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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Marion County

Edgar W. Dickson, Circuit Court Judge

TRAVIS MCLAUGHLIN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000543

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF MARION

COURT OF GENERAL SESSIONS
2010-GS-33-176

STATE OF SOUTH CAROLINA,)
)
)
 -vs-)
)
)
 TRAVIS McLAUGHLIN,)
)
 Defendant.)

December 2, 2011

B E F O R E:

HONORABLE WILLIAM H. SEALS, JR.

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

FTIZLEE H. McEACHIN, Esquire
Attorney for the State

HENRY M. ANDERSON, JR., Esquire
Attorney for the Defendant

Henry P. Young
Court Reporter

1 P-R-O-C-E-E-D-I-N-G-S

2 MR. McEACHIN: May it please the Court, Your
3 Honor, standing before you is Travis McLaughlin.
4 He is pleading guilty on indictment number
5 2010-GS-33-176. The State is allowing him to plead
6 to the lesser included offense of voluntary
7 manslaughter. The State is recommending a thirty
8 year sentence. He is represented by Hank Anderson
9 of the Public Defender's office.

10 THE COURT: Mr. McLaughlin, you are pleading
11 guilty to voluntary manslaughter which has a
12 minimum of two years and a maximum of thirty years
13 in jail. Is that correct?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Speak up.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Also were you in the courtroom
18 when I went over your rights to a jury trial?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Did you understand those rights?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you have any questions for me
23 or your lawyer about your rights to a jury trial?

24 THE DEFENDANT: No, sir.

25 THE COURT: Do you want to give up your right

1 to a jury trial and plead guilty today?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Are you satisfied with your
4 lawyer?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Has he answered all your
7 questions, done everything you have asked him to
8 do?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Has anybody promised you any type
11 of reward or a gift to induce you into pleading
12 guilty?

13 THE DEFENDANT: No.

14 THE COURT: Has anybody coerced you or
15 threatened you in any way to make you plead guilty?

16 THE DEFENDANT: No, sir.

17 THE COURT: Are you under the influence of
18 any drugs or alcohol at this time that would affect
19 your ability to think, reason, understand, know
20 what you're doing?

21 THE DEFENDANT: No.

22 THE COURT: Are you guilty?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Have you understand all my
25 questions?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Have you answered me truthfully?

3 THE DEFENDANT: Yes.

4 THE COURT: All right.

5 Solicitor?

6 MR. MCEACHIN: Thank you, Your Honor. This
7 occurred back on December 7th, 2009. On that day
8 the defendant and the victim Mr. Joe Harps had been
9 hanging out together during the day. At some point
10 that evening they went back to Mr. Harps' residence
11 at [REDACTED] [REDACTED] [REDACTED] [REDACTED] in Mullins
12 here in Marion County. At some point during the
13 time, once they had gotten back to Mr. Harps'
14 residence, there are some varying accounts but even
15 in the defendant's statement to law enforcement he
16 said there was some sort of wrestling that kind of
17 went on, some sort of argument that went on between
18 the two of them. At some point the defendant
19 actually did take a small caliber firearm and shoot
20 the victim Joseph Harps with that firearm.

21 Your Honor, the bullet went in the left
22 temple lobe and ended up striking the brain stem,
23 which pretty much caused immediate death according
24 to the autopsy report from the Marion County
25 Medical Center.

1 The defendant was subsequently arrested the
2 following day, did in fact give a statement to law
3 enforcement. It varied a little bit throughout the
4 course of the conversation he had with Captain
5 Davis but in essence that is the reason we're here
6 today, Your Honor.

7 I do believe Mr. Harps', according to the
8 autopsy report it was pretty instantaneous death
9 but given the fact there is some indication there
10 may have been some heat of passion involved on the
11 defendant's part the State is allowing him to plead
12 to the voluntary manslaughter, however we are
13 recommending a thirty year sentence.

14 I do have Investigator Hotaling here with me
15 and if he would like to add anything I would ask
16 you hear from him, Your Honor.

17 THE COURT: State your name.

18 MR. HOTALING: Reggie Hotaling.

19 THE COURT: Anything you needed to add to
20 that?

21 MR. HOTALING: He has about covered it all.

22 THE COURT: Previous record?

23 MR. McEACHIN: Your Honor, as far as the
24 defendant's record is concerned, it looks like he
25 had a distribution of cocaine base near a school

1 back in 1991. In '97 it looks like a simple
2 assault and battery. In '98 a simple possession of
3 marijuana and also disorderly conduct charge. In
4 '99 another simple possession charge. A malicious
5 injury to property charge, drug paraphernalia
6 charge in 2001 and obtaining property under false
7 pretenses in 2002. It looks like a simple assault
8 and battery in 2007, a public disorderly conduct in
9 2009, and that would be the extent of his record,
10 Your Honor.

11 THE COURT: Have any of the victim's family
12 been notified?

13 MR. MCEACHIN: Yes, Your Honor. As a matter
14 of fact I spoke with Miss Minnie Blackwell who was
15 the victim's sister. She currently lives in the
16 State of New York and was unable to travel down for
17 the hearing this morning. The State informed her
18 of the offer reducing the charge from murder down
19 to voluntary manslaughter and what our
20 recommendation would be, she was fine with that,
21 Your Honor, she just said she left it up to the
22 Court, she thought that would be sufficient.

23 And for the record, I spoke with her on
24 November 28th, 2011.

25 THE COURT: All right, I find there is a

1 factual basis for the plea, he is giving this plea
2 freely, intelligently and voluntarily with the
3 advice of a very competent attorney.

4 Mr. Anderson?

5 MR. ANDERSON: If it please the Court, if it
6 is all right, I would like Travis to address you
7 first, then I will address you after that.

8 THE COURT: All right.

9 THE DEFENDANT: I just wanted to let the
10 Court know that the situation is not like it seems,
11 that I just went and murdered Mr. Harps, you know,
12 he was a very good friend of mine, I knew him all
13 my life and we was drinking together and, you know,
14 he couldn't drive so he asked me to take him home,
15 I got him home, you know, we was talking and we got
16 into an argument and it led to complications so he
17 pulled out a gun and threatened to shoot me. That
18 is when I grabbed the gun, we wrestled for the gun
19 and during the struggle I got possession of the gun
20 and the gun discharged, I did discharge it while I
21 had possession of it. It wasn't, I didn't mean to
22 do it, you know, I never was planning to, you know,
23 just something that happened in the heat of the
24 moment.

25 If I could, I would just, I would just like

1 to tell the victim's family I'm sorry, I apologize
2 for what happened. If I had any thought in my mind
3 that this was going to take place I would have
4 never went, you know, but I can't change it. All I
5 can say is I'm sorry for what happened, you know, I
6 know mistakes caused it. That was a mistake on
7 both our parts.

8 THE COURT: All right, thank you.

9 Mr. Anderson?

10 MR. ANDERSON: Judge, if it please the Court,
11 Your Honor, this is a case I was told about two
12 weeks ago would be going to trial probably next
13 week so I began working on the case, Your Honor.
14 Miss Sloan in my office certainly helped me a great
15 deal in preparation.

16 Your Honor, just because you grow up an
17 alcoholic that doesn't mean you're a murderer, or
18 just because you have a poor family life, that
19 doesn't mean you should be found guilty of murder.
20 Your Honor, Travis had a terrible childhood.

21 To give you kind of an idea, Judge, I take it
22 for granted all the time, last night, you heard me
23 talk about my mama before, Judge, about some things
24 that she would and wouldn't approve of as far as
25 I'm concerned, but anyway, Your Honor, she's a

1 good, good lady. Last night, my wife was sick this
2 week and one of my sons has been sick so my mama,
3 last night she came over and she brought dinner for
4 the family. Included in that dinner was a big old
5 thing of banana pudding. I had fun eating that
6 pudding last night. But anyway, Judge, you take
7 stuff, I take stuff like that for granted, my mom
8 and daddy live nextdoor to me, they are always
9 there if I need them.

10 Travis, his father died -- excuse me. He
11 hadn't seen his father since he was five years old,
12 his mother raised him for a short period of time,
13 she was an alcoholic, had mental problems, she
14 turned him over to his grandparents. He lived with
15 his grandparents from a very early age, up until
16 about thirteen or fourteen. Unfortunately both his
17 grandparents are alcoholics.

18 DSS or someone stepped in and removed him
19 because his grandparents weren't sending him to
20 school, wasn't taking care of him. And he left
21 them and went to live with another lady who
22 basically raised him after the age of fifteen, she
23 raised him for awhile.

24 Your Honor, Travis, they say that if your
25 parents are alcoholics that greatly increases your

1 chance of being one, and Travis told me yesterday
2 in that jury room back there, he said, "I like to
3 drink," he has always liked the way it tastes.

4 Your Honor, he has always worked. When I was
5 talking with him over the last few months he has
6 worked a number of places, he worked at McDonald's
7 on two different occasions, Smithfield two
8 different occasions, Purdue, he worked at I think
9 it is called Davis, in Dillon, he has done roofing
10 work. Your Honor, from the time he was old enough
11 to work he has worked up until about 2007. He got
12 laid off from I think it's Purdue or Smithfield in
13 2007 and that's when he started drinking.

14 And of course as he indicated, he has always
15 known Mr. Harps, Mr. Harps was a friend that he had
16 known. Your Honor, according to the autopsy Mr.
17 Harps' blood alcohol that day was 28, so I can only
18 imagine my client wasn't too far behind him because
19 according to the incident report, according to
20 witnesses' statements, Your Honor, my client and
21 Mr. Harps made several trips to the liquor store
22 that day, Your Honor.

23 As my client indicated to you, this wasn't
24 premeditated, this wasn't with malice aforethought,
25 Your Honor, I don't think that is present and I say

1 that for several reasons, Your Honor. First of all
2 I say that because, Judge, when you look at the
3 autopsy report, you look at the evidence of the
4 injury, first of all, Your Honor, the gunshot wound
5 was to the left temple area. You know, what is
6 important about that, Your Honor, there was no soot
7 or stippling seen on the skin, Your Honor. Of
8 course I know and you know that means it wasn't a
9 close range gunshot wound, it wasn't within
10 probably eighteen inches, it was probably eighteen
11 inches or more away, Your Honor.

12 You look at some other evidence of injuries,
13 and on the abdomen there is two contusions to the
14 right lateral side of the back. Then you look at
15 the upper extremities, contusions to the arm, there
16 is one on the upper left arm, there is also one on
17 the lateral upper arm. There are multiple
18 contusions on the right forearm that are about an
19 inch and a half each. Your Honor, there is a half
20 inch laceration that extends through the skin on
21 his lateral right second finger and there is also a
22 bruise on that same hand.

23 THE COURT: You're talking about the victim
24 or the defendant?

25 MR. ANDERSON: Talking about the victim, Your

1 Honor. On the lower extremities there is a
2 contusion to the right hip.

3 Your Honor, according to my client there was
4 a struggle. Of course the autopsy backs that up,
5 there were bruises on his arm, bruise on his hip,
6 there was a cut on his hand, Your Honor, I have
7 looked at his hand and I'm going to hand this up to
8 you, the State of course is the one provided these
9 pictures to me.

10 THE COURT: Have you seen these?

11 MR. McEACHIN: Yes.

12 MR. ANDERSON: You can see a bruise on him
13 and then a cut on looks like the right hand, the
14 index finger, Your Honor, as well as the middle
15 finger. Your Honor, I realize those are black and
16 white, the Public Defender hasn't seen fit to buy
17 Miss Molly a color printer. Maybe we can change
18 that in the near future. Of course she is a state
19 employee anyway, Your Honor.

20 I think that that cut on his middle finger is
21 from a tooth. Of course my position is it was my
22 client's tooth that cut, that made that cut. The
23 other finger, Your Honor, is wearing, not wearing,
24 but has a mark on it as well, a cut that you could
25 get from hitting something or someone, Your Honor.

1 Of course his position, my position is that
2 there was a struggle. I say that for several
3 reasons, Your Honor. SLED was called in, Your
4 Honor, they take photographs, of course the State
5 also has these. Your Honor, these photographs
6 right here were taken by SLED. Your Honor, what is
7 significant about those photos, of course, is there
8 is a bullet hole in one of the doors that is in the
9 den, slash, bedroom area. Of course, Your Honor, I
10 would demonstrate for the court reporter there is a
11 pencil or a rod stuck in the bullet hole, it is in
12 a downward angle.

13 Your Honor, of course what is significant
14 about that is the bullet had to have come from, you
15 know, it couldn't have been just fired right here,
16 and the angle of it, Your Honor, I would submit to
17 the Court it wasn't fired like that, it was fired
18 from a position like this. Your Honor, I would
19 submit that is significant because if my client and
20 the victim were struggling for the gun and the gun
21 goes off, the first time it goes off at an angle
22 while they are struggling over the gun. Your
23 Honor, Mr. Harps was found on the floor and it is
24 apparent to me that he was found basically, you
25 know, he was either killed while he was on his

1 knees or he was killed while he was on the floor in
2 a prone position.

