

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Kershaw County

Robert E. Hood, Circuit Court Judge

RECEIVED

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S.C. Supreme Court

MARKELLE JAMAR REID,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000745

APPENDIX

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ORIGINAL

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
COUNTY OF KERSHAW) 2008-GS-28-00011

State of South Carolina)
)
)
 vs.) TRANSCRIPT OF RECORD
) (Guilty Plea)
)
 Markelle J. Reid,)
)
 Defendant.)

July 27, 2009
Camden, South Carolina

BEFORE:

THE HONORABLE G. THOMAS COOPER, JR., JUDGE

APPEARANCES:

BARNEY GIESE, SOLICITOR
JOHN MEADORS, DEPUTY SOLICITOR
JOANNA MCDUFFIE, ASSISTANT SOLICITOR
Attorneys for the State

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1	COURT'S EXHIBITS		
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1 Monday, July 27, 2009

2 MR. MEADORS: Markelle Reid. May it please the
3 Court?

4 THE COURT: Yes, sir.

5 MR. MEADORS: Before you is one Markelle Jamar Reid
6 with his attorney, Mr. Jack Swerling, here on Kershaw County
7 true billed indictment 2008-GS-28-00011. As Your Honor
8 knows, this was the first case the State planned on calling
9 this week. Mr. Reid stands before Your Honor I believe to
10 enter a plea of guilty to murder. At the appropriate time
11 there's some other things we'd like to put on the record.

12 THE COURT: All right. Fine.

13 THE CLERK: Mr. Reid, would you raise your right
14 hand, please.

15 Markelle J. Reid, having been
16 first duly sworn, pleads guilty as follows:

17 THE COURT: Mr. Swerling, you represent Markelle
18 Jamar Reid?

19 MR. SWERLING: Yes, sir.

20 THE COURT: Have you advised your client of the
21 charge contained in this indictment and his right to a trial
22 by a jury?

23 MR. SWERLING: Yes, sir.

24 THE COURT: How does your client indicate he wishes
25 to plead?

1 MR. SWERLING: Guilty.

2 THE COURT: Mr. Reid, you're charged in this
3 indictment with murder, sir, a charge which carries a penalty
4 of from 30 years in jail to life imprisonment. Do you
5 understand that?

6 DEFENDANT: Yes, sir.

7 THE COURT: Understanding the charges you face and
8 the punishment you could receive, how do you wish to plead?
9 Guilty or not guilty?

10 DEFENDANT: Guilty.

11 THE COURT: Do you understand by pleading guilty
12 you are giving up your right to remain silent?

13 DEFENDANT: Yes, sir.

14 THE COURT: Do you understand by pleading guilty
15 you are giving up your right to a trial by a jury?

16 DEFENDANT: Yes, sir.

17 THE COURT: If you requested or demanded a trial by
18 a jury the State would give you a trial. Do you understand
19 that?

20 DEFENDANT: Yes, sir.

21 THE COURT: At that trial you would have the right
22 to confront and cross examine all witnesses against you. You
23 would have a right to present any witnesses or evidence in
24 your own defense. You would have the right to testify in
25 your own defense if you wished to do so but no one could make

1 you testify at your own trial.

2 If you decided to go to trial and not testify, the judge
3 would tell the jury that they could not hold your failure to
4 testify against you. In fact, the jury could not even
5 consider your failure to testify in their deliberations on
6 your guilt or innocence.

7 You'd be presumed innocent throughout your trial. The
8 State would have to prove you guilty beyond a reasonable
9 doubt to a jury of 12 people and all 12 people would have to
10 unanimously agree that you were guilty in order for you to be
11 convicted. Even if you were convicted, you would still have
12 the right to appeal that conviction. Do you understand your
13 rights with regard to a trial by a jury?

14 DEFENDANT: Yes, sir.

15 THE COURT: Understanding your rights to a trial by
16 a jury, do you still want to plead guilty, or do you want me
17 to set your case for trial?

18 DEFENDANT: Plead guilty.

19 THE COURT: Has anyone promised you anything, held
20 out any hope of reward or threatened you in any manner to
21 make you plead guilty?

22 DEFENDANT: No, sir.

23 THE COURT: All right. Are you satisfied with the
24 manner in which your attorney has advised and represented you
25 in this case?

1 DEFENDANT: Yes, sir.

2 THE COURT: Have you had an adequate amount of time
3 to discuss this matter with your attorney?

4 DEFENDANT: Yes, sir.

5 THE COURT: Is there anything else you need to
6 discuss with him before making this plea?

7 DEFENDANT: No, sir.

8 THE COURT: Has your attorney told you the
9 witnesses and the evidence that the State has available to
10 prove your guilt in this case?

11 DEFENDANT: Yes, sir.

12 THE COURT: Has your attorney fully discussed all
13 the charges against you?

14 DEFENDANT: Yes, sir.

15 THE COURT: Has your attorney discussed any legal
16 defenses that might be available to you if you were to go to
17 trial?

18 DEFENDANT: Yes, sir.

19 THE COURT: Have you told your attorney the names
20 of any and all witnesses that he might subpoena to bring to
21 trial to assist in your defense?

22 DEFENDANT: Yes, sir.

23 THE COURT: Are you under the influence of any
24 alcoholic beverages, drugs or prescription medications at
25 this time?

1 DEFENDANT: No, sir.

2 THE COURT: Are you aware of any mental, emotional
3 or nervous condition that you have that would interfere with
4 your ability to understand what you're doing here today?

5 DEFENDANT: No, sir.

6 THE COURT: Do you clearly understand what you're
7 doing here today?

8 DEFENDANT: Yes, sir.

9 THE COURT: Are you pleading guilty of your own
10 free will and accord?

11 DEFENDANT: Yes, sir.

12 THE COURT: How old are you, sir?

13 JUROR: Nineteen.

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

15 DEFENDANT: Tenth grade.

16 THE COURT: All right. Solicitor.

17 MR. MEADORS: Your Honor, he gave several
18 statements, Your Honor.

19 THE COURT: Yes, sir.

20 MR. MEADORS: Judge, after --

21 THE COURT: I just want a factual basis for the
22 plea.

23 MR. MEADORS: Okay. Your Honor, Ms. McDuffie is
24 going to start off with the facts.

25 THE COURT: All right.

1 MS. MCDUFFIE: Your Honor, this incident occurred
2 on or about December the 7th of 2007 at 204 Wall Street which
3 is the McDonald's right off of 521 here in Camden which is in
4 Kershaw County, Your Honor.

5 Your Honor, before we get to the actual incident, it's
6 important for Your Honor to have some background knowledge
7 about what was going on that led up to this incident. This
8 whole chain of events that started actually started a couple
9 of months before this, Your Honor.

10 The defendant at one point in time admittedly was a
11 member of The Blood Gang here in Camden. In the beginning of
12 2007, he got out of The Blood Gang and became a member of the
13 74 GD Sect of The Folk Gang. He was brought into The Folk
14 Gang by his cousin who is Teran Richardson who goes by the
15 nickname of T. Rich, Your Honor.

16 The defendant was a member of The Folk Gang for about
17 two months. When he, Teran Richardson, had a baby by a girl,
18 Your Honor, and this defendant then got that same girl
19 pregnant. That started a fight between the defendant and his
20 cousin, Teran Richardson. When that fight started, the
21 defendant then was no longer in good graces with The Folk
22 Gang.

23 He then was no longer in a gang for some period of time
24 during 2007. And during this time he was having problems
25 with both members of The Folk Gang and The Blood Gang.

1 Because of his problems he was having with both of these
2 groups of people, he decided he wanted to get back in The
3 Blood Gang to have some protection against The Folks and to
4 no longer be having these issues with the members of The
5 Bloods.

6 In November of 2007, on Thanksgiving Day, Your Honor,
7 the defendant went to his grandparents' house and stole four
8 guns, three shotguns and one rifle. With him when he stole
9 the guns was Akeem Dixon and his brother, Quentin. The
10 defendant took those guns and brought them back to Camden,
11 Your Honor.

12 THE COURT: Where were they?

13 MS. MCDUFFIE: They were at his grandparents'
14 house. Beg the Court's indulgence for the address. Your
15 Honor, I believe they were --

16 THE COURT: In Kershaw County?

17 MR. MEADORS: Oh, clearly.

18 MS. MCDUFFIE: Yes, sir, Your Honor. He brought
19 them back to the City of Camden. A few days after that the
20 defendant along with Akeem Dixon and Dexter Caldwell went to
21 the Wal-Mart in Camden, Your Honor, and because they were not
22 old enough to buy shotgun shells stole the shotgun shells for
23 those shotguns.

24 Your Honor, a couple of days before this incident
25 occurred, in December, somewhere probably around December 2nd

1 or 3rd, the defendant texted an individual by the name of
2 Byron Wood. Byron Wood is supposedly a general in The Blood
3 Gang here in Camden, Your Honor. The defendant texted him
4 and told him that he would do whatever it took to get back in
5 with The Bloods. He texted Byron and told Byron he was
6 willing to put a hole in someone and to "murk", which is the
7 slang term for murder, Your Honor, and he said he was willing
8 to murk -- beg the Court's indulgence on using the "N" word.

9 Byron replied that in order to get back in with The
10 Bloods he would have to ride on someone. Your Honor, that's
11 slang for either doing some sort of drive-by shooting into
12 someone's home or getting into a fight with someone or
13 shooting someone directly, Your Honor. The defendant said he
14 was willing to do whatever it took to get back in to be a
15 member with The Bloods. By this time he had stolen the
16 shotguns and he also had ammunition that was used in this
17 murder.

18 Your Honor, on the day of December the 7th of 2007,
19 there was a party at the American Legion by Cassatt, Your
20 Honor. The defendant went to that party with Dexter
21 Caldwell, Ronnie Brown and Rolando Brown. Before going to
22 that party, guns were secured, Your Honor, or guns were
23 transported to that party with the defendant in either Dexter
24 Caldwell's car which the defendant was riding in or in Byron
25 Wood's car. In the car with Byron Wood was Terrance

1 Chestnut, Akeem Dixon and the Defigleo Whitaker. Your Honor,
2 all three of these individuals are charged in this incident.

3 After they got to the party at the American Legion, the
4 defendant went in. He went in wearing a red shirt and red
5 pants which are colors of The Blood Gang. Other members of
6 The Bloods that were there that night did not know that the
7 defendant was not trying to get back in the gang, knew that
8 he was not in The Blood Gang and thought it was disrespectful
9 that he was wearing blood colors to that party.

10 The defendant got into a fight with an individual by the
11 name of Jermel Wise who goes by Bud, and as a result of that
12 fight, the defendant was kicked out of the party by Ms.
13 Gloria Johnson, one of the adult chaperones and the mother of
14 the girl whose birthday party that was at the American
15 Legion.

16 The defendant left the American Legion, took Dexter
17 Caldwell's car and then came back when Dexter called him and
18 told him that the party was over because it was shut down by
19 Ms. Johnson. After they left the party at the American
20 Legion, they met up with Byron Wood at a car wash, Your
21 Honor, on the corner of Fair and York Streets here in Camden.
22 There the defendant who was riding with Dexter Caldwell met
23 up with a car driven by Byron Wood.

24 Guns were exchanged between the two cars, Your Honor.
25 Sometime in the week preceding, the defendant had given the

1 guns that he stole to various people. He still had some and
2 he had given some away. Your Honor, at the car wash all
3 three guns were put into Dexter Caldwell's car in which the
4 defendant was riding in.

5 They then left the car wash. Byron Wood told the
6 defendant to follow him. They knew that they were going to
7 the McDonald's, and Byron told him that they would take care
8 of things there at the McDonald's, that they would settle
9 things, Your Honor.

10 When they got to the McDonald's, Your Honor, when they
11 got to the McDonald's, Dexter Caldwell parked his car
12 somewhere over here in which the defendant was riding along
13 with Ronnie and Rolando Brown who were also in the car.
14 Byron Wood parked his car somewhere over here, Your Honor.
15 In his car again were Akeem Dixon and Terrance Chestnut and
16 Defigieo Whitaker.

17 The defendant entered the McDonald's through the Tiger
18 Shop entrance, Your Honor. Once inside the McDonald's, he
19 stood right in the threshold between the McDonald's and the
20 Tiger Shop. Because of where the defendant was standing
21 there, he was never able to be picked up on McDonald's
22 surveillance video.

23 MR. MEADORS: Your Honor, we'll mark this as
24 Court's 1 and Court's 2 after the proceeding if we can.

25 THE COURT: Any objection?

1 MR. SWERLING: No, sir.

2 MR. MEADORS: And now refer to Court's 2.

3 THE COURT: Without objection.

4 (WHEREUPON, Court's Exhibit No. 1 is marked for
5 identification.)

6 (WHEREUPON, Court's Exhibit No. 2 is marked for
7 identification.)

8 MS. MCDUFFIE: Your Honor, Court's Exhibit 2, the
9 defendant stood somewhere in this area which is out of the
10 view of the cameras of the McDonald's restaurant. Once
11 inside the McDonald's, the defendant then got into an
12 altercation with an individual by the name of Derrick Dubose.
13 That altercation was over an incident that occurred in the
14 week prior where the defendant was in a car with Mr. Dubose
15 and other people. The car was stopped by law enforcement
16 officers and a quantity of marijuana was found to be in the
17 car. Because the defendant wouldn't take responsibility for
18 the marijuana, all of the individuals in the car were
19 charged. As a result of that, they all got kicked off the
20 football team and had hostility against the defendant because
21 of that.

22 He then gets into an altercation with Derrick Dubose
23 there at the threshold to the door, the threshold of the
24 McDonald's, Your Honor. When this altercation is occurring,
25 Derrick Dubose bumps into someone who goes by the name of

1 Little Earl's mother. Little Earl, his mother was there.
2 And Derrick Dubose bumps into that, which starts another
3 altercation in the rear of the McDonald's between Derrick
4 Dubose and Little Earl. At this time, Your Honor, we don't
5 know the whereabouts of the defendant. We don't know what he
6 was doing during this altercation.

7 Your Honor, another completely separate fight is then
8 started between the victim and Akeem Dixon. Akeem Dixon is
9 also charged in this case, Your Honor. He was riding in the
10 car with Byron Wood.

11 The week prior to this Akeem had cut the victim in line,
12 in the lunch line at school, and they had exchanged words
13 over this. This is the first time Akeem had seen the victim
14 since the incident at school the week prior. Akeem then goes
15 up to the victim and says to him, well, we're not in school
16 now, inviting a fight to occur.

17 THE COURT: Where was the victim?

18 MS. MCDUFFIE: Your Honor, the victim, you can see
19 him on the video which we'll play for Your Honor in a second.
20 He was sitting, Your Honor, somewhere in this area by himself
21 leaning back against the booth.

22 THE COURT: So he was a customer?

23 MS. MCDUFFIE: He was a customer, Your Honor.

24 THE COURT: He wasn't with another gang member?

25 MS. MCDUFFIE: Your Honor, there are some

1 allegations that the victim may or may not have been
2 affiliated with The Crips, Your Honor, but we do not believe
3 that that was the motive or even relevant to these
4 proceedings.

5 THE COURT: There was no gang there with the
6 victim?

7 MS. MCDUFFIE: No, sir, Your Honor.

8 MR. MEADORS: Your Honor, for the record, his
9 family disputes that he was a member of any gang, the victim.
10 I just want to put that on the record. They are present.

11 THE COURT: All right. That's fine. I'm just
12 trying to --

13 MS. MCDUFFIE: Your Honor, you'll see the victim
14 sitting at the table over here, leaning back against a booth,
15 not talking to anyone, not bothering anyone, just reclining
16 in the booth. The fighting then breaks out between Derrick
17 Dubose and Little Earl and the victim gets up and goes and
18 sits by himself over here away from the action. You then see
19 Akeem Dixon approach him. Behind Akeem Dixon are Jermel
20 Wise, Terrance Chestnut and Darius Smith. An altercation
21 then breaks out with them.

22 You see the victim running from them around the
23 McDonald's this way, Your Honor. You catch him here on the
24 video and you see him putting his hands up as if to say stop.
25 The three of them proceed after the victim. And, Your Honor,

1 there are between 50 and 100 other people in the McDonald's.
2 A crowd forms around this fight that was going on, and the
3 victim is chased out of the McDonald's through the front door
4 to the McDonald's. The entire crowd goes outside.

5 While this is going on, the defendant has now exited the
6 McDonald's, gone through the Tiger Shop and gone to Dexter
7 Caldwell's car and retrieved a gun. Your Honor, the victim
8 is chased out of the front door by Akeem Dixon, Darius Smith,
9 and you can also see Jermel Wise on the video, Your Honor.

10 MR. MEADORS: All three of those are also charged
11 in this incident, Your Honor.

12 MS. MCDUFFIE: As he's chased outside, we have
13 numerous witnesses that were inside the McDonald's not
14 affiliated with either of these parties, Your Honor, who say
15 they see Darius Smith with a knife which you can also pick up
16 on the video, and they see Akeem Dixon with a gun. They see
17 the three of them advancing at the victim and the victim is
18 retreating, Your Honor. Many of them put the victim as
19 having his hands up saying: No, don't. And all of them put
20 the victim as running from these people.

21 The victim runs this way through the gas pumps, and they
22 are coming towards him, Your Honor, as he is running away
23 from them. The defendant has now retrieved the gun and is
24 standing somewhere over here, Your Honor, in this area. He
25 took the gun out and fired one shot in the air. After he

1 fires one shot in the air, Your Honor, we have a witness who
2 was an employee of the Tiger Shop by the name of Johnny
3 Middleton. Mr. Middleton says that the victim was standing
4 there. He did not see him to be armed in any way. He did
5 not see him gesture as if he was armed in any way.

6 Mr. Middleton sees the victim freeze, sees the victim
7 look at the defendant and then sees the defendant aim and
8 fire the gun at the victim. Your Honor, the victim was hit.
9 He then staggers and is pulled back behind a gas pump. A
10 friend then meets him back there and tries to pull him into
11 the car to get him into the car and to the hospital.

12 Your Honor, his friends were never able to get him in
13 the car. When EMS arrived on the scene, the victim was lying
14 beside the car, and EMS tried to treat him on the scene, Your
15 Honor, however, were not successful in that.

16 MR. MEADORS: Your Honor, if I could interject
17 here. The neutral witness, if you will, Johnny Middleton who
18 actually worked at the Tiger Shop had actually gone into the
19 McDonald's, seen the altercation there, came outside and
20 actually observed the victim going by with his hands up and
21 said he did not see a weapon. The victim did not have a
22 weapon that we was presenting to any of the parties. There
23 had been some of the other co-defendants charged who said
24 that at this point of the incident the victim had brandished
25 a firearm. This witness did not say he saw it. Several

1 other witnesses in this area said they did not see the victim
2 with a gun at that time.

3 MS. MCDUFFIE: Your Honor, the only three witnesses
4 that we interviewed that said that the victim had a gun were
5 three of the defendants, co-defendants charged with lynching.
6 Of the 15 lay witnesses that we interviewed that were at the
7 scene of the McDonald's, none of them ever saw the victim
8 with a gun. None of them ever saw the victim reaching for a
9 gun. The only people that allege that are the three
10 co-defendants.

11 MR. MEADORS: Your Honor, at this time with the
12 Court's permission we were going to show a video of what Ms.
13 McDuffie just described and then take up from there. It will
14 just take a few seconds.

