

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from Charleston County

R. Markley Dennis, Jr., Circuit Court Judge

---

ETHAN MACK,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

*2014 - 001042*

---

A P P E N D I X

---

LAURA R. BAER  
Appellate Defender

ALAN WILSON  
Attorney General

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

ASHLEIGH R WILSON  
Assistant Attorney General

P. O. Box 11549  
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX .....i

GUILTY PLEA TRANSCRIPT ..... 1

APPLICATION FOR POST-CONVICTION RELIEF ..... 26

RETURN ..... 36

AMENDED RETURN ..... 40

BRIEF IN SUPPORT OF AND AMENDMENT FOR POST CONVICTION  
RELIEF APPLICATION ..... 45

POST-CONVICTION RELIEF HEARING TRANSCRIPT ..... 51

STATE’S EXHIBIT #1 (PROFFER AGREEMENT ..... 106

ORDER OF DISMISSAL ..... 110

CLERK OF COURT RECORDS ..... 117

PARTIAL TRIAL TRANSCRIPT ..... 120

STATE OF SOUTH CAROLINA      COURT OF GENERAL SESSIONS  
 COUNTY OF CHARLESTON        2010-GS-10-1265  
    2010-GS-10-1270

STATE OF SOUTH CAROLINA )  
    ) TRANSCRIPT OF RECORD  
    )  
    ) April 1, 2011  
    )  
 ETHAN MACK,                        )  
    ) Charleston, South Carolina  
    )  
    ) Defendant.                        )

B E F O R E:

The Honorable Deadra L. Jefferson, Judge.

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

Scarlett Wilson, Solicitor  
 Attorney for the State  
  
 David Aylor, Esquire  
 Attorney for the Defendant

Amanda K. Haffenden, RPR, CRR  
 Circuit Court Reporter

1 THE COURT: This is the state versus Ethan  
2 Carlos Mack, 2010-GS-10-1823. The indictment has been  
3 true billed, and that is an indictment for murder. He is  
4 pleading to the lesser included offense of voluntary  
5 manslaughter.

6 Is the state ready to proceed?

7 MS. WILSON: Yes, Your Honor.

8 THE COURT: Is the defense ready to proceed?

9 MR. AYLOR: Yes, Your Honor.

10 THE COURT: For the record, Mr. Mack is  
11 represented by David Aylor, and the state is represented  
12 by Ms. Scarlett Wilson. Mr. Aylor, have you explained to  
13 your client the charges contained in the indictment, the  
14 possible punishment, and his constitutional rights?

15 MR. AYLOR: I have, Your Honor.

16 THE COURT: Do you believe he understands the  
17 charge, the punishment and his rights?

18 MR. AYLOR: I do, Your Honor.

19 THE COURT: Does he wish to plead guilty or  
20 not guilty?

21 MR. AYLOR: Guilty, Your Honor.

22 THE COURT: Do you agree with that decision?

23 MR. AYLOR: I do.

24 THE COURT: To your knowledge has he ever had  
25 to be evaluated to determine his competency?

1 MR. AYLOR: He has not, Your Honor.

2 THE COURT: And, sir, if you would stand for  
3 me and raise your right hand to be sworn.

4 And have there been any recommendations or  
5 negotiations?

6 MS. WILSON: Yes, ma'am, Your Honor. In  
7 addition to reducing the charge from murder to voluntary  
8 manslaughter, the state has negotiated a sentence of 25  
9 years concurrent with the sentences that he is serving  
10 now, and, also, as he is entitled, we will be asking for  
11 credit for time served since his arrest.

12 I have it written on the sentencing sheet. I  
13 believe it was October 7th of 2009. We are also  
14 dismissing three indictments, one for a 2008 unlawful  
15 carrying of a firearm and two other charges, which were  
16 direct indictments that we obtained in anticipation of  
17 trial, one was for conspiracy and one was for accessory  
18 after the fact of murder.

19 THE COURT: Is that correct, Mr. Aylor?

20 MR. AYLOR: That is, Your Honor.

21 THE COURT: Does he have any record,  
22 Ms. Wilson?

23 MS. WILSON: He does. He has a 2003 cocaine  
24 conviction.

25 THE COURT: And the agreement the negotiation

1 is 25 years, right? I have another question I wanted to  
2 ask. What is the indictment number of his other  
3 convictions or indictment numbers of his other  
4 convictions?

5 MS. WILSON: You mean his prior record or the  
6 indictments for dismissing?

7 THE COURT: You said you were running it  
8 concurrent with what he was convicted on.

9 MS. WILSON: I don't have those indictments  
10 with me, Your Honor.

11 THE COURT: Do you know what the charges  
12 were?

13 MS. WILSON: They were for obstruction of  
14 justice and for forgery.

15 THE COURT: Sir, raise your right hand to be  
16 sworn.

17 (Defendant duly sworn.)

18 THE COURT: Sir, state your full name for the  
19 record.

20 MR. AYLOR: Ethan Carlos Mack.

21 THE COURT: And, Mr. Mack, how old are you?

22 THE DEFENDANT: Thirty-one.

23 THE COURT: How far did you get in school?

24 THE DEFENDANT: Up to 12th grade. Right now  
25 I'm currently trying to finish getting my GED at Perry

1 Correctional Institution.

2 THE COURT: Can you read, write, and  
3 understand the English language?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Did you understand the sentence  
6 sheet when you read and signed it?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: What type work did you do before  
9 you were incarcerated?

10 THE DEFENDANT: I was a --

11 THE COURT: Take your time.

12 THE DEFENDANT: I was a -- at the Holiday  
13 Inn, I was a head house man at the Holiday Inn. I  
14 performed the jobs, helping the housekeepers regarding  
15 the rooms and breaking down and taking the linens out of  
16 the room and putting in the new linens and getting the  
17 room prepared for them and taking out the trash.

18 THE COURT: Are you married, sir?

19 THE DEFENDANT: No, ma'am.

20 THE COURT: Do have you any children?

21 THE DEFENDANT: No, ma'am.

22 THE COURT: Are you currently on probation or  
23 parole?

24 THE DEFENDANT: No, ma'am.

25 THE COURT: Have you been treated for the

1 abuse of alcohol, drugs, or mental illness?

2 THE DEFENDANT: No, ma'am.

3 THE COURT: Have you had any drugs, alcohol,  
4 or medication in the last 72 hours?

5 THE DEFENDANT: High blood pressure medicine.

6 THE COURT: Does that in any way affect your  
7 ability to understand where you are or what you're doing?

8 THE DEFENDANT: No, ma'am.

9 THE COURT: Are you aware of any physical,  
10 emotional, or nervous problem that might keep you from  
11 understanding where you are right now or what you're  
12 doing?

13 THE DEFENDANT: No, ma'am.

14 THE COURT: Sir, on the charge on indictment  
15 2010-GS-10-1823, which is originally indicted for murder  
16 but you're pleading to voluntary manslaughter, how do you  
17 plead, guilty or not guilty?

18 THE DEFENDANT: Guilty.

19 THE COURT: Sir, do you understand that  
20 carries a minimum of two years and a maximum of 30 years?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Do you also understand it is  
23 classified as most serious and violent?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Do you understand that under

1 South Carolina law that subjects you to enhanced  
2 penalties?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Do you understand that if you  
5 were to receive an additional most serious offense you  
6 could face life without the possibility of parole.

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Sir, you may have discussed  
9 parole or parole eligibility with your lawyer or with  
10 others, but until you're sentenced no one can tell you  
11 when, if ever, you'll be eligible for parole, under what  
12 conditions. You should assume you will serve the entire  
13 time in jail that you're sentenced day for day. Do you  
14 understand?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Do understand that the violent  
17 classification also affects how you will serve your time  
18 and how the department of corrections will calculate that  
19 time?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: I want you to listen very  
22 carefully to the facts. Madame Solicitor?

23 MS. WILSON: Thank you, Your Honor. As the  
24 Court, I'm sure, is aware, this case actually went to  
25 trial last year, and that is where we obtained the

1 convictions for the forgery and obstruction of justice.  
2 The jury was hung and unable to reach a decision as to  
3 the murder charge.

4           What the Court will see from the very  
5 abbreviated version of the facts, we were in trial for  
6 almost two weeks is that the timeline which took place is  
7 in pretty incredible. The defendant and the victim had  
8 known each other for some years, five years or more, and  
9 were very good friends.

10           In the spring of 2009, the codefendant in  
11 this case, Heather Angelica Kamp, moved to Charleston  
12 after she had become friends with Kate Waring, the victim  
13 in this case. Kate, being good friends with Ethan,  
14 decided to set the two of them up. She thought that they  
15 might like each other and might make a good couple, and  
16 very quickly Heather Kamp and Ethan Mack became involved  
17 in a relationship and ultimately moved to an apartment on  
18 Riley Road in James Island, here in Charleston County.

19           Over the few days before the murder, Your  
20 Honor, the defendant, Ms. Kamp, and Ms. Waring became  
21 involved in arguments and had tensions over a number of  
22 things. Some of those things are unclear and changed,  
23 depending on when Ms. Kamp is telling her story, but  
24 suffice it to say, there was tension amongst the three of  
25 them. On June the 12th of 2009, the three of them went

1 out to dinner at Wasabi's here in downtown Charleston  
2 County. Afterwards, they went back to the apartment on  
3 Riley Road that Kamp and Mack were staying in, and they  
4 continued to drink.

5           According to Ms. Kamp, the victim, Ms.  
6 Waring, was intoxicated. And while they were there at  
7 the apartment, Ms. Waring was induced to play a game with  
8 them, and that game was for her to see if she could fit  
9 inside a suitcase. Kamp and Mack had borrowed a suitcase  
10 to go on a trip, and they had borrowed that suitcase from  
11 Ms. Waring. They had it out. They asked her if she  
12 could fit in the suitcase, see if she could be zipped in.  
13 She was always up for a challenge and was very athletic  
14 and thought that it was a game, and she proceeded to try  
15 to get into the suitcase and fit into the suitcase, and  
16 she was able to do so for the most part.

17           At that point, Your Honor -- and it's unclear  
18 exactly when the decision was made to kill Ms. Waring,  
19 but at that point, the murder began. Over the few  
20 minutes that Ms. Waring was in the suitcase, she had a  
21 pillow held over her face, she was Tased with a Taser,  
22 and she was hit over the head with a wine bottle. She  
23 lost consciousness. It's unclear which of those things  
24 killed her or if she died after Mack and Kamp ran bath  
25 water and put her head down into the bath water. She was

1 unconscious at that point, and I don't believe we know  
2 exactly, again, when she died.

3           After she -- after Ms. Waring was subdued,  
4 the defendants, Mr. Mack and Ms. Kamp, took a check from  
5 Kate Waring and made it out to Ethan Mack for \$4,500. He  
6 cashed that check the next day, but before that, they  
7 decided to dispose of Ms. Waring's body out in the woods  
8 on Wadmalaw Island.

9           Mr. Mack had worked in the area years before  
10 doing construction type work and he knew that area fairly  
11 well, and so he and Ms. Kamp took Ms. Waring out to that  
12 area and dumped her body there. Again, that was in June  
13 of 2009. It wasn't until October the 10th of 2009, after  
14 being arrested for obstruction of justice and for forgery  
15 that Ms. Kamp led private investigators hired by Ms.  
16 Waring's family. She led them to that body, and the  
17 remains were recovered.

18           Prior to that, and even after the remains  
19 were found, Mr. Mack gave false information to the police  
20 about the events of that night and the events after  
21 Wasabi, and we were able to show that Mr. Mack was not  
22 telling the truth about those things, but those are the  
23 meat of the facts that we would present. Again at trial,  
24 obviously, two-week trial, there are more details that  
25 corroborate the story, but this is the heart of the

1 story.

2 THE COURT: Sir, do you agree or disagree  
3 with the facts?

4 THE DEFENDANT: I don't agree with the facts.

5 THE COURT: What do you disagree with?

6 MR. AYLOR: Your Honor, if I may, he's aware  
7 he's pleading guilty today, but he's going to be pleading  
8 under no contest.

9 THE COURT: He can't plead no contest on a  
10 felony. He can plead no contest on a misdemeanor. If he  
11 wants to enter an Alford plea, the Court will accept  
12 that, but he would still have to admit that this would be  
13 evidence admitted in trial against him, and he would be  
14 most likely convicted. Is that your understanding,  
15 Ms. Wilson, that he wishes to enter an Alford plea?

16 MS. WILSON: Yes, ma'am, Your Honor.

17 MR. AYLOR: We're ready to go forward.

18 THE COURT: Mr. Aylor, from your  
19 investigation of the facts and circumstances of this  
20 case, do you believe the state could produce sufficient  
21 evidence to prove your client guilty beyond a reasonable  
22 doubt?

23 MR. AYLOR: I do, Your Honor.

24 THE COURT: Do you believe that if he were to  
25 go to trial, the jury would most probably find him

1 guilty?

2 MR. AYLOR: I do, Your Honor.

3 THE COURT: Have you explained to your client  
4 that while he's entering a plea pursuant to North  
5 Carolina versus Alford that the Court still considers it  
6 a guilty plea.

7 MR. AYLOR: Absolutely.

8 THE COURT: Do you understand it will still  
9 be reflect on his criminal record as a guilty plea?

10 MR. AYLOR: We do, Your Honor.

11 THE COURT: Sir, from your investigation of  
12 the facts and circumstances of this case, do you believe  
13 the state could produce sufficient evidence to prove your  
14 guilt beyond a reasonable doubt?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Do you believe that if you were  
17 to go to trial a jury would most probably find you  
18 guilty?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Sir, has your lawyer explained to  
21 you that while you're entering a plea pursuant to North  
22 Carolina versus Alford that it will still be reflected on  
23 your record as a guilty plea?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Do you understand that the Court

1 still treats this as a guilty plea?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: And that your criminal record  
4 will reflect it as a guilty plea?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Sir, do you agree or disagree  
7 that the facts as articulated by the solicitor would be  
8 the facts that the state would produce at trial?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Do you feel anything needs to be  
11 changed or added to those facts?

12 THE DEFENDANT: No.

13 THE COURT: Sir, I want you to listen very  
14 carefully. We've already gone through this process, but  
15 out of an abundance of caution, I'm going to advise you  
16 of your constitutional right to a jury trial.

17 You are entitled to a jury trial, and during  
18 that trial, the state has the burden of proving your  
19 guilt beyond a reasonable doubt. You would have the  
20 right to confront and cross-examine the state's witnesses  
21 and call witnesses in your own defense. You would have  
22 the right to present any defenses that you may have. If  
23 you have made any confessions or other incriminating  
24 statements, you would have the right to challenge those  
25 statements. You would also have the right to remain

1 silent, and if you exercise that right, your silence  
2 would never be used against you. Do you understand your  
3 rights as I've just explained them to you?

4 THE WITNESS: Yes, ma'am.

5 THE COURT: Do you understand that you're  
6 giving up those rights?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Sir, other than what has been  
9 stated for the record, have there been any other plea  
10 negotiations that have been made on your behalf that  
11 you're relying on in entering this plea?

12 THE DEFENDANT: No, ma'am.

13 THE COURT: Do you understand that your  
14 lawyer and the solicitor have entered into what is called  
15 a negotiated plea?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Do you understand that Court has  
18 no discretion in your sentencing other than what has been  
19 worked out between your lawyer and the solicitor?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Have you been satisfied with your  
22 lawyer's services?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Has he answered all of your  
25 questions?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Has he done everything you've  
3 asked or expected in representing you?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Have you met with him for as long  
6 and as often as you felt was necessary to represent you?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Have you understood your talks  
9 with him?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Is there anything more you would  
12 have him do that he has not already done on your behalf?

13 THE DEFENDANT: No, ma'am.

14 THE COURT: Do you have any complaints about  
15 his services?

16 THE DEFENDANT: No, ma'am.

17 THE COURT: Has anyone promised you anything  
18 or held out any hope of a reward to cause you to plead  
19 guilty?

20 THE DEFENDANT: No, ma'am.

21 THE COURT: Has anyone used threats,  
22 coercion, force, pressure, intimidation, or duress to  
23 cause you to enter this plea?