3 Now, at first that might sound like an
4 execution, Your Honor, but I will explain that in a
5 second. Your Honor, my theory of the case,
6 Travis', based on what he has told me and of course
7 based on what he told me, I start doing this
8 research, and I believe what Travis told me. They
9 fought, they struggled. I don't know why they
10 fought over it, Your Honor, I have talked with
11 Travis about it, he doesn't know either, Your
12 Honor. I would submit that he was extremely
13 intoxicated. If the victim's blood alcohol was 28,
14 I guarantee you Travis was either right there with
15 him or wasn't too far behind.

16 Your Honor, I believe what happened, they
17 struggled over the gun, they fought, my client was
18 hit a few times, obviously from the contusions in
19 the autopsy report Mr. Harps was hit several times.
20 Judge, the gun goes off, it puts that bullet in an
21 upward angle in the room where his body is found or
22 close to where his body was found. I think they
23 went to the ground, Your Honor, I think they
24 eventually were on the ground fighting, I think my
25 client got the gun away from him and shot him. I

1 say that, Your Honor, because if you will look at
2 his body the pool of blood is right there where he
3 is laying.

4 Now, Your Honor, I have looked at every
5 single crime scene photo, I have looked at the ones
6 that Marion County took, I have looked at the ones
7 that SLED took. Your Honor, you probably have
8 heard of blood spatter, in fact I have heard of
9 blood spatter, have done a tremendous amount of
10 research on blood spatter. I was prepared to try
11 and convince a Marion County jury and I was going
12 to have to do some explaining but I was going to
13 try and explain to them what blood splatter is.

14 Of course as Your Honor is aware, anytime
15 someone is injured and blood leaves their body, it
16 depends on the markings of the blood, where the
17 blood is found, on the wall, the floor, clothes, a
18 lot of times it has to do, not a lot of times, but
19 always has to do with the velocity of whatever
20 struck them.

21 Your Honor, these are low wounds typically
22 that come from a fist or running into something.
23 You have medium, which a lot of times will come
24 from a knife injury, an automobile accident,
25 something like that, something that is traveling

1 more than a few miles an hour. Then you have the
2 high velocity spatter, that is from a gunshot.
3 Obviously this is from a gunshot wound, Your Honor,
4 but all the pictures I looked at, Your Honor, the
5 blood is in one area, it is not on the TV, it is
6 not on the wall, it is not on the bed, it is all in
7 one area. The dripping of the blood, the pattern
8 of the blood, it goes down, it does not appear to
9 be shot, the body was shot and then moved, the body
10 was not shot and rolled over, it all appears to be
11 going down and that falls in line with what he
12 says, "We struggled over the gun, I got it from him
13 and I shot him." Your Honor, based on my research
14 and based on my evidence I think it happened while
15 they were on the ground struggling.

16 Now, Your Honor, here is where Travis'
17 problem was and anytime you try a case, anytime you
18 do a guilty plea you can't just say the good
19 things, you got to say the good and the bad, you
20 got to make it all connect. The bad thing is, Your
21 Honor, Travis didn't call the police. The bad
22 thing is, Your Honor, the next morning Travis
23 didn't go to the police station. The bad thing,
24 Your Honor, is Travis fled the scene, he fled, he
25 left. Travis had blood on his shoes, he also had

1 some blood on his sweater.

2 Now, Your Honor, I think Travis, judged by
3 his work history, is smart enough to know he can't
4 walk around with blood on his shoes and blood on
5 his sweater. Your Honor, with that work history,
6 working at those different companies, Travis isn't
7 stupid, he's not retarded, he knows right from
8 wrong and he knows what he needs to do as far as
9 working, things like that. He doesn't change his
10 shoes, he doesn't get rid of his shoes, doesn't
11 change his sweater, get rid of his sweater. When
12 he is arrested the next day he still has that same
13 outfit on.

14 Your Honor, I wish Travis would have that
15 night called the police, or the next morning showed
16 up and turned himself in. I mean, I can sit here
17 and tell you he was scared and I'm sure he was,
18 Judge, I got no doubt Travis was scared, I could
19 sit here and tell you he was drunk and just didn't
20 know what he was doing and I have no doubt in my
21 mind he was drunk but, Your Honor, the next morning
22 when he is a little bit more sober, thinking a
23 little bit more clearly, that is when Travis should
24 have made the call, that is when Travis, I think,
25 possibly stepped away from any argument I would

1 have for involuntary manslaughter and we start
2 getting over to them fighting, struggling, heat of
3 passion, and then and we're in the manslaughter
4 area, which is what Mr. McEachin was kind enough to
5 offer.

6 But, Judge, there is a bottle or box full of
7 pills that if my client wanted to take them he
8 certainly could have. I mean, there is every pill
9 a man could want, I don't know what they were, I
10 can't read that fine print, but if Travis was,
11 after he shoots him, "I'm going to rob this man,"
12 he could have taken some drugs. There was money
13 right there beside the victim, there is money
14 literally laying on the floor beside the victim,
15 you can see a ten dollar bill, you can see a one
16 dollar bill and on the other side of the victim,
17 Your Honor, you can see, if not his wallet,
18 certainly an envelope from the bank where you can
19 see a twenty dollar bill and some other
20 denominations in there. His keys are right there
21 beside him.

22 Your Honor, this was not a murder, I do not
23 think that. He obviously is not pleading to murder
24 but, Your Honor, there was no intent to rob him,
25 that is why I don't think there was any malice,

1 there was no premeditation, he could have taken
2 anything he wanted to.

3 Your Honor, the gun, in my opinion, belonged
4 to Mr. Harps and my client took the gun and
5 disposed of it. He gave conflicting stories about
6 what he did with it. One of the stories was he
7 threw it away, another story was that he gave it to
8 somebody selling crack in exchange for some crack.
9 Your Honor, I don't know what happened to the gun.
10 I have talked to him about it, he doesn't really
11 remember, Judge, but there were bullets found in
12 Mr. Harps' house that match the bullets that were
13 recovered from him and also at the scene. Those
14 match, I will submit to you, and these bullets were
15 found in a drawer. I will submit to you it was Mr.
16 Harps' gun.

17 Judge, I tell you all that to tell you this.
18 I don't know what happened that night. I don't
19 think anybody knows, I don't think Travis really
20 has a clear understanding, based on his level of
21 intoxication but, Your Honor, I know that Mr. Harps
22 was killed, I know it was a tragic event, I don't
23 think that my client meant to do it, I don't think
24 that my client hung out with him all day and said,
25 "I'm going to get this guy drunk up and then I'm

1 going to go kill him," Your Honor, because there is
2 just no evidence that was the case. I think this
3 is in the truest sense a manslaughter.

4 And, Your Honor, based upon that we of course
5 do not agree with the recommendation of thirty
6 years. That is the State asking for thirty. Your
7 Honor, I think what is key here is the victim said,
8 the victim's family said whatever Your Honor sees
9 fit. Judge, I tell you all that to tell you we
10 would certainly ask for something a lot less than
11 thirty. Judge, he has been in jail for almost two
12 years, right at two years, Your Honor. He has been
13 in jail since this happened. He was arrested on
14 December the 8th, which is the day after, Your
15 Honor. I have got him down as 724 days. Judge, I
16 would certainly ask that you give him credit for
17 that and, Your Honor, based upon the facts here
18 today I would ask you to consider something less
19 than thirty years. .

20 MR. McEACHIN: Your Honor, I just, one quick
21 point of clarification, if I misspoke it, what the
22 victim's sister said, she was fine with the State's
23 recommendation, she understood it was going before
24 the Court today. If I said anything along the
25 lines of that she didn't necessarily care about the

1 sentence I did not mean to say that.

2 THE COURT: I understand. He has been in
3 jail how long?

4 MR. ANDERSON: 724 days, Judge.

5 THE COURT: Were there any witnesses at the
6 scene of the crime?

7 MR. ANDERSON: No, sir.

8 THE COURT: Did anybody see anything?

9 MR. ANDERSON: No, sir, not I'm aware of.

10 THE COURT: We don't know whose gun it is?

11 MR. ANDERSON: No, sir.

12 THE COURT: Did the defendant have any
13 injuries on him?

14 MR. ANDERSON: Your Honor, the next day they
15 took some pictures of his hands but, I mean, I
16 can't really tell, I mean, I will be happy, they
17 are black and white, Your Honor.

18 MR. MCEACHIN: I may be able to help on that,
19 Your Honor. During the interview of the defendant
20 he did have a scrape on his nose but the defendant
21 said that did not come from the victim in this
22 case, his statement was it came from something
23 else.

24 MR. ANDERSON: Your Honor, my client did say
25 in the interview that there was a struggle over the

1 gun, I think the 40 minute interview, I think he
2 did indicate there was some fighting going on.
3 They did take pictures of the back of his hand,
4 they also took pictures of his right hand, they
5 took a picture of his face, the left side of his
6 face and right side of the face but you cannot
7 really tell what is in the photographs. I would
8 say, Your Honor, they did take several photographs
9 of him.

10 THE COURT: The sentence of the Court is that
11 the defendant is committed to the State Department
12 of Corrections for a term of 25 years. I will give
13 him credit for 724 days he has served thus far.

14 MR. MCEACHIN: Thank you, Your Honor.

15 MR. ANDERSON: Thank you, Judge.

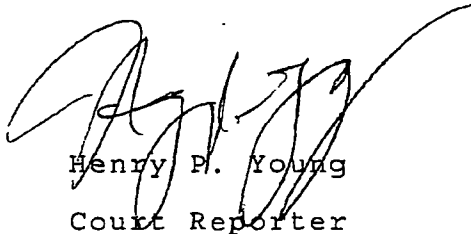
16 (Hearing Concluded).
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I, the undersigned Henry P. Young, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case in the Circuit Court for Horry County, South Carolina, on the 2nd day of December, 2011.

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

February 12, 2013



Henry P. Young
Court Reporter

STATE OF SOUTH CAROLINA

County of Marion

Travis McLaughlin # 291562
Full name and prison number (if any) of Applicant.

vs.

The State of South Carolina
Name of Respondent.

In the Court of Common Pleas
2012 - CP - 33 - 231

APPLICATION FOR
POST-CONVICTION RELIEF

2012 APR -4 A 10:15

BOOK _____ PAGE _____

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 it clear to which question any such continued answer refers.

Since every application must be sworn to 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 applicant was convicted.

1. Place of detention McCormick Corr. Inst. 386 Redemption Way
McCormick SC 29899

2. Name and location of Court which imposed sentence Marion Court of General
Session

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

- (a) 2010-GS-30-0176 / Murder
- (b) _____
- (c) _____

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

- (a) Dec 2, 2011 / 25 yrs
- (b) _____
- (c) _____

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law? NO

(b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? NO

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? None

(d) any other petitions, motions or applications in this or any other Court? No

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i.	<u>N</u>
ii.	
iii.	
iv.	<u>A</u>

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

i.	<u>N</u>
ii.	
iii.	
iv.	<u>A</u>

(c) the disposition thereof:

i.	<u>N</u>
ii.	
iii.	
iv.	<u>A</u>

(d) the date of each such disposition:

i.	<u>N</u>
ii.	
iii.	
iv.	<u>A</u>

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

i.	<u>N</u>
ii.	
iii.	
iv.	<u>A</u>

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

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

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

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

15. If any ground set forth in (9) 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) See 9 (a) Applicant first time presenting ground
- (b) See 9 (b) " " " " " "
- (c) _____

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

- (a) your arraignment and plea? YES
- (b) your trial, if any? None
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? None
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? None

17. If you answered "yes" to one or more parts of (16), list:

- (a) the name and address of each attorney who represented you
 - i. Hank Anderson 12th Cir. Public Defender Marion Co.
Office 221 North Main St. Marion SC 29571
 - ii. _____
 - iii. _____

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

- i. Plea / Sentencing
- ii. _____
- iii. _____

18. State clearly the relief you seek in filing this application.

Vacate conviction & sentence, New trial, and any other relief that I am entitled to, and or the court deems just and fair

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

No

STATE OF SOUTH CAROLINA

VERIFICATION

County of McCormick

I, Travis McLaughlin, 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.

Travis McLaughlin

SWORN to and subscribed before me this 02 day of April, 192012

J C Franklin (L.S.)
Notary Public

My Commission Expires: 12-16-2019

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

I, Travis McLaughlin, 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 therefor.

