

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Appeal from Richland County

S.C. Supreme Court

James R. Barber, III, Circuit Court Judge

MARCUS FARR,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) FIFTH JUDICIAL CIRCUIT
 COUNTY OF RICHLAND) 2009-GS-40-2116
) 2009-GS-40-2118

THE STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 VS.)
)
 MARCUS L. FARR,)
)
 DEFENDANT.)
)
)
)

TRANSCRIPT OF RECORD

OCTOBER 26, 2009
 COLUMBIA, SOUTH CAROLINA

B E F O R E:

THE HONORABLE ALISON RENEE LEE, JUDGE

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

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 ATTORNEYS FOR THE STATE

JACK B. SWERLING, ESQUIRE
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 CIRCUIT COURT REPORTER

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NO EXHIBITS INTRODUCED.

M. FARR -EXAMINATION BY THE COURT

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1 MS. WEISS: May it please the court, Your Honor?

2 THE COURT: Yes.

3 MS. WEISS: The state calls Marcus Farr.

4 (WHEREUPON, THE DEFENDANT IS DULY SWORN.)

5 MS. WEISS: Your Honor, before you is Marcus Farr with
6 his attorneys, Jack Swerling and Jason Peavy of the private
7 bar. He is pleading guilty on a reduced charge from murder
8 to voluntary manslaughter, and he is pleading guilty as
9 charged to assault and battery with intent to kill.

10 The state was prepared to go forward with trial on
11 these charges this week. The defendant has indicated he
12 wishes to enter a guilty plea. There are no negotiations
13 beyond a reduction in charge for murder to voluntary
14 manslaughter.

15 EXAMINATION BY THE COURT:

16 Q. Marcus Farr.

17 A. Ma'am.

18 Q. How old are you, sir?

19 A. Twenty-one.

20 Q. How far did you go in school?

21 A. I left school in the twelfth grade.

22 Q. Before, before you were arrested, were you employed?

23 A. Not at the current moment. No, I was not employed
24 just then.

25 Q. Mr. Farr, are you currently under the influence of any

1 drugs or alcohol or prescription medicine?

2 A. No, ma'am.

3 Q. Do you have any physical or mental conditions that
4 would prevent you from being able to understand a plea here
5 today?

6 A. No, ma'am.

7 Q. Mr. Farr, do you understand that you had been charged
8 originally with murder and with assault and battery with
9 intent to kill? Do you understand that?

10 A. Yes, ma'am.

11 Q. And do you understand that with respect to these
12 charges, you have certain constitutional rights?

13 A. Yes, ma'am.

14 Q. And what I'd like to do is explain those rights to
15 you, and then I'll have some additional questions to ask
16 you.

17 Mr. Farr, even though you have been charged with these
18 crimes, you understand that as you stand before me that you
19 are innocent, and you remain innocent unless and until the
20 state is able to convince a jury that you are guilty of
21 these two charges? Do you understand that?

22 A. Yes, ma'am.

23 Q. In connection with these two charges, you have certain
24 constitutional rights. One of your rights is what we call
25 your right of presentment to the grand jury. That's your

M. FARR -EXAMINATION BY THE COURT

5

1 right to require the state to produce evidence of these
2 charges to a grand jury.

3 The grand jury's function is to determine whether or
4 not there is reason to believe that a crime has been
5 committed, and whether or not there is reason to believe
6 that you committed that particular crime. The grand jury
7 is made up of eighteen people, and what happens is that the
8 solicitor's office will go into the grand jury and they
9 will present evidence about these charges. That is, the
10 murder charge and the assault and battery with intent to
11 kill, and they present evidence about those charges to the
12 grand jury.

13 After hearing that evidence, then twelve of those
14 grand jurors would have to agree in order to vote, and vote
15 for a true bill in order to have you formally indicted.

16 In this case, on both of these indictments there is a
17 true bill stamped on the front of the indictment. That
18 means that the grand jury -- and there's a signature of the
19 foreperson of the grand jury. That means that the grand
20 jury did consider these charges, and found that there was
21 reason to formally charge you with these two crimes. And
22 that's evidenced by the true bill, the signature of the
23 foreperson of the grand jury, and the date of the
24 indictment. You understand that?

25 A. Yes, ma'am.

1 Q. Even though you have been formally charged, you also
2 have the right to remain silent. That's known as your
3 right against self-incrimination. That's your right not to
4 say anything or do anything that would give evidence
5 against yourself on these two charges. That means that you
6 don't have to talk to anyone in law enforcement. You don't
7 have to talk to anyone in the solicitor's office. You
8 don't have to discuss these charges with me.

9 But by coming here today and by offering to plead
10 guilty to these charges, you understand that you're giving
11 up your right to remain silent because at some point, you
12 will be required to make statements that are against your
13 interest. You understand that?

14 A. Yes, ma'am.

15 Q. Mr. Farr, you also have the right to a jury trial.
16 That's your right to have twelve people decide your guilt
17 or your innocence. And just as I have told you that you
18 are innocent as you stand here, the jury is told the same
19 thing. They are told that you are innocent, that you
20 remain innocent, that you don't have to prove that you are
21 not guilty. That you are innocent until such time as the
22 state is able to convince all twelve of those jurors that
23 you are guilty of these charges. And before they can
24 convict you, the state has to produce enough evidence to
25 convince those jurors that you are guilty beyond a

M. FARR -EXAMINATION BY THE COURT

7

1 reasonable doubt. Do you understand that?

2 A. Yes, ma'am.

3 Q. In connection with your right to a jury trial, you
4 have the opportunity to put up a defense. And I know
5 briefly from your attorney that there was a defense that
6 you had that you wanted -- that you have the opportunity to
7 put up. The time that you would present that defense would
8 be during the jury trial. So, by pleading guilty at this
9 particular point, you give up that opportunity to be able
10 to put up that defense.

11 You also give up the opportunity to be able to call
12 witnesses who would testify in your behalf. You also give
13 up the opportunity, Mr. Farr, to be able to raise any legal
14 challenges to either the charges or to the evidence that
15 would be presented.

16 For example, if you've made statements to law
17 enforcement officers and the state wants to use those
18 statements against you, you are entitled to have a hearing
19 to determine whether or not those statements could be used.
20 If you've been searched for whatever reason or had your
21 property searched, or if you want to challenge either the
22 search warrants or the evidence that came about as a result
23 of that research, you are entitled to have a hearing to
24 determine whether or not it was a valid search, or whether
25 that evidence could be used.

1 If there's any other reason you and your attorneys
2 believe that you have to challenge either the charges or
3 the evidence, the time that that is done is right before
4 the jury trial begins. And so by pleading guilty, you're
5 giving up the opportunity to be able to raise any of those
6 challenges. Do you understand that?

7 A. Yes, ma'am.

8 Q. Mr. Farr, you also have the right to confront your
9 accusers. That's known as your right of confrontation.
10 That is your right to require the state to bring forth the
11 witnesses who would testify against you. You have the
12 opportunity to see who those witnesses are and to hear what
13 they have to say. They'd come in. They'd be placed under
14 oath, and they'd testify from the witness stand. So, you
15 actually get to see who they are and hear what they have to
16 say.

17 It's not a situation where someone's going to come in
18 and say, well, we've got witnesses that are going to say X,
19 Y, Z. You actually get to see who those witnesses are and
20 hear them testify. Once they've done that, then your
21 attorneys have the opportunity to cross-examine them while
22 those witnesses are under oath.

23 And so by pleading guilty at this point, Mr. Farr,
24 you're giving up that opportunity to be able to confront
25 your accusers, to see who they are, and then actually hear

M. FARR -EXAMINATION BY THE COURT

9

1 them testify, and to be able to ask them questions while
2 they're under oath in an effort to refute what they have to
3 say. You understand that?

4 A. Yes, ma'am.

5 Q. Mr. Farr, you understand that you were originally
6 charged with murder, which carries a minimum of thirty
7 years up to life in imprisonment. Do you understand that?

8 A. Yes, ma'am.

9 Q. It's my understanding that you're here today to plead
10 guilty to voluntary manslaughter. Is that correct?

11 A. Yes, ma'am.

12 Q. Do you understand that that charge carries a maximum
13 term of imprisonment of thirty years?

14 A. Yes, ma'am.

15 Q. Do you understand that that charge constitutes what we
16 call a strike? And so that if you were subsequently
17 convicted of other charges that carry a strike, or whether
18 it be serious or most serious offenses, that at some
19 particular point you could be looking at life without the
20 possibility of parole? Do you understand that?

21 A. Yes, ma'am.

22 Q. Do you also understand that this offense is a
23 no-parole offense?

24 A. Yes, ma'am.

25 Q. Which means that you would not be eligible for any

1 parole. You would not have those rights. You would be
2 required to serve a period of time in jail and upon your
3 release, you'd been under community supervision. It is not
4 parole, but it in a lot of ways may be somewhat, somewhat
5 similar to parole in that you'd be supervised for a period
6 of time. And you'd have to be on community supervision for
7 a period of two years upon your release after serving
8 eighty-five percent of any sentence that's imposed. Do you
9 understand that?

10 A. Yes, ma'am.

11 Q. And, Mr. Farr, do you also understand that this charge
12 is considered to be a violent charge, and that it affects
13 your classification within the Department of Corrections,
14 and where you are actually housed, and where you actually
15 will be residing within the Department of Corrections? You
16 understand that?

17 A. Yes, ma'am.

18 Q. Mr. Farr, you've also been charged with assault and
19 battery with intent to kill. Do you understand that
20 carries a maximum term of imprisonment of twenty years? Do
21 you understand that?

22 A. Yes, ma'am.

23 Q. Do you understand that that charge is also considered
24 to be a violent offense, that it's also considered to be a
25 strike, and that it is also a no-parole offense? Do you

M. FARR -EXAMINATION BY THE COURT

11

1 understand that?

2 A. Yes, ma'am.

3 Q. Mr. Farr, you're represented by Mr. Swerling and Mr.
4 Peavy. Is that correct?

5 A. Yes, ma'am.

6 Q. Have they had the opportunity to explain these charges
7 to you?

8 A. Yes, ma'am.

9 Q. Have you had discussions with them about the evidence
10 that the state has against you on these charges?

11 A. Yes, ma'am.

12 Q. Have you discussed with them any defenses that you may
13 have?

14 A. Yes, ma'am.

15 Q. Have you discussed with them your constitutional
16 rights as well?

17 A. Yes, ma'am.

18 Q. Did they also explain to you the consequences for a
19 guilty plea or conviction?

20 A. Yes, ma'am.

21 THE COURT: Mr. Swerling, you've heard your client
22 indicate that you've had those discussions with him. Is
23 that correct?

24 MR. SWERLING: That's correct, Your Honor.

25 THE COURT: Did you, in fact, explain to him his

1 constitutional rights?

2 MR. SWERLING: I did, Your Honor.

3 THE COURT: Did you explain to him the evidence that
4 the state has against him on this charge, these charges?

5 MR. SWERLING: I did. I did, Your Honor.

6 THE COURT: And did you explain to him any possible
7 defenses that he may have and discuss those in detail?

8 MR. SWERLING: I did, Your Honor.

9 THE COURT: Do you believe that he understood all of
10 the discussions you had with him?

11 MR. SWERLING: Yes.

12 BY THE COURT:

13 Q. Mr. Farr, has anyone promised you anything to come
14 here and plead guilty?

15 A. No, ma'am.

16 Q. Has anyone threatened you or coerced you in any way to
17 come here any plead guilty to these charges?

18 A. No, ma'am.

19 Q. Has there been any hope or promise of any type of
20 reward or any benefit to you to plead guilty to these
21 charges today?

22 A. No, ma'am.

23 Q. And, Mr. Farr, you understand that this case was
24 scheduled to go to trial this week. You understand that?

25 A. Yes, ma'am.

M. FARR -EXAMINATION BY THE COURT

13

1 Q. And that we were here today prepared to go forward
2 with hearing any pretrial motions that you may have, and
3 with going forward and selecting a jury. You understand
4 that?

5 A. Yes, ma'am.

6 Q. Having heard your constitutional rights, do you still
7 wish to go forward today by pleading guilty?

8 A. Yes, ma'am.

9 Q. Then, Mr. Farr, before I will accept your plea, I'll
10 hear briefly from the state about the facts. There may not
11 be all of the facts, but at least the facts that would
12 support your plea here to the charge of voluntary
13 manslaughter, and the assault and battery with intent to
14 kill. I ask that you listen carefully, and I will hear
15 from you and your counsel and your attorneys as to other
16 facts at a future point.

