

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Appeal from Horry County

Honorable Thomas A. Russo, Circuit Court Judge

LAVARD D. LIND-BAEZ,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-000282

APPENDIX

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INDEX

INDEX.....	i
GUILTY PLEA TRANSCRIPT DATED JULY 22, 2013	1
APPLICATION FOR POST-CONVICTION RELIEF	22
RETURN	30
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED AUGUST 10, 2015	36
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED NOVEMBER 13, 2015	42
ORDER OF DISMISSAL	164
INDICTMENT	179

1 STATE OF SOUTH CAROLINA) TRANSCRIPT OF RECORD
2 COUNTY OF HORRY) CASE NO: 2012-GS-26-2928
3

4 -----
5 B E F O R E: The Honorable Larry B. Hyman
6 July 22, 2013
7 -----

8 STATE OF SOUTH CAROLINA,
9
10 Plaintiff,
11 vs.
12 LAVARD D. LIND-BAEZ,
13 Defendant.
14

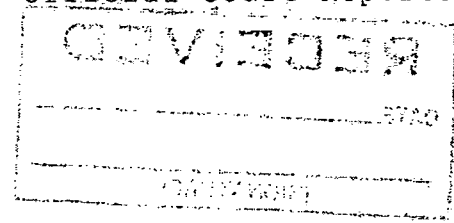
 ORIGINAL

15 -----
16 APPEARANCES:

17 Laurie Richardson, Esq.
18 Attorney for the State.
19

20 Edward Brown, Esq.
21 Attorney for the Defendant.
22

23 Natalie Dahl, RPR
24 Official Court Reporter
25



1

I N D E X

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Examination by the Court..... 3

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Sentence by the Court..... 20

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E X H I B I T S

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NO EXHIBITS WERE MARKED

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

2 MS. RICHARDSON: State of South Carolina
3 versus Levard Lind-Baez, Indictment 2012-GS-26-2928.
4 I'll hand Your Honor up a certified copy of that.

5 (LAVARD LIND-BAEZ, having been duly sworn,
6 testified as follows:)

7 EXAMINATION

8 BY THE COURT:

9 Q Is it Lind-Baez (pronouncing)?

10 A Yes, sir.

11 Q Mr. Lind-Baez, you are represented by Mr. Brown?

12 A Yes, sir.

13 Q Have you had an opportunity to discuss your case
14 with him?

15 A Yes, sir.

16 Q And has he explained to you that for trafficking
17 cocaine in the 28 to 100 gram range, you could receive
18 no less than seven, but up to 30 years?

19 A Yes, sir.

20 Q And do you understand the nature of that offense
21 or what constitutes trafficking?

22 A No, sir.

23 Q You don't?

24 A Well, can I get...

25 Q Trafficking is a possessionary offense. It

1 would, in layman's terms, suggest that you were dealing
2 in or distributing cocaine. The State is not required
3 that under our trafficking statute. It is a possessory
4 offense. You have committed the offense of trafficking
5 when you are in possession, either actual or
6 constructive possession, of more than 28 grams, but
7 less than -- in your case -- less than 100 grams of
8 cocaine. There are other levels of this offense, but
9 you are charged with trafficking in 28 to 100. So the
10 State would have to prove to a jury beyond a reasonable
11 doubt that you were in either actual or constructive
12 possession of more than 28 grams, but less than 100
13 grams of cocaine; do you understand that?

14 A Yes, sir.

15 Q You understand it fully?

16 A Yes, sir.

17 Q Has your attorney gone over the evidence in this
18 case with you?

19 A Yes, sir.

20 Q And do you understand how the State would use
21 that evidence against you if you were to have a jury
22 trial?

23 A Yes, sir.

24 Q And how the State would use that to prove the
25 elements of this offense; do you understand that?

1 A Yes, sir.

2 Q Then there is no question that you and your
3 attorney have discussed the matter of a jury trial; is
4 that right?

5 A Yes, sir.

6 Q Now, are you aware of the fact that your right
7 to a jury trial is an absolute right, that is no one
8 can waive it but you?

9 A Yes, sir.

10 Q But, however, if you enter a plea of guilty, and
11 I'm just informed that that is what you wish to do here
12 today, I want to make sure that is what you want to do,
13 do you understand that if you plead guilty you are
14 waiving, you are giving up, irrevocably your right to a
15 jury trial?

16 A Yes, sir.

17 Q You can't later come back and say I've changed
18 my mind, I want a jury trial; you understand that?

19 A Yes, sir.

20 Q Now, Mr. Lind-Baez, do you realize that if you
21 plead guilty and waive or give up your right to a jury
22 trial, you are also giving up many, many other rights
23 you have as well? If a person has a jury trial, there
24 are many rights that attach to a jury trial. There are
25 so many that we could sit here for a month and discuss

1 every day rights that attach to a jury trial. There is
2 so many we could never cover them all. However, some
3 of the rights that are more important, at least in my
4 view, some of the more important ones that I want to
5 point out by way of illustration would be things like
6 your Fifth Amendment right. Under the Fifth Amendment
7 of the United States Constitution, you would not have
8 to testify in your trial. No one could make you
9 testify. Of course you have the absolute right to
10 testify if you wish to, but if you were to decide that
11 you want to exercise your Fifth Amendment right and not
12 testify, I would even tell the jury -- and you would
13 have a right to require me to do it -- I would tell the
14 jury they could not use that against you in any form or
15 fashion, that it would mean nothing in your trial; do
16 you understand that?

17 A Yes, sir.

18 Q Do you further understand you would have a right
19 to counsel throughout your trial, right to an attorney,
20 and you would have the right at the end of the trial to
21 require the State to prove to each and every juror your
22 guilt beyond a reasonable doubt before there was a
23 conviction; do you understand that?

24 A Yes, sir.

25 Q Again, these are just some of the many rights

1 you have that attach to a jury trial, but I want you to
2 understand that when you plead guilty, you are not only
3 giving up that general right to a jury trial, you are
4 giving up many other rights as well; do you understand?

5 A Yes, sir.

6 Q Is that what you wish to do?

7 A Yes, sir.

8 Q All right. Tell me about Mr. Brown. How long
9 has he represented you?

10 A Shortly after I got in trouble, February 21,
11 2012.

12 Q So that has been -- going on 18 months, right?

13 A Yes, sir.

14 Q And during that time, has he gone over the case
15 with you? Has he discussed the case with you?

16 A Yes.

17 Q Has he explained to you your options, that is
18 that you have the right to a jury trial, and in
19 addition, the right to appeal -- I mean to plea?

20 A Yes, sir.

21 Q And has he provided you with all of the
22 information that you feel that you need?

23 A Yes, sir.

24 Q Is there anything else you want him to do for
25 you today?

1 A No, sir.

2 Q Are there any questions that you would like to
3 ask me about this procedure? I cannot give you legal
4 advice, but I would be more than happy to answer any
5 questions you have about this procedure, about how it
6 works.

7 A I'm pleading basically today is the 85 percent?

8 Q Yes, sir.

9 A So I will be doing six years, three months or --

10 Q I can't tell you precisely what you'll be doing,
11 but under the current law, that is not a parole
12 eligible offense, those are what we call 85 percent
13 offenses. I can't promise you you'll serve six years
14 and three months, or anything else. I have not
15 calculated it. I'm not in a position to calculate it,
16 and I don't know whether you would be eligible for good
17 time or work credits, I don't know if any of that would
18 apply. I don't involve myself in that process. That
19 is a matter that takes place in your classification
20 procedures at the Department of Corrections; do you
21 understand?

22 A Yes, sir.

23 Q Is there anything else you need from your
24 attorney?

25 A No, sir.

1 Q Are you satisfied with Mr. Brown?
2 A Yes, sir.
3 Q Now, Mr. Lind-Baez, I see you are 27 years old?
4 A Yes, sir.
5 Q Are you married?
6 A I'm engaged.
7 Q Do you have any children?
8 A Yes. A one-year-old son outside -- nine months.
9 Q Do you live with the son?
10 A Yes.
11 Q Is his mother your partner?
12 A Yes. She's here.
13 Q Mr. Lind-Baez, how far did you go in school?
14 A Graduated high school. I went all the way to my
15 associate's degree in business at Horry Georgetown
16 Tech.
17 Q That's good for you. Mr. Lind-Baez, have you
18 been working until this time?
19 A Yes. I worked for Sunbelt Rentals.
20 Q What do they do?
21 A Build scaffold.
22 Q Scaffolds?
23 A Yes, sir, the platforms for people to work off
24 of.
25 Q Like in construction?

1 A Yes, sir.

2 Q How long have you been doing that kind of work?

3 A Since, like, a-year-and-a-half.

4 Q Have you ever had any mental health problems or
5 addiction issues that might possibly prevent you from
6 understanding what we're doing here today?

7 A No, sir.

8 Q Do you understand fully and completely why you
9 are here and what we're doing?

10 A Yes, sir.

11 Q Mr. Lind-Baez, have you had any alcohol or any
12 drugs in the last 48 hours?

13 A No, sir.

14 Q Again, can you think of any reason why you
15 wouldn't understand what we're doing?

16 A I fully understand what's going on.

17 Q I want you to listen carefully, the solicitor is
18 going to tell me why you are charged with this offense.

19 MS. RICHARDSON: Thank you, Your Honor. On
20 February 21, 2012 agents with the 15th Circuit
21 Solicitor's office, or DU, Your Honor, conducted a
22 buy bust at the Garden City Connector in Horry County
23 at that Walmart. Agents attempted to make contact
24 with this defendant as well as a codefendant. Both
25 defendants fled the scene, Your Honor, in this

1 defendant's car. Agents were able to make contact
2 with them a short time later and did find -- it came
3 back at 55.69 grams of cocaine. The codefendant had
4 that on his possession at that time.

5 THE COURT: There's a recommendation from the
6 State?

7 MS. RICHARDSON: There is, seven years, Your
8 Honor.

9 THE COURT: Minimal?

10 MS. RICHARDSON: That is correct.

11 THE COURT: Mr. Lind-Baez, is that what
12 happened?

13 MR. LIND-BAEZ: Somewhat.

14 THE COURT: Let me ask you this. Did you
15 have possession of 65 --

16 MS. RICHARDSON: 55, Your Honor.

17 THE COURT: 55?

18 MR. LIND-BAEZ: No, sir, I didn't have
19 possession of it.

20 THE COURT: Tell me what the facts are.

21 MS. RICHARDSON: Basically, it is that RCI
22 made contact with a third party who was out of town.
23 That party wasn't able to go through with the drug
24 transaction. He got in contact with the codefendant
25 in this case, Mr. Bryant (phonetic). Mr. Bryant

1 agreed to make the transaction for this third party.
2 Bryant did not have that much drugs on him. He made
3 contact with Mr. Baez. Mr. Baez, according to
4 Mr. Bryant, is the one who brought the drugs to the
5 scene. Once the CI made contact with these two
6 gentlemen, the CI never alleged that Mr. Baez,
7 himself, had actual possession; however, it was in
8 his car. We know from phone calls that he knew what
9 was going on, and it is our position that he is the
10 one who actually brought the drugs to the scene.

11 THE COURT: Is that more like it, Mr. Baez?

12 MR. LIND-BAEZ: No, sir.

13 THE COURT: Tell me what part you played in
14 this.

15 MR. LIND-BAEZ: Earlier that morning, I was
16 on my way to go to school. I gave Mr. Bryant a ride
17 to Myrtle Beach. When I got to school, lunchtime, I
18 was going to go to the gym afterwards, and he wanted
19 a ride back from Horry County to Georgetown County
20 where we live at, our family members.

21 Mr. Bryant calls me and tells me that there's
22 a scale in the car, and I cussed him out because he
23 knew my situation and how I didn't want to be around
24 drugs and none of that. I cussed him and told him I
25 was going to come pick him up.

1 When I went to pick him up from his
2 girlfriend's, or whatever she was, I picked him up and
3 I was leaving out of the parking lot, and he told me he
4 needed to meet with somebody. When I pulled over
5 there, the female that he was meeting was acting funny,
6 and I told him, Either you need to get out of this car
7 or -- you know what I mean, you all need to do
8 something else. After I said that, she said we were
9 okay, and she asked the question, she said, Are we the
10 same people from the last time we bought something
11 from, something she said, and I put the car in drive
12 and pulled off.

13 THE COURT: You are saying that you didn't
14 know there was any drugs in the car?

15 MR. LIND-BAEZ: No.

16 THE COURT: Didn't have any idea he had
17 drugs?

18 MR. LIND-BAEZ: When I pulled up to the
19 meeting, I didn't know who he was meeting.

20 THE COURT: You are totally innocent in this?

21 MR. LIND-BAEZ: I'm not saying I'm totally
22 innocent.

23 THE COURT: Well, what was your involvement?
24 Did you know he had the drugs? Did you know he was
25 going to sell drugs?

1 MR. LIND-BAEZ: No, sir.

2 THE COURT: What was your involvement?

3 MR. LIND-BAEZ: I was picking him up from the
4 Walmart to carry him to his mother's house in
5 Pawley's Island.

6 THE COURT: And didn't know anything about
7 the drugs?

8 MR. LIND-BAEZ: No, sir.

9 THE COURT: I'm not going to take his plea.

10 MS. RICHARDSON: He will be first up for
11 trial tomorrow. Do we want to deal with the attorney
12 issue, or are we moving forward with Mr. Brown?

13 THE COURT: If it's before me, I will.

14 MR. LIND-BAEZ: Your Honor, I know I was
15 totally wrong for running from the police, the law
16 enforcement, and I really don't feel that what I'm
17 being offered, because of the situation as it is
18 presented, I don't feel it's right, because like I
19 told you, I wasn't involved.

20 THE COURT: You know your attorney has
21 nothing to do with the offer that is being made, that
22 is entirely up to the State.

23 MR. LIND-BAEZ: I understand Ms. Laurie
24 Richardson is the person.

25 MR. BROWN: May I have a minute, Your Honor?

1 THE COURT: Yes.

2 (Whereupon, Mr. Brown and Mr. Lind-Baez have
3 a conversation off the record.)

4 THE COURT: Would you like to say anything to
5 me, Mr. Lind-Baez?

6 MR. BROWN: Your Honor, he's informed me
7 that -- and I realize I can't answer for him, at
8 least at this junction, and I still represent him,
9 but he informed me that he had a hand in this, and I
10 say "a hand." He was the driver of the car, and he
11 wants to plea. I don't know that the Court -- the
12 Court's position is that apparently there is a
13 dispute with him as to the factual basis for the
14 plea, but he does want to take this plea.

15 THE COURT: Does he want to change his plea
16 to an Alford plea?

17 MR. BROWN: Yes, sir, that was going to be my
18 next suggestion.

19 MS. RICHARDSON: No objection from the State.

20 THE COURT: Mr. Lind-Baez, your attorney
21 tells me you would like to change your plea to an
22 Alford plea. I'm sure you probably don't know what
23 that means, but let me explain what my understanding
24 of an --

25 MR. BROWN: Can I tell him first, Your Honor?

1 THE COURT: Yes.

2 MR. BROWN: Sorry, Your Honor.

3 (Whereupon, Mr. Brown and Mr. Lind-Baez have
4 a conversation off the record.)

5 EXAMINATION (CONTINUED)

6 BY THE COURT

7 Q My understanding of an Alford plea is it is a
8 plea where you tell me that you didn't do this crime,
9 but you recognize the fact, after having looked at the
10 evidence in this case, that the State has enough
11 evidence to convince a jury of your guilt beyond a
12 reasonable doubt, and that probably would happen if you
13 went to a trial, and for that reason, you want to
14 accept the State's offer of a sentence. Of course, I'm
15 not bound by that, but the State is offering a
16 recommendation of seven years, that's my understanding
17 of what a plea under Alford is. It has the same effect
18 as a guilty plea. You have the same record, the
19 sentencing would be the same; do you understand that?

20 A Yes, sir.

21 Q Okay. Now, is that what you wish to do, plead
22 under North Carolina versus Alford?

23 A Yes, sir.

24 Q And you are telling me that you didn't do this,
25 but that you understand that the State has sufficient

1 evidence, more than enough evidence, to convince a jury
2 of your guilt beyond a reasonable doubt; is that right?

3 A Yes, sir.

4 Q All right. Has anyone promised you anything in
5 order to get you to plead guilty other than what I've
6 heard here today, and what I heard here today is that
7 the State is offering to allow you to plea with this
8 charge with a recommendation of seven years; is that
9 your understanding?

10 A Yes, sir.

11 Q Has there been any other proposals made to you?

12 A No.

13 Q Has anyone threatened you or intimidated you or
14 done anything improper or inappropriate in order to get
15 you to plead guilty?

16 A No, sir.

17 Q Are you pleading freely and voluntarily?

18 A Yes, sir.

19 Q Have you had all the time you need in order to
20 think about this?

21 A Yes, sir.

22 Q Do you think this plea is the best way for you
23 to resolve this case?

24 A Yes, sir.

25 Q Do you believe it's in your best interest?

1 A Yes, sir.

2 Q Do you need any more time with your attorney?

3 Do you have any questions for me?

4 A No, sir.

5 Q And have you been truthful with me?

6 A Yes, sir.

7 Q Mr. Lind-Baez, you have a right to appeal what I
8 do here today, but that is conditioned upon your filing
9 what is known as or called a Notice of Intent to Appeal
10 within the next 10 days. If you do not do that, you
11 are saying that you do not want to appeal or you waive
12 your right to appeal. I'm sure you probably don't know
13 where or how to do that, but Mr. Brown does. Mr. Brown
14 is available to file that Notice of Intent to Appeal if
15 that's what you wish to do. Then, if you cannot afford
16 an attorney to handle your appeal, one would be
17 appointed for you. Do you understand that?

18 A Yes, sir.

19 THE COURT: I find there is a substantial
20 factual basis for this plea, and it is made freely,
21 voluntarily, knowingly and intelligently and after
22 the advice of a very competent attorney with whom Mr.
23 Lind-Baez says he's satisfied, and I'll accept the
24 plea under North Carolina versus Alford.

25 Mr. Brown, let me hear from you.

1 MR. BROWN: May it please the Court. As the
2 Court gleamed from his colloquy with Mr. Baez, he's
3 27 years old. He does have a previous history. He's
4 been involved in this kind of conduct twice before,
5 but the last time, after this incident, I think he --
6 I'm pretty sure he turned it around. In fact, he got
7 a job with Sunbelt. He's been with Sunbelt the
8 entire time. He is a trusted -- he was in the
9 Jacksonville facility for awhile. He was in
10 Columbia. He's been all over with them. He has --
11 his child is nine months old. He is engaged to his
12 fiancée, who is in the room here with him today.
13 He's also with his minister, Reverend Graham, who
14 basically Mr. Baez tells me mentored him and raised
15 him.

16 Unfortunately, Your Honor, with the culture
17 that is there and present in our society, it seems
18 like sometimes the bad influences is not -- the bad
19 influences become dominant in an individual's life
20 and they engage in conduct that is certainly
21 debilitory (sic) -- debilitating.

22 In this instance, he was in the car. He
23 claimed he didn't know that the drugs were there, but
24 -- and he did run from the police, we admit that.
25 Your Honor, I think he's learned his lesson this

1 time. He has responsibilities to the extent that he
2 has a child now and a partner. Your Honor, we ask
3 that the Court -- I would humbly ask on behalf of my
4 client that the Court accepts the recommendation for
5 the seven years as related and offered by the State.

6 THE COURT: All right, sir. Ms. Richardson,
7 any question that is a second offense?

8 MS. RICHARDSON: It is not, and I did want to
9 add that for the record. Just the one -- he does
10 have two priors, but the one prior, specifically PWID
11 cocaine, looks like he plead in front of Judge John
12 in May of 2007.

13 THE COURT: Is that right, Mr. Baez?

14 MR. LIND-BAEZ: Yes, sir.

15 THE COURT: No question this is your second
16 offense?

17 MR. LIND-BAEZ: No, sir.

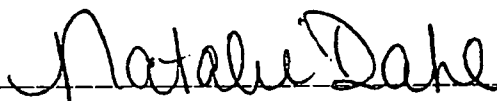
18 THE COURT: I'll follow the recommendation.
19 Sentence of the Court is that he is to be confined to
20 the State Department of Corrections for a period of
21 seven years. Good luck to you, sir.

22 (Whereupon, the proceedings concluded.)
23
24
25

1 CERTIFICATE OF REPORTER

2
3 STATE OF SOUTH CAROLINA

4 COUNTY OF HORRY

5
6 I, Natalie Dahl, Official Court Reporter for the
7 Fifteenth Judicial District of the State of South
8 Carolina, do hereby certify that the foregoing is a
9 true, accurate and complete Transcript of Record of the
10 proceedings captioned on the 22nd day of July 2013.11 I do further certify that I am neither of kin,
12 counsel, nor interest to any party hereto.13
14
15
16 November 28, 201317
18 A handwritten signature in cursive script, reading "Natalie Dahl", is written over a horizontal line.

19 Natalie Dahl, RPR

20 Official Court Reporter
21
22
23
24
25

FORM 5

STATE OF SOUTH CAROLINA)

County of Horry)Lavard D. Lind-Baez #322170)

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

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS READ CAREFULLY

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

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

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Walden Correctional Institution
2. Name and location of Court which imposed sentence Horry County Court of General Sessions; 1301 2nd Ave, Conway, SC

Name(s) of co-defendant(s) (if any) N/A

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

(b) _____

FILED
HORRY COUNTY
2013 OCT 18 PM 3:59
CLERK OF COURT
LANE HUGGINS-WARD

(a)

(b)

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) July 20, 2013 ; 7 years
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty X
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No _____
8. If you answered yes to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. N/A
- iii. N/A
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. N/A
- iii. N/A
- (c) the date of each such result:
- i. N/A
- ii. N/A
- iii. N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. N/A
- iii. N/A
9. If you answered no to (7), state your reasons for not so appealing:
- (a) Procedurally barred due to a plea agreement
- (b) _____

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

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

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

(a) which grounds have been presented:

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

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

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

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

- (a) 6th Amendment Violation; Procedurally barred due to a plea agreement
 (b) _____
 (c) _____

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

- (a) your arraignment and plea? Yes
 (b) your trial, if any? _____
 (c) your sentencing? _____
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

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

- (a) the name and address of each attorney who represented you:
 i. Edward M. Brown, P.O.Box 20261, Charleston, S.C.

 ii. _____

 iii. _____

 (b) the proceedings at which each such attorney represented you:
 i. Plea agreement (and sentencing)

 ii. _____

 iii. _____

6936

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

I wish to have my plea nullified, my sentence vacated, and a new trial be ordered.

