

VOL. II of II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Marlboro County

R. Ferrell Cothran, Jr., Circuit Court Judge

KENWOOD BRIGHT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001846

APPENDIX

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CHARGE ON THE LAW

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1 the witness have a cause or reason to be bias or
2 prejudiced in favor of the testimony he or she gave?

3 Was the testimony of the witness corroborated or
4 made stronger by any testimony in evidence, or was it
5 made weaker, or impeached by such other testimony in
6 evidence.

7 Furthermore, a person who has a past criminal
8 record is competent to testify during a trial. A past
9 record does not affect the ability of that witness to
10 testify. The past record may only be considered by you,
11 if at all, in deciding the witness' believability.

12 Remember, you are the sole judges of the facts in
13 the case and the believability of any and all of the
14 witnesses.

15 Furthermore, you have heard testimony from persons
16 described as experts. Persons, who by their education
17 and experience have become expert in some field, may
18 state their opinion on matters in that field. And may
19 also state their reasons for their opinion.

20 You should judge expert testimony like any other
21 testimony. You may accept it or reject it, or give it
22 as much weight as you think it deserves, considering the
23 witness' education and experience, the reasons given for
24 the opinion, and all the other evidence in the case.

25 Also, please understand that the testimony of a

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1 police officer is not entitled to more weight of that
2 than any other witness. You are the sole judges of the
3 credibility of a witness, and you are not to give more
4 weight to a police officer's testimony solely because he
5 is a police officer. Rather, you should judge an
6 office's testimony by the same standards that you apply
7 to all other witnesses.

8 Please understand you have the right to believe a
9 small portion of a witness' testimony and disregard the
10 larger portion, or vice versa. You may believe all of
11 the witness' testimony, or none. You may believe the
12 testimony of a single witness against that of many, or
13 the other way around.

14 In exercising your mental processes and attempting
15 to decide the truth, the law simply requires that you
16 exercise your good judgement, your common sense, your
17 sense of logic and reason in your experiences in life.
18 You then apply these attributes to the evidence, and
19 apply the law as I now state it to you, and thus arrive
20 at a verdict.

21 Furthermore, if you find, from all the evidence,
22 that the Defendant was merely present at or near the
23 scene of an alleged crime on the day in question, you
24 are instructed that such presence can only create a
25 suspicion. And you cannot find the Defendant guilty

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1 because of suspicion. Mere presence at or near the
2 scene of a crime does not, in itself, permit you to draw
3 an inference that the Defendant had knowledge of any
4 criminal plan which might have been formed. Nor does
5 mere presence support an inference of intent to engage
6 in, or to aid in criminal conduct.

7 Thus, in summary, suspicious circumstances like
8 mere presence are not sufficient for a finding of guilt
9 against any Defendant.

10 The Defendant is charged with murder. The State
11 must prove, beyond a reasonable doubt, that the
12 Defendant killed another person with malice
13 aforethought.

14 Malice is hatred, ill will, or hostility towards
15 another person. It is the intentional doing of a
16 wrongful act without just cause or excuse, and with an
17 intent to inflict an injury, or under circumstances that
18 the law will infer an evil intent.

19 Malice aforethought does not require that malice
20 exists for any particular time before the act is
21 committed. But malice must exist in the mind of the
22 Defendant just before and at the time the act was
23 committed.

24 Therefore, there must be a combination of the
25 previous evil intent in the act. Malice aforethought

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1 may be expressed or inferred. These terms, expressed
2 and inferred, do not mean different kinds of malice.
3 But merely, the manner in which the malice may be shown
4 to exists.

5 That is either by direct evidence or by inference
6 from the facts and circumstances which are proved.
7 Expressed malice is shown when a person expresses hatred
8 or ill will for another, or when the person prepared
9 beforehand to do the act, which was later accomplished.

10 For example, lying in wait for a person, or any
11 other acts of preparation going to show that the deed
12 was within the Defendant's mind with the expressed
13 malice.

14 Malice may be inferred by conduct showing a total
15 disregard for human life. Inferred malice may also
16 arise when the deed is done with a deadly weapon.

17 A deadly weapon is any article, instrument, or
18 substance which is likely to cause death or great bodily
19 harm. Whether an instrument has been used as a deadly
20 weapon depends on the facts and circumstances of the
21 case. If facts are proved, beyond a reasonable doubt,
22 sufficient to raise an inference of malice to your
23 satisfaction, this inference would be simply an
24 evidentiary fact to be taken into consideration by you,
25 the Jury, along with other evidence in the case. And

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1 you may give it such weight as you determine it should
2 receive.

3 Ladies and gentlemen, I am now drawing near the end
4 of my charge. And I want you to clearly understand that
5 you are not patricians for The State of South Carolina
6 or this Defendant.

7 You do not serve as Jurors to reward your friends
8 or punish your enemies. In this regard, you have been
9 selected by both The State and this Defendant to be fair
10 and impartial Jurors. It is your duty by your joint
11 deliberations to determine the truth in this case,
12 giving to this Defendant the benefit of every reasonable
13 doubt on each and every issue.

14 Measure the facts that you determine to be true.
15 You should take and apply the law which has been given
16 to you by this Court, and thus arrive at a verdict which
17 speaks the truth in this case.

18 In fact, the word verdict, which has a Latin
19 derivative means a true saying. Thus, when you have
20 accomplished these responsibilities you will have
21 satisfied your oath as Jurors, and you will have
22 discharged your duties to this Court.

23 Now, Mr. Foreman, I hand to you the Verdict Form.
24 Mr. Bailiff, will you hand that to the foreman?

25 Now, Mr. Foreman, regarding the Verdict Form, you

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1 must render a verdict on the charge in this case. For
2 the charge, if The State has failed to prove the guilt
3 of this Defendant, beyond a reasonable doubt, your
4 verdict would be two words, not guilty.

5 Likewise for this charge, if The State has proved
6 the guilt of this Defendant, beyond a reasonable doubt,
7 your verdict would be one word, guilty.

8 Mr. Foreman, once a decision has been made, just
9 check whichever choice is your verdict, and sign and
10 date the Verdict Form. The verdict that you render in
11 this case must be the verdict of each and every Juror.
12 It must be your unanimous verdict. All twelve Jurors
13 must agree on the verdict which you authorize the
14 Foreman to write for the Jury.

15 Mr. Foreman, and members of the Jury, I want you to
16 further understand that the order in which the choices
17 of verdict appear on the Verdict Form are not suggestive
18 of any verdict on the part of this Court. The verdict
19 in this case is to be determined by you, the Jury, not
20 The Court.

21 Furthermore, please understand that even though I
22 have given the Verdict Form to the Foreman, it is not
23 his verdict alone. It is the verdict of all twelve of
24 you. And I emphasize again it must be unanimous.

25 I now ask that you please retire to the jury room,

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1 but do not begin your deliberations until you are told
2 to do so.

3 The law requires that I now check with the
4 attorneys to make sure that I have not left anything out
5 of the charge. After I have checked with the attorneys,
6 the Bailiff will bring in the items of evidence and
7 instruct you to begin your deliberations.

8 Also, should you have any questions during your
9 deliberations you must put them in writing and send them
10 to me by the Bailiff.

11 Once you have reached a verdict, please knock on
12 the jury room door and ask the Bailiff to advise the
13 Court that you have reached a verdict, and we will
14 return to the courtroom as promptly as possible to
15 dispose of this case.

16 Now, at this time I would ask that you please go
17 into the jury room, but do not begin deliberations at
18 this time, or you are told to do so.

19 And the alternate may stay in the courtroom. Thank
20 you.

21 (Whereupon, the Jury exits the courtroom at
22 11:59 a.m.)

23 Any objections from The State?

24 **MS. MUNNERLYN:** Nothing from The State, Your
25 Honor.

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1 **THE COURT:** Any objections from the Defense?

2 **MS. BROWN:** No, Your Honor.

3 **THE COURT:** All right. If y'all would get together
4 with the competent Court Reporter and make sure all of
5 these items are into evidence that do go back to the
6 jury room.

7 Also I have Number 38, which is the live bullet.

8 **MS. MUNNERLYN:** Your Honor, I would like for that
9 to go back. And I understand The Court's hesitancy in
10 sending both the gun and the bullet back.

11 **THE COURT:** We can do that. Why don't we send
12 everything back. I will hand the bullet to Mr.
13 Funderburk, if that's okay with the Defense and the
14 Solicitor. He can show it to them, let them look at it,
15 and then bring it back out.

16 **(PAUSE.)**

17 **MS. MUNNERLYN:** Judge, once he gives that to them
18 and then takes it back, if he can just tell them if you
19 wish to see it again, if you will just let us know we
20 can switch out the gun.

21 **THE COURT:** How about you, Ms. Brown?

22 **MS. BROWN:** That will be fine, Your Honor.

23 **THE COURT:** Okay. Exhibits 1 through 45.

24 (Whereupon, the Jury begins their
25 deliberations at 12:43 p.m.)

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1 (Whereupon, the jury announces a verdict at
2 1:48 p.m..)

3 (Whereupon, The Court resumes its sitting at
4 1:51 p.m.)

5 **THE COURT:** All right. Everybody be seated and
6 thank you. All right, Mr. Clerk, do we have a verdict?

7 **CLERK OF COURT:** Yes, sir, we do.

8 **THE COURT:** Folks, let me talk to everybody out
9 her in this audience just for a second. Everybody
10 seated over here behind the Solicitor, and everybody
11 over here seated behind the Defense, I want all of y'all
12 to understand that our jury system is very important.
13 And these Jurors right here have a hard job. They are
14 under a lot of pressure sometimes.

15 And let me tell you, in this courtroom with me they
16 are not going to have any pressure from anybody. When
17 they come back in this courtroom and this verdict is
18 announced, I want everybody to understand that I want no
19 reaction period good or bad. None. If I hear any
20 reaction from anybody out there in that courtroom these
21 deputies are going to cuff you, and I'm going to put you
22 in jail. I'm going to find you in contempt of Court.

23 I want everybody to clearly understand that. And
24 if you have any questions about that at this time,
25 please raise your hand and ask. If anybody in this

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1 courtroom cannot comply with that Order, or if you're
2 not sure if you can comply with that Order, you need to
3 go ahead and leave now.

4 Have I made myself clear? Bring them on out.

5 (Whereupon, the Jury enters the courtroom at
6 2:08 p.m.)

VERDICT

7
8 **THE COURT:** All right. Mr. Foreman, have you
9 reached a verdict.

10 **THE FOREMAN:** Yes, we have.

11 **THE COURT:** If you would hand it to the Clerk,
12 please. Thank you very much. Mr. Clerk, if you would
13 publish the verdict.

14 **CLERK OF COURT:** Yes, sir. Indictment number
15 20008-GS-34-0820, State of South Carolina verses Kenwood
16 Bright, Defendant, as to the charge of murder, we, the
17 Jury, unanimously find the Defendant, Kenwood Bright,
18 guilty. Timothy Oliver Davis, 3-1-2010.

19 **THE COURT:** All right. Members of the Jury, if
20 that's your verdict, would you signify by raising your
21 right hand? Let the record reflect that everybody
22 raised their right hand, all twelve Jurors.

23 Thank you very much. I want to tell you you have
24 done a good job. You've been here on time everyday, you
25 have paid attention, and you have done your job second

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1 to none. I thank you for that. I thank not only
2 personally, but on behalf of The State of South
3 Carolina. You are hereby discharged and you have earned
4 a three year exemption. Now, you're going to get a
5 check in the mail for your jury service all week long.
6 And you're going to get that thing and you're going to
7 want to cuss me out. Don't do that. You can call the
8 Clerk, or call your local representative or senator,
9 whoever you want to, don't to me. It won't satisfy you,
10 I can promise you that. But you're good to go. Thank
11 you.

12 (Whereupon, the Jurors are dismissed by the
13 Court and exit the courtroom)

14 Any motions from the Defense?

15 **MS. BROWN:** Not from the Defense, Your Honor.

16 **THE COURT:** Let me know when you have the
17 sentencing sheet filled out.

18 (PAUSE.)

19 **SENTENCING HEARING**

20 **THE COURT:** All right, if you would bring him
21 forward for sentencing. Solicitor, if you would give me
22 his full record, please, ma'am.

23 **PRESENTATION OF PRIOR RECORD**

24 **MS. MUNNERLYN:** Yes, Your Honor, in 1999 on,
25 actually it was in May of '99, he was convicted in 2000,

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1 of assault and battery with intent to kill. Received a
2 sentence of twelve years, suspended upon time served,
3 with five years probation. And on the same date, he was
4 convicted of possession of crack. And it looks like two
5 parole probation revocations as a result of those same
6 charges.

7 In 2007, he had a conviction for DUI and driving
8 without a license and a seatbelt violation. And then
9 disregarding a stop sign, driving under suspension, open
10 container, wreckless driving, and a failure to stop for
11 blue light. That was all in 2007.

12 **THE COURT:** Thank you very much. Anything you
13 would like to add, Ms. Brown?

STATEMENT BY MS. BROWN ON BEHALF OF DEFENDANT

14 **MS. BROWN:** Your Honor, we would just like to say
15 briefly that Mr. Bright is now twenty-years of age. He
16 has lived in Bennettsville, South Carolina his entire
17 life. He's the son of Ms. Shirley Morgan and Reginald
18 Brown. He was raised by his grandparents here. He
19 graduated from high school in 1999. It is my understand
20 he played some football. He attended Florence Technical
21 College in 2005 toward a degree.

22 He's the father of a two-year old son, Kendray. He
23 has two brother and a one sister. It is my
24 understanding that he has some family members that are
25

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1 present today in Court. We just ask that you take that
2 into consideration.

3 **THE COURT:** All right. On Indictment Number 2008-
4 GS-34 -- Excuse me.

5 **MS. MUNNERLYN:** Your Honor, I'm sorry. I think
6 that there may be some members of the victim's family
7 which would like to address The Court, if you would hear
8 from them.

9 Your Honor, this is Carolyn Hodges. She is the
10 Grandmother of Christopher Dease. She actually raised
11 him however. And so she wants to say a few words on
12 behalf of the family.

13 **THE COURT:** Sure. Be glad to hear from you, Ms.
14 Hodges.