15 (Pause)

16 THE COURT: If you're going to narrate, Ms.
17 McDuffie, if you'll go to the other side so that the court
18 reporter can hear what you say.

19 MS. MCDUFFIE: Your Honor, seated right here in the
20 white shirt is the individual by the name of Derrick Dubose
21 who the defendant gets into the initial altercation with
22 which then sparks the other altercation in the rear of the
23 McDonald's.

24 Behind Mr. Dubose, behind this wall right here, Your
25 Honor, is the door between the Tiger Shop and the McDonald's

1 where the defendant was when he entered the McDonald's. Your
2 Honor, this is the victim, Michael Smith. He is wearing a
3 white shirt and a black vest. You'll see him say hello to
4 several of the other people in the McDonald's and then sit in
5 this booth right here, Your Honor.

6 Your Honor, this is one of the co-defendants, Darius
7 Smith. Your Honor, this is the victim. Judge, another of
8 the co-defendants, Landy Brown, Terrance Chestnut is in the
9 yellow hoodie. Your Honor, this is still the victim who's
10 now seated in the booth, reclining in the booth by himself.

11 Your Honor, that's Clarissa Wright, another one of the
12 witnesses who witnessed the entire series of events. In this
13 area are other witnesses that also witnessed the statement.
14 Your Honor, this is where the fight begins between the
15 defendant and Derrick Dubose. Derrick Dubose is taken in the
16 back corner by one of his friends to calm down. During this
17 incident Derrick Dubose bumps into the Little Earl's mother.
18 Little Earl is wearing the blue and yellow jacket. The fight
19 then ensues between them, Your Honor, in the rear of the
20 restaurant. The victim is still seated in the booth and is
21 now moving to the table over here to sit with his back
22 towards the wall, Your Honor.

23 MR. MEADORS: That's Earl Warren.

24 COURT REPORTER: I'm sorry. I didn't hear you.

25 MR. MEADORS: That's Earl Warren, Little Earl.

1 MS. MCDUFFIE: Your Honor, the victim is now
2 sitting at this table right here. Your Honor, that fight
3 disburses. This is Bud Wise, Akeem Dixon and Terrance
4 Chestnut who are now surrounding the victim who is seated at
5 this booth right here, Your Honor. The victim gets up. You
6 see them exchanging words. The three of them are here, Your
7 Honor. The victim then walks away and the three of them then
8 follow him.

9 Your Honor, that's Darius Smith who is coming this way,
10 and you can see a knife in his hand. I'm sorry. We didn't
11 get -- if we could switch to the other view to show you what
12 happens on the other side, Your Honor.

13 (Pause)

14 MS. MCDUFFIE: Your Honor, from this view you'll be
15 able to see the victim retreating backwards. You'll see
16 Akeem Dixon, Terrance Chestnut and Jermel Wise coming towards
17 him and you'll see the victim put his hands up as if to say
18 stop as they are coming towards him. He is walking backwards
19 retreating from them, Your Honor.

20 Your Honor, there is Terrance Chestnut. It's coming up
21 in just a second, Your Honor. Your Honor, here comes the
22 victim retreating from them. That's Akeem Dixon and Bud Wise
23 going after him, Your Honor. And then the rest of the crowd
24 begins to form around them.

25 If we could just show Your Honor the last view of the

1 McDonald's, Your Honor. Your Honor, it will be very hard to
2 see and it will be very quick, but the crowd will form and
3 the defendant will go out of the front door and you'll see
4 the entire crowd of other patrons of the McDonald's follow
5 him out.

6 Your Honor, here is Akeem Dixon and you just saw Bud
7 Wise. This is when they're talking with the victim before
8 the altercation begins. This is as they're coming around,
9 Your Honor, the view you just saw, and in a minute you'll see
10 them come out on the other side. I don't know if we'll be
11 able to get it slow enough, Your Honor, to see, but Bud Wise,
12 Jermel Wise actually picks up a trashcan and throws it during
13 the altercation, Your Honor. This is as the victim is being
14 ushered by the crowd outside. Your Honor, there's the
15 trashcan going up in the air. Your Honor, that's the extent
16 of the surveillance video from the inside of the McDonald's.

17 THE COURT: All right.

18 MR. MEADORS: Your Honor, just give us one second
19 just to --

20 (Pause)

21 MR. MEADORS: Your Honor, one of the shift managers
22 at McDonald's was an individual named Dewayne Loyd. The
23 first call went out to law enforcement about just some fights
24 and law enforcement was on their way. And then another call
25 went out on 911 shots fired. At that time Dewayne Loyd, the

1 manager, was trying to get everybody out to lock them out.
2 When everybody was first going out, as Your Honor saw at the
3 McDonald's, he was actually going to lock the door. After
4 the shots were fired, a lot of them came back in.

5 Well, to his credit, Manager Loyd locked them in, locked
6 them in the McDonald's and went around and locked the Tiger
7 Shop. Obviously some folks got out, but he basically told
8 them, you all are staying here until law enforcement gets
9 here. So thanks to his help, initially a lot of these
10 players were detained at the Tiger Shop.

11 MS. MCDUFFIE: Your Honor, after this incident the
12 defendant then fled on foot. He ran to the nearby Black
13 River Shell. The gun was given to Dexter Caldwell and Ronnie
14 Brown which was placed back in Dexter Caldwell's car. Mr.
15 Caldwell was detained at the McDonald's, Your Honor.
16 However, after they got everyone's IDs and took pictures,
17 then, Your Honor, they were released.

18 Mr. Caldwell with an individual by the name of Tierra
19 Simon and Rolando Brown then went off of Chestnut Ferry Road,
20 Your Honor, and dumped the guns into a creek. The guns were
21 found by law enforcement the next day when Mr. Caldwell told
22 law enforcement of their whereabouts.

23 Your Honor, the guns were sent to SLED. SLED was able
24 to positively identify or confirm that the shell casing found
25 at the scene by Sergeant Ed Corey, it was a positive match to

1 one of the .12 gauge shotguns that was dumped into the creek
2 that night, Your Honor. And they were able to do this by
3 toolmarks and firing pin impressions.

4 Your Honor, Ms. Simon was also charged in this incident
5 for obstruction of justice. She along with Mr. Caldwell gave
6 a statement to police, and because of that the police were
7 able to locate the guns the next day.

8 MR. MEADORS: Judge, if you're going down
9 Battleship Road before you get to the park, Chestnut Ferry is
10 on the left, as everybody in this courtroom knows. That
11 first little bridge is where the shotguns were dumped over
12 and later recovered by law enforcement.

13 Judge, as you've seen, there were several different
14 instances and fights, if you will, going at the same time.
15 But the basic tale or story is true that the defendant,
16 Markelle Reid, had been in a gang, The Bloods, went in The
17 Folks and now was beaten out of that, and now he was
18 basically getting beaten down by both of them, or so he
19 thought, and he was attempting to get back in The Bloods
20 again.

21 One of the co-defendants said they saw a text message in
22 his phone, as Ms. McDuffie said, saying: I'll do anything to
23 get back in. I'll murk somebody. I'll put a hole in
24 somebody.

25 That individual that he was texting later did admit, a

1 Byron Wood, that we had texted him and told him he'd do
2 whatever it took to get back in The Bloods and that Byron
3 Wood said he had to check with somebody. Judge, it's that
4 conversation and those text messages that led to the car wash
5 which led to McDonald's.

6 Judge, the victim in this case was Michael Smith, 17
7 years of age. I don't know if he was the intended victim. I
8 know that that night on December 7th, 2007, Markelle Reid
9 wanted to do something to get back in this group or this gang
10 to prove himself to them, and I think Michael Smith just
11 happened to be the unfortunate first bird that flew across
12 and he took advantage of it.

13 The defendant has said that one co-defendant said:
14 Shoot, shoot before he shoots you. That co-defendant has
15 denied that. But clearly there were several people who saw
16 the defendant take this .12 gauge shotgun, Judge -- it's
17 equipped with a lock -- this .12 gauge shotgun, point it in
18 the air, pump it and then point it like this and fire at
19 Michael Smith where numerous witnesses said he was not armed,
20 did not have a firearm on him.

21 Judge, one of the individuals that was with Michael
22 Smith did say that after Michael Smith was shot he tried to
23 take him over to the car, as Ms. McDuffie pointed out. Once
24 he got to his car, he was reaching in trying to get a phone
25 to call help. He did reach into Michael Smith's pocket and a

1 .32 caliber pistol was in Michael Smith's pocket. This
2 individual said he took that pistol out and put it into the
3 bookbag of Michael Smith which was later recovered by police.
4 There was one bullet in there. It was hard to get the
5 cartridge open, if you will. It was tested by SLED. It was
6 fireable. But it was in his pocket. That information
7 obviously was given to Mr. Swerling. But again, there was no
8 evidence from any witness besides the three that were charged
9 that the victim ever had his gun out, ever pulled it out
10 during this altercation.

11 Judge, the cause of death was basically bleeding to
12 death from lacerations of the lungs, heart and liver due to a
13 shotgun wound of the chest. There were 47 holes in Michael,
14 Judge. And if you look, it's 19 by 23 vertical and
15 horizontal. And even the -- we met with the -- and I want to
16 show this to the -- but I'll show this as Court's 3.

17 (WHEREUPON, Court's Exhibit No. 3 was marked for
18 identification.)

19 MR. MEADORS: We went and met with Dr. Ross in
20 Newberry a week or so ago, and she was able to tell us, and
21 obviously anticipating potential self-defense or anything,
22 that if you look at the holes on Michael, you can just see
23 where they're inconsistent with him even holding a weapon or
24 doing anything, almost like he was just standing there, which
25 some of the witnesses say that he was.

1 Judge, there were approximately 11 other individuals
2 charged in this incident from varying degrees of obstruction,
3 mis-prison to lynching, accessory after the fact. Those
4 cases are still pending. We're looking forward to resolving
5 those hopefully in front of Your Honor as soon as possible.

6 Judge, I met with Chief Floyd who is in the courtroom
7 behind the family, Major Trapp, Herbie Frasier. And, Judge,
8 after talking with them and talking with his family who is
9 here today, Ms. Jody Hancock who is the mother of Michael
10 sitting right here, Your Honor, and again, also the
11 stepfather, Marcellas, is here, as well as one of their
12 friends, Your Honor, we basically met with the mother. We
13 went over all this. Mr. Swerling had just started talking to
14 us this weekend.

15 In exchange for his plea to murder as charged, we
16 have -- kind of going back to my grand jury days I guess,
17 Your Honor -- asked that his client be fully debriefed and
18 that in exchange for his cooperation against any and all of
19 these other defendants that we would recommend to Your Honor
20 a 30-year day-for-day sentence.

21 Your Honor, for the record, that does include complete
22 cooperation against any of these other defendants if they
23 decide not to plead guilty. If we go to trial as a part of
24 this agreement, he has agreed to testify on behalf of the
25 State. If he fails to do so, then this agreement would be

1 null and void is the position we would take. And I think
2 there is no dispute about that.

3 The family is fully on board on that. We checked with
4 Solicitor Giese. Solicitor Giese approves it along with
5 Chief Floyd. And, Your Honor, under these circumstances, to
6 bring this whole organization, if you will, down and out of
7 Kershaw County, we felt that was the right thing to do.

8 Judge, after the defendant was arrested, he did give a
9 series of statements to Investigator Burris, Lieutenant
10 Frasier, where he initially denied being at McDonald's,
11 denied being at McDonald's, denied being at McDonald's, then
12 denied the shooting. And then finally, and I want the record
13 to reflect, he was read his rights, waived those rights.
14 That's on the video we prepared for the Jackson v. Denno
15 today. He did admit to shooting Michael, didn't really give
16 a good reason but did say it was about him getting out of a
17 gang and wanting to get back in a gang.

18 Judge, the further part of that agreement, we'd like
19 Your Honor to accept this plea. Obviously the Tiger Shop and
20 McDonald's are at the intersection of I-20 and 521 here in
21 Kershaw County, for the record. We would ask Your Honor to
22 accept the plea and delay sentencing, that we may fulfill the
23 agreement between the State and the defendant, Markelle Reid,
24 Your Honor. And I think the victims understand that as far
25 as their victim impact, they know that will come at a later

1 date unless Your Honor so wants it now, but they're prepared
2 to hold that off for sentencing.

3 I just want to thank the Camden Police Department for
4 their work, and I also want to thank Solicitor Giese, as
5 always, for allowing me to work with him. And Billy Tabor
6 was brought in by Solicitor Giese to help with the Camden
7 Police Department, and they've all worked together. I want
8 to thank him. And mostly Ms. Joanna McDuffie has been the
9 main person behind this; I certainly want to thank her on the
10 record.

11 Judge, hopefully we've given a factual basis which is
12 sufficient for Your Honor, and that's all we have. Thank
13 you.

14 THE COURT: Well, Mr. Reid, you've heard what the
15 solicitor has told me about the factual basis for this plea.
16 And although you may or may not agree with everything he
17 said, I do need to know if on or about December the 7th of
18 2007 you did shoot Michael Joseph Smith.

19 DEFENDANT: Yes, sir.

20 THE COURT: You did. I find the decision of the
21 defendant, Markelle Jamar Reid, to plead guilty to be freely,
22 voluntarily and intelligently made. He has had the
23 representation of a competent attorney in the person of Mr.
24 Swerling with whom he says he is satisfied. I find a factual
25 basis for the plea; and, therefore, I will accept his plea.

1 Mr. Reid, if you disagree with the sentence I give you
2 or the procedure we have just completed, you will have ten
3 days from the date that sentence is pronounced to file an
4 appeal of either these proceedings or the sentence that I
5 give you. Do you understand that?

6 DEFENDANT: Yes, sir.

7 THE COURT: Has your lawyer explained that to you?

8 DEFENDANT: Yes, sir.

9 THE COURT: Mr. Swerling.

10 MR. SWERLING: Yes, sir.

11 THE COURT: Anything to add at this time?

12 MR. SWERLING: No, sir. I'm not going to add
13 anything to the factual presentation. And obviously, as you
14 said, I mean, there are some disputes, but it's not relevant
15 at this time. None of them are relevant at this time.

16 THE COURT: I'm assuming then that you are asking
17 me to retain jurisdiction of this case?

18 MR. SWERLING: We agree with that, Your Honor,
19 based upon the State's negotiated plea.

20 MR. MEADORS: Your Honor, I think the only way this
21 will, or the most efficient way for this to be handled is if
22 Your Honor took jurisdiction of the whole case, including the
23 other co-defendants. I hope you would entertain that. And
24 that way, once we get through all of the other co-defendants,
25 whenever that may be, then, Your Honor, we'd like to save Mr.

1 Reid for last for Your Honor to sentence.

2 THE COURT: And whatever mitigation you will
3 present at that time; is that correct?

4 MR. SWERLING: That would be fine.

5 THE COURT: All right. Mr. Reid, I am going to
6 accept your plea. I am not going to sentence you at this
7 time based on the agreement between your attorney and the
8 State Solicitor's Office. Do you understand that?

9 DEFENDANT: Yes, sir.

10 THE COURT: You will be held in custody until such
11 time as this court reconvenes to address the matter of your
12 sentencing. Do you understand that?

13 DEFENDANT: Yes, sir.

14 THE COURT: You have no bond at this time. Does
15 he?

16 MR. SWERLING: No, sir.

17 THE COURT: All right. That will conclude this
18 matter today. Thank you very much.

19 MS. MCDUFFIE: Thank you, Your Honor.

20 (Whereupon, the proceedings are concluded)
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25

1 CERTIFICATE OF REPORTER:
2
34 STATE OF SOUTH CAROLINA)
5 COUNTY OF RICHLAND)
6
78 I, Jenny H. Williams, previously and at the time of
9 these proceedings having been an Official Court Reporter for
10 the Fifth Judicial Circuit of the State of South Carolina, do
11 hereby certify that the foregoing is a true, accurate and
12 complete Transcript of Record of the proceedings had and
13 evidence introduced in the guilty plea of the captioned case,
14 relative to appeal, in the Court of General Sessions for
15 Kershaw County, South Carolina, on the 27th day of July,
16 2009.17 I do further certify that I am neither of kin, counsel
18 nor interest to any party hereto.
19
20

21 May 16, 2012

22 Jennifer H. Williams23 Jennifer H. Williams, RPR
24 U.S. District Court Reporter
25

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

COURT OF GENERAL SESSIONS
08-GS-28-00011

State of South Carolina :
 :
 -vs- :
 :
Markelle Jamar Reid :

Transcript of Record

Thursday, May 26, 2011
Camden, South Carolina

B E F O R E:

Honorable G. Thomas Cooper, Judge.

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

Dan Johnson, Assistant Solicitor
Brett Perry, Assistant Solicitor
Attorneys for the State

Jack Swerling, Esquire
Attorney for the Defendant

Dianne A. Rutledge
Circuit Court Reporter

1 I N D E X

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3 Certificate of Court Reporter 7

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12 E X H I B I T S

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14 (No exhibits were introduced during the hearing.)

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1 THE COURT: Solicitor.

2 MR. JOHNSON: Your Honor, standing before you is Mr.
3 Markelle Reid. As you may remember, he is charged with
4 murder of the then 17 year old Michael Smith the night of
5 December 7, 2007.

6 On July 27th of 2009 Your Honor accepted a guilty plea
7 from Mr. Reid. However, Your Honor withheld sentencing
8 pending the defendant's agreement to assist us in the
9 prosecution of a co-defendant, a Mr. Byron Wood.

10 Mr. Wood pled guilty on February 24th of 2011, and we
11 are here to complete that negotiation, and ask Your Honor
12 to sentence Mr. Reid to the negotiated 30 years.

13 Mr. Reid did assist us in terms of the prosecution of
14 Mr. Wood. Your Honor, I would be happy to lay the factual
15 basis if Your Honor needs it.

16 THE COURT: Well, I'm familiar with the facts of this
17 case, fairly -- I'd say very familiar. And I have the file
18 from July 27, 2009 when the plea was accepted.

19 MR. SWERLING: Yes, sir.

20 THE COURT: Mr. Swerling, do you have anything to say
21 for your client?

22 MR. SWERLING: Judge, of course, he's here with his
23 parents and he's now 21. He's been in custody since his
24 arrest.

25 THE COURT: Do you remember that date?

1 MR. SWERLING: The date was ---
2 THE COURT: Do you have a date of arrest?
3 MR. PERRY: December 2007, I believe, Your Honor.
4 MR. SWERLING: December 7.
5 THE COURT: 12/7, what year?
6 MR. SWERLING: 2008 -- 7. I'm sorry. I'm back a
7 year.
8 THE COURT: 12/7/07. Does everybody agree with that?
9 MR. JOHNSON: Yes, Your Honor.
10 MR. SWERLING: Judge, anyway, when we were here doing
11 the plea, there was a full factual presentation made,
12 actually by both sides, and it was a negotiated plea. He
13 did agree to cooperate. It's my understanding one of the
14 reasons the sentence was withheld or has been withheld is
15 to ensure that the other co-defendants that the state
16 wanted to use Mr. Reid for in case they went to trial have
17 now been disposed of. I understand there's a couple of
18 other cases, but there's no longer any reason to defer
19 sentencing.
20 We would ask The Court to enter the sentence in to the
21 negotiated sentence in this case.
22 The family here deeply regrets and so does he deeply
23 regrets what happened. There's been a lot of lessons
24 learned in this terrible tragedy. But I submit to you that
25 the sentence is a fair sentence in light of the fact that

1 he did cooperate with the state in this case.