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

No.

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Richland)

I, Lavard D. Lind-Baez, 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.



SWORN to and subscribed before me this 16th day of September, 2013.

Golanda Long (L.S.)
Notary Public

My Commission Expires: 1/20/2022

FILED
JURY COUNTY
2013 OCT 18 PM 4:00
MELANIE HUGGINS-WARD
CLERK OF COURT

13 6934

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

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

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


Applicant

SWORN or affirmed to and subscribed before me this

14th day of October 2013


Notary Public

My Commission Expires: 1/20/2022

FILED
JURY COUNTY
2013 OCT 18 PM 4:00
MELANIE HUGGINS-WARD
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTEENTH JUDICIAL CIRCUIT

Lavard D. Lind-Baez, #322170,

) Case No. 2013-CP-26-6936
)

Applicant,

)

v.

)

RETURN

State of South Carolina,

)

Respondent.

)

)

Respondent, making its Return to the Application for Post-Conviction Relief filed October 18, 2013, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. In July 2012, the Horry County Grand Jury indicted Applicant for trafficking cocaine, 28-100 Grams (2012-GS-26-2928). Edward M. Brown, Esquire, represented Applicant. On July 22, 2013, Applicant pled guilty to as indicted. The Honorable Larry B. Hyman Jr. sentenced Applicant to seven (7) years imprisonment. Applicant did not appeal his plea or sentence.

II.

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

1. "6th Amendment Violation"
 - a. "Ineffective Assistance of Counsel"

Respondent denies Applicant is entitled to relief on any of these claims, and demands strict proof thereof. Any claims not specifically enumerated in the application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRCP.

Attached to this return and incorporated herein are the records of the Horry County Clerk of Court regarding the subject conviction(s), Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III.

Respondent moves pursuant to Rule 12(e), SCRCP, to require Applicant to provide a more definite statement of his allegation of ineffective assistance of counsel. The Uniform Post-Conviction Procedure Act requires applicants to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Furthermore, Rule 8(a), SCRCP, requires all civil pleadings include "a short and plain statement of the facts showing that the pleader is entitled to relief."

Question 11 of the application asks Applicant to state concisely the supporting facts for each of his grounds for relief. In response to that question, Applicant fails to set forth any specific facts to explain his allegation. Respondent submits Applicant's allegations are so vague and ambiguous that Respondent cannot be reasonably required to frame a responsive return. Therefore, Respondent moves to require Applicant to file an amended application well in advance of the hearing scheduled in this matter.

IV.

Without waiving its motion for a more definite statement in Part III, supra, Respondent submits Applicant's allegation of ineffective assistance of plea counsel is without merit. 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, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of plea counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process" that the plea proceedings "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes plea counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, the Applicant must prove plea counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, plea 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." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show 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, 59 (1985).

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

V.

Respondent denies each and every allegation not hereinbefore expressly admitted, qualified, or explained.

VI.

WHEREFORE, having made its return, Respondent requests Applicant provide a more definite statement of his claims, and an evidentiary hearing be held on any claims so requiring one.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

JOSHUA L. THOMAS
Assistant Attorney General
S.C. Bar No. 100777

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

Jan 16, 2015

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	
	)	
	)	2013-CP-26-6936
LAVARD D. LIND-BAEZ, #322170	)	
	)	
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** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Daniel A. Selwa, II, Esquire
 1053 London St., Suite A
 Myrtle Beach, SC 29577

DATED this 16TH day of January, 2015.


 Norma Bigbee, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY)

2012-GS-26-6936

STATE OF SOUTH CAROLINA,)

Plaintiff,)

Transcript of Record

vs.)

August 10, 2015

LAVARD D. LIND-BAEZ,)

Defendant.)

B E F O R E:

Honorable G. Thomas Cooper
Horry County Courthouse
Conway, South Carolina

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

Joshua L. Thomas, Esquire
Attorney for Plaintiff

Daniel A. Selwa, II, Esquire
Attorney for Defendant

Kay H. Richardson
Circuit Court Reporter

Lind-Baez v. State - 2012-CP-26-06936
INDEX

2

I N D E X

AUGUST 11, 2015

Pg.

Motion 3
Certificate of Court Reporter 6

E X H I B I T S

No.

ID

EV

(No Exhibits were marked during hearing.)

Lind-Baez v. State - 2012-CP-26-06936
MOTIONS

3

1 **(AUGUST 11, 2015)**

2 THE COURT: Mr. Thomas?

3 MR. THOMAS: Your Honor, this is Lavard Lind-Baez versus
4 the State of South Carolina, Case Number 2013-CP-26-6936. He
5 filed this application in October 2013 in that he alleged --
6 the application itself, when it asks what your grounds for
7 relief and to state the supporting facts, he simply put that
8 there was a Sixth Amendment violation, ineffective assistance
9 of counsel. The State filed its return. We included a motion
10 under Rule 12(b) asking for a more definite statement.
11 Obviously, ineffective assistance of counsel is fairly broad.
12 I can't really prepare today to know what to go forward on in
13 a hearing without some more facts. And also, there's some
14 confidentiality issues I can't really talk to the attorneys
15 about what the allegations are unless I have some specifics.
16 So, the State would just ask that the Applicant be required to
17 file a complaint with more specificity.

18 THE COURT: Mr. Selwa?

19 MR. SELWA: Your Honor, I can certainly do that. I have
20 one issue in this case. I tried to send a subpoena to get the
21 trial attorney's case file. I got the address from Mr.
22 Thomas, but it was returned as not picked up. So, I'd like to
23 see his file if I could get that and then that may help me
24 amend the pleadings a bit.

25 THE COURT: Who is the attorney?

Lind-Baez v. State - 2012-CP-26-06936
RULING OF THE COURT

4

1 MR. SELWA: Brown, Edward Brown, I think he's retired
2 now.

3 MR. THOMAS: Yeah, it looks like he's -- he's got a post
4 office box in Charleston. I don't have a -- I think we tried
5 -- I think I tried -- I tried to give you his physical
6 address.

7 MR. SELWA: Yeah, and it came back ---

8 MR. THOMAS: And that would've been the address that we
9 had for him so if that doesn't work, I'm not sure I know to
10 get in touch with him either.

11 THE COURT: Well, is he still a member of the bar?

12 MR. THOMAS: It says he's in good standing.

13 THE COURT: Well, they'd have an address for him for that
14 -- What is it, AIS?

15 MR. THOMAS: Yeah, the AIS has a post office box which
16 shouldn't -- he should get his mail, he should -- if that's
17 getting returned, that's an issue above my paygrade, if he's
18 not checking his mail.

19 THE COURT: All right. Motion granted.

20 MR. THOMAS: Thank you, Your Honor.

21 RULING OF THE COURT:

22 THE COURT: Motion for continuance is granted. And I'm
23 -- the State's motion is granted.

24 MR. THOMAS: Okay. And we'll -- I guess we'll ---

25 THE COURT: We're confusing the Clerk.

Lind-Baez v. State - 2012-CP-26-06936
RULING OF THE COURT

5

1 MR. THOMAS: We'll put some language in there giving Mr.
2 Selwa an opportunity to retrieve the file.
3 (ADJOURNED - 9:40.)
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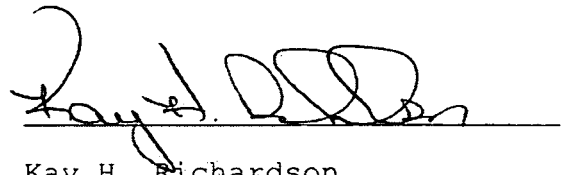
Lind-Baez v. State - 2012-CP-26-06936
CERTIFICATE OF COURT REPORTER

6

C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of Lavard D. Lind-Baez versus State of South Carolina, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on August 11, 2015.

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

A handwritten signature in black ink, appearing to read 'Kay H. Richardson', is written over a horizontal line.

Kay H. Richardson

Official Court Reporter

April 8, 2016.

1

2 State of South Carolina) Court of Common Pleas
3 County of Horry) 2012-CP-26-06936

4

5

6 Lavard D. Lind-Baez)
7 vs.) Transcript of Record
8 State of South Carolina)

8

9

10

ORIGINAL

November 13, 2015
Conway, South Carolina

11

12 BEFORE:

13 Honorable Thomas A. Russo, Judge.

14

15 APPEARANCES:

15

16 Robert B. Bryan, Esq.
Attorney for the Applicant

17

18 Jennifer Kinard, Esq.
Office of the Attorney General
Attorney for the State

19

20

21

22

Teresa J. F. Bautz, RPR
Official Court Reporter

23

24

25

I N D E X

	WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
1					
2					
3	Lavard D. Lind-Baez				
4	Mr. Bryan	6	--	--	--
5	Ms. Kinard	--	34	--	--
6	Shawn A. Simmons				
7	Mr. Bryan	41	--	--	--
8	Ms. Kinard	--	--	--	--
9	Jadai Jackson				
10	Mr. Bryan	50	--	--	--
11	Ms. Kinard	--	--	--	--
12	Margaret Wigfall				
13	Mr. Bryan	52	--	--	--
14	Ms. Kinard	--	--	--	--
15	Taesha Lind-Baez				
16	Mr. Bryan	55	--	--	--
17	Ms. Kinard	--	--	--	--
18	Edward M. Brown, Esq.				
19	Ms. Kinard	59	--	--	--
20	Mr. Bryan	--	72	--	--
21					
22					
23					
24					
25					

E X H I B I T S

NO.	DESCRIPTION	ID	EV
P-1*	Affidavit	45	--

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23 *Exhibit retained by Clerk of Court

24

25

1 (The hearing commenced at approximately
2 11:53 a.m.)

3 MS. KINARD: This is the matter of Lavard
4 Lind-Baez versus the State of South Carolina, Case No.
5 2013-CP-26-6936. This is an application for post
6 conviction relief that was filed October 18, 2013. The
7 applicant is presently confined in the South Carolina
8 Department of Corrections pursuant to orders of
9 commitment by the Horry County clerk of court.

10 In July 2012 the Horry County grand jury indicted
11 the applicant for trafficking cocaine, 28 to 100 grams.
12 That was Indictment No. 2012-GS-26-2928. Mr. Edward M.
13 Brown represented the applicant.

14 On July 22nd, 2013, applicant pled guilty as
15 indicted. The Honorable Larry B. Hyman, Jr., sentenced
16 the applicant to seven years imprisonment, and the
17 applicant did not appeal his plea or sentence. On
18 behalf of the applicant is Mr. Bo Bryan, and the State
19 is ready to proceed.

20 THE COURT: All right. Mr. Bryan, you ready to
21 proceed, sir?

22 MR. BRYAN: Yes, sir, Your Honor.

23 THE COURT: All right. Be happy to hear from you.

24 MR. BRYAN: We'd like to call Mr. Lind-Baez.

25 THE COURT: All right. Sir, if you would please

1 come around to be sworn, just around here to the front
2 of the witness stand. And then after you're placed
3 under oath, you can have a seat in the witness stand.

4 LAVARD LIND-BAEZ, after being duly sworn,
5 testified as follows:

6 THE CLERK: Please have a seat and state your name
7 for the Court.

8 MR. BRYAN: Before I begin to question
9 Mr. Lind-Baez --

10 THE COURT: Yes, sir.

11 MR. BRYAN: -- I'll just kind of tell you real
12 briefly so you kind of understand where we're going.
13 And we're not here to try the whole case, we understand
14 that.

15 THE COURT: All right.

16 MR. BRYAN: But I am going to ask him about the
17 facts real briefly because he ended up on an Alford
18 plea. Basically we're here for ineffective assistance,
19 and the claim is that there was a severe lack of
20 preparation, communication with his lawyer. He
21 maintained his innocence throughout the entire process.
22 There was never any question that he said he wasn't
23 guilty.

24 He was arraigned. He showed up to plead one time,
25 couldn't plead guilty because he wouldn't say he was

LAVARD LIND-BAEZ-DIRECT BY MR. BRYAN

6

1 guilty. Got arraigned, same story. And finally he's
2 on the trial roster at least twice, and he ends up with
3 a straight up guilty plea that morphs into a Alford
4 plea. And so we want to kind of, given the standard
5 for Alford, we want to talk a little bit about the
6 facts and what the evidence would have been.

7 THE COURT: All right.

8 MR. BRYAN: Thank you, Your Honor.

9 DIRECT EXAMINATION

10 BY MR. BRYAN:

11 Q State your name.

12 A Lavard Lind-Baez.

13 Q And so you pled guilty ultimately to trafficking
14 back on July 22nd of 2013; is that right?

15 A Yes, sir.

16 Q When you went to court that day, did you know what
17 you were going for?

18 A No, sir.

19 Q Why were you in court?

20 A From my understanding, the Friday before the day I
21 got my time in Monday, Mr. Brown called me from his
22 cell phone telling me that I'm supposed to be in court
23 and I needed to come from work in Florida and be in
24 court Monday morning. And I asked him for what, and he
25 said he didn't know, I just need to come down there.

1 Q Okay. So did you know if you were going to do a
2 guilty plea or a trial?

3 A No, sir. I didn't find out if I had a guilty plea
4 until I Googled the trial roster, because I was
5 expecting to go to trial from that December or from
6 October the year before when they put me on the trial
7 docket. I looked on -- I Googled the trial roster for
8 that month and I wasn't on, it was just guilty pleas.
9 That's how I found out about the guilty plea.

10 Q And let me back up, and just real briefly tell the
11 judge about the facts about what you were doing the day
12 you got arrested and how you ended up getting arrested,
13 just briefly as you possibly can.

14 A Okay. On the day, the day before February
15 the 20th, I received a phone call from Mr. Bryant
16 asking for me for a ride to Myrtle Beach.

17 Q Mr. Bryant ended up your codefendant?

18 A Yes, sir.

19 Q Okay. So you got a call from your ultimate
20 codefendant asking for a ride?

21 A Right.

22 Q Then what happened?

23 A Mr. Bryant knew that I was supposed to be going to
24 Horry-Georgetown Tech to register for school. So on
25 the 21st that morning, I woke up, I picked him up

LAVARD LIND-BAEZ-DIRECT BY MR. BRYAN

8

1 around 8 o'clock and we proceeded to the beach. I
2 dropped him on Glenns Bay a gas station, and I
3 continued to my sister's house to help her move
4 furniture from -- because they were about to clean the
5 carpet, so and I helped her out. And then I continued
6 to school. After leaving school, I went to the gym for
7 a couple hour -- well, a couple -- like 30 minutes, 30,
8 45 minutes. I left and picked Mr. Bryant up.

9 Q All right. Where were you going to school, where
10 were you at?

11 A Horry-Georgetown Tech.

12 Q Myrtle Beach?

13 A Yes.

14 Q City of Myrtle Beach?

15 A Right.

16 Q And this incident took place where?

17 A This incident took place at Garden City Wal-Mart.

18 Q And where is Mr. Bryant from?

19 A He's from Pawleys Island where I'm from.

20 Q So 15, 20 minutes south to the incident location
21 and another 30 minutes to where you are?

22 A Yes, sir.

23 Q And he wanted to get back to Pawleys Island, he
24 was asking for a ride from the Wal-Mart, called you and
25 asked for a ride; is that right?

1 A Yes, sir. Yes, sir.

2 Q Okay. So then what happened?

3 A I arrived to Wal-Mart. I parked next to the
4 female friend he had, he was with. I picked him up, he
5 got in the car, leaving out of the parking lot and he
6 told me that he had to meet someone on the other side
7 of the parking lot. I pulled to -- next to the Land
8 Rover, white Land Rover. I backed into the space so he
9 can talk to her. I'm assuming he was just getting
10 money from her, because I told him I needed some gas
11 money. They did started talking. She was just
12 nervous, so I told Mr. Bryant, I said, look, either
13 you're going to get out of the car or I'm leaving. And
14 she said --

15 Q Why did you tell him that?

16 A Because a confidential informant, she asked a
17 question, she was like -- she was like, is this the
18 same stuff from last week.

19 Q So what did you think?

20 A I thought it was a drug transaction, so I pulled
21 off immediately.

22 Q All right. So you took off?

23 A I pulled out the parking space.

24 Q And did you see any police officers before you
25 pulled off?

LAVARD LIND-BAEZ-DIRECT BY MR. BRYAN

10

- 1 A No, sir.
- 2 Q Did any drugs change hands?
- 3 A No, sir.
- 4 Q Did you have any drugs that you gave to
- 5 Mr. Bryant?
- 6 A No, sir.
- 7 Q Did he give any drugs to anybody else?
- 8 A No, sir.
- 9 Q Did she give any money to anybody?
- 10 A No, sir.
- 11 Q And you drove away?
- 12 A Yes, sir.
- 13 Q Okay. What happened next?
- 14 A I sped out of the parking lot because I was
- 15 nervous about being in the middle of a transaction that
- 16 I didn't need to be in the middle of.
- 17 Q You've been convicted before; correct?
- 18 A Yes, sir.
- 19 Q All right.
- 20 A So I was scared to go back to prison because I
- 21 just came home.
- 22 Q All right.
- 23 A And I didn't want to upset my family by being in
- 24 the middle of a transaction.
- 25 Q And you had enrolled in Horry-Georgetown Tech?

1 A Yes, sir.

2 Q Got a job?

3 A Yes, sir.

4 Q Okay.

5 A I was leaving out of the parking lot, and I guess
6 five to eight seconds later, that's -- he was like, oh,
7 it's a setup. And I went through a light, I turned the
8 corner, I sped through a light, turned the corner. I
9 turned, I made the first right-hand turn down the back
10 road. And Mr. Bryant jumped out of the car.

11 I proceeded down the road. I later on stopped the
12 car and was arrested. They took me back to where
13 Mr. Bryant was and that's when I was informed of what
14 happened, what took place and what he had on him
15 actually.

16 Q Did they search you when they arrested you?

17 A Yes.

18 Q Did you have any drugs on you?

19 A No, sir.

20 Q Did anybody find any drugs?

21 A No, sir.

22 Q Whose car was it you were in?

23 A A friend of mine.

24 Q But you were driving it?

25 A Yes, sir.

LAVARD LIND-BAEZ-DIRECT BY MR. BRYAN

1 Q And any drugs found in your car?

2 A No, sir.

3 Q How about Mr. Bryant, did they find any drugs on
4 him?

5 A They found 56 grams of cocaine and marijuana on
6 him.

7 Q And where y'all were, to be clear, he jumped out,
8 you were at least a block or more than a block away
9 from where they found him and where they found you?

10 A Yes, sir.

11 Q And the drugs were nowhere near you?

12 A No, sir.

13 Q All right. Is that basically what happened that
14 day?

15 A Yes.

16 Q All right. So when you got arrested, did you tell
17 the police that you didn't know anything about anything
18 and didn't have anything to do with anything?

19 A Yes, sir.

20 Q And did you ever change your story?

21 A No, sir.

22 Q And you hired Mr. Brown shortly after your arrest,
23 before the preliminary hearing; right?

24 A Yes, sir.

25 Q So you had him pretty early; right?

1 A Yes.

2 Q Did you tell him what you just told the judge
3 about what happened?

4 A Yes, sir.

5 Q And, in fact, is that in the police report,
6 basically when you talked to them, is that what you
7 told them?

8 A Yes, sir.

9 Q Okay. And did you take part in any phone calls to
10 anybody?

11 A No, sir.

12 Q Did you talk to Ernest about drugs, Ernest Bryant?

13 A No, sir.

14 Q Did you talk to anybody, Adren Duran, do you know
15 who that is?

16 A I don't know who that is.

17 Q Did you ever talk to him?

18 A Never talked to him.

19 Q Did you know the confidential informant in the
20 case, did you ever see her before in your life?

21 A No, sir.

22 Q Did you ever talk to her?

23 A No, sir.

24 Q So when you met with Mr. Brown, tell us about when
25 you met with him.

LAVARD LIND-BAEZ-DIRECT BY MR. BRYAN

14

1 A When I went to Mr. Brown's office, I told him
2 exactly what happened, what I just told y'all. When I
3 went to his office, he -- we came up with how much he
4 wanted, and I gave him half of down payment right then
5 and there. And he said at the preliminary hearing, I
6 needed to have the rest of the down payment.

7 Q Let me stop you before we get off the facts, real
8 quick let me ask you one other thing. In addition to
9 having the drugs on him, did Mr. Bryant give a
10 statement to police?

11 A Yes.

12 Q What did he say?

13 A When we got to the precinct, he wrote a statement
14 saying that he took full --

15 MS. KINARD: Objection, hearsay.

16 THE COURT: Sustained.

17 Q All right. To your knowledge, did you ever get to
18 review -- look at your police report or the police
19 report?

20 A No, sir.

21 Q Okay. All right. So when did you first meet with
22 Mr. Brown?

23 A I met with Mr. Brown in March of 2012 after the
24 incident in February.

25 Q And what was the content of that meeting, what

1 happened when you met with him?

2 A We just discussing my background, what happened in
3 the case and about the preliminary hearing and the cost
4 of payment arrangements.