24 THE DEFENDANT: No, ma'am.

25 THE COURT: Are you entering this plea

1 freely, voluntarily, and of your own will?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Do you believe you had enough  
4 time to make up your mind about entering this plea?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Have you understood the Court's  
7 questions?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Do you need to ask me about  
10 anything we've been over?

11 THE DEFENDANT: No, ma'am.

12 THE COURT: Have you been absolutely truthful  
13 in each and every answer you've given to this Court?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Do you understand that you have  
16 the right to appeal this guilty plea and sentence of the  
17 Court but that you must do so in writing within ten days  
18 of today?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Do you understand that if you  
21 cannot afford an attorney for this process that one would  
22 be appointed for you at no cost?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: I find there is a substantial  
25 factual basis for the plea, that defendant has entered

1 the plea freely, voluntarily, knowingly, and  
2 intelligently, that he has had the advice and assistance  
3 of counsel with whom he's indicated to the Court he's  
4 satisfied, and I will accept the plea.

5           You may take your seat. Anything further  
6 from the state regarding imposition of sentence?

7           MS. WILSON: Yes, ma'am, Your Honor. First  
8 of all, for the Court's benefit, and also for the  
9 community's benefit, obviously, this has been a long  
10 process, and one thing the Court should understand is our  
11 only witness in this case was Heather Kamp, as far as  
12 what happened in the actual murder.

13           She suffers from a host of mental and  
14 emotional issues and illnesses and has since she was a  
15 young child. Between the ages of five and ten she was  
16 first hospitalized for her problems.

17           She has been consistent regarding the actual  
18 facts of the murder, but the events leading up to the  
19 murder and the events after the murder have been all over  
20 the place. She has since our trial -- I've shared this  
21 with Mr. Aylor -- she has added additional information  
22 and changed her story regarding the events leading up to  
23 the murder again, and that was one of the things that we  
24 were faced with in preparing for trial this time.

25           No doubt, you know, when you start out in a

1 prosecution like this, you want the ultimate penalty, but  
2 you have to weigh the risks and the benefits with  
3 entering into a negotiation like this, and that is what  
4 we've done. I think it's important for the Court and for  
5 the community to remember that in October of 2009 when  
6 Ms. Waring's remains were found, we didn't have a murder  
7 case.

8           There were no murder charges; there was no  
9 cause of death. In fact, the evidence that we had was  
10 that Ms. Waring had told people she was going to a party  
11 in the woods and her remains were found in the woods.  
12 Certainly there were many suspicions, and those  
13 suspicions proved to be correct, but as the Court knows,  
14 suspicions alone won't garner a conviction, and we've  
15 come a long way and it's taken a lot of hard work and we  
16 certainly have mixed feelings about this plea, but,  
17 frankly, based on what I have witnessed firsthand with  
18 Ms. Kamp and her ability to testify truthfully as to all  
19 of the facts, we could have faced an uphill battle again  
20 at trial and ran a serious risk of, if not a not guilty,  
21 certainly a hung jury once again.

22           That is something I've discussed at length  
23 with the victim's family. They have been extremely  
24 supportive of this prosecution and have been most  
25 understanding in all the twists and turns and ups and

1 downs that we've been through all together.

2           Unlike most cases, there have been -- more  
3 than I've ever seen in one case, as far as new  
4 information, misleading information, but trying to get  
5 down to the crux of what really happened, I think we're  
6 about as close as you can get in a case. And, again,  
7 while certainly we wished we could have gotten a murder  
8 conviction and an ultimate sentence, in speaking with the  
9 family, in reviewing the case again with Mr. Durant and  
10 my investigators and with David Osborne with the city,  
11 it's clear to me that this is not just the right thing to  
12 do, it's the smart thing to do.

13           Mr. Waring is here, along with many family  
14 members and friends, and I believe he would like to  
15 address the Court.

16           THE COURT: Absolutely. Mr. Waring, you may  
17 address the Court. If you would, state your name for the  
18 record.

19           THE WITNESS: Your Honor, if it please the  
20 Court, yes, sir. My name is Thomas Waring, and I am the  
21 father of the victim, Kate Waring. On behalf of Kate  
22 Waring's family I would like to address comments in three  
23 specific areas.

24           I consulted with my wife, Janice, who is out  
25 of town and cannot be here, our older son, Joe, who lives

1 in London and could not be present today, and our  
2 youngest son, Richard, who happened to be present with me  
3 and these are our collective comments.

4 First, we concur fully and completely with  
5 the recommendations of the solicitor, Scarlett Wilson,  
6 and would like to thank her and her dedicated staff for  
7 their caring professionalism throughout our ordeal of  
8 almost two years following Kate's disappearance on June  
9 12, 2009. I would also like to thank Chief Greg Mullen  
10 and the officers of Charleston Police Department, sheriff  
11 Al Cannon and the officers of the Charleston County  
12 sheriff's department, SLED, special thanks to Andy and  
13 Cheryl Savage, who are here, and their investigating  
14 team, our friend John Rivers who assisted us throughout  
15 this case, as well as the clergy and congregation of St.  
16 Michaels Church and our family and friends whose undying  
17 love, prayers, and support uplifted and sustained us  
18 during this horrible odyssey.

19 Second, we implore and condemn the actions of  
20 the defendant which resulted in the death of our beloved  
21 only daughter, our sons' only sister, and adored friends  
22 and family members and many friends. Her death in the  
23 prime of her life was tragic, completely wrong,  
24 unnecessary, total waste, and benefitted absolutely no  
25 one. Our family has been devastated by our loss.

1 Kate was blessed with many unique and  
2 wonderful gifts, and although she was by no means perfect  
3 and struggled with her own personal issues, Kate was  
4 greatly loved and treasured by those who knew her. Her  
5 death was inexcusably wrong. For the rest of my life,  
6 not a day, actually, not an hour, will go by that I and  
7 her family will not think of her and miss her, love her,  
8 and pray for her soul. Our only consolation is that she  
9 is finally at peace and can be made to suffer no further.

10 Third: We are gratified by the circumstances  
11 which bring us here today. While we recognize that the  
12 defendant, Ethan Mack, is acting in his own interest and  
13 for his own reasons, we are pleased that he is now  
14 accepting responsibility for his actions and that he will  
15 receive the agreed upon punishment. His actions also  
16 have the beneficial effect of neither our family and  
17 friends or his family and friends will have to endure a  
18 new trial in the case with necessary rehearing of the  
19 awful details and the uncertainty of a result.

20 Finally, for the defendant, I hope that  
21 during this period of incarceration he will face his  
22 wrongful acts, atone for them, seek forgiveness and  
23 redemption, and eventually, through God's grace, will be  
24 transformed and ultimately released as a changed person  
25 who will lead his life as a productive citizen of whom

1 his family can be proud. That is my wish for him.

2 Finally, I would like to thank the Court for  
3 the opportunity to make these remarks.

4 THE COURT: You're welcome, Mr. Waring. The  
5 Court appreciates your heartfelt remarks. Anything  
6 further from the state?

7 MS. WILSON: No, ma'am, Your Honor. Thank  
8 you again for accommodating us this afternoon.

9 THE COURT: Mr. Aylor, is there anything from  
10 the defendant?

11 MR. AYLOR: Briefly, Your Honor. I just want  
12 to say on behalf of Mr. Mack that we ask you to please  
13 accept the negotiated sentence. We feel like the offer  
14 that has been made in the agreement we've come to with  
15 the state is very fair, and considering the circumstances  
16 for Mr. Mack, of course, first and foremost the Waring  
17 family, as well as Mr. Mack's family and everyone that  
18 was involved with this tragic situation, that it's time  
19 for a close, and we're glad to be here in the sense that  
20 it is ending, not glad to be here for the reasons that  
21 we're here. I do think my client would like to speak  
22 briefly.

23 THE COURT: Absolutely. He can address the  
24 Court when he's ready. And sir, you may proceed.

25 THE DEFENDANT: Yes, ma'am. I would like to

1 send my deepest condolences to the family of Kate Waring  
2 for the loss of your daughter, for the loss of your  
3 sister, for the loss of your grandchild, and for the loss  
4 of a loved one. She will not only be missed by y'all,  
5 but will be missed by me and my family members also.

6 I'm sorry for the tragedy that has taken  
7 place in this, and I ask that y'all could please forgive  
8 me for what has taken place in this event of Kate  
9 Waring's death.

10 THE COURT: Thank you, sir.

11 MR. AYLOR: Thank you, Your Honor.

12 THE COURT: The Court has accepted and  
13 qualified the negotiated plea, and for the reasons stated  
14 by the solicitor has -- I have no hesitance in having  
15 qualified and accepted the plea. Sir, if you would stand  
16 for sentencing.

17 Consistent with the negotiated plea, you are  
18 sentenced to South Carolina Department of Corrections for  
19 a period of 25 years. You will get credit for any time  
20 that you served pursuant to 24-13-40 to be calculated and  
21 applied by the Department of Corrections. As a part of  
22 the negotiated plea, your attorney and the state have  
23 agreed that you will get credit from October 7th of 2009,  
24 and while the Court does not generally calculate credit  
25 for time served, since that is a part of the negotiated

1 plea, I will make that notation on your sentence sheet.

2 In addition to that, consistent with the  
3 negotiated plea on cases 2010-GS-10-1265, which is  
4 obstruction of justice, and 2010-GS-10-1270, which is  
5 forgery, which you were convicted of each of those on  
6 October 5 of 2010, at that time, Judge Nicholson imposed  
7 sentence on the obstruction in the amount of ten years  
8 and five years on the forgery. These sentences will run  
9 concurrent with your current guilty plea.

10 Is there anything further from the state?

11 MS. WILSON: No, ma'am. Thank you.

12 THE COURT: Anything further from Mr. Aylor?

13 MR. AYLOR: Nothing further.

14 THE COURT: Thank y'all for your patience.

15 - - -

16 (Whereupon, the proceedings were concluded.)

17 - - -

18

19

20

21

22

23

24

25

I, the undersigned Amanda K. Haffenden, RPR, CRR, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 1st of April 2011.

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

December 19, 2011

  
Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA )

County of Charleston )

Ethan Mack #343243 )

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

v. )

State of South Carolina )

) 2012-CP-10-2100  
) IN THE COURT OF COMMON PLEAS

APPLICATION FOR  
POST-CONVICTION RELIEF

FILED  
2012 MAR 27 AM 3:31  
JULIE J. ARBENSTRONG  
CLERK OF COURT  
BY

**INSTRUCTIONS B 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 Corr. Inst. 430 Oaklawa Rd. Pelzer, S.C. 29669

---

2. Name and location of Court which imposed sentence Charleston County  
Courthouse 100 Broad Street, Suite 106 Charleston, South Carolina 29401

---

3. Name(s) of co-defendant(s) (if any) Heather A. Ranp

---

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:  
(a) DIRIND0953 2010GS1001823

- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) March 25, 2011
- (b) 25 years 85% violent
- (c) \_\_\_\_\_

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty Alfa plea
- (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) lawyer instructed to do so, but failed to.

- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) Ineffective assistance of counsel \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) See attached pages \_\_\_\_\_
- (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 Ayes@ 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. \_\_\_\_\_
- (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. \_\_\_\_\_

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) \_\_\_\_\_
- (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? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

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. David Aylor, 24 Broad Street, Charleston South Carolina 29401
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. Arrest
  - ii. Sentencing
  - iii. \_\_\_\_\_

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

New trial

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA )  
 )  
County of Charleston )

VERIFICATION

I, Ethan Mack #343243, 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.

Ethan Mack

SWORN to and subscribed before me this 4th  
day of October, 2011.

Henry Melvinley (L.S.)  
Notary Public

My Commission Expires: November 2 2016

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

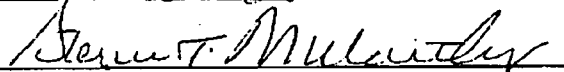
I, Ethan Mack #343243, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (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.

  
Applicant

SWORN or affirmed to and subscribed before me this

7th day of October, 2011.

  
Notary Public

My Commission Expires: November 7 2016

Answer to question #10 on PCR Application:

- A) My attorney failed to file a Direct Appeal on my behalf, as instructed to do so.
- B) My attorney helped the solicitor violate my Brady Motion.
- C) My attorney was ineffective for failure to insure that my (3) main Constitutional rights were waived.
- D) My attorney failed to challenge the chain of custody of the alleged evidence.
- E) My attorney failed to challenge my co-defendant's statements.
- F) My attorney failed to object to the fraudulent indictments.
- G) My attorney failed to challenge the prosecution misconduct.
- H) My attorney failed to review any of my discovery file with me.
- I) Applicant was a victim of malicious prosecution by the solicitor's office by violating his right to due process.
- J) My conviction was obtained pursuant to a deliberate perversion of the plea bargain process.
- K) I did not receive a full, fair or constitutionally adequate hearing in state court.
- L) Trial counsel failed to properly move to quash the indictments in accordance with S.C. Code Ann. §17-19-90.
- M) Trial counsel ineffective in failing to fully apprise applicant of the sentencing consequences of his guilty plea.

Answers to question #11 on PCR Application:

- 1) My attorney never intended to offer any defense to the court on my behalf.
- 2) My attorney never explained to me or discussed with me any kind of defense strategy.
- 3) My attorney dictated to me exactly how my case was going to be handled and he gave me no alternative options.
- 4) My attorney did not subject the prosecution's case to any adversarial litigation.
- 5) My attorney acted as a friend of the Court.
- 6) My attorney did not try to have my case settled in a manner that would have been to my best advantage.
- 7) My attorney did not do the necessary factual investigation

on my behalf.

8) My attorney did not conscientiously gather any information to protect my rights.

9) My attorney failed to give me his complete loyalty.

10) My attorney failed to serve my cause in good faith.

(A) My attorney failed to file a Direct Appeal as instructed. A lawyer who disregards a defendant's specific instruction to file a notice of appeal acts in a professionally unreasonable manner. Failing to file a notice of appeal without the defendant's consent is per se deficient. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 provides the proper framework for evaluating a claim that counsel was constitutionally ineffective for failing to file a notice of appeal. Counsel has a constitutionally imposed duty to consult, only when there is reason to think either (1) that a rational defendant would want to appeal, or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Counsel's performance actually deprived him of an appeal, there is a reasonable probability that but for counsel's failure to consult with him about an appeal he would have timely appealed. Ortega, 120 S.Ct. 1029 and White v. State, 208 S.E.2d 35. From a trial, a defendant has a right to be informed of the right to an appeal and the manner and method for taking the appeal. Fraiser v. State, 430 S.E.2d 696 (2005). See also In re Anonymous Member of the Bar, 400 S.E.2d 483.

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 Ethan Mack, )  
 S.C.D.C. No. 343243, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 C.A. No. 2012-CP-10-2100

**RETURN**

In response to the post-conviction relief application filed March 27, 2012, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Charleston County Clerk of Court's orders of commitment. The Applicant was indicted by the Charleston County Grand Jury for murder (2010-GS-10-1823), forgery (2010-GS-10-1270), and obstruction of justice (2010-GS-10-1265). David Aylor, Esquire represented the Applicant.

The State brought the case to trial. On October 15, 2010, the Honorable J.C. Nicholson sentenced the Applicant to consecutive sentences of ten (10) years imprisonment for obstruction of justice and five (5) years imprisonment for forgery. The jury remained hung on the murder charge. The Applicant subsequently pled guilty to voluntary manslaughter on April 1, 2011. The Honorable Deadra L. Jefferson sentenced the Applicant to twenty-five (25) years imprisonment, to be run concurrently with his other sentences. The Applicant did not appeal.

The Applicant subsequently filed an application for post-conviction relief (PCR) on his

April 1, 2011 guilty plea.

Attached herewith and incorporated herein by reference are the records of the Charleston County Clerk of Court regarding the subject convictions and the Applicant's records from the South Carolina Department of Corrections.

II.

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

1. Ineffective assistance of counsel.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a criminal defense attorney.

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 on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must

overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). 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 trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington 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, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

#### IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

#### V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held.

[Signature on the following page.]

