

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

JUN 30 2015

Appeal from Charleston County

S.C. Supreme Court

R. Markley Dennis, Jr., Circuit Court Judge

CALVIN TYLER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000254

APPENDIX

BENJAMIN JOHN TRIPP
Appellate Defender

ALAN WILSON
Attorney General

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

J. RUTLEDGE JOHNSON
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT	1
APPLICATION FOR POST-CONVICTION RELIEF	172
RETURN AND MOTION TO DISMISS	181
CONDITIONAL ORDER OF DISMISSAL	189
RESPONSE AND OPPOSITION TO CONDITIONAL ORDER OF DISMISSAL	196
FINALAL ORDER OF DISMISSAL	199
INDICTMENTS	201

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS
DOCKET NOS. 98-GS-10-5477

COUNTY OF CHARLESTON

TRANSCRIPT OF PROCEEDINGS

STATE OF SOUTH CAROLINA,

-VS-

APRIL 23, 1999
CHARLESTON, SOUTH CAROLINA

CALVIN TYLER,

Defendant.

BEFORE:

THE HONORABLE J. DERHAM COLE, Judge.

APPEARANCES:

MATTHEW J. MODICA, ESQ.
ASSISTANT SOLICITOR
FOR THE STATE

D. ASHLEY PENNINGTON, ESQ.
CHARLESTON COUNTY PUBLIC DEFENDER
FOR THE DEFENDANT

BY: HEATHER GAYLE BURNS, R.D.R.
CIRCUIT COURT REPORTER

INDEXEXHIBITS

No.	Description	Ident.	Evd.
Court's 1	Report of Dr. Behrmann		168
Court's 2	Report of Dr. Sarnoff		168
Court's 3	Reports of Drs. Higgins and Gerald		168
Court's 4	C. V. of Edwin E. Wagner		168

1 MR. MODICA: State versus Tyler,
2 State versus Leigh, State versus
3 Hansen, State versus Bell, State versus
4 Muraca, State versus Paffen.

5 THE COURT: Before we begin, let
6 me add one thing. I know we've got a
7 lot of people up here. We've got a lot
8 to do. It's going to take a lot to get
9 it accomplished. I know, I notice we
10 have a lot of spectators in the
11 audience. I've got to have absolute
12 quiet up here. There can be no
13 discussions, no outbursts, no talking,
14 no displays of satisfaction,
15 dissatisfaction, or anything of that
16 nature. If there's anybody in the
17 courtroom who can't be quiet or can't
18 control their emotions, I'm going to
19 ask you to leave now because we've got
20 a lot to do and it's going to be
21 difficult enough as it is. So if you
22 can't control yourself, I'm going to
23 ask you to leave now otherwise you'll
24 be in some difficulty if you can't
25 control yourself later.

1 Everybody understand it? Okay.

2 All right, Mr. Modica.

3 MR. MODICA: Yes, your Honor.

4 If I may for the record introduce the
5 defendants and their attorneys. First
6 is Mr. Paffen with Mr. James Smiley.
7 Next is Mr. Savage, Andrew Savage with
8 Charles Hansen. Next is John Drennan
9 with Kenneth Bell. Next is Stephen
10 Schmutz with Cindy Reagle. Next is
11 John Crumrine with Lance Muraca. And
12 last is Ashley Pennington with Calvin
13 Tyler.

14 THE COURT: All right, sir.

15 MR. MODICA: Your Honor, there's
16 two waivers as it relates to Mr. Bell
17 and Mr. Muraca.

18 THE COURT: We got Mr. Paffen is
19 first?

20 MR. MODICA: Yes.

21 THE COURT: And second is Mr?

22 MR. MODICA: Hansen.

23 THE COURT: Hansen. And next is
24 Mr. Bell and next is Miss Reagle and
25 next is Mr. Muraca and Mr. Tyler.

1 With regard to the solicitation
2 charge, I understand that she's
3 pleading to the accessory before the
4 fact.

5 MR. MODICA: Yes, sir, of
6 manslaughter.

7 THE COURT: Of manslaughter. It
8 seems to me that that would require a
9 waiver. You take the position
10 accessory before the fact is a lesser
11 offense of solicitation?

12 MR. MODICA: Your Honor, to be
13 on the safer side, we could also do a
14 waiver for her.

15 THE COURT: Let's do a waiver.

16 MR. MODICA: Your Honor, I
17 believe we could accomplish that by
18 checking off the appropriate box
19 "defendant waives presentation to the
20 grand jury."

21 THE COURT: That's fine. Just
22 let Mr. Schmutz show that to Miss
23 Reagle, because she's got her signature
24 there.

25 MR. MODICA: Your Honor, it's

1 been initialled by Miss Reagle and
2 counsel and myself.

3 **THE COURT:** Okay. All right.
4 Now, I've got several indictments
5 before me. Some defendants have more
6 than one indictment. Some have only
7 one indictment. Each of you, however,
8 have indicated your desire to enter
9 pleas of guilty to some offense that we
10 will discuss shortly. Each of you are
11 now represented by lawyers assisting
12 you in the matter.

13 I've got a number of questions
14 that I'm going to be asking you. Some
15 of those questions will be asked as a
16 group because they're the same
17 questions for each individual, that
18 would apply to each individual, and
19 there will be other questions that will
20 be specific to specific defendants, so
21 understand that you'll have to answer
22 certain questions, but all will be
23 answered individually. And if you fail
24 to understand any question, please stop
25 me and tell me to repeat it or clarify

1 in some fashion because it's important
2 that you understand each question that
3 is asked of you because I've got to
4 have an accurate and truthful response
5 to each of the questions.

6 There are a number of questions
7 that I must ask in order to determine
8 that your decisions to enter these
9 pleas of guilty are freely and
10 voluntarily made, you having a full
11 understanding of the consequences of
12 your decision to enter these pleas of
13 guilty, including the possible
14 sentences that may be imposed if I
15 accept your pleas of guilty.

16 So if at any time any defendant
17 fails to understand the question, stop
18 me. Ask me to repeat it or clarify it.
19 If at any time you need to stop and
20 have further discussions with your
21 lawyers, simply let me know that fact.
22 We'll stop and I'll give you additional
23 time to talk with your lawyers.

24 First of all, you are Jonathan
25 Caleb Paffen?

1 MR. SMILEY: Paffen, your Honor.

2 THE COURT: Let me start off
3 right now. You have to answer orally.
4 I can't --

5 MR. PAFFEN: Yes, sir.

6 THE COURT: -- decipher head
7 shakes and nods, and the court reporter
8 has to take down everything that is
9 said.

10 MR. PAFFEN: Yes, sir.

11 THE COURT: So any question that
12 I ask, it must be responded to with an
13 oral response.

14 MR. PAFFEN: Yes, sir.

15 THE COURT: And if you don't
16 understand it, as I say, let me know.
17 I'll clarify it for you.

18 You're Mr. Paffen?

19 MR. PAFFEN: Yes, sir.

20 THE COURT: Mr. Smiley is your
21 lawyer?

22 MR. PAFFEN: Yes, sir.

23 THE COURT: How long has
24 Mr. Smiley been assisting you in these
25 matters?

1 MR. PAFFEN: Fourteen months,
2 sir.

3 THE COURT: Have you had plenty
4 of time to talk with him about the
5 nature of the charges set forth in each
6 of these indictments?

7 MR. PAFFEN: Yes, sir.

8 THE COURT: You are charged
9 under indictment 97-1628 with the
10 offense of burglary in the first
11 degree. You're also charged in
12 indictment 98-2817 with the offense of
13 murder.

14 MR. PAFFEN: Yes, sir.

15 THE COURT: You have indicated
16 your desire to enter a plea of guilty
17 to the lesser offense of voluntary
18 manslaughter as it relates to the
19 murder indictment, and you have
20 indicated your desire to plead guilty
21 as charged in the burglary indictment.
22 That is burglary in the first degree.

23 MR. PAFFEN: Yes, sir.

24 THE COURT: Mr. Hansen, you are
25 represented by Mr. Savage?

1 MR. HANSEN: Yes, sir.

2 THE COURT: You're charged under
3 indictment 98-2811 with the offense of
4 murder. You've indicated by your
5 signature on the indictment that you're
6 offering to plead guilty to the offense
7 of voluntary manslaughter. Is that
8 right?

9 MR. HANSEN: Yes. Yes, sir.

10 THE COURT: Have you had plenty
11 of time to talk with your lawyer about
12 your decision?

13 MR. HANSEN: Yes, sir.

14 THE COURT: Do you need any
15 additional time?

16 MR. HANSEN: No, sir.

17 THE COURT: You're Kenneth
18 Lester Bell?

19 MR. BELL: Yes, sir.

20 THE COURT: Mr. Bell, you are
21 represented by Mr. Drennan?

22 MR. BELL: Yes, sir.

23 THE COURT: How long has he been
24 representing you?

25 MR. BELL: Fourteen months.

1 THE COURT: Have you had plenty
2 of time to talk to him about your case?

3 MR. BELL: Yes, sir.

4 THE COURT: Do you need any more
5 time?

6 MR. BELL: No, sir.

7 THE COURT: You're charged in
8 indictment 99-3301 with accessory after
9 the fact to the commission of a felony.

10 MR. BELL: Yes, sir.

11 THE COURT: And you've talked
12 with your lawyer about the substance of
13 that charge and the consequences of
14 pleading guilty?

15 MR. BELL: Yes, sir.

16 THE COURT: Cindy Leigh Reagle.

17 MS. REAGLE: Yes, sir.

18 THE COURT: Mr. Schmutz is your
19 lawyer?

20 MS. REAGLE: Yes, sir.

21 THE COURT: You're charged in
22 the indictment with solicitation to
23 commit a felony, that felony being
24 described as murder. You've indicated
25 by your signature on the indictment

1 your desire to enter a plea of guilty
2 to accessory before the fact of
3 manslaughter.

4 MS. REAGLE: Yes, sir.

5 THE COURT: You understand the
6 nature of the charge in the indictment
7 as well as that to which you've offered
8 to plead guilty?

9 MS. REAGLE: Yes, sir, I have.

10 THE COURT: How long has Mr.
11 Schmutz been representing you?

12 MS. REAGLE: Nearly fourteen
13 months now.

14 THE COURT: And have you had
15 plenty of time to discuss with him the
16 nature of the charge in the indictment
17 as well as that to which you've offered
18 to plead guilty?

19 MS. REAGLE: Amply, sir. Thank
20 you.

21 THE COURT: Do you need any
22 additional time?

23 MS. REAGLE: No, sir.

24 THE COURT: Mr. Muraca.

25 MR. MURACA: Yes, sir.

1 THE COURT: Mr. Crumrine is your
2 lawyer?

3 MR. MURACA: Yes, sir.

4 THE COURT: How long has he been
5 representing you?

6 MR. MURACA: Fourteen months,
7 sir.

8 THE COURT: You're charged in an
9 indictment with the misprision of a
10 felony. You understand the nature of
11 that charge and the consequences of
12 entering a plea of guilty?

13 MR. MURACA: Yes, sir.

14 THE COURT: Do you need more
15 time to talk with your lawyer about it?

16 MR. MURACA: No, sir.

17 THE COURT: Mr. Tyler.

18 MR. TYLER: Yes, sir.

19 THE COURT: Mr. Pennington is
20 your lawyer?

21 MR. TYLER: Yes, sir.

22 THE COURT: And how long has he
23 been representing you?

24 MR. TYLER: Almost fourteen
25 months.

1 THE COURT: Have you had plenty
2 of time to talk to him about your case?

3 MR. TYLER: Yes, sir.

4 THE COURT: Or cases?

5 MR. TYLER: Yes, sir.

6 THE COURT: You're charged in
7 two separate indictments. Indictment
8 98-5477 charges you with armed robbery,
9 and indictment 98-5476 charges you with
10 murder. You have indicated by your
11 signature that you're offering to plead
12 guilty to the crime of voluntary
13 manslaughter and to common law robbery.

14 MR. TYLER: Yes, sir.

15 THE COURT: Those being lesser
16 included offenses of the charges that
17 you are or that are set forth in the
18 separate indictments.

19 MR. TYLER: Yes, sir.

20 THE COURT: You've had plenty of
21 time to talk to Mr. Pennington about
22 your decision?

23 MR. TYLER: Yes, sir.

24 THE COURT: You understand the
25 charges in the indictments as well as

1 those to which you've offered to plead
2 guilty?

3 MR. TYLER: Yes, sir.

4 THE COURT: As I indicated to
5 you, I have a number of questions that
6 I'm going to be asking you. Some of
7 those will be as individuals and some
8 of those will be as a group, so please
9 listen carefully. All of these
10 questions are directed to you and you
11 need to be certain that you understand
12 the questions before you respond. If
13 you don't, please let me know because
14 as I say I need for your response to be
15 truthful and accurate.

16 Mr. Paffen.

17 MR. PAFFEN: Yes, sir.

18 THE COURT: You're charged in
19 indictment 97-1628 with the crime of
20 burglary in the first degree.

21 MR. PAFFEN: Yes, sir.

22 THE COURT: That specific
23 indictment alleges that you did on or
24 about the fourth day of January of 1997
25 wilfully, unlawfully, and feloniously

1 enter the dwelling of Kevin Reardon
2 located at Pinehurst Street in
3 Charleston. They allege you entered
4 that dwelling in the nighttime, without
5 the consent of the owner, and with the
6 intent to commit a crime therein.

7 MR. PAFFEN: Yes, sir.

8 THE COURT: That constitutes
9 burglary in the first degree, for which
10 you could receive a maximum sentence of
11 up to life, a minimum sentence of not
12 less than fifteen years.

13 MR. PAFFEN: Yes, sir.

14 THE COURT: You understand the
15 nature of that charge and the possible
16 sentence?

17 MR. PAFFEN: Yes, sir.

18 THE COURT: You still want to
19 plead guilty to it?

20 MR. PAFFEN: Yes, sir.

21 THE COURT: Indictment 98-2817
22 charges you with murder. State alleges
23 on February the twenty-second of 1998
24 you did wilfully and feloniously and
25 with, in concert with others and with

1 malice aforethought, kill one Robert
2 Paul Nixon. The indictment alleges
3 that Mr. Nixon was shot with a firearm
4 and that he died as a proximate result
5 of that gunshot wound. That
6 constitutes the crime of murder, for
7 which you could receive a sentence of
8 life imprisonment.

9 You have indicated your desire
10 to enter a plea of guilty to the lesser
11 included offense, that being voluntary
12 manslaughter, for which you could
13 receive a maximum sentence of not more
14 than thirty years in jail.

15 MR. PAFFEN: Yes, sir.

16 THE COURT: Do you understand
17 the nature of the charge set forth in
18 the indictment as well as the charge to
19 which you've offered to plead guilty?

20 MR. PAFFEN: Yes, sir.

21 THE COURT: You still want to
22 plead guilty to it?

23 MR. PAFFEN: Yes, sir.

24 THE COURT: Mr. Hansen.

25 MR. HANSEN: Yes, sir.

1 **THE COURT:** You're charged in
2 indictment 98-2811 also with the crime
3 of murder. The State alleges on
4 February the twenty-second of 1998 you
5 did in concert with other --

6 **MR. HANSEN:** Yes.

7 **THE COURT:** -- individuals
8 wilfully and with malice aforethought
9 kill one Robert Paul Nixon, in that he
10 was shot with a firearm and did die as
11 a proximate result of that gunshot
12 wound. If convicted of murder, you
13 could receive up to life. You've
14 indicated by your signature that you're
15 offering to plead guilty to the lesser
16 included offense, being voluntary
17 manslaughter, for which you could
18 receive up to thirty years in prison.

19 **MR. HANSEN:** Yes, sir.

20 **THE COURT:** You understand the
21 nature of the charge in the indictment
22 as well as that to which you've offered
23 to plead guilty?

24 **MR. HANSEN:** Yes, sir.

25 **THE COURT:** Mr. Bell.

1 MR. BELL: Yes, sir.

2 THE COURT: You're represented
3 by Mr. Drennan?

4 MR. BELL: Yes, sir.

5 THE COURT: You're charged with
6 accessory after the fact to the
7 commission of a felony.

8 MR. BELL: Yes, sir.

9 THE COURT: State alleges on
10 February the twenty-second after --

11 MR. BELL: Yes, sir.

12 THE COURT: -- after having
13 knowledge and knowing that other
14 individuals had murdered Robert Nixon,
15 that you -- that you did assist them in
16 some fashion by hiding the murder
17 weapon, all in an attempt to aid and
18 assist them from being arrested and
19 charged with these various offenses.

20 MR. BELL: Yes, sir.

21 THE COURT: Accessory after the
22 fact to the commission of a felony --

23 MR. DRENNAN: Zero to fifteen,
24 your Honor.

25 THE COURT: -- carries up to

1 fifteen years in jail.

2 MR. BELL: Yes, sir.

3 THE COURT: You understand the
4 nature of the charge and the possible
5 sentence?

6 MR. BELL: Yes, sir.

7 THE COURT: And you still want
8 to plead guilty?

9 MR. BELL: Yes, sir.

10 THE COURT: Cindy Leigh Reagle,
11 you're charged in indictment 98-2798
12 with solicitation to commit a felony,
13 that felony being murder. If
14 convicted, you could receive up to
15 life. You've indicated by your
16 signature that you're offering to plead
17 guilty to the offense of accessory
18 before the fact of manslaughter.

19 The indictment alleges that you
20 did on January the first of 1998, or
21 some time between that date and
22 February the twenty-second, you did
23 wilfully and unlawfully urge,
24 encourage, or attempt to hire others to
25 commit a felony, that felony being the

1 murder of Robert Paul Nixon, and that
2 you did provide them with information
3 necessary to accomplish that offense.

4 You've indicated as I've
5 indicated that you're offering to plead
6 guilty to the offense of accessory
7 before the fact of manslaughter.

8 Accessory before the fact of
9 manslaughter carries up to thirty years
10 in prison. You understand the nature
11 of the charge to which you've offered
12 to plead guilty as well as that set
13 forth in the indictment?

14 MS. REAGLE: Yes, sir, I do.

15 THE COURT: You still wish to
16 plead guilty as indicated?

17 MS. REAGLE: Yes, sir.

18 THE COURT: Mr. Muraca, you are
19 charged in indictment 99-3300 with the
20 offense of misprision of a felony.
21 State alleges on February the
22 twenty-second of 1998 you did with
23 criminal neglect fail to bring certain
24 felons, those being Mr. Paffen,
25 Mr. Hansen and/or Mr. Tyler, to justice

1 after their commission of the crime of
2 murder of Robert Nixon, and they allege
3 that you participated with them in
4 driving away from the scene of the
5 offense, and that you did fail to
6 inform police as to the principal
7 felons' conduct. Misprision of a
8 felony carries up to ten years in jail.

9 Do you understand the nature of
10 the charge and the possible sentence?

11 MR. MURACA: Yes, sir.

12 THE COURT: You still want to
13 plead guilty to it?

14 MR. MURACA: Yes, sir.

15 THE COURT: Mr. Tyler,
16 indictment 98-5477 charges you with the
17 offense of armed robbery, the State
18 alleging on February the twenty-second
19 of 1998 you did with others and while
20 armed with a deadly weapon take, steal,
21 and carry away from the person or
22 presence of Paul Robert Nixon certain
23 goods or monies being described as
24 United States currency and other
25 personal property. That constitutes

1 the crime of armed robbery, for which
2 you can receive up to thirty years in
3 jail. You've indicated by your
4 signature that you're offering to plead
5 guilty to the lesser included offense
6 of common law robbery, which carries a
7 maximum sentence of up to fifteen years
8 in jail.

9 You understand the charge set
10 forth in the indictment as well as the
11 charge to which you've offered to plead
12 guilty?

13 MR. TYLER: Yes, sir.

14 THE COURT: Indictment 98-5476
15 also charges you with the crime of
16 murder, State alleging on February the
17 twenty-second of 1998 you did act in
18 concert with others and did wilfully
19 and with malice aforethought kill one
20 Robert Paul Nixon by his having been
21 shot with a firearm and dying as a
22 proximate result of that gunshot wound.
23 The offense of murder carries up to
24 life. You've indicated by your
25 signature that you're offering to plead

1 guilty to the offense of voluntary
2 manslaughter. Voluntary manslaughter
3 still carries a maximum sentence of up
4 to thirty years in jail.

5 You understand the nature of the
6 charge in the indictment as well as
7 that to which you've offered to plead
8 guilty?

9 MR. TYLER: Yes, sir.

10 THE COURT: And do you still
11 wish to plead guilty to it?

12 MR. TYLER: Yes, sir.

13 THE COURT: Now, this is a
14 question for all of you. Have all of
15 you had sufficient time to discuss with
16 your lawyers the nature of the charges
17 set forth in each indictment, as well
18 as the consequences of your pleading
19 guilty to the charges that you have
20 indicated that you're pleading guilty
21 to as shown on the indictment pursuant
22 to your signature? Mr. Paffen?

23 MR. PAFFEN: Yes, sir.

24 THE COURT: Mr. Hansen?

25 MR. HANSEN: Yes, sir.

1 THE COURT: Mr. Bell?

2 MR. BELL: Yes, sir.

3 THE COURT: Miss Reagle?

4 MS. REAGLE: Yes, sir.

5 THE COURT: Mr. Muraca?

6 MR. MURACA: Yes, sir.

7 THE COURT: Mr. Tyler?

8 MR. TYLER: Yes, sir.

9 THE COURT: Have your lawyers
10 explained to you all of the necessary
11 elements of the offenses to which
12 you've offered to plead guilty and have
13 each of your lawyers explained to you
14 what the State would have to prove
15 before you could be convicted of any
16 offense set forth in the indictment as
17 well as those offenses to which you've
18 offered to plead guilty? Mr. Paffen?

19 MR. PAFFEN: Yes, sir.

20 THE COURT: Mr. Hansen?

21 MR. HANSEN: Yes, sir.

22 THE COURT: Mr. Bell?

23 MR. BELL: Yes, sir.

24 THE COURT: Mr -- Miss Reagle?

25 MS. REAGLE: Yes, sir.

1 THE COURT: Mr. Muraca?

2 MR. MURACA: Yes, sir.

3 THE COURT: Mr. Tyler?

4 MR. TYLER: Yes, sir.

5 THE COURT: Have each of you had

6 an opportunity to discuss with your

7 lawyers whether or not you have any

8 defense to the charges to which you

9 have offered to plead guilty? Mr.

10 Paffen?

11 MR. PAFFEN: Yes, sir.

12 THE COURT: Mr. Hansen?

13 MR. HANSEN: Yes, sir.

14 THE COURT: Mr. Bell?

15 MR. BELL: Yes, sir.

16 THE COURT: Miss Reagle?

17 MS. REAGLE: Yes, sir.

18 THE COURT: Mr. Muraca?

19 MR. MURACA: Yes, sir.

20 THE COURT: Mr. Tyler?

21 MR. TYLER: Yes, sir.

22 THE COURT: Do any of you have

23 any defense to the charges to which

24 you've offered to plead guilty? Mr.

