

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

L. Casey Manning, Circuit Court Judge

RECEIVED

MAY - 6 2015

S.C. Supreme Court

EVETTE FRANKLIN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001948

APPENDIX

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF RICHLAND) COURT OF GENERAL SESSIONS
3) 2010-GS-40-2363

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

9 July 3, 2013
10 Columbia, South Carolina

11
12
13 B E F O R E:

14 THE HONORABLE DEANDREA G. BENJAMIN, JUDGE.
15

16
17 A P P E A R A N C E S:

18 DOLLY JUSTICE GARFIELD, ASSISTANT SOLICITOR
19 Attorney for the Plaintiff

20 MARK A. SAWYER, JR., ASSISTANT PUBLIC DEFENDER
21 JOANNA K. DELANY, ASSISTANT PUBLIC DEFENDER
22 Attorneys for the Defendant
23
24

25 DEBORAH M. McCURDY, RPR
Official Court Reporter

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

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

E X H I B I T S

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

JULY 3, 2013

MS. GARFIELD: Evette Franklin.

THE CLERK: Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

THE DEFENDANT: Yes, ma'am.

MS. GARFIELD: Before you is Evette Lavae Franklin. He is represented by his attorneys, Mr. Mark Sawyer and Joanna Delany, of the Public Defender's Office.

Your Honor, Mr. Franklin is entering a guilty plea today as charged to murder. The State and the Defense have entered into negotiations for a negotiated sentence of 30 years.

Your Honor, law enforcement and the victim have been consulted about this. Law enforcement Investigator Josh Mauldin, with the Sheriff's Department now, but from the Criminal Justice Academy, could not be here this morning due to a sick child; however, he wanted to put on the record he had wanted to be here.

There are several members in the courtroom from the victim's family, just for the record, to include: Mary Golson, his mother; Pamela Golson, his sister; Beyonce Smith, the mother of his son;

1 Katanya Starr, a family friend; and Gilda Williams,
2 his aunt; also Lakisha Boyd, a mother of three of
3 his children.

4 THE COURT: All right. And I'll give them --
5 if they would like to speak, I'll give them an
6 opportunity to speak at the appropriate time.

7 MS. GARFIELD: Thank you.

8 THE COURT: All right. Is that correct,
9 Mr. Sawyer, Ms. Delany?

10 MS. DELANY: Yes, Your Honor.

11 MR. SAWYER: Yes, Your Honor.

12 THE COURT: And you all represent Evette
13 Franklin?

14 MS. DELANY: Yes, ma'am.

15 THE COURT: And have you explained to your
16 client the charges contained in the indictment, the
17 possible punishment, and his constitutional rights?

18 MS. DELANY: I have, Your Honor.

19 THE COURT: And how does he wish to plead?

20 MS. DELANY: Guilty.

21 THE COURT: And do you agree with his decision
22 to plead guilty?

23 MS. DELANY: I do.

24 THE COURT: And you are Evette Franklin?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: And, sir, you are pleading guilty
2 to one count of murder, is that correct?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: And how old are you, sir?

5 THE DEFENDANT: Thirty.

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

7 THE DEFENDANT: I have a GED.

8 THE COURT: And, sir, how long have you been
9 in jail?

10 THE DEFENDANT: Thirty-seven months.

11 THE COURT: And are you married?

12 THE DEFENDANT: No, ma'am.

13 THE COURT: Do you have children?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Their ages?

16 THE DEFENDANT: My son will be eight the 27th
17 of this month. My daughter will be nine the
18 21st of this month.

19 THE COURT: All right. And who do you
20 normally -- I know you have been in jail for 37
21 months, but who do you live with?

22 THE DEFENDANT: My lady. She stays here out
23 in Irmo, South Carolina.

24 THE COURT: And, sir, are you on probation or
25 parole?

1 THE DEFENDANT: No, ma'am.

2 THE COURT: And within the last 24 hours have
3 you taken any medication, drugs, or alcohol?

4 THE DEFENDANT: No, ma'am.

5 THE COURT: All right. Listen closely to the
6 Solicitor as she states the facts.

7 MS. GARFIELD: Thank you, Your Honor. This
8 incident occurred May 4th, 2010, at an
9 establishment called the Exclusive Bar and Grill,
10 which is located at 1004 Zimalcrest Drive in
11 Richland County. I will unfold to you how these
12 events were relayed to law enforcement and how they
13 conducted their investigation.

14 On this particular evening, law enforcement
15 was called to this location due to a shooting that
16 had occurred by at the time an unknown black male
17 and the victim, who would later be identified as
18 Thomas Golson. He was found in the establishment.
19 He had been shot approximately eight times.

20 There were several witnesses to this incident,
21 one being a bartender. She gives a description of
22 the Defendant, gives a clothing description, as
23 well as a particular hat, a green hat with white
24 writing with an A on it.

25 There was also an individual outside of the

1 establishment who was on a motorcycle who had been
2 talking with the victim at the time of the
3 shooting. She gives the same description.

4 And a third patron inside the establishment
5 that saw it and later called law enforcement and
6 gives the same description as well.

7 At that time they had no leads, and law
8 enforcement began to look at other businesses
9 surrounding Exclusive Bar and Grill, one which
10 included a BP gas station which was right beside
11 it.

12 They went to the BP gas station and obtained
13 any video footage they had hours leading up to the
14 shooting.

15 When viewing that video, they were able to
16 find the Defendant coming inside -- that matched
17 the description that had been given -- to come
18 inside to purchase alcohol. He was accompanied by
19 someone that appeared to be wearing a navy
20 recruiting uniform.

21 They called -- law enforcement called the Navy
22 Recruitment Office here in Richland County to
23 inquire if anyone had been at that BP station the
24 night before, and also gave a description of the
25 car that was seen in the video.

1 The person that answered the phone, who
2 identified himself as Stacy Legette, informed law
3 enforcement at the time that that person they saw
4 in the video was himself.

5 Mr. Legette, after some time, became very
6 cooperative with law enforcement and did give
7 information to law enforcement that the person that
8 was with him wearing the clothing that had been
9 described as being the shooter was Evette Franklin.

10 That led them also to two individuals that
11 were known as the Defendant's friends, Kevin
12 Richardson and Torice Richardson, who are brothers,
13 who indicated they had been with the Defendant
14 prior to the shooting, that he had left. He then
15 had come back and explained to them that he had
16 gotten -- used expletive words, Your Honor -- but
17 had gotten someone, paraphrased, at the
18 establishment.

19 What we later found out was that while they
20 were at the BP station there was an individual by
21 the name of Roman Caldwell. And Mr. Caldwell was
22 known as the CD man, the CD man who sold bootleg
23 CDs out of the back of his car.

24 The Defendant had approached the CD man about
25 purchasing a CD. He only wanted to purchase one

1 CD; however, the deal was the CDs were three for
2 \$10.

3 The two individuals went back and forth. And
4 an innocent bystander, who happened to be Thomas
5 Golson, was witnessing this exchange between the CD
6 man and the Defendant and began to laugh at the
7 Defendant. He thought this bartering back and
8 forth was funny.

9 This angered the Defendant, who later did
10 confess, as well as the individuals who had left
11 confessed that he had had a large amount of alcohol
12 and perhaps marijuana to smoke and he was high,
13 then got mad and wanted to take care of business.
14 At that point he armed himself with a gun and went
15 back to the Exclusive Bar and Grill.

16 Later the Defendant gives a statement
17 confessing to his role in this. He says he is
18 going to the bar to confront the CD man, who is now
19 at the bar.

20 The first person he comes in contact, however,
21 is Thomas Golson. At that point he produces a gun
22 and says -- again I am going to paraphrase, leave
23 the expletives out, but essentially says, you know:
24 How do you like this now? And begins to shoot at
25 Thomas Golson.

1 Mr. Golson tries to flee from him and goes to
2 the bar, at which time the Defendant follows him
3 into the bar, continuing to shoot him, and then
4 does flee.

5 Judge, there was not a good photograph able to
6 be found of the Defendant. He had changed
7 appearances somewhat. The photographic line-up did
8 provide no identification made by any eyewitnesses.

9 Once he was apprehended, physical line-ups
10 were done. Several members of the Richland County
11 Sheriff's Department stood in as individuals with
12 the Defendant and both of these physical line-ups
13 were done to all three eyewitnesses, the lady on
14 the motorcycle, the bartender, and the patron, and
15 all three individuals did pick the Defendant out as
16 being the shooter.

17 The Defendant was Mirandized and waived his
18 rights. And he did give a statement confessing to
19 shooting Thomas Golson. However, his version is
20 that Thomas Golson began to fight him first. So he
21 tried to put out a self-defense claim out there.
22 However, that is undisputed -- or is disputed,
23 excuse me, by all the other eyewitnesses that
24 Thomas Golson did not try to defend himself or
25 attack the Defendant whatsoever.

1 Later, Kevin Richardson, who was the
2 Defendant's friend, tells law enforcement that the
3 gun that was used had been sold due to a business
4 deal set up by the Defendant. Kevin Richardson was
5 involved in the selling of the gun. And he did go
6 back and actually purchase the gun back from the
7 seller and turn it in to law enforcement.

8 A ballistics test and gun comparisons were
9 done, and the bullet taken from the autopsy
10 compared to the gun that Kevin Richardson produced
11 was a match.

12 I believe that is the extent of the facts,
13 Your Honor. Do you wish to hear from the victims
14 at this time?

15 THE COURT: After I accept the plea, and then
16 I'll come back once when we get his prior record.

17 Sir, do you agree with the facts as stated by
18 the Solicitor?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: And is that what you are pleading
21 guilty to?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: You understand that murder carries
24 between 30 years and life in prison?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: You understand that? Knowing
2 that, do you still wish to plead guilty?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: And, sir, you understand that
5 murder is classified as a most serious offense,
6 meaning, sir, under our two-strike law, if you were
7 to get another strike, that you would be facing
8 life without parole. Do you understand that, sir?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Also, sir, you understand that it
11 is classified as a violent offense, which means
12 that any sentence that you get, that you will have
13 to serve 85 percent of that sentence. Do you
14 understand that, sir?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Knowing that, do you still wish to
17 plead guilty, sir?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: All right, sir. Do you understand
20 that you have the right to a jury trial? At a jury
21 trial the State would have to prove you guilty
22 beyond a reasonable doubt. You and your attorneys
23 would have the opportunity to cross-examine any
24 witnesses that they would present. You, yourself,
25 would not have to testify. The burden is solely

1 upon the State to prove you guilty beyond a
2 reasonable doubt.

3 Sir, if you gave any incriminating statements
4 you'd have the opportunity to challenge the
5 admission of those statements.

6 Sir, if you had any defenses that you wish to
7 advance you would have the opportunity, you and
8 your attorney, to put forward those defenses.

9 Sir, once again, you would not have to
10 testify. The burden would be solely upon the State
11 to prove you guilty beyond a reasonable doubt.

12 But, sir, when you plead guilty you give up
13 those very important constitutional rights and also
14 your right to a jury trial. Is that what you wish
15 to do here today?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: And, sir, you have been
18 represented by Mr. Sawyer and Ms. Delany. Are you
19 satisfied with their representation?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Have you had adequate time to
22 speak with them?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Do you need any more time to speak
25 with them?

1 THE DEFENDANT: No, ma'am.

2 THE COURT: And have they gone over everything
3 with you regarding your case, answered all of your
4 questions prior to today?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: And are you satisfied with their
7 services?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Do you need -- and I think I asked
10 this -- do you need any more time to speak with
11 them?

12 THE DEFENDANT: No, ma'am.

13 THE COURT: All right. And, sir, I have your
14 affidavit of rights form that you have signed here
15 indicating that your attorneys have gone over with
16 you everything that I will ask you today. Also
17 gone over with you your rights. They have gone
18 over with you the life without parole statute.
19 They have also gone over with you your right as to
20 the plea being a violent-most serious offense. Is
21 that correct?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: All right. And is this your
24 signature on the advisement of rights form?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: All right. And everything that
2 you have signed in here is truthful, is that
3 correct?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: All right. And, sir, you have --
6 are you completely satisfied with their services?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: All right. And you, sir, have --
9 it is my understanding this is a negotiated plea?

10 MS. GARFIELD: Yes, ma'am.

11 THE COURT: For 30 years, is that correct?

12 MS. GARFIELD: Yes, ma'am.

13 THE COURT: Is that correct, Ms. Delany?

14 MS. DELANY: It is, Your Honor.

15 THE COURT: Is that correct, Mr. Franklin?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: All right. And you understand,
18 sir, I do not have to follow that negotiation. If
19 I am not inclined to do so, I will inform your
20 attorney and give you an opportunity to withdraw
21 your plea if I am not going to follow that
22 recommendation. Do you understand that, sir?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: All right. Knowing all of that,
25 do you still wish to plead guilty?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Is anyone forcing you to plead
3 guilty today?

4 THE DEFENDANT: No, ma'am.

5 THE COURT: And are you pleading guilty of
6 your own free will?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: And are you pleading guilty
9 because you are guilty of murder? Is that correct?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: And, sir, have you understood my
12 questions?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Have you answered them truthfully?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Has anyone suggested to you how to
17 answer my questions?

18 THE DEFENDANT: No, ma'am.

19 THE COURT: And the answers that you have
20 given me today have been your answers, is that
21 correct?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: All right. And, sir, you
24 understand you have the right to appeal the guilty
25 plea and sentence of this Court within ten days of

1 today's date? Do you understand that, sir?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: If you could not afford an
4 attorney for that appeal, an attorney would be
5 appointed for you. Do you understand, sir?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Knowing all of that, do you wish
8 for me to accept your plea of guilty to this charge
9 today?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: All right. I find that there is a
12 substantial factual basis for the plea. I also
13 find that the Defendant's decision to plead guilty
14 is freely, voluntarily, knowingly, and
15 intelligently made. That he is represented by
16 counsel to whom he has informed me he is completely
17 satisfied with. I will accept your plea.

18 His prior record?

19 MS. GARFIELD: He has a 2001 conviction for
20 ABHAN, unlawful carrying of a weapon; 2002,
21 discharging firearms into a dwelling; 2003, two
22 counts of disorderly conduct, assault on police
23 officer while resisting arrest, public drunk, and
24 disorderly conduct; and in 2005, ABHAN.

25 THE COURT: All right. And I will be glad to

1 hear from the victims at this time.

2 MS. GOLSON: Good afternoon, Your Honor. I'm
3 Pamela Golson, Thomas Golson's sister.

4 THE COURT: Okay. One second. Is there a
5 microphone up there? I am going to get you to
6 speak up some for me, ma'am.

7 MS. GOLSON: I'm Pamela Golson, Thomas
8 Golson's sister, the victim.

9 And while we appreciate his honesty and
10 admitting his guilt to this crime, to be completely
11 honest with you, I don't feel like that is justice
12 no matter what decision will be made here today.
13 He will never come back, he will never be able to,
14 you know, raise his children, he will never be able
15 to go to family functions. He was very much so a
16 family-oriented person.

17 He took, you know, a part of our family that
18 we can never have back. And until you, you know,
19 actually walk that walk yourself, you will just
20 never understand that. No matter what happens, he
21 will just never be back.

22 THE COURT: Yes, ma'am, I understand. Thank
23 you.

24 MS. BOYD: Hi. I'm Lakisha Boyd. I have
25 three of Thomas's children. And I feel the same

1 way as Pamela. I don't feel like this is justice,
2 but same way, it will never bring him back.

3 My youngest son just had a birthday yesterday,
4 Terrance Green. And I was actually pregnant with
5 my youngest child when Thomas died. So he has
6 seven children in all, and he will never be able to
7 do anything with all seven of his children. So
8 that is the hardest part, Father's Day and
9 birthdays without their father, over something
10 senseless.

11 THE COURT: Thank you.

12 MS. SMITH: My name is Beyonce Smith. I am
13 also the mother of Thomas's son, Jeremiah. He is
14 three at the time. Jeremiah was four months when
15 he was shot and presently passed away. We were
16 together.

17 And as for me speaking, I want to say that of
18 course what he did, he took a major part of my life
19 and my child's life. And to say that he will
20 never, ever be able to experience having a father
21 and being able to say that he knows his father.

22 Me and Thomas, we waited seven years of a life
23 of military to actually have a child. And that was
24 the one thing that he wanted most in his life was
25 for us to have a family. And he took that away

1 from him over some CD, over his pride.

2 And I do feel like 30 years is not enough and
3 that he should never walk the street if he could
4 shoot somebody eight times over something
5 senseless, that he should never get out. That is
6 just how I feel.

7 THE COURT: Thank you, ma'am.

8 MS. SMITH: Thank you.

9 THE COURT: All right. And to the victim's
10 family, I am -- I just want you all to know that I
11 am sorry for your loss. I know that it is
12 difficult coming here and having to listen --
13 because it is difficult for the Solicitor -- it is
14 difficult coming in here and having to hear this
15 and relive this. And I understand everything that
16 you all have said. And I am sorry for your loss.
17 And I know this is a difficult time. And may God
18 bless you.

19 And I will be glad to at this point hear from
20 Ms. Delany or Mr. Sawyer.

21 MS. DELANY: Thank you, Your Honor. May it
22 please the Court? As my client told you, he has
23 been in jail for a substantial period of time. He
24 has been in for 1147 days. He went in when he was
25 27. He is now 30.

1 And he does have two children as well. He is
2 estranged from their mother. He was released from
3 prison on his 2004 charge, got out, tried to
4 reunite with her and that didn't happen. So he has
5 not seen his children in a long time.

6 I had him seen by Dr. McKee --

7 THE COURT REPORTER: I'm sorry, I didn't hear
8 you.

9 MS. DELANY: I had him seen by Dr. Geoffrey
10 McKee. One of the things Dr. McKee and I talked
11 about, which is what a tragedy this was. You know,
12 the victims have lost their family member and that
13 is just the loss of a life.

14 But, you know, Mr. Franklin is very
15 intelligent, very, the way Dr. McKee described him,
16 as bright, sociable, and verbal. And he is -- and
17 it is just such a waste of his life as well.

18 Your Honor, he had -- he had an unstable
19 childhood. His mother had an alcohol issue. His
20 father was married to someone else. When he would
21 see Mr. Franklin, he was living in a house with
22 about nine other people. As a child he was exposed
23 to guns, exposed to drugs, violence when he was
24 very young.