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

ASHLEIGH WILSON  
Assistant Attorney General

P.O. Box 11549  
Columbia, S.C. 29211

By:



**Attorneys for Respondent**

January 7, 2013

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 Ethan Carlos Mack, )  
 S.C.D.C. No. 343243, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 C.A. No. 2012-CP-10-2100

**AMENDED RETURN**

In response to the post-conviction relief application filed March 27, 2012,<sup>1</sup> the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Charleston County Clerk of Court's orders of commitment. The Charleston County Grand Jury indicted the Applicant at the February 2010 term of General Sessions for murder (2010-GS-10-1823). David Aylor, Esquire represented the Applicant.

On April 1, 2011, the Applicant pled guilty to voluntary manslaughter, pursuant to North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160 (1970). The Honorable Deadra L. Jefferson accepted the negotiated sentence and sentenced the Applicant to twenty-five years, concurrent to the fifteen year sentence he was already serving. The Applicant did not appeal.

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

---

<sup>1</sup> The original Return was filed January 7, 2013.

Carolina Department of Corrections, and the guilty plea transcript.

## II.

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

1. Ineffective assistance of counsel:
  - a. Failed to file an appeal as instructed.
  - b. “[H]elped the solicitor violate my Brady Motion.”
  - c. Failed to ensure the “(3) main Constitutional rights were waived.”
  - d. Failed to challenge the chain of custody.
  - e. Failed to challenge the co-defendant’s statements.
  - f. Failed to object to “the fraudulent indictments.”
  - g. Failed to challenge “the prosecution misconduct.”
  - h. Failed to review discovery with the Applicant.
  - i. Failed to move to “properly quash the indictments in accordance with S.C. Code Ann. § 17-19-90.”
  - j. Failed to “fully apprise” of the sentencing consequences of the guilty plea.
2. “Applicant was a victim of malicious prosecution by the solicitor’s office by violating his right to due process.”
3. “[C]onviction was obtained pursuant to a deliberate perversion of the plea bargain process.”
4. “[D]id not receive a full, fair or constitutionally adequate hearing in state court.”

## III.

The Respondent asserts the Applicant’s allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant’s attorney rendered effective assistance well within the standard of “reasonableness within professional norms” for a defense attorney.

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 on as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441,

442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). 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 trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington 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, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

## IV.

The Respondent notes the Applicant has alleged prosecutorial misconduct. The allegation is too vague for the Respondent to formulate a response. The Applicant has failed to articulate either the alleged misconduct or any actual vindictiveness on behalf of the State. See, e.g., Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989) (finding the burden is on the defendant to prove actual vindictiveness).

## V.

The Respondent denies each allegation not expressly admitted, qualified or explained.

## VI.

WHEREFORE, having made its Amended Return, the Respondent requests that a hearing be held on the issues of ineffective assistance of counsel.

Respectfully submitted,


ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Senior Assistant Deputy Attorney General

KAREN C. RATIGAN  
Assistant Deputy Attorney General  
P.O. Box 11549  
Columbia, S.C. 29211

By:

  
Attorneys for Respondent

June 7, 2013



STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 Ethan Mack, 343243 )  
 )  
 Applicant )  
 )  
 State of South Carolina )  
 )  
 Respondent, )  
 \_\_\_\_\_ )

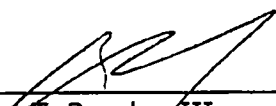
IN THE COMMON PLEAS COURT  
 DOCKET NO.: 2012-CP-10-2100  
 BRIEF IN SUPPORT OF AND  
 AMENDMENT FOR POST  
 CONVICTION RELIEF APPLICATION

FILED  
 JUN 17 AM 11:38  
 JULIE J ARMSTRONG  
 CLERK OF COURT

The Applicant through undersigned Counsel wishes to submit this Brief in Support of and Amendment for Post Conviction Relief filed on March 27, 2012

**SEE ATTACHED PAGES 1 THROUGH 5**

RESPECTFULLY SUBMITTED ON BEHALF OF  
 APPLICANT, Ethan Mack

  
 \_\_\_\_\_  
 Charles T. Brooks, III  
 Attorney for Applicant  
 309 Broad Street  
 Post office Box 3512  
 Sumter, South Carolina, 29150  
 (803) 418-5708

June 13, 2013

STATE OF SOUTH CAROLINA  
 COUNTY OF CHARLESTON

IN THE COURT OF  
 COMMON PLEAS

ETHAN MACIS #343243  
 APPLICANT.

CASE NO: 2012-CP-10-2100

STATE OF SOUTH CAROLINA  
 DEFENDANT.

BRIEF IN SUPPORT OF  
 AND AMENDMENT TO  
 APPLICATION FOR POST-  
 CONVICTION-RELIEF

WHEREIN THE APPLICATION IS SUPPORTED  
 AND AMENDMENTS FOR THE APPLICATION FOR  
 POST-CONVICTION-RELIEF HEREBY SUBMIT  
 THE FOLLOWING.

POST-CONVICTION-RELIEF ALLOWS THE  
 APPLICANT THE CHANCE TO PROVE THAT COUNSEL  
 WAS INEFFECTIVE ASSISTANCE PURSUANT TO  
STRICTLAND V. WASHINGTON 466 U.S. 668, 104  
 S.Ct. 2052 (1984).

THE SUPREME COURT HAS ESTABLISH A  
 TWO PRONG TEST TO EVALUATE INEFFECTIVE  
 ASSISTANCE COUNSEL CLAIMS.

TO ESTABLISH A CLAIM THAT COUNSEL WAS  
 INEFFECTIVE, APPLICANT MUST SHOW THAT (1)  
 COUNSEL REPRESENTATION FELL BELOW AN  
 OBJECTIVE STANDARD OF REASONABLENESS, AND  
 (2) BUT FOR COUNSEL ERRORS, THERE IS A  
 REASONABLE PROBABILITY THAT THE OUTCOME OF  
 THE TRIAL WOULD HAVE BEEN DIFFERENT. STRICTLAND  
LAND V. WASHINGTON 466 U.S. 668, 104 S.Ct. 2052 (1984);  
JOHNSON V. STATE, 325 S.C. 183, 186, 480 S.E.2d 733,  
 735 (1997). "A REASONABLE PROBABILITY IS A  
 PROBABILITY SUFFICIENT TO UNDERMINE CONFIDENCE  
 IN THE OUTCOME OF THE TRIAL. STRICTLAND, 466 U.S.  
 AT 674

WHEREIN APPLICANT IS ENTITLED TO RELIEF UPON REQUEST. IN REVIEW OF THE APPLICANT CASE WE WILL DISCOVER THAT THERE IS SUBSTANTIAL EVIDENCE SHOWING HE OR SHE IS BEING HELD UNLAWFULLY AS REQUIRED ACCORDING TO STATE V. JOHNSON 332 S.C. 459, 510 S.E.2d 423 (1997).

IN ADDITION TO THE REVIEW WE WILL DISCOVER THAT APPLICANT 6<sup>TH</sup> AND 14<sup>TH</sup> AMENDMENT TO THE U.S.C.A. HAS BEEN VIOLATED, FOR THE 6<sup>TH</sup> AMENDMENT GUARANTEED THE RIGHT TO EFFECTIVE ASSISTANCE, AND THE 14<sup>TH</sup> AMENDMENT GUARANTEED THE RIGHT TO DUE PROCESS OF LAW AND EQUAL PROTECTION OF LAW.

### STATEMENT OF FACTS

THE APPLICANT ABOVE WAS INDICTED AT FEBRUARY 2010 TERM OF THE CHARLESTON COUNTY GRAND JURY FOR MURDER (2010-GS-10-1823)

### STATEMENT OF STANDARD REVIEW

THE APPLICANT IS PRESENTLY CONFINED IN THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS PURSUANT TO ORDERS OF COMMITMENT OF THE CHARLESTON COUNTY CLERK OF COURT. THE APPLICANT WAS INDICTED AT THE FEBRUARY 2010 TERM OF CHARLESTON COUNTY GRAND JURY FOR MURDER (10-GS-10-1823). HE WAS REPRESENTED BY DAVID AYLOE, ESQUIRE. ON APRIL 1, 2011, THE APPLICANT PLED GUILTY TO VOLUNTARY MANSLAUGHTER. HE WAS SENTENCED BY THE HONORABLE DEADRA L. JEFFERSON TO CONFINEMENT FOR A PERIOD OF TWENTY-FIVE (25) YEARS.

ARGUMENT ONE.

BECAUSE THE APPLICANT HAD WAIVED SEVERAL CONSTITUTIONAL RIGHTS BY PLEADING GUILTY, THE DUE PROCESS CLAUSE REQUIRES THAT GUILTY PLEAS ARE ENTERED INTO VOLUNTARY, KNOWINGLY AND INTELLIGENTLY. BOYKIN V. ALABAMA, 395 U.S. 238 (1969). PITTMAN V. STATE 337 S.C. 597, 524 S.E. 2d 623 (1999). BOYKIN REQUIRES THAT THE APPLICANT HAD BEEN MADE AWARE OF THE RIGHT TO A JURY TRIAL, THE PRIVILEGE AGAINST SELF-INCRIMINATION, AND THE RIGHT TO CONFRONT ONE'S ACCUSERS. ADDITIONALLY, THE SOUTH CAROLINA COURT REQUIRES THAT WHEN THE APPLICANT HAD ENTER A GUILTY PLEA, HE HAD BEEN MADE AWARE OF THE NATURE, AND OF THE CRIMINAL ELEMENTS OF OFFENSE, THE MAXIMUM AND ANY MINIMUM PENALTY, AND THE NATURE OF THE CONSTITUTIONAL RIGHTS BEING WAIVED. PITTMAN, 337 S.C. at 599, 524 S.E.2d at 624; DOVER V. STATE, 304 S.C. 433, 405 S.E. 2d 391 (1991). STATE V HAZEL, 275 S.C. 392, 271 S.E. 2d 602 (1988).

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. U.S. 519 F.2d 347 (4th Cir 1975).

(END AT LINE 24)

TRIAL TRANSCRIPT PAGE 17 LINE 7 SOLICITOR ATTORNEY FOR THE STATE M.S. WILSON STATES FOR THE RECORD: YES MA'AM, YOUR HONOR. FIRST OF ALL, FOR THE COURTS BENEFIT, AND ALSO FOR THE COMMUNITY'S BENEFIT. OBVIOUSLY, THIS HAS BEEN A LONG PROCESS, AND ONE THING THE COURT SHOULD UNDERSTAND IS OUR ONLY WITNESS IN THIS CASE WAS HEATHER KAMP, AS FAR AS WHAT HAPPENED IN THE ACTUAL MURDER.

LINE 17 STARTS: SHE HAS BEEN CONSISTENT REGARDING THE ACTUAL "FACTS" OF THE MURDER, BUT THE EVENTS LEADING UP TO THE MURDER AND THE EVENTS AFTER THE MURDER HAVE BEEN ALL OVER THE PLACE." SHE HAS SINCE OUR TRIAL... & I'VE SHARED THIS WITH MR. AVLOR... SHE HAS ADDED ADDITIONAL INFORMATION AND CHANGED HER STORY REGARDING THE EVENTS LEADING UP TO THE MURDER "AGAIN", AND THAT WAS ONE OF THE THINGS THAT WE WERE FACED WITH IN PREPARING FOR TRIAL THIS TIME."

IN GIBSON, THE PROSECUTION FAILED TO INFORM "APPLICANT" AND HIS "COUNSEL" THAT AN EYEWITNESS CHANGE HER STORY. THE COURT FOUND THAT A PLEA CANNOT BE CONSIDERED KNOWING AND INTELLIGENTLY IF A DEFENDANT "LACKS KNOWLEDGE OF MATERIAL EVIDENCE IN THE PROSECUTION. GIBSON V. STATE, 334 S.C. 515, 514 S.E. 2d 320 (1999).

IT IS THE LAWYER'S DUTY TO ASCERTAIN IF THE PLEA IS ENTERED VOLUNTARILY AND KNOWINGLY. LAMB V. BETO 5th Cir. 1970, 423 F.2d 85, 87, cert. denied 400 U.S. ~~843~~ 846, 91 S.Ct. 93, 27 L.Ed. 2d 84. see WALKER V CALDWELL, 5th Cir 1973, 476 F.2d 213; HE MUST ACTUALLY AND SUBSTANTIALLY ASSIST HIS CLIENT IN DECIDING WHETHER TO PLEAD GUILTY WALKER V CALDWELL, SUPRA, 476 F.2d at 224. IT IS HIS JOB TO PROVIDE THE ACCUSED AN "UNDERSTANDING OF THE LAW IN RELATION TO THE FACTS" Id. at 218. THE ADVICE HE GIVES NEED NOT BE PERFECT, BUT IT MUST BE REASONABLY COMPETENT. COLSON V SMITH, SUPRA, 438 F.2d at 1081 n.s. HIS ADVICE SHOULD PERMIT THE ACCUSED TO MAKE AN INFORMED AND CONSCIOUS CHOICE. Id. at 1079.

THE STANDARD OF VALIDITY OF GUILTY PLEA IS WHETHER PLEA REPRESENTS A VOLUNTARY AND INTELLIGENT CHOICE AMONG THE ALTERNATIVE COURSE OF ACTION OPEN TO THE DEFENDANT. SEE BOYKIN V ALABAMA, 395 U.S. 238, 242, 89 S.Ct 1709 1711, 23 L.Ed.2d 274 (1969).

THUS, AN APPLICANT MUST SHOW BOTH ERROR AND PREJUDICE TO WIN RELIEF IN A PCR PROCEEDING. SCOTT V. STATE, 334 S.C. 248, 513 S.E.2d 100 (1999).

COUNSEL WAS INEFFECTIVE ~~IN~~ ASSISTANCE BY HIS FAILURE TO DISCLOSE MATERIAL EVIDENCE OF FACTS TO HIS CLIENT, RENDERING HIS PLEA NEGOTIATION NOT KNOWINGLY, VOLUNTARILY AND INTELLIGENTLY ACCEPTED.

DEFENDANT WAS PREJUDICE BY BEING SENTENCED WITHOUT EFFECTIVE ASSISTANCE OF COUNSEL TO THE DEPARTMENT OF CORRECTIONS FOR A TERM OF TWENTY FIVE (25) YEARS IMPRISONMENT, BUT FOR COUNSEL ERRORS, APPLICANT WOULD HAVE ASSIGNED TO ONE TO THREE

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
Ethan Mack,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. 12-CP-10-2100
	)	
State of South Carolina,	)	
	)	
Defendant	)	

## TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on April 17<sup>th</sup>, 2014, , before The Honorable R. Markley Dennis in Courtroom 4C of the Charleston County Courthouse, 100 Meeting Street, Charleston, South Carolina; attended by counsel as follows:

### APPEARANCES:

Charles Brooks, Esquire  
Appearing for Applicant

Karen Ratigan, Assistant Attorney General  
Ashleigh Wilson, Assistant Attorney General  
OFFICE OF THE ATTORNEY GENERAL  
P O Box 11549  
Columbia, South Carolina 29211  
Appearing for State of South Carolina

### ALSO ATTENDING:

Ethan Mack, Applicant

Deborah Garrison  
*Circuit Court Reporter – 9<sup>th</sup> Judicial Circuit*  
P O Box 901  
Johns Island, South Carolina 29457  
[dgarrison@sccourts.org](mailto:dgarrison@sccourts.org)

Ethan Mack v State of South Carolina  
Case No. 12-CP-10-2100  
Hearing of April 17, 2014  
Before The Honorable R. Markley Dennis

2

INDEX

Examination of Applicant	3
Testimony of Ethan Mack	4
Testimony of David Aylor	
Introduction of State's Exhibit 1	20
Direct Examination	23
Cross Examination	31
Ruling	51
Certificate of Court Reporter	55

Ethan Mack v State of South Carolina  
Case No. 12-CP-10-2100  
Hearing of April 17, 2014  
Before The Honorable R. Markley Dennis

3

1 THE COURT: All right, sir. You are  
2 Ethan Mack?

3 DEFENDANT: Yes, sir.

4 THE COURT: Mr. Mack, this is your  
5 application for post-conviction relief. Do  
6 you understand all the possible outcomes?