25 Paffen?

1 MR. PAFFEN: Yes, sir.

2 THE COURT: You do?

3 MR. PAFFEN: Oh. No, sir.

4 MR. SMILEY: No, sir, your
5 Honor. He does not. He understood.

6 MR. PAFFEN: I understood what
7 you're saying. I wasn't --

8 THE COURT: You weren't what?

9 MR. PAFFEN: I was mixed up with
10 all the "yes, sirs."

11 THE COURT: Well, that's why
12 it's important that you pay attention,
13 pay attention and listen.

14 MR. PAFFEN: I'll pay attention,
15 sir.

16 THE COURT: Do you have a
17 defense to --

18 MR. PAFFEN: No, sir.

19 THE COURT: -- any charge that
20 you've offered to plead guilty to?

21 MR. PAFFEN: No, sir.

22 THE COURT: What about you,
23 Mr. Hansen?

24 MR. HANSEN: No, sir.

25 THE COURT: Mr. Bell?

1 MR. BELL: No, sir.

2 THE COURT: Miss Reagle?

3 MS. REAGLE: No, sir.

4 THE COURT: Mr. Muraca?

5 MR. MURACA: No, sir.

6 THE COURT: Mr. Tyler?

7 MR. TYLER: No, sir.

8 THE COURT: Are all of you
9 satisfied with your lawyer's assistance
10 in the matter; that is, have your
11 lawyers done everything that you asked
12 them to do, have they talked to every
13 witness that you've requested them to
14 contact, have they investigated the
15 matter to your satisfaction, and do you
16 believe that they have done everything
17 required to properly represent you in
18 the matter? Mr. Paffen?

19 MR. PAFFEN: Yes, sir.

20 THE COURT: Mr. Hansen?

21 MR. HANSEN: Yes, sir.

22 THE COURT: Mr. Bell?

23 MR. BELL: Yes, sir.

24 THE COURT: Miss Reagle?

25 MS. REAGLE: Yes, sir.

1 THE COURT: Mr. Muraca?

2 MR. MURACA: Yes, sir.

3 THE COURT: Mr. Tyler?

4 MR. TYLER: Yes, sir.

5 THE COURT: Have each of your
6 lawyers explained to you the
7 Constitutional rights that you give up
8 when you plead guilty to a criminal
9 charge? Mr. Paffen?

10 MR. PAFFEN: Yes, sir.

11 THE COURT: Mr. Hansen?

12 MR. HANSEN: Yes, sir.

13 THE COURT: Mr. Bell?

14 MR. BELL: Yes, sir.

15 THE COURT: Miss Reagle?

16 MS. REAGLE: Yes, sir.

17 THE COURT: Mr. Muraca?

18 MR. MURACA: Yes, sir.

19 THE COURT: Mr. Tyler?

20 MR. TYLER: Yes, sir.

21 THE COURT: I'm going to go over
22 those Constitutional rights with you.
23 I need to find out whether or not you
24 understand each right and whether or
25 not, understanding that right, you wish

1 to give it up in order to enter these
2 pleas of guilty. Each of you have a
3 right to remain silent. That simply
4 means that nobody can make you testify.
5 No one can require that you answer any
6 questions or make any statement as they
7 relate to these particular charges. No
8 one can require that you plead guilty,
9 even though you may be guilty of some
10 criminal offense. And no one can
11 require that you admit any fact or any
12 act which might tend to prove you
13 guilty of some crime that's been
14 alleged against you. That is called
15 your right to remain silent.

16 Mr. Paffen, do you understand
17 that right?

18 MR. PAFFEN: Yes, sir.

19 THE COURT: Do you wish to give
20 it up?

21 MR. PAFFEN: Yes, sir.

22 THE COURT: Mr. Hansen, do you
23 understand that right and do you wish
24 to give it up?

25 MR. HANSEN: Yes. Yes, sir.

1 **THE COURT:** Mr. Bell, do you
2 understand that right and do you wish
3 to give it up?

4 **MR. BELL:** Yes, sir.

5 **THE COURT:** Miss Reagle, do you
6 understand that right and do you wish
7 do give it up?

8 **MS. REAGLE:** Yes, sir.

9 **THE COURT:** Mr. Muraca, do you
10 understand that right and do you wish
11 to give it up?

12 **MR. MURACA:** Yes, sir.

13 **THE COURT:** Mr. Tyler, do you
14 understand that right and do you wish
15 to give it up?

16 **MR. TYLER:** Yes, sir.

17 **THE COURT:** Each of you also
18 have a right to confront the State's
19 witnesses. That is, you have a right
20 to require the solicitor to bring his
21 witnesses into court, and any witness
22 that would be offering testimony or
23 other evidence tending to prove you
24 guilty of some crime alleged against
25 you would be required to come into

1 court, take the witness stand, testify
2 in your presence under oath. You could
3 see each witness. You could hear their
4 testimony. Your lawyer would be able
5 to cross-examine each of those
6 witnesses on that testimony.

7 Mr. Paffen, do you understand
8 that right and do you wish to give it
9 up?

10 MR. PAFFEN: Yes, sir.

11 THE COURT: Mr. Hansen?

12 MR. HANSEN: Yes, sir.

13 THE COURT: Do you understand
14 that right and wish to give it up?

15 MR. HANSEN: Yes, sir.

16 THE COURT: Mr. Bell?

17 MR. BELL: Yes, sir.

18 THE COURT: Do you understand
19 that right and wish to give it up?

20 MR. BELL: Yes, sir.

21 THE COURT: Miss Reagle?

22 MS. REAGLE: Yes.

23 THE COURT: Do you understand
24 that right and wish to give it up?

25 MS. REAGLE: Yes, sir.

1 THE COURT: Mr. Muraca?

2 MR. MURACA: Yes, sir.

3 THE COURT: Do you understand
4 that right and wish to give it up?

5 MR. MURACA: Yes, sir.

6 THE COURT: Mr. Tyler, do you
7 understand that right and wish to give
8 it up?

9 MR. TYLER: Yes, sir.

10 THE COURT: Each of you also
11 have a right to have a jury trial and
12 have a jury determine whether or not
13 you're guilty. If you elected to have
14 a jury trial, you and your lawyers
15 would participate in the selection of
16 the jury that would be selected for the
17 purpose of deciding a verdict in your
18 cases. Twelve jurors would be selected
19 from a larger panel or pool of jurors
20 and once those twelve jurors were
21 selected, they would sit over there in
22 the jury box behind you. They would
23 listen to all of the testimony
24 presented. They would consider any
25 other evidence offered. And based upon

1 their consideration of all of the
2 evidence, they would decide whether or
3 not you're guilty of any crime alleged
4 against you in the indictment, or
5 perhaps whether you're guilty of some
6 lesser included offense, or whether
7 you're not guilty. But the jury would
8 make that decision.

9 If you elected to have a jury
10 trial you still could not be required
11 to testify. You could not be called to
12 the witness stand. You could not be
13 required to answer any questions as
14 they relate to these charges. The
15 burden is always upon the State in
16 bringing a charge against you to prove
17 that you're guilty, and the burden is
18 never upon you to prove that you're not
19 guilty and, therefore, you can have a
20 jury trial and still not testify or
21 offer any evidence in the case. The
22 burden would still be upon the State to
23 establish your guilt to the
24 satisfaction of that jury beyond a
25 reasonable doubt. Before that jury

1 could find you guilty of any crime, all
2 twelve would have to be in agreement
3 and all twelve would have to be
4 convinced of your guilt beyond a
5 reasonable doubt.

6 Mr. Paffen, do you understand
7 your right to have a jury trial and do
8 you wish to give it up?

9 MR. PAFFEN: Yes, sir.

10 THE COURT: Mr. Hansen?

11 MR. HANSEN: Yes, sir.

12 THE COURT: Mr. Bell?

13 MR. BELL: Yes, sir.

14 THE COURT: Miss Reagle?

15 MS. REAGLE: Yes, sir.

16 THE COURT: Mr. Muraca?

17 MR. MURACA: Yes, sir.

18 THE COURT: Mr. Tyler?

19 MR. TYLER: Yes, sir.

20 THE COURT: Mr. Bell, your

21 case -- that is, the indictment that
22 charges you with accessory after the
23 fact in the commission of a felony --
24 has not been presented to the
25 Charleston County Grand Jury, but you

1 have indicated by your signature on the
2 back of the indictment that you
3 understood that you had a right to have
4 the grand jury consider the charge and
5 you wish to give that right up. Is
6 that correct?

7 MR. BELL: Yes, sir.

8 THE COURT: Did Mr. Drennan
9 explain to you the purpose and the
10 function of the grand jury?

11 MR. BELL: Yes, sir.

12 THE COURT: And you understand
13 what their purpose and function is?

14 MR. BELL: Yes, sir.

15 THE COURT: Do you wish for them
16 to consider this charge or do you wish
17 to give that right up?

18 MR. BELL: Give it up.

19 THE COURT: Miss Reagle, you've
20 heard the questions I asked Mr. Bell.
21 You've also indicated by your signature
22 that you do not wish for the grand jury
23 to consider the charge of accessory
24 before the fact of manslaughter. You
25 have been indicted for the offense of

1 solicitation to commit a felony. Do
2 you wish for the grand jury to consider
3 the charge of accessory before the fact
4 of manslaughter?

5 MS. REAGLE: No, sir.

6 THE COURT: Mr. Schmutz
7 explained to you the purpose and
8 function of the grand jury?

9 MS. REAGLE: Yes, he has.

10 THE COURT: You understand that?

11 MS. REAGLE: Yes, sir.

12 THE COURT: And you wish to give
13 that right up?

14 MS. REAGLE: Yes, sir.

15 THE COURT: Mr. Muraca?

16 MR. MURACA: Yes, sir.

17 THE COURT: You've also
18 indicated by your signature on the back
19 of your indictment for misprision of a
20 felony that you wish to waive your
21 right for the grand jury to consider
22 that particular charge. Did
23 Mr. Crumrine explain to you the grand
24 jury process and procedure?

25 MR. MURACA: Yes, sir.

1 THE COURT: Do you understand
2 it?

3 MR. MURACA: Yes, sir.

4 THE COURT: Do you wish to give
5 your right up for the grand jury to
6 consider that charge?

7 MR. MURACA: Yes, sir.

8 THE COURT: Mr. Paffen?

9 MR. PAFFEN: Yes, sir.

10 THE COURT: Have you been
11 promised anything or have you been
12 threatened in any way or coerced in any
13 fashion in order to get you to arrive
14 at your decision to plead guilty?

15 MR. PAFFEN: No, sir.

16 THE COURT: Were you told that
17 there would be any type of plea
18 negotiations or recommendations made on
19 your behalf if you would enter pleas of
20 guilty to the charges that you've
21 indicated you wish to plead guilty to?

22 MR. PAFFEN: Yes, sir.

23 THE COURT: And what was your
24 understanding as to those plea
25 negotiations?

1 MR. PAFFEN: I would have
2 twenty-seven and a half years.

3 THE COURT: Were you promised
4 anything other than that in order to
5 induce you to plead guilty?

6 MR. PAFFEN: The other charges
7 would be dismissed.

8 THE COURT: What other charges?

9 MR. SMILEY: There's a series of
10 charges, your Honor. There's an
11 original armed robbery warrant.

12 MR. MODICA: Your Honor, do you
13 want me to put them on the record?

14 THE COURT: Okay. Listen to
15 what Mr. Modica tells me, Mr. Paffen.

16 MR. PAFFEN: Yes, sir.

17 THE COURT: And you be certain
18 that you agree. If you disagree, you
19 let me know.

20 MR. MODICA: State will be nol
21 prossing indictment 97-GS-10-1629, the
22 charge of possession of stolen motor
23 vehicle; 98-GS-10-2815, the charge of
24 conspiracy; 98-GS-10-2816, the charge
25 of lynching in the first degree;

1 98-GS-10-2818, the charge of pointing a
2 firearm; 98-GS-10-2819, the charge of
3 armed robbery.

4 MR. PAFFEN: Yes, sir. That's
5 all right.

6 THE COURT: Anything else
7 promised you in order to induce you to
8 plead guilty?

9 MR. PAFFEN: No, sir.

10 THE COURT: You've been
11 threatened, coerced, or pressured in
12 any way in order to get you to arrive
13 at your decision?

14 MR. PAFFEN: No, sir.

15 THE COURT: You're doing so
16 freely and voluntarily?

17 MR. PAFFEN: Yes, sir.

18 THE COURT: Are you guilty of
19 the offenses as I have described those
20 by reading the allegations set forth in
21 the indictment?

22 MR. PAFFEN: Yes, sir.

23 THE COURT: Mr. Hansen, have you
24 been promised anything in order to
25 induce you to plead guilty, other than

1 the reduction in the charge from murder
2 to voluntary manslaughter?

3 **MR. HANSEN:** No, sir.

4 **THE COURT:** Did anybody indicate
5 to you that they would recommend some
6 sort of sentence on your behalf if you
7 were to plead guilty to voluntary
8 manslaughter?

9 **MR. HANSEN:** Yes, sir.

10 **THE COURT:** What did they tell
11 you they would --

12 **MR. HANSEN:** They told me I get
13 between twenty to twenty-five, and all
14 my other charges would get dropped.

15 **MR. MODICA:** Your Honor, in
16 regard to Mr. Paffen, it's a negotiated
17 sentence, should the Court accept it,
18 of twenty-seven and a half.

19 In regard to Mr. Hansen it's a
20 negotiated range of not less than
21 twenty nor not more than twenty-five.
22 In addition the State will be not
23 prossing a number of charges. They are
24 98-GS-10-2810, pointing a firearm;
25 98-GS-10-2812, the charge of lynching

1 in the first degree; 98-GS-10-2813, the
2 charge of conspiracy; 98-GS-10-2814,
3 the charge of armed robbery; and
4 98-GS-10-3651, the charge of lynching
5 in the second degree.

6 THE COURT: All right, Mr.
7 Hansen. You heard what the solicitor
8 told me. Do you agree or disagree?

9 MR. HANSEN: I agree.

10 THE COURT: Promised anything
11 else?

12 MR. HANSEN: No, sir.

13 THE COURT: Have you been
14 threatened, coerced, or pressured in
15 any fashion by anybody in order to get
16 you to arrive at your decision?

17 MR. HANSEN: No, sir.

18 THE COURT: Are you doing so
19 freely and voluntarily?

20 MR. HANSEN: Yes, sir.

21 THE COURT: Voluntarily?

22 MR. HANSEN: Yes, sir.

23 THE COURT: Are you doing so
24 because you're guilty of the crime
25 alleged as I have read the allegations

1 from the indictment?

2 MR. HANSEN: Yes, sir.

3 THE COURT: Mr. Bell, you've
4 been promised anything in order to
5 induce you to enter this plea of
6 guilty?

7 MR. BELL: No, sir.

8 THE COURT: Did anybody indicate
9 to you that they would offer or make
10 any type of recommendation as to
11 sentence?

12 MR. BELL: No, sir.

13 THE COURT: Just going to leave
14 it up to me?

15 MR. BELL: Yes, sir.

16 THE COURT: Okay. Have you been
17 threatened or coerced or pressured in
18 any way by any person in order to get
19 you to arrive at your decision to plead
20 guilty?

21 MR. BELL: No, sir.

22 THE COURT: You doing so freely
23 and voluntarily?

24 MR. BELL: Yes, sir.

25 THE COURT: Are you guilty of

1 the crime that I have explained to you
2 by reading the allegations set forth in
3 the indictment?

4 MR. BELL: Yes, sir.

5 MR. MODICA: Your Honor, in
6 relation to Mr. Bell, may I put on the
7 record the charges that the State will
8 be dismissing?

9 THE COURT: Okay.

10 MR. MODICA: Your Honor,
11 98-GS-10-2805, the charge of lynching
12 in the first degree; 98-GS-10-2806,
13 murder; 98-GS-10-2807, conspiracy;
14 98-GS-10-2808, armed robbery; and
15 98-GS-10-2809, pointing a firearm.

16 THE COURT: All right. Now what
17 about that, Mr. Bell?

18 MR. BELL: Yes, sir.

19 THE COURT: Did you know that
20 you were charged with those?

21 MR. BELL: Sir?

22 THE COURT: Did you know that
23 you were charged with those other
24 offenses?

25 MR. BELL: Yes, sir.

1 **THE COURT:** Did you know that
2 they were going to dismiss those if you
3 pled guilty?

4 **MR. BELL:** Yes, sir.

5 **THE COURT:** Would you have pled
6 guilty if they did not dismiss those
7 charges?

8 **MR. BELL:** Yes, sir.

9 **THE COURT:** You would have? So
10 that didn't cause you to plead guilty?

11 **MR. BELL:** No, sir.

12 **THE COURT:** You were going to
13 plead guilty anyway?

14 **MR. BELL:** Yes, sir.

15 **THE COURT:** Okay. All right,
16 Ms. Reagle.

17 **MS. REAGLE:** Yes, sir.

18 **THE COURT:** Anybody promised you
19 anything other than the change in the
20 charge from solicitation to commit a
21 felony, that felony being murder, to
22 accessory before the fact of
23 manslaughter in order to get you to
24 plead guilty?

25 **MS. REAGLE:** No, sir.

1 **THE COURT:** Did anybody indicate
2 to you they'd recommend any type of
3 sentence or range of sentencing?

4 **MS. REAGLE:** Yes, sir.

5 **THE COURT:** And what was
6 indicated to you?

7 **MS. REAGLE:** Fifteen to
8 twenty-five years.

9 **THE COURT:** Was anything else
10 promised you in order to induce you to
11 plead guilty?

12 **MS. REAGLE:** Yes, sir. They
13 were going to be dismissed.

14 **THE COURT:** Ma'am?

15 **MS. REAGLE:** The rest of the
16 charges would be dismissed.

17 **THE COURT:** The other charges
18 would be dismissed?

19 **MS. REAGLE:** Yes, sir.

20 **THE COURT:** Mr. Modica.

21 **MR. MODICA:** Thank you, your
22 Honor. 98-GS-10-2797, the charge of
23 armed robbery; 98-GS-10-2796, charge of
24 murder; 98-GS-10-2795, the charge of
25 lynching in the first degree; and

1 98-GS-10-2799, the charge of
2 conspiracy.

3 **MS. REAGLE:** Your Honor, I'm
4 sorry. Can you give me one minute,
5 please?

6 **THE COURT:** Yes, ma'am.

7 (Whereupon, Ms. Reagle and Mr.
8 Schmutz have an off-the-record
9 discussion.)

10 **MS. REAGLE:** Never mind, your
11 Honor. I apologize to the Court.

12 **THE COURT:** You heard what
13 Mr. Modica told me. Do you agree with
14 his statement?

15 **MS. REAGLE:** Yes, sir.

16 **THE COURT:** Was anything else
17 promised you in order to induce you to
18 plead guilty?

19 **MS. REAGLE:** No, sir.

20 **THE COURT:** Have you been
21 threatened, coerced, or pressured in
22 any fashion by any person to get you to
23 plead guilty?

24 **MS. REAGLE:** No, sir.

25 **THE COURT:** Are you pleading

1 guilty freely and voluntarily?

2 MS. REAGLE: Yes, sir.

3 THE COURT: Are you guilty of
4 the crime as alleged by the allegations
5 set forth in the indictment?

6 MS. REAGLE: Yes, sir.

7 THE COURT: Mr. Muraca, have you
8 been promised anything in order to
9 induce you to plead guilty?

10 MR. MURACA: No, sir.

11 THE COURT: Has anyone indicated
12 to you what your sentence might be if
13 you pled guilty or that they would
14 recommend some type of specific
15 sentence?

16 MR. MURACA: No, sir.

17 THE COURT: Has anyone
18 threatened you, placed any pressure
19 upon you, or coerced you in any way to
20 get you to plead guilty?

21 MR. MURACA: No, sir.

22 THE COURT: You doing so freely
23 and voluntarily?

24 MR. MURACA: Yes, sir.

25 THE COURT: Are you guilty of

1 the offense as described by the
2 allegations in the indictment?

3 MR. MURACA: Yes, sir.

4 THE COURT: Do you have any
5 additional charges that are to be
6 dismissed upon your entry of this plea?

7 MR. MURACA: Yes, sir.

8 THE COURT: What are those,
9 Mr. Modica?

10 MR. MODICA: Your Honor,
11 98-GS-10-2801, pointing a firearm;
12 98-GS-10-28000, charge of murder;
13 98-GS-10-2802, the charge of
14 conspiracy; 98-GS-10-2803, the charge
15 of armed robbery; 98-GS-10-2804, the
16 charge of lynching in the first degree.

17 THE COURT: All right,
18 Mr. Muraca, you heard what the
19 solicitor told me. Do you agree or
20 disagree?

21 MR. MURACA: I agree, sir.

22 THE COURT: But you were not
23 promised anything other than that?

24 MR. MURACA: No, sir.

25 THE COURT: And you're pleading

1 guilty freely and voluntarily?

2 MR. MURACA: Yes, sir.

3 THE COURT: Mr. Tyler, you've
4 been promised anything to get you to
5 plead guilty?

6 MR. TYLER: No, sir.

7 THE COURT: Nothing?

8 MR. TYLER: No, sir.

9 THE COURT: Did anybody indicate
10 to you through negotiations there was
11 some type of sentence or range of
12 sentencing that would be recommended on
13 your behalf?

14 MR. TYLER: Yes, sir.

15 THE COURT: Well, did that
16 induce you to plead guilty?

17 MR. TYLER: No, sir.

18 THE COURT: It didn't? You
19 didn't care about that? You were going
20 to plead guilty anyway?

21 MR. TYLER: Yes, sir.

22 THE COURT: Okay. What did they
23 tell you they would do, though, if you
24 pled guilty? What did they tell you
25 they'd recommend?

1 MR. TYLER: Oh. Thirty
2 suspended forty.

3 THE COURT: Sir?

4 MR. TYLER: Thirty suspended
5 forty.

6 THE COURT: Thirty suspended to
7 forty?

8 MR. TYLER: Yes, sir.

9 THE COURT: I don't believe
10 we're going to be able to do that.

11 MR. PENNINGTON: I think he
12 means that you were going to suspend
13 forty to thirty, your Honor.

14 THE COURT: Oh. Is that what he
15 means?

16 MR. PENNINGTON: Yes, sir.

17 THE COURT: Okay. Is that what
18 you meant?

19 MR. TYLER: Yes, sir.

20 THE COURT: Okay. Were you
21 promised anything other than that?

22 MR. TYLER: No, sir. Oh --

23 THE COURT: Has anybody --

24 MR. TYLER: -- dropping
25 additional charges.

1 THE COURT: They were going to
2 drop some additional charges? All
3 right, Mr. Modica. What are they?

4 MR. MODICA: Your Honor, as it
5 relates to Mr. Tyler, the negotiated
6 plea should the Court accept it of
7 thirty years on the manslaughter,
8 followed by a consecutive sentence of
9 ten years on the strong armed robbery
10 suspended upon five years' probation.
11 In addition the State would be nol
12 prossing 98-GS-10-5481, the charge of
13 lynching in the first degree;
14 98-GS-10-5480, the charge of
15 conspiracy; 98-GS-10-5479, possession
16 of a firearm during the commission of
17 attempt to commit a violent crime; and
18 98-GS-10-5478, the charge of unlawful
19 possession of a pistol.

