

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

R. Markley Dennis, Jr., Circuit Court Judge

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S.C. Supreme Court

THOMPSON WHITE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001776

APPENDIX

ROBERT M. PACHAK
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ASHLEIGH R WILSON
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX.....i

TRIAL TRANSCRIPT (FEBRUARY 14, 2012).....1

APPLICATION FOR POST-CONVICTION RELIEF.....30

RETURN.....38

POST-CONVICTION RELIEF HEARING TRANSCRIPT (APRIL 16, 2014).....44

PROVIDENCY FORM.....88

ORDER (FEBRUARY 11, 2013).....99

AMENDED ORDER OF DISMISSAL (APRIL 16, 2014).....105

1 (February 14, 2012.)

2 THE COURT: All right. Thompson White, is
3 that your name?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: I have here in my hands an
6 indictment. It started out as a charge of murder. The
7 State is willing to accept the plea of guilty to a charge
8 of voluntary manslaughter in connection with the events
9 on September 21, 2010 that resulted in the death of
10 Eugene Evans by means of a gunshot.

11 Do you understand that charge?

12 THE DEFENDANT: Yes, I do, Your Honor.

13 THE COURT: All right. I believe that
14 carries a possible penalty of at least two years in the
15 penitentiary. Can be up to 30 years in the penitentiary.

16 Do you understand that?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: But as I understand it, the State
19 and your attorney have discussed this matter. Actually,
20 they presented it to me, and the State has agreed to no
21 more than 15 years in the penitentiary. They have asked
22 me to sentence you to no more than 15 years in the
23 penitentiary, and I've agreed to that and your plea of
24 guilty to this charge.

25 Do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Of course you don't have to plead
3 guilty to anything. You have an absolute right to a jury
4 trial. Put the State to the test. See if they can
5 convince 12 jurors that you're guilty beyond a reasonable
6 doubt.

7 Do you understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Of course that would include any
10 evidence you wish to present. You don't have to present
11 any evidence, and the State must prove you guilty beyond
12 a reasonable doubt.

13 Do you understand that?

14 THE DEFENDANT: Understood, Your Honor.

15 THE COURT: But you could present evidence.
16 You could testify, although you don't have to. Nobody
17 can make you testify against yourself.

18 Do you understand that?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Would you like to have a jury
21 trial?

22 THE DEFENDANT: No, sir.

23 THE COURT: How do you wish to plead to this
24 charge of voluntary manslaughter, guilty or not guilty?

25 THE DEFENDANT: Guilty.

1 THE COURT: Are you?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Has anybody promised you
4 anything, threatened you to plead guilty other than this
5 cap of 15 years?

6 THE DEFENDANT: No, sir.

7 THE COURT: Are you entering this plea then
8 freely and voluntarily?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: I ask, again, would you like to
11 have a jury trial on this?

12 THE DEFENDANT: No, Your Honor.

13 THE COURT: I ask you, again, are you
14 pleading guilty?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. I'll accept your plea
17 then. Solicitor?

18

19 THE ASSISTANT SOLICITOR: Thank you, Your
20 Honor. The facts as alleged by the State are as follows:
21 In the early evening of September 21, 2010, the defendant
22 and his girlfriend at the time, Shakira Brown, got into
23 an argument over dinner that evening. That argument
24 escalated, and at some point -- although we have heard
25 some varying degrees of physicality, but at some point

1 that argument did become physical. Shakira, following
2 that, contacted her family. Some of her relatives nearby
3 heard that this argument had gotten physical. They were
4 understandably very upset about that.

5 Evans, Joshua Brown, Christopher Brown and a
6 Roslyn Brown went over to where the defendant was staying
7 at the time, that is [REDACTED], and confronted him
8 about this earlier incident between him and Shakira
9 Brown. That confrontation became physical.

10 A blood swab was secured at that scene, which
11 came back to match the defendant. Whereas on the booking
12 photos from the next day, there are very few physical
13 injuries, we do acknowledge that that physical
14 confrontation between the victim and his family and the
15 defendant did at least arise to the point where the
16 defendant was bleeding at the time.

17 At some point the defendant was able to free
18 himself from this fight, went into the home, got a 22
19 bolt action rifle. Testimony would establish that he
20 came out of the house and fired a couple of shots into
21 the air, initially. Those shots had their desired
22 effect. The individuals who were there at the property
23 fled.

24 I would like to approach if I could, Your
25 Honor.

1 THE COURT: Sure.

2 THE ASSISTANT SOLICITOR: I've shared this
3 with Mr. Savage prior to the hearing. That is an image
4 from Google maps of the area. I think it might let you
5 understand the area, what we're talking about.

6 The Browns fled in one direction down Ashley.
7 That's the street at the bottom of the picture. The
8 deceased, Eugene Levar Evans, fled down Noonan. That's
9 the line you see going down Noonan Street there.

10 At that point the defendant's testimony would
11 establish he stepped into the street and fired some shots
12 with the 22 down in the direction down Noonan Street.
13 The witness would establish she didn't have a view all
14 the way down Noonan Street, but she did have a view of
15 the defendant firing in that direction.

16 The number two on the image I've shown you is
17 the approximate area where the deceased, Eugene Levar
18 Evans, was. The cause of death was a single gunshot
19 wound near the front of the face near the right side,
20 gunshots being fired.

21 Defendant, Mr. White, fled in his car. He
22 did turn himself in to police the following day, and the
23 murder weapon was found in the trunk of his car.

24 Present today are several members from the
25 deceased's family, Agnes Evans, his stepmother, Karen

1 Rivers, his aunt, Anitra Evans, another aunt, his sister,
2 as well as other members of the family, a few of whom
3 would like to address you at the proper time, if you
4 would like to hear from them.

5 THE COURT: I would like to hear from anybody
6 now. I'll be glad to hear from anybody that wants to say
7 anything.

8 Tell me your name.

9 THE WITNESS: My name is Wesley Tice,
10 T-i-c-e.

11 THE COURT: All right.

12 THE WITNESS: And I am the uncle of the
13 deceased, and I wanted to just make a couple statements
14 to the Court, one being that this event is tragic on both
15 sides, for both families, and I don't think we or anybody
16 will really know what happened that night, but there is
17 one thing for certain: Mr. White took a life, and that
18 person's life -- regardless of what happens in court
19 today, he's not going to be brought back to life, but we
20 feel, my family does that, Mr. White should receive the
21 maximum.

22 He just agreed to a cap of 15 years as
23 opposed to 30, which he could have gotten, so we feel he
24 should receive the maximum 15 years for taking someone's
25 life.

1 THE COURT: Thank you very much.

2 THE WITNESS: Thank you, sir.

3 THE COURT: All right. Yes, ma'am. Tell me
4 your name, please?

5 THE WITNESS: Anitra Evans. I'm his aunt,
6 and I feel he should get the maximum because he did take
7 my nephew's life. He's no longer going to be here to
8 even be around his child anymore. All his family -- I
9 feel sorry for his family because they got to go through
10 this tragedy and all with us, but I feel that when he
11 left, or whatever he did, he should have just called the
12 cops, not got a gun out and took his life.

13 I feel so sorry for you, and I hope God have
14 mercy upon you. Thank you.

15 THE COURT: Thank you. Yes, ma'am, tell me
16 your name.

17 THE WITNESS: Aneal German.

18 THE COURT: All right.

19 THE WITNESS: I was always taught that God
20 gives and takes nothing but his own, but in this case,
21 that didn't happen. A life was taken. There was enough
22 time that should have been spent that we didn't have to
23 act -- you know, acted in violence with a gun. One time
24 back, if there was a fight, you take a fight. You have a
25 fight, you take a beating, and you leave, but in this

1 case, that didn't happen.

2 There was time to go in the house, get a gun,
3 and shoot when the man obviously ran away, so for that
4 reason, we have lost a loved one. That life, of course,
5 we know, no matter what time is given, a life will never
6 be brought back. We do understand that, but because the
7 time has already been asked to be shortened with a
8 maximum of 15 years, we're asking that the 15 years
9 maximum be given for that.

10 THE COURT: Thank you. All right. Yes,
11 ma'am, we have one other -- tell me your name, please,
12 ma'am.

13 THE WITNESS: My name is Delores Evans. I'm
14 the mother.

15 THE COURT: Be glad to hear from you.

16 THE WITNESS: I feel like he took my son's
17 life, and I'm asking for 15. That's all. I want the
18 max.

19 THE COURT: Thank you. I understand your
20 situation, your feeling. All right. Yes, ma'am, tell me
21 your name, please.

22 THE WITNESS: My name is Agnes Evans.

23 THE COURT: Ms. Evans?

24 THE WITNESS: I am the grandmother, which I
25 raised Eugene Evans from a baby. He is a sweet -- was a

1 sweet and loving boy, never had no trouble with him, and
2 I'm just asking today for you to please give him the
3 maximum. This 15 years is not too much for him taking a
4 life that they cannot get back, and I thank you very
5 much.

6 THE COURT: Thank you for coming here and
7 saying that. All right. Yes, ma'am, tell me your name?

8 THE WITNESS: Marian White. I'm the
9 stepmother.

10 THE COURT: Ms. White?

11 THE WITNESS: I'm sorry this incident
12 happened, but Eugene was a sweet, kind person. Never got
13 into any trouble. He loved his family, and he is
14 protective of his family, and I don't think what happened
15 to him that night should have happened.

16 THE COURT: No question about that.

17 THE WITNESS: And he had time to think about
18 what he was going to do when he went and got that gun.
19 He left the scene, got the gun, and came back and started
20 shooting. That's not right, and I think he should get
21 the maximum.

22 THE COURT: All right. Thank you. Yes,
23 ma'am. Tell me your name?

24 THE WITNESS: I'm Antrena Evans, and he was
25 my brother. I have -- he has a niece and two nephews

1 that would not even come because they couldn't handle
2 that he's no longer here. He has a daughter, and we
3 don't have him. He's a thoughtful person. He's a
4 helpful person, and for him to no longer be here is a
5 loss for more than just me, his nieces and nephew, but
6 for -- also he has friends.

7 THE COURT: Thank you. All right.

8 Well, my heart certainly goes out to
9 everybody on both sides of this case that has been
10 touched by this tragedy. All right. Anything else,
11 solicitor?

12 THE ASSISTANT SOLICITOR: Your Honor, just in
13 conclusion, obviously, he entered this plea. Concessions
14 are being made on the part of the State in reviewing the
15 evidence. We are conceding that there was an arguable
16 provocation, but there is an important flip side to that
17 too in that the defendant is also admitting his guilt to
18 voluntarily, albeit in the heat of passion, taking the
19 life of another human being.

20 You've heard the impact it has had on his
21 family. We just ask you to consider that while
22 fashioning a sentence.

23 THE COURT: Certainly will. Thank you very
24 much. Any record?

25 THE ASSISTANT SOLICITOR: Your Honor, his

1 record includes two counts in 2002, CDV and CDV second,
2 and an employment fraud case from -- since then.

3 THE COURT: All right. We'll switch now to
4 the other side.

5 Mr. Savage, be glad to hear from you, and I
6 have read the materials that you furnished to me
7 yesterday. Thank you very much for providing that to me.

8 MR. SAVAGE: Thank you, Judge. Mr. White
9 just turned 53 just a couple weeks ago. He was born and
10 raised into South Carolina. He attended Johns Island
11 High School back in the late '70s and then took up a
12 career for four years in the United States military where
13 he served his country honorably and received an honorable
14 discharge.

15 Shortly after that he went to work for A & R
16 Sheet Metal Works, that is out on Johns Island, as well,
17 probably within a mile of the high school, and he's
18 worked there, in the words of his supervisor, for 26
19 years without incident.

20 Now, this should never have happened. There
21 are so many tragedies Your Honor sees that shouldn't have
22 happened. Thompson was home that night, in his kitchen,
23 and they were preparing an evening meal. There was a
24 disagreement over the lima beans, who was cooking the
25 lima beans, and an argument ensued. And then somebody in

1 that home, without violence at that point, somebody in
2 the home called friends and relatives, and the next thing
3 you know, five uninvited males, bigger, stronger,
4 heavier, and younger came and took Thompson out of his
5 house, put a beating on him where he lost his glasses off
6 his head that the police found later that night. That
7 was on the stoop of his house.

8 If Thompson had gone inside at that point and
9 called the police, he would have just added one incident
10 to the six-page rap sheet of the deceased, but instead,
11 he grabbed a weapon, went back outside, fearing, as he
12 says, for his life. He had had surgery immediately
13 before this incident. They had stomped pretty good on
14 his hand, and had serious nerve damage to the extent he
15 was out on a worker's comp claim at the time.

16 He took this weapon and he fired it, as he
17 said, in the air, to scare them, and he saw a shadow and
18 he got nervous and he fired again. The Google map that
19 Your Honor has in front of you is accurate in terms of
20 where the street and house are, and it's accurate where
21 the deceased was found; however, the police report is
22 exemplified in the arrest warrant that following the
23 shootings, approximately four rounds striking Evans in
24 the face -- not in the back, not in the back of the head,
25 but in the face -- the victim then ran down the street

1 and collapsed.

2 What that doesn't say and what the diagram
3 doesn't point out is where the defendant and the deceased
4 were at the time the weapon was fired, and we'll never
5 know. There wasn't any blood found except for the
6 defendant's blood at the time. The police never found
7 any blood, never recovered any blood from the street or
8 from anywhere other than where the deceased collapsed,
9 but, clearly, he did run down the street some distance
10 after having been shot.

11 Thompson fled the scene. He called the
12 police and turned himself in. He stayed in the Al Canon
13 Detention Center from December 22 to August 25th, 2010 to
14 2011.

15 THE COURT: That was how long?

16 MR. SAVAGE: 332 days. He was released on
17 bond, \$100,000 split bond. He has been without any
18 problem since then. I've handed up a couple of
19 documents, but I would like to point out a couple of them
20 in particular. One is the psychiatric psychological
21 evaluation that indicates he's not a threat to future
22 dangerousness.

23 I've also provided you with a report from the
24 medical university where he was assessed and treated for
25 alcohol abuse and treated without further treatment. I

1 provided you with a letter from his employer that says
2 he's one of the best employees he's had, working there
3 for 26 years, and if allowed out to work again, he would
4 hire him in a minute.

5 I have a copy and provide you a copy of a
6 letter from his landlord. His landlord also had an agent
7 for the rental of that property. In both instances, they
8 speak highly of him, the way he treated his neighbors,
9 cared for the property that he was the custodian of.

10 Your Honor, this is a terrible tragedy. We
11 reviewed, in going over this case, the statutory defense
12 of self-defense. It's pretty close. The problem is that
13 when the shots are fired, Thompson was not on his
14 property or in his home defending his castle, and
15 therefore he had a legal obligation, as he knows now,
16 that he should have backed off, called the police, and
17 hidden inside his house instead of going out seeking the
18 defendant.

19 But I think it's very significant and the
20 Courts have to recognize that the fatal shot was received
21 in the face, not in the back. A number of people are
22 here today that want to stand by Thompson White as he
23 apologizes to the Court.

24 Would you please stand up, everybody that is
25 here on his behalf, and sit down, those of you, unless

1 you're going to speak to the Court.

2 THE WITNESS: My name is Robin Edwards.
3 First of all, I would like to say to the family, we are
4 all incredibly sorry for your loss. I agree with the
5 first gentleman that got up there. This should have
6 never happened, but it did, and the thing about it is
7 that I know he was provoked because he would never have
8 done something like this, never in a million years, and
9 these people came and beat on him.

10 I just want y'all to imagine, you know,
11 three, four guys coming and beating on you --

12 THE COURT: Direct your comments to me,
13 please, ma'am, rather than --

14 THE WITNESS: Just image someone beating on
15 you, you know, beating on your head. You're in extreme
16 pain. You know, I just can imagine he was really afraid
17 and he said he heard someone said something about a gun,
18 and they just scared him half to death so he did what he
19 had to do by scaring him away with this firearm, but I
20 know he didn't mean to shoot Eugene.

21 I know Eugene. I was Eugene's manager at one
22 point. I was his manager. I know Eugene, but I knew he
23 did not mean -- my brother didn't mean to shoot Eugene
24 and kill Eugene. Eugene -- my brother didn't even know
25 Eugene. I didn't even know it was Eugene. The first

1 thing he called me, when I spoke to him on the phone, he
2 said, Who in the world is this that they said I shot?

3 He didn't even know who he was. He was the
4 guy -- when Eugene came up to him, to his house, he never
5 seen the guy before in his life. He don't even know who
6 he was. He didn't know nothing about him. I just found
7 out who he was after I saw the paper, and I said, wow, I
8 know this guy.

9 And I I'm not going say anything about his
10 character, but the point is, he didn't even know him.
11 They didn't even know each other, to beat him for
12 something that didn't even happen. If they had only
13 asked his girlfriend to come outside, they would have saw
14 and they would have let them know there is no fight
15 because somebody would say he was beating her, you know,
16 beating her. She didn't have a mark or anything, but his
17 girlfriend said it in one of the phone calls.

18 I really am sorry because I know what it is
19 to lose a loved one. We have lost mother, father,
20 sister, brothers and I know this, and they have my
21 deepest, deepest sympathies, so I don't want them to
22 think we're some cruel people. We're not. We're very
23 God-fearing people, and I just want to say on behalf of
24 my brother that my brother is good. He's just the type
25 of person that would make you laugh, hold down a job.

1 He's been working at the sheet metal place for years, and
2 these people love him. They love him.

3 My brother have his children. He loved them.
4 He raised them. He was married and he raised them, and
5 now he got his grandchildren, which, Your Honor, he took
6 care of those kids like any -- my brother have a
7 seven-year-old daughter. He goes there and he braids her
8 hair and plat her hair and take her places.

9 This thing escalated because other people
10 came in and they provoked this thing that happened, and
11 all I'm saying is please have mercy on him.

12 THE COURT: Thank you very much. Anything
13 else? Tell me your name.

14 THE WITNESS: My name is Jessica White. I'm
15 Thompson White's daughter, and I just wanted to apologize
16 to the family for losing their family member. Not only
17 have they lost a family member, I've lost a father. Ever
18 since he got out, he took care of my kids when I needed
19 him. I'm daddy's little girl, and it's hurt me so bad
20 and so much that me and my children's sons and daughters,
21 nieces and nephews have to go through this, but I just
22 want to say, this is not a bad man, and I believe y'all's
23 family member wasn't a bad person either.

