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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Charleston County

Honorable Diane Schafer Goodstein, Circuit Court Judge

DE'ANDRE MURPHY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000598

APPENDIX

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| |) | |
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| |) | |
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| |) | |
| VS. |) | ORIGINAL |
| |) | |
| Jahmal Jerome Green, Jr., |) | |
| |) | |
| DEFENDANT. |) | |
| |) | |
| <hr/> | | |
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| |) | |
| De'Andre Marquell Murphy, |) | |
| |) | |
| DEFENDANT. |) | |
| |) | |

July 27, 2018

Charleston, South Carolina

B E F O R E:

The Honorable R. Markley Dennis

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

For the State
Edward Regin Corvey, III, and David Osborne

For the Defense
Gregory K. Voigt - for Jahmal Green
Lorelle Proctor - for De'Andre Murphy

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C O U R T ' S E X H I B I T S
FOR DE'ANDRE MURPHY

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|------------|--------------------|----|
| 1 | Murphy DVD | 03 |

C O U R T ' S E X H I B I T S
FOR JAHMAL GREEN

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CERTIFICATION OF TRANSCRIPT -- 52

If you need an additional copy of this transcript or a sealed transcript or if opposing counsel requires a copy of the transcript, you should contact the court reporter.

Certification will satisfy Rule 80, Stenographic Report of Transcript as Evidence.

1 (WHEREUPON, Court's Exhibit 1, Green DVD, marked for
2 identification in Green Case 2016A1010201808)

3 (WHEREUPON, Court's Exhibit 1, Murphy DVD, marked for
4 identification in Murphy Case 2016A1010201810)

5 THE COURT: Let the record reflect that Mr. Green and
6 Mr. Murphy are present with their attorneys. We -- everybody
7 had filed various motions, and of course the filing of your
8 motion now has made that a part of the record in this case
9 for purposes of review should that ever become necessary.

10 So you are entitled to rely fully on your memorandum and
11 the positions stated therein without arguing it on the record
12 here now. Certainly you are free to express for emphasis any
13 portion you wish. But I just wanted to let you know that.

14 I have also reviewed the video statements of both Mr.
15 Green and Mr. Murphy. They are Court's Exhibit 1 in each of
16 the cases. Because we have two separate cases. And they are
17 a part of the record now. And I see no useful purpose in
18 playing them again. I am sure you have reviewed them. And I
19 have reviewed them. So unless I hear otherwise a motion to
20 have them play again I don't think there is any necessity for
21 that.

22 I have -- there are several motions. In looking at them
23 and in considering issues the issues there are two -- well,
24 there are several factors that make me think that it is
25 necessary to take up the motion to settle first; because

1 there are a lot of over -- while -- I will first address --
2 because typically, as we know, there is no guarantee of a
3 separate trial. There is nothing that prohibits joint
4 trials. That is general law, and we understand that.
5 Typically where you run amok is when there is a Bruton issue
6 or some redacting of a statement.

7 I listened to it intently, the statements. I don't find
8 anything in those statements - I will be happy for y'all to
9 point me to it - where one says something that would be
10 detrimental to the other. Both are denying any involvement
11 and they don't really implicate anyone other than to mention
12 that the two names had been mentioned in the newspaper, and
13 that's about the extent of the overlap in the statements.

14 So you have to look at some other issues. And there are
15 several. But I want to hear from you all first as to why I
16 should sever it. And then of course the -- I will hear from
17 both, Mr. Corvey, and then let you respond to both of them
18 rather than separately if that is okay with you.

19 MR. CORVEY: That is fine, Your Honor.

20 THE COURT: Okay, and then I will give each of you an
21 opportunity to reply to Mr. Corvey should that become
22 necessary. Whichever way --

23 Ms. Proctor, do you want to go first?

24 MS. PROCTOR: Yes, sir.

25 THE COURT: Okay.

1 MS. PROCTOR: Your Honor, at this time we are making a
2 motion to sever. We have given you -- most of it is based on
3 the fact of the co-defendant's behavior during from the
4 arrest and things in jail. During his bond hearing -- I
5 sent -- I have given you those. During the bond hearing
6 he ---

7 THE COURT: By the way, has the State seen these
8 submissions or the copies ---

9 MR. CORVEY: She provided a copy, Your Honor.

10 THE COURT: All right. I am going to make -- I am going
11 to make the entire packet a Court's exhibit with respect to
12 Mr. Murphy. It will be Court's Exhibit 2, as being what they
13 purport to be, articles from various publications.

14 MR. PROCTOR: Thank you, Your Honor.

15 (WHEREUPON, Courts' Exhibit 2, media package, was marked for
16 identification in the case of De'Andre Murphy.)

17 THE COURT: Okay.

18 MS. PROCTOR: During the bond hearing for Mr. Green
19 while the victim's family was speaking he told the victim's
20 family to shut the F up. He also was rude, disrespectful,
21 and kept saying a lot of other things.

22 And so I think that -- and then the news played it
23 over -- it was on the news about ten times. It has also been
24 in the newspaper. But they showed it on the nightly news,
25 all the local stations, for about two days.

1 There is also a problem with some jail letters that the
2 State intends to bring in. And they were written to De'Andre
3 Murphy, but he never received them. But I think when the
4 jury sees those letters, which have threats in them I think
5 to the victims, that is going to affect Mr. Murphy.

6 Also, I don't know whether the State intends to bring up
7 the fact which of course also was in the news which ran when
8 he, Mr. Green, was arrested that he was arrested stealing a
9 baited moped. And because of that and because he was wanted
10 it was shown on the news again over and over. And I don't
11 know whether he intends to bring that out at trial.

12 But we have at least 20 articles that were just in our
13 local newspapers, and there were articles -- the news, the
14 news showed all the videos of everything.

15 There are also some jail calls that I assume that they
16 are going to use. And I think -- we don't -- and plus we
17 don't know if he will have an outburst during the trial. He
18 seemed to have quite a few outbursts during that hearing.
19 And I am afraid that will reflect on Mr. Green -- I mean,
20 excuse me, Mr. Murphy. So we would ask at this time that you
21 sever this case for that reason.

22 THE COURT: Mr. Voigt, do you have a position ---

23 MS. PROCTOR: Excuse me. Excuse me.

24 THE COURT: Okay.

25 (WHEREUPON, pause for Ms. Proctor)

1 MS. PROCTOR: Oh, I was just going to say she is wanting
2 him -- if he could undo one of his cuffs so he can write
3 notes. But ---

4 THE COURT: Would that be ---

5 THE DEPUTY: (Shakes head)

6 THE COURT: No? Sorry. At the trial we will have to --
7 we will make arrangements for that to be done.

8 MS. PROCTOR: Okay. And I think the case law that we
9 have submitted to you, Your Honor, I think -- I think we
10 could have Ms. Washington retext this as a State v. Denno.
11 But thank you. I have concluded.

12 THE COURT: And State v. Denno of course is a similar
13 case, and both sides.

14 All right, Mr. Voigt, you have a position on severing?

15 MR. VOIGT: Your Honor, I am not joining in that motion.

16 THE COURT: I understand.

17 MR. VOIGT: And I think I can explain why I am not, but
18 I think perhaps Mr. Corvey would rather do that.

19 THE COURT: Okay. Be glad to hear from you, Mr. Corvey.

20 MR. CORVEY: Your Honor, I think State v. Denno speaks
21 for itself. I mean I certainly understand Ms. Proctor's
22 concerns. And given my involvement in this case, you know, I
23 don't believe it to be unwarranted.

24 You know, I think the grounds for severance are clear.
25 I think we have a lot of the same evidence about both

1 defendants that we would present at an eventual trial. So
2 for judicial economy sake I would argue that a joint trial is
3 probably the best -- best interest of that. But beyond that,
4 Your Honor, I concur for that.

5 THE COURT: And I -- and I -- and that is nothing -- and
6 that is not slight. That is important, judicial economy, and
7 expediency I think.

8 Being the prospective trial judge -- and that is the
9 nice -- it is a good thing about having this opportunity,
10 because I have read the letters, and of course haven't made a
11 ruling on those, but I think there's going to be at least
12 from what I've seen thus far a good probability that some of
13 those will be admitted.

14 And I haven't heard all -- everybody's position on the
15 statements, but clearly the videos a large portion of those
16 are going to be admitted. And the concern that I have is the
17 linking with the articles, the letters, the threatening
18 letters it creates almost a Bruton issue with being addressed
19 to him.

20 Now granted, they didn't get to him. I understand that.
21 There's an argument, therefore, I think Mr. Voigt makes in
22 his -- that you -- that there really was no threat, it wasn't
23 anything it shouldn't be.

24 But clearly the letter itself -- and I go to another
25 issue of what you -- one of the parts is to prove who wrote

1 it. And that is important. The problem I have is then we
2 begin to overlap. I mean there is nothing in the world that
3 I see thus far that says that Mr. Murphy has been part of
4 that.

5 And I don't know -- I haven't heard yet your -- what you
6 are seeking to offer with respect to the visitation and the
7 records of the jail, what is going on there, who is that
8 involved. But there is a motion about excluding that, Ms.
9 Proctor. What is that?

10 MS. PROCTOR: I'm sorry.

11 THE COURT: Those are jail visitation, jail videos?

12 MS. PROCTOR: Yes, I think -- it is my understanding
13 that the State is going to introduce some jail videos.

14 THE COURT: Of whom?

15 MS. PROCTOR: I assume my client. I assume -- I thought
16 they -- some jail videos and phone calls. I think both
17 defendants.

18 THE COURT: All right. And I don't know the content of
19 those. But right now that, and then probably to me one of
20 the most difficult ones is when you link them there is the --
21 and there's two parts of that video. One where clearly there
22 has been no discussion of Miranda rights, hasn't happened
23 yet; he is in there. And I watched, as we all did, his
24 reaction and actions. No questions, he's just doing that sua
25 sponte, voluntarily.

1 I can't understand what he is saying for the most part.
2 I really don't. I mean I understand that you may be able to
3 and some people may be able to understand. I couldn't, and I
4 would just confess that.

5 But it is clearly something that could appeal to and
6 cause someone to react to that. Not necessarily -- and this
7 is what I'm going to have to guard against in charging the
8 jury is you can't rely on that type of -- almost a bias.
9 That is -- that is indicative of something.

10 And it doesn't really indicate -- because I don't -- I
11 don't hear anything; but you -- I mean you looked at it more,
12 and I'm sure there will be testimony more about some of this
13 but that links it directly with anything other than just a
14 general attitude of an almost my conclusion. And I think
15 there's a motion about interpreting films; I think this is a
16 danger about that, because I can tell you what my
17 interpretation is but that is not -- the important part is
18 that jury's.

19 But my concern is that if you start -- if they start
20 feeling one way about this person - and the outbursts at the
21 bond hearing, clearly that creates another major obstacle -
22 and suddenly these are -- these are partners, I think there's
23 a problem.

24 And my concern is I think it would eliminate that
25 problem totally because then we wouldn't have -- I wouldn't

1 have -- that wouldn't be played at his trial so there
2 wouldn't be that tainting issue that if the Court wanted to
3 send his back should he be convicted. I just think we
4 eliminate that.

5 And to me while it is -- while, it's -- I understand the
6 expense involved and the time. I think it is safer to just
7 try them separately. And I just I think it would be a much
8 easier trial for everybody involved to do that without any
9 overlap and any potential issues.

10 Also and I know there won't be any outbursts, but should
11 there be an outburst then that also further links and that is
12 a concern that I have to -- I really have to address given
13 the fact that I have watched some -- I have watched body
14 language. And I mean I know as a lawyer we instruct our
15 clients. But there's no guarantee of that.

16 So for those reasons stated, I believe while the general
17 part I think the prejudice outweighs the benefit by far of
18 trying them together so I'm going to sever it.

19 Now which one do we want to go with first?

20 MR. CORVEY: We will proceed forward against Mr. Green,
21 Your Honor.

22 THE COURT: Against Mr. Green?

23 MR. CORVEY: Yes.

24 THE COURT: So why don't we go ahead -- so we can go --
25 while we have everybody here let's go ahead and rule on some

1 of the things that will be an issue in the second trial as
2 well, such as statements and that sort of thing, so that we
3 can -- you plan accordingly going forward.

4 So I will grant your motion to sever. If you will
5 prepare a brief order to that effect I would appreciate it.

6 THE COURT: All right. Let's deal next -- y'all the
7 statement, there are some issues there. Let's go ahead and
8 deal with those. And I will be happy here ---

9 MR. CORVEY: Just briefly, I have a matter. I have all
10 of my witnesses available for Mr. Green's statement.

11 THE COURT: Right.

12 MR. CORVEY: Unfortunately the key witness that we
13 needed with regard to Mr. Murphy's statement for Denno now
14 lives in Greenville and was not able to make it here today,
15 but ---

16 THE COURT: I am going -- I mean -- y'all, based on what
17 I've seen -- I will be happy to hear from you. What is --
18 what witness do you need to have that I can't -- that is
19 Court's Exhibits 1 in each case can't satisfy for the State?

20 MR. CORVEY: Certainly as it pertains to Mr. Murphy's I
21 think probably not. I mean the record of course Exhibit 1 is
22 against Mr. Murphy to make a ruling on his statement. His --
23 and could be something for Mr. Green as well.

24 THE COURT: Well, Mr. Voigt, what is not in the record
25 that I -- that would prevent me from ruling in Mr. Green's

1 statement?

2 MR. VOIGT: I don't think there's anything in the
3 record.

4 THE COURT: I don't either. I mean clearly -- clearly
5 there is -- I can find by the preponderance of the
6 evidence -- obviously this will go to the jury and you will
7 have the opportunity to present that.

8 The statement itself, frankly, I think Mr. Voigt argues
9 that it really doesn't inculcate anything at all; but it is a
10 statement, and you are entitled to that because there are
11 some things about in his responses to some questions that may
12 be probative. There is no question. But it is his
13 statement.

14 And it is clearly admissible after the Miranda warnings
15 are issued, and they clearly are issued in that case. I mean
16 there's -- I don't think there is any -- I find by the
17 preponderance of the evidence he was given his Miranda
18 warnings.

19 No question there was an in-custody interrogation. No
20 question he had been -- I mean read the warrant I think
21 during his statement as well. So I am comfortable going
22 forward, not hearing any objection.

23 I mean obviously we are all -- I don't think there will
24 ever be -- maybe there is. The beauty of this business is I
25 make a ruling today but something comes up between now and

1 then, I guarantee you before it goes to the jury we will hear
2 it. So I'm not the least bit concerned about that, given the
3 fact that Mr. Voigt even does not raise any issue.

4 MR. CORVEY: Well, just -- Your Honor, I may -- I just
5 have his advice of rights form. Maybe with no objection we
6 can add it as a Court's exhibit as well ---

7 THE COURT: We don't ---

8 MR. CORVEY: --- or take that up later?

9 THE COURT: We are not challenging -- are you
10 challenging my finding that based on the video?

11 MR. VOIGT: I concur that Miranda rights were given.

12 THE COURT: Yeah, I mean -- Ms. Proctor, any challenge
13 to his Miranda warning? Now that one is -- wait, a minute.
14 That one has another little component to it. It wasn't as
15 clear -- I mean it clear he was given it to him. There was
16 some reference to you are familiar with this because of your
17 prior involvement with some things.

18 MS. PROCTOR: Yes, Your Honor. That is why I was going
19 to add. We don't object to you making a finding based on
20 Jackson v. Denno; but we are going to have some requests for
21 redactions that we have agreed we will address ---

22 THE COURT: And I think those -- I don't -- I assume the
23 State is not going to have a problem changing that part of
24 it.

25 MR. CORVEY: Absolutely not. I've said to counsel that

1 I am happy to work with them all redactions.

2 THE COURT: Okay.

3 MR. CORVEY: And we have already been noticed on obvious
4 ones as well.

5 THE COURT: Precisely. And I think some of your memo
6 addresses that, at least from what I have read, that you --
7 the State was not opposed to that ---

8 MR. CORVEY: No, Your Honor.

9 THE COURT: --- portion. So, yeah, there's no question
10 that part of it was there. But there is no question he knew
11 and indicated that he wanted to talk, at least for a point --
12 up to a point, and then he invoked his right.

13 MS. PROCTOR: We just don't object to you ruling based
14 on the video.

15 THE COURT: Thank you. All right. That is fine. Based
16 on the video I would find the statement at least -- portions
17 of the statement meet the test that I am required that by the
18 preponderance of the evidence is clear that there was no
19 coercion.

20 There were certainly some points in both of them where
21 there was techniques utilized, interrogation techniques,
22 that, you know, were in somebody's mind may find a little
23 abusive. But those -- just as I had another one where there
24 was a similar result, it didn't change anything; it didn't
25 cause any admission that I would have to suppress. So

1 therefore, that being said, it comes in.

2 I think the part about the statement that I want to
3 address is the obvious one I think is when they both say I
4 don't want to talk anymore. And they can't -- and I think it
5 is more so in Mr. Murphy's than it is Mr. -- well, in some in
6 Mr. Green's too. That is the portion that gave -- gives me
7 some concern, that once they have invoked that right.

8 And it is not -- I would agree with your argument
9 about -- I am sharing this so you can address it as to why I
10 should allow the whole statement -- the statement as a whole.

11 I don't know that I would -- I don't know what I would
12 do, but I don't -- because I don't have it, in my opinion.
13 If somebody had said I don't want to talk anymore to you, and
14 that is it; ah, that probably at least allows some door
15 opening there. When they use the word lawyer, to me -- and
16 what I commend the officers in both situations, it stopped,
17 baam, just like that, I'm out of here.

18 And I think that is what they are supposed to do. I
19 think that is appropriate. I mean I think you can nudge here
20 and there, but that is the safer thing to do is just say I'm
21 stopping.

22 I know they -- and I guess -- well, I will hear from
23 you. I'm sure you say, well, you know, there's no
24 interrogation, they know -- because obviously he points at
25 the camera. He addresses the camera at one point. So I am

1 cognizant of that, that he's doing something; he's not being
2 interrogated per se.

3 I will be happy to hear from you on those issues. But
4 clearly that is the part that I'm most concerned with. But I
5 will be happy to hear from you, Mr. Corvey.

6 MR. CORVEY: And likewise, Your Honor. And frankly at
7 first flush my initial reaction was the same, and it wasn't
8 until I started digging into it a little bit longer that I
9 actually started evaluating what the term interrogation
10 means.

11 So, as you pointed out, very clearly if someone invokes
12 the right to a lawyer an interview must stop. And that -- I
13 think, as I mentioned in my brief, that it absolutely should
14 you find that Detective Benton's conduct in putting
15 photographs on the table following that point was
16 interrogation, absolutely then I think what we are done under
17 Edwards v. Arizona. However, under Rhode Island v Innis, in
18 the other cases that I cited in my brief in reply to Mr.
19 Voigt's motion, I don't think that Detective Benton's conduct
20 rose to being an interrogation or a functional equivalent.

21 Certainly he doesn't ask any questions that would be of
22 a particular interrogative style. In fact, the only question
23 he asks him upon reentering the room 20 seconds later is to
24 double-check to make sure that Mr. Green didn't care that he
25 left the photographs there.

1 I would urge the Court, as I mention in my brief, to
2 consider the other cases that have evaluated that out of our
3 circuit. I noted some South Carolina cases that evaluated
4 Innis, adopted its holdings. Unfortunately none of them are
5 particularly instructive in so far as we have a different
6 circumstance here.

7 So outside of them just kind of regurgitating what Innis
8 provides us and the definitions that it provides us, I would
9 urge the Court to consider it not being interrogation.

10 And the important thing about it I think really
11 ultimately revolves around the defendant's conduct. The
12 standard that I think the Court needs to apply is whether or
13 not a reasonable officer, you know, should have or should
14 likely have known that what he was doing, his conduct in any
15 way, was to lead to an incriminating response.

16 And I know from my conversations with officers and also
17 just from viewing it, I don't -- it is difficult for me to
18 imagine a circumstance where one could imagine where merely
19 placing the photographs, albeit inflammatory ones, would lead
20 to the reaction that he got from that.

