

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

—————
Certiorari to Aiken County

R. Scott Sprouse, Circuit Court Judge
—————

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S.C. SUPREME COURT

LEON SIMMONS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001085

—————
APPENDIX
—————

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State of South Carolina
County of Aiken

Court of General Sessions

State)
)
)
 v.)
)
 Brian Morton and)
 Leon Simmons)
)
 Defendants.)

Transcript of Record
2013-GS-02-1737
2013-GS-02-1727

November 12, 2015
Aiken, South Carolina

B E F O R E:

The Honorable Doyet A. Early, III, Judge.

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

John William Weeks, Deputy Solicitor
Attorney for the State

David Hayes, Assist. Public Defender
Attorney for the Defendant Morton

Kevin Molony, Esquire
Attorney for the Defendant Simmons

Bethanie K. Creppon
Circuit Court Reporter

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WITNESS

I N D E X

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(No Witnesses.)

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NO. DESCRIPTION ID. EVD.

(No Exhibits.)

P R O C E E D I N G S

* * *

LEON SIMMONS

1
2
3
4 being first duly sworn, testified as follows:

5 THE DEFENDANT SIMMONS: Yes, ma'am.

BRIAN MORTON

6
7 being first duly sworn, testified as follows:

8 THE DEFENDANT MORTON: Yes, ma'am.

9 THE COURT: Good morning, gentlemen.

10 Mr. Weeks?

11 MR. WEEKS: Your Honor, this is Leon Jacob
12 Simmons and Brian Morton. Mr. Molony represents
13 Leon Simmons, Dave Hayes represents Brian Morton.
14 You have before you three indictments on each man;
15 murder, burglary first degree, and armed robbery.
16 It's my understanding they've signed sentence sheets
17 and they are pleading guilty to these three charges
18 under a negotiated sentence of 30 years.

19 THE COURT: All running concurrent?

20 MR. WEEKS: To run concurrent, yes, Your Honor;
21 30, of course, being the minimum for murder, kind of
22 in the middle of the range on a burglary, and the
23 maximum for an armed robbery.

24 THE COURT: All right.

25 MR. WEEKS: Neither one of them has any prior

1 record of any substance, Your Honor.

2 THE COURT: Thank you.

3 Mr. Molony, do you represent Leon Jacob Simmons
4 in the three indictments called?

5 MR. MOLONY: I do, Your Honor.

6 THE COURT: And, Mr. Hayes, do you represent
7 Brian Morton on the three indictments called?

8 MR. HAYES: I do Your Honor.

9 THE COURT: All right. Gentlemen, there are
10 three indictments. The first indictment is for
11 murder, the second one I will deal with is an
12 indictment for armed robbery, and the third one is
13 an indictment for burglary in the first degree.
14 Have y'all explained to them these three charges and
15 what it means? Mr. Molony?

16 MR. MOLONY: I have, Your Honor.

17 THE COURT: Mr. Hayes?

18 MR. HAYES: Yes, sir.

19 THE COURT: Have you explained to them that
20 each of these indictments are classified as violent
21 and most serious and what that means?

22 MR. MOLONY: I have, Your Honor.

23 MR. HAYES: Yes, sir.

24 THE COURT: Have you explained to them that
25 these are -- the armed robbery and the burglary in

1 the first degree are what we call 85-percent,
2 no-parole sentences?

3 MR. MOLONY: Yes, sir, Your Honor.

4 MR. HAYES: Yes, sir.

5 THE COURT: Have you advised them that on the
6 murder charge, that that is a day-for-day sentence
7 and you do every day of the 30 years?

8 MR. MOLONY: I have, Your Honor.

9 MR. HAYES: Yes, sir.

10 THE COURT: Have you further advised them of
11 their rights to trial by jury as to each indictment?

12 MR. MOLONY: Yes, sir, Your Honor.

13 MR. HAYES: Yes, sir.

14 THE COURT: And you've heard Mr. Weeks say
15 these are negotiated sentences, that the sentence
16 will be 30 years on the murder charge with
17 everything else running concurrent, and the ultimate
18 effect of that is that they will do a 30-year
19 sentence in the department of corrections, day for
20 day?

