

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Kershaw County

James R. Barber, III, Circuit Court Judge

RECEIVED

MAR 21 2014

S.C. Supreme Court

HENRY R. WOODS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001679

APPENDIX

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4 State of South Carolina,)
5 Plaintiff,)
6 vs.) TRANSCRIPT OF RECORD
7 Henry Woods,)
8 Defendant.)

9 July 26, 2010
Camden, South Carolina

13 B E F O R E:

14 THE HONORABLE J. ERNEST KINARD, JR., JUDGE.

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

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Attorney for the Plaintiff

19 CORNELIUS J. RILEY, ASSISTANT PUBLIC DEFENDER
20 Attorney for the Defendant

DEBORAH M. McCURDY, RPR
Official Court Reporter

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I N D E X O F W I T N E S S E S

(WHEREUPON, no witnesses were called
during these proceedings.)

E X H I B I T S

(WHEREUPON, no exhibits were introduced
during these proceedings.)

1 JULY 26, 2010

2 MR. MOAK: Your Honor, the State calls Henry
3 Woods.

4 THE COURT: All right.

5 THE CLERK: Mr. Woods, would you raise your
6 right hand?

7 (Defendant complies.)

8 THE CLERK: Do you swear or affirm to tell the
9 truth, the whole truth, and nothing but the truth,
10 so help you God?

11 THE DEFENDANT: Yes, ma'am.

12 MR. MOAK: Your Honor, Mr. Woods is before you
13 on Kershaw County true-billed indictment 2006-GS-
14 28-421, true-billed by the Kershaw County Grand
15 Jury for the offense of murder. He is pleading
16 guilty to the offense of voluntary manslaughter on
17 that indictment.

18 He is also here before you on 2009-GS-28-358,
19 Your Honor, which is lynching second degree,
20 true-billed by the Grand Jury. He is pleading as
21 charged on that indictment.

22 MR. RILEY: Your Honor, he is pleading under
23 North Carolina v. Alford.

24 THE COURT: All right. Okay, you are Henry
25 Woods?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Are you doing all right?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Now, Mr. Woods, looking at these
5 indictments -- it is what is called the charging
6 papers -- this just didn't happen, it happened back
7 in March of '06, is that right?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And you were charged in one
10 indictment with murder, and it involved the death
11 of Chad Hough?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Is that right?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: They reduced that charge to
16 voluntary manslaughter. Voluntary manslaughter
17 carries all the way up to 30 years. Do you
18 understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: The other indictment charges you
21 with lynching in the second degree. That carries
22 up to 20. Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And you are not a constitutional
25 scholar probably, but when you plead guilty under

1 Alford versus North Carolina you are in fact
2 pleading guilty. Do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: You get sentenced just like you
5 were pleading guilty straight-up. You don't get a
6 jury trial on either charge. If you wanted a jury
7 trial you'd have to plead not guilty.

8 Now, you have talked this over with your
9 attorney?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: I guess you have talked it over
12 with him a good many times since it is a pretty old
13 case. And Mr. Riley has explained to you that you
14 have a right to plead under North Carolina versus
15 Alford?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You basically have reviewed all
18 the facts that the State could present and you
19 decided that irrespective of anything you did, a
20 good probability you would get convicted anyway,
21 whether you testified you weren't even in Kershaw
22 County when this alleged crime occurred. Do you
23 understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Now, of course I don't generally

1 know anything about the case, but I did accept
2 guilty pleas for a lot of people that were with you
3 on that day. And they went over the facts to some
4 degree. And it looks like to me if they testified
5 as they did then it is a high probability you would
6 be convicted even if you said you acted in
7 self-defense or you didn't do anything, or so
8 forth. Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: You weren't in here when they pled
11 guilty, but Mr. Riley took pretty good notes. I
12 think you and he reviewed those notes, is that
13 right?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: You understand if you plead not
16 guilty you get a trial? All of your rights you can
17 exercise are listed on this advisement of rights
18 form.

19 THE DEFENDANT: (Nods affirmatively.)

20 THE COURT: And you went over it with
21 Mr. Riley?

22 THE DEFENDANT: (Nods affirmatively.)

23 THE COURT: Of course you have had a long time
24 to think about this, almost four years, right?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: In a trial you of course are
2 presumed innocent. You don't have any burden to
3 prove that you are not guilty. In fact, if there
4 was presented during the trial evidence of
5 self-defense, the State would have to prove beyond
6 a reasonable doubt that you did not act in
7 self-defense. You don't have to prove that you
8 did. Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Of course during a trial you get
11 to help your lawyer pick the jury. You have so
12 many strikes, so does the State. Eventually 12
13 jurors are seated. And then the State has got to
14 convince all 12 of them beyond a reasonable doubt
15 that you committed the crime or crimes as charged.
16 Do you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: In a trial you get to be present
19 in the courtroom, observe all that transpires,
20 listen to what the witnesses say, you can make
21 various motions, you can of course object to
22 testimony being hearsay or various other reasons.
23 Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Of course you personally can

1 testify or not, that would be your choice, during a
2 trial. And they can't make you testify, they can't
3 keep you from testifying.

4 Now, you did not make any statements to law
5 enforcement, did you?

6 THE DEFENDANT: No, sir.

7 THE COURT: You haven't admitted that you did
8 it?

9 THE DEFENDANT: No, sir.

10 THE COURT: So if you elected to testify, they
11 wouldn't be able to bring out any statement that
12 you made to them. Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: You have the right to not only
15 question everybody the State puts up, you can call
16 witnesses to testify for you during the trial. But
17 if you plead guilty, you waive any potential
18 defenses that you might have, you waive your right
19 to contest that. And I'm talking about pleading
20 guilty straight-up or under Alford versus North
21 Carolina.

22 Now, Mr. Riley has explained to you the nature
23 and extent of crimes being classified as violent or
24 serious or most serious, I'm sure. And you
25 understand that as far as when you get out is

1 concerned, you serve a lot more time under a
2 violent crime than you do under just a normal
3 crime. You have to serve like 85 percent, then
4 they let you out on supervised release, and so
5 forth. And that is the earliest you could get out.
6 Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: In addition, you have heard that
9 about two strikes, three strikes you're out. but if
10 you plead to these two crimes you are picking up
11 two strikes. And what that means is if in the
12 future you violate any crimes the legislature has
13 classified as violent, they can ask for life
14 without parole -- they being the State -- whether
15 the penalty of the crime carries life or not. Do
16 you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: I mean, I had to sentence some guy
19 last month to life without parole, and he just
20 robbed a drug dealer who had been supplying people.
21 He was short on cash. And they called the cops --
22 the drug dealer called the cops on him. Armed
23 robbery, that is a violent crime. And he had one
24 other out there. He had to do life without parole.
25 even though normally I would just give like ten

1 years. Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Now, how far in school did you go?

4 THE DEFENDANT: Ninth grade, sir.

5 THE COURT: You can read and write all right?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And you are now 27, 28?

8 THE DEFENDANT: Twenty-seven years old.

9 THE COURT: Twenty-seven. All your other
10 answers are correct on this advisement of rights
11 form?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Are you satisfied with your
14 lawyer?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Have you got any questions about
17 any rights you give up if you plead guilty?

18 THE DEFENDANT: No, sir.

19 THE COURT: You can't later say, for instance,
20 if I accept your plea and sentence you, I really
21 didn't plead guilty. You pled guilty under Alford
22 versus North Carolina. You have been advised of
23 all the rights and consequences. You can't later
24 say, I want a trial because I didn't plead guilty
25 straight-up. Do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Have you got any questions about
3 anything?

4 THE DEFENDANT: No, sir.

5 THE COURT: All right, Mr. Moak.

6 MR. MOAK: Your Honor, first, this did happen
7 in Kershaw County on March 7, 2006 at
8 Lane. And I'm just going to go through this kind
9 of backwards. I'm going to start off with -- this
10 is what the end result was, Your Honor.

11 (Plays 9-1-1 tape.)

12 MR. MOAK: Your Honor, I think the testimony
13 would have been that Chad Hough died in that truck
14 on the way to meet the ambulance at Midway School.

15 That is the voice of Corey Woodall, who was
16 called by Mont Hough, the intended victim, and
17 actually was the victim of the lynching before the
18 fight started, got there shortly after it was over
19 just in time to load his friend Chad Hough into his
20 truck.

21 When he is talking, we think they are chasing
22 us -- see that picture of the pick-up truck right
23 there, Your Honor?

24 THE COURT: All right.

25 MR. MOAK: That is the truck that was

1 identified by the other seven Co-Defendants during
2 their pleas as the truck that they went up there
3 with.

4 The people in the Tahoe, which is Corey
5 Woodall, Daniel Robinson, Shanasia Danzy and
6 Vincent Bracey, all saw that truck behind them,
7 were on the phone with 9-1-1 with the Defendant in
8 the truck. That is why they thought they were
9 being chased.

10 Now, this started -- actually it started
11 earlier than 7:30 when there was a phone call
12 between Ebony Danzy and Henry Woods in regard to
13 him being allowed to see his child.

14 Mr. Woods, when you were asking him questions,
15 said he gave no statement to the police, but he
16 actually did, Your Honor.

17 He actually told the police -- he was asked by
18 Danny Catoe, in his notes they asked Mr. Woods
19 about what happened, what caused him to go to
20 Rochelle Drive in Bethune.

21 He, Mr. Woods, then explained he was upset
22 because his baby's mama wouldn't let him see his
23 son and her boyfriend, that was Mont, Isaac DeMont
24 Hough, was getting involved in the matter and was
25 running his mouth to him.

1 Mr. Woods wouldn't go into a lot of detail
2 about what happened other than the fact that he was
3 fighting with three guys that came out of the
4 trailer when he got there.

5 After this I asked Mr. Woods if he knows which
6 one of the three guys was Ebony's boyfriend. And
7 he stated that, no, I didn't.

8 So then I asked Mr. Woods if he was aware that
9 the boy he shot was not Ebony's boyfriend. He
10 stated no. He didn't say he didn't shoot anybody.
11 he didn't say he did shoot anybody, he just said
12 no. He didn't confirm or deny that.

13 The seven Co-Defendants that pled before Your
14 Honor last week all in lockstep told you that he
15 was the reason they went up there. Most of them
16 told you that they came up there to get his back in
17 case something went down. Your Honor, something
18 did go down.

19 Most of them testified -- or allocuted that
20 there was a fight where multiple people were
21 involved, a gun went off.

22 Your Honor, if you look at the pictures that
23 were taken of Mr. Woods after his arrest, they
24 don't really show any severe injuries, so it
25 doesn't really indicate that he actually physically

1 was involved in a fight.

2 That is important because the four people that
3 lived -- that were in the house, Ebony Danzy,
4 Shanasia Danzy, Isaac DeMont Hough and Vinny
5 Bracey, all were prepared to testify if this had
6 went to trial that Mr. Woods called the house one
7 last time, said they were out in the yard. The
8 four individuals -- or the five individuals in the
9 house came out, confronted Mr. Woods at the front
10 porch, and Mr. Woods was in the face of Isaac Hough
11 making threats, and Mr. Hough was on the phone
12 trying to get hold of Corey Woodall, and Mr. Woods
13 was continuously doing this(indicating), I guess
14 trying to flash that he had something on him.

15 When the fight broke out, all four of the
16 victim's side, Your Honor, were going to testify
17 that when the fight broke off Mr. Woods ran to the
18 back of the crowd.

19 They all were going to testify that Mr. Woods,
20 they never saw him involved in any physical fight.

21 They were all going to testify that as the
22 fight progressed, the victim, Chad Hough, was
23 fighting Jerry Haile on the ground and Mr. Woods
24 ran up and shot him in the neck while he is on the
25 ground.

1 That is what those four would have testified
2 to. And the fact that he has no visible injuries I
3 think is consistent with him not being in the
4 fight, Your Honor.

5 Also, just for the benefit of the victims,
6 there are some autopsy photos on Mr. Hough where it
7 shows where he was hit with a bat. I believe the
8 Co-Defendant, Dale Drakeford, testified she had a
9 bat, hit a guy with a bat and the bat was broken,
10 so I think the autopsy pictures back that up too.

11 One of his Co-Defendants, Jeanette Haile,
12 testified that she saw Smurf, which is Henry Woods,
13 shooting a firearm. The bullet that was removed
14 from the body of Chad Hough was a .22 caliber
15 bullet.

16 In the bed of the truck that they drove to
17 there and back to Camden from Bethune, in the bed
18 there was a broken bat, several unfired .22 bullets
19 and several .22 caliber shell casings..

20 The description of the gun that we got was a
21 revolver, so it would be consistent with unloading
22 the revolver in the back of the truck. The gun was
23 never recovered.

24 Again, the reason everybody went to Bethune
25 was Henry Woods. In the middle you had Ebony Danzy

1 and Shanasia Danzy. Those two knew the people that
2 came up there.

3 Henry Woods and his side didn't know Mont
4 Hough. didn't know Chad Hough. Chad Hough and Mont
5 Hough didn't know them.

6 Ebony and Shanasia identified every person
7 that was charged in this case and what their roles
8 were in there. Obviously, you know, if you --
9 logically, when you look at what their allocution
10 was, they are all testifying there was a big fight.
11 but none of them were admitting being in there. If
12 none of them were in the fight, there was no fight.

13 But out of this mess, Your Honor, I think the
14 consistent things are that:

15 Mr. Woods shot Chad Hough. Chad Hough is
16 dead. Mr. Woods is the reason everybody went up
17 there. He got his group -- one of the Defendants
18 has 11 people with him, or 10 people with him.
19 Everybody else has seven people with him. He
20 brought between eight and 11 people up there
21 because he wanted to see his son and he wanted to
22 see his son no matter what. They brought a bat.
23 they brought a gun, he brought his back-up.

24 They pulled up to the scene. They actually
25 would not pull in the yard, they pulled up around

1 the corner and snuck in the woods. And, Your
2 Honor, between Street, is where the start
3 location of this trip apparently was, and
4 Lane is approximately 22 miles.

5 We had Lamar Pope, with the Sheriff's
6 Department, we had him drive from Point A to Point
7 B with a video, and I believe it was somewhere
8 about a half-hour drive.

9 They loaded these people up, hopped in the
10 truck, drove 22 miles in the middle of nowhere. I
11 mean, it is hard to find this place. Hid the
12 truck. Snuck through the woods. Started the
13 fight. Ended up shooting the wrong guy. Chad
14 Hough had nothing to do with what they were up
15 there for. And that is what Mr. Woods is pleading
16 guilty to.

17 Your Honor, Mr. Woods' prior record, he's got
18 a 2000 simple possession of marijuana; and a 2004,
19 looks like possession with intent to distribute. I
20 believe that would be marijuana because he got five
21 years suspended on time served and 18 months
22 probation. That probation was revoked in 2006 for
23 a three-year sentence, Your Honor. Actually that
24 may be cocaine because the probation revocation
25 indicates it is cocaine. And I believe he also may

1 have had a disturbing schools charge at some other
2 time.

3 That is his prior record, Your Honor. I think
4 with the facts of this case I would ask for no less
5 than 20 years, but we have several family members
6 here. I don't know whether Mont Hough himself
7 wishes to address the Court. I don't know if Isaac
8 Hough, who is Chad Hough's father, wishes to
9 address the Court. I don't know if Judy Hough, the
10 mother, would address the Court. Anybody?

11 Your Honor, this is Isaac Hough, Sr. This is
12 the father of Chad Hough.

13 THE COURT: Okay, Mr. Hough.

14 MR. HOUGH: I understand that -- we miss our
15 son so bad. For nothing. This here shouldn't even
16 happened. He didn't know none of what was going
17 on. He was just there. My kids -- my boys were in
18 there playing games. They didn't know them people
19 there from one -- I be around every day. As a
20 matter of fact, I just left the yard working on a
21 car. My son Chad told me to, go home and take your
22 clothes off. And I just went down the road. It
23 didn't take me ten minutes before I could get back.
24 They saw me walk out that yard and they waited till
25 I left with that car to come and ambush and came

1 and did this. Before I could get back up there, my
2 son was gone. And this is a bad thing that
3 happened for nothing. And the thing about it, they
4 were just innocent as anything for them to come and
5 do this.

6 I just want him to be punished for what he
7 done, and all of them punished for what they done
8 and what they took from us.

9 THE COURT: Okay.

10 MR. MOAK: Your Honor, this is Judy Hough.

11 MS. HOUGH: Chad was full of life. Chad
12 didn't believe in all of this. Now, he would
13 strike back, but only if you struck him. Chad was
14 always the laugh, an outgoing person.

15 MR. HOUGH: Uh-huh.

16 MS. HOUGH: He always kept a lot of stuff
17 going on. Playful.

18 MR. HOUGH: Yes.

19 MS. HOUGH: You know, I just want to say this
20 much right here. That is the first thing I think
21 about in the morning, that is the last thing I
22 close my eyes to at night. And when y'all done
23 this to us, I mean, it just like -- it just did
24 something to me and my family. It did something to
25 his brother and sister as well, his aunts and

1 uncles. And it just took a lot from us. I just
2 don't know what to do.

3 But, again, I would like to say this much.
4 That I hope that they are punished, but in the
5 right way, you know, for what they did to us
6 because, again, they made us suffer. And this here
7 been going on now for about four years. And I'm
8 just ready to get it over with. And yet if it was
9 mine then I would say the same thing, you know,
10 because you can't take nothing that you can't give
11 no way. God gives us life. And he took a lot from
12 us. I have to say that, yes, he did, he took a lot
13 from us and our family.

14 THE COURT: Okay, thank you, victims.

15 MS. HOUGH: Thank you.

16 MR. MOAK: Your Honor, I think that is all.

17 THE COURT: Okay.

18 MR. RILEY: Your Honor, Mr. Woods is 27 years
19 old. He is single. Lives with his aunt. Ms.
20 Christine Haile is here with him today. And also
21 with him is Paulette Haile. And he has three
22 children. The oldest is eight years old. And he
23 has seven-month-old twins. Went as far as the
24 ninth grade at Camden High School. Has worked for
25 two years now with Brown's Construction. It is a

1 construction company located here in Camden.

2 Judge, the tragic events of that night back in
3 2006 resulted from, as Mr. Moak has already
4 explained, resulted from Mr. Woods wanting to see
5 his child who was with the mother, Ebony Danzy.

6 He had heard some rumors that the child -- he
7 hadn't seen the child in quite a while -- had heard
8 some rumors that the child was not being treated
9 very well, was being neglected.

10 When he called that night to speak with Ebony
11 and asking to come up there to see his child, she
12 immediately transferred the telephone to DeMont.
13 her boyfriend. And apparently Mr. Woods and DeMont
14 got into a bit of an argument on the telephone.