21 Beyond that I think the Innis court was clear that the
22 real test we have to look at is not so much that necessarily
23 what the officer's intent was, or what their purpose for
24 putting it down was, but the effect that may have had on the
25 defendant. And here I think the most instructive thing is

1 about the effect that it had coming from Mr. Green himself.
2 When presented with the photographs the first thing he says
3 is that I don't care, you can leave them.

4 Detective Benton follows up by asking him, you don't
5 care if I leave them. No, I don't care if you -- I don't
6 care. You know, I don't give a damn - excuse me - I think is
7 the actual language that he uses.

8 Following that he immediately places his head back down
9 on the table for approximately 30 or 45 seconds until he
10 starts laughing, looks up at the camera; and then I think
11 given the totality of the circumstances indicating that he is
12 rationally perceiving what the photographs are, that they
13 were placed there, and then the environment which he is in,
14 seems to be making -- trying to attempt to may contact with
15 someone beyond the lens and even indicate how come you can
16 put these pictures here but you can't show me me, in
17 reference to the debate that he was having with the officers
18 with regard to the surveillance camera video they mentioned
19 in the warrant.

20 I think given the totality of Mr. Green's circumstances
21 it is very clear that the effect that those pictures had was
22 relatively none on him. He didn't care and he was aware that
23 they were there. He was aware that he was being recorded.
24 And following that he voluntarily proceeded to go on with his
25 rap for 25 minutes, the majority of which I don't think has

1 any relevance to this case. I've excluded that and really
2 limited what portions that I do think are relevant.
3 Following the portions that Your Honor reviewed it delves
4 into what I would just call generalized behavior, and not
5 necessarily with anything independent to this case.

6 And so based on the cases cited in my brief and really
7 based on Mr. Green's conduct in the interview room, not just
8 from following his indication of his right to an attorney but
9 from the moment he was placed in the interview room, from the
10 moment of his conduct from I mean really standing into the
11 night before with CPD officers during his arrest in that
12 incident, to when Detective Benton and Detective Jellico went
13 to pick him up from the jail he was rapping in the car to
14 there, I anticipate if testimony were to be taken in that the
15 text would indicate that the purpose for printing out the
16 photographs was really just because he -- they were so off
17 guard based on Mr. Green's conduct and the way that he was
18 acting that he wanted to be sure that he was really aware of
19 the gravity of the situation.

20 And, you know, to his credit I don't know really how we
21 get to that point quicker than kind of showing the result of
22 why we are here, at least what the allegations are.

23 And so as far as it being interrogation, I don't think
24 it is. I think it is certainly a bit of a gray area. But I
25 think under Innis and I think under a lot of cases that have

1 evaluated similar sorts of conduct in invocation situations
2 on a Miranda elsewhere we are on -- in the lower end. And
3 that includes cases which have approved worse conduct.

4 You know, for example in a case I specifically mention
5 in my brief, Lewis Alforda -- it is a video. I mean I
6 don't -- you know, of course we don't have the benefit of
7 knowing the exact circumstances in which the video was shown,
8 but the video was -- I would assume constantly playing and
9 Mr. Lewis would have had no opportunity to stop it. Granted
10 he could have -- I assume could have likely looked away. But
11 here the photos could have been slipped under the door,
12 flipped over, put down; you know, put on the floor. There is
13 anything that he could have done to not look at them or not
14 engage in them. And his behavior after having them in his
15 possession was fully voluntary.

16 I think if you were to look at the totality of the
17 circumstances, it was a voluntary action taken upon Mr.
18 Green. And given that, I think they should be -- I think
19 that portion should be admissible.

20 THE COURT: Response?

21 MR. VOIGT: Forgive me. That is offensive. The whole
22 thing -- that whole argument is offensive. For this reason:
23 Edwards and now Montego has set a fairly bright line on
24 when -- when you invoke. And I think what we are all
25 agreeing is there is a clear invocation of the right to

1 counsel. I want a lawyer, I will talk to after I talk to my
2 lawyer. The officers clearly understand the message,
3 internalized the message, scoop up their file and walk out
4 the door. Now under Edwards analysis you don't reinitiate,
5 you don't reengage for any purpose.

6 I respect Detective Benton. He is someone I have
7 enjoyed working with for the last 12 years. However, I don't
8 think it is determinative what his intention was. What was
9 in his heart when he decided to put crime scene photos in
10 front of a room -- in front of a man who was locked in a room
11 in Charleston City Hall? I don't think his intent, even if
12 we can colorize it in some sort of way as to make it as
13 benign as the State would have you believe, I don't think
14 there is any way that a neutral observer -- because this is
15 really what the State would like you to do is just because he
16 had pure intensions we should then let in something else
17 which is clearly not a statement.

18 The Innis court, Edwards, all the progeny, talk about
19 not necessarily interrogation -- yes, interrogation. But
20 also behavior designed to elicit evidence. And so in an
21 argument to you where he is attempting to introduce evidence
22 he is saying they clearly didn't have that behavior that
23 elicited the evidence that I am seeking to introduce. It is
24 a search warrant argument.

25 Detective Benton 20 seconds after being told that a

1 client wanted his lawyer, turned around and provoked him. He
2 didn't interrogate him, but provoked him. Intentionally
3 decided because we have a hothead on her hands let's just see
4 what he does with these. And it worked. He immediately
5 turns to the camera, because he knows he is being played.

6 And what the State would have you do is reward the
7 officers for violating Edwards and its progeny. And this
8 involved different officers talking about a gun that could
9 have been -- harm to children; it was a shooting in a school
10 and the officers who were literally driving a van - a paddy
11 wagon, which, you know, we don't have much anymore - were
12 driving a paddy wagon, said, boy, it would be a shame if
13 those kids found that gun that was in the shooting, somebody
14 could get hurt. These were officers disconnected from the
15 original investigation. The defendant piped up in the
16 background I will tell you where the gun is to save the
17 children.

18 That's not what happened here. This isn't the Innis
19 case. This has nothing to do with Innis. This has to do
20 with an officer rolling the dice and saying let's see what
21 this hothead does. That is an improper purpose. He
22 reengaged for an improper purpose. It is clear on the table.
23 I don't have to ask Detective Benton a question because he is
24 going to tell me something that makes him look good and I
25 don't have to believe him.

1 The evidence is clear on the table. The purpose was to
2 elicit evidence to incriminate my client, and they're trying
3 to bring that evidence in. And they are after the clear,
4 unequivocal indication of his right to counsel they
5 nevertheless persisted. The law does not allow them to do
6 that.

7 I don't want to try this case twice. And I don't want
8 to try it having to listen to that. Okay. Thank you.

9 THE COURT: Reply.

10 MR. CORVEY: Just very briefly, Your Honor. And I think
11 as I said from the start, I understand the bright line under
12 Edwards. I understand Mr. Voigt's position. And I think,
13 like I mentioned at the start of my comments, when I
14 initially saw it and when I -- before I really looked into it
15 that was always my assumption. I started digging into the
16 case law and found out that that is -- that that is just
17 quite simply not the case.

18 There is a lot of breath of case law in here with, as I
19 think it highlights in my brief, conduct I find to be much
20 more offensive and violative of the bright line established
21 by Edwards. And, to be clear, I don't find the conduct here
22 offensive.

23 I think -- I think you have to look at the totality of
24 the circumstances surrounding this. And the standard
25 provided by Innis that, you know, our courts have adopted,

1 although not -- not evaluated under circumstances such as
2 this, is I think -- I think very clear. And I struggle to
3 see any circumstance in which Detective Benton or any
4 reasonable officer should have, you know, known or have any
5 reason to believe that in showing those photographs, which on
6 their own don't add any probative value towards Mr. Green's
7 guilt or innocence, would have elicited the response that
8 they got or frankly any response. And I think the best
9 evidence from that, as I mentioned, came from Mr. Green
10 himself in his immediate response to being shown them.

11 THE COURT: Okay. All right. I understand. I don't
12 think he intended to re-engage. But, frankly, to me it is
13 the colloquy shows -- again, there is no question that's
14 evident; because we are talking about professionals, but we
15 are talking about human beings who are moved by something
16 that has happened. And I get it. I understand, and I
17 appreciate it. I've have to deal with the same situation
18 where I've said it too.

19 But the bottom line is once he said I want the lawyer
20 you don't come back in the room for any purpose, in my
21 opinion. Because why, why is it necessary for him to know
22 anything about them; because he didn't do anything.

23 I mean there is no -- there is logic to that. That
24 doesn't do -- except for one thing, the reaction, the
25 officers, they felt like he was being evasive. That comes

1 across. They didn't buy it.

2 And I can understand that. I don't quarrel with that.
3 I think I could conclude that also, listening to the
4 conversation. But that is okay. That is their opinion.
5 They are entitled to that.

6 But so this other was -- there's a flip side to it. And
7 I am afraid when you said have I studied it -- I will always
8 remember a lawyer who did a seminar one time. I'll try to
9 remember it. He said you know if a case walks in - and
10 typically we were talking about civil cases, not criminal
11 cases - and that case barks at you when you first hear it and
12 then you spend your time and you look at the law and you
13 study it and it doesn't bark so much anymore, in fact it
14 becomes a very good case, remember something, the first time
15 that jury hears it it is going to bark at them too. Because
16 there are certain aspects of it. This is one. I hear you,
17 but my concern is that is exactly what happens. And I don't
18 think it should. And I think there is a problem here.

19 Again, had he said I want to stop talking to you, that
20 would be dangerous too; but clearly when we say I want a
21 lawyer, I didn't do anything, and the questions persist, I
22 mean tell me where you were, tell me what you were doing, why
23 are they doing that, I don't need to remember that. I mean
24 those are things that just simply -- I appreciate it. Please
25 understand I'm talking about what transpired after the

1 invocation, not what occurred before. That what occurred --
2 what occurred before -- now you have a motion as to the first
3 part?

4 MR. VOIGT: I do, Judge.

5 THE COURT: I figured you might. Let's go ahead and
6 hear that.

7 MR. VOIGT: Normally when we are talking about
8 confessions, the term confession gives it away right there.
9 We don't say I'm going to introduce a complete denial of
10 liability or a complete denial -- we don't introduce
11 self-exculpatory statements.

12 Yes, they are a statement of a party opponent. But they
13 are not against that party opponent's interest, so they don't
14 fall squarely within the hearsay exception.

15 It is not a motion to suppress. It has nothing to do
16 with the Constitution. I agree with you that Miranda was
17 probably given especially in my kinds of cases as opposed to
18 Mr. Murphy's, but I worry that all we have -- once we take
19 out what we just took out what we have is didn't do it. And
20 that's -- that is normally not the sort of thing that we have
21 in a case where they are alleging that he did.

22 THE COURT: Okay. Well, the part I'm talking -- we are
23 talking about the statement. And I assume you want it to
24 start from the time he is brought into the room?

25 MR. CORVEY: Yes, Your Honor.

1 THE COURT: Before anybody comes in?

2 MR. CORVEY: Yes.

3 THE COURT: Because that is the one where there was a
4 lengthy action on his part. Extremely.

5 You just still want to address in generalities, Mr.
6 Voigt?

7 MR. VOIGT: All right, so let me go to that. Like you I
8 had a difficult time understanding everything that was said.
9 We have not -- as far as I know it is not a crime to react
10 negatively to being interrogated by the police.

11 THE COURT: Absolutely not.

12 MR. VOIGT: It is we do not convict people based upon
13 their attitude or their behavior. And this is not other
14 crimes evidence, so it doesn't kind of go into that sort of
15 analysis.

16 It is he is a surly guy, and I just don't see what the
17 probative effect of that would be in that context where as we
18 all know that is a very common occurrence. There is no -- at
19 the end of that -- so if you're going to just play right to
20 the point where I want a lawyer, which is always kind of
21 problematic in a case, by the way, and tends to be cases we
22 don't litigate - very good reasons for that - if you get
23 right to the point where he wants a lawyer, all we have got
24 is -- now there's going to be some redactions about prior
25 arrests because the police were not clean enough to keep that

1 out. I think there may be redactions about which Garrett
2 Academy he went to. Which kind of depending on how much
3 people know about Garrett Academy might influence some of
4 them or make them think something about him. And then he
5 argues about the warrant and they both yell at each other.
6 And then the beginning where he has a reaction to
7 interrogation -- or to being arrested.

8 What do we have? I mean we have don't like him, he is a
9 bad guy. That is not the sort of evidence that we ever bring
10 in here. It is the sort of thing that all of our rules of
11 evidence are designed specifically to exclude.

12 We don't have the he is a bad guy exception to these
13 rules. There is no -- if he had said anything inculpatory,
14 that was directly inculpatory, that he had placed himself
15 somewhere, that he had been with someone, that he had -- in
16 other words, if he had been able to -- if they could have
17 mined from this statement any fact that supported something
18 else in their case then I would have -- this is a much
19 shorter argument for me. But there's nothing in there.

20 So what we have is in a self-exculpatory statement that
21 ends in an invocation of somebody's constitutional right.
22 And I worry that by placing all of this 15 minutes of
23 argument into the record what we are also going to get to and
24 what we never -- what we try never to do is impugn someone
25 properly invoking a constitutional right. And so there is no

1 positive purpose for this other than to show he is
2 argumentative. And it ends with him invoking his
3 constitutional right, which even if they never mention it I
4 think has the effect of putting before the jury something
5 that we cannot explain to them how to avoid. No jury
6 instruction fixes.

7 There is no confession in this case. None of this
8 should come in.

9 THE COURT: Thank you.

10 Well, the issue I have is of course again what someone
11 understands, that is again the burden. And, as you know, I
12 will charge the jury that they have to find that the
13 statement was his, was -- and that it was freely, voluntarily
14 given, and that by the -- not by the preponderance of the
15 evidence, which is my standard here today, but rather beyond
16 a reasonable doubt.

17 But one of the things -- and then I start thinking,
18 well, what is the probative value of this. Not -- the
19 prejudice is obvious. But what is the probative value.

20 Well, the probative value is quite significant I think
21 of any -- by any statement that comes in. Because a jury has
22 to -- as we -- as I will -- I have said and I will say to
23 this jury too, you know, it is not what somebody says
24 sometimes but how they say it. You judge their body
25 language. You judge from their demeanor; how did they act,

1 how did they appear to you, straightforward or hesitant.

2 That means that you -- that you are instructing a jury
3 to consider body language, to consider persons, to consider
4 their mindset what is a demeanor. And that is very critical
5 in assessing what; is this statement, I didn't do it, is it
6 reliable, is a truthful, does it now gravitate to change the
7 evidence that does suggest that he did it. Because now all
8 we have is his.

9 And of course he doesn't have to say a word. And we
10 know and I will tell the jury that. And I hear you and
11 understand. And I -- you have mentioned an area that has
12 been perplexing and will continue to be for at least one more
13 year, of what we do when a person invokes their rights. And
14 that is done in the presence -- in the presence of the jury.

15 But that having been said, I think there is significant
16 probative value to that. And I think the probative value
17 outweighs the prejudice. Because following that -- it goes
18 to -- also a jury could conclude what is my attitude about
19 this, what do I think about this.

20 And to be honest with you, that may move -- dovetail
21 very nicely into you, what am I here for, I didn't do
22 anything, why do I need to be serious about this because I am
23 not guilty of a thing.

24 So I mean it has probative value both ways, really, from
25 the standpoint of just human nature and argument. And

1 because it follows -- and I appreciate -- I remember Garrett
2 when I -- I played football, and we played football with
3 Garrett. I don't know -- I don't know the history of
4 Garrett. But they had a decent football team back in the
5 '60s; I can tell you that.

6 But be that as it may, the conversation with that was
7 one of the cordial conversations that the two had. There was
8 what I perceived to be sort of a genuine sharing a ha ha.
9 But which shows again, what am I concerned about here, I am
10 not -- I am not guilty of a thing, I will be happy to talk to
11 you.

12 And then when -- when it got a little more intensive,
13 you know, then said, wait a minute, whoa. Which, again, I
14 think all goes -- and that is just my quick analysis of
15 trying to say there's probative value both ways. And I think
16 for that reason it is legitimate and it should be allowed.
17 So I would not exclude the first part of it but would exclude
18 the last section.

19 MR. CORVEY: Just so -- just closed sticks on your disk
20 would be -- I think is the only portion that following his
21 invocation ---

22 THE COURT: That is fine. And now that -- now there's
23 other things. Obviously y'all are going to agree on ---

24 MR. CORVEY: Yes.

25 THE COURT: I am not -- I am not okaying a carte blanche

1 okay on that.

2 MR. VOIGT: I am going -- if I might, Your Honor, for
3 the record so that someday ---

4 THE COURT: Sure.

5 MR. VOIGT: --- when I make an objection and I say
6 remember the objections I made, I want to make sure that I
7 get this out.

8 THE COURT: All right.

9 MR. VOIGT: Because part of what the Court's analysis
10 was is that would be the -- beneficial to the jury, be
11 probative to the jury, to be able to weigh the truthfulness
12 of the statement that I didn't do it.

13 And I would suggest to the Court -- and it just occurred
14 to me as you said it. I would object that that is burden
15 shifting; because all, frankly, Mr. Green has to do is come
16 in and say he didn't do it. But what this now does is forces
17 me to explain body language in that context.

18 THE COURT: Well, of course it does.

19 MR. VOIGT: And that would be my only ---

20 THE COURT: Well, I appreciate that. And he doesn't
21 have to say anything. Therein lies the problem with waiving
22 Miranda. That is why defense counsel I think always say, and
23 I bet you do too when you talk to them, don't say a thing,
24 nothing, zero.

25 Why? Not because you have had something to hide, but

1 because of what we are just talking about. Because you are
2 right, I am not burden shifting; the jury considers the
3 evidence, and the evidence that they will consider if they
4 find the statement to be first of all freely and voluntarily
5 given after Miranda warnings without any threat or coercion.
6 And if they do that, as my charge will say, then you may give
7 it the weight that you deem it necessary or entitled. And it
8 doesn't say it is true; it doesn't say anything.

9 So I appreciate your position. But I haven't shifted
10 anything other than the fact that it is proper evidence and
11 has been for the last 25 years, unfortunately or fortunately,
12 as the case may be. It depends on how we -- how strongly we
13 look at that Fifth Amendment and the right.

14 But I think -- I think it is a weighed proposition. And
15 in this case not only do I find it to be properly under the
16 Jackson v. Denno, but also my discussion is also any
17 objection that had -- I think you mentioned it in your brief
18 about 403 analysis of it, but that was also to address any
19 403 arguments as well for purposes of review.

20 Okay. All right. Now what -- what other motions do we
21 have deal with -- the letters I think we have to deal with.

22 MR. CORVEY: The letters. But only because we have a
23 time constraint, I think Mr. Voigt had a motion in limine to
24 suppress some evidence seized by CPD in his arrest. We have
25 those officers here if need be.

1 THE COURT: All right.

2 MR. CORVEY: And I wanted him to have the time perhaps
3 to do that.

4 THE COURT: All right. That's fine. Well, let's --
5 well, let's do ---

6 MR. VOIGT: Okay.

7 THE COURT: I mean what is the evidence you want to
8 suppress -- well, before we do that, do we need testimony for
9 this?

10 MR. VOIGT: We may not. I don't think that the
11 testimony is going to be -- I don't know that the -- I don't
12 think that the substance of the -- of what he is going to say
13 is substantially different than what I've been told is in a
14 report; is that correct?

15 MR. OSBORNE: We still have two motions going on.

16 THE COURT: Okay.

17 MS. OSBORNE: So the warrants for Mr. Green were placed
18 out on -- or issued on April 22nd of 2016. He wasn't
19 arrested until May the 22nd a month later. He was arrested
20 by CPD. They put out a bait moped. The moped -- the moped
21 activated. The GPS activated. They tracked the moped. They
22 then ended up arresting Mr. Green for possession of a stolen
23 moped.

24 When they arrested him officer Marotta searched him and
25 found a 40 -- an empty 40-caliber magazine in his pocket.

1 They put that magazine into evidence under the stolen moped
2 case number.

3 Mr. Brantley was shot -- or one of the weapons used to
4 shoot him was a 40-caliber. So at the time of his arrest Mr.
5 Green gave a false name. He -- we don't know what that name
6 was. The officer didn't document it. He says it is not
7 uncommon.