15 **STATEMENT OF CAROLYN HODGES**

16 **MS. HODGES:** My name is Carolyn Hodges. It was a
17 tragedy what happened to my grandson. I raised Chris
18 the best that knew how. He didn't deserve that. He
19 just didn't deserve it. And it hasn't been a day that
20 went by that I haven't thought of Chris. Chris is all
21 over my house. Chris has been up here with me. I go to
22 the grave and I just cry because his life was taken away
23 from him at a young age. He was at my home the day that
24 he died. He was saying Mama, I'm going to make you
25 proud of me. I said that's a good thing, Chris. And I

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1 loved him. And I just want to let the other family know
2 I don't know Kenwood. I don't care to know Kenwood.
3 But God knows as my witness I don't want Kenwood's Mama
4 to go through with what I went through. I don't wish
5 that on no mother. I don't wish that on nobody. I just
6 don't wish that the same had happened to her that
7 happened to my son. But I do want justice to prevail.
8 My baby is rotting in the grave. And I think Kenwood
9 Bright should rot in jail. I think he should have
10 natural life in prison for the rest of his days for what
11 he done to me and my family. Thank you.

12 **THE COURT:** Thank you.

13 **MS. MUNNERLYN:** Just one more, Your Honor.

14 **THE COURT:** Sure.

15 **MS. MUNNERLYN:** Your Honor, this is Mary Dease.
16 She, I think you will recall from the testimony, is the
17 aunt of Christopher. And this all happened in front of
18 her home.

19 **STATEMENT OF MARY DEASE**

20 **MARY DEASE:** Your Honor, what I have to say is
21 that all my nephews I helped raise all of them in my
22 home. And Christopher, the reason why he was down there
23 with his dog that day, I had just got out of the
24 hospital. I had pneumonia. And I had just got out of
25 the hospital. He said, he came to the door and he said,

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1 Auntie, what you need me to do. I said, well, my grass
2 real high, get my grass cut, or cut my grass. He say,
3 I'll get somebody to cut your grass. He was down there
4 because of me. But what happened is I had to leave to
5 go to Wal-Mart in Laurenburg to get my all my medicine
6 they put me on. When I come back he had been already
7 shot and killed him.

8 Your Honor, I can't sleep at night. This happened
9 right at my house. I can't sleep at night. I'm staying
10 sick. My sugar is staying down. My blood's staying up.
11 Please, please consider giving him the max for killing
12 him like a dog in the street. Please do that for me.
13 Consider it.

14 **THE COURT:** Thank you. Anybody else?

15 **MS. MUNNERLYN:** Thank you, Your Honor. I think
16 that's it.

17 **THE COURT:** Mr. Bright, I'll give you the last
18 word. Anything you would like to add?

19 **STATEMENT BY KENWOOD BRIGHT**

20 **MR. BRIGHT:** Yes, sir. I would like to apologize
21 to the family for what happened to Mr. Dease. And while
22 I'm incarcerated I hope they do find and realize who is
23 the real killer. And realize that I'm not the real
24 killer in this incident. And that's it.

25 **SENTENCE OF THE COURT**

1 **THE COURT:** Thank you very much. All right. In
2 reference to Indictment Number 2008-GS-34-820, the
3 Defendant is committed to The State Department of
4 Corrections for life without the possibility of parole.
5 Thank you very much and that concludes this case.

6 **MS. MUNNERLYN:** Thank you, Your Honor.
7
8
9

10 **(COURT REPORTER'S NOTATION:** As the Defendant
11 Kenwood Bright is escorted out of the courtroom, he
12 makes the following statement. "At least I'm still
13 alive.")
14
15

16 (Whereupon, this trial was concluded at
17 2:16 on Thursday, March 11, 2010.)

18 **-- END OF TRANSCRIPT --**

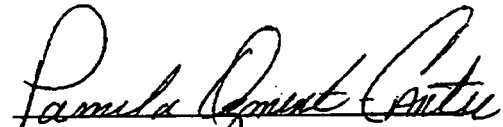
CERTIFICATE OF REPORTER

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I, the undersigned, Pamela Ozment-Cartee, official Court Reporter for the Fourth Judicial Circuit of South Carolina, do hereby certify, that the foregoing is a true, accurate, and complete Transcript of Record in the trial of the above captioned case, relative to appeal, in The Court of General Sessions in Marlboro County, South Carolina, on the 8th, 9th, 10th, and 11th, days of March 2010.

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

September 21, 2012

A handwritten signature in cursive script, reading "Pamela Ozment-Cartee", written over a horizontal line.

Pamela Ozment-Cartee
Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF MarlboroKenwood Bright #273013

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

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

12-34-00178

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay 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 Oaklawn Rd. Pelzer S.C. 29669
2. Name and location of Court which imposed sentence Marlboro County Court of General Sessions
3. Name(s) of co-defendant(s) (if any) Victoria Knight
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 086534-0820
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) March 11, 2010/Life
 - (b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeal
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. May 9, 2012
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. No
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) NA
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

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2012 JUN 27 PM 1:17
WILLIAM B. FORTBERRY, JR.
CLERK OF COURT
MARLBORO COUNTY, S.C.

- (a) Ineffective Assistance of Trial Counsel
 (b) Prosecutor Misconduct
 (c) Judicial Error

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

- (a) Attachment Fact
 (b) Attachment Fact
 (c) Attachment Fact

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? Yes
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 (d) any other petitions, motions or applications in this or any other Court? No

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

(a) the specific nature thereof:

i. South Carolina Court of Appeal

ii. _____

iii. _____

iv. _____

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

i. Post office Box 11629 Columbia, South Carolina

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. Dismissed

ii. _____

iii. _____

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 2011 JUN 27 PM 4:17
 WILLIAM B. FORD, JR.
 CLERK OF COURT
 MARLBORO COUNTY, S.C.

- iv. _____
- (d) the date of each such disposition:
- i. May 9, 2012
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. NA
- 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. NA
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. NA
- ii. _____
- iii. _____

2012 AUG 27 PM 1:17
WILLIAM D. FURMAN, CLERK OF COURT
HARBORO COUNTY, S.C.

FILED

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

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

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

i. Miesha Brown, Emily Crayton & Rick Jones

ii. Wanda Carter

iii. _____

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

i. Trial

ii. Appeal

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

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 2012 FEB 27 PM 1:17
 WILLIAM E. FORD, JR.
 CLERK OF COURT
 HARBOR COUNTY, S.C.

STATE OF SOUTH CAROLINA)

County of Marlboro)

VERIFICATION)

Kenwood Bright

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

Kenwood Bright

SWORN to and subscribed before me this 22nd
day of August, 2012.

Steven T. McLaurie (L.S.)
Notary Public

My Commission Expires: January 7, 2016

FILED

2012 AUG 27 PM 1 17

WILLIAM B. FULTON
CLERK OF COURT
MARLBORO COUNTY, S.C.

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

Kenwood Bright

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

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

Kenwood Bright
Applicant

SWORN or affirmed to and subscribed before me this

2nd day of August, 2012.

Henry T. McDaniel
Notary Public

My Commission Expires: January 7, 2016

FILED

2012 AUG 27 PM 1 17

WILLIAM B. FURBER, JR.
CLERK OF COURT
MARLBORO COUNTY, S.C.

Ineffective Assistance of Trial Counsel

525

12-34-00178

Trial counsel was ineffective in representing me by failing to have a expert witness testify that the haad gun the state had wasn't the gun that Kill the victim, *Frasier v. State* 306 S.C. 158

Trial Counsel was ineffective in representing me by failing to request a charge of voluntary manslaughter when Victoria Knight testified that there was an argument (Heat of the passion) before the shot, Which would require a charge of voluntary manslaughter. Tr. pg. 250 line 3-5 *Locklair v. State* 341 S.C. 352

Trial counsel was ineffective in representing me by failing to exclude Ira B. Parnell testimony

FILED

2012 AUG 27 PM 1 17

WILLIAM B. FUNDENBERG
CLERK OF COURT
HARBORO COUNTY, S.C.

Trial Counsel was ineffective in representing me by failing to object to the jury charge that malice maybe inferred with the use of a deadly weapon was involved when there was evidence of an argument (Heat of the passion) according to Victoria Knight testimony. Tr. pg 504 line 14-16 *Drayton v. Evatt* 312 S.C. 4

Prosecutor Misconduct

12-34-00178

Prosecutor statement to the jury during closing argument that

witnesses was telling the truth was improper vouching. Tr. pg 478 line 16-17

Marshall v. Hendricks 307 F3d 36

Prosecutor withheld a witness and a statement until the day of trial
was a Brady violation.

Judicial Error

Trial judge denied the Motion to exclude the hand gun that wasn't
connected to the crime was abuse of discretion. Tr. pg 38 line 20- pg 43 line 11
State v. Jarrell 564 S.E.2d 362

Trial judge overruled trial counsel objection to admitting the hand
into evidence was abuse of discretion. Tr. pg. 412 line 3-9
State v. Jarrell 564 S.E.2d 362

Trial judge denied the motion to exclude the witness and a statement we
didn't find out about until the day of trial was abuse of discretion.
Tr. pg 44 line 14- pg 48 line 6 State v. Jarrell 564 S.E.2d 362

FILED

2012 AUG 27 PM 1 17

WILLIAM B. FURBER, JR.
CLERK OF COURT
MARLBORO COUNTY, S.C.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF MARLBORO	)	
	)	
	)	2012-CP-34-178
	)	
Kenwood Bright, 273013	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Respondent, making its Return to the Application for post conviction relief (PCR) filed August 28, 2012, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Marlboro County Clerk of Court. Applicant was indicted by the Marlboro County Grand Jury for larceny (2008 GS-34-820). Applicant alleges that Miesha Brown, Esquire, Emily Crayton, Esquire, and Rick Jones, Esquire, represented Applicant.

On March 11, 2010, the Applicant was tried as indicted before the Honorable Judge William H. Seals, who sentenced Applicant to life imprisonment. Applicant appealed the conviction and sentence to the South Carolina Court of Appeals, with the result being that his appeal was dismissed and the remittitur sent May 25, 2012.

Attached herewith and incorporated herein are the records of the Clerk of Court regarding the subject conviction, Applicant's SCDC records, and if available, the transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. "Ineffective Assistance of Trial Counsel"
2. "Prosecutor misconduct"
3. "Judicial error"

III.

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under

professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

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

IV.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that the Application be denied and the matter dismissed with prejudice.

Respectfully submitted,

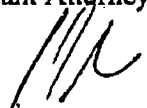
ALAN WILSON

Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

TYSON ANDREW JOHNSON, SR.
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

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

January 17, 2012³

STATE OF SOUTH CAROLINA)

COUNTY OF MARLBORO)

IN THE COURT OF COMMON PLEAS

2012-CP-34-0178

KENWOOD BRIGHT, 273013)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

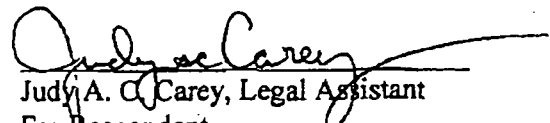
STATE OF SOUTH CAROLINA,)

Respondent.)

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

J. Marshall Biddle, Esquire
Biddle Law Firm, PA
Post Office Box 50460
Myrtle Beach SC 29579

DATED this 17th day of January, 2013.


Judy A. Carey, Legal Assistant
For Respondent

State of South Carolina
County of Marlboro

Kenwood Bright #273013
Applicant

vs

The State of South Carolina
Respondent

In the Court of Common Pleas
Case No: 12-34-00178

Applicant Amendment
Post-Conviction Relief

2013 MAY 10 PM 10 05
WILLIAM B. FUNN, JR.
CLERK OF COURT
MARLBORO COUNTY, S.C.

FILED

The applicant hereby amends answer to Number 10 and Number 11 application for Post-Conviction Relief to state the following

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

- (A) Ineffective Assistance of Appellate Counsel
- (B) Ineffective Assistance of Trial Counsel

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

(A) Ineffective Assistance of Appellate Counsel

Argument I

Appellate counsel was ineffective for failing to argue on direct appeal trial court erroneously admitted the handgun as evidence that wasn't connected to the crime. Southerland v. State 524 S.E. 2d 833. Ezell v. State 548 S.E. 2d 852. Trial Counsel objected to the handgun being admitted into evidence preserving the issue for direct appeal review.

Tr. pg 415 line 9-12. Trial Counsel cross examine the state expert witness Ira B. Parnell, "So you can not today identify the gun, which you actually had to test fire, as the weapon that caused the death of Mr. Dease,

Can you, Ira B. Parnell responded That's correct, I can not." Tr. pg 392 line 6-9. By the state admitting the handgun into evidence the probative value was substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. Rule 403 South Carolina Rules of Evidence. *Alexander v. State* 401 S.E. 2d 146

(B) Ineffective Assistance of Trial Counsel
Argument II

Trial counsel was ineffective in representing me by failing to have an expert witness testify that the handgun the state had was not the gun that killed the victim. Had counsel hired an expert to refute the state claim that the handgun in possession of the state wasn't the gun that killed the victim, it would've been unlikely for the state to convict applicant beyond a reasonable doubt. Thus, the outcome of trial would've been totally different. *Ard v. Catoe* 642 S.E. 2d 590. *McKnight v. State* 661 S.E. 2d 354

Argument III

Trial counsel was ineffective in representing me by failing to object to prosecutor's vouching for the credibility of state witnesses in closing argument. Tr. pg 478 line 16-17

If trial counsel would've objected to the prosecutor's vouching for the credibility of state witnesses in closing argument (which is a violation) then it's a strong possibility that the outcome of trial would have been totally different. See *Strickland v. Washington* 466 U.S. at 695. Trial counsel also have a duty to ensure that the adversarial testing process work to produce a just result under standards governing decision. *Matthews v. State* 565 S.E. 2d 766. Prosecutor's duty is not to convict a defendant but to see justice done. The prosecutor's closing argument must, of course, be based upon this principle. The argument therefore

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2013 MAY 10 AM 10 05
WILLIAM B. PARNELL
CLERK OF COURT
MARLBOROUGH COUNTY, S.C.

must be carefully tailored so as not to appeal to the personal bias of the juror nor be calculated to arouse his passion or prejudice.
Marshall v. Hendricks 307 F.3d 36

