**VOLUME II OF II**

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Certiorari to Chesterfield County

G. Thomas Cooper, Circuit Court Judge

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S.C. SUPREME COURT

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WILLIAM OUTLAW,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-000811

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APPENDIX

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1 to some questions how the shell would be next to the gun at
2 a different location, do you recall that?
3 A. Yes.
4 Q. What type of shotgun was it that you had? Was it a
5 semi-automatic where it kicks the shell out when you shoot
6 it or was it one that once you shoot you've got to break
7 the gun in half to eject it?
8 A. Yeah, just a single barrel shotgun.
9 Q. Okay. So when you load the shotgun you load the shell
10 in ---
11 A. Yes.
12 Q. --- cock it get, shoot, and then to get the shell to
13 come out you've, actually, physically got to break it back
14 to eject it?
15 A. Yes, sir.
16 Q. Did that particular gun, did it eject -- - did it have
17 ejectors on it to flip the shell out or did you pull the
18 shell out?
19 A. Yes.
20 Q. Yes, what?
21 A. It had an ejector on it to push the shell out.
22 Q. Okay. So when you fired the shot you didn't break the
23 gun there at the house?
24 A. No.
25 Q. At the scene, right?

1 A. No.

2 Q. Okay. Do you recall if that, that motion for a new

3 trial included or was based on ballistics that you say were

4 performed after or during the trial?

5 A. To my knowledge that was one of the issues that was

6 going to be brought up at the motion.

7 Q. Okay. When did you learn about some ballistics being

8 performed on the guns or the shells?

9 A. In -- well, in 2005 when Mr. Cannarella come spoke

10 with me at the prison.

11 Q. Okay. Did he shows you some items, some documents

12 about the forensics?

13 A. Ballistics, yes.

14 MR. BOOZER: Okay. And we'll talk about that with

15 the attorney. That's all the questions I have. Thank you.

16 MS. GIOVANOLI: Just a brief follow-up.

17 **Re-cross Examination by Ms. Giovanoli:**

18 Q. During the trial you testified that you couldn't see

19 and so you reach into your truck to find a shell to load

20 your gun in order to fire it back.

21 A. Yes.

22 Q. Do you have more than one shell in the trunk?

23 A. Birdshot.

24 Q. And did you shoot the gun after you left the scene?

25 A. No.

1 MS. GIOVANOLI: Nothing further.

2 THE COURT: Mr. Boozer?

3 MR. BOOZER: No.

4 THE COURT: All right. You may come down. Thank

5 you very much. Next witness?

6 MR. BOOZER: No further witnesses, Your Honor.

7 THE COURT: All right. The State?

8 MS. GIOVANOLI: Your Honor, the State would call Paul

9 Cannarella to the stand.

10 THE COURT: Come around.

11 THE CLERK: Do you swear to tell the truth, the

12 whole truth, and nothing but the truth so help you God?

13 MR. CANNARELLA: I do.

14 THE CLERK: Have a seat and state your full name.

15 MR. CANNARELLA: My is Paul Vincent Cannarella, C-a-n-

16 n-a-r-e-l-l-a.

17 PAUL CANNARELLA, first being

18 duly sworn, testified as follows:

19 **Direct Examination by Ms. Giovanoli:**

20 Q. Good afternoon, Mr. Cannarella

21 A. Good afternoon.

22 Q. How long have you been practicing law?

23 A. Since 1980.

24 Q. And of that, how many years has that been criminal

25 law?

1 A. The whole time.
2 Q. Do you recall ---
3 A. You know that and civil law.
4 Q. Do you recall ---
5 THE COURT: What did you say?
6 A. Civil -- civil law.
7 Q. Do you recall when you were retained in this case?
8 A. It wasn't very long after the event occurred. I don't
9 know if it was within the time frame of the request for a
10 preliminary hearing. I would kind of think that I got the
11 case after the ten (10) days had passed from the date bond
12 was set.
13 Q. So is it fair to say early 2002?
14 A. Right away, basically.
15 Q. How many times did you meet with the applicant prior
16 to his trial?
17 A. Well, I don't know how many times I met with him but
18 if you read the transcript of the trial I think you could
19 reasonably conclude that I met with him more than two
20 times.
21 Q. And is that your practice to meet with clients more
22 than two times prior to trial?
23 A. Yes, ma'am.
24 Q. Did the applicant cooperate with you during these
25 meetings through your representation?

1 A. Yes, ma'am.
2 Q. Did you file a Brady or Rule 5 motion in this case?
3 A. Yes, ma'am.
4 Q. And did you receive all of the discovery ---
5 A. Yes ---
6 Q. --- Rule 5 material?
7 A. Yes, ma'am.
8 Q. Did you review that discovery with the applicant?
9 A. Yes, ma'am.
10 Q. Prior to the trial, did you discuss with the applicant
11 the elements of the charges what the State was required to
12 prove?
13 A. Yes, ma'am.
14 Q. Did you discuss the applicants version of the facts?
15 A. Yes, ma'am.
16 Q. And what were those?
17 A. Well, as best as he can remember and as best I can
18 reconstruct was that he was with the victim during the day
19 and they had been doing something's that would put them
20 under the influence and that most of the time spent
21 together between William and the victim's name, I don't
22 recall, was at the victim's house. And then this fellow,
23 this big-o brute showed up later on in the day and I think
24 William had walked outside of the mobile home where he was,
25 where the victim lived, and he ran -- any he happened to

1 see the brute because the brute just happened to show up.
2 I think his name was Talbert. So there was some, I think
3 there was some bad blood for reasons with William and
4 Talbert and Talbert, he's like six -- he's a big-o home
5 invader. He cold-cocked William upside the head and based
6 on looking at the pictures you can tell he hit William
7 pretty hard. William got in his car which was behind the
8 trailer that set up on this little inclined, this little
9 hill, and as William was driving off in William's car that
10 guy was so strong he smashed his fist through William's
11 windshield. The evidence showed that William went on down
12 beside the trailer, down a little incline, and then later,
13 sometime later, I don't know probably within minutes
14 reappeared and that's when the shooting took place. The
15 homeowner that was William's friend that they had been
16 together all day with each other, that guy the homeowner
17 I'm going to call him, okay, because I know -- I knew him.
18 I'll just call him the homeowner. He was standing outside
19 away from his trailer but back some distance, you know, and
20 there was an aerial light but the aerial light really would
21 probably not provide you any clear vision of anything,
22 okay. So it was the theory that or the belief that William
23 pulled back up, got out, just through his gun up, after
24 this homeowner, a friend of his, had fired a shotgun in the
25 air and supposedly said something like, you know, maybe

1 leave or hey, William chill or whatever.
2 Q. Did he fire the shot first and then say something?
3 A. Now, I can't remember all that. I know the shotgun
4 went off, okay. And I'm sure William saw that but William
5 wouldn't be able to determine what direction that gun was
6 pointing in at night because that aerial light wouldn't
7 provide him with that enough of the vision to see where
8 that gun had been pointed and William fired back, okay.
9 Well, I believed that William he's not going to know
10 whether it was his buddy that he was with that day at the
11 home, at his buddy's home, or if it was going to be that
12 guy that cold-cocked William upside the head earlier. So
13 -- and then I'm pretty sure the evidence showed that
14 William left after the gun was fired and drove off. And
15 then William threw, what I think the evidence showed was or
16 was believable, that William threw the breach shotgun of
17 his out in some area and there -- it turns out there was an
18 empty shot shell, birdshot shell, and it wasn't till after
19 the trial that I realized that, that was birdshot. So I
20 said, look I think an injustice might have occurred here,
21 you know. It would've been a lot better for me as it turns
22 out to argue, hey, ladies and gentlemen of the jury, this
23 empty shot shell right here was found around the corner
24 from the house with William's gun it's birdshot, that man
25 died of a buckshot. But the tool marked identification

1 found an individually identifiable characteristic about
2 that shotgun that eliminated that birdshot from having been
3 shot from that shotgun and that was a hammer on the shotgun
4 that was broken in half, okay. So -- so -- see, so I'm
5 saying, Godly, I wish I had been smart enough and caught
6 that but I didn't because I could argue to the jury that,
7 that was shot, birdshot that came from William's gun that
8 killed -- that didn't kill the man because the man died of
9 buckshot, okay, but I eliminated that. Okay. And I
10 apologize for going into that, Your Honor,
11 Q. That's okay.
12 A. --- but I wanted everybody to understand that.
13 Q. Can I just slow you down so we can kind of take this
14 piece by piece ---
15 A. Okay.
16 Q. --- because there's a lot of issues ---
17 A. Okay.
18 Q. --- floating around. Okay. So I asked the question
19 what was his version of the facts, right?
20 A. Okay.
21 Q. That was his, right?
22 A. Well, basically ---
23 Q. At this -- and at that time did he not express to you
24 that his version was self-defense?
25 A. Well, you see, here's how I -- not -- not immediately

1 -- I don't know immediately. You know, William was so
2 intoxicated in my opinion that night that there was a lot
3 of things that he couldn't even, he couldn't even remember.
4 You know, he told me what happened so he tells, he tells me
5 he fired a shot up there, okay. So and through the
6 collection of evidence during the investigation, you know,
7 there's a shot fired by the friend, the homeowner, so, I
8 mean, well, William, did you fire it in self-defense or did
9 you not fired in self-defense?
10 Q. Was there any evidence of any of the gunshots heard at
11 the residence?
12 A. No. No, ma'am.
13 Q. Was there any other testimony or witnesses that said
14 there were other gunshots?
15 A. No.
16 Q. So the only two gunshots that were heard and witnesses
17 testified to this, were two, one by the victim and one by
18 the applicant?
19 A. Right.
20 Q. Now, going back to the facts, we discussed the
21 version, the applicant's version of the facts, what was the
22 actual State's evidence against the applicant?
23 A. Well, the State's evidence was, basically, what I
24 described and based on probably the old Roots, Talbert's
25 testimony, that he came there. William was outside. He