25 During the time of the event, he was dependent

1 on alcohol, cocaine, and amphetamines, according to
2 Dr. McKee.

3 I know that that is not an excuse, Your Honor,
4 but I do think that contributed to the actions that
5 led up to this.

6 He had, despite all that, had done fairly well
7 over period of time. He was in ROTC for several
8 years. He wanted to join the Marines. He got kind
9 of sidetracked. He had some things happen.

10 He was working when this occurred. Been hired
11 at Otis Spunkmeyer through a temp agency. They
12 actually wanted to hire him on full-time because he
13 was dependable, he showed up, he did what he needed
14 to do, and they liked him.

15 He -- Judge, I know that he wants to address
16 the Court as well. And I will just ask you to
17 accept the negotiated sentence.

18 THE COURT: All right. I will be glad to hear
19 from you.

20 THE DEFENDANT: I just wanted to say something
21 to the family of the victim.

22 THE COURT: Yes, sir. They are not going to
23 let you turn around.

24 THE DEFENDANT: With all due respect to those
25 to Mr. Thomas Golson and the Golson family, I,

1 Evette Franklin, deeply and sincerely apologize for
2 my uncivilized actions in causing such loss, grief,
3 and turmoil on your family since May 4th, 2010.

4 I can't imagine how you may feel or think of
5 me, but I know it can't be of a father. I know I'm
6 not worthy of your forgiveness, but due to me
7 admitting my wrong before you and the courts and
8 ready to accept my just punishment, I pray you have
9 closure and justice and some day find it in your
10 heart to forgive me.

11 Ms. Golson, from the first day I looked into
12 your eyes during my preliminary hearing I could see
13 your hurt and expression of wanting to know why. I
14 have been praying especially for you that God will
15 give you comfort and help you find peace.

16 I have also been trying for the wellbeing and
17 upbringing of each of Mr. Thomas Golson's children
18 and their mother to have the proper support needed
19 to raise them.

20 For the past three years I have thought
21 limitlessly about my criminal actions in this case
22 and I have realized there is no way to justify any
23 of them. I was 100 percent wrong.

24 But, once again, I apologize to you,
25 Ms. Golson, Mr. Thomas's children, their mothers,

1 and the rest of the Golson family. I beg your
2 forgiveness.

3 THE COURT: All right. Thank you.

4 Anything else from the State?

5 MS. GARFIELD: No, ma'am.

6 THE COURT: All right. On Indictment Number
7 2010-GS-40-2363, sir, you will be sentenced to the
8 State Department of Corrections for 30 years. You
9 will be given credit for the 37 months that you
10 have served.

11 Sir, if you are at some point able to be
12 released from the Department of Corrections, it is
13 my hope that you will do something -- as they
14 stated earlier, there is nothing that you can do
15 to -- and I don't want to -- but there is nothing
16 that you can do to bring Mr. Golson back, but
17 hopefully that you will do something to make your
18 life productive once and if you are released, and
19 that you do understand that as a result of your
20 actions that not only is Mr. Golson's children
21 going to be raised without a father, your children
22 are going to be raised without a father, which for
23 me is a -- sitting here in this position and got
24 nine kids who are going to be raised without a
25 father, which is a vicious, vicious cycle.

1 To the family, once again, I do -- my thoughts
2 and prayers are with you during this difficult
3 time.

4 And to you, Mr. Franklin, I hope that you will
5 learn from this lesson.

6 MS. DELANY: Thank you.

7 MR. SAWYER: Thank you, Your Honor.

8 MS. GARFIELD: Thank you, Judge.

9 THE COURT: Thank you.

10 (WHEREUPON, the proceedings were concluded.)
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(END OF TRANSCRIPT)

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

I, Deborah M. McCurdy, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 3rd day of July, 2013.

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

January 3, 2014

Deborah M. McCurdy, RPR
Fifth Circuit Court Reporter

\$	appearances [1] 10/7	20/1
\$10 [1] 9/2	appeared [1] 7/19	CDs [2] 8/23 9/1
1	appointed [1] 17/5	CERTIFICATE [1] 26/1
100 percent [1] 23/23	appreciate [1] 18/9	certify [2] 26/10 26/16
1004 [1] 6/10	apprehended [1] 10/9	challenge [1] 13/4
1147 [1] 20/24	approached [1] 8/24	changed [1] 10/6
2	appropriate [1] 4/6	charge [2] 17/8 21/3
2001 [1] 17/19	approximately [1] 6/19	charged [1] 3/12
2002 [1] 17/20	armed [1] 9/14	charges [1] 4/16
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FORM 5

STATE OF SOUTH CAROLINA)

County of Richland)Evette Franklin #284514)

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

v.)

State of South Carolina)

2013CP4005965
IN THE COURT OF COMMON PLEAS

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 the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Correctional Institution
2. Name and location of Court which imposed sentence Richland County Court of General Sessions
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2010-GS-40-02363 (Murder)
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) July 3, 2013 (30 years)
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty Guilty plea
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- 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. September 11, 2013
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) 6th. & 14th. Amendment Violation
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Involuntary Guilty Plea
- (b) Ineffective Assistant of Counsel
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

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

- i. N/A
- 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?

N/A

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

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

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

- i. N/A
- ii. _____
- iii. _____

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

(a) First PCR Application
 (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? N/A
 (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?
N/A

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. Joanna Delany (Aichland County Public Defender)
P.O. Box 192
 ii. Columbia, SC 29202
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. Guilty plea
 ii. Sentencing
 iii. _____

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

Reversed and Remand for a New Trial

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

NO

STATE OF SOUTH CAROLINA)

County of Dorchester)

VERIFICATION

I, Erette Franklin, 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.

Erette Franklin

SWORN to and subscribed before me this 18th
day of September, 2013.

Ludrean Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

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

I, Everette Franklin, 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.

Everett Franklin
Applicant

SWORN or affirmed to and subscribed before me this
18th day of September, 2013.

Ludine Bryant
Notary Public

My Commission Expires: May 26, 2020

2013 OCT -1 PM 1:31
 JEAN-LOUIS BOUTIN
 C.L.P. & G.S.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Evette Franklin, #284514,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

2013-CP-40-5965

**RETURN AND MOTION FOR A MORE
DEFINITE STATEMENT**

Respondent, making its Return to the application for post-conviction relief filed October 1, 2013, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was indicted during the July 2010 term of the Richland County Grand Jury for Murder (2010-GS-40-2363). Applicant was represented by Joanna K. Delany, Esquire. On July 3, 2013, Applicant appeared before the Honorable DeAndrea G. Benjamin, where he pled guilty as indicted to Murder. Judge Benjamin sentenced Applicant to thirty years imprisonment pursuant to negotiations.

Applicant filed a notice of appeal and an appeal was perfected. The South Carolina Court of Appeals dismissed the appeal for failure to provide sufficient explanation as required by Rule 203(d)(1)(B)(iv), SCACR. The Remitter was issued on September 30, 2013.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject convictions, Applicant's appellate records, Applicant's records

from the South Carolina Department of Corrections, and guilty plea transcript¹. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Involuntary Guilty Plea; and
2. Ineffective Assistance of Counsel

Any claims not specifically enumerated in the application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

Respondent submits that Applicant's allegation that his guilty plea was involuntary is without merit. In post-conviction relief cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be

¹ The guilty plea transcript has been ordered and will be forwarded for incorporation into this Return upon receipt.

considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Respondent submits that the record fully supports the knowing and voluntary nature of Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. 'Sharper v. State, 305 S.E.2d 247.

IV.

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, 334 S.E.2d 813 (1985). Where the Applicant alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 334 S.E.2d 813.

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

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

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

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).

V.

In his application, Applicant alleges that he is being held in custody unlawfully based on "involuntary guilty plea" and "ineffective assistance of counsel." Applicant has failed to set forth any "facts which support each ground" or to explain with any specificity whatsoever, the actual scenarios/facts upon which these supposed claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added).

The Respondent submits that it would be unfair to wait until the day of the hearing to finalize the specificity of plea counsel's supposed errors. The Respondent and plea counsel are entitled to adequately prepare for the hearing; to withhold the specific grounds and amend only on the day of the hearing prejudices the Respondent and plea counsel. The Respondent

respectfully submits that it is incumbent on the Applicant to amend the application and provide specifics so that adequate preparation is possible. The Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the Respondent. Rule 15(a), SCRCF.

VI.

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

VII.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

By: Megan E. Harrigan
ATTORNEYS FOR RESPONDENT

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

Dec. 16, 2013

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

2013-CP-40-5965

EVETTE FRANKLIN, #284514

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 and Motion for a More Definite Statement** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Kristy G. Goldberg, Esquire
Law Office of Kristy Goldberg, LLC
1720 Main Street, Suite 301
Columbia, South Carolina 29201

DATED this 16th day of December, 2013.


Kelly Oppenheimer, Legal Assistant
For Respondent



ALAN WILSON
ATTORNEY GENERAL

April 28, 2014

The Honorable Jeanette W. McBride
Clerk of Court, Richland County
1701 Main Street
Post Office Box 2766
Columbia, South Carolina 29202

RICHLAND COUNTY
FILED
2014 MAY -2 AM 10:49
JEANETTE W. MCBRIDE
C.C.P. & G.S.

Re: Evette Franklin, #284514 v. State of South Carolina
2013-CP-40-5965

Dear Ms. McBride:

Enclosed please find a copy of the Transcript in the above mentioned case. Please incorporate this document with the appropriate Return that our office previously filed.

Sincerely,

Megan E. Harrigan
Assistant Attorney General

MEH/ko
Enclosure

cc: Kristy G. Goldberg, Esquire

SCANNED

STATE OF SOUTH CAROLINA)

GENERAL SESSIONS

County of Richland)

MOTION

STATE OF SOUTH CAROLINA,)

vs.)

TRANSCRIPT OF RECORD

YVETTE FRANKLIN,)

DEFENDANT,)

2011 MAY -2 AM 10:19
 YVETTE FRANKLIN
 C.C.P. & G.S.

June 17, 2013
 Columbia, South Carolina

BEFORE:

THE HONORABLE ROBERT E. HOOD, JUDGE.

APPEARANCES:

MARGARET FENT, ASSISTANT SOLICITOR
 Attorney for the State

JOANNA DELANEY, ASSISTANT PUBLIC DEFENDER
 Attorney for the Defendant

KAREN AMBROZIAK
 Official Court Reporter

C O N T E N T S

INDEX OF EXHIBITS:

(There were no exhibits introduced.)

INDEX OF WITNESSES:

(There were no witnesses called.)

1 THE COURT: Okay. We're going to have to clear the
2 courtroom on this, so do you all want to go ahead take him
3 back or how do you want to do that?

4 THE DEPUTY: I'll take him back.

5 THE COURT: Okay.

6 MS. FENT: Your Honor, I was just going to put on the
7 record in regard to Yvette Franklin is he is charged with
8 murder. It is my understanding that we are set for trial
9 in the beginning of August, so we wanted to resolve this
10 as a motion to relieve counsel.

11 We just wanted to resolve it as soon as possible
12 because I believe we have to fly back -- we are -- an
13 eyewitness in the case from some type of military vessel
14 out in the ocean, so I will leave the courtroom --

15 THE COURT: Okay.

16 MS. FENT: -- and leave the motion to you all.

17 THE COURT: Thank you, Ms. Fent.

18 So it is a murder charge, and it's on the docket for
19 August. He has nothing else pending?

20 MS. FENT: Correct.

21 THE COURT: Okay. Thank you. Just one second.

22 (Pause.)

23 Okay. Mr. Franklin, please raise your right hand.

24 YVETTE FRANKLIN, after being duly
25 sworn, testified as follows:

1 THE COURT: Okay. Here is -- here is how this is
2 going to work, okay. Ms. Delaney has informed me via
3 motion before the court that you would like her to be
4 relieved as your counsel; is that correct?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Okay. In the interest of protecting your
7 attorney/client privilege with her and your constitutional
8 rights, this hearing is held what we call in camera which
9 means it's held in here. I've cleared the courtroom.

10 At this time, what I'm going to do is have anybody
11 that's in the courtroom put their name on the record, and
12 they're going to be sworn that they will not disclose what
13 happens in here to anybody. Do you understand me?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you understand why I'm doing that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you understand that I'm doing that
18 solely for your protection and the protection of the
19 proceedings that surround your case?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Okay. All right.
22 One at a time, state your name.

23 THE BAILIFF: Jim Coward.

24 THE DEPUTY: Joseph Kimber.

25 THE CLERK: Elizabeth Hedgeco.

1 THE CLERK: Rebecca Stevens.

2 THE DEPUTY: Joe Gravelyn.

3 THE BAILIFF: Frank Whittle.

4 THE COURT: Okay. You all are all hereby admonished
5 and ordered that you are not allowed to discuss what
6 happens in here with anybody in any way, shape, or form.

7 Okay, Ms. Delaney. I'll be happy to hear from you.

8 MS. DELANEY: Thank you, Your Honor. This is a case
9 that Mr. Franklin -- I'm his fourth public defender at
10 this point. Through no fault of his own, his three prior
11 attorneys left our office to take other jobs.

12 His second prior attorney, Mr. May, had asked me to
13 second seat him on this case. So I've been involved with
14 Mr. Franklin's case since either 2011 or 2012.

15 He had Ms. Thomas. He had Mr. May; then he had
16 Mr. Newton. When Mr. Newton left our office,
17 Mr. Strickler assigned the case to me. That was, I
18 believe, in April, Your Honor.

19 THE COURT: April of this year?

20 MS. DELANEY: Yes, sir. Ms. Garfield, who is the
21 solicitor on the case -- Ms. Fent is standing in for her
22 because she is out of the country -- she had contacted me
23 and wanted to call the case to trial in June. That was,
24 obviously, too soon for me.

25 We had a meeting with Judge Benjamin. Judge Benjamin

1 scheduled the trial for the week of August 5th.

2 Mr. Franklin, the last time that I saw him -- well, I've
3 seen him -- I was looking back through my notes. I've
4 seen him about six times.

5 I believe the last time that I tried to see him was
6 at the very end of May. I believe it was May 31st, and he
7 -- I was informed by the corrections officer that he did
8 not want to meet with me and would not come out of his
9 cell. Then a few days later, I received a letter from him
10 asking to be relieved, so that's why we are here today.

11 THE COURT: Okay. And help he with the status of the
12 case. Do you have the discovery materials?

13 MS. DELANEY: We do, Your Honor.

14 THE COURT: And have you been able to review those --

15 MS. DELANEY: Yes.

16 THE COURT: -- with him?

17 MS. DELANEY: Yes, sir.

18 THE COURT: Okay. And is it a whodunit case? Is it
19 an eyewitness case? Is it a photo lineup? I mean, I
20 don't need you to give me any strategy or anything, but
21 just help me with kind of the gist. I mean, is it a
22 confession case? I mean...

23 MS. DELANEY: It's several of those things, Your
24 Honor. It is a shooting at a club. There are numerous
25 videos. The ones from about 30 minutes before the State

1 is saying he was on the scene, they are fairly clear
2 videos.

3 There's some witnesses saying the guy that was
4 wearing this clothing that was in the gas station, came
5 back to the club 30 minutes later and shot this man.
6 There are several eyewitnesses. There is a confession.
7 There are -- he's implicated by several of his friends as
8 to what he said before and after the shooting. It -- you
9 know, my discussions with Mr. Franklin are -- we have a
10 couple of defenses.

11 I don't feel we have complete defenses. I think that
12 we would have issues of -- meeting a couple of the
13 elements of self-defense, particularly bringing about the
14 difficulty and the reasonableness of his actions.

15 The discovery I have shows that the victim was
16 unarmed and, you know, that I think could be a problem for
17 us. Also, there's some -- in terms of voluntary, I think
18 that we would probably be able to get a voluntary charge.
19 I don't think that we would prevail on that at trial.

20 We do have a possible identity issue, in my opinion.
21 The police did three lineups with a couple of the
22 eyewitnesses before they could pick him out. They did one
23 photo lineup; witnesses couldn't pick him out. They did
24 another photo lineup. They still couldn't pick him out.
25 Then they did a show up, and then they did an in-person

1 lineup with the defendant and five police officers. At
2 that point, after being shown his picture twice, they
3 finally picked him out.

4 So I believe we have some good identity issues on
5 that, but he confessed to being there and doing it. Then
6 you've got Ms. Branham's from earlier in the night
7 implicating him. So, you know, I don't think that we have
8 a complete defense in terms of our odds at trial. I
9 wouldn't call them good.

10 He had an offer of 30. That's, obviously, not what I
11 would like for him, but that's not within my power to get
12 an offer. That's what Ms. Garfield has been set out
13 for --

14 THE COURT: Is that 30 on murder or 30 on voluntary?

15 MS. DELANEY: Thirty on murder, Your Honor.

16 THE COURT: Okay. All right.

17 What do you want to tell me?

18 THE DEFENDANT: Well, first off, Your Honor, with the
19 confession, it's not confessing to just doing the
20 shooting.

21 It was a motive to how the shooting went down, which
22 I later found out wasn't -- because see, my statement was
23 typed by the detective, but instead of me reading that
24 statement and signing it, I just signed the statement.

25 THE COURT: Okay. Tell me what your issues are with

1 Ms. Delaney.

2 THE DEFENDANT: Well, first of all, like I say, my
3 type of charges are 30 years minimum, a life sentence.
4 Just out of curiosity, not trying to be sarcastic or
5 anything, I asked her how many murder cases has she
6 handled. She thought for a minute, and she said one.

7 Okay. So I was just thinking that, you know, I met
8 with Ms. Joanna down there. I think this was last month,
9 and she stated to me, well, about the 30 years, at least I
10 would have a max-out date, which I would be 57 years old
11 when I came home, opposed to going to trial and never
12 coming home at all.

13 Every time I try to speak to Ms. Delaney about the
14 reliability issues because they are describing me,
15 credibility and reliability and two different things.

16 THE COURT: Sure.

17 THE DEFENDANT: So I went through my discovery over
18 three years. I've been detained for 37 months now. Like
19 she said, I had four public defenders.