2 THE COURT: A lot of people hurt in this case.

3 Mr. Reid, do you have anything you want to add to
4 that?

5 MR. REID: No, sir.

6 MR. JOHNSON: Your Honor, if I may just briefly.

7 THE COURT: Sure.

8 MR. JOHNSON: In speaking with the victim's family,
9 they may want to speak just briefly if Your Honor would
10 indulge us.

11 THE COURT: Absolutely.

12 MR. JOHNSON: Obviously, this case has had a
13 tremendous impact, not just on Camden, but the Kershaw
14 community as a whole, and particularly these victims.
15 Would you all like to say anything?

16 MOTHER: Yes, I would like to say something.

17 THE COURT: Ma'am, if you will just get a little
18 closer to that microphone.

19 MOTHER: I'm his mother, Michael's mother. On that
20 day, I can't begin to tell you what Mr. Reid took from us.
21 Michael was a good child. For him to have done what he
22 did, I think that he really getting off pretty easy. He's
23 never shown any remorse as far as I've seen. He's never
24 apologized. He doesn't care. And I think that's sad. I
25 really do, because he had no reason to do what he did. And

1 I just want him to know that he robbed not just me, he
2 robbed his brothers, his sisters. Michael was going to be
3 somebody; that's all I have to say.

4 MAN: There's not nothing I want to say right now.
5 What I want to do, it's not the time and place so.

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

7 (Pause.)

8 THE COURT: All right. Mr. Reid, the sentence of The
9 Court you be committed to the State Department of
10 Corrections for a period of 30 years. You are to serve
11 that day for day. You're getting credit for time served
12 since December 7, 2007. Good luck to you, sir.

13 MR. SWERLING: Thank you, Your Honor.

14 --- End of transcript of record ---

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1 I, the undersigned Dianne A. Rutledge, official court
2 reporter for the Fifth Judicial Circuit of The State of
3 South Carolina, do hereby certify that the foregoing is a
4 true, accurate, and complete transcript of the record of
5 the proceedings had and evidence introduced in the sentence
6 hearing of the captioned case, relative to appeal, in the
7 Circuit Court for Kershaw County, South Carolina on the
8 26th day of May 2011.

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

11

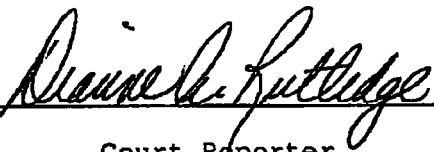
12

May 17, 2012

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Court Reporter

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State vs. Markelle Jamar Reid

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

County of GREENVILLE)MARKELE J. MARREID 346234)

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

v.)

State of South Carolina)

APPLICATION FOR)

POST-CONVICTION RELIEF)

2012 - CP - 28 - 318)

NOTICE RECORDED
CLERK OF COURT
KERSHAW COUNTY, S.C.

2012 MAR 26 AM 11:33

FILED FOR RECORD

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention PERRY CORRECTIONAL INSTITUTION, 430 OAK-LAWN RD., PELZER SC 29569
2. Name and location of Court which imposed sentence KERSHAW COUNTY COURT HOUSE, CAMDEN KERSHAW COUNTY
3. Name(s) of co-defendant(s) (if any) SEE PAPER ATTACHED.
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2008-CR-28-00011
 - (b) MURDER

ATTEST True, Correct & Certified
Copy of Original on File in this
Court

[Signature]
Clerk of Court Kershaw County

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) MAY 26, 2011
- (b) 30 years MANDATORY
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ☒
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Case did not appeal
- (b) _____

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2012 MAR 26 AM 11:33
JULIE MCNEIL
CLERK OF COURT
KERSHAW COUNTY, S.C.

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

- (a) ineffective assistance of counsel
- (b) Denial of Due process
- (c) _____

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

- (a) SEE PAPER ATTACHED
- (b) _____
- (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? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

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

- (a) the specific nature thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

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2012 MAR 26 PM 11:33
JOYCE M. HARRIS
CLERK OF COURT
Kershaw County, S.C.

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

NO

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

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

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2012 MAR 26 AM 11:33
JOYCE McDONALD
CLERK OF COURT
Kershaw County, S.C.

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) only form of Redress

(b) _____

(c) _____

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

(a) your arraignment and plea? YES

(b) your trial, if any? _____

(c) your sentencing? YES

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____

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

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. JACK SWIERLING

ii. 1720 MAIN STREET SUITE 301

iii. COLUMBIA SC 29201

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

i. BOND HEARING

ii. SENTENCING DATE

iii. _____

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2012 MAR 26 AM 11:38
JOYCE HARRIS
CLERK OF COURT
KERSHAW COUNTY, S.C.

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

To have my sentence reduced and my charge reduced
to a lesser charge

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

No

STATE OF SOUTH CAROLINA)

County of ~~SPARTANBURG~~ GREENVILLE)

VERIFICATION

FILED FOR RECORD
2017 MAR 26 AM 11:33
JOYCE McDONALD
CLERK OF COURT
Kershaw County, S.C.

I, Markelle Reid, 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.

M. E. R. Reid Markelle Reid

SWORN to and subscribed before me this 12th
day of MARCH, 2012

Dwight M. [Signature] (L.S.)
Notary Public

My Commission Expires:

JAN 25, 2018

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

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

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

Markelle Reid Markelle Reid
Applicant

SWORN or affirmed to and subscribed before me this

12 day of March 2012

Dwayne Murre
Notary Public

My Commission Expires:

Jan 28, 2018

FILED FOR RECORD
2012 MAR 26 AM 11:33
JOYCE MEDGALL
CLERK OF COURT
KERSHAW COUNTY, S.C.

QUESTION THREE OF PAGE ONE

3) NAME(S) OF CO-DEFENDANT(S) (IF ANY): BYRON WOODS, DEXTER CALDWELL
AKEEM DIXON, RONNIE BROWN, ROLANDO BROWN, JERMELL WISE,
JARIUS SMITH, TERRANCE CHESTNUT, DEFFIGO WHITAKER, TIARA SIMON.

QUESTION ELEVEN OF PAGE THREE

1) STATE CONCISELY AND IN THE SAME ORDER THE FACTS WHICH SUPPORT
EACH OF THE SET GROUNDS OUT IN:

1) COUNSEL VIOLATED THE DUTY OF EFFECTIVE ASSISTANCE OF COUNSEL BY NOT
INVESTIGATING PROPERLY, HE DID NOT ATTEMPT TO DISCOVER ALL REASONABLE
AVAILABLE MITIGATING EVIDENCE.

3) COUNSEL FAILED TO APPEAL THE DECISION OF THE COURT

FILED FOR RECORD
2012 MAR 26 AM 11:33
JOYCE MEDDARD
CLERK OF COURT
KERSHAW COUNTY, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

REID Markelle J -
00346234,

2012CP28318

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

The Respondent, making its Return to the application for post conviction relief (PCR) filed March 26, 2012, would respectfully show this Court:¹

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Kershaw County Clerk of Court. The Applicant was indicted at the February 2008 term of the Kershaw Grand Jury for Murder - (2008-GS-28-00011).² He was represented by Jack Swerling, Esquire, on the charge(s). On July 27, 2009, the Applicant appeared before the Honorable G. Thomas Cooper, Jr. where he pled guilty and sentencing was deferred by agreement. On May 26, 2011, Applicant appeared against before Judge Cooper at which time he was sentenced to thirty (30) years imprisonment.

¹<http://publicindex.sccourts.org/kershaw/publicindex/PCaseDetails.aspx?County=28+&Casenum=2012CP28318&CourtType=G&CaseType=Civil&CourtAgency=28002>

² <https://sword.doc.state.sc.us/scdc-public/inmateDetails.do?id=+00346234>

Direct Appeal

The Applicant did not appeal his conviction and/or sentence .

II.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the trial transcript, and the Applicant's applicable direct appeal files.³ The Respondent reserves the right to amend this Return upon receipt of any relevant materials or submit an amended Return to reflect any amended allegations and/or to provide a more detailed procedural history.

III.

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

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

- (a) ineffective assistance of counsel
- (b) Denial of Due process
- (c) _____

2012 MAR 26
JUDGE
CLERK OF
REID MARKELLE J

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

QUESTION ELEVEN OF PAGE THREE

1) STATE CONCISELY AND IN THE SAME ORDER THE FACTS WHICH SUPPORT EACH OF THE SET GROUNDS OUT IN:

A) COUNSEL VIOLATED THE DUTY OF EFFECTIVE ASSISTANCE OF COUNSEL BY NOT INVESTIGATING PROPERLY, HE DID NOT ATTEMPT TO DISCOVER ALL REASONABLE AVAILABLE MITIGATING EVIDENCE.

3) COUNSEL FAILED TO APPEAL THE DECISION OF THE COURT

IV.

For the purposes of this Return, the Respondent interprets each of the Applicant's allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The

courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). Even with respect to guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985)

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by

the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied. The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held. The Respondent will coordinate with the Applicant's attorney who is, according to the Respondent's file, Tara D. Shurling, Esquire regarding when the hearing should be set.⁴

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

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Senior Assistant Deputy Attorney
General

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By: 
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April 30, 2012

⁴ The current PCR Roster for the 5th Circuit is available at <http://www.scag.gov/criminal-litigation/postconvictionrelief>

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

REID Markelle J -
00346234,

2012CP28318

Applicant,

v.

CERTIFICATE OF SERVICE

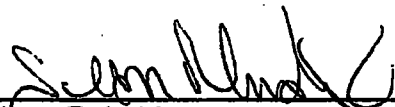
State of South Carolina,

Respondent.

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

Tara D. Shurling, 3614 Landmark Drive - Suite D , Columbia, SC 29204

DATED April 30, 2012.



Jean R. Indriago
Legal Assistant.

1 STATE OF SOUTH CAROLINA

2 COURT OF COMMON PLEAS

3 COUNTY OF KERSHAW

4 2012-CP-28-00318

5

6 Markelle J'Mar Reid

7 vs.

8 State of South Carolina

9

10

11 Columbia, South Carolina

12 November 19, 2013

13 Before the Honorable Robert E. Hood

14

15 APPEARANCES

16 For the State: Megan E. Harrigan

17 For the Applicant: Tara Dawn Shurling

18

19 Reported by: Michael C. Watkins

20 Official Court Reporter

21

22

23

24

25

1	Markelle Reid:	3
2	Jack B. Swerling:	15
3	Certificate:	58

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1 MS. HARRIGAN: Your Honor, the State would call
2 Markelle Reid versus State of South Carolina, docket number
3 2012-CP-28-0318.

4 (Break in proceedings.)

5 MS. HARRIGAN: Your Honor, may it please the Court?

6 THE COURT: Yes, ma'am.

7 MS. HARRIGAN: Markelle Reid was true bill indicted
8 during the February of 2008 term of the Kershaw County Grand
9 Jury for murder. He was represented by Jack B. Swerling,
10 Esquire. On July 27th of 2009 he appeared before the
11 Honorable G. Thomas Cooper and pled guilty as indicted to
12 murder, sentencing was deferred by agreement at that time,
13 Mr. Reid had agreed to work with the State. He thereafter
14 appeared before Judge Cooper again on May 26, 2011 where
15 Judge Cooper sentenced him to 30 years for murder pursuant
16 to negotiations with the State. His PCR application was
17 filed on March 26th, 2012. In that application he set forth
18 allegations of ineffective assistance of counsel for failure
19 to investigate as well as failure to file an appeal.
20 Yesterday the State received an unfiled copy of the amended
21 application for post conviction relief per Ms. Shurling
22 setting forth three new allegations for relief, two of which
23 are grounds of ineffective assistance of counsel, one of
24 which is involuntary guilty plea, and the State at this time
25 would object to those three amendments.

1 THE COURT: Ms. Shurling?

2 MS. SHURLING: Thank you, Your Honor.

3 THE COURT: I don't have a copy of the amendment so if
4 somebody else could give me one --

5 MS. SHURLING: Your Honor, the amended application was
6 sent to the Kershaw County Clerk of Court by overnight mail
7 for mailing and we have not yet received the returned
8 clocked copies, and I can certify to the Court that the copy
9 I've just handed you is identical to the original that was
10 provided to Ms. Harrigan and served on Mr. Swerling and sent
11 to the clerk of court for filing. With regard to the
12 State's objection to the amendments, we have met in chambers
13 and discussed at length some reasons for why I did not file
14 the amended application until when I did. I had the
15 opportunity to visit with Mr. Reid Friday evening at
16 McCormick Correctional. We had discussed at length the
17 extreme risks with his proceeding with this post conviction
18 relief action, but he indicated that notwithstanding the
19 risk he wished to go forward. Previously, Your Honor, I had
20 written Mr. Reid, as I have all of my clients, and told them
21 that if there were any additional issues that they want to
22 raise that they need to let me know about them in writing as
23 soon as possible, however in my interview with him on Friday
24 for the first time he articulated what I believed to be some
25 cognizable -- not commenting on the merits, but cognizable

1 claims under the act and so I prepared them as amended
2 allegations. I understand that the State's notice as well
3 as Mr. Swerling's was late coming and I do apologize greatly
4 for that. As the Court knows I've had some medical issues
5 going on in the last year and a half that have caused me not
6 to always do things with the timeliness which I'm accustomed
7 to in my practice and I do apologize for that. However,
8 these are legal issues, they're very simple straight-forward
9 issues. I would ask that the Court allow us to take very
10 simple testimony concerning these issues and then permit us
11 to submit proposed orders or bench briefs and that way the
12 State would not be prejudiced in that they would have ample
13 opportunity to do any additional research they feel was
14 necessary to respond in light of the allegations or any
15 testimony that might arise.

16 MS. HARRIGAN: If the State could briefly respond to
17 that? In response to Ms. Shurling's contention that these
18 are legal issues, perhaps in some of her other amendments
19 they are more legal, but these three allegations are more
20 fact allegations involving representation that Mr. Swerling
21 provided. He has, as Your Honor can see, quite a large box
22 of documents and the State feels it's prejudiced that it was
23 not able to fully review -- we reviewed the file before
24 receiving these amended application allegations late
25 yesterday afternoon and the State would like to object to

1 it. We feel it's prejudicial for him to go forward on these
2 three.

3 THE COURT: All right. It is prejudicial for any of
4 you to go forward on these three receiving these late last
5 night for a case that's been pending as long as this one
6 has. And for the record, the next time that I hold PCR
7 court and these amendments that are filed late get filed
8 they will be stricken from the record completely and
9 totally. Here is what I'm going to do this week, in the
10 interest of justice and getting these cases moved and
11 resolved we're going to go forward with this hearing today.
12 However, if after Mr. Swerling testifies, if he's called to
13 testify, the State believes that they need anymore time with
14 him to discuss these issues that they were just made known
15 of last night or yesterday or whenever it was, I will allow
16 Mr. Swerling to be deposed if the State so wishes as to any
17 of these issues -- if they feel a deposition is necessary
18 after the testimony today I will give the State a period of
19 time to respond to the Court and say we request to depose
20 Mr. Swerling along these issues if you believe it is
21 necessary. If you do not believe it is necessary you do not
22 have to do so. But after the hearing today if you believe
23 you need some more time for Mr. Swerling to prepare or to
24 review something then I will allow him to be deposed.

25 MS. HARRIGAN: Thank you, Your Honor.

TESTIMONY OF MARKELLE REID

1 THE COURT: All right. Let's go forward.

2 MS. SHURLING: Thank you very much, Your Honor. Your
3 Honor, at this time we would call the applicant, Markelle
4 Reid.

5 The witness, MARKELLE REID, was first duly
6 sworn and testified as follows:

7 THE COURT: Please have a seat in the jury box. State
8 and spell your full name for the record.

9 THE APPLICANT: You say spell it too?

10 THE COURT: Please.

11 THE APPLICANT: Markelle J'Mar Reid. M-a-r-k-e-l-l-e,
12 J-m-a-r, R-e-i-d.

13 DIRECT EXAMINATION

14 BY MS. SHURLING:

15 Q. Mr. Reid, sometimes you talk a little fast and run your
16 words together, it's very important that the court reporter
17 and His Honor be able to understand you so I ask you to
18 speak up and speak as clearly as you can. Okay?

19 A. Yes, ma'am.

20 Q. Who was your attorney prior to and during your guilty
21 plea in this case?

22 A. Jack Swerling.

23 Q. Was he retained or court appointed?

24 A. Retained.

25 Q. During --

TESTIMONY OF MARKELLE REID

1 THE REPORTER: I'm sorry, I need Ms. Shurling to keep
2 her voice up, please.

3 MS. SHURLING: Oh, I'm sorry. My voice? Thank you.

4 Q. During Mr. Swerling's representation of you, did you
5 have an opportunity to review discovery materials with him?

6 A. Yeah. He came to see me probably about three times the
7 whole time, about three or four times, I was locked up for
8 about three years in the county.

9 Q. Okay. Did Mr. Swerling file motions with the State
10 asking for discovery in your case to your knowledge?

11 A. Yes, ma'am.

12 Q. And once he got these materials from the solicitor's
13 office he came to see you and reviewed those discovery
14 materials with you, did he not?

15 A. Yes, ma'am.

16 Q. Did you discuss the pros and cons of going forward to
17 trial versus entering a plea with Mr. Swerling?

18 A. We discussed some stuff on that issue.

19 Q. Okay. Specifically after reviewing the discovery in
20 your case did you and Mr. Swerling discuss if you went to
21 trial what potential defenses you could raise to the charge
22 of murder?

23 A. He said that it was a very good chance that like murder
24 is like the only charge that I could really get basically.

25 Q. Okay. There was a very good chance that murder would

TESTIMONY OF MARKELLE REID

1 be the only charge that would be given to the jury, is that
2 what you're saying?

3 A. If it went to trial.

4 Q. If you went to trial?

5 A. Yes, ma'am.

6 Q. Okay. Did he discuss with you something called a
7 lesser-included offense? Did he tell you what the
8 lesser-included offenses to murder were?

9 A. Voluntary and manslaughter?

10 Q. Yes. Did he discuss voluntary manslaughter with you
11 and tell you that it was potentially a lesser-included
12 offense to murder?

13 A. He said it was a lesser charge but he didn't say
14 anything as far as us fighting to get a lesser charge, he
15 said that it was a -- really wasn't no win, really.

16 Q. Pardon me?

17 A. He really -- he really -- the way he explained it to me
18 like we really didn't have no win, like if we was to go in
19 and try to get a lesser charge that they probably would
20 still see it the same way.

21 Q. Okay. You understand that voluntary manslaughter is a
22 lesser charge, you're clear on that.

23 A. Yes, ma'am.

24 Q. What about defenses? Were there defenses to the charge
25 that you committed murder that you discussed with Mr.

TESTIMONY OF MARKELLE REID

1 Swerling?

2 A. I don't understand.

3 Q. Well, specifically did Mr. Swerling discuss with you
4 the possibility of raising the defense of self-defense?

5 A. No, ma'am.

6 Q. You had no discussions whatsoever with Mr. Swerling
7 about self-defense?

8 A. Oh, yeah. He said -- my bad, excuse me -- he said
9 being that I went outside and that I shot the gun first,
10 that it would be hard to get a self-defense charge.

11 Q. Okay. He said it would be hard to get a charge on
12 self-defense, but he didn't say it would be impossible, did
13 he?