Travis McLaughlin
Applicant

SWORN or affirmed to and subscribed before me this 02 day of April, 192012

J C Franklin
Notary Public

My Commission Expires 12-16-2019

STATE OF SOUTH CAROLINA)
 COUNTY OF FLORENCE)
)
 Travis McLaughlin, # 291562,)
)
 Applicant,)
)
 -vs-)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 TWELFTH JUDICIAL CIRCUIT

Case Number: 2012-CP-33-231

AMENDED APPLICATION FOR
 POST-CONVICTION RELIEF

300K PAGE
 2013 SEP -6 A 9:40
 MARION COUNTY SHERIFF R. RHODES
 CLERK OF COURT

FILED

1. Applicant is detained at the McCormick Correctional Institute located at 386 Redemption Way, McCormick, South Carolina 29899.
2. The sentence was imposed by the Marion County Court of General Sessions.
3. Applicant did not have any co-defendants.
4. Applicant was indicted pursuant to indictment number 2010-GS-33-0176 for Murder and Possession of Weapon During Commission of Violent Crime.
5. Applicant was sentenced on December 2, 2011 to twenty-five (25) years in prison for Voluntary Manslaughter.
6. A finding of guilty was made after a plea of guilty.
7. Applicant did not appeal his conviction or sentence.
8. (a) The Court to which Applicant appealed:
 - (1) Not applicable.
- (b) The result in each Court to which Applicant appealed:
 - (1) Not applicable.
- (c) The date of each result:
 - (1) Not applicable.

(d) Citations of any written opinion or orders entered pursuant to such results:

(1) Not applicable.

9. Applicant did not have an appealable issue.

10 & 11

GROUND FOR RELIEF WITH SUPPORTING FACTS

10(a). Applicant was denied the effective assistance of counsel guaranteed by the South Carolina Constitution and the Sixth and Fourteenth Amendments to the United States Constitution in the following particulars:

11(a)(1). Applicant's plea counsel failed to adequately conduct an investigation into the facts and circumstances of Applicant's case;

11(a)(2). Applicant's plea counsel failed to retain experts necessary to refute the theory of the State's case against Applicant;

11(a)(3). Applicant's plea counsel failed to adequately inform Applicant of the defenses available to the Applicant;

11(a)(4). Applicant's plea counsel failed to properly and adequately inform Applicant of the applicable law in his case to the extent that Applicant's guilty plea was not made freely, voluntarily and with sufficient knowledge to render it valid.

12. (a) Petitions filed in State Court under South Carolina Law:

(1) None.

(b) Petitions in State or Federal Courts for habeas corpus or post-conviction relief:

(1) None.

(c) Petitions to the United States Supreme Court for certiorari:

(1) None.

(d) Any other petitions, motions or applications in this or any other Court:

(1) None.

13. Not applicable.
 14. None of the grounds set forth in Question Number Ten (10) has been previously presented to this or any other Court, State or Federal.
 15. Not applicable.
 16. These grounds rely on additional facts outside the record which was before the previous courts and this is Applicant's first opportunity to collaterally attack his conviction and sentence.
 17. Applicant was previously represented by counsel at his arraignment, guilty plea, and sentencing. Applicant did not appeal his conviction and/or sentence.
 18. Applicant was represented at his arraignment, guilty plea and sentencing by Henry M. Anderson. Esquire. 265 West Evans Street, Florence, South Carolina, 29501.
 19. Applicant seeks the vacation of his convictions and sentences.
 20. Applicant is not under sentence of another court.
-

Respectfully submitted,



JOSHUA A. BAILEY
Attorney for the Applicant

September 4, 2013

Florence, South Carolina

Finklea Law Firm
814 West Evans Street
Post Office Box 1317
Florence, SC 29503
(P): (843) 317-4900
(F): (843) 317-4910
(E): jbailey@finklealaw.com

STATE OF SOUTH CAROLINA)
)
 COUNTY OF MARION)
)
)
 Travis McLaughlin, 291562)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

2012-CP-33-231

RETURN

Respondent, making its Return to the Application for post conviction relief (PCR) filed March 9, 2012, and received by Respondent from the Marion County Clerk on November 20, 2012, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Marion County Clerk of Court. Applicant was indicted at the May 2010 term of the Marion County Grand Jury for murder and possession of a weapon during a violent crime (2010-GS-33-176). Hank Anderson, Esquire, represented Applicant.

On December 2, 2011, Applicant pled guilty as indicted and was sentenced by the Honorable William H. Seals to twenty-five years imprisonment.

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

II.

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

1. "Ineffective Assistance of Counsel"
2. "Guilty plea was not voluntarily nor intelligently made, plus the state withheld exculpatory and favorable evidence from my case – including but not limited to pictures from the crime scene and statement from this person (unknown) allegedly stated that I tried to sale the gun that was used in the crime for drugs."

III.

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

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

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

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

With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

IV.

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

V.

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

VI.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

TYSON ANDREW JOHNSON, SR.
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

2/4, 2012.

STATE OF SOUTH CAROLINA)

COUNTY OF MARION)

IN THE COURT OF COMMON PLEAS

2012-CP-33-231

TRAVIS MCLAUGHLIN, #291562)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)

Respondent.)

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

Joshua A. Bailey, Esquire
814 W. Evans St.
Florence, SC 29501

DATED this 4th day of February, 2013.


 Norma Bigbee, Legal Assistant

STATE OF SOUTH CAROLINA)	COURT OF COMMON PLEAS
)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF MARION)	CASE NO. 2012-CP-33-231
)	
TRAVIS MCLAUGHLIN,)	
)	
Plaintiff,)	
)	
-vs-)	TRANSCRIPT OF RECORD
)	
STATE OF SOUTH CAROLINA,)	
)	
Defendant.)	
)	

October 8, 2014
 Florence, South Carolina

B E F O R E:

THE HONORABLE EDGAR W. DICKSON, Judge

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

JOSHUA BAILEY, Esquire
 Attorney for the Plaintiff

CROOM HUNTER, Esquire
 Attorney for the Defendant

KRYSTAL J. SMITH
 Court Reporter

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I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE NUMBER</u>
Don Girndt	
Direct by Mr. Bailey.....	6
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Travis McLaughlin	
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Henry M. Anderson Jr.	
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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
P-1	Color Photograph		38
P-2	Floor Plan Diagram		38

1 OCTOBER 8, 2014

2 (WHEREAS this matter was scheduled for a post-conviction
3 relief hearing, the applicant appeared along with his
4 counsel of record. The hearing began at 11:32 a.m.)

5 THE COURT: Mr. Bailey, I always appreciate it when
6 attorneys go to the trouble of doing what you did with the
7 amended post-conviction relief thing.

8 MR. BAILEY: Oh, yes, sir, Your Honor.

9 THE COURT: Thank you, sir.

10 (Whereupon, there is a pause in the proceedings.)

11 MR. HUNTER: Your Honor, I think we're ready whenever you
12 are.

13 THE COURT: I am ready, Mr. Hunter. And this is Mr.
14 McLaughlin's case?

15 MR. HUNTER: Yes, sir. May it please the Court.

16 THE COURT: Yes, sir.

17 MR. HUNTER: This is Travis McLaughlin versus the State
18 of South Carolina, 2012-CP-33-231. Mr. McLaughlin is
19 presently confined in SCDC pursuant to orders of commitment
20 from the Marion County Clerk of Court. He was indicted the
21 May 2010 term of the Marion County Grand Jury for murder and
22 possession of a weapon during a violent crime. He was
23 represented by Hank Anderson.

24 On December 2nd, 2011, Mr. McLaughlin pled guilty and was
25 sentenced by the Honorable William H. Seals to 25 years'

1 imprisonment. He didn't -- he did not appeal his plea or his
2 sentence, and he filed this application for post-conviction
3 relief on March 9th, 2012. He's represented here today by Mr.
4 Bailey.

5 THE COURT: All right. Mr. Bailey?

6 MR. BAILEY: Thank you, Your Honor. May it please the
7 Court.

8 THE COURT: Yes, sir.

9 MR. BAILEY: Judge, I would waive any opening statement
10 on behalf of Mr. McLaughlin --

11 THE COURT: Okay.

12 MR. BAILEY: -- and call my first witness as the Court
13 allows.

14 THE COURT: All right, sir. You can call your first
15 witness, please, sir.

16 MR. BAILEY: At this time, Your Honor, we would call Don
17 Girndt to the stand.

18 THE COURT: Okay. And how do you spell his last name?

19 MR. BAILEY: G-i-r-n-d-t.

20 THE COURT: Okay. And you said Don?

21 THE CLERK: Please step up to the Bible. Place your left
22 hand on the Bible and raise your right hand. Do you swear or
23 affirm that the testimony you are about to give is the truth,
24 the whole truth, and nothing but the truth, so help you God?

25 THE WITNESS: I do.

DON GIRNDT - DIRECT BY MR. BAILEY

1 THE CLERK: Please take your seat and state your name for
2 the record.

3 THE WITNESS: Donald C. Girndt. Last name is spelled G-
4 i-r-n-d-t.

5 THE COURT: All right. Your witness, Mr. Bailey.

6 MR. BAILEY: Thank you, Your Honor. May it please the
7 Court.

8 THE COURT: Yes, sir.

9 DON GIRNDT, being first duly sworn,
10 testifies as follows:

11 DIRECT EXAMINATION

12 BY MR. BAILEY:

13 Q: Mr. Girndt, can you please tell the Court what kind of
14 business you are in currently?

15 A: I'm self-employed as a forensic consultant in the areas
16 of fingerprint identification, footwear identification, crime
17 scene analysis, blood stain pattern interpretation, and
18 evidence collection and preservation.

19 Q: And where did you go to college, Mr. Girndt?

20 A: I attended the University of South Carolina.

21 Q: And when did you graduate college?

22 A: Associate's degree in 1975 and a bachelor's degree in
23 1977.

24 Q: Okay. Do you have any other degrees besides the
25 bachelor's degree?

DON GIRNDT - DIRECT BY MR. BAILEY

1 A: No.

2 Q: All right. Do you have any type of special
3 certifications that you've received?

4 A: Yes. I'm a certified crime scene analyst for the state
5 of South Carolina, and I've also testified in all of these
6 areas that I've mentioned before.

7 Q: Okay.

8 A: And as an expert in South Carolina, North Carolina,
9 Maryland, Georgia, and in federal district court.

10 Q: Okay. And all of -- any of those times that you've
11 testified, you were qualified as an expert?

12 A: Yes, I was.

13 Q: Okay. And can you give us just a brief summation of your
14 work history?

15 A: Yes. As I stated, I'm self-employed as a forensic
16 consultant, and I also at this time work part-time with the
17 South Carolina -- University of South Carolina Division of Law
18 Enforcement Safety as an automated fingerprint identification
19 operator and their fingerprint analyst. Prior to that, I was
20 with the State Law Enforcement Division as a crime scene
21 analyst working with the crime scene unit from -- that was
22 from 1985 until 1994. Prior to that, I was with the Richland
23 County Sheriff's Department with the warrant -- fugitive
24 warrant division. Prior to that, the Lexington County
25 Sheriff's Department. Prior to that, SLED. And prior to

DON GIRNDT - DIRECT BY MR. BAILEY

1 that, I was a sergeant in the Marine Corps.

2 Q: Okay.

3 MR. BAILEY: Your Honor, at this time, we have brought
4 Mr. Girndt in as an expert witness in crime scene -- crime
5 scene -- as a crime scene analyst and also for purposes of
6 evidence collection, and we would offer him as an expert in
7 those two areas.

8 THE COURT: All right. Mr. Hunter, any questions you
9 have of this witness?

10 MR. HUNTER: No, Your Honor. I wouldn't object to him
11 being qualified as an expert.

12 THE COURT: Okay. He is so noted in the record as an
13 expert.

14 MR. BAILEY: Thank you, Your Honor.

15 THE COURT: Thank you.

16 BY MR. BAILEY:

17 Q: Mr. Girndt, with regards to crime scene analysis, can you
18 kind of give us an idea of what that is and what it entails?

19 A: A crime -- as a crime scene analyst, what I do is I
20 gather all the information that's available, such as incident
21 reports, autopsy reports, crime scene photos, autopsy photos,
22 statements, anything that's pertinent to the crime scene, a
23 list of evidence that were collected, laboratory reports, that
24 sort of thing, in an attempt to reconstruct or get a better
25 idea of what may have -- may or may not have happened at a

DON GIRNDT - DIRECT BY MR. BAILEY

1 scene.

2 Q: Okay. And do you have experience as a crime scene
3 analyst in murder-related cases?

4 A: Oh, yes.

5 Q: Okay. Can you approximate for us how many times you've
6 been retained or investigated a homicide-type crime?

7 A: All -- in twenty years?

8 Q: Just a ballpark figure for us.

9 A: Several hundred.

10 Q: Now, how about evidence collection and preservation? Can
11 you give us a brief summation as to what that is and what it
12 entails?