1 hit William. William left. William came back. William
2 fired a shot. That is what killed his friend and William
3 left and then threw the gun out the window and went home
4 and passed out on the floor.
5 Q. Okay. During the trial you stipulated to State's
6 Exhibits 1 through 11, do you recall what each piece of
7 evidence those were?
8 A. No, ma'am. But it was probably -- no, I don't
9 remember what it was. Obviously, it was guns and spent
10 shells.
11 Q. You also stipulated to the cause of death ---
12 A. Yes, ma'am.
13 Q. --- do you recall that? And you also stipulated that
14 the victim fired a 20 gauge shotgun and the defendant fired
15 a 12 gauge shotgun?
16 A. Right.
17 THE COURT: The victim's not the guy that hit him
18 in the head?
19 A. No, Your Honor. No, sir. That was somebody that had
20 arrived there later on. Mr. Talbert was the guy who hit
21 him, hit William in the head ---
22 THE COURT: He's not -- he's not the victim?
23 A. No, sir.
24 THE COURT: All right.
25 A. The victim is the, homeowner, friend of William's ---

1 THE COURT: Okay.
2 A. --- and they had been together all day long.
3 THE COURT: All right. And that's a 20 gauage, is
4 that right?
5 A. I think -- I think so.
6 THE COURT: Okay. It doesn't matter.
7 Q. Why did you stipulate to all of the things ---
8 A. Because I felt like it was consistent with what the
9 truth was. It didn't really give up anything, you know.
10 Q. What do you think the truth was?
11 A. What do I think the truth was? I think the truth was
12 that William pulled out a shotgun and fired it in reaction
13 to what his friend had done and I think William believed he
14 was being fired at and that he acted, and he was acting in
15 self-defense.
16 Q. Did you believe he had the opportunity to retreat?
17 A. Well, yeah that was a problem because see after --
18 after the victim -- after William was first assaulted by
19 Mr. Talbert or the brute, I can't remember what his name
20 was. William left and came back, okay. Or -- or at the
21 very least, if you will, he drove from the backside of the
22 residence down to the bottom of the residence from where
23 the shot was fired up on and towards the mobile home that
24 set up on a little hill, see, so William had the chance to
25 get on out of there but he came back. That was a problem I

1 was having to deal with.
2 Q. And when he came back what did the applicant tell you,
3 did he have a gun in his possession?
4 A. He told me that he drove to the bottom of the hill,
5 pulled the car around, I guess, facing towards the mobile
6 home and off to the right would have been where his friend
7 was standing and then further to the right would have been
8 the aerial light that would've really provided him with
9 nobody, nothing that he could really see.
10 Q. Okay. Did he tell you he had a gun when he went back?
11 A. Well, he told me -- my best recollection, William told
12 me he drove to the bottom of the hill, got the gun out of
13 the trunk, and then hid behind the door, and when he was
14 fired upon, he fired back. It's kind of like he threw the
15 gun up and fired it.
16 Q. Okay. So just for clarification, there was an
17 altercation between Talbert and the applicant because
18 Talbert hit the applicant ---
19 A. Right.
20 Q. --- in his vehicle as the applicant drove away?
21 A. Right.
22 Q. And then a few minutes pass, there was varying
23 testimony as to how long exactly the applicant returns,
24 gets the gun out of his vehicle, and hides behind the door?
25 A. Right.

1 Q. That was his version of the facts?

2 A. Williams?

3 Q. Right.

4 A. Yes, ma'am.

5 Q. Okay.

6 A. And that was -- I believe that is kind of undisputed.

7 Q. Okay. So now this newly discovered evidence as far as

8 a shell being found by the gun, how do you tie that in?

9 A. Well, see that really wasn't newly discovered

10 evidence. That was something that was available to me that

11 I should've realized in the beginning and had I been good

12 enough, I would have let it roll on until my closing

13 argument and then whipped it out and said, "but this empty

14 shot shell is birdshot". Okay. Nobody would have been any

15 the wiser about this being a broken hammer on the shotgun

16 to clearly rule out that seven, number seven, having been

17 fired from that gun but a reasonable inference that I

18 could've argued was that "hey, y'all down the road was

19 Williams gun and right beside it was seven, was birdshot."

20 Q. And it's your testimony today that you didn't argue

21 that to the jury?

22 A. Yes. See, I that's why I miss the mark on that and I

23 think I could've one Williams case when that -- but that

24 shell would not have really even came out of that gun,

25 though. So I said, Judge Burch, I've got to send this gun

1 back. We've got to send this gun back to sled. We got to
2 know what the justice and the truth is in this case. And
3 it came back that the hammer, you could -- then you could
4 look at it, yeah, I can see that hammer -- the little
5 hammer on the shotgun was like, the front part of it was
6 broken off, so you could clearly, that was clearly a way,
7 you know, that individual identifying tool mark
8 identification would've shown, see.
9 Q. And you weren't aware of that until after the trial?
10 A. No. No. I missed that. I missed that. Yeah, I
11 could elaborate more on those post-trial motions if you
12 want me to but I'll just wait until I'm asked.
13 Q. Okay. There were no ballistic test done prior to
14 trial?
15 A. There were not on that right there. No, not -- I
16 don't think so. No, ma'am.
17 Q. Did the State perform any ballistics test?
18 A. I can't remember. I can't remember.
19 Q. And ---
20 A. They might have but it didn't really do anything for
21 me.
22 Q. So you included this ballistic evidence as part of
23 post-trial motion?
24 A. Well, I don't know if I specifically set forth that in
25 there because at that particular point in time when I filed

1 those post-trial motions, I wanted to get the judge go down
2 on the sentence. I thought I might have some things I
3 could, I could talk about and people could talk about in so
4 far as William is concerned to get it, to get it lowered
5 than that.
6 Q. Then that's the motion to reconsider, correct?
7 A. Right. Right.
8 Q. A motion for a new trial ---
9 A. Right. A motion was for a new trial. I think I --
10 well, I listed why I thought I was entitled to involuntary
11 manslaughter charge too. Okay. But you know as well as I
12 do, when you start talking about making a record and you've
13 got to weave in there, you know, where I'm somewhere
14 between voluntary and not guilty by reason of self-defense,
15 well, it's not real, real easy although I think it's
16 allowable. There's case law on it. You can get a charge
17 on murder, manslaughter, involuntary manslaughter and in
18 this case not guilty by reason of self-defense, see, that's
19 what I wanted. I wanted those four options but ---
20 Q. And you made that argument during the trial, correct?
21 A. Right. Because you can still act in self-defense and
22 kind of miss the mark, if you will, and shoot when you
23 shouldn't have and he was real drunk. I mean, they
24 probably -- I don't know they probably didn't -- he -- you
25 know, I know they were real, real impaired that day,

1 alcohol, all kind of drugs and everything else because, I
2 mean, I just know the character of the individual that
3 William was associating with.
4 Q. Did the judge deny your request for the involuntary
5 manslaughter charge?
6 A. At the trial.
7 Q. After you had argued that it should be ---
8 A. Right.
9 Q. As also part of your motion for a new trial, you
10 listed a -- you had a list of witnesses, did you ---
11 A. Yes, ma'am.
12 Q. --- find those witnesses or did the applicant provide
13 those names?
14 A. Those -- those -- he and his mom, Ms. Willie Jean, she
15 was helping us and those witnesses I'm going to say came
16 out after the trial, after the sentencing and said, "oh"
17 and then justice has occurred here, you know, William, I've
18 heard, these witnesses would be saying about some other
19 person doing something or saying something that would
20 indicate that, that person might be the real guilty person.
21 I couldn't never develop anything before trial and I didn't
22 have a chance to develop anything after trial because I was
23 relieved. I had -- I was relieved pretty shortly after,
24 after I filed those motions and did not hide from William
25 the evidence that I got from sled when I carried it over

1 there to him at Lee County to show him, hey, William look,
2 the hammer was broken.
3 Q. Okay. And so with regard to those, that shell that
4 was found by the creek, how do you reconcile the theory
5 that someone else shot him at the same time as you saying
6 he shot the victim in self-defense?
7 A. You know, it's really hard to even know what to think
8 about that because I'm firmly convinced that, that empty
9 birdshot shot shell was not fired from Williams gun. Okay.
10 While on the other hand, I feel confident that, that gun
11 fired buckshot because that's the only thing I could ever
12 find that was shot that killed the friend. You see, so and
13 when you start talking about third-party guilt they come
14 out, they come out after the fact. So we even got sled to
15 come down and drag, drag the pond where -- where the real
16 weapon was supposed to be, the real gun that killed the man
17 was supposed to be based on some statements.
18 Q. Okay. Did you review the police reports and autopsy
19 reports and the atomic absorption kit before?
20 A. I'm sure I did.
21 Q. Did you interview that list of witnesses to put into
22 your motion, post-trial motion?
23 A. After the discovery witnesses on third-party guilt?
24 Q. Yes.
25 A. I got statements from but see I was cut loose before

