

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

J. Ernest Kinard, Jr., Circuit Court Judge

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DEC - 6 2013

S.C. Supreme Court

ANTONIO BARNES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-210229

A P P E N D I X

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND) 2009-GS-40-241 and 2009-GS-40-3140

The State of South Carolina,)
)
 vs.) TRANSCRIPT OF RECORD
)
 Devion Jenkins and Antonio)
 Barnes,)
)
 Defendants.)

November 12, 2009
Columbia, South Carolina

B E F O R E:

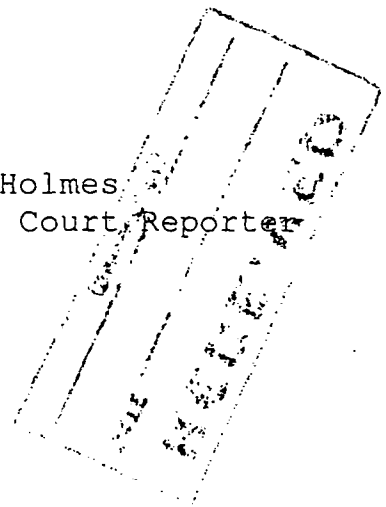
HONORABLE L. CASEY MANNING, JUDGE.

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Attorneys for the State

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Attorney for Defendant Barnes

Crystal Holmes
Official Court Reporter



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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
C-1	Plea Agreement Antonio Barnes	3	
C-2	Plea Agreement Devion Jenkins	3	

I N D E X

WITNESS DIRECT CROSS REDIRECT RECROSS

(REPORTER'S NOTE: NO WITNESSES TESTIFIED AT THE
HEARING.)

1 THURSDAY, NOVEMBER 12, 2009:

2 (Whereupon, Court's Exhibit Number 1, Plea
3 Agreement Antonio Barnes, was admitted into
4 evidence.)

5 (Whereupon, Court's Exhibit Number 2, Plea
6 Agreement Devion Jenkins, was admitted into
7 evidence.)

8 (The Defendants, Devion Jenkins and Antonio
9 Barnes, were first duly sworn.)

10 MS. HENDRICK: May it please the Court.

11 THE COURT: Yes, ma'am.

12 MS. HENDRICK: Standing before you is Mr.

13 Devion Jenkins. He's represented by Mr. James May and
14 Joanna Delany of the Public Defender's office. Also
15 standing before you is Mr. Antonio Barnes. He's
16 represented by Mr. Robert Mills of the private bar.

17 Your Honor, they're both originally charged
18 with one count of murder in the Family Court here in
19 Richland County. That charge was waived, after a full
20 waiver hearing on both Defendants, to the Court of
21 General Sessions and were subsequently indicted by the
22 Richland County Grand Jury for one count of murder.
23 However, Your Honor, they're here today to plead
24 guilty to one count of voluntary manslaughter with a
25 negotiated sentencing range of 15 to 25 years.

THE STATE V. JENKINS AND BARNES

1 THE COURT: All right. Now, Mr. May, you
2 represent Devon -- is it Devon?

3 MR. MAY: Devon, Your Honor.

4 THE COURT: Devon Jenkins.

5 MR. MAY: Yes, sir.

6 THE COURT: And Mr. Mills, you represent
7 Antonio Barnes?

8 MR. MILLS: That's correct, Your Honor.

9 THE COURT: All right. Have you gentlemen
10 had an opportunity to explain to Mr. Barnes and Mr.
11 Jenkins the charge contained in the respective
12 indictments, the possible punishment and their rights,
13 including their constitutional right to a jury trial?

14 MR. MAY: Yes, sir.

15 MR. MILLS: Yes, sir.

16 THE COURT: In your opinion, gentlemen, does
17 Mr. Barnes and Mr. Jenkins understand the charge, the
18 punishment and their rights?

19 MR. MAY: Yes, sir.

20 MR. MILLS: Yes, sir.

21 THE COURT: How do they indicate to you
22 gentlemen they wish to plead, guilty or not guilty?

23 MR. MAY: Guilty, Your Honor.

24 MR. MILLS: Guilty, Your Honor.

25 THE COURT: All right. Do you both agree

THE STATE V. JENKINS AND BARNES

1 that from the facts and circumstances surrounding this
2 case, that the State could produce sufficient evidence
3 to convince a jury here in Richland County of Mr.
4 Barnes' and Mr. Jenkins's guilt beyond a reasonable
5 doubt and if they were to stand trial on this charge
6 their convictions would be probable?

7 MR. MAY: Yes, sir.

8 MR. MILLS: Yes, sir.

9 THE COURT: All right. Now, has Mr. Jenkins
10 or Mr. Barnes been ordered to submit to a mental
11 examination to determine their competency to stand
12 trial?

13 MR. MAY: At the waiver -- pre-waiver
14 hearing, they each were evaluated, they each were
15 found competent to stand trial

16 MR. MILLS: That's correct.

17 THE COURT: All right. Do you have a copy of
18 that ---

19 MR. MILLS: Yes, sir.

20 THE COURT: --- evaluation?

21 MS. HENDRICK: Your Honor, I cannot provide
22 you with a copy of the pre-evaluation but Defense
23 counsel can if they waive the right to confidentiality
24 because of the pre-waiver hearing. However, we can
25 both stipulate to the record, they were found

1 competent ---

2 THE COURT: Well, at some point and time I
3 need the record supplemented ---

4 MR. MAY: Yes, sir.

5 THE COURT: --- with those.

6 MR. MILLS: Yes, sir.

7 MR. MAY: Yes, sir.

8 THE COURT: With that evaluation.

9 MR. MAY: Yes, sir.

10 MR. MILLS: Yes, sir.

11 THE COURT: All right. Now, are you Devion
12 Jenkins?

13 DEFENDANT JENKINS: Yes, sir.

14 THE COURT: And you're Antonio Barnes, is
15 that correct?

16 DEFENDANT BARNES: Yes, sir.

17 THE COURT: Now, you've got to be patient.
18 This is going to be long and you've got to listen
19 carefully, all right?

20 DEFENDANT JENKINS: (Affirmative response.)

21 DEFENDANT BARNES: (Affirmative response.)

22 THE COURT: Now, Mr. Jenkins and Mr. Barnes,
23 you heard your lawyers, Mr. May and Mr. Mills, tell me
24 that they have explained to you both the charge
25 contained in the respective indictments, the possible

1 punishment and your rights, including your
2 constitutional right to a jury trial, and that y'all
3 understand these things, is that right?

4 DEFENDANT JENKINS: Yes, sir.

5 DEFENDANT BARNES: Yes, sir.

6 THE COURT: All right. Now, Mr. Barnes and
7 Mr. Jenkins, before I can accept your plea of guilty,
8 it is necessary for me to make sure that you're making
9 this plea, both of you, freely and voluntarily. To do
10 that, I need to ask y'all a series of questions. At
11 any point during my questioning of you, if you do not,
12 either one of you, understand anything that I say or
13 any words that I use, please stop me. I will be more
14 than happy to repeat or explain anything I say,
15 gentlemen.

16 Additionally, I will be more than happy to
17 stop this plea, and allow either one or both of you to
18 consult with your lawyers for as long as you think is
19 necessary.

20 Do you both understand what I just said?

21 DEFENDANT JENKINS: Yes, sir.

22 DEFENDANT BARNES: Yes, sir.

23 THE COURT: All right. And let me have your
24 name for the record again.

25 MS. DELANY: Joanna Delany.

1 THE COURT: Delany?

2 MS. DELANY: Yes, sir.

3 THE COURT: It's changed now?

4 MS. DELANY: It has.

5 THE COURT: Okay. When the Solicitor said
6 that, I didn't recognize Delany. So you've got married
7 in the meantime?

8 MS. DELANY: Divorced.

9 THE COURT: Oh, divorced, okay. Had to be
10 one or the other. So you and Mr. May are both
11 representing Mr. Jenkins, is that correct?

12 MS. DELANY: Your Honor, I represented him in
13 Family Court.

14 THE COURT: Okay. You're in Family Court and
15 Mr. -- all right, that makes sense then.

16 All right. Now, Mr. Barnes and Mr. Jenkins,
17 you're both -- well, let me see.

18 Mr. Jenkins, you're before me on indictment
19 number 2009-241, The State versus Devion Jenkins.
20 This is an indictment for murder but you're here
21 before me today to proffer a plea, that is to actually
22 plead guilty to voluntary manslaughter.

23 Do you understand the charge of voluntary
24 manslaughter?

25 DEFENDANT JENKINS: Yes, sir.

THE STATE V. JENKINS AND BARNES

1 THE COURT: All right. And Mr. Barnes,
2 you're before me on indictment number 2009-3140. And
3 once again, this is an indictment for murder but
4 you're before me today to proffer a plea, that is to
5 actually plead guilty to voluntary manslaughter.

6 Do you understand that?

7 DEFENDANT BARNES: Yes, sir.

8 THE COURT: All right. So you both
9 understand the charge of voluntary manslaughter, is
10 that correct?

11 DEFENDANT JENKINS: Yes, sir.

12 DEFENDANT BARNES: Yes, sir.

13 THE COURT: All right. Now, these
14 indictments, the one for both of you, allege that Mr.
15 Jenkins as well as you, Mr. Barnes, did here in
16 Richland County on or about May 23rd of 2008,
17 feloniously, willfully and with malice aforethought
18 kill one Jerome Hart by means of a single gunshot
19 wound and that the victim died as a proximate result
20 thereof.

21 And I assume I'm taking this plea -- I know
22 I'm taking this plea under the theory of the hand of
23 one is the hand of them all. Have your lawyers
24 explained that?

25 DEFENDANT JENKINS: Yes, sir.

THE STATE V. JENKINS AND BARNES

1 DEFENDANT BARNES: Yes, sir.

2 THE COURT: You both were there, acting in
3 concert. I think one pulled the trigger and fired the
4 gun. The bullet actually struck Mr. Hart and killed
5 him but you both are equally responsible for his
6 death.

7 Do y'all both understand that?

8 DEFENDANT JENKINS: Yes, sir.

9 DEFENDANT BARNES: Yes, sir.

10 THE COURT: All right. And what I just read
11 to you, that y'all did here in Richland County on
12 May 23rd, 2008, shoot and kill one Jerome Hart, that's
13 what you want to both plead guilty under voluntary
14 manslaughter, not murder but voluntary manslaughter.

15 Do y'all understand that?

16 DEFENDANT JENKINS: Yes, sir.

17 DEFENDANT BARNES: Yes, sir.

18 THE COURT: So, Mr. Jenkins, you want to
19 plead guilty to voluntary manslaughter in the death of
20 Mr. Jerome Hart; and, Mr. Barnes, you want to plead
21 guilty to voluntary manslaughter in the death of Mr.
22 Jerome Hart, is that correct?

23 DEFENDANT JENKINS: Yes, sir.

24 DEFENDANT BARNES: Yes, sir.

25 THE COURT: Now, y'all realize that by doing

THE STATE V. JENKINS AND BARNES

1 so that y'all can go to jail for up to 30 years, you
2 understand that?

3 DEFENDANT JENKINS: Yes, sir.

4 DEFENDANT BARNES: Yes, sir.

5 THE COURT: Understanding then, Mr. Jenkins
6 and Mr. Barnes, that you could go to jail for 30 years
7 by pleading guilty to voluntary manslaughter, do y'all
8 still wish to plead guilty to it?

9 DEFENDANT JENKINS: Yes, sir.

10 DEFENDANT BARNES: Yes, sir.

11 THE COURT: Now, there's been the plea
12 agreement entered between your lawyers, you, Mr.
13 Jenkins, by Mr. May and you, Mr. Barnes, by Mr. Mills
14 that sets the parameters of sentencing between 15 and
15 25 years.

16 Do y'all understand that?

17 DEFENDANT JENKINS: Yes, sir.

18 DEFENDANT BARNES: Yes, sir.

19 THE COURT: So by pleading guilty to
20 voluntary manslaughter, I'm going to give you no less
21 than 15, no more than 25 years, by pleading guilty to
22 voluntary manslaughter.

23 Do you understand that, Mr. Barnes?

24 DEFENDANT BARNES: Yes, sir.

25 THE COURT: Do you understand that, Mr. Hart

1 (sic)?

2 MR. MAY: Jenkins.

3 THE COURT: I'm sorry, Mr. Jenkins?

4 DEFENDANT JENKINS: Yes, sir.

5 THE COURT: You both understand that?

6 DEFENDANT JENKINS: Yes, sir.

7 DEFENDANT BARNES: Yes, sir.

8 THE COURT: All right. Now, Mr. Barnes and
9 Mr. Jenkins, when you plead guilty, you have to give
10 up certain basic rights. Well, let me ask you this.

11 How old are you, Mr. Jenkins?

12 DEFENDANT JENKINS: 16.

13 THE COURT: 16?

14 DEFENDANT JENKINS: Yes, sir.

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

16 DEFENDANT JENKINS: Eighth grade.

17 THE COURT: Eighth grade. You've never had a
18 job before, have you worked anywhere?

19 DEFENDANT JENKINS: No, sir.

20 THE COURT: All right. And how about you.

21 Mr...

22 DEFENDANT BARNES: Barnes.

23 THE COURT: Barnes, how old are you?

24 DEFENDANT BARNES: 16.

25 THE COURT: Speak up a little bit.

1 DEFENDANT BARNES: 16.

2 THE COURT: And how far did you go in school?

3 DEFENDANT BARNES: Eighth.

4 THE COURT: Eighth grade. Now, have y'all
5 ever been treated, either one of you, you, Mr. Barnes
6 or you, Mr. Jenkins, have y'all ever been treated for
7 the abuse of alcohol or drugs or for mental illness?

8 DEFENDANT JENKINS: No, sir.

9 DEFENDANT BARNES: No, sir.

10 THE COURT: Neither one of you have been
11 treated for any of that?

12 DEFENDANT JENKINS: No, sir.

13 DEFENDANT BARNES: No, sir.

14 THE COURT: Well, Mr. Jenkins and Mr. Barnes,
15 have you taken any medications, drugs or alcohol in
16 the past 24 hours, either one of you?

17 DEFENDANT JENKINS: No, sir.

18 DEFENDANT BARNES: No, sir.

19 THE COURT: All right. Are either one of you
20 today aware of any physical, nervous or emotional
21 problem that might keep you from understanding what
22 you're doing?

23 You, Mr. Barnes?

24 DEFENDANT BARNES: No, sir.

25 THE COURT: You, Mr. Jenkins?

1 DEFENDANT JENKINS: No, sir.

2 THE COURT: Mr. Jenkins and Mr. Barnes, you
3 both understand, know and appreciate what you're doing
4 here today, is that correct?

5 DEFENDANT JENKINS: Yes, sir.

6 DEFENDANT BARNES: Yes, sir.

7 THE COURT: Now, Mr. Mills and Mr. May, do
8 you both agree that Mr. Jenkins and Mr. Barnes know,
9 understand and appreciate what they're doing here this
10 -- well, this afternoon now?

11 MR. MAY: Yes, sir.

12 MR. MILLS: Yes, sir.

13 THE COURT: Now, Mr. Jenkins and Mr. Barnes,
14 you've heard your lawyers, Mr. Mills and Mr. May, tell
15 me that they have explained to you, once again, the
16 charges -- the charge contained in this indictment,
17 the possible punishment and your rights, including
18 your constitutional right to a jury trial and that
19 y'all understand these things, these rights, is that
20 true?

21 DEFENDANT JENKINS: Yes, sir.

22 DEFENDANT BARNES: Yes, sir.

23 THE COURT: All right. Now, Mr. Jenkins and
24 Mr. Barnes, when you plead guilty you have to give up
25 certain basic rights. First of all, you have to give

1 up your right to remain silent. Now, this is your
2 right against self-incrimination, Mr. Barnes and Mr.
3 Jenkins, this is your right to say nothing at all. No
4 one can compel you to come into court to provide
5 evidence or to testify against yourself.

6 Do y'all understand that?

7 DEFENDANT JENKINS: Yes, sir.

8 DEFENDANT BARNES: Yes, sir.

9 THE COURT: You understand that, Mr. Barnes.

10 DEFENDANT BARNES: Yes, sir.

11 THE COURT: Understand that Mr. Jenkins?

12 DEFENDANT JENKINS: Yes, sir.

13 THE COURT: Secondly, Mr. Barnes and Mr.
14 Jenkins, when you plead guilty you have to give up
15 your right to a jury trial, that is your right for a
16 jury here in Richland County to decide whether or not
17 y'all are guilty of killing Mr. Hart beyond a
18 reasonable doubt. A jury would base its decision on
19 whatever evidence the State would introduce at trial
20 against you, gentlemen, and also on whatever evidence
21 Mr. May and Mills may wish to introduce. And I
22 emphasize, may wish to introduce, Mr. Barnes and Mr.
23 Jenkins, because in a trial you'd be presumed
24 innocent, would not have to prove anything, and you
25 could not be convicted unless the State convinced all

1 12 jurors of your guilt beyond a reasonable doubt.
2 The jury's decision would have to be unanimous, all 12
3 would have to agree that you both killed Mr. Hart.

4 Do y'all understand that?

5 DEFENDANT JENKINS: Yes, sir.

6 DEFENDANT BARNES: (Affirmative response.)

7 THE COURT: Thirdly, Mr. Jenkins and Mr.
8 Barnes, when you plead guilty you give up your right
9 to confront and to be confronted by the witnesses
10 against you, that is your right to see, hear and
11 cross-examine any witnesses that State may call to
12 testify against you gentlemen during the trial.

13 And additionally by pleading guilty, you give
14 up your right to subpoena and call witnesses on your
15 own behalf, that is someone who may testify for you.

16 Do you understand this, Mr. Jenkins?

17 DEFENDANT JENKINS: Yes, sir.

18 THE COURT: You understand this, Mr. Barnes?

19 DEFENDANT BARNES: Yes, sir.

20 THE COURT: Now, do y'all understand the
21 rights I just mentioned to you, your right to remain
22 silent, that you have to waive when you plead guilty,
23 your right to a jury trial that you have to waive when
24 you plead guilty, your right to confront your
25 witnesses and have a trial that you waive when you

1 plead guilty? Y'all both understand that after
2 consulting with lawyers, is that correct?

3 DEFENDANT JENKINS: Yes, sir.

4 DEFENDANT BARNES: Yes, sir.

5 THE COURT: Now, understanding all that,
6 y'all want to give up all these rights and plead
7 guilty, is that correct?

8 DEFENDANT JENKINS: Yes, sir.

9 DEFENDANT BARNES: Yes, sir.

10 THE COURT: Now, Mr. Barnes and Mr. Jenkins,
11 you realize that when you plead guilty you admit the
12 truth of the allegation contained in this indictment
13 against you.

14 Now, Mr. Jenkins and Mr. Barnes, you're
15 telling me that y'all together, the hand of one, the
16 hand of all, y'all together shot and killed Jerome
17 Hart, y'all understand that?

18 DEFENDANT JENKINS: Yes, sir.

19 DEFENDANT BARNES: Yes, sir.

20 THE COURT: Now, I tell you both that because
21 y'all may have some defenses to this charge. Of
22 course, I have no way of knowing that. But you both
23 need to realize that by pleading guilty here today you
24 give up any defenses you may have.

25 Do y'all understand that?

1 DEFENDANT JENKINS: Yes, sir.

2 DEFENDANT BARNES: (Affirmative response.)

3 THE COURT: I also tell you that because when
4 y'all were arrested by the Richland County Sheriff's
5 Department -- and y'all were arrested by the Sheriff's
6 Department, is that correct?

7 DEFENDANT JENKINS: Yes, sir.

8 DEFENDANT BARNES: Yes, sir.

9 THE COURT: Y'all may have given some type of
10 incriminating statements, that is made some admissions
11 or confessions about your guilt. You need to realize
12 that by pleading guilty here today, you waive your
13 right to later on challenge or contest, if y'all gave
14 any statements, whether or not those statements were
15 taken or obtained from you all freely and voluntarily
16 in accordance with your constitutional rights.

17 Do you understand that, Mr. Jenkins?

18 DEFENDANT JENKINS: Yes, sir.

19 THE COURT: You understand that, Mr. Barnes?

20 DEFENDANT BARNES: Yes, sir.

21 THE COURT: All right. Now, did y'all give
22 any statements?

23 MR. MAY: Yes, sir, they did.

24 THE COURT: They both gave statements
25 implicating each other, I would assume, is that fair

1 enough?

2 DEFENDANT JENKINS: Yes, sir.

3 THE COURT: All right.

4 MS. HENDRICK: (Affirmative response.)

5 THE COURT: All right. Now, Mr. Jenkins and
6 Mr. Barnes, once again, y'all are pleading guilty to
7 voluntary manslaughter, it carries up to 30 years in
8 the penitentiary. Under the plea agreement, the
9 parameters are between no less than 15, no more than
10 25 years, okay. Y'all are giving up all your
11 constitutional rights.

12 Now, considering what I just said to you,
13 that is giving up all your constitutional rights,
14 you're throwing yourself upon this Court to receive a
15 sentence between 15 and 25 years in the penitentiary
16 for killing Mr. Hart, I'll ask y'all once again.

17 How do you wish to plead to this charge,
18 guilty or not guilty?

19 DEFENDANT JENKINS: Guilty.

20 DEFENDANT BARNES: Guilty.

21 THE COURT: You both still want to plead
22 guilty, is that correct?

23 DEFENDANT JENKINS: Yes, sir.

24 DEFENDANT BARNES: Yes, sir.

25 THE COURT: You both want to plead guilty, is

1 that correct? Knowing that by doing so you're going
2 to go to jail for at least 15 years and up to 25
3 years, you still want to plead guilty to killing Mr.
4 Hart and receive that sentence, is that correct?

5 DEFENDANT JENKINS: Yes, sir.

6 DEFENDANT BARNES: Yes, sir.

7 THE COURT: All right. Now, Mr. Jenkins, Mr.
8 Barnes, has anyone promised you anything or has anyone
9 held out any hope of reward in order to get you to
10 plead guilty? Mr. Jenkins?

11 DEFENDANT JENKINS: No, sir.

12 THE COURT: Mr. Barnes.

13 DEFENDANT BARNES: No, sir.

14 THE COURT: Has anyone threatened you or used
15 force against you to get you to plead guilty, Mr.
16 Jenkins, Mr. Barnes?

17 DEFENDANT JENKINS: No, sir.

18 DEFENDANT BARNES: No, sir.

19 THE COURT: Has any used any pressure or
20 intimidation to cause you to plead guilty?

21 Mr. Jenkins?

22 DEFENDANT JENKIN: No, sir.

23 THE COURT: Mr. Barnes?

24 DEFENDANT BARNES: No, sir.

25 THE COURT: Have you had enough time to make

1 up your mind as to whether or not you want to plead
2 guilty?

3 Mr. Jenkins?

4 DEFENDANT JENKINS: Yes, sir.

5 THE COURT: Mr. Barnes?

6 DEFENDANT BARNES: Yes, sir.

7 THE COURT: You've both had enough time?

8 DEFENDANT JENKINS: (Affirmative response.)

9 DEFENDANT BARNES: (Affirmative response.)

10 THE COURT: You need any more time to think
11 about what you're doing here today?

12 DEFENDANT JENKINS: No, sir.

13 DEFENDANT BARNES: No, sir.

14 THE COURT: All right. And you both
15 understand what you're doing here today?

16 DEFENDANT JENKINS: Yes, sir.

17 DEFENDANT BARNES: Yes, sir.

18 THE COURT: You both understand that you're
19 going to receive a sentence between 15 and 25 years in
20 the penitentiary by pleading guilty?

21 DEFENDANT JENKINS: Yes, sir.

22 DEFENDANT BARNES: (Affirmative response.)

23 THE COURT: All right. Now, Mr. Jenkins and
24 Mr. Barnes, are y'all satisfied with the manner in
25 which your lawyers, Mr. May and Mr. Mills, have

1 advised and represented you on these charges?

2 How about you, Mr. Jenkins?

3 DEFENDANT JENKINS: Yes, sir.

4 THE COURT: Mr. Barnes?

5 DEFENDANT BARNES: Yes, sir.

6 THE COURT: Have you talked with your lawyers
7 for as long and for as often as you feel it necessary
8 for them to properly represent you?

9 Mr. Jenkins?

10 DEFENDANT JENKINS: Yes, sir.

11 THE COURT: Mr. Barnes?

12 DEFENDANT BARNES: Yes, sir.

13 THE COURT: Do you need any more time to talk
14 to them?

15 DEFENDANT JENKINS: No, sir.

16 DEFENDANT BARNES: No, sir.

17 THE COURT: All right. Have you understood
18 your talks with your lawyers?

19 DEFENDANT JENKINS: Yes, sir.

20 DEFENDANT BARNES: Yes, sir.

21 THE COURT: All right. Now, Mr. Jenkins, Mr.
22 Barnes, has Mr. May and Mr. Mills done everything for
23 you you feel they should do or could do on your behalf
24 in advising and representing you on this charge?

25 DEFENDANT JENKINS: Yes, sir.

1 DEFENDANT BARNES: Yes, sir.

2 THE COURT: All right. Have they done
3 anything you feel that should not have done?

4 DEFENDANT JENKINS: No, sir.

5 DEFENDANT BARNES: No, sir.

6 THE COURT: All right. Now, Mr. Jenkins, Mr.
7 Barnes, are y'all completed satisfied with the
8 services of Mr. May and Mills?

9 DEFENDANT JENKINS: Yes, sir.

10 DEFENDANT BARNES: Yes, sir.

11 THE COURT: Do you need any more time to talk
12 to them at all?

13 DEFENDANT JENKINS: No, sir.

14 DEFENDANT BARNES: No, sir.

15 THE COURT: You've understood everything that
16 they've told you?

17 DEFENDANT JENKINS: Yes, sir.

18 DEFENDANT BARNES: Yes, sir.

19 THE COURT: And having talked to your
20 lawyers, having talked to them many times I assume,
21 y'all still want to enter this plea of guilty to
22 voluntary manslaughter and receive a sentence of
23 between 15 and 25 years?

24 DEFENDANT JENKINS: Yes, sir.

25 DEFENDANT BARNES: Yes, sir.

1 THE COURT: You both still want to do that,
2 is that correct?

3 DEFENDANT JENKINS: Yes, sir.

4 DEFENDANT BARNES: Yes, sir.

5 THE COURT: All right. Now, Mr. Jenkins and
6 Mr. Barnes, do y'all have any complaints, any
7 complaints against anyone at the Richland County
8 Sheriff's Department?

9 DEFENDANT JENKINS: No, sir.

10 DEFENDANT BARNES: No, sir.

11 THE COURT: Do you have any complaints
12 against anyone working here at the Solicitor's office?

13 DEFENDANT JENKINS: No, sir.

14 DEFENDANT BARNES: No, sir.

15 THE COURT: All right. Now you've both
16 understood my questions?

17 DEFENDANT JENKINS: Yes, sir.

18 DEFENDANT BARNES: Yes, sir.

19 THE COURT: Anything you want to ask me, Mr.
20 Jenkins, at all?

21 DEFENDANT JENKINS: No, sir.

22 THE COURT: Mr. Barnes, is there anything you
23 want to ask me?

24 DEFENDANT BARNES: No, sir.

25 THE COURT: Now, despite this plea agreement

1 and everything I've said to y'all today, you realize
2 that you have a right to -- well, I think they're
3 waiving their right to appeal? Can I see the plea
4 agreement?

5 (Pause.)

6 THE COURT: I was about to tell you in most
7 cases you have a right to appeal this guilty plea and
8 whatever sentence I may impose upon you. But I have a
9 -- what's been marked as Court's Exhibit Number 1
10 regarding Mr. Barnes and Court's Exhibit Number 2,
11 Plea Agreements, regarding Mr. Jenkins, they both
12 essentially memorialize or it's written what I've gone
13 through with you, gentlemen, that y'all have agreed to
14 plead guilty and the essence of it is that y'all are
15 pleading to a lesser included offense of voluntary
16 manslaughter with a negotiated range of 15 to 25
17 years, giving up -- giving me the, the sentencing
18 judge, discretion to fashion an active sentence with
19 those parameters. Along with entering of that guilty
20 plea, you both agree to waive any right to file an
21 appeal or for post-conviction relief from any Family
22 Court proceedings or from this plea.

23 Do y'all understand that? I think you
24 signature -- Devion Jenkins, you've signed with Mr.
25 May as a witness, your lawyer, and Ms. Hendrick,

1 Assistant Solicitor, as a witness. And, Mr. Barnes,
2 you signed with Robert Mills, your lawyer, as well as
3 Ms. Hendrick as a witness?