5 Q You talked about the money?

6 A Yes, sir.

7 Q All right. And you retained him at that time?

8 A Yes, sir.

9 Q When did you meet with Mr. Brown again?

10 A At the preliminary hearing when I paid him the
11 rest of the payment, the down payment.

12 Q Okay. Did you ever meet with him and talk about
13 your case?

14 A In June -- in June 2000 and --

15 Q Of what year? Yes, go ahead.

16 A Yes, the same year, 2012, I went to his office.
17 He had my file of my previous charge and I guess some
18 paperwork on what took place and what happened, I guess
19 the second statement. And Mr. Brown told me that I
20 should have nothing to worry about because there's no
21 evidence. The only thing that was incriminating me was
22 the second statement.

23 Q The second statement?

24 A Yes.

25 Q What does that mean?

LAVARD LIND-BAEZ-DIRECT BY MR. BRYAN

16

1 A Mr. Bryant wrote two different statements. The
2 first statement he said that he took full
3 responsibility --

4 MS. KINARD: Objection, hearsay.

5 THE COURT: Sustained.

6 Q All right. So you tried to talk about the
7 evidence, and the only evidence they had was some
8 statement, a second statement, that we're not allowed
9 to talk about?

10 A Yes, sir.

11 Q All right. Any other evidence that they had
12 against you?

13 A No, nothing against me.

14 Q All right. Did y'all talk about any phone calls
15 or anything else or what evidence they might have, you
16 and your lawyer?

17 A No, sir.

18 Q All right. So the total sum of y'all's discussion
19 about the case was that somebody gave a second
20 statement and that he didn't think that he had much of
21 a case?

22 A Right.

23 Q All right. Did you tell him you wanted to plead
24 guilty?

25 A No, sir.

1 Q Did you ever tell him you wanted to plead guilty?

2 A No, sir.

3 Q Did you always tell him you did not want to plead
4 guilty?

5 A Yes, sir.

6 Q Was there ever any confusion about that?

7 A No, sir.

8 Q All right. So when did you first appear in court?

9 Did you have to go to court in April; did you have an
10 initial appearance in April?

11 A Yes. Roll call.

12 Q And did you go to that?

13 A Yes, sir.

14 Q Was Mr. Brown there?

15 A No, sir.

16 Q Did you have a second court date for a bond
17 returnable a couple of months later?

18 A Yes, sir.

19 Q In August. Let me look at that date, make sure
20 that's right. So did you have a second appearance July
21 the 6th?

22 A Yes, sir.

23 Q And did you make that appearance?

24 A Yes, sir.

25 Q Was Mr. Brown there that day?

LAVARD LIND-BAEZ-DIRECT BY MR. BRYAN

18

1 A No, sir.

2 Q Did you have to go back again in September?

3 A Yes, sir.

4 Q I'm sorry, how about August, were you there on
5 August 31st?

6 A Yes, sir.

7 Q Did Mr. Brown come on August 31st?

8 A No, sir.

9 Q How about in September, did you appear in
10 September?

11 A Yes, sir.

12 Q Did Mr. Brown come in September?

13 A No, sir.

14 Q What appearance did Mr. Brown make?

15 A If I ain't mistaken, I think it's in October. It
16 was in October I went in front of the judge, Mr. Hyman,
17 I think. And they wanted to -- they wanted me to plead
18 guilty to five years, ten grams or more. And I told
19 them I wasn't -- I didn't feel comfortable with the
20 plea, so I wanted to go to trial.

21 That's when we decided what -- on that day, that's
22 when we were supposed to go forward with the trial in
23 December. And Ms. Richardson brought up the audio and
24 video of whatever happened, and she claimed that I had
25 knowledge of whatever took place. She had audio video

1 that could prove that I had knowledge of what took
2 place.

3 Q So you're in an arraignment, and the solicitor,
4 Ms. Richardson, said there was some audio and video
5 that would have you on it discussing the deal?

6 A Yes, sir.

7 Q And you told Mr. Brown what?

8 A There's no audio, it's impossible that they have
9 anything with my voice or anything on a text message or
10 anything with my name or anything on it.

11 Q Did you ask him if he could obtain that evidence
12 and review it with you?

13 A After the October appearance, I did ask him to get
14 this for me.

15 Q And at the October appearance, to be clear, that
16 was an arraignment; right, they offered you five years
17 nonviolent?

18 A Nonviolent.

19 Q And you were pleading guilty to seven years
20 violent, no parole. But they offered you five years
21 nonviolent; right?

22 A Yes, sir.

23 Q And you didn't want that?

24 A No, sir.

25 Q Why not?

LAVARD LIND-BAEZ-DIRECT BY MR. BRYAN

20

1 A Because I wasn't guilty of what they were trying
2 to accuse me of. I didn't have no involvement with the
3 transaction, I didn't have any knowledge of what was
4 going on. So I felt that I shouldn't take something or
5 blame for something I didn't have nothing to do with.

6 Q And the State said you had -- they had evidence of
7 you on an audio video?

8 A Yes, sir.

9 Q Did you ever get that?

10 A No, sir.

11 Q Did you ever review it with your lawyer?

12 A No, sir.

13 Q Now, you ended up that day, Ms. Richardson then
14 told you you'd be trial for December; right?

15 A Yes, sir.

16 Q You're not pleading guilty October the 10th,
17 you're going to be trial in December; is that right?

18 A Yes, sir.

19 Q What happened in December; did you have a trial?

20 A No, sir.

21 Q Why not?

22 A I don't know. Mr. Brown -- after the meeting in
23 October, Mr. Brown said he would be in contact with me.
24 And I never heard anything else about anything until
25 the next year.

1 Q Did you ever see any letters from Mr. Brown
2 talking about he had serious medical issues and that he
3 had been out for three weeks and wouldn't be able to
4 have a trial in December, did he tell you any of that?

5 A No, sir.

6 Q All right. When were you back on the trial
7 roster; were you back on the trial roster in April?

8 A In April. No, sir. I never knew when I was on
9 the trial roster until -- well, from my understanding,
10 I was on the trial roster the whole time since October.
11 I never knew I was off the trial roster or what was
12 going on.

13 Q So you -- if there's a docket sheet from April
14 with your name on it on the trial roster, you certainly
15 never talked about that with your lawyer?

16 A No, sir.

17 Q So you -- did he never tell you that he had a
18 prepaid vacation, he was asking for a continuance in
19 April?

20 A No, sir.

21 Q Okay. Did y'all talk about your trial and any of
22 the evidence when they said you would be tried, on
23 October the 10th when they said they were going to try
24 you in December, you guys schedule a time to meet?

25 A No, sir.

LAVARD LIND-BAEZ-DIRECT BY MR. BRYAN

22

1 Q Did you talk about the evidence?

2 A No, sir.

3 Q How about in December, did you talk about the
4 evidence?

5 A No, sir.

6 Q Did you go to your lawyer's office?

7 A No, sir.

8 Q Did he send you any letters saying that we're on
9 the trial roster, we need to get prepared?

10 A No, sir.

11 Q How about in April, did you receive any
12 correspondence relative to preparation for trial?

13 A No, sir.

14 Q Did you get some letters from him telling you to
15 go to court, and there would be roll call?

16 A Yes.

17 Q All right. What they say, don't wear flip flops,
18 show up?

19 A Yes, just show up. Yes, sir.

20 Q That's it. Did you ever -- between the first time
21 you ever met him and the day you pled guilty, did you
22 ever say you were guilty to the offense?

23 A No, sir.

24 Q That shouldn't come as any big surprise during a
25 guilty plea; should it?

1 A Right.

2 Q But did y'all ever talk about the case, when you
3 showed up and you were on the trial roster in July,
4 what discussions did you have with Mr. Brown about your
5 trial and the preparation of your defense?

6 A Well, the Friday before Mr. Brown called me, he
7 asked me to be in court that Monday morning. And he
8 said he didn't know what was going on, that I just
9 needed to be there. So when I found out that I wasn't
10 on the trial roster, it was actually a guilty plea on
11 the day of, Monday, I called Mr. Brown on Friday, on
12 all day Friday. Me and my fiance called Friday.
13 Saturday I called my mother, told her what was going
14 on. My mother called, helped me call Sunday, and he
15 never picked up the phone.

16 Monday morning I called him again, he didn't
17 answer until he got in the parking lot. He's saying
18 that he was on his way up, that he'll be in in a
19 minute. So when he got up here, I asked to -- like I
20 wanted to relieve you as counsel because I felt that he
21 was more so against me versus being in my corner.

22 He came up here, he talked to Ms. Richardson. He
23 came back to me 30 minutes later, and he left and
24 talked to Mr. Hyman.

25 Q Do you mean Judge Hyman?

LAVARD LIND-BAEZ-DIRECT BY MR. BRYAN

24

1 A Yes, sir, I'm sorry, Judge Hyman. And he came and
2 talked to me, he told me that they no longer -- he said
3 that they would not let me relieve him as counsel and
4 that they no longer offer me five years, no more
5 that -- they took the five years off the table, and
6 they are offering me seven years nonviolent. And I
7 felt that I shouldn't -- I told him, I said, I don't
8 think that I should take seven years because, like I
9 say, I'm not guilty, I shouldn't be -- I shouldn't be
10 charged with something I had nothing to do with or had
11 no involvement or knowledge of.

12 So Mr. Brown said, basically you got a prior
13 record, and if you don't take this today, then
14 basically you're going to trial tomorrow by yourself,
15 I'm not going to be your counsel. I felt the only
16 reason why I took that plea today is because Mr. Brown
17 left me with no choice.

18 Q Now, when you had a conversation with Mr. Brown
19 and he said you needed to take the plea, why did he say
20 you needed to take the plea?

21 A Because I have a prior record, and that's what he
22 just kept on saying, like we going back and forth like
23 a good ten minutes. And I was like, look, I shouldn't
24 take this, it's wrong that you're making me take this,
25 and there's no evidence. You never got this audio,

1 like everything is just -- everything is not even
2 pointing to me. I didn't have anything to do with it,
3 so I felt that I shouldn't be charged with it.

4 Q Okay. And did you -- did he ever discuss any
5 potential defenses or witnesses you might call the next
6 day at trial?

7 A No, sir.

8 Q Did he say he was going to represent you?

9 A No. He said he wasn't going to.

10 Q All right. Was anybody present for the
11 converse -- and this was how long before you pled
12 guilty?

13 A 15 minutes before I pled guilty.

14 Q And was there any witness to the conversation
15 wherein Mr. Brown told you that if you didn't plead
16 guilty, he was going to get off your case?

17 A Yes. My fiance and my cousin Shawn.

18 Q What is your fiance's name?

19 A Jadai Jackson.

20 Q And your cousin?

21 A Shawn.

22 Q They're both present here today?

23 A Yes, sir.

24 Q Okay. And where did that conversation take place?

25 A In the hallway outside of the courtroom.

LAVARD LIND-BAEZ-DIRECT BY MR. BRYAN

26

1 Q Okay. So then you come in and you go in front of
2 the judge. And the judge asked you, page three of the
3 transcript, says you're represented by Mr. Brown.

4 Have you ever had a chance to discuss your case
5 with him? Yes. On the very first page, line 23, he
6 asked you if you understand what the nature of what --
7 do you understand the nature of that offense or what
8 constitutes trafficking? And you said, no, sir. Is
9 that right?

10 A Yes, sir.

11 Q And that's on the first page of the transcript?

12 A Right.

13 Q Did you ultimately get the opportunity in the
14 questioning by the judge to answer whether you were
15 guilty of the offense?

16 A Excuse me?

17 Q Did the judge ask you if you were guilty?

18 A Yes.

19 Q What did you tell him?

20 A Well, I told him yes because my counsel told me
21 like before we came inside the courtroom, the judge --
22 he said the judge was going to ask you some questions.
23 So you may not know them, but just repeat after me and
24 I'll tell you what to say, so he whispered. Like every
25 time the judge asked me something, he told me repeat

1 after him. And I just said yes or no.

2 MR. BRYAN: Court's indulgence.

3 Q When you were asked about the facts of the case,
4 the judge said -- I'm on page 13, line 13 -- you were
5 saying that you didn't know there were any drugs in the
6 car, what did you say?

7 A No, sir.

8 Q And you didn't have any idea there were drugs, and
9 what did you say?

10 A No, sir.

11 Q Okay. And, again, the Court says, well, what was
12 your involvement, did you know he had drugs, did you
13 know he was going to sell drugs, and you said?

14 A No, sir.

15 Q And then when he asked what your involvement was,
16 you said you were picking him up and carrying him to
17 your mother's house; is that right?

18 A Yes, sir. Yes, sir.

19 Q And then the judge says, I'm not going to take the
20 plea; is that right?

21 A Yes, sir.

22 Q Now, was that the first time you had told your
23 lawyer that you didn't know anything about the drugs?

24 A No. That was since day one, since the first day I
25 met him, I told him I was innocent of everything.

LAVARD LIND-BAEZ-DIRECT BY MR. BRYAN

28

1 Q Did he ever discuss a case called Alford with you?

2 A No, sir.

3 Q Did he ever discuss anything about an Alford plea?

4 A No, sir.

5 Q Do you know what the standard for Alford is?

6 A No, sir.

7 Q Do you know what is necessary to plead guilty
8 under North Carolina versus Alford?

9 A No, sir.

10 Q Did the judge bring the Alford plea up in the
11 middle of your guilty plea?

12 A Yes, he did. Immediately after the prosecutor
13 said that she wanted to continue with trial the next
14 day, and Mr. Brown stood up and said that he wants to
15 plead to -- he wants me to plead to seven years that
16 day, that he didn't want to proceed to trial. And the
17 judge asked, well, you want to turn this into a Alford
18 plea, and he said yes.

19 Q And your lawyer said, well, yes, sir, that would
20 be my next suggestion; is that what he said?

21 A Yes, sir.

22 Q All right. And then did you get to like go out of
23 the courtroom and discuss the nature of the evidence
24 against you or what the State would be presenting to
25 prove you guilty?

1 A No, sir.

2 Q How did that conversation go with Mr. Brown, what
3 did he tell you?

4 A Mr. Brown basically told me that a Alford plea is
5 where you're going to plead no content, and that if I
6 was to go to trial my prior record would make -- I
7 guess makes it look bad that I would be found guilty
8 because my prior record. Like they don't have no
9 evidence, they still would find me guilty because of my
10 prior record. That's basically what he said, and
11 summed it up in so many words.

12 Q All right. And did you ultimately plead guilty
13 under Alford?

14 A Yes, sir.

15 Q And why did you plead guilty? Did you think you
16 had a choice?

17 A No, I had no choice, my back was against the wall.
18 Mr. Brown told me if I didn't plead guilty, I would be
19 going to trial the next day by myself.

20 Q Okay. If you'd had a lawyer that was willing to
21 discuss your case with you and present the evidence
22 under the rules, would you have had a jury trial or
23 pled guilty that day?

24 A I would have had a jury trial.

25 Q Did you ever -- by the way, did you ever review

1 the tape or these recordings that were referred to?

2 A No, sir. To this day I still haven't heard the
3 audio video.

4 Q So you haven't heard the two-hour, 50-minute audio
5 of the entire transaction?

6 A No, sir.

7 Q You were on the trial roster three times, you were
8 up for trial in the morning, and you'd never heard the
9 actual incident caught on tape?

10 A No, sir.

11 Q That supposedly had your voice which you know
12 could not have had your voice because you never talked
13 to anybody?

14 A No, sir.

15 Q Did you ask Mr. Brown to subpoena any witnesses
16 for you?

17 A I told Mr. Brown that he needed to cross-examine
18 my codefendant, Mr. Bryant, because Mr. Bryant
19 basically -- I don't know the word, I don't want to get
20 objected -- I don't -- Mr. Bryant basically told a
21 story so that he felt that he would have got a lighter
22 sentence by incriminating me into something because he
23 knew I had a prior background.

24 So I told him that he needed to talk to Mr. Bryant
25 to understand or get the real story to why he did what

1 he did.

2 Q When you did talk to Mr. Brown, what did he tend
3 to talk about?

4 A That basically they didn't have -- the State
5 didn't have anything on me, that I should have nothing
6 to worry about, and when I'm going to make a payment.

7 Q When you're going to make a payment?

8 A Yes, sir. Like everything was based around, in my
9 opinion, money. Like it was either I'm going to pay
10 him, or I just felt that it was -- he wouldn't have
11 represented me.

12 MR. BRYAN: Court's indulgence, Your Honor.

13 (Discussion off the record.)

14 Q Anything that you think this Court needs to know
15 that I have not brought out that I failed to ask you
16 about?

17 A I think back in February or March, I think, in
18 2013, Mr. Brown -- I'm in Florida working -- Mr. Brown
19 called me saying I needed to be in court in Horry
20 County. So I came from Florida, I came down to Conway.
21 And when I got it -- he didn't tell me why, I'm
22 thinking it's a roll call. When I got here, we went
23 across the street.

24 So when we went across the street, Mr. Brown told
25 me that he wants to be relieved off of my case, he want

1 to fire himself off of my case. And I begged him, I
2 was like, look, I really don't have no money to -- no
3 more money to retain another lawyer. So could we
4 please just continue to go through, and I'll try to pay
5 you the payments, and I mean, I'll try to pay you what
6 I need to pay you to get it all caught up.

7 Q And what happened as a result of that?

8 A He, I guess, threw it away or I don't know how it
9 went down.

10 Q He actually filed a motion to be relieved based on
11 the fact that you hadn't paid him; is that right?

12 A Yes, sir.

13 Q And then you paid him a little bit, and he --

14 A And everything was back --

15 Q -- dismissed the motion?

16 A Right. And I didn't talk to him again until --

17 Q Did you ever -- I'm sorry, go ahead.

18 A I didn't talk to him again until July 2013 when I
19 got this time.

20 Q Did you ever finish paying him?

21 A No, sir.

22 Q What about the nature of your fee, were you aware
23 that you owed more for a trial than just a guilty plea,
24 that if there was a trial it would actually be a third
25 more money due?

1 A No, sir.

2 Q Okay. Anything else?

3 A No, sir.

4 Q Did you feel like your plea was voluntary? Did
5 anybody -- let me ask you this -- did anybody threaten
6 you with a gun or a knife or hit you over the head,
7 make you plead guilty?

8 A No, sir.

9 Q But did you feel like you had a choice in the
10 guilty plea?

11 A I feel like I had no choice, like my back was
12 against the wall. Like Mr. Brown told me that if I
13 didn't take that plea that I would go to trial the next
14 day, and they would give me -- I will go to trial the
15 next day by myself, and they would give me 30 years.

16 So I was left with no choice, either take the time
17 or spend the rest of my life in prison with somebody
18 who really didn't want to represent me or go to trial
19 by myself. And I can't represent myself, so that's why
20 I took the seven years that was supposed to be
21 nonviolent.

22 MR. BRYAN: I don't have any other questions.

23 Please answer --

24 Q Well, let me ask you this. You obviously answered
25 a lot of questions under oath --

1 A Yes, sir.

2 Q -- that you were making a free and voluntarily
3 plea; is that right? In other words, the judge put you
4 under oath and questioned you and said, are you
5 pleading guilty freely and voluntarily?

6 A Right.

7 Q And he asked you if you were satisfied with your
8 lawyer?

9 A Right.

10 Q And you answered that you were?

11 A Yes.

12 Q And why did you do that?

13 A Because Mr. Brown told me, he whispered that the
14 answer -- he whispered to tell me that I should say yes
15 or I should say no to certain questions that the judge
16 asked me.

17 MR. BRYAN: I don't have any other questions.
18 Please answer any other questions that the Attorney
19 General has.

20 CROSS-EXAMINATION

21 BY MS. KINARD:

22 Q Good afternoon, Mr. Lind-Baez. Your attorney
23 questioned you very thoroughly, but I do have some
24 questions I'd like answers to as well.

25 A All right.

1 Q To start where you left off, you did testify that
2 you were pleased with the services of your attorney?

3 A Yes, sir -- yes, ma'am.

4 Q And you testified that your attorney had gone over
5 the evidence in the case with you?

6 A Yes.

7 Q And you testified that you understood all
8 constitutional rights you were giving up?

9 A Yes, ma'am.

10 Q And regardless of that, you understood -- you
11 testified that that is what you wished to do, you
12 wished to plead guilty?

13 A Yes.

14 Q And eventually you pled guilty under Alford versus
15 North Carolina -- or excuse me, reverse that, North
16 Carolina versus Alford?

17 A Yes, ma'am.

18 Q Did Mr. Brown explain to you the elements of
19 Alford?

20 A No, ma'am.

21 Q He didn't explain them to you in the courtroom?

22 A Well, at the courtroom he did. Well, at the table
23 in front of the judge he did, a brief statement about
24 the Alford.

25 Q Did the Court also explain the elements of Alford

LAVARD LIND-BAEZ-CROSS BY MS. KINARD

1 and the requirements of Alford?

2 A The judge did a brief statement about the Alford
3 plea also.

4 Q And you understood that it had the same effect as
5 a guilty plea?

6 A Yes. I didn't quite understand because, like I
7 said, like so many things was going on, like so much
8 emotion was in there. I was just in a tunnel vision, I
9 just felt like I was trapped, like my back was against
10 the wall.

11 Q Okay. Your attorney also just asked you if you
12 had been promised anything to testify?

13 A Yes.

14 Q Were you promised anything to testify?

15 A Well, from my understanding, it wasn't really a
16 promise, like and, I mean, so I answered no. But
17 Mr. Brown told me that it's seven years nonviolent.
18 And I said, you sure, I asked him like five or six
19 times, and he said it was nonviolent.

20 Q Okay. But were you promised anything to plead
21 guilty?

22 A No, ma'am.

23 Q Other than a negotiation, nobody promised you a
24 car or a house or anything?

25 A No, ma'am.

1 Q Okay. And you testified that no one had
2 threatened you or intimidated you in order to plead
3 guilty?

4 A Well, other than him basically -- I thought --
5 okay. When we was out in the hallway when Mr. Brown
6 told me that -- he brought up another client's case.
7 He said prior he went to trial the month before. And I
8 was telling Mr. Brown the whole time like my client --
9 my codefendant is not going to show up at trial, like
10 he just said -- he lied so that he can get a lighter
11 sentence.