7 DEFENDANT: (No verbal response).

8 THE COURT: Do you understand what the  
9 best deal is for you?

10 DEFENDANT: (No verbal response).

11 THE COURT: Do you understand what the  
12 best deal is, for you, to be returned to face  
13 the murder charge?

14 DEFENDANT: Yes, sir.

15 THE COURT: And that's what you want to  
16 do?

17 DEFENDANT: Yes, sir.

18 THE COURT: And that exposes you to a  
19 potential life sentence. Do you understand  
20 that?

21 DEFENDANT: Yes, sir.

22 THE COURT: That's fine. You ready to  
23 go forward, Mr. Brooks?

24 MR. BROOKS: We are.

25 THE COURT: Call your first witness.

Ethan Mack v State of South Carolina  
Case No. 12-CP-10-2100  
Hearing of April 17, 2014 - Testimony of Ethan Mack  
Before The Honorable R. Markley Dennis

1 MR. BROOKS: We call Mr. Mack to the  
2 stand, Your Honor.

3 THE COURT: Mr. Mack, come forward.

4 (WITNESS TAKES STAND)

5 ETHAN MACK, having affirmed to tell the  
6 truth, and nothing but the truth, testified  
7 as follows:

8 DIRECT EXAMINATION

9 BY MR. BROOKS:

10 Q. How you doing today?

11 A. Fine.

12 Q. Good. As the judge asked you, you  
13 know we are here for your post-conviction  
14 relief matter; is that correct?

15 A. Yes, sir.

16 Q. And as you know, the only remedy on  
17 this is to start over; set aside your guilty  
18 plea and start over?

19 A. Yes, sir.

20 Q. There's no such remedy as cutting  
21 your time. You understand that?

22 A. Yes, sir.

23 Q. Knowing that, it is still your  
24 desire to go forward; is that correct?

25 A. Yes, sir.

Ethan Mack v State of South Carolina  
Case No. 12-CP-10-2100  
Hearing of April 17, 2014 - Testimony of Ethan Mack  
Before The Honorable R. Markley Dennis

5

1 Q. Getting to the heart of the matter,  
2 you pled guilty on April 1<sup>st</sup>, 2011, to a  
3 negotiated voluntary manslaughter. Twenty-  
4 five years.

5 A. Yes, sir.

6 Q. Okay. Who was your lawyer?

7 A. David Aylor.

8 Q. Okay. Now, in this particular case  
9 you had actually gone to trial on the facts  
10 of this case; is that correct?

11 A. Yes, sir.

12 Q. And how did that trial end up?

13 A. With a mistrial.

14 Q. Was it a hung jury?

15 A. (Affirmative nod), hung jury.

16 Q. Okay. All right. So you had the  
17 opportunity to see the case that the State  
18 had against you, ---

19 A. Yes, sir.

20 Q. --- in its full entirety?

21 A. Basically, yes, sir.

22 Q. Now, in this situation you pled.  
23 Why did you end up pleading?

24 A. Because, as my lawyer instructed me  
25 that I -- that I'd end up being sixty or

Ethan Mack v State of South Carolina  
Case No. 12-CP-10-2100  
Hearing of April 17, 2014 - Testimony of Ethan Mack  
Before The Honorable R. Markley Dennis

6

1           seventy years, that I wasn't going to be  
2           brought up on murder charges anymore -- which  
3           I instructed that I wanted to go back to  
4           trial on murder, because I knew that the  
5           evidence or whatever they said that they had  
6           there against me, that there wasn't none  
7           there to prove that I did anything -- and,  
8           no, I didn't do this in the first place.

9           Then to come down to now it's being  
10          brought up on supposedly kidnaping,  
11          extortion, accessory-before-the-fact, and  
12          some other charges now instead of being  
13          brought up on murder charges.

14          Q.    So now are you -- are you saying  
15          that you felt like your lawyer pressured you?

16          A.    Yeah, yeah, yeah. He told me  
17          everything that was being brought up against  
18          me instead of me just being brought back to  
19          trial on murder. Now he's saying that I'm  
20          being brought up on these different other  
21          nothing charges -- other charges that I  
22          didn't know nothing about when I thought I  
23          just be going back to court on that murder  
24          charge.

25          Q.    Okay. So, now, if you -- if you

Ethan Mack v State of South Carolina  
Case No. 12-CP-10-2100  
Hearing of April 17, 2014 - Testimony of Ethan Mack  
Before The Honorable R. Markley Dennis

7

1           could -- if you could get in a time machine  
2           and go back to March 31<sup>st</sup>, 2011, back to April  
3           1<sup>st</sup>, 2011, would you have taken this plea?

4           A.    No, not when that trial -- during  
5           that trial, I was offered seventeen years.

6           At one time in that trial, they offered  
7           thirteen years.

8           At another time, at a plea in front of  
9           Scarlett Wilson -- at the trial.

10          So why would I take twenty-five years  
11          when I going to go back to court for murder?  
12          And if that was the case, why would I have  
13          turned down those two pleas?

14          Q.    All right. Now, we're sitting here  
15          -- the date is April 17<sup>th</sup>, 2013 (sic). 2014.  
16          It's been nearly three years since you took  
17          that plea. You understand that?

18          A.    Yes, sir.

19          Q.    In that three years, what do you  
20          know now about your case that would cause you  
21          to do something different about your case if  
22          you were able to get in that time machine and  
23          could go back to that time?

24          A.    I would have went ahead and took  
25          that plea. If I knew then what I know now,

Ethan Mack v State of South Carolina  
Case No. 12-CP-10-2100  
Hearing of April 17, 2014 - Testimony of Ethan Mack  
Before The Honorable R. Markley Dennis

1 from doing my research, it was unintentional  
2 -- it was unintelligently and unknowingly  
3 what I did at that time. If I'd known what I  
4 did -- at the time, I would never have took  
5 that plea. I would have waited until trial  
6 until I went to trial, just like I insisted  
7 on going to trial on murder once again.

8 Q. Okay. Now, as a matter of fact,  
9 after you were at SCDC, you wrote the Clerk  
10 of Court here; is that correct?

11 A. Yes, sir.

12 Q. And what did you find out?

13 A. The only thing that I found from the  
14 Clerk of Court was that charges was being  
15 brought against me -- that the only charge  
16 that was being brought against me was  
17 accessory after the fact of murder. Which I  
18 was never informed of me being brought up on  
19 that charge before this plea ever took place.

20 Q. As a matter of fact, you were -- you  
21 were true billed on that in December of 2010?

22 A. Yes, sir.

23 Q. Okay. Now, that would have been  
24 about four to five months before your plea?

25 A. Yes, sir.

Ethan Mack v State of South Carolina  
Case No. 12-CP-10-2100  
Hearing of April 17, 2014 - Testimony of Ethan Mack  
Before The Honorable R. Markley Dennis

9

1 Q. Just to make sure that I understand  
2 you correctly, it's your testimony that you  
3 didn't even know about that?

4 A. I didn't even know about the  
5 accessory-after-the-fact until afterwards.  
6 Once I took the plea and I wrote to the Clerk  
7 of Court, asking them could they send me all  
8 documents, all transcripts and everything  
9 that they may have on me at the time, that's  
10 when I got the paperwork back, when I was at  
11 Perry Correctional Institution, and it showed  
12 that I was null and void on April 11<sup>th</sup> when I  
13 took the plea, that I had the accessory-  
14 after-the-fact of murder charge.

15 Q. So you didn't even know that you  
16 were indicted until you got -- after -- when  
17 you were in prison, when you got it after-  
18 wards?

19 A. Yes, sir, that's the only time that  
20 I found out about it.

21 Q. And it showed that it was *nol*  
22 *prossed*.

23 A. *Nol prossed*, (affirmative nod). I  
24 have a copy of it with me here today.

25 Q. Okay. That you were *nol prossed*

Ethan Mack v. State of South Carolina  
Case No. 12-CP-10-2100  
Hearing of April 17, 2014 - Testimony of Ethan Mack  
Before The Honorable R. Markley Dennis

10

1 after you pled?

2 A. Yes, sir.

3 Q. Ethan, is there anything else that  
4 you want to tell Judge Dennis here today, of  
5 why you should get your new trial?

6 A. Why I should get a new trial?  
7 Because they did -- because I did not know  
8 everything pertaining in my case in the first  
9 place. I never did my motion of discovery, I  
10 never was able to go over my transcript or  
11 really not any of these things.

12 I thought that my lawyer at the time,  
13 which he did when we first went to trial, had  
14 my best interest at hand.

15 But it seemed like -- something after  
16 that -- whatever went wrong and I don't know.  
17 It was like it was a total different game  
18 now. It's like -- well, everybody -- I can't  
19 say and I'm not going to say that a deal was  
20 made against me but that's the way that it  
21 seemed like with the -- the way with my  
22 people and the stature of her family and  
23 everything else that played a part in my  
24 case, it seems like this is all right where  
25 it came from.

Ethan Mack v State of South Carolina  
Case No. 12-CP-10-2100  
Hearing of April 17, 2014 - Testimony of Ethan Mack  
Before The Honorable R. Markley Dennis

11

1 Q. Okay. Mr. Aylor was court-appointed  
2 to you; is that correct?

3 A. Yes, sir.

4 Q. That's because you were indigent, is  
5 that right?

6 A. Yeah. He took my case *pro bono*.

7 Q. And you understand what "indigent"  
8 meant? It means that you didn't have the  
9 money to afford a lawyer?

10 A. Yes, sir.

11 Q. Is there anything else that we  
12 haven't covered that we can tell Judge Dennis  
13 here today?

14 A. No, sir, not to be exact.

15 Q. Take a deep breath. This is your  
16 day here in court to ask that this guilty  
17 plea be set aside. You've got, basically,  
18 one bite at the apple. Judge Dennis is here  
19 presiding. I just want to make sure that we  
20 cover all of our bases as to why this guilty  
21 plea should be set aside.

22 A. Yes, sir, that would be all.

23 MR. BROOKS: Okay. Answer any questions  
24 that Ms. Ratigan has.

25 THE COURT: Cross-examine?

Ethan Mack v State of South Carolina  
Case No. 12-CP-10-2100  
Hearing of April 17, 2014 - Testimony of Ethan Mack  
Before The Honorable R. Markley Dennis

12

1 MS. RATIGAN: Thank you, Your Honor.

2 CROSS EXAMINATION

3 BY MS. RATIGAN:

4 Q. Mr. Mack, would it be fair to say  
5 that you had several meetings with Mr. Aylor  
6 before you pled guilty?

7 A. Yes, ma'am.

8 Q. And did you review the State's  
9 evidence when you would meet with him?

10 A. No, ma'am.

11 Q. Never?

12 A. No, ma'am.

13 Q. Did you ---

14 A. I only saw my transcript when I was  
15 at trial, and I didn't really get to go over  
16 it then. I just had to look through it while  
17 I was sitting there at my trial.

18 Q. Okay. I'm talking about the  
19 evidence. I'm not talking about the  
20 transcript.

21 A. No, there wasn't no evidence.

22 Q. So you didn't ever talk about the  
23 police reports with him?

24 A. No, ma'am.

25 Q. You didn't talk about any kind of

Ethan Mack v State of South Carolina  
Case No. 12-CP-10-2100  
Hearing of April 17, 2014 - Testimony of Ethan Mack  
Before The Honorable R. Markley Dennis

13

1 forensic tests, any witness statements,  
2 statements of your codefendant?

3 A. No, ma'am. We talked about -- the  
4 only time that I heard about that was at  
5 trial.

6 Q. Okay. Did you tell Mr. Aylor your  
7 version of what had happened?

8 A. Yes, ma'am.

9 Q. So in all these meetings that you  
10 had with him, you never talked about the  
11 State's evidence?

12 A. Yes.

13 Q. When did you find out ---

14 A. I found out about the State's  
15 evidence just like I said, ---

16 Q. --- instead?

17 A. --- at my trial.

18 Q. Okay. But what I am asking you is,  
19 when you had these meetings with him, if you  
20 weren't talking about the evidence, what were  
21 you talking about?

22 A. Talking about just the case, what  
23 happened, this is what was involved with the  
24 case.

25 Q. So you talked about procedurally?

Ethan Mack v State of South Carolina  
Case No. 12-CP-10-2100  
Hearing of April 17, 2014 - Testimony of Ethan Mack  
Before The Honorable R. Markley Dennis

14

1 A. No, not procedure. 'This is what  
2 happened.' Or 'this is what went over.' Or,  
3 'this is what happened.' No, ma'am.

4 Q. So you talked about the case but you  
5 didn't talk about the evidence or the  
6 procedure?

7 A. No, ma'am.

8 Q. And you had a hung jury in October  
9 of 2010 on that murder charge?

10 A. Yes, ma'am.

11 Q. And you're saying today that you  
12 feel like Mr. Aylor kinda pushed you into  
13 pleading guilty?

14 A. Yes. That's the only reason why I  
15 took that plea.

16 Q. Well, why didn't you tell Judge  
17 Jefferson that day that you felt like your  
18 attorney was coercing you, or pushing you, or  
19 pressuring you?

20 A. Because I didn't know at the time.  
21 I didn't know the law like I do now. I  
22 wasn't able to cite and go to the legal  
23 library like I've had the chance to do now at  
24 this point in time.

25 Q. Sir, are you saying now that you did

Ethan Mack v State of South Carolina  
Case No. 12-CP-10-2100  
Hearing of April 17, 2014 - Testimony of Ethan Mack  
Before The Honorable R. Markley Dennis

15

1 not feel pressured that day?

2 A. That I did not?

3 Q. Yes.

4 A. (No verbal response).

5 Q. Did you feel pressured that day, the  
6 day that you went to court and stood up in  
7 front of Judge Jefferson, did you feel  
8 pressured to feel guilty?

9 A. Kinda. In a way, yes, but that's  
10 the only reason that I took it, was to save  
11 some time -- it was put in front of my face  
12 at that time. If I had not took that plea at  
13 the time that it was -- I was scared, I was  
14 facing six (sic) years, eight years.

15 Q. So when you told the judge that you  
16 had not been pressured or coerced, was that a  
17 lie?

18 A. No, ma'am.

19 Q. You're just saying now that you've  
20 had time to think about it that you feel like  
21 you were pressured or coerced?

22 A. Once I found out the facts that was  
23 inside my case with the plea, I would never  
24 have took it -- took the plea in the first  
25 place.

Ethan Mack v State of South Carolina  
Case No. 12-CP-10-2100  
Hearing of April 17, 2014 - Testimony of Ethan Mack  
Before The Honorable R. Markley Dennis

16

1 Q. Did Mr. Aylor explain to you before  
2 you went to court that day what an *Alford*  
3 plea would mean?

4 A. No, ma'am.

5 Q. Did he explain to you what a  
6 negotiated sentence meant?

7 A. Yeah, he told me that that means  
8 that I am saying that I am going to take this  
9 twenty-five years instead of going to trial  
10 on all those other charges that I didn't know  
11 that were going to be brought up against me,  
12 that were ---

13 Q. Okay.

14 A. --- never was.

15 Q. And you're saying today that you  
16 never wanted to plea guilty, instead that you  
17 wanted to go to trial?

18 A. Yes, ma'am.

19 Q. And you ---

20 A. That was my first -- that was the  
21 first thing, when he came to visit me at  
22 Perry, I tell him, I said, 'I want to go back  
23 to trial.'

24 I always did say that I wanted to go back  
25 to trial.

Ethan Mack v State of South Carolina  
Case No. 12-CP-10-2100  
Hearing of April 17, 2014 - Testimony of Ethan Mack  
Before The Honorable R. Markley Dennis

17

1 Q. So you told this to Mr. Aylor?

2 A. Yes, ma'am.

3 Q. But your contention is that he,  
4 instead, pressured you to plead guilty?

5 A. To this plea besides those years  
6 that I was facing on some charges that I did  
7 not know that existed.

8 Q. Okay. Your testimony today is that  
9 you never had any of the State's evidence,  
10 that you never looked over your motion for  
11 discovery?