4 Is that correct? Do you gentlemen recognize
5 these pleas, your signatures and everything?

6 MS. HENDRICK: Your Honor, I just want to
7 clarify for the record. They have waived the right to
8 PCR, file an appeal, the Family Court proceedings and
9 appeal this guilty plea. However, because this guilty
10 plea is not concluded, they still have a right to PCR
11 the guilty plea.

12 THE COURT: Okay, all right.. Is that
13 correct, Mr. May and Mr. Mills?

14 MR. MILLS: That's correct.

15 MR. MAY: That's correct.

16 THE COURT: Let me explain this. And I don't
17 know of any reason why I'm not going to go along with
18 this at this point in time. But until this is over
19 with, I need to advise you on the record that you have
20 a right to file a post conviction relief application
21 once you're in the Department of Corrections. But if
22 you're going to file -- and the PCR and goes to this.
23 Once you're in the Department of Corrections you find
24 out, Mr. Jenkins, that you have some complaints
25 against Mr. May or Ms. Delany, and you, Mr. Barnes,

1 you find out you have any complaints against Mr. Mills
2 later on or against the Richland County Sheriff's
3 Department or against the Solicitor's office, against
4 anybody else involved in your case, you may -- you
5 must make those complaints known by filing a post
6 conviction relief application within one year of the
7 date that you're sentenced.

8 Now, I'm probably going to sentence you today
9 but I've told your lawyers, as well as the Solicitor,
10 that this is a very serious complicated case, I might
11 want to think about it a little while. I'm not sure
12 what sentence I'm going to give you right now. I
13 haven't heard anything.

14 Y'all understand that?

15 DEFENDANT JENKINS: Yes, sir.

16 DEFENDANT BARNES: (Affirmative response.)

17 THE COURT: And understanding what I just
18 said, y'all still want to go forward?

19 DEFENDANT JENKINS: Yes, sir.

20 DEFENDANT BARNES: Yes, sir.

21 THE COURT: And the important thing is you
22 still have a right to file a post conviction relief
23 application once you're in the Department of
24 Corrections after I impose a sentence on you.

25 Y'all understand that?

1 DEFENDANT JENKINS: Yes, sir.

2 DEFENDANT BARNES: Yes, sir.

3 THE COURT: But you must file it within one
4 year of the date that I sentence you. It may be
5 today, it may be tomorrow, I don't know yet. I don't
6 want to bring everybody back but this is a serious
7 enough case where, as I told the Solicitor as well as
8 your lawyers, that I might want to think about it a
9 little while because it is serious. Somebody is dead,
10 Mr. Hart, as serious of a case with two kids your age.

11 Y'all understand that, don't you?

12 DEFENDANT JENKINS: Yes, sir.

13 DEFENDANT BARNES: Yes, sir.

14 THE COURT: All right. So with that in mind,
15 I'm going to ask the Solicitor or somebody from the
16 Sheriff's office to give me the facts of the case.

17 MS. HENDRICK: I will, Your Honor. And just
18 to make it clear again for the record, that they
19 cannot PCR or appeal the Family Court decision.

20 THE COURT: The Family Court decision, okay.

21 MR. MAY: That's correct.

22 MS. HENDRICK: They cannot PCR that at all.
23 I just want to make sure that's clear for the record,
24 that they ---

25 THE COURT: Well, they can't appeal this

1 guilty plea?

2 MS. HENDRICK: They cannot appeal the guilty
3 plea.

4 THE COURT: Not this guilty plea but they can
5 file a post conviction relief?

6 MS. HENDRICK: That's the only -- that's the
7 only thing they have not waived.

8 THE COURT: All right. Is that correct, Mr.
9 May?

10 MR. MAY: Yes, sir, that's correct.

11 THE COURT: Mr. Mills?

12 MR. MILLS: Yes, sir ---

13 THE COURT: And I know this is going to be
14 sort of convoluted but I think I'm covering
15 everything. If I leave anything out, y'all let me
16 know, if y'all can think of anything else, y'all let
17 me know.

18 MR. MAY: Yes, sir.

19 MR. MILLS: Yes, sir.

20 THE COURT: If y'all can think of anything
21 else. And, Solicitor, I'd invite you to do that also.

22 MS. HENDRICK: Thank you, Your Honor. May it
23 please the Court.

24 THE COURT: Yes, ma'am.

25 MS. HENDRICK: This event happened on May --

1 the late evening hours of May 23rd, 2008 here in
2 Richland County in the area known as Hillandale
3 Apartments and Willow Run Apartments.

4 Beg the Court's indulgence. I think Mr. May
5 and Mills have both seen this. If I can just orient
6 yourself -- orient you, Your Honor.

7 THE COURT: Yes, ma'am.

8 MS. HENDRICK: Up here is what is known as
9 Willow Run Apartments (indicating).

10 THE COURT: Willow Glen?

11 MS. HENDRICK: Willow Run.

12 THE COURT: Run, okay.

13 MS. HENDRICK: Down here is what is known as
14 Hillandale Apartments (indicating). There's a street
15 separating the two of them and there's a hill that
16 goes down -- there's a change in elevation. This
17 Hillandale Apartment (indicating) is lower than Willow
18 Run Apartment. So there's a change in elevation and
19 they're separated by this street here (indicating) and
20 they're separately managed apartment complexes.

21 On this day in question, the evening in
22 question -- earlier that evening, these two Co-
23 Defendants were hanging out in Willow Run Apartments.
24 At this point in time, they were both armed with a
25 weapon. Antonio Barnes which is Mr. Mills' Defendant

1 is armed with a shotgun. Devion Jenkins is armed with
2 a revolver.

3 Antonio gets into a physical altercation with
4 someone named Hedric -- Cedric Hayward (phonetic)
5 while he's up here in Hillandale -- excuse me, in
6 Willow Run. They get into a physical altercation over
7 the shotgun. I think Mr. Hayward tried to take it
8 from him, they get in a physical altercation. At that
9 point, Devion goes and breaks up that physical
10 altercation to try to remind Antonio that they should
11 not be doing these things because they were armed with
12 weapons

13 THE COURT: So Mr. Jenkins tries to stop Mr.
14 Barnes, is that what you're saying?

15 MS. HENDRICK: Well, he breaks up a fight.

16 THE COURT: All right, breaks up a fight.

17 MS. HENDRICK: He breaks up a fight.

18 THE COURT: All right, go ahead.

19 MS. HENDRICK: But at that point they decide
20 that they still want to continue on with this physical
21 altercation with Mr. Hayward. So Mr. Barnes goes and
22 hides his weapon. He describes it as somewhere in the
23 cut between Hillandale and Willow Run. It's somewhere
24 in this area (indicating), Your Honor, he goes and
25 hides his shotgun.

1 Then he goes back to Willow Run Apartments
2 and continues to fight Mr. Cedric Hayward. They get
3 in a fight, just a fist fight. They fight for a
4 couple of minutes and the fight ends. At that point,
5 there's -- there's lots of people hanging out here at
6 -- in these two apartment complexes on this night.

7 Mr. Barnes learns that a person named Alex
8 Smith is down in Hillandale Apartments. Alex Smith is
9 parked in a car generally in this area (indicating),
10 Your Honor. This is ---

11 THE COURT: And they were both 15 years of
12 age at this time?

13 MS. HENDRICK: These two are both 15 years of
14 age, Your Honor, at this point in time.

15 THE COURT: All right.

16 MS. HENDRICK: At this point in time. This
17 is buildings 17, 18 and 19 (indicating), okay. They
18 learn that Alex Smith is parked in front of building
19 18. He's there to go visit a girlfriend or a friend.

20 Mr. Barnes and Alex Smith have a long history
21 of bad blood together. Alex -- Antonio Barnes had a
22 friend named Lakavis Hennicks (phonetic) who was
23 killed in an unsolved CPD murder. Word on the street
24 and what Antonio Barnes believes is that Alex Smith
25 may be responsible for this gang related shooting that

1 happened several years beforehand. This belief of his
2 has developed a beef between him and Antonio -- and
3 Alex Smith.

4 It transpired and cumulates actually at this
5 event; however, there's prior bad blood, there's prior
6 shooting incidents between these two individuals.
7 There's just a very big history of violence between
8 Antonio Barnes, his friends and Alex Smith's group of
9 friends who are commonly known as FAB (phonetic) Boys,
10 Your Honor, and it just kind of cumulates into this
11 event. There's many -- it's gang related and there
12 are exchanges on MySpace. It's a heated -- a heated
13 bad blood between these two individuals.

14 Your Honor, so at this point when they're in
15 Hillandale, he -- when he's at Willow -- Willow Run
16 and he learns that Alex Smith is down at Hillandale,
17 he decides that they want to go confront Alex Smith
18 because they have this ongoing beef with him and his
19 friend Devion Jenkins with him.

20 So at that point they walk down the -- into
21 Hillandale Apartments and see Alex Smith and they
22 exchange some point of words with him. At that point
23 they decide that they want to scare the FAB Boys or
24 whoever is with Alex Smith because of this prior bad
25 blood with him and they walk back up to the hill,

1 Antonio walks back up to the hill to retrieve the
2 shotgun that he has hidden because he's hid it
3 previously before the second fight with Cedric
4 Hayward.

5 So he walks back up to where the shotgun is
6 hidden and has a conversation with Devion, says, hey
7 man, let's go down there and scare them. Are you --
8 basically wants to know if Devion still has the
9 revolver that he's had in his pants the whole time.
10 And Devion confirms to him, yes, I still have that
11 revolver with me. Doesn't use his exact words but
12 they have this conversation that they're going to go
13 back down there to scare the FAB Boys, which is mainly
14 who he sees as Alex Smith in this car.

15 At that point, Antonio Barnes runs down this
16 hill (indicating) with his shotgun pointed at Alex
17 Smith. And Devion runs down through -- this is a
18 laundry building and this is an office, around the
19 laundry building to this area, this ends up right here
20 (indicating). And Antonio Barnes was running down
21 this hill with his shotgun pointed and Antonio -- and
22 Devion Jenkins has his revolver pointed.

23 They have them both pointed at Alex Smith and
24 for some reason the shotgun Antonio Barnes has does
25 not go off. And at that point, he looks to his friend

1 Devion Jenkins and at that point Devion Jenkins fires
2 we know at least three times from the physical
3 evidence. He fires in the direction of the -- of
4 where the FAB Boys -- or where Alex Smith is standing.

5 It ends up that there is a shell casing
6 recovered in this building and on the ground there
7 (indicating) and in the body of the victim. I'll get
8 to that in a second.

9 MS. CAMPBELL: Projectile.

10 MS. HENDRICK: Projectile, excuse me, not
11 shell casing, projectile, recovered there.

12 So as he's running -- as Antonio Barnes is
13 running down the hill with his gun pointed, Devion is
14 coming from another angle with his weapon pointed as
15 well. When Devion realizes that Antonio's gun is not
16 working, he decides to fire as well.

17 Your Honor, at that point, after the fire,
18 they flee -- flee the area. They both run up towards
19 Willow Run Apartments and Devion runs into his friend
20 Marcus White who was with them earlier that night.
21 Marcus White asked them what happened to the shotgun,
22 are y'all okay, and wants to know what's going on.
23 And at that point Devion shows him the weapon that he
24 had on him and said, we didn't shoot the shotgun, I
25 had this. So he confirms to Marcus White that he has

1 that revolver and Marcus White gives his statement to
2 police.

3 At that point, Devion is with Marcus White.
4 They go to Marcus White's house which is close by and
5 Antonio comes up and meets with them. They all figure
6 out -- the get a phone call and they realize that
7 something's happened, someone's actually been hit
8 during this altercation. And Marcus White makes them
9 leave their house.

10 They then go to Antonio's aunt's house where
11 they're confronted by Antonio's sister who they learn
12 who the victim is that was shot and say he's died,
13 that they need to go to, I think, it's Antonio's house
14 where Devion decides to change clothes.

15 Once they're at Devion's house, they --
16 Devion changes clothes so no one knows what he was
17 wearing that night. And then Devion goes home.

18 Your Honor, meanwhile law enforcement has
19 responded to shots fired calls because there are
20 numerous 911 calls that come in. This area is filled
21 with people. Law enforcement responds to the calls
22 and finds that Alex Smith is right in front of this
23 building, right here (indicating), and they arrest him
24 for possessing a weapon.

25 Your Honor, law enforcement thinks that

1 that's what they respond -- that's what the incident
2 was, they've solved it. But they leave and they get
3 about less than a minute away when they get another
4 call and then another responding call to shots fired,
5 someone's down. Law enforcement immediately turns
6 around and comes back and finds that there has been a
7 body in between these two buildings, it was lying
8 right here (indicating). And that's the body of
9 Jerome Hart, Your Honor.

10 Jerome Hart was actually in the car with Alex
11 Smith. He never got out of the car when Alex Smith
12 was talking to the -- to Devion and Antonio; however,
13 he got out of the car and began to run when he heard
14 the gunshots.

15 Also in the car was Terrell Hagins
16 (phonetic). At that point, Terrell -- they -- law
17 enforcement gets in touch with Terrell Hagins and Alex
18 Smith and they get a statement from those two and they
19 learn about the bad blood between Antonio and Alex
20 Smith and they begin to develop Antonio as a suspect
21 in this case. There are numerous people out there who
22 say they see Little Tony, which is his nickname, with
23 a shotgun. There are lots of witnesses that say they
24 see Little Toney with this shotgun out there.

25 So at that point they interview the witnesses

1 and law enforcement's beginning to work the case. And
2 they continue to work the case and they eventually are
3 able to identify who Devion Jenkins is, who -- his
4 nickname is Little Duke, and who Little Tony is.
5 They're able to figure out that, you know, there's
6 established proof this bad blood between the FAB Boys
7 which is Alex Smith's group and Antonio's group
8 because of Lakavis Hennicks' murder and they were able
9 to establish that these two are friends.

10 So they eventually go and talk to Antonio
11 Barnes and want to figure out what's going on. They
12 interview him, they advise him of his rights, talk to
13 his parents, go through the whole thing and they
14 interview him and he gives a completely false
15 statement, denies even being there, denies having the
16 gun, denies anything. And then that same evening, law
17 enforcement confronts him with these inconsistencies
18 and then he gives another statement saying, yes, he
19 was there and admits the fight with Cedric Hayward but
20 said that he -- other two people were also there, a
21 group of four people were there shooting behind them
22 and that's who shot him. He even goes into make up
23 this story of a person with a Cash Money (phonetic)
24 flag who was the actual shooter. Gives a complete
25 fabrication to law enforcement to what actually

1 happened that night.

2 At that point he does admit to shoot --
3 pointing the shotgun at Alex Smith but he said that
4 people, who he doesn't know, with the Cash Money flag,
5 just basically made it up, were pointing. So he's not
6 charged, he's charged with AWIK against Alex Smith and
7 he's detained as a juvenile.

8 Law enforcement wants to talk to Marcus White
9 and Devion Jenkins as witnesses for the AWIK against
10 Alex Smith, assault with intent to kill. Your Honor,
11 so they go and they interview Marcus White and Devion
12 Jenkins.

13 At this point, Devion Jenkins and Marcus
14 White also give very very self-serving untruthful
15 statements, Your Honor, without admitting to anything,
16 just admitted to being there, not admitting to
17 possession of weapons or anything.

18 Law enforcement meets, they decide that they
19 want to go back out to the scene, examine it in
20 daylight, get some more forensic evidence. That's
21 when they discover the projectiles in the wall and are
22 able to develop a trajectory analysis that points
23 directly back to the laundry room.

24 Your Honor, so at that point they decide they
25 want to re-talk to Antonio a third time and try to

1 confront him with some of the things they've learned
2 from re-examining the scene and a lot of the things he
3 was saying just doesn't make sense. He tried to claim
4 that a whole separate group was there that had beef --
5 had problems with Alex Smith. And it just didn't make
6 sense to law enforcement that two groups who had such
7 a strong problem with Alex Smith would be in the same
8 area. So they thought he was not being truthful with
9 things.

10 They interview Antonio. Sergeant McDaniels
11 and Investigator Boland interviewed Antonio. He then
12 gives a full confession to his role and to Devion's
13 role in the shooting and to possessing the shotgun
14 that day and how Devion had the revolver and so forth.

15 At that point, they decided they also need to
16 go confront Devion again with this information learned
17 from Antonio Barnes. So Antonio Barnes and Marcus
18 White are picked up again. Marcus White is
19 interviewed. Devion Jenkins is interviewed. Then law
20 enforcement confronts Devion basically with the
21 information they've learned from Antonio and Marcus
22 White and Devion then gives a confession to his role
23 in the shooting.

24 Your Honor, these confessions I would
25 characterize mainly of self-serving. They kind of --

1 they don't really point the blame at each other but
2 they minimize their role.

3 Your Honor, they eventually did give
4 confessions but it took with Antonio three separate
5 statements and with Devion two separate statements for
6 them to actually tell the truth. The statements --
7 the first two sets of statements were complete
8 fabrications that just basically made up with these
9 other groups. I mean, he went so -- so in detail as
10 to describe someone with a Cash Money flag and that
11 person, there was just no evidence that person ever
12 even existed or out there that night.

13 So, Your Honor, after they gave the
14 statements, Devion was immediately charged with murder
15 because he was the shooter in this case. Mr. Jerome
16 Hart, as I said, his body was found in this area
17 (indicating) as he ran from the car to this area where
18 the firefight broke out. He was shot in the back of
19 the head and they recovered rounds that matched a 38
20 caliber revolver which is consistent with the type of
21 weapon that Marcus White and other witnesses saw
22 Devion with.

23 So based on his own confession, he is the one
24 who shot -- shot -- actually shot the weapon at this
25 group of people, Your Honor. However, Mr. Barnes was

1 charged under hand of one hand of all because they had
2 that meeting up at the top of the hill and decided,
3 let's go down there and scare them and went down with
4 their guns pointed at Alex Smith, ready -- ready to
5 engage, Your Honor, when they went down that hill.

6 Those are the basic facts of the case. I
7 don't know if law enforcement has anything to add at
8 this point to the facts. I know that I have a lot of
9 comments regarding sentencing and then law enforcement
10 has comments regarding sentencing, and the victim's
11 family does. But that's the facts of the case.

12 THE COURT: How about their prior record?

13 MS. HENDRICK: May it please the Court.

14 THE COURT: Yes, ma'am.

15 MS. HENDRICK: Devion Jenkins' prior record,
16 in July of 2006 he had two counts of runaway and two
17 counts of incorrigible. The two counts of incorrigible
18 were dismissed and he pled guilty to two counts of
19 runaway where he received a sentence to be evaluated
20 at the Midlands Evaluation Center.

21 Your Honor, he came back from the Midlands
22 Evaluation Center and received nine months probation.
23 Included in that were several services from DJJ. Your
24 Honor, he successfully completed probation in May of
25 2007.

1 As for Antonio Barnes, he had two prior -- in
2 2001, he had a contempt of court which was diverted
3 with a behavior contract. In 2003, he had a simple
4 assault where he went through the juvenile arbitration
5 program. In 2006, he pled guilty to disorderly
6 conduct and he received six months probation, 20 hours
7 of community service, anger management classes and a
8 male mentor. In 2007, he was petitioned for
9 disturbing schools and assault and battery on school
10 personnel. He pled guilty to simple assault and
11 battery. In 2008, he was charged with possession with
12 intent to distribute crack cocaine and possession with
13 intent to distribute crack cocaine within proximity of
14 a school. He pled guilty to simple possession of
15 crack.

16 Your Honor, at that point he was sentenced to
17 a 90 days suspended sentence upon -- 90 days at the
18 Department of Juvenile Justice suspended upon
19 completion of alternative placement and suspended upon
20 nine months probation. So, he received 90 days
21 suspended upon completion of alternative placement
22 then all of that was suspended again on probation. So
23 he basically received a probationary sentence. And
24 that was in March of 2008.

25 So, Mr. Antonio Barnes was on probation when

1 he committed this offense. He was on probation for
2 the charge of simple possession of crack cocaine.

3 THE COURT: All right. Now, Mr. May,
4 Mr. Mills, do y'all essentially agree with the facts
5 as presented?

6 MR. MAY: Essentially, Your Honor. There are
7 some discrepancies which I can address ---

8 THE COURT: Okay.

9 MR. MAY: --- but ---

10 THE COURT: Substantially ---

11 MR. MAY: --- for the purpose ---

12 THE COURT: --- what was presented ---

13 MR. MAY: Yes, sir.

14 THE COURT: --- that's accurate? Do you
15 agree, Mr. Mills?

16 MR. MILLS: Essentially ---

17 THE COURT: Okay, all right. Very well, Mr.
18 Jenkins, Mr. Barnes, now, once again, I would ask you
19 both, y'all are pleading guilty. You, Mr. Jenkins, to
20 indictment 2009-241 and you, Mr. Barnes, to indictment
21 2009-3140, y'all are pleading guilty to voluntary
22 manslaughter, once again, because y'all did in fact,
23 here in Richland County, on or about May 23rd of 2008,
24 shoot and kill one Jerome Hart. Y'all are pleading
25 guilty because you are in fact guilty, is that

1 correct?

2 DEFENDANT JENKINS: Yes, sir.

3 DEFENDANT BARNES: Yes, sir.

4 THE COURT: And you both acknowledge that?

5 DEFENDANT JENKINS: Yes, sir.

6 DEFENDANT BARNES: Yes, sir.

7 THE COURT: Is that correct?

8 DEFENDANT JENKINS: Yes, sir.

9 DEFENDANT BARNES: Yes, sir.

10 THE COURT: All right. Very well, I find
11 that there's a substantial factual basis for your
12 plea, Mr. Barnes, Mr. Jenkins. I further find your
13 decisions to plead guilty to be freely and
14 voluntarily, knowingly and intelligently made, that
15 you've had the advice of competent counsels, Mr. May
16 and Mr. Mills, whom you both indicated to me you're
17 completely satisfied with; therefore, I will accept
18 these pleas.

19 I will be happy to hear anything further from
20 the State at this time.

21 MS. HENDRICK: Your Honor, I would just like
22 to introduce -- present with me is Investigator
23 Bicksler (phonetic) of the Richland County Sheriff's
24 Department, Sergeant McDaniels of the Richland County
25 Sheriff's Department, Investigator Boland and Captain

1 Smith of the Richland County Sheriff's Department. I
2 believe they have some very brief comments and then
3 you will hear from the victim's family and then I can
4 address sentencing after that or...

5 THE COURT: Very well. Yes, sir, Captain.

6 CAPTAIN SMITH: Your Honor, may it please the
7 Court. Just a couple of things I'd point out. She --
8 just to reiterate a little bit of what the Solicitor
9 said.

10 Alex Smith was the intended target here,
11 let's make no mistake about that. I have been
12 involved in several cases with Alex Smith. The
13 reverberations from the September 2007 homicide that
14 the Solicitor talked about, it is unsolved, the CPD'S
15 jurisdiction. In that case -- he is the primary
16 suspect in that case.

17 But I've also been involved in several cases
18 exactly like this. One of them is identical to this
19 case where the intended target, that the person that
20 was firing, when people that were firing missed and
21 hit an innocent person in much in the case of this
22 with Mr. Hart. In that particular case, which was
23 gang related, the Defendants sought trial and were
24 convicted and got in excess of 40 years. Not to -- to
25 make such a close comparison to this to compel Your

1 Honor to do anything specifically, I'm just pointing
2 out to the Court that this is a pretty good plea for
3 these young men. And mainly I think that it would be
4 fair to say that we went along with it as far as the
5 Sheriff Department's position based on their ages,
6 Your Honor. They're -- these were kids killing kids.

7 THE COURT: I understand.

8 CAPTAIN SMITH: And I just wanted to point
9 that out. I do think it's a good plea and that would
10 be pretty much all I have to say. I just -- I do want
11 to tell Your Honor, Alex Smith is in jail involved in
12 yet another shooting that Sergeant McDaniels is
13 working. So there will be some justice for Alex Smith
14 at some juncture hopefully.

15 THE COURT: All right. Thank you, Captain.

16 MS. HENDRICK: Your Honor, the victim's ---

17 THE COURT: Well, let's let the officers go
18 first.

19 MS. HENDRICK: Sorry, I thought he ---

20 SERGEANT MCDANIELS: That's fine. In all
21 fairness to the victim, Your Honor, I think it's
22 important to point out ---

23 THE COURT: You need to say your name for the
24 record.

25 SERGEANT MCDANIELS: I'm sorry, Walter

1 McDaniels.

2 THE COURT: Okay. Yes, sir.

3 SERGEANT MCDANIELS: Your Honor, in all
4 fairness to the victim, I think it's important to
5 point out that our victim in this case -- although
6 this ongoing dispute was between two local gangs, our
7 victim in this case basically came home for a matter
8 of a couple of months. The father of the victim, who
9 I'm quite sure he may give you a little more detail
10 than I can, but he basically intervened and took this
11 young man and was raising him up -- raising him in New
12 York if I'm not mistaken.

13 So within a matter of months and as a result
14 of childhood association, our victim was in that
15 vehicle. He was not involved in any ongoing dispute
16 between these two groups. And, again, in all fairness
17 to him, I just wanted to point that out, that he
18 wasn't a part of that ---

19 THE COURT: He was just an innocent
20 bystander, a passenger.

21 SERGEANT MCDANIELS: Yes, sir, thank you.

22 MS. HENDRICK: And, Your Honor, we do want to
23 make it clear that Jerome Hart had just returned home,
24 I think he was living in either Atlanta or D.C. with
25 his family, and reconnected with some childhood

1 friends from when he was raised in Columbia. And one
2 of these childhood friends happened to be Alex Smith
3 who was...

4 THE COURT: The intended victim.

5 MS. HENDRICK: The intended victim. Your
6 Honor, I think he was -- his father explained to me
7 Jerome was simply just getting a ride this night and
8 happened to be in the car. Jerome was truly not part
9 of this -- the beef, so to say, between Antonio and
10 Alex.

11 And I think the person who does want to speak
12 next is Major -- Major Hart and he is the victim's
13 father.

14 THE COURT: All right. Major Hart, I will be
15 happy to hear from you, sir.

16 MR. HART: Good afternoon, Your Honor.

17 THE COURT: Good afternoon, sir.

18 MR. HART: I wrote a couple of things down
19 and I had to do it this way.

20 I would like to thank you for giving me a
21 voice this morning. My son's birthday is tomorrow, he
22 would have been 20 years old. I beg your pardon and
23 ask for your diligence because there has been no other
24 single event in my life that has caused the magnitude
25 of pain that ---

1 (Pause.)

2 MR. HART: --- the murder of my son has.

3 It's been over a year ---

4 THE COURT: Ms. Delany -- thank you.

5 MAJOR HART: It's been over a year since my
6 son was murdered and I still haven't been able to
7 embrace the finality of it. Our son, my son, cannot
8 be replaced. My son's life was taken through
9 unnatural means which means that it didn't have to
10 happen. And the fact that it was senseless makes each
11 of us call on the Lord not to be consumed with hatred,
12 not only for the young men, but for the people that
13 was responsible for them.

14 These young men will never know the full
15 magnitude of the pain they've caused. They have
16 prevented my son from the opportunity to pursue God's
17 will for his life and for me to see God's work go back
18 out of him.

19 I, as any father is called to do, took
20 Jerome, my son, through God's Word and personally on
21 what was needed for salvation and everlasting life. I
22 lift this up because that's the only thing that gives
23 me comfort right now because I may have a chance to
24 see him again.

25 Your Honor, I prayed about this proceeding

1 and I defer to your wisdom as God leads your judgment.
2 And I'll tell you, as a father that has a son, there
3 are two things that uppermost in any father's mind is
4 to protect his family and to provide for his family.
5 There's no greater sense of failure than to lose a
6 child through unnatural means.

7 As Sergeant McDaniels was saying, my son had
8 only been back here a few months and he got back with
9 some childhood friends that particular night, as I
10 understand it, I was not there. But as I understand
11 it, he was getting a ride from a friend who had some
12 questionable dealings and other things. And that
13 friend was diverted -- and since he had the car and
14 the license and the like, was diverted and wanted to
15 go somewhere else and so my son really didn't have a
16 choice in the matter since he was already in the car.

17 The only thing I'll tell you is I don't know
18 these young men. All I know is their impact on our
19 lives. And, again, I defer to your wisdom on it.