8 So he gives the false name. He said that he was 16.
9 Marotta then carried him because he was 16 to DJJ. At the --
10 during the process of booking him in Mr. Green looked at him
11 and said, okay, you got me, my real name is Jamaal Green, I'm
12 18, you got a good one with me, you are going to get a medal
13 for this one.

14 He wasn't subjected to interrogation at that time. He
15 wasn't given Miranda. He was -- this is something that he
16 said on his own.

17 So the two issues. One, because he lied about his name
18 CPD didn't know who he was, did not -- they did not
19 understand the significance of him being found with a
20 magazine in his pocket. They documented that under the
21 stolen -- or the stolen moped case number. It was therefore
22 destroyed afterwards once that municipal case was disposed
23 of.

24 THE COURT: It, being what?

25 MR. OSBORNE: The magazine.

1 THE COURT: The magazine.

2 MR. OSBORNE: So if Mr. Voigt is making a spoliation
3 argument we had the supervisor from evidence here to talk
4 about to say that it wasn't destroyed in bad faith.

5 THE COURT: Well, I mean that is -- first of all, you
6 think it should be suppressed because it is no longer
7 present?

8 MR. VOIGT: Not just that it is no longer present.

9 THE COURT: All right.

10 MR. VOIGT: There's no real documentation that it ever
11 existed. And the argument that Mr. Green somehow caused it
12 to be destroyed is specious.

13 THE COURT: No, I am not suggesting he did.

14 MR. VOIGT: Well ---

15 THE COURT: I mean he doesn't either.

16 MR. VOIGT: Well, he said that because he gave him a
17 different name they couldn't have found it.

18 THE COURT: He said ---

19 MR. VOIGT: Understanding that they know he is Jamaal
20 Green while they're booking him, and they have the ability to
21 go find why he is interesting.

22 THE COURT: Well, that's -- that's a good argument for
23 cross-examination of the officer in the presence of the jury.
24 And I -- spoliation is something that may or may not be
25 charged. It depends on how it all unfolds from that

1 standpoint.

2 But clearly whether or not the officer can testify to
3 arresting him and what he said and what he did and what he
4 found, I don't see that that stops that testimony from coming
5 in or we prevent that testimony.

6 MR. OSBORNE: No, sir, and we are not opposed to
7 curtailing and leaving out the stolen moped portion if he
8 wants to leave that out.

9 THE COURT: That is fine.

10 MR. VOIGT: Well, I certainly would -- yeah, to that.

11 THE COURT: All I'm saying is spoliation may be an issue
12 but it is not going to stop the testimony of the officer.

13 MR. OSBORNE: Okay.

14 THE COURT: Okay.

15 MR. OSBORNE: Thank you, sir.

16 THE COURT: All right.

17 Mr. Voigt, is that ---

18 MR. VOIGT: I understand the Court's ruling. I would
19 make -- and for the record, I object.

20 THE COURT: Okay. That is fine. Okay. All right. So
21 that takes care of that issue. What other issues do we have?

22 MR. CORVEY: I guess we have the writings as well, and
23 there's also -- there's also the Facebook. The officer
24 who ---

25 THE COURT: Well, let me do this. If you want to

1 address any of your issues now, Ms. Procter, since your trial
2 won't be going forward right on the 6th.

3 MS. PROCTOR: One second.

4 THE COURT: Sure. Before we get to the writings.

5 (WHEREUPON, pause for defense to confer)

6 (WHEREUPON, Court's Exhibit 2, previously marked in the
7 Murphy case was provided by Court to the court reporter)

8 THE COURT: Let's make that one a joint exhibit since I
9 am using it for a granting their motion. Well, no, it really
10 doesn't need to be in theirs because it has no useful purpose
11 anymore in Murphy's trial. But the articles, that is really
12 primarily for this one, so that would be --

13 THE COURT REPORTER: So make them Green?

14 THE COURT: Yes, be in Green's case.

15 THE COURT REPORTER: Okay.

16 (WHEREUPON, Court's Exhibit Number 2, media package, revised
17 to be marked for identification in the Green case versus the
18 Murphy case.)

19 MS. PROCTOR: Your Honor, I think the rest of ours we
20 can address later I would think.

21 THE COURT: That's fine. I think many of them probably
22 could be -- almost that by status conference for some of them
23 and narrow the scope of them.

24 MR. CORVEY: To a lot of them, certainly.

25 THE COURT: But I those that you can't I will be happy

1 to obviously reschedule that at another time. So if you want
2 to go ahead -- you are welcome -- or do you want to stay for
3 this?

4 MS. PROCTOR: Oh, we will stay.

5 THE COURT: Okay. I figured you might want to. I
6 didn't want -- I'm not running you off. But I figured you
7 might want to be a part of everything that you want to hear.
8 So that is fine.

9 (WHEREUPON, pause before next portion of hearing)

10 THE COURT: All right. Okay. Let's go into the
11 writings. You have a motion to suppress that. Why don't I
12 hear from you as to why; and then they can respond to it, Mr.
13 Corvey.

14 MR. VOIGT: All right. Judge, there are two kinds of
15 sets of writings that I think the State is seeking to
16 introduce. And they can correct me if I'm wrong. One of
17 which I had a similar argument to -- to -- I will just say
18 Mr. Green and Victoria Deas corresponded while they were
19 in -- while they were in lockup. I believe that Mr. Green
20 also wrote a letter to the other defendant, Ms. Maybank.

21 I've read those letters. I don't see the relevance of
22 those letters. And that is really not -- relevance at this
23 stage is really kind of best perhaps left for trial.

24 THE COURT: Correct.

25 MR. VOIGT: Those -- that is one set of writings. The

1 second set of writings, obviously because there is prejudice
2 involved in those writings -- because the first set is not
3 with prejudice; there is just -- I don't know why I would
4 spend the time.

5 The second set of writings is purportedly witness
6 intimidation evidence. And witness intimidation evidence the
7 seminal case in South Carolina is Edwards. And this is one
8 that Mr. Corvey and I have gone round and round on. And
9 while we have been having the argument the Court of Appeals
10 has come out and blessed me with another case.

11 I understand where you sit on the Circuit Court, and I
12 understand what the Court of Appeals said; so I will just for
13 the record note that when Judge Hill goes through a lengthy
14 description of why it doesn't matter that anybody ever hear
15 the threat, it is nevertheless the crime is when the thought
16 comes out, I will note that he doesn't cite any cases,
17 because he is kind of out on a limb there.

18 In this case, factually, a letter is -- a letter is
19 written. All right. I think that the State is going to have
20 to prove who to that letter was written to. I don't know how
21 they intend to do it.

22 It was addressed to a Donald Jackson, a former client of
23 mine. And this letter opines that -- a bunch of things. And
24 it has a bunch of phrases kind of I think meant to bolster
25 somebody's resolve, whatever that may be. But it also

1 includes an unfortunate phrase that can be read as terribly
2 as this whole case would go away if these witnesses die.
3 Which, yes, if that is truism. But the State has read that
4 to be witness intimidation evidence as a threat to Victoria
5 Deas or London Maybank. That letter is written -- and not to
6 put the cart before the horse, but assuming the State's
7 expert testifies that it is Mr. Green's handwriting the State
8 is going to say that he is the author of that and that that
9 letter then was sent into the general mail system at the
10 Correction Center, was intercepted as a threat, and then it
11 was never received by its intended recipient Donald Jackson.

12 The problem that I have with this evidence, one, is the
13 test is not whether it is prejudicial; it is whether it is
14 unduly prejudicial. I think this is unduly prejudicial when
15 we get to the balance of whether or not this comes in.

16 This wouldn't fit a statutory definition for witness
17 intimidation. Under all of the cases that led to Edwards,
18 including Edwards, there is actual evidence of communication
19 to a witness or somebody in proximity to a -- in other words,
20 there is a real threat communicated to a person who is in the
21 position to receive that threat and understands the threat
22 and perceived the threat.

23 That is not at all what happened in this case. And I do
24 understand that the Court of Appeals has kind of said it
25 doesn't matter. But that would then put this sort of

1 evidence in a place unlike any sort of evidence that I am
2 aware of, which is essentially a thought crime.

3 It would be, you know, how many men lay in bed at night
4 thinking awful things in an unhappy time in their marriage
5 would that then subject them to some sort of criminal
6 penalty. I just don't think that that is the case.

7 I think that this evidence is unduly -- it wouldn't be
8 balanced as evidence. It is unduly prejudicial versus any
9 probative value.

10 We are talking about at the time the letter was written
11 all of the people were incarcerated. There was no one who
12 could get to anyone. There was no threat that could have
13 happened from some outside forces. He couldn't tell somebody
14 to go put a hit on somebody.

15 And the language is not even that explicit. The
16 language is, frankly, much more ambiguous than that. And I
17 think without a -- and because he had the ability to directly
18 communicate with this person and when he had the opportunity
19 to directly communicate with this person he did not
20 communicate any threats whatsoever. I think what we have is
21 a frustrated man musing about how to be out of jail after
22 having been incarcerated for 14 months, and I don't think it
23 actually is technically witness intimidation just even in its
24 inception.

25 So, you know, we are using the Court of Appeals model as

1 the -- when this, you know, when this thought fully forms on
2 the forehead of Zeus that this now becomes an entity. I
3 don't believe that that is exactly what we have. I think we
4 have something much more ambiguous.

5 And, again, it goes from my client nowhere. Poof, it
6 goes -- the only person who could have ever communicated this
7 threat to Ms. Deas or Ms. Maybank would have been Mr. Corvey
8 or their attorneys. Because that is the only way they would
9 have ever learned about it. Because it goes directly then --
10 it doesn't go to its intended recipient. It goes through
11 Donald Jackson who told the Solicitor's Office that he never
12 got it.

13 I understand that that is -- if it were a much more
14 clear threat that -- I think that perhaps would matter; but
15 because it is ambiguous and vague and can be interpreted in
16 more than one way, in a way that is clearly innocent and not
17 witness intimidation, I think that it should be excluded
18 under the balance.

19 THE COURT: Okay.

20 Mr. Corvey.

21 MR. CORVEY: Just at the outset, Your Honor, Mr. Voigt
22 talked a lot about whether or not the witness received it. I
23 think the case law as to witness intimidation is abundantly
24 clear. I mean I would just briefly read the Tucker quote,
25 equally, immaterial as to whether the witness knew about the

1 threat, the relevance of the defense threatening a witness
2 rests upon the proof it was said, not that it was heard.

3 So I think as to the case law we move well beyond
4 whether it was ever received by Ms. Deas. Because I think
5 the relevance behind it is the fact that he thought it.

6 And so beyond that, Your Honor, as to it being a threat,
7 the only reason that we were able to receive it is because
8 the jail as a part of their security protocol screened it and
9 thought it was a threat to the extent that they did not
10 continue to deliver the letter for the purpose of jail
11 safety.

12 Outside of that I think the content and more
13 specifically the context in which that letter was wrote adds
14 to its threatening nature. Included in the packet that I
15 gave Your Honor is the entirety of what was contained, the
16 front of the envelope said to Donald Jackson, and the
17 entirety of the packet.

18 The first letter in there -- although I know the copy
19 that I gave to you is written in pencil, so it is not very
20 clear. But just to generalize it, this is from a cooperating
21 codefendant, Ms. Deas, following entering a proffer agreement
22 to my office written to Mr. Green in essence telling her
23 that -- so she hears it from her first. She is testifying
24 against him and goes into some of the reasoning as to why
25 she's doing that.

1 On the back of that letter Mr. Green wrote: This for
2 Lil D.

3 Lil D is the nickname or street name that De'Andre
4 Murphy goes for. Kodak is the nickname of Ms. Deas. Ratting
5 Ass and then the SMFH, shaking my fucking head. Also
6 following that, Your Honor, in little scribble which is an
7 instruction presumably from Mr. Murphy to send the letter
8 back to Mr. Green after he receives it so he can send it on
9 so they would know what is going on. Following that you
10 actually get the letter intended for Mr. -- Mr. Murphy. You
11 know that because it says Lil D on the top of it.

12 And I won't -- I will spare the Court reading the
13 entirety of the letter. But I think the context following
14 from receiving of the letter from Ms. Deas to the thought to
15 write this letter to Mr. Murphy in its entire context and
16 beyond the threatening language with regarding -- regarding
17 her, her daughter, and everyone she loves needing to die,
18 there's also more in there.

19 He also says, word, and tell Crummie call Vonta and tell
20 him to make his people do the right thing. Crummie at that
21 point was lodged with De'Andre Murphy. Vonta is Ravonta Deas
22 who is the younger brother of Victoria Deas.

23 Beyond that, Your Honor, obviously I think there is some
24 other relevant portions of the letter. But I mean I think
25 the intent of it becomes abundantly clear, if it wasn't

1 already, in ending, that: Still have faith because she can
2 die in her sleep any day and we still going home.

3 I think the relevancy of this and why I think it should
4 pass -- pass 403 muster is it is -- I think goes to the heart
5 of Mr. Green's guilty conscious about this and his fear that
6 should Ms. Deas testify that he would be convicted.

7 In the Edwards case law the Supreme Court does cite the
8 trial judge in that case, which was you, as I am sure you
9 remember. And I think you trace out your thoughts in
10 allowing that in. And the purpose of witness intimidation
11 evidence as it pertains to guilty consciousness is that it
12 heightens the corroboration that the person who said that or
13 made that expression is the perpetrator of the crime.

14 And the purpose is here he doesn't want her to testify.
15 And I think that is what really signifies his guilty
16 conscious. I think calling it -- I think witness
17 intimidation is a generalized term given to this sort of
18 evidence. I think it can be -- I will agree with Mr. Voigt
19 to the extent that it is certainly clearer in a context in
20 some of the other case law; but given the totality of the
21 case law between witness intimidation evidence and guilty
22 consciousness evidence I think it should clearly be allowed
23 in. And under the other circumstances I think it should pass
24 403 muster as well, which I have detailed in my brief.

25 THE COURT: Okay.

1 Response.

2 MR. VOIGT: This is -- every time I look at it I see
3 less and less here. What I see is a hodgepodge of
4 frustrations that -- I mean I even see something in one of
5 the letters which I tell my clients it means that this
6 happened after I talked to him which was that nobody talk,
7 everybody walk. I mean that is what we -- back to on these
8 statements. That is -- I used to have it printed out on hats
9 and used to give them to clients.

10 There is nothing in this letter that instructs anybody
11 to do any physical harm to any person or to threaten any
12 person. It is so far removed from that.

13 I don't know -- and so imagine it comes in; who gets to
14 testify to its meaning? I mean I understand at some date at
15 the end Mr. Corvey and I are going to be talking to the jury
16 about what we think it means. But we are going to go down a
17 side track to get into who Crummie is, who Vonta is, and what
18 they can possibly want. We are going to have to probably
19 excise the they come at me 15 or 20, because I think that
20 means that he would be willing to accept some sort of plea
21 deal if the State ever came to it. I think that's what that
22 means. But I don't know who is going to actually testify to
23 that.

24 There is just a whole bunch of let's make Mr. Green look
25 bad stuff in this letter but nothing that actually indicates

1 knowledge of guilt.

2 I mean it is true that if someone is lying on you and
3 they didn't testify that you would be in better shape if they
4 stopped lying. That is a hypothesis of innocent. There is
5 nothing in here that is clearly witness intimidation, and
6 that there's nothing that takes it clearly out of the 403
7 analysis - which I know at least the Court of Appeals seems
8 to think you just bypass that. I suspect the Supremes may
9 reach out and decide differently on it.

10 This is just not -- this is not the sort of reliable
11 evidence of knowledge of guilt that a jury needs to see. It
12 is not actually evidence or knowledge of guilt.

13 THE COURT: All right. I am going to review this and
14 read the cases, and I'll let y'all know. Okay.

15 MR. CORVEY: Thank you, Judge.

16 THE COURT: What else?

17 MR. CORVEY: There's a Facebook mention regarding
18 records as well. Detective Butler had a previously scheduled
19 vacation out of town, and so she is not here. And I think we
20 will require testimony from her regarding her affidavit.

21 THE COURT: Well, we will have time to do that.

22 MR. CORVEY: I can take that up on Monday afternoon
23 through trial.

24 THE COURT: That is fine.

25 MR. VOIGT: It will -- it will go much faster if we knew

1 if Detector Butler had put -- in other words, if we are
2 arguing within the four corners of the affidavit or there is
3 extra, which is something you could authenticate.

4 MR. CORVEY: I could; but, again, she is traveling. I
5 think we will have to take it up ---

6 THE COURT: Okay. We will take it up before then.

7 MR. CORVEY: Okay.

8 THE COURT: When does she get back? Because we have
9 still got ---

10 MR. CORVEY: I'm not sure. I -- certainly at next week,
11 because I have a meeting scheduled with her ---

12 THE COURT: All right. Well, let's see where -- maybe
13 we can schedule a time. Do you have available time next
14 week?

15 MR. VOIGT: I do, at the moment.

16 THE COURT: Okay.

17 MR. VOIGT: Well -- all right, I am scheduled for a
18 family court trial. But you will drag me in whenever you
19 want.

20 THE COURT: Well, you know, just I will work around
21 that. I mean it won't take long to hear that.

22 MR. VOIGT: No, I actually think that if it is within
23 the four corners of the affidavit it is a lawyer talking
24 motion.

25 THE COURT: I think you are correct. But be that as it

1 may, I will be available next week to hear that. Okay.

2 All right. What else do we have; anything else that has
3 to be addressed? Motions, credibility, and that sort of
4 thing, those really can be in limine type things that I can't
5 really until I hear the evidence rule specifically on them.

6 So those are ---

7 MR. VOIGT: Kind of what I thought, Judge.

8 THE COURT: Those you can carry it over. Okay.

9 Anything else?

10 MR. CORVEY: Nothing else from the State, Judge.

11 THE COURT: Thank you very much. And we will be glad to
12 go forward with this trial on August 6th.

13 (WHEREUPON, the hearing adjourned under advisement)

(NOTE: Please contact the court reporter for additional copies or certified transcripts.)

CERTIFICATE

I, the undersigned Phyllis Norton, 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 proceedings had and evidence introduced in the captioned case, relative to appeal, in the court for South Carolina, on July 27, 2018.

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



PHYLLIS NORTON, CVR

Date: September 6, 2020

Certified Transcript Provided For: SC Attorney General's Office

Certification Reference #2020-0906

1 (November 15, 2018.)

2 THE COURT: Good morning. You're De Andre
3 Murphy?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Mr. Murphy, you're standing with
6 your lawyers. Have they explained to you the nature of
7 the charge contained in indictment 2018-2636?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: It charges you with the offense
10 of murder. Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And your lawyers have explained
13 that charge to you and the possible punishment for that
14 charge?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Have they also explained to you
17 the lesser included offense known as voluntary
18 manslaughter?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And the difference between the
21 two?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: They've explained to you that
24 voluntary manslaughter carries a minimum sentence of two
25 years with a maximum sentence of up to 30 years?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: They've also explained to you
3 that voluntary manslaughter is a non-parolable offense?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Meaning that any sentence the
6 Court imposes that you would be required to serve
7 85 percent of that sentence; is that correct?

8 THE DEFENDANT: Correct.

9 THE COURT: And upon being released, you
10 would still be required to satisfactorily complete a
11 two-year community supervision program. Do you
12 understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And, basically, that is probation
15 for two years. Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And if you should violate any
18 terms of that community supervision, you could be
19 returned to prison for up to one year in increments of
20 one year until the balance of that sentence is satisfied.

21 Do you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: You understand it's also
24 considered a most serious offense?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And you understand the
2 significance of that term?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: It's a violent offense also. Do
5 you realize and understand the significance of that term?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Also, apparently, according to
8 the sentencing sheet that you have signed, you have
9 negotiated a sentence through your lawyers which you're
10 asking me to use, or impose today; is that correct?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And that's one of those -- as
13 your lawyers have explained, one of those odd situations.
14 It's not uncommon, but normally the sentence is left to
15 the discretion of the presiding judge. Do you understand
16 that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And recommendations, the judge is
19 at liberty to accept or reject it and to decide whatever
20 sentence he or she wishes to impose; do you understand?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: But in a negotiated sentence, my
23 only options are to accept it or reject it. Do you
24 understand that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: I can't modify it in any fashion.
2 Do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And you're asking me today, from
5 your perspective through your lawyers, having performed
6 the task, you're saying, Judge, I want you to accept that
7 negotiated sentence.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: What are the terms, Solicitor?