20 I point out a lot of good issues that question the
21 reliability of these witnesses and the credibility of some
22 of these witnesses, and she hasn't taken the initiative to
23 do anything about that as opposed to Mr. Christopher,
24 spoken about where he was positioned at and from what he
25 seen.

1 You have a witness saying the shooter had on a white
2 hat, when some of the shooters [sic] are saying he had on
3 a green hat. You have this unknown witness that no one
4 took the initiative to find out saying the shooter pulled
5 up in this truck but you know...

6 THE COURT: So what has she not done that you want
7 her to do?

8 THE DEFENDANT: It's like every time I bring up
9 something that I'm wanting to do that's helpful to my
10 case, she tells me what the solicitor is not going to do
11 and --

12 THE COURT: Now, you still are not defining for me --
13 have you looked at her and said -- I'm making this up,
14 okay. Do you understand what a hypothetical is?

15 THE DEFENDANT: I understand.

16 THE COURT: Okay. Well, hypothetically speaking,
17 have you looked at her and said, "Ms. Delaney, Jimmy was
18 out there that night, and he can tell you what happened to
19 me," and then she hadn't gone and found or tried to find
20 Jimmy? I mean, is that the kind of thing that's going on?

21 THE DEFENDANT: I mean, in -- in some cases, Your
22 Honor.

23 THE COURT: All right. Well, give me an example.

24 THE DEFENDANT: It's -- she agreed to go back and
25 look at the positions of where some of the these witnesses

1 said they were.

2 THE COURT: Okay.

3 THE DEFENDANT: And then she agreed to also ask this
4 Dave Lawrence to try to find this unknown witness that
5 said the shooter came up. None of these things was done.

6 For one, with the -- with the 30 years, she told me
7 herself that there was no way we could get a voluntary
8 manslaughter charge. That's when the --

9 THE COURT: You're talking about on a plea or during
10 a trial?

11 THE DEFENDANT: During a trial.

12 THE COURT: Okay.

13 THE DEFENDANT: She didn't see any. That's what she
14 was giving me her opinion on, and that -- that kind of
15 discouraged me because this is a big charge I have here.

16 I'm like, God, you know, if I'm going to go to trial
17 with a lawyer, I'm not telling her to tell me just
18 something to make me feel good, but if you're going to be
19 honest and tell me that you just don't see a way that you
20 can get this charge here in the best interest, I mean...

21 THE COURT: But when she looks at you and says, "I
22 don't think you're going to get a voluntary charge at
23 trial," I mean, whether or not you get a voluntary charge
24 at trial could be based on so many factors that she
25 doesn't even have any control over: Factor number one,

1 who the judge is; factor number two, what witnesses say in
2 a trial and what witnesses don't say. That doesn't mean
3 she is not going to try to get you a voluntary charge.

4 But she said -- I mean, when she is looking at you
5 going, "Listen, you know, I don't think you're going to
6 get a voluntary charge, or if you do get a voluntary
7 charge, I don't think it's going to carry today." I mean,
8 that's what you want your -- I mean, I'm not saying you
9 want her telling you that like you want that to happen,
10 but that's somebody being -- the word that I would use
11 would be candid with you about how they feel about your
12 situation as opposed to just sugar -- you know the lawyers
13 that just come down to the jail and just tell you stuff to
14 make you feel good --

15 THE DEFENDANT: Right.

16 THE COURT: -- and then you come up here and you get
17 life without parole.

18 THE DEFENDANT: Right.

19 THE COURT: You know what I'm talking about. You've
20 been sitting up there for three years. You know what I'm
21 talking about, and you know who they are.

22 I mean, I think that's beneficial that she is looking
23 at you going, "I don't think you're going to get a
24 voluntary charge, and if you do get a voluntary charge, I
25 don't think you're going to win on it." That doesn't mean

1 she is not going to fight for you or she doesn't care
2 about you, or she is not going to try or she is not going
3 to argue for it. That's just her trying to give you a
4 realistic outlook.

5 It's like having surgery, and the doctor has got to
6 look at you and say, you know, "Yeah, all I'm doing is
7 taking out your tonsils, but you could die." It's the
8 same kind of -- they have to tell you that to be honest
9 with you.

10 I hear you. What else do you want to -- is your
11 issue an issue of you want a little of a better offer?

12 THE DEFENDANT: No, it's not that, Your Honor. My
13 thing is I just feel like she has a lack of concern of
14 this case. I mean, I went through my discovery, and I
15 pointed out some real powerful things.

16 THE COURT: So you and her have sat down and gone
17 through your discovery together?

18 THE DEFENDANT: Not the whole discovery, Your Honor.

19 THE COURT: Okay.

20 THE DEFENDANT: We went through two statements,
21 right, with -- was it Fitzgerald and Lauren Stuckey?

22 MS. DELANEY: We watched all the videos together. He
23 -- we have gone through some of his discovery, Your Honor.
24 It's literally a Banker Box-and-a-half.

25 We haven't gone through everything, but he has been

1 given -- he was given his -- this discovery initially by
2 Mr. May, and I confirmed that a couple of times, that he
3 has seen his discovery. We've gone through statements
4 from witnesses. We've gone through some of the
5 investigators' notes.

6 THE COURT: I'll let you respond, I promise.

7 MS. DELANEY: Then we talked about -- we talked about
8 his possible defenses, you know, the issues that I thought
9 we had with them.

10 We talked about him testifying at trial, different
11 ramifications that that could have. The last time I saw
12 him, he told me that he had not seen our private
13 investigator's interviews of the witnesses. So I got
14 those together for him, and that's when I went down to the
15 jail to see him. He wouldn't come out.

16 Some of the things he is saying, I have been to the
17 scene once with Mr. Newton. We were mostly going -- for a
18 long time -- one of the reasons this case is so old is the
19 State couldn't find some of the videos, weren't sure of
20 how many videos they had, kind of went to the sheriff's
21 department, just watched everything, copied everything.

22 The reason I went to the scene initially was to look
23 at the cameras because there were numerous cameras in the
24 area. The club was closed at that time, so we did not --
25 I went there with Mr. Newton. We didn't go into the club.

1 Mr. Franklin has told me that one of the witness who
2 claims to have seen part of the shooting allegedly happen
3 outside of the club, and then the rest happened inside the
4 club. They ran in the club.

5 Mr. Franklin says one of the witnesses that's been in
6 the club, one of the witnesses couldn't have seen what he
7 says he saw from where he was sitting. I do intend to go
8 back and look at that.

9 A lot of the other things that he is saying, I'm not
10 listening to him, though, it's, "Well, this witness says
11 the shooter is wearing a white hat. This witness says the
12 shooter is wearing a green hat."

13 I understand that, and that's something that I told
14 him we would bring out at trial. But ultimately, if they
15 all agree that he's the shooter and that they saw him walk
16 up to the guy and put eight rounds into him and the guy
17 didn't say anything, I don't think the jury is going to
18 focus on the hat.

19 The issue with -- the issue with the truck, we have
20 all the witness statements. The original incident report
21 says an unknown female states -- and this is the
22 responding officer's incident report: "An unknown female
23 states that the shooter got out of a white truck."

24 The unknown female who was talking to the victim at
25 the time of the shooting says the shooter got out of the

1 white truck. We have the statement from the female who
2 was talking to him at the time of the shooting. She does
3 not mention anything about a white truck in that.

4 There were several girls there who heard shots who I
5 think were stopping to get wings or something that were
6 driving a white truck. I think that's probably why that's
7 in there, you know, but I don't believe that there --
8 well, I can't tell who that witness would be if there was
9 such a witness. I think the responding officer probably
10 had a lot of confusion at that point.

11 THE COURT: All right. What else do you want to tell
12 me, Mr. Franklin?

13 THE DEFENDANT: Concerning that issue about -- with
14 the white hat, that wasn't making a big issue with that.
15 The reason why I was making a big issue is because every
16 time I tried to tell her something that I'm thinking would
17 help my case, it's like she would tell me, "Well, what if
18 the solicitor don't care why you shot him or how you shot
19 him," and just the simple fact because I confessed to
20 being at the crime and getting into it -- getting into it
21 with the guy.

22 You know, it's just like every time I tried to help
23 myself -- if you tried to tell me something and I'm always
24 trying to discourage you or to shut you down on it, it
25 makes me feel like whose side are you on, you know.

1 I mean, I'm not coming up here trying to point my
2 finger. I believe Ms. Delaney is a good attorney. I just
3 don't feel comfortable with her being my attorney having
4 to go to trial with this type of case. That's what I'm
5 saying.

6 THE COURT: Well, what are you -- what are you going
7 to do if I -- I mean, the best case scenario for you right
8 now is I say Ms. Delaney is off the case. That means
9 you're going to get, you know, another public defender; is
10 that right?

11 MS. DELANEY: I'm not sure, Your Honor.

12 THE COURT: I mean -- and Judge Benjamin is not going
13 to continue your case. You're going to be up for trial in
14 two months with an attorney that has got a Bankers Box
15 full of documents that has two months to get ready. Then
16 you're going to be back in front of the judge and say, "My
17 attorney is not ready because he's only been representing
18 me two months."

19 THE DEFENDANT: So basically, what you're telling me
20 and I have to bite the bullet.

21 THE COURT: No. What I'm telling you is -- here is
22 what I think should happen in your case: I think
23 Ms. Delaney has an obligation soon to go through, to make
24 sure that you and her have gone through all of the
25 discovery materials together, okay, because the worst

1 thing that could happen for you is you're sitting in court
2 and somebody gets on the witness stand and says something
3 that's in the discovery materials and you never knew about
4 it, okay.

5 So I think you all need to go through all the
6 discovery materials together. I think Ms. Delaney intends
7 on doing, and that is her purpose, okay. Now, to see
8 that, to do that, you've got meet with her, okay.

9 Number two: I think Ms. Delaney needs to go out to
10 the crime scene, and after she has a full-blown meeting
11 with you about what to look for, where to go, what the
12 issues are, what the angles are, what the locations are
13 and a detailed list of why this witness couldn't see this
14 fact based on the layout of the crime scene. Does that
15 make sense?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And if she needs some help from the Court
18 to get into that place during, you know, during a time
19 where she can have the ability to view it, to go through
20 it, to feel safe -- I don't know where it is. I'm not
21 making any assumptions but to feel safe while she is
22 there, then, you know, I will be more than happy to help
23 her get in that place so that she can understand because
24 that, as you know is your -- you're, obviously, very
25 astute, Mr. Franklin, is a great defense to what a witness

1 can really see and what a witness really cannot see based
2 on the way the club is set up. The only way Ms. Delaney
3 can know that like you know that is for her to physically
4 go out there.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And I think both of those things are very
7 reasonable and very fair. Her statement to me today --
8 and I have full faith and confidence in that -- is that is
9 her plan in the course of the preparation for your case,
10 but I mean, what -- here is where I don't want to be is
11 where, you know, I get rid of Ms. Delaney.

12 I really haven't heard enough of a reason today to do
13 that, but -- and then you're sitting there looking at
14 Judge Benjamin in August going, I got this new lawyer
15 regardless of who they are, and he has a Bankers Box worth
16 of documents for two months.

17 I mean, for that lawyer to be prepared, he would
18 essentially have to stop everything he is doing for the
19 next 60 days or 45 days -- I can't do math that fast in my
20 head -- to be prepared for your case. I mean, that's how
21 much preparation a murder case takes.

22 You have the advantage of somebody that's been on
23 your file and meeting with you and discussing things with
24 the solicitor and sitting down and reviewing videos for
25 over -- at least over a year now and working on your

1 situation.

2 So I'm going to deny your motion to be relieved, but
3 I am going to instruct Ms. Delaney that she, as an officer
4 of this court, is required to sit down with you and make
5 sure that the full extent of the discovery materials are
6 gone over with you.

7 Now, to that extent, you have to cooperate in meeting
8 with her. It's just that simple, and that she should go
9 to the crime scene in person after meeting with you about
10 what's relevant and what's important to you on the
11 different angles of who can see what and how they can see
12 it. Those are the two things that I hear you telling me
13 more than anything else.

14 Now, her not being -- I'm going to use the word
15 optimistic about your case, okay, is actually a positive
16 thing because they're her being real with you. Because if
17 she was looking at you telling you anything other than
18 what she believed was the truth, then I would have a major
19 problem with her and the expectation that she was creating
20 for you in your mind.

21 None of that means she is not going to fight. None
22 of that means she is not going to come in and do a good
23 job. None of that means that she doesn't have your best
24 interest at heart.

25 Just like a doctor telling a cancer patient, "You

1 know, chemotherapy is going to hurt and radiation is not
2 fun. Your hair is going to fall out. We may do all this
3 treatment, and you may still die" is part of her
4 responsibilities.

5 So I'm going to deny your motion to be relieved.
6 However, I am telling Ms. Delaney as an officer of the
7 court that I believe that she could do all of those things
8 in preparation for your case.

9 Okay. Good luck to you, sir.

10 MS. DELANEY: Thank you, Your Honor.

11 THE COURT: Thank you, Ms. Delaney.

12

13 (Whereupon, the proceedings were concluded.)

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CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Karen Ambroziak, Official Court Reporter for the
5th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of General Sessions for
Richland County, South Carolina, on the 17th day of June,
2013.

April 15, 2014

Karen Ambroziak

Karen Ambroziak, RPR
Circuit Court Reporter

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)

EVETTE FRANKLIN)
 SCDC # 284514,)

Applicant,)

vs.)

STATE OF SOUTH CAROLINA,)
Defendant.)

IN THE COURT OF COMMON PLEAS
 2013-CP-40-5965

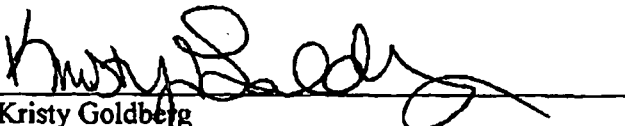
AMENDED APPLICATION
 FOR POST CONVICTION RELIEF

2014 JUL -9 PM 4:53
 RICHLAND COUNTY
 FILED
 JEANETTE W. MURPHY
 C.C.P. & C.S.

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

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

- (a) Ineffective Assistance of counsel – Trial counsel failed to provide Applicant with all discovery and witness statements prior to the decision to enter a plea and therefore the plea was not knowingly entered as he did not have a full understanding of what could be presented at trial.
- (b) Ineffective Assistance of counsel – Trial counsel failed to investigate case by failing to go to crime scene and take photographs.
- (c) Ineffective assistance of counsel – Trial counsel failed to fully consider all of the issues and inconsistencies present in his discovery and erroneously advised Applicant to enter a guilty plea.


 Kristy Goldberg
 Attorney for Defendant

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

Columbia, South Carolina

This 8th day of July, 2014

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)

EVETTE FRANKLIN)
 SCDC # 284514,)

Applicant,)

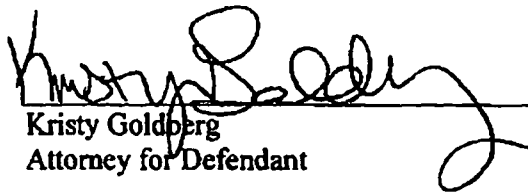
vs.)

STATE OF SOUTH CAROLINA,)
Defendant.)

IN THE COURT OF COMMON PLEAS
 2013-CP-40-5965

CERTIFICATE OF SERVICE

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


 Kristy Goldberg
 Attorney for Defendant

Kristy Goldberg
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 1720 Main Street, Suite 301
 Columbia, SC 29201
 803-252-2299
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 kristy@kristygoldberglaw.com

Columbia, South Carolina

This 8th day of July 2014

RICHLAND COUNTY
 FILED
 2014 JUL -9 AM 10:06
 JEANETTE W. MCBRIDE
 C.C.P. & G.S.

LAW OFFICE OF
Kristy Grafton Goldberg, LLC
ATTORNEY AT LAW

July 8, 2014

Jeanette McBride
Richland County Clerk of Court
Post Office Box 2766
Columbia, South Carolina 29202

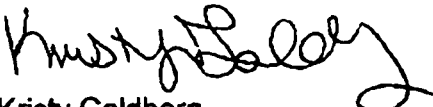
RE: Evette Franklin, SCDC # 284514 vs. State of South Carolina
2013-CP-40-5965

Dear Madam Clerk:

Please find enclosed two copies of an Amended Application for Post-Conviction Relief on behalf of Evette Franklin, SCDC # 284514 along with a Certificate of Service. Please file the Amended Application, stamp the copy, and return the copy to me in the enclosed, self-addressed stamped envelope.

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

Sincerely,


Kristy Goldberg

Enclosure

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

Everette Franklin, SCDC # 284514
Lieber Correctional Institution
136 Wilborn Avenue
P.O. Box 205
Ridgeville, SC 29472

1 STATE OF SOUTH CAROLINA) IN GENERAL SESSIONS
2 COUNTY OF RICHLAND) COURT
3)
4 EVETT FRANKLIN,)
5) TRANSCRIPT
6 -V-) OF
7) RECORD
8 STATE OF SOUTH CAROLINA,) 2013-CP-40-05965
9 DEFENDANT.)

10

11 JULY 15, 2014

12 RICHLAND, SOUTH CAROLINA

13

14 B-E-F-O-R-E:

15 HONORABLE CASEY L. MANNING, JUDGE;

16

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

18 FOR THE PLAINTIFF:

19 MS. KRISTY GOLDBERG, ESQ.

20

21

22 FOR THE DEFENDANT:

23 CROOM HUNTER, ESQ.

24

25

1	I-N-D-E-X	
2		PG.
3	EXAMINATION OF EVETTE FRANKLIN:	
4	DIRECT BY MS. GOLDBERG	4
5	CROSS BY MR. HUNTER	26
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13	E-X-H-I-B-I-T-S	
14	PLAINTIFF'S	
15	NO.	EVD
16	1. MEMO OF ROMAN CHRISTOPHER BALDWIN.	
17	2. FOUR PHOTOS.	
18	3. MEMO OF LAUREN STUCKEY.	
19	4. MEMO OF LATASHA BROWN.	
20		
21		
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25		

1 (The following proceeding were held July
2 15, 2014.)

