

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County
Frank R. Addy, Circuit Court Judge

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FEB 22 2013

S.C. Supreme Court

CHARLES GORY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-212310

APPENDIX

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ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG

2010-GS-42-0765

THE STATE of SOUTH CAROLINA

-VS-

CHARLES EDWARD GORY,

Defendant.

TRANSCRIPT OF RECORD

May 18, 2010

Spartanburg, South Carolina

Ordered: November 17, 2010

Delivered: December 20, 2010

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 JUL 18 PM 12:41
M. HOPE BLACKLEE

B E F O R E:

THE HONORABLE J. MARK HAYES, II, Presiding Judge.

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

MR. ZACHARY ELLIS, Esquire
Assistant Solicitor for the State

MS. KATHLEEN HODGES, Esquire
Public Defender for the Defendant

SC Attorney General
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Referred to D. W. White
Answered _____

Pamela Faucette
Circuit Court Reporter

PAMELA FAUCETTE, CVR - 864-574-9534 or 336-260-2864

I N D E X

(No witnesses were called by the State or the Defense.)

State's Exhibits:

Marked:

Received:

(None)

Defendants' Exhibits:

Marked:

Received:

(None)

Charles Edward Gory Plea:

Page:

Recitation of Charges.....8
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Investigator's Comments.....13
Ms. Hodges' Comments.....14
Mr. Gory's Friends'
Comments.....16
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Reporter's Note: This transcript may contain quoted material. Such material is reproduced as read or quoted by the speaker.

May 18, 2010

2:41 p.m.

MS. HODGES: Charles Gory?

(The Defendant stepped forward with his attorney for the plea.)

MR. ELLIS: May it Please the Court, Your Honor?

The State calls Charles Edward Gory, indictment 2010-GS-42-0765, indicted for assault and battery with intent to kill. He's pleading to the indictment without negotiations or recommendations. Ms. Kathy Hodges represents him.

I'm also handing up an order of restitution in this matter, Your Honor.

(Documents handed up to the Court.)

THE COURT: Are you Mr. Gory?

THE DEFENDANT: Yes, sir.

THE COURT: Sir, please raise your right hand and allow the clerk of court to swear you in.

(Whereupon,

CHARLES EDWARD GORY

first being duly sworn, testified as follows:)

(Brief Pause)

THE COURT: Sir, you intend to plea today to assault and battery with intent to kill?

THE DEFENDANT: Yes, sir.

THE COURT: All right. Sir, if ever during this

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HARRISBURG COUNTY
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M. HOPE BLACKLETT

1 process, you want to speak with your lawyer, you just let
2 me know and I'll allow you to talk your lawyer in
3 private, okay?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And, sir, I need to let you know, we are
6 making recording of everything that happens here. This
7 lady that is sitting right here beside me (indicating) is
8 a court reporter.

9 I tell you that because I need you to really speak
10 up because both she and I need to be able to hear you.
11 Okay?

12 THE DEFENDANT: Yes, sir -- yes, sir.

13 THE COURT: Thank you. And, if ever during this
14 process, you can't hear me or one of the lawyers that is
15 participating in this hearing, let me know immediately
16 and I or the lawyers will speak up, okay?

17 THE DEFENDANT: Okay.

18 THE COURT: How old are you?

19 THE DEFENDANT: Fifty-three (53).

20 THE COURT: How far did you go in school?

21 THE DEFENDANT: Ninth (9th) grade.

22 THE COURT: Did you ever get a GED?

23 THE DEFENDANT: No, sir.

24 THE COURT: Where are you in school when you
25 dropped out?

1 THE DEFENDANT: Sir?

2 THE COURT: Where were you in school when you
3 dropped out?

4 THE DEFENDANT: Oh, Dorman high.

5 THE COURT: Are you married, single, divorced?

6 THE DEFENDANT: I married separated.

7 THE COURT: Do you have children?

8 THE DEFENDANT: No, sir.

9 THE COURT: Do you have a job outside the home?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: What do you do?

12 THE DEFENDANT: I work for a lumber company
13 (phonetic).

14 THE COURT: Have you ever served in the military?

15 THE DEFENDANT: No, sir.

16 THE COURT: And, when you got arrested on this
17 charge originally, how long a time did you spend in jail
18 before you got out on bond?

19 THE DEFENDANT: I believe it was two (2) days.

20 THE COURT: Sir, within the last twenty-four (24)
21 hours, have you consumed any type of substance that's
22 adversely or negatively affecting your ability to
23 understand what we're doing today?

24 THE DEFENDANT: No, sir.

25 THE COURT: Have you ever been treated for any type

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JANAMBURG COUNTY
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1 of substance abuse, for drugs or alcohol abuse?

2 THE DEFENDANT: Yeah, they gave me some during the
3 last time.

4 THE COURT: All right. Were you treated for drugs
5 or alcohol?

6 THE DEFENDANT: Alcohol.

7 THE COURT: Oh, was that at the ATU?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: About how long ago was that?

10 THE DEFENDANT: It was about seventeen (17) years
11 ago.

12 THE COURT: And do you think it was successful?

13 THE DEFENDANT: Well, not really because I started
14 back drinking.

15 THE COURT: All right. Are you satisfied with the
16 work of your lawyer?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you believe you have had enough time
19 to talk to her about the facts that are behind this case,
20 the legal elements of the charge that is against you, and
21 any possible defenses you might have?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right. And, sir, has anybody come
24 to you and threatened you in any way or made you any
25 promises in order to get you to make the decision to

1 enter this plea?

2 THE DEFENDANT: No, sir.

3 THE COURT: The decision has been made by you freely
4 and voluntarily?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Sir, I need for you to understand that,
7 under the law, you are presumed innocent of this charge.
8 And you do have a right to have a jury trial on this
9 charge.

10 At any trial that would take place, it's the State
11 that has the burden of proof. And the State would have
12 to convince all twelve (12) members of a jury that you
13 are, in fact, guilty beyond a reasonable doubt of this
14 charge.

15 Now, do you understand that you have a right to the
16 jury trial?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And do you wish to give up your right to
19 that jury trial?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Sir, I need for you to understand that
22 there are other very important constitutional rights that
23 you are entitled to but that you have to give up in order
24 to enter a plea.

25 You have to give up your right to confront and

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1 cross-examine the State's witnesses. You also have to
2 give up your right to present evidence which you or your
3 lawyer might feel would establish a defense to this
4 charge.

5 And you have to give up your right to remain silent
6 and you have to give up your right of subpoena. Do you
7 understand all of those rights?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you wish to give up all those
10 rights?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. Sir, the gentleman that is
13 standing over to your far right (indicating), the one
14 that is over here to your far right, the tall fellow ---

15 THE DEFENDANT: Yes, sir.

16 THE COURT: --- he is the solicitor. And he is
17 going to give us the facts behind this case. Please,
18 listen to him.

19 MR. ELLIS: Thank you, Your Honor. This occurred
20 November 28th, two thousand, nine (2009), at the home of
21 Laf -- Lafayette Taylor, which is at [REDACTED]
22 here in Spartanburg, Your Honor, in Spartanburg County.
23 Your Honor, on that date, Mr. Taylor was sitting on
24 his porch of his residence and he stated that the
25 Defendant, Mr. Gory, basically walked to his house, Your

1 Honor. Mr. Taylor began to walk out in the yard to see
2 him.

3 Mr. Gory presented a 12-gauge shotgun, Your Honor.
4 He pointed it at Mr. Taylor.

5 He, then, approached Mr. Taylor from a distance of
6 approximately five (5) feet away and fired the shotgun
7 into Mr. Taylor's chest, Your Honor.

8 Your Honor, Mr. Taylor -- Mr. Taylor, then, was able
9 to get the shotgun from Mr. Gory and began to basically
10 defend himself by hitting Mr. Gory with the shotgun until
11 he basically knocked Mr. Gory out, Your Honor, and also
12 broke the shotgun in the process, at which point, of
13 course, he, then, collapsed. Mr. Taylor did also.

14 There was an eyewitness to this -- this entire
15 incident, Your Honor, across the street. There was also
16 a few other people that were very nearby, within a couple
17 of houses or across the street, Your Honor, who also
18 responded to the scene very quickly after hearing the
19 gunshot.

20 Ron -- Investigator Leonard, who is with me today,
21 was the investigating officer. He arrived on scene and
22 began to take statements, Your Honor, from the various
23 witnesses and also from Mr. Taylor, who he located at the
24 hospital, Your Honor.

25 Your Honor, there are some medical bills that are

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1 outstanding for Mr. Taylor's treatment since he was
2 wounded in this -- this attack.

3 The State Office of Victim's Assistance or SOVA
4 (phonetic) has agreed to -- to cover those costs, Your
5 Honor. We would ask that, that be ordered to be paid to
6 SOVA as far as any excess that is due, Your Honor.

7 Your Honor, Investigator Leonard is present as I
8 said. I believe he wishes to speak.

9 And also, Mr. Taylor, the victim, is here, Your
10 Honor. And I think he would like to be heard at the
11 appropriate time as well.

12 THE COURT: Mr. Gory, were you able to hear the
13 solicitor when he told me the facts?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And do you believe that, as he stated
16 the facts to me, that he is substantially correct?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And, sir, do you understand that on this
19 particular charge of assault and battery with intent to
20 kill that I could sentence you up to twenty (20) years
21 today?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And, sir, do you understand that this
24 particular charge that you're pleading to is classified
25 as a violent offense under the law and also classified as

1 a most serious offense under the law?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And have you been able to talk to your
4 lawyer as to the consequences and ramifications of this
5 charge being classified as a violent and also as a most
6 serious offense?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Understanding the possible sentence I
9 could impose, as well as the two classifications of
10 violent and most serious, do you still wish to enter this
11 plea?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Sir, are you, in fact, guilty of assault
14 and battery with intent to kill?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Have you been able to hear all of my
17 questions?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Have all of your answers been truthful
20 and honest?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Discovery has been shared with the
23 Defense?

24 MR. ELLIS: Yes, sir, Your Honor.

25 THE COURT: Prior record?

1 MR. ELLIS: Yes, sir. 1984, assault and battery,
2 also voluntary manslaughter; 1997, criminal domestic
3 violence; 1998, driving under suspension; 2001, operating
4 uninsured motor vehicle, driving under suspension; 2002,
5 driving under the influence; 2003, petit larceny.

6 Also, Your Honor, I would note although only one
7 shell was fired, the police did locate three additional
8 shotgun shells on the Defendant's person when they
9 arrived on the scene, Your Honor.

10 (Brief Pause)

11 THE COURT: All right. Now, shells, does that mean
12 fired?

13 MR. ELLIS: No, no, sir, unfired shells.

14 THE COURT: All right.

15 MR. ELLIS: One shell was fired and three unfired
16 shells also.

17 THE COURT: All right. Now, did you say the victim
18 did wish to address the Court?

19 MR. ELLIS: Yes, sir, he does. And also
20 Investigator Leonard.

21 THE COURT: All right. You are Mr. Tullis, right?

22 MR. TULLIS: Yes, sir.

23 THE COURT: All right. You're not the victim, so,
24 you are the victim?

25 MR. TAYLOR: Uh-huh (affirmative).

1 THE COURT: Sir, if you would, I just need to let
2 you know that we are making a recording of everything
3 that happens here. So, when you speak, speak up loud
4 enough, so, that both the court reporter and I can hear
5 you. And just start by giving us your full name.

6 MR. TAYLOR: Lafayette Taylor (phonetic).

7 THE COURT: Yes, sir, Mr. Taylor? I'll be more than
8 happy to hear from you.

9 MR. TAYLOR: I would just like to state that...

10 (Mr. Taylor becomes emotional.)

11 MR. TAYLOR: I am sorry. He is not a bad person,
12 but that day the alcohol took over him and I got hurt.
13 And I still have four fingers (phonetic) in me now and it
14 still bothers me to this day. But he is not a bad
15 person.

16 THE COURT: All right.

17 MR. TAYLOR: Excuse me.

18 THE COURT: Thank you, sir. Yes, sir?

19 INVESTIGATOR LEONARD: Your Honor, I'm Detective
20 Leonard (phonetic) with the Sheriff's office. Based on
21 the facts of this case, Mr. Gory, and evidence found on
22 him showing that he brought three other shotgun shells
23 with him to that crime scene, we just believe that, if a
24 miracle hadn't happened in this thing, that we would be
25 under worse circumstances and that our victim would be

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JEFFERSON COUNTY
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1 deceased.

2 And based off of the prior record of Mr. Gory, we
3 don't want Mr. Gory the opportunity to have the lucky
4 charm because he's hurt two other individuals already in
5 his past. So, it is the stance of the Sheriff's office
6 that he receive the maximum sentence.

7 THE COURT: Thank you, sir. Anything else from the
8 State?

9 MR. ELLIS: No, sir, Your Honor.

10 THE COURT: Yes, ma'am?

11 MS. HODGES: Thank you, Your Honor. May it please
12 the Court? Your Honor, I can tell the Court that, since
13 the beginning of my representation of Mr. Gory, he has
14 expressed to me nothing but remorse for the incident that
15 occurred in November of last year.

16 He recognizes, Your Honor, that he faces very
17 serious charges and very -- and a very serious penalty.
18 He is thankful that it did not have a different result.

19 And -- and while we certainly do appreciate the
20 Sheriff's Office stance and concern, Your Honor, Mr. Gory
21 tells me and I think -- and I think the Court saw some of
22 the angst that Mr. Taylor expressed, alcohol very
23 definitively was the overriding factor on this particular
24 day.

25 Mr. Gory had been drinking whiskey. There were no

1 problems or animosity or any sort of disagreement or
2 dispute between Mr. Gory and Mr. Taylor, which makes this
3 case all that more troubling is because there was nothing
4 that -- that spurred this on, Your Honor, other than some
5 significantly impaired and -- clouded judgment of Mr.
6 Gory his behalf because of the alcohol that he had drunk.

7 Your Honor, Mr. Gory indicates to me that, you know,
8 some of this, in terms of -- of leading up to the actual
9 incident, some of it he actually does not remember. I
10 think that is part of -- of the -- the alcohol
11 consumption.

12 He did serve some time in prison, Your Honor, as his
13 record indicates. The last seventeen (17) years he has
14 been working for a lumber company here in Spartanburg.

15 In this day and age, Your Honor, that's quite
16 impressive not only for a public defender client but
17 essentially for anybody in this community.

18 And there are many folks that, you know, are coming
19 from job to job. And Mr. Gory hasn't been doing that.
20 He has essentially had a steady employment record for the
21 last seventeen (17) years; been a -- been a productive
22 member of the community.

23 He has had some minor skirmishes with the law since
24 his previous serious conviction, or most serious
25 conviction, Your Honor, but he has essentially, for the

1 most part, has been a productive member.

2 He had gone to AA meetings. They were helpful
3 somewhat in the past, but he, like many who suffer from
4 an alcohol addiction problem, did lapse back into those
5 behaviors that -- that essentially led to the tragic
6 incident that happened in November of two thousand, nine
7 (2009).

8 With Mr. Gory, Your Honor, are actually two folks in
9 the audience, both of them know from work from work or -
10 in our -- or in the community. And, Your Honor, I would
11 actually them to come up one at a time just to address
12 the Court.

13 (Off-the-Record Comments)

14 (The witness stepped forward to speak.)

15 DEPUTY SMITH: Just, please, one at a time.

16 MS. HODGES: You all just come up one at a time.

17 THE COURT: Ma'am, if you would, just start by

18 giving us your full name and speak up loud enough, so

19 that both the court reporter and I can hear you.

20 MS. MCCONNELL: Julie McConnell (phonetic).

21 THE COURT: Yes, ma'am, Ms. McConnell?

22 MS. MCCONNELL: I have worked with Mr. Gory since
23 1993. And he is always at work and he always does what
24 he is asked to do.

25 We have never had one problem with him; couldn't ask

1 for a better employee.

2 THE COURT: Thank you, ma'am.

3 (The witness stepped forward to speak.)

4 THE COURT: Just come right up here, ma'am, beside
5 Ms. Hodges.

6 (The witness complied with request.)

7 THE COURT: Yes, ma'am, be more than happy to hear
8 from you. If you would, just speak up loud enough, so,
9 the court reporter and I can hear you.

10 MS. SMITH: All right.

11 THE COURT: And start by giving us your full name.

12 MS. JONES: My name is Elizabeth Jones (phonetic).
13 And I live down there close to Charles Gory. And he is
14 very nice fellow.

15 He just made a mistake and I think he is very sorry
16 about it. He didn't intend to do it. But, sometimes, we
17 all we do things to a lot of people that they don't want
18 to try to. He is not the only one.

19 But he is a good guy. And he tries to do the right
20 thing. And he helps the children and he helps with our
21 church activities and everything.

22 So, I'd just say that, if -- if you can, give him a
23 chance because he -- he is a good guy. And he works.

24 And he tries to help everybody in the community if he can
25 help them.

1 And I just think and hope that you can take that
2 into consideration. Thank you.

3 THE COURT: Thank you, ma'am. Mr. Gory, were you
4 able to hear what your lawyer said to me earlier?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And do you agree with what she stated to
7 me?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Mr. Gory, is there anything that you
10 would like to say or would like for me to know or
11 consider?

12 THE DEFENDANT: Well, just that I am sorry for
13 everything that happened. I didn't mean for none of it
14 to happen and wish I could change it.

15 THE COURT: Thank you, sir.

16 (Brief Pause)

17 SENTENCING

18 THE COURT: I'll find that there is a substantial
19 factual basis for the plea. I'll find that the
20 Defendant's decision to enter the plea has been made
21 freely, voluntarily, and knowingly and intellectually by
22 him.

23 I'll find that he's received the services from a
24 very competent and able legal counsel, services that he
25 has indicated to the Court he is satisfied with and has

1 relied on in reaching the decisions that he has made.
2 Therefore, I will accept the plea.

3 (Brief Pause)

4 THE COURT: The sentence of the Court on this charge
5 is that the Defendant will be confined to the State
6 Department of Corrections for a period of twenty (20)
7 years. He will get credit for the time that he served.
8 Restitution has been ordered.

9 I also indicated on the sentencing sheet that he
10 will, once again, receive ATU while he is in the
11 Department of Corrections. Good luck to you, sir.

12 MR. ELLIS: Thank you, Your Honor.

13 (Whereupon, the proceeding concluded at 2:59 p.m.)