Argument IV

Trial Counsel was ineffective in representing me by failing to request a charge of voluntary manslaughter when Victoria Knight testified that there was an argument (Heat of the passion) before the shot. Which would require a charge of voluntary manslaughter. Tr. pg. 460 line 15-18. Because of counsel unprofessional error at trial Victoria Knight was allowed to testify that there was an argument (Heat of the passion) before the shot occurred. Tr. pg. 250 line 3-5 revealing there was not "aforethought" premeditated thought of the incident. Which would require a charge of voluntary manslaughter, however due to counsel error the state was allowed to convict and sentence applicant upon the charge of murder. However, if it wasn't for counsel error and had counsel been effective when the state witness Victoria Knight testified that there was an argument (Heat of the passion) before the shot happened. Counsel would have seen evidence existence from Victoria Knight testimony to reveal my action was not premeditated "aforethought" and request for the court to include a lesser instruction of murder which would've been voluntary manslaughter because if evidence rise at trial to show a lesser included offense, the defendant has the right to the lesser included instruction. Carter v. State 392 S.E. 2d 184

Argument V

Trial Counsel was ineffective in representing me by failing to object to jury instructions that shifted the burden of proof to the defendant by stating that malice may be inferred with the use of a deadly weapon. Tr. pg. 504 line 14-16. Furthermore, trial counsel also prejudiced the defense by failing to object to the jury instructions that shifted the burden of proof to the defendant by

Stating malice may be inferred with the use of a deadly weapon
 Tr. pg. 504 line 1446 Tate v. State 570 S.E. 2d 522. Lowry v. State
 657 S.E. 2d 760 There's no evidence of malice in applicant's case,
 so if trial counsel would've objected to such charge then it would've
 been impossible for the jury to convict applicant of murder where malice
 doesn't even exist. Charging a jury that malice may be inferred by the
 use of a deadly weapon can not be considered if evidence of malice is
 limited or non-existent and mitigating evidence is presented. See
 Belcher v. State 685 S.E. 2d 802

Argument VI

Trial counsel was ineffective in representing me by failing to investigate
 State witnesses to prepare a defense. State witnesses, Jacob Robinson, Samuel,
 Tammy D. Parker, Albert Garner Sr, Edward M. Garner, Jacob Robinson,
 Larry Turner, Ira Dease III, Ira B. Parnell, Jasper Hammett, Kathleen
 Woodward, Larry D. Bowman Jr, William Hall, Marsha R. Strickland,
 Teddy Brigman, Michelle Knight.

The applicant also contends that trial counsel should've prepare a defense
 by interviewing state witnesses prior to trial that applicant had requested
 her to. In Strickland v. Washington, the court recognized that the reasonableness
 of counsel's actions may be determined or substantially influenced by the
 defendant's own statement or actions. See Strickland v. Washington
 466 U.S. at 691. Thus, had counsel interviewed these witnesses prior
 to trial then the defense would've been better prepared for the above
 witnesses which could've changed the entire outcome of trial. Trial
 counsel must ordinarily investigate possible methods for impeaching
 prosecution witnesses. Lounds v. State 670 S.E. 2d 646

Sworn to and Subscribed before me

this 15th day of May, 2013

1st Patricia C. Sullivan
 NOTARY Public For South Carolina

My Commission Expire 4-26-2020

1st Kenwood Bright
 Kenwood Bright # 273013
 Perry C. I.
 430 Oaklawn Rd.
 Pelzer, S.C. 29669

536

Mr. Kenneth Bright #273013

Perry Corr. Inst.

430 Oaklawn Rd.

Pelzer, S.C. 29669

Date: May 6, 2013

Marlboro County Clerk of Court

P.O. Box 996

B'ville, S.C. 29512

FILED
2013 MAY 10 AM 10 05
WILLIAM B. FUNDERSBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

To whom it may concern,

I'm writing this letter
because I'm amend my entire Post-Conviction Relief application.
Once its file with the clerk of court I would like the clerk of
court to provide me with a copy. Thank you for your time

Sincerely
Kenneth Bright

1 STATE OF SOUTH CAROLINA

2 COUNTY of Darlington

3

4

5 Kenwood Bright,
6 Plaintiff

PCR
2012-CP-34-00178

7

8 vs.

9 The State of South Carolina,
10 Defendants

January 14, 2014
Darlington, S.C.

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13

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Before the Honorable R. Ferrell Cothran, Judge.

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

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Mr. James M. Biddle,
Attorney for Plaintiff.

20

21 Mr. Joshua L. Thomas,
22 Attorney for Defendants

23

24

Margaret T. Sullivan,
Court Reporter

25

26

27

28

	<u>Witnesses</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
1	Kenwood Bright				
2	by Mr. Biddle	5		28	
	by Mr. Thomas		24		
3	Myesha Brown				
	by Mr. Biddle	29			
4	by Mr. Thomas		46		

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8

Exhibits

9

<u>No.</u>	<u>Description</u>	<u>Id.</u>	<u>Ev.</u>
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P-1

Acknowledgment

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1 MR. THOMAS: May it please the court.

2 THE COURT: Yes, sir.

3 MR. THOMAS: The next case is Kenwood Bright
4 versus the State of South Carolina. It is case
5 No. 2012-CP-34-178. Mr. Bright was indicted in
6 September of 2008, for murder. He is represented on
7 that charge by Nathan Brown and other members of the
8 public defender's office. He went to trial on
9 March 8th through 11th, 2010. He was convicted as
10 indicted. The Honorable William H. Seals, Jr. sentenced
11 him to life in prison for the murder charge. Wanda H.
12 Carter of the Office of Appellate Defense filed an
13 Anders brief on appeal. The Court of Appeals dismissed
14 the appeal in an unpublished in 2012, UP 288.

15 He filed this PCR on August 28th 2012,
16 alleging four grounds of ineffective assistance of
17 counsel, two grounds of prosecutorial misconduct,
18 and 3 grounds of judicial error. He is
19 represented by Marshal Biddle. And at this time,
20 the State would make a motion to dismiss the
21 counts of prosecutorial misconduct and judicial
22 error. Those are direct appeal issues. There was
23 an Anders brief filed. Those are not ripe for
24 PCR.

25 THE COURT: Do you want to address that?

1 MR. BIDDLE: Your Honor, in his initial
2 PCR application, he did address those items. At
3 this matter, subsequent to that, he filed an
4 amended post conviction relief application that is
5 dated the first day of May 2013. That has been
6 provided to everybody. I don't know that there is
7 any -- I don't know that there is any issue
8 associated with the initial PCR application. I
9 understand those are direct appealable issues,
10 Your Honor.

11 You know, we have discussed arguing those
12 issues dealing with---

13 MR. THOMAS: Do you have a copy of that?

14 MR. BIDDLE: I don't have a copy of it. I
15 have that. When we were here the last time, I had
16 provided that. But if you want to take a look at
17 that, you may need another one before we go
18 forward, I'm okay with that as well, or if you
19 want to do something else.

20 MR. THOMAS: And, Your Honor, I have just
21 reviewed his amended application. I don't think
22 it adds anything to the allegation in the original
23 one. So the amended application doesn't raise any
24 trial court error or prosecutorial misconduct. So
25 I just withdraw my motion.

Kenwood Bright-Direct by Bright

1 THE COURT: Okay.

2 MR. THOMAS: They haven't been pled. I'm
3 sorry, Your Honor. A little confusion there. I
4 am ready.

5 MR. BIDDLE: Thank Your Honor. May it
6 please the court, the applicant would like testify
7 himself. We would call Kenwood Bright to the
8 stand.

9 THE COURT: Please come around, please,
10 sir, and place your left hand on that bible and
11 raise your right.

12 Kenwood Bright, being first duly sworn,
13 testified as follows:

14 Direct Examination by Mr. Biddle:

15 Q Mr. Bright, we're here today on your
16 application or amended application for a PCR, is
17 that correct?

18 A Yes, sir.

19 Q And you could, could you pull the
20 microphone down so I get a chance to hear. Now
21 you filed an application and we're going to go
22 through those items now. And I wanted to ask you
23 specifically. Your first claim is a against your
24 appellate counsel, is that correct?

25 A Yes, sir.

Kenwood Bright-Direct by Bright

1 Q And tell me what your first claim of
2 ineffective assistance of appellate counsel is.

3 A Well my appellate counsel was ineffective
4 for failing to argue on direct appeal to the
5 court. The trial court erred erroneously admitted
6 the handgun into evidence that wasn't connected to
7 the crime.

8 Q Okay. So if you would just talk to me.
9 Let's not -- are you reading from something?

10 A Yes, sir.

11 Q Well let's just talk about that. So
12 you're saying that they failed to argue on a
13 direct appeal that the handgun was erroneously
14 admitted into evidence.

15 A Yes, sir.

16 Q Did you meet with your appellant counsel?

17 A No, sir.

18 Q And but that issue was -- did your
19 attorney, Ms. Brown, did she object to that, and
20 preserve that issue for the record on appeal?

21 A Yes, sir.

22 Q But your appellant counsel didn't raise
23 that issue?

24 A No, sir.

25 Q What was the issue that she raised?

Kenwood Bright-Direct by Bright

1 A She raised the -- about a flight.

2 Q Okay. Just the issue associated with the
3 flight after the fact---

4 A Yes, sir.

5 Q ---and that's it.

6 A Yes, sir.

7 Q The only ground that she raised. Do you
8 believe that failing to appeal the admission of
9 the gun prejudiced your case?

10 A Yes, sir. It prejudiced my case and it
11 was a confusion to the jury.

12 Q Okay. Now at the trial your counsel did
13 actually object. They argued whether that was the
14 gun or not the gun. And she also cross examined
15 the expert, is that correct?

16 A Yes, sir.

17 Q But your appellant counsel failed to raise
18 that issue.

19 A Yes, sir.

20 Q So you're asking the court to grant you an
21 opportunity for your appellant counsel to raise a
22 new appeal based on the fact that she didn't argue
23 that the handgun was wrongfully admitted.

24 A Yes, sir.

25 Q Now let's look at your trial counsel,

Kenwood Bright-Direct by Bright

1 Ms. Brown. What is the first issue that you
2 believe that where she was ineffective in
3 representing you as to -- in your PCR application?

4 A My trial counsel was ineffective by
5 failing to have an expert witness to testify that
6 the handgun the State had wasn't the gun that
7 killed Mr. Deas.

8 Q Did you talk with your appellate -- I
9 mean, did you talk with your trial counsel about
10 the handgun?

11 A Yes, sir.

12 Q Extensively?

13 A Yes, sir.

14 Q And did you ask her about expert
15 witnesses?

16 A Yes.

17 Q What did she say?

18 A She said she was going to get around to
19 it.

20 Q So her answer to you was, I will get an
21 expert, and we will have an expert in the trial in
22 this matter.

23 A Yes, sir.

24 Q But when you got the trial, did you have
25 an expert witness?

Kenwood Bright-Direct by Bright

1 A No, sir.

2 Q Did she cross examine the State's witness?

3 A Yes, sir.

4 Q But didn't have an expert to refute their
5 expert---

6 A Yes, sir.

7 Q Is that correct?

8 A Yes, sir.

9 Q And you believe that that prejudiced you
10 in your trial.

11 A Yeah, the probative value outweighs the
12 substantial -- outweighs by damaging the
13 unfairness and prejudice confusion, confusion of
14 the issue.

15 Q So what you're saying is, is that confused
16 them, because you got an expert saying that I
17 don't think this is the gun from the transcript.

18 A Yes.

19 Q And yet she should have an expert
20 representing you, to say, yeah, no, we don't this
21 is the gun.

22 A Yes, sir.

23 Q And that's the first issue with your trial
24 counsel, is that correct?

25 A Yes, sir.

Kenwood Bright-Direct by Bright

1 Q What is the second issue?

2 A The second issue, my trial counsel was
3 ineffective by failing to object to the
4 prosecutor's vouch for the credibility of the
5 witnesses.

6 Q Okay. So tell me about that.

7 A Um, the prosecutor said -- the prosecutor
8 vouched for the credibility of the witness. Said
9 the witnesses were taking the stand, and wasn't --
10 and was telling the truth. The transcript page
11 478 lines 16 through 17.

12 MR. BIDDLE: So may I approach, Your
13 Honor?

14 THE COURT: Yes, sir.

15 Q So this is your transcript before Judge
16 Seals?

17 A Yes, sir.

18 Q And you said page 478 lines 16 and 17.

19 A Yes, sir.

20 Q If you would, this is the closing argument
21 by Ms. Munnerlyn, is that correct?

22 A Yes, sir.

23 Q If you would, start at 8 and read through
24 19.

25 A I tried to tell you the truth every

Kenwood Bright-Direct by Bright

1 question I could possibly answer for you. And I
2 think if you go back and consider, please, I can't
3 see it. Say please be -- please save every piece
4 of evidence. It say, even words were spoken from
5 the stand and things about why those witness are
6 saying what they are saying. If there is no
7 reason for them to say it. So are they benefiting
8 in any way. Do you think some of the people were
9 scared, and they were scared to come sit up here
10 and testify about what happened. They still live
11 here and have reason to lie, when they are coming
12 up here frightened and telling the truth. It say
13 think about it. It say, that's all I say.

14 Q Okay. So Ms. Munnerlyn said, you know,
15 she's vouching for the State's witnesses, is
16 that---

17 A The State witness.

18 Q ---correct?

19 A Yes, sir.

20 Q She is trying to bolster their credibility
21 in that statement.

22 A Yes, sir.

23 Q And do you believe that that prejudiced
24 your case?

25 A Yes. See if trial counsel would have

Kenwood Bright-Direct by Bright

1 objecting to the prosecuting of the witness -- if
2 the trial counsel would have objected to the
3 prosecuting of the witness credibility, the
4 witness in closing argument, which is a violation,
5 then it would have been a strong possibility that
6 the outcome of my trial would have been totally
7 different. See Strickland vs. Washington 466,
8 U.S. at 695. Trial counsel also have a duty to
9 ensure that the applicant tested process works to
10 produce a just results from the standard
11 government decision.

12 Q So Ms. Brown didn't object to that
13 statement.

14 A Yes, she didn't object.

15 Q And so therefore not objecting to that
16 statement and not allowing the judge to disregard
17 that, assuming that that would have occurred,
18 prejudiced you by letting her put in her personal
19 bias towards the, or bolster their witnesses
20 testimony.