13 A: Yes. Usually, the first part of evidence collection and
14 preservation involves photography. What we try to do is
15 photograph everything as it was found and then, depending on
16 what kind of evidence it is, it depends on the type of -- it
17 depends on the way it's collected, of course. Body fluids
18 would be collected maybe using swabs and saline solution.
19 Bullets may be put into envelopes so that they're not damaged.
20 Guns would be suspended in cardboard boxes. It just depends
21 on what it is. Wet clothing would be put in paper bags so it
22 wouldn't putrefy, that sort of thing.

23 Q: In preparation of your testimony here today, you received
24 and reviewed a number of documents that I've sent up to you in
25 Columbia; correct?

DON GIRNDT - DIRECT BY MR. BAILEY

1 A: Yes.

2 Q: Some of those include reports and diagrams from SLED?

3 A: Yes.

4 Q: And I've also reviewed with you some photographs that
5 we've received from Mr. Anderson?

6 A: Yes.

7 Q: And those photographs would include from the crime scene,
8 the victim, those types of photographs?

9 A: There were a limited number, but yes.

10 Q: Okay. Before we get into the specifics of your
11 investigation and your opinions, the records and photographs
12 that you reviewed in support of this case -- would that
13 support a theory of a struggle between Mr. McLaughlin and Mr.
14 Harps, the victim?

15 A: Yes, I believe it would.

16 Q: Okay. Now, what I'm going to show you, Mr. Girndt, is
17 what has been marked as Plaintiff's Exhibit 2 for
18 identification purposes. I'm going to ask you -- have you had
19 the opportunity to review that document prior to today?

20 A: Yes.

21 Q: Of all the materials that you reviewed, would this be the
22 most accurate depiction of the crime scene itself?

23 A: Well, of course, photographs would be the most accurate
24 depiction. This is a drawing by the crime scene officer who
25 was there from SLED. So, yes, this does depict the -- the

DON GIRNDT - DIRECT BY MR. BAILEY

1 crime scene.

2 MR. HUNTER: And, Your Honor, I would object to the
3 question. Mr. Girndt wouldn't know what the crime scene
4 looked like at the time of the crime.

5 THE COURT: Okay. Well, I think the question is -- is --
6 is that -- is that an accurate depiction of the crime scene?
7 Is that what your question is?

8 MR. BAILEY: Well, I mean based on the information that
9 we've received from --

10 THE COURT: Okay.

11 MR. BAILEY: -- the discoverable material, that's all
12 we've got, Judge.

13 THE COURT: Okay. Yeah. Well, I think your question was
14 something to the effect of most accurate.

15 MR. BAILEY: Yeah, from -- from the material that we
16 reviewed.

17 THE COURT: So that part of it I will object to and we'll
18 go forward. I mean I will grant your objection to that part
19 of the question and go forward otherwise.

20 BY MR. BAILEY:

21 Q: Mr. Girndt, based on the materials you reviewed,
22 including that diagram by SLED, can you give us an idea of the
23 layout of the apartment where this took place?

24 A: Yes. It appears to have a living room/kitchen combined
25 area as you enter, and to the left would be a bedroom with an

DON GIRNDT - DIRECT BY MR. BAILEY

1 adjoining bath and tub.

2 Q: A very confined area that we're dealing with; correct?

3 A: Yes. There are no dimensions on here, but yes, it
4 appears to be limited.

5 Q: Okay. Based upon the materials that you've reviewed in
6 connection with this case, can you give us an idea of what
7 leads you to believe that there was a struggle between Mr.
8 McLaughlin and Mr. Harps on the night of the shooting?

9 A: Well, there are a number of things. One would be the
10 autopsy report, which indicates that the victim, Mr. Harps,
11 had a laceration on his right index finger which for most
12 people, if you would be right-handed, that would be your
13 trigger finger. And my understanding is that there was a
14 struggle over the gun and I think that would be consistent
15 with trying to remove the gun from somebody's hand if they
16 were the -- if they were the ones who were holding the gun.

17 Also, he had a number of -- a number of bruises on his
18 right arm and the back of his right hand, and I think that's
19 probably consistent with fighting over a gun.

20 And the other thing would be that there would be -- two
21 projectiles were recovered from the crime scene. One was
22 found under the body in an undamaged condition, and another
23 was found in the kitchen cabinet. So both of these appeared
24 they didn't hit the victim. The victim was only hit one time,
25 and it appeared that these would be wild shots, which I think

DON GIRNDT - DIRECT BY MR. BAILEY

1 that would be in accordance or consistent with maybe
2 struggling over a gun and the gun going off.

3 And then the last thing would be that Mr. Harps actually
4 ended up on the floor, which is where he was shot, and that is
5 consistent with what's referred to as a shored-up wound, which
6 means he was probably shot while he was on the floor. The
7 bullet went in one side of his head and didn't have enough
8 energy to go out the other side due to the head being on the
9 floor. So all those things are consistent with -- with a
10 struggle.

11 Q: Okay. Now, what I want to talk to you about next, Mr.
12 Girndt, is the evidence collection aspect of this case and,
13 specifically, gunshot residue. Do you have knowledge on how
14 GSR kits are collected?

15 A: Yes.

16 Q: And I understand that you're not a GSR -- gunshot residue
17 expert. I just want to talk to you about the collection of
18 that. What is the appropriate measures to be taken at a crime
19 scene to protect gunshot residue?

20 A: Well, normally you wouldn't collect the gunshot residue
21 at the crime scene. You would have the body removed to the
22 morgue, but before you removed it, you would take -- there are
23 small paper bags. Put one bag over each hand, and normally we
24 would tape the bags onto the hands. And what that does is --
25 gunshot residue is very fragile. It will float away in a

DON GIRNDT - DIRECT BY MR. BAILEY

1 breeze or it will wash off, and the bags preserve it. And
2 also if it falls off in the bag, the bags themselves can be
3 analyzed. And it also helps preserve any -- any trace
4 evidence that might be on the hands, such as hairs or blood or
5 fiber, things like that.

6 Q: Okay.

7 A: That's just a standard procedure to bag the hands.

8 Q: Okay. And, Mr. Girndt, in the materials that you
9 reviewed for your testimony here today, is there any
10 documentation or photographs that would indicate that any of
11 that was performed on Mr. Harps?

12 A: There was no indication that the hands were bagged, no,
13 and no mention of it that I saw.

14 MR. BAILEY: Your Honor, I think that that would be all
15 the questions I have for Mr. Girndt this morning.

16 THE COURT: All right. Mr. Hunter, any questions on
17 cross?

18 MR. HUNTER: Just very briefly, Your Honor.

19 THE COURT: Okay.

20 CROSS EXAMINATION

21 BY MR. HUNTER:

22 Q: Mr. Girndt, did -- in your investigation of this case,
23 did you actually go to the crime scene?

24 A: No, I did not.

25 Q: Okay. So is it fair to say that your testimony as far as

DON GIRNDT - CROSS BY MR. HUNTER

1 your opinion of the way that the crime scene played out as far
2 as being a small, confined area and -- and, you know,
3 everything being consistent with a struggle, that's solely
4 based on the documents that you've been given to review in
5 this case?

6 A: Yes, sir.

7 Q: Okay. And are -- are you able to tell from the photos
8 you reviewed whether -- I know you mentioned the cut on the
9 victim's hand. Could you tell from that picture whether that
10 cut, you know, was recent and had it happened that day or can
11 you say definitively that that cut only came from a struggle
12 with the defendant?

13 A: I can't say that it only came from a struggle with the
14 defendant, but Plaintiff's Exhibit 1 is a photograph showing
15 the cut with fresh blood on it. So I assume that it was
16 related to that incident.

17 Q: Okay. But you don't know for sure?

18 A: No, I don't.

19 Q: Okay. Now, can you tell from the photographs you have
20 reviewed whether or not the bruises on the victim -- can you
21 definitively say they came from that struggle?

22 A: No, I can't, but they're mentioned in the autopsy; so I
23 assume that they associated those with the incident.

24 Q: Okay. And now I know you mentioned that there was no
25 indication that the victim's hands were bagged in this case?

DON GIRNDT - CROSS BY MR. HUNTER

1 A: That's correct.

2 Q: But do you have any indication that the victim's hands
3 were not bagged?

4 A: Well, they have photographs showing the one hand in the
5 body bag and it doesn't have a bag on it, and normally the --
6 the pathologist will mention it. When the body is received,
7 they'll say received with bags on the hands, that sort of
8 thing. That wasn't in there. And the agent mentioned that
9 they went and took what we call MCP, which is major case
10 prints, which means they inked them up. They got the
11 fingerprints and palm prints and they don't mention that
12 either.

13 Q: Okay.

14 MR. HUNTER: I think that's all the questions I have,
15 Your Honor.

16 THE COURT: All right. Anything on redirect?

17 MR. BAILEY: Nothing from the applicant, Your Honor.

18 THE COURT: All right. Thank you, sir. I appreciate it.

19 THE WITNESS: Thank you.

20 MR. BAILEY: The Court's indulgence for one moment, Your
21 Honor.

22 THE COURT: Take your time, Mr. Bailey.

23 MR. BAILEY: Your Honor, at this time --

24 THE COURT: Yes, sir.

25 MR. BAILEY: We would call the applicant, Travis

TRAVIS MCLAUGHLIN - DIRECT BY MR. BAILEY

1 McLaughlin, to the stand.

2 THE COURT: Mr. McLaughlin.

3 THE CLERK: Step up to the Bible. Place your left hand
4 on the Bible and raise your right hand, please. Do you swear
5 or affirm that the testimony you're about to give is the
6 truth, the whole truth, and nothing but the truth, so help you
7 God?

8 THE PLAINTIFF: Yes, ma'am.

9 THE CLERK: Please take a seat and state your name for
10 the record.

11 THE PLAINTIFF: Travis McLaughlin.

12 THE COURT: All right. Mr. Bailey, he's your witness.

13 MR. BAILEY: Thank you, Your Honor. May it please the
14 Court.

15 THE COURT: Yes, sir.

16 TRAVIS MCLAUGHLIN, being first duly
17 sworn, testifies as follows:

18 DIRECT EXAMINATION

19 BY MR. BAILEY:

20 Q: Mr. McLaughlin, you are currently incarcerated in the
21 South Carolina Department of Corrections; correct?

22 A: Yes, sir.

23 Q: And are you incarcerated pursuant to a guilty verdict at
24 a trial or as a result of a guilty plea?

25 A: As a guilty plea -- result of a guilty plea.

TRAVIS MCLAUGHLIN - DIRECT BY MR. BAILEY

1 Q: Okay. And what county were you convicted in, Mr.
2 McLaughlin?

3 A: Marion County.

4 Q: Okay. And what is the crime that you were convicted of
5 in Marion County?

6 A: Murder.

7 Q: Okay.

8 A: I was convicted of voluntary manslaughter, but I was
9 charged with murder.

10 Q: Okay. Thank you, Mr. McLaughlin. And what sentence did
11 you receive by the Court?

12 A: A 25-year sentence.

13 Q: Okay. During the course of your charges pending in
14 Marion County, were you represented by Mr. Anderson?

15 A: Yes, sir.

16 Q: Okay. And is Mr. Anderson present in the courtroom
17 today?

18 A: Yes, sir.

19 Q: Okay. And that is the attorney that you had represent
20 you throughout the entirety of your case?

21 A: Yes, sir.

22 Q: Did you retain Mr. Anderson or was he appointed to you?

23 A: He was appointed.

24 Q: Okay. Do you recall the approximate date of when this
25 shooting took place?

TRAVIS MCLAUGHLIN - DIRECT BY MR. BAILEY

1 A: December the 7th of 2009.

2 Q: Okay. Do you recall when you were arrested?

3 A: I was arrested the next day on December the 8th.

4 Q: Of 2009?

5 A: 2009. Yes, sir.

6 Q: Okay. And do you recall when you pled guilty in Marion
7 County General Sessions?

8 A: I pleaded guilty in Marion County on December the 1st of
9 2011.

10 Q: Okay.

11 A: December the 2nd I mean.

12 Q: Approximately two years later; correct?

13 A: Yes, sir.

14 Q: Okay. Did you ever make a bond during that two-year
15 period of time?

16 A: No, sir.

17 Q: Okay. Were you incarcerated at the Marion County
18 Detention Center for that entire two-year period?

19 A: Yes, sir.

20 Q: Okay. During that two-year period of time, Mr.
21 McLaughlin, how many times did you have an opportunity to sit
22 down and meet with Mr. Anderson to discuss your case?