24 THE COURT: Thank you very much. All right.
25 Anybody else? Yes, sir. Tell me your name.

1 THE WITNESS: Reverend Jones. I'm his
2 pastor, and I just want to say that I've lived by
3 Thompson many years as my neighbor, and when I heard
4 about what had happened, it scared me because that kind
5 of attitude -- and I say to this family. I know they
6 lost someone. It's hard, but at the same time, I didn't
7 even know what happened until the solicitor said just now
8 what went down. And to say to them, he had to be
9 provoked, but at the same time, a life is taken and he
10 said to me, Reverend Jones, I just wish it didn't happen.

11 THE COURT: We all do.

12 THE WITNESS: And we do. You can't bring a
13 person back, and the first gentleman will never know what
14 happened. We can't bring a person back. We just hope
15 that this young man's life could be changed, and it's
16 changed what he's doing in our church. I've never had
17 any problem out of him, Your Honor, and I just -- it's a
18 tragedy, you can see, either way because this family is
19 hurting, this family is hurting, and there is not going
20 to be any winner here today, no matter what happens.

21 And so we just ask that the Court would look
22 at him in that way that he have done the best he can.
23 His life has been changed. Since he got back out, he
24 been trying to do the right thing, and we was thinking
25 about having a mentor to work with him, to help him, so I

1 just hope that the Court and the family would have mercy.

2 THE COURT: All right. Thank you very much.

3 All right.

4 Mr. Savage, anything else?

5 MR. SAVAGE: Just from the defendant.

6 THE COURT: Be glad to hear from you,
7 Mr. White. Anything you want to say to me or anyone else
8 present?

9 MR. SAVAGE: Mr. White wants me to read a
10 phone call to you, but I can summarize it by saying that
11 what was said was that no one in his home that night was
12 injured in any way. Actually, there is a phone call that
13 the solicitor's office provided us to that was made with
14 the woman the day after the arrest that said that all
15 this to do about me being violated or my being assaulted
16 was just not true, so that's important to them, and I
17 believe it's also important to point out that the
18 deceased was six feet one, some six inches taller.

19 THE DEFENDANT: First, I wanted to say I'm
20 sorry. I never meant this to happen. I was so scared.
21 I don't know how to say it, but I was so afraid that this
22 guy is going to kill me. The only thing I could think
23 about is I don't want to die.

24 I'm sorry. I don't know what to say to you.
25 Nothing I say will make you feel better. I know that. I

1 am not the person you think I am. All I can say is I'm
2 sorry. All those years taking a life for someone, I know
3 that, but I got a life too, and I wanted to live. I
4 don't want to lose my life, and pick his life for his
5 sake for something somebody told him and lied to your
6 cousin, your brother, your uncle. They lied to him so he
7 come to see, didn't give me a chance.

8 They gave me a beating for no reason. I
9 couldn't help it. I was afraid of what would have
10 happened to me, and God in heaven knows that's the truth.

11 THE COURT: Thank you very much. Just
12 looking at the picture, it's certainly interesting.
13 Exact distances can't be established, I don't think, but
14 looking at the photograph of the area, photograph of the
15 scene, about 100 feet or so, approximately that much from
16 where you were apparently to about where the deceased was
17 found, I don't know where he was exactly at the time the
18 shot was fired and he was hit, but even if you half that
19 distance, the 50 feet with a 22 rifle, that's just -- all
20 you can say is it's an unlucky shot to have this occur.
21 Tragic. So one more tragedy to add on to what's
22 happening.

23 My heart goes out to everybody who has been
24 affected by this tragedy, but considering all the things
25 I should consider, the sentence is you are confined to

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the South Carolina Department of Corrections for a period
of 12 years. Good luck to you.

- - -

(Whereupon, the proceedings were concluded.)

- - -

I, the undersigned Amanda K. Haffenden, RPR, CRR, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 14th of February 2012.

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

February 1, 2014


Circuit Court Reporter

\$	8	<p>Ashley (1) - 6:6 assaulted (1) - 20:15 assessed (1) - 14:24 ASSISTANT (4) - 4:19, 6:2, 11:12, 11:25 attended (1) - 12:10 attitude (1) - 19:5 Attorney (2) - 1:13, 24:6 attorney (1) - 2:19 August (1) - 14:13 aunt (3) - 7:1, 8:5</p>	<p>Browns (1) - 6:6 Building (1) - 24:6</p>	<p>complete (1) - 23:4 conceding (1) - 11:15 Concessions (1) - 11:13 concluded (1) - 22:4 conclusion (1) - 11:13 confined (1) - 21:25 confrontation (2) - 5:9, 5:14 confronted (1) - 5:7 connection (1) - 2:8 consider (2) - 11:21, 21:25 considering (1) - 21:24 contacted (1) - 5:2 convince (1) - 3:5 cooking (1) - 12:24 cops (1) - 8:12 copy (2) - 15:5 Corrections (1) - 22:1 counsel (1) - 23:10 country (1) - 12:13 counts (1) - 12:1 County (1) - 23:7 COUNTY (1) - 1:2 couple (5) - 5:20, 7:13, 12:9, 14:18, 14:19 course (3) - 3:2, 3:9, 9:4 court (1) - 7:18 COURT (42) - 1:1, 2:2, 2:5, 2:13, 2:18, 3:2, 3:9, 3:15, 3:20, 3:23, 4:1, 4:3, 4:7, 4:10, 4:13, 4:16, 6:1, 7:5, 7:11, 8:1, 8:3, 8:15, 8:18, 9:10, 9:15, 9:19, 9:23, 10:6, 10:10, 10:16, 10:22, 11:7, 11:23, 12:3, 14:15, 16:12, 18:12, 18:24, 19:11, 20:2, 20:6, 21:11 Court (10) - 1:20, 7:14, 15:23, 16:1, 19:21, 20:1, 23:2, 23:7, 23:15, 24:1 Courts (1) - 15:20 cousin (1) - 21:6 CRR (4) - 1:19, 23:1, 24:1, 24:19 cruel (1) - 17:22 custodian (1) - 15:9</p>
'	A	<p style="text-align: center;">B</p> <p>baby (1) - 9:25 backed (1) - 15:16 bad (3) - 18:19, 18:22, 18:23 beans (2) - 12:24, 12:25 beat (2) - 16:9, 17:11 beating (8) - 8:25, 13:5, 16:11, 16:14, 16:15, 17:15, 17:16, 21:8 became (1) - 5:9 become (1) - 5:1 BEFORE (1) - 24:11 behalf (2) - 15:25, 17:23 best (2) - 15:2, 19:22 better (1) - 20:25 between (2) - 5:8, 5:14 beyond (2) - 3:5, 3:11 bigger (1) - 13:3 bleeding (1) - 5:16 blood (5) - 5:10, 14:5, 14:6, 14:7 bolt (1) - 5:19 bond (2) - 14:17 booking (1) - 5:11 born (1) - 12:9 bottom (1) - 6:7 Box (2) - 24:2, 24:7 boy (1) - 10:1 braids (1) - 18:7 bring (2) - 19:12, 19:14 brother (8) - 10:25, 16:23, 16:24, 17:24, 18:3, 18:6, 21:6 brothers (1) - 17:20 brought (2) - 7:19, 9:6 Brown (5) - 4:22, 5:5, 5:6, 5:9</p>	C	<p>cannot (1) - 10:4 Canon (1) - 14:12 cap (2) - 4:5, 7:22 captioned (1) - 23:6 car (2) - 6:21, 6:23 care (2) - 18:6, 18:18 cared (1) - 15:9 career (1) - 12:12 CAROLINA (2) - 1:1, 1:4 Carolina (5) - 1:6, 12:10, 22:1, 23:3, 23:7 carries (1) - 2:14 case (5) - 8:20, 9:1, 11:9, 12:2, 15:11, 23:6 castle (1) - 15:14 CDV (2) - 12:1 Center (1) - 14:13 certain (1) - 7:17 certainly (2) - 11:8, 21:12 Certainly (1) - 11:23 certify (2) - 23:3, 23:9 chance (1) - 21:7 changed (3) - 19:15, 19:16, 19:23 character (1) - 17:10 charge (5) - 2:6, 2:7, 2:11, 2:24, 3:24 CHARLESTON (1) - 1:2 Charleston (2) - 1:6, 23:7 child (1) - 8:8 children (1) - 18:3 children's (1) - 18:20 Christopher (1) - 5:5 church (1) - 19:16 Circuit (5) - 1:20, 23:2, 23:7, 23:15, 24:1 claim (1) - 13:15 clearly (1) - 14:9 close (1) - 15:12 collapsed (2) - 14:1, 14:8 Columbia (1) - 24:7 coming (2) - 10:6, 16:11 comments (1) - 16:12 comp (1) - 13:15</p>
1	<p>able (1) - 5:17 absolute (1) - 3:3 abuse (1) - 14:25 accept (2) - 2:7, 4:16 accurate (3) - 13:19, 13:20, 23:4 acknowledge (1) - 5:13 act (1) - 8:23 acted (1) - 8:23 action (1) - 5:19 add (1) - 21:21 added (1) - 13:9 address (1) - 7:3 admitting (1) - 11:17 affected (1) - 21:24 afraid (3) - 16:16, 20:21, 21:9 agent (1) - 15:6 Agnes (2) - 6:25, 9:22 ago (1) - 12:9 agree (1) - 16:4 agreed (3) - 2:20, 2:23, 7:22 air (2) - 5:21, 13:17 Al (1) - 14:12 albeit (1) - 11:18 alcohol (1) - 14:25 alleged (1) - 4:20 allowed (1) - 15:3 Amanda (3) - 1:19, 23:1, 24:19 AMANDA (1) - 24:1 Andrew (1) - 1:13 Aneal (1) - 8:17 Anitra (2) - 7:1, 8:5 Antrena (1) - 10:24 apologize (1) - 18:15 apologizes (1) - 15:23 appeal (1) - 23:6 approach (1) - 5:24 approximate (1) - 6:17 area (4) - 6:4, 6:5, 6:17, 21:14 arguable (1) - 11:15 argument (5) - 4:23, 5:1, 5:3, 12:25 arise (1) - 5:15 arrest (2) - 13:22, 20:14 Ashleigh (1) - 24:5</p>	<p>1 (2) - 23:11, 24:4 100 (1) - 21:15 11 (1) - 5:7 11549 (1) - 24:7 12 (2) - 3:5, 22:2 14 (3) - 1:5, 2:1, 24:10 14th (1) - 23:8 15 (9) - 2:21, 2:22, 4:5, 7:22, 7:24, 9:8, 9:17, 10:3</p>	<p style="text-align: center;">B</p> <p>baby (1) - 9:25 backed (1) - 15:16 bad (3) - 18:19, 18:22, 18:23 beans (2) - 12:24, 12:25 beat (2) - 16:9, 17:11 beating (8) - 8:25, 13:5, 16:11, 16:14, 16:15, 17:15, 17:16, 21:8 became (1) - 5:9 become (1) - 5:1 BEFORE (1) - 24:11 behalf (2) - 15:25, 17:23 best (2) - 15:2, 19:22 better (1) - 20:25 between (2) - 5:8, 5:14 beyond (2) - 3:5, 3:11 bigger (1) - 13:3 bleeding (1) - 5:16 blood (5) - 5:10, 14:5, 14:6, 14:7 bolt (1) - 5:19 bond (2) - 14:17 booking (1) - 5:11 born (1) - 12:9 bottom (1) - 6:7 Box (2) - 24:2, 24:7 boy (1) - 10:1 braids (1) - 18:7 bring (2) - 19:12, 19:14 brother (8) - 10:25, 16:23, 16:24, 17:24, 18:3, 18:6, 21:6 brothers (1) - 17:20 brought (2) - 7:19, 9:6 Brown (5) - 4:22, 5:5, 5:6, 5:9</p>	<p>cannot (1) - 10:4 Canon (1) - 14:12 cap (2) - 4:5, 7:22 captioned (1) - 23:6 car (2) - 6:21, 6:23 care (2) - 18:6, 18:18 cared (1) - 15:9 career (1) - 12:12 CAROLINA (2) - 1:1, 1:4 Carolina (5) - 1:6, 12:10, 22:1, 23:3, 23:7 carries (1) - 2:14 case (5) - 8:20, 9:1, 11:9, 12:2, 15:11, 23:6 castle (1) - 15:14 CDV (2) - 12:1 Center (1) - 14:13 certain (1) - 7:17 certainly (2) - 11:8, 21:12 Certainly (1) - 11:23 certify (2) - 23:3, 23:9 chance (1) - 21:7 changed (3) - 19:15, 19:16, 19:23 character (1) - 17:10 charge (5) - 2:6, 2:7, 2:11, 2:24, 3:24 CHARLESTON (1) - 1:2 Charleston (2) - 1:6, 23:7 child (1) - 8:8 children (1) - 18:3 children's (1) - 18:20 Christopher (1) - 5:5 church (1) - 19:16 Circuit (5) - 1:20, 23:2, 23:7, 23:15, 24:1 claim (1) - 13:15 clearly (1) - 14:9 close (1) - 15:12 collapsed (2) - 14:1, 14:8 Columbia (1) - 24:7 coming (2) - 10:6, 16:11 comments (1) - 16:12 comp (1) - 13:15</p>
2	<p>2002 (1) - 12:1 2010 (3) - 2:9, 4:21, 14:13 2011 (1) - 14:14 2011-GS-10-1229 (1) - 1:2 2012 (4) - 1:5, 2:1, 23:8, 24:10 2014 (2) - 23:11, 24:4 21 (2) - 2:9, 4:21 22 (4) - 5:18, 6:12, 14:13, 21:19 25th (1) - 14:13 26 (2) - 12:18, 15:3 29211-1549 (1) - 24:7 29484 (1) - 24:2</p>	<p>2002 (1) - 12:1 2010 (3) - 2:9, 4:21, 14:13 2011 (1) - 14:14 2011-GS-10-1229 (1) - 1:2 2012 (4) - 1:5, 2:1, 23:8, 24:10 2014 (2) - 23:11, 24:4 21 (2) - 2:9, 4:21 22 (4) - 5:18, 6:12, 14:13, 21:19 25th (1) - 14:13 26 (2) - 12:18, 15:3 29211-1549 (1) - 24:7 29484 (1) - 24:2</p>	<p>2002 (1) - 12:1 2010 (3) - 2:9, 4:21, 14:13 2011 (1) - 14:14 2011-GS-10-1229 (1) - 1:2 2012 (4) - 1:5, 2:1, 23:8, 24:10 2014 (2) - 23:11, 24:4 21 (2) - 2:9, 4:21 22 (4) - 5:18, 6:12, 14:13, 21:19 25th (1) - 14:13 26 (2) - 12:18, 15:3 29211-1549 (1) - 24:7 29484 (1) - 24:2</p>	<p>2002 (1) - 12:1 2010 (3) - 2:9, 4:21, 14:13 2011 (1) - 14:14 2011-GS-10-1229 (1) - 1:2 2012 (4) - 1:5, 2:1, 23:8, 24:10 2014 (2) - 23:11, 24:4 21 (2) - 2:9, 4:21 22 (4) - 5:18, 6:12, 14:13, 21:19 25th (1) - 14:13 26 (2) - 12:18, 15:3 29211-1549 (1) - 24:7 29484 (1) - 24:2</p>
3	<p>30 (2) - 2:15, 7:23 332 (1) - 14:16</p>	<p>30 (2) - 2:15, 7:23 332 (1) - 14:16</p>	<p>30 (2) - 2:15, 7:23 332 (1) - 14:16</p>	<p>30 (2) - 2:15, 7:23 332 (1) - 14:16</p>
4	<p>424 (1) - 24:2</p>	<p>424 (1) - 24:2</p>	<p>424 (1) - 24:2</p>	<p>424 (1) - 24:2</p>
5	<p>50 (1) - 21:19 53 (1) - 12:9</p>	<p>50 (1) - 21:19 53 (1) - 12:9</p>	<p>50 (1) - 21:19 53 (1) - 12:9</p>	<p>50 (1) - 21:19 53 (1) - 12:9</p>
6	<p>6999 (1) - 24:21</p>	<p>6999 (1) - 24:21</p>	<p>6999 (1) - 24:21</p>	<p>6999 (1) - 24:21</p>
7	<p>771-3755 (1) - 24:3</p>	<p>771-3755 (1) - 24:3</p>	<p>771-3755 (1) - 24:3</p>	<p>771-3755 (1) - 24:3</p>