21 A Yes, sir.

22 Q What is this next item that your trial
23 counsel was ineffective in doing in representing
24 you in your trial?

25 A Trial counsel was ineffective in failing

Kenwood Bright-Direct by Bright

1 to request a charge of voluntary manslaughter when
2 Victoria Knight testified that there was an
3 argument in heat of passion before the shot,
4 transcript pages 460, lines 1 through 18. Because
5 of counsel---

6 Q Hold on one second for me. So did she
7 have an opportunity to request a charge of
8 manslaughter?

9 A Yes. It was an argument before the shot
10 occurred. Because heat of the passion.

11 Q And had Ms. Brown asked for the court to
12 allow her to have a lesser included offense of
13 manslaughter?

14 A No, the court asked her did she want a
15 lesser included offense and she stated no.

16 Q So and had she talked to you about a
17 lesser included offense?

18 A No, sir.

19 Q Had she talked to you prior to your trial
20 about a guilty plea?

21 A Yes, sir.

22 Q And what was she attempting to get you to
23 plead to?

24 A She was getting me to plea to voluntary
25 manslaughter and take 25 years.

Kenwood Bright-Direct by Bright

1 Q And is voluntary manslaughter to your
2 information, believed a lesser included charge of
3 murder?

4 A Yes, sir.

5 Q So do you believe that that would be the
6 lesser included charge?

7 A No, sir.

8 Q That she would have wanted for that. Do
9 you believe that that would have been the charge,
10 the jury charge, for a lesser included offense,
11 would it have been voluntary manslaughter?

12 A Yes, sir. For murder, it is voluntary
13 manslaughter.

14 Q So she was aware of the voluntary
15 manslaughter to your information, both being a
16 lesser included charge.

17 A Yes, sir.

18 Q But when the court asked her if she wanted
19 a jury charge she said no.

20 A She said no.

21 Q As to a lesser included offense.

22 A Yes, sir.

23 Q And do you believe that that prejudiced
24 you in your trial?

25 A Yes, sir.

Kenwood Bright-Direct by Bright

1 Q And how did that prejudice you?

2 A The lesser included offense?

3 Q Yes.

4 A Because it was an argument, heat of the
5 passion.

6 Q Okay. So you believe that having that
7 opportunity to charge the jury with a lesser
8 included offense, would have been possible for you
9 to get convicted of not murder, but voluntary
10 manslaughter, which would have reduced your
11 sentence from life to something---

12 A Yes, sir.

13 Q ---less than that. Okay. Anything else
14 other than the request of manslaughter that your
15 trial counsel did or didn't do?

16 A No, sir.

17 Q And what is the next item of ineffective
18 assistance of counsel by Ms. Brown that you are
19 claiming in your PCR?

20 A Trial counsel was ineffective for
21 requesting -- no, trial counsel was ineffective in
22 representing me by failing to object to the jury
23 instructions that shift the burden of proof to the
24 defendant by stating, malice may be inferred by
25 the use of a deadly weapon.

Kenwood Bright-Direct by Bright

1 Q So what you're saying is your counsel Ms.
2 Brown did not object to the malice being inferred
3 by the use of a deadly weapon.

4 A Yes, sir.

5 Q Is this the same deadly weapon that
6 couldn't be conclusively determined to be the
7 actual pistol that committed the crime?

8 A Yes, sir.

9 Q It couldn't be linked to the crime.

10 A Yes, sir.

11 Q According to the State's expert, is that
12 correct?

13 A Yes, sir.

14 Q But yet the State wanted to infer the
15 malice by virtue of the deadly weapon, and she
16 didn't object to it, is that correct?

17 A Yes, sir.

18 Q And so you believe that that prejudiced
19 you in your trial?

20 A Yes, sir.

21 Q Do you believe that if you would have had
22 an attorney that -- well, I won't go there. Is
23 there anything else with respect to that issue of
24 the deadly weapon and not objecting to that, that
25 Ms. Brown did or didn't do?

Kenwood Bright-Direct by Bright

1 A Charging the jury that malice may be
2 inferred by use of a deadly weapon, is no lower
3 good law in South Carolina. When evidence is
4 present that would reduce or mitigate, excuse or
5 justify the homicide.

6 Q What was the next item that your counsel
7 did that was ineffective?

8 THE COURT: Let me stop you.

9 MR. BIDDLE: I'm sorry, Your Honor.

10 THE COURT: Page 458 of the transcript,
11 line 13. Your counsel did object to that charge.

12 A For the malice?

13 THE COURT: Yeah.

14 A No, she didn't.

15 THE COURT: Well the transcript I have
16 says she did. And brought out the Belcher case
17 and said, asked the judge not to charge it.

18 A Four what?

19 THE COURT: Page 458, starting with line
20 12. That's what my transcript says. And the
21 defense argued that they all became vicious after
22 he was shot.

23 A Transcript page 4 -- transcript page 5---

24 THE COURT: 458.

25 A 504?

Kenwood Bright-Direct by Bright

1 THE COURT: 458 is mine.

2 A 504. She never objected to the malice
3 charge.

4 THE COURT: But she objected to the malice
5 charge. She asked the judge not to charge malice
6 on page 458 line 12.

7 A Yeah, she tell them not.

8 THE COURT: And the judge overruled it.

9 A But she never objected.

10 THE COURT: But she -- but the judge, she
11 had already objected to the charge, and the judge
12 overruled it. So you're saying she should have
13 objected the second time?

14 A Yes.

15 THE COURT: I am sorry, go ahead.

16 MR. BIDDLE: No, you are fine, Your Honor.

17 Q So she objected and she was overruled.

18 And did your appellate counsel raise that issue?

19 A No, sir.

20 Q Do you believe that prejudiced you?

21 A Yes, sir.

22 Q Tell me about your trial preparation with
23 Ms. Brown. How did Ms. Brown become your attorney
24 in this matter? Was she originally appointed to
25 represent you?

Kenwood Bright-Direct by Bright

1 A No, sir.

2 Q Who was the attorney appointed to
3 represent you?

4 A Dan Blake.

5 Q How many times did you meet with him?

6 A I meet with him 3 or 4 times.

7 Q And how much time did he spent with you?

8 A Probably about an hour in two weeks time.

9 Q And he was -- and then what happened? How
10 did Ms. Brown become your public defender?

11 A Because Dan Blake, he wasn't a public
12 defender no more. And Ms. Brown came in.

13 Q So he left the employment of the public
14 defender's office, and so you got Ms. Brown as
15 your replacement---

16 A Yes, sir.

17 Q ---as the public defender. When did that
18 occur? Do you know?

19 A Like in November of 2009.

20 Q And your trial was in March of 2010?

21 A Yeah, March 8th of 2010.

22 Q So how knowledgable was Ms. Brown about
23 your case?

24 A How knowledgeable?

25 Q Yes.

Kenwood Bright-Direct by Bright

1 A I mean she came and spent 30 minutes here.

2 She said she had other cases to deal with.

3 Q What did you all talk about?

4 A Taking a plea.

5 Q Taking a plea. Did you talk about

6 witnesses?

7 A Yes. I asked her did she interview any

8 witnesses. She told me she interviewed Victoria

9 Knight, and looked at some statements that was

10 given.

11 Q Who were those statements given by, do you

12 know?

13 A She said she had a video. She said she

14 had a video, like a statement done by my brother.

15 She showed me that, and that was it.

16 Q And did you all talk about witnesses, and

17 what they may or may not say? Did you all talk

18 about the crime? Did you all talk about any of

19 the incidences that occurred that night?

20 A We talked about the witnesses, the expert

21 witnesses.

22 Q Okay.

23 A And reviewed the gun. And get all the

24 witnesses, the so called eye witnesses. And

25 that's what she was told to do.

Kenwood Bright-Direct by Bright

1 Q Your trial was in March. She came to see
2 you in January, is that correct?

3 A Yes.

4 Q And originally your trial was scheduled
5 for February, is that correct?

6 A February 1st.

7 Q And that meeting that you had with her,
8 how much time did you spend with her?

9 A About 30, 45 minutes.

10 Q And what was the majority of that time
11 spent doing?

12 A She was just telling me about my case and
13 telling me what the State told her.

14 Q Why was her recommendation at that time?

15 A To take the plea.

16 Q So she wanted you to plead guilty.

17 A Yes, sir.

18 Q Now obviously your trial didn't go forward
19 in February. It ended up being in March. Did she
20 to come and see you again?

21 A No. I had got a phone call from her, and
22 I talked to her. And that was it. She said she
23 was coming to the jail to come visit me. She came
24 to the jail and visit me before I went to trial.

25 Q Okay. And what was that -- what was the

Kenwood Bright-Direct by Bright

1 gist of that conversation?

2 A She was telling me all what the prosecutor
3 has, and she advised me to take a plea.

4 Q Did you all talk about witnesses and
5 statements, the gun? Did you talk about any of
6 the preparation for trial?

7 A We talked about all of that.

8 Q Do you feel like she had a handle on your
9 case in order to put up a worthy defense?

10 A No. She ain't interview no witnesses.

11 Q Didn't hire an expert.

12 A Didn't hire an expert.

13 Q Didn't interview any witnesses.

14 A Yes.

15 Q And was basically going by what the State
16 said, is that correct?

17 A Yes, sir.

18 Q And do you believe that that prejudiced
19 you in the trial of this matter?

20 A Yes, sir.

21 Q In your trial?

22 A Yes, sir.

23 Q And do you believe that had she done a
24 proper investigation, that possibly you would have
25 been acquitted or certainly not found guilty.

Kenwood Bright-Direct by Bright

1 A Yes, sir.

2 Q And beyond a reasonable doubt. Is there
3 anything that Ms. Brown did or failed to do that
4 you believe was ineffective and resulted in
5 prejudice to you a your trial?

6 A Yes, sir.

7 Q What is that?

8 A I had 15 witnesses. The State gave her 15
9 witnesses. And Ms. Brown ain't interview but two
10 witnesses.

11 Q And one of those was the co-defendant, is
12 that correct?

13 A Yes. Victoria Knight.

14 Q And you believe that if she would have
15 interviewed and possibly called those other
16 witnesses---

17 A We would have been better prepared for
18 trial.

19 Q And by not doing that.

20 A We ain't had a chance.

21 Q And you believe that that was ineffective
22 assistance of counsel.

23 A Yes, sir.

24 Q Anything else?

25 A No, sir.

Kenwood Bright-Cross by Thomas

1 MR. BIDDLE: Please answer any questions
2 from the attorney general.

3 Cross Examination by Mr. Thomas:

4 Q Good morning, Mr. Bright. I believe you
5 said you had 2 or 3 meetings with Ms. Brown?

6 A Yes.

7 Q And during those meetings you discussed
8 all the State's discovery, the witness statements
9 and the experts.

10 A The first time she come and meet me, she
11 was letting me know that she was the lawyer on my
12 case and what not. And she said she was going get
13 my Rule 5, and bring it back and talk to me. The
14 second time she came, she had my Rule 5.

15 Q And you reviewed the Rule 5 during that
16 second meeting?

17 A No. She just came up to bring it to me.

18 Q So she gave it to you?

19 A Yes, sir.

20 Q But she testified in direct and on that
21 third meeting four days before trial, you
22 discussed all the State's evidence?

23 A Yes.

24 Q Did you give her any leads to investigate,
25 other than the witnesses the State planned to

Kenwood Bright-Cross by Thomas

1 call?

2 A When I told -- she told me who was the eye
3 witness and this person and that person, I told
4 her she needed to talk to them and get a statement
5 from them.

6 Q So just the State's witnesses.

7 A Yes.

8 Q Did you get a chance to tell her --
9 discuss with her what your defense would be? What
10 your theory of the case would be?

11 A No, sir.

12 Q So you never discussed the fact that your
13 defense was that you weren't the actual shooter?

14 A Their defense was pointed at the gun,
15 because the gun didn't match the bullet that they
16 removed from the victim.

17 Q So your -- but your defense was that the
18 State could not prove that you were actual
19 shooter.

20 A Yes, sir.

21 Q And I believe you said you discussed the
22 State's plea offer with her. That was a 25-year
23 plea offer?

24 A Yes, sir.

25 Q And you made the decision to reject that?

Kenwood Bright-Cross by Thomas

1 A Yes, sir.

2 Q And you testified that you believe that
3 she should have called an expert to testify that
4 the gun that State had, was not the murder weapon.
5 But the expert that the State called did testify
6 that he couldn't confirm that that gun was the
7 murder weapon.

8 A Yes, he couldn't tell.

9 Q In fact, the expert said that it could
10 have been any number of weapons that was the
11 murder weapon. She could not specifically say
12 that one was it.

13 A Yes, sir.

14 Q Did you discuss with Ms. Brown the
15 possibility of your taking the stand and
16 testifying?

17 A No, sir.

18 Q But you discussed it with the judge. The
19 judge talked to you about it before---

20 A Yes, sir.

21 Q ---the case.

22 A Yes, sir.

23 Q As far as the clothing statements,
24 Ms. Brown argued in her closing that some of
25 witnesses had a motive for lying, didn't she?

Kenwood Bright-Cross by Thomas

1 A Yes.

2 Q Specifically that your co-defendant was
3 also charged with a crime, and she was hoping to
4 get some sort of help from the State?

5 A Yes, sir.

6 Q Did you ever discuss a voluntary
7 manslaughter charge with her?

8 A No. Ms. Brown she just -- she told me if
9 I plead to it, I get voluntary manslaughter.

10 Q Did she describe to you the elements of
11 what that crime was?

12 A No.

13 Q But as far as, when she told the judge she
14 didn't want a voluntary manslaughter charge, the
15 judge then turned and said well it didn't matter,
16 because he wasn't going to give you one. Didn't
17 he say that?

18 A No.

19 THE COURT: Page 60. Line 19. He did say
20 that.

21 A He did say that.

22 THE COURT: He said I personally consider
23 a lesser included offense, and I do not find it is
24 appropriate to the facts of this case.

25 MR. THOMAS: Thank Your Honor.

Kenwood Bright-Cross by Thomas

1 Q And as far as the charge of the voluntary,
2 I believe the evidence that came out at trial was
3 that when you were allegedly, when she testified
4 you were arguing with the victim, you were sitting
5 in a car and he was outside of the car?

6 A Yes.

7 Q Correct? You also had sitting at counsel
8 table with you during the trial, you also had
9 Emily Crayton and Rick Jones.