20 THE COURT: All right. Thank you, Major
21 Hart.

22 MS. HENDRICK: I think next the victim's
23 uncle would like to say a few words.

24 MR. J. HART: Good morning ---

25 THE COURT: Good morning.

1 MR. J. HART: --- Your Honor, everyone seated
2 here. My name is John Henry Hart. Jerome was my
3 nephew. There's a lot I would like to say and I'm a
4 human being and I am consumed a great part by my
5 emotion. But I have to refer back to what I was
6 taught as a child by my mother and my father seated
7 here (indicating). That was to reach unto the Father
8 from which your help comes. I'd just like to ask that
9 you help within your power -- I know you can't dry our
10 tears, I know you can't replace him but please give us
11 a little strength along that way, please, please.

12 Thank you.

13 THE COURT: Thank you, sir.

14 MR. D. HART: Good afternoon, Your Honor. My
15 name is Dan Hart, Jerome's uncle also. He and my son
16 were a few months apart. They were headed in the same
17 direction together. My son is now a father. He's in
18 San Diego in the Navy. These two individuals were
19 going to be joined at the hip, so to speak. They were
20 going together.

21 Jerome was as a son to me. As I look at
22 these two young men, I have yet to see any remorse in
23 these individuals. I feel that they robbed this
24 family, they robbed society. I feel that what they
25 have taken can never be replaced. I honestly feel

1 that without the maximum that you can give, there
2 won't be any closure. I ask because nothing that you
3 can do or anybody else can do can ever bring Jerome
4 back. These young men will still be able, in a few
5 years, hug their mothers, live a full life, be a part
6 of a family. But what they've done, they've wasted
7 and destroyed ours. And I'd like for you to take that
8 into consideration.

9 Thank you.

10 THE COURT: Thank you, sir.

11 MS. HENDRICK: Your Honor, I think finally
12 the victim's step-mother and mother would like to
13 address the Court.

14 (Pause.)

15 MS. HENDRICK: And, Your Honor, if you'll
16 excuse -- I think Jerome's mom actually has a mask on.
17 She's a cancer survivor so I think Ms. Hart's going to
18 actually read the letter for her.

19 THE COURT: That's fine.

20 MS. HART: Good afternoon, Your Honor.

21 THE COURT: Good afternoon.

22 MS. HART: My name is Sheila Hart and I am
23 Jerome's second mother. This is Andrenna (phonetic)
24 Toney (phonetic), Jerome's mom.

25 Jerome was blessed to have two moms in his

1 life, so he had a lot of guidance. When I first came
2 down here to the arraignment and I saw these young men
3 for the first time, I said, these are just little
4 boys. Oh, my goodness, these are just little boys.
5 They're not much bigger than I am. And I can
6 understand why the attorney is standing their hugging
7 them because that's the very same thing that I wanted
8 to do. I wanted to literally reach up to these young
9 men and hug them because I said, they're just kids.

10 Today was the first time that I learned about
11 the incident -- (pause) -- and how he was murdered.
12 I understand that these young men were 15 years old.
13 But they have the presence of mind of grown men.

14 Initially I was expecting, okay, this is just
15 too much television, they'd seen this stuff that going
16 on in television and they don't feel that's a real
17 thing. You see it on TV, you're going to shoot
18 somebody and they'll get up. This was not a cartoon,
19 this was not just a TV show with actors. This was
20 real.

21 And my husband has already mentioned,
22 tomorrow Jerome should have been celebrating his 20th
23 birthday but instead those of us that remain here will
24 recognize him and recognize his 20th birthday in his
25 absence.

1 Your Honor, I am a Christian and I cannot
2 harbor any hatred against these young men but I do ask
3 that justice is served in whatever capacity that may
4 be.

5 Andrenna has written a letter that I would
6 like to read this letter on her behalf.

7 In April 2008 I found out that I had cancer
8 and had -- (pause) -- and I had to sit down and tell
9 my kids that I might not be with them. But instead,
10 one month later on May -- on May 23rd, 2008, my son
11 was taken from me. He was shot to death and left to
12 die by himself in an apartment breezeway. I had to
13 deal with the death of my son and cancer all at the
14 same time.

15 (Pause.)

16 MS. HART: I know that nothing you do here
17 today is going to bring him back but hope you give him
18 justice. These young men will be able to go on with
19 their lives if they serve time. They will still be
20 able to reflect on their lives, they will still be
21 able to celebrate or have their birthday -- birthdays.
22 But Jerome will never be able to do that with us. He
23 is gone, he is gone from us forever. We will never
24 hear his voice again, we will never see his face
25 again. We have lost our son forever.

1 Your Honor, we thank you for hearing us. May
2 God be with you young men forever.

3 Thank you.

4 THE COURT: Thank you.

5 MS. HENDRICK: Your Honor, I would just like
6 to put on the record that the victims understand and
7 are fully in agreement with this plea agreement. They
8 understand the sentencing range of 15 to 25 years.

9 And at this time, the State respectfully asks
10 for you to impose the maximum sentence allowed under
11 the sentencing range of 25 years. That's on behalf of
12 law enforcement, the Solicitor's office and the
13 victims.

14 Your Honor, even if they were to receive a 25
15 year sentence, they would still be released probably
16 before their 40th birthday and still be able to have a
17 life. Your Honor, Jerome Hart will never have a life.
18 Like the victims all said, tomorrow would be his 20th
19 birthday. These individuals get to celebrate their
20 birthday with their families after all this is said.

21 There's some other things I want to point out
22 to the Court. This event did happen late at night in
23 an apartment complex where neither of these
24 individuals lived and one was on probation.

25 There are also some issues I want to address

1 as to Antonio Barnes's behavior at the jail. We can
2 do that during his mitigation section.

3 THE COURT: Go ahead and do it now.

4 MS. HENDRICK: Your Honor, he had several
5 write-ups while he was in the jail. Most of them were
6 before the waiver hearing. After the waiver hearing
7 his behavior basically got better according to the
8 jail staff. I've provided Mr. Mills copies of every
9 time, every incident report, anything he's ever done
10 in the jail. Some of them are gang related. Some of
11 them were threatening other juveniles, some of them
12 were threatening other JCO's.

13 Your Honor, he was written up as recently as
14 November 5th, 2008 for -- excuse me, as recently as
15 November 1st, 2009 for disobeying a direct order,
16 interfering security operations, disruptive behavior
17 and threatening bodily harm.

18 Your Honor, he had a consistent pattern of
19 behavior at the jail of not following the rules. I
20 just think it's important for the Court to be aware of
21 while he was incarcerated and knew that this behavior
22 would come back to him he still continued to act-out,
23 didn't follow the rules, was disrespectful, threatened
24 authority figures. I think that's important for the
25 Court to be aware of, that he had a consistent pattern

1 of that. And Mr. Mills, I'm sure, has gone over all
2 of that with him.

3 Again, just on behalf of the State and behalf
4 of the family and law enforcement, we respectfully ask
5 for the full 25 years in this case. We think 25 years
6 is basically a very fair sentence in this case. Like
7 the victims told the Court, Jerome Hart will never
8 celebrate another birthday because of these two
9 individuals' actions and we ask the Court to impose a
10 25 year sentence.

11 THE COURT: Thank you, ma'am. Anything
12 further from the State?

13 MS. HENDRICK: (Negative response.)

14 THE COURT: All right. Could I see the
15 lawyers involved in that trial? Y'all, we'll be at
16 ease for a minute. I need to see the lawyers involved
17 in that trial.

18 (The Court was in recess.)

19 THE COURT: Are we all ready then? Mr. May,
20 I think you want to proceed first, is that correct?

21 MR. MAY: Yes, sir. May it please the Court,
22 Your Honor.

23 THE COURT: Yes, sir.

24 MR. MAY: In tragedy such as this, our words
25 just are never appropriate when a family has lost so

1 much. This was a needless tragedy. He's here to take
2 responsibility for his actions. I'd like to address
3 some of the facts ---

4 THE COURT: Yes, sir.

5 MR. MAY: --- that we believe may have been
6 differently stated as we understand the facts.

7 That night Tony was getting in several fights
8 up in Willow Run Apartments. At some time, there was
9 a girl who screams, there goes A-Rock (phonetic).
10 They were roughly around this building right here.
11 Tony says ---

12 THE COURT: When you say, A-Rod (phonetic),
13 you need to explain for me who A-Rod is.

14 MR. MAY: Sorry, A-Rock is Alex Smith.

15 THE COURT: All right.

16 MR. MAY: The driver of the blue Impala which
17 was parked right about here (indicating), the driver
18 of the car where Jerome Hart was riding in.

19 Somebody says, there goes A-Rock. Little
20 Tony says, let's go get him, let's go scare him. And
21 even Little Tony's statement ---

22 THE COURT: And Little Tony, you mean Antonio
23 Barnes?

24 MR. MAY: Yes, sir. I apologize.

25 THE COURT: All right. That's all right.

1 MR. MAY: And this is Duke (indicating).
2 This is what everybody calls him, Duke. Duke says,
3 let's don't do that. We don't need to go down there
4 and he proceeded to go down there anyway.

5 At that point Duke made the decision to
6 follow him. I believe -- and I believe that the
7 testimony from different statements showed that out of
8 this area right here (indicating), the Co-Defendant
9 and Alex Smith essentially get into a Mexican
10 standoff. Alex Smith is arrested with a 22 pistol
11 with one of the cartridges in the chambers depressed
12 showing that it was misfired. He was arrested about
13 45 seconds to a minute after the shooting.

14 At which point the Defendant pulls out a gun,
15 fires it at A-Rock, trying to help his buddy.

16 THE COURT: You mean Mr. Jenkins.

17 MR. MAY: Mr. Jenkins.

18 THE COURT: All right.

19 MR. MAY: Duke fires a 38 snub nose revolver
20 in the direction of Alex Smith. People start running.
21 He starts running. He runs this path right about here
22 (indicating), shooting Jerome Hart who was a passenger
23 in the car driven by Mr. Smith, his shot approximately
24 152 feet away in this cut (indicating). We believe
25 that's what the evidence would have shown at trial.

1 We believe this is an appropriate voluntarily plea.

2 Your Honor, the first time I met Duke was
3 back in January after his waiver hearing. The first
4 day he says, I want to plead, I want to take
5 responsibility for what I did. That's always been his
6 actions. That's always been his desire.

7 We have a bunch of people in the gallery here
8 to speak on behalf of Mr. Jenkins. Everybody wants to
9 get up, everybody wants to talk. For the sake of your
10 time, I've asked that only four people talk. One
11 correctional officer, Mr. Hilliard (phonetic), his
12 teacher Ms. Howk (phonetic), his father Robert Jenkins
13 and his brother Corey Jenkins. They will address the
14 Court and Ms. Delany would like to address the Court,
15 the Defendant would and then I'll sum it up.

16 THE COURT: All right, sir.

17 MR. MAY: Mr. Hilliard.

18 MR. HILLIARD: Good afternoon, Your Honor.

19 THE COURT: Good afternoon, sir.

20 MR. HILLIARD: My name is Officer Randy
21 (phonetic) Hilliard. I work at Alvin S. Glenn
22 Detention Center. I've been a detention officer there
23 for 10 years. I have worked in the juvenile division
24 for six. I was there when Jenkins came in, May 28th,
25 2008. From that day until this day, we have never had

1 any problem with him. He's always been respectful to
2 us. He's never got into any trouble. When he sees
3 trouble brewing, he walk away. And the time comes and
4 sometimes I walk by his room when I'm doing security
5 check, he's like sitting there like he's in a trance,
6 I ask him if he's okay. He say, yeah. If anybody --
7 any problem someone giving him, he will come to one of
8 the officers and let the officer know what's going on
9 to keep from getting into trouble.

10 And my heart goes out to this family for
11 their loss. Mr. Jenkins, I think he have or he's
12 trying very hard. He's very sorry for what happened
13 and I think Mr. Jenkins, if he was ever get through
14 this -- and I can see he is a different person, from
15 the day he came in until now, he's very different.

16 Thank you.

17 THE COURT: All right. Thank you, sir.

18 MR. MAY: Ms. Howk.

19 MS. HAWK: Your Honor, I am Mary Howk. I'm a
20 teacher with Richland County School District One. I
21 first met Devion August 2008 when he started the
22 school there. I see him approximately two, two and a
23 half hours a day including summers. And during that
24 time he's always been very respectful, pleasant, hard
25 working. I've never had to discipline him for

1 anything.

2 I agree that that he does tend to separate
3 himself whenever there's any sort of student
4 discipline issue. Grade-wise, he's applied himself.
5 He's made a lot of progress. He's been B's and C's in
6 my class and other teachers' classes. And I have his
7 report card if you would like to see that.

8 Thank you.

9 THE COURT: All right. Thank you, ma'am.

10 MR. MAY: Robert.

11 MR. R. JENKINS: Good afternoon, Your Honor.

12 THE COURT: Good afternoon, sir.

13 MR. R. JENKINS: To the Court and the Hart
14 family. I take responsibility for my son's actions
15 because he cried out to me and I did not listen to
16 him. See, I live in a retirement home and that's
17 where children are not allowed to live. But Devion
18 cried out to me, yes, he did. He said, daddy, he
19 said, I wish I was staying in a better neighborhood.
20 That's what he said, he was crying out to me. And
21 Devion is not a bad kid. Devion, he's very
22 respectful. I never have a problem with Devion. But
23 I've got to say it, Devion lived in a bad neighborhood
24 and the schools there are some of the worst in South
25 Carolina. And Devion is not a bad kid, Your Honor,

1 he's not. And as you can see by some of the testimony
2 here today, they're the ones knows Devion. He's very
3 respectful and he's well-mannered. But Devion has to
4 take respect (sic) for his actions. He's going to
5 have to stand up to his actions.

6 And I talked to Devion and I go -- I go see
7 Devion three times a week. And Devion is very
8 remorseful for what he has done, Judge. He has been
9 remorseful. And I've seen improvement in Devion from
10 day one. Devion has grown up since he's been locked
11 up. He's very mature and he's willing -- and he has
12 taken responsibility for what he has done, like I
13 said. And I've seen a lot of positive things in
14 Devion. And if Devion continue on the way he's going,
15 I know he's going to have to be accountable for his
16 actions, I know he's going to be locked up, but yet
17 still I'm going to support Devion and I know Devion is
18 going to get through this all the well and good.

19 Devion's a fine young man. But he made the
20 wrong choice and my heart goes out to the Hart family,
21 it really do, it goes out to the Hart family because
22 it could have been him on the other side. I'm just
23 torn apart.

24 THE COURT: All right.

25 MR. R. JENKINS: Thank you all for hearing

1 me.

2 THE COURT: I understand, yes, sir. Thank
3 you.

4 MR. C. JENKINS: Good morning, Your Honor.
5 My name is Corey Jenkins. To the Hart family, I am
6 truly sorry for you guys's loss. We can't imagine
7 what you feel like. But regardless if it's 15 years,
8 if it's 25 years, life in prison, it's not going to
9 bring your son back. And I ask you, because we are
10 praying for you guys, and I ask you guys to pray for
11 us as well.

12 My brother made a choice that he shouldn't
13 have made. We all understand nowadays, you know what,
14 life is not the same growing up as it is when I am
15 growing up. Kids nowadays are influenced by things
16 that we have no clue about. We can't watch our kids
17 24 hours a day. We can't watch over them and see what
18 they're doing. But at the same time, they've got to
19 understand, you know what, I've got a decision I've
20 got to make. My brother made a bad decision and he
21 understands he has a penalty to pay.

22 Now, Your Honor, I'm not standing here to try
23 to cut his time down because he understands. I've
24 talked to him on the phone several times and I've told
25 him, Dude -- because that's what I call him and that's

1 what I've always called him and that's what I always
2 will call him. You did something you had no business
3 doing. And like my father said, he reached out to us
4 and at the time I wasn't here. I wasn't able to do
5 anything for him. All I could do was talk to him.

6 But in the time and situation that he was in,
7 he did something wrong. And like I said, to the Hart
8 family, I can't say I'm sorry enough, on behalf of
9 myself and the rest of my family. To his mother, to
10 his father, to his uncles, brothers and sisters,
11 nieces, cousins, nephews, everybody. His 20th
12 birthday is tomorrow. And you know what, I will
13 celebrate for him. And I wish he was here to
14 celebrate it with you guys but unfortunately he's not
15 due to the mistakes my brother made.

16 Now, Dude, I love you, and you understand
17 what the situation caused and what's going to happen
18 here.

19 Now, at the end of the day, Your Honor, we
20 thank you for your time and we just hope and pray that
21 you're lenient and give him the understanding that he
22 did make a bad choice and he's learning from it and
23 he's a great young man.

24 Thank you.

25 THE COURT: All right. Thank you, sir.

1 Yes, ma'am, Ms. Delany.

2 MS. DELANY: Your Honor, I represented Devion
3 at his waiver hearing and DJJ did a pretty
4 comprehensive pre-wavier evaluation on him and had him
5 meet with a psychologist, meet with a social worker.
6 And the psychologist in his case, you know, didn't
7 think that he was a very mature 15 year old. She
8 thought that he was performing below grade level in
9 school. She thought, Your Honor, that he was in --
10 cognitively in the low grade range. However, this is
11 a boy that loves school. His favorite thing to do
12 before he was locked up was to spend time with his
13 nephew and to help him with his homework, Your Honor.

14 I think he's about absolutely remorseful,
15 Your Honor, and I think he's absolutely capable of
16 rehabilitation. He has said that he cried when he
17 found out that the victim died in this case. He was
18 heard saying by a witness that his heart was hurting.
19 I know he was very sad, Your Honor. This is a boy
20 that I think is capable of rehabilitation, absolutely,
21 Your Honor.

22 Your Honor, we lost the waiver hearing and he
23 was sent to General Sessions. If he had stayed in
24 Family Court he would have had the opportunity to
25 finish high school, to get some job training, come out

1 without a criminal record, Your Honor, and he doesn't
2 have that. And he understands that he's going to come
3 out with a criminal record and it's going to be very
4 hard for him to get a job when he gets out because
5 he's going to have this conviction, Your Honor.

6 But I think this is a good child who made a
7 bad decision, Your Honor, and I'm sorry for ---

8 THE COURT: That's all right, Ms. Delany, I
9 understand.

10 MS. DELANY: He's been very well behaved at
11 the jail. This is a child who does well in structure.
12 He has not had any discipline problems, Your Honor.
13 He's doing well in school. The CO's when we ask about
14 him, they always say, oh, definitely there's no
15 problem.

16 I think he very strongly regrets what
17 happened, Your Honor. And I know that all of us here
18 today do and we would just -- we would just ask the
19 Court for mercy in his case and -- and, Your Honor, I
20 would say it's been a pleasure to work with him.

21 THE COURT: All right. Thank you, ma'am.

22 MR. MAY: He would like to address the Court,
23 Your Honor.

24 THE COURT: All right, Mr. Jenkins.

25 DEFENDANT JENKINS: Your Honor, I take

1 responsibility for my actions and I know I did wrong
2 and I can't make no excuses or anything but I was
3 scared. And I want to apologize to my family and to
4 the Hart family for the pain that I'm causing them.
5 And I think about the situation daily, not because
6 that I'm locked up but because the pain that I'm
7 causing both of our families.

8 And while I was locked up and at the
9 detention center, I've been participating in Gang Out
10 Program and I have learned a lot of things. And while
11 I'm in jail and when I get out of jail, I want to
12 share my testimony with others because I believe that
13 my testimony will have a big impact on others' life
14 and it can help them do the right thing and change
15 their life around. And I want to say that we all fall
16 short of the glory of God and we do and say things
17 that we later regret.

18 And I want to say again, that I'm sorry to my
19 family and the Hart family.

20 THE COURT: All right. Thank you, Mr.
21 Jenkins.

22 Yes, sir, Mr. May.

23 MR. MAY: I'll sum it up real quick, Your
24 Honor.

25 This is a hard case. I can honestly say I've

1 never said this in Court, this is the favorite client
2 I've ever represented. He has been a pleasure. He's
3 been a joy to go down to see. His family has been a
4 pleasure to work with. It's amazing to watch how a
5 family can have to such different life paths.

6 I feel a connection with their family. I
7 played against his brother in college. And then you
8 have a child who becomes 12 who, because of
9 circumstances, grew up in arguably the worst
10 neighborhood in Columbia. There are five murders in
11 six months in the old Gable Oaks Apartments. He lived
12 in Gable Oaks. Gable Oaks is roughly a half mile as
13 the crow flies from Hillandale Apartments.

14 He screwed up. He's going to pay a mighty
15 price. We respectfully request the Court in its
16 infinite wisdom to give him a sentence of how many
17 years he was -- been on the earth. That's 15 years,
18 Your Honor. I think that's an appropriate sentence
19 and respectfully ask that from you.

20 THE COURT: All right. Thank you, Mr. May.
21 All right, Mr. Mills.

22 MR. MILLS: Yes, sir, Your Honor.

23 Your Honor, as you've heard, and this is a
24 very very tragic situation for especially the Hart
25 family losing their loved one. This is also a tragedy

1 for the Barnes family, the Pringle family which is Mr.
2 Barnes family. They know that they're going to have
3 Mr. Barnes away from them for quite a long time. This
4 is a case where Mr. Barnes is not as mature as his
5 age. Your Honor, he's now 16. He was 15 at the time
6 of this incident. We also had a pre-waiver evaluation
7 at a waiver hearing, to get to this point, in Family
8 Court. And throughout the evaluation results was that
9 Mr. Barnes is not and does not behave up to his -- up
10 to his age.

11 And, Your Honor, I do have a IEP, an
12 Individualized Education Program. This is the latest
13 one that I will present to the Court, supplement the
14 record, Your Honor. Basically, Your Honor, Mr. Barnes
15 has been in emotionally disabled classes all his life,
16 resource classes. This is the latest one and it
17 basically goes over his 9th grade levels on different
18 things. He recognizes words at a second grade level.
19 His reading and writing skills are between first and
20 third grade level.

21 So this is a young man who is not very mature
22 for his age. He has had problems with some earlier --
23 in his elementary school classes. He was -- he had
24 some ADHD issues as well growing up. And, Your Honor,
25 he was -- he's been raised by Ms. Barnes who is

1 present here and she will be speaking in a few
2 minutes.

3 Your Honor, this is a case where his father
4 had left very early in the relationship between he and
5 Ms. Barnes. One thing that -- as sitting, listening
6 to Antonio talk to the psychiatrist at -- from DJJ who
7 came to talk to him and to do the evaluation, an
8 interesting thing came up, that his father has never
9 really paid any attention to Mr. -- to Antonio and
10 basically at one point the -- his family had bought
11 some gifts for him to say that they were from the
12 father. And his father actually told him, no, those
13 are not from me. That they were trying to make
14 Antonio feel better about his father, his relationship
15 with his father, but his father just does not want to
16 have anything to do with him.

17 I think that is a core problem that Antonio's
18 had. He's not blaming his -- his actions in this case
19 on that but that is a problem he's had growing up. In
20 fact, in the evaluation he -- they recommended that he
21 needs some type of father figure and he has not had
22 that due to his father basically not wanting to get
23 involved in his life.

24 Your Honor, he -- he never got the
25 intervention that he really needed for his emotional

1 behavioral issues. I think that's one reason he is in
2 this situation today. He was -- he reacted in this
3 case when he should have thought about it and pulled
4 back and left the scene. He had had this problem with
5 Alex Smith, who as you heard had a gun down there at
6 this scene and he should have turned around and gone
7 the other way. He knows that but he is -- he knows
8 that he is responsible for his actions in this and
9 he's willing to go to prison for that, Your Honor.

10 He understands he should not have been there.
11 He should not have tried to scare basically is what
12 they were trying to do, scare Mr. Smith and -- because
13 of his actions with the shotgun and the -- he is an
14 accomplice in this situation. He understands that.
15 We've talked about that. Even though he's not the
16 shooter, he understands the accomplice liability in
17 this and his involvement in it.

18 Your Honor, one thing Mr. Barnes did tell
19 me, since he knows he's going to prison, he said he'd
20 like to get involved in some kind of prison ministries
21 while he's there. He knows he's going to be there
22 awhile. He'd like to share his testimony of the
23 mistakes he's made and hopefully help some other young
24 men in similar a situation. He is very remorseful,
25 he's very upset about this and he's upset that Mr.

1 Hart was killed.

2 Your Honor, we -- I would ask that first his
3 mother come to the microphone.

4 THE COURT: Yes, sir.

5 MS. BARNES: How you doing, sir? My name is
6 Latoya (phonetic) Barnes.

7 THE COURT: Yes, ma'am.

8 MS. BARNES: And my heart goes out to y'all,
9 all of y'all, truly. And kids get into things
10 everyday. I tried to hold him down but my son at the
11 same time is not a bad person. And I just hope you be
12 easy with my son.

13 Thank you.

14 THE COURT: All right. Thank you, ma'am.

15 MR. MAY: Your Honor, his step-father, David
16 Johnson, would also like to make a statement.

17 THE COURT: All right, sir.

18 MR. JOHNSON: How you doing, Your Honor?

19 THE COURT: Yes, sir.

20 MR. JOHNSON: My condolence go out to the
21 Hart family. I'm sorry about your loss. My
22 condolence go out his family, the Jenkins family.
23 Your Honor, I've been knowing Duke about five years.
24 I've been knowing Tony every since he was about nine.
25 I tried to raise him as mine, you know, but sometimes

1 when you're trying to raise young teenagers they just
2 do what they want to do. Want to sneak out the house
3 and do stuff, you know, without you knowing it.

4 But Tony's not a bad person. And he's not
5 what he seemed -- seem to be or what he's trying to be
6 because he's not. All that hardness, that don't buy
7 with me, he knows that. When he comes to his house,
8 he's a different person. He don't want to say it but
9 he do wash dishes -- he do wash dishes and take the
10 doggone trash out when he's in my house. But when
11 he's out on another house, I can't -- you know, I
12 can't work and try and keep up with him.

13 But he need -- he needs a little anger
14 management, he needs a little counseling. And I
15 reckon maybe you can give him that, Your Honor,
16 because he knows that he's going to have to do time.
17 We talk about things that he can't talk to anybody
18 else about and he know I love him. And all that
19 hardness, you know, I told, you know, that don't get
20 it, you know, just be yourself and you've got to face
21 what you did, you know. But, you know, I love you and
22 you know your mother loves you and the rest of your
23 brothers. You know, you get there and you get your
24 time and you've got to do what you've got to do, you
25 know, go to school, take a trade, you know, get that

1 education, you know.

2 And I thank you, Your Honor, for letting me
3 speak and I love you, man, I love you too, Duke.

4 THE COURT: All right. Thank you, sir.

5 MR. MAY: Your Honor, Tamika (phonetic)
6 Pringle.

7 MS. PRINGLE: Good evening, Your Honor.

8 THE COURT: Good afternoon.

9 MS. PRINGLE: I'm Tamika Pringle and I'm his
10 aunt, I'm his father's sister. I've been in his life
11 since he was brought home from the hospital from day
12 one. I just ask that you be lenient as much as
13 possible. I've been following him throughout this
14 whole process and I have seen a difference in his, you
15 know, his whole character. And I know that he's
16 feeling real sorry and remorseful for what he has
17 done, you know, taking full responsibility for his
18 actions. My heart goes out to the Hart family,
19 everyone in the courtroom today, because, you know,
20 all the pain that this has caused for everyone in here
21 today. Just ask that you be as lenient as possible,
22 as much as possible.

23 THE COURT: All right. Thank you, ma'am.

24 MR. MAY: And, Your Honor, James Pringle.

25 (Pause.)

1 MR. MAY: Oh, he had to go outside. And,
2 Your Honor, I'm sorry, Mr. Pringle had to go.

3 THE COURT: That's all right.

4 MR. MAY: Also, I had talked previously to
5 Mr. Kedrick Lusk who taught Antonio at Sanders Middle
6 School. He couldn't be here today but he wanted to
7 say that -- that Antonio never caused him any
8 problems. He was always cooperative with him and
9 tried to learn and felt that he could be
10 rehabilitated, Your Honor. We believe that also. We
11 think that Mr. Barnes can be rehabilitated. He would
12 like to address the Court.