15 He was afraid of going up there alone, afraid
16 that he was going to be ambushed, basically. What
17 happened once they arrived up there clearly was a
18 chaotic scene.

19 I think, Your Honor, from last week's guilty
20 pleas by the other seven Co-Defendants, I think
21 clearly what went on is, not only did it happen a
22 long time ago, but I think it was chaotic even
23 shortly after the events of that night unfolded in
24 everybody's mind. It was after nightfall. There
25 was a lot of people scuffling around. And it was

1 hard to tell who did what to who.

2 Judge, he was -- I know it is not a defense, I
3 am offering this just by way of explanation -- he
4 was intoxicated that night. He had been drinking.
5 He regrets the events of that night deeply.

6 There are a couple of things I ask -- that I
7 implore the Court to bear in mind. When these
8 other seven Co-Defendants pled last week, they
9 were -- each of them was facing a charge of
10 lynching first degree and lynching second degree.
11 Their exposure under those charges totaled 60
12 years.

13 The State agreed to plead them to a new
14 offense under the Omnibus Bill that was passed last
15 year carrying a maximum of one year each, so their
16 maximum exposure was reduced from 60 years down to
17 two years.

18 I think Mr. Woods ought to have a minimum
19 sentence on this charge. He did not act with
20 premeditation. It is unfortunate that a life was
21 lost and no one regrets that more than Mr. Woods.

22 He has served 209 days in pretrial custody on
23 this charge, which I would ask the Court to give
24 him credit for.

25 I think that both Ms. Christine and

1 Ms. Paulette and possibly the Defendant might want
2 to say a few words to the Court.

3 THE COURT: Sure.

4 MS. HAILE: Your Honor, he is not a bad
5 fellow. He is a pretty good fellow. And since he
6 came home he have changed a whole lot. He has been
7 staying with me. He is working.

8 In addition, anything I ask him to do, he is
9 there for us in any kind of way.

10 You know, I ask you to have lenience on him.

11 THE COURT: Okay.

12 MS. HAILE: I just want to say that Henry
13 Woods, he has a good heart. Like my mama said, he
14 is not a bad person like everybody is trying to
15 make him out to be.

16 I mean, he did take somebody life, but he
17 regrets it. You know, we feel sorry for the family
18 of the person's life he took. But whatever
19 happened, we can't change it, you know.

20 THE COURT: Okay. All right. Mr. Woods.
21 Well, Mr. Woods, I explained to you about any
22 out-of-court statement that you might have made.
23 You just probably didn't remember. And since you
24 didn't confess, you probably didn't think that was
25 a statement. But Mr. Riley probably has already

1 explained to you that if you talked to them at all
2 they can put it in. See, if they put it in, they
3 would have done just like Mr. Moak did. They will
4 say, he talked to them, this is what he said. He
5 didn't deny it, you know. And that would kind of
6 work against you, if the statement would come in.
7 You would have been able to make a motion to keep
8 it out also. And I don't -- that hasn't been
9 developed in front of me. But you can't -- you
10 know, once you enter a plea of guilty whether
11 straight-up or under Alford, you can't contest any
12 statement you made. They can just read it to me,
13 like Mr. Moak did.

14 Do you have any questions about that?

15 THE DEFENDANT: No, sir.

16 THE COURT: Sentencing is just a tough thing.
17 I am the longest-serving circuit judge by about
18 seven years. I don't know how many I sentenced on
19 homicide, not necessarily murder, just where
20 somebody died.

21 One year when I was chief judge in Richland
22 for that period I kept count, and I sentenced 82 in
23 that one year. I mean, I have been a judge way
24 over 20 years. So I've got a lot of experience
25 doing it. And these situations are a little

1 different. I sentenced four two weeks ago in one
2 week. They all had different factual scenarios.
3 People got five years to 40 years.

4 When I first took the bench, it didn't matter
5 how much time I gave anybody, they were eligible
6 for parole after like ten years. That is not the
7 case now. You are looking at a maximum of 50 years
8 on the two counts, 30 on one -- 30 on the
9 manslaughter and 20 on the lynching charge. Both
10 of them are serious offenses, as I explained to
11 you.

12 I just evaluate the situation. I recognize
13 you didn't go up there to kill anybody, you know.
14 You didn't go up there to kill anybody. But you
15 got there and the situation was there.

16 Chad Hough, I mean, he had -- he didn't know
17 you, as I understand it. And there is nothing I
18 could do to help the family to bring him back.
19 This is just some closure on the situation.

20 Taking everything under account, I sentence
21 you to 22 years on both counts -- 22 on one and 20
22 on the other. They are concurrent. You get credit
23 for the time served. You get 22 years on the
24 manslaughter charge, 20 on the lynching charge.
25 Credit for the time you have been incarcerated.

1 And that is it.

2 MR. RILEY: Thank you, Judge.

3 MR. MOAK: Thank you, Your Honor.

4 (WHEREUPON, the proceedings were concluded.)

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CERTIFICATE OF REPORTER

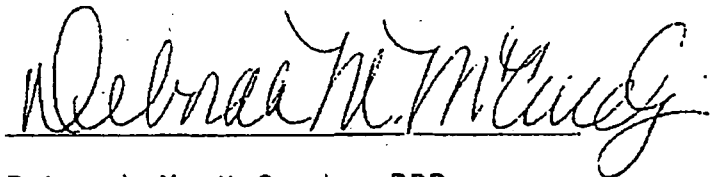
STATE OF SOUTH CAROLINA)

COUNTY OF KERSHAW)

I, Deborah M. McCurdy, 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 the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Kershaw County, South Carolina, on the 26th day of July, 2010.

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

December 6, 2010



Deborah M. McCurdy, RPR
Fifth Circuit Court Reporter

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STATE OF SOUTH CAROLINA)	
County of Kershaw)	COURT OF General Sessions
)	2009-GS-28-358
)	2006-GS-28-421
)	
)	
)	
The State)	
)	
)	
vs.)	TRANSCRIPT OF RECORD
)	
Henry Woods,)	
)	
Defendant)	

August 26, 2010
Columbia, South Carolina

BEFORE:

The Honorable J. Ernest Kinard, Jr., Judge

APPEARANCES:

Ronald Moak, Asst. Solicitor
Attorney for the State

Neil J. Riley, Esq.
Attorney for the Defendant

KAREN AMBROZIAK
Official Court Reporter

1 THE COURT: Okay.

2 MR. MOAK: Your Honor, Mr. Woods was sentenced on
3 indictment 2009-GS-28-358, which is a lynching second
4 degree and 2006-GS-28-421. On 421, he pled guilty to
5 voluntary manslaughter and was sentenced to an aggregate
6 total of 22 years, Your Honor.

7 I -- Mr. Riley filed a motion to reconsider. I have
8 yet to hear any reason for the motion, only other -- than
9 the fact that the codefendants were sentenced after
10 this, but they were all sentenced in a range that was kind
11 of what we knew was going to happen when he pled and got
12 the 22 years so...

13 THE COURT: All right. Mr. Riley?

14 MR. RILEY: Judge, Mr. Woods is -- as Your Honor
15 remembers, pled on the 26th of July, and I have filed a
16 motion for the Court to reconsider the sentence that was
17 imposed.

18 Basically, I've got two main arguments, Judge.
19 First of all, I wanted to stress, and I think that
20 perhaps at the time of sentencing, this -- this was
21 stressed, and the court was fully informed as to Mr. Woods'
22 record. I did briefly just want to allude to that.

23 This is not an individual who has a terribly
24 extensive record. I've been over his record again to
25 prepare for this motion hearing. He has a simple

1 possession of marijuana conviction in 2000, a breach of
2 the peace in 2002, and the only serious conviction that
3 he has was a 2004 drug conviction for P.W.I.D. cocaine.

4 Now, he was put on -- the sentence on that was five
5 years suspended to time served and 18 months' probation,
6 and he subsequently did violate his probation and got
7 revoked for three years. I think he served 18 months on
8 that revocation.

9 So the most, until he was before Your Honor on the
10 26th of July, the most time he ever served in prison or
11 in custody was 18 months.

12 He's not a violent individual. His record certainly
13 does not bear out that interpretation. Secondly,
14 Judge, as Mr. Moak mentioned, I would argue for some
15 consideration by the Court for what I think is a huge
16 discrepancy between what Mr. Woods was sentenced to and
17 what the codefendants were sentenced to.

18 Now, the State agreed to reduce Mr. Woods' murder
19 charge to voluntary manslaughter. Of course, you know
20 that very well, Judge, which makes a big difference in
21 the sentencing potential.

22 As far as the other seven codefendants, one of
23 whom just was sentenced not five minutes ago, four out
24 of the seven received a time-served sentence with no
25 probation. Three out of the seven were serving --

1 received a time-served sentence with some probation. Two
2 of them got nine months' probation. One of them got six
3 months' probation.

4 THE COURT: Yeah, but they didn't kill anybody. I'm
5 not, you know, cutting you off, but here is the thing:
6 I'm the longest-serving judge by almost seven years.

7 In one year in Richland, I sentenced 82 homicides.
8 They weren't all killings. I know how to sentence people
9 to get what other people did. It's on what's presented
10 to me.

11 They didn't kill anybody. If they had not dropped
12 it, he would have been convicted of murder. It would have
13 been 30 to life. They dropped it, so I gave him 22.

14 MR. RILEY: Judge --

15 THE COURT: If he didn't kill the person, he should
16 have had a trial. If he acted in self-defense, he should
17 have had a trial. If he pled guilty, waived all of
18 that, clearly understood what he was getting into, and
19 22 years is much less than 30. It's still --

20 MR. RILEY: Yes, sir.

21 THE COURT: -- a long time for somebody who is 27,
22 28 years old, but you kill somebody, you go to jail.
23 That's all.

24 MR. RILEY: Yes, sir. Well, of course, I'm not --

25 THE COURT: There's nothing that has changed as far

1 as I'm sentencing. They wanted more time than that.

2 MR. RILEY: Correct.

3 THE COURT: So that's tough luck. That's all. If
4 there's changed circumstances, but not the people that
5 rode to fool with it, didn't get time. They didn't kill
6 anybody.

7 MR. RILEY: Judge, even the codefendant who went
8 there armed with a bat and broke the bat over somebody --

9 THE COURT: Yeah, but I -- that's another matter and
10 another time. He didn't kill anybody.

11 MR. MOAK: Your Honor, our argument is --

12 THE COURT: I'm really not interested in what
13 somebody else got, but 22 years is within the range of
14 what people get, what most people, including some
15 resident judges in this circuit, would give him 30
16 without batting an eye, as you well know. So 22 is a long
17 time.

18 Somebody is dead. If he had a trial and was found
19 not guilty, then he wouldn't have served any time, but
20 I'm not going to -- I'm not going to alter it. I
21 recognize he has family support. They were here last
22 time.

23 MR. RILEY: Had what now, sir?

24 THE COURT: His family was here last time.

25 MR. RILEY: Yes, sir. And as you can see, they're

1 with him again today.

2 THE COURT: They're with him. They want him back.
3 They think he got a raw deal. Well, 22 years is a long
4 time, but I'm...

5 MR. RILEY: Okay.

6 THE COURT: To many, that doesn't sound bad to me.
7 It sounds bad to him, of course. There you go.

8 Now, if he didn't have the codefendants there, he
9 wouldn't even be here.

10 MR. RILEY: Right.

11 THE COURT: They got whatever, which after the
12 Solicitor's Office investigated for a long time, they
13 made recommendations. I don't know what happened over
14 there. I didn't check into it. I did see a little video
15 of it, but it's like everything. It's ten minutes in
16 front of me.

17 I have to rely on the Solicitor's Office to do the
18 investigating and make the recommendation. If they
19 thought that somebody else was really culpable, they
20 would not have recommended such light sentences, or they
21 would start there with it.

22 So I'm not in the business of recommending -- I mean,
23 reducing the sentences unless I'm -- something has
24 changed, and if something has changed, then I will consider
25 it.

1 I was aware of all that went on when he was
2 sentenced. I did not know what the codefendants were going
3 to get. I was not advised by the Solicitor as to what
4 the recommendation was.

5 They had all pled based on being willing to testify
6 at the trial. They all stated what they would testify
7 to in the trial.

8 MR. RILEY: Correct.

9 THE COURT: And after Mr. Woods went over with you,
10 I would take it, what they would testify to, he decided
11 it would be in the best interest not to face the murder
12 trial, take the voluntary, and there you go.

13 MR. RILEY: Well, Judge, thanks for your
14 consideration.

15 THE COURT: Okay.

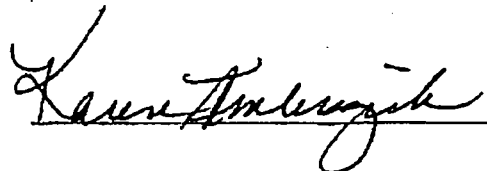
16 MR. MOAK: Thank you, Your Honor.
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CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF KERSHAW)

I, Karen Ambroziak, Official Court Reporter for the 5th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings heard and evidence introduced in the trial of the captioned case relative to appeal, in the General Sessions Court for Kershaw County, South Carolina, on the 26th day of August, 2010.

May 28, 2011

A handwritten signature in cursive script, reading "Karen Ambroziak", written over a horizontal line.

Karen Ambroziak, Court Reporter

My Commission Expires: 04/01/14

5th RC

FORM 5

STATE OF SOUTH CAROLINA

County of ~~Richland~~ KershawHenry R. Noor #314307
Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR
POST-CONVICTION RELIEF
2012-CP-28-9012012 SEP 24 AM 9:40
CLERK OF COURT
KERSHAW COUNTY, S.C.INSTRUCTIONS - READ CAREFULLY

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

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

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

- Place of detention L.P.I. 990 Wiscacky Hwy
Bishopville, SC 29010
- Name and location of Court which imposed sentence Fifth Judicial Circuit
Kershaw County Courthouse 1121 Broad Street, Camden, SC 29020
- Name(s) of co-defendant(s) (if any) _____
- The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) 2006-05-28-0421 Voluntary Manslaughter 22 Months(b) 2009-05-28-0355 Lying Second Degree 12 MonthsATTEST True, Correct & Certified
Copy of Original on File in this
Court.Debra M. Wines
Clerk of Court Kershaw County

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 7/26/2010 22 years
- (b) 7/26/2010 20 years
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ☒
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. denied
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. submitted Feb. 1, 2012 - Filed Feb. 22, 2012
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

2012 SEP 24 AM 9:40
JOHN B. HARRIS
CLERK OF COURT
KERSHAW COUNTY, S.C.

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Constitutional Violation 6th Amendment ineffective Assist. of Counsel
- (b) Constitutional Violation Due process & Equal protection
- (c) Exhaustion of available Remedies
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Counsel performance was deficient
- (b) Was denied my right to a fair trial
- (c) ~~_____~~
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. S.C. Court of Appeals
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. S.C. Court of Appeals
- ii. _____
- iii. _____
- iv. _____

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CLERK OF COURT
BERNARD COUNTY, SC
2012 SEP 24 AM 9:40

d (c) the disposition thereof:

i. denied

ii. _____

iii. _____

iv. _____

* (d) the date of each such disposition:

i. don't know

ii. _____

iii. _____

iv. _____

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

i. ~~_____~~

ii. _____

iii. _____

iv. _____

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

No

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

2012 SEP 24 AM 9:40
CLERK OF COURT
KEESAW COUNTY, S.C.
FOR RECORD

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

(a) Counsel failed to present said Issues and said issue was for PCR.
 (b) _____
 (c) _____

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

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

2512 SEP 24 AM 9:40
 JERRY L. EDDY, JR.
 CLERK OF COURT
 Kershaw County, S.C.

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

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

i. Cornelius J. Riley P.O. Box 1557 Camden, S.C. 29021
 ii. _____
 iii. _____

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

i. Cornelius (Neil) J. Riley Plea
Sentencing
 ii. _____
 iii. _____

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

Sentence Reversion, Setaside, or Re-sentence without prejudice

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

N/A

STATE OF SOUTH CAROLINA)
)
County of _____)

VERIFICATION

FILED FOR RECORD
2012 SEP 24 AM 9:40
JOYCE McDONALD
CLERK OF COURT
Kershaw County, S.C.

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Very Happy

SWORN to and subscribed before me this 21
day of Sept, 2012.

Debra Sisco (L.S.)
Notary Public

My Commission Expires: 11-4-2013

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

FILED FOR RECORD
2012 SEP 24 AM 9:40
JEFFREY J. JOHNSON
CLERK OF COURT
HERSHAW COUNTY, S.C.

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

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

9dmy/wood
Applicant

SWORN or affirmed to and subscribed before me this

21 day of Sept, 2012.

Debra L. Sims
Notary Public

My Commission Expires: 11-4-2015

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

HENRY WOODS)
SCDC # 314307,)

Applicant,)

vs.)

STATE OF SOUTH CAROLINA,)
Defendant.)

IN THE COURT OF COMMON PLEAS
2012-CP-28-901

AMENDED APPLICATION
FOR POST CONVICTION RELIEF

JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

2013 APR 23 AM 11:57

FILED FOR RECORD

Based upon further investigation and research, the Post-Conviction Relief Application filed on behalf of the above named Applicant is hereby Amended as follows:

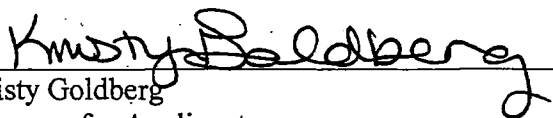
11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Ineffective assistance of trial counsel – failure to adequately prepare Applicant for trial and failure to provide Applicant with information regarding exculpatory evidence including but not limited to the existence of gunshot residue on the victim;

(b) Ineffective assistance of trial counsel – failure to adequately prepare Applicant for trial including but not limited to discussing available defenses;

(c) Ineffective assistance of counsel – failure to adequately advise Applicant about his rights during trial regarding his right to testify;

(d) Ineffective assistance of counsel – Applicant was coerced into pleading guilty.



Kristy Goldberg
Attorney for Applicant

Kristy Goldberg

Law Office of Kristy Goldberg, LLC.
1720 Main Street, Suite 301
Columbia, SC 29201
803-252-2299
803-799-4059 (fax)
kristy@kristygoldberglaw.com

Columbia, South Carolina

This 22nd day of April, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

HENRY WOODS)
SCDC # 314307,)

Applicant,)

vs.)

STATE OF SOUTH CAROLINA,)
Defendant.)