1 that but I tell you something of those post-trial motions
2 if I -- May I?
3 Q. Okay.
4 A. You see, at the post-trial motions nothing was ever
5 really developed. I came to the post-trial motions. They
6 were here. Okay. They were here some where like in one of
7 these rooms back there in the back. Well, in all fairness
8 to both size those post-trial motions were -- I was there
9 because his mama wanted me to be there, Willie Jean. So I
10 went there but, I mean, there was never ever really any
11 full presentation in my opinion of everything that I think
12 should have been presented in fairness to William because
13 it's just kind of like bare naked assertions when I, you
14 know, those people that gave those statements and I think
15 Judge Burch would had a little bit more time to think about
16 the, what I believe, would have been entitled William under
17 the circumstances to a charge on involuntary manslaughter,
18 you know, contrary to what was testified to earlier any
19 lawyer would want an involuntary manslaughter charge. You
20 know, so I wasn't trying to say no I don't want an
21 involuntary because they might hang their hat on an
22 involuntary. No, I would want an involuntary charge.
23 Q. Yes, and your argument is in the transcript.
24 A. Right. Okay.
25 Q. The applicant has also claimed that you failed to

1 bring up ten facts during the course of the trial and after
2 reviewing the transcript it seems as if you did so I'm just
3 going to see if you remember. Do you remember bringing up
4 the fact that the defendant was, the applicant was drunk at
5 the time of the incident?
6 A. I'd have to rely on what's in the transcript. Okay.
7 Q. Well, you have a fairly good memory of the case.
8 A. Yes, ma'am.
9 Q. Did you -- you don't recall ever ---
10 A. I think ---
11 Q. --- presenting that the defendant was drunk?
12 A. I would think I did. Oh yeah -- yeah, they were ---
13 Q. And that the defendant was using drugs that night?
14 A. Right.
15 Q. And that the defendant was attacked by Mr. Talbert?
16 A. Right.
17 Q. And that the defendant's vision was obscured?
18 A. Right.
19 Q. Okay. And the defendant was not aiming the gun?
20 A. No. No. Yeah, just threw it up.
21 Q. You also brought out during the trial that the
22 defendants gun was discharged on the hip, do you recall
23 that?
24 A. Hip shot, I think I remember -- yeah, I -- I always
25 believe -- yeah -- I always ---

1 Q. And you also brought up during trial that the
2 defendant was not intending the result that happened, the
3 death?
4 A. Right.
5 Q. And that the victim was a friend of the defendant?
6 A. Right.
7 Q. And that the victim was not part of an initial
8 altercation between Talbert and the applicant?
9 A. Right.
10 Q. And also that the defendant had an impaired state of
11 mind causing him to overreact to the initial gunfire?
12 A. I think so. I know so because see William had never
13 been in any trouble before. He's a real peaceful person.
14 A peace loving person. And he truly was not the one not to
15 be around, you know, mama is liable to say, "my young'un
16 went around the wrong crowd." I know what the response
17 would be, "well, your young'un is the wrong crowd," but
18 honestly in this case right here in fairness to both sides
19 that guy ain't really a violent person, William.
20 Q. Also in this case have you heard of -- excuse me, one
21 moment. Court's indulgence ---
22 A. I'm sorry he's not a real violent person.
23 Q. What was your understanding of the time of the trial
24 with regard to the malice charge that the judge gave him?
25 A. You know, I don't know if -- I probably -- I don't

1 know if I addressed that in trial or not but I don't know
2 if that was -- I think that trial was before that Supreme
3 Court's opinion but, "inferring malice for a use of a
4 deadly weapon" was given a charge on the facts or statement
5 of the facts rather than the law. So I don't think I don't
6 believe argue that. I don't think I did.
7 Q. Okay. And in this case he was tried for murder,
8 correct?
9 A. Yes, ma'am.
10 Q. And the jury found him guilty of voluntary
11 manslaughter?
12 A. Right.
13 Q. And the voluntary manslaughter doesn't require malice,
14 correct?
15 A. Right. Right. Right.
16 Q. So the jury didn't find ---
17 A. He was implied ---
18 Q. --- guilty of malice?
19 A. He was impliedly acquitted of murder, I guess, you
20 might say.
21 MS. GIOVANOLI: Nothing further.
22 THE COURT: Mr. Boozer?
23 MR. BOOZER: Thank you, Your Honor.
24 **Cross-Examination by Mr. Boozer:**
25 Q. Mr. Cannarella, how are you doing?

1 A. I'm fine.

2 Q. Good. Going back to the motion for a new trial, do

3 you recall what exactly the basis of that motion was?

4 A. Well, I think I wanted a new trial based on I didn't -

5 - - based on the fact I didn't get an involuntary

6 manslaughter charge.

7 Q. Okay.

8 A. I mean, the evidence was there to support the jury's

9 verdict but I still wanted that third or fourth option.

10 Q. Was ---

11 MR. BOOZER: May I approach the witness, Your Honor?

12 THE COURT: Sure.

13 A. Mr. Cannarella, I am going to hand you, this is

14 actually a copy of Mr. Outlaws PCR application and attached

15 is exhibits to his application, are a number of items, one

16 of which that I'm showing you is dated June 20, 2005, it

17 appears to be a letter from you to Jay Hodge, do you

18 recognize that?

19 A. Okay. Yeah, I mean, I prepared this.

20 Q. And then if you continue to flip probably one more

21 page it looks like it's a memo in support of your motion

22 for a new trial?

23 A. Yes, sir.

24 Q. Okay. Is that what you filed with the clerk for --

25 were though the bases for your new trial motion, what's in

1 the letter and what's in the memo?

2 A. Essentially.

3 Q. Okay. And in the letter you address, it appears,

4 obviously, a number of third-party guilt witnesses?

5 A. Right.

6 Q. And then also after discovered evidence with regard to

7 sled testing, I guess, some ballistics?

8 A. Right.

9 Q. Okay. And you were -- you said you were present at

10 the motions hearing?

11 A. Here, in 2010?

12 Q. Okay.

13 A. Right? Yes, sir.

14 Q. And do you recall, in some form or fashion, were those

15 witness statements and the ballistics and the argument on

16 involuntary manslaughter, was that all presented in some

17 form whether by affidavit or whatnot to the judge?

18 A. I was say it was presented in some form. I've never

19 seen a copy of the transcript from the proceeding.

20 Q. Okay. Did you ever have any discussion with Mr.

21 Outlaw after the trial verdict about filing an appeal or

22 was your focus then on these post-trial motions?

23 A. Focused on the post-trial motions and getting his time

24 cut too. I would have never mentioned anything to him

25 about filing an appeal because it wasn't time to really

1 talk about that. I might would have mentioned something in
2 passing but I would've never gone into any detail about
3 filing an appeal at that point in time because of my focus
4 on all those post-trial motions and what I wanted to
5 accomplish.
6 Q. And in your practice and specifically to Mr. Outlaw,
7 would you had these pretrial motions, had you been his
8 attorney, would you have filed an appeal for him or advised
9 him on an appeal after they were denied?
10 A. Yeah, I would've done that because I know if I didn't
11 what would happen I would get a letter and I wouldn't of --
12 and what I know I'd have to go do is I would have to go get
13 his affidavit of indigence, get it prepared, get it on over
14 to appellate defense, and get the transcript ordered so
15 they would pay for it and I would've told him all about
16 that but he let me go before then.
17 Q. All right. Going back to what you were talking about
18 with the birdshot versus the buckshot, did you say that you
19 were aware that, that was the case or that the shell that
20 was found was birdshot and that ---
21 A. Exactly ---
22 Q. --- hang on a second, and that the bullets that killed
23 the victim were buckshot, were you aware of that at trial?
24 A. No. I missed -- I missed the fact that the shot shell
25 that was empty, a birdshot, that was found by his breach

1 shotgun wherever he threw it out, I had missed it. I miss
2 that.
3 Q. When did you discover ---
4 A. I, you know, something hit me that night or the day
5 before I started thinking about it, I can't remember
6 really. See, on that shell it had something like high-
7 powered, really, and not being -- I took it for granted
8 that, that was a buckshot shot shell not being totally
9 familiar but believe and since it had scripted on there,
10 'high-powered', 'high-powered', whatever, I believe that,
11 you know, it was, you know, injustice could have really
12 occurred here when you combine everything together and I
13 wanted to rule that out from ---
14 Q. Well, and then what did you do, did you take any
15 action or make any request to further your belief?
16 A. Oh, yeah.
17 Q. What did you do?
18 A. I went down there and look -- I went down there with
19 the assistant solicitor, J.R. Joyner, and we looked at the
20 evidence at the sheriff's office and I said, you know, that
21 it dawned on me last night that, that might, for some
22 reason, you know, that was birdshot. I can't tell you why.
23 Nobody said anything to me. It just came to my mind.
24 That's all I can tell you. And I went immediately to the
25 sheriff's office. I got the solicitor in there. I got the

1 judge -- I told the judge what had happened. I went and
2 had it re-examined. I mean, I went and had it examined. I
3 went and had it done. And as soon as I got the results
4 back I went -- I told William about it and I showed William
5 what it was. You know, while they're some -- where there
6 were some relief that the shot shell didn't clearly didn't
7 come from that shotgun, you know, is a burden on me because
8 I lost the case when I might could have won it, you know.
9 Q. Did you ever receive an actual report from sled on the
10 forensics or on the ballistics?
11 A. Yes.
12 Q. Okay.
13 MR. BOOZER: Your Honor, May I approach the witness?
14 THE COURT: Sure.
15 Q. Mr. Cannarella, if you would I'm going to hand you a
16 document and you take a moment and look at it, and if you
17 can identify that ---
18 A. Yeah -- yeah -- that's what I would've -- that's what
19 the solicitor would've gotten back from sled.
20 Q. And, if you would, just take a moment and what does
21 that document appear to be?
22 A. The firearms department ballistics, if you want to
23 call it -- firearms report from test firing weapons.
24 Q. Okay. And what's the date on that?
25 A. Um ---

1 Q. If you would look maybe on the top of the first page.
2 A. June 27, 2005.
3 Q. Is that after the trial?
4 A. I think it is. I mean, I asked for it. I believe it
5 is.
6 Q. Okay. And is this a true and accurate copy of the
7 document that you received after your request to have the
8 testing made?
9 A. I would say it is.
10 MR. BOOZER: Your Honor, at this time and I
11 apologize this is the only copy that I have with me today,
12 I moved to make this Applicant's Exhibit Two. I have shown
13 this to the AG's office and I imagine they are going to
14 object.
15 THE COURT: Any objection?
16 MS. GIOVANOLI: My only objection is failure to
17 authenticate and also it's the first time that I've seen it
18 and I would appreciate a copy.
19 THE COURT: All right. I'll overrule your
20 objection. I'd like to see it.
21 (Whereupon, the judge takes a moment to take a look at the
22 document)
23 THE COURT: All right. Do you want to wait ---
24 (Whereupon, the SC Law Enforcement Division Forensic
25 Services has been marked and entered into evidence as

1 Applicant's Exhibit No. 2)

2 MR. BOOZER: Your Honor, may we take a break to get

3 a couple of copies?