12 So he said that, I just had a client, he had a
13 murder trial, he said the same thing, his codefendant
14 came to court and testified against him. And he said
15 he wasn't going to come. He got life plus 45. So I
16 felt that if I didn't plead to the seven years, then I
17 was going to trial and get 30 years.

18 Q I understand you felt uncomfortable and you said
19 your back was against the wall, but you were not
20 actually threatened, no one, as he said, put a gun up
21 against your head or said you were going to suffer in
22 any way, other than the potential extra time, if you
23 didn't plead guilty?

24 A No, ma'am.

25 Q Okay. Did you testify that you thought the plea

1 was the best way for you to resolve your case?

2 A No, ma'am, I didn't. Like that's not how I felt.

3 Like I told Mr. Brown about that, but...

4 Q But did you answer when the judge questioned you?

5 A Yes.

6 Q You said yes?

7 A Yes.

8 Q Okay. And you were under oath when all of this
9 happened?

10 A Yes.

11 Q Okay. You stated that you wanted Mr. Brown to be
12 fired; and can you remind me when that was.

13 A That was the morning of.

14 Q Of the plea?

15 A The 21st.

16 Q Okay. And when did Mr. Brown tell you he wanted
17 to be relieved?

18 A Oh. This was back in March, February and March
19 of 2013.

20 Q Okay. And so you testified that that was because
21 you hadn't paid him?

22 A Yes. And like when we meet, like I was ask -- I
23 asked him to do certain things, and he would be like,
24 oh, what you want me to be the lawyer or you want to be
25 the lawyer. Like we constantly knock heads, and he's

1 just like we wouldn't see eye to eye.

2 Q Okay. Speaking of that, did you trust Mr. Brown
3 to provide you legal advice?

4 A Well, yes. Because he was -- I was paying him to
5 be a lawyer. Like yes, I trusted him.

6 Q And you understand that an attorney/client
7 relationship is also a business transaction?

8 A Yeah, I guess, yes.

9 Q That you hire him for his services, and therefore
10 you have to pay him?

11 A Right.

12 Q And so it would be legitimate and understandable
13 for him to want money in order to keep representing
14 you?

15 A Right.

16 Q Okay. Was there any other reason why he wanted to
17 be relieved?

18 A Just because I wasn't -- I couldn't pay him, like
19 he -- like he would want a payment. Like I could make
20 a payment today, and then three weeks later, he was
21 like, well, when you going to make another payment.

22 Q Okay. Did you understand that he was probably
23 doing work that you hadn't seen?

24 A No, ma'am.

25 Q Okay. Did y'all have a problem communicating

1 during the pendency of this?

2 A Well, not on my behalf. I tried to get in contact
3 with him, like every time I called his office he's in a
4 meeting. I go to his office, I can't meet with him
5 because he's obviously doing something or I got to come
6 back in my -- I had a tight schedule because my work, I
7 was working and traveling.

8 Q Was he able to contact you while you were in
9 Florida?

10 A The one time he did contact me is when I came from
11 Florida here to take this guilty plea.

12 Q So you'd never received any phone calls from him
13 while you were in Florida?

14 A No. Only he will mail me -- basically anytime he
15 would want to get in contact with me, he would mail me,
16 I guess, the paper to come to court.

17 Q Were you allowed to be in Florida?

18 A Yes.

19 Q Okay. Did your codefendant have an attorney
20 representing him?

21 A I think a public defender.

22 Q Okay. So you understood that because Mr. Brown is
23 an attorney, he can't speak directly to someone who's
24 represented?

25 A I never understood that. I thought he could at

1 least have cross-examined him or, you know what I mean,
2 hire a private investigator or do something.

3 Q But you testified at the plea that you gave up the
4 right to cross-examine any accusers or other witnesses
5 at your plea?

6 A The only reason why I answered the way I did in
7 front of the judge is because Mr. Brown informed me to.

8 MS. KINARD: Okay, I believe that's all the
9 questions I have. Please answer any redirect that your
10 attorney may have.

11 MR. BRYAN: Nothing else, Your Honor.

12 THE COURT: Thank you very much, sir. You may
13 step down.

14 (Witness excused.)

15 MR. BRYAN: I would like to call Shawn Simmons.

16 THE COURT: Please come around and be sworn.

17 SHAWN A. SIMMONS, after being duly sworn,
18 testified as follows:

19 THE CLERK: Please have a seat and state your name
20 for the Court.

21 THE WITNESS: My name is Shawn Antonio Simmons.

22 DIRECT EXAMINATION

23 BY MR. BRYAN:

24 Q Thank you. You know Lavard Lind-Baez?

25 A Yes, sir.

- 1 Q How do you know him?
- 2 A He was my cousin. He was my cousin.
- 3 Q He still is your cousin?
- 4 A Well, not was. Cousin.
- 5 Q Yes. You didn't divorce him. Were you here the
- 6 day that he pled guilty --
- 7 A Yes.
- 8 Q -- like July 22nd --
- 9 A Yes, sir.
- 10 Q -- when he got seven years?
- 11 A Yes, sir.
- 12 Q And were you present for a conversation between
- 13 him and his lawyer?
- 14 A Yes, sir, I was around.
- 15 Q Tell the judge what was said by his lawyer and him
- 16 in that conversation.
- 17 A As of when I was around him, you know, he was
- 18 stating what he said, like asking about the
- 19 cross-examination and asking him --
- 20 Q And so just to be clear for the record, when you
- 21 say he and him, just do your best to say Lavard and Mr.
- 22 Brown.
- 23 A Oh, Lavard, right. Yeah.
- 24 Q So we're not saying he and him so much.
- 25 A Yeah. He was asking him about not taking the plea

1 about, you know, saying he was guilty. Now, from my --
2 you know, from my knowledge to or that day too he was
3 going prior on his prior record. And that's what he
4 said, he had the choice of either taking that time that
5 day or getting 30 years. I did hear that part there
6 too.

7 Q Who said --

8 A Brown.

9 Q -- you have a choice of taking the time --

10 A Brown.

11 Q -- or getting 30 years?

12 A Brown.

13 Q And did Lavard say he wanted to plead guilty?

14 A No, not at no time was that said.

15 Q And did he ever say he was guilty of the offense?

16 A No, not to me.

17 Q Was there any confusion about whether he said he
18 was guilty or wanted to plead guilty?

19 A No, sir.

20 Q And what did Mr. Brown say about the guilty plea?

21 A He was saying --

22 Q And whether he should plead or not?

23 A He said he should plead guilty.

24 Q Why?

25 A Because there's a prior record, and Mr. Bryant

1 wasn't going to come and stand trial on it.

2 Q And did he say anything else about what would
3 happen the next day if he didn't plead guilty today?

4 A That he wasn't going to represent him and that --

5 Q Who said that?

6 A Brown. And that he was facing up to 30 years.

7 Q Was anybody else present for that conversation?

8 A Jadai.

9 Q Jadai, his girlfriend?

10 A Yes.

11 Q And where did that conversation take place?

12 A Right in the hall inside that little conference
13 room they have in there.

14 Q Did you come to my office on October 13th, 2015?

15 A Yes, sir.

16 Q Who was there?

17 A Me and Ernie Bryant.

18 Q Who's Ernie Bryant?

19 A We know him as E, come from another family.

20 Q And he was the guy that got arrested with Lavard?

21 A Yes, sir.

22 Q All right. And he came of his own free will, or
23 did he come on his own or did you drag up there?

24 A Oh, no, he came on his own free will.

25 Q Were you in the room when he gave a sworn

1 statement?

2 A Yes, sir.

3 MR. BRYAN: Can I get his marked.

4 (WHEREUPON, Plaintiff's Exhibit No. 1 was marked
5 for identification only.)

6 Q I'm going to hand you Plaintiff's Exhibit 1;
7 what's that? Affidavit?

8 A You asking me what's this, the affidavit, yeah.

9 Q And who signed it?

10 A Ernie Bryant.

11 Q And were you there for the entire conversation
12 when that statement was given?

13 A Yes, sir.

14 Q So it was me, you and Ernie Bryant?

15 A Yes, sir.

16 Q Did I tell him what to say?

17 A No, sir.

18 Q Did I suggest what to say?

19 A Yes.

20 Q He write that statement freely and voluntarily?

21 A Yes, sir.

22 Q And he signed it and had it notarized. We walked
23 next door and there was a lady in there, and she put a
24 notary seal on it?

25 A Yes, sir.

SHAWN A. SIMMONS-DIRECT BY MR. BRYAN

46

1 Q Is that right?

2 A Yes, sir.

3 Q And does that statement say that that's a free and
4 voluntary and truthful statement?

5 A Yes, sir.

6 Q And did he say in that statement, does that
7 statement say that he gave a truthful statement when he
8 first talked to police and said that Lavard didn't have
9 anything to do with it?

10 MS. KINARD: Objection.

11 THE COURT: All right.

12 MS. KINARD: I believe counsel is using a loophole
13 to get in a hearsay statement by having this witness
14 testify to the contents of a hearsay affidavit.

15 MR. BRYAN: I'd like to -- I'm just trying to lay
16 the foundation to admit the exhibit, Your Honor. I
17 have to make it relevance first, but I will gladly just
18 submit it into evidence. It's a notarized statement by
19 the codefendant saying that my guy wasn't guilty. I
20 think it's pretty relevant.

21 THE COURT: It's not admissible. It might be
22 relevant, but it's not admissible. She can't
23 cross-examine that statement.

24 MR. BRYAN: Well, my understanding was that under
25 the rules that affidavits were admissible in civil

1 court.

2 THE COURT: Not to replace a witness.

3 MR. BRYAN: Okay.

4 THE COURT: When the State has no opportunity to
5 cross-examine a statement. I mean, it's still hearsay,
6 there's no exception to the hearsay rule that would
7 allow an affidavit to replace a witness. I mean, you
8 can -- my point is you can move to admit it.

9 MR. BRYAN: Okay.

10 THE COURT: She's going to object, and I'm going
11 to sustain the objection, and then we can make it a
12 Court's exhibit for, you know, so that it's in the
13 record. But I'm not -- unless you can show me some
14 rule that shows that that's an exception to the hearsay
15 rule, I would sustain any objection.

16 MR. BRYAN: Thank you, Your Honor. Yes, sir.

17 Q Let me ask this. Do you know if Ernie Bryant is
18 available to come to court today?

19 A I'm not sure if he's available to come. My last
20 understanding, I'm guessing -- well, the last I talked
21 to him he was saying he wasn't because he got a
22 warrant.

23 Q He pled guilty on this offense; right?

24 A Yes.

25 Q And he actually got probation, not seven years,

SHAWN A. SIMMONS-DIRECT BY MR. BRYAN

48

1 even though he had the 50 grams in his pocket, set up
2 the deal, and he got probation; right?

3 A That's what he told me.

4 Q Because he then told on Lavard?

5 A Yeah.

6 Q Changed his story?

7 A Yeah. He said it would give him a lighter
8 sentence.

9 THE COURT: All right. I'm going to stop all the
10 hearsay, okay. There was an objection to the hearsay.
11 It's not admissible.

12 Q And he's on the run from probation at this point?

13 A As to my knowledge.

14 Q Is he available to come court as far as you know?

15 A No, sir.

16 MR. BRYAN: All right, Your Honor, we'd like to
17 submit Plaintiff's-1 into evidence based on the
18 exception for the declarant being unavailable given
19 that he is in violation of his probation and on the
20 run.

21 MS. KINARD: The State would argue that that's not
22 a very viable reason for being unavailable to testify.
23 The applicant could have also perhaps conducted a
24 deposition at which point the State could have
25 cross-examined him.

1 THE COURT: Could have subpoenaed him, any number
2 of things.

3 MS. KINARD: Yes, Your Honor.

4 THE COURT: I'm not going to allow it into
5 evidence based upon the hearsay objection. However, I
6 am going to -- we'll obviously note it as an exhibit,
7 so that it will be part of the record.

8 MR. BRYAN: Thank you, Your Honor.

9 THE COURT: Okay.

10 MR. BRYAN: I don't have any other questions.
11 Please answer any questions the Attorney General has.

12 MS. KINARD: Court's indulgence, Your Honor.

13 THE COURT: Yes, ma'am.

14 MS. KINARD: The State has no cross for this
15 witness.

16 THE COURT: All right. Thank you very much, sir.
17 You may step down.

18 THE WITNESS: Keep that down or I got to take that
19 with me?

20 THE COURT: No, that just stays there, thank you.
21 (Witness excused.)

22 THE COURT: Yes, sir.

23 MR. BRYAN: The State calls Jada Jackson.

24 THE COURT: Ms. Jackson, if you would please come
25 around to be sworn, ma'am.

JADAI JACKSON-DIRECT BY MR. BRYAN

1 MS. KINARD: Also for the record, that was the
2 applicant calling.

3 MR. BRYAN: Yeah, see.

4 THE COURT: We got it. Applicant calls Ms.
5 Jackson.

6 JADAI JACKSON, after being duly sworn, testified
7 as follows:

8 THE CLERK: Please have a seat and state your name
9 for the Court.

10 THE WITNESS: J-A-D-A-I, Jackson.

11 DIRECT EXAMINATION

12 BY MR. BRYAN:

13 Q What's your relationship to Lavard Lind-Baez?

14 A Fiance.

15 Q Okay. And were you in court the day that he pled
16 guilty?

17 A Yes, I was.

18 Q Did you take part in any conversation between him
19 and his lawyer or witness any conversation between him
20 and Mr. Brown?

21 A Yes, sir.

22 Q And what was -- what did Mr. Brown say to Lavard
23 about pleading guilty?

24 A In the hallway down there, down the hall, between
25 the waiting room and the courtroom, Mr. Brown told

1 Lavard that if he didn't take the seven years today
2 that he would get 30 years tomorrow because he wasn't
3 going to represent him because of his prior record.

4 Q Okay. Anything else?

5 A No, sir.

6 Q When y'all came to court that day, did you know
7 why you were going to court?

8 A No.

9 Q Did you not -- y'all didn't try to talk to your
10 lawyer about why you were there?

11 A The only thing I know that was just come into
12 court.

13 Q And that's the day he pled and got seven years?

14 A Yes, to the...

15 Q Did Lavard ever go to his lawyer's office to
16 maybe, I don't know, listen to a CD with the evidence
17 on it?

18 A No, sir.

19 MS. KINARD: Objection, speculation.

20 Q To your knowledge --

21 THE COURT: She can testify if she knows.

22 Q To your knowledge, did he ever do any -- did you
23 live with him?

24 A Not live with him, but stayed with him --

25 Q Okay.

MARGARET WIGFALL-DIRECT BY MR. BRYAN

52

1 A -- most of the time.

2 Q Did you know what was going on in his life?

3 A Yes.

4 Q To your knowledge, did he ever review any evidence
5 with his lawyer?

6 A To my knowledge, he never reviewed any evidence.

7 MR. BRYAN: I don't have any other questions.

8 MS. KINARD: No cross from the State.

9 THE COURT: Thank you, ma'am. You may step down.

10 (Witness excused.)

11 MR. BRYAN: I would like to call Margaret Wigfall.

12 THE COURT: Ma'am, if you would please come around
13 and be sworn.

14 THE CLERK: Please have a seat, state your name
15 for the Court.

16 THE WITNESS: My name is Margaret Wigfall.

17 DIRECT EXAMINATION

18 BY MR. BRYAN:

19 Q You are Mr. Lind-Baez's mother?

20 A Yes.

21 Q And you kind of helped him hire his lawyer; did
22 you talk to his lawyer ever?

23 A Yes.

24 Q Prior to his plea; did you ever talk to his
25 lawyer?

1 A No.

2 Q Okay. Did you know he was -- were you at the
3 guilty plea that day?

4 A No.

5 Q And did you know he was pleading guilty that day?

6 A No.

7 Q Would you have been there if you had known he was
8 pleading guilty?

9 A Yes.

10 Q Did you ever meet with Mr. Brown about that?

11 A I spoke to him briefly after the hearing that day
12 in the parking lot.

13 Q So you came up here?

14 A Yes, after I found out that he plead guilty.

15 Q Okay.

16 A And I spoke do Mr. Brown a little bit in the
17 parking lot but didn't get no answers or anything.

18 Q Okay. Did you go to his office in Charleston?

19 A Yes, I did.

20 Q And what was the conversation there?

21 A I basically went there to ask him why my son
22 pleaded guilty because they didn't find anything on him
23 or in the car that he was driving.

24 Q All right. And what did he say?

25 A He said because Lavard had a past, because of the

MARGARET WIGFALL-DIRECT BY MR. BRYAN

54

1 past --

2 Q What do you mean, he had a past?

3 A That when he got locked up before. So that's why
4 he went to jail because of his past.

5 Q Did he say anything about the evidence against
6 him?

7 A No.

8 Q Or lack thereof?

9 A No.

10 Q Did he say anything about any of Lavard's
11 contention that he didn't know anything about it?

12 A No.

13 MR. BRYAN: That's all the questions I have.

14 Q You love your son obviously?

15 A Of course.

16 Q Would you lie in court to help him out?

17 A No, sir.

18 Q Okay.

19 A No, sir.

20 MR. BRYAN: Judge, no more questions.

21 MS. KINARD: No questions from the State.

22 THE COURT: Thank you very much, ma'am. You may
23 step down.

24 (Witness excused.)

25 MR. BRYAN: Just one more witness, Your Honor.

1 Taesha Lind-Baez.

2 THE COURT: All right. Please come around, ma'am.

3 TAESHA LIND-BAEZ, after being duly sworn,
4 testified as follows:

5 THE CLERK: Have a seat and state your name for
6 the Court.

7 THE WITNESS: How you doing. My name is Taesha
8 Lind-Baez.

9 DIRECT EXAMINATION

10 BY MR. BRYAN:

11 Q Lavard is your brother?

12 A Yes.

13 Q Were you there for the guilty plea that day?

14 A I was not, I was at work.

15 Q Okay. Did you know he was pleading guilty that
16 day?

17 A I didn't until I got the phone call.

18 Q And did you go talk to his lawyer afterwards?

19 A I did.

20 Q And what was said there? Did you know he was
21 going to have a trial the day he pled guilty?

22 A I did not. He just -- he got the call to be down
23 there, so that's why we didn't go.

24 Q Now, the day that he was actually arrested, where
25 was he before he got arrested?

TAESHA LIND-BAEZ-DIRECT BY MR. BRYAN

56

1 A You said the day before?

2 Q The day he got arrested, where was he before?

3 A He was --

4 Q Like earlier that day, where was he?

5 A He was coming to my house. And after that he told
6 me he got the phone call and he said he was going to
7 the gym. And then after the gym, that's when he called
8 because I was supposed to get my carpet washed.

9 Q Okay.

10 A And he told me that he got a call that he needed
11 to pick Ernie up. So that's when he called me, he told
12 me that he'll be back. And then after I got the phone
13 call later that afternoon that he got arrested.

14 Q Okay. So you were with him the day that he got
15 arrested?

16 A Yes, earlier that day.

17 Q Did you ever get a call from his lawyer about
18 discussing the facts of the case or where he was all
19 day the day that this big trafficking three-hour deal
20 got set up?

21 A No.

22 Q He never talked to you once?

23 A No. Only time I talked with him was when I went
24 to his office in Charleston because he never answered
25 the phone.

1 Q Did you get a subpoena for a jury trial?

2 A No.

3 Q Did his lawyer ever tell you that you might be a
4 witness given the fact that while the transaction was
5 being conducted he was at your house?

6 A No.

7 Q Never talked to him about it?

8 A No.

9 Q Did you go to his office the day after?

10 A I went to his office.

11 Q And what was said there?

12 A I asked him the same, like why did my brother
13 take -- why did he take that plea. And he also told me
14 the reason why he took the plea because he had a prior
15 record.

16 Q And what does that mean, he had a prior record?

17 A That he took -- he did time before prior for when
18 he got in trouble before. He brought that up to me,
19 and I told him that's not a good reason to me of why he
20 took the plea. But he also said, you know, he wouldn't
21 have represented him if he had took it to trial.

22 Q Did he say why?

23 A No.

24 MR. BRYAN: All right. I don't have any other
25 questions.

1 MS. KINARD: No questions from the State.

2 THE COURT: Thank you, ma'am. You may step down.

3 (Witness excused.)

4 MR. BRYAN: We don't have any other witnesses,
5 Your Honor.

6 THE COURT: All right. Before we recognize the
7 State, why don't we just take a short break. We've
8 been going for quite some time. Let's just take about
9 five minutes, okay.

10 (WHEREUPON, a brief recess was taken at
11 12:46 p.m.)

12 THE COURT: Thank you, folks. Please have a seat.
13 All right. Is the State ready to proceed?

14 MS. KINARD: Yes, Your Honor. We would call
15 Mr. Edward Brown.

16 THE COURT: Mr. Brown, if you'll please come
17 around and be sworn.

18 EDWARD M. BROWN, after being duly sworn, testified
19 as follows:

20 THE CLERK: Please have a seat, state your name
21 for the Court.

22 THE WITNESS: My name is Edward M. Brown.

23 MS. KINARD: May it please the Court.

24 THE COURT: Yes, ma'am.

25 DIRECT EXAMINATION

1 BY MS. KINARD:

2 Q Mr. Brown, how long have you been practicing?

3 A 38 years.

4 Q And how long of that has been involved with
5 criminal law?

6 A All of it.

7 Q Were you retained in this matter?

8 A Yes, ma'am.

9 Q And did Mr. Lind-Baez's family help with that
10 process?

11 A I don't know who helped. When he first came to my
12 office, he came by himself.

13 Q Okay. Did you file your Rule 5 Brady motions?

14 A Yes, ma'am, I did.

15 Q Did you have any trouble getting discovery?

16 A No, ma'am, I did not.

17 Q Did anything seem to be absent from the discovery?

18 A Initially there was some CD's, but I eventually
19 got those.

20 Q Okay.

21 A There was some other -- a CD or audio and some
22 pictures, yeah, I got those.

23 Q You did get those?

24 A Yes, ma'am.

25 Q Did you go over everything with the applicant?

EDWARD M. BROWN-DIRECT BY MS. KINARD

60

1 A Yeah. Mr. Baez, yes. He -- Mr. Baez came to my
2 office initially, and I think he was referred to me by
3 a friend of his, I'm not sure. But he came in
4 indicating what the charges were, and we talked about
5 his history. And he also indicated -- the thing I
6 remember the most, he said he wanted some digits from
7 me, meaning he wanted my cell phone number. And I
8 simply refused to give him that. But --

9 Q Is that your standard practice, you don't give --

10 A No, no, I don't give out my -- no. That's -- that
11 can become very burdensome.

12 Q Understandable. How many times do you believe you
13 met with the applicant?

14 A I think, as my record would reflect, I met with
15 Mr. Baez about four to five times in person in my
16 office. There was a period of time that I did have a
17 problem contacting him because I think he moved to
18 Florida. He was working -- he said he was working, if
19 I recall correctly, on a dock or something of that
20 nature.