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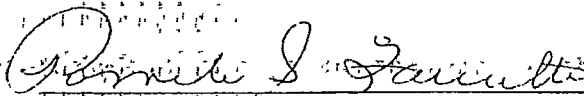
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REPORTER'S CERTIFICATE

I, the undersigned **PAMELA FAUCETTE**, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that I acted as the Court reporter at the foregoing proceeding; that the foregoing pages, numbered 1 through 19, were transcribed by me and represent a complete and accurate transcription of said proceeding to the best of my knowledge and belief.

I do further certify that I am not of counsel for or in the employment of either of the parties to this action, nor am I interested in the results of this action.

December 20, 2010



Pamela S. Faucette
Official Court Reporter
Seventh Judicial Circuit

FORM 5

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Spartanburg)
Charles Goetz, 123219)
 Full name and prison number (if any) of Applicant)

IN THE COURT OF COMMON PLEAS

2010-CP-42-5764

v.)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention MCGINNICK CORRECTIONAL INST.
2. Name and location of Court which imposed sentence SPARTANBURG COUNTY.
3. Name(s) of co-defendant(s) (if any) NONE.
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 (a) was not provided with copy of warrant.
 (b) Indictment.
 (c) ASSAULT and BATTERY with intent to Kill.
2010CS4200765
5. The date upon which sentence was imposed and the terms of the sentence
 (a) May 18, 2010.
 (b) 20-years.

(12)

- (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?
No.
- 8 If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. N/A
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Counsel Failed To advise of Right To appeal.
- (b) _____
- (c) _____
- 10 State concisely the grounds on which you base your allegation that you are being held in custody unlawfully

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- (a) Ineffective assistance of Counsel
 (b) Lack of Subject Matter Jurisdiction
 (c) Involuntary Guilty Plea

11 State concisely and in the same order the facts which support each of the grounds set out

in (10): Denial of Right To appeal.

- (a) Court Failed To object To plea not being a Lesser
 (b) Plea not a Lesser included Plea/Did not waive Presentment.
 (c) Counsel advised me To plea Guilty To probation

12 Prior to this application have you filed with respect to this conviction: no.

- (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. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. N/A

ii. _____

iii. _____

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 MICHELE L. N. L.

iv _____

(d) the date of each such disposition

i. _____ N/A

ii. _____

iii. _____

iv. _____

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

i. _____ N/A

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?

_____ No.

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

(a) which grounds have been presented

i. _____ N/A

ii. _____

iii. _____

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

i. _____ N/A

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) _____ Denial of Right To appeal.

(b) _____ FIRST Post-conviction Application.

(c) _____

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

✓ (a) your arraignment and plea? yes

(b) your trial, if any?

✓ (c) your sentencing? yes.

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? was not advise by counsel and did not waive Right To appeal.

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No.

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

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

i. Katherine J. Hodges, Esq.

ii. Spartanburg, SC.

iii.

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

i. arraignment and Plea.

ii.

iii. sentencing.

19 State clearly the relief you seek in filing this application: vacating of The conviction and sentencing and plea to a lesser included charge of The offense.

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

No.

STATE OF SOUTH CAROLINA)

VERIFICATION

County of SPARTANBURG -)
Charles GARY

I, _____, 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

Charles Gary

SWORN to and subscribed before me this 27
day of Oct, 2010

Joyce L Young (L.S.)
Notary Public

My Commission Expires: 8 28 2011

2010 OCT 28 AM 8:48
NOTARY PUBLIC

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

Charles GARY.

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

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

Charles Gary
Applicant

SWORN or affirmed to and subscribed before me this

27 day of Oct, 2010

Joyce L Young
Notary Public

My Commission Expires 8 28 2011

2010 OCT 28 AM 11:18
M. ROPE BLANK L.

1, STATE OF SOUTH CAROLINA County OF SPARTANBURG
 CHARLES GOBY, 123219.
 APPLICANT,
 VS.
 The State,
Respondent.

The COURT OF Common Pleas
 C/A. No. 2010-CR-42-5764
 Amended Application FOR
 POST-CONVICTION RELIEF

Now Comes The Applicant in The above-captioned
 Case Respectfully moving To amend his application
 FOR POST-CONVICTION RELIEF. The applicant would amend
 his application FOR POST-CONVICTION RELIEF To contain
 The following Specific allegations of ineffective
 assistance of Counsel and denial of due
 process and Fundamental Fairness:

- (1) Trial Counsel was ineffective FOR failing To conduct
 an adequate and proper pre-trial investigation.
- (2) Trial Counsel was ineffective FOR failing To provide him
 with discovery of his indictment so That he will
 know what charges To prepare and defend himself
 of,
- (3) Trial Counsel was ineffective FOR failing To object To

CLERK OF COURT
 SPARTANBURG COUNTY
 MAY 26 AM 9:09
 M. HOPE BLACKBERRY

2,

The applicant pleading Guilty To The Charge which had never been presented To The Grand Jury,

(4, Trial ^{counsel} was ineffective for not objecting To The applicant waiving presentment To The Grand Jury in violation of due process and fundamental fairness,

(5, Trial counsel was ineffective for failing To object To his pleading Guilty To a offense That The plea did not contain a lesser included offense of The crime charged and did not contain a lesser included sentence due To The waiver of presentment of The indictment To The Grand Jury.

Date, December 9, 2010

Charles Hony

FILED
CLERK OF COURT
SPRINGFIELD COUNTY
2011 MAY 26 AM 9:09
M. HOPE BLACKLEY

STATE of South Carolina, County of Spartanburg
 Charles Gory, 123219. (The Court of Common Pleas
 Applicant, C/A No. 2010-CR-42-5764

V.S.

CERTIFICATE OF SERVICE

The State,

Respondent.

The undersigned hereby certifies that he has served a copy of amended application for post-conviction relief on opposing counsel by placing copy of same in the U.S. Mail postage prepaid.

Date 11-22-2010

Charles Gory

Sworn to before me this 22 day
 of November, 2010

J. C. Franklin

Notary Public for South Carolina

My Commission Expires 12/16/2019

CLERK OF COURT
 SPARTANBURG COUNTY
 2011 MAY 26 AM 9:09
 M. HOPE BLACKLEY

gR

May 23, 2011

Spartanburg County Clerk of Court
P. O. Box 3483

Spartanburg, S.C. 29304-3483

Re: 2010-CP-42-5764

Dear Hon. Clerk;

Please Clock-Stamp-File The enclosed documents,
and Return a Filed Copy To me. a prepaid Self-
addressed envelope is enclosed For That
purpose.

Sincerely,
Charles E. Gory

Charles Gory, 123219.
386 Redemption way
McGinnick, S.C. 29899

FILED
SPARTANBURG COUNTY
2011 MAY 25 AM 9:09
M. HOPE BLACKLEY

1,

State of North Carolina County of Spartanburg
 Charles Cory, 123219.
 Applicant, C/A. No: 2010-CR 42-5764

VS.

Laura A. Filler, Esq.,

Notice: Judicial Notice
 Adjudicative Facts

AND

The State, et al.,

Respondent.

Code of Judicial Conduct
 Rule 5a1, Canon 3, B(s). 36

To The Presiding (PCR) Judge/Applicant's Counsel of
 Records: Please Take Judicial Review and
 Judicial Notice of The herein Facts That needs
 be orally raised by argued by The Applicant's
 Counsel of Record due To The Applicant's mental
 incompetence.

Submitting These Findings of Fact is a licensed
 Paralegal and Law Clerk for The McCorrison & S.C.
 Law Library.

on November 28, 2009 The applicant was arrested and
 charged with assault and battery with intent to kill
 The after he was appointed attorney Katherine Had
 whom eventually coerced The applicant To plead Guilt
 To 20 years with no recommendations.

From myself, and other Law Clerks we Learned That The
 applicant dropped out of School in The ninth grade. From
 other observations we find That The applicant can
 barely Read or Write, and cannot hold a conversation
 To understand The subject matter sufficiently To

2,

hold one's thought in focus, The applicant basically has no comprehensive skills than a 13 or 14 year old, and he usually answers in the affirmative or negative without understanding what he is answering to. Myself, and the other law clerks, and prison officials immediately became aware that there are indications that the applicant does suffer from a mental disorder. Thus, the applicant has been abused by alcohol and has been a heavy drinker for over 40 years, how much impact that this abuse may have contributed to his already mental competency can only be fairly answered by an expert and a competency evaluation, even though these signs were very clear and showing counsel failed to assure herself that the applicant fully understood the proceedings, and counsel failure to do so denied applicant due process of law. Thus, within this motion of adjudicative facts and judicial notice the applicant requests that the Counsel of Record moves the court for funds to hire an expert psychiatrist and a competency evaluation pursuant S.C. Code Ann. 17-3-50 (B); Drope, 420 U.S. at 180; also Ake v. Oklahoma, 470 U.S. 68, 83 (1985). The findings of this evaluation would support that applicant had no understanding of the proceedings in which he pleaded guilty;

Moreover, the court lacked jurisdiction to convict the applicant in which the applicant was not charged or indicted by a legal grand jury. The applicant pleaded

3.

guilty and was sentenced on May 18, 2010, see, (Exhibit 1 Sentencing Sheet): The applicant was denied discovery before trial and did not receive a copy of his indictment until January 6, 2011. See (Exhibit 2, envelope). Through this honorable court and through my attorney of record I move that my attorney file a proposed order for relief on the grounds that the court of general sessions was without jurisdiction to accept my guilty plea because the applicant's indictment were irregular on their face where indictment was not signed by the grand jury foreperson, and the date accessing the foreperson the grand jury is dated January 15, 2010, which is on a Friday; the indictment alleges that court of general sessions January 18, 2010 term did not convene until that Monday, see, (Exhibit 3, indictment), also there is no signature of the applicant waiving presentment. The court lacked subject matter jurisdiction to accept the applicant's plea of guilty. In *Campbell v. State*, 535 S.E.2d 928 (S.C. 2000), the court held that even though Campbell voluntarily pled guilty, the trial court was without subject matter jurisdiction to accept his plea because the charge to which he pled had never been presented to the grand jury. Applicant further held that subject matter jurisdiction of his charge in the warrant could not be waived, according to the applicant he was denied due process of law where defense counsel failed to object to his waiving presentment to the grand jury, but his charge was not a lesser

4,

included offense of The crime charged in The indictment. Because of The mental Competency of The applicant, This party Requests That The Court and Counsel of Record Take Judicial Notice of The adjudicative Facts and The issues Raised in The Applicant's Post-conviction application are properly Raised and This Applicant be Fully heard.

Date: 1-12-11

Charles Hargis

Sworn To Before me This 12th day
of January 2011.
J C Franklin

Notary Public for South Carolina

My Commission Expires 12 / 16 / 2019

FILED
CLERK OF COURT
JAN 26 AM 9:09
M. HOPE BLACKLEY

State of South Carolina County of SPARTANBURG
 Charles Gory, #123219. The Court of Common Pleas
 Applicant, C/A. No. 2010-CP-42-576L

VS.

Laura A. Filler, Esq.,

Certificate of Service

The State,

Respondent

I The above Applicant, hereby does CERTIFY That:
 This day I have served a copy of Judicial Notice
 of adjudicative facts and code of Judicial
 Conduct on opposing counsel by placing copy of
 same in the U.S. mail postage prepaid.

January 13, 2011

Charles Gory

CLERK OF COURT
 SPARTANBURG COUNTY
 2011 MAY 26 AM 9:09
 M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
Charles Gory, #123219,	)	2010-CP-42-5764
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed October 28, 2010, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the January 2010 term of the Spartanburg County Grand Jury for assault and battery with intent to kill (2010-GS-42-0765). He was represented by Kathleen J. Hodges, Esquire. On May 18, 2010, the Applicant pled guilty as indicted. Applicant was sentenced by the Honorable Roger L. Couch to confinement for a period of twenty (20) years for the charge. The Applicant did not appeal his guilty plea or sentence.

Attached herewith and incorporated herein are the records of the Spartanburg County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 JUL 18 PM 12:39
MARJORIE B. LEE

II.

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

1. Ineffective assistance of counsel;
 - a. Denial of right to appeal.
 - b. "Counsel failed to object the plea not being lesser."
 - c. Involuntary guilty plea;
 - d. Counsel did not advise Applicant to plead guilty to probation, and
2. Subject matter jurisdiction.
 - a. Applicant did not waive presentment

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

FILED
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SPARTANBURG COUNTY
2009 JUL 18 PM 12:39
M. J. HOPKINS

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

IV.

Respondent submits that the Applicant's allegation that his guilty plea was involuntary without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354; 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on

going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Respondent submits that the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

V.

The Applicant has claimed that the trial court lacked subject matter jurisdiction because he did not waive presentment. The Respondent submits that this claim has no merit. The Applicant was indicted by the Spartanburg County Grand Jury and a true bill indictment was presented to the court.

In post-conviction relief, an Applicant wishing to raise challenges to the sufficiency of an indictment must do so in the context of ineffective assistance of counsel, basically alleging that his trial counsel failed to properly move to quash the indictment in accordance with S.C. Code Ann. § 17-19-90 (2003). A claim of this nature is subject to the procedural bars in the Uniform

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SPARTANBURG COUNTY
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A.H.O.F.
B.C.C.

Post-Conviction Procedure Act – notably the statute of limitations and successiveness. See S.C. Code §§ 17-27-45 and -90 (2003).

An Applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by Gentry, 610 S.E.2d 494. However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” Gentry, 610 S.E.2d 494; See also S.C. Const. Art. V, § 7. Thus, the Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. The Applicant’s conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction. Therefore, Respondent submits that this claim should be summarily dismissed.

VI.

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

VII.

WHEREFORE, having made its Return, the State requests that a hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

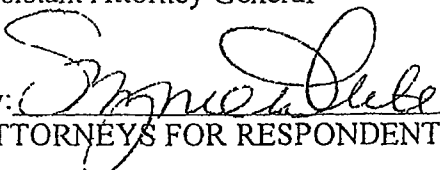
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

[signatures continued on next page]

FILED
CLERK OF COURT
SPRINGFIELD COUNTY
2011 JUL 18 PM 12:40
M. HOPE BLANCHETT

SUZANNE H. WHITE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

July 15, 2011

FILED
CLERK OF COURT
CAPITOL BUILDING
2011 JUL 18 PM 12:40
M. HOPE BLACKWELL

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT

Charles Gory,

2010-CP-42-5764

Applicant,

v.

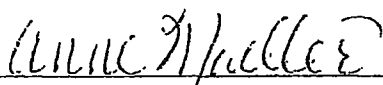
CERTIFICATE OF SERVICE BY MAIL

State of South Carolina,

Respondent.

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

Laura A. Filler, Esquire
2111 Cannons Campground Road
Spartanburg, South Carolina 29307


Anne A. Mueller
Legal Assistant for the Respondent

DATED this 15th day of June, 2011.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 JUL 18 PM 12:40
M. HOSE BLACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

COURT OF COMMON PLEAS
2010-CP-42-05764

CHARLES GORY,

-vs-

THE STATE of SOUTH CAROLINA,
Defendant.

TRANSCRIPT OF RECORD

February 1, 2012
Spartanburg, South Carolina

Ordered: July 13, 2012
Delivered: September 16, 2012

B E F O R E:

THE HONORABLE FRANK R. ADDY, Presiding Judge.

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

MS. SUZANNE H. WHITE, Esquire
Assistant Attorney General Appearing for the State

MS. LAURA FILLER, Esquire
Attorney Appearing for the Applicant

Pamela Faucette
Circuit Court Reporter

PAMELA FAUCETTE, CVR - 864-574-9534 or 336-260-2864

I N D E X

CHARLES GORY PCR

Page:

Ms. White's Recitation of Facts.....3

W I T N E S S E S

Mr. Charles Gory

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Direct by Mr. Filler.....19

Cross by Ms. White.....27

Examination by The Court.....35

Redirect by Ms. Filler.....46

Recross by Ms. White.....47

Ms. Kathleen Hodges, Esquire

Page:

Direct by Ms. White.....48

Cross by Ms. Filler.....62

Examination by The Court.....69

Redirect by Ms. Filler.....72

Recross by Ms. Filler.....74

E X H I B I T S

Applicant's Exhibits:

Marked:

Received:

1 - (Letter)

22

23

Respondent's Exhibits:

Marked:

Received:

1 - (Intake Form)

55

55

Court's Exhibits:

Marked:

Received:

(None)

Reporter's Certification.....82

Reporter's Note: This transcript may contain quoted material. Such material is reproduced as read or quoted by the speaker.

1 February 1, 2012

11:05 A.M.

2 THE COURT: All right, Ms. White, are you ready?

3 MS. WHITE: Yes, Your Honor.

4 THE COURT: Go ahead, Ms. White.

5 MS. WHITE: Thank you, Your Honor. This is the case
6 of Charles Gory vs. The State. It's case number 2010-CP-
7 42-5764. He's represented today by the Ms. Laura Filler.

8 The indictment was January of two thousand and ten
9 (2010) for ABWIK. Mr. Gory was represented by Kathy
10 Hodges from the public defenders office at the time.

11 He ultimately pled guilty before Judge Couch on May
12 18, two thousand and ten (2010) -- I'm sorry, Judge Hayes,
13 and received a sentence of twenty (20) years.

14 And he has filed on this application alleging various
15 claims. And I believe Ms. Filler has also filed two (2)
16 separate motions to which the State has filed a return
17 that you should have received a copy of.

18 So, I'll turn it over to Ms. Filler for her motions
19 and to proceed at this time.

20 THE COURT: All right. Ms. Filler, are you ready to
21 proceed at this time?

22 MS. FILLER: Yes, Your Honor. May it please the
23 Court?

24 THE COURT: Yes, ma'am

25 MS. FILLER We have several motions. Our first was

1 a motion to dismiss for failure to timely file a return
2 on the PCR applications.

3 And, even prior to that return ever being filed and
4 served, which I believe was done in July of 2011, Mr.
5 Gory had served on both myself and the respondent an
6 amended application for his PCR application.

7 At the time I received it, I still had not received
8 the transcript or had any basic information. I had just
9 been appointed.

10 I assumed he had also filed it with the Clerk of
11 Court. He did not actually file with the Clerk of Court
12 until May of 2011 of two thousand, eleven (2011) and prior
13 to the return.

14 Ms. White brought to my attention that she objected
15 to the amended application based on the fact that I had
16 not signed it.

17 I, then, filed this motion to allow those amendments
18 to the application and 2011 since they had been served
19 prior to and filed much prior in advance of any return
20 being filed by Ms. White, that I felt that it was without
21 prejudice to her to have that.

22 In those amended applications 2011 and -- and it
23 actually goes back a little bit to the first PCR
24 application -- he asserts that the Court lacked subject
25 matter jurisdiction. That was alleged in the initial

1 application.