4 THE COURT: Sure.

5 (Whereupon, the court took a brief moment to get copies of

6 exhibit for AG's office)

7 Q. Mr. Cannarella, you reviewed that sled forensic report

8 that has been marked exhibit two?

9 A. A long time ago.

10 Q. Okay. Are you familiar -- you been practicing law

11 since 1980, you're pretty familiar with those types of

12 reports?

13 A. I would say they're not always easy to read, if you

14 don't read them on a daily basis. But generally speaking

15 I'm, basically, familiar with how they appear, yeah.

16 Q. And based on your review of that report, what's your

17 understanding of that report, shows?

18 A. Well, my understanding is that report showed that,

19 that shot shell couldn't have been fired from that gun ---

20 Q. Which ---

21 A. --- nnless the shot shell that was fired, that was

22 found at the scene as I recollect -- no, that was found

23 with the breach gun some distance away -- wherever William

24 threw the gun out, William disposed of the gun after the

25 shooting, he drove off and dispose the gun after the

1 shooting, and it was my understanding that the shot shell
2 found beside that gun was not fired from that gun, that
3 shotgun. That's what I remember it to be.
4 Q. From the gun that killed the victim, the buckshot?
5 A. That's what I thought, yeah.
6 Q. Okay.
7 A. Now, if that wasn't the case then I stand to be
8 corrected based on that report says, but that was my
9 understanding of it.
10 Q. And at the time you just feel like you missed at the
11 trial that you could've argued that what came out of his
12 gun was birdshot and not buckshot which was later retrieved
13 from the victim?
14 A. Right.
15 Q. Okay. And looking back you wish that was something
16 you would've done? Yes?
17 A. Yes, sir.
18 Q. Okay.
19 MR. BOOZER: I beg the Court's indulgence, Your
20 Honor. Thank you, Mr. Cannarella. That's all the
21 questions I have.
22 MS. GIOVANOLI: Just a brief follow-up.
23 THE COURT: Sure.
24 **Redirect Examination by Ms. Giovanoli:**
25 Q. So, I'll admit I'm a little confused as far as these

1 bird and buckshot. So explain to me what was found -- what
2 was found -- what shotgun shell was found beside the gun?
3 A. Now, I don't remember. It was my belief that the gun
4 William fired and later threw away was the gun that he
5 used, that he fired that night and that the shot shell that
6 was found beside that gun was not the shot shell that came
7 out of that gun.
8 Q. Okay. So the shot gun shell ---
9 A. That's what I best ---
10 Q. --- found beside the applicant's breach gun was not
11 fired ---
12 A. Was not fired ---
13 Q. --- from the breach gun?
14 A. --- from that. That was my understanding.
15 Q. Okay. And what kind of shell was found in the victim?
16 A. Buckshot or steel shot or whatever they want to say.
17 Q. And the type of shotgun shell that was found by the
18 creek that wasn't fired from the applicant's gun had
19 birdshot?
20 A. Yeah -- I think -- my understanding was that -- is
21 that when William told them where the gun was and they went
22 and got his shotgun and they picked up a shell from there
23 that the shell laying beside that gun was birdshot, that's
24 was what -- that was my understanding.
25 Q. So your understanding is that shot shell was not used

1 in this incident?

2 A. That's what I believe, yeah, that's right.

3 Q. So is it fair to say that the shell that was used was

4 never recovered?

5 A. That's right.

6 MS. GIOVANOLI: Okay. Nothing further.

7 MR. BOOZER: Nothing further, Your Honor.

8 THE COURT: All right. You may come down. Thank

9 you.

10 MR. CANNRELLA: Thank you. Your Honor, May I be

11 excused?

12 THE COURT: Without objection?

13 MS. GIOVANOLI: No objection, Your Honor.

14 MR. BOOZER: No objection, Your Honor.

15 MR. CANNARELLA: Thank you.

16 THE COURT: Thank you very much. Next witness?

17 MS. GIOVANOLI: The State has no further witnesses,

18 Your Honor.

19 THE COURT: Anything further from the applicant?

20 MR. BOOZER: Nothing further, Your Honor.

21 THE COURT: Mr. Boozer, state for the record what

22 you're seeking in this case, I mean, what....

23 MR. BOOZER: Of course, judge. If it pleases the

24 Court? Your Honor, in my legal opinion the biggest thing

25 that Mr. Outlaw needs is a belated direct appeal review of

1 his trial and post-trial motions. That's in my belief what
2 he really needs in this case. As far as PCR goes, Your
3 Honor, separate and apart from the appellate side, his
4 belief is that his lawyer didn't argue involuntary
5 manslaughter enough. I think he understands that would be
6 in appellate issue since it was ruled upon. And then on
7 the other side of that, I guess, under his failure to
8 investigate claim would arise in being that Mr. Cannarella
9 should have made some sort of argument as he mentioned in
10 closing that he should have made an issue of the birdshot
11 shell. He said he wish he would have done that. So then
12 that would, if Your Honor agrees with all of that, of
13 course, he would be entitled to a new trial. I guess,
14 first if he's entitled to the belated appeal we'd like that
15 to run its course and then depending on the outcome of that
16 it may be a moot point on the new trial. That's what we
17 would ask, Your Honor. And I'll certainly -- I know he has
18 other allegations that I'll let stand on there own based on
19 the testimony.
20 THE COURT: I understand. What's the State's
21 position with regard to ---
22 MS. GIOVANOLI: Yes, Your Honor.
23 THE COURT: --- the belated appeal and/ or, I
24 believe it's and/or, maybe it's and, PCR application.
25 MS. GIOVANOLI: Okay. Well, on the issue of the

1 belated appeal based on today's testimony, the State would
2 not contest a belated appeal for the applicant. But as far
3 as the ineffective assistance of counsel claims go, we do
4 contest those. Specifically, Mr. Boozer brought up the
5 involuntary plea charge. There was an argument made in
6 court for that on page 236 of the transcript line 10. He,
7 Mr. Cannarella, early argue that issue and the Court ruled
8 upon it and they did not read the involuntary manslaughter.
9 THE COURT: Okay.
10 MS. GIOVANOLI: As Mr. Boozer stated that would be an
11 issue for appellate review. And then as far as the gunshot
12 shell and not making a bigger issue of that at trial, my or
13 the State's position is that he couldn't quite reconcile
14 one claim that the applicant didn't shoot the victim and
15 another claim that the applicant did shoot the victim out
16 of self-defense. Those two theories are quite
17 contradicting and could possibly confuse the jury. We
18 argue that Mr. Cannarella was effective in his
19 representation and that the applicant's failed to meet the
20 requirements of Strickland.
21 THE COURT: Well, with regard to the ballistic
22 report, we'll call it that, forensic report ---
23 MS. GIOVANOLI: Mmm, hmm.
24 THE COURT: --- that came two months after the
25 trial so Mr. Cannarella could have had no knowledge of it

1 at the time and I'm not certain as to when whether Mr.
2 Irvin had this information or not. Now, Mr. Cannarella
3 said he probably should have figured it out without having
4 the benefit of the sled report and maybe someone more
5 familiar with firearms could have figured it out. He says
6 that's where he dropped the ball. But until this report
7 was made available, he certainly could not known for
8 certain because if you read it some of these, at least on
9 the 20 gauge that apparently was fired by the victim, he
10 had reloaded shells, I think.
11 MS. GIOVANOLI: Yes, Your Honor. There were three
12 shells found from the 20 gauge.
13 THE COURT: Right. But they have been loaded with
14 buckshot, I don't know if that's where they came from the
15 factory or whether he, the victim, loaded himself which he
16 could have done easily. But, anyway, what about that Mr.
17 Boozer, the State does not object to the filing of the the
18 belated appeal?
19 MR. BOOZER: And Judge, are you asking -- is, Your
20 Honor, asking whether just to grant a belated appeal and
21 not rule on -- and that's an issue judge -- my first job
22 was assistant attorney general handling PCR's. At that
23 time what we would do is, as an assistant AG, if we can
24 send it to a belated appeal, basically, you would go have
25 the belated appeal, let all those issues get ruled on and