10 MR. CORVEY: It is a negotiated 30 years for
11 a plea of voluntary manslaughter. In addition, I'm also
12 going to dismiss all of the additional pending
13 indictments from this incident as well as two prior
14 arrests that predated this incident.

15 THE COURT: And is that your understanding,
16 Ms. Proctor?

17 MS. PROCTOR: Yes, Your Honor.

18 THE COURT: Is that your understanding,
19 Mr. Murphy?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And, Ms. Norris, that's your
22 understanding as well?

23 MS. NORRIS: Yes.

24 THE COURT: You understand that while I'm
25 sure that's part of the negotiation, the 30-year sentence

1 for murder would be the minimum sentence. Do you
2 understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: But in this particular case, it's
5 an 85 percent sentence. Do you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And that is a benefit that you
8 considered?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Okay. Understanding, then,
11 Mr. Murphy, that if I accept the negotiated sentence, I
12 would sentence you to 30 years, give you credit for any
13 time that you served, what is your plea, guilty or not
14 guilty?

15 THE DEFENDANT: Guilty.

16 THE COURT: Are you totally satisfied with
17 your lawyers?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you know of anything they did
20 or didn't do that you disagreed with?

21 THE DEFENDANT: No, sir.

22 THE COURT: You believe the negotiated
23 sentence is in your best interest?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Ms. Proctor, or Ms. Norris?

1 MS. NORRIS: Absolutely, Your Honor. It's
2 her case.

3 THE COURT: That's the only reason I
4 addressed that, is she's been the primary lawyer
5 involved. I appreciate you being here. I know he does
6 as well.

7 Ms. Proctor, you have investigated this
8 matter fully on your client's behalf?

9 MS. PROCTOR: Yes.

10 THE COURT: And you have shared the results
11 with him?

12 MS. PROCTOR: We have seen everything. We've
13 seen the videos and all the discovery materials.

14 THE COURT: And after fully discussing it
15 with you, he indicated a desire to enter this guilty
16 plea?

17 MS. PROCTOR: Yes, Your Honor, he did.

18 THE COURT: And asked you to negotiate the
19 best arrangements you could for him?

20 MS. PROCTOR: Yes, sir.

21 THE COURT: Your efforts are now reflected in
22 the record; is that correct?

23 MS. PROCTOR: Yes, Your Honor, and we're very
24 pleased with the outcome of this.

25 THE COURT: And do you believe the negotiated

1 sentence to be in your client's best interest?

2 MS. PROCTOR: Definitely, yes, sir.

3 THE COURT: And, obviously, I'm familiar with
4 this case. I've tried the other part of it, but there's
5 no question in your mind that he is, in fact, guilty of
6 this offense?

7 MS. PROCTOR: Correct.

8 THE COURT: Mr. Murphy, is that true?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: You understand, sir, that if I
11 accept your negotiated sentence, you won't have a jury
12 trial, as your co-defendant did. Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: At a jury trial, you would have
15 the right to confront witnesses against you. Do you
16 understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Are you also aware that the State
19 has the burden of proving you guilty beyond a reasonable
20 doubt?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: You don't have to prove your
23 innocence. Do you understand?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And you have the right to remain

1 silent. Do you realize that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And I'm sure you understand it,
4 but I want to let you confirm that. Do you realize that
5 by admitting your guilt today that I will be relying on
6 that, and that admission is proof that you're giving up
7 your right to remain silent?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: That's what you choose to do,
10 sir?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: No one has threatened you in any
13 way to get you to plead guilty?

14 THE DEFENDANT: No, sir.

15 THE COURT: Other than the promises,
16 Mr. Murphy, that are contained in the negotiated
17 sentence, have any other promises been made to you, sir?

18 THE DEFENDANT: No, sir.

19 THE COURT: Have you had sufficient time to
20 reflect and think about what you're doing here today?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And you've talked with your
23 lawyers at length and anyone else that you wanted to
24 discuss this with; is that correct?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Are you today under the influence
2 of any type of medication at all?

3 THE DEFENDANT: No, sir.

4 THE COURT: Have you in the past been treated
5 for any mental issues or emotional problems?

6 THE DEFENDANT: No, sir.

7 THE COURT: Have you consumed any alcohol or
8 taken any type of medication in the last 24 hours?

9 THE DEFENDANT: No, sir.

10 THE COURT: You understand I will be relying
11 on your responses here today?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Solicitor, as we know, I stamped
14 the plea accepted. Is this deferred sentencing?

15 MR. CORVEY: We're not doing it this morning.

16 THE COURT: That was a potential situation
17 earlier. As I recall there was some discussion about
18 that.

19 MR. CORVEY: Correct.

20 THE COURT: Tell me about the facts, please.
21 I am familiar with this.

22 MR. CORVEY: Yes, Your Honor. Understanding
23 your familiarity, just briefly, Judge, this incident took
24 place -- I guess started on the night of April 19, 2016.
25 Mr. Murphy and his co-defendant in the murder, Jahmal

1 Green; another individual, Cory Gethers; two females,
2 Victoria Deas and London Maybank, ultimately met at a
3 nightclub in North Charleston called Vegas Lounge. They
4 made some plans to get together later to look for
5 marijuana. As the midnight hour approached, it became
6 4:20, which some believe is the national marijuana
7 holiday.

8 In any event, they then left that club after
9 closing time, went down to the Montague area where
10 Mr. Green's apartment was, got back together, and got in
11 Ms. Deas's white Dodge Durango. They went down the
12 Spruill corridor in North Charleston, around Macon and
13 Horizon Village, and began to try to find some additional
14 marijuana. At some point, a bit of a disagreement broke
15 out, primarily between Ms. Deas and Mr. Green, and the
16 decision was they were going to drop Mr. Murphy and
17 Mr. Green back off at Mr. Green's mother's house on
18 Montague where they first picked them up after leaving
19 the club.

20 En route to get there, they end up going to
21 the old Park Circle area of North Charleston. Around the
22 same time as their arrival, the victim in this case,
23 Eric S. Brantley, was ending his bartending shift at the
24 Sparrow Bar in North Charleston. They happened to drive
25 by him as he and his coworker that night were standing

1 outside and locking up.

2 They then proceeded down the street where
3 they observed him, and then Mr. Green instructed Ms. Deas
4 to start turning and ultimately basically performed a
5 circle back to roughly the area where they observed
6 Mr. Brantley. Mr. Green instructed Ms. Deas to stop. He
7 and Mr. Murphy then get out of the car for approximately
8 a minute, minute-and-a-half, gunshots ring out, and they
9 then come back to the car and instruct Ms. Deas to drive,
10 and Ms. Deas ends up dropping Mr. Murphy and Mr. Green
11 off at Mr. Green's mother's apartment.

12 Of course, in that minute-and-a-half,
13 Eric Brantley had been killed. He had been shot five
14 times by two different weapons. One caliber of one gun
15 was located in his stomach and four others of a different
16 caliber, 40-caliber handgun, were in his arm and
17 ultimately the fatal shot through his head. Upon getting
18 dropped off, individuals in the car testified at trial
19 that Mr. Murphy made some comments as they were exiting
20 the vehicle with regard to him having some sort of
21 struggle with Mr. Brantley, and then they got out.

22 The individuals remaining in Ms. Deas's car
23 were Cory Gethers, Ms. Deas, Ms. Maybank. They continued
24 up Montague to get gas at a Spinx station. As it was,
25 they realized Mr. Green had left his cellphone in the

1 vehicle, a call to Mr. Murphy's cellphone, went to
2 Mr. Gethers to figure out where they were so they could
3 meet up to find the cellphone. They then meet at the
4 Spinx further up Montague, and that interaction is all
5 recorded on video.

6 Following that, the parties break off. By
7 working with the North Charleston Police Department, they
8 were able to identify some distinguishing features from
9 the surveillance video of the white Dodge Durango in this
10 case and trace it back to Ms. Deas. Ultimately, she came
11 in, initially denied involvement, but as the
12 investigation and video came in, they ultimately came
13 back to her, and she and Ms. Maybank and Mr. Gethers
14 later that same evening, so about 48 hours after the
15 crime, all implicated Mr. Murphy and Mr. Green in the
16 murder and the armed robbery, or attempted armed robbery,
17 of Mr. Brantley.

18 Following that, warrants were issued for
19 Mr. Green and Mr. Murphy. Mr. Murphy was not taken into
20 custody until five days later, until he was located in an
21 abandoned house in the Macon area of North Charleston.
22 Mr. Green was not taken into custody until 30 days later.

23 THE COURT: Right.

24 Thank you, sir. Mr. Murphy, are those facts
25 correct?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Have you fully understood all of
3 my questions?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: You have given me truthful and
6 complete answers?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: They are your answers. Let me
9 explain what I mean: During my experience in another
10 proceeding where I've heard witnesses testify in response
11 to this, it's called post-conviction relief proceedings,
12 where they testified, Everything I said during my plea
13 was what my lawyers told me I had to say.

14 That's not the case here today, is it?

15 THE DEFENDANT: No, sir.

16 THE COURT: Because if that's the case, then
17 they're really not your answers; you understand that?
18 But these are your answers?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: They're truthful in every
21 respect?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And you want me to fully rely on
24 those responses?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And you want me to impose a
2 30-year sentence?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And I'd let the record reflect
5 his body language was -- I understand that's a difficult
6 statement for any person to have to answer, to say yes,
7 Judge, I want you to sentence me to 30 years. I
8 appreciate that, but that's what you want me to do today,
9 to accept it; is that correct?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Okay. And the reason for it is
12 you believe it's in your best interest?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Okay.

15 MR. CORVEY: And, Your Honor, sorry to
16 interrupt. I neglected to mention --

17 THE COURT: The victims are here, again, and
18 I'm sorry that they're having to be here. I hope this
19 will be the closure, to some extent. It unfortunately
20 doesn't close anything that you have to deal with every
21 day, and my heart goes out to all of you for that, and I
22 pray that some peace will come at some point in your
23 lives.

24 Do they wish to be heard in this case?

25 MR. CORVEY: I know the victim's mother would

1 like to speak, Your Honor.

2 THE COURT: Be delighted to hear from you,
3 ma'am, and I'm sorry again you have to be here.

4 THE WITNESS: My name is Suzanne Sentner.
5 I'm Eric Brantley's mom. I just want to say that Eric
6 was an individual with many interests. He was a
7 musician. He rebuilt motorcycles. He bartended so he
8 could do the many things he liked to do.

9 When Eric was murdered, we didn't understand
10 how this could have happened, and now we know from the
11 previous trial and today that he was stopped because he
12 was alone. Eric in life was a formidable person. He
13 wouldn't have backed away from anything, and that night,
14 I believe he chose to fight, and, unfortunately, it's not
15 much of a fight when you're against two armed men.

16 Eric's family and friends are here today to
17 let you know that we see you, De Andre Murphy, and we
18 will never forget what you did that night. We hope that
19 you think about it the whole time you're in prison and
20 know that you took away somebody that was very much
21 loved. You haven't broken Eric's family and friends,
22 over 500 of which showed up for his memorial service.
23 You have the promise from all of us that if we have
24 anything to say, you'll suffer for the rest of your life.

25 You messed with the wrong army when you

1 messed with the Eric Brantley liberation army.

2 Thank you.

3 THE COURT: Thank you, ma'am. Anything else,
4 Solicitor?

5 MR. CORVEY: No, Your Honor.

6 THE COURT: Okay. Mr. Murphy, I've asked you
7 this: You want me to accept it. Now I'm going to ask
8 you, do you know of any reason today that I shouldn't
9 accept your negotiated sentence?

10 THE DEFENDANT: No, sir.

11 THE COURT: Okay. Well, I find that
12 Mr. Murphy certainly has the benefit of very competent
13 counsel with whom he's indicated he's totally satisfied.
14 I find that he's demonstrated by his responses here today
15 that his plea is freely, voluntarily, knowingly, and
16 intelligently made, and I now will be happy to hear from
17 you, Ms. Proctor, as to why I should accept the 30-year
18 sentence.

19 MS. PROCTOR: Well, Your Honor, he was
20 17 years old at the time this happened, and it's been a
21 long time getting to this point. He's standing before
22 you today taking his full responsibility, and we're just
23 asking that you accept this plea.

24 THE COURT: Thank you. And because this
25 carries the 30-year max, this does not expose and require

1 any mitigation evidence. Does everybody agree with that
2 statement?

3 MR. CORVEY: Yes, Your Honor.

4 MS. PROCTOR: I will say for the record we
5 have a mitigation specialist in the courtroom that has
6 been working with De Andre since the day of the incident,
7 since the day he was arrested, and I also put on the
8 sentencing sheet he has been in jail since April 28,
9 2016.

10 THE COURT: And that's important too for
11 family members, and everyone knows that they don't have
12 to go through another proceeding. We've avoided it by
13 this reduction to voluntary manslaughter, which is quite
14 another traumatic experience for the victims and the
15 victim's family to have to endure that. So I just want
16 the record to reflect that that's another factor that I'm
17 weighing as to whether or not the negotiated sentence is
18 appropriate, and I commend the State for its resolution
19 in this fashion. I think it's appropriate given his age
20 and whatnot, so from that standpoint, there is that
21 benefit to you.

22 Ms. Norris, anything you wish to add?

23 MS. NORRIS: No, sir.

24 THE COURT: Mr. Murphy, is there anything you
25 want to add?

1 THE DEFENDANT: No, sir.

2 THE COURT: Well, tragedy is such an empty
3 word, and there's really no way that word encompasses
4 what everybody is enduring here, especially the family.
5 I, again, am not going to elaborate. I have it on my
6 wall. I remember a lot of things. I remember my family,
7 but I have an article about my grandfather who was gunned
8 down on Main Street in Moncks Corner before I was born,
9 but my daddy had to live with that, and for the family --
10 his sister somehow found some way, I think, to forgive
11 him, and I'm not preaching here. I'm just sharing this
12 with you. That enabled them to try to get to a point --
13 I'm not asking you to do that. I just know my daddy
14 died, he was 81, and he was still a bitter man because of
15 it. So I have some degree of empathy with you, with
16 those family members, and I understand the sentence is
17 not going to do anything to alleviate that. I wish that
18 could.

19 But, Mr. Murphy, I'll also say I'm glad
20 you're getting an opportunity, sir, to do something
21 positive with your life, and I would hope that some
22 day -- I noted yesterday there was some talk, and
23 apparently again this morning, about the federal system
24 of improving opportunities for people incarcerated to
25 help them make transition to become productive people

1 when they're finished their sentences. I hope South
2 Carolina will follow suit some day, because if they do,
3 that's one way you can prove that you are worthy of this
4 negotiated sentence.

5 I'll share this with the family, because to
6 this day -- and it's happened probably 10, 12 years ago.
7 It's the only time in my 25 years on the bench that I've
8 had a mother come in and say what I'm about to say, and
9 the person was charged with felony DUI. She came in, and
10 she was from Virginia, and she, when she was given an
11 opportunity to speak, said my daughter's birthday -- and
12 she gave the date, was such and such. And she looked at
13 the defendant, and she said, I want you to call me when
14 you get out every year on her birthday. And I thought,
15 wow, that's tough. She said, Not to talk about her, but
16 to tell me what you've done with your life that's
17 positive, because then I will realize that there was
18 something that was gained out of this horrible tragedy.

19 I thought about it. I'm a father and a
20 grandfather. I couldn't have done that, but she's right,
21 in some respects: That's how you prove that you're
22 worthy of what the State's been willing to do here, sir,
23 and I hope you do it.

24 Sentence of the Court is this: That you be
25 committed on indictment 2018-2636 to the department of

1 corrections for 30 years, and I give you credit for time
2 served since December --

3 MS. PROCTOR: April 28th, 2016.

4 THE COURT: April the 28th, 2016. Good luck
5 to you, sir.

6 - - -

7 (Whereupon, the proceedings were concluded.)

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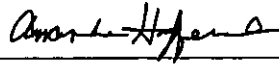
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1 I, the undersigned, Amanda Kelly Haffenden, RPR, CRR,
2 Circuit Court Reporter for the Ninth Judicial Circuit of
3 the State of South Carolina, do hereby certify that the
4 foregoing is a true, accurate, and complete transcript of
5 record of all the proceedings had and evidence introduced
6 in the trial of the captioned case, relative to appeal,
7 in the Circuit Court for Charleston County, South
8 Carolina, on the 15th of November 2018.

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

11 December 16, 2019

12
13
14 

Circuit Court Reporter

FORM 5

2019-CP-10-4694

IN THE COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA)

County of Charleston County)

De'Andre Murphy #398303)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEF

2019 SEP 11 PM 12:56
CLERK OF COURT

FILED

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 Perry Correctional Institution, ~~Atter~~ 430 OAKLAWN RD, PELZER SC 29669
2. Name and location of Court which imposed sentence Charleston County 100 BROAD ST. Charleston S.C. 29401
3. Name(s) of co-defendant(s) (if any) JAHMAL GREEN, LONDON MAYBANK, VICTORIA DEAS, Cory Gathers
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2016-011093
 - (b) _____

- (c) _____
- 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) November 18th 2010 30 years violent 85%
 - (b) _____
 - (c) _____
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty ✓
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?

- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. _____
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. _____
 - iii. _____
- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) _____
 - (b) _____

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

- (a) Ineffective assistance of counsel
- (b) Due process violation of 4th, 5th, 6th, and 14th Amendment Rights
- (c) Involuntary plea

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

- (a) Applicant has never been induced into studying legal law until recently as a result of violation's of 4th, 5th, 6th, and 14th Amendment Rights
- (b) of regular law
- (c) Plaintiff's plea was involuntary due to not being waived up from juvenile court

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

- (a) any petition in a State Court under South Carolina Law? NO!
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO!
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

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

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

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

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

(a) which grounds have been presented:

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

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

- i. _____
- ii. _____
- 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) _____
- (b) _____
- (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? _____
- (c) your sentencing? Yes!
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

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. Lorelle Proctor - Public Defender O. To WALLACE County
OFFICE BLDG. 101 Meeting Street, 5th Floor Charleston, SC 29401
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Sentencing, and PICG
 - ii. _____
 - iii. _____

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

I AM seeking a re-sentencing and to have my sentence vacated

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

No!

STATE OF SOUTH CAROLINA)
County of CHARLESTON)

VERIFICATION

I, De'Andre Murphy # 378303, 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.

De'Andre Murphy

SWORN to and subscribed before me this 29 day of August, 2019.

Jamarc Conwell (L.S.)
Notary Public

My Commission Expires: Sept-25-2023

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

I, Dr. Andre Murphy # 379303, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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

Andre Murphy
Applicant

SWORN or affirmed to and subscribed before me this

29 day of August, 2019.

Lanana Conner
Notary Public

My Commission Expires: Sept. 25, 2023

STATE OF SOUTH CAROLINA)
 COUNTY OF CHARLESTON)
)
 DeAndre Murphy, #378303)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT

Case No.: 2019-CP-10-4694

**RETURN AND MOTION
 FOR MORE DEFINITE STATEMENT**

FILED
 2020 FEB - 7 PM 1:31
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY _____

The State (Respondent), making its Return to the application for Post-Conviction Relief ("PCR") filed on September 11, 2019, would respectfully show this Court:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. In May 2018, the Charleston County Grand Jury indicted Applicant for murder (2018-GS-10-02636). Lorelle Proctor, Esquire, and Teresa Norris, Esquire represented Applicant at his guilty plea. Assistant Solicitor Edward Regin Corvey III prosecuted the case. On November 15, 2018, Applicant plead to the lesser included offense of voluntary manslaughter before the Honorable R. Markley Dennis Jr. Judge Dennis sentenced Applicant to imprisonment for thirty years for voluntary manslaughter. Applicant did not appeal his conviction.