2 And, secondly, he alleged that he should have been
3 given some sort of competency or psychological evaluation
4 prior to entering the plea and that being part of the
5 ineffective assistance of counsel and thus supporting,
6 you know, any late filings if found by this Court.

7 Mr. Gory has less than a ninth grade application --
8 education, excuse me.

9 He has reported in the PCR amended application
10 itself and documented by a clerk at the library at the
11 jail and staff that he suffers from loss of memory and
12 other disabilities to fully appreciate and understand
13 what's being discussed and said.

14 So he certainly asserts that maybe even prior to
15 having a full hearing in this matter, that he be given
16 some sort of ❖- of evaluation.

17 THE COURT: All right. Ms. Filler, have you had
18 any difficulty communicating with Mr. Gory at this time?

19 MS. FILLER All of our communication have mostly
20 been in writing and it's written by somebody other than
21 him. It's written by whoever is helping him write these
22 letters. And they're documenting legal arguments
23 that ---

24 THE COURT: All right. And, just so I understand,
25 what's exactly the ❖- the motion to dismiss, failure to

1 file a return; is that correct?

2 MS. FILLER: To timely file a return.

3 THE COURT: Okay.

4 MS. FILLER: And, then, in the alternative it is to
5 have a competency evaluation of Mr. Gory. And, secondly,
6 to allow our amended PCR application pleadings to be
7 taken into consideration today, which were served in
8 January of two thousand, eleven (2011), but not filed
9 until May of two thousand, eleven (2011), which were all
10 in his original PCR application. (Phonetic).

11 THE COURT: All right. Ms. White, let me hear from
12 you on those three (3) motions. On the first motion to
13 dismiss ---

14 MS. WHITE: Thank you, Your Honor.

15 THE COURT: ❧- what's the State's position?

16 MS. WHITE: In this situation, the ❧- the time
17 limits are discretionary within the statute.

18 It was -- it's not anything that has been prescribed
19 by the Court as an absolute. It's discretionary and the
20 outcome would show some kind of prejudice that he has
21 suffered as a result of any kind of delay by the
22 respondent in the matter.

23 We would submit that he can not demonstrate that. I
24 had communicated with Ms. Filler via email, attached and
25 forward the transcript that we -- as soon as we obtained

1 that in February, two thousand, eleven (2011), for any
2 ability to go ahead and start proceeding even though we
3 did file the return at a later time.

4 So I don't believe there was any prejud --
5 prejudice, excuse me, for that time. His hearing could
6 not have been called any sooner.

7 Mister ❖- Mr. Gory was sentenced and the plea was
8 accepted by Judge Hayes. Mr. Hayes -- Judge Hayes,
9 excuse me, was the PCR hearing judge for both September
10 and December terms, which were the two (2) terms that
11 were available following the ❖- the time that Mr. Gory's
12 hearing would have been held.

13 So this was the next available time.

14 We are on about a year long, at least, delay for
15 most of the PCR applications in Spartanburg. And this
16 was filed in October 28 of two thousand and ten (2010)
17 and could not have been heard any sooner without that.

18 THE COURT: All right. Ms. Filler, can you all
19 demonstrate any prejudice to your client due to the
20 failure of the State to file ---

21 MS. FILLER: Well, I think if they had filed a
22 return sooner we would have been -- I mean, were those
23 the only two (2) terms you had all year last year?

24 MS. WHITE: Those were the only two (2) terms that
25 we had from July on.

1 MS. FILLER: Well, but he filed his initial
2 application in October of two thousand and ten (2010).
3 There was none in the beginning of the year?

4 MS. WHITE: We have to receive the transcript and
5 we have to receive records. And we forward them on as
6 soon as we received those, which I did.

7 And, then, I have to call the cases, Your Honor, in
8 the order in which they're called. And in the order in
9 which they're filed in our office. So we call them in
10 the order in which they're filed.

11 We can not skip ahead to anybody's case simply
12 because they want to have their case heard earlier
13 because we're not going to prejudice anyone else. And
14 we're not going to be accused of having anyone prevented
15 from, you know, being heard ---

16 THE COURT: Right.

17 MS. WHITE: --- or presented to the Court. So...

18 THE COURT: You do it the same way as the
19 solicitor's office?

20 MS. WHITE: Right.

21 THE COURT: Anything else on that, Ms. Filler?

22 MS. FILLER: No, sir.

23 THE COURT: As far as the motion to dismiss, I'll
24 -- I'll deny that.

25 Does the State have a position concerning competency

1 evaluation? Before I turn to that, I actually do not
2 have that motion in front of me, which is fine. We can
3 work off with what you're telling me.

4 Has he seen a psychiatrist previously that you're
5 aware of?

6 MS. FILLER: No, sir.

7 THE COURT: Okay. Are you aware of any -- you told
8 me that he made it to the ninth grade at school. Are you
9 aware of any placement and special needs classes growing
10 up or any background along those lines?

11 (Off-the-Record Discussion)

12 MS. FILLER: Not that I'm aware of, Your Honor.

13 THE COURT: Do you know anything concerning IQ
14 testing -- I'm sorry, IQ testing or...

15 MS. FILLER: No, sir. He was never tested.

16 THE COURT: He was never tested? Okay.

17 (Train going by and very loud background noise.)

18 MS. FILLER: He has indicated to me that he has
19 very limited ability to read.

20 THE COURT: Okay. No prior commitments for mental
21 health treatment though? No diagnosis? No...

22 MS. FILLER: No, sir. He's spent a substantial
23 amount of his time being incarcerated from what I
24 understand.

25 THE COURT: Okay. Anything prior to his

1 incarcerations that indicate any mental illness or any
2 problems complying to the rules of the institution? Or
3 has he ever been confined to solitary confinement for
4 extended periods time or ever had a referral to a
5 psychiatrist in the Department of Corrections? Mr. Gory,
6 anything like that?

7 MR. GORY: No, sir.

8 MS. FILLER: Not that I know of.

9 THE COURT: I'm still trying to figure out what ❧
10 what the basis would be for the motion.

11 MS. FILLER: Well, Your Honor, per my client, Ms.
12 Hodges only spent probably a total of an hour with him.

13 And, from what I received from the person at the
14 jail, and possibly on that, (inaudible/train passing)
15 he's had a limited recall ability, a limited ability to
16 fully appreciate what was happening or what was being
17 told and was confusing things.

18 And, so, whether or not he could have understood
19 within just an hour's consultation of time with Ms.
20 Hodges, with what he was facing, he was under the
21 impression he was going to get parole when he walked out
22 of that courtroom and got twenty (20) years.

23 So there's, obviously, a misinterpretation from that
24 standpoint if that's what -- if that's contrary to what
25 Ms. Hodges is going to testify he told her ❧- or she told

1 him.

2 So whether or not the plea could have been voluntary
3 on its face would depend upon whether or not Mr. Gory
4 could understand, with one hour's consultation of time,
5 what he was entering as far as that plea goes.

6 THE COURT: What's the State's position on this?

7 MS. WHITE: I guess in regards to looking at X-
8 it's a two (2) prone thing.

9 If we're looking at competency for PCR value or
10 competency in regards to the plea, obviously, SCDC
11 records don't indicate any time spent at Killiam's
12 Psychiatric Ward (phonetic) or anything.

13 I believe some of the paperwork that he's filed
14 indicates his belief in looking for perhaps mental
15 competency are related to his long time abuse of alcohol.

16 I think he has spent some time at the drug addiction
17 unit while incarcerated from what I can tell from his
18 SCDC records.

19 But we'll be happy to proffer some testimony. I
20 don't think there's any indication, though, based on the
21 transcript and the record that's presented to the Court.
22 I think it was pretty full -- fully and clearly gone
23 through by Judge Hayes.

24 And X- and he spoke with him and didn't appear to
25 have any trouble understanding when he entered that plea;

1 talked about things and ~~§~~- and agreed with the facts and
2 shared information with the Court.

3 So, with regards to any competency issue for the
4 PCR, I believe that counsel may state there is case law
5 that says, as long as the situation is not very factually
6 intensive;

7 As long as they have able and competent counsel that
8 there is no need for a competency situation in regards to
9 an applicant.

10 In regards to the competency at the guilty plea, I
11 think that the record speaks for itself. And unless he
12 can establish any history of that, that it would be
13 something that should be denied.

14 And if, you know, you need additional testimony,
15 I'll be happy to proffer Ms. Hodges in regards to any
16 communication she had with him and his ability to
17 understand at the time of the guilty plea, but...

18 THE COURT: Okay. Let's hold on that one for a
19 second and skip to the third, whether to -- to allow the
20 -- the amended PCR application to be filed.

21 What's -- what's different in the new application
22 that's -- than the one that he filed?

23 MS. FILLER: Your Honor, the only -- it goes on to
24 -- to -- to challenge a more detailed indictment, which
25 he says he never received prior to the guilty plea.

1 I did examine the PD's file. And there was no
2 indictment in there.

3 And I went over to the solicitor's office and asked
4 them if they ever served the indictment. And they had no
5 proof of service that it was ever served.

6 Furthermore, Mr. Gory's position is going to be
7 that, although the grand jury allegedly met on the
8 fifteenth (15th), there wasn't any court in session that
9 week. And so that it's fraudulent on its face, which
10 would all go to subject matter jur -- jurisdiction.

11 He did allege, in his initial PCR application, that
12 he contested jurisdiction was ever established. So it
13 does fall back to that; it's just more detailed.

14 And secondly is the issue of competency.

15 THE COURT: Okay. So you raise the competency
16 issue in the amended PCR ---

17 MS. FILLER: Yes, sir.

18 THE COURT: --- application. Does someone have a
19 copy of that, that I can look at briefly?

20 MS. FILLER: Your Honor, may I approach?

21 THE COURT: Please.

22 (Document handed up to the Court.)

23 THE COURT: Thanks.

24 (Brief Pause)

25 THE COURT: You said that there was a letter or an

1 affidavit attached by a person in the prison. May I see
2 that?

3 (Document handed up to the Court.)

4 MS. FILLER: I think this is for the earlier one.
5 And I think there's probably one more for the January
6 that's not attached to that. I do have a copy of it.

7 THE COURT: This is the affidavit of service.

8 MS. FILLER: Is that X- what are you looking for?

9 THE COURT: The affidavit from the person at the
10 prison library that you mentioned.

11 MS. FILLER: Okay. It would be -- it's in a form
12 of a letter.

13 THE COURT: Okay. Do you have a copy of the
14 letter?

15 (Off-the-Record Comments)

16 MS. WHITE: Your Honor, I might have missed that.
17 What X- what are we looking at?

18 THE COURT: She's referenced -- in support of the
19 position to have him evaluated, she referenced an
20 affidavit or a letter from ---

21 MS. FILLER: Well, what it was, was -- hang on one
22 second.

23 (Brief Pause)

24 MS. FILLER: I'm not sure if it was not in that --
25 although Mr. Gory signed it, it was obviously written by

1 someone writing in the third person. And I thought it
2 was part of that application, but it might have been ---

3 THE COURT: Well, it is, but I thought you
4 referencing ---

5 MS. FILLER: No, no, no, it was -- it was because
6 obviously as I read it, it says, "I and others...", you
7 know, people at the jail. Is that -- is it not in that
8 application?

9 THE COURT: It is. It is. It does -- I -- I see
10 what you're getting at now ---

11 MS. FILLER: But it's -- it's in third person
12 so...

13 (Brief Pause)

14 THE COURT: It's on the second page at the very
15 top. What's the State's position on allowing the amended
16 PCR application?

17 MS. WHITE: Your Honor, we filed a response to --
18 to this. We received a copy of the pro se documents.
19 They were titled "Notice" -- "Judicial Notice of
20 Adjudicated Facts" and "Code of Judicial Conduct" and an
21 amended application for PCR on -- on May 31st.

22 We filed a letter with the clerk's office June 10,
23 two thousand, eleven (2011), letting them know that
24 according to -- to Rule 11 that he was represented by
25 counsel at the time and that, according to that *Foster v.*

1 State (phonetic) and *Miller v. State* (phonetic) that the
2 Supreme Court has held that anyone that is represented by
3 counsel has no right to hybrid (phonetic) representation
4 and that the clerk of court's office should not accept
5 any substantive filings other than a motion to relieve
6 counsel unless it's submitted by counsel.

7 And, so, we submitted that and copied Ms. Filler
8 that, that was our position at the time. And we -- we
9 remain of that same position that -- that Mr. Gory had
10 counsel, had the ability to review any claims that he
11 had; that Counsel could review with him any that she
12 determined were -- had merit.

13 He has the ability to testify today as to any claims
14 he wants to go forward on. But, in regards to
15 substantive filings and the additional claims, that he
16 needs to abide by I guess the law or the rules stating
17 that he needs to file anything through his appointed
18 counsel.

19 THE COURT: Ms. Filler?

20 MS. FILLER: As I said earlier, at the time I
21 received it -- I believe Ms. White received it in January
22 -- it already been filed and that it was part of -- it
23 was before I even had the transcript or got any of the
24 pleadings other than what I received just through the
25 mail from the Court appointing me.

1 I had just been appointed, so, I assumed he had
2 filed that in addition and that she received it at that
3 time. I didn't realize until later that it wasn't filed
4 until May.

5 At that time, I immediately filed a motion to accept
6 those pleadings and would give -- and that was before the
7 return.

8 THE COURT: Okay. Here's where I kind of think we
9 are: The initial application does allege lack of subject
10 matter jurisdiction.

11 That's on page three (3) in response to the question
12 10(b); that's no lack of subject matter jurisdiction,
13 which would go to the validity of the indictment and
14 those issues would be raised with some more details.

15 So I don't think that's really a different issue.
16 And I think that, that's something that -- that we can
17 hear today.

18 It's the competency issue that I'm really hanging --
19 hanging up on, at this particular point in time, because
20 nothing has really been shown to me that he has any
21 competency issues.

22 And that said, at the same time I usually err on the
23 side of caution. I understand that what was written in
24 the amended petition for PCR, even though it was maybe
25 not authored by him, but it was signed by him, maybe that

1 could be some evidence of alcohol abuse dementia, or
2 something to that effect.

3 So, if there's no objection, what I would prefer to
4 do today is, since we have everyone here, let's proceed
5 and at least get some testimony and try and maybe I can
6 get an -- an idea of whether there was any difficulty in
7 communicating at -- at the time of the PCR -- I'm sorry,
8 at the time of the plea from trial Counsel.

9 And maybe we'll have a better idea of where to go
10 from there because, if he was not competent at the time
11 that the plea took place, then obviously that would be
12 pretty fatal to the overall plea itself.

13 With that said, you're telling me, Ms. Filler, you
14 haven't had any difficulty communicating with him?

15 MS. FILLER: I -- well most of my
16 communications ---

17 THE COURT: I mean, can he understand ---

18 MS. FILLER: --- and today, I mean, they're all
19 written by someone else as far as the facts.

20 THE COURT: Right.

21 MS. FILLER: So, no, I haven't. They've been
22 responsive to my questions to him and everything, but
23 that was because he was having some help with that.

24 THE COURT: Okay. But your conversation with him
25 today, or any other times that you've met, they've

1 followed a logical pattern?

2 MS. FILLER: I will -- I will ✕- I guess the best
3 thing to do, Your Honor, is put him on the stand and you
4 can kind of get a feel.

5 THE COURT: I need to do that? All right. Let's
6 proceed with at least that aspect of this. And go ahead,
7 Ms. Filler.

8 MS. FILLER: I'd call Mr. Gory to the stand.

9 (The witness stepped forward to be sworn.)

10 THE COURT: Mr. Gory, come on up, please, sir and
11 have a seat.

12 (The witness complied with the request.)

13 (Whereupon,

14 CHARLES GORY

15 having been previously duly sworn, testified as
16 follows:)

17 THE COURT: Ms. Filler?

18 DIRECT EXAMINATION BY MS. FILLER:

19 Q. Mr. Gory, would you, please, state your full name?

20 A. Charles Edward Gory.

21 Q. And are you a Spartanburg County resident?

22 A. Yes, ma'am. I moved to Spartanburg about seventeen
23 (17) years ago.

24 Q. How old are you, Mr. Gory?

25 A. I'm sixty -- fifty-four (54).

1 Q. And how much education have you had? .

2 A. I went to the ninth (9th) grade, dropped out in the
3 ninth (9th).

4 Q. Okay. Do you -- you do -- can you read?

5 A. A little, not too much.

6 Q. Do you feel that you have any difficulty in
7 understanding?

8 A. I get confused.

9 Q. In understanding ---

10 A. I get confused a lot just with things.

11 Q. In what way do you get confused? Can you kind of
12 explain it?

13 A. I would just, I don't know -- when I -- when I talk
14 it don't -- things I want to say it don't come out like I want
15 it to. It gets kind of mixed up.

16 Q. Do you have difficulty in understanding or hearing
17 what people are telling you?

18 A. I get confused sometimes -- a lot.

19 Q. Do you -- if you're told do something, do you follow
20 the order? Do you follow the orders?

21 A. I could follow orders pretty good, yeah, yes, ma'am.

22 (Brief Pause)

23 Q. Prior to your plea, did you spend a lot of time with
24 Ms. Hodges?

25 A. Not much, not too much.

1 Q. Okay. Would you say of all the time was it more
2 than an hour?

3 A. I would say about an hour if that.

4 Q. What was your -- do you have a -- a memory of what
5 happened the night of -- of the shooting?

6 A. Well, a little, not -- not too much because it was
7 -- because it was a party. There was a party that night and
8 there was a lot of drinking. I remember some things. Some
9 things I don't.

10 Q. Does that happen to you a lot, that you don't
11 remember?

12 A. When I drink.

13 Q. How about when you're not drinking?

14 A. When -- when I'm not drinking, everything's still
15 kind of a little confusing. It's about -- you know, it's --
16 it's just -- just kind of hard for me to understand things.

17 Q. Based upon your discussion with Ms. Hodges, what was
18 your impression of what was going to happen during that
19 sentencing?

20 A. She had -- she said -- I heard life without parole.
21 I -- I didn't hear nothing about twenty (20) years until I --
22 until I faced the Judge.

23 I made a plea hoping -- thinking that voluntary, I
24 was going to get a lesser -- a lesser -- a lesser plea.

25 Q. Was there any ---

MR. CHARLES GORY - DIRECT by MS. FILLER

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1 A. That's why I made a plea.

2 Q. Was there any lesser -- what do you mean by lesser
3 plea?

4 A. Lesser -- to me a lesser plea is -- twenty (20)
5 years ain't no lesser plea. Twenty (20) years at my age might
6 as well gave me a life sentence.