13 THE COURT: All right, Mr. Barnes.

14 DEFENDANT BARNES: I just want to start out
15 by saying I apologize to the Hart family, you know
16 what I mean. I want to apologize to my family and
17 Duke's family. You too, brother. I didn't mean to
18 get you in this situation. I don't want nobody to be
19 blamed for something I started, you know what I mean.
20 If I could take it back, I would. I would do anything
21 to see Jerome walk in. I ain't mean for none of this
22 to happen. I didn't know nothing was going to happen.
23 I put myself in a situation. I got to man up now.
24 That's what I'm going to do. I understand what y'all
25 gave me, you know what I mean.

1 THE COURT: All right. Thank you,
2 Mr. Barnes.

3 MR. MAY: Thank you, Your Honor. We would
4 just ask that you sentence Mr. Hart -- I mean, Mr.
5 Barnes to -- to the minimum sentence of 15 years.

6 THE COURT: All right. Thank you, sir.
7 Anything further?

8 MR. MAY: That's all, Your Honor.

9 THE COURT: All right. Well, someone once
10 said, the truth spoken too soon has about as much
11 value as an error. I think it would be inappropriate
12 for me to pronounce sentence at this time. I'll do it
13 one of two ways. I'll let the lawyers know first,
14 along with the Defendants or I can invite everybody
15 back, which I really don't want to do but it's
16 something that when it's this serious, you need to
17 weigh about it, think about it and that's what I
18 intend to do.

19 But I'll let y'all -- I'll let the lawyers --
20 I'll let the lawyers -- alert the lawyers first as to
21 what the sentence I'm probably going to give. And then
22 I'll leave it up to you all to invite everybody back
23 if they want to. But it's something I do want to
24 think about and weigh and consider everything I've
25 heard here today. So it won't be -- yes, sir.

1 MR. MAY: Yes, sir. I'd ask that -- we'd
2 just, as we mentioned, that we supplement the record.

3 THE COURT: Oh, yeah, you need to supplement
4 the record with some opinion of a Family Court Judge.
5 I invite you to do that in writing, Mr. May.

6 MR. MAY: Yes, sir.

7 THE COURT: So my decision is to make no
8 decision today but to weigh everything I've heard
9 today, think about it and make my decision later on.

10 Thank you all so very much for your
11 presentations.

12 MR. MAY: Thank you very much, Your Honor.

13 MR. MILLS: Thank you.

14 MS. CAMPBELL: Thank you, Your Honor.

15 ----- END OF TRANSCRIPT OF RECORD -----
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1 CERTIFICATE OF REPORTER

2

3 STATE OF SOUTH CAROLINA)

4 COUNTY OF RICHLAND)

5

6 I, Crystal Holmes, Official Court Reporter for the
7 Fifth Judicial Circuit of the State of South Carolina,
8 do hereby certify that the foregoing is a true,
9 accurate and Complete Transcript of Record of the
10 proceedings had and evidence introduced in the guilty
11 plea hearing of the captioned cases, relative to
12 appeal, in the Court of General Sessions for Richland
13 County, South Carolina, on the 12th day of November,
14 2009.

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

17

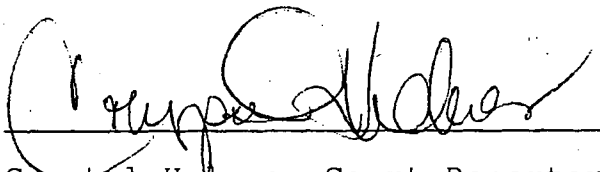
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February 6, 2010

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Crystal Holmes, Court Reporter

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA

-VS-

DEVION JENKINS

STATE OF SOUTH CAROLINA

-VS-

ANTONIO BARNES

09-GS-40-241

TRANSCRIPT OF RECORD
SENTENCING

09-GS-40-3140

TUESDAY, JANUARY 12, 2009
COLUMBIA, SOUTH CAROLINA

B E F O R E:

HONORABLE L. CASEY MANNING, JUDGE.

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

LUCK CAMPBELL, ASSISTANT SOLICITOR
EDEN HENDRICK, ASSISTANT SOLICITOR
ATTORNEYS FOR THE STATE

JAMES H. MAY, ESQUIRE
ATTORNEY FOR DEFENDANT JENKINS

ROBERT MILLS, ESQUIRE
ATTORNEY FOR DEFENDANT BARNES

DIANNE A. RUTLEDGE
CIRCUIT COURT REPORTER

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3 CERTIFICATE OF COURT REPORTER 5

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12 (NO EXHIBITS WERE INTRODUCED DURING THE HEARING.)

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1 THE COURT: IS EVERYBODY READY?

2 MS. CAMPBELL: THE STATE'S READY, YOUR HONOR.

3 THE COURT: YES, MA'AM.

4 MS. HENDRICK: YOUR HONOR, WE ARE HERE TODAY STANDING

5 BEFORE YOU IS ANTONIO JENKINS -- ANTONIO BARNES AND DEVION

6 JENKINS. WE'RE HERE TODAY FOR SENTENCING, YOUR HONOR.

7 THEY PLED BEFORE YOU EACH TO ONE COUNT OF VOLUNTARY

8 MANSLAUGHTER WITH A SENTENCING RANGE OF 15 TO 25 YEARS.

9 YOUR HONOR, WE ARE HERE TODAY FOR SENTENCING.

10 THE COURT: ALL RIGHT. DID I HEAR FROM EVERYBODY LAST
11 TIME?

12 MR. MILLS: YES, SIR.

13 MR. MAY: YES, YOU DID, YOUR HONOR.

14 THE COURT: I HAVE A BRIEF STATEMENT TO MAKE. THIS IS
15 A SAD AND UNFORTUNATE TRAGEDY. I'M NOT IN DOUBT. I'VE
16 THOUGHT ABOUT THIS LONG ENOUGH. I ALWAYS TAKE THESE SORT
17 OF MATTERS -- I TAKE TIME TO THINK ABOUT THEM.

18 I SEE THE FATHER OUT THERE WHO LOST HIS SON. AND YOU
19 HAVE MY DEEPEST SYMPATHIES AND EMPATHIZES.

20 AND I SEE A FATHER WHO'S ABOUT TO LOSE A SON FOR A
21 LONG, LONG TIME. THERE'S NO GOOD SOLUTION TO THIS.

22 AND I'M PROBABLY GOING TO ISSUE A SENTENCE THAT
23 NOBODY'S PARTICULARLY PLEASED WITH, BUT I CAN LIVE WITH.
24 AND SOME TIMES YOU HAVE TO ACT AS A CONSCIENCE OF THIS
25 COMMUNITY AND YOUR DECISIONS SHOULD REFLECT ITS VALUES.

1 ON THE ONE HAND I THINK WHAT'S BEEN NEGOTIATED IS
2 FAIR, THE RANGE IS FAIR. AND SOME PEOPLE MAY DISAGREE WITH
3 THE NUMBER, BUT IT'S JUST HARD TO PLEASE EVERYBODY ALL THE
4 TIME. YOU DO THE BEST YOU CAN HOPE BOTH SIDES UNDERSTAND
5 THIS.

6 AND AFTER DUE CONSIDERATION AND A LOT OF THOUGHT,
7 CONSIDERING THE AGE OF THE DEFENDANTS, THE AGE OF THE
8 VICTIM, AND ALL THAT I LISTENED TO THE LAST TIME I WAS
9 HERE, ON INDICTMENTS 09-241, THE STATE VERSUS DEVION
10 JENKINS AND ON INDICTMENT 09-3140, THE STATE VERSUS ANTONIO
11 BARNES, THE SENTENCE IS 22 YEARS WITH CREDIT FOR TIME
12 SERVED.

13 GOOD LUCK TO EVERYONE. THANK YOU ALL FOR YOUR
14 PATIENCE.

15 THIS MATTER IS CONCLUDED.

16 --- END OF TRANSCRIPT OF RECORD ---

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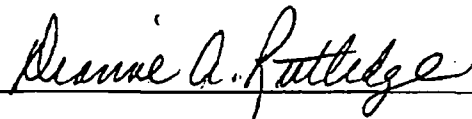
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1 I, THE UNDERSIGNED DIANNE A. RUTLEDGE, OFFICIAL COURT
2 REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF
3 SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
4 TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF THE RECORD OF THE
5 PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE SENTENCING
6 OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT
7 COURT FOR RICHLAND COUNTY, SOUTH CAROLINA ON THE 12TH DAY
8 OF JANUARY 2009.

9 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
10 COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

11 SEPTEMBER 28, 2010

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13 

14 COURT REPORTER

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STATE OF SOUTH CAROLINA

County of Rich Land

In the Court of Common Pleas

2010CP4007380

Antonio Barnes #338781

Full name and prison number (if any) of Applicant,

vs.

The State of South

Name of Respondent.

CarolinaAPPLICATION FOR
POST-CONVICTION RELIEFRICHLAND COUNTY
FILED
2010 OCT 20 PM 5:00
JENNETTE W. MC
C.C.P. & G.S.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 answer 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 it clear to which question any such continued answer refers.

Since every application must be sworn to 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 applicant was convicted.

1. Place of detention Lee CI 990 Wismore Hwy, Bishopville
SC 29010

2. Name and location of Court which imposed sentence Richland County Court house
P.O. Box 2766, Columbia, SC 29202 - 2766

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

2009 GS-40-3140 Voluntary manslaughter

(b) _____

(c) _____

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

(a) January 12, 2010 - 22 years

(b) _____

(c) _____

5. 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

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

Yes

7. If you answered "yes" to (6), list

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

i. Reconsideration in the court of GS for the ^{cont.}

ii. Fifth Judicial Circuit

iii. _____

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

i. Reconsideration motion Denied

ii. _____

iii. _____

(c) the date of each such result:

i. Feb 1, 2010

ii. _____

iii. _____

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

i. 2009 - GS - 40 - 3140

ii. _____

iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) ~~_____~~

(b) _____

(c) _____

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

(a) Ineffective of assistance of counsel - 6th Amendment

(b) Unreasonable body seizure - 4th Amendment

(c) Due process rights violation - 14th Amendment

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) See attachment

(b) _____

(c) _____

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

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

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

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

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

N/A

(a) which grounds have been presented:

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

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

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

15. If any ground set forth in (9) 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) Raising for the first time
- (b) _____
- (c) _____

16. 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? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

17. If you answered "yes" to one or more parts of (16), list:

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

- i. Robert Mills 1728 Main Street, Suite 213
Columbia SC. 29201
- ii. Same
- iii. Same

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

- i. at plea hearing
- ii. at sentencing
- iii. reconsideration

18. State clearly the relief you seek in filing this application.

Sentencing vacated

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

No

STATE OF SOUTH CAROLINA

VERIFICATION

County of Richland

I, Antonio Barnes, 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.

Antonio BarnesSWORN to and subscribed before me this 19day of Oct, 2010

J. Bracey Dunn (L.S.)
Notary Public

RICHLAND COUNTY
FILED
2010 OCT 20 PM 5:00
JEANNETTE W. McBRIDE
C.C.P. & G.S.

-My-Commission-Expires- 5-16-17

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

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 therefor.

Antonio Barnes

Applicant

SWORN or affirmed to and subscribed before me this

19 day of Oct, 2010
J. Bracey Dunn
Notary Public

My Commission Expires 5-16-17

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
Barnes Antonio -	)	2010CP4007380
# 00338781,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed October 20, 2010, would respectfully show this Court:¹

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was represented by Robert Mills, Esquire. On January 12, 2010, the Applicant pled guilty and was sentenced by The Honorable L. Casey

¹

<http://www4.rcgov.us/publicindex/PCaseDetails.aspx?County=40+&Casenum=2010CP4007380&CourtType=G&CaseType=Civil&CourtAgency=40002>

Manning. The Applicant had been indicted and/or pled guilty to the following:
Murder/VM - (2009-GS-40-3140).²

<u>Offender Type</u>	Adult-straight Sentence
<u>Offense</u>	Voluntary Manslaughter
<u>Sentence Start Date</u>	05/24/2008
<u>Sentence Length</u>	22 YRS, 0 MOS, 0 DYS
<u>Admission Date</u>	01/14/2010
<u>Committing County</u>	Richland
<u>Location</u>	Lee
<u>Projected Release Date</u>	01/30/2027
<u>Projected Parole Date</u>	Not Eligible
<u>Supervised Furlough Eligibility</u>	Not Eligible
<u>Sex Offender Registry</u>	No

II.

Attached herewith and incorporated herein are the records of the Richland 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 or submit an amended Return to reflect any amended allegations and/or to provide a more detailed procedural history.

III.

For the purposes of this Return, the Respondent interprets each of the Applicant's unspecified allegations to be claims that he received ineffective

² <https://sword.doc.state.sc.us/incarceratedInmateSearch/incarceratedInmateFaceSheet.do?id=00338781&youth=N&type=F>

assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases.

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).

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.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied. The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis

that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held. The Respondent will coordinate with the Applicant's attorney who is, according to the Respondent's file, Robert L. Brown, Esquire regarding when the hearing should be set.³

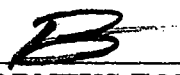
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

BRIAN T. PETRANO
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

February 4, 2011

³ The current PCR Roster for the 5th Circuit is available at <http://www.scattorneygeneral.com/inside/pdf/5th.pdf>
State's Return - (2010CP4007380) – Applicant: Barnes Antonio

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
Antonio Barnes, #338781,	)	C/A No.: 2010-CP-40-7380
	)	
Applicant,	)	
	)	
vs.	)	
	)	
State of South Carolina,	)	
	)	
Defendant.	)	

APPLICANT'S TRIAL BRIEF

The Applicant hereby submits this *Trial Brief* for the Court's consideration in this matter.

I. Statement of Facts of the Case.

A. This case was filed on October 20, 2010, by the Applicant, acting *pro se*. Undersigned counsel was appointed to represent the Applicant by the Honorable Alison Renee Lee on December 19, 2011.

B. Applicant's application states that he is seeking relief from the sentence imposed by the Honorable L. Casey Manning on January 12, 2010, for the crime of Voluntary Manslaughter (Indictment No.: 2009-GS-40-3140).

C. The Applicant was represented by Robert W. Mills, Esquire of the private Bar.

D. Applicant was interviewed by Richland County Sheriff's Department (RCSD) investigators on May 25, 2008, about the shooting death on May 23, 2008, of one Jerome Hart. Witnesses had given the investigators Applicant's name and the name of his co-defendant, Devion Jenkins. At 2:00 p.m. on May 25, 2008, the investigators drove to Applicant's home and met his mother. Applicant was not there and his mother stated that he was at a relative's home. The investigators drove with Applicant's mother

to the relative's house, where the mother went in alone and came out with Applicant. Applicant was fifteen (15) years old at the time [REDACTED]. Applicant's mother agreed to go with Applicant to RCSD headquarters to talk to the investigators. At headquarters, Applicant's mother agreed to allow the investigators to talk with Applicant and departed, with one of the investigators, Sgt. Strange, agreeing to inform her about the investigation (*Notes of Investigator Boland, Exhibit 1, attached.*) Following the departure of Applicant's mother, Applicant was given *Miranda* rights and signed an advice of rights form (*Exhibit 2, attached*). Applicant was told that the investigators wanted to "talk about a fight" involving Alex Smith. The interview turned, however, to the shooting of Jerome Hart. Applicant gave a written statement at 2:53 p.m. admitting being at the scene of the crime but denying having a firearm or having any involvement in the shooting death (*Exhibit 3, attached*). Applicant was then placed in a holding cell.

E. At 7:05 p.m. that same day, investigators again interviewed Applicant, determining that Applicant "...may need to be polygraphed about his statements." (*Exhibit 4, attached*). This interview resulted in a second written statement (*Exhibit 5, attached*) in which Applicant admitted having a shotgun at the scene but continuing to deny involvement in the shooting death. Applicant was arrested and charged with Assault with Intent to Kill one Alex Smith (a person who was at the scene along with the deceased).

F. On May 27, 2008, while still in custody and without benefit of a parent or counsel, Applicant was again given *Miranda* rights (*Exhibit 6, attached*) and interrogated, resulting in a third written statement (*Exhibit 7, attached*) again admitting being at the crime scene with a shotgun, denying shooting, and stating that his co-defendant fired shots at the victims. During the investigation, Applicant's co-defendant, Devion Jenkins, finally admitted firing three (3) shots at the crime scene and was charged with Murder.

G. On April 14, 2009, the Applicant appeared for a waiver hearing in Family Court. On April 17, 2009, Family Court Judge Leslie Riddle ordered that Applicant be waived to the Court of General Sessions.

H. On April 15, 2009, Applicant was indicted for Murder by the Grand Jury. On April 29, 2009, Robert Mills was appointed to represent Applicant in General Sessions

Court by Judge Edgar Dickson.

I. On November 12, 2009, Applicant pled guilty to Involuntary Manslaughter before Judge Manning. The State and Applicant's counsel stipulated that Applicant was competent to stand trial (*Transcript* pg. 5 ln. 9 through pg 6 ln 8). A *Stipulation* was subsequently filed with the Court on November 16, 2009 (*Exhibit 8*, attached), noting that Applicant's IQ was "...73 in the below average/borderline range."

J. During the plea hearing, Judge Manning stated that he was taking the plea "...under the theory of the hand of one is the hand of them all." (*Transcript* pg. 9 ln. 21-24). Both Applicant and his co-defendant acknowledged that they understood this theory (*Transcript* pg. 17 ln. 14-19). The State maintained, in the factual basis for the plea, that Applicant's shotgun was not fired and that the co-defendant's revolver was fired three (3) times resulting in the death of Jerome Hart (*Transcript* pg. 34 ln. 20 through pg 35 ln 18).

K. After accepting the pleas and hearing from all parties, Judge Manning deferred sentencing until January 12, 2010. Prior to the plea, Applicant had been informed by counsel that he would receive a sentence of fifteen (15) years; however, Judge Manning sentenced Applicant to twenty-two (22) years imprisonment.

L. On January 21, 2010, Applicant's counsel filed a *Motion to Reconsider Sentence* (*Exhibit 9*, attached), without specifying grounds or justification for the Court to review in reconsidering the matter.

M. On February 1, 2010, Judge Manning summarily denied Applicant's motion (*Exhibit 10*, attached).

N. On August 4, 2010, Applicant's counsel, apparently unaware that Judge Manning had denied the motion, wrote to Applicant stating he would give copies of the State's discovery to Applicant at the motion hearing (*Exhibit 11*, attached).

II. Legal Issues

Plea counsel was deficient in representing Applicant because he did not challenge the voluntariness of Applicant's written statements. Without those statements, the State had very little to use to prosecute Applicant – no gun was found with Applicant's fingerprints; no gun powder residue was on Applicant or his clothing, etc.

The Applicant was only fifteen (15), a minor, at the time of Jerome Hart's death, and was stipulated to have an IQ of 73. The police interrogated Applicant outside of the presence of his mother and without having an attorney present to represent his interests. The South Carolina Supreme Court has rejected the position that a minor's inculpatory statement obtained in the absence of a parent, counsel or other friendly adult should be inadmissible *per se*. Instead, the Court has adopted a "totality of the circumstances" test, including the individual's age, intelligence, education, experience, and ability to comprehend the meaning and effect of his statement. *In the Interest of Christopher W.* (SC Ct. App. 1985); *In re Wyman Williams, et al. vs. State*, 217 S.E. 2d 719 (copies attached). Applicant's counsel was looking for a plea from the beginning, without effectively researching a challenge to Applicant's statements. Without those involuntary statements, the Applicant would not have been put in a position to have to plead guilty.

III. Legal Authority

For Applicant to be granted relief as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective assistance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Brown v. State, 340 S.C. 590, 533 S.E.2d 308 (2000). This does not only apply to trials - this same standard applies to a guilty plea. Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991).

When a guilty plea has been entered, the applicant must prove counsel's representation was below the standard of reasonableness and but for counsel's unprofessional errors, there is a reasonable probability the applicant would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Alexander v. State, 303 S.C. 539, 543, 402 S.E.2d 484, 485 (1991). The advice Applicant received from his plea counsel failed to meet the standards for attorneys. Tollett v. Henderson, 411 U.S. 258, 98 S.Ct. 1602, 36 L.Ed 2d 235 (1973). t

Applicant did not appeal the plea. Now, the Applicant is challenging the

voluntariness of his guilty pleas and this PCR evidentiary hearing is the only forum to raise this issue. State v. Barton, 325 S.C. 522, 530 n. 6, 481 S.E.2d 439, 443 n. 6 (Ct. App. 1997) (any challenge to the knowing and voluntary nature of appellant's plea could be raised only in a petition for post-conviction relief); In the Interest of Antonio H., 324 S.C. 120, 122, 477 S.E.2d 713, 714 (1996) (where sole issue before appellate court was competency to enter plea and issue was not raised at the time of the plea, issue was procedurally barred; proper avenue to challenge a guilty plea which was not objected to at the time of its entry was through post-conviction relief); State v. McKinney, 278 S.C. 107, 108, 292 S.E.2d 598, 599 (1982) (absent timely objection at a plea proceeding, the unknowing and involuntary nature of a guilty plea can only be attacked through the more appropriate channel of post-conviction relief).

Applicant asserts that he did not validly waive his constitutional right to a trial by jury. When a PCR applicant alleges that he was denied the right to exercise one of his constitutional rights, the sole inquiry is whether he was informed of that right, and if so, whether he validly waived it. If there is no knowing and intelligent waiver, then the remedy is a new trial. See, e.g., Wroten v. State, 301 S.C. 293, 391 S.E.2d 575 (1990) (no valid waiver of right to counsel, new trial ordered); Prince v. State, 301 S.C. 422, 392 S.E.2d 462 (1990) (same).

The second step in the analysis—whether Applicant was prejudiced by the deficient representation. Strickland v. Washington, 466 U.S. at 687. As this was a guilty plea, Applicant “must show that there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial.” Here, the evidence shows that Applicant *did* go to trial initially and only agreed to plead guilty upon ineffective recommendations of his attorney as to the sentence he would receive.

Therefore, Applicant’s attorney did not demonstrate “reasonableness under professional norms” that satisfies the requirements of the Sixth Amendment. Cherry v. State, 300 S.C. 115, 386 S.E. 2d 624 (1989).

PRAYER FOR RELIEF

Based on the foregoing, Applicant prays that the Court vacate his sentence as violative of the Sixth Amendment and remand this case to the Richland County Court of General Sessions.



David E. Belding
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Columbia, SC 29211-1964
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Email: dar820@sc.rr.com
ATTORNEY FOR APPLICANT

January 11, 2012

walked into her aunt's apartment and returned outside a short time later to find most of those out front were now walking over to Willow Run apartments. Spain stated that she heard that Tony was supposed to be fighting another boy. She stated that she observed Tony arguing with a lady and then "Ced" came out and he and Tony began fighting. At the end of the fight, Spain stated that she walking back across [REDACTED] go to a Sharema's apartment when she heard someone say something like, "There goes A-Rock". Spain stated that she yelled for them not to do anything and began running back around the front of building 17 and 18. Spain stated that she heard the gunshots, which caused her to begin running for Smith. Spain stated that she finally caught up with Smith. About the same time Spain located Smith, RCSD units arrived about shots being fired. Spain stated that deputies stopped Smith and subsequently detained him. Spain stated that Haggins came up and it wasn't until after RCSD left with Smith that a woman from building alerted them to the deceased being between buildings 17 and 18. Spain stated that she saw Tony with a long gun that looked like a shotgun.

2114hrs

I/O phoned Smith and agreed to meet him at his residence at 9401 Wilson Blvd. Smith was shown a photo line-up. Smith was able to identify Barnes from the photo line-up.

5/25/08

0930hrs

I/O met Inv. Poulin at RCSD HQ to continue investigation.

1158hrs

I/O phoned Richland County Family Court solicitor Kendall Corley and advised her about the case. Corley advised that Barnes could be housed for the "AWIK charge against Smith."

1225hrs

I/O phoned Officer Ferguson with Columbia Police Department. I/O inquired about information for "Lil Duke". Ferguson stated that she was familiar with a "Lil Duke" and agreed to meet I/Os at Alcorn Middle School.

1330hrs

I/Os met Ferguson at Alcorn Middle School and retrieved current address for "Lil Duke" aka Devion Jenkins.

1400hrs

I/Os traveled to [REDACTED] Drive. I/Os met with Latoya Barnes, mother of Antonio Barnes. I/O inquires about Antonio's whereabouts and she stated that her son was at a relatives' home off of Blue Ridge Terrace. I/O advised her that I/Os needed to speak with Antonio. Ms. Barnes agreed to ride with I/Os to locate Barnes. Upon arrival, Ms Barnes entered the house while I/Os waited outside.

Shortly, Barnes exited the front door. I/O asked Ms. Barnes if all could return to RCSD HQ to talk.
 "Ms. Barnes² agreed.)

1425hrs

I/Os, Barnes' mother, and Barnes returned to RCSD HQ. I/O had phoned Sgt. Strange and he too met I/Os back at HQ. Ms. Barnes consented for Barnes to talk with I/Os. Boland and Poulin met with Barnes with Ms. Barnes consent. Ms. Barnes to Antonio in front of I/Os and told him that she has tried all that he could do in the past to help him but this time she couldn't help him. Sgt. Strange would advise Ms. Barnes about the investigation.

1438hrs

Antonio Barnes was mirandized. Barnes stated that he and his friend, Duke, were at the Hillendale apartments visiting a girl named Ashley. He stated that Ashley aunt lived in either building 17 or 18. Barnes stated that when he and Duke had walked through a cut, which is behind Willow Run apartments, he claims that there were four unknown black males. He stated that he and Duke were nervous as the two walked past them but nothing was said to Barnes and Duke. Barnes stated that the four boys began to walk behind them as Barnes and Duke neared the end of the cut. Barnes stated that he and Duke walked through Willow Run apartments and down into Hillendale. He claims the four boys following them stayed at the top of the hill. *Note: The "hill" which is often alluded to is the difference in elevation between Willow Run and Hillendale. Willow Run, located across the street from Hillendale rests a bit higher, and one crosses Alcott Drive they would walk a down into Hillendale apartments.* Barnes stated that when he and Duke arrived at Hillendale apartments was when Alex Smith arrived in a blue Impala with several other males. Barnes claims that he and Duke walked towards the complex Laundromat, which is located across from buildings, 17 & 18. Barnes claimed that the four boys from the cut began arguing with Smith. Barnes stated that she then walked over to Ashley, speaking briefly. Barnes claimed that after speaking with Ashley, he and Duke walked back up to the top of the hill. Barnes claimed that he wanted to see who the "four boys" that were arguing with Smith. Barnes claimed that he didn't know the boys and that he and Duke walked off. This seemed contradictory to Barnes' previous remarks about uneasy he and Duke were as they came upon the boys in the cut. Barnes claimed that as the two walked off that he heard arguing between Smith the unknown boys and there was mention of shooting rather than fighting. Barnes stated that he and Duke then went to Duke's house but that only he went into Duke's residence to retrieve a pair of pants. He stated that Duke didn't go inside, as Duke's mother would have made him stay at home. He stated that he and Duke then went to Marcus White's house before going to Barnes' aunt's home. Barnes stated that he had gotten a phone call from his sister, Natoya, stating that word had spread that Barnes was responsible for shooting the deceased. Barnes stated that he and Duke then went back to his home before Duke's sister arrived to pick him up. Barnes denied being in a fight at Willow Run apartments. He stated that he only knew Alex Smith as Smith used to talk to Barnes' sister. Barnes denied that he or Duke had a handgun that night. I/O noticed several marks and scratches about Barnes face, arms, and legs. This would be consistent with Barnes having been in a fight. Barnes dismissed the injuries as having received them from playing football.

CSI Lee would photograph Barnes' visible marks. Barnes was offered something to eat but he declined. Barnes was detained in the RCSD holding cell while I/Os conferred.