21 Q We're going to come back to that in a minute.

22 A Okay.

23 Q But in the meantime, did you ever have any trouble
24 with Mr. Lind-Baez understanding you?

25 A Oh, absolutely not.

1 Q Okay. Did he explain his version of events to
2 you?

3 A He did.

4 Q And what was your initial impression of those?

5 A My initial impression is that he understood what
6 the transaction was and what they were doing. That's
7 what he told me.

8 Q Okay. Did you think the State had enough evidence
9 to convict him?

10 A I think given the fact that Mr. Bryant had an
11 initial -- had a second statement where he implicated
12 him and based on what he told me, I think they could
13 have convicted him if he did not testify.

14 Q And speaking to Mr. Bryant, or speaking of him,
15 did you speak to him?

16 A The day I came up initially with Mr. Baez,
17 Mr. Bryant had a public defender. I don't remember the
18 public defender's name, but I wanted to talk to
19 Mr. Bryant and his lawyer indicated that I couldn't.
20 So I did not. I never talked to Mr. Bryant.

21 Q Did you talk to any other witnesses?

22 A I didn't know there were any other witnesses.

23 Q You had -- I'm sorry.

24 A Mr. Baez never informed me about any other
25 witnesses.

EDWARD M. BROWN-DIRECT BY MS. KINARD

62

1 Q Did you attempt to contact the CI involved in the
2 case?

3 A I didn't. I wanted to contact the CI, but I did
4 not contact the CI. As I understand it, it's
5 discretionary whether the CI talks to you or not.

6 Q So it may not have been fruitful to even try to
7 contact the CI?

8 A That is correct.

9 Q Did you explain the elements of the offense and
10 the nature of the charges?

11 A Yes, ma'am, I did.

12 Q And you explained to him what the State would have
13 to prove at trial?

14 A Yes, ma'am.

15 Q And the other side talked a bit about the time
16 spent and the opportunities you may have had to appear
17 on Mr. Lind-Baez's behalf. They allege that you missed
18 several roll calls; is that true?

19 A I don't come to roll calls. It depends on the
20 county, but most counties I don't come to roll calls.
21 The roll calls as I understand them is just there to
22 make sure that the Defendant is still within the
23 jurisdiction of the Court.

24 Q Did you ever miss an arraignment?

25 A No, ma'am, I did not.

1 Q Did you have an order of protection in December
2 of 2012 for a medical reason?

3 A I did.

4 Q Did you have an order of protection in April
5 of 2013?

6 A Yes, ma'am.

7 Q And that was for a vacation?

8 A I bought some cheap tickets way ahead of time, and
9 it would be difficult, I mean, I couldn't transfer
10 them.

11 Q Understandable. Did you go through the proper
12 channels to obtain an order of protection for each of
13 those?

14 A Yes, ma'am, I think I got a -- I know I got an
15 order of protection signed for the vacation. And I
16 think we agreed because of the medical problems that
17 the case wouldn't come up that time or during that
18 term.

19 Q An agreement with the solicitor's office?

20 A Yes, ma'am.

21 Q And that's normal protocol either to have an
22 agreement or a trial not before date or to enter an
23 order of protection to protect yourself?

24 A Yes, ma'am.

25 Q And that's something that attorneys do all the

EDWARD M. BROWN-DIRECT BY MS. KINARD

64

1 time?

2 A Something I do, yes, ma'am.

3 Q Okay. There was discussion earlier about
4 Mr. Lind-Baez's innocence. Did he ever admit to
5 committing this crime?

6 A He told me -- and I'm going to read to you exactly
7 what he told me. Mr. Lind-Baez related to me that he
8 along with his -- a Mr. Bryant, codefendant, went to a
9 shopping center in the Horry County, in Horry County.
10 On the date of this incident Mr. Baez indicated that
11 Mr. Bryant asked him for a ride to the shopping center.
12 Specifically the shopping center was located at 545
13 Gadson City Connector in Gadson -- Garden City, I'm
14 sorry, Garden City, which is a part of Horry County.

15 Mr. Baez informed me that he did not know at the
16 time that Mr. Bryant, his codefendant, was going to the
17 shopping center for the purpose of making a cocaine
18 buy.

19 Q Okay. Did he admit that he would have been guilty
20 of running a blue light?

21 A He did. As a matter of fact, that's one of the
22 things that we tried to negotiate this down to.

23 Q Okay. There was some discussion earlier about
24 whether Mr. Lind-Baez knew he was going to be pleading
25 guilty that day or he was going to trial and all of

1 those communications. Can you enlighten us about what
2 happened.

3 A Mr. Baez knew exactly why we were here. That was
4 the time he was in Florida. I called him repeatedly,
5 and we discussed on the telephone what this was, what
6 was going to happen. He knew it was a plea. This
7 nonsense about he didn't know why he was here and that
8 I didn't tell him why we were going to court is simply
9 nonsense.

10 Q Along that same line, did you prepare him for how
11 to -- what to anticipate during the guilty plea?

12 A Yes, ma'am. But I need to retrogress for a
13 minute. I was prepared to go to trial if he wanted to
14 go to trial. I -- my strategy in this trial would have
15 been to vigorously attack Mr. Bryant. Secondly, they
16 had produced no forensic evidence that Mr. Baez's DNA
17 or fingerprint was on any of the contrabands.

18 I also thought that there was -- they didn't
19 produce any money, there was no weapons or anything of
20 that nature. I was prepared to go to trial.

21 Q What was your big issue going to be at trial?

22 A My big issue at trial would be this, he -- in 2006
23 he was or he pled guilty. I think the arrest date was
24 perhaps in 2006, I think January 5th of 2006. And then
25 six months later in June of 2006, the same crime,

EDWARD M. BROWN-DIRECT BY MS. KINARD

66

1 drugs. He got five years for the second.

2 My fear was that if he went to trial and he chose
3 to testify, then that might create a problem given his
4 history.

5 Q In other words, having him testify would open the
6 door to allow the prosecution to discuss his charges?

7 A I'm sure she would have done that, yes, ma'am.

8 Q And you felt that even though he has the option
9 not to testify, why would it be important for him to
10 testify?

11 A Well, okay, but I've in my 38 years, juries want
12 to hear from the person who is in fact on trial. Now,
13 I did tell him that there would be an instruction given
14 by the judge more than likely -- more likely than not
15 that -- well, not more likely than not, there would be
16 an instruction that the jury could not hold that
17 against him if he did not testify. And he understood
18 that. And we talked about that on multiple occasions.

19 Q So you weighed the pros and cons of his testifying
20 at trial?

21 A I did. And if he had asked me -- if he wanted to
22 testify, I would have -- I mean, I would advise against
23 it, but he could have testified.

24 Q So weighing those pros and cons as part of a
25 development of a strategy that you do with all of your

1 criminal clients?

2 A Yes, ma'am.

3 Q Similarly, is weighing the pros and cons of a
4 guilty plea versus a trial part of the development of
5 your strategy with every client?

6 A Yes, ma'am. He would have had -- he would have
7 been exposed to a significant amount of time more than
8 what the plea resulted in had a jury found him guilty.

9 Q Do you remember the maximum that he was facing?

10 A I think it was either 25 or 30 years.

11 Q So just to recap a bit, although he maintained his
12 innocence, he understood the benefit of going to a
13 plea?

14 A In my opinion, yes, ma'am, he did.

15 Q And you had discussed the potential of an Alford
16 plea with him beforehand?

17 A I did. I heard testimony before that -- from him
18 that he didn't know what Alford was. We discussed
19 that. We discussed -- I told him, look, there is this
20 thing called a Alford plea and that although the State
21 might not -- although you think you're not guilty, the
22 State probably has enough evidence to convict you. And
23 if they do, if you plead, you can plead guilty under
24 Alford in regards to that.

25 And the other thing that gave me concern, the

EDWARD M. BROWN-DIRECT BY MS. KINARD

68

1 first plea offer was for five years, and that was in, I
2 think, October -- I think October of 2012 if I'm not
3 mistaken. And then when he agreed not to take that,
4 and I wasn't forcing him to take that one either, I
5 wasn't forcing him to take any of them, then they
6 increased it to seven.

7 Q Do you recall him knowingly waiving his rights to
8 trial?

9 A Yes, ma'am, he did.

10 Q Do you recall him testifying he was satisfied with
11 your representation?

12 A Yes, ma'am, he did.

13 Q Do you recall him being fully and completely aware
14 of what was going on?

15 A Yes, ma'am. And this testimony about me
16 whispering in his ears what to say is, I mean, I don't
17 do that and I didn't do that to him. I told him in the
18 hall that the judge is going to ask you some questions
19 about your constitutional rights, and I told him what
20 those constitutional rights were.

21 And I told him you answer those as you see fit.
22 Because I was nervous about this anyway. Because that
23 morning he came in and told me he wanted to -- he had
24 hired another lawyer out of Kingstree, I think his name
25 was Barr, and that he wanted me -- he didn't want me to

1 represent him anymore.

2 Q Was Mr. Barr, Mr. or Ms. Barr, there?

3 A No. He said he was going, as I recall, and I
4 don't know that that is in the transcript, but as I
5 recall, I made mention of that. And that might have
6 been in a in-camera conference with the judge. But the
7 indication there was that I told him that Mr. Baez has
8 indicated that he contacted and was hiring another
9 lawyer out of Kingstree, and he no longer wanted me to
10 represent him.

11 Q Did you ever tell Mr. Baez that you wouldn't
12 represent him at trial?

13 A Oh, no. No. I mean, that can't happen. I have
14 to be relieved. And at that point there was no motion
15 to be relieved as counsel of record.

16 Q Because the one that had been filed earlier had
17 been resolved?

18 A That's correct.

19 Q Do you recall the conversation that any of these
20 prior witnesses have recounted?

21 A I recall -- I don't recall -- I recall, I think,
22 the girlfriend and I think the man with -- the
23 gentleman with the green shirt. Now, I don't know, I
24 think the girlfriend was there. I'm not sure this
25 other guy was there. I saw him, however, afterwards in

1 the parking lot as I was leaving and we talked. But I
2 don't recall him being there.

3 Q And I believe they both testified that essentially
4 Mr. Baez felt he had to plead or he would get 30 years?

5 A No. But, well, that's what they testified to,
6 yes.

7 Q That's what they testified to.

8 A Yeah.

9 Q What's your recollection of that?

10 A My recollection of that is that I explained to him
11 what his options were, that in fact we can go to trial,
12 and if you want to go to trial I'm prepared to go to
13 trial. However, here's what the plea offer is. And if
14 you think that you want to go to trial, we'll go to
15 trial. And I told him what the plea offer was. He
16 said he was afraid of the 30 years or the potential for
17 the 30 years or 25 years.

18 Q That's an understandable reaction that have you
19 encountered before?

20 A Many times. This is my thirty-eighth year in the
21 practice, and I think I've had about three of these,
22 PCR's that is.

23 Q Lastly, when his mother and sister went to your
24 office in Charleston after the plea, they testified
25 that you stated you wouldn't take him to trial or he

1 should not go to trial because of his prior charges?

2 A I don't recall having a conversation with the
3 sister, but I do recall having a conversation with the
4 mother. The mother came to my office indicating that
5 she wanted a copy of his file because she was going to,
6 I think, something about filing an appeal. But at that
7 time I had already filed an appeal for him.

8 So I had a copy of the file for her. No, I told
9 her to come back, sign a release, and I'd give her a
10 copy of the file. As a matter of fact, when his lawyer
11 came to my house, that's the copy that I gave him, and
12 he signed a release. But she never came back. But I
13 didn't have -- the conversation I had with her was
14 about, well, he didn't have anything to do with it. I
15 said, well, you know, that very well might be true, but
16 here were his options. And we -- that's what we talked
17 about.

18 Now, I don't recall having a conversation with his
19 sister. That doesn't mean it didn't happen, but I
20 don't recall having a conversation with his sister at
21 all.

22 Q So this matter came down to weighing his options,
23 whether it was plea or trial?

24 A Yes, ma'am.

25 Q And you feel like you provided him the best

1 possible advice and counsel that you could have?

2 A Yes, ma'am.

3 MS. KINARD: No further questions at this time,
4 Your Honor.

5 (Discussion off the record.)

6 MR. BRYAN: You ready, Mr. Brown?

7 THE WITNESS: Yes, I'm ready, sure.

8 CROSS-EXAMINATION

9 BY MR. BRYAN:

10 Q I think I just -- I'm not sure I understood
11 correctly. When you very first testified you said, I
12 thought she said that he said that he was guilty, but
13 then when you read your notes it sounded like he came
14 in the office and said that he didn't know about the
15 drugs.

16 Did he say he knew or didn't -- when you read
17 those notes right off the bat, I thought the question
18 was, did he say he was guilty or you said he said he
19 was guilty, I just misheard it?

20 A I don't remember what the question was, if you can
21 read your question back.

22 Q You were asked whether he ever said you were
23 guilty on direct examination, and you read some notes?

24 A I did.

25 Q And did they say that he admitted guilt or that he

1 did not admit guilt?

2 A No. I'll read to you what I read to her.

3 Q Thank you.

4 A Okay. Mr. Lind-Baez related to me that he along
5 with Mr. Bryant, a codefendant, went to a shopping
6 center in Horry County on the date of the incident.
7 Mr. Baez indicated that Mr. Bryant asked him for a ride
8 to the shopping center. Specifically the shopping
9 center was located -- and I gave the address. Mr. Baez
10 informed me that he did not know --

11 Q Okay.

12 A -- at that time that Mr. Ernest Bryant, his
13 codefendant, was going to the shopping center for the
14 purpose of making a cocaine buy.

15 Q Got you. And you testified that he told you he
16 asked for a ride to the shopping center?

17 A That he, who?

18 Q You said that Mr. Bryant -- Mr. Lind-Baez told you
19 that Mr. Bryant asked for a ride to the shopping
20 center?

21 A That's correct. That's what I -- that's what I
22 just read.

23 Q Right. But that's not what happened at all;
24 right? Like he, Lind-Baez, wasn't there when Bryant
25 was there, he just went and picked him up afterwards;

1 right?

2 A I'm telling you what he told me.

3 Q I know. Now I'm asking you a different question,
4 which is that's not what happened at all; right? Like
5 according to the police report, did you read the police
6 report?

7 A Mr. Baez -- this is what Mr. Baez told me.

8 Q Yes, sir. Now I'm asking you a different
9 question.

10 A Yes, I read the police report.

11 Q That he -- that's not what was alleged, that's not
12 what was on the audio. Like he wasn't there, they
13 didn't go together, he didn't get a ride to there, he
14 got picked up from there; right? He got met there;
15 right?

16 A I think your question was, what did he tell me.

17 Q Right. And you answered it.

18 A And I told you what he told me.

19 Q Yes, sir.

20 A Okay.

21 Q You answered that question.

22 A All right.

23 Q So I'm asking another question, that that's not
24 what was actually consistent with the evidence; right?
25 What you say he told you is not what was in the

1 evidence, wasn't in the police report, it's not
2 consistent with the tape that you surely reviewed. He
3 didn't take him there, he met him there; right?

4 A The police report he speaks for itself. It says
5 what it says.

6 Q Did you read it?

7 A Of course I read it.

8 Q And according to that -- did you also listen to
9 the CD of the actual transaction?

10 A I listened to the CD. No, I don't think you mean
11 listen to the CD. Yeah, that's right, it was a CD. It
12 was a CD, audio video CD, and a CD of Ernest Bryant's
13 statement.

14 Q Right. And so there was an actual CD that was two
15 minutes --

16 A I'm sorry, a DVD, not a CD.

17 Q But it was audio only; right?

18 A That's correct.

19 Q Right, so when I say CD. So there was an audio
20 recording of the transaction, right, the actual buy and
21 deal and thing that happened, the actual crime was on
22 audio recording; right?

23 A As far as I remember, yes, sir.

24 Q And that it was two hours, 50 minutes and 49
25 seconds long?

1 A It could have been. I mean, I don't know how long
2 it was.

3 Q And the recording, so did you review that prior to
4 trial?

5 A I reviewed all of it.

6 Q Okay. And they recorded it, it was a DEU case,
7 right, that's the drug enforcement agency in Horry
8 County. And they recorded it from the time she got
9 there, all the phone calls made to everybody to set it
10 up and the actual deal, start to finish, almost three
11 hours, everything right there to be listened to;
12 correct?

13 A That's correct.

14 Q And in that time of two hours and 50 minutes and
15 49 seconds, how many times did anybody say Lavard
16 Lind-Baez or anything that might mean Lavard Lind-Baez?

17 A I don't recall Mr. Baez being mentioned in that.

18 Q Never, right? Like you would know that your
19 client was never on the audio. Were there any
20 recordings of him talking to anybody?

21 A Not on the audio.

22 Q So who were they trying to set the deal up with?
23 Were they trying to buy from a guy; right?

24 A They was trying -- as I understand it, they were
25 trying -- the buyer was being set up with Mr. Bryant.

1 Q Okay.

2 A Based on what I understand.

3 Q All right. How about there was a guy named Adren
4 Duran who was in Florence that they were actually
5 trying to buy from, that on the CD it says, you can
6 actually hear the CI with the DEU people going, call
7 Adren, call Adren, set him up, well, he's saying he's
8 in Florence, he's not here, he can't do it. That goes
9 on for an hour, and they are frustrated, they can't get
10 the guy they're trying to get. You don't remember
11 that?

12 MS. KINARD: Objection to relevance, Your Honor.

13 THE COURT: I don't know what all this is leading
14 up to.

15 MR. BRYAN: Well, it's leading up to the fact that
16 he pled under Alford to something he says he didn't do.

17 THE COURT: Okay.

18 MR. BRYAN: And then there's a standard in Alford
19 that requires that there's overwhelming evidence of
20 guilt, or that he would be found guilty. And that
21 effect assistance of counsel would be not only to
22 discuss the nature of the Alford plea but the burden of
23 proof and the evidence that would be given at trial, I
24 think, is the crux of the whole argument.

25 Like how you end up at a guilty plea having said

EDWARD M. BROWN-CROSS BY MR. BRYAN

78

1 that you never did it over the course of a year, it
2 turns into an Alford plea wherein the standard is you
3 would be found guilty if you had a trial even though
4 you didn't do it.

5 THE COURT: That you would likely be found guilty.

6 MR. BRYAN: Right. And so, yeah, I'm just trying
7 to ask him the questions about like what would be
8 produced at trial. That's not relevant?

9 THE COURT: It is. But, I mean, you went through,
10 you have this three-hour tape where his name is never
11 mentioned.

12 MR. BRYAN: Right.

13 THE COURT: You keep talking about this other
14 character.

15 MR. BRYAN: Right.

16 THE COURT: In other words, you're going into such
17 great detail.

18 MR. BRYAN: Okay.

19 THE COURT: I don't know if it's that necessary to
20 prove what you're trying to prove.

21 MR. BRYAN: Okay.

22 THE COURT: I mean --

23 MR. BRYAN: Well, okay.

24 THE COURT: I mean, clearly based on what you
25 shared, they were targeting someone else.

1 MR. BRYAN: Okay. We'll move on from that. It
2 seemed like he thought they were targeting Ernest
3 Bryant, that's a different guy. In any event, they
4 weren't targeting Ernest Bryant, they were targeting
5 Adren Durant, right, he wasn't even there.

6 Q So then they start talking to Ernest Bryant, and
7 they mentioned him by name about 20, 25 times, but they
8 never talk about this guy; right?

9 A I never heard his name, no.

10 Q Right. But you did hear a name, and that name was
11 E-E-E. And then if you listen to the tape, you would
12 know that the CI actually gives Ernest's name like a
13 rare -- I did prosecution for a while, you never get E.
14 Well, his real name is Ernest Bryant. But that's on
15 the tape; right?

16 A That's --

17 Q So the guy who was actually in possession of the
18 drugs was on there with the CI going, we're going to
19 buy from Ernest Bryant?

20 A That's correct.

21 Q Then when they found the drugs, they were in whose
22 like possession?

23 A They were on Mr. Bryant.

24 Q And were there any drugs found on this guy?

25 A Not that -- that's not reflected in the police

EDWARD M. BROWN-CROSS BY MR. BRYAN

80

1 report or the -- no, that's not reflected anywhere.

2 Q All right, sir. So when did y'all talk about the
3 Alford plea?

4 A We talked about the Alford plea, I think, after
5 this first -- after he indicated, and I want to say
6 October of 2012, when I think Judge Cottingham and,
7 well, I'm not sure who the judge was, but it was -- no,
8 it was October '12, I think it was October '12. And
9 Mr. Bryant was here, that's the time I wanted to talk
10 to Mr. Bryant. Because he said he wasn't going to
11 plead guilty, and I said, that's fine.