17 Yes, ma'am.

18 MS. WEISS: Thank you, Your Honor. May it please the
19 court? This incident occurred on or about February 24,
20 2008, approximately 8 p.m. The defendant, along with his
21 brother and a cousin, came to _____, which is in the
22 city of Columbia in Richland County. They drove a vehicle
23 there.

24 The defendant brought a 9 millimeter rifle, pointed it
25 out the window, fired on a crowd of people, striking

1 Maurice Boykin. His bullet went through his chest, came
2 out his back. He was -- EMS got to him in time. He was
3 taken to hospital, was able to survive after many
4 surgeries. He lost his spleen, as well as other serious
5 injuries.

6 The second victim, Charles McDaniel, was shot through
7 his arm into his back, and it came out his neck. He lived
8 for just a couple minutes. He was able to climb up the
9 stairs into an apartment, where he collapsed was pronounced
10 dead on the scene.

11 There was one gun on the scene, and that was the gun
12 belonging to Marcus Farr that fired those shots, and that
13 would be the victim for the ABWIK as well as the voluntary
14 manslaughter. And there was -- I think that's the basic
15 facts as far as the voluntary manslaughter and the ABWIK.

16 BY THE COURT:

17 Q. Mr. Farr, is there anything that you wish to add or
18 change or correct as it relates to these particular facts?

19 A. No, ma'am.

20 Q. Mr. Farr, you are, therefore, admitting that you fired
21 the rifle and shot Mr. Boykin and Mr. McDaniel, causing the
22 death of Mr. McDaniel and serious injuries to Mr. Boykin?

23 A. Yes, ma'am.

24 Q. Have you had enough time to discuss this matter with
25 your attorneys?

M. FARR -EXAMINATION BY THE COURT

15

1 A. Yes, ma'am.

2 Q. Have you cooperated with them so that they could
3 prepare a defense for you?

4 A. Yes, ma'am.

5 Q. Have you done -- have they done everything that you
6 have asked them to do in connection with these charges?

7 A. Yes, ma'am.

8 Q. Mr. Farr, are you pleading guilty freely and
9 voluntarily?

10 A. Yes, ma'am.

11 Q. And are you pleading guilty to the assault and battery
12 with intent to kill and the voluntary manslaughter because
13 you are, in fact, guilty?

14 A. Yes, ma'am.

15 THE COURT: Then, Mr. Farr, I will accept your plea.
16 I find that it's freely and voluntarily made. I find that
17 you understand that you are giving up your constitutional
18 rights. In particular, you're giving up your right to a
19 jury trial which we were prepared to go forward with this
20 week. And that again that your pleas are freely and
21 voluntarily made.

22 At this time, I will hear additional information from
23 the victims and additional information about Mr. Farr's
24 criminal record, if he has any.

25 MS. WEISS: Thank you, Your Honor. First of all, just

1 to go over more in depth the facts of the case. This
2 incident occurred at which is formerly known
3 as the Ashley Apartment. The victims all stayed in the
4 apartment that was right here.

5 The defendant came in, came in and parked in this
6 parking lot right here. The victims came out of the
7 apartment. These are steps right here. Came down the
8 steps into this grassy area.

9 The distance from these parking spaces to where the
10 victim was shot was less than a 100 feet. So, it was
11 fairly close range, 8:00 at night. It was in February, so
12 it was dark. It is illuminated from the steps, as well as
13 light posts out there, so it was possible to see who the
14 targets were and that there were actual people out there.
15 For your information, there is a playground right here and
16 other apartments just beyond this, and that becomes
17 important in just a minute.

18 Basically on February 4, 2008, earlier in the day the
19 defendant's brother, Sherman Farr, had come back from Iraq.
20 Had been in the military. Was going to be going to Fort
21 Hood the next day. From information we've been able to
22 gather, Marcus Farr, the defendant, and his cousin, Rashad
23 Bradshaw, were going to go with him to Texas the next day
24 to Fort Hood. Sherman and Rashad were in the area and
25 decided to come visit their stepsisters, who are also

1 friends that they had known for a while, and that was
2 Sierra and Lashawn Jacobs and Angela Graves. They came to
3 their apartment, and that's how they ended up here at 901
4 Colleton earlier in the day.

5 They came to the apartment and visited them. This
6 just shows you the general apartments. They came out there
7 and they were talking to them. Sherman offered to go out
8 to the PX. This was before the new laws when you could not
9 buy alcohol on Sundays, and offered to buy alcohol for
10 everybody in there on Sunday, and asked if anybody wanted
11 to go with him. Sierra Jacobs, a stepsister to Sherman and
12 Marcus, said that she would go with them out to the PX to
13 buy the alcohol. She got in the vehicle with Rashad and
14 Sherman.

15 And at some point as they were getting in the vehicle
16 -- the vehicle belonged to Sherman Farr and was being
17 driven by Rashad Bradshaw. Was covered in black bandannas,
18 black flags as they would be called by the Folk Nation.
19 There were bandannas: a bandanna hanging from the rear view
20 mirror, bandannas covering the head rests in the car, and
21 covering the seats. It had been decorated that way by
22 Rashad and Sherman. Those are known as Folk flags. That
23 is a sign of disrespect if you go into an area that is
24 known to be a Blood gang area, as is Gable Oaks or Ashley
25 Apartments.

1 Your Honor, standing before you is one Marcus Farr,
2 but I show you from the My Space page. We've talked a lot
3 in chambers about My Space. This would be the Marcus Farr
4 that was out there that day, a member of Folk Nation. In
5 this picture, he's got his grillz, his black and white, his
6 black bandanna, all symbols of being a member of the Folk
7 Nation.

8 If you were to see his live My Space page that I would
9 show you, would have been prepared to show a jury at trial,
10 but unfortunately I don't have a DVD player to be able to
11 bring it down here now. You would see pictures similar to
12 that on the page with seventy-four GDs streaming down.
13 Seventy-four GDs stands for growth and development of
14 Gangster Disciples. That is a set of the Folk Nation that
15 Marcus Farr is proud to be a part of. All throughout his
16 page, it says that he is a Folk and he is a Gangster.

17 So, that day his brother and his cousin came out with
18 the black flags on the car into Gable Oaks. The people who
19 were in the apartment that were friends with Angela Graves,
20 Sierra, and Lashawn Jacobs happened to be members of the
21 Blood gang. Charles McDaniel was a member of Blood.
22 Maurice Boykin was a member GKB, Gangster Killer Bloods,
23 also a Blood set, and Jamall Robinson was also a
24 self-proclaimed member of the Blood gang. However, that
25 was not what they were about that day. That was not what

1 was going on, but it is a fact of who was in that
2 apartment.

3 When they looked out the window to see the car that
4 Sierra was getting into, they saw the black flags and
5 somebody yelled out: Why are you flagging in our hood? Why
6 are you disrespecting our hood? It was just a matter of
7 words that were yelled out the window. And at that point,
8 according to Rashad Bradshaw, they said: We're not trying
9 to cause trouble. They got in the car and left.

10 After they left, they went to the PX where they were
11 trying to buy the alcohol. Once they got there, Sherman
12 realized he had left his military ID at home and were
13 unable to buy the alcohol. So, they were getting ready to
14 come back.

15 Sierra Jacobs was in the vehicle. Her sister,
16 Lashawn, was back at the house, and they were texting and
17 calling back and forth. Rashad Bradshaw started commenting
18 on the comments that were made out of the window as they
19 were leaving. And somehow that conversation escalated into
20 Rashad saying: I'll come back; I'll fight all of y'all.
21 I'll fight all the guys in that apartment, basically
22 sending word through Sierra, through Lashawn to the guys in
23 the apartment.

24 The guys at the apartment at the time were Jamall
25 Robinson and Maurice Boykin. They had, you know, gotten

1 word that these boys were coming back. That they were
2 coming back with Sierra, but it's unclear as to whether
3 anything in the apartment -- as to whether they knew what
4 exactly was being said from the guys in the car.

5 When they got -- on the way back, Sherman and Rashad
6 stop and pick up Marcus, and that's how Marcus Farr gets
7 involved. He -- they stop at his girlfriend's house,
8 Chanel's house, and tell him that they're going to go fight
9 these boys over at the apartment, and they want one more
10 person. He decides to get in a separate vehicle to come
11 two cars deep, per his own statement. He's coming two cars
12 deep. And according to the statement by Sherman and
13 Rashad, they were coming to fight. They were coming to
14 have a fight with the guys who had yelled out of the
15 apartment.

16 Marcus gets in his own vehicle and brings along, Your
17 Honor, his 9 millimeter rifle. This is not a 9 millimeter
18 handgun, something that would typically be concealed. But
19 as you can see, it's a rather large weapon. This is
20 something that Marcus Farr bragged about on his website;
21 this is on his My Space page. He calls it my choppa. This
22 is his heat; this is what he brings.

23 Your Honor, if you look at his pictures that are on
24 his web page -- these are his pictures. He has comments
25 about Folk:

1 Keep it real, Folk. Six poppin' over here.

2 More Folk slang. He has my choppa where he has the
3 gun laying on a white T-shirt. He has himself wearing
4 various Folks colors and talking about basically Folk gang.
5 That is he's proud of; that's what he brags about.

6 He's also a member of a rap group called COB, Choppa
7 Boys, where they talk about -- they have a song called
8 "Bang, Bang" where they talk about going out and shooting
9 members of other gangs, and this is what he brought to do
10 that.

11 He came in his separate car. He drove separately, and
12 when they pulled up, he backs in, and into the parking
13 space is basically right here -- and I can hand these up if
14 you'd like to see them -- where the vehicles are over here.

15 The victims come out. Sierra calls up, says they're
16 back. Her boyfriend at the time was Maurice Boykin. He
17 gets word from Lashawn: Sierra wants you downstairs. So,
18 he goes downstairs and walks out to the middle of the
19 grass, as I said less than a 100 feet from where the car
20 was. Sierra walks right past him upstairs. He's standing
21 out there, Jamall possibly out there, as well as Charles
22 McDaniel, trying to figure out -- there are a couple words
23 exchanged.

24 But before anything can happen, Marcus Farr has his
25 gun out of his car window. He never gets out of his

1 vehicle. Has his gun pointed out of his car, vehicle
2 pointed in the direction -- you can see where this grass is
3 -- and just starts firing. He fires one shot, and at that
4 point people start running. And I'm going to hand up these
5 two pictures, if you'd like.

6 People start running, turn and run. At that point, he
7 fires off at least three or four more shots, firing.
8 Complete disregard for anybody's safety, anybody in that
9 entire apartment complex.

10 He fires and as I stated, Charles McDaniel is turned
11 away from the vehicle. And from the ballistics, Dr.
12 Nichols would say he was bent over, his arm back, and the
13 bullet went in and out here, in here, and comes out right
14 here in his neck. So, he had to have been bent over to get
15 that angle, that trajectory, running away from the scene.

16 He ran up the stairs at that apartment, those stairs
17 that you're looking at. Made it just inside the apartment
18 where he fell down, and within minutes he was dead. Your
19 Honor, I hand up a picture. This is where he fell right
20 inside the apartment.

21 The other picture that you have that shows the black
22 shirt, that is where Maurice Boykin ended up. He was
23 trying to calm down the scene. And before he could say
24 anything, that shot went straight through his chest. It's
25 almost a straight through from here to here.

1 His spleen had to be removed; he was in the hospital
2 for an extended period of time. He has undergone major
3 surgeries. And according to EMT that came out there, his
4 blood pressure was so low that within minutes -- it's a
5 matter of minutes as to how long it would have been before
6 he was deceased as well. We would have been here on a
7 second murder, manslaughter charge, Your Honor.

8 EMT said it was -- his blood pressure dropping
9 quickly. It was very critical. The 9-1-1, when they
10 arrived at the hospital -- one of the most serious type
11 wounds that they have. They were able to scoop him up and
12 take him away from the scene immediately.

13 Your Honor, there was another bullet, and I'm going to
14 let Mr. Carson talk about this because he talked to this
15 vehicle -- to this victim. I'm going to let him talk about
16 the other bullet that struck.

17 MR. CARSON: Thank you, Your Honor. May it please the
18 court? This is a round that so happened to pass into
19 another apartment. This round went into apartment to
20 where you had victims, a Latisha Swinton who was prepared
21 to come before this court and testify that such rounds did
22 enter her apartment.