Attached to this Return and incorporated by reference are the records of the Charleston County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II. Current Application

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

1. “Ineffective Assistance of Counsel”
2. “Due process violation of 4th, 5th, 6th, and 14th Amendment Rights”
3. Involuntary Plea

III. Response to Allegations of Ineffective Assistance of Counsel

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

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief.

Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced 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.

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

IV. Involuntary Guilty Plea

Applicant alleges that he did not plead guilty freely and voluntarily. Respondent submits this allegation has no merit. To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

Respondent submits the transcript reflects that the pleas were knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Boykin, supra; Dover, supra. Further, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976). The

Respondent submits the Applicant should not be allowed to depart from the truth of the statements he made during his guilty plea hearing.

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). Given the Applicant's burden of proof and the analysis to be applied to this claim, Respondent submits that the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it should therefore, be treated as such. Accordingly, this allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V. Motion for More Definite Statement

Respondent also hereby moves for a more definite statement. Applicant has failed to set forth any facts to "support each ground" or to explain with any specificity whatsoever the facts upon which his claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

VI. Any Future Amendments

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

VII. Response to Any and All Other Allegations

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

VIII. Request for an Evidentiary Hearing

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

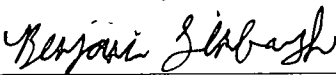
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

BENJAMIN LIMBAUGH
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

February 5, 2020

STATE OF SOUTH CAROLINA)
 COUNTY OF CHARLESTON)
)
 DeAndre Murphy, #378303)
)
 Applicant,)
)
 v.)
)
 State of South Carolina)
)
 Respondent,)
)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2019-CP-10-4694

Affidavit of Service by Mail

2020 FEB - 7 PM 1:31
 JULIE J. ARMSTRONG
 CLERK OF COURT

FILED

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:

James K. Falk, Esquire
Falk Law Firm, LLC
Post Office Box 1058
Charleston, SC 29402

DATED this 5th day of February, 2020.

Jennifer Jennison

 Jennifer Jennison, Administrative Coordinator
 For Respondent

STATE OF SOUTH CAROLINA
 COUNTY OF CHARLESTON

COURT OF COMMON PLEAS
 2019-CP-10-04694

De'Andre Murphy)

) TRANSCRIPT OF RECORD

-vs-)

) November 3, 2022

State of South Carolina)

) Charleston, South Carolina

B E F O R E:

The Honorable Diane S. Goodstein, Judge

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

Lauren T. Mims, Esquire
 Attorney for the State

James K. Falk, Esquire
 Attorney for the Applicant

Also Present:

Samantha J. Weidauer, Esquire

Reported By:

Yvestre Torres, OCR
 Circuit Court Reporter for the
 Ninth Judicial Circuit

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EXHIBITS

| <u>NO</u> | <u>DESCRIPTION</u> | <u>ID</u> | <u>EVIDENCE</u> |
|-----------|-----------------------------|-----------|-----------------|
| P-1 | Key Swipe Record | 14 | 14 |
| P-2 | Photo of Car at Gas Station | 22 | 22 |

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De'Andre Murphy

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| Ms. Mims | | | 60 | |
|----------|--|--|----|--|

1 THE COURT: Good morning. And good morning,
2 Mr. Murphy.

3 THE APPLICANT: Good morning, good morning.

4 THE COURT: All right. Ms. Mims and
5 Ms. Weidauer.

6 MS. MIMS: Sorry. I'm getting everything
7 set up.

8 THE COURT: Oh, sure. And then I'm happy
9 to receive packets.

10 MS. WEIDAUER: Your Honor, may I approach?

11 THE COURT: Sure. Great. Mr. Falk, do you
12 have all these things?

13 MR. FALK: Yes, Your Honor.

14 THE COURT: Just let me know when you're
15 ready.

16 MS. MIMS: I am ready to proceed, Your
17 Honor.

18 THE COURT: Very well. And, Mr. Falk,
19 are you ready to proceed?

20 MR. FALK: Yes, Your Honor.

21 THE COURT: Great. And, Ms. Mims will enter
22 this case, and I will turn it over to you.

23 MS. MIMS: May it please the Court?

24 THE COURT: Yes, ma'am.

25 MS. MIMS: For the record, I am Lauren Mims,

1 and I will be representing the State. This is
2 a post-conviction relief matter of De'Andre Murphy
3 versus State, Docket No. 2019-CP-10-04694. This matter
4 is before the Court by way of an application for
5 post-conviction relief filed by Mr. Murphy in Charleston
6 County on September 11th, 2019.

7 Applicant is presently confined in the South
8 Carolina Department of Corrections, pursuant to an order
9 of commitment of the Charleston County Clerk of Court.

10 In May of 2018, Charleston grand --
11 Charleston County Grand Jury indicted Applicant for
12 murder. Lorelle Proctor, Esquire and Teresa Norris
13 represented Applicant at his guilty plea ---

14 THE COURT REPORTER: Hold on, hold on.
15 I'm sorry.

16 MS. MIMS: I'm sorry.

17 THE COURT REPORTER: You have a mask on,
18 and you're going too fast.

19 MS. MIMS: Okay. Do you want me to take
20 the mask off and slow down or ---

21 THE COURT REPORTER: One or the other.

22 MS. MIMS: Okay, I'll slow down. Where did
23 you lose me?

24 THE COURT REPORTER: I lost you
25 at indictment with the grand jury.

1 MS. MIMS: Indicted Applicant for murder.
2 Lorelle Proctor, Esquire and Teresa Norris, Esquire
3 represented Applicant at his guilty plea. Assistant
4 Solicitor Edward Corvey, III prosecuted the case.

5 On November 15th, 2018, Applicant pled
6 to the lesser included offense of voluntary manslaughter
7 before the Honorable R. Markley Dennis, Jr. Judge
8 Dennis sentenced Applicant to imprisonment for 30 years,
9 pursuant -- for voluntary manslaughter, pursuant
10 to a negotiated plea. Applicant did not appeal his
11 conviction.

12 Judge, given that Mr. Murphy could be facing
13 up to life in prison on the original indictment -- given
14 that Mr. Murphy could be facing up to life in prison
15 on the original indictment, we would ask that you advise
16 him what would happen should he prevail on
17 post-conviction relief.

18 THE COURT: Okay. Thank you so much,
19 Ms. Mims. I am confident that Mr. Falk has had an
20 opportunity to discuss with Mr. Murphy that oftentimes
21 folks want me to lower the sentence or do things a lot
22 that -- and all I can do, I say all I can do, it's
23 pretty powerful, obviously, for somebody who's at SCDC.

24 But I am sure that you told Mr. Murphy that
25 what the PCR court does is if there have been violations

1 of his constitutional rights that the remedy is to grant
2 him a new trial. And then the granting, what do we call
3 it, a clean slate, all begin anew. Very well.

4 MR. FALK: Yes, Your Honor.

5 THE COURT: Have you had a chance to chat
6 with him about that, Mr. Falk?

7 MR. FALK: Yes, I have, Your Honor.

8 THE COURT: I know you always do, Mr. Falk.
9 All right.

10 MR. FALK: I would like to start off calling
11 Mr. Murphy to the stand.

12 THE COURT: Yes, sir. Come up, Mr. Murphy.

13 MS. MIMS: Your Honor, before we get started
14 -- I apologize. I would like for Mr. Falk to read his
15 allegations into the record.

16 THE COURT: Okay. Let Mr. Murphy come
17 on up. And is that because you want to just be sure
18 of which ---

19 MS. MIMS: Yes.

20 THE COURT: Which allegations are going
21 forward?

22 MS. MIMS: Yes, ma'am.

23 THE COURT: Okay.

24 MR. FALK: Your Honor, I mean, the only
25 allegations that we have is the involuntary guilty plea,

1 tried to frame everything as an involuntary guilty plea,
2 so we would say that he was -- because of trial
3 counsel's failure to fully investigate the case, he made
4 this plea, and that's why it was involuntary.
5 Specifically, I'm going to talk about pieces of evidence
6 that I already shared with the attorney general's
7 office.

8 THE COURT: Okay. Got it. Thank you.
9 Thank you so much, Mr. Falk. All right. If you would
10 swear him in, please, ma'am.

11 THE CLERK: Raise your right hand.

12 MR. DE'ANDRE MURPHY was called as a witness,
13 being duly sworn, was examined and testified as follows:

14 THE CLERK: You can be seated. If you could
15 state your full name, spelling your last name.

16 THE WITNESS: De'Andre, M-U-R-P-H-Y, Murphy.

17 THE COURT: Thanks, Mr. Murphy.

18 THE WITNESS: You're welcome.

19 THE COURT: All right.

20 MR. FALK: Mr. Murphy, I want to make sure
21 you're close enough to the microphone.

22 THE WITNESS: Can you hear me?

23 THE COURT: Can you help him just a bit?

24 MR. FALK: Yeah.

25 THE COURT: That would be great.

1 THE WITNESS: All right.

2 THE COURT: Good.

3 DIRECT EXAMINATION

4 BY MR. FALK:

5 Q. All right, Mr. Murphy, let's just go over
6 a couple of things here. So you were originally charged
7 with murder; is that correct?

8 A. Yes, sir.

9 Q. And you know what the sentencing range is for
10 murder, correct?

11 A. Yes, sir.

12 Q. And that includes ---

13 A. Life.

14 Q. --- life. And you had co-defendants in this
15 case; is that correct?

16 A. Yes, sir.

17 Q. Have any of your co-defendants been tried?

18 A. Yes, sir.

19 Q. Which ones?

20 A. Jahmal Green.

21 Q. And what kind of sentence did he have?

22 A. Sixty years.

23 Q. Okay. So you understand that your co-defendant
24 -- so you certainly would run the risk at trial ---

25 A. Yes, sir.

1 Q. --- the potential of a 60-year to life sentence?

2 A. Without a doubt.

3 Q. The sentencing range is 30 to life, but you know
4 the co-defendant got a 60-year sentence?

5 A. Yes, sir.

6 Q. Okay. So tell me a little bit about -- you were
7 appointed Ms. Proctor?

8 A. Yes, sir.

9 Q. All right. About how many times did you meet
10 with her?

11 A. Probably -- in the first two years, probably,
12 like, five times within the first two years.

13 Q. Okay. And did she share the discovery with you?

14 A. Pieces. She was showing me what she wanted to
15 show me.

16 Q. Okay. Do you know of any discovery she didn't
17 share with you?

18 A. Yes, sir.

19 Q. And what is that?

20 A. My key card swipe.

21 Q. Okay. We'll get to that. So tell me, do you
22 remember when this occurred?

23 A. Yes, sir.

24 Q. And what was that date, do you remember?

25 A. April the 20th.

1 Q. And what were you doing on that day?

2 A. Well, it happened April the 19th, going
3 into April the 20th, so in the wee hours of the night,
4 as in early morning time, so it's just becoming April
5 the 20th, like, April the 20th morning.

6 Q. And I'm not going to offend Judge Goodstein.
7 I'm sure she understands what 4/20 is. So you were
8 celebrating a little bit?

9 A. Yes, sir.

10 Q. Okay.

11 A. Yes, sir.

12 Q. And so that's why you knew where you were?

13 A. Exactly.

14 Q. And where were you?

15 A. At the hotel.

16 Q. Which hotel?

17 A. The Value Place.

18 Q. And which one is that?

19 A. The Value Place, it's over there on ---

20 Q. Leeds?

21 A. Yes, sir, across the street from the jail.

22 Q. Yeah, okay. How long have you been there?

23 A. Probably about a month.

24 Q. So you were kind of living there?

25 A. Yes, sir. My house was being renovated because

1 of molds in the wall.

2 Q. Okay. And so was anyone in the room with you?

3 A. Yes, sir.

4 Q. Who was that?

5 A. My father.

6 Q. Okay. And -- well, let's just sort of get right
7 to it.

8 A. Okay.

9 MR. FALK: Your Honor, may I approach
10 the witness?

11 THE COURT: I'm so sorry.

12 MR. FALK: May I approach?

13 THE COURT: Oh, of course.

14 BY MR. FALK:

15 Q. I'm going to show you a piece of paper. Hang
16 on for a minute. All right, Mr. Murphy, that piece
17 of paper, can you sort of -- is there a number on
18 the bottom of the piece of paper, in black?

19 A. Yes, sir.

20 Q. And what does that say?

21 A. Rule 5, Page 187.

22 Q. Okay. So that was -- so it's Page 187 and then
23 188?

24 A. Yes, sir.

25 Q. Of your Rule 5 material?

1 A. Yes, sir.

2 Q. And when you said earlier that you hadn't seen
3 your key card swipes, is that what you're talking about?

4 A. Yes, sir.

5 Q. And so are you saying that you never saw this?

6 A. Never.

7 Q. Okay. What difference would it have made?

8 A. A big difference because ---

9 Q. Explain.

10 A. Because, for one, the distance from the crime
11 scene from the hotel is approximately nine miles.

12 Q. Okay.

13 A. And the 911 call happened at 3:32.

14 Q. Okay.

15 A. Okay.

16 Q. On which day?

17 A. On April the 20th.

18 Q. Okay.

19 A. At the time the crime was being committed, I was
20 swiping the key card at 3:22.

21 Q. Okay.

22 A. That's -- and the truck was first seen by North
23 Charleston High School camera at exactly 3:27. At 3:27.
24 I got it right here if you want to see it.

25 Q. What I want to do is ---

1 MR. FALK: Can I just have it marked,
2 the particular one he's talking ---

3 THE COURT: Of course.

4 MR. FALK: Mark the swipe that you think
5 is important.

6 THE COURT: And y'all got that?

7 MR. FALK: I'm going to show them the one
8 that we're talking about. That's enough.

9 THE WITNESS: Okay.

10 THE COURT: I'm sorry. Any objection
11 to marking this exhibit?

12 MS. MIMS: You're entering it?

13 MR. FALK: I haven't gotten to entering
14 it yet, I was just trying to -- can we enter this as ---

15 THE COURT: Ultimately, I think he's going
16 to do that.

17 MR. FALK: Can we mark this as Applicant's
18 Exhibit A -- 1?

19 MS. MIMS: No objection, Your Honor.

20 THE COURT: No objection? Okay. This will
21 be Applicant's 1. Great. You've got to hand it -- can
22 you help him hand that to Eve?

23 (Plaintiff's Exhibit No. 1 was marked for
24 identification.)

25 (Plaintiff's Exhibit No. 1 was entered into evidence.)

1 THE COURT: Mr. Falk, let's get those times.
2 The swipe was 3:22?

3 MR. FALK: Yes.

4 THE COURT: And -- okay. And he said that
5 the 911 call was at three ---

6 THE APPLICANT: Thirty-two.

7 THE COURT: Okay.

8 BY MR. FALK:

9 Q. Now just so everybody is clear, on the right-hand
10 column of that page is a column that says event, right,
11 at the very top?

12 A. One more time.

13 Q. What's that?

14 A. I can't hear you, say one more time.

15 Q. Oh. On that page that you're looking at ---

16 A. Yes, sir.

17 Q. --- on the far left-hand side [sic.], isn't there
18 a column that goes all the way down that says event,
19 and it has a bunch of numbers?

20 A. Yes, sir.

21 Q. Okay. So -- and they're all different for each
22 card swipes, right?

23 A. Yes, sir.

24 Q. And so what card swipe are we talking about?
25 Is that event number 117?

1 A. No, sir, I'm talking about event number 116.

2 Q. 116, okay. All right. And again -- so can
3 you read what that says?

4 A. It says 4/20/2016, 3:22 a.m., card was rejected
5 because the door had a dead bolt.

6 Q. Okay. All right.

7 THE COURT: Say that one more time.

8 MR. FALK: The card was rejected.

9 THE COURT: And it was 116, it's his card,
10 and the date is 4/22?

11 THE APPLICANT: No, sir -- no, ma'am,
12 it's 4/20, at 3:22 a.m.

13 THE COURT: When you give numbers ---

14 THE APPLICANT: Yes, ma'am.

15 THE COURT: --- if you could just slow down
16 a little bit. I'm trying to keep up with your numbers.

17 THE APPLICANT: Yes, ma'am.

18 THE COURT: Now give it to me slow.

19 THE APPLICANT: Yes, ma'am.

20 THE COURT: Numbers aren't my thing.

21 When you give them, just slow down a little bit.

22 Thank you so much. Mr. Falk.

23 BY MR. FALK:

24 Q. All right. Where were we? All right. So that's
25 -- and why do you think that piece of evidence was

1 important?

2 A. Because it's clearly important because from
3 the jump, before I was even appointed counsel, when
4 I was in the interrogation room, I had a conversation
5 with the detective stating on the night of the crime
6 where was I at the time that the crime was being
7 committed, which I told him. They went to the hotel
8 themselves. You see what I'm saying? So, I was later
9 apprehended.

10 And then I get a chance to talk to my counsel
11 about my whereabouts the night of the crime being
12 committed. But the main issue when the crime is being
13 committed is that the truck was being seen at 3:27,
14 which is exactly five minutes after I swiped my card.
15 So it's clearly impossible for me to get from the crime
16 scene to -- from the hotel to the crime scene in five
17 minutes.

18 Q. All right. You obviously know the facts better
19 than anyone else in the courtroom. So the truck was
20 seen in front of the crime scene?

21 A. Yes, sir.

22 Q. And where's the crime scene?

23 A. On Park Circle.

24 Q. So it's in the Park Circle area?

25 A. Yes, sir.

1 Q. And this is on Leeds Avenue?

2 A. No, not Leeds Avenue.

3 Q. I thought you said it was Park ---

4 A. Park Circle.

5 Q. Back up. Your hotel.

6 A. Yes, sir.

7 Q. That's the one that's right on Leeds Avenue,

8 goes up to Dorchester Road ---

9 A. Yes, sir.

10 Q. --- by the 526 exit?

11 A. Yes, sir.

12 Q. Okay. So that is a good bit of ways from Park
13 Circle?

14 A. Nine miles.

15 Q. Okay. And so five minutes away, you're saying
16 that the car, which was important to the case ---

17 A. Yes, sir, was already on camera in the area
18 at 3:27, which means I would have to be already in
19 the car or at the crime scene at 3:27, which was five
20 minutes later.

21 Q. Okay. All right. All right. Now, did you have
22 a discussion with Ms. Proctor about the card swipes?

23 A. Yes, sir.

24 Q. And what was that discussion?

25 A. The discussion was -- well, at first, it was the

1 main thing about the surveillance camera. At the time,
2 I guess, the Leeds Avenue cameras wasn't achieving
3 [sic.] at the time, you know. So, I guess that was
4 a problem at first, it wasn't achieving at the time,
5 but I didn't know that. You know what I'm saying?
6 That wasn't something that I knew. You know what
7 I'm saying? So it wasn't achieving at the time.
8 It was rolling, but it wasn't recording when he came
9 to go and look at the tape.

10 Q. Okay.

11 A. So when we would get into that, it was a camera
12 that the detective stated that he's seen me come through
13 the front entrance, at the front entrance to the hotel.
14 But it was later -- because he was the only person who's
15 seen it, and we've never seen it.

16 But the problem came between when Ms. Proctor
17 stated that oh, well, when it came two months before
18 trial, before I was about to attend trial, two months
19 after my co-defendant was already tried, and I got
20 a severance trial. Judge Dennis gave me the severance
21 trial, and I was going to trial. So when I went to
22 trial, when it was time for me to go to trial, she came
23 two months later to say that, I can't use my alibi
24 because daylight savings time, it made the key card
25 swipe off an hour.

1 So it seemed that I'm being at the crime scene,
2 the paper be saying 4:32 instead of 3:32, and that would
3 give enough time to say that I made it to the crime
4 scene and back to the hotel, which is incorrect, because
5 the paper states that it was at 3:32 when I swiped my
6 card. So she said that she was calling the corporation
7 to show how -- she said that they would have to go door
8 to door to change the key card swipe ---

9 Q. Wait, wait. So you're saying that you went over
10 this with her?

11 A. Yes.

12 Q. And, I mean, I'll ask her about it when she takes
13 the stand. What you're saying is that she said it
14 wasn't going to work for some reason?