3 THE COURT: Everybody ready?

4 MS. GOLDBERG: Yes, Your Honor.

5 MR. HUNTER: May it please the Court. This is
6 Evette Franklin v. the State of South Carolina,
7 2013-CP-40-5965. Mr. Franklin was indicted during the
8 July 2010 term of the Richland County Grand Jury for murder.
9 That indictment number was 2010-GS-40-2363. He was
10 represented by Joanna Delany. On July 3rd, 2013, the
11 applicant appeared before the Honorable DeAndrea G.
12 Benjamin, where he pled guilty as indicted to murder. Judge
13 Benjamin sentenced him to 30 years imprisonment and that was
14 a negotiated sentence.

15 Mr. Franklin filed a notice of appeal. South
16 Carolina Court of Appeals dismissed the appeal for failure
17 to provide sufficient explanation as required by Rule
18 203(d)(1)(b)(4) and remittitur was issued on September 30th,
19 2013. He filed this application for post-conviction relief
20 on October 1st, 2013. And he's represented here today by
21 Ms. Goldberg.

22 THE COURT: Ms. Goldberg, are you ready to
23 proceed?

24 MS. GOLDBERG: I am. Thank you, Your Honor. At
25 this time, I will call Evette Franklin to testify.

EVETTE FRANKLIN DIRECT BY MS. GOLDBERG

1 THE COURT: Come around, Mr. Franklin.

2 MS. GOLDBERG: Your Honor, as he's walking, I do
3 want to make clear an amended application was filed in this
4 matter July 9th. Does Your Honor have that in front of you?

5 THE COURT: Yes, I just read it.

6 MS. GOLDBERG: Very good, I just wanted to make
7 sure you had it.

8 THEREUPON,

9 EVETTE FRANKLIN,
10 after having been duly sworn, testified as follows:

11 THE COURT: Now, please take a seat in the witness
12 box. And you need to tell me your full name, Mr. Franklin,
13 and spell your last name for the record.

14 THE WITNESS: Evette L. Franklin.

15 THE COURT: Spell your last name.

16 THE WITNESS: F-R-A-N-K-L-I-N.

17 THE COURT: All right.

18 Ms. Goldberg.

19 MS. GOLDBERG: Thank you, Your Honor. May it
20 please the Court.

21 THE COURT: Yes, ma'am.

22 DIRECT EXAMINATION

23 BY MS. GOLDBERG::

24 Q. Mr. Franklin, and just because there's a little -- just
25 to clarify, can you spell your first name as well?

EVETTE FRANKLIN DIRECT BY MS. GOLDBERG

- 1 A. It's Evette, E-V-E-T-T-E.
- 2 Q. Okay. And is that -- does SCDC have you incorrectly?
- 3 A. They have. I addressed the issue, but they said it
- 4 would take something from the courts to correct that.
- 5 Q. Okay. But the correct spelling is E-V-E-T-T-E.
- 6 A. T-T-E, yes.
- 7 Q. Thank you, sir. Where are you currently housed?
- 8 A. Leiber Correctional Institution in Ridgeville, South
- 9 Carolina.
- 10 Q. And what sentence are you serving?
- 11 A. Thirty-year sentence.
- 12 Q. For what charge?
- 13 A. First degree murder.
- 14 Q. Did you have a plea or a trial?
- 15 A. Guilty plea.
- 16 Q. And who was your attorney for that plea?
- 17 A. Joanna Delany.
- 18 Q. Do you understand that in a PCR hearing, if you're
- 19 successful, the case is overturned and you start the
- 20 whole case over?
- 21 A. Yes, ma'am.
- 22 Q. When were you arrested?
- 23 A. May 13, 2010.
- 24 Q. Do you remember when you pled guilty?
- 25 A. July 3rd, 2013.

EVETTE FRANKLIN DIRECT BY MS. GOLDBERG

1 Q. Your charge was pending for three years?

2 A. Yes, ma'am.

3 Q. Were you in jail the entire time?

4 A. Yes, ma'am.

5 Q. When did you first receive an attorney in this matter?

6 A. I think that was May 17th of 2010.

7 Q. Right after you were arrested?

8 A. Right.

9 Q. Who was that attorney?

10 A. Ashley R. Thomas.

11 Q. But other than Ashley Thomas and Joanna Delany, did you
12 have other attorneys in this matter?

13 A. Yes, ma'am.

14 Q. Who else represented you?

15 A. Clark Newton, also, James May.

16 THE COURT: James who?

17 Q. James May.

18 THE COURT: Oh, May, James May. And Mark Sawyer?

19 THE WITNESS: And Mark Sawyer.

20 BY MS. GOLDBERG::

21 Q. All right. At what point did Ms. Delany become
22 involved in your case?

23 A. She was, actually, put as second seat with James May,
24 but she became my first seat lawyer, I think, was the
25 end of 2012.

EVETTE FRANKLIN DIRECT BY MS. GOLDBERG

- 1 Q. The end?
- 2 A. 2012.
- 3 Q. The end of 2012?
- 4 A. Yes, ma'am.
- 5 Q. And you pled the middle of 2013?
- 6 A. Yes, ma'am.
- 7 Q. So at this time, you believed that she represented you
- 8 for about six months?
- 9 A. Yes, ma'am.
- 10 Q. But you did say she was involved in your case longer
- 11 than that?
- 12 A. Yes, ma'am.
- 13 Q. Did you at some point file a motion to have Ms. Delany
- 14 relieved as your counsel?
- 15 A. Yes, ma'am.
- 16 Q. Did you have a hearing on that matter?
- 17 A. Yes, ma'am.
- 18 Q. Why did you request that Ms. Delany be relieved?
- 19 A. Simply because for the entire time that I was in the
- 20 county, my whole motive was to go to trial, but
- 21 Ms. Delany was so enthusiastic in getting me to plead
- 22 based on her advice about how things would turn out if
- 23 we went to trial. And, you know, some of the things
- 24 that I found she didn't disclose to me as of what could
- 25 have happened. And, you know, she was just, basically,

EVETTE FRANKLIN DIRECT BY MS. GOLDBERG

1 deteriorating me from going to trial and taking a plea,
2 you know. She --

3 THE COURT: Mr. Franklin, let me stop you. Could
4 you be a little bit more specific when you say when she said
5 to you certain things what could have happened, could you
6 tell me what those things were, like A, B, C and D,
7 something like that?

8 THE WITNESS: I spoke to her about having my
9 statement suppressed.

10 THE COURT: Uh-huh. Okay.

11 THE WITNESS: Had I went to trial, I know that
12 would have been one of my options, one of my rights. She
13 told me because they gave me drinks and smoke breaks and
14 food, it wouldn't be suppressed. All right. I spoke to her
15 about issues concerning the identification, but she told me
16 because of the --

17 THE COURT: Now, you were picked out of a lineup?

18 THE WITNESS: No, sir, about what the witnesses
19 stated that they say.

20 THE COURT: Okay. All right. And I hate to
21 interrupt you, but I need to understand exactly what you're
22 trying to say.

23 THE WITNESS: Yes, sir. Yes, sir.

24 THE COURT: All right. Go ahead.

25 THE WITNESS: There were numerous issues with

EVETTE FRANKLIN DIRECT BY MS. GOLDBERG

1 photo lineups, which I wasn't picked out by two of the
2 witnesses in the photo lineups, but two weeks after that,
3 they was able to pick me out in a physical lineup. And we
4 was attempting to find -- she even made agreement herself,
5 said that she believed it was prejudice concerning that, but
6 she still didn't give me no agreement on raising that issue.

7 And at the time, I didn't understand what was
8 going on. All I know is she told me is, If you take this
9 plea, at least, you'll have a max-out date as opposed to you
10 going to trial and getting life without parole. I expressed
11 this to Judge Hood. He said she was just being optimistic
12 with me. So I felt, basically, forced to take the plea.

13 And then we went over the questions and I learned
14 that had I not answered the questions approximately, my plea
15 wouldn't be accepted. She, also, explained to me that Judge
16 Benjamin was the only judge going to accept that plea. All
17 the other judges was wanting trial.

18 THE COURT: So --

19 And, Ms. Goldberg, I apologize.

20 MS. GOLDBERG: It's okay, Your Honor.

21 THE COURT: So you're saying that Judge Benjamin
22 was the only one that would accept the negotiated plea for
23 30 years rather than let you go to trial for murder or give
24 you a greater sentence?

25 THE WITNESS: Yes, sir.

EVETTE FRANKLIN DIRECT BY MS. GOLDBERG

1 THE COURT: Does that make sense?

2 THE WITNESS: Yes, sir.

3 THE COURT: That's what you're trying to tell me?

4 THE WITNESS: Yes, sir.

5 THE COURT: Okay. I'm sorry.

6 If I interrupt you again, I'll leave the bench,

7 Ms. Goldberg.

8 MS. GOLDBERG: That's all right, Judge Manning.

9 BY MS. GOLDBERG::

10 Q. All right. At the motion to relieve counsel, did you
11 also address that there were specific requests you had
12 made of Ms. Delany to do that you did not believe she
13 had done?

14 A. Yes, ma'am.

15 Q. And what were those things?

16 A. One of those issues was to go back to the crime scene
17 and take photos from the stated position of the witness
18 in the view of where the witness said the crime
19 happened. And what that would have done is proved the
20 unreliablness of this witness, which this was the key
21 witness that the detectives used --

22 THE COURT: What was the witness's name?

23 THE WITNESS: Christopher Baldwin.

24 THE COURT: Okay. All right.

25 THE WITNESS: They interviewed three other

EVETTE FRANKLIN DIRECT BY MS. GOLDBERG

1 witnesses and couldn't obtain enough information to get an
2 arrest warrant for murder on my case. So when they got to
3 this witness, his testimony and photo identification got
4 them enough information to get an arrest warrant. And had
5 she went and take these photos, that would have been another
6 ground for us to proceed trial and, also, have a Franks v.
7 Delaware hearing that would have proved that the detectives
8 either intentionally and knowingly used a false witness
9 statement or regards with reckless to the truth. But she
10 failed to do that and I -- it was just -- it's left me like
11 well, if she's not going to prepare for trial, why would I
12 still go.

13 THE COURT: All right.

14 (Plaintiff's Exhibit Nos. 1 and 2 were
15 marked for identification.)

16 BY MS. GOLDBERG::

17 Q. Mr. Franklin, I've handed you what's been marked as
18 Applicant's Exhibits 1 and 2. Can you tell me what
19 this first document is?

20 A. It's a memorandum of interview.

21 Q. Interview of who?

22 A. Roman Christopher Baldwin.

23 Q. And is that what you were just trying to explain to the
24 Judge?

25 A. Yes, ma'am.

EVETTE FRANKLIN DIRECT BY MS. GOLDBERG

1 Q. That witness's statement?

2 A. Yes, ma'am.

3 Q. What is the second page of that document?

4 A. It's Roman Christopher Baldwin's personally sworn
5 statement.

6 Q. It's his written statement?

7 A. Yes, ma'am.

8 Q. Okay. And what issues do you have with those
9 statements?

10 A. The first issue I have with this statement is the
11 detectives asked him where he was standing while he
12 reviewed this crime and he stated at the third pool
13 table. And the crime, as in detective's followup,
14 happened at the front door where the witness said that
15 the shooter held the door with his left hand and shot
16 with his right hand. So that established that the
17 shooter did not come in the club.

18 And the issue that I pointed out to my attorney,
19 plea counsel, Ms. Delany, was that was an issue with
20 that because if anyone had been in that club and had
21 put that witness back in that position and stood at
22 that front door, they would have known that it was
23 impossible for that witness to see the front door.

24 Q. Okay. So those statements are the basis of you asking
25 Ms. Delany to go to the crime scene?

EVETTE FRANKLIN DIRECT BY MS. GOLDBERG

- 1 A. Yes, ma'am.
- 2 Q. To your knowledge, did she ever go to the crime scene?
- 3 A. She said she went out there, but she didn't go to the
- 4 crime scene. They asked to review cameras behind the
- 5 store and not the crime scene.
- 6 Q. So as far as you know, she never went and looked at the
- 7 witness's point of view like you asked her to do?
- 8 A. No, ma'am.
- 9 Q. Okay. Applicant's Exhibit No. 2, the next, what is
- 10 that document?
- 11 A. These are photos of inside the bar.
- 12 Q. Have you ever seen those before?
- 13 A. No, ma'am.
- 14 Q. Are they accurate to what the bar looked like the night
- 15 of the incident?
- 16 A. Yes, ma'am.
- 17 Q. Are any of those photos accurate to what you wanted
- 18 Ms. Delany to look for?
- 19 A. Yes, ma'am.
- 20 Q. Okay. And can you talk the Court through that?
- 21 A. Well, this top right photo shows if you --
- 22 THE COURT: What exhibit number is that?
- 23 MS. GOLDBERG: Two.
- 24 THE WITNESS: Two.
- 25 MS. GOLDBERG: And I'll hand it to you.

EVETTE FRANKLIN DIRECT BY MS. GOLDBERG

1 THE COURT: That's fine. For the record.

2 MS. GOLDBERG: Yes, Your Honor. Thank you.

3 BY MS. GOLDBERG::

4 Q. Go ahead.

5 A. This top right photo shows that if you're standing at
6 the third pool table where the witness stated that he
7 was standing, you cannot even see the front door from
8 here. No matter which side of that third pool table
9 you could stand on, you cannot see the front door,
10 which is where the crime happened at. He stated that
11 the shooter came in and held the front door with his
12 left hand and shot with his right hand. But my thing
13 to Ms. Delany was how could he have saw that from the
14 position he stated he was in?

15 Q. Okay. And so you had asked her to investigate this
16 more fully?

17 A. Yes, ma'am.

18 Q. And you don't believe she did?

19 A. No, ma'am.

20 Q. All right. I'm going to take those back from you.

21 MS. GOLDBERG: And, Your Honor, I did give the
22 attorney general copies of these already.

23 THE COURT: All right.

24 BY MS. GOLDBERG::

25 Q. Mr. Franklin, did you meet with Ms. Delany to prepare

EVETTE FRANKLIN DIRECT BY MS. GOLDBERG

1 for your case?

2 A. Yes, ma'am.

3 Q. How many times do you think you met with her?

4 A. I did request that information from the county, but to
5 just give an estimate, I believe around seven times.

6 Q. Did she discuss with you available any possible
7 defenses?

8 A. Only thing we talked about was the negative photo IDs.

9 Q. Okay.

10 A. Basically, everything that I brought to Ms. Delany's
11 attention, she stated to me that it wouldn't be a big
12 issue if we went to trial.

13 Q. And that would be -- that would apply to when you
14 discussed having your statement suppressed as well?

15 A. Having my statement suppressed, which was brought on
16 earlier by Mr. Jim May. A lot of the things I took on
17 with Delany was previously from Jim May. And she was
18 present for many of the times we met and the things
19 that we talked about, how he would -- if we went to
20 trial, we would have my statement suppressed to get it
21 thrown out because I asked her -- I said, Ms. Delany,
22 well, what is this evidence that they have against me
23 that makes you not want to go to trial and advise me
24 not to go to trial?

25 We looked at these photos -- I mean, the video

EVETTE FRANKLIN DIRECT BY MS. GOLDBERG

1 here. She said -- her and Mark Sawyer said, Well,
2 unless the outside female witness, which was Keisha
3 Robinson, unless she had eyes in the back of her head
4 she couldn't have seen what she stated in her
5 statement. And I said, Well, Ms. Delany, that's
6 something that we can use at trial. And she said, What
7 about all the other evidence, as regarding my
8 statement, which I was like, You stated that -- well,
9 Jim May had stated that we could get that suppressed if
10 we went to trial. And I said, also, with Roman
11 Christopher Baldwin, we could have his statement
12 impeached if we went to trial along with Lauren Stuckey
13 and Latasha Brown.

14 Q. Okay.

15 MS. GOLDBERG: May I approach, Your Honor?

16 THE COURT: Yes, ma'am.

17 (Plaintiff's Exhibit No. 3 was marked

18 for identification.)

19 BY MS. GOLDBERG::

20 Q. Mr. Franklin, you just mentioned Lauren Stuckey and
21 Latasha Brown?

22 A. Yes, ma'am.

23 Q. I'm going to hand you a document. You're testifying
24 that you had issues with their statements as well?

25 A. Yes, ma'am.

EVETTE FRANKLIN DIRECT BY MS. GOLDBERG

1 Q. What do you have in front of you?

2 A. This is Lauren Stuckey's memorandum of interview.

3 Q. And this is Exhibit No. 3, correct?

4 A. Yes, ma'am.

5 Q. What's the second page of that?

6 A. This is her personal statement.

7 Q. Okay. What issues do you have with Ms. Stuckey?

8 A. The first issue was when me and Ms. Delany went over
9 the investigator followup reports, it stated in there
10 that Ms. Lauren Stuckey stated that she did not -- she
11 seen the victim and the shooter come into the club and
12 that she witnessed the shooter shoot the victim, but
13 when I got the exhibits from Ms. Lauren Stuckey after
14 my guilty plea, which was from my investigator, it
15 stated that -- hold on one second. Excuse me. Excuse
16 me. She went to the window and door and saw the victim
17 ran inside.

18 But in her personal statement, which is the
19 exhibit that you just give me, Lauren Stuckey said she
20 sat the drinks down for them and was starting back to
21 the bar. That is when I heard shots outside. I ran
22 towards the window in front to attempt to see what was
23 going on. I didn't make it there. I heard more shots,
24 so I went -- turned and went in the other way and
25 ducked down behind a little wall which is in there. I

EVETTE FRANKLIN DIRECT BY MS. GOLDBERG

1 saw other people ducking as well. I then heard a thump
2 from the other side of the half wall I was hiding
3 behind. The shots stopped for a second and I thought
4 it was over. I then stood up, that is when I saw the
5 shooter. I looked into his eyes from about seven or
6 eight feet away. I saw that he had a gun in his right
7 hand, I think it was his right hand. He looked back at
8 me for a second. He then started shooting downward.
9 At first, I didn't know what he was shooting at. The
10 guy shots several times and he ran out. It was then I
11 was able to see who he was shooting at. I saw Red on
12 the floor. It was then I realized that the thump I
13 heard was Red hitting the wall when he fell back.

14 Q. Okay. Let me back up a little bit and clarify this for
15 the Court. Prior to your guilty plea, did you have a
16 copy of your discovery?