20 THE COURT: You agree with that,
21 Mr. Tyler?

22 MR. TYLER: Yes, sir.

23 THE COURT: And you're pleading
24 guilty freely and voluntarily?

25 MR. TYLER: Yes, sir.

1 **THE COURT:** Are you guilty of
2 the crimes that you're pleading guilty
3 to as described by the allegations set
4 forth in the indictment?

5 **MR. TYLER:** Yes, sir.

6 **THE COURT:** All right. Let me
7 be certain I understand. Mr. Tyler's
8 negotiated sentence is thirty years on
9 the manslaughter and ten on the common
10 law robbery to run consecutive,
11 suspended during probation for five
12 years?

13 **MR. MODICA:** For the strong
14 armed robbery. Yes. Yes, sir.

15 **MR. PENNINGTON:** That is
16 correct, your Honor.

17 **THE COURT:** All right. Mr.
18 Paffen.

19 **MR. PAFFEN:** Yes, sir.

20 **THE COURT:** Do you understand
21 that both burglary in the first degree
22 and voluntary manslaughter are violent
23 offenses under the law of this state?

24 **MR. PAFFEN:** Yes, sir.

25 **THE COURT:** Did your lawyer

1 explain to you the significance of that
2 designation as being a violent offense?

3 MR. PAFFEN: Yes, sir.

4 THE COURT: And do you
5 understand it?

6 MR. PAFFEN: Yes, sir.

7 THE COURT: Do you understand
8 that should you be convicted or found
9 guilty in the future of a crime which
10 is classified as a violent offense
11 under the law of this state, that upon
12 your conviction you would not be
13 eligible for parole on that future
14 sentence?

15 MR. PAFFEN: Yes, sir.

16 THE COURT: Do you also
17 understand that voluntary manslaughter
18 and burglary in the first degree --
19 these are both "no parole" offenses,
20 are they not?

21 MR. SMILEY: Correct, your
22 Honor.

23 MR. MODICA: Yes.

24 THE COURT: You understand
25 they're "no parole" offenses?

1 MR. PAFFEN: Yes, sir.

2 THE COURT: You understand the
3 significance of that designation as a
4 "no parole" offense?

5 MR. PAFFEN: Yes, sir.

6 THE COURT: Do you understand
7 that notwithstanding any other
8 provision of law, that you're not
9 eligible for early release, discharge,
10 or community supervision until you have
11 served at least eighty-five per cent of
12 the actual term of imprisonment
13 imposed?

14 MR. PAFFEN: Yes, sir.

15 THE COURT: Do you also
16 understand that voluntary manslaughter
17 and burglary in the first degree are
18 designated as "most serious" offenses
19 under the law of this state?

20 MR. PAFFEN: Yes, sir.

21 THE COURT: Do you understand
22 the significance of that designation?

23 MR. PAFFEN: Yes, sir.

24 THE COURT: And do you
25 understand that should you be convicted

1 or found guilty in the future of a
2 crime which is classified as a "most
3 serious" offense, that under the law of
4 this state that upon your conviction
5 for that future offense you must be
6 sentenced to a term of life
7 imprisonment without the possibility of
8 parole?

9 MR. PAFFEN: Yes, sir.

10 MR. SMILEY: Your Honor, I
11 further have instructed him because the
12 burglary and the murder are separate
13 dates that even a "serious" in the
14 future would be life without parole in
15 his case.

16 THE COURT: Well, that would be
17 in the discretion of the solicitor. If
18 you committed a serious offense, that
19 would -- that's the "three strikes".
20 You understand that?

21 MR. PAFFEN: Yes, sir.

22 THE COURT: And it would still
23 subject you to a life -- a sentence of
24 life imprisonment without the
25 possibility of parole.

1 MR. PAFFEN: Yes, sir.

2 THE COURT: Understanding that,
3 do you still want to plead guilty?

4 MR. PAFFEN: Yes, sir.

5 THE COURT: Mr. Hansen?

6 MR. HANSEN: Yes, sir.

7 THE COURT: You've heard the
8 questions that I asked Mr. Paffen. Do
9 you understand that voluntary
10 manslaughter is a violent offense?

11 MR. HANSEN: Yes, sir.

12 THE COURT: And you understand
13 the significance of that designation?

14 MR. HANSEN: Yes, sir.

15 THE COURT: You've heard me
16 explain it?

17 MR. HANSEN: Yes, sir.

18 THE COURT: Your lawyer's also
19 explained it?

20 MR. HANSEN: Yes, sir.

21 THE COURT: You understand that
22 voluntary manslaughter is also a "no
23 parole" offense?

24 MR. HANSEN: Yes, sir.

25 THE COURT: You heard my

1 explanation of that?

2 MR. HANSEN: Yes, sir.

3 THE COURT: Your lawyer has also
4 explained it to you?

5 MR. HANSEN: Yes, sir.

6 THE COURT: You understand
7 voluntary manslaughter is a "most
8 serious" offense?

9 MR. HANSEN: Yes, sir.

10 THE COURT: You understand the
11 significance of that designation?

12 MR. HANSEN: Yes, sir.

13 THE COURT: I've explained it.

14 MR. HANSEN: Yes, sir.

15 THE COURT: Your lawyer's also
16 explained it to you?

17 MR. HANSEN: Yes, sir.

18 THE COURT: You still want to
19 plead guilty?

20 MR. HANSEN: Yes, sir.

21 THE COURT: Ms. Reagle, you
22 understand that accessory before the
23 fact to the crime of manslaughter is a
24 violent offense under the law of this
25 state?

1 MS. REAGLE: Yes, sir, I do.

2 THE COURT: You understand the
3 significance of that designation as I
4 have explained it?

5 MS. REAGLE: Yes, sir, I do.

6 THE COURT: Mr. Schmutz has also
7 explained it to you?

8 MS. REAGLE: Yes, sir.

9 THE COURT: You understand that
10 accessory before the fact of voluntary
11 manslaughter is also a "no parole"
12 offense under the law of this state?

13 MS. REAGLE: I understand that,
14 sir.

15 THE COURT: You've heard me
16 explain it?

17 MS. REAGLE: Yes, I have.

18 THE COURT: Mr. Schmutz has
19 explained it to you?

20 MS. REAGLE: Thoroughly. Yes,
21 sir.

22 THE COURT: You also understand
23 that accessory before the fact of
24 voluntary manslaughter is a "most
25 serious" offense under the law of this

1 state?

2 MS. REAGLE: Yes, sir, I do.

3 THE COURT: You understand the
4 significance of that designation?

5 MS. REAGLE: Yes, sir, I do.

6 THE COURT: From my explanation?

7 MS. REAGLE: From your
8 explanation.

9 THE COURT: And Mr. Schmutz has
10 explained it to you?

11 MS. REAGLE: Yes, sir.

12 THE COURT: Understanding those
13 consequences, do you still wish to
14 enter your pleas of guilty as
15 indicated?

16 MS. REAGLE: Yes, sir, I do.

17 THE COURT: Mr. Tyler?

18 MR. TYLER: Yes, sir.

19 THE COURT: You understand that
20 voluntary manslaughter is a violent
21 offense under the law?

22 MR. TYLER: Yes, sir.

23 THE COURT: Do you understand
24 the significance of that designation?

25 MR. TYLER: Yes, sir.

1 THE COURT: You heard my
2 explanation?

3 MR. TYLER: Yes, sir.

4 THE COURT: Mr. Pennington has
5 also explained it to you?

6 MR. TYLER: Yes, sir.

7 THE COURT: You understand that
8 voluntary manslaughter is a "no parole"
9 offense?

10 MR. TYLER: Yes, sir.

11 THE COURT: You understand the
12 significance of that designation as I
13 have explained it?

14 MR. TYLER: Yes, sir.

15 THE COURT: Mr. Pennington has
16 explained it to you?

17 MR. TYLER: Yes, sir.

18 THE COURT: You understand the
19 significance of voluntary manslaughter
20 as being a "most serious" offense as I
21 have explained it?

22 MR. TYLER: Yes, sir.

23 THE COURT: And Mr. Pennington
24 explained it to you also?

25 MR. TYLER: Yes, sir.

1 THE COURT: Understanding those
2 consequences, do you still wish to
3 enter your pleas of guilty as you've
4 indicated?

5 MR. TYLER: Yes, sir.

6 THE COURT: All right,
7 Mr. Paffen.

8 MR. PAFFEN: Yes, sir.

9 THE COURT: How old are you?

10 MR. PAFFEN: Eighteen, sir.

11 THE COURT: And how far did you
12 go in school?

13 MR. PAFFEN: Eighth grade, sir.

14 THE COURT: Eighth grade?

15 MR. PAFFEN: Yes, sir.

16 THE COURT: Are you able to read
17 and write?

18 MR. PAFFEN: Yes, sir.

19 THE COURT: You understand fully
20 what you're doing here today?

21 MR. PAFFEN: Yes, sir.

22 THE COURT: Have you understood
23 each of the questions that I've asked
24 you?

25 MR. PAFFEN: Yes, sir.

1 THE COURT: Are you married?

2 MR. PAFFEN: No, sir.

3 THE COURT: Do you have any
4 children?

5 MR. PAFFEN: No, sir.

6 THE COURT: You've been in jail
7 fourteen months?

8 MR. PAFFEN: Yes, sir.

9 THE COURT: Were you employed
10 before that?

11 MR. PAFFEN: Yes, sir.

12 THE COURT: Doing what?

13 MR. PAFFEN: Odd jobs.

14 Construction work.

15 THE COURT: Mr. Hansen, how old
16 are you?

17 MR. HANSEN: Seventeen, sir.

18 THE COURT: And how far did you
19 go in school?

20 MR. HANSEN: I made to it the
21 ninth grade.

22 THE COURT: Are you able to read
23 and write?

24 MR. HANSEN: Yes, sir.

25 THE COURT: You understand fully

1 what you're doing here today?

2 MR. HANSEN: Yes, sir.

3 THE COURT: You understood all
4 of my questions?

5 MR. HANSEN: Yes, sir.

6 THE COURT: Are you married?

7 MR. HANSEN: No, sir.

8 THE COURT: Any children?

9 MR. HANSEN: No, sir.

10 THE COURT: Have you ever been
11 employed?

12 MR. HANSEN: No, sir.

13 THE COURT: Mr. Bell, how old
14 are you?

15 MR. BELL: Nineteen, sir.

16 THE COURT: How far did you go
17 in school?

18 MR. BELL: Ninth grade, sir.

19 THE COURT: Are you able to read
20 and write?

21 MR. BELL: Yes, sir.

22 THE COURT: Have you understood
23 every question that I've asked you up
24 to this point?

25 MR. BELL: Yes, sir.

1 THE COURT: Are you married?

2 MR. BELL: No, sir.

3 THE COURT: Children?

4 MR. BELL: No, sir.

5 THE COURT: Ever been employed?

6 MR. BELL: No, sir.

7 THE COURT: Miss Reagle.

8 MS. REAGLE: Yes, sir.

9 THE COURT: How old are you?

10 MS. REAGLE: Twenty-seven.

11 THE COURT: How far did you go
12 in school?

13 MS. REAGLE: I graduated from
14 Daniel High School with a diploma. I
15 attended Anderson Baptist College,
16 Orangeburg Technical College in
17 Orangeburg, South Carolina with a
18 diploma, a program diploma for early
19 childhood development, sir, and
20 nineteen credit units for the Anderson
21 Bible College Correspondence School.

22 THE COURT: Are you married?

23 MS. REAGLE: No, sir.

24 THE COURT: Children?

25 MS. REAGLE: Yes, sir.

1 THE COURT: Have you been
2 employed?

3 MS. REAGLE: Sir?

4 THE COURT: Have you been
5 employed?

6 MS. REAGLE: Yes, sir. I have
7 been.

8 THE COURT: Doing what?

9 MS. REAGLE: Right before this
10 time I worked, I was a child day care
11 provider and I did residential and
12 commercial cleaning.

13 I'm divorced.

14 THE COURT: Ma'am?

15 MS. REAGLE: I'm divorced.

16 THE COURT: Mr. Muraca.

17 MR. MURACA: Yes, sir.

18 THE COURT: How old are you?

19 MR. MURACA: Twenty-one, sir.

20 THE COURT: How far did you go
21 in school?

22 MR. MURACA: Ninth grade with
23 completion of a G. E. D.

24 THE COURT: You able to read and
25 write?

1 MR. MURACA: Yes, sir.

2 THE COURT: Have you understood
3 all the questions I asked you today?

4 MR. MURACA: Yes, sir.

5 THE COURT: Have you been
6 married?

7 MR. MURACA: No, sir.

8 THE COURT: Children?

9 MR. MURACA: No, sir.

10 THE COURT: Ever been employed?

11 MR. MURACA: Yes, sir.

12 THE COURT: Where?

13 MR. MURACA: At the time of this
14 I was employed at In and Out car wash
15 and also learned to be a electrician in
16 home maintenance.

17 THE COURT: Mr. Tyler, how old
18 are you?

19 MR. TYLER: Sixteen.

20 THE COURT: Sixteen?

21 MR. TYLER: Yes, sir.

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

24 MR. TYLER: Ninth grade.

25 THE COURT: You able to read and

1 write?

2 MR. TYLER: Yes, sir.

3 THE COURT: You understand fully
4 what you're doing here today and each
5 of the questions that I've asked you?

6 MR. TYLER: Yes, sir.

7 THE COURT: Ever been married?

8 MR. TYLER: No, sir.

9 THE COURT: Children?

10 MR. TYLER: No, sir.

11 THE COURT: Ever been employed?

12 MR. TYLER: Yes, sir.

13 THE COURT: Where?

14 MR. TYLER: Landscaping.

15 Heritage Landscaping Company on Remount
16 Road.

17 THE COURT: Okay.

18 MR. PENNINGTON: Your Honor, I
19 should probably interject that the
20 reason that this court has jurisdiction
21 over my client, Mr. Tyler, is because
22 there was a transfer petition filed in
23 family court. At the time of the
24 offense my client biologically was
25 fifteen years old, and therefore the

1 solicitor had to file a petition in our
2 local family court. There was a
3 hearing conducted and a ruling by a
4 Judge Smoak, Junior that it was
5 appropriate to transfer this case to
6 this court, and I have a copy of the
7 order if the Court wishes to review it.

8 **THE COURT:** Okay.

9 **MR. PENNINGTON:** That was last
10 summer.

11 **THE COURT:** All right. Thank
12 you.

13 All right. Now I'm going to ask
14 the solicitor to tell me about the
15 facts that relate to each of the
16 charges that are brought before you and
17 to which you've offered to plead
18 guilty. Listen carefully to what he
19 tells me because when he's through
20 giving his recitation and version of
21 the facts I'll ask each of you if you
22 agree with him or if you disagree with
23 him, and give you an opportunity to
24 explain anything that you do not agree
25 with. So listen carefully to what he

1 tells me.

2 MR. MODICA: Your Honor, with
3 the Court's permission what I would
4 like to do is go over the facts and use
5 Mr. Paffen's statement as kind of a
6 springboard for explaining what
7 happened and then reserve the right to
8 talk additionally in regard to each
9 defendant.

10 THE COURT: All right, sir.

11 MR. MODICA: Thank you, your
12 Honor. Your Honor, the victim in this
13 case -- who you've heard is Robert Paul
14 Nixon -- would have been thirty years
15 old this June. At the time he was
16 working for a company called Duncan
17 Foods and he had worked for them for
18 approximately ten years. He had been
19 involved in a relationship on and off
20 with Miss Reagle for a number of years.
21 In fact it's argued that they have a
22 children -- a child together by the
23 name of Joshua. To this day there's --
24 and I'll tell you more about that
25 later -- there's a question as to who

1 is in fact the child's father.

2 In any event, in mid-January of
3 1998 they separated with -- because
4 they had been living together -- with
5 the victim moving back to his mother's
6 residence. Briefly, Miss Reagle
7 requested of a number of young men,
8 including Mr. Paffen and Mr. Hansen, to
9 severely beat up and, if they so
10 desired, to rob Mr. Nixon.

11 They provided -- I should say
12 she provided to them where he worked,
13 when he worked, when he would have
14 money, and what route of travel he
15 would take late on a Sunday evening to
16 come home. She indicated that there
17 was a road that's darker than the rest
18 where they could in fact jump him.

19 On February twenty-second, 1998
20 at approximately 11:40 p. m. the victim
21 was walking home when he was approached
22 by Mr. Paffen and Mr. Tyler, who at
23 that time had either a scarf or
24 handkerchief hiding their identity.
25 Actually Mr. Paffen knew the victim.

1 And when he saw them pass, he began to
2 run away from them and they proceeded
3 to chase him. At some point in time
4 the gun that Mr. Paffen had was given
5 to Mr. Tyler. The victim was ordered
6 by both of them to stop and to shut up.
7 He kept moving.

8 And at one point in time Mr.
9 Tyler, who had the gun, attempted to
10 fire the weapon. The weapon failed to
11 fire. He then reracked the weapon and
12 shot the victim. The first shot
13 appears to have been with the victim's
14 right arm up, blocking his face area.
15 It went through the elbow area, went
16 through the arm, and then struck him in
17 the neck and ended up being lodged in
18 his mouth, the bullet.

19 After he was shot that first
20 time, he managed to go approximately
21 ten feet and then fell against a fence.
22 At that point he was still pleading
23 with the defendants not to shoot him.
24 He then was shot a second time in the
25 head, which eventually killed him.

1 After that time Mr. Paffen took the
2 wallet from the victim and both him and
3 Mr. Tyler ran back to the car.

4 The Court should know that there
5 were two live rounds and two spent
6 rounds found at the scene, and there
7 became an issue about the operability
8 of the weapon. In fact Mr. Tyler's
9 statement suggests that it might have
10 been by accident. But from having
11 spoken to a number of people, including
12 the firearm expert from S. L. E. D.,
13 Ira Parnell, he indicated that there
14 was a problem with the weapon. Mr.
15 Paffen explains that the spring to the
16 trigger was broken and that he rolled
17 up a piece of paper towel and stuck it
18 in there as a method of by-passing the
19 loss of the spring. That the gun would
20 work, but it would not sometimes fire
21 in the single action mode; hence, the
22 gun would have to be reracked and fired
23 again in double action, and it would
24 fire. That's why I would suggest that
25 there were two live rounds found.

1 If I may give you a little
2 background, again using Mr. Paffen's
3 statement as a springboard for
4 understanding what was transpiring,
5 when Mr. Paffen in January of 1998 met
6 up with Mr. Hansen again he was
7 introduced to Mr. Hansen -- I should
8 say by Mr. Hansen to Cindy Reagle at
9 Cindy Reagle's residence. At the time
10 the victim was living with her and,
11 according to Mr. Paffen, he would from
12 time-to-time stay there.

13 In his statement he indicates
14 that the victim moved out and that he
15 moved in. At one point in time Miss
16 Reagle asked Paffen and a few others to
17 do her a favor without telling anyone,
18 and she indicated that they could make
19 some money by beating up the victim.
20 She indicated that she would pay them a
21 hundred and fifty dollars, that she
22 would get them some clothes, and that
23 she indicated that he would have four
24 hundred dollars in his right back
25 pocket in his billfold. She indicated

1 that he would have that every Sunday.

2 She also indicated to them that
3 he would have jewelry on his neck as
4 well as his fingers. She indicated
5 that they could keep all that and, in
6 addition, she would pay them a hundred
7 and fifty dollars. She explained to
8 them where he got off of the bus at
9 Rivers and at the Navy Hospital, that
10 he walks up Rivers Avenue to the Auto
11 Zone and then turns down a really dark
12 street to go home. She said that would
13 be the best place to get him. She
14 indicated that they should take him out
15 on that street by beating him with
16 baseball bats.

17 She indicated to Mr. Paffen that
18 he used to play football and that his
19 knees were broke up. They talked about
20 how to do it so as not to get caught.
21 He believed, Mr. Paffen in his
22 statement believed that conversation
23 took place on Friday, and then that
24 following Sunday Mr. Paffen and
25 Mr. Hansen and another person went out

1 there to attempt to accomplish doing
2 what was requested by Miss Reagle, but
3 they missed him.

4 Paffen had a conversation with
5 Reagle about the fact that they missed
6 him and she indicated yes, she knew,
7 because he had -- he being the
8 victim -- had gone home and had called
9 her. That night Mr. Paffen stayed over
10 at the Reagle residence, and the
11 following morning she again asked about
12 what happened and he explained, and she
13 went on to say not to worry about it,
14 and she told Mr. Paffen that on
15 Wednesdays he gets a check for eight
16 hundred dollars while at Duncan Food
17 and that he could go to Duncan Food in
18 the middle of the day and beat him up
19 and rob him because he would be there
20 by himself in the back, stocking the
21 freezer. She indicated that, to him,
22 that nobody would know until the next
23 shift.

24 Paffen indicated that he didn't
25 want to do that because it was too

1 dangerous, a place of business and in
2 the middle of the day, but he indicated
3 that he would do it the following
4 Sunday. He didn't.

5 About two weeks, two Sundays
6 went by when Mr. Paffen called Miss
7 Reagle on the phone and told her that
8 he was going to take care of Robbie.
9 He inquired of her whether or not he
10 would have the money, and she indicated
11 yes. She -- he also asked if he would
12 have gold and jewelry, and she said
13 yes. She indicated that the victim had
14 gotten items out of the pawn shop,
15 except for a herringbone chain and some
16 diamonds. She specifically indicated
17 to Mr. Paffen that she wanted the
18 victim's I. D. so she could get those
19 items out of pawn.

20 Mr. Paffen in this statement
21 then indicates that they went to Kenny
22 Bell's house and that when he went
23 there, a person that he was introduced
24 as "Boo", who is in fact Calvin Tyler,
25 answered the door, and at that time

1 Bell, Muraca, and Tyler were there.
2 And Hansen -- I'm sorry and
3 Mr. Paffen -- Mr. Hansen was in the
4 car, his car, and that Mr. Paffen told
5 Mr. Bell that they were going to go
6 jump a guy, and he needed some help.
7 The other two, that being Muraca -- I
8 should say Muraca, Bell, and Tyler, all
9 agreed that they would go and help.

10 Mr. Paffen goes on to say in his
11 statement that everyone in the car knew
12 that he had the gun because he took it
13 out of the glove box and he told them.

14 When they were traveling down
15 attempting to find the victim, they saw
16 him and they turned the car around and
17 Mr. Hansen pulled the car in the Auto
18 Park -- Auto Park -- or Auto Zone parts
19 store and turned off the car because it
20 was close to the dark street that the
21 victim was going to walk by.