IN THE COURT OF COMMON PLEAS
2012-CP-28-901

CERTIFICATE OF SERVICE

FILED FOR RECORD
2013 APR 23 AM 11:57
JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

I certify that on this date I served the Amended Application for Post-Conviction Relief in this case on The State of South Carolina by delivering a copy of this application to the Office of the Attorney General via U.S. mail at Post Office Box 11549, Columbia, South Carolina 29211-1549.



Kristy Goldberg
Attorney for Defendant

Kristy Goldberg
Law Office of Kristy Goldberg, LLC.
1720 Main Street, Suite 301
Columbia, SC 29201
803-252-2299
803-799-4059 (fax)
kristy@kristygoldberglaw.com

Columbia, South Carolina

This 22nd day of April, 2013

Kristy Grafton Goldberg, LLC

ATTORNEY AT LAW

April 22, 2013

Joyce McDonald
Kershaw County Clerk of Court
Post Office Box 1557
Camden, South Carolina 29021

RE: Henry Woods, SCDC # 314307 vs. State of South Carolina
2012-CP-28-901

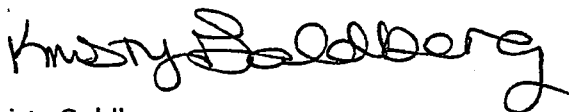
FILED FOR RECORD
2013 APR 23 AM 11:57
JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

Dear Madam Clerk:

Please find enclosed two copies of an Amended Application for Post-Conviction Relief on behalf of Henry Woods, SCDC # 314307 along with a Certificate of Service. Please file the Amended Application, stamp the copy, and return the copy to me in the enclosed, self-addressed stamped envelope.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,



Kristy Goldberg

Enclosure

CC: Megan E. Harrigan
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

WOODS Henry R -
00314307,

2012CP28901

Applicant,

RETURN

v.

State of South Carolina,

Respondent.

RICHLAND COUNTY
FILED
2012 NOV 29 PM 3:17
JENNIFER W. HEBRIDE
C.C.P. & G.S.

The Respondent, making its Return to the application for post conviction relief (PCR) filed October 24, 2012, 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 Kershaw County Clerk of Court. The Applicant was true bill indicted at the November 2006 and March 2009 terms of the Kershaw Grand Jury for Murder and Lynching 2nd Degree) (2006-GS-28-0421; 2009-GS-28-0358).² He was represented by Cornelius J Riley, Esquire, on the charge(s). Applicant proceeded to jury trial before The Honorable J. Ernest Kinard, Jr., and on July 26, 2010, was found guilty of Lynching as indicted, as well as the lesser included Voluntary Manslaughter. He was sentenced to twenty (20) years

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2012 NOV 29 PM 12:10
JOSEPH D. ALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

¹<http://publicindex.sccourts.org/kershaw/publicindex/PCCaseDetails.aspx?County=28+&Casenum=2012CP28901&CourtType=G&CaseType=Civil&CourtAgency=28002>

² <https://sword.doc.state.sc.us/scdc-public/inmateDetails.do?id=+00314307>

imprisonment for Lynching and twenty-two (22) years imprisonment for Voluntary Manslaughter, to run concurrently.

Direct Appeal

A notice of appeal was filed and an appeal perfected. Applicant was represented by Assistant Appellate Defender Elizabeth Franklin-Best on the appeal. After the submission of briefs, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences. State v. Woods, Op. No. 2012-UP-102 (S.C. Ct. App. filed February 22, 2012). The remittitur was issued March 12, 2012.

The current application for post conviction relief (PCR) was filed October 24, 2012.

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 trial transcript, and the Applicant's applicable direct appeal files.³ 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.

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

³ The Respondent will utilize the Record on Appeal if the direct appeal was an Anders appeal.

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

- (a) Constitutional Violation 6th Amendment Ineffective Assist of Counsel
- (b) Constitutional Violation Due process & Equal protection
- (c) Examination and Discovery Plan

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

- (a) Counsel performance was deficient
- (b) Was denied my right to a fair trial.
- (c) [REDACTED]

2012 SEP 24 AM 9:40
 CLERK OF COURT
 HENRICH COUNTY

IV.

For the purposes of this Return, the Respondent interprets each of the Applicant's 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. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. 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, 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, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used 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, 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. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). Even 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 (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 cannot be conclusively refuted by the record. 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).

V.

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.

1 A. Yes, ma'am.

2 Q. Okay. Are you aware that he is incarcerated related to
3 a voluntary manslaughter conviction?

4 A. Yes, ma'am.

5 Q. All right. This conviction -- the incident allegedly
6 occurred on March 7th, 2006. Were you present the day that
7 this incident occurred?

8 A. Yes, ma'am.

9 Q. Okay. And this involved a shooting where an individual
10 named Chad Huff died; correct?

11 A. Yes, ma'am.

12 Q. All right. On that particular day, were you with either
13 Mr. Woods or the victim?

14 A. I was with the victim.

15 Q. Okay. Okay. Can you tell -- again, I haven't spoken
16 with you, but I did send Mr. Billy Tabor, who is here
17 present. He has spoken with you before today's date;
18 correct?

19 A. Yes, ma'am.

20 Q. And you see him in the courtroom?

21 A. Yes, ma'am.

22 Q. Okay. Generally, did you ever speak with an attorney
23 named Neil Riley related -- about anything that happened that
24 day?

25 A. No, ma'am.

1 Q. Have you ever spoken with any other investigators about
2 what happened that day?

3 A. No, ma'am.

4 Q. Okay. Did you ever speak with an investigator from
5 Kershaw County, law enforcement, about what happened that
6 day?

7 A. No, ma'am.

8 Q. Did you ever give a written statement?

9 A. No, ma'am.

10 Ms. Goldberg: Okay. One second. Beg the Court's
11 indulgence. Can you mark this for I.D., please?

12 (Plaintiff's Exhibit 3 was marked for identification
13 only.)

14 Ms. Goldberg: May I hand this to the witness, Your
15 Honor---

16 The Court: You may.

17 Ms. Goldberg: ---for I.D. purposes?

18 By Ms. Goldberg:

19 Q. Mr. Bracey, I'm handing a written statement to you that
20 allegedly states that it's your statement about what happened
21 that day. Is that a statement that you wrote?

22 A. No, ma'am.

23 Q. Have you ever seen that before?

24 A. No, ma'am.

25 Ms. Goldberg: Okay. Your Honor -- Your Honor, at this

1 time the defendant has -- the witness has stated he's not
2 seen this witness (verbatim) before and cannot verify its
3 accuracy. It was a part of the discovery in this matter.
4 I'd like to enter it -- even though he cannot authenticate
5 it, I'd like to enter it into evidence at this time if the
6 State consents that it was part of the discovery.

7 **Ms. Harrigan:** With that limited -- that it was part of
8 the discovery, yes, Your Honor.

9 **Ms. Goldberg:** And, Your Honor, if not, I can always
10 readmit it with defense counsel that it was part of the
11 discovery, but I just wanted to make it clear for the record
12 that there was this statement out there.

13 **The Court:** How does he know what -- what discovery?

14 **Ms. Goldberg:** Mr. Woods' discovery.

15 **The Court:** How does he know what Mr. Woods' discovery
16 is?

17 **Ms. Goldberg:** He doesn't, Your Honor. I'll keep going,
18 and then we'll see where it goes.

19 **The Court:** I mean, if y'all want to stipulate it, then
20 I guess you can stipulate to anything you want to stipulate
21 to, but I don't know how this witness can---

22 **Ms. Goldberg:** Do you want to---

23 **Ms. Harrigan:** The State will stipulate that that was
24 provided in the discovery that Ms. Goldberg sent the State.

25 **The Court:** - All right. That was provided -- that was

1 discovery provided to Mr. Riley at the time that the initial
2 charge was pending.

3 **Ms. Goldberg:** Yes.

4 **The Court:** All right.

5 **Ms. Goldberg:** And that -- and that Mr. Bracey has
6 looked at it and cannot authenticate it.

7 (Plaintiff's Exhibit 3 was received in evidence.)

8 By Ms. Goldberg:

9 Q. All right. Mr. Bracey, you were present on March 7th,
10 2006; correct?

11 A. Yes, ma'am.

12 Q. Can you tell this Court what you observed that day
13 regarding the shooting of Chad Huff?

14 A. I just seen -- I'm saying we was -- there was an
15 altercation between I guess you would say them or -- on the
16 outside.

17 **The Court:** You've got to speak up. I still can't...

18 **The Witness:** There was an altercation between -- I'm
19 saying I guess you could say the defendant and me or some
20 more of them fellows that I was with---

21 **Court Reporter:** I'm sorry. Some what fellows?

22 **The Witness:** Some more fellows. And there was the
23 shooting. I never seen who pulled the trigger, but, yes, I
24 was a part of the fight.

25 By Ms. Goldberg:

1 Q. Okay. You stated you were originally with the victim,
2 Chad Huff; correct?

3 A. Yes, ma'am.

4 Q. And was -- were you with a group of people?

5 A. It was just me and him and his brother.

6 Q. And his brother.

7 A. Yes, ma'am.

8 Q. And how did this incident begin?

9 A. I don't know where it occurred from or how it occurred.
10 I just know I was there at the time of the incident.

11 Q. Okay. When -- and then a physical altercation took
12 place?

13 A. Yes, ma'am.

14 Q. Okay. And then during the physical altercation, at some
15 point guns were involved. Is that correct?

16 A. Yes, ma'am.

17 Q. And what did you see or not see as far as the presence
18 of guns?

19 A. I never seen a gun. I'm saying I never seen a gun, but
20 I'm saying I heard the shots.

21 Q. You heard shots.

22 A. Yes, ma'am.

23 Q. Did you see the defendant, the applicant here, Henry
24 Woods, shoot Chad Huff?

25 A. No, ma'am.

1 Q. Did you see another individual shoot Chad Huff?

2 A. I never seen who possessed the gun nor who pulled the
3 trigger. I was just out there in the midst of fighting. I
4 just heard the gunshots. Never seen who pulled the trigger.

5 Q. Did you see if the applicant was near Chad Huff when he
6 was shot?

7 A. Yes, ma'am.

8 Q. And what did you see?

9 A. I'm just saying I seen -- like he had his back towards
10 me, but I never seen -- like I just noticed that I heard the
11 gunshots and he was shot, but I never seen like the gun---

12 Q. Who had his back toward you?

13 A. The defend -- well, it was the triggerman. I'm saying
14 whatever the direction that the shots came from, it was off
15 to the side of me.

16 Q. You saw an individual whose back was towards you---

17 A. Yes, ma'am.

18 Q. ---who shot Chad Huff.

19 A. I guess you would say so; yes, ma'am.

20 Q. And was that individual Mr. Woods?

21 A. Not from the looks of it; no, ma'am.

22 Q. And you knew Mr. Woods at the time; correct?

23 A. Yes, ma'am.

24 Q. I asked you once before: Did an attorney named Neil
25 Riley ever speak with you about this matter?

1 A. No, ma'am.

2 Q. Did an investigator for the Kershaw County Public
3 Defender's Office ever speak with you about this matter?

4 A. No, ma'am.

5 Q. Were you ever asked to testify in the trial of Mr. Henry
6 Woods?

7 A. Yes, ma'am.

8 Q. Who were you asked to testify by?

9 A. Solicitor Ron Moak.

10 Q. All right. And what happened in that conversation?

11 A. I told him I couldn't testify to what he was asking me
12 to testify to.

13 Q. What did Ronald Moak ask you to testify to?

14 A. He asked me was Mr. Woods the shooter, and I told him I
15 didn't know. I never seen -- I couldn't say that he was the
16 shooter, so I couldn't testify and say, yeah, that I seen him
17 shoot.

18 Ms. Goldberg: All right. Your Honor, if I may
19 approach?

20 The Court: All right.

21 By Ms. Goldberg:

22 Q. Mr. Bracey, I'm going to show you Defendant's (verbatim)
23 Exhibit 3. This is the statement that you stated you've
24 never seen before, you never wrote. I want to direct you to
25 Page 2. Can you look at Page 2?

1 A. I can't move my hands.

2 Q. On that page it said that Smurf -- do you know who Smurf
3 is?

4 A. No, ma'am.

5 Q. Have you ever known the defendant or applicant, Mr.
6 Woods, to go by the name of Smurf?

7 A. No, ma'am.

8 Q. Okay. On that page it says that you actually observed
9 Smurf shoot someone. Is that what that says?

10 A. That's what the paper say; yes, ma'am.

11 Q. Is that true?

12 A. No, ma'am.

13 Q. Did you -- and, again, you did not write that statement?

14 A. No, ma'am.

15 Q. Thank you very much. Mr. Bracey, what charge are you
16 incarcerated for?

17 A. Voluntary manslaughter.

18 Q. Is it in any way related to the incident that took place
19 on March 7th?

20 A. No, ma'am.

21 **Ms. Goldberg:** No further questions, Your Honor.

22 **The Court:** All right.

23 **Ms. Harrigan:** May it please the Court?

24 **The Court:** Yes, ma'am.

25

Cross-Examination

1
2 By Ms. Harrigan:

3 Q. Mr. Bracey, I believe you testified before you're
4 currently housed at Lee Detention Center?

5 A. Yes, ma'am.

6 Q. And you testified that you're there for voluntary
7 manslaughter; correct?

8 A. Yes, ma'am.

9 Q. What other charges are you there for?

10 A. That's the only one I'm there for, but I caught one
11 while down there.

12 Q. You don't also have a charge for strong arm robbery?

13 A. Before that.

14 Q. And you don't have a charge for assault and battery of a
15 high and aggravated nature?

16 A. Yeah. That's the one I caught down there.

17 Q. How long are you serving for that charge?

18 A. Ten years.

19 Q. And can you tell the Court the facts of that case
20 briefly?

21 A. Which one?

22 Q. The assault and battery of a high and aggravated nature?

23 A. An altercation between me and another inmate. He got
24 stabbed.

25 Q. And you had a -- you filed a P.C.R. on that case;

1 correct? That was resolved in April of this year?

2 A. Yes, ma'am.

3 Q. And did you fill out that application for post-
4 conviction relief for the assault and battery of a high and
5 aggravated nature?

6 A. Yes, ma'am.

7 Q. And, Your Honor, the State would request that the record
8 be left open so we can provide a copy of that application and
9 compare the handwriting with the statement he's claiming he
10 did not make. The State does not have a copy of it
11 currently. We weren't on notice that he was going to claim
12 he never wrote it.

13 A. I can give a handwriting -- I can write a statement on
14 anything now, a sample of my handwriting.

15 **The Court:** Do y'all have any objection?

16 **Ms. Goldberg:** I'd leave it in the Court's discretion.
17 I did tell the State that I would be using portions of the
18 discovery and specifically did mention this statement. I did
19 not tell the State exactly what he was going to say because I
20 didn't want to assume how that -- a witness was going to
21 testify.

22 **Ms. Harrigan:** The State was put on notice that he was
23 going to deny that he -- that the applicant was the shooter,
24 but we did not know that he was going to deny that the
25 statement was totally fabricated and not written by him.

1 **The Court:** All right.

2 By Ms. Harrigan:

3 Q. What time did you enter the department of corrections
4 for your -- your first charge I believe you testified was to
5 voluntary manslaughter; correct?

6 A. Yes, ma'am.

7 Q. Do you recall approximately what date you entered the
8 department of corrections?

9 A. 2007. February, I think.

10 Q. So at the time of Mr. Woods' guilty plea in preparation
11 for trial, you were already housed within the department of
12 corrections; correct?

13 A. Yes, ma'am.

14 Q. And I believe you testified before that you were
15 involved in the altercation giving rise to these charges;
16 correct?

17 A. Yes, ma'am.

18 Q. And you were there with the victim and his friends;
19 correct?

20 A. Yes, ma'am.

21 Q. And you were involved in the altercation?

22 A. Yes, ma'am.

23 Q. And I believe your testimony in regards to Ms.
24 Goldberg's questions is that you saw the altercation between
25 the applicant and his friends and your friends; correct?

1 A. Yes, ma'am.

2 Q. And you were actively involved, but you never saw who
3 pulled the trigger?

4 A. No, ma'am.

5 Q. And the shooter's back was turned to you is your
6 testimony; correct?

7 A. Yes, ma'am.

8 Q. So you never saw the face of the shooter; correct?

9 A. No, ma'am.

10 Q. And your testimony was the applicant was near the victim
11 when the gunshots went off; correct?

12 A. Yes, ma'am.

13 Q. And you only saw the back of the shooter; correct?

14 A. Uh-huh.

15 Q. How long have you known Henry Woods for?

16 A. Not long. I'm saying he -- it wouldn't be too long.
17 I've known him from like the same -- we were around the same
18 area, but I never like know...

19 Q. Would you consider him a friend?

20 A. You could say so; yes, ma'am.

21 Q. And you're denying that you provided the written
22 statement to law enforcement.

23 A. Yes, ma'am.

24 Q. Which has been entered as Applicant's Number 3. Do you
25 recognize that handwriting as anyone else's?

1 A. No, ma'am.

2 Q. Are you aware that the other friends who you were with
3 at the time gave statements to police?

4 A. No, ma'am, I wasn't aware of that.

5 Q. Okay. Are you aware that they indicated that Mr. Woods
6 was the shooter?

7 A. No, ma'am.

8 Q. Did you ever discuss this with your friends---

9 A. Never spoke to them.

10 Q. ---who were there? And now you're saying this isn't
11 your statement; correct?

12 A. Yes, ma'am, it's not.

13 Q. Is that your signature on the statement?

14 A. No, ma'am.

15 Q. And you never spoke with Mr. Riley regarding these
16 charges; correct?

17 A. Don't know who that is.

18 Q. But you were in the department of corrections from 2007
19 until currently; correct?

20 A. Yes, ma'am.

21 Q. And you were asked to testify for the State; correct?

22 A. Yes, ma'am.

23 Q. And you told the State that you weren't sure who the
24 shooter was; correct?

25 A. I told him I wouldn't testify because I can't say that

1 he was the shooter.

2 Q. But you can't say conclusively that he isn't the
3 shooter, can you?

4 A. I cannot say that he was either.

5 Q. But you cannot say that you know that the---

6 A. I'm saying the fellow that had his back to him was a
7 much bigger fellow than him, I'm saying taller-wise.

8 Q. But you testified before that you know Mr. Woods but you
9 aren't good friends with him; correct? You just know him
10 from around the area?

11 A. Uh-huh.

12 Q. Okay. And you never saw the face of the shooter.

13 A. No, ma'am.

14 Q. So you don't conclusively know who the shooter was, do
15 you?

16 A. No, ma'am.

17 **Ms. Harrigan:** No further questions, Your Honor.

18 **The Court:** All right. Thank you, sir. You may step
19 down.

20 **Ms. Goldberg:** Thank you, sir. The applicant would next
21 call Maurice Chisholm.