23 A: One. One time.

24 Q: Okay. Can you please explain to the Court how that
25 meeting took place?

TRAVIS MCLAUGHLIN - DIRECT BY MR. BAILEY

1 A: Well, every three months or so, they'd come around with a
2 guilty plea. That's where all the lawyers and the solicitors
3 come out to the -- to the jailhouse, but you can only see them
4 if you -- if you sign the guilty plea. So I signed the guilty
5 plea just to speak with my attorney and tell him that I wanted
6 to discuss my case with him. And so --

7 Q: Let me ask you real quick, Mr. McLaughlin, before you
8 continue -- when did this one meeting between you and Mr.
9 Anderson take place? Do you recall that?

10 A: Yes, sir.

11 Q: Can you tell that to the Court?

12 A: Approximately 14 months after I was arrested. It was in
13 February of 2011, the second week of General Sessions court.

14 Q: Okay. And just so the record is clear, did you meet with
15 Mr. Anderson at the detention center or were you transported
16 to the courthouse for a meeting?

17 A: I met with him at the detention center.

18 Q: Okay. And, Mr. McLaughlin, please go ahead and continue
19 and inform the Court about that first meeting you had with Mr.
20 Anderson.

21 A: Well, when I met with Mr. Anderson, I explained to him
22 that me and a friend of mine, which was Mr. Harps, we had --
23 we was uptown at a place in Mullins called the Block, and we
24 had been together all day hanging out, drinking, and so late
25 that afternoon, Mr. Harps asked me to drive him home, you

TRAVIS MCLAUGHLIN - DIRECT BY MR. BAILEY

1 know, which I didn't really want to, but it was getting dark
2 and it was cold. So I took my chances on driving him home,
3 and upon arriving at his apartment, he invited me inside. So
4 we went and sat down and had a few drinks, talking.

5 Then eventually it just turned into an argument. We
6 started arguing. I can't really tell you what the argument
7 was about. And during the argument, he pulled on his --
8 pulled his gun on me and threatened to shoot me. So my first
9 thought was to defend myself; so I grabbed the gun and tried
10 to wrestle the gun away from him. Now, this gun starts going
11 off. Now, I'm thinking I'm going to die. So as I rips the
12 gun away from him and gets ready to back away, he flinches and
13 I shoot.

14 And after explaining this to counsel, he told me that he
15 would get -- he would investigate and get back in touch with
16 me concerning this matter, but he never made any attempts to
17 come back and visit me. And the next time that I saw him, it
18 was December the 1st of 2011, and he explained to me that --
19 that the State didn't have no plea and that they wanted me to
20 plead to a mandatory 30 years. So I told him I would rather
21 go to trial.

22 So I went back to the county jail and maybe a half an
23 hour or a hour later, he called me back up there and told me
24 that the State has recon -- reconsidered their plea offer and
25 was going to allow me to plead from an open plea to two to 30.

TRAVIS MCLAUGHLIN - DIRECT BY MR. BAILEY

1 Right? And he told me that I didn't have -- that he couldn't
2 win self-defense, that I had no argument for involuntary
3 manslaughter, and that if I went to trial, a jury was going to
4 find me guilty. So I felt that I had no other alternative but
5 to accept this plea or go to trial and lose.

6 Q: Okay. And let me just ask you a few more follow-up
7 specific questions. Okay, Mr. McLaughlin? You were
8 originally charged with murder; correct?

9 A: Yes, sir.

10 Q: Did Mr. Anderson explain to you what the State would be
11 required to prove to convict you of murder?

12 A: I really don't recall.

13 Q: Okay. How about when y'all discussed pleading guilty to
14 involuntary manslaughter? Did Mr. Anderson explain to you
15 what involuntary manslaughter was and what the State had to
16 prove to convict you of that?

17 A: He -- he explained to me that voluntary manslaughter was
18 in the heat of passion and -- and things of that nature.

19 Q: Did he explain to you what involuntary manslaughter was?

20 A: No. He never explained to me what involuntary
21 manslaughter was.

22 Q: Okay. Did you guys review any defenses that you may be
23 able to present to the Court and the jury if you were to have
24 proceeded to trial?

25 A: There was no defense. He's never -- he never informed me

TRAVIS MCLAUGHLIN - DIRECT BY MR. BAILEY

- 1 of a -- of a defense. He told I had -- I had no defense.
- 2 Q: Okay. So you and Mr. Anderson never discussed presenting
- 3 a self-defense argument at trial?
- 4 A: All we discussed was pleading guilty.
- 5 Q: Okay. When you were arrested back in 2009, Mr.
- 6 McLaughlin, were you arrested by the Sheriff's Department or
- 7 the Mullins Police Department?
- 8 A: I was arrested by SLED.
- 9 Q: You were arrested by SLED?
- 10 A: Yes, sir.
- 11 Q: Did you give a statement to law enforcement?
- 12 A: Yes, sir.
- 13 Q: Did you tell law enforcement about the struggle that
- 14 occurred between you and Mr. Harps?
- 15 A: Yes, I did.
- 16 Q: Okay. Did Mr. Anderson provide you with a copy of all of
- 17 your discoverable material?
- 18 A: Yes, sir.
- 19 Q: That would include the -- the documents he received from
- 20 law enforcement in connection with their investigation?
- 21 A: Yes.
- 22 Q: And did he review with you any photographs that he
- 23 received from the Solicitor's Office and law enforcement?
- 24 A: I don't recall.
- 25 Q: Did Mr. Anderson discuss with you about the possibility

TRAVIS MCLAUGHLIN - DIRECT BY MR. BAILEY

1 of obtaining some type of expert to come into court to testify
2 on your behalf?

3 A: No, sir.

4 Q: You were present in the courtroom when Mr. Girndt
5 testified today; correct?

6 A: Yes, sir.

7 Q: And you understood what his testimony was; correct?

8 A: Yes, sir.

9 Q: Okay. Had you had the benefit of that information prior
10 to you entering this guilty plea, would you have still pled
11 guilty to the voluntary manslaughter charge?

12 A: No, sir.

13 Q: What would you have done, Mr. McLaughlin?

14 A: I would have insisted on going to trial.

15 Q: Okay. Now, I'm going to ask you just a couple of
16 questions in closing. You pled guilty; correct?

17 A: Yes, sir.

18 Q: Okay. And the judge asked you during the course of your
19 guilty plea if you were satisfied with the services of Mr.
20 Anderson?

21 A: Yes, sir.

22 Q: How did you respond to that question?

23 A: I told him yes because I was informed of Mr. Anderson the
24 day before that I would have to -- that I was going to be
25 asked these questions by the judge and I would have to answer

TRAVIS MCLAUGHLIN - DIRECT BY MR. BAILEY

1 them accordingly in order to get him to accept my plea. If
2 not, I was going to trial.

3 Q: Okay. Were you asked by the Court at your guilty plea
4 hearing if you were entering the guilty plea freely and
5 voluntarily?

6 A: Yes, sir.

7 Q: And at the time you entered your guilty plea, was it
8 freely and voluntarily entered into?

9 A: No, sir. It was on the advice of counsel.

10 Q: Okay. And you -- you heard Mr. Anderson's position at
11 your guilty plea hearing; correct?

12 A: Yes, sir.

13 Q: And he spoke to Judge Seals on your behalf about the
14 facts of the case. Do you recall that?

15 A: Yes, sir.

16 Q: Do you remember him informing the Court that there was
17 evidence of a struggle?

18 A: Yes, sir.

19 Q: Okay. Did you and Mr. Anderson ever discuss any of that
20 factual basis prior to your guilty plea?

21 A: Well, we discussed that there was a struggle, but we
22 never discussed that -- that the State couldn't prove murder.
23 We never discussed that. I only -- I was only informed of
24 that until after I accepted the plea.

25 Q: Okay.

TRAVIS MCLAUGHLIN - DIRECT BY MR. BAILEY

1 A: But had I know the State had no evidence to find me
2 guilty of murder, then I would not have accepted that plea.

3 Q: Okay. Mr. McLaughlin, I appreciate your testimony this
4 morning. Please answer any questions that Mr. Hunter may have
5 for you. Okay?

6 A: Yes, sir.

7 THE COURT: All right. Mr. Hunter, your witness.

8 CROSS EXAMINATION

9 BY MR. HUNTER:

10 Q: Good morning, Mr. McLaughlin.

11 A: Good morning.

12 Q: Let me see. So I believe you spoke just a minute ago
13 about when you pled guilty and told the judge that you were
14 satisfied with Mr. Anderson, that you were just pleading
15 guilty -- or you just told the judge that because Mr. Anderson
16 told you to?

17 A: Yeah. He advised me that that's what I had to do in
18 order for the jury to accept my plea.

19 Q: Okay. So at that time, were you not happy with Mr.
20 Anderson?

21 A: Well, I can't say I was or wasn't because I didn't see
22 him but one time.

23 Q: Okay. So your testimony is that you only saw him one
24 time?

25 A: One time. Once.

TRAVIS MCLAUGHLIN - CROSS BY MR. HUNTER

1 Q: Okay. Now, do you recall the judge telling you that you
2 were pleading guilty to voluntary manslaughter and it carried
3 between two and 30 years in prison?
4 A: Yes, sir.
5 Q: And the judge told you he could give you anything in that
6 range? You could get two years or you could get thirty?
7 A: Get thirty. Yes, sir.
8 Q: Okay. Do you recall the judge telling you that by
9 pleading guilty you were giving up your right to a jury trial?
10 A: Yes, sir.
11 Q: And that you were giving up your right to challenge the
12 evidence against you?
13 A: Yes, sir.
14 Q: Okay. And do you recall the judge asking you if you had
15 any questions about that and you told him no?
16 A: Yes.
17 Q: Okay. And you told him that you did want to give up
18 those rights and you wanted to plead guilty?
19 A: Yes.
20 Q: Okay. And you told the judge that no one had promised
21 you anything in exchange for your guilty plea; right?
22 A: That's right.
23 Q: So you knew -- when you were going to plead guilty, you
24 knew that whatever the judge gave you, that's what you were
25 going to get?

TRAVIS MCLAUGHLIN - CROSS BY MR. HUNTER

1 A: Unfortunately.

2 Q: Okay. Now, let's see.

3 MR. HUNTER: I beg the Court's indulgence just a moment,
4 Your Honor.

5 THE COURT: Yes, sir.

6 BY MR. HUNTER:

7 Q: I believe you testified a few minutes ago that when you
8 told the -- I guess the people at the jail that you wanted to
9 speak with your attorney that they said you had to sign a
10 guilty plea before you could speak with him? Is that what you
11 said?

12 A: No. That's not what I said. I said in order to see my
13 attorney, I had to sign a guilty plea. That's the only way I
14 could go out there and meet with him.

15 Q: Okay. So you're saying -- was this at the jail or was
16 this --

17 A: Yeah. This was at the jail.

18 Q: So you're saying the people working at the jail told you
19 you couldn't see your attorney?

20 A: No. The people didn't tell me nothing. I'm saying every
21 three months or so they come around with a guilty plea list.
22 Right? In order -- those -- for those who want to plead
23 guilty to go out there and meet with the solicitor and the
24 lawyer. So I signed the guilty plea just to go out there so I
25 could talk to my lawyer.

TRAVIS MCLAUGHLIN - CROSS BY MR. HUNTER

1 Q: Okay. Okay. Now, up until that point, had you ever
2 spoken with Mr. Hank -- Mr. Anderson?

3 A: No, sir.

4 Q: Okay. So you -- you -- did you -- were you aware that he
5 was your attorney?

6 A: I believe I was informed by Ms. Sloan, yes.

7 Q: Okay. Do you remember the judge asking if you were
8 guilty of this crime and you told him you were -- that you
9 were guilty of manslaughter?

10 A: Yes. I had to say I was guilty in order to get him to
11 accept my plea.

12 Q: Right.

13 A: Yes.

14 Q: So now you're saying that you're not guilty?

15 A: Not of what they got me charged with, no, sir.

16 Q: Okay. So is it fair to say that you told the judge that
17 and it was not entirely the truth?

18 A: But it was on the advice of my counsel.

19 Q: Okay. All right. So you lied to the judge because your
20 lawyer told you to, basically?

21 A: Well, I didn't lie to him. I just told him that just so
22 he would accept my plea.

23 Q: Okay. Thank you, Mr. McLaughlin.

24 MR. HUNTER: I don't have any further questions, Judge.

25 THE COURT: Anything on redirect?

HENRY M. ANDERSON JR. - DIRECT BY MR. HUNTER

1 MR. BAILEY: Nothing further, Your Honor.

2 THE COURT: All right. Thank you, Mr. McLaughlin. You
3 may step down. Thank you, sir. Your next witness, Mr.
4 Bailey.

5 MR. BAILEY: At this time, Your Honor, the applicant
6 rests.

7 THE COURT: All right. Mr. Hunter, any witnesses?

8 MR. HUNTER: Your Honor, the State would call Mr.
9 Anderson.

10 THE COURT: All right. Mr. Anderson, come on down.

11 THE CLERK: Do you swear or affirm that the testimony you
12 are about to give is the truth, the whole truth, and nothing
13 but the truth, so help you God?