22 At that time Calvin Tyler and
23 Paffen got out of the car and they hid
24 their faces as I explained. Mr. Paffen
25 indicates that when they went there,

1 they were a little late and the victim
2 walked right by them. As I said he saw
3 them and he began to turn -- move away
4 quickly. They went towards him but
5 before they did that, according to
6 Mr. Paffen's statement, Calvin Tyler
7 asked Mr. Paffen if he could hold the
8 gun. Mr. Paffen relented and gave
9 Tyler the gun.

10 They chased the guy as -- the
11 victim as I explained. At the time and
12 as indicated in Mr. Paffen's statement
13 and it's true from the crime scene, he
14 was carrying two grocery bags. When
15 they caught up to the victim Tyler was
16 pointing the gun. The victim
17 repeatedly said "please, no" and kept
18 walking. Tyler said, "Stop and shut
19 up." Paffen said, "Shut up and get
20 down on the ground." Tyler pulled the
21 trigger but it didn't go off. Tyler
22 cocked the gun because the victim was
23 walking faster. Tyler pointed the gun
24 again and told the victim to shut up.
25 Tyler pulled the trigger again and the

1 gun went off. The victim walked about
2 ten feet and then fell against the
3 fence, and then Tyler shot again.

4 In Mr. Paffen's statement he
5 indicates that Tyler took the wallet
6 out of the victim's back pocket but
7 Mr. Tyler -- Mr. Paffen has
8 subsequently indicated that it was he
9 who took the victim's wallet from his
10 back right pocket.

11 About that time Mr. Hansen
12 pulled up in the car and Mr. Tyler and
13 Mr. Paffen got back in the car, Mr.
14 Paffen taking the gun back from
15 Mr. Tyler. After that time, they went
16 to Mr. Hansen's house, where they
17 switched cars. I believe they switched
18 to a bigger car and to Mr. Hansen's
19 uncle's car.

20 In Mr. Paffen's statement it
21 indicates that Mr. Tyler threw out the
22 wallet, but again Mr. Paffen has
23 subsequently indicated that it was he
24 who threw out the contents of the
25 wallet. There was no money in the

1 wallet, just a card, some cards, Social
2 Security card, and identification.

3 After they switched cars they
4 went to the B. P. gas station and got
5 cigarettes and soda. They went back to
6 the crime scene to see if the police
7 was there and, according to
8 Mr. Paffen's statement "plus everyone
9 was upset because they didn't get any
10 money." Tyler said he shot the victim
11 in the face the second time. When they
12 didn't see the police, they dropped
13 Tyler off and he went back to the body.
14 When Mr. Tyler came back to the car he
15 indicated that he didn't have anything
16 except a dollar thirty-seven, which he
17 counted, as change.

18 Sometime after that they dropped
19 off Tyler, Bell, and Muraca at Pappy's
20 on Remount Road. They then went to
21 Hansen's house and told Hansen's mother
22 what had happened. Later that day Mr.
23 Paffen used the same gun and pointed it
24 at some guys in car that were in a
25 gang. Those people that he pointed the

1 gun at followed them back to Mr. Bell's
2 house, called the police, and the
3 police showed up. When the police
4 showed up subsequently Mr. Bell let
5 them look inside the house and found
6 the weapon, a Makarov 9, underneath the
7 mattress. It wasn't until a few hours
8 later that the police put a connection
9 between the gun, because it was unique
10 and so were the shells or the bullets,
11 that they put two and two together,
12 they brought Mr. Paffen from the cell
13 and then brought him back and he gave a
14 statement. He gave a very long
15 statement because most of what I've
16 been talking about is taken from
17 Mr. Paffen's statement. I believe it
18 was at least ten, probably twelve pages
19 long.

20 That's all I have to say for
21 now, your Honor.

22 THE COURT: All right, Mr.
23 Paffen. You heard what the solicitor
24 told me about the facts.

25 MR. MODICA: Your Honor, I

1 apologize. I did not tell you about
2 the burglary case, and I will do so
3 briefly.

4 On January fourth, 1997
5 approximately 6:50 p. m., which would
6 have been nighttime at that time, the
7 neighbor of the victim, the victim is
8 Kevin Reardon, heard a crashing noise
9 from Mr. Reardon's house. He went over
10 there in his pick-up truck and he
11 observed two people, one white young
12 male and one black young male, run out
13 the back. He called the police. The
14 police came, a canine search was done,
15 after approximately twenty minutes the
16 co-defendant came out, gave a
17 confession indicating that Mr. Paffen
18 was involved. On January sixth, 1997
19 the defendant was arrested and gave a
20 confession indicating his involvement.
21 In that case the front door was broken
22 into and was left open as they fled out
23 the back.

24 I've spoken to Mr. Reardon about
25 the plea arrangements in this case and

1 he understands fully and he agrees.

2 I've spoken to the victim in the
3 pointing of the firearm case as it
4 relates to a number of the defendants
5 in this case and he understands what's
6 transpiring and has no objection to the
7 negotiations as I've previously
8 indicated. Thank you, sir.

9 THE COURT: All right, Mr.
10 Paffen. You heard what the solicitor
11 told me about the facts that relate to
12 the charges against you. Do you agree
13 that what the solicitor told me is
14 correct?

15 MR. PAFFEN: Yes, sir.

16 THE COURT: Is there anything
17 that he's told me that you disagree
18 with?

19 MR. PAFFEN: No, sir.

20 THE COURT: Mr. Hansen, you
21 heard what the solicitor told me about
22 the facts that relate to this case?

23 MR. HANSEN: Yes, sir.

24 THE COURT: Do you agree with
25 him or disagree?

1 MR. HANSEN: I agree.

2 THE COURT: You agree with
3 everything he stated as being correct?

4 MR. HANSEN: Yes, sir.

5 THE COURT: Mr. Bell, you heard
6 what the solicitor told me?

7 MR. BELL: Yes, sir.

8 THE COURT: You agree with him?

9 MR. BELL: Yes, sir.

10 THE COURT: Is there anything
11 that you don't agree with?

12 MR. BELL: I didn't know they
13 were going to rob and shoot until I was
14 in the car.

15 THE COURT: You didn't know that
16 they were going to rob or shoot until
17 after you got in the car?

18 MR. BELL: Yes, sir.

19 THE COURT: Was that before it
20 happened?

21 MR. BELL: No, it ain't.

22 THE COURT: It was after it?

23 MR. BELL: Yes, sir. Yes, sir.
24 Yes, sir. Yes, sir. Excuse me.

25 THE COURT: It was before it

1 happened?

2 MR. BELL: Yes, sir.

3 THE COURT: But you didn't know
4 it was going to happen, is that what
5 you're telling me?

6 MR. BELL: Yes, sir.

7 THE COURT: All right. What
8 about --

9 MR. DRENNAN: Judge, I want to
10 just clear up for the record. He
11 didn't know anything was going to
12 happen until he got in the vehicle, and
13 then it's his position that he could
14 not do anything at that point. He was
15 in the back seat and he was on the way
16 over there. But he didn't know about
17 this plan or anything like that until
18 he saw a gun in the car.

19 THE COURT: But he simply agrees
20 that he aided, abetted, or assisted
21 after --

22 MR. DRENNAN: Yes, sir.

23 THE COURT: -- having knowledge
24 of the commission of the crime?

25 MR. DRENNAN: Yes, sir.

1 **THE COURT:** Okay. All right,
2 Ms. Reagle, you heard what the
3 solicitor told me. Do you agree or
4 disagree?

5 **MR. SCHMUTZ:** Your Honor, if I
6 may, and obviously she can answer in
7 just a moment, but we disagree with
8 ninety per cent of that statement. We
9 do agree with enough of it that we
10 think that there's a substantial
11 likelihood that a jury would convict
12 her. She gave a statement on February
13 the twenty-fourth implicating herself
14 in this, in this incident. She talked
15 to Mr. Paffen and Mr. Hansen. She
16 didn't know any of these other people.
17 Her version of it is substantially
18 different than Mr. Paffen's. However,
19 her version of it does implicate her as
20 an accessor if there's a word
21 "accessor" before the fact of
22 manslaughter.

23 **THE COURT:** Tell me what she
24 agrees with or what she -- what her
25 position is as to what she has done

1 that would cause her to be guilty.

2 **MR. SCHMUTZ:** Judge, I think I
3 was going to do this when I was able to
4 address the Court later, but this is a
5 statement she gave to the police on
6 February the twenty-fourth, which is a
7 voluntary statement, a Mirandised
8 statement, and that is why we're in
9 this courtroom today pleaing guilty.

10 **THE COURT:** Well, as I
11 understand it, what Miss Reagle is
12 saying that her, her role was or her
13 participation was, is that she talked
14 with some of these boys and asked them
15 to teach Mr. Nixon a lesson --

16 **MR. SCHMUTZ:** That's right.

17 **THE COURT:** -- by beating him
18 up.

19 **MR. SCHMUTZ:** Yes, sir.

20 **THE COURT:** Or in some fashion
21 doing some physical injury to him.

22 **MR. SCHMUTZ:** Yes, sir.

23 **THE COURT:** But you're saying
24 that she did not intend that it result
25 in a death.

1 MR. SCHMUTZ: She certainly did
2 not intend that. What we've got, of
3 course, Judge, is a foreseeability
4 issue here, and I understand the law of
5 foreseeability as it applies to
6 co-conspirators. She does not. Her
7 theory is that she never imagined that
8 her boyfriend was going to be murdered.
9 She didn't even know there was a gun
10 involved. She knew none of these
11 people in this room other than
12 Mr. Paffen and Mr. Hansen.

13 It was a close call for me
14 making a decision whether to plead or
15 try this case. I think the conspiracy
16 law in this state is strong. I think
17 foreseeability is something that was
18 incredibly difficult for us to get
19 around. Her statement itself asks
20 Mr. Paffen and Mr. Hansen to beat up
21 Mr. Nixon, and it goes further. It
22 says in effect "rob him." He was
23 robbed. He was not beaten. He was
24 murdered by someone she didn't even
25 know. However, and I did not mean to

1 get into all this now, but I want to
2 make sure that you understand that it
3 is a, a, a plea. I believe it's a
4 legitimate plea. I believe there's a
5 chance a jury would find her guilty of
6 murder under foreseeability, under the
7 law of foreseeability with respect to
8 conspiracy. That's why we're pleaing.

9 The Paffen statement, which was
10 given unbeknownst to her -- when she
11 gave this statement she didn't know
12 anything about Hansen or Paffen giving
13 a statement. But I think that
14 statement there justifies this plea.

15 **THE COURT:** All right. Miss
16 Reagle, you've heard what Mr. Schmutz
17 has told me. Is it a correct
18 statement, that you were aware and you
19 did intend that Mr. Nixon be beaten up
20 by Mr. Paffen and Mr. Hansen and anyone
21 else for that matter that were with
22 them, that you also intended and were
23 aware that he was to be robbed?

24 **MS. REAGLE:** Yes, sir.

25 **THE COURT:** You agree with that?

1 MS. REAGLE: Yes, sir.

2 THE COURT: Do you believe that
3 if your case went to trial and you and
4 Mr. Schmutz participated in the
5 selection of a jury that it's likely a
6 jury would find you guilty beyond a
7 reasonable doubt of at least the charge
8 to which you've offered to plead guilty
9 and perhaps a greater charge?

10 MS. REAGLE: Yes, sir.

11 THE COURT: And based upon that
12 fact and the fact that there have been
13 some negotiations so far as you and
14 your lawyer and the solicitor are
15 concerned, based upon those facts is it
16 your desire to still enter a plea of
17 guilty as you've indicated to the
18 charge of accessory before the fact to
19 voluntary manslaughter?

20 MS. REAGLE: Yes, sir. I do --
21 never mind.

22 THE COURT: Yes, sir, what?

23 MS. REAGLE: I do want to make
24 sure that it was noted that we do not
25 agree with ninety per cent of the

1 statement.

2 MR. MODICA: Paffen's statement
3 she's referring to.

4 THE COURT: Okay.

5 MR. SCHMUTZ: Paffen's
6 statement.

7 THE COURT: All right. Well,
8 we'll address it.

9 MS. REAGLE: Paffen's statement,
10 not my own statement.

11 THE COURT: But you do agree
12 that it was your intent and you
13 instigated the contact between Mr.
14 Paffen and Mr. Hansen and perhaps
15 others with Mr. Nixon?

16 MS. REAGLE: Yes, sir.

17 THE COURT: And that you were
18 aware and did -- were aware that, that
19 he was to be robbed or personal
20 property was to be taken?

21 MS. REAGLE: Yes, sir.

22 THE COURT: Okay. And you still
23 want me to except your plea of guilty?

24 MS. REAGLE: Yes, sir.

25 THE COURT: Okay. All right.

1 Mr. Muraca, you've heard what
2 the solicitor told me about the facts.
3 Do you agree or disagree with him?

4 **MR. MURACA:** I agree to the
5 extent that I didn't know anything
6 prior to getting in the car, sir.

7 **THE COURT:** All right, sir. And
8 you still wish for me to accept your
9 plea of guilty?

10 **MR. MURACA:** Yes, sir.

11 **THE COURT:** All right. And,
12 Mr. Tyler, you heard what the solicitor
13 told me about the facts?

14 **MR. TYLER:** Yes, sir.

15 **THE COURT:** Do you agree or do
16 you disagree with his version?

17 **MR. TYLER:** No, sir, I didn't
18 know a gun was involved till after I
19 got in the car.

20 **THE COURT:** You didn't know they
21 were going to -- there was a -- you
22 didn't know Mr. Paffen had a gun until
23 you got in the car?

24 **MR. TYLER:** Yes, sir.

25 **THE COURT:** But you were keenly

1 aware that he had handed it to you?

2 MR. TYLER: Yes, sir.

3 THE COURT: And you don't
4 dispute the fact that you used the
5 weapon and that you shot Mr. Nixon on
6 more than one -- with more than one
7 round, resulting in his death?

8 MR. TYLER: Can you clarify
9 that?

10 THE COURT: Well, I tell you
11 what. You clarify. You tell me what
12 you did. What you agree with that you
13 did that causes you to be guilty of
14 anything.

15 MR. TYLER: Well, yes, I did
16 shoot him, sir. I, I admit to that.

17 THE COURT: You used
18 Mr. Paffen's gun?

19 MR. TYLER: Yes, sir.

20 THE COURT: You shot Mr. Nixon?

21 MR. TYLER: Yes, sir.

22 THE COURT: How many times?

23 MR. TYLER: Twice.

24 THE COURT: How many?

25 MR. TYLER: Twice.

1 THE COURT: Twice?

2 MR. TYLER: Yes, sir.

3 THE COURT: Okay. Is there any
4 defendant who is under the influence of
5 any alcohol or other substance which
6 might prevent you from understanding
7 what you're doing?

8 MR. PAFFEN: No, sir.

9 MR. HANSEN: No, sir.

10 MR. BELL: No, sir.

11 MS. REAGLE: No, sir.

12 MR. MURACA: No, sir.

13 MR. TYLER: No.

14 THE COURT: Do any of you suffer
15 from any type of mental or emotional
16 disturbance that would prevent you from
17 understanding what you're doing here
18 today?

19 MR. PAFFEN: No, sir.

20 MR. HANSEN: No, sir.

21 MR. SAVAGE: Judge, I might
22 submit at this time Mr. Hansen, he's
23 been under psychiatric care for quite
24 some time that pre-dated this, and I
25 have the evaluation to provide you.

1 He's under anti-psychotic medication at
2 this time and has been, but he's fully
3 cognizant and is competent to proceed
4 today and it is not interfering with
5 his ability to make rational decisions
6 regarding his plea.

7 **THE COURT:** In fact it is a fair
8 statement to say that any medication
9 he's taking enhances his ability to
10 understand what he's doing here today
11 as opposed to inhibit, inhibiting that
12 ability?

13 **MR. SAVAGE:** That is correct,
14 your Honor.

15 **THE COURT:** Is that right,
16 Mr. Hansen?

17 **MR. HANSEN:** Yes, sir.

18 **THE COURT:** Do you understand
19 fully what you're doing?

20 **MR. HANSEN:** Yes, sir.

21 **THE COURT:** Mr. Bell.

22 **MR. BELL:** Yes, sir.

23 **THE COURT:** You don't suffer
24 from any emotional or mental
25 disturbance that prevents you from

1 understanding what you're doing?

2 MR. BELL: No, sir.

3 THE COURT: Ms. Reagle?

4 MS. REAGLE: No, sir.

5 THE COURT: Mr. Muraca?

6 MR. MURACA: No, sir.

7 THE COURT: Mr. Tyler?

8 MR. TYLER: No, sir.

9 THE COURT: Okay.

10 MR. MODICA: Your Honor, are you
11 at the sentencing portion for Mr.
12 Paffen?

13 THE COURT: No. I'm going to
14 hear from them, but what I prefer to
15 do, I'll be happy to hear from any
16 family member. I find it preferable
17 that they listen to what the defense
18 says so that they can tell me what
19 they'd like and they can respond to
20 anything they hear, if they wish to.

21 MR. MODICA: Okay.

22 THE COURT: So I'll hear from
23 them last.

24 MR. MODICA: Okay. Your Honor,
25 in regards to Mr. Paffen, I would just

1 indicate to the Court that he does
2 have -- he has no adult criminal
3 history, however he does have a
4 juvenile history, adjudicated
5 delinquent as it relates to a burglary
6 charge, malicious injury to personal
7 property, breaking and entering an
8 automobile, possession of burglary
9 tools, and petty larceny. These
10 occurred in '92 and '96 respectively.

11 **THE COURT:** All right. Any
12 other record on behalf of any of the
13 other defendants?

14 **MR. MODICA:** Yes, sir. As it
15 relates to Cindy Reagle, she has two
16 convictions for fraudulent check in
17 April of 1997.

18 One moment, please, your Honor.
19 Mr. Hansen has no record as a juvenile
20 or adult. Mr. Bell has no record as a
21 juvenile or an adult.

22 Mr. Muraca has a juvenile
23 history for burglary and grand larceny
24 out of July of 1994. He was
25 adjudicated delinquent and in regard to

1 his criminal history as an adult, in
2 February of '96 he has a shoplifting;
3 in April of '96 he has a petty larceny;
4 and in October of '97 he has a petty
5 larceny. I believe that's it, sir.

6 THE COURT: All right, Mr.
7 Paffen. I'd be glad to hear from you
8 and Mr. Smiley.

9 MR. SMILEY: Your Honor, if I
10 could, since this is a negotiated plea,
11 I would ask you to accept the
12 negotiated plea, as he gave a very
13 detailed statement at the beginning of
14 this case. He's been cooperative in
15 any fashion since the beginning. His
16 family is not here. His father is
17 suffering from terminal cancer and at
18 this point is having to have hospice
19 come to the house. I told his family
20 that I would let the Court know and the
21 victim's family know that they are
22 truly remorseful and wish they could
23 change that day.

24 Your Honor, we would ask you to
25 accept the negotiations in this case.

1 **THE COURT:** All right. Mr.
2 Paffen, anything you want to add to
3 what your lawyer's told me?

4 **MR. PAFFEN:** No, sir. That's
5 all.

6 **THE COURT:** All right.
7 Mr. Hansen, do you and Mr. Savage have
8 anything you want to tell me?

9 **MR. SAVAGE:** Judge, Mr. Hansen
10 is seventeen years of age. He was born
11 in Charleston in December, December
12 twenty-third of 1981. He attended
13 Abundant Life Christian School through
14 the eighth grade and then went on to
15 Middleton High School and completed the
16 ninth grade. He's single. He has no
17 children. He's a member of the Full
18 Gospel Church on Dozen Street.

19 His mother is present with him
20 in the courtroom today. Miss Hansen,
21 if you'd stand up, please. His
22 adoptive father is present in the
23 courtroom today. His adopted father
24 traveled here from the Great Lakes
25 Naval Training Station where he works

1 as a civil servant. His uncle is also
2 present with him, who is really his
3 surrogate father in the absence of his
4 stepfather or his adoptive father. He
5 has a younger brother nine years of age
6 who is emotionally disabled.

7 Mr. Hansen I would tell you
8 briefly has had a somewhat troubled
9 life, not as it relates to law
10 enforcement and criminal activity, but
11 has significant -- suffered some
12 significant social impediments in his
13 life and some significant mental health
14 disabilities.

15 Through -- his mother tells me
16 through about the sixth grade, fifth or
17 sixth grade he did fine. He was
18 emotionally stable and socially stable.
19 And within a year's period of time he
20 had three rather traumatic events. His
21 maternal grandmother who had raised him
22 up to that point died. His father he
23 found out was his adoptive father, and
24 within a year's time that adoptive
25 father was transferred as a result of

1 the closure of the naval base here in
2 Charleston and transferred up to
3 Chicago.

4 He always had learning
5 disabilities in school but was able to
6 accommodate those through the
7 taking of Ritalin. When I met Charles
8 in February who cooperated with police
9 I might add even to the extent that he
10 signed a full statement and was
11 assisting the police department in
12 their investigation of this case, it
13 was clear to me that he was not a
14 leadership-decisive individual, and at
15 that time we engaged the services of
16 Pat Gerald, who's a forensic
17 psychologist in Charleston, who did
18 extensive testing in March, several
19 clinical interviews, and then did a
20 series of tests through the summer of
21 that year. We never sought bond or
22 asked for bond in Charles' case because
23 of the nature of the charges and his
24 emotional stability at the time. We
25 did not feel it was appropriate, and

1 that was with the consent of my client
2 as well as with his family.

3 Pat Gerald, Dr. Gerald, who's a
4 psychologist, was concerned enough
5 about Charles' mental health that he
6 engaged the services of Edmond Higgins.
7 Dr. Higgins is a board certified
8 psychiatrist who was assigned to the
9 Charleston County Detention Center and
10 retained there by the medical providers
11 at the jail. Dr. Higgins, when he
12 examined Charles, made some significant
13 findings regarding his mental health,
14 and treated him with antidepressant
15 medication, but in August added Navane,
16 that's N-a-v-a-n-e, which is an
17 anti-psychotic medication, which he has
18 stayed on since that time.

19 Charles originally was housed at
20 the juvenile detention center, but when
21 he reached the age of seventeen he was
22 transferred from the detention center
23 to the county jail, where he's been in
24 the medical ward ever since. As
25 recently as March twenty-third of this

1 year he has been examined for
2 competence by Dr. Higgins. Dr. Higgins
3 has issued a report, which I'll make
4 part of the record, that he believes
5 that Charles is competent and he sees
6 no reason why he cannot consult with
7 his lawyer with a reasonable degree of
8 understanding. There is no indication
9 that Charlie is incompetent to stand
10 trial. Dr. Gerald's report finds him
11 to be somewhat less clear in his
12 psychiatric analysis, but the
13 psychiatrist involved finds him to be
14 competent. Both doctors, that is
15 Dr. Gerald and Dr. Higgins, evaluated
16 him for defense of NGRI. I explained
17 that to Charles and his family. It was
18 not an appropriate defense. He didn't
19 meet the standard to do that. I've
20 explained to his family as well as to
21 Charles the issues of competence. We
22 determined together -- that is the
23 family unit, the defendant, and myself
24 along with the psychologist and the
25 retained psychiatrist -- that it would

1 not be necessary to have him sent to
2 Columbia for a state evaluation as to
3 competency. I made that clear to
4 Mr. Modica and he agreed and we
5 consented in that decision.