14 A. No, ma'am.

15 Q. Did you understand that if you exercised your right to
16 trial by jury and were convicted of murder that you would be
17 looking at a mandatory minimum of 30 years all of the way up
18 to life as the sentence?

19 A. Yes, ma'am.

20 Q. And did you understand that whatever sentence you got
21 for murder would be day for day, that you would have to
22 serve everyday of it, that there would be no possibly of
23 being released any earlier than whatever the numerical
24 sentence was and that if you got life it would be
25 unfortunately life with no chance of ever getting out before

TESTIMONY OF MARKELLE REID

1 you die? You understood that.

2 A. Yes, ma'am.

3 Q. Okay. And you understood that if you went to trial by
4 jury there was a chance that you could get a charge on
5 self-defense?

6 A. Yes, ma'am.

7 Q. Did you also understand that there was a chance you
8 could get a jury instruction on the lesser-included offense
9 of voluntary manslaughter?

10 A. I understand.

11 Q. Pardon?

12 A. I understand.

13 Q. You understand that now. Did you understand it then?

14 A. From what I was getting it was -- it wouldn't happen --
15 it was almost impossible to happen so I wasn't really
16 thinking about it.

17 Q. Had you given a state to law enforcement authorities
18 following the shooting?

19 A. Yes, ma'am.

20 Q. And in that statement did you admit firing the weapon
21 that killed the victim?

22 A. Yes, ma'am.

23 Q. Can you recount for the Judge briefly what the
24 circumstances were surrounding that shooting?

25 A. Let's see, I went in the store, about three guys

TESTIMONY OF MARKELLE REID

1 approached me. So I went back out of the store, got a gun
2 and everybody came outside and I shot it in the air and I
3 seen the victim reaching so I shot him.

4 Q. Okay. Were you affiliated with a gang at the time of
5 this shooting? Were you a gang member?

6 A. Yes, ma'am.

7 Q. And the gang that you were a member of was called the
8 bloods; is that correct?

9 A. Yes, ma'am.

10 Q. And the victim in this case was a member of a different
11 gang?

12 A. Yes, ma'am.

13 Q. And that gang was called what, the crips?

14 A. Yes, ma'am.

15 Q. Okay. Were you an active member of the bloods at that
16 time or were you trying to get out?

17 A. I was trying to get out.

18 Q. All right. When you first went into the store you said
19 you had an altercation with three people. The three people
20 that you had an altercation with, were they bloods or crips?

21 A. Bloods.

22 Q. So they were your only gang members that you were
23 having a disagreement with?

24 A. Yes, ma'am.

25 Q. After you left the store did any further altercation or

TESTIMONY OF MARKELLE REID

1 fight break out inside the store?

2 A. Yeah, they fought.

3 Q. They being who?

4 A. Bloods and crip dudes.

5 Q. And could you see that from where you were outside?

6 A. It kind of started when I was leaving out. It kind of
7 started when I was leaving out but I saw somewhat (sic) of
8 it.

9 Q. So when you went outside you were aware that a fight
10 between these rival gangs had broken out; is that correct?

11 A. Yes, ma'am.

12 Q. Okay. And just so I'm clear, when you went outside you
13 said when you saw people coming out you fired a warning shot
14 in the air?

15 A. Yes, ma'am.

16 Q. And what caused you to fire the shot that killed the
17 victim?

18 A. I seen him reaching.

19 Q. You saw him reach?

20 A. Yes, ma'am.

21 Q. Did you see the weapon?

22 A. I couldn't really see -- I couldn't really see the
23 weapon but -- no, I didn't see the weapon.

24 Q. In the discovery materials that you reviewed with Mr.

~~25 Swerling, was there documentation of the fact that the~~

TESTIMONY OF MARKELLE REID

1 deceased's friends admitted taking a gun off of him after he
2 was shot?

3 A. Yes, ma'am.

4 Q. So you knew from the file that there was some proof
5 that the decedent had a gun on him as well.

6 A. Yes, ma'am.

7 Q. Okay. But Mr. Swerling discussed all of that with you,
8 right?

9 A. Yes, ma'am.

10 Q. Okay. What sentence did you ultimately receive, Mr.
11 Reid?

12 A. Thirty years.

13 Q. Was that negotiated in advance of your plea? Did you
14 know going in you were going to get 30 years?

15 A. I wanted to go to trial but I was scared, he kind of
16 shook me up.

17 Q. I understand. But my question is once you went in to
18 enter the plea, did you know in advance that you were going
19 to get the minimum sentence for murder, 30 years, in
20 exchange for that plea?

21 A. Yes, ma'am.

22 Q. Okay. You say you wanted to go to trial. Can you tell
23 Judge Hood and others present what the deciding factor was
24 in your deciding to plead instead of exercising your right
25 to trial by jury?

TESTIMONY OF MARKELLE REID

1 A. We was in the courthouse in the back and Mr. Swerling
2 came to the back and he said that they wanted to see me get
3 life, and really it would just be best to go ahead and plea,
4 there was a couple of people out there ready to testify
5 against me and things like that.

6 Q. Okay. Now, when you say they -- in the courtroom
7 you've got to be careful, when you say they you need who say
8 who. Who wanted to see you get life?

9 A. The State.

10 Q. The prosecutors?

11 A. Yes, ma'am.

12 Q. So Mr. Swerling told you that if you went to trial and
13 you were convicted the State was going to push for you to
14 get a life sentence --

15 A. Yes, ma'am.

16 Q. -- for murder.

17 A. Yes, ma'am.

18 Q. And that's what made you decide to enter the plea?

19 A. Yes, ma'am.

20 Q. How old were you at the time of the plea, Markelle?

21 A. I don't know how old I was at the time of the plea, I
22 can't remember. What year was it?

23 Q. How old were you at the time of the incident?

24 A. Eighteen.

25 Q. You had already turned 18, right?

TESTIMONY OF MARKELLE REID

1 A. Yes, ma'am.

2 Q. And you and I have discussed a case called Graham v.
3 Florida, haven't we?

4 A. Yes, ma'am.

5 Q. And the fact that it wouldn't have any application to
6 the facts of your case because you had already turned --

7 MS. SHURLING: Pardon me, Your Honor.

8 Q. -- you had already turned 18 at the time of the
9 shooting, correct?

10 A. Yes, ma'am.

11 Q. Now, what is it that you feel Mr. Swerling could have
12 done differently that would have made you make the decision
13 to go ahead and go to a jury trial instead of entering the
14 plea that you entered?

15 A. Really he just didn't act like he wanted to fight for
16 me, and I probably would have gone ahead and went -- if he
17 wouldn't have told me that I would have went -- that they
18 wanted to see me get life, if he wouldn't have told me that
19 I would have went.

20 Q. Well, in fairness to Mr. Swerling you knew that a life
21 sentence was a possibility if you were convicted of murder,
22 right?

23 A. Yes, ma'am.

24 Q. And Mr. Swerling also discussed with you that because
25 this case had gang upper tones, that that was a problem?

TESTIMONY OF MARKELLE REID

- 1 A. Yes, ma'am.
- 2 Q. And that gang related killings had a tendency to be
- 3 treated especially harshly by the prosecution?
- 4 A. Yes, ma'am.
- 5 Q. So you knew all that, right?
- 6 A. Yes, ma'am.
- 7 Q. Have I discussed the law of self-defense with you?
- 8 A. Yes, ma'am.
- 9 Q. Have I explained to you the elements of self-defense?
- 10 A. Yes, ma'am.
- 11 Q. And have I explained to you the reasons why there might
- 12 be problems with the application of self-defense to the
- 13 facts in your case?
- 14 A. Yes, ma'am.
- 15 Q. I've also explained arguments you could have made in
- 16 favor of self-defense, have I not?
- 17 A. Yes, ma'am.
- 18 Q. And with regard to the voluntary manslaughter with a
- 19 lesser-included offense, you and I have discussed the
- 20 elements of that as well, haven't we?
- 21 A. Yes, ma'am.
- 22 Q. And you understand that in order for a court to
- 23 consider giving that lesser-included instruction they would
- 24 have to find sudden heat of passion upon sufficient legal
-
- 25 provocation? We discussed that, right?

TESTIMONY OF MARKELLE REID

1 A. Yes, ma'am.

2 Q. And that would require the Court to make a certain
3 interpretation of the facts in your case that would be
4 particularly favorable to you, right?

5 A. Yes, ma'am.

6 Q. Okay. I don't want to beat you up with this, Markelle,
7 but it's really important that the record be clear, all
8 right? What have I told you is the prize, if you will, if
9 you win your PCR?

10 A. A trial.

11 Q. A trial.

12 A. Yes, ma'am.

13 Q. And I also explained to you that although there is a
14 right constitutionally to a jury trial, there is no right
15 constitutionally to a plea bargain. Did I tell you about
16 that?

17 A. Yes, ma'am.

18 Q. Did I also explain to you that most people don't
19 understand that by court rule in South Carolina you can't
20 even plead unless the solicitor's office agrees to you
21 entering a plea, you understand that?

22 A. Yes, ma'am.

23 Q. So I made it very clear to you that if you were to win
24 and win a new trial, the result could be that the
25 solicitor's office had no interest in negotiating any

TESTIMONY OF MARKELLE REID

1 further with you, wouldn't even agree to a plea and you
2 would be forced into a situation where you had a jury trial,
3 you understand that.

4 A. Yes, ma'am.

5 Q. And once again you understand -- there's a big
6 misunderstanding in the prison about this so I want to make
7 sure I made it clear to you, once that 30 year sentence were
8 to be gone, if His Honor were to grant your application it's
9 like everything gets torn up and you start completely over.
10 So if you were prosecuted for murder and if you were
11 convicted of murder the Judge presiding over that proceeding
12 under -- remember I was talking about the Lewis Hilton case?

13 A. Yes, ma'am.

14 Q. That under that case a new Judge would have the
15 authority to give you any sentence within the range of 30
16 years to life, do you understand that?

17 A. Yes, ma'am.

18 Q. And that even if the case went before the same Judge,
19 which it's not guaranteed to, that Judge could give you a
20 higher sentence if he articulated on the record a basis for
21 the increase in the penalty that was not related to your
22 having won an appeal. Do you understand that?

23 A. Yes, ma'am.

24 Q. All right. So you understand that there's a risk of
~~25 ending up with more time.~~

TESTIMONY OF MARKELLE REID

1 A. Yes, ma'am.

2 Q. Okay. Notwithstanding that risk, are you sure you
3 want to go forward with your prayer that Judge Hood grant
4 you a new trial?

5 A. Yes, ma'am.

6 Q. You and I talked about your statement a little bit. We
7 talked about the fact that if you went to trial by jury you
8 would have an opportunity to attack that statement if you
9 wanted to. Remember that?

10 A. Yes, ma'am.

11 Q. And did you and I discuss the circumstances that
12 existed at the time you gave that statement?

13 A. Yes, ma'am.

14 Q. And did I discuss with you generally how rare it is for
15 a Judge to find that a statement is not admissible?

16 A. Yes, ma'am.

17 Q. And I told you that even if the Judge found that it was
18 admissible that the jury would still have to find that it
19 was freely and voluntarily entered in the presence of
20 accurate Miranda warnings, right?

21 A. Yes, ma'am.

22 Q. But I told you, did I not, that once a jury hears the
23 statement it's kind of hard to convince them not to consider
24 it.

25 A. Yes, ma'am.

TESTIMONY OF MARKELLE REID

1 Q. We talked about that, right?

2 A. Yes, ma'am.

3 Q. To summarize. You feel that, what, that you should
4 have been encouraged to pursue self-defense, is that your
5 position?

6 A. Yes, ma'am.

7 Q. And if I understood you correctly, that you should have
8 been pursued to take the risk that the Judge would also give
9 a charge on voluntary manslaughter?

10 A. Yes, ma'am.

11 Q. What do you think Mr. Swerling could have done to make
12 you comfortable going to a jury trial and taking that risk?

13 A. I really don't know. I guess just talk to me like he's
14 my lawyer. He just had me shook up. I hadn't seen him, I
15 only seen him about four times, he just had me shook up. I
16 really didn't know too much about the law so I just ain't
17 really know what to do.

18 Q. Well, did you give Mr. Swerling the names of a bunch of
19 witnesses you wanted him to interview?

20 A. Yes, ma'am.

21 Q. And isn't it true that he came back to you and went
22 over with you the results of those interviews?

23 A. Yes, ma'am.

24 Q. So there weren't witnesses that you wanted him to talk
~~25 to that he never talked to, were there?~~

TESTIMONY OF MARKELLE REID

1 A. No, ma'am.

2 Q. Okay. Did you understand the law of self-defense at
3 the time of your plea?

4 A. Not really, a little bit somewhat.

5 Q. I'm just trying to get the record clear. Is it your
6 position that if you had had the law of self-defense
7 explained to you better you would have wanted to go to
8 trial?

9 A. Yes, ma'am.

10 Q. Do you feel the same way about the lesser-included
11 offense of voluntary manslaughter?

12 A. Yes, ma'am.

13 Q. And once again, when it comes to discovery you're
14 comfortable with the fact that Mr. Swerling reviewed the
15 discovery materials with you, right?

16 A. Yes, ma'am.

17 Q. And he talked with your witnesses and he came back and
18 he told you what the results of those interviews were,
19 didn't he?

20 A. Yes, ma'am.

21 Q. Last thing. When I first got court appointed to
22 represent you, and again when I saw you last week, I told
23 you that I have had a close professional relationship with
24 Mr. Swerling for many years, didn't I?

25 A. Yes, ma'am.

TESTIMONY OF MARKELLE REID

1 Q. I told you he was a lawyer I had a lot of respect for.

2 A. Yes, ma'am.

3 Q. I also told you that I am a fellow in the American
4 Academy of Appellate Lawyers due to his generosity in
5 nominating me for that position, right?

6 A. Yes, ma'am.

7 Q. And I told you that if you weren't comfortable with me
8 being your lawyer because of that relationship that I would
9 ask to be relieved as counsel based on that and ask that you
10 get a new lawyer, didn't I?

11 A. Yes, ma'am.

12 Q. And what did you tell me?

13 A. I told you I was fine.

14 Q. And you wanted me to stay on the case.

15 A. Yes, ma'am.

16 Q. I don't have -- well, let me do what I know Judge Hood
17 will do anyway. Have I covered the issues that you wanted
18 me to raise in your PCR with you?

19 A. Yes, ma'am.

20 Q. Are there any issues that you instructed me to raise
21 that I haven't gone over here today?

22 A. No, ma'am.

23 Q. I need you to listen very carefully to the questions
24 put to you by the State's counsel, Ms. Harrigan, and answer
~~25 them truthfully. Okay?~~

TESTIMONY OF MARKELLE REID

1 A. Yes, ma'am.

2 MS. SHURLING: Thank you.

3 MS. HARRIGAN: Court's indulgence for a brief moment,

4 Your Honor..

5 (Break in proceedings.)

6 CROSS EXAMINATION

7 BY MS. HARRIGAN:

8 Q. Mr. Reid, you testified on direct that you met with

9 Mr. Shurling -- I mean Mr. Swerling, excuse me, three times,
10 correct?

11 A. Three or four.

12 Q. Three or four. He was retained in this case, correct?

13 A. Yes, ma'am.

14 Q. Did you retain him or a family member?

15 A. Family member.

16 Q. And I believe you testified that the surroundings

17 giving rise to this incident is you fired a shot in the air,
18 correct?

19 A. Yes, ma'am.

20 Q. And then after that you saw that the victim appeared to
21 be reaching for something, correct?

22 A. Yes, ma'am.

23 Q. But you never saw a weapon, correct?

24 A. No, ma'am.

25 Q. And you shot him then, correct?

TESTIMONY OF MARKELLE REID

1 A. Yes, ma'am.

2 THE REPORTER: Excuse me, Your Honor, I need them both
3 to wait before responding.

4 THE COURT: Okay.

5 MS. HARRIGAN: We can slowdown, I apologize.

6 THE COURT: All right. Now listen, she has got to
7 finish talking before you start talking. Okay?

8 THE APPLICANT: Yes, sir.

9 THE COURT: And likewise, if you need to say something
10 I will give you the opportunity to explain your answer at
11 anytime so I won't let her cut you off either. Okay?

12 THE APPLICANT: Yes, sir.

13 THE COURT: It goes both ways, just wait a second
14 before each other talks. Thank you very much.

15 Q. And I believe you testified that you did give a
16 statement to the police in this case, correct?

17 A. Yes, ma'am.

18 MS. HARRIGAN: Your Honor, may I approach?

19 THE COURT: Yes, ma'am, you may.

20 Q. Mr. Reid, I'm going to hand you a two page document.

21 Do you recognize this document?

22 A. Yes, ma'am.

23 Q. What is this document?

24 A. My statement.

~~25 Q. Let me flip to the second page for you. Do you~~

TESTIMONY OF MARKELLE REID

1 recognize the second page as well?

2 A. Yes, ma'am.

3 Q. Is this your complete statement to the best of your
4 recollection?

5 A. Yes, ma'am.

6 MS. HARRIGAN: At this time I would like to move this
7 into evidence as State's Exhibit 1.

8 MS. SHURLING: Without objection, Your Honor, I've seen
9 it.

10 THE COURT: All right. Let Ms. Harris mark it, please.

11 (The statement was received as State's 1.)

12 Q. I'm going to hand you back what's been marked as
13 State's Exhibit 1. On what date did you give that
14 statement, Mr. Reid?

15 A. It says the 10th.

16 Q. 10th of 2007?

17 A. Of 2007, December.

18 Q. Was that before or after you retained Mr. Swerling?

19 A. I believe it was before I guess, I don't know. I
20 believe it was before.

21 Q. It was before -- you believe to the best of your
22 recollection it was before you retained him. Would you read
23 the highlighted portion of your statement starting with
24 Dexter gave me?

25 A. "Dexter gave me the gun and told me to shoot in the

TESTIMONY OF MARKELLE REID

1 air. He said, 'Shoot him before he shoot you,' and I shot
2 again and put the gun in Dexter's car and ran to the
3 sheriff's station."

4 Q. And this again confirms what you told Mr. Swerling that
5 you were the first one who shot, correct?

6 A. Yes, ma'am.

7 Q. Did you ever write any letters to Mr. Swerling during
8 your representation -- or his representation of you?

9 A. Probably, it wasn't a lot. If I did probably one or
10 two.

11 MS. HARRIGAN: May I approach, Your Honor?

12 THE COURT: Yes, ma'am.

13 Q. Mr. Reid, I'm going to hand you a four page document.
14 Do you recognize this document?

15 A. Yes, ma'am.

16 Q. Whose handwriting does that appear to be in?

17 A. It looks like mine.

18 Q. Does it look like a letter that you wrote to Mr.
19 Swerling during your (sic) representation of him (sic)?

20 A. Yes, ma'am.

21 Q. If you will briefly review the letter to yourself for a
22 moment, particularly the highlighted portions if you don't
23 mind.

24 A. You want me to read it?

~~25 Q. No. If you'll just read it to yourself to familiarize~~

TESTIMONY OF MARKELLE REID

1 yourself, I have a few questions to you about that letter.

2 Are you finished reviewing it?

3 A. Yes, ma'am.

4 MS. HARRIGAN: At this time the State would introduce
5 this four page document as State's Exhibit Number 2.

6 MS. SHURLING: Without objection, Your Honor.

7 (The document was received as State's 2.)