12 Q Right. Because he wasn't guilty?

13 A Well, you know --

14 Q And that's what he was saying, he said he was --

15 A I never told you he said he was guilty.

16 Q Okay.

17 A I think I read to you what he said. All right.

18 Q What I'm trying to get to is when you did the
19 guilty plea, you set up there and he got seven years,
20 did he start to plead guilty or did he plead guilty
21 under Alford when we started the plea?

22 A When we started the plea -- no, here's how that
23 worked. When we started the plea, he was pleading
24 guilty, all right. And then as the -- as most Courts
25 do, they ask the Defendant a number of questions, and

1 they ask him whether or not he agreed with the facts,
2 and he said, you know, he didn't, and there was a
3 discussion about that. And then that's when the judge
4 said, well, I'm not going to take his plea.

5 Q Right.

6 A All right. Now, before that, however, before that
7 on other -- on another occasion in my office, we
8 discussed what the Alford plea was.

9 Q Okay. And at what point did he and you talk and
10 he said he was going to plead guilty because he was in
11 fact guilty?

12 A Say that again.

13 Q At what point did you and he talk, and he said he
14 was going to plead guilty because he was in fact
15 guilty? Like he went to enter a guilty plea --

16 A No. He said he was going to plead guilty because
17 he was afraid of that excessive time.

18 Q Right.

19 A That's why he pled guilty.

20 Q And at that point you said, you can't plead guilty
21 because you're afraid of time. The judge is going to
22 ask you, are you pleading guilty because you are in
23 fact guilty; right?

24 A That's correct.

25 Q And he said what, I'm going to lie and say I did

EDWARD M. BROWN-CROSS BY MR. BRYAN

82

1 it then?

2 A No. What he said is that he's going to say he was
3 guilty. And this was, as I understand it, he was in
4 the car with Mr. Bryant, and it would have been under
5 the factual basis of constructive possession.

6 Q Okay. Constructive possession, meaning what?

7 A Meaning that he had dominion, control, he was
8 driving the car.

9 Q Okay. And so he said he was going to plead guilty
10 because he was guilty. And you were totally shocked
11 when he told the judge that he didn't do it and he
12 didn't know about it?

13 A Well, I don't know that I was totally shocked
14 because he said he wasn't guilty.

15 Q I guess --

16 A You know, but -- wait a minute, now, let me finish
17 my answer. The choice was his always, the choice was
18 his.

19 Q I guess --

20 A And, again, I say to you, if he wanted to go to
21 trial, we would have gone to trial.

22 Q I guess my question is you knew that he wasn't
23 guilty, why not talk about the Alford plea prior to the
24 plea?

25 A We did.

1 Q I mean, why didn't you present it as such? Why
2 stand up there and have a plea where you know the guy's
3 saying he's not guilty the whole time instead of just
4 approaching the solicitor and saying, we need to plead
5 under Alford because we want to take this great deal of
6 seven years, the recommendation?

7 A No, I think you're misunderstanding.

8 Q Okay.

9 A Look, I didn't approach the solicitor about
10 Alford. I talked to him about Alford way before
11 then --

12 Q Right.

13 A -- in my office.

14 Q Right.

15 A Okay. So your question is why would I approach
16 the solicitor about Alford?

17 Q Why would you not if you knew that he had said the
18 whole time he didn't do it?

19 A I mean --

20 Q I mean, why not turn it into an Alford plea in the
21 middle where you're having to just have a colloquy back
22 and forth so that they can, you know, kind of speed it
23 on through?

24 A Because if you notice in there, I said to the
25 judge that was going to be my next suggestion, Alford,

EDWARD M. BROWN-CROSS BY MR. BRYAN

84

1 because we had discussed it, he and I had discussed it.

2 Q Okay.

3 A But why would I discuss an Alford plea with a
4 solicitor? I did discuss it with her -- I mean, prior,
5 why would I discuss it with her then. There would be
6 no reason to discuss it with her. He was pleading
7 guilty.

8 Q Okay. So on 14, page 14 of the transcript --

9 A You got a copy of the transcript. Yes, sir, I'm
10 sorry, page what?

11 Q I'm sorry, page 14.

12 A What line?

13 Q Nine. The Court says, I'm not going to take this
14 plea.

15 A That's correct.

16 Q Ms. Richardson says what?

17 A She says, he'll be first up for trial tomorrow.

18 Q And?

19 A Do you want to deal with the attorney issue, or
20 are we moving forward with Mr. Brown?

21 Q What did that mean? Like normally when there's a
22 plea and it doesn't happen and you get a new lawyer,
23 why did the judge say that?

24 A Well, if I recall correctly, that was a -- that
25 was as a result of an in camera, the in-camera

1 conference I had with the judge and Ms. Richardson.
2 And that's when I informed them that Mr. Baez told me
3 that in fact he had hired or was going to hire Mr. Barr
4 from Kingstree.

5 Q Okay.

6 A And that was -- I mean, that's what that meant.
7 That's what that's referring to.

8 Q Okay. And then on page --

9 A And if you further notice, it says, if it's before
10 me, I will, meaning if the trial was before him.

11 Q That he would deal with it?

12 A Yes.

13 Q Okay. So but that's not what happened; right?

14 A What do you mean, that's not what happened?

15 Q Did you have a trial?

16 A No.

17 Q We didn't get that far?

18 A No, we didn't get that far, no.

19 Q So what happened is you said, Mr. Brown, may I
20 have a minute, Your Honor; right, on the bottom of 14,
21 last line?

22 A That's correct.

23 Q The Court says, yes, whereupon Mr. Brown and
24 Mr. Lind-Baez have a conversation off the record. And
25 the judge says, would you like to say anything to me,

1 who? Mr. Lind-Baez. And Mr. Lind-Baez answers or
2 Mr. Brown says, Your Honor, he's informed me that I
3 realize I can't answer for him at least at this
4 juncture, but I still represent him. And he's informed
5 me that he had a hand in this, I say a hand, he was the
6 driver of the car and wants to plead.

7 So when the judge asked Mr. Lind-Baez if he had
8 anything he would like to say after y'all's conference
9 about whether he wanted to plead guilty, he says, would
10 you like to say anything, Mr. Lind-Baez, and you said,
11 Your Honor, you spoke for him; is that right?

12 A I did. No, I didn't speak for him. I spoke and
13 answered. I gave the Court this --

14 Q When they addressed him, not his attorney, when
15 the judge said, Mr. Lind-Baez --

16 A That's correct.

17 Q -- you answered?

18 A That's correct, I did.

19 Q And then you said he wants to -- at which point
20 you said he had a hand in it, he was the driver of the
21 car?

22 A That's correct.

23 Q And then the judge says, does he want to change
24 his plea to an Alford plea. And you said, yes, sir,
25 that was going to be my next suggestion. You were just

1 getting around to it?

2 A That's correct. Not just getting around to it. I
3 had discussed it with him in the off -- in the
4 off-the-record conversation.

5 Q Okay. So the standard for Alford which is what,
6 he pled guilty under North Carolina versus Alford, what
7 does an Alford have to entail to be a valid plea? I
8 mean, in the United States we can't -- we don't
9 normally let people plead guilty to stuff they didn't
10 do, but sometimes we do. And what's required for that
11 is what?

12 A As I understand Alford, you believe that you're
13 not guilty, you don't think you're guilty, but you do
14 think that there is evidence sufficient for the State
15 that the State has that can in fact -- where you would
16 be found guilty.

17 Q And Alford, actually, if you read the case, talks
18 about overwhelming evidence. And it goes on to talk
19 about how they presented actual testimony and that
20 every time the lawyer went to talk to a witness, that
21 they would not corroborate his statement and that it
22 was clear that if he had a trial it would lead to a
23 conviction, and that the record contains strong
24 evidence of actual guilt. Right?

25 A That --

EDWARD M. BROWN-CROSS BY MR. BRYAN

88

1 Q There's got to be strong evidence of actual guilt,
2 it's not just like, oh, they might convict me if you
3 plead under Alford; right?

4 A That's correct.

5 Q So what was the strong evidence? He was at the
6 scene, and he ran which is a different offense that he
7 could have been found guilty of failure to stop for a
8 for a blue light. What else was the strong evidence
9 against him besides he was there?

10 A Well, as I recall an opinion from justice, I think
11 it was Scalia, the United States Supreme Court, he said
12 that a fleeing man, something to the effect that if you
13 flee, that is indicative of guilt. Let me finish.

14 First of all, he ran and he left. That was going
15 to come out. They chased him, he ran out of the car.
16 In addition to that, the drugs was in the car at one
17 point, at some point.

18 Again, I say to you, if he wanted to go to trial,
19 we would have gone to trial. Separate and apart from
20 the fact that there was an issue about whether or not
21 I'd be still representing him. But I would have gone
22 to trial the next day. We were ready.

23 THE COURT: And I'm going to interject here
24 because of the prior testimony which is all this is
25 before the Court, it's not before a jury. But there

1 was also the testimony from your client, from the
2 applicant, that the codefendant, Mr. Bryant, told law
3 enforcement that he was involved. He later recanted
4 but that was his testimony that he told law enforcement
5 that Mr. -- because he thought it would give him a
6 lighter sentence. So that's also evidence that was
7 present.

8 MR. BRYAN: Okay. Is it fair for me to now say
9 what was objected to was hearsay, although that didn't
10 get objected to and --

11 THE COURT: No, sir, that wasn't hearsay. Your
12 client --

13 MR. BRYAN: He told him --

14 THE COURT: Your client testified that Bryant, the
15 codefendant --

16 MR. BRYAN: Right.

17 THE COURT: -- there was no objection from the
18 State when he said that Bryant thought he was going to
19 get a lighter sentence if he implicated him, so he did.

20 MR. BRYAN: Right.

21 THE COURT: That wasn't objected to. That came in
22 the record. Then you tried to put in the statement
23 where apparently Bryant recants, and there was the
24 objection regarding the hearsay.

25 MR. BRYAN: Right.

EDWARD M. BROWN-CROSS BY MR. BRYAN

1 THE COURT: You asked what was the overwhelming
2 evidence. As we're going through it, that's another
3 piece of evidence that was present.

4 MR. BRYAN: I got you. Thank you, Your Honor.

5 Q Was the statement where he said that he did it,
6 was that the first statement that he gave? Meaning
7 Ernest Bryant, did he state --

8 A Who is he? I don't understand the question.

9 Q Ernest Bryant.

10 A Um-hum.

11 Q The evidence being that Ernest Bryant, codefendant
12 with the drugs actually on him, said this guy knew
13 about it; right, he said that?

14 A That's correct.

15 Q Was that the thing he said first, or did he first
16 say, none of these parties knew about it, it was all
17 mine? Did he say that to police?

18 A That's what he said first.

19 MS. KINARD: Objection to hearsay, Your Honor.

20 MR. BRYAN: Right.

21 THE COURT: Sustained.

22 Q So that being evidence of guilt, would you be able
23 to impeach somebody on a prior inconsistent statement
24 if you went to trial, if Mr. Bryant got up there and
25 said he knew about it, and I gave him a statement, you

1 would be able to cross-examine him about the fact that
2 he gave an inconsistent statement right after the
3 offense saying it was all mine.

4 A Sir --

5 Q Would you be able to cross-examine them on that?

6 A My -- I was going to do all I could to destroy the
7 credibility of Mr. Bryant on the stand based on those
8 inconsistencies, yes. You're absolutely correct, I
9 would have done that.

10 Q So the evidence was he was there and he ran, and
11 the drugs were on somebody else, but they were in his
12 car?

13 A No. It was more evidence than that.

14 Q Which is?

15 A Mr. Bryant's statement.

16 Q Right, okay. And that's it. The one that was
17 inconsistent with his prior statement?

18 A In addition to that, I fear that if he got on the
19 stand and testified, then he would have a problem.

20 Q Because? Why would he have a problem?

21 A He had a prior record.

22 Q And you think the judge would allow them to
23 cross-examine him that he had prior drug convictions as
24 a matter of impeaching him?

25 A Well, I don't know what the judge would have

1 allowed, but you know, that's quite possible. I don't
2 know what they would have allowed.

3 Q Could you not have asked for an instruction saying
4 that he had committed a prior felony, but we
5 wouldn't -- it would be more unfairly prejudicial to
6 talk about a guy --

7 A Well, that would have been my objection. Yes, of
8 course that would have been my objection.

9 Q Okay. All right, I'll try to wrap it up. You did
10 have a separate fee for your trial; right, there was an
11 additional fee?

12 A A separate fee for my trial?

13 Q An additional fee, like total sum \$5000 if case
14 disposed for trial, 7500 if it goes to trial?

15 A That's correct. Well, I mean, I don't know. Is
16 that what the contract says? This is not the contract,
17 this is the balance form.

18 Q That was the sheet that was laying on the absolute
19 top of the papers you gave me; is it not?

20 A Well...

21 Q Is that not on the very top of what you gave me?

22 A It very well could be, but there's a contract.

23 Q And he didn't pay his fee; right?

24 A Well, that's not the -- sir, I've represented pro
25 bono criminal defendants. The fee had nothing to do

1 with this.

2 Q You did try to get relieved for not paying his
3 fee; right?

4 A I tried to get relieved for not paying the fee and
5 because I was having problems contacting him when he
6 was in Florida.

7 Q Well, when you filed your motion, irreconcilable
8 differences in that Defendant had not honored his
9 financial obligation, that was the end of it; right?

10 A That's correct.

11 Q And then you testified you didn't go to roll call
12 because roll call is just for defendants to show up to,
13 you don't find any value in talking to the prosecutor
14 maybe trying to work out a deal, you just don't go to
15 roll call?

16 A Well, you know, I went to -- I came up here, I was
17 on the telephone with Ms. Richardson, I tried to work
18 out a deal and I don't know that you have to come to
19 roll call to work out a deal. There's a thing called a
20 telephone and I used it.

21 Q Okay. And what did she say?

22 A Initially, as I recall, she wanted him, if I'm not
23 mistaken, she wanted him to plead straight up because
24 this was his third offense. But I told -- my first
25 offer -- the one thing I knew I couldn't get around was

1 him running from the blue light, failure to stop for a
2 blue light, all right. So I offered that and I
3 continued to offer that, and I think she dropped down
4 some. And I got it down to five years at one time, and
5 he said -- that's when he said no. And then it went
6 back up to -- it went back up to -- no, it went up to
7 seven years.

8 Q So your testimony is that you believe that he
9 would be convicted if he had a jury trial?

10 A No, that's not my testimony.

11 Q I'm sorry.

12 A My testimony is that if he went to a jury trial,
13 there was a possibility that he could be convicted.
14 And if he was convicted, it was no doubt in my mind
15 that he was going to get much more than seven years.

16 Q And that he pled under Alford because there was a
17 possibility he might get convicted?

18 A There was a possibility that he might be
19 convicted, a strong possibility.

20 Q And did you in your preparation for trial, did you
21 do some jury charges or anything like that? Do you
22 have any notes like where you prepared an opening and
23 closing, did you have any direct cross-examination, any
24 subpoenas issued, any notes in your file that you could
25 submit to the Court that you were ready to go to trial

1 that day?

2 A I don't have any notes in my file that I'm -- that
3 I would be prepared to give to the Court. Because,
4 look, I have standard boiler plate charges in regard,
5 charge for juries. I've done numerous drug casings,
6 numerous, so I knew what I was doing, I didn't need to
7 write down notes. Now, if you what you mean, do I
8 have -- did I have a legal pad with notes on it, yes, I
9 did.

10 Q Okay.

11 A And let me explain to you why you don't have that.
12 Because I don't know where it is. And let me explain
13 to you why that is. I supposedly retired in 2013, at
14 the end of 2013, sold my office building, moved my
15 office, put everything in storage. That note pad was
16 one of the pads or one of the things that I couldn't
17 find for this file.

18 And unfortunately, I didn't segregate the pad to
19 the file as I never do, because I have a tendency to
20 just use the pad, don't use it all, and then, you know,
21 wasting material and money that way. I have a note
22 pad, there was a note pad. There were notes on the
23 pad, but I can't find the pad. But I knew what I did.

24 Q Okay. And I appreciate you been a lawyer for a
25 long time. I'm sorry, you know, it's not actually a

EDWARD M. BROWN-CROSS BY MR. BRYAN

96

1 lot of fun to do this, so I apologize to you for my
2 approach. And I was just really --

3 A No, no. You need to represent your client. Don't
4 apologize.

5 Q So I guess the bottom line is did you have any
6 charges relative to mere presence prepared?

7 A I had a charge regarding constructive possession.
8 I had a charge regarding dominion and control. I had a
9 charge regarding possession in and of itself. And I
10 think I did have, if I recall, yeah, I did have a
11 charge about mere presence. And that charge came from
12 a case I remember that occurred in Columbia. Mere
13 presence is not evidence of guilt.

14 Q Right.

15 A You can't convict on mere presence, yes.

16 Q Right. So the fact that he was present there,
17 there was no other evidence before or after, he didn't
18 have any of the drugs on him, the other guy did, he was
19 connected by three hours worth of phone calls,
20 everything like that, a mere presence charge and maybe
21 you present it with the failure to stop for a blue
22 light which he did, would it not be maybe a successful
23 trial strategy to go forward with no evidence of his
24 guilt other than this guy who said something different
25 before and after he had all the drugs on him?

1 I found in my experience when somebody had the
2 stuff and then said, he did it, it wasn't the most
3 compelling testimony; do you agree with that?

4 A Is that --

5 Q He got red-handed caught and goes, not me but him,
6 after he's already said it's all mine, wouldn't that be
7 subject to scrutiny by a jury?

8 A Everything you say on the witness stand is going
9 to be subject to scrutiny by the jury.

10 Q So I mean, wouldn't it be valid? So wouldn't a
11 mere presence in asking the jury to find him guilty of
12 what he did which is run from the police, and he'd be
13 out today, would that not have been maybe a good
14 strategy to employ?

15 A Well, you know, in hindsight a number of things
16 would have been a good strategy. And let me further
17 say this. Look, if I thought that -- if he wanted to
18 go to trial, we were prepared to go to trial.

19 Q Yes, sir.

20 A But the fact that he didn't go to trial was not my
21 decision. I gave him the options and the alternatives.
22 Now, I understood he was scared because he said he just
23 had a little -- a minor child and what have you. But,
24 you know, that's not a decision I can make for the
25 client, that's a decision solely within the providence

1 of the client. And he made the decision.

2 MR. BRYAN: Thank you.

3 THE WITNESS: And by the way, I need to say this.
4 He called me the other day for about ten seconds, and I
5 pretty much told him the same thing.

6 Q Okay.

7 A Okay?

8 Q Which was what?

9 A That it was not my decision.

10 MR. BRYAN: Okay. I don't have any other
11 questions. Thank you for your patience, I appreciate
12 it.

13 MS. KINARD: No redirect.

14 THE COURT: Thank you very much, sir. You may
15 step down.

16 THE WITNESS: May I be excused, Your Honor?

17 THE COURT: Any objection to Mr. Brown being
18 excused?

19 MS. KINARD: No objection.

20 MR. BRYAN: No, Your Honor.

21 THE WITNESS: Thank you very much.

22 (Witness excused.)

23 THE COURT: Anything further from the State?

24 MS. KINARD: No. That's the State's case.

25 THE COURT: All right. I'll be happy to hear

1 from, well, start with Mr. Bryan, any closing remarks,
2 and then I'll hear from Ms. Kinard.

3 MR. BRYAN: Yeah, thank you, Your Honor. Your
4 Honor, the standard -- and I apologize it took so long
5 and I know it's Friday.

6 THE COURT: That's okay.

7 MR. BRYAN: I apologize for that.

8 THE COURT: Listen, Friday's a workday.

9 MR. BRYAN: And the nature of the questioning is
10 awkward and uncomfortable, and I apologize for --

11 THE COURT: No need to apologize, you're fine.

12 MR. BRYAN: But it just looked like to me from the
13 face of it like everything that the case talked about
14 from the beginning to the end, from the jump he said he
15 wasn't guilty, he never had any knowledge. He showed
16 up at arraignment, he said that, he showed up to plead
17 guilty he said that, and he came back again.

18 And it's hard for me to understand given
19 professional norms how you could present a guilty plea
20 on the trial roster with what appears to have been some
21 lack of preparation. You had four witnesses who say
22 that he didn't want to have a jury trial, that it was
23 Mr. Brown telling him that he wasn't going to have a
24 lawyer. That seems to be corroborated by the statement
25 that says, you know, as soon as they backed out of the

1 plea, they said, we'll go to trial and we'll handle the
2 issue with the lawyer tomorrow.

3 So it looked like there is some evidence to
4 corroborate from the record that he might be going
5 forward without his lawyer the next day, that he didn't
6 feel like he had much of a choice. And I guess just
7 from the standard that I understand for ineffective
8 assistance, first of all, roll call, to say that roll
9 call has no value, I don't -- I mean, I was looking
10 around for any other lawyer who practices here.

11 Lawyers come here to roll call to negotiate and
12 make deals and to try to advance the agenda of their
13 client. And for him to have to come six times while
14 this guy doesn't come and get sort of the frustration
15 of the solicitor -- and I didn't present much evidence,
16 and I probably should have where he's gotten roll call
17 after roll call signing stuff, the attorney's signature
18 is blank.

19 He ends up on the arraignment. You can't make a
20 deal at arraignment, judge, that ship has sailed. That
21 is not the time to be trying to make a deal, it was too
22 late when all that happened. And he ends up on a trial
23 roster with a guy telling him that I'm not going to
24 represent you. I think the fee agreement, I think the
25 fact that it was on the very top of my file that I

1 received from him, I think basically what happened is
2 he didn't get paid for a trial, he didn't want to do a
3 trial. That carries a lot of exposure that he wasn't
4 looking for.

5 And he told Mr. Lind-Baez that based on his prior
6 record, which is interesting because he seemed to
7 believe that a judge would allow the impeachment to
8 come before the jury relative to prior drug
9 convictions, I just don't think that's a reason not to
10 have a trial that you have prior convictions. So they
11 are going to ask you, you're a drug dealer and they're
12 not going to believe you, and you're going to have to
13 testify.