14 THE WITNESS: I do.

15 THE CLERK: Please take your seat and state your name for
16 the record.

17 THE WITNESS: Henry Morris Anderson, Jr.

18 THE COURT: All right. Mr. Hunter, your witness.

19 MR. HUNTER: Okay. I beg the Court's indulgence for just
20 a second.

21 THE COURT: Oh, yes, sir. Sorry.

22 HENRY M. ANDERSON JR., being first duly
23 sworn, testifies as follows?

24 DIRECT EXAMINATION

25 BY MR. HUNTER:

HENRY M. ANDERSON JR. - DIRECT BY MR. HUNTER

- 1 Q: Good morning, Mr. Anderson.
- 2 A: Good morning.
- 3 Q: Mr. Anderson, how long have you been practicing law?
- 4 A: Twenty-three years I believe.
- 5 Q: Okay. And in your 23 years of practice, how much would
- 6 you say is devoted to criminal law -- criminal defense?
- 7 A: The vast majority of it.
- 8 Q: Okay. And were you appointed or retained on this case?
- 9 A: I was appointed.
- 10 Q: Okay. And was this when you were doing contract work or
- 11 was --
- 12 A: Yes, sir, with the Public Defender's Office in Marion.
- 13 Q: Okay. Do you recall how many times you met with Mr.
- 14 McLaughlin in this case?
- 15 A: Yes, sir. According to my notes, I met with him on four
- 16 different occasions. I may have met with him more than that.
- 17 Q: Okay. And were those meetings at the jail or the
- 18 courthouse or do you recall?
- 19 A: I -- the ones -- my notes reflect they were always at the
- 20 jail.
- 21 Q: Okay. Now, did you file all the Rule 5 and Brady motions
- 22 in this case?
- 23 A: Yes, sir.
- 24 Q: Did you have any trouble getting discovery?
- 25 A: No, sir.

HENRY M. ANDERSON JR. - DIRECT BY MR. HUNTER

1 Q: Did you review the discovery that you received with Mr.
2 McLaughlin?

3 A: Yes, sir.

4 Q: Okay. Do you recall receiving a statement that was given
5 to SLED agents when he was arrested?

6 A: Yes, sir.

7 Q: Okay. So you went over that with him?

8 A: Yes, sir. Actually, I think he gave it to Chief Davis.

9 Q: Okay.

10 A: Who I think was with the Mullins Police Department at the
11 time.

12 Q: Okay. Did you discuss Mr. McLaughlin's version of the
13 facts in this case?

14 A: Yes, sir.

15 Q: Okay. And did you discuss the elements of murder,
16 voluntary and involuntary manslaughter with him?

17 A: Yes, sir, I did.

18 Q: Okay. Now, in discussing Mr. McLaughlin's version of the
19 facts of this case, did you prepare to go to trial?

20 A: Yes, sir, I did.

21 Q: Okay. And how -- would you just kind of briefly go
22 through the evidence that -- that the State had against Mr.
23 McLaughlin?

24 A: My notes reflect the first time I met with Mr. McLaughlin
25 was in March and, at that point in time, we didn't have all

HENRY M. ANDERSON JR. - DIRECT BY MR. HUNTER

1 the discovery, but one of the notes that I made was this is
2 not murder, there's no premeditation, there's no malice, and
3 that was based off of what he had told me. Of course, we went
4 over the autopsy photos. We went over the photos at the crime
5 scene. We talked about blood spatter and the angle of the
6 bullets. And basically anytime you try a case, you've got to
7 encompass everything, good facts and the bad facts.

8 He told me a couple things about the victim that I
9 investigated, but we couldn't ever prove. He told me the
10 victim was known to carry a gun. I couldn't get anybody to
11 back that up. He told me the victim had a violent prior
12 record. We got a copy of his prior record and there was
13 nothing on it except a DUI. He'd never even been charged with
14 anything. But the entire time I was preparing this case and
15 talking with Travis, we were preparing to go to trial.

16 Q: Did the Solicitor's Office offer you any -- or offer Mr.
17 McLaughlin any type of plea deal in this case?

18 A: They offered him a negotiated 30 years on manslaughter.

19 Q: Now, whose decision was it to plead guilty?

20 A: It was Travis'. I met with Travis, according to my
21 notes, November the 29th, 2011. I told Travis that we were
22 ready to go to trial. I was prepared to go to trial, but that
23 we had some problems with the case. I discussed those
24 problems with him. I concluded the meeting by asking him what
25 kind of pants he needed and what kind of shirt he needed and

HENRY M. ANDERSON JR. - DIRECT BY MR. HUNTER

1 what kind of shoes he needed so that we would be properly
2 dressed for the jury.

3 Q: Okay. Now, you said Mr. McLaughlin made the decision to
4 plead guilty. When did he make that decision? Do you recall?
5 Was it the day y'all were ready to go to trial or was it --

6 A: I do not know if it was the morning we were going to draw
7 the jury or if he had notified someone at the jail that he
8 wanted to plead guilty, but we did enter a plea of guilty.

9 Q: Did you agree with that? With --

10 A: I did.

11 Q: Okay.

12 A: I thought that if we'd have tried this case ten times, we
13 might have gotten involuntary once or twice. It might have
14 been murder once or twice. It probably would have been
15 voluntary most of the time.

16 Q: Did you think there was any need to bring in an expert in
17 this case?

18 A: I did not.

19 Q: So would you say that the evidence against Mr. McLaughlin
20 was fairly straightforward?

21 A: It was. I -- and to be honest with you, I think if you
22 have read what we said at the guilty plea, it followed in line
23 with a lot of what Mr. Girndt said.

24 Q: And so that brings me to my next question. You did at
25 the guilty plea go through some mitigation on behalf of Mr.

HENRY M. ANDERSON JR. - DIRECT BY MR. HUNTER

1 McLaughlin?

2 A: Yes, sir, I did.

3 Q: Okay.

4 A: We talked about the wounds to Travis. We talked about
5 the struggle over the gun. We talked about the injuries to
6 his hand. When I say his hand, the victim's hand. We talked
7 about wounds on the victim's forearms and his chest and his
8 face. We talked about the angle of the bullets at the house
9 indicating that there had been a struggle over the gun or at
10 least what we thought was a struggle over the gun. I thought
11 we covered all of that in our -- I guess our mitigation.

12 Q: Now, did you tell Mr. McLaughlin that he would have to
13 answer the judge's certain -- questions a certain way in order
14 for the judge to accept his plea?

15 A: No, sir. I mean I prepared a trial notebook. I had done
16 a lot of research on blood spatter. We were ready to try the
17 case.

18 Q: Okay. Did you ever -- did Mr. McLaughlin ever ask you to
19 try to get him a bond hearing?

20 A: I think we went up for a bond hearing and then he
21 withdrew his request while we were there. I think -- I think
22 we did that.

23 MR. HUNTER: I beg the Court's indulgence.

24 THE COURT: You can have it.

25 Q: This is my last question, Mr. -- Mr. Anderson. Do you --

HENRY M. ANDERSON JR. - DIRECT BY MR. HUNTER

1 are you aware of any practice at the detention center where in
2 order to speak to their attorney the inmates have to -- have
3 to say that they're going to plead guilty?

4 A: I do know that a lot of them will do that. They don't
5 want to plead guilty, but they will sign the list so that you
6 can talk. But I don't think that was the case with Travis,
7 and the reason I say that is there were letters addressed to
8 me at my Florence office, and I would write Travis back from
9 Florence telling him that, you know, when I came over there I
10 would talk to him.

11 Q: And you did review the photos with Mr. McLaughlin that
12 were in the file?

13 A: Yes, sir.

14 Q: Okay. Did you review the constitutional rights that Mr.
15 McLaughlin was giving up by pleading guilty?

16 A: Yes, sir. I don't think I did that at the jail, but I
17 would have done it before we entered the plea and before --
18 before we went before Judge Seals.

19 Q: Okay. So -- so, you know, you felt that he knew what was
20 happening and what was going -- what was going on when he went
21 to plead guilty? He knew what he was doing?

22 A: Yes, sir. But -- I mean yes, I do think he knew what he
23 was doing, but sometimes I think Travis gets confused over
24 language because he later sent me a letter saying I thought I
25 was pleading to manslaughter. I didn't know I was pleading to

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1 voluntary manslaughter. And then I had to write him back and
2 say they're the same thing.

3 Q: But you did go over that -- the different between those
4 before his plea?

5 A: Yes, sir.

6 Q: Okay.

7 MR. HUNTER: I don't have any further questions, Your
8 Honor.

9 THE COURT: Anything on cross-examination?

10 MR. BAILEY: Just briefly, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. BAILEY:

13 Q: I guess the first thing I need to do, Mr. Anderson, is
14 I've got -- marked two exhibits there for identification, and
15 let me ask you this first. I contacted you early on in my
16 representation of Mr. McLaughlin and asked that I obtain a
17 copy of your file?

18 A: Yes, sir.

19 Q: And you allowed me to make a complete copy of your entire
20 file?

21 A: Yes, sir.

22 Q: Okay. And you're not aware of anything that would have
23 gone missing out of your file by the time of representation
24 and me requesting it?

25 A: No, sir. I in no way, shape or form would think that you

HENRY M. ANDERSON JR. - CROSS BY MR. BAILEY

1 would ever do that.

2 Q: Okay. Now, Mr. Anderson, I've marked two exhibits here.
3 for identification. Do you recall seeing these exhibits in
4 your material that you obtained from the State?

5 A: Yes, sir.

6 MR. BAILEY: And, Your Honor, I would move those two
7 exhibits into evidence in this matter.

8 THE COURT: Okay. Any objection?

9 MR. HUNTER: Your Honor, I would just object based that
10 I've never seen them before today, but Mr. Anderson has
11 identified them.

12 THE COURT: Okay. I'm going to -- both of -- those are
13 Applicant's 1 and 2?

14 MR. BAILEY: They are, Your Honor.

15 THE COURT: And I don't know -- one of them is -- is the
16 photograph. Which is the photograph? Is that Number 2?

17 MR. BAILEY: Plaintiff's Number 1 is the photograph of
18 the victim's hand.

19 THE COURT: Okay. And --

20 MR. BAILEY: And Plaintiff's or Applicant's Number 2 is
21 the diagram by SLED.

22 THE COURT: Okay. They are in evidence. Thank you, sir.

23 BY MR. BAILEY:

24 Q: Mr. Anderson, you testified on direct that you
25 investigated some matters on behalf of Mr. McLaughlin related

HENRY M. ANDERSON JR. - CROSS BY MR. BAILEY

1 to the victim?

2 A: Yes, sir.

3 Q: Now, how did y'all investigate that? Did y'all hire an
4 investigator? Did you go out to Mullins and interview folks
5 yourself? How did you do that?

6 A: I did not hire an investigator. I did talk with law
7 enforcement. I -- Travis gave me a couple of names and I
8 tried to get in touch with them. And then as far as the
9 defendant's -- or -- excuse me -- the victim's record, I just
10 simply asked the solicitor to get me an NCIC on the victim.

11 Q: And I believe you testified on direct examination, Mr.
12 Anderson, that you had been preparing for trial in this matter
13 for quite some time before the guilty plea?

14 A: Yes, sir.

15 Q: Mr. Anderson, do you recall telling Judge Seals during
16 the guilty plea hearing that you were told this case would go
17 to trial in two weeks; so you began preparing for it?

18 A: Yes, sir.

19 Q: Okay. Is that when you began preparing the case for
20 trial was two weeks prior to the guilty plea?

21 A: Yes, sir.

22 Q: Okay.

23 MR. BAILEY: Your Honor, I think that would be all of the
24 questions I have for Mr. Anderson.

25 THE COURT: Thank you. Anything on redirect?

26

HENRY M. ANDERSON JR. - REDIRECT BY MR. HUNTER

1 MR. HUNTER: Briefly, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. HUNTER:

4 Q: Mr. Anderson, did -- did you have any doubt that you were
5 ready to go to trial in this case?

6 A: No, sir.

7 Q: Okay.

8 A: You can prepare -- I guess, absent of a death penalty
9 case, you can get anything ready in two weeks.

10 MR. HUNTER: No further questions, Your Honor. Thank
11 you, Mr. Anderson.

12 THE COURT: Anything on recross?

13 MR. BAILEY: Nothing from the applicant, Your Honor.

14 THE COURT: Thank you, Mr. Anderson. You may step down.
15 Does the State have any other witnesses?

16 MR. HUNTER: No, Your Honor. The State would rest.

17 THE COURT: All right. Gentlemen, what I'm going to do
18 is let me -- let me go back. I'll read over the transcript
19 and the records I have. I'm sorry. Mr. -- Mr. Bailey,
20 anything?