7 Q. Would you -- were you under the impression that you
8 might go home?

9 A. That's what she had -- she had me thinking that, if
10 I signed a paper, that I was going to get probation.

11 Q. If you had known you were going to get twenty (20)
12 years, would you have pled guilty?

13 A. No, ma'am.

14 (Whereupon, Applicant's Exhibit Number 1 was marked
15 for identification.)

16 Q. Did she ever discuss with you whether or not that --
17 whether the solicitor was going to negotiate any sort of plea?

18 A. No, ma'am.

19 Q. Were you -- did you -- I'm going to show you what
20 Applicant's Exhibit 1 is. Have you seen this before?

21 (Brief pause while witness examines document.)

22 A. (No Response)

23 Q. Do you want me to read that?

24 A. Yeah, I'd appreciate it.

25 MS. FILLER: Your Honor, for the record, it's a

1 letter from Hope Blackley, Clerk of Court, dated October
2 29, two thousand and ten (2010), sending Mr. Gory a copy
3 of his indictment.

4 THE COURT: Okay.

5 Q. (By Ms. Filler) Did you request, or with the help
6 of someone else, did you request a copy of your indictment?

7 A. I think -- I believe I did. I thought I did. I
8 ain't sure.

9 Q. Okay. Prior to this time, have you ever seen this
10 -- was this ever given to you from a solicitor?

11 A. From the solicitor? Not from the solicitor, no.

12 Q. Well, did the public defender, Ms. Hodges, ever give
13 you a copy of this document?

14 A. She gave -- there was a lot of -- there was a -- a
15 lot of papers.

16 MS. FILLER: I'd move to put this into evidence.

17 MS. WHITE: No objection, Your Honor.

18 THE COURT: Without evidence -- without objection,
19 it's Applicant's Number 1 in evidence.

20 (Whereupon, Applicant's Exhibit Number 1 was
21 admitted into evidence without objection.)

22 Q. (By Ms. Filler) You allege, in your PCR
23 application, that you did not receive a copy of the indictment
24 until after your sentencing.

25 A. Correct.

1 Q. Is that part of your application?

2 A. (Nods affirmatively.)

3 Q. And I believe in your application you also assert
4 that there was no court in session the days that, that grand
5 jury allegedly convened?

6 A. Uh-huh (affirmative).

7 Q. And are you asking the Court to dismiss this
8 indictment for lack of jurisdiction?

9 A. Yeah.

10 (Brief Pause)

11 Q. Did you understand what you were arrested for?

12 A. Assault and battery, intent to kill.

13 Q. What does that mean?

14 A. It's assault -- assault -- assault on -- on
15 somebody.

16 Q. Meaning you hurt somebody?

17 A. Yes, ma'am.

18 Q. You understood that?

19 A. Yeah.

20 Q. Just to be clear, if you had known that you were
21 going to get a twenty (20) year sentence, would you have taken
22 this to trial?

23 A. Yeah, I'd took it to trial.

24 Q. And do you feel that you -- you adequately
25 understood what was going to happen prior to going into that

1 plea hearing?

2 A. Ma'am?

3 Q. Did you understand what to expect when you went into
4 that plea hearing?

5 A. What you mean?

6 Q. Did you un' -- did Ms. Hodges adequately explain to
7 you what to expect; what you were being charged with, what you
8 allegedly did?

9 A. No, ma'am.

10 (Brief Pause)

11 Q. Do you feel that she was helpful to you as your
12 assigned counsel?

13 A. Nope.

14 Q. Did she ever discuss with you that, once you entered
15 a plea, you couldn't appeal?

16 A. I didn't hear her say.

17 (Brief Pause)

18 Q. Did she tell you that you should plea guilty? Did
19 she ever advise you of that?

20 A. She told -- she told -- she told me that I was going
21 to get some time.

22 Q. But did she tell you to plead guilty to the charges?
23 Did she advise you that, that was in your best interest?

24 A. I don't remember that.

25 Q. Whose decision was it to plead guilty?

1 A. It was -- at the time, it was mine for a -- for a
2 lesser -- for a lesser charge. If I know I was going to get
3 twenty (20) years, I wouldn't pled guilty. I might as well
4 have gotten a life sentence; twenty (20) years at my age.

5 (Brief Pause)

6 Q. Did you ever tell Ms. Hodges that you had difficulty
7 reading and had trouble understanding?

8 A. We didn't have enough time.

9 Q. Was there anything that prevented you from going out
10 and seeing Ms. Hodges or did she schedule enough appointment
11 time with you?

12 A. I went -- I went and saw her.

13 Q. Whenever she told you to come?

14 A. Yes, ma'am.

15 Q. Are you asking this Court to vacate your sentence
16 and allow you to try this case?

17 A. Yes, ma'am.

18 (Brief Pause)

19 Q. Do you feel that Ms. Hodges investigated your case
20 -- spent enough time investigating your case?

21 A. Nope, no, ma'am.

22 Q. Why do you feel that?

23 A. Time wise.

24 (Brief Pause)

25 Q. And isn't it true that at your hearing the victim of
PAMELA FAUCETTE, CVR - 864-574-9534 or 336-260-2864

1 the crime came and -- and -- in support of your case?

2 A. Yes, ma'am.

3 Q. And he was seeking leniency on your behalf?

4 A. (Nods affirmatively.)

5 THE COURT: Answer out loud if you could, sir,
6 because she has to take it down what ---

7 A. Yes, ma'am.

8 THE COURT: Thank you.

9 Q. (By Ms. Filler) When you got to the hearing, were
10 you surprised when the solicitor indicated that he was not
11 allowing you to plead down to a lesser charge?

12 A. Yes, ma'am.

13 Q. Is there anything that you want to offer this Court
14 that you feel that I am overlooking as far as your desire for
15 a new trial ---

16 A. No, ma'am.

17 Q. --- for what went on between you and Ms. Hodges?

18 A. No, ma'am. I believe you done covered everything.

19 (Brief Pause)

20 MS. FILLER: Your Honor, I have no further
21 questions.

22 THE COURT: Ms. White?

23 MS. WHITE: Thank you, Your Honor.

24 CROSS EXAMINATION BY MS. WHITE:

25 Q. (Clears throat) Excuse me. Mr. Gory, you

1 mentioned earlier, at the beginning of your testimony, that --
2 something about life without parole and that you made a plea
3 to get a lesser plea?

4 A. Uh-huh (affirmative).

5 Q. And was that because you knew that, based on your
6 past convictions that the State -- you were eligible
7 potentially for a life without parole sentence?

8 A. No, ma'am. I didn't even -- I didn't even know -- I
9 didn't know that, that law had -- you know, like I say I -- I
10 wasn't -- I wasn't into, you know -- I knowed this was my --
11 you know, as -- as they say my second -- my second violent
12 crime, you know.

13 But that's something -- that's something that
14 happened, you know, years -- years ago. So that's -- so
15 that's -- that's the rest about that.

16 So that's been -- that's been held against me --
17 against me too, right?

18 Q. But you knew -- you knew that this was your second
19 violent crime you said?

20 A. Yes, ma'am.

21 Q. Okay. And you mentioned that you were pleading to
22 get lesser plea. You were hoping to get a lesser sentence
23 than the maximum if you pled guilty; is that right?

24 A. I was looking at getting lesser than twenty (20)
25 years.

1 Q. Right. And, when you went before the Court, the
2 Court asked you if you were there to plea to assault and
3 battery with intent to kill and you told the Court, yes?

4 A. Uh-huh (affirmative).

5 Q. So, if you thought you were going there to plead to
6 a -- a lesser charge, why didn't you stop the plea right then
7 and -- and say, "That's not what I thought I was here for"?

8 A. Well, everything was happening -- happened like
9 fast, you know. So I didn't have -- you know, everything was
10 happening fast.

11 Q. So you didn't think that was the time to -- to stop
12 it, though, and say, "That's not what I thought I was pleading
13 guilty to"?

14 A. No, ma'am. I didn't think about it at that time.

15 Q. Now you had gotten -- you had been served with the
16 arrest warrant for this charge, hadn't you?

17 A. I believe so.

18 Q. Okay. And the arrest warrant was for assault and
19 battery with intent to kill; is that right?

20 A. Uh-huh (affirmative).

21 Q. And -- and the crime -- the -- the facts in the case
22 are you used a shotgun and -- and shot a man at fairly close
23 range in his front yard; is that right?

24 A. Yes, ma'am.

25 Q. Okay. And you admit and he acknowledges that you

1 had been drinking whiskey that day, so, you were pretty
2 intoxicated when it happened?

3 A. Yes, ma'am.

4 Q. All right. And at the time you had already served a
5 sentence for voluntary manslaughter; is that right?

6 A. Yes, ma'am.

7 Q. And the Court went over your past record with you
8 there when you were pleading guilty. You also had an assault
9 and battery, a criminal domestic violence ---

10 A. Uh-huh (affirmative).

11 Q. --- driving under suspension?

12 A. Uh-huh (affirmative).

13 Q. A couple of those, a driving under the influence,
14 and petit larceny. So this wasn't your first time in court?

15 A. Huh-uh (negative).

16 Q. So you were familiar with the judicial system and
17 how the court process works. Had you pled guilty before?

18 A. No, ma'am.

19 Q. You had gone to trial on all these charges?

20 A. No, ma'am, no.

21 Q. So how -- how ---

22 A. I paid fines, paid ---

23 Q. Okay. How -- did you plea guilty to voluntary
24 manslaughter or did you go to trial on that one?

25 A. I don't remember that one; did I plead guilty or

1 not.

2 Q. And that was back in 1997, so, that was a while
3 back, right?

4 A. Yes, a while back, yes, ma'am.

5 Q. Now you said you didn't have a chance -- didn't have
6 time to talk to Ms. Hodges about the fact that you were having
7 trouble reading and writing?

8 A. Uh-huh (affirmative).

9 Q. But you said you -- you went to see her whenever you
10 had an appointment. Did you ever tell her that -- that you
11 felt like you were confused and you didn't understand what was
12 going on?

13 A. No, ma'am. I let her do all the talking.

14 Q. Okay. Did you not think that was important to tell
15 her?

16 A. I wasn't thinking at the time.

17 Q. Did you tell her anything about your background,
18 about your work history?

19 A. No, ma'am.

20 Q. Then how did she know to tell ---

21 A. Well ---

22 Q. --- about your work at the lumber yard?

23 A. Oh yeah, I told her about that, my job -- yeah, my
24 job.

25 Q. Okay. Did you talk about your school when you

1 had -- if you had dropped out or graduated?

2 A. I believe so. I -- I ain't for sure.

3 Q. Did you talk to her about whether or not you were
4 married or divorced?

5 A. I think married. She asked me was I married.

6 Q. Okay. So, you talked about a lot of things about
7 your life, but you didn't talk to her about the fact that you
8 had trouble understanding or reading and writing at the time?

9 A. No, ma'am.

10 Q. Okay.

11 (Brief Pause)

12 Q. Now you also said at one point that Ms. Hodges told
13 you that you were going to get time but then earlier you said
14 that you thought you were signing papers that you'd be able to
15 go home with probation.

16 A. Yeah, because that -- because that's what -- that's
17 what she told me. So I'm thinking like I was going to go
18 home.

19 Q. So ---

20 A. I wasn't the only one heard it. There was some more
21 too.

22 Q. Well which -- which was it, was it that you were
23 going to go home and get probation or was it ---

24 A. That I was going to get probation.

25 Q. So, when you said just a little bit ago that Ms.

1 Hodges told you that you were going to get time, that's not
2 accurate? That's not right?

3 A. That was later -- that was like the first time when
4 I went to see her.

5 Q. Okay. So she told you, when you went to see her one
6 time, that you would serve time for this charge probably?

7 A. Yes, ma'am.

8 Q. Okay. But you -- you're saying that, when you went
9 to the guilty plea, she promised you that you would be serving
10 just probation?

11 A. Just probation and paying a fine. That's what she
12 said.

13 Q. Now do you remember the judge going over with you
14 everything at the trial -- I mean at the guilty plea?

15 A. I read some of it, what -- most of what I
16 understood.

17 Q. Do you remember the judge, when he asked you if you
18 understood that he could sentence you up to twenty (20) years,
19 and you said, "Yes, sir"?

20 A. He might have did. I don't remember.

21 Q. Okay. If the transcript shows that, would you agree
22 that he probably asked you that and ---

23 A. Yes, ma'am.

24 Q. --- you said, "Yes, sir"?

25 A. Yes, ma'am.

1 Q. And, if he asked if you knew that this was a violent
2 offense and most serious, and you said, "Yes, sir," and he
3 said, "Understanding the possible sentence I could give, you
4 still want to enter this plea and are you guilty?" And you
5 agreed with that; is that right?

6 A. I think so.

7 Q. Okay. And -- and Ms. Hodges spoke on your behalf,
8 didn't she, to the Court?

9 A. Yes, she was up -- she was standing up there. I
10 don't know what she said.

11 Q. She talked about the fact that you had a steady
12 employment record for seventeen (17) years and that -- that,
13 you know, you were extremely regretful and sorry about this
14 happening and that it basically was because of the alcohol;
15 isn't that right?

16 A. I think so.

17 Q. And she also talked about the fact that there were a
18 lot of people that supported you and that you had been going
19 to AA. And she even brought two (2) people to speak on your
20 behalf, right?

21 A. Uh-huh (affirmative).

22 Q. And was that in effort to try to maybe get you a
23 lesser sentence?

24 A. I believe so.

25 Q. All right. And you apologized for it and said you

1 wish you could change it, if it could happen; isn't that
2 right?

3 A. I believe I agree with that part.

4 Q. Okay. So -- so you went in there knowing what you
5 could get and that this was a violent sentence. You're just
6 not happy with the fact that the judge gave you twenty (20)
7 years; isn't that right?

8 A. Yes, ma'am.

9 MS. WHITE: Okay. Thank you. That's all the
10 questions I have at this time, Your Honor.

11 THE COURT: All right. Just a couple of quick
12 questions, Mister -- Mr. Gory.

13 EXAMINATION by THE COURT:

14 Q. Can you tell what your birthday is?

15 A. [REDACTED] [REDACTED].

16 Q. Okay. And are you -- do you have any brothers or
17 sisters?

18 A. I have seven (7) -- seven (7) sisters and four (4)
19 brothers.

20 Q. Seven (7) sisters and four (4) brothers?

21 A. Yes, sir.

22 Q. Okay. So how many kids total did your parents have?

23 A. Twelve (12).

24 Q. Twelve (12)? And all twelve (12) came from the same
25 mother and father?

1 A. Yes, sir.

2 Q. And you all grew up here in Spartanburg?

3 A. No, sir, really in Jonesville. I moved to
4 Spartanburg years ago.

5 Q. And where did you all grow up?

6 A. In Jonesville.

7 Q. Where's that?

8 A. A -- a little town down below Pacolet, below
9 Pacolet, down below Pacolet. It's in Union County.

10 Q. Union County?

11 A. Yes, sir.

12 Q. Okay. And it's a small town? What did -- what did
13 your daddy do for a living?

14 A. Well, he worked in a cotton -- in a cotton mill.

15 Q. Okay. Did -- I imagine with twelve (12) kids, what
16 did your mom do? Did she stay home?

17 A. Yes, sir. Well, sometime she -- she worked in the
18 mill some -- you know, a textile mill too.

19 Q. Okay. And your brothers and sisters, do you see
20 them much or do you hear from them much or...?

21 A. Well, not since I'm locked up. Not -- no.

22 Q. Beforehand though?

23 A. Oh, yes, sir.

24 Q. Before you got locked up in all this?

25 A. Oh, yes, sir, all the time.

1 Q. Do you have a brother or sister you're particularly
2 close to?

3 A. All of ~~the~~ - all of them.

4 Q. All of them?

5 A. Yeah, we're close.

6 Q. And are you ~~the~~ - are you in the middle or are you
7 towards the old or youngest or where are you in the bunch?

8 A. I'm ~~the~~ - I'm the next oldest boy, but there's five (5)
9 girls older than me.

10 Q. Okay. So there are five (5) girls older than you?

11 A. Yeah.

12 Q. I'm sure that must have been interesting growing up.
13 And you say your dad worked in a cotton mill?

14 A. Yes, sir.

15 Q. Now, your brothers and sisters, have they ever had
16 any problems in school or did they all graduate high school
17 or...?

18 A. All graduated high school.

19 Q. And did any of them go on to college?

20 A. Yes, sir.

21 Q. Okay. Have they been in trouble? Have any of them
22 been in trouble with the law?

23 A. Well just -- just me and my baby brother, but he
24 ain't been in too much, just ---

25 Q. Not too much? You've been in more trouble?

1 A. Yeah.

2 Q. Why do you think you've been in more trouble than
3 he?

4 A. I don't know. It's just -- I don't know.

5 Q. And you said that you worked in logging; is that
6 right?

7 A. Yeah, lumber.

8 Q. What have you done -- what company have you worked
9 for?

10 A. Well, Clemmons ❧- Clemmons Lumber (phonetic) up here
11 in Spartanburg. That was before I got arrested.

12 Q. Right. What type of work did you do for them?

13 A. Cut lumber.

14 Q. Cut lumber?

15 A. I was a saw operator.

16 Q. What does that involve?

17 A. Cutting -- cutting -- cutting the ends off of the
18 lumber.

19 Q. Okay. So what would your job -- what was your
20 typical day be on the job?

21 A. Sir?

22 Q. What -- what would your typical day be on the job?
23 They'd bring in lumber and you we be responsible for ---

24 A. Oh, yeah, yes, sir.

25 Q. --- running the blade or ---

1 A. Oh, yeah, sir. Cutting ✕- cutting the bad ends off
2 of it.

3 Q. What kind of lumber would you cut?

4 A. It was wet or, you know, kind ✕- kind of wet lumber.
5 And we had to stack it and dry it; you know, let it dry and
6 all after we cut it.