22 **The Court:** Do y'all have any objection to this witness
23 being allowed to leave?

24 **Ms. Harrigan:** No, Your Honor.

25 **The Court:** I don't know if y'all... All right. Tell

1 me the name of that -- sir, give me your name again, please.

2 Mr. Bracey: Vincent Bracey.

3 The Court: First name is?

4 Mr. Bracey: Vincent.

5 The Court: Vincent. Okay.

6 Maurice Chisholm, after being duly sworn, testified
7 as follows:

8 The Court: And tell me your full name.

9 The Witness: Maurice Chisholm.

10 The Court: I'm sorry?

11 The Witness: Maurice Chisholm.

12 The Court: Maurice Chisholm? All right. Thank you.

13 Direct Examination

14 By Ms. Goldberg:

15 Q. Mr. Chisholm, you were not present on March 7th, 2006,
16 when Chad Huff was shot; correct?

17 A. No.

18 Q. Where were you at that time in 2006?

19 A. I was locked up. I was in prison.

20 The Court: Sir, you're going to have to speak up if
21 you're---

22 The Witness: I was in prison. Prison.

23 By Ms. Goldberg:

24 Q. Okay. Are you aware that you were named as a witness by
25 defense attorney Neil Riley for Mr. Woods' jury trial?

1 A. Yes.

2 Q. What do you know about what happened that day, since you
3 were in prison?

4 A. Well, I mean, at first I never knew that they was going
5 to call me. I can recollect what I heard but -- so, you
6 know, to keep it simple, I can't speak vividly of any detail,
7 but I just remember -- recall the dude that spoke saying that
8 they was beefing on the streets, Smurf and him fighting on
9 the streets, and he said that Smurf didn't kill no one.
10 Smurf didn't -- wasn't the shooter.

11 Q. And when you said the guy that just spoke, you're
12 referring to Vincent Bracey?

13 A. Yes.

14 Q. He had told you that Henry Woods was not the shooter.

15 A. He told me and whoever else was present.

16 Q. When was that?

17 A. I told -- I didn't know that they was going to come back
18 for me to -- but as soon as he came to the system, into
19 prison, and the story, I mean, came about and he spoke on it.

20 Q. Do you have a guess as to what year that was?

21 A. What year? It had to have been early 2007 or late '06.

22 Q. Where did this take place, this conversation?

23 A. In prison.

24 Q. At which facility---

25 A. Sumter -- Lee County.

1 Q. Is that all you know about this case?

2 A. Yes.

3 Q. Okay. Did anyone -- when Mr. Woods was going to have a
4 jury trial, did anyone come to the department of corrections
5 to speak with you about that?

6 A. No.

7 Q. To the best of your memory.

8 A. No.

9 Ms. Goldberg: All right. No further questions.

10 Ms. Harrigan: May it please the Court?

11 The Court: Yes, ma'am.

12 Cross-Examination

13 By Ms. Harrigan:

14 Q. Mr. Chisholm, you don't know Mr. Woods, do you?

15 A. No.

16 Q. Never met him before?

17 A. Yes.

18 Q. You have met him?

19 A. In prison.

20 Q. In prison. You weren't present at the incident giving
21 rise to these charges, were you?

22 A. No.

23 Q. Okay. And your testimony before was that Mr. Bracey
24 told you that Mr. Woods' nickname was Smurf. You referred to
25 him as Smurf; correct?

1 A. I referred to him as Smurf.

2 Q. Okay. Did Mr. Bracey ever refer to him as Smurf to you?

3 A. No. I can't recollect this detailic (phonetic). I
4 mean, I told -- I never know this day was going to come about
5 again to answer that. I can understand -- I mean, I can
6 speak on what was blunt. You know, you can't forget someone
7 saying that he didn't kill someone or...

8 Q. And the conversation took place you said in late 2006 or
9 early 2007? Correct?

10 A. Yes.

11 Q. So there's been a significant time lapse between your
12 testimony today in court and the one conversation that
13 happened in 2006 or early 2007; correct?

14 A. Yes.

15 Q. Okay. Do you remember word for word the conversation?

16 A. I just told you I recall them -- when we were first
17 meeting, I mean, we was told that they had a beef on the
18 streets and the incident -- they spoke on the incident that
19 took place, to show a fight, and then, of course, I'm not
20 going to forget him -- Vinnie saying Smurf didn't kill the
21 man. Smurf wasn't the shooter because that was the talk of
22 the unit.

23 Q. He told you Smurf didn't kill the man; Smurf wasn't the
24 shooter?

25 A. I referred to him as Smurf.

1 Q. Did he tell you who was the shooter?

2 A. No.

3 Q. Did he tell you he could see the shooter?

4 A. That's detailic. I told you -- I mean, that don't stand
5 out. I told you what stands out, what you can't forget, is
6 when he say what I just told you.

7 Q. Did he tell you he gave a statement to law enforcement
8 regarding this incident?

9 A. No.

10 Q. And you were subpoenaed by the defense to testify in Mr.
11 Woods' trial; correct?

12 A. Yes.

13 Q. And you didn't end up needing to testify because it was
14 resolved by guilty plea; correct?

15 A. Excuse me?

16 Q. You didn't need to testify because it was a guilty plea;
17 correct? Your subpoena was cancelled?

18 A. I'm not understanding the question.

19 Q. You didn't have to come to court and present any
20 testimony in regards to Mr. Woods' case; correct?

21 A. No. Yes.

22 Q. And your only involvement in this case is a conversation
23 from 2006 or 2007 where Mr. Bracey told you that Smurf didn't
24 kill the decedent. That's your limited involvement.

25 A. Yeah. I mean, I told you he didn't refer to him as

1 Smurf.

2 Ms. Harrigan: No further questions, Your Honor.

3 The Court: All right. Thank you. You may step down.
4 All right.

5 Ms. Goldberg: Your Honor, at this time we would call
6 Henry Woods.

7 Henry R. Woods, after being duly sworn, testified
8 as follows:

9 Direct Examination

10 By Ms. Goldberg:

11 Q. Henry Woods?

12 A. Yes, ma'am.

13 Q. I'm going to get some background information on you as
14 we begin. Where are you currently housed?

15 A. At Lee Correctional Institution.

16 Q. And what is -- what convictions are you serving time on?

17 A. Involuntary manslaughter and second degree lynching.

18 The Court: Deputy, raise that mic a little bit for me.

19 Bailiff: I don't think it's working, Your Honor.

20 The Court: It's not working? It ain't making any
21 noise, is it? Mr. Woods, you're going to have to speak up if
22 you would.

23 By Ms. Goldberg:

24 Q. You said voluntary manslaughter?

25 A. Involuntary manslaughter and on second degree lynching.

1 Q. And what is the length of your current sentence?

2 A. Twenty-two years.

3 Q. Are you serving time on any other sentences right now?

4 A. No, ma'am.

5 Q. As to voluntary manslaughter and second degree lynching,
6 you pled under North Carolina versus Alford; correct?

7 A. Yes, ma'am.

8 Q. You did not plead guilty. You remained silent as to
9 your guilt or innocence but while entering a plea; correct?

10 A. Yes, ma'am.

11 **The Court:** Let me understand something. My
12 understanding of North Carolina versus Alford is you're
13 denying your guilt.

14 **Ms. Goldberg:** Well, Your Honor, I'm not going to
15 dispute that. I've always interpreted it as at least
16 remaining silent as to it, but you would know better than I
17 would.

18 **The Court:** Well, my understanding of North Carolina
19 versus Alford is you deny your guilt but understand that
20 either -- I mean, two things happen. One is that there's a
21 likelihood that they're going to get convicted.

22 **Ms. Goldberg:** Yes.

23 **The Court:** And, two, the offer you're getting is too
24 good to pass up.

25 **Ms. Goldberg:** I agree with that, and that's the

1 requirement and the standard, but during the plea he didn't
2 actually admit guilt. That's my point.

3 **The Court:** Well, he's pleading guilty pursuant to North
4 Carolina versus Alford. He's denying he did it, but it's
5 treated as a guilty plea and, I mean, that would be my
6 understanding of what the law would be.

7 **Ms. Goldberg:** Yes, sir. That's fair.

8 **The Court:** He doesn't get up and say, "I did it."

9 **Ms. Goldberg:** Right.

10 **The Court:** He gets up and basically says, "I didn't do
11 it, but I'm pleading guilty pursuant to North Carolina versus
12 Alford."

13 **Ms. Goldberg:** Right.

14 **The Court:** Which means I didn't do it. I'm not
15 admitting anything, but here's why I'm doing it.

16 **Ms. Goldberg:** Right. Yes, Your Honor. Yes, Your
17 Honor.

18 By Ms. Goldberg:

19 Q. Who was your attorney at the time of this plea?

20 A. Neil Riley.

21 Q. This was July 26th, 2010?

22 A. Yes, ma'am.

23 Q. And after the plea, your lawyer actually also filed a
24 motion to reconsider your sentence; correct?

25 A. Yes, ma'am.

1 Q. That was heard a short time later?

2 A. Yes, ma'am.

3 Q. Do you remember the basis of the motion to reconsider
4 your sentence?

5 A. No, ma'am; not really.

6 Q. Was it based on the sentences that your co-defendants
7 received?

8 A. Oh, yeah. Yes. Yes, ma'am.

9 Q. Generally what kind of sentences do you remember your
10 co-defendants received?

11 A. I think probation.

12 Q. And some time served as well?

13 A. Some time served.

14 Q. Was your motion -- your motion to reconsider was heard
15 before Judge Kinard; correct?

16 A. Yes, ma'am.

17 Q. Was that denied?

18 A. Yes, ma'am.

19 Q. All right. And then your lawyer also filed a notice of
20 appeal?

21 A. Yes, ma'am.

22 Q. And the appeal was denied as well; correct?

23 A. Yes, ma'am.

24 Q. You were originally charged with murder in this case;
25 correct?

1 A. Yes, ma'am.

2 Q. You understand that a murder charge carries a minimum of
3 30 years and a maximum of a life sentence.

4 A. Yes, ma'am.

5 Q. You understand that if you're successful in this post-
6 conviction relief action that you could be charged with and
7 tried for murder instead of voluntary manslaughter. Do you
8 understand that?

9 A. Yes, ma'am.

10 Q. Do you still want to go forward with this post-
11 conviction relief action here today?

12 A. Yes, ma'am.

13 Q. When were you arrested on the murder charge, generally?

14 A. I want to say March 6th.

15 Q. Of what year?

16 A. 2006.

17 Q. When was it in relation to when this incident happened?

18 A. I don't understand the question.

19 Q. There was an altercation that took place that ultimately
20 resulted in someone shooting Chad Huff; correct?

21 A. Yes, ma'am.

22 Q. How soon after that were you arrested?

23 A. Like an hour and a half, two hours later.

24 Q. At that point were you taken to jail?

25 A. Yes, ma'am.

1 Q. Did you receive an appointed attorney?

2 A. No, ma'am, not at that time.

3 Q. Not at that time?

4 A. Yes, ma'am.

5 Q. Ultimately, who was your attorney in this matter?

6 A. I can't remember his name.

7 Q. Did you have one attorney or several attorneys?

8 A. I had -- I had one attorney at first, but they -- they
9 gave me Neil Riley after him.

10 Q. Okay. So your attorney changed at some point.

11 A. Yes, ma'am.

12 Q. By the time your plea came, Neil Riley was still your
13 attorney; correct?

14 A. Yes, ma'am.

15 Q. Your plea was in 2010?

16 A. Yes, ma'am.

17 Q. So between 2006 and 2010, were you in jail the whole
18 time?

19 A. No, ma'am.

20 Q. Did you bond out at some point?

21 A. Yes, ma'am.

22 Q. How long were you in jail before you bonded out?

23 A. About six -- six months.

24 Q. So the majority of that time you were on bond.

25 A. Yes, ma'am.

1 Q. During this four-year period, did you meet with Neil
2 Riley to discuss this case?

3 A. Yeah, a little closer to the time for me to go up.

4 Q. And how many times do you think you met with Mr. Riley?

5 A. One time. Then I was supposed to come back on the
6 Friday before I go up that next week, and he cancelled.

7 Q. What do you mean go up that next week?

8 A. I was getting ready to go up or either go to trial or
9 plead, and he cancelled that Friday.

10 Q. You met with Mr. Riley one time the week before your
11 trial?

12 A. Yes, ma'am.

13 Q. Did you ever attempt to meet with him prior to that?

14 A. No, ma'am.

15 Q. Were you aware that the court was calling your case to
16 trial in -- in July of 2010?

17 A. Yeah, a couple of days before they decided; yes, ma'am.

18 Q. When did you receive notice that you were going to
19 have -- that your trial was going to be called?

20 A. I can't remember the specific date, but I remember my
21 bondsman telling me that it was getting ready to -- that they
22 was getting ready to go forward with it.

23 Q. That's how you received notice?

24 A. Yes, ma'am.

25 Q. How many days do you think that was prior to your trial?

1 A. I want to say around three. Three days prior.

2 Q. Was that before or after you met with Mr. Riley?

3 A. That was -- well, I didn't meet with him until after I
4 found out that I was getting ready to go up.

5 Q. All right. When you met with Mr. Riley, were y'all --
6 did you -- did the both of you discuss what would happen at
7 your trial?

8 A. Well, we really -- well, not really -- I mean not really
9 discuss what would happen.

10 Q. What did you discuss?

11 A. Basically he was telling me about the people that was
12 going to come back and testify or whatever.

13 Q. Did you ever go over your discovery documents with Mr.
14 Riley?

15 A. No, ma'am.

16 Q. Prior to your plea, did you ever see any evidence, any
17 documents, any statements related to your case?

18 A. No, ma'am.

19 Q. You never reviewed the written statements?

20 A. No, ma'am.

21 Q. Police reports?

22 A. No, ma'am.

23 Q. Forensic reports?

24 A. No, ma'am.

25 Q. The night you were arrested, were you aware that you

1 were tested for gunshot residue?

2 A. Yes, ma'am.

3 Q. Did you ever find out the results of that test?

4 A. No, ma'am.

5 Q. Prior to your plea?

6 A. No, ma'am.

7 Q. Have you since found out the results of that test?

8 A. Yes, ma'am.

9 Q. Have you since seen a copy of the results of that test?

10 A. Yes, ma'am.

11 **Ms. Goldberg:** May I approach, Your Honor?

12 **The Court:** Yes, ma'am.

13 (Plaintiff's Exhibit 4 was marked for identification

14 only.)

15 By Ms. Goldberg:

16 Q. Mr. Woods, I'm handing you Plaintiff's Exhibit 4. Have
17 you seen that document?

18 A. Yes, ma'am.

19 Q. And when did you see that document for the first time?

20 A. When you sent me my motion of discovery.

21 Q. And what does that document mean to you? What is that?

22 A. It's -- I guess it's the gun forensic test paper.

23 Q. It's the results of the gunshot residue test?

24 A. Yes, ma'am.

25 Q. And I believe on the second page it has the results of

1 your test. What are the results?

2 A. Right palm, no gunshot residue was found. Left palm, no
3 gunshot residue was found.

4 Q. Okay. Does that report also state that the victim in
5 this case, Chad Huff, was tested for gunshot residue?

6 A. Yes, ma'am.

7 Q. And what are the results of that test?

8 A. Round lead particles are found.

9 Q. It appears there was some gunshot residue found on the
10 victim's hand?

11 A. Yes, ma'am.

12 Ms. Goldberg: Your Honor, at this time we'd ask to
13 enter this exhibit into evidence.

14 Ms. Harrigan: No objection---

15 The Court: So admitted.

16 Ms. Harrigan: ---from the State.

17 (Plaintiff's Exhibit 4 was received in evidence.)

18 By Ms. Goldberg:

19 Q. Mr. Woods, did you ever discuss any possible defenses
20 that you may have had at trial with your lawyer?

21 A. No, ma'am.

22 Q. Did you know what possible defenses you may have?

23 A. No, ma'am.

24 Q. Did you ever discuss potential witnesses for the trial
25 with your lawyer?

1 A. Yes, ma'am.

2 Q. What did you discuss?

3 A. He -- basically he was telling me people that was going
4 to come back and testify against me.

5 Q. And what did he say?

6 A. He said Vincent Bracey. Of course, my baby's mother
7 which is Ebony Danzy (phonetic), her sister, Shanasia
8 (phonetic) Danzy. That was pretty much -- that was pretty
9 much it.

10 Q. Did you ever speak with your lawyer about Maurice
11 Chisholm?

12 A. Yes. Yes. Yes, ma'am.

13 Q. What was that?

14 A. He just basically -- well, basically I told -- I told
15 him about that he heard the conversation, and he was
16 basically bringing him back to testify what he had heard.

17 Q. What Mr. Chisholm had heard from whom?

18 A. From Vincent.

19 Q. From Vincent Bracey?

20 A. From Vincent Bracey, yes, ma'am.

21 Q. Did you ask your lawyer to go speak with Mr. Chisholm or
22 call him as a witness?

23 A. I asked him to call him as a witness.

24 Q. Did you ask your lawyer to call Mr. Bracey as a witness?

25 A. Yes, ma'am.

1 Q. Did you believe Mr. Bracey was already going to be
2 called as a witness?

3 A. Yes, ma'am. I was already told that he was -- he was
4 prepared to come back and testify.

5 Q. And was going to be called by the State.

6 A. Was going to be called by the State.

7 Q. You had several co-defendants in this matter; correct?

8 A. Yes, ma'am.

9 Q. And these individuals came to court and proffered
10 testimony of what they were prepared to say happened that
11 day. Is that correct, to your knowledge?

12 A. Yes, ma'am.

13 Q. Were you present in court during their testimony?

14 A. No, ma'am.

15 Q. Were you -- why weren't you present in court? Do you
16 know?

17 A. They said that they -- it wasn't right for me to be in
18 the courtroom or something while they was giving their pleas
19 or whatever.

20 Q. Did you ever receive a copy of their transcript of what
21 all they said?

22 A. Yes, ma'am.

23 Q. When did you receive that?

24 A. When you sent it to me.

25 Q. You did not receive a copy of that prior to your plea.

1 A. No, ma'am.

2 Q. Did your defense counsel, Mr. Riley, share with you what
3 each of those witnesses said in the proffered testimony?

4 A. No, ma'am.

5 Q. He never told you what was stated?

6 A. No, ma'am.

7 Q. You said you've since received a copy of this transcript
8 and reviewed what the witnesses said against you; correct?

9 A. Yes, ma'am.

10 Q. Did the witnesses state that you shot the victim?

11 A. No, ma'am.

12 Q. Did any of the witnesses state that you shot the victim?

13 A. No, ma'am.

14 Q. If you had been aware of what the witness statements
15 were prior to your plea, would you have still entered a plea
16 pursuant to North Carolina versus Alford?