15 A. She said we had to -- the corporation would
16 have to go door to door to change it, the whole hotel,
17 which is -- daylight savings time is 17 days prior
18 to the crime being committed. That's impossible.

19 Q. Okay. And you're -- during the testimony,
20 was there some -- were you referred to by a street name
21 in some of the information in this case? Are you Lil'
22 D?

23 A. Yes, sir.

24 Q. Okay.

25 MR. FALK: Your Honor, one more.

1 THE COURT: Sure.

2 BY MR. FALK:

3 Q. I'm going to show you another piece of your
4 discovery. And can you just read the number on the
5 bottom of that?

6 A. Rule 5, 1223.

7 Q. Okay.

8 MR. FALK: Can we mark this as our Exhibit
9 2?

10 THE COURT: Any objection to this exhibit
11 coming into evidence?

12 MS. MIMS: No, Your Honor.

13 THE COURT: All right. And it's front
14 and back?

15 MR. FALK: It is front and back.

16 MS. MIMS: I only have one -- I only have
17 the front version, so let me see if we have the second
18 one.

19 THE COURT: Sure. Well, if Mr. Falk doesn't
20 need the back, can y'all swap?

21 MS. MIMS: Yes.

22 MR. FALK: All right. Let's -- if we could
23 just change this for fairness here. We're going to talk
24 about Page 123 of the discovery.

25 THE COURT: Okay. Page 123. 123, okay.

1 MR. FALK: Oh, no, sorry. It's 1223.

2 THE COURT: 1223. Okay.

3 MR. FALK: So we'll offer -- so the page
4 that says 1223 will be our Exhibit No. 1 -- No. 2.

5 THE COURT: Number 2, Exhibit 2. Let's get
6 that marked. If you'll hand it -- Mr. Falk, I'm so
7 sorry. If you'll hand that please to Eve, and she'll
8 mark it.

9 (Plaintiff's Exhibit No. 2 was marked for
10 identification.)

11 (Plaintiff's Exhibit No. 2 was entered into evidence.)

12 BY MR. FALK:

13 Q. All right. So that photograph was in your
14 discovery?

15 A. Yes, sir.

16 Q. And why do you think that photograph is
17 important? What do you think it was supposed to be?
18 What was it supposed to show? Why was it included?

19 A. It would seem that I was at a gas station.

20 Q. And was that gas station a significant part
21 of the case as far as the State had?

22 A. They say that's when we meet up after the crime
23 scene was committed.

24 Q. Okay. And were you at -- so what person did they
25 say you were in that photograph?

1 A. The person with the blonde hair with the blouse
2 on.

3 Q. Okay. Why don't you try to put an X right there
4 with that pen that I left you.

5 A. (Indicating.).

6 Q. All right. I'm going to put it down here where
7 they can see it. Is that the right spot for the X?

8 A. Yes, sir.

9 Q. All right. So what was your concern about this
10 photograph?

11 A. That just wasn't me at all.

12 Q. Okay. Did you have a conversation with your
13 counsel about that?

14 A. Yes, sir.

15 Q. And what did you say?

16 A. That I never had blonde hair in my life.

17 Q. Okay. What was -- and after showing her that
18 photograph saying that it wasn't you, she -- what was
19 her recommendation as far as going forward?

20 A. She didn't have -- she didn't have nothing
21 to say, honestly, you know.

22 Q. Well, why did you plea then? I mean, if you
23 knew about the photograph, why did you plead guilty?

24 A. At first -- this right here, at first, I never
25 seen this. It was on a disc because everything,

1 she said, was on a disc. It was never -- not on paper.

2 Q. Okay.

3 A. I never had any, like, motion discovery like
4 this right here until I went up to the rule already.

5 Q. Okay. All right. So why -- so other than
6 the fact that you didn't see those two pieces of your
7 discovery, why did you plead guilty?

8 A. Because counsel stated again -- stated that
9 my alibi defense was not going to work due to the fact
10 that it was -- she said it was daylight savings time
11 and that the key card swipe would have given enough
12 time to put me at the crime scene, so it would cause
13 me a life sentence potentially.

14 Q. What did she -- did she go over the evidence
15 that they had against you?

16 A. It was all circumstantial.

17 Q. Okay. And her recommendation was that you needed
18 to plead guilty?

19 A. Yes, sir.

20 Q. Had you known about that -- those two pieces
21 of your discovery, would you have gone to trial?

22 A. Still went to trial.

23 Q. Okay.

24 A. Like, Judge Dennis gave me a severance.

25 I was going to trial the whole way. It was never --

1 I was never -- I didn't do anything, so I was going
2 to trial.

3 Q. Okay.

4 MR. FALK: I have no further questions.

5 THE COURT: Cross-examination?

6 MS. MIMS: Yes, Your Honor. I beg the
7 Court's indulgence.

8 THE COURT: All right.

9 (Pause.)

10 CROSS-EXAMINATION

11 BY MS. MIMS:

12 Q. Good morning. How are you doing?

13 A. How are you doing?

14 Q. Good, good. So let's talk a little bit about
15 your testimony. Okay. So you testified that you did
16 receive discovery materials from Ms. Proctor, correct?

17 A. Well, we'd seen -- video, as in interrogation
18 tapes, slide show, and that was about it.

19 Q. So you did see the picture where you said that
20 you had blonde hair?

21 A. It was on -- yeah, it was on a disc. So, I made
22 her go over -- 30 days prior, I was arrested for some
23 marijuana. So, I made her go and look at my mugshot
24 30 days prior, 27 days prior, before I was arrested.

25 Q. Okay. But she did review that piece of evidence

1 with you prior to your plea, correct?

2 A. Yes, ma'am.

3 Q. Okay. And you spoke with her about that piece
4 of evidence, correct?

5 A. Yes, ma'am.

6 Q. And you still decided to plead guilty, despite
7 that evidence, correct?

8 A. Yes, ma'am.

9 Q. Okay. Why did you plead guilty, despite that
10 evidence?

11 A. Because she -- this was going against me as
12 a circumstantial evidence, stating I had blonde hair,
13 which I didn't. So she was saying that this was after
14 the crime scene, so put them after the crime scene,
15 which I didn't, because I keep telling her that you
16 can go check my record, you can check everything else,
17 I've had no deals with these people.

18 Q. Okay. And you were apprehended for this crime,
19 correct?

20 A. Yes, ma'am.

21 Q. And do you remember what date you were
22 apprehended?

23 A. April 27th.

24 Q. Okay. So that would be about ---

25 A. Seven days later.

1 Q. Seven days later. Okay. Would it be possible
2 for you to have changed your hair in that time?

3 A. No, ma'am, I still had my same hair.

4 Q. Okay. Let's speak a little bit about the key
5 card swipes. So you stated that it would be impossible
6 for you to be in the area of the crime at that time,
7 correct?

8 A. Yes, ma'am.

9 Q. All right. And you had that discussion with
10 Ms. Proctor, correct?

11 A. As in one time?

12 Q. Well, you had the discussion about the key card
13 swipes with Ms. Proctor?

14 A. Yes, ma'am.

15 Q. And she showed you that discovery, correct?

16 A. No, she never showed me this.

17 Q. So how did you all have the conversations about
18 the key card swipes?

19 A. My mitigation specialist. When was the last
20 time you swiped your card on the night the murder
21 was committed?

22 Q. Okay. But you saw the key card swipe prior
23 to your plea?

24 A. No, ma'am. I was telling her about it.

25 Q. Okay.

1 A. I was the one telling her to go and get these,
2 this is what I need to go to trial.

3 Q. And y'all had -- but y'all had a discussion about
4 the key card swipe, correct?

5 A. Yes, ma'am.

6 Q. Okay. And she told you that ---

7 A. It was off an hour.

8 Q. Because it was daylight savings time?

9 A. Yes, ma'am.

10 Q. All right. And is your -- give me one second.

11 MS. MIMS: I beg the Court's indulgence.

12 THE COURT: All right. Sure.

13 BY MS. MIMS:

14 Q. And just so it's clear for the record -- the key
15 card swipes, do you have them, Mr. Murphy?

16 A. Yes, ma'am.

17 Q. And it's your contention that swipe 116 is the
18 most important swipe, correct?

19 A. Yes, ma'am.

20 Q. Okay. Could you read me the line through here,
21 what that says, the date, before you get to card
22 rejected. Read all of that, please. I'm sorry.
23 Here you go.

24 A. Date 4/20/2016, 3:22 a.m., card rejected because
25 dead bolt was in the door.

1 Q. Okay. Can you tell me what -- what type of time;
2 eastern standard time, pacific time, what that says?

3 A. 3:22 a.m.

4 Q. Is it DST or is EST or PST?

5 A. It's a DST card.

6 Q. Okay. So in that conversation that you had with
7 Ms. Proctor, she said that it was daylight savings time,
8 correct?

9 A. Yes.

10 Q. And that's what that piece of evidence reflects,
11 DST as daylight savings time, correct?

12 A. I don't know that's what it's called. I don't --
13 because all of them have DST card on them ---

14 Q. Okay.

15 A. --- prior to this one. All of them do.

16 Q. It was your contention that daylight savings
17 time had been 17 days prior to the crime, correct?

18 A. Yes, ma'am.

19 Q. Okay. So it would be daylight savings time
20 for every swipe before and after, correct?

21 A. You said daylight savings time ---

22 Q. It would be DST for every swipe before and after,
23 correct?

24 A. Before and after, yes, ma'am.

25 Q. All right.

1 A. It was DST before and after.

2 Q. Okay.

3 MS. MIMS: I beg the Court's indulgence
4 for one minute.

5 THE COURT: Okay.

6 BY MS. MIMS:

7 Q. Do you recall discussing with your attorney the
8 elements of the offenses charged that you were initially
9 charged with?

10 A. Yes, ma'am.

11 Q. Okay. And do you recall possible defenses --
12 discussing possible defenses with your attorney?

13 A. It was only one.

14 Q. Okay. But y'all did discuss the defense
15 if you were to go to trial, correct?

16 A. Yes.

17 Q. Okay. And did you give your attorney any
18 witnesses to investigate?

19 A. Yes.

20 Q. Okay. So once we get to the plea, do you recall
21 waiving your constitutional rights?

22 A. No, ma'am.

23 Q. Okay. If I show you the transcript, would
24 it refresh your memory?

25 A. I mean, you can.

1 Q. Okay.

2 MS. MIMS: Beg the Court's indulgence.

3 THE COURT: All right.

4 BY MS. MIMS:

5 Q. Specifically, do you recall giving up your right
6 to a jury trial?

7 A. As in pleading guilty?

8 Q. Yes.

9 A. As in -- yeah, I pled guilty.

10 Q. Okay. And do you recall giving up your right
11 to challenge the evidence against you because you were
12 pleading guilty?

13 A. One time again, ma'am.

14 Q. I'm sorry. Do you remember giving up the right
15 to challenge any evidence that was against you, so any
16 of the card swipes, anything? You don't recall that?

17 A. No, ma'am. I was giving up -- no, ma'am.

18 Q. Okay.

19 MS. MIMS: May I approach the witness?

20 THE COURT: You may. And, for the record,
21 what are you showing?

22 MS. MIMS: I am showing him -- this
23 is the plea transcript on Page 8, Lines 17 through 23.

24 THE COURT: And you have that, Mr. Falk?
25 You have the transcript? Okay.

1 THE WITNESS: (The witness read to himself.)

2 (Pause.)

3 BY MS. MIMS:

4 Q. And do you recall telling Judge Dennis that
5 day that you were, in fact, guilty?

6 A. Yes, ma'am.

7 Q. And do you recall telling Judge Dennis that
8 those were, in fact, your answers?

9 A. Yes, ma'am.

10 Q. And that you were telling the truth that day?

11 A. Yes, ma'am, yes, ma'am.

12 Q. And it's your contention today that you were
13 not telling the truth that day?

14 A. One more time.

15 Q. Is it your contention today that you were not
16 telling the truth?

17 A. That I wasn't telling the truth, as in, I was
18 guilty?

19 Q. Yes.

20 A. I wasn't guilty. It was really supposed to
21 be an Alford plea, which is saying the evidence against
22 me and I go to trial, and I can be found guilty.

23 It's possible. You feel me? That's what it really
24 was. That's why I took the negotiated deal.

25 Q. Okay.

1 A. Yes, ma'am.

2 Q. And is it your contention today that you were
3 not guilty?

4 A. I wasn't -- I was not guilty.

5 Q. So is it your contention today that you lied
6 to the Court at the time?

7 MR. FALK: Your Honor, I object to the
8 question.

9 THE WITNESS: No, ma'am.

10 THE COURT: I'm sorry?

11 MR. FALK: I object to that question
12 as argumentative.

13 THE COURT: Okay. Very well. Overruled.

14 MS. MIMS: You can answer.

15 THE WITNESS: No, ma'am.

16 BY MS. MIMS:

17 Q. But you didn't tell the Court the truth?

18 A. Because I didn't know -- at the moment, as in --
19 as in taking my counsel's advice, saying, oh, it's an
20 hour off, so it gives plenty of time to bring you back.
21 It could give you time to be -- to the crime scene
22 and back to the hotel. So that would make it a loop.
23 So, therefore, your best bet is -- you can plead guilty,
24 or you can get life. Which one?

25 Q. And it was your choice to plead guilty?

1 A. Yes, ma'am, because I didn't have -- I wouldn't
2 have no defense. She hide my defense from me.

3 Q. I'm sorry? Can you repeat the last for me?

4 A. She hide my defense from me.

5 Q. But y'all had a conversation about the card
6 swipes, correct?

7 A. Yes, ma'am.

8 Q. And y'all had a conversation about you not having
9 blonde hair, correct?

10 A. Yes, ma'am.

11 Q. Okay. And with that evidence, you still decided
12 to plead guilty?

13 A. One more time.

14 Q. With knowing about those two pieces of evidence,
15 you still decided to plead guilty and not go to trial,
16 correct?

17 A. This is what the paper actually said from
18 the jump. Your counsel is telling you, this is who
19 I'm supposed to trust, this is the person who's got
20 my discovery, so I'm going to take her word for it.
21 I'm not going to just sit here thinking that -- in
22 the air, as in, I wasn't thinking of nothing.

23 This is her word. She came to me and said,
24 well, D, you can't do this because it's off an hour.
25 As my counsel, I took her advice. From client

1 privilege, I took her advice. I don't have a defense
2 at this moment. It's two months -- we're going
3 to trial. It's two months before trial. I mean,
4 what's going to be my defense? I don't have a defense.
5 I didn't do nothing.

6 Q. Okay. But you -- did you understand at the time
7 that you still could have went to trial?

8 A. Did I understand at the time? No, because it
9 wasn't an option. It was either take this or you're
10 going to prison, and you can get this. It was exactly
11 that.

12 Q. And it's your contention today that you didn't
13 understand that you could not go to trial?

14 A. One more time.

15 Q. Did you not understand that you were giving
16 up your right to a jury trial by pleading guilty?

17 A. Exactly. I didn't know. I didn't know. A lot
18 of shame on me, but I didn't know.

19 Q. You didn't know that you could have a jury trial?

20 A. I knew -- I was trying to have a jury trial;
21 that was my objective. A plea was never on the table
22 for me; that was never on the table. It was never,
23 oh, you want to plea. It was always I'm going to trial.
24 That was my whole point. When I went to the motion
25 hearing for my trial date for the severance time,

1 and Judge Dennis granted me the severance, it was
2 still I was going to trial. It was never nothing new.
3 It was never me pleading guilty or anything.

4 MS. MIMS: I beg the Court's indulgence.

5 THE COURT: All right.

6 BY MS. MIMS:

7 Q. Do you recall telling the plea judge that
8 you were satisfied with your attorney's services?

9 A. Yes, ma'am.

10 Q. Okay. And did you recall telling the plea judge
11 that no one was promising you or threatening you with
12 anything in order to plead guilty?

13 A. No, ma'am.

14 Q. Okay. If I showed it to you, would it refresh
15 your recollection?

16 A. I said no. I mean, you can, but I remember
17 saying nobody promised me nothing.

18 Q. Okay. So you do remember that?

19 A. Yes.

20 Q. Let's talk a little bit about -- before the plea
21 and before trial. You stated that Ms. Proctor filed
22 several motions on your behalf, correct?

23 A. Yes, ma'am.

24 Q. Okay. Including the one for -- a motion
25 for severance?

1 A. Yes, ma'am.

2 Q. Which allowed you to be tried separately
3 from your co-defendant?

4 A. Yes, ma'am.

5 Q. Okay. And that was to your benefit?

6 A. Yes, ma'am.

7 Q. Okay. And also, you pled guilty to voluntary
8 manslaughter, correct?

9 A. Yes, ma'am.

10 Q. Which is a lesser included offense of murder,
11 correct?

12 A. Yes, ma'am.

13 Q. So you went from facing up to life in prison
14 to facing up to 30 years, correct?

15 A. Yes, ma'am.

16 Q. Okay.

17 A. I got 30 years.

18 Q. Right. But you were facing 30 years as opposed
19 to 30 to life, correct?

20 A. Yes, ma'am.

21 Q. Okay. And that was at a great benefit to you
22 as well?

23 A. No, ma'am.

24 Q. Okay. And in exchange for a guilty plea,
25 the State also dropped several other charges, correct?

1 A. Yes, ma'am.

2 Q. Okay.

3 MS. MIMS: Beg the Court's indulgence.

4 THE COURT: All right.

5 MS. MIMS: No further questions, Your Honor.

6 THE COURT: Very well. All right.

7 Redirect?

8 MR. FALK: Yes, Your Honor.

9 THE COURT: All right.

10 REDIRECT EXAMINATION

11 BY MR. FALK:

12 Q. I'm just trying to understand your testimony.

13 The piece of paper that's our Exhibit 1 ---

14 A. Yes, sir.

15 Q. --- had you seen that before you pled guilty?

16 A. No, sir.

17 Q. Okay. So you haven't -- you had a conversation
18 about the card swipes with your lawyer?

19 A. It was always a conversation. It was never --
20 the proof ---

21 Q. So you never saw that?

22 A. Never.

23 Q. Okay. So that's really the thing that you did
24 not know?

25 A. At all.

1 Q. That that existed?

2 A. (Witness nods head.)

3 Q. Okay. What did you think would happen if you
4 had answered no to any of Judge Dennis's questions?

5 A. What would happen?

6 Q. Yeah.

7 A. I would have went to trial.

8 Q. Okay. And you had said that you wanted a trial?

9 A. Yes, sir.

10 Q. But then why didn't you just say no and go to get
11 a trial?

12 A. Counsel advised me to take the plea.

13 Q. And when she gave you that advice, you didn't
14 have that piece of information?

15 A. No, sir.

16 Q. And if you had that piece of information,
17 what would you have told her?

18 A. We're still going to trial.

19 Q. So you always wanted to go to trial?

20 A. Always.

21 MR. FALK: No further questions.

22 THE COURT: Recross?

23 MS. MIMS: No, Your Honor.

24 THE COURT: Very well. You can come back
25 to counsel's table, Mr. Murphy. Call your next witness,

1 please.

2 MR. FALK: I think I would rather
3 cross-examine, so we'll rest.

4 THE COURT: Thank you. All right.
5 Call your first witness, please, ma'am.

6 MS. MIMS: Your Honor, the State calls
7 Lorelle Proctor.

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

9 THE CLERK: Raise your right hand.

10 LORELLE PROCTOR, was called as a witness,
11 being duly sworn, was examined and testified as follows:

12 THE CLERK: You can be seated. Please state
13 your full name, spelling your last name.

14 THE WITNESS: Lorelle Proctor,
15 P-R-O-C-T-O-R.

16 THE COURT: Your witness.

17 DIRECT EXAMINATION

18 BY MS. MIMS:

19 Q. Good morning, Ms. Proctor, how are you doing?

20 A. I'm fine.

21 Q. And how long have you been practicing law?

22 A. Well, I'm retired.

23 Q. Okay.

24 A. So, I practiced, I think, about 32 years
25 probably, give or take. Retired about three years ago.

1 Q. Okay. How much of that has been criminal law?

2 A. It was all criminal law.

3 Q. Okay. And you were appointed to represent
4 Mr. Murphy, correct?

5 A. Correct.

6 Q. Okay. And how many times did you meet with
7 Applicant, if you could give me a ballpark?

8 A. How many times what?

9 Q. Did you meet with Applicant.

10 A. We met a lot of times. And when we would go
11 to the jail, we would take all of the stuff, discovery,
12 most everything were on discs. There was quite a bit
13 of discovery in this case. So we would take it to
14 the jail and get a private room so that he could see
15 everything.