1 then you can come back and,I believe, my recollection is
2 then you file the PCR because new issues could arise with
3 ineffective assistance of your appellate lawyer.
4 THE COURT: Right.
5 MR. BOOZER: What has since happen and my
6 understanding of the law is there was a case called Dycippa
7 Garner vs. State. I don't have the cite handy, but
8 basically ---
9 THE COURT: I'm not familiar with it.
10 MR. BOOZER: Basically, the Supreme Court has said
11 that when there is an issue on whether someone is entitled
12 to a belated direct appeal and also they have PCR issues
13 the Supreme Court has said the proper procedure is for, I
14 guess, basically, judicial economy to rule on everything
15 all at once and determine whether there entitled to a
16 belated appeal and make final findings of fact and rulings
17 on the PCR issues.
18 THE COURT: Sounds somewhat inconsistent to me.
19 MR. BOOZER: And, respectfully, I disagree with that
20 process because I think it ends up making some additional
21 work in case he has claims on his ineffective assistance of
22 appellate counsel. But that's the process is my
23 understanding and the research that I have done in past
24 cases. Like I said before, judge, if he is entitled to a
25 belated appeal and Your Honor does also grant some of his

1 PCR issues, then he'll, I think, he would then have,
2 basically, his belated appeal first and depending on what
3 happens with that. If that's denied, then he can go back
4 on his PCR on a new trial. But that's my understanding of
5 the law based on the Garner case.
6 THE COURT: He could then appeal the PCR ruling?
7 MR. BOOZER: Yes, Your Honor, and I think what in
8 either circumstance the procedure that I have followed is
9 when we've been in a situation, I've only been in a
10 situation where someone has been granted the belated PCR's,
11 excuse me, the belated direct appeal and then denied the
12 other allegations. Basically, he almost has two appeals
13 going on at one time where they're reviewing the belated
14 direct appeal and then also reviewing the denial of the
15 PCR.
16 THE COURT: All right. What is your argument as to
17 why the PCR should be granted?
18 MR. BOOZER: Judge, I think I'll let the testimony
19 stand on its own with regard to his allegations. I do
20 think the issue, as Mr. Cannarella stated, that he wished
21 he would have brought out the birdshot being with the
22 victim's gun versus the buckshot. He feels like he
23 should've brought that to the jury's ---
24 THE COURT: Now.
25 MR. BOOZER: --- attention. Now and I think that he

1 may have testified ---
2 THE COURT: After he read this report.
3 MR. BOOZER: I'm sorry.
4 THE COURT: After he read this report?
5 MR. BOOZER: After he read the report and I think
6 that he actively sought out -- apparently he learned of
7 some information, actively sought this out by his June
8 letter to the solicitor, then solicitor Hodge, to have
9 these ballistics tested. So I think he was trying to catch
10 himself. I guess in all of this, judge, just for
11 preservation issues I do have one concern as far as what
12 Mr. Irvin presented at the motion for a new trial. The
13 reason I was asking a lot of those questions is to make
14 sure that all that stuff was presented and ruled on so that
15 if it was that can also be appellate issues for Mr. Outlaw
16 if the judge denied a motion for a new trial based on this
17 after discovered evidence of the ballistics and bullets.
18 THE COURT: And was it?
19 MR. BOOZER: I'm sorry.
20 THE COURT: And was it?
21 MR. BOOZER: Well, judge, the order -- the final
22 order that I had seen denies the motion for a new trial and
23 basically, it harps on the involuntary manslaughter charge.
24 I don't see specific ---
25 THE COURT: Not on after discovered evidence?

1 MR. BOOZER: Correct. Not on after discovered
2 evidence. And then they deny, I guess, the sentence
3 reduction request. It's a very simple one -- well, one
4 page order with the signature block on the next page.
5 THE COURT: That's from Judge Burch?
6 MR. BOOZER: Yes, sir, Your Honor. And it should --
7 Your Honor, this is the appendix that was part of the PCR
8 that brought us here today so I'm presuming it's part of
9 the record. If it's not I can certainly ---
10 THE COURT: I haven't seen it.
11 MR. BOOZER: --- make it ---
12 THE COURT: I've got the....
13 MR. BOOZER: Th Court's indulgence, Your Honor.
14 (Whereupon, Mr. Boozer takes a to find the document)
15 MR. BOOZER: Your Honor, I have a copy of the
16 appendix from the PCR case, the 2012 PCR case, where the
17 court remanded for a hearing. If I may just make this a
18 part of the record to be on the safe side. It has all of
19 his filings in there.
20 THE COURT: All right.
21 MS. GIOVANOLI: The State doesn't have any objection.
22 THE COURT: No objection.
23 MR. BOOZER: It would be exhibit three.
24 (Whereupon, the Appendix for Appl. Case No. 2012-213200-
25 William Outlaw has been marked and entered into evidence as

1 Applicant's Exhibit No. 3)

2 THE COURT: And that's Judge Burch's order?

3 MR. BOOZER: It's in there as part of the record.

4 THE COURT: Oh, this is the exhibit?

5 MR. BOOZER: It's page 69, Your Honor.

6 THE COURT: It doesn't appear that the ballistic

7 issue was even argued.

8 MR. BOOZER: I'm not sure what happened.

9 THE COURT: It's certainly was not addressed by the

10 Court. All right. All right. Proposed orders in thirty

11 (30) days.

12 MS. GIOVANOLI: Thank you, Your Honor.

13 THE COURT: Anything further for today?

14 MS. GIOVANOLI: Nothing further from the State.

15 (CONCLUSION OF THE HEARING ON JANUARY 10, 2017)

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1 CERTIFICATE

2

3 I, the undersigned Lisa S. Carter, Official Court

4 Reporter for the Fourth Judicial Circuit of the State

5 of South Carolina, do hereby certify that the

6 foregoing is a true, accurate, and complete excerpt of

7 transcript of record of all the proceedings had and

8 evidence introduced in the hearing of the captioned

9 cause, relative to appeal, in the Fourth Circuit Court

10 for Marlboro County, South Carolina, on the 10th day

11 of January, 2017.

12 I do further certify that I am neither of kin,

13 counsel, nor interest in any party hereto.

14

15

16 Lisa S Carter

17 Lisa S. Carter

18 Circuit Court Reporter

19 June 21, 2017

20

21

22

23

| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
|---|---|---|
| COUNTY OF CHESTERFIELD | ) | FOURTH JUDICIAL CIRCUIT |
| William Outlaw, SCDC #308544, Applicant, | ) | 2012-CP-13-0113 |
| v. | ) | ORDER OF DISMISSAL GRANTING WHITE V. STATE[1] APPEAL |
| State of South Carolina, Respondent. | ) | |

2017 MAR 13 AM 11: 37
Wanda F. Hiles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by William Outlaw (Applicant) on February 16, 2012. The State (Respondent) made a return and motion to dismiss on April 2, 2012, based on the statute of limitations and the doctrine of laches. On May 21, 2012, a conditional order of dismissal was filed, that later became a final order of dismissal filed on September 4, 2012. Applicant appealed this order to the South Carolina Court of Appeals (App. Ca. No. 2012-213200). In an unpublished opinion filed on June 18, 2014, the Court of Appeals reversed the PCR court's summary dismissal and, because there was a question of whether Applicant knowingly waived his right to direct review, remanded the case back to this PCR court for an evidentiary hearing. Respondent made an amended return and partial motion to dismiss on December 30, 2016, requesting summary dismissal of all claims except on the issue of whether Applicant knowingly waived his right to appellate review.

An evidentiary hearing into the matter was convened on January 10, 2017 at the Marlboro County Courthouse. Applicant was present and represented by Lance S. Boozer,

[1] White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

Esquire. Valerie Garcia Giovanoli, Esquire, represented Respondent. At the hearing, Applicant testified on his own behalf. Applicant's trial counsel, Paul V. Cannarella, Esquire, also testified. This Court had before it a copy of the Chesterfield County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, the records of this PCR action, and the trial transcript.

Respondent called the case and proceeded with the motion to dismiss all claims except for the issue of whether Applicant knowingly waived his right to appeal. Applicant provided this Court with an affidavit dated October 27, 2011 and executed by Applicant's prior trial counsel, James T. Irvin, Esquire, stating that he did not receive the September 2, 2010 order denying Applicant's motions for a new trial and reduction in sentence. This Court made the document part of the record of this action over Respondent's objection for failing to lay the proper foundation and failure to authenticate. Irvin could not be present or testify due to medical reasons. The affidavit further stated that Irvin represented Applicant in the motion hearings and did not receive a copy of the order until October 17, 2011 via fax from Applicant's mother. This Court finds that Applicant did not knowingly waive his right to a direct appeal and further that this case was remanded from the South Carolina Court of Appeals to consider the merits of Applicant's entire application and all claims therein. Therefore, this Court respectfully denies Respondent's motion to dismiss.

## PROCEDURAL HISTORY

Applicant is presently confined to South Carolina Department of Corrections pursuant to orders of commitment of the Chesterfield County Clerk of Court. Applicant was indicted at the March 2002 term of the Chesterfield County Grand Jury for murder (2002-GS-13-0159). Paul V.

Cannarella, Esquire represented him at trial. On April 6, 2005, Applicant was found guilty as indicted by a jury of his peers. On April 6, 2005, the Honorable Paul M. Burch sentenced him to confinement for twenty-five (25) years.

On April 11, 2005, Mr. Cannarella filed two post-trial motions: (1) motion for a new trial and (2) motion to reconsider sentence. Before these motions could be ruled upon, Applicant terminated the representation of Mr. Cannarella and alleges that he then retained the services of Kenneth Martin, Esquire. While the motions were still pending, Applicant filed his *first* PCR application on January 10, 2007 (2007-CP-13-0029). After Respondent filed its Return and Motion to Dismiss, the application was dismissed *without* prejudice by the Honorable John M. Milling on June 1, 2007 because an application for PCR may not be made during the time when an appeal is pending or during the time in which an appeal may be perfected.