8 Q. Mr. Reid, in what's been marked as State's Exhibit 2
9 that you just reviewed to yourself briefly, do you also
10 explain to Mr. Swerling in that letter that you were the
11 first one who shot and you never saw a weapon from the
12 defendant -- or on the victim?

13 A. Yes, ma'am.

14 Q. And I believe you testified on direct you did review
15 the discovery with Mr. Swerling, correct?

16 A. Yes, ma'am.

17 Q. Do you recall how many times you reviewed it with him?

18 A. No, ma'am.

19 Q. And you testified that he did discuss self-defense with
20 you, correct?

21 A. Yes, ma'am.

22 Q. And I believe your testimony was that he explained to
23 you why self-defense wouldn't likely work if you were to
24 proceed to a jury trial, correct?

25 A. Yes, ma'am.

TESTIMONY OF MARKELLE REID

1 Q. What were some of the reasons he told you self-defense
2 wouldn't work likely?

3 A. Because I shot in the air first.

4 Q. You were the first person who shot and you never saw a
5 weapon, correct?

6 A. Yes, ma'am.

7 Q. And I believe you testified that he also discussed the
8 possibility of the lesser-included offense of voluntary
9 manslaughter, correct?

10 A. Yes, ma'am.

11 Q. But he also told you that it wasn't likely you would
12 even receive a jury charge on that, correct?

13 A. Yes, ma'am.

14 Q. What reasons did he give you for why you likely
15 wouldn't be able to be afforded a charge on that?

16 A. Because I shot in the air first.

17 Q. And you knew this before your guilty plea, correct?

18 A. Yes, ma'am.

19 Q. Do you recall whether or not your attorney used a
20 private investigator in this case?

21 A. I believe he did.

22 Q. Did he review the reports and witness statements that
23 his investigator had gathered with you?

24 A. Yes, ma'am.

~~25 Q. Were you aware that five different witnesses identified~~

TESTIMONY OF MARKELLE REID

1 you as the only person with the gun shooting and that no one
2 else had a gun?

3 A. I was told that.

4 Q. So you were aware that his investigative reports and
5 his investigation in this case showed that you were the only
6 one with a gun by at least five different witnesses,
7 correct?

8 A. Yes, ma'am.

9 Q. And you knew this before you decided to enter your
10 guilty plea.

11 A. Yes, ma'am.

12 Q. Did you ever tell Mr. Swerling that you wanted him to
13 work out a plea deal with the State?

14 A. I told him -- probably told him I didn't want no 30
15 years.

16 Q. But you did ask for him to negotiate a plea on your
17 behalf for the State, correct?

18 A. Yes, ma'am.

19 Q. That you wanted to forgo a trial and enter a guilty
20 plea if he can find a favorable sentence for you.

21 A. Oh, yes, ma'am.

22 Q. You didn't want a trial in this case, you wanted a
23 favorable plea offer, correct?

24 A. Yeah, after he told me what he told me.

25 MS. HARRIGAN: Your Honor, may I approach?

TESTIMONY OF MARKELLE REID

1 THE COURT: Yes, ma'am.

2 Q. Do you recall this -- have you seen this two page
3 document before?

4 A. Yes, ma'am.

5 Q. If you will look at the second page and see if you
6 recognize that as well.

7 A. Yes, ma'am.

8 Q. What does that appear to be? Is that a letter that you
9 wrote Mr. Swerling and his response to you?

10 A. Yes, ma'am.

11 MS. HARRIGAN: At this time the State would move this
12 in as State's Number 3.

13 MS. SHURLING: Without objection, Your Honor.

14 (The letter was received as State's 3.)

15 Q. In that letter to --

16 THE COURT: Hold on.

17 MS. HARRIGAN: Sorry, Your Honor.

18 THE COURT: That's okay. She has a few places she has
19 to write it down so just wait one second to make sure she
20 gets it down so the record is complete.

21 Q. Does that letter show that you're asking Mr. Swerling
22 to get a favorable plea offer for you, somewhere in the
23 neighborhood of 20 years?

24 A. Yes, ma'am.

~~25 Q. And does he respond to you in that letter that he will~~

TESTIMONY OF MARKELLE REID

1 try his best but he's not sure if he'll be able to secure a
2 20 year deal?

3 A. Yes, ma'am.

4 Q. And you testified before you didn't want to go to
5 trial, you wanted a guilty plea.

6 A. Yes, ma'am.

7 Q. Do you recall telling the Judge during your plea
8 proceeding that you wanted to plead guilty?

9 A. Yes, ma'am.

10 Q. And that you were, in fact, guilty?

11 A. Yes, ma'am.

12 Q. So you are guilty.

13 A. I'm guilty for shooting him.

14 Q. Do you recall agreeing with the facts that the State
15 presented at your guilty plea proceeding when the assistant
16 solicitor stood up and gave the Court the recitation of what
17 happened?

18 A. Yes, ma'am.

19 Q. Do you recall waiving your constitutional right to a
20 jury trial during your guilty plea, your right to remain
21 silent and your right to present any defenses?

22 A. Yes, ma'am.

23 Q. Do you recall telling the Judge that you were satisfied
24 with Mr. Swerling's representation?

25 A. Yes, ma'am.

TESTIMONY OF MARKELLE REID

- 1 Q. And I believe you testified on direct that you were a
2 current gang member at the time of the shooting, correct?
- 3 A. Yes, ma'am.
- 4 Q. Was that the only gang you'd ever been in?
- 5 A. No, ma'am.
- 6 Q. Can you elaborate on that for the Court how you
7 switched gang affiliations?
- 8 A. I don't know what you mean.
- 9 Q. What gang were you originally in and how did you switch
10 gangs?
- 11 A. I got beat out. I got beat out. I got beat out of the
12 folks.
- 13 Q. So you were originally a member of the folks and then
14 switched to the blood gang at the time of the plea, or the
15 shooting?
- 16 A. Yes, ma'am.
- 17 Q. But your testimony was that this shooting wasn't gang
18 related, that he was a fellow member of the same gang with
19 you, correct?
- 20 A. He was a crip, but yes, ma'am.
- 21 Q. So the victim was in another gang.
- 22 A. Yes, ma'am.
- 23 Q. The gun that was used, was that your gun?
- 24 A. No, ma'am.
- ~~25 Q. Is that the gun that you stole from your grandparents?~~

TESTIMONY OF MARKELLE REID

1 A. Yes, ma'am.

2 Q. Was that the only gun that you brought with you to the
3 McDonald's area that night?

4 A. No, ma'am.

5 Q. How many other guns did you have?

6 A. I had three more.

7 Q. So you brought four guns to the McDonald's area.

8 A. Yes, ma'am.

9 Q. In regards to your allegation that Mr. Swerling failed
10 to file an appeal on your behalf, do you recall the Judge
11 telling you during your guilty plea that you had ten days to
12 file a notice of appeal?

13 A. Yes, ma'am.

14 Q. And do you recall telling the Judge that you understood
15 this, that you only had the ten days?

16 A. Yes, ma'am.

17 Q. Do you recall also telling the Court that -- or Mr.
18 Swerling telling the Court that he discussed the appellate
19 rights with you?

20 A. Yes, ma'am.

21 Q. And this was a negotiated plea, correct?

22 A. Yes, ma'am.

23 Q. You knew you were going to get 30 years when you
24 entered your plea and when you came back for sentencing,
25 correct?

TESTIMONY OF MARKELLE REID

1 A. Yes, ma'am.

2 Q. And in regards to these negotiations, you gave some
3 statements to the State against your co-defendants, correct?

4 A. Yes, ma'am.

5 Q. And the relief that you set forth in your pro se
6 application was to just have your sentence reduced to a
7 lesser charge. And I believe Ms. Shurling covered this with
8 you on direct, but you are aware that that's not something
9 that is available in PCR, correct?

10 A. Yes, ma'am.

11 THE COURT: I'm sorry, I didn't hear that last
12 question.

13 Q. In your pro se application you set forth that all
14 you're really seeking is a sentence reduction, correct?

15 A. Yes, ma'am.

16 Q. And you're aware that's not something that you can be
17 awarded in a PCR if you were to win, correct?

18 A. Yes, ma'am.

19 Q. That best case scenario you would be facing murder
20 charges again, correct?

21 A. Yes, ma'am.

22 Q. And you would be again facing 30 years to life,
23 correct?

24 A. Yes, ma'am.

~~25 Q. Are you aware that that would be a 30 year day for day~~

TESTIMONY OF MARKELLE REID

1 sentence mandatory minimum?

2 A. Yes, ma'am.

3 MS. HARRIGAN: Court's indulgence.

4 (Break in proceedings.)

5 Q. Was this shooting gang related?

6 A. No, ma'am.

7 Q. Did you ever receive any text messages or communication
8 from leaders of the gang where you volunteered that you
9 would murk someone to be able to get back in the gang?

10 A. Yes, ma'am.

11 Q. You did receive those texts, correct?

12 A. Yes, ma'am.

13 Q. What does murk mean?

14 A. Kill.

15 Q. So you had sent a text message to a leader of the gang
16 saying you would kill someone to get back in with the gang,
17 correct?

18 A. Yes, ma'am.

19 MS. HARRIGAN: No further questions, Your Honor.

20 THE COURT: Redirect?

21 MS. SHURLING: Briefly.

22 REDIRECT EXAMINATION

23 BY MS. SHURLING:

24 Q. Mr. Reid, I explained to you, did I not, that when you
25 raise an allegation of ineffective assistance of counsel in

TESTIMONY OF MARKELLE REID

1 a PCR action it has the result of waving the attorney/client
2 privilege between you and your original lawyer?

3 A. Yes, ma'am.

4 Q. And I explained to you that that meant that any
5 communications you had had with Mr. Swerling would be
6 subject to disclosure in court if you went forward with a
7 claim that he had been ineffective in representing you,
8 right?

9 A. Yes, ma'am.

10 Q. Just wanted to make sure that wasn't coming as a
11 surprise to you that they could reveal those communications.
12 I've warned you about that, haven't I?

13 A. Yes, ma'am.

14 Q. Okay. You say when you admitted your guilt at your
15 plea, if I understood you, you were admitting your guilt as
16 far as being the person to shoot the man, is that what you
17 said?

18 A. Yes, ma'am.

19 Q. And if I understood you correctly you were saying you
20 would have gone to trial by jury if you had better
21 understood the law of self-defense and the law on the
22 lesser-included offense of voluntary manslaughter?

23 A. Yes, ma'am.

24 Q. And now, two things. With regard to the allegation

~~25 about not getting a direct appeal, I talked to you about the~~

TESTIMONY OF MARKELLE REID

1 fact that direct appeals from guilty pleas are very seldom
2 worth the paper they're written on, didn't I?

3 A. Yes, ma'am.

4 Q. And I explained what in South Carolina we call the
5 contemporaneous objection rule to you?

6 A. Yes, ma'am.

7 Q. And why that rule is the reason why a direct appeal
8 from a guilty plea virtually never works, you just don't
9 have any chance except for in the very rarest occasioned
10 cases of getting anywhere with a direct appeal, didn't I?

11 A. Yes, ma'am.

12 Q. Based on the advice I gave you concerning the way a
13 direct appeal works versus the way a PCR works, do you
14 understand now why Mr. Swerling didn't file a direct appeal?

15 A. Yes, ma'am.

16 Q. And as far as the sentence reduction is concerned I
17 want to follow-up on something the State said. Despite the
18 fact that your application asked for a sentence reduction, I
19 made it very clear to you, did I not, that there was no way
20 to simply ask Judge Hood to cut your time to give you a
21 lesser sentence, that he frankly didn't have the authority
22 to do that even if he wanted to. You understood that,
23 right?

24 A. Yes, ma'am.

25 Q. And even after I fully explained that to you you still

TESTIMONY OF MARKELLE REID

1 wanted to go forward with your PCR?

2 A. Yes, ma'am.

3 MS. SHURLING: Okay. No further questions.

4 MS. HARRIGAN: Very briefly, Your Honor.

5 RECROSS EXAMINATION

6 BY MS. HARRIGAN:

7 Q. Mr. Reid, did you ever ask Mr. Swerling to file an
8 appeal on your behalf?

9 A. No, ma'am.

10 MS. HARRIGAN: Thank you.

11 THE COURT: Okay. Thank you. Anything further,
12 Ms. Shurling?

13 MS. SHURLING: Nothing further, Your Honor.

14 THE COURT: All right.

15 MS. HARRIGAN: The State would call Jack B. Swerling to
16 the stand.

17 THE COURT: All right. Mr. Swerling, please come
18 forward and be sworn.

19 The witness, JACK B. SWERLING, was first duly
20 sworn and testified as follows:

21 DIRECT EXAMINATION

22 BY MS. HARRIGAN:

23 Q. Good morning, Mr. Swerling.

24 A. Good morning.

25 Q. Do you recall Mr. Reid's case?

TESTIMONY OF JACK SWERLING

1 A. I do.

2 Q. How did you become involved in his case?

3 A. I was retained by his parents.

4 MS. HARRIGAN: May I approach, Your Honor?

5 THE COURT: Yes, ma'am. You can approach, you don't
6 have to ask over and over.

7 MS. HARRIGAN: Thank you.

8 Q. I want to hand you a document. Do you recognize what
9 that document is?

10 A. Yes. This is one of my standard retainer agreements.

11 Q. On what date were you retained?

12 A. January 20th of 2008.

13 Q. Does the retainer agreement mention anything regarding
14 a direct appeal?

15 A. "Any appeal representation for a retrial is not covered
16 by the agreement, and the fees for or cost thereof will
17 not -- thereof will be by separate agreement entered into
18 between the parties."

19 Q. So your retainer was just for the general sessions
20 matter, not for any appellate appeal coming off of it,
21 correct?

22 A. That's correct.

23 Q. Have you had a chance to review your file before coming
24 to court to testify today?

25 A. I did.

TESTIMONY OF JACK SWERLING

1 Q. Do you recall the number of times you met with Mr. Reid
2 to discuss his charges?

3 A. I would say it was a lot more than four. He met with
4 me, met with my paralegal, Ebony English, who was over there
5 a number of times, to be exact I can't tell you. I had a
6 lot to do last night after we got the amendments and I did
7 not add up all of the visits.

8 Q. Did you employ a private investigator in this case?

9 A. I did. Carlisle McNair, the former captain with the
10 Lexington County Sheriff's Department did a lot of the
11 investigation in this case and we spoke with a couple of
12 dozen witnesses.

13 Q. Did Mr. McNair also meet with Mr. Reid?

14 A. I believe he did. I mean, I frankly do not have those
15 notes in front of me but I would imagine that he did go over
16 there himself.

17 Q. Did you discuss the -- what charge was Mr. Reid facing?

18 A. Murder.

19 Q. Did you discuss with him the possible sentences for
20 murder?

21 A. Yes, I did. As a matter -- can I get that brown
22 envelope that's there?

23 Q. This one?

24 A. Yeah. I might also say we met with his parents on

~~25 several occasions. And as I said, there were numerous~~

TESTIMONY OF JACK SWERLING

1 witnesses that were interviewed that he asked us to
2 interview. An intensive amount of work was done on this
3 case. Oh, you had asked me about whether I discussed with
4 him murder, the elements of murder?

5 Q. Yes.

6 A. Oh, yes. Discussed with him the elements of murder,
7 the possible lesser-included offenses, the possible
8 defenses, that would be what I would do in any case, and in
9 this case particular. Because we had -- it was a very
10 complicated case and not a particularly good case for the
11 defense to try.

12 Q. Can you elaborate on why it wasn't a particularly good
13 case to try?

14 A. Well, my recollection is that Markelle Reid engaged in
15 this whole scenario -- first of all, he stole the guns from
16 his grandfather, he engaged in this entire scenario because
17 he was -- wanted to get back into the gang. And you had
18 referred to a message, a text message about murking
19 somebody, there were some other messages and discussions
20 about putting a hole in somebody and whether he was willing
21 to do that, and the indications were that he was willing to
22 do that to get back into the gang. And one of the reasons
23 why he showed up at McDonald's that night and they had this
24 chaos out there with all of these people that got arrested
25 was that they were looking for trouble that night, and he

TESTIMONY OF JACK SWERLING

1 had a shotgun in his hand and he was -- how he -- there was
2 a fight that started in McDonald's. When he came out Byron
3 Woods -- this is what he said -- Byron Woods told him to
4 shoot the victim. He fired a shot in the air and then he
5 shot the victim behind one of the gas pumps.

6 Q. Based on -- and did he confirm -- did your
7 investigation confirm these facts, that he was the first one
8 to shoot and had multiple weapons with him at the time?

9 A. Correct. There was nobody else shot that -- the victim
10 in the case did not shoot, and Markelle had always said he
11 thought he was reaching for a gun. Well, there -- he said
12 he did not see a gun, and, of course, you have all of the
13 different -- other different problems with self-defense and
14 being without fault in brining on the difficulty, retreat
15 and all of those other issues. So this was not a great
16 self-defense case, particularly with the fact that there had
17 been a lot of discussions about going ahead and shooting
18 somebody to get back in the gang. I don't know where
19 self-defense would even possibly come in in this situation.

20 Q. Did you explain that to your client, Mr. Reid?

21 A. Sure I did.

22 Q. Do you recognize this document from your file?

23 A. Yes.

24 Q. What is that?

~~25 A. This was a -- well, I do it different ways. But this~~

TESTIMONY OF JACK SWERLING

1 basically was a memorandum addressed to me that I had my
2 paralegals put together about basically every witness in the
3 case, what they said, what they were saying, whether or not
4 we had interviewed them or not. And it was just sort of
5 a -- kind of something that I would have in my file that I
6 could refer to from time to time in a very orderly fashion
7 rather than turn the page through a bunch of notebook pages.
8 So this is a list of everybody that -- pretty much everybody
9 in the case.

10 Q. And this would have been prepared after the
11 investigation by Carlisle McNair.

12 A. Well, that was prepared by my two paralegals.

13 Q. Based on information from their --

14 A. Well, he wasn't the only one who did the interviewing.
15 Ebony English did the interviewing, I did the interviewing,
16 and so it was a compilation. And Carlisle McNair did
17 interviewing.

18 MS. SHURLING: I have no objection if she wants to
19 introduce that, Your Honor. I had the opportunity to review
20 it myself in Mr. Swerling's file yesterday.

21 MS. HARRIGAN: The State would move this multipage
22 document in as State's Number 4.

23 THE COURT: Without objection?

24 (The witness inventory was received as State's
25 4.)

TESTIMONY OF JACK SWERLING

1 A. I believe it's dated July 24, 2009, and we call it a
2 witness inventory.

3 Q. Do you recall how many witnesses stated that Mr. Reid
4 fired first?

5 A. I don't recall the specific number. I know that there
6 was no one that said otherwise.

7 Q. Did multiple witnesses also say they only saw Markelle
8 with a gun and didn't see anyone else with a gun?

9 A. I believe that is correct. I can't tell you how many
10 did that -- but I think the reference to this would pretty
11 much answer those questions, and I'll have to -- this is
12 what, about a ten page summary? So I would have to stand on
13 this as a summary of what these particular people said.

14 Q. Did you also speak -- or did you speak with a witness
15 named Quinton Godwin, I believe it's on page three of your
16 document, State's Number 4?

17 A. Right. That is Markelle's brother, he was interviewed
18 by my paralegal.

19 Q. Did he state that Mr. Reid had called him and told him
20 that he did, in fact, shoot the victim?

21 A. Yeah. It said Markelle called him 30 minutes after the
22 shooting and told him that he had shot the victim, yeah,
23 uh-huh.

24 Q. And again, you did discuss self-defense and the reason
25 self-defense would not likely work in a trial with Mr. Reid?

TESTIMONY OF JACK SWERLING

1 A. Well, I mean, self-defense was discussed as part of
2 other greater discussions about murder, manslaughter, and
3 possible ways to approach the trial -- or approach a trial.
4 The State wasn't offering anything. There were a number of
5 people that were arrested in this case, maybe 12 or 13, and
6 one of the openings came about when the State said that they
7 would want Markelle to testify about some of the other
8 people and the most that they were willing to do in that
9 situation was to go ahead and offer him a minimum sentence
10 on murder. I discussed with John Meadors trying to get it
11 down to manslaughter so it would not be a day for day, it
12 would be 85 percent even if he got a maximum of 30 years,
13 and John Meadors and Barney Giese, they both said that they
14 were not going to let him plead to anything less than
15 murder. So it was all part of a discussion concerning
16 murder, manslaughter, possible defenses, and the risks that
17 were attended thereto, the punishments that were involved,
18 all of that was discussed with Mr. Reid on more than one
19 occasion.

20 Q. Did you receive discovery in this case from the State?

21 A. I did. If I can, I just tagged a couple of things.
22 There was a discussion here that I had had with Mr. Meadors
23 about manslaughter, and that was in July of '09, trying to
24 get him to do it, he would say he wouldn't allow that.
25 There was a discussion that I had with his parents about the

TESTIMONY OF JACK SWERLING

1 30 years, that they want murder and life, the best that you
2 can get -- this was actually a discussion that I had with
3 Markelle and then with his parents, but the best that he
4 could get was manslaughter if he got the lesser charge. The
5 Judge could give you 30, you would be out in 25 and a half,
6 the worst was murder for life, they're offering the 30,
7 which is the minimum of the murder. And then we discussed
8 the risks being greater than the possible rewards, and
9 measuring -- and what I mean by that is if he got lucky and
10 got a manslaughter verdict, which I didn't think he was
11 going to get, and got 30 he would do 25 and a half year. If
12 he -- this deal afforded him no risk and 30 years. So
13 that's what I'm talking about when we discussed the risks
14 outweighing the benefit. And there is several other --
15 there's a discussion here with me and Mr. Reid July 23rd, we
16 discussed murder, manslaughter, risk and reward, my opinion
17 about what he should do. And I gave him my opinion, I
18 didn't tell him what to do, but he certainly needed to know
19 how I felt about the possibilities of the murder conviction
20 and manslaughter conviction or self-defense. And I will
21 state right now, and I will say it again, I said it then,
22 self-defense wasn't even -- that was a ludicrous position to
23 take in that case, I felt it then and I feel it now knowing
24 what we know and knowing what we knew then. Mr. Woods told

25 him to shoot the guy and he shot him, so he understood all

TESTIMONY OF JACK SWERLING

1 of that. And there's other indications in here that we had
2 that discussion.

3 Q. Did you ever have reason to doubt his competency or
4 that he might not be understanding the discussions you had?

5 A. I had him evaluated by Dr. Harold Morgan which is what
6 I do in many murder cases, just -- and there was no question
7 about his competency. Does not show any signs of mental
8 illness, adequate intelligence but appears to be easily
9 persuaded. He's a follower rather than a leader. He has a
10 clear understanding of the charges against him and is able
11 to assist in his defense and competent to stand trial. That
12 was Dr. Morgan.

13 Q. Did you ever discuss appellate rights with your client,
14 Mr. Reid?

15 A. I mean, certainly in part of the discussion you talked
16 about appeals if he was convicted and if we went to trial he
17 could have an appeal. But in this particular case I would
18 have to say that we did not discuss an appeal after he was
19 sentenced because it was an agreed-on sentence and he got
20 what we agreed on. We agreed to 30 years, he pled to 30
21 years and the Judge gave him 30 years, so I don't see what
22 could possibly have been appealed so I don't recall ever
23 having that discussion with him.

24 Q. Did he ever request you to file an appeal on his
25 behalf?

TESTIMONY OF JACK SWERLING

1 A. No.

2 MS. HARRIGAN: Court's indulgence, Your Honor.

3 (Break in proceedings.)

4 Q. And you testified prior that there were 12 or 13
5 co-defendants also arrested in this case.

6 A. Yeah, it was a big number. You know, it could be
7 somewhere between ten and 13.

8 Q. Did you discuss with Mr. Reid that co-defendants could
9 possibly or would likely testify against him at trial?

10 A. Well, they were going to be testifying against him and
11 many of them had incriminated him in the situation. That
12 was one of the reasons we had some leverage, because what
13 Mr. Meadors and Mr. Giese were concerned about was that some
14 of these individuals who they knew were also responsible for
15 the activities that took place at the McDonald's that night
16 could go to trial and the evidence may not have been strong
17 against them, so they wanted Mr. Reid to testify -- to be
18 prepared to testify against them because they didn't want to
19 lose any of those cases. Other people were involved in a
20 lot of what happened out there that night, not the shooting
21 now -- I mean the actual shooting, Mr. Woods told him to do
22 the shooting. But so they held -- they agreed to let Mr.
23 Reid plead to 30, the minimum of murder but held open the
24 sentencing until these other people had gone through the
25 ~~system and so that they would know that Mr. Reid was~~

TESTIMONY OF JACK SWERLING

1 prepared to testify against them.

2 Q. You testified that some of the cases against the
3 co-defendants were not as strong. Would you --

4 A. Whatever they were charged with is what I'm talking
5 about, and they wanted Mr. Reid to be a potential witness in
6 those cases against them.

7 Q. Was Mr. Reid the only one charged with murder?

8 A. Yes, as far as I recall. I don't know that anybody
9 else was charged as an accessory but I could be wrong.
10 Nobody else was charged as a principal, I know that.

11 MS. HARRIGAN: No further questions, Your Honor.

12 CROSS EXAMINATION

13 BY MS. SHURLING:

14 Q. Mr. Swerling, did Mr. Reid ever tell you that prior to
15 firing the fatal shot he saw the victim reaching for
16 something?

17 A. He said that, and he also said he never saw anything.
18 He told the police that as well.

19 Q. But in his written statement, I believe it has already
20 been introduced, he didn't say anything about seeing the
21 victim reach for anything, did he?

22 A. I don't remember.

23 Q. There's a reference to a shot in the air and I believe
24 you mentioned it just a moment ago?

25 A. Uh-huh.

TESTIMONY OF JACK SWERLING

1 Q. Did he ever tell you what the purpose of the shot in
2 the air was?

3 A. I don't remember.

4 Q. Did you discuss with him the possibility of arguing
5 that the shot up in the air was a warning shot to get the
6 people to back away?

7 A. I don't remember what the purpose of it was. Get away
8 from what?

9 Q. I believe you said that he has indicated that he saw
10 the victim reaching for something.

11 A. Yeah, but to get away from what? I mean, he came out
12 of the McDonald's with a shotgun and Byron Woods told him to
13 shoot the guy, so what was he getting away from?

14 Q. I understand. My question was if he said he saw the
15 victim reaching for something and he fired a shot in the
16 air, was there any discussion about arguing that a first
17 shot was a warning shot to deter the victim --

18 A. I wouldn't have recollection of that, something that
19 specific after three or four years. If there is something
20 in the file which you had an opportunity to look at that
21 indicates that then please show me.

22 Q. Oh no, nothing. That was just a general question I had
23 after reviewing his statement. And with regard to voluntary
24 manslaughter, based on your years of experience you did not
25 feel there was sufficient evidence of an ongoing altercation

TESTIMONY OF JACK SWERLING

1 between the parties to have a good shot at getting a
2 voluntary manslaughter instruction?

3 A. Well, even more than that, he did not have an
4 altercation with anybody. He was told to go shoot somebody
5 so I didn't see where manslaughter would come into play on
6 that, plus he had said that he would be willing to do that.
7 So I think manslaughter was a stretch and I told him. So
8 now I'm sorry that he didn't have -- that he thought I was
9 not being effective as his lawyer but my purpose when I
10 think I'm effective is when I investigate the case, which I
11 did in this case, interviewed a couple dozen witnesses,
12 explained to him and his parents all the possibilities here
13 and let him make an intelligent decision on whether to go to
14 trial or plead guilty then I'm doing my job.

15 Q. And again, you heard his testimony earlier, you never
16 told him there was no possibility of getting a self-defense
17 instruction at trial, did you?

18 A. I told him -- what I probably said -- and, of course,
19 if you have something there that indicates what I did say I
20 would be happy to take a look at it, but what I probably did
21 say is in my opinion he would not get a self-defense charge.
22 And if he did get a self-defense charge in my opinion he
23 would not have been found not guilty by reason of
24 self-defense, and I would have gone up the ladder about
25 manslaughter and then murder.

TESTIMONY OF JACK SWERLING

1 Q. You anticipate my next question. I would assume that
2 you would have given some word of advice with regard to the
3 chances of getting a jury charge on the lesser-included
4 offense.

5 A. Correct. I mean, this was just -- this was a very
6 difficult case. It was gang related, about a guy trying to
7 get back in a gang, brought weapons to the crime, to the
8 scene, acted on the instructions of somebody to go ahead and
9 shoot somebody after he said he would be willing to murk
10 somebody or whatever they call it. I mean, this was a tough
11 case. And what I tried to do -- I was trying to get it into
12 the manslaughter range, which is what he said on the witness
13 stand about "something 20 years or something, but Meadors and
14 Giese were not about to go ahead and do that. This was a
15 pretty aggravated situation over in Camden and a lot of
16 people were pretty upset about what they did to the
17 McDonald's that night.

18 Q. Once again you anticipated my last questions. With
19 regard to his desire that you get him into a 20 year range
20 for a plea, I assume you explained to him once the State was
21 unwilling to consider voluntary manslaughter, that that was
22 just factually impossible because you couldn't get 30 -- you
23 couldn't get less than 30 for murder.

24 A. Yeah. Murder is 30 to life.

25 ~~MS. SHURLING: Thank you. No further questions.~~

1 MS. HARRIGAN: No further questions.

2 THE COURT: Thank you very much, step down. Anything
3 else from the State?

4 MS. HARRIGAN: No, Your Honor.

5 THE COURT: Any summation of any sort, Ms. Shurling?

6 MS. SHURLING: Just, Your Honor, that based on the
7 statement that was introduced and the communication telling
8 his desire to get back in the gang and his comments about
9 what he would be willing to do to get back in the gang, he
10 did allege that the shot that killed the young man was fired
11 after he saw the victim reaching for something. He did
12 indicate that he fired a shot in the air prior to shooting
13 the fatal shot, an action which could be interpreted as a
14 warning shot which would be more consistent with
15 self-defense than it would be a deliberate murder. That
16 there was evidence based on the applicant's own statement
17 that there was an altercation at the scene of the McDonald's
18 between rival gang members, and that based on that there may
19 have been a basis for getting a jury charge on the
20 lesser-included offense of voluntary manslaughter. The
21 applicant's position, Your Honor, as was reflected in his
22 testimony is that if he would have better understood the law
23 as it relates to the defense of self-defense and if he had
24 better understood the law as it relates to the
25 lesser-included offense of voluntary manslaughter, he would

1 not have waved his right to trial by jury and would have
2 proceeded to trial rather than entering his plea of guilty.

3 THE COURT: All right.

4 MS. HARRIGAN: Your Honor, the uncontroverted testimony
5 before this Court from both Mr. Reid and Mr. Swerling is
6 that Mr. Swerling fully discussed self-defense and the
7 lesser-included offense of voluntary manslaughter with Mr.
8 Reid including the likelihood of success on either. Mr.
9 Swerling testified that he told Mr. Reid he would not likely
10 be successful on a self-defense if he went to trial, or
11 likely to receive a voluntary manslaughter conviction of a
12 lesser-included offense. Mr. Reid also confirmed that these
13 were the discussions that he had with Mr. Swerling and this
14 was the advice that Mr. Swerling gave him, and that based on
15 this advice he entered into a negotiated plea fully aware of
16 the consequences of this plea and that he would be required
17 to serve 30 years day for day for murder. I believe that
18 covers the three amended application for post conviction
19 relief grounds that Ms. Shurling set forth. Additionally in
20 regards to the pro se allegations that Mr. Swerling did not
21 investigate, there is testimony both by Mr. Reid and from
22 Mr. Swerling that he retained a private investigator to
23 assist in this case and that the private investigator, as
24 well as Mr. Swerling's staff, talked to well over two dozen
25 witnesses, that they shared the yield of this investigation

1 with Mr. Reid and that after this he realized it was in his
2 best interest to accept a plea negotiation. And in regards
3 to his allegation for failure to file a direct appeal, Mr.
4 Reid himself acknowledged that he never asked Mr. Swerling
5 to file an appeal on his behalf. And so for these reasons
6 the State would set forth that no deficiency has been shown
7 in regards to the allegations as set forth in the pro se
8 application for post conviction relief or the three grounds
9 that the State received yesterday that are amended. And
10 there's also no prejudice that can be shown. Thank you.

11 THE COURT: All right. Anything further from anybody
12 else?

13 MS. SHURLING: Nothing, Your Honor.

14 THE COURT: Okay. All right. On Mr. Reid's case,
15 applying the standards of Strickland versus Washington to
16 the factual scenario presented to me today, I find that
17 there has been no showing in any way, shape or form that
18 Mr. Swerling was deficient in any way, shape or form. He
19 went above and beyond the reasonable standard ground of
20 criminal defense in this state in doing an extensive
21 investigation and going over the legal issues, and very
22 frankly getting a pretty close to unbelievable deal, plea
23 deal negotiations in this case. Finding that there's been
24 no deficiency in the performance I can show no prejudice to
25 Mr. Reid in any way, shape or form. The State has 60 days

1 to prepare an order, and that's it.

2 MS. HARRIGAN: Thank you, Your Honor.

3 THE COURT: Make sure Ms. Shurling sees the order so
4 that all of the issues -- that she can make sure that all of
5 the issues are in there before I see it.

6 (End of the hearing.)

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2 I, the undersigned, Michael C. Watkins, Official Court
3 Reporter for the Sixth Judicial Circuit of the State of South
4 Carolina, do hereby certify that the foregoing is a true,
5 accurate and complete transcript of the proceedings had and
6 evidence introduced in the trial of the captioned case
7 relative to appeal, in the Court of Common Pleas for Kershaw
8 County, South Carolina, on the 19th day of November, 2013.

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

11

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June 2, 2014

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Michael C. Watkins
Court Reporter

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STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

Markelle Reid, #346234,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No. 2012-CP-28-0318

ORDER OF DISMISSAL

FILED FOR RECORD
2013 MAR -5 AM 11:30
CLERK OF COURT
KERSHAW COUNTY, S.C.

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for post-conviction relief filed March 26, 2012. Respondent made its Return on April 30, 2012, requesting an evidentiary hearing be held. Thereafter, Applicant amended his application on November 18, 2013. An evidentiary hearing was convened on November 19, 2013, at the Richland County Courthouse. Applicant was present at the hearing and was represented by Tara D. Shurling, Esquire. Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Kershaw County Clerk of Court. Applicant was indicted during the February 2008 term of the Kershaw County Grand Jury for Murder (2008-GS-28-0011). Jack B. Swerling, Esquire, represented Applicant. On July 27, 2009, Applicant appeared before the Honorable G. Thomas Cooper, Jr., where he pled guilty as indicted. Sentencing was deferred until May 26, 2011, when Judge Cooper sentenced Applicant to thirty years imprisonment. No direct appeal was taken.

ATTEST True, Correct & Certified
Copy of Original on File in this
Court

[Signature]
Clerk of Court Kershaw County

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following allegations of ineffective assistance of counsel:

1. Ineffective assistance of counsel
 - a. "Counsel violated the duty of effective assistance of counsel by not investigating properly, he did not attempt to discover all reasonable available mitigating evidence; and
 - b. Counsel failed to appeal the decision of the court."
2. Due process

In his amended application, filed by his counsel on the eve of the evidentiary hearing¹, Applicant alleges:

1. "Plea Counsel was ineffective for failing to fully and accurately advise the Applicant of the law on self-defense and its potential application to the facts in the Applicant's case if the Applicant had exercised his right to trial by jury;"
2. "Plea counsel was ineffective for failing to fully and accurately advise the Applicant of the law concerning the lesser-included offense of voluntary manslaughter and its possible application to the facts in Applicant's case had he exercised his right to a trial by jury;" and
3. "The Applicant's pleas of guilty were not knowingly and voluntarily entered where they were made without adequate legal advice concerning a possible defense at trial, and without adequate knowledge of a possible lesser included offense which may have been successfully argued for at trial."

TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. Respondent presented testimony from plea counsel Jack B. Swerling, Esquire (hereafter "Counsel"). This Court also had before it a copy of the Applicant's plea transcript, the records of the Kershaw County Clerk of Court, and Applicant's records from the South Carolina Department of Corrections.

During the evidentiary hearing, Applicant testified that Counsel was retained to represent him by a family member. He testified that Counsel met with him "three or four times" prior to

¹ Respondent objected to these amendments, citing a lack of notice to both the State and trial Counsel, Jack Swerling. This Court agrees that Applicant's late amendments, served only hours before the hearing, prejudiced Respondent, but in an interest of justice, allowed the late amendments with leave for Respondent to depose trial counsel if necessary following the hearing. Respondent ultimately decided a deposition of trial counsel was not necessary following the hearing.

his guilty plea. He testified that during these meetings, he reviewed the discovery with Counsel. Applicant testified that he also reviewed possible defenses with Counsel, including self-defense. He elaborated that Counsel told him it was unlikely that Applicant would be successful on a claim of self-defense because Applicant had readily admitted to law enforcement that he fired shots first in a signed written statement before Counsel was retained. Applicant also conceded that he first fired a shot in the air, and then shot the victim without ever seeing a weapon because the victim reached for his waistband. Applicant also testified that Counsel discussed the likelihood of being convicted of the lesser-included offense of voluntary manslaughter and that Counsel advised him that it was not likely that a jury would convict him of the lesser-included offense, as he initiated the gunfire without seeing a weapon. He testified that Counsel reviewed the possible sentences for murder, included a mandatory minimum sentence of thirty years and a maximum sentence of life without parole.

Applicant testified that is a member of a nationally-known gang and that shortly before the crime, he sent text messages to the local leader of the gang stating that he was willing to kill someone to get back into the gang. He testified that Counsel advised him his gang affiliation would be a large problem at trial and that the solicitor's office prosecuted gang-related crimes especially toughly. He testified that Counsel advised him that if he was convicted after a trial, the State would likely seek a life sentence.

Applicant testified that Counsel employed a private investigator, who interviewed several witnesses from the scene. He testified that Counsel advised him that the private investigator's report indicated that all five witnesses stated that Applicant was the only person with a gun and the only one who shot. He testified that Counsel advised him that these witnesses would likely testify against him if he proceeded to trial.

Applicant testified that that Counsel advised him of the State's plea offer for thirty years imprisonment in exchange for his testimony against co-defendants. He testified that it was his decision to accept the State's offer and tender a guilty plea because he did not want to risk a harsher sentence if convicted at trial. He testified that he recalled telling the plea court he was guilty while under oath and that he is guilty. He testified that he stole the weapon used in the murder, as well as three other guns, from his grandparents. He testified that he understood he would be receiving a thirty year sentence when he pled guilty. Applicant testified that Counsel advised him of his right to appeal, as did the plea court. He testified that he did not ask Counsel to file an appeal on his behalf.