12 A. I still ain't got it today. Never  
13 was able ----

14 Q. Okay.

15 A. --- to have it in my property.

16 Q. All right. Well, why didn't you  
17 tell Judge Jefferson that day, 'you know, I  
18 haven't even ever had a chance to look at my  
19 evidence, Judge.' Why didn't you tell her  
20 that?

21 A. Because I was going by what my  
22 lawyer advised me to do. I figured that he  
23 still had my best interests at hand.

24 Q. Okay. Explain to me again why it  
25 was that you decided to plea guilty after

Ethan Mack v State of South Carolina  
Case No. 12-CP-10-2100  
Hearing of April 17, 2014 - Testimony of Ethan Mack  
Before The Honorable R. Markley Dennis

1 that October trial.

2 A. Once again, because of the extensive  
3 time that my lawyer instructed me on some  
4 charges that I did not know about that were  
5 being brought up against me besides murder;  
6 for kidnaping, extortion, accessory-before-  
7 the-fact of murder and other charges that he  
8 said were being brought against me. He said  
9 that if I went back in front of Judge  
10 Nicholson that I would have been found guilty  
11 of those charges and I would have been  
12 looking at consecutive time, like he did with  
13 my obstruction of justice and forgery charge.  
14 He ran them consecutive to each other.

15 Q. But I thought you just testified on  
16 direct that you learned of that accessory  
17 charge for the first time after you wrote the  
18 Clerk of Court. Is that not correct?

19 A. That's when I found out about that,  
20 after once I got sentenced.

21 Q. Okay.

22 A. Then after I wrote down to the clerk  
23 of court, that's when I got found out that I  
24 was being brought up on not accessory-before-  
25 the-fact. Like I just said, it was accessory

Ethan Mack v State of South Carolina  
Case No. 12-CP-10-2100  
Hearing of April 17, 2014 - Testimony of Ethan Mack  
Before The Honorable R. Markley Dennis

19

1 after the fact of murder.

2 Q. Okay. And Mr. Aylor never told you  
3 about that?

4 A. No, ma'am.

5 Q. Okay. And the State never mentioned  
6 that during your guilty plea or anything?

7 A. No, ma'am.

8 Q. Are you sure?

9 A. Yeah, I don't have it inside my --  
10 it is not inside my plea.

11 Q. Did you ever sign a proffer agree-  
12 ment with the State?

13 A. What did you say?

14 MS. RATIGAN: May I approach, Your Honor?

15 THE COURT: You may.

16 CROSS EXAMINATION CONTINUED

17 BY MS. RATIGAN:

18 Q. I am handing you a docket dated  
19 March 22<sup>nd</sup>, 2011. Are your hands free?

20 A. (Accepts document).

21 Q. Okay. Do you recognize this?

22 A. (Reviewing).

23 Q. Tell me if you need me to turn the  
24 page.

25 A. (Upon review), yeah.

Ethan Mack v State of South Carolina  
Case No. 12-CP-10-2100  
Hearing of April 17, 2014 - Testimony of Ethan Mack  
Before The Honorable R. Markley Dennis

1 Q. You recognize that?

2 A. Yes, ma'am.

3 Q. Do you recognize this document?

4 A. Yes, ma'am.

5 Q. Is that your signature on that  
6 document?

7 A. Yes, ma'am.

8 Q. Okay. Can I have that back?

9 A. (Tenders).

10 MS. RATIGAN: Your Honor, we would put  
11 this in as Exhibit 1.

12 THE COURT: Any objection?

13 MR. BROOKS: No objection.

14 THE COURT: Without objection, State's  
15 Exhibit 1.

16 (SO ENTERED AS STATE'S EXHIBIT 1)

17 CROSS EXAMINATION CONTINUED

18 BY MS. RATIGAN:

19 Q. Mr. Mack, did you discuss this with  
20 Mr. Aylor before you signed it?

21 A. I had a brief discussion about it,  
22 saying that they just wanted to pin down my  
23 side of the story of what happened; to give  
24 them the story, that's what it was.

25 Q. Okay. And so your testimony is that

Ethan Mack v State of South Carolina  
Case No. 12-CP-10-2100  
Hearing of April 17, 2014 - Testimony of Ethan Mack  
Before The Honorable R. Markley Dennis

21

1 even though you signed that proffer agreement  
2 and you gave the State your version of what  
3 happened, you still wanted ---

4 A. Yes, ma'am.

5 MS. RATIGAN: That's all that I have,  
6 Your Honor.

7 THE COURT: Very well. Redirect?

8 REDIRECT EXAMINATION

9 BY MR. BROOKS:

10 Q. That proffer agreement that you  
11 signed and that Mr. Aylor signed, did you  
12 intend to sign that or is that something that  
13 your lawyer advised you to do?

14 A. Something that he advised me to take  
15 at that time.

16 Q. And that just like he told you to  
17 take that plea on April 1, 2011?

18 A. Yes, sir.

19 Q. And when you signed that, that looks  
20 like it is somewhere around about a week  
21 before you did your plea; is that correct?

22 A. Yes, sir.

23 Q. So is that -- is that something that  
24 if you had to do all over again, you wouldn't  
25 have signed that or talked to the State; is

Ethan Mack v State of South Carolina  
Case No. 12-CP-10-2100  
Hearing of April 17, 2014 - Testimony of Ethan Mack  
Before The Honorable R. Markley Dennis

22

1 that correct?

2 A. I wouldn't have done none of that.  
3 The only thing that I would have do is go to  
4 trial.

5 Q. Okay. And you signed that and  
6 talked to the State as a result of Mr. Aylor;  
7 is that correct?

8 A. Yes, sir.

9 Q. The same way that you did the plea?

10 A. Yes, sir.

11 Q. Okay.

12 MR. BROOKS: No other questions.

13 THE COURT: Recross?

14 MS. RATIGAN: None, Your Honor.

15 THE COURT: You may come down, sir.

16 COURT REPORTER: Ethan, I will take the  
17 exhibit.

18 MR. MACK: (Tenders).

19 COURT REPORTER: State's Exhibit 1.

20 Thank you, sir.

21 (WITNESS STEPS DOWN)

22 THE COURT: Call your next witness.

23 MR. BROOKS: Beg the court's indulgence.

24 THE COURT: Sure.

25 MR. BROOKS: Your Honor, we would call

Ethan Mack v State of South Carolina  
Case No. 12-CP-10-2100  
Hearing of April 17, 2014 - Testimony of David Aylor  
Before The Honorable R. Markley Dennis

23

1 David Aylor to the stand.

2 (WITNESS TAKES STAND)

3 DAVID AYLOR, having been sworn to tell  
4 the truth, and nothing but the truth,  
5 testified as follows:

6 DIRECT EXAMINATION

7 BY MR. BROOKS:

8 Q. Mr. Aylor -- good morning, Mr.  
9 Aylor.

10 A. Good morning.

11 Q. How are you?

12 A. I am doing well.

13 Q. You've had the -- you were the  
14 attorney for Mr. Mack? Ethan Mack?

15 A. I was one of them. Yes, sir.

16 Q. Okay. Would it be fair to say that  
17 you were the lead attorney?

18 A. Well, I don't like to phrase it that  
19 way but I -- I probably was -- I was there  
20 from the beginning, let's put it that way.

21 Q. Okay. Now, y'all went to trial on  
22 this case?

23 A. We did.

24 Q. Ended up with a hung jury, is that  
25 correct?

Ethan Mack v State of South Carolina  
Case No. 12-CP-10-2100  
Hearing of April 17, 2014 - Testimony of David Aylor  
Before The Honorable R. Markley Dennis

24

1 A. Related to the murder charge, it  
2 did.

3 Q. But that was -- okay, I gotcha. And  
4 some time after that, he ended up pleading  
5 guilty.

6 A. He did not plead guilty to murder,  
7 no.

8 Q No, no, no. He ended up pleading  
9 guilty to voluntary manslaughter?

10 A. He did.

11 Q. To dispose of this case?

12 A. Correct.

13 Q. Was it his intention to always go to  
14 trial?

15 A. At what point?

16 Q. Throughout this trial? Throughout  
17 this process of you representing him?

18 A. You mean before the first -- you've  
19 got to clarify that.

20 Q. Not the first trial, not before the  
21 first trial. I'm sorry. After the first  
22 trial, did he make it known that he still  
23 wanted to go to trial? Did he say that it  
24 was never his intention to plead guilty to  
25 any type of murder, voluntary manslaughter,

Ethan Mack v State of South Carolina  
Case No. 12-CP-10-2100  
Hearing of April 17, 2014 - Testimony of David Aylor  
Before The Honorable R. Markley Dennis

25

1 anything like that?

2 A. No, we didn't actually have a  
3 specific plan that was put together. You  
4 know, after we got the hung jury, which we  
5 were relieved to have as opposed to a  
6 conviction -- of course, we would have liked  
7 a not guilty.

8 But the hung jury, considering all the  
9 facts and the evidence in the case, you know,  
10 put us in a position where we had to  
11 determine what we were going to do next.

12 There are a number of different things  
13 that came into play. Obviously I can't  
14 remember all of them from three and a half  
15 years ago, but one of the issues that I think  
16 that was a little of, per se, confusion on  
17 was this looming threat or -- of whether he  
18 was told about potential other charges or  
19 things like that.

20 What is in reference there is that  
21 essentially after the murder charge that  
22 there was a hung jury, there were other  
23 charges outside of whether he was indicted,  
24 or not indicted for, that the government  
25 could have brought and would have been able

Ethan Mack v State of South Carolina  
Case No. 12-CP-10-2100  
Hearing of April 17, 2014 - Testimony of David Aylor  
Before The Honorable R. Markley Dennis

1 to potentially prove.

2 At that point it was my feeling, based on  
3 what Judge Nicholson had done with the  
4 forgery and obstruction charge, that they  
5 would run those consecutively. That was sort  
6 of "out there." I would tell you that in no  
7 way did Scarlett Wilson or Bruce Durant, nor  
8 anybody else, ever threatened that. Those  
9 were just the realistics of what the facts of  
10 the case were alleged to have been and the  
11 potential crimes that could be connected to  
12 those facts.

13 Q. I know that it's been a while since  
14 you was in this case, uh, but could you  
15 surmise what the State's facts or what the  
16 facts were that were facing against Mr. Mack  
17 as part (sic) of your defense in this case?  
18 Surmise the State's case against him.

19 A. The State's case against him in  
20 regards to the murder?

21 Q. Correct.

22 A. Specifically as to the murder, it  
23 was that -- I -- I'd prefer not to have to  
24 have into any specific facts out of respect  
25 for the family.

Ethan Mack v State of South Carolina  
Case No. 12-CP-10-2100  
Hearing of April 17, 2014 - Testimony of David Aylor  
Before The Honorable R. Markley Dennis

27

1 Q. I understand.

2 A. But essentially there were two  
3 individuals, Mr. Mack and another individual,  
4 Ms. Kamp, who were involved personally both  
5 at the beginning as well as at the end of the  
6 taking of one ---

7 Q. Did ---

8 A. --- person's life and the disposal  
9 of the body.

10 Q. Instead of getting into those  
11 graphic details, really what I am asking you  
12 is what evidence did he have that would have  
13 implicated Mr. Mack?

14 He didn't give a -- let me ask you this,  
15 Ms. Kamp gave a statement, correct?

16 A. She also testified.

17 Q. Okay. So they had codefendant  
18 testimony that would have implicated him?

19 A. They did.

20 Q. What else did they have to implicate  
21 him?

22 A. They had a number of different  
23 things to implicate him in the situation as a  
24 whole. They had things related to cell phone  
25 towers, they had things related to where the

Ethan Mack v State of South Carolina  
Case No. 12-CP-10-2100  
Hearing of April 17, 2014 - Testimony of David Aylor  
Before The Honorable R. Markley Dennis

1 body was actually discovered and who would  
2 have been familiar with that area. Ms. Kamp  
3 was not from here, had not been here -- had  
4 only been here for a very short period of  
5 time.

6 In reality, now that we're sort of  
7 reflecting on it, that was sort of the  
8 linchpin, I believe, in my opinion, connected  
9 Mr. Mack more than anything. Because Ms.  
10 Kamp led the private investigators to the  
11 body. She was not familiar with the area,  
12 would not have known that.

13 Even though she had a lot of mental  
14 issues that discredited her, that was  
15 something that was indisputable; that she  
16 knew where the body was, that it was in a  
17 remote area that even a lot of people from  
18 the area wouldn't have known about, much less  
19 an out-of-towner.

20 Q. Okay. And -- okay. The cell phone,  
21 the codefendant testimony, ---

22 A. (Affirmative nod), some financial  
23 things. You know, there were various things.  
24 The main thing, in my situation, is the fact  
25 of the credibility that Ms. Kamp could bring

Ethan Mack v State of South Carolina  
Case No. 12-CP-10-2100  
Hearing of April 17, 2014 - Testimony of David Aylor  
Before The Honorable R. Markley Dennis

29

1 to the table was the discovery of the body,  
2 the location of the body in comparison to Mr.  
3 Mack's knowledge of that area as opposed to  
4 Ms. Kamp's.

5 Q. Okay. Now, and you -- and you  
6 explained all of this to Ethan?

7 A. I will never have a case that I  
8 spent as much time with the client before,  
9 after and during a trial, with the client's  
10 family, -- I still keep in touch with the  
11 family, they're a great family, they are  
12 great people. It is a horrible situation  
13 for everybody involved.

14 But to say that everything wasn't  
15 explained, looked at, gone over -- they even  
16 let his mom come into the jail with us so  
17 that she could sit down with us and go over  
18 the case.

19 The prosecution's office bent over  
20 backwards to allow us access to him at any  
21 point in time that we needed it. Here at the  
22 court, at the jail, every aspect.

23 Sorry. I'm a little bit strongly  
24 opinionated on that, yes.

25 Q. That's all right. That's what we

Ethan Mack v State of South Carolina  
Case No. 12-CP-10-2100  
Hearing of April 17, 2014 - Testimony of David Aylor  
Before The Honorable R. Markley Dennis

1 are here for, to get your ----

2 A. And also let me just put one thing  
3 out. It's -- it was sort of alluded to  
4 earlier, and it was in these ludicrous  
5 filings, there was no "deal" between myself,  
6 Scarlett Wilson, Bruce Durant or the  
7 President of the United States having  
8 anything to do with this case.

9 Everybody was aboveboard in every  
10 possible way ethically. The provided us with  
11 any and all discovery, including various  
12 contradictory statements made by their star  
13 witness, every single time -- the recordings,  
14 the transcripts, all of that information was  
15 provided to the client.

16 From start to finish, I would say that  
17 this case was perfect ethically, I'd say,  
18 from the point of representation; both from  
19 the government and the defendant. I am not  
20 saying that because I was personally  
21 involved. I am saying that because I  
22 witnessed it.

23 Q. Now, did you advise Ethan to take  
24 this plea?

25 A. Absolutely, I did.

Ethan Mack v State of South Carolina  
Case No. 12-CP-10-2100  
Hearing of April 17, 2014 - Testimony of David Aylor  
Before The Honorable R. Markley Dennis

31

1 Q. Because of the reasons that you just  
2 described?

3 A. (Affirmative nod), and I -- again,  
4 I'm not one to try to toot my own horn but I  
5 still feel like it's a very good plea.  
6 Considering the situation, it was a good  
7 plea. It is a good plea.

8 Q. I understand.

9 MR. BROOKS: Beg the court's indulgence,  
10 Your Honor?

11 THE COURT: Certainly.

12 MR. BROOKS: That's all my questions,  
13 Judge.

14 THE COURT: Thank you. Cross-examine?

15 CROSS EXAMINATION

16 BY MS. RATIGAN:

17 Q. Just a few basic questions for you,  
18 Mr. Aylor. So you were in fact appointed in  
19 this matter?

20 A. No.

21 Q. Okay. How did you come to represent  
22 Mr. Mack?

23 A. Through contact with his family.

24 Q Did you file the usual Brady Rule 5  
25 motions in this case?

Ethan Mack v State of South Carolina  
Case No. 12-CP-10-2100  
Hearing of April 17, 2014 - Testimony of David Aylor  
Before The Honorable R. Markley Dennis

32

1 A. I did.

2 Q. And did you receive those from the  
3 State?

4 A. I did.

5 Q. Did you perceive that there was any  
6 material(s) requested that you did not  
7 receive?

8 A. Absolutely not. There was never  
9 even a delay in the time period in which I  
10 received the material.

11 Q. And when you received that material,  
12 did you review it independently?

13 A. Yes, I did.

14 Q. And did you also review the  
15 discovery materials with Mr. Mack?

16 A. Absolutely and all the fact  
17 scenarios and how I believe that it  
18 potentially could affect us and would affect  
19 us, and everything else that a lawyer is  
20 supposed to do.

21 Q. You reviewed with him the elements,  
22 the penalties, things of that nature, about  
23 these charges?

24 A. I did. Particularly after that  
25 first trial because it was -- it was somewhat

Ethan Mack v State of South Carolina  
Case No. 12-CP-10-2100  
Hearing of April 17, 2014 - Testimony of David Aylor  
Before The Honorable R. Markley Dennis

33

1 a technical situation. For whatever the  
2 strategic reasons were, the Solicitor's  
3 Office only charged those charges and he was  
4 convicted of the two. But there were several  
5 other charges, potentially, outside of the  
6 murder, that they could have charged him  
7 with. I believe that had we gone back to  
8 trial that may have in -- I hate to say it  
9 but in almost like a safety net sort of  
10 scenario. There were a lot of concerns  
11 beyond the murder charge.

12 Q. Did Mr. Mack convey to you his  
13 version of the series of events?

14 A. He did.

15 Q. Now, after the hung jury, did you  
16 approach the State about plea negotiations,  
17 did they approach you or was it just kind of  
18 a mutual thing?

19 A. From before the trial until up to,  
20 during and after it, we were in very  
21 consistent communication.

22 Q. After the trial and the hung jury,  
23 did Mr. Mack ever tell you that he wanted to  
24 cease plea negotiations with the State?

25 A. No. There would be no advantage to

Ethan Mack v State of South Carolina  
Case No. 12-CP-10-2100  
Hearing of April 17, 2014 - Testimony of David Aylor  
Before The Honorable R. Markley Dennis

1 ceasing negotiations. Regardless of what our  
2 end result would be. That would be ignorant.  
3 He didn't ever say that anyway.

4 Q. And the eventual -- Mr. Aylor, I am  
5 going to hand you what has been marked as  
6 State's Exhibit 1. Are you familiar with  
7 that exhibit?

8 A. (Upon review), I am familiar with  
9 the proffer. I can't say that I am  
10 specifically familiar with this one, but it  
11 does look like my terrible writing on the  
12 signature page, so -- (pause) -- I am going  
13 to go with that I see this and that I am  
14 familiar with the fact that we signed a  
15 proffer agreement.

16 Q. Prior to signing that proffer  
17 agreement, did you explain to Mr. Mack what  
18 that would entail if you signed that with the  
19 State?

20 A. Absolutely. I remember the day that  
21 we were at the North Charleston Police  
22 Department working -- we had several people  
23 there and we were going over several  
24 different things, working; talking with  
25 Scarlett, talking with others from the

Ethan Mack v State of South Carolina  
Case No. 12-CP-10-2100  
Hearing of April 17, 2014 - Testimony of David Aylor  
Before The Honorable R. Markley Dennis

35

1 Solicitor's Office and the Police Department.  
2 What we were trying to do at that point was  
3 to angle the best position for Ethan and --  
4 out of respect for the family and concern  
5 about the situation, so that they too -- as  
6 it comes in, as you hear from a prosecutorial  
7 standpoint, would not have to be put through  
8 another trial. Trying to get an explanation  
9 for what was a very unexplainable horrible  
10 situation. That is what they wanted and  
11 that was something that we could provide,  
12 which in turn would help Mr. Mack with regard  
13 to his sentence. Somebody looking at life in  
14 prison was not going to get anywhere close to  
15 life in prison because of various -- some  
16 weakness in evidence but also what was  
17 related to this proffer agreement.

18 Q. Now, was signing a proffer agreement  
19 a precursor to the guilty plea?

20 A. (No verbal response).

21 Q. Would you say?

22 A. It was an *Alford* plea.

23 Q. Oh, I'm sorry, it was an *Alford*  
24 plea. When you signed the proffer agreement,  
25 was that with the expectation that he would

Ethan Mack v State of South Carolina  
Case No. 12-CP-10-2100  
Hearing of April 17, 2014 - Testimony of David Aylor  
Before The Honorable R. Markley Dennis

1 later accept a plea offer?

2 A. There wasn't a specific plea offer  
3 on the time at that time. Obviously you  
4 would be working in that direction from that  
5 standpoint. But, you know, the issues at  
6 hand weren't specifically related to the  
7 murder charge in and of itself. It was  
8 related to these other collateral potential  
9 charges that were out there, and that could  
10 be out there. That is what the concern was.

11 Q. So the State's offer was, for lack  
12 of a better word, "firmed up a little bit"  
13 after the outside proffer?

14 A. You know, I'll have to go back and  
15 look at my e-mails. I don't recall. Like I  
16 said, I was in constant contact with Scarlett  
17 and Bruce. You know, this case was very much  
18 a fluid situation that involved Ethan and,  
19 with his permission, his sister and his  
20 mother. They were involved in the process as  
21 well. And, of course, my whole office.

22 Q. According to the dates, y'all would  
23 have pled guilty about a week after the  
24 proffer; does that sound about right?

25 A. If that's what the dates show.

Ethan Mack v State of South Carolina  
Case No. 12-CP-10-2100  
Hearing of April 17, 2014 - Testimony of David Aylor  
Before The Honorable R. Markley Dennis

37

1 Q. Do you recall Mr. Mack ever telling  
2 you, between the proffer being signed and the  
3 plea, that he wanted to have a jury trial on  
4 the murder?

5 A. No. Mr. Mack understood exactly --  
6 Mr. Mack is a very intelligent individual  
7 and he had a very good understanding and  
8 grasp of the law. So did his family.

9 It wasn't a situation where there was a  
10 rush to decision. He understood everything  
11 that was at risk.

12 What Mr. Mack was concerned about, and  
13 that I believe he still is to this day, is a  
14 conviction that he has that -- and I mean a  
15 personal conviction, not in a courtroom -- he  
16 was not responsible, *per se*, for the untimely  
17 death of Miss Waring.

18 So the reason that we pled the Alford  
19 plea was because of the facts, considering  
20 everything, he did not feel that he, himself,  
21 but that it was more Ms. Kamp who actually  
22 committed the murder.

23 However, at the same time, he did realize  
24 the exposure to that particular charge, in  
25 and of itself, much less the charges outside

Ethan Mack v State of South Carolina  
Case No. 12-CP-10-2100  
Hearing of April 17, 2014 - Testimony of David Aylor  
Before The Honorable R. Markley Dennis

38

1 of that. So it was never a case of -- it was  
2 not a one-shot deal. It wasn't a 'let's try  
3 a murder case' or 'let's not.' There was a  
4 whole lot more to it that took a lot of time  
5 in between. It wasn't as if we hung the jury  
6 one week and two weeks later were back in  
7 here pleading involuntary because we knocked  
8 it down a notch because we'd hung up a jury.  
9 That's not the way that it went, at all.

10 Q. Did you explain to Mr. Mack the  
11 nature of an *Alford* plea?

12 A. I did. That was important to him,  
13 understandably so. You know, I believe in my  
14 heart of hearts that he got up in a situation  
15 that was horrible and was influenced and --  
16 uh, around an evil individual and he got  
17 caught up in that evil. He didn't walk to  
18 walk into court in front of that person's  
19 family, as well as his own family, and admit  
20 to something that he doesn't feel that he was  
21 completely responsible for.

22 Q. And did you explain to him exactly  
23 what a negotiated twenty-five year sentence  
24 would mean?

25 A. You know, as a defense attorney, as

Ethan Mack v State of South Carolina  
Case No. 12-CP-10-2100  
Hearing of April 17, 2014 - Testimony of David Aylor  
Before The Honorable R. Markley Dennis

39

1 any defense attorney will tell you, the most  
2 important thing that anybody is going to hear  
3 at the end of the day, when talking about  
4 plea negotiations or trial exposures, is  
5 numbers. So from day one, from the very  
6 beginning of the case all the to the day that  
7 we walked in here, every single potential  
8 exposure of any type of plea or trial was  
9 completely explained. We would work with --  
10 in Columbia, we would work with, uh, uh, you  
11 know, the department of prisons to know, you  
12 know, that we had the calculations within  
13 reason, what percentage it was and everything  
14 like that. So he had a clear picture of what  
15 it was that he was looking at in each  
16 situation.

17 Q. But did he understand the negotiated  
18 twenty-five meant either that the judge would  
19 take it or impose the twenty-five, or would  
20 not take it at all? Did he understand that?

21 A. Correct, he did. And we had the  
22 indication that it was going to be something  
23 that the judge would be willing to take.  
24 Obviously we don't know. It's up to Your  
25 Honor at the hearing, in and of itself. But

Ethan Mack v State of South Carolina  
Case No. 12-CP-10-2100  
Hearing of April 17, 2014 - Testimony of David Aylor  
Before The Honorable R. Markley Dennis

40

1 I think that's why you go through all the  
2 questions before the judge makes that  
3 determination. And they did that, per the  
4 transcript, in this case.

5 Q. And part of the State's offer was to  
6 also *nol pross* three charges; do you recall?

7 A. I don't what -- you know, how many.  
8 But the bottom line is that this was going to  
9 end the case. This was going to resolve  
10 anything that was going to be hanging out  
11 there or that could potentially be brought.  
12 That's one thing that we had to explain to  
13 Mr. Mack, because that would be sort of  
14 confusing from a general public standpoint --  
15 that just because you haven't been charged  
16 without something related to a case, that you  
17 may have been charged with other things,  
18 doesn't mean that it can't come at a later  
19 point in time.

20 Q. So you would have explained to Mr.  
21 Mack that entering an *Alford* plea to  
22 voluntary manslaughter, all the other pending  
23 charges would have been dismissed? Did you  
24 explain that to him?

25 A. That, as well as the fact that

Ethan Mack v State of South Carolina  
Case No. 12-CP-10-2100  
Hearing of April 17, 2014 - Testimony of David Aylor  
Before The Honorable R. Markley Dennis

41

1 nothing else would be brought. Which again,  
2 you know, sort of the looming -- I don't want  
3 to use the term "threat", but the looming  
4 reality that was out there.

5 Q. Okay.

6 A. And Judge Nicholson made it clear  
7 where he stood when he gave consecutive  
8 sentences on forgery and obstruction; which I  
9 don't think would be a common practice, when  
10 you look at sentencing.

11 Q. Mr. Mack has testified that he felt  
12 you pressured him into pleading guilty. Now,  
13 obviously it's kind of a reflection to ask --  
14 but, in your opinion, were you threatening or  
15 did you pressure him in any way to influence  
16 his decision to plead guilty?

17 A. No. I mean, the transcript from the  
18 plea doesn't reflect that. I mean, this was  
19 a drawn out situation that took a lot of  
20 time. You have to remember that he was  
21 coming in pleading guilty, *Alford* or not, to  
22 a version, if you will, of the murder in and  
23 of itself. So it was not something that  
24 anybody took likely but, of course, most  
25 importantly Mr. Mack. So myself, my

Ethan Mack v State of South Carolina  
Case No. 12-CP-10-2100  
Hearing of April 17, 2014 - Testimony of David Aylor  
Before The Honorable R. Markley Dennis

42

1 investigator, my co-counsel, his mother,  
2 (negative gesture). There was never  
3 pressure. He was never put in a situation,  
4 around the solicitor's office or the police  
5 department, where he was pressured into  
6 making that decision.

7 Had he chose not to make that decision  
8 and had gone to trial, I would have dealt  
9 with it just like I do with any other trial  
10 and presented the best case that we could.  
11 We may have had strong points related to the  
12 murder charge but, again, there were other  
13 things that were -- where the exposure was  
14 the biggest concern.

15 So I think that's probably where they may  
16 be a little bit of a disconnect from a legal  
17 standpoint.

18 Q. Okay. And my final question, once  
19 you were at the hearing that day in front of  
20 Judge Jefferson, did Mr. Mack ever waiver in  
21 his decision to go forward?

22 A. No, not at all. He went through  
23 everything -- as you've read the transcript,  
24 he made a heartfelt statement to the victim's  
25 family, as well as his own family. It was a

Ethan Mack v State of South Carolina  
Case No. 12-CP-10-2100  
Hearing of April 17, 2014 - Testimony of David Aylor  
Before The Honorable R. Markley Dennis

43

1 pretty emotional and sad day, but I also  
2 think that it was an emotional relief for  
3 everybody involved.

4 MS. RATIGAN: That's all that I have,  
5 Your Honor.

6 THE COURT: Redirect?

7 MR. BROOKS: Just a moment, (sidebar  
8 with Applicant).

9 THE COURT: While you are doing that,  
10 I want to ask a couple of questions.

11 I've read the transcript and, Mr. Aylor,  
12 I see that Judge Jefferson did, as typically  
13 most of us do, after the *Alford* plea was  
14 disclosed, asked you a question as to whether  
15 you felt the evidence that the State had  
16 would probably result in a conviction beyond  
17 a reasonable doubt. Your answer as an  
18 attorney and a professional was "yes."

19 MR. AYLOR: That's correct.

20 THE COURT: That was not just answering  
21 the question to facilitate a plea but that  
22 answer was your honest opinion? Is that  
23 correct?

24 MR. AYLOR: That was, Your Honor. And  
25 we had actually done a little research, too,

Ethan Mack v State of South Carolina  
Case No. 12-CP-10-2100  
Hearing of April 17, 2014 - Testimony of David Aylor  
Before The Honorable R. Markley Dennis

44

1 after the first trial to get a jury pulled  
2 and everything else.

3 THE COURT: I figured that you probably  
4 had.

5 MR. AYLOR: Yes, sir.

6 THE COURT: Your client also answered  
7 in the affirmative as well. Did he fully  
8 understand, based on your explanation, from  
9 what he was saying that it was his belief  
10 that if he went to trial that the jury would  
11 most probably find him guilty beyond a  
12 reasonable doubt?

13 MR. AYLOR: He did, Your Honor. But  
14 the one sort of, if you want to call it,  
15 "benefit", if you want to call it that, to  
16 this situation of plea coming thereafter, we  
17 had -- I don't remember how many days of  
18 trial it was, but something like eight, nine,  
19 ten, eleven days of live exposure in live  
20 court; which you don't have a lot of times  
21 before a plea. So he saw many of the things  
22 that would have come up if we'd had another  
23 trial. So he was very familiar with it.

24 And, like I said, Mr. Mack is an educated  
25 individual. He was very functional and

Ethan Mack v State of South Carolina  
Case No. 12-CP-10-2100  
Hearing of April 17, 2014 - Testimony of David Aylor  
Before The Honorable R. Markley Dennis

45

1 understood completely everything, a lot more  
2 than sort of maybe your everyday occurrence  
3 with some clients, as to what was out there,  
4 because not only had he heard it but he'd  
5 seen it for himself in the trial previously.

6 THE COURT: All right, sir. Also, as  
7 you aware, some states had statutes for  
8 criminal actions. We have none in this  
9 state, of which I am aware of. We've been  
10 talking about these potential charges in the  
11 past tense but if we -- if this case goes  
12 back, are all those facts still available to  
13 the State?

14 MR. AYLOR: Absolutely. Yes, and a lot  
15 of those are a lot less controversial as to  
16 what they would be able to prove. Just to  
17 give one example, the accessory charges and  
18 things like that.

19 THE COURT: Thank you. Sorry for  
20 interrupting. Please continue with your  
21 questions.

22 MR. BROOKS: Thank you.

23 REDIRECT EXAMINATION

24 BY MR. BROOKS:

25 Q. Mr. Aylor, you said that you polled

Ethan Mack v State of South Carolina  
Case No. 12-CP-10-2100  
Hearing of April 17, 2014 - Testimony of David Aylor  
Before The Honorable R. Markley Dennis

46

1 the jury after -- sort of an informal  
2 polling? Something that we as defense  
3 lawyers sometimes try to do, trying to kind  
4 of get a ----

5 A. You want to try to see what you did  
6 right and what you did wrong. Right.

7 Q. In your opinion, -- obviously there  
8 was an informal polling, but could you shed  
9 some light on whether that polling was  
10 negative towards Mr. Mack or positive towards  
11 Mr. Mack?

12 A. I don't think that it was anything  
13 -- it was more on the bias of the trial as a  
14 whole. The key focal point, for anybody that  
15 followed the trial or was familiar with it,  
16 was whether Heather Kamp and her testimony --  
17 because she was so, uh, sort of unpredictable  
18 that it was a difficult person to have on the  
19 stand for the prosecution. A great defense  
20 witness. However, she'd brought some  
21 credibility to the table due to the  
22 circumstances of the discovery of the body.

23 So I think some jurors -- as I'm sure  
24 you've seen, and a lot of attorneys have --  
25 uh, were not satisfied with her and were not

Ethan Mack v State of South Carolina  
Case No. 12-CP-10-2100  
Hearing of April 17, 2014 - Testimony of David Aylor  
Before The Honorable R. Markley Dennis

47

1 completely willing to swallow the murder  
2 charge based on that being the reason and  
3 that being the person, because of their  
4 distaste and dislike for her and how she  
5 presented herself. So that was sort of a key  
6 element that assisted us.

7           However, had we gone to another trial --  
8 and you're talking about two veteran trial  
9 lawyers in Bruce Durant and Scarlett Wilson.  
10 They've tried and convicted a lot of people  
11 of murder. You know. Would they have  
12 changed the scheme and had a different plan?  
13 Absolutely. I'm sure they probably would  
14 have come up with some things and that would  
15 have put us at a much greater risk; which, I  
16 believe, would have found him guilty.

17           Q. So basically -- and I don't  
18 necessary want to try to surmise what you  
19 just said ---

20           A. I'm sorry. I'm a rambler.

21           Q. That's fine. Some of the things  
22 that you found out from the informal polling  
23 of the jury led you to believe that the  
24 State might put up a more muscular or a more  
25 powerful case the next time around?

Ethan Mack v State of South Carolina  
Case No. 12-CP-10-2100  
Hearing of April 17, 2014 - Testimony of David Aylor  
Before The Honorable R. Markley Dennis

48

1           A.    If I was in their shoes, which I  
2           wasn't -- but if I was and they did the same  
3           thing, I am sure it would have transitioned  
4           it away from so much relying on Heather Kamp  
5           and tried to go more on the sort of cold,  
6           hard facts related to jewelry being pawn, and  
7           other hard facts of the case. I would have  
8           pushed it that way and limited her role, so  
9           that jury wouldn't so much "hate" her and put  
10          more blame on her. They could have pulled  
11          him in, and I think that they would have done  
12          that and had they done that I think the jury  
13          would have convicted him.

14          Q.    That's kind of what you found out  
15          from talking to some of the jurors after the  
16          first trial?

17          A.    And I think it was evident -- at  
18          least an average lawyer would have been able  
19          to see what helped and what hurt. As you  
20          know, until you get into the trial, you don't  
21          know how things are going to play out. Then,  
22          like you said, yes, you confirm it by  
23          speaking with jurors to confirm what they  
24          thought was important, what they thought  
25          wasn't, what they thought was lacking. The

Ethan Mack v State of South Carolina  
Case No. 12-CP-10-2100  
Hearing of April 17, 2014 - Testimony of David Aylor  
Before The Honorable R. Markley Dennis

49

1 Solicitor's office does it every time.

2 Q. All right. Did you relay this to  
3 Ethan?

4 A. Yes, and his family. Like I said, I  
5 still keep in touch with his family. I mean,  
6 this was all open communication. This was --  
7 this is a sad state of affairs here today. I  
8 feel sorry for the Waring family and every-  
9 body involved.

10 MR. BROOKS: Beg the Court's indulgence.

11 THE COURT: Certainly.

12 MR. BROOKS: (Sidebar with Applicant).

13 No other questions.

14 THE COURT: Recross?

15 MS. RATIGAN: No recross, Your Honor.

16 THE COURT: Thank you, you may step  
17 down.

18 (WITNESS STEPS DOWN)

19 THE COURT: Call your next witness.

20 MR. BROOKS: Beg the Court's indulgence  
21 -- (sidebar with Applicant). That is the  
22 Applicant's case, Your Honor.

23 THE COURT: All right. Does the State  
24 have any additional witnesses?

25 MS. RATIGAN: Your Honor, we would rest

Ethan Mack v State of South Carolina  
Case No. 12-CP-10-2100  
Hearing of April 17, 2014 - Testimony of David Aylor  
Before The Honorable R. Markley Dennis

50

1 on the record of Mr. Aylor's testimony.

2 THE COURT: Thank you. Very good. Be  
3 happy to hear from you, Mr. Brooks, in  
4 closing.

5 MR. BROOKS: Judge, obviously this is a  
6 very unfortunate situation. You've heard  
7 from my client. He insists that his plea was  
8 involuntarily given, not intelligently put  
9 forth to the court. Based on my client's  
10 testimony that has been presented to the  
11 Court, we would respectfully ask the Court to  
12 overturn Mr. Mack's guilty plea, to set it  
13 aside and grant him his post-conviction  
14 relief -- grant him a new trial, as he has  
15 testified to the court.

16 THE COURT: Okay.

17 MS. RATIGAN: Your Honor, very briefly,  
18 it is the State's position that Mr. Mack has  
19 not met either prong of the *Strickland* test.  
20 He has proven neither error nor prejudice.

21 Mostly he's not -- he's just not a  
22 credible witness today. The plea transcript  
23 repeats most of his testimony in cases such  
24 as *Holden* that has found that you can look to  
25 the plea transcript. I specifically point

Ethan Mack v State of South Carolina  
Case No. 12-CP-10-2100  
Hearing of April 17, 2014 - Ruling of The Court  
Before The Honorable R. Markley Dennis

51

1 out that he told Judge Jefferson that he  
2 had not been coerced, he told Judge Jefferson  
3 that he was satisfied with counsel.

4 Contrary to his testimony today about not  
5 being advised of accessory-after-the-fact or  
6 conspiracy until afterwards, Ms. Wilson  
7 mentioned it on page three of the transcript.

8 So we would simply argue that he is not  
9 credible and he has not met his burden of  
10 proof.

11 THE COURT: Any reply?

12 MR. BROOKS: Judge, we stand on our  
13 client's testimony.

14 THE COURT: Well, your client is  
15 obviously very articulate and -- certainly by  
16 his own presence and presentation, he has  
17 confirmed Mr. Aylor's assessment that he is a  
18 very intelligent individual. That's  
19 important in this case because there is a  
20 package assessment that one has to do as an  
21 attorney; we all who practice law, understand  
22 that. Persons who have not had the benefit  
23 of practicing, -- and I am not belittling it  
24 but it's just that when you take something  
25 and read it, you want to put it in a vacuum.

Ethan Mack v State of South Carolina  
Case No. 12-CP-10-2100  
Hearing of April 17, 2014 - Ruling of The Court  
Before The Honorable R. Markley Dennis

52

1 But you can't do that. You can't make  
2 assessments and each conclusions based on  
3 just considering one thing. You have to look  
4 at a much larger picture. That is precisely  
5 what he was doing the day that he was  
6 entering his plea. Mr. Aylor -- those words  
7 -- I know in every *Alford* plea that I've  
8 asked them. They are important, the response  
9 is important.

10 "Do you really believe that if you went  
11 to trial that you would be found guilty?"

12 His answer was "yes."

13 He differs with the facts but he believed  
14 that he would be -- was going to be found  
15 guilty. His attorney felt that. Those are  
16 two very important answers, in addition to  
17 all the others where he said that he's not  
18 been coerced.

19 I find his testimony today to not be  
20 credible at all. I find it solely to try to  
21 benefit him.

22 And in some ways, in a sadistic sort of  
23 way, there may be -- and I am not casting  
24 dispersions about anybody but there may be  
25 persons who would love to have another chance

Ethan Mack v State of South Carolina  
Case No. 12-CP-10-2100  
Hearing of April 17, 2014 - Ruling of The Court  
Before The Honorable R. Markley Dennis

53

1 of convicting him of murder.

2 You know what? There's no question that  
3 he is facing, just as he told -- just as Mr.  
4 Aylor told him, -- they try him on the murder  
5 and get a not guilty, then they could try him  
6 on the other charges. I mean, it just keeps  
7 rolling. It doesn't go away, it doesn't just  
8 stop.

9 He's already got a benefit. He got a  
10 benefit -- a tremendous benefit. He had a  
11 reduced, known time to run concurrently with  
12 his presence sentence. That's pretty  
13 significant given everything that happened in  
14 this case.

15 So there was tremendous benefit to the  
16 Applicant. The State made some concessions,  
17 and I understand why. But that's what a deal  
18 is all about, everybody gives up a little bit  
19 to achieve some result. I think that the  
20 result achieved was clearly what the  
21 Applicant wanted. He had a sure thing.  
22 Everything else would be taken off the table.  
23 That is pretty significant in this case,  
24 major significance. The Applicant  
25 articulated his complete understanding.

Ethan Mack v State of South Carolina  
Case No. 12-CP-10-2100  
Hearing of April 17, 2014 - Ruling of The Court  
Before The Honorable R. Markley Dennis

54

1 I therefore find that he has failed on  
2 either prong. In fact, I think Mr. Aylor did  
3 a magnificent job. He doesn't even come  
4 close to meeting the first prong. So the  
5 application is denied completely.

6 Prepare the appropriate Order.

7 MS. RATIGAN: Thank you, Your Honor.

8 MR. BROOKS: Thank you, Judge.

9 (HEARING CONCLUDED)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25



# State of South Carolina

Charleston County  
101 Meeting Street, Suite 400  
Charleston, SC 29401  
Phone (843) 958-1900  
Fax (843) 958-1905



Berkeley County  
300-B California Avenue  
Moncks Corner, SC 29461  
Phone (843) 723-3800 ext 4529  
Fax (843) 719-4588

**SCARLETT A. WILSON**  
Solicitor, Ninth Judicial Circuit

March 22, 2011

David Aylor, Esq.  
Attorney at Law  
24 Broad Street  
Charleston, SC 29401

Re: **State of South Carolina v. Ethan Carlos Mack**

Dear David:

The following constitutes the proffer agreement between the Attorneys for the State and Ethan Carlos Mack, hereinafter referred to as "Client."

## PROFFER AGREEMENT

The purpose of Client making a Proffer is to provide the State with an opportunity to assess the value, extent, and truthfulness of Client's information about the criminal liability of Client and others.

Client has agreed to provide the State with statements and information, and to respond to questions so that the State may evaluate Client's statements and other information in making prosecutive decisions. By receiving Client's Proffer, the State does not agree to make any prosecutive decisions on the Client's behalf or to enter into a plea agreement, immunity or non-prosecutive agreement. The State makes no representation about the likelihood that any such agreement will be reached in connection with this Proffer.

By signing this "Proffer Agreement," Client agrees to be fully truthful and forthright with the Ninth Circuit Solicitor's Office and State and/or federal law enforcement agents in their investigation of all unlawful activities, to include, but not limited to, truthful and complete debriefings with no misstatements or material omissions of fact of Client's knowledge concerning



David Aylor, Esq.  
March 22, 2011  
Page 2

violations of State or Federal laws, violent or non-violent. Also, Client understands that Client must fully disclose and provide truthful information to the State including any books, papers, documents or any other items of evidentiary value to the investigation. Client must also testify fully and truthfully at any trials or other proceedings if called upon to do so by the State, subject to prosecution for perjury for not testifying truthfully. Client's failure to be fully truthful and forthright at any stage will, at the sole election to the State, cause the obligations of the State within this Agreement to become null and void. **Further, it is expressly agreed that if the obligations of the State within this Agreement become null and void due to the lack of truthfulness on Client's part:**

- (1) **the State will file any and all charges known to the State; and**
- (2) **the State may use for any purpose any and all statements made and other information provided by Client in the Prosecution of Client on any charges, including perjury.** Client accepts this provision being fully advised that, under SCRE. 410, statements made by Client pursuant to this Agreement would not ordinarily be admissible in any criminal proceedings including perjury and making false statements unless the statements were made under oath, on the record, and in the presence of counsel.

Client agrees to submit to polygraph examination(s) by any qualified polygraph examiner designated by the State should Client be requested to do so. **Failure to pass to the satisfaction of the State any polygraph examination administered pursuant to this Agreement constitutes a breach of the Agreement, and the State may use for any purpose any statements made and other information provided by Client in the prosecution of Client on any charges.**

Provided Client is truthful as described above, remaining terms of the Agreement are as follows:

1. No statements made or other information provided by Client during this Proffer or discussion will be used against Client in any State Court criminal case except as provided herein.
2. The State may make derivative use of, and may pursue any investigation leads suggested by, any statements made or other information provided by Client for the purpose of obtaining other evidence, which may be used in a prosecution of Client. This is necessary to prevent the State from having to prove that evidence it would introduce at any future trial is not tainted by any statements made or other information provided by Client during this Proffer.
3. In the event that Client is a witness at a trial or other proceeding concerning any matter discussed in this Proffer and testifies materially different from any statements made or other information provided during this Proffer, the State may

David Aylor, Esq.  
March 22, 2011  
Page 3

cross-examine Client concerning any statements made or other information provided during this Proffer or use such to rebut any evidence or arguments offered by or on behalf of Client (including arguments made or issues raised sua sponte by the Court) at any stage of the criminal prosecution (including bail, trial, and sentencing) should any prosecution of Client be undertaken.

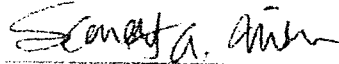
4. The State agrees that any self-incriminating statements made and other information provided by Client during this Proffer will not be used in determining the applicable sentencing recommendation should Client be convicted or enter a guilty plea unless there is a breach of this Agreement. The provisions of this paragraph shall not be applied to restrict the use of any such statements or information:
- (A) known to the State prior to the date Client makes this Proffer;
  - (B) concerning the existence of prior convictions and sentences;
  - (C) in a prosecution for perjury or giving false statement; or
  - (D) in the event there is a breach of the terms of this Agreement or subsequent plea agreement.

The obligations of and restrictions on the State within this Agreement are expressly contingent upon Client's abiding by federal, state, and local laws and complying with terms and conditions of any bond executed in this case. **Therefore, Client's violation of federal, state, or local law or of the provisions of any bond executed in this case constitutes a breach of this Agreement, and upon such violation, the State may use for any purpose any and all statements made and other information provided by Client in the prosecution of Client on any charges.**

To the extent the Government is entitled under this Agreement to offer in evidence any statements made or other information provided by Client or leads obtained there from, Client shall assert no claim under the United States Constitution, any Statute, Rule 410 of the South Carolina Rules of Evidence, or any other rule that such statements made or other information provided or any leads there from should be suppressed. It is the intent of this Agreement to waive all rights in the foregoing respects.

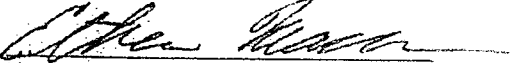
David Aylor, Esq.  
March 22, 2011  
Page 4

The parties hereby agree that this Agreement contains the entire agreement of the parties; that this Agreement supersedes all prior promises, representations and statements of the parties; that this Agreement may be modified only in writing signed by all parties; and that any and all other promises, representations and statements made prior to this Agreement are null and void.

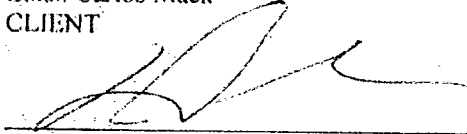


Scarlett A. Wilson, Solicitor  
Ninth Judicial Circuit

I AGREE AND ACCEPT THE TERMS OF THIS AGREEMENT:



Ethan Carlos Mack  
CLIENT



David Aylor  
ATTORNEY FOR ETHAN C. MACK

March 24<sup>th</sup>, 2011  
DATE

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 Ethan Carlos Mack, )  
 S.C.D.C. No. 343243, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

---

IN THE COURT OF COMMON PLEAS  
 C.A. No. 2012-CP-10-2100

**ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed March 27, 2012. The Respondent made its return on January 7, 2013 and its amended return on June 7, 2013. An evidentiary hearing into the matter was convened on April 17, 2014 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Charles T. Brooks, III, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's plea counsel, David Aylor, Esquire. The Court had before it the transcript of the plea hearing, the Charleston County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the return, the amended return, and Respondent's Exhibit 1.