Barnes was removed from the holding cell and re-interviewed by I/Os. Barnes stated that there was more than what he had initially told. He stated that he, Duke, and Marcus White had been in the cut and that he (Barnes) had a shotgun. He described the shotgun as one that breaks and the shell is inserted. He claims though that it wouldn't fire. Barnes continued with the four boys in the cut and with them following Barnes, Duke, and White. Barnes stated that as they exited the cut that he loaded the shotgun with a shell, as he believed that they might be approached. Barnes stated that he, Duke, and White walked through Willow Run and down to Hillandale apartments. He claimed that Alex Smith was already at Hillandale apartments. Barnes stated that his trio then returned back to Willow Run apartments where he fought a boy called "Ced". Barnes stated that he had hid the shotgun the shotgun before he fought "Ced". Barnes stated that he fought "Ced" and then returned to get the shotgun. Barnes stated that he had put the shotgun down his pants and under his armpit. He claimed that the shotgun got heavy and he wanted to hide it. Barnes claimed that he was going to put the shotgun in some bushes on the other side of building 19. This would take him past Alex Smith and his friends. I/O believed this was strange as it was known that Barnes had previous altercations with Smith and Barnes known dislike for Smith. Barnes claimed that he walked closer to the complex laundromat and towards building 19, having to cross the circle drive within the complex. Barnes stated that he looked back towards the four boys that he spoke of at the top of the hill, and that he only saw three. He claimed that he then heard the mention the mention shooting rather than fighting and that he noticed another male coming up a sidewalk, perpendicular to building 18 & 19. Barnes claimed that the male had, what he called a "cash money flag", described as a bandana with a dollar bills print. He claimed this unknown male had a revolver and fired five shots. Barnes stated that he saw Smith and the others with him run between two buildings. Barnes claimed that he had seen one of them fall. Barnes claimed that he ran around a building and up towards Willow Run apartments. He stated that he ran through the field next to Willow Run and across Fairfield Road to a hand car wash business. He stated that he ran around the back of the business and threw the shotgun and three shells into the trees behind the business. Barnes stated that he continued running to Ashley apartment and waited for Duke and White to arrive. Barnes claimed that all three then went to White's house on Randall Drive, but not before he retrieved some pants from Duke's apartment. Barnes claimed that only he had a gun that night. Barnes was asked about the clothes that his mother had found in his room. He stated that the clothes belonged to Duke and that he had changed at his home because they were concerned that Duke might be recognized if he wore the same clothes. Barnes was housed at ASGDC for AWIK involving Alex Smith.

Inv. Poulin traveled to [REDACTED] Drive and recovered clothing that Latoya Barnes had located beneath Antonio Barnes bed. The clothing would later be alluded to by Barnes and Jenkins as being the close Jenkins wore at the time of the shooting and changed out of after arriving back at Barnes' home.

RICHLAND COUNTY SHERIFF'S DEPARTMENT

INTERROGATION: ADVICE OF RIGHTS

NAME: Antonio D. Barnes PLACE: 5623 Two Notch Rd.
 OFFICER (S): INV. J. Boland
 DATE: 5/25/08 TIME: 1438

YOUR RIGHTS

☒ Before we ask you any questions, you must understand your rights.

☒ You have the right to remain silent.

☒ Anything you say can be used against you in court.

☒ You have the right to talk to a lawyer for advice before we ask you any questions, and to have a lawyer with you during any questioning.

☒ If you cannot afford a lawyer, one will be appointed for you before any questioning, if you wish.

☒ If you decide to answer questions now, without a lawyer present, you still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

WITNESS: J. Boland SIGNED: Antonio Barnes

WITNESS: _____

WAIVER OF RIGHTS

☒ I have read this statement of my rights and understand what my rights are. I am willing to talk and answer questions. I understand and know what I am doing. No promises have been made to me and no pressure or coercion of Force any kind has been used against me.

WITNESS: J. Boland SIGNED: Antonio Barnes

WITNESS: _____

th grade
 (yup)

EXHIBIT 2

1

Statement of

Antonio Demontes Barnes

██████████ Drive
Columbia SC 29204

Made at

Columbia, South Carolina, this 25th day of May 2008, at 1453 hours, in the presence of
~~Captain Scott Smith~~ of the Richland County Sheriff's Department
INV BOLAND

I, Antonio Demontes Barnes, understand that I have the right to remain silent. Anything I say can be used against me in court. I have the right to talk to a lawyer for advice before you ask me any questions, and to have a lawyer with me during any questioning. If I cannot afford a lawyer, one will be appointed for me before any questioning, if I wish. If I decide to answer questions now, without a lawyer present, I still have the right to stop answering at any time. I also have the right to stop answering at any time until I talk to a lawyer.

Do make the following statement:

Q- Inv. Boland

A- Antonio Demontes Barnes

Q-What do you know about a shooting that occurred at Hillendale Apartments on May 23rd, 2008?

A-I was at Hillendale apartments visiting a girl named Ashley. Her aunt lives in either building 16, 17, or 18. I was outside talking to her. Duke was with me. Ashley walked off from me. Duke and I walked up to the top of the hill. When Duke and I walked from Ashley Apts., we came through the cut. When we came through the cut there four boys in the cut. They were standing there talking. We passed them. They didn't say anything. When Duke and I got a little ways from them. They started following us. They followed us through Willow Run. Duke and I walked down the hill to Hillendale. The four boys stayed on the top of the hill. Alex pulled up in his blue Impala. He had three others dudes in the car.

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: [Signature]

Signed: Antonio Barnes

Witness: _____

This is to certify that I have read or have read to me the foregoing statement consisting of _____ pages and a true copy has been given to me this _____ day of _____, 2008.

Sworn to and subscribed before me
This 25 day of May, 2008

Signed: Antonio Barnes

[Signature]
Notary Public for South Carolina
My commission expires 12/2017

Duke and I walked down towards the washers. The guys were standing on top of the hill. They were arguing with Alex. Then a guy got out of Alex's car. He had on a yellow shirt. The guy in the yellow shirt stood next to him. That was when Duke and I walked over to talk to Ashley. When Ashley walked off, Duke and I walked back up the hill. I wanted to see if I knew the guys. I stood there for about five seconds to see if I knew them. I didn't know who they were. I've seen the before somewhere. Duke and I walked off when you heard that they were saying that they weren't fighting tonight; we shooting tonight. Duke and I went back to the cut. I got to Duke's house and Duke kept walking. I went inside and got my pants and left out. Then I went to Marcus' house. We chilled out and then left to go my aunt's house. When I got there, my sister, Natoya, told me that somebody said that I did it. Then I went to my house. Duke went with me. I got something to eat. Duke called his sister and she came and got him.

Q- Were fighting with someone in Willow Run apartments?

A- No sir.

Q- How do you know Alex Smith?

A- My sister used to mess around with him. Everybody knows him, he's popular.

Q- Did you have a gun that night?

A- No Sir.

Q- Who is Duke?

A- My brother. He's not really my brother; I have only known him for a long time.

Q- Did Duke have a gun?

A- Nope.

Q- Did you see anyone with a gun that night?

A- I just saw them clutching like they had a gun.

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: _____

Signed: _____

Witness: _____

This is to certify that I have read or have read to me the foregoing statement consisting of _____ pages and a true copy has been given to me this _____ day of _____, 2008.

Sworn to and subscribed before me
This 25 day of May, 2008

Signed: _____

Notary Public for South Carolina

My commission expires 06/17/2012

1

Q- Who was clutching like they had guns?

A- The four dudes.

Q- Did you hear any gunshots that night?

A- No.

Q- Can you describe the guys that followed you from the cut?

A- I remember two of them. One was bald headed, taller than me, about 6 feet tall, chubby, he had on black t-shirts and blue jeans. The other one was shorter than me, had little messed up braids.

Q- Why would someone say that you had a gun?

A- I don't know, but before I got locked up, people would say that I had a gun. I found a .25 in the bushes in Highland Forest. It didn't have clip. I used to take everywhere with me. I finally threw it in the trash.

Q- Where did you go after you left Hillendale?

A- Duke and I went to Ashley apartments. Duke didn't go inside because his mother would have made him stay there. I told him that I would go in and get my shorts and meet him at Marcus' house.

Q- Where did you go next?

A- Duke had gone on to Marcus' house and I met him there after I got my shorts.

Q- What can you tell me about Duke's clothes that your mother found at your house?

A- Those clothes have been at the house.

~~Q- What nickname do you know Ashley to go by?~~

~~A- I don't know her to go by a nickname.~~

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: [Signature]

Signed: Antonio Barnes

Witness: _____

This is to certify that I have read or have read to me the foregoing statement consisting of _____ pages and a true copy has been given to me this _____ day of _____, 2008.

Sworn to and subscribed before me

This 25 day of May, 2008

Signed Antonio Barnes

[Signature]
Notary Public for South Carolina

My commission expires 05/17/2017

Q- Do you know if Ashley is called Pig?

A- I think they do call her that.

Q- Tell me about your beef with Alex Smith?

A- I think he killed Lekavis.

Q- Did you talk with Derrika that night?

A- Yeah, I talked to her but she wasn't out there when they were arguing.

Q- Did you apologize to her?

A- She said something about me shooting at her and Alex before. I told her that I didn't do it and that I was trying to talk to her but she thought that I was the enemy.

Q- Did you attend a bike or car show at Benedict College earlier this year?

A- No Sir. I was not there.

End of Statement

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: _____

Signed: _____

Witness: _____

This is to certify that I have read or have read to me the foregoing statement consisting of _____ pages and a true copy has been given to me this _____ day of _____, 2008.

Sworn to and subscribed before me

This _____ day of _____, 2008

Signed _____

Notary Public for South Carolina

My commission expires 09/13/2017.

Homicide Followup Report: 0805238824/9

Primary Information

Report Number: 0805238824/9
Case Number: 0805238824
Case Status: OPEN
Case Lead LEO: Boland, James Hal
Type Of Report: Homicide Followup
Report Date/Time: 05/28/2008 16:24
Description: Captain Smith's follow-up
Reporting LEO: Smith, J Stan (323 / Major Crimes / Richland County Sheriff's Department)
Approval Status: Un-Approved
Expense Status: Not Posted

Narrative

Open Narrative Document
Hide Narrative Text

5-27-08 at 0900 hrs. Attended a briefing on a homicide, which I/O had been continuously briefed on during the course of the Memorial Day weekend. The killing happened on the preceding Friday night, and had been worked throughout the weekend by Sgt. Strange, Inv. Boland, Inv. Poulin, and Inv. Gonzalez.

Boland now related the following: 18 year old FAB BOY ("Fuck all Bitches") gang member Jerome Harts had been shot in the back of his head, and was dead at the scene of the incident. The incident happened between buildings 18 and 19 at Hillandale Apts. Harts had arrived in the area with fellow gang members Alex Smith and Tirell Hagins.

Note: Smith was a known suspect in a CPD murder which occurred in September of 07 at the Gaz-Bah on Farrow Rd. Inv. McCracken worked that case, and I/O had spoken to him several times about the case due to common interests in some of the related players, including Justin Archie.

Apparently Smith (nicknamed "A-Rock") pulled up in his car with the victim and Hagins and they were approached by several subjects, who were identified as being from a rival gang. That rival gang was learned to be named "CHB" or "Certified Head Busters". Smith was in possession of a .22 pistol, which responding officers subsequently caught him with. He was arrested after a shots fired call came in. Apparently when the initial officers arrived they didn't know there was a victim, as Harts lay between the two adjacent buildings in a very dark area. Subsequent interviews with Smith resulted in the identification of two subjects in particular, who had allegedly approached him. One of those two subjects was definitely armed as well. That subject was initially identified as "Little Tony". By Tuesday AM, however, he was correctly identified as one Antonio Barnes. Smith had identified the second subject who had also approached him as "Little Duke". By Tuesday he had also been correctly identified as one Devion Jenkins. Smith would state that the subjects approached him, and that Tony had a shotgun. Smith said he simply fled the area, but shots rang out behind him. Based on Smith's identification of Tony having the shotgun (and at that juncture the belief that he fired same), he was arrested on Saturday then 24th. He was learned to be 15 years old. Tony had given two statements, one in which he denied having the shotgun, and a second statement in which he admitted to having the shotgun, but claimed that it wouldn't fire. He admitted to engaging Alex when he saw him pull up, but said he only wanted to fight. He said it was Alex who pulled a pistol first. He said that shots then came from another group of unidentified individuals. Little Duke was located on Monday the 26th. He gave a similar statement as Tony. In his statement he said he had a fake gun, and that he was with Tony when Tony wanted to simply fight Alex. He said that shots then came from an area behind them being fired by an unidentified individual. He said that Tony did have a shotgun, but that the gun was not operational. A third member of their group was also identified by Monday the 26th. Marcus White was brought in and interviewed. White indicated that Alex was the one who started shooting first. He said that Tony tried to fire the shotgun back, but it wouldn't fire.

One key piece of information was that apparently Little Duke felt the need to change his clothes, which were subsequently located by Tony's mother. The clothes were brought in to RCSD and turned over to the investigators.

It was determined that Tony needed to be re-interviewed, and quite possibly polygraphed about his statements. I/O dispatched Isenhoward and Linfert to retrieve Tony from the juvenile wing of ASGDC.

In the interim I/O proceeded back to the scene with Boland, Gonzalez, and McDaniel. I/O wanted to get a look at the scene first hand to get a better idea of what the statements were indicating thus far. Once at the scene I/O detected two significant things: There was an apparent bullet hole in the vinyl siding in the side of building #18, not too far from where the victim had been found lying. There was also a broken piece of 4" pipe which housed the electrical wiring to the major electrical supplies for the #19 apartment building. The pieces of the pipe were strewn about, but were all relatively close. I/O noticed one piece in particular, which had an apparent bullet strike on it. I/O surmised that if the pipe could be re-constructed (jigsaw puzzle style) the trajectory of the bullet may be able to be determined based on the exact location of where the piece broke off of the main pipe. I/O summoned the lab back to the scene. I/O also called David Collins, as well as Bill Simpson with SCANA. Richards would return to the scene himself (he had actually worked the initial scene that night). Stan acknowledged that he wanted to dismantle the vinyl siding that night, but had not been adequately equipped at that time to undertake that task. He also indicated that indeed a bullet had struck the 4" pipe because he had picked it up where it was found on the ground adjacent to the pipe. I/O's obtained consent from the property managers due to the possible damage, which may be done to the wall trying to retrieve the bullet. Within a few minutes Richards and Bouknight located a bullet from the wall area. It was in good condition as it had only penetrated the vinyl, and the wallboard underneath. Ballistics experts David Collins and Terri Gleason, who had arrived by this time, identified the bullet a jacketed .38. Simpson called in a crew, which actually had to disconnect the electricity to the building in order to remove the 4" pipe where the other bullet had struck it.

I/O departed the scene and proceeded back to RCSD CID.

Once back at the office I/O learned that McDaniel and Boland had interviewed Antonio Barnes further. Tony had by now admitted that the shooter of the revolver was Devion Jenkins. He would provide another statement to McDaniel in which he acknowledged that Devion was shooting multiple times with a revolver, and was to his immediate right as they were pursuing A-Rock and the others between the buildings.

By 1245 hrs. Boland and Gonzalez had gone and picked Marcus White back up for further questioning. This effort was generated due to the change in Antonio's statement. Marcus would ultimately change his version as well. He would now admit that he left the area when he heard there might be gunplay. He said he heard the shots, and moments later Devion caught up to him on the cut-through trail. He said that Devion was out of breath and told him that they had a shoot out. He said he asked Devion how they could have shot a gun (since the shotgun was messed up). He said that Devion then pulled up his shirt and showed him the butt of a revolver, indicating that he had shot it. He also told Marcus that he felt he might have hit one of the boys. Once back at Marcus' house, Tony soon also showed up. They then called a female named "Pig" who told them that a boy had died out there. The pair expressed disbelief at this

XIBIT 4

12

news, and ultimately left to go to Tony's Aunt's house.

I/O secured Marcus' 2nd statement. At approx. 1715 hrs. I/O drove Marcus home. The situation was explained to his parents, who were very cooperative and thankful that their son was not apparently involved directly in the shooting incident.

I/O proceeded back to RCSD CID. By the time I/O made it back (approx. 1745 hrs.), Boland and Gonzalez had already arrested Devion Jenkins for the murder of Jerome Harts. The PC was developed through the collective statements of Antonio Barnes and Marcus White. Those statements were further corroborated by the analysis of the projectile strikes to the side of building #19, which clearly showed the shots coming from an area of the parking lot just behind where Harts' body had been found between buildings #18 and #19.

Note: While I/O was gone Inv. Gonzalez had called I/O on the Nextel to ask as to where the Marcus White statement (that I/O had just secured) was located. The investigators desired to challenge Devion with the information which had just been gleaned from his buddies. I/O had actually brought a working file that I/O had created with I/O when White was driven home. The statement was in that file. Upon arrival back at RCSD CID I/O interrupted the interview to take Boland and Gonzalez that statement.

When I/O stepped into the interview room (Lt. McDonald's office) I/O could quickly ascertain that Devion was denying shooting a gun at the scene. I/O joined briefly in the interview at that time. Within several minutes Devion confessed that he had indeed shot a pistol three times at the scene that night. He said, however, that someone else was also firing behind his position. He said he didn't know who that person was. He said he shot twice into the air, and once with the pistol aimed further down. He said he threw the pistol down beside building #21 at Willow Run Apts. when he was departing the scene.

Note: This assertion (about the disposition of the gun) could not be possible in the event that White really saw it in Devion's waistband in the cut-through, so I/O pressed him on this contention that he threw the gun down before entering the cut-through. Devion maintained that was where he threw it down.

I/O soon departed the interview and allowed the case officers to further debrief Devion. The result of this interview would produce a three and a half page statement.

Devion Jenkins was ultimately booked into the juvenile wing of the ASGDC charged with murder.

At approx. 1830 hrs. I/O drove Antonio Barnes back to ASGDC and checked him back into the juvenile wing.

On the following AM McDaniels, Gonzalez, and Boland had both Barnes and Jenkins try to show them where they threw their respective weapons down in the aftermath of the shooting. Barnes had previously indicated that he threw his shotgun down near a car wash on Farfield Rd. On this third attempt to find the shotgun, the effort proved negative once again. All efforts to locate the pistol allegedly tossed down by building #21 Willow Run also proved negative.

Record Status Information

Record Origination Operator: Smith, J Stan (323 / Major Crimes / Richland County Sheriff's Department)

Record Origination Date: 05/28/2008 16:20

Last Update Operator: Smith, J Stan (323 / Major Crimes / Richland County Sheriff's Department)

Last Update Date: 05/30/2008 14:00

Statement of

2

Antonio Demontez Barnes
 [REDACTED] Drive
 Columbia SC 29204

Made at

Columbia, South Carolina, this 25th day of May 2008, at 1905 hours, in the presence of Inv. Boland and Sgt. Strange of the Richland County Sheriff's Department.

I, Antonio Demontez Barnes, understand that I have the right to remain silent. Anything I say can be used against me in court. I have the right to talk to a lawyer for advice before you ask me any questions, and to have a lawyer with me during any questioning. If I cannot afford a lawyer, one will be appointed for me before any questioning, if I wish. If I decide to answer questions now, without a lawyer present, I still have the right to stop answering at any time. I also have the right to stop answering at any time until I talk to a lawyer.

Do make the following statement:

Q- Inv. Boland

A- Antonio Barnes

Q- Regarding your earlier statement, is there anything that is incorrect or missing?

A- Yes.

Q- What can you tell me about what happened at Hillendale Apartments?

A- Marcus, Duke, and I were walking through the cut. I had a shotgun with me. There were four dudes in the cut smoking. We passed them. I looked and saw the dudes start walking behind us. When we got to Willow Run, I ran off around the corner and put a shell in the gun. I thought these guys might start something with us. I caught back up with Marcus and Duke. We walked down to the bottom. Alex is already there. Alex and a dude in a yellow shirt were standing outside the car. We walked back up to the top. I fought with a dude named Ced at Willow Run. He was saying that I hit in the mouth with gun. I never did hit the guy. Before I fought Ced, I had to put the gun up and then came back to

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: [Signature]

Signed: Antonio Barnes

Witness: _____

This is to certify that I have read or have read to me the foregoing statement consisting of 3 pages and a true copy has been given to me this 25 day of May, 2008.

Sworn to and subscribed before me
 This 25 day of May, 2008

Signed: Antonio Barnes

[Signature]
 Notary Public for South Carolina

My commission expires 05/17/2017.

Page 1

EXHIBIT 5

fight Ced. After we stopped fighting, I went to get the gun. I had in pants and under my arm. The gun started getting heavy. I had a headache and was tired from fighting. I wanted to put the gun up. Duke and Marcus stood at the top of the hill. Duke was like man that ain't smart for all of us to go put that gun up. I walked down by the wash building and going over to the corner of the buildings to put the gun up. There had been four dudes out there but after I got through fighting and I went back down the hill to put gun up; there was only three on top of the hill. When I got over the corner to hide the gun. I heard the one of the dudes yelling about shooting instead of fighting. I looked over and saw a dude running up from behind them by the loop. The dude had on a cash money flag over his face. He had a revolver. He fired five shots. Alex and his guys ran between the buildings. I saw one of them fall; I thought that he just twisted his ankle. I didn't know he got shot. I ran around the end of another building. I ran up through field near Willow Lakes. I ran and came out by the car wash. I tossed the gun and the three shells in woods behind the car wash. I ran to Ashley Apartments. I sat in the park because I thought Marcus got shot. Marcus came up. I went in Duke's house and got my pants. Marcus and Duke waited outside for me. We all went to Marcus' house.

Q- Where did you get the shotgun?

A- We found it near James Street a few weeks ago.

Q- Who is we?

A- Me and a dude called Lil Black.

Q- Did Marcus have a gun?

A- No Sir.

Q- Did Duke have a gun?

A- No Sir.

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: [Signature]

Signed: Antonio Barnes

Witness: _____

This is to certify that I have read or have read to me the foregoing statement consisting of 3 pages and a true copy has been given to me this 25 day of May, 2008.

Sworn to and subscribed before me

This 25 day of May, 2008

Signed: Antonio Barnes

[Signature]
Notary Public for South Carolina

My commission expires Oct 11/2017

Q- Did you have the shotgun out at Willow Run after you fought Ced?

A- No, I had it in my pants. I never took it out.

Q- Do you know the dudes that you saw in the cut?

A- No.

Q- What did you hear the dudes on the hill and Alex argue about?

A- About a girl, I heard a dude on the hill say something about his baby momma. Alex offered to fight the dude and then I heard someone say that they were n't fighting tonight, they were shooting. After that the shots were fired.

Q- What can you tell me about the clothes that were in your room that your mother turned over?

A- Those are Duke's clothes. He left them at my house Friday night. I gave Duke some of my clothes because he might have to walk home because my mother said no one could spend the night. We were worried that they might find Duke if he wore the same clothes walking home.

End of Statement

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: J. H. Balant

Signed: Antonio Barnes

Witness: _____

This is to certify that I have read or have read to me the foregoing statement consisting of 3 pages and a true copy has been given to me this 25 day of may, 2008.

Sworn to and subscribed before me
This 25 day of may, 2008

Signed: Antonio Barnes

[Signature]
Notary Public for South Carolina

My commission expires 05/17/2017

RICHLAND COUNTY SHERIFF'S DEPARTMENT

INTERROGATION: ADVICE OF RIGHTS

NAME: Antonio Demonte Barnes ^{DOB} 010693 PLACE (RCSB H.Q.)
 OFFICER: Sgt. McDaniels / Imu Boland DATE: 5/27/08
 TIME: 1320

YOUR RIGHTS

- ✓ Before we ask you any questions, you must understand your rights.
- ✓ You have the right to remain silent.
- ✓ Anything you say can be used against you in court.
- ✓ You have the right to talk to a lawyer for advice before we ask you any questions, and to have a lawyer with you during any questioning.
- ✓ If you cannot afford a lawyer, one will be appointed for you before any questioning, if you wish.
- ✓ If you decide to answer questions now, without a lawyer present, you still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

WITNESS:

Sgt. Ma

SIGNED:

X Antonio Barnes

WITNESS:

Imu BolandWAIVER OF RIGHTS

✓ I have read this statement of my rights and I understand what my rights are. I am willing to talk and answer questions. I understand and know what I am doing. No promises have been made to me and no pressure or coercion of any kind has been used against me.

WITNESS:

Sgt. Ma

SIGNED:

X Antonio Barnes

WITNESS:

Imu Boland

EXHIBIT 6

Statement of

Antonio Demontez Barnes DOB [REDACTED][REDACTED]
Columbia, S.C. 29204[REDACTED] Latoya Barnes

Made at

Columbia, South Carolina, this 02 day of May, 2008, at 1327hrs hours, in the presence of Sgt. W. McDaniels of the Richland County Sheriff's Department.

I, Antonio D. Barnes, understand that I have the right to remain silent. Anything I say can be used against me in court. I have the right to talk to a lawyer for advice before you ask me any questions, and to have a lawyer with me during any questioning. If I cannot afford a lawyer, one will be appointed for me before any questioning, if I wish. If I decide to answer questions now, without a lawyer present, I still have the right to stop answering at any time. I also have the right to stop answering at any time until I talk to a lawyer.

Do make the following statement:

Q: Sgt. W. McDaniels

A: Antonio D. Barnes

Q: What can you tell me about the shooting that took place while you were at [REDACTED] Drive more specifically in front of building #18 on 05/23/08?

A: Over seven months ago, A-rock his real name is Alex Smith was beefing with my homeboy Casey Washington. A-rock was going around spreading rumors saying that Casey had aids, because his momma has aids. Casey went to Eau Clair and beat up A-rock. Then A-Rock seen me riding down the street one day after that so he started pointing guns at us, and that is really when the beef started. Casey told me that one day A-Rock fought Casey at a club. He snuck Casey and that is when the fight started. That is when they put everybody out the club. Everybody started walking to the Gaz-bah, and

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: Sgt. MacSigned: X Antonio Barnes

Witness: _____

This is to certify that I have read or have read to me the foregoing statement consisting of 6 pages and a true copy has been given to me this 27 day of May, 2008.

Sworn to and subscribed before me
This 27 day of May, 2008

Signed: X Antonio Barnes

[Signature]
Notary Public for South Carolina

My commission expires 7/3/2014

Page

EXHIBIT 7

that is where a big old fight happened. A-Rock ran to his car and started shooting. Word had gotten back to the hood that A-Rock was the only one out there shooting that night. That was the night that Lekavis had gotten shot. Lekavis was like my little brother. We had grew up together. I went to the house and saw Lekavis mom and I was like "A-Rock gotta get it". A couple of weeks pass and I kept seeing A-Rock but he wouldn't fight us, but he would send messages on my-space talking about what he was going to do. So when I got out of jail I went to a bike show and I saw his car pull up. He was driving a blue Impala. That is when I was like "There go A-rock" He must have heard me. I had my Lekavis shirt on. It was a "rest in peace" shirt. A-Rock started pointing at my shirt and that is when I just ran up to him and punched him in the face. Then he spun off. He was still sitting in the car when I hit him. He was acting as if he was reaching under his seat, and that is when the police came. I kept telling him to get out the car, but that is when he spun off. Then I didn't see him for a while. One day he wrote me on my-space. He wrote me and said "You see what happened to your boy. You think that I won't do you?" That is when I said to myself that it was on. I seen him riding on North Main one day. The first time that he rode past he hung out the window, but I do not know if he had a gun or anything. He was yelling "Fab Boy" Fab Boy" That is when I had ran and got a little .22. he rode past again and that is when I had shot. I shot at him one time, and then he spun off. That is when he called my cell phone telling me what he was going to do. He said "When I see you it's a wrap. I'm going to put you in the trunk" Then after that something would pop up and then the beef would just die down. Then one day we all went to this party at the Army National Guard. That night after the party we were walking. It was me, Marcus and Duke. The Fab boys rode past. They were like seven cars deep. They first rode by and was yelling "Fab Boys" and then they came back around and started shooting. They just started shooting into the crowd. The next day, me, Duke and some of our other boys from the hood when to look where they be on North Main. We knew that they hung out at Hassan-house. We walked by his house. ~~They were nowhere to be found. All of us had split up that same night and then they~~ showed up and jumped my homeboy Antwan. We call him lil-a. Last Friday, me Duke his real name is Davian Jenkins and Marcus White were walking through the cut that put you over at Willow Run. The only gun that I thought we had was the shotgun. We all walked through and I got in an argument with Cedric. He tried to take the shotgun from

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: Sgt. Man

Signed: X Antonio Barnes

Witness: _____

This is to certify that I have read or have read to me the foregoing statement consisting of 6 pages and a true copy has been given to me this 27 day of May, 2008.