<p style="text-align: center;">D</p> <p>daddy's [1] - 18:19 damage [1] - 13:14 dangerousness [1] - 14:22 DATE [1] - 24:10 daughter [3] - 11:2, 18:7, 18:15 daughters [1] - 18:20 days [1] - 14:16 death [3] - 2:9, 6:18, 16:18 deceased [9] - 6:8, 6:17, 7:13, 13:10, 13:21, 14:3, 14:8, 20:18, 21:16 deceased's [1] - 6:25 December [1] - 14:13 deepest [2] - 17:21 Defendant [3] - 1:7, 1:13, 6:21 defendant [11] - 4:21, 5:6, 5:11, 5:15, 5:16, 5:17, 6:15, 11:17, 14:3, 15:18, 20:5 DEFENDANT [15] - 2:4, 2:12, 2:17, 3:1, 3:8, 3:14, 3:19, 3:22, 3:25, 4:2, 4:6, 4:9, 4:12, 4:15, 20:19 defendant's [2] - 6:10, 14:6 defending [1] - 15:14 defense [2] - 15:11, 15:12 degrees [1] - 4:25 Delores [1] - 9:13 Dennis [1] - 24:6 Department [1] - 22:1 desired [1] - 5:21 Detention [1] - 14:13 diagram [1] - 14:2 die [1] - 20:23 dinner [1] - 4:23 Direct [1] - 16:12 direction [3] - 6:6, 6:12, 6:15 disagreement [1] - 12:24 discharge [1] - 12:14 discussed [1] - 2:19 distance [2] - 14:9, 21:19 distances [1] - 21:13 documents [1] -</p>	<p>14:19 done [2] - 16:8, 19:22 doubt [2] - 3:6, 3:12 down [11] - 6:6, 6:8, 6:9, 6:12, 6:14, 13:25, 14:9, 15:25, 17:25, 19:8 DUE [1] - 24:16</p>	<p style="text-align: center;">F</p> <p>face [4] - 6:19, 13:24, 13:25, 15:21 facts [1] - 4:20 families [1] - 7:15 family [19] - 5:2, 5:14, 6:25, 7:2, 7:20, 8:8, 8:9, 10:13, 10:14, 11:21, 16:3, 18:16, 18:17, 18:23, 19:5, 19:18, 19:19, 20:1 fashioning [1] - 11:22 fatal [1] - 15:20 father [2] - 17:19, 18:17 fearing [2] - 13:11, 17:23 February [6] - 1:5, 2:1, 23:8, 23:11, 24:4, 24:10 feet [3] - 20:18, 21:15, 21:19 few [2] - 5:12, 7:2 fight [5] - 5:18, 8:24, 8:25, 17:14 firearm [1] - 16:19 fired [6] - 5:20, 6:11, 6:20, 13:16, 13:18, 14:4, 15:13, 21:18 firing [1] - 6:15 First [2] - 16:3, 20:19 first [3] - 16:5, 16:25, 19:13 five [1] - 13:3 fled [5] - 5:23, 6:6, 6:8, 6:21, 14:11 flip [1] - 11:16 following [3] - 5:1, 6:22, 13:22 follows [1] - 4:20 foregoing [1] - 23:4 four [3] - 12:12, 13:23, 16:11 fraud [1] - 12:2 free [1] - 5:17 freely [1] - 4:8 friends [2] - 11:6, 13:2 front [2] - 6:19, 13:19 furnished [1] - 12:6 future [1] - 14:21</p>	<p>German [1] - 8:17 girl [1] - 18:19 girlfriend [3] - 4:22, 17:13, 17:17 given [2] - 9:5, 9:9 glad [4] - 7:6, 9:15, 12:5, 20:6 glasses [1] - 13:5 God [4] - 8:13, 8:19, 17:23, 21:10 God-fearing [1] - 17:23 Google [2] - 6:4, 13:18 grabbed [1] - 13:11 grandchildren [1] - 18:5 grandmother [1] - 9:24 guilt [1] - 11:17 guilty [9] - 2:7, 2:24, 3:3, 3:5, 3:11, 3:24, 4:4, 4:14 Guilty [1] - 3:25 gun [6] - 8:12, 8:23, 9:2, 10:18, 10:19, 16:17 gunshot [2] - 2:10, 6:18 gunshots [1] - 6:20 guy [4] - 17:4, 17:5, 17:8, 20:22 guys [1] - 16:11</p>	<p>help [2] - 19:25, 21:9 helpful [1] - 11:4 hereby [1] - 23:3 hereto [1] - 23:10 hidden [1] - 15:17 High [1] - 12:11 high [1] - 12:17 highly [1] - 15:8 himself [3] - 5:18, 6:22, 14:12 hire [1] - 15:4 hit [1] - 21:18 hold [1] - 17:25 home [6] - 5:18, 12:22, 13:1, 13:2, 15:14, 20:11 Honor [16] - 2:12, 2:17, 3:14, 3:19, 4:2, 4:9, 4:12, 4:20, 5:25, 11:12, 11:25, 12:21, 13:19, 15:10, 18:5, 19:17 honorable [1] - 12:13 Honorable [2] - 1:10, 24:11 honorably [1] - 12:13 hope [3] - 8:13, 19:14, 20:1 house [7] - 5:20, 9:2, 13:5, 13:7, 13:20, 15:17, 17:4 Hughston [2] - 1:10, 24:11 human [1] - 11:19 hurt [1] - 18:19 hurting [2] - 19:19</p>
	<p style="text-align: center;">E</p> <p>early [1] - 4:21 Edwards [1] - 16:2 effect [1] - 5:22 either [2] - 18:23, 19:18 employees [1] - 15:2 employer [1] - 15:1 employment [1] - 12:2 ensued [1] - 12:25 entered [1] - 11:13 entering [1] - 4:7 escalated [2] - 4:24, 18:9 Esquire [1] - 1:13 establish [3] - 5:19, 6:11, 6:13 established [1] - 21:13 Eugene [14] - 2:10, 6:8, 6:17, 9:25, 10:12, 16:20, 16:21, 16:22, 16:23, 16:24, 16:25, 17:4 Eugene's [1] - 16:21 evaluation [1] - 14:21 Evans [13] - 2:10, 5:5, 6:8, 6:18, 6:25, 7:1, 8:5, 9:13, 9:22, 9:23, 9:25, 10:24, 13:23 evening [3] - 4:21, 4:23, 12:23 event [1] - 7:14 events [1] - 2:8 evidence [5] - 3:10, 3:11, 3:15, 11:15, 23:5 Exact [1] - 21:13 exactly [1] - 21:17 except [1] - 14:5 exemplified [1] - 13:22 extent [1] - 13:14 extreme [1] - 16:15</p>	<p style="text-align: center;">G</p> <p>General [1] - 24:6 GENERAL [1] - 1:1 gentleman [2] - 16:5, 19:13</p>	<p style="text-align: center;">H</p> <p>Haffenden [3] - 1:19, 23:1, 24:19 HAFFENDEN [1] - 24:1 hair [2] - 18:8 half [2] - 16:18, 21:18 hand [1] - 13:14 handed [1] - 14:18 handle [1] - 11:1 hands [1] - 2:5 hard [1] - 19:6 head [3] - 13:6, 13:24, 16:15 hear [6] - 7:4, 7:5, 7:6, 9:15, 12:5, 20:6 heard [5] - 4:24, 5:3, 11:20, 16:17, 19:3 hearing [1] - 6:3 heart [2] - 11:8, 21:23 heat [1] - 11:18 heaven [1] - 21:10 heavier [1] - 13:4</p>	<p style="text-align: center;">I</p> <p>image [3] - 6:3, 6:16, 16:14 imagine [2] - 16:10, 16:16 immediately [1] - 13:12 impact [1] - 11:20 important [3] - 11:16, 20:16, 20:17 IN [1] - 24:10 inches [1] - 20:18 incident [5] - 5:8, 10:11, 12:19, 13:9, 13:13 include [1] - 3:9 includes [1] - 12:1 incredibly [1] - 16:4 indicates [1] - 14:21 indictment [1] - 2:6</p>

<p>individuals [1] - 5:22 injured [1] - 20:12 injuries [1] - 5:13 inside [2] - 13:8, 15:17 instances [1] - 15:7 instead [2] - 13:10, 15:17 interest [1] - 23:10 interesting [1] - 21:12 introduced [1] - 23:5 Island [2] - 12:10, 12:16</p>	<p>19:23, 21:2, 21:3, 21:4 lima [2] - 12:24, 12:25 line [1] - 6:9 live [1] - 21:3 lived [1] - 19:2 look [1] - 19:21 looking [2] - 21:12, 21:14 lose [2] - 17:19, 21:4 losing [1] - 18:16 loss [2] - 11:5, 16:4 lost [6] - 9:4, 13:5, 17:19, 18:17, 19:6 love [2] - 18:2 loved [4] - 9:4, 10:13, 17:19, 18:3 loving [1] - 10:1 luck [1] - 22:2</p>	<p>metal [1] - 18:1 might [1] - 6:4 mile [1] - 12:17 military [1] - 12:12 million [1] - 16:8 minute [1] - 15:4 mother [2] - 9:14, 17:19 MR [4] - 12:8, 14:16, 20:5, 20:9 murder [2] - 2:6, 6:23 must [1] - 3:11</p>	<p>occur [1] - 21:20 OF [6] - 1:1, 1:2, 1:4, 1:4, 24:11 Office [1] - 24:6 office [1] - 20:13 Official [1] - 23:2 old [1] - 18:7 One [2] - 8:23, 14:20 one [13] - 6:6, 7:14, 7:17, 9:4, 9:11, 13:9, 15:2, 16:21, 17:17, 17:19, 20:11, 20:18, 21:21 opposed [1] - 7:23 ORIGINAL [1] - 24:14 outside [2] - 13:11, 17:13 own [1] - 8:20</p>	<p>plead [3] - 3:2, 3:23, 4:4 pleading [1] - 4:14 PO [1] - 24:7 point [12] - 4:24, 4:25, 5:15, 5:17, 6:10, 13:1, 13:8, 14:3, 14:19, 16:22, 17:10, 20:17 police [7] - 6:22, 13:6, 13:9, 13:21, 14:6, 14:12, 15:16 possible [1] - 2:14 POSTAGE [1] - 24:15 preparing [1] - 12:23 Present [1] - 6:24 present [4] - 3:10, 3:15, 20:8 presented [1] - 2:20 pretty [2] - 13:13, 15:12</p>
J	M	N	P	R
<p>Jessica [1] - 18:14 job [1] - 17:25 Johns [2] - 12:10, 12:16 Jones [2] - 19:1, 19:10 Joshua [1] - 5:5 Jr [2] - 1:10, 24:11 Judge [2] - 1:10, 12:8 Judicial [1] - 23:2 jurors [1] - 3:5 jury [3] - 3:3, 3:20, 4:11</p>	<p>ma'am [8] - 8:3, 8:15, 9:11, 9:12, 9:20, 10:7, 10:23, 16:13 males [1] - 13:3 man [2] - 9:3, 18:22 man's [1] - 19:15 manager [2] - 16:21, 16:22 manslaughter [2] - 2:8, 3:24 map [1] - 13:18 maps [1] - 6:4 Marian [1] - 10:8 mark [1] - 17:16 married [1] - 18:4 match [1] - 5:11 materials [1] - 12:6 matter [3] - 2:19, 9:5, 19:20 max [1] - 9:18 maximum [7] - 7:21, 7:24, 8:6, 9:8, 9:9, 10:3, 10:21 meal [1] - 12:23 mean [3] - 16:20, 16:23 means [1] - 2:10 meant [1] - 20:20 medical [1] - 14:24 member [3] - 18:16, 18:17, 18:23 members [2] - 6:24, 7:2 mentor [1] - 19:25 mercy [3] - 8:14, 18:11, 20:1 Metal [1] - 12:16</p>	<p>name [15] - 2:3, 7:8, 7:9, 8:4, 8:16, 9:11, 9:13, 9:21, 9:22, 10:7, 10:23, 16:2, 18:13, 18:14, 18:25 near [2] - 6:19 nearby [1] - 5:2 needed [1] - 18:18 neighbor [1] - 19:3 neighbors [1] - 15:8 nephew [1] - 11:5 nephews [1] - 8:7 nephews [2] - 10:25, 18:21 nerve [1] - 13:14 nervous [1] - 13:18 never [13] - 9:5, 10:1, 12:20, 14:4, 14:6, 14:7, 16:6, 16:7, 16:8, 17:4, 19:13, 19:16, 20:20 Never [1] - 10:12 next [2] - 5:12, 13:2 niece [1] - 10:25 nieces [2] - 11:5, 18:21 night [5] - 7:16, 10:15, 12:22, 13:6, 20:11 Ninth [1] - 23:2 Nobody [1] - 3:16 Noonan [5] - 5:7, 6:8, 6:9, 6:12, 6:14 Nothing [1] - 20:25 nothing [2] - 8:20, 17:6 number [2] - 6:16, 15:21</p>	<p>P.O [1] - 24:2 page [1] - 13:10 pages [1] - 24:14 pain [1] - 16:16 paper [1] - 17:7 part [1] - 11:14 particular [1] - 14:20 party [1] - 23:10 passion [1] - 11:18 pastor [1] - 19:2 penalty [1] - 2:14 penitentiary [4] - 2:15, 2:21, 2:23 people [6] - 15:21, 16:9, 17:22, 17:23, 18:2, 18:9 period [1] - 22:1 person [8] - 10:12, 11:3, 11:4, 17:25, 18:23, 19:13, 19:14, 21:1 person's [1] - 7:18 phone [4] - 17:1, 17:17, 20:10, 20:12 photograph [2] - 21:14 photos [1] - 5:12 physical [5] - 5:1, 5:3, 5:9, 5:12, 5:13 physicality [1] - 4:25 pick [1] - 21:4 picture [2] - 6:7, 21:12 place [1] - 18:1 places [1] - 18:8 plat [1] - 18:8 plea [5] - 2:7, 2:23, 4:7, 4:16, 11:13</p>	<p>problem [3] - 14:18, 15:12, 19:17 proceedings [2] - 22:4, 23:5 PROCEEDINGS [1] - 24:11 promised [1] - 4:3 proper [1] - 7:3 property [4] - 5:22, 15:7, 15:9, 15:14 protective [1] - 10:14 prove [1] - 3:11 provide [1] - 15:5 provided [3] - 14:23, 15:1, 20:13 providing [1] - 12:7 provocation [1] - 11:16 provoked [3] - 16:7, 18:10, 19:9 psychiatric [1] - 14:20 psychological [1] - 14:20 Put [1] - 3:4 put [1] - 13:5</p>
L	O	O	R	R
<p>landlord [2] - 15:6 late [1] - 12:11 laugh [1] - 17:25 least [2] - 2:14, 5:15 leave [1] - 8:25 left [2] - 8:11, 10:19 legal [1] - 15:15 letter [2] - 15:1, 15:6 Levar [2] - 6:8, 6:17 lied [2] - 21:5, 21:6 life [2] - 7:17, 7:18, 7:19, 7:25, 8:7, 8:12, 8:21, 9:4, 9:5, 9:17, 10:4, 11:19, 13:12, 17:5, 19:9, 19:15,</p>	<p>obligation [1] - 15:15 obviously [2] - 9:3, 11:13</p>	<p>raised [4] - 9:25, 12:10, 18:4 ran [2] - 9:3, 13:25 rap [1] - 13:10 rather [1] - 16:13 RE [1] - 24:10 read [2] - 12:6, 20:9 really [3] - 7:16, 16:16, 17:18</p>		