In the interim, Applicant retained new counsel, James T. Irvin, Esquire, who argued the motion for a new trial and motion to reconsider sentence. Judge Burch denied these motions by order dated September 1, 2010 and filed on September 2, 2010. Applicant did not appeal his conviction or sentence.

Applicant filed this current application for post-conviction relief on February 16, 2012, in which Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel.
    a. "Applicant Trial Counsel was ineffective for not filing the notice of intent to appeal..."
    b. "Applicant trial counsel was ineffective for not pre-trialing the murder charge based upon the prob. cause mandates..."
    c. "Trial Counsel was ineffective for not objecting to the improper malice charge given by the Court..."
    d. "Trial Counsel was ineffective when he failed to properly investigate the facts and circumstances..."

e. "Counsel for trial failed to interview potential witnesses..."
f. "Trial Counsel failed to present ten (10) factual relevants to the jury..."
(sic)

At the evidentiary hearing, Applicant proceeded on claims a, c, d, e, and f.

**SUMMARY OF TESTIMONY**

Applicant testified to the following:

Applicant is incarcerated for voluntary manslaughter. He was originally tried for murder. Applicant's family hired Paul Cannarella ("Counsel") to represent Applicant in his murder trial. Applicant was arrested in January of 2002 and Counsel was hired immediately after, sometime in January. Over the course of the three (3) years of representation, Applicant testified that he met Counsel only twice – once at the time he was retained and once at trial. Applicant claims he killed the victim in self-defense. Applicant testified that he discussed his version of the events with Counsel and that Counsel was in agreement with his self-defense claim. Applicant testified that he discussed the evidence with Counsel a little bit, but not much. They also discussed witnesses. Applicant also recalls discussions of post-trial motions, reconsideration of sentence, third party guilt, newly discovered evidence, and the Court's failing to charge involuntary manslaughter.

Applicant stated that he later (after conviction) released Counsel as his attorney. He hired another attorney, briefly, by the name of Kenneth Martin. Martin had some medical issues so he released him and hired James T. Irvin. Irvin represented Applicant in court on the post-trial motions that Counsel had filed after the trial. A hearing was held at the Marlboro County Courthouse sometime in 2010. Applicant believed that Irvin would appeal his case after the

denial of the post-trial motions. In the post-trial motions, Irvin argued that a ballistics report, from a test done two (2) months after trial, was newly discovered evidence as were eight (8) new statements made after Applicant's conviction by Applicant's friends and acquaintances that Applicant did not shoot or kill the victim.[2] Applicant testified that after reviewing the post-trial ballistics report, he realized that the victim was killed by buckshot, but that birdshot was introduced at trial.[3] Applicant further testified that the shell introduced at trial did not match the gun that he claimed at trial he fired. Applicant claims that his gun and a spent birdshot shell were found next to a creek two (2) miles from the victim's home, where the killing occurred.

Applicant admitted that he did not supply Counsel with any list of witnesses. Applicant was aware that Counsel had spoken to one witness, but that Counsel believed he was incompetent. Applicant testified that the gun he shot at victim had to be breached in order for the empty shell to eject and that he did not breach it at the scene of the incident. Applicant testified that all of the shells in his trunk were birdshot and he never shot the gun after leaving the scene.

Applicant believes Counsel failed to investigate because he should have gotten a witness statement that Applicant was not the one who shot the victim. The judge had a copy of the witness's statements and reviewed them in order to rule on the post-trial motions. Applicant

[2] This Court notes that Applicant testified during his trial that he shot the victim out of self-defense. Applicant did not, nor any other witness at trial, testify to hearing more than the first warning shot fired in the air by the victim and then Applicant's alleged self-defense shot.
[3] According to the transcript, birdshot was not introduced at trial. Rather, an empty shell casing that bore markings on its side indicating it had been originally loaded with birdshot pellets had been introduced.

claims that Counsel did not seek involuntary manslaughter because he wanted to get Applicant off on self-defense.[4]

Applicant testified that he did not receive the order denying his post-trial motions until September 12, 2011. Irvin indicated that he never received the order so Applicant's mother faxed it to him. Irvin provided Applicant an affidavit claiming he received the order via fax from Applicant's mother October 17, 2011 and Applicant has never heard from Irvin since. Although Applicant did not request that Irvin file a notice of appeal at that juncture, Applicant recalls discussing filing an appeal at the time of the post-trial motions with Irvin and expected him to file a notice for him.

Counsel testified to the following:

Counsel testified that he has been practicing law since 1980, although not exclusively criminal law. Counsel was retained shortly after the incident. He does not recall how many meetings he had with Applicant from the time he was retained in January 2002 to the date of his trial in April 2005, but finds it reasonable to conclude he met with Applicant more than twice, as testified to by Applicant. It is Counsel's practice to meet with his clients much more than twice before a criminal trial. Counsel received discovery, reviewed it with Applicant, and reviewed Applicant's charge and Applicant's version of the facts with him.

Counsel recalled the facts of the case as follows: Applicant spent the day with the victim. They were under the influence of alcohol and spent most of the time at the victim's house. Another guy, described as a "brute," showed up later. There was bad blood between this new

[4] Counsel requested an involuntary manslaughter charge and the Court denied his request. Trial Tr. pp. 246-252.



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arrival and Applicant. The brute cold clocked Applicant. Applicant got in his car and the brute smashed his fist through the windshield. Applicant drove around then returned to the victim's home. The victim, and homeowner, was standing outside of his residence. Applicant pulled up to the home and got out of his vehicle. The victim fired a warning shot in the air and threatened Applicant, but Counsel did not recall in what order. There was not enough light for Applicant to see where gun was pointed or who was holding it. Applicant fired his shotgun in his defense.[5] Applicant then drove off and threw his breached shotgun in a remote area a couple miles away from the incident. Counsel said that according to the ballistics report, the birdshot shell found near[6] Applicant's breached shotgun was not the same shot type that killed the victim. In Counsel's opinion, an injustice may have been done.[7] Counsel was unsure if Applicant really shot the victim in self-defense because Applicant was so intoxicated that he did not have much memory. Counsel testified that only two shots were heard.

At trial, Counsel stipulated to the guns and shotgun shells as evidence and to the cause of death being a shot fired by Applicant. Counsel testified that he stipulated to this information and evidence because it was consistent with the truth, that Applicant had shot and killed the victim out of self-defense. It was consistent with all of the evidence in the case, Counsel's investigation of the case, and Applicant's version of the facts. Counsel testified that based on Applicant's version of the facts, the trial strategy was a claim of self-defense and that by stipulating to the

[5] Applicant testified in his trial that Applicant actually exited his vehicle, stood behind the opened driver's side door and when he heard a gunshot and saw a flame, he ran to the trunk of his vehicle, used the keys to open the truck, retrieved a shotgun, fumbled blindly around the trunk for a shell, loaded his shotgun, returned behind the open driver's side door and shot his gun from his hip toward the flame.

[6] The evidence in record reflects that the birdshot shell was found on a dirt road and the breached shotgun was found *in* the creek by the road.

[7] Counsel does not make mention of the finding in the ballistics report that "[d]ifferences in the breechface impressions were sufficient to conclude that the Item 10 shotshell [found near defendant's shotgun] was **not fired** by the [defendant's] shotgun." Applicant's Ex. 2. (emphasis added.)



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shooting and killing, he was not giving up anything. Counsel testified that the victim had fired a warning shot with a 20 gauge shotgun and Applicant fired a 12 gauge shotgun.

Counsel was candid in overlooking what he viewed a critical piece of evidence. Counsel opined that had he ordered the ballistics report prior to trial, he would not have missed the fact that the empty shell casing collected a couple miles from the incident, was not the shell shot to kill the victim. And, that had he known of this detail, the trial may have been different. Counsel lamented that he could have used the birdshot in his closing to create a reasonable inference that Applicant did not kill the victim. Counsel testified that neither he nor the prosecution had requested a ballistics analysis prior to trial. His understanding of the ballistics report was that the shell found near the defendant's shotgun, collected by law enforcement, and introduced at trial could not have been fired from defendant's gun. Counsel believes that the shell that *was* fired from defendant's gun was never recovered.

Counsel also testified that he wanted the jury to have four options – murder (as charged), voluntary manslaughter, involuntary manslaughter and not guilty by reason of self-defense. Counsel testified, and the record reflects, that he did request an involuntary manslaughter charge and Judge Burch refused his request. The list of statements and names used in Counsel's post-trial motion for a new trial were collected by Applicant and his mother after the trial. Counsel and the family had been unable to develop this information prior to trial. Counsel believes that the ballistics report could have convinced Judge Burch of giving an involuntary manslaughter charge.[8] Counsel recalled that the ten facts he laid out in his motion for a new trial and reduction

[8] This Court is unsure of how alleged evidence of third party guilt would give rise to an involuntary manslaughter charge.

in sentence arguing that the jury should have been allowed to consider involuntary manslaughter: Applicant's drunken state, drug usage, being attacked by John Talbert, obscured vision as a result of attack, not aiming the gun, discharging gun from the hip, testimony that he did not intend the result, the victim was Applicant's friend, the victim was not a part of the initial altercation, and impaired state of mind causing him to overreact to initial gun fire.

Counsel testified that the implied malice instruction was given at the trial, but that the trial occurred over four years prior to the change in law after Belcher.[9] Counsel recalled some discussion of an appeal and that process, but insisted his focus was more on post-trial motions up until the time he was relieved from Applicant's case. Counsel was not Applicant's attorney when the time was proper to file a notice of appeal.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and has weighed their testimony and credibility accordingly. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017).

### Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the Applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP).

[9] State v. Belcher, 385 S.C. 897, 685 S.E.2d 802 (2009). (finding the "use of deadly weapon" implied malice instruction has no place in a murder prosecution where evidence is presented that would reduce, mitigate, excuse, or justify the killing.)



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Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 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.

A. Failure to file notice of appeal

This Court finds Applicant did not knowingly and intelligently waive his right to a direct appeal. Counsel must ensure that a criminal defendant is made fully aware of his appeal rights. White v. State, 263 S.C. 110, 118, 208 S.E.2d 35, 39 (1974). In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure required by Anders v. California, 386 U.S. 738 (1967). Id. Where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive their appellate rights, the

applicant may petition the South Carolina Supreme Court for review of direct appeal issues pursuant to White v. State. See Rule 243(i)(1), SCACR; Davis v. State, 288 S.C. 290, 291 n.1, 342 S.E.2d 60, 60 n.1 (1986) ("Even where the post-conviction relief judge makes this finding, he may not grant relief on this basis. Instead, the applicant must petition this Court for a White v. State review.").

In the present case, Applicant testified that Counsel did not file a notice of appeal on his behalf. Applicant provided this Court with an affidavit executed by his attorney of record at the time when it was proper to file a notice of appeal (after Judge Burch's order denying Applicant's post-trial motions), James T. Irvin. The affidavit specified that Irvin did not receive notice of the September 2, 2010 order denying Applicant's post-trial motions until it was faxed to him by Applicant's mother on October 17, 2011. Applicant testified that he had no further communication with Irvin, but that at the time of the post-trial motions hearing, he had discussed an appeal with Irvin and expected him to pursue an appeal in the event that he lost the motion hearing.[10] Because Irvin is unable to testify, this Court finds Applicant's testimony regarding his waiver of his right to appeal credible. In light of the testimony elicited at the PCR hearing, Respondent does not oppose a belated review of Applicant's trial and post-trial motions pursuant to White. Id. It does not appear that Applicant knowingly and intelligently waived his right to appeal; therefore, he is entitled to a belated appeal. As such, the Court finds Applicant did not knowingly and voluntarily waive his appellate rights and is entitled to an appeal from his conviction. Applicant's lack of an appeal shall be remedied pursuant to White v. State. Id.

[10] Applicant was not sleeping on his rights. This is further illustrated by his first, premature pro se PCR application filed on January 10, 2007, at the time his post-trial motions continually pended for five years after his trial.

B. Failure to object to malice charge

This Court finds Counsel was not ineffective for failing to object to the implied malice charge given by the Court in Applicant's 2005 trial. At the time of Applicant's trial, April 4-6, 2005, it was common practice to instruct a jury that malice could be implied by the use of a deadly weapon. However, in October of 2009, the Supreme Court of South Carolina held in Belcher that this was no longer good law in a case where there is evidence that would reduce, mitigate, excuse, or justify the homicide. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009). This Court recognizes that Belcher applies squarely to Applicant's case, had he been tried over four years later. No South Carolina court has ever required an attorney to anticipate or discover changes in the law, or facts which did not exist, at the time of the trial. Thomes v. State, 310 S.C. 306, 309-10, 426 S.E.2d 764, 765 (1993). The relevant time frame for analysis is when the alleged ineffectiveness occurred. Id. at 310. While the rules of preservation require that objections to the admissibility of evidence be specific, they most certainly do not require clairvoyance. State v. Tapp, 398 S.C. 376, 728 S.E.2d 468 (2012).

Applicant has failed to put forth sufficient reason why Counsel should have objected to a charge on the law that was appropriate at the time it was given. As such, this Court finds that Applicant has failed to meet his burden in proving a deficiency in Counsel's performance as required by Strickland. This Court also notes, that even if Counsel was deficient in failing to object to the implied malice charge, Applicant was not prejudiced by that failure. The jury convicted Applicant of voluntary manslaughter, instead of murder, which does not require malice. Therefore, this claim is denied and dismissed with prejudice.

C. Failure to properly investigate

This Court finds Applicant has not met his burden to prove Counsel was ineffective by failing to properly investigate his case. Specifically, Applicant contends that a ballistics report produced after his trial yields evidence that could have been used at his trial. Applicant claims that trial counsel was deficient in failing to request the report prior to trial. Applicant provided this court with the ballistics report as Applicant's exhibit 2, over Respondent's objection. This Court has had the opportunity to review the contents of the report and pass upon its authenticity.

This Court finds the ballistics report to be an authentic report produced by South Carolina Law Enforcement. Counsel testified that he requested and received the report approximately two months after trial. The document is also dated June 27, 2005, approximately two months after Applicant's trial. This Court notes the relevant portion of the report concludes that a spent shell casing found in the same vicinity as where the Applicant's shotgun was found was not shot from Applicant's gun. The report further concluded that the shell bore markings that indicate it was originally filled with birdshot pellets. This Court fails to see the relevance of this evidence to Applicant's trial.

First, as the ballistics report indicates, if the shell casing that was located near the Applicant's shotgun, miles from the shooting, was not shot from Applicant's gun, then it is abundantly clear that it was not the shell casing that was used to kill the victim. Whether that shell casing had been loaded with birdshot or buckshot is also irrelevant, as it was located miles away from the shooting. Absent a nexus between Applicant's gun and the shell, there is no evidence the shell has any connection to the shooting. At best, the report illustrates that the shell casing from the fatal shot was never recovered – a detail that is irrelevant in a case where Applicant has confessed to shooting the victim out of self-defense.

Second, Applicant's version of the facts, from the very beginning and up to the PCR hearing, has been that he shot and killed the victim out of self-defense. This Court finds very credible Applicant's testimony that he believes he shot the victim in self-defense. Counsel's testimony with regard to discussing Applicant's version of the facts is also very credible. Applicant's own testimony at his trial, and that of the State's witnesses present during the shooting, was that there were *only* two gunshots fired and heard.[11] The testimony was also consistent that the first gunshot came from the victim and the second shot was from Applicant. The record shows that neither the State nor the Defense ever offered evidence of any other gunshots to support a claim of third party guilt. This Court fails to see how this questionable evidence of third party guilt based on the ballistics report could have helped Applicant in his self-defense claim. The proposition made *after* the production of this report that a third party shot the victim is not credible in light of the consistent and overwhelming evidence that there were two shots fired that night – a warning shot from the victim and the fatal shot by Applicant. Even if known prior to trial and addressed solely in Counsel's closing, as Counsel proposed, this argument would only serve to confuse the jury, discredit Applicant's testimony and his theory of the case. The report does not support or prove a claim of third party guilt. Rather, it only supports a claim that law enforcement picked up a stray shell from the same vicinity of Applicant's gun that has *no* connection to the shooting and that the shell used to kill the victim was never found.

Third, to the extent that it is Applicant *or* Counsel's contention that had they known the shell admitted into evidence during the trial was not the fatal shell used to kill the victim, the trial strategy would have been different, this Court finds that contention inherently flawed. In the PCR hearing, Counsel and Applicant both testified that Applicant shot the victim, or at least shot

[11] State's witness, Susan Wilson, wife of the victim, testified that she only heard one gunshot.

toward the victim, in self-defense. To put forth a different theory at trial, essentially that someone else shot the victim that night, would require Applicant to violate his oath to testify truthfully and Counsel to violate his duty as an officer of the court to put forth evidence known to be untrue.

Additionally, this Court finds that it was reasonable to forego a request for a ballistics analysis given the circumstances *at the time*. "The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." Yarborough v. Gentry, 540 U.S. 1, 6, 124 S.Ct. 1, 157 L.Ed.2d 1 (2003). Going into the trial, Counsel had no reason to believe, based on what Applicant told him happened and Counsel's own investigation of the facts and evidence, that a ballistics report would yield anything of value. In his professional judgement, it was more prudent to focus on perfecting Applicant's self-defense claim where there had been absolutely *no* indication that someone other than Applicant shot the victim. This decision was more than reasonable in light of the prevailing professional norms. This Court finds no deficiency in Counsel's performance as required by Strickland.

Assuming *arguendo* that Counsel's failure to request a ballistics report was unreasonable, Applicant still cannot prove he was prejudiced by that failure. Applicant contends, and Counsel seems to agree, that had they had the report prior to trial, the trial *may* have been different. As discussed in the paragraphs supra, this Court finds that it would not have made a difference. Counsel's entire theory of the case, based on his investigation, revolved around Applicant's claim of self-defense. Had Counsel addressed the unrelated shell casing collected by law enforcement in his closing to infer someone other than Applicant had shot the victim, at best, the jury would have been left confused. It is likely that the jury would discredit the entire defense for alleging self-defense, but at the same time inferring someone else shot the victim. In light of

the overwhelming evidence against Applicant, the fact that the shell in evidence was not shot from defendant's gun nor was the shell used to kill the victim is insufficient to establish, even by a reasonable inference, third party guilt.

This Court having found Applicant has failed to prove either prong of Strickland, finds this allegation meritless. Therefore, this claim is denied and dismissed with prejudice.

D. Failure to interview potential witnesses.

This Court finds Applicant has failed to meet his burden in proving that Counsel was ineffective for failing to interview potential witnesses. Applicant contends that he provided a list of eight witnesses who provided statements *after* Applicant's trial alleging that someone other than Applicant shot the victim. Counsel testified that Applicant and his family obtained these statements and that the witnesses had never been brought to his attention prior to trial. This Court finds Counsel's testimony on this issue to be credible. Nonetheless, Counsel filed a post-trial motion for a new trial and a reduction in sentence using these eight statements as newly discovered information.