Sworn to and subscribed before me
This 27 day of May, 2008

Signed: X Antonio Barnes

Jeff. Beland
Notary Public for South Carolina

My commission expires 9/3/2014

me. We were fighting over the gun. It wasn't a real fight we were just tussling over it. That is when Duke came and broke it up. We walked back to the bottom, and went straight back to Willow Run and that is when Cedric told me that he wanted to fight me because I had hit him in the mouth with the shotgun. We started fighting and then at the end of the fight somebody screamed "There go A-rock" Me, Duke, and Marcus ran down there and then I tried to fight A-rock. He pulled out a black gun and one of his friends said "We ain't fighting tonight" So I went back to the top near Willow Run and got the shotgun from the cut. Duke and Marcus all ran in different directions, but when I got back at the top of the hill We all met back up. It was me, duke and some other dudes from Willow Run. Marcus was not there. I thought I was the only one with a gun, but Duke had a gun. I asked "oh! You strapped" and he was like "don't worry about that" Duke said "I don't think that we need to do this junk" I was like "We are going to run down there and scare him" When we went down there I saw A-rock aiming at me from in front of his car. I was running with the shotgun but I didn't get a chance to point it at him but he was just pointing. I ran down, at first Duke was behind me. All of the Fab-boys started running through the cut, and that is when I heard one shot and two more followed from my right side, then I turned around and looked to my right and I saw Duke shoot three more times. That is when everyone split up. We met back up in the hood at the Ashton Apts at Marcus White's house. His mother was there. Duke told Marcus that I almost got shot. Duke said to Marcus that he didn't want to shoot but he didn't want to lose another homie. That is when we left. It was me and Duke and then we went to my auntie house. Her name is Tameka Pringle. She wasn't home but my sister (Natoya Thompson she go to AC Flora High was there. Her little home-girl Courtney called her and told her that I shot and killed Jerome. I didn't know who that was so she pulled his picture up on my-space. That is when Duke started crying. He said "Man I didn't want to do it" he kept crying he couldn't even talk. I started crying, cause I knew that we were going to do life in jail or they was going to kill us. He kept saying that he had a baby on the way. He kept saying "God I'm sorry...I'm sorry" I just walked out into the other room. Me and Duke left and went to my house. My little brothers were there and they were sleep. That is when we had waited for his sister to come and pick him up and that was it.

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: Sgt. Mcn

Signed: X Antonio Barnes

Witness: _____

This is to certify that I have read or have read to me the foregoing statement consisting of 6 pages and a true copy has been given to me this 27 day of May, 2008.

Sworn to and subscribed before me
This 27 day of May, 2008

Signed: X Antonio Barnes

[Signature]
Notary Public for South Carolina

My commission expires 9/3/2014

Q: How long have you known Duke?

A: He is like my big brother. I knew him for four years.

Q: Do you know him by name and sight?

A: Yes.

Q: How long have you known Marcus White?

A: I knew him longer because we went to school together.

Q: Describe your relationship with Marcus White?

A: He would always try to keep us out of trouble. He tried that night but we were not trying to hear it. He was trying to tell me to forget A-Rock and let's go to the house.

Q: Do you know him by name and sight?

A: Yes.

Q: What did you do with the shotgun that you had?

A: I threw behind the carwash on Fairfield Road.

Q: What were you wearing that night?

A: I was wearing a white shirt. It was all white. I had on some black jeans. They were Jaboo jeans. I had the same sneakers that I have on right now.

Q: Where are the jeans that you had on that night?

A: They are at my house, but I think that I left them at Duke house. I had on red dickie shorts and you could see when I walk with the shotgun. I had done that earlier before we went to Willow Run.

Q: What did Duke do with his gun?

A: I do not even know.

Q: Did you know that Duke had a gun prior to the shooting?

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: Set Man

Signed: x Antonio Barnes

Witness: _____

This is to certify that I have read or have read to me the foregoing statement consisting of 6 pages and a true copy has been given to me this 27 day of May, 2008.

Sworn to and subscribed before me
This 27 day of May, 2008

Signed: x Antonio Barnes

[Signature]
Notary Public for South Carolina

My commission expires 9/3/2014

A: Yes, when we were on top of the hill. I never seen this man cry like that before. He is the type of person that would do anything for me.

Q: Did he tell you what he did with the gun?

A: No.

Q: What did Duke have on during the shooting?

A: I think he had on all black. He had some black Dickie pants that night. He had on some all black jordans.

Q: What make you so sure about the clothing that he and you had on that night?

A: Cause I keep thinking about it. I be dreaming about that whole night. I can't go to sleep. If I can't go to sleep than I know Duke hurting.

Q: How many times did you actually see Duke firing a weapon?

A: I seen it like three, but I heard five.

Q: Did you and Duke discuss turning yourselves in?

A: I didn't know how to do that junk. I knew that ya'll was going to get our names from A-rock, so we were just waiting. I didn't talk to Duke none that weekend after that. I got locked up Sunday.

Q: If you could go back and do something different on the night of 05/23/08 what would it be?

A: I would not have went to Willow Run. I would have just left. Me and Duke had already talked about squashing the beef with the Fab boys, but when I read that junk on my-space that just made it worst.

~~Q: Is there anything that you would like to add to this statement?~~

A: Sorry to that man's momma. I apologize for having a gun and making beef with people.

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: Sgt + MCR 1

Signed: x Antonio Barnes

Witness: _____

This is to certify that I have read or have read to me the foregoing statement consisting of 6 pages and a true copy has been given to me this 27 day of May, 2008.

Sworn to and subscribed before me
This 27 day of May, 2008

Signed: x Antonio Barnes

[Signature]
Notary Public for South Carolina
My commission expires 9/3/2014

Q: Is this statement the whole truth?

A: Yes, sir.

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: Sgt. McCall

Signed: X Antonio Barnes

Witness: _____

This is to certify that I have read or have read to me the foregoing statement consisting of 6 pages and a true copy has been given to me this 27 day of May, 2008.

Sworn to and subscribed before me
This 27 day of May, 2008

Signed: X Antonio Barnes

[Signature]
Notary Public for South Carolina
My commission expires 9/3/2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF RICHLAND	)	
	)	
THE STATE	)	STIPULATION
	)	
	)	
v.	)	WARRANT(S): DP09111
ANTONIO BARNES	)	2009-GS-40-3140
Defendant.	)	

JEANETTE W. McBRIDE
C.C.P. & G.S.

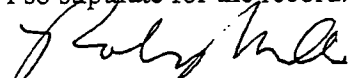
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RICHLAND COUNTY
FILED

The above mentioned Defendant appeared before the Honorable Judge Casey Manning on November 13, 2009 to enter a guilty plea to one count of Voluntary Manslaughter with a negotiated sentencing range of fifteen (15) to twenty-five (25) years along with other conditions outlined in the written Plea Agreement that was made part of the record during the plea. Please refer to Plea Agreement for those conditions.

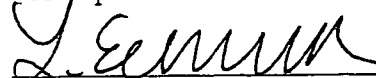
During the plea the Attorney for the State, L. Eden Hendrick, and the Attorney for the Defense, Robert Mills, Esquire, stipulated for the record that the above mentioned Defendant was competent to stand trial. Although the Defendant did not undergo a specific evaluation to address his competency to stand trial but he did undergo several psychological and psychosocial evaluations that included Wechsler Intelligence Scale for Children Fourth Edition (WISC-IV) where it was determined his IQ was 73 in the below average/borderline range. Both parties stipulate to the findings of this IQ test and that this Defendant is competent to stand trial and no further evaluation is needed. Furthermore, Mr. Mills also supplemented the record with the most recent copy of the above mentioned defendant's Individualized Education Plan to show his intellectual ability.

I so stipulate for the record:



Robert Mills, Esq. Attorney for Defendant

I so stipulate for the record:



L. Eden Hendrick, ASOL

STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
 COUNTY OF RICHLAND)

STATE OF SOUTH CAROLINA) IND NO.: 2009-GS-40-3140
)
 vs.)
) MOTION TO RECONSIDER
 ANTONIO BARNES) SENTENCE
)

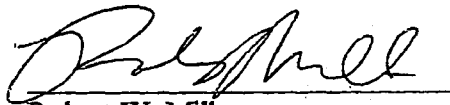
JEANETTE W. McBRIDE
 C.C.P. & G.S.

2010 JAN 21 PM 3:15

RICHLAND COUNTY
 FILED

To: LUCK CAMPBELL, Fifth Circuit Senior Assistant Solicitor
 EDEN HENDRICK, Assistant Solicitor

YOU WILL PLEASE TAKE NOTICE that the Defendant, by and through his undersigned attorney, will move before the Presiding Judge of the Fifth Judicial Circuit for a reconsideration of sentence. The Defendant received the sentence on January 12, 2010 from the Honorable Casey Manning. Movant's counsel certifies that consultation would serve no useful purpose.



Robert W. Mills
 Attorney for the Defendant
 1728 Main Street
 Columbia, SC 29201
 803-252-9648

Columbia, SC

21 day of Jan, 2010

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

The State of South Carolina,)

vs.)

ANTONIO BARNES)

Defendant.)

IN THE COURT OF GENERAL SESSIONS
FOR THE FIFTH JUDICIAL CIRCUIT

No.: 2009-GS-40-3140

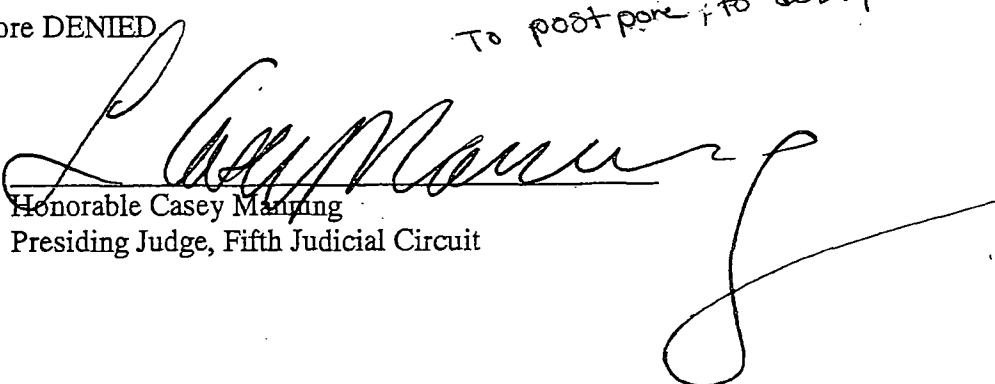
ORDER

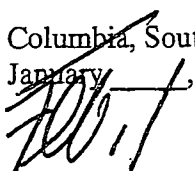
RICHLAND COUNTY
FILED
2010 FEB - 1 AM 11:04
JEANETTE W. McBRIDE
C.C.P. & G.S.

Defendant, through his attorney, moves for a reconsideration of sentence. Defendant pleaded guilty on November 12, 2009 and sentencing was deferred. On January 12, 2010 the Defendant was sentenced to twenty-two (22) years in the State Department of Corrections for the crime of Voluntary Manslaughter in the death of Jerome Hart. The State and Defense negotiated a sentencing range of fifteen (15) to twenty-five (25) years. The twenty-two (22) year sentence is well within both the negotiated range and the discretion of the Court.

Defendant's motion is therefore DENIED

IT IS ORDERED

To postpone to delay

Honorable Casey Manning
Presiding Judge, Fifth Judicial Circuit

Columbia, South Carolina
January 12, 2010


ROBERT W. MILLS

Attorney-at-law
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(August 4, 2010)

Antonio Barnes #338781
Lee CI, SUM-S-2135
990 Wisacky Hwy
Bishopville, SC 29010

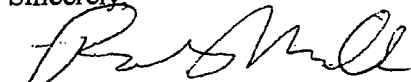
Mr. Barnes:

I had written you months ago informing you that I have filed a motion to reconsider your sentence and that I would give you copies of your discovery at the time you are transported to the Richland County Judicial Center for the motion hearing (due to the volume of the discovery and the uncertainty of you receiving it by mail at SCDC.)

If you still want me to mail it, I will. Please respond.

Thank you.

Sincerely,



Robert W. Mills

State of South Carolina

Court of Common Pleas

County of Richland

2010-CP-40-07380

Antonio D. Barnes

:

:

-VS-

:

TRANSCRIPT OF RECORD

:

The State of South Carolina

:

January 11, 2012

Columbia, South Carolina

B E F O R E:

The Honorable J. Ernest Kinard, Jr., Judge.

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

David E. Belding, Esquire
Attorney for the Applicant

Brian T. Petrano, Esquire
Attorney for the State

Daphne D. Helms
Circuit Court Reporter

I N D E XWitnessAntonio D. Barnes

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(There were no exhibits introduced.)

1 **The Court:** Okay.

2 **Mr. Petrano:** We'll start with Mr. Barnes. I'm going to
3 start with Mr. Barnes. Thank you, Your Honor. May it please
4 the Court? This is 2010-CP-40-07380, Mr. Antonio Barnes. It
5 was a P.C.R. application filed October 20th, 2010. It is, of
6 course, a Richland County P.C.R.

7 Mr. Barnes pled guilty in front of Judge Manning on
8 January 12th, 2010, and let me just explain that for a
9 moment. The plea itself was actually accepted on
10 November 12th, 2009, but the sentencing was deferred and
11 sentencing was ultimately on January 12th, 2010. You'll have
12 both transcripts in there, the longer one being the plea
13 itself. It was a negotiated sentence range of 15 to
14 25 years. He was sentenced to 22 years.

15 He had been indicted by the April 2009 term of the
16 Richland County grand jury. That's 2009-GS-40-3140. The
17 indictment was for murder. As part of the plea, he pled to
18 the lesser offense of voluntary manslaughter. Once again, it
19 was a 22-year sentence. There was no direct appeal. On
20 that, I'll turn it over to Mr. David Belding, the applicant's
21 current counsel of record.

22 **The Court:** Okay. Mr. Belding.

23 **Mr. Belding:** Thank you, Your Honor. I'd like to call
24 to the stand Mr. Antonio Barnes.

25 **The Court:** All right. Mr. Barnes.

1 **Mr. Belding:** While he's doing that, may I hand up the
2 trial brief?

3 **The Court:** Sure.

4 **Mr. Belding:** I appreciate it.

5 Antonio D. Barnes, after being duly sworn,
6 testified as follows:

7 **Bailiff:** State your full name for the record.

8 **The Witness:** Antonio Barnes.

9 Direct Examination

10 By Mr. Belding:

11 Q. You only have two names, Mr. Barnes?

12 A. Oh, Antonio Demontez (phonetic) Barnes.

13 Q. Okay. And is your middle name spelled with an S. on the
14 end or a Z.?

15 A. Z.

16 Q. Z. Good enough. All right. And are you incarcerated
17 at this time, Mr. Barnes?

18 A. Yes, sir.

19 Q. What are you serving time for?

20 A. Voluntary manslaughter.

21 Q. Okay. And where are you -- where are you incarcerated?

22 A. Perry Institution.

23 Q. Now, when you were originally arrested, taking you back
24 to May of 2008, when the police came to see you, what did
25 they tell you they wanted to talk to you about?

1 A. They told me they wanted to talk about a fight.

2 Q. A fight. And had you been in some kind of fight
3 sometime just prior to that day?

4 A. Yes, sir.

5 Q. Okay. Now, when the police came to get you, where were
6 you at that time?

7 A. I was at one of my relative's house.

8 Q. A relative's house?

9 A. (Witness nodded head affirmatively.)

10 Q. Okay. When the police came to your relative's house,
11 was your mother with you -- with them?

12 A. Yeah, she was with them.

13 Q. Okay. Now, did they come in with her or did she come in
14 by herself to see you?

15 A. She came in by herself, and then I came on the porch and
16 that's when everything...

17 Q. Okay. Did you get a chance to talk to the Richland
18 County sheriff's investigators?

19 A. They said they wanted to talk to me about a fight. I
20 said, "We can talk right here." They said they wanted to go
21 downtown.

22 Q. All right. Did you agree to go?

23 A. I'm saying I really ain't have a choice. You know what
24 I mean, my mama (unintelligible words spoken).

25 **Court Reporter:** Whoa, whoa, whoa. Can you repeat that?

1 And back off the mic just a little bit.

2 **The Witness:** Oh. I said I really didn't have a choice.
3 I really couldn't overpower my mother's arm.

4 By Mr. Belding:

5 Q. Okay. How old were you at that time?

6 A. Fifteen.

7 Q. Fifteen years old.

8 A. (Witness nodded affirmatively.)

9 Q. All right. Did your mother on your behalf agree to go
10 with you down to the police station?

11 A. Yes, sir.

12 Q. Okay. So y'all rode down there together?

13 A. Yes, sir.

14 Q. All right. Now, when you got to the police station, was
15 there -- did you observe any conversation between your mother
16 and the sheriff's deputies?

17 A. No, they ain't talk in front of me.

18 Q. Okay. Did she stay or did she leave?

19 A. She leave.

20 Q. Okay. Now, was that before they talked to you?

21 A. Yes, sir.

22 Q. Okay. Now, before -- when did you know she had left the
23 sheriff's department?

24 A. She came in the office and told me if I wasn't going to
25 cooperate that she was leaving. She kissed me on my cheek

1 and she left.

2 Q. She said if you weren't going to cooperate she was
3 leaving?

4 A. Yeah.

5 Q. Okay. So was she instructing you to cooperate?

6 A. Yes, sir.

7 Q. Okay. All right. If you weren't going to -- if you
8 were going to cooperate, was she going to -- was she going to
9 stay or did you understand what she meant by that?

10 A. Honestly, man, I ain't really -- you know what I mean?
11 I couldn't see my mama put me in a situation like that.

12 Q. Okay. All right. Now, after your mother left, did the
13 sheriff's investigators begin to talk to you about the fight?

14 A. They did. They begin to start talking, but it wasn't
15 about no fight though.

16 Q. When they first started talking to you, did they talk to
17 you about Miranda rights or advice of rights? Did they tell
18 you that you had a right to remain silent?

19 A. No. Like, yeah, they did, right, but it was like in the
20 middle of a conversation.

21 Q. Wasn't at the very beginning?

22 A. No, not quite.

23 Q. Okay. Let me ask you: Do you recall signing a piece of
24 paper called Advice of Rights before you finished giving them
25 a written statement?

1 A. Yes, sir, I think so. Looks like...

2 Q. All right. Now, then after the police had talked to
3 you, did you give them a statement?

4 A. Sir?

5 Q. After that time, the first time they interviewed you,
6 did you give them a statement about---

7 A. Yes.

8 Q. ---about what had happened?

9 A. Yes, sir.

10 Q. All right. Did they ask you whether or not you had a
11 gun at the -- at the scene?

12 A. Yes, sir.

13 Q. Okay. Do you remember what you told them about that?

14 A. I told them I did have a gun.

15 Q. Okay. That you did?

16 A. Yeah. I told them I was the only one with a gun.

17 Q. All right. Now, after that interview, as I understand
18 it, they typed up your statement. They typed it up and they
19 gave it to you. Do you recall signing that -- that document?

20 A. Yeah, they gave it to me and took it back. I didn't
21 really get to read over it.

22 Q. How well do you read?

23 A. Well, back then I was reading on a second grade and
24 third grade level.

25 Q. Second or third grade?

1 A. (Witness nodded affirmatively.)

2 Q. Okay. What grade were you actually in in school at the
3 time in May of 2008?

4 A. Eighth grade.

5 Q. Eighth grade? Okay. Did the sheriff's investigators
6 allow you to read every page of the statement that they typed
7 up for you?

8 A. No, sir.

9 Q. Okay. Did they just put it in front of you and tell you
10 where to sign?

11 A. Yes, sir.

12 Q. Okay. Now, after you got done giving them the
13 statement, were you allowed to leave?

14 A. No, sir. They put me in the holding cell.

15 Q. Okay. And to the best of your recollection,
16 approximately what time did you finish giving them this first
17 statement?

18 A. I ain't quite sure.

19 Q. Okay. How long do you recall remaining in the holding
20 cell?

21 A. I'd say about 30 minutes max.

22 Q. Okay. Now, sometime around 7:00 that same day they
23 brought you back and started talking to you again. Is that
24 correct?

25 A. Yes, sir.

1 Q. Do you recall whether or not you received your Miranda
2 warnings before that discussion?

3 A. I ain't quite sure.

4 Q. Okay. I don't find anything in the records where you
5 signed another advice of rights form. Do you recall signing
6 anything else before you started talking to them?

7 A. No, sir. We went straight to the office.

8 Q. Okay. Now, at that time how long did they talk to you
9 that time?

10 A. I'd say about an hour, like 30 to an hour.

11 Q. Okay. Thirty minutes to an hour?

12 A. Yeah.

13 Q. Okay. And were they just going over the whole story
14 again or did they have new facts they wanted to ask you
15 about?

16 A. Basically they were trying to prove that I was lying.

17 Q. Okay. What was it that they thought you weren't telling
18 the truth about?

19 A. Saying I was the only one with a weapon.

20 Q. Okay. Did they ask you whether or not you would take a
21 polygraph at that time?

22 A. They asked me, but they said they wouldn't do it.

23 Q. I want to make sure I understand you. They said---

24 A. Yeah, they said they wanted to, but they said they ain't
25 going to do it.

1 Q. Okay. Said they wanted to but they're not going to give
2 you a polygraph.

3 A. Yeah.

4 Q. Okay. Did you at any time in any of these
5 interrogations ask for your mother or for a lawyer or some
6 adult friend to help you out during this time you were being
7 interrogated?

8 A. Yes, sir.

9 Q. All right. How many times do you recall asking for
10 someone to assist you?

11 A. On the second statement I asked him could he call my
12 mama back up there.

13 Q. Okay. Tell the Court exactly what you recall saying.
14 What exactly do you recall asking for?

15 A. Talking about with my parent?

16 Q. Asking for a parent?

17 A. I was -- I was -- like they asked me a question. I was
18 like, "Can I talk to my mama? Can my mama come back up
19 here?" They was like, "When we're done, you can call her."

20 Q. They said you could call her when you're done?

21 A. Yeah.

22 Q. Okay. Do you recall signing a statement at the end of
23 that second session?

24 A. Yes, sir.

25 Q. Okay. Did you get a chance to read that one before you

1 signed it?

2 A. No, sir.

3 Q. Did they just tell you "sign here" and on the pages and
4 made -- had you sign?

5 A. Yes, sir.

6 Q. Okay. Now, ultimately what was the first thing that you
7 were charged with?

8 A. Pointing and presenting a firearm and assault with
9 intent to kill.

10 Q. Right. And who was the victim of those charges?

11 A. Alex Smith.

12 Q. Alex Smith. Okay. Alex Smith, was he one of the people
13 that was there at the fight?

14 A. No, he wasn't there at the fight.

15 Q. Okay. Which fight did you think they wanted to talk
16 about?

17 A. I guess they were talking about the fight I had with
18 another guy named Ced, Cedric.

19 Q. Cedric. Okay. Was that before the incident where
20 Jerome Hart was killed?

21 A. Yes, sir.

22 Q. Okay. All right. Now, why, to the best of your
23 understanding, were you charged with pointing and presenting
24 a firearm at Alex Smith?

25 A. To be honest, I really didn't understand.

1 Q. Okay. Did you admit having a gun at the -- at the
2 scene?

3 A. Yes, sir.

4 Q. Okay. Did you admit pointing -- pointing it at Alex
5 Smith?

6 A. Yes, sir.

7 Q. Okay.

8 A. I understood pointing and presenting a firearm, but
9 assault with intent to kill, I never fired.

10 Q. Okay. What kind of weapon did you have at that time?

11 A. A sawed-off 12 gauge.

12 Q. A sawed-off 12 gauge. And did that shotgun work?

13 A. No, sir.

14 Q. Were there -- do you know whether or not there were
15 actually any cartridges or bullets in the shotgun?

16 A. Yes, sir, there was.

17 Q. There were? Okay. Did you actually at any point try to
18 fire it?

19 A. Yes, sir.

20 Q. Was it inoperable? Did it not work?

21 A. It didn't fire.

22 Q. Okay. You could not fire it.

23 A. (Witness nodded affirmatively.)

24 Q. I understand. Okay. Now, after you were charged with
25 assault and battery with intent to kill and pointing and

1 presenting a firearm, were you then arrested and booked in
2 and sent to jail?

3 A. Yes, sir.

4 Q. Okay. Now, after that did -- at what point were you
5 actually charged with murder?

6 A. I'd say about two days later.

7 Q. Okay. All right. When did you ask for or first get a
8 lawyer appointed for you?

9 A. Well, one had -- a female. I forgot her name. She came
10 down there and talked to me about it, but my parents didn't
11 like the way she was -- how she was going about handling the
12 charges and stuff, so they was talking about hiring a new
13 lawyer.

14 Q. Okay. Now, at some point did you get a lawyer named Bob
15 Mills to help you?

16 A. Yes, sir.

17 Q. Do you see Mr. Mills in the courtroom?

18 A. Yes, sir.

19 Q. Okay. Now, was he appointed by the Court to represent
20 you?

21 A. Not to my understanding, no. I think my parents went
22 and hired him.

23 Q. Okay. At first, because you were 15 years old, were
24 your charges brought up in family court?

25 A. Yes, sir.

1 Q. All right. On the murder charge did you appear in front
2 of a family court judge?

3 A. Yes, sir.

4 Q. All right. Do you recall the judge's name?

5 A. Ms. Riddle?

6 Q. Riddle? Okay. At the end of the hearing what did Judge
7 Riddle rule?

8 A. That I be waived up to general sessions.

9 Q. Okay. So now you were going to be tried as an adult?

10 A. Yes, sir.

11 Q. Okay. Now, do you remember approximately when that was?

12 A. No, sir. I don't exactly remember the date.

13 Q. Okay. Do you even recall what month or year it was?

14 A. I think it was in April.

15 Q. April of what year?

16 A. '09.

17 Q. Okay. Was this like 11 months, almost a year, after---

18 A. Yes, sir.

19 Q. ---Jerome Hart was killed?

20 A. (Witness nodded affirmatively.)

21 Q. Okay. Now, did Mr. Mills actually assist in
22 representing you in family court at the waiver hearing?

23 A. Yes, sir.

24 Q. Okay. All right. Now, after you were waived to general
25 sessions, how long was it before you came up for trial?

1 A. I'd say about six to seven months.

2 Q. Okay. During that time, were you in the Richland County
3 Detention Center the whole time?

4 A. Yes, sir.

5 Q. Were you in the juvenile wing?

6 A. Yes, sir.

7 Q. All right. How many times did Mr. Mills come to see you
8 after you got waived up to general sessions court?

9 A. I'd say about three or four times.

10 Q. Okay. During those three or four times, how long did
11 you get to talk to him each time?

12 A. I'd say 30, 30 minutes to 45.

13 Q. Okay. In the times you talked to Mr. Mills at the
14 detention center, what did y'all talk about? Were you
15 talking about defenses or what your strategy was going to be?
16 What were y'all talking about?

17 A. Basically we were talking about pleading.

18 Q. From the beginning you were talking about pleading
19 guilty?

20 A. Yes, sir.

21 Q. Okay. Do you recall whether Mr. Mills asked you about
22 any of the statements that you gave to the police?

23 A. No. No, sir.

24 Q. Okay. Do you recall whether you discussed whether or
25 not there was any problem or any way he could challenge the

1 statements that you gave to the police?

2 A. No, sir.

3 Q. Okay. To your recollection, that never came up?

4 A. No, sir.

5 Q. Did you talk about the photo line-up where you were
6 picked out by Mr. Smith?

7 A. I never -- I never got a hold of none of that
8 information until after I was sentenced.

9 Q. Okay. All right. Did you ever discuss it with Mr.
10 Mills?

11 A. Never had it.

12 Q. Okay. The three or four times -- I'm sorry. You said
13 he saw you four times or three times or...

14 A. Three or four.

15 Q. Three or four? Okay. During those times when you were
16 always talking about pleading guilty -- is that correct?

17 A. (Witness nodded affirmatively.)

18 Q. What was Mr. Mills telling you about why you should
19 plead guilty?

20 A. Well, he ain't really give me -- he was just like -- I
21 guess he was feeling that was the best thing for me to do.

22 Q. Okay. At that time, of course, you're still charged
23 with murder; correct?

24 A. Yes, sir.

25 Q. Did you understand that murder carried a life sentence?

1 Was that explained to you by Mr. Mills?

2 A. Yes, sir.

3 Q. Okay. And you know what a life sentence means.

4 A. Yes, sir.

5 Q. Okay. Now, at what point did Mr. Mills start talking to
6 you about maybe getting a reduced charge to plead to, that
7 being voluntary manslaughter?

8 A. Like when we were going to court, around that time he
9 was saying that he can get it to voluntary manslaughter, but
10 he said the plea would be like 20 to 25 and then he was like
11 he maybe can get 15, you know. So I was like, well, I'll
12 plead to 15.

13 Q. Okay. Let me make sure I understand that now. Was it
14 your understanding from Mr. Mills that there was going to be
15 a plea to voluntary manslaughter in exchange for a range of
16 years that you could be sentenced to?