<p>reason [2] - 9:4, 21:8 reasonable [2] - 3:5, 3:12 receive [2] - 7:20, 7:24 received [2] - 12:13, 15:20 recognize [1] - 15:20 RECORD [1] - 1:4 record [3] - 11:24, 12:1, 23:5 recovered [1] - 14:7 regardless [1] - 7:18 relative [1] - 23:6 relatives [2] - 5:2, 13:2 released [1] - 14:16 Rembert [1] - 24:6 rental [1] - 15:7 report [2] - 13:21, 14:23 Reporter [4] - 1:20, 23:2, 23:15, 24:1 resulted [1] - 2:9 Reverend [2] - 19:1, 19:10 reviewed [1] - 15:11 reviewing [1] - 11:14 rifle [2] - 5:19, 21:19 Rivers [1] - 7:1 Robin [1] - 16:2 Roslyn [1] - 5:6 rounds [1] - 13:23 RPR [4] - 1:19, 23:1, 24:1, 24:19 run [1] - 14:9</p>	<p>See [1] - 3:4 seeking [1] - 15:17 sees [1] - 12:21 self [1] - 15:12 self-defense [1] - 15:12 sentence [3] - 2:22, 11:22, 21:25 September [2] - 2:9, 4:21 serious [1] - 13:14 served [1] - 12:13 SESSIONS [1] - 1:1 seven [1] - 18:7 seven-year-old [1] - 18:7 several [1] - 6:24 shadow [1] - 13:17 Shakira [3] - 4:22, 5:1, 5:8 shared [1] - 6:2 Sheet [1] - 12:16 sheet [2] - 13:10, 18:1 shoot [3] - 9:3, 16:20, 16:23 shooting [1] - 10:20 shootings [1] - 13:23 shortened [1] - 9:7 Shortly [1] - 12:15 shot [5] - 14:10, 15:20, 17:2, 21:18, 21:20 shots [4] - 5:20, 5:21, 6:11, 15:13 shown [1] - 6:16 side [3] - 6:19, 11:16, 12:4 sides [2] - 7:15, 11:9 significant [1] - 15:19 single [1] - 6:18 sister [2] - 7:1, 17:20 sit [1] - 15:25 situation [1] - 9:20 six [3] - 13:10, 20:18 six-page [1] - 13:10 Solicitor [1] - 4:17 solicitor [2] - 11:11, 19:7 SOLICITOR [4] - 4:19, 6:2, 11:12, 11:25 solicitor's [1] - 20:13 someone [4] - 16:14, 16:17, 19:6, 21:2 son's [1] - 9:16 sons [1] - 18:20 sorry [8] - 8:9, 8:13,</p>	<p>10:11, 16:4, 17:18, 20:20, 20:24, 21:2 SOUTH [2] - 1:1, 1:4 South [5] - 1:6, 12:10, 22:1, 23:3, 23:7 spent [1] - 8:22 split [1] - 14:17 stand [2] - 15:22, 15:24 started [2] - 2:6, 10:19 STATE [2] - 1:1, 1:4 State [9] - 2:7, 2:18, 2:20, 3:4, 3:11, 4:20, 11:14, 23:3, 24:10 statements [1] - 7:13 States [1] - 12:12 statutory [1] - 15:11 stayed [1] - 14:12 staying [1] - 5:6 stepmother [2] - 6:25, 10:9 stepped [1] - 6:11 stomped [1] - 13:13 stoop [1] - 13:7 Street [4] - 5:7, 6:9, 6:12, 6:14 street [6] - 6:7, 6:11, 13:20, 13:25, 14:7, 14:9 striking [1] - 13:23 stronger [1] - 13:3 summarize [1] - 20:10 Summerville [1] - 24:2 supervisor [1] - 12:18 surgery [1] - 13:12 swab [1] - 5:10 sweet [3] - 9:25, 10:1, 10:12 switch [1] - 12:3 sympathies [1] - 17:21</p>	<p>2:5, 2:12, 2:13, 2:17, 2:18, 3:1, 3:2, 3:8, 3:9, 3:14, 3:15, 3:19, 3:20, 3:22, 3:23, 3:25, 4:1, 4:2, 4:3, 4:6, 4:7, 4:9, 4:10, 4:12, 4:13, 4:15, 4:16, 4:19, 6:1, 6:2, 7:5, 7:9, 7:11, 7:12, 8:1, 8:2, 8:3, 8:5, 8:15, 8:17, 8:18, 8:19, 9:10, 9:13, 9:15, 9:16, 9:19, 9:22, 9:23, 9:24, 10:6, 10:8, 10:10, 10:11, 10:16, 10:17, 10:22, 10:24, 11:7, 11:12, 11:23, 11:25, 12:3, 14:15, 16:2, 16:12, 16:14, 18:12, 18:14, 18:24, 19:1, 19:11, 19:12, 20:2, 20:6, 20:19, 21:11 therefore [1] - 15:15 thinking [1] - 19:24 Thomas [2] - 1:10, 24:11 THOMPSON [1] - 1:6 Thompson [10] - 2:2, 12:22, 13:4, 13:8, 14:11, 15:13, 15:22, 18:15, 19:3, 24:10 thoughtful [1] - 11:3 threat [1] - 14:21 threatened [1] - 4:4 three [1] - 16:11 Tice [1] - 7:9 TO [1] - 24:5 today [5] - 6:24, 7:19, 10:2, 15:22, 19:20 took [8] - 7:17, 8:12, 9:16, 12:11, 13:4, 13:16, 18:5, 18:18 TOTAL [1] - 24:16 touched [1] - 11:10 tragedies [1] - 12:21 tragedy [6] - 8:10, 11:10, 15:10, 19:18, 21:21, 21:24 Tragic [1] - 21:21 tragic [1] - 7:14 transcript [1] - 23:4 TRANSCRIPT [2] - 1:4, 24:11 treated [3] - 14:24, 14:25, 15:8 treatment [1] - 14:25 trial [4] - 3:4, 3:21, 4:11, 23:6 trouble [2] - 10:1,</p>	<p>10:13 true [2] - 20:16, 23:4 trunk [1] - 6:23 truth [1] - 21:10 trying [1] - 19:24 turn [1] - 6:22 turned [2] - 12:9, 14:12 two [4] - 2:14, 6:16, 10:25, 12:1 type [1] - 17:24</p>	
S		T		U	
<p>sake [1] - 21:5 SAVAGE [4] - 12:8, 14:16, 20:5, 20:9 Savage [4] - 1:13, 6:3, 12:5, 20:4 saw [3] - 13:17, 17:7, 17:13 SC [3] - 24:2, 24:7, 24:10 scare [1] - 13:17 scared [3] - 16:18, 19:4, 20:20 scaring [1] - 16:19 scene [4] - 5:10, 10:19, 14:11, 21:15 School [1] - 12:11 school [1] - 12:17 second [1] - 12:1 secured [1] - 5:10 see [3] - 6:9, 19:18, 21:7</p>	<p>See [1] - 3:4 seeking [1] - 15:17 sees [1] - 12:21 self [1] - 15:12 self-defense [1] - 15:12 sentence [3] - 2:22, 11:22, 21:25 September [2] - 2:9, 4:21 serious [1] - 13:14 served [1] - 12:13 SESSIONS [1] - 1:1 seven [1] - 18:7 seven-year-old [1] - 18:7 several [1] - 6:24 shadow [1] - 13:17 Shakira [3] - 4:22, 5:1, 5:8 shared [1] - 6:2 Sheet [1] - 12:16 sheet [2] - 13:10, 18:1 shoot [3] - 9:3, 16:20, 16:23 shooting [1] - 10:20 shootings [1] - 13:23 shortened [1] - 9:7 Shortly [1] - 12:15 shot [5] - 14:10, 15:20, 17:2, 21:18, 21:20 shots [4] - 5:20, 5:21, 6:11, 15:13 shown [1] - 6:16 side [3] - 6:19, 11:16, 12:4 sides [2] - 7:15, 11:9 significant [1] - 15:19 single [1] - 6:18 sister [2] - 7:1, 17:20 sit [1] - 15:25 situation [1] - 9:20 six [3] - 13:10, 20:18 six-page [1] - 13:10 Solicitor [1] - 4:17 solicitor [2] - 11:11, 19:7 SOLICITOR [4] - 4:19, 6:2, 11:12, 11:25 solicitor's [1] - 20:13 someone [4] - 16:14, 16:17, 19:6, 21:2 son's [1] - 9:16 sons [1] - 18:20 sorry [8] - 8:9, 8:13,</p>	<p>T-i-c-e [1] - 7:10 taller [1] - 20:18 taught [1] - 8:19 terms [1] - 13:19 terrible [1] - 15:10 test [1] - 3:4 testify [2] - 3:16, 3:17 Testimony [1] - 5:19 testimony [1] - 6:10 THE [79] - 2:2, 2:4,</p>	<p>2:5, 2:12, 2:13, 2:17, 2:18, 3:1, 3:2, 3:8, 3:9, 3:14, 3:15, 3:19, 3:20, 3:22, 3:23, 3:25, 4:1, 4:2, 4:3, 4:6, 4:7, 4:9, 4:10, 4:12, 4:13, 4:15, 4:16, 4:19, 6:1, 6:2, 7:5, 7:9, 7:11, 7:12, 8:1, 8:2, 8:3, 8:5, 8:15, 8:17, 8:18, 8:19, 9:10, 9:13, 9:15, 9:16, 9:19, 9:22, 9:23, 9:24, 10:6, 10:8, 10:10, 10:11, 10:16, 10:17, 10:22, 10:24, 11:7, 11:12, 11:23, 11:25, 12:3, 14:15, 16:2, 16:12, 16:14, 18:12, 18:14, 18:24, 19:1, 19:11, 19:12, 20:2, 20:6, 20:19, 21:11 therefore [1] - 15:15 thinking [1] - 19:24 Thomas [2] - 1:10, 24:11 THOMPSON [1] - 1:6 Thompson [10] - 2:2, 12:22, 13:4, 13:8, 14:11, 15:13, 15:22, 18:15, 19:3, 24:10 thoughtful [1] - 11:3 threat [1] - 14:21 threatened [1] - 4:4 three [1] - 16:11 Tice [1] - 7:9 TO [1] - 24:5 today [5] - 6:24, 7:19, 10:2, 15:22, 19:20 took [8] - 7:17, 8:12, 9:16, 12:11, 13:4, 13:16, 18:5, 18:18 TOTAL [1] - 24:16 touched [1] - 11:10 tragedies [1] - 12:21 tragedy [6] - 8:10, 11:10, 15:10, 19:18, 21:21, 21:24 Tragic [1] - 21:21 tragic [1] - 7:14 transcript [1] - 23:4 TRANSCRIPT [2] - 1:4, 24:11 treated [3] - 14:24, 14:25, 15:8 treatment [1] - 14:25 trial [4] - 3:4, 3:21, 4:11, 23:6 trouble [2] - 10:1,</p>	<p>uncle [2] - 7:12, 21:6 undersigned [1] - 23:1 understandably [1] - 5:4 Understood [1] - 3:14 uninvited [1] - 13:3 United [1] - 12:12 university [1] - 14:24 unless [1] - 15:25 unlucky [1] - 21:20 up [6] - 2:15, 12:11, 14:18, 15:24, 16:5, 17:4 upset [1] - 5:4</p>	
S		T		V	
<p>sake [1] - 21:5 SAVAGE [4] - 12:8, 14:16, 20:5, 20:9 Savage [4] - 1:13, 6:3, 12:5, 20:4 saw [3] - 13:17, 17:7, 17:13 SC [3] - 24:2, 24:7, 24:10 scare [1] - 13:17 scared [3] - 16:18, 19:4, 20:20 scaring [1] - 16:19 scene [4] - 5:10, 10:19, 14:11, 21:15 School [1] - 12:11 school [1] - 12:17 second [1] - 12:1 secured [1] - 5:10 see [3] - 6:9, 19:18, 21:7</p>	<p>See [1] - 3:4 seeking [1] - 15:17 sees [1] - 12:21 self [1] - 15:12 self-defense [1] - 15:12 sentence [3] - 2:22, 11:22, 21:25 September [2] - 2:9, 4:21 serious [1] - 13:14 served [1] - 12:13 SESSIONS [1] - 1:1 seven [1] - 18:7 seven-year-old [1] - 18:7 several [1] - 6:24 shadow [1] - 13:17 Shakira [3] - 4:22, 5:1, 5:8 shared [1] - 6:2 Sheet [1] - 12:16 sheet [2] - 13:10, 18:1 shoot [3] - 9:3, 16:20, 16:23 shooting [1] - 10:20 shootings [1] - 13:23 shortened [1] - 9:7 Shortly [1] - 12:15 shot [5] - 14:10, 15:20, 17:2, 21:18, 21:20 shots [4] - 5:20, 5:21, 6:11, 15:13 shown [1] - 6:16 side [3] - 6:19, 11:16, 12:4 sides [2] - 7:15, 11:9 significant [1] - 15:19 single [1] - 6:18 sister [2] - 7:1, 17:20 sit [1] - 15:25 situation [1] - 9:20 six [3] - 13:10, 20:18 six-page [1] - 13:10 Solicitor [1] - 4:17 solicitor [2] - 11:11, 19:7 SOLICITOR [4] - 4:19, 6:2, 11:12, 11:25 solicitor's [1] - 20:13 someone [4] - 16:14, 16:17, 19:6, 21:2 son's [1] - 9:16 sons [1] - 18:20 sorry [8] - 8:9, 8:13,</p>	<p>T-i-c-e [1] - 7:10 taller [1] - 20:18 taught [1] - 8:19 terms [1] - 13:19 terrible [1] - 15:10 test [1] - 3:4 testify [2] - 3:16, 3:17 Testimony [1] - 5:19 testimony [1] - 6:10 THE [79] - 2:2, 2:4,</p>	<p>2:5, 2:12, 2:13, 2:17, 2:18, 3:1, 3:2, 3:8, 3:9, 3:14, 3:15, 3:19, 3:20, 3:22, 3:23, 3:25, 4:1, 4:2, 4:3, 4:6, 4:7, 4:9, 4:10, 4:12, 4:13, 4:15, 4:16, 4:19, 6:1, 6:2, 7:5, 7:9, 7:11, 7:12, 8:1, 8:2, 8:3, 8:5, 8:15, 8:17, 8:18, 8:19, 9:10, 9:13, 9:15, 9:16, 9:19, 9:22, 9:23, 9:24, 10:6, 10:8, 10:10, 10:11, 10:16, 10:17, 10:22, 10:24, 11:7, 11:12, 11:23, 11:25, 12:3, 14:15, 16:2, 16:12, 16:14, 18:12, 18:14, 18:24, 19:1, 19:11, 19:12, 20:2, 20:6, 20:19, 21:11 therefore [1] - 15:15 thinking [1] - 19:24 Thomas [2] - 1:10, 24:11 THOMPSON [1] - 1:6 Thompson [10] - 2:2, 12:22, 13:4, 13:8, 14:11, 15:13, 15:22, 18:15, 19:3, 24:10 thoughtful [1] - 11:3 threat [1] - 14:21 threatened [1] - 4:4 three [1] - 16:11 Tice [1] - 7:9 TO [1] - 24:5 today [5] - 6:24, 7:19, 10:2, 15:22, 19:20 took [8] - 7:17, 8:12, 9:16, 12:11, 13:4, 13:16, 18:5, 18:18 TOTAL [1] - 24:16 touched [1] - 11:10 tragedies [1] - 12:21 tragedy [6] - 8:10, 11:10, 15:10, 19:18, 21:21, 21:24 Tragic [1] - 21:21 tragic [1] - 7:14 transcript [1] - 23:4 TRANSCRIPT [2] - 1:4, 24:11 treated [3] - 14:24, 14:25, 15:8 treatment [1] - 14:25 trial [4] - 3:4, 3:21, 4:11, 23:6 trouble [2] - 10:1,</p>	<p>varying [1] - 4:25 victim [2] - 5:14, 13:25 view [2] - 6:13, 6:14 violated [1] - 20:15 violence [2] - 8:23, 13:1 voluntarily [2] - 4:8, 11:18 voluntary [2] - 2:8, 3:24 vs [2] - 1:5, 24:10</p>	
S		T		W	
<p>sake [1] - 21:5 SAVAGE [4] - 12:8, 14:16, 20:5, 20:9 Savage [4] - 1:13, 6:3, 12:5, 20:4 saw [3] - 13:17, 17:7, 17:13 SC [3] - 24:2, 24:7, 24:10 scare [1] - 13:17 scared [3] - 16:18, 19:4, 20:20 scaring [1] - 16:19 scene [4] - 5:10, 10:19, 14:11, 21:15 School [1] - 12:11 school [1] - 12:17 second [1] - 12:1 secured [1] - 5:10 see [3] - 6:9, 19:18, 21:7</p>	<p>See [1] - 3:4 seeking [1] - 15:17 sees [1] - 12:21 self [1] - 15:12 self-defense [1] - 15:12 sentence [3] - 2:22, 11:22, 21:25 September [2] - 2:9, 4:21 serious [1] - 13:14 served [1] - 12:13 SESSIONS [1] - 1:1 seven [1] - 18:7 seven-year-old [1] - 18:7 several [1] - 6:24 shadow [1] - 13:17 Shakira [3] - 4:22, 5:1, 5:8 shared [1] - 6:2 Sheet [1] - 12:16 sheet [2] - 13:10, 18:1 shoot [3] - 9:3, 16:20, 16:23 shooting [1] - 10:20 shootings [1] - 13:23 shortened [1] - 9:7 Shortly [1] - 12:15 shot [5] - 14:10, 15:20, 17:2, 21:18, 21:20 shots [4] - 5:20, 5:21, 6:11, 15:13 shown [1] - 6:16 side [3] - 6:19, 11:16, 12:4 sides [2] - 7:15, 11:9 significant [1] - 15:19 single [1] - 6:18 sister [2] - 7:1, 17:20 sit [1] - 15:25 situation [1] - 9:20 six [3] - 13:10, 20:18 six-page [1] - 13:10 Solicitor [1] - 4:17 solicitor [2] - 11:11, 19:7 SOLICITOR [4] - 4:19, 6:2, 11:12, 11:25 solicitor's [1] - 20:13 someone [4] - 16:14, 16:17, 19:6, 21:2 son's [1] - 9:16 sons [1] - 18:20 sorry [8] - 8:9, 8:13,</p>	<p>T-i-c-e [1] - 7:10 taller [1] - 20:18 taught [1] - 8:19 terms [1] - 13:19 terrible [1] - 15:10 test [1] - 3:4 testify [2] - 3:16, 3:17 Testimony [1] - 5:19 testimony [1] - 6:10 THE [79] - 2:2, 2:4,</p>	<p>2:5, 2:12, 2:13, 2:17, 2:18, 3:1, 3:2, 3:8, 3:9, 3:14, 3:15, 3:19, 3:20, 3:22, 3:23, 3:25, 4:1, 4:2, 4:3, 4:6, 4:7, 4:9, 4:10, 4:12, 4:13, 4:15, 4:16, 4:19, 6:1, 6:2, 7:5, 7:9, 7:11, 7:12, 8:1, 8:2, 8:3, 8:5, 8:15, 8:17, 8:18, 8:19, 9:10, 9:13, 9:15, 9:16, 9:19, 9:22, 9:23, 9:24, 10:6, 10:8, 10:10, 10:11, 1</p>		

24:10

White's [1] - 18:15

willing [1] - 2:7

Wilson [1] - 24:5

winner [1] - 19:20

wish [3] - 3:10, 3:23,

19:10

witness [1] - 6:13

WITNESS [19] - 7:9,

7:12, 8:2, 8:5, 8:17,

8:19, 9:13, 9:16, 9:22,

9:24, 10:8, 10:11,

10:17, 10:24, 16:2,

16:14, 18:14, 19:1,

19:12

woman [1] - 20:14

words [1] - 12:18

worker's [1] - 13:15

Works [1] - 12:16

world [1] - 17:2

wound [1] - 6:19

wow [1] - 17:7

Y

y'all [1] - 16:10

y'all's [1] - 18:22

year [1] - 18:7

years [18] - 2:14,

2:15, 2:21, 2:22, 4:5,

7:22, 7:24, 9:8, 10:3,

12:12, 12:19, 15:3,

16:8, 18:1, 19:3, 21:2,

22:2

yesterday [1] - 12:7

young [1] - 19:15

younger [1] - 13:4

yourself [1] - 3:17

STATE OF SOUTH CAROLINA)
)
COUNTY OF Charleston)

IN THE COURT OF COMMON PLEAS
Case No. 2013-CP-10-4159

Thompson White 349723)
Applicant's name & prison number)

vs.)

The State of South Carolina)
Respondent.)

APPLICATION FOR
POST-CONVICTION RELIEF

FILED
2013 JUL 16 PM 2:41
JULIE J. ARISTRONG
CLERK OF COURT

1. Place of detention: MacDougall Corr. Inst.
1516 Old Gilliard Rd., Ridgeville SC 29472

2. Name and location of Court which imposed sentence: Charleston
County General Sessions Court, Charleston, SC

3. Name(s) of co-defendant(s) (if any): None

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

(a) MANS/AUGHTER

(b) _____

(c) _____

- (c) _____
- 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) Amended Sentencing date, February 11, 2013. Sentence was reduced to (10) years following motion for reconsideration
 - (b) _____
 - (c) _____

- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty X
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____

- 7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO

- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. N/A
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. N/A
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. N/A
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. N/A
 - ii. _____
 - iii. _____

- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) There were no grounds for direct appeal.
 - (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of counsel; 6th and 14th amendment violations.
- (b) Unknowing/involuntary guilty plea; 14th amend. due process violation
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Counsel failed to investigate the law and facts governing my case.
- (b) Counsel failed to pursue available remedies which precluded criminal proceedings, conviction and confinement.
- (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)? NO
- (d) any other petitions, motions or applications in this or any other Court? Yes see (a) Above
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. Motion for Reconsideration
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. Charleston County Court of General Sessions
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. Motion was granted, and my sentence was
reduced to (10) years.
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. February, 11 2013
- ii. _____
- iii. _____
- iv. _____

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

- i. None noted.
- 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. NO
- ii. _____
- iii. _____

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

- i. NO
- ii. _____
- iii. _____

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

- (a) The constitutional rights violations set forth herein
- (b) are enforceable only through the post conviction relief process.
- (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? N/A
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
Yes

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. Andrew J Savage, III (Plea Hearing, Sentencing, Mot. to recons
15 prioleau St. P.O. Box 1002. Charleston, SC 29402
 - ii. MR. Mastantuno
171 Church St. Suite 160, Charleston, SC 29401
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Plea hearing, Sentencing, Motion to Reconsider
 - ii. Preliminary hearing
 - iii. _____

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

Sentence and conviction vacated, Case remanded to
Charleston County.

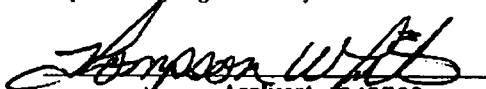
20. Are you under sentence from any other Court that you have not challenged?

NO

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

I, Thompson White, SCDC# 349723, hereby apply for leave to proceed in this action
without prepayment of fees or costs or security thereof. 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.