7 Q. All right. And how did you learn how to do all of
8 that?

9 A. I just -- it was just something; just something I ✕-
10 something I was good at.

11 Q. And you were separated from your wife at the time
12 that this happened?

13 A. Yes, sir.

14 Q. How long had you all been separated?

15 A. Well, now ✕- let's see, maybe about seven (7) or
16 eight (8) years.

17 Q. Seven (7) or eight (8) years?

18 A. Uh-huh (affirmative).

19 Q. Do you have any kids?

20 A. (Shakes head negatively.)

21 Q. Yes?

22 A. No, sir.

23 Q. You don't have any kids?

24 A. No, sir.

25 Q. Why did you all get separated, you and your wife?

1 A. I just ---

2 Q. Not to pry, but just what happened?

3 A. I guess -- I don't know, just couldn't get alone no
4 more I guess.

5 Q. And how long were you married before you got
6 separated?

7 A. Three (3) years.

8 Q. Were you married before you met this woman? This is
9 your first wife?

10 A. Yes, sir.

11 Q. First?

12 A. Yes, sir.

13 Q. Okay. And do you ever hear from her? Do you know
14 what she's doing now?

15 A. Oh, no, sir.

16 Q. Have you ever had any trouble managing money or
17 anything like that?

18 A. No.

19 Q. Do you know how to balance a checkbook?

20 A. Well, I ain't never had a checkbook. I just deal in
21 cash money.

22 Q. You deal in cash money?

23 A. (Nods affirmatively.)

24 Q. And did you own or rent your own house?

25 A. Rent.

1 Q. You rented?

2 A. Uh-huh (affirmative).

3 Q. Have you ever owned a car or anything like that?

4 A. Well, there was about four (4) or five (5) cars.

5 Q. And you -- did you pay cash for them? Or were they
6 -- or did you have to buy them on credit?

7 A. Well, I bought -- down payment and pay them off.

8 Q. All right. But you've had to file taxes before I
9 assume?

10 A. Uh-huh (affirmative).

11 Q. On the money you made at the lumber mill?

12 A. Yeah.

13 Q. Do you do that yourself or do you get somebody to
14 help you with that?

15 A. Somebody -- I get somebody to do it. I don't know
16 nothing about that.

17 Q. I'm the same way. No -- no reflection on you; I get
18 an accountant to do it. Who do you usually get to help you
19 with your taxes?

20 A. I usually get -- the last one was like -- I'm trying
21 to think. The last person that I had them done was... I
22 don't -- I don't remember.

23 Q. You can't remember who it was?

24 A. (Shakes head negatively.)

25 Q. All right. Now, Mr. Gory, do you -- when you went

1 into court, did you understand -- do you understand what the
2 role of the solicitor or the prosecutor is?

3 A. (Nods affirmatively.)

4 Q. What's the -- what's the prosecutor's job?

5 A. The -- the prosecutor prosecutes?

6 Q. Right. And what does that mean? What -- how does
7 he go about doing that?

8 A. With evidence.

9 Q. Evidence? Okay. And your lawyer that was
10 representing you, when you -- when you pled guilty, that's
11 this lady right here (indicating) or who -- who -- is that --
12 is that the lady who represented you when you pled guilty to
13 this charge?

14 A. I think so.

15 Q. Okay. Let assume for the minute -- for a moment it
16 was; what would her job be if she's representing you as your
17 attorney?

18 A. If she -- if she was representing me?

19 Q. Right.

20 A. Evidence.

21 Q. What do you mean by that?

22 (Brief Pause)

23 Q. Take your time; there's no wrong answer here.

24 A. Repeat the question one more time.

25 Q. What -- what would your lawyer's job be? If you're

1 going into court and you have a lawyer, what would your job --
2 what would the job of the lawyer be?

3 (Brief Pause)

4 A. To -- to find me guilty or innocent.

5 Q. Okay. And what would the -- the judge's job -- what
6 would the job of the judge be, Mr. Gory?

7 A. The sentence -- to sentence.

8 Q. Okay. Mr. Gory, I read through the transcript and
9 sounds like that maybe on the day that this happened maybe you
10 had a little bit to drink. How much had you had to drink that
11 day?

12 A. You mean when the accident happened?

13 Q. Right.

14 A. It was -- it was a party -- it was a -- a lot.

15 Q. Big party? Was it liquor or beer?

16 A. Liquor.

17 Q. Liquor? What kind of liquor?

18 A. It was -- vodka -- it wasn't vodka ---

19 Q. That's not important. How -- how much would you say
20 that -- did you have a lot to drink that day you think?

21 A. I think so.

22 Q. Do you normally have this much to drink every day?

23 A. Oh, no, sir.

24 Q. How -- how often do you usually drink?

25 A. Well usually probably about every day, you know,

MR. CHARLES GORY - EXAM by THE COURT

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1 beer. Weekends, a little alcohol, yeah.

2 Q. So you usually drink beer during the week days and
3 maybe liquor on the weekends?

4 A. Uh-huh (affirmative), on weekends.

5 Q. What time do you usually start drinking over the
6 course of a -- I assume you're not drinking when you're at
7 work because ---

8 A. Oh, no.

9 Q. --- you probably would have lost your arms by now
10 with you working ---

11 A. Yeah.

12 Q. --- at a saw mill drunk; am I right?

13 A. Right.

14 Q. Okay. So what time do you usually get off work?

15 A. Five o'clock (5:00).

16 Q. And would you usually have a beer or something like
17 that after work?

18 A. Yes, sir.

19 Q. About how many beers would you have during the
20 course of a night?

21 A. Probably a couple of quarts.

22 Q. A couple of quarts?

23 A. Quarts of Colt 45.

24 Q. Two -- two (2) of the 45s, Colt -- the big Colt 45s?

25 A. Yes, sir.

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1 Q. And what time did you go to sleep?

2 A. Probably around about ten (10:00) or eleven
3 (11:00) ---

4 Q. All right. Have you ever been diagnosed ---

5 A. --- on a work day.

6 Q. I'm sorry. Ten (10:00) or (11:00) eleven on a work
7 day?

8 A. On my work days.

9 Q. Have you ever been diagnosed with any ulcers? Has
10 the doctor ever told you, you had an ulcer?

11 A. No, sir.

12 Q. How about pancreatitis?

13 A. No, sir.

14 Q. Jaundice?

15 A. No, sir.

16 Q. Anything like that? No?

17 A. Just a little high blood. That's all.

18 Q. Diabetes?

19 A. No, sir.

20 Q. High blood sugar?

21 A. Just real high blood, yeah, blood pressure.

22 Q. How often would you see a doctor?

23 A. It depends. As long as I'm healthy, I don't see one
24 (phonetic).

25 Q. If it's not broke you don't fix it?

1 A. No, no.

2 Q. Okay.

3 THE COURT: All right. Follow up based on my
4 questions, Ms. Filler?

5 MS. FILLER: I think...

6 REDIRECT EXAMINATION by MS. FILLER:

7 Q. How long did you work with one lumber place?

8 A. For seventeen (17) years.

9 Q. Okay. And did you do the same job every day?

10 A. Yes, ma'am.

11 Q. Was it a full-time or a part-time job?

12 A. Full-time.

13 Q. Okay.

14 (Brief Pause)

15 Q. The last -- did you work seventeen (17) years
16 straight or was that broken up from other things?

17 A. No, that was seventeen (17) years straight.

18 Q. And, so, the ~~the~~ the earlier conviction on the
19 violent crime was seventeen (17) years before that?

20 A. It happened -- it happened in '84.

21 Q. In '84, not '97?

22 A. '84.

23 MS. FILLER: I have no further questions.

24 THE COURT: Any follow up, Ms. White, as to my
25 questions or Ms. Filler's questions?

1 RECROSS EXAMINATION by MS. WHITE:

2 Q. Mr. Gory, did -- do you remember if Ms. Hodges ever
3 asked you for any medical records?

4 A. I heard her mention it.

5 Q. Okay. Do you remember if she was able to get any
6 medical records from any doctors or anything ---

7 A. No, ma'am.

8 Q. Okay. So you don't know if she got any?

9 A. Huh-uh (negative).

10 MS. WHITE: Okay. That's all, Your Honor.

11 THE COURT: Thank you, sir. You can step down.

12 (The witness complied with the request.)

13 THE COURT: You all want to proffer her testimony,

14 Ms. White?

15 MS. WHITE: Yes, Your Honor.

16 THE COURT: Do you want to call her or...?

17 MS. FILLER: No, she can.

18 THE COURT: All right. Go ahead.

19 MS. WHITE: Your Honor, we would call Kathy Hodges.

20 (The witness stepped forward to be sworn.)

21 (Whereupon,

22 KATHLEEN HODGES

23 having been previously duly sworn, testified as
24 follows:)

25 THE COURT: Have a seat.

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1 (The witness complied with the request.)

2 (Off-the-Record Comments)

3 THE COURT: Go ahead, Ms. White.

4 MS. WHITE: Okay. Thank you.

5 DIRECT EXAMINATION by MS. WHITE:

6 Q. State your name for the record.

7 A. It's Kathleen, K-a-t-h-l-e-e-n, Hodges, H-o-d-g-e-s
8 and I go by Kathy.

9 Q. And, Ms. Hodges, if you can, just tell us where
10 you're employed now and if not at the same place, how you were
11 involved with Mr. Gory's case?

12 A. I'm currently employed as a staff attorney for the
13 South Carolina Department of Social Services in Anderson
14 County. I have been there since April of two thousand and
15 eleven (2011).

16 Prior to that, I was a -- an assistant public
17 defender at the Spartanburg County Public Defenders' Office
18 here in the Seventh (7th) Circuit.

19 And I was assigned to represent Mr. Gory when he --
20 basically, from the time he came in to our office; was picked
21 up by our office, up until through he plea with Judge Hayes.

22 Q. And how long had you worked as an assistant public
23 defender in Spartanburg?

24 A. I worked with the Spartanburg Public Defenders'
25 Office just a little over six (6) years.

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1 Q. Now, in your representation of Mr. Gory, do you
2 recall meeting with him at your office or was he in jail the
3 whole time?

4 A. He actually only spent two (2) days in jail prior to
5 bonding out. The first time I met with him in person was on
6 January the 26th of two thousand and ten (2010) at my office.

7 He had been in the office previously on December the
8 31st, two thousand and nine (2009) when he was interviewed by
9 one of our investigators, filled out the application, and did
10 an initial interview for us to be able to pick him up on the
11 charges.

12 Q. And tell us the process a little bit. Once they
13 meet with the investigator, do you get those notes? How does
14 that work in regards to the information they receive?

15 A. We have a standard interview form that the
16 investigator fills out.

17 It gets basic information in terms of the client's
18 name, address, contact information, date of birth, social
19 security number.

20 We'll ask questions as to their health, military
21 service, whether they have any prior drug, alcohol, or mental
22 illness history;

23 If they've ever been treated for any drugs, alcohol,
24 or mental illness, if they're on probation or parole
25 currently.

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1 We'll also get a brief summary of the -- what the
2 charges are and anything that the client can relate to us as
3 to what they know about the offense for which they have been
4 charged.

5 Q. Okay. And, when you got that information and had
6 your first meeting on January 26th, what was your conversation
7 or, if you recall, what you went over with Mr. Gory?

8 A. Yes. My conversation with Mr. Gory basically was to
9 review the discovery that I had received on January the 7th of
10 two thousand and ten (2010).

11 Bear with me one moment. I actually have my notes
12 from that day.

13 Q. Okay.

14 (Brief pause while witness examines documents.)

15 A. My recollection is that Mr. Gory had called the
16 office and requested a meeting. And, so, we actually met in
17 the office.

18 We talked basically about what had happened the day
19 of the incident. He indicated to me that he had been drinking
20 liquor.

21 It had a blue top or I don't -- I don't know if it
22 was a blue top whiskey or if it was just a whiskey bottle that
23 has a blue top.

24 It says he had been drinking it straight as he had
25 been drinking most of the day. He did not remember clearly

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1 who else had been at the party.

2 He described the whole incident as being unreal. He
3 indicated that he known Mr. Taylor (phonetic), who was the
4 victim in this case, for some time, had not had any problems
5 with Mr. Taylor.

6 He basically indicated that he had not given a
7 statement to the police because I had asked if he had given
8 one because there was not a statement in the discovery from
9 him.

10 He indicated to me that he had been working at the
11 lumber cutting -- lumber company doing cutting for
12 approximately seventeen (17) years.

13 He told me that he drunk -- drinks on the weekends
14 mostly, sometimes in between.

15 We kind of reviewed his rap sheet in terms of what
16 prior convictions he had. And I discussed with him on that
17 day the potential that the solicitor's office could file a
18 notice to seek life without parole based on his prior
19 conviction for voluntary manslaughter.

20 Q. During your initial conversation with him or
21 meeting, did you have any concern or did you notice anything
22 that stood out to you in regards to issues of competency?

23 A. No, nothing that -- that stuck out to me in terms of
24 issues of competency at that time. I did ask him to sign a
25 release for his medical records that we sent to Spartanburg

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1 Regional.

2 We received records from that day as well as
3 records from two thousand, three (2003). And those were the
4 only medical records that Spartanburg Regional sent me.

5 Q. And, in regards to the intake form, had he indicated
6 any issues with mental illness or a history of treatment?

7 A. He indicated no issues with mental illness or a
8 history of treatment. He did indicate that he had a problem
9 with alcohol and had been treated through AA in 1984.

10 Q. Okay.

11 (Brief Pause)

12 Q. After meeting with him initially, did you have --
13 did he indicate to you whether or not he wanted to proceed to
14 trial, plea guilty? Was there any discussion about that?

15 A. His first indication to me was that -- that he
16 wanted to plea guilty, that he -- that's what he told our
17 investigator.

18 We have a standard question that we ask whether
19 guilty or not guilty of the offense and ---

20 MS. FILLER: Your Honor, I'm going to object
21 because this is hearsay and ---

22 THE COURT: I'm -- I'm going to allow it. This is
23 standard operating procedure. This is their habit,
24 routine practice. I'll allow it and see where it goes.
25 Go ahead.

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1 Q. (By Ms. White) Go ahead.

2 A. He had indicated to the investigator that he was
3 interested in pleading guilty. I, then, talked with him about
4 the fact that he had a preliminary hearing that would be
5 coming up in February.

6 We -- and, then, there were a couple of other things
7 that I wanted to try and -- and investigate with the
8 solicitor's office in terms of either a 911 call or statements
9 that one particular witness may or may not have made.

10 And, then, the next time we talked specifically
11 would have been on March the 18th. I had a telephone call with
12 Mister -- well, actually first time -- the next time we talked
13 was at his preliminary hearing, which was on February the 8th,
14 of two thousand and ten (2010).

15 My recollection is we met downstairs at this
16 courthouse outside of the Magistrate's courtroom where the
17 preliminary hearings are ordinarily held.

18 We talked about what the discover was; we had
19 already previously talked about and he indicated that he
20 didn't need a preliminary hearing, so, the preliminary hearing
21 was waived.

22 And, then, we then talked on March the 18th. I
23 indicated to Mr Gory that the solicitor had made no offer
24 other than a straight-up plea to the assault and battery with
25 intent to kill.

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1 He asked me if they had served notice about life. I
2 told him that, that they had not served the life without
3 parole notice; that it was a plea that would encompass zero
4 (0) to twenty (20) years and asked him if he wanted to plea
5 guilty; did he want to go to trial; if he had any questions.

6 He told me to announce it as a guilty plea at the
7 second appearance.

8 Q. Okay. And do you have a copy of the intake form
9 with you?

10 A. I do.

11 MS. WHITE: If I may approach, Your Honor?

12 THE COURT: Please.

13 (Ms. White retrieves document.)

14 Q. Okay. And you received this from your investigator?

15 A. Yes. What happens is the -- the client comes in
16 with a copy of their receipt which they paid the application
17 fee for the public defenders office and a copy of their
18 warrant.

19 A -- an investigator interviews that person. The
20 entire packet is put together. It's provided to our court
21 coordinator, who assigns a case number, opens up the file.

22 A secretary does the initial paperwork to file for
23 the request for discovery, request for a preliminary hearing.
24 And, then, would -- the file would come to me probably within
25 about a week from the date that the person is interviewed.

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1 (Whereupon, Respondent's Exhibit Number 1 was marked
2 for identification.)

3 MS. WHITE: And, Your Honor, if we could, I'd move
4 this in a Respondent's Number 1.

5 THE COURT: Without objection?

6 MS. FILLER: I don't have any objection.

7 MS. HODGES: Your Honor, the only thing that we
8 would ask is, if we could, get a copy of it to maintain a
9 copy in our file for future reference.

10 (Whereupon, Respondent's Exhibit Number 1 was
11 admitted into evidence without objection.)

12 Q. (By Ms. White) And the information -- I'm sorry,
13 Your Honor.

14 THE COURT: We'll do that.

15 Q. (By Ms. White) The information that we were just
16 going over, that you've just been discussing prior to, that
17 was obtained -- obtained from the form when you discussed it
18 with him?

19 A. Yes.

20 Q. Would you have gone over that with him and asked him
21 if there were any changes to it or if anything was incorrect
22 on that form?

23 A. Yes.

24 Q. Okay. Once the March 18th meeting and you discussed
25 with him that, that he wanted this to be called out as a plea,

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1 what other communication did you have with him?

2 A. The next communication I had, according to my review
3 of the file, is he and I -- I actually sent him a letter
4 indicating that we needed to meet. And I believe he called
5 in.

6 We set a scheduled meeting. I was not able to keep
7 that original meeting as scheduled, so, I then had a phone
8 call to his place of work to ask them to re -- to relay a
9 message to reschedule it.

10 And he and I then met again on May the 11th of two
11 thousand and ten (2010) in the public defenders office.

12 Q. Okay. Did you -- in order for you to get in touch
13 with him, was it easiest to get him at work?

14 A. He only had a -- a phone number at work.

15 Q. Okay. And during this time were you having any
16 trouble communicating with him still?

17 A. No. I had no trouble communicating with him. He
18 appeared to understand our conversations and was able to
19 answer my questions in a matter that did not give me any rise
20 to concern that he did not understand our conversations.

21 Q. Did you have a chance to discuss with him and go
22 over with him the arrest warrant or the charge and the
23 particular sentence that he was facing?

24 A. Yes, I did.

25 Q. Did he appear to understand that conversation and

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1 what he was facing in regards to sentence and charge?

2 A. Yes, he did.

3 Q. And, after your May meeting, was that your last
4 meeting prior to the guilty plea?

5 A. I met with him before the plea itself on the day of
6 the plea. I do not recall whether I had a copy of the
7 indictment prior to his actual plea.

8 I do know that I did not have a copy of the
9 indictment in the initial discovery that was provided to me by
10 the solicitor's office in January of two thousand and ten
11 (2010).

12 There is a sticky note in the file that is Zack
13 Ellis' handwriting and -- and he was the solicitor assigned to
14 the case. It indicates, "To Kathy Hodges, PD's office,
15 Tuesday, May 18, two o'clock (2:00).

16 That indicates to me and their normal practice was
17 that would have been attached to the sentencing sheet and the
18 restitution form.

19 I do not have an independent recollection whether I
20 had a copy of the indictment also with that at the time, but I
21 would have gone over the indictment with Mr. Gory prior to
22 actually entering the plea because I go through all the
23 documents that are handed up to the Court prior to a plea.