This Court finds that Counsel was not deficient in failing to interview witnesses he had no reason to know existed or the substance of what their testimony would be. Applicant testified that Counsel was retained sometime shortly after his arrest in August of 2002. Applicant's trial was in April of 2005. This Court notes that Counsel had over three years to prepare for Applicant's trial. This Court finds credible Counsel's testimony that he would have met with Applicant much more than two times prior to his trial. This Court finds not credible Applicant's allegation that Counsel only met with him twice or that Counsel could have interviewed and gotten similar statements from these eight witnesses. The alleged witnesses had over three years to come forward to share this information with Applicant and his Counsel, but instead withheld

the information until after Applicant was convicted. Counsel cannot be expected to interview and investigate those who he does not know exist. Although Counsel has a duty to investigate, that duty can only be discharged with a cooperative and forthcoming Applicant. In this case, Applicant was forthcoming, not with witnesses, but with his story of self-defense. The witnesses that came forth after Applicant's trial did not provide information to help Applicant's claim of self-defense, but rather an entirely different theory of third party guilt. Therefore, it was reasonable for Counsel not to find and interview the late-coming witnesses. This Court finds no deficiency in Counsel's performance as required by Strickland.

Additionally, this Court finds the statements offered by the after-discovered witnesses to be not credible. Even if this Court were to view this alleged newly discovered evidence to be credible, this Court does not have authority to grant post-conviction relief on that basis. This alleged newly discovered evidence was put before the trial court and ruled upon in the post-trial motions; making this issue a matter for direct appeal. Understanding that Applicant did not receive his direct appeal, this Court is granting Applicant relief in the form of a belated review of his conviction pursuant to White and as discussed in the section A, supra. Should this alleged newly discovered evidence have merit, relief may be granted by the appropriate Court tasked with reviewing Applicant's conviction. Lastly, § 17-27-45 (c) of the South Carolina Code of Laws states that a newly discovered evidence claim can be timely raised within one year of actual discovery or within one year of when, by the exercise of due diligence, such evidence could have been ascertained. This evidence, while newly discovered after the trial and at the time of the post-trial motions, is no longer newly discovered in his current PCR action. This information was discovered some time prior to the filing of his post-trial motions in June of

2005. This application for PCR was filed on February 16, 2012, well beyond the one year statute of limitations.

Finding Applicant has failed to meet his burden under Strickland to prove Counsel was either deficient or that his deficiency prejudiced the Applicant's trial, this claim is denied and dismissed with prejudice.

E. Failure to put forth ten "facts" during Applicant's trial.

This Court finds that Applicant has failed to prove his burden of proving Counsel was ineffective for failing to put forth ten "facts" during his trial. These facts included Applicant's drunken state, drug usage, being attacked by John Talbert, obscured vision as a result of attack, not aiming the gun, discharging gun from the hip, testimony that he did not intend the result, the victim being Applicant's friend, the victim not being a part of the initial altercation, and the Applicant's impaired state of mind causing him to overreact to initial gun fire. Applicant's testimony that Counsel failed to put forth evidence of these ten "facts" is not credible. The record is replete with this evidence. Counsel addressed these issues in his opening statement, he elicited it from numerous witnesses, including Applicant, and he addressed it again in his closing. Counsel also drew the Court's attention again to those facts in his motion to reconsider Applicant's sentence.

Applicant has failed to show any deficiency on the part of Counsel. Therefore, this Court finds Applicant has failed to meet his burden under Strickland. Counsel rendered effective assistance in putting forth any and all evidence favorable to Applicant's claim of self-defense. Therefore, this claim is denied and dismissed with prejudice.

## CONCLUSION

Based on all the foregoing, this Court grants Applicant a belated review of his conviction pursuant to White v. State. With regard to all other claims, this Court finds Applicant has not established any violations that would require this Court to grant further relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice. This Court also finds that Applicant failed to present evidence as to the other allegations, and thus, this Court deems the other allegations abandoned.

*[Remainder of page left blank intentionally]*

This Court notifies Applicant that he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. See Rule 71.1 (g), SCRCP. You must look at Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED THAT:**

1. The application for Post-Conviction Relief is denied and dismissed with prejudice;
2. Within **thirty (30) days** of service of this Order, counsel for Applicant must file a notice of appeal to secure the appropriate review of Applicant's conviction. Counsel and Applicant are directed to Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986), and Rule 243(i), SCACR, for the appropriate procedure for securing appellate review; and
3. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

**AND IT IS SO ORDERED** this 9th day of March, 2017.

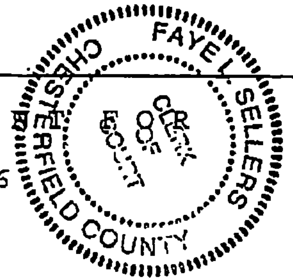
G. THOMAS COOPER, JR.
Presiding Judge
Fourth Judicial Circuit

Chesterfield, South Carolina

2017 MAR 13 AM 11: 37
Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

VIS

| WITNESSES | DOCKET #: 02GS13-0159 |
|---|---|
| David Watson<br>Ccsd<br>JL | THE STATE OF SOUTH CAROLINA<br>County of Chesterfield |
| | COURT OF GENERAL SESSIONS<br>Term: March, 2002 |
| ARREST WARRANT #:<br>G016135<br>Arrested on January 12, 2002 | THE STATE<br>vs.<br>William Outlaw |
| ACTION OF GRAND JURY<br>True Bill<br>Foreman: Cynthia J. Davidson<br>Grand Jury<br>2/28/02 | INDICTMENT<br>0116<br>MURDER<br>16-3-10 |
| VERDICT<br>___ Guilty of Murder<br>✓ Guilty of Voluntary Manslaughter<br>___ Not Guilty<br>Foreman: [signature]<br>Petit Jury<br>Date: 4-6-05 | A True Copy Attest<br>Faye L. Sellers<br>CLERK OF COURT C.P. & G.S.<br>CHESTERFIELD COUNTY, SC |

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CHESTERFIELD ... SC
BOOK ___

STATE OF SOUTH CAROLINA )
)     INDICTMENT #02GS13-0159
County of Chesterfield )

At a Court of General Sessions, convened on March 04, 2002 the Grand Jurors of Chesterfield County present upon their oath:

COUNT: MURDER
16-3-10

That William Outlaw in the County of Chesterfield on or about January 11, 2002, feloniously, wilfully and with malice and aforethought, kill one William Michael Johnson means of shooting and that the said William Michael Johnson did die in Chesterfield County as a proximate result thereof on or about the 11th day of January, 2002.

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

SOLICITOR: [signature]

FAYE L. SELLERS CLERK CHESTERFIELD COUNTY

A True Copy Attest
Faye L. Sellers
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

STATE OF SOUTH CAROLINA

COUNTY OF CHESTERFIELD

STATE VS. William Outlaw

AKA:

Race: W Sex: M Age: 24

DL# SID#

**IN THE COURT OF GENERAL SESSIONS**

INDICTMENT/CASE#: 2002 -GS- 13 - 159

A/W#: G016135

Date of Offense: 1-11-02

S.C. Code §: 16-3-10

CDR Code #: 0 1 1 1 1 16

☐ CASE RESTORED

SENTENCE

☐ PLEA ☑ TRIAL

In disposition of the said indictment comes now the Defendant who was ☑ CONVICTED OF or ☐ PLEADS TO: Voluntary Manslaughter

in violation of § 16-3-50 of the S.C. Code of Laws, bearing CDR Code # 0 1 2 1 1 7

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☑ MOST SERIOUS ☐ 17-25-45

The charge is: ☐ As Indicted, ☑ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor — Defendant: Will Outlaw — Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☑ **State Department of Corrections**, ☐ **County Detention Center,** for a determinate term of 25 ~~days/months~~/years or ☐ under the **Youthful Offender Act** not to exceed ______ years and/or to pay a fine of $_______; provided that upon the service of ____ days/months/years and/or payment of $__________; plus costs and assessments as applicable*; the balance is suspended with **probation** for ____________ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☑ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

**SPECIAL CONDITIONS:**

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: $ plus 20% fee: $

Payment Terms:

☐ set by SCDPPPS

Recipient:

| | | |
|---|---|---|
| *Fine: | | $ |
| §14-1-206 (Assessments 107.5%) | | $ |
| §14-1-211(A)(1) (Conv. Surcharge) | $100 | $100.00 |
| §14-1-211(A)(2) (DUI Surcharge) | $100 | $ |
| §56-5-2995 (DUI Assessment) | $12 | $ |
| § 35.13 (Public Def/Prob) | $500 | $ |
| §73.3, 1B TP (Law Enforce. Funding) | $25 | $25.00 |
| §33.7, 1B TP (Drug Court Surcharge) | $100 | $ |
| §50-21-114(BUI Breath Test Fee) | $50 | $ |
| §56-5-2942(J) (Vehicle Assessment) | $40/ea | $ |
| 3% to County (if paid in installments) | | $3.75 |
| TOTAL | | $128.75 |

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ ______ beginning ______

$ ______ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, §35.13 TP Requires $500 be paid to Clerk during probation.

Faye L. Sellers

Clerk of Court/ Deputy Clerk

Court Reporter: Nettie O. Gordon

PRESIDING JUDGE

Judge Code: 18

Sentence Date: 4/05

True Copy Attest

CLERK OF C.C.P. & G.S. CHESTERFIELD COUNTY, SC

*White* – Clerk *Green* – Corrections *Canary* – Probation *Pink* – Defendant

SCCA/217 (7/2003)