Thompson White Applicant #349723

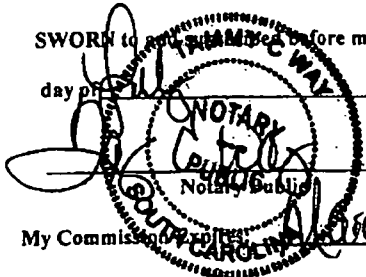
SWORN and affirmed to me subscribed before me this
NOV 11 2013
 My Commission Expires NOV 9, 2014
 SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
County of CHARLESTON)

VERIFICATION

I, Thompson White, SCDC# 349723, 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.


Thompson White Signature #349723

SWORN to me before me this 11th
day of July 2013.
 (L.S.)
My Commission Expires August 9, 2014

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
)
)
 Thompson White, #349723,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

2013-CP-10-4159

RETURN

FILED
 2013 DEC -4 PM 2:06
 JULIE J. ARMSTRONG
 CLERK OF COURT

The Respondent, making its Return to the application for post-conviction relief (PCR) filed July 16, 2013, 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 Charleston County Clerk of Court. The Applicant was indicted at the March 2011 term of the Charleston County Grand Jury for murder (2011-GS-10-1229). The Applicant was represented by Andrew Savage, Esquire.

On February 14, 2012, the Applicant pled guilty as indicted. The Applicant was sentenced by the Honorable T.L. Hughston, Jr. to confinement for a period of twelve (12) years. The Applicant filed a motion for reconsideration of sentence on February 11, 2013. The Applicant's sentence was amended to confinement for a period of ten (10) years.

Attached herewith and incorporated herein are the records of the Charleston County Clerk of Court regarding the subject convictions and the Applicant's records from the South

Carolina Department of Corrections. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective assistance of counsel.
 - a. 6th and 14th amendment violations.
 - b. Counsel failed to investigate the law and facts governing my case.
 - c. Counsel failed to pursue available remedies which precluded criminal proceeding, conviction, and confinement.
2. Unknowing/involuntary guilty plea.
 - a. 14th amendment and due process violations.

III.

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

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

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

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

IV.

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

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

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

VI.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

By: AK RWS
ATTORNEYS FOR RESPONDENT

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

Dec. 3, 2013.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 THOMPSON WHITE, #349723)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS

2013-CP-10-4159

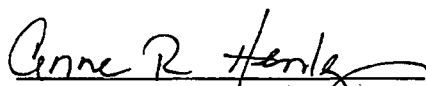
AFFIDAVIT OF SERVICE BY MAIL

FILED
 2013 DEC -4 PM 2:01
 JUDITH J. ARMSTRONG
 CLERK OF COURT

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

Rodney D. Davis, Esquire
4000 Faber Place Drive
Suite 300
Charleston, SC 29405

DATED this 3rd day of December, 2013


 Anne Henley, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)	
)	COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)	
)	
Thompson White,)	
)	
Applicant,)	
v.)	Case No. 13-CP-10-4159
)	
State of South Carolina,)	
)	
Defendant)	

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on April 16, 2014, before The Honorable R. Markley Dennis in Courtroom 4D of the Charleston County, 100 Broad Street, Charleston, South Carolina; attended by counsel as follows:

APPEARANCES:

Rodney Davis, Esq.
 4000 Faber Place, Suite 300
 Charleston, South Carolina 29401
 Appearing for Applicant

Ashleigh Wilson, Esq.
 U.S. ATTORNEYS OFFICE
 P O Box 11549
 Columbia, South Carolina 29211
 Appearing for State of South Carolina

Deborah Garrison
Circuit Court Reporter – 9th Judicial Circuit
 P O Box 901
 Johns Island, South Carolina 29457
dgarrison@sccourts.org

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6
7
8
9
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11
12
13
14
15
16
17
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19
20
21
22
23
24
25

INDEX

TESTIMONY OF THOMPSON WHITE

Direct Examination

Cross Examination

TESTIMONY OF ANDY SAVAGE

Direct Examination

Cross Examination

INTRODUCTION OF STATE'S EXHIBIT 1

ARGUMENTS by Counsel

RULING by The Court

Thompson White v State of South Carolina

3

Case No. 13-CP-10-3400

Hearing of April 16, 2014

Before The Honorable R. Markley Dennis

1 THE COURT: You are Thompson White?

2 APPLICANT: Yes, sir.

3 MR. DAVIS: Your Honor, may we approach
4 for a moment?

5 THE COURT: Yes.

6 (OFF RECORD BENCH CONFERENCE)

7 THE COURT: Mr. White, -- sir, you
8 don't have to stand up. You may as you want
9 to. Thank you, sir.

10 Mr. White, this matter comes before me
11 this morning on your application for post-
12 conviction relief. I'm sure you've talked
13 with your lawyer, that you're ready to go
14 forward. But before doing that -- especially
15 when I see cases like this. I confess to you
16 that I practice law for twenty-one years and
17 sometimes -- while I haven't practiced in
18 over twenty years now, that part of me that
19 practiced law kind of gets in the way. If
20 you will, indulge me for a moment because I
21 had the privilege and responsibility of
22 representing persons just like yourself who
23 filed applications for post-conviction
24 relief. Oddly, one of mine had a similar
25 sentence. You were indicted for murder;

Thompson White v State of South Carolina

4

Case No. 13-CP-10-3400

Hearing of April 16, 2014

Before The Honorable R. Markley Dennis

1 correct?

2 APPLICANT: Correct.

3 THE COURT: And you negotiated a
4 plea to a lesser-included offense, involun-
5 tary manslaughter. Correct?

6 APPLICANT: Correct.

7 THE COURT: Judge Hughston
8 sentence you to twelve years, but then on a
9 motion to reconsider reduced it to ten?

10 APPLICANT: Correct.

11 THE COURT: And now you're wanting
12 to go back to square one?

13 APPLICANT: (Affirmative nod).

14 THE COURT: That means that you
15 are going to face murder. There is no
16 guarantee that you will receive any offer at
17 all. You face the potential, even if you
18 were -- even if the charge of involuntary
19 manslaughter should be submitted to the jury,
20 you still face a potential sentence of thirty
21 years on that. More importantly, if you're
22 convicted of murder there is a day-for-day
23 thirty-five years to a potential life
24 sentence. Do you understand that?

25 APPLICANT: Understood.

Thompson White v State of South Carolina

Case No. 13-CP-10-3400

Hearing of April 16, 2014

Before The Honorable R. Markley Dennis

5

1 THE COURT: So the best that I can
2 do for you is get you exposed to a life
3 sentence. That's what you want me to do?

4 APPLICANT: (No verbal response).

5 THE COURT: Because that's what
6 happens. You go back to the beginning and
7 now you are exposed to a potential life
8 sentence, with no guarantee that you're going
9 to come out any better.

10 The reason I say that is because the
11 person that I talked to had a similar charge,
12 murder. I remember him very clearly because
13 he -- he was very direct with me, and I
14 appreciated it. I said, 'Do you really want
15 to do this?'

16 And he looked at me and said,
17 'Absolutely not. I just want my sentence
18 reduced.'

19 I said, 'Well, understand that but I
20 can't do that. The only thing that I can do
21 is start it over again. There are no
22 guarantees.'

23 And he said, 'Well, that's not what
24 I want to do.'

25 I will never forget what he told me.

Thompson White v State of South Carolina
Case No. 13-CP-10-3400 - Hearing of April 16, 2014
Testimony of Thompson White - Direct Examination
Before The Honorable R. Markley Dennis

6

1 That doesn't apply to you, but he told me
2 'why did I pay that guy fifty dollars to file
3 this application?' I said, 'I don't know the
4 answer to that one. That's between you and
5 that guy, but that's the best that I can do
6 for you, is to get you back to the
7 beginning.'

8 The best that I can do for you is to
9 expose you to murder. That's what you're
10 asking me to do?

11 APPLICANT: Yes, Your Honor.

12 THE COURT: Okay. That's fine. Your
13 call. Thank you, sir. Mr. Davis, are you
14 ready to proceed?

15 MR. DAVIS: I am, Your Honor.

16 THE COURT: Call your first
17 witness.

18 MR. DAVIS: Your Honor, I call
19 Thompson White to the stand.

20 THE COURT: All right.

21 (WITNESS TAKES STAND)

22 THOMPSON WHITE, having been sworn to tell
23 the truth, and nothing but the truth,
24 testified as follows:

25 DIRECT EXAMINATION

Thompson White v State of South Carolina
Case No. 13-CP-10-3400 - Hearing of April 16, 2014
Testimony of Thompson White - Direct Examination
Before The Honorable R. Markley Dennis

7

1 BY MR. DAVIS:

2 Q. Mr. White, I am going to ask you to
3 continue to speak up so that we all can hear
4 you. You entered a guilty plea to voluntary
5 manslaughter; is that correct?

6 A. Correct.

7 Q. And you were represented by Mr.
8 Savage, Andrew Savage?

9 A. That's correct.

10 Q. And you have some complaints about
11 his performance prior to that plea, is that
12 accurate?

13 A. Accurate.

14 Q. Before you get into the details of
15 that, can you tell the judge what it is that
16 you most rely on that you would not have pled
17 guilty other than for what Mr. Savage did?

18 A. Can you repeat that?

19 Q. What is it that you complain about
20 that Mr. Savage did or didn't do that caused
21 you to plead guilty?

22 A. He didn't pursue a castle defense
23 for me.

24 Q. Did he talk to you about self-
25 defense with you?

Thompson White v State of South Carolina
Case No. 13-CP-10-3400 - Hearing of April 16, 2014
Testimony of Thompson White - Direct Examination
Before The Honorable R. Markley Dennis

8

1 A. We spoke about it some.

2 Q. You told the judge a castle defense.
3 Can you tell the just what your understanding
4 of that defense was?

5 A. No, I can't.

6 Q. Why is that? Why are you unable to
7 explain that defense to the judge today?

8 A. Because I didn't understand it at
9 the time.

10 Q. You did meet with Mr. Savage more
11 than once?

12 A. Yes.

13 Q. And you had discussions about a
14 trial versus a guilty plea?

15 A. Yes.

16 Q. And did you talk about defenses?

17 A. We talked about things to do but I
18 didn't understand the difference between the
19 different types of the law.

20 Q. What do you recall, if anything,
21 that Mr. Savage told you about, as you termed
22 it, the castle -- the castle doctrine?

23 A. We never discussed the castle
24 defense, to my knowledge.

25 Q. What defenses do you recall

Thompson White v State of South Carolina
Case No. 13-CP-10-3400 - Hearing of April 16, 2014
Testimony of Thompson White - Direct Examination
Before The Honorable R. Markley Dennis

1 discussing?

2 A. Self-defense. Actually I don't
3 remember any of them, to tell the truth.

4 Q. Now, this was a death by shooting;
5 correct?

6 A. Correct.

7 Q. Okay. When you say that Mr. Savage
8 spoke with you about self-defense, do you
9 remember how he explained that to you?

10 A. No, I don't.

11 Q. When it came time for your guilty
12 plea, what was your understanding of the
13 terms of the plea?

14 A. For me, I was convinced that I would
15 receive the bare minimum of a sentence.

16 Q. What did you understand that
17 possible sentence was?

18 A. To fifteen (phonetic).

19 Q. Did Mr. Savage talk to you about
20 that?

21 A. Yes.

22 Q. And was it his advice that you go to
23 trial or that you plead guilty?

24 A. Plead guilty.

25 Q. When you went to court for the

Thompson White v State of South Carolina
Case No. 13-CP-10-3400 - Hearing of April 16, 2014
Testimony of Thompson White - Direct Examination
Before The Honorable R. Markley Dennis

10

1 guilty plea, what was your thinking?

2 A. That I would have got the bare
3 minimum.

4 Q. Did you think that you were going to
5 get some time?

6 A. Yes.

7 Q. What about if you went to trial, did
8 you think that you were going to get some
9 time?

10 A. Probably.

11 Q. Why was that? Why did you think you
12 were going to get time if you went to trial?

13 A. Because I thought because you took a
14 life of someone, even on your property, that
15 you would do some kind of time.

16 Q. Did you talk to Mr. Savage about
17 what was going on in your head at the time of
18 the shooting?

19 A. I can't really say, not truthfully.

20 Q. You don't remember talking to him
21 about how you felt when the other, the
22 deceased, the gentleman was on the street
23 near you?

24 A. Oh, yeah. I was scared.

25 Q. Did you talk to Mr. Savage about

Thompson White v State of South Carolina
Case No. 13-CP-10-3400 - Hearing of April 16, 2014
Testimony of Thompson White - Direct Examination
Before The Honorable R. Markley Dennis

11

1 that?

2 A. Yes, I believe I did.

3 Q. For this Court's purposes, had there
4 been an altercation prior to the shooting?

5 A. Yes.

6 Q. Some folks had approached you at
7 your residence, is that right?

8 A. Yes.

9 Q. Beat you up?

10 A. Yes.

11 Q. Then some time later the shooting
12 happened at the same location?

13 A. I'd say about a couple of minutes
14 later.

15 Q. Did Mr. -- do you recall discussions
16 with Mr. Savage explaining the elements of
17 self-defense?

18 A. Yes.

19 Q. Did you understand those as he
20 explained them to you?

21 A. No, I didn't.

22 Q. Do you recall Mr. Savage ever
23 talking to you about the defense of persons
24 and property statute?

25 A. No.

Thompson White v State of South Carolina
Case No. 13-CP-10-3400 - Hearing of April 16, 2014
Testimony of Thompson White - Direct Examination
Before The Honorable R. Markley Dennis

12

1 Q. An immunity defense statute?

2 A. No, I don't remember that.

3 Q. Or the stand-your-ground, it may
4 have been called?

5 A. No.

6 Q. You don't recall any conversation
7 about that?

8 A. No.

9 Q. Mr. White, at the time that you
10 entered the plea, did you have an
11 understanding of self-defense before you
12 entered that plea?

13 A. No.

14 Q. Did you have an understanding of the
15 protecting persons and property Act before
16 you entered the plea?

17 A. No.

18 Q. Can you tell the court if you'd had
19 a better understanding of those two potential
20 defenses whether you would have entered the
21 plea or not?

22 A. I don't believe I would have.

23 Q. Had Mr. Savage talked to you about
24 going to trial, though?

25 A. Some.

Thompson White v State of South Carolina
Case No. 13-CP-10-3400 - Hearing of April 16, 2014
Testimony of Thompson White - Direct Examination
Before The Honorable R. Markley Dennis

13

1 Q. And discussed with you that if you
2 wished to have a trial that you could have
3 had a trial?

4 A. Yes.

5 Q. Can you tell the court what, if
6 anything, you were instructed by your
7 attorney that caused you to plead guilty?

8 A. Repeat that.

9 Q. Sure. Can you tell the court what,
10 if anything, Mr. Savage would have advised
11 you that caused you to accept the plea?

12 A. Well, I know that Mr. Savage was
13 saying to me that because I didn't -- that
14 because I wasn't on my property, that I was
15 guilty.

16 Q. Let's talk about that a little bit.
17 Did Mr. Savage come out to the scene and go
18 through the allegations with you on the
19 scene?

20 A. Yes.

21 Q. And what's your recollection about
22 his discussion about the property line?

23 A. I don't really know.

24 Q. You don't remember those discussions
25 out on the scene?

Thompson White v State of South Carolina
Case No. 13-CP-10-3400 - Hearing of April 16, 2014
Testimony of Thompson White - Direct Examination
Before The Honorable R. Markley Dennis

14

1 A. No. I remember that he was there,
2 but I don't remember the discussions.

3 Q. Just a few more questions, Mr.
4 White. The shooting happened out in the
5 street in front of your residence; is that
6 accurate?

7 A. On the side of my residence. Yes.

8 Q. Were you armed?

9 A. Yes.

10 Q. When you went out of your house?

11 A. Yes.

12 Q. What timeframe did this occur
13 following when you were attacked? Can you
14 give the court an idea?

15 A. Had to have been about three or four
16 minutes.

17 Q. Did you observe the deceased prior
18 to the shooting?

19 A. Say again?

20 Q. Did you observe the deceased prior
21 to the shooting?

22 A. Yes.

23 Q. Which direction was he traveling?

24 A. Towards me.

25 Q. Were you fearful of anything at that

Thompson White v State of South Carolina
Case No. 13-CP-10-3400 - Hearing of April 16, 2014
Testimony of Thompson White - Direct Examination
Before The Honorable R. Markley Dennis

1 time?

2 A. Well, he was coming towards me with
3 whatever he had in his gun, which I believed
4 was a gun.

5 FEMALE: (Inaudible remark).

6 THE COURT: I am not going to have
7 any outburst in the courtroom, or I'll have
8 to remove you. Please.

9 DIRECT EXAMINATION CONTINUED

10 BY MR. DAVIS:

11 Q. Mr. White, you filed the application
12 originally yourself; is that accurate?

13 A. Accurate.

14 Q. And we met and discussed about this
15 hearing, is that accurate?

16 A. Accurate.

17 Q. Is there anything else that you wish
18 the judge to know about your complaints about
19 Mr. Savage, your trial counsel? Is there
20 anything else that you wish to tell him?

21 A. Mr. Savage didn't object to when the
22 solicitor stated that I fired the shot as
23 soon as I exited my door and then exited from
24 the house -- that's not true.

25 Q. Anything else, sir?

Thompson White v State of South Carolina
Case No. 13-CP-10-3400 - Hearing of April 16, 2014
Testimony of Thompson White - Direct Examination
Before The Honorable R. Markley Dennis

16

1 A. (No verbal response).

2 Q. Anything else that you would like
3 the court to hear, sir?

4 A. Yes. The police report ---

5 THE COURT: Mr. Davis, I can't
6 allow that kind of question. You're here as
7 his lawyer. He's not a lawyer, he's already
8 demonstrate that. Frankly, that question --
9 I don't know what he's going to say.

10 Mr. White, the testimony has to be
11 relevant to the issues at-hand. I know that
12 you may have some other things to talk about,
13 but it has to be in connection to this
14 application and relevant.

15 Please phrase a question that -- ask
16 specific questions.

17 MR. DAVIS: I will rephrase, Your
18 Honor.

19 THE COURT: Thank you.

20 DIRECT EXAMINATION CONTINUED

21 BY MR. DAVIS:

22 Q. Mr. White, simply what I am asking
23 you is that you have covered your complaints
24 about Mr. Savage in relation to explaining
25 defenses to you. Okay?