10 A Yes.

11 MR. THOMAS: That's all the questions I
12 have. Thank you.

13 THE COURT: Anything further?

14 Redirect Examination by Mr. Biddle:

15 Q With respect to the part of the transcript
16 that the judge read to you regarding the judge
17 saying that he considered the lesser included
18 charge when your counsel said she didn't want
19 that. Do you believe that she made a sufficient
20 argument for the lesser included charge?

21 A No.

22 Q Did she make any argument?

23 A No, sir.

24 Q Why do you think the judge considered
25 it -- why do you believe the judge considered it?

Kenwood Bright-Redirect by Biddle

1 MR. THOMAS: Objection. It calls for
2 speculation.

3 THE COURT: I will allow him to answer
4 that. You can answer that.

5 A They offered a lesser included offense.

6 MR. BIDDLE: Is there any other -- well I
7 have no further questions, Your Honor.

8 THE COURT: You can step down. Watch your
9 step.

10 MR. BIDDLE: The applicant calls Myesha
11 Brown please.

12 Myesha Brown, Being first duly
13 sworn, testified as follows:

14 DIRECT EXAMINATION by Mr. Biddle:

15 Q Ms. Brown, my name is Marshall Biddle. I
16 represent Kenwood Bright in this PCR application.
17 You were his trial attorney, is that correct?

18 A That is correct.

19 Q And tell me how you came to be Mr. -- was
20 that the first time you met with Mr. Bright was
21 when you were appointed to take this case?

22 A Yes.

23 Q And you were with the public defender's
24 office, is that correct?

25 A Yes, it is.

Myesha Brown-Direct by Biddle

1 Q Now somebody else had his case prior to
2 you, is that correct?

3 A I do not know.

4 Q So you never met or talked to my client
5 while he was in jail about what the other lawyer
6 was or wasn't doing?

7 A I met with Mr. Kenwood Bright once I was
8 assigned the case, but I did not have any
9 communications with him about any prior attorneys
10 that represented him.

11 Q And tell me about your meetings with
12 Mr. Bright. I mean, how many cases did you have
13 ongoing at that time?

14 A While I was with the public defender's
15 office, I handled primarily Marlboro County. Any
16 time there are hundreds of case in that data base.
17 And I was responsible mainly for of all them. Of
18 course we had other attorneys that worked
19 throughout the circuit so they came over, and they
20 assisted me with those cases as well.

21 Q And in the trial of this matter, I mean,
22 how much time, how many hours did you spend with
23 Mr. Bright preparing his case for trial?

24 A I do not have the exact amount of time
25 that I spent with Mr. Bright. I know that he and

Myesha Brown-Direct by Biddle

1 I met many times. I kept him informed as to ,
2 everything that I was doing. Mr. Bright and I sat
3 down and looked at theories relating to his case.
4 We talked about the evidence that was provided in
5 his case. We talked about any potential defense
6 that we may have. And we of course talked about
7 just the strategy of his case. He was actively
8 involved and preparing for this trial.

9 Q Okay. How much time was spent trying to
10 convince him that he should plead to this charge?

11 A That was not -- we didn't have a lot of
12 time relating to the plea, because Mr. Bright made
13 it very clear when I originally met with him, that
14 he was not going to take a plea relating to this
15 case. I have an obligation to communicate with
16 him any plea that's given. And I did that.

17 Q And did you ask him to sign and
18 acknowledgment regarding that plea, and what
19 your -- is that something that the public
20 defender's does?

21 A I don't know about the public defender's
22 office, but that's something I definitely did.
23 And he did sign an acknowledgment. That included
24 the things that we discussed. That included the
25 plea offer that was given to him. And also It

Myesha Brown-Direct by Biddle

1 states that I had recommended that he take the
2 plea based on the evidence that we had.

3 Q Based on the evidence that the State had.

4 A The evidence that was provided to me
5 throughout the course of this case, yes.

6 Q From the State.

7 A Yes.

8 Q Did you do any investigation of your own?

9 A Yes, I did.

10 Q What did you do to investigate defenses,
11 witnesses, experts?

12 A Okay. Mr. Bright made it very clear that
13 his only defenses, I didn't shoot him; not that he
14 wasn't present, not that he wasn't in the vehicle,
15 but that I did not shoot him. I met with -- he
16 didn't give me any particular witnesses that we
17 should call. However, I did meet with
18 Ms. Victoria Knight. She provided a statement.
19 She actually had an attorney, but she was charged
20 as well. So I could not question her. But she
21 certainly provided information as to what she
22 recalled that particular evening in the presence
23 of her attorney.

24 I also drove to the incident location.
25 And all of that was included in the defendant's

Myesha Brown-Direct by Biddle

1 acknowledgment. So I can take a look at, is that
2 okay?

3 Q Sure.

4 A Thank you. I interviewed his
5 co-defendant, Victoria McKnight. I met with the
6 pathologist, which was Dr. Erin Presnell. She was
7 in Charleston, South Carolina. She is the one
8 that did the autopsy. Actually Ms. Emily Bright,
9 Ms. Emily and I, both met with her in Charleston,
10 South Carolina. We visited the incident location
11 where this allegedly took place. We researched
12 the whereabouts of the vehicle in which he
13 supposedly was driving at the time.

14 We tried to determine the interior and
15 exterior measurements to see whether or not this
16 was even possible based on the State's allegations
17 that he placed his arm outside of the window and
18 shot this guy. And the proximity where the guy
19 was standing at the time.

20 Q Did you---

21 A Would you like me to finish?

22 Q Did you hire an expert regarding the
23 recreation of the---

24 A No, I did not.

25 Q Did you hire an expert regarding the

Myesha Brown-Direct by Biddle

1 allegations associated with the gun?

2 A There was no reason to hire an expert. I
3 concluded there was no reason to hire an expert
4 related to the gun, because I spoke with the gun
5 expert. The person that actually evaluated the
6 firearm in the firearm's department with sled.
7 And they made it very clear during my
8 communications that they could not conclusively
9 determine this firearm was involved in this
10 incident. So that expert was going to testify for
11 the State, and in fact was going to benefit us,
12 and was not going to harm us.

13 Q So you believe, did you have that
14 discussion with Mr. Bright?

15 A Mr. Bright and I spoke about single aspect
16 of his case, yes. And he knew that's why we going
17 to have firearm excluded. He knew exactly the
18 issue relating to the firearm.

19 Q Go ahead and continue. Tell me about your
20 meeting with the pathologist. She did the
21 autopsy. What was your discussion with her?

22 A I don't recall everything. She explained
23 to me. She showed me the photos, all the photos
24 that were going to be, that she provided as part
25 of her report. She just talked about how an

Myesha Brown-Direct by Biddle

1 autopsy is done. And I asked her some questions
2 about where the bullet went. I asked her how it
3 traveled. Was it in fact removed. If it was
4 extracted, where. I just asked her certain
5 questions about the procedure itself.

6 Q Did you file the appeal on Mr. Bright's
7 behalf?

8 A I did.

9 Q Did you address the issues to appeal, to
10 include on the appeal? Or did you prepare those
11 issues?

12 A No. Once the trial ends, of course, I am
13 no longer -- I was no longer representing him
14 relating to any type of appealable issues. But I
15 did discuss with Mr. Bright the issues I thought
16 was important for his appeal. I did do that.

17 Q And did you discuss those with his
18 appellant counsel?

19 A No, I have not had a conversation with his
20 appellate attorney.

21 Q So you were not involved in the issues
22 that you felt like would have been appealable with
23 the appellate counsel.

24 A I did not have any communications with the
25 appellant attorney.

Myesha Brown-Direct by Biddle

1 Q So all you did was file the notice of
2 appeal and then left it at that.

3 A That's correct.

4 Q Did you, I think your testimony was, you
5 didn't hire an expert. You didn't believe that it
6 was necessary.

7 A I believe the expert that the State was
8 going to call, of course was going to give the
9 same information if we had the funds or the
10 resources to call an expert, they were going to
11 same information, which is the gun that was found
12 at Ms. Knight, it was Victoria Knight's home,
13 could not be deemed conclusively as the gun that
14 was used in this particular case.

15 Q Okay. We know she believed that -- and
16 don't you think that the mere evidence that the
17 gun is there even with the State's expert saying I
18 don't believe it's the gun, could have been a
19 number of guns, don't you believe that prejudiced
20 him?

21 A That's why we did a motion to exclude the
22 firearm, which we argued why that firearm should
23 not be presented to the jury, because was once
24 again, there was no evidence to connect that gun
25 with this particular incident.

Myesha Brown-Direct by Biddle

1 Q And you're relying on the State's expert
2 to say we don't know whose gun it was or whatever
3 it was. You don't believe that if you had your
4 own expert that is representing your interest as a
5 defense lawyer and Mr. Bright, that he would have
6 been able to say there's no question, this isn't
7 the gun, period. It's not questionable as to
8 whether it's the gun, but he would have said, it's
9 not the gun.

10 A I believe that a witness, any expert would
11 have give the same testimony that was given during
12 the course of the trial, which is that that
13 firearm could not be inclusively connected to this
14 case. And that was beneficial to us.

15 Q And was that issue raised on appeal?

16 A I would not know. I was not involved
17 after the verdict was read.

18 Q Do you think that would have been a major
19 appellate issue?

20 A I think it was important. That's why I
21 talked to Mr. Bright about having it be one of his
22 appealable issues.

23 Q And that certainly prejudiced him at the
24 trial, do you think so?

25 A I certainly do.

Myesha Brown-Direct by Biddle

1 Q Certainly providing the malice, if you
2 will, being inferred by the simple fact that it
3 was a deadly weapon.

4 A The fact that the firearm came into the
5 case I thought was a -- was not helpful to us.
6 That firearm was never connected to any particular
7 incident if that's what you are asking.

8 Q So you believe it certainly prejudiced his
9 trial.

10 A As far as having the case -- that's why I
11 argued the motion to have it excluded, yes.

12 Q Why did you not object to the prosecutor
13 basically bolstering the credibility of the
14 State's witnesses?

15 A I am not certain, I don't recall exactly
16 what happened that particular evening or that day.
17 I don't recall the prosecutor bolstering any of
18 her witness' testimony. I do think that the judge
19 made it very clear that nothing that I say or that
20 the prosecutor say is evidence in this case. But
21 they are to only consider who testifies. And of
22 course as relates to credibility, we attack the
23 credibility of any witness that took the stand.

24 In fact, I recall their being a lot of
25 objection about some of the questions that I had,

Myesha Brown-Direct by Biddle

1 or some of the witnesses. In particular, maybe
2 Kenta Samuels, I believe. Because I think it was
3 an issue about he's selling drugs or he being
4 involved on gang activities. And, you know, the
5 State objected to that. That was my way of
6 attacking the credibility of the witnesses that
7 took the stand against Mr. Bright.

8 Q Well why did you not specifically request
9 and argue for a lesser included offense charge?

10 A Certainly. Every single decision that was
11 made during the course of this trial was consulted
12 with, and it came from Mr. Bright. I know that we
13 had communications with Mr. Bright as to whether
14 or not to consider it. If we did not make that
15 argument is because Mr. Bright directed us not to
16 make that argument. It was all or nothing. And
17 in fact prior to going to trial, he had that
18 particular -- that offer of voluntary
19 manslaughter. And he made it very clear that he
20 was not entertaining any pleas whatsoever. And he
21 rejected that.

22 Q But this was not a plea.

23 A I understand.

24 Q This was an argument to the court and to
25 the jury regarding a lesser included offense. And

Myesha Brown-Direct by Biddle

1 you're saying that Mr. Bright dictated to you, I
2 don't want you to raise that issue.

3 A Mr.---

4 Q He, a non-lawyer and you his lawyer, with
5 a team of two other lawyers, decided that, you
6 know, we don't want to make that argument.
7 Mr. Bright says he doesn't want to do it. He
8 knows what's best for him in the legal realm.
9 Therefore, Your Honor, we're not going to make
10 that argument. Is that what your testimony is?

11 A No, my testimony is that I consulted. We
12 had communication with Mr. Bright. We talked
13 about every part of the aspect of the case. And I
14 recall specifically talking to Mr. Bright about
15 not only the malice or the issue dealing with the
16 inferred firearm, but also about whether or not we
17 need to ask for a lesser included charge. And
18 that decision was thoroughly discussed. We talked
19 about the information we had already presented at
20 the trial. The fact that he had already -- we
21 made it clear that that was not the firearm. That
22 was our argument. That was the firearm, and he
23 didn't shoot anybody.

24 So it did not, if I recall correctly after
25 our communications, it did align with our theory

Myesha Brown-Direct by Biddle

1 that we wanted to remain in closing to the jury.
2 So we made, all of us, Mr. Bright was included,
3 made a decision at that that particular, that
4 lesser included charge was not appropriate under
5 the argument and the strategy of our case.

6 Q Okay. And so but your testimony was that
7 he pretty much made that decision.

8 A He makes the final decision about this
9 case absolutely. It's his trial.

10 Q He makes the final decision about legal
11 issues?

12 A Not legal issues. We give him the
13 advice. Just as I offered to him and suggested
14 that he take a plea, and he makes the decision
15 whether or not he wants to accept it. Just like
16 he makes a decision of whether or not he wants a
17 jury trial. And he also made a decision of
18 whether or not he wanted a lesser included.

19 Q Or whether he wants to testify.

20 A That absolutely was something that we
21 discussed as well. And he -- we discussed him
22 testifying as well.

23 Q What do you believe your job is as a
24 defense attorney in a case like this? What is
25 your ultimate goal in representing your client?

Myesha Brown-Direct by Biddle

1 It is to get a not guilty. Is it to get a -- you
2 know, I mean what is your goal?

3 A My goal is to advise my client and
4 represent my client's interest to the best of my
5 ability; to be competent as his attorney. And I
6 did that throughout every stage of my case and my
7 interaction with Mr. Bright.

8 Q Okay. And so is it to -- are you a damage
9 control? Did you tell him, you know, I think
10 they're going to find you guilty. I mean,
11 obviously you've got an agreement that is
12 defendant's acknowledge and you're saying this
13 looks pretty good. We better plead, right?

14 A It is my obligation to inform my client as
15 to the evidence that stands against him. Am I
16 supposed to offer my best advice as relates to the
17 trial; yes, I did that. And I did that when I did
18 the defendant acknowledgment, because I wanted to
19 be clear that there were no disputes as to what
20 evidence was out there and what offer was made to
21 him.