17 A. Yes, ma'am.

18 Q. Okay. You were able to review the discovery?

19 A. Yes, ma'am.

20 Q. Okay. Were -- did you have a copy -- were you given
21 the reports from your private investigator?

22 A. No, ma'am.

23 Q. So you did not see what the statements told your
24 private investigator?

25 A. No, ma'am.

EVETTE FRANKLIN DIRECT BY MS. GOLDBERG

1 Q. When did you first see those statements?

2 A. This was -- I think this was July the 11th of 2013,
3 after I was admitted into South Carolina Department of
4 Corrections.

5 Q. After your guilty plea?

6 A. After my guilty plea.

7 Q. So what you're telling the Court is that there was an
8 inconsistency in her -- the statement to law
9 enforcement and to the private investigator, is that
10 accurate?

11 A. Yes, ma'am.

12 Q. And you didn't know about that inconsistency until
13 after your plea?

14 A. Yes, ma'am.

15 Q. Okay. Is there any further issue or is that the issue
16 with that particular statement?

17 A. Yes, ma'am. And the big issue was she went from not
18 seeing the shooter and the victim come in the club, the
19 victim getting shot and just hearing a thump and she
20 stated she didn't know what he was shooting at to
21 saying that she now see the victim and the shooter come
22 in the club. The shooter is chasing the victim. The
23 victim fell on the side of the door. I mean, I was
24 like, Well, Ms. Joanna, how did we allow this to slip?
25 You said that her statement is what would have hurt me

EVETTE FRANKLIN DIRECT BY MS. GOLDBERG

1 had I went to trial, but now you sending me information
2 saying that she saw these people come in the club, when
3 in her personal statement, she didn't see this stuff
4 going on.

5 Q. And you weren't aware of that inconsistency until after
6 the plea?

7 A. Yes, ma'am.

8 Q. All right. Very good.

9 MS. GOLDBERG: May I approach, Your Honor?

10 THE COURT: Yes, ma'am.

11 (Plaintiff's Exhibit No. 4 was marked
12 for identification.)

13 BY MS. GOLDBERG::

14 Q. Mr. Franklin, you also mentioned Latasha Brown. What
15 do you have in front of you?

16 A. Memorandum of interview for Latasha Brown.

17 Q. What is the second page of that?

18 A. This is an investigator's followup from Ms. Latasha
19 Brown.

20 Q. It's the investigator notes about a conversation with
21 her?

22 A. Yes, ma'am.

23 Q. What's the third page of that?

24 A. This is also an investigation followup notes with
25 Latasha Brown.

EVETTE FRANKLIN DIRECT BY MS. GOLDBERG

1 Q. And this is Applicant's Exhibit No. 4?

2 A. Yes, ma'am.

3 Q. Okay. Again, did you receive the discovery documents
4 prior to your plea, those documents that were in
5 discovery?

6 A. No, ma'am, I didn't have these documents.

7 Q. You didn't ever have the investigative followup?

8 A. No, I received these after -- prior -- I mean, after my
9 guilty plea.

10 Q. Okay. And what is your issue with those documents?

11 A. The issue that I have with this is first, Latasha Brown
12 never came in to give a statement of exactly what
13 happened. And I learned about what she said is -- the
14 detective said they called Latasha Brown, who was
15 inside Exclusive Bar & Grill during the time of the
16 shooting. They asked Ms. Brown to come in and provide
17 with a statement. Brown stated that she would meet me
18 at the Richland County Sheriff's Department, she told
19 the detectives that, at the following day at 1600
20 hours, which would have been the 6th, the 11th, 2010,
21 and it shows that Brown failed to show up for
22 interview.

23 But Ms. Brown stated in this statement, Brown
24 stated that she had been inside the bar when she heard
25 the shooting. She stated that she took cover

EVETTE FRANKLIN DIRECT BY MS. GOLDBERG

1 underneath a pool table and that she only saw the
2 shooter as he was exiting the building. Brown stated
3 that the shooter was a dark -- was slim, dark-skinned
4 black male wearing a white T-shirt, blue jeans and a
5 green hat. Brown stated that she believed that the
6 shooter may have had small braids or corn rows in his
7 hair.

8 The issue with that was when I got the memorandum
9 of interview from Ms. Delany on July the 11th, 2013,
10 after my guilty plea, she stated that while there, she
11 recalled -- which was speaking in the bar, she recalled
12 this one guy who was playing pool, a pool of game and
13 then stopped to go outside. It was very shortly after
14 that she heard three or four gunshots coming from
15 outside of the club. Almost instantly, the door of the
16 club flew opened and the same guy that was playing pool
17 was running into the club with another black male
18 chasing him. The black male chasing the guy firing
19 about four to five more shots inside the club toward
20 the guy running from him. Brown estimated that she was
21 approximately 10 feet away from this incident. She
22 described that the person who did the shooting as a
23 black male, tall, slender with braids wearing a
24 baseball cap. She does not recall exactly what type of
25 clothing he had on. Brown also related that she had

EVETTE FRANKLIN DIRECT BY MS. GOLDBERG

1 only consumed half a beer at the time of the incident.
2 She was not intoxicated and remembered the incident
3 very well.

4 Q. So you believe there's an inconsistency there again?

5 A. Yes, ma'am, because she first stated that she didn't
6 see the shooter until he exited the club. Now, she
7 goes to say that she saw the shooter chasing the victim
8 inside the club and now she gives a description of the
9 shooter's clothing. This was after being talked to by
10 the investigators.

11 Q. And you didn't know about that inconsistency until
12 after your guilty plea?

13 A. No, ma'am.

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

15 THE COURT: Yes, ma'am.

16 BY MS. GOLDBERG::

17 Q. Mr. Franklin, what plea offers did you get?

18 MR. HUNTER: Your Honor, have these exhibits been
19 admitted into evidence?

20 MS. GOLDBERG: You know what, no, probably not.

21 MR. HUNTER: Okay.

22 MS. GOLDBERG: Your Honor, I would -- I'll go back
23 through each one of them.

24 THE COURT: Let's back up. I think they've been
25 marked. You have a copy of them. I assume that she

EVETTE FRANKLIN DIRECT BY MS. GOLDBERG

1 intends -- do you have any objection?

2 MR. HUNTER: No, no, I don't have any objection.

3 MS. GOLDBERG: I didn't do it properly, but --

4 THE COURT: That's all right. So they're all
5 admitted.

6 MS. GOLDBERG: Thank you, Your Honor.

7 (Plaintiff's Exhibit Nos. 1, 2, 3 and 4
8 were admitted into evidence.)

9 THE COURT: Pretty good, Mr. Hunter, for somebody
10 that grew up in Lexington.

11 MR. HUNTER: No, sir, I'm not from Lexington.

12 THE COURT: Where you from?

13 MR. HUNTER: I grew up on Harden Street.

14 THE COURT: That's even better.

15 Go ahead.

16 (Laughter.)

17 MS. GOLDBERG: Thank you.

18 BY MS. GOLDBERG::

19 Q. Mr. Franklin, what plea offers -- or did you receive
20 any plea offers in this case?

21 A. Mr. Jim May talked about a 16-year sentence, but,
22 apparently, he wasn't here to -- accustomed to that, so
23 the plea offer was 30 years, which was the first offer
24 all the way from when this charge first happened. And
25 I always denied any plea.

EVETTE FRANKLIN CROSS BY MR. HUNTER

1 Q. Did you ask your lawyer to file a notice of appeal in
2 this matter?

3 A. Yes, ma'am.

4 Q. Is there anything else that you haven't been over that
5 you believe Ms. Delany should have done that she did
6 not do?

7 A. Basically, because my motive was to go to trial, I was
8 telling Ms. Delany there was numerous things that could
9 have been done, which was suppressing hearing of my
10 statement, which I was still stuck on going to trial,
11 having the witness's statements impeached, which had I
12 went to trial. Also, I was telling Ms. Delany about
13 these incident photos, which she never showed me or
14 never stated to the judge that she had when she knew
15 she had them because the courts -- at the relieve of
16 counsel hearing, Judge Hood had instructed her to go
17 back to the crime incident. But with her having the
18 photos the whole time, I don't know why she didn't just
19 show them to me and just let me make a decision from
20 there. And had it not been for the erroneous advice of
21 my counsel, I wouldn't have taken a guilty plea. I
22 would have went to trial.

23 THE COURT: All right.

24 BY MS. GOLDBERG::

25 Q. Is there anything else you want to add as to why her

EVETTE FRANKLIN CROSS BY MR. HUNTER

1 advice was erroneous?

2 A. Basically --

3 Q. Or have you covered it?

4 A. I covered it.

5 MS. GOLDBERG: Thank you very much. Please answer
6 Attorney General's questions.

7 THE COURT: And for the record, Exhibit No. 1 is
8 the interview -- or the statement of Mr. Baldwin; No. 2,
9 photos of the club; No. 3, statement of Lauren Stuckey; and
10 No. 4, Latasha Brown. The exhibits are all admitted.

11 MS. GOLDBERG: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. HUNTER::

14 Q. Good morning, Mr. Franklin.

15 A. Good morning.

16 Q. So you did give a confession to the police, correct?

17 A. Yes, sir.

18 Q. Okay. At your plea, you agreed with the solicitor's
19 recitation of the facts as to what happened?

20 A. Yes, sir.

21 Q. Okay. And even after that, you still wished to plead
22 guilty and you did plead guilty, correct?

23 A. Yes, sir.

24 Q. Okay. And when the judge -- at your plea, when Judge
25 Benjamin asked you if you were satisfied with your

EVETTE FRANKLIN CROSS BY MR. HUNTER

1 attorney, you said you were?

2 A. Yes, sir.

3 Q. And Judge Benjamin then asked you if you needed more
4 time to speak with your attorneys and you also said
5 that you didn't need any more time?

6 A. Yes, sir.

7 Q. Okay. And then Judge Benjamin asked you after that --

8 MR. HUNTER: And, Your Honor, this is on page 14.

9 THE COURT: All right.

10 BY MR. HUNTER::

11 Q. He asked -- or Judge Benjamin asked you -- even after
12 she already asked you once if you needed to ask your
13 attorneys anything else, she then asked you again if
14 your attorneys had gone over everything and asked and
15 answered all your questions?

16 A. Yes, sir.

17 Q. Sorry, that was kind of confusing. And you also signed
18 an affidavit -- you signed a form that Ms. Delany gave
19 you that said all of the rights that you were waiving
20 by pleading guilty, is that correct?

21 A. Yes, sir.

22 Q. And on that form, you waived the right to challenge any
23 of the evidence, is that correct?

24 A. Yes, sir.

25 Q. And you knew going into this plea that it was a

EVETTE FRANKLIN CROSS BY MR. HUNTER

- 1 negotiated plea?
- 2 A. Yes, sir.
- 3 Q. And you knew you were going to receive 30 years?
- 4 A. Yes, sir.
- 5 Q. And you still pled guilty?
- 6 A. Yes, sir.
- 7 Q. Okay. And then you -- when Judge Benjamin asked you if
- 8 you were pleading guilty because you were guilty, you
- 9 said yes, you were guilty?
- 10 A. Yes, sir.
- 11 Q. Okay. Then you said you asked Ms. Delany to file an
- 12 appeal for you?
- 13 A. Yes, sir.
- 14 Q. Okay. Let's talk about these witness statements for a
- 15 minute. In Christopher Baldwin's witness statement, he
- 16 did positively ID you as the shooter, didn't he?
- 17 A. Yes, photo lineup.
- 18 Q. Well -- was it the photo lineup? But he said that he
- 19 had seen you earlier when you were -- because he sold
- 20 CDs, correct, out of the trunk of his car?
- 21 A. Yes, sir.
- 22 Q. And you were trying to buy a CD from him?
- 23 A. Yes, sir.
- 24 Q. Mr. Baldwin said the victim in this case saw you trying
- 25 to buy a CD and he thought there was something funny

EVETTE FRANKLIN CROSS BY MR. HUNTER

1 about that?

2 A. I don't recall that.

3 Q. Okay. But he did say that he was at the club later,
4 Mr. Baldwin was at the club later and he said that he
5 saw you shoot the victim?

6 A. That's what he stated.

7 Q. Okay. Now, let's talk about Lauren Stuckey's statement
8 for a minute. She was the bartender at the club,
9 correct?

10 A. Yes, sir.

11 Q. And she had -- in her statement, she said that she had
12 stepped outside to smoke a cigarette and then she came
13 back inside. Right after she came back inside is when
14 the shooting occurred?

15 A. Yes, sir.

16 Q. Okay. And she said that she heard the shots and she
17 was hiding behind some type of, you know, wall?

18 A. Yes, sir.

19 Q. Okay. And then she stood up because she heard the
20 victim's body hit the ground? She stood up and she saw
21 you and looked you in the face, is that correct?

22 A. Yes, sir.

23 Q. And you looked back at her in the face?

24 A. That's what she said.

25 Q. Okay. Now, do you know -- did you know her before this

EVETTE FRANKLIN CROSS BY MR. HUNTER

1 night? Do you know her?

2 A. No, sir, I don't.

3 Q. Okay. So you don't know why she would have any reason
4 to lie about, you know, your identification of her?

5 A. No, sir.

6 Q. Okay. All right. And let's go to Latasha Brown's
7 statement -- or, I guess, she didn't give a statement.
8 Let's go to her interview. Now, she also picked you
9 out of the lineup, is that correct?

10 A. Yes, sir.

11 Q. Physical lineup?

12 A. Yes, sir.

13 Q. Okay. And so that's three people that identified you
14 as the shooter that night?

15 A. Yes, sir.

16 Q. Okay. And all of their -- would you agree that, for
17 the most part, all of their statements give a very
18 similar identity as the description of the shooter?

19 A. Well, I have to disagree with that because they were
20 shown photo lineups of me and couldn't identify me.
21 And one of those witnesses -- well, Ms. Robinson is not
22 included, but Latasha Brown and Lauren Stuckey was
23 shown -- not Latasha Brown, but Lauren Stuckey was
24 shown a photo lineup of me as well as with another
25 witness, which is Lakeisha Robinson, and they couldn't

EVETTE FRANKLIN REDIRECT BY MS. GOLDBERG

1 pick me out in a photo lineup.

2 Q. But you understand that when you pled guilty, you gave
3 up the right to challenge any of that evidence?

4 A. Yes, sir.

5 Q. Okay. Do you have a copy of the transcript in front of
6 you?

7 A. No, sir.

8 Q. If you could, would you turn to page 23 for me? Would
9 you please -- can you read?

10 A. Yes, sir.

11 Q. Would you read me lines 20 through 23?

12 A. Twenty through 23?

13 Q. Yes, sir.

14 A. For the past three years, I have thought numerously
15 about my criminal actions in this case and I have
16 realized there's no way to justify any of them. I was
17 100 percent wrong.

18 Q. Okay. Thank you.

19 MR. HUNTER: Just a moment, Your Honor.

20 THE COURT: That's fine.

21 BY MR. HUNTER::

22 Q. I just want to clear this up, you said that you didn't
23 get all of your discovery until after your plea?

24 A. Some of it.

25 Q. Okay.

EVETTE FRANKLIN REDIRECT BY MS. GOLDBERG

1 MR. HUNTER: That's all the questions I have, Your
2 Honor.

3 THE COURT: Anything on redirect?

4 MS. GOLDBERG: Thank you, Your Honor, briefly.

5 REDIRECT EXAMINATION

6 BY MS. GOLDBERG::

7 Q. Mr. Franklin, you testified that you didn't know about
8 the witness inconsistencies until after you pled
9 guilty?

10 A. Yes, ma'am.

11 Q. Had you known those inconsistencies prior to your plea,
12 would you -- would it have affected your decision to go
13 to trial?

14 A. Yes, ma'am.

15 Q. What would your decision have more likely been?

16 A. I would have told Ms. Delany that some way we was just
17 going to have to set up a defense for this. I didn't
18 know if I could have a motion to have her relieved
19 again. Judge Hood said that if he relieved her, I
20 would have 45 days for the next lawyer to prepare for
21 my trial. And it wasn't fair, but I don't see that
22 there was anything else I can do. And I just -- not
23 that I had anything against Ms. Delany, I just wanted a
24 lawyer that would adhere to what I had to say because
25 it wasn't the lawyer going to trial, it was me going to

EVETTE FRANKLIN RECROSS BY MR. HUNTER

1 trial. And those were the issues that I was raising
2 and requesting to my attorney at the time and I felt
3 like it was only right that she go with it.

4 Q. Had you received the private investigator statements
5 prior to the plea, would you have wanted a trial
6 instead?

7 A. Yes, ma'am, I would have went to trial.

8 Q. Why did you decide to plead guilty?

9 A. Because Ms. Delany -- everything that we talked about,
10 which was the victim's inconsistency and stuff like
11 that, she didn't give me those investigator reports,
12 so, therefore, I had no way to dispute those witnesses'
13 statements. As far as the crime scene photos, I had no
14 way to dispute Christopher Baldwin unreliableness to
15 see what he said to support what he said that he saw.
16 I had no way to dispute that. And she was, basically,
17 telling me that, Evette, the things that we can point
18 out as of the negative photo lineups is nit-picking.
19 And she was telling me that. I'm pretty sure she would
20 admit that. Her and Mr. Mark Sawyer was telling me if
21 I took the plea, at least, I would have a max out date
22 opposed to going to trial and getting life without
23 parole. And I said, Ms. Delany, how do you know that?
24 And she said, There's, basically, no defense.
25 Q. All right.