Thompson White v State of South Carolina
Case No. 13-CP-10-3400 - Hearing of April 16, 2014
Testimony of Thompson White - Cross Examination
Before The Honorable R. Markley Dennis

17

1 A. Okay.

2 Q. I want to make sure that I cover
3 your complaints about Mr. Savage's conduct
4 leading up to this plea. That is my
5 question. Are there any other complaints
6 about Mr. Savage's advice leading up to this
7 guilty plea?

8 A. No.

9 MR. DAVIS: Thank you, Your Honor.
10 No other questions.

11 THE COURT: Very well. Cross-
12 examine?

13 MS. WILSON: Briefly, Your Honor.

14 CROSS EXAMINATION

15 BY MS. WILSON:

16 Q. Mr. White, do you recall how many
17 times that you met with Mr. Savage before you
18 pled guilty?

19 A. Three or four times.

20 Q. Did he review the State's evidence
21 with you?

22 A. Beg your pardon?

23 Q. Did he review the State's evidence
24 against you with you?

25 A. (No verbal response).

Thompson White v State of South Carolina
Case No. 13-CP-10-3400 - Hearing of April 16, 2014
Testimony of Thompson White - Cross Examination
Before The Honorable R. Markley Dennis

18

1 Q. Did he go over any police reports?
2 Any incident reports? Any statements with
3 you?

4 A. Only phone calls.

5 Q. So he reviewed them over the phone?

6 A. No. When -- the phone calls that
7 were made at the correctional department.

8 Q. All right. Was it your decision to
9 plead guilty?

10 A. Beg your pardon?

11 Q. Was it your decision to plead
12 guilty?

13 A. Not mine alone.

14 Q. Did you tell the court that it was
15 your decision to plead guilty

16 A. Beg your pardon?

17 Q. Did you tell the court that it was
18 your decision to plead guilty?

19 A. No.

20 Q. Thank you.

21 THE COURT: Redirect?

22 MR. DAVIS: None, Your Honor.

23 THE COURT: Thank you, sir. You
24 may come down, Mr. White.

25 (WITNESS STEPS DOWN)

Thompson White v State of South Carolina
Case No. 13-CP-10-3400 - Hearing of April 16, 2014
Testimony of Andy Savage - Direct Examination
Before The Honorable R. Markley Dennis

1 THE COURT: Do you have any
2 additional witnesses?

3 MR. DAVIS: The Applicant does
4 not, Your Honor.

5 THE COURT: Very well. Does the
6 State wish to call any witnesses.

7 MS. WILSON: Thank you, Your Honor.
8 The State would call Mr. Andrew Savage.

9 (WITNESS TAKES STAND)

10 ANDY SAVAGE, having been sworn to
11 tell the truth, and nothing but the truth,
12 testified as follows:

13 DIRECT EXAMINATION

14 BY MS. WILSON:

15 Q. Good morning, Mr. Savage.

16 A. Good morning.

17 Q. Can you tell the court how long you
18 have been practicing law, and what your
19 background has been over those years?

20 A. Almost as long as the court's. A
21 long time, primarily emphasis in criminal
22 law. I've been in private practice for
23 thirty-three years and prior to that I was
24 a prosecutor.

25 Q. Do you recall when you were retained

Thompson White v State of South Carolina
Case No. 13-CP-10-3400- Hearing of April 16, 2014
Testimony of Andy Savage - Direct Examination
Before The Honorable R. Markley Dennis

20

1 to represent Mr. White in this case?

2 A. Yeah. Mr. White's family came to
3 see me following his arrest. I talked with
4 them on several occasions and determined that
5 it would be better for him to get someone
6 else to represent him, because of the
7 financial obligations that he had at the
8 time.

9 Referred him to Alan Mastatuno. Mr.
10 Mastatuno represented him all the way through
11 the guilty plea.

12 Then at some point in time he came back
13 to me -- his family came back to me, asked me
14 if I would reduce my fee and work with Mr.
15 Mastatuno. I really came into the case -- I
16 don't remember exactly when. I have it in my
17 notes here. But at that time he was in jail
18 without bond.

19 He had a, you know, a nonviolent past
20 though he had a record. He clearly had some
21 substance abuse issues. We had him inter-
22 viewed at the Medical University of South
23 Carolina by a psychiatrist, got him involved
24 in a substance abuse program and his health
25 got better.

Thompson White v State of South Carolina
Case No. 13-CP-10-3400 - Hearing of April 16, 2014
Testimony of Andy Savage - Direct Examination
Before The Honorable R. Markley Dennis

21

1 He was released on a hundred thousand
2 dollar bond, split fifty-fifty by Judge
3 Hughston.

4 A very empathetic situation that led to
5 his arrest. He was with his girlfriend, they
6 had a fight in the kitchen over the
7 preparation of beans. There was a lot of
8 alcohol involved. The girlfriend claimed
9 that she was assaulted. She called family
10 members. Shortly thereafter a lot of family
11 members showed up at the house. Mr. White
12 was taken outside and got a little bit of a
13 beatdown. He then went back inside the
14 house, got his rifle, went outside looking
15 for them. They had dispersed, they were not
16 in his area. Mr. White said there were
17 multiple warning shots fired on the street.
18 The evidence that we had was a dead body and
19 also other bullet holes in cars some distance
20 down the street.

21 So it was very empathetic the way
22 that started. Mr. White said, 'Call 911.'
23 He went to his closet and got a weapon.
24 There was no police intervention at that
25 point. He went beyond the perimeters of his

Thompson White v State of South Carolina
Case No. 13-CP-10-3400 - Hearing of April 16, 2014
Testimony of Andy Savage - Direct Examination
Before The Honorable R. Markley Dennis

22

1 property, went out onto the street and, uh,
2 killed somebody. That's why manslaughter was
3 more appropriate than a murder case.

4 You know, I walked that scene. I've
5 walked that scene over and over again to
6 ensure -- and I think that if you ask Mr.
7 White, that there is a manhole cover that we
8 used as a reference point -- repeatedly that
9 -- he was intoxicated, pretty much, at the
10 time of the incident and had a very poor
11 memory of it. We tried to recover that
12 memory, over and over and over again, of
13 where he was standing when the shots were
14 fired. The only thing that was very clear
15 was that he was beyond the perimeters of his
16 property, that he was in the public right-of-
17 way on the street. The deceased was in the
18 public right-of-way on the street. The cars
19 that were shot up were on the public right-
20 of-way, on the street.

21 There was no evidence of imminent threat,
22 there was no use of a weapon during the prior
23 assault. It was a gang of people who were
24 there, but no weapons.

25 Mr. White then -- following the shots

Thompson White v State of South Carolina
Case No. 13-CP-10-3400 - Hearing of April 16, 2014
Testimony of Andy Savage - Direct Examination
Before The Honorable R. Markley Dennis

1 being fired, he got in a car and left the
2 scene, which further complicated his state of
3 mind, from our perspective.

4 It was truly a terrible situation. It
5 started out as a CDV, then the girlfriend
6 called for help from her family and they came
7 to the house. He received a beat-down, which
8 did not require any emergency medical
9 treatment or hospitalization but nonetheless
10 he was assaulted on his own property. The
11 reaction to that was to get his weapon and
12 firing it.

13 Q. Did you Mr. White's discovery
14 material?

15 A. Yes. Again, Alan represented him
16 and I came in later but I reviewed repeated-
17 ly, three or four times, perhaps more times
18 than that, with Mr. White the information
19 that we had.

20 He references the castle doctrine. That
21 was an issue involving where he was at the
22 time of the shooting.

23 We also reviewed the stand-your-ground
24 law, which is a separate respective matter.

25 He, in my opinion, didn't qualify for

Thompson White v State of South Carolina
Case No. 13-CP-10-3400 - Hearing of April 16, 2014
Testimony of Andy Savage - Direct Examination
Before The Honorable R. Markley Dennis

24

1 either one. The first, he didn't qualify
2 because of the location. The second, he
3 didn't qualify because there was an
4 opportunity to retreat back to his house and
5 call the authorities; that with the lack of
6 any evidence of imminent threat.

7 The body was probably a hundred to a
8 hundred and fifty yards from where he was
9 standing. It was a rifle shot.

10 Q. In your representation of Mr. White,
11 did you have to do any investigation or was
12 that done by Mr. Mastatuno?

13 A. No. We obtained the services of an
14 investigator, James Randolph, who is our
15 investigator, and his report was provided to
16 Mr. White and his family. But I want to re-
17 emphasis that I personally, along with the
18 investigator and another lawyer from my
19 office, spent a day with Mr. White walking
20 the crime scene. Not just the immediate area
21 of his home but the streets surrounding that,
22 because there were some issues as whether or
23 not these people were perhaps coming back
24 towards him. So we spent a good day
25 interviewing neighbors with Mr. White,

Thompson White v State of South Carolina
Case No. 13-CP-10-3400 - Hearing of April 16, 2014
Testimony of Andy Savage - Direct Examination
Before The Honorable R. Markley Dennis

1 literally walking the street.

2 Q. Before Mr. White pled guilty, did
3 you talk to him about the consequences of the
4 guilty plea?

5 A. Yeah. The guilty plea offer from
6 the State was interesting. They gave us a
7 choice. He could either plead to involuntary
8 with a cap of fifteen or he could have the
9 assurance of an agreement of a ten-year
10 sentence.

11 My advice to Mr. White was that, given
12 the circumstances that led to the shooting,
13 that I thought that perhaps we had a pretty
14 good mitigation package -- his efforts at
15 sobriety, his mental health counseling, all
16 of those things were very strong in his
17 favor. The circumstances of the incident,
18 the matters that took place prior to the
19 shooting, I thought were all very mitigating
20 to him -- and apparently were to Judge
21 Hughston, -- so I -- so my advice with him
22 was to go with the cap of fifteen and I'd see
23 if I could -- 'do the best that I can.'

24 Judge Hughston, I believe sentenced him
25 to ten -- no, he sentenced him to twelve and

Thompson White v State of South Carolina
Case No. 13-CP-10-3400 - Hearing of April 16, 2014
Testimony of Andy Savage - Direct Examination
Before The Honorable R. Markley Dennis

26

1 then -- then, of course, I felt pretty bad
2 about my advice for him to take a chance. So
3 we filed an application for reconsideration,
4 which was granted.

5 Q. And after that motion to reconsider,
6 what was the sentence changed to?

7 A. Ten.

8 Q. Did you talk to him about his
9 Constitutional rights before pleading guilty?
10 Is that something that you normally review
11 with your clients?

12 A. Yeah. I have something that I call
13 a provency form. Whenever anybody looks like
14 they have a chance of being incarcerated, we
15 go through the form -- not just verbally but
16 we read the form. Then the client endorses
17 that, so there's no question about what the
18 advice was that was given prior to a plea.

19 Q. And do you have that with you here
20 today?

21 A. Yes.

22 MS. WILSON: Your Honor, we would
23 like to mark that form as State's Exhibit 1.

24 THE COURT: Any objection?

25 MR. DAVIS: No objection.

Thompson White v State of South Carolina
Case No. 13-CP-10-3400 - Hearing of April 16, 2014
Testimony of Andy Savage - Direct Examination
Before The Honorable R. Markley Dennis

1 THE COURT: Without objection, it
2 is admitted as State's Exhibit 1.

3 (SO ENTERED AS STATE'S EXHIBIT 1)

4 DIRECT EXAMINATION CONTINUED

5 BY MS. WILSON:

6 Q. Lastly, Mr. Savage, did Mr. White
7 ever indicate that he didn't understand
8 something while y'all were going through ---

9 A. No. The only thing, and I don't say
10 this disrespectfully, at all, to Mr. White,
11 because we had a pretty good relationship in
12 the course of the representation -- not just
13 with him but with his family. There were
14 some deficits that he had, primarily caused
15 by his substance abuse, so we were very
16 cautious about his understanding of the
17 situation. As I said, he was examined by a
18 psychiatrist at MUSC and then engaged in a
19 program for substance abuse.

20 No question that he understood.

21 I would say that his memory, due to
22 substance abuse, of the events that happened
23 that night was impaired. He had a lot of
24 blackouts of certain situations that I don't
25 think that he was faking, they were true

Thompson White v State of South Carolina
Case No. 13-CP-10-3400 - Hearing of April 16, 2014
Testimony of Andy Savage - Cross Examination
Before The Honorable R. Markley Dennis

28

1 blackouts. It was a complicated
2 situation but in interviewing all the people
3 involved, walking the scene repeatedly with
4 him, going through the event, he had limited
5 memory.

6 MS. WILSON: Thank you.

7 THE COURT: You may cross examine.

8 THE COURT: Thank you, Your Honor.

9 CROSS EXAMINATION

10 BY MR. DAVIS:

11 Q. Mr. Savage, if you could elaborate
12 just a little bit more there about what you
13 were just talking about, some of these
14 blackouts and memory issues. Can you explain
15 a little more fully why you had Dr. Cusack
16 evaluate Mr. White?

17 A. Yeah, in a situation like that it's
18 pretty proforma. You have a person who was
19 alcohol-impaired. Not only that but he'd
20 suffered a beat-down, they'd hit his head.
21 There were gaps in what he was saying to me
22 and we thought that it was in his best
23 interest healthwise to have him examined for
24 competency. Once that was done, we proceeded
25 with the case like any other case.

Thompson White v State of South Carolina
Case No. 13-CP-10-3400 - Hearing of April 16, 2014
Testimony of Andy Savage - Cross Examination
Before The Honorable R. Markley Dennis

1 Q. Let's talk about two issues of
2 defense that Mr. White raised.

3 A. Okay.

4 Q. I believe that you testified earlier
5 that on a self-defense claim that you felt
6 that was lacking because of the duty to
7 retreat issue?

8 A. Yes. The castle doctrine is one.
9 He mentioned that. If he had use the weapon
10 while they were still there, while the beat-
11 down was happening, he probably would have
12 had a pretty good castle doctrine defense.
13 I don't know the proportionality but --
14 clearly he was being assaulted by outsiders
15 who had no right to be there.

16 Once he moved beyond the parameters of
17 the physical layout of his home, then things
18 changed. Then you have a duty to retreat,
19 which he did not do. He was moving forward,
20 he was the aggressor at that time. There was
21 no evidence that the person who was killed
22 was an imminent threat to him.

23 Q. Switching over to the protection of
24 persons and property Act, are you familiar
25 with that Act?

Thompson White v State of South Carolina
Case No. 13-CP-10-3400 - Hearing of April 16, 2014
Testimony of Andy Savage - Cross Examination
Before The Honorable R. Markley Dennis

30

1 A. Yes.

2 Q. Have you handled immunity hearings
3 under that Act?

4 A. Three in the last three months.

5 Q. And I believe on that defense it's
6 the location that concerns you about that; is
7 that your testimony?

8 A. I'm not sure what you mean by that.

9 Q. I may have misunderstood your
10 testimony on direct.

11 A. The castle defense is for the home,
12 an automobile, -- and the stand-your-ground
13 is a different defense.

14 Q. I understand. So dealing with the
15 protection of persons and property, you'd
16 discussed that statute and the possible
17 defense with him as well?

18 A. Yes.

19 Q. Okay.

20 A. It's all the same statute, just
21 different portions of it.

22 Q. Certainly on that, if he is lawfully
23 where he was supposed to be, there is no duty
24 to retreat?

25 A. If there is a threat.

Thompson White v State of South Carolina
Case No. 13-CP-10-3400 - Hearing of April 16, 2014
Testimony of Andy Savage - Cross Examination
Before The Honorable R. Markley Dennis

31

1 Q. Correct. On the first part, if he
2 is where he is lawfully supposed to be, there
3 is no duty to retreat?

4 A. Correct, but that didn't apply in
5 his situation because he -- and I don't mean
6 this disrespectfully to -- I don't want to
7 speak against him. But he left his property
8 with a weapon, looking for the bad guys.

9 Q. And I believe that in your
10 investigation that you actually researched
11 about him being in possession of that weapon
12 outside the property. You looked to see if
13 that was going to be another violation of the
14 case law, do you recall that?

15 A. I don't know what his prior -- I
16 know that he had a significant prior record.
17 I don't know if he was involved with
18 possession of a weapon but -- but that
19 doesn't apply. Even if possession of a
20 weapon was unlawful, if he was a convicted
21 felon, he certainly was entitled to use a
22 weapon. Whether it was illegal or not,
23 that's not -- (pause) -- wasn't the charge.

24 Q. Were you aware that not only in
25 addition to substance abuse issues any issues

Thompson White v State of South Carolina
Case No. 13-CP-10-3400 - Hearing of April 16, 2014
Testimony of Andy Savage - Cross Examination
Before The Honorable R. Markley Dennis

32

1 with my client's ability to use his hands?
2 Did he talk to you about that?

3 A. I don't recall a physical deficit.
4 He may have, but I don't recall that at that
5 time. We were primarily focused on his
6 mental and substance abuse issue.

7 MR. DAVIS: Judge, may I have just one
8 moment?

9 THE COURT: Sure.

10 MR. DAVIS: (Sidebar with Mr.
11 White), --- okay.

12 CROSS EXAMINATION COINTINUED

13 BY MR. DAVIS:

14 Q. Mr. Savage, you were provided
15 information, either from my client or Mr.
16 Cusack that he did believe that the deceased
17 was armed. Do you recall that?

18 A. No, but I am not surprised -- that
19 my client believed that?

20 Q. Yes.

21 A. Yes, he did. I know that he told
22 that to Dr. Cusack.

23 Q. Thank you, Mr. Savage.

24 MR. DAVIS: Thank you, Your Honor.
25 No further questions.

Thompson White v State of South Carolina
Case No. 13-CP-10-3400 - Hearing of April 16, 2014
Arguments by Counsel
Before The Honorable R. Markley Dennis

33

1 THE COURT: Redirect?

2 MS. WILSON: Just briefly, Your
3 Honor.

4 THE COURT: Yes, ma'am.

5 REDIRECT EXAMINATION

6 BY MS. WILSON:

7 Q. Mr. Savage, after Mr. White was --
8 when you found Mr. White evaluated, was he
9 found to be competent?

10 A. Yes.

11 MS. WILSON: That's all. Thank
12 you.

13 THE COURT: Recross?

14 MR. DAVIS: No, sir.

15 THE COURT: Mr. Savage, you may
16 step down.

17 (WITNESS STEPS DOWN)

18 THE COURT: Any additional
19 witnesses?

20 MS. WILSON: Nothing further from
21 the State.

22 MR. DAVIS: No, sir.

23 THE COURT: Mr. Davis, I will be
24 happy to hear from you in closing.

25 MR. DAVIS: Thank you, Your Honor.

Thompson White v State of South Carolina
Case No. 13-CP-10-3400 - Hearing of April 16, 2014
Arguments by Counsel
Before The Honorable R. Markley Dennis

34

1 Judge, I attempted to portray a very specific
2 issue here. We certainly have had testimony
3 about Mr. White's blackout, issues with
4 memory based on substance abuse. His
5 attorney was well aware of that.