17 A. No, ma'am.

18 Q. If you had been aware of the gunshot residue results
19 prior to your plea, would you still have entered that plea?

20 A. No, ma'am.

21 Q. Why did you plead pursuant to North Carolina versus
22 Alford?

23 A. Because basically I was -- he told me 85 percent sounds
24 better than day for day. You know, he wouldn't feel right
25 going to sleep at night knowing that I got 40 years. So

1 basically I was scared before I even stepped up there. So I
2 took the best way out, that I thought was the best way.

3 Q. Do you think you made the right decision?

4 A. No, ma'am.

5 Q. What do you want this Court to do?

6 A. I want to be given a fair trial.

7 Q. You want the opportunity for a jury trial.

8 A. Yes, ma'am.

9 **Ms. Goldberg:** No further questions.

10 **The Court:** All right. Madam Attorney General.

11 **Ms. Harrigan:** May it please the Court?

12 Cross-Examination

13 By Ms. Harrigan:

14 Q. Mr. Woods, your testimony on direct was that you only
15 met with Neil Riley once prior to your guilty plea; correct?

16 A. Yes, ma'am.

17 Q. Did that include any meetings with him in the courtroom
18 or hearings before your guilty plea?

19 A. No, ma'am.

20 Q. How many times, including those meetings in court, did
21 you meet with him total?

22 A. One. One time. When I went up there that Friday to
23 meet with him, you know, he cancelled.

24 Q. There were two times total you met with him prior to
25 your guilty plea; correct?

1 A. If you want to count that Friday as a meeting, yeah.

2 Q. Did your address or phone number change while you were
3 out on bond awaiting these charges?

4 A. No, ma'am.

5 Q. So you had a consistent address and phone number.

6 A. Yeah. The bondsman had my phone number.

7 Q. Did you provide this to your attorney, Mr. Riley?

8 A. No, I never talked to him.

9 Q. Did you ever contact his office to get a hold of him?

10 A. No, ma'am.

11 Q. Did you ever provide him with your updated contact
12 information and address and phone number, a way to reach you?

13 A. No, I don't know...

14 Q. So you never contacted your attorney either.

15 A. No.

16 Q. Your testimony is that you never reviewed your discovery
17 with your attorney; correct?

18 A. No, ma'am.

19 Q. You've never seen the gunshot residue report before.

20 A. No, ma'am.

21 Q. Do you know if the transcript of your co-defendants'
22 proffered testimony was available at the time of your guilty
23 plea?

24 A. No.

25 Q. But you've since looked at that; correct?

1 A. Yes, ma'am.

2 Q. And you testified before that none of your co-defendants
3 testified they saw you shooting; correct?

4 A. No, I never said that. They testified that I never --
5 that they never -- that I never shot anybody.

6 Q. Okay. Are you -- do you have a copy of that in front of
7 you?

8 A. No, ma'am.

9 Ms. Goldberg: This is the exhibit.

10 Ms. Harrigan: Your Honor, may I approach?

11 The Court: Sure.

12 Ms. Harrigan: Your Honor, I'm turning to Page 118 of
13 the July 9th -- 19th, 2010, which has been marked as
14 Plaintiff's Exhibit 1.

15 By Ms. Harrigan:

16 Q. Okay. If you'll please read into the record lines 7
17 through 16, please.

18 A. You said which one? But Smurf did have a gun to him
19 when everybody got on the---

20 Court Reporter: I can't understand him. Speak up and
21 enunciate.

22 The Witness: But Smurf did have a gun, too, and when
23 everybody got on the truck, Smurf was still shooting at them
24 and they were shooting at Smurf, too.

25 By Ms. Harrigan:

1 Q. I'm going to take this away from you. Okay. So you are
2 aware that one of your co-defendants, at least Jeanette
3 Hayley, identifies you as having a gun and shooting.

4 Correct?

5 A. Yes, ma'am.

6 Q. Your testimony before that you didn't know that any of
7 your co-defendants placed you with a gun is incorrect.

8 A. No. You said that they -- that they placed me with
9 shooting anybody. That's what you said.

10 Q. And her statement shows that you -- according to her
11 testimony, you were shooting; correct? One of your co-
12 defendants---

13 A. That's what she says; yes, ma'am.

14 Q. Okay. Did you ever have an opportunity to review
15 statements from your child's mother, Ebony, or her sister?

16 A. Yes, ma'am.

17 Q. Are you aware that they provided statements to the
18 police that you were the shooter?

19 A. Yes, ma'am.

20 Q. Did you know that prior to your guilty plea?

21 A. No, ma'am.

22 Q. Do you recall discussing possible defenses with your
23 attorney?

24 A. No. No, ma'am.

25 Q. And this is because you never contacted your attorney

1 prior to your guilty plea; correct?

2 A. I never contacted him.

3 Q. You never told him that you were acting in self-defense
4 in this instance?

5 A. No.

6 Q. And this dispute started over an argument between you
7 and your son's mother and her boyfriend; correct?

8 A. Yes, ma'am.

9 Q. And you not being able to see your son; correct?

10 A. Yes, ma'am. Yes, ma'am.

11 Q. And most of your co-defendants who pled guilty to lesser
12 included to lynching, those are family members of yours;
13 correct?

14 A. Yes, ma'am.

15 Q. Why did you go over to your child's mother's house that
16 evening?

17 A. Because it was rumored that my child was being abused.

18 Q. And your child's mother told you not to come over that
19 night; correct?

20 A. Well, she said something about go to the grandmother's
21 house or something.

22 Q. And you and your family members decided to go despite
23 her requesting you not to go to her residence; correct?

24 A. No, but there was a comment made to let's talk about
25 this.

1 Q. Okay. Are you aware of any baseball bats being brought
2 to the house---

3 A. No, ma'am.

4 Q. ---that night?

5 A. I didn't -- I didn't see any bats.

6 Q. Was there any discussion that you were going over to
7 cause an altercation with her boyfriend, Isaac Huff?

8 A. No, ma'am.

9 Q. I believe you had testified that you did give your
10 attorney some potential leads to investigate in this.
11 Correct?

12 A. Yes, ma'am.

13 Q. Case. Correct?

14 A. Yes, ma'am.

15 Q. You asked that he contact Mr. Chisholm---

16 A. Yes, ma'am.

17 Q. ---for his testimony; correct?

18 A. Yes, ma'am.

19 Q. And this is during the one meeting you had with him
20 throughout his whole representation?

21 A. Yes, ma'am.

22 Q. And you also informed him that Vincent Bracey was a
23 potential witness; correct?

24 A. No, I never informed him of Vincent Bracey.

25 Q. You were aware that Vincent Bracey was planning to be

1 called as a State's witness; correct?

2 A. As a State's witness, correct.

3 Q. Your attorney told you that; correct?

4 A. Yes, ma'am.

5 Q. And he told you the witnesses the State intended to call
6 against you; correct?

7 A. Yes, ma'am.

8 Q. So you were aware that your seven co-defendants were
9 going to be called as a witness; correct?

10 A. Yes.

11 Q. As well as Mr. Bracey.

12 A. Yes.

13 Q. Were you aware that your child's mother, Ebony, and her
14 sister, Shan---

15 A. Shanasia.

16 Q. ---Shanasia were going to be called as well?

17 A. Yes, ma'am.

18 Q. But you had never seen their statements prior to...

19 A. No, ma'am.

20 Q. Did you ask your attorney to negotiate a plea deal on
21 your behalf with the State?

22 A. No, ma'am.

23 Q. Did you want a trial on these charges?

24 A. I never knew anything about entering -- when he came

25 back to me, he told me -- said they was willing to drop it to

1 a voluntary manslaughter if I pled guilty.

2 Q. And you were originally charged with murder; correct?

3 A. Yes, ma'am.

4 Q. Did he advise you that a conviction for murder would
5 result in a mandatory minimum sentence of 30 years that must
6 be served day for day in the department of corrections?

7 A. Yes, ma'am.

8 Q. And the maximum sentence would be life imprisonment
9 without the possibility of parole?

10 A. Yes, ma'am.

11 Q. And he advised you that the State was making an offer to
12 allow you to plead guilty to the lesser included offense of
13 voluntary manslaughter?

14 A. Yeah. Yes, ma'am.

15 Q. And did he advise you that the benefit would be you
16 wouldn't be required to serve day for day of your sentence---

17 A. Yes, ma'am.

18 Q. ---as opposed to murder? Did you want a trial on these
19 charges?

20 A. Had I seen my evidence, yes, ma'am, I would have wanted
21 it.

22 Q. Why did you decide to enter a guilty plea?

23 A. Because I never knew what I was going up against. I
24 never knew what I was facing in the courtroom. I never knew
25 the evidence that was there.

1 Q. Is it because you didn't want to risk 30 years day for
2 day to life if you were convicted at trial?

3 A. Yes, ma'am.

4 Q. The State's plea offer at the time for involuntary
5 manslaughter -- voluntary manslaughter, excuse me, seemed
6 like a good deal to you; correct?

7 A. Yes, ma'am.

8 Q. Because you didn't want to risk a life sentence;
9 correct?

10 A. Yes, ma'am.

11 Q. It was your decision to enter a guilty plea to
12 involuntary manslaughter or voluntary manslaughter. I'm
13 sorry, Your Honor.

14 A. Well, when he came back to me and said 85 sounds better
15 than day for day -- I mean, in a situation like that, who
16 wouldn't go for the 85 if you don't know what evidence is
17 there for you?

18 Q. So you were aware that you would be required to serve
19 85 percent of whatever sentence you received for voluntary
20 manslaughter; correct?

21 A. Yes, ma'am.

22 Q. And Judge Kinard also advised you of that on the record;
23 correct?

24 A. Yes, ma'am.

25 Q. And you told Judge Kinard you were satisfied with Mr.

1 Riley's representation; correct?

2 A. Yes, ma'am.

3 Q. One of your allegations today is that your attorney,
4 Neil Riley, didn't advise you the victim had gunshot residue
5 on his hands; correct?

6 A. Yes, ma'am.

7 Q. The shooting occurred during an altercation with several
8 co-defendants; correct?

9 A. Yes, ma'am.

10 Q. As well as your child's mother's boyfriend's friends,
11 correct, one of which was in the courtroom today? Do you
12 know if any of the other participants of this altercation had
13 a gun?

14 A. Not that I know. I didn't look around and see.

15 Q. Are you aware that statements from witnesses show that
16 the other side per se also had a gun and they were
17 shooting---

18 A. Yes.

19 Q. ---backfire---

20 A. Yes.

21 Q. ---both sides? And were you aware of this before your
22 guilty plea?

23 A. No, ma'am.

24 Q. When you were at the incident location, did you see
25 anyone from the Huff camp or the victim's friends and

1 associates with a gun?

2 A. No. When I heard gunshots, I just -- I'm not looking
3 around to see where nothing is coming from.

4 Q. Are you aware if more than one participant had a gun?

5 A. Yeah. Yes, ma'am.

6 Q. So you knew there was at least one gun out there.

7 A. Right.

8 Q. More than one gun out there. Two or more. And the
9 victim was shot during a struggle; correct?

10 A. I don't know.

11 Q. And I believe you testified before, based on that
12 transcript, that you're aware that at least one of the
13 witnesses, Jeanette Hayley, testified she saw you with a gun
14 and she saw you shooting; correct?

15 A. Yes, ma'am.

16 Q. And Jeanette Hayley was one of the co-defendants charged
17 with lynching; correct?

18 A. Yes, ma'am.

19 Q. And she arrived at the incident location with you;
20 correct?

21 A. Yes, ma'am.

22 Q. And is she related to you?

23 A. Yes, ma'am.

24 Q. In regards to your allegation that you were not allowed
25 to be present in the courtroom during your co-defendants'

1 proffered testimony, do you know why you were asked to be
2 removed from the courtroom?

3 A. They said something about intimidation or something,
4 they being scared or something.

5 Q. There were some allegations that you had intimidated
6 witnesses?

7 A. That's what they were saying.

8 Q. But your attorney, Mr. Riley, was allowed to---

9 A. Yes, he was there.

10 Q. ---remain in the courtroom.

11 A. He was there.

12 Q. Did you ever discuss the proffered testimony with him
13 prior to your guilty plea?

14 A. No, ma'am.

15 Q. But you knew your co-defendants were all likely going to
16 be called against you at trial; correct?

17 A. Yeah, they was going to be called to testify of what
18 they -- what they said in the courtroom, yes.

19 Q. Because Mr. Riley shared with you the State's witness
20 list you testified; correct?

21 A. I don't understand that.

22 Q. You testified prior that before your guilty plea Mr.
23 Riley reviewed with you the State's witness list, their
24 potential witnesses for trial---

25 A. Yes. Yes. Yes.

1 Q. Including Mr. Bracey; correct?

2 A. Yes.

3 Q. So you knew that your seven co-defendants were going to
4 be called by the State to testify in the State's case against
5 you; correct?

6 A. Well, yes.

7 Q. Another one of your allegations is that Mr. Riley did
8 not advise that you could testify at your trial; correct?

9 A. Excuse me?

10 Q. One of your allegations is that Mr. Riley didn't advise
11 you you could take the stand on your own behalf in a trial,
12 correct, and tell your side of the story to the jury?

13 A. No, I didn't know anything about that.

14 Q. That's not one of your allegations.

15 A. No, I'm not saying I didn't know -- no, I'm talking
16 about he didn't...

17 Q. He didn't advise you of that.

18 A. No.

19 **Ms. Harrigan:** Your Honor, may I approach?

20 By Ms. Harrigan:

21 Q. Do you recognize this document, Mr. Woods? It's a
22 front-and-back. Look at that for a moment.

23 A. (The witness complies.) Yes, ma'am, I remember this.

24 Q. Did Mr. Riley go over that with you prior to your guilty
25 plea?

1 A. (No response.)

2 Q. Would you describe what that document is for the Court?

3 A. Telling everything that -- the maximum sentence and all
4 of that.

5 Q. Advice of your rights before you entered your guilty
6 plea; correct?

7 A. Uh-huh.

8 Q. Is your name listed---

9 The Court: Wait a minute. Mr. Woods, I need you to
10 answer. You can't just shake your head. You need to answer.

11 The Witness: Yes, sir.

12 The Court: You need to answer loud enough for me to
13 hear you.

14 Ms. Harrigan: So you do recall reviewing that with Mr.
15 Riley before your guilty plea; correct?

16 The Court: He said he did in the---

17 The Witness: Yes.

18 By Ms. Harrigan:

19 Q. Do you recognize your signature on the back of that?

20 A. Yes.

21 Q. Okay. If I could have that back for a second. The
22 State would like to get this marked as State's 1. The State
23 would like to move this in as Defendant's 1.

24 The Court: So admitted without objection.

25 (Defendant's Exhibit 1 was received in evidence.)

1 By Ms. Harrigan:

2 Q. If I can hand this back to you, could you briefly read
3 number 11 into the record and your indicated response?

4 A. Do you understand that in a trial you have the right to
5 take witness (verbatim) and testify -- testify or not take
6 the witness stand as you choose and that you cannot be
7 required to take the witness stand?

8 Q. What is your indicated answer?

9 A. "Yes."

10 Q. Do you recall Judge Kinard also advising you during your
11 trial - or your guilty plea, excuse me - that you had the
12 right to take the stand and testify if you went to trial?

13 A. Yeah, that's in the transcript.

14 Q. And he advised you of all your constitutional rights and
15 that you were waiving them by entering a guilty plea;
16 correct?

17 A. Yes, ma'am.

18 Q. Following your guilty plea, Mr. Riley filed a motion to
19 reconsider your sentence; correct?

20 A. Yes, ma'am.

21 Q. Do you recall his reasoning for filing a motion for
22 reconsideration?

23 A. Something about -- but when she mentioned about -- about
24 the time thing about my co-defendants...

25 Q. You received significantly more time than your

1 co-defendants; correct?

2 A. (Witness nodded head affirmatively.)

3 Q. Were any of your co-defendants ever charged with murder?

4 A. No, ma'am.

5 Q. Do you recall what your co-defendants were charged with?

6 A. First degree lynching and second degree lynching.

7 Q. But none of the seven were charged with murder.

8 A. No, ma'am.

9 Q. Did you appear before Judge Kinard for a subsequent
10 hearing on your motion to reconsider your sentence?

11 A. Yes, ma'am.

12 Q. And Judge Kinard declined to ever consider your
13 sentence; correct?

14 A. Yes, ma'am.

15 Q. Court's indulgence. Do you recall the Court advising
16 you that even though you were pleading guilty pursuant to
17 North Carolina versus Alford, for all intents and purposes it
18 was a guilty plea?

19 A. Yes, ma'am.

20 Q. Correct?

21 A. Yes.

22 Q. And it would be treated by the Court as a guilty plea.

23 A. As a guilty plea, yes, ma'am.

24 Ms. Harrigan: No further questions.

25 The Court: All right. Ms. Goldberg, anything?

1 **Ms. Goldberg:** Briefly, yes, Your Honor.

2 Redirect Examination

3 By Ms. Goldberg:

4 Q. Mr. Woods, you reviewed that portion of the transcript
5 where your co-defendants testified on the stand a second ago?

6 A. Yes, ma'am.

7 Q. And you looked at a portion of Jeanette Hale's
8 (verbatim) testimony?

9 A. Yes, ma'am.

10 Q. And in that she said that -- she had testified that you
11 were shooting; correct?

12 A. Yes, ma'am.

13 Q. She did not testify she saw you shoot someone; correct?

14 A. Yes, ma'am.

15 Q. Is that the worst anybody said during that hearing?

16 A. Yes, ma'am. Yes, ma'am.

17 Q. Did anybody else even say they saw you shoot at all?

18 A. No, ma'am.

19 Q. The -- you were aware that two other witnesses, Ebony
20 and Shanasia, had made statements that you had shot someone;
21 correct?

22 A. Yes, ma'am.

23 Q. Those are the two individuals that you were in an
24 argument with; correct?

25 A. For my baby's mother.

1 Q. And who is that?

2 A. Ebony Danzy.

3 Q. And that was about custody issues?

4 A. No. Basically it was about me seeing my child.

5 Q. And what did Ebony want?

6 A. She was saying for me to go to my -- go to her mother's
7 house.

8 Q. Was Ebony supportive of you seeing your child?

9 A. No, ma'am.

10 Q. And now that you're in prison, you're not able to see
11 your child; correct?

12 A. Yes, ma'am.

13 Q. And regarding your conversations with your attorney, did
14 you and Mr. Riley ever discuss what you would have testified
15 to if you had taken the stand?