17 A. (Witness nodded affirmatively.)

18 Q. Okay. What was the range that Mr. Mills told you you
19 could be sentenced in?

20 A. First he said 20 to 25.

21 Q. Okay. Did you -- did you agree to plead to 20 or 25?

22 A. No, sir.

23 Q. Okay. Let me ask you: Why did you not agree to plead
24 to voluntary manslaughter the first time?

25 A. Because I ain't -- 20, 25, I felt like I might as well

1 go to trial.

2 Q. Well, I understand that, but we -- I mentioned to you
3 did you talk about any of the defenses. Let me just ask you:
4 You said you had a gun and you tried to fire it, but it
5 didn't fire; correct?

6 A. Yes, sir.

7 Q. Were you the one that killed Jerome Hart?

8 A. No, sir.

9 Q. Okay. Was there any physical proof of any kind that you
10 were the one that shot the weapon that killed him?

11 A. No, sir.

12 Q. Any fingerprints on a gun that they found that matched
13 up to the bullet that caused his death?

14 A. No, sir.

15 Q. Was -- did they do a gun powder residue test on you or
16 your clothing?

17 A. Yes, sir.

18 Q. Did they find any on you?

19 A. No, sir.

20 Q. Were there any shell casings or projectiles or anything
21 from the gun that you claim you had---

22 A. No, sir.

23 Q. ---that were associated with his death?

24 A. No, sir.

25 Q. Okay. And, in fact, wasn't it a single gunshot---

1 A. Yes, sir.

2 Q. ---that killed Jerome Hart?

3 A. (Witness nodded affirmatively.)

4 Q. Now, I understand you had a co-defendant throughout all
5 of this named Devian (phonetic) Jenkins; is that right?

6 A. Yes, sir.

7 Q. All right. And in all the -- in all the material
8 related to the investigation, y'all went by nicknames. What
9 was his nickname?

10 A. His nickname was Duke.

11 Q. Duke. Okay. What was your nickname?

12 A. Little Tony.

13 Q. Little Tony?

14 A. (Witness nodded affirmatively.)

15 Q. Okay. Now, Mr. Jenkins -- did he plead guilty to
16 voluntary manslaughter as well?

17 A. Yes, sir.

18 Q. To your knowledge, did Mr. Jenkins admit to firing the
19 shots that killed Jerome Hart?

20 A. Yes, sir.

21 Q. Okay. And how do you know that?

22 A. Seen it in the paperwork.

23 Q. Okay. Now, let me talk to you about the paperwork. Did
24 you ever get to see the State's discovery materials? Do you
25 understand what I mean by that? Do you know what I mean by

1 the State's discovery?

2 A. No.

3 Q. Do you know what I mean by that?

4 A. No.

5 Q. Okay. Before you are tried, the State is required, upon

6 request, and there was a request made -- the State is

7 required to provide your attorney all of the documents that

8 they are going to use at that trial. They're supposed to

9 give you everything they've got: Witness statements,

10 ballistics reports, test reports, lab reports, everything.

11 Did you ever see any of that material?

12 A. No, sir.

13 Q. Did Mr. Mills ever bring any of it to the jail and say,

14 well, look, they've got this and they've got this and they've

15 got this? Do you recall him everything ever doing that?

16 A. He brought it in one time. I asked him could I keep it,

17 and he was like he don't want me to have it because I might

18 admit to something or something like that, but he never gave

19 them to me.

20 Q. Okay. This -- was it a big stack of papers or just a

21 few things?

22 A. Just a few things.

23 Q. Just a few things? Okay. Now, did you ever get a copy

24 of what it was Mr. Mills had?

25 A. Yes. Yes, sir.

1 Q. When did you get a copy of that?

2 A. Like in October 2010.

3 Q. After you had already been in prison?

4 A. Yes, sir.

5 Q. Okay. Now, what was your understanding from Mr. Mills
6 of what the State had on you?

7 A. The confession.

8 Q. Okay. Your confessions?

9 A. Yes, sir.

10 Q. Okay. And these were the statements that you gave the
11 police when your mother and no lawyer was there to assist
12 you; is that right?

13 A. Yes, sir.

14 Q. Okay. Aside from the confessions, did they have any
15 other physical evidence that you were aware of, the State, to
16 prosecute you with?

17 A. No, sir.

18 Q. Okay. Now, at some point after you were waived up to
19 general sessions, you appeared in general sessions court here
20 in Richland County in a courtroom like this. Isn't that
21 right?

22 A. Yes, sir.

23 Q. Now, do you recall when that was?

24 A. The first one was like in November, November 2009.

25 Q. Okay.

1 A. But I wasn't sentenced. They sent me back to the county
2 jail.

3 Q. Okay. Let me ask you about the November 2009. When did
4 you find out that you were going to be going to court in
5 November of 2009?

6 A. I ain't find out until the morning. Like I knew my co-
7 defendant was going to court, but they never had paperwork
8 saying I was going to court until in the morning.

9 Q. What time in the morning?

10 A. I'd say about around like 7 or 8, around that time.

11 Q. Okay. And they put you in a van and brought you down
12 here?

13 A. Yes, sir.

14 Q. Okay. When you got to the courthouse here, I assume you
15 were in one of the holding cells down in the basement;
16 correct?

17 A. Yes, sir.

18 Q. Did you get a chance to talk to Mr. Mills down in the
19 holding area?

20 A. Yes, sir.

21 Q. Okay. What did y'all talk about?

22 A. We were talking about pleading.

23 Q. Okay. What was Mr. Mills' advice to you about pleading
24 guilty?

25 A. There wasn't no -- you know what I mean? He was just

1 saying 15 to 25.

2 Q. Okay. Now, he understood that you had maintained your
3 innocence throughout as far as killing Jerome Hart; correct?

4 A. Yes, sir.

5 Q. He knew you didn't fire the gun.

6 A. Yes, sir.

7 Q. Okay. But he did know you were there.

8 A. Yes, sir.

9 Q. And that you did have a gun as well.

10 A. Yes, sir.

11 Q. Okay. Did Mr. Mills explain to you prior to the plea
12 the theory of the hand of one is the hand of all?

13 A. I knew them -- I knew that when I was on 'em, but it
14 really wasn't explained though.

15 Q. Okay. Wait. I want to make sure I understood your
16 answer. Had you ever heard that legal theory before the day
17 you pled guilty in front of Judge Manning?

18 A. Yes, sir.

19 Q. Okay. Where had you heard that before?

20 A. I used to always -- like you just hear it floating
21 around.

22 Q. Okay. What was your understanding at the time of what
23 that meant?

24 A. If you were with somebody and something happened, you
25 can be charged with what they did.

1 Q. Okay. So you understood that if you were with someone
2 who killed someone that you could also be charged with the
3 death of that person. Is that right?

4 A. Yes, sir.

5 Q. Okay. Now, knowing that, did you agree to plead guilty
6 to the charge of voluntary manslaughter?

7 A. Yes, sir.

8 Q. Okay. Why did you agree to plead guilty?

9 A. Because I felt like I ain't had no better way of coming
10 off.

11 Q. Okay. Why didn't you have a better way?

12 A. Because ain't nobody ever talked to me about having a
13 better way of taking it to trial or nothing.

14 Q. Okay. Well, I mean, you had Mr. Mills; he was your
15 attorney. Did y'all have -- had y'all outlined defenses and
16 witnesses to call in your defense and, you know, defense
17 strategy or anything like that? Had he gone over any of that
18 with you?

19 A. No, sir.

20 Q. Is all you ever talked about was pleading guilty?

21 A. Yes, sir.

22 Q. Okay. Now, ultimately on November the -- some day in
23 November of 2009, November the 12th, you appeared in front of
24 Judge Casey Manning; correct?

25 A. Yes, sir.

1 Q. And at that time did you enter a plea to involuntary
2 manslaughter?

3 A. Yes, sir.

4 Q. And is this correct that you understood that the
5 sentencing range was going to be between 15 and 25 years?
6 Correct?

7 A. Yes, sir.

8 Q. Okay. What sentence did you think you were going to
9 get?

10 A. Fifteen.

11 Q. Why did you think you were going to get 15 years?

12 A. You know what I mean? Because I was always -- when we
13 talked, he always made it seem like I was the lesser person
14 in the crime, so I was thinking 15 would be reasonable.

15 Q. Okay. He understood that you weren't the one that
16 actually killed Jerome Hart; correct?

17 A. Yes, sir.

18 Q. Okay. So is that part of the reason that you agreed to
19 plead guilty because you thought you were going to get
20 15 years?

21 A. Yes, sir.

22 Q. Okay. Now, after the plea -- as you said a few minutes
23 ago, Judge Manning did not sentence on that day, did he?

24 A. No, sir.

25 Q. He wanted to think about it.

1 A. Yes, sir.

2 Q. One of the things that came up: Do you recall whether
3 or not there was any discussion about whether you were
4 competent to stand trial?

5 A. I didn't think I was (unintelligible words spoken.)

6 **Court Reporter:** I didn't understand.

7 By Mr. Belding:

8 Q. Please repeat your answer, Antonio.

9 A. I said I ain't never heard, you know, talked about that.

10 Q. Okay. Do you recall that even being said at the hearing
11 at any point whether or not there had been a determination of
12 whether you were competent to stand trial?

13 A. I can't quite remember.

14 Q. Okay. When you were at the family court level being
15 charged with murder as a juvenile, did you -- were you
16 evaluated by some psychologists to determine whether or not
17 you were competent for the family court hearing?

18 A. Yes, sir.

19 Q. Okay. Do you recall what the result of that was?

20 A. I ain't -- no, sir.

21 Q. Okay. All right. Did you understand what was going on
22 in front of Judge Manning?

23 A. I know I was supposed to get sentenced; that was it.

24 Q. Well, quite frankly, Mr. Barnes, there's a long
25 transcript in front of Judge Manning where repeatedly Judge

1 Manning went over things with both you and Mr. Jenkins, your
2 co-defendant. Twice at least he explained: "Do you
3 understand the hand of one is the hand of all? That's how
4 I'm taking this plea." Do you remember that?

5 A. Yes, sir.

6 Q. Okay. And at the time you understood what that meant;
7 correct?

8 A. Yes, sir.

9 Q. All right. And did you recall Judge Manning explaining
10 all the constitutional rights you had---

11 A. Yes, sir.

12 Q. ---that you would be giving up by pleading guilty?

13 A. Yes, sir.

14 Q. Okay. Before your plea, had your attorney, Bob Mills,
15 explained all these rights to you and the legal theories that
16 were going to come up at your sentencing?

17 A. No, sir.

18 Q. Do you recall -- you don't recall talking to him about
19 any of those things like, you know, you have a right to a
20 jury trial. You have a right to -- the jury has to find you
21 guilty beyond a reasonable doubt. It has to be unanimous.

22 Do you recall him talking about any of those things?

23 A. No. The only thing he talked to me about like when we
24 was meeting up there was that I could come back after I was
25 sentenced.

1 Q. Okay. That did come up at the sentencing. I want to
2 make sure I understand what you just said. Judge Manning
3 originally said that part of the plea agreement was that you
4 couldn't appeal anything. The solicitor actually changed
5 that, as I understand it, and Mr. Mills agreed. They said
6 that you could not P.C.R. -- which is what this is; correct?

7 A. (Witness nodded affirmatively.)

8 Q. You couldn't P.C.R. the family court waiver hearing.

9 A. (Witness nodded affirmatively.)

10 Q. Do you understand that?

11 A. Yes, sir.

12 Q. Okay. But that you could bring a post-conviction relief
13 action about your plea and sentence to voluntary
14 manslaughter. Did you understand that at the time?

15 A. Yes, sir.

16 Q. Okay. And, in fact, that's what we're doing here today,
17 isn't it?

18 A. Yes, sir.

19 Q. Okay. What about this -- since you brought it up, why
20 are you bringing a post-conviction relief action against your
21 attorney, Bob Mills? How do you think he was ineffective in
22 representing you?

23 A. Well, you know what I mean, I didn't feel like I got
24 represented right. I felt like everybody wanted me to do
25 what they wanted to be done and I did it. I ain't know

1 nothing about no law; I was 15.

2 Q. Okay. And when you say everybody wanted you to do this,
3 who are some of the people that you felt like were wanting
4 you to plead guilty?

5 A. Mother, grandma, father. Everybody was saying that's
6 the best thing: Plead guilty. My mama ain't want to see her
7 firstborn with a life sentence.

8 Q. Okay.. All right. Did you have -- anyone with the
9 police or the solicitor's office, were they talking to you at
10 any time about pleading guilty?

11 A. No, sir.

12 Q. Okay. And you told Judge Manning you didn't have any
13 complaints about the police or the prosecutors, as I recall.
14 Is that correct?

15 A. Yes, sir.

16 Q. Okay. Judge Manning also asked you at the time if you
17 had any complaints about Bob Mills. Do you recall what you
18 said?

19 A. No, sir. I probably ain't said nothing.

20 Q. Probably said you don't have any complaints; right?

21 A. Yes, sir.

22 Q. Had you ever pled guilty to anything before?

23 A. Yeah, as far as juvenile.

24 Q. Okay. And so you kind of knew the procedure that the
25 Court goes through at a guilty plea; correct?

1 A. Yes, sir.

2 Q. Okay. And you understand that if you don't answer the
3 questions right, the judge can't take your plea.

4 A. Yes, sir.

5 Q. Okay. If you say, "Well, I'm pleading guilty, but I
6 didn't do it," the judge is going to say, "Hey, not taking
7 this plea." The guilty plea has to be: I'm guilty. I know
8 I'm guilty. I'm pleading guilty. I did it. Correct?

9 A. Yes, sir.

10 Q. Okay. So you know you have to give the right answers to
11 the judge. Did Mr. Mills, before the plea to involuntary
12 manslaughter, go over this procedure with you so that you
13 would know what to say?

14 A. No, sir.

15 Q. Okay. He just assumed you already knew what the
16 answer...

17 A. Yes, sir.

18 Q. And didn't explain any constitutional rights about
19 juries or witnesses or reasonable doubt or anything like
20 that.

21 A. No, sir.

22 Q. Okay. Now, Judge Manning took the entire thing under
23 advisement. He did not sentence you in November. You went
24 back to the county jail?

25 A. Yes, sir.

1 Q. Okay. When did you get sentenced? When did you get
2 your prison sentence for involuntary manslaughter and
3 22 years?

4 A. January 12th, 2011.

5 Q. Were you brought back---

6 A. 2010. 2010.

7 Q. 2010. Okay. Were you brought back to the courtroom to
8 receive that sentence from the judge?

9 A. Yes, sir.

10 Q. Okay. Now, were you a little surprised at how many
11 years you got?

12 A. Yes, sir.

13 Q. Okay. Did you say anything to Mr. Mills after the --
14 after you received the sentence of 22 years?

15 A. Yes, sir.

16 Q. What did you tell him?

17 A. After we walked out, me and my co-defendant, they took
18 us into a room and I asked him -- I was like: The prosecutor
19 or whoever she was had said something about they came to the
20 scene and they didn't see nobody on the ground, no nothing.
21 They just seen shells. I wouldn't say shells. Projectiles.
22 They seen none. You know what I mean? They did a little
23 policing job and arrested Alex Love. They said they got
24 another call for some more shots being fired, and they came
25 back out there and now there's a body. So I was asking him

1 whether he wanted us to hide in the bushes and come back out
2 and start shooting. Once the first incident took place, we
3 left. You know what I mean? So I asked him about that. He
4 ain't never said nothing.

5 Q. Okay. When -- those were some factual facts about the
6 crime that the solicitor's office told the judge about;
7 correct?

8 A. Yes, sir.

9 Q. And you did not agree with the way those facts were
10 presented to the Court?

11 A. No, sir.

12 Q. You're saying that's not the way it happened?

13 A. I'm saying that's the way it happened, but I was never
14 told that until she said it. I never knew nothing about
15 that.

16 Q. Okay. Did your attorney know about it before it was
17 said?

18 A. Nine times out of ten he had to. He had all the
19 paperwork.

20 Q. Did he tell you that the State knew about that before
21 you pled guilty?

22 A. No, sir.

23 Q. Okay. Now, when you were back in the little room, did
24 you ask Mr. Mills whether or not you could appeal?

25 A. He spoke on something about a reconsideration of my

1 sentence like we said before, but that was denied.

2 Q. Okay. Well, did he, in fact, file a motion to have your
3 sentence reconsidered by Judge Manning?

4 A. Yes, sir.

5 Q. Okay. Now, do you know when he did that?

6 A. January the 21st.

7 Q. Okay. And how do you know that?

8 A. Because I got the paperwork of him putting the motion
9 in. Then I got one back of Casey Manning denying it.

10 Q. Okay. When did you find out that -- the motion to
11 reconsider was put in in January of 2010; correct?

12 A. Yes, sir.

13 Q. When did you find out that that motion had been denied?

14 A. Around like August.

15 Q. Okay. Who told you that the motion had been denied?

16 A. The clerk of court.

17 Q. Okay. Mr. Mills wasn't the one that told you the motion
18 had been denied?

19 A. No, sir.

20 Q. Okay. Did you feel, Mr. Barnes -- Antonio, do you feel
21 your statements to the Richland County Sheriff's Department
22 investigators was a voluntary statement?

23 A. I mean, I ain't -- that was my first time being in an
24 incident like that, so I ain't really -- I ain't really think
25 I had a right to rebuff it. You know what I mean? I thought

1 I had to write a statement. I thought that was the only way.

2 Q. Would you have liked to have had the benefit of an
3 attorney to advise you during that interrogation?

4 A. Somebody who knew about the law. You know, my mama
5 could have been there.

6 Q. Okay. All right. But she left; correct?

7 A. Yes, sir.

8 Q. Okay. And, again, without the confessions and
9 statements that you gave the Richland County Sheriff's
10 Department investigators, there really isn't any other
11 evidence against you, is there?

12 A. Yes, sir.

13 Q. Thank you. Mr. Barnes, this is your day in court. Is
14 there anything else you would like to tell Judge Kinard
15 before you are cross-examined by Mr. Petrano of the Attorney
16 General's office?

17 A. No, sir.

18 **Mr. Belding:** Okay. Well, thank you very much. I think
19 you did fine. Thank you. Nothing further, Your Honor.

20 Cross-Examination

21 By Mr. Petrano:

22 Q. Mr. Barnes, what are you seeking here today? What is it
23 you want?

24 A. Honestly, you know what I mean... (Pause) Well, either
25 a better plea or go to trial.

1 Q. Do you understand if you are successful here that the
2 murder charge comes back to life?

3 A. Yes, sir.

4 Q. Sorry for the bad pun there. Okay. And you understand
5 that that carries 30 to life.

6 A. Yes, sir.

7 Mr. Petrano: Nothing further. Thank you.

8 Mr. Belding: No redirect, Your Honor.

9 The Court: You can step down.

10 Mr. Belding: At this time I'd like to call Mr. Bob
11 Mills to the stand.

12 The Court: All right, Mr. Mills.

13 Robert Mills, after being duly sworn, testified as
14 follows:

15 Bailiff: Give the Court your full name.

16 The Witness: I'm Robert Mills.

17 Direct Examination

18 By Mr. Belding:

19 Q. Mr. Mills, I'm Dave Belding. We've seen each other at
20 the courthouse many times.

21 A. Yes, we have.

22 Q. I didn't know your name was Bob. I thought it was
23 something else.

24 A. Okay.

25 Q. Good to see you. Now, let me ask you: How did you get

1 to be the lawyer for Antonio Barnes?

2 A. Mr. Barnes's family contacted me.

3 Q. Okay. So you were privately retained?

4 A. I was privately retained for the juvenile case.

5 Q. So you were initially representing him at the family
6 court waiver hearing.

7 A. That's correct.

8 Q. Okay. How did that go?

9 A. Well, we went through all the procedures before the
10 hearing, and then judge -- I believe it was Judge Riddle did
11 waive him up.

12 Q. Okay. Do you think it was a close call?

13 A. I tried my best. I mean, you know, it's up to her, but
14 I think she -- she met all the statutory requirements, I
15 believe, but, you know, we did have an argument for
16 maintaining the case be in family court.

17 Q. What were the arguments that, as you recall, that it
18 should stay in family court?

19 A. I don't have that transcript, so I don't have all those
20 arguments, but I know that we had a pre-waiver evaluation
21 done and I'm sure I argued from a lot of that as well. I
22 believe we called witnesses. I don't have the transcript, so
23 I can't say for sure.

24 Q. I understand and I -- and I understand that we're
25 dealing with three-year-old memories but...

1 A. Yes.

2 Q. When Mr. Barnes was evaluated prior to the waiver
3 hearing, the report I saw in the family court documents
4 indicated that he was assessed with what -- a Wechsler scale
5 I.Q. of 73. Do you recall that?

6 A. I'd have to look at it. I take your word for it.

7 Q. Okay. And the statement was made that that was
8 borderline. Okay. But was it your recollection that he was
9 found competent to stand trial?

10 A. That's correct.

11 Q. Okay. Now, after the waiver hearing, you remained on as
12 Mr. Barnes' attorney?

13 A. I did.

14 Q. Okay. And how many times do you recall going to see him
15 at the Alvin S. Glenn Detention Center?

16 A. I went several times. I don't -- I don't have all those
17 listed, but I went several times to see him.

18 Q. Okay. He says three or four. Does that sound...

19 A. Could be that.

20 Q. Okay. Do you recall how long you might have been able
21 to spend with him on each occasion?

22 A. Probably anywhere from 30 minutes to an hour and a half
23 depending upon what we were talking about.

24 Q. Okay. To the best of your recollection, what did you
25 talk about with Mr. Barnes?

1 A. We talked about the case. Now, we -- and I had all the
2 discovery that the solicitor had given me, and we did go over
3 the discovery. As far as him having copies of it, I know he
4 testified about it. It is my policy, unless a client really
5 understands that there's a potential for someone else in
6 the -- when they're in jail that someone else in the jail
7 could look at the file and then know enough about the case to
8 be a jailhouse snitch, and that could hurt us and I explained
9 that to him.

10 Q. Okay. But you did show him the discovery?

11 A. Yes, as far as -- as far as I recollect.

12 Q. Okay. Did y'all discuss defenses, trial strategy,
13 witnesses you could call, things like that?

14 A. We discussed the -- what was in the discovery. We
15 discussed the hand of one/hand of all or accomplice
16 liability. We discussed the witness statements. It was not
17 just the statements that he made that were inculpatory---

18 Q. I understand.

19 A. ---towards him. There were also witnesses at the scene,
20 and we discussed all that. I would have brought up the
21 defenses, to my recollection, that are possible in those kind
22 of circumstances such as self-defense or any other defense
23 where he would just merely be present which wasn't the case,
24 according to the discovery and according to his statements.

25 Q. Okay. Do you recall whether you talked about the photo

1 line-up where he was picked out?

2 A. I don't have an independent recollection of that. We
3 probably -- I assume we did, but I don't have any memory.

4 Q. Okay. Well, photo line-up aside, I mean he did -- I'll
5 just represent to you he did look a little different than the
6 other people, but he had already been identified by other
7 people that actually knew him.

8 A. Knew him. That's correct. That's correct.

9 Q. Okay. Would that have been the reason that you didn't
10 see that as something to pursue?

11 A. I don't remember if we discussed that in any detail or
12 not.

13 Q. Okay. As to his statements, did you ever discuss with
14 him whether there was any problems with the fact that his --
15 he's 15 years old. He's borderline on the Wechsler scale.
16 He doesn't have an attorney, and he doesn't have a parent
17 there or any adult that's friendly to him during the time
18 that he's being interrogated by the sheriff's department.

19 A. I believe we talked about that, but I don't know -- I
20 can't remember the details of what we talked about as far
21 as -- I didn't take any detailed notes of what we talked
22 about. We did talk about his confessions and whether he
23 understood his rights that were given at the time.

24 Q. Okay. Now, I understand that you're not a
25 psychologist---

1 A. No, sir.

2 Q. ---or psychiatrist and neither am I. Did you feel he
3 was competent to stand trial?

4 A. I did.

5 Q. Did you feel that he understood the things that you
6 talked to him about?

7 A. Yes, especially when I went over it enough times for him
8 to -- I thought he understood it.

9 Q. Okay. Did you feel in your experience -- and how long
10 have you been doing criminal defense work?

11 A. About 27 years.

12 Q. Okay. In your 27 years of criminal defense experience,
13 did you feel like the State had at least probable cause to go
14 forward with a murder charge against Antonio Barnes?

15 A. Yes, under the -- both the accomplice liability,
16 considering the nature of the facts that were alleged which
17 were that he tried to fire his weapon first and then the
18 other -- the co-defendant fired, once his weapon wouldn't
19 fire. There's also a proximate cause issue and there's some
20 case law on that that would hurt us if we'd gone to trial
21 with the case.

22 Q. Okay. Given all that, was it your opinion, based on
23 your experience, that he should consider a plea to a lesser
24 charge than murder?

25 A. Yeah. That's why I talked to him about that when the

1 offer was made.

2 Q. Okay. Is that essentially what you were working on the
3 whole time you were representing him in general sessions, a
4 plea instead of---

5 A. Well, we were looking for a plea, but, of course, I
6 always tell my clients that we have the absolute right to go
7 to trial in any case and we can determine what kind of
8 evidence -- and sometimes you don't know what is going to
9 happen until you actually get in the trial, so... That's
10 generally what I say. I'm not sure if I told him that
11 specifically, but that's generally what I say to most of my
12 clients.

13 Q. Okay.

14 A. I tell all my clients that they have the absolute right
15 to a jury trial.

16 Q. Do you agree with Mr. Barnes' testimony that if the
17 State hadn't been able to use his statements, his
18 confessions, that he might have had a shot at a trial?

19 A. I mean, I guess you always have a shot, but there are
20 witnesses there. There's a co-defendant there as well who
21 could testify against him potentially. So there's a lot of
22 -- there are a lot of people out there that could testify.

23 Q. Okay.

24 A. Other than -- even if the statements were suppressed.

25 Q. I understand. Those weren't the only statements, as you

1 pointed out. There were actually a number of written
2 statements---

3 A. That's correct.

4 Q. ---from witnesses; correct?

5 A. That's correct.

6 Q. And did a lot of those statements identify someone
7 called Little Tony as being at the scene?

8 A. I believe -- I believe that was the term.

9 Q. And did a number of them indicate that Little Tony had a
10 gun?

11 A. I believe so. I haven't looked at the statements
12 recently, but I believe that's the case.

13 Q. Ultimately it was your opinion that he plead guilty to
14 voluntary manslaughter. Now, what is the -- what is the
15 sentencing range available to a judge for voluntary
16 manslaughter?

17 A. First of all, I never make it my opinion -- I tell
18 people that they have to decide on their own. I can give
19 them advice, but it wasn't my opinion for him to plead and
20 the -- he could have gotten up to 30 years on the voluntary
21 manslaughter.

22 Q. And I assume you also told him that for murder he could
23 have gotten a life sentence.

24 A. Yeah. I told him it was 30 to life on the murder.

25 Q. And so you did pursue -- leaving the decision ultimately

1 up to Mr. Barnes, but you did pursue a guilty plea with the
2 prosecutor's office.

3 A. Yes.

4 Q. Okay. Ultimately is it correct that they were willing
5 to allow him to plead to voluntary manslaughter for a
6 negotiated sentencing range of 15 to 25 years?

7 A. That's correct.

8 Q. Do you -- Mr. Barnes testified that he thought he was
9 going to get 15 because he wasn't the one that killed Jerome
10 Hart. Do you know why he would have had that understanding
11 as he went into the guilty plea?

12 A. I don't know why he would think that that was a definite
13 sentence possibility, but I was arguing for the minimum
14 sentence but he -- I made him fully aware that it was 15 to
15 25, but I was arguing for the 15.

16 Q. Okay. After the hearing in front of Judge Manning, as
17 you recall Judge Manning kind of took it under advisement for
18 awhile. And were you -- before you actually came back to the
19 sentencing portion of the plea in January, there was a
20 colloquy between the State and the judge about whether or not
21 the witness - I'm sorry - whether or not Mr. Barnes was
22 competent to stand trial. As I understood it, there was a
23 stipulation that the Court wanted to augment the record that
24 he was, in fact, competent. Do you recall signing a
25 stipulation to that effect?

1 A. I -- I'd have to see it.

2 Q. Okay.

3 A. I mean, I know that we had -- we agreed that he was
4 competent due to the evaluation that was done earlier. I
5 don't remember the stipulation, but if it's my signature on
6 it, I'm sure that it happened.