6 As the Court is well aware, there
7 are possible difference offenses, Mr. Savage
8 testified about those, that might be
9 available in cases like this.

10 The testimony from Mr. White is that
11 while have been discussing -- and I will
12 voluntarily call it the common law of self-
13 defense that raises the presumption and has
14 the different elements. That was discussed
15 not to the level that he completely
16 understood prior to the plea that would cause
17 him to not plead guilty but to present that
18 defense.

19 Similar to that, there is a separate
20 statutory defense that might have been
21 available. The testimony by Mr. White is
22 that he does not recall it being discussed.
23 Even with Mr. Savage's testimony, he still
24 takes the position that if it was discussed
25 it was not discussed in detail enough for Mr.

Thompson White v State of South Carolina
Case No. 13-CP-10-3400 - Hearing of April 16, 2014
Arguments by Counsel
Before The Honorable R. Markley Dennis

1 White to fully understand and refute that.
2 Specifically, again, that if he had just been
3 attacked, he was on the street and lawfully
4 armed, if he felt that there was an imminent
5 threat that he had no duty to retreat --- it
6 was that lack of understanding on behalf of
7 Mr. White prior to the plea that had he
8 known, he may not have entered the plea.
9 Thank you.

10 THE COURT: Thank you.

11 MS. WILSON: May it please the
12 court, Your Honor, the State just asks that
13 you dismiss the Applicant's application for
14 post-conviction relief with prejudice.

15 With regard to Mr. White's
16 allegation that he didn't fully understand
17 the castle doctrine and the stand-your-ground
18 doctrine enough to decide to plead guilty, we
19 would rely on Mr. Savage's testimony and his
20 extensive criminal law experience that after
21 his review of the facts that he didn't think
22 the castle doctrine or the stand-your-ground
23 portion of that law would have been a viable
24 defense for the defendant.

25 Also, he testified that he spoke

Thompson White v State of South Carolina
Case No. 13-CP-10-3400 - Hearing of April 16, 2014
Arguments by Counsel
Before The Honorable R. Markley Dennis

36

1 with Mr. White about it, that he visited the
2 scene and reviewed the perimeter of the home
3 with Mr. White and -- also, Your Honor, Mr.
4 Savage's testimony that he was aware of Mr.
5 White's mental condition and that he was very
6 careful in his communications with him with
7 regard to this case.

8 We ask that you dismiss this
9 application.

10 THE COURT: Any reply?

11 MR. DAVIS: No, Your Honor.

12 THE COURT: Thank you. And the
13 similarity -- I didn't realize that it was
14 going to have any application, the story that
15 I shared about my former client, uh, -- I
16 think it's very clear here today, Mr. White,
17 -- and it's what I tell -- not to belittle
18 anyone who reads the law. I commend persons
19 that read it, study it and become well-versed
20 in legal principles. Certainly he has
21 espoused a legal principle. But those of us
22 that have done it for our living, we
23 understand that it is not so much what you
24 read but it is the experience and application
25 of that law. That is what gets persons who

Thompson White v State of South Carolina
Case No. 13-CP-10-3400 - Hearing of April 16, 2014
Arguments by Counsel
Before The Honorable R. Markley Dennis

1 don't have the background and training in a
2 little bit of trouble

3 Quite frankly, it's an interesting
4 doctrine. It is still evolving as we speak
5 right now. I am waiting on a decision --
6 there was a decision much closer in point of
7 time than yours that I found that it didn't
8 apply. The guy was in his wrecker and the
9 victim came up and brandished a firearm,
10 threatened him, said 'you're going to take
11 the boot off my car.' Had he shot him -- he
12 had the gun in his hand. It was in the
13 truck. Had he shot him then, I would have
14 probably granted immunity on that statute.
15 He's in a public street but in his car. But
16 what changed it for me was that the victim
17 then turned and walked away. He got out of
18 the car and shot him in the back five times.
19 I don't think the castle doctrine allows you
20 to do that. His theory was, 'I don't have to
21 wait for him to go get the drop on me, I can
22 shoot him.' Well, we will find out. That's
23 on appeal. I don't know what the Court is
24 going to do.

25 But I can tell you that in this case

Thompson White v State of South Carolina
Case No. 13-CP-10-3400 - Hearing of April 16, 2014
Arguments by Counsel
Before The Honorable R. Markley Dennis

38

1 I would probably do the same thing -- it was
2 not before. I don't think the castle
3 doctrine has any application in this case.
4 None. Zero. For this reason: it never
5 meant for us to take the law in our own
6 hands. That's the danger. People start
7 seeing that and hearing that and think, 'you
8 know what, I can do this.'

9 The problem is that there is a
10 really fine line, really it is, very gray,
11 that -- in every case that I know of where
12 the Court has upheld it, there was continued
13 aggression present. In some form or fashion
14 there was some continued aggression. You
15 testified to that, but your problem is that
16 you left your position of safety. You were
17 home, safe inside.

18 Now, I grant you that you'd been
19 assaulted and you had every right to swear
20 our warrants against these people. That's
21 what you should had done. Called the police.
22 Let them come take care of the persons.
23 Those thugs would have been dealt with for
24 beating you up. They didn't have the right
25 to do that, that was against the law. But

Thompson White v State of South Carolina
Case No. 13-CP-10-3400 - Hearing of April 16, 2014
Arguments by Counsel
Before The Honorable R. Markley Dennis

1 that didn't give you the right to take a gun
2 and go out and shoot and pursue. That's what
3 you were doing, you were in pursuit.

4 APPLICANT: (Gesturing).

5 THE COURT: Now, you can shake
6 your head all day long. That's okay. I
7 wasn't there. But I can tell you that that
8 is how I as a trial judge would have
9 construed that, and would never have applied
10 the castle doctrine.

11 And the question comes up -- and
12 that's where we get into what lawyering is
13 all about. We have to make -- because none
14 of us have crystal balls. We have to make
15 the best call and do the best that we can
16 with the given facts.

17 Oddly enough, I tried a case
18 yesterday -- yours is similar -- this guy
19 took a chance. He was offered twenty-five
20 years and he turned it down. He was
21 convicted. Unfortunately, it was an LWOP and
22 he is serving life. He rolled the dice, he
23 lost.

24 You got the benefit of the bargain.
25 You got a sure thing. I understand that ten

Thompson White v State of South Carolina
Case No. 13-CP-10-3400 - Hearing of April 16, 2014
Arguments by Counsel
Before The Honorable R. Markley Dennis

40

1 years is a dadgum long time, no question
2 about it. I am not telling you that is a
3 short time but it's a lot less than thirty
4 and much less than thirty-five murder, and a
5 whole lot less than life. That's a sure
6 thing.

7 You go take your chance on self-
8 defense and the jury says, 'You know what,
9 you're right, he was defending himself.'

10 The problem you have -- it's partly
11 your fault and partly not your fault. We all
12 do things we shouldn't do in our lives, but
13 yours has caused you some memory problems.
14 Unfortunately, to set up the castle doctrine,
15 to set up everything, you're going to have to
16 take the stand because it's your mindset.
17 There's no way to get that in but through
18 your testimony. You can't remember much.
19 You know what juries think about that? It's
20 human nature that we forget those things that
21 might be damaging to us. That's just human
22 nature. So you've got an inference, that
23 problem.

24 All of these things, nobody knows
25 but as an attorney you have to balance those

Thompson White v State of South Carolina
Case No. 13-CP-10-3400 - Hearing of April 16, 2014
Arguments by Counsel
Before The Honorable R. Markley Dennis

1 things and make calls. Your lawyer did a
2 tremendous job. He got you a sure thing. He
3 ever went one more step. He took a chance --
4 and I don't fault him for that, he assessed
5 it and thought 'maybe I can come under that
6 ten.' Judge Hughston, from what I know and
7 know about him, and your lawyer Mr. Davis
8 knows this too, that's a reasonable approach.
9 He is probably a good one to take that shot
10 with. But it didn't work.

11 But he didn't just say, 'sorry, Mr.
12 White, we tried, we lost.' He went back and
13 got you the best deal that he could get, what
14 was offered. He went above and beyond, no
15 question.

16 I am going to save you the risk of
17 coming back. You have the right to appeal
18 this within thirty days and have it reviewed
19 by the Court. I make these statements so
20 that the Court can make its assessment.

21 I agree totally with Mr. Savage's
22 assessment. I don't think the castle
23 doctrine or any part of that statute applies
24 in this particular case, it just doesn't.

25 I think you've got a real risk with

Thompson White v State of South Carolina
Case No. 13-CP-10-3400 - Hearing of April 16, 2014
Arguments by Counsel
Before The Honorable R. Markley Dennis

42

1 common law self-defense because he was out in
2 the street. Therein lies the -- you've got a
3 major problem. But no one knows what a jury
4 is going to do, but that's a risk that I --
5 if I were looking at life versus ten, I think
6 that I would not take that chance.

7 I find that the results wouldn't
8 have changed. In fact, it would have been
9 worse because the offer -- in fact, if you go
10 to trial there is no offer, it's straight up.
11 Then you run the risk of a judge hearing it
12 all and -- I read the victim's witnesses.
13 They all get to testify and you hear the
14 whole story. You only hear part of it ---

15 APPLICANT: I ---

16 THE COURT: No, no, you can -- you
17 want to talk but this is my turn to talk.
18 You get a chance to talk when you go to the
19 Court of Appeal and they tell you that Judge
20 Dennis was wrong. You can speak to your
21 heart's content at that level.

22 I am denying your application and
23 ask the State to prepare the appropriate
24 Order.

25 I state all of that because I want

Thompson White v State of South Carolina
Case No. 13-CP-10-3400 - Hearing of April 16, 2014
Arguments by Counsel
Before The Honorable R. Markley Dennis

1 the record to understand my rationale for
2 what I'm doing. I think that he fails on the
3 first prong and the second prong.

4 Thank you, sir. Good luck to you.

5 (HEARING CONCLUDED)

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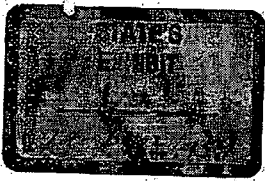
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STATE OF SOUTH CAROLINA,)
)
COUNTY OF CHARLESTON)
)
)

IN THE COURT OF GENERAL SESSIONS
FOR THE NINTH JUDICIAL CIRCUIT
INDICTMENT NUMBERS: 2011-GS-10-1229;
2011-GS-10-1230
WARRANT NUMBERS: K-404180; K-404181

STATE OF SOUTH CAROLINA,)
)
Plaintiff,)
)
-versus-)
)
THOMPSON WHITE,)
)
Defendant.)
_____)

PROVIDENCY FORM

A. Swearing of Defendant and Preliminary Questions

1. Mr. White, the Court is informed that you wish to plead guilty. Is that correct?

2. Before accepting your guilty plea, there are a number of questions I will ask you to assure that it is a valid plea. If you do not understand any of the questions, or at any time wish to consult with your attorneys, please say so, since it is essential to a valid plea that you understand each question before you answer.

3. The clerk will please swear the defendant.

4. Do you understand that, having been sworn, your answers to my questions will be subject to the penalties of perjury or of making a false statement if you do not answer truthfully?

B. Competence of Defendant to Plead

1. Mr. White, how old are you?
2. How much formal education have you had?
3. Do you have any problems understanding your purpose for being here or difficulty understanding the questions I am asking you?
4. Where are you currently employed?
5. Have you taken any drug or medication or consumed any alcoholic beverages in the past seventy-two (72) hours or are you now under the influence of any drugs or alcohol?
6. Have you ever been treated for mental illness or addiction to alcohol or narcotic drugs of any kind? Do you understand what is happening today?
7. Tell me in your own words what is happening.
8. How much time have you spent in pre-trial custody?
9. Have you been mistreated in any way by the police, officers at the jail, or anyone in the Solicitor's Office?

C. Defendant's Right to Counsel (Attorney Competence)

1. Have you had ample opportunity to discuss your case with Mr. Savage and Mr. Mastantuno?

2. Are you satisfied with Mr. Mastantuno's and Mr. Savage's representation?

3. Have Mr. Mastantuno and Mr. Savage done everything you have asked them to do?

4. Have they failed to do anything you have asked them to do?

5. Is there anything that you would like for them to do at this time?

D. Defendant's Right to a Trial and the Nature Thereof

1. Do you understand that, under the Constitution and laws of the United States as well as the laws and Constitution of the State of South Carolina, you are entitled to a trial by a jury during which you would have the right to the assistance of counsel for your defense on the charges contained in Indictment Number 2011-GS-10-1229 (Warrant Number K-404180) for Murder (SC Code Section 16-3-10), and Indictment Number 2011-GS-10-1230 (Warrant Number K-404181) for Use of a Firearm During Commission of a Violent Crime (SC Code Section 16-23-490)?

2. Do you understand that, at that trial, you would be presumed to be innocent and the State would be required to prove you guilty by competent evidence and beyond a reasonable doubt before you could be found guilty, and you would not have to prove that you were innocent?

3. The offense of Murder (South Carolina Code Section 16-3-10) is an unclassified Felony. Do you understand that, at a trial, the State would have to prove the following elements, beyond a reasonable doubt, in order to obtain a conviction for the crime of Murder:

- A. The killing
- B. Of a person
- C. With malice aforethought.

4. The offense of Use of a Firearm During Commission of a Violent Crime (South Carolina Code Section 16-23-490) is a Class F Felony. Do you understand that, at a trial, the State would have to prove the following elements, beyond a reasonable doubt, in order to obtain a conviction for the crime of Use of a Firearm During Commission of a Violent Crime:

- A. Defendant convicted of
- B. Committing or attempting to commit a violent crime
- C. Defendant at the time of this crime
- D. In possession of a firearm.

5. Do you understand that, in the course of trial, the witnesses for the State would have to come to court and testify in your presence, and Mr. Mastantuno and Mr. Savage could cross-examine the witnesses for the State, object to evidence offered by the State, and offer evidence on your behalf?

6. Do you understand also that, at a trial, while you would have the right to testify if you chose to do so, you also would have the right not to testify, and no inference or suggestion of guilt could be drawn from the fact that you did not testify?

7. Do you understand that, at a trial, you would have the right to the issuance of subpoenas or compulsory process to compel the attendance of witnesses to testify in your defense?

8. At trial, Mr. Mastantuno and Mr. Savage would have the right to move before the Court to suppress evidence that may have been gathered by law enforcement in violations of your Constitutional Rights. These rights include, among other things, your right to remain silent. Did you provide anyone from law enforcement with a statement about your involvement in this case?

9. I understand that you are entering a guilty plea under Indictment Number 2011-GS-10-1229, which originally charged you with Murder, to the lesser included offense of Voluntary Manslaughter in violation of South Carolina Code Section 16-3-50. Is this your understanding of the plea you are entering?

10. Voluntary Manslaughter (South Carolina Code Section 16-3-50) is a Class A Felony which is classified as a violent and most serious offense. The elements of this offense are as follows:

- A. Unlawful killing
- B. Of a human being
- C. In a sudden heat of passion of mind soon after a legally sufficient provocation
- D. Without malice aforethought

11. If you plead guilty to the charge of Voluntary Manslaughter and I accept your plea, do you understand that you will waive your right to a trial and the other rights I have just discussed, there will be no trial, and I will enter a judgment of guilty and sentence you on the basis of your guilty plea?

12. If you plead guilty, do you understand that you will also have to waive your right not to incriminate yourself, since I may ask you questions about what you did in order to satisfy myself that you are guilty as charged, and you will have to acknowledge your guilt?

13. Do you fully understand that if you plead guilty and I accept your plea, you may be required to make restitution to the victim or victims of your acts, either by payment of money or in personal services, as may be directed by this Court? If restitution or personal service is ordered, failure to comply may be the basis for revoking your probation or parole.

14. Do you understand that the offense to which you are pleading guilty, Voluntary Manslaughter, is a felony offense, that if your plea is accepted you will be adjudged guilty of that offense, and that such adjudication *may* deprive you of valuable civil rights, such as the right to vote, the right to hold public office, the right to serve on a jury, and the right to possess any kind of firearm?

15. Having discussed your rights with you, do you still want to plead guilty?

E. Nature of Charges and Possible Consequences of Plea

1. Have you received a copy of the Warrants and Indictments, that is, the written charges made against you in this case? Have you discussed with your counsel the charges in the Warrants/Indictments and the case in general?

2. Do you understand each charge?

3. Do you understand that maximum possible penalty under Indictment 2011-GS-10-1229 (Warrant Number K-404180) for the charge of Murder is life imprisonment, meaning until death without possibility of parole, and that the mandatory minimum sentence is thirty (30) years which must be served in full?

4. Do you understand that the maximum possibly penalty under Indictment 2011-GS-10-1230 (Warrant Number K-404181) for the charge of Use of a Firearm During Commission of a Violent Crime is five years incarceration and a fine of Two Thousand (\$2,000.00) Dollars?

5. Do you understand that the maximum possibly penalty for the offense to which you are pleading, Voluntary Manslaughter, is thirty (30) years incarceration, and that this offense imposes a mandatory minimum of two (2) years incarceration?

F. Voluntariness of Plea and Plea Agreement

1. Has anyone threatened you or anyone else or forced you in any way to plead guilty?

A. Mr. Mastantuno and Mr. Savage, I understand that there have been plea negotiations in this matter.

Your Honor, Mr. White was originally charged/indicted for the following offenses:

- | | | |
|----|------------------------|---|
| 1. | Indictment Number: | 2011-GS-10-1229 |
| | Arrest Warrant Number: | K-404180 |
| | Charge: | Murder |
| | Statute: | SC Code Section 16-3-10 |
| | Date of Offense: | September 21, 2010 |
| 2. | Indictment Number: | 2011-GS-10-1230 |
| | Arrest Warrant Number: | K-404181 |
| | Charge: | Use of a Firearm During Commission of a Violent Crime |
| | Statute: | SC Code Section 16-23-490 |
| | Date of Offense: | September 21, 2010 |

In accordance with our discussions with Assistant Solicitor Simpson, Mr. White will enter a guilty plea to the following:

Indictment Number:	2011-GS-10-1229
Charge:	Voluntary Manslaughter
Statute:	SC Code Section 16-3-50
Date of Offense:	September 21, 2010

The State has agreed to dismiss Mr. White's charge of Use of a Firearm During Commission of a Violent Crime. The State has further agreed to a **negotiated cap of fifteen (15) years incarceration** for Mr. White's guilty plea to the offense of Voluntary Manslaughter, however, Mr. White will be permitted to advocate for a lower sentence.