Following Applicant's testimony, Counsel was called to testify by Respondent. Counsel testified that he was retained on January 20, 2008, to represent Applicant. He testified that he that he met with Applicant numerous times, and during these meetings, he reviewed the elements of murder, what the State would be required to prove at trial, and Applicant's constitutional rights. He testified that he reviewed possible defenses with Applicant, including self-defense. He testified that before he was retained, Applicant gave a statement to law enforcement implicating himself as the only shooter and that he never saw the victim with a weapon. He testified that he explained to Applicant that based this statement, which would likely be admissible at trial, he would not be successful on a claim of self-defense because he brought about the difficulty. Counsel testified that the idea that Applicant could have been successful on a claim of self-defense was "ludicrous then and now" and that he informed Applicant of this. Counsel testified that he also reviewed the lesser-included offense of voluntary manslaughter with Applicant and explained to him that he would not likely be convicted of the lesser-include offense rather than murder because he was the only aggressor and the victim was not armed.

Counsel testified that Applicant stole the gun used in the murder, as well as three other guns, from his grandfather. He testified that Applicant sent text messages to the leader of his former gang, which he was trying to re-enter, shortly before the murder stating that he was willing to "murk²" somebody and that he was willing to "put a hole in somebody" to get back in the gang. He testified that he informed Applicant because this was a gang-related case, the State would likely prosecute it harshly. He testified that he reviewed all discovery materials with Applicant. Additionally, Counsel testified that he employed a private investigator, whose report indicated that at least five witnesses would testify that Applicant was the only shooter. Counsel testified that he had Applicant evaluated, a common practice for a client charges with such a serious offense. He testified that there were no issues regarding Applicant's competency and that he had a clear understanding of the law and his case.

Counsel testified that he tried to negotiate a plea deal with the State for the lesser-included offense, but the prosecuting assistant solicitor absolutely refused to make an offer to voluntary manslaughter. He testified that the State offered to allow Applicant to plead to the mandatory minimum of thirty years imprisonment for murder in exchange for his testimony against his co-defendants. He testified that as Applicant had already given a statement to law enforcement, he thought this offer was in the best interest of his client. He testified that he informed both Applicant and Applicant's parents that the offer was for a negotiated thirty year sentence, which would require Applicant to serve thirty years in prison, day-for-day. He testified that it was ultimately Applicant's decision to plead guilty. He testified that he reviewed Applicant's appellate rights with him, as did the plea court. He testified that that Applicant never asked him to file an appeal on his behalf. He testified that he does not believe that Applicant had

² Counsel and Applicant testified that "murk" is common slang term for murder. Additionally, Applicant testified that in the context of this text message, "murk" signified murder.

any meritorious ground on which to seek appellate review, as he pled guilty and was sentenced according to negotiations.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant 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 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms."

Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

"A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a 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." Holden v. State, 393 S.C. 565, 572, 713 S.E.2d 611, 615 (2011), citing Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009).

After careful review based on the standard discussed above, this Court finds that Applicant has failed to carry his burden in this action. Specifically, this Court finds that Counsel's testimony is very credible while Applicant's testimony is not credible. Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

Counsel's alleged failure to investigate

Applicant alleges that Counsel was ineffective for failing to properly investigate his case, including failing to discover all reasonable available mitigating evidence. Applicant has failed carry his burden of establishing that Counsel was ineffective for failure to investigate. The uncontroverted testimony reveals that Counsel employed a private investigator that spoke to multiple witnesses who all stated that Applicant was the sole aggressor. Additionally, Applicant

failed to present any evidence or testimony to this Court as to what possible benefit could have been derived from additional investigation. "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998). Therefore, this allegation must be denied and dismissed with prejudice.

Counsel's alleged failure to file a direct appeal

Applicant alleges that he is entitled to a belated direct appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974), as Counsel failed to file an appeal on his behalf. "[C]ounsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either: (1) that a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing." Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S.Ct. 1029 (2000). "Even in cases when the defendant pleads guilty, the court must consider such factors as whether the defendant received the sentence bargained for, as part of the plea and whether the plea expressly reserved or waived some or all appeal rights." Id. Absent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008). "One extraordinary circumstance which would require counsel to advise a defendant of the right to appeal from a guilty plea would arise when the defendant inquires about an appeal." Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995).

After careful review based on the standard discussed above, this Court finds that Applicant has failed to carry his burden in this action. Uncontroverted testimony reveals that Counsel reviewed Applicant's appellate rights with him, as did the plea court during Applicant's

guilty plea. Additionally, Counsel and Applicant both testified that Applicant did not request that Counsel file an appeal on Applicant's behalf. Counsel testified that he did not believe that Applicant had a meritorious ground on which an appeal could be sought, as Applicant pled guilty and was sentenced in accordance with the negotiations between Applicant and the State. This Court finds that Counsel's performance was reasonable and effective. Therefore, this Court finds that this allegation must be denied and dismissed with prejudice.

Counsel's alleged failure to fully advise Applicant on the law regarding self-defense

Applicant alleges that Counsel was ineffective for "failing to fully and accurately advise the Applicant of the law on self-defense and its potential application to the facts in the Applicant's case if the Applicant had exercised his right to trial by jury." This Court finds that Applicant has failed to meet his burden in regards to this allegation, which must be denied and dismissed with prejudice. The undisputed testimony reveals that Counsel fully advised Applicant of the law on self-defense, the applicability to Applicant's case, and the specific reasons why Applicant would not likely prevail on such a claim at trial. Applicant's own testimony is that he brought on the difficulty and the victim was unarmed. Counsel's performance in regards to this allegation was reasonable and effective based on the circumstances of this case. Therefore, this allegation must be denied and dismissed.

Counsel's alleged failure to fully advise Applicant on the law regarding the lesser-included offense of voluntary manslaughter

Applicant alleges that Counsel was ineffective for "failing to fully and accurately advise the Applicant of the law on concerning the lesser-included offense of voluntary manslaughter and its potential application to the facts in the Applicant's case if the Applicant had exercised his right to trial by jury." This Court finds that Applicant has failed to meet his burden in regards to

this allegation, which must be denied and dismissed with prejudice. The undisputed testimony reveals that Counsel fully advised Applicant of the law on the lesser-included offense of voluntary manslaughter, the applicability to Applicant's case, and the specific reasons why Applicant would likely be convicted of murder and not the lesser-included offense if he proceeded to trial. Applicant's own testimony is that he brought on the difficulty and the victim was unarmed. Counsel's performance in regards to this allegation was reasonable and effective based on the circumstances of this case. Therefore, this allegation must be denied and dismissed.

Involuntary Guilty Plea

Applicant's also alleges that his guilty plea was entered involuntary due to Counsel's failure to fully advise him of the law regarding self-defense and the lesser included offense of voluntary manslaughter. To find a guilty plea was voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (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 presented at the post-conviction relief hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

As discussed above, this Court finds that Counsel performed reasonable and proficiently in advising Applicant of both self-defense and the lesser-included offense of voluntary manslaughter and the likelihood of success based on the facts of Applicant's case. Additionally, the transcript and Applicant's own testimony reveal that the guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea, as well as the exact sentence he would receive if his plea was accepted. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, [an applicant'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 (1977). Statements made during a guilty plea should be considered conclusively, unless an [applicant] presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir. 1975), overruled on other grounds by United States v. Whitley, 759 F.2d 327 (4th Cir. 1985). This Court finds that the Applicant presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing. During his guilty plea, Applicant freely admitted his guilt to the plea court, which he affirmed during the evidentiary hearing. Applicant also told the plea court under oath that he understood his plea was pursuant to a thirty year negotiation from the State and that he would receive a sentence of thirty years imprisonment if the plea court accepted his guilty plea. Additionally, during the evidentiary hearing, Applicant testified that he is guilty of and that he pled guilty to avoid a harsher sentence if convicted at trial. Therefore, this allegation must be denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-

conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That this application for post-conviction relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to and remain in the custody of the State

AND IT IS SO ORDERED this 27th day of February 2014.



ROBERT E. HOOD
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina

WITNESSES

Corey, CAPD

ARREST WARRANT NUMBER

1133288

ACTION OF GRAND JURY

1111-111

Foreperson of Grand Jury
Date: 12/11/08

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2008-GS-28-0011

The State of South Carolina

County of Kershaw

COURT OF GENERAL SESSIONS

February TERM 2008

THE STATE
vs.

Markelle Jamar Reid

Indictment for

MURDER

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

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

Defendant

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

Defendant

Witness:

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

ATTEST True, Correct & Certified
Copy of Original on File in this
Court

[Signature]
Clerk of Court Kershaw County

STATE OF SOUTH CAROLINA)
)
COUNTY OF KERSHAW)

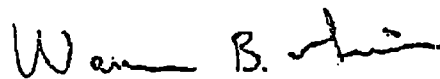
INDICTMENT

At a Court of General Sessions, convened on February 20, 2008, the Grand Jurors of Kershaw County present upon their oath:

MURDER

That Markelle Jamar Reid did in Kershaw County on or about December 7, 2007, feloniously, willfully and with malice aforethought, kill one Michael Joseph Smith by means of shooting the victim and that the said victim died as a proximate result thereof. All in violation of SC Code of Laws § 16-3-10

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



Warren B. Giese, SOLICITOR

ARREST WARRANT

I-133288

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
CAMDEN

THE STATE

against



MARKELLE JAMAR REID

 Address: ST
CAMDEN SC 29020

Phone: _____ SSN: _____

Sex: M Race: B Height: 5-7 Weight: 120DL State: SC DL#: _____DOB: _____ Agency ORI#: SC0280100Prosecuting Agency: CAMDEN POLICE DEPARTMENTProsecuting Officer: DET SGT E R COREYOffense: MURDEROffense Code: 0116Code/Ordinance Sec. 16-03-0010, 16-03-0020

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

 _____ The accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge

(L.S.)

Date: _____

RETURN

 A copy of this arrest warrant was delivered to
defendant MARKELLE JAMAR REID
on 12/8/07

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

CAMDEN MUNICIPAL COURT

1000 LYTTLETON STREET

CAMDEN, SC 29020

(803) 425-6025

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
CAMDEN

AFFIDAVIT

 Form Approved by
S.C. Attorney General
July 26, 1990
SCCA 818
Personally appeared before me the affiant DET SGT E.R. COREY wtbeing duly sworn deposes and says that defendant MARKELLE JAMAR REIDdid within this county and state on 12/07/2007 violate the criminal laws ofState of South Carolina (or ordinance of ☐ County/ ☒ Municipality of CAMDEN

in the following particulars:

DESCRIPTION OF OFFENSE: 16-03-0010, 16-03-0020 / MURDER
 I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

 ON 12/07/07 THE DEFENDANT MARKELLE REID DID COMMIT THE ABOVE STATED OFFENSE IN THAT HE DID WITH MALICE,
AND AFORETHOUGHT, SHOOT THE VICTIM MICHAEL JOSEPH SMITH WITH A SHOTGUN KILLING THE VICTIM. THIS INCIDENT
OCCURRED AT TIGERSHOP 204 WALL STREET CAMDEN, SC, IN THE CITY LIMITS OF CAMDEN, SC. WITNESSES AND
STATEMENTS TO PROVE THE SAME.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
CAMDEN
Affiant's Address 816 WEST DEKALB STREETCAMDEN SC 29020Affiant's Telephone 803-425-6025

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER IN THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on 12/07/2007 defendant MARKELLE JAMAR REID

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of CAMDENDESCRIPTION OF OFFENSE: MURDER / MURDER
 True, Correct & Certified
Copy of Original on File in this
Court

 Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to the law. A copy of this Arrest Warrant shall be delivered
to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me)

on Dec 8, 2007)

_____) (L.S.)

MICHAEL E STEGNER

Judge Code: 000Judge's Address 1000 LYTTLETON STREET BOX 7002CAMDEN SC 29020-7002Judge's Telephone 803-425-6035Issuing Court: ☐ Magistrate ☐ Municipal ☒ Circuit

Case: 2007-2306

ORIGINAL

STATEMENT

8/16 W. 2/14/16 127

DATE 12-10-07 TIME 1234 P. M. PLACE 1215 ~~Street~~ ~~Brady~~ ~~St.~~ C.P.P.
 I, Maq Kelle Reid am 18 years old and I live at Friday Rd. Camden SC 29020

I am giving this statement to Detective D. Buxis I.D. 1717 who has identified himself as a Police Officer

and he had duly warned me that I have the following rights: that I have the right to remain silent and not make any statement at all; that any statement I make may be used against me at my trial; that any statement I make may be used as evidence against me in court; that I have the right to have a lawyer present to advise me prior to and during any questioning; that if I am unable to employ a lawyer, I have the right to have a lawyer appointed to advise me prior to and during any questioning and that I have the right to terminate the interview at any time.

Prior to and during the making of the statement, I have and do hereby knowingly, intelligently, and voluntarily waive the above explained rights and I do make the following voluntary statement to the aforementioned person of my own free will and without any promises or offers of leniency or favors, and without compulsion or persuasion by any persons whatsoever:

I texted Byron on a Mon or Tues and asked could I get back down and ~~be~~ that I was willing to put a whole ~~son~~ in somebody if I had to. Then he said come talk to him I went to Trinity and met him there and he told we was going to ride on somebody. I said okay and left. Friday came and we all went to the party at the American Legion and I got kicked out early because I was about to fight Jerrell wise so I left in Dexter's car. He called a little later on said that the party got shut down for throwing gang signs. So I went back in picked up Andy, Renee up. So we were leaving and Byron said meet them at the car wash when we got there he said meet him at 521 Medfields we gonna handle everything because somebody was stacking at them. Got to McDonalds and Jerrell, Akem, Darius and others started to jump Mike he was running and they ran him outside then Dexter gave me his gun and told me to shoot in the air and he said shoot him before he shoot you and I shot again, put the gun back in Dexter's car and ran to the shell stations where Byron, TC, Akem, Figie, Alex, came on pickup I me up the took us to the Ville, when we got in the Ville me, TC, and Akem was being shot at by

I have read this statement consisting of 11 page (s), each page of which bears my signature, and I do affirm that all facts and statements contained herein are true and correct.

Maq Kelle Reid
 Signature of person making voluntary statement

The above warnings were given by and this voluntary statement was taken by



Darius B...
 Witness

(This must be one and the same person as named above)

DATE 12-10-07 , 20 1734 TIME 816 L. DeKalb St. (C.I.P.) PLACE
Mr. Keith Reid am 18 years old and I live at

I am giving this statement to Detective P. Buxis I.D. 1347 who has identified
 myself as a Police Officer

and he had duty warned me that I have the following rights: that I have the right to remain silent and not make any statement at all; that any statement I
 make may be used against me at my trial; that any statement I make may be used as evidence against me in court; that I have the right to have a lawyer
 present to advise me prior to and during any questioning; that if I am unable to employ a lawyer, I have the right to have a lawyer appointed to advise me
 prior to and during any questioning and that I have the right to terminate the interview at any time.

Prior to and during the making of the statement, I have and do hereby knowingly, intelligently, and voluntarily waive the above explained rights and I do
 make the following voluntary statement to the aforementioned person of my own free will and without any promises or offers of leniency or favors, and
 without compulsion or persuasion by any persons whatsoever:

Ernest Richardson and Jarvis Jones, Charles Jones, Van Nelson, and
Marcel Moore was with him.

At the car wash they got the shotgun out of Byron's
car and gave it to Dexter because he already a Akceem and Dexter's
uncle and Dexter had two shotguns and the 22 in his car

My me, Akceem and Quinter got 2 shotguns and 2 rifles
from my grandparents house on thanks giving and Dexter
and I got Shotgun shells on Thursday on the 6th of December

I have read this statement consisting of _____ page (s), each page of which bears my signature, and I do affirm that all
 facts and statements contained herein are true and correct.

x Mr. Reid

Signature of person making voluntary statement

The above warnings were given by and
 this voluntary statement was taken by

Dominic B. #500
 Witness

(This must be one and the same person as named above)

Edward Goodwin
Birmingham, SC

Quentin Goodwin
Birmingham, SC

Ask Dad

Edward Reid

Mr. Swerling

Well it started Sept 3, 2007 when me, Terren 669-
Richardson and friends got pulled over for smoking 7338
marijuana and nobody wanted to ~~take~~ take the
charge. So we all went to Jail and when we 6/25-
got out it was seeming to be problems between 7/6/8
us because no one would admit to the charge.
A short while after that he began telling me
(Terren Richardson) that he wanted to fight me be-
cause he felt like I should have took the charge
and I did not want to fight so he hit me in
my face and I did not do anything. I just went
home. So I stayed away from him, so in October
I was at a friends house and Terren came over
there and while I was sitting on the couch he
(Terren) and some others came into the house and
he approached me and ask what I was gon do and
then he hit me once again and I did nothing and
when he noticed I wasn't going to fight him he
went outside and bust the passenger glass in
my car and put dents on the side. Me and my
dad informed the police. So now I decide to get
back in the gang for some protection. Once they heard
that Terren and a couple of other guys came to
an apartment complex with guns looking for me.

so a couple of days later I go to my grandparents house and some guns because they were looking for me (Terren and other gang members). so I take the guns and put them up and I text byron and let him know that I wanted to get back down so he told me to come and talk to him and when I met him we started talking and he told me that we were going to have to do something like shoot at somebody's house or at a person and I said okay. He told me to get with him later Friday. So Friday around about three-thirty my brother called and told me that terren said he was going to shoot me to-night so once I hung up the phone I called byron and told him and he said 'dont worry about it we are going to shoot his house up'. So the reason for me bringing the gun is because of the phone call from my brother. Dexter comes on picks me up when the gun were put in his car then and we went to landy house and waited there for him to get off work while waiting we start to drink alcoholic beverages. We never went to a basketball game. Once landy came home we went to the american legion. Once we got there we all went in and within the 30 mins and they threw me out of the party. so when I left

✓

I saw torren and he called my phone and told me that he had a gun that was going to shake the ground with me, I hung up. Then dexter called and told me to come back because the party has been shut down do to fighting. I got back to get them when we were leaving Byron called and told us to meet him at the carwash and then we followed him to McDonalds once there the people in the car with me walked in and I was just standing around and I was approached by two young men and they were saying they wanted to fight me and I was like no so then I saw michael being chased around the restaurant and the two left me alone to go help fight michael and I walked outside and byron those in his car was just walking in from outside. I then had the gun and shot in the air and then I saw michael reach a left his shirt for something at this time dexter told me to shoot him before he shoots you so I then ~~shoot~~ ~~shot at or~~ shot out of fear and ran once I got picked up I went to the apartment complex where I was shot at by torren Richardson (who was the reason I got the gun in the first place) so I went to my mom's house. I'm trying to say I did not want to shoot

michael I just thought the he was going to shoot me because of the blast in the air, which I shouldn't have done. I feel like I needed to get those weapons just because of how many times my life was threatened by Terren Richardson I felt that if we shot his house up he would get the police to leave me alone. But the shooting at McDonalds was not gang related because me and Michael did not have any problems with each other. The police made it seem like it was a gang shooting because I wanted to regain and they wanted some publicity I assume. But the lynching I do believe was gang related, but I really just was scared because this has been going on since the drug charge I hope that you can work with me. The police told me if I would help them that I would have got a bond and that I would have got the least amount of time. They also told me that if I did not help them that I was going to be somebody's bitch at RWE. I'm not a bad person I just want to take care of my kids. Could you see about getting me about ten yrs. if possible.