21 MR. BAILEY: Nothing else from the applicant, Your Honor.

22 THE COURT: All right. What I will do is let me go back.
23 I will read through the transcript and double check my notes
24 and get back with y'all with my decision.

25 MR. BAILEY: Thank you very much.

1

THE COURT: Thank y'all.

2

MR. HUNTER: Thank you, Your Honor.

3

(Whereupon, the proceedings end at 12:25 p.m.)

4

5

--- END REQUESTED TRANSCRIPT ---

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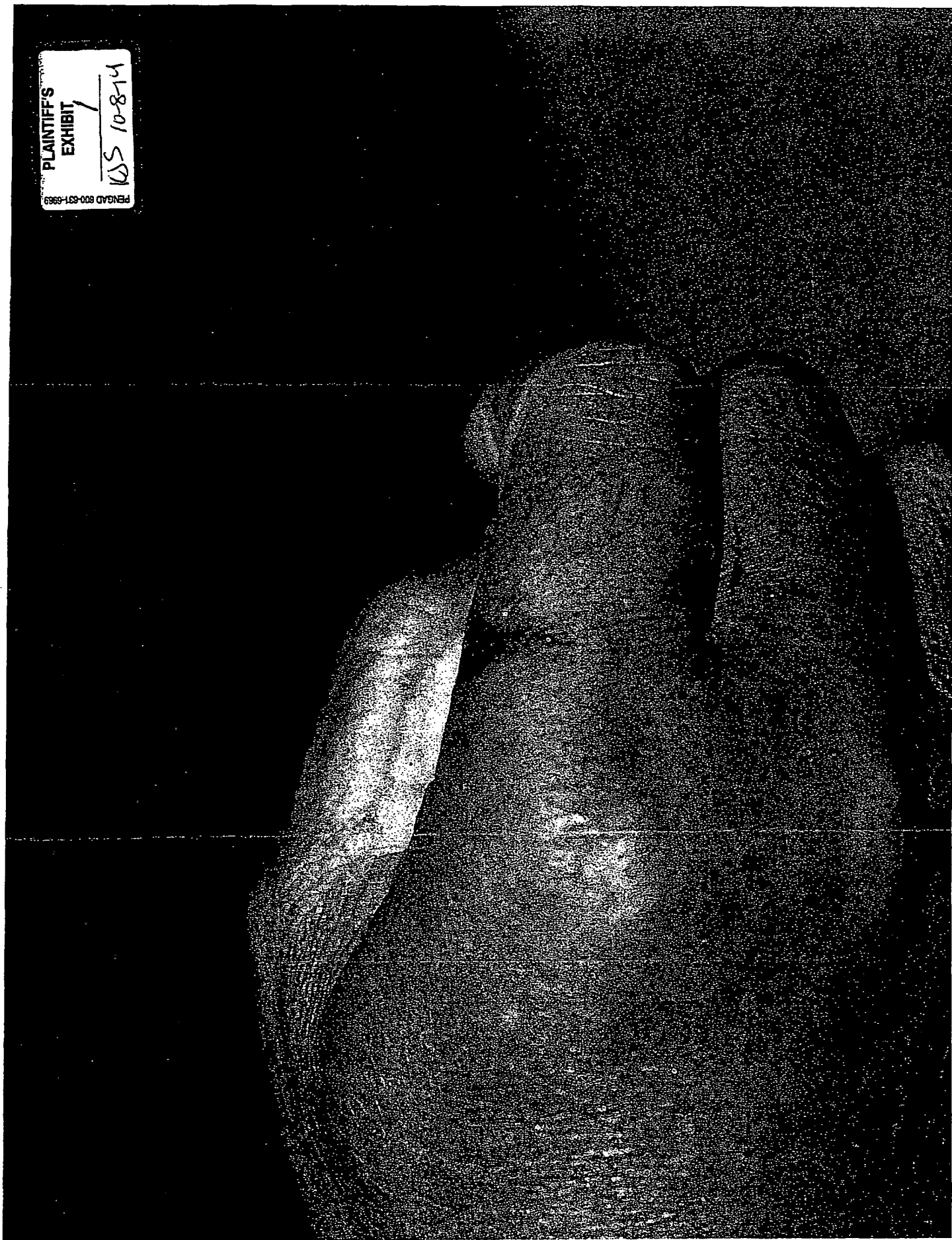
23

24

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1 STATE OF SOUTH CAROLINA)
 2) CERTIFICATE
 3 COUNTY OF FLORENCE)
 4
 5 I, the undersigned, Krystal J. Smith, Notary Public and
 6 Official Court Reporter for the Twelfth Judicial Circuit of
 7 the State of South Carolina, do hereby certify that the
 8 foregoing pages, numbered 1 through 41 constitute a true,
 9 accurate, and complete Transcript of Record of all the
 10 proceedings had and evidence introduced in the hearing of the
 11 above captioned case, relative to appeal, in the Court of
 12 Common Pleas for Florence County, South Carolina, on the 8th
 13 day of October, 2014.
 14 I do further certify that I am neither of kin, counsel,
 15 nor interest to any party hereto.
 16
 17 s/ Krystal J. Smith
 18 Court Reporter
 19
 20 Florence, South Carolina
 21 March 24, 2015
 22
 23
 24
 25

PLAINTIFF'S
EXHIBIT
7
KS 10-8-14
FENGAD 800-637-6969



L09-14606
120809 KD
3915 EAST HWY 76 Apt E5
Mallins, St.
Marion County
Marion CO death investigation

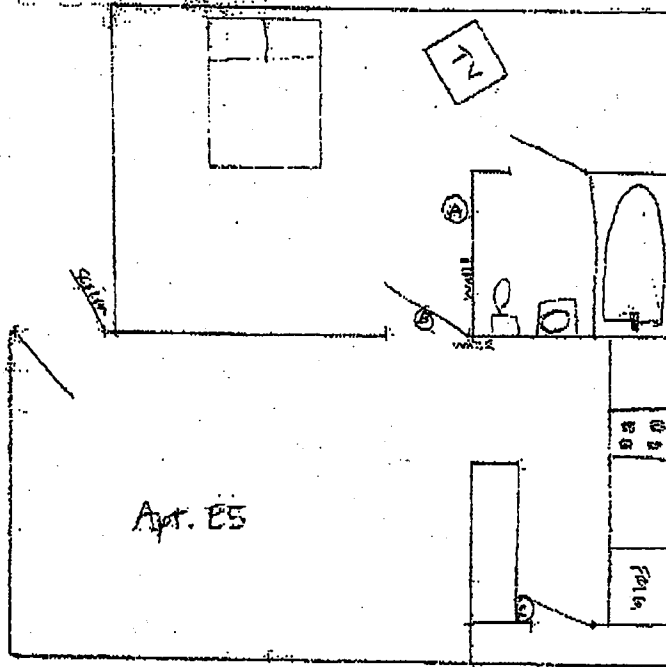
V) Harps, Joe

Marker A - projectile
Marker B - ratchet
Marker C - projectile

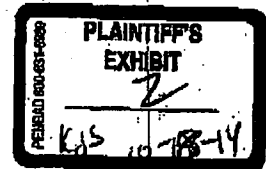
NOT TO SCALE



3915 E HWY 76
APT E5



Marker A $\frac{1}{10}$ " wall $\frac{2}{5}$ " wall
Marker B \rightarrow on door
Marker C \rightarrow in wall



STATE OF SOUTH CAROLINA)
 COUNTY OF MARION)
)
 Travis McLaughlin, #291562,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 TWELFTH JUDICIAL CIRCUIT

Case No. 2012-CP-33-0231

ORDER OF DISMISSAL

This matter comes before this Court by way of a post-conviction relief (PCR) application filed on March 9, 2012. Respondent made its return on February 4, 2013.¹ Applicant filed an amended application for post-conviction relief on September 6, 2013. An evidentiary hearing into the matter was convened on October 8, 2014, at the Florence County Courthouse. Applicant was present at the hearing and was represented by Joshua A. Bailey, Esquire. Respondent was represented by Assistant Attorney General J. Croom Hunter of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

Applicant is currently incarcerated in the South Carolina Department of Corrections pursuant to orders of commitment from the Marion County Clerk of Court. In May 2010, the Marion County Grand Jury indicted Applicant for murder and possession of a weapon during a violent crime (2010-GS-33-0176). Henry M. Anderson, Jr., Esquire, represented Applicant. On December 2, 2011, Applicant pled guilty to the lesser included offense of voluntary

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¹ Respondent did not receive the Application from the Marion County Clerk of Court until November 20, 2012.

manslaughter. The Honorable William H. Seals sentenced Applicant to twenty-five (25) years imprisonment. Applicant did not appeal his plea or sentence.

ALLEGATIONS

At the post-conviction relief hearing, Applicant proceeded to argue his confinement is unlawful based upon the following grounds:

1. Ineffective assistance of counsel.
 - a. Plea counsel failed to adequately conduct an investigation into the facts and circumstances of Applicant's case.
 - b. Plea counsel failed to retain experts necessary to refute the theory of the State's case against Applicant.
 - c. Plea counsel failed to adequately inform Applicant of available defenses.
2. Involuntary guilty plea.
 - a. Plea counsel failed to properly and adequately inform Applicant of the applicable law in his case to the extent that his guilty plea was not entered freely, voluntarily, and with sufficient knowledge to render it valid.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. This Court also heard testimony from trial counsel, Henry M. Anderson, Esquire (Counsel). Applicant also called Don Girndt, who was qualified as an expert in crime scene investigation and forensics. This Court also had before it a copy of the trial transcript, the Marion County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return.

At the evidentiary hearing, Applicant initially called Don Girndt to testify. Girndt testified he is a forensic consultant, specializing in the fields of fingerprint and footprint analysis, as well as general evidence collection procedures. Girndt testified he received his undergraduate

degree from the University of South Carolina. He testified he is a certified crime scene analyst. Girndt testified that after serving in the United States Marine Corps, he worked for the following agencies in the field of crime scene investigation: the University of South Carolina Police Department, SLED, the Richland County Sheriff's Department, and the Lexington County Sheriff's Department. ~~Girndt~~ ^{Girndt} testified his work as a crime scene analyst entails going over photographs, statements, evidence, and lab reports, in order to get a better idea of what events may or may not have transpired at a crime scene. Girndt testified he has investigated several hundred homicides. Applicant moved to qualify Girndt as an expert. Respondent did not object. This Court then qualified Girndt as an expert in the field of crime scene investigation and forensics. Counsel for Applicant subsequently showed Girndt a depiction of the crime scene, which was marked as Applicant's Exhibit 2. Girndt testified he reviewed the exhibit prior to the evidentiary hearing. When asked whether the depiction accurately showed the crime scene, Respondent objected, arguing Girndt could only speculate whether the depiction accurately represented the crime scene on the day of the homicide. This Court sustained the objection. Girndt testified that based upon the depiction, the crime scene was a confined area, although the depiction did not list any dimensions. Girndt testified the evidence collected during the investigation suggested there was a struggle between Applicant and the victim prior to Applicant killing the victim. Girndt based this assessment upon the autopsy report which indicated lacerations on one of the victim's fingers, as well as bruising on the victim's body. Girndt also testified that the fact two shots were fired, but the victim was only hit once, indicated a struggle could have caused Applicant to fire wildly and miss the victim with one of the shots. Girndt further testified that the angle of the victim's wound indicated a "shored-up wound," which was consistent with being shot while struggling on the floor. Finally, Girndt testified with respect to

evidence collection. He testified that when gunshot residue (GSR) kits are collected, the body is normally bagged and removed to the morgue, where the test is performed. Girndt testified that gunshot residue is very fragile, and if the deceased is suspected to have fired a weapon, paper bags should be taped around the hands to preserve the evidence until the test can be performed. Girndt testified that in this case, no gunshot residue was collected from the victim, but there was also no indication the victim's hands had been bagged.

On cross-examination, Girndt testified he did not visit the crime scene, and that his testimony was based solely on his review of the documents and photographs he was provided prior to the hearing. Girndt testified he could not definitively state whether the cuts and bruises on the victim came from a struggle with Applicant, but he based his opinion on the notes in the autopsy report. Finally, Girndt testified that normally if hands are bagged at the crime scene, it is noted in the autopsy report.

After Girndt's testimony, Applicant took the stand. Applicant testified that he was represented at his plea by Henry M. Anderson, Esquire (Counsel). Applicant testified he was charged with murder, but he pled guilty to voluntary manslaughter. Applicant testified he was sentenced to twenty-five (25) years imprisonment. Applicant testified the shooting occurred on December 7, 2009 and he was arrested on December 8, 2009. Applicant testified he did not plead guilty until two (2) years later in December of 2011. Applicant testified he never made bond during that time and was held at the Marion County jail. Applicant testified he only met with Counsel one (1) time prior to his plea. Applicant testified the only way he could speak with his attorney was by informing the corrections staff he wished to plead guilty. Applicant testified that when he met with Counsel, Applicant told Counsel his version of events. Applicant testified he and the victim were uptown drinking, and Applicant reluctantly agreed to drive the victim home.