23 The apartment, if I could put it in perspective for
24 Your Honor, would have been -- this is where the two cars
25 pulled up with the defendant. The defendant fired rounds

1 towards this area, and rounds went to an apartment that's
2 located there at . Ms. Swinton was prepared to come
3 before you today, and if I may show you where such holes?

4 (A PAUSE.)

5 MR. CARSON: The round entered apartment , Your
6 Honor, and entered the wall. What Latisha Swinton tells us
7 through our investigation, that had her mother been sitting
8 in such bedroom, sitting in that bed, that round
9 potentially would have gone through her head or through her
10 upper torso. Again, we would have been here on another
11 potential murder, another potential voluntary manslaughter
12 charge, Your Honor. And that concludes as far as where
13 that projectile went that came from defendant Marcus Farr's
14 weapon, Your Honor.

15 MS. WEISS: Your Honor, once he fired off those next
16 three or four shots, he then took off, sped off in his
17 vehicle, his brother and Rashad in the separate vehicle.
18 At that point, Marcus then went out to Gadsden, where he
19 got rid of his rifle. He ditched it, and these are just
20 pictures in the woods behind a gate where he dumped the
21 rifle trying to dispose of the evidence, Your Honor. And
22 then he went off, as he says, so he could go try to make
23 some music and calm down and figure out what had just
24 happened.

25 Tried to tell law enforcement that he didn't know he

1 had hit anybody. He fired numerous times. People were
2 lying -- there was one victim lying dead right out there at
3 the bottom of those steps. I mean, lying, not dead. Lying
4 seriously wounded at the bottom of the steps. Another
5 victim had barely made it upstairs. People were screaming
6 but, Your Honor, it was in disregard. He drove off; he
7 didn't care. It's not that he didn't know he had shot
8 anybody. He didn't care if he had shot anybody.

9 He drove off, got rid of the gun, and went to go and
10 try to make music. Went out to Camden to try and make
11 music and calm down and try to deal with it, and that was
12 what he did.

13 If you look at his My Space page, if you were able to
14 see the last page, it says: What mood are you today? He
15 had logged in that same day, and his mood for that date
16 was: Pissed off. He went out there pissed off with his
17 gun.

18 There is no evidence that anybody out there had a
19 weapon, any of those victims had a weapon. Charles
20 McDaniel had come over to visit his cousins just before
21 this happened. Just before 8, he'd come in the door. He
22 had come in to visit, and they said the boys -- Sierra's
23 coming back. They said they want to fight. He said: I'm
24 not going to let anything happen. He walked down the
25 steps, not a part of this argument from the beginning at

1 all. Walks down the steps and ends up dead on the scene.
2 He was not there probably more than fifteen minutes total
3 before he ended up dead. He was not a part of this
4 argument at all.

5 There is no evidence that anyone had a gun. Law
6 enforcement got there almost instantaneously. They were on
7 the scene; EMS was on the scene. There was no evidence
8 that there was a weapon. Maurice Boykin was bent over,
9 barely could breathe. Was fighting for his life. There's
10 no evidence that he was able to run and hide anything. He
11 was laying there.

12 No shots were fired back. There is no evidence. Not
13 a person testifies that any shots were fired back. No GSR
14 on that vic, on the deceased victim, Charles McDaniel's
15 hands. No evidence of any weapons being fired back. No
16 weapons, no information of any weapons being there.

17 And, in fact, Mertis Bradshaw says he saw somebody
18 lift up a chair, almost as if they saw a gun come out when
19 they weren't expecting it. Picked up a tin chair, and you
20 can see the chair in one of those pictures is actually
21 laying over on the grass. They had picked it up as a
22 shield, not knowing what else to do when the gun got
23 pointed at them.

24 There is also, we also have witnesses, neighbors, one
25 neighbor who is downstairs who heard somebody say: Just put

1 down the gun and fight. You know, they weren't armed.
2 They were are out there. You know, they weren't shying
3 away from a fight, but they weren't armed. This wasn't a
4 gunfight. There was no reason for a gun to be drawn, much
5 less shot.

6 And this weapon is not a weapon I would define as a
7 weapon you would use in self-defense. This is a weapon
8 that has to be -- it's very, it's very heavy. It would
9 have to be drawn. You're not going to get the drop on
10 somebody with this gun. This is a gun that has to be drawn
11 in advance.

12 As far as a prior record, Marcus Farr does not have a
13 prior record. He's twenty-one years old, and this was the
14 only charge on his record.

15 Your Honor, the victim's family is seated out in the
16 gallery, as you see on the left. There are numerous
17 members of his family, as well as some of the witnesses who
18 are also his family. And we do have some victim impact.

19 The first thing I'd like to do, the victim, Charles
20 McDaniel's father is Eugene Mathis. He is seated in the
21 tan suit on the front with the gold tie. He has written a
22 letter to Your Honor, and Mr. Carson is going to read that
23 letter and then hand it up to Your Honor.

24 MR. CARSON: May it please the court, if the court
25 finds it appropriate to read such letter now?

1 THE COURT: Yes, sir.

2 MR. CARSON: This is a letter written by Charles
3 McDaniel's father, Eugene Mathis, and he wrote this on
4 March the 26th of 2008, and he asked that the state relay
5 this message to you for he didn't feel that he could relay
6 such emotion to this court, Your Honor.

7 Dear Judge, on the 24th of February, 2008,
8 my son, Charles McDaniel, was murdered in
9 cold blood. My son was only nineteen years
10 of age with his whole life ahead of him.
11 Since the death of my son, I have been
12 living in a nightmare, and I just can't
13 believe that he is gone. There's not a day
14 that goes by that I don't think about him.
15 I often find myself checking my cell phone
16 to see if he's called needing a ride home,
17 or if he's in the car beside me waving, and
18 I just don't see him. The day before he was
19 murdered, I was on my way home from work,
20 and he was in the car right beside me, and I
21 didn't see him. He couldn't blow the horn
22 because it wasn't working, and was the last
23 time my child saw me. I keep replaying back
24 in my mind when he took his last breath.
25 Was he calling for me? Was he scared? Oh,

1 God, help me understand why. I love my son
2 with all of my heart and soul, and I want
3 him back. The day I buried my son, I buried
4 a part of me, and my life hadn't been the
5 same since. I keep asking myself who gave
6 those murderers the right to take my son's
7 life. Every day they wake, they wake up and
8 eat, talk, laugh, smile, think, breathe, and
9 my son can't do any of those things. And
10 I'm angry. People tell me that they know
11 what I'm going through, but they don't.
12 They can't begin to imagine what I'm going
13 through. I never thought I would have to
14 bury one of my children. I always assumed
15 that they would be burying me. Isn't that
16 the way it's supposed to be? I'm a
17 God-fearing man, and I know that one day it
18 will get a little easier to deal with, but
19 right now I'm drowning. These young men
20 have caused a stain of financial
21 difficulties and a life of heartache and
22 sorrow. I want to thank you, Judge, for
23 letting me express my feelings. And I hope
24 that when it's time to sentence them, you
25 will remember the pain and the suffering

1 they caused me and my family. Sincerely.

2 May I approach, Your Honor?

3 THE COURT: Thank you.

4 MS. WEISS: The next person who would like to speak on
5 behalf of the victim is his mother, Mary McDaniel.

6 MS. M. McDANIEL: I'm Charlie McDaniel's mother.

7 THE COURT: I'm sorry, Ms. McDaniel, if you can just
8 speak up.

9 MS. M. McDANIEL: I'm Charlie McDaniel's mother, and
10 every day, I think about my son all the time. I mean, I
11 wake up in the night, in the morning. I mean, it hurts
12 every day that I deal with this, that I know that I will no
13 longer see my son, you know? And we all love and miss my
14 son because I'll never see him no more, and I cannot talk
15 with him or be with him or anything.

16 And he was going back to school. Going to get his GED
17 and everything. I used to take him some mornings, or
18 either I'd let my daughter take him. Also I'd give him
19 money to catch the bus if I couldn't take him. And before
20 he got killed, he only had, like, probably a week more to
21 get his GED because he was going back to finish because he
22 told me wanted to go in the Army, and how he wanted to take
23 care of me.

24 That's all I've got to say, and I really miss him.
25 Thank you.

1 MS. WEISS: And next is the victim's aunt, Cecile
2 McDaniel.

3 MS. C. McDANIEL: Your Honor, I'm Charles's sister.

4 MS. WEISS: Sorry. Charles's sister.

5 MS. C McDANIEL: And he called me, like, before all
6 this. He was with us finishing [INAUDIBLE] wash our cars.
7 Did everything. And then he called me, and he asked where
8 I was at. Told him I was at my aunt house. You know, like
9 fifteen, twenty minutes, somebody called me back, told me
10 he got shot and all that kind of stuff.

11 So, I mean, he asked me come meet him, call him when I
12 got ready, and said come meet him. Can you go meet me at
13 my house. Last thing he ever said to me. That's what he
14 told me.

15 So, I'm trying to figure out why would he take my
16 brother's life. My brother, he was young, and I got to go
17 through this because I've got three kids. My kids miss
18 they uncle, and he was waiting for my baby to turn two on
19 his birthday. He was waiting for his birthday on March,
20 and he couldn't even see -- he was hurt.

21 He was going to school. He was doing everything, and
22 I just don't understand why somebody would take his life.
23 I mean, they caused us pain. I mean, every day I ride by.
24 I see kids out there, think that's my brother. Thinking he
25 going to come right out there. He's not going to come out

1 there because he's gone. And I ride through Gable Oaks all
2 the time thinking I'm going to see him. I'm not going to
3 see him because they took my brother.

4 And, I mean, they don't have no sympathy, no apology,
5 no nothing. I mean, they just took his life right there.
6 They don't know what -- the family go through a whole lot,
7 and I go visit his grave. I think about my brother every
8 day. Not a day go by I don't think about him, me and my
9 kids. My kids miss him. That's all I got to say.

10 MS. WEISS: And another sister, Eugenia McDaniel.

11 MS. E. McDANIEL: I'm the victim's sister, Eugenia
12 McDaniel. I think about him every day, knowing that I'm
13 not going to be able to see him ---

14 MS. WEISS: Hold on one second. I'm sorry. She can't
15 hear.

16 (A PAUSE.)

17 MS. E. McDANIEL: I think about my brother every day,
18 knowing that I'm not going to be able to see him no more,
19 knowing that he was waiting for me to graduate and see my
20 eighteenth birthday and everything. Going to celebrate
21 with the family but now, I mean, he's gone. Can't do none
22 of that. That's what he was waiting on. And I think about
23 him every day, visit his grave, knowing I'm not going to
24 see his face. It's hard.

25 MS. WEISS: His brother, Garnell McDaniel. Speak up

1 loud.

2 MR. G. McDANIEL: I'm Garnell McDaniel, his brother.
3 We was, we was cool, like, at times, stuff like that. I
4 mean, we all fight all each other day by day sometimes.
5 But I miss him a whole lot and stuff like that. I mean, we
6 fought together, go together, did everything together.

7 It's like, like, if he's not -- he was my role model,
8 and I'm going to finish the dream. He wanted to get my
9 momma a house, so I'm going to do that now. I'm going to
10 take, take that on and do that now. So, that's all I got
11 to say.

12 MS. WEISS: Now finally Maurice Boykin.

13 MR. BOYKIN: Be honest with you, I'm back here
14 looking at everything going on, and looking, I'm just
15 looking at the gun I got shot with. It's like me oh my.
16 It looks like a deer or something. You go hunting with
17 that gun. You don't just ride by and shoot, you know?

18 And then to have -- I just want you to think about,
19 just think about what we went through. The thing about
20 being -- if you're twenty-one and young, you ain't thinking
21 about dying. You really supposed to be living life and
22 doing things, and all that is gone, you know? Like, like,
23 I hear what she's saying. Ain't like Charles was laying
24 down to die. He was trying to fight to live, you know?
25 Old people don't fight to live on a daily basis.

1 And he ain't got no right to say whether I'm going to
2 live or die, or whether Charles is going to live or die.
3 He ain't take no consideration about nobody outside.

4 And like she say, it was, it was like cattle. People
5 was standing outside. There were kids in that house; there
6 were kids outside. He treated us like cattle. Just, by
7 the way, I'm going to kill everybody. You ain't got no
8 right to do that.

9 You know, look at the gun we got shot with. Most
10 people die with that. You go hunt animals with that. Man
11 ain't had no right. Ain't nothing I could say to justify,
12 not nothing. Look what he did. Look at how many people he
13 affected. But, you know, I mean, nothing I can say.