16 And then we got a new computer system so that
17 from the jail I could sit in my office and show him
18 all of the discovery that we had of the car at the gas
19 station, everything he's talking about, so he could see
20 it all.

21 Q. Okay. And did you conduct any additional
22 investigation outside of the State's discovery?

23 A. We did quite a bit of investigation.

24 My investigator is in the courtroom today.

25 We thoroughly investigated every single thing he said.

1 We went to his parents' house, we spoke with his mom.
2 My investigator went and talked to his father about
3 the key card, and we went to the crime scene many times.
4 So, yes, it was thoroughly investigated.

5 Q. Okay. And, specifically, let's speak about
6 the key card swipes. Were you able to see that piece
7 of discovery that was at issue earlier?

8 A. Yes, and there was something about the time.
9 And I think we -- my investigator, although he would
10 be better to explain all this, but he also talked to the
11 father, and the father was not going to -- did not want
12 to come and testify. But his time was not -- his father
13 wasn't a very good witness, and the time on the key card
14 didn't really help our case.

15 Q. Okay. And was it your understanding that
16 it was off an hour due to daylight savings time?

17 A. Probably so. I mean, it was five years ago,
18 so probably.

19 Q. Okay. And did you discuss the possibility
20 of a defense based on the card swipes?

21 A. Did I ---

22 Q. Discuss the possibility of a defense based
23 on the card swipes?

24 A. No, I don't think that would have -- I mean,
25 I wouldn't have gone to trial having that be the only

1 evidence that there was because the problem is he was
2 on video at the scene. There were three people that
3 testified at the trial that he was -- that were there
4 with him in the car. So that, and after my investigator
5 had gone to talk about it and see the key card, I don't
6 think that would have won his trial. That was not --
7 we did investigate, but that wasn't the main problem.

8 Q. Okay. And was there any investigation into
9 Mr. Murphy possibly having blonde hair at the time?

10 A. We investigated every single thing he told us to
11 investigate, and he saw every single piece of evidence
12 that we had. Every video, we showed him. All the --
13 there were three other people in the back seat of the
14 car. We showed -- he heard all of their testimonies.
15 He also heard their statements to the police. So he --
16 every single bit of discovery, he heard.

17 Q. Okay. And, if you could, just give us a brief
18 overview of the State's case.

19 A. Well, they had three co-defendants that were
20 going to testify against him. They had them on video
21 at the gas station. We talked to every alibi he said;
22 we talked to his mother numerous times; my investigator
23 talked to his father.

24 And, especially, after watching the
25 co-defendant's trial, after I sat through that whole

1 trial, I went back and talked to De'Andre, and I said,
2 it's definitely not going to look good because they just
3 went through trial and your name was just in it the
4 whole time. And so there was about a 99 percent chance
5 we were going to lose the trial, especially after
6 hearing the whole trial, which would have been the same
7 -- basically the same evidence.

8 Q. Okay. And you filed pre-trial motions?

9 A. We had many, many pre-trial motions.

10 Q. Okay. And including one for severance, correct?

11 A. Yes.

12 Q. And ---

13 A. That was granted, so that's why the co-defendant
14 went to trial first, and that didn't work out so well.

15 Q. Okay. And what, if anything, did Applicant tell
16 you happened?

17 A. Did what?

18 Q. What did he tell you happened that night?

19 A. Did who tell me?

20 Q. Applicant, Mr. Murphy.

21 A. What his alibi was, that he wasn't with them.

22 Q. Okay. So in light of the evidence in your
23 investigation, was there any conceivable defense?

24 A. I don't -- there was nothing, I don't think,
25 that was going to help us.

1 Q. Okay.

2 A. I mean, I think the main problem was with three
3 eyewitnesses, I mean, three people that were there,
4 that testified to dropping -- to being at the scene
5 of the crime.

6 Q. Okay.

7 A. And that was a big problem.

8 Q. However, if Applicant asked you to go to trial,
9 would you have continued to trial?

10 A. Oh, if he had said he wanted a trial, yes.
11 I always would have done that. I mean, I don't make
12 them plead guilty. If he wanted a trial, and kept
13 saying no, no, no, and I think when you read the
14 transcript of the plea, Judge Dennis was very -- went
15 through each step and talked to him, are you sure you
16 want to plea? What about PCR? Are you going to come
17 back in a few years? And he went through each step
18 to make sure that he was pleading voluntarily.

19 Judge Dennis did an excellent job on that.
20 He always did at his guilty pleas, especially one of
21 this magnitude. He wanted to make sure he was pleading
22 voluntarily -- you know, freely and voluntarily.
23 All he had to do at any point during that plea was say
24 no, I'm really not -- I'm not guilty, we have evidence,
25 and we would have stopped the plea.

1 Q. And did you agree with Applicant in -- the
2 Applicant's decision in pleading guilty?

3 A. Yes, I think it saved him from a life without
4 parole sentence or even a life sentence. And at a young
5 age -- it doesn't seem like it, but a life sentence
6 at his age would have been a very long time.

7 Q. And you stand by your representation in that
8 regard, correct?

9 A. Correct.

10 Q. Okay. And, ultimately, your client did end up
11 pleading guilty. Can you just give the Court a brief
12 rundown of the plea negotiations?

13 A. I don't have the plea in front of me, but I think
14 he pled to voluntary manslaughter, and I think some
15 other charges were dismissed. I don't have the
16 transcript in front of me.

17 Q. Do you need a copy?

18 A. Pardon?

19 Q. I said do you need a copy?

20 A. Okay, sure.

21 Q. Okay.

22 A. But I think some of the charges might have been
23 dismissed, but I know he pled to voluntary manslaughter,
24 and I don't know if he pled to any others.

25 Q. And were there any earlier offers?

1 A. I don't think so. I don't think there were any
2 offers. That was probably the only -- this was after
3 the co-defendant's trial and after those three people
4 testified, so I don't think there was an offer before
5 that.

6 Q. Okay.

7 A. And I think there really wasn't one until,
8 I think, my co-counsel and I -- Teresa Norris and I went
9 to the solicitor and basically begged him for a plea.
10 I mean, he was -- Ted Corvey wanted to go forward,
11 you know. I just somehow talked him into maybe this was
12 the best way to settle it. And I know -- if he talked
13 to the family to see if they wanted to go through
14 another trial, I don't know about that. But it wasn't
15 -- it was a hard deal for me to get, and I was happy
16 when we finally worked something out.

17 Q. Okay. And did you explain to Mr. Murphy
18 the nature of a negotiated sentence?

19 A. If it was negotiated, yes, I would have.

20 Q. Okay. And did you explain to him all
21 of his constitutional rights regarding the plea?

22 A. Yes, and Judge Dennis went over it quite
23 at length.

24 Q. Okay. And, ultimately, it was Applicant's
25 decision to plea?

1 A. Yes.

2 Q. Okay. And if Applicant had asked you to continue
3 to trial, would you have been prepared to go to trial?

4 A. Oh, we were prepared to go to trial all along.
5 We worked extremely hard. In this case, there was
6 probably over 60 or 70 CDs, just alone, of evidence
7 in this case. This was thoroughly investigated by the
8 police. We had notebooks and notebooks of discovery,
9 went through every single piece of it. And everything,
10 we did show to De'Andre.

11 MS. MIMS: Beg the Court's indulgence.

12 THE COURT: Yes.

13 BY MS. MIMS:

14 Q. And just for clarification, for the record,
15 you guys did discuss the photo with the blonde hair,
16 correct?

17 A. Pardon? It's hard for me to hear you through
18 the mask.

19 Q. I'm sorry. Just for clarification, did you guys
20 discuss the photo still from the gas station where ---

21 A. Did we show him the photo?

22 Q. Yes.

23 A. Yes, we showed him. He saw every piece
24 of discovery. He saw the photo. I think there's
25 a video also at the gas station.

1 Q. Okay.

2 A. If I recall, I think there was a video. I could
3 be wrong, but he saw -- yes, he saw them.

4 Q. And did y'all discuss the defense about -- based
5 on his blonde hair -- this person having blonde hair?

6 A. We discussed it all, yes.

7 Q. Okay.

8 MS. MIMS: No further questions, Your Honor.

9 THE COURT: All right. Cross-examination.

10 CROSS-EXAMINATION

11 BY MR. FALK:

12 Q. Ms. Proctor, so he said that he never saw
13 that page with the card swipes, our Exhibit No. 1?

14 A. He saw everything we had, so I don't know what
15 to tell you. My investigator is here, but we thoroughly
16 investigated the card swipes to the back door.

17 Q. You said that three witnesses identified him
18 at trial. Were they co-defendants?

19 A. They had -- I think lesser charges. I'm not
20 sure if they were charged in this. They were -- three
21 people, I think five in the car, three were in the back
22 seat, they were all charged. I think -- I don't know
23 if they ended up -- what happened to them, but they
24 gave lengthy, very lengthy, statements to the police.
25 I mean, it went on for hours when they were arrested,

1 and it was on video.

2 And so -- then they testified at the
3 co-defendant's trial because they were in the car
4 in the back seat when this happened. They were there.
5 I mean, I don't know if they were -- I don't remember
6 exactly where they were parked. I can't remember
7 at this time, but they gave lengthy statements to the
8 police. And they're also on video at that gas station,
9 I think.

10 Q. You were saying that you sat through the whole
11 trial, and I still appreciate that was quite a while
12 ago. Do you remember testimony from the FBI specialist
13 about the cell phones?

14 A. I remember him testifying, but I can't -- I don't
15 exactly remember ---

16 MS. MIMS: Objection, Your Honor.

17 THE COURT: Okay.

18 MS. MIMS: Relevance.

19 THE COURT: I don't know. I don't know.

20 Mr. Falk, will connect the dots. If he cannot, I will
21 just disregard it.

22 MS. MIMS: All right.

23 THE WITNESS: So what was your question
24 again?

25 BY MR. FALK:

1 Q. Do you remember -- did the State call an FBI
2 cell phone guy?

3 A. I think they did. They had pings. It was --
4 they somehow had -- yes, they -- yes.

5 Q. Do you recall his testimony that there were
6 no pings within a three-mile radius at the time for
7 Mr. Murphy?

8 A. I don't recall that. I'm not saying I don't --
9 I just don't recall. It was a couple of years ago,
10 I don't recall all his testimony.

11 Q. And what went first, just so I know? Did the
12 trial go first, the co-defendant's trial, then he pled?

13 A. Oh, yes. I mean, he -- yes, the co-defendant
14 had his trial. And it was after that, that De'Andre
15 took his plea, yes. It was way after the trial.
16 And it would have been the exact -- almost the same
17 witnesses that would have been at his trial that were
18 at the co-defendant's trial. And so I sat through
19 the whole thing and then heard all of the testimony.

20 MR. FALK: No further questions.

21 THE COURT: Recross.

22 MS. MIMS: I beg the Court's indulgence.

23 THE COURT: Okay.

24 (Pause.)

25 MR. FALK: Your Honor, could I go back

1 on direct?

2 THE COURT: Can you go back on direct?

3 MR. FALK: Can I go back on my cross?

4 THE COURT: Sure.

5 BY MR. FALK:

6 Q. If the cell phone expert said that his phone
7 was not within the three-mile radius, if that was said,
8 would that have made a difference in your recommendation
9 to plead?

10 A. If his phone wasn't with ---

11 Q. If Mr. Murphy's phone wasn't within the
12 three-mile radius at the time?

13 A. No, because -- no.

14 Q. Why?

15 A. Would that one thing make a difference, no,
16 I don't think so.

17 Q. Okay. Thank you.

18 A. There was too much other evidence against him.
19 I don't think I would not go to trial just on that.

20 Q. Thank you.

21 THE COURT: Does that prompt any questions
22 from the State?

23 MS. MIMS: Beg the Court's indulgence.

24 THE COURT: Sure.

25 REDIRECT EXAMINATION

1 BY MS. MIMS:

2 Q. Mr. Falk just asked you about FBI cell site data,
3 and it was your contention that made -- I'm sorry.
4 Would that have changed your decision to recommend
5 a plea for Mr. Murphy?

6 A. It would not.

7 Q. Okay.

8 MS. MIMS: No further questions.

9 THE COURT: Did that prompt anything
10 from you, Mr. Falk?

11 MR. FALK: No recross.

12 THE COURT: Sure, I know. Very well.
13 Is this witness free to leave, and is there any
14 objection?

15 MR. FALK: No objection, but I want
16 to recall my client.

17 THE COURT: Okay. All right. Oh, okay.
18 Okay. Great. Thank you. I don't know if that changes
19 for the State ---

20 MS. MIMS: We would like -- yeah, we would
21 like for Ms. Proctor to stay.

22 THE WITNESS: I'll stay.

23 THE COURT: Pull up a chair. Call your
24 next witness, please. You're done. Mr. Falk is ready.
25 All right.

1 MS. MIMS: Your Honor, can we briefly --
2 can I briefly meet with Mr. Falk before I call the next
3 witness?

4 THE COURT: Can you do -- I'm so sorry.

5 MS. MIMS: I'm sorry. Briefly meet with
6 Mr. Falk before I call the next witness?

7 THE COURT: Sure.

8 MS. MIMS: Okay.

9 THE COURT: As a matter of fact, it would
10 be a good time for us to take a comfort break. Eve,
11 what do you think? We'll take ten minutes. Thank you.

12 (Recess taken.)

13 (Back on the record.)

14 THE COURT: Thank you so much, and please
15 be seated. Yes, ma'am.

16 MS. MIMS: Yes. The State would like
17 to call one more witness, the investigator. I beg
18 the Court's indulgence.

19 THE COURT: Yeah.

20 MS. MIMS: The State would call Harry Long.

21 THE CLERK: Place your left hand on the
22 Bible, raising your right hand.

23 MR. HARRY LONG was called as a witness,
24 being duly sworn, was examined and testified as follows:

25 THE CLERK: Okay. You can be seated.

1 Please state your full name, spelling your last name.

2 THE WITNESS: Harry Long, L-O-N-G.

3 THE COURT: Your witness.

4 DIRECT EXAMINATION

5 BY MS. MIMS:

6 Q. Good morning, Mr. Long.

7 A. Good morning.

8 Q. Were you involved in the matter of De'Andre
9 Murphy versus State?

10 A. Yes, I was.

11 Q. Okay. And what was your position?

12 A. At the time, I was an investigator with the
13 public defender's office, which I am still employed
14 there. I assisted Attorney Lori Proctor on this case
15 and Teresa Norris.

16 Q. And how many years have you been in law
17 enforcement?

18 A. Approximately 27 years. Retired from the
19 sheriff's office, and then I've been in the public
20 defender's office nine years now.

21 Q. And you just testified that you worked with
22 Ms. Proctor and Ms. Norris on the investigative portion
23 of this matter, correct?

24 A. That is correct.

25 Q. And can you tell the Court a little bit about

1 your investigation in this matter?

2 A. Yes, ma'am. In summary, basically, I met with
3 De'Andre, and he gave me his version of what happened,
4 and he wasn't there. He was with some friends and
5 a girl. Eventually, we were able to track down this
6 girl and this guy that he was allegedly with, and they
7 were interviewed. They were interviewed separately,
8 and their times did not match, their locations did not
9 match. They had no alibi. Really, they -- one was
10 way before the event, one was way after. So it was not
11 anything that's going to help De'Andre with an alibi.

12 Q. Okay. And, specifically, about the key swipe
13 at the hotel, what was your investigation surrounding
14 that?

15 A. I conducted a search warrant on the hotel
16 for videos for inside, interior and exterior videos
17 and key card logs and key card swipes and stuff,
18 whatever, you know, their terminology was. They sent
19 us all the videos that they could come up with during
20 the timeframe that we asked for, and it did not show
21 Mr. Murphy coming in or out of the hotel.

22 And the key card swipe showed that there was
23 a key card swipe, but it was rejected, which could mean
24 a couple of things. It could be, you know, a drunk
25 person walking down the hall who could have used it.

1 Mr. Murphy could have used it; his mother could have
2 came downstairs and used it. There's just no way
3 to determine that with no video to supplement.

4 Q. And so there was no evidence that it was
5 or was not Mr. Murphy ---

6 A. No.

7 Q. --- using the key card?

8 MS. MIMS: Beg the Court's indulgence.

9 THE COURT: All right.

10 BY MS. MIMS:

11 Q. Were there any other witnesses that Mr. Murphy
12 asked either -- asked you or Ms. Proctor to look into?

13 A. I don't know that he asked me or his mother asked
14 me, but his dad was asked -- you know, for us to talk to
15 him, which I did. He gave an interview, which he was --
16 he told us he could not tell us exactly what time
17 De'Andre came into the room. He remembered him coming
18 in late, and he kind of was upset because he had to get
19 up and go to work. He didn't get a good night's sleep,
20 so he was upset. But he couldn't give us a good
21 timeframe that we could use, you know, that would help
22 Mr. Murphy in this case, and he did not want to come
23 to court. He kind of balk at that.

24 Q. Okay. And just to reiterate, there was not
25 corroborating evidence of Mr. Murphy entering or leaving

1 the hotel around the time the card was swiped, correct?

2 A. There was no evidence by the video supplied
3 by the hotel, nor by the key card, due to the fact,
4 you know, it could have been him, it could not have
5 been him, it could have been just anybody wandering
6 down the hall, went to the wrong room. It could have
7 been an abundance of things. There was no sufficient
8 evidence to definitely say Mr. Murphy used that card.

9 MS. MIMS: Beg the Court's indulgence.

10 THE COURT: All right.

11 MS. MIMS: No further questions, Your Honor.

12 THE COURT: All right. Cross-examination.

13 CROSS-EXAMINATION

14 BY MR. FALK:

15 Q. Just as far as not finding any video evidence,
16 you were aware that all the cameras at that hotel were
17 not working at the time?

18 A. Yes, I believe if I remember ---

19 Q. Can I show you?

20 A. Yes, I was going to ask you if you had some
21 notes.

22 Q. If I show you your report, would that help
23 refresh your memory?

24 A. Yes, sir. Just give me a second to review it.

25 Q. It's on the last five lines of the first page.

1 A. I'm sorry?

2 Q. The last five lines of the first page.

3 A. Okay.

4 (Pause.)

5 BY MR. FALK:

6 A. Okay.

7 Q. Having had an opportunity to look at your report,
8 do you remember if all the cameras were working?

9 A. According to this, they were not all archiving
10 correctly.

11 Q. Okay. So he could have come in and out?

12 A. It's possible.

13 MR. FALK: No further questions.

14 THE COURT: Any redirect?

15 MS. MIMS: Yes, Your Honor, briefly.

16 THE COURT: Okay.

17 REDIRECT EXAMINATION

18 BY MS. MIMS:

19 Q. Despite the cameras working or not working
20 properly, there was no other evidence that could
21 corroborate that Mr. Murphy was the person who swiped
22 the key card at the hotel?

23 A. None that I found.

24 Q. Okay.

25 MS. MIMS: No further questions.

1 THE COURT: All right. Recross?

2 MR. FALK: No, Your Honor.

3 THE COURT: All right. Is this witness
4 free to leave, and is there any objection?

5 MR. FALK: No objection.

6 MS. MIMS: No objection, Your Honor.

7 THE COURT: All right. Thank you, sir.
8 Call your next witness, please.

9 MS. MIMS: State rests.

10 THE COURT: Very well. And you wanted
11 to call ---

12 MR. FALK: No, Your Honor.

13 THE COURT: Okay, you do not want to call
14 your client. Okay. Very well. I think I have the
15 issues. If you want to make a closing, that's fine.
16 You certainly don't need to. I think I'm aware of the
17 issues. I've listened to the testimony, and I'll take
18 the matter under advisement.

19 MR. FALK: Thank you.

20 THE COURT: Thank you. What I'll do
21 is I'll advise one side or the other by letter to --
22 and I'll ask at that time for a proposed order. Okay.
23 Thank y'all so much.