14 I feel like, I feel like the evidence was not
15 overwhelming of guilt, but it was overwhelming that he
16 wasn't guilty. He was basically there. The other guy
17 had the drugs, the other guy arranged the thing. The
18 reason why I went through all that so labored was they
19 weren't targeting him, they weren't even targeting the
20 guy they got. But the guy they got was on the phone 15
21 times saying all kinds of God awful stuff that as a
22 prosecutor I would never want in front of a jury.

23 It would not have played well. It would not have
24 been a good trial, and he should have known that. And
25 the jury trial would have probably resulted in a

1 failure to stop for a blue light. At the worst he
2 would be getting out today, and I think he pled guilty,
3 as he testified, because he didn't think he had a
4 choice.

5 The standard under Strickland is if the
6 representation falls below professional norms in the
7 area, that is ineffective assistance. And I think
8 given the lack of preparation, the fact that he didn't
9 seem to know what the nature of the case was or wanted
10 to advance any of the arguments made by Mr. Lind-Baez,
11 it's easy to say it was his decision, not mine, four
12 witnesses contradicted that, and five counting him.

13 And I think what happened is they got on the trial
14 roster, they weren't prepared, he came in and he forced
15 him to plead guilty, told him he was going to get 30
16 years or go to trial by himself. So he took the deal
17 even though he didn't do it. And I don't think he knew
18 what he was doing, and I don't think it was a knowing
19 and intelligent waiver of his right to a jury trial.

20 So we'd ask you to overturn the conviction, grant
21 the PCR based on ineffective assistance for lack of
22 preparedness, for lack of meeting with the client, for
23 lack of advancing his case, for lack of showing up,
24 talking to the prosecutor and trying to get a better
25 deal, for lack being prepared to go to trial, for lack

1 of knowing what the case was about and for a lack of
2 investigating claims, talking to any witnesses or
3 wanting to go to trial such that this man was basically
4 left without a decision that was a meaningful one.

5 Thank you, Your Honor.

6 THE COURT: Thank you, sir.

7 MS. KINARD: Thank you, Your Honor.

8 THE COURT: Ms. Kinard.

9 MS. KINARD: Mr. Bryan is absolutely right,
10 Strickland is the standard. We all know that, we all
11 know it's a two-prong test. And there is some language
12 in that case that we have not met. The burden has not
13 been met.

14 First of all, "the applicant must prove that
15 counsel's conduct so undermined the proper functioning
16 of the adversarial process," that's a quote, that the
17 plea proceedings, quote, "cannot be relied upon as
18 having produced a just result."

19 Part of Strickland also takes into consideration
20 that trial counsel be given leeway to make reasonable
21 strategic decisions. That is what Mr. Brown did, he
22 made a strategic decision not to charge his client for
23 a trip from Charleston every time there was a roll call
24 to make sure he was in the state. He decided to make
25 phone calls to the solicitor in order to work out

1 deals. He decided to go ahead and prep for trial even
2 though his client had stopped communicating with him
3 very properly and stopped paying him. Though that was
4 resolved, I will admit that.

5 Strickland also states there's no particular set
6 of detailed rules for counsel's conduct that can
7 satisfactorily take account of the variety of
8 circumstances faced by defense counsel or the range of
9 legitimate decisions regarding how best to represent a
10 criminal defendant.

11 Mr. Brown testified that this was a classic
12 situation of weighing pros and cons in different
13 situations. Should he take the deal, should he roll
14 the dice. Should he consider taking the stand and
15 opening the door to investigation or discussion of his
16 prior drug charges, should he play it safe.

17 All the testimony that we heard both from
18 Mr. Lind-Baez and his witnesses stated that he was
19 scared at the time. He was scared at the time.
20 Regardless of whether he did the crime or not, whether
21 he was guilty or not, he was scared of the potential
22 time. I don't blame him, I would be too.

23 But he also testified in the plea that he knew
24 what he was doing. He waived his rights, he had the
25 benefit of counsel whom he testified he was pleased

1 with. He made a knowing and intelligent decision after
2 having the benefit of Mr. Brown's counsel for 18 months
3 between the arrest and the plea. You heard Mr. Brown
4 testify that he absolutely knew, he being
5 Mr. Lind-Baez, absolutely knew he was coming up for a
6 plea and that he was prepared to go to trial the next
7 day.

8 So in this situation we do have some issues of
9 credibility. We have the fact that Mr. Lind-Baez
10 testified at the plea that he was satisfied, he knew
11 what he was doing, so on and so forth. We have today
12 that he said he was stuck between a rock and a hard
13 place. We've heard that earlier this week, and I know
14 you've heard that plenty of times.

15 Mr. Brown, his testimony is called into question,
16 I will admit, by the witnesses. But I believe that a
17 man of 40 years of criminal experience knows what he's
18 doing, knows how to represent a client sufficiently and
19 understands the choices that must be made and did his
20 best to present them to his client in a way that he
21 could understand and in a way that he could knowingly,
22 intelligently, voluntarily make the decision to plead
23 guilty in whatever form that guilty plea took.

24 Therefore, the State submits that neither prong of
25 the Strickland tests have been met and that this PCR

1 should be denied. Thank you.

2 THE COURT: I knew nothing about this case prior
3 to the beginning of this hearing. So I might be the
4 only one in here that at least is objective from that
5 standpoint in that I've heard it all. And here's what
6 I've heard today and what I've observed today.

7 Mr. Bryan, I don't in any way doubt that you would
8 have prepared this case differently. I may have
9 prepared it differently, Susan may have prepared it
10 differently. Because there is no cookie cutter stamp
11 on this is the way lawyers prepare cases. There are
12 numerous ways to prepare cases. You seem to make a
13 pretty big deal about the fact that were you ready, I
14 mean, do you have your trial preparation materials, do
15 you have them there ready to go.

16 I would have been shocked if he would have said
17 yes. Because from what I gathered from everything,
18 they were at the courthouse on July 22nd, 2013 to enter
19 a guilty plea. I wouldn't have shown up with all my
20 trial notebooks and all my trial ready to go to trial
21 when I believe I'm going there to enter a guilty plea.
22 So that wasn't terribly moving to me.

23 But here's the thing. And we can sit here as
24 lawyers, and we do it all the time, and we can give our
25 clients their options, their best case scenarios and

1 all of this stuff. I don't know about all the evidence
2 because I didn't hear all the evidence, I didn't see
3 all of the evidence. I only have been exposed to what
4 I've seen here today.

5 But what I've heard here today is if this case had
6 gone to trial is that Mr. Lind-Baez would have been
7 going to the trial on trafficking third offense. If
8 I'm not mistaken, that's 25 to 30. So it's a mandatory
9 25 to 30.

10 And it's easy for you to sit here and say they
11 didn't have overwhelming evidence, this case should
12 have gone trial, he probably would have gotten nothing
13 but failure to stop for a blue light. But you put
14 yourself in his shoes, put yourself in I'm facing 25 to
15 30.

16 And here's what I've got. I show up at a parking
17 lot. I pick up a dude, he's in my car, he tells me to
18 take him across the parking lot. I drive him over
19 there. There's somebody at the end of the parking lot.
20 Next thing I know, they are striking a drug deal. I
21 didn't know he was going to do that, but that's what
22 they're doing. I'm no part of that because I've got
23 two prior convictions, and I'm not hanging around for
24 that. So he bolts out of there.

25 Police get behind him, he runs. Why does he run?

1 Well, he's running because he knows the guy is dealing
2 drugs because he just witnessed it, and he runs from
3 the police because he's already got two prior
4 convictions and he doesn't want the cops to find those
5 drugs which are not his in that vehicle. So he takes
6 off and he runs.

7 All of that -- the only way all of that evidence
8 comes in is if he takes the stand. Well, you say, do
9 you really think a judge is going to allow you to bring
10 that into evidence. Absolutely. Maybe not, probably
11 not, I wouldn't allow the evidence to be a prior
12 conviction for blah, blah, blah, but I would allow the
13 prior convictions in, any judge would. Some judges
14 will allow it and risk getting overturned on that. I
15 wouldn't do it, but some would.

16 So to say that there wasn't overwhelming evidence
17 by which a jury could find him guilty is, I don't think
18 it's an accurate description of what's before the Court
19 here today. You're a former prosecutor; correct?

20 MR. BRYAN: Yes, sir.

21 THE COURT: You've done it. I'm a former
22 prosecutor, I'm a former public defender. As wearing
23 either hat, I would have been more than happy to try
24 this case on either side because I think this case
25 could have gone either way.

1 And it's easy for you or me to say I'd have rolled
2 the dice on that one because I'm not doing the 25 years
3 or the 30 years. Mr. Lind-Baez was faced with that
4 decision. I have the transcript from the hearing. And
5 I'm just going to say this, do I believe he's guilty of
6 this, it really doesn't matter what I believe.

7 Based on everything that I've heard, I believe his
8 story that he wasn't part of this and all this stuff.
9 But that's the whole purpose, that's the reason that we
10 have North Carolina versus Alford, because it takes a
11 young man who finds himself in an almost impossible
12 situation because we live in a country where you don't
13 have to prove your innocence. The State has the burden
14 of proof. I don't have to prove I'm innocent.

15 And in this case this is one of those cases where
16 Mr. Lind-Baez finds himself in a position that he can't
17 prove his innocence. He can't prove his innocence. He
18 can allege his innocence, but the State has some pretty
19 damning evidence as well. And so it is, it's a crap
20 shoot.

21 And so that's what Alford's all about. If the
22 State has evidence that, I don't know if the -- I don't
23 know if you quoted the case as saying it has to be
24 overwhelming or whatever, but all I know is my
25 understanding of Alford is if I believe that there is a

1 great likelihood of me being convicted, then the law
2 allows me to take advantage of a plea opportunity.

3 And in this case the State reduced his exposure
4 from 25 to 30 to simply a seven-year sentence, and when
5 I say simply, I don't mean seven years is not a long
6 time at all. I'm just saying 25 to 30 down to seven.
7 So I think it meets the criteria of Alford.

8 And I don't know Mr. Brown personally, I don't
9 even know him by reputation. There's a lot of lawyers
10 in South Carolina that I don't know. But from the
11 testimony, he's 38 years practicing nothing but -- not
12 nothing but apparently the majority of his practice is
13 criminal work. These cases it's not a very technical
14 case, it's not an extremely complex case.

15 And so this would be one of those cases that I
16 believe you can give me about two hours with the file
17 and I could probably go in there and prosecute it. You
18 could give me two hours with the file, and I could
19 probably go in there and defend it.

20 I wouldn't do that. I didn't get the impression
21 that that's what Mr. Brown did. 38 years, I'm not of
22 the belief that there was any great fear that he didn't
23 want to go to trial because he wasn't prepared.

24 Now, there was all the big issue about the issue
25 with regards to the lawyer and not representing him and

1 this, that and the other. And it was my understanding
2 if I followed everybody that this all happened prior to
3 this case being before the judge. And they did an
4 in-camera hearing before it even got in front of Judge
5 Hyman to resolve the issue that Mr. Lind-Baez wanted to
6 hire Mr. Barr. Now, there's a Charles Barr, there's a
7 William Barr, there's several Barrs in Kingstree. I
8 don't know which one, but they are over there.

9 And so he informs Mr. Lind-Baez that -- excuse me,
10 Mr. Baez informs Mr. Brown that he's hired Mr. Barr and
11 that he no longer is going to have Mr. Brown represent
12 him. Well, that's a sticky wicket because the case is
13 being called for trial.

14 Now, Mr. Brown finds himself in a position with
15 Mr. Lind-Baez that he wants another lawyer to represent
16 him, but he's done it apparently on the eve of trial.
17 And so they have that conversation with the judge in
18 camera. And whatever resolves comes out of that, he
19 goes forward.

20 And if you go through this plea colloquy, Judge
21 Hyman goes into great detail with regards to
22 Mr. Lind-Baez understanding what he's doing. And it's
23 not lost on me that this isn't the first time that
24 Mr. Lind-Baez has been in front of a Court. Whether, I
25 don't know if the other two prior convictions were

1 guilty pleas or trials, I don't know. But it's not his
2 first time in Court, so it's not like, you know, I'm
3 nervous, I don't know what's going on, this is all new
4 to me. So it's not that.

5 So he's in front of the judge, he understands that
6 he's placed under oath and he answers questions. And,
7 again, this is the age old problem, and you know, I
8 will tell you that after doing this as long as I've
9 done it, I'm kind of -- I just believe I'm going to be
10 changing my plea colloquy with people to stress on the
11 front end to let them know, you're under oath and what
12 you tell me is on the record.

13 And some judge down the road, whether it be
14 another circuit judge or an appellate court judge, is
15 going to take this as you're telling me the truth. And
16 so, you know, don't get -- don't get caught at a later
17 date having to tell some other judge that, no, I lied
18 under oath, I lied to him because -- and that's what
19 I've got here, I've got Mr. Lind-Baez telling me that
20 he lied to Judge Hyman while he's under oath, and he's
21 telling me that while he's sitting here under oath.

22 I don't know when he's telling the truth and when
23 he's lying. Is he lying to me today? I don't know,
24 I'm not going to say he is because I don't know. Was
25 he lying here? I don't know. It's the sticky wicket

1 that we find ourselves in.

2 And that's the whole reason that we place people
3 under oath before we do these things and we ask them to
4 tell the truth. We want to have some reason that we
5 can hang our hat on to believe we're getting the truth.
6 And throughout this plea colloquy, he seems to
7 understand everything, Judge Hyman does a good job of
8 going over an Alford plea.

9 So even if he didn't understand Alford prior to
10 this, Judge Hyman answered those questions, asked him
11 if he had any other questions about it, asked him twice
12 to make sure that he didn't go forward unless he
13 understood what he was doing. And it just seems to be
14 an absolute classic case of an Alford plea. This is
15 the perfect scenario of why someone would enter a plea
16 under Alford in this case.

17 MR. BRYAN: And, judge, that's why I can't
18 understand why it wasn't presented that way. If I
19 didn't make that clear, what I was trying to say is the
20 whole point is if you're talking to a guy who's not
21 guilty the entire time --

22 THE COURT: Yeah.

23 MR. BRYAN: -- I've never had this happen because
24 I tell my guys, you can't plead guilty and not plead
25 guilty at the same time. Don't make me look like a

1 jerk. If you're not guilty, let's either have a trial
2 which is your right, or let's go approach the solicitor
3 about Alford. And it was up for trial the next day.

4 THE COURT: Yeah.

5 MR. BRYAN: I didn't get it in, but it was --
6 there's a letter saying you're up for trial. So that's
7 why I was talking about him being ready. And I
8 understand everything you're saying, and I
9 understand --

10 THE COURT: And I agree with you. Listen, would I
11 have presented this initially as a guilty plea and have
12 it morphed into an Alford plea, the only way that's
13 ever happened to me was that we went into it with my
14 client telling me that they were guilty.

15 MR. BRYAN: Right.

16 THE COURT: And then when we got in there, they
17 flipped and said, no, I disagree with those facts.

18 MR. BRYAN: Which is why I went to such great
19 lengths to try to show it's been like from the get,
20 like I didn't do it.

21 THE COURT: Yeah.

22 MR. BRYAN: And I can't understand like the
23 professional standard should be that's why if you take
24 all this stuff together, you got to ask yourself how
25 this discussion did not take place and was there some

1 pressure applied such that maybe the questioning, maybe
2 somebody didn't feel like they had a choice. But I
3 understand everything you're saying.

4 THE COURT: Well, and there are other -- you know,
5 there's also other options, it's not just if this
6 occurred, then it must be that. Whether or not
7 Mr. Brown should have presented this, there's no
8 question it should have been presented from the get go
9 as an Alford plea.

10 But does that make it fatal? Because the judge
11 was sharp enough to pick up on the fact that if this
12 plea goes forward at all, it would have to be under
13 Alford.

14 MR. BRYAN: And I understand that. But I'm saying
15 if you back it up, wouldn't you have the threshold
16 discussion with your client, they got to be able to
17 prove it, that's what we're talking about. You're
18 going to say they got to be able to prove it, now let's
19 talk about the evidence. And that's where I just think
20 it failed altogether. There was no discussion about
21 that.

22 THE COURT: But --

23 MR. BRYAN: I'll tell you, I've tried some cases
24 on both sides now too, and I've listened to that tape.
25 And I probably am the only person, I believe, in the

1 world who ever listened to that tape of three hours.
2 Because you couldn't prepare that case in two hours
3 because the whole transaction was three hours.

4 THE COURT: No, I understand.

5 MR. BRYAN: Even just to listen to what happened
6 was three hours, and I don't think anyone did it. And
7 there was some God awful stuff said by that CI. In
8 fact, if anyone wants to ever listen to it, would not
9 be one you picked as a prosecutor if you did.

10 THE COURT: But here's the thing --

11 MR. BRYAN: And I don't believe he listened to it,
12 or he would have been more indignant about what was on
13 it.

14 THE COURT: Well, here's the thing, whether he did
15 or didn't, he says he did. But let's not lose sight or
16 lose sight of the forest for the trees or whatever.
17 When it comes down to you've got to make a decision,
18 the State's called your case. You're facing 25 to 30,
19 they've offered you seven. Here's the evidence, here's
20 the thing, there's some God awful thing. Let's say we
21 talk about it.

22 But you know what, you compounded the matter
23 because you took off and you ran. And the phrase he
24 was looking for was --

25 MR. BRYAN: The guilty plea of yoga, stand bold as

1 a lion.

2 THE COURT: Exactly. And so that's what you've
3 got, you've got this issue and it's difficult. And I'm
4 confident that, and I probably don't know you well
5 enough to say this, but I'm confident you wouldn't
6 guarantee any client a result. I'm confident you would
7 not do that.

8 And so you could tell Mr. Lind-Baez, listen,
9 there's some things we can attack here. There's
10 certainly some things we can attack here. And I would
11 do everything in my power to shove reasonable doubt all
12 over the courtroom. But I can't guarantee you that
13 you're going to prevail, and I can't guarantee you that
14 the jury is not going to look unfavorably on the fact
15 that you ran from the police, and that it does make you
16 appear to be a part.

17 Now, the only way we can get our story in front of
18 a jury is that you take the stand. And you've got a
19 prior record, and here are the dangers of taking the
20 stand. So you got those risks.

21 And now, there was something said, and I just want
22 to get a clarification because there was a comment that
23 you made about, you know, he didn't take the time, he
24 didn't interview witnesses and stuff. My understanding
25 is there weren't any witnesses. These witnesses were

1 here today to testify as to what he said about, I'm not
2 going to take you to trial. They weren't witnesses to
3 this case, so they wouldn't have been people you would
4 have --

5 MR. BRYAN: Well, I can clarify that.

6 THE COURT: -- questioned.

7 MR. BRYAN: His sister was with him during the
8 time, and she said that she was --

9 THE COURT: Earlier.

10 MR. BRYAN: -- with him the day -- yeah, but
11 there's a three-hour -- like it's literally three hours
12 of phone calls back and forth where they're looking for
13 somebody, not him, and he's somewhere else not involved
14 in anything. And the solicitor said, we got him on
15 recording, which is why he told his lawyer, I need to
16 listen to those recordings, can't be me, I didn't take
17 part in that. And I don't think that ever took place.

18 THE COURT: All right. And --

19 MR. BRYAN: And so she could have testified that
20 he was working on moving her and not setting up some
21 drug deal, like she was with him.

22 THE COURT: Okay.

23 MR. BRYAN: And talking to him the day before
24 trial would have been a good idea.

25 THE COURT: Again, and all of us are speculating

1 at this point. But if I -- you know, I've never been
2 in the drug business other than I actually was a
3 pharmaceutical rep before I went to law school. So I
4 guess I was -- I've never been in the illegal drug
5 business.

6 But, you know, the other side of that coin is that
7 how long does it take to have a buddy call you up and
8 go, look -- and I'm not saying that this happened
9 because he tells me it didn't happen this way, and I
10 believe that -- but I'm saying how long would it take
11 for Susan to say to me, hey, Tommy, I can score a
12 pretty big hit here, but I'm kind of lean, have you got
13 some whatever it is, cocaine or weed, whatever it was.

14 I need to get some from you, I'll be able to pay
15 for it, to drive it over there, regardless of whatever
16 he had planned with his sister. But, you know, you're
17 right, that is, it's another cog to this big piece,
18 another piece of this puzzle.

19 For purposes -- you know, we're going on and on,
20 but I just want to make it clear that I don't think the
21 standard has been met under Strickland. This plea
22 colloquy is very detailed, he answers, all his answers
23 are appropriate. They are appropriate as to the
24 question. And when he didn't understand Judge Hyman,
25 he did not shy away to question Judge Hyman and Judge

1 Hyman answered those questions. And it appears to be
2 an appropriate Alford plea.

3 And I just don't see, I don't think there's been a
4 showing that Mr. Brown's performance was deficient to
5 the point that it was prejudicial and that the result
6 is inappropriate. Again, it's an Alford plea that
7 based upon all the facts and circumstances presented
8 before the Court and hearing from Mr. Brown, from
9 Mr. Lind-Baez and everyone else, you know, of course I
10 have to, as I sit in this position, have to judge the
11 credibility and the believability of the witnesses.
12 And I'm not going to shy away and from that
13 responsibility.

14 And in all candor, again, you know, based on
15 everything I heard, I don't believe that Mr. Brown told
16 Mr. Lind-Baez that if you go to trial you'll go by
17 yourself because I won't represent you. Because having
18 been a lawyer of 38 years, he knows he doesn't have
19 that option, that's not his call. That has to come
20 from a Court. He doesn't have the right to just walk
21 away from a client on the eve of trial. And I think he
22 knows that, and so I don't believe that was said.

23 And having said all that, I'm going to
24 respectfully deny the application. I do believe that
25 there's failure to meet the standards of Strickland,

1 and I'm going to respectfully deny the application.

2 MS. KINARD: Thank you, Your Honor.

3 (The hearing concluded at approximately 2:13 p.m.)