6 At the time of this terrible
7 offense, Judge, Mr. Hansen I would say
8 was a sort of dependent young man,
9 dependent for social recognition, and
10 he exercised that dependence by using
11 his family vehicle to transport the
12 people who he would most like to be
13 around and want to be like, and those
14 are the parties that are before you
15 today. He had established a social
16 relationship with one of his
17 defendants. He had known another
18 defendant at some previous era in his
19 life, but was sort of hanging out. He
20 was not in school at this time, he was
21 not working at this time, but spent all
22 his waking hours pretty much with this
23 crowd.

24 On the night of the offense he
25 had his family vehicle and he provided

1 the transportation. He had a broken
2 leg at the time and was in a cast.
3 Nonetheless, he knew when his
4 co-defendants were in the vehicle that
5 they were armed. He had had the
6 conversation with another two of his
7 co-defendants about beating the victim
8 in this case. He did not participate
9 in that, but he knew what the event was
10 that was going to transpire that night,
11 except for the use of the firearm. He
12 did not have any knowledge nor did he
13 realize or think that a firearm was
14 going to be used. He thought that the
15 beating was going to be at the hands
16 and fists of his two co-defendants, but
17 he was aware of it.

18 He has -- I have visited Charles
19 on -- probably sixty occasions?

20 MR. HANSEN: Yes.

21 MR. SAVAGE: Since his
22 incarceration. I have found him to be
23 extremely remorseful from the very
24 beginning. His mother is present,
25 adoptive father is present, his

1 minister and his wife is present, and
2 his uncle is present, all whom have
3 visited him when he was in the juvenile
4 detention center every evening. Since
5 he's been incarcerated in the adult
6 center they have visited him on a
7 regular basis.

8 I would ask them to talk to the
9 Court but I would tell the Court on
10 their behalf that they would speak as a
11 father and a mother, an uncle, and a
12 minister, that they would extend their
13 remorse to the family of the victim,
14 they would ask the Court to be
15 considerate and compassionate in
16 sentencing, as much leeway as the
17 solicitor has provided to the Court,
18 and that Mr. Hansen be given a
19 non-parolable period of incarceration
20 of twenty years.

21 Mr. Hansen did want to address
22 the Court briefly, your Honor.

23 **THE COURT:** All right.

24 Mr. Hansen.

25 **MR. HANSEN:** Yes, sir. I'd like

1 to apologize to the family. I'm truly
2 sorry and I never meant for this to
3 happen and I'm truly remorseful. And I
4 would like apologize.

5 MR. SAVAGE: Judge, if I may,
6 may I make a copy for the record of the
7 March twenty-fifth correspondence from
8 Edmond S. Higgins, board certified
9 psychiatrist, and a March twenty-fourth
10 five-page letter from Pat Gerald, who
11 is a clinical psychologist, who has --
12 both of whom have evaluated and have
13 treated Mr. Hansen since he was
14 incarcerated.

15 Thank you, your Honor.

16 THE COURT: Thank you,
17 Mr. Savage.

18 All right. Mr. Bell, you and
19 Mr. Drennan.

20 MR. DRENNAN: Your Honor, may it
21 please the Court, in the interests of
22 time I would -- I think that Kenneth
23 kind of mirrors along the lines of a
24 background, developmental background,
25 like Mr. Hansen. He did -- his school

1 was shortened to the ninth grade. He
2 had learning disabilities. He had
3 attention deficient disorder. He had
4 been diagnosed and had been to the
5 M. U. S. C. senior clinical
6 psychiatrist which -- for behavior
7 problems as well as for a symptom
8 called Tourette's.

9 As a result of learning about
10 his previous mental health problems
11 that he was having, experiences that --
12 he obviously was not employed. He
13 had -- he had not been doing anything
14 after school. I employed the services
15 of Dr. Sarnoff and he is here today and
16 I furnished you with a report, and if
17 you have any questions for him, he does
18 have some recommendations toward the
19 end of his report. If I may have
20 Dr. Sarnoff come up, Judge?

21 **THE COURT:** Yes, sir.

22 **MR. MODICA:** Your Honor, in
23 regard to Mr. Bell, as we indicated in
24 chambers, Mr. Bell was evaluated by the
25 William S. Hall Institute for purposes

1 of competency to stand trial and the
2 determinate -- and determined that the
3 factors in terms of defenses that he
4 was in fact competent and knew what he
5 was doing, and so there was no defense.
6 I don't know if counsel has a copy of
7 it to submit to the Court.

8 MR. DRENNAN: I did, Judge, and
9 I thought I gave that to the Court, to
10 the clerk, the law clerk.

11 THE COURT: All right. I have
12 Dr. Behrmann's report.

13 MR. DRENNAN: Yes.

14 THE COURT: I have it.

15 MR. DRENNAN: Okay.

16 MR. MODICA: Thank you, your
17 Honor.

18 MR. DRENNAN: Sir, we have no
19 dispute about that.

20 Your Honor, at this time I'd ask
21 Dr. Sarnoff to kind of give you his
22 feeling, "take" on the case as to
23 reviewing him and he also had an
24 associate, a very well-respected, and
25 he'll explain that to you as well.

1 THE COURT: All right.

2 DR. SARNOFF: Okay. I saw
3 Mr. Bell a couple of months ago in the
4 Charleston County Jail and evaluated
5 him then for his intellectual capacity,
6 and I found that he had a borderline
7 level of verbal intelligence, although
8 he had a normal level of performance
9 intelligence. He could do things like
10 look at pictures and understand what
11 they meant and solve puzzles with
12 blocks and things like that. But as
13 far as being -- expressing himself
14 verbally, he had considerable
15 difficulty doing that. And so I think
16 he's had a lot of problems throughout
17 his educational career because of that.
18 He's had the attention deficit disorder
19 and things that have caused him
20 problems throughout his life. In
21 addition, he had emotional problems due
22 to being abandoned by his parents at
23 the age of five, and so he has quite a
24 bit of anger and things have kind of
25 built up in him. So I recommend that

1 he receive vocation rehabilitation
2 service. I think he could be capable
3 of learning a trade, something like
4 that, although he probably couldn't go
5 to college for academic programs. I
6 think he also would need some
7 considerable mentoring and coaching and
8 psycho-therapy to help him overcome his
9 emotional problems. In addition, he
10 should be given a medical evaluation to
11 determine if some medicants could be
12 helpful in his case.

13 **MR. DRENNAN:** He was on some
14 medications, your Honor, previous to
15 this event happening. He was taking
16 Ritalin, but he wasn't taking his
17 medication properly, and I would have
18 some of the family members just stand
19 up for Kenneth Bell, your Honor. And
20 he -- he was raised by his
21 grandparents. His grandmother right
22 now is in the hospital. She had a
23 heart attack. But his grandfather is
24 here today, Thomas Bell, and of course
25 he would express the same concerns to

1 the victims of the family. And he
2 would take his son, grandson back home,
3 but only other -- only under the
4 stipulation that Kenneth, you know, go
5 along with his medications and go along
6 with the recommendations of the Court.
7 He doesn't have a problem with him, but
8 it's when he gets off his medications
9 and doesn't take them properly, that's
10 when Kenneth falls into bad times.

11 On that previously I did note
12 for the record he does not have any
13 previous criminal record. This is an
14 isolated incident. He's -- he will
15 tell the judge and he, or tell the
16 Court in his twelve-page statement
17 that -- basically it was typed four,
18 but handwritten approximately twelve --
19 that when he -- the first time he
20 learned of a, of the robbery was when
21 he got inside the car. The first time
22 he learned about a gun was when he was
23 inside the car. He, he would tell you
24 right now, Judge, that he was scared to
25 either get out of the car, but he said

1 if he would have known these facts
2 prior to getting into that car he would
3 not have gone along for this ride.

4 He, he's basically an individual
5 that's easily manipulated. He was put
6 into this situation. He didn't know
7 how to extricate himself, but when he
8 was approached by the police officers
9 he gave full, a full twelve-page
10 statement.

11 Your Honor, with that all in
12 mind, I just ask you to consider
13 probation for Mr. Bell. He's been in
14 jail for fourteen months and, and is
15 sincerely remorseful for his presence,
16 and I'd ask him to say anything that he
17 would like at this time.

18 MR. BELL: Yes, sir. I'd like
19 to say something to the victim's
20 family, that I'm sorry, truly sorry for
21 what happened, and I didn't meant for
22 this to happen like that. That's all I
23 got to say. Thank you.

24 THE COURT: Miss Reagle and
25 Mr. Schmutz.

1 MR. SCHMUTZ: Yes. Your Honor
2 please, with the Court's permission the
3 way I'd like to handle it, I'd like to
4 tell you a little about Cindy Reagle.
5 I have members of her family, the
6 people who have raised her up in
7 Anderson and Clemson, have come down
8 here, and were the people that hired me
9 to represent her. They will speak
10 briefly and then I will speak with you
11 again, just about this incident and
12 address the Nixon family.

13 Judge, as Cindy Reagle has told
14 you, she's twenty-seven years old. She
15 had just turned twenty-six when this
16 happened. She graduated from Daniel
17 High School, she went a year at
18 Anderson Baptist College, and she
19 married Steve Reagle, who is Navy
20 person, an enlisted man of the Navy
21 until 1991. She moved to Charleston
22 and moved on the naval base in 1993.
23 She has two children; a little girl,
24 Michelle, six years old, and a little
25 boy, Joshua, two years old.

1 While she was here on the base
2 she went to Orangeburg Tech. I think
3 she told you about that. She received
4 a six-month certificate in early
5 childhood development. That was in
6 November of '96. She also did a
7 correspondence course. She got
8 nineteen units in that manner.

9 Judge, with the exception of
10 writing two checks that she did not
11 have money to, to cover, she has no
12 criminal record whatsoever. And,
13 Judge, I would like and I'm going to
14 step back here because I can't see and
15 it's difficult and I would ask them to
16 stand up and they will speak briefly to
17 you.

18 Judge, Cindy was raised by her
19 uncle and aunt, Leon and Hilda Boyd.
20 Would you all stand up.

21 Hilda, I'd like for you to just
22 briefly tell the judge what you -- what
23 you are, what you've done in life, and
24 your -- and tell him about Cindy.

25 HILDA BOYD: I recently retired

1 from forty years of work with the U. S.
2 government, in the Health and Human
3 Services Department.

4 Cindy was adopted by our family
5 since she was two years old and her
6 sister was one year old. When she was
7 four and five years old her father, who
8 was on the staff of Clemson University,
9 had a severe heart attack. A doctor
10 lived next-door to him and saved his
11 life, but he had severe mental damage
12 to the brain. He has for the last
13 twenty-something years been in a mental
14 institution.

15 My husband and I have raised
16 Cindy. We sent her to college. She is
17 a part of all that we have been. We
18 protected Cindy from a lot of things.
19 She was not prepared for a large town.
20 She grew up in the country and in
21 Clemson, which was very small. She has
22 never been out of the state or never
23 been away from home. She was married
24 when she was eighteen years old and by
25 the time she was nineteen she had a

1 child.

2 I know that Cindy did not mean
3 for these things to happen. She was a
4 victim of circumstances. I ask for the
5 mercy of the Court, and I ask for the
6 forgiveness from the family. Thank
7 you.

8 **THE COURT:** Thank you, ma'am.

9 **MR. SCHMUTZ:** Your Honor, the
10 gentleman standing with her, of course,
11 is her husband and that's her -- that's
12 Cindy's uncle, Leon Boyd. He's been
13 retired from the U. S. Navy for
14 twenty-five years, and retired postal
15 service worker for twenty years.

16 You all may sit down.

17 And, your Honor, Cindy has a
18 sister, Annie, who is twenty-five years
19 old, who is married. Her husband is
20 not with her. She has three children.
21 She lives in Columbia.

22 And, Annie, if you would just
23 briefly address the Court, please.

24 **SISTER ANNIE:** Your Honor, I am
25 Cindy's sister. We grew up together,

1 and we're very close. Our whole family
2 is very close. I know Cindy did not
3 mean anything by this. She's a very
4 lovable and very caring person. She's
5 very close to me. We never fought when
6 we grew up, or as we were growing up.

7 I really do -- I think that she
8 has gotten into some bad company, and
9 I, I honestly think that she did not
10 mean any of this to happen. She loved
11 Robert. We had several phone calls,
12 and I know that she did not mean for
13 this to happen. And her family loves
14 her dearly and we ask for the mercy of
15 the Court.

16 **THE COURT:** All right. Thank
17 you, ma'am.

18 **SISTER ANNIE:** Thank you.

19 **MR. SCHMUTZ:** James and Tina
20 Ritchie, would you all stand up
21 together. Stand up, please.

22 This is James Ritchie. He
23 lives -- lived across the street from
24 Cindy. If you'll address the Court
25 please.

1 **JAMES RITCHIE:** My name is James
2 Ritchie. This is my wife Tina. I'm
3 (indiscernible) officer in the Navy
4 (indiscernible) here in Charleston.

5 **THE COURT REPORTER:** I'm sorry.
6 I can't hear you, sir.

7 **THE COURT:** All right. Let me
8 ask you if you will, please, come
9 forward to where Mr. Schmutz is
10 standing so that the reporter, court
11 reporter can hear what you have to say.

12 **MR. SCHMUTZ:** This James
13 Ritchie.

14 Go ahead. Say -- start all
15 over.

16 **JAMES RITCHIE:** Sir, this is my
17 wife, Tina. I'm James Ritchie. I'm
18 currently stationed here in Charleston
19 as a corrections officer, consolidated
20 brig. Since relocating here to
21 Charleston, little over two years ago,
22 my wife and I have grown to be best of
23 friends with Miss Reagle. She's a very
24 loving mother. She takes care of her
25 children very well. And we're all just

1 like family.

2 This is a situation that is
3 totally unbelievable. I can't even
4 fathom to understand any involvement in
5 this whatsoever. Her sincerity and her
6 honesty has always been number one, as
7 well as the welfare, welfare of her
8 children. Thank you.

9 THE COURT: Thank you.

10 MR. SCHMUTZ: Mr. Sheppard, if
11 you'll come up here, please.

12 Your Honor, obviously
13 Mr. Sheppard is in the Navy, and has
14 known Cindy Reagle for quite a while.

15 Would you address, the Court,
16 please.

17 MR. SHEPPARD: Yeah. My name is
18 Del Sheppard. I'm security in M & T of
19 Charleston. Cindy, I met Cindy like
20 about a couple months after I got here
21 and my kids and her kids have been
22 playing together. They're always
23 together. And there were times when
24 she baby-sit my kids and I baby-sit her
25 kids. And there was also some times

1 where, you know, I probably needed some
2 money to get by and she lent it to me.
3 And she needed to borrow my car and
4 there was not, no problem with it. I
5 just never thought she would be no type
6 of person like that. She was the type
7 person where if she had it and you need
8 it, she'll give it to you.

9 **THE COURT:** Thank you.

10 **MR. SCHMUTZ:** And beside him is
11 Patsy Sharon. If you'll come up.

12 Your Honor, as you know Cindy
13 Reagle of course has been in jail
14 for -- since this incident. Patsy
15 Sharon is in the prison ministry. She
16 goes to the jail and ministers the
17 people there. This the first time
18 she's ever come into the courtroom to
19 speak on behalf of anyone. I didn't
20 ask her. I've never seen her before
21 today or never heard of her.

22 If you would address the Court.

23 **PATSY SHARON:** I've known Cindy
24 since she has been in the detention
25 center for fourteen months. I don't

1 recognize the person that's been
2 presented to the court here, but when
3 I've known Cindy she is extremely
4 interested in the welfare of others.
5 I've never heard her speak a malicious
6 word against anybody. She's not shown
7 any vindictiveness. She cares about
8 other people. She -- her prayer
9 requests have always been for her
10 children, for other people in the, in
11 the detention center.

12 I feel like she's been a victim
13 of making a statement to the police.
14 She tried and helped them straighten
15 out some facts in the case. I think
16 they were taken out of context. I
17 cannot see how this girl could have
18 done anything to -- I don't think it's
19 in her nature to do it and I appreciate
20 her faith, and I think she's been a
21 consistent, strong -- has had strong
22 faith her entire time she's been in the
23 jail, in the detention center, and I
24 don't do this. It's not my job to do
25 this, but I felt compelled to do it

1 because of the person I've seen in her
2 last fourteen months.

3 **THE COURT:** Thank you, ma'am.

4 **MR. SCHMUTZ:** Your Honor,
5 please, let me, let me sort of back up
6 here a little bit and start off with
7 this. Cindy Reagle is not in here
8 pleaing not guilty. She is pleaing
9 guilty to accessory before the fact of
10 manslaughter. She knows that her words
11 set into motion the death of someone
12 she loved, Robert Nixon. She knew the
13 Nixon family. She loved the Nixon
14 family.

15 She is in here pleaing guilty to
16 what she did, and what she did is
17 reflected in that statement. She is
18 not in here as some sort of victim.
19 Nobody has treated her poorly. She is
20 going to get what she deserves.

21 Judge, breaking it down to the
22 simplest terms, what Cindy Reagle did
23 was ask Mr. Paffen and Mr. Hansen to
24 beat up her boyfriend, which was
25 horrible. Which was absolutely

1 inexcusable and horrible. She thought
2 they were going to beat him up and take
3 some money he had, that that was the,
4 the, the motive for them to do it.
5 Obviously they weren't going to beat
6 him up just for the heck of it. That
7 was what they were going to get.

8 What happened was Mr. Paffen and
9 Mr. Hansen recruited some other folks,
10 and there was a gun that got involved.
11 I don't even believe Mr. Paffen and
12 Mr. Hansen wanted to shoot Mr. Nixon.
13 Mr. Paffen didn't shoot Mr. Nixon.

14 The other people in this
15 courtroom Cindy Reagle has never heard
16 of or seen in her life. Just Mr.
17 Hansen and Mr. Paffen. She did not
18 know there was any gun involved. She
19 did not know there would be any
20 killing. She's told me time and time
21 again, "But, Mr. Schmutz, how could
22 that possibly be foreseeable? How
23 could that be imaginable that I would
24 ask them to do what they were going to
25 do and this happened?"

1 Judge, if what would have
2 happened was what she thought was going
3 to happen, it would have been an ABHAN
4 or a strong arm robbery. Of course,
5 that did not happen. She -- a crime
6 got set into motion, and it turned into
7 the incredibly tragic death of the
8 Nixon son and her boyfriend and father
9 of her child. That's what happened.
10 We're not in here -- at any time a
11 lawyer comes into court and asks -- it
12 almost seems that he's trying to excuse
13 what his client did. We're not asking,
14 we're not excusing anything that she
15 did. She has sat in that jail and
16 thought about this every day. She
17 cannot believe that words can kill, and
18 that's what's happened. Her words led
19 to it. There's no -- no two ways.
20 It's sort of like the "but for"
21 situation in law. But she certainly
22 didn't intend it. She certainly didn't
23 intend for him to be even harmed
24 seriously.

25 Judge, it's, it's, it's just a

1 shame is what it is. This young lady
2 had a nice family, was doing well, had
3 never had a brush with the law, was
4 schooling herself, had children, and
5 she gets involved in this type of thing
6 and commits her first crime, which is
7 asking these boys to beat her boyfriend
8 up. That's the crime she thought she
9 was committing, which is horrible,
10 which is absolutely horrible.

11 Judge, I would like for Cindy to
12 speak with you and to -- she's going to
13 speak to the Nixon family.

14 **MS. REAGLE:** Your Honor, what
15 has happened is that -- is a pure
16 tragedy. Not only has Mr. Nixon been
17 lost by his family, he's been lost by
18 my, our son, Joshua, who's just two
19 years old. Every time I see Joshie and
20 talk to him on the telephone on the
21 weekend basis I hear Robert Paul Nixon.
22 He looks just like him.

23 I loved Mr. Nixon so much. I
24 tried to do everything I could to help
25 him. I met him at a time when he

1 needed help and I needed help. I was
2 co-dependent on him as much as he was
3 dependent on me.

4 I met his family through holiday
5 gatherings, dinners. His mother,
6 Valerie, excuse me, was very active in
7 my son's, in our son's life. When,
8 when we were able to -- there were
9 times I did not have the transportation
10 or she did not have transportation, but
11 when we could. I looked up to Mrs --
12 Miss Valerie quite a bit.

13 I am deeply, deeply sorry for
14 what happened. What I said were words
15 that were seeds, corrupt seeds that
16 fell on treacherous ground, and I know
17 that now. I knew it then, but I never
18 knew that words, your Honor, could
19 hurt. Could kill. Could do the most
20 unforeseen things, that has not only
21 ruined the life for him, for my
22 children, his children and our children
23 together, but Mr -- Excuse me.

24 Your Honor, Mr. Nixon and I were
25 very close. We shared a great deal. I

1 tried to help him out. Bailed him out
2 of jail. Paid his rent. Bought his
3 clothes. Paid his child support. I
4 became very close to his son from a
5 prior relationship and daughter. They
6 were always active with my two, with
7 our two children. I loved having the
8 four children together. Mr. Nixon,
9 like myself, enjoyed the family
10 relationship.

11 What I said caused so much pain,
12 not only to his family, to the
13 community, to these boys' lives, excuse
14 me, these young men's lives, but my
15 son's life, to our children's life.
16 And I, I apologize once again, your
17 Honor.

18 **MR. SCHMUTZ:** Your Honor,
19 that's, that's all I have to say. I
20 would ask you to sentence her to
21 non-parolable fifteen years.

22 **THE COURT:** All right.
23 Mr. Crumrine and Mr. Muraca.

24 **MR. CRUMRINE:** Yes, sir. Thank
25 you, your Honor. As you know, your

1 Honor, Lance is twenty-one years of
2 age. He was nineteen at the time this
3 happened. He like everyone else been
4 in, in the county jail for fourteen
5 months. He, he comes from, from a very
6 close family. His father, however,
7 died when he was ten years old. His
8 father was in the Navy. And Lance is
9 the eldest son and, and pretty much
10 tried to take his, fill his father's
11 shoes from there.

12 His mother is, is present, as
13 well as his sister. He has, she is --
14 if you'll stand, Mrs. Muraca, and
15 Lance's sister. She's seventeen.
16 The -- he has, has an eight year old
17 brother that of course they didn't
18 bring to court, your Honor. He also
19 has with him today his uncle. I think
20 he may have just stepped outside. But
21 he, he has a place to stay for Lance.
22 He owns a two bedroom, two bedroom
23 townhouse on Dorchester Road. He is a
24 manager with, with Power Brake here in
25 the north area, and he has a lot of

1 other friends and family that, that
2 came. If you all would stand and show
3 your support. That's okay. You can
4 all sit down now.

5 Your Honor, as I said that Lance
6 tried fill his father's shoes. He went
7 into ROTC in, in high school to -- his
8 father had been in the Navy and he was
9 real interested in pursuing that.