JOANNA DELANY DIRECT BY MR. HUNTER

1 MS. GOLDBERG: No further questions, Your Honor.

2 THE COURT: Anything further?

3 MR. HUNTER: Just briefly, Your Honor.

4 RECROSS-EXAMINATION

5 BY MR. HUNTER::

6 Q. Mr. Franklin, you acknowledge that you did plead guilty
7 because you were guilty, correct?

8 A. I did.

9 Q. Okay. And that you knew you would be getting 30 years
10 when you pled guilty?

11 A. Yes, sir.

12 Q. Okay.

13 MR. HUNTER: No further questions.

14 THE COURT: You may step down, Mr. Franklin.

15 I assume -- anything further?

16 MS. GOLDBERG: No, Your Honor.

17 THE COURT: All right. Mr. Hunter.

18 MR. HUNTER: Your Honor, the State calls Joanna
19 Delany.

20 THEREUPON,

21 JOANNA DELANY,

22 after having been duly sworn, testified as follows:

23 THE COURT: All right. Please take a seat and
24 tell us your full name and spell your last name for the
25 record.

JOANNA DELANY DIRECT BY MR. HUNTER

1 THE WITNESS: Joanna Delany, D-E-L-A-N-Y.

2 THE COURT: You may proceed, Mr. Hunter.

3 DIRECT EXAMINATION

4 BY MR. HUNTER::

5 Q. Ms. Delany, how long have you been practicing law?

6 A. Since 2007.

7 Q. Okay. And you were with the public defender's office
8 when you accepted this case?

9 A. Yes.

10 Q. Okay. Do you remember about how many times you met
11 with Mr. Franklin?

12 A. I met with him -- I looked back through my notes. I
13 met with him 10 times, twice with Jim May, once with
14 Clark, and the rest of the times were after I had his
15 case. A couple of them were with Mark Sawyer.

16 THE COURT: Can you speak up a little bit, please?

17 THE WITNESS: Sorry. I met with him 10 times,
18 twice with Jim May, once with Clark Newton. The rest of
19 them were after I was first seat on his case. Some of the
20 time, Mr. Sawyer was there, also.

21 BY MR. HUNTER::

22 Q. Okay. Did you file the usual Rule 5 and Brady motions
23 in this case?

24 A. They had been filed by his first attorney.

25 Q. Okay. And did you receive all of that discovery?

JOANNA DELANY DIRECT BY MR. HUNTER

1 A. Yes.

2 Q. Did you go over all of the discovery with Mr. Franklin?

3 A. Yes. If you want to ask me, I can tell you

4 specifically what I went over with him --

5 Q. That would be great.

6 A. -- if you'd like. We did -- we did a motion in front
7 of Judge Hood and Judge Hood ordered that I go through
8 certain -- go through the discovery with him and I did.
9 And I also wrote down what I went through with him and
10 what I gave him. I gave him and went through with him
11 --

12 Well, first, I can tell you what I gave him. I
13 gave him investigative reports by Investigators
14 Eisenhower, Mauldin, their followup reports, case
15 summaries, the same by Investigator Carwell,
16 Investigator Smith, Investigator Holdorf as well as the
17 statements of the witnesses we've been talking about,
18 Lauren Stuckey, Charlotte Moore, Kevin Richardson,
19 Christopher Baldwin, Torice Richardson, Stacy Leget,
20 James Brazell, Velvet Fitzgerald, Lakeisha Robinson,
21 Lee Hicks, his statement, Andy Collota, Shakedra
22 Harold, Tonya Harold, as well as I did give him a copy
23 of our private investigator, which was Dave Lawrence,
24 his interviews of Kevin Richardson, Tonya Harold,
25 Christopher Baldwin, Latasha Brown, Velvet Fitzgerald,

JOANNA DELANY DIRECT BY MR. HUNTER

1 Lee Hicks, T.J. Oliver, Lakeisha Robinson, Lauren
2 Stuckey and James Brazell as well as some of Dave
3 Lawrence's investigator notes. I prepared a packet of
4 those items for him and I also went through those items
5 with him on a couple of occasions. So I did go through
6 and provide that for him.

7 Q. Okay. So you did -- you did have an investigator go
8 back and interview a lot of these witnesses?

9 A. It had been done before I got the case, but, yes, we
10 had a private investigator.

11 Q. Okay. Did you, actually, go to the crime scene
12 yourself?

13 A. I did. I went there twice. I went there initially
14 with Mr. Newton to look at where the videos could have
15 been. And then after our hearing with Judge Hood, I
16 went back and went inside the club with another
17 attorney from our office and, actually, talked to a man
18 that worked there and looked around. And we did stand
19 behind that last pool table and it was visible -- it
20 was visible to see the door from behind the farthest
21 pool table.

22 Q. Did you feel any need to take additional pictures?

23 A. No. And I -- I don't -- I don't remember Mr. Franklin
24 ever asking me to take additional pictures or I would
25 have.

JOANNA DELANY DIRECT BY MR. HUNTER

1 Q. Okay.

2 A. And looked back through the transcript of the motion to
3 be relieved and there was no mention about that.

4 Q. Okay. Did you discuss Mr. Franklin's version of the
5 facts of what happened that night with him? I mean,
6 was there ever any real viable defense?

7 A. We talked about a couple of defenses. We talked about
8 self-defense and we talked about voluntary
9 manslaughter. I did tell him that, in my opinion, I
10 did not think that either of those would work for us at
11 trial. I did not think that we would be able to get --
12 I was unsure if we would be able to get a jury
13 instruction on either of those. There was some real
14 problems with self-defense and whether Mr. Goldson did
15 not, actually, have a weapon and there was no -- there
16 was no -- I think Mr. Franklin said that Mr. Goldson
17 reached towards him like he was going to grab him, but
18 there was no reason to think that he had a weapon. So
19 in terms of the reasonableness of him shooting him, I
20 felt that we had a problem with that.

21 Q. As far as Mr. Franklin's confession that he gave to the
22 police, did you think that you would have, you know,
23 any way to get that tossed out?

24 A. We would have done a Denno motion, obviously, but I did
25 not have any specific reason to think that it would

JOANNA DELANY DIRECT BY MR. HUNTER

1 have -- that we would have been successful at it.
2 There were a lot of things in some of the
3 investigator's notes -- or there were several things in
4 a couple of the investigator's notes that weren't put
5 into his statement, but they weren't things that were
6 helpful to us in terms of a defense. So in terms of
7 his statement being complete, there may have -- there
8 was some issues with that, but the details that were
9 left out were not helpful to the defense.

10 Q. Okay. Kind of along that same line, did you think you
11 had much of a chance in getting, you know, the
12 eyewitness lineup stuff thrown out?

13 A. There were -- yes. There were some issues with the
14 IDs. The police showed two of the witnesses photo
15 lineups where they couldn't pick Mr. Franklin out. And
16 then they did -- then they did an in-person lineup, so
17 after already having seen his picture and not being
18 able to pick him out, they showed him an in-person
19 lineup where they did pick Mr. Franklin out. And there
20 was also the investigator's notes said that they --
21 they, actually, said that they chose people who looked
22 like Mr. Franklin, not people who looked like the
23 suspect. So there were issues with, I think, two of
24 the girls from the club, maybe Lauren Stuckey, and I
25 don't remember if it was Lakeisha Robinson or Latasha

JOANNA DELANY DIRECT BY MR. HUNTER

1 Brown.

2 But, you know, one thing that was problematic was,
3 you know, in my opinion, we couldn't argue identity and
4 self-defense and I didn't think getting those two -- we
5 should have been able to get those two suppressed, but
6 there were so many other witnesses who identified him.

7 There were statements that he made to other people
8 after the fact. Christopher -- not Christopher
9 Baldwin, Kevin Richardson said that Mr. Franklin told
10 him the only people that could get him in trouble were
11 the girl on the motorcycle and the guy selling CDs. He
12 told his girlfriend's daughter -- or his girlfriend's
13 daughter gave a statement to the police saying that he
14 told her that he had gotten in some trouble and was
15 going to have to go away for a while. He told his
16 girlfriend that he was going to have to go away for a
17 while and he wanted to buy her some stuff. And I
18 believe there are a couple others, but I don't remember
19 them off the top of my head.

20 But he -- there was also his friends, the
21 Richardsons, Torice Richardson and Kevin Richardson --
22 I think it was Torice, actually, said that he came back
23 to the apartment afterwards -- that he was talking
24 about robbing the CD man, who was Christopher Baldwin,
25 and that he came back to the apartment afterwards and

JOANNA DELANY DIRECT BY MR. HUNTER

1 said, I got him. I got that expletive. So there
2 were -- there was other evidence of identity.

3 Q. Okay.

4 A. I think we could have gotten two of the IDs suppressed,
5 but there were other things identifying him.

6 Q. Okay. Now, prior to his plea, I believe -- did you
7 have him sign an affidavit of rights form?

8 A. Yes.

9 Q. You went over that with him?

10 A. I did.

11 Q. So he was aware of everything he was giving up by
12 pleading?

13 A. Yes, sir.

14 Q. Did you have any concerns about mental state, his
15 competency?

16 A. I did have him evaluated, actually, by Dr. McKey, who
17 just happens to be here. I did have him evaluated just
18 to make sure we had all of our bases covered and Dr.
19 McKey said he was very intelligent and competent.

20 Q. Okay. So in all your dealings with Mr. Franklin, did
21 he appear to understand what was going on?

22 A. Yes.

23 Q. Okay. Did he ever indicate he wanted a trial or did he
24 always want to plea or how did that work out?

25 A. Our discussions were not so much -- and he would bring

JOANNA DELANY CROSS BY MS. GOLDBERG

1 up inconsistencies in witness statements, but it was
2 more of I should get a better plea because of this, not
3 I should go to trial because of this. You know, the
4 inconsistencies were just, in my opinion, minor and we
5 just had so many witnesses. We just had -- there was
6 so much other evidence of guilt, I don't think we would
7 have won at trial and that's what I told him.

8 Q. Okay. Did you tell him that Judge Benjamin was the
9 only judge that would accept the plea?

10 A. I don't remember saying that. The only thing that I
11 can think of is maybe we waited so long and we were so
12 close to trial that it's possible that she was the only
13 judge we had in the next few weeks that would accept a
14 negotiated plea.

15 Q. Okay. And did Mr. Franklin ever ask you to file a
16 notice of appeal?

17 A. He did.

18 Q. And you did file a notice of appeal, didn't you?

19 A. I think he sent me a letter saying file a notice of
20 appeal and I did file one.

21 Q. Okay. Because an appeal was filed. If he wanted -- if
22 he had indicated to you that he wanted to go to trial,
23 would you have tried the case?

24 A. Yes.

25 Q. Okay.

JOANNA DELANY CROSS BY MS. GOLDBERG

1 MR. HUNTER: I think that's all the questions I
2 have.

3 THE COURT: Ms. Goldberg.

4 THE PLAINTIFF: Yes, sir, beg the Court's
5 indulgence. Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MS. GOLDBERG::

8 Q. Ms. Delany, you went over -- it appears in your notes,
9 that you gave Mr. Franklin several items of discovery?

10 A. Yes.

11 Q. And I think that you testified that you did give him
12 the private investigator reports?

13 A. I did.

14 Q. Do you have a date?

15 A. I -- I can tell you when I went through it with him for
16 certain, if you give me a second. I went through that
17 with him on June 21st of 2013. I went through Dave
18 Lawrence's interviews of Kevin Richardson, Tonya
19 Harold, Christopher Baldwin, Latasha Brown, Lee Hicks,
20 T.J. Oliver, Lakeisha Robinson, Lauren Stuckey and
21 James Brazell. And I talked to him about some other
22 things and I gave him a copy of them on the same day.

23 Q. You gave him a copy the same day?

24 A. Yes.

25 Q. Were there -- did you attempt to get Mr. Franklin a

JOANNA DELANY CROSS BY MS. GOLDBERG

1 better plea offer in this case?

2 A. Yes.

3 Q. How were those discussions? What went on with those
4 discussions?

5 A. I talked to Ms. Garfield about it several times and she
6 was not willing to come down from 30 on murder. I
7 tried talking to her, actually, on a -- when were at
8 the Court of Appeals for a drug court meeting once. I
9 remember specifically to try to get a -- since we were
10 out of the courthouse, I thought maybe that would be
11 better. But I did talk to her several times and she
12 was not willing to reduce the charge.

13 Q. Did you ever have a conversation with Mr. Franklin
14 about your experience as an attorney and your
15 experience with murder cases in general, do you recall
16 that conversation with him?

17 A. I was -- in reading the transcript from Judge Hood's --
18 the motion to be relieved, it appears that I did.

19 Q. What do you remember about that?

20 A. That he asked me how many murder cases I had had and I
21 told him one.

22 Q. You said you did go out to the crime scene on two
23 occasions?

24 A. Yes.

25 Q. But did not take photographs?

JOANNA DELANY CROSS BY MS. GOLDBERG

1 A. Yes.

2 MS. GOLDBERG: Your Honor, if I could have Exhibit

3 No. 2 back, please.

4 THE COURT: Sure.

5 BY MS. GOLDBERG::

6 Q. Ms. Delany, I'm going to hand you Applicant's Exhibit

7 No. 2, those are the photographs. Do you recognize

8 those photographs?

9 A. Yes.

10 Q. Do you -- can you tell me what they are?

11 A. There are the inside of the club.

12 Q. Do you -- do you recognize where those photographs came

13 from?

14 A. I think they came from discovery.

15 Q. Those were the crime scene photos?

16 A. Yes.

17 Q. From the night of the incident?

18 A. Yes.

19 Q. Are they accurate to what you observed when you went to

20 the crime scene?

21 A. Mostly. It was a little bit different. They had torn

22 down part of a wall and they didn't have all of the

23 flags up, I don't think. I'm not sure, but it looks

24 about the same.

25 Q. Do you recall if you ever showed Mr. Franklin those

JOANNA DELANY REDIRECT BY MR. HUNTER

1 photograph or went over those with him?

2 A. I don't, and I was looking back through my notes trying
3 to see that. What it says is one of the times we met,
4 he said he hadn't seen the CSI reports or the autopsy
5 photos and I went through those with him, but there's
6 nothing about going through the photos with him, so I
7 may not have.

8 Q. Based on those photos, would your opinion whether Mr.
9 Baldwin had been able to see the incident been the
10 same? Would anything be blocking his view in those
11 photographs?

12 A. No. There was like a half wall about this high
13 (indicating).

14 THE COURT: When you say this high, please give me
15 an estimate. Is it three feet, is it four feet?

16 THE WITNESS: Three and a half feet high, Judge.

17 THE COURT: Okay.

18 THE WITNESS: And there was -- I stood in the back
19 of the bar and you could see -- you could see the front
20 door. I stood behind the last pool table.

21 BY MS. GOLDBERG::

22 Q. So your opinion of whether he would have seen the
23 incident would be the same?

24 A. Yes.

25 Q. Did you file a notice of appeal in this matter?

JOANNA DELANY REDIRECT BY MR. HUNTER

1 A. Yes.

2 Q. Do you remember why it was dismissed or --

3 A. Mr. Franklin had written me a letter saying, Please
4 file a notice of appeal, and I did. And then right
5 after I did it, I got a letter from him saying, I don't
6 want to appeal, but we had already done it at that
7 point. I think it was dismissed because it was the
8 standard language of I'm filing an appeal because my
9 client has asked me to. And he didn't respond to the
10 dismissal.

11 Q. Was there -- should you have stated a reason for the
12 appeal in your notice of appeal?

13 A. No. I mean, it was a negotiated plea and he knew what
14 he was going to get.

15 MS. GOLDBERG: All right. Beg the Court's
16 indulgence.

17 THE COURT: Yes, ma'am.

18 MS. GOLDBERG: Nothing further, Your Honor.

19 THE COURT: Anything further, Mr. Hunter?

20 REDIRECT EXAMINATION

21 BY MR. HUNTER::

22 Q. Even though -- so was this your first murder case or
23 was it your second?

24 A. Second.

25 Q. Okay. Does your office have a policy of having a

JOANNA DELANY REDIRECT BY MR. HUNTER

1 second chair on all murder cases?

2 A. Yes.

3 Q. So during this case, did you have someone second chair
4 with you?

5 A. Yes.

6 Q. Okay. And while you were, actually, second chair,
7 first chair was Jim May?

8 A. Yes.

9 Q. Would you say he's very experienced?

10 A. We started at the same time. He probably had more
11 violent cases than I had.

12 Q. Okay. And as far as the appeal goes, do you have -- or
13 do you have a duty to be honest with the Court when you
14 file a notice of appeal?

15 A. Yes.

16 Q. As far as whether or not you believe there's any
17 grounds for an appeal?

18 A. Yeah, I think -- and I'm sorry, I think the language is
19 from Weathers, I think is the case of what you're
20 supposed to say when your client ask you to file an
21 appeal, but you don't have a legal ground for it. And
22 I believe that's what I filed.

23 Q. Okay.

24 MR. HUNTER: That's all I have, Your Honor.

25 Thank you, Ms. Delany.

1 THE COURT: Anything further for this witness?

2 MS. GOLDBERG: No, Your Honor.

3 THE COURT: All right. You may step down, Ms.

4 Delany.

5 THE WITNESS: Thank you, Your Honor.

6 THE COURT: Anything further, Mr. Hunter?

7 MR. HUNTER: No, Your Honor.

8 THE COURT: Anything further, Ms. Goldberg?

9 MS. GOLDBERG: No, Your Honor. I think the
10 applicant testified fully as to the grounds he's presenting.

11 THE COURT: All right.

12 Thank you for your lively presentation. I will
13 consider what I've heard today and let you know my decision.

14 MS. GOLDBERG: Thank you, Your Honor.

15 THE COURT: Thank you all so very much.

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1 COUNTY OF RICHLAND)

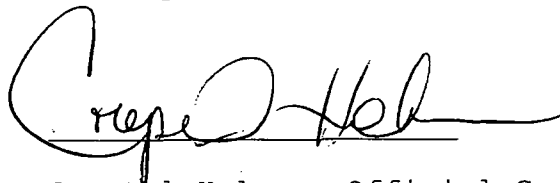
2 CERTIFICATE OF REPORTER

3 I, Crystal Holmes, hereby certify that I reported
4 the preceding case entitled Evelt Franklin Vs. State of SC
5 Case No. 2013-CP-40-05965, at the Richland County
6 Courthouse, July 15, 2014.

7 I FURTHER CERTIFY that the foregoing pages 1
8 through 50 constitute a true, accurate and full transcript
9 of said hearing.

10 I FURTHER CERTIFY that I am not employed by any of
11 the parties hereto and I have no financial interest in the
12 outcome of said case.

13 IN WITNESS WHEREOF, I have heretofore set my hand
14 and seal at Richland County on this 9th day of November,
15 2014.