**PROCEDURAL HISTORY**

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Charleston County Clerk of Court's orders of commitment. The Charleston County Grand Jury indicted the Applicant at the February 2010 term of General Sessions for

*rwj/1*

murder (2010-GS-10-1823). David Aylor, Esquire represented the Applicant.

On April 1, 2011, the Applicant pled guilty to a negotiated sentence for voluntary manslaughter, pursuant to North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160 (1970). The Honorable Deadra L. Jefferson accepted the negotiated sentence and sentenced the Applicant to twenty-five years imprisonment, concurrent to the fifteen-year sentence he was already serving. The Applicant did not appeal.

### ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:<sup>1</sup>

1. Ineffective assistance of counsel:
  - a. Failed to file an appeal as instructed.
  - b. “[H]elped the solicitor violate my Brady Motion.”
  - c. Failed to ensure the “(3) main Constitutional rights were waived.”
  - d. Failed to challenge the chain of custody.
  - e. Failed to challenge the co-defendant’s statements.
  - f. Failed to object to “the fraudulent indictments.”
  - g. Failed to challenge “the prosecution misconduct.”
  - h. Failed to review discovery with the Applicant.
  - i. Failed to move to “properly quash the indictments in accordance with S.C. Code Ann. § 17-19-90.”
  - j. Failed to “fully apprise” of the sentencing consequences of the guilty plea.
2. “Applicant was a victim of malicious prosecution by the solicitor’s office by violating his right to due process.”
3. “[C]onviction was obtained pursuant to a deliberate perversion of the plea bargain process.”
4. “[D]id not receive a full, fair or constitutionally adequate hearing in state court.”

---

<sup>1</sup> The Applicant’s attorney filed a pro se “Brief in Support of and Amendment to Application for Post-Conviction-Relief” on June 17, 2013. As hybrid representation is prohibited, this Court will not consider this document. See Jones v. State, 348 S.C. 13, 14, 558 S.E.2d 517, 517 (2002) (counsel cannot serve as a mere conduit for pro se documents in an effort to avoid the prohibition against hybrid representation and the displeasure of his client).

*rmw8/2*

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

#### Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel’s representation was below the standard of reasonableness and that, but for counsel’s unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

The Applicant stated he had several meetings with plea counsel but never reviewed the evidence in his case. The Applicant stated he pled guilty because plea counsel told him the State would bring additional charges against him. The Applicant stated he first learned of these

additional charges when he wrote the clerk of court after he pled guilty. The Applicant stated he wanted a trial on this charge and had refused prior plea offers for a fifteen- and seventeen-year sentences. The Applicant stated that, even though he entered into a proffer agreement<sup>2</sup> with the State, he still intended to go to trial. The Applicant stated that, while plea counsel explained the nature of a negotiated sentence, he did not explain the meaning of an Alford plea.

Plea counsel testified he filed discovery motions and received full discovery from the State. Plea counsel testified he independently reviewed the discovery materials and then reviewed that evidence and the facts with the Applicant. Plea counsel testified they also discussed the Applicant's version of events. Plea counsel testified there was consistent communication with the State regarding plea negotiations and that the State was very accommodating throughout this case. Plea counsel testified that, after the jury was hung when the murder case was brought to trial, the Applicant never told him to refrain from plea negotiations. Plea counsel confirmed there were other charges that could have been brought against the Applicant. Plea counsel testified they entered into a proffer agreement with the State (in which the Applicant gave an explanation of the factual situation in this case) and that he explained the nature of this agreement to the Applicant. After the proffer agreement, plea counsel testified the State made a plea offer for the Applicant to enter an Alford plea in exchange for a twenty-five year negotiated sentence, and that he reviewed this with the Applicant. Plea counsel testified the Alford plea was very important to the Applicant. Plea counsel testified the Applicant never told him after the proffer agreement that he wanted to go to trial. Plea counsel testified the Applicant was not pressured by any party to enter his Alford plea and that he did not waver during the plea hearing.

---

<sup>2</sup> Respondent's Exhibit I.

*RMW/4*

This Court finds plea counsel's testimony is credible. In contrast, this Court finds the Applicant's testimony is self-serving and not credible. For example, while the Applicant stated he never reviewed the State's evidence in this case, this indictment had been brought to trial (which resulted in a hung jury) approximately six months before he entered his Alford plea. In another example, while the Applicant stated he was not aware of additional charges until after he pled guilty, the Solicitor stated at the plea hearing that she was dismissing indictments for unlawful carrying of a firearm, conspiracy, and accessory after the fact of murder. (Plea transcript, p.3).

This Court finds the Applicant failed to meet his burden of proving plea counsel was ineffective. This Court finds plea counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation. Plea counsel reviewed the evidence, facts, and circumstances of this case with the Applicant. Plea counsel reviewed the Applicant's version of the facts. The Applicant was certainly aware of the additional pending charges against him both because of his discussions with plea counsel and because of the State's mention of such during the plea hearing. (Plea transcript, p.3). This Court finds plea counsel did a magnificent job of representing the Applicant. This Court finds the Applicant received a tremendous benefit as the result of plea counsel's negotiations with the State and that the result of this proceedings was clearly what the Applicant wanted.

This Court finds the Applicant failed to meet his burden of proving plea counsel pressured him to plead guilty. In fact, the plea transcript refutes this allegation because he told the plea judge that he was satisfied with counsel and had not been coerced in any way. (Plea transcript, pp.15-16). See Stalk v. State, 375 S.C. 289, 300, 652 S.E.2d 402, 407 (Ct. App. 2007); see also Rayford v. State, 314 S.C. 46, 48-49, 443 S.E.2d 805, 806 (1994) (where

emo/5

transcript of guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, grant of PCR was inappropriate notwithstanding applicant's claim lawyer misadvised him). Further, this Court does not find credible the Applicant's contention that he wanted to go to trial in this case. Plea counsel testified the Applicant did not tell him after the execution of the proffer agreement that he wanted a jury trial. Plea counsel testified the Applicant did not waver during the plea hearing. This Court finds this testimony is credible and notes the plea transcript is devoid of any equivocation by the Applicant during the plea hearing. See id.

This Court finds the Applicant failed to meet his burden of proving plea counsel did not explain an Alford plea to him. Plea counsel testified they discussed this matter and that the Applicant wanted an Alford plea. This Court finds this testimony is credible. Regardless, even assuming arguendo that plea counsel did not explain the purpose of an Alford plea, any such omission was cured when the Applicant informed the plea judge that he agreed the State could produce sufficient evidence to prove his guilt beyond a reasonable doubt at trial. (Plea transcript, p.12). See Holden v. State, 393 S.C. 565, 575, 713 S.E.2d 611, 616 (2011).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

kmof/6

All Other Allegations

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

CONCLUSION

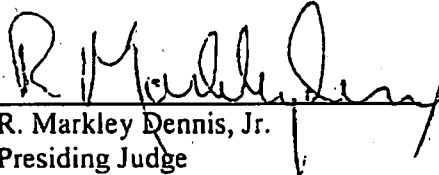
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his plea and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

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

**IT IS THEREFORE ORDERED:**

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

AND IT IS SO ORDERED this 6<sup>th</sup> day of May, 2014.

  
R. Markley Dennis, Jr.  
Presiding Judge  
Ninth Judicial Circuit

Moncks Corner, South Carolina.

*rmj/7*

SAW20091005937

DOCKET NO. 2010GS1001823

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

0911299

ARREST WARRANT NUMBER  
DIRIND0953

DATE OF ARREST  
February 1, 2010

ACTION OF GRAND JURY...

TRUE BILL

Foreperson of Grand Jury FEB 02 2010  
Date:

VERDICT

Foreperson of Petit Jury

Date:

INDICT.DOT

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

February 2010 Term

THE STATE

Vs.

ETHAN MACK

DOB: [REDACTED]  
B/M

Indictment for

MURDER

FILED

2010 FEB -2 PM 2:35

FILED JULIE J. ARMSTRONG  
CLERK OF COURT

2/2/2010 3:19:14 PM

JULIE J. ARMSTRONG  
CLERK OF COURT



STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Charleston
STATE VS.
ETHAN CARLOS MACK

INDICTMENT/CASE#: 2010GSI001823
A/W#: DIRIND0953
Date of Offense: 6/13/2009
S.C. Code §: 16-03-0010, 0020
CDR Code #: 0116

AKA:
Race: B Sex: M Age: 30
DOB:
Address:
City, State, Zip: JOHNS ISLAND, SC 29455
DL#: SID#: SC01275409

SENTENCE SHEET

\*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was
TO: Voluntary Manslaughter

CONVICTED OF or PLEADS

in violation of § 16-03-0050 of the S.C. Code of Laws, bearing CDR Code # 0217
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS
Mandatory GPS(CSC) §17-25-45 w/minor 1st or Lewd Act

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State

ATTEST: Wilson, Scarlett A SC Bar# 65315 Defendant
Attorney for Defendant 24974 SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 25 days/months/years
and/or to pay a fine of \$ provided that upon the service of days/months/years and/or payment
of \$ plus costs and assessments as applicable\*, the balance is suspended with probation for

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

CONCURRENT or CONSECUTIVE in sentence on: 2010-GS-10-1265; 1270
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
from 10/7/09
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

PI/UP
days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

Table with columns for Fee Code, Description, and Amount. Includes items like 14-1-206 (Assessments 107.5%), 14-1-211(A)(1) (Conv. Surcharge) \$100, 14-1-211(A)(2) (DUI Surcharge) \$100, 56-5-2955 (DUI Assessment) \$12, 56-1-286 (DUI Breath Test) \$23, Proviso 47.9 (Public Def/Prsn) \$500, 14-1-212 (Law Enforce. Funding) \$25, 14-1-213 (Drug Coun Surcharge) \$150, 50-21-114 (BUI Breath Test Fee) \$50, 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCA Surcharge) \$5, 44-53-456(C) (Conditional Discharge) \$350, 3% to County (if paid in installments) \$3.90, TOTAL \$133.90

Condition Discharge. §53-450(C) requires
\$350 be paid to the Clerk prior to case disposition
Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk:
Court Reporter:
SCCA/217 (06-2010)

Presiding Judge:
Judge Code:
Sentence Date:

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 10-GS-10-1265
	)	
Ethan Mack,	)	
	)	
Defendant.	)	

## TRANSCRIPT OF JURY TRIAL

The within Jury Trial was held commencing October 4, 2010 through October 15<sup>th</sup>, 2010, before the Honorable J.C. Nicholson, Jr., in Courtroom 4C of the Court of General Sessions for Charleston County, 100 Broad Street, Charleston, South Carolina; attended by Counsel, as follows:

### APPEARANCES:

Scarlett Wilson, Solicitor  
Bruce Durant, Chief Deputy Solicitor  
9th JUDICIAL CIRCUIT  
100 Broad Street, 4th Floor  
Charleston, SC 29401  
Appearing for State of South Carolina

David Aylor, Esq.  
Charleston, South Carolina

-and-

Steven Harris, Esq.  
Charleston, South Carolina  
Appearing for Defendant

### **VIVIAN CROSS - OFFICIAL COURT REPORTER**

Transcribed by Deborah Garrison  
Circuit Court Reporter - 9<sup>th</sup> Judicial Circuit  
Post Office Box 901  
Johns Island, South Carolina 29457  
[dGarrison@sccourts.org](mailto:dGarrison@sccourts.org)

1 the deals. They gave her chance one, chance  
2 two and now chance three. Her plea is not  
3 vacated. She's still got voluntary  
4 manslaughter. She's still got a maximum.

5           They picked the wrong horse.  
6 Heather Kamp, we know killed Kate Waring. We  
7 don't know how. She created this story of how  
8 but none of these things make sense on a  
9 physical scale, on an evidentiary scale. Her  
10 story doesn't make sense. What makes more  
11 sense is that Heather Kamp killed Kate Waring  
12 because she was jealous of her.

13           Did she tell Ethan Mack about it?  
14 We don't know. She's been pointing the finger  
15 at Ethan Mack the whole time. We know that  
16 she got Terry Williams arrested for it. At  
17 one point they were going to arrest Terry  
18 Williams for accessory after the fact of  
19 murder because she said that he came in and  
20 helped move that body, and they believed her.  
21 He is not charged with accessory after the  
22 fact. The State got greedy. They wanted  
23 murder. They want blood.

24           They want Ethan but there is no  
25 physical evidence putting Ethan there. They

## State of South Carolina v. Ethan Carlos Mack

1958

Case No. 10-GS-10-1265 et al

Jury Trial of October 4-15, 2010

Before The Honorable J.C. Nicholson, Jr.

1 have no evidence that he was involved, other  
2 than pieces of Kate Waring's belongings that  
3 Heather Kamp pointed them to. She told them  
4 'this is exactly where you will find this,  
5 this and this.'

6 They couldn't charge him. They say  
7 we think Ethan knew something, we think that  
8 he knew, because she said he cleaned the  
9 apartment -- 'accessory after the fact', not  
10 murder. They wanted murder. They wanted  
11 blood.

12 You twelve individuals here today,  
13 you got sworn in, we have thirteen judges in  
14 this room. We could provide you robes, though  
15 I don't know if we have enough money in the  
16 county, but you all are judges, individual  
17 judges. It's not a team sport, it's not a  
18 team game. This is a big decision in your  
19 life, it's a big decision in his life. The  
20 verdict, everybody have to live with it. He  
21 has to live with it, you have to live with it.  
22 It is not a small deal.

23 Has the State proven beyond a  
24 reasonable doubt that Ethan Mack committed  
25 that murder? No.

State of South Carolina v. Ethan Carlos Mack  
Case No. 10-GS-10-1265 et al  
Jury Trial of October 4-15, 2010  
Before The Honorable J.C. Nicholson, Jr.

1959

1                   They proved that Heather Kamp did.

2                   If you think that Ethan had  
3 something to do with it, charge him with  
4 accessory after the fact. But he's not  
5 charged with that today. They wanted a home  
6 run. They wanted it all. Afterwards, if he  
7 helped to clean up, that's not murder. It's  
8 not the hand of one. The hand of one is being  
9 there, doing it. It's not murder.

10                   They made the decision. The State  
11 made the decision to bring a murder charge.  
12 They tried to mold the evidence to show you  
13 that it was a murder charge. They tried to  
14 say that the police officers found things,  
15 when really it was the investigators were told  
16 by Heather Kamp. They tried to make Mr. Gatch  
17 say that he heard a phone conversation when he  
18 didn't. They tried to say that the ring was  
19 her grandmother -- her mother didn't recognize  
20 it, but Mr. Gatch did. There is no murder  
21 about it. The only person that puts Ethan  
22 Mack at the scene is Heather Kamp, who has  
23 told countless lies.

24                   It is not your job to correct their  
25 mistake of charging him with murder and not

1 accessory after the fact or anything else.

2 That's not your job today.

3           You twelve individual people, your  
4 job is to individually think about -- Heather  
5 Kamp is the only witness who said that he was  
6 there, and you can't trust her on anything.  
7 Child who died, bounced the checkbook. I  
8 wouldn't believe her if she told me that Exit  
9 sign was the exit. I wouldn't believe her if  
10 she told me the sky was blue. I would get two  
11 other opinions.

12           They want you to believe that she  
13 and Ethan Mack, Kate Waring's best friend,  
14 committed murder after he'd known her for  
15 nineteen days.

16           It is not your job to fix their  
17 problem. They made a deal with the devil.  
18 They made the deal with the devil. They want  
19 you to sign off on that deal, they're asking  
20 you today -- with this no physical evidence  
21 and rambling crazy person -- to sign off on  
22 the deal with that they made with this person.  
23 They want you to sign off with Ethan Mack's  
24 blood and his life.

25           Based on the lack of physical