10 He had some difficulties when he
11 was younger. Nothing major. He had
12 one thing as juvenile when he was in an
13 abandoned house that he went to family
14 court for. Other than that I think
15 there was just some petty larceny type
16 things about three or four years ago.
17 Lance otherwise has no record.

18 Certainly no violence indicating his
19 background at all. In fact he has been
20 interested in, in becoming a preacher.
21 He has been taking some courses in
22 order to do that.

23 Although he did leave high
24 school relatively early, he's an
25 intelligent young fellow. Got his

1 G. E. D. right away and at the time of
2 this incident was to have attended
3 Trident Tech in the, in the fall of
4 that, of that year. He, he was working
5 at the In and Out car wash, just trying
6 to get himself established. He was
7 living on his own. Had his younger
8 sister living with him. She was
9 fifteen at the time, I believe and, and
10 was taking care of her. His mother had
11 moved. She wanted to complete school
12 where she was, so he had that
13 responsibility on his shoulders.

14 Your Honor, on the evening this
15 thing happened, Lance had no plan to go
16 anywhere, but received a call from over
17 at Kenneth Bell's house. Kenneth Bell
18 was a fellow that he'd I think just run
19 into a couple times prior to that.
20 They, the invitation was to "come hang
21 out". He caught a ride over there that
22 evening and, as he said, when he
23 arrived there were a lot of people
24 there he really didn't -- didn't know,
25 that they were trying to give each

1 other tattoos, apparently, and it was
2 just sort of a, kind of different
3 atmosphere. He spent most of the
4 evening talking to a young lady there
5 that he had just met and, and certainly
6 had never met Miss Reagle, didn't know
7 Mr. Paffen or Mr. Hansen, and when,
8 when he was told that at 11:30 it was
9 time to go, I guess the, the Bell
10 family was, was to go to bed or
11 whatever, he walked out. He didn't
12 know Mr. Paffen was there and Mr.
13 Hansen or anyone. They had a car
14 outside. It was raining lightly. They
15 were -- he was, he was offered a ride
16 home. He got in the back seat of the
17 car and on the way they began to talk
18 about this plan.

19 It soon became very apparent
20 that, that not only was there big talk
21 going on but that they, that they were
22 crazy enough to do something. On the
23 way over there Mr. Paffen pulled a gun
24 out and pointed it at a fellow walking
25 down the road and was threatening to,

1 to shoot him. There was some prior
2 dispute. My client doesn't know
3 exactly what that was about, but it was
4 clear to him that not only were they
5 talking about doing something very
6 dangerous, but they also were acting
7 crazy enough to, to have done harm to,
8 to about anyone.

9 He was placed in a position,
10 I've tried to think about what a
11 reasonable person would do in that
12 situation. Do you just say, "Thanks
13 for letting me know your, your plans.
14 I'll get out the next corner"? What
15 exactly do you do? Do you try to talk
16 them out of it at that stage?

17 He was the whole evening going
18 through all these thoughts, trying to
19 think about if he did anything wrong,
20 what would happen to him or possibly
21 his, his younger sister. At the end of
22 the evening, he asked them to let him
23 out somewhere other than his home. He
24 did not want them to know where he
25 lived. He did not do the right thing

1 that he was supposed to do, your Honor,
2 his responsibility that society puts on
3 us. He, he will tell you he sat in
4 jail for fourteen months thinking what
5 other steps he may have taken that
6 evening, and that he should have gone
7 to report it immediately. I think
8 human nature placed in him the, the
9 thought that it's better to, to pretend
10 it just didn't happen, to count it off
11 as a bad dream or something of that
12 nature.

13 Your Honor, this is the first
14 time that my client has been in the
15 jail for anything other than overnight
16 with that petty larceny stuff, but he
17 has been in there fourteen months. He
18 has learned, learned a lot about
19 himself and about what, what he will
20 certainly do from now on with his life.

21 I've handed up to your Honor
22 just before we began a, a folder full
23 of statements written by all the people
24 that know him in the community, and I
25 think your Honor has seen that, that

1 all those comments made about Lance
2 that are things such as he, he is kind,
3 he is gentle, he is considerate, he has
4 gone out of his way to help so many
5 people. The outpouring of all, from
6 all of these people I think speaks very
7 well of him. He has a lot to him. He
8 certainly is not a violent person. Had
9 no idea that any of this was to go on,
10 and was stuck in a difficult situation.

11 Your Honor, his mother -- I know
12 we've talked and I won't require her
13 to, to say that, she's very nervous
14 about speaking in public, but she said
15 he was always a very gentle son; that
16 if anyone came to pick a fight with him
17 he would not fight with, with the
18 person; that he has filled his, his
19 father's shoes, and he's been a
20 dependable son and just a good person.

21 His sister and he are very
22 close. She's very emotional and would
23 spare, spare the Court from, from going
24 through all, all of the, all of that
25 emotion. But she, she thinks the world

1 of him as well.

2 Your Honor, I know Lance wants
3 to say a few words to you.

4 THE COURT: Mr. Muraca.

5 MR. MURACA: Yes, sir. First
6 I'd like to say I'm sorry to the
7 family. I don't think any of us meant
8 for this to happen like that.
9 Everybody's very resentful (sic). I'm
10 sorry for my family because, you know,
11 I failed them. If I would have done
12 something, you know, if I would have
13 done something better maybe I wouldn't
14 be or Calvin wouldn't be here so I've,
15 you know, I just -- I should have been
16 able to do something instead of
17 nothing.

18 MR. CRUMRINE: Your Honor, he
19 spent fourteen months out of the time
20 facing him. We would submit that, that
21 with all the time to think about his
22 responsibilities, what to do in the
23 future if he's ever placed in this
24 situation or comes across anything he
25 said, you know, that he would maybe

1 honk the horn of the car as soon as
2 they got out, or, or just get out, run,
3 or, or call the police immediately. He
4 knows what to do from now on.

5 We would submit that at his age
6 and for his responsibility that no more
7 jail time would serve a purpose with
8 him, no positive purpose, and we would
9 ask you to consider giving him time
10 served on this. He's done a
11 substantial portion of what he is
12 facing. And we appreciate your
13 consideration.

14 THE COURT: All right. Mr.
15 Tyler and Mr. Pennington.

16 MR. PENNINGTON: If your Honor
17 please, I'll try to be brief. You have
18 a complicated picture before you. Let
19 me say very frankly that there's no
20 dispute that the gun was in Calvin's
21 hand and that the two shots were fired,
22 and that resulted in, in Mr. Nixon's
23 death. And he's here. He's accepted
24 responsibility. In fact he told the
25 police that early on.

1 I want to comment briefly that
2 we are grateful to the mercy that has
3 been shown to Mr. Tyler by the
4 solicitor, by the victim's family, and
5 try to justify that mercy in, in a
6 couple ways. You have heard that in
7 this strange night most -- lot of the
8 people didn't know each other. My
9 client falls into that category. He's
10 a fifteen year old who was hanging out
11 with a couple of sixteen year olds at
12 their house, and they're the ones that
13 are the least culpable, the misprision
14 defendant and the defendants that is
15 the accessory after. And some people
16 that he didn't know showed up in the
17 evening. Something that hasn't been
18 mentioned is my client had been smoking
19 some marijuana and was kind of high,
20 and the initial offer was made by
21 Mr. Paffen that, "Come on. Ride with
22 me and we can make twelve hundred
23 dollars and you don't have to do
24 anything." And to him that sounded
25 boy, that's pretty good. Hard to say

1 no to that.

2 And so they pile into the
3 vehicle, and then the plan becomes
4 clearer. There's no dispute that it's
5 Mr. Paffen's weapon and that Mr.
6 Paffen, according to my client, was
7 racking the weapon and flashing the
8 weapon. And then when they arrived at
9 this location there was no dispute, my
10 client knew that they were there to try
11 to take something from Mr. Nixon.

12 The odd part of this is that why
13 Mr. Paffen put the gun in my client's
14 hand, a gun he had never handled
15 before. We do dispute that my client
16 asked for the gun or requested the gun,
17 and I have to wonder since Mr. Paffen
18 was the one who knew the victim, maybe
19 he was trying to minimize his role even
20 though he was standing like a
21 puppeteer, inviting people to get
22 involved and making these events flow,
23 because my client did chase him down
24 and did try to take control of the
25 situation and did have the gun in his

1 hand and the gun did go off. And we
2 know from testing it this week that it
3 has one-fourth the degree of trigger
4 pull that most semi-automatic pistols
5 have. There's this question about
6 whether the gun was racked a couple of
7 times, and my client does not agree
8 with that and says that the gun went
9 off twice. There's no question it
10 produced the fatal injuries. The first
11 one I think was completely
12 unintentional but, nonetheless, he
13 bears responsibility because he was a
14 willing participant in this armed
15 robbery, and under our felony with
16 liability or felony murder rule he's
17 clearly responsible.

18 And he's also ashamed for going
19 back later. The good news that I have
20 to report is, is that and, and I think
21 it's in the record to some degree
22 already, when we had our transfer
23 hearing it was clear that Calvin had
24 gotten in jail, gotten serious, and had
25 been sorry, and actually performed

1 beautifully for the detention officers
2 at the juvenile detention facility. He
3 even became a trustee there.

4 And because I have a heavy case
5 load, I don't have the time to go and
6 see my clients as often as I probably
7 should, and I worried that Calvin was
8 going to be getting in some sort of
9 trouble, especially when he was
10 transferred to the sixteen year olds in
11 the main jail.

12 But I'm happy to report, I'm
13 proud to report on his behalf, without
14 coaxing, that he's continued to have
15 impeccable behavior. In his
16 educational ability he failed the first
17 grade. When he was arrested we had him
18 evaluated. He's certainly competent.
19 He was very low. Like first, second
20 grade. He's worked hard and that has
21 progressed and has continued to
22 progress. His teacher has pulled me to
23 the side and written letters which I've
24 shared with the solicitor that he's
25 someone who has potential. He was

1 living completely unsupervised. His
2 mother was in North Carolina. His
3 father here really was not a much of a
4 parent as was revealed at the transfer
5 hearing, and so he was drifting. Not
6 in school.

7 The last thing I would say to
8 the Court is, is that, you know, it's
9 easy for a lawyer to say they're sorry
10 for their client or for a client to
11 come to court in the middle of a
12 sentencing hearing and say they're
13 sorry. But I can attest that he has
14 been saying "sorry" all along and more
15 importantly I think his actions have
16 shown that. He has never tried to
17 divert blame or pass the buck. He was
18 there. He did it. And he wants the
19 family to know that he's sorry.

20 We ask the Court to, humbly, to
21 please accept the recommendation that
22 you have before you.

23 THE COURT: Mr. Tyler, anything
24 you want to add to what your lawyer's
25 told me?

1 MR. TYLER: Yeah. I like to
2 apologize to the family on what
3 happened. It wasn't meant to happen
4 like that. Sorry.

5 THE COURT: All right.
6 Mr. Modica.

7 MR. MODICA: Your Honor, I
8 apologize. I neglected to mention that
9 Mr. Tyler has been adjudicated in
10 family court. Since his is a
11 negotiated sentence, I won't get into
12 the specifics.

13 Your Honor, I would like to take
14 a moment to talk to you a little bit
15 about the situation that existed at the
16 Reagle residence so you get an
17 understanding or flavor of what was
18 going on. It's arguably a different
19 picture that's been painted in regard
20 to her.

21 My -- the scenario that I'm
22 going to create for you comes from
23 having spoken to people, reviewing the
24 defendants' statements, speaking to
25 some of the defendants, speaking to her

1 ex-husband, speaking to the police
2 officers involved in this case,
3 speaking to people who knew the victim
4 and the defendant Reagle socially, and
5 I'm going to try and encompass all that
6 into one to try and explain the
7 situation that existed.

8 First of all, as you know, Miss
9 Reagle was married to a serviceman by
10 the name of Stephen Reagle, and he was
11 stationed in Guam. While he was
12 stationed in Guam and still married to
13 her, she began an affair with the
14 victim. There was a time period where
15 he was home that Robbie was out of the
16 picture and it's around this time that
17 the child Joshua was conceived, and it
18 became an issue as to whose child it
19 actually was. But I will tell you that
20 Cindy made both of them, her husband
21 and the victim, both believe that the
22 child was theirs.

23 At one point in time Cindy
24 Reagle expressed to the Nixon family
25 her husband was dead and when they

1 pressed her on that she changed her
2 story and then said she was getting,
3 she was getting a divorce. Then she
4 said she was divorced. They said
5 "Well, can we see the divorce papers?

6 "Oh, they're in Florida. I
7 can't get them." Whenever she was
8 confronted about something, she would
9 try and deflect away and not answer
10 their questions.

11 Mr. Schmutz gave you the copy of
12 the statement and it indicates that she
13 put these boys up to it because the
14 victim was assaultive to her. Well, I
15 can tell you that, both from the family
16 and from others who observed them
17 socially, there were times that she was
18 physically abusive to him. I'm not
19 saying that Mr. Nixon might not have
20 hit her at times. I'm not saying that,
21 but I certainly don't want you to think
22 it was just Mr. Nixon who might have
23 been abusive to her. Clearly from
24 independent witnesses that I've spoken
25 to and I've read statements from there

1 are times when she has been physically
2 abusive to him. And she indicated
3 that, in her statement, that she wanted
4 him to be taught a lesson for having
5 been abusive to women, but she was no
6 longer in danger of him. He had
7 separated himself out from that
8 situation. It was he who terminated
9 the relationship. It was he that moved
10 back in with his mother. So, so that,
11 you know, there wasn't a fear factor in
12 regard to Miss Reagle as it relates to
13 harm that may have been caused or
14 coming from Mr. Nixon.

15 I'm going to digress slightly
16 and tell you, because I don't want to
17 forget, that in regard to the other
18 co-defendants about knowing, having
19 knowledge about it, what was going on,
20 in Mr. Hansen's statement as well as
21 Mr. Paffen's, it indicates that they
22 were aware of what was going on and
23 what was going to happen before they
24 ever got in the car. I just bring that
25 to your attention.

1 Now, Judge, I want to tell you
2 that I've spoken to the police and
3 Detective Sloane was the lead
4 investigator in this case from the
5 North Charleston Police Department.
6 And the day of the homicide he went,
7 after finding out the relationship
8 between Cindy Reagle and the victim, he
9 went there with a chaplain to console
10 Miss Nixon -- I'm sorry, Miss Reagle,
11 and try and find out some information.
12 When he went there he told her that he
13 was dead, and he indicated that she
14 turned her head and cried for
15 approximately thirty seconds, and then
16 stopped and began to speak as if she
17 never cried and was never upset. And
18 he went out of his way to tell me that
19 he likened her to Susan Smith, that he
20 thought that she was cold and detached.
21 And, and he brought that to my
22 attention.

23 A day later, another detective,
24 Detective Jellico and Detective
25 Hernandez from the North Charleston

1 Police Department now know her
2 involvement with the case and they're
3 going there to pick her up. But you
4 should know that early on when she
5 spoke to Detective Sloan on the
6 twenty-third -- he was killed late on
7 the twenty-second; this is the
8 twenty-third -- that she, knowing what
9 had happened, she began to tell them
10 that Robbie had fired a person at work
11 and had suggested that this person had
12 an axe to grind, suggested that he had
13 a nine millimeter pistol, and suggested
14 that they look at him as being the
15 person responsible for Robbie's death.

16 When the police go to her on the
17 twenty-third, Detective Jellico and
18 Detective Hernandez, they're going
19 there under the idea that she's going
20 to point out or tell them more about
21 this person who got fired. When she,
22 when she's in the car she's talking up
23 a storm, she's joking around with the
24 officers. She called one of them
25 Detective -- that he look like Freddie

1 Flintstone. She told the other
2 detective he looked like Donnie Osmond.
3 Not a care in the world. She told them
4 about the insurance policy that the
5 victim had taken out for one of his own
6 children from a previous marriage, as
7 well as Joshua.

8 And you should know that on the
9 day afterwards, on the twenty-third,
10 there is the defendant Reagle calling
11 the victim's place of work and asking
12 information in regard to the insurance
13 policy and how to collect on it.

14 In Mr. Hansen's statement it
15 indicates that when Cindy Reagle spoke
16 to him about taking care of Robbie, and
17 it's quoted that she said "beat him
18 beyond beat." Not really rough him up
19 and teach him a lesson, but "beat him
20 beyond beat." And Mr. Paffen's
21 statements talk about it and in
22 conversation with Mr. Paffen she
23 wanted, she indicated that she wanted
24 the victim's knees broken with a
25 baseball bat. So in terms of

1 foreseeability, I would indicate there
2 is, there's a lot of foreseeability.

3 Your Honor, the situation that
4 existed at this Reagle residence was
5 that she would have a lot of young
6 girls and boys go there, and you know
7 from the ages of the co-defendants, and
8 she would allow drinking to go on
9 there, drug use by the kids. She
10 would -- there's information that she
11 would take them over to the mall and
12 make arrangements for them to get
13 stolen clothes out of the store.
14 There's been occasions when she took
15 those items that were stolen from the
16 store and went back and got cash.

17 In regard to Mr. Reagle, she
18 had -- after she got arrested he had
19 two thousand dollars in bad checks. He
20 was paying for a card that he didn't
21 know where it was. The credit cards
22 were run up. He indicated that his
23 life was absolutely ruined by his wife
24 while he was over serving his country
25 in Guam. He also indicated to me that

1 she was physically confrontational with
2 him, that she had struck him in the
3 past, and that he would never strike
4 her back.

5 The people who, who were staying
6 at the house would indicate that she
7 acted totally inappropriately when it
8 came to these children, who are younger
9 than seventeen, eighteen years old.
10 And that she would attempt to control
11 them. She would talk openly about sex.
12 She was flirtatious with them in a
13 totally inappropriate way. She would
14 kiss them. Not, not on the lips but on
15 the cheek inappropriately. All her
16 behavior with these people was very
17 inappropriate, and she did so in part
18 to control them.

19 When she wanted something done
20 she would ask them to do it and they
21 would do it. She would call their
22 parents and tell them, the parents of
23 these children, that they were
24 misbehaving, and that she would take
25 care of them and they needed to stay

1 over there. These kids would be
2 staying over her house during this time
3 period.

4 When I asked people who knew
5 them, they never heard of any situation
6 where she complained of or observed the
7 victim beating her. My understanding
8 from having spoken to the some of the
9 people involved in this case, that her
10 reason for doing this is because he had
11 left her and that he wasn't giving her
12 any more money, and she specifically
13 wanted him beaten so badly so that he
14 would have to come back to her, under
15 her control, and being taken care of by
16 her. Maybe she did love him, but she
17 literally loved him to death.

18 Now what I've told you, your
19 Honor, is truly a brief stroke of what,
20 what kind of environment existed at the
21 Reagle house and what was going on, and
22 arguably she's the most culpable
23 because she set all this in motion.
24 Mr. Schmutz is right, but for her this
25 never would have happened. They never

1 would have known to go do it and they
2 never would have known he had money or
3 jewelry and they never would have known
4 what dark street he would have taken.

5 Now I'm not suggesting to you,
6 and I know from speaking to the family
7 that we understand that this carries up
8 to thirty years, it would be
9 inappropriate for me or the victim's
10 family to ask for thirty years, but in
11 the same time I don't believe, and I
12 think they would also agree with me,
13 that she doesn't deserve fifteen years.
14 Arguably she deserves at least as much
15 time as Mr. Hansen is getting.

16 Your Honor, Mr. Schmutz is
17 right, she, she has -- and she's
18 right -- she has ruined so many
19 people's lives. She's ruined Steve
20 Reagle's life. She's ruined her kids'
21 lives. She's ruined the Nixons' lives.
22 She's ruined these boys' lives. She's
23 ruined their families' lives. She
24 should be sentenced in accordance with
25 and commensurate with what she's done

1 to all of these people. Thank you,
2 your Honor.

3 I think Valerie would like to
4 speak to you first. Your Honor, this
5 is the victim's mother.

6 **THE COURT:** All right.

7 **VALERIE NIXON:** I come on
8 behalf, I come behalf, before you on
9 behalf of my son Robert Nixon because
10 as we know he can't be here to speak
11 for himself. I held Robbie in my arms
12 when he was born as I did Steven,
13 Robbie's brother. As I have in my
14 Lord, but I wasn't given a chance to
15 hold him in his arms when he was dying
16 to say good by.

17 There a lot of things in my life
18 I had to struggle through, but the
19 hardest thing I've ever had to go
20 through is this cold and vicious murder
21 of my son. Maybe Robbie wasn't a
22 perfect kid growing up. He was more
23 like me in the sixties, but he also was
24 a warm and caring person. Never said a
25 bad word about anyone. He worked on

1 the same job for ten years and I
2 respected him for that. God blessed me
3 with a little sparrow named Robbie and
4 my eagle Steven, who has always been
5 strong. Robbie was always the one to
6 fly home to mom. I have lost a son.
7 Steven, Steven has lost a brother,
8 Allison has lost a brother-in-law, and
9 Heather has lost an uncle who will
10 never see her grow up.

11 I have asked God to give you the
12 strength to give these people the
13 stiffest sentence you possibly can.
14 They need a lot of time to pay for the
15 brutal murder of my son, who was taken
16 from his family and from all his good
17 friends. God is the only one to take a
18 life and I know in my heart he didn't
19 want Robbie to leave this world in such
20 a horrible way without some kind of
21 choice.

22 The Saturday I spoke to Mrs.
23 Reagle on the phone, she asked me how
24 she could get Robbie back. I told her
25 she'd need to go on and try to make a

1 happy life. And her reply to me was,
2 "If I can't have Robbie, nobody else
3 will." So I guess she did mean it
4 because Robbie is not with us any more.

5 If it had not been for
6 Miss Reagle's planning to get rid of my
7 son, Robbie would still would be with
8 us today. Mrs. Reagle has a violent
9 temper. Robbie had called many times
10 to come pick him up after Cindy had
11 beaten and scratched him. I could
12 always see the visible signs of
13 injuries, and I had to take him home to
14 take care of you -- take care of him.

15 Thank you for, your Honor, for
16 hearing the mother's last plea for her
17 son.

18 **THE COURT:** Thank you, ma'am.

19 **MR. MODICA:** Your Honor, this is
20 Steven. This is the victim's brother.

21 **STEVEN NIXON:** Each day when I
22 watch the news like everyone else I see
23 people killing people for no logical
24 reason, and I sit and wonder why things
25 like this happen. My brother Robbie

1 lost his life for no reason. It
2 totally destroyed the family inside and
3 out. You look at life in a whole
4 different way. I still don't
5 understand why this happened. I still
6 think Robbie's alive. I wish I could
7 see him. I wish I could hear him. But
8 the last two years me and Robbie didn't
9 talk much, we didn't see each other
10 because of foolish pride, and I think
11 that is the thing that tears me up
12 inside the most because of the years
13 that I lost. You never know when
14 something like this will happen. I
15 would give everything to have those two
16 years back. The memories of those two
17 years are empty and now my life is
18 empty without him. Younger brothers
19 look up to their older brothers, and I
20 did. Robbie was just one, just an
21 "everyday Joe". He was the type of
22 person that anyone could get along
23 with. He went to work, he took care of
24 his family, and he cared about his
25 friends. Robbie's friends were a big

1 part of his life. He spent a lot of
2 time with them and he misses them and
3 they miss him very much. His friends
4 are here today and I wish that they
5 could stand up here and express their
6 feelings because it was a great loss
7 for them.

8 One of the biggest joys of my
9 life was when my little girl was born.
10 Robbie was very proud of me that day
11 because I was starting a family on my
12 own and now because of these people he
13 will not have the chance to see her
14 grow up, and I feel, feel that my
15 daughter will miss him a lot, without
16 him in her life.

17 Today is supposed to be a day of
18 closing, but there will be no closing
19 for my family because each day for the
20 rest of my life I have to think about
21 this. It tears me up inside that one
22 day these people will get out of jail
23 for what they did and there never be a
24 day in this life that I can spend with
25 my brother. I blame Cindy Reagle for

1 my brother's death and it's because of
2 her this happened. These lawyers here
3 might say bad things about my brother,
4 probably because the defendants told
5 them to, but if you knew Robbie and you
6 knew what he was like, you would know
7 that he was a good person.

8 I know one thing for sure today,
9 after today, that my family is going --
10 that their family is always going to be
11 able to see them, to touch them, to
12 hear their voices, to watch them grow
13 up. You know what my family gets?
14 Memories. A tombstone to look at. A
15 tombstone to talk to. And it's all
16 because of Cindy Reagle, so I beg the
17 Court to punish these people to the
18 full extent. Please make my family and
19 friends feel that there is justice here
20 today. I know Robbie is looking down
21 on us today. Let's do the right thing
22 so he can rest in peace. Make these
23 people suffer for what they did,
24 because my family will be suffering for
25 the rest of our lives. Thank you.

1 THE COURT: Thank you, sir.

2 MR. MODICA: Your Honor, may I
3 just have the friends and family of the
4 victim stand for a moment?

5 THE COURT: Okay.

6 MR. MODICA: Please stand.

7 Thank you. You can sit down.

8 Thank you very much, your Honor.

9 THE COURT: Let me ask. Your
10 last name is Nixon?

11 VALERIE NIXON: No, sir. It's
12 Goladzai (phonetic).

13 THE COURT: Goladzai.

14 VALERIE NIXON: I go by Nixon
15 because it's easier.

16 THE COURT: I just want to ask
17 you, you understand what the
18 negotiations have been that the
19 solicitor and the defense lawyers have
20 been involved in?

21 VALERIE NIXON: Yes, sir.

22 THE COURT: You understand what
23 they agreed to, to recommend so far as
24 the disposition of this case is
25 concerned?

1 VALERIE NIXON: Yes, sir.

2 THE COURT: Do you agree with
3 that disposition of it?

4 VALERIE NIXON: Yes, sir.

5 THE COURT: Anything further
6 from anyone?

7 MR. PENNINGTON: I just ask that
8 you specify the precise date of the
9 beginning of custody and if your Honor
10 is interested, my client was arrested
11 on February the twenty-fourth of that
12 year, two days after the incident,
13 1998.

14 THE COURT: Well, have you
15 figured out what it amounts to as far
16 as credit is concerned?

17 MR. PENNINGTON: I have not,
18 your Honor. I can do that.

19 THE COURT: I'll figure it out
20 while I'm writing. Does that include
21 today?

22 MR. PENNINGTON: Yes, sir. I
23 believe they'll calculate it for the
24 Court. If you just simply apply the
25 credit as of the date of the arrest,

1 which would be February twenty-fourth,
2 1998.

3 **MR. SMILEY:** Your Honor, I've
4 calculated four hundred and forty-four
5 days for Mr. Paffen who was the first
6 arrested, on the twenty-third.

7 **THE COURT:** Of February?

8 **MR. SMILEY:** Yes, sir. The rest
9 I believe were arrested subsequent to
10 that, on the twenty-fourth.

11 **THE COURT:** Four twenty-four.

12 **MR. SMILEY:** He was arrested on
13 the twenty-third and the rest were
14 shortly thereafter.

15 **MR. DRENNAN:** Twenty-fourth.

16 **THE COURT:** It would be four
17 hundred and twenty-four, not
18 forty-four, wouldn't it?

19 **MR. SMILEY:** Yes, sir.

20 **THE COURT:** Okay. All right.

21 As to Jonathan Caleb Paffen on
22 indictment 98-2017, an indictment for
23 murder, wherein you have plead guilty
24 to voluntary manslaughter, sentence of
25 the Court is you, Jonathan Caleb

1 Paffen, be confined to the South
2 Carolina Department of Corrections for
3 a period of twenty-five years. You're
4 to be given credit for four hundred and
5 twenty-four days of jail time, pursuant
6 to your arrest. As to indictment
7 97-1628, an indictment for burglary,
8 wherein you pled guilty, the sentence
9 of the Court is you, Jonathan Caleb
10 Paffen, be confined to the South
11 Carolina Department of Corrections for
12 a period of thirty months. That
13 sentence is consecutive to that
14 sentence imposed on 98-2817, also being
15 given credit for four hundred and
16 twenty-four days.

17 As to Charles Thomas Hansen,
18 indictment 98-2811, an indictment for
19 murder, wherein you have pled guilty to
20 a charge of voluntary manslaughter, the
21 sentence of the Court is you, Charles
22 Thomas Hansen, be confined to the South
23 Carolina Department of Corrections for
24 a period of twenty-one years.
25 Defendant is to be given credit for

1 four hundred and twenty-four days jail
2 time.

3 Indictment 99-3301, State versus
4 Kenneth Lester Bell, an indictment for
5 accessory after the fact of a felony,
6 sentence of the Court is you, Kenneth
7 Lester Bell, be confined to the South
8 Carolina Department of Corrections for
9 a period of ten years. That sentence
10 is suspended upon the service of
11 eighteen months. Defendant to be given
12 credit for four hundred and twenty-four
13 days of jail time. You're to be placed
14 on probation for three years.
15 Conditions of that probation, you are
16 to perform two hundred and fifty hours
17 of public service employment; you are
18 to attend and participate in the
19 program through the Vocational
20 Rehabilitation Office; and you are to
21 participate in mental health
22 counselling and a course of treatment.

23 MR. DRENNAN: Thank you, your
24 Honor.

25 THE COURT: Indictment 98-2798,

1 that's the indictment against Cindy
2 Leigh Reagle, indictment for
3 solicitation to commit a felony,
4 wherein you have pled guilty to
5 accessory before the fact of
6 manslaughter, sentence of the Court is
7 you, Cindy Leigh Reagle, be confined to
8 the South Carolina Department of
9 Corrections for a period of seventeen
10 years. You're to be given credit for
11 four hundred and twenty-four days of
12 jail time.

13 Indictment 99-3300, the State
14 versus Lance Muraca, an indictment for
15 misprision of a felony, sentence of the
16 Court is you, Lance Muraca, be confined
17 to the South Carolina Department of
18 Corrections for a period of ten years.
19 That sentence is suspended upon the
20 service of eighteen months. You're
21 given credit for four hundred and
22 twenty-four days of jail time. Placed
23 on probation for three years.
24 Conditions of probation, perform two
25 hundred and fifty hours of public

1 service employment.

2 Indictment 98-5476, State versus
3 Calvin Tyler, an indictment for murder,
4 wherein you pled guilty to voluntary
5 manslaughter, sentence of the Court is
6 you, Calvin Tyler, be confined to the
7 South Carolina Department of
8 Corrections for a period of thirty
9 years. Defendant to be given credit
10 for four hundred and twenty-four days
11 of jail time. As to indictment
12 98-5477, an indictment for armed
13 robbery, wherein you pled guilty to the
14 lesser included offense of common law
15 robbery, the sentence of the Court is
16 you, Calvin Tyler, be confined to the
17 South Carolina Department of
18 Corrections for a period of ten years.
19 That sentence is suspended. You're
20 placed on probation for five years.
21 That sentence is consecutive to that
22 sentence imposed on 98-5476.

23 MR. PENNINGTON: Thank you, your
24 Honor.

25 MR. MODICA: Thank you, your

1 Honor.

2 THE COURT: All right. Good
3 luck to you all.

4 (Whereupon, the following
5 documents are marked for purposes of
6 the record: Court's 1, report of
7 Thomas W. Behrmann, re: Kenneth Bell;
8 Court's 2, report of David P.
9 Sarnoff, re: Kenneth Bell;
10 Court's 3, reports of Edmund S.
11 Higgins and Dr. Gerald, re: Charles
12 Hansen;
13 Court's 4, curriculum vitae of
14 Edwin E. Wagner.)

15 THE COURT: Back on the record
16 on Mr. Paffen.

17 MR. MODICA: Your Honor, it's
18 been brought to my attention regarding
19 Mr. Paffen, the way your sentence reads
20 it is consecutive and it would be
21 twenty-seven and a half, but the
22 Department of Corrections might give
23 him credit for both, thereby it would
24 be less than the negotiated
25 twenty-seven and a half. So with all

1 due respect, I would ask that you
2 re-sentence the defendant as negotiated
3 to twenty-seven and a half.

4 **THE COURT:** All right.
5 Mr. Smiley, have you talked to Mr.
6 Paffen about that?

7 **MR. SMILEY:** I have, your Honor,
8 and his understanding is he, when he
9 signed the sentencing sheets, he could
10 see that the numbers as they were
11 written down and I explained to him
12 that he received the twenty-seven and a
13 half year sentence on the voluntary
14 manslaughter, a fifteen-year sentence
15 on the burglary first. He received
16 credit for four hundred and twenty-four
17 days.

18 **MR. PAFFEN:** Yes, sir.

19 **MR. SMILEY:** And they ran
20 concurrent to one another. And he, he
21 agrees and acknowledges that is as he
22 understands it.

23 **THE COURT:** Okay. All right.
24 On indictment 97-16 -- excuse me.
25 98-2817, that's the indictment for

1 voluntary manslaughter, sentence of the
2 Court is you, Jonathan Caleb Paffen, be
3 confined to the South Carolina
4 Department of Corrections for a period
5 of twenty-seven and one-half years.
6 You're to be given credit for four
7 hundred and twenty-four days of jail
8 time. That sentence is concurrent with
9 any other sentence imposed.

10 Indictment 97-1628, an
11 indictment for burglary in the first
12 degree, the sentence of the Court is
13 you be confined to the South Carolina
14 Department of Corrections for a period
15 of fifteen years. That sentence is
16 concurrent to that sentence imposed on
17 98-98-2817.

18 MR. MODICA: Thank you, your
19 Honor.

20 MR. SMILEY: Thank you, your
21 Honor.

22 (Whereupon, the matter was
23 concluded.)
24
25

C E R T I F I C A T I O N

I, the undersigned HEATHER GAYLE BURNS, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the requested proceedings in the captioned case, relative to appeal, heard in the Court of General Sessions for Charleston County, South Carolina, on the 23rd day of April, 1999.

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

DATED: September 1, 2001

Heather Gayle Burns R.D.R.
HEATHER GAYLE BURNS, R.D.R.
Official Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)
 County of Charleston)

2010-CP-10-7730
 IN THE COURT OF COMMON PLEAS

Calvin Tyler #258233)
 Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR
 POST-CONVICTION REVIEW

2010 SEP 21 PM 4:31
 JULIE J. ARMSTRONG
 CLERK OF COURT

FILED

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 McCormick Correctional Inst.,
F-4, A-265, 386 Redemption Way, McCormick, SC
2. Name and location of Court which imposed sentence G.S. Charleston
County
3. Name(s) of co-defendant(s) (if any) MR. Paffen, Charles Hansen
Kenneth Bell, Cindy Reagle, Lance Muraca
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 (a) 98-GS-105476; Manslaughter

- (b) 98-GS-105471; Strong Arm robbery
 (c) _____

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

- (a) April 23, 1999 / 30 years
 (b) April 23, 1999 / 10 years suspended to 5 yrs. -
 (c) probation

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty Yes
 (b) after a plea of not guilty No
 (c) after a plea of nolo contendere No

7. Did you appeal from the judgment of conviction or the imposition of sentence?

No

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

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

(b) the result in each such Court to which you appealed:

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

(c) the date of each such result:

- i. _____
 ii. N/A
 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) My attorney failed to advise me of an appeal of my conviction.

- (b) _____
 (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 (a) see attachment
 (b) see attachment
 (c) see attachment
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
 (a) see attachment
 (b) \ / \ /
 (c) \ / \ /
12. Prior to this application have you filed with respect to this conviction:
 (a) any petition in a State Court under South Carolina Law? Yes
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? Yes
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 (d) any other petitions, motions or applications in this or any other Court? Yes
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. Post-Conviction Relief
 ii. Motion for Reconsideration (Rule 52)b
 iii. PCR second
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. Charleston County Clerk of Court
 ii. Charleston County Clerk of Court
 iii. Charleston County Clerk of Court

- iv. _____
- (c) the disposition thereof:
- i. Application "Denied"
- ii. Denied
- iii. Denied without Prejudice
- iv. _____
- (d) the date of each such disposition:
- i. November, 2001
- ii. ~~_____~~ June 23, 2003
- iii. Jan. 23, 2003
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- ii. N/A
- iii. N/A
- 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?

Yes

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

- (a) which grounds have been presented:
- i. Subject Matter Jurisdiction
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. PCR
- 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) Subject Matter Jurisdiction can be raised at
 (b) any time.
 (c) see attachment

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

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

(a) the name and address of each attorney who represented you:
 i. Ashely Pennington, Charleston County Public Defender
office (address unknown)
 ii. Bradley D. Churdur, 215 East Bay St., Suite 203
Charleston, S.C. 29401
 iii. Michael D. Coleman, 171 Church St., Suite 218
Charleston, S.C. 29401
 (b) the proceedings at which each such attorney represented you:
 i. Plea and Sentencing
~~Reasonable Doubt~~
 ii. PCR and (52)b
 iii. PCR

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

Sentence reduction

Overturn Conviction

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of CHARLESTON)

VERIFICATION

I, Calvin Tyler, 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.

Calvin Tyler

SWORN to and subscribed before me this 17th
day of September, 2010.

Michelle Michel (L.S.)
Notary Public

My Commission Expires: 9-3-2014

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

I, Calvin Tyler, 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.

Calvin Tyler
Applicant

SWORN or affirmed to and subscribed before me this
17th day of September, 2010.

Wesleya Michel
Notary Public

My Commission Expires: 9-3-2014

Answers to questions 10, 11, & 16

10.) (A) Subject Matter Jurisdiction.

10.) (B) Subject Matter Jurisdiction.

10.) (C) Ineffective Assistance of P.C.R. counsel.

11.) (A) Transfer of Jurisdiction statute 20-7-7605 (6) did not give the Court of General Sessions jurisdiction over the charges of Armed Robbery; lynching in 1st degree; Conspiracy; Possession of a firearm during the Commission of attempt to commit a violent crime; and Unlawful possession of a pistol. See State v. Corey D. 529 S.E. 2d 20 (S.C. 2000).

11.) (B) When the Court violated Rule 11 of Federal Rules of Criminal Procedure Section (e)(3). It lacked Jurisdiction to execute sentence for the Charges of Voluntary Manslaughter and Common Law Robbery. See McCarthy v. United States, 89 SC 1166 (1969).

11.) (C) P.C.R. counsel failed to comply with South Carolina Supreme Court Rule 71.1 (d); which makes it mandatory that Post-Conviction attorney raise all available grounds in Post-Conviction Proceedings. Making P.C.R. counsel Ineffective and applicant

Calvin Tyler #258233
Palmetto B #63
4848 Goldmine Hwy.
Kershaw, S.C. 29067

(B)

SCDC

SEP 30 2010

MAIL ROOM

23401+2233

Julie J. Armstrong
Clerk of Court, C.P. & G.
Charleston County
100 Broad Street, Suite
Chas. S.C. 29401-22



UNITED STATES
02 1A
000461E
MAILED F



STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	2010-CP-10-7736
	)	
Calvin Tyler, #258233,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN AND MOTION TO DISMISS
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the Application for post-conviction relief filed September 21, 2010 and received by the S.C. Office of the Attorney General on December 7, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the August 1998 term of the Charleston County Grand Jury for murder (1998-GS-10-5476) and armed robbery (1998-GS-10-5477). D. Ashley Pennington, Esquire, represented the Applicant. On April 23, 1999, the Applicant pled guilty to the lesser included offenses of voluntary manslaughter and strong arm robbery. The Honorable J. Derham Cole sentenced the Applicant to confinement for thirty (30) years for voluntary manslaughter and ten (10) years suspended to five (5) years probation for strong arm robbery. The sentences are to run consecutively. The Applicant did not appeal his convictions or sentences.

Applicant subsequently filed an application for post-conviction relief (PCR) on March 27, 2000. In his application for PCR, the Applicant requested relief on the following grounds:

1. Ineffective Assistance of Counsel
 - a. Counsel failed to inform of his right to impanel a jury to determine the propriety of a recommendation of mercy.
 - b. Counsel failed to inform the Applicant of the possibility of a jury finding him guilty of the lesser included offense of involuntary manslaughter.
 - c. Counsel failed to file an interlocutory appeal in regards to the applicant being waived as an adult.

The Applicant amended this application on June 26, 2001 to allege:

1. He never signed any statement as required by S.C. Code Ann. §8-14-50 an §19-1-90 (1976).

The Applicant amended his application for the second time on September 18, 2001 to allege:

1. Trial counsel was ineffective in that he failed to inform Calvin Tyler that by entering a guilty plea he is waiving his right to appeal the Family Court Order transferring him to General Sessions court for trial as an adult.

The Respondent made its Return on April 12, 2001. An evidentiary hearing into the matter was convened on September 26, 2001 at the Charleston County Courthouse. The Applicant was present at the hearing and was represented by Bradley D. Churdar, Esquire. William Edgar Salter, III, Esquire, of the South Carolina Attorney General's Office represented the Respondent. By Order filed November 30, 2001, the Honorable R. Markley Dennis denied and dismissed this application with prejudice. By Order filed July 3, 2003. Judge Dennis denied the Applicant's "Pro Se Motion for Reconsideration and Motion to Relieve Counsel". The Applicant did not appeal this denial.

The Applicant filed his second application for post-conviction relief on May 7, 2002. In his application for PCR, the Applicant requested relief on the following grounds:

1. Subject Matter Jurisdiction
 - a. Only murder charge could be transferred to general sessions court.
2. Newly Discovered Evidence pursuant to §17-27-45(c)

The Respondent made its Return to Successive Application on January 10, 2003. An evidentiary hearing into the matter was convened on January 23, 2003. The Applicant chose to freely and voluntarily withdraw his application. By Order dated January 23, 2003, the Honorable Daniel F. Pieper dismissed the application and stated the claim of lack of subject matter jurisdiction was withdrawn without prejudice.

II.

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

1. Subject Matter Jurisdiction.
 - a. Transfer jurisdiction statute 20-7-7605 (b) does not give the court of General Sessions jurisdiction over charges.
 - b. Ct. violated Rule 11 of Federal Rules of Civil Procedure (e)(3); lacked jurisdiction to execute a sentence for charges of voluntary manslaughter and common law robbery.
2. Ineffective Assistance of PCR Counsel.
 - a. Failed to comply with South Carolina Supreme Court Rule 71.1(d) requiring counsel to raise all available grounds in a PCR proceeding.

Attached herewith and incorporated herein by reference are the records of the Charleston County Clerk of Court regarding the subject convictions, the Applicant's records from the Department of Corrections, and the Orders of Dismissal from the Applicant's prior PCRs.

III.

The Applicant alleges the Court of General Sessions lacked subject matter jurisdiction because the transfer jurisdiction statute 20-7-7605(6) did not give the Court jurisdiction. The Respondent submits this allegation is wholly without merit and this application should be summarily dismissed with prejudice. The Applicant was arrested for the murder and armed robbery for which he pled guilty at the age of fifteen. On April 30, 1998, he was waived up from Family Court to the Court of General Sessions. At the time the Applicant was indicted, S.C.

Code § 20-7-7605 (1996), governed the transfer of juvenile cases from Family Court to General Sessions Court.¹ The code section read as follows:

§ 20-7-7605. Transfer of jurisdiction.

In accordance with the jurisdiction granted to the family court pursuant to Sections 20-7-400, 20-7-410, and 20-7-420, jurisdiction over a case involving a child must be transferred or retained as follows:

- (1) If, during the pendency of a criminal or quasi-criminal charge against a child in a circuit court of this State, it is ascertained that the child was under the age of seventeen years at the time of committing the alleged offense, it is the duty of the circuit court immediately to transfer the case, together with all the papers, documents, and testimony connected with it, to the family court of competent jurisdiction, except in those cases where the Constitution gives to the circuit court exclusive jurisdiction or in those cases where jurisdiction has properly been transferred to the circuit court by the family court under the provisions of this section. The court making the transfer shall order the child to be taken immediately to the place of detention designated by the court or to that court itself, or shall release the child to the custody of some suitable person to be brought before the court at a time designated. The court then shall proceed as provided in this article. The provisions of this section are applicable to all existing offenses and to offenses created in the future unless the General Assembly specifically directs otherwise.
- (2) Whenever a child is brought before a magistrate or city recorder and, in the opinion of the magistrate or city recorder, the child should be brought to the family court of competent jurisdiction under the provisions of this section, the magistrate or city recorder shall transfer the case to the family court and direct that the child involved be taken there.
- (3) When an action is brought in a circuit court which, in the opinion of the judge, falls within the jurisdiction of the family court, he may transfer the action upon his own motion or the motion of any party.
- (4) If a child sixteen years of age or older is charged with an offense which, if committed by an adult, would be a misdemeanor, a Class E or F felony as defined in Section 16-1-20, or a felony which provides for a maximum term of imprisonment of ten years or less, and if the court, after full investigation, considers it contrary to the best interest of the child or of the public to retain jurisdiction, the court, in its discretion, acting as committing magistrate, may bind over the child for proper criminal proceedings to a court which would have trial jurisdiction of the offense if committed by an adult.
- (5) If a child fourteen or fifteen years of age is charged with an offense which, if committed by an adult, would be a Class A, B, C, or D felony as defined in Section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen

¹ S.C. Code § 20-7-7605 was enacted on July 1, 1996 and was replaced by S.C. Code § 63-19-1210 enacted June 16, 2008.

years or more, the court, after full investigation and hearing, may determine it contrary to the best interest of the child or of the public to retain jurisdiction. The court, acting as committing magistrate, may bind over the child for proper criminal proceedings to a court which would have trial jurisdiction of the offenses if committed by an adult.

(6) Within thirty days after the filing of a petition in the family court alleging the child has committed the offense of murder or criminal sexual conduct, the person executing the petition may request in writing that the case be transferred to the court of general sessions with a view to proceeding against the child as a criminal rather than as a child coming within the purview of this article. The judge of the family court is authorized to determine this request. If the request is denied, the petitioner may appeal within five days to the circuit court. Upon the hearing of the appeal, the judge of the circuit court is vested with the discretion of exercising and asserting the jurisdiction of the court of general sessions or of relinquishing jurisdiction to the family court. If the circuit judge elects to exercise the jurisdiction of the general sessions court for trial of the case, he shall issue an order to that effect, and then the family court has no further jurisdiction in the matter.