4 (End of Transcript of Record.)

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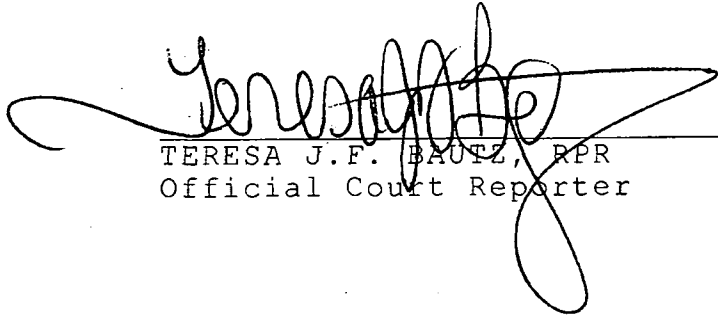
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1 CERTIFICATE OF REPORTER

2
3 STATE OF SOUTH CAROLINA)
4 COUNTY OF HORRY)

5
6 I, TERESA J.F. BAUTZ, Official Court
7 Reporter for the Fifteenth Judicial Circuit of the
8 State of South Carolina, do hereby certify that the
9 foregoing is a true, accurate and complete Transcript
10 of Record of the proceedings had and evidence
11 introduced in the trial of the captioned case, relative
12 to appeal, in the Court of Common Pleas for Horry
13 County, South Carolina, on the 31st day of May, 2016.

14
15 I FURTHER CERTIFY that I am neither of
16 kin, counsel nor interest to any party hereto.

17
18
19
20 
21 TERESA J.F. BAUTZ, RPR
22 Official Court Reporter
23
24
25

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Lavard D. Lind-Baez, #322170,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Case No. 2013-CP-26-6936

ORDER OF DISMISSAL

HORRY COUNTY
2016 JAN -7 PM 1:23
MELANIE HARRIS
CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief filed October 18, 2013. Respondent made a timely Return on or about January 16, 2015, which included a motion for a more definite statement of Applicant's allegations pursuant to Rule 12(e), SCRCPP. The Court convened a motion hearing on August 10, 2015 in Horry County, at which time the Honorable G. Thomas Cooper, Jr. granted the motion and ordered that the Applicant obtain a copy of plea counsel's file and submit an amended application, with appropriate time for Respondent to reply. A more definite statement was submitted to the court on October 30, 2015, and Respondent did not amend its return. The Court convened an evidentiary hearing into the merits of the case on November 13, 2015, at the Horry County Courthouse. Applicant was present at the hearing and represented by Robert B. Bryan, Esquire. Jessica E. Kinard, Esquire of the South Carolina Attorney General's Office, represented Respondent.

Applicant and Applicant's plea counsel, Edward M. Brown, Esquire, testified at the hearing. The Court had before it a copy of the plea transcript, the records of the Horry County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. In July 2012, the Horry County Grand Jury indicted Applicant for trafficking cocaine, 28-100 Grams (2012-GS-26-2928). Edward M. Brown, Esquire, represented Applicant. On July 22, 2013, Applicant pled guilty to as indicted pursuant to North Carolina v. Alford¹. The Honorable Larry B. Hyman Jr. sentenced Applicant to seven (7) years imprisonment. Applicant did not appeal his plea or sentence.

II. ALLEGATIONS

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

1. "6th Amendment Violation"
 - a. "Ineffective Assistance of Counsel"

In his more definite statement, Applicant added the following allegations:

1. Ineffective Assistance of Counsel
 - a. "Trial Counsel never meaningfully discussed the facts of the case, the States potential evidence against Applicant, or reviewed any discovery, case summary, witness statements, audio or video with Applicant."
 - b. "Trial Counsel failed to Investigate Applicants claims that would support his Defense"
 - i. Did not interview witnesses
 - ii. Did not request documents, including school transcripts and phone records
 - iii. Did not obtain audio recording, listen to it himself, or listen to it with client.
 - c. "Ineffective for facilitating Applicant's plea under N.C. vs. Alford without ever discussing the nature of an Alford Plea with his client prior to the plea or adequately explaining the meaning and nature of an Alford plea during the actual plea.
 - i. Facts do not support the conclusion that the State had sufficient evidence based on the complete lack of any evidence implicating Applicant other than the fact that he was there when co-defendant was in possession of cocaine.
 - d. "Trial Counsel's singular focus was on being paid the balance on his fee."
 - e. "Trial Counsel was not available to meet with Applicant prior to date of plea."

¹ 400 U.S. 25, 91 S. Ct. 160 (1970).

- f. "Trial Counsel consistently missed roll-calls to the point that Assistant Solicitor expressed frustration to Applicant about his counsel's repeated absence."
- g. "Trial Counsel failed to adequately advise Applicant of his constitutional rights relative to a guilty-plea or trial rendering his plea involuntary."
- 2. Involuntary guilty plea
 - a. Applicant was never allowed to review State's evidence against him.
 - b. "Trial counsel failed to adequately advise Applicant of his constitutional rights relative to a guilty-plea or trial rendering his plea involuntary."
- 3. After-discovered evidence
 - a. Co-Defendant recanted his statement and provided affidavit to this effect.

At the evidentiary hearing, Applicant proceeded on all of the above allegations.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. The Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80.

A. Summary of Testimony

i. Lavard Lind-Baez

Applicant was called first by his attorney, and began his testimony with a review of the facts regarding the date of the underlying incident. He went on to testify that he retained Mr. Brown as his trial counsel shortly after the incident. He testified that Brown was not at several preliminary court appearances, such as roll calls and bond returnable hearings, and further testified that Brown had two (2) conflicts at potential times of trial that prevented the case from going forward. Applicant testified that he was contacted by Brown in July of 2013 on a Friday and told to be at the courthouse on Monday, but was not told why. He used the internet to find

out that he was scheduled for a guilty plea, though he had maintained his innocence the entire time, and was unable to reach Mr. Brown by phone the rest of the weekend.

Applicant testified that when he reached court on Monday, the previously negotiated offer of five (5) years was off of the table and had become an offer of seven (7) years, non-violent. He testified that Brown advised him to take the plea offer because it was highly likely that his prior record would come out during a trial. He further testified that Brown told him he would not represent Applicant at trial the next day if the plea was not taken.² During the plea, Applicant testified, Brown whispered appropriate answers to the colloquy questions into Applicant's ear. When the possibility of a plea pursuant to North Carolina vs. Alford was presented, Applicant felt that Brown was ineffective for not taking him from the courtroom to explain the process and consequences. Applicant testified that, ultimately, he felt pressured to plead because he faced the possibility of trial without counsel the next day.

On cross-examination, Applicant admitted that he testified at the plea to everything in Judge Hyman's colloquy, including that his plea was voluntary and that he understood the rights that he was waiving. He testified that the Alford plea was explained to him at the plea, and that he understood that it had the same effect as a guilty plea, but he felt as if his back was against the wall and he was trapped into the plea. Regarding the possibility of relieving Brown, Applicant stated that he trusted Brown, though they did not get along very well. He further testified that he understood retention of an attorney was a business transaction and that Brown deserved to be paid for his services, which did not make any discussion regarding fees unreasonable.

ii. Shawn Simmons

² Brown had previously filed a motion to be relieved citing lack of payment and difficulties with the client. This was withdrawn well before the plea was entered.

Mr. Simmons, Applicant's cousin, testified that he was present at the time of the plea and witnessed a conversation between Applicant and Brown. During this conversation, Brown stated that if Applicant did not take the plea, he would most likely get thirty (30) years at trial. He also informed Applicant that Ernest Bryant, Applicant's co-defendant, would stand trial, which he did not.³ Simmons further testified that Brown stated he would not represent Applicant at trial.

Simmons testified that he was in Applicant's PCR counsel's office on October 13, 2015, along with Ernest Bryant at the time Bryant executed an affidavit. Though the State's objections prevented the affidavit from being entered into evidence pursuant to hearsay, Simmons testified that he understood from conversations that day that the affidavit was meant to show that Bryant had recanted his earlier statement implicated Applicant. Respondent did not cross-examine this witness.

iii. Jada Jackson

Ms. Jackson, Applicant's fiancée, testified to the same courthouse conversation that Simmons witnessed, including that Applicant was likely to receive thirty (30) years if he went to trial and that Brown would not represent him at trial. She also testified that no one, including Applicant, was aware of why they needed to be in court that day. She was unaware of whether Applicant ever reviewed any discovery materials. Respondent did not cross examine this witness.

iv. Margaret Wigfall

Ms. Wigfall, Applicant's mother, testified that she spoke with Brown after Applicant entered his plea. She was unaware of the court proceedings, and arrived after the plea hearing had taken place. She spoke to Brown in the parking lot afterward, and testified that she did not get satisfactory answers as to why her son pled guilty. She further testified that she and her daughter

³ Mr. Bryant received a negotiated sentence of probation despite having approximately fifty (50) grams of cocaine in

went to Brown's office in Charleston the next day to speak to him further, and was told again that Brown felt the risk of opening up Applicant's history of drug convictions outweighed pleading to something he believed he did not do. Respondent did not cross-examine this witness.

v. Tiesha Lind-Baez

Ms. Lind-Baez, Applicant's sister, testified that, like her mother, she was not at the plea hearing, but went to Charleston to speak with Brown the next day. She testified that she had seen the Applicant on the date of his arrest, but was never called or subpoenaed by Brown. She further testified similarly to Wigfall regarding Brown's reasoning for advising Applicant to plead. She also stated that Brown told her he would not represent the Applicant at trial. Respondent did not cross-examine this witness.

vi. Edward M. Brown, Esq.

Respondent called Mr. Brown, who was retained as plea/trial counsel for Applicant. He testified that he has practiced for thirty-eight (38) years, all of it has been in criminal law, and that he prepared for this case like he does any other. He stated that he received discovery and reviewed it with the Applicant over four (4) or five (5) in-person meetings. He could not speak to Bryant, the co-defendant, due to his being represented by an attorney; similarly, he could not get in touch with the confidential informant that set up the underlying incident. He testified that Applicant never informed him of any other witnesses that would be of any help regarding that incident, and stated that the witnesses who testified at this hearing were not, in his opinion, valuable to Applicant's defense. He felt that the Defendant always knew what was going on, based on his statements and his acts.

his pocket at the time of arrest.

Brown reiterated that he conducted this case as he would others by describing the strategy he discussed with the Applicant. For example, because roll calls are only to make sure that defendants are still in the area, Brown has never made it a practice to attend, though he informed his clients of each one. Similarly, he explained that he and the Applicant had to weigh the options available: if they went to trial, Applicant would not have to testify, but Brown's experience led him to believe that juries want to hear from defendants, and his testimony would allow information regarding his prior record to be admitted. Because of this, along with the fact that Applicant was facing up to thirty (30) years, Brown advised Applicant to accept the negotiated offer and plead guilty, regardless of the fact that he was not actually guilty of this offense. Brown testified that he attempted to change the nature of the offense, including pleading guilty to failure to stop for a blue light, but that seven (7) years ended up being the best offer, especially because Applicant would not take the earlier offer of five (5) years. Brown testified that, prior to the plea, he explained to Applicant all of the elements and waivers involved with a plea, including those involved with an Alford plea, as he does with all clients.

On cross-examination, Brown testified that he never told Applicant that he would not represent him at trial, plus he knew the Court would not allow him to be relieved at that stage in the case. He further testified that the choice to plea was always the Applicant's, but he believed Applicant understood the strong possibility that he could be convicted at trial due to the idea of constructive possession: he had dominion and control of drugs, rather than just mere presence. Brown testified that his strategy at trial would have been to show inconsistencies in the investigation and the controlled buy, as well as to discredit the co-defendant's testimony as much as possible. He further testified to the idea that flight can be seen as indicative of guilt, and Applicant did run from a blue light, which did not serve in his favor.

B. Ineffective Assistance of Plea Counsel

In a post-conviction relief action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of plea counsel as a ground for relief, Applicant must prove plea counsel's "conduct so undermined the proper functioning of the adversarial process" that the plea proceedings "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether plea counsel provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The Court strongly presumes plea counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The Court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove plea counsel's performance was deficient. Id. Under this prong, the Court measures plea counsel's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, plea counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. In the context of a guilty plea, Applicant must show there is a reasonable probability that, but for plea 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, 59 (1985).

The Court finds Applicant failed to meet his burden to show plea counsel rendered ineffective assistance of counsel. Regarding Applicant's allegations, the Court finds plea counsel's testimony credible, and Applicant's not credible. Accordingly, the Court finds plea counsel conducted a proper investigation, adequately conferred with Applicant, and was thoroughly competent in his representation.

Applicant's allegations are without merit. It is easily disproven by plea counsel's testimony that Brown failed to review discovery materials with Applicant; facilitate his plea under Alford; appear at court hearings; interview witnesses; advise Applicant of details and waivers involved with pleas; provide competent representation; or reasonably consult or visit. He was familiar with all of the evidence and the circumstances surrounding Applicant's arrest. The Court finds credible plea counsel's testimony he would have been prepared for a trial if Applicant had requested one. Though other attorneys may have prepared this case differently, it does not mean that Brown was ineffective in his methods. Accordingly, Applicant fails to meet his burden in demonstrating that plea counsel was ineffective.

Failure to Investigate

This Court finds Applicant has failed to meet his burden to show counsel's investigation and preparation of his case violated his 6th Amendment right to effective assistance of counsel. As stated previously, counsel's performance under the first prong of the Strickland test is judged under the standard of "reasonableness under prevailing professional norms." 466 U.S. at 688, 104 S.Ct. 2052. Accordingly, the controlling standard for counsel's duty to investigate is *reasonableness*. Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 64 (2011). So long as a

defendant's attorney conducts a reasonable investigation, including interviewing potential witnesses when it is reasonable to do so, his performance will not be deficient. Id. at 457, 710 S.E.2d at 65.

This Court finds counsel's investigation of Applicant's case was clearly not deficient. Counsel testified credibly to the effect that he received discovery in this case and reviewed it with Applicant. It is apparent that Counsel had a firm grasp of the strength of the State's case against Applicant and strategically focused his efforts on trying to secure a favorable plea deal. This Court finds such a focus was reasonable in light of the circumstances in this particular case.

Moreover, Applicant has failed to show any prejudice resulting from counsel's purported failure to investigate or prepare a defense. In order to show prejudice, Applicant must present some evidence that but for counsel's purported failure to properly investigate he would have refused to plead guilty and instead exercised his right to trial. See, e.g., Porter v. State, 368 S.C. 378, 386, 629 S.E.2d 353, 358 (2006) (no prejudice where Applicant failed to produce evidence at the PCR hearing that further investigation would have led to a different result); Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) ("Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result."). Applicant failed to produce any such evidence, and this Court is not persuaded that any further investigation or preparation would have changed the outcome. Accordingly, this Court finds Applicant has failed to meet his burden with regard to this allegation. As a result, it is denied and dismissed.

C. Involuntary Guilty Plea

This Court also finds Applicant's allegation that his guilty plea was involuntary is without merit. A defendant who enters a plea on the advice of counsel may only attack the voluntary and

intelligent character of a plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Holden v. State, 393 S.C. 565, 572, 713 S.E.2d 611, 615 (2011) (citing Rolen v. State, 3841 S.C. 409, 413, 683 S.E.2d 471, 474 (2009)).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 421 (2000). A defendant's knowing and voluntary waiver of the constitutional rights which accompany a guilty plea may be accomplished by colloquy between the Court and the defendant, between the Court and defendant's counsel, or both. Holden at 573, 713 S.E.2d at 615 (citing Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 625 (1999)). The longstanding test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant. Id.

In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 84, 886 (2007). Specifically, the voluntariness of a guilty plea is not determined by an examination of a specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the guilty plea, and also from the record of the PCR hearing. Roddy, 339 S.C. at 33, 528 S.E.2d at 420.

"[I]n South Carolina, a guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." State v. Rice, 401 S.C. 330, 331-32, 737 S.E.2d 485, 485-86 (2013) (citing Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). "A

guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (2007). Further, "a defendant is not entitled to withdraw his plea merely because he discovers long after the plea has been accepted that his calculus misapprehended the quality of the State's case or the likely penalties attached to alternative courses of action." Brady v. U.S., 397 U.S. 742, 757 (1970).

Based on the guilty plea transcript as well as evidence at the PCR hearing, this Court is firmly convinced that Applicant's guilty plea was entered into voluntarily and knowingly. Applicant acknowledged during his guilty plea hearing that he had been given sufficient time to confer with counsel, and that he had discussed and understood his constitutional rights prior to pleading. This Court is further convinced that Applicant's decision to plead guilty to murder was not the result of coercion, but rather a well-reasoned choice – in light of his poor trial prospects and overwhelming evidence of guilt – designed to mitigate the risk of spending the rest of his natural life in prison. This is reinforced by Applicant's statements during his guilty plea hearing, when he admitted to the presiding judge that he was guilty and wanted to plead. This Court also places great weight on counsel's credible testimony that he consulted with Applicant both prior to and during the hearing regarding the consequences of both guilty and Alford pleas.

Applicant has failed to present any probative or credible evidence that he was coerced into pleading guilty to murder. As a result, he has failed to meet his burden, and this allegation is denied and dismissed.

D. Newly-Discovered Evidence

Concerning Applicant's claim of after-discovered evidence, this Court finds Applicant has not presented any evidence that would lead it to believe he is entitled to relief. Under S.C.

Code § 17-27-45(c), a newly-discovered evidence claim can be timely raised within one (1) year of actual discovery or within one (1) year of when, by the exercise of due diligence, such evidence could have been ascertained. When an applicant seeks relief on the basis of newly-discovered evidence following a guilty plea, relief is appropriate only when the applicant presents evidence showing that (1) the newly-discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea, and (2) the newly-discovered evidence is of such weight and quality that, under the facts and circumstances of that particular case, the "interest of justice" requires the applicant's guilty plea be vacated. Jamison v. State, 410 S.C. 456, 470, 765 S.E.2d 123, 130 (2014).

In Jamison, the South Carolina Supreme Court noted it would be a "rare case" where the interests of justice require the vacation of a knowing and voluntary guilty plea involving an admission of guilt and a waiver of trial. Id. Applicant has not shown that the purported new evidence meets any of the requirements for after-discovered evidence. Most importantly, this new evidence, in the form of an allegedly exculpatory affidavit from Applicant's co-defendant, was not technically admitted at the PCR hearing. The mere allusion to it through testimony is not satisfactory for the Court to pass judgment upon its validity. As a result, this Court finds Applicant has failed to meet his burden, and that this allegation must be denied and dismissed.

All Other Allegations

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

IV. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. The evidence presented at this hearing could have been viewed and prepared differently by any attorney that viewed it, and it is easy to say in hindsight that Brown's approach was not the best. Regardless, this does not mean that his representation of the Applicant was deficient in any way. Particularly, Brown advised his client about the potential of an Alford plea. This Court does not find it the fact that this plea started out as a classic guilty plea to be fatal. The potential for the plea arose and was handled by Brown in a case that is a classic example of the necessity for the existence of Alford pleas. There was overwhelming evidence to justify the need for that kind of plea, particularly due to Applicant's existing record and, by necessity, familiarity with the judicial process. Even if the Applicant did not understand the effects of a plea or an Alford plea in particular, it was explained thoroughly under oath by Judge Hyman. The standard under Strickland simply has not been met: there was a detailed colloquy, to which Applicant provided appropriate answers and asked intelligent questions. This Court does not find credible any testimony that stated Brown refused further representation past that date, as someone with his experience is surely aware that it is rarely possible to be relieved on the eve of trial. For all of the above reasons, this application for post-conviction relief must be denied and dismissed with prejudice.

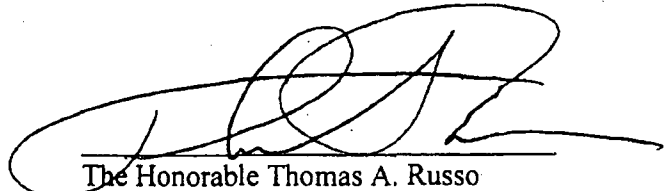
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a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

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

IT IS THEREFORE ORDERED THAT:

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

AND IT IS SO ORDERED this 22nd day of December, 2015.


The Honorable Thomas A. Russo
Presiding Judge

Florence, South Carolina

179

WITNESSES

C.J. Cox 15th Circuit Drug Enforcement Unit

DOCKET NO. 2012-GS-26-02928

The State of South Carolina

County of Horry

Lauree Richardson

12H00839

COURT OF GENERAL SESSIONS

July, 2012 TERM

EST WARRANT NUMBER

M842005

CDR: 0388 44-53-0370(e)(2)(b)2

DOA: 2/22/2012

THE STATE

VS.

ACTION OF GRAND JURY

Lavard Deon Lind-Baez
B/ M

JUL 26 2012

Foreperson of Grand Jury

VERDICT

ATTORNEY: Brown, Edward M.

Indictment for

**Trafficking Cocaine
(28 - 100 grams)**

J. Gregory Hembree, Solicitor

Foreperson of Petit Jury

Date:

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on July 26, 2012, the Grand Jurors of Horry County present upon their oath:

TRAFFICKING COCAINE (28 - 100 GRAMS)**(CDR: 0388 44-53-0370(e)(2)(b)(2))**

That Lavard Deon Lind-Baez did in Horry County on or about February 21, 2012, knowingly sell, deliver, purchase or bring in this State, or aid, abet, attempt or conspire to sell, deliver, purchase or bring into this State, or was in actual or constructive possession, or attempted to become in actual or constructive possession of a quantity of Cocaine in an amount of more than twenty-eight (28) grams, but less than one-hundred (100) grams, same being a controlled substance all within the meaning of Section 44-53-370, et seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized, and being in violation of section 44-53-370(e)(2)(b), S. C. Code of Laws, 1976, as amended, for the crime of trafficking.

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


J. GREGORY HAMBREE
FIFTEENTH CIRCUIT SOLICITOR