Markelle Reid

*Law Offices of
Jack B. Swerling*

*1720 Main Street, Suite 301
Columbia, South Carolina 29201*

*Telephone 803-765-2626
Fax 803-799-4059*

July 10, 2009

Markelle Reid
c/o Kershaw County Detention Center
101 Bramblewood Plantation Road
Camden, South Carolina 29020

Dear Markelle:

I received your letter on July 9, 2009. I will see what they say about twenty (20) years or less. As for a bond, that will not be possible. The trial is in two (2) weeks.

Very truly yours,

Jack B. Swerling

JBS:lhb



Mr. Seveling

I don't know what's really going on or what you are trying to do but I just need to hear me out.

I can't just plea to 30 yrs rather I admitted or not because of the simple & that I also told them (police) that I seen him reach in his ~~pants~~ for something I don't know what it was. As it turns out it was a gun so it could have been either, or you understand where im coming from. So listen I will only plea to any under 20 yrs & down, I know you are a good lawyer and I need you to work some magic. If you cant get 20 yrs or under by the time I go to court, get me in for a bond and prolong my arst date or something ~~because I know you can do something so don't~~ just leave me to say you got good money out of my family so please help us out and let me my mom know something asap.

Merkelle Reid

RECEIVED JUL 09 2008

MEMORANDUM

To: Jack Swerling

From: Julia and Ebony

Date: 07/24/09

Re: UPDATED: Witness Inventory / Markelle Reid

Witness: Alisha Baskins

- id-ed, no stmt or interview with police
- Julia talked to the mother who was very hostile about being contacted by the defense. She could not recall her daughter's phone number at school but said she would tell her daughter to call the office if they spoke any time soon. The mother did say that her daughter was present the night of the shooting and does recall what happened but would not go into detail. Again, she would not give her daughter's contact information.
- Julia interview: got to McDonalds right after the shooting; is not from Camden and does not know Markelle or Mike; did not see any guns

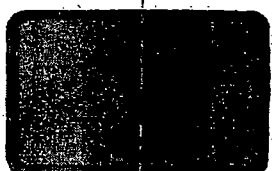
Witness: Kenyatta Belton

- interview by Carlisle McNair
- Markelle used to date her sister
- her family and Markelle's went to same church and also went to same after school program
- knew Markelle ran with gang crowd
- not present at McDonalds
- thinks he was being initiated into a gang in Aug- Sept of 2007

Witness: Shayla Bennett

- id-ed, no stmt or interview
- interview by Carlisle McNair
- did not go to McDonalds
- did not see Markelle at party not McDonalds
- knows Markelle and Mike from school
- Has no idea why Markelle shot Mike
- Knows nothing about any gang activity concerning Markelle

Witness: Darby Bradley

- interview by Carlisle McNair
 - student at SC State
 - Markelle's god brother
 - no knowledge of Markelle being in a gang
 - was at McDonalds order food when saw a fight break out
- 

- did not see shooting, was inside during shooting
- did not see Markelle nor did he see Markelle with a gun
- no interview with law enforcement

Witness: Jacolby Carlos

- interview by Carlisle McNair
- was at McDonalds
- did not witness shooting
- did not see Markelle with a gun
- was interview by Burris and gave a written statement (we need stmt)

Witness: Trevor Carlos

- older brother of Jacolby Carlos
- according to Markelle, Trevor had an altercation with Markelle
- Julia interview: Only knows of Markelle thru his little brother(s); Has never had an altercation with Markelle; Has no knowledge of gangs in the community; Heard that the shooting at McDonalds was over a girl

Witness: Shanais Clark

- id-ed, no stmt or interview
- cannot find working phone number; prosecution has no info on this person

Witness: Whitney Corbett

- id-ed, no stmt or interview with police
- just pulled up to get gas after the shooting had occurred
- says the confrontation started at the American Legion party
- did not see anyone with guns, only saw some guys, whom she could not identify, jump into a SUV

Witness: Audrey Dempsey

- interview with Carlisle McNair on 11/06/08: knew about incident involving Bernardo and Terran beating up Markelle
- interview with Carlisle McNair on 11/10/08: Markelle told Audrey about beating he received from Bernardo and Terran for leaving the gang; she stated that on the date of the shooting, Byron Wood picked Markelle up after the shooting at McDonalds and took him to Wateree Villa; gang members came looking for Markelle that night at Wateree Villa and shot guns, Audrey called 911 when she heard the shots and she was not aware of the shooting at McDonalds at this time; Markelle was seeing Terran Richardson's babies mother and indicated that Markelle's beating may have to do with that and/or the gang.

Witness: Derrick Dubose

- interview is pending with Carlisle McNair
- affiliated with Folk gang

Witness: Myia Eleby

- id-ed, no stmt or interview with police
- the phone number provided by the prosecution has been disconnected; we cannot find another number at this time

Witness: Alexander English

- id-ed, no stmt or interview
- cannot find working phone number; prosecution has no info on this person

SUBPOENA Witness: Amber Felder

- interviewed by Carlisle McNair
- student at College of Charleston
- Markelle's cousin
- went to McDonalds with Shalya Bennett and cousin
- saw Markelle with gun, saw Markelle do the shooting, did not see anyone else with a gun

Witness: Christian Greene

- handwrote an unmarked statement that Markelle was back and forth between gangs and wanted to become a Blood

SUBPOENA Witness: Quinton Goodwin

- interview with Ebony
- Markelle's brother
- received a text msg from Jamie Halley saying that he and Markelle should not go to the party because there were rumors that something would happen if they did, specifically the victim and Daryus Smith were going to kill Quinton and Markelle
- he went with Markelle to Jaime's house after school and she told them the same thing
- Terran Richardson, Jarvis Jones, Anthony Bradford, and Carlos Whitmore came through the Watteree Villa and shot at Markelle
- Says that Markelle was first in Bloods, then went to Folk, and then dropped out completely.
- Markelle hung out with victim before dropping out and when he tried to get out, the fighting and messages started
- believes the shooting of the victim is related to the prior shootings, fighting, and messages
- says Markelle called him 30 minutes after the shooting and told Goodwin that he had shot the victim
- he did not go to the party or McDonalds and believes that Markelle and the victim were friends

SUBPOENA Witness: Jamie Halley

- Ebony interview via phone 11/3/08: stated that was not at McDonalds when shooting occurred, but drove up minutes later to get gas and received a call about what happened; didn't see anything but was aware of people jumping Markelle
- Carlisle interview 07/21/09: Attended the party at American Legion with Kim Cook; Did not witness Markelle get into a fight at the party or any altercation; Kim left the party

with Markelle and returned after party was over; Kim and Jamie were reunited; Unknown who Markelle left with the second time; Jamie & Kim got something to eat, got gas at Shell Station on Hwy 521 and went to McDonald's. Law enforcement was present and the area was roped off with crime scene tape. The shooting had already occurred; Returned to Wateree Villa, where a crowd of people were gathered; Markelle was with his father; Apparently someone had ridden through the Villa shooting; Was not present at McDonald's when shooting occurred; Was not present at Villa when drive-by shooting occurred; Unknown why Markelle shot Mike

Witness: Safa Halley

- id-ed, no stmt or interview; prosecution has no info on this person

Witness: Julian Hamblin

- id-ed, no stmt or interview with police
- was just pulling up when the confrontation began and was inside of McDonalds when the shooting occurred
- did not see anyone with a gun
- did not know Markelle well
- says he new Mike a little better than Markelle, but Mike kept to himself mostly as he cared for his little brother

Witness: Jerome Hampton

- interview with Carlisle McNair
- was working at Tiger Store on 12/07/07 but is no longer employed
- knows Markelle and his parents and the victim and victim's parents
- made 911 call after John Middleton instructed him to do so
- did not witness fight at McDonalds
- did not witness shooting
- heard 2 shots for shotgun
- found 1 shotgun shell at Tiger Store

Witness: Sharmel Harris

- interview with Ebony
- she was working that night at McDonalds but was in the back in the break room so she didn't see anything

Witness: Marcus Hickman

- interview by Carlisle McNair
- McDonalds employee at time of shooting
- got off at 11, so saw nothing

Witness: Joia Johnson

- id-ed, no stmt or interview; prosecution has no info on this person
- Julia interview: attended a church meeting then went to McDonalds and was just pulling up when the shooting occurred; saw shooting; only saw Markelle with a gun; only knew

of Mike, but knew Markelle a little better; lives in North Carolina and was just home for the weekend

Witness: Felicia Jones

- interview by Carlisle McNair on 07/21/09
- Knows Markelle and Mike (victim)
- As far as she knew Markelle and Mike were friends
- Markelle switched gangs from Bloods to Folk
- Blood gang members, jumped & beat Markelle at McDonald's on Hwy 521 sometime prior to the shooting
- Terrence Patterson & Akeen Dickson came to her house after the shooting at McDonald's and told her Markelle shot Mike. They were both crying and saying they didn't know what to do.
- Markelle and Kim Cook came by her house earlier, before going to McDonald's after Markelle was kicked out of the party for fighting. They were in Dexter Caldwell's car. Unknown who Markelle got into a fight with
- Dexter called Markelle and told him the party was over, to come pick him up
- Markelle and Kim returned to the American Legion Hut
- Felicia didn't go to the party or McDonald's, but was told Markelle picked up Dexter and went to McDonald's. Kim left with Jamie Halley
- Markelle returned to the Wateree Villa later, sometime after the shooting. Unknown how Markelle got to Wateree Villa
- A black truck rode through the Villa and started shooting at Markelle. Unknown who was in the black truck
- Markelle's father came to the Villa to get Markelle.
- Jamie and Kim arrived at the Villa, after the black truck left and Kim spoke to Markelle's father. Unknown what was said.

Witness: Jarvis Jones

- interviewed with Terran Richardson and Carlos Whitmore by Carlisle McNair
- claimed to have no knowledge about Markelle getting beat up
- accused Markelle of getting involved in something they had nothing to do with
- said Markelle calls him every day (NOTE: Markelle told Carlisle that he didn't have a phone number for Jarvis)
- denied knowing of any incidents at McDonalds involving Markelle
- Markelle informed Ebony that Jones is affiliated with Folk gang

Witness: Wesley Joyner

- id-ed, no stmt or interview
- cannot find working number; prosecution has no info on this person

Witness: Brittany Kelley

- 12/8 stmt to Det. Skinner: stmt is worthless, has 5th hand knowledge that something might have happened maybe

Witness: Cameren Kelley

- id-ed, no stmt or interview with police
- Julia interviewed: -was present, but was inside McDonalds; knows no reason for shooting. No one knew of any trouble between Markelle and Mike. The shooting was senseless. The only thing he can figure is that it all happened so fast that Markelle just reacted.; says Mike was a "cool dude." He knows Mike was involved in a gang but you would never know it unless you knew him or his crew well. According to Cameren. Mike did not "act" like a gang member.

Witness: Ashley Lee

- interview by Carlisle McNair
- was at McDonalds
- did not witness the shooting
- did not see Markelle with gun
- saw Markelle in store prior to shooting
- id-ed by law enforcement, but no stmt or interview

Witness: Melquan Lee

- interview by Carlisle McNair
- denied being in a gang
- witness fight at McDonalds between victim and others
- never saw Markelle inside McDonalds
- never saw a gun
- law enforcement id-ed him as being present
- no law enforcement statement

Witness: Dwayne Lloyd

- interview with Ebony
- he saw victim inside McDonalds before the shooting
- never heard victim call out Markelle's name
- never saw victim with gun
- saw victim being approached by a bunch of guys trying to fight him, but Lloyd never saw victim swing back or put up a fight
- was inside McDonalds when shooting occurred and never saw who fired the shots
- saw victim lying on the ground

Witness: Devon McCord

- id-ed as being present, but no stmt or interview
- cannot locate a working phone number; prosecution has no info on this person

Witness: Steven Magazine

- id-ed, no stmt or interview with police
- Julia interview: was at McDonalds when the shooting took place; did not see any one with a gun; did not know of Mike or Markelle having a bad reputation or being in a fight with each other

Witness: Jonathan Marshall

- id-ed, no stmt or interview with police
- Julia interview: went to the American Legion party and was at the McDonalds when the shooting happened; was standing in the doorway of the McDonalds and saw Markelle with the gun; saw Markelle shoot the victim; did not see anyone else with a gun; seemed very surprised about the whole incident; had no idea that Markelle and the victim had a problem with each other; saw Markelle run after shooting the victim

Witness: John Middleton

- interview with Carlisle McNair
- was working at Tiger Store on 12/07/07
- saw victim arrive at McDonalds
- knows victim's mother
- saw a group of guys corner victim and friends
- instructed Jerome Hampton to call 911
- saw victim run out of McDonalds chased by 3 black males, one of which had a pistol in his hand down by his side
- saw the "shooter" with long gun shot victim one time
- did not know who the shooter was or where he went after the shooting
- cannot identify the shooter and has never been shown a photo line-up
- does not know Markelle
- heard an individual standing next to "shooter" says, "Shoot that nigga." NOTE: Markelle claims Dexter Caldwell told him, "Shoot before he shoots you."

Witness: McArthur Missouri

- 12/14 stmt to Det. Burris: stated he is missing two guns
- Markelle's grandfather

Witness: Deanna Montgomery

- id-ed, no stmt or interview with police
- spoke with mom at _____ who advised me to call at 9:30 - 10:00 am tomorrow because Deanna is at work now

Witness: Bernardo Moore

- interview with Carlisle McNair
- denies any involvement in any assaults on Markelle; denied knowing any other players; denied gang affiliation
- Markelle identified Moore as being affiliated with Folk gang

Witness: Andrea Reynolds

- id-ed, no stmt or interview; prosecution has no info on this person
- Julia interview: just pulled up to the McDonalds when shooting occurred; saw no guns; knows nothing about gangs; did not know Markelle or Mike; does not know a reason for the shooting

Witness: Jonathan Richardson

- id-ed, no stmt or interview; prosecution has no info on this person
- Julia: per his mother, Jonathan was not there, but his sister Jonica was. See Jonica Richardson.

Witness: Jonica Richardson

- 12/8 stmt to William West: her friend told her that Markelle shot victim

Witness: Terran Richardson

- interview with Jarvis Jones and Carlos Whitmore by Carlisle McNair
- denied involvement in any assaults against Markelle
- accused Markelle of getting involved in something they had nothing to do with
- denied knowing of any incidents at McDonalds involving Markelle
- Markelle informed Ebony that Richardson is affiliated with Folk gang

Witness: Jerel Robinson

- id-ed, no stmt or interview with police
- Julia's interview: was present the night of the shooting but was inside of the McDonalds; did not see anyone with a gun, but heard a shot; knows no reason for the shooting; has no knowledge of Mike have a bad reputation

Witness: Ashley Ruff

- Ebony interview: Markelle has 2 children with her; says that Markelle was jumped at McDonalds; not sure of the reason; Bryon Wood, Terrance Chestnut, and Jermel Wise are Blood gang members; Markelle got a knee injury from incident; car window was busted out by Terran Richardson who is in Folk; the night of the shooting, Jermel Wise beat Markelle's head against the wall and witnesses said Markelle left because of that; Markelle was shot at in the Wateree Villa.

SUBPOENA Witness: Jerry Salmond

- interview by Carlisle McNair
- saw Markelle with gun
- saw Markelle shoot once in the air
- saw Markelle shoot victim
- saw Dixon with pistol but did not see him shoot
- interviewed by Burris (we need stmt)

Witness: Kenan Spears

- id-ed, no stmt or interview with police
- Julia's interview: was present the night of the shooting but was inside of the McDonalds; did not see anyone with a gun, but heard a shot; did not know Mike or Markelle to be violent or bullied or have a problem with each other or anyone else for that matter

Witness: Carleshia Stevens

- owner of 1998 Jeep Cherokee

Witness: Ken Stover

- id-ed, no stmt or interview
- cannot locate a working phone number; prosecution has no info on this person
- Ken responded to the letter Ebony sent. Julia interview: was inside of the McDonalds during the shooting; did not see any guns or see the shooting; was home for the weekend but lived in Rockhill and attended Winthrop at the time; did not know Mike at all, and only casually knew Markelle; has no knowledge of why the shooting took place or a bad reputation of either Mike or Markelle

Witness: Trence Turner

- interview in process by Carlisle McNair

Witness: Carlos Whitmore

- interview with Jarvis Jones and Terran Richardson by Carlisle McNair
- claimed to have no knowledge about Markelle getting beat up
- accused Markelle of getting involved in something they had nothing to do with
- denied knowing of any incidents at McDonalds involving Markelle
- Markelle informed Ebony that Whitmore is affiliated with Folk gang

Witness: Loretta Williams

- interview by Carlisle McNair
- went to McDonalds after a party
- heard gunshots but cannot remember how many
- did not see shooting
- did not see Markelle and did not see him with a gun
- no interview with law enforcement

Witness: Mary Williams

- interview with Ebony via phone
- says she did not hear the victim calling out Markelle's name in McDonalds

Witness: Wayne Woods

- interview in progress by Carlisle McNair

MEMORANDUM

Medical/Program Interview Inventory / Markelle Reid : Correctional Programs

Interviewed: John Carmicheal

- Director of The Alpha Center.
- Interviewed on 10/16/08
- Stated that the anti-social behavior exhibited by Reid was reported by the school as a result of numerous fights he was involved in.
- Was admitted to The Alpha Center for marijuana use, fighting and possession of a knife on school grounds (Admission was court ordered). Which Reid denied were a result of a mental illness.
- Said Reid denied gang affiliation but admitted to knowing gang members.
- Reid was admitted in August, stopped coming in October and was discharged in December.

Interviewed: Nancy Horsby

- Center for Change
- Interviewed on 10/15/08
- Observations: No anti-social behavior
- Formulated Opinions: Nice kid but sort of an attitude, never observed any mental illness.
- Is aware of the murder charges.
- Performance in counseling: Would talk only if you asked him questions.
- Reasons for termination from program: Non-compliance.
- Reason for being there: Referred by CIS and to help change his attitude.

Gang Out program:

- Records received

Kershaw County Medical Center:

- Medical Records Requested: 7/24/08
- Medical Records Reviewed: 8/12/08

MEMORANDUM

Mental Evaluation Inventory / Markelle Reid

Doctor: Harold C. Morgan, M.D.

- Examined Markelle Reid while he was incarcerated in Kershaw County Detention Center on 10/22/08.
- Reviewed school records from 2005 to 2007 as well as records from The Alpha Center (a substance abuse treatment center), and programs "Gang Out" and "A Better Way".
- In 2005 Reid made passing grades with very little disturbances. However the grades suffered and Reid had behavior problems resulting in his expulsion in 2006 and later again in 2007. Dr. Morgan notes that the behavioral issues began when Reid's parents separated, and Reid was forced to live part time with both parents separately.
- Dr. Morgan concluded that Reid does not show signs of major mental illness. He has adequate intelligence but he appears to be easily persuaded. He is a follower rather than a leader.
- Dr. Morgan goes on to note that Reid has a clear understanding of the charges against him and is able to assist in his defense, and that he is competent to stand trial or enter a plea.