(7) Once the family court relinquishes its jurisdiction over the child and the child is bound over to be treated as an adult, Section 20-7-8510 dealing with the confidentiality of identity and fingerprints does not apply.

(8) When jurisdiction is relinquished by the family court in favor of another court, the court shall have full authority and power to grant bail, hold a preliminary hearing and any other powers as now provided by law for magistrates in such cases.

(9) If a child fourteen years of age or older is charged with a violation of Section 16-23-430(1), Section 16-23-20, assault and battery of a high and aggravated nature, or Section 44-53-445, the court, after full investigation and hearing, if it considers it contrary to the best interest of the child or the public to retain jurisdiction, acting as committing magistrate, may bind over the child for proper criminal proceedings to a court which would have trial jurisdiction of the offenses if committed by an adult.

(10) If a child fourteen years of age or older is charged with an offense which, if committed by an adult, provides for a term of imprisonment of ten years or more and the child previously has been adjudicated delinquent in family court or convicted in circuit court for two prior offenses which, if committed by an adult, provide for a term of imprisonment of ten years or more, the court acting as committing magistrate shall bind over the child for proper criminal proceedings to a court which would have trial jurisdiction of the offense if committed by an adult. For the purpose of this item, an adjudication or conviction is considered a second adjudication or conviction only if the date of the commission of the second offense occurred subsequent to the imposition of the sentence for the first offense. (emphasis added)

The Respondent submits, § 20-7-7605(5) controlled the transfer of the Applicant's charges from Family Court to General Sessions Court. The record reflects the Applicant was fifteen at the time of the incident and charged with murder and armed robbery. The Applicant's age puts him under the purview of §§ 5 and 6. Also, murder and armed robbery both have maximum terms of imprisonment greater than fifteen years which subjects the Applicant to transfer pursuant to this statute.² The record reflects a waiver hearing was held within the Family Court on April 30, 1998 and the result of the hearing was the Applicant being waived up to be tried as an adult within the Court of General Sessions. (See Affidavit Attached to Arrest Warrant). The Respondent submits this allegation is wholly without merit and the Applicant's charges were properly transferred from Family Court to the Circuit Court giving the Court of General Sessions the jurisdiction to accept his plea of guilty. The Respondent submits this Court should summarily dismiss this allegation with prejudice.

IV.

The Applicant also alleges ineffective assistance of post-conviction relief counsel. The Respondent submits this allegation is without merit and should also be summarily dismissed with prejudice. The Applicant's contention that he received ineffective assistance of counsel on his prior post-conviction relief application is not a ground for relief. There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722 (1991). Therefore, "the

² Murder carries a mandatory minimum term of imprisonment for thirty years to life. S.C. Code Ann. §16-3-20(A) (1976). Armed robbery carries a mandatory minimum term of not less than ten years to thirty years. S.C. Code Ann. §16-11-330 (1976).

contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' warranting a successive PCR application under ' 17-27-90." Aice, 305 S.C. at 451, 409 S.E.2d at 394.

V.

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

VI.

WHEREFORE, Respondent moves to summarily dismiss the application because it is wholly without merit.

Respectfully submitted,

ALAN WILSON
Attorney General

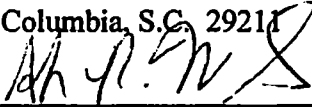
JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN RATIGAN
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

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

By:


Attorneys for the Respondents

Columbia, South Carolina
October 29, 2013

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

CALVIN TYLER, #258233
Applicant,

vs

STATE OF SOUTH CAROLINA,
Respondent.

IN THE COURT OF COMMON PLEAS

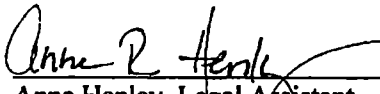
2012-CP-10-7736

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the abovecaptioned 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 to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Calvin Tyler, #258233
Kershaw Correctional Institution
4848 Goldmine Highway
Kershaw, SC 29067

DATED this 29th day of October


Anne Henley, Legal Assistant
For Respondent

22
Ag
At

AW
9

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Calvin Tyler, #258233,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2010-CP-10-773

RECEIVED

FEB 12 2015

S.C. Supreme Court

Conditional Order of Dismissal

2013 NOV -6 AM 11:54
S.C. SUPREME COURT

This matter comes before this Court by way of an application for post-conviction relief filed September 21, 2010 and received by the S.C. Office of the Attorney General on December 7, 2012. The Respondent made its Return and Motion to Dismiss.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the August 1998 term of the Charleston County Grand Jury for murder (1998-GS-10-5476) and armed robbery (1998-GS-10-5477). D. Ashley Pennington, Esquire, represented the Applicant. On April 23, 1999, the Applicant pled guilty to the lesser included offenses of voluntary manslaughter and strong arm robbery. The Honorable J. Derham Cole sentenced the Applicant to confinement for thirty (30) years for voluntary manslaughter and ten (10) years suspended to five (5) years probation for strong arm robbery. The sentences are to run consecutively. The Applicant did not appeal his convictions or sentences.

B

Applicant subsequently filed an application for post-conviction relief (PCR) on March 27, 2000. In his application for PCR, the Applicant requested relief on the following grounds:

1. Ineffective Assistance of Counsel
 - a. Counsel failed to inform of his right to impanel a jury to determine the propriety of a recommendation of mercy.
 - b. Counsel failed to inform the Applicant of the possibility of a jury finding him guilty of the lesser included offense of involuntary manslaughter.
 - c. Counsel failed to file an interlocutory appeal in regards to the applicant being waived as an adult.

The Applicant amended this application on June 26, 2001 to allege:

1. He never signed any statement as required by S.C. Code Ann. §8-14-50 an §19-1-90 (1976).

The Applicant amended his application for the second time on September 18, 2001 to allege:

1. Trial counsel was ineffective in that he failed to inform Calvin Tyler that by entering a guilty plea he is waiving his right to appeal the Family Court Order transferring him to General Sessions court for trial as an adult.

The Respondent made its Return on April 12, 2001. An evidentiary hearing into the matter was convened on September 26, 2001 at the Charleston County Courthouse. The Applicant was present at the hearing and was represented by Bradley D. Churdar, Esquire. William Edgar Salter, III, Esquire, of the South Carolina Attorney General's Office represented the Respondent. By Order filed November 30, 2001, the Honorable R. Markley Dennis denied and dismissed this application with prejudice. By Order filed July 3, 2003. Judge Dennis denied the Applicant's "Pro Se Motion for Reconsideration and Motion to Relieve Counsel". The Applicant did not appeal this denial.

The Applicant filed his second application for post-conviction relief on May 7, 2002. In his application for PCR, the Applicant requested relief on the following grounds:

1. Subject Matter Jurisdiction
 - a. Only murder charge could be transferred to general sessions court.
2. Newly Discovered Evidence pursuant to §17-27-45(c)

The Respondent made its Return to Successive Application on January 10, 2003. An evidentiary hearing into the matter was convened on January 23, 2003. The Applicant chose to freely and voluntarily withdraw his application. By Order dated January 23, 2003, the Honorable Daniel F. Pieper dismissed the application and stated the claim of lack of subject matter jurisdiction was withdrawn without prejudice.

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

1. Subject Matter Jurisdiction.
 - a. Transfer jurisdiction statute 20-7-7605 (b) does not give the court of general sessions jurisdiction over charges.
 - b. Ct. violated Rule 11 of Federal Rules of Civil Procedure (e)(3); lacked jurisdiction to execute a sentence for charges of voluntary manslaughter and common law robbery.
2. Ineffective Assistance of PCR Counsel.
 - a. Failed to comply with South Carolina Supreme Court Rule 71.1(d) requiring counsel to raise all available grounds in a PCR proceeding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the pleadings and all relevant supporting documents. Pursuant to S.C. Code Ann. § 17-27-70(b), the Court makes the following findings of fact and conclusions of law:

The Applicant alleges the Court of General Sessions lacked subject matter jurisdiction because the transfer jurisdiction statute S.C. § 20-7-7605(6) did not give the Court jurisdiction. This Court finds this allegation is wholly without merit and this application is summarily dismissed with prejudice. The record reflects the Applicant was arrested the murder and armed robbery for which he pled guilty at the age of fifteen. On April 30, 1998, he was waived up from

Family Court to the Court of General Sessions. At the time the Applicant was indicted, S.C. Code § 20-7-7605 (1996), governed the transfer of juvenile cases from Family Court to General Sessions Court.¹ The code section read as follows:

§ 20-7-7605. Transfer of jurisdiction.

In accordance with the jurisdiction granted to the family court pursuant to Sections 20-7-400, 20-7-410, and 20-7-420, jurisdiction over a case involving a child must be transferred or retained as follows:

(1) If, during the pendency of a criminal or quasi-criminal charge against a child in a circuit court of this State, it is ascertained that the child was under the age of seventeen years at the time of committing the alleged offense, it is the duty of the circuit court immediately to transfer the case, together with all the papers, documents, and testimony connected with it, to the family court of competent jurisdiction, except in those cases where the Constitution gives to the circuit court exclusive jurisdiction or in those cases where jurisdiction has properly been transferred to the circuit court by the family court under the provisions of this section. The court making the transfer shall order the child to be taken immediately to the place of detention designated by the court or to that court itself, or shall release the child to the custody of some suitable person to be brought before the court at a time designated. The court then shall proceed as provided in this article. The provisions of this section are applicable to all existing offenses and to offenses created in the future unless the General Assembly specifically directs otherwise.

(2) Whenever a child is brought before a magistrate or city recorder and, in the opinion of the magistrate or city recorder, the child should be brought to the family court of competent jurisdiction under the provisions of this section, the magistrate or city recorder shall transfer the case to the family court and direct that the child involved be taken there.

(3) When an action is brought in a circuit court which, in the opinion of the judge, falls within the jurisdiction of the family court, he may transfer the action upon his own motion or the motion of any party.

(4) If a child sixteen years of age or older is charged with an offense which, if committed by an adult, would be a misdemeanor, a Class E or F felony as defined in Section 16-1-20, or a felony which provides for a maximum term of imprisonment of ten years or less, and if the court, after full investigation, considers it contrary to the best interest of the child or of the public to retain jurisdiction, the court, in its discretion, acting as committing magistrate, may bind over the child for proper criminal proceedings to a court which would have trial jurisdiction of the offense if committed by an adult.

¹ S.C. Code § 20-7-7605 was enacted on July 1, 1996 and was replaced by S.C. Code § 63-19-1210 enacted June 16, 2008.

(5) If a child fourteen or fifteen years of age is charged with an offense which, if committed by an adult, would be a Class A, B, C, or D felony as defined in Section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more, the court, after full investigation and hearing, may determine it contrary to the best interest of the child or of the public to retain jurisdiction. The court, acting as committing magistrate, may bind over the child for proper criminal proceedings to a court which would have trial jurisdiction of the offenses if committed by an adult.

(6) Within thirty days after the filing of a petition in the family court alleging the child has committed the offense of murder or criminal sexual conduct, the person executing the petition may request in writing that the case be transferred to the court of general sessions with a view to proceeding against the child as a criminal rather than as a child coming within the purview of this article. The judge of the family court is authorized to determine this request. If the request is denied, the petitioner may appeal within five days to the circuit court. Upon the hearing of the appeal, the judge of the circuit court is vested with the discretion of exercising and asserting the jurisdiction of the court of general sessions or of relinquishing jurisdiction to the family court. If the circuit judge elects to exercise the jurisdiction of the general sessions court for trial of the case, he shall issue an order to that effect, and then the family court has no further jurisdiction in the matter.

(7) Once the family court relinquishes its jurisdiction over the child and the child is bound over to be treated as an adult, Section 20-7-8510 dealing with the confidentiality of identity and fingerprints does not apply.

(8) When jurisdiction is relinquished by the family court in favor of another court, the court shall have full authority and power to grant bail, hold a preliminary hearing and any other powers as now provided by law for magistrates in such cases.

(9) If a child fourteen years of age or older is charged with a violation of Section 16-23-430(1), Section 16-23-20, assault and battery of a high and aggravated nature, or Section 44-53-445, the court, after full investigation and hearing, if it considers it contrary to the best interest of the child or the public to retain jurisdiction, acting as committing magistrate, may bind over the child for proper criminal proceedings to a court which would have trial jurisdiction of the offenses if committed by an adult.

(10) If a child fourteen years of age or older is charged with an offense which, if committed by an adult, provides for a term of imprisonment of ten years or more and the child previously has been adjudicated delinquent in family court or convicted in circuit court for two prior offenses which, if committed by an adult, provide for a term of imprisonment of ten years or more, the court acting as committing magistrate shall bind over the child for proper criminal proceedings to a court which would have trial jurisdiction of the offense if committed by an adult. For the purpose of this item, an adjudication or conviction is considered a second adjudication or conviction only if the

date of the commission of the second offense occurred subsequent to the imposition of the sentence for the first offense. (emphasis added)

This Court finds, § 20-7-7605(5) controlled the transfer of the Applicant's charges from Family Court to General Sessions Court. The record reflects the Applicant was fifteen at the time of the incident and charged with murder and armed robbery. This Court finds the Applicant's age at the time of the murder put him under the purview of §§ 5 and 6. Also, murder and armed robbery both have maximum terms of imprisonment greater than fifteen years which subjects the Applicant to transfer pursuant to this statute.² The record reflects a waiver hearing was held within the Family Court on April 30, 1998 and the result of the hearing was the Applicant being waived up to be tried as an adult within the Court of General Sessions. (See Affidavit Attached to Arrest Warrant). This Court finds this allegation is wholly without merit and the Applicant's charges were properly transferred from Family Court to the Circuit Court giving the Court of General Sessions the jurisdiction to accept his plea of guilty. This Court find this allegation is summarily dismissed with prejudice.

The Applicant also alleges ineffective assistance of post-conviction relief counsel. This Court finds this allegation is without merit and is summarily dismissed with prejudice. The Applicant's contention that he received ineffective assistance of counsel on his prior post-conviction relief application is not a ground for relief. There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722 (1991). Therefore, "the contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' warranting a

² Murder carries a mandatory minimum term of imprisonment for thirty years to life. S.C. Code Ann. §16-3-20(A) (1976). Armed robbery carries a mandatory minimum term of not less than ten years to thirty years. S.C. Code Ann. §16-11-330 (1976).

successive PCR application under ' 17-27-90.' Aice, 305 S.C. at 451, 409 S.E.2d at 394. This Court finds this allegation is dismissed as being an improper basis for post-conviction relief.

CONCLUSION

S.C. Code Ann. § 17-27-70(b) states in pertinent part:

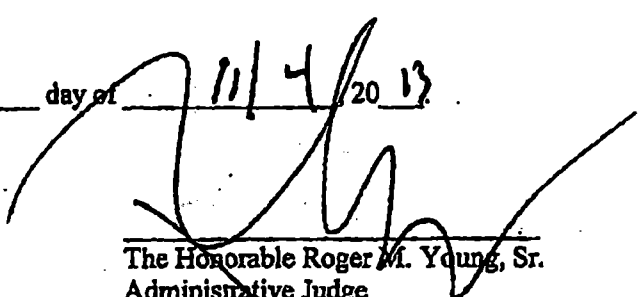
When a court is satisfied, on the basis of the application, the answer or motion, and on the record, that the Applicant is not entitled to post-conviction relief and no purpose would be served by any further proceedings, it may indicate to the parties its intention to dismiss the application and give reason for so doing. Applicant shall be given an opportunity to reply to the proposed dismissal.

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. The Applicant shall file any reasons he may have with the Charleston County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: Ashleigh Wilson, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this ____ day of

11/4/2013


The Honorable Roger M. Young, Sr.
Administrative Judge
9th Judicial Circuit


_____, South Carolina

State of South Carolina
County of Charleston

Calvin Tyler #258233,
Applicant,

V.

State of South Carolina,
Respondent,

In The Court of Common Pleas
2010-CP-10-7736 ^{AV}₉

Applicant Response and
Opposition to the States
Conditional Order of Dismissal

This matter is placed before the court to express the reasons that applicant has filed his current Post-Conviction Relief Application (P.C.R.) filed September 21, 2010. Applicant is requesting the court grant him a hearing.

- PROCEDUAL HISTORY -

Applicant adopts the PROCEDUAL and HISTORY as stated in Respondents Conditional Order OF Dismissal.

- ISSUES OF LAW -

Applicant would like for the court to look at the Order TRANSFerring Jurisdiction of him to the Court of General Sessions. As you can see Judge Smoak clearly transfered Applicant pursuant to S.C. Code Ann. § 20-7-7605 (6), and according to that section of the statue it does not bound over the charge of Armed Robbery, which applicant plead guilty to. Only the charges that are enumerated may be waived to the Court of General Sessions (See Johnson v. State 312 S.C. 556, 437 S.E.2nd 20.)

Id. Because the aboved mention charge may not be waived up, the Circuit Court was without jurisdiction of Armed Robbery¹⁹⁷ charge. Furthermore, making Respondents claim that Applicants allegation is without merit not true.

Applicant is not seeking relief of his conviction for Post-Conviction Relief Counsel being ineffective. Applicant just wants to show the court how (P.C.R.) Counsel ineffectiveness deprived him his right to a "full bite" of the apple, and his right according to South Carolina Supreme Court Rule 71.1(d), which makes it mandatory for Post-Conviction Counsel to raise all available grounds for the relief of their clients.

First, Applicant would like to show that (P.C.R.) Counsel did not insure that applicant got a "full bite" of the apple. Counsel did not appeal the Judgement of the first (P.C.R.) hearing, and counsel did not send Applicant the Order Denying his Pro SE Motion For Reconsideration And Motion to Relieve Counsel. Applicant states it can be verified that (P.C.R.) Counsel did not appeal first (P.C.R.) hearing by looking at the Respondents PROCEDUAL History on their Conditional Order of Dismissal. Applicant states that he did not receive his Order Denying aboved mention Motions. Applicant states he had to write Daniel E. Shearouse to get Order. (See Attachment).

Secondly, Applicant would like to show (P.C.R.) Counsel did not insure that all available grounds were raise or that application was not amended when it was clearly evident that it needed to be. It can be easily shown that Counsel failed to raise grounds and amend application as needed by this application being filed. Also applicant would like to let the court know that ~~the~~ his Due Process of Law was violated when Applicant not

Knowingly & Intelligently enter his plea, making plea null & void.
(See ¹⁹⁸ Holden v. State 343 S.C. 565, 713 S.E. 2nd 611).

— Conclusion —

Applicant states that by the specific reasons and facts of Law presented the court should not dismiss his application, but Applicant prays the court will grant him a hearing.

Respectfully
Submitted,

Cal Tyler
Calvin Tyler
4848 Goldmine Hwy.
Kershaw, S.C. 29067

A29

CE
AT
AG
ES
SocSTATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

2010-CP-10-7736

Calvin Tyler, #258233,

Applicant,

v.

FINAL ORDER OF DISMISSAL

State of South Carolina,

Respondent.

2013 JAN -7 PM 1:06
JUDGE CHRISTOPHER
CLEAN COURT

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed September 21, 2010 and received by the Respondent on December 7, 2012. The Respondent (the State) made its Return and Motion to Dismiss on October 30, 2013, requesting that the Application be summarily dismissed. Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal dated November 6, 2013, provisionally denying and dismissing this action, while giving the Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. The Applicant was served a copy of the filed Conditional Order of Dismissal on December 3, 2013.

In a document captioned "Applicant Respondent and Opposition to the State's Conditional Order of Dismissal" and filed December 27, 2013, the Applicant argues:

- Post-conviction relief counsel did not insure that applicant got a "full bite" of the apple.
- Post-conviction relief counsel did not insure that all available grounds were raised or that application was not amended when it was clearly evident that it needed to be,

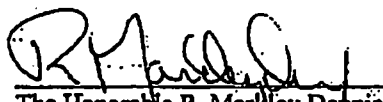
rmj

This Court has reviewed the Applicant's response to the State's motion to dismiss in its entirety, in conjunction with the original pleadings, and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final. This Court finds the Applicant has shown no reason that a hearing should be held on his claim of ineffective assistance of post-conviction relief counsel. This Court also finds this application is successive and the Applicant's response to the conditional order of dismissal does not raise any claims which could not have been raised in the Applicant's first two applications for post-conviction relief. This Court finds no reason why the Conditional Order of Dismissal should not become final.

IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for PCR is hereby denied and dismissed with prejudice.

This Court hereby advises the Applicant that he must file and serve a Notice of Appeal within thirty (30) days of the service of this Order to secure appellate review. See Rule 203, SCACR. The Applicant's attention is directed to Rule 227, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 6th day of January, 2015.


The Honorable R. Markley Dennis
Chief Administrative Judge
9th Judicial Circuit

Moncks Corner South Carolina.

RMD 8/2

98-02-MJM-00809

WITNESSES

JOHN BURNETT AND/OR

EDITH HAIR

RAYTON, NCPD

1005330

Ross

ARREST WARRANT NUMBER

F 866353

MAY 1, 1998

ACTION OF GRAND JURY

12
Foreperson of Grand Jury

AUG

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 1998-GS-10- 5476

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

AUGUST TERM 1998

THE STATE

vs.

CALVIN TYLER

Indictment for

MURDER

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT FOR
MURDER

At a Court of General Sessions, convened on August 3, 1998 the Grand Jurors of Charleston County present upon their oath:

That Calvin Tyler did in Charleston County on or about the 22nd day of February, 1998, while acting in concert with others, feloniously, willfully and with malice aforethought murder Robert Paul Nixon, to wit: did shoot Robert Paul Nixon with a firearm, and that Robert Paul Nixon did die in Charleston County as a proximate result on or about February 22, 1998. This is in violation of §16-3-10 of the South Carolina Code of Laws (1976) as amended.

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


ASSISTANT SOLICITOR

98-02-MJM-00809

WITNESSES

IN BURNETT AND/OR

ITH HAIR

AYTON, NCPD

105330

Ross

ARREST WARRANT NUMBER

F 866354

MAY 1, 1998

ACTION OF GRAND JURY

[Signature]
person of Grand Jury

VERDICT

person of Petit Jury

Date:

DOCKET NO. 1998-GS-10-5477

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

AUGUST TERM 1998

THE STATE

vs.

CALVIN TYLER

Indictment for

ARMED ROBBERY

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT FOR
ARMED ROBBERY

At a Court of General Sessions, convened on August 3, 1998 the Grand Jurors of Charleston County present upon their oath:

That Calvin Tyler did in Charleston County on or about the 22nd day of February, 1998, while acting in concert with others, and while armed with a deadly weapon, a firearm, feloniously take by means of force or intimidation, goods or monies from the person or presence of Paul Robert Nixon, such goods or monies being described as: United States currency and other personal property. This is in violation of §16-11-330 of the South Carolina Code of Laws (1976) as amended.

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


ASSISTANT SOLICITOR