16 A. No, ma'am.

17 Q. Did you ever discuss whether testifying would be in your
18 best interest or not?

19 A. I can't remember. I can't remember.

20 Q. Do you know -- did you go into that kind of detail about
21 what your testimony would have been?

22 A. Yes, ma'am. Yes, ma'am.

23 Q. Did you tell Mr. Riley whether you shot someone or not?

24 A. No, I never told him I shot anybody, ma'am.

25 Q. You never told him you shot anybody?

1 A. No, ma'am.

2 Ms. Goldberg: No further questions.

3 The Court: Anything?

4 Ms. Harrigan: No, Your Honor.

5 The Court: All right. Thank you. You may step down.

6 Anything further, Ms. Goldberg?

7 Ms. Goldberg: No, Your Honor.

8 The Court: All right. Anything from the State?

9 Ms. Harrigan: Yes, Your Honor. The State would call
10 Neil Riley.

11 Neil Riley, after being duly sworn, testified as
12 follows:

13 The Court: If you'll have a seat and tell us your full
14 name, please, sir. Speak up into the mic.

15 Direct Examination

16 By Ms. Harrigan:

17 Q. Good morning, Mr. Riley.

18 A. Good morning.

19 Q. Do you recall becoming involved in Mr. Woods' case?

20 A. Yes.

21 Q. Were you appointed or retained?

22 A. Appointed.

23 Q. Do you recall the approximate date you were appointed?

24 A. It would have been in I think December of 2007, I
25 believe. He was arrested on the charge of murder on

1 September the 28th, and I think it was -- there was a time
2 lag before our office got appointed.

3 Q. Were you the first attorney appointed to represent Mr.
4 Woods?

5 A. No. At that time there was a public defender in our
6 office by the name of Glenn Rogers, and he was initially
7 appointed.

8 Q. Did you represent Mr. Woods from your appointment in
9 December of 2007 until his guilty plea?

10 A. I did, yes.

11 Q. Have you had the opportunity to review your file before
12 coming to court today?

13 A. Yes.

14 Q. Do you recall meeting with Mr. Woods to discuss the
15 charges he was facing?

16 A. Yes, ma'am, but I had -- if I could elaborate on that.

17 Q. Certainly.

18 A. I had extreme difficulty getting Mr. Woods to meet with
19 me or to communicate with me. After having been served with
20 a notice of trial, I filed -- because of my difficulties
21 getting a hold of Mr. Woods, I filed a motion to be relieved
22 or, in the alternative, for a continuance, and I believe
23 you've been provided with a copy of that. I spelled out in
24 that motion all the difficulties I've had -- that I had had
25 contacting Mr. Woods, getting him to meet with me. Addresses

1 that we had available to us were incorrect and mail would
2 come back. Phone numbers were out of service. When I met
3 him in court on -- on May 28th, 2010, I told him -- since I
4 had other cases to deal with, I asked him to go straight down
5 to my office to make an appointment before leaving the
6 courthouse. He did not do that.

7 At any rate, I felt very frustrated but, yes, ultimately
8 we did -- we were close upon the scheduled trial date, but I
9 did have the opportunity to meet and talk with Mr. Woods in
10 detail, yes.

11 Q. Do you recall how long this meeting was?

12 A. I really don't.

13 Q. During this meeting -- so your recollection is you met
14 with him once outside brief meetings in the courtroom.

15 A. To the best of my recollection, yes.

16 Q. And I believe your testimony was that you attempted to
17 contact him several other times.

18 A. Repeatedly, either by mail, by telephone. In person I
19 told him to please go down and make an appointment to meet
20 with me. When I later checked with our secretary, he hadn't
21 even stopped by my office. He never called. He never came
22 by. Our addresses were wrong and our phone numbers were
23 wrong.

24 Q. During this one meeting, were you able to go over the
25 indictments for murder and lynching---

1 A. Yes, ma'am.

2 Q. ---with which he'd been charged? Did you advise him of
3 the elements of these offenses?

4 A. Yes, ma'am.

5 Q. What the State would be required to prove?

6 A. Yes, ma'am.

7 Q. Potential sentences he was facing?

8 A. Yes, ma'am.

9 Q. At that time did you advise him of the State's plea
10 offer?

11 A. I think so. I'm not even sure I had received it yet at
12 that point, but I think so.

13 Q. Would you tell the Court what the plea offer from the
14 State was in this case?

15 A. To reduce the murder charge to a voluntary manslaughter
16 charge. They would not agree to make a sentence
17 recommendation.

18 Q. Was there a recommendation for concurrent time?

19 A. Yes.

20 Q. But no definite sentence length.

21 A. Definite what now?

22 Q. No definite sentence length, no cap.

23 A. No, ma'am.

24 Q. During this one meeting, were you able to discuss Mr.
25 Woods' version of the facts?

1 A. We did.

2 Q. Would you mind briefly telling the Court Mr. Woods'
3 version of the facts giving rise to these charges?

4 A. Well, he -- he was always pretty consistent. He said
5 that he had contacted the mother of his baby. He was
6 concerned about the baby's welfare from various things he had
7 heard. It had been awhile since he had seen the child. As
8 soon as he contact -- that particular evening when he
9 contacted the mother of his child, she immediately
10 transferred the telephone to her then current boyfriend, and
11 apparently Mr. Woods and whoever the current boyfriend was -
12 I forget his name - but they sort of got into a dispute over
13 the telephone.

14 Mr. Woods gathered together some family members and
15 friends. They all hopped in a pickup truck and drove up to
16 where the mother of his child and his child were, and the --
17 in the ensuing struggle various fights broke out. Shots were
18 fired, although Mr. Woods always denied being one of the ones
19 that fired any shots or went there armed.

20 Q. Did he tell you whether any of his co-defendants who
21 accompanied him to the incident location had weapons?

22 A. No, ma'am. He never said any of the others had weapons
23 either.

24 Q. What about a baseball bat?

25 A. One of the other folks that went up there with him

1 admitted to having a baseball bat.

2 Q. Do you recall receiving a copy of Mr. Woods' discovery
3 file in this matter?

4 A. Yes.

5 Q. Were you able to review the contents of that file with
6 him?

7 A. Yes.

8 Q. At this one meeting.

9 A. Yes, and obviously I would have liked to have had a lot
10 more time to go over it with him, but getting him to contact
11 me was an ongoing problem.

12 Q. Did you show him the S.L.E.D. gunshot residue report?

13 A. I'm sure that I did. Either we -- either I directly
14 handed it to him or else I went over and summarized for him
15 the results of that gunshot residue test.

16 Q. Do you recall what the results of that test were?

17 A. They found gunshot residue on the decedent's hand, but
18 they didn't find any on Mr. Woods' hands.

19 Q. And you recall discussing this with Mr. Woods.

20 A. I do. Now since -- various witnesses said that both
21 sides had fired shots. It wasn't -- to me it wasn't that
22 exceptional that the decedent had gunshot residue.

23 Q. When you say both sides had weapons based on statements,
24 are you aware of what -- what parties gave statements to the
25 police or law enforcement?

1 A. Yes, ma'am. And I -- I made Mr. Woods aware of this.
2 Of course, the Court has already heard testimony from Mr.
3 Bracey, but I had -- pursuant to a Rule 5 request for
4 discovery, I was provided by the State with a statement
5 allegedly written out by Vincent Bracey saying, "Smurf
6 started shooting. Everybody ran. Me and Chad were side by
7 side. Smurf pointed a silver gun, looking like 25, shot Chad
8 in the chest." I have a statement provided to me by the
9 State from Jeanette Hale.

10 Q. Is that statement consistent with her in-court proffered
11 testimony that you've previously heard?

12 A. Repeat that, please.

13 Q. Is the statement provided to you consistent with her
14 in-court proffered testimony during her guilty plea?

15 A. Pretty consistent. I was -- I was going to go over
16 first the statements I've got and then go over the proffer---

17 Q. Certainly.

18 A. ---if I could. Anyway, the statement from Jeanette Hale
19 -- "Smurf did have a gun, and when everybody got on the
20 truck, Smurf was still shooting at them and they were
21 shooting at Smurf." I was provided a statement by Shanasia
22 Danzy by the State. "Henry Woods started a fight. Then
23 Henry Woods shot Chad Huff two times, and the place cleared."

24 Another statement I was provided by Ebony Danzy.
25 "Everything broke up. That is when Henry Woods pulled out .

1 the gun and shot Chad Huff twice, then ran back and shot the
2 gun two more times at the house."

3 Now, at the -- there were eight co-defendants altogether
4 in this case. On July the 19th when the seven others entered
5 their plea -- and, of course, the Woods trial was set for I
6 think the 28th of July. Anyway, on July the 19th -- now, my
7 recollection is that courthouse security due to the fact that
8 there was still -- for I think perfectly understandable
9 reasons, there was still a lot of bad blood between the
10 various families involved in this shooting. They were -- and
11 the courthouse was filled with a lot of not only co-
12 defendants but family members, and courthouse security was
13 concerned about the security situation.

14 So the only -- to the best of my recollection, the State
15 only brought in one defendant at a time and pretty much
16 limited the members of the courtroom audience to people
17 directly involved with each person's guilty plea. But,
18 anyway, at the guilty pleas on July 19th Chad Burroughs
19 testified that he heard Mr. Woods say, "I'll take the rap on
20 this." Francis Dale Drakeford testified the same. Jeanette
21 Hale said she saw the defendant shoot. And, of course, I've
22 already apprised you of the statements I had from Shanasia,
23 Vincent Bracey, and Ebony Danzy.

24 Q. Did all of the co-defendants' statements and proffered
25 testimony reveal why they went to the incident location that

1 night?

2 A. They were -- they were fairly consistent that it was
3 because Mr. Woods was worried about his child and also angry
4 that he couldn't get his -- his -- the mother of his baby to
5 speak with him directly. She kept turning -- not wanting to
6 talk to him and instead asking her new boyfriend to talk with
7 Mr. Woods and that -- I think that was something that very
8 severely irritated Mr. Woods.

9 Q. And you were present in the courtroom during this
10 July 19th hearing.

11 A. Yes.

12 Q. Did you take notes during this hearing?

13 A. Yes.

14 Q. Did you review those notes during your one meeting with
15 Mr. Woods?

16 A. Yes.

17 Q. By your account, I believe there were four statements
18 that implicated Mr. Woods as at least having a gun and firing
19 shots.

20 A. Yes, ma'am.

21 Q. Did you advise Mr. Woods of these four statements?

22 A. Yes, ma'am.

23 Q. Did you advise him that these witnesses would be likely
24 called to testify against him?

25 A. Well, I basically was advising him that I knew that they

1 were in -- that they were on the State's witness list. Now,
2 they were -- let me just add quickly: There were -- the
3 State provided me with one, two, three, four, five -- five
4 other statements that basically say there was shooting going
5 on, but they couldn't see or were running or just heard shots
6 or didn't have any idea who did what shooting. But I
7 knew that -- I advised Mr. Woods they were on the State's
8 witness list also.

9 Q. This case had been called for trial, and you were put on
10 notice it would be called for trial soon at the time of your
11 meeting with Mr. Woods?

12 A. I had -- no, I had been served a trial notice by the
13 State for -- well, whenever the -- I apologize. I can't flip
14 to it right now, but the -- the date of the guilty plea and
15 the transcript reflecting the guilty plea was the date the
16 trial was due to commence.

17 Q. In preparation for trial, had you compiled a list of
18 potential witnesses to call?

19 A. Yes.

20 Q. Who was on this list?

21 A. I remember subpoenaing Mr. Chisholm, and I think I
22 issued a subpoena for Mr. Bracey, but I'm not a hundred
23 percent sure.

24 Q. Do you recall if Mr. Bracey was listed on the State's
25 witness list?

1 A. Yes.

2 Q. And both Mr. Bracey and Mr. Chisholm were housed within
3 the department of corrections at this time.

4 A. That's correct. Yes.

5 Q. Did you employ an investigator to help with the pretrial
6 investigation in this case?

7 A. No, ma'am. The Camden office does not have an
8 investigator, either part-time or full-time.

9 Q. Did you feel an investigator was needed in this case?

10 A. Considering the amount of evidence and the witnesses
11 that the State had, I felt pretty confident I had a grasp of
12 the facts of the situation without the need for further
13 investigative work.

14 Q. Did you speak with Mr. Woods' seven co-defendants prior
15 to his guilty plea?

16 A. No, ma'am.

17 Q. Were they all represented by counsel?

18 A. Yes.

19 Q. And you were present for their proffered testimony;
20 correct?

21 A. Correct.

22 Q. The State's plea offer was to allow Mr. Woods to plead
23 from murder to voluntary manslaughter; correct?

24 A. Correct.

25 Q. Okay. Do you recall if that was the only offer made?

1 A. Well, yes, and it took me -- it took me some heavy
2 lifting in order to get Mr. Meadors to go that far.

3 Q. Did you advise Mr. Woods that murder carries a mandatory
4 minimum of 30 years imprisonment that must be served day for
5 day?

6 A. Yes, ma'am.

7 Q. Did you advise him that murder carries up to a sentence
8 of life without parole?

9 A. Yes, ma'am.

10 Q. Did you advise him of the significant advantage of
11 pleading to the lesser included offense of voluntary
12 manslaughter to remove the day-for-day requirement?

13 A. Yes, ma'am.

14 Q. And you testified prior that you moved to be relieved
15 shortly before the case was called for trial; correct?

16 A. Yes. The motion -- my motion to be relieved or
17 alternatively for a continuance was filed July the 7th.

18 Q. Was that motion heard?

19 A. No.

20 Q. After that motion was made, were you able to meet with
21 Mr. Woods?

22 A. Yes.

23 Q. Did you feel comfortable with him going forward with his
24 guilty plea that day, based on your meeting?

25 A. I did. He understood completely everything I explained

1 to him.

2 Q. Following the guilty plea, you filed a motion to
3 reconsider his sentence with Judge Kinard; correct?

4 A. Correct.

5 Q. Was that motion heard?

6 A. It was.

7 Q. What was your reasoning for filing such motion?

8 A. Well, I was -- of course, sentencing is always in the
9 discretion of the judge. The other seven co-defendants had
10 gotten -- none of them had gotten jail time. Well, some of
11 them got time suspended to time served plus probation, but
12 none of them, upon entering their guilty plea and the Courts
13 accepting the guilty plea and sentencing, none of them were
14 sentenced to any further jail time, including the one who --
15 the co-defendant who went up there with the baseball bat and
16 ended up breaking it on somebody. I was a little bit
17 staggered by the magnitude of the sentence that Mr. Woods
18 got, and I based my motion on that.

19 Q. What was the result of this motion?

20 A. Judge Kinard denied my motion, and I perfected an appeal
21 for Mr. Woods.

22 Q. You provided the Court with a Rule 203 statement---

23 A. Um...

24 Q. ---to go forward based on a guilty plea?

25 A. Say what now?

1 Q. You provided the Court with a statement and there was a
2 meritorious ground on which to go forward?

3 A. Yes. Under the appellate court rules, because it was a
4 guilty plea, an Alford plea which is treated the same under
5 the law as a guilty plea, I had to provide a -- in order to
6 have the Court of Appeals accept it, I had to provide a
7 statement explaining why there were exceptional circumstances
8 and that the appellate court should review this and I did do
9 so. They would have -- they would have denied the appeal
10 otherwise.

11 Q. Mr. Woods' plea was entered pursuant to North Carolina
12 versus Alford; correct?

13 A. He did, yes.

14 Q. Did you advise him the tenets of that case and what was
15 required to receive the benefit of North Carolina versus
16 Alford?

17 A. Yes, ma'am.

18 Q. Did he ever indicate to you that he did not understand
19 that he was entering his plea pursuant to North Carolina
20 versus Alford?

21 A. No, ma'am.

22 Q. Did you believe that there was a substantial benefit he
23 received to allow him to plead guilty pursuant to Alford?

24 A. Substantial what?

25 Q. Benefit to allow him to plead---

1 A. Oh, yes, ma'am.

2 Q. ---pursuant to Alford?

3 A. Yes, ma'am.

4 **Ms. Harrigan:** No further questions.

5 **The Court:** Ms. Goldberg, anything?

6 **Ms. Goldberg:** Yes, Your Honor. Beg the Court's
7 indulgence.

8 Cross-Examination

9 By Ms. Goldberg:

10 Q. Good morning, Mr. Riley.

11 A. Good morning, Ms. Goldberg.

12 Q. You've stated that you did review the discovery with Mr.
13 Woods?

14 A. Yes, ma'am, but as I also stated, I tried over a long
15 period of time to get him in to go over it with a little more
16 detail and I -- we didn't have as much time to talk things
17 over as I would have liked, but that was not my fault I felt
18 at that point.

19 Q. Do you know or do you recall, to the best of your
20 ability, when that meeting was?

21 A. I sure don't. It was not long before the scheduled
22 beginning of the trial. I think it was the week before.

23 Q. And you did prepare this case as if it was going to
24 trial; correct?

25 A. Yes, ma'am.

1 Q. In doing so, you did name as a potential witness and
2 subpoena Maurice Chisholm?

3 A. Uh-huh.

4 Q. Is that correct?

5 A. Right.

6 Q. Your Honor, may I approach? Mr. Riley, do you recognize
7 that document?

8 A. Yes, ma'am.

9 Q. And what is that?

10 A. This is what -- this is what I prepared for Judge Kinard
11 in the -- in the event that, you know, we decided -- Mr.
12 Woods and I decided to go to trial.

13 Q. Is that the defense's witness list?

14 A. Yes, ma'am.

15 Q. And who is listed on that list?

16 A. Mr. Woods obviously, a S.L.E.D. agent by the name of
17 John Roberts, and Maurice Chisholm.

18 Q. Okay. Thank you.

19 **Ms. Goldberg:** At this time the applicant would like to
20 enter this into evidence.

21 **Ms. Harrigan:** No objection from the State.

22 **The Court:** So admitted.

23 (Plaintiff's Exhibit 5 was received in evidence.)

24 By Ms. Goldberg:

25 Q. Did you ever speak with Mr. Chisholm prior to---

1 A. No. No.

2 Q. What did you believe he would be testifying to?

3 A. Well, I had -- Mr. Woods had told me -- I believe it
4 came from Mr. Woods because I don't know who else it would
5 have come from that -- that Mr. Chisholm had overheard a
6 comment by Vincent Bracey that the defendant was totally
7 innocent, that he had nothing to do with it. Now, I also
8 understood from Mr. Woods that beyond that, Mr. Chisholm
9 didn't have a whole lot he could testify to; okay? Because
10 he wasn't there the night of the incident. I knew that.