22 Q But in the trial of the matter you know
23 what evidence had been put in. This is what they
24 are purposing to put in your acknowledgment, is
25 that correct?

Myesha Brown-Direct by Biddle

1 A That's the evidence that they provided to
2 me. Now whether or not it's relevant, whether or
3 not it's going to be admitted, that's completely
4 something separate. But that's the evidence that
5 was provided to me, and my understanding as to
6 what would likely be presented to the jury.

7 Q That's correct. But when you're actually
8 in the trial, you know what evidence has been
9 included. And you know what evidence the jury has
10 heard, correct?

11 A Yes, that's correct.

12 Q And in that situation, if you feel like
13 things aren't going our way, you know, wouldn't
14 you think that it would be proper to say, well I
15 believe we probably ought to do a lesser included,
16 because we want to hedge all of our bets. Because
17 if they come back with a murder, you're going to
18 be looking at this life. If you get a voluntary
19 manslaughter it may be something different. Was
20 that the advice you gave to Mr. Bright?

21 A It's my obligation to look at the evidence
22 that's already provided to see whether or not that
23 even applies. A lesser included charge doesn't --
24 is not automatically granted to anybody. It
25 depends on what's in the record, what evidence has

Myesha Brown-Direct by Biddle

1 been offered to the court.

2 And based on what we have presented to the
3 court, we did not deem it was going to apply. And
4 then more importantly, we had communications with
5 Mr. Bright. And he indicated that we shouldn't do
6 it.

7 Q Did you object to the malice being
8 inferred by the deadly weapon?

9 A I don't recall if I objected to that or if
10 Mr. Rick Jones objected to that. But I do believe
11 that objection was made.

12 Q And again, your testimony is, you don't
13 know whether that was brought up on appeal.

14 A I don't know anything about the appeal.

15 Q And so would you have felt like that would
16 have been something that should have been
17 appealed?

18 A I am not an appellant attorney, but
19 clearly, I think, I don't recall if we had
20 discussions about it, if that's what you're
21 asking me. I did have a discussion with
22 Mr. Bright about appealable issues. And I know
23 one that we discussed thoroughly was the motion to
24 exclude the firearm. And we believe that was just
25 a wrong ruling.

Myesha Brown-Direct by Biddle

1 Q And so and again, you don't know about the
2 appeal. Did you discuss that issue with
3 Mr. Bright for his appealable issues?

4 A I discussed issues that he can certainly
5 raise in an appeal, yes, I did. And his right to
6 an appeal. And also the fact that I was going to
7 file the notice of appeal.

8 Q And so I believe your testimony was that
9 once you filed the notice of appeal, you're no
10 longer his attorney.

11 A Now clearly I understand that's not the
12 case now. But back then, that was my
13 understanding at the PD's office. Once I filed
14 it, I was no longer responsible for his case. And
15 I believe the way it happens now is, once he's
16 assigned an attorney, then of course my
17 obligations to him is relieved.

18 Q Did you provide your file to somebody
19 associated with the appellate case?

20 A No one contacted me about my file. The
21 file that I have here was provided to the PD's
22 office. I asked that they scan everything in.
23 And I retain the original for, you know,
24 situations such as now.

25 MR. BIDDLE: Bear with me one moment, Your

Myesha Brown-Cross by Thomas

1 Honor. I have no further questions, Your Honor.

2 Cross Examination by Mr. Thomas:

3 Q Thank you, Ms. Brown. Just get some
4 background stuff cleared up. I want to make sure,
5 and I am not sure it was clear from your direct.
6 How many meetings did you have with the defendant?

7 A I don't recall the number of meetings. I
8 know we meet a lot. Now whether or not that's 10
9 or 15, I don't know exactly the numbers, but we
10 met a lot. And especially up to the month leading
11 up to the trial.

12 Q And during those meetings, you said you
13 had an opportunity to review the discovery with
14 him?

15 A We reviewed every document that was
16 provided. We also looked at each and every video
17 statement that was provided. We reviewed them
18 together.

19 Q And I'm assuming you didn't file the Rule
20 5 or Brady motions. The prior attorney filed
21 those?

22 A I believe so, yes.

23 Q Do you believe the State's response to
24 those was complete?

25 A The State provided me all of the evidence

Myesha Brown-Cross by Thomas

1 that we -- that was presented during the course of
2 the trial, with the exception of a statement from
3 a Eureka Zimmerman. And I believe that statement
4 was provided the day of trial. And we filed a
5 motion to exclude that witness. Now whether they
6 provide everything at once, that's not the case,
7 it was over a period of time. Especially the sled
8 information. I think that came in maybe, maybe
9 even a month before the trial was called. And
10 that would be any of the forensic evidence, any of
11 the reports.

12 Q Based upon that discovery, can you just
13 give us a brief overview of what the State's case
14 against Mr. Bright was?

15 A Certainly.

16 Q And I know you started reading from your
17 pleading. You can complete that too if that's
18 going to help.

19 A Is that, thank you so much. Can I just
20 read here what I have?

21 Q I think that's kind of what you do.

22 A Thank you. Here it's stated that my
23 attorney recommends a plea for this case because
24 of the following: No. 1, the State has given
25 notice that an eye witness will testify he

Myesha Brown-Cross by Thomas

1 observed me fire a shot at Mr. Christopher Deas.

2 No. 2, the State has given notice that my

3 co-defendant Victoria Knight will testify that she

4 observed me placing my hand towards my back

5 shortly before Mr. Christopher Deas was shot. And

6 immediately after we drove off the alleged

7 incident location she observed Mr. Deas lying on

8 the ground. No. 3, the State will offer testimony

9 from a forensic scientist that the gun found in

10 Victoria Knight's bedroom could have fired the

11 bullet removed from Mr. Deas body.

12 No. 4, the State will offer testimony that

13 a forensic scientist, that the 22 caliber handgun

14 found in Victoria Knight's bedroom had DNA that

15 matched the profile of me. No. 5, Victoria Knight

16 and her mother, Michelle Knight, will offer

17 testimony that I was in Victoria Knight's bedroom

18 after the alleged shooting, along with Victoria

19 Knight while she took a shower.

20 No. 6, the State will offer testimony from

21 my brother, Dwayne Bright, that he observed me

22 with a 22 Dillinger gun the day of the alleged

23 shooting, and hours before the alleged shooting.

24 No. 7, the pathologist will offer testimony which

25 will corroborate the State's theory of this case

Myesha Brown-Cross by Thomas

1 and the eye witness Jacobi Knight, Kenta Samuels,
2 account of what he observed. And No. 8, the
3 State will introduce evidence of flight since I
4 was apprehended 7 days after the alleged shooting
5 in the State of Virginia.

6 Q A couple of things about that and going
7 backwards, the flight and the evidence of flight.
8 He was picked up in Virginia, I believe and
9 transported back.

10 A That's correct, yes.

11 Q Did he give a statement during that right?

12 A There was a statement. I believe it was
13 similar to, when I left, he was alive.

14 Q And you had a Jackson v. Denno hearing to
15 keep that out beforehand?

16 A That's correct.

17 Q Regarding the witnesses that were going to
18 testify, would you say that Victoria Knight was
19 the key witness in this case?

20 A Yes, she was.

21 Q And you interviewed her?

22 A Yes, I did.

23 Q Did he ever tell you specifically go
24 interview anyone else?

25 A No, he did not.

Myesha Brown-Cross by Thomas

1 Q What was your defense strategy on this? I
2 know you talked about it, but just kind of for the
3 record, was it a -- it was sort of an all or
4 nothing strategy, or that he didn't do it? They
5 couldn't prove that eh did it?

6 A Pretty much that was Mr. Bright's position
7 that he was in the vehicle; that he did see
8 Mr. Deas on that particular date, and that he
9 drove off; that they did have a gun and that they
10 couldn't prove he did it.

11 Q So regarding the voluntary manslaughter
12 charge, you had the opportunity to discuss the
13 elements of voluntary with him.

14 A Yes, I did.

15 Q Did you have a chance to discuss with him,
16 before the charge conference about whether or not
17 he should a voluntary charge as opposed to not
18 having a voluntary charge?

19 A We discussed it, yes. It would have been
20 before the charge conference, yes.

21 Q And what was your advice to him regarding
22 whether you should ask for that charge?

23 A Basically during our discussions, we
24 looked at the evidence that had been presented.
25 We look at the evidence that we had or the lack

Myesha Brown-Cross by Thomas

1 thereof. And the issue became whether or not we
2 can prove any type of heat of passion or the
3 elements relating to voluntary manslaughter. I
4 believe we can included that we didn't it. It
5 was not in the course of the trial. No one
6 testified to anything that would meet the elements
7 of heat of passion, prior to the shot being fired.

8 And I think there was something -- there
9 was a discussion if I remember correctly about
10 Mr. Jones talking about maybe the dog. You know,
11 because Mr. Deas I believe had a huge dog with him
12 that protected him, or was always around him. And
13 there discussions about whether or not the dog
14 could have been deemed a deadly -- somehow reach
15 us or get us to voluntary manslaughter. The
16 elements for that.

17 Q But that was, I guess the testimony was
18 also that he was sitting in the car and the dog
19 would have been outside the car?

20 A Absolutely, yes.

21 Q So is that why you thought there would be
22 a proper self defense charge there?

23 A We believe it was improper, yes.

24 Q Regarding the experts, did he ever ask you
25 for another expert?

Myesha Brown-Cross by Thomas

1 A We did not have any communications about
2 an expert in this case. We talked about the
3 witnesses that the State planned to call. I
4 actually provided him a list of the witnesses.
5 And I provided that list based on the evidence
6 that we received from the Rule 5. We just picked
7 out anyone that had involvement in this case, and
8 determined that they may be called as a witness.
9 And we went down the list together to see what
10 they would testify to. But Mr. Bright did not
11 offer any potential witnesses in his case. Nor
12 did we discuss having an expert witness about the
13 firearm.

14 The firearm did not even become extremely
15 important I recall, until we determined that his
16 fingerprints was just on the trigger of the gun.
17 His fingerprints was nowhere else to be found on
18 the firearm. But later getting closer to the
19 trial, we learned that it was just found on the
20 trigger of the gun.

21 Q And so the testimony of the State's expert
22 actually helped your case?

23 A It certainly did not hurt our case. The
24 State witness stated that he cannot say whether
25 this gun or any other gun was involved in this

Myesha Brown-Cross by Thomas

1 particular shooting.

2 Q And I guess your biggest complaint would
3 be the admission of the gun was the fact that it
4 was prejudicial, because it sort of, there was
5 this chain of how it got to the girlfriend's
6 mother's house. And other than that, there was no
7 evidence linking the gun to him and the crime.

8 A Well there was a gun linking it. There
9 was evidence linking it to him, because his
10 fingerprint was on the trigger, but there was no
11 evidence relating or linking it to this incident
12 relating to the death of Mr. Deas. And, you know,
13 our position was the fact that a gun was found or
14 located and it's going to be presented to the jury
15 that had this fingerprint on hit, was going to be
16 prejudicial to our client. Especially since they
17 could not state affirmatively it was involved in
18 this crime.

19 Q And there is no expert that you're aware
20 of that could have actually testified to that.

21 A None that I aware of. I only know that
22 the State's expert was going to say---

23 MR. BIDDLE: Object to the speculation,
24 Your Honor.

25 A I didn't do any research.

Myesha Brown-Cross by Thomas

1 THE COURT: I will allow her to answer
2 that.

3 MR. THOMAS: I'll rephrase it a little
4 bit.

5 A Thank you.

6 Q Could an expert, in your knowledge dealing
7 with experts, could an expert testify to sort of
8 the link of how that gun got into the mother's
9 house?

10 A Absolutely not.

11 Q But you argued all that to the jury, or to
12 the judge in the motion to include the gun?

13 A I did.

14 Q And as far as the appeal goes, an Anders
15 brief was filed in this appeal, correct?

16 A I don't know. I am not sure.

17 Q But is it based on your knowledge an
18 Andrews brief basically tells the court you look
19 at the record, and find any issues that are
20 preserved and ready for -- that need to be
21 reviewed?

22 A That's my understanding, yes.

23 Q And do you remember any other pretrial
24 motions you made?

25 A Yes. I just need to look through my file,

Myesha Brown-Cross by Thomas

1 because we had a list of them. There was the of
2 course the motion to suppress the defendant's
3 statement. There was a motion to exclude the
4 firearm. There was a motion to exclude some of
5 photos. There was a motion to review the deal
6 that they had with Victoria Knight, since she was
7 a co-defendant and was testifying in their case.
8 There was a motion to disclose any prior bad acts
9 by Mr. Bright. It was a -- that's Rule 404 (b).
10 And I believe there was a motion to change venue.

11 MR. THOMAS: I think that's all the
12 questions I have, Ms. Brown, thank you.

13 Q Actually let me just run through this real
14 quick. You've got 6 allegations here. One, you
15 didn't hire an expert to testify that the gun
16 wasn't the gun that killed the victim. But the
17 State's expert testified to that?

18 A That's correct.

19 Q And you didn't ask for a manslaughter
20 charge. That was your trial strategy not to ask
21 for that?

22 A That's correct.

23 Q And the trial judge said he wouldn't
24 charge it even if you asked for it?

25 A Yes, I recall that.

Myesha Brown-Cross by Thomas

1 Q You did not object to a jury charge about
2 malice. You did object to that, didn't you?

3 A That's correct. I think Mr. Rick Jones
4 did.

5 Q And there was no evidence, you said in
6 your opinion, there was no evidence of a heat of
7 passion or anything to support sort of the lesser
8 included?

9 A That's correct.

10 Q You didn't object to the closing argument
11 because you didn't believe that was improper
12 vouching?

13 A Certainly, the judge made it clear that
14 any information that came out -- any words that
15 came out of the mouth or the prosecutor, the
16 solicitor in this case, open or closing is not
17 evidence.

18 Q And you made the strategic decision not to
19 hire another expert or to, and you made the
20 strategic decision not to hire another expert to
21 review the gun?

22 A After having communications with the fire
23 department expert, yes, we did. Or I did.

24 Q And you interviewed at least the State's
25 key witnesses, isn't that correct?

Myesha Brown-Cross by Thomas

1 A I interviewed all of them except a Euretha
2 Zimmerman of course, we didn't know about. Anyone
3 that provided a statement. And also Mr. Samuels,
4 I didn't interview him.