7 Q. Well, I have included it as an exhibit in my trial
8 brief. Let me just ask if you -- if this refreshes your
9 memory.

10 A. Yeah. That was -- that was based on the evaluation that
11 was done. Yeah, that's my signature.

12 Q. Okay. All right. And, in fact, again in there it even
13 talks about the fact that he was determined to have an I.Q.
14 of 73.

15 A. That's correct. That's correct.

16 Q. Okay. All right. Now, that was filed November 16th
17 just after the actual plea-taking part.

18 A. Okay.

19 Q. Okay? And then when were you notified that Judge
20 Manning wanted to see you all again?

21 A. I do not have that. I know we came back for a
22 sentencing hearing.

23 Q. Okay.

24 A. I don't have the -- I didn't get a copy of that
25 transcript. Also, I don't have the -- when he actually told

1 us to come back to court.

2 Q. I'll represent to you that you came back on
3 January 12th, 2010---

4 A. Okay.

5 Q. ---a couple of months later. And I don't know -- was it
6 a very long hearing in front of Judge Manning?

7 A. I don't think it was. I do not have the transcript, so
8 I don't -- I'm not sure how long it was. It probably wasn't
9 too long because it was basically just a sentence at that
10 point.

11 Q. And---

12 A. He got 22 years.

13 Q. 22 years.

14 A. That's correct.

15 Q. Okay. Now, after -- Mr. Barnes has testified that after
16 he got the 22-year sentence from Judge Manning that y'all
17 went into a little room and talked for a few minutes. Do you
18 recall talking about whether or not he could file an appeal
19 or a P.C.R. or anything with what he received?

20 A. I don't recall a specific conversation. I know I filed
21 a motion to reconsider the sentence.

22 Q. Let me ask you---

23 A. Okay.

24 Q. ---so you don't have to dig it out. Does that look like
25 your motion to reconsider?

1 A. Yes.

2 Q. Okay. And that is Exhibit 9, Your Honor, to the trial
3 brief. Actually it's fairly brief. It says that you move
4 before the presiding judge to reconsider. Were there any
5 attachments to this, any affidavits, anything?

6 A. I don't think so.

7 Q. Okay.

8 A. I think I just wanted another hearing---

9 Q. Okay.

10 A. ---to clarify some things and hopefully he'll give us
11 that.

12 Q. Now, did you actually get a hearing on that motion?

13 A. No, we didn't.

14 Q. Okay. And, in fact---

15 A. There was an order.

16 Q. There was an order. Is that -- is that the order from
17 Judge Manning?

18 A. It looks like it.

19 Q. Okay.

20 A. I explained to the attorney preceding you taking this
21 case---

22 Q. Right.

23 A. ---that I did not receive that from the clerk's office.
24 There was no hearing held. There was an order done. In
25 fact, when Mr. Rob Brown, who was handling Mr. Barnes'---

1 Q. Barnes.

2 A. ---P.C.R. before you, asked me about it, I said, "Well,
3 let me go look in the clerk's office." That's when I found
4 it. It was sometime last year. I don't know the date.

5 Q. Okay.

6 A. It was sometime mid 2011 that I found out that the
7 motion had been denied.

8 Q. All right. So what I have included as Exhibit 10 to the
9 applicant's trial brief, does that look like the order that
10 you found in the clerk's office?

11 A. Yeah. That's correct. That's correct.

12 Q. All right. And that would then explain -- let me ask
13 you if you recognize what is in there as Exhibit 11.

14 A. Yeah, that explains that because I didn't -- I didn't
15 know that...

16 Q. Exactly. Exhibit 11 just -- I'll just represent to you
17 is -- in January you filed a motion for reconsideration.
18 February 1st Judge Manning denies that. You don't get a copy
19 of it, and in August you're writing a letter to Mr. Barnes
20 saying, you know, when we have a hearing, I'll get with you
21 about your discovery.

22 A. That's correct. That's correct.

23 Q. Okay. All right. Do you think that Mr. Barnes got a
24 good deal?

25 A. Well, that's a subjective -- I mean, he got a better

1 deal than he would have if he got convicted of murder.

2 Q. Okay.

3 A. Okay? Obviously I agreed and was arguing for the
4 minimum sentence and I was hoping he would get the minimum
5 sentence, and he did get a sentence though within the range
6 that was -- that was agreed upon that he understood, I
7 believe, and it's a better deal than the possible
8 alternative---

9 Q. Okay.

10 A. ---which is -- which is a possible conviction for murder
11 which he could get life and spend the rest of his life in
12 prison.

13 Q. I understand. So on those terms he did get the benefit
14 of the bargain, agreeing to plead guilty to voluntary
15 manslaughter.

16 A. That's correct. That's correct.

17 Q. Thank you, Mr. Mills. No further questions---

18 A. You're welcome.

19 Q. ---Your Honor.

20 Cross-Examination

21 By Mr. Petrano:

22 Q. There was a plea sheet in this case?

23 A. I believe so.

24 **The Court:** Mr. Petrano, I have read the 79-page hearing
25 one, but I don't have the sentencing brief.

1 **Mr. Petrano:** And I wanted to point that out, Judge. It
2 says January 12th, 2009, on the front. It's obviously a
3 scrivener's error. It was January 12th, 2010. Here's
4 another copy. I tried to get a correction on that. I do
5 apologize that it didn't make it to the packet.

6 By Mr. Petrano:

7 Q. I'll bring one to the witness as well.

8 A. Okay.

9 Q. We were confused when we got it because it has that
10 2009, but clearly it had to be 2010 based on everything that
11 was said. Mr. Mills?

12 A. Yes, sir.

13 Q. Can you just sum up this case very briefly for us as you
14 saw it?

15 A. As far as Mr. Barnes---

16 Q. I mean, he wasn't -- the victim was not the intended
17 target.

18 A. That's right. That's correct. There was an innocent
19 person killed. I mean, not that all people aren't innocent
20 who get killed, but I'm saying that the person that was
21 the -- who ended up being hit with the bullet and died was
22 not the intended target by either of the co-defendants.

23 Q. They were hunting for someone else.

24 A. That's correct.

25 Q. All right. My final question -- I think we covered

1 everything on direct. My final question now: As you know,
2 Mr. Mills, South Carolina code 17-27-130 privileged --
3 attorney/client privilege is waived. Tell us what he told
4 you.

5 A. As far as the---

6 Q. His involvement---

7 A. ---the date of the incident?

8 Q. Yeah.

9 A. He basically told me that -- that they were out there to
10 -- after the other person and when -- and they had come -- I
11 believe he was coming down a hill. I don't have all the
12 facts and I don't have any written thing from him, so I can't
13 give you verbatim what he said.

14 Q. Just the gist.

15 A. The gist was that he did try to fire his weapon. He was
16 with the co-defendant, and the co-defendant, seeing that he
17 couldn't fire his weapon, fired his weapon is the basis of
18 what I remember, the gist of it.

19 Q. Paralleling the State's case.

20 A. Maybe not to every detail but enough that it was --
21 manslaughter was a good offer, considering the facts.

22 Q. Were there any offers for your client, Mr. Barnes, the
23 applicant here, to testify against a potential trial for Mr.
24 Jenkins, the co-defendant?

25 A. I do not recall.

1 Q. Thank you, sir. Nothing further.

2 A. All right. Thank you.

3 Mr. Belding: No redirect, Your Honor.

4 The Court: You can step down.

5 Mr. Belding: Your Honor, that would be the applicant's
6 case. I appreciate your consideration in this matter.

7 The Court: All right.

8 Mr. Petrano: Your Honor, we have nothing additional by
9 way of testimony or evidence. You've got the packet; you've
10 heard the examinations.

11 The Court: So what's your position?

12 Mr. Belding: Our position, Your Honor, as stated in the
13 trial brief, obviously we're seeking a vacation of the
14 sentence, and I think the one sort of like an Anders brief
15 issue that I find in this is that I'm disturbed about the
16 voluntariness of the confessions and the statements before
17 the Richland County Sheriff's Department. You know, I cited
18 some law, included a couple of cases that we've gotten in
19 there.

20 The fact that he was a minor, as you know, does not make
21 it per se inadmissible in South Carolina. I don't think it
22 does anywhere, but the Court has specifically stated that
23 there's a totality-of-the-circumstances test that they would
24 like to be applied to when there's a question about an
25 unrepresented minor being with the police, and they say it's

1 not only the age but it's the intellect, it's the experience,
2 and it's things that -- I have listed those in those cases:
3 In re Walker and the Williams case, and I think that if there
4 had been a totality-of-the-circumstances approach taken here
5 by Mr. -- by Mr. Mills and challenged the voluntariness of
6 those statements, they may very well have been suppressed.

7 Then, you know, whether or not the State could have been
8 able to go forward really with murder I think would have
9 been -- would have been a problem. We take the position that
10 the main prejudice to the applicant is that -- is his own
11 statements that the police got out of him because he was a
12 15-year-old that didn't know much about the system and quite
13 frankly is -- has a Wechsler scale of 73 and I think that
14 that -- those things very much weigh on his side of the
15 analysis in balancing the totality of the circumstances.

16 So I would say that based upon the fact that his
17 statements were improperly taken that the sentence should be
18 vacated, and that's what we're here for, Your Honor.

19 **Mr. Petrano:** Just briefly in reply. The statements
20 were completely voluntary. This factual scenario, even taken
21 in the light most favorable to Mr. Barnes, almost exactly
22 parallels the situation in State versus Wannamaker.

23 That's---

24 **The Court:** He also made three statements; right?

25 **Mr. Petrano:** Well, the first one was self-serving and

1 then they kind of break them down; you know, the usual drill,
2 Judge. In Wannamaker -- there were several Wannamakers. If
3 I could, for the record, the one I'm talking about is 346
4 S.C. 495. That's all I've got, Judge. Thank you.

5 **The Court:** Okay. Just prepare an order. I don't -- I
6 don't think he's met his burden on that.

7 **Mr. Petrano:** Thank you, Your Honor.

8 **The Court:** Now, I have read everything at this point,
9 and I did notice that the State and the victims and even law
10 enforcement, which they normally don't get involved, all
11 asked for the maximum, 25, and it looks like he gave both of
12 them 22. And I won't get into what they said about his
13 background and all that, but I'm aware of all that and I
14 sympathize with him because of the 73 -- you know, 14, 15 at
15 the time and all of that and it looks like his family didn't
16 back him either, but I can't help him with any of that.

17 He was stipulated to be competent. There's nothing in
18 front of me that shows that he was not, and he got the
19 benefit of not having the hand of one/hand of all. And with
20 his statement, he did try to shoot the gun, you know. I
21 recognize if that was suppressed that would be another
22 matter, but we still have Devian there and I don't think he
23 can -- he would be right back where he was. So sorry, but
24 that's it.

25 **Mr. Belding:** Thank you, Your Honor. I appreciate your

1 consideration.

2 **The Court:** All right..

3 **Mr. Petrano:** Thank you, Your Honor.

4 (Whereupon, the proceedings were concluded. There were
5 no exhibits introduced.)

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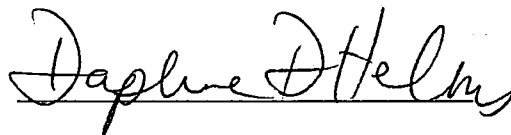
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I, the undersigned Daphne D. Helms, official court reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the circuit court for Richland County, South Carolina, on the 11th of January, 2012.

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

June 13, 2012

A handwritten signature in cursive script that reads "Daphne D. Helms". The signature is written in dark ink and is positioned above the printed name.

Daphne D. Helms, court reporter

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
	)	2010CP4007380
Barnes, Antonio, 00338781,	)	
	)	
Applicant,	)	
	)	
v.	)	ORDER OF DISMISSAL
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

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C.C.P. & U.S.
CLERK OF COURT

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed October 20, 2010. The Respondent made its Return on February 28, 2011. An evidentiary hearing into the matter was convened on January 11, 2012 at the Richland County Courthouse. The Applicant was present at the hearing and was represented by David Belding, Esquire. Brian T. Petrano of the South Carolina Attorney General's Office represented the Respondent.

At the hearing, the Applicant testified on his own behalf. The Applicant's plea counsel, Robert Mills, Esquire also testified. This Court had before it the records of the Richland County Clerk of Court, the transcript of the proceedings against the Applicant, and the Applicant's records from the South Carolina Department of Corrections.

The Applicant is presently incarcerated following a January 12, 2010 plea before the Honorable L. Casey Manning. The Applicant was convicted and sentenced to the following:

Barnes, Antonio - Order of Dismissal (2010CP4007380)

Grand Jury Term	Indictment Number	Charged Offense	Potential Sentence	Offense Description	Sentence Received	Sentenced to Lesser Offense
4-09	2009GS403140	0116 16-03-0020 * 30 - L/D * Murder / Murder	22		Yes	
Sentenced to: 0217 16-03-0050 * 30 * Manslaughter / Voluntary manslaughter					: as a lesser offense.	
NOTES: Plea accepted on November 12, 2009, sentencing on January 12, 2010. Negotiated sentence range of 15 to 25.					TOTAL	POSSIBLE

A motion for reconsideration was denied on February 1, 2010. The Applicant did not appeal his plea.

In the PCR application, the Applicant makes the following allegations:

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

(a) Ineffective of assistance of counsel - 6th Amendment

(b) Unreasonable body seizure - 4th Amendment

(c) Due process rights violation - 14th Amendment

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) See attachment

(b) _____

(c) _____

18. State clearly the relief you seek in filing this application.

Sentencing vacated

Through appointed counsel, the Applicant submitted a pre-trial brief with the following statement of issues:

I. Statement of Facts of the Case.

A. This case was filed on October 20, 2010, by the Applicant, acting *pro se*. Undersigned counsel was appointed to represent the Applicant by the Honorable Alison Renee Lee on December 19, 2011.

B. Applicant's application states that he is seeking relief from the sentence imposed by the Honorable L. Casey Manning on January 12, 2010, for the crime of Voluntary Manslaughter (Indictment No.: 2009-GS-40-3140).

C. The Applicant was represented by Robert W. Mills, Esquire of the private Bar.

D. Applicant was interviewed by Richland County Sheriff's Department (RCSD) investigators on May 25, 2008, about the shooting death on May 23, 2008, of one Jerome Hart. Witnesses had given the investigators Applicant's name and the name of his co-defendant, Devion Jenkins. At 2:00 p.m. on May 25, 2008, the investigators drove to Applicant's home and met his mother. Applicant was not there and his mother stated that he was at a relative's home. The investigators drove with Applicant's mother

to the relative's house, where the mother went in alone and came out with Applicant. Applicant was fifteen (15) years old at the time (DOB: [REDACTED]). Applicant's mother agreed to go with Applicant to RCSD headquarters to talk to the investigators. At headquarters, Applicant's mother agreed to allow the investigators to talk with Applicant and departed, with one of the investigators, Sgt. Strange, agreeing to inform her about the investigation (*Notes of Investigator Boland, Exhibit 1, attached.*) Following the departure of Applicant's mother, Applicant was given *Miranda* rights and signed an advice of rights form (*Exhibit 2, attached*). Applicant was told that the investigators wanted to "talk about a fight" involving Alex Smith. The interview turned, however, to the shooting of Jerome Hart. Applicant gave a written statement at 2:53 p.m. admitting being at the scene of the crime but denying having a firearm or having any involvement in the shooting death (*Exhibit 3, attached*). Applicant was then placed in a holding cell.

E. At 7:05 p.m. that same day, investigators again interviewed Applicant, determining that Applicant "...may need to be polygraphed about his statements." (*Exhibit 4, attached*). This interview resulted in a second written statement (*Exhibit 5, attached*) in which Applicant admitted having a shotgun at the scene but continuing to deny involvement in the shooting death. Applicant was arrested and charged with Assault with Intent to Kill one Alex Smith (a person who was at the scene along with the deceased).

F. On May 27, 2008, while still in custody and without benefit of a parent or counsel, Applicant was again given *Miranda* rights (*Exhibit 6, attached*) and interrogated, resulting in a third written statement (*Exhibit 7, attached*) again admitting being at the crime scene with a shotgun, denying shooting, and stating that his co-defendant fired shots at the victims. During the investigation, Applicant's co-defendant, Devion Jenkins, finally admitted firing three (3) shots at the crime scene and was charged with Murder.

G. On April 14, 2009, the Applicant appeared for a waiver hearing in Family Court. On April 17, 2009, Family Court Judge Leslie Riddle ordered that Applicant be waived to the Court of General Sessions.

H. On April 15, 2009, Applicant was indicted for Murder by the Grand Jury. On April 29, 2009, Robert Mills was appointed to represent Applicant in General Sessions

Court by Judge Edgar Dickson.

I. On November 12, 2009, Applicant pled guilty to Involuntary Manslaughter before Judge Manning. The State and Applicant's counsel stipulated that Applicant was competent to stand trial (*Transcript* pg. 5 ln. 9 through pg 6 ln 8). A *Stipulation* was subsequently filed with the Court on November 16, 2009 (*Exhibit 8*, attached), noting that Applicant's IQ was "...73 in the below average/borderline range."

J. During the plea hearing, Judge Manning stated that he was taking the plea "...under the theory of the hand of one is the hand of them all." (*Transcript* pg. 9 ln. 21-24). Both Applicant and his co-defendant acknowledged that they understood this theory (*Transcript* pg. 17 ln. 14-19). The State maintained, in the factual basis for the plea, that Applicant's shotgun was not fired and that the co-defendant's revolver was fired three (3) times resulting in the death of Jerome Hart (*Transcript* pg. 34 ln. 20 through pg 35 ln 18).

K. After accepting the pleas and hearing from all parties, Judge Manning deferred sentencing until January 12, 2010. Prior to the plea, Applicant had been informed by counsel that he would receive a sentence of fifteen (15) years; however, Judge Manning sentenced Applicant to twenty-two (22) years imprisonment.

L. On January 21, 2010, Applicant's counsel filed a *Motion to Reconsider Sentence* (*Exhibit 9*, attached), without specifying grounds or justification for the Court to review in reconsidering the matter.

M. On February 1, 2010, Judge Manning summarily denied Applicant's motion (*Exhibit 10*, attached).

N. On August 4, 2010, Applicant's counsel, apparently unaware that Judge Manning had denied the motion, wrote to Applicant stating he would give copies of the State's discovery to Applicant at the motion hearing (*Exhibit 11*, attached).

II. Legal Issues

Plea counsel was deficient in representing Applicant because he did not challenge the voluntariness of Applicant's written statements. Without those statements, the State had very little to use to prosecute Applicant – no gun was found with Applicant's fingerprints; no gun powder residue was on Applicant or his clothing, etc.

The Applicant was only fifteen (15), a minor, at the time of Jerome Hart's death, and was stipulated to have an IQ of 73. The police interrogated Applicant outside of the presence of his mother and without having an attorney present to represent his interests. The South Carolina Supreme Court has rejected the position that a minor's inculpatory statement obtained in the absence of a parent, counsel or other friendly adult should be inadmissible *per se*. Instead, the Court has adopted a "totality of the circumstances" test, including the individual's age, intelligence, education, experience, and ability to comprehend the meaning and effect of his statement. *In the Interest of Christopher W.* (SC Ct. App. 1985); *In re Wyman Williams, et al. vs. State*, 217 S.E. 2d 719 (copies attached). Applicant's counsel was looking for a plea from the beginning, without effectively researching a challenge to Applicant's statements. Without those involuntary statements, the Applicant would not have been put in a position to have to plead guilty.

III. Legal Authority

For Applicant to be granted relief as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective assistance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Brown v. State, 340 S.C. 590, 533 S.E.2d 308 (2000). This does not only apply to trials - this same standard applies to a guilty plea. Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991).

When a guilty plea has been entered, the applicant must prove counsel's representation was below the standard of reasonableness and but for counsel's unprofessional errors, there is a reasonable probability the applicant would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Alexander v. State, 303 S.C. 539, 543, 402 S.E.2d 484, 485 (1991). The advice Applicant received from his plea counsel failed to meet the standards for attorneys. Tollett v. Henderson, 411 U.S. 258, 98 S.Ct. 1602, 36 L.Ed 2d 235 (1973). t

Applicant did not appeal the plea. Now, the Applicant is challenging the

voluntariness of his guilty pleas and this PCR evidentiary hearing is the only forum to raise this issue. State v. Barton, 325 S.C. 522, 530 n. 6, 481 S.E.2d 439, 443 n. 6 (Ct. App. 1997) (any challenge to the knowing and voluntary nature of appellant's plea could be raised only in a petition for post-conviction relief); In the Interest of Antonio H., 324 S.C. 120, 122, 477 S.E.2d 713, 714 (1996) (where sole issue before appellate court was competency to enter plea and issue was not raised at the time of the plea, issue was procedurally barred; proper avenue to challenge a guilty plea which was not objected to at the time of its entry was through post-conviction relief); State v. McKinney, 278 S.C. 107, 108, 292 S.E.2d 598, 599 (1982) (absent timely objection at a plea proceeding, the unknowing and involuntary nature of a guilty plea can only be attacked through the more appropriate channel of post-conviction relief).

Applicant asserts that he did not validly waive his constitutional right to a trial by jury. When a PCR applicant alleges that he was denied the right to exercise one of his constitutional rights, the sole inquiry is whether he was informed of that right, and if so, whether he validly waived it. If there is no knowing and intelligent waiver, then the remedy is a new trial. See, e.g., Wroten v. State, 301 S.C. 293, 391 S.E.2d 575 (1990) (no valid waiver of right to counsel, new trial ordered); Prince v. State, 301 S.C. 422, 392 S.E.2d 462 (1990) (same).

The second step in the analysis—whether Applicant was prejudiced by the deficient representation. Strickland v. Washington, 466 U.S. at 687. As this was a guilty plea, Applicant “must show that there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial.” Here, the evidence shows that Applicant *did* go to trial initially and only agreed to plead guilty upon ineffective recommendations of his attorney as to the sentence he would receive.

Therefore, Applicant’s attorney did not demonstrate “reasonableness under professional norms” that satisfies the requirements of the Sixth Amendment. Cherry v. State, 300 S.C. 115, 386 S.E. 2d 624 (1989).

The Applicant proffered a number of investigative type documents to his pre-trial brief. At the evidentiary hearing, Applicant proceeded on the allegations stated in the pre-trial brief.

A handwritten signature, possibly reading "Barnes", is written in the center of the page. A large, loopy handwritten mark, possibly a stylized "X" or a large flourish, is drawn over the signature and extends across the middle of the page.

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 at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 (1985).

The Applicant testified and explained his version of the original investigation. The Applicant explained that the police contacted him and explained that they wanted to talk to him about a fight. The Applicant explained that he went there with his mother and that she told him if he did not cooperate, she would leave. The Applicant explained that he was informed of his rights. The Applicant explained that he recalled signing the advice of rights form that the officer had typed up but that that he (the Applicant) did not really read it over. The Applicant claimed that he only read at a 2nd grade level, despite that he was in the 8th grade at the time. The Applicant claimed that he wanted to call his mother, but he was ultimately charged with AWIK and possession of a firearm. The Applicant explained that he had a gun (shotgun) at the scene but that he never fired the gun because when he tried to do so it malfunctioned. The Applicant explained that he was eventually charged with murder and ultimately waived from family court to general sessions. The Applicant explained that he met with plea counsel three (3) or four (4) times prior to the plea. The Applicant explained that plea counsel first came to him with a plea offer to voluntary manslaughter for twenty (20) to twenty-five (25) years but he rejected that offer. The Applicant explained that plea counsel then relayed a fifteen (15) year offer and that is what he thought was the plea arrangement. The Applicant explained that plea counsel was

hesitant to give him a copy of the discovery materials but that he eventually got a copy in October 2010. The Applicant explained that plea counsel and he did discuss *hands of one*. The Applicant explained that he pled guilty because there simply was no better option but that he thought he was pleading to fifteen (15) years because he was the lesser person of two assailants.

Plea counsel testified that he recalled his representation of the Applicant and that he had originally been retained by the Applicant's family for the family court proceedings. Plea counsel explained that the family court hearing ended in a waiver and that the Applicant was found competent. Plea counsel explained that he met with the Applicant on multiple occasions and that they reviewed the discovery materials together. Plea counsel explained that they fully discussed *hands of one* and accomplice liability. Plea counsel explained that they also discussed the witness statements from those who were at the scene. Plea counsel explained that if they ended up going to trial the best they could argue would be self-defense. Plea counsel explained that they discussed the photo identification and the Applicant's confession. Plea counsel explained that the State's case was legally correct based on accomplice liability. Plea counsel explained that even without the confession there was enough for a conviction based on the witness statements referring to "little tony." Plea counsel explained that while he was certainly arguing for fifteen (15) years, the Applicant was fully aware that the plea sentencing range was fifteen (15) to twenty-five (25) years. Plea counsel explained that the Applicant told him his version of events and it fully supported the State's case.

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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, 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, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. 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. As discussed above, the Applicant has failed to

carry his burden in this action. Therefore, this Court finds that the application must be denied and dismissed.

The Applicant's testimony that he thought he was pleading guilty to a fifteen year sentence was not credible. Plea counsel credibly testified that he explained the sentencing range and that they would argue for the lower end. The transcript reflects a full waiver and an additional explanation as to the potential sentence. (Guilty plea transcript, p. 18 – 19).

Beyond his review of the undisputed procedural history, this Court finds Applicant's testimony is not credible. Plea counsel's testimony is credible. Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that counsel failed to render reasonably effective assistance under prevailing professional norms. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by counsel's performance.

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. Counsel was not deficient in any manner, nor was Applicant prejudiced by counsel's representation. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

Except as discussed above, this Court finds that the Applicant failed to raise the remaining allegations set forth in his application at the hearing and has, thereby, waived them. As to any and all allegations that were or could have been raised in the application or at the hearing in this matter, but were not specifically addressed in this Order, this Court finds Applicant failed to present any probative evidence regarding such allegations. Accordingly, this Court finds that Applicant waived such allegations and failed to meet his burden of proof regarding them. Accordingly, they are dismissed with prejudice. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issue at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

This Court cautions the 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. Applicant and counsel are directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief 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 21st day of February, 2012.


The Honorable J. Ernest Kinard, Jr.
Presiding Judge
Fifth Judicial Circuit

Camden, South Carolina.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on APRIL 15, 2009, the Grand Jurors of Richland County present upon their oath:

MURDER

That Antonio Barnes did in Richland County on or about May 23, 2008, feloniously, willfully and with malice aforethought, kill one Jerome Hart, by means of a single gunshot wound and that the said victim died as a proximate result thereof. All in violation of SC Code of Laws § 16-3-10.

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



Warren B. Giese, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
STATE

VS.

Antonio Barnes

AKA:

Race: B Sex: M Age: 16

DOB: _____ SS#: _____

Address: _____

City, State, Zip: Columbia SC 29204

DL# _____ SID# _____

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Voluntary manslaughterin violation of § 16-3-50 of the S.C. Code of Laws, bearing CDR Code # 0217☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

L. Ellis Hunk 74034 Antonio Barnes 15-25 year range Robert Mills 3599
Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 22 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. May 24, 2008☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

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

PTUP _____

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

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ set by SCDPPPS _____

Attend Voc. Rehab. or Job Corp. _____

Recipient: _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

*Fine:

\$14-1-206 (Assessments 107.5%)	\$	_____
\$14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>✓</u>
\$14-1-211(A)(2) (DUI Surcharge)	\$100	\$ _____
\$56-5-2995 (DUI Assessment)	\$12	\$ _____
\$56-1-289 (DUI Breath Test)	\$500	\$ _____
\$35.13 (Public Def/Prob)	\$25	\$ _____
\$73.3, 1B TP (Law Enforce. Funding)	\$25	\$ <u>✓</u>
\$33.7, 1B TP (Drug Court Surcharge)	\$100	\$ _____
\$50-21-114(BUI Breath Test Fee)	\$50	\$ _____
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ _____
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
\$90.11 TP (SCCJA Surcharge)	\$5	\$ _____
TOTAL	\$	\$ <u>133.90</u>

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ Beginning _____
\$ _____ paid to Public Defender Fund

Other: _____

\$25

☐ Appointed PD or appointed other counsel, \$95.10 TP☐ Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE _____

Judge Code: 2061Sentence Date: 1-12-08

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ORIGINAL FILED

C.C.C.P.&G.S.

RICHLAND COUNTY
SOUTH CAROLINA