11 Obviously my reason for listing the S.L.E.D. agent had
12 to do with the gunshot residue test, but I was -- to be
13 honest with you, the -- other than Mr. Woods' testimony as
14 the defendant in the case, ammunition for me to gather up and
15 stockpile was rather thin on the ground. Okay?

16 Q. On the defense's witness list we've offered, Vincent
17 Bracey is not named on that list; correct?

18 A. Correct. Yeah.

19 Q. Did you ever speak with Vincent Bracey?

20 A. No, I didn't and I thought -- I wasn't sure if I had
21 served a subpoena on him or not, but apparently I did not. I
22 would have listed him if I had.

23 Q. Were you aware that he could have been a potential
24 defense witness?

25 A. Yes, ma'am. Why I subpoenaed Chisholm and not Bracey, I

1 can't explain. I honestly don't know. All right?

2 Q. Because would you agree that without Bracey's testimony,
3 Chisholm's testimony may have been inadmissible hearsay?

4 A. Exactly.

5 Q. And previously during your direct testimony you actually
6 went over basically what the evidence was in this case.

7 A. Uh-huh.

8 Q. The evidence in this case, aside from the fact that an
9 individual is deceased, all comes from witness statements;
10 correct?

11 A. Uh-huh.

12 Q. There wasn't -- other than the gunshot residue, there
13 wasn't any forensic evidence.

14 A. No, you know, unless you wanted to -- the autopsy didn't
15 show much in the way of who was to blame.

16 Q. Just that the individual was shot.

17 A. Right. So, yeah, forensic evidence, there wasn't much.

18 Q. The whole case was based on witness statements.

19 A. Yes, ma'am.

20 Q. And as you've listed off, the main ones were Vincent
21 Bracey's which he testified earlier today; correct?

22 A. Correct.

23 Q. And he testified today that the statement may have been
24 inaccurate. Did you know anything about that prior to today?

25 A. No. The State provided -- I mean, honestly the

1 statements I went over for the Court here today were provided
2 pursuant to my discovery requests. I knew all of these
3 people were going to be called by the State as witnesses at
4 trial.

5 Q. Uh-huh.

6 A. I had -- prior to the entry of the guilty plea by Mr.
7 Woods, I had no reason to doubt any of these statements.

8 Q. Okay.

9 A. And I had -- the week before not -- not the week before.
10 July 19th was when the seven others pled and I was in court
11 listening to what -- the State engaged in an extensive
12 colloquy with each one as part of their guilty plea sort of
13 -- the word escapes me right now, but, anyway, a sort of a
14 summary of what it was that they were prepared to testified
15 to in Mr. Woods' trial if it were to go forward.

16 Q. Okay. And as part of that, you had reviewed Jeanette
17 Hale's statement and the proffer where she did allege that
18 Mr. Woods had done some shooting of a gun; correct?

19 A. Yes, ma'am.

20 Q. But she never said that she actually observed him to
21 shoot anyone; correct?

22 A. She did at the July 19 guilty plea.

23 Q. Uh-huh.

24 A. During the colloquy that the State engaged in with Ms.
25 Hale, she said she saw Henry Woods shoot a gun. Okay? All

1 right? Now, I don't believe she says that in her statement.

2 Q. But she didn't actually witness him -- she saw him shoot
3 but not witness him shoot the victim.

4 A. Correct.

5 Q. Okay.

6 A. Correct. She saw him fire a gun in the -- in the
7 direction of the other group of people.

8 Q. Okay. The only other two written statements that
9 actually were incriminating as to Mr. Woods were that of
10 Ebony and Shanasia; correct?

11 A. Yes, ma'am, except that I was at that point under the
12 conviction that Vincent Bracey was going to testify that he
13 saw -- not only saw Mr. Woods shoot but he saw Mr. Woods
14 shoot Chad Huff twice in the chest. Okay?

15 Q. Right.

16 A. But the State also -- aside from the people who were
17 there that night, the State also had Lewis Wright of Trapps
18 Towing that they were planning to present as a witness who
19 said that Mr. Woods told him either that night or at some
20 subsequent point that he had shot somebody and -- and I
21 forget the name of the town. Bethune. Excuse me. That he
22 had shot someone in Bethune.

23 Q. Did you ever investigate that witness to see if that
24 statement was accurate?

25 A. No, ma'am, but I had -- again, I had -- I've got

1 something that I remember seeing indicating that he was
2 definitely a planned -- he was a witness the State planned on
3 calling.

4 Q. And in addition to those few statements, the only other
5 evidence, real evidence in this case or forensic evidence,
6 would have been the gunshot residue test which I believe you
7 stated on direct you did not find the fact that there was
8 gunshot residue on the victim to be especially helpful.

9 A. No, ma'am, because of the fact that there were -- as I
10 mentioned earlier, numerous witnesses said shots were
11 exchanged on both sides, not just on one side. In fact, one
12 of the witnesses says that Mr. Woods and his family members
13 and friends didn't, according to this one witness and I don't
14 recall which one it was, that they didn't start getting upset
15 until somebody at the residence said, "Go get the heater," or
16 words to that effect. Go get a heater or something like
17 that. So things spiraled after that point pretty quickly.

18 Q. So, if nothing else, that information would confirm that
19 there were guns on the victim's side.

20 A. Yes, ma'am.

21 Q. And that the -- anybody on Mr. Woods' side who was
22 shooting may have been returning fire rather than initiating
23 gunshots.

24 A. That certainly was what I was hoping to convince the
25 jury of had we gone to trial, but, of course, it was clear

1 from various wit -- witnesses I knew who were going to be
2 called that the first one to shoot was Mr. Woods. Now, you
3 know, obviously it would have come down to a jury issue.

4 Q. And, in addition, the gunshot residue test showed that
5 Mr. Woods did not have any gunshot residue---

6 A. Correct.

7 Q. ---on his hands; correct?

8 A. Correct, but that was, of course, before Mr. Woods got
9 apprehended. He would have had time to wash his hands.

10 Q. You stated you were present during the co-defendants'
11 proffer of testimony?

12 A. Yes, ma'am.

13 **Ms. Goldberg:** Mr. Riley -- Your Honor, may I approach?

14 **The Court:** Sure.

15 By Ms. Goldberg:

16 Q. Mr. Riley, I'm going to hand you Plaintiff's Exhibit
17 Number 1. This is the transcript from that hearing.

18 A. Okay.

19 Q. If you could read into the record, please, on Page 5,
20 lines 16 through 18.

21 A. 16 through 18?

22 Q. Yes, sir.

23 A. Okay. The Court, referring to Mr. Woods: "No, he is
24 not a victim. He doesn't have a right to be here, but he is
25 entitled to have a transcript of the proceedings." Did you

1 want me to stop there? Mr.---

2 Q. Whatever you think needs to be said to be complete.

3 A. Mr. Moak's response was, "Yes, but I would like for him
4 to get a transcript after the proceedings is done with,"
5 whereupon Mr. Woods exits the courtroom.

6 Q. Thank you.

7 A. Okay.

8 Q. May I approach, Your Honor? Did Mr. Woods receive a
9 transcript of the proffered testimony prior to his plea?

10 A. No, ma'am, not from me anyway.

11 Q. Did you receive a copy of the transcripts?

12 A. No, ma'am.

13 **Ms. Goldberg:** Beg the Court's indulgence. No further
14 questions, Your Honor.

15 **The Court:** All right. Anything?

16 **Ms. Harrigan:** Briefly, Your Honor.

17 Redirect Examination

18 By Ms. Harrigan:

19 Q. During this July 19th hearing where the co-defendants
20 proffered testimony, you took -- you were present; correct?

21 A. Yes, ma'am.

22 Q. You took notes during this hearing?

23 A. Yes, ma'am.

24 Q. And I believe your prior testimony is that you reviewed
25 these notes with Mr. Woods during your one meeting. Correct?

1 A. Yes, ma'am. I now re -- by review, I may have verbally
2 reviewed them with him. I don't know if I handed him my
3 notes; okay? But I -- you know, I went over everything with
4 him; yes, ma'am.

5 Q. You made him aware of what statements were made during
6 this July 19th hearing.

7 A. Yes, ma'am.

8 **Ms. Harrigan:** No further questions, Your Honor.

9 **The Court:** All right. Thank you, Mr. Riley.

10 **The Witness:** Thank you, Judge.

11 **The Court:** You may step down. Anything further from
12 the State?

13 **Ms. Harrigan:** No, Your Honor.

14 **The Court:** Anything further from the applicant?

15 **Ms. Goldberg:** Beg the Court's indulgence. Your Honor,
16 if I could call Mr. Woods in a brief reply.

17 **The Court:** All right.

18 Henry Woods, having been previously sworn and
19 remaining under oath, testified as follows:

20 Direct Examination

21 By Ms. Goldberg:

22 Q. Mr. Woods, you heard Mr. Riley testify; correct?

23 A. Yes, ma'am.

24 Q. Did Mr. Riley review the discovery with you in this
25 matter?

1 A. No, ma'am.

2 Q. Did Mr. Riley share with you the statements of the
3 proffered testimony in this matter?

4 A. No, ma'am.

5 Q. Did you hear any information or evidence today that was
6 new that you hadn't previously heard from Mr. Riley?

7 A. Yeah, the evidence of him saying he went over the notes
8 with me about what they pled, I never -- he never went over
9 that with me.

10 Q. Did you hear Mr. Riley describe his interpretation of
11 what the evidence would have shown at trial?

12 A. No. No, ma'am.

13 Q. Today on the stand.

14 A. No, ma'am.

15 Q. Did you understand when he explained what witnesses he
16 thought may be testifying and what the jury might see
17 generally?

18 A. He went over about what the witness might testify, but I
19 don't recall nothing about what the jury might see or
20 whatever or nothing about that.

21 Q. Based on everything that has been revealed today in this
22 hearing, the information that's been brought out since your
23 P.C.R. has been initiated, do you think that there was a
24 substantial chance you would have been convicted had you gone
25 to trial?

1 A. No, ma'am, I don't think that I would have been
2 convicted.

3 Ms. Goldberg: Okay. No further questions.

4 The Court: Anything?

5 Ms. Harrigan: No, Your Honor.

6 The Court: All right. You may step down. Anything
7 further?

8 Ms. Harrigan: Not from the State, Your Honor. I would
9 just like to place on the record that we'd like the record to
10 be left open to submit a copy of Vincent Bracey's P.C.R.
11 application out of Lee County to compare with the
12 handwriting.

13 The Court: And who is it you want to compare?

14 Ms. Harrigan: Just provide to the Court a copy of his
15 written statement which has been introduced into evidence as
16 well as his application. He's denying he did write the
17 statement and it's completely fabricated. The State would
18 like to---

19 The Court: I understand that. So I'm supposed to do a
20 handwriting analysis?

21 Ms. Harrigan: Your Honor, the State would just like to
22 introduce it as an exhibit to show -- I don't think there is
23 a difference. If Your Honor would not like this, the State
24 would just like to request it on the record.

25 The Court: All right. All right.

1 **Ms. Goldberg:** Thank you, Your Honor. Basically, as
2 Your Honor is well aware, this P.C.R. is based almost wholly
3 on testimony not from the record. The record was the plea
4 proceeding. Essentially here we have Mr. Woods who has
5 testified that he was not aware of written witness
6 statements, was not aware of the gunshot residue results, was
7 not aware -- was not present during the co-defendants'
8 proffer of testimony, did not receive a copy of the
9 transcript of such before deciding to plead although he was
10 entitled to it.

11 He did not have the information necessary to make an
12 intelligent decision to enter the plea. Although it was a
13 plea pursuant to North Carolina versus Alford, he has
14 testified he did not have the appropriate information. He
15 has testified that if he had known this information prior to
16 that point, he would have wanted a jury trial. He does not
17 any longer believe there is a substantially -- substantial
18 likelihood the State would have convicted him.

19 In order to support this, we have entered the
20 testimony -- I did call Mr. Chisholm, even though that is
21 essentially hearsay testimony, because he was the witness
22 named by the defense. But Mr. Bracey has testified that he
23 did see -- from my understanding, my interpretation of his
24 testimony, he did see the shooter from the back, did not see
25 his face, does not know who it was and believes it was

1 someone larger than Mr. Woods. Also testified that the
2 written statement offered by law enforcement or by the State
3 was not accurate and he did not write it and would not have
4 testified in accordance. That is, of course, important
5 information that should have come out in trial. Mr. Riley
6 did not name Mr. Bracey as a witness or plan on calling him,
7 from what I gather. Therefore, that is information that was
8 not prepared prior to trial.

9 Your Honor, all of this essentially plays into Mr.
10 Woods' state of mind at the time. He states he was not fully
11 aware and, therefore, was scared and that was the reason he
12 entered his plea. The only other witnesses that it appears
13 that the State even had to offer were the ones that he was in
14 a dispute with over childcare anyway. It does appear that
15 the State's case was weak, and that is what Mr. Woods is
16 basing his argument on in part today.

17 **Ms. Harrigan:** May it please the Court? Mr. Riley's
18 testimony reveals that he had extreme difficulty and I
19 believe his exact testimony was that he had extreme
20 difficulty in contacting Mr. Woods despite numerous attempts
21 in person, by letter, by phone. He could not get his client
22 to come to his office, that he tried for his entire
23 representation. During the one time he was able to meet with
24 his client, he was able to review all the discovery
25 materials, potential defenses, review the -- there is

1 undisputed testimony that he was able to review the State's
2 potential witness list as well as his witness list.

3 They were able to discuss potential witnesses. That's
4 how Mr. Riley was able to discern that Maurice Chisholm was a
5 potential witness. Additionally, Mr. Riley's testimony was
6 that he did intend on calling Vincent Bracey as a witness at
7 trial. His testimony was that he knew he'd need Vincent
8 Bracey to testify if he planned on calling Maurice Chisholm
9 who he subpoenaed to be present should a trial go forward.

10 He was well aware that Vincent Bracey had been
11 subpoenaed by the State. He had a copy of the State's
12 potential witness list which he did review with Mr. Woods
13 prior to his guilty plea. He also testified that he
14 thoroughly advised him of his rights pursuant to entering a
15 plea pursuant to North Carolina versus Alford. The defense
16 has entered that as Exhibit 1 which was made a Court's
17 exhibit and is part of the Kershaw clerk of court's file. He
18 was thoroughly advised of his rights.

19 He met with his attorney. His attorney tried to meet
20 with him for years and had extreme difficulty. So any lack
21 of meeting is entirely on applicant's fault and is not a
22 sufficient basis to hold Mr. Riley ineffective.

23 **The Court:** All right. Thank y'all. I'll take it under
24 advisement.

25 **Ms. Goldberg:** Thank you, Your Honor.

1 **Ms. Harrigan:** Thank you, Your Honor.

2 (Whereupon, the proceedings were concluded.)

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I, the undersigned Daphne D. Helms, official court reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the circuit court for Richland County, South Carolina, on the 4th of June, 2013.

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

October 21, 2013

A handwritten signature in cursive script, reading "Daphne D. Helms", written over a horizontal line.

Daphne D. Helms, court reporter

Case # 2006-854

Vincent Bracey

Name of Person Giving Statement

421 forest ct

Address

Bethune S.C. 29009

City, State, Zip Code

Social Security Number

3-7-04

Current Time/Date

10-31-87

Date of Birth / Age

Home/Work/Cellular Phone

I Vincent Bracey was sitting in Chad tough's brother house. Mount got a call. After he got of the phone he went out side on the porch. On he said "A it's a group of people walkin down the road, so me and Chad went out side, on the boy 3 girls was coming in the yard with bats. The boys ran up on mount, Chad on me and started fight 2 boys each then a girl hit me with a bat in the face on back, then smurf

I have made the foregoing statement freely and voluntarily, without fear, threat, promise of reward or hope of reward of any kind. This is to certify that I have read or have read to me the foregoing statement consisting of 2 pages and a true copy has been given to me this date.

Vincent Bracey Sk
Signature of Person Giving Statement

[Signature]
Witness Signature

Page 1 of 2 pages

Witness Signature



SUPPLEMENTAL STATEMENT PAGE 2

Starting Shooting everybody ran and
an chad was side by side. Smurf pointed
a sliver gun looking like a 25 and shot
chad in the chest area. after they saw
he was shot, they ~~continued~~ ran on while still
shooting.

WITNESS



WITNESS

Vincent B. B. SA
SIGNED

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Henry Woods, #314307,

Case No. 2012-CP-28-0901

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

FILED FOR RECORD
2013 JUL 17 AM 10:38
JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for post-conviction relief filed October 24, 2009. The Respondent made its Return on November 13, 2012. Thereafter, Applicant, through his counsel, amended his application on April 22, 2013 and again on May 1, 2013. An evidentiary hearing into the matter was convened June 4, 2013, at the Richland County Courthouse. The Applicant was present at the hearing and was represented by counsel, Kristy Goldberg, Esquire. The Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Kershaw County Clerk of Court. Applicant was indicted during the November 2006 term of the Kershaw County Grand Jury for Murder (2006-GS-28-0421) and during the March 2009 term of the Kershaw County Grand Jury for Lynching in the Second Degree (2009-GS-28-0358). Applicant was represented by Cornelius J. Riley, Esquire. On July 26, 2010, the Applicant appeared before the Honorable J. Ernest Kinard, Jr., and pled guilty pursuant to North Carolina v. Alford¹ to the lesser included offense of Voluntary Manslaughter and as indicted to Lynching in the Second

¹ 400 U.S. 25, 91 S. Ct. 160; 27 L. Ed. 2d 162 (1970).

ATTEST True, Correct & Certified
Copy of Original on File in this
Court.

Joyce McDonald
Clerk of Court Kershaw County

Degree. Judge Kinard sentenced Applicant to twenty-two years imprisonment for Voluntary Manslaughter and to twenty years imprisonment for Lynching in the Second Degree, with the sentences to be served concurrently. Applicant filed a timely motion to reconsider his sentence, which was heard and denied by the plea court on August 26, 2010.

A notice of appeal was filed and an appeal was perfected on Applicant's behalf. Following the submission of briefs, the South Carolina Court of Appeals affirmed Applicant's guilty plea and sentences. State v. Henry Woods, Op. No. 2012-UP-102 (Ct. App. filed Feb. 22, 2012). The Remittitur was sent on March 12, 2012.