21 MR. MOLONY: Yes, sir, Your Honor.

22 MR. HAYES: Yes, sir.

23 THE COURT: And that the other two charges will
24 run concurrent at the same time?

25 MR. HAYES: Yes, sir.

1 MR. MOLONY: Yes, sir.

2 THE COURT: They will be given credit for their
3 time served.

4 MR. MOLONY: Yes, sir.

5 MR. HAYES: Yes, sir.

6 THE COURT: Having had an opportunity to review
7 all of the evidence in the case and in speaking to
8 your clients about the case and through your
9 investigation, Mr. Molony, are you in agreement with
10 your client's decision to enter this plea?

11 MR. MOLONY: I am, Your Honor.

12 MR. HAYES: Yes, sir.

13 THE COURT: You feel like it's in his best
14 interest?

15 MR. MOLONY: I do.

16 THE COURT: Mr. Hayes, same question.

17 MR. HAYES: I am, sir, and I do.

18 THE COURT: All right. Mr. Simmons,
19 Mr. Morton, I'm going to have to ask you some
20 questions, gentlemen, and if you do not understand
21 my question, please ask me to repeat it so we'll all
22 be on the same page. Is that fair?

23 THE DEFENDANT SIMMONS: Yes, sir.

24 THE DEFENDANT MORTON: Yes, sir.

25 THE COURT: If you answer my questions, I'll

1 assume that you understood it. Is that fair enough?

2 THE DEFENDANT SIMMONS: Yes, sir.

3 THE DEFENDANT MORTON: Yes, sir.

4 THE COURT: All right. Mr. Simmons,
5 Mr. Morton, do you understand what you're charged
6 with?

7 THE DEFENDANT SIMMONS: Yes, sir.

8 THE DEFENDANT MORTON: Yes, sir.

9 THE COURT: There are three charges; one is for
10 the offense of murder, one is for the offense of
11 armed robbery, and one is for the offense of
12 burglary in the first degree. Do you understand
13 each of those?

14 THE DEFENDANT SIMMONS: Yes, sir.

15 THE DEFENDANT MORTON: Yes, sir.

16 THE COURT: On the murder charge, that carries
17 a minimum of 30 years to life, that's the range of
18 sentence. And on that particular charge under our
19 current law, you have to serve whatever sentence you
20 get day for day. In other words, you get no credit
21 for good time, no early parole, no early release; 30
22 years means 30 years. Do you understand that
23 potential sentence, gentlemen?

24 THE DEFENDANT SIMMONS: Yes, sir.

25 THE DEFENDANT MORTON: Yes, sir.

1 THE COURT: On the armed robbery that's a
2 minimum of ten years up to 30 years, and on the
3 burglary first that is 15 years to life.

4 (Brief interruption in the proceedings.)

5 THE COURT: Those, as I told you, are minimum
6 of 10 to 30 and 15 to life. If you were pleading
7 only to those two, those are what we call 85-percent
8 sentences which means you'd do 85 percent of that
9 sentence before you were eligible for release and
10 then you would be released into a community
11 supervision program. Do you understand those,
12 Mr. Simmons?

13 THE DEFENDANT SIMMONS: Yes, sir.

14 THE COURT: Mr. Morton?

15 THE DEFENDANT MORTON: Yes, sir.

16 THE COURT: Now, all three of these offenses,
17 murder, armed robbery, and burglary in the first
18 degree, they are all classified as a violent
19 offense, so it will have some effect on where you're
20 housed in the department of corrections and may have
21 some other conditions imposed upon it. Do you
22 understand that, gentlemen?

23 THE DEFENDANT SIMMONS: Yes, sir.

24 THE DEFENDANT MORTON: Yes, sir.

25 THE COURT: And they're also classified as most

1 serious which means that under South Carolina's
2 three- or two-strike law, if when you are released
3 from incarceration you become involved in criminal
4 activity classified as most serious one more time or
5 criminal activity classified as serious two more
6 times, you'd have three strikes under the most
7 serious and serious which would subject you to
8 spending the rest of your life in jail without the
9 possibility of parole. Do you understand what that
10 means with our two-strike and three-strike law and
11 classification that it is most serious?

12 THE DEFENDANT SIMMONS: Yes, sir.

13 THE DEFENDANT MORTON: Yes, sir.

14 THE COURT: Do you any questions about any of
15 that?

16 THE DEFENDANT SIMMONS: No, sir.

17 THE DEFENDANT MORTON: No, sir.

18 THE COURT: Now, understanding the charge and
19 the potential sentence and the classification of
20 violent and most serious, I'm going to ask you in a
21 minute whether or not you wish to plead guilty or
22 not guilty to these charges. But before I ask you
23 that, this is what we often have in these types of
24 cases is what's called a negotiated sentence, which
25 means that the State and your lawyers with law

11

1 enforcement and victims and everyone else involved
2 in the case has come to a compromise and they're
3 asking me to sentence you to 30 years on the murder,
4 30 years on the armed robbery, and 30 years on the
5 burglary with all of them running concurrent, which
6 means you'll do them at the same time.

7 And what the end effect of that being is that
8 you will spend the next 30 years of your life
9 incarcerated in the department of corrections, less
10 the time that you've already served. You'll be
11 given credit for whatever time you've served to
12 date. So it will be 30 years less what you've
13 already done. And that's the negotiations. Is that
14 your understanding of negotiation, Mr. Molony?

15 MR. MOLONY: Yes, sir, Your Honor.

16 THE COURT: Mr. Hayes?

17 MR. HAYES: Yes, sir.

18 THE COURT: Mr. Simmons, is that your
19 understanding of the negotiations?

20 THE DEFENDANT SIMMONS: Yes, sir, Your Honor.

21 THE COURT: And Mr. Morton?

22 THE DEFENDANT MORTON: Yes, sir.

23 THE COURT: And the way that works is I will
24 listen to the facts by the State and from the
25 victims, if any are here, the victims' family, and

1 from your lawyers and from you, if you wish to say
2 anything, or your family. If I feel like that
3 that's an appropriate resolution of this case, then
4 I will accept it and that's what you will receive.

5 If I feel like that is not an appropriate
6 resolution, then I will tell you that I cannot
7 accept that and I will give you the option to
8 discuss with your lawyers whatever options there are
9 out there including withdrawing the plea and going
10 to trial. Do you understand what a negotiated plea
11 is, gentlemen?

12 THE DEFENDANT SIMMONS: Yes, sir, Your Honor.

13 THE DEFENDANT MORTON: Yes, sir.

14 THE COURT: Now, understanding all of that, how
15 do you wish to plead to all three charges,
16 Mr. Simmons?

17 THE DEFENDANT SIMMONS: Guilty.

18 THE COURT: Mr. Morton?

19 THE DEFENDANT MORTON: Guilty.

20 THE COURT: Now, when you plead guilty you'll
21 give up or waive certain of your constitutional
22 rights. You have a right under the Fifth Amendment
23 of the constitution to remain silent; you don't have
24 to testify, you don't have to say anything in these
25 types of things. If you enter a plea of guilty,

1 then you'll have to admit to me your involvement in
2 the events as outlined in the three indictments. Do
3 you understand giving up your right to remain
4 silent, Mr. Simmons?

5 THE DEFENDANT SIMMONS: Yes, sir.

6 THE COURT: Mr. Morton?

7 THE DEFENDANT MORTON: Yes, sir.

8 THE COURT: The other main right that you'll
9 give up is your right to a jury trial. We have a
10 jury coming in Monday and if you wanted a jury
11 trial, the case would be tried Monday or at any
12 ensuing terms of court when we have a jury. And
13 when you have a jury trial, during that trial you
14 have the right to confront everyone who testifies
15 against you by way of cross-examining them through
16 your lawyers.

17 During that trial you also have the right to
18 tell your side of the story, present your own
19 defense. You do that by calling witnesses,
20 introducing relevant exhibits, and testifying in
21 your own defense, if you choose to do so.

22 If you exercise your constitutional right to
23 remain silent, then I would tell the jury they could
24 not hold the fact that you did not testify against
25 you in any manner whatsoever, and I would instruct

1 them that they could not even consider the fact that
2 you did not testify while they deliberate your guilt
3 or innocence. You'd be presumed innocent throughout
4 the trial and the State would have the burden of
5 proving you guilty beyond a reasonable doubt to a
6 jury of 12 people. And in order for that
7 12-membered jury to convict you, all 12 would have
8 to unanimously agree that you were, in fact, guilty.
9 And even if you were convicted, you'd still have the
10 right to an appeal.

11 Mr. Simmons, Mr. Morton, do y'all understand
12 your rights to trial by jury?

13 THE DEFENDANT SIMMONS: Yes, sir.

14 THE DEFENDANT MORTON: Yes, sir.

15 THE COURT: Understanding your rights to trial
16 by jury, do you still wish to plead guilty or do you
17 want me to set these cases for trial?

18 THE DEFENDANT SIMMONS: Guilty.

19 THE DEFENDANT MORTON: Guilty.

20 THE COURT: Other than the negotiations which
21 we just discussed, has anyone promised you anything,
22 held out any hope of reward, or threatened you in
23 any manner in order to make you plead guilty?

24 THE DEFENDANT SIMMONS: No, sir.

25 THE DEFENDANT MORTON: No, sir.

1 THE COURT: Mr. Simmons, you're represented by
2 Mr. Molony, Mr. Morton by Mr. Hayes. Gentlemen, are
3 you totally and completely satisfied with the legal
4 representation provided to you by your respective
5 lawyers?

6 THE DEFENDANT SIMMONS: Yes, sir.

7 THE DEFENDANT: No, sir.

8 THE COURT: No, sir?

9 THE DEFENDANT MORTON: No, sir.

10 THE COURT: What are you not satisfied with?

11 THE DEFENDANT MORTON: I wrote it down.

12 This is the reason why: The reason why I'm not
13 satisfied with my counsel is because he has been
14 portraying a fake image to my family --

15 THE COURT: A fake image to your family?

16 THE DEFENDANT MORTON: Yes, sir.

17 THE COURT: What does that mean?

18 THE DEFENDANT MORTON: As far as, like,
19 basically -- basically being hypocritical, saying
20 one thing but acting another way, basically.

21 All right. I'll read on. He has been
22 portraying a fake image to my family of his work
23 ethics which has come back insufficient. Due to the
24 law, a public defender is supposed to defend the
25 public. Instead of defending the civilians to get

1 back into civilization, he defends the civilization
2 on what they think a civilian deserves. My public
3 defender has been doing this exact thing.

4 All right. And him being a public defender
5 does not give him the time needed for this case --
6 for this high profile case to be attended to. All
7 right. There has been many cases that I've seen
8 similar to mine as far as the
9 hands-of-one-hands-of-all theory, and no one in that
10 case got the same time. They got time according to
11 the role they played in the crime.

12 I feel like I do not have a fair case, Your
13 Honor. Justice is not being served. Just because I
14 took a -- just because I took a part in it doesn't
15 mean I'm supposed to wear the title. None of us
16 knows what the next man is thinking. It is clearly
17 seen that this was an accident.

18 There was a struggle over the gun. The autopsy
19 report said that he was intoxicated with cocaine.
20 And after the shooting, the man was alive for an
21 hour and a half. I'm looking for justice, Your
22 Honor.

23 THE COURT: Looking for what?

24 THE DEFENDANT MORTON: Justice.

25 THE COURT: Well, you certainly do not have to

1 plead guilty.

2 THE DEFENDANT MORTON: All right.

3 THE COURT: Do you want to withdraw your plea?

4 THE DEFENDANT: The fact of that is that if I
5 withdraw my plea, it gives y'all the opportunity of
6 basically giving me life without parole, you know.
7 And seeing that --

8 THE COURT: Well, let me explain all of that to
9 you.

10 THE DEFENDANT MORTON: All right.

11 THE COURT: You're welcome to withdraw your
12 plea. If you withdraw your plea, when this case is
13 tried, it will be tried before 12 people and the
14 jury can do one of two things; they can find --
15 well, they can do a number of things. They can find
16 you guilty of murder or not guilty.

17 If they find you guilty of murder, whatever
18 judge is trying the case, he has the discretion of
19 sentencing you anywhere from 30 years to the balance
20 of your life. Now, I don't know what I would do or
21 any judge would do. We have to listen to the facts.
22 But we have to give you 30 years if you're
23 convicted.

24 Then let's say you were found not guilty of
25 that but guilty of the armed robbery. You're

1 looking at a minimum of 10 up to 30. And if you
2 were found guilty of the burglary, you're still
3 looking at a minimum of 15 up to life. You may be
4 found not guilty on everything or guilty on all or a
5 combination. I don't know what would happen. But
6 the State would have to prove your guilt beyond a
7 reasonable doubt to the jury.

8 And it is true that South Carolina recognizes
9 the proposition of law known as the hand of one is
10 the hand of all. So they don't have to prove you
11 were a trigger man, they don't have to prove that
12 you're the person who broke in as long as you're
13 there and participating in the crime.

14 If the jury finds that beyond a reasonable
15 doubt, then they can find you guilty on all of these
16 charges and the judge then has the right to make you
17 serve them all at the same time, concurrent, which
18 is the plea deal here, or he or she can make you
19 serve one and then the other and then the other. So
20 he could give you a 30-year sentence on the armed
21 robbery followed by a 30-year sentence on the
22 burglary. There's all types of combinations that
23 can be imposed if you were found guilty.

24 But if you're not satisfied with your lawyer,
25 even though what you've told me sounds like it's a

1 consentful thing, sounds like he's worked out a
2 pretty good deal for you, that's up to you. If
3 you're not satisfied with him, I'll let you step
4 down and you can hire you a lawyer or we'll consider
5 giving you a new lawyer. That's up to you.

6 THE DEFENDANT MORTON: And this is in the
7 process of taking it to trial, right, stepping back
8 and getting a new lawyer?

9 THE COURT: Well, if you want to withdraw your
10 plea, I'll let you do so and then we'll consider
11 about getting you a new lawyer. If we keep going
12 today, Mr. Hayes has got you absolutely the minimum
13 that you could get under these situations if you
14 were found guilty.

15 THE DEFENDANT MORTON: So if I withdraw now and
16 get a paid lawyer, is the plea still on the table?

17 THE COURT: No, sir.

18 THE DEFENDANT MORTON: It's not on the table?

19 THE COURT: No, sir.

20 THE DEFENDANT MORTON: Okay. And --

21 THE COURT: And what this is all about is
22 people who are involved in criminal activity, if
23 they accept their responsibility that I was part of
24 this unfortunate situation for whatever reason,
25 Judge, I'm admitting I'm part of it, the judge

1 normally, as a result of all this, gives you a
2 considerable amount of leeway or consideration for
3 admission of guilt, accepting responsibility.

4 If you exercise your constitutional right,
5 which you have the absolute right to do so, of
6 saying I'm not guilty, you didn't do it and you
7 didn't participate in it then plead not guilty, then
8 we let 12 members of the community to decide whether
9 or not you did or you didn't. But the plea is off
10 the table, so whatever the jury decides, whether
11 it's guilty or not guilty, the judge is not bound to
12 this 30-year agreement.

13 THE DEFENDANT MORTON: Okay. Okay.

14 THE COURT: But in order to go forward, not
15 withstanding the fact that you're not completely
16 satisfied with lawyers -- you know, a lot of people
17 aren't completely satisfied with me or Mr. Weeks or
18 your husband or your wife. You can't make everybody
19 happy all the time.

20 But if you are -- you'll have to admit to me
21 that you were involved in this situation. I can't
22 take your plea unless you admit that to me. And if
23 you admit that and I accept your plea, you'll more
24 than likely get a 30-year sentence here today. If
25 don't want to do that and want a trial, then I can't

1 tell you what you would get if you were found
2 guilty. You understand all that?

3 THE DEFENDANT MORTON: Yes, sir.

4 THE COURT: Do you have any questions you want
5 to ask me?

6 THE DEFENDANT MORTON: No, sir. I'd just like
7 to say that I was involved in the matter, you know,
8 and, as the law says, that I have to get charged
9 with murder because I was participating in the crime
10 so, basically, it kind of leaves me no choice. I
11 plead guilty.

12 THE COURT: And not -- you plead guilty not
13 withstanding the fact that you're not completely
14 satisfied with Mr. Hayes?

15 THE DEFENDANT MORTON: Yep.

16 THE COURT: Well, let me ask you this,
17 gentlemen: Do you think your lawyers have had
18 enough time to spend with you and look at the facts
19 and research the law so that they can do their best
20 job for you? Mr. Simmons?

21 THE DEFENDANT SIMMONS: Yes, sir.

22 THE COURT: Mr. Morton?

23 THE DEFENDANT MORTON: Yes, sir.

24 THE COURT: Is there anything else you want him
25 to do for you today other than speak up on your

1 behalf before we proceed, Mr. Simmons?

2 THE DEFENDANT SIMMONS: No, sir, Your Honor.

3 THE COURT: Mr. Morton?

4 THE DEFENDANT MORTON: No, sir.

5 THE COURT: Mr. Simmons, you're totally and
6 completely satisfied with Mr. Molony; is that
7 correct?

8 THE DEFENDANT SIMMONS: Yes, sir, Your Honor.

9 THE COURT: And, Mr. Morton, you're not
10 completely satisfied, but you're satisfied enough to
11 move forward?

12 THE DEFENDANT MORTON: Yes, sir.

13 THE COURT: All right. Gentlemen, are you
14 today under the influence of alcohol or drugs or
15 prescription medication?

16 THE DEFENDANT SIMMONS: No, sir.

17 THE DEFENDANT MORTON: No, sir.

18 THE COURT: And, gentlemen, are you today aware
19 of any mental, nervous, or emotional conditions
20 which could keep you from understanding these
21 proceedings? In other words, have you understood
22 all of my questions? Mr. Simmons?

23 THE DEFENDANT SIMMONS: Yes, sir, Your Honor, I
24 do.

25 THE COURT: Mr. Morton?

1 THE DEFENDANT MORTON: Yes, sir.

2 THE COURT: Gentlemen, are you pleading guilty
3 to the offense of murder, armed robbery, and
4 burglary in the first degree of your own free will?
5 Nobody is twisting your arm, nobody is making you,
6 not withstanding the fact, Mr. Morton, that you're
7 not completely satisfied with your lawyer, you still
8 want to go forward with this? Is that correct,
9 Mr. Simmons?

10 THE DEFENDANT SIMMONS: Yes, sir, Your Honor.

11 THE COURT: Mr. Morton, with that reservation,
12 are you ready to go forward?

13 THE DEFENDANT MORTON: Yes, sir, Your Honor.

14 THE COURT: Gentlemen, did you participate in
15 activity here in Aiken County on May 28th, 2013
16 which resulted in the death of Shane Jones by means
17 of shooting, also resulted in willfully and
18 unlawfully entering Mr. Jones' dwelling locating at
19 [REDACTED] in Aiken without his consent and
20 attempted to commit a crime while armed in the
21 nighttime, and on that same date, time, and place
22 that you, while armed with a deadly weapon, took
23 from either the deceased or members of the household
24 certain personal items and drugs? Mr. Simmons, is
25 that what you're pleading guilty to?

1 THE DEFENDANT SIMMONS: Yes, sir, Your Honor.

2 THE COURT: Pleading guilty because you are, in
3 fact, guilty?

4 THE DEFENDANT SIMMONS: Yes, sir, Your Honor.

5 THE COURT: Pleading guilty in the killing of
6 Mr. Jones and breaking into his -- and burglarizing
7 his home and with force and intimidation taking
8 goods from people in the house?

9 THE DEFENDANT SIMMONS: Yes, sir.

10 THE COURT: All right. I find your decision to
11 plead guilty to be freely, voluntarily, and
12 intelligently made. You've had the representation
13 of an excellent lawyer Mr. Kevin Molony and you say
14 you're completely satisfied with his representation,
15 and I'll accept the plea.

16 Mr. Morton, are you admitting your involvement
17 in the killing, murder, of the deceased Shane Jones,
18 the burglarization of his house, going into his
19 house without permission and without consent to
20 commit a crime and the robbing of the occupants in
21 the house, taking from them such personal items and
22 drugs?

23 THE DEFENDANT MORTON: Yes, sir, Your Honor.

24 THE COURT: Pleading guilty because you are, in
25 fact, guilty?

1 THE DEFENDANT MORTON: Yes, sir.

2 THE COURT: All right. I find your decision to
3 plead guilty to be freely, voluntarily, and
4 intelligently made. You've also had the
5 representation of a excellent attorney Mr. Dave
6 Hayes. You have expressed to me some concern about
7 his representation, but considering the totality of
8 the circumstances, you are satisfied with his
9 representation and I too, likewise, will accept your
10 plea.

11 Gentlemen, if you have any questions or
12 problems with these proceedings, you have ten days
13 from today's date to file a notice of intent to
14 appeal. Mr. Simmons, do you understand that?

15 THE DEFENDANT SIMMONS: Yes, sir, Your Honor.

16 THE COURT: Mr. Morton?

17 THE DEFENDANT MORTON: Yes, sir, Your Honor.

18 THE COURT: Mr. Weeks -- gentlemen, this is
19 what we'll do now: The State will give me a
20 detailed recitation, recite the facts, of what
21 happened. At the conclusion of that, if any of the
22 victims wish to speak or any of the victims' family
23 wish to speak, I'll hear from them at the
24 appropriate time.

25 Once that is done, I'll hear from your lawyer,

1 Mr. Simmons, and your lawyer, Mr. Morton, and then
2 I'll give each of you an opportunity to say anything
3 you'd like to me. You understand that?

4 THE DEFENDANT SIMMONS: Yes, sir, Your Honor.

5 THE COURT: Mr. Weeks?

6 MR. WEEKS: Your Honor, late in the evening of
7 May 28th, 2013, the residence where Mr. Shane Jones,
8 who was a 19-year-old young man, lived was invaded,
9 for lack of a better word, by the actions of five
10 people. The police were called shortly after
11 midnight in the early-morning hours of May 29th with
12 regard to gunshots that had been fired and an
13 individual that was hit and also an individual that
14 was taken to the hospital by personal transport, a
15 young lady that was shot through the upper thigh.

16 Upon arriving at the scene, it was a confused
17 mess, for lack of a better word. But Aiken
18 Department of Public Safety began investigating,
19 back-tracing what had happened. They started by
20 contacting South Carolina Law Enforcement Division
21 who came down to work forensically and assist them
22 in working the crime scene.

23 Mr. Shane Jones was deceased. He was on the
24 floor of his kitchen in his home right next to the
25 back door of the residence. He had been shot

1 multiple times. Autopsy would finally determine
2 that he had been fatally shot three times with
3 bullet penetrating the left upper thigh, gunshot
4 wound in the abdomen, and one in his chest
5 lacerating his left lung.

6 He didn't die right away; he was a tough young
7 man. He was laying there on the floor while
8 these -- two or three of these individuals were
9 basically running through his house, based on the
10 information we have. Police started tracking. They
11 found out early on that some phones had been taken,
12 phone of Shane Jones' girlfriend had been taken by
13 one of the individuals. It was determined that it
14 was Mr. Morton later on in the investigation. And,
15 also, some Xanax pills were taken off of the
16 defendant.

17 But primarily the phone began to play a vital,
18 important part in locating who was involved in this
19 case. Steve Miano from our office, while he was
20 working with public safety, David Savage, Jeremy
21 Hembry, Officer Sawyer, they were all -- and the
22 solicitor and myself were out there that night.

23 They were busy tracking and pinging this phone
24 that had been taken and that led them to Carver
25 Terrace where Mr. Morton and Mr. East and

1 Mr. Simmons and Rashad Isaac had met up at some
2 point in time. Ultimately the vehicle that the
3 phone was riding in ended back up there and they
4 were literally following them around Aiken just
5 behind them.

6 They gathered enough information and pressed
7 enough buttons that the next -- I believe it was the
8 next day they started getting information about the
9 weapons that were used and the defendant Marquise
10 East was brought forward by his relatives,
11 interviewed by law enforcement, and gave a statement
12 implicating himself along with Leon Simmons and
13 along with Brian Morton in the home invasion of
14 Shane Jones.

15 He also included in the statement the driver
16 that took them there and the young man also assisted
17 in obtaining a weapon which ultimately was the
18 weapon that killed Shane Jones which was given to
19 Leon Simmons for use in this crime. As it turns
20 out, the investigation was piecemealed up to the
21 time that the young men that came forward, which was
22 Mr. East and then Mr. Isaac, to kind of set the
23 parameters of what happened that night.

24 Warrants were issues for Mr. Morton and for
25 Mr. Simmons. They ultimately were arrested.

1 Mr. Morton denied being involved in what he was
2 accused of being involved with, and Mr. Simmons
3 exercised his right to remain silent. That was in
4 early June of 2013.

5 Going forward from that date, the police had
6 downloaded some information from a cell phone that
7 was recovered from Mr. Simmons and also downloaded
8 some information from a cell phone from that was
9 recovered from Mr. Morton or from his vehicle or his
10 house, somewhere right in there, that the new
11 technology that Aiken Department of Public Safety
12 allowed them to really print out the correspondence
13 that was going on that night, and it became very
14 obvious that there was an inside person in the house
15 giving them information to let them know when was an
16 appropriate time for them to come in.

17 That person was later identified in the
18 investigation as Mr. Treyvon Butler. He was friends
19 with Shane Jones. He was in this house, according
20 to the testimony or the statements that have now
21 been given by Mr. Simmons -- well, scratch that.
22 Mr. Simmons has never admitted that Treyvon Butler
23 was the person he was talking to.

24 But Mr. Morton has admitted that Mr. Simmons
25 was texting back and forth with Mr. Butler on the

1 cell phone that Mr. Morton had provided Mr. Butler.
2 We waited until we got the statements, which was
3 just a short while ago, a month or so ago, from
4 Mr. Morton before taking out warrants on Mr. Butler,
5 the fifth guy that was really actively involved in
6 this. And those warrants were served on him last
7 week and we'll be having a bond hearing shortly on
8 Mr. Butler.

9 But the information we have is that Mr. Butler
10 and Mr. Morton were the ones that initially talked
11 about this home invasion plan, ultimately recruited
12 or got Mr. Simmons involved and got Mr. Isaac
13 involved, and they all played different roles, for
14 lack of a better word, in it.

15 The first meeting that I had with the family,
16 Mr. Shane Jones, the 19-year-old young man's
17 girlfriend was staying there, and she was pregnant.
18 She's had this child of Shane Jones and is working
19 today to try to support that child. The child is
20 now two years old, give or take, and is healthy and
21 is doing okay. But he, of course, is never going to
22 see his father.

23 The family, when I first met with them, was,
24 like always, I mean, they wanted life plus 30 and 30
25 and 30. After explaining to them that these

1 co-defendant-type cases are difficult to prove --
2 they're difficult to solve, but they're difficult to
3 prove in court because of the legalities of using
4 some people's statements and all of the above. And
5 the fact that, as it turns out, the four young men
6 that were involved in the actual home invasion and
7 Mr. Butler were all young and didn't have
8 significant prior records.

9 So I explained to them the realities of the
10 world, that if we go to trial, they face up to life
11 imprisonment, but the likelihood of getting life
12 imprisonment, if they came forward and admitted
13 their guilt, was not likely. So I was candid with
14 them, as I know how to be after doing this for 35
15 years or so, and they listened, they ranted, they
16 vented. After it was all said and done, I think
17 they understand what we're doing here today and why
18 we're doing it.

19 The thing from the State's perspective that we
20 would like to be able to do is to have everybody
21 admit their guilt. Obviously the statements that
22 you'll hear after I hush will reflect their
23 particular client's role in this or their, for lack
24 of a better word, minimization of their involvement
25 in it, which is what we get when we start

1 interviewing different people.

2 You know, you hear one, Mr. Jones was
3 accidentally shot three times, you know, which is
4 just absolutely ludicrous and unbelievable. You'll
5 hear another one that this person ran after he shot
6 him three times, he ran, he didn't go in the house.
7 You'll hear another one that says, yeah, he went in
8 the house and he looked for stuff.

9 But what is certain is that there were a number
10 of people that were in the house. Quite honestly,
11 the family of Shane Jones gave us the information of
12 the people that were friends of Shane that contacted
13 them that said they were in the house, gave us
14 names. And we went looking and we went
15 interviewing. And people don't like to talk to us,
16 but they did, partially because some of them were
17 under arrest, some of them were in jail, some of
18 them were friends of Shane Jones and wanted justice
19 for him and for his little boy.

20 So we were able to get statements and have got
21 statements during the investigation, which
22 strengthened the case. In July of this year I made
23 an offer to all four of the defendants that we had
24 warrants on and that we were prosecuting, and that
25 offer is what these