24 MS. FILLER: Your Honor, I'm going to object if she
25 doesn't have an independent recollection of ever even

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1 receiving it. So she's just saying what's her ---

2 THE COURT: She's giving evidence of what her habit
3 or her custom is. I will sustain the objection, but if
4 you want to lay a better foundation of how she deals with
5 her clients, that might be the better way to go about
6 getting in what you're getting at.

7 MS. WHITE: Okay. Thank you, Your Honor.

8 Q. (By Ms. White) Initially we discussed earlier that
9 he brought in his arrest warrant and had that attached to the
10 intake form. Does the arrest warrant give information about
11 what he's been charged with?

12 A. Yes, it does.

13 Q. Can you read for me what the arrest warrant states
14 in regards to the charges?

15 A. The body of the warrant indicates that the probable
16 cause for which the Magistrate judge signed the warrant was
17 based on the following facts: "That on November 28, 2009, in
18 the County of Spartanburg, one Charles Edward Gory did
19 intentionally commit a battery upon Lafayette Taylor
20 (phonetic) by shooting the victim at close range with a
21 shotgun with the intent to kill."

22 Q. Okay. You reviewed that with Mr. Gory when he
23 initially came in and met with you; is that right?

24 A. Yes.

25 Q. Okay. Now in regards to before a client -- and

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1 your standard procedure and operating procedure in the six (6)
2 years you worked at the public defenders office, did you have
3 a habit or a -- a method of operation in how you treated
4 guilty pleas? Would you have allowed someone to plead guilty
5 were there no indictment? Had they not been indicted?

6 A. No, unless the client indicated to me that they were
7 willing to waive presentment of the indictment. And, then, we
8 would have gone through the charging document that was being
9 provided to the Court.

10 That was the -- the actual way -- the accusation on
11 an indictment form.

12 Q. And, from the evidence that has been put in -- and I
13 know you reviewed the indictment -- was this a situation where
14 Mr. Gory waived presentment to the indictment?

15 A. He did not. The indictment was true billed.

16 Q. Okay. And you indicated you don't have an
17 independent recollection of receiving the indictment. What is
18 your standard operating procedure in regards to proceeding
19 with a guilty plea with someone once a true bill indictment
20 has been formed when you don't have a copy of the indictment?

21 A. If I don't have a copy of the indictment at the time
22 that we are discussing the plea or the -- the decision to
23 plead, I always ensure that we get the -- the -- the
24 indictment.

25 The original indictment that's being passed up to

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1 the judge for consideration on the day of the plea, I actually
2 will make sure that I go through that indictment with the
3 client prior to the client being presented to the Court for a
4 plea to ensure that there aren't any defects in the indictment
5 that we need to raise prior to the plea being offered and
6 taken.

7 Q. And, in regards to this situation, do you recall if
8 there were any issues that you felt were defective on Mr.
9 Gory's indictment?

10 A. There were not.

11 Q. In your experience ---

12 MS. FILLER: Well, I'm going to object. I don't
13 believe she testified that she did that with Mr. Gory. I
14 think she's just talking about her standard operating
15 procedures.

16 THE COURT: I'm not sure if we got the question out
17 yet, but ---

18 MS. FILLER: I mean, is she saying that she went
19 over it with Mr. Gory or does she just do that in
20 general?

21 THE COURT: Why ---

22 MS. FILLER: I mean, is she ---

23 THE COURT: Why don't you clarify that real quick
24 with the witness?

25 MS. WHITE: Okay. I believe I asked what her

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1 standard operating procedure was and if she had no copy
2 of the indictment at the time of the guilty plea.

3 THE COURT: All right. Let's go about it like
4 this: Do you have a independent recollection of doing
5 that with Mr. Gory in this case?

6 A. Yes, I do.

7 THE COURT: Okay.

8 A. I have an independent recollection of going through
9 the -- both the -- the -- the plea, the sentencing sheet, the
10 indictment, and the rest -- the restitution order with Mr.
11 Gory the day of the plea.

12 I do not have an independent recollection as to
13 whether I had a copy of the indictment at the day -- because I
14 -- at the -- when we talked about pleading and what would go
15 on at the plea in my office on May the 11th.

16 MS. WHITE: Thank you, Your Honor. Just briefly,
17 Ms. Hodges -- if the Court would bear with me: I want to
18 make sure I've covered everything.

19 Q. (By Ms. White) Did you ever tell Mr. Gory that he
20 would be receiving a probationary sentence?

21 A. No, I did not.

22 (Brief Pause)

23 MS. WHITE: I think that's all the questions I have
24 at this time, Your Honor.

25 THE COURT: Ms. Filler?

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1 CROSS EXAMINATION by MS. FILLER:

2 Q. When you handed Mr. Gory the release to sign for the
3 medical records, did he read it or did he just sign it?

4 A. I went through the medical records release with him
5 indicating where it was going, what the dates were that were
6 to be covered.

7 We actually would have gone through the release in
8 terms of any issues that involved any psychiatric history,
9 drug history, HIV history. And, then, he signed it after
10 indicating that he understood what he was signing.

11 Q. My question was did he read it or did you go over it
12 and he just signed it?

13 A. I went over it and he signed it. He did not read it
14 to X- in terms of -- of -- yeah, we went through it.

15 Q. In fact, all X- with all the documents you went over
16 with Mr. Gory, did you ever see him independently read
17 anything?

18 A. I don't remember. I X- I don't recall.

19 Q. This X- these two pages, which I think are the first
20 part of your interview form, is that -- is the part that was
21 only done by the interviewer?

22 (Documents shown to the witness.)

23 A. That as well as the financial -- there's a second
24 part you did not copy when you reviewed the file that's an
25 affidavit of indigence, an application for counsel, that is

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1 also prepared by the interviewer.

2 Q. Okay. And, so, these -- I'm -- this isn't a ✖- a
3 long, time consuming interview from ✖- from what's here. And
4 I'm looking at, you know, a few sentences filled out by your
5 interviewer.

6 A. I'm not sure I understand the question.

7 Q. In other words, this is just real basis information.
8 It's not like it's a long, drawn-out interview?

9 A. It's basis information, yes. In terms of long and
10 drawn out...

11 Q. Well, I'm seeing about maybe three (3) or four (4)
12 paragraphs total if you added it and consolidated it that has
13 been written down by your interviewer?

14 A. That's about right.

15 Q. And where in this interview form is it documented
16 that he was seeking a guilty plea at that time?

17 A. On the back side of the interview where it says,
18 ✖Defendant states guilty/not guilty,✖ and there's a box to
19 check.

20 Q. It doesn't say he wanted to plead guilty.

21 (Brief pause while witness examines documents.)

22 A. Not -- it does not say he doesn't want to plead
23 guilty, no.

24 Q. You had said earlier that the investigator
25 documented that he wanted to plead guilty.

1 A. And -- and -- and that's the way that I would
2 interpret that he indicates that he is -- that he is guilty of
3 the offense.

4 Q. But not that he would plead guilty?

5 A. No. I mean, that's a conversation that we would
6 have had throughout the course of our representation.

7 Q. Is the interviewer a lawyer?

8 A. No, he's not.

9 Q. And all the information that's taken down by the
10 interviewer was written by him and not by Mr. Gory?

11 A. Except for Mr. Gory's signature, that is correct.

12 Q. When -- when you said that Mr. Gory appeared to
13 understand your conversations, did you -- did you ask for
14 feedback from him or was it more of a -- okay ~~yes,~~ ~~no~~ kind
15 of answers?

16 A. I mean, I spent the time to ask him what happened,
17 what did he remember. I went through -- read to him the
18 discovery that people were saying.

19 I asked him if -- if anything happened that was any
20 different than what was in the discovery, asked him if he
21 understood. He indicated that he did.

22 I asked him if he had any questions. He indicated
23 that he did not.

24 I try to ask as many open-ended questions in talking
25 with a client as possible, so, that they had an opportunity to

1 provide me as much information as possible.

2 Q. He ~~was~~- he didn't tell you very much, did he?

3 A. We actually had a pretty good conversations. I
4 mean, I...

5 Q. Well, in the interview documents, he doesn't have
6 much of memory of what happened that night other than this
7 party beforehand and he remembered showing up, but that's --
8 not very much information. It's only about three (3)
9 sentences long.

10 A. In that interview, that's true. That's a synopsis
11 of what he would have told Mr. Smith (phonetic).

12 Q. Did he tell you anything more than that?

13 A. Uh-huh (affirmative), he did.

14 Q. What did he tell you?

15 A. Well, he told me what type of liquor he was
16 drinking. He told me what his habits were for drinking.

17 We talked about, you know, whether he remembered who
18 else was there. And we had a conversation about what he
19 remembered and, you know...

20 Q. The education level documented on the interviewer
21 form was ninth (9th) grade. Did you ever try to ascertain his
22 ability to read and to write?

23 A. I don't remember that I did.

24 (Brief Pause)

25 Q. Do you feel you made an assumption about his ability

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1 to read and write?

2 A. No, I don't. I always actually assume that my
3 clients are -- have more difficulty in reading and writing.
4 And quite frankly have offended some people that tell me, "Oh,
5 I can read it; you don't need to read it to me."

6 Q. Did Mr. Gory ever tell you that?

7 A. No, he didn't. And that's why I made sure that I
8 read everything to him and talked with him about what we were
9 reading.

10 (Brief Pause)

11 Q. Would you say that Mr. Gory is a pretty agreeable
12 fellow as far as when you're having conversations?

13 A. Yes, he is.

14 Q. And, so, you ask a question and he'll nod,
15 "yes" and "no," but he goes along with whatever you're telling
16 him?

17 A. I would not say that Mr. Gory is able to be led into
18 what I'm telling him, but he is an agreeable person. He's a
19 very likeable person.

20 He has -- would ask questions independent of what we
21 were talking about that -- that led me to believe that he was
22 understanding our conversations.

23 Q. Can you give me some examples?

24 A. Yes. He would ask several times about whether the
25 State had filed the notice for life -- to seek life without

1 parole and whether he was actually going to be facing a life
2 sentence or not.

3 Q. Well, is there a time limit for the State to do
4 that?

5 A. They have to do it within ten (10) days prior to
6 actually going to trial.

7 (Brief Pause)

8 Q. What would have been their deadline for -- for
9 seeking that?

10 A. Ten (10) days prior to trial.

11 Q. Oh, so, at any time up to the plea, they could have
12 still had time to file it?

13 A. They could have done it any time prior to it going
14 to trial.

15 Q. But I'm saying you -- and I'm -- you have to excuse
16 me; I'm not a criminal attorney. So, I'm not -- this is my
17 oversight, but at the time he pled guilty, there was not a
18 trial date?

19 A. That's correct. It was a plea.

20 Q. So, based on -- if you had not pled, they would have
21 still had time to file that?

22 A. That's correct.

23 (Brief Pause)

24 Q. Have you -- were there other cases where you sought
25 psychological evaluations?

1 A. Yes.

2 Q. Was it usually because the person asked?

3 A. No.

4 Q. What type of behaviors would elicited that kind type
5 of competency evaluation?

6 A. Somebody who was not able to coherently answer the
7 questions that I'm asking. For example; "How are you today?"
8 and the response is "Mayonnaise." Or someone who has
9 indicated that they have a documented history of mental
10 illness.

11 They may indicate that they feel fine and they think
12 that they understand everything, but I have concerns because
13 of documentation of mental illness that, you know, that a
14 psychological evaluation or competency evaluation might be
15 necessary.

16 I've had -- you know, those are a couple of examples
17 from a couple of clients.

18 Q. Do you have any special training in psychiatry or
19 psychology?

20 A. I do not.

21 Q. Mr. Gory testified earlier that he wasn't -- unless
22 something was actually broke he wasn't going to go to a
23 doctor.

24 A. That's true.

25 Q. Do you think that Mr. Gory would have realized if

1 something were broken as far as his mental deficiencies or...?

2 A. I have no idea.

3 (Brief Pause)

4 MS. FILLER: If I may?

5 THE COURT: Certainly.

6 (Off-the-Record Discussion)

7 MS. FILLER: Your Honor, I have no further
8 questions.

9 THE COURT: Two quick questions from me.

10 EXAMINATION by THE COURT:

11 Q. The records that you obtained from the hospital, you
12 said you got records, which I presume were contemporaneous
13 with this incident?

14 A. Yes, sir. And they were -- records that were
15 contemporaneous with this incident. And the hospital also
16 sent me from --

17 Q. From two thousand, three (2003)?

18 A. From two thousand, three (2003).

19 Q. Okay.

20 A. Yes, sir.

21 Q. Two thousand, three (2003) would have been the time
22 that he was charged with DUI. Anything in those records that
23 indicate any sort of cognizance, impairment, or mental
24 difficulties?

25 A. No, sir.

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1 Q. Anything indicating a physical disease which would
2 most commonly be caused by alcoholism; either ulcers,
3 pancreatitis, high blood pressure, delirium, confusion,
4 anything in those records indicating any of that?

5 A. No, sir.

6 Q. What do the record indicate?

7 A. Basically, Judge, the records indicate -- two
8 thousand and three (2003) records basically are for a
9 fractured wrist.

10 Q. Any indication how that happened?

11 (Brief Pause)

12 Q. In the nurses' notes perhaps?

13 A. The nurses' notes indicate that he presented with
14 swelling and pain to the left wrist. That, "He fell four (4)
15 days ago and landed on his hand and swelling has increased
16 since."

17 Q. Okay. And the second incident was for ---

18 A. The second incident, Your Honor, is actually from
19 the confrontation with Mr. Taylor. The shotgun that was
20 used -

21 Q. He was bludgeoned with it after he shot Mr. Taylor?

22 A. Yeah. Basically he shot Mr. Taylor and part of the
23 shotgun broke apart and apparently hit Mr. Gory in the head.
24 And, so, there's lacerations to his head for which he was
25 treated at the hospital after his arrest and prior to being

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1 taken to the county jail.

2 Q. All right. In your interviews with him -- in your
3 interviews with Mr. Gory, did he ever give an explanation as
4 to why he shot this fellow?

5 A. He did not, Judge. He was very concerned about --
6 and very remorseful about the fact that Mr. Taylor had been
7 shot.

8 He says he doesn't know why he did it. He did not
9 have a good memory of -- he remembers drinking. He remembers
10 that there was a party.

11 He remembers the confrontation happening, but he
12 doesn't have a good explanation or -- or memories to what he
13 was thinking.

14 Part of the State's theory of the case was that
15 there was an argument about another woman. He vehemently
16 denied that, said that, that was not it;

17 That he said Mr. Taylor was a friend of his and he
18 doesn't know why he did it.

19 THE COURT: Follow up?

20 MS. FILLER: No, Your Honor.

21 MS. WHITE: Well, you -- in your -- I'm sorry, in
22 reference just your questions or...?

23 THE COURT: Yeah, her first and then ---

24 MS. WHITE: Okay. I did have brief redirect.

25 THE COURT: Go ahead. Go ahead. Sorry.

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1 REDIRECT EXAMINATION by MS. WHITE:

2 Q. Ms. Hodges, just briefly, in regards to the
3 questions and -- and your experience, you said that you have
4 requested some mental evaluations for clients in the past?

5 A. Yes.

6 Q. To your -- in your experience, has the fact or the
7 fact of not being able to read or write, has that been able to
8 determine that someone is not competent to plead guilty or to
9 proceed to trial?

10 A. In and of itself, no.

11 Q. Okay. And had Mr. Gory asked for a competency exam
12 would you have been able to secure one for him? If you -- I
13 guess, if you thought it was necessary?

14 A. No, I certainly would have, you know, explored the
15 ability to -- to request one. Now, you know, whether the
16 Court would have ordered one or not, you know, I can't tell
17 you.

18 I think that -- that would speculation on my part.
19 But, I mean, I certainly would have asked the Court for one
20 had Mr. Gory either presented to me that he needed one or if
21 he'd asked for one, I would, you know, examined whether I
22 thought that one was necessary.

23 Q. And would you have had to go to court and ask for a
24 Blair hearing or make a motion for a competency evaluation?
25 Is that -- when you say if the Court had determined that

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1 or...?

2 A. Well, the -- the -- my recollection of the practice
3 in -- in the office was we would see if the solicitor's office
4 first would simply consent to doing a competency evaluation.

5 We also -- if they -- if they do, then, we basically
6 attach whatever records we have and, you know, present that to
7 the Court.

8 And, if it's an -- an agreement, ordinarily the
9 Court will sign off on that. If it was a situation where the
10 solicitor's office would not consent, then, I would have made
11 a motion for the presiding administrative judge at the time
12 and presented what I had and asked for the evaluation.

13 Q. And, in regards to a guilty plea, the issue of
14 competence, can that be used to sway for mitigation purposes?
15 Can that be used for a defense for trial?

16 Can you explain a little bit to what -- what, if
17 someone was found not competent, how that would have been used
18 in a situation?

19 A. Well, if the person is found not competent, then --
20 then you need to then look further as to whether they're not
21 competent by reason of insanity or they are not competent by
22 reason -- or are they -- they are not guilty by reason of
23 insanity?

24 They're not -- or are they're guilty but mentally
25 ill?

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1 And, then, the question becomes whether it's
2 something that would prevent the State from being able to try
3 the person at all or whether -- or whether it's something that
4 would be used either in terms of mitigation or a factor in
5 terms of sentencing as to where -- what an appropriate
6 sanction or treatment for someone who is guilty but mentally
7 ill.

8 I found Mr. Gory able to assist me in terms of being
9 able to determine what the issues were in his case, what the
10 facts were; what the avenues were that -- that he needed me to
11 investigate in order to represent him.

12 I found that he understood what his charge was. He
13 appeared to me to understand what the -- the purpose of the
14 different actors and players are in the criminal justice
15 system.

16 So I did not have any concerns regarding his
17 competency. But, if a psychiatrist told me that he was not
18 competent to stand trial, then, you know, we wouldn't have
19 been offering a guilty plea necessarily.

20 MS. WHITE: Okay. That's all I have.

21 RECROSS EXAMINATION by MS. FILLER:

22 Q. Doesn't incompetency also affect whether somebody
23 voluntarily enter into a plea?

24 A. Yes, it does.

25 Q. And what about, if you were incompetent to

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1 appreciate and understand your advice, would you have tried to
2 either explain it differently or find another approach?