At the evidentiary hearing, Applicant proceeded forward on the following grounds as set forth in his second amended application for post-conviction relief:

1. Ineffective Assistance of Counsel for failure to prepare Applicant for trial and failure to provide Applicant with information regarding exculpatory evidence including but not limited to the existence of gunshot residue on the victim;
2. Ineffective Assistance of Counsel for failure to adequately prepare Applicant for trial including but not limited to discussing available defenses;
3. Ineffective assistance of counsel for failure to propel investigate witnesses Vincent Bracey as a witness for trial;
4. Ineffective assistance of counsel for failure to advise Applicant about his rights during trial regarding his right to testify; and
5. Ineffective assistance of counsel for coercing applicant to plead guilty.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from Vincent Bracey and Maurice Chisholm. Respondent presented testimony from plea counsel, Cornelius J. Riley, Esquire (herein "Counsel"). This Court also had before it Applicant's guilty plea transcript, motion for reconsideration transcript, the transcript of the plea,

proffered testimony and sentencing of the Applicant's co-defendants, the records of the Kershaw County Clerk of Court, Applicant's appellate records, and Applicant's records from the South Carolina Department of Corrections.

Testifying first on Applicant's behalf at the evidentiary hearing was Vincent Bracey (herein "Bracey"), who is currently incarcerated at the Lee Correctional Institute (SCDC # 320786) for Voluntary Manslaughter, Assault and Battery of a High and Aggravating Nature, and Strong Arm Robbery. Bracey testified that he was present at the incident location and was involved in the altercation giving rise to these charges. Bracey testified that he had known Applicant prior to the altercation and that he was at the home of Applicant's child's mother with the victim at the time of the altercation or death of the victim. He testified that he was unaware that Applicant's commonly known nickname is "Smurf."

Bracey testified that he never gave a written statement to law enforcement and does not recall ever speaking with any investigators regarding the altercation. Bracey testified that the signed, written statement to law enforcement that identifies Applicant as the shooter was not written by him. Bracey elaborated that he had never seen the statement before this hearing. Bracey testified that he was unable to identify the shooter because the shooter's back was to him. He testified that he never saw the shooter's face, but did state that the Applicant was near the victim when he heard gunshots. He testified that the shooter's build from behind was different from Applicant's build, but acknowledged that he does not know who shot the victim.

Bracey testified that he never spoke with Applicant's counsel prior to Applicant's guilty plea. He testified that he has been incarcerated in the South Carolina Department of Corrections since early 2007, more than three years before Applicant's guilty plea. Bracey testified that he

was asked to testify for the State if Applicant proceeded to trial and did not agree to testify. However, he was aware that he was on the State's list of potential witnesses.

Testifying next on behalf of the Applicant was Maurice Chisholm (herein "Chisholm"), who is currently incarcerated at the Kershaw Correctional Institute (SCDC # 311039) for Voluntary Manslaughter and Armed Robbery. Chisholm testified that he has never met Applicant and was not present during the altercation giving rise to these charges. He testified that he spoke with Bracey while in he was incarcerated at Lee Correctional Institute and that Bracey told him that "Smurf" did not shoot the victim, although he also said that Bracey may not have used the name "Smurf" during this conversation. He elaborated that Bracey told him that he did not know who shot the victim. Chisholm testified that the conversation took place in either "late 2006 or early 2007" and that he could not recall any specific details regarding the conversation. He testified that he has never spoken with law enforcement or Applicant's Counsel regarding his conversation with Bracey. He testified that he was not aware he was subpoenaed as a potential defense witness for Applicant's trial.

Applicant testified next on his own behalf. Applicant testified that he is currently incarcerated at the Lee Correctional Institute. He testified that he pled guilty pursuant Alford and still denies that he shot the victim. He testified that he was originally charged with murder, which he understands carries a mandatory minimum sentence of thirty years, which must be served day-for-day, and a maximum sentence of life imprisonment. He testified that the altercation arose from a dispute between himself and his child's mother over her refusal to allow him to see his child.

He testified that he was arrested shortly after the shooting and was in jail for approximately six months before he was released on bond. Applicant testified that he only met

with Counsel once before trial. He acknowledged that he never contacted Counsel and did not speak with Counsel, respond to Counsel's correspondence and calls, or provide Counsel with an updated address or phone number. He testified that he was aware Counsel moved to be relieved as counsel due to Applicant's refusal to meet with him or discuss the case.

He testified that Counsel never reviewed his discovery with him, including a SLED Gunshot Residue Report that analyzed himself and the victim; however, he testified that he recalled being tested for Gunshot Residue and that he recalled seeing the Report prior to his guilty plea. He testified that he never reviewed possible defenses with Counsel; however, he did acknowledge that he informed Counsel of potential witnesses that could be used in his defense, including Maurice Chisholm. He testified that Counsel did review potential witnesses for the State with him and he was aware that his child's mother Ebony Danzey, her sister Sanasia Danzey, and Vincent Bracey were subpoenaed to testify for the State. He testified that he was aware that both Danzey sisters would testify that he was the shooter. He testified that he did not request that Counsel subpoena Bracey to testify at trial, but he was aware that Bracey would be present at trial and Counsel could call him as a defense witness as well.

Applicant testified that he was aware that several of his co-defendants proffered testimony for the State and that he was not present for this hearing. He did acknowledge that he was initially present, but that the court removed him from the hearing due to concerns that the co-defendants were being improperly influenced and threatened. He acknowledged that Counsel was present during this hearing, but testified that Counsel did not review any notes from this hearing with him prior to trial and did not obtain a copy of the transcript for Applicant to review. He testified that he was aware that all co-defendants were listed as potential State witnesses and that he was aware of the testimony each co-defendant would likely provide at trial. Particularly,

he testified that he was aware that co-defendant Jeanette Haile proffered testimony that he had a gun and fired a gun during the altercation.

Applicant testified that he never asked Counsel to negotiate a favorable plea on his behalf and that he would have proceeded to trial if he had reviewed all discovery prior to his guilty plea. He acknowledged that the plea was a "good deal" compared to the possibility of serving a mandatory minimum of thirty years in prison if he had been convicted of murder at trial. He testified that Counsel advised him that this voluntary manslaughter was a non-parole sentence that would require him to serve at least eighty-five percent before being eligible for community supervision. He testified that prior to his guilty plea, Counsel reviewed his constitutional rights with him and acknowledged that he reviewed and signed an advisement of rights form (introduced into evidence at the hearing), including that he could testify at trial.

Applicant testified that he received a significantly longer sentence than any of his co-defendants; however, he acknowledged that he was the only person charged with murder. He testified that Counsel filed a motion to reconsider on his behalf, arguing that the court should reduce his sentence due to the disparities between his sentence and those received by his co-defendants. He testified that he was present for a hearing on this motion, which was denied by the court. Additionally, he testified that Counsel filed a notice of appeal and necessary documentation to perfect an appeal based on the sentence disparities between himself and his co-defendants.

Following Applicant's testimony, Respondent presented testimony from Counsel. Counsel testified that he was appointed to represent Applicant in December of 2007 and that he was Applicant's third attorney. He testified that he repeatedly tried to contact Applicant and had "extreme difficulty" contacting Applicant. He testified that Applicant failed repeatedly to

provide him with an updated address or telephone number and failed to keep scheduled appointments. He testified that he even reached out to Applicant's family members and pled with them to have Applicant contact him so that they could discuss the case. He testified that he eventually moved to either have the case continued or be relieved as counsel due to Applicant's complete refusal to meet with him or cooperate in his defense.

Counsel testified that following this motion, he was able to have a long meeting with Applicant. He testified that during this meeting, he was able to review the indictments, charges Applicant was facing, potential sentences, and elements the State would be required to prove at trial with Applicant. He testified that he discussed Applicant's version of events and possible defenses with Applicant during this meeting, as well as potential witnesses to call at trial. He testified that he reviewed the discovery with Applicant, including statements from Vincent Bracey, Jeanette Haile, Shanasia Danzey, and Ebony Danzey. Counsel elaborated that all of these statements implicated Applicant as the shooter. He testified that he told Applicant that all four would be called as witnesses for the State at trial and reviewed the State's potential witness list with him, which listed Vincent Bracey. He testified that he informed Applicant that all of his co-defendants would likely testify against him at trial and reviewed notes with him from the hearing where testimony was proffered. Counsel testified that he also reviewed the SLED Gunshot Residue Report with him. Counsel testified that the report showed that Applicant did not have any gunshot residue on him, but that the victim did have gunshot residue. Counsel testified that he did not find this particularly helpful, as Applicant was arrested hours after the incident and would have had ample time to wash off any potential gunshot residue by the time of his arrest, and the shooting occurred during a chaotic altercation between more than a dozen individuals. Counsel testified that he would have liked to have more time to review discovery

and prepare a defense with Applicant, but that he was significantly hindered by Applicant's refusal to cooperate in his defense or communicate with him.

Counsel testified that he was preparing to proceed to trial and that Applicant's case was noticed for trial approximately one week before his guilty plea. Counsel testified that his trial strategy was to convince the jury that Applicant was not the shooter or that he was just acting in self-defense after receiving fire from victim and his associates. Counsel testified that he felt as prepared as he could be to proceed to trial considering Applicant's refusal to communicate with him or assist in his defense. Counsel testified that he negotiated with the State on Applicant's behalf to secure a plea offer. He testified that the State offered to allow Applicant to plead to the lesser included offense of voluntary manslaughter, which "took heavy lifting" on Counsel's behalf. Counsel testified that he informed Applicant of the benefit of this plea offer, including that he would be eligible for community supervision after serving eighty-five percent of his sentence as opposed for the mandatory minimum of a day-for-day thirty year sentence if convicted of murder. He testified that he reviewed Applicant's constitutional rights with him and had him read and sign an advisement of rights form prior to his guilty plea.

Counsel testified that following Applicant's guilty plea hearing and sentencing, he filed a motion to reconsider Applicant's sentence based on the disparities between his sentence and that of his co-defendants. Counsel elaborated that Applicant was sentenced to twenty-two years imprisonment, while most of his co-defendants received a time served or probationary sentence; however, Counsel did acknowledge that none of Applicant's co-defendants were charged with murder. Counsel testified that the court denied his motion following a subsequent hearing. Counsel testified that he filed a notice of appeal on Applicant's behalf and filed a statement pursuant to SCACR 203(d)(1)(B)(vi) that the appeal was meritorious.

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).

Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (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).

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. 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 (1985).

After careful review based on the standard discussed above, the Applicant has failed to carry his burden in this action. Specifically, this Court finds that Counsel's testimony is credible while Applicant's testimony, along with the testimony of Bracey and Chisholm, is not as credible. Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

Counsel was ineffective for failing to adequately prepare Applicant for trial and failure to provide Applicant with information regarding exculpatory evidence including but not limited to the existence of gunshot residue on the victim

Applicant asserts that Counsel was ineffective for failing to prepare him for trial and failure to provide him with exculpatory evidence. This Court finds that this allegation is without merit. The uncontroverted testimony presented at the evidentiary hearing is that Applicant refused to contact Counsel to participate in his defense. Counsel testified that he repeatedly tried to contact Applicant and had "extreme difficulty" contacting Applicant. He testified that Applicant failed repeatedly to provide him with an updated address or telephone number and failed to keep scheduled appointments. He testified that he even reached out to Applicant's family members and pled with them to have Applicant contact him so that they could discuss the case. He testified that when he finally met with Applicant, he went over all discovery materials, including the SLED Gunshot Residue Report, with Applicant. Additionally, Counsel testified

that he did not believe the Gunshot Residue Report was particularly exculpatory, as Applicant was arrested several hours after the incident and would have had ample time to wash off any potential gunshot residue by the time of his arrest, and the shooting occurred during a chaotic altercation between more than a dozen individuals. Additionally, Counsel testified that he reviewed the indictments, elements of each offense, and potential sentences with Applicant, as well as possible defenses. Counsel testified that he wanted additional time to prepare the matter with Applicant, but he was significantly hampered by Applicant's complete failure to assist or communicate with him.

Based on the foregoing, this Court finds that the Applicant has not shown that trial counsel's performance fell below "professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Furthermore, the Applicant has shown no actual prejudice from an alleged deficiency of counsel. Therefore, this Court finds this allegation must be denied and dismissed with prejudice.

Counsel was ineffective for failing to adequately discuss available defenses with Applicant

Applicant asserts that Counsel was ineffective for failing adequately discuss available defenses with him. This Court finds that this allegation is without merit. As discussed above, the undisputed testimony presented at the evidentiary hearing is that Applicant refused to contact Counsel to participate in his defense and that Counsel was significantly hampered in his ability to prepare the case based on Applicant's uncooperativeness. Counsel testified that when he was finally able to meet with Applicant, he reviewed Applicant's version of the facts and possible defenses. Additionally, both Counsel and Applicant testified that Counsel reviewed potential defense witnesses, including Maurice Chisholm and Vincent Bracey, with Applicant.

Based on the foregoing, this Court finds that the Applicant has not shown that trial counsel's performance fell below "professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Furthermore, the Applicant has shown no actual prejudice from an alleged deficiency of counsel. Therefore, this Court finds this allegation must be denied and dismissed with prejudice.

Counsel was ineffective for failing to properly investigate witness Vincent Bracey and failure to subpoena Bracey as a witness for trial

Applicant asserts that Counsel was ineffective for failing investigate Vincent Bracey as a witness and for failure to subpoena him as a witness for trial. This Court finds that this allegation is without merit. Counsel testified that he received a copy of the State's potential witness list in advance of trial and noted that Vincent Bracey was already subpoenaed to testify on behalf of the State. Counsel testified that he reviewed all discovery materials, including Vincent Bracey's statement to law enforcement, with Applicant. Applicant testified that he did not request that Counsel subpoena Bracey to testify at trial, but he was aware that Bracey would be present at trial and Counsel could call him as a defense witness as well. Additionally, both Counsel and Applicant testified that Counsel reviewed potential defense witnesses, including Maurice Chisholm and Vincent Bracey, with Applicant. As Maurice Chisholm's testimony centered around Vincent Bracey's statement being inaccurate, Counsel was clearly aware of Vincent Bracey's potential testimony on behalf of the defense at trial.

Based on the foregoing, this Court finds that the Applicant has not shown that trial counsel's performance fell below "professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Furthermore, the Applicant has shown no actual prejudice from an

alleged deficiency of counsel. Therefore, this Court finds this allegation must be denied and dismissed with prejudice.

Counsel was ineffective for failing to adequately advise Applicant about his rights to trial regarding his right to testify

Applicant asserts that Counsel was ineffective for failing advised him of his rights to trial, including the right to testify. This Court finds that this allegation is without merit. Counsel and Applicant both testified that Counsel reviewed his constitutional rights with him prior to his guilty plea, including the right to trial. Additionally, both testified that Applicant reviewed and signed an advisement of rights form, which was introduced into evidence at the hearing, which specifically stated that Applicant was entitled to testify in his defense if he elected to proceed to trial. Additionally, the record reveals that the plea court also advised Applicant of his constitutional rights during its plea colloquy, including his right to testify:

THE COURT: Of court you personally can testify or not, that would be your choice during a trial. And [the State] can't make you testify, they can't keep you from testifying . . .

Tr. P. 7 ln. 25 – p. 8 ln. 3. This Court finds that Counsel adequately reviewed all of Applicant's constitutional rights with him, including the right to testify, with him prior to trial, as evidenced by the advisement of rights form signed by Applicant. Based on the foregoing, this Court finds that the Applicant has not shown that trial counsel's performance fell below "professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Furthermore, the Applicant has shown no actual prejudice from an alleged deficiency of counsel. Therefore, this Court finds this allegation must be denied and dismissed with prejudice.

Counsel was ineffective for coercing Applicant to plead guilty

Applicant alleges that Counsel was ineffective for coercing Applicant to plead guilty. This Court finds that Counsel's credible testimony reveals that Applicant was fully apprised of the State's plea offer and after receiving competent advice from his attorney, Applicant voluntarily and knowingly pled guilty. Based on the foregoing, this Court finds that Counsel's performance was not deficient in regards to this allegation. Furthermore, the Applicant has shown no actual prejudice from any alleged deficiency of counsel. This Court holds that the Applicant has failed to meet his burden of proof in regards to this allegation, which must be denied and dismissed with prejudice.

CONCLUSION

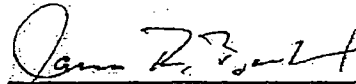
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that that Applicant must file and serve a notice of appeal within thirty 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 post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 9 day of June, 2013.



JAMES R. BARBER, III
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina.

WITNESSES

Crawford, KCSD

DOCKET NO. 2006-GS-28-0421

The State of South Carolina

County of Kershaw

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

Defendant

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

ARREST WARRANT NUMBER

H972137

November TERM 2006

Defendant

Witness:

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

ACTION OF GRAND JURY
TRUE BILL

Henry Reanard Woods

Foreperson of Grand Jury
Date: *NOV 29 2006*



VERDICT

Indictment for

MURDER

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

Foreperson of Petit Jury
Date:

ATTEST True, Correct & Certified
Copy of Original on File in this Court

Debra S. Wilson
Clerk of Court Kershaw County

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

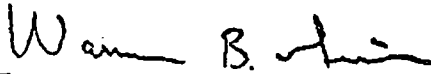
INDICTMENT

At a Court of General Sessions, convened on November 29, 2006, the Grand Jurors of Kershaw County present upon their oath:

MURDER

That Henry Reanard Woods did in Kershaw County on or about March 7, 2006, feloniously, willfully and with malice aforethought, kill one Chad Hough by means of shooting the victim with a .22 caliber handgun and that the said victim died as a proximate result thereof. All in violation of SC Code of Laws § 16-3-10

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


Warren B. Giese, SOLICITOR

WITNESSES

Crawford, KCSD

DOCKET NO. 2009-GS-28-0358

The State of South Carolina

County of Kershaw

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

Defendant

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

COURT OF GENERAL SESSIONS

March TERM 2009

Defendant

ARREST WARRANT NUMBER

DP09070

THE STATE
vs.

Henry Woods

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

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: MAR 11 2009

VERDICT

Indictment for
LYNCHING - 2nd DEGREE

SC Code: 16-3-220
CDR Code: 313
Class FEL-C

Foreperson of Petit Jury
Date:

Clerk of Court Kershaw County

09 MAR 11 PM 12:01
RECORDED
ATTEST True, Correct & Certified
Copy of Original on File in this
Court
Deputy Clerk

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

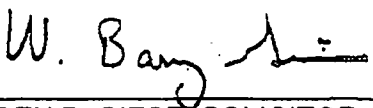
INDICTMENT

At a Court of General Sessions, convened on March 11, 2009, the Grand Jurors of Kershaw County present upon their oath:

LYNCHING - 2nd DEGREE

That Henry Woods did in Kershaw County on or about March 7, 2006, band together with one or more persons thus constituting a mob for the premeditated purpose and intent of inflicting violence upon the body of Isacc Hough, and did assault him . All in violation of SC Code of Laws §16-3-220.

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


WARREN B. GIESE, SOLICITOR