16 

17 Crystal Holmes, Official Court Reporter

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Dave Lawrence
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MEMORANDUM OF INTERVIEW

Person Interviewed: Roman Christopher Baldwin

Interview Conducted by: Dave Lawrence

Date: October 19, 2010

Roman Christopher Baldwin, [REDACTED], Little Mountain, SC, 29075; voluntarily agreed to be interviewed. He provided the following information:

Baldwin is known to be called the "CD man". He sells compact discs (CD) from his automobile which is usually parked behind the Kangaroo Express at Zimalcrest Drive and Broad River Road. He is also a training to be a barber and works in a barbershop next door to the Kangaroo Express. Baldwin has given a written statement to the Richland County Sheriff's Department regarding the shooting at the Exclusive Bar and Grill on Zimalcrest Drive in May 2010. He explained that a black male subject came up to him wanting to buy a CD and then asked him if he wanted to buy a "strap". Baldwin explained that this is a slang street term for a gun. The subject informed Baldwin that it was a .40 caliber Glock and lifted his shirt so Baldwin could see it tucked in his waistband. Baldwin recalled the gun had a gray or silver colored slide and the rest of it was black. The subject was asking \$250 for the gun. Baldwin told him that was too much and did not buy it.

Later on this evening, Baldwin was at the Exclusive Bar and Grill when the same person that he said tried to sell him the gun came up to the club shooting a gun. Baldwin was familiar with "T-Red" from seeing him on numerous occasions around the club and general area. Baldwin recalled the guy doing the shooting was wearing a green cap, white tee shirt and jeans. It was the same clothing as he had on during the time he asked about the CD and tried to sell him the gun. The subject fired numerous shots at "T-Red" inside and outside of the club. Baldwin also received some damage to his vehicle's windshield that was parked outside the club.

Baldwin emphasized that he did not have anything else further to add or change other than what he had told the police in his written statement he gave months ago.

PLAINTIFF'S
EXHIBIT

Statement of

Roman Christopher BaldwinLittle Mountain, SC 29075

Made at

Columbia, South Carolina, this 10th day of May, 2010, at 14:40 hours, in the presence of J.C. Mauldin and K. Isenhoward of the Richland County Sheriff's Department.

I, Christopher Baldwin, Do make the following statement:

Q: Were you in the Parking Lot of the BP Station at the corner of Zimacrest Dr. and Broad River Rd. on the evening of Tuesday April 4th 2010?

A: Yes.

Q: Were you inside of the Exclusive Bar and Grill, which is located behind that BP station, later that same evening?

A: Yes.

Q: Can you tell me why you were at the BP station that evening?

A: I'm in training to be a barber so I hang out at the barber shop up there. I also sell CD's and DVD's out of the back of my trunk.

Q: On the evening of May 4th 2010, did you sell a CD to a dark skinned black male wearing a green baseball cap, white t-shirt, and blue jeans?

A: Yes.

Q: Can you describe your interaction with this individual?

A: He walked up to me and asked me for a CD with Gucci, Young Jazzy, and Lil Wayne. I said Nah...you are asking for the wrong CD and I told him the one he wanted. I gave him the CD and he asked me if I wanted to buy a strap, which is a gun. I asked him what kind of gun and he told me it was a Glock .40. He lifted up his shirt and I could see a gun in his waist band. The gun had a gray slide and the rest was black. I asked him how much he wanted for it and he told me \$250.00. I told him that was too much. Then he bought the CD and walked away.

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: [Signature]

Signed: [Signature]

Witness: _____

Sworn to and subscribed before me

This 10 day of May, 2010

[Signature]
Notary Public for South Carolina

My commission expires 2/12/2017

Q: Is the guy that showed you the gun and bought the CD from you, the same person that you identified in the photo lineup that we showed you?

A: Yes sir it is.

Q: Did you see this same person in the Exclusive Bar and Grill later that evening?

A: Yes. That same dude came in. I saw him shooting.

Q: Are you sure that the person that you saw shoot T-Red at the Exclusive Bar and Grill was the same person that you dealt with earlier.

A: I'm certain. He had his hat pulled down but you could still see his face. He had on the same hat and clothes. He was standing just inside the doorway of the club. He didn't come in the bar too far. He only walked into the bar a couple of steps.

Q: Can you describe where you were at the time of the shooting and what you saw while you were standing there?

A: I was at the third pool table. I didn't see T-Red actually come in. I think he was crawling. I could see the dude with the green hat come in and start shooting down. He was holding the door with his left hand and shooting with his right. T-Red was directly to the right of the door on the ground. There are two tables there that T-Red knocked down while he was crawling in.

Q: Do you know the guy in the green hat?

A: I don't know the dude's name. I hadn't seen him before but evidently he knew who I was the way he came up to me.

Q: Did your vehicle receive any damage during the shooting?

A: Yes. He shot my windshield. I guess that happened when he started shooting outside. I didn't see the shooting outside.

Q: Do you have anything else to add to your statement?

A: No that's about it.

Q: Is this statement the truth?

A: Yes.

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: [Signature]

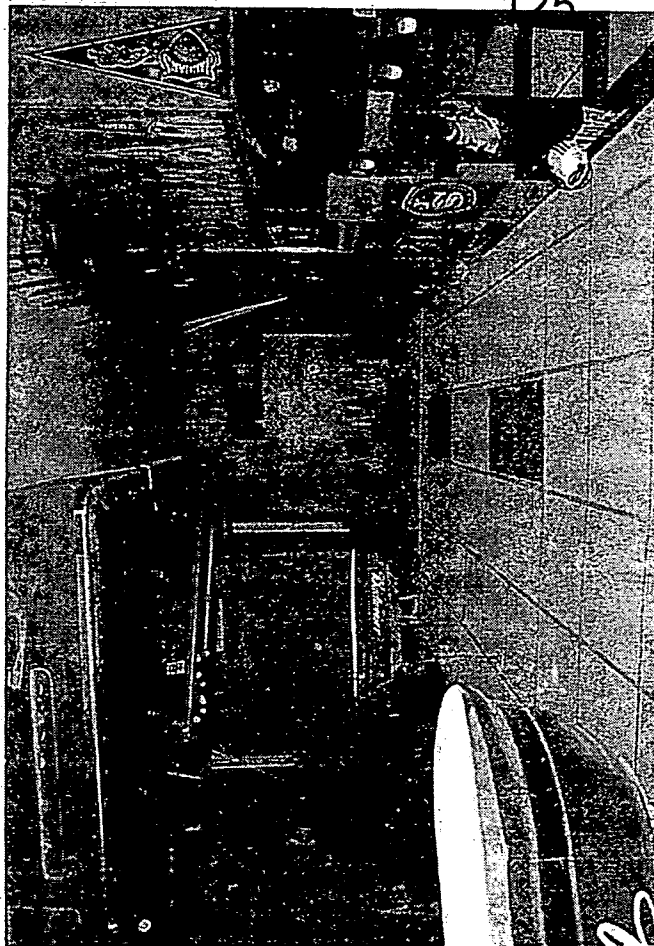
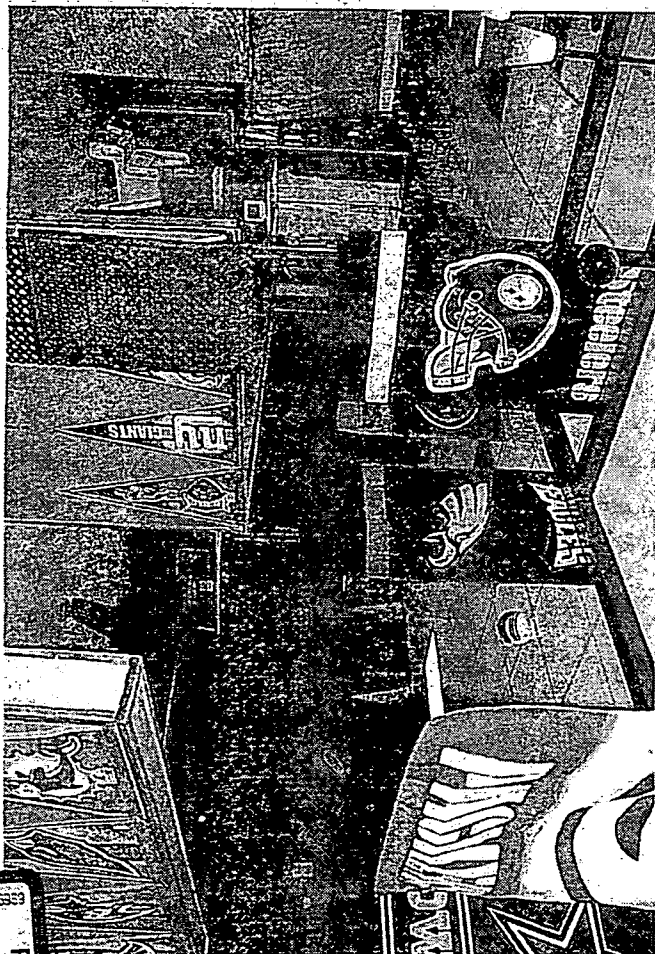
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Witness: _____

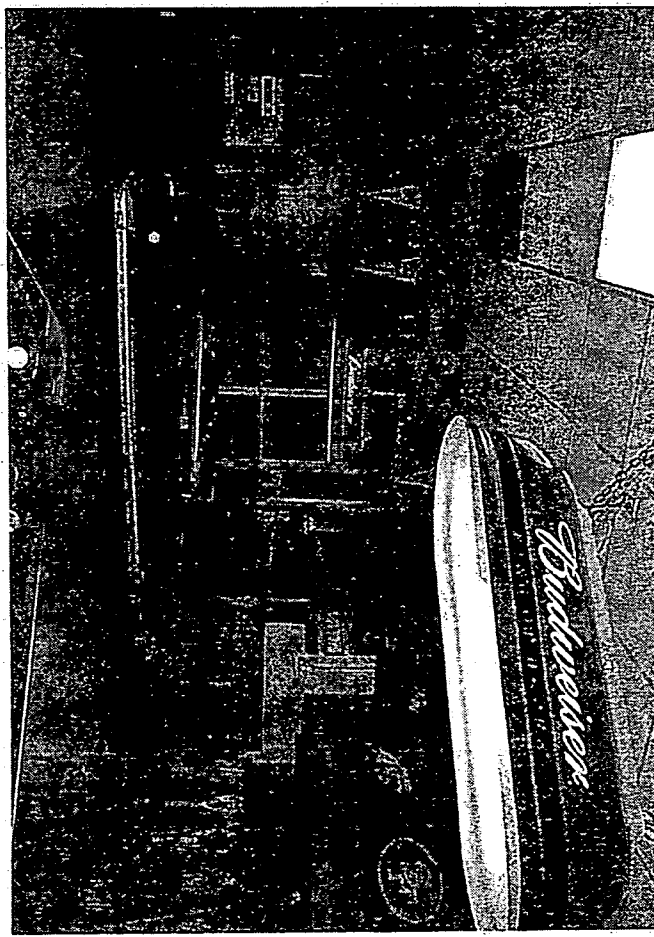
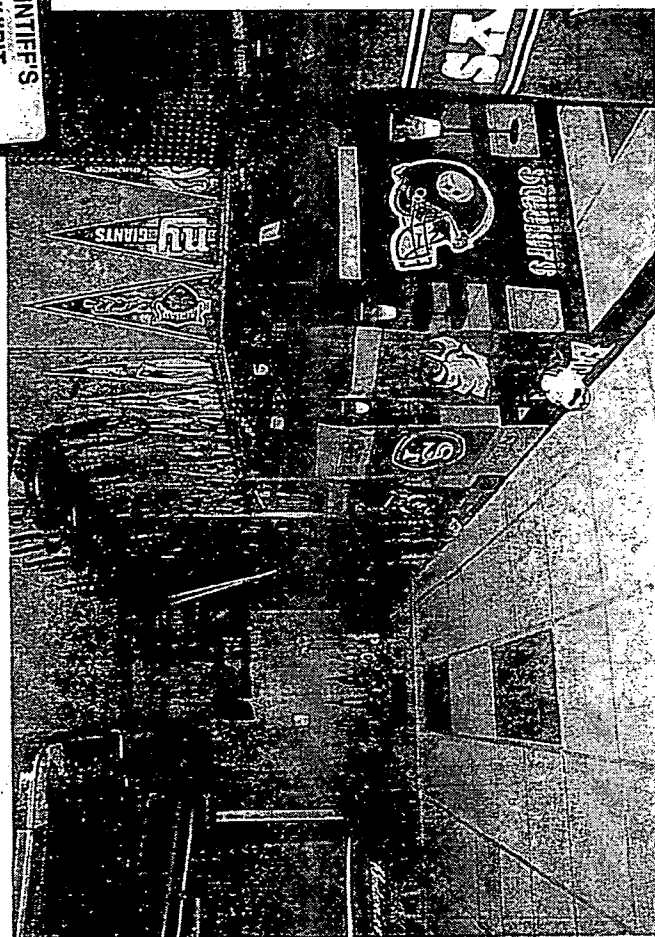
Sworn to and subscribed before me
This 10 day of May, 2010

[Signature]
Notary Public for South Carolina

My commission expires 01/17/2017.



PLAINTIFF'S
EXHIBIT
GAD 600-631-6639



Dave Lawrence
President
The Lawrence Company, LLC
(803) 348-4220



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Chapin, SC 29036
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MEMORANDUM OF INTERVIEW

Person Interviewed: Lauren Stuckey

Interview Conducted by: Dave Lawrence

Date: January 10, 2011

Lauren Stuckey, [REDACTED], Lexington, SC 29072; cell phone number [REDACTED]; voluntarily agreed to be interviewed by telephone. She provided the following information:

Stuckey was employed at the Exclusive Bar and Grill as a bartender during the time of the shooting. She knew a black male by the nickname of "Red" as a regular customer. As she was taking a smoke break one night, she saw "Red" leave the pool table area and go outside. Just moments later, she heard several gun shots. She went to the window and door and then saw "Red" run back inside while another black male was shooting him. She got a good look at the shooter as she was only a few feet away. She did not recognize the shooter as anyone she knew.

Stuckey gave a verbal statement to the police that night and a written statement later the next day. A few days later, she was asked by the police to view a photo line-up. She did not recognize anyone in the line-up as the shooter. A week or two later, she was asked to come to the Richland County Sheriff's Department to view a physical line-up. She was able to positively identify the person that did the shooting at the Exclusive Bar and Grill.

Stuckey was unaware of any previous incident that the shooter and the victim in this case had prior to this shooting. She recalled seeing "Red" in the bar numerous times but did not know whether he had any verbal or physical confrontation with any other customer. If any incident did occur, it happened sometime while she was not working. Stuckey also quit her job at the Exclusive Bar and Grill after the night of the shooting.



Statement
State of South Carolina
County of Richland

Personally appeared before me this 5th day of May, 2010, at 1130 hours, an officer duly and legally authorized to administer oaths in the above named county and state aforesaid, comes one Lauren Stuckey DOB [REDACTED]. Daytime telephone number [REDACTED].
Nighttime telephone number [REDACTED].
Who makes the following statement under oath to wit:

Q: Lauren, can you again relate again what happened last night at the Exclusive Bar and Grill?
A: I was tending bar there. I had been there since 4:00 PM. It was after 9:00 PM, and I happened to walk outside to smoke a cigarette. I saw "Red" there, and he was talking to a girl who had a motorcycle. She had just apparently pulled up. I walked past them to go smoke on the patio. As I walked by I commented that she had a nice bike. She really didn't say anything back to me, but I heard a portion of their conversation. I heard Red ask her if she was going in. I think she said something like she was waiting on somebody. I was sort of eavesdropping. I then smoked my cigarette, but didn't get to finish it because other customers came in. I went back in and took their orders, and then made two drinks (2 shots of Hennessy). I was starting around the bar to serve the drinks to the two females who had ordered them (two sisters). I sat the drinks down for them, and was starting back towards the bar. [That is when I heard the shots outside. I ran towards the windows in the front to try to see what was going on. I didn't make it there. I heard more shots, so I turned and went the other way to duck down behind a little wall which is in there. I saw other people ducking as well. I then heard a thump from the other side of the half wall I was hiding behind. The shots stopped for a second, and I thought it was over. I then stood up. That was when I saw the shooter. I looked into his eyes from about seven or eight feet away. I saw that he had a gun in his right hand (I think it was his right hand). He looked back at me for a second. He then started shooting downward. At first I didn't know what he was shooting at. The guy shot several times and he then ran out. It was then that I was able to see who he was shooting at I saw Red on the floor. It was then that I realized that the thump I had heard was Red hitting the wall when he fell back. Red was bleeding badly. At first I thought it was just a leg wound because I saw that wound first. I got a man to give me his shirt, and I applied pressure to the leg wound. I used to be an EMT, so I know the basics. I was trying to control the bleeding and to assist in his breathing by holding his head a certain way. I kept talking to Red, trying to comfort him. I then saw blood coming up from his pants waistline area. I knew then that Red had other wounds. Red was also going into shock. The deputies soon got there and told me to get out of the area. The EMT's got there soon thereafter. Later, I spoke to the investigators and told them what I had seen.

This statement was made in the presence of Investigator Smith of the
Richland County Sheriff's Department.

I make this statement of my own free will and accord, without reward or intimidation. All of the above is the truth, the whole truth and nothing but the truth.

Sworn to and subscribed before me
this 5 day of MAY 2010

[Signature]
Notary Public for South Carolina
My commission expires 05/26/2011

Signed: [Signature]

Witness: _____

Witness: _____

Richland County Sheriff's Department
Criminal Investigative Division
Investigative Report

Case Number:	1005039804
Offense Date:	05/04/2010
Case Officer:	J.C. Mauldin
Victim's Name:	Thomas Golson
Victim's Address:	
Location of Offense:	
Type of Offense:	Murder

05/04/2010

09:30 hrs I was notified by Sgt. Kevin Isenhoward of a shooting at the Exclusive Bar and Grill located at 1004 Zimalcrest Dr. near the intersection of Zimalcrest Dr. and Broad River Rd. I responded to that location where I observed a number of people moving about the bar's outer most parking lot as well as the parking lot of an adjacent BP gas station. A crime scene had been established encompassing most of the front parking lot of the bar as well the entire interior of the bar. Inv. J. Carwell provided a summary of his understanding of what had transpired at the bar a short time before based on several eye witness accounts. The victim of the shooting, Thomas Leven Golson, was apparently standing just outside the entrance of the bar when he was approached by an unidentified black male who presented a gun and opened fire on Golson. As Golson attempted to take cover inside of the club, the same suspect followed him in and continued to fire his weapon. Golson was struck by an unknown number of shots before collapsing and was summarily transported to Palmetto Richland ER where he succumbed to his wounds.