5 MR. THOMAS: That's all the questions I
6 have. Thank you.

7 A Thank you.

8 MR. BIDDLE: Your Honor, the only thing I
9 would have is the defendant's acknowledgment that
10 she referred to be included as an exhibit.

11 MR. THOMAS: I believe that's correct,
12 Your Honor. I just -- I think we'd like to make a
13 copy of that, Judge, and she can keep her
14 originals.

15 A I actually have a copy here you can have.

16 THE COURT: Anything else?

17 MR. BIDDLE: I ask that that be
18 Applicant's 1, please.

19 MR. THOMAS: No objection.

20 (Acknowledgment marked Plaintiff's Exhibit
21 No. 1 into evidence.)

22 MR. BIDDLE: Let me just make sure I have
23 everything, Your Honor. We having nothing
24 further, Your Honor.

25 THE COURT: Anything from the State?

1 MR. THOMAS: Nothing from the State, Your
2 Honor. We will rest.

3 THE COURT: I will review the record and
4 let you know.

5 MR. BIDDLE: Thank you, your honor.

6 ---End of Requested Transcript of Record--
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C-E-R-T-I-F-I-C-A-T-E

I, Margaret T. Sullivan, Court Reporter, for the
Third Judicial Circuit of the State of South Carolina,
do hereby Certify that the foregoing is a true, accurate
and complete Transcript of Record of the proceedings had
and evidence introduced on January 14, 2014, in Common
Pleas Nonjury Court, Darlington County, Darlington,
South Carolina.

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

12-10-14
DATE

Margaret T. Sullivan
COURT REPORTER

My Commission expires: 9/7/2021

Marlboro

RECEIPT FOR EXHIBITS

CASE NO. 2012 CP 34 0178 JUDGE R. Terrell Collier
PLAINTIFF: Kenneth Bugis PLTF'S ATTY: J. Marshall Bick
DEFENDANT: State DEF'D ATTY: Joshua L. Thomas
DATE TRIAL STARTED: 1.14.14 DATE TRIAL ENDED: 1.14.14
Received of Margaret Thomas Court Reporter for the above case, these exhibits:

	This space for Clerk of Court's use
1. <u>Defendant's Acknowledgement</u>	
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WILLIAM B. FUNDERBORK
CLERK OF COURT
MARLBORO COUNTY, SC

This 14th day of January 20 14. Page 1 of 1

DARLINGTON COUNTY CLERK OF COURT

By: Jennifer SandersTHE CLERK OF COURT WILL RETAIN THE WHITE COPY OF THIS RECEIPT IN CIVIL CASES.THE CLERK OF COURT WILL RETAIN THE PINK COPY OF THIS RECEIPT IN CRIMINAL CASES.



FOURTH CIRCUIT PUBLIC DEFENDER'S OFFICE
 Myesha L. Brown, Assistant Circuit Public Defender
 P.O. Box 37
 Bennettsville, South Carolina 29512
 (877) 225-2922 (toll free)
 (800) 670-6375 (fax)
Circuit4pdbrown@att.net

DEFENDANT'S ACKNOWLEDGMENT

I, **KENWOOD BRIGHT**, understand that I have been charged with Murder pursuant to Indictment No. 2008-GS-34-0820 in the Marlboro County General Sessions Court for the Fourth Judicial Circuit. A true bill of indictment occurred or about September 8, 2008. I have been provided a complete copy of my discovery documents relating. The most recent time was November 13, 2009.

I understand I have the absolute right to a jury trial in my case. Furthermore, I understand that if convicted of Murder, I will be subject to a minimum sentence of 30 years and up to a life sentence.

Additionally, my attorney has advised me that if I am convicted of Murder, I may be subject to life imprisonment without parole pursuant to the South Carolina Code 17-25-45 and a copy of said statute has been provided to me.

I understand that if convicted, I may appeal that conviction to the South Carolina Court of Appeals. I must do so within (10) days of the conviction.

I have been offered a plea by the State of South Carolina. However, I understand that if I accept a plea in this case I am waiving my right to a jury trial. The State of South Carolina has offered me a plea to Voluntary Manslaughter with a recommended sentence of 25 years.

I have met with my attorney regarding this case several times. On or about March 2, 2010, my attorney called the Marlboro County Detention Center and advised me that she recommended a plea agreement for this case.

My attorney recommends a plea for this case because of the following (1) the State has given notice that an eye-witness will testify he observed me fire a shot at Mr. Christopher Dease (2) the State has given notice that my co-defendant, Victoria Knight will testify that she observed me placing my hand towards my back shortly before Mr. Christopher Dease was shot and immediately after we drove off from the alleged incident location she observe Mr. Dease lying on the ground (3) State will offer

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testimony from a Forensic Scientist that the gun found at Victoria's Knight bedroom could have fired the bullet removed from Mr. Dease's body (4) State will offer testimony from a Forensic Scientist that the 22 caliber Flake handgun found in Victoria's Knight bedroom had DNA that matched the profile of me. (5) Victoria Knight and her mother, Michelle Knight, will offer testimony that I was in Victoria Knight's bedroom after the alleged shooting alone while Victoria Knight took a shower (6) the State will offer testimony from my brother, Dwayne Bright, that he observed me with a 22 Derringer gun the day of the alleged shooting and hours before the alleged shooting and (7) the pathologist will offer testimony which will corroborate the State's theory of this case and the eye-witness, Jacobie Kinta Samuels account of what he observed and (8) the State will introduce evidence of flight since I was apprehended nearly 33 days after the alleged shooting in the State of Virginia.

7 MRB 3/4/2010
L.B. 3-4-2010

Based on the information provided in statements 1-8 referenced above, my attorney has recommended that I accept the State's offer of a plea to Voluntary Manslaughter with a recommended sentence of 25 years.

In an effort to prepare for a trial, my attorney has met and interviewed my co-defendant Victoria Knight, met with the pathologist, Dr. Erin Presnell, visited the incident location, researched the whereabouts of the vehicle believed to have been involved in this case to determine the interior and exterior measurements, and review the full video statements of Dwayne Bright and Victoria Knight. All of the information gathered and discovered through each meeting and investigation contributes to my attorney's advice in this matter.

Despite my attorney's advice, I fully understand that the decision to accept a plea or proceed with a trial is my decision. Furthermore, I fully understand that my decision to move forward with a jury trial is my sole and exclusive decision. My decision to move forward with a jury trial is voluntarily made and with knowledge of all the evidence against me. My decision to move forward is intelligently, voluntarily, and knowingly made of all the evidence and the potential penalty that exists if I should be found guilty.

My attorney has expressed her concerns about this case and I am fully aware of her recommendation in this matter. I am fully aware of my attorney's recommendation to accept the State's offer of a plea to Voluntary Manslaughter.

Based on the above, my attorney has repeatedly advised against a jury trial.

X Kenwood Bright
Kenwood Bright
Emily M. Crayton
Witness Emily M. Crayton

† Date: 3-4-2010
Date: 03/04/10

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JULIA B. BROWN
WILLIAMS COUNTY, MISSOURI

STATE OF SOUTH CAROLINA)
COUNTY OF MARLBORO)

Kenwood Bright, #273013,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTH JUDICIAL CIRCUIT

Case No. 2012-CP-34-178

ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief filed August 28, 2012. Respondent made a timely return on or about January 17, 2013. The Court convened an evidentiary hearing into the matter on January 14, 2014, at the Darlington County Courthouse. Applicant was present at the hearing and represented by James Marshall Biddle, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, Myesha L. Brown, Esquire, also testified. The Court had before it a copy of the trial transcript, the records of the Horry County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the return. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Marlboro County Clerk of Court. In September 2008, the Marlboro County Grand Jury indicted Applicant for murder (2008-GS-34-820). Myesha

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CLERK OF COURT
MARLBORO COUNTY

Brown, Esquire, ("trial counsel") represented Applicant. On March 8-11, 2010, Applicant proceeded to trial before the Honorable William H. Seals, Jr., and a jury. The jury found Applicant guilty as indicted. Judge Seals sentenced Applicant to life without the possibility of parole.

Applicant filed a timely notice of appeal and Wanda H. Carter, Esquire ("appellate counsel"), of the Office of Appellate Defense perfected the appeal with the filing of an Anders¹ brief. The South Carolina Court of Appeals dismissed Applicant's appeal on May 9, 2012. State v. Bright, 2012-UP-288 (S.C. Ct. App. filed May 9, 2012). The Court of Appeals returned the remittitur to the circuit court on May 25, 2012.

II. ALLEGATIONS

In his application, Applicant alleged he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Trial Counsel"

- a. "Trial counsel was ineffective in representing me by failing to have a expert witness testify that the hand gun the state had wasn't the gun that kill the victim. Frazier v. State 306 S.C. 158"
- b. "Trial Counsel was ineffective in representing me by failing to request a charge of voluntary manslaughter when Victoria Knight testified that there was an argument (heart of passion) before the shot. Which would require a charge of voluntary manslaughter. Tr. pg. 250 line 3-5 Locklair v. State 341 S.C. 352"
- c. "Trial counsel was ineffective in representing me by failing to move to exclude Ira B. Parnell testimony."
- d. "Trial counsel was ineffective in representing me by failing to object to the jury charge that malice may be inferred with the use of a deadly weapon was involved when there was evidence of an argument (heat of the passion) according to Victoria Knight testimony. Tr. pg. 504 line 14-16 Drayton v. Evatt 312.

¹ Anders v. California, 386 U.S. 738 (1967)

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S.C. 4"

2. "Prosecutor Misconduct"

- a. "Prosecutor statement to the jury during closing argument that witnesses was telling the truth was improper vouching. Tr. pg. 478 line 16-17 Marshall v. Hendricks 307 F3d 36"
- b. "Prosecutor withheld a witness and a statement until the day of trial was a Brady violation"

3. "Judicial Error"

- a. "Trial judge denied the motion to exclude the hand gun that wasn't connected to the crime was abuse of discretion. Tr pg 38 line 20-pg 43 line 11 State v. Jarrell 564 S.E.2d 362"
- b. "Trial judge overruled trial counsel objection to admitting the hand gun into evidence was abuse of discretion. Tr. pg. 412 line 3-9 State v. Jarrell 564 S.E.2d 362"
- c. "Trial judge denied the motion to exclude the witness and a statement we didn't find out about until the day of trial was abuse of discretion. Tr. pg 44 line 14-pg 48 line 6 State v. Jarrell 564 S.E.2d 362"

On April 22, 2013, Applicant filed an amendment to his application adding the following allegations of ineffective assistance of counsel:

1. Ineffective assistance of trial counsel for failing to object to the solicitors closing argument containing inappropriate vouching.
2. Ineffective assistance of trial counsel for failing to investigate.
3. Ineffective assistance of appellate counsel for failing to argue the trial judge erred in ruling on Applicant's motion to exclude the handgun.

At the PCR hearing, Applicant proceeded on only the allegations of ineffective assistance of trial and appellate counsel with the exception of the allegation counsel was ineffective by failing to move to exclude the testimony of Ira B. Parnell.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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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).

A. Summary of Testimony

Applicant testified he believed appellate counsel should have argued Judge Seals erred in admitting the handgun. He also testified he never met with appellate counsel. Applicant testified trial counsel never had an expert examine the handgun to show it was not the murder weapon. He claimed he asked trial counsel about experts, and trial counsel said she would get one. Applicant further testified counsel failed to object to the solicitor's closing argument, which he claims included the solicitor's personal bias. Applicant also testified trial counsel failed to request a charge on the lesser included offense of voluntary manslaughter. However, he admitted his defense was that the State could not prove he shot the victim. He also admitted he previously rejected a plea to voluntary manslaughter. Applicant testified he felt counsel should have objected to the judge's charge regarding malice. He stated the charge about inferred malice from a deadly weapon was inappropriate because the weapon could not be proven to be the murder weapon. Applicant finally testified that he only met with trial counsel three (3) times. In the first meeting they only discussed the State's plea offer. In the second and third they merely discussed the State's evidence. He admitted trial counsel interviewed the State's witnesses, but believed she should have done a further investigation. He stated he gave her a list of fifteen (15) witnesses to interview, but she only interviewed two (2). Applicant further stated he believed a further investigation would have led to a not guilty verdict.

Trial counsel testified she was an assistant public defender at the time she was appointed to Applicant's case, but did not recall who Applicant's prior attorney was. She further testified

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she was assisted at trial by Chief Deputy Public Defender Rick Jones and Assistant Public Defender Emily Crayton. She recalled meeting many times with Applicant. She further recalled reviewing the State's evidence and discussing possible defenses and strategies. Trial counsel testified Applicant was very involved in his defense. She further testified Applicant claimed he was not the person who shot the victim. Trial counsel testified her trial strategy, based on discussions with Applicant, was to try and show that the State's evidence did not link Applicant to the crime and that the State's key witness was lying.

Trial counsel testified Applicant did not give her any witnesses to investigate. However, her investigation included visiting the crime scene, meeting with the State's witnesses, and examining the State's evidence. Trial counsel specifically recalled meeting with the State's key witness, Victoria Knight. He also recalled meeting with the pathologist. She also recalled reviewing the report from the firearms expert. Trial counsel testified she believed the expert's report helped her case because it could not positively conclude Applicant's gun was the murder weapon. She testified she did not retain her own expert to examine the gun in light of the helpfulness of the State's expert's report. She also testified she did not want to risk the possibility a second expert may opine the gun could have been the murder weapon. Trial counsel testified she discussed all of this with Applicant. She also recalled trying to exclude the gun at trial on the grounds it could not be positively identified. Trial counsel testified she made several other pre-trial motions, including: a motion to determine the voluntariness of Applicant's statement; a motion to exclude photos of the victim's injuries; a motion to reveal Victoria Knight's plea deal; a motion to exclude evidence of prior bad acts; and a motion to change venue.

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Trial counsel reviewed the transcript of the closing argument and testified she did not object to anything because she did not think the solicitor improperly bolstered the witness' credibility. She recalled part of her strategy was to attack Victoria Knight's credibility. She also recalled Judge Seals charging the jury that arguments are not evidence. Trial counsel recalled discussing a voluntary manslaughter charge with Applicant. She recalled Applicant telling her not to request a lesser included because he did not shoot anyone. She testified she could not credibly argue for a lesser included offense to the jury where she had attempted to convince them Applicant was not at the scene and did not shoot the victim. She also recalled discussing the malice charge with Applicant, and allowing the more senior attorney, Mr. Jones, to argue that issue to Judge Seals.

B. Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Id. at 442, 334 S.E.2d at 814 (citing Strickland v. Washington, 466 U.S. 668 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 546 (4th Cir. 1977)). Courts presume counsel rendered adequate assistance and made all significant decisions

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in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to appellate counsel, the applicant must prove prejudice by showing "there is a reasonable probability he would have prevailed on appeal." Anderson v. State, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003) (citations omitted).

The Court finds Applicant failed to carry his burden of proving ineffective assistance of trial counsel. Specifically, the Court finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in her representation. The Court also finds trial counsel's testimony very credible, and Applicant's not credible.

The Court finds Applicant's allegation trial counsel failed to retain an expert to be without merit. The State's expert testified hundreds of weapons could have fired the fatal bullet and he could not positively identify Applicant's gun as the murder weapon. (Trial Transcript 372:9). Trial counsel testified she did not call a second expert because the State's expert's testimony helped her case. The Court finds this to be a valid trial strategy. Dempsey v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

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363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (“[C]ounsel's decision not to call an expert witness to rebut the state's expert witness was a legitimate trial strategy.” (citing McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003))). Applicant also has not shown any prejudice from trial counsel's decision. Trial counsel thoroughly cross-examined the State's expert to drive home the point the gun could not be identified as the murder weapon. Lorenzen v. State, 376 S.C. 521, 531, 657 S.E.2d 771, 777 (2008) (citing Frasier v. State, 306 S.C. 158, 410 S.E.2d 572 (1991)). Furthermore, Applicant presented no expert testimony at the evidentiary hearing. Id. at 530, 657 S.E.2d at 776-77 (2008) (citing Dempsey, 363 S.C. at 369, 610 S.E.2d at 814).

The Court also finds without merit Applicant's allegation trial counsel should have requested a charge on voluntary manslaughter. Trial counsel testified her trial strategy was to show Applicant did not shoot the victim. In light of this trial strategy, trial counsel articulated a valid trial strategy for not seeking a voluntary manslaughter charge. Abney v. State, 408 S.C. 41, 46-47, 757 S.E.2d 544, 547 (Ct. App. 2014), reh'g denied (Apr. 24, 2014) (refusing to ask for a lesser included offense may be reasonable trial strategy). Furthermore, trial counsel was under no duty seek the lesser included offense where Applicant maintained he was not present at the crime scene and did not shoot the victim. McCray v. State, 317 S.C. 557, 560, 455 S.E.2d 686, 688 (1995). The Court also finds Applicant cannot show prejudice from the failure to request a voluntary manslaughter charge. Judge Seals indicated he would not have given the charge even if requested. (Trial Tr. 460:19-23). The Court agrees such a lesser included offense was not applicable under the facts presented at trial.

Furthermore, because the evidence did not support a charge on a lesser included offense, it also did not support the elimination of the implied malice instruction in Judge Seal's charge.

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See State v. Belcher, 385 S.C. 597, 610, 685 S.E.2d 802, 809 (2009) (“[T]he ‘use of a deadly weapon’ implied malice instruction has no place in a murder prosecution where evidence is presented that would reduce, mitigate, excuse or justify the killing.”). The Court notes trial counsel, through Mr. Jones, argued the malice charge was inappropriate in light of the evidence the victim’s dog may have been vicious. (Trial Tr. 458:13-459:1). However, Judge Seals overruled the objection and charged the jury on implied malice. Thus, trial counsel could not have been deficient in this regard because she did attempt to exclude the implied malice charge. Furthermore, the mere fact the murder weapon was not positively identified is not sufficient grounds to exclude a charge on implied malice by the use of a deadly weapon. An eyewitness testified Applicant used a gun to shoot the victim. Accordingly, trial counsel was not ineffective where no grounds existed to object to Judge Seals’ proper charge on implied malice.

The Court also finds Applicant failed to demonstrate error by trial counsel in failing to object to the solicitor’s closing argument. The Court has reviewed the portions of the argument Applicant alleges were inappropriate, and finds no inappropriate vouching. The solicitor neither “places the government’s prestige behind a witness by making explicit personal assurances of a witness’ veracity” nor “indicat[es] information not presented to the jury supports the testimony.” State v. Shuler, 344 S.C. 604, 630, 545 S.E.2d 805, 818 (2001) (citing State v. Kelly, 343 S.C. 350, 540 S.E.2d 851 (2001); 75A Am.Jur. Trial § 700 (1991)). Rather, he indicated the manner in which the witnesses testified lent credibility to their testimony. This argument is not improper because “[a] solicitor has the right to state his version of the testimony and to comment on the weight to be given such testimony.” State v. Caldwell, 300 S.C. 494, 505, 388 S.E.2d 816, 822 (1990) (citing State v. Allen, 266 S.C. 468, 224 S.E.2d 881 (1976)), overruled on other grounds.

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by State v. Evans, 371 S.C. 27, 637 S.E.2d 313 (2006). The Court agrees with trial counsel that these statements are not objectionable and finds her reasoning was sound. See Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) ("Where, as here, counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel." (citing Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992))). Furthermore, Judge Seals consistently reminded the jury that an attorney's arguments are not evidence. See State v. Dawkins, 297 S.C. 386, 393, 377 S.E.2d 298, 302 (1989) (judge's instruction sufficient to cure error from improper arguments). Therefore, trial counsel was not ineffective because the solicitor's statement was not objectionable.

The Court also finds Applicant failed to demonstrate trial counsel should have conducted a further investigation. Failure to conduct an independent investigation is not *per se* ineffective assistance of counsel, especially where an investigation would not have uncovered any helpful information. See Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998). Applicant has failed to demonstrate what counsel would have uncovered with a further investigation. He presented no testimony for other witnesses about what could have been uncovered. Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995) (to show prejudice from failure to investigate witnesses, applicant must produce the witnesses at the evidentiary hearing or otherwise introduce testimony pursuant to the rules of evidence). Accordingly, the Court finds Applicant has not shown counsel was ineffective in this regard.

Finally, The Court finds Applicant failed to meet his burden to show appellate counsel ineffective. Though Applicant argued appellate counsel should have briefed additional issues, he failed to present any testimony from appellate counsel on that issue. As such, the Court cannot

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speculate as to why certain issues were not briefed. Cf. Dempsey, 363 S.C. at 370, 610 S.E.2d at 815 (without a witness's testimony, "any finding of prejudice is merely speculative").

Regardless, the Court finds Applicant has not demonstrated he was prejudiced by appellate counsel's failure to brief the issue of Judge Seals' ruling on the suppression motion because appellate counsel filed an Anders brief. In State v. McKennedy, 348 S.C. 270, 559 S.E.2d 850 (2002), the South Carolina Supreme Court outlined the Anders procedure as follows:

"[A]ccording to Anders, the reviewing court is obligated to make a full examination of the proceedings on its own. After such an examination, if the reviewing court agrees with the attorney, it may dismiss the appeal or proceed to a decision on the merits. On the other hand, if the court disagrees with the attorney's analysis of the appeal, it must afford the defendant 'the assistance of counsel to argue the appeal.' The purpose of filing a brief under Anders is to ensure the merits of the appeal are not overlooked. The court has to conclude independently, regardless of counsel's conclusion, whether or not the appeal has merit before it can dismiss the appeal."

McKennedy, 348 S.C. at 279, 559 S.E.2d at 855. A presumption of regularity attaches to judicial proceedings, and this presumption should extend to the Court of Appeal's review under the Anders procedure. See Pringle v. State, 287 S.C. 409, 410-11, 339 S.E.2d 127, 128 (1986) (citing State v. Britt, 235 S.C. 395, 111 S.E.2d 669 (1959); State v. Jones, 211 S.C. 319, 45 S.E.2d 29 (1947); State v. Waring, 109 S.C. 52, 95 S.E. 143 (1918)). Accordingly, this Court must presume the Court of Appeals reviewed this preserved² issue before dismissing Applicant's direct appeal. See McHam v. State, 404 S.C. 465, 475, 746 S.E.2d 41, 46 (2013) ("Under the Anders procedure, an appellate court is required to review the entire record, including the complete trial transcript, for any preserved issues with potential merit." (citing State v. [redacted])).

² Trial counsel raised an objection in a pretrial motion (Trial Tr. 38:20) and renewed her objection when the State was introduced (Trial Tr. 415:11).

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Williams, 305 S.C. 116, 406 S.E.2d 357 (1991))). Furthermore, Applicant has not demonstrated Judge Seals erred in admitting the gun. See State v. Spears, 393 S.C. 466, 479, 713 S.E.2d 324, 331 (Ct. App. 2011) (admission of gun proper where State laid a proper foundation and witnesses testified the gun found near defendant was similar to the gun they witnessed him use in crime). Accordingly, Applicant has failed to demonstrate ineffectiveness of appellate counsel in this regard.

C. 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, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. CONCLUSION

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

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf.

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Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 12 day of Aug, 2014.

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R. Ferrell Cothran, Jr.
THE HONORABLE R. FERRELL COTHRAN, JR.
Presiding Judge

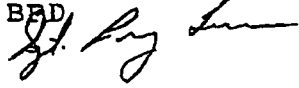
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WITNESSES

Sgt. Larry Turner

BPD



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

Defendant

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

Defendant

WITNESS:

C.C.C. PLS AND GRS.

ARREST WARRANT #:

1078698

Arrested on August 26, 2008

9/8/2008

ACTION OF GRAND JURY

True Bill

Foreman:


Grand Jury

VERDICT

Foreman:

Petit Jury

Date:

DOCKET #: 08GS34-0820

THE STATE OF SOUTH CAROLINA

County of Marlboro

COURT OF GENERAL SESSIONS

Term: September, 2008

THE STATE

vs.

Kenwood Bright

INDICTMENT FOR

0116

MURDER

16-3-10

STATE OF SOUTH CAROLINA)
County of Marlboro)

INDICTMENT #08GS34-0820

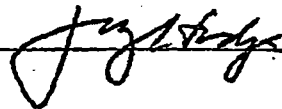
At a Court of General Sessions, convened on September 08, 2008
the Grand Jurors of Marlboro County present upon their oath:

COUNT: MURDER
16-3-10

That Kenwood Bright in the County of Marlboro on or about July 22, 2008,
feloniously, wilfully and with malice and aforethought, kill one Christopher
Antonio Dease by means of shooting victim in the chest area and that the said
Christopher Antonio Dease did die in Marlboro County as a proximate result
thereof. This incident occurred on Hudson Street in Bennettsville, SC.

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

SOLICITOR: _____



ARREST WARRANT

1-078698

STATE OF SOUTH CAROLINA
County/ ☒ Municipality of
BENNETTSVILLE

THE STATE
against

KENWOOD BRIGHT

STREET

BENNETTSVILLE SC 29512

Phone: SSN:

Sex: M Race: B Height: 6-1 Weight: 270

DL State: SC DL#: 090418415 I.D.

DOB: Agency Off#: SC0350100

Prosecuting Agency: CITY OF BENNETTSVILLE

Prosecuting Officer: DET. LARRY TURNER

Offense: MURDER Offense Code: 0116

Code/Ordinance Sec. 16-03-0010, 16-03-0020

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

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

Signature of Judge (I.S.)

Date:

A copy of this arrest warrant was delivered to
defendant KENWOOD BRIGHT on 07/22/2008

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO: JUDGE
MUNICIPAL COURT
103 E. MARKET STREET
BENNETTSVILLE, SC 29512

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
BENNETTSVILLE

AFFIDAVIT

Personally appeared before me the affiant DET. LARRY TURNER

being duly sworn deposes and says that defendant KENWOOD BRIGHT
did within this county and state on 07/22/2008 to 07/22/2008

State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of BENNETTSVILLE
in the following particulars:
DESCRIPTION OF OFFENSE: 16-03-0010, 16-03-0020 / MURDER

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

THAT ON 07-22-2008 ONE KENWOOD BRIGHT DID COMMIT THE OFFENSE OF MURDER BY SHOOTING THE VICTIM, ONE
CHRISTOPHER ANTONIO DEASE, IN THE CHEST AREA RESULTING IN THE DEATH OF THE VICTIM, SAID INCIDENT
OCCURRED ON HUDSON STREET IN BENNETTSVILLE, SC, PROBABLE CAUSE BASED ON INVESTIGATION BY THE
BENNETTSVILLE POLICE DEPARTMENT.

Signature of Affiant

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
BENNETTSVILLE

Affiant's Address: 243 EAST MAIN STREET
BENNETTSVILLE SC 29512
Affiant's Telephone: 843-479-3620

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that
on 07/22/2008 defendant KENWOOD BRIGHT

did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of BENNETTSVILLE
DESCRIPTION OF OFFENSE: MURDER / MURDER) as set forth below:

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

Sworn to and subscribed before me on 07/23/2008

Signature of Affiant (I.S.)
WALKER H. COLLINS

Judge Code: JUDGE1

ORIGINAL

Judge's Address: 103 EAST MARKET ST. / PO BOX 1283
BENNETTSVILLE SC 29512
Judge's Telephone: 843-479-1582
Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

Case: 1-078698

618 THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS
PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Kenwood Bright, Appellant.

Appeal from Marlboro County
William H. Seals, Jr., Circuit Court Judge

Unpublished Opinion No. 2012-UP-288
Submitted April 2, 2012 - Filed May 9, 2012

APPEAL DISMISSED

Deputy Chief Appellate Defender Wanda H. Carter, of
Columbia, and Kenwood Bright, pro se, for Appellant.

Attorney General Alan Wilson, Chief Deputy Attorney General
John W. McIntosh, Assistant Deputy Attorney General Salley
W. Elliott, and Assistant Deputy Attorney General Donald J.
Zelenka, all of Columbia; and Solicitor William B. Rogers, Jr.,
of Bennettsville, for Respondent.

PER CURIAM: Kenwood Bright appeals his conviction of murder, arguing the trial court erred in allowing the State to argue the principle of flight during closing arguments because Bright was unaware at the time he left the scene of the incident that the victim had died from his wounds. Additionally, Bright filed a pro se brief. After a thorough review of the record and all briefs pursuant to Anders v. California, 386 U.S. 738 (1967), and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss the appeal and grant counsel's motion to be relieved.**[1]**

APPEAL DISMISSED.

FEW, C.J., and HUFF and SHORT, JJ., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.