

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Chesterfield County

Roger E. Henderson, Circuit Court Judge

DAMEION J. RIVERS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-002353

APPENDIX

TAYLOR D GILLIAM
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

JOHNNY ELLIS JAMES, JR.
Assistant Attorney General
Attorney General Office
P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSION
<u>COUNTY OF CHESTERFIELD</u>	)	2007-GS-13-00814
		2007-GS-13-00897

STATE OF SOUTH CAROLINA	)	
PLAINTIFF	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
DAMEION J. RIVERS	)	
DEFENDANT	)	

August 30, 2010
Chesterfield, South Carolina

B E F O R E:

THE HONORABLE PAUL M. BURCH, JUDGE.

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

KERNARD E. REDMOND, DEPUTY SOLICITOR
Attorney for the State

ADAM FOARD, ASSISTANT SOLICITOR
Attorney for the State

PAUL CANNARELLA, ESQUIRE
Attorney for the Defendant

MIKKOS NEWMAN, Detective, Pageland Police Department
LARRY BROWN, Chief, Pageland Police Department

HATTIE O. GORDON
Circuit Court Reporter

I N D E X

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STATE'S EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Autopsy Report	5	
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1	COURT'S EXHIBITS			
2	<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
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1 (WHEREUPON, State's Exhibit Nos. 1 THROUGH 3 were
2 marked for identification only.)

3 COLLOQUY

4 MR. REDMOND: Your Honor, before you is Dameion
5 Rivers. Indictment Number 2007-GS-13-0814 for murder and
6 2007-GS-13-897 for possession of a weapon during the
7 commission of a violent crime. At this time I'll yield to
8 Mr. Cannarella who has a motion to continue. I will tell
9 the Court that he did indicate to us, I think as recently
10 as Thursday, that he would be filing this motion. And we
11 would like to respond at the appropriate time.

12 THE COURT: All right. Any other attorneys involved
13 with any other codefendants for anybody that needs to be
14 here?

15 MR. CANNARELLA: No, Your Honor.

16 MR. REDMOND: There are codefendants, but we were
17 only calling this case for trial.

18 THE COURT: Mr. Cannarella.

19 MR. CANNARELLA: Your Honor, in the State v. Dameion
20 Rivers, this is Indictment Number I27 -- Warrant Number
21 I271205. I'm moving for a continuance of his trial for
22 the murder after Tavish Dunlap on October the 26th 2007..

23 Mr. Rivers is facing a life sentence, and his rights
24 of fundamental due process to prepare a thorough defense
25 and to develop his own theory of defense, his right to

1 effective assistance on counsel and a fair trial all
2 demand that a continuance be granted for the following
3 reasons.

4 The State just provided the Defense with an autopsy
5 this past Friday, and previously claiming that it did not
6 exist. Just like the Solicitor's Office has an
7 opportunity to discuss the autopsy with its expert, to
8 develop its work product, the Defense has a right to a
9 reasonable amount of time to create our own work product,
10 Your Honor, and thoroughly digest the autopsy and develop
11 our own theory of the case and prepare a thorough defense.

12 Giving me an autopsy on Friday that existed for over
13 three years is just totally unacceptable. I have a
14 fundamental right to be given a reasonable opportunity.
15 This man is facing a life sentence. I have a fundamental
16 right to be able to have ample opportunity to review the
17 autopsy report, consult with my own expert, Judge, and
18 develop my own theory of defense.

19 And giving it to me Friday and expect me to do that
20 during the course of this trial is just fundamentally
21 unfair to compound the problem. It's been three years
22 since this happened. The body was taken to North
23 Carolina. There is some medical records that exist in
24 North Carolina. I'm entitled to those medical records to
25 review them and to see what they say. I have no idea what

1 they might tell me or how revealing they might be or how
2 consistent they might be what my theory of the defense may
3 end up being with what my witnesses say and whether or not
4 they're consistent with what some of the prosecutor's
5 witnesses say. And to compound the problem, and I can
6 never change anything about this. The Solicitor's Office
7 has lost the crime scene photos. So I will never know
8 what I might have been able to develop from what I see
9 there.

10 Now, I've got some ideas of what I would like to see
11 and what it could enlighten me -- how it could enlighten
12 me. But I don't want to stand here and give away my
13 theory of defense or discuss my own work product with them
14 before I even go to trial. Don't have any measurements.
15 Don't really know where the body was. Don't know anything
16 about what it looked like. Only thing I know for sure is
17 that his shoes are missing.

18 And don't have any measurements of any sort. And
19 it's been suggested, "Well, we can recreate the crime
20 scene." Well, I don't want to recreate the crime scene.
21 I want the benefit of what the photographs would have
22 shown me so I can develop my own theory of defense.

23 And all of this could easily help me in defending
24 Dameion Rivers who is facing a life sentence in so far as
25 evaluating this evidence that I could have access to and

1 develop and see how it plugs in or applies to the various
2 levels of degree in so far as manslaughter and murder is
3 concerned, and more importantly the issue of self-defense.

4 And I heard versions of the Solicitor's explanation
5 as to what happened, but there is a lot more in between
6 one point in time and the ultimate point in time and my
7 having heard the Solicitor's explanation of what their
8 presentation would be really glossed over a lot of
9 material information that I know if I had already had to
10 be able to present to the Court.

11 MR. REDMOND: May it please the Court, Your Honor.
12 Let me just say, first of all, and I'll try to address
13 these things briefly, but as it relates to each point that
14 was brought up.

15 First of all the medical records that were mentioned
16 about medical records which are not in possession of the
17 State. They can -- Mr. Cannarella is familiar with Calvin
18 Whatley which says, yes, we are responsible for those
19 items that are in our possession or in law enforcement's
20 possession.

21 Medical records aren't in our possession. He can get
22 them just as easily as we could with a Court order. We do
23 not have to do his work for him. So in that regard I just
24 want to make sure the record is clear on what our
25 obligations are.

1 Now, the autopsy report, that as I explained earlier
2 in chambers to the family, mother here, did not even know
3 an autopsy had been done. And I'm sure people are
4 wondering and just for the record to be clear the way that
5 developed was that the past administration had been
6 notified by Mecklenburg County at the time that Mr. Dunlap
7 was deceased.

8 At that particular time because of the nature of the
9 killing, the shotgun blast, there was a judgment call made
10 that an autopsy was not necessary. That judgment call is
11 made all the time, quite frankly. However, the
12 pathologist in North Carolina, who actually has ties to
13 Chesterfield County through his parents, decided that he
14 would go ahead and do an autopsy anyway.

15 In that decision nobody else was aware that it had
16 been done. The coroner has even explained to the chief I
17 believe, friend of the family, that an autopsy had not
18 been done because he was not aware it was done. So my
19 blaming the coroner, the former coroner, if any way, he
20 wasn't aware of it.

21 Fortunately, Chief Brown checked on Thursday and just
22 to make sure, because there was discussion even from the
23 Defense, about the lack of an autopsy. And at that point
24 that's when we discover in contacting Mecklenburg County
25 that an autopsy had been done. That autopsy was not

1 directed by the State. Was not in possession of anybody
2 from the State. It was one of these happenstance
3 situations that occurred that nobody knew about.

4 So once we become aware of it we immediately
5 contacted Mr. Cannarella and then, of course, forwarded
6 him the autopsy report. The reason I'm bringing that up,
7 Your Honor, is that I don't want this Court or anybody in
8 here to be left with the impression that Mr. Cannarella
9 has been sandbagged because that's clearly not the case.
10 And we had explained that to Mr. Cannarella.

11 Now, as it relates to the photos, there was mention
12 about the photos are gone. Prior to Mr. Foard's
13 involvement with the case, prior to my involvement with
14 the case the Chief indicates that, yes, there were
15 pictures that were handed over to the Solicitor's Office.
16 Not to either one of us that are involved in the case now,
17 but to persons involved in the case previously.

18 These photos are not in the file. We've never seen
19 them, and unfortunately, we can't reproduce them. Now,
20 with that said does that automatically cause for
21 continuance? No, it doesn't, because, unfortunately,
22 having prosecuted all over the Circuit I've tried several
23 cases with lost photo. It happens sometimes.
24 Unfortunately, it happened here.

25 So I would not say that that would be the basis of

1 the continuance. So, again, I'm addressing these things
2 just to make them clear. Obviously, Mr. Cannarella, I'm
3 sure, will have fun arguing that to the jury, and you
4 know, we will deal with it as it comes. But I
5 specifically on the issue of the continuance, Judge, I can
6 tell you that the State -- the State's position is this:
7 The autopsy records concern. Even though at the end of
8 the day I don't think from the State's presentation that
9 it would make a difference.

10 As I explained to law enforcement and to the family I
11 don't want to try -- as the Court knows my motto I only
12 want to try a case once. I don't want to see it again.
13 And, of course, the Court is aware and Mr. Cannarella that
14 if there is the perception or the chance that he may have
15 been prejudiced by getting that autopsy report too late
16 then we might see this case again after we go through
17 this.

18 I'd rather wait a month and get it done and get it
19 done right the first time rather than trying to take the
20 chance that we might have to see this case again in a
21 couple of years. Given the witnesses that we have and
22 what's going on I would rather wait a month as opposed to
23 a couple of years. We've got our witnesses now, but as
24 the Court know a couple of years from now you never know
25 where witnesses end up.

1 And so I'd rather just wait a month and get it right
2 than to possibly have to retry this case in a couple of
3 years. And then the more practical reason, from the
4 State's standpoint, we just discovered -- Mr. Foard
5 discovered that one of S.L.E.D. agents who examined the
6 clothes is not going to be able to get here. We just got
7 that call after we came out of chambers.

8 Ira Simmons is not going to be able to be present
9 this week in Court She is in our chain of custody. And,
10 of course, she also examined the clothes for gunshot
11 residue, which based on the way the case has played out,
12 maybe a material issue. So for those reasons, Judge, I'm
13 not going to oppose this particular motion.

14 The only reason I took as long as I did is that I
15 wanted to make sure that everything that Mr. Cannarella
16 addressed was put in its proper context because I don't
17 want anybody left here thinking the State is sandbagging
18 or in some way trying to prejudice his particular client.
19 I don't have a problem giving him a fair trial. We want
20 to make sure it's done right just as the Court does.

21 And for these reasons I would prefer that we continue
22 the case, and I've explained that to everybody that this
23 was the position I was going to take out of an abundance
24 of precaution more so than anything.

25 THE COURT: I think the answer to this is obvious,

1 but I'm going to make sure we're crystal clear in this.
2 Solicitor's Office, specifically you. You're handling
3 this case and Mr. Foard. Y'all knew nothing about this
4 autopsy before Thursday?

5 MR. REDMOND: We found out -- as a matter of fact let
6 me tell you how that happened. Chief Brown came to my
7 house. It was a little bit before 5:00. I had gone home.
8 I think I had been in Florence. I can't remember where I
9 was. So I came up, went home, hear a knock at the door,
10 and come up and he's there with a folder. I think -- I
11 don't think I brought it in.

12 And the folder had the autopsy reports. He had
13 gotten them e-mailed to him from Mecklenburg County on
14 Thursday. That's when I became aware of it. Of course,
15 immediately contacted Adam. And as soon as his jaw came
16 up off the floor we were able to discuss the fact that now
17 we had this autopsy report.

18 THE COURT: That implies then that there was, of
19 course, no discussion with any experts or any medical
20 examiner by y'all before Thursday?

21 MR. REDMOND: Oh, no. Thursday I called, and I
22 didn't mention this, Judge. I call Dr. Gullledge on Friday
23 and talked to him cause we weren't even sure we were going
24 to be able to get Dr. Gullledge here. That's how fresh
25 this information was. So I tracked him down and talked

1 with him twice on Friday. He indicated that he could be
2 here at 9:30 on tomorrow.

3 And so that was the first opportunity that I had to
4 discuss the case with him. And I did discuss it,
5 obviously, cause the Court with me at that time.

6 THE COURT: The State hadn't had any chance to do any
7 preliminary work on this. How is an autopsy on a shotgun
8 killing so important that you need all this time to
9 examine it? Explain that to me.

10 MR. CANNARELLA: Judge, I'm not really, really
11 certain for the reasons I stated earlier because once I
12 have the time to thoroughly digest this autopsy report and
13 consult within an expert I will not know. I will not
14 know. There are some issues that I can see already in
15 preparing for this case and some things I've read in
16 there.

17 But in anticipation of His Honor asking me that
18 question that's why I specifically used the words, 'work
19 product' in this motion because I really don't want, if I
20 can beg the indulgence of the Court, to go into all that
21 right now. But it plays very -- it plays very, very
22 materially into what my client says happened that night.

23 MR. REDMOND: I hate to interrupt, but I've got an
24 idea, Judge, that might work. Let me say this.. With all
25 that said if the Court were to direct us to try the case,

1 I mean, we're ready to go forward. Let me make that
2 clear. The only I said that was for reasons concerning
3 future consideration. If the Court feels that Mr.
4 Cannarella is not prejudiced we would make arrangements,
5 even with what I said concerning our same, I don't have a
6 problem trying this case this week. And I think we would
7 all love to see that happen.

8 The proposal I was thinking, Judge, and I hadn't
9 discussed this with Mr. Foard. It just popped in my head;
10 that I would not be opposed to in camera. He's talked
11 about being concerned about disclosing his defense to me.
12 I don't have a problem with an in camera proffer by the
13 Defense and let the Court decide. Therefore, it's on the
14 record and then the Court will be able to decide whether
15 or not his reasons would constitute prejudice to prohibit
16 us going forward with this trial.

17 So, again, we've got everybody lined up to be here.
18 The position I'm taking, like I said, Your Honor, is that
19 if it appears that it would prejudice Mr. Cannarella then
20 we don't have a problem. We want only to have to try this
21 once.

22 But if the Court feels that there's not prejudice,
23 and you're worried about disclosing your defense to us
24 we'll say, "Have an in camera hearing. Let the Court
25 determine whether or not his reasons that he's proffering

1 are enough to substantiate continuing this case. Whether
2 or not it constitutes actual prejudice on the part of the
3 Defense.

4 And, again, that's just a brainstorm idea. I don't
5 know how the Court feels about that, but that would be one
6 way to relay his concerns about us knowing what his
7 defenses were.

8 THE COURT: Well, I'm going to make sure. Both of
9 you have got access or have a copy of the this autopsy
10 report?

11 MR. REDMOND: Oh, yes. We forwarded it to him. We
12 e-mailed it to him. As soon as we got it I forwarded it
13 to Mr. Foard. He forwarded it to Mr. Cannarella. So it
14 was actually sent Thursday night. Let me clarify. It was
15 sent Thursday night because, matter of fact, the Chief got
16 on my computer at home in order to be able to download it
17 and e-mail it to us.

18 THE COURT: What gives me a problem about Mr.
19 Cannarella's argument though is your defense is what it
20 is. You don't take the evidence and go back and study it
21 and make up a defense. I don't think that's the way it
22 works. If it is I don't think we even need this
23 courtroom.

24 MR. REDMOND: And, again, Your Honor, if the Court
25 indicates that everything we've got all clear to try this

1 case then the State would be glad to move forward, and we
2 will make the necessary adjustments to be able to bring
3 this case to a conclusion this week.

4 Dr. Gulledge has already said he can be here at 9:30
5 tomorrow morning. He's already planned on being here. I
6 know I'm flip flopping a little bit, but at the same time
7 if it's a problem and there is prejudice then I have no
8 problem backing down. But if there is not prejudice for
9 us going forward in this case we'll make the arrangements.
10 We've got all our witnesses subpoenaed. We're prepared to
11 go forward.

12 THE COURT: A trial is a search for the truth, and I
13 don't want to be involved in any situation where all the
14 evidence that's out there that is admissible or can be
15 admissible is not presented to the jury to make a fair and
16 impartial decision.

17 So the three of you go over here in the corner and
18 you decide now with all these new factors the best thing
19 to do is go forward or not go forward and come back here
20 and advise me of that.

21 MR. REDMOND: Yes, sir.

22 (WHEREUPON, a short break was taken.)

23 THE COURT: Y'all approach.

24 (WHEREUPON, a bench conference was held off record no
25 jury present).

1 THE COURT: All right. I'm going to give counsel a
2 few minutes to talk to family members or whatever, but
3 we've got a jury panel back here that's in a more or less
4 very uncomfortable situation. Mr. Bailiff, Madam Clerk,
5 let's move the jury in here to this section, in the rear
6 section in front of you, Mr. Douglas.

7 (WHEREUPON, other Court-related business was
8 conducted on the record but not related to this case
9 and not included in this transcript of record.)

10 MR. FOARD: Your Honor, back on the record with the
11 State v. Dameion Rivers. Docket Number 2007-GS-13-0814,
12 murder and -0897, possession of a weapon during the
13 commission of a violent crime.

14 The State intends at trial to introduce the
15 Defendant's voluntary statement while under arrest that
16 was given to officers with the Pageland Police Department.
17 I believe if the defense is so inclined we're repair to
18 present testimony in a Jackson V. Denno Hearing.

19 MR. CANNARELLA: So inclined, Your Honor.

20 MR. FOARD: Your Honor, we would -- the State would
21 call Detective Mikkos Newman to the stand.

22 MIKKOS NEWMAN, after being duly sworn, testified
23 as follows:

24 MR. FOARD: Your Honor, can we have my client's
25 family brought in here?

1 THE COURT: Sure. Let them in.

2 MR. CANNARELLA: They're not out there.

3 THE COURT: They're not?

4 MR. CANNARELLA: They probably are not cause they
5 didn't realize this was going to happen in so far as a
6 motion.

7 MR. FOARD: The victim's family, I know I saw them.
8 They walked out.

9 THE COURT: Y'all want to take a check right quick?

10 MR. CANNARELLA: I don't think so. Their presence is
11 absolutely necessary. Let me just explain to him.

12 (WHEREUPON, Court's Exhibit Nos. 1 THROUGH 3 were
13 marked for identification and received into
14 evidence.)

15

16 DIRECT EXAMINATION

17 BY MR. FOARD:

18 Q. Please state your name for the record.

19 A. Mikkos Newman.

20 Q. And what position do you hold?

21 A. Currently I hold Sergeant Detective Pageland Police
22 Department.

23 Q. And how long have you worked there?

24 A. Six years.

25 Q. Okay. Were you employed there in 2007?

1 A. Yes, sir.

2 Q. And did you have the opportunity to take part in the
3 investigation of the charges which we're here about today?

4 A. Yes, sir, I did.

5 Q. Okay. Did --

6 MR. FOARD: May I approach the witness, Your Honor?

7 THE COURT: Sure.

8 BY MR. FOARD:

9 Q. Officer or Detective Newman, I'm handing you what's
10 been previously marked as Court's Exhibit One. Can you
11 please tell the Court what that document is.

12 A. Miranda rights.

13 Q. And are you familiar with that form?

14 A. Yes, sir, I am.

15 Q. And do you -- is that form employed on a regular
16 basis with your organization?

17 A. Yes, sir, it is.

18 Q. And what is that used for?

19 A. Used for questioning victims, suspects or just anyone
20 they have information about any type of crime.

21 Q. Okay. Did you have the opportunity to use that form
22 in conjunction with the investigation of the charges that
23 Mr. Rivers faces?

24 A. Yes, I did.

25 Q. Okay. And can you explain to us the manner in which

1 you use that form? .

2 A. We use in form before we talk to the subject or ask
3 the subject any questions about the incident that was at
4 hand.

5 Q. And is that what you did in speaking to Mr. Rivers?

6 A. Yes, sir, it is.

7 Q. Okay. What date and time was that form used?

8 A. It was used on August the 28th 2007 at 11:40 a.m.

9 Q. Okay. Who was present when you used that form and
10 when you gave Miranda rights?

11 A. Just me at that time.

12 Q. Okay. Was the defendant present as well, obviously?

13 A. Yes, sir, he was present.

14 Q. All right. Okay. And was the defendant under the
15 influence of any alcohol or drugs?

16 A. No, sir, he was not.

17 Q. Okay. Did he have any physical or mental disable
18 that would have impaired his ability to understand the
19 rights?

20 A. No, sir, he did not.

21 Q. Where did you -- where did you use that form and give
22 him those rights?

23 A. I used the form within the Pageland Police Department
24 in what's known as our squad room where we usually do
25 interviews and question people and usually talk to people

1 in that room. And that's where this form was given.

2 Q. And at what point in speaking with the defendant did
3 you give him the rights from that form?

4 A. Before I ever said anything to him I automatically
5 give him and read him these rights.

6 Q. And how long had he been there when you gave him
7 those rights?

8 A. Less than 30 minutes.

9 Q. Okay. How long was he totally there being
10 questioned?

11 A. I would say in between an hour to two hours.

12 Q. All right. Were there any breaks taken?

13 A. No, sir. I'm not exactly remembering.

14 Q. Was he denied access to a telephone or to a restroom
15 or anything of that nature?

16 A. No, sir, he was not.

17 Q. Okay. Did you make any threats or promises in order
18 to get him to sign that form?

19 A. No, sir, I did not.

20 Q. All right. Was the defendant under arrest at the
21 time?

22 A. Yes, sir, he was.

23 Q. Okay. Was he -- if he was under arrest he was not
24 free to go, was he?

25 A. No, he was not free to go.

1 Q. All right. And you were interrogating him?

2 A. Yes, sir. Not so much interrogating. Just an
3 interview.

4 Q. Did the defendant understand the nature of the
5 allegations against him?

6 A. Yes, sir, he did.

7 Q. Okay. And you used that form to give him the rights?

8 A. Yes, sir, I did.

9 Q. Could you please read the form for the Court.

10 A. "Before we ask you any questions you must understand
11 your rights. You have the right to remain silent.
12 Anything you said can and will be used against you in a
13 court of law. You have the right to talk to a lawyer for
14 advise before we ask you any questions and to have him or
15 her present with you during questioning. If you have no
16 money for lawyer fees the Court will appoint one to
17 represent you without cost to you if you wish.

18 If you decide to answer questions now without a
19 lawyer present you will still have the right to stop
20 answering questions at any time. You also have the right
21 to stop answering any questions at any time until you talk
22 with a lawyer." And then it states, "I have read this
23 statement of my rights, and I understand what my rights
24 are." And the suspect signs it.

25 Q. The suspect did sign that?

1 A. Yes, sir. It was Dameion Rivers.

2 Q. Dameion Rivers. And did you sign that form as well?

3 A. Yes, sir, I did.

4 Q. All right. To the best of your understanding did the
5 defendant comprehend and understand those rights as given
6 to him?

7 A. Yes, sir. Because on the bottom of this page it has
8 the Waiver of Rights, and if you like I will read them to
9 you at this time.

10 Q. Sure. Please. Go ahead.

11 A. It states, "I am willing to make a statement and
12 answer questions. I do not want a lawyer at this time. I
13 understand and know what I am doing. No promises or
14 threats have been made to me and no pressure or coercion
15 of any kind has been used against me." With Mr. Rivers'
16 signature on it as well.

17 Q. All right. Did the defendant's answers to your
18 questions appear rational and responsive?

19 A. Yes, sir, they did.

20 Q. Did he ever change his mind about speaking to you or
21 ask to stop the interview at any time?

22 A. No, sir, he didn't.

23 Q. All right. Now, was the answers to your questions,
24 were these accomplished orally or written?

25 A. Both orally and written.

1 Q. Both orally and written?

2 A. Yes.

3 Q. All right. And to the best of your knowledge the
4 statements, both oral and written, were freely and
5 voluntarily given?

6 A. Yes, sir, on the Miranda rights.

7 Q. Now, as far as the written statement goes who wrote a
8 statement?

9 A. Mr. Rivers.

10 Q. Mr. Rivers wrote a statement himself?

11 A. Yes, sir.

12 MR. FOARD: Your Honor, if I may approach the
13 witness.

14 BY MR. FOARD:

15 Q. Detective Newman, I'm handing you what's previously
16 been marked as Court's Exhibit Two. Do you recognize that
17 document?

18 A. Yes, sir, I do.

19 Q. And could you tell us what that is?

20 A. This is -- I assume this is Dameion Rivers' voluntary
21 statement.

22 Q. And on that statement is that something that he
23 filled out on his own?

24 A. Yes, sir, it is.

25 Q. Okay. Are his rights covered on this statement in

1 any form?

2 A. Yes, sir, they are.

3 Q. All right. And if you could please tell us what the
4 form says regarding his constitutional rights?

5 A. It states that, "I am giving this statement to, name,
6 myself, Mikkos Newman, and Larry Brown, who has identified
7 himself as a Pageland Police Department. And he has
8 dually warned me I have the following the rights: That I
9 have the right to remain silent and not make any statement
10 at all. That any statement I make may be used against me
11 at my trial.

12 That any statement that I make may be used as
13 evidence against me in Court. That I have the right to
14 have a lawyer present to advise me prior to and during any
15 questioning. That if I am unable to employ a lawyer I
16 have the right to have a lawyer appointed to advise me
17 prior to any -- to prior -- excuse me. Prior to and
18 during any questioning, and that I have the right to
19 terminate the interview at any time prior to and during
20 the making of the statement.

21 I have and do hereby knowingly, intentionally and
22 voluntarily waive the above explained rights. And I do
23 make the following voluntary statement to the
24 aforementioned person of my own free will and without any
25 promise -- excuse me. Promises or offers of leniency or

1 favors and without completion -- compulsion or persuasion
2 by any person or persons whomsoever."

3 Q. Did Mr. Rivers sign this form?

4 A. Yes, sir, he signed it.

5 Q. Okay. Who witnessed Mr. Rivers' signature?

6 A. Myself and Chief Brown.

7 Q. All right. And in the obtaining of this statement
8 did you do anything to coerce? To place him under duress?
9 To do anything to elicit this statement from him in a
10 forceful manner?

11 A. No, sir, I did not.

12 Q. Did you deny him the use of bathroom facilities or
13 anything that he may have requested while he was there?

14 A. No, sir, I did not.

15 Q. Did you withhold food or anything else that he may
16 have needed?

17 A. No, sir, I did not.

18 Q. All right.

19 MR. FOARD: At this time, Your Honor, I'm going to
20 publish the contents of this statement for the purposes of
21 then asking Detective Newman if what I have published is
22 in fact the correct representation of the statement.

23 MR. CANNARELLA: Your Honor, the statement is already
24 admitted as a Court's Exhibit for the Court to read. I
25 think the purpose and the scope of this hearing is just to

1 determine if he freely and voluntarily and knowingly
2 entered into that statement. At this point in time the
3 contents of that statement is not relevant.

4 THE COURT: True.

5 MR. FOARD: Your Honor, well, the State's purpose in
6 this is this is put in the defendant's own hand. We feel
7 that placing it on the record and placing the contents of
8 the statement out there would corroborate the fact that he
9 did offer this statement freely, voluntarily and without
10 any coercive activity by the law enforcement.

11 MR. CANNARELLA: The contents -- we're splitting
12 hairs. The contents of that statement at this point in
13 time is not relevant to the issue of whether he wrote it
14 in his own hand writing or not has already been testified
15 to by this witness here and that's not a matter that's
16 been put in issue be me. So publishing served no purpose.
17 And the Court's got a copy of it.

18 And the whole issue here is was it freely and
19 voluntarily and knowingly entered into regardless of
20 what's in it. Unless the contents of what's in it become
21 an issue sometime during the course of this proceeding.

22 MR. FOARD: Well, of course, the content of it is
23 going to become an issue at some point in this proceeding
24 I think.

25 THE COURT: This hearing is freely, voluntarily and

1 intelligently given. So you don't have to publish it now.

2 MR. FOARD: All right, Your Honor.

3 THE COURT: Save time, basically.

4 BY MR. FOARD:

5 Q. Now, was the manner in which this statement was given
6 was all of Mr. Rivers' statement accomplished on one page
7 or did he have to use multiple pages?

8 A. He used the back of the page.

9 Q. He used the back of the page. And did he delineate
10 in any form the ending of his statement?

11 A. He just told us where he had put the weapon that was
12 used.

13 Q. What I mean is did he do anything on the page to
14 prohibit someone from, perhaps, altering the statement or
15 adding anything further?

16 A. Yes, sir, he did.

17 Q. Okay. And what did he do?

18 A. Drew an X and put his initials on all four parts of
19 it that way no one can add or subtract to his statement.

20 Q. All right. And has anything been added, subtracted
21 or modified to your knowledge from what Mr. Rivers did in
22 his own hand?

23 A. No, sir, it has not.

24 MR. FOARD: Your Honor, that's all for this witness.

25 THE COURT: Your witness.

CROSS-EXAMINATION

BY MR. CANNARELLA:

Q. Office Newman, you testified in the beginning that you obtained this statement from Mr. Rivers?

A. Yes, sir, I did.

Q. So you were the one conducting the interview?

A. Yes, sir, along with -- at that time it was Assistant Chief Brown who is now Chief Brown.

Q. Okay. So in other words it was not just you present. He was also?

A. Yes, sir.

Q. And y'all were both questioning him?

A. Yes, sir.

Q. And, actually, the form itself has got his statement on it. Says that you and now Chief Brown were present?

A. Yes, sir.

Q. Now, you signed that form as a witness. So you were not just merely present for the purpose of being a witness watching him sign it. It was you also to conduct the interrogation?

A. Yes, sir. He also stated on the statement that the was given both that statement to me, Mikkos Newman and Larry Brown, which was the Assistant Chief at that time.

Q. Okay. So it was given to both you of?

A. Yes, sir, it was given to both of us.

1 Q. So that's why the Chief signed it above warnings were
2 given, and this voluntary statement was taken by ...

3 A. Yes, sir, cause before he ever started writing his
4 statement he was notified again as you can see of these
5 Miranda rights on these papers.

6 Q. Okay. He also signed a Miranda Waiver, right?

7 A. Yes, sir. I was the only one giving -- in there when
8 he signed that Miranda rights.

9 Q. Now, you had had some contact with Mr. Rivers in the
10 past, right?

11 A. Yes, sir, I believe I had him charged with
12 possession.

13 Q. Yeah, that was -- and you worked that out for him,
14 right? He got P.T.I?

15 A. Not sure. I believe he did. It was ---

16 Q. You remember ---

17 A. --- a year or two before this.

18 Q. And remember when some drugs were found somewhere.
19 It was a number of people stand around, and you arrested
20 them all?

21 A. No, sir. He was the only one standing there.

22 Q. Okay. But you worked it out for him. Now, do you
23 know his family?

24 A. Yes, sir. I live in the Pageland community. I'm
25 aware of his family.

1 Q. Who are they?

2 A. His mother is Iris Rivers and his grandfather is ---

3 MR. FOARD: Objection, Your Honor. At this point
4 we're going into things that are outside the scope of this
5 hearing.

6 MR. CANNARELLA: Well, Judge, if you let me ask a
7 couple more questions I'll connect it up. Where I'm
8 getting to on the issue of coercion or threats.

9 THE COURT: Go ahead.

10 BY MR. CANNARELLA:

11 Q. You know Jeanna Rivers?

12 A. I've seen her, but I don't personally know her.

13 Q. Okay. Well, did you ever -- this took -- you were
14 there for about one to two hours? That's what you
15 testified to? This interrogation lasted one to two hour?

16 A. Yes, sir.

17 Q. Is it closer to one hour or two hours?

18 A. Between one and two.

19 Q. Okay. Well, when you first sat down with him did he
20 first start writing cause it doesn't appear to me to take
21 two hours or even an hour to write this statement right
22 here?

23 A. Can you rephrase that question again, sir?

24 Q. Well, why would it take one to two hours to write
25 this statement; this one and a quarter page statement?

1 A. Or to ask him about any events that happened cause it
2 was dealing with a life that was lost. That's why. Cause
3 we want to make sure we have everything.

4 Q. Well, I understand that. And did you bother to
5 record the conversations that took place before you got
6 him to start writing?

7 A. No, sir.

8 Q. Why not?

9 A. Because he said he would make a statement. He signed
10 that waiver knowing his rights that he would talk to me
11 and answer any questions that I have. And that he wanted
12 to put it down on paper.

13 Q. If you wanted to record the entire interview from one
14 to two hours you had the capability of doing that?

15 A. What you're saying was it capable at my disposal or
16 could I have done that.

17 Q. Could you have done that?

18 A. I could have if I wanted to.

19 Q. I know. But you didn't want to? At any time you
20 didn't want to, yes or no?

21 A. At this time it was three years ago.

22 Q. So you don't recall?

23 A. I can't be clear on that.

24 Q. Clear on why you would have wanted to or not wanted
25 to record it?

1 A. Yes, sir. This happened three years ago. Yes, sir.

2 Q. Okay. But you could have recorded the entire
3 interview on a tape if you wanted to?

4 A. It just depends on the circumstances. What were the
5 circumstances. But I did not have to because he
6 voluntarily signed that his rights. He voluntarily wrote
7 down on a piece of paper everything that he wanted to
8 write down. So, actually, he reported it himself by
9 writing it down.

10 Q. Well, I know, but I'm talking about listening to all
11 the conversations?

12 A. All the conversations. Basically, the conversation
13 was can you tell me what happened. He told me what
14 happened and then of his own free liberty he wrote it
15 down.

16 Q. That take one to two hours?

17 A. To read it, process it, and to make sure he had
18 everything right because he was the one telling the story
19 about the people that was there. Not me. He was the one,
20 you know.

21 Q. During the process of interviewing him, now, in so
22 far a police tactics are concerning. Mr. Newman, I want
23 you to think hard now, okay?

24 A. Yes, sir.

25 Q. Did you ever tell him that if he didn't cooperate and

1 give you a statement that you could or might could arrest
2 his family for accessory after the fact of this crime?

3 A. No, sir.

4 Q. Well, not his grandmomma, not his daddy or not
5 anybody that you thought might have knew that he had
6 possessed a shotgun and put it in the car?

7 A. No, sir.

8 Q. And threatened to lock up anybody in his family if he
9 didn't cooperate?

10 A. No, sir.

11 Q. You never did that?

12 A. No, sir. His brother was charged cause he was with
13 him.

14 Q. But still yet though, we don't have the benefit of
15 the audio recording of the entire interrogation so we get
16 to hear what everybody asked and everybody says?

17 A. No, sir.

18 Q. Okay.

19 MR. CANNARELLA: That's it, Your Honor.

20 MR. FOARD: Quick redirect, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. FOARD:

23 Q. Is it your department policy to record every
24 interview with every defendant?

25 A. No, sir, it is not.

1 Q. Okay. And do you record every interview with every
2 defendant?

3 A. No, sir, we do not.

4 Q. Okay. So it would not be out of the ordinary for you
5 to only reduce a statement to writing or for the defendant
6 to only reduce a statement to writing?

7 A. No, it is not at all.

8 Q. All right. Going back to the nature of the
9 statements themselves there is the written statement which
10 has been marked as Court's Exhibit Two. There were also
11 oral discussions as well?

12 A. Yes, sir.

13 Q. All right. And where did these discussions occur at?

14 A. At the same place in the same room at the Pageland
15 Police Department.

16 Q. All right then. And were they contemporaneous with
17 what was going on with the voluntary statement? Was it as
18 the same time or around about the same time?

19 A. Around about the same time.

20 Q. And so he had previously been -- he had previously
21 signed, which we have marked as Court's Exhibit One, and
22 advised of his rights for that as well?

23 A. Yes, sir.

24 Q. All right. And so that covered both anything he said
25 orally and the written statement, correct?

1 A. Correct.

2 Q. All right. Did he ever make any statement to you
3 outside of the police station?

4 A. Yes, sir, he did.

5 Q. And where did those occur at?

6 A. With Assistant Chief -- well, excuse me. Chief Brown
7 blazed the issue on the way back from retrieving the
8 weapon that was used during the incident.

9 Q. Okay. How did you know where to go retrieve the
10 weapon?

11 A. He showed us, and he explained it to us within his
12 statement, written statement, and also he voluntarily took
13 us to it.

14 Q. All right. So did you -- did you offer him anything
15 in exchange for taking you to the location or making any
16 of this oral statements on the way to or from looking at
17 that weapon?

18 A. No, sir, we did not.

19 Q. All right. Did you put him in the car and make him
20 take you somewhere?

21 A. No, sir, we did not.

22 Q. He volunteered that information?

23 A. Yes, sir.

24 Q. And took you, ultimately, to where the gun was found?

25 A. Yes, sir.

1 MR. FOARD: And beg the Court's indulgence.

2 BY MR. FOARD:

3 Q. The contents of what he said orally to you what did
4 he tell you, from what you testified previously, on the
5 way to and from and during the search for the weapon?

6 A. On the way back he stated that, "I bet you they won't
7 fuck with me no more."

8 Q. Is that the only statement he made or did he say
9 other things?

10 A. He was saying a rap song that had dealings with
11 shooting somebody or some type of shooting guns. And
12 Chief Brown directed a question to him, and he stated, "I
13 bet you they won't fuck with me no more."

14 Q. All right. And then, obviously, if you were going to
15 where the gun was he was giving you directions as well to
16 where to find the weapon in question?

17 A. Yes, sir.

18 Q. All right. And were those statements made freely and
19 voluntarily?

20 A. Yes, sir.

21 Q. Did you do anything to coerce those statements or
22 place him under duress?

23 A. No, sir.

24 Q. Did you put him in the vehicle and make him do -- say
25 those things or take you to those locations?

1 A. No, sir.

2 Q. Was the rap song that you mentioned was that playing
3 on the radio or was he just singing that?

4 A. I believe it was playing on the radio?

5 Q. And he was singing along with the radio?

6 A. I really can't be sure. It was three years ago. It
7 was a very recent song.

8 Q. Okay?

9 MR. FOARD: That's all, Your Honor.

10 RECROSS-EXAMINATION

11 MR. CANNARELLA: I may have mishap about the rap
12 song. Where was that -- was coming out of the radio?

13 A. Like I said how new it was.

14 Q. Whose radio?

15 A. Chief Brown out of the vehicle.

16 Q. He was in the car with his rap songs playing?

17 A. Yes.

18 Q. Officer Newman, let me see if I got this right, now.

19 So you finished with the statement, and you're leaving

20 Pageland P.D?

21 A. Yes, sir.

22 Q. And you walk out and you get ready to put him in the
23 car, Dameion, in the car, right?

24 A. Yes, sir.

25 Q. Okay. Well, whose car were you going to put him in?

1 Chief Brown's?

2 A. Yes, sir.

3 Q. And what were you intending to do?

4 A. He stated that he would take us to where he put the
5 weapon that was used.

6 Q. And you, because you asked him if he would show you
7 where to take him -- where it was?

8 A. As far as I can best remember he volunteered to take
9 us. He said he can show us better than he can take us.

10 Q. Well, sure. That's an important part of your
11 investigation. Ask the suspect, "Well, where is the gun,
12 right?

13 A. Yes, sir.

14 Q. I mean, anyway, y'all left there, and he cooperated
15 with you and he volunteered, said "Let me tell you where
16 the gun is without y'all even asking me?

17 A. We asked him, and he told us.

18 Q. And he told you, okay. And he took you to where it
19 was?

20 A. Yes, sir.

21 Q. Okay. Now, when he said, "I bet you they won't F
22 with me any more," now, I want you to tell us who they are
23 cause, surely, working in Pageland P.D. you know what he
24 meant by or who he meant by 'they'. Tell us they is?

25 A. He was asked about they, and he never responded.

1 Q. Well, do you have an opinion as to who they were?

2 MR. FOARD: Objection, Your Honor. The officer's
3 opinion about who they would be would be nothing but
4 speculation, and again, have nothing to do with the
5 voluntariness of the statement that would have been given.

6 THE COURT: Well, this is outside of the jury. I'm
7 interested to hear, too, if he knows.

8 BY MR. CANNARELLA:

9 Q. They, meaning the people that were at Pop's that day?

10 A. Well, he never stated who they were. He was asked
11 who they were, and he never stated.

12 Q. So he never -- so when you asked who they were he
13 never said they, meaning Red Boy, Cory Little, Tavish,
14 Seth, anybody else that was out there that night?

15 A. If he did he never said cause he was asked who they
16 were and he never responded.

17 Q. Okay. Thank you, sir.

18 THE COURT: May I see that.

19 MR. FOARD: Nothing further.

20 THE COURT: You may step down. Thank you.

21 MR. FOARD: The State calls Chief Larry Brown to the
22 stand.

23 LARRY BROWN, after being duly sworn, testified
24 as follows:

25 DIRECT EXAMINATION

1 BY MR. FOARD:

2 Q. Chief Brown, if you could give your name, please?

3 A. Larry Brown.

4 Q. And by whom are you employed?

5 A. Town of Pageland Police Department.

6 Q. And what's your position there?

7 A. Chief at the time.

8 Q. All right. In 2007 what was your position?

9 A. Assistant Chief?

10 Q. Assistance Chief, all right. In August of 2007 were
11 you involved in taking the statement from the Defendant,
12 Dameion Rivers?

13 A. Yes, sir, I was.

14 Q. All right. That statement has been previously
15 entered as Court's Exhibit Number Two, I believe, which
16 Your Honor is in possession of. Did you witness
17 Mr. Rivers' statement on that form?

18 A. Yes, sir, I did.

19 Q. You did. And so you were present when he signed that
20 voluntary statement?

21 A. Yes.

22 Q. All right. Were you -- so you were present when he
23 waived his constitutional rights as outlined on that form
24 and previously read to the Court by Officer Newman?

25 A. Yeah, on the written statement I was.

1 Q. And did you or Officer Newman place the defendant in
2 any type of duress, coerce him, make any threats or
3 promises in order to get him to make that statement?

4 A. No, sir.

5 Q. Did you withhold anything from him in order to get
6 him to make that statement?

7 A. No, sir.

8 Q. You didn't prevent him from going to the restroom or
9 depriving him access to anything that he asked for?

10 A. No, sir.

11 Q. Did at any time did he ask to invoke his rights and
12 stop any interviewing?

13 A. No, he did not.

14 Q. And did you accompany Mr. Rivers to Monroe as
15 previously testified by Officer Newman?

16 A. Yes, sir.

17 Q. And if you could tell us again. I know we've already
18 heard, but tell us again what that was to accomplish?

19 A. He told us that he put the gun in Monroe at a CVS.
20 He kept explaining to us where it was at, and he said, "I
21 can show you better than I can tell you." And I said
22 "Well, you gone take us to it?" He said, "yes," and we
23 secured him in handcuffs and took him to Monroe. And he
24 told us where it was at.

25 In the meantime we were the only police officers and

1 we were out of our area -- and he kept directing us to
2 where the gun was at because knew Officer Mikkos Newman
3 was down there looking for the gun. And Dameion kept
4 telling us where it was at.

5 Q. So you did not compel him to go with you? He
6 volunteered to go with you?

7 A. Yes, sir.

8 Q. All right. And ultimately did you retrieve a weapon
9 with that knowledge that he -- and with his direction that
10 he had given to you?

11 A. Yes, sir.

12 Q. And at any time during the trip did he ask to go back
13 to Pageland? Did he say that he wanted to get out of the
14 car? Did he give any indication that he wanted to stop
15 giving information?

16 A. No. Matter of fact he was acting pretty happy.

17 Q. What do you mean by happy? What was he doing?

18 A. He was calm, collected, cool. And like a normal day.
19 Like nothing never really happened.

20 Q. Detective Newman testified that he made some
21 statements that were not reduced to writing during the
22 time that you were retrieving the weapon; is that correct?

23 A. Yes.

24 Q. All right. And you heard Detective Newman's
25 testimony today, right?

1 A. Right.

2 Q. And would you say that's an accurate depiction of
3 those statements?

4 A. Yes. Let me clarify something. We were on the way
5 back from Monroe, and I was thinking about the whole
6 ordeal that was happening the night before about the four
7 young kids that died. I worked a murder back in the
8 March, and I asked Dameion what did he accomplish by shoot
9 Tae Bug, Little Tae Bug, and quote me, made a statement
10 that, "I bet they won't fuck with me no more," quote. And
11 Officer Newman said, "Who is they?" He didn't respond.

12 And, well, on the radio he started singing some rap
13 song. I don't know. Tupac or 50 Cent. Some song, he was
14 singing some song. I guess it was a G Song. Some hyped
15 up song. He was beginning to sing a song like that.

16 Q. Okay. Just to round everything off. He received
17 Miranda warnings at that police station?

18 A. Yes.

19 Q. He waived his right to counsel at the police station?

20 A. Yes.

21 Q. That was done in writing?

22 A. Yes.

23 Q. And at no time therefore during the time that the
24 written statement was taken or anything that happened to
25 or from Monroe did he attempt to then state he did not

1 wish to move forward with cooperating?

2 A. No, he did not.

3 Q. All right.

4 MR. FOARD: No further questions.

5 CROSS-EXAMINATION

6 BY MR. CANNARELLA:

7 Q. Chief Brown, how could he if he was writing this
8 statement and he was signing it did you ever later on
9 shortly thereafter at the police station get him to add
10 your name to the top of it so it would read, "I'm giving
11 this statement to Mikkos Newman and Larry Brown?"

12 A. I don't recall that scenario.

13 Q. Okay. Well, you signed that at the bottom were it
14 says, "Above what has been given by and this voluntary
15 statement is taken by," and you signed your name and
16 Mikkos witnesses it?

17 A. Okay.

18 Q. Right. I mean, Detective Newman, you were the
19 principal interrogator, but you weren't in the room the
20 whole thing this interrogation was going on, really, were
21 you, now?

22 A. Oh, yes, sir.

23 Q. You were there the whole time?

24 A. Let me clear something up before you go into detailed
25 question. I was in the room when he read Miranda

1 warnings, the first page. By then I walked in the room at
2 the end of that conversation.

3 Q. You were present for the entire interview is what you
4 want to say?

5 A. The interview. Not the initial Miranda warnings.

6 Q. Okay. So he Mirandized first, and the you were
7 present for the entire interview?

8 A. Yes. And he was Mirandized again on the statement.

9 Q. Okay. And that took about one to two hours?

10 A. I would say hour, few minutes, maybe, cause we ---

11 Q. You do a lot of questioning ahead of time and then
12 you tell him to write it?

13 A. Yeah.

14 Q. That's typical?

15 A. Let him tell his story first then going to write it
16 on paper and then write it in a statement.

17 Q. Okay. Then he voluntarily showed you where the gun
18 was or had you asked him where the gun was?

19 A. He asked us. He said it was there in Monroe. We
20 asked him in the interview. He wrote in his statement.
21 We asked him. Tell told us where it was at, and he got
22 confused and he said, "I will show you. I can tell you."

23 Q. Okay. And he voluntarily showed you where it was?

24 A. Yes.

25 Q. You didn't make him?

1 A. He said he would take us to go to Monroe.

2 Q. He was willing to do it?

3 A. Yes.

4 Q. They. Now, you know who they are? They won't mess
5 with me any more?

6 A. I can speculate. I can't say for sure.

7 Q. Well, speculate for us then?

8 A. I guess talking about -- he said Red Boys was
9 harassing him or chasing him or something. But I gues
10 it's Red Boy.

11 Q. Steven Benjamin Bracket.

12 A. Steven.

13 Q. You know him, don't you?

14 A. Very little.

15 Q. Okay. You know enough about him that you don't care
16 to know anything else about him, right?

17 A. We warned him to stay out of Pageland.

18 Q. Stay out. You ran him out? Back to Columbia?

19 A. He had a warrant for something, and we picked him up.

20 Q. Okay. Good for you. Thank you.

21 MR. FOARD: Nothing, Your Honor.

22 THE COURT: You may step on down, Chief.

23 MR. FOARD: That's all the State has to proffer, Your
24 Honor.

25 MR. CANNARELLA: I call Dameion Rivers, Your Honor.

1 DAMEION RIVERS, after being duly sworn,
2 testified as follows:

3 DIRECT EXAMINATION

4 BY MR. CANNARELLA:

5 Q. Dameion, do you understand the purpose of this
6 hearing right here?

7 A. Yes.

8 Q. You've got to speak up so everybody can hear you now.

9 A. Yes, I do.

10 Q. Okay. So then you understand this is just for the
11 Judge to determine if you freely and voluntarily entered
12 into your statement. Do you understand that? Do you
13 understand what I'm talking about?

14 A. Not really.

15 Q. You've got to speak up so that we can hear you.

16 A. Say that one more time. I didn't hear you.

17 Q. Okay. We are not talking about the facts of this
18 case, now. Okay. We're not talking about what that
19 statement says, do you understand that?

20 A. Okay.

21 Q. All the Judge wants to know is if you wrote that
22 statement freely and voluntarily.

23 A. I did.

24 Q. Which you say you did?

25 A. I didn't.

1 Q. Okay. That's what I want you to stick with. You
2 don't have to answer any other questions other than
3 whether or not you were forced to write that statement,
4 okay? You understand that?

5 A. Yes, sir.

6 Q. Okay. Well, were you there for between one and two
7 hours at the Pageland Police Department like Mr. Newman
8 and Mr. Brown testified to?

9 A. No, I wasn't there that long.

10 Q. You weren't there that long? Okay. But you hand
11 wrote that statement, right?

12 A. Yes, I did.

13 Q. Now, have you told me before, though, that you didn't
14 really want to write that statement?

15 A. I didn't want to write the statement at all.

16 Q. Well, why did you?

17 A. Mikkos or Officer Newman was the only one in the room
18 with me. Larry -- Chief Brown was never in the room.
19 Mikkos Newman told me that -- he told me that if I didn't
20 want to write a statement he was going to try to
21 interrogate me. I told him I didn't want to write a
22 statement. I was going to get a lawyer. He told me that
23 if I didn't write the statement my family can get charged
24 with access after the fact cause I went home after the
25 fact.

- 1 And that's when I said, "No, I didn't. I went to
- 2 Monroe." He said, "Well, that's where we got -- they got
- 3 you at home." He said, "They got you at home. So,
- 4 therefore, we can charging your family with accessory
- 5 after the fact." I said, "No. Don't put my family in
- 6 it." He said the only way -- he said, "The only way that
- 7 won't charge your family with accessory after the fact is
- 8 if you write a statement and tell us what happened on last
- 9 night."
- 10 Q. Okay. Cause you went home. He thought you had went
- 11 -- he found you at your house, right?
- 12 A. He didn't. The sheriff -- the sheriff -- the
- 13 Chesterfield County Sheriffs, they came and got me and
- 14 said I was detained or whatever.
- 15 Q. But you were arrested at your home?
- 16 A. I was arrested at my home, but an ambulance came and
- 17 picked my up. But they had me in handcuffs and then the
- 18 ambulance came because of what they said I had pills and
- 19 what not in my pocket. So I had gassed myself and all
- 20 that.
- 21 Q. Oh, you were throwing up. Is this the same night or
- 22 the next day, now?
- 23 A. No, the same night. This is the same the night that
- 24 the incident had happened.
- 25 Q. When you say 'home' you're talking about -- whose

1 home you talking about?

2 A. My grandma's house.

3 Q. What's her name?

4 A. Jeanna Rivers.

5 Q. That's where you were living?

6 A. Yes, sir.

7 Q. And your granddaddy is Curtis Peanut Rivers?

8 A. Yes, sir.

9 Q. All right. And who showed up at your house to lock
10 you up?

11 A. Chesterfield County Sheriff.

12 Q. Anybody from Pageland P.D.

13 A. One Pageland police. I can't -- I can't even
14 remember. Anyway, he handcuffed me and told me I wasn't
15 under arrest. He told me I was detained.

16 Q. Right.

17 A. He said they were going to take me to the hospital,
18 so they did take -- Chesterfield County had handcuffs on
19 me. And they said -- at first Chesterfield County had
20 handcuffs on me. They said they was waiting on Pageland
21 to come. So when Pageland came Chesterfield took their
22 handcuffs off me, and Pageland put their handcuffs on me.

23 And then they put me on the ambulance, and they took
24 the handcuffs off and cut the clothes of me that I had on.

25 Q. Okay.

1 A. So I went to the hospital. I woke up the next day I
2 remember, whatever. So when I woke up the next day they
3 told me that Mikkos ---

4 Q. When you woke up the next day. Where were you, in
5 jail?

6 A. Chesterfield General Hospital.

7 Q. Oh, Okay.

8 A. Mikkos was in the room with me, and we were going --
9 we were coming from Chesterfield. We got there. Whenever
10 we got to the Pageland Police Department Larry Brown was
11 there, and he was like, "I'm charging you with murder
12 because that boy died last night, whatever." And he left
13 out. Mikkos took me in the room.

14 Q. What room?

15 A. Some little room.

16 Q. Okay.

17 A. It was me, him and another dude. Him and a white --
18 a white sheriff. It was him and a white -- Larry Brown
19 was never in the courtroom. Larry Brown never -- Mikkos
20 got in there. The white sheriff left out. Mikkos, it's
21 my word, he starts -- he got over by me.

22 He kept trying to get me to write a statement. I
23 kept telling him I didn't want to write a statement. He
24 told me that my family could get locked up. That's the
25 only way I wrote that statement in which I didn't tell the

1 truth in my statement because I just wrote -- I just wrote
2 ---

3 Q. Just stick with free and voluntary, okay?

4 A. Okay.

5 MR. REDMOND: I'm not objecting to this portion, Your
6 Honor.

7 BY MR. CANNARELLA:

8 Q. I don't know if he will use it anyway. But, so you
9 were released from the hospital, and when you were
10 released from the hospital they took you to the police
11 department?

12 A. Straight to the police department.

13 Q. Okay. And then later on after the interrogation you
14 showed them where the gun was, right?

15 A. I showed them where the gun was. He, Mikkos Newman,
16 told me to -- he said he guarantee me bond on the first
17 time I go up if I showed him where the gun was. I was
18 already going to show them where the gun was. I wasn't
19 trying to hide nothing no way. When he said that I was
20 already ---

21 Q. So you're telling the Court that the only reason that
22 you gave that statement is because you were threatened
23 that your parents -- your grandparents or some members of
24 your family, your grandmomma or your granddaddy were going
25 to be locked up if you didn't?

1 A. That's right. He said like this, "I can lock your
2 brother up." He said, "I can lock you grandma up, your
3 momma and grandpa up and hit them all with accessory after
4 the fact if I don't get a statement."

5 Q. You know who said that?

6 A. Mikkos Newman. Larry Brown wasn't in there. It was
7 just Mikkos Newman in there.

8 Q. Okay. Answer any questions they have about whether
9 you were coerced into giving this statement, okay, or
10 forced to?

11 CROSS-EXAMINATION

12 BY MR. REDMOND:

13 Q. All right. I noticed that when Mr. Cannarella was
14 asking you initially you said quote, you weren't there
15 that long. I think he asked you if you were there an hour
16 or two. You said you weren't even there that long, isn't
17 that what you said?

18 A. Yes, sir.

19 Q. Okay. I can't hear you.

20 A. Yes, sir.

21 Q. Okay. Just wanted to make sure that's clear. All
22 right. Now, you said -- let's go back to this episode
23 y'all were talking about the night before? Where were you
24 when you had to go to the hospital?

25 A. I was at my grandma's house.

1 Q. Where is that at? That in Tee Town?

2 A. Tee Town.

3 Q. Now, when was it that you had to go to the hospital?
4 Was it the night of the shooting?

5 A. Yes, sir.

6 Q. And why did you have to go to the hospital?

7 A. I just -- I just -- it was just getting to me what
8 had happened. The situation that had happened. I was
9 trying to -- I was trying to commit suicide.

10 Q. And how did you do that?

11 A. I had pills. I was taking pills.

12 Q. Okay. You were taking pills and anything else you
13 did?

14 A. I poured gas on myself.

15 Q. You poured gas on yourself? How did you pour the gas
16 on yourself?

17 A. Poured gas on me out of a jug.

18 Q. Out of a jug on you? And what were you going to do
19 with the gas you poured on you?

20 A. I was going to -- I was just -- I don't know. My
21 mind was just gone after what had happened.

22 Q. Your mind was gone after what had happened? Did you
23 strike a match or strike a match to set yourself on fire?

24 A. No. I did have some. I didn't have the heart to go
25 through with what I was -- I wasn't planning on doing

1 anything.

2 Q. Why did you decide not to?

3 A. I just didn't have the heart to do it.

4 Q. You didn't have the heart to take your own life?

5 That's what you're telling me?

6 A. Yeah.

7 Q. Okay. Fair enough. Now, let's get into what you
8 talked about. Get back to the ambulance being called. So
9 who called the hospital? What was it caused the ambulance
10 to come out there? Did you call the hospital?

11 A. No, I didn't.

12 Q. Who did?

13 A. My family did.

14 Q. Your family called the hospital. Who was there at
15 the time that you attempted or thought about taking your
16 own life?

17 A. My family was there.

18 Q. I mean who was there? I mean when you say your
19 family who in your family?

20 A. They were looking for me. I could hear my grandma
21 and my momma calling my name.

22 Q. Okay.

23 A. And I was down in the woods. I didn't really want to
24 say. I didn't never say nothing. Then I did and I came
25 out. I had came out. When I got close to them they were

1 like asking me what was on my clothes.

2 Q. Okay.

3 A. And when they smelled it they were like you gas all
4 over your clothes. They were trying to call the
5 ambulance. That's when I took off running back down to
6 the woods.

7 Q. Wait a minute. Let me stop you right there. So when
8 that called the ambulance, you didn't tell us that before,
9 so then you started running?

10 A. Back down to the woods.

11 Q. Okay. You started running back down in the woods.
12 Why did you run?

13 A. I don't know.

14 Q. Because you had just shot Dameion -- I mean just shot
15 Tae Bug?

16 A. I ain't just shot nobody.

17 Q. Okay. So you didn't shoot anybody. We'll get into
18 that in a minute. So then why did you run?

19 A. I don't -- I told you what had happened. I was just
20 in shock.

21 Q. Okay. You were in shock about something you didn't
22 do as you just said?

23 A. Not intentionally, no, I didn't.

24 Q. Okay. Well, now, you just said you didn't shoot
25 anybody?

1 MR. CANNARELLA: Your Honor, I will object to that
2 because this is beyond the scope of Jackson v. Denno here.
3 And I ain't open the door to all that so he could develop
4 a cross examination today. Possibly use it for later on.
5 When I put him up here to testify it's for the limited
6 purpose of free, voluntarily and without coercion.

7 And I don't think I opened the door to the extent
8 that the Solicitor is trying to get into it, now. I don't
9 think he's entitled to cross-examine him for things that
10 are not pertinent to the issue of free and voluntarily
11 without any coercion. I think the scope of this hearing
12 is very, very limited.

13 MR. REDMOND: Your Honor, the only thing I would say
14 is that, and I'm actually almost done with this line of
15 questioning regarding the hospitalization. But, again,
16 that's something that was not elicited by the State. It
17 was put up there in the context of the Jackson v. Denno.
18 I think I am allowed at least some latitude on cross to
19 examine that into, based on the allegations that he's made
20 about being coerced.

21 THE COURT: Okay. I want you to show me how the
22 testimony connects to the theory of the alleged statement.
23 Otherwise I'm going to sustain the objection.

24 MR. REDMOND: Yes, sir. And if I could I'm actually
25 about to get into how he ended up encountering law

1 enforcement if I could proceed.

2 BY MR. REDMOND:

3 Q. So, okay, we talked about you, ambulance being called
4 and what not. So when did you first -- you mentioned
5 something about the officers that were there. I think you
6 said a white deputy, and who else did you say from law
7 enforcement was there?

8 A. I can't remember the sheriff that was there. I can't
9 even really remember the one or two police, Pageland
10 police, that came, but I got -- when they came and put me
11 in handcuffs on me.

12 Q. Okay.

13 A. They put -- Chesterfield County put handcuffs on me
14 and said they were waiting on Pageland to come. But the
15 ambulance was already there. I didn't know what was going
16 on.

17 Q. Okay. So, now, when did you get out of the hospital?

18 A. The next morning.

19 Q. Okay. And I didn't ask you this. About what time
20 did you go into the hospital the night before?

21 A. I don't know.

22 Q. Okay. All right. Fair enough. So you get out of
23 the hospital. What happened when you got out of the
24 hospital as it relates to your first contact with law
25 enforcement? Specifically, Pageland Police Department?

1 A. Mikkos Newman told me they wanted to question me.

2 Q. Okay. And were you taken to the Pageland Police
3 Department for questioning?

4 A. Yes, I was.

5 Q. Okay. And you mentioned that you didn't want to
6 write a statement. But then you said something that, and
7 I quote you and correct me if I'm wrong. You were already
8 going to show them where the gun was?

9 A. I was going to show them where the gun was. I didn't
10 say I was going to write a statement.

11 Q. Okay. But how were you planning to accomplish that?
12 To tell them where the gun was without telling them
13 anywhere -- anything about how the gun got there?

14 A. I was already going to tell them where the gun. I
15 wasn't trying to hide that. I was going to tell them
16 where the gun was at.

17 Q. How were you planning on doing that assuming that
18 they didn't give you a statement? How were you planning
19 on telling them where the gun was?

20 A. Say they again.

21 Q. How were you planning on telling them where the gun
22 was? Let's say the didn't ask you a thing, didn't ready
23 your Miranda, didn't try to get a statement from you. How
24 were you going to tell them where the gun was?

25 A. I was going to tell them about the gun. I was not

1 trying to hide it or make it look like that I did what I
2 was accused of. I was going to tell where the gun was. I
3 was going to tell them that much, but I was not going to
4 write a statement.

5 Q. Okay. Fair enough. Now, you talk about being
6 coerced and all. Didn't you make the comment, before your
7 lawyer tried to stop you but it's already in the record,
8 so I want to ask you about this. You said you didn't tell
9 the truth in the statement. What you lie about in the
10 statement?

11 MR. CANNARELLA: Your Honor, I'm going to object to
12 that, see, because that's -- he can't go into details of
13 that statement right now because that's not what a part of
14 this proceeding is. He thinks he can use this
15 cross-examination against him later on. That is going too
16 far afield of what the basis of this conversation -- this
17 whole thing is about.

18 THE COURT: Sustained.

19 BY MR. REDMOND:

20 Q. I'll just ask you like this. So, basically, what
21 you're telling us is that you lied in that statement?
22 That's what your testimony is today?

23 A. I did. Just to get Mikkos Newman off of me. I did.

24 Q. You lied about what was in the statement, but you
25 were going to tell them anyway where the gun was?

1 A. You can tell where the gun is without writing a
2 statement.

3 Q. Last question. How were you going to tell them where
4 the gun was?

5 A. Because I wasn't trying to hide -- what they say I
6 was accused of I wasn't trying to make it look like that's
7 what it was. So I was going to give them that gun.

8 Q. Okay. You were going to show them where you took the
9 gun, right?

10 A. That's right. That's right.

11 MR. REDMOND: I have nothing further at this point.

12 MR. CANNARELLA: No redirect, Your Honor.

13 THE COURT: I've got a couple of questions for
14 background.

15 EXAMINATION BY THE COURT

16 BY THE COURT:

17 Q. I need your age.

18 A. Twenty-one.

19 Q. So you were 18 ---

20 A. Yes, sir.

21 Q. --- when this allegedly happened?

22 A. Yes.

23 Q. And your education?

24 A. Right now or my last grade?

25 Q. What was your education when this alleged incident

1 happened?

2 A. Ninth.

3 Q. And what's your occupation?

4 A. I don't have one.

5 Q. And you've never been declared by any doctor or
6 psychiatrist or psychologist or any medical personnel,
7 you've never been declared mentally incompetent or
8 anything like that, have you?

9 A. I did used to go to mental health, Tr-County Mental
10 Health.

11 Q. Tri-County Mental Health. But you've never been
12 institutionalized?

13 A. No, I have not.

14 THE COURT: Thank you, sir. You may step down.
15 Anything else?

16 MR. CANNARELLA: Not about this, Your Honor. Not
17 from me.

18 COLLOQUY

19 MR. FOARD: Just, Your Honor, that based on the
20 testimony of Chief Brown as well as Detective Mikkos
21 Newman we feel that the State has shown that the
22 defendant's statements were given voluntarily; that he was
23 advised of his rights, and we should be allowed to use
24 that statement against him at trial.

25 THE COURT: All right. I'm not going to rule right.

1 now, because I've got to memorialize this since I've got
2 some contestation in here between the State and the
3 Defense. And I'll to that in the morning and memorialize
4 on the record.

5 MR. CANNARELLA: Your Honor, I just, of course, renew
6 my motion for a continuance based the and violation of
7 Brady and Rule Five. It's not asking too much to give me
8 30 days to have an opportunity to independently review and
9 evaluate that autopsy report. Obviously, it will be in
10 some way critical to my defense and being able to
11 materially prepare my defense. And that autopsy, if they
12 had exercised due diligence like the rules require, they
13 would have found that within three years and I would have
14 had it and we wouldn't be here.

15 Never, ever have I ever, ever in my life ever asked
16 for a continuance except for now in cases I've tried. And
17 this ain't the same. I want the opportunity to thoroughly
18 evaluate and review that autopsy so I can be prepared to
19 cross examine that doctor and put on my own witnesses, too
20 if I'm not satisfied with what his explanation of what he
21 puts in that report.

22 And it may come down to having a significant bearing
23 on the issues -- maybe on the issues of what the Judge
24 might be willing to charge to the jury in so far as
25 alternatives are concerned. And it may very well end up

1 going very, very close, Judge, to enter involuntary
2 manslaughter, self-defense in this case. And that's why
3 I'm just asking for 30 days or whatever you whenever you
4 want to do it. Just give me a couple of weeks and I'll
5 come back here and I'll try it then.

6 Just give me a shot at your own expert that you
7 didn't even bring to me until last Friday, and I'll go get
8 me one and I'll be ready. I think it's a violation of
9 Rule Five and Brady.

10 Also, Your Honor, Number -- on the State's potential
11 witness list, Number Six, was Tracy Thrower. Number
12 Either Nordred Mc Bride, and Number Nine is Cedric Dunlap.
13 Sun Kenneth Burrell is missing from that statement. I
14 know there is a recorded statement of his that I can get,
15 but Tracey Thrower and Nordred McBride and Cedric Dunlap,
16 I don't have any information on them unless there might be
17 something buried in some sort of report. I don't think
18 it's in the incident report, but who are they and what are
19 they going to testify to.

20 MR. FOARD: Your Honor, Tracey Thrower is the
21 firearms expert from S.L.E.D. which Mr. Cannarella does
22 have a copy of that report, might I add.

23 Nordrea McBride is an individual that, through the
24 State's investigation of this, he is a person who did not
25 give any written statement at the time of the incident,

1 but he has since provided us with information that we feel
2 the pertinent to the case. There is no written,
3 memorialized statement from him of any kind that would be
4 covered by Rule Five.

5 Cedric Dunlap is the brother of the victim in this
6 case, your Honor. Again, that's not anything -- there is
7 no statements that were reduced to write or anything of
8 that nature, but I have interviewed Mr. Dunlap and I
9 placed him on the witness list because I feel that it's
10 possible that he may have something to add to this, Your
11 Honor.

12 MR. CANNARELLA: So McBride is a Solicitor's
13 interviewed witness?

14 MR. FOARD: Yes.

15 MR. CANNARELLA: Okay.

16 MR. REDMOND: And that actually ---

17 MR. CANNARELLA: And so is Cedric Dunlap?

18 MR. FOARD: Yes.

19 MR. CANNARELLA: And I apologize for the error. I
20 just happened to have seen that.

21 MR. REDMOND: And, actually, that reminds me of
22 something. Just because we do have people coming in from
23 S.L.E.D. Tracey Thrower is scheduled to come in tomorrow,
24 but at one time we had discussed the possibility of the
25 stipulation as to the firearms reports.

1 I wanted to get the Defense's position on that so
2 that we can let Tracey Thrower know one way or the other.

3 MR. CANNARELLA: I think that might -- I think that
4 might have been before I was provided with the autopsy
5 report.

6 MR. REDMOND: And he's already scheduled to be here.
7 Second thing is, just to address that -- if I may briefly
8 address his motion -- his renewed motion for a
9 continuance. And I can just tell the Court, and I know
10 there one in -- there was some uncertainty as it relates
11 to that position. And, quite frankly, after the Defendant
12 testified, even though I understand it is strictly for the
13 purposes of this hearing, my concern, quite frankly, is
14 that -- and let me correct one thing.

15 That autopsy report, even though we have an open file
16 policy, it was not in the custody of law enforcement. It
17 was not ordered by anybody in the Chesterfield County law
18 enforcement or the coroner even. This was one that the
19 doctor happen to perform himself. That, and I think
20 that's a very important distinguished -- a very
21 distinguishing factor for the State being thrown under the
22 bus for violating Brady, Rule Five or Kyle v. Whatley.

23 The other thing is, and quite frankly after the
24 defendant testified today, allowing this continuance my
25 concern, quite frankly, is I don't want to give him time

1 to construct something. And I can say, of course, all the
2 evidence is not in now. But based on my review of the
3 case, and I'll be blunt about it, I don't want to give him
4 that opportunity to then try to fashion something as what
5 we've already witnessed has been attempted today.

6 He is just as prejudiced as we are in the sense that
7 we got it Thursday and sent it straight to him. And I
8 don't even think it's prejudiced. I think he would have
9 to show actual prejudice. Not just something you can
10 fortunate in your head in order to justify a continuance.
11 If we can do that I could think of a thousand reasons to
12 try to keep from doing something. Doesn't mean that they
13 hold anything that -- doesn't mean that it's something
14 that's actually substantive. It just means it's something
15 I'm using to try to create a reason.

16 And my concern, and I'll be honest with you, after
17 listening to this defendant testify that's exactly what my
18 concern is. Is a smoke screen. The autopsy report is
19 very legible. It's not that hard to understand. And I'm
20 not the smartest person in the world, but when the report
21 says, "the path of the bullet was downwards and backwards"
22 and it has a diagram showing you where the bullet entered
23 and where the different spots were. It even has the I.V's
24 marked, where the I.V's were and what not.

25 I don't think that take a rocket scientist. I don't

1 think it's enough to justify a continuance. And so with
2 that, Your Honor, I would ask, and I think I'm much more
3 firm in my position at this point, I do not think the
4 Defense should be entitled to a continuance unless there
5 is a showing of actual prejudice. And I do not think
6 they're going to be able to do that based on what is in
7 this autopsy report.

8 MR. CANNARELLA: Well, Your Honor, I admire Mr.
9 Redmond. He can pick up an autopsy report, and he can
10 read it and he can understand it and inwardly digest
11 everything that's in it and be prepared to go to trial,
12 you mean to tell me that you're going to put your medical
13 examiner on the witness stand and not even talk to him
14 ahead of time?

15 MR. REDMOND: Well, you've got that opportunity. And
16 let me just say this, Judge. And I hate to interrupt, but
17 again, it is not my job to do the Defense's job.

18 MR. CANNARELLA: It your job ---

19 MR. REDMOND: --- the phone number, the phone number
20 to Dr. Gullledge is listed on the autopsy report that you
21 received Thursday evening. In fact I picked up the phone
22 and called Dr. Gullledge. Please, Mr. Cannarella, tell me
23 what rule, what provision prohibits you from going into
24 ---

25 THE COURT: Wait a minute, now. Wait a minute. You

1 talk to me.

2 MR. REDMOND: Yes, sir.

3 THE COURT: You talk to me one at the time..

4 MR. REDMOND: My point is what would prohibit the
5 Defense from doing the exact same thing I did? I got the
6 report. Friday morning about eleven o'clock I had call
7 Dr. Gullledge to get information about, first of all,
8 whether or not he would be available. Dr. Gullledge will
9 be here in the morning at 9:30. Nothing prohibiting Mr.
10 Cannarella from having the opportunity to talk to him
11 then.

12 Sometimes what happens, Judge, and I apologize. I
13 get a little uptight about these things. The State is
14 thrown under the bus so often on situations like this
15 regarding discovery that I'm, quite frankly, sick and
16 tired of being made to feel that I got to do the Defense's
17 work for them.

18 MR. CANNARELLA: Well, Your Honor ---

19 MR. REDMOND: It's just a easy for them to pick up
20 the phone, call the 704 area code number that's listed in
21 the top third of the autopsy report and find out from
22 Dr. Gullledge himself directly. If that wasn't done, guess
23 what? It ain't my fault. So I would certainly state,
24 Your Honor, that -- the argument, the basis of the Defense
25 motion, quite frankly in the State's opinion, does not

1 hold water, and we are prepared and we want to go forward
2 with the trial of this case.

3 MR. CANNARELLA: This is a three year old case. If
4 they did exercise any due diligence whatsoever they would
5 have been already found that autopsy report. I filed a
6 motion to exhume the body. And then all of a sudden the
7 autopsy report appears on Thursday. And I don't have a
8 right to be given a reasonable opportunity to look at that
9 autopsy and study it and get -- and consult with my own
10 expert to prepare my client's defense for something that
11 might very well be material to his defense. And I've go
12 to go forward and cross-examine that doctor without the
13 benefit of having had a reasonable opportunity to study.

14 And if I were not making this motion ...

15 THE COURT: Does that autopsy say anything about this
16 victim dying of anything other than a shotgun blast?

17 MR. REDMOND: It specifically says that that is the
18 reason that the victim died.

19 THE COURT: Well, I've heard enough. I've overruled
20 on this one time. Sitting here going over what we've
21 already been over this morning.

22 MR. REDMOND: Yes, sir.

23 MR. CANNARELLA: Well, I apologize to the Court.

24 THE COURT: No, you've got to do your job.

25 MR. REDMOND: And I apologize. I know I get ---

1 THE COURT: No apology. If the autopsy says that the
2 man died of something else besides the shotgun blast then
3 tell me now cause I will grant the continuance right now.
4 But, otherwise, he either died of a shotgun blast or he
5 died of something else. Now, how complicated can that be?

6 MR. REDMOND: That's it, Your Honor. You said
7 everything. It's just that simple.

8 THE COURT: All right. We been going here for some
9 time, now. The court reporter hadn't had a chance to take
10 a break, and we've still got a lot of work to do. I'm
11 going to meet with the three attorneys one more time
12 before we leave here, please.

13 MR. REDMOND: Yes, sir.

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END OF TRANSCRIPT OF RECORD

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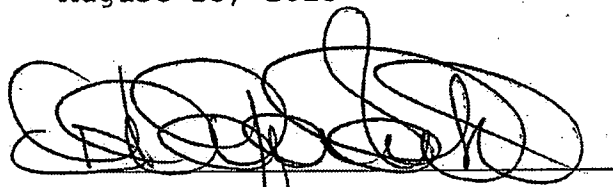
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTERFIELD)

I, HATTIE O. GORDON, Official Court Reporter for the
4th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of General Sessions for
Chesterfield County, South Carolina, on the 30th day of
August, 2010.

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

August 23, 2013

A handwritten signature in black ink, appearing to read 'Hattie O. Gordon', written over a horizontal line.

HATTIE O. GORDON, Court Reporter

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSION
<u>COUNTY OF CHESTERFIELD</u>	)	2007-GS-13-00814
		2007-GS-13-00897

STATE OF SOUTH CAROLINA	)	
PLAINTIFF	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
DAMEION RIVERS	)	
<u>PLAINTIFF</u>	)	

August 31, 2010
Chesterfield, South Carolina

B E F O R E:

THE HONORABLE PAUL M. BURCH, JUDGE.

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

ADAM FOARD, ASSISTANT SOLICITOR
Attorney for the State

KERNARD REDMOND, DEPUTY ASSISTANT SOLICITOR
Attorney for the State

PAUL CANNARELLA, ESQ.
Attorney for the Defendant

PAMELA MUNGO, DEFENDANT'S MOTHER
DEBBIE STROTTER, DEFENDANT'S AUNT
RODNEY BLAKENEY, DEFENDANT'S FATHER
GINA RIVERS, DEFENDANT'S GRANDMOTHER
PRISCILLA DUNLAP, VICTIM'S AUNT
GALA BARRENTINE, DEFENDANT'S SISTER
RONNIE GAINNEY,

HATTIE O. GORDON
Circuit Court Reporter

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2	<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
3	1	Not Included in this Record	45	45
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COLLOQUY

MR. FOARD: May it please the Court, Your Honor.

We're here in the matter of the State v. Dameion Rivers.

Docket Number 2007-GS-13-0814. He is indicted for murder.

He is pleading to voluntary manslaughter with no recommendation by the State.

And 2007-GS-13-0894, indicted for possession of a weapon during commission of a violent crime. He's pleading as indicted to that charge. Again, with no recommendation by the State.

I do have representative of the victim who are present today. I do have Ms. Pamela Mungo who was the mother of the victim. I have Mr. Rodney Blakeney who is the father of the victim, and Miss Debbie Strotter who is the aunt of the victim who would all like to address the Court at the appropriate time.

THE COURT: All right. We will take our time with this. I want to hear from everyone who wants to be heard from. So we will take our time. Mr. Rivers, your age is 21?

MR. RIVERS: Yes, sir.

THE COURT: And you're -- where do you reside?

MR. RIVERS: My grandmother's house, [REDACTED]

THE COURT: That's in Chesterfield County?

1 MR. RIVERS: Yes.

2 THE COURT: What is your education?

3 MR. RIVERS: Ninth grade education.

4 THE COURT: And where did you last work?

5 MR. RIVERS: John Berry Landscaping.

6 THE COURT: You have a G.E.D?

7 MR. RIVERS: Yes, sir.

8 THE COURT: Who is this landscaping that you worked
9 for?

10 MR. RIVERS: John Berry landscaping?

11 THE COURT: Are you married?

12 MR. RIVERS: No, sir.

13 THE COURT: You have any children?

14 MR. RIVERS: Yes, sir.

15 THE COURT: Tell me about that. What are their ages?

16 MR. RIVERS: I got one that's one that's five months,
17 and one a year and five months, and one just turned a year
18 August 25th.

19 THE COURT: Girls.

20 MR. RIVERS: I got daughters and a son.

21 THE COURT: Okay. Daughter and son. Do you have any
22 disabilities?

23 MR. RIVERS: No, sir.

24 THE COURT: All right. Under the Bill of Indictment
25 -814 you're charge with the offense of murder which you

1 are entering a plea of guilty to the offense of voluntary
2 manslaughter which is a lesser included offense of the
3 offense of murder.

4 But the indictment alleges that this homicide
5 occurred on August the 27th 2007 when you did kill one
6 Tavish Jerel Dunlap by means of shooting him and the said
7 Tavish Jerel Dunlap did die in Chesterfield County as the
8 approximate result thereof and in violation of our State
9 laws. The maximum possible punishment for voluntary
10 manslaughter is up to 30 years.

11 Now, the only difference between murder and voluntary
12 manslaughter is that murder has an element that requires
13 malice aforethought whereby manslaughter does not.
14 Manslaughter normally involves heat of passion. You're
15 also charged with possession of a weapon during the
16 commission of a violent crime. That's on Indictment -897.
17 Same date, August the 27th 2007, Chesterfield County. You
18 did display a weapon -- visibly display a weapon which is
19 a shotgun during the commission of a violent crime which
20 in this case will be voluntary manslaughter.

21 Okay, that carries up to five years, and as I said
22 manslaughter is up to 30. Therefore, I ask you how do you
23 plead to the offense of voluntary manslaughter?

24 MR. RIVERS: Plead guilty to it.

25 THE COURT: And how do you plead to the offense of

1 possession of a weapon during the commission of a violent
2 crime?

3 MR. RIVERS: Guilty.

4 THE COURT: Do you understand that by pleading guilty
5 you're giving up your constitution right to remain silent?

6 MR. RIVERS: Yes, sir.

7 THE COURT: You understand that by pleading guilty
8 you're giving up your constitutional right to a jury
9 trial?

10 MR. RIVERS: Yes, sir.

11 THE COURT: You fully understand that if you had a
12 jury trial that you would have the right to confront the
13 witnesses against you, and the State of South Carolina
14 would have to establish your guilt beyond a reasonable
15 doubt. And you could put up such evidence or such
16 defenses that you have. In other words when I say,
17 'confront' that means you can cross examine through your
18 attorney. You can cross-examine the State's witnesses.

19 MR. RIVERS: Yes, sir.

20 THE COURT: You also understand that you are presumed
21 to be innocent and that presumption stays with you
22 throughout any trial.

23 MR. RIVERS: Yes, sir.

24 THE COURT: That presumption would only end if a
25 jury convicted you, you understand?

1 MR. RIVERS: Yes, sir.

2 THE COURT: You understand that you would have a
3 right to testify at our own defense during the trial.
4 However, you wouldn't have to, but you would have a
5 constitution right not to testify. And I would even
6 instruct the jury not to told your failure to testify
7 or your -- excuse me. I shouldn't say failure. Let me
8 strike that.

9 Your election, your election to testify against you,
10 and before you could be convicted you understand that all
11 12 jurors must agree that you're guilty. In other words
12 it would be to be a unanimous decision of 12 jurors, you
13 understand that?

14 MR. RIVERS: Yes, sir.

15 THE COURT: You also understand that if you were
16 convicted you would have a right to appeal.

17 MR. RIVERS: Yes, sir.

18 THE COURT: Appellate rights ---

19 MR. RIVERS: Yes, sir.

20 THE COURT: --- work like this. If you disagree,
21 think the Court has erred on something you would have ten
22 days to file a Notice of Appeal in order to perfect that
23 appeal?

24 MR. RIVERS: Yes, sir.

25 THE COURT: You understand that if I agree to accept

1 your pleas that you have in effect said, "I do not want or
2 wish to be tried by a jury. I wish to give up that right
3 and proceed to plead guilty." Is that what you're saying?

4 MR. RIVERS: Yes, sir.

5 THE COURT: Now, have you got any questions about
6 your jury trial rights that I just went over? You
7 understand them?

8 MR. RIVERS: Yes, sir.

9 THE COURT: Has anybody promised you anything? Held
10 out any hope of reward? Or threatened you in any way in
11 order to get you to plead guilty?

12 MR. RIVERS: No, sir.

13 THE COURT: As I understand it there are no
14 negotiations or recommendations for the Court at this
15 time?

16 MR. FOARD: That is correct, Your Honor.

17 THE COURT: Mr. Cannarella.

18 MR. CANNARELLA: Yes, sir.

19 THE COURT: Mr. Rivers, you're satisfied with the
20 manner in which your attorney has advised you and
21 represented your in this case?

22 MR. RIVERS: Yes, sir.

23 THE COURT: Has he done everything in your behalf
24 that you think he could or should have done?

25 MR. RIVERS: Yes, sir.

1 THE COURT: What you've asked him to do?

2 MR. RIVERS: Yes, sir.

3 THE COURT: Contacted everybody that you asked him to
4 contact, if anybody?

5 MR. RIVERS: Yes, sir.

6 THE COURT: If you've had any problem with his
7 representation please tell me now.

8 MR. RIVERS: I got no problem.

9 THE COURT: Okay. And you have thoroughly talked
10 over this plea with him?

11 MR. RIVERS: Yes, sir.

12 THE COURT: And this is your decision?

13 MR. RIVERS: Yes, sir.

14 THE COURT: Nobody is making you do this.

15 MR. RIVERS: No, sir.

16 THE COURT: And it's your decision of our own free
17 will and accord?

18 MR. RIVERS: Yes, sir.

19 THE COURT: Now, are you today under the influence of
20 any alcohol, drugs or medication?

21 MR. RIVERS: No, sir.

22 THE COURT: Are you aware of any physical, emotional
23 or nervous disorder that might be keeping you from
24 understanding what you're doing at this time?

25 MR. RIVERS: No, sir.

1 THE COURT: Do you indeed understand what you're
2 doing?

3 MR. RIVERS: Yes, sir.

4 THE COURT: You have any complaints about any
5 mistreatment concerning this plea?

6 MR. RIVERS: No, sir, I don't.

7 THE COURT: Once again now, are you entering this
8 plea of your own free will and accord?

9 MR. RIVERS: Yes, sir, I am.

10 THE COURT: What are you guilty of?

11 MR. RIVERS: Voluntary manslaughter and possession of
12 a weapon.

13 THE COURT: All right. Now, I have made no
14 representation to you about the classification of these
15 crimes, but we're going to discuss that a little bit at
16 this time before I finalize this. Do you understand that
17 voluntary manslaughter is a most serious violent crime?

18 MR. RIVERS: Yes, sir.

19 THE COURT: And you understand that possession of a
20 weapon during the commission of a violent crime as I have
21 classified as non-violent. And you understand that --
22 have you discussed with your attorney the 85 Percent Rule
23 or anything like that? Parole eligibility?

24 MR. RIVERS: No, sir.

25 THE COURT: I don't know what y'all discussed.

1 That's really not any of my concern. I just want you to
2 know that I am in no way advising you on that because I
3 can't keep up with all the rules and regulations up there.
4 But as far as I'm concerned whatever sentence you get you
5 could actually expect the serve the entire amount of it as
6 far as the Court is the concerned because I would not dare
7 try to advise you as to what the Department of Corrections
8 might or would do?

9 MR. RIVERS: Yes, sir, I understand.

10 THE COURT: Now, before I accept the plea you got any
11 questions about anything that I've gone over with you?

12 MR. RIVERS: No, sir, I don't.

13 THE COURT: I find that your decision to enter this
14 plea is freely, voluntarily and intelligently made.
15 You've had the advice of counsel of a competent attorney
16 with whom you say you're satisfied. Plea is accepted. At
17 this time now we will let the jury back in. They've been
18 back there all morning.

19 (WHEREUPON, the jury panel enters the courtroom at
20 11:07 a.m.)

21 THE COURT: Jury may be seated. Good morning. I
22 know all of you say, "Judge, why you tell us to be back
23 down here at 9:30 and here it is after eleven o'clock?"
24 Well, we needed you here at 9:30 but when I got here a
25 little bit before 9:30 this morning I was requested by

1 counsel involved in this case that they needed some time
2 to discuss some things. And good news for you is that
3 this case is now resolved by a guilty plea. And I want to
4 thank you for your patience back there. If you hadn't
5 been there and ready to go it right not have resolved.

6 The mere fact that you were here helped us in
7 resolving this matter up to this point. This was a tragic
8 case. I can tell you that. We are in the middle of this
9 plea and I didn't want to keep y'all cooped up back there
10 any longer. So after I accepted the plea it is certainly
11 permissible for y'all to come out and hear basically what
12 happened and the resolution of this matter.

13 So if y'all will just bare with us we'll work through
14 this and try to get you out of here as soon as possible.
15 All right. Solicitor.

16 MR. FOARD: Your Honor, on August the 27th of 2007
17 officers with the Pageland Police Department responded to
18 214 North Elm Street in the Town of Pageland here in
19 Chesterfield County in response to a call that an
20 individual had been shot. This was located outside of
21 Pop's Game Room on North Elm Street.

22 When law enforcement arrived they found the victim,
23 Tavish Dunlap, on the ground bleeding having suffered a
24 shotgun wound to his abdomen, Your Honor. Investigation
25 at the scene as well as later on indicated that the

1 suspect in this incident was Dameion Rivers, the defendant
2 in this matter. Ultimately, Mr. Dunlap was air lifted to
3 CMC Medical Center in North Carolina, however, he did not
4 survive. Speaking with the witnesses at the scene then
5 Chief Assistant Brown and Detective Mikkos Newman
6 determined that these witnesses had seen Dameion Rivers
7 step from an automobile, a black Pontiac Grand Am, and
8 fired at Tavish Dunlap with the shotgun as I previously
9 stated.

10 Subsequent to this Mr. Rivers was arrested. He did
11 provide a written statement in the matter. He did tell
12 officers that he in fact did shot Tavish Dunlap with that
13 shotgun, and he then volunteered to take law enforcement
14 to Monroe, North Carolina where he disposed of the weapon.
15 Upon being transported to Monroe, North Carolina the
16 weapon was located right off of Highway 74
17 approximately -- I'm sure Your Honor is familiar with the
18 location where Highway 74 crosses some railroad tracks and
19 Monroe Hardware is off to your right, the Monroe Hardware
20 Distribution Center; that being just north of CMC Union
21 Medical Center.

22 The weapon was retrieved. Ultimately, testing by the
23 State Law Enforcement Division did match that weapon to a
24 shell casing found at the scene. That shell casing was
25 loaded with bird shot that was consistent with bird shot

1 that was found inside the victim, Tavish Dunlap.

2 Your Honor, the Defendant, Dameion Rivers, with
3 regards to his prior history, he has a conviction for
4 public disorderly conduct in 2006. Another in 2006.
5 Another in 2007. He has a conviction for criminal
6 domestic violence first in 2007 as well. However, as Your
7 Honor knows those are all Magistrate level offenses. He
8 does not have any record in General Sessions Court. At
9 this time I would defer to Deputy Solicitor Kennard
10 Redmond, who I believe would like to make a few remarks.

11 MR. REDMOND: Briefly, Your Honor. I just wanted to
12 recognize a few people in addition to, obviously, the
13 officer with the Pageland Police Department for solving
14 this crime in such a fast fashion. Tracy Thrower is here
15 from S.L.E.D. He actually is the agent who analyzed the
16 weapon and the casings and what not. Agent Thrower, he
17 came here from Columbia prepared to testify today.

18 But then I also want to especially recognize Dr.
19 Christopher Gullledge, if he could stand. He's from the
20 Medical Examiner's Office in Mecklenburg County. Of
21 course, as the Court heard during pretrial matters that
22 the autopsy was a pretty significant issue. And what
23 happened was, and as I explained at that time, but Dr.
24 Gullledge actually took it upon himself to conduct this
25 autopsy which had he not done that, quite frankly, I feel

1 that we might not have this plea being taken at this
2 particular time.

3 And part of the reason was because he has ties to
4 Chesterfield County. Believe his parents are from
5 Chesterfield County, and so he was familiar with the
6 County. And when he became aware that Mr. Dunlap was a
7 Chesterfield County resident, even though not requested,
8 he undertook it himself to do this autopsy. And as, of
9 course, we discovered last week that, again, I think
10 significantly led towards the resolution of this case by
11 this plea.

12 I just want to especially recognize him for being
13 kind enough to come down without a subpoena. I didn't
14 have a chance to get a subpoena to him. Talked to him
15 Friday, and here he is today prepared to testify. I just
16 needed to make those two things aware to the Court.

17 THE COURT: Dr. Gullledge.

18 DR. GULLIGH: Yes, sir.

19 THE COURT: Thank you for taking interest in this
20 case and being here ready to two ---

21 DR. GULLIGH: Yes, sir.

22 THE COURT: --- with this matter. We know that you
23 had to travel some ways this morning, and thank you so
24 much for your patience with us and. S.L.E.D. Agent
25 Thrower, I know we interpreted your plans for the week. I

1 could hear that in discussions with counsel yesterday.
2 Thank you for adjusting your schedule and coming up and
3 being with us.

4 MR. FOARD: Your Honor, we do have victims who would
5 like to speak at the appropriate time, but I know that
6 Your Honor likes to do that at the appropriate time.

7 THE COURT: I always let the victims have the last
8 say.

9 MR. FOARD: Nothing further from the State.

10 THE COURT: Mr. Cannarella.

11 MR. CANNARELLA: Your Honor, it really is sad that
12 this happened. I can't say that there is no -- there is
13 any excuse for it because Dameion got out of the car
14 basically with a shotgun. But these families are
15 connected because Michael, he is the gentlemen standing
16 right here, who is Dameion's brother. See, the Tavish
17 Dunlap, the gentlemen that passed away, his -- Michael is
18 basically his brother in law because Michael is dating
19 Shai, the sister, and they have a baby together.

20 I think Shai is pregnant actually when this happened,
21 and there is never ever been any of thea that I know of
22 through my investigation of this case, I don't think that
23 there's ever really been any real bad blood or prior
24 difficulty between Dameion and Tavish or between any of
25 them for that matter. But from -- here's what I believe

1 happened, Judge. This guy named Steven Bradley, he comes
2 to town and he's from Columbia. And he goes by the
3 nickname of Red Boy, and he had been here for quite -- for
4 how long I don't know. For some time. And there was some
5 association with Red Boy or Red Boy association --
6 associated with people on both sides of this. And I think
7 that they all, Dameion, Michael and Tavish and Red Boy, I
8 think they's all been in places together before this
9 incident occurred.

10 By what happened some days before the incident at
11 Pops, and law enforcement can bare this out, are Red Boy
12 believed that -- erroneously believed that Dameion was a
13 snitch. And the reason that's so is because Dameion and
14 Michael were at this place, this Chamber's residence, and
15 Tavish and the other ones and Red Boy were there. And
16 they saw some things that didn't necessarily mean all that
17 to them.

18 But after they -- after Michael and Dameion left the
19 residence where Red Boy was Michael and Dameion, they come
20 on back into town in Pageland. They track on to McGregor
21 where the Marathon Gas Station is. That's where Dodson
22 Creek is. Where Virginia Rivers lives. Well, it just so
23 happened that Red Boy was in behind them. He doesn't go
24 straight to what I would call the T section of McGregor.
25 Now, he makes a left, and he goes down Elm Street and

1 pulls off across the street from Jerome's at a house.

2 Well, it just so happens that Chief Brown, his
3 officers, pull the car that Red Boy is in and there is
4 marijuana in there. So, see, Red Boy for that reason
5 believed that Dameion was a snitch. Sometime after that
6 Vivian, this is what I've been told, Vivian McBride, cop
7 sees the mother of Billy Jean, a younger female child.
8 And Vivian -- well, Billy Jean McBride and Tavish have a
9 child together.

10 So Vivian calls Dameion, "Do you know where Billy
11 Jean is and Billy Jean," and he said, "Up there at the --
12 he believed that she was up at the Villager Hotel. Well,
13 see, and Red Boy was at the Villager Hotel, and the police
14 went over there as a result of Vivian McBride calling the
15 police department and -- the police to get her daughter
16 out of there. Well, I don't know if they found any drugs
17 in there or not. Chief Brown would know, but that's two
18 times that Red Boy is really thinking that Dameion is a
19 snitch.

20 Now, Dameion had some problems in the past with the
21 police in so far as drugs are concerned, but Dameion was
22 charged with possession, simple possession of cocaine, and
23 he didn't have a prior record. So the Pageland P.D, they
24 worked P.T.I. out for him. So I don't know if that also
25 figures into the equation. Well, in other words, Dameion,

1 he's the -- okay, so Red Boy, he's not really all that
2 familiar to my knowledge of you know what's down here. He
3 come down there to deal drugs is what he's doing, and he
4 got ran off after this. Officers with the Pageland P.D.
5 ran him off cause he was also wanted in Columbia, and he
6 might be doing some time now.

7 So on the day, on the day this happened Michael and
8 Dameion had gone over to Yoshea Chamber's, and that's
9 their cousin's house. All right. And even based on the
10 statements that I've read, even for -- and that's on the
11 other side of Pageland. I forget the name of the road
12 that crosses from Thompson Creek and Coon Creek. But the
13 two brothers go over there to their cousin's house and
14 that's the same place that they first -- where Red Boy
15 back then when there was some dope in the house. Some --
16 cutting some stuff up, some weed.

17 All right. So on the day in question though they go
18 to -- Dameion and Michael go to Yoshea Chamber's house.
19 She's there. Darsha, a younger child is there. Monica
20 Reed is there, and they have a statement from Monica Reed.
21 Well, according to Monica Reed's statement -- State
22 subpoenaed witness. After she enters the Chamber's house
23 somebody calls looking for Dameion. Dameion hadn't even
24 gotten there yet, and the people that called I don't know
25 why they would ever have any reason to believe Dameion was

1 even going over there.

2 But Dameion and Michael went over there to the
3 cousin's house, Yoshea. And when they get there Dameion
4 gets on the phone. He uses the land line phone at
5 Yoshea's house; and he calls Kim in North Carolina. It's
6 a girl he knows, and while he's on the twice there is a
7 beeping in on that phone.

8 So we're at Yoshea Chamber's house. Combraco. Okay,
9 so he -- somebody has already called there looking for
10 Michael -- I mean Dameion. But then while Dameion is on
11 the phone talking on Yoshea's phone two beeps come in. We
12 all on the same page with this. Both sides on the same
13 page with this. And somebody on the other line is making
14 threatening remarks to him. Now, he was just -- the first
15 beep in he talked to Kim, the girl up there in North
16 Carolina the female acquaintance. Hold on. You've got a
17 beep. She hears, somebody's threatening you.

18 And then he's talking -- when he gets back on the
19 phone with Kim again and then hears another beep coming
20 in. This time Monica -- I think it's in Monica's
21 statement that she is listening to somebody over that
22 phone threatening him. I'm going to whip your butt and
23 I'm going to beat your A double S. And all that. You put
24 the cane down on me. So see, he's thinking at that time
25 that's Red Boy saying that. Now, so they leave there.

1 Now, Monica -- Monica in her statement she had said
2 she knew it came from Pops. But they don't realize that
3 really -- they don't realize it came from Pops. And
4 another thing, too, they had no reason to believe that
5 Tavish was anywhere -- they didn't hear Tavish on the
6 phone or in the background talking when Red Boy said --
7 must have been Red Boy, "You put the cane on me twice."

8 Okay, so they leave there, and they leave there and
9 then they go down to -- they coming to what I call the T
10 section McGregor. And, now, Eltoya has supposedly just
11 left this place called Pop which you leave and you pull
12 out there and you go back up Elm and get to McGregor. And
13 she came in behind him and she was flashing the light.
14 Well, they didn't know who that was to start with, but
15 then they looked out and, yeah, it was Eltoya.

16 Now, Eltoya as I understand was at that time was
17 talking with or had a relationship with Tavish Dunlap.
18 Okay, now, Eltoya's statements are that Michael actually
19 gets out the car. They stopped at Jim's. A place called
20 Jim's, and Michael got out the car. He goes inside.
21 Eltoya borrows \$3, but what's not good ask that Eltoya
22 would testify that he said, "I'm getting the Mossburg and
23 clean that crew out down at Pops." Okay.

24 Well, that wouldn't be good for us, but you know what
25 is wasn't a Mossburg. I forget the name of the weapon,

1 but it wasn't a Mossburg. They leave there and they go to
2 Camelot, Number 16 at Camelot to pick up John Boy
3 Crawford. Okay. They're -- there is some -- John Boy is
4 advised about, you know, these threats and everything
5 else. So they -- but John Boy wants to ride, and it's in
6 John Boy's statement. So they leave Camelot. At this
7 time it's three of them in the car. There is no weapon at
8 the point in time.

9 They go to grandma's house, and I'm convinced that
10 unbeknownst to Michael he puts the shotgun -- he gets the
11 shotgun and his grandfather tells me -- his grandfather
12 has never seen it before. He didn't know anything about
13 it. And he puts it down his pant leg. Well, see at that
14 point in time though he harbors no ill will or malice
15 aforethought or any premeditation about anything before
16 Tavish cause Tavish ain't really anywhere in the picture
17 in terms of those threats.

18 All right. But, see, you've got Red Boy making those
19 threats to him. All right. So you would initially
20 believe that, well, he's armed himself to go cause some
21 trouble. And that would be a reasonable belief. But I
22 don't call him no gun slinging killer like in the wild,
23 wild west. They call him in the streets now the Accident
24 Killer. The Accident Killer. They make fun of him. And
25 they say, "You ain't really killed nobody. Boy, you just

1 an accident killer. You ain't really a murderer," jinking
2 at him.

3 So anyway, they leave. They leave grandma's house
4 and Michael and Dameion has got the gun stuck down his
5 pants leg, okay. And they go to Coon. They leave
6 Thompson Creek at grandma's house and Jean Rivers and go
7 to Coon Creek. And Coon Creek, you know where it is
8 better than I do cause this is confirmed by Jonathan
9 Crawford, the guy who was riding in the back seat of the
10 car, confirmed in his statement that he's taken there.
11 He's taken to his daddy's house. All right.

12 And they're going back downtown and Jonathan
13 Crawford, I believe he says this in his statement, I'm
14 pretty sure. "I was wanting them to give me a ride to
15 Jessica's." Well, I don't really know where Jessica is,
16 but probably they could have taken a different route than
17 they took cause they go down McGregor and take a right and
18 gone down Elm.

19 Now, Michael is driving. And his testimony would be
20 that he rode by there and he saw Tavish. That's his, you
21 know, he's got -- he's having a baby with Tavish's sister.
22 And it's never been any bad blood between these people
23 that I know of; that I can find out about. Everybody told
24 me they passed fine and turned around. Jonathan Crawford
25 is in the back seat. He even says somebody flagged

1 Michael over.

2 Now, there might be a dispute about that, but I don't
3 think this is really any set up cause they didn't really
4 know -- they didn't really have any reason to believe
5 necessarily that he was -- that Red Boy was at Pop's. And
6 I don't even know if Red Boy was at Pop's because Tavish
7 was outside and Tavish was standing out there with Kory
8 Little. And they turned around and they pulled up .

9 Well, the thing that Dameion should have done Dameion
10 stepped out of the car and his gun was between his legs.
11 Now, and they were parked on the grassy side of the road
12 that runs down the side of the pond. So he's not there
13 to cause any problems with Tabo, which is Tavish's name.
14 He's not there to cause any problems with him, but our
15 evidence would be, Judge, and I don't know that anybody
16 would dispute this, except that there are some things that
17 we don't have that we would like to have if this is the
18 town right here and this is Pop's sitting right here and
19 here is that side road. So they go down to Jerome's and
20 turn around and come in and park at the angle and park on
21 the grass. So I believe that the event occurred right
22 near to or close to their vehicle. When they pulled up
23 where no other vehicles were parked.

24 So not being hostile necessarily, but Tavish walks up
25 to -- walks towards Dameion, okay. And I'm let Michael

1 tell you and Dameion tell you what occurred there. But
2 after the event, yes, they left. They went to Union.
3 John Boy Crawford ran off. They got back in the car.
4 They drove to Union County, and they through the gun away.
5 And but now then they cooperate and they carried them
6 where the gun was.

7 But before they tell you about the events that
8 occurred right then and there is I do know this. It is
9 undisputed that they say it was a closed gunshot wound.
10 The wadding that holds to pellet inside the casing, it was
11 inside. It's very close. There is no soot. There is no
12 stippling, but I would think that it was almost like a
13 contact wound. If you don't have any of that it's almost
14 like a contact wound. So that means that there was no
15 distance. I want to be able -- it wasn't like boom, I'm
16 just going to shoot you cause you're now aligned with Red
17 Boy. It wasn't anything like that.

18 You see Tavish walked up to -- was walking towards
19 Dameion. I think that to some extent, unfortunately -- I
20 mean he has no excuse for getting out the car with this
21 gun. There is no excuse for it. He was acting unlawfully
22 when he did that. That would eliminate any particular
23 charge on the law. And but I think that to some extent --
24 and spending time with Michael if Michael -- he, you know,
25 he knew -- I mean he was a friend of Tabo. He thought

1 Tabo changed a little bit because he was associated with
2 Red Boy. That's what Michael tells me, and that's what
3 Michael thinks.

4 So, anyway, Dameion Rivers, I believe misread Tabo's
5 aggressiveness. At that point in time. you know how
6 things change. I don't really fully understand the
7 dynamics of it. The relationship, you know how one minute
8 they're together or down with each other. The next day
9 they end it. I don't understand all that. I don't really
10 know how that works in as far as the friendship are
11 concerned.

12 But it was a close gunshot wound not a distant
13 gunshot wound. That occurred at -- it occurred -- that
14 had to occur on the grass. On that rocky little parking
15 lot. So when they pulled up there Tavish walked over to
16 them and Michael -- I mean I believe Dameion when he tells
17 me that he was actually backing up. He was actually
18 backing up when the gun went off.

19 I mean to suggest involuntary. Well, there was in
20 this pump, in this 12 gauge pump there was a plug and
21 there was two rounds in the magazine and one in the
22 barrel. So when the one in the barrel went off you know
23 they found it on the ground, the shot shell. Well, the
24 only way that was going to happen is if you stop to
25 reload. So you know stepping out the car and self-defense

1 and involuntary and that demonstration would cause me some
2 concern in the trial of the case.

3 But a killer in his heart he's not. He hates it. I
4 mean it's really been a tragedy for both sides. He didn't
5 go over there intending for that to happen. He had to
6 accept the consequences of it because he stepped out of
7 the car with the gun and Michael was there. And, "Michael
8 is credible to me" is what he says that he saw. And
9 before -- this is -- I've looked at all the testimony.
10 But there is no shoes. The victim's shoe was not anywhere
11 around. He had on some black footies.

12 I don't know that anything was in his pockets. I
13 don't know if he had anything in his pockets or if
14 anything -- or if there was anything in his pockets, and
15 he had a 380, a black 380 stuck down in his belt. And he
16 was wearing a white belt around his black shorts.

17 This might be a coincidence, but several months later
18 out of six Tavish's brother -- I believe Tavish's brother
19 was arrested, and it might have been a joint possession,
20 several people around the vehicle, but Tavish's brother
21 was arrested, and I've been told -- I've not verified it,
22 but somebody can call me incorrectly on it but it matched
23 the description of what Michael said he saw.

24 And I don't know -- I mean Michael is going to take
25 up for his brother, but -- and you know he said there was

1 a gun there. Jonathan Crawford didn't acknowledge that.
2 Jonathan Crawford say in his statement, Tavish, Tavish,
3 Tavish, Tavish. So see Michael foolishly having the
4 shotgun out there. I mean he back it up. I mean Dameion,
5 he's backing up. I know there is not any witnesses going
6 to say the jumped out the car and ran over there for some
7 feet and fired some distance and shot Tabo because it was
8 too close. It was almost a contact.

9 It happened right there at the car on the grass where
10 they were parked. So I mean he came out with the weapon,
11 but he didn't make it. He doesn't forgive him for what he
12 did, but he wasn't hit. He had a gun. He didn't make any
13 aggressive moves towards Tabo. Tabo was nowhere in the
14 equation. This was just a real sad, unfortunate, should
15 have never happened event for which he's got to accept
16 responsibility and pay the price for.

17 I would like for you to hear from Michael. Michael
18 is under -- Michael is charged, too. He's under
19 indictment, too, but he's going to just tell -- talk to
20 you about what he saw.

21 MR. FOARD: Your Honor, I would advise that he is
22 under indictment, and the State does plan on going forward
23 and we will be seeking a disposition on his case as well.
24 And so anything that he states in open Court and on the
25 record we would move to use against him at a later time.

1 MR. CANNARELLA: Okay. All right. I'll tell you
2 exactly what happened. Tabo comes up here and he's got
3 the long white tee shirt on. He says, "What you got that
4 big old gun for, man?" Now, he's walking towards him. He
5 doesn't mean -- see, now, him cut from a different cloth
6 so to speak, never should have been. Tabo said, "No, man.
7 No, dog. No, dog. If you're going to shot anybody you're
8 going to shoot me." And he had the gun, and the 380 is
9 sitting right there.

10 And he kept going and then Jonathan Crawford said --
11 and he's backing up the whole time. And that's how it
12 happened. He really -- he pulled the trigger because he
13 was scared, but I don't think Tabo necessarily was going
14 on do any real harm to him. I think Tabo was going to
15 take the gun from him and slap him and send him home but
16 the gun went off. That's why they call him the Accident
17 killer.

18 And but you know I think there is some
19 corroborating -- some substantial -- some circumstantial
20 corroborating evidence to the existence of a weapon
21 because I mean it's kind of odd. No shoes, nothing in his
22 pockets. I think somebody took his shoes and the stuff
23 out of his pockets and took the gun. And Kory Little was
24 there, and Kory little is in prison in North Carolina
25 right now await a trial for murder cause he took.-- he and

1 four other people -- three other people -- him and another
2 guy are still in prison there now waiting disposition.
3 Kory Little took an S.K.S, allegedly, and fired into a
4 dwelling in North Carolina and killed a 15 year old child.

5 And that's who was out there right now -- out there
6 that night. So the dynamics of this thing, I don't know
7 it just started unraveling in a terrible, unfortunate set
8 of circumstances. That's my list to tell you everything I
9 know, Judge.

10 THE COURT: Mr. Rivers.

11 MR. RIVERS: I just want to say that I'm sorry that
12 it happened. I mean like the way people got it it didn't
13 happen the way people said it happen. They never heard my
14 side of the story. I just want to want say that it wasn't
15 meant for him. The shot, it wasn't meant for him. I
16 never even pulled the trigger. I never pulled the
17 trigger. I fell back on the car. The gun went off, and
18 it hit him. He was so close that he did fall on the
19 barrel. This is no lie.

20 He did swing at me and which I fell back and the
21 long -- the gun was -- did hit up against the car and it
22 did go off. He fell when he swung, fell frontwards. When
23 he swung he fell. When he got hit he fell frontwards.
24 That's why they found him laying face down or whatever.

25 When we was leaving I did see Kory run up to him. I

1 did see Kory run to him while we were leaving, and that
2 gun that he had I did have that gun. And he did have on
3 shoes. Now, I don't know if he took the stuff off of him
4 or not, but I do believe that he did took the stuff off of
5 him. They didn't find it. I believe he did take
6 everything off of him. But I am sorry for what happened.
7 I didn't intend to go and kill your son.

8 THE COURT: Anything else, Mr. Cannarella, the
9 family?

10 MR. CANNARELLA: Ms. Rivers, Gina Rivers, Your Honor,
11 standing down there. That's Dameion's grandmomma. Gina
12 Rivers would like to speak.

13 MS. RIVERS: That night I was driving coming in the
14 yard and they were getting ready to pull out. Michael,
15 Dameion, and John Boy. I pulled up beside the car and I
16 ask them, "Where are y'all going." And they said,
17 "Dameion's grandma. Going to meet -- to drop John Boy
18 off. You cook yet?" I said, "No." He said, "Michael is
19 going to bring me back home in a little bit and Michael is
20 going home to go to school."

21 I said by that time dinner will be done. So that's
22 the last. That was done. But if they were going to
23 intentionally harm somebody they wouldn't ask about no
24 food or they were coming back home so Michael could go to
25 school the next morning. So I don't believe

1 intentionally -- I'm sorry. I want it say to the family
2 I'm very, very sorry.

3 But, intentionally, Your Honor, that was not what
4 happened. That was not intentionally supposed to happen.

5 MR. REDMOND: Your Honor, may we approach for just a
6 second with Mr. Cannarella.

7 (WHEREUPON, a bench conference was held off the
8 record.)

9 THE COURT: Anyone else?

10 MR. CANNARELLA: Your Honor, there is Mr. Curtis
11 Peanut Rivers. That's the granddad.

12 MR. C. RIVERS: I know for myself that he's not a bad
13 kid, and I know intentionally he would not have done what
14 happened. What happened had to be an accident. I stayed
15 on him all the time. Don't to that. Don't do that. So
16 I'm -- I don't think none of this was intentional. I
17 think it just got out of hand. I mean don't blame him as
18 a bad kid. He's not never had been. We all have done
19 something. You know what I'm saying, but this is just
20 something that is obviously an accident.

21 And so I mean people saying that he meant this. He
22 didn't mean for that, but that doesn't matter. That just
23 was an accident because I stayed up on him all the time.
24 And I'm pretty much come do that, and I have had to do
25 that. Not since they been up. Kind of obey me like, but

1 when they were little I put him to try to do the right
2 thing. That's all I got to say.

3 THE COURT: All right. Let me -- I heard what you
4 had to say about the 380 pistol. Apparently, there is no
5 evidence here that it was drawn and used in a threatening
6 manner. Self-defense.

7 MR. CANNARELLA: Would not be -- hard cause ---

8 THE COURT: Sort of teetering here about maybe an
9 argument about accident. Clarify your position.

10 MR. CANNARELLA: Well, Judge, my position on that,
11 well, see to get a self-defense charge the first thing is
12 was he at fault in bringing about the immediate
13 difficulty. That's going to be time sensitive. I thought
14 that even if the jury -- I don't know that I can get a
15 charge on that cause if I went to a place with a weapon,
16 all that. Illegal to start with. Front end I was at
17 fault in bringing about the difficulty by having the
18 weapon there to start with.

19 I wasn't going to be in a position to argue that he
20 wasn't at fault in bringing about the immediate difficulty
21 cause the immediate difficulty was the aggression of the
22 other party. I think that would have been a stretch, both
23 factually and legally. And when it comes down to an
24 accident, I would never get an accident charge to the jury
25 because he was acting unlawfully to start with. You have

1 to be acting lawfully in causing the death of someone else
2 for it to be an accident.

3 Like if I believe if you know we were cleaning a gun
4 and it went off. I have -- I was acting lawfully. But,
5 now, If we were drinking I would be acting criminally
6 negligent if I dropped it. So I don't think accident
7 would have been -- I don't think I could have established
8 anything in the record to justify accident. It was too
9 much of a risk to -- on self-defense charge.

10 THE COURT: All right. You discussed this with
11 Mr. Rivers?

12 MR. CANNARELLA: Yes, sir, I discussed this.

13 THE COURT: Cause later on I don't want him coming up
14 and saying that you didn't do your job.

15 MR. CANNARELLA: And on the tail end of that,
16 arguably, a duty to retreat you know. So I don't think it
17 would have been enough in the record in my opinion -- it
18 would have been enough in the record to justify. Never
19 enough for an accident. Involuntary -- I mean
20 self-defense, not really. And it was too much of -- I'm
21 not going to take this case to trial on the hope that I
22 can get a charge on self-defense and hope I can persuade
23 them to recognize the four element, but then I've got to
24 convince them that he was without fault in bringing about
25 the immediate difficulty when he got out the car with a

1 shotgun. I didn't think that was in my client's best
2 interest.

3 THE COURT: Mr. Rivers, y'all discussed all that?

4 MR. RIVERS: Yes, sir.

5 THE COURT: Anybody else? I need your name.

6 MR. GAINNEY: My name is Ronnie Gainey. I just like to
7 start off by saying that this is really hard. I've been
8 active in both families. I know there is absolutely
9 nothing that the family of Tavish have heard to give them
10 a whole lot of peace. And just as a member of the
11 community, and I'm just hurt tremendously that it ever
12 happened. These are our kids, both of them. To Dameion,
13 I started mentoring him when he was about 15 years old.
14 He's a good kid.

15 But he's had some challenges and sometimes in
16 judgment, and I believe out of what the details are I
17 don't really know. The first I've heard of any was here
18 this morning, and I just do not understand a lot of the
19 legalistics of it. But to say that I do know that he,
20 just as probably any kid hitting his age at that time, he
21 was around maybe 17, 18, and -- but he -- I talked with
22 him and encouraged him to try to go on with himself and
23 deal with the issues, of course, between he and God. And
24 to just pray that somehow there will be peace with the
25 family, some type of feeling if can again from all of

1 this.

2 What he did was go on and to get his G.E.D. and went
3 on to college. Matter of fact I kind of helped him to go
4 on. My thing is that, and my prayers and all that I've
5 got to say as far as he is concerned, and I don't think
6 that he's a bad kid and I'm convinced myself that he had
7 no intention of killing Tavish.

8 I honestly believe that, and but that he, hopefully
9 with this, can pull himself together and move on. Really,
10 to the family, my prayer is that we all can come back
11 together as a community and move forward.

12 THE COURT: Thank you, Mr. Gainey.

13 MR. FOARD: Your Honor, I know this is taking a long
14 time, but there is just a few matters that I need.

15 THE COURT: I'm sorry. She wanted to say something?

16 MR. CANNARELLA: Gala Barrentine.

17 MS. BARRINGTON: I'm his sister. I want to say sorry
18 also. I mean I don't stay in Pageland much. There is
19 nothing there for me. I mean it is small, and y'all
20 probably haven't seen me around that much, but my brother,
21 he's not a killer. I mean from what I last understood he
22 and Tavish were best friends back the school. The whole
23 family. I'm friends with all of y'all. I don't have no
24 hate against nobody. My brother has no hate. None of my
25 family has no hate. So hopefully we can come to an

1 understanding about this whole matter. How much time he
2 get, and you know, how much y'all grieve on it. In the
3 end life has got to move on.

4 So I want to say I'm sorry for him, and I want to
5 give that to y'all. I'm sorry that it happened, but you
6 know as far as everybody else in my family I'm encouraging
7 everybody in my family to move on. I got my degree in
8 college. I'm going back to get two more. I come back to
9 Pageland and everybody else is claiming this gang
10 affiliation. I don't know what it is going on all, but
11 all of it needs to stop. This here is a small town.
12 Everybody is related.

13 There shouldn't be no rolling eyes at each other.
14 There shouldn't be no looking out of the corner of your
15 eyes at each other. Like, come on. That's all I have to
16 say. And I mean now I moved to Atlanta, Georgia. I've
17 opened my own business, and I mean if y'all need a job.
18 I'm here for you. I'll take you out of Pageland. That's
19 what I want to do. I'm not up here to make anybody shed
20 any tears. I'm not up here trying to tell my success
21 story, but I want to help because when I come back home
22 and I see the same stuff. I see the same stuff.

23 THE COURT: I understand where you're coming from.

24 MR. FOARD: Your Honor, just in respond to a few of
25 the things that have been said here on the Defense side.

1 Mr. Cannarella referenced the statement by Eltoya Blakeney
2 which was who was one of the State's subpoenaed witnesses.
3 She did give a statement at the time of the incident where
4 she indicated that she had seen Mr. Rivers both before and
5 after the shooting had occurred. And as Mr. Cannarella
6 said she was prepared to testify and she is here today and
7 she is prepared to testify that he did state that he was
8 going, and I quote, "Get the Mossburg to blow through the
9 whole crowd."

10 What Mr. Cannarella did not state is that she then
11 goes on to state that she saw Mr. Rivers after the
12 incident almost what would be -- almost immediately after
13 the incident in the vicinity of First Citizen's Bank which
14 is on the corner of Pearl Street in Pageland where he was
15 leaning out of the car window saying, and I quote, "Go up
16 there. I just shot Tabo," and he said it three times.
17 Leaning out of the car window, Your Honor, yelling, "I
18 shot Tabo."

19 Take that's for what it is. Bad Blood,
20 Mr. Cannarella has referenced bad blood and the lack
21 therefore between parties. Mr. Cannarella, from my
22 independent information of it is correct. Mr. Rivers did
23 not have any reason to go there and shoot Tavish Dunlap
24 that day. Nothing that we can find of anyway, however,
25 there was the issue of Red Boy and the fact that Red Boy

1 and Tavish, through my investigation, determined that they
2 were -- did have mutual common friends, Your Honor.

3 Mr. Cannarella has referenced the distance of the
4 shotgun blast and the fact that the wadding did implant
5 into Mr. Dunlap which is correct. The wadding was pulled
6 out of Mr. Dunlap in the autopsy. But what Mr. Cannarella
7 did not reference was the fact that the gunshot residue
8 test from The State Law Enforcement Division indicated
9 that there was no gunshot residue on the victim's
10 clothing.

11 So, therefore, you've got to balance the fact that he
12 was far enough away, but there was no G.S.R. But, yet, he
13 was close enough away that the wadding implanted. Again,
14 Your Honor, just another factor to keep in mind.

15 Mr. Cannarella has indicated from his client's
16 standpoint that he would contend that Mr. Dunlap acted in
17 an aggressive manner immediately before the shotgun was
18 fired. The State had subpoenaed Mr. Nordrea McBride who
19 was a witness that day, who was within about a 25-foot
20 area of the shooting.

21 Mr. McBride was going to testify that there was no
22 such aggressiveness. He saw no aggressiveness of any kind
23 that would be described by Mr. Rivers. Mr. Cannarella did
24 reference the fact that this was a pump shotgun. The
25 State felt that was extremely important because,

1 obviously, the presence of the shells at the scene would
2 indicate that Mr. Rivers had made some affirmative action
3 after firing the weapon. He had to have pumped that gun
4 in order to have left the shell behind.

5 Therefore, he was -- it's not as if the shotgun fired
6 and he jumped in the car and ran out of fear. He was
7 standing there or whatever you want to characterize it as,
8 and he took the time to rack that weapon, your Honor. The
9 State feels that's very important and shows his state of
10 mind at the time as well as the fact that he was well in
11 possession of all of his facilities and what he was doing
12 there.

13 And, finally, just to round things off Mr. Cannarella
14 had put a lot of speculation and conjecture on the record
15 as far as what Mr. Dunlap, the victim, may or may not have
16 had on his person at the time, and I respect Mr.
17 Cannarella's zealous advocacy of his client, but I know of
18 no true evidence other than his client's testimony that
19 puts Tavish Dunlap in possession of a weapon that day.

20 And in fact the State was prepared to present
21 witnesses who are going to testify that Tavish Dunlap was
22 not in possession of a weapon or specifically a 380 that
23 Mr. Cannarella had reference. I just wanted to kind of
24 reference those issues since Mr. Cannarella had gone so
25 thoroughly into his client's versus of the case. And at

1 this time I would yield to the victims who would like to
2 address Your Honor.

3 THE COURT: All right.

4 MR. FOARD: We'll start with Debbie Strotter.

5 MS. STROTTER: Your Honor, we've talked a lot today
6 about the victim. I brought a picture cause I wanted you
7 to see. Actually, Tavish Dunlap was a living, breathing,
8 human being. Would you?

9 THE COURT: Sure.

10 MS. STROTTER: He is the young man in the striped
11 shirt to your left, to your far left. To your left, yes.
12 He was a very easy going young man and even though he's
13 very young in that picture he looked very much like that
14 at 18, and that's the age he was when he died. We know
15 him to be very quiet, very laid back. He was not an
16 aggressive individual in any way, shape or form. What I
17 would want this Court to know that my family for the past
18 three years have suffered. And regardless to how it
19 happened it did happen. And we lost someone that we loved
20 very much.

21 I saw the accused's mother I believe go up and give
22 him a kiss. We can't kiss Tavish any more. That
23 privilege is loss to us. And there is not a day that goes
24 by that we don't think about him, that we don't miss him,
25 but we don't understand that he will never have the chance

1 to marry. He will never have the chance to have children
2 and live his life. It was snuffed out and it was snuffed
3 out senselessly. That was something that never should
4 have happened.

5 I believe, as do my family, that if you are man
6 enough to commit a crime then you should be man enough to
7 do the time. And so for that reason we are asking for the
8 maximum allowed by law. And also for the gun charge
9 that's also pending we ask that it be done consecutively.
10 Thank you very much, and thank you for the opportunity to
11 speak.

12 MR. FOARD: Next we would have Tavish's mother,
13 Pamela Mungo.

14 MS. MUNGO: To you, Your Honor, I just have one thing
15 to ask for today. We have dealt with this for three years
16 and today I want to ask for the last thing my son can get
17 in this world and that's his justice. So today I ask
18 y'all to convict him with 30 year plus the five years for
19 the gun charge and give my son his justice. So as your
20 board say, "Let the justice run down as water and
21 righteousness as a mighty stream," and Your Honor, my son,
22 Tavish Dunlap. Thank you.

23 MR. FOARD: And, finally, Mr. Rodney Blakeney, the
24 father of the victim.

25 MR. BLAKENEY: My name is Rodney. I'm sorry this

1 happened and we got to go through this. I don't think
2 nobody is bad. Well, I think it was bad in the way that
3 it happened and it shouldn't have happened that way. But
4 now all of us got to suffer with my son gone and they're
5 son fin to go. And it's not right, but being around these
6 guns, playing, selling these drugs and doing all this,
7 it's not called for anymore.

8 It's a time to make a change from this stuff. And it
9 hurts that I can't see him no more. I can't touch him. I
10 can't play with him. I can't do none of that with him no
11 more, but they got a right to go visit her son. I don't
12 have that right no more. If I go see mine I've got to
13 look down in the dirt. That's something I don't want to
14 do. So that's all I want to say.

15 MR. FOARD: And, Your Honor, we do have one other
16 family member. Ms. Priscilla Dunlap who is the victim's
17 aunt as well.

18 MS. DUNLAP: I would just like to say you know as
19 each one said we suffered a tremendous loss. Tavish was
20 something so dear, so precious to our family. You know
21 you have one in the family that -- you know just the
22 center of the family and we lost that. But I just want to
23 say to the family, I don't dislike y'all. I don't hate
24 y'all. I pray for y'all. Every time I say a prayer for
25 my family I pray for y'all because that's what we need.

1 And, Dameion, seek God because God is the only one
2 that can help you. Thank you.

3 THE COURT: Mr. Solicitor.

4 MR. FOARD: Nothing further, Your Honor.

5 MR. CANNARELLA: And also the firearm, I want to make
6 that a Court's Exhibit. The gun was in working order.

7 (WHEREUPON, Court's Exhibit Nos. 1 AND 2 were marked
8 for identification and received into evidence in a
9 hearing prior to plea being taken.)

10 (WHEREUPON, Court's Exhibit No. 3 was marked for
11 identification and received into evidence.)

12 THE COURT: Well, there is an old saying, "There are
13 two sides to every story." After all these years of
14 public service I disagree with that. There is always
15 three sides to every story and sometimes more.

16 Mr. Gainey, what you said and a lot put forth by you here,
17 and I know both families. I've been in Pageland all my
18 life and in public service now the 40th year all the way
19 from law enforcement to prosecution and defense work.

20 And, basically, I know every family that's ever lived
21 in Pageland for any time at all and it puts me between a
22 rock and a hard place cause I know whatever I do probably
23 is going to make both sides upset somewhat because I'm
24 under a duty to seek justice and temper it with mercy.

25 I've got one side who has lost a family member that

1 can't be replaced that would like to see the maximum
2 sentence. And I've got the other side arguing very
3 strongly that there should be an extra dose of mercy
4 looking towards a minimum sentence. So I've got to come
5 up with something that serves justice as I see it in the
6 neutral position.

7 Now, this statement that I have was shortly after
8 this incident return, it is obvious to the Court that some
9 third parties -- I'll be very curt in my terminology.
10 Some third party lit your fuse and you went to Pageland
11 and you went to Pop's seeing red.

12 MR. RIVERS: Yes, sir.

13 THE COURT: So because of that I have no problem with
14 this plea, voluntary manslaughter, because I think that
15 scenario, which I don't believe anybody disagrees with,
16 indicates to me that this is closer to voluntary
17 manslaughter than it is to premeditated murder involving
18 malice aforethought. I could understand why a jury could
19 have found murder and probably would be justified in doing
20 it. But I think that, in my experience, that it probably
21 would have come down to voluntary manslaughter because you
22 were still in the heat of passion; that you hadn't had
23 time to cool down.

24 Cooling period may be ten seconds in one instance.
25 It may be two days in another instance, but obviously,

1 somebody had you upset and seeing red, and you were
2 looking to do something about it. And, unfortunately, I
3 think you probably did find the wrong person because there
4 is no -- there is no other reason. I mean I don't have
5 any evidence before me and nobody has accused you of any
6 gang involvement where we got two gangs going at it.

7 There doesn't seem to be any Caplet or Montague
8 situation or Hatfield and McCoy cause there has never been
9 any serious problem between the families. I'm sort of
10 amazed about this whole thing. But the bottom line is
11 that the economy is bad enough and people are struggling
12 bad enough and then this continued spilling of blood in
13 Pageland and Chesterfield County is becoming an
14 embarrassment. And it's so many times that it involves
15 young people.

16 We've got a life lost and we've got a life that is
17 going to be affected for many years. And an important
18 additive to the whole deal is that you've got children
19 that somebody has got to raise. I don't know what the
20 answer is, but the children, if we don't do something in
21 society to start changing our children and raising our
22 children better than what we're seeing now I don't know
23 where we're headed.

24 But I can say this. As an agent of the State I'm not
25 supposed to get into church and State matters. Don't

1 intend to, but I think -- well, I know so that both sides
2 are Christian families because I've heard evidence of
3 everybody's church attendance. And I can tell you from my
4 previous experience, further instance before the Court,
5 and I'll tell you all like I have many times before. All
6 of you need to pick up the Bible and read the book of
7 Matthew.

8 Whether you know -- no matter how you feel about your
9 religious, whether you're Christian or whatever faith,
10 there is some good guidance in Matthew about forgiveness
11 and how you should live your life especially after
12 something like this happens. Vengeance or hatred over
13 something like this is like a cancer. It's going to eat
14 away at you and end up destroying you. You need to get
15 that out of your mind. What's done is done.

16 The penalty has got to be paid. On the other hand
17 point of view over here, you've got a very crippled up
18 situation with the family that's got to be raised. All
19 members of Mr. Rivers' family are going to have to pitch
20 in and do the best that they can for these kids. These
21 kids are going to need all the help that they can get.

22 And most of all let today end what has gone on that's
23 already caused so much damage. Water under the dam.
24 Nothing can be done about correcting as far as bringing a
25 life back. And further violence and an animosity towards

1 each other, family members to each other is not going to
2 accomplish anything except for more tragedy. So for
3 goodness sake get on with your lives. Pitch in and help
4 your fellow family members and your fellow man. That's
5 enough preaching on my part, but I can tell you that I am
6 disturbed with some of the trends going on in our smaller
7 communities.

8 Twenty years ago who would have thought that we would
9 have Bloods and Crips in small towns like Pageland or
10 Cheraw. Twenty years ago, even on a more national matter,
11 who would have thought that the Hells Angles and Outlaws
12 and all those gangs that we've heard about over the years
13 could have such a political presence as they do in this
14 country now with the backing that they've got whether it's
15 a small town or whether it's an entire region.

16 The bad influences out there that we need to be on
17 guard about. And we, as members of society, need to get
18 some kind of plan to put a stop to it. So, Mr. Rivers, I
19 can throw the book at you and your children will never
20 have any assistance from you. You will probably die in
21 prison since you're 21 or you will be close to retirement
22 age any way. Or I can follow my normal pattern. What I
23 usually do, and all of you are aware of that, if you know
24 my sentencing procedure I usually look at something if you
25 stand here and take your medicine and you show remorse.

1 And I'm comment upon that because of what I heard
2 from the stand yesterday. This definitely upset you
3 because you did attempt to take your own life, apparently,
4 by taking some pills and had some thought about going even
5 further with something that would even be more horrific.
6 Fortunately, you didn't do it, but that indicates remorse.
7 You knew what you did was wrong.

8 You're take you medicine today, and I believe that
9 since you don't have any serious criminal record. You've
10 had some run ins with the Magistrate sounds like, but that
11 sound like some domestic argument went on. Especially
12 disorderly conduct. I have no real right to condemn you
13 to the point that I should max you, but on the other hand
14 this here brutality of what you did does not mitigate in
15 your favor. It mitigates against you.

16 SENTENCE OF THE COURT

17 THE COURT: So bottom line is sentence of the Court
18 is 19 years on the voluntary manslaughter and five years
19 concurrent on the weapons charge.

20 Under case law you will get credit for any time that
21 you have served.

22 MR. CANNARELLA: Your Honor -- I'm sorry. I was
23 going to ask can was put that on the report at that
24 appropriate time served? I mean the amount of time he has
25 served in jail?

1 THE COURT: I would like to know the actual date.

2 MR. CANNARELLA: I apologize for interrupting the
3 Court. He just gets actual time and can you do it later.
4 I don't have the actual time in my head, Your Honor.

5 THE COURT: I can do that later. All right.

6 MR. CANNARELLA: He said 119 days.

7 THE COURT: We'll check that. Appellate rights run
8 ten days from the sentencing date. If you think something
9 was done in error here. However, it is a guilty plea.
10 Appellate rights certainly are not what they used to be on
11 guilty pleas. Little more difficult now because of case
12 law, but I am required to tell you that.

13 Once again, usually in Court proceedings nobody
14 leaves happy but I think that everyone should be able to
15 take the advice which has been given from several
16 individuals today and get on with their lives. Good luck
17 to everyone concerned. And put this behind you. Thank
18 you very much.

19 MR. FOARD: Thank you, Your Honor.

20 END OF TRANSCRIPT OF RECORD

21

22

23

24

25

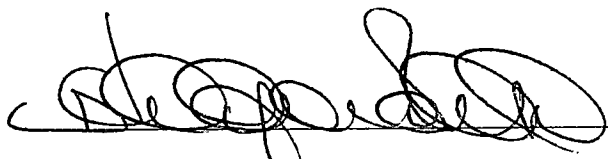
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTERFIELD)

I, HATTIE O. GORDON, Official Court Reporter for the
4th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of General Sessions for
Chesterfield County, South Carolina, on the 31st day of
August, 2010.

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

September 19, 2011

A handwritten signature in black ink, appearing to read 'Hattie O. Gordon', written over a horizontal line.

HATTIE O. GORDON, Court Reporter

FORM 5

2011 Cp13-210

STATE OF SOUTH CAROLINA)

County of Chesterfield)

IN THE COURT OF COMMON PLEAS

Dameion Jermiah Rivers *342549)

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

v.)

State of South Carolina)

A True Copy, Attest

Jaye S. SellersCLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

APPLICATION FOR

POST-CONVICTION RELIEF

2011 JUN 9 PM 11 37
CLERK OF COURT
CHESTERFIELD COUNTY, SC**INSTRUCTIONS B 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 Broad River Correction Institution, 4460 Broad River Rd, Columbia, SC 29210
2. Name and location of Court which imposed sentence Chesterfield County Courthouse
3. Name(s) of co-defendant(s) (if any) Johnathon Crawford, Michael Heath
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 07- G6-13-0814 Murder

- (b) 07-G5-13-0897 Poss. of weapon during commission of certain crimes
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) Voluntary Manslaughter 19 years August 31, 2010
- (b) Possession of weapon during violent crime 5 years August 31, 2010
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (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 Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. N/A
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered Ano@ to (7), state your reasons for not so appealing:
- (a) my lawyer didnt tell me that I could appeal

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of counsel
- (b) Involuntary plea
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Trial counsel failed to conduct an adequate pre-trial investigation
- (b) to prepare for a trial defense.
- (c) Plea was not voluntary, knowingly made.
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 Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. None
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. None
- ii. _____
- iii. _____

- iv. _____
- (c) the disposition thereof:
- i. None
- ii. _____
- iii. _____
- iv. _____
- (d) the date of each such disposition:
- i. None
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. None
- ii. _____
- iii. _____
- iv. _____

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

No

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

- (a) which grounds have been presented:

i. None

ii. _____

iii. _____

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

i. None

ii. _____

iii. _____

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

(a) N/A

(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? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

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

(a) the name and address of each attorney who represented you:

i. Paul V. Cannarella

111 N. Sixth Street, P.O. Box 38, Hartsville, SC 29551

ii. _____

iii. _____

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

i. During trial / guilty Plea

ii. _____

iii. _____

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

Over Turn and New Trial

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

None

2011 JUN 9 PM 11 38
 REVISOR 8/2003
 COUNTY, S.C.

STATE OF SOUTH CAROLINA)

County of RICHLAND)

VERIFICATION

I, Dameion Rivers, 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.

Dameion Rivers

SWORN to and subscribed before me this 8th day of June, 2011.

Susan H. Frye (L.S.)
 Notary Public

My Commission Expires

My Commission Expires: March 5, 2018

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

I, Dameion Rivers, 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.

Dameion Rivers
Applicant

SWORN or affirmed to and subscribed before me this

8th day of June, 2011.

Susan H. Frye
Notary Public

My Commission Expires: _____
My Commission Expires
March 5, 2018

2011 JUN 9 AM 11 38
NOTARY PUBLIC
STATE OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA

County of RICHLAND

Dameion J. Rivers 342549
Applicant

Y.

STATE OF SOUTH CAROLINA
Respondent,

IN THE COURT OF COMMON PLEAS

C/A No.:

Memorandum in Support for Motion

FOR ABEYANCE and REQUEST

TRANSCRIPT

2011 JUN 9 AM 11 38

PEAS
ESTIMATING
MOTIVATION
FOR
ACTIVITY, S.C.

Applicant, pro se, files this memorandum in support for
abeyance and respectfully request for transcript.

STATEMENT OF FACTS

Applicant was indicted on one account of Murder (07-GS-13-0814) and one account for possession of weapon during a violent crime (07-GS-13-0897) from charges stemming from a shooting on August 27, 2007, in Pageland, South Carolina.

On August 30, 2010, after picking a jury as the last matter of business, the trial court heard applicant's Motion to Suppress his pretrial statement. The court denied the motion and applicant case proceeded. The following morning court was to be reconvened. On the following morning (August 31, 2010) when court reconvened, applicant pled guilty to: Voluntary manslaughter and commission of weapon during

2011 JUN 9 AM 11 38

EXAMINERS
CLERK
CHESTERFIELD COUNTY, S.C.

a violent crime, after which Honorable Paul Burch sentenced him to nineteen (19) years, plus five (5) years ran concurrent.

Discussion

In Strickland v. Washington, the Supreme Court has stated that trial counsel has a "particular duties to consult with the defendant informed of important developments in the course of the prosecution", Id. 466 U.S. at 688, 104 S.Ct. 2052

In the course of pretrial investigation, officer Mikes Newman, of the Pageland Police department express a condition that if the applicant did not write a statement the applicant relatives would also be charged with accessory after the fact. During trial an unsuccessful attempt to suppress applicant involuntary statement, trial counsel was also inform that a new development in the prosecution case. Under the confusion of the new information trial counsel felt bad about this new turn in the case requesting that applicant plea to the following charges - Voluntary manslaughter and possession of a weapon during ~~the~~ a violent crime.

Futhermore, in that haste, trial counsel did not inform applicant fundement right, that are available or that applicant could challenge the plea or that any other procedural remedy was available. Applicant insisted that he wanted to go through with his trial, As a constitutional right and that ~~any~~ due process requires the state the burden of proof. However, applicant has tried diligently

2011 JUN 9 AM 11 38

FEDERAL CLERK
CLERK OF COURT
CHESTER COUNTY, S.C.

to pursue a copy of his trial script so that, in fact, applicant could be able to examine the record and select the most promising issue for review and its substantiate that his plea (with such haste) was not knowingly, voluntary, or understanding made. *Hill v. Lockhart* 474 U.S. 52, 106 S.Ct. 366 (1995), *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709 (1969).

Trial counsel has a duty to make a "reasonable investigations" or to make a reasonable decision that makes particular investigation unnecessary, *Strickland, supra*, If trial counsel had opportunity to interview the person who had information from which to establish a defense. Moreover, it would had eliminate that "surprise" in which made counsel deficient and prejudice the applicant a constitutional right to challenge the state case. Since applicant plea, applicant receive no transcript pertaining to his own proceeding. As procedural rule in the State of South Carolina, a prisoner has one (1) year to challenge his or her conviction.

Conclusion

Ten months has past, under S.C. Code Ann. § 17-27-45 (A) (supp. 1998) an application for PCR "must be filed within one year after the entry of judgment of conviction." *Odom v. State*, 377 S.C. 256, 523 S.E. 2d 753 (1999). Applicant wants his bite of the apple to challenge his conviction (in a post-conviction relief). Applicant request that this Honorable

2011 JUN 9 AM 11 38

P/... CLERS
CLE... RT
CHESTERFIELD COUNTY, S.C.

Court grant this motion so that Applicant may amend that
justice be served.

Respectfully Submitted

Damion J. Rivers

SWORN to and subscribed before me

this 08th day of June, 2011Susan H. Frye

Notary Public

My Commission Expires

March 5, 2018

My Commission Expires : _____

State OF SOUTH CAROLINA
County OF RICHLAND

Dameion J. Rivers 342549
Applicant

V.

STATE of SOUTH CAROLINA
Respondent,

In the COURT OF Common PLEAS

C/A No : _____

MOTION for ABEYANCE and
PETITIONER'S REQUEST FOR
TRANSCRIPT

1947
CITY OF
CHESTER, N. CAROLINA, S.C.

PURSUANT TO Rule 3 of the State Rule of Civil procedure toll statute ... the Applicant in the above caption, is requesting abeyance for preparation for the following proceeding, and the posting of transcript at government expense.

WHEREFORE, applicant humbly request that this Honorable Court would Grant this motion, and all else deemed just and proper.

Respectfully Submitted

CC : ON FILE

Damion J. Rivers

Richland, South Carolina
June 1, 2011

State of South Carolina
County of RICHLAND

IN THE COURT OF COMMON PLEAS

Case No:

V.

Dameion J. Rivers, SCDC #342549

CERTIFICATE OF SERVICE

1975
JUL 11
LIBRARY
CHESTER, N. C.

The applicant hereby certify that he served a application for Post-Conviction Relief and Motion for abeyance of time to the following party by the way of depositing a copy thereof in the United States mail, postage in an envelope sealed and addressed to : Chesterfield Co./Clerk

P.O. Box 529

cc : ON FILE

Chesterfield, SC 29210

This 8 day of June, 2011

sl/Dameien J. Rivers

Name: Darneion J. Rivers

Address : 4460 Broad River Rd

Columbia, SC 29210

Subscribed and SWORN to before me

This 8th day of June, 2011

Susan H. Frye
Notary Public

Notary Public

**My Commission Expires
March 5, 2018**

My Commission Expires : _____

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHESTERFIELD) Case Number: 2011-CP-13-210

Dameion Jermiah Rivers)
S.C.D.C. NO. 342549,)

Applicant,)
vs.) AMENDMENT TO APPLICATION FOR
State of South Carolina,) POST CONVICTION RELIEF

Respondent.)

NOTICE OF MOTION AND MOTION TO AMEND AND
GROUND FOR POST CONVICTION RELIEF

The State is notified that the Applicant will move at the time of the hearing on this matter to amend and clarify the grounds for post conviction relief as follows:

The Applicant above named respectfully moves to amend and clarify his previously filed Application to amend paragraph 10, page 3 to add the following grounds:

1. Ineffective assistance of counsel and counsel's failure to quash the indictment for murder;
2. Ineffective assistance of counsel in failing to advise the applicant of the mandatory minimum penalty of the guilty plea involved.

The applicant further amends paragraph 11 in conjunction with the addition as to paragraph 10 of the Application for Post Conviction Relief as follows:

1. The indictment was invalid based on the fact that it states that the victim died in Chesterfield County when in fact the record clearly indicates that the victim was airlifted to

FILED
2013 JAN 1 PM 3:12
CLERK OF COURT
SOUTH CAROLINA
DARLINGTON COUNTY, S.C.

Law Offices

Harris, McLeod &
Ruffner

Post Office Drawer 1449
221 Market Street
Cheraw, South Carolina
(843) 537-5204

Charlotte, North Carolina where surgery was performed and that ultimately the victim expired in Charlotte, North Carolina at the hospital and not in Chesterfield County.

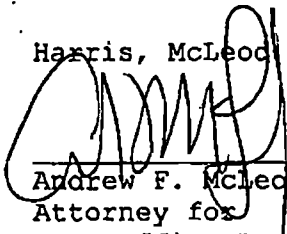
There are several cases that indicate that the place of death is absolutely necessary in an indictment for murder. These include:

- State vs. Platt, 154 S.C. 1
- State v. Shoemaker, 276 S.C. 86
- State v. Coleman, 17 S.C. 473
- State v. Blakeney 33 S.C. 111

2. Counsel was ineffective in failing to advise the applicant concerning the mandatory minimum penalty for the guilty plea.

WHEREFORE, the applicant believes that in the interest of justice that this motion to amend and to clarify grounds should be granted.

Harris, McLeod & Ruffner


Andrew F. McLeod

Attorney for

Post Office Drawer 1449

222 Market Street

Cheraw, South Carolina 29520

(843)-537-5204

January 11, 2013
Cheraw, South Carolina

Law Offices

Harris, McLeod &
Ruffner

Post Office Drawer 1449
222 Market Street
Cheraw, South Carolina
(843) 537-5204

FILED
2013 JAN 11 PM 3:42
SCOTT B. SUGGS
CLERK OF COURT
DARLINGTON COUNTY, S.C.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHESTERFIELD	)	Case Number: 2011-CP-13-210
	)	
Dameion Jermiah Rivers	)	
S.C.D.C. NO. 342549,	)	
	)	
Applicant,	)	
vs.	)	SECOND
	)	AMENDMENT TO APPLICATION FOR
State of South Carolina,	)	POST CONVICTION RELIEF
	)	
Respondent.	)	
	)	

**NOTICE OF MOTION AND MOTION TO AMEND THE APPLICANT'S
POST CONVICTION RELIEF**

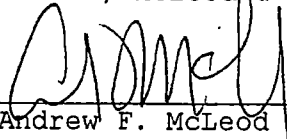
For good cause to be shown, the applicant moves with the court's permission to amend his Application for Post Conviction Relief to include the following issues in regards to ineffective assistance of counsel and constitutional violations:

1. Failure to discover exculpatory evidence;
2. Failure to advise the plea court to give applicant all of his time served;
3. Failure to clarify plea court's erroneous language pertaining to the murder indictment;
4. Failure to advise the applicant of the mandatory minimum penalty based on the plea;
5. Failure to quash indictment for murder.

Law Offices
Harris, McLeod &
Ruffner
Post Office Drawer 1449
222 Market Street
Cheraw, South Carolina
(843) 537-5204

I SO MOVE

Harris, McLeod & Ruffner



Andrew F. McLeod

Attorney for

Post Office Drawer 1449

222 Market Street

Cheraw, South Carolina 29520

(843)-537-5204

May 29, 2013

Cheraw, South Carolina

Law Offices

Harris, McLeod &
Ruffner

Post Office Drawer 1449
222 Market Street
Cheraw, South Carolina
(843) 537-5204

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTH JUDICIAL CIRCUIT
COUNTY OF CHESTERFIELD	)	Case Number: 2011-CP-13-210
	)	
Dameion Jeremiah Rivers,	)	
#342549,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	SECOND AMENDED PCR APPLICATION
	)	
State of South Carolina,	)	
	)	
Defendant.	)	

In addition to the current pending Notice of Motion, Motion to Amend and clarify grounds of post-conviction relief, in the interest of justice, the applicant, Dameion Jeremiah Rivers, provides a Second Amended PCR Application as follows:

I.

Trial counsel was ineffective in not obtaining a continuance due to the fact that the State did not comply with the Brady request in it did not provide the recorded statement of Kenneth Louallen. Said statement was clearly referenced in the incident report and was not produced.

II.

Trial counsel was ineffective in not advising the PCR applicant concerning the fact that he would have to serve 85% of any sentence and the trial counsel advised that PCR application would only have to serve 65% of any sentence. Had PCR Applicant known this then, he would not have pled guilty and would have gone to trial.

III.

Trial counsel was ineffective in failing to raise all the issues possible concerning the validity of the indictment. The incident was not signed by the grand jury foreman, and it incorrectly stated the location where the victim died.

Law Offices

Harris, McLeod &
Ruffner

Post Office Drawer 1449
222 Market Street
Cheraw, South Carolina
(843) 537-5204

IV.

The police officer who was investigating this case for the Town of Pageland is currently on administrative leave and being investigated for improper conduct, and the PCR applicant believes that the police officer intentionally withheld evidence and did not investigate this case.

V.

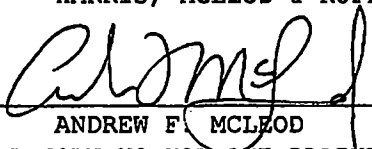
There is a witness, Billy Lee Lisenby, Jr., who is prepared to testify that he informed Chief Brown, the investigating officer, after the shooting that he saw the victim with a gun prior to the shooting at the scene, but the investigating officer did not get a statement from Billy Lee Lisenby, Jr. or bring this information to light during the investigation.

VI.

These amendments are in addition to and in conjunction with the original amendment to Application to Post Conviction filed January 24, 2013.

WHEREFORE, having set forth his Amended (Second) Post Conviction Relief Application, the applicant prays that this Court grant to him all appropriate relief, and for such other relief as this Court may deem just and proper.

HARRIS, McLEOD & RUFFNER

BY 

ANDREW F. MCLEOD

ATTORNEYS FOR THE PLAINTIFF

Law Offices

Harris, McLeod &
Ruffner

Post Office Drawer 1449
222 Market Street
Cheraw, South Carolina
(843) 537-5204

December 23, 2015
Cheraw, South Carolina.

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF CHESTERFIELD)

FOURTH JUDICIAL CIRCUIT

Case Number: 2011-CP-13-210

Dameion Jermiah Rivers,
#342549,

Plaintiff,

vs.

SUPPLEMENT TO SECOND AMENDED
PCR APPLICATION

State of South Carolina,

Defendant.

For clarification of the previous amendment and pursuant to Section 17-27-20(a)(4), there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice. Primarily, there is newly discovered evidence in the form of an eyewitness to the shooting, Billy Lee Lisenby, Jr., that this is newly discovered evidence that 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 the newly discovered evidenced is of such a weight and quality that, under the facts and circumstances of this particular case, the "interest of justice", requires the applicant guilty plea to be vacated. In addition to the fact that this individual's existence and knowledge of the incident was unknown to applicant. Applicant is now informed and believes that it was known to law enforcement and concealed.

In addition, the witness, Kory Little, who gave a statement is prepared to recant his statement and provide testimony that would be helpful to the applicant.

Respectfully submitted,

BY

ANDREW F. MCLEOD

ATTORNEYS FOR THE PLAINTIFF

January 4, 2016
Cheraw, South Carolina.

Law Offices

Harris, McLeod &
RuffnerPost Office Drawer 1449
222 Market Street
Cheraw, South Carolina
(843) 537-5204

Billy Lee Lisenby JR; #200275

Bidgeland Corr. Inst.

P.O. Box 2039

Bidgeland, SC. 29936

Law Offices

Dated: Dec. 4th 2015

Harris, McLeod, & Ruffner

222 Market St.

P.O. Drawer St.

Charlottesville S.C. 29520

Dear Andrew McLeod,

Yes I was an eye witness to the Aug. 27, 2007 shooting of Tavish Dunlap. Yes I did observe Tavish with a handgun prior to being shot. I would love to testify to this.

I have provided Dameion with a statement, that has been notarized. If you need me please set up a conference call, and let me know. I will prepare another sworn affidavit if necessary.

I am

Billy Lee Jr.

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF CHESTERFIELD)

C.A. No. 2011-CP-13-0210

Dameion Jermiah Rivers,)
S.C.D.C. No. 342549,)

Applicant,)

RETURN

v.)

State of South Carolina,)

Respondent.)

In response to the post-conviction relief application filed June 9, 2011, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Chesterfield County Clerk of Court's orders of commitment. The Chesterfield County Grand Jury indicted the Applicant at the November 2007 term of General Sessions for murder (2007-GS-13-0814) and at the December 2007 term for possession of a weapon during commission of a violent crime (2007-GS-13-0897). Paul V. Cannarella, Esquire represented the Applicant.

Upon information and belief, the State called the case to trial before the Honorable Paul M. Burch on August 30, 2010 and a jury was selected. Upon information and belief, a suppression hearing was held that day and the motion to suppress was denied. On August 31, 2010, the Applicant pled guilty to the lesser charge of voluntary manslaughter and the other charge as indicted. Judge Burch sentenced the Applicant to concurrent terms of nineteen (19) years for voluntary manslaughter and five (5) years for possession of a weapon during

commission of a violent crime. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Chesterfield County Clerk of Court regarding the subject convictions and the Applicant's records from the South Carolina Department of Corrections. The guilty plea transcript will be forwarded upon receipt.

II.

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:
 - a. Failure to investigate.
 - b. Convinced the Applicant to plead guilty after a "new turn in the case."
2. Involuntary guilty plea.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel

"rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Applicant's assertion that his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as

one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An Applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the Applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An Applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985); Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

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

between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)).

When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

The Respondent submits the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. at 265, 305 S.E.2d at 248 (1983).

V.

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

VI.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

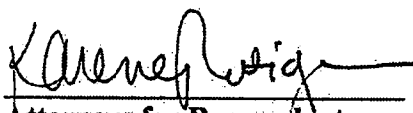
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Attorney General

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

By: 
Attorneys for Respondent

August 19, 2011

STATE OF SOUTH CAROLINA)

COUNTY OF CHESTERFIELD)

IN THE COURT OF COMMON PLEAS

2011-CP-13-00210

DAMEION JERMAH RIVERS, 342549)

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 of the Respondent in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Dameion Jermiah Rivers, 342549
Broad River Correctional Institution
4460 Broad River Road
Columbia SC 29210**

DATED this 19th day of August, 2011.


Judy A. C. Carey, Legal Assistant
For Respondent

In Circuit Court of the
Fourth Judicial Circuit
2011-CP-13-0210

DAMEION RIVERS,

Plaintiff,

VS.

STATE OF SOUTH CAROLINA,

Defendant.

Transcript of Record

Darlington, South Carolina
January 11, 2016

B E F O R E:

The Honorable Roger E. Henderson

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

Mr. Andrew F. McLeod, Esquire
Attorney for Plaintiff

Ms. Jessica E. Kinard, Esquire
Attorney for Defendant

Lisa Carter
Circuit Court Reporter

I N D E X

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>EV.</u>
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1 THE COURT: Yes, ma'am, Ms. Kinard.

2 MS. KINARD: Thank you, Your Honor. May it please,
3 The Court? This is the matter of Dameion Jiermiah Rivers
4 versus the State of South Carolina. This case is before
5 the Court on a post conviction relief application that was
6 filed June 9, 2011. We're here for a merits hearing.

7 A brief procedural history. Mr. Rivers was indicted
8 by the Chesterfield County Grand Jury on a November of 2007
9 term for murder. And in December of 2007 term, possession
10 of a weapon during the commission of a violent crime. He
11 was represented by Paul V. Cannarella. Upon information
12 and belief the State called the case to trial before your
13 Honorable Paul Burch on August 3, 2010 and a jury was
14 selected. We believe a suppression hearing was held that
15 day and the motion to suppress was denied. On August 31,
16 2010, the applicant pled guilty to the lesser charge of
17 voluntary manslaughter and the other charge as indicted.
18 He was sentenced to concurrent terms of nineteen (19) years
19 for voluntary manslaughter and five (5) years for
20 possession of a weapon during the commission of a violet
21 crime. He did not appeal.

22 In his application for post-conviction relief that is
23 before the Court today he's alleging ineffective assistance
24 of counsel by failing to investigate, that he convinced the
25 applicant to plead guilty after a new turn in the case,

1 involuntary guilty plea. There's also been several
2 amendments and supplements to this application and I
3 apologize I'm not sure if you have all of them in your
4 packet we can certainly make copies. There have been two
5 major amendments ---

6 MR. McLEOD: I can go over that.

7 MS. KINARD: Sure.

8 THE COURT: I have in my file an amendment to the
9 application and then a second amendment to the application.

10 MS. KINARD: Yes, sir.

11 THE COURT: Are there others?

12 MS. KINARD: There is another document entitled
13 Second Amendment as well as a supplement.

14 THE COURT: I do not have that.

15 MR. McLEOD: If I may, Your Honor, I'm Andrew McLeod
16 on behalf of the applicant, Dameion Rivers. Mr. Rivers did
17 file his initial application on June 9, 2011 and I was
18 subsequently appointed by the Court to represent Mr.
19 Rivers. Upon his instructions, I filed an amended
20 application on January 24, 2013 when we went into
21 additional information. Then there was a second amended
22 application on May 30, 2013. And then there was on
23 December 23, 2015, there was another second amended
24 application, which should have been a third amended
25 application, I apologize, for that error, that included

1 some additional information. And then there was supplement
2 to that in regards to after discovered evidence issue.
3 Your Honor, I've got the second amendment application that
4 was filed on December 23, 2013, that which you said you
5 didn't have.

6 THE COURT: Yes, I don't have that one or the
7 supplement that you refer to.

8 MR. McLEOD: And the supplement I have, Your Honor,
9 was filed but I have not gotten my true copy back from the
10 courthouse yet but that's just my copy there.

11 THE COURT: Okay. Is this the only copy you have?

12 MR. McLEOD: Yes, sir, Your Honor, but I'm fine with
13 that. You can hold onto that.

14 THE COURT: Can we get a copy?

15 THE CLERK: Yes, sir.

16 THE COURT: I can get a copy.

17 MR. McLEOD: Okay.

18 THE COURT: You may need it to refer to it. This
19 is the only copy you have of the second?

20 MR. McLEOD: No, sir. I've got extra copies of
21 that.

22 (Whereupon, copies were being made for all parties)

23 MR. McLEOD: The one -- the other issue, if we had
24 raised the issue of the Brady violation as far as
25 ineffective assistance of counsel issue but also -- and I

1 would like to include just the Brady violation in and of
2 itself and I don't know if that's articulately stated in
3 any of these amendments that involves the fact that there
4 was -- the incident report refers to a statement of Kenneth
5 Louallen but that statement was never provided to trial
6 counsel and that issue was brought up and it's shown in the
7 transcript that they use a different name instead of saying
8 Kenneth Louallen they said Kenneth Burnell and I don't know
9 why that was just a miss transcription but it's never --
10 they made reference they did not have that statement but
11 there was never any finality as to whether there was a
12 statement or why they didn't have the statement. And that
13 would just be a Brady violation that we would say was,
14 should have been addressed at that time, wasn't. That was
15 ineffective assistance of counsel and it was also just a
16 straight up Brady violation that prevented my client from
17 having all the information he should've had in order to
18 make an informed decision to make his plea. And It is my
19 understanding that the state has and I've talked with the
20 assistant attorney general, prior to the current assistant
21 attorney general, and to Ms. Kinard and I understand that
22 there's agreement about these amendments, these motion.

23 MS. KINARD: We'll consent to including all of the
24 amendments and the supplement to these hearings.

25 THE COURT: Okay. Thank you, ma'am. I see he's

1 served five (5) years of the sentence, is that correct?

2 MR. McLEOD: Almost six (6), Your Honor. That's
3 right.

4 THE COURT: Almost six (6). Is he eligible for
5 parole and if so, when will that be? Does anybody know?

6 MR. McLEOD: I -- that's one of the -- I think he's
7 under the 80% of the nineteen (19) years ---

8 THE COURT: Nineteen (19) years.

9 MS. KINARD: I'll see if I can find that real quick,
10 Your Honor.

11 THE COURT: Okay.

12 MS. KINARD: Your Honor, according to the last SCDC
13 print out I have he's not eligible for parole. His max out
14 date is July 19, 2026.

15 THE COURT: Okay. Mr. Rivers, do you understand
16 clearly what it is you're seeking by filing this
17 application for post-conviction relief?

18 MR. RIVERS: Yes, sir.

19 THE COURT: What's your understanding?

20 MR. RIVERS: I'm asking to overturn the case or
21 vacation of the sentence.

22 THE COURT: No. If they wanted to do that, they'd
23 grant you the right to a new trial on the original charge,
24 do you understand that?

25 MR. RIVERS: Okay. I understand.

1 THE COURT: If I grant the post conviction relief,
2 you'll go back and stand trial for the original charge of
3 murder, do you understand that?

4 MR. RIVERS: Yes, sir.

5 THE COURT: Okay. I just want you to understand
6 and, obviously, if you are confronted with a murder charge
7 and you're convicted of that then you could possibly serve
8 life in prison, do you understand that?

9 MR. RIVERS: I understand that.

10 THE COURT: Which is substantially more than about
11 the nine (9) or ten (10) years that you have left on the
12 sentence, do you understand that?

13 MR. RIVER: I understand.

14 THE COURT: I just want you to clearly understand
15 what it is you're asking for before we go forward and you
16 understand everything I've told you ---

17 MR. RIVERS: I understand.

18 THE COURT: --- thus far?

19 MR. RIVERS: I understand.

20 THE COURT: I'm sure you've discussed this with Mr.
21 McLeod, have you not?

22 MR. RIVERS: I understand. I've discussed it with
23 him.

24 THE COURT: All right. Okay. You may be seated.
25 All right. We can proceed.

1 MR. McLEOD: Your Honor, I'd call Mr. Dameion
2 Rivers.

3 THE COURT: All right. Come around, Mr. Rivers.

4 THE CLERK: Place your left hand on the Bible. You
5 swear the testimony you give this Court will be the truth,
6 and nothing but the truth, so help you God?

7 MR. RIVERS: I do.

8 THE CLERK: Have a seat and state your name.

9 THE COURT: All right. Mr. Rivers, I want you to
10 speak loudly and clearly please so I can hear you, you
11 understand, and the court reporter so she can take down
12 everything we say?

13 MR. RIVERS: All right.

14 THE COURT: And please respond with a yes or no
15 response. Don't say uh, uh, or uh, huh, okay?

16 MR. RIVERS: I gotcha.

17 THE COURT: Okay.

18 DAMEION RIVERS, first being
19 duly sworn, testified as follows:

20 **Direct Examination by Mr. McLeod:**

21 Q. Mr. Rivers, can you please give us your full name for
22 the court reporters record?

23 A. Dameion Jiermiah Rivers.

24 Q. And what sentence are you currently serving?

25 A. Nineteen (19) years for voluntary manslaughter and

Dameion Rivers- Direct Examination by Mr. McLeod

11

1 five (5) years concurrent for possession of a weapon.

2 Q. Okay. And during the pendency of that action who
3 represented you?

4 A. Mr. Paul Cannarella.

5 Q. Now, how did you -- how did he come to represent you?

6 A. Say that again?

7 Q. I said how did he -- did he -- was he appointed for
8 you or how did you get Mr. Cannarella?

9 A. I hired him.

10 Q. Okay. All right. And how many times did you meet
11 with Mr. Cannarella before your appearance in court on
12 August 30th was the first hearing?

13 A. Probably about three times, for a total of about two
14 hours of almost a three year period.

15 Q. Okay. And then one of your allegations in your PCR
16 application is ineffective assistance of counsel and how do
17 you believe your trial counsel was ineffective in his
18 representation concerning any pretrial investigation?

19 A. Well, he failed to adequately investigate and discover
20 exculpatory evidence concerning the case.

21 Q. Do you -- when did you first see the indictment that
22 you were charged with?

23 A. When I was at SCDC I sent him -- I sent him a client
24 case file personally to the matter. I had ask for my
25 complete case file. And then when he sent it to me, I seen

1 my murder indictment.

2 Q. Okay. And then what did you -- and what did you feel
3 -- when did you first hear that indictment, though, before
4 then?

5 A. During the plea hearing.

6 Q. Okay. And then what did you discover that the
7 indictment said?

8 A. That I was accused of assaulting, shooting the victim
9 in Chesterfield County which is in South Carolina and that
10 he died in Chesterfield County as a result in South
11 Carolina.

12 Q. Okay. And then what did you -- what did you believe
13 that you found out where the victim actually died?

14 A. The victim actually died in Mecklenburg County which
15 is in Charlotte, North Carolina.

16 Q. Okay. And did you -- was it your -- is it you're
17 feeling that, that would make that indictment invalid?

18 A. Yes, sir.

19 Q. Okay. Did Mr. Cannarella what ever discuss that issue
20 with you anytime?

21 A. No. He ain't never say nothing about the death of the
22 decease.

23 Q. And what -- did he make a motions, did your trial
24 counsel make any motions about the validity of the
25 indictment?

Dameion Rivers- Direct Examination by Mr. McLeod

13

1 A. Know, he didn't.

2 Q. Now, what else did you notice about the indictment?

3 Who signed the indictment?

4 A. I see -- I see that somebody name Dale Cheek (sic)
5 sign off as the foreman but I requested -- I requested the
6 indictment information from the clerk of court. When I got
7 it, it said that the foreman was Michael, somebody name
8 Michael Farris or something. The person who signed off on
9 the indictment wasn't the foreman.

10 Q. Okay. All right. And was that issue ever discussed
11 with you or was it ever raised in court at anytime?

12 A. No.

13 MR. McLEOD: I beg the Court's indulgence.

14 THE COURT: Yes, sir.

15 Q. Is this the information that we've just been
16 discussing, Mr. Rivers, that your indictment for murder
17 signed by Dale Cheek (sic) and then the jury list you got
18 from the clerk of court showing the foreman was Michael
19 Farris?

20 A. That's it.

21 Q. Okay.

22 MR. McLEOD: Your Honor, I would just move to make
23 this a trial exhibit, applicant's number one.

24 MS. KINARD: Without objection.

25 THE COURT: All right. Without objection.

1 MR. McLEOD: If you'd like to see it, Your Honor?

2 THE COURT: All right. It's submitted into
3 evidence.

4 (Whereupon, the Indictment- Grand Jury has been marked and
5 entered into evidence as Applicant's Exhibit No. 1)

6 MR. McLEOD: Also, Your Honor, let's ---

7 Q. Mr. Rivers, have I provided you a copy of this that
8 came from the South Carolina Department of Health and
9 Environmental Control concerning Tavish Jerrell Dunlap, do
10 you recognize that?

11 A. Yes, sir, I recognize it.

12 Q. Okay. And this is a certified copy from the Director
13 Assistant State Registrar saying that there is no record of
14 death of Tavish Jerrell Dunlap in South Carolina and
15 attached is a copy of Mr. Dunlap's obituary that says he
16 died in Charlotte, North Carolina.

17 MR. McLEOD: Your Honor, I would just make that
18 applicant's number 2, that combined.

19 MS. KINARD: Objection. This is not certified.
20 This is not verified or authenticated by any person from
21 DHEC here today. We can't know that it's valid.

22 MR. McLEOD: Your Honor, I'm pretty sure that I
23 agree with this with the previous attorney, assistant
24 attorney general if I can -- I'll dig back through my file
25 get that letter where I mailed him a copy and he said that

Dameion Rivers- Direct Examination by Mr. McLeod

15

1 was fine that he would consent to me using that document.

2 MS. KINARD: I'm happy to defer to that but I have
3 no recollection of that happening.

4 MR. McLEOD: I mean, it was not with Ms. Kinard.

5 THE COURT: All right. It was prior counsel? You
6 want to take a moment to look and see if you can find that,
7 then.

8 MS. KINARD: I look as well, Your Honor.

9 THE COURT: You may have a copy as well, Ms. Kinard
10 so....

11 MR. McLEOD: I mean, Your Honor, I just landed on
12 this where I mailed it to Ms. Rivers and I copied it to
13 Karen Ratigan saying we intended to use at trial but I
14 think if I keep on going I'll find where we agreed that she
15 wasn't going to make me have a person here or make me have
16 a certified copy or anything like that. It is a copy with
17 the seal on it. Your copy, the original, is the one with
18 the seal on it.

19 MS. KINARD: I have a copy of the letter you sent
20 but I don't have a copy of any response from our office.
21 If I may make a suggestion? We'll stipulate to the fact
22 that he died in Mecklenburg County or outside of
23 Chesterfield County as the indictment states.

24 MR. McLEOD: That's sort of what were trying to
25 establish, Your Honor.

1 THE COURT: Okay. That's fine.

2 MR. McLEOD: Is to just raise the issue of the
3 indictment and I may, it seemed like at some point when we
4 were here, we've been back and forth with this thing so
5 many times, I may have just had a conversation about that
6 with either Josh or Karen, you know, after I provided them
7 with a copy.

8 MS. KINARD: And I understand that's one of the
9 downfalls of my position so I don't want to prejudice him -
10 --

11 MR. McLEOD: And I don't want ---

12 MS. KINARD: --- since ---

13 THE COURT: And the Court has known Mr. McLeod for
14 very long time. The Court knows Mr. McLeod would not try
15 to mislead anybody so.

16 MS. KINARD: And I do not mean to imply that
17 whatsoever.

18 MR. McLEOD: That's fine. That's why they provided
19 me one with that seal on it, Your Honor. They said that's
20 the best they were going to do for me.

21 THE COURT: Okay. But the sole purpose is to
22 establish that he died in Mecklenburg County.

23 MR. McLEOD: Right.

24 THE COURT: The attorney general indicated she'll
25 stipulate to that.

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1 MR. McLEOD: And indictment says he died in
2 Chesterfield County, Your Honor.

3 THE COURT: Okay. That's fine.

4 MR. McLEOD: Thank you, Your Honor. Thank you.

5 MS. KINARD: Thank you.

6 Q. Mr. Rivers, what kind of conversation did you have
7 with Mr. Cannarella about these issues about the
8 indictment? About the fact that it possibly -- that it
9 misstated where the victim died and that it was signed by a
10 person who was not actually the foreman as listed by the
11 court records?

12 A. I ain't had no discussion with him.

13 Q. Okay. Now, what -- as far as the issue of your plea,
14 what did your trial counsel explained to you about the
15 penalty that you were faced with on the plea that you were
16 offered?

17 A. He told me if I pled guilty to voluntary manslaughter
18 that I would only do 65% of the sentence I received but he
19 said I could -- he said if I got in trouble while I was in
20 SCDC I could run my up time and do all the time. But he
21 said as long as I don't get in trouble, I do 65% and I can
22 come home.

23 Q. And then where did you find out about the 85% that was
24 the actual mandatory minimum penalty for that plea?

25 A. When I got to SCDC I sat down with my caseworker and

1 they told me I had to do 85% of my time based on the plea
2 that I took.

3 Q. And when you pled on this matter, did you remember,
4 and I'm looking at page 11 of the plea transcript -- that
5 the Court ask you and this is on line 19, page 11 of the
6 transcript, the plea transcript, the Court said, "and you
7 understand that possession of a weapon during the
8 commission of a violent crime as I have classified as non-
9 violent and you understand that and have you discuss with
10 your attorney the 85% rule or anything like that parole
11 eligibility" and then your answer, do you remember what you
12 answered?

13 A. I said, no, sir.

14 Q. Okay. On line ---

15 A. I ain't know nothing about 85%. He ain't never said
16 nothing about no 85%.

17 Q. And on line 19 -- and on line 24, your answer is, "no,
18 sir". Okay.

19 A. Yes.

20 Q. And then did the Court go on to say anything about
21 that, after that?

22 A. The judge was like, that's not my concern. I ain't
23 fix'in to discuss that with you. I just want to let you
24 know that you may end up doing your whole time. But he
25 didn't tell me I had to do a mandatory minimum penalty up

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1 to 85% before I'm released from prison.

2 Q. You just didn't understand that at the time that you
3 were ---

4 A. I didn't understand nothing about no 85%.

5 Q. You thought -- what did Mr. Cannarella tell you?

6 A. He told me I had to do 65% and I would be released
7 from prison. I would be doing 65% of whatever sentence the
8 Court gave me.

9 Q. Okay. How did you, based on that, how did that affect
10 you making your decision about whether or not to plea that
11 you thought you only had to do 65%?

12 A. I mean, I pled guilty based on that he tell me I gonna
13 do 65% of my sentence.

14 Q. All right. What would you have done if Mr. Cannarella
15 had said Mr. Rivers if you plead guilty to involuntary
16 manslaughter in this other charge that you're going to have
17 to do ---

18 A. Voluntary manslaughter.

19 Q. --- voluntary, excuse me, voluntary manslaughter that
20 you're going to have to do at least and 85% or 80%
21 whichever it is, mandatory minimum sentence, what would you
22 have done, had you had that information?

23 A. I would've pled not guilty. I would've went to trial.

24 Q. Okay. And how do you feel about your plea as being
25 knowingly and voluntarily entered based on the penalty?

1 A. I think it was involuntarily and unintelligently given
2 because I didn't have a full understanding of the
3 consequences of plea based on that penalty.

4 Q. If your trial attorney had objected to this murder
5 indictment and probably move to quash the murder
6 indictment, how do you believe that would make things
7 different for you?

8 A. As far as insufficient?

9 Q. Right.

10 A. I would've never pled -- I would've never pled guilty
11 to it instead I would've went to trial. I would've never
12 pled guilty to a voluntary manslaughter based on a false
13 insufficient notice in the indictment, instead I would've
14 went to trial and I could've challenged the place of death,
15 because the place of death must be, must be proved before
16 the State ---

17 Q. And then what did your trial counsel tell you about
18 the State's case against you?

19 A. He told me the State had planned to use a eyewitness
20 name Kory Little who gave a statement saying they was going
21 to plan to use that to show that I initial difficulty
22 stepping out, by stepping out of the car with a shotgun in
23 my hand bringing on bringing on initial difficulty.

24 Q. Okay. And then what, let's back up just for second,
25 what -- was there some reference about another sworn

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1 statement, ah, recorded statement from somebody else that
2 was a witness?

3 A. Yeah, it was Kenneth Louallen.

4 Q. Okay. And how did you -- how did you come to know
5 that there was a statement from Kenneth Louallen?

6 A. I read the Pageland police incident report where they
7 gave a report about what happened and I see that they said
8 that Kenneth Louallen has a statement on tape where he
9 stated with things that he said he saw.

10 Q. Okay. And did you -- did you -- did your attorney
11 ever talk to Kenneth Louallen?

12 A. No.

13 Q. And did in the Brady motion that was made by your
14 attorney, did the State provide the recorded statement of
15 Kenneth Louallen?

16 A. No, they didn't -- - no, they didn't -- they didn't
17 even give us the address so my lawyer couldn't have talked
18 to him because he didn't have the address to even find out
19 where he was.

20 Q. And at the pretrial motions conference, did that issue
21 come up about the missing statement?

22 A. During the pretrial matter my lawyer brought up the
23 issue that his statement is missing and, basically, he was,
24 basically, requesting for it during pretrial but the State
25 they just brushed it off. They ain't say nothing about

1 it.

2 Q. Okay. And did your lawyer move for a Brady violation
3 at that time or anything in relation to that statement?

4 A. No, he didn't.

5 Q. Okay. On page 66 of the transcript from August 30,
6 2010, is that where the issue came up but for some reason
7 the statement says, it talks about Kenneth Burrell?

8 A. It must've been a misprint.

9 Q. Okay. Because you think that supposed to say Kenneth
10 Louallen?

11 A. Suppose to be Kenneth Louallen.

12 Q. There's no Kenneth Burrell that was ever mentioned as
13 a witness to this incident?

14 A. That's nowhere -- nowhere in no paperwork.

15 Q. And it says here that Mr. Cannarella says, " there's a
16 missing statement from this Kenneth and it's printed here
17 Burrell" but we think it should be Louallen and it goes on
18 to say, "I know there is a recorded statement of his that I
19 can get but they never provided" and Mr. Cannarella never
20 insisted on having it or anything like that?

21 A. No, he didn't.

22 MS. KINARD: I'm sorry, what page is that?

23 MR. McLEOD: Page, I'm sorry, that's page 66 of this
24 earlier day before hearing ---

25 MS. KINARD: Okay.

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1 MR. McLEOD: --- August 30th.

2 THE COURT: What are you referring to?

3 MR. McLEOD: This is a transcript of record on the
4 day before the plea.

5 MS. KINARD: That's not included in the judges
6 packet is it, because ---

7 THE COURT: Yeah, I don't have that.

8 MR. McLEOD: Okay. I'm sorry, Your Honor. I'll
9 just -- it was when they had a motion hearing about Mr.
10 Rivers' statement. He took a motion to suppress the plea
11 etc. and a motion for continuance and the Brady issues.

12 MS. KINARD: Your Honor, I'm going to object to the
13 inclusion of that during this because it is not actually
14 evidence of his plea and not contain as part of the
15 transcript.

16 THE COURT: All right. I'm going to respectfully
17 overrule your objection with regards to that.

18 MS. KINARD: Thank you, Your Honor.

19 THE COURT: This took place -- it's all in
20 conjunction with the same matter.

21 MR. McLEOD: This is the day before, Your Honor.

22 THE COURT: Right.

23 MR. McLEOD: And I apologize ---

24 THE COURT: This is all part of the same proceeding
25 in my opinion.

1 Q. So do you know if your trial counsel ever talked to
2 Kenneth Louallen or anything like that?

3 A. I don't think he did because, I mean, I know he
4 requested -- he sent the Brady request to the State
5 requesting for the names and addresses of all witnesses who
6 law enforcement interviewed and they ain't never give us
7 the address. They gave us the name in the incident report
8 but his addressed ain't in there so we wouldn't know where
9 to find him at. We don't even know where he stay at
10 because it don't say where you stay at. Don't got his date
11 of birth. Don't got noth'in. We don't know noth'in. All
12 we know is his name is Kenneth Louallen and a statement on
13 tape.

14 Q. Because that was clearly stated in the incident report
15 created by the Pageland Police Department that Kenneth
16 Louallen gave a statement?

17 A. Yes, sir.

18 MR. McLEOD: Excuse me, Your Honor, for a moment.

19 THE COURT: Yes, sir.

20 MR. McLEOD: Your Honor, this is the actual incident
21 report and it says in here that Mr. Louallen, they listed
22 him as a witness and gave a statement and that's how he
23 knew about it -- and that's how the officer knew about it
24 and that statement was never produced. I'll just moved to
25 make that a trial exhibit to establish that.

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1 MS. KINARD: No objection.

2 THE COURT: All right. Received without objection.

3 Admitted into evidence, madam, court reporter.

4 (Whereupon, the Pageland Police Department Incident Report
5 has been marked and entered into evidence as Applicant's
6 No. 2)

7 THE COURT: It's applicant's two, right?

8 MR. McLEOD: Two or three?

9 COURT REPORTER: Two.

10 THE COURT: The other one was not admitted.

11 MR. McLEOD: Okay.

12 THE COURT: That was stipulated to.

13 MR. McLEOD: Stipulated.

14 Q. Okay. Now, what -- since your plea, Mr. Rivers, what
15 have you come to learn about the statement that Kory Little
16 gave to the Pageland Police Department that the State was
17 going to use against you?

18 A. Since the time of my guilty plea I learn that ---

19 Q. Since your guilty plea, I mean, after you gave your
20 guilty ---

21 A. Yeah, after I gave my guilty plea I learn that he lied
22 about the statement he wrote. That he only wrote the
23 statement because the police told him if he didn't say I
24 stepped out of the car with the gun and shot the victim,
25 then they were going to charge him with accessory after the

1 fact for not calling authorities after the incident
2 occurred.

3 Q. Now, had you known about that or had your trial
4 attorney known about that before you gave your guilty plea
5 how would that have changed -- how would that affected your
6 decision?

7 A. I believe I would've pled not guilty and went to trial
8 because then I would been able to dispute the State's
9 theory that I brought on initial difficulty by stepping out
10 the car with a gun because the only testimony that they
11 plan to use that I brought initial difficulty by stepping
12 out of the car with the gun was Kory Little's statement.

13 Q. And did your trial attorney, did y'all discuss that,
14 that statement was against you and that, that was going to
15 be hard to overcome?

16 A. Yep. He didn't never -- he didn't never -- he didn't
17 never interview -- he didn't never interview him.

18 Q. Interview who?

19 A. He never interviewed Kory Little about the incident.

20 Q. Even though he had a statement that was taken from
21 him?

22 A. There was statement -- there was a statement but he
23 never interviewed him.

24 Q. Okay. Um, now, what was the -- why was your -- why
25 was your trial attorney concerned that you did not have a

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1 good -- that you did not have a self-defense argument?

2 A. Say that again.

3 Q. What was some of the reasons that your trial attorney
4 was concerned that you did not have a self-defense argument
5 that y'all were trying to wait when you were either
6 deciding to go to trial or deciding to plead guilty?

7 A. Why he said I didn't have one?

8 Q. Why you didn't have ---

9 A. Cause he was trying to say I couldn't -- I wouldn't be
10 able to overcome the fact that I -- there was testimony
11 that I stepped out the car with a gun and I brought on
12 initial difficulty by stepping out the car with the gun so
13 that would automatically kill off the first prong of self-
14 defense.

15 Q. And then what about -- what about the victim -- what
16 about the victim and his gun?

17 A. He said the victim -- the victim -- if the victim did
18 have a gun because I said the victim had the gun but he was
19 like if nobody else -- if nobody else could say that he
20 pulled out the gun on me or he brought on the initial
21 difficulty by pulling out the gun first on me, he said
22 nobody would come forward so they -- I wouldn't of been
23 able to dispute ---

24 Q. All right.

25 A. --- the State's theory.

1 Q. Was there somebody else that you knew that at the time
2 that they also said the victim had a gun?

3 A. I mean ---

4 Q. Was that -- what about your brother?

5 A. My brother he said he saw -- he said he saw the victim
6 with a gun.

7 Q. But no -- but the victim didn't have a gun when the
8 police got there to investigate it?

9 A. Nah, he ain't had no gun ---

10 Q. And, of course, your brother would be your brother,
11 right, I mean, he wouldn't considered ---

12 A. My lawyer say -- my lawyer say the Court would kinda
13 be like, well, your brother gonna protect you anyway so
14 they ain't really wouldn't really believe him if he say he
15 seen victim with a gun.

16 Q. All right. Since all that -- since y'all made that
17 decision based on those kind of issues, what have you
18 learned about any other person who could say that the
19 victim had a gun -- had a gun that night?

20 A. Well, since I've been -- since I've been at SCDC I ran
21 into somebody who said that there was there the night the
22 incident occurred and they said that they seen, they seen
23 me when I got out the car and I didn't have a gun in my
24 hand. They said they seen the victim pull out the gun,
25 pull out a gun and walked towards me and screamed

1 aggressive words to me as he was walking up to me with the
2 gun.

3 Q. Okay. So that person was not known to you at the time
4 you made your plea or at the time that you and your
5 attorney talked about whether or not you should go to trial
6 or take a plea?

7 A. No. He didn't know about him at the time.

8 Q. All right. Was he listed on any witness list or
9 anything like that?

10 A. No. He didn't even give a statement when the incident
11 occurred.

12 Q. All right. And who is that individual?

13 A. His name was Billy Lee Lisenby, Jr.

14 Q. All right. So if you had known about Billy Lee
15 Lisenby, Jr. seeing the victim with a gun, would that have
16 been something you and your attorney would've talked about?

17 A. Yeah, of course, because then I would've been able to
18 establish a self-defense claim because that would've showed
19 that the victim was the aggressor that night and I did not
20 step out the car with the gun in my hand.

21 Q. What -- based on the -- I think it's in the incident
22 report, the incident report also refers and I find this --
23 does it say something about something else was found at the
24 scene but it wasn't found when they went back to get it?

25 A. They said they initial observed a cell phone on the

1 ground due to a large crowd having to contain it an unknown
2 subject picked it up.

3 Q. Okay.

4 A. So people been picking up stuff from the scene.

5 Q. So that was a police officer who said that ---

6 A. Right in front of the police.

7 Q. So what do you believe -- do you believe it's possible
8 that the same thing may have happened to the gun that you
9 said the victim had?

10 A. I believe somebody take the gun out of his hand.

11 Q. Okay. And what discussion did you have with your
12 trial counsel about appealing the issue about the judge
13 denying your continuance based on just receiving the
14 autopsy report a day or two ahead of time? Was there any
15 discussion you about what he could do about that?

16 A. About how it would've helped me?

17 Q. Could you've appealed that after the fact ---

18 A. Ah, nah, he didn't tell me I could appeal it that.

19 Another thing, it stated in the -- he stated in the
20 pretrial transcript that his shoes was missing to. So his
21 shoes were missing and then a cell phone picked up. So,
22 Obviously, somebody must've took the gun too.

23 Q. And this autopsy report came a few days ahead of time,
24 did it give you any indication about the victim, whether or
25 not there was any alcohol in this victim's blood or

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1 anything like that?

2 A. Yeah, it showed -- the technology test -- the test
3 revealed that the victim had like 70 mg of ethanol in his
4 blood.

5 Q. Did you and your attorney have, did y'all talk about
6 whether or not that would be a good defense to whether or
7 not somebody was acting aggressively or acting in any kind
8 way or anything like that?

9 A. No.

10 Q. Did your trial counsel do any kind of checking into
11 the actual victim about his history or anything of that
12 nature?

13 A. No. He didn't do no kind of background cause I ain't
14 got no copy of his criminal background or noth'in.

15 Q. And then what did -- what did the trial counsel say in
16 court that you felt like that you disagreed with?

17 A. He kept saying during the plea hearing, he kept saying
18 that I stepped out the car with a gun.

19 Q. Okay. And he got that information from, where do you
20 think that information came from?

21 A. He must've got it from Kory Little's statement.

22 Q. All right. How else do you feel that your trial
23 counsel is ineffective, is there anything else that you
24 want to bring up at this time?

25 A. You mean as far as -- about the Brady violation as far

1 as the State failing to disclose the address and the
2 statement on tape of Kenneth Louallen.

3 Q. Okay. So as far as your application to the Court
4 you've got, there's an issue with the indictment that you
5 believe it's invalid based on the fact it inaccurately
6 states the location of death. It's also invalid because
7 the foreman didn't sign it. And it was ineffective
8 assistance of counsel that he didn't raise those issues
9 right immediately and make a re-indictment which would've
10 given more opportunities for you to get some of this other
11 information. And then you feel like that you had
12 ineffective assistance in counsel advising you of the plea
13 that you were faced with and that had, had accurate
14 information been given to you that you would have not pled
15 and would have chosen to go to trial?

16 A. That's right.

17 Q. You testified to that. And you've testified to the
18 fact that you believe that there was a Brady violation
19 because the incident report clearly says that Kenneth
20 Louallen gave us a statement. They never -- they never --
21 the State never produced it. Your trial attorney asked for
22 but then it never got any further than that and you feel
23 like that was a Brady violation, number one, and then
24 ineffective assistance of counsel for him not stopping the
25 train and making that either prove that, that there wasn't

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1 one or produce it.

2 A. Well, the tape -- well, the tape was also based on the
3 Pageland Police incident report, it was impeachment
4 evidence, really favorable evidence on my behalf because I
5 could've used that to show that Kory Little, he had lied in
6 his statement. I could've used that within the trial. I
7 would've pled not guilty and went to trial because I
8 could've use that to show that Kory Little lied in his
9 statement because you see Kory Little say in his statement
10 that he seen me and two others get out but Kenneth Louallen
11 he'd say, within the Pageland Police report he say, he just
12 seen me step out the car.

13 Q. And, of course, you've learn about -- you've learn the
14 fact that Kory Little is now willing to recant his
15 statement and you've learn about this other witness, Billy
16 Lisenby, Jr., who saw the victim with a gun after you gave,
17 after you gave your plea and after you were incarcerated?

18 A. Yes, sir.

19 Q. Okay. And so that's after discovered evidence that
20 you are raising in this PCR application?

21 A. Yes, sir.

22 Q. Now, are there any other -- are there any other issues
23 that we haven't covered that you wanted to cover today with
24 the Court?

25 A. Well, I want to raise the house arrest issue. I don't

1 know how far I will get to that. The house arrest issue

2 ---

3 Q. You don't think you got time for the time that you
4 were on house arrest between the time you were arrested and
5 the time, and when you pled, is that what you're talking
6 about?

7 A. Yeah. I did like two and half years on house arrest.
8 I ain't get no time.

9 Q. Okay. So you think you suppose to get credit for that
10 for that time?

11 A. I mean, I'm asking can I get credit for it.

12 Q. Okay. So you want to ask that you get credit for the
13 time you were serving between the time you were arrested
14 and the time you pled guilty?

15 A. Mmm, hmm.

16 THE COURT: Is that a yes or no?

17 A. Yes, sir.

18 Q. All right.

19 MR. McLEOD: Your Honor, we would just include that
20 as part of this process if that's permissible?

21 Q. You were on house arrest and you weren't on bond or
22 anything like that?

23 A. I was on house arrest but section 24-13-40 recently
24 amended that people on house arrest that got out on bond on
25 house arrest can get time credit. It's like it's just the

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1 same as being incarcerated.

2 Q. But you were on house arrest so you weren't just free
3 on your own recognizance bond or anything like that?

4 A. No. I was on house arrest. It's -- I got it over ---

5 Q. Did you have to wear a bracelet?

6 A. I had to wear bracelet.

7 Q. All right. Now, other than that, is there anything
8 else that you want to include on this PCR application?

9 A. Nah, that's about all.

10 Q. Okay. All right. Now ---

11 A. I really wanted that amended as far as him failing to
12 interview, finding out about Kory Little new testimony, I
13 want to say that I really wanted that amended as a failure
14 to interview, cause his failure to interview the witness
15 ---

16 Q. Well, that would follow the ineffective assistance of
17 counsel that you're saying that he never interviewed the
18 witness that the State was using against you?

19 A. Mmm, hmm.

20 THE COURT: Yes or no?

21 A. Yes, ma'am.

22 Q. All right.

23 MR. MCLEOD: Now, please answer any questions the
24 assistant attorney general may have for you, Mr. Rivers?

25 A. All right.

1 THE COURT: Ms. Kinard?

2 MS. KINARD: Thank you.

3 **Cross Examination by Ms. Kinard:**

4 Q. Mr. Rivers, a lot has been said on different levels,
5 so I want to go back and talk about, first, your actual
6 plea, okay, and you did plead guilty to these crimes?

7 A. Yes, ma'am.

8 Q. Voluntary manslaughter and possession of a weapon?

9 A. Yes, ma'am.

10 Q. Okay. So as part of this, I'm going to present to you
11 the plea transcript, may I approach, Your Honor?

12 THE COURT: Yes, ma'am.

13 Q. This is a copy, it's double-sided. If you look at
14 that please, I'm going to ask you a couple questions about
15 it and make sure you remember. Now, this is all in front
16 of Judge Burch and starting on page 6, we've talked about
17 the indictment. At this point, you stated that you didn't
18 know about the indictment? You didn't know that it stated
19 the victim died in Chesterfield County, is that correct?

20 A. Mmm, hmm. Yes, ma'am.

21 Q. However, otherwise, Judge Burch read the indictment,
22 you said you wanted to plead guilty to it, page 6 line 24,
23 is that correct?

24 A. Yes, ma'am.

25 Q. And then page 7, line 3, you said you also wanted to

1 plead guilty to possession of a weapon during the
2 commission of a violent crime, is that correct?

3 A. Yes, ma'am. But he didn't never tell me -- he didn't
4 never tell me that I could challenge the place of death in
5 the indictment. He ain't never tell me the victim died in
6 another place.

7 Q. I understand. Regardless of that, were you aware of
8 the incident that the indictment referred to?

9 A. I was aware of it.

10 Q. You knew what happened?

11 A. I was aware of what the indictment said when he read
12 it to me.

13 Q. Okay. So you knew exactly the date, time, place
14 exactly what this is all referring to?

15 A. Based on what he tell me.

16 Q. Okay. Say you didn't have any question as to the
17 events you were brought to court for?

18 A. No. Cause, I didn't know I could've challenged it.

19 Q. Okay. So going on page 7, line 7, you understand that
20 pleading guilty, you're giving up your constitutional right
21 to a jury trial, and you said?

22 A. I said, yes, sir -- yes, ma'am.

23 Q. Okay. And the judge continues to go through the rest
24 of your constitutional rights including the right to a jury
25 trial, the right to confront your witnesses, the right to

1 require the State to establish your guilt beyond a
2 reasonable doubt, do you see that on lines 14 and 15?

3 A. I see it.

4 Q. Okay. And then on lines 20 through 22, you understand
5 you're presumed to be innocent and that presumption stays
6 with you, excuse me, throughout any trial?

7 A. I see it.

8 Q. Okay. And then pass that, presumption only ends if
9 the jury convicts you and on page 8, line 1, you say, yes,
10 sir, correct?

11 A. Yes, ma'am.

12 Q. All right. And then he goes into line 2, you have the
13 right to testify on your own defense, do you see that?

14 A. Yes, ma'am.

15 Q. All right. And you keep going down to line 15, you
16 understand if you're convicted you have the right to
17 appeal, and you say?

18 A. I say, yes, ma'am. I seen it.

19 Q. All right. So down in the crux of this matter page 9,
20 line 19, Mr. Rivers, are you satisfied with the manner in
21 which your attorney has advised you and represented you in
22 this case, and you said?

23 A. I say -- I say, yes, sir.

24 Q. He's done everything on your behalf that you think he
25 could or should have done, line 25, you say?

1 A. I say -- I say, yes, sir.

2 Q. And then page 10, line 3, he contacted everybody you
3 ask him to contact, if anybody, and you said, yes, sir, is
4 that correct?

5 A. Yeah, cause I thought that's what he did. I thought
6 he contacted everybody. I thought he interviewed
7 everybody. He tell me that's what he did.

8 Q. Okay. Do you know of anybody that you ask him to
9 contact that he didn't?

10 A. He's suppose to -- he suppose to contact everybody who
11 supposed to have been an eyewitness in the case.

12 Q. Okay.

13 A. And anybody who was relevant to the case.

14 Q. And do you believe of all the people you knew at that
15 time, he contacted them all, baring Billy Lisenby, because
16 you didn't know about him apparently?

17 A. Nah, I mean, he told me he interviewed everybody who
18 he could possibly interview about the case.

19 Q. Okay. Page 10, line 6, if you have any problem with
20 his representation please tell me now and you said, I got
21 no problems, is that correct?

22 A. I said that.

23 Q. Page 10, line 12, this is your decision? Yes, sir.
24 Nobody is making you do this? No, sir. This is of your
25 own free will and accord? Yes, sir. Is that correct?

1 A. Yes, ma'am, I said that.

2 Q. And the rest of page 10, you state that you are not
3 under the influence of anything and no one has coerced you
4 to do anything, is that correct?

5 A. I said that, yes, ma'am.

6 Q. Page 11, line 11, you state you are guilty of
7 voluntary manslaughter and possession of a weapon, is that
8 correct?

9 A. Yes, ma'am.

10 Q. Okay. So through all of this you state that you are
11 satisfied with your attorney, you pled guilty to these
12 matters, and you didn't have an issue with what was
13 happening that day, is that correct?

14 A. Yes, ma'am, I said that.

15 Q. Okay. So going forward let's talk about -- let's talk
16 about this plea just a little bit, I believe you have been
17 in court before, is that correct?

18 A. Yes, ma'am.

19 Q. Did you plead guilty to your prior incident?

20 A. Oh no, I ain't never been in court, general sessions
21 court.

22 Q. Okay. My apologies. I was confused. On this case,
23 there was a relatively lengthy speech made by Mr.
24 Cannarella, do you remember that?

25 A. Yes, ma'am.

Dameion Rivers- Cross Examination by Ms. Kinard

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1 Q. That's kind of why this is so thick. These are
2 usually a lot shorter. Were you surprised that he talked
3 about so many things?

4 A. Yes, ma'am, I was.

5 Q. Okay. Do you have any idea why he did that?

6 A. I really don't know where he got the information from.

7 Q. Okay. Did you ever try to stop him?

8 A. Stop him?

9 Q. Yeah, if he was saying something wrong, did you ever
10 try to stop him?

11 A. I ain't try to stop him. I thought he -- I thought he
12 was helping me.

13 Q. Okay.

14 A. I mean, that's what I paid him to do.

15 Q. Right. So at no point you thought he was messing up
16 and at no point did he say something you disagreed with?

17 A. No, ma'am.

18 Q. Okay. All right. And so going on to talk about Mr.
19 Lisenby for a minute, did you see him the night of the
20 incident?

21 A. I mean, I don't -- I mean, I seen a lot of people
22 really but I don't -- I didn't really see him, no.

23 Q. Okay. Did you ---

24 A. I didn't even know him.

25 Q. Okay. That was my next question. So was there a

1 group of people at the incident?

2 A. It was a group. It was a lot of people.

3 Q. Okay. All right. And Kory Little was there?

4 A. Kory Little was there.

5 Q. And, apparently, Billy Lee Lisenby was there?

6 A. I seen Kory Little because I know Kory Little.

7 Q. Great. And you ended up -- in this transcript it
8 says, you got credit for 119 days, times served, was that,
9 are you saying that's different than your house arrest
10 time?

11 A. That's different from the house arrest. That's time I
12 did -- that's time I did incarcerated. That ain't the time
13 I did on house arrest.

14 Q. All right.

15 A. I have a copy of the time I did on house arrest from
16 probation and parole.

17 Q. Okay. We'll discuss that further if we need to.

18 A. All right.

19 Q. But at this point, do you have any disagreement with
20 me that you stated under oath and in this transcript that
21 everything Mr. Cannarella did was what you ask him to do?

22 A. I ain't had no problem with it, I mean, I thought -- I
23 thought he did, like I said, I thought he did everything he
24 possibly could do to help me.

25 Q. Right. And you chose not to appeal these pleas?

1 A. Nah, I told him not to appeal.

2 Q. Okay.

3 MS. KINARD: All right. That's all I have right
4 now. If you'll answer any further questions from your
5 attorney or the court.

6 THE COURT: Mr. McLeod?

7 **Redirect Examination by Mr. McLeod:**

8 Q. Mr. Rivers, at the time the judge asked you those
9 questions, did you think -- is that what you thought at the
10 time those question got asked to you?

11 A. Which questions?

12 Q. The questions that the assistant attorney general just
13 went over with you.

14 A. I felt like -- I felt like ---

15 Q. At that moment that's what you thought?

16 A. At that moment, I felt like everything ---

17 Q. All right. But since then you've learned -- but since
18 then you've actually seen the indictments?

19 A. Yeah, I actually seen the indictment.

20 Q. Okay.

21 A. And I found out that I could challenge, that the
22 indictment could be challenged as far as the place of
23 death, time of death, and things like that.

24 Q. All right. And then now, you've learn about Billy Lee
25 Lisenby and Kory Little, you learned -- had you known that-

1 --

2 A. I would've never took that plea.

3 Q. Okay.

4 A. I would've went to trial.

5 Q. Okay. And also you said that you were in agreement
6 with everything Mr. Cannarella said in his speech but on
7 line, on page 17, lines 12 through 14, when Mr. Cannarella
8 says, I can't say that there is no any excuse for because
9 Dameion got out of the car, basically, with a shotgun, did
10 you want him to say that in court?

11 A. No, I didn't want him to say that. I was thinking he
12 was helping me. I ain't -- I didn't want him to say that.
13 He was harming me the whole time by saying that.

14 Q. All right.

15 A. And when -- I was thinking that he was -- I was
16 thinking that, basically, he was saying that I stepped out
17 with a gun that it was in my pants. I ain't said -- I
18 didn't think he was saying that I stepped out with it in my
19 hand and that's, basically, what he was saying.

20 Q. Okay. And that was coming from -- where do you
21 believe that was coming from?

22 A. I believe that was coming from Kory Little's
23 statement. The only statement

24 Q. The only statement the State had ---

25 A. The only evidence the State had to try to prove that.

Dameion Rivers- Redirect Examination by Mr. McLeod

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1 Q. But that's not what you say happened?

2 A. No, that's not what I say happened.

3 Q. Okay. All right.

4 A. Also I had waive my constitutional rights and all that
5 thinking that I was going to do 65% of the time. Like I
6 say, I didn't know, I did know the plea was an 85% plea.
7 If I knew the plea was an 85% plea, I would've never waived
8 my constitutional rights and all that. Like I say, I
9 would've went to trial.

10 Q. But your decision came because your defenses was for
11 self-defense were diminished by the fact the victim didn't
12 have a gun and that the State had this Kory Little who said
13 you got out the car with the gun?

14 A. Yes, sir.

15 Q. All right. I don't have ---

16 A. And that nobody would come forward -- nobody would say
17 nothing about the victim was the initial aggressor by
18 pulling out a gun on me.

19 Q. All right.

20 MR. McLEOD: I don't have anything further, Your
21 Honor, at this time.

22 THE COURT: Okay.

23 MS. KINARD: I have just one quick question.

24 THE COURT: All right.

25 MS. KINARD: If I can look at the transcript.

1 **Re-cross Examination by Ms. Kinard:**

2 Q. Mr. McLeod brought this up before, that even though
3 you thought it was a 65% plea, the judge did say that he
4 doesn't know what these are, that you could serve the whole
5 thing, do you remember ---

6 A. I could -- I could serve the whole thing that's if,
7 like I say, he told me if I get in trouble then I could
8 serve my whole time. So I'm thinking I could serve my
9 whole time if I get in trouble but if I had known that I
10 would have to serve a mandatory 85% before even be released
11 from prison, I would've never took that plea. Like I say,
12 I would've went to trial.

13 Q. I understand that but my question, specifically, is do
14 you remember the judge telling you that you could serve the
15 whole time?

16 A. I remember him saying that. Yes, ma'am.

17 Q. All right.

18 MS. KINARD: Thank you.

19 THE COURT: All right. Sir, you can step down.

20 You have any other witnesses, Mr. McLeod?

21 MR. McLEOD: Our next witness is Kory little. Can
22 somebody get Cory Little for us?

23 (Whereupon, the deputy retrieved the witness from the back)

24 THE CLERK: Raise your right hand as best you can.

25 Do you solemnly swear or affirm that the testimony you give

Kory Little- Direct Examination by Mr. McLeod

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1 this Court to be the truth and nothing but the truth so
2 help you God?

3 MR. LITTLE: Yes, ma'am.

4 THE CLERK: You may have a seat and state your
5 name.

6 THE COURT: Please answer the questions with yes or
7 no response, not uh, uh or huh, huh.

8 KORY LITTLE, first being
9 duly sworn, testified as follows:

10 **Direct Examination by Mr. McLeod:**

11 Q. Mr. Little, can you please give us your full name?

12 A. Kory Alexander Little.

13 COURT REPORTER: I'm sorry, what was that name?

14 A. Kory Alexander Little.

15 Q. And where are you currently being housed right now?

16 A. Darlington County jail at the detention center.

17 Q. The detention center?

18 A. Yes, sir.

19 Q. And why are you at the Darlington County Detention
20 Center?

21 A. I'm a federal detainer. I'm on a federal detainer for
22 possession of a firearm by a convicted felon.

23 Q. All right. And so do you got any other detainers on
24 you anywhere else?

25 A. No, sir.

1 Q. All right. Now, were you at Pop's Game Room in
2 Pageland the night that Tavish Dunlap was killed?

3 A. Yes.

4 Q. Okay. Now, what did you give to the Pageland Police
5 Department in regards to that incident?

6 A. You mean the statement that I wrote?

7 Q. That's right.

8 A. Yes, I wrote a statement to the Pageland Police
9 Department.

10 Q. Okay. What was -- what was -- in that statement what
11 did you tell the Pageland Police Department at that time?

12 A. I have to look over it. I can't exactly remember
13 everything that I wrote in it.

14 Q. Okay. Did you tell them that you saw Mr. River step
15 out of the car with the gun?

16 A. Yes.

17 Q. Now, ---

18 A. But that wasn't true.

19 Q. Okay.

20 A. That was a coerced statement because the Pageland
21 Police Department forced me to do it. They made me write
22 what they wanted me to write. They wouldn't let me go to
23 the restroom. They wouldn't let me use, um, they wouldn't
24 let me get no food or nothing and they held me in there
25 forever until I wrote -- until I wrote what they wanted me

Kory Little- Direct Examination by Mr. McLeod

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1 to write. But everything that I wrote in that statement
2 was not true. It was false.

3 Q. Okay. So what did you actually -- but you were there
4 that night?

5 A. Yes, I was there.

6 Q. Okay. What did you actually see, I mean, what did you
7 see?

8 A. Me and Tavish was standing out there in front of Pop's
9 Game Room it was dark because all the lights had been, the
10 streetlights have been shot out. He was talking to
11 somebody, him and someone was arguing over the phone, the
12 telephone. And a car pulled up and somebody got out the
13 car with the long gun, I don't know who it was because it
14 was dark. He, Tavish walked up to him, they was arguing.
15 The guy that had the gun was, like, he was backing up
16 trying to get back in the car and I heard a shot go off and
17 I saw Tavish fall and I ran inside Pop's and called 911.

18 Q. But you didn't know who it was or anything like that?

19 A. No. I didn't see, knew who the person was.

20 Q. All right. But you said in your statement that you,
21 specifically, saw Dameion Rivers?

22 A. Yes. That was because the Pageland Police, Larry
23 Brown, Detective Larry Brown and Officer Mikos Newman
24 forced me to do what.

25 Q. Okay. So, now, you're saying that the statement you

1 gave was not accurate?

2 A. No. It wasn't true at all.

3 Q. All right. So did you see Mr. River shoot?

4 A. No. I didn't even know Mr. Rivers was there. I don't
5 know who it was that exited the car, I don't know. I
6 couldn't see faces because it was dark.

7 Q. And did you know anything that had gone on between
8 Mr. Rivers and the victim before any of this?

9 A. No. We was all best friends.

10 Q. Okay. Did you ever get interviewed by Mr. Rivers's
11 attorney prior to the trial, the upcoming trial of that
12 case?

13 A. No, sir. And if he or she, whoever it may be,
14 would've interviewed me I would've told them what they made
15 me do at the police department.

16 Q. Was there any other reason why you think that police
17 department tried to make you make that statement that you
18 don't think is true?

19 A. It was -- they told me that they was going to charge
20 me with accessory after the fact of murder because I didn't
21 call, they said I didn't call the police but I did but they
22 said I didn't and I didn't report it and they was, throwed
23 all kind of things at me and I just went ahead and complied
24 with them so I could get out of there so I could get
25 something to eat and use the bathroom.

Kory Little- Cross Examination by Ms. Kinard

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1 Q. And so what was -- and so what do you think, if later
2 after you were out of that situation and trial counsel for
3 Mr. Rivers had asked about that, would you have been
4 forthcoming at that point and said that statement wasn't
5 accurate?

6 A. Yes. I been trying since 2014 to get in contact --
7 well, I would've -- I was trying to get in contact with Mr.
8 Rivers's or his lawyer since 2014 so I could come back and
9 recant my story and let them know what was going on.

10 Q. Okay. And who were the officers that were there? Did
11 you say ---

12 A. He's achieved -- he's Chief Larry Brown now -- well,
13 he was but he got fired, but him and officer Mikos Newman.

14 Q. All right. And then as far as, what knowledge do you
15 have about the victim having a gun that night?

16 A. There were guns everywhere out there that night.

17 Q. Okay.

18 A. I'm not, absolutely, sure if he had one on him at the
19 time and not. I don't know.

20 Q. Okay.

21 A. I wasn't up on them. I wasn't that close up to see
22 what was transpiring between ---

23 Q. How far -- how far were you from the incident?

24 A. I was at the top of the building, they were, Tavish
25 and the guys were down at the bottom of the hill by, up

1 under the streetlight which I said those streetlights were
2 shot out so you really couldn't see.

3 Q. Oh, so there weren't any light down there?

4 A. It wasn't a light.

5 Q. How distance wise was that from here to the back of
6 the courtroom or, I mean, how far do you think it was?

7 A. Probably from right here to a little bit pass the back
8 of the courtroom.

9 Q. Okay. And, so, obviously, it was dark outside?

10 A. Yes, sir.

11 Q. Okay. All right.

12 MR. McLEOD: Answer any questions that the assistant
13 attorney general may have for you, Mr. Little?

14 A. Okay.

15 THE COURT: Okay. Ms. Kinard?

16 MS. KINARD: Thank you, Your Honor.

17 **Cross Examination by Ms. Kinard:**

18 Q. Good morning. So what benefit did you receive for
19 issuing a statement to the police?

20 A. None.

21 Q. So you didn't forgo any possible charges?

22 A. No.

23 Q. Did you not just testify that they threatened to
24 charge you with ---

25 A. Oh, I thought you were asking me did I -- I'm sorry.

Kory Little- Cross Examination by Ms. Kinard

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1 Q. That's okay.

2 A. I miss understood what you were saying. Yes, they
3 told me they was going to charge me with accessory after
4 the fact of a murder and some other charges. I can exactly
5 remember the name of them but that's why made the statement
6 that I made.

7 Q. And you made a statement and ended up not being
8 charged with anything resulting from this incident?

9 A. Yes, ma'am.

10 Q. And you said you've been trying to come forward since
11 2014?

12 A. Yes, ma'am.

13 Q. Who did you try to contact?

14 A. I tried to contact his brother that's sitting back
15 there in the back and asked him how I could get in contact
16 with his lawyer so I could come and do what I'm doing now.
17 But I had to end up catching this charge and we didn't get
18 to do it.

19 Q. You have no idea who shot the gun that night?

20 A. No, ma'am.

21 Q. All right. And you said at the time you and Mr.
22 Rivers were best friends?

23 A. Yes, ma'am.

24 Q. And when you gave a statement to the police, did you
25 provided it under oath?

1 A. Yes, ma'am.

2 Q. And you're under oath right now?

3 A. Yes, ma'am.

4 Q. So one of these times you were lying?

5 A. Yes, I would lying there.

6 Q. Okay.

7 MS. KINARD: That's all I have, Your Honor.

8 THE COURT: Mr. McLeod, anything else?

9 MR. MCLEOD: I don't have anything further for this
10 witness.

11 THE COURT: All right. You can step down. Your
12 Honor, we'd -- Billy Lee Lisenby is who we need next.

13 THE CLERK: Raise your right hand for me. Do you
14 solemnly swear or affirm the testimony you give this Court
15 is the truth and nothing but the truth so help you God?

16 MR. LISENBY: I do.

17 THE CLERK: Have a seat.

18 BILLY LISENBY, Jr., first being
19 duly sworn, testified as follows:

20 **Direct Examination by Mr. McLeod:**

21 Q. Mr. Lisenby, can you please give us your full name?

22 A. Billy Lisenby, Jr.

23 Q. Are you also known as Billy Lee Lisenby, Jr.?

24 A. Yes, sir. Billy Lee Lisenby, Jr.

25 Q. All right. And where are you currently incarcerated?

1 A. At Ridgeland Correctional Institution.

2 Q. And what sentence are you serving there?

3 A. Thirteen (13) years for failure to stop for a blue
4 light.

5 Q. Okay. Now, were you at Pop's Game Room in Pageland
6 the night that Tavish Dunlap was shot?

7 A. Yes, I was.

8 Q. Okay. Now, what did you -- where were you that night
9 when you were there?

10 A. I was sitting in the parking lot, in the parking lot
11 area eating, sitting on the hood of a car.

12 Q. All right. And what did you see transpired out there
13 in the parking lot?

14 A. Well, I initially saw Tavish Dunlap walking around,
15 you know, waving a gun, talking about he was gonna get this
16 guy. He said I'm waiting on him to come, but I couldn't
17 really make out the name.

18 Q. Did you know Mr. Tavish Dunlap?

19 A. I know his family and face but he's not acquaintance
20 of mine, but I know of him. Yes, I know of him.

21 Q. So you knew -- so you knew who it was but you just
22 didn't know him personally?

23 A. Right.

24 Q. Just by the fact that he was a Dunlap and that you
25 knew that he was a member of that family?

1 A. Yes, I knew he was a Dunlap.

2 Q. All right. So then what happened after you saw that?

3 A. Well, a Grand Am, a blue Grand Am or either a Grand
4 Prix, pulled up like to the edge of Pop's and at this time
5 a guy got out which is Dameion ---

6 Q. Did you know it was Dameion Rivers at the time?

7 A. No, sir.

8 Q. I mean, you didn't know Dameion Rivers at the time?

9 A. No, sir.

10 Q. Okay.

11 A. And when he pulled up Dameion Rivers got out, like,
12 the passenger side and Tavish start going toward him like
13 in an irate manner ---

14 Q. All right. And where are you at this time?

15 A. I'm behind Tavish. Tavish is walking straight to the
16 car Dameion is getting out of.

17 Q. And how far away from you was that?

18 A. Probably about from here to the table where the lady
19 is sitting at right there.

20 Q. All right.

21 A. And they started going toward him real fast. Dameion
22 walked toward, like, to the front of the car. And Dameion
23 - Dameion act like he didn't even know that the guy was
24 talking to him and he was saying all types of stuff, I'm
25 going to kill you and using cuss words and stuff like that.

Billy Lisenby - Direct Examination by Mr. McLeod

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1 Q. Could you see -- could you see what -- did you see
2 what Tavish Dunlap had in his hand ---

3 A. Yeah, he ---

4 Q. --- that far?

5 A. Well, I had saw the gun about five times prior ---

6 Q. Earlier, okay.

7 A. --- to Dameion of get'in there. And he had the gun,
8 like, toward like the side of his pocket area and as soon
9 as Dameion went to come in from of the car, I saw him go
10 toward Dameion and all I saw was Dameion fall back, like,
11 on the hood of the car and I heard the shots, the shot---

12 Q. What did you think happened when you heard shots?

13 A. I, actually, when I heard the shot I actually thought
14 Dameion was the one that got shot. Because, like I said, I
15 was standing behind Dameion, I mean, behind Tavish so I
16 couldn't really see Dameion that good. I was standing
17 directly behind him. I actually thought it was Dameion
18 that got shot. And then as Dameion ran to jumped in the
19 car, I saw Tavish fell. He had fell to the ground that's
20 when all the Dunlap family just covered the body, ran up to
21 him real quick and I saw a guy pulled the gun off of him.

22 Q. Okay.

23 A. And hand it to another guy and said -- that's when I
24 jumped in the car and left myself.

25 Q. So, at that point, you got out of there?

1 A. Yes, sir.

2 Q. All right. Now, after all of that happened, what
3 occasion did you have to talk to law enforcement officers
4 down in Pageland?

5 A. Well, the incident happened with my girlfriend, um,
6 there was a girl that look like her and they thought, she
7 was doing checks and Larry Brown called her up to verify it
8 wasn't her, you know, and while we were there Larry Brown
9 was showing me ---

10 Q. You were in the ---

11 A. Pageland Police Department.

12 Q. Okay. So you were in there with your girlfriend
13 talking to officer Larry Brown?

14 A. Yes, sir.

15 Q. Okay. And how did it come up about the shooting at
16 Pop's?

17 A. Well, Larry was showing me, he was getting ready to
18 purchase an Alexis. He was showing me the Alexis and stuff
19 like that. So I asked him I said, whatever happened with
20 that incident with the little young guy that got shot at
21 Pop's? I didn't know the guy had died because at the time
22 I was staying in Kannapolis, North Carolina. And Larry
23 said, well, he said which one you talking about? He
24 started -- he named both of their name and I recognize the
25 Dunlap guy. And I told -- I told him I said, well, you

1 know that guy initially had a gun, don't you.

2 Q. When you say that guy, who are you referring to?

3 A. Tavish.

4 Q. The victim?

5 A. Yes. I said, you know he initially had a gun on him,
6 like that, he said, he did. I said, yeah, I was right
7 there when it happened. He said, um, how can I get back in
8 touch with you? I said, you can get in touch with me
9 through Gwen. He said, well I'll do that. And that was
10 late January '08 and I ended up getting, becoming
11 incarcerated in April and Larry Brown never got back with
12 me on that.

13 Q. So you never gave anybody a statement about being a
14 witness or anything like that?

15 A. No, I didn't.

16 Q. Nobody ever contacted you?

17 A. No, sir.

18 Q. And did you make yourself known to anybody else other
19 than Larry Brown that you were there that night and saw any
20 of that?

21 A. Just Larry.

22 Q. How did you know Larry Brown other than the fact that
23 he was a law enforcement officer in Pageland?

24 A. Well, I've been knowing Larry Brown. I've been -- I
25 used to do with his brother. Me and Larry been knowing

1 each other for a while. You know, Chesterfield county is
2 real small.

3 Q. Or you related or something?

4 A. No. I'm not related to him.

5 Q. Is he related to your girlfriend, maybe?

6 A. No.

7 Q. Okay.

8 A. He just -- he just -- I just know him well, you now.

9 Q. You just know him. All right. How did you -- how did
10 you later learn of Mr. Rivers, how did you later come to
11 know him?

12 A. Well, actually we were at Lee County together, the
13 correction institution, I found out he was from Pageland.
14 So when we got to Ridgeland, I mean, Lieber Correctional
15 Institution he was at the mail room one day and he had his
16 legal mail in his hand at the mail room and I saw his name.
17 I said Dameion Rivers and I ask him what he was in prison
18 for and then when he told me what he was in prison for I
19 said, that was the incident that happened at Pop's. He was
20 like how you know about that? I said, I was out there that
21 night, and it went from there. You know, we started
22 talking and, like, about two or three months down the line
23 he ask me he said, man, is there anyway you can help me
24 out, verifying the guy had a gun? I said, nah, I don't
25 want to get involved in it, you know, and he ask me again I

Billy Lisenby - Direct Examination by Mr. McLeod

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1 had initially wrote a statement. That's when you contacted
2 me and we went from there.

3 Q. All right. But you didn't know him at the time this
4 happened and you didn't know him at the time he entered his
5 guilty plea ---

6 A. No.

7 Q. --- and he didn't know you or anything like that?

8 A. No, sir.

9 Q. He didn't know you were a witness there or had been
10 there?

11 A. No, sir. We never -- we didn't know each other at
12 all.

13 Q. The only person you ever really told that you had seen
14 it was officer Larry Brown?

15 A. Yes.

16 Q. Other than anybody who saw you there that night ---

17 A. Right.

18 Q. --- they may have known you were there? Okay. And
19 it's your testimony today that Tavish Dunlap had a gun that
20 night?

21 A. He did.

22 MR. McLEOD: All right. Please answer any questions
23 that the assistant attorney general has for you.

24 A. Okay.

25 THE COURT: Ms. Kinard?

1 MS. KINARD: Thank you, Your Honor.

2 **Cross Examination by Ms. Kinard:**

3 Q. Hey, Mr. Lisenby. So you said you are serving
4 thirteen (13) years for failure to stop for a blue light?

5 A. Yes, ma'am.

6 Q. Is that the only charge you're currently serving on?

7 A. An assault with intent to kill. I assaulted my
8 correctional officer that I catch while I was in prison.

9 Q. This is not your first time in prison, is it?

10 A. No, it's not.

11 Q. Okay. Had you recently been released shortly before
12 this incident?

13 A. '05.

14 Q. '05?

15 A. 2005.

16 Q. And you entered, reentered incarceration, you said
17 April of '08?

18 A. Yes, ma'am, April 21st.

19 Q. Okay. Now, I've had some involvement with you in my
20 office. Have you filed any PCR actions yourself?

21 A. Yes, ma'am.

22 Q. All right. Do you remember how many?

23 A. A lot.

24 Q. Okay. Have you been asked by the supreme court not to
25 file anymore?

1 A. Civil suits, not criminal suits. I -- if you would
2 be honest, I just won a case with the parole board against
3 your office. I just won with the parole board. I can ---

4 Q. The parole board, okay, I haven't heard about that.
5 Thank you.

6 A. Yes.

7 Q. By my records you filed thirty-five different suits
8 with my office?

9 A. Huh, huh.

10 Q. And the supreme court has asked you not to file
11 anymore PCR actions. So just by way of that I just wanted
12 to clarify that you have been around the circuit before and
13 you are from this area and so you are familiar with the
14 entire Dunlap family?

15 A. Yes.

16 Q. And you said, just to clarify, you saw Tavish fall the
17 Dunlap family swarmed, they pulled the gun off of him and
18 someone eventually called the police, is that correct?

19 A. Well, I wasn't there when they called the police.

20 Q. You got out of there?

21 A. Yeah.

22 Q. Okay. All right. Do you -- have you spoken with
23 anybody else that was there that night at Pop's?

24 A. There were a couple of people there that night. Prior
25 to my incarceration and during my incarceration, you had a

1 good many people at Pop's.

2 Q. Okay. And they all, basically, have the same version
3 of the story?

4 A. I mean, everybody tells us that he had a gun --
5 everybody knew Tavish had a gun that night, I mean, Tavish
6 was known to carry a gun. That's what Tavish is known for.
7 Being a drug dealer and carrying a gun that's what he's
8 known for.

9 Q. Are you positive that it was Dameion that stepped out
10 of the car?

11 A. I mean, um, hundred percent could I say that was
12 Dameion? No. I just knew the name Dameion Rivers once
13 Larry Brown told me who it was, you know, and then, when I
14 saw the name Dameion Rivers on the thing, I assumed it was
15 him. I can't hundred percent say that it was Dameion
16 Rivers that stepped out of the car.

17 MS. KINARD: That's all I have, Your Honor.

18 THE COURT: Okay. Mr. McLeod?

19 **Redirect Examination by Mr. McLeod:**

20 Q. And let me understand this, when you saw somebody
21 stepping out of the car and saw the victim going toward
22 that person, did you see him come out with a gun?

23 A. Tavish or the ---

24 Q. Tavish, the victim?

25 A. Tavish, yes, I saw -- Tavish had the gun already out.

1 All he did was, basically, concealed the ---

2 Q. But you were kinda of behind him but you could see it
3 coming out?

4 A. Yeah. Because he just had it out when he -- he
5 initially didn't see the blue Grand Am pull up or the Grand
6 Prix, Tavish didn't initially see it. When he turned
7 around it was already at the curve and then when he turned
8 around, he kind of like, concealed it, like this right
9 here, and then went toward him.

10 Q. So he had the gun out before then?

11 A. Yes. He -- he must've been drinking because he was
12 just talking about, oh, yeah, people want war, he was just
13 talking crazy. People want war, they can get it and stuff
14 like that.

15 Q. All right. So -- all right.

16 THE COURT: I don't have anything further, Your
17 Honor.

18 THE COURT: Anything else, Ms. Kinard?

19 MS. KINARD: No, thank you, Your Honor.

20 THE COURT: All right. You can step down, you're
21 excused. Any other witnesses, Mr. McLeod?

22 MR. MCLEOD: I'm going to go ahead, Your Honor, if
23 it pleases, the Court, and I'll call Mr. Cannarella.

24 THE COURT: Anybody need a break or we good?

25 MS. KINARD: Maybe one more witness.

1 THE CLERK: Do you swear from the testimony you
2 shall this Court is the truth and nothing but the truth so
3 help you God?

4 MR. CANNARELLA: I do. Good morning, Judge.

5 THE COURT: Good morning, Mr. Cannarella.

6 MR. McLEOD: I'm sorry, Your Honor.

7 THE COURT: That's fine.

8 MR. McLEOD: Your Honor, since Mr. Cannarella, I
9 guess will be a witness, is it all right if I just question
10 him in a cross examine fashion or ---

11 THE COURT: I'll allow that under the
12 circumstances.

13 PAUL CANNARELLA, first being
14 duly sworn, testified as follows:

15 **Direct Examination by Mr. McLeod:**

16 Q. Mr. Cannarella, would you please state your full name?

17 A. Paul Vinson Cannarella.

18 Q. And how did you come to represent Mr. Rivers?

19 A. I think his grandmama contacted me and hired me.

20 Q. So you were hired?

21 A. Hired, yes, sir.

22 Q. All right. Now, when you initially met with Mr.
23 Rivers, did he tell you that the victim had a gun that
24 night?

25 A. He could have told me that or he could have not told

1 me that. I can't remember. But it was always my firm
2 belief that he stepped out of the car with a shotgun or
3 whatever long gun he had and I never could prove that there
4 was a weapon anywhere else?

5 Q. As far as the victim or anything?

6 A. Right.

7 Q. And that was -- was that primarily because the State
8 had a statement from Cory little saying that Mr. River
9 stepped out of the car with the shotgun and shot ---

10 A. I would have to say -- I would have to say that's
11 pretty correct. I don't have any independent recollection
12 of a lot of stuff about it but I can't necessarily dispute
13 that.

14 Q. All right. And so -- but -- what did you discuss with
15 Mr. Rivers about the possibility of a self-defense
16 argument?

17 A. Okay. Given what I believe the facts were that I was
18 going to have to work with that would be credible to the
19 jury, in the end I would asking the trial judge for a
20 charge on, he was going to give him a charge on murder.
21 I'd be trying to get a charge on voluntary manslaughter.
22 I'd be trying to get a charge on involuntary manslaughter
23 too, to say, and self-defense, and, you know, that's kind
24 of slip and slope when you get right down to it and I
25 explained all this, Mr. McLeod, to Dameion. You know, I'm

1 not sure that we gonna get a charge on self-defense since I
2 think the jury is gonna believe that you armed yourself and
3 you went there with a long gun and stepped out of the car
4 with that, you know, the judge might not give me a jury
5 charge on that because he might say well, you brought
6 about, that you were not without fault in bringing about
7 the difficulty or with bringing about the immediate
8 difficulty. And then I want to say well he was entitled to
9 arm himself, ladies and gentlemen of the jury, in self-
10 defense but he acted negligently when he really, when the
11 gun really went off, so give me a charge on involuntary
12 too.

13 Q. And so the only person -- were you familiar with the
14 letter that Mr. Rivers had and his girlfriend wrote him
15 that insinuated that somebody else had seen, I call it a
16 double hearsay letter, that somebody had told somebody that
17 they saw the victim with a gun?

18 A. If that letter is in my file, then I saw it.

19 Q. Okay. All right.

20 A. If it's in there then I saw it.

21 Q. But at the same time that wouldn't have been what you
22 considered credible evidence to come forward with?

23 A. Well, it could be but Dameion would emphasize more
24 that he was being approached in a menacing fashion and not
25 necessarily that I recall with a gun but Dameion was saying

1 that guy kept walking towards me, walking towards me and I
2 fell backwards and the gun went off.

3 Q. And then ---

4 A. See that was bothering me. That's the involuntary
5 part but then you, you know, I had to act in self-defense
6 but I really, the gun really didn't go off.

7 Q. But if you had, had credible evidence or any evidence
8 that Tavish like what Billy Lee Lisenby testified ---

9 A. Had a gun?

10 Q. --- was acting out, having a gun that night, would
11 that have affected how you advise Mr. Rivers about his
12 chances on the self-defense?

13 A. Yeah, I think I probably -- I think we probably
14 would've rolled on proverbial dice, if you will, if that
15 fella had a gun.

16 Q. But before then you had no -- you had no -- all you
17 knew was what was in incident report that the telephone
18 have been picked up but that nobody had picked up a gun on
19 a body?

20 A. There was no -- there was -- right. There was no
21 credible evidence in my opinion to run the risk of getting
22 a life sentence unless I had somebody put the gun in Tavish
23 Dunlap's hand.

24 Q. But you agree that Mr. Rivers's brother said that
25 Tavish had a gun but being his brother that would've been

1 bias witness and wasn't strong enough ---

2 A. I -- yeah, I mean, I think his brother, I spent a good
3 bit of time with his brother in preparation of this trial
4 too, to get him to help me and I think his brother did tell
5 me that he, his brother saw a weapon or that Tavish was
6 acting in such a manner that it would be consistent with,
7 let's say, a reasonable belief that Dunlap had a weapon on
8 him.

9 Q. Now, did you ever talk with a witness, Kory Little?

10 A. No, sir.

11 Q. And what would've been the reason for not talking to
12 the witness under the circumstances?

13 A. Well, I probably wouldn't get anything but a
14 regurgitation of what he already had given in a statement.
15 I mean, I don't necessarily try to interview people who I
16 know are going to be against me, are going to testify
17 against me in court for the State.

18 Q. Okay. Well, of course, in this incident apparently
19 Kory Little said that, that statement was not accurate that
20 he gave?

21 A. Right.

22 Q. All right.

23 A. He testified to that today.

24 Q. But you were kind of relying on the fact that they had
25 a sworn statement from an eyewitness when you were advising

1 Mr. Rivers?

2 A. Right.

3 Q. And that sworn statement was Kory Little's statement?

4 A. Was what he said, right.

5 Q. And you based a lot of your advice to Mr. Rivers based
6 on the fact that, hey, the State has a sworn statement from
7 an eyewitness, is that true?

8 A. Yes, sir.

9 Q. Okay. What -- if you had known he was willing to
10 recant that statement because they had put undue pressure
11 on him, wouldn't let him go to the bathroom, wouldn't let
12 him get anything to eat, promise not to or threaten to
13 include him on it if he didn't do it, would that had given
14 you any ground to advise him, Mr. Rivers, differently?

15 A. Yes, sir.

16 Q. Okay. Now, did you -- had you known that Billy Lee
17 Lisenby had seen Tavish Dunlap beforehand cutting up with
18 the gun, going towards Mr. Rivers with the gun, you know,
19 would that have played into your advice given to Mr. Rivers
20 about whether he should plea guilty to the agreement or go
21 to trial?

22 A. Yes, sir. If there were some compelling reasons and
23 belief that Tavish Dunlap had a weapon, I'd gone to trial.
24 Even though I would've never been able to anticipate what
25 would actually come out of their mouths when they get on

1 the witness stand.

2 Q. I understand that. But that would definitely altered
3 how you advise Mr. Rivers about whether or not he should
4 plead guilty or go to trial?

5 A. Yes, sir.

6 Q. And you didn't know that there was a witness to ---

7 A. Mr. Lisenby ---

8 Q. --- a victim having a gun?

9 A. No, sir.

10 Q. Other than the ones that you -- other than your client
11 and your client's brother, there really was no other what
12 you consider credible witness that the victim had a gun?

13 A. That's true.

14 Q. And the gun was not found on the victim at the time?

15 A. That's true.

16 Q. Do you remember what happened to the crime scene
17 photos in this case?

18 A. No, sir.

19 Q. I'm looking at the transcript on August 30th which was
20 the pretrial hearing and I'm looking at 7, page 7, line 6,
21 and this is part of your talking, it starts on page 5, line
22 19, and you say -- and the compound problem I can never
23 change anything about this, the solicitor's office has lost
24 the crime scene photos.

25 A. Is that in there? I can take your word for if I said

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1 it -- solicitor -- yes, sir.

2 Q. Okay. So ---

3 A. And that ---

4 Q. And do you recall the incident report listed the
5 Kenneth Louallen and the fact that they said in the
6 incident report which was, I guess, contemporarily or made
7 close to the time of the incident that they had a statement
8 from Kenneth Louallen, a recorded statement ---

9 A. Is that -- I guess I concede that, that says that ---

10 Q. It says that.

11 A. --- if you say it does.

12 Q. And was this -- was this -- and did you ever get the
13 statement of Kenneth Louallen?

14 A. If is not in the file, Ms. McLeod, I didn't get it.

15 Q. And based on the earlier situation that I pointed out
16 that y'all talked about a Kenneth Burrell, you asked, you
17 said there was a statement from Kenneth Burrell and we are
18 of the mind that, that was just a mis-speak or mistyped
19 into the record, where you were actually referring to the
20 statement that they refer to that you ---

21 A. You mean when I gave -- in that transcript right
22 there?

23 Q. Right.

24 A. I guess so. If I refer to a name then it was a name
25 that I read somewhere ---

1 Q. Okay.

2 A. --- and if it wasn't the correct name then I didn't
3 know it.

4 Q. But according to the transcript you said there was a
5 statement out there that you didn't have.

6 A. Okay.

7 Q. Do you agree with that?

8 A. If I said it in the transcript I agree with it.

9 Q. Okay. And then, did you do -- did you do anything to
10 say, you know, why can y'all not account for the statement,
11 I'd like to see it?

12 A. No.

13 Q. Okay.

14 A. Not that I can remember.

15 Q. If there is a statement, what is your -- normally, if
16 the police report says there's a statement and you get the
17 information under your Brady request and the statement is
18 not there, what's your normal thing that you would do?

19 A. Well, I normally would be looking for the statement
20 but I don't remember why I would've wanted the statement.

21 I don't know what the statement says even if it's
22 exculpatory now. The only thing I'm faced with is, he arms
23 himself as globally speaking, if you will, he arms himself,
24 he goes over there, somebody gets killed, he leaves there,
25 dumps the shotgun. As a consciousness of guilt on my part,

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1 so I've got to try to balance all the interest and I'd
2 rather be sitting here right now facing a PCR and he's
3 eighteen (18) years rather than a life sentence and he's
4 hoping that he can get this life sentence overturned. But
5 that's the things I have to deal with all the time.

6 Q. And it's your -- as far as the indictment is
7 concerned, did you ever give any thought to the fact that
8 it had misstated the place of death or that - did you
9 research any of that to see if there was any grounds to
10 challenge jurisdiction on an invalid indictment?

11 A. No, because there is a statue. I think it's 17-21-20
12 that says since he got shot in Chesterfield County even
13 though he died in Mecklenburg County it didn't matter under
14 that statue because that statue says that if you got shot
15 in Chesterfield County you can be tried in Chesterfield
16 County even though, or the other County where you died.

17 Q. But would there have been any merit in trying to make
18 them get it right on that indictment itself?

19 A. I don't think so because we knew what we had defend
20 against.

21 Q. Okay. Now, did you explain to your client that he
22 was, that whatever sentence the judge gave him in the
23 guilty plea process that he could, he could be eligible to
24 serve 65% of that?

25 A. No, I would've said 85% of that even though I didn't

1 reference it -- even though I didn't reference it in the
2 guilty plea, I know I told him 85%.

3 Q. So you're saying you didn't tell him he'll only have
4 to do 65%?

5 A. No, I would've told him that.

6 Q. Did you ever go into the, victim, himself to find out
7 like, I know that you were only handed the autopsy report
8 several days ahead of the proposed trial date, the fact
9 that he did have alcohol in his system, his criminal
10 record, anything about his background or anything like
11 that?

12 A. I'm pretty sure we could've presented a witness, I
13 don't know who it would've been but his record, Tavish
14 Dunlap's reputation for carrying a gun, I'm sure that, that
15 there was somebody we could've gotten to testify for us to
16 that.

17 Q. Did you ever talk to anybody that could do that?

18 A. Not that I recall. Other than probably talking to his
19 brother who helped me a great deal in getting ready.

20 Q. Did you have a separate investigator work on this
21 case?

22 A. No, sir.

23 Q. And what action did you take about the statement that
24 Mr. Rivers gave to the police?

25 A. We would've had a Jackson v. Denno hearing, I'm sure.

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1 We would had a voluntariness hearing on his statement. I'm
2 sure if we got that far you know -- I think we picked -- I
3 don't remember, we pick the jury and if we hadn't done the
4 voluntariness hearing or due process hearing prior to the
5 plea we would -- that would've been the process of being
6 done, is that what you talking about Jackson versus Denno
7 hearing, right?

8 Q. Right. Did the fact that, that motion was denied, did
9 that affect your advice on -- the fact that you could not
10 suppress his statement ---

11 A. No.

12 Q. That didn't affect you advising him about whether he
13 should or shouldn't take his plea?

14 A. I wouldn't think that would 've ---

15 Q. Well, if you could have suppressed his plea ---

16 A. Well, that ---

17 Q. --- that would give him a better chance ---

18 A. Well, if I -- if I would've won the suppression
19 argument that would've been different.

20 Q. Okay.

21 A. You know, that would've been -- that would've been
22 something else that I'd need to consider in the overall
23 scheme of things because I'm believing that you can in
24 reality the jury is not going to discuss it but I thought
25 under the circumstances if I was going to win this case I

1 would've advised him it would have been best -- I would've
2 advised Dameion that it would've been best for Dameion to
3 testify as to what happened if he wanted to convince the
4 Chesterfield County jury that he acted in self-defense.

5 Q. Was that -- was the fact that you lost the motion to
6 suppress the statement, could that have been something you
7 would've appealed if he had not gotten a favorable result
8 in the trial?

9 A. Yes, sir.

10 Q. Did you advise him about his right to appeal on any
11 issues or that he could appeal on the issue or anything
12 like that?

13 A. Did I -- I didn't get him to sign anything. I don't
14 know if I -- I probably -- I might've discussed that with
15 him, I don't know. I can't remember if I did or if I
16 didn't. But if I did discuss it with him I would've told
17 him that when in an argument like that on an appeal would
18 be hard.

19 Q. Do you -- when the court asked Mr. Rivers and I think
20 we cited that in the plea transcript, "has anybody discuss
21 with you 85%", Mr. River says, "no, sir," did you recall
22 that?

23 A. Well, I can tell you right now I would've told him
24 that he would have to serve at least 85% of whatever he got
25 under voluntary manslaughter conviction or plea.

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1 Q. Okay. I'm just going to go back to page 11 of the
2 transcript and it starts in with the judge on line 21, it
3 says, "you understand" and talking to Mr. Rivers, "you have
4 discussed with your attorney the 85% rule or anything like
5 that parole eligibility", and Mr. Rivers's response on line
6 23 is, "no, sir."

7 A. Yeah, that's there.

8 Q. I mean, did you stop the thing at that point and said
9 ---

10 A. No.

11 Q. --- let me get this clear with him because apparently
12 he doesn't understand what I told him?

13 A. No, sir.

14 Q. Okay. Did it occur to you at that time that maybe Mr.
15 Rivers didn't understand anything about the plea ---

16 A. Well, I should've spoken up then -- well, I should've
17 spoken up then and said -- I should've turned to him and
18 said, "hey, well, you know this is 85%, now."

19 Q. But you didn't do that?

20 A. No. But I -- it's so automatic that I would've told
21 him 85% because those are traditional run-of-the-mill
22 arguments in PCR's that I've faced for the last 35 years
23 since the statute was in active.

24 MR. McLEOD: Just one second, Your Honor.

25 THE COURT: Sure.

1 Q. Mr. Cannarella ---

2 A. Yes, sir.

3 Q. --- based on the hearing today, Kory Little saying
4 what he said that his statement was not accurate that he
5 gave and based on Billy Lee's Lisenby saying he was there,
6 he saw the victim with a gun acting aggressively, based on
7 that information which is the information you didn't have
8 at the time, would you have had advised Mr. Rivers
9 differently about whether or not about taking a plea or
10 going to trial?

11 A. I think so.

12 Q. Would that have changed your advice? Okay.

13 A. Because you've got, obviously, a strong self-defense
14 argument and even if the gun went off accidentally, you
15 know, I think you can might still get a charge on it
16 everything you wanted.

17 Q. But you didn't have any that information at the time
18 that you advised him?

19 A. No, sir.

20 Q. So you didn't have those -- those arguments were not
21 available to you to weigh in on whether or not he should or
22 shouldn't ---

23 A. No, sir.

24 Q. --- make his selection?

25 MR. McLEOD: I don't have any more questions for

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1 you.

2 A. Thank you.

3 THE COURT: Ms. Kinard?

4 MS. KINARD: Thank you, Your Honor.

5 **Cross Examination by Ms. Kinard:**

6 Q. Good morning -- good afternoon, Mr. Cannarella?

7 A. Good afternoon.

8 Q. Because we did this little backwards I'm going to go
9 back and ask some basic questions about your practice. How
10 long have you been practicing criminal law?

11 A. Since 1980.

12 Q. And you became involved in this case through retainer?

13 A. Yes, ma'am.

14 Q. Okay. Did you file a Rule 5 and Brady motion?

15 A. Yes, ma'am.

16 Q. At the time, did you think you had any trouble getting
17 the discovery?

18 A. No, ma'am.

19 Q. Do you believe you received everything you should've
20 received?

21 A. Yes, ma'am.

22 Q. Did you go over all of this with the applicant, Mr.
23 Rivers?

24 A. I did.

25 Q. How many times did you met with him?

1 A. I don't know. I know, he said three times. I don't
2 know how many times I met with him but I familiarize
3 myself, I felt like, good enough with the case to make the
4 recommendation that I did to him under the circumstances.

5 Q. How would you describe the evidence against him in
6 terms of probability of winning a trial?

7 A. Well, Dameion goes to his house and gets the gun. He
8 goes over to Pop's and he's with his brother and Dameion
9 had a problem, as I best recall, with some guy maybe named,
10 Red, and he thought Red was over there and Dameion wanted
11 to, in these rumors, that Red was starting, and this is the
12 best I can recall, about being a snitch. So Tavish Dunlap
13 was not even an intended target. I didn't believe. Okay.
14 But he goes over there and he goes over there with some,
15 you know, I feel like malice in his heart but at the same
16 time some peer pressure too with these rival groups and
17 after the shot gun goes off, whether it was intentionally
18 or accidentally, I believe that there was something in the
19 evidence that says he racked it back. And then they leave,
20 he and his -- he leaves there and he drives, I think
21 towards Monroe, and he gets on a bridge and throws the gun
22 off. So I'm saying that's inconsistent and it's evidence
23 of consciousness of guilt so what am I going to do. So
24 when I feel like I can compromise in the middle and even
25 get, let's say, fifteen (15) years on a thirty (30) year

1 sentence, maybe because you know we probably have some idea
2 about the victim's background. So see that's a compromise
3 for me right there. You know, that's why I advised Dameion
4 to do what he did because we're not sitting here right now
5 and he's not trying to PCR me where he can get out
6 underneath a life sentence and I feel a lot more
7 comfortable about being here in this chair with him being
8 sentenced to eighteen (18) than I do having lost a trial
9 and he's looking at trying to get out from underneath a
10 life sentence. I don't know if that answered your question
11 really or not.

12 Q. It does. So Mr. Rivers explained his versions of
13 events to you?

14 A. Yes, ma'am.

15 Q. And you said you had help from, who?

16 A. His brother.

17 Q. Was he there at the scene?

18 A. Yes, ma'am.

19 Q. And he explained the details as he understood them?

20 A. I think so.

21 Q. Okay. Did you ever have any trouble with the
22 applicant understanding you?

23 A. I don't think so.

24 Q. So you think he benefited and understood all of your
25 conversations?

1 A. I think he did.

2 Q. Explain what you just said to me to Mr. Rivers as far
3 as your different strategies and how you felt best to ---

4 A. Well, we talked about it.

5 Q. You talked about that. And was there any other
6 negotiation other than this one, any other offers from the
7 solicitor?

8 A. No.

9 Q. Okay.

10 A. Not that I recall.

11 Q. Before the plea, you explained all of his
12 constitutional rights that he would be waiving?

13 A. Yes, ma'am.

14 Q. And you believe that this was done again effectively
15 during the colloquy?

16 A. I think so.

17 Q. In line with that, the 65% and 85%, that discussion
18 that's been had, you stated that you felt like -- you state
19 to all of your clients it's probably an 85% instead of a
20 65% ---

21 A. I would've told Dameion eighty five. I might've not
22 even been listening to -- I should've responded right then
23 and there at the plea. When he said, no, I should've said
24 wait a minute it's eighty-five. I mean, there would have
25 been no reason for me to not know. He might've thought he

1 heard sixty-five and I said eighty- five but

2 Q. Do you believe the judge cured that issue when he
3 said, hey, look you could serve all of this? Do you
4 believe that it was noticed ---

5 A. That -- just to give you an idea of -- also see that
6 plea took as long as it did because I knew that it was a
7 struggle to make a decision. Between me, Dameion, his
8 mama, his grandmama, I wanted to put it all out there on
9 the table so Dameion, if Dameion wanted to back out of that
10 plea, he had about forty-five minutes to back out of it
11 because that's how long it took me to present that plea and
12 that was part of what I was doing because I realize one day
13 I was going to be sitting right here and I didn't -- I
14 don't know whether it was going to be on self-defense or he
15 could be arguing he should've gotten charge on involuntary
16 manslaughter and he would've already been convicted of that
17 and done his time and gone if I persuaded that jury in
18 Chesterfield like that.

19 Q. And you keep referring to that jury in Chesterfield,
20 what makes the Chesterfield jury special?

21 A. Well, it's because I think Chesterfield jurors tend to
22 be very, very conservative and especially about maybe, you
23 know, problems that in the Petersburg area and things have
24 gone on down there. Things that had recently happened down
25 there, I mean, you can't, you know, you make the jurors

1 base their decision on justice with their minds and their
2 hearts. I don't know you, you see. You've got a lot of
3 stuff I have to take into consideration. I'm glad Dameion
4 took that plea. If he gets another trial that's fine but,
5 at least, I know he's not serving a life sentence if he
6 doesn't get a new trial.

7 Q. Switching over to the issue of notice or continuing
8 that they made it in the indictment, you said you didn't
9 feel there's a need to make a fuss about the place of
10 death?

11 A. No, ma'am. I think statute 17-21-20 says that you can
12 do it in either county if the death or the significant
13 event took place. If the shooting took place in one county
14 and he died in another, I think 17-1-21-20 says a trial in
15 either place.

16 Q. But as you stated everybody knew why you were there?

17 A. Right. Right. Yeah.

18 Q. Ultimately, whose decision was it to plead guilty?

19 A. Dameion's.

20 Q. And did you agree with that decision?

21 A. I did.

22 Q. And you explain the advantages and disadvantages of
23 going to trial?

24 A. Yes, ma'am.

25 Q. Did he ever indicate that day that he wished to go to

1 trial instead of a plea?

2 A. No, ma'am. And we took the plea in front of the jury
3 we had selection.

4 Q. Exactly. So you wouldn't have gone to trial if he
5 said that's what he wanted to do?

6 A. No, ma'am.

7 Q. At no time during your speech to the judge, did he
8 ever indicate you said anything wrong or he was unhappy
9 with your work?

10 A. No, ma'am. He didn't -- he was unhappy about the time
11 but I don't think they had a real big gripe about anything
12 ---

13 Q. Gotcha.

14 A. --- under the circumstances.

15 Q. So unhappy just the fact that anybody before the court
16 would be unhappy?

17 A. I think so.

18 MS. KINARD: That's all I have right now. Thank
19 you.

20 THE COURT: Mr. McLeod?

21 MR. MCLEOD: Your Honor, I don't have any further
22 witnesses, ah, questions for this witness and that's all my
23 witnesses. I do have a closing statement I can make.

24 THE COURT: Okay. All right. Mr. Cannarella, you
25 can step down. Thank you, sir.

1 MS. KINARD: The State has no witnesses to present
2 but we would also like to present closing arguments.

3 THE COURT: All right. Certainly. Okay. Mr.
4 McLeod, if you're ready I'll be glad to hear your argument.

5 MR. McLEOD: Your Honor, May it please, the Court?

6 Just to recap the situation without too much
7 redundancy. My client believes that number one, the
8 indictment was faulty. The statute clearly says, it
9 states, where the act occurred, where the death occurred.
10 Now, you know, I know that there's case law that
11 identifies, you know, what you been faced with but my
12 belief when a client is charged with murder that the
13 attorney needs to be beaten down every door and if he can
14 attack the validity of the indictment then, that should be
15 done. And, obviously, there was something wrong with it.
16 I mean, it was clearly, you know, you don't surgery in
17 Pageland, you don't airlift a dead body into Charlotte, so
18 immediately you should know, hey, there's something wrong
19 with this indictment, it's faulty. Let me challenge that
20 and go through that process again for the benefit of your
21 client to make sure that the State gets it right. And I
22 think that would be -- the indictment was invalid in-and-of
23 itself and then it was ineffective assistance of counsel
24 for him not to jump on that and at least make the State re-
25 indict him correctly.

1 Also, Your Honor, my client has stated that there was
2 ineffective assistance of counsel that his effective
3 assistance of counsel was violated on the issue of the
4 advice about the plea. He said he heard sixty-five. I
5 know that Mr. Cannarella said he would've never told him
6 that he would've said eight-five. And, Your Honor, but I
7 think if you do look at the transcript on page 11, on lines
8 21 through 25, where the judge ask him and Mr. Rivers says,
9 no. And then the judge went on later after that on page
10 12, 1 through 8, I think the judge was proper in doing
11 that. I don't think that necessarily cures it when a
12 person who doesn't understand anything about court and has
13 a lawyer whose paid for, didn't get that clear on the front
14 end. So I don't think what transpired after that was cured
15 and if you read it in just basically, judge, says, well,
16 that something you need to discuss with your lawyer. I
17 don't keep up with what happens at SCDC and you might have
18 to serve the whole amount. Which Mr. Rivers understands
19 that, of course, that if he didn't do what he was supposed
20 to do, he might have to serve the whole amount but he would
21 have the option if he can get in there and behave himself
22 that he can only do 65% is what he thought when he made
23 that decision. And he's saying now, hey, if I had known it
24 was eighty-five then I would've, I would've done
25 differently. And, Your Honor, I will hand up and I

1 provided this case to the assistant attorney general this
2 is Dean vs. State which is an unpublished opinion but it's
3 directly on point on that issue about whether or not the
4 PCR applicant was advised correctly about that before he
5 made the decision to plea. And so the two prongs of the
6 test are met. The second prong being that he's prejudiced
7 because Mr. River says if he had understood eighty-five
8 that he had gone to trial. He would have never pled
9 guilty. So there's your prejudiced there, Your Honor.

10 The next issue, Your Honor, is the newly discovered
11 evidence that he has found out after the fact that Kory
12 Little came in here and testified under oath that the
13 statement that he gave was not accurate. That was the
14 statement that his lawyer was relying on when he was
15 advising him hey, you better take this plea because, you
16 know, they've got a witness that says all these things.
17 That witnesses Kory Little. That's the statement they
18 provided. The Brady issue of not getting the statement is
19 clearly identified in the incident report. It's two fold,
20 it's a Brady violation, one fold, and two fold, is
21 ineffective assistance of counsel because somebody should
22 have said, hold the show, stop the presses, I want to know
23 what that guy says. I want to know why y'all don't want me
24 to know what it says. So nothing was ever done to get
25 their hands on that. And based on the fact that there is a

1 lost of photos and the phone got picked up and they saw it,
2 I mean, there's a lot of things going on that should say
3 well, you know, there might be something there that
4 somebody doesn't want us to know about.

5 You've got the issue of the after discovered evidence.
6 Now, we know that Mr. Little has said, hey, I'm recanting
7 that statement because I was under duress and under
8 pressure and being threatened with prosecution myself if I
9 didn't help the State out by pinning the blame on Mr.
10 Rivers and Mr. Cannarella was relying on that because it
11 was a statement that the police had, even though he did not
12 interview Mr. Little and his theory is understandable,
13 because hey, he's given us one statement why do I need to
14 ask him, I know what he's going to say. Mr. Little said if
15 Mr. Cannarella had talked to him after the fact he might
16 would've come clean and told him what was going on there.

17 The other issue is, of course, Billy Lee Lisenby who
18 says and nobody knew about him being there and obviously
19 Mr. Lisenby is somebody who's been in trouble with the law
20 before. In sense and I can understand why he didn't want
21 to hang around and say hey, I'm a witness to all of this
22 mess, you know, and so he -- but he says, you know, he sees
23 it, he makes that connection with the name. Interestingly
24 enough for Mr. Lisenby, not only does he say he saw it
25 happen, he says he mention it to the police officer after

1 the fact when they were in there with another matter, hey,
2 what went on with that. I saw, you know, the victim with a
3 gun and, well, I'll get that with you later. You know, I
4 think that's information that Mr. Cannarella didn't have.
5 It could have affected how he advised his client and
6 that's, obviously, information that Mr. Rivers didn't have
7 but may have affected his decision on making this, taking
8 the guilty plea.

9 So I think those come under, Your Honor, I know
10 there's and I've handed this, a copy of this case, I'm
11 going to hand this up to the court, this is Jamison vs. the
12 State and in that case, Your Honor, of course, the plea --
13 the PCR applicant who pled guilty was not granted PCR
14 because after discovered evidence but it lays out the
15 groundwork of how you can grant the after discovered
16 evidence issue if a person gave a guilty plea. And so I
17 think to distinguish our situation from that case is in the
18 case, in the Jamison case, the victim was an innocent
19 bystander. And that person was the one who was trying to
20 claim a transfer of self-defense argument which is very
21 complicated. And so in our situation here when Tavish
22 Dunlap was coming at Mr. Rivers there was no, I mean, the
23 person who was involved with the aggression was the one who
24 got shot here. That's what I think distinguishes our facts
25 from the Jamison case but the Jamison case says, Your

1 Honor, that, you know, if the persons -- if the PCR
2 applicant's decision was based on the fact that he could
3 not develop a self-defense argument or says this is
4 essentially because of the alleges that the victim did not
5 have a gun or the gun was not found on the victim, you
6 know, there's evidence that the crime scene was not secure
7 in our situation. And it goes on to the interest of
8 justice, Your Honor. But you don't really go by the
9 conventional after discovered evidence rules but you just
10 go by, they've outlined here where because ordinary someone
11 who pleads guilty, they give up, they waive that right and
12 they give up that so many constitutional rights when they
13 plead guilty that the after discovered evidence rule was
14 not always available to them but in this case it says that,
15 that newly discovered evidence, you know, following a
16 guilty plea the relief is appropriate only where the
17 applicant's presents evidence showing that, you know, the
18 newly discovered evidence was discovered after the entry of
19 the plea. The newly discovered evidence is of the weight
20 and quality that under the facts and circumstances of a
21 particular case and the interest of justice requires the
22 applicant's guilty plea to be vacated. So, I mean, it
23 does outline how a person who has pled guilty, can go back
24 and use after discovered evidence which I think before it
25 was the case law was kind of against that concept. So

1 that's why I hand this case up even though in this
2 particular case the application was not granted. I think
3 there's some distinguishing circumstances with our case
4 different from this case, Your Honor. But this case does
5 set forth the grounds for allowing someone who pled guilty
6 to ought to use after discovered evidence to help them out
7 under the circumstances. So, Your Honor, based on that,
8 based on the application, the amended application, the
9 supplements and the testimony here Mr. Rivers is wanting
10 this application to be granted. And he understands that
11 he's faced with just back to his original murder charge
12 that he would have to deal with if the Court granted that
13 application and I've confirmed that with him.

14 THE COURT: Thank you, Mr. McLeod. Ms. Kinard?

15 MS. KINARD: Your Honor, mean it please, the Court?
16 I think it might be easiest to write these arguments down
17 into different categories. One being that ineffective
18 assistance of counsel and on the different elements or
19 allegations thereof and one being of the after omitted
20 discovered evidence. So I'll tackle that one first.

21 The State's primary argument is that Mr. Lisenby is
22 not a credible witness and neither could Mr. Little be
23 considered a credible witness. They both given opposite
24 statements regarding what they've testified here. Mr.
25 Lisenby has been, I hate to use the word career criminal,

1 but he is. He's been in and out. If you will look at his
2 SCDC sheet. Mr. Little, obviously, gave a sworn statement.
3 And now, he's giving another sworn statement to the
4 opposite effect. That is, of course, up to the Court to
5 give the weight it deserves. However, the State would
6 point out the inherent issues and credibility that come
7 with listening to a witness of that basis.

8 Mr. McLeod stated that there are now two prongs to
9 test for relevance of after discovered evidence based on
10 the Jamison case and I want to just point out the language
11 that it is a rare case, indeed, where the interest of
12 justice would require in knowing, excuse me, knowing a
13 voluntary guilty plea be vacated through PCR on the basis
14 of newly discovered evidence. And I would state that this
15 is not one of those cases. These witnesses both stated
16 that they were not quite certain who it was that Mr. Dunlap
17 had a gun but Dameion might not have come out with a gun.
18 He might not have been Dameion that came out of the car.
19 We're not entirely sure. So I don't think enough basis has
20 been brought before this Court in order to say that there
21 is enough evidence to overturn his knowing and voluntary
22 guilty plea.

23 To turn to the ineffective assistance of counsel
24 allegations, first, let's look at the potential Brady
25 violation regarding this statement. The State would argue

1 that that is a strategic decision. That, for whatever
2 reason, Mr. Cannarella did not feel it was necessary to
3 pursue the turning over of that statement that whether he
4 had some information that kept him from thinking it would
5 be primarily helpful or anything else. This is not
6 necessarily a fail of law in this case that it was a
7 strategic decision not to pursue that statement as he
8 testified to. Regarding exculpatory evidence that he may
9 not have found, he being Mr. Cannarella, we would look to
10 Morehead vs. State which states, the failure to
11 independently investigate a case does not equal ineffective
12 assistance of counsel when this potential investigation was
13 only supported by mere speculation. And in this case
14 that's all he would've had to go on. It's a speculation
15 that somebody might have said something, somebody might
16 have seen something. And it's not up to Mr. Cannarella to
17 conduct a full long investigation on his own.

18 Moving to the indictment. The indictment is a notice
19 document. There is plenty of case law stating that any
20 defects in the indictment do not effect subject matter
21 jurisdiction. The case would be before this Court no
22 matter what. The applicant even said he knew that, that
23 was why he was in court because this man was shot and
24 killed. So the fact that it states he died in a different
25 state does not matter. Mr. Cannarella also testify to the

1 fact that because everybody knew why they were here, it was
2 not worth the opportunity or worth the effort to pursue any
3 caution of the indictment or re-indictment.

4 The last element, I believe, would be the question of
5 whether Mr. Rivers knew how much time he could serve
6 whether it was a 85%, or 65%, the full sentence, Mr. McLeod
7 appointed to an unpublished opinion which the State would
8 argue that has no valid weight in this case. And instead,
9 pointing to Knotts vs. State or Pittman vs. State both of
10 which say the defendant does not to be informed that any
11 potential variation in the sentence is a collateral
12 consequences sentencing, that any defendant should expect
13 to serve the entire sentence and failure to inform a
14 defendant of this fact by trial counsel is not ineffective
15 assistance of counsel.

16 For all of these reasons the State argues that Mr.
17 Cannarella was neither prejudicial or nor deficient both of
18 which must be satisfied under Strickland vs. Washington in
19 order to find ineffective assistance of counsel and instead
20 Mr. Cannarella made strategic trial strategy decisions that
21 in this case turned into plea strategy decisions and he was
22 not ineffective and, therefore, any relief that the
23 applicant seeks should be denied.

24 THE COURT: Thank you, ma'am. What was the name of
25 that case concerning the attorney not have to advise the

1 percentage of sentence to be served?

2 MS. KINARD: One is Knotts vs. State and one is
3 Pittman with two t's versus State. I can find both those
4 if you give me a second or I can put them on the record in
5 a minute.

6 THE COURT: Okay.

7 MR. McLEOD: Your Honor, if I may have just by
8 reply?

9 THE COURT: Yes, sir.

10 MR. McLEOD: Your Honor, it's kinda of like you
11 can't pick your family, you can't pick your witnesses. I
12 mean, witnesses are the witnesses. You know if they don't
13 have a good pedigree or they don't have an upstanding
14 record, I mean, I can't help it if they may have witnessed
15 a crime and you've got to go with who you have, just like
16 you gotta go with who your family is. And so as far as
17 their credibility goes, I think, obviously, that should be
18 for a jury to decide whether they're credible or not, and
19 that, that's where the person's attorney can talk to the
20 person in making that inform consent about hey, we've got
21 these witnesses, are they going to be credible and that all
22 goes to making the decision of whether or not whether do I
23 go to trial or take a chance on these witnesses, whether
24 not -- or do I plead guilty. Your Honor, I think all that
25 goes to that situation under those circumstances. So, Your

1 Honor, that would be my response as to the issues that were
2 brought up there.

3 THE COURT: All right. Thank you, Mr. McLeod. All
4 right. Ms. Kinard, you don't have to give me those cites
5 on the record. If you would just supply ---

6 MS. KINARD: Yes, sir.

7 THE COURT: --- me with those cites for those two
8 cases, I'd appreciate it. All right. As to this matter I
9 am going to take this matter under advisement. I want to
10 review the cases that have been submitted. I want to
11 review my notes of the testimony as well and I will let you
12 hear from me as soon as I possibly can. Thank you.

13 MR. McLEOD: Thank you, Your Honor.

14 MS. KINARD: Thank you, Your Honor.

15 (CONCLUSION OF THE HEARING ON JANUARY 11, 2016)

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CERTIFICATE

I, the undersigned Lisa S. Carter, Official Court Reporter for the Fourth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete excerpt of transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Fourth Circuit Court for Darlington County, South Carolina, on the 11th day of January, 2017.

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

s/ Lisa S. Carter

Lisa S. Carter

Circuit Court Reporter

February 12, 2018

Exhibit A

STATE OF SOUTH CAROLINA)
)
 County of Chesterfield)

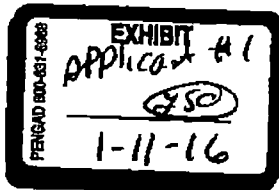
INDICTMENT #07GS13-0814

At a Court of General Sessions, convened on November 05, 2007
 the Grand Jurors of Chesterfield County present upon their oath:

COUNT: MURDER
 16-3-10

That Dameion Rivers in the County of Chesterfield on or about August 27,
 2007, feloniously, wilfully and with malice and aforethought, kill one Tavish
 Jerel Dunlap by means of shooting him and that the said Tavish Jerel Dunlap did
 die in Chesterfield County as a proximate result thereof in violation of Section
 16-3-10 of the South Carolina Code of Laws (1976), as amended.

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

SOLICITOR: *Jaybridge*

A True Copy, Attest
Jay
 CLERK OF COURT C.P. & S.S.
 CHESTERFIELD COUNTY, SC

2016 JAN 14 AM 11 53

FAYE L. J. J.
 CLERK
 CHESTERFIELD

WE THE GRAND JURY OF CHESTERFIELD COUNTY, DO HEREBY

ACKNOWLEDGE THAT THE HIGHLIGHTED CASES OR THE CHECKED CASES

ON THE ATTACHED GRAND JURY DOCKET HAVE BEEN PRESENTED TO US

THIS 30th day of October, 2007, WITH THE ACTION

TAKEN BY THE GRAND JURY NOTED ON SAME.

1. Michael S. Phares, Foreman
2. Robert R. Griggs, Jr.
3. Vicki L. Tucker
4. Laura A. Lewis
5. Brian S. Mungo
6. Glenn E. Alexson
7. Sharon J. Bixler
8. Kenneth B. Frazier
9. Dianne B. Brigman
- Alternate
1. Johnny J. Redfern
2. Duel R. Crump
3. _____

1. Gina D. Blackmon
2. Iris R. Deese
3. Mary F. King
4. Ashly N. Burch
5. Robert G. Hutson
6. Christopher C. Oneal
7. Robert M. Nicholson
8. Dale L. Cheek
9. Billy David
- Alternate
1. _____
2. _____
3. _____

AGENCY I.D.
SC0130500

PAGELAND POLICE DEPARTMENT
INCIDENT REPORT

CASE NUMBER

07 - 08 - 502

257

INQ. ENTD.

INCIDENT TYPE				COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM
1. 09A - MURDER				☒ YES ☐ NO	☐ YES ☐ NO	03		☒ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Relig. Orgn. ☐ Soc./Public ☐ Other ☐ Unknown ☐ Police Off.
2.				☐ YES ☐ NO	☐ YES ☐ NO			
3.				☐ YES ☐ NO	☐ YES ☐ NO			
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)						ZIP CODE	WEAPON TYPE	
214 NORTH ELM STREET, PAGELAND SC						29728	14	
INCIDENT DATE	24 HR. CLOCK	TO	DATE	24 HR. CLOCK	DISPATCH DATE/TIME 24 HR. CLOCK	LOCATION NO.		
08/27/2007	2116		08/27/2007	2120	08/27/2007 2120 2121 2248	04		
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)			RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE
POPS GAME ROOM, UNK. UNK.			#1 #2 #3		0 S O U			
ADDRESS			CITY		STATE	ZIP CODE	LOCATION NO.	
214 NORTH ELM STREET			PAGELAND		SC	29728	04	
VICTIM'S NAME (LAST, FIRST, MIDDLE)			RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE
DUNLAP, TAVISH JEREL			#1 #2 #3		J S O U	B	M	18
HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.				
5-1	125	BLK	BRO					
ADDRESS			CITY		STATE	ZIP CODE	LOCATION NO.	
			PAGELAND		SC	29728		
VISIBLE INJURY (VICT. 1) ☐ YES ☒ NO EXPLAIN -								
#1 VICTIM (NO. 1) USING: ALCOHOL: ☐ YES ☐ NO ☒ UNK. DRUGS: ☐ YES ☐ NO ☒ UNK.								
☐ TWO-MAN VEH. ☐ ONE-MAN VEH. ☐ DETECTIVE/SPLASMT. ☐ OTHER ☐ ALONE ☐ ASSISTED J - This Jurisdiction S - State O - Out of State U - Unknown								
SUBJECT	☒ SUSPECT	SUBJECT NAME (LAST, FIRST, MIDDLE)			RACE	SEX	AGE	ETH.
	☐ RUNAWAY	RIVERS, DAMEION JERMAH			B	M	18	N
	☐ WANTED	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.						
	☐ WARRANT	ADDRESS			CITY	STATE	ZIP CODE	LOCATION NO.
☐ ARREST				PAGELAND	SC	29728		
#1	☐ JAIL	SUBJECT (NO. 1) USING: ALCOHOL: ☐ YES ☐ NO ☒ UNK.			ARRESTED NEAR OFFENSE SCENE ☐ YES ☒ NO		DATE/TIME OF OFFENSE	
	☐ SUMMONS	DRUGS: ☐ YES ☐ NO ☒ UNK. TYPE:			TOTAL # ARRESTED 2		08/27/2007 2116 08/28/2007 0950	
ON 8-27-07 I ALONG WITH SGT. MINORS WAS DISPATCHED TO POP'S GAMEROOM ON NORTH ELM STREET IN REFERENCE TO A SHOOTING. UPON ARRIVAL I OBSERVED A LARGE CROWD GATHERED AROUND A BLACK MALE LAYING FACE DOWN IN THE PARKING LOT. AS I GOT CLOSER I OBSERVED THE VICTIM TO BE TAVISH DUNLAP WHOM SGT. MINORS AND I HAD TALKED WITH EARLIER IN THE EVENING ON A POSSIBLE FIGHT CALL AT POP'S. THERE WAS SEVERAL PEOPLE HOLLERING AT SGT. MINORS AND MYSELF BECAUSE THE RESCUE SQUAD WAS TAKING LONGER THAN NORMAL BECAUSE IT WAS COMING FROM JEFFERSON. KORY LITTLE WAS PRESENT AND WAS HOLDING AND TALKING WITH THE VICTIM TRYING TO KEEP HIM AWAKE. I TALKED WITH ELTOYA BLAKENEY DOB: WHO GAVE A WRITTEN STATEMENT THAT SHE SAW DAMEION RIVERS RIDE BY HER AND SAID "I JUST SHOT TAY BUG." TAY BUG IS VICTIM'S NICKNAME. I TALKED WITH KENNETH LOUALLEN WHO WITNESSED THE SHOOTING. HE STATES AND HIS STATEMENT IS ON TAPE THAT HE OBSERVED A GUY NAMED DAMEION GET OUT THE PASSENGER SEAT OF A BLACK GRANDAM WITH A SHOTGUN AND SHOOT VICTIM. HE THEN STATES HE RACKED THE SHOTGUN AGAIN AND PUT IT UP TO HIS CHEST AND SAID "I SHOULD GO AHEAD AND KILL YOU." MR. LOUALLEN STATES THAT ONE OF THE VICTIM'S FRIEND'S, STEVEN BRADLEY DOB: SAID "MAN DON'T DO THAT YOU DONE ENOUGH." HE ALSO STATES THAT KORY LITTLE AND MICHAEL DUNLAP WERE PRESENT WHEN THE VICTIM WAS SHOT. THE VICTIM HAD A SEVERE GUN SHOT WOUND TO HIS LEFT TORSO AND WAS AIR LIFTED TO CAROLINA MEDICAL CENTER IN CHARLOTTE. THE CRIME SCENE WAS ROPED OFF BY SGT. MINORS AND DEPUTY MARTIN AS THERE WAS A SHOTGUN SHELL ABOUT 12 TO 15 FEET FROM THE POOL OF BLOOD FROM VICTIM. I INITIALLY OBSERVED A CELL PHONE ON THE GROUND BUT DUE TO THE LARGE CROWD AND HAVING TO CONTAIN THEM AN UNKNOWN SUBJECT PICKED IT UP. ASSISTANT CHIEF BROWN WAS CONTACTED AND ARRIVED ON THE SCENE AND TOOK COMMAND OF IT AND THE INVESTIGATION. ON 8-27-07 ASST. CHIEF BROWN CONTACTED CAROLINA MEDICAL CENTER AND STATED THAT AT 11:08 PM THE HOSPITAL STATED THE VICTIM HAD PASSED								

JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY				JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY				
P	TYPE (GROUP)			EXHIBIT		TOTAL VALUE		
R	Burned			Applied #2				
O	Count/Forged			1-11-16				
P	Dist./Damaged							
E	Recovered							
R	Seized							
T	Stolen							
Y	Unknown							
A	SUBJECT IDENTIFIED		SUBJECT LOCATED		ACTIVE		ADM. CLOSED	
	☒ YES ☐ NO		☐ YES ☒ NO		☐ UNFOUNDED		☒ ARRESTED UNDER 18 ☒ ARRESTED 18 AND OVER	
M	REASON FOR EXCEPTIONAL CLEARANCE:		OFFENDER DEATH		NO PROSECUTION		EXTRADITION DENIED	
							VICTIM DECLINES COOPERATION	
I	REPORTING OFFICER(S)		DATE		UNIT NUMBER		APPROVING OFFICER	
	PFC DAVID WATSON		08/27/2007		310			
N	SGT C MINORS		08/27/2007		304		FOLLOW-UP INVESTIGATION OFFICER	
							☒ YES ☐ NO ASST CHIEF LARRY BROWN	

AGENCY NO.
SC0130500

PAGELAND POLICE DEPARTMENT
INCIDENT REPORT

CASE NUMBER

07 - 08 - 502

NCIC

INQ. ENTD.

AWAY DUE TO THE GUNSHOT WOUND.

				JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY		JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY	
P R O P E R T Y	TYPE (GROUP)						TOTAL VALUE
	Burned						
	Count./Forged						
	Dest./Damaged						
	Recovered						
	Seized						
A D M I N I S T	Stolen						
	Unknown						
SUBJECT IDENTIFIED	SUBJECT LOCATED		☐ ACTIVE	☐ ADM. CLOSED	☒ ARRESTED UNDER 18	☐ EX-CLEAR UNDER 18	
	☒ YES ☐ NO	☐ YES ☒ NO	☐ UNFOUNDED		☒ ARRESTED 18 AND OVER	☐ EX-CLEAR 18 AND OVER	
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY							
REPORTING OFFICER(S)		DATE	UNIT NUMBER	APPROVING OFFICER		DATE	UNIT NUMBER
PFC DAVID WATSON		08/27/2007	310				
SGT C MINORS		08/27/2007	304	FOLLOW-UP INVESTIGATION OFFICER ☒ YES ☐ NO ASST CHIEF LARRY BROWN			

AGENCY I.D.
SC0130500

PAGELAND POLICE DEPARTMENT
SUPPLEMENTAL INCIDENT REPORT

CASE NUMBER

07-08-502

VCIC
INO 259

PAGE 1

☐ ORIGINAL REPORT	☐ SUPPLEMENTAL REPORT	☐ ADDITIONAL VICTIMS	☐ ADDITIONAL STOLEN PROPERTY
☐ MODIFIES ORIGINAL	☐ CASE STATUS CHANGE	☒ ADDITIONAL OFFENDERS	☐ ADDITIONAL RECOVERED PROPERTY

V I C T I M S U B J O V E R F L	☐ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)			RELATIONSHIP TO SUBJECT			RESIDENT	RACE	SEX	AGE	D.O.B.	ETH
	☐ VICTIM #	HEATH, MICHAEL DARRIN						J	S	O	U		N
	☒ SUBJECT # 02	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.							
	☐ RUNAWAY	5-10	165	BLK	BRO								
	☐ WANTED	ADDRESS			CITY	STATE	ZIP CODE	LOCATION NO.	DAY PHONE	EVENING PHONE			
	☒ WARRANT				PAGELAND	SC	29728			H	B		
	☐ ARREST	☐ VICTIM NO. _____ VISIBLE INJURY: ☐ NO ☐ YES			☐ VICTIM USING ALCOHOL: ☐ NO ☐ YES ☐ UNK.			☐ TWO-MAN VEH. ☐ DETECTIVE/SPLASMT ☐ ALONE					
	☐ JAIL	EXPLAIN:			DRUGS: ☐ NO ☐ YES TYPE: _____			☐ UNK. ☐ ONE-MAN VEH. ☐ OTHER ☐ ASSISTED					
	☐ SUMMONS	☒ SUBJECT NO. 02 USING ALCOHOL: ☐ NO ☐ YES			☒ UNKNOWN								
	☐	USING DRUGS: ☐ NO ☐ YES TYPE: _____											

V I C T I M S U B J O V E R F L	☐ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)			RELATIONSHIP TO SUBJECT			RESIDENT	RACE	SEX	AGE	D.O.B.	ETH
	☐ VICTIM #	CRAWFORD, JOHNATHON TYWANE						J	S	O	U		N
	☒ SUBJECT # 03	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.							
	☐ RUNAWAY	5-4	160	BLK	BRO								
	☐ WANTED	ADDRESS			CITY	STATE	ZIP CODE	LOCATION NO.	DAY PHONE	EVENING PHONE			
	☒ WARRANT				PAGELAND	SC	29728			H	B		
	☐ ARREST	☐ VICTIM NO. _____ VISIBLE INJURY: ☐ NO ☐ YES			☐ VICTIM USING ALCOHOL: ☐ NO ☐ YES ☐ UNK.			☐ TWO-MAN VEH. ☐ DETECTIVE/SPLASMT ☐ ALONE					
	☐ JAIL	EXPLAIN:			DRUGS: ☐ NO ☐ YES TYPE: _____			☐ UNK. ☐ ONE-MAN VEH. ☐ OTHER ☐ ASSISTED					
	☐ SUMMONS	☒ SUBJECT NO. 03 USING ALCOHOL: ☐ NO ☐ YES			☒ UNKNOWN								
	☐	USING DRUGS: ☐ NO ☐ YES TYPE: _____											

A D M I N I S T	SUBJECT IDENTIFIED		SUBJECT LOCATED		☐ ACTIVE ☐ ADM. CLOSED		☒ ARRESTED UNDER 18		☐ EX-CLEAR UNDER 18	
	☒ YES ☐ NO		☐ YES ☒ NO		☐ UNFOUNDED		☒ ARRESTED 18 AND OVER		☐ EX-CLEAR 18 AND OVER	
	REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY									
	REPORTING OFFICER(S)			DATE	UNIT NUMBER	APPROVING OFFICER			DATE	UNIT NUMBER
	PFC DAVID WATSON			08/27/2007	310					
SGT C MINORS			08/27/2007	304	FOLLOW-UP INVESTIGATION OFFICER					
					☒ YES ☐ NO ASST CHIEF LARRY BROWN					

IN THE COURT OF COMMON PLEAS
FOR THE FOURTH JUDICIAL CIRCUIT

Dameion Jermiah Rivers, #342549,

Case No. 2011-CP-13-0210

Applicant, 2016 JUL 8 PM 12 28

v.

FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter came before the Court by way of an Application for Post-Conviction Relief ("PCR") filed June 9, 2011. Respondent filed a return on or about August 19, 2011. The Court convened an evidentiary hearing into the matter on January 11, 2016 at the Darlington County Courthouse. Applicant was present and represented by Andrew McLeod, Esquire. Jessica E. Kinard, Esquire, of the South Carolina Attorney General's Office, represented respondent.

Applicant; his trial counsel, Paul V. Cannarella, Esquire; Kory Little; and Billy Lee Lisenby, Jr. testified at the hearing. The Court had before it a copy of the trial transcript, the records of the Chesterfield County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the pleadings.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Chesterfield County Clerk of Court's orders of commitment. The Chesterfield County Grand Jury indicted the Applicant at the November 2007 term of General Sessions for murder (2007-GS-13-0814) and at the December 2007 term for possession of a weapon during commission of a violent crime (2007-GS- 13-0897). Paul V. Cannarella, Esquire represented the Applicant.

Upon information and belief, the State called the case to trial before the Honorable Paul M. Burch on August 30, 2010 and a jury was selected. Upon information and belief, a suppression hearing was held that day and the motion to suppress was denied. On August 31, 2010, the Applicant pled guilty to the lesser included charge of voluntary manslaughter and the weapons possession charge as indicted. Judge Burch sentenced the Applicant to concurrent terms of nineteen (19) years for voluntary manslaughter and five (5) years for possession of a weapon during commission of a violent crime, with credit for time served. The Applicant did not appeal.

II.

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

1. Ineffective assistance of counsel
 - a. Failure to investigate.
 - b. Convinced the Applicant to plead guilty after a "new turn in the case."
2. Involuntary guilty plea.

On or about January 11, 2013, Amendment filed an amendment to his application, adding the following allegations:

1. Ineffective assistance of counsel.
 - a. Failure to quash the indictment for murder.
 1. "The indictment was invalid based on the fact that it states that the victim died in Chesterfield County when in fact the record clearly indicates that the victim was airlifted to Charlotte, north Carolina where surgery was performed and that ultimately the victim expired in Charlotte, North Carolina at the hospital and not in Chesterfield County. There are several cases that indicate that he place of death is absolutely necessary in an indictment for murder. These include:
 - State v. Platt, 154 S.C. 1
 - State v. Shoemaker, 276 S.C. 86
 - State v. Coleman, 17 S.C. 473
 - State v. Blakeney, 33 S.C. 111
 - b. Failing to advise the Applicant of the mandatory minimum penalty of the guilty plea involved.

A second amendment to the post-conviction relief application was filed by the Applicant on or about May 29, 2013. This added the following allegations:



1. Failure to discover exculpatory evidence;
2. Failure to advise the plea court to give applicant all of his time served;
3. Failure to clarify plea court's erroneous language pertaining to the murder indictment;
4. Failure to advise the applicant of the mandatory minimum penalty based on the plea;
5. Failure to quash indictment for murder.

Applicant filed a second amended PCR application on or about December 22, 2015, which added the following allegations:

1. Trial counsel was ineffective in not obtaining a continuance due to the fact that the State did not comply with the Brady request in it did not provide the recorded statement of Kenneth Louallen. Said statement was clearly referenced in the incident report and was not produced.
2. Trial counsel was ineffective in not advising the PCR applicant concerning the fact that he would have to serve 85% of any sentence and the trial counsel advised that PCR application would only have to serve 65% of any sentence. Had PCR Applicant known this then, he would not have pled guilty and would have gone to trial.
3. Trial counsel was ineffective in failing to raise all the issues possible concerning the validity of the indictment. The incident [sic] was not signed by the grand jury foreman, and it incorrectly stated the location where the victim died.
4. The police officer who was investigating this case for the Town of Pageland is currently on administrative leave and being investigated for improper conduct, and the PCR applicant believes that the police office intentionally withheld evidence and did not investigate this case.
5. There is a witness, Billy Lee Lisenby, Jr., who is prepared to testify that he informed Chief Brown, the investigating officer, after the shooting that her saw the victim with a gun prior to the shooting at the scene, but the investigating officer did not get a statement from Billy Lee Lisenby, Jr. or bring this information to light during the investigation.

Applicant filed a supplement to this amendment on or about January 4, 2016, which alleged that the testimony that Billy Lee Lisenby, Jr. was expected to present constituted newly-discovered evidence. It further provided that Kory Little was prepared to recant his statement and provide testimony that would be helpful to the Applicant.

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 the witnesses who testified at the hearing, and to closely pass upon their credibility. This Court finds Counsel's testimony credible, and that the testimony presented by Applicant and his witnesses was less than credible. 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 (2003). Furthermore, this Court finds that Applicant abandoned all allegations except for those specifically addressed below.

A. Summary of Testimony

Applicant – Dameion Rivers

Applicant testified first, and began by stating that trial counsel was retained, and they met approximately three times over the course of three years of representation. He believed that trial counsel failed to engage in an adequate pre-trial investigation because he failed to find exculpatory evidence. In particular, Applicant alleged that once he reached the state prison system and received his case file, he saw that the indictment for his murder charge listed the victim's place of death as being in North Carolina. He also alleged that the person signing as the Grand Jury foreman was not the current foreman. Applicant further testified that a statement seemed to be missing from the discovery. He testified that he believed if he pled to the lesser-included charge of voluntary manslaughter, he would serve sixty-five percent (65%) of that sentence as long as he was well-behaved. Because this was not the case, he believed that his guilty plea was not fully voluntary and intelligent.

Applicant further testified about the idea of a self-defense argument, and that he understood it would not work because he stepped out of the car with a gun and could be viewed as initiating the difficulty. He also testified that he was unaware at the time that Billy Lee

Lisenby, Jr. was at the scene and saw that the victim had a gun. Applicant brought up the idea of asking for a continuance because he and trial counsel had just received an incident report at the time of the call of the case, and said that he was not aware a continuance was a possibility. He further testified that he did not discuss with trial counsel that there was alcohol in his system at the time of the crime. Lastly, he stated that he was on house arrest with an ankle monitor for two and a half (2 ½) years, and wanted credit for time served.

On cross examination, Applicant admitted that he voluntarily testified to the questions regarding waiver of his constitutional rights and satisfaction with his attorney during the entry of his guilty plea. Additionally, he testified that he recalled that Judge Burch told him during the plea colloquy that he could potentially serve the entire sentence length.

Kory Little

Kory Little, who was being held in Darlington County on a Federal detainer for possession of a firearm by a felon, testified that he was at the scene of the incident. During the investigation of this crime, he wrote a statement for the police that he said he saw the Applicant get out of the car with a gun; however, he testified at this hearing that it was a coerced statement because the police would not let him go to the bathroom without issuing it. He further testified that what he actually saw was someone getting out of the car with a long gun and, when that person tried to back up and get back into the car, the gun went off. Mr. Little testified that he did not know who this person was, nor did he know if the victim had a gun. He admitted to lying in his previous statement when questioned on cross-examination.

Billy Lee Lisenby, Jr.

Billy Lee Lisenby, Jr., an inmate serving time in South Carolina Department of Corrections for assault with intent to kill, assaulting a corrections officer, and failure to stop for law enforcement, was called to testify based on a letter that he submitted to PCR counsel in

December of 2015. This stated that he witnessed the shooting of which Applicant is charged, as well as that the victim had a gun when he was shot. He testified that he saw the Applicant step out of the car, the victim came toward Applicant, Applicant seemed to ignore the victim, Lisenby heard a shot and assumed that Applicant was shot, but then saw the victim fall. Mr. Lisenby further testified that, between the time of the incident and his current incarceration, he informed the police chief that he saw the victim holding a gun, but does not believe that this information was ever utilized or provided to Applicant and trial counsel. Mr. Lisenby and the Applicant were eventually housed at Lieber Correctional Institute together, and Applicant asked for Lisenby's assistance. On cross-examination, Lisenby testified that he was not absolutely certain it was Applicant that stepped out of the car, but he was certain that the victim had a gun, as he watched him conceal it when the car arrived.

Trial Counsel – Paul V. Cannarella

Trial counsel was called by Applicant's PCR counsel, and confirmed that he was hired by Applicant's family to represent him. From the outset, he testified that he firmly believed Applicant was in possession of a long gun and exited the car with that gun. When questioned about presenting the affirmative defense of self-defense, trial counsel admitted that the statement of Kory Little may have influenced his decision, as it called into doubt exactly what the facts were and what would be credible. Trial counsel felt that it would be disingenuous and confusing to ask for jury charges on all three issues of voluntary manslaughter, involuntary manslaughter, and self-defense, and that he explained all of this to the Applicant. Further, trial counsel believed that it would be difficult for a jury to process information under a theory of self-defense knowing that he arrived at the scene with a gun. He testified that if he knew conclusively that the victim had a gun, he may have recommended "rolling the dice" at trial using a self-defense argument.

Similarly, he stated that, had they proceeded to trial, he would have put up a witness to testify regarding the victim's reputation for carrying a gun.

Regarding the allegation of failing to investigate, trial counsel testified that he realized a statement was probably missing from the discovery, but he did not believe that its purported contents would have been helpful at the time; therefore, he believed that all exculpatory evidence had been provided by the state. When it came to the inaccuracy in the indictment, he did not believe it was worth the time to mention it – everyone involved knew what the crime was and what they were there to defend. Further, he testified that he would never have told the Applicant that it was a 65% sentence, and was certain that, if he had mentioned a percentage of time that would need to be served, it would have been 85%. Trial counsel also recalled the trial judge stating that Applicant may have to serve the entirety of his sentence. When questioned about the motion to suppress that preceded the plea, trial counsel stated that he believed it would have been a good ground for appeal if Applicant had not pled. Lastly, he believed that he had plenty of time to meet with the Applicant and familiarize himself with the case before heading to Court.

B. Ineffective Assistance of Counsel

In this 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 trial counsel as a ground for relief, Applicant must prove trial counsel's "conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether trial 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 trial 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 trial counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove trial counsel's performance was deficient. Id. Under this prong, the Court measures trial counsel's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, trial 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.

This Court finds Applicant has failed to show Counsel's performance fell below an objective standard of reasonableness. Counsel's testimony indicated he was extremely familiar with the facts of Applicant's case. This Court finds Counsel met with Applicant an adequate number of times and was familiar with the discovery materials. Counsel indicated he explained Applicant's constitutional rights, and he explained the differences between going to trial and entering a guilty plea. Counsel indicated he never had trouble communicating with Applicant, and he never had any concern that Applicant did not fully understand their conversations.

Trial counsel refuted the allegations that Applicant made in his application including, but not limited to, issues regarding validity of the indictment, discovery of exculpatory evidence, discussions regarding percentage of the sentence that Applicant would have to serve, importance of a statement that may have been omitted from discovery, and whether the plea was knowingly entered. He described conversations that he had with Applicant in which all of these items were

discussed. Specifically regarding failure to investigate, "[a] criminal defense attorney has a duty to investigate, but this duty is limited to a reasonable investigation." Ard v. Catoe, 372 S.C. 318, 331-32, 642 S.E.2d 590, 597 (2007). 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. Moreover, 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. Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998). This Court finds that, through the presentation of evidence at the post-conviction relief hearing, Applicant has failed to demonstrate both deficiency by trial counsel, as well as any prejudice caused by trial counsel's actions. Therefore, this allegation is denied and dismissed with prejudice.

C. Newly-discovered Evidence

This Court finds Applicant's allegation that the testimony of Kory Little and Billy Lee Lisenby, Jr. constitute newly-discovery evidence is without merit. An Applicant requesting a new trial based on after discovered evidence must show that the evidence:

- 1) Is such as would probably change the result if a new trial was had; 2) has been discovered since the trial; 3) could not by the exercise of due diligence have been discovered before the trial; 4) is material to the issue of guilt or innocence; and 5) is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983). The information presented by these witnesses does not rise to the level of probably changing the outcome of a new trial, as they spoke mostly to the availability of a self-defense claim. One witness (Little) said that he was not certain who got out of the car, but that man had a gun, and he was unsure whether the victim



did. The other witness (Lisenby) said that he was fairly sure that Applicant got out of the car with a gun, but he that he also saw the victim with a gun. Regardless, it is not a far reach to think that a jury would believe that the Applicant exited the car with a gun, yet doubt whether the victim had one.¹ Lastly, it is worth noting that Applicant pled guilty and, therefore, waived the right to subject any evidence to review by the Court or a jury. Though he may have made a different decision with this information at hand, this Court does not believe that this information is so material to the issue of guilt or innocence that it would have reasonably led to an acquittal by a jury.

D. 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. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial

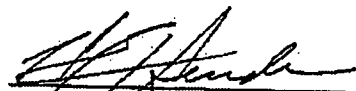
¹ The Court notes that, during his testimony at the PCR hearing, Applicant admitted to exiting the vehicle while holding a gun.

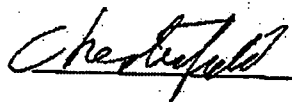
of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice;
and
2. The Applicant shall be remanded to the custody of the South Carolina Department of Corrections for service of the remainder of his term of imprisonment.

AND IT IS SO ORDERED this 12th day of July, 2016.


THE HONORABLE ROGER E. HENDERSON
Presiding Judge
Fourth Judicial Circuit

, South Carolina

File 7731

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF CHESTERFIELD)

FOURTH JUDICIAL CIRCUIT

Case Number: 2011-CP-13-210

Dameion Jeremiah Rivers,
#342549,

Plaintiff,

vs.

NOTICE OF MOTION, MOTION PURSUANT
TO RULE 59(e) OF THE SOUTH CAROLINA
RULES OF CIVIL PROCEDURE TO ALTER OR
AMEND JUDGMENT

State of South Carolina,

Defendant.

TO: THE STATE OF SOUTH CAROLINA AND ITS ATTORNEY:

You will please take notice that the above named applicant will move, not within ten (10) days of service hereof and at such time as the court may set, for the Order to either alter and/or amend the judgment by the Court in the above referenced matter, consistent with the information attached hereto as Exhibit A and incorporated herein by reference thereto, containing four handwritten pages.

This motion may be supported by such other and further memorandums, case law, affidavits and deposition testimony, which may be supplied.

I SO MOVE.

Andrew F. McLeod

Andrew F. McLeod
Court Appointed Attorney for the Post
Conviction Relief Applicant

September 09, 2016
Cheraw, South Carolina

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

2016 SEP 9 PM 4 36
FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, SC

Law Offices

Harris, McLeod &
Ruffner

Post Office Drawer 1449
222 Market Street
Cheraw, South Carolina
(843) 537-5204

State of South Carolina
County of Chesterfield

DAMEION JERMIK RIVERS,
342549
Applicant

State of South Carolina
Respondent.

IN THE COURT OF COMMON
Pleas

For the Fourth Judicial Circuit

C/A No#: 2011-CP-13-0210

NOTICE AND MOTION FOR
RULE 59(e) SCRPC

To: Respondents:

Now comes the Applicant moving before this Honorable Court Circuit of Common Pleas pursuant to Notice and Motion Rule 59(e) pursuant to Newly Discovered Evidence.

In August 31, 2010, the Applicant pled guilty to the lesser included charge of Voluntary Manslaughter and possession of a firearm as indicted. Judge Paul Burch sentenced the Applicant to concurrent terms of Nineteen (19) years for Voluntary Manslaughter and five (5) years for possession of a ~~firearm~~ weapon during the commission of a violent crime. The Applicant was also credit time served.

The Respondent's prepared a order of Dismissal file within the Clerk of Court for Chesterfield County on July 8, 2016. The Applicant's attorney, Andrew F. Melcod, Esq. sent a letter to the Applicant dated August 19, 2016 stating that he "looked online on August 18, 2016 and found the order denying the Applicant's PCR application."

The Applicant makes "Notice of Motion for Rule 59(e) pursuant to pg. 9 of 11 of the Respondent order of dismissal pursuant to pg. 9 of 11 subsection (c) Newly Discovered Evidence.

This court made an error of Law by denying the Applicant allegation that the testimony of Kory Little and Billy Lee Lisenby, Jr. constitute newly discovered evidence is without merit. An Applicant requesting a new trial based on after-discovered evidence must show ~~that~~ the evidence.

The Applicant contends that the Respondent's committed an error of Law by applying the traditional five-factor Newly discovered evidence cite at Hayden. (pg. 9 of 11).

(1) Is such as would probably change the result if a new trial was held; (2) has been discovered since the trial; (3) could not by the exercise of due diligence have been discovered before trial; (4) is material to the issue of guilt or innocence; and (5) is not merely cumulative or impeaching. Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983).

Evidence test in evaluating the Applicant's PCR claim and Order of Dismissal by Respondent, the Applicant contends that this traditional five factor test applies only where a defendant has gone to trial and was convicted - Not where a defendant plead ~~guilty~~ guilty. See Jamison v. State, 410 S.C. 456 765 S.E.2d 123 - The Applicant further contends that during the plea colloquy the Applicant ~~waived~~ waived his right to have a trial.

Applicant ~~contends~~ argues that when a PCR applicant seeks relief on the basis of Newly discovered evidence following a guilty plea, relief is appropriate only when the applicant present evidence that showing that: (1) the Newly discovered evidence was discovered after the entry of the guilty 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 a weight and quality that, under

the facts and circumstances of that particular case, the interest of justice requires the applicant's guilty plea to be vacated; in other words, a PCR applicant may successfully disown his plea only where the interest of justice outweighs the waiver and solemn admission of ~~guilt~~ guilt encompassed in a plea of guilty and the compelling interests in maintaining the finality of plea convictions. Code 1976, § 17-27-20(A)(4) cite at Jamison v. State, 410 S.C. 456 765 S.E.2d 123,

Last

On August 22, 2016 the Applicant received legal mail at McCormick Correctional Institution from his Attorney At Law PCR counsel Andrew F. McLeod, Esq. notifying the Applicant on August 19, 2016 PCR case no# 2011-CP-13-210 has been denied. See Exhibit (A).

Pursuant to SCRCP Rule 59(e), the Applicant has (10) days after receipt of Written Notice of the entry of the ~~plea~~ order. Respondent never served the Applicant nor Applicant's counsel based on the legal letter from PCR counsel, and the PCR court should schedule a hearing pursuant to Notice and Motion Rule 59(e) to determine if the applicant is entitled to Newly discovered evidence claim that he alleged in his prior PCR application which has merit.

CONCLUSION

Therefore this Notice and Motion 59(e) should be required for a motion hearing to determine if the Applicant claim of Newly discovered evidence has merit.

Granted or Denied

Date: August 28, 2016

Circuit Judge Honorable Roger E. Henderson
Presiding Judge
Fourth Judicial Circuit

Exhibit A 4 of 4

LEGAL MAIL
MAIL ROOM

State of South Carolina)
County of Chesterfield)

In Circuit Court of the
Fourth Judicial Circuit
2011-CP-13-0210

DAMEION RIVERS,
Plaintiff,
vs.
STATE OF SOUTH CAROLINA,
Defendant.

Transcript of Record

Darlington, South Carolina
July 24, 2017

B E F O R E:

The Honorable Roger E. Henderson

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

Mr. Andrew F. McLeod, Esquire
Attorney for Plaintiff

Ms. Jessica E. Kinard, Esquire
Attorney for Defendant

Lisa Carter
Circuit Court Reporter

I N D E X

WITNESSESPAGE

(NO WITNESSES WERE INTRODUCED DURING HEARING)

(NO EXHIBITS WERE INTRODUCED DURING HEARING)

1 THE COURT: All right. Mr. McLeod?

2 MR. McLEOD: May it please, The Court? Your Honor,
3 this is case number 2011-CP-13-210. It's Dameion Jermiah
4 Rivers versus the State of South Carolina. It is a PCR
5 action. I'm here as an appointed attorney for Dameion
6 Rivers, the applicant, on a motion pursuant to Rule 59 (e)
7 to alter and amend the judgment that was entered by the
8 court in Mr. Rivers's PCR application pursuant to an order
9 of dismissal that was recorded on July 8, 2016.

10 Your Honor, this motion is made based on the fact that
11 my client felt like that the decision of the Court made on
12 that PCR application that contained an error of law.
13 Primarily, the part where the newly discovered evidence
14 that was brought forth at the PCR application, the Court
15 applied the five-part test found in Hayden vs. State and
16 Mr. Rivers believes that, that was the wrong test to apply
17 to his situation because his situation was a guilty plea
18 and that the Supreme Court has held in Jamison vs. State
19 and that's, 410 S.C. 456, that we have a situation where a
20 person's pled guilty in a PCR that the proper test to
21 consider when you're reviewing after discovered evidence is
22 a two-part test set out in that case by the Supreme Court
23 which provides that the newly discovered evidence was
24 discovered after the entry of the plea and in the exercise
25 of reasonable diligence could not have been discovered

1 prior to the entry of the plea. That's the first test, the
2 first part of the test. And the second part, the newly
3 discovered evidence is of such a weight the quality that
4 under the facts and circumstances of that particular case,
5 the interest of justice requires the applicant's guilty
6 plea to be vacated. And, Your Honor, that is the basis of
7 this motion to reconsider. We'd asked the Court to
8 reconsider the new evidence that was presented at the PCR
9 trial, about the new evidence that Mr. Rivers had brought
10 forward that he only learned about after he was in jail.
11 He could not have found it out beforehand and it is such a
12 significant piece of information that would, he feels like,
13 would've allowed him to go forward on the self-defense that
14 he really wanted to, but that his attorney had advised him
15 against that because at the time there was nothing that
16 could corroborate that and, therefore, he chose to enter
17 into a plea. And he feels like that if he had known this
18 evidence at the time he would've certainly insisted on
19 going forward. That would've changed his decision and he
20 would've gone forward with a trial or gone forward and not
21 pled guilty, I should say. And so based on the gravity of
22 the fact that he serving a extensive lengthy sentence that
23 we feel like in the interest of justice based on this
24 information that he should be allowed to vacate his plea
25 and the PCR should be granted.

1 And I think like I said the case I handed to you is
2 the case where we outline that the Court should've applied
3 in analyzing the newly discovered evidence that was put
4 forward in that case, Your Honor.

5 THE COURT: Thank you, Mr. McLeod. Ms. Hastings?

6 MS. KINARD: Thank you, Your Honor. Jessica Kinard
7 on behalf of the State. In analyzing this motion, the
8 State actually does not disagree that the wrong standard
9 was applied. However, it would leave us with a distinction
10 about a difference. The five prongs in the Hayden vs.
11 State test compared to the two prongs in the Jamison vs.
12 State test, essentially, it accomplishes the same
13 information. The Court distinguishes between the two in
14 Jamison vs. State. Particularly, because after a guilty
15 plea there is no record of evidence presented at trial.
16 However, in this PCR evidentiary hearing, we did have the
17 benefit of hearing the information that would've been
18 presented or that the applicant alleged would have been
19 presented at trial by these two witnesses and the Court may
20 findings as such in his order of dismissal. In its order
21 of dismissal, the Court ordered dismissal, the credibility
22 was considered by both of these gentlemen. Kory Little
23 provided recantation testimony of a statement that he gave
24 to law enforcement. And there is clear state law that
25 recantation testimony is generally unreliable that you be

1 subjected to the closest scrutiny when offered as a ground
2 for a new trial. That's from State vs. Porter, 269, S.C.
3 618. Mr. Lisenby's testimony was similarly un-credible.
4 Both of these men are convicted felons and I believe were
5 transported at the time of the evidentiary hearing. Also
6 both of these men testified that they were at the scene of
7 the crime, therefore, all of this information could and
8 should have been discovered before trial or before the
9 plea. That's the biggest contention by the State is that
10 when you look at the Hayden vs. State test or the Jamison
11 vs. State test, both inquire an effort of due diligence
12 before trial or before a plea that if this could have been
13 discovered pursuant to do due diligence before the trial
14 and plea, it cannot be considered newly discovered
15 evidence. Both of these gentlemen testified at the
16 evidentiary area hearing. They were at the scene of the
17 crime. So, obviously, they were both aware of the
18 situation and could have and, I believe both testified,
19 tried to get this information to Mr. Rivers.

20 Additionally, as included in your order, neither of
21 them stated that they definitively saw Mr. Rivers in order
22 to exculpate him of this crime. They said they saw someone
23 they believe was the applicant. I believe that's on pages
24 9 and 10 of your order, I'm sorry, 5 and 6 of your order,
25 page 5.

1 Furthermore, there is testimony from Mr. Rivers that
2 he took the deal because he thought it was a good sentence.
3 He did object to the fact that he thought it was a 65%
4 sentence rather than an 85% sentence. But regardless there
5 was, obviously, testimony of an evaluation that he did
6 mentally that he decided to take the deal rather than have
7 to go through the trial.

8 So overall based on the quality of the evidence and
9 the quantity of the evidence and the fact that it could
10 have been discovered prior to trial, the State rest on the
11 second prong of Jamison that none of this is of the weight
12 and quality that requires a vacation in the interest of
13 justice which is the second prong of Jamison vs. State.

14 Furthermore, as the applicant actually cited in his
15 motion, the applicant may disavowal a guilty plea only
16 where the interest of justice outweighed the waiver and
17 solemn admission of guilt encompass in a plea of guilty and
18 that the compelling interest in maintaining the validity of
19 a guilty plea conviction and it is a rare case, indeed,
20 whether this will be overturned.

21 So, therefore, the State argues that though the
22 Jamison vs. State, standard should've been applied instead
23 of Hayden vs. State. It's ultimately an distinction about
24 a difference because the evidence is not of the nature of
25 quality that should overturn Mr. Rivers's guilty plea.

1 Thank you, Your Honor.

2 THE COURT: Thank you, Ms. Kinard. Anything else,
3 Mr. McLeod?

4 MR. McLEOD: Your Honor, I would just add that in a
5 situation where somebody's, you know, would've been on
6 trial for what this, the alleged crime was, that I think
7 the fairness and in the interest of justice, a jury should
8 be the ones, twelve people of Chesterfield County should be
9 the ones to determine whether or not testimony is or is not
10 relevant or supportive of this claim and the only way to
11 happen for that is for him to be able to do what he wanted
12 to do which was have a trial on self-defense. And I think
13 we elaborated at the PCR hearing why this information was
14 not or could not have been discovered beforehand. I think
15 it was established that, that there was some interference
16 possibly as to why this information, threats, as to why
17 this person didn't come forward at that point from law
18 enforcement or where else, otherwise.

19 And, therefore, also as far as the, again, the
20 quality, you know, it would go to in the interest of
21 justice would be, give the person the benefit of the doubt,
22 let a jury decide it, Your Honor. So that would be my
23 counter points to the well behaves of the State, Your
24 Honor.

25 THE COURT: Anything else, Ms. Kinard?

1 MS. KINARD: No, thank you, Your Honor.

2 THE COURT: All right. Counsel, I'm going to take
3 this matter under advisement. I'm going to review this
4 Jamison case closely before I rule on this matter. So I'll
5 let you hear from you, hopefully, sometime this week.

6 MR. McLEOD: Thank you, Your Honor.

7 MS. KINARD: Thank you, Your Honor.

8 (CONCLUSION OF THE HEARING ON JULY 24, 2017)

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CERTIFICATE

I, the undersigned Lisa S. Carter, Official Court Reporter for the Fourth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete excerpt of transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Fourth Circuit Court for Chesterfield County, South Carolina, on the 24th day of July, 2017.

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

s/ Lisa S. Carter

Lisa S. Carter

Circuit Court Reporter

February 19, 2018

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP1300210

Dameion Rivers

State Of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant

☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: Motion to Reconsider denied - Formal
Order to follow.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

[Signature]
Circuit Court Judge

2754
Judge Code

7-27-17
Date

For Clerk of Court Office Use Only

This judgment was entered on July 24, 2017, and a copy mailed first class or placed in the appropriate attorney's box on July 24, 2017, to attorneys of record or to parties (when appearing pro se) as follows:

Andrew Foster McLeod PO Drawer 1449 Cheraw, SC
29520

Caitlin Bazan Hastings 1220 Senate Street Columbia, SC
29201

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Wanda C. Miles

Court Reporter

Wanda C. Miles - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

2017 JUL 27 PM 4:03
Caitlin C. Hastings
Clerk of Court
SCCA

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

Dameion Jermiah Rivers, #342549,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FOURTH JUDICIAL CIRCUIT

Case No. 2011-CP-13-0210

**ORDER DENYING
MOTION PURUSANT TO**

Wanda C. Hiles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

2017 OCT 19 PM 12:54

This matter came before the Court by way of a motion to alter or amend judgment pursuant to Rule 59(e), SCRCP that Applicant filed on September 9, 2016 by and through his attorney, Andrew F. McLeod, Esquire. This motion was served upon this court and opposing counsel, Jessica E. Kinard, Assistant Attorney General. A hearing was convened at the Chesterfield County Courthouse on July 24, 2017. Applicant was present at the hearing, when this court heard argument from both attorneys.

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Chesterfield County Clerk of Court's orders of commitment. The Chesterfield County Grand Jury indicted the Applicant at the November 2007 term of General Sessions for murder (2007-GS-13-0814) and at the December 2007 term for possession of a weapon during commission of a violent crime (2007-GS- 13-0897). Paul V. Cannarella, Esquire represented the Applicant.

Upon information and belief, the State called the case to trial before the Honorable Paul M. Burch on August 30, 2010 and a jury was selected. Upon information and belief, a suppression hearing was held that day and the motion to suppress was denied. On August 31, 2010, the Applicant pled guilty to the lesser included charge of voluntary manslaughter and the

weapons possession charge as indicted. Judge Burch sentenced the Applicant to concurrent terms of nineteen (19) years for voluntary manslaughter and five (5) years for possession of a weapon during commission of a violent crime, with credit for time served. The Applicant did not appeal.

II.

In his original Application, Applicant alleged he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel
 - a. Failure to investigate.
 - b. Convinced the Applicant to plead guilty after a "new turn in the case."
2. Involuntary guilty plea.

On or about January 11, 2013, Amendment filed an amendment to his application, adding the following allegations:

1. Ineffective assistance of counsel.
 - a. Failure to quash the indictment for murder.
 1. "The indictment was invalid based on the fact that it states that the victim died in Chesterfield County when in fact the record clearly indicates that the victim was airlifted to Charlotte, north Carolina where surgery was performed and that ultimately the victim expired in Charlotte, North Carolina at the hospital and not in Chesterfield County. There are several cases that indicate that he place of death is absolutely necessary in an indictment for murder. These include:
 - State v. Platt, 154 S.C. 1
 - State v. Shoemaker, 276 S.C. 86
 - State v. Coleman, 17 S.C. 473
 - State v. Blakeney, 33 S.C. 111
 - b. Failing to advise the Applicant of the mandatory minimum penalty of the guilty plea involved.

A second amendment to the post-conviction relief application was filed by the Applicant on or about May 29, 2013. This added the following allegations:

1. Failure to discover exculpatory evidence;
2. Failure to advise the plea court to give applicant all of his time served;
3. Failure to clarify plea court's erroneous language pertaining to the murder indictment;
4. Failure to advise the applicant of the mandatory minimum penalty based on the plea;
5. Failure to quash indictment for murder.

Applicant filed a second amended PCR application on or about December 22, 2015, which added the following allegations:

1. Trial counsel was ineffective in not obtaining a continuance due to the fact that the State did not comply with the Brady request in it did not provide the recorded statement of Kenneth Louallen. Said statement was clearly referenced in the incident report and was not produced.
2. Trial counsel was ineffective in not advising the PCR applicant concerning the fact that he would have to serve 85% of any sentence and the trial counsel advised that PCR application would only have to serve 65% of any sentence. Had PCR Applicant known this then, he would not have pled guilty and would have gone to trial.
3. Trial counsel was ineffective in failing to raise all the issues possible concerning the validity of the indictment. The incident [sic] was not signed by the grand jury foreman, and it incorrectly stated the location where the victim died.
4. The police officer who was investigating this case for the Town of Pageland is currently on administrative leave and being investigated for improper conduct, and the PCR applicant believes that the police office intentionally withheld evidence and did not investigate this case.
5. There is a witness, Billy Lee Lisenby, Jr., who is prepared to testify that he informed Chief Brown, the investigating officer, after the shooting that her saw the victim with a gun prior to the shooting at the scene, but the investigating officer did not get a statement from Billy Lee Lisenby, Jr. or bring this information to light during the investigation.

Applicant filed a supplement to this amendment on or about January 4, 2016, which alleged the testimony Billy Lee Lisenby, Jr. was expected to present constituted newly-discovered evidence. It further provided Kory Little was prepared to recant his statement and provide testimony that would be helpful to the Applicant.

An evidentiary hearing was held on January 11, 2016 at the Darlington County Courthouse. Applicant; his trial counsel, Paul V. Cannarella, Esquire; Kory Little; and Billy Lee Lisenby, Jr. testified at the hearing. The Court had before it a copy of the trial transcript, the records of the Chesterfield County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the pleadings. After consideration of all facts and testimony, this court denied Applicant's request for post-conviction

relief in an order signed July 1, 2016 and filed July 8, 2016. This court further understands there was a delay in the attorneys of record receiving this filed order and, as a result, both parties have stipulated that the instant motion was timely filed.

III.

At the argument of this motion, Applicant presented further argument that his application should be granted on the basis of newly-discovered evidence, which was the testimony of Kory Little and Billy Lee Lisenby, Jr., both of whom testified in support of this claim at Applicant's post-conviction relief evidentiary hearing. In support of this, he argued the Court was in error when it cited Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983), and its five factor test in evaluating alleged new evidence, as that standard applies only to cases that go to trial and receive a verdict. Because Applicant pled guilty, he cites instead to Jamison v. State, 410 S.C. 456, 765 S.E.2d 123 (2014) and its two factor test in determining the relevance of alleged new evidence. Applicant further argued he was entitled to a new trial by a jury of his peers to question the alleged new witnesses into why they had not or could not have come forward at the time of his trial. He lastly argued he should receive the benefit of the doubt, and his conviction should be vacated to allow him a new trial with the inclusion of this testimony.

The State conceded that Jamison was the appropriate standard, but argued it was a distinction without a difference. This court agrees. Initially, both tests require the new evidence to be discovered after the trial or plea, and that it be of a nature that it could not have been discovered beforehand with due diligence. As both witnesses were at the scene of the incident, this prong is not satisfied. In fact, Mr. Lisenby testified he told law enforcement of his presence at the scene prior to Applicant entering his plea. Further, the second prong of Jamison, which is similar to the fourth prong of Hayden, requires the evidence be of a weight and quality that requires vacation of the sentence in the interest of justice. In this case, both witnesses are

convicted felons and are currently incarcerated. One of them, Mr. Little, recanted¹ a prior statement given to law enforcement, and Mr. Lisenby told law enforcement he could not be certain whether it was the Applicant or another person that committed the act. These facts weigh very heavily against placing credibility on the statements of these men.

This court previously held in the order of dismissal "the information presented by these witnesses does not rise to the level of probably changing the outcome of a new trial" as "this court does not believe this information is so material to the issue of guilt or innocence that it would have reasonably led to an acquittal by a jury." OOD, p.9 - 10. Ultimately, Applicant desires vacation of his sentence for the opportunity to be potentially acquitted by a jury. However, that is in contravention of state law, as the grant of a new trial is not favored, and requires an abuse of discretion on the part of the trial or plea court, as it has the ability and opportunity to weigh the evidence. State v. Harris, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011).

Lastly, the courts of this state place a heavy burden on those who plead guilty, as evidence by the different standard espoused by Jamison. In reaching its decision to create a different standard for newly discovered evidence after a guilty plea, the South Carolina Supreme Court considered the fact that pleas are sworn oaths made to the court, stating the following:

In other words, a PCR applicant may successfully disavow his or her guilty plea only where the interests of justice outweigh the waiver and solemn admission of guilt encompassed in a plea of guilty and the compelling interests in maintaining the finality of guilty-plea convictions. In so holding, we caution that it will be the rare case indeed where the interests of justice will require that a knowing and voluntary guilty plea be vacated through post-conviction relief on the basis of newly discovered evidence, for an unconditional guilty plea involving an admission of guilt and a waiver of trial and all defenses will generally preclude any subsequent challenge to factual guilt.

¹ Recantation of a statement is "unreliable and should be objected to the closest scrutiny when offered as a ground for a new trial." State v. Porter, 269 S.C. 618, 239 S.E.2d 641 (1977).

Id., 410 S.C. at 470, 765 S.E.2d at 130. When considering this caution against the evidence and argument presented by Applicant, this court finds he has not satisfied his burden, his motion is denied, and his application remains denied.

IV. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not presented any evidence or argument that would warrant an alteration or amendment of this court's prior order.

IT IS THEREFORE ORDERED THAT:

1. The motion for alteration or amendment pursuant to Rule 59(e) is denied; and
2. Applicant shall be remanded to the custody of the South Carolina Department of Corrections for service of the remainder of his term of imprisonment.

AND IT IS SO ORDERED this 18th day of October, 2017.


 THE HONORABLE ROGER E. HENDERSON
 Presiding Judge
 Fourth Judicial Circuit

Darlington, South Carolina

2017 OCT 19 PM 12:54
 Wanda C. Miles
 CLERK OF COURT
 CHESTERFIELD COUNTY, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

Dameion Jermiah Rivers, #342549,

Applicant,

v.

State of South Carolina,

Respondent.

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

) Case No. 2011-CP-13-0210

) **AMENDED ORDER DENYING**
) **MOTION PURSUANT TO RULE 59(e)**

2017 NOV -2 AM 10:28
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

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DEM

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At the argument of this motion, Applicant presented further argument that his application should be granted on the basis of newly-discovered evidence, which was the testimony of Kory Little and Billy Lee Lisenby, Jr., both of whom testified in support of this claim at Applicant's post-conviction relief evidentiary hearing. In support of this, he argued the Court was in error when it cited Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983), and its five factor test in evaluating alleged new evidence, as that standard applies only to cases that go to trial and receive a verdict. Because Applicant pled guilty, he cites instead to Jamison v. State, 410 S.C. 456, 765 S.E.2d 123 (2014) and its two factor test in determining the relevance of alleged new evidence. Applicant further argued he was entitled to a new trial by a jury of his peers to question the alleged new witnesses into why they had not or could not have come forward at the time of his trial. He lastly argued he should receive the benefit of the doubt, and his conviction should be vacated to allow him a new trial with the inclusion of this testimony.

The State conceded that Jamison was the appropriate standard, but argued it was a distinction without a difference. This court agrees. Initially, both tests require the new evidence to be discovered after the trial or plea, and that it be of a nature that it could not have been discovered beforehand with due diligence. As both witnesses were at the scene of the incident, this prong is not satisfied. In fact, Mr. Lisenby testified he told law enforcement of his presence at the scene prior to Applicant entering his plea. Further, the second prong of Jamison, which is similar to the fourth prong of Hayden, requires the evidence be of a weight and quality that requires vacation of the sentence in the interest of justice. In this case, both witnesses are

convicted felons and are currently incarcerated. One of them, Mr. Little, recanted¹ a prior statement given to law enforcement, and Mr. Lisenby told law enforcement he could not be certain whether it was the Applicant or another person that committed the act. These facts weigh very heavily against placing credibility on the statements of these men.

This court previously held in the order of dismissal "the information presented by these witnesses does not rise to the level of probably changing the outcome of a new trial" as "this court does not believe this information is so material to the issue of guilt or innocence that it would have reasonably led to an acquittal by a jury." OOD, p.9 - 10. Ultimately, Applicant desires vacation of his sentence for the opportunity to be potentially acquitted by a jury. However, that is in contravention of state law, as the grant of a new trial is not favored, and requires an abuse of discretion on the part of the trial or plea court, as it has the ability and opportunity to weigh the evidence. State v. Harris, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011).

Lastly, the courts of this state place a heavy burden on those who plead guilty, as evidence by the different standard espoused by Jamison. In reaching its decision to create a different standard for newly discovered evidence after a guilty plea, the South Carolina Supreme Court considered the fact that pleas are sworn oaths made to the court, stating the following:

In other words, a PCR applicant may successfully disavow his or her guilty plea only where the interests of justice outweigh the waiver and solemn admission of guilt encompassed in a plea of guilty and the compelling interests in maintaining the finality of guilty-plea convictions. In so holding, we caution that it will be the rare case indeed where the interests of justice will require that a knowing and voluntary guilty plea be vacated through post-conviction relief on the basis of newly discovered evidence, for an unconditional guilty plea involving an admission of guilt and a waiver of trial and all defenses will generally preclude any subsequent challenge to factual guilt.

¹ Recantation of a statement is "unreliable and should be objected to the closest scrutiny when offered as a ground for a new trial." State v. Porter, 269 S.C. 618, 239 S.E.2d 641 (1977).

Id., 410 S.C. at 470, 765 S.E.2d at 130. When considering this caution against the evidence and argument presented by Applicant, this court finds he has not satisfied his burden, his motion is denied, and his application remains denied.

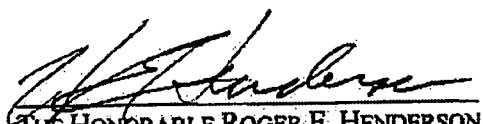
IV. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not presented any evidence or argument that would warrant an alteration or amendment of this court's prior order.

IT IS THEREFORE ORDERED THAT:

1. The motion for alteration or amendment pursuant to Rule 59(e) is denied; and
2. Applicant shall be remanded to the custody of the South Carolina Department of Corrections for service of the remainder of his term of imprisonment.

AND IT IS SO ORDERED this 27th day of October, 2017.


 THE HONORABLE ROGER E. HENDERSON
 Presiding Judge
 Fourth Judicial Circuit

Chesterfield, South Carolina

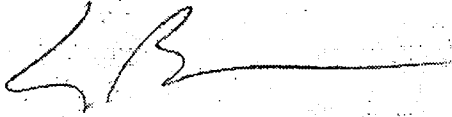
Wanda C. Miles
 CLERK OF COURT
 CHESTERFIELD COUNTY, S.C.

2017 NOV -2 AM 10:24

WITNESSES

Mikos Newman

Pageland Police Dept.




ARREST WARRANT #:

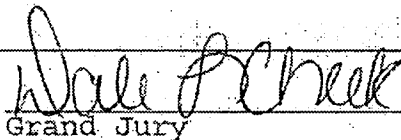
I271205

Arrested on August 28, 2007

ACTION OF GRAND JURY

Oct. 30, 2007 True Bill

Foreman:



Grand Jury

VERDICT

CLERK OF COURT CL. & U.S.
CHESTERFIELD COUNTY, SC

True Copy Attest
J. S. Sullivan

Foreman:

Petit Jury

Date:

DOCKET #: 07GS13-0814

THE STATE OF SOUTH CAROLINA

County of Chesterfield

COURT OF GENERAL SESSIONS

Term: November, 2007

THE STATE

vs.

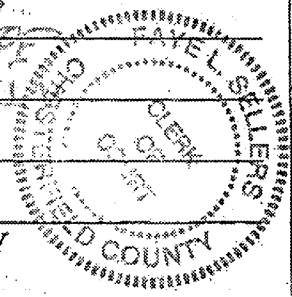
Dameion Rivers

INDICTMENT FOR

0116

MURDER

16-3-10



STATE OF SOUTH CAROLINA)
)
 County of Chesterfield)

INDICTMENT #07GS13-0814

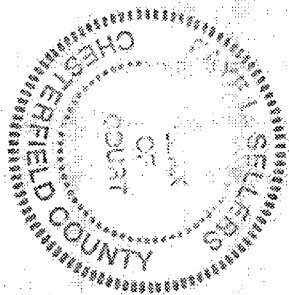
At a Court of General Sessions, convened on November 05, 2007
 the Grand Jurors of Chesterfield County present upon their oath:

COUNT: MURDER
 16-3-10

That Dameion Rivers in the County of Chesterfield on or about August 27,
 2007, feloniously, wilfully and with malice and aforethought, kill one Tavish
 Jerel Dunlap by means of shooting him and that the said Tavish Jerel Dunlap did
 die in Chesterfield County as a proximate result thereof in violation of Section
 16-3-10 of the South Carolina Code of Laws(1976), as amended.

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

SOLICITOR: *Jay Bridges*



A True Copy Attest
Elyse L. Sullivan
 CLERK OF COURT CP & GS
 CHESTERFIELD COUNTY, SC

WITNESSES

Mikos Newman

Pageland Police Department


(S)

ARREST WARRANT #:

CHE0291

Arrested on

ACTION OF GRAND JURY

1-7-08True Bill

Foreman:

Wan Cheuk
Grand Jury

VERDICT

Foreman:

Petit Jury

Date: _____

DOCKET #: 07GS13-0897

THE STATE OF SOUTH CAROLINA
County of Chesterfield

COURT OF GENERAL SESSIONS

Term: December, 2007

THE STATE

vs.

Damion Rivers

INDICTMENT FOR

0549

POSSESSION OF WEAPON DURING THE
COMMISSION OF CERTAIN CRIMES 16-23-490

STATE OF SOUTH CAROLINA)
)
 County of Chesterfield)

INDICTMENT #07GS13-0897

At a Court of General Sessions, convened on December 10, 2007
 the Grand Jurors of Chesterfield County present upon their oath:

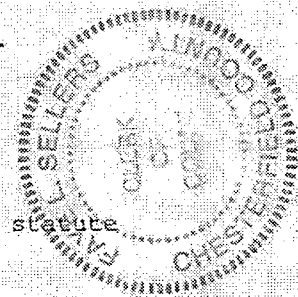
COUNT: POSSESSION OF WEAPON DURING THE
 COMMISSION OF CERTAIN CRIMES 16-23-490

That Damion Rivers in the County of Chesterfield on or about August 27,
 2007, was in possession of and did visibly display a weapon, to wit: a shotgun
 during the commission of a violent crime, to wit: Murder, in violation of
 Section 16-23-490, Code of Laws of South Carolina (1976), as amended.

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

SOLICITOR: _____

[Signature]



A True Copy Attest
[Signature]
 CLERK OF COURT
 CHESTERFIELD COUNTY