I then spoke to Lauren Stuckey, who is a bartender at the Exclusive Bar and Grill. Stuckey stated that she was outside smoking this evening when she saw the victim, talking to a black female who was on a motorcycle just outside of the entrance of the bar. Stuckey stated that she knows the victim, Thomas Golson, as "Red" and that he often frequents the bar. Stuckey claims that she spoke to the victim as well as the female he was with for a brief period before entering the bar. Stuckey stated that she heard a pop a few seconds later and that she saw Red collapse through the front door and into the bar where he crawled toward a corner just to the right of the doorway. He was followed by a black male who was wearing a green hat with a white A on the front, a white t-shirt, and denim pants. She stated that this subject was pointing a gun at Red and that he fired it at red several times. Stuckey stated that at one point, the shooter looked right at her because she was very close to Red at the time of the shooting. Stuckey described the shooter as being about 5'10" with a slim muscular build and dark skin. Stuckey further stated that the shooter then went out the front door and that she did not see his direction of travel. Stuckey then claims that she saw blood coming from one of the victim's legs and from the area of his waist.

I spoke to Phyonicia Smith who claimed to be the mother of one of the victim's children. Smith was hysterical and crying. She stated that she heard about the shooting from one



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MEMORANDUM OF INTERVIEW

Person Interviewed: Latasha Brown

Interview Conducted by: Dave Lawrence

Date: January 4, 2011

Latasha Brown, cell phone number [REDACTED], voluntarily agreed to be interviewed by telephone. She provided the following information:

Brown was at a car wash beside the Family Dollar store on Broad River Road one day when a black female began talking to her. She could not recall her name but the unknown female actually invited her to go to the Exclusive Club later that night. Brown later met up with this unknown female and some of her friends at the Exclusive Club.

While there, she recalled this one guy was playing a pool game and then stopped to go outside. It was very shortly afterwards that she heard three to four gunshots coming from outside of the club. Almost instantly, the door to the club flew open and the same guy that was playing pool was running into the club with another black male chasing him. The black male chasing the guy fired about four to five more shots inside of the club towards the guy running from him. Brown estimated that she was approximately 10 feet away from this incident. She described the person that did the shooting as a black male, tall, slender, with braids, wearing a baseball cap. She does not recall exactly what type clothing he had on. Brown also related that she had only consumed 1/2 of a beer at the time of the incident. She was not intoxicated and remembered the incident very well.

A few days later she recalled going to the Richland County Sheriff's Department where she was asked to view a physical lineup. She recalled viewing a physical lineup with six black males in it. She positively identified one of the individuals in the physical lineup as the person that did the shooting at the Exclusive Club. Brown was not shown a photo line-up of anyone.

Brown is now living in the state of Maryland and is employed with the Lowe's company.



Richland County Sheriff's Department
Criminal Investigative Division
Investigative Report

of the victim's cousins and that she came to the club after the shooting. Smith stated that she heard from the same cousin that Golson had been killed because of a game of pool. When I asked her to clarify, she stated that she heard that Golson had gotten into a fight with someone over a game of pool a few days or weeks prior to the shooting. Smith denied any direct knowledge of any altercations or ongoing disputes between Golson and anyone else. I asked Smith to show me where Golson lived. She accompanied me to Hunter's Ridge Apartments where she pointed out building 965 on Ridgely Place. She stated that she did not know the apartment letter.

I then made contact with the Bar manager, Dunbar Dolo, as well as Kevin Johnson who is the bar owner. I inquired about video surveillance. Johnson stated that there is a video system within and without the building. He also stated that it is hooked to a monitoring device at his home and that it appears that the surveillance system may be broken. Johnson stated that although he was unable to view the video at his home, the hard drive connected to the bar's internal cameras may still be recording. Sgt. Iserhoward and I then inquired into the location of the hard drive. Johnson described it as being in the ceiling above the last table at the back of the bar's pool area.

I then spoke to a witness named Lakeisha Robinson. Robinson had ostensibly been talking to the victim at the time he was approached and shot by the unidentified assailant. Robinson stated that she was driving by the Exclusive Bar and Grill when she saw the victim who she only knows as "T-Red" standing outside talking on the telephone. Robinson stated that she and T-Red waived at each other and that she then pulled into the parking lot of the bar to talk to him. Robinson stated that she pulled up and parked her bike directly in front of the door to the bar and was speaking to T-Red for a few minutes. She stated that a dark skinned black male in a white t-shirt, blue jeans, and a green baseball hat, walked around the left corner of the building and toward the door as if he was going to enter the bar. She stated that the subject had one of his hands behind his back. According to Robinson, when this subject got within a few feet of Robinson and Golson he pulled out a black and silver semi automatic handgun. Robinson claims that she heard the subject say "What's up now nigga" before firing several shots into T-Red. Robinson stated that T-Red fell into her bike knocking it down and then fell on the ground where the subject shot him again. Robinson stated that T-Red then staggered into the bar trying to flee and that he was followed by the subject who continued to shoot him. Robinson stated that she ran away at that point. Robinson stated that she may be able to identify the shooter if she were to see him again.

I was then given a phone number for a Latasha Brown. Brown had apparently been at the Exclusive Bar and Grill during the shooting and had fled immediately after the shooting. Brown stated that when she got to her home she contacted the police so that she could give an account of what she had seen. Brown stated that she had been inside of the bar when she heard the shooting. She stated that she took cover underneath a pool table and that she only saw the shooter as he was exiting the building. Brown stated that the shooter was a slim, dark skinned black male wearing a white t-shirt, blue jeans, and a green hat. Brown stated that she believes that the shooter may have had small braids or corn rows in his hair.

Richland County Sheriff's Department
Criminal Investigative Division
Investigative Report

the man with the gun was shooting other people inside of the club and that she only learned later that only one person had been shot. Hicks stated that the shooter was wearing a white t-shirt, blue jeans and a hat. Hicks could not provide the color of the hat. Hicks stated that she got a good look at the gun which she described as being a grey and black semi automatic pistol. Hicks maintained that there was no altercation between Golson and Franklin and that Golson was shot before he could react in any way to Franklin's presence.

06/10/2010

I called Latasha Brown who was inside of the Exclusive during the shooting and was able to identify Franklin in the physical lineup. I asked Brown to come and provide me with a written statement. Brown stated that she would meet me at RCSD headquarters the following day at 16:00 hrs.

06/11/2010

Brown failed to show up for her interview. → why

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Evette Franklin, #284514,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No. 2013-CP-40-5965

ORDER OF DISMISSAL

RICHLAND COUNTY
FILED
2014 AUG 29 AM 11:21
JEANETTE W. MCBRIDE
C.L.P. & G.S.

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on October 1, 2013. Respondent made its return on December 16, 2013. An evidentiary hearing into the matter was convened on July 15, 2014, at the Richland County Courthouse. Applicant was present at the hearing and was represented by Kristy G. Goldberg, Esquire. Respondent was represented by Assistant Attorney General J. Croom Hunter of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was indicted during the July 2010 term of the Richland County Grand Jury for Murder (2010-GS-40-2363). Applicant was represented by Joanna K. Delany, Esquire. On July 3, 2013, Applicant appeared before the Honorable DeAndrea G. Benjamin, where he pled guilty as indicted to Murder. Judge Benjamin sentenced Applicant to thirty years imprisonment pursuant to negotiations.

Applicant filed a notice of appeal and an appeal was perfected. The South Carolina Court of Appeals dismissed the appeal for failure to provide sufficient explanation as required by Rule 203(d)(1)(B)(iv), SCACR. The Remitter was issued on September 30, 2013.

ALLEGATIONS

In his application for post-conviction relief, and in an Amendment to the application filed on July 9, 2014, Applicant alleges that he is being held in custody unlawfully based on the following grounds:

1. Ineffective assistance of counsel – Trial counsel failed to provide Applicant with all discovery and witness statements prior to the decision to enter a plea and therefore the plea was not knowingly entered as he did not have a full understanding of what could be presented at trial.
2. Ineffective assistance of counsel – Trial counsel failed to investigate case by failing to go to crime scene and take photographs.
3. Ineffective assistance of counsel – Trial counsel failed to fully consider all of the issues and inconsistencies present in his discovery and erroneously advised Applicant to enter a guilty plea.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from plea counsel, Joanna K. Delaney, Esquire (Counsel). This Court also had before it a copy of the plea transcript, the Richland County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the return, and various exhibits.

During the evidentiary hearing, Applicant testified that he was represented at his plea by Joanna K. Delaney, Esquire. Applicant testified he was arrested on May 13, 2010 and pled guilty on July 13, 2013. Applicant testified he went through multiple attorneys before Counsel began her representation. Applicant testified Counsel started out as second chair but assumed the first chair role at the end of 2012. Applicant testified Counsel was first chair for around six months.

Applicant testified that he filed a motion to have Counsel relieved, and a hearing was held. Applicant testified that the hearing judge told him if Counsel was relieved, his new attorney would only have forty-five (45) days to prepare for trial. Applicant testified he wanted to go to trial, but Counsel was very enthusiastic in trying to make him plead guilty. Applicant testified he wanted his statements to be suppressed, but Counsel told him that it was unlikely. Applicant testified he wanted to challenge the photo lineup. Applicant testified Counsel told him if he went to trial, he would likely get LWOP. Applicant testified Counsel told him the plea judge was the only judge they were likely to get who would accept his negotiated plea for thirty years. Applicant testified that he specifically requested Counsel go to the crime scene and take photos from the witnesses' points of view. Applicant testified that the witness Lauren Stuckey could not have seen what she said she did based on her location at the crime scene. Applicant testified he does not know Stuckey. Applicant testified that three different witnesses identified him as the shooter. Applicant testified he met with Counsel around seven times. Applicant testified that everything they talked about was negative. Applicant testified Counsel told him he would likely be convicted at trial. Applicant testified he did not see all of the witness statements until after his plea, and that he did not discover inconsistencies between the statement and the interview until after his plea. Applicant testified his prior attorney, Jim May, talked to him about a sixteen year sentence at some point. Applicant testified that he asked for an appeal. Applicant testified he wanted Counsel to have his statements and the witness statements suppressed. Applicant testified that he did give a confession to police. Applicant testified that he agreed with the solicitor's recitation of the facts at the plea that he was guilty, and he wanted to plead guilty. Applicant testified that he told the plea judge he was satisfied with Counsel and did not need any more time. Applicant testified that he signed an affidavit stating he did not want to challenge the

evidence at trial, and he knew he was giving up his right to challenge the evidence by pleading guilty. Applicant testified that he knew he was pleading to a negotiated sentence of thirty years.

Following Applicant's testimony, Joanna Delaney, Esquire (Counsel) was called to testify. Counsel testified she has been practicing since 2007 and was with the Public Defender's office when she was appointed to this case. Counsel testified she met with Applicant ten times. Counsel testified she received discovery and went over it with Applicant. Counsel testified she gave Applicant the investigators' reports, and all of the witness statements, including the statements Applicant claimed she did not give him. Counsel also testified she gave Applicant a copy of the notes made by Dave Lawrence, the private investigator, although Applicant claims she did not. Counsel testified she went to the crime scene two times and confirmed the witness's statements. Counsel testified she discussed with Applicant his version of the events, as well as self-defense and voluntary manslaughter theories. Counsel testified she told Applicant she did not think those defenses would be successful at trial. Counsel testified she did not think self-defense would be successful because the victim did not have a weapon. Counsel testified she did not think there was any reasonable basis for Applicant to claim he was in fear for his life or in danger. Counsel testified she did not believe she would be able to get a jury instruction on self-defense or voluntary manslaughter. Counsel testified that she would have requested a Jackson v. Denno hearing if Applicant proceeded to trial. Counsel testified there was a photo lineup as well as an in-person lineup, and she thought there was a possible basis for challenging them at trial. Counsel testified she believed the evidence was overwhelming, even without the lineups. Counsel testified that Applicant told numerous friends he had done something wrong and would have to go away for some time. Counsel testified she reviewed Applicant's constitutional rights and had him sign a waiver of rights. Counsel testified she had Applicant mentally evaluated, and

the doctor said he was very intelligent and competent. Counsel testified Applicant wanted a better plea offer due to inconsistencies between the witness statements, but Counsel told him the inconsistencies were minor, and there was so much other evidence, that he was likely to be convicted at trial. Counsel testified Applicant was aware of the inconsistencies prior to his plea. Counsel testified this was her second murder case, but she had another attorney as second chair throughout the trial.

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that,

but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

This Court finds Applicant failed to demonstrate that Counsel's performance was deficient in any way. This Court further finds that Applicant presented no evidence to show any prejudice resulting from Counsel's representation. Additionally, this Court finds Counsel's testimony credible and Applicant's testimony not credible.

This Court finds that Counsel met with Applicant multiple times prior to the guilty plea. This Court finds Applicant understood he was pleading to a thirty year sentence. This Court finds Applicant understood he was not going to get a better plea offer. This Court further finds Counsel obtained discovery from the solicitor and went over it with Applicant. Accordingly, this Court finds Applicant's claim that Counsel did not go over discovery with Applicant is without merit. This Court finds Counsel explained to Applicant the terms of his plea and the fact that if he went to trial he was facing many more years in prison. This Court finds Counsel's belief that there was not a good chance of having the statement suppressed was reasonable. This Court finds Counsel had Applicant mentally evaluated. This Court further finds that Counsel reasonably believed the inconsistencies in the witness statements were insignificant, and that the evidence against Applicant was overwhelming. This Court further finds Applicant's claim that Counsel should have taken pictures at the crime scene is without merit. This Court finds that Counsel visited the crime scene twice, and Counsel had no reason to obtain further photographs. This Court finds that the evidence against Applicant was overwhelming, and Counsel did everything

she could reasonably have done to obtain a favorable outcome for Applicant.

Accordingly, this Court finds Applicant did not demonstrate any deficiencies in Counsel's representation. This Court finds that because Counsel's representation was well within the range of competence required in criminal cases, Applicant has further failed to make any showing that but for Counsel's alleged deficiencies, the result of Applicant's case would have been any different.

INVOLUNTARY GUILTY PLEA

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)).

When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief

hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

This Court finds Applicant has failed to demonstrate that his guilty plea was entered involuntarily.

This Court finds Applicant was aware of the nature of the charges he was facing and the possible penalties. This Court finds Applicant did not disagree with the solicitor's recitation of the facts at his plea. This Court further finds that Applicant told the plea judge that he was guilty, and he wanted to plead guilty. This Court finds Applicant told the plea judge he was satisfied with his attorney and did not need any more time. This Court finds Applicant signed a waiver of rights affidavit prior to his guilty plea. Accordingly, this Court finds Applicant was well aware that by pleading guilty he was waiving his ability to challenge the evidence against him. This Court further finds that Applicant knew he was pleading to a negotiated sentence of thirty (30) years in prison, and that he pled guilty voluntarily. This Court finds Applicant's decision to plead guilty was his choice, and he did not enter his plea involuntarily.

Accordingly, this Court finds Applicant's guilty plea was knowingly and voluntarily entered. This Court finds that the evidence presented at the evidentiary hearing as well as contained within the guilty plea transcript clearly supports a finding that the guilty plea was not coerced or involuntary; rather, it was freely, knowingly, and voluntarily entered. This Court finds Applicant was informed of the nature and elements of the offenses with which he was charged and to which he pled guilty. This Court further finds that Applicant was fully apprised of the rights he was forfeiting in order to plead guilty and that Applicant decided to go forward with his guilty plea.

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 sufficient evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

CONCLUSION

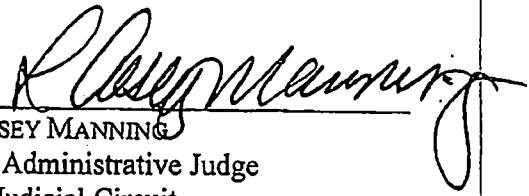
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Plea counsel rendered effective assistance in regard to the claims raised by Applicant. Therefore, this application 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), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 13 day of August, 2014.



L. CASEY MANNING
Chief Administrative Judge
Fifth Judicial Circuit

Columbia, South Carolina

WITNESSES

✓ (S) MAULDIN - RCSD

ARREST WARRANT NUMBER

1918641

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: JUL 14 2010

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2010-GS-40-2363

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

JULY TERM 2010

87

THE STATE

vs.

EVETTE FRANKLIN

Indictment for

MURDER

SC Code: **16-3-10**

CDR Code: **0116**

Class **FEL/EXM(V)**

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

Defendant

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

Defendant

Witness:

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

RECEIVED
JUL 14 2010
CLERK OF COURT
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

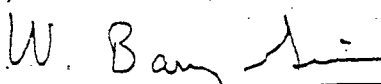
INDICTMENT

At a Court of General Sessions, convened on JULY 14, 2010, the Grand Jurors of Richland County present upon their oath:

MURDER

That EVETTE FRANKLIN did in Richland County on or about MAY 4, 2010, feloniously, willfully and with malice aforethought, kill one THOMAS GOLSON by means of GUNSHOT WOUNDS and that the said victim died as a proximate result thereof. All in violation of SC Code of Laws § 16-3-10 as amended.

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


Warren B. Giese, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Richland

VS.

Evette Lavae Franklin

AKA:

Race: BLACK Sex: M Age: 30

DOB: SS#: 123456789

Address: Street

City, State, Zip:

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder / Murder

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010-GS-40-2363

A/W#: I918641

Date of Offense: 5/4/2010

S.C. Code § : 16-03-0010

CDR Code #: 0116

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. SELF (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: G. Garfield

GARFIELD, DOLLY

13433

SC Bar#

Defendant

Attorney for Defendant

76081

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 37 months☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

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

Clerk of Court/ Deputy Clerk
Court ReporterPTUP days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel§ 47.12 requires \$500 be
during probation.

Presiding Judge

Judge Code: 2169Sentence Date: 7-3-10

TRUE COPY
OF ORIGINAL FILED
C.D.C. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA