

VOLUME II OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

Roger M. Young, Circuit Court Judge

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S.C. Supreme Court

D'EL GRANT,

RESPONDENT,

V.

STATE OF SOUTH CAROLINA,

PETITIONER

APPELLATE CASE NO 2013-000135

APPENDIX

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INDEX

INDEX	i
TRIAL TRANSCRIPT	1
INDICTMENTS	572
APPLICATION FOR POST-CONVICTION RELIEF	576
RETURN	589
POST-CONVICTION RELIEF HEARING TRANSCRIPT	594
ORDER OF DISMISSAL	681

1 you have to take that into consideration because your job
2 is to evaluate the credibility the bias of a witness. And
3 there is no more significant or severe bias than self-
4 interest and self-preservation. And that's what those
5 three witnesses were testifying in furtherance of. They
6 all want to get off these murder charges that they were all
7 charged with. And to do that, they're going to blame my
8 client because they have to. So really there's one
9 witness that the State put up one of 20 plus people at the
10 scene of these shootings one witness who is not an
11 accomplice or co-defendant. And that's a girl who is a
12 child really at 14 years old, teenager. Resheema Witfield
13 testified almost surgically that between Gary and D'el
14 who were standing there with her brother, Cederious Nelson
15 and Robert Bryant, D. L. pulled the trigger.

16 She also told you that Gary Grant is in her family.
17 Gary Grant has a baby, a child who's now six years old
18 with her sister and was also there also not called as a
19 witness. And Gary Grant was a family member. So given
20 the choice between naming Gary as the shooter or his
21 brother, D'el, she picked D'el.

22 Now, more about Resheema and I submit to you that
23 Resheema knows a lot more than she told you or law
24 enforcement and that kind thing hurts her credibility.
25 Because when you're going to come give evidence in murder

1 trial, you got to tell everything you know. You can't
2 protect your family. And in addition to protecting Gary
3 the day of the shootings, her niece's father. She is
4 protecting I submit to you the evidence shows folks who
5 took guns off of her brother and Robert Bryant and some
6 somebody who moved that car because we do know from all
7 the crime scene photographs that you have and all the
8 testimony of everybody that those two decedents,
9 Mr. Bryant and Mr. Nelson, drove up in a green Oldsmobile
10 Eighty Eight. About the time law enforcement arrived a
11 short time later, it was gone, never found. The police
12 never located it. I submit to you that they looked very
13 hard for it, but that car was a crucial piece of evidence
14 just gone. Family members of the victims took it away or
15 associates of the victims drove it from the scene for
16 whatever reason. Gary Grant also told you that guns were
17 taken off the decedents and that makes perfect sense given
18 evidence from Detective Spears that both victims had
19 gunshot residue all over both their hands. And evidence
20 from other folks who were up the Woodlawn address that
21 they were involved in a driveby some 40 minutes before
22 they were murdered at Ashley Shores.

23 Resheema Witfield's testimony is also suspect in that
24 she doesn't remember seeing any of these other people that
25 were at the scene and we know were at the scene. Cordero

1 Porcher, Azerious West all those other folks 20 plus
2 people that where everybody agreed there was a mob of
3 people out there. She doesn't remember seeing anybody
4 except four people her brother, Robert Bryant, Gary Grant,
5 who's in her family she remembers seeing his brother D'el,
6 nobody else. Her testimony is questionable. And when you
7 go back and evaluate it because she really the only eye
8 witness without a dog in the fight in terms of having
9 personal interest to protect. She's the only witness that
10 the State produced for your consideration in this case
11 that isn't charged with murder. When you think about her
12 testimony and whether or not you think it proved the case
13 beyond a reasonable doubt, you have to look at the things
14 she didn't tell you. And she knows where that green car
15 went. She was right there. He was watching and she
16 choose not to tell that crucial piece of information and
17 that I submit to you makes her testimony suspect.

18 On to law enforcement, the State put up about one,
19 two, three, four, five representatives from the North
20 Charleston police department. None of whom added much of
21 anything to the prosecution of this case in furtherance of
22 your ability to make a decision. Detective Spears
23 testified briefly. She testified that they were looking
24 for D'el, found him Illinois, came back. He was locked up
25 and he stands trial today. And she testified that the

1 victim had gunshot residue on their hands. She also
2 testified as did John Reynolds that a handgun was located
3 at the Evergreen hotel in possession with Gray Grant and
4 Cordero Porcher. No other evidence was admitted by the
5 State about any crime scene work that was done. Very
6 little was done with the evidence gathered and some
7 evidence that I submit to you is probative was not picked
8 up when Mr. Reynolds went to the Evergreen hotel all he
9 did was retrieve the gun. There's a bloody T-shirt after
10 a homicide has occurred. There's bloody garment of
11 clothing in a room that a defendant was taken out of and
12 he didn't bag it. It could have had the victim blood all
13 over it, but we'll never know. We'll never know if it
14 puts Gary Grant who was wearing that T-shirt right next to
15 the victims or possibly as the shooter getting spatter on
16 him from murdering Cederious Nelson and Robert Bryant
17 because the cops didn't think it was important enough to
18 pick it up and put it in a bag and put it in evidence.
19 And the things that they did pick up and put in evidence
20 they put in evidence and did nothing else with.

21 The tire cast, took the cast thought it was important
22 enough to pick it up put it in evidence did nothing with
23 it. A terry cloth rag covered in blood, bagged it up put
24 it in evidence, did nothing with it. Bullets or shell
25 casings rather were photographed at the scene. There were

1 picked up and put in evidence. And this is where I take
2 issues with law enforce and I submit to you you should
3 too. On the stand at variance with his file, no
4 documentation whatsoever, none in the file. And he agreed
5 with me there was no documentation in his file that any
6 latent fingerprint testing was done on those shell
7 casings. Mr. Reynolds said, oh, yeah, I did it. I don't
8 remember what kind exactly. There was nothing there.

9 Now, really what kind of police work is that. You
10 pick up a piece of evidence and you do some testing on it,
11 but you don't even write a note in your file that when you
12 did it or what you did. And you're going to come to court
13 two and a half years later and try to expect 12 people
14 believe that you actually did the work that you're saying
15 you did on the stand. I submit to you that wasn't done.
16 He realized when I asked him that question maybe I should
17 have done that. You know that may have been good piece of
18 evidence to have. I would have known then who handled
19 those shell casings, who loaded the had gun that murdered
20 these two decedents, these two victims, just didn't do it.

21 The State's burden of proving of a murder charge
22 starts at the scene and it continues through to time of
23 trial. And the 12 of you have to be convinced beyond a
24 reasonable doubt that the State's done everything they can
25 to prove the case and not to leave any gapping holes of

1 doubt. And that is one of those gapping wholes of doubt.
2 Who's fingerprints were on those shell casings? That
3 member of law enforcement did not tell the truth. If he
4 had really done that testing, he would have a had document
5 or a note or a report where he did the kind of testing he
6 said he did, but he's not even sure what kind it was. And
7 he would have shown you the results negative, partial
8 reading, no match was available, nothing, that's not true
9 what he told you. And when law enforcement takes the
10 stand and lie to you in a murder case, you got have doubt.
11 You got to. How are you not going to have doubt when the
12 folks charged with collecting the evidence and making the
13 charge and presenting it in court and driving home
14 convictions of murder against my client didn't do their
15 job and then come to court and just say, oh, yeah, I did
16 it. The other members of law enforcement who testified
17 Mr. Mellott who was on routine patrol at the time on
18 February 24th. All he did was establish the driveby that
19 started these horrible chain of events.

20 Now, with regard to the charge of the murder. The
21 State has to prove all the elements of murder and murder
22 is a fairly simple thing to prove. You have to prove that
23 with malice aforethought, with malice premeditation or
24 with malice aforethought. Meaning there has to be some
25 thought given that the defendant murdered somebody. In

1 this case, the State's proven neither. There's no
2 evidence that D'el Grant was shot at, involved in a
3 driveby, had any reason to kill these guys or was provoked
4 in anyway. One, one co-defendant said D'el said I'm going
5 to handle it, one. Out of all those folks who testified
6 who testified and all the other potential witnesses out
7 there that the State did not present to you said D'el was
8 on the scene and said something that may have indicate
9 premeditation and that is a 20-year-old who testified
10 first. And I know remember him. He was wearing a baggie
11 sweater who testified that he was in his kitchen and he
12 saw a gun which nobody else bore out. And he's testified
13 under a deal with the State who you told he wanted to gain
14 from his testimony personally and who was the kid who
15 started all this in motion. Who had blood on his hands by
16 telling Project who's looking for people who stole \$17,000
17 from him according to Gary Grant where these guys could be
18 found, instigated a driveby, instigated a later
19 confrontation from 40 minutes later in which two people
20 were murdered.

21 Other than that, there's no evidence in the record,
22 none that would support a finding of murder because
23 there's no evidence of malice on the part of D'el Grant,
24 none. There's also evidence in the record that he wasn't
25 the person who murdered these folks. It's very unusual

1 in a murder trial for somebody else to walk into this
2 courtroom and say I did it. And that's what Gary Grant
3 did yesterday and that's very unusual.

4 And I urge you to consider the fact that he, who we
5 know is a murderer, because he murdered somebody else
6 after he got out of jail on bond in this case went and
7 killed somebody else, got convicted and is doing a life
8 sentence. Gary Grant is a murderer you know that. And
9 when he tells you I murdered these people, you got to stop
10 for a moment and consider maybe he did. Maybe, he's the
11 one who did it. He had the reason. He was the one who
12 broiled in the conflict with Project and Project's
13 associates, Cederious Nelson and Robert Bryant. He was
14 the one who got shot in the head and was walking around
15 bleeding with a towel on his head, had a gun. He was the
16 one who had a reason to kill these guys. He was the one
17 who sought out a conflict with them. It makes far more
18 sense for Gary Grant to have killed these two young men
19 than for his brother, D'el., who wasn't involved in it.
20 Didn't have anything to gain or lose having been shot at,
21 having stolen \$17,000, wasn't involved in the whole mess
22 that lead up to these homicides. And the Court is going
23 to tell you you have to evaluate credibility. And, of
24 course, having a conviction for murder may weaken his
25 credibility. But on the other hand coming into court and

1 saying I murdered those people, takes a certain amount of
2 ownership and a brave one. And I submit to you that you
3 should consider that he's telling the truth. His
4 testimony is also supported by another witness one of the
5 other 20 people out there that that State is aware of and
6 didn't present at trial.

7 I had to call her Barbara Scott who don't even live
8 around there, had gone with Azerious West to get her bill
9 paid, pay her water bill. Then they went over to Ashley
10 Shores and she's just standing there. And she saw a man
11 in a black jumper which all the witnesses agree Gary Grant
12 was wearing an all black jumper with a white T-shirt on
13 underneath, saw a man black with a jumper with a gun start
14 shooting. I submit to you that she has no reason to lie.
15 She was terrified to come to court yesterday and she was
16 terrified the day of these shootings. And she came in
17 here and she told you what she remembered, told you what
18 her statement given hours after the murders occurred. And
19 her testimony if nobody else is should give you doubt that
20 D'el Grant murdered Cederious Nelson and Robert Bryant
21 because she didn't live there. She didn't have anybody
22 unlike Resheema Witfield she didn't consider Gary Grant
23 part of her family. She doesn't have any children that
24 are related to Gary Grant. She's not related by blood or
25 any other affinity with any of these folks. She's the

1 only witness that was produced for you yesterday at trial
2 during the evidence portion of the case that really has
3 nothing to do with any of this. She's literally in the
4 wrong place at the wrong time and she saw Gary Grant
5 shooting. And Gary Grant acknowledges that he murdered
6 Cederious Nelson and Robert Bryant and that in and of
7 itself should give you doubt. The kind of doubt that
8 should cause you to render verdicts of not guilty.

9 Remember the State has the burden and it's a serious
10 burden in a case like this where they undertake to
11 prosecute people for the most serious offense under our
12 laws of murder. They have to present every witness that
13 they identified where was Azeri ous West, where was
14 Cordero Porcher, was the kids that were in the car with
15 them, where were any of those other 20 people that were
16 identified as witnesses of a shooting, nowhere.

17 I submit to you that those folks weren't brought
18 because they didn't -- have the State's agenda of
19 convicting D'el Grant. They it should have been here.
20 They should have have told you what they saw. The State
21 has the obligation under our laws of proving their case
22 and not just barely proving it, but proving it.

23 Mr. Wetmore representing Charleston County and the
24 State of South Carolina brought in the bare minimum of
25 witnesses that he thought he needed to convince you folks

1 to convict D'el Grant. There's a whole bunch of people
2 out there that you should have heard from that you didn't.
3 There's a lot of law enforcement work that should have
4 been done that wasn't. Those kind of things can't but
5 leave you with reasonable doubt. It's up to the State to
6 prove. It's not up to D'el Grant to prove. We brought in
7 two witnesses yesterday who had very salient points to
8 establish that somebody other than D'el Grant shot and
9 murdered Cederious Nelson and Robert Bryant, that in and
10 of itself should give you doubt.

11 The State has not proven these serious charges
12 against D'el Grant. The State did not do the requisite
13 investigation to establish if he was even there. All they
14 did was present three co-defendants who agreed to testify
15 for them that D'el shot these fellows. And one young girl
16 who's really the only witness that's not charged with
17 murder that the State presented to you. One have all
18 those folks out there, one. One person alone you can see
19 the State wants you to believe. And we know for a fact
20 that she thinks that Gary Grant who's a more viable
21 suspect in these murders is her family. He was her
22 niece's father.

23 And I submit to you that should give rise to some
24 doubt about her testimony that in conjunction with the
25 fact that we know that green car disappeared. We know the

1 car those decedents arrived in was not on the scene after
2 the murder. We know there were a whole bunch of cars in
3 and around where the shooting took place could have
4 obstructed her view all gone by the time law enforcement
5 got there, that scene was tampered with. And I submit to
6 you that Miss Witfield knows who took the car and who took
7 the guns and who sanitized the scene around the evidence.
8 She should have told us. It wouldn't have hurt her to
9 tell us that might have filled in some very important gaps
10 in this case. She withheld that information. For that
11 reason, her testimony should give rise to doubt just like
12 law enforcements failure to fully and adequately and
13 thoroughly investigate this case. They got statements a
14 lot of bunch of people called it a day and that's not
15 enough. And you should hold them to a higher standard
16 than that. You should demand evidence sitting in a box
17 somewhere why wasn't worked up? Why? They didn't do
18 their job. They didn't do their job out of the courtroom
19 and they haven't done it in the courtroom.

20 And I know that the State is going to get up and
21 argue that there are two dead young men and that is true,
22 but you have to consider that D'el Grant wasn't at that
23 driveby and didn't have anything to do with the murders.
24 It's not the person to blame in this case. His brother,
25 Gary, who said he did it yesterday in this courtroom in

1 front of you had the reason, the meaning and the motive to
2 kill Cedarius Nelson and Robert Bryant by far more likely
3 the shooter, the murderer. And I'm going to sit down now
4 this is my only opportunity to talk you, so I had to
5 discuss every piece of evidence that I wanted you remember
6 when you deliberate. I ask you in this case take a long
7 hard look at everything the State did or didn't do.
8 Everything law enforcement did or didn't do. And if you
9 believe that additional witnesses, more information help
10 you solve this case, and you have doubt for that reason,
11 that doubt has to be -- come down on the side of D'el
12 Grant. I'm asking you when you are given those
13 indictments, the sentence sheet sign not guilty because
14 the State has not met their burden in this case. Thank
15 you for your attention I appreciate it.

16 THE COURT: Mr. Wetmore.

17 MR. WETMORE: Thank you, Your Honor. May it please
18 the Court?

19 THE COURT: Yes, sir.

20 MR. WETMORE: Ms. Fanning. Ms. Fanning is absolutely
21 right. I am going to certainly talk to you quite a bit
22 about those two boys who were executed. It's what we're
23 here for. And I submit to you this man right here that
24 did it. He ran out of the apartment armed, shot both of
25 them, murdered both of them. When they fell, he shoot

1 them again and again and again. These two victims Robert
2 Bryant, Cederious Nelson, you may wonder about these guys.
3 Were they involved in some sort of ongoing feud that day,
4 I don't know. Were they up to no good that day, I don't
5 know. There's some mention of gun powder on their hands
6 and their bodies is that because they handled the firearm,
7 is that because they were shot at a very close range five
8 times. You may wonder about these victims. We don't have
9 all the answers. They're gone. And I tell you what the
10 defendant didn't wonder about the victims. He didn't wait
11 to figure everything out. He took the law into his own
12 hands. And what he did is he armed himself. He laid
13 await in an apartment. He waited until they got there,
14 and when they got there, he executed them. Whatever you
15 may think or whatever you may wonder about these victims
16 rest assure they been held accountable paid the ultimate
17 price. And I ask you to find the defendant find him
18 guilty of murder, two counts of murder.

19 Now, leading up to this double murder at Ashley
20 Shores, you heard a lot of different renditions of the
21 facts. And I want to try and make sure that I'm being
22 clear. There's an earlier break-in and there were some
23 rumors that the people that broken into the guy's house
24 stole money. That led to this shooting that occurred on
25 Woodlawn about an hour before the murders. And in that

1 shooting, the defendant's, big brother, Gary Grant was
2 grazed. He was wounded and there were some suspicion,
3 some belief that the victims might have been in the area,
4 might have some involvement in that earlier shooting on
5 Woodlawn. At about 4:30 in the middle of the day is when
6 these murders happened at Ashley Shores apartment.

7 By all accounts it's certainly a verbal argument, a
8 heated discussion that was going on there, but until this
9 man right here came out of the apartment, there's no shots
10 fired. There wasn't even a physical fight at that
11 location. This man took it to the next level, took it to
12 the ultimate level. He came out and kill both of those
13 guys.

14 Now, after he did that after he shot them once while
15 on the ground, he took off and ran. And he ran
16 immediately from the scene, but that wasn't it. This
17 happened February 24th of 2005. And for the next 17
18 months, this man right here kept running. He kept hiding.
19 He wasn't anywhere to be found in this area. He was
20 finally found 17 months later in Illinois. And I mean
21 that's along away for somebody who's born and raised in
22 North Charleston. Seventeen months, he's gone found in
23 Illinois. He's trying to escape his crime. The defendant
24 ran, hid a long period of time. Who didn't run? Who
25 didn't leave town? Well, you have Deshawn Gathers. He

1 was the first witness real lengthy you heard from him.
2 And what did he do? He stayed in his apartment which was
3 right next door to where this happened. He didn't go
4 anywhere. He didn't even get out of the apartment
5 complex. The next person you heard from is Devant
6 Porcher. He was at his house on Woodlawn which is right
7 around the corner. It's not too far. Cordero Porcher you
8 also heard from him. He went as far as West Ashley
9 that's about as far as he went. None of them ran,
10 traveled across the country to hide for 17 months. They
11 stayed and they told the truth to the police department
12 that day. They told the truth to our office. And they
13 came in here and sat on that stand and told you the truth
14 in court.

15 And of course, of course, all these three people, you
16 know, they don't have any criminal convictions. Their
17 records are clean now, but there's no doubt they have
18 pending charges. They are all charged with their
19 involvement in this case. Some of them even have other
20 unrelated charges. But to make sure that I was clear with
21 them, we entered into agreements and the agreement is
22 called a proffer agreement says that there are no
23 promises, says that there are no threats. And what it
24 does it says you must tell the truth, that's the only deal
25 they have. That's the only deal they have is that they

1 promise to tell the truth. All the while knowing I have
2 these pending charges, but I have no promises. I have no
3 threats. They haven't been offered any kind of deal. The
4 only deal they been offered from me, from the State is you
5 got tell the truth.

6 Now, when you saw these guys for a limited amount of
7 time on the stand and you may not like these guys. You
8 may not like the life they live. You may not like things
9 about them, and I certainly didn't get to pick them. If I
10 could have picked my witnesses, I would would have hoped
11 to have picked somebody who was much more upstanding part
12 of the community. These witnesses weren't chosen by me.
13 They were chosen by the defendant. They are his friends.
14 These are his associates. These are people he hangs out
15 with. I don't get to pick these witnesses. They are who
16 they are because they were hanging out with the defendant.
17 You certainly may have some questions with these guys.
18 You may have some questions about certain details of their
19 story, but you have not one, not two, but three, three of
20 of these guys who were describing to you an event that
21 happened in February of 2005, that's a long time ago.
22 It's a long time to remember details. It's a long to
23 remember specific facts. They told very similar stories
24 and they told those very similar stories a part from each
25 other. They didn't get listen to what the other one said.

1 They each got there independently and remembered something
2 that happened in February of 2005. And they told almost
3 the exact same story. And they told that story the same
4 way because it's the truth. They didn't have any promises
5 up there. I hadn't threatened them. They told you the
6 truth. And there's mention made certainly that not every
7 single person who may have any involvement in the case or
8 any knowledge of the case. There's some argument that all
9 those people weren't brought in. And it's impossible we
10 cannot bring in every single person who may have the
11 smallest amount of knowledge. This trial would have taken
12 a month if we brought in everybody who was in the
13 apartment complex.

14 What you have you have Deshawn Gathers and Devant
15 Porcher and Cordero Porcher not one, not two, but three
16 people who were close to the situation they are all
17 friends.

18 They all describe the rising tensions they had
19 started among over the days and hours leading up to this.
20 And they all stayed true to these very important details
21 and they all stayed consistent that the defendant D'el
22 Grant is the one that ran out of the apartment. He's the
23 one with the gun in his hand. They all D'el remembered
24 him shooting Cederious Nelson first and they all
25 remembered him shooting Robert Bryant second. And they

1 remember him shooting again while the victims were on the
2 ground. Y'all remember him running from the scene pistol
3 in his hand. This man took that gun with him and he was
4 gone 17 months all the way to the great state of Illinois.

5 These three guys who testified they all know the
6 defendant, D'el Grant. They all know his big brother,
7 Gary Grant. You can tell them a part. They are all very
8 clear. Gary Grant wasn't out there shooting. Most of
9 them even said he was trying to break up the fight. They
10 are all very clear that this man right here was the one
11 who shot both the victims over and over, took the gun with
12 him.

13 Now, the murder weapon that the defendant used was
14 never found. He was gone 17 months. North Charleston did
15 find a pistol in the motel where Gary Grant and where
16 Cordero Porcher were found, but it's not ---

17 MS. FANNING: Objection, Your Honor, he's referring
18 to facts not in evidence.

19 THE COURT: All right, confine your arguments to
20 matters that are in evidence please, sir.

21 MR. WETMORE: Deshawn Gathers and Cordero Porcher
22 witnessed this event. They saw the gun involved in the
23 shooting. And they reviewed the photographs of the gun
24 found at the motel. They told you this wasn't the same
25 gun. Unfortunately, these guy do know guns and they are

1 very clear it's not same gun. Not a one person testified
2 that the gun found at the motel is the murder weapon make
3 sure you understand that. All of them in fact said it was
4 not the murder weapon. Even defense, big brother, Gary
5 Grant, not the murder weapon.

6 I would argue to you that the testimony of three eye
7 witnesses to a double murder is all you need to convict
8 this defendant. However, we do have other witnesses. The
9 shooting that happened on Woodlawn earlier North
10 Charleston police responded and they told you they
11 responded to shoots being fired. They said that they
12 couldn't locate any victims, couldn't locate any witnesses
13 everybody was gone, that corroborates what these witnesses
14 told you.

15 Moving onto the double murder at Ashley Shores, the
16 scene of the crime. You heard from two police officers
17 who testified both the victims were dead, gunshot wounds,
18 lying side by side, surrounded by shell casings which is
19 the part of the bullet that shoots out of the pistol.
20 Just like these witnesses said these officers told you
21 corroborates what these witnesses said. At that scene,
22 they did find shell casings. Police officer told you he
23 fingerprinted them. He said the words negative results.

24 Dr. Schandl who is the very bright young lady that
25 came in and testified from MUSC. She said that these

1 victims deaths were certainly the result of gunshot
2 wounds. The first one was fired closely in the neck of
3 Cederious Nelson. And as to Robert Bryant, there was a
4 shot fired in his neck, in his head and another one in
5 his -- coming from his shoulder back into his chest,
6 another one in his hand.

7 She backs up the witnesses story about who was shot,
8 about how they were shot. This person who is a medical
9 doctor from MUSC, who has absolutely no connection with
10 this other than doing her job. She backs up what these
11 witnesses say. Finally, these witnesses all testified
12 about the defendant taking off and leaving the scene of
13 the crime. Well, the led detective, Kelly Spears,
14 certainly talked about that, talked about how he kept
15 running for 17 months about how she looked for him. And
16 how law enforcement across the country finally found him
17 17 months later that is very important. These witnesses
18 that I just describe to you backed up and corroborate the
19 witnesses who testified.

20 I want to talk about Resheema Witfield now. She is
21 the sister as she told you of the victim, Cederious
22 Nelson, he was known as Little D. She's a brave lady,
23 brave young lady. She was 14 year olds when this
24 happened. And she had to watch her big brother be
25 executed by this man right here. She watched that. And

1 don't you imagine that's something that's burned in her
2 mind beyond all belief. I didn't ask her about it. It's
3 not appropriate to ask her. I imagine she can't get it
4 out of her mind. When she told you that her brother, her
5 big brother looking out for his little sister say, hey, go
6 back in the house. He knew something was going to happen.
7 She went back in there. She looked out of the little
8 window. Her view was big as the window and she saw what
9 she wanted to see absolutely I agree with that. She was
10 looking at her big brother, that's who she was worried
11 about. And she watched this man run into her view and
12 shoot her brother. That must have been absolutely
13 unbelievable. And she ran upstairs to grab the phone and
14 when she came back down, she saw this man running off,
15 jumping up and down, that's got to be hard to forget.
16 It's got to be hard to not remember. It's got to be hard
17 and confusing.

18 On the stand, she said certainly she was sad about
19 this. She was scared about this. It wasn't at all
20 pleasant for her to come in here and do this. I'm sorry
21 we had to make her do that. There's absolutely no reason
22 for her to come in here just to make up some fantastic
23 story. This was incredibly hard for her to do and she did
24 it bravely. There's no reason for her to come here and
25 make anything up to you. She's telling you the truth.

1 She's not covering for anybody. You think she would
2 actually cover for somebody that actually murdered her big
3 brother because that person had had a baby with her
4 sister. The person murdered her big brother. She told
5 you that that man right there D'el Grant. She's not lying
6 to you and she's not confused. She knows these two
7 brothers. She knows D'el Grant. She knows Gary Grant.
8 She's know them for a while. There's no doubt in her mind
9 which one is which. She without any problem said that's
10 the guy that shot my brother. She even picked him out in
11 a photo group, that's the one shot my brother. I watched
12 it. I know this guy. I know who he is and I watched him
13 shoot my brother. I think it's absolutely ridiculous that
14 you would think she had anything to do with hiding
15 evidence destroying evidence. She's 14 years old. She
16 just watched her brother murdered. You think that she
17 would have the wherewithal to go out and move cars and
18 collect guns is just absolutely absurd. Don't forget
19 about Resheema Witfield remember her.

20 What I just described to you was the case that the
21 State presented. And yesterday, the defense presented
22 their case two witnesses. The first one was Barbara Scott
23 and I would argue to you that that witness is confused.
24 She certainly seem like very nice lady up there. She's a
25 little bit old. She was in a very strange environment.

1 She didn't know the area. She didn't know the people.
2 She didn't know the faces. She didn't know the names.
3 She was in a very strange environment and she didn't get
4 out thank goodness. She stayed in the car that she
5 arrived in. If you remember her testimony, was parked
6 back from the crime scene along the side of the building.
7 She was a long way from where this happened. And this
8 very strange environment that she was in absolutely
9 exploded in her face. I mean, there were so many people.
10 There was confusion. She was terrified and there were
11 shots fired and she's confused. And she told you that she
12 never saw the shooter, so she heard the shooter. And when
13 Ms. Fanning first asked her who the shooter was, no idea.
14 She had no idea. Then when asked again when pressed, she
15 said I think it was the guy in the black jump suite was
16 involved. Obviously, the guy in the black jump suit was
17 his big brother, Gary Grant. He was there, but he wasn't
18 the one shooting this man right here was the one shooting.
19 I'm not trying to talk badly about any witnesses that
20 would take the stand. Barbara Scott she can't identify
21 the shooter. Certainly, she's confused.

22 The second witness for the defendant is this man's
23 big brother, Gary Grant. I would argue that he is not at
24 all confused. He is not at all credible. He wasn't
25 confused about this. He was just flat out lying.

1 He first described the fight that happened on
2 Woodlawn. The fistfight. When he talked about Deshawn
3 Gathers who you saw testify here might weight 100 pounds
4 on a good day. Tiny little Deshawn Gathers fighting with
5 ten people he describes, ten people in this fight. He
6 calls them little people. I don't even know what that
7 mean, but that's not believable.

8 He moves on into the shooting that happened on
9 Woodlawn. He's describes that the victims shot at him
10 which was out of nowhere. Then he also describe that
11 there was another man shooting at him. All three people
12 shooting at him and he just stood there like superman or
13 something just miraculously didn't get hit everybody
14 shooting at him. And he was grazed on the head. It is
15 just not credible just don't make any sense.

16 I do believe him that he was hit in the head.
17 There's no question about that. He was grazed. I don't
18 know if you had experience, but when you get cut or
19 scraped on the head, it bleeds a whole bunch. For the
20 rest of that day, he was using his shirt. He was using a
21 rag and all kinds of stuff to stop his head from bleeding.
22 Obviously, it was his blood on it. There's no question
23 about it. His head was bleeding. He had his shirt on,
24 had his rag on it.

25 Finally, Gary describes his big brother, Gary Grant,

1 describes going to Ashley Shores where the murder took
2 place. And he says my little brother wasn't even there.
3 I didn't even see him anywhere. Nobody knew where he was
4 he was gone, wasn't even there. He describes to you how
5 it was in fact him who just very coolly murdered these two
6 guys, his good friends. I mean, I asked him and he's such
7 an important act. He didn't have any idea who was
8 supposedly shoot first, who he supposed shoot second, no
9 idea how many shoots he fired. It's a pretty important
10 act in his life, that he's telling you he took. He
11 doesn't remember those details. He doesn't remember
12 because it's not true. Then he describes using a crack
13 head some person to drive him. And so in doing kidnaps
14 another person, Cordero Porcher, who was his friend I
15 guess until that point. And he escapes is what he
16 describes. Somewhere along that escape he hands off the
17 murder weapon to this mysterious unnamed person. He
18 expects you guy to believe all this. I argue it's not
19 credible.

20 Now, when he was asked by the police about this, who
21 shot those guys. He said I don't know. He said everybody
22 saying that my little brother, D'el, did it, that's what
23 he told North Charleston. And the story he told you
24 yesterday is not close to what he told North Charleston.
25 Back when this happened, he told the story that he's come

1 in here yesterday told a very different story. The story
2 he told you wasn't at all close to the testimony of
3 Deshawn Gathers, not close to the testimony of Devant
4 Porcher or Cordero's. Not at all close because it wasn't
5 true. What he told you was not true. His testimony was
6 not at all close to the testimony of Resheema Witfield,
7 not close because once again not true. He lied.

8 I was thinking about this last night. And after
9 Resheema Witfield watched her brother get killed, she had
10 to come in here and be brave and take the stand and
11 testify and tell you the truth. She told you the truth.
12 This man shot her brother. She had to sit back there and
13 watch Gary Grant tell his unbelievable story. She had to
14 watch that. Gary Grant is not credible.

15 What else is not credible. Well, as you know this
16 murder happened February of '05. Yesterday, I looked at
17 my watch and it was November the 6th 2007. All that time
18 this is the very first time he thought it was important
19 enough to make this revelation that he did it in the
20 middle of his little brother's murder trial. He makes his
21 revelation one that he had not made since February of
22 2005. When we talked to North Charleston did he admit it,
23 no. When he talked to the detectives everybody on scene
24 did he admit it, no. When, he, himself was arrested and
25 come clean then absolutely none. When three other people

1 were arrested in connection with this did he come clean
2 then, absolutely not. When his little brother was
3 arrested finally, his little brother was finally caught
4 and arrested 17 months after it happened, did he say, hey,
5 then now I have to come clean I did it, absolutely not.
6 Yesterday, was the first time he had mention this right in
7 the middle of his little brother's murder trial. He never
8 said a thing about it until yesterday because it's not
9 true.

10 Now, we talked about a little bit about Gary Grant's
11 criminal record. He's got a horrible record. He is not a
12 person of good character. Not somebody that you would
13 place your trust in. Most importantly about two months
14 ago, almost exactly two months ago, he was convicted in a
15 separate matter in Berkeley County. He was convicted of
16 burglary, of kidnapping, armed robbery, and murder. And
17 for that conviction, he received a life sentence.

18 So when he came before you yesterday, he was serving
19 a life sentence. His situation can't possibly get any
20 worse, can't possibly get any worse. He's already serving
21 life why not come in here and lie to take the rap for your
22 brother. It's exactly what he's done here take the rap
23 for his little brother. His little brother was two years
24 younger than him. They grew up in the same house. And I
25 asked him several questions yesterday and he kind of tried

1 to be tough, but he said when it comes down to it, I look
2 out for my little brother. When it comes down to it, I'll
3 look out for my little brother. Those were Gary Grant's
4 words. He is not credible. He's taking the rap for his
5 little brother.

6 Ladies and gentlemen, it's not -- certainly not TV
7 or not the movies. It's not Law and Order, not CSI
8 nothing like that, but what we have brought to you is not
9 fingerprints, not DNA. We brought to you is in a reality
10 what we have which is credible testimony of eye witnesses,
11 that's why you have to make a decision. The witnesses
12 told you this man right here armed himself and waited in
13 the apartment. And he waited during the argument and he
14 ran out of the apartment and executed two young men, two
15 boys. And I ask that you find him guilty of two murders,
16 find him guilty of both. He didn't call the police. He
17 didn't call EMS. He took off and he kept running for 17
18 months. He kept running. He kept hiding. Finally, he
19 brought in his big brother to try and take rap for him.
20 He's trying to escape. Don't let him get away with it.
21 Thank you.

22 THE COURT: All right. Before I give my instructions
23 to the jury, I want to speak just a moment to the
24 spectators in the courtroom. The next matter that we have
25 to do is to instruct the jury on the law of this case and

1 this will take about 30 minutes. I will tell anyone that
2 is in the courtroom that feels that they cannot sit here
3 for that period of time they need to leave now. You will
4 not be allowed to leave the courtroom after I begin my
5 charges. And if anyone comes into the courtroom, they
6 will also not be allowed to leave, but the courtroom will
7 remain open.

8 (WHEREUPON, pause in the proceedings.)

9 THE COURT: All right. Thank you. Now, ladies and
10 gentlemen of the jury, if you would give me your
11 attention. You have followed very patiently and listened
12 very attentively to the presentation of the evidence in
13 this case. And also to the able arguments made by the
14 Solicitor, Mr. Wetmore, on behalf of the State and,
15 Ms. Fanning, on behalf of the defendant and I thank you
16 for that.

17 It now becomes the duty of the trial judge under the
18 constitution of this state to charge and instruct you in
19 the law applicable to this case. And it is your duty as
20 jurors to accept and apply the law as the Court will now
21 state it to you. And as jurors, it is your exclusive duty
22 to decide all of the issues of fact in this case. And for
23 that purpose to determine the affect, the value, the
24 weight, and the truth of the evidence.

25 Both the State of South Carolina and the defendant

1 had the right to expect that you will conscientiously
2 consider and evaluate the evidence and apply the law
3 thereto to the end that both the State of South Carolina
4 and the defendant will receive and obtain a fair and
5 impartial trial.

6 Now, when I use word defendant in these instructions
7 I refer, of course, to Mr. D'el Jvon Grant. The State of
8 South Carolina by the two indictments in this case charges
9 the defendant, Mr. Grant, with two offenses the offenses
10 of murder. I'm going to summarize the indictments for you
11 and will tell you that in one indictment the defendant,
12 Mr. Grant, is charged with in Charleston County on or
13 about February the 24th of '05, 2005, with malice
14 aforethought killed and murdered Robert Bryant by means of
15 shooting and that Robert Bryant did die in Charleston
16 County as a proximate result thereof.

17 Indictment number 11481 charges that Mr. D'el Jvon
18 Grant did in Charleston County on or about February 24th
19 2005, with malice aforethought kill and murder Cederious
20 Nelson by means of shooting him. And that Cederious
21 Nelson did die in Charleston County as a proximate result
22 that of that shooting.

23 To these charges and to these indictments, the
24 defendant has entered a plea of not guilty. This plea of
25 not guilty by the defendant places the burden of proof on

1 the State to prove by evidence the guilt of the defendant
2 beyond a reasonable doubt before you, the jury, can find
3 the defendant guilty. The defendant, Mr. Grant, is
4 presumed in the law innocent of the charges contained in
5 these indictments. It is a cardinal and fundamental rule
6 of the law of evidence that a defendant irrespective of
7 the enormity of the charges against him will always be
8 presumed innocent of the charges for which he is indicted
9 unless and until the guilt of the defendant has been
10 proven by evidence that satisfies you, the jury, of the
11 guilt beyond a reasonable doubt.

12 The presumption of innocence is not a mere legal
13 theory. It is not just a legal phrase. The presumption
14 of innocence is a substantial right to which every accused
15 is entitled. Our Supreme Court has declared that the
16 presumption of innocence is like a robe of righteousness
17 placed about the shoulders of this defendant. And it
18 remains with him and assigns to him that class, the
19 innocent, until that presumptive robe of righteousness has
20 been stripped from his person by evidence satisfying you,
21 the jury, of the guilt of the defendant beyond a
22 reasonable doubt.

23 The presumption of innocence accompanies the
24 defendant from the time of his arraignment and appearance
25 in this court and continues with the defendant after you

1 retire to your jury room to deliberate a verdict. The
2 presumption of innocence continues in existence to the
3 benefit of the defendant until you, the jury, reach the
4 conclusion that the State has proven the guilt of the
5 defendant beyond a reasonable doubt.

6 The State is not required to prove the guilt of a
7 defendant beyond all doubt or beyond every doubt, but
8 beyond a reasonable doubt. What is a reasonable doubt?
9 It is not an imaginary or fanciful doubt or a weak doubt.
10 It is a substantial doubt. It is a doubt which the words
11 imply. A doubt for which you can give or assign a reason
12 based upon the testimony and the evidence in this case. A
13 reasonable doubt is not any sort of a doubt. You and I
14 know from every day life experiences that you may have a
15 sort of a doubt about any matter that arises no matter how
16 trivial it may be or how serious it may be.

17 A reason reasonable doubt is a doubt that makes an
18 honest, sincere, conscientious juror in search of the
19 truth hesitate to act. Proof beyond a reasonable doubt is
20 proof which leaves you firmly convinced of the defendant's
21 guilt. If you have a doubt for which you can give a
22 reason or assign a reason as to the guilt of the
23 defendant, then he is entitled to a verdict of not guilty.

24 Reasonable doubt may arise from evidence which is in
25 the case or from the lack of evidence in the case. You,

1 the jury, must make the determination of whether or not
2 reasonable doubt exist as to the guilt of the defendant.
3 The very fact however that the jury engages in a full and
4 free discussion of the issue of guilt or non-guilt in this
5 case with a normal conversational ev and flow of these
6 issues does not automatically mean that reasonable doubt
7 exist in this case or in any other case. I charge you
8 that the defendant is entitled to every reasonable doubt
9 arising in the whole case or arising in any defense
10 asserted by the defendant. If upon any issue of fact
11 essential to conviction and a verdict of guilty, you have
12 a reasonable doubt as to how that doubt should be
13 resolved, it would be your duty to resolved that doubt in
14 favor of a defendant.

15 A defendant, ladies and gentlemen, is not required to
16 prove his innocence, but the State is required by law to
17 prove every essential element of the offense charged
18 against the defendant by evidence that satisfies you, the
19 jury, of the guilt of the defendant beyond a reasonable
20 doubt before you can convict a defendant and find him
21 guilty. If then upon the whole case, you have a
22 reasonable doubt as to the guilt or innocence of the
23 defendant, he is entitled to that reasonable doubt and
24 would be entitled to a guilt -- entitled to an acquittal
25 and a verdict of not guilty. But on the other hand if

1 upon the whole case, you find the State has proven by
2 evidence which satisfies you, the jury, of the guilt of
3 the defendant beyond a reasonable doubt, then in such
4 circumstances it would equally be your duty to convict the
5 defendant and find him guilty. If you find the defendant
6 guilty but you have a reasonable doubt as to whether the
7 defendant be guilty of the greater crime charged or a
8 lessor crime, and I will give you some instructions on
9 that in a few minutes, then you would resolve that
10 reasonable doubt in favor of the defendant and write a
11 verdict of guilty only as to the lessor charge. But, of
12 course, you could not write a verdict of guilty to any
13 charge unless you find that all the elements of the charge
14 have been proven by the State beyond a reasonable doubt.

15 Now, I instruct you that the indictments which I --
16 the indictments in this case which I have in my mind are
17 not evidence and cannot be considered by a jury as
18 evidence in the case. The indictments are simply the
19 formal written instruments which contain the charges
20 against the defendant and they serve as the formal
21 documents by which this case is brought to trial.

22 During this trial, each of us you and I have certain
23 duties to perform. As the trial judge, it is my
24 responsibility to preside over the trial of this case and
25 also have the duty to rule upon or pass upon the

1 admissibility of evidence offered during the progress of
2 the trial. The Court rules only upon the admissibility of
3 the evidence not the weight that is to be given to it that
4 is for you to determine. You are to consider only the
5 competent evidence before you and you are to disregard and
6 disabuse from your mind any questions ordered stricken
7 from the record of this case during the progress of the
8 trial if there be any. And you are to consider only the
9 testimony which has been presented from the witness stand
10 together with any exhibits admitted into the record of
11 this case and any stipulations of counsel made into
12 record, if there are any.

13 I have the additional duty to charge you the
14 presiding law in this case or the applicable law of this
15 case. As the presiding judge, I am the sole judge of the
16 law in this case. And it is your duty to accept and apply
17 the law as I now state it to you. If you have a
18 preconceived idea of what the law is or what the law ought
19 to be and it does not agree with what I tell you the law
20 is, you are obligated under your oath to abandon this
21 preconception on your part because you are sworn to accept
22 the law precisely as I state it to you.

23 In every case tried in this court before a jury, the
24 jury becomes the sole and exclusive judge of the facts.
25 You, the jury, are the judge of the facts in this case.

1 The Court is the judge of the law. The Constitution of
2 this State has declared that the trial judge shall not
3 intimate, state, comment upon or make any statement to a
4 trial jury about the facts in a case. Since, you are the
5 sole judge of the facts you are not to infer from anything
6 that I have said during the progress of this trial. And
7 ruling upon the admissibility of evidence or otherwise or
8 anything that I say to you now during the course of this
9 instruction or charge to you, that I have an opinion about
10 the facts of this case. I do not. The law does not
11 permit me to have an opinion about the facts. That is the
12 matter solely for you, the jury, to determine.

13 As jurors then, it is your duty to determine as I
14 have stated to you the effect, the value, the weight, and
15 the truth of the evidence presented during the course of
16 this trial. Necessarily then, you must assess the
17 credibility of the witnesses who have testified in this
18 case. Credibility is simply a legalistic term which means
19 believability. It becomes your duty to analyze and
20 evaluate the evidence and to determine that evidence which
21 convinces you of its truth. I charge you that in
22 determining the question of credibility or believability
23 of witnesses, you may believe one witness as against
24 several witnesses or several witnesses as against one
25 witness. You may believe a part of the testimony of a

1 witness and reject the remaining part of the testimony of
2 that same witness. You may believe the testimony of a
3 witness in its entirety or you may reject the testimony of
4 a witness in its entirety. You may consider whether has,
5 exhibited any interest, any bias or any prejudice in the
6 case. And you may consider the demeanor of the witness
7 that is the appearance of the witness from the witness
8 stand. And you may also consider the opportunity for
9 knowledge concerning those things about which a witness
10 testified. These considerations you do not exercise
11 arbitrarily or but if your good judgment there is sound
12 reason and record for so doing. Because you are
13 objecting, ladies and gentlemen, is to find the truth
14 whether it comes from a witness or witness for the State
15 of South Carolina or a witness or witnesses for the
16 defense. And in doing so in exercising your mental
17 processes and in determining what you consider to be true,
18 the law simply requires that you exercise your good
19 judgment, your common sense, your sense of logic and
20 reason and your experiences in life. You then take and
21 apply those attributes and ability to the evidence in
22 determining what you consider to be the truthful evidence.
23 And do these true state of facts as determined by you, the
24 jury, you take and apply the law as the Court will now
25 state it to you and thus arrive at a verdict in this case.

1 Now, the defendant in this case is charged with the
2 crime of murder. What is murder? I will now define this
3 offense for you. It is defined as the willful felonious
4 killing of a human being by a human being with malice
5 aforethought, that malice being either expressed malice or
6 implied malice.

7 Section 16-3-10 of the South Carolina code of laws
8 provides that murder is the killing of any person with
9 malice aforethought either express or implied. The State
10 must prove beyond a reasonable doubt that the defendant
11 killed another person with malice aforethought. The
12 presence of malice is a required element of murder.
13 Malice is defined as being hatred or ill will. Malice in
14 its legal sense does not necessarily import ill will
15 toward the individual injured, but signifies whether a
16 general malignant recklessness of the lives and safety of
17 others or a condition of the mind which shows a heart
18 regardless of social duty and fatally bent on mischief.

19 Malice is the wrongful intent to injure another
20 person. It indicates a wicked or depraved spirit intent
21 on doing wrong. Malice is a legal term implying
22 wickedness and excluding a just cause or excuse. It is
23 the doing of a wrongful act intentionally and without just
24 cause or excuse. The term malice indicates a formed
25 purpose and design to do a wrongful act under the

1 circumstances that exclude any legal right to do it.
2 Malice may be either expressed or implied. The words
3 express or implied add nothing to the meaning of the word
4 malice. They do not imply different kinds of malice, but
5 the merely the manner in which the only kind known in the
6 law to exist may be shown. That is either by positive
7 evidence or by inference. Expressed malice is when there
8 is a deliberate intention to unlawfully take the life of
9 another. Implied malice is when the circumstances
10 demonstrate a wanton or reckless disregard for human life
11 or a reasonably prudent man would have known that
12 according to common experiences there was a plain and
13 strong likelihood that death would follow the contemplated
14 act. The law says that if one intentionally kills another
15 with a deadly weapon, the implication of malice may arise.
16 If facts are proven beyond a reasonable doubt sufficient
17 to raise an inference of malice to your satisfaction, this
18 inference would be simply an evidentiary fact to be taken
19 into consideration by you, the jury, along with the other
20 evidence in this case. And you may give it such weight as
21 you should determine it should receive.

22 A deadly weapon is any article, instrument or
23 substance which is likely to cause death or great bodily
24 harm. Whether an instrument or an object has been used as
25 a deadly weapon depends upon the facts or circumstances of

1 the case. Although malice must be aforethought, there is
2 no requirement that it must exist for any appreciable
3 length of time before the commission of the act. It may
4 be conceived at the very moment the act occurred. There
5 must be a combination of the evil intent and of the act
6 producing the result.

7 Now, on the theory that the lesser-included offense
8 is included in the principle offense, you will also have
9 for your consideration whether the defendant committed the
10 lesser-included offense the crime of voluntary
11 manslaughter. What is voluntary slaughter? Section
12 16-3-50 of the South Carolina law defines manslaughter as
13 the unlawful killing of another without malice expressed
14 or implied. Voluntary manslaughter is the unlawful
15 killing of a human being without malice in sudden heat of
16 passion upon sufficient legal provocation. To prove
17 voluntary manslaughter, the State must demonstrate beyond
18 a reasonable doubt that the defendant unlawfully killed
19 another without malice in sudden heat of passion on
20 sufficient legal provocation. Heat of passion alone will
21 not suffice both heat of passion and sufficient legal
22 provocation must be present at the time of the killing to
23 constitute voluntary manslaughter.

24 The sudden heat of passion upon sufficient legal
25 provocation while it need not dethrone reason entirely or

1 shut out knowledge and volition must be such as would
2 naturally disturbed the sway of reason and render the mind
3 of an ordinary person in cable of cool reflection. And
4 produce what according to human experience may be called
5 uncontrollable impulse to do violence. The passion need
6 not be so overpowering as for the time to shut out
7 knowledge and destroy volition.

8 To constitute sufficient legal provocation, the
9 provocation must come from some act of or related to the
10 victim. The provocation of the deceased must be such as
11 naturally and instantly provides in the mind of a person
12 ordinarily constituted the highest degree of exasperation,
13 rage, anger, sudden resentment or terror rendering the
14 mind in cable of cool reflection. If sufficient legal
15 provocation does not exist, the killing even if committed
16 during the heat of passion is not voluntary manslaughter.
17 The provocation must deprive one of the power of self-
18 control, but it need not entirely dethrone reason.

19 Now, ladies and gentlemen, there a couple things I
20 want to tell you. A couple of them are evidentiary.
21 First of all, you have heard testimony in this case from
22 what is called expert witnesses. And I would tell you
23 that the testimony of expert witnesses is to be given no
24 greater weight than the testimony of any other witnesses.
25 You should weigh the testimony of an expert witness just

1 as you would weigh the testimony of any other witness.

2 I would also tell you that there are generally two
3 types of evidence from which a jury may properly find the
4 truth of the facts of the case. One is direct evidence
5 such as the testimony of a witness and the other is in-
6 direct or circumstantial evidence. The proof of a chain
7 of circumstances according to the existence or none
8 existence of certain facts. By the term direct evidence,
9 the law means the testimony of persons who have perceived
10 its existence by means of their senses as in the essence
11 where a person sees a crime committed and comes into court
12 to testify as to what he or she saw.

13 Circumstantial evidence on the other hand means the
14 proof of some other fact or facts from which taken either
15 singly or collectively the existence of a particular fact
16 in question may be inferred from the -- inferred as a
17 necessary consequence. Violation of the law may be proved
18 by circumstantial evidence as well as by direct testimony
19 of an eye witness.

20 Now, ladies and gentlemen, I would also tell you and
21 emphasise to you now that the fact that the defendant in a
22 criminal case does not testify in his own behalf is not a
23 factor to be by considered by you in anyway in your
24 deliberation and in your consideration of the question of
25 guilt or innocence of the accused. It must not be

1 considered by you in any manner whatsoever against the
2 defendant or mitigate against him in any respect
3 whatsoever. A defendant has the constitutional right to
4 remain silent and the election of such a constitutional
5 right cannot and must not be considered by you in your
6 deliberations. Under your oath then, you are to reach no
7 inference and draw no conclusions whatsoever from the fact
8 that the defendant in this case did not testify. The fact
9 that the defendant did not testify should not even be
10 discussed in your jury room.

11 The burden of proof as I have stated to you is upon
12 the State. It is not incumbent upon the accused to prove
13 his innocence. The burden of proof remains upon the State
14 to prove the guilt of the defendant beyond a reasonable
15 doubt. And the fact that the defendant exercised his
16 constitutional right to remain silent is not a factor to
17 be considered by you in determining the guilt or innocence
18 of a defendant.

19 Now, ladies and gentlemen, I have just about finished
20 my instructions to you, but I would tell you that you are
21 not partisans or advocates for the State of South Carolina
22 or for this defendant. You do not serve on the jury to
23 reward your friends or punish your enemies. Obviously,
24 such a perverted system of justice would be intolerable.

25 You have been selected by both the State and this

1 defendant as fair and impartial jurors. It is your duty
2 then by your joint deliberations to determine the truth in
3 this case giving to the defendant the benefit of each and
4 every reasonable doubt on each and every issue. And then
5 to the facts which you determine to be true. You then
6 take and apply the law which has been given to you by this
7 court and arrive at a verdict which does those speak the
8 truth. The word verdict has a Latin derivative and comes
9 from the Latin verb veredicto meaning to speak the truth.
10 And when you have accomplished these responsibilities, you
11 will have satisfied your oath as jurors and you will have
12 discharged your duty to this court.

13 Now, I'm going to instruct you on your forms of
14 verdict in this case and there are three possible
15 verdicts. If the State has failed to prove the guilt of
16 the defendant beyond a reasonable doubt on either of the
17 discharges or each defendant, your verdict would be two
18 words not guilty. If the State has proven the guilt of
19 the defendant beyond a reasonable doubt on the crime of
20 murder, your verdict would be one word or would be guilty
21 of murder. If the State has not proven the defendant
22 guilty of the offense of murder beyond a reasonable doubt
23 but has proven the defendant guilty of voluntary
24 manslaughter beyond a reasonable doubt, your verdict would
25 be guilty of voluntary manslaughter.

1 Now, I would tell you that the verdict that you
2 render in this case must be the verdict of each and every
3 juror. It must be your unanimous verdict. All 12 of you
4 must agree upon the verdict which you authorize the
5 foreman write for you.

6 Now, Mr. Foreman, I have prepared on a sheet of paper
7 the possible verdicts in this case. And I will tell you
8 and all the members of the jury now that the order in
9 which I have put the possible verdicts on this form have
10 absolutely significance whatsoever. You should not infer
11 from the order in which I have put the possible verdicts
12 on this form that I have any opinion as to what your
13 verdict should be. I do not, but obviously when putting
14 something down on paper I had to put something down first
15 and something down second and something down third. But
16 each one there are two verdict forms in this case. One
17 for each indictment. One involves the homicide of Robert
18 Bryant and the other one involves the homicide of
19 Cederious Nelson. But across the top is simply the State,
20 the county, and the formalities of the court, the case
21 number, The State vs. D'el Jvon Grant verdict form. And
22 on one of them is on the charge of murder of Robert Bryant
23 and I put that there because that is the charge of the
24 indictment. We, the jury, by unanimous agreement find the
25 defendant, D'el Jvon Grant, guilty of murder, guilty of

1 voluntary manslaughter or not guilty. And you would
2 choose one of those three by putting an X or a check in
3 there and sign it down here. Depending on what the
4 unanimous verdict of the jury was. And the same applies
5 to the verdict form on the murder of Cederious Nelson.
6 We, the jury, by unanimous agreement find the defendant,
7 D'el Jvon Grant, guilty of murder, guilty of voluntary
8 manslaughter or not guilty. One of the three again and
9 sign your name.

10 And as soon as you have reached a verdict, knock on
11 the door, and we will return you to the courtroom. The
12 bailiff will be stationed outside of the courtroom door or
13 security during your deliberations. I'm going to send you
14 to your jury room. Going to ask that you not begin your
15 deliberations just yet. I am required by law to take up
16 certain matters with the attorneys. If it is not
17 necessary for me to bring you back into the courtroom for
18 additional instructions, the bailiffs will bring you these
19 verdict forms. They will also bring you the exhibits that
20 have been introduced into evidence and will tell you to
21 begin your deliberations. So if you would go to your jury
22 room, but do not begin your deliberations just yet. Thank
23 you very much.

24 (WHEREUPON, the jury retired to the jury room at
25 11:34 a.m.)

1 THE COURT: Any additions or exceptions on behalf of
2 the State, Mr. Wetmore?

3 MR. WETMORE: No, sir, Your Honor.

4 THE COURT: On behalf of the defense, Ms. Fanning?

5 DEFENSE ATTORNEY: None, Your Honor.

6 THE COURT: All right. Counsel, my records indicates
7 that State's 1, 2, 3, and 4 never did come into evidence
8 and were Id only. The State's 5 through 16 are admitted.
9 State's 17 was the color photograph of the bodies of these
10 two young men and was not admitted. State's 18 was
11 admitted that was the lineup containing the defendants.
12 State's 19 was not admitted that was the lineup containing
13 Mr. Graves State's 10 or State's 20 was not admitted.
14 From the defense standpoint, Defendant 1 and 3 were
15 admitted and Defendant's 2 were not admitted that's what
16 my records indicate. Is that what your records show as
17 well? All right. Those will be the exhibits then. Check
18 those, counsel, and they will to the jury room. Madam
19 Bailiff, here is the verdict form. If you will get the
20 exhibits if y'all will check the exhibits and make sure
21 those are the ones that go in the jury room. And you may
22 tell the jury to begin their deliberations have the two
23 alternates come back in please.

24 MR. WETMORE: Thank you, Judge.

25 (WHEREUPON, a pause in the proceedings.)

1 THE COURT: They're on their way back in, but let me
2 ask you, Mr. Wetmore, no objection to excusing the
3 alternates at this time is it?

4 MR. WETMORE: Judge, I don't have any objections. I
5 certainly give to your decision.

6 THE COURT: Sir.

7 MR. WETMORE: I don't have any objections. You
8 think it's a good time that's perfect.

9 THE COURT: Okay. Do you have any objection to
10 excusing the alternates?

11 MS. FANNING: No, Your Honor.

12 (WHEREUPON, a pause in the proceedings.)

13 THE COURT: All right. Y'all can stand there for
14 just a moment you don't even really need to have a seat.
15 You have heard all of the testimony in this case, but you
16 will not participate in the decision. The purpose in
17 drawing alternates is in the event that somebody gets sick
18 and is unable to serve so that we would not have a
19 mistrial, but fortunately everyone in this case has
20 remained healthy. And I am not allowed by law to have
21 more than 12 jurors. So I am going to excuse you from any
22 further service in this case.

23 I will tell you that once you have been excused by
24 the Court there is nothing illegal about anyone talking
25 with you about your service. There's nothing illegal

1 about your talking with anyone about it as well. As I
2 say, it's not illegal for anyone to talk with you about
3 your service. It's a practice of which I strongly
4 disapprove and I strongly discourage, but it's not
5 illegal. But it's up to you. You talk can with anyone or
6 you cannot talk with anyone. If anyone wants to talk with
7 you about it and you don't want to discuss it with them
8 and they continue to harass you or bother you, you let the
9 court personnel know and I will deal with them. But you
10 can discuss it with anyone. However, I would ask that you
11 not discuss it with anyone until after this jury has
12 reached a verdict. You want know when that is, but it
13 will be sometime later on today I'm sure. But after that,
14 it would be your call. And, Mr. Clerk, what -- do you
15 have them coming back in. You want them to just...

16 THE CLERK: Call back tonight.

17 THE COURT: I'm going to go ahead and excuse you for
18 the rest of the day. We are going to start another case
19 for this afternoon, but we got enough jurors to take care
20 of that. I would ask that you call that number that you
21 have after six o'clock tonight and there will be an
22 answering machine. And it will have your instructions on
23 there for tomorrow, but with that then, you are excused
24 for any further service on this case. And you're free to
25 go for the rest of the day. Thank you very much.

1 (WHEREUPON, the alternates were excused.)

2 THE COURT: All right. We will be at ease 'til we
3 hear from the jury.

4 (WHEREUPON, the jury began deliberations at 11:42
5 a.m.)

6 (WHEREUPON, court in recess.)

7 (WHEREUPON, Court's Exhibit No. 5 was marked for the
8 record.)

9 THE COURT: All right. We're back on the record with
10 regard to the matter of The State vs. D'el Jvon Grant.

11 The State is present as is Mr. Grant with his counsel. A
12 little earlier we received a note from the jury. The jury
13 which has has been marked as Court's Exhibit Number 5
14 which I discussed with counsel in chambers by that note
15 the jury -- the note reads as follows: We, the jury,
16 request a written testimony of C. Porcher, D. Porcher,
17 D. Gathers, and R. Witfield and was signed by the foreman.
18 After discussing the matter with counsel, I went to the
19 door of the jury room and advised the jury that the
20 written testimony of the witnesses was not able. And that
21 the testimony could be played back to them, but would take
22 of course as long as it had did to present the testimony
23 initially. And I told them that would be glad to do that,
24 but if they would like to narrow their request, we would
25 handle that as well. That has been marked as Court's

1 Exhibit Number 5 and made a part of record. Any objection
2 to the way that the response to the initial inquiry from
3 the jury was handled on behalf of the State, Mr. Wetmore?

4 MR. WETMORE: No, sir, Your Honor.

5 THE COURT: Ms. Fanning.

6 MS. FANNING: No, Your Honor.

7 THE COURT: All right. We have now have received
8 another request. And I will have the court reporter mark
9 this as Court's Exhibit Number 6 another note from the
10 jury and here the jury has requested or the note reads as
11 follows: Jury request the testimony the D. Gathers from
12 the time he arrived at Ashley Shores on day of the
13 murders. So I think that we can key that up and play that
14 and I will ask the court reporter to do that. Any problem
15 with that, Mr. Wetmore?

16 MR. WETMORE: No, sir, Your Honor.

17 THE COURT: All right, Ms. Fanning?

18 MS. FANNING: All right. No, Your Honor.

19 THE COURT: All right. We need to find the testimony
20 of that -- was that on the first day or the second day?

21 MR. WETMORE: First day second witness.

22 THE COURT: That would be Ms. McCall's. We will be
23 at ease 'til we get it done.

24 (WHEREUPON, Court's Exhibit No. 6 was marked for the
25 record.)

1 (WHEREUPON, court at ease.)

2 THE COURT: What we got we have found the testimony
3 or she's found the testimony of Deshawn Gathers. Without
4 her listening to the whole thing, she doesn't know where
5 they wanted to started which is the Ashley Shores part of
6 it because we haven't gotten it broken down that way. It
7 appears to be about an hour from start to finish based
8 upon Ms. McCall's notes 2:47 to 3:47. I guess the thing
9 for us to do would be just to play all of the testimony of
10 Deshawn Gathers since that's apparently what they're
11 asking for direct goes from 2:47 to 3:17. Then cross from
12 to 3:17 to 3:40. And then redirect 3:40 to 3:47. And I'm
13 assuming those are times I don't know since Ms. McCall
14 isn't here. And it just looks like that it's an hour
15 worth testimony. And I guess the best thing for us to do
16 would just be to bring the jury in and play that testimony
17 without trying to pick it up at the point where they said
18 to start from because really there's no way to do that
19 without listening to it and finding out where that is.
20 Any objection to that, Mr. Wetmore?

21 MR. WETMORE: No, sir.

22 THE COURT: Any objection?

23 MS. FANNING: No, Your Honor.

24 THE COURT: Well, what I'm gone do then is wait about
25 15 minutes or so before we start because the jury has just

1 gotten lunch and so I'm gone allow them to eat lunch. And
2 then we'll bring them in when they're ready to play that
3 testimony for them at that time. So y'all just be at ease
4 until the jury has had a chance to eat their lunch.

5 (WHEREUPON, court at ease.)

6 THE COURT: All right. We're back on the record with
7 regard to the matter of The State vs. D'el Grant. The
8 juror has now had their lunch and the reporter I
9 understand has the testimony of Mr. Gathers ready to play.
10 And the jury is ready to hear it. So if there's anything
11 before I bring the jury in, Mr. Wetmore?

12 MR. WETMORE: Nothing, Your Honor.

13 THE COURT: All right, Ms. Fanning?

14 MS. FANNING: No, Your Honor.

15 THE COURT: All right. We'll bring the jury in and
16 play the testimony as requested by the jury. All right,
17 bring the jury in please.

18 (WHEREUPON, the jury returned to the courtroom at
19 2:41 p.m. to hear the testimony of Deshawn Gathers.)

20 THE COURT: All right. Thank you very much, ladies
21 and gentlemen. And I have your latest note where you have
22 requested the testimony of Mr. Gathers from the time he
23 arrived at Ashley Shores on the day of the murders. And
24 I'm sure that you probably realize, we have had to have
25 two different court reporters in connection with this

1 matter. And Mr. Gathers testimony was taken by the court
2 reporter that we had the first day. And we do have the
3 testimony that you want to hear, but it is not possible
4 for us get it at the time he arrived at Ashley Shores, so
5 we going to play Mr. Gathers' testimony from the time of
6 that he initially took the stand for you and let you hear
7 the entire testimony of Mr. Gathers. If at any time after
8 you get into this, if there's a consensus, Mr. Foreman,
9 that you do not need to hear any more, we can stop and
10 allow you to go back to your deliberations. But if you
11 want to hear it all while, of course, you're welcome to
12 hear all of the testimony of Mr. Gathers. With that, we
13 will play that testimony. All right, madam reporter.

14 (WHEREUPON, testimony being played for the jury.)

15 THE COURT: Mr. Foreman, have y'all heard everything
16 you need to hear you think?

17 FOREMAN: Yes, sir.

18 THE COURT: All right. Thank you. With that then,
19 we'll allow you to go back to the jury room. You may
20 resume your deliberations. Thank you.

21 (WHEREUPON, the jury continued deliberations at
22 3:45.)

23 THE COURT: All right. Mr. Wetmore, any objection to
24 the method of handling the playing of the testimony for
25 the jury?

1 MR. WETMORE: No, sir, Your Honor.

2 THE COURT: Ms. Fanning.

3 MS. FANNING: No, Your Honor.

4 THE COURT: All right. We will be at ease until we
5 hear from the jury.

6 (WHEREUPON, court in recess.)

7 THE COURT: All right. Back on the record with
8 regard to the matter of The State vs. D'el Jvon Grant. In
9 the two cases indictment numbers 11480 and 11841. The
10 State is present through the Solicitor. The defendant is
11 present with his counsel. Counsel, I understand the jury
12 has reached a verdict. Anything before we bring the jury
13 in?

14 MR. WETMORE: No, sir.

15 THE COURT: Ms. Fanning?

16 MS. FANNING: No, Your Honor.

17 THE COURT: All right. Let me address all of the
18 members of the audience for just a moment before I bring
19 the jury in. I know that this is a very emotional and
20 serious matter for all of the parties that are involved
21 the victims families and the defendant and his family.
22 And I know that everybody -- emotions are running very
23 high in this case. But I am going to have to require as I
24 have done all during the trial of this case that order and
25 decorum in the courtroom be maintained. And by that, I

1 mean if you feel that you cannot sit quietly while the
2 verdict is read, then I am going to ask you to leave the
3 courtroom now because I cannot allow any displays of
4 emotion, clapping or anything else when the jury verdict
5 is read. So if there's anybody in the courtroom that
6 feels they cannot sit quietly and accept the juries
7 verdict when it is read, I would ask that you leave now.
8 All right. Then I would expect that order and decorum in
9 the courtroom be maintained. All right. Bring the jury
10 in please.

11 (WHEREUPON, the jury returned to the courtroom with a
12 verdict at 5:35.)

13 THE COURT: All right. Mr. Foreman, I understand
14 that you've reached a verdict; is that correct?

15 FOREMAN: Yes, sir, we have.

16 THE COURT: Would you hand it up to the bailiff
17 please.

18 (WHEREUPON, a pause in the proceedings.)

19 THE COURT: All right. From the standpoint of form,
20 the verdict appears to be correct. Ms. Fanning, if you
21 and Mr. Grant stand please. And, Mr. Clerk, you may
22 publish the verdict.

23 THE CLERK: Yes, sir, Your Honor. The State of South
24 Carolina vs. D'el Jvon Grant, indictment number
25 2006-GS-10-11480 on the charge of murder of Robert Bryant.

1 We, the jury, by unanimous agreement find the defendant,
2 D'el Jvon Grant, guilty of murder. Signed by Lester
3 Phillips dated November 7, 2007. Ladies and gentlemen of
4 the jury, if this is your verdict please reply by raising
5 your right hand.

6 State of South Carolina vs. D'el Jvon Grant case
7 number 2006-GS-10-11481 on the charge of murder of
8 Cederious Nelson. We, the jury, by unanimous agreement
9 find the defendant, D'el Jvon Grant, guilty of murder.
10 Signed by Lester Phillips, foreperson. Dated November 7th
11 2007. Again, ladies and gentlemen of the jury, if this is
12 your verdict please reply by raising your right hand.
13 Thank you.

14 (WHEREUPON, all jurors' responded in the affirmative
15 by raising their right hand.)

16 THE COURT: All right. Ms. Fanning, you may be
17 seated. Anything before the jury is excused?

18 MS. FANNING: We would like them polled, Your Honor.

19 THE COURT: The jury will be polled please,
20 Mr. Clerk.

21 THE CLERK: Ladies and gentlemen of the jury, I'll be
22 asking two questions is this your verdict and are these
23 still your verdicts. When I call your name and juror
24 number, if you would raise your right hand.

25 THE COURT: Is it agreeable to you, Ms. Fanning, do

1 you want to do the polling separately on each case or
2 combined?

3 MS. FANNING: Combined.

4 THE COURT: All right. So it will be on both cases
5 that you'll be answering these questions with regard to
6 both the homicide involving Mr. Bryant and the one
7 involving Mr. Nelson. The two questions will apply to
8 both of your verdicts in both of those cases. Okay.

9 THE COURT: Lester Phillips, are these your verdicts?

10 MR. PHILLIPS: Yes, sir.

11 THE CLERK: And are they still your verdicts?

12 MR. PHILLIPS: Yes, sir.

13 THE CLERK: Thank you. Put your hand down.

14 Rodney Beard, are these your verdicts?

15 MR. BEARD: Yes, they are.

16 THE CLERK: And are they still your verdicts?

17 MR. BEARD: Yes, they are.

18 THE CLERK: Thank you. Willie Smalls, are these your
19 verdicts?

20 MS. SMALLS: Yes.

21 THE CLERK: And are they still your verdicts?

22 MS. SMALLS: Yes.

23 THE CLERK: Thank you. Joseph Carson, are these your
24 verdicts?

25 MR. CARSON: Yes.

1 THE CLERK: And are they still your verdicts?

2 MR. CARSON: Yes.

3 THE CLERK: Thank you. Lindsey Winslow, are these
4 your verdicts?

5 MS. WINSLOW: Yes.

6 THE CLERK: And are they still your verdicts?

7 MS. WINSLOW: Yes.

8 THE CLERK: Thank you. Kelly Needham, are these your
9 verdicts?

10 MS. NEEDHAM: Yes.

11 THE CLERK: And are they still your verdicts?

12 MS. NEEDHAM: Yes.

13 THE CLERK: Thank you. Kenneth Smith, are these your
14 verdicts?

15 MR. SMITH: Yes.

16 THE CLERK: And are they still your verdicts?

17 MR. SMITH: Yes.

18 THE CLERK: Thank you. Kimberly Keller, are these
19 your verdicts?

20 MS. KELLER: Yes.

21 THE CLERK: And are they still your verdicts?

22 MS. KELLER: Yes.

23 THE CLERK: Thank you. Donald Proulx, are these your
24 verdicts?

25 MR. PROULX: Yes.

1 THE CLERK: And are they still your verdicts?

2 MR. PROULX: Yes.

3 THE CLERK: Thank you. Linda Meyer, are these your
4 verdicts?

5 MS. MEYER: Yes.

6 THE CLERK: And are they still your verdicts?

7 MS. MEYER: Yes.

8 THE CLERK: Robert Litaker, are these your verdicts?

9 MR. LITAKER: Yes.

10 THE CLERK: And are they still your verdicts?

11 MR. LITAKER: Yes.

12 THE CLERK: Thank you. Frankie Owens, are these your
13 verdicts?

14 MS. OWENS: Yes.

15 THE CLERK: And are they still your verdicts?

16 MS. OWENS: Yes.

17 THE CLERK: Is there anyones names I missed? Your
18 Honor, the verdict stands.

19 THE COURT: All right. Thank you. Anything before
20 the jury is excused, Ms. Fanning?

21 MS. FANNING: No, Your Honor.

22 THE COURT: All right. All right. Ladies and
23 gentlemen of the jury, this will conclude your services in
24 this case and I'm going to excuse you in just a few
25 minutes with the thanks of the Court not for your verdict,

1 but for your service. I know that it is never convenient
2 to serve on a jury, but it is important that we have good
3 citizens who are willing to come forward and serve when
4 they are summoned to do so.

5 I will tell you that there is only one thing that
6 remains to be done with regard to these two cases and that
7 is the sentencing of the defendant and we will go into the
8 sentencing phase at this time. You are welcome to stay.
9 If you would like to stay for the sentencing phase
10 because I know juries like to know what the ultimate
11 outcome is, but you do not have to. And when I excuse you
12 if you want to leave, you can simply leave and go out the
13 way that you usually come in. But if you would like to
14 stay, you can stay and keep your seats there in the jury
15 box while I go through the sentencing phase. And I will
16 excuse you first before anyone else is excused from the
17 courtroom. So you are welcome to stay if you would like
18 to stay. But we are going to go through the sentencing
19 phase of the matter in just a very few minutes, but if you
20 would like stay, you may do so. But if there's anyone on
21 the jury who would like to be excused, you are free to do
22 so. I would tell you that what I would ask you to do is
23 to call the number that you have after six o'clock
24 tonight. It's about ten minutes to five now. There may
25 be other matters. We've already drawn another matter for

1 this court tomorrow, but there may be other matters with
2 one of the other judges that will need your services
3 tomorrow, so please call that number that you have after
4 six o'clock tonight to get your reporting instructions for
5 tomorrow. So if you would like to be excused, you may do
6 so or you may stay. It's up to you. That if you like to
7 be excused, you may do so.

8 (WHEREUPON, the jurors that wanted to be dismissed
9 exited the courtroom.)

10 THE COURT: All right. Ms. Fanning, motions on
11 behalf of the defendant?

12 MS. FANNING: Your Honor, we'd like to make a motion
13 for to set aside the jury verdict or the 13th Juror
14 doctrine and grant the defendant a new trial on the
15 grounds that the -- there was not any physical evidence
16 tying Mr. Grant to the scene as it's been discussed.

17 My other motion is for a directed verdict. And on
18 the grounds that there was evidence in the record absolve
19 him of this crime which apparently the jury disregarded.
20 I'm sorry I'm trying to read the sentence sheet and talk
21 at the same time. It's clearly not working so let me just
22 pay attention. On the grounds that there was insufficient
23 evidence in the record to establish guilt that the jury is
24 apparently disregarding evidence which would have absolve
25 Mr. Grant and I would ask that the Court set aside the

1 jury verdict and grant a new trial.

2 THE COURT: All right. Mr. Wetmore.

3 MR. WETMORE: Judge, there was certainly ample
4 evidence to the jury that this man was the shooter four
5 eye witnesses. I think that's certainly enough to go to
6 the jury. And they did weigh that evidence based on the
7 verdict. We ask that you keep it the same.

8 THE COURT: All right. Thank you, counsel. And I do
9 understand the motion is one in arrest a verdict and for
10 new trial. In my view however even though there was
11 conflicting evidence in the record that is what the juries
12 job is is to weigh the evidence and to decide that
13 evidence which it feels is the most credible. And I if
14 were to grant a new trial or to set aside the verdict, I
15 would be imposing my judgment on that of the jury and that
16 I do not think I can do. I think there is evidence in the
17 record by which the jury could have reached the conclusion
18 that they did. And I will therefore respectfully the
19 motions.

20 Mr. Wetmore, do you have sentencing sheets?

21 MR. WETMORE: Yes, sir, Judge. The clerk has them
22 pass them to you right now.

23 THE COURT: All right. Ms. Fanning, if you and
24 Mr. Grant will come forward. And, Mr. Wetmore, I'll hear
25 from you first if there's anything you would like to offer

1 from the standpoint of the State first of all with regard
2 to criminal record and then with regard to any
3 representatives of the victim that wish to be heard.

4 MR. WETMORE: Yes, sir, Judge. You have certainly
5 heard quite a few of the facts and sufficient factual
6 basis. I will share with you the prior record. He has a
7 2001 possession of crack. He received a YOA probation
8 sentence on that, 2002 false information to police, 2002
9 assault with intent to kill. For that, he received five
10 years probation the service of one year. He also received
11 in 2002 pointing and presenting a firearm to a person,
12 2004 driving offenses driving under suspension, resisting
13 arrest. And in 2006, a parol revocation for YOA parole.
14 He does have some other things pending in Illinois, but
15 I'm sure they'll be resolved with your sentence here. I
16 don't have anything further. I believe there are two
17 members of the victims families that would like to address
18 you, Your Honor.

19 THE COURT: All right. I'll be glad to hear from
20 them have them come on up. Have them come right over
21 there. All right. Let me tell you that under our law and
22 under the victims' rights amendment and implementing
23 legislation to that. The law provides that you have the
24 right to be kept advised of everything that's going on.
25 And I'm sure that the Solicitor's office has kept you

1 advised of the proceedings as this matter has moved its
2 way through the court system. You also have a right to be
3 present at any crucial stage of the proceeding including
4 the trial. And you also have the right to address the
5 Court. So if either of you would like to just identify
6 yourself, I'll be glad to hear from you. You can stand
7 right there that will be fine.

8 MS. MOULTREY: Your Honor, my name is Loretta
9 Moultreay. I'm the mother of Robert Bryant. I can't begin
10 to tell you how my life has changed since February the
11 24th 2005. There's not a day that goes by that I don't
12 miss Robert. He would have celebrated his 21st birthday
13 that October. I just ask that you give this young man
14 sentence him to life without parole because, you know, he
15 still can get up and look at the sunshine. Robert can
16 never do that again. Thank you.

17 THE COURT: Thank you.

18 MS. WITFIELD: I'm Sheneca Witfield. I'm the mother
19 of Cederious Nelson. All I feel that he took a big part
20 of me when he took my son and I just feel that he should
21 get life in prison. Thank you.

22 THE COURT: Thank you. All right. Thank you.
23 Mr. Wetmore, anything else from State at this time?

24 MR. WETMORE: Judge, obviously, the sentencing is in
25 your hands. Based on the prior record, based on the fact

1 there were two victims, based on the fact what you heard
2 from these victims here. I urge you to sentence him to
3 life.

4 THE COURT: All right.

5 MR. WETMORE: Nothing further.

6 THE COURT: All right. Ms. Fanning.

7 MS. FANNING: Your Honor, D'el Grant is 23 years old.
8 He does not have the benefit of a high school education.
9 He's worked in the past as a dishwasher in food service.
10 And you will notice that there's no family here with him.
11 He did have a sister and cousin here for most of the
12 trial. The cousin has lupus and she was ill today and
13 called me and said she couldn't come. And D'el instructed
14 his sister, who was pretty young, to go home because he
15 didn't want her to see this. His mama didn't come.
16 Nobody from his family is here and I think that speaks a
17 lot about the kind of background that he had. And it is
18 clearly deprived of a lot of things economically,
19 educationally and some nurturing. And I hope he doesn't
20 get offended, but I'm not trying to pick at him about his
21 mama, but I do think she should have been here. As a
22 mother, I would be here with my child no matter what
23 happened.

24 I would ask the Court to show Mr. Grant any leniency
25 you are incline to. I know given what you've heard this

1 week you may not be inclined to, but given what we know
2 about his background and what I'm telling you now about
3 his background, he may deserve whatever you can do for
4 him.

5 I will tell you that I represented him for a little
6 less than a year. He's always been polite to me. At
7 counsel table, he showed respect for the process. You
8 didn't hear any noise from him. He had some questions for
9 me. He referenced every one with Ms. Fanning. He was
10 very polite to me and the investigator who's working on
11 this case with him and he didn't have to act like that.
12 And I know we've all seen folks who didn't have respect
13 for the process. And I think that shows something that
14 may cut against or show some characteristics that may not
15 be established for -- shown in the events, the horrible
16 events of February 24th 2005. So if there's consideration
17 you can give Mr. Grant, I will ask you to do so. I
18 understand it is entirely in your hands.

19 THE COURT: All right. Thank you. Mr. Grant,
20 anything you like to tell me?

21 THE DEFENDANT: (Shook head no.)

22 THE COURT: Twelve years ago when I got this job, I
23 was told by my colleagues that the most difficult thing
24 that we would have to do would be to impose criminal
25 sentencing or criminal sentence. Nothing has changed in

1 that 12 years that makes me think anything differently.

2 It is the most difficult thing that we have to do.

3 We judges have no crystal ball. We know no magic.

4 We make decisions based on the evidence and sometimes our
5 decisions satisfy one side and don't satisfy the other or
6 sometimes it might satisfy the other side and not the
7 other. Sometimes, they satisfy no one. But all we can do
8 is make a decision based upon what we hear in court, the
9 facts of the case, and the needs of society and the
10 victims families and all the other competing factors we
11 have to weigh.

12 There no winners here only victims. The victims are
13 the two young men that were killed and this young is a
14 victim as well. This is a tragedy for everyone involved.
15 I, too, am shocked that this young man has no family
16 support. It's very difficult for this court to show
17 leniency when there is apparently indifference from his
18 own family.

19 Nonetheless, I have tried to weigh all of the
20 competing factors that we have to weigh in connection with
21 this and it is my view that a life sentence is
22 appropriate. Therefore, the defendant is committed to the
23 state department of corrections for a term of life on each
24 case to run concurrent. So it's current life sentences.
25 He will, of course, have to follow whatever the department

1 of corrections requirements are in connection to that, but
2 the sentence is life on indictment number 1141 (sic) and
3 life on indictment number 11480. Life in prison is to run
4 concurrent.

5 All right. With that then is there anything else
6 that the Court needs to hear from either counsel in this
7 matter?

8 MR. WETMORE: Nothing from the State, Your Honor.

9 MS. FANNING: Nothing from the defense.

10 THE COURT: All right. We will be in recess then on
11 this matter. Court is adjourned and this hearing is
12 adjourned. And court is adjourned until 9:30 tomorrow
13 morning.

14 END OF REQUESTED TRANSCRIPT
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1 CERTIFICATE OF REPORTER

2 STATE OF SOUTH CAROLINA

3 COUNTY OF FLORENCE

4
5 I, Keshia Reed, Court Reporter and Notary Public
6 in and for the State of South Carolina At Large, do hereby
7 certify that the above-entitled cause was heard as
8 hereinafter set out; that I was authorized to and did
9 transcribe the said proceedings; and that the foregoing
10 and annexed pages, numbered 1 through 394, inclusive,
11 constitute a true and accurate transcription of my
12 stenographic report of the said cause taken during the
13 said hearing.

14 In witness whereof, I have hereunto affixed my
15 signature this 23rd day of May, 2008.

16 
17 Keshia Reed, Court Reporter
18 My Commission Expires: 6-5-2010
19
20
21
22
23
24
25

BMW 2005-02-01153

WITNESSES

JEFF OSBOURN AND/OR

MATT CASEY

SPEARS, NCPD

2005007425

ARREST WARRANT NUMBER

F969192

JULY 24, 2006

ACTION OF GRAND JURY

TRUE BILL

For a Person of Grand Jury

Arnette T. JMA

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2006-GS-10-11480

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2006

THE STATE

VS.

DEL JYON GRANT

Indictment for

MURDER

FILED

2006
G.S.

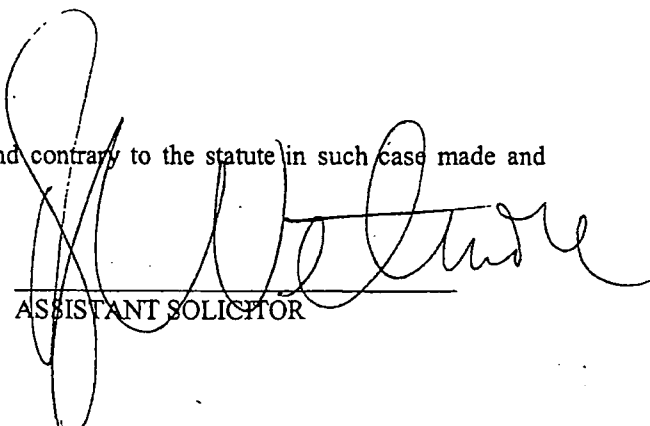
STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT FOR
MURDER

At a Court of General Sessions, convened on November 13, 2006 the Grand Jurors of Charleston County present upon their oath:

That Del Jvon Grant did in Charleston County on or about February 24, 2005 with malice aforethought, kill and murder Robert Bryant by means of shooting, and that Robert Bryant did die in Charleston County as a proximate result thereof on February 24, 2005; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976), as amended.

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


ASSISTANT SOLICITOR

BMW 2005-02-01153

WITNESSES

FF OSBOURN AND/OR

ATT CASEY

FEARS, NCPD

05007425

ARREST WARRANT NUMBER

F969193

JULY 24, 2006

ACTION OF GRAND JURY

MURDER BILL

Shannon T. Smith
Defendant of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2006-GS-10-11481

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2006

THE STATE

VS.

DEL JYON GRANT

NOV 27 2006

FILED
JULIE J. ARMSTRONG
CLERK, C.P. & G.S.

Indictment for

MURDER

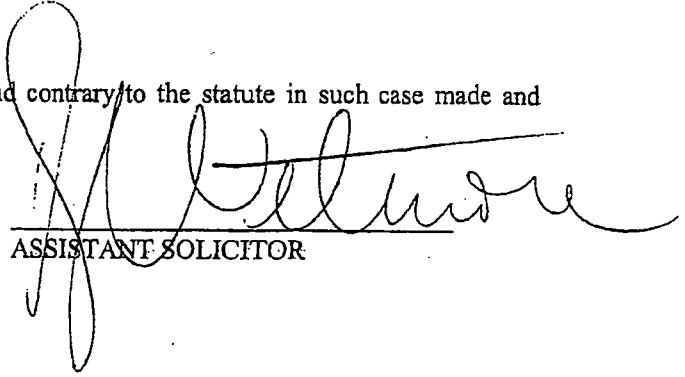
STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT FOR
MURDER

At a Court of General Sessions, convened on November 13, 2006 the Grand Jurors of Charleston County present upon their oath:

That Del Jvon Grant did in Charleston County on or about February 24, 2005 with malice aforethought, kill and murder Sadaris Nelson by means of shooting, and that Sadaris Nelson did die in Charleston County as a proximate result thereof on February 24, 2005; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976), as amended.

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


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

County of CharlestonDEL GRANT #285741

Full name and prison number (if any) of Applicant

v.

State of South Carolina

2010-CP-10-10674
IN THE COURT OF COMMON PLEASFILED
2010 DEC 31 PM 2:47
JULIE J. ARMSTRONG
CLERK OF COURT

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention LEE CORRECTIONAL INSTITUTION
S.M.U./Northwing #89 990 WISACKY HWY Bishopville, S.C. 29010
2. Name and location of Court which imposed sentence Charleston County
General Sessions Court Charleston County Charleston S.C. 100 Broad St.
3. Name(s) of co-defendant(s) (if any) Gary Grant, Devant Porter, DeShawn
Bothers, Lordero Porter
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 06-25-10-11480

Side
29901

- (b) 06-LS-10-11481
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) November 7th 2007
- (b) 2 Life Sentences to run concurrent
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (☒) after a plea of not guilty NOT GUILTY
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. SOUTH CAROLINA Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Sentences and Convictions Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. August 25th 2010
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. NO MERTY
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A

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

- iv. _____
- (c) the disposition thereof:
- i. _____
- ii. N/A
- iii. _____
- iv. _____

- (d) the date of each such disposition:
- i. _____
- ii. N/A
- iii. _____
- iv. _____

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

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

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

No

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

- (a) which grounds have been presented:
- i. _____
- ii. N/A
- iii. _____

- (b) the proceedings in which each ground was raised:
- i. _____
- ii. N/A
- iii. _____

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

(a) This is the first opportunity to raise
 (b) the issues presented in this application.
 (c) _____

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

(a) your arraignment and plea? Yes
 (b) your trial, if any? Yes MARGARET SANNING
 (c) your sentencing? Yes MARGARET SANNING
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes Robert Dudek
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

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

(a) the name and address of each attorney who represented you:
 i. MARGARET SANNING PO BOX 13177 Charleston, SC 29422
Wilson & Hayward LLC
 ii. Robert Dudek Division of Appellate defense
1330 Lady Street, Suite 401 Columbia, SC 29201
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. MARGARET SANNING Trial & Sentence
 ii. Robert Dudek Appeal
 iii. _____

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

Reverse and remand for a new trial and any other
relief the Court deems just and proper

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

No

I would like to reserve the right to Amend.

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Charleston)

VERIFICATION

I, DEL BRANT, 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.

Del Brant

SWORN to and subscribed before me this 23
 day of Dec., 2010.

Debra Sw (L.S.)
 Notary Public

My Commission Expires: 11-4-2015

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

I, DEE BRANT, 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.

Dee Brant
Applicant

SWORN or affirmed to and subscribed before me this
23 day of Dec, 2010.

Duke J. [Signature]
Notary Public

My Commission Expires: 11-4-2015

ATTACHMENT - A

1/10/ State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(A) Ineffective assistance of trial counsel

1/1/ State concisely and in the same order the facts which support each of the grounds set out in (10):

A/ Counsel failed to cross-examine co-defendants DeShawn Gathers, Devant Porter and Lordero Porter testimonies. Counsel should have cross-examined each co-defendant and witness Regheema Wittfield to further establish to the jury that each co-defendant and witness was giving false details of what they supposedly saw at the crime scene.

B/ Counsel failed to argue on jury's asking for a written testimony from Regheema Wittfield. Lordero Porter, DeShawn Gathers and Devant Porter. When the judge informed the jury he would only provide them with recorded testimony, the jury said they only wanted to hear DeShawn Gathers testimony. Counsel should have argued that the jury should hear tapes of all the above names since they wanted a written testimony from all the above names.

C/ Counsel informed me I should give the jury the option of finding me guilty of Voluntary manslaughter. She showed me on a lap top where I could receive 30 years if found guilty and that it would be in my best interest to give the jury the option. I didn't have a lot of time to think on it. I turned it down. Moments later when I got back in the courtroom, I told Counsel I would give the jury the option of finding me guilty of Voluntary manslaughter due to Counsel's urging. After I gave the jury the option Counsel told me I shouldn't have because it ruined my chances on Appeal. I only gave the jury the option of finding me guilty of Voluntary manslaughter due to Counsel's urging.

(D) Counsel's efforts in getting my motion discovery to me wasn't pushed hard enough. I got my motion discovery August 3rd 2007 and I went to trial November 5th 2007. Counsel neither I was properly prepared for trial.

(E) Upon representation I only had 3 visits from Counsel. The first was to let me know she was going to be representing me which it only lasted 15-20 minutes. The second was to show and go over pictures of the crime scene and bodies of the victims. The third was prior 10 minutes to see if I had trial clothes prepared and to let me know trial was starting Monday November 5th 2007. Counsel never prepared me for trial.

(F) Counsel failed to move for a time reconsideration. I wrote Counsel November 9th 2007 asking Counsel to ask or go through the proper procedure for a time reconsideration. Counsel told me she no longer represents me it should go through my Appellant lawyer. I wrote Counsel two days after I was found guilty.

(G) Defendant Dick Brant moved to have Counsel Margaret Fanning removed from his case. Judge said defendant Dick Brant could not fire Counsel if he did not have money to obtain new Counsel and then Judge Dennis asked Defendant did he have a law degree or knew anything about the law. Defendant said no. Judge Dennis informed Defendant he would have to keep Margaret Fanning as Counsel. It would be his best interest. I never wanted to finish or start trial with Counsel Margaret Fanning.

(H) Counsel informed me of a plea for 30 years. Counsel failed to tell me the stipulations of the plea. Counsel never said whether the 30 years was for 1 or both of the murders. If Counsel would have stipulated the plea agreement Defendant would have a better understanding.

(I) Counsel's representation during trial wasn't put forth with determination only with a little effort. in arguing of a photo Council stated the case was not about 2 dead men. in order for it to be a double murder trial it had to be about the 2 dead men or it wouldn't have been a trial. Counsel's representation wasn't where it needed to be. in her stating the case wasn't about 2 dead men.

ATTACHMENT - B

110). State Concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(A) INEFFECTIVE assistance of trial counsel

111). State Concisely and in the same order the facts which support each of the grounds set out in (110):

(A) Appellant Counsel failed to argue Co-Defendants Credibility which they gained freedom from these false testimonies. Desant Porter had 2 murder charges pending and a possession of crack cocaine pending upon his testimony. Dethawn Gathers had 2 murder charges, 2 weapons charges and 2 drug charges pending upon his testimony. Lordero Porter had 2 murder charges, second degree lynching, trafficking and possession of crack cocaine with intent to distribute upon his testimony.

(B) Counsel failed to argue chain of custody of evidence. Detective Reynolds stated he never followed up with evidence and was moved to another job. he wasn't sure if evidence was touched or sent out for testing.

(C) Counsel failed to argue photos of evidence at motel where suspects Gary Grant, Lordero Porter and Dethawn Gathers were arrested were not taken into evidence in which it was thrown away

(D) Appellant failed to argue confession of Co-Defendant Gary Grant's confession that it was he and not DESANT who shot and killed both victims.

DELIVERY 285741

L.L.R.
Gnu/Nothing #89
996 W. Gally Hwy
Richmond, Va.
29010

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Alfie & Armstrong
Chick of Court
Charleston County
100 Broad Street, Suite 106
Charleston, South Carolina
29401



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CHARLESTON CRIMINAL SYSTEM
**** CRIMINAL FILING INQUIRY ****

BLC MA1V R1PIQ01

FUNCTION _

CASE ID: YEAR: 2006 COURT: GS LOC: 10 NUMBER: 011480 DEF ID: A COUNT: 01
O A OF: 01

***** DEFENDANT DATA *****

NAME: GRANT, DEL JVON STATUS: NA STATUS DATE: 07 24 2006
ALIAS FLAG: N ATTORNEY: FANNING, MARGARET H TYPE: CA BOND TYPE: SU
BND DTE: 07 24 2006 AMT: 0.00 SURETY: ** NO SURETY FOUND **

***** FILING DATA *****

OFFICER: SPEARS KA/VICTIM BG# 0084 ARREST DATE: 07 24 2006
ARRESTING AGENCY 1008 MUNICIPALITY: NC WARRANT/CITATION: F969192STATUTE CHARGED: 16-3-10 DESCR: MURDER
WARRANT FILED: 07 28 2006 REPORT GROUP CHARGED 0116 GOC CHARGED: GINDICTMENT FILED JUDGE: 2107 ASSIGN DATE: 11 08 2007
NEXT OR LAST EVENT HEA EVENT DATE: 11 07 2007 EVENT TIME: 08 00
EVENT DESCRIPTION HEARING EVENT JUDGE: 2107
NUMBER OF CONTINUANCES CONTINUANCE DATE:
LAST UPDATE: 11 08 2007 OPERATOR: JSB

ENTER PS,DK,PD,DS,EV,SS OR HIT PF1

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

D'el Grant, #285741,

2010-CP-10-10674

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

FILED
2011 APR -4 PM 10:43
JULIE J. ARMSTRONG
CLERK OF COURT

The Respondent, making its Return to the Application for post-conviction relief filed December 31, 2010, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Charleston County. The Applicant was indicted at the November 2006 term of the Charleston County Grand Jury for two counts of murder (2006-GS-10-11480,-11481). Margaret Helen Fanning, Esquire, represented the Applicant. The Applicant proceeded to trial on November 5-7, 2007, after which a jury found him guilty as indicted. The Honorable Howard P. King sentenced the Applicant to confinement for life for each count of murder. The sentences were to run concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Robert M. Dudek, Esquire, of the South Carolina Commission on Defense, filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The Court of Appeals subsequently dismissed the appeal. State v. Grant, Op. No. 2010-UP-388 (S.C. Ct. App. filed August 25, 2010). The Remittitur was issued on September 13, 2010.

Attached herewith and incorporated herein by reference are the records of the Charleston County Clerk of Court regarding the subject convictions, the Applicant's records from the Department of Corrections, the Record on Appeal, the Final Anders Brief of Appellant, the Court of Appeals' opinion dismissing the appeal, and the Remittitur dated September 13, 2010.

II.

In his application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel in that counsel
 - a. Failed to re-cross co-defendants Deshawn Gathers, Devant Porcher, and Cordero Porcher or witness Resheema Witfield.
 - b. Failed to argue on jury's asking for a written testimony from Resheema Wittfield, Cordero Porcher, Deshawn Gathers, and Devant Porcher. When judge informed the jury that he could orally provide them with recorded testimony, the jury said they only wanted to hear Deshawn Gathers' testimony. Counsel should have argued that the jury should hear tapes of all the above names since they wanted testimony from all the above names.
 - c. Informed Applicant that he should give the jury the option of finding him guilty of voluntary manslaughter.
 - d. Only visited Applicant three times.
 - e. Failed to move for a time reconsideration.
 - f. Informed Applicant of a plea for 30 years but failed to tell Applicant the stipulations of the plea.
 - g. Failed to argue co-defendants' credibility.
 - h. Failed to argue chain of custody of evidence.
 - i. Failed to argue photos of evidence at motel where suspects Gary Grant, Cordero Porcher, and Keshia Brown were arrested was not take into evidence in which it was thrown away.
 - j. Failed to argue confession of co-defendant Gary Grant.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process

that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

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

IV.

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

V.

WHEREFORE, having made its Return, the Respondent requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MATTHEW J. FRIEDMAN
Assistant Attorney General

By: Matthew J. Friedman
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3737

April 13, 2011.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

D'EL GRANT, #285741

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2010-CP-10-10674

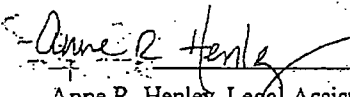
AFFIDAVIT OF SERVICE BY MAIL

FILED
 2011 APR -4 AM 10:43
 JULIE ARMSTRONG
 CLERK OF COURT

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

Kent Taylor Stair, Esquire
 40 Calhoun St ste 400
 Charleston, SC 29401

DATED this 1st day of April, 2011


 Anne R. Henley, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF CHARLESTON 2010-CP-10-10674

D'EL GRANT)
Applicant,) TRANSCRIPT OF RECORD
-vs-) December 6, 2012
STATE OF SOUTH CAROLINA,) Charleston, South Carolina
Respondent.)

B E F O R E:

The Honorable Roger M. Young, Sr., Judge.

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

Arie Bax, Esquire
Attorney for the Applicant

Ashleigh Wilson, Esquire
Attorney for the Respondent

Amanda K. Haffenden, RPR, CRR
Circuit Court Reporter

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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
D'el Grant	14	44	49	--
Margaret Fanning-Horn	52	71	76	--

1 (Thursday, December 6, 2012.)

2 THE COURT: You're D'el Grant?

3 THE APPLICANT: Yeah.

4 THE COURT: You're here for your application
5 for post-conviction relief. We are set to go. Are you
6 ready?

7 THE APPLICANT: Not yet. I want to talk to
8 Mr. Bax first.

9 THE COURT: You want to talk to your client
10 real quick?

11 MR. BAX: I certainly can, Your Honor, and I
12 have visited him at his institution and had a long,
13 extensive meeting with him and reviewed the transcript,
14 but I'll be happy to talk him some more, and I apologize.

15 THE COURT: All right.

16 All right. Ready? Have you had enough time
17 to talk to your lawyer?

18 THE APPLICANT: Yes, sir.

19 THE COURT: Are you ready to proceed?

20 THE APPLICANT: Yes, sir.

21 THE COURT: Give me a brief overview of what
22 your case is about.

23 MR. BAX: First and foremost, and I don't
24 know if you've got anything from the procedural
25 background, but, basically, Your Honor, this was a where

1 my client was charged with two homicides. He was
2 represented by Ms. Fanning, and I know she has a married
3 name now, so I apologize about that, but going on my
4 memory is the name in the transcript, but Ms. Fanning
5 represented him. She went to trial on the case. It was
6 a trial that went through everything. There was a
7 verdict at the end. My client receives a life sentence
8 on both counts of murder, Your Honor.

9 My client filed a post-conviction relief
10 action in December of 2010. He is within his time frame.
11 I do not believe there is any statute of limitations or
12 successive issues in this case, so this is his first
13 post-conviction relief application.

14 My client has been very thorough in informing
15 me on his issues. He has written me a lot about his
16 issues, and I have them all in his own writing which is
17 clear and I've been through them with him.

18 He is, I believe, still housed at Lieber --
19 Lee Correctional Facility up in Bishopville, and I have
20 seen him in the institution there and reviewed his case
21 with him.

22 His issues all stem from ineffective
23 assistance claims for things that happened during the
24 trial. They are fairly numerous, but he has informed me
25 that some of them he's not really as focussed on at this

1 time after consultation with me and thinking about the
2 advice that I have given him.

3 There is the primary issues in this case of
4 ineffective assistance of counsel for failure to request
5 a mental evaluation of Mr. Grant prior to, obviously,
6 trial. Based on his history, you know, his childhood,
7 his history socially, he spent a number of years in
8 foster care. He was in and out of his own home. There
9 are many incidents in his childhood, and based on that
10 background history, which my client tells me Ms. Fanning
11 was aware of, it would be our contention that she should
12 have asked for a mental evaluation of Mr. Grant, both to
13 seek an opinion about his competency to stand trial, but
14 also if there is any issues with his responsibility, and,
15 furthermore, because of the fact that I think it would
16 have aided in mitigation that may become necessary,
17 either after conviction, after a trial, which happened in
18 this case, or if there were any other things that could
19 have been worked out.

20 Without that --

21 THE COURT: Have you had him evaluated?

22 MR. BAX: I have not had him evaluated, Your
23 Honor.

24 THE COURT: I'm just thinking in order for
25 you to have any chance of success, you're going to have

1 to have an expert that comes in now and says, Well, at
2 the time he wasn't competent to stand trial.

3 MR. BAX: Well, Your Honor, I don't think
4 it's going to be a competency issue based on my
5 conversations with my client. As Your Honor is well
6 aware --

7 THE COURT: So are you abandoning that issue?

8 MR. BAX: No, I'm not, because as I said
9 before, it may not be that it was just competency. An
10 evaluation can cover a lot of ground, both criminal
11 responsibility and mitigation, and in a situation where
12 you're facing --

13 THE COURT: One of the things you have to
14 show is prejudice, all right? In other words, that what
15 she didn't do would have made a difference. If you
16 haven't done an evaluation now, how am I going to know
17 that it would have made a difference; in other words,
18 that he either wasn't competent to stand trial or he
19 didn't bear criminal responsibility as a defense or there
20 was something in his background that would have gone
21 towards mitigation?

22 Am I just supposed to speculate that he was,
23 or am I supposed to evaluate it? How do you envision
24 that works?

25 MR. BAX: Well, Your Honor, as having done

1 this a lot in the past, I've never had a Court approve
2 funds for an evaluation at the PCR stage based on the
3 idea that it might have been necessary at the pretrial
4 phase, and the problem is, I get put between a rock and a
5 hard place in these cases as well as appointed cases at
6 the beginning. Every time I ask for something, it's an
7 argument about whether the State needs to spend money for
8 it.

9 In addition, I have -- both the time when I
10 was an assistant Attorney General handling PCRs as well as
11 in private practice handling PCRs from the other side,
12 I've certainly argued in many occasions, based on
13 questioning the attorney who represented the individual
14 at the trial level, whether or not they saw anything that
15 would give rise to a doubt about whether or not there was
16 competency, criminal responsibility, or a need for
17 mitigation based on mental health history.

18 That's how I intended to proceed and show
19 that to the Court, and I've done that in the past. Part
20 of the reason why I did not request an evaluation in this
21 case is because I've been told by the Court on a number
22 of occasions that those kinds of things, you're going to
23 have to have a high argument that the State needs to
24 expend money for that prior to the PCR to show what could
25 have happened before the trial.

1 THE COURT: That may be your reason for not
2 asking for it, but I'm just trying to figure out how you
3 get around showing there is prejudice without having an
4 evaluation done where somebody says he was, in fact, not
5 competent, or there is a reasonable chance he was not
6 competent at the time.

7 But if his lawyer just stands up and says, I
8 didn't have any reason to believe he wasn't competent,
9 what else are you going to base your case on?

10 MR. BAX: Well, Your Honor, two responses to
11 that: Number one, I think it's more than just whether or
12 not there was a suspicion of incompetence. My
13 understanding of the responsibilities of trial counsel in
14 murder cases -- which I just got done trying a murder
15 case in Beaufort County and I was going to try a murder
16 case in front of Your Honor next week, we just pled that
17 yesterday so Your Honor is not going to need to try that
18 next week, and I've had my client evaluated in the case
19 we were going to have next week.

20 But there is not just the responsibility of
21 saying, well, is he competent or not competent? Number
22 one, attorneys are not psychiatrists.

23 THE COURT: I know. That's why you have
24 experts.

25 MR. BAX: Exactly.

1 THE COURT: There has got to be something to
2 let them think, Well, there is something not normal about
3 this person.

4 MR. BAX: Well, Your Honor, through the
5 testimony that we intend to present in this PCR, I think
6 I can show there is certainly enough to merit asking for
7 an evaluation in this case.

8 As I've said before, we're not psychiatrists,
9 so even if our client can necessarily say the words
10 lawyer and judge doesn't necessarily mean that we can
11 give an opinion on any of the issues, competency,
12 responsibility, or mitigation.

13 THE COURT: Okay. I'm just asking.

14 MR. BAX: And the second thing I would like
15 to bring up, Your Honor, in light of the Court's stated
16 opinion on that matter, you know, this is his only shot
17 at post-conviction relief. If he comes back later --

18 THE COURT: I didn't state anything. I just
19 asked a question.

20 MR. BAX: And, Your Honor, I was just trying
21 to state that in light of Your Honor's questions, in
22 order for me to provide him the best opportunity, I would
23 have to move for a mental evaluation now.

24 THE COURT: Well, what is your reason for
25 thinking that's an issue?

1 MR. BAX: Well, Your Honor, my client endured
2 severe abuse and neglect as a young child in North
3 Charleston. He was removed from his mother on a number
4 of occasions based on the findings of narcotics in the
5 house at a young age, situations where him and his
6 brother were having to take care of themselves at the
7 ages of five, six, seven, eight, seeing instances of
8 narcotics use at a young age, going to a foster care,
9 experiencing things in foster care that could also impact
10 his ability to make rational decisions that may impact
11 his psyche, his moods.

12 Additionally, there were times that my client
13 has told me that the only reason he would go to school is
14 so he could get something to eat because he was starving.
15 There were times when he was a juvenile and he was living
16 on the street. It's not surprising to me that he ends up
17 in a gun fight in the middle of a bad neighborhood in
18 North Charleston when his brother is -- you know, comes
19 and testifies, I'm the one that did it, and he's serving
20 a life sentence for murder as well.

21 This is the upbringing he comes from. This
22 is the experience he has been through his childhood, no
23 parents, narcotics use at a young age, physical abuse,
24 poverty, starvation, living on the streets as a minor.

25 When you put those things together, I

1 certainly think there is more than enough to have a
2 mental evaluation when you're getting ready to face two
3 murder charges.

4 THE COURT: Well, I don't necessarily agree
5 that based on what you've told me that everybody that has
6 a bad upbringing isn't competent to stand trial, and so I
7 think you have to show that he had some sort of mental
8 disorder in order to suggest he wasn't competent to
9 assist his trial at counsel or to understand what was
10 going on at the time.

11 When we first started, you stated you spoke
12 with him extensively. He has written to you in what
13 appears to be language that you understand, so it appears
14 he is competent to help you now. Just because you had a
15 rough upbringing doesn't make you not competent to
16 understand what you're doing, so the other issue would be
17 criminal responsibility, M'Naghten; in other words, did
18 he not understand that what he was doing was wrong at the
19 time he did it.

20 Again, there is usually some sort of
21 psychosis involved, or mental disorder, and, again, those
22 aren't -- while they often go hand in hand with a bad
23 upbringing, one doesn't necessarily bring on the other.

24 So, again, I'm fleshing these things out,
25 because if you have a good faith basis for saying, well,

1 I talked with him and I spent a lot of time with him, and
2 I questioned his competency to assist me now or there's
3 something in his background that suggests to me that he
4 was so mentally ill at the time he committed those
5 offenses that he might not have known that what he was
6 doing was wrong, under M'Naghten or the criminal
7 responsibility statute which codifies M'Naghten, that's a
8 whole different issue.

9 Then you're just left with mitigation, and
10 I'm not sure you need to have a mental evaluation to
11 bring out the issues that you told me about his
12 upbringing for the purposes of mitigation. If this was a
13 death penalty case, I would say you almost have to do
14 that. On a regular murder case, I'm not so sure that
15 that is, in fact, the law.

16 Clearly, in a death penalty case, I think you
17 probably have to have those sort of things done just to
18 cover yourself in the levels of competency, but what
19 you're telling me about a bad upbringing and learning a
20 lot of street skills and learning to survive doesn't
21 necessarily mean in and of themselves that he wasn't
22 competent to stand trial or assist his trial counsel, nor
23 does anything that you told me go, Yeah, those sound like
24 the things that my client needed to trigger a criminal
25 responsibility evaluation.

1 So for right now, I will deny your request to
2 have him evaluated. If there is something that, you
3 know, trial counsel says that, you know, changes my mind
4 about that, well, then we'll revisit it at that point,
5 but right now you haven't told me anything that suggests
6 to me that that would have been the proper basis for
7 either of those two right -- just from here, so -- we'll
8 revisit it later, if the facts warrant it. Okay?

9 MR. BAX: Certainly, Your Honor.

10 THE COURT: All right. So is that's your
11 basis for ineffective assistance of counsel?

12 MR. BAX: He has an issue for ineffective
13 assistance of counsel for failure to ask for a clear
14 charge of reasonable doubt in light of lesser included
15 offenses. Based on my conversations with him, what I'm
16 thinking is, and in my reading of the transcript I think
17 he's referring to the judge's charge of lesser included
18 offense of manslaughter and the language instructing the
19 jury how to examine that aspect of it.

20 And, Your Honor, I'm going to give him a full
21 opportunity to go through his complaints. There's some
22 issues that he did have that he tells me now he's not
23 really as focussed on about her decisions about how
24 extensive her cross-examination was going to be on some
25 of the witnesses in the case, specifically Mr. -- I

1 believe it's DeShawn Gathers and some of those. He has
2 informed me he does not really want to focus on those as
3 much now, but, you know, I want to make sure I put that
4 on the record for completeness purposes.

5 So based on what he's told me this morning,
6 his primary issues are the concern about failure to be
7 evaluated as well as the instructions to the jury by the
8 judge and counsel's failure to object to its language.

9 THE COURT: Okay. Call your first witness.

10 MR. BAX: Thank you, Your Honor. The
11 applicant calls Mr. Grant, Mr. D'el Grant, to the stand.

12 D'EL GRANT,

13 having been first duly sworn,

14 was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. BAX:

17 Q. All right. Mr. Grant, you've heard some of the
18 things that have been said here this morning by myself
19 and in conversation on the record with the Court.

20 We're here for your post-conviction relief
21 application. We're here to put before the Court your
22 issues, mostly of ineffective assistance of counsel, with
23 your trial counsel, who is Ms. Fanning at that time; is
24 that correct?

25 A. Yes, sir.

1 Q. Okay. All right. I want you to make sure you
2 speak up, answer all my questions verbally, because the
3 court reporter needs to take them down so that we can
4 have a record of today's proceeding. Okay?

5 A. Yes, sir.

6 Q. Okay. Good.

7 Mr. Grant, you were charged with two counts of
8 murder, and, I believe, two counts of possession of a
9 weapon during a violent crime; is that correct?

10 A. No, sir. Just two counts of murder.

11 Q. They didn't -- okay. They didn't charge you with
12 possession of a weapon charge?

13 A. No, sir.

14 Q. And you went to trial on those two charges of
15 murder; is that correct?

16 A. Yes, sir.

17 Q. Okay. All right. And you went to trial, make
18 sure we reference that for the Court, in 2007, correct?

19 A. Yes, sir.

20 Q. All right. In fact, in November of 2007; is that
21 your memory of it, Mr. Grant?

22 A. Yes, sir.

23 Q. Okay. As a result of that trial, there was a
24 conviction in that trial, and you were sentenced to life;
25 is that right?

1 A. Yes, sir.

2 Q. All right. Now, you've alleged in your
3 application that you feel your attorney was ineffective
4 in representing you; is that right?

5 A. Yes, sir.

6 Q. Okay. And I just wanted to get some of that stuff
7 out to start with so we can move on to your allegations.

8 Tell us, in your own words, what reasons do you
9 believe that your attorney was ineffective in
10 representing you during your case, Mr. Grant?

11 A. During representation, like, I saw her, like, four
12 times, but it was only, like, four times, about five to
13 six hours, but it ain't really been about much, it was
14 just -- I mean, it ain't been about much.

15 Like, the first she started representing me, like,
16 December 2006, but I didn't see her until around August
17 or September 2007, so, like, when I first saw her, we
18 ain't really talk about much. We ain't talk about much,
19 you know. And --

20 Q. Now, Mr. Grant -- and I don't mean to interrupt
21 you, but I want to make sure that we guide through this
22 process. You were being held at the Charleston County
23 Detention Center?

24 A. No, sir.

25 Q. No? Tell the Court where you were being housed

1 leading up to your trial.

2 A. When I left Charleston County in October on my YOA
3 sentence, I went to Turbeville -- I went to Kirkland
4 first. She came and saw me there for, like, 15 minutes.
5 I left Kirkland, went to Turbeville. From Turbeville, I
6 went to Lee, and they said I couldn't be -- I couldn't be
7 on a level two yard with violent offenses pending. I
8 went to Lee December 21st, 2006, and I stayed up there
9 until my trial in 2007.

10 Q. So you were not -- let me ask you this: When do
11 you recall being transported down here to Charleston for
12 your trial in 2007?

13 A. Like, around the second or third week of October
14 2007.

15 Q. So, roughly speaking, would it be correct to say
16 you were here maybe a month, maybe a little bit less than
17 a month, prior to your trial?

18 A. Yeah.

19 Q. Is that right?

20 A. Yes, sir.

21 Q. Okay. All right. Thank you, Mr. Grant. Now,
22 you've stated that Ms. Fanning did see you in the
23 Department of Corrections. Was it while you were at
24 R&E at Kirkland or was it at Turbeville?

25 A. She came to see me the first time at R&E, let me

1 know she was my lawyer, she would be representing me and
2 stuff like that.

3 Q. And so throughout the time leading up to your
4 trial, the vast majority of that you were not even in
5 Charleston County; is that right?

6 A. No, I wasn't in Charleston County. I was in
7 Bishopville, same place I'm at now.

8 Q. And that was based on -- well, tell the Court,
9 what was the reason that you were in the Department of
10 Corrections rather than in the Charleston County
11 Detention Center?

12 A. Cause I had a past YOA sentence and I violated my
13 parole, so I had to go serve the ten months, so I went to
14 SCDC.

15 Q. And, Mr. Grant -- and I think this is important to
16 go through. Please tell us, when was the first time that
17 you remember ever getting arrested, for anything?

18 A. I was, like, 12.

19 Q. Twelve?

20 A. Twelve years old.

21 Q. And at that point you went through the Department
22 of Juvenile Justice, and Family Court resolved that case?

23 A. No.

24 Q. Do you remember what happened with that case?

25 A. A stolen bicycle.

1 Q. What was the result of that arrest? Was there
2 some kind of conviction? Did you do time at DJJ or --

3 A. No, they just took me home. They just took me
4 home to my mom. That's it.

5 Q. So you remember being in trouble then before. Let
6 me ask you this: Did you graduate from high school?

7 A. No, sir.

8 Q. Okay. What was the last grade that you had
9 attended, that you recall?

10 A. Last grade I attended in public school is fifth
11 grade, but from there, everything else was just
12 disciplinary schools.

13 Q. So the last regular school you remember being in
14 was in fifth grade, and after that, it was alternative
15 schools?

16 A. Yes, sir.

17 Q. Base on discipline problems or things they say
18 were being done at school?

19 A. Yes, sir.

20 Q. Was there ever any other times that you were
21 arrested when you were still under the age of 17?

22 A. Yes, sir.

23 Q. Tell us about that.

24 A. Stolen motor vehicle and possession of crack
25 cocaine with intent to distribute.

1 Q. How old were you when you got that charge?

2 A. Sixteen.

3 Q. Sixteen? Okay.

4 A. Yes, sir.

5 Q. Now, just by way of background, first of all, were
6 these things -- do you recall ever talking about your
7 background and these kind of things with your trial
8 attorney in this case Ms. Fanning?

9 A. Not much, just a little bit.

10 Q. Just a little bit?

11 A. Yeah.

12 Q. Was it a result of her asking you about it or did
13 you just tell her about it? Do you remember?

14 A. Just, like, speaking on it.

15 Q. Did you volunteer any information to her about
16 your past?

17 A. A little.

18 Q. So you don't remember having very many
19 conversations about your past?

20 A. No, sir.

21 Q. I know you and I have talked about this. Were you
22 always in your mother's home or were you ever removed
23 from your mother's home?

24 A. Removed from my mother's home.

25 Q. When did that happen to your memory, D'el?

1 A. When I was 15, I was placed in an orphanage. The
2 time before that, I lived with my aunts and my uncles,
3 stuff like that.

4 Q. And some of these times that you lived with your
5 aunts and uncles, was that as a result of the fact that
6 DSS had taken you and your brother out of the home and
7 placed you with other family temporarily?

8 A. Yes, sir.

9 Q. And do you remember why it was that DSS came and
10 moved you and your brother and put you in different
11 family homes?

12 A. Yeah. The first started when I found my little
13 sister deceased, and after that, that's when -- I guess
14 they call it investigation or whatever. They started
15 investigating my mama, so we couldn't live with her. So
16 at that time, that's when my aunt and uncles come and
17 taking us in and stuff like that.

18 Q. Now, let's talk about this a little bit. You said
19 that you found your little sister deceased. Tell us, if
20 you can -- well, how old were you when you found your
21 sister?

22 A. Eleven.

23 Q. How old was your sister when she died?

24 A. Like, two months.

25 Q. Two months. What did you -- what is your

1 understanding of why and how she died?

2 A. What I now know, what they called it sudden infant
3 death syndrome, SIDS or something like that.

4 Q. But as a result of that, DSS got involved in
5 investigating your mother because they believed it might
6 have been also as a result of neglect; is that right?

7 A. Yes, sir.

8 Q. All right. And you were the one that found her;
9 is that right?

10 A. Yes, sir.

11 Q. And you were 11 years old at that time?

12 A. Yes, sir.

13 Q. Was your mother in the home when you found your
14 sister?

15 A. Yes, sir.

16 Q. She was? Okay. After that time, you were not
17 with your mother for a good while after that; is that
18 right?

19 A. No. I was back and forth with my aunts and
20 uncles, different aunts and uncles.

21 Q. So you were moving from relatives' house to
22 relatives' house?

23 A. Yes, sir.

24 Q. What other siblings did you have? I know you had
25 a brother, right? Tell us what his name is.

1 A. Gary Grant.

2 Q. Gary Grant. And he is older or younger than you?

3 A. Older than me.

4 Q. Okay. Any other siblings besides your sister that
5 we just talked about?

6 A. Yes, sir, got three more sisters and four more
7 brothers.

8 Q. Three more sisters and four more brothers?

9 A. Yes, sir.

10 Q. So you're one of nine -- or, actually, one of ten,
11 if you count your two-month-old sister, one of ten or one
12 of nine?

13 A. No, nine.

14 Q. Were all of these children removed from your
15 mother's care at that time and put with different family
16 members or did some of them stay?

17 A. No, all of us was removed. Two came way after the
18 fact, but the rest of us was removed. So, like, my
19 brother Gary, he was locked up, and my sisters and
20 brothers, they went other places, aunts, uncles, stuff
21 like that.

22 Q. So your older brother Gary was already locked up
23 at the time you found your sister dead?

24 A. Yes, sir.

25 Q. How much older than you was Gary?

1 A. A year.

2 Q. A year. So he would have been 12 years old?

3 A. Yes, sir.

4 Q. And he was locked up at that time.

5 A. Yes, sir.

6 Q. Was your father in the home at any time?

7 A. No, sir.

8 Q. Okay. So was there any -- in your home at the
9 time that -- when you were 11 years old and you found
10 your sister dead, was there any older male figure living
11 in the home besides yourself?

12 A. My little sister who passed, her father was living
13 in the home.

14 Q. Her father was there?

15 A. Yeah.

16 Q. But that wasn't your father?

17 A. No, just her father.

18 Q. Okay. Now, do you recall whether or not you had
19 an opportunity to talk to Ms. Fanning about all this
20 stuff in your past?

21 A. I mean, like an opportunity, like just volunteer
22 to tell her or --

23 Q. Yeah. Let me rephrase, and I apologize.

24 Did you at any time tell her -- whether she
25 questioned you about it or whether you just volunteered

1 the information, did you ever tell Ms. Fanning about the
2 situation with your sister and your past when you were
3 young, any of that stuff that we have just been over?

4 A. No. Not all of it, but just a little, because I
5 didn't really know that. I just been waiting to go to
6 court, waiting to go to trial, so I don't know.

7 Q. Do you recall if you ever told her about finding
8 your sister?

9 A. No, I never told her that.

10 Q. You never told her that?

11 A. No.

12 Q. Now, for the Court, at your trial, your brother
13 Gary, he testified, correct?

14 A. Yes, sir.

15 Q. And he testified for the defense; is that right?
16 He testified because your attorney called him to the
17 stand; is that right?

18 A. Yes, sir.

19 Q. So is it fair to say Ms. Fanning knew about your
20 brother Gary?

21 A. Yes, sir.

22 Q. During this time, did she ever ask you about you
23 and Gary's history? Like, did she ever ask you about how
24 early you guys started getting in trouble or what was
25 going on in your home life?

1 A. No, sir.

2 Q. We started talking about this, and I wanted to
3 make sure we got your background out for the judge and
4 Ms. Fanning's knowledge of that, whatever it may be.

5 You've alleged in your application and the
6 allegations you attached to it a number of areas where
7 you felt like Ms. Fanning was ineffective; is that right?

8 A. Yes, sir.

9 Q. And you and I have had an opportunity to discuss
10 all those allegations at length, correct?

11 A. Yes, sir.

12 Q. Okay. And you and I have gone through copies of
13 what you have written out together, right?

14 A. Yes, sir.

15 Q. Okay. Now, you told me today there is some of
16 those, because you've lettered your allegations
17 A through -- close to Z, right?

18 A. Yes, sir.

19 Q. It ends at Y?

20 A. Yes, sir.

21 Q. Some of those you have added since that time.

22 A. Yes, sir.

23 Q. Okay. But as you and I talked about, they're kind
24 of more -- they're just some specifications about
25 allegations you've already made, correct?

1 A. Yes, sir.

2 Q. Those allegations all involve ineffective
3 assistance of counsel, things like you felt Ms. Fanning
4 did not do, correct?

5 A. Yes, sir.

6 Q. Let's talk about those. In your application
7 itself, you list A as ineffective assistance of counsel.
8 That's a general allegation, correct?

9 A. Yes, sir.

10 Q. What you -- you want to inform the Court now that
11 you just want to be more specific about what things
12 specifically you feel that she did wrong during your
13 trial; is that right?

14 A. Yes, sir.

15 Q. Okay. And I just want to go through some of
16 these. Now, you told me that you didn't really want to
17 focus on B, C, D, E, H and I?

18 A. Yes, sir.

19 Q. And you really didn't feel like you needed to
20 focus as much as on N, O, T, U, and Y.

21 A. Yes, sir.

22 Q. I just want to make sure we get it on the record
23 and we talk about that because some of those were
24 attached to the application. Some of those is just
25 things you have sent to me.

1 For the purpose of the Attorney General and for
2 the Court, I want to make sure we talk about what those
3 are, because it is my belief, as your attorney, you and I
4 have talked about this, that those are just the same
5 thing, ineffective assistance of counsel, you're just
6 talking about specifics?

7 A. Yes, sir.

8 Q. Okay. You have stated that, you know, your
9 primary is ineffective assistance of counsel, and I
10 talked to the Court about this. One of the things that
11 you had told me was some issues with the testimony of
12 DeShawn Gathers; is that right?

13 A. Yes, sir.

14 Q. I just want to make sure we cover everything.
15 That's one of the things that you're not so much focussed
16 on after talking with me, but just for the record, what
17 problems did you have with how Ms. Fanning handled
18 DeShawn Gathers' testimony during your trial?

19 A. It was the part that I -- what he said he saw,
20 there's no possible way that it could have happened,
21 because if you look in the transcript and from the
22 doctor's testimony, that he was saying that he saw one of
23 the victims get shot in their chest, but none of victims
24 were never shot in their chest.

25 And another thing was, like, he said that I told

1 him I was going to handle it, that I was going to handle
2 the situation, but the other -- another codefendant's
3 testimony stated I was nowhere, never around to see
4 nothing like that, so just --

5 Q. And I believe in your discussions with me,
6 Mr. Grant, to make it clear for the Court, the problem
7 was you didn't feel like Ms. Fanning brought those
8 inconsistencies out sufficiently in her cross-examination
9 of Mr. Gathers; is that right?

10 A. Yes, sir.

11 Q. And, Mr. Grant, do you recall that the jury
12 actually asked to relisten to or listen to again after
13 they started their deliberations a portion of
14 Mr. Gather's testimony?

15 A. Yeah. The jury sent a note back to the judge
16 saying -- first, they said they wanted the written
17 testimony from all -- everyone who testified that day,
18 but then the judge told them he could only provide them
19 with a playback of what they said.

20 So they narrowed it down to just DeShawn Gathers'
21 part to when he arrived at Ashley Shores, and that's the
22 part where he overheard me say that I was going to handle
23 the situation or something like that.

24 Q. And did you feel that it was ineffective of
25 Ms. Fanning not to object to them replaying that small

1 portion of testimony to the jury?

2 A. Yeah, because I feel like she should have objected
3 because they asked for written testimony from everybody.
4 So, you know, I mean, since they asked for written
5 testimony from everybody, it would have been better -- I
6 mean, she at least got them to hear everyone else's
7 testimony again because there was testimony that I never
8 said that.

9 Q. And this testimony that was replayed to the jury,
10 your contention is that she should have argued to the
11 Court that since they asked for all of that they should
12 get played all of that; is that correct?

13 A. Yes.

14 Q. Because you feel that small portion just
15 highlighted a problem that made you look -- that there
16 was bad testimony but without the context of what other
17 people said that contradicted it?

18 MS. WILSON: I'm going to object to the
19 nature of his question because he's not asking a
20 question, he's testifying for the witness.

21 MR. BAX: Your Honor -- and I apologize for
22 the leading nature of the question --

23 THE COURT: I think that's a way of saying a
24 leading question.

25 MR. BAX: I think that's what she's objecting

1 to.

2 MS. WILSON: Yes, Your Honor.

3 MR. BAX: I'll rephrase.

4 BY MR. BAX:

5 Q. What about the fact that there was just this small
6 portion of testimony being played versus all of it did
7 you have a problem with?

8 A. Another part -- because the solicitor used that in
9 the closing argument and pointed it out to the jury. He
10 was, like, there is testimony that I said I was going to
11 handle those boys, or handle the situation, when I never
12 said that, and you had another codefendant saying --
13 well, I can't say codefendant. You had another witness
14 saying I never said that.

15 Q. Well, let's talk about that codefendant situation
16 a little bit, because I know that's also something that
17 you have talked to me about, Mr. Grant.

18 Was there a lot of other people actually charged
19 in this crime?

20 A. Yeah. All of them, except for one. He came back
21 for armed robbery.

22 Q. Can you remember exactly how many people were
23 actually charged with the murder charges?

24 A. Four.

25 Q. Four?

1 A. Yes, sir.

2 Q. Now, of those four -- that's four outside of you,
3 I believe?

4 A. I make the fifth.

5 Q. You would be the fifth, that's right. Out of
6 those four people that were charged in addition to you,
7 Mr. Grant, how many testified?

8 A. Three for the State and one in my defense.

9 Q. The one that testified in your defense was your
10 brother Gary; is that right?

11 A. Yes, sir.

12 Q. But all the other gentlemen, they testified for
13 the State; is that right?

14 A. Yes, sir.

15 Q. Now, let's talk a little bit about the voluntary
16 manslaughter issue.

17 Can you tell the Court, why do you think your
18 attorney was ineffective when it came to the issue of
19 manslaughter?

20 A. Because the reasonable doubt charge.

21 Q. Okay.

22 A. The manslaughter issue was brought up. It wasn't
23 back to the jury, but the judge's reasonable doubt
24 instruction did not clearly and correctly instruct the
25 jury of their duty in that murder was the greater crime,

1 voluntary manslaughter was the lesser offense. It was
2 their duty if they had any reasonable doubt to resolve
3 that in my favor and find me guilty of a lesser included
4 offense, but the trial judge's instruction did not
5 clearly and correctly instruct the jury of their duty.

6 Q. Do you recall from your memory or reading the
7 transcript whether Ms. Fanning made any objection to the
8 judge's charge on that?

9 A. No, she didn't object.

10 Q. And you feel that if she had there would have been
11 a more strenuous charge, a more clear charge, on
12 reasonable doubt?

13 A. Yes, because there was evidence that tended to
14 reduce the crime to manslaughter, being that you had
15 someone else took the stand and say they was the one that
16 shot both of the victims, and --

17 Q. Well -- and let me ask you this: Was there also
18 testimony in the record, Mr. Grant, that the two
19 individuals, the two people that died in this case, were
20 involved in a shooting at Gary but maybe 30, 45 minutes
21 before?

22 A. Yes, sir. Earlier that day, like 45 minutes,
23 maybe an hour before the shooting happened, those two
24 victims along with someone else was involved with the
25 shooting of my brother. They shot my brother in his

1 head, like an hour before that, but aimed and just like a
2 deep graze, like in and out, and he didn't have to go to
3 the hospital for it, but he got shot, though.

4 Q. He was bleeding, right?

5 A. Yes, sir.

6 Q. But it was not fatal? He did not die -- he did
7 not choose to get any medical attention at that time?

8 A. Yes, sir.

9 Q. And so do you recall that Ms. Fanning argued some
10 of those factors in arguing that there was potentially
11 sufficient legal provocation that could lead a jury to
12 find manslaughter in this case?

13 A. Yes, sir.

14 Q. But just to be clear, it's the judge's charge on
15 murder versus manslaughter and reasonable doubt that you
16 have a problem with.

17 A. Yes, sir.

18 Q. Okay. All right. Now, additionally -- and we've
19 talked about this a little bit. Did Ms. Fanning ever
20 talk to you about -- let me ask you this: You recall
21 Ms. Fanning going over your trial rights, talking about
22 what trial was and how it would go?

23 A. No, sir. I mean, like, she got me moved to the
24 Charleston County Detention Center. She came to see me
25 the Saturday, November the 3rd. My trial started Monday,

1 November 5th. We just talked about basic stuff like if I
2 had something to wear to trial and is my family going to
3 be there and stuff like that, you know, and she would,
4 like -- she going to have -- at first, I told her that my
5 brother was going to confess to these crimes, but then
6 she didn't want to go with that line or whatever.

7 So when I got to see her that Saturday, she said,
8 You're brother is going to be at trial, so I'm, like, all
9 right.

10 Q. And, in fact, your brother Gary did testify at
11 your trial, correct?

12 A. Yes, sir.

13 Q. Okay. All right. We want to make sure that's
14 clear. That did happen.

15 A. Yes, sir. He did testify.

16 Q. Okay. And Mr. Grant did testify that he was the
17 guilty one. He was the one that shot those two boys,
18 right?

19 A. Yes, sir.

20 Q. Now, in any of your discussions with Ms. Fanning,
21 did she ask you if you understood what she was going to
22 be trying to present and you understood your rights? Did
23 she ever talk to you about your understanding and make
24 sure that you knew what she was talking about?

25 A. To my knowledge, no.

1 Q. So she would tell you about these things --

2 A. I mean, she like -- really, like all the time she
3 see me, I am saying she just asked me little questions,
4 you know, like little stuff. Ain't never been nothing
5 too big, you know.

6 Q. Did she ever ask you if you had any kind of mental
7 health history, if you've ever been treated for any kind
8 of condition, whether it be mental health or alcohol
9 abuse or substance abuse? Did she ever ask you about any
10 of that stuff?

11 A. No.

12 Q. Had you ever been treated for any of those things?

13 A. Yes, sir.

14 Q. You had?

15 A. Yes, sir.

16 Q. And she, to your knowledge, was not aware of that?

17 A. No, sir. I mean -- no, sir.

18 Q. Okay. Do you know whether or not she ever
19 obtained any records concerning your treatment -- let me
20 ask you this: What was your treatment for? What did you
21 get treated for?

22 A. Stress, depression, and stuff like that. I was
23 on -- placed on Prozac at one point in time.

24 Q. Do you remember what age you were when you were
25 placed on Prozac, D'el?

1 A. Fifteen when I was in the orphanage.

2 Q. Fifteen when you were in the orphanage?

3 A. Yes, sir.

4 Q. Did you continue to take that medication?

5 A. For a while, up until I got out of the
6 orphanage.

7 Q. After you were out, did you have any access to
8 this medication you've been prescribed?

9 A. No, sir.

10 Q. So as a result you couldn't take it?

11 A. No, sir.

12 Q. Do you recall -- well, do you remember who
13 prescribed you the Prozac?

14 A. The doctor.

15 Q. Okay. Do you remember if it was after talking
16 with someone who said they were either a psychologist or
17 psychiatrist?

18 A. I know the counselor at the school, the school I
19 was going to, she took me to see the doctor because she
20 knew about a lot of my problems, and they placed me on
21 the medicine.

22 Q. And when you talked with the doctor, did they ask
23 any questions about your past?

24 A. Yes, sir.

25 Q. Do you recall whether or not you told them about

1 finding your sister dead and some of the other things
2 that you told the Court today?

3 A. Yes, sir.

4 Q. Okay. Do you recall whether or not they stated
5 anything about that having something to do with the
6 diagnosis and the resulting prescription for Prozac?

7 A. I can't remember because after I went to see the
8 doctor and talked to him, she was -- like, a counselor
9 and the teacher, she talked to them, and they asked me if
10 I had a problem with taking the medicine, and I told them
11 no.

12 So we went back to the school, and after a while I
13 had a bottle of medicine at the school and one back at
14 the orphanage. I used to take it.

15 Q. How long were you -- let me ask you this: You
16 said this happened when you were 15.

17 A. Yeah.

18 Q. Had you ever had access to a counselor or
19 psychiatrists before that time when you were in the
20 orphanage?

21 A. No, sir.

22 Q. Do you remember whether or not the doctor said
23 anything about how long he thought you had been suffering
24 from this?

25 A. No, sir.

1 Q. Okay. Tell the judge -- tell us, how long were
2 you in the orphanage?

3 A. About seven to eight months.

4 Q. And you've testified that after you got out of the
5 orphanage, you no longer took the medication you had been
6 prescribed; is that correct?

7 A. Yes, sir.

8 Q. So is it accurate to say you were only on that
9 medication for sometime less than seven months?

10 A. Yes, sir.

11 Q. Did you get prescribed that right away when you
12 got to the orphanage or was it a number of months after
13 you got there?

14 A. After I got there, after I got there. After I got
15 there -- well, I was getting in a lot of trouble in
16 school, and I got a new -- the original counselor I had,
17 he left and a female came, and I used to be showing out
18 and she feel something was wrong and she took me to see
19 the doctor, and that's when I got on the medicine.

20 Q. So some time after you got to the orphanage, but
21 you don't remember exactly how long?

22 A. Yes, sir.

23 Q. Now, I think we've talked about this, but I wanted
24 to make sure we ask -- do you ever remember signing
25 anything for your attorney that looked like a release,

1 any kind of medical release or records, medical or mental
2 health records?

3 A. No, sir.

4 Q. Did you ever tell Ms. -- let me ask you this: Did
5 Ms. Fanning ever ask you if you had ever been on any
6 medication?

7 A. No, sir.

8 Q. Do you know if she knew that you had been on
9 Prozac?

10 A. No, sir.

11 Q. Mr. Grant, how old were you when you were first
12 charged with these murder charges?

13 A. Twenty years old.

14 Q. And you testified that you were only at the
15 orphanage for about seven months. Did you turn 16 by the
16 time you left the orphanage?

17 A. After.

18 Q. So you were still 15 when you left the orphanage?

19 A. Yes, sir.

20 Q. So had you ever taken your medication between the
21 ages of 15 and 20?

22 A. No, sir.

23 Q. Now, we've gone over a lot of your claims. Do you
24 feel that Ms. Fanning was ineffective for failing to look
25 into your background and failing to see if you needed an

1 evaluation to get you evaluated?

2 A. Yes, sir.

3 Q. Let me ask you this, Mr. Grant: When you were
4 young, you've testified that you got arrested as early as
5 11 years old and that your brother Gary was in lockup, or
6 had been locked up in some kind of facility, by the age
7 of 12; is that right?

8 A. Department of Juvenile Justice.

9 Q. Okay. Do you recall your mother or any other
10 parent spending a lot of time talking to you about what
11 is right and wrong?

12 A. No, sir.

13 Q. What kind of things did -- do you know whether or
14 not your mother was ever accused of having done any kind
15 of drugs or alcohol or anything like that?

16 A. Yeah. She been locked up multiple times.

17 Q. She was locked up multiple times?

18 A. Yeah.

19 Q. And you knew about this?

20 A. Yeah.

21 Q. What kind of things was she locked up for?

22 MS. WILSON: Objection, Your Honor.

23 Relevance.

24 MR. BAX: Your Honor, I think this
25 establishes the background that I need to ask Ms. Fanning

1 about as far as her decision.

2 THE COURT: Overruled. Go ahead.

3 MR. BAX: Thank you.

4 BY MR. BAX:

5 Q. I think I asked you, what kind of things was she
6 locked up for?

7 A. Stabbing. She stabbed my little sister daddy in
8 front of me. Stealing, drinking in public, fighting; she
9 got a crack charge. Stuff like that.

10 Q. Did you ever witness her -- you've already
11 testified that you saw her stab one of her -- somebody
12 she was in a relationship with and the father of your
13 sister. Did you ever see her using narcotics?

14 A. Yes, sir.

15 Q. Did you ever witness her stealing around you and
16 the kids that she never got caught for?

17 A. Around me when I were little.

18 Q. Okay. Now, Mr. Grant, I want to make sure -- and
19 you and I talked about this. I want to make sure you get
20 your full and fair opportunity. Is there any other
21 aspects of Ms. Fanning's representation that you want to
22 make sure the Court aware of as far as ineffective
23 assistance of counsel in this case?

24 A. She spoke on my background, but she never
25 investigated, and she was, like, by then -- when I went

1 to trial, I had no family. Ain't no family came to trial
2 but my little sister and my cousin. My cousin got sick,
3 but my little sister been there.

4 I tell her to go home, and Ms. Fanning was, like,
5 I mean, by the kind of background that I have and show
6 what I was deprived of, education, economically and that
7 I lacked some nurturing, but she ain't never checked into
8 none of that, you know, and she was, like, as a mother
9 she would be there with her child.

10 Q. In your recollection and in reading the
11 transcript, Ms. Fanning talked about the fact that you
12 lacked some nurturing, but did she ever present anything
13 about your mental health history or the fact you were in
14 an orphanage or the fact you had been prescribed
15 medication? Did she present any of that to the Court on
16 sentencing?

17 A. No.

18 Q. To your awareness, did she ever look into that and
19 know about any of that?

20 A. Not that I know of.

21 Q. Mr. Grant, any other issues with Ms. Fanning --
22 and take your time. This is your time in front of the
23 Court, and I want to make sure you get every opportunity.

24 A. Just -- what I said, and one time I tried to get
25 her off the case, but we went in front of the judge, and

1 she was, like, that I had no money to represent -- to get
2 another lawyer to represent me or that I had no education
3 law or none of that, it would be in my best interest to
4 keep her as my attorney, so I just -- I kept her as my
5 attorney because, basically, I don't have no choice.

6 I didn't want to go in front of no judge with no
7 double murder when I don't know nothing about the law,
8 but at the same time I didn't really want her
9 representation. I just went through what it, you know --

10 Q. And, in fact, the case is actually a transcript of
11 a hearing you had I believe it was in front of Judge
12 Dennis about the status of your counsel.

13 A. Yeah.

14 Q. And do you recall at that time the Court telling
15 you that Ms. Fanning was relieved, that you may have to
16 go represent yourself?

17 A. Yeah.

18 Q. Is that right?

19 A. Yeah, something to that effect..

20 Q. All right, Mr. Grant.

21 MR. BAX: At this time, please answer any
22 questions the Attorney General has. Okay? Thank you,
23 Mr. Grant.

24 CROSS-EXAMINATION

25 BY MS. WILSON:

1 Q. Good morning, Mr. Grant.

2 A. Yeah.

3 Q. So you testified today that you met with
4 Ms. Fanning before you went to trial, though, you met
5 with her?

6 A. Yeah, yes, ma'am.

7 Q. All right. And do you recall her telling the
8 judge about your background when you were being
9 sentenced?

10 A. No.

11 Q. Okay. Do you not recall her telling the Court
12 that you were 23, you didn't have a high school
13 education, you worked as a dishwasher? She told the
14 Court that none of your family was present. I told her
15 that the Court told -- I mean, Ms. Fanning told the Court
16 that your sister was present and that you told her to go
17 home.

18 She also told the Court that your mom didn't come
19 and that because your family didn't come, that spoke
20 volumes about the kind of background you had, and she
21 also told the Court that you were clearly deprived of a
22 lot things educationally economically and some nurturing,
23 but -- you recall her telling that to the Court?

24 A. Yeah, that little bit there, yeah.

25 Q. So she told that to the Court?

1 A. I mean, yeah, if you say so.

2 Q. And you say that she should have objected to the
3 reasonable doubt charge because you -- the judge --
4 articulate that for me. Tell me what that was about.

5 A. Because it did not clearly and correctly instruct
6 the jury of their duty. Being that murder and
7 manslaughter went back to the jury, he didn't instruct
8 them that murder was a greater crime and voluntary
9 manslaughter was a lesser crime, and if they had any
10 reasonable doubt it was their duty to resolve that jury
11 trial in favor of the defendant, in my favor.

12 Q. And you're saying that that is incorrect.

13 A. Yeah. I mean, they could -- there was no way that
14 they could clearly and correctly understood their duty.

15 Q. Okay. And you said that Ms. Fanning didn't advise
16 you of your rights prior to trial, such as your right to
17 have a trial, your right to remain silent, your right to
18 call witnesses? She didn't discuss those with you prior
19 to trial, but you recall during the trial the judge
20 advising you of those rights before -- do you recall
21 that?

22 A. Yes.

23 Q. It was before he actually asked you if you wanted
24 to testify, right?

25 A. I remember him asking me all that. I can't

1 remember everything before and after, but I remember all
2 that though.

3 Q. Okay. Thank you. And after he advised you of all
4 those rights, you told the Court you understood and you
5 didn't want to testify; is that correct?

6 A. Yeah.

7 Q. And did you ever tell Ms. Fanning that you had any
8 trouble understanding what you all discussed?

9 A. What?

10 Q. Did you ever tell her you didn't understand the
11 things she told you?

12 A. I mean, like, what all she tell me, she just -- I
13 mean, when I first meet her, she tell me she were my
14 lawyer. I already know the charges I had. You know, she
15 be -- like, she would be representing me, this, that, and
16 the third.

17 Q. So you didn't misunderstand what she talked to you
18 about.

19 A. No.

20 Q. Do you also recall discussing any type of defenses
21 with Ms. Fanning?

22 A. Like, I told -- I let her know about my brother
23 wanting to confess to the crimes and stuff like that, and
24 at one point in time she was -- like, she wasn't going to
25 pursue that, and she did, and that's what happened. He

1 confessed to the crime.

2 Q. Okay. So you discussed with her about how your
3 brother would confess, and as a result, that is the
4 defense you presented at trial?

5 A. That's what she presented.

6 Q. She talked to you about it before, though?

7 A. Yeah.

8 Q. Okay. And did she go over any discovery with you
9 prior to your trial? Did she show you, like, what
10 evidence the State had and that type of thing?

11 A. I got a pack from -- I got it from her. I guess
12 she got it from the State or wherever. It had evidence
13 that was found at the crime scene and the autopsy of the
14 bodies and stuff like that. I got that, and my motion
15 for discovery.

16 MS. WILSON: No further questions. Thank
17 you.

18 THE COURT: Are you taking Prozac now?

19 THE APPLICANT: No. Right now I'm on -- I
20 just got some -- I was on Paxils, but now it's -- the
21 pill I'm on now is called Celexa.

22 THE COURT: What is that for?

23 THE APPLICANT: Stress, depression, anxiety.

24 THE COURT: Okay. You got any questions you
25 want to ask him?

1 MR. BAX: Yes, sir, thank you very much.
2 Briefly.

3 REDIRECT EXAMINATION

4 BY MR. BAX:

5 Q. Now, the medication that you're on now, that's
6 provided through the Department of Corrections, correct?

7 A. Yes, sir.

8 Q. And did you have to go through any kind of
9 examination by anybody working for the Department of
10 Corrections before that medication was prescribed and
11 given to you?

12 A. Yes. I had to sign up for sick call and explain
13 to them why I needed medicine, and then I got to see a
14 doctor, psychiatrist, and I told them my problems and
15 what I went through in the past, and that's what they put
16 me on.

17 Q. Okay. And how long have you been -- when was that
18 prescription made?

19 A. Last -- around last year, like, last year, August.

20 Q. Okay. And have you been taking that regularly
21 since that time?

22 A. Yes, sir.

23 Q. Has it helped in any way?

24 A. Yes, sir. I was on the Paxil. It just got
25 changed to the Celexa, like, three months ago, maybe four

1 or five months ago.

2 Q. Okay.

3 MR. BAX: No further questions. Thank you,
4 Mr. Grant.

5 MS. WILSON: Nothing further.

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

7 All right. Let's take an hour for lunch, and
8 we'll come back and finish up.

9 (Recess taken.)

10 A F T E R N O O N S E S S I O N

11 THE COURT: Are you ready?

12 MS. WILSON: The State is ready. I think
13 we're missing Ms. Fanning-Horn, though, who will probably
14 be the next witness for the State if he's finished.

15 THE COURT: All right. Let's begin.

16 MR. BAX: Your Honor, I think probably the
17 best thing for me to do in this situation is to call --
18 and I think it's Ms. Horn now according to the record. I
19 want to call Ms. Fanning-Horn to the stand for the
20 Applicant.

21 THE COURT: Okay. Thank you.

22 MARGARET FANNING-HORN,

23 having been first duly sworn,

24 was examined and testified as follows:

25 DIRECT EXAMINATION

1 BY MR. BAX:

2 Q. And I apologize for referring to you as Ms.
3 Fanning before. I couldn't exactly remember the new
4 name. I apologize.

5 Thank you for being here. You remember
6 representing Mr. D'el Grant?

7 A. Yes.

8 Q. Can you tell us when were -- were you appointed on
9 Mr. Grant's case?

10 A. I was Court appointed.

11 Q. Do you recall when that Court appointment -- when
12 you got notice of that, when that occurred?

13 A. No, not specifically.

14 Q. The testimony we've had from the transcript
15 indicates this was tried November of 2007. Does that
16 sound accurate to you?

17 A. It does.

18 Q. Can you tell us -- you don't recall when you were
19 appointed, but can you remember about how long you
20 represented him prior to that trial in November of 2007?

21 A. I believe more than a year.

22 Q. Okay.

23 A. Or around a year.

24 Q. Okay. Can you tell us a little bit about your
25 contact with Mr. Grant in that year leading up to the

1 trial.

2 A. I wrote him letters I know at Kirkland, and I
3 communicated with him by letter when he was moved to Lee.
4 I saw him at those institutions. I remember driving and
5 interviewing him. I had various letters to him when --
6 as I received various documents from the State.

7 I received different letters from him with his
8 observations about the case, questions about the
9 documents. I told him, because of the distance between
10 us, to please write down all of his thoughts,
11 observations, things he wanted me to make note of since
12 we were going to have limited face to face time in the
13 months leading up to the trial.

14 And I met with him here. I remember meeting with
15 him in Berkeley County at the lockup there, and I know I
16 saw him in Charleston here in the jail here and in the
17 lockup downstairs several times.

18 Q. And I ask this generally because I don't know if
19 you have notes on it or not. Can you remember exactly
20 how many times you did have some face time with him prior
21 to the trial?

22 A. Unfortunately, I have lost my file containing my
23 notes. I had to recreate my electronic file when I got
24 the subpoena from the Attorney General. I have not
25 received a subpoena from you for this information.

1 I could have explained that to you if you had
2 contacted me, so I have copies of letters I sent him, and
3 I have to rely on my own recollection.

4 Q. I understand.

5 A. So if your question is, do I remember exactly how
6 many times I met with him face to face, the answer is no,
7 I don't remember exactly.

8 Q. Generally was it more than three, more than four?

9 A. Yes.

10 Q. Can you quantify it in any way?

11 A. Yes, more than three, more than four.

12 Q. Now, in the -- obviously you've testified that he,
13 on your instruction, sent you letters, correct?

14 A. Correct.

15 Q. And was this something that you instructed him on
16 the first time you saw him, in the first meeting or --

17 A. Yes.

18 Q. How did you instruct him about that?

19 A. I said, I understand that you're going to have
20 things that you want to communicate to me, and it's going
21 to be hard since you're not going to see me, given how
22 far you are from Charleston where the case was pending,
23 so write it down.

24 Q. And this is a face to face conversation you had
25 with Mr. Grant?

1 A. Yes. We were out of town. It was either Kirkland
2 or in Bishopville, at Lee. I don't remember which.

3 Q. Okay. And as a result of that, obviously, I
4 understand if you don't -- if you have misplaced your
5 file, I've had that happen. I understand.

6 A. I didn't misplace it. It is in storage, and our
7 closed file was lost. It could not be retrieved by the
8 IT people. It's in storage somewhere, and it is
9 unretrievable.

10 Q. That certainly makes sense. I've had that happen
11 as well.

12 Were you working with a firm or the public
13 defender's office? What was your employment at that
14 time?

15 A. I was working at Wilson & Hayward.

16 Q. So it would have been storage through that law
17 firm?

18 A. Correct, right.

19 Q. That's all I wanted to know. And as a result of
20 this, based on your remembrance, did you receive a lot of
21 correspondence from Mr. Grant?

22 A. Yes.

23 Q. What generally did his correspondence contain?
24 What was he usually talking about, or can you remember?

25 A. He had gone through all the witness statements,

1 the incident reports, all the documents that he had been
2 provided through -- from the State, and written logs, I
3 would call them, of inconsistencies, his observations
4 about the witnesses' ability to perceive what they said
5 or whether they did or didn't see it.

6 I mean, it was just a lot of detailed information
7 about -- or queries or observations or I don't know how
8 else to characterize it, just logs, pages and pages of
9 things that he read in the discovery that he wanted me to
10 be aware that he had an issue with or he thought was not
11 true or improbable, things like that.

12 Q. And you reference the fact this was things that he
13 brought up after review of the discovery. Did you mail
14 him his discovery? How did he get his discovery?

15 A. I mailed him his discovery.

16 Q. So he had the documentary discovery that you had;
17 is that right?

18 A. Yes.

19 Q. Was there any independent investigation done in
20 this case? Did you get an investigator or do anything
21 like that in this case?

22 A. Yes.

23 Q. Okay. And who was that investigator?

24 A. Vicki Childs and Davita Hartigan who are
25 associates.

1 Q. And was Mr. Grant aware of the fact that you had
2 the ability to go out and investigate and look for
3 people? Did he know about that?

4 A. Of course he did.

5 Q. Did any of his correspondence involve that, what
6 he wanted you to look into?

7 A. Yes.

8 Q. Now, during the times that you met with Mr. Grant,
9 did you have any conversations with him about his
10 background, his educational background, any of that kind
11 of stuff?

12 A. Yes.

13 Q. Okay. What do you recall from -- what did he tell
14 you?

15 A. I honestly don't -- I knew -- I was aware that his
16 education had been disrupted. I was aware he had not
17 been raised in a nuclear family. I was aware he was in
18 foster care. He did not share with me the SIDS incident
19 he testified to earlier on direct.

20 I was aware of his earlier criminal history. I
21 was aware of his brother's criminal history. I was aware
22 that his mother was not very functional as a parent. I
23 was aware he didn't have a father.

24 Q. Do you recall if you were aware at that time of
25 the fact that he had been treated for mental health in

1 the past, issues in the past?

2 A. No.

3 Q. Do you recall ever knowing whether or not he had
4 ever been placed on any medication?

5 A. No.

6 Q. Okay. If you had known that he had a mental
7 health history and he had been on medication in the past,
8 what would have been your course of action as a defense
9 in that situation?

10 A. Given the posture of the case, probably nothing.

11 Q. And why is that?

12 A. A, it wasn't a capital case where I needed to
13 mitigate for sentencing purposes during an evidentiary
14 part of the trial; and, B, this was not a situation where
15 I was faced with defending somebody who was apprehended
16 at or near the scene of the crime or had anything to do
17 with the crime, as far as our defense was.

18 Our defense was that he was not there, not
19 present, had nothing to do with it, no information, don't
20 know anything about it, and I wouldn't have done anything
21 different.

22 Q. Now, you testified because it's not a capital case
23 that you wouldn't have needed to present any mitigation
24 testimony at his mitigation phase of the trial.

25 A. During an evidentiary part of the trial, yes,

1 that's what I mean.

2 Q. I understand. Capital case mitigation part is
3 before a jury, though, correct?

4 A. Right.

5 Q. Often called mitigation phase of the trial?

6 A. Right.

7 Q. Now, however, obviously -- well, let me ask you
8 this: Did you consider the fact or think about the fact
9 that he may lose this trial and be convicted?

10 A. Of course.

11 Q. In that situation, would you agree that mitigation
12 is necessary when you're looking at a range of 30 to life
13 on two charges?

14 A. Some mitigation is required.

15 Q. Okay. Some mitigation is required. Can you
16 expound on that for me.

17 A. The Court needs to know something about the
18 defendant during sentencing, and I think in this case the
19 Court knew something about the defendant.

20 Since he didn't testify, we didn't have a lot of
21 opportunity to expound on his background in the
22 testimonial part of the trial. Sentencing was done
23 immediately after conviction, and the Court was told
24 about his background, but do I think I needed a
25 psychiatrist to come testify to that? No.

1 Q. Do you think that it could have helped?

2 A. No.

3 Q. And why do you think that it would not have
4 helped?

5 A. He was convicted at trial on murdering -- or
6 homicide of two people at the same time under a set of
7 facts that were pretty gruesome, and I think after that,
8 I don't think the Court would have felt like they had any
9 leeway to give him 30 years, or any reason to, based on
10 his background being what it was, I don't think.

11 Q. You don't think, you don't know for sure, correct?

12 A. I don't believe, sitting here today, it would have
13 made any difference.

14 Q. Obviously, you've talked about the fact that the
15 defense in this case, which I believe was very well put
16 on, as far as the fact that Mr. Grant -- because Mr. Gary
17 Grant came and testified in this trial, correct?

18 A. Right.

19 Q. And what did he testify to?

20 A. He said he had committed the crime and that D'el
21 was not in the vicinity and had no knowledge of it, not
22 part of the events leading up to the homicides and was
23 not there.

24 Q. So you had testimony from the defense, from
25 another person, that he was guilty and your client was

1 not?

2 A. That is right, yes. That's is what his brother
3 said.

4 Q. So he certainly had evidence that you presented
5 that certainly gives rise to a reasonable doubt argument
6 that someone else could have been responsible other than
7 your client.

8 A. Right.

9 Q. Okay. Obviously that was a defense y'all went
10 with and presented it well; however, in preparing for
11 this case in looking at his background, the fact that,
12 you know, he had been around a mother who was committing
13 crimes as early as -- younger than the age of 11, the
14 fact that he found his sister dead at the age of 11, saw
15 his mother stab somebody else, saw her steal, do you
16 think there could have been any possibility that a
17 psychiatrist might have looked at him to see whether he
18 understood right from wrong at all?

19 A. No.

20 Q. Why not?

21 A. Based on the facts of the case, the way that
22 D'el -- apparently, if the State is correct, D'el
23 committed the homicides and fled the scene immediately,
24 went to another state, and lived there for, I want to
25 say, two years while evading arrest.

1 If you look at it from that perspective, with all
2 those facts being out there, I don't think that anybody
3 would have thought he didn't know what he was doing.

4 Q. I understand. Well, let me ask you this:
5 Obviously, and I have to say this myself, are you a
6 psychiatrist or psychologist?

7 A. No.

8 Q. Do you have any background in psychology or
9 psychiatry, as far as educational background?

10 A. No.

11 Q. And you testified, hopefully I'm correct about
12 this, that you don't recall whether you knew whether he
13 had had a mental health history and medication for it; is
14 that correct?

15 A. No. I knew he had not had any substantial
16 documented history of mental illness. He didn't tell me
17 he did.

18 There was nothing in any of his records that I had
19 that indicated that he was substantially mentally
20 impaired. There was nothing in the communications that I
21 had that gave me pause to think that he didn't understand
22 what was going on, the gravity of the charges against
23 him, or anything that made me feel like he wasn't
24 competent or didn't understand what was going on.

25 Q. Now, you testified that he didn't communicate this

1 to you. Do you recall whether you ever asked him have
2 you ever been treated for any mental illness or drug
3 addiction or anything? Have you ever been on medication?

4 A. We talked about substance abuse. I don't think I
5 asked him if he's ever been on a serotonin replacement
6 drug or -- I don't recall. He didn't tell me. He didn't
7 volunteer it.

8 Q. Now, there's some other things that Mr. Grant has
9 testified to, and I want to ask you about those.

10 You recall asking for a manslaughter charge to be
11 given to the jury by the Court in this case as a lesser
12 included offense?

13 A. Actually, I did not ask for that. I believe, and
14 I have reviewed the transcript this week, I think
15 Mr. Wetmore asked for that.

16 Q. And did you -- I defer here. I've read the
17 transcript a couple times, but I've been in trial last
18 week. Did you oppose that request?

19 A. I asked for a minute to talk to D'el. We talked
20 about it. I did not -- initially, I think I did oppose
21 it, but ultimately it was given to the jury, I think.
22 Yes, it was charged to the jury. I think he decided he
23 wanted it.

24 Q. And I think I remember that you asked the judge
25 for a moment to speak with your client, and as a result

1 of that, you simply indicated that you were withdrawing
2 any opposition to the manslaughter, does that sound
3 accurate?

4 A. It does.

5 Q. Do you call whether on the record or off the
6 record having any charging conference with the judge
7 about the language he was going to use in his charge?

8 A. I'm sure there was some charging conference
9 wherein we went through the topics that were going to be
10 charged. I don't believe he showed us verbatim his
11 entire charge to go through prior to him reading it to
12 the jury, no.

13 Q. And you didn't place any objections to the charge
14 on the record after the judge was done charging the jury?

15 A. That's correct, I did not.

16 Q. Let me ask about this. This is one thing I want
17 to make sure I ask you about. Do you recall the
18 testimony of -- well, let me strike that and rephrase,
19 Your Honor.

20 Did any of the people that were also charged in
21 this crime testify against Mr. Grant?

22 A. Yes. I'm sorry. I'm losing my voice. I really
23 apologize for the roughness over here.

24 Q. If you need pause for water or anything --

25 A. I'm all right.

1 Q. Do you recall that one of those individuals was a
2 DeShawn Gathers?

3 A. Yes.

4 Q. And Mr. Gathers testified in the trial transcript
5 that Mr. Grant spoke to him immediately prior the
6 shooting and told him he was going to handle that.

7 Do you recall that testimony?

8 A. Do you have a page in the transcript you want me
9 to look at?

10 THE COURT: Let me ask you a question: What
11 are you looking for on the lesser included?

12 MR. BAX: Your Honor, my client testified to
13 the fact that the language in the charge about how the
14 jury is to look at lesser includeds, that they have to
15 resolve any doubts they have in favor of the defendant,
16 and in that if they have a charge of murder and they have
17 a doubt about it, they must then look to manslaughter.
18 If they have a doubt about manslaughter, they then must
19 drop down to a not guilty.

20 That is the charge that he does not see in
21 there, and I don't believe -- that specific language I
22 don't think is in the charge that I recall, and that is
23 the issue.

24 THE COURT: He got a voluntary manslaughter
25 charge.

1 MR. BAX: He did, yes, sir. He did.

2 THE COURT: So I'm not sure what you're
3 saying to me.

4 MR. BAX: Your Honor, the language of -- that
5 a judge would charge to the jury -- and, actually, I
6 don't have the case with me, but I argued this in my
7 trial last week, that -- and I believe it's State V.
8 Davis, but I don't have a cite, so I don't want to put
9 that out there, but there's case law that says that the
10 jury can and should be charged in situations such as
11 that, that if there is any doubt about whether the
12 elements of a charge have been met that they have to
13 resolve those doubts in favor of the defendant.

14 And he's referring to that specifically in
15 the context of lesser included offenses in this case.

16 THE COURT: All right. Go ahead.

17 MR. BAX: Thank you, Your Honor.

18 BY MR. BAX:

19 Q. And I think you asked me about Mr. Gathers'
20 testimony. If you refer to page 78 -- and I think that's
21 the numbering on the actual transcript itself versus the
22 numbering of the appellate paperwork that I have, but if
23 you refer to page 78 --

24 A. I have it.

25 Q. Okay. That's the testimony of Mr. Gathers about

1 what he purports to have observed and been told while he
2 was in an apartment right near where the shooting
3 occurred, right prior to when the shooting was alleged to
4 have occurred, and I would refer you down to the lines 19
5 and 20. That was an answer given by Mr. Gathers.

6 A. Okay.

7 Q. Now, that testimony -- from my reading of the
8 transcript, that was the only testimony from somebody
9 saying anything about him directly linked to this. Do
10 you recall that testimony ultimately was played back to
11 the jury after a question?

12 A. I recall that the jury asked for pieces of
13 testimony, and I recall the court reporter -- and I've
14 read the section where the court reporter had to locate
15 what they wanted to hear, and it was played back.

16 Q. Now, to your recollection, did the jury ask for
17 more than what ultimately -- when they first asked for a
18 much larger portion of testimony than what was ultimately
19 played to them; is that correct?

20 A. The jury apparently thought they could get a
21 transcript of the testimony and read it in chambers, or
22 in the jury room. When they were told they could not
23 have that, that their alternative was to hear all the
24 testimony, they opted to narrow it down to what they
25 specifically wanted to rehear because of the length of

1 the testimony.

2 Q. Based on that request, did you object to them just
3 getting a segment of what they originally asked for?

4 A. I don't think so.

5 Q. And why not?

6 A. Because I didn't. There wasn't much in what he
7 said that was helpful to us, so --

8 Q. Well, do you feel or did you feel at the time that
9 cutting away all the testimony around this statement and
10 narrowing it down to Mr. Gathers' testimony in that
11 segment -- did you at all feel like that would highlight
12 that testimony all over again for the jury?

13 A. Mr. Gathers, if I recall, kind of downplayed the
14 whole event, so I didn't know if it was good or bad. I
15 know -- I knew it was what they wanted to hear. I didn't
16 think that particular sentence was going to stand out
17 highlighted beyond Mr. Gathers' downplaying the urgency
18 of the situation.

19 He acknowledged this was said, but if you read
20 around it, you listen to the paragraph around it, he
21 said, well, it wasn't a big deal, nobody seems angry, so,
22 you know --

23 Q. And going back to the context there, was also
24 another individual that I think was charged in this by
25 the name of Devant Porcher, if I'm saying it correctly.

1 A. It was Porcher.

2 Q. Mr. Porcher, who also, I believe, testified for
3 the State?

4 A. Right.

5 Q. And you recall Mr. Porcher testifying he didn't
6 recall Mr. D'el Grant even being in the little apartment
7 immediately prior to, that he didn't see him there --

8 A. I don't remember that. He could have. There were
9 a lot of gaps in the evidence. There were
10 inconsistencies. So maybe he could have said that.

11 Q. In the original request from the jury that they
12 wanted the transcript, they felt like our wonderful court
13 reporters were powerful enough to have the transcripts
14 ready to go as soon as the witness is off the stand.
15 They asked also for Mr. Porcher's testimony, correct?

16 A. I think they asked for all the State witnesses.

17 Q. So they asked for the entire context in written
18 form, correct?

19 A. Right.

20 Q. Did you at all consider that without Mr. Porcher's
21 testimony that, in fact, Mr. Grant wasn't there at all,
22 it -- to kind of counteract what Mr. Gathers said, that
23 there should have been some kind of objection? They got
24 to listen to both sides from that since they both came
25 from the State and they originally asked for it?

1 A. No.

2 Q. And what is your -- what is your feeling on that?
3 Why not?

4 A. At this point, the jury had heard repeatedly how
5 involved D'el was in these shootings, and I figured -- I
6 felt like the less they heard, the better, again, right
7 in the middle of deliberations, so I didn't push hard for
8 them to listen to the entire State's case again now.

9 It to my mind was unfortunate they didn't want to
10 hear any of the defense witnesses. There were only two,
11 but they didn't want to hear anything from the defense
12 side. They wanted to hear from the State's side, so I
13 figured let them hear what they want to hear. Maybe they
14 were looking for something to exculpate him in that
15 testimony, so I don't know, but I'm really bad at reading
16 their minds and knowing exactly what they're looking for.

17 So no, I didn't try to force too much information
18 at them during deliberations.

19 Q. I understand, and I sympathize. It's hard to read
20 people's minds that you don't know. At that time, you
21 remember having any thought -- wondering if maybe what
22 they were looking for was Mr. --

23 A. I had all kinds of thoughts, wondering what they
24 were looking for. I had no good feelings about them
25 asking to rehear the State's entire case obviously. Did

1 I know they were looking for this sentence? No. Do you
2 know they were looking for this sentence? No.

3 We are just guessing at this point what they
4 wanted to hear. Did I think about why they wanted to
5 hear what they wanted to hear, yeah, I thought about it.

6 Q. Did Mr. Grant offer you any opinions about what he
7 felt like they were looking for at that time or did you
8 consult with him about that? I know you aren't required
9 to.

10 A. I would have talked to him about everything that
11 was going on during the trial. We talked a lot during
12 the trial, and when he felt like he could be of
13 assistance or if he had a question, he certainly did not
14 feel constrained to talk to me about what he thought
15 needed to be heard.

16 Now, when it came to what the Court decided the
17 jury was going to rehear, what the jury asked to hear, he
18 didn't have many feelings one way or the other.

19 Q. Okay. Fair enough.

20 Ms. Horn, let me back up for one more area, and
21 thank you for being here. Do you recall that there was a
22 hearing before this trial in front of another judge, I
23 believe it was Judge Dennis -- if I'm incorrect, I
24 apologize -- about the status of counsel, that Mr. Grant
25 at that time was trying to relieve you as counsel.

1 A. Yes, I do.

2 Q. Tell us a little bit about from your remembrance.

3 A. D'el fired me a couple, three times in writing,
4 told me he didn't want me representing him. And I told
5 him I understood. I would certainly file a motion. The
6 trial was getting pretty close at this point, so I would
7 immediately file a motion.

8 I did. I got Judge Dennis to hear it while he was
9 on the bench in Berkeley. That's why I remember talking
10 to Mr. Grant in the Berkeley lockup and we had a hearing,
11 and he was given the opportunity to tell the Court
12 whether he wanted to go forward with me representing him
13 or not, and I recall specifically him saying no, I want
14 to keep her, and so I was, like, well, okay.

15 Q. Do you recall -- I don't mean to interrupt.

16 A. No, you didn't.

17 Q. Do you recall if the judge mentioned anything
18 about the fact that if he didn't stay with you that he
19 wasn't going to get another counsel potentially and he
20 would have to go forward pro se? Do you remember if that
21 was the case?

22 A. I don't remember any threats like that coming from
23 the bench.

24 Q. And I don't mean it as a threat, and you do you
25 recall anything from the Court that potentially he may

1 not have -- you know, he may have to represent himself?

2 MS. WILSON: Objection, Your Honor. Asked
3 and answered.

4 THE COURT: Overruled. Let her answer.

5 THE WITNESS: My answer is no, I don't
6 remember that. I don't remember him being told he had
7 two options, keep me, who he didn't want as his attorney,
8 or represent himself. No, I don't remember it being laid
9 out like that to him.

10 MR. BAX: Okay. Moment's indulgence, Your
11 Honor.

12 Thank you very much. No further questions at
13 this time.

14 MS. WILSON: May it please the Court?

15 CROSS-EXAMINATION

16 BY MS. WILSON:

17 Q. Good afternoon, Ms. Horn.

18 A. Good afternoon.

19 Q. How long have you been practicing law?

20 A. I got my license in South Carolina in 1994 when I
21 graduated from school.

22 Q. And has a good portion of that been doing criminal
23 law?

24 A. First four years, I was with the First Circuit
25 Solicitor's Office, and mostly in Orangeburg and

1 Dorchester County, so until '98, I practiced exclusively
2 criminal law.

3 Q. Okay. And prior to trial, did you discuss the
4 elements of the charges against Mr. Grant with him?

5 A. Yes.

6 Q. And did you discuss his version of the facts?

7 A. Yes.

8 Q. And did you discuss any possibility defenses with
9 him?

10 A. Yes.

11 Q. And despite the fact that you don't have your file
12 with you today, you recall your representation of him
13 pretty well?

14 A. I do, I think. I mean, obviously.

15 Q. And go ahead.

16 A. There could be some gaps, but I remember the case
17 well.

18 Q. Okay. And you recall that Mr. Grant wrote you
19 frequently. He reviewed all the documents. He sent you
20 detailed observations of the discovery, wrote logs of all
21 the inconsistencies, et cetera. Would you say he could
22 assist you in his defense?

23 A. In that regard, yes.

24 Q. In his background regarding disrupted family and
25 his foster care, all which you presented to the Court

1 during his sentencing, did you feel like investigating
2 that further was relevant to his defense?

3 A. No.

4 Q. And if you had had the information, or the
5 information that we had learned about today in this
6 hearing, would you have hired a psychiatrist or
7 psychologist to talk to Mr. Grant about those things?

8 A. No.

9 Q. You had no indication that he was incompetent?

10 A. I did not.

11 Q. And had you had some indication, you would have
12 requested a mental evaluation?

13 A. Yes.

14 Q. Did you get an opportunity before coming here
15 today to review the involuntary manslaughter charge?

16 A. Not before -- not before coming here today. I
17 have looked at it.

18 Q. And did you at the time of trial think it was
19 objectionable in any way?

20 A. No. I thought it was sufficient. It does talk
21 about burdens of proof, and it doesn't come right out and
22 say if you have any doubts, you resolve them in favor of
23 the defendant in the section that I just reviewed, but I
24 do think the Court said if you find him not -- if you
25 don't find the factors for murder but you do find them

1 for voluntary manslaughter, you would -- I forget what
2 page it was on. He addressed -- it wasn't maybe as
3 detailed as the language that Mr. Bax has suggested, but
4 I thought it was sufficient at the time, and I didn't
5 make an objection.

6 Q. Did you also think a reasonable doubt charge was
7 sufficient?

8 A. I don't remember. Obviously.

9 Q. You would have objected?

10 A. Correct.

11 Q. Mr. Bax also pointed out some testimony from, I
12 believe, Mr. Gathers about saying the defendant saying he
13 was going to handle it at trial. Did you feel that was
14 objectionable or he had a basis to object to that?

15 A. I did object to it at the time on that one page.
16 There is no objection right underneath. I forget what
17 page it's on.

18 Q. And what was the result of that objection?

19 A. It was overruled. I can't find the page again,
20 but --

21 Q. And did you --

22 A. I thought I saw an objection.

23 Q. I think it's on page 79 in the first volume. It
24 starts on page 78 at the bottom.

25 A. I did object.

1 Q. And you said the result of that objection was that
2 it was overruled?

3 A. On page 79.

4 Q. Okay. And did you think it was beneficial to have
5 the jury replay all of the State's case when they
6 requested it?

7 A. No, not to my client.

8 Q. And did you feel like you adequately represented
9 Mr. Gathers during your trial?

10 A. Adequately, maybe adequately. I don't -- I
11 haven't reread all the cross. I think so.

12 Q. I guess what I'm trying to say, at the time did
13 you feel like you brought out all the relevant
14 inconsistencies in his testimony?

15 A. I did my best. I don't remember feeling terrible
16 about it, but I guess it could have been better.

17 MS. WILSON: Nothing further.

18 MR. BAX: Brief redirect, Your Honor.

19 REDIRECT EXAMINATION

20 BY MR. BAX:

21 Q. I want to ask you something that the Assistant
22 Attorney General asked you. She asked you, based on your
23 communication with your client, whether you feel like he
24 could assist in his defense, and you said -- I'm trying
25 to remember this --

1 A. I said in that regard.

2 Q. In that regard, yes.

3 A. I'll clarify that. What I meant was he was very
4 helpful inasmuch as picking apart the testimony of
5 others. I did not get a lot out of him in terms of
6 why -- a big theory about why this was happening to him,
7 why he was being charged, why there would be witnesses
8 saying he had done something he denied doing, denied
9 being present for, denied having any part in.

10 So in that regard, I didn't get much guidance from
11 him in terms of a theory. Do you see what I'm saying?

12 Q. And I understand what you're saying. Did you
13 attempt to try to have some of those conversations and
14 just didn't get any feedback? How did that go?

15 A. From day one, he told me he wasn't there. He
16 didn't know anything about it. He didn't do anything,
17 and when I asked him how this would happen, I don't know.
18 I don't know why they think I was there. I wasn't there,
19 that kind of thing.

20 So when it came to me coming up with some
21 conspiracy theory or some theory that maybe would
22 indicate why all these people were lying, I didn't get a
23 whole lot of help, but six to one, half dozen to another.
24 If he had some ideas, they may not have gone anywhere, so
25 that's what I meant by that statement, not that he

1 couldn't understand or couldn't assist, just when it came
2 to building a theory of the case as to why he was being
3 grouped in with the rest of these guys in the homicide, I
4 didn't get much help there.

5 Q. Okay. All right.

6 MR. BAX: Thanks very much, Ms. Horn.

7 MS. WILSON: Nothing further from the State.

8 THE COURT: You can step down.

9 THE WITNESS: Thank you.

10 MR. BAX: Do you have any other witnesses?

11 MS. WILSON: No, Your Honor.

12 THE COURT: Anything from the State?

13 MS. WILSON: Nothing from the State.

14 MR. BAX: No, Your Honor. Just a couple
15 things to add to what our discussion was at the beginning
16 of the case.

17 I would still rely on the arguments I made at
18 the beginning of the case. Based on what Your Honor
19 stated on the record, I would reiterate my request for a
20 mental evaluation.

21 Additionally, Your Honor, I think that you
22 heard testimony from Mr. Grant that I hope the Court can
23 see makes it clear that his upbringing was not just
24 rough. He didn't just have a rough life. It wasn't like
25 he had an overbearing father or a bad education or just

1 had difficulty at school.

2 This is somebody who at a young age was
3 witnessing crimes, was witnessing narcotics use,
4 violence, who was finding his siblings dead, which is
5 something I think we could all agree we would never want
6 an 11-year-old to have to do, something that occurred
7 when his 12-year-old older brother, the only other male
8 member in his life, who wasn't in a dispute with his
9 mothers in stabbings was locked up.

10 I think to say that is a rough upbringing and
11 that's no excuse is simplifying the matter a little bit,
12 and I hope that that is more clear now that Your Honor
13 has had the opportunity to hear from Mr. Grant about some
14 of the specifics that we're referring to.

15 Additionally, the fact that he does have a
16 mental health history, the fact that when he was finally
17 placed into some kind of care that was not other members
18 of his family were juggling him from aunt to uncle until
19 he was finally returned to his mother, he was finally
20 able to get some diagnosis and some care, something he
21 probably should have had much earlier than that, but as
22 Your Honor heard, that care ended fairly quickly. As
23 soon as he was back out of the system that care went
24 away.

25 As I've stated to the Court before, I'm not a

1 psychiatrist. I'm not a psychologist. There are many
2 times I wish I would have gone into that career instead,
3 but I'm here where I am and I'm going to stay. Ms. Horn
4 has testified she's not either. Neither of us have
5 psychiatry or psychology background. We're certainly not
6 practiced. We're certainly not licensed in that area, an
7 area that is regulated the same way attorneys are.

8 You have to be licensed to practice law, you
9 have to be licensed to practice medicine in the field of
10 psychiatry and practice counselling in the field of
11 psychology.

12 With the history that he had, we argue that
13 it is ineffective assistance especially when you're
14 looking at the kind of charges he had, not to look into
15 that. You know, she's testified that she doesn't recall
16 ever asking him, but she's testified he didn't offer it;
17 however, Your Honor, it is not the standard for us as
18 defense attorneys at the trial level to solely rely on
19 what our client offers us. We have to stand up and ask
20 our clients the information that we need to know.

21 Now, if he did not give that information
22 after an affirmative questioning by his defense counsel,
23 I think that's a different matter. We can only do what
24 we do, however, and this is something that I have argued
25 in PCRs before and it's been agreed with by the Court.

1 It's not just -- you don't just go to your
2 clients and say, So, tell me about it. You have to ask
3 questions.

4 For one thing, the constitution guaranteeing
5 the right to counsel is not because the constitution and
6 the founders of the constitution felt like everybody
7 could represent themselves. The very opposite.

8 They tell you you're entitled to counsel
9 because most people, if they're not a lawyer already,
10 can't understand the law without the assistance of
11 counsel, and I certainly would agree and I believe Your
12 Honor would agree after everything that we've been
13 through, being in our profession and being on the bench
14 as well.

15 The everyday person or a person who has not
16 been in the legal field, especially someone who has been
17 in the fifth grade either in alternative schools or not
18 in school, never received a degree, we can't expect that
19 person to know what information to offer to their defense
20 attorney.

21 It has to be up to the attorney they're
22 entitled to to ask for the appropriate information. Ms.
23 Horn has testified that even if she had gotten that
24 information, she would not have done anything with it.

25 I disagree with that. I think Ms. Horn is a

1 good attorney, and there were some areas in this trial
2 where I was very impressed with her performance; however,
3 we cannot leave any stone unturned because the fact is
4 once that conviction comes down, someone like Mr. Grant
5 is -- the opportunities to fight his defense become more
6 and more limited with every level of appeal.

7 There was an Anders brief filed in this case
8 with one issue put forth other than the fact that it was
9 an Anders brief, which of course requires the Appellate
10 Court to review the record in total. Now he's on
11 post-conviction relief. Once this is over, he doesn't
12 get another one of those.

13 So the opportunity to look into things like
14 his mental health and make a decision about what defense
15 is most proper, what mitigation can be offered, that
16 really only comes at the beginning stage of this game,
17 and once it's passed, it falls under the ineffective
18 assistance counsel realm by ruling of the Court.

19 Increasingly, our Supreme Court has moved
20 into the ineffective assistance of counsel realm. You
21 have cases like State V. Gentry that moves subject matter
22 over into the ineffective assistance of counsel realm,
23 and they've closed that down to be the premiere claim,
24 which means that to me the Court is looking at this as a
25 situation where if there are problems that counsel did

1 not address, the Court has to look at that counsel's
2 performance as the only question, really.

3 And so we would argue that he received
4 ineffective assistance of counsel for lack -- or failure
5 to investigate his mental health background to ask for an
6 evaluation, to provide whatever results that were gotten
7 either in mitigation or in argument or anything else it
8 would qualify for, as well as all the other claims that
9 he brought up today.

10 Thank you, Your Honor.

11 MS. WILSON: May it please, Your Honor: The
12 respondent request you deny Mr. Grant's application for
13 post-conviction relief.

14 With regard to his allegations about the
15 objectionableness of the reasonable doubt slash
16 involuntary manslaughter charge, the State submits that
17 the sentence Mr. Grant says should have been charged was
18 charged by the judge on page 357 of the second volume.

19 It says upon any issue of fact, potential for
20 conviction and a verdict of guilty, you have a reasonable
21 doubt as to how the doubt should be resolved. It would
22 be your duty to resolve that doubt in favor of the
23 defendant.

24 Regarding the mental competency issue, Your
25 Honor, in Jeter vs. The State, the Court said in

1 determining if counsel is ineffective or failing to
2 request a competency hearing, an applicant must show that
3 a reasonable probability exists that he would be found
4 incompetent at the time of his trial or his plea and that
5 Mr. Bax has provided no information that Mr. Grant would
6 have been found incompetent at the time of his trial.

7 His unfortunate childhood is not evidence of
8 mental incompetency. Ms. Horn said she was aware of that
9 at the time of trial. She presented that information to
10 the Court in mitigation of his sentencing.

11 The PCR counsel today also didn't present any
12 evidence of his mental health history. He didn't provide
13 any medical records. I believe the Applicant testified
14 he had been receiving treatment at SCDC. He didn't
15 provide any of that to the Court today, and with regard
16 to Ms. Horn's testimony on the issue, she said that she
17 had no concern about his competency.

18 In ways, he was able to assist in the defense
19 and that even if she had felt she needed to know of his
20 background, she wouldn't have used it for mitigation
21 purposes. Further, the Court felt that counsel may
22 reasonably rely on his or her own perceptions determining
23 whether the client is competent to stand trial, and that
24 is exactly what Ms. Horn testified to here today.

25 So the State requests that you deny Mr. Grant

1 the application for post-conviction relief and deny his
2 request that you grant him an evaluation.

3 THE COURT: Well, as far as the jury trial
4 goes, I think that the charge given was the correct
5 charge as a matter of law, so that one is denied.

6 As far as the mental health issue goes, you
7 got to have some basis for asking for it. Every person
8 charged with a criminal offense in this case doesn't just
9 get the right to have a mental evaluation done. The
10 Court has got to order it based on there being some
11 showing that there is an issue involved, and from what I
12 have gathered from both personal observation today and
13 statement of counsel, not only his PCR counsel today, but
14 trial counsel, is he seemed to be able to cooperate with
15 both trial lawyers at every step along the way, and I
16 haven't heard anything out of either the testimony or
17 statements that counsel or my own personal observation
18 that would give me anything that would suggest that he
19 had anything in the way of a mental disorder that would
20 rise to the level of not knowing what he was doing at the
21 time of trial such that he didn't understand the charges
22 against him or could assist counsel in preparation of
23 this defense.

24 In fact, he seemed to assist counsel in
25 preparation of trial, and, in fact, based on the limited

1 amount of education he had, it sounds to me like he was
2 probably a lot more actively aware of what was going on
3 in the legal sense than a lot of people are.

4 As far as criminal responsibility goes, you
5 know, M'Naghten didn't know what he was doing at the
6 time. There is absolutely nothing in the record to
7 suggest that that would have been a productive line of
8 inquiry either. He testified that he is currently taking
9 some medication for depression, but depression alone is
10 hardly a grounds for saying you didn't know what you were
11 doing so that you would be excused from the consequences
12 of your actions in a criminal court.

13 A lot of people have depression issues, and
14 that in and of itself does not relieve you from criminal
15 responsibility. It's you did not know what you were
16 doing at the time. And so there was absolutely no basis
17 for requesting a mental evaluation, either at the time of
18 the original trial or today, for that matter, so on both
19 grounds that have been raised, the application is denied.

20 Ask the State to prepare an order. Good luck
21 to you.

22 - - -

23 (Whereupon, the proceedings were concluded.)

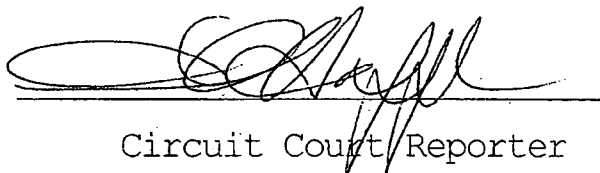
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I, the undersigned Amanda K. Haffenden, RPR, CRR, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 6th of December.

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

March 27, 2013



Circuit Court Reporter

CC
AG
AT
ES
SOL

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
2010-CP-10-10674

D'el Grant, #285741,

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

FILED
2013 JAN -4 AM 9:21
JULIE J. ANDERSON
CLERK OF COURT
BY _____

This matter comes before the Court by way of an application for post-conviction relief (PCR) dated December 31, 2010. The Respondent made its return on April 1, 2011. An evidentiary hearing on the matter was convened on December 6, 2012 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Arie Bax, Esquire. Ashleigh R. Wilson, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant was present and testified, along with Margaret Fanning Horn, Esquire. The Court had before it the trial transcript, the Charleston County Clerk of Court records, and the Applicant's records from the South Carolina Department of Corrections, the Applicant's application, the Respondent's return, and the appellate records.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Charleston County Clerk of Court. The Applicant was indicted at the November 2006 term of the Charleston County Grand Jury for two counts of

murder (2006-GS-10-11480 and -11481). He was represented by Margaret Fanning Horn, Esquire.

The Applicant proceeded to trial and was found guilty as indicted. On November 7, 2007, the Applicant was sentenced by the Honorable Howard P. King to confinement for life for each count of murder. The sentences were to run concurrently.

A timely Notice of Appeal was filed on the Applicant's behalf. Robert M. Dudek, Esquire, of the South Carolina Office of Appellate Defense perfected the appeal and filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals affirmed the Applicant's convictions and sentences. State v. Grant, Op. No. 2010-UP-388 (S.C. Ct. App. filed August 25, 2010). The Remittitur was issued on September 13, 2010.

ALLEGATIONS

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

1. Ineffective assistance of trial counsel in that counsel
 - a. Failed to re-cross co-defendants Deshawn Gathers, Devant Porcher, and Cordero Porcher or witness Resheema Witfield.
 - b. Failed to argue on jury's asking for a written testimony from Resheema Witfield, Cordero Porcher, Deshawn Gathers, and Devant Porcher. When judge informed the jury that he could orally provide them with recorded testimony, the jury said they only wanted to hear Deshawn Gathers' testimony. Counsel should have argued that the jury should hear tapes of all the above names since they wanted testimony from all the above names.
 - c. Informed Applicant that he should give the jury the option of finding him guilty of voluntary manslaughter.
 - d. Only visited Applicant three times.
 - e. Failed to move for a time reconsideration.
 - f. Informed Applicant of a plea for 30 years but failed to tell Applicant the stipulations of the plea.
 - g. Failed to argue co-defendants' credibility.
 - h. Failed to argue chain of custody of evidence.
 - i. Failed to argue photos of evidence at motel where suspects Gary Grant, Cordero Porcher, and Keshia Brown were arrested was not take into evidence in which it was thrown away.

j. Failed to argue confession of co-defendant Gary Grant.

At the hearing, Applicant proceeding solely on the allegations of ineffective assistance of counsel for counsel failure to request a mental evaluation of the Applicant prior to trial and failure to request a clearer reasonable double charge and a lesser included offense charge.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. Sec. 17-27-80 (2003).

Summary of the Testimony

At the start of the evidentiary hearing, the Applicant made a Motion for continuance and leave to obtain a mental evaluation for the Applicant. The Applicant argued that due to his background of severe neglect and abuse as a child he should be allowed to be mentally evaluated. This Court denied the Applicant's request and found that it appears the Applicant was competent to assist PCR counsel and that there was no evidence of mental incompetency based on the Applicant's unfortunate upbringing.

The Applicant testified on his own behalf that he met with trial counsel four times prior to trial. He testified that he was not housed in the Charleston County Detention Center and that they did not talk very much. The Applicant testified that he was first arrested at age 12 and he did not graduate from high school. He testified that he told trial counsel a little of his background which he recalled trial counsel conveying to the trial judge during his sentencing. The Applicant

testified further that at a young age he found his little sister dead and that his mother was investigated for neglect. He testified that he had witnessed his mother using narcotics and his father was not in the home.

The Applicant testified that counsel should have brought out the inconsistencies of Deshawn Gathers' testimony during trial. He also testified he felt counsel should have objected to the playback of limited trial testimony when the jury requested the testimony of several witnesses. The Applicant testified further that he should have objected to the reasonable doubt charge and that involuntary manslaughter should have been requested. He testified that trial counsel did not go over his rights with him prior to trial, but he was advised of his rights at trial. He testified that he also recalled telling the Court he understood his rights at trial.

The Applicant testified that trial counsel never asked him about his mental health or abuse history. He testified that he was treated for stress and depression and placed on Prozac at age 15. He testified he had no access to any mental health counseling until he was sent to an orphanage for seven months. The Applicant testified that he never signed a medical release for counsel to get his records and that he felt counsel was ineffective for not looking into his background. He testified that counsel did not present his mental health background at sentencing. Lastly, the Applicant testified he is currently taking medication for stress, depression, and anxiety.

Margaret Fanning Horn, Esquire, testified that she has been practicing law since 1994. She testified that she was appointed to represent the Applicant. Since representing the Applicant, counsel has lost her defense file, but testified that she is able to recall her representation of the Applicant very well. She testified that she reviewed the discovery material, discussed the

elements of the charges and what the State was required to prove, discussed the Applicant's version of the facts, and discussed possible defenses with the Applicant prior to trial.

She testified that because the Applicant was not housed in the Charleston County Detention Center, they communicated mostly via mail. She testified that once the Applicant was moved to Charleston, she went and met with the Applicant several times. She testified that she recalled receiving a lot of correspondence from the Applicant. She testified that the Applicant reviewed all the documents in his discovery and had created a log of what he felt where inconsistencies. She testified that the Applicant was able to assist in his defense. Counsel testified that she also hired an investigator for the case.

She testified that she discussed with the Applicant his background which included a disrupted education, foster care, an early criminal history, family problems, and the lack of a father figure. Counsel testified that the Applicant did not tell her about the death of his baby sister or that he had been treated for mental health problems and had been on medication. Counsel testified further that even if she had known more about his mental health history and background, she would not have done anything further because this was not a capital case and extensive mitigation was not needed in the Applicant's case. She testified that some mitigation was required and the Court knew about the Applicant's background at sentencing. She also testified that his defense was that he was not at the scene of the crime and his background was not relevant to his defense at trial. Counsel testified that she did not believe further mitigation would have made a difference during sentencing.

Counsel testified that she did not need a psychiatrist to testify about the Applicant's background during sentencing and that having one would not have been helpful. She testified that a psychiatrist would not have found the Applicant did not know right from wrong and was



not competent to stand trial. Counsel testified further that the Applicant did not have a substantial documented history of mental illness and that she had no indication that he did not understand the gravity of the charges against him or that he was incompetent in any way. Counsel testified that they talked about his substance abuse, but if she thought he may have been incompetent she would have requested a mental evaluation for him.

Counsel testified that she did not request an involuntary manslaughter charge and that she actually opposed the request. She testified that she spoke to the Applicant about it during trial. Counsel testified that there was a charge conference to discuss the jury charges. She testified that she did not believe the reasonable doubt charge given to the jury was objectionable and that it sufficiently stated the law on reasonable doubt.

Lastly, counsel testified that she recalls the jury requesting a transcript of pieces of testimony. She testified they were told that there was no transcript and that the jury chose to replay only a portion of the original testimony requested. She testified that she did not object to the jury hearing a portion of the testimony they requested because the testimony they wanted replayed was not helpful to the defense. She testified that she did not want the jury to hear the State's entire case replayed.

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "the burden of proof is on the applicant to prove his allegation by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For the Applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective

performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984), Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989). "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).

This Court finds the Applicant's testimony is not credible, while also finding trial counsel's testimony is credible. This Court further finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation. This Court finds that counsel has extensive experience in the practice of criminal law and has been practicing law since 1994. This Court finds that counsel met with the Applicant numerous times prior to trial and fully investigated the Applicant's case. This Court finds that counsel reviewed the received discovery with the Applicant. This Court finds that counsel discussed with the Applicant the elements of the charges against him and what the State was required to prove. This Court finds that counsel discussed the Applicant's version of the facts and possible defenses with the Applicant.

This Court finds that the Applicant failed to meet his burden of proving trial counsel should have requested a mental evaluation of the Applicant prior to trial. A defendant must be mentally competent to stand trial to assist counsel in his defense. Drope v. Missouri, 420 U.S. 62 (1975). In determining if counsel is ineffective for failing to request a competency hearing, an applicant must show that a reasonable probability exists that he would be found incompetent at



the time of this trial or plea. Jeter v. State, 308 S.C.230, 417 S.E.2d 594 (1992). Counsel may reasonably rely on his own perceptions in deciding if a client is competent to stand trial. Id.

This Court finds the Applicant has presented no evidence that a reasonable probability exists that he would have been found incompetent to proceed to trial had counsel had him mentally evaluated. This Court finds that the Applicant appeared capable of assisting both trial counsel and PCR counsel during his trial and post-conviction relief proceedings. This Court also finds that the Applicant presented no evidence that trial counsel should have inquired further into the Applicant's competency prior to trial. This Court finds further that it heard no testimony and observed no behavior to indicate that the Applicant had any mental disorder that would rise to the level of incompetency outlined in M'Naghten. Lastly, this Court finds that counsel gave credible testimony that from her observations and interactions with the Applicant, she did not discern any issues with the Applicant's competency to stand trial. For these reasons, this Court finds that the Applicant failed to carry his burden of proving that counsel should have requested a mental evaluation prior to trial.

This Court finds that the Applicant failed to meet his burden of proving trial counsel should have objected to the reasonable doubt charge and requested an involuntary manslaughter charge. This Court finds that the jury was properly charged on reasonable doubt as a matter of law and the charge given to the jury was not objectionable. This Court finds further that after discussion with the Applicant, counsel opposed the involuntary manslaughter charge. This Court finds that the Applicant has failed to show how counsel's objection to the charge was improper. This Court also finds that if counsel's objection to the involuntary manslaughter charge was improper, no prejudice resulted because the Court charged the jury on involuntary manslaughter despite counsel's objection. (T. 541-542). This Court finds that the Applicant failed to carry his

burden of proving that counsel should have objected to the reasonable doubt charge. This Court also finds that the Applicant failed to show that counsel's objection to the involuntary manslaughter charge was improper.

Accordingly, this Court finds the Applicant failed to prove the first prong of the Strickland test- that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in their representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland- that he was prejudiced by trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application at the hearing in this matter and not specifically addressed in this Order, this Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

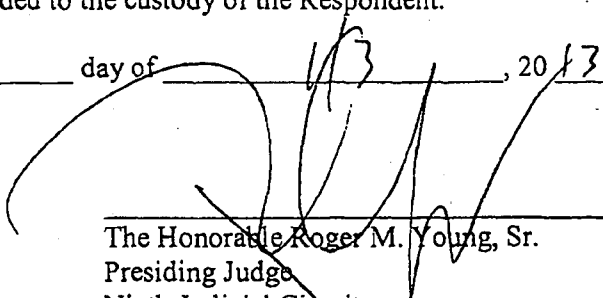
Based on all the forgoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

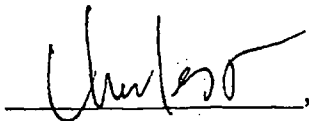
This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice;
and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this _____ day of _____, 2013


The Honorable Roger M. Young, Sr.
Presiding Judge
Ninth Judicial Circuit


_____, South Carolina.