3 A. Yes.

4 Q. So, but in order for him to voluntarily plea, he
5 would've had to understand what the consequences were?

6 A. Yes, and he appeared to understand those
7 consequences.

8 MS. FILLER: I have no further questions, Your
9 Honor.

10 THE COURT: Thank you, ma'am. You can step down.

11 MS. HODGES: Yes, sir. Thank you.

12 THE COURT: Anything else from the State?

13 MS. WHITE: Nothing else, Your Honor.

14 THE COURT: Anything else, Ms. Filler?

15 MS. FILLER: No, sir.

16 THE COURT: Okay.

17 (Brief Pause)

18 THE COURT: All right. One of the reasons that I
19 just want to make sure that the record is perfectly clear
20 at this point and one of the reasons that I wanted to go
21 through that quasi-Blair hearing was to determine both
22 whether some reason existed or some reason may have
23 existed at the time that Counsel represented the
24 Applicant, some reason that may have existed for her to
25 request a competency evaluation.

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1 Right now, if there was some evidence demonstrating
2 lack of capacity or a thought kind of situation at the
3 time that she represented him; obviously, if there was
4 some evidence of that and she failed to follow up on
5 that, then, perhaps he would be entitled to relief.

6 Of course, we also have a, for a lack of better
7 word, an informal request from the Applicant at this
8 point in time for a competency evaluation.

9 And what I'm finding significant is that Mr. Gory's
10 long-term memory is largely intact. He is substantially
11 functional.

12 His arrest record, based upon what was reflected
13 during the -- in the transcript -- and that's all I'm
14 going on -- based on what's in the transcript, the only
15 alcohol related offense, in addition to this one, is a
16 DUI in '93.

17 Usually, if you see alcohol induced, dementia would
18 be your most common type of problem. And symptoms for
19 that, as you all know, are pretty much identical to
20 Alzheimer's.

21 You have memory impairment. You have difficulty
22 speaking, difficulty of motor coordination, difficult in
23 abstract -- difficulty in abstract thinking; hard to
24 identify objects that you would normally see.

25 You have some sort of limitations in your social or

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1 occupational functioning usually. Normally there's some
2 kind of physical problems associated with you -- with you
3 that also has an alcohol base to it.

4 Sometimes that happens. And we just have a
5 situation where that does not seem to be the case in
6 light of Mr. Gory's absence of any kind of prior mental
7 health treatment.

8 And because of the -- and, when I was asking him
9 questions, I was making a point to ask open-ended
10 questions about this family history and about how things
11 in his life had gone.

12 He was able to hold down -- he was able to hold down
13 a job for seventeen (17) years. Obviously, I think there
14 is some level of alcohol abuse going on here.

15 I can't say, though, as a matter of -- of law or as
16 a matter of course, that it would have been proper for
17 his attorney to request a mental exam or not or asked for
18 a competency evaluation.

19 I just don't think that was something that needed to
20 be done in this case because there was simply no evidence
21 of any impairment.

22 Perhaps intellectual functioning, yes. Perhaps --
23 perhaps his lack of schooling; maybe that was one of the
24 reasons that the people in the prison wrote what they
25 wrote.

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1 But I just don't see the need for a mental
2 evaluation at this point in time unless you're telling
3 me, Ms. Filler, that you're having difficulty
4 communicating with him at this point in time.

5 I've seen you talk to him a couple of times. I just
6 don't know that I see it. But feel free to change my
7 mind.

8 MS. FILLER: I just don't think I'm in a position
9 to judge that, Your Honor.

10 THE COURT: I understand. I'm not sure I am
11 either, but usually a *Blair* hearing, the reason that you
12 have a *Blair* hearing is when in doubt and the Judge tries
13 to figure out whether it will or should be ordered,
14 whether it's really and truly necessary.

15 I always err on the side of caution. If there was
16 any evidence indicating that he had a mental problem, I
17 would order it.

18 MS. FILLER: I mean, if it goes to the fundamental
19 ability for someone to voluntarily plea, I mean, people
20 who see him every day would be in a better position to
21 judge that than I.

22 And, if goes to the common law issue of whether he
23 voluntarily understood its consequences, he thought he
24 was going to walk out of there. He didn't understand the
25 consequences. And ---

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1 THE COURT: I know, but no offense, but we -- I've
2 been doing this since Monday and pretty much everybody
3 that's testified so far was absolutely sure that they
4 were going to be walking out of that courtroom.

5 So, you know, that's the -- your client's mental
6 abilities are perhaps more limited than most of the folks
7 just because of his educational background. So, maybe
8 his sophistication isn't as good as theirs, but --

9 MS. FILLER: Right. I just find him to be -- I
10 mean, every question I've asked, he's just agreed.

11 So, I don't -- do you know what I'm saying? I don't
12 -- he hasn't -- he hasn't offered me any independent --
13 what I've gotten was from what other people have written,
14 not from what he has helped me do.

15 THE COURT: Sure.

16 MS. FILLER: And, so, I have not gotten an iota of
17 assistance in the preparation.

18 THE COURT: I'm going to take this under
19 advisement. I'm going to think about it a little bit
20 more and maybe -- I want to be satisfied that -- that
21 he's got the capacity certainly to assist you.

22 But based on what I'm hearing, I mean, there's not
23 much in the way of evidence of mental impairment. And I
24 don't really know that there's a great deal of work to do
25 to assist him in his application overall.

PAMELA FAUCETTE, CVR - 864-574-9534 or 336-260-2864

MS. KATHLEEN HODGES, ESQ - RECROSS by MS. FILLER Page 80

1 But I will take it under advisement and try to get
2 back to you tomorrow.

3 MS. WHITE: And, Your Honor, if I ---

4 THE COURT: Friday ❧- not tomorrow, Friday.

5 MS. WHITE: If I can, I'll just note the *Council v.*
6 *Cato* (phonetic) case in regards to whether or not PCR
7 applicants are required to be competent and *Jeter v.*
8 *State* (phonetic) regarding the requirements for guilty
9 plea.

10 Applicants challenging competency have to be plead
11 -- have to prove the allegations by a preponderance of
12 the evidence in regards to challenging their competency
13 in regards to a guilty plea.

14 THE COURT: Correct. The *Cato* case was the one
15 involving the day care center?

16 MS. WHITE: It was a situation -- it was a murder,
17 poison, burglary, larceny, first degree criminal sexual
18 conduct.

19 THE COURT: That's not the one I'm thinking about
20 then.

21 MS. WHITE: No, it was in two thousand and four
22 (2004).

23 THE COURT: I'll find it.

24 MS. WHITE: Okay. Well, it's 597 2nd -- SE 2nd,
25 782.

PAMELA FAUCETTE, CVR - 864-574-9534 or 336-260-2864

MS. KATHLEEN HODGES, ESQ - RECROSS by MS. FILLER Page 81

1 THE COURT: Seven, eighty-two (782)? All right.

2 MS. WHITE: Uh-huh (affirmative).

3 THE COURT: We've been at this for about two (2)
4 hours. Take a break and we'll try and do another one and
5 get these gentlemen out of here, okay? We're at ease in
6 this for a few minutes.

7 (Whereupon, the proceeding concluded at 3:51 p.m.)

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PAMELA FAUCETTE, CVR - 864-574-9534 or 336-260-2864

CERTIFICATION

Page 82

REPORTER'S CERTIFICATE

I, the undersigned **PAMELA FAUCETTE**, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that I acted as the Court reporter at the foregoing proceeding; that the foregoing pages, numbered 1 through 81, were transcribed at my direction and represent a complete and accurate transcription of said proceeding to the best of my knowledge and belief.

I do further certify that I am not of counsel for or in the employment of either of the parties to this action, nor am I interested in the results of this action.

September 14, 2012


Pamela S. Faucette
Official Court Reporter
Seventh Judicial Circuit

PAMELA FAUCETTE, CVR - 864-574-9534 or 336-260-2864

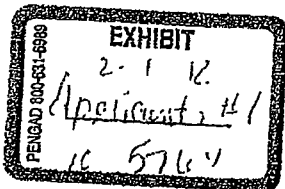
Spartanburg County

Spartanburg County Court House
130 Magnolia Street
P O Box 3483
Spartanburg, SC 29304-3483

Phone (864) 596-2591
Fax (864) 596-2239



M. Hope Blackley
Clerk of Court



RE: Charles Gory #123219
CASE #: 2010CP4205764

Dear Sir/Madam:

Please find enclosed a certified copy of the indictment(s) along with the Post Conviction Relief Application.

Should there be any questions regarding this matter please do not hesitate to call me at the above listed telephone number.

Sincerely

M. Hope Blackley / KGM/Kinney, AC

M. HOPE BLACKLEY
CLERK OF COURT

MHB/KGM
ENCLOSURES

INDICTMENT NUMBER(S) 2010GS4200765

October 29, 2010

Spartanburg County Sheriff's Office

1. SENTENCE MADE

2. REPORT MADE

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANTS

ARREST WARRANT NUMBER

7. ASSESSMENT AND
FINE CARD MADE

420584 TRAFFIC VIOLATION COPY

ACTION OF GRAND JURY

Preperson of Grand Jury
ate

VERDICT

Preperson of Petit Jury
ate

The State of South Carolina
County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

JAN 18 2010

TERM

THE STATE
VS.

Charles Edward Gory

Indictment for
ASSAULT AND BATTERY
WITH INTENT TO KILL

SC Code: 16-3-620
CDR Code: 014
Class FEL-C(V)

MARC KITCHENS

2010 JAN 27 PM 9:14

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

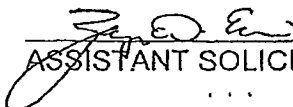
JAN 15 2010

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

ASSAULT AND BATTERY WITH INTENT TO KILL

That Charles Edward Gory, did in Spartanburg County on or about November 28, 2009, with malice aforethought commit an assault and battery upon one Lafayette Taylor, by shooting the victim with a shotgun, with the intent to kill the said victim, in violation of §16-03-620, of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

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


ASSISTANT SOLICITOR

FILE NUMBER: 60609 Solicitor _____ Attorney K91129

Bond Hearing Request Submitted by: _____ on _____ Initial Appearance: 01-14-10

Bond Hearing Request Received by: _____ on _____ 2nd Appearance: 03-18-10

Interviewer: DS Interview Site OFFICE Interview Date: 12-31-09

Name CHARLES EDWARD GORY Alias: _____

Address: [REDACTED] SPARTANBURG SC 29302

Phone: (Home) [REDACTED] (Other) _____ Other contact information: NONE

DOB: [REDACTED] Age: 52 SS#: [REDACTED] Sex: M Race: B Ed Level: 9

M W S D (SEP) Military: NO Health: NO PROBLEMS

Alcohol/Drugs/Mental Illness ALCOHOL

Treatment (Year/Type/Location): AA - 1984

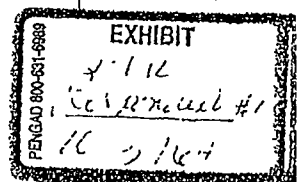
Probation/Parole (For/When) NO

Sentence: _____ Agent: _____

Pending Charges: STATUS NONE Attorney: _____

Criminal Record: VOLUNTARY MANSLAUGHTER, DUI, DUS

<u>WARRANT:</u> <u>DOA/DOI:</u>	<u>INDICTMENT:</u> <u>T.B. DATE:</u>	<u>CHARGE:</u>	<u>CDR</u> <u>CODE:</u>	<u>BOND \$</u> <u>SET:</u>	<u>BOND</u> <u>POSTED:</u>	<u>BONDSMAN:</u>
M-420584 11-28-09 11-28-09		ABWIK	DD14	\$20,000 ⁰⁰ 11-29-09	11-30-09	SAMBERS BA BOND 427-392 466-434 DANNY SAME UNION, SC



Co-Defendants MYAVictim(s) LA FAYETTE TAYLOR

Magistrate

<u>CHARGE:</u>	<u>COURT DATE:</u>	<u>TIME:</u>	<u>LOCATION:</u>
<u>MYA</u>			

Defendant States: ☒ Guilty ☐ Not GuiltyStatement to Police: NONE

ADMITTS GUILTY + HE HAD BEEN DRINKING. SAID HE DOESN'T REMEMBER GETTING HIS SHOTGUN
BUT SAID S.O. CONFISCATED HIS GUN. DOESN'T REMEMBER WHAT THEY ARGUED ABOUT. REMEMBERS
SHOOTING VICTIM w/ BIRDSHOT FROM ABOUT 4 FT. w/ 12 GAUGE SHOTGUN. SAID HE WAS STILL ON
SCENE WHEN S.O. GOT THERE. VICTIM WAS HIT IN LEFT SIDE.

THE STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)

IN THE GENERAL SESSIONS COURT
 SEVENTH JUDICIAL CIRCUIT

The State of South Carolina)
 Plaintiff,)

Vs.)

CHARLES EDWARD GORY)

Defendant.)

AFFIDAVIT OF INDIGENCY
 AND
 APPLICATION FOR COUNSEL
 (Defense of Indigency Act, Form No. 2)

CRIMINAL CHARGING DOCUMENT NO. M-420584

NAME OF APPLICANT	CHARLES EDWARD GORY
ADDRESS	[REDACTED] SPARTANBURG, SC 29302
TELEPHONE NUMBER(S):	[REDACTED]
DATE OF BIRTH	[REDACTED]
SOCIAL SECURITY NO.	[REDACTED]
NAMES OF CO-DEPENDANTS	N/A

1. Are you presently employed? Yes ☒ No ☐
 a. If "yes", state the amount of your salary or wages per month, and give the name and address of your employer.

SALARY OR WAGES PER MONTH	NAME AND ADDRESS OF EMPLOYER
\$200 / WK	CLEMENT LUMBER CO SP786 SC

If "no", state the name and address of last employment, date of termination of employment, and amount of your salary or wages per month.

SALARY OR WAGES PER MONTH	NAME AND ADDRESS OF EMPLOYER	TERMINATION DATE

2. Include employment information for the spouse, if applicable.

N/A

SALARY OR WAGES PER MONTH	NAME AND ADDRESS OF EMPLOYER

If the spouse is not currently employed, state the name and address of last employment, date of termination of employment, and amount of salary or wages per month

SALARY OR WAGES PER MONTH	NAME AND ADDRESS OF EMPLOYER	TERMINATION DATE

3. List by name, age and relationship to you, any persons who are dependent upon you for support. Indicate beside each how much you contribute toward their support.

NAME	AGE	RELATIONSHIP	AMOUNT OF SUPPORT
NONE			

4. Have you received within the past twelve months any money from any of the following sources?

- a. Business, profession or form of self-employment? Yes ☐ No ☒
- b. Rent payments, interest or dividends? Yes ☐ No ☒
- c. Pensions, annuities or life insurance payments? Yes ☐ No ☒
- d. Gifts or inheritances? Yes ☐ No ☒
- e. Any other sources? Yes ☐ No ☒

If the answer to any of the above is "yes", describe each source of money and state the amount received from each during the past twelve months.

SOURCE OF MONEY	AMOUNT

5. Do you own cash, or do you have any money in a checking or savings account?

Yes ☐ No ☒

If the answer is "yes", state the total amount of the cash owned. _____

6. Do you own any real estate, stocks, bonds, notes, or other valuable property (excluding ordinary household furnishings and clothing)?

Yes ☐ No ☒

If the answer is "yes", describe the property and state the appropriate value of the items owned.

7. What kind of motor vehicle do you own? NONE

Is it paid for? Yes ☐ No ☐

If not, what are the payments? _____

8. How much do you owe (on liens, mortgages, other encumbrances or debts)? NONE

I do solemnly swear that the account by me delivered into this court, with my application for counsel does contain a true and full account of all my real and personal estate, debts, credits and effects whatsoever without exception, which I or any person in trust for me have or at the time of my possession had, or am, or was, in any respect, entitled to, in possession, remainder or reversion and that I have not at any time since charges were made against me or before, directly or indirectly sold, leased, assigned or otherwise disposed of or made over, in trust for myself or otherwise, other than is mentioned herein.

I understand the appointment of counsel creates a claim against the assets and estate of the person who is provided counsel or the parents or legal guardians of a juvenile in an amount equal to the cost of representation less the amount paid to appointed counsel, the public defender office and/or the Commission on Indigent Defense. I understand that such claim shall be filed in the office of the Clerk of Court in the county where I, my child, or ward are assigned counsel, but that the filing of a claim shall not constitute a lien against my real or personal property unless, in the discretion of the court, part of all of such claim is reduced to judgment by appropriate order of the court after serving me with at least thirty (30) days notice that judgment will be entered.

I understand that, pursuant to §17-3-30(b), I am required to pay a non-refundable \$40.00 application fee to the Clerk of Court for public defender services or other appointed counsel.

I am financially unable to employ counsel and request that counsel be assigned to represent me. I understand that I am entitled to at least thirty days' notice before a claim against me may be reduced to judgment, and I do hereby waive the right to such notice.

This 31 day of Dec, 2009

Charles Gary
Defendant

Subscribed and sworn to before me this	
<u>31</u>	day of <u>Dec</u> , 2009
<u>Donald E. Hogg</u>	(L.S.)
Notary Public for South Carolina	
My Commission Expires: <u>09-16-18</u>	

The applicant's request for court-appointed counsel is hereby ☐ granted / ☐ denied.

Dated: _____

Judge/Clerk or Deputy Clerk

_____, South Carolina

APPLICATION FORM

Family Net Income: 200. / week
 Number Dependents: 2 dependent
 Real Estate: —
 Bank Acct (Type/Balance) Checking: —
 Savings: —
 Qualifier Initials: DM

****IF ABOVE INFORMATION CHANGES,
 CONTACT OUR OFFICE BEFORE
 PAYING \$40.00 APPLICATION FEE**

Date: 12-31, 2009

To: Spartanburg County Public Defender Office
 366 North Church Street, Suite 3000
 Spartanburg, South Carolina 29303

ABWIK M420584
1st APPEAR 1/14

From: Charles Long

Please consider my application to your office for legal representation. I understand that S.C. Law requires that a \$40.00 application fee must be paid by me prior to my mandatory affidavit; that I am financially unable to employ counsel by either having an income that does not exceed \$208.00 weekly, or having no dependants at \$72.00 per dependant to reduce my income to \$208.00 weekly, and I have no monies, securities, or real property. Also, I understand that the **APPLICATION FEE IS NON REFUNDABLE** and that I am responsible for the safe keeping of this form and my receipt until I present both to the Public Defender Office upon my interview.

SIGNATURE

Important Instructions:

- Take application form and \$40.00 payment to the: Clerk of Court Office Payment Division, Room 514, located on second floor of Spartanburg County Judicial Center (courthouse), 180 Magnolia Street, Spartanburg, South Carolina.
- Return to the Public Defender Office with your receipt, this stamped form and a copy of your ticket(s) and/or warrant(s) to be interviewed.

