/Alcohol Testing _____
 Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____

Appointed PD or appointed other counsel, \$35.13 TP Requires \$500 be paid to Clerk during probation.
 PRESIDING JUDGE Howard P. King
 Judge Code: 21110177
 Sentence Date: Sept 13, 2007