14 He lives and breathing. I had to fight to get my life
15 back. That's a hard thing to do. That was a hard thing to
16 wake up, like, man, what happened? I woke up a week later.
17 When I woke up, Charles was dead in a split second. Man
18 ain't had no right to do that.

19 No matter what y'all do now, I just want you to think,
20 you know, in consideration of this trial, look at the
21 people he affect. Charles got little brothers and sisters.
22 Charles ain't had no time to have kids yet. He was trying
23 to start his life. He ended it. He almost ended mine.

24 I had -- I got to thank every day I have four minutes
25 'til when they say I would meet my maker. I wasn't ready

1 to die. To be honest with you, I don't like -- I don't
2 want to think about this. I don't want to think about none
3 of this because I'm still thinking this stuff really ain't
4 happen. But Charles is dead. I got, I got organs, you
5 know. I was born with them. You can't give them back.

6 I just want you to think, I just want you to look at
7 these people when you sentence him. I just want you to
8 look at these people regardless of what other stuff going
9 on. Look at these people, how many lives he affected. And
10 the lives he -- the life he done took, that wasn't even
11 his. Man ain't had no right to do that.

12 Just look at the gun he shot us with. That's like you
13 go hunting with that. I just want you to think about it
14 when you sentence him, what he really did. Man had no
15 right. He might of kill a old woman laying in her bed, but
16 he ain't thinking about none of that. But he say all
17 right. I'm going to kill people and ride off.

18 And then I'm, I'm listening to what these people are
19 saying. He went and killed Charles, tried to kill me and
20 made a murder song. Because you're pissed off, you're
21 going to make a song about how you killed somebody. That
22 ain't no consideration. The man ain't got no remorse than
23 that. He killed somebody. Went down, drove down, thought
24 about it, and ditch his gun. After he ditch his gun, he
25 say I'm'll go make some music. This ain't no movie. This

1 reality. He just killed somebody. He tried to kill me,
2 but he saying because he's mad, he's, like, well I'm going
3 to write a song about it.

4 I just want you to think about what he done did. I
5 want you to look at these people when you sentence him.
6 He, he's been sitting here the whole time. I ain't never
7 heard this man apologize. It's just like it ain't -- look
8 at him. It's like you're talking to a statute. The man
9 has got no remorse. These people done showed you what he
10 done did. He done killed somebody. This man ain't tell
11 his mom sorry. He ain't tell me sorry. His family ain't
12 tell nobody sorry. These people don't care about that.
13 That man ain't got no right to do that.

14 So, I'm mad and angry about the situation. I want him
15 to get everything. I feel like I deserve it because he
16 felt like he had a right to take everything away from me
17 and everything away from them. So, why don't I feel I got
18 a right to take everything away from him? I just want you
19 to think about that when you, when you sentence him. I'm
20 not going to say nothing else, and that's it, but just
21 think about that when you sentence him.

22 MS. WEISS: Thank you, Your Honor, and that's from the
23 victims. And on behalf of the state, kind of echo some of
24 what Mr. Boykin just said.

25 You know, he went out there. He didn't even know

1 these victims. He didn't know them. He knew the people
2 they hung out with. He didn't know the victims at all.
3 There was no personal reason. There was no reason at all
4 for him to go out with a gun. There was no reason for him
5 to point the gun, and there was no reason for him to fire
6 and kill Charles McDaniel and almost kill Maurice Boykin.

7 We would ask that you consider giving him every day of
8 the thirty years that he is facing in these charges and the
9 voluntary manslaughter. In talking with the family, we
10 just ask that you consider the max on these cases,
11 considering especially the bullet that they were talking
12 about that went through the spare room, the bullet that
13 killed Charles McDaniel, the bullet that almost killed
14 Maurice Boykin. And the fact that he was living the life
15 he wanted to leave -- live.

16 He was a gangster. He was proud of his choppa, his
17 gun. He was proud of the Folk life, proud of the gangster
18 life, and he was proud of the idea of going out and
19 shooting people in another gang. All he knew about them is
20 that they were affiliated with the Blood gang. And that
21 was enough to make him go out there with his rifle and
22 shoot and kill one man, almost kill another, and spray
23 bullets in a family apartment complex.

24 (COUNSELORS FOR THE STATE CONFER.)

25 MS. WEISS: And, Your Honor, Mr. Carson makes a good

1 point, one thing I did leave out. Lashawn, Lashawn Jacobs
2 was his stepsister. When he got back, when they got back
3 with Sierra to the apartment, Sierra ran inside. I forgot
4 to mention. Lashawn came out of the apartment. She first
5 went to Rashad Bradshaw's car and pleaded with them just to
6 leave. Not to do anything. Rashad had his windows up.
7 Didn't respond to her at all. She ran around to Marcus's
8 car. She had a prior relationship with Marcus; she knew
9 Marcus. She thought maybe he would listen.

10 And she pleaded with Marcus, and he even says in his
11 own, in his own statement he says:

12 Lashawn came out and said they're just
13 talking. Don't stress it. Leave. Go.

14 She begged with them, pleaded with them. When he
15 pulled out the gun, she pleaded with him not to shoot the
16 gun. She pushed away the gun. He told her to move, and
17 that's when he started firing, Your Honor, and I'm sorry I
18 neglected to talk about that part.

19 He had the opportunity to leave, to drive away, to not
20 come in first place, to not bring the gun, or to leave. He
21 didn't choose use any of those options. He chose the
22 worst, the fatal option: to start firing and continue
23 firing until the place was clear. And so, Your Honor, we
24 ask that you consider the full thirty years in this case.
25 Thank you.

1 THE COURT: Mr. Swerling.

2 MR. SWERLING: Judge, I don't intend to try and
3 respond to every single thing they said, but I think we can
4 respond and give you a view of what happened out there from
5 our perspective.

6 First of all, I will take strenuous objection to what
7 the solicitor said. They're trying to characterize this as
8 some gang fight between the Bloods and the Folk Nation.
9 Frankly, there's no evidence whatsoever that I've seen in
10 any discovery or any statements that he knew when they went
11 over there to the apartments that these people over at the
12 apartments were members of the Bloods. That's just not
13 there. There's no evidence.

14 They've been trying to make this a gang case but,
15 frankly, it had nothing to do with the gangs. And if it
16 had anything to do with the gangs, it involved the people
17 who Ms. Weiss said yelled out the window what are you guys
18 doing here disrespecting our neighborhood. That was the
19 people in the apartment, not Mr. Bradshaw or Sherman Farr
20 and certainly not him because he's one step removed.

21 They're trying to lump this all together as a gang.
22 This is not his car that had the bandannas on it. And
23 there's no evidence that anybody said anything to him, or
24 he said anybody -- anything to anybody else that he knew
25 that these folks were Bloods. So, I think we really need

1 to take that -- we need to at least put that part of it out
2 of this situation because if there was something going on
3 between the Bloods and the Folk Nation -- which all that
4 stuff is very strange to me anyway -- but it was between
5 the people in the apartment who came down the stairs
6 looking for a fight, and Mr. Bradshaw and Sherman Farr who
7 were in the vehicle and left, and then came back after they
8 got him.

9 But I would like to ask the court not to hold him
10 responsible for what those guys in the apartment said, if
11 -- and we take no exception to the fact that they said it.
12 So, those were the ones that initiated the first exchange
13 of words about this whole situation, and Sherman Farr and
14 Bradshaw.

15 There's no question that he went over there, and we'll
16 explain in a minute why he did go over there. But I just
17 want to make sure that we put it in context that this is
18 not a gang-related fight, not a gang-related shooting at
19 all. There's just no evidence of that. And I challenge
20 the state to come up with one piece of evidence in the
21 discovery that I'm aware of that he knew that these guys
22 were Bloods. So, I just tell you that.

23 I also want to speak about this My Space thing. You
24 know, there's 200 million people on My Space and Facebook.
25 You know, it's all wonderful, but what you have here is you

1 have a situation where people are on My Space. They're on
2 the other one. I can't, I can't -- Facebook, and obviously
3 they're boasting. They're painting pictures of themselves
4 that they may not be because it's easy to do that on the
5 Internet.

6 He was doing rap music, and I don't understand rap
7 music. I don't agree with rap music. It's violent.
8 There's always references to violence in rap music, a lot
9 of it anyway. But this is all part of the -- what you do
10 on these web sites, and he was portraying himself as a
11 tough individual on the My Space page. That's why you have
12 the things that are there on My Space because it's -- his
13 background as a rapster is to put those things on there.

14 I am not aware of any song where -- and of course the
15 state may have this evidence, a song called "Bang, Bang"
16 where he did or said anything about killing anybody else.
17 Now, there may be. Maybe there's something specific they
18 had, but we're not aware. He is a rapster; there's no
19 question he was doing rap. But not aware of any song that
20 he ever did where he said he wanted to murder or shoot
21 anybody. It's just, whatever it is is typical rap music.
22 Whether you agree with it or not, that's what's out there.
23 But all of these things that are on this page were him and
24 friends and what he was trying to portray himself as.

25 The fact of the matter is as far as his -- and we're

1 not trying to hide from it as far as whether or not he was
2 ever affiliated with the Folk Nation. Again, I say that
3 has nothing to do with this case whatsoever. But this
4 picture, I don't want you to have the impression this was
5 taken that day. I think Ms. Weiss inadvertently said this
6 is the way he looked that day. That's not correct. This
7 was taken some time well before these events.

8 The fact of the matter is he was at one time
9 affiliated with them. But since the time he was affiliated
10 with the Folks, he went ahead and got a job out at Fort
11 Jackson. He has had two children, and he was
12 disassociating himself from that group.

13 Your Honor remembers the facts are undisputed that he
14 was not the one who went over to the apartments in the car
15 with Sherman Farr and Rashad with the bandannas. He was
16 not even bothering anybody that day when they came to him.

17 So, Mr. Peavy is going to talk a little bit about some
18 of the evidence. What I'd like you to understand is this.
19 He's charged with murder, and he's charged with -- and he's
20 now pled guilty to manslaughter, which -- and assault and
21 battery with intent to kill. There was a defense that we
22 were looking at, we'd developed. We had witnesses, as Your
23 Honor knows. We had motions prepared today; Your Honor has
24 the *voir dire* and some of the research we had done. We
25 were certainly prepared to go to trial, and he has always

1 maintained that there were issues of self-defense from the
2 time that this -- the time he was arrested.

3 We think and he thinks that this is an appropriate
4 disposition of the case. That the law was not on his side
5 with respect to the issues of self-defense. And when we
6 explained that to him, and the state was willing to go
7 ahead and let him plead to the lesser charge of
8 manslaughter, we felt it fit more appropriately to the
9 facts of the case, although at trial we would have been
10 raising these issues which we think would now support the
11 manslaughter plea and the assault and battery with intent
12 to kill plea.

13 Mr. Peavy wants to give you a little bit of an idea of
14 what some other things were that we would have gone into to
15 support that.

16 THE COURT: Yes, sir.

17 MR. PEAVY: If it please the court, Your Honor? As
18 you've heard, the defendant interjected himself into what
19 was essentially already a bad situation. And in support of
20 this voluntary manslaughter plea and conviction, I wanted
21 to go over a couple of pieces of the evidence that, when we
22 reviewed it and during our pretrial investigation, we think
23 support this rather than the murder charge.

24 Your Honor, from the very beginning when the defendant
25 was interviewed, he cooperated, provided a statement to law

1 enforcement wherein he has maintained since day one that he
2 saw someone reach into I guess the waistband of their
3 pants, and he thought they were pulling out a gun.

4 Your Honor, if you take that initial statement that he
5 gave, I believe it was February 25th of 2008, and then if
6 we look at the statement of Rashad Bradshaw -- this is an
7 individual that the state had advised us they were actually
8 going to call as a witness in this trial. Although it's
9 not addressed in his original statement to law enforcement,
10 Mr. Bradshaw recently indicated to our investigator that
11 when he and Sherman first went to the apartment, these
12 individuals, as the state has already indicated, leaned out
13 the window and were yelling some type of threats, whatever.
14 Arguments, threats, whatever you want to call it.

15 However, he also indicated to us that at this point,
16 he, someone, whether -- we don't know exactly who at this
17 point, but somebody brandished a silver in color chrome-
18 plated pistol. This was, you know, something new in our
19 investigation. But it was also surprising to us that -- we
20 learned this was not the first time he had disclosed this
21 piece of information. He had been interviewed by an
22 attorney named Christian Cross, who was with Nexsen Pruet.
23 I think she's an associate attorney there. Nexsen Pruet is
24 representing the apartment complex property management
25 group in connection with some pending civil litigation or

1 proposed civil litigation. And he had disclosed this very
2 fact to her as well.

3 Your Honor, next in reviewing the notes from Officer
4 Menendez when they were interviewing the victim, Maurice
5 Boykin, he indicated that he had seen a gentleman by the
6 name of Jamall Robinson. He had been engaged in some type
7 of verbal, I don't want call it an altercation, but verbal
8 argument outside the apartment immediately prior to this
9 shooting. Additionally, later when he was interviewed, in
10 that statement he indicated that while Mr. Boykin
11 maintained that he did not have a gun on him at the time,
12 Jamall may, in fact, have had a gun at that time. It was
13 another individual there.

14 And then additionally, Your Honor, in some recent
15 discovery that we received from the state, Mr. Boykin, he
16 was -- provided a recorded statement to these Nexsen Pruet
17 attorneys. And although we're not exactly sure what -- the
18 context in which he says this. Initially when asked
19 whether or not he had a gun, initially Mr. Boykin denies,
20 you know, he denies having a gun. And then in the next
21 sentence of that statement, this quote:

22 Hopefully, when they was putting me in the
23 ambulance, it fell out or something like
24 that.

25 End quote. We don't know what exactly that means, but

1 that was something we were hoping to explore during
2 cross-examination that we thought would ultimately help us
3 in this manslaughter conviction.

4 And then also finally, Your Honor, with regard to
5 Sherman Farr, Mr. Farr in his initial statement to law
6 enforcement indicated that he did see one of the victims
7 reaching in to pull out what he thought was a gun.

8 Your Honor, all of this is in no way to minimize
9 guilt, but it's just mitigation of what we're doing here
10 and in support of this manslaughter conviction as opposed
11 to murder.

12 MR. SWERLING: Judge, we just want to go back a
13 little bit, give you a little bit of background information
14 on Mr. Farr.

15 He and his family have been lifelong residents of the
16 Midlands area. They've lived in Richland, Lexington,
17 Sumter County over the period of their lives. He was
18 twenty years at the time; now he's twenty-one years of age,
19 going on twenty-two. His brother was twenty-two at the
20 time and is now twenty-four.

21 And as you've heard from Ms. Weiss, his brother had
22 just come back from Iraq and was going to Texas where he
23 had gotten his orders. And, as a matter of fact, Marcus
24 was going with him to move down there because they are
25 extremely close. Sherman wanted him to be with him, Marcus

1 wanted to be with Sherman, and so there was a plan to move
2 down to Texas. His, the woman he has had two children
3 with, Ms. Myers over here, was going to move down there
4 with them once he made enough money to bring them down.

5 He went Airport High School. He finished the eleventh
6 grade, and he dropped out of school after Ms. Myers got
7 pregnant with their first boy, who is four years of age
8 now. Since that time, they've had another child who is now
9 two years of age, and she'll be able to speak to you a
10 little bit about him.

11 He was working at Fort Jackson right before this at
12 Johnson Food Services where his mother's worked for many
13 years, and she actually got him a job there. And he worked
14 there for two full years, and he was helping support his
15 family and doing what he could for the children.

16 When he was in school, he was an athlete. He did a
17 lot of the athletics there, and was very active in the
18 sports programs.

19 As I've pointed out, he has two children. His mother
20 is right over here, and she'll speak with you as well, Your
21 Honor. It's Valerie Jacobs.

22 As I told you, just to repeat, he left the gang
23 membership and had nothing to do with this gang on the day
24 that this thing happened. As Ms. Weiss pointed out, he has
25 no prior record, which we ask Your Honor to take into

1 consideration.

2 I'm going to ask at this time, Your Honor, if Ms.
3 Myers and his mother, Ms. Jacobs, can address you, and then
4 I'd like to finish up after that.

5 Go ahead and just stand up there, and go ahead and
6 identify yourself for the court reporter.

7 MS. MYERS: My name is Chanel Myers.

8 THE COURT: Yes, ma'am.

9 MS. MYERS: I've been with Marcus for six years. We
10 have two kids together; one's four and one's two years old.
11 When I first had my first child, Marcus completely changed
12 his life. You know what I'm saying? He stopped going to
13 school to be with me.

14 I then, in between having my first child and my
15 second, was diagnosed with an illness, and he then
16 supported me then. Took care of the kids while I was in
17 the hospital for approximately a week or two. After that,
18 I had my second child, me and Marcus. We planned on
19 getting our life together. He also asked me to marry him,
20 whatever, whatever like that.

21 But as far as goes as a person, I -- as a violent
22 person, no, I don't see him as being a violent person. My
23 kids are without a father now. You know what I'm saying?

24 I feel sorry to the family. I apologize to the family
25 on your loss, and also to the court I apologize. You know

1 what I'm saying?

2 So, as far as my baby father goes and as far as him
3 being a good person, he is a good person. I don't know
4 what happened that day. But I know that my son got
5 christened earlier that day, and I was cooking dinner that
6 day and all. But as far as him being violent, no, he's not
7 a violent person.

8 MR. SWERLING: Ms. Jacobs.

9 MS. JACOBS: My name is -- excuse me -- my name is
10 Valerie Jacobs. I'm Marcus Farr's mother. The first thing
11 I would like to say is that I love my son very much.

12 I also want to express to the McDaniel family that my
13 son is sorry for what happened. My son actually wrote a
14 letter to Ms. McDaniel, but this letter was never given to
15 her.

16 He is, I know, deep down he is sorry about everything
17 that happened to you, Maurice. He's saying he is sorry
18 because he has apologized. He has apologized to me for
19 sending me through this pain, too, because not only is he
20 hurting, I hurt, too. I feel for all of you, every last
21 one of you.

22 I also want to address the court to let you know that
23 my son, only a mother knows her son's heart. My son has a
24 good heart. He has never been a violent person. He's
25 always loved his family. He would go out of his way for

1 his family. And even Lashawn and Sierra is part of his
2 family. Well, most all of them are part of his family. He
3 would go out of the way for all of them, and they could
4 tell you that.

5 I also want to ask that when you sentence him, I know
6 he's pled guilty to this because he is sorry, and I would
7 like for you to take that into consideration when you give
8 him his sentence. And I also would like to ask that you be
9 lenient on him, and please have mercy on him. Thank you.

10 MR. SWERLING: Judge, there's a few more facts.

11 THE COURT: Mr. Swerling.

12 MR. SWERLING: Oh, come on. Come on down. I'm
13 sorry. This is his stepdad, Your Honor, who actually
14 raised him.

15 MR. TAYLOR: Yeah.

16 MR. SWERLING: Because his father, really nobody
17 really knows where he is.

18 MR. TAYLOR: I'm Marcus ---

19 THE COURT: Tell us your name first.

20 MR. TAYLOR: My name is Michael Taylor, and I met
21 Marcus when he was about three or four years, and I raised
22 him. And it was never any violence in the house, in my
23 house. And Marcus went to school every day, and he did
24 learn a lot of stuff, you know, a lot of school work. He
25 never was violent at home. He did play sports real well in

1 school.

2 You know, around about the twelfth year when he was in
3 school, my wife had a problem and we broke up at that time.
4 And -- excuse me -- the whole time Marcus lived with me, he
5 never was violent. He never was violent, him, his brother,
6 or his sister. You know, they'd get into little things
7 with people, you know. I didn't know anything about no
8 gangs and I still, still don't know, you know, because I
9 wasn't here at the time.

10 But I did come home when he was -- had his apartment,
11 and I stayed here and there was no violence. I know he had
12 a weapon. And I told him: Marcus, this is for your home
13 protection. This is not for the street, and I told him
14 that.

15 And I'm sorry for the family that this happened. I
16 didn't know nothing about it. I wasn't here, and I'm sorry
17 it had to happen, but Marcus was a good kid all his life.
18 Thank you, Your Honor.

19 MR. SWERLING: Thank you.

20 Judge, some other facts. He turned himself in; he and
21 his brother, Sherman, turned themselves in on February 5,
22 2008, the day after this.

23 Marcus was interviewed by Investigator Thomas and
24 Investigator Reese. While another two investigators were
25 interviewing Sherman, it was apparent that Sherman Farr was

1 trying to cover for his brother. There was some things
2 that he was telling the police which were not factually
3 consistent with what other people told the police. So, the
4 brothers asked for a period of time where they could talk
5 to each other.

6 And just so you'll see the kind of person that he is,
7 these are the notes from that interview. He admitted he
8 was the shooter in the incident. He was the only one with
9 a gun. He was not trying to pass off responsibility to
10 anybody else.

11 And, by the way, that gun is, it was in the -- it was
12 lawfully possessed. It was in the vehicle, and it's not
13 registered on NCIC. It was bought in Columbia, and that is
14 a gun you can buy in a gun store. Whether we like it not,
15 that's what you can buy.

16 Farr stated, he said he went there with his brother
17 and cousin to confront the people making threats, but there
18 was never any intent when he went over there to go ahead
19 and do any shooting. What he understood was that these
20 guys, when they yelled out the window, and Rashad and
21 Sherman wanted to fight. There was going to be a fight.
22 They came by to see him and ask him if they would go over
23 there with him. They had, first of all, had his stepsister
24 Sierra with them, and they had to drop her off. So, he was
25 concerned then, when they went back over there to drop

1 Sierra off, that there was going to be a confrontation
2 based upon what had been yelled out from the window. But
3 he did not go over there with any intention of going ahead
4 and shooting anybody, and I think that's very important
5 that he wants you to understand.

6 This conversation that Ms. Weiss is talking about or
7 something, logging in at 12:00 that afternoon about the
8 fact that he was pissed off has really nothing to do with
9 this case. This happened at 8:00 in the evening. And so
10 to try and put him in the mind-set that that's why he went
11 over there I don't think is really fair or accurate.

12 He also goes on in the notes to say when he got there
13 and he was outside the apartments, he heard one of the boys
14 say I'm going to kill you and reached in his pocket. He
15 does not know which one it was, but he had that weapon in
16 his car. The weapon was always kept in his car. The kind
17 of car that he has, it's in the back under -- in the truck,
18 and you can actually reach through the front seats and grab
19 it, and that's what he did.

20 So, he didn't go driving into the parking lot. And
21 there absolutely is no evidence that he went into the
22 parking lot with the gun and parked with the gun out the
23 window. He says that he heard somebody say that. He
24 heard, saw somebody, what he thought going for something.

25 And based upon what has already been said, there is a

1 change that there was another gun out there, whether it was
2 used or not. That's not the issue. The point is that's
3 what he perceived it to be, and that's when he took the
4 gun.

5 He also says in here that he was going, he was going
6 -- now, I don't know if the state's brought this out or
7 not, but he actually took the police to recover the weapon,
8 and he actually took the police to recover the vehicle that
9 he was driving. He voluntarily did that even after
10 voluntarily turning himself in. So, I think that tells you
11 a little about the young man also.

12 During his waiting period when they were waiting to go
13 back, to go out there to look for the gun and the vehicle,
14 said:

15 Farr requested to see his brother, Sherman,
16 who was being interviewed in another room.
17 We allowed them to meet in the hallway. At
18 that time, they embraced each other and
19 cried. Marcus told his brother that he'd
20 already told the investigators what had
21 happened and to cooperate with them and not
22 lie about the incident.

23 So, at that point he was -- to me, that speaks a lot
24 about, volumes about this individual's view about life and
25 his family and what was going on, and he was accepting

1 responsibility. He told the police he accepted
2 responsibility. He didn't want his brother to get in
3 trouble, and he told his brother he'd better just tell the
4 truth because he's already told them that. So, he was
5 concerned about his brother. And from there, Judge, they
6 went ahead and retrieved the weapon and also the vehicle.

7 We're not trying the case. I think we're going to
8 pretty much conclude there. I think Mr. Boykin made a
9 comment, though, that kind of hit me about these people
10 thinking or young men thinking about what they're doing and
11 the consequences of it. And unfortunately, we see this all
12 too often. These guys join the Bloods, these people being
13 in Folk Nation, none of that can lead to anything good.
14 You know, at some point, people need to realize that,
15 including the young man who stood up and was so angry, and
16 justifiably so he's angry because he got shot.

17 But everybody has to kind of take responsibility for
18 what they do, and he's taking responsibility for what he
19 did. I think other people need to take responsibility for
20 how they got themselves into the situations that lead them
21 going into these gangs. And being members of these gangs
22 just cannot lead to any kind of good outcome.

23 I still say that there's no evidence that this
24 shooting, what he did, had anything to do with gangs. And,
25 you know, we would have fought that vigorously at trial and

1 tried to hold the state to their proof that this had
2 anything to do with a gang. I think we even mentioned that
3 in the status conference to Your Honor: that we just did
4 not think that his involvement had anything to do with any
5 gang related things.

6 But he is prepared to accept his responsibility.
7 That's why he's standing up in front of you. He took the
8 responsibility that when he talked to the police. And he
9 knows he's going to get sentenced to prison. His family
10 knows he's going to get sentenced to prison. But I would
11 just ask Your Honor to take into consideration everything
12 you heard about his lack of criminal history, his two
13 children, the fact that there are some circumstances which
14 led him to go out there. He did not intend to go out there
15 and shoot. His perception was that he was in danger, his
16 family was in danger. And just ask you to consider all
17 that, and try to give this young man a fair sentence in
18 this case.

19 MS. WEISS: Your Honor, if I may respond briefly?

20 THE COURT: Briefly.

21 MS. WEISS: The bottom line is I think Mr. Swerling
22 talks a lot about what happened after the fact. What we
23 have to look at here is what he did and why he did it. He
24 had no reason to go out there at all whatsoever, much less
25 any reason to bring a gun. This gun is not something that

1 you see somebody reaching in their pants, whip it out of a
2 trunk, pull it out, point it out the door, and start
3 shooting. This is a gun that has to be at the ready. He
4 went out there for no reason. There is no reason other
5 than gangs to explain why he went out there.

6 There was a couple of words that were said about
7 colors, and that's what spawned the argument. They should
8 not have been out there to begin with. They did not need
9 to come out there. He does have this song "Bang, Bang"
10 about shooting and killing people in the other gang.

11 MR. SWERLING: Can I find out where that is?

12 MS. WEISS: Sure. It's in discovery; I'll show it to
13 you after this.

14 MR. SWERLING: Okay.

15 MS. WEISS: He didn't make it after; he did not make
16 it after this incident occurred. That's a song that he
17 sang with his group. And this is what he was proud of at
18 the time. He had the two children.

19 He had, you know -- he didn't have the prior record
20 when he went in to do this. He chose to go out there. He
21 chose to do this. He did not know these victims. They did
22 not have weapons. There is no evidence they had weapons.

23 The only -- the mention of Rashad came up as they were
24 preparing for trial. The first time Rashad discussed the
25 guy yelling out the window in detail in his statement,

1 never mentions one thing about a gun. We start to prepare
2 for trial, and all of a sudden he comes up with a
3 description of a gun, that somebody had a gun.

4 There is no evidence. The state has found no evidence
5 that anybody had a weapon other than Marcus Farr. He had
6 it at the ready, and he took the opportunity to shoot and
7 kill members of the Blood gang. All right, Your Honor, we
8 ask you consider the full thirty years.

9 And to go behind that, Sherman and Rashad were even
10 asking in the vehicle, asking Sierra do they have guns, and
11 Sherman explains that in detail, that they were asking
12 that, wondering if they had guns. That doesn't make sense
13 they really saw a gun prior to that and then were asking if
14 they had guns.

15 The victims didn't have guns. Marcus Farr had the
16 gun. He came there with the gun at the ready to shoot and
17 took the opportunity to do. We'd ask that you consider the
18 full thirty years, Your Honor.

19 MR. SWERLING: Judge, I'm not trying to belabor. I
20 still haven't heard what the proof is that he knew that
21 this was a gang issue. I just don't see that. It's just
22 speculation. It's good jury argument, and it may be they
23 might have gotten into it. But it was Sherman and Rashad
24 Bradshaw, not Marcus Farr.

25 THE COURT: Thank you.

1 Mr. Farr, is there anything you'd like to say at this
2 time?

3 MR. SWERLING: I think he, I think he would.

4 THE COURT: Yes, sir.

5 DEFENDANT: I would just like to say first of all that
6 I'm sorry that all this, the outcome of this situation.
7 And that I really had no intent of hurting anyone because,
8 you know, I'd rather myself get hurt than anybody else get
9 hurt around me, my family or anybody that's just in the
10 situation period. I'd rather I get hurt.

11 So, I mean, as far as what they're saying, I went to
12 go make music after this happened. After this happened,
13 when Lashawn called my baby momma house, I, I really just
14 thought this was a big joke, know what I mean, because I
15 didn't see anybody get shot. I didn't know nobody got
16 shot. So, I was just figuring this was a big joke, you
17 know what I mean?

18 So, I just, I left to go to my uncle house because
19 when my moms was telling me, they was, like, well, Lashawn
20 and them called the police, whatever, and they gave me a
21 name and all of that. So, I just left, know what I mean,
22 and I went down my uncle house. And I was chilling down
23 there. And when I seen it on the news the next day, that's
24 when it hit me that it was real, know what I mean?

25 And it hurt me because I didn't really want, I didn't

1 want nobody to get hurt. I didn't want my family to get
2 hurt. I didn't want nobody else to get hurt. And I'm just
3 so sorry that this, it came out to like that.

4 But when I was out there, words were exchanged, moves
5 were made, and I panicked, and I, if I could take it back,
6 I would, you know? If, if I could die right now and bring
7 them back and take away his pain, I would just because of
8 the simple fact that I didn't want nothing to happen to
9 nobody. And I would rather my kids follow me through my
10 memories instead of seeing me now as the mistake that I am
11 because of this.

12 And I would just, want to put myself on the mercy of
13 your court, Your Honor, because I just, I just want
14 forgiveness because I didn't want to hurt nobody. And I'm
15 truly, deeply hurt because of this. And I just want to ask
16 you for your mercy, Your Honor.

17 (A PAUSE.)

18 THE COURT: To the family of Charles McDaniel, I'd
19 like to thank you very much for your letters and your
20 words, and you have my sincere condolences for your loss.
21 I only hope that as time goes on, you'll be able to hold on
22 to the pleasant memories of your loved one, and to be able
23 to find it within your heart for any healing power and
24 forgiveness and mercy to be bestowed on others as well.

25 To Mr. Boykin, I'd like to thank you very much for

1 your comments as well. I have understood exactly what
2 you've stated. I understand why you state it. I also hope
3 that you are able to have a full recovery and to be able to
4 find within your heart eventually to come to some
5 forgiveness and understanding of the situation.

6 To the family members of Mr. Farr, I wanted to thank
7 you very much for your words as well. I understand the
8 loss that you are suffering as well. And while certainly
9 it may not compare to the loss that has been suffered by
10 the loss of life in this particular situation, I do
11 understand that you, too, are affected by his actions and
12 for his deeds in this particular matter.

13 Mr. Farr, I've heard the recitation of the facts. I
14 do understand that, in your view, that there are some
15 disputed facts. And I think you put it best that there
16 were words exchanged, movements made, and you panicked.
17 And I do understand that.

18 I can't help but come back to the statements that were
19 made by the solicitor that one of a few things could have
20 happened. Either not bring the weapon, or not be there.
21 And I understand that that's a choice. That we all make
22 choices. We all make mistakes. We all do things in the
23 heat of the moment that are not necessarily the wisest
24 things.

25 It's unfortunate in this particular situation that

1 your actions caused the events that led to the death of Mr.
2 McDaniel and to the injuries of Mr. Boykin. And there's
3 nothing that we can do at this particular point to change
4 that. That's done. It is an unfortunate situation, and
5 what's even more tragic is that it's something that could
6 have been avoided.

7 It's also tragic in that it involved three young men:
8 you, Mr. McDaniel, Mr. Boykin, all healthy, intelligent,
9 articulate, young men who had your whole lives ahead of
10 you. Had great promise. And that poor choices have gotten
11 us to where we are at this particular point.

12 I don't know, of course, whether or not your actions
13 were motivated by gang activity. I've got state on one
14 side saying yes, you were. I've got your attorneys on the
15 other side saying no, that they weren't.

16 And I understand that the context sometimes in which
17 My Space or Facebook helps to create a persona that we may
18 not really be because I would suspect that if you truly
19 were the person that was betrayed in the Facebook, you
20 wouldn't have the same demeanor as you have before me
21 today. There are some things that are just so deep in
22 conflict and so ingrained in the spirit of gang activity
23 that a true gangster would not be standing before me as you
24 are standing before me today. So, I take both sides with a
25 grain of salt.

1 I understand that there may have been some gang
2 activity. Whether or not you were fully aware of it, maybe
3 not, but at least to the extent there was discussion, and
4 no one's really talked about what those comments, what
5 those discussions, what was said to each other than the
6 initial conversations when they were leaving, initially
7 leaving the apartment to go to the commissary. And I don't
8 know exactly what was said to you for you to join in and to
9 follow them over there. And I suspect that none of us will
10 ever know, but nonetheless we're still in this situation.

11 This is the part of my job that's very difficult
12 because as I look at you, as I think about Mr. McDaniel, as
13 I look at Mr. Boykin, everybody in this room thinks about
14 their son, their nephew, their brother, somebody in their
15 family who's that age, who has been that age, and you think
16 about how you'd feel if you were in that person's shoes.
17 And I can't help but do that here today. You know, to
18 think about how I would feel if I were in Mr. Boykin's
19 shoes, or I were in the McDaniels' family shoes, to think
20 about a brother or a son that would have been killed under
21 these circumstances.

22 I understand your plea is to voluntary manslaughter,
23 and assault and battery with intent to kill. I genuinely
24 believe that there is good in everybody. I believe that
25 you have potential to be better than what you are here

1 today, that you do have a future ahead of you. And despite
2 the fact that you will carry forever with you the events of
3 what occurred in February of 2008, as will everyone else in
4 this courtroom that's tied to this situation, I'm going to
5 tell you as I've told the families. That you also need to
6 be able to move forward. I think you've expressed your
7 apologies. I think your apologies were sincere. I think
8 they are heartfelt.

9 But you also need to be able to take this and not, and
10 not let it consume you forever in a negative way. But try
11 to find some good somewhere in it, and to be about to pick
12 yourself up, and to be able to move on because no matter what
13 my sentence is and will be, at some particular point you
14 will be released from the Department of Corrections. And
15 at that point, you have to decide -- you're going to be a
16 whole lot older than what you are now. You would have
17 missed a significant portion of your life. And you'll have
18 to take what you have and who you are at that particular
19 point and be able to go on and be productive in some manner
20 upon your release from the Department of Corrections.

21 Having said all that, I believe that I had indicated
22 to the attorneys when we initially discussed the idea that
23 there may be a plea, that it's generally my policy. There
24 are certain circumstances in which I don't think that it's
25 productive to make a consecutive sentence. So, I have told

1 them that unless I heard something that just really put me
2 over the top, that I just didn't think that it would be
3 appropriate to sentence you to consecutive sentences. And
4 I've told the state that, and I told your defense attorneys
5 that as well so that the sentences here will be run
6 concurrently. That is, they will be run together.

7 And I understand that there are separate victims.
8 That there was, in fact, a death in this particular case,
9 and I considered that very seriously. And I understand
10 that you've come forward. You've taken responsibility for
11 what occurred. While there may have been some initial
12 attempt to hide the weapon, that you did come forward and
13 you did talk with law enforcement officers. You did show
14 them where the weapon was. And you did come forward
15 quickly and kept the incident from being a lot more
16 prolonged than what it has been at this particular point.

17 SENTENCE OF THE COURT:

18 THE COURT: On the indictment 2009-GS-40-2118, the
19 original indictment is for murder. As to the plea for
20 voluntary manslaughter, Mr. Farr, I'm going to sentence you
21 to the Department of Corrections for a period of
22 twenty-five years.

23 On the charge of 2009-GS-40-2116 for the charge of
24 assault and battery with intent to kill, I will sentence
25 you to the Department of Corrections for a period of twenty

1 years. They will run concurrently.

2 And to you and to your family, and to the victims and
3 their family, I wish you all healing and recovery and the
4 ability again to be able to forgive and to go forward.

5 Good luck to you, sir.

6 MS. WEISS: Thank you, Your Honor.

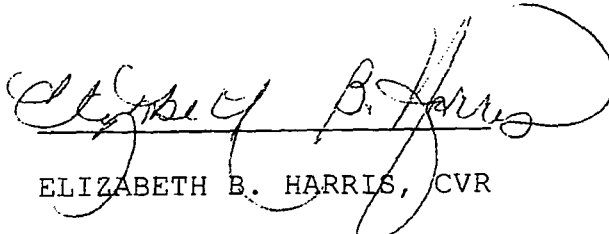
7 MR. SWERLING: Thank you, Your Honor.

8 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED VERBATIM 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 HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 26TH DAY OF OCTOBER, 2009.

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



ELIZABETH B. HARRIS, CVR

COLUMBIA, SOUTH CAROLINA

AUGUST 12TH, 2010

57hBP
2010CV4002203

STATE OF SOUTH CAROLINA

County of Richland

In the Court of Common Pleas

Marcus I. Farr # 337673
Full name and prison number (if any) of Applicant,

vs.

State of South Carolina
Name of Respondent.

APPLICATION FOR
POST-CONVICTION RELIEF

2010 MAR 31 PM 3:05
JEANNETTE W. HIBBEN
C.C.P. & G.
FILED
RICHLAND COUNTY

INSTRUCTIONS — READ CAREFULLY

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

- Place of detention Lieber Correctional Institution, P.O. Box 205
Ridgeville, SC 29472
- Name and location of Court which imposed sentence Richland County Court of General
Sessions, Columbia, SC.
- The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - 09-65-40-2118 - Voluntary Manslaughter
 - 09-65-40-2116 - ABWIK
 -
- The date upon which sentence was imposed and the terms of the sentence:
 - October 26, 2009 - 25 years Concurrent
 - October 26, 2009 - 20 years Concurrent
 -

5. Check whether a finding of guilty was made

(a) after a plea of guilty yes

(b) after a plea of not guilty N/A

(c) after a plea of nolo contendere N/A

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

NO.

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

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

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

(c) the date of each such result:

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

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

(a) Counsel never informed Applicant of Appeal Rights

(b) _____

(c) _____

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

(a) Ineffective Assistance of Counsel

(b) Guilty plea not Freely, Knowingly, Intelligently and Understandably entered.

(c) _____

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

(a) My attorney failed to object to the hearsay / did not do as I aske

(b) My attorney failed to ~~discuss any pleas~~ in turn I was forced into an ops

(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? Yes
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NO
- (d) any other petitions, motions or applications in this or any other Court?
NO

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. Motion for Reconsideration
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. Richland County Court of General Sessions
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (d) the date of each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

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?

NO

14. If you answered "yes" to (13), identify:

(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) First PCR Application filed
- (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? N/A
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes

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. Jack Swerling, Esquire, 1720 Main st, Suite 301, Columbia, SC 29201
 - ii. _____
 - iii. _____

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

- i. plea, and sentencing and Motion to reconsider
- ii. _____
- iii. _____

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

plea and sentence vacated and remanded for a New Trial

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, Marcus I. Farr, 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.

Marcus I. Farr

SWORN to and subscribed before me this _____

day of _____, 19 _____

Notary Public (L.S.)

My Commission Expires: _____

FILED
RICHLAND COUNTY
2010 MAR 31 PM 1:04
JEANETTE W. MBRIDE
C.C.P. & G.S.

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

I, Marcus I. Farr, 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.

Marcus I. Farr
Applicant

SWORN or affirmed to and subscribed before me this

29th day of March, 19 2010

Sylvia Jones
Notary Public

My Commission Expires 1/24/2018

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)	
)	
)	2010-CP-400-2203
FARR Marcus I, # 337673,)	
)	
Applicant,)	
)	
v.)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	

RICHLAND COUNTY
 FILED
 2010 MAY 26 AM 9:03
 JEANNETTE W. MCBRIDE
 C.C.P. & G.S.

The Respondent, making its Return to the application for post conviction relief (PCR) filed March 31, 2010, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was represented by Jack Swerling, Esquire. On October 26, 2009, the Applicant pled guilty and was sentenced by The Honorable Alison Renee Lee. The Applicant had been indicted and/or pled guilty to the following: ABWIK and Murder - (2009-GS-40-2116;2118). According to the South Carolina Department of Corrections, the Applicant is serving a 25 year sentence for "Voluntary Manslaughter."

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.

The Respondent interprets each of the Applicant's unspecified allegations to be claims that he received ineffective 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, Tynika A Claxton, Esquire regarding when the hearing should be set.¹

Respectfully submitted,

HENRY DARGAN McMASTER
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

May 10, 2010

¹ See: <http://www.scattorneygeneral.com/inside/pcr.html> for current and archived PCR rosters.

STATE OF SOUTH CAROLINA))	COURT OF COMMON PLEAS
County of Richland)	2010-CP-40-02203
)	
)	
Marcus Farr,)	
)	
Applicant)	
)	
vs.)	TRANSCRIPT OF RECORD
)	
The State,)	
)	
Respondent)	

August 29, 2011
Columbia, South Carolina

BEFORE:

The Honorable James Barber, III, Judge

APPEARANCES:

Tyneka Claxton, Esq.
Attorney for the Defendant

Brian Petrano, Asst. Attorney General
Attorney for the State

KAREN AMBROZIAK
Official Court Reporter

CONTENTS:WITNESSES:

MARCUS FARR

Direct Examination by Ms. Claxton 3

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JACK SWERLING

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EXHIBITS:

(There were no exhibits introduced.)

CERTIFICATE OF REPORTER 18

1 THE COURT: All right. Mr. Petrano, are you
2 ready to proceed?

3 MR. PETRANO: Yes, Your Honor. Thank you. May
4 it please the Court.

5 This is 2010-CP-40-02203, Mr. Marcus Farr. It
6 was a PCR application filed March 31st, 2010. He
7 plead guilty in front of Judge Lee on October 29th,
8 2009. He was represented by Mr. Jack Swerling of the
9 private bar, who for the record, is here present.

10 He had been indicted by the October 2009 term of
11 the Richland County grand jury. That's
12 2009-GS-40-2116. That was an assault and battery
13 with intent to kill. He received 20 years for that.

14 The April 2009 term indicted him for murder,
15 2009-GS-40-2118. He pled to voluntary manslaughter.
16 He received 25 years for that. There was no direct
17 appeal.

18 On that, I will turn it over to Ms. Tyneka
19 Claxton, the Applicant's current counsel of record.
20 Thank you.

21 THE COURT: Yes, ma'am.

22 MS. CLAXTON: Your Honor, I call Marcus Farr to
23 the stand.

24 MARCUS FARR,
25 after being duly sworn, testified as follows:

1 THE COURT: All right. If you'll have a seat in
2 the witness box and tell us your full name.

3 DIRECT EXAMINATION:

4 BY MS. CLAXTON:

5 Q State your name for the record.

6 A Marcus Dalzell Farr.

7 Q Where are you housed, Mr. Farr?

8 A At Lieber Correctional.

9 Q And what did you plead guilty to?

10 A Voluntary manslaughter and assault and battery
11 with intent to kill.

12 Q And what sentence did you receive for those two
13 charges?

14 A Twenty-five years.

15 Q Okay. Was that negotiated or just a straight-up
16 plea?

17 A I think it was a straight-up plea to the judge's
18 discretion.

19 Q Okay. And who represented you on those charges?

20 A Jack Swerling and Jason --- oh, I can't remember
21 his name.

22 Q Okay. And were you going trial that day?

23 A I was planning on it, yeah.

24 Q Okay. And you ended up pleading guilty why?

25 A Because it was --- that's what Jack advised me

1 to do.

2 Q Okay. Do you agree with that looking back on it?

3 A Looking back on it, I think I would attempt a
4 trial now that I look back and see that the discovery
5 that Jack sent me when I got to the penitentiary was
6 not the same exact discovery that I got when I was in
7 the county.

8 Q Okay. Is that one of the complaints that you
9 have with Mr. Swerling?

10 A Yeah.

11 Q What other complaints do you have against Mr.
12 Swerling?

13 A About the fact that he --- I told him about when
14 I read through one of the victim's statements that it
15 was other people out there.

16 It's mentioned in the other victim's statements
17 that there was more people involved in the situation.
18 I was telling --- I told the cops that. I told him
19 that. I told everybody that from the beginning, but
20 no one seemed to follow through with that and there
21 was no investigation into that that would lead up to
22 anything in my case, basically.

23 Q What's the significance of another person being
24 at the scene?

25 A Because from the beginning, I told that someone

1 else had a weapon out there. It wasn't just me, and
2 I felt that if that is brought to light, then that
3 would change the circumstances from --- well,
4 voluntary manslaughter to my self-defense plea that I
5 was going for in trial.

6 Q You were going to allege self-defense at trial?

7 A Yes, ma'am.

8 Q Okay. Any other complaints against Mr. Swerling?

9 A And about these ballistics on the gun and about
10 the bullets, they never found any bullets about ---
11 from any of the victims, and the bullet that they did
12 find wasn't a match to my gun.

13 Then it said that my fingerprints wasn't even on
14 my gun for some reason. I don't know how, but
15 that's --- that's what was said in the ballistics
16 report.

17 Q Okay. And yet, you still pled guilty?

18 A Because I didn't know this at the time.

19 Q Okay. And also at the guilty plea, you stated
20 that you were satisfied with Mr. Swerling's services.
21 Are you changing that today?

22 A Yes, ma'am.

23 Q And why?

24 A Because I felt that at the time that the
25 information that I did not know, I felt that I was

1 satisfied with that because I felt that was what
2 was --- he gave his all to help me, but now that I
3 see that he didn't tell me everything and didn't show
4 me everything, that he put me at a disadvantage.

5 Q Okay. If he had shown you everything and told
6 you everything that you feel like you should have
7 known, would you have, in fact, pled guilty or would
8 you have gone to trial?

9 A I would have attempted trial.

10 MS. CLAXTON: No further questions, Your Honor.

11 THE COURT: All right. Mr. Petrano.

12 CROSS-EXAMINATION:

13 BY MR. PETRANO:

14 Q Sir, what exactly are you saying that
15 Mr. Swerling hid from you?

16 A The fact about the ballistics report about the
17 bullets and the fingerprints.

18 Q And what --- that there were no fingerprints of
19 yours on your gun?

20 A Yeah, and the bullet didn't match and they
21 didn't find any bullets.

22 Q You're saying that the ballistics report said
23 that the bullet found in the victim ---

24 A It wasn't found in the victim. They found a
25 bullet somewhere in the apartment complex. They said

1 it came from my gun, but it didn't match my gun.

2 Q So just a random bullet in one of the buildings?

3 A I'm guessing.

4 Q Okay. Not about the one that actually killed
5 the victim?

6 A They didn't have any bullets from any victims.

7 Q Because it was a through and through.

8 A They could still find bullets.

9 Q Was there a bullet in the victim or not?

10 A I have no idea.

11 Q What did you use, the nine millimeter rifle,
12 right?

13 A Yes, sir.

14 Q All right. You're saying it was self-defense?

15 A Yes, sir.

16 Q So who did you see there with a weapon?

17 A I don't know these people.

18 Q Describe them.

19 A A guy.

20 Q You saw a guy?

21 A It's multiple people out there.

22 Q You saw multiple people with weapons.

23 A No. I saw a person with a weapon, but there was
24 multiple people out there.

25 Q Okay. So tell me about the guy you saw with a

1 weapon. Where was he?

2 A Out there with the rest of the guys.

3 Q Was he in the middle of the group? Was he
4 standing on the left side, the right side, in front
5 of the car?

6 A He was in the pack of people. I mean, I don't
7 decipher who was who and what was what when it was
8 going down.

9 Q You saw a guy with a weapon and you shot into
10 the crowd.

11 A Yes, sir.

12 Q Did the guy with the weapon that you didn't
13 really see where he was, was he aiming the weapon at
14 you?

15 A He had the weapon. It didn't matter if he was
16 aiming it at me or not.

17 Q Okay. Thank you.

18 A I wasn't going to take the ---

19 Q I appreciate it.

20 A --- risk.

21 THE COURT: Anything further, Ms. Claxton?

22 MS. CLAXTON: Nothing, Your Honor.

23 THE COURT: All right. Thank you. You may step
24 down.

25 MS. CLAXTON: The Applicant rests, Your Honor.

1 THE COURT: All right. Mr. Petrano, anything?

2 MR. PETRANO: We'll call Mr. Swerling.

3 JACK SWERLING,

4 after being duly sworn, testified as follows:

5 DIRECT EXAMINATION:

6 BY MR. PETRANO:

7 Q Sir, do you recall your representation of this
8 Applicant?

9 A Yes.

10 Q I see you have quite a bit of a stack in front
11 of you. The record seems to reflect that this case
12 was going to go to trial but pled at the last minute.