Please Note:

- Interviews at the Public Defender Office are conducted Monday through Friday, 9:00a.m - 4:00 p.m.
- Magistrate Charges: The Public Defender Office must have ten (10) BUSINESS days prior to your court date in order to prepare for your case.

*****YOU ARE RESPONSIBLE FOR YOUR RECEIPT. SHOULD YOU MISPLACE YOUR RECEIPT YOU WILL HAVE TO REPAY THE \$40.00 FEE.*****

FEE PAID
590 12/31/09

General Sessions
Clerk : Marcus W Kitchens
180 Magnolia Street
Spartanburg, SC 29304
(864) 596-2591

135

Received From: GORY, CHARLES

Date : 12/31/2009

RECEIPT # 195943

Clerk: rjeter

Paying for: GORY, CHARLES,

Payment Type:	Cash	\$40.00	Reference #
Total Paid		40.00	Comment:

Total Received	\$40.00
Change Due	\$0.00

M-420584

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

THE STATE

2009111510

against

Charles Edward Gory

Address

SPARTANBURG, SC 29302

Phone SSN.

Sex M Race B Height 5 6 Weight 210

DL State DL #

DOB Agency ORI # SC0420000

Prosecuting Agency Spartanburg County Sheriff

Prosecuting Officer Brandon M Letterman - 0064

Offense Assault / Assault and battery with Intent to Kill

(ABWIK)

Offense Code 0014

Code/Ordinance Sec 16-03-0620

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Date

Signature of Judge

RETURN

A copy of this arrest warrant was delivered to

defendant CHARLES EDWARD GORY

on 11/28/2009

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO

General Sessions

180 Magnolia Street

P O Box 3483

Spartanburg, SC 29304

136

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Spartanburg

Personally appeared before me the affiant Brandon M Letterman who

being duly sworn deposes and says that defendant Charles Edward Gory

did within this county and state on or about 11/28/2009 violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Spartanburg)

in the following particulars:

DESCRIPTION OF OFFENSE Assault / Assault and battery with Intent to Kill (ABWIK)

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:That on November 28, 2009, in the county of Spartanburg, one Charles Edward Gory did intentionally commit a battery upon
LAFAYETTE TAYLOR by shooting the victim at close range with a shotgun with the intent to kill.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

Affiant's Address 8045 Howard Street

Spartanburg, SC 29303-

Affiant's Telephone

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 11/28/2009 defendant Charles Edward Gory

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Spartanburg) as set forth below

DESCRIPTION OF OFFENSE. Assault / Assault and battery with Intent to Kill (ABWIK)

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

Sworn to and subscribed before me

on 11/28/2009

(L.S.)

Signature of Issuing Judge

Frederick "Fred" Douglas Caton

Judge Code 5013

Judge's Address Spartanburg County Judicial Center

Spartanburg, SC 29306-2335

Judge's Telephone (864) 596-3424

Issuing Court ☒ Magistrate ☐ Municipal ☐ Circuit

Spartanburg County Sheriff's Office

1. SENTENCE MADE

2. REPORT MADE

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANTS

ARREST WARRANT NUMBER

7. ASSESSMENT

FINE CARD MADE

1420584, TRAFFIC VIOLATION COPY

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: 1/15/10

VERDICT

Foreperson of Petit Jury
Date:The State of South Carolina
County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

JAN 18 2010

TERM

THE STATE
VS.

Charles Edward Gory

Indictment for

ASSAULT AND BATTERY
WITH INTENT TO KILLSC Code: 16-3-620
CDR Code: 014
Class FEL-C(V)

HARC KITCHENS

2019 JAN 27 PM 3:14

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

JAN 1st 2010

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

ASSAULT AND BATTERY WITH INTENT TO KILL

That Charles Edward Gory, did in Spartanburg County on or about November 28, 2009, with malice aforethought commit an assault and battery upon one Lafayette Taylor, by shooting the victim with a shotgun, with the intent to kill the said victim, in violation of §16-03-620, of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

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



ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Charles Gory, #123219,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2010-CP-42-5764

ORDER OF DISMISSAL

2012/01/11 - 2 PM 1:11

This matter comes before the Court by way of an Application for Post-Conviction Relief October 28, 2010. The Respondent made its Return on or about July 15, 2011. An evidentiary hearing into the matter was convened on February 1, 2012, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Laura Ann Filler, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Also testifying was Kathleen J. Hodges, Esquire ("Counsel"). This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, the guilty plea transcript, Applicant's Motions and Respondent's Return to those Motions, and exhibits entered into evidence at the hearing.

Prior to the hearing, Applicant's Counsel made a Motion for Default Judgment on the basis that Respondent failed to file the return timely. Following arguments, this Court found that the Motion was not proper and should be denied. Applicant's Counsel also made a Motion to allow the Applicant to proceed with the allegations included in his *pro se* amendment, which the

[Handwritten signature]

Respondent argued was improperly filed. The Motion also included a Motion for a competency evaluation, which the Respondent argued against as there had been no basis or good cause established for. Before ruling on Applicant Counsel's Motion for as competency evaluation or on the Motion to proceed with the amended application, this Court asked for testimony to be presented.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the January 2010 term of the Spartanburg County Grand Jury for assault and battery with intent to kill (2010-GS-42-0765). He was represented by Kathleen J. Hodges, Esquire. On May 18, 2010, the Applicant pled guilty as indicted. Applicant was sentenced by the Honorable Roger L. Couch to confinement for a period of twenty (20) years for the charge. The Applicant did not appeal his guilty plea or sentence.

ALLEGATIONS

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

- 1. Ineffective assistance of counsel;
 - a. Denial of right to appeal.
 - b. "Counsel failed to object the plea not being lesser."
- 2. Involuntary guilty plea;
 - a. Counsel did not advise Applicant to plead guilty to probation, and
- 3. Subject matter jurisdiction;
 - a. Applicant did not waive presentment.

2012 MAY -2 PM 1:11
CLERK OF COURT

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the

testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

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

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

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing* Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."

Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

The Applicant testified that he was 54 years old and could read some. He testified that he moved to Spartanburg seventeen years ago. The Applicant testified that he gets confused a lot and sometimes the things he wants to say do not come out right. He explained that he has some memory of the night of the shooting because there was a party, but it is hard for him to remember when he has been drinking. Applicant testified that on the day of his plea, he thought he was signing papers to go home with probation. He testified that he had heard her previously say something about life without parole, so he pled to get a lesser plea; however, he testified that Counsel never discussed with him if the Solicitor was going to negotiate any kind of plea. Applicant also later testified that Counsel had told him that he would serve time when they originally met and went over the charge. Applicant also testified that he knew that it was his second violent crime because of his 1997 conviction for voluntary manslaughter.

The Applicant testified that he never received a copy of the indictment from the Solicitor, but was unsure if his attorney ever gave him a copy. A copy of a letter from October 2010 that indicates the copy of the indictment was included was introduced as the Applicant's Exhibit #1. The Applicant alleged that the Grand Jury did not meet when they state they met on his indictment. However, he acknowledged that he knew he had been arrested for the charge of assault and battery with intent to kill. The Applicant testified that he met with his attorney every time they had an appointment. However, he testified that he did not tell her that he had any trouble with understanding, writing and reading. Applicant did testify that he told Counsel about his work, educational, and marital history during their meetings.

The Applicant testified that had he known he would receive a sentence of twenty years, he would have proceeded to trial. However, he testified that at the time of the plea, it was his decision to plead guilty. In fact, the Applicant testified that even the victim spoke on Applicant's behalf at the guilty plea.

Counsel testified that the Applicant bonded out of jail after only two days and she met with him in person the first time January 26, 2010. However, the investigator from the public defender's office had previously met with him in December and had Applicant fill out the intake form, which covers the Applicant's history and knowledge about the offense he is charged with. (Respondent's Exhibit #1). Counsel testified that she reviewed the discovery with the Applicant and talked about the incident. Counsel testified that the Applicant told her he had been drinking whiskey most of the day and told her that he had a substantial history of drinking. However, he also told her that he had given no statement to police. Counsel testified that they reviewed the possibility of the State seeking a sentence of life without parole at that time. Counsel testified that she had the Applicant sign a medical release, so that she could obtain his medical records and review the records in particular from the night of the shooting.

Counsel testified that based on her review of his intake form, review of his medical records, and conversations, nothing stood out to her in regards to concerns about the Applicant's competency. Counsel testified that she asked Applicant if he understood their conversations and if he had any questions and always tries to ask as many open ended questions as possible. Counsel testified that she did not recall if she ascertained Applicant's ability to read or write. However, Counsel also testified that whether or not Applicant could read or write well would not affect whether or not he would be found competent in and of itself. Any issue of competency would have most likely been an issue for allowing Applicant to plead guilty rather than proceed

to trial or an additional issue for mitigation.

Counsel testified that the Applicant wanted to plead guilty during all of her conversations with him. Counsel testified that she discussed a preliminary hearing with the Applicant and it was waived, but she also discussed with Applicant the 911 call and witness statements. Counsel testified that the Solicitor's office made no offer than a straight up plea, but at the time, they had not filed notice to seek a sentence of life without parole.

Counsel testified that she did not receive a copy of the indictment in the initial discovery materials, but her standard practice is to get a copy of the indictment and review it with her client and she does have an independent recollection of reviewing the indictment with the Applicant.

As to Applicant Counsel's Motion regarding an evaluation and the Applicant's claim that Counsel was ineffective for failing to request a competency evaluation prior to his plea, this Court finds that insufficient evidence exists warranting a competency evaluation now, or at the time of the plea. PCR's are not "extraordinarily fact intensive and do not warrant the assistance of a mentally competent applicant." Council v. Catoe, 359 S.C. 120, 597 S.E.2d 782 (2004); therefore, Counsel was not deficient in failing to request the same. A criminal defendant is competent to enter his guilty plea if "the accused [has] sufficient capability to consult with his lawyer with a reasonable degree of rational understanding and [has] a rational as well as a factual understanding of the proceeding against him." Jeter v. State, 308 S.C. 230, 417 S.E.2d 594, 596 (1992). An Applicant challenging his competency to plead must prove this allegation by a preponderance of the evidence. Id. This Court finds that the Applicant failed to meet his burden of proof as to this claim. Therefore, it is denied and dismissed. Additionally, as indicated, Counsel's motion for an evaluation is accordingly denied.

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The amended application for post-conviction relief is allowed. To the extent the original and amended PCR applications make factual allegations concerning competency, this Court finds these allegations are contrary to the testimony and observed demeanor of the Applicant. Additionally, this Court finds that insufficient evidence or grounds exist to grant relief on Applicant's jurisdiction allegations or discovery allegations. The Applicant alleged that Counsel was ineffective for failing to conduct an adequate pre-trial investigation. This Court finds that this allegation lacks merit. This Court finds Counsel's testimony as to the discussions held during her meetings with the Applicant, as well as her pursuit of Applicant's medical records and other history to be very credible. To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial). The Applicant failed to offer any additional information that could have been discovered to assist in his defense had Counsel done additional investigation. Therefore, this claim is denied and dismissed.

The Applicant claimed that Counsel was ineffective for failing to provide him with discovery materials, including the indictment, so that he could be aware of the charge he had to defend himself against. This Court finds that the Applicant was aware of the charge that he was facing and finds Counsel's testimony credible that she reviewed the indictment with the Applicant during one of their meetings. Additionally, in his amended application, Applicant alleged that Counsel was ineffective for failing to object to his pleading guilty to a charge which had never been presented to the grand jury and for not objecting to the Applicant waiving

presented to the grand jury in violation of his Constitutional rights. This Court first finds that these claims lack merit. The record reflects that the indictment was true billed and signed by the grand jury foreperson. Second, this Court finds that the Applicant failed to provide any evidence or testimony in support of these claims, other than the statement that he did not believe the grand jury met at the time they said they did. This Court finds that his statement by the Applicant is mere speculation and does not meet the required burden of proof. Therefore, these claims are denied and dismissed.

The Applicant also alleged that Counsel was ineffective for failing to object to Applicant pleading guilty to an offense that did not contain the option of a lesser-included charge and lesser-included sentence based upon his belief that he waived presentment to the grand jury. This Court finds that this allegation lacks merit. There is no such requirement in the law and as such, Counsel cannot be found ineffective for failing to object to a legal indictment. Therefore, this claim is denied and dismissed.

The Applicant also alleged that Counsel was ineffective for failing to file an appeal in this matter. This Court finds that the Applicant failed to present any evidence or testimony in support of this claim. Therefore, this Court finds that the Applicant failed to meet his burden of proof as to this claim and it is denied and dismissed.

In Hill v. Lockhart, 474 U.S. 52 (1985), the United States Supreme Court held that the two-part standard adopted in Strickland v. Washington, supra, for evaluating claims of ineffective assistance of counsel applies, as well, to guilty plea challenges based on ineffective assistance of counsel. To meet the Court's "prejudice" requirement, a criminal defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial

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This Court finds that the Applicant was aware of and informed of the charge to which he was pleading guilty. This Court also finds that Counsel is an experienced attorney who was prepared for, had thoroughly investigated the case, and effectively represented Applicant at his guilty plea. This Court finds that the Applicant has failed to meet his burden of proof as to this claim; therefore, this claim is denied and dismissed.

Involuntary Guilty Plea

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, 89 S.Ct. 1709, 23 L.Ed.2d 274 (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).

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. Crawford v. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

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). This Court finds the Applicant's own testimony credible that on the day he pled guilty, he was pleading on his own, and had previously been told by Counsel that he faced some sort of jail time. Additionally, this Court finds Counsel's testimony that in her discussions with the Applicant, he always wanted to plead guilty and was aware of the charge and potential sentence he faced to be credible. Therefore, this Court finds that the Applicant failed to meet his burden of proof as to this claim and it is denied and dismissed.

Subject Matter Jurisdiction

The Applicant alleged in his application that the court lacked subject matter jurisdiction to accept his guilty plea because he did not waive presentment of the indictment to the grand jury. However, as the record reflects, the indictment was presented to and was true billed by the grand jury; therefore, there was no requirement for the Applicant to waive presentment to the grand jury. Again, this Court finds that the Applicant was aware of the charge that he was facing and finds Counsel's testimony credible that she reviewed the indictment with the Applicant during one of their meetings.

Additionally, the Applicant appeared to allege that the grand jury was not properly convened. However, he offered no evidence or testimony to support this claim, other than his mere speculation and assertion. A presumption of regularity attaches to proceedings in the Court of General Sessions. Pringle v. State, 287 S.C. 409, 339 S.E.2d 127 (1986). Absent evidence to the contrary, the courts will presume that a properly returned indictment is valid. "Thus, if the record does not reveal any irregularity in the proceedings affecting the indictment, this court must presume the trial court had subject matter jurisdiction." State v. James, 321 S.C. 75, 79, 472 S.E.2d 38, 40 (Ct. App. 1996).

Here, the Spartanburg County Clerk of Court's record of the indictment shows that it is regular on its face. "Speculation about "potential" abuse of grand jury proceedings cannot substitute for evidence of actual abuse as grounds for quashing an otherwise lawful indictment."

James, Id. The Applicant's bare "assertion, standing alone, is not sufficient to overcome the presumption of regularity and legality attending the proceedings before the Grand Jury," and this Court, simply based on the Applicant's assertion, cannot assume any abuse of the grand jury process. Id. Therefore, in regards to the area of subject matter jurisdiction, this Court finds that the Applicant has failed to meet his burden of proof. These claims are denied and dismissed.

Summary

This Court finds in regards to the allegations, Counsel's testimony is more credible than Applicant's testimony. This Court further finds counsel adequately conferred with the Applicant, was thoroughly competent in her representation, and that Counsel's conduct does not fall below the objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in her representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. See Frasier supra. Therefore, this allegation is denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not

established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 27th day of April, 2012.

Newberry

South Carolina

Frank R. Addy, Jr.
Presiding Judge

2012 MAY -2 PM 1:11
J. MURPHY
CLERK

Spartanburg County

Spartanburg County Court House
180 Magnolia Street
P. O. Box 3483
Spartanburg, SC 29304-3483



Phone (864) 596-2591
Fax (864) 596-2239

M. Hope Blackley
Clerk of Court

May 2, 2012

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

Charles Cory #123219

7TH JUDICIAL CIRCUIT

Applicant

CASE # 2010-CP-42-5764

VS

State

CERTIFICATE OF SERVICE

Respondent

I certify that, on this date, I served a copy of the

In this action dated

Order of Dismissal
4-27, 2012 on 5-3-12

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Jan Miller
Suzanne White
Charles Cory
Laura Fuller

5-3-12

(Date)

Debbie Seaf
(Signature)

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Charles Gory

☐ Plaintiff

v.

State of South Carolina

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2010-CP-42-5764

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

Laura Anne Filler, Bar No.

Address:

P O. Box 103

Drayton, South Carolina 29333

phone: fax:

e-mail: other:

Defendant's Attorney:

Suzanne H. White Bar No.

Address:

P.O. Box 11549

Columbia, SC 29211-11549

phone: (803) 734-3737 fax: (803) 734-4113

e-mail: other:

☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed Order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

April 24, 2012

Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT:☒ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support(check reason) ☐ Domestic Abuse or Abuse and Neglect☐ Indigent Status ☐ State Agency v. Indigent Party☐ Sexually Violent Predator Act ☒ Post-Conviction Relief☐ Motion for Stay in Bankruptcy☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

JAN 1st 2010

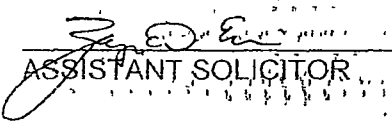
At a Court of General Sessions, convened on _____, the

Grand Jurors of Spartanburg County present upon their oath:

ASSAULT AND BATTERY WITH INTENT TO KILL

That Charles Edward Gory, did in Spartanburg County on or about November 28, 2009, with malice aforethought commit an assault and battery upon one Lafayette Taylor, by shooting the victim with a shotgun, with the intent to kill the said victim, in violation of §16-03-620, of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

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


ASSISTANT SOLICITOR

WITNESSES

tanburg County Sheriff's Office

1. SENTENCE MADE

2. REPORT MADE

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANTS

ARREST WARRANT NUMBER

7. ASSESSED FINE CARD MADE

0584 TRAFFIC VIOLATION COPY

ACTION OF GRAND JURY

person of Grand Jury

VERDICT

person of Petit Jury

DOCKET NO. 10-GS-42-0165

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

JAN 18 2010

TERM

THE STATE
VS.

Charles Edward Gory

Indictment for

ASSAULT AND BATTERY
WITH INTENT TO KILL

SC Code: 16-3-620

CDR Code: 014

Class FEL-C(V)

2010 JAN 27 PM 3:44
11700 KILGORE