Applicant testified the victim became belligerent and pulled out a gun. Applicant testified he grabbed the gun, and it started going off. Applicant testified that after relaying his story to Counsel, he did not see Counsel again until the day before his guilty plea. Applicant testified he told Counsel he would rather go to trial than plea. Applicant testified Counsel told him the State would let him plead to voluntary manslaughter with a sentencing range of a minimum of two (2) years and a maximum of thirty (30) years imprisonment. Applicant testified he felt like he had no alternative but to plead guilty. Applicant testified he did not recall whether Counsel went over the elements of murder. Applicant testified Counsel did explain the elements of voluntary manslaughter but not involuntary manslaughter. Applicant testified Counsel never explained the elements of self-defense. Applicant testified that all of his discussion with Counsel centered on entering a guilty plea. Applicant testified that when he was arrested, he gave a statement and told the officers about his struggle with the victim. Applicant testified he never reviewed the photos of the crime scene with Counsel. Applicant testified Counsel never discussed using an expert. Applicant testified if he knew then what Girndt testified to at the evidentiary hearing, he would have insisted on going to trial. Applicant testified he only told the plea judge he was satisfied with Counsel because Counsel told him to say that. Applicant testified he only pled guilty upon Counsel's advice. Applicant testified he recalled Counsel discussing mitigating evidence with the plea judge.

On cross-examination, Applicant testified he told the plea judge he knew he could receive between two (2) and thirty (30) years imprisonment. Applicant testified he told the judge he knew he was giving up his right to a jury trial and his right to challenge the evidence against him. Applicant testified he told the judge he had no questions regarding his waiver of rights. Applicant testified he told the judge he wished to give up his constitutional rights in order to

enter his guilty plea. Applicant testified he told the judge no one had promised him anything or forced him to plead guilty. Applicant testified he told the judge he was satisfied with Counsel because Counsel told him to say that. Applicant testified he was untruthful when he told the plea judge he was satisfied with Counsel. Applicant testified he only told the plea judge he was guilty because Counsel told him to say that.

Following Applicant's testimony, Henry M. Anderson, Esquire (Counsel) testified. Counsel testified he took this case as a contract public defender with the Twelfth Circuit Public Defender's Office. Counsel testified he has been practicing law for twenty-three (23) years, with the vast majority focused on criminal defense. Counsel testified he obtained full discovery from the State and went over Applicant's statement, as well as photographs of the crime scene, and the autopsy photos with Applicant. Counsel also testified he talked about the blood splatter with Applicant. Counsel testified he met with Applicant at least four (4) times at the jail prior to Applicant's plea. Counsel testified he discussed the elements of voluntary and involuntary manslaughter, as well as the elements of murder with Applicant. Counsel testified he and Applicant discussed Applicant's version of the facts. Counsel testified Applicant told him the victim was known to carry a gun. Counsel also testified the victim did not have any convictions for violent crimes on his record. Counsel testified there was no need to hire an investigator in Applicant's case because the evidence against Applicant was straightforward. Counsel testified he spoke with the law enforcement officers who investigated the case. Counsel testified that while there was some sign of a struggle, he did not believe the facts of the case presented a viable self-defense or involuntary manslaughter claim. Counsel testified he gave his defense file to PCR counsel and did not believe anything was missing from the file. Counsel testified he tried to get in touch with possible witnesses the victim told him about, but he was unable to contact

them. Counsel testified the State also offered a negotiated plea of thirty (30) years. Counsel testified he was ready to go to trial when he met with Applicant on November 29, 2011, but he also discussed the problems he found with Applicant's case. Counsel testified he prepared the case for trial two weeks prior to the guilty plea. Counsel testified he did not need more time to prepare. Counsel testified he reviewed Applicant's constitutional rights with him prior to the plea. Counsel testified he agreed with Applicant's decision to plead guilty. Counsel testified Applicant made the decision to plead guilty.

INEFFECTIVE ASSISTANCE OF COUNSEL

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

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

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

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

1. Failure to Investigate

Counsel met with Applicant an adequate number of times prior to the guilty plea. Counsel also obtained discovery from the solicitor and went over it with Applicant. Counsel interviewed the officers who investigated the case and reviewed the evidence against Applicant. Counsel also attempted to speak with witnesses whose names he was given by Applicant. Because Applicant did not produce these witnesses at the PCR hearing, he has not shown any prejudice. See Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992). Accordingly, this Court finds Counsel thoroughly investigated and prepared Applicant's case.

2. Failure to Retain Expert Witness

Counsel explained at the PCR hearing that based upon the evidence against Applicant, he did not believe it was necessary to hire an investigator or expert witness. Council's belief was confirmed at the PCR hearing, where the expert testimony presented by Applicant added little

either factually or theoretically, and it did not negate the fact that all of the elements necessary for a manslaughter conviction were present. As such, Applicant has not shown a reasonable probability that the added testimony would have been enough to change the outcome if the case went to trial. "Counsel has a duty . . . to make a reasonable decision that makes particular investigations unnecessary" Strickland, 466 U.S. at 691. Finally, the record is clear that Applicant was well aware that by pleading guilty, he waived any right to challenge the evidence against him. Accordingly, this Court finds no deficiency in Counsel's decision not to retain an investigator or an expert.

3. Failure to Inform of Available Defenses

Applicant argues that he was not informed by counsel of the elements of involuntary manslaughter or a possible claim of self-defense. However, Counsel testified that he did go over the elements of involuntary manslaughter, as well as the reasons he did not believe Applicant had a legitimate self-defense claim. Even assuming *arguendo* that Applicant's claims were true, Applicant is still not entitled to relief. The following excerpt from State v. Gibson is directly on point:

"Regardless of whether Jacques was lawfully armed in self-defense, the essence of involuntary manslaughter is the involuntary nature of the killing. See Douglas v. State, 332 S.C. 67, 74, 504 S.E.2d 307, 310 (1998) (finding no involuntary manslaughter charge warranted where defendant admitted he intentionally fired a gun into a crowd in self-defense despite testimony that the defendant had been rushed by a group of people during a fight); State v. Pickens, 320 S.C. 528, 466 S.E.2d 364 (1996) (holding where a defendant admitted he intentionally shot his gun, contending he was acting recklessly but lawfully in self-defense, involuntary manslaughter charge was not warranted); State v. Morris, 307 S.C. 480, 483-84, 415 S.E.2d 819, 821-22 (Ct.App.1991) (noting that under involuntary manslaughter, the act must be unintentional and defendant intentionally shot his gun though he claimed self-defense); accord Light, 378 S.C. at 648-49,

664 S.E.2d at 468–69 (finding the defendant had lawfully armed himself in self-defense and was entitled to an instruction on involuntary manslaughter, in a case in which there existed evidence the gun *unintentionally discharged*); Brayboy, 387 S.C. at 181–82, 691 S.E.2d at 486 (holding that although unlawful to point and present a firearm, when a defendant lawfully armed himself in self-defense his failure to immediately disarm himself when the threat subsided did not amount to unlawful pointing and presenting a firearm and evidence suggesting the gun *accidentally discharged* was sufficient to warrant instruction on involuntary manslaughter).

State v. Gibson, 390 S.C. 347, 357-58, 701 S.E.2d 766, 771-72 (Ct. App. 2010).

Applicant claims he would not have pled guilty if he had been aware of the possible charge of involuntary manslaughter as well as the possible claim for self-defense. However, as the above referenced case law explains, the “essence of an involuntary manslaughter charge is the involuntary nature of the killing.” Douglas, 332 S.C. at 74. Applicant testified during his PCR hearing that the victim flinched as he began to back away, at which point Applicant pulled the trigger, shooting and killing the victim. While this may have all occurred during the heat of passion, the shot that killed the victim was intentional. Therefore, even assuming plea counsel failed to inform the Applicant of the charge of involuntary manslaughter as well as a possible defense, it is highly unlikely the results would have changed Applicant’s decision to plea, because the Applicant could not have succeeded on getting his charges reduced to involuntary manslaughter in the first place.

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

INVOLUNTARY GUILTY PLEA

The voluntariness of a guilty plea is determined in light of the entire record before the court. Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012) (citing Roddy v. State, 339 S.C. 29, 528 S.E.2d 418 (2000)). “To knowingly and voluntarily enter a plea of guilty, all that is required is that a defendant have a full understanding of the consequences of his plea and of the charges against him.” Simpson v. State, 317 S.C. 506, 508, 455 S.E.2d 175, 176 (1995) (citing Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991)). Furthermore, a defendant must only be informed of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Roddy, 339 S.C. at 33, 528 S.E.2d at 421 (citing Boykin v. Alabama, 395 U.S. 238 (1969)). “When attempting to determine the voluntary and intelligent nature of a plea, the plea colloquy ordinarily serves as confirmation that a criminal defendant is waiving the right to raise certain constitutional claims by pleading guilty.” Hyman, 397 S.C. at 44, 723 S.E.2d at 379 (citing Rivers v. Strickland, 264 S.C. 121, 213 S.E.2d 97, 98 (1975)). However, the plea judge need not provide an “enumeration of specific rights waived ... where the record otherwise reveals affirmative awareness of the consequences of a guilty plea.” State v. Lambert, 266 S.C. 574, 579, 225 S.E.2d 340, 342 (1976) (citing Stinson v. Turner, 473 F.2d 913 (10th Cir. 1973)). Furthermore, “[a] guilty plea is a solemn, judicial admission of the truth of the charges” against the applicant. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Admissions “made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements.” Id. at 137-38, 654 S.E.2d at 874 (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). Pleading guilty to avoid a possibly greater sentence, without more, does not render a

guilty plea involuntary. Brady v. United States, 397 U.S. 742, 90 S.Ct. 1463, 25 L.Ed. 2d 747 (1970); Wicker v. State, 310 S.C. 8, 12, 425 S.E.2d 25, 27 (1992).

The record before this Court clearly shows that Applicant was fully informed of the consequences of entering his guilty plea. The record shows Applicant's plea was not coerced, and it was Applicant's decision to plead guilty. Additionally, this Court finds Applicant's testimony that he lied to the plea judge on Counsel's advice not credible. Applicant was advised that by pleading guilty he gave up his right to challenge the evidence the State had against him, as well as his right to put up any affirmative defenses. Applicant has failed to present any valid reasons why he should be allowed to depart from his valid plea of guilty. Accordingly, this Court finds Applicant's plea was knowingly, intelligently, and voluntarily entered.

ALL OTHER ALLEGATIONS

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

CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Plea counsel rendered effective assistance in regard to the claims raised by Applicant. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d

395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 10th day of December, 2014.



EDGAR W. DICKSON
Presiding Judge
Twelfth Judicial Circuit

Orangeburg, South Carolina

FILED
BOOK _____ PAGE _____
2010 MAY 14 P 4: 34

MARION COUNTY SO
CLERK OF SUPERIOR
COURT
MAY 14 2010

DOCKET NO. 2010-GS-33-0176

The State of South Carolina
County of

MARION

COURT OF GENERAL SESSIONS

MAY TERM 2010

THE STATE

vs.

TRAVIS MCLAUGHLIN

Indictment for

MURDER;
POSSESSION OF A WEAPON DURING
COMMISSION OF VIOLENT CRIME

WITNESSES

RÉGGIE HOTALING Marion County
Sheriff

ARREST WARRANT NUMBER

M395100 2010GS330176

ACTION OF GRAND JURY

True Bill

Robert D. Harshbarger

Foreperson of Grand Jury

Date: 5-13-2010

VERDICT

Foreperson of Petit Jury Date:

STATE OF SOUTH CAROLINA)
)
 COUNTY OF MARION)

INDICTMENT FOR
 MURDER
 POSSESSION OF A WEAPON DURING
 COMMISSION OF VIOLENT CRIME

At a Court of General Sessions, convened on MAY 13, 2010 the Grand Jurors of MARION County present upon their oath:

COUNT ONE- MURDER

That TRAVIS MCLAUGHLIN did in Marion County, on or about December 7, 2009, willfully, feloniously, and intentionally kill the victim, JOE HARPES (DECEASED), with malice aforethought, either express or implied, by means of shooting, and the victim did die as a proximate result thereof on or about December 7, 2009 in Marion County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

COUNT TWO- POSSESSION OF A WEAPON DURING COMMISSION OF VIOLENT CRIME

That TRAVIS MCLAUGHLIN did in Marion County, on or about December 7, 2009, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, S. C. 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.



E.L. Clements, III
 TWELFTH CIRCUIT SOLICITOR