13 A That's correct. What I have here are the
14 notebooks that were put together for this case.

15 Q And it ---

16 A I can refer to those if there's any questions.

17 Q This is going to sound silly. I just have to do
18 this for the record. If you could, explain what kind
19 of experience you have.

20 A I was admitted to the bar in 1973. I ---
21 primarily, my practice is devoted to criminal work
22 since about the early '80s, and I've tried many
23 homicide cases and handled many others over these
24 years.

25 Q And that would include death penalty cases?

1 A Yes.

2 Q Okay. And that would include cases with
3 self-defense as an issue?

4 A Many.

5 Q What was your analysis of this case?

6 A I thought that there were some problems with the
7 case, and of course, you know, as far as the defense
8 of the case.

9 We did everything that we could to go ahead and
10 try to explore what Mr. Farr had said contrary to
11 what --- we did have an investigator on the case,
12 Carlisle McNair, who is a former captain with the
13 Lexington County Sheriff's Department. He does a
14 good bit of investigation for me, and he did try to
15 identify, and did identify, some other people.

16 We interviewed anybody we could and, you know,
17 of course, I heard Mr. Farr say something about the
18 discovery.

19 Ms. Switzer, Kelly Switzer is my paralegal back
20 there. It is our practice that every time we get
21 discovery, we send it to the individual.

22 So I cannot in any way --- well, not that I
23 can't understand. I do not accept the fact that he
24 did not see all the discovery, because that's --- we
25 have a policy of sending it out as soon as it's

1 received to the jails.

2 Q Okay.

3 A Or if they're not in jail, to them at home.

4 Q Did the Applicant explain his version of events
5 to you?

6 A I'm sure he did. I can't tell you that I recall
7 all of that at this time.

8 Q The plea transcript --- the plea transcript
9 reflects that you had explained that although there
10 might have been some self-defense, the law was not on
11 his side. Does that sound about right?

12 A I mean, it's often in these cases that, you know,
13 there are elements of self-defense and, you know,
14 what we call an imperfect self-defense. In this
15 particular case, if I recall correctly, Mr. Farr put
16 himself in the position of going over to that place,
17 and that would have created a problem because he went
18 over there with this particular weapon, which was a
19 pretty significant weapon as far as fire power. But
20 he actually injected himself into that location over
21 there with the weapon, and I think the weapon was
22 actually on Facebook or MySpace or one of these
23 things.

24 Q Yeah. Actually, if I may approach.

25 Part of the State's presentation during the plea

1 was a MySpace print-out from the applicant's page, I
2 believe is what's called. In the picture is his
3 weapon, which he refers to as his "Choppa"?

4 A I mean, I'm looking at that now. I can't tell
5 you this is the weapon that was used. I would not
6 say that, but I did see this.

7 Q Okay. Is there anything else you want to add to
8 this, sir?

9 A Now, I can tell you this: Obviously, these
10 cases --- it was prepared for trial. We were
11 supposed to start trial.

12 We had subpoenas issued, everybody that we could
13 speak to we did speak to or that we would speak with
14 us. We certainly did try to find other people that
15 would back up what he said.

16 It is my practice to sit down and go over the
17 pros and cons of the case, which I did in this case,
18 and to explain the defenses and the problems with the
19 State's presentation, as well as the defense
20 presentation and then leave it up to that individual.

21 I felt like if the jury accepted the State's
22 version of this case, he would have been convicted of
23 murder.

24 Q Not the lesser?

25 A Right.

1 MR. PETRANO: Thank you, sir.

2 THE COURT: Ms. Claxton, anything?

3 MS. CLAXTON: Just a couple of questions.

4 CROSS-EXAMINATION:

5 BY MS. CLAXTON:

6 Q Did Mr. Farr know that you had hired an
7 investigator on the case to follow up with the
8 questions that he had regarding someone else being on
9 the scene with ---

10 A Well, I'm sure --- I'm sure he did, but let me
11 see if there is something in here, without going,
12 looking through his whole file.

13 Q Well, let me rephrase the question. Is it your
14 practice to let your client know what's going on at
15 every stage, meaning we've hired an investigator and
16 these are the things that they're looking into.

17 Q Yeah. Actually --- I mean, I know he knew there
18 was an investigator. What I was looking for was is
19 to see if there was an actual interview by my
20 investigator of him, which would nail that down.

21 I'm not sure and I wasn't prepared for that
22 question, so I don't --- without going through all of
23 this, I could not find that, but if you want me to, I
24 will.

25 Q That's not necessary.

1 Beg the Court's indulgence.

2 (Pause)

3 Is it possible that there was maybe supplemental
4 discovery that you may not have sent to him once it
5 came into your office?

6 A You know, all I can tell you is --- and, you
7 know, of course, I can't tell you everything that's
8 in here right now.

9 I wasn't --- frankly, I wasn't prepared for that
10 question because it's not in the application, I don't
11 believe, but can I tell you this: It is my practice
12 in every single case, except federal cases where
13 we're not allowed to send the discovery, to send the
14 discovery to a person who is committed.

15 As soon as we get the discovery in, I give the
16 discovery to Ms. Switzer. She makes a copy for me.
17 She puts a copy in the file, and she send a copy to
18 the defendant. That's done in every single case
19 except federal cases, whether it's original discovery
20 or supplemental discovery.

21 It just automatically goes to her tray. She
22 makes a copy for me, a copy for the file and a copy
23 for the defendant.

24 MS. CLAXTON: No further questions, Your Honor.

25 THE COURT: Anything further, Mr. Petrano.

1 MR. PETRANO: No further questions, Your Honor.
2 May this witness be excused?

3 THE COURT: If you'll have a seat out there
4 while I think about it.

5 THE WITNESS: Okay.

6 THE COURT: You are free to leave.
7 Anything further from the State?

8 MR. PETRANO: No, sir. Just a brief argument,
9 if you want it, and I'll do it in reply.

10 THE COURT: Anything, Ms. Claxton?

11 MS. CLAXTON: Your Honor, just briefly, Mr. Farr
12 testified that he would have continued with his trial.
13 He felt like he was forced to plead guilty, and he
14 felt like there was not enough investigation put into
15 his case. We just ask that his PCR application be
16 granted and that he get a new trial.

17 THE COURT: All right.

18 MR. PETRANO: Your Honor, the case speaks for
19 itself. There was eight or 10 inches worth of
20 materials, probably more. My guesstimates aren't
21 that good.

22 If the Applicant thought there was some specific
23 piece of discovery that he supposedly didn't get, he
24 should have been waving it around saying, "This is
25 what I didn't have, and this why I think there is a

1 difference."

2 Your Honor, it's been nothing but an allusion to
3 something that he discovered later, only to forward
4 the fact that he said he was satisfied with
5 Mr. Swerling at the plea.

6 Your Honor, I just want to explain everything.
7 The allegation is vague, at best. There is nothing
8 here judge. Thank you.

9 THE COURT: All right. Thank you all.

10 MS. CLAXTON: Thank you, Your Honor.

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

2010CP4002203

Farr, Marcus, 00337673,

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

RICHLAND COUNTY
FILED
2011 OCT 19 PM 3:11
JEANETTE W. McBRIDE
C.C.P. & G.S.

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 31, 2010. The Respondent made its Return on May 26, 2010. An evidentiary hearing into the matter was convened on August 29, 2011 at the Richland County Courthouse. The Applicant was present at the hearing and was represented by Tynika Claxton, 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, Jack Swerling, 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 his October 29, 2009 guilty plea before The Honorable Alison Renee Lee who sentenced him to the following:

Grand Jury Term	Indictment Number	Charged Offense: CDR- S/C, Code § *Potential Sentence*	Offense Description	Sentence Received	Sentenced to Lesser Offense?
10-09	2009GS402116	0014 16-03-0620 * 20 * Assault / Assault and battery with intent to Kill (ABWIK)		20	No
4-09	2009GS402118	D116 16-03-0020 * 30 - L/D * Murder / Murder		25	Yes
Sentenced to: 0217 16-03-0050 * 30 * Manslaughter / Voluntary manslaughter				: as a lesser offense.	
NOTES				TOTAL	POSSIBLE
				25	

The Applicant did not appeal his guilty plea.

In the PCR application the Applicant made the following allegations:

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
(a) <u>Ineffective Assistance of Counsel</u>
(b) <u>Guilty plea not freely, knowingly, intelligently and understandably entered.</u>
(c) _____
10. State concisely and in the same order the facts which support each of the grounds set out in (9):
(a) <u>My attorney failed to object to the hearsay / did not do as I asked.</u>
(b) <u>My attorney failed to discuss any pleas in turn I was forced into an open plea.</u>
(c) _____
18. State clearly the relief you seek in filing this application.
<u>plea and sentence vacated and remanded for a New Trial</u>

At the evidentiary hearing, Applicant proceeded in part on the allegations stated in the application for post-conviction relief. Specifically, the Applicant claimed that there was evidence of self-defense that he was not aware of at the time of his plea because after the plea he received a copy of his discovery that was different from what he had previously reviewed.

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 that he received a twenty-five (25) year sentence and that his guilty plea was straight-up. The Applicant explained that they were going to trial that day but that his attorney advised him to plea. The Applicant explained that the discovery he received in the penitentiary after his plea was different from what he received in the county detention center prior to the plea/trial. The Applicant testified that he would go to trial because it does not matter if someone else was actually pointing a gun at him, he saw a weapon – so it was self-defense.

Plea counsel testified that he received the discovery and consistent with his practice, he makes three copies, one for the file, one for the client, and for himself. Plea counsel testified that he sent a complete copy to the client and that they reviewed it. Plea counsel explained that he had an investigator. Plea counsel explained that as he saw the Applicant's version of events, this was not self-defense, it was not voluntary manslaughter – that if he went to trial the best outcome would be a minimum sentence for murder so it made sense to take the straight-up plea to voluntary manslaughter that the State was offering. *See also*, p. 42 – 43 of the plea transcript.

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCF; 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.

Beyond his review of the undisputed procedural history, this Court finds Applicant's testimony is not credible. Plea counsel's testimony is credible. This Court takes judicial notice that plea counsel is a well respected criminal defense attorney with decades of experience who is highly regarded by both the bench and bar. 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. The Applicant's claim is that he was not provided the full discovery via his attorney and if he had been, he would not have pled guilty but would have gone to trial. To be clear, the Applicant's claims are without merit and he has failed to satisfy his burden of proof because his testimony was not credible. In addition, the Applicant has not specifically explained what was allegedly missing between the two supposedly different versions of the discovery materials he received. The Applicant made some generic references to not knowing about other weapons or shell casings, but he has not explained what specifically would support his argument (apart from the fact that he is not credible). As plea counsel explained at the guilty plea, "the law was not on his side with respect to the issues of self-defense." (Plea transcript, p. 43 L. 4 – 5). The Applicant has failed to demonstrate that plea counsel's performance was deficient or that he was prejudiced.

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 (Cl. 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.

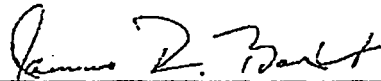
This Court cautions the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the

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), SCRCR, 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 18 day of March, 2011.


 The Honorable James R. Barber, III
 Presiding Judge
 Fifth Judicial Circuit

Counsel, South Carolina.

WITNESSES

✓(S) INV MENEDEZ - CPD

ARREST WARRANT NUMBER

K332951

ACTION OF GRAND JURY

TRUE BILL

OCT 15 2009

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2009-GS-40-2116

AMENDED
The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2009

102

THE STATE

vs.

MARCUS FARR

Indictment for

ASSAULT AND BATTERY
WITH INTENT TO KILL

SC Code: 16-3-620

CDR Code: 0014

Class FEL-C(V)

After being fully advised as to my legal rights, I hereby waive present and future rights to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Year 11/10/09
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

WITNESSES

✓(s) INV MENENDEZ CPD

ARREST WARRANT NUMBER

K332846

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

APR 15 2009

VERDICT

Foreperson of Petit Jury
ate:

DOCKET NO. 2009-GS-40-2118

The State of South Carolina
County of Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2009

102

THE STATE
vs.

MARCUS FARR

Indictment for

MURDER

SC Code: 16-3-10, 20
CDR Code: 0116
Class FEL/EXM(V)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

COPIED TRUE COPY
ORIGINAL FILED
Charlette Williams
C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

MARCUS FARR
Voluntary Manslaughter
+ Nancy Furr