Mr. White is aware that the Court may not accept the Solicitor's recommendation, but if it does not, he will be permitted to withdraw his plea.

2. Has anyone made any promise, other than the plea agreement, that induced you to plead guilty?

3. Has anyone made any prediction, prophesy, or promise to you as to what your sentence will be?

4. (If answer is affirmative): What was it and who made it?

G. Determining Factual Basis for Guilty Plea

1. Did you, on or about September 21, 2010, in Charleston County, unlawfully kill Eugene Evans in a sudden heat of passion of mind soon after a legally sufficient provocation without malice aforethought?

2. Tell me, in your own words, what you did with regard to this offense.

3. The Solicitor or State case agent will summarize the evidence concerning the facts they would be prepared to prove at trial in order to establish an independent factual basis for the offense.

4. Do you agree with the Solicitor's summary of what you did? If no, with what do you disagree? Are there any questions you want to ask the prosecution or case agent?

_____ We have reviewed this document with Thompson White, and he has expressed a desire to enter a guilty plea as outlined therein.

ANDREW J. SAVAGE, III

J. ALLEN MASTANTUNO

_____ I have reviewed this document and confirm the accuracy of the State's position.

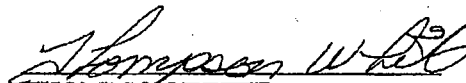
BENJAMIN CHAD SIMPSON
Assistant Solicitor
Ninth Judicial Circuit

T.W. I have read and I understand the questions presented in the preceding document.

T.W. I have reviewed in detail the evidence in my case and all possible defenses that I might employ. It is my desire to enter a guilty plea as outlined in Paragraph F on Pages 8 and 9.

T.W. I understand that I have a right to appeal the sentence imposed upon me, and it is further my understanding that if I desire to appeal, that I must request my attorney to do so within a limited time period. I understand that my notice of intent to appeal must be filed within ten (10) days of my plea and sentencing.

WITNESS


THOMPSON WHITE

DATE

IN THE STATE OF SOUTH CAROLINA)
CHARLESTON COUNTY)

IN THE COURT OF GENERAL SESSIONS
NINTH JUDICIAL CIRCUIT
CASE NUMBER 2011-GS-10-01229

STATE OF SOUTH CAROLINA,)

vs.)
Thompson White,)
Defendant.)

ORDER
BY _____
JULIE ANN STRONG
CLERK OF COURT
2013 FEB 11 AM 10:52
FILED

This case is before me on Motion for me to Reconsider and change my sentence. I have considered everything submitted to me including the Affidavit of Defendant White of 1/2/13 and attached police reports, and the Affidavit of Shakerra Brown.

Defendant White's Affidavit says essentially, "I should not have plead guilty to Voluntary Manslaughter because I was not guilty by reason of self defense." I reject that as a reason to change the sentence.

The Memo submitted by Defendant's attorneys in support of the Motion says essentially, "Change the sentence because we erred in our advice to our client after negotiations between us and the Solicitor regarding a guilty plea and sentence." Also, that they expected Ms. Brown to talk at the sentencing, support mitigating circumstances, but she did not attend.

Defendant's attorneys talk about negotiations leading up to sentencing. All negotiations were with the Solicitor and not me. As I repeatedly say in Court when an attorney talks about something being negotiated, it is not negotiated unless I have agreed to it. It may be recommended by both sides, but it is not negotiated and binding on me unless I have agreed to it, then it is negotiated. There was no negotiation with me prior to sentencing. I note on the Sentence Sheet that was filled out by someone and presented to me to use, that someone put an

#1
T.L.H.

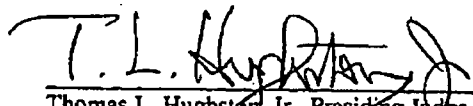
"X" in the box next to the words "Negotiated Sentence". This was an error that I do not believe that I noticed, and did not correct.

However, I can understand how Defendant, and perhaps his attorneys, misinterpreted this situation and had certain expectations that led to errors in advising their client about what to do and expect. Out of an abundance of caution, fairness to all involved including persons on both sides of this case, and with an eye toward the future including judicial economy, I grant the Motion to the extent of reducing the sentence to ten years at SCDC with credit for 332 days in jail.

IT IS SO ORDERED.

#2

February 11, 2013
Charleston, South Carolina


Thomas L. Hughston, Jr., Presiding Judge

FILED
2013 FEB 11 AM 10:52
JULIE S. ARMSTRONG
CLERK OF COURT
BY _____

*See Medlin vs. State, 276 S.C. 540 (1981).

STATE OF SOUTH CAROLINA)
 COUNTY OF CHARLESTON)
 STATE CHARLESTON)
THOMPSON vs. WHITE)
 AKA: _____)
 Race: _____ Sex: _____ Age: _____)
 DOB: _____ SS#: _____)
 Address: _____)
 City, State, Zip: _____)
 DL# _____ SID# _____)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE# 2011 GS 10 01229
 AWW# K404/80
 Date of Offense: 4/22/2010
 S.C. Code §: 16-03-010, 0020
 CDR Code #: 0116

AMENDED SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: VOLUNTARY MANSLAUGHTER
 In violation of § 16-03-0050 of the S.C. Code of Laws, bearing CDR Code # 0217
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS \$17-25-45 (CSC w/minor 1st or Lewd Act)
 The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentation to Grand Jury. (def.'s initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.
 ATTEST:

Solicitor _____ SC Bar # _____ Defendant _____ Attorney for Defendant _____ SC Bar # _____
 WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center, for a determinate term of TEN years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: _____
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
 Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____
 Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment
 Payment Terms: _____ Obtain GED
 Set by SCDPPPS Attend Voc. Rehab. Or Job Corp. _____
 Recipient: _____ May serve W/E beginning _____
 Substance Abuse Counseling

*Fines	\$	_____
§14-1-206 (Assessments 107.5%)	\$	_____
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ _____
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$ _____
§56-5-2995 (DUI Assessment)	\$12	\$ _____
§56-1-286 (DUI Breath Test)	\$25	\$ _____
Proviso 47.9 (Public Def/Prob)	\$500	\$ _____
§14-1-212 (Law Enforce. Funding)	\$25	\$ _____
§14-1-213 (Drug Court Surcharge)	\$150	\$ _____
§50-21-114 (BUI Breath Test Fee)	\$50	\$ _____
§56-5-2842(J) (Vehicle Assessment)	\$40/ea	\$ _____
Proviso 80.5 (SCCJA Surcharge)	\$5	\$ _____
3% to County (if paid in installments)	\$	\$ _____
TOTAL	\$	\$ _____

Random Drug/Alcohol Testing
 Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ _____ Beginning _____
 \$ _____ Paid to Public Defender Fund
 Other: _____

Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.
 Presiding Judge J.L. Hyatt Jr.
 Judge Code: 2008
 Sentence Date 5/11/13

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Charleston)
STATE VS.)

INDICTMENT/CASE#: 2011GS1001229

Thompson White)

A/W#: K404180

AKA: _____)

Date of Offense: 9/22/2010

Race: BLACK Sex: M Age: 53)

S.C. Code §: 16-03-0010, 0020

DOB: _____ SS#: _____)

CDR Code #: 0116

Address: _____)

City, State, Zip: CHALESTON, SC 294030000)

DL#: _____ SID#: SC00207012)

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

CONVICTED OF or PLEADS

In disposition of the said indictment comes now the Defendant who was
TO: Voluntary Manslaughter

in violation of § 16-03-0050 of the S.C. Code of Laws, bearing CDR Code # 0217

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: _____ 11257 _____ 4946
Simpson, Benjamin Chad SC Bar# _____ Thompson White Defendant _____ Michael H. Smith Attorney for Defendant SC Bar# _____

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 12 years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. CREDIT 332 DAYS JAIL.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____
Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment
Payment Terms: _____ Obtain GED
 Set by SCDPPPS _____ Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(DUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.76
TOTAL		\$ 123.20

Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____

Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk: _____
Court Reporter: _____
SCCA/217 (03/2011)

Presiding Judge: T. L. Hughton Jr.
Judge Code: 2008
Sentence Date: 2/14/12

BCS20100905038

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1015937

ARREST WARRANT NUMBER

K404180

DATE OF ARREST

September 22, 2010

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

MAR 07 2011

VERDICT

Foreperson of Petit Jury

Date

INDICT.

DOCKET NO. 2011GS1001229

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

March Term 2011

THE STATE

vs.

THOMPSON WHITE

DOB: [REDACTED]

B/M

Indictment for

Murder

FILED

3/29/2011 9:10:55 AM
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)


INDICTMENT

At a Court of General Sessions, convened on March 7, 2011 the Grand Jurors of Charleston County present upon their oath:

Murder

That in Charleston County on or about September 21, 2010, with malice aforethought, THOMPSON WHITE did kill and murder Eugene Evans by means of gunshot, and that Eugene Evans did die in Charleston County as a proximate result thereof on September 21, 2010; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


BENJAMIN CHAD SIMPSON
ASSISTANT SOLICITOR

CC
SOL
GS
AT
AG

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Thompson White, #349723,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 2013-CP-10-4159

**AMENDED
 ORDER OF DISMISSAL**

FILED
 2014 JUL 19 PM 3:32
 CLERK OF COURT
 JULIE HARRIS TROTT

Presiding Judge:	The Honorable R. Markley Dennis
Applicant's Attorney:	Rodney Davis, Esquire
Respondent's Attorney:	Ashleigh R. Wilson, Esquire
Trial Counsel:	Andrew Savage, Esquire
Date of Hearing:	April 16, 2014
Court Reporter:	Deborah Garrison

This matter comes before the Court by way of an application for post-conviction relief ("PCR") filed July 16, 2013. The Respondent made its Return on December 3, 2013. An evidentiary hearing into the matter was convened on April 16, 2014 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Rodney Davis, Esquire. Ashleigh R. Wilson, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. The Applicant's plea counsel, Andrew Savage, Esquire, also testified at the hearing. This Court had before it the guilty plea transcript, the records of the Charleston County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application, the Respondent's Return thereto, and the one exhibit submitted by the State¹.

¹ State's Exhibit 1- Providency Form signed by the Applicant

proof 1

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Charleston County. The Applicant was indicted at the March 2011 term of the Charleston County Grand Jury for murder (2011-GS-10-1229). Andrew Savage, Esquire, represented the Applicant. The Applicant pled guilty to the lesser included offense of voluntary manslaughter on February 14, 2012. The Honorable T.L. Hughston, Jr., sentenced the Applicant to confinement for twelve years. The Applicant filed a Motion to Reconsider Sentence which was granted. Judge Hughston amended the Applicant's sentence to confinement for ten years by Order dated February 11, 2013. The Applicant did not appeal his conviction or sentence.

ALLEGATIONS

The Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. 6th and 14th amendment violations.
 - b. Counsel failed to investigate the law and facts governing his case.
 - c. Counsel failed to pursue available remedies which precluded criminal proceeding, conviction, and confinement.
2. Involuntary guilty plea.
 - a. 14th amendment and due process violations.

At the hearing, the Applicant proceeded on the claims of ineffective assistance of counsel for counsel's failure to pursue and advise the Applicant of the possibility of pursuing a self-defense claim or seeking immunity using the provisions of the Protection of Persons and Property Act. This Court finds no evidence, testimony, or argument was presented at the evidentiary hearing in support of any other allegations raised by the Applicant, therefore, this Court deems all allegations not addressed by the Court in this Order abandoned by the Applicant.

rmog/2

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon his or her credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Summary of Testimony

The Applicant was present and testified he entered a guilty plea to voluntary manslaughter and was represented by Andrew Savage, Esquire. He testified counsel did not pursue the Castle Doctrine as a defense in his case. He testified he spoke with counsel about self-defense, but does not recall how counsel explained self-defense. He testified his case was a death by shooting case and he was not on his property at the time. He testified there was an altercation before the shooting and he was approached by people at his residence. The Applicant testified he left his home armed and thought the victim was armed when he approached.

The Applicant testified he did not discuss immunity or the "Stand Your Ground" law with counsel. He testified before he pled guilty he did not understand self-defense or the Protection of Persons or Property Act. He testified he pled guilty because counsel told him he was guilty since he was not on his property. He testified he also visited the scene with counsel since the shooting took place on the side of his residence in the street.

Andrew Savage, Esquire, was present and testified he has been practicing criminal law for 39 years. He testified the Applicant's family first came to him and he referred them to Allen Mastatuno, Esquire. He testified the family then came back to him and retained him to assist

Mastatuno for a reduced fee. Counsel testified he reviewed the State's evidence with the Applicant many times.

Counsel testified the Applicant was accused of shooting the victim after an altercation with his girlfriend. Counsel testified the Applicant had a non-violent prior record and substance abuse issues. He testified the Applicant bonded out and was involved in a substance abuse program. Counsel testified the Applicant had deficiencies which were caused by his substance abuse. Counsel testified he was cautious about the Applicant's understanding of the proceeding based on his limited memory of the event. He testified he had the Applicant evaluated and the Applicant was found competent.

Counsel testified he has handled many immunity hearings and cases involving the Protection of Persons and Property Act. Counsel testified he discussed possible defenses with the Applicant including the Castle Doctrine and the "Stand Your Ground" law. He testified neither would apply as a defense for the Applicant. He testified the defenses were inapplicable because the Applicant went back to his home to retrieve the gun and went beyond the perimeter of his property to shoot at the victim. He testified he walked the perimeter of the Applicant's home with the Applicant many times to insure the Applicant was indeed outside of the perimeter when the incident took place. Counsel testified it was clear the Applicant was beyond the perimeter of his home and in the public street. He testified there was also no evidence of imminent threat or use of a gun by the victim in the prior assault on the Applicant. Counsel testified voluntary manslaughter was a more appropriate charge.

Counsel testified the State provided two plea options to the Applicant. He testified the State offered a plea to voluntary manslaughter with a cap of a fifteen year sentence or a ten year negotiated sentence. Counsel testified he thought the circumstances provided good mitigation

and advised the Applicant to accept the fifteen year cap plea offer. He testified when the Applicant was sentenced to twelve years he filed a motion to reconsider and the Applicant's sentence was reduced to ten years.

Counsel testified prior to the Applicant's guilty plea, he advised the Applicant of the consequences of his plea and informed him of his constitutional rights. Counsel testified he also had the Applicant sign a providency form acknowledging he was advised of certain rights.

Ineffective Assistance of Counsel

The Applicant alleges that he received 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 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

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

Courts use a two-pronged test to evaluate 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." Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. 668). 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." Id. 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). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citations omitted).

This Court finds counsel is a trial practitioner who has extensive experience in the trial of serious offenses. Counsel conferred with the Applicant on numerous occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, the Applicant's constitutional rights, the Applicant's version of the facts, and possible defenses or lack thereof. The record reflects that Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. The Applicant was

advised by the Court of the constitutional rights he was waiving by pleading guilty and advised the Court that he had not been promised anything to plead guilty. (App. 3, 4).

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court further finds counsel adequately conferred with the Applicant, conducted a proper investigation, and provided thorough representation. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

This Court finds the Applicant has failed to carry his burden of proving counsel was ineffective for failing to discuss with the Applicant the possibility of pursuing a traditional self-defense claim. This Court finds in light of counsel's extensive discussions with the Applicant about the Protection of Persons and Property Act, it is unlikely counsel did not discuss with the Applicant a traditional self-defense claim. This Court finds particularly telling the Applicant's own testimony that counsel discussed with his self-defense, but he did not recall the specific content of their discussion. This Court finds the Applicant has failed to show that he would have a viable self-defense claim had he proceeded to trial and that counsel's performance affected his decision to plead guilty.

This Court finds the Applicant has failed to carry his burden of proving counsel was ineffective for failing to discuss with the Applicant the Castle Doctrine or the "Stand Your Ground" law and pursue immunity under the Protection of Persons and Property Act ("The

Act²). The common law Castle Doctrine was codified by the General Assembly in the Protection of Persons and Property Act §16-1-440(A). The Act provides:

(A) A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person:

- (1) against whom the deadly force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; and
- (2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.

The Protection of Persons and Property Act §16-1-1-440(C)² also provides:

(C) A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believed it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 19-1-60.

This Court finds counsel was not ineffective for failing to pursue immunity under the Protection of Persons and Property Act. This Court finds counsel has extensive experience handling immunity hearings under the Act and his conclusions about the applicability of the Act to the facts of the Applicant's case were proper. The record reflects the Applicant freed himself from an altercation with the victim and others, went into his home to retrieve a gun, fired shots in the air causing the individuals to flee the property, and then stepped into the public street and fired shots down a street hitting the victim. (Plea Transcript 5:17-6:20). This Court finds both the Castle Doctrine and "Stand Your Ground" law inapplicable since the Applicant stepped outside the perimeter of his residence and there was no evidence the Applicant was facing any imminent threat when he stepped in the street to fire down the street towards the victim.

This Court also finds credible counsel's testimony that he discussed the provisions of the

² This provision of the Protection of Persons and Property Act is commonly called the "Stand Your Ground" law.

Protection of Persons and Property Act with the Applicant. This Court also does not find credible the Applicant's testimony that counsel never discussed the Castle Doctrine with him prior to his guilty plea especially in light of the Applicant's testimony that he had talks with counsel about the significance of him not being on his property during the shooting. This Court finds the Applicant presented no testimony indicating how a discussion with counsel about the Protection of Persons and Property Act would have affected his decision to plead guilty. This Court finds this allegation is without merit.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions while representing the Applicant. The Applicant failed to show that counsel's performance was deficient. Therefore, this Court need not address prejudice. The Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Therefore, this Court deems the allegations abandoned by the Applicant.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant

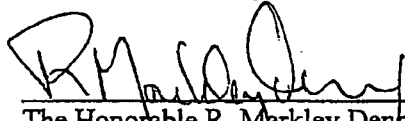
prejudiced by counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 10th day of July, 2004.



 The Honorable R. Markley Dennis, Jr.
 Presiding Judge
 9th Judicial Circuit

Moncks Corner, South Carolina.

RMDJ/10