24 (End of Transcript of Record)

25

CERTIFICATE OF REPORTER

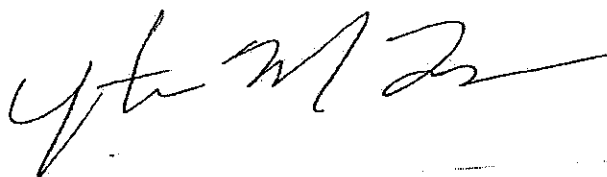
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State of South Carolina)
County of Charleston)

I, the undersigned, Yvestre Torres, Circuit 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 hearing of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 3rd of November, 2022.

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

January 18, 2023



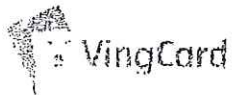
Yvestre Torres
Circuit Court Reporter



Locklink transfer lock events



| Event | Date & Time | Event description | Event Details | Keycard type |
|---------|------------------------|---|----------------------------------|--------------|
| User ID | Name (Room) | User group | | |
| | | <i>(Status = checked out or removed cardholders as of the print time)</i> | | |
| 116 | 4/20/2016 3:22 AM DST | Card rejected, Valid card 3479 (425) | Blocked by deadbolt GUEST | SINGLE ROOM |
| 117 | 4/20/2016 1:37 AM DST | Opened/closed, Valid card 3611 (425) | Deadbolt not overridden GUEST | SINGLE ROOM |
| 118 | 4/19/2016 10:27 AM DST | Opened/closed, Valid card 3479 (425) | Deadbolt not overridden GUEST | SINGLE ROOM |
| 119 | 4/19/2016 1:56 AM DST | Card rejected, Valid card 3479 (425) | Blocked by deadbolt GUEST | SINGLE ROOM |
| 120 | 4/18/2016 11:25 PM DST | Opened/closed, Valid card 3611 (425) | Deadbolt not overridden GUEST | SINGLE ROOM |
| 121 | 4/18/2016 10:40 PM DST | Opened/closed, Valid card 3611 (425) | Deadbolt not overridden GUEST | SINGLE ROOM |
| 122 | 4/18/2016 10:15 PM DST | Opened/closed, Valid card 3479 (425) | Deadbolt not overridden GUEST | SINGLE ROOM |
| 123 | 4/18/2016 9:28 PM DST | Opened/closed, Valid card 3611 (425) | Deadbolt not overridden GUEST | SINGLE ROOM |
| 124 | 4/18/2016 8:37 PM DST | Opened/closed, Valid card 3611 (425) | Deadbolt not overridden GUEST | SINGLE ROOM |
| 125 | 4/18/2016 8:33 PM DST | Opened/closed, Valid card 3611 (425) | Deadbolt not overridden GUEST | SINGLE ROOM |
| 126 | 4/18/2016 8:06 PM DST | Opened/closed, Valid card 3856 (425) | Deadbolt not overridden GUEST | SINGLE ROOM |
| 127 | 4/18/2016 4:07 PM DST | Opened/closed, Valid card 3856 (425) | Deadbolt not overridden GUEST | SINGLE ROOM |
| 128 | 4/18/2016 3:19 PM DST | Opened/closed, Valid card 3479 (425) | Deadbolt not overridden GUEST | SINGLE ROOM |
| 129 | 4/18/2016 2:48 PM DST | Opened/closed, Valid card 3479 (425) | Deadbolt not overridden GUEST | SINGLE ROOM |
| 130 | 4/18/2016 2:40 PM DST | Opened/closed, Valid card 3479 (425) | Deadbolt not overridden GUEST | SINGLE ROOM |
| 131 | 4/18/2016 2:40 PM DST | Opened/closed, Valid card 3479 (425) Battery low | Deadbolt not overridden GUEST | SINGLE ROOM |
| 132 | 4/17/2016 11:53 PM DST | Card rejected, Valid card 3479 (425) Repeated use | Blocked by deadbolt GUEST | SINGLE ROOM |
| 133 | 4/17/2016 8:51 PM DST | Opened/closed, Valid card 3588 (425) | Deadbolt not overridden GUEST | SINGLE ROOM |
| 134 | 4/16/2016 11:16 PM DST | Opened/closed, Valid card 3856 (425) | Deadbolt not overridden GUEST | SINGLE ROOM |
| 135 | 4/16/2016 7:17 PM DST | Opened/closed, Valid card | Deadbolt not overridden | |



Locklink transfer lock events

| Event | Date & Time | Event description | Event Details |
|--|------------------------|--|---|
| User ID | Name (Room) | User group | Keycard type |
| <i>Italics = checked out or removed cardholders as of the print time</i> | | | |
| 176 | 4/21/2016 11:28 PM DST | Opened/closed, Valid card 3518 (224) | Deadbolt not overridden GUEST SINGLE ROOM |
| 177 | 4/21/2016 7:22 PM DST | Opened/closed, Valid card 3518 (224) | Deadbolt not overridden GUEST SINGLE ROOM |
| 178 | 4/21/2016 5:42 PM DST | Opened/closed, Valid card 3518 (224) | Deadbolt not overridden GUEST SINGLE ROOM |
| 179 | 4/21/2016 5:30 PM DST | Opened/closed, Valid card 3077 (224) | Deadbolt not overridden GUEST SINGLE ROOM |
| 180 | 4/21/2016 5:14 PM DST | Opened/closed, Valid card 3077 (224) | Deadbolt not overridden GUEST SINGLE ROOM |
| 181 | 4/21/2016 8:08 AM DST | Opened/closed, Valid card 3518 (224) | Deadbolt not overridden GUEST SINGLE ROOM |
| 182 | 4/21/2016 7:04 AM DST | Opened/closed, Valid card 3077 (224) | Deadbolt not overridden GUEST SINGLE ROOM |
| 183 | 4/20/2016 10:43 PM DST | Opened/closed, Valid card 3518 (224) | Deadbolt not overridden GUEST SINGLE ROOM |
| 184 | 4/20/2016 9:18 PM DST | Opened/closed, Valid card 3518 (224) | Deadbolt not overridden GUEST SINGLE ROOM |
| 185 | 4/20/2016 8:45 PM DST | Opened/closed, Valid card 3518 (224) | Deadbolt not overridden GUEST SINGLE ROOM |
| 186 | 4/20/2016 8:24 PM DST | Opened/closed, Valid card 3077 (224) | Deadbolt not overridden GUEST SINGLE ROOM |
| 187 | 4/20/2016 7:52 PM DST | Opened/closed, Valid card 3518 (224) | Deadbolt not overridden GUEST SINGLE ROOM |
| 188 | 4/20/2016 5:01 PM DST | Opened/closed, Valid card 3077 (224) | Deadbolt not overridden GUEST SINGLE ROOM |
| 189 | 4/19/2016 6:39 PM DST | Opened/closed, Valid card 3518 (224) | Deadbolt not overridden GUEST SINGLE ROOM |
| 190 | 4/19/2016 5:45 PM DST | Opened/closed, Valid card 3077 (224) | Deadbolt not overridden GUEST SINGLE ROOM |
| 191 | 4/19/2016 4:49 PM DST | Opened/closed, Valid card 3077 (224) | Deadbolt not overridden GUEST SINGLE ROOM |
| 192 | 4/19/2016 1:28 PM DST | Opened/closed, Valid card 12472 <i>Darlene, Darlene</i> | Deadbolt not overridden PROPERTY MGR PM - MASTER DBO |
| 193 | 4/19/2016 1:22 PM DST | Opened/closed, Valid card 12472 <i>Darlene, Darlene</i> | Deadbolt not overridden PROPERTY MGR PM - MASTER DBO |
| 194 | 4/19/2016 7:04 AM DST | Opened/closed, Valid card 3077 (224) | Deadbolt not overridden GUEST SINGLE ROOM |
| 195 | 4/19/2016 6:46 AM DST | Opened/closed, Valid card 3077 (224) | Deadbolt not overridden GUEST SINGLE ROOM |

County of Charleston Berkeley)

Case No. 2019-CP-10-04694)

DeAndre Murphy, 378303)

Applicant / Petitioner)

vs.)

State of South Carolina,)

Respondent.)

ORDER

FILED
2022 NOV 22 PM 3:08
JULIE J. ARMISTRONG
CLERK OF COURT

AS
SOL
AG
ATTY

This post-conviction relief case came before the court for a hearing. Having now heard this matter, the court orders as indicated herein.

1. The application for post-conviction relief is hereby: denied granted under advisement; a formal order will be filed (see below - No.6)

2. Motion(s) was/were heard in this case and the court orders: The motion to dismiss and/or for summary judgment is hereby granted denied under advisement, based upon the statute of limitations and/or the successive nature of the application or other reason as follows:

3. A conditional order of dismissal was previously filed in this case. Upon review of the matter, the court finds:
 Good cause as to why the case should not be dismissed has been shown in response to the order of dismissal; therefore, a hearing on the merits of the application shall be scheduled.
 The court has considered the response to the conditional order of dismissal and finds that good cause has not been shown or no response has been filed to the conditional order of dismissal; therefore, the application is hereby dismissed.

4. The application was freely, voluntarily, and intelligently withdrawn as indicated on the record; therefore, this case is dismissed with prejudice without prejudice.

5. Other: _____

6. The court further orders:
 The Attorney General Applicant's counsel is directed to submit to the court a proposed order and to serve the order on opposing counsel within 30 days.

Both sides are directed to submit proposed orders to the court and to serve the orders on each other within _____ days.

The court does not request proposed orders.

IT IS SO ORDERED.

Date: 11 / 03 / 2022

Charleston, S.C.

Court Reporter: Yvestre Torres

Attorney for State: Lauren T. Mims & Samantha J. Weidauer

Attorney for Defendant: James K. Falk



Presiding Judge

STATE OF SOUTH CAROLINA)
 COUNTY OF CHARLESTON)
 De'Andre Murphy, #378303,)
 Applicant,)
 v.)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT
 CASE NO. 2019-CP-10-4694

2024 MAR 18 PM 12:53
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY NSL

FILED

**ORDER OF DISMISSAL
 WITH PREJUDICE**

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by De'Andre Murphy (Applicant) on September 11, 2019. Respondent made its return requesting an evidentiary hearing. On November 3, 2022, an evidentiary hearing convened before the Honorable Diane S. Goodstein. Applicant was present and represented by James K. Falk, Esquire. Assistant Attorney General Samantha J. Weidauer represented Respondent. At the hearing, Applicant testified on his behalf. Respondent called as witnesses plea counsel Lori Proctor and investigator Harry Long. After hearing the testimony at the PCR hearing and reviewing the records, this Court finds that Applicant did not meet his burden of proof and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving a thirty-year sentence. In ^{DP} May 2018, the Charleston County Grand Jury indicted Applicant for murder (2018-GS-10-02636). These charges arose from the fatal shooting of Eric S. Brantley on April 20, 2016. On April 1, 2019, Applicant appeared before the Honorable R. Markley Dennis and pled guilty to the lesser included offense of voluntary manslaughter. Lorelle Proctor and Teresa Norris, Esquires, represented Applicant, and Assistant Solicitor Edward Regin Corvey III

AK
 GS
 SOL
 AG

represented the State. Judge Dennis sentenced Applicant to thirty years. Applicant did not appeal.

CURRENT APPLICATION

On September 11, 2019, Applicant filed the current PCR application alleging:

“Ineffective Assistance of Counsel”

1. “Due process violation of 4th, 5th, 6th, and 14th Amendment rights”
2. Involuntary Plea

At the evidentiary hearing, Applicant proceeded on allegations of involuntary guilty plea and ineffective assistance of counsel based on counsel’s failure to investigate.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the Charleston County Clerk of Court records of the underlying conviction, Applicant’s records from the Department of Corrections, and the plea transcript. This Court also had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony. After a careful review based on the Strickland standard set forth below, this Court finds Applicant failed to carry his burden of proof. Below are this Court’s findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). In evaluating allegations of ineffective assistance of counsel, courts apply the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668 (1984). First, an applicant must prove counsel’s performance was deficient. Id. Under this prong, courts measure an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the

exercise of reasonable professional judgment,” and an applicant must overcome this presumption to receive relief. *Id.* at 117-18, 386 S.E.2d at 625. Second, an applicant must prove counsel’s deficiency 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.” *Id.*

In the context of a guilty plea, the analysis of counsel's performance under the first prong of Strickland remains unchanged: the applicant must show counsel's representation fell below an objective standard of reasonableness. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985). To show prejudice, an applicant must "must show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." *Id.* at 59.

To find a guilty plea is knowing and voluntary, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 385 U.S. 238, 89 S. Ct. 1709 (1969); Dover v. State, 304 S.C. 433, S.E.2d 391 (1991). Courts can consider the guilty plea transcript as well as evidence at PCR hearing when determining guilty plea issues. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

Involuntary Plea

Applicant first contends his plea was not voluntarily entered because it was entered based on the advice of counsel and not because he wanted to. Applicant did not prove this ground.

At the PCR hearing, Applicant testified counsel advised him to plea due to the weight of evidence against him, and he pled because he felt like his only choice was prison or pleading guilty. Plea counsel testified she advised Applicant to plead because she believed, based on her investigation, Applicant would not win at trial and would potentially receive life imprisonment. She explained the State’s evidence included a surveillance video capturing Applicant on video at the crime scene as well as expected testimony of three co-defendants. As part of her preparation,

counsel stated she watched the trial of one of Applicant's co-defendants; she stated Applicant's name was mentioned repeatedly at that trial, and based on her observation, she believed there was a 99% chance they would lose at trial. However, counsel testified she made Applicant aware of the nature of the charges against him, discussed all relevant evidence with him prior to plea, and would have gone to trial without hesitation if Applicant wanted to.

Initially, this Court finds counsel's foregoing testimony credible. Based on this testimony, this Court finds counsel's advice to plead guilty was reasonable under prevailing professional norms and not deficient. Likewise, this Court finds Applicant pled guilty knowingly and voluntarily. Initially, this Court finds credible counsel's testimony that she explained the plea to Applicant and the constitutional rights he was waiving. Further, the plea court apprised Applicant of the nature of charges against him and possible sentences. (Tr. 2-5). The Court also advised Applicant of the constitutional rights he was waiving, including the right to a jury trial, the right to confront his accusers, and the right to remain silent. (Tr. 8-9). Based on the foregoing, this Court finds counsel's advice was not ineffective, and Applicant entered his plea knowingly and voluntarily. Thus, this claim is denied.

Failure to Investigate

Applicant next contends plea counsel was ineffective for failing to thoroughly investigate evidence related to Applicant's location at time of crime and physical appearance, which Applicant asserts induced him to plead guilty. This Court finds Applicant did not prove this ground.

Initially, this Court finds credible plea counsel's testimony regarding her investigation. Specifically, counsel credibly testified she hired an investigator and investigated potential alibis; visited the crime scene multiple times; reviewed co-defendant's statements to law enforcement; attended a co-defendant's trial to assess the State's case; and had the investigator look into

evidence concerning key card swipes and Applicants blonde hair. Investigator Harry Long credibly testified he interviewed all possible alibis and conducted an investigation. Based on the foregoing, counsel's investigation was reasonable within prevailing professional norms and not deficient. Further—and critically—Applicant did not introduce any credible evidence (through, for example, the testimony of one of his alleged alibis) of what counsel would have uncovered upon a further investigation and thus did not prove prejudice. Thus, this claim is denied.

CONCLUSION

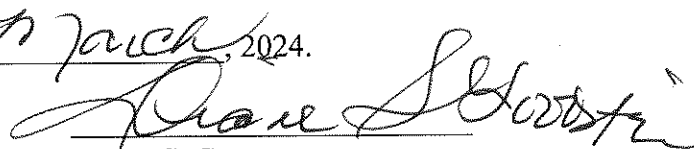
Based on the foregoing, this Court concludes Applicant has not established any constitutional violations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice.

Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). If Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 71.1(g), SCRPC. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

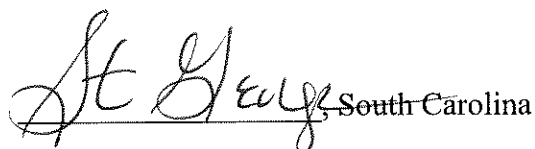
IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and
2. Applicant shall be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 12 day of March, 2024.



DIANE S. GOODSTEIN
Presiding Judge
Ninth Judicial Circuit



ERC/0316980
WITNESSES

DOCKET NO. 2018-GS-10-02636

North Charleston Police Department

The State of South Carolina
County of Charleston

AGENCY CASE NUMBER

2016-011693

ARREST WARRANT NUMBER

DATE OF ARREST

04/28/2016

ACTION OF GRAND JURY


TRUE GILL

Foreperson of Grand Jury Date: MAY 08 2018

VERDICT

Foreperson of Petit Jury

Date:

COURT OF GENERAL SESSIONS
MAY TERM 2018

THE STATE

VS.

DE ANDRE MARQUELL MURPHY
B/M DOB: 05-22-1998

Indictment for

MURDER

SC Code: § 16-03-0010
CDR Code: 0116

FILED

5/24/2018 1:23:07 PM
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

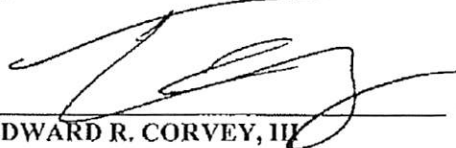
INDICTMENT

At a Court of General Sessions, convened May 2018, the Grand Jurors of Charleston County present upon their oath:

MURDER

That in Charleston County, South Carolina on or about April 20, 2016, the defendant, De Andre Marquell Murphy, while acting alone or in concert with others, with malice aforethought did kill and murder Eric Brantley by means of shooting, and Eric Brantley did die in Charleston County as a proximate result thereof on or about April 20, 2016; in violation of §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.


EDWARD R. CORVEY, III
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON
STATE VS.

INDICTMENT/CASE#: 2018-GS-10-02636
A/W: 2018-GS-10-02636
Date of Offense: 04/20/2016
S.C. Code §: 16-03-0010
CDR Code #: 0116

DE ANDRE MARQUELL MURPHY
AKA: DeAndre Marquell Murphy, De Andre Marquell Murphy
Race: Black/African American Sex: M
DOB: [REDACTED] SS#: [REDACTED]
Address: [REDACTED]
City, State, Zip: North Charleston, SC 29405-3409
DL# [REDACTED] SID# SC02221614

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

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

TO: Voluntary Manslaughter
In violation of § 16-03-0050 of the S.C. Code of Laws, bearing CDR Code # 0217

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

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

ATTEST: [Signature] 101454 SC Bar # Defendant X DeAndre Murphy [Signature] 4581 SC Bar #
Edward R. Corvey, III, Assistant Solicitor General Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center,
for a determinate term of 30 days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which
are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: _____
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections. Sued April 28, 2016
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____
Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment
Payment Terms: _____ Obtain GED

Set by SCDPPPS _____
Attend Voc. Rehab. Or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling

Recipient: _____
*Fine: _____ \$ _____
§14-1-206 (Assessments 107.5%) \$ _____
§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00
§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____
§56-5-2995 (DUI Assessment) \$12 \$ _____
§56-1-286 (DUI Breath Test) \$25 \$ _____
Proviso (Public Def/Probation) \$500 \$ _____
§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
§14-1-213 (Drug Court Surcharge) \$150 \$ _____
§50-21-114 (BUI Breath Test Fee) \$50 \$ _____
§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
3% to County (if paid in installments) \$ \$ 3.75
TOTAL \$ 128.75

Random Drug/Alcohol Testing
Fine may be pd. in equal consecutive weekly/monthly
pmts. of \$ _____ Beginning _____
\$ _____ Paid to Public Defender Fund
Other: ~~DEFERRED SENTENCE (Plan Accepted)~~ [Signature]
Judge: _____ [Signature]
Date: 11/15/18 [Signature]

Clerk of Court/Deputy Clerk: [Signature]
Court Reporter: [Signature]
Appointed PD or appointed other counsel,
Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.
Presiding Judge: [Signature]
Judge Code: 20100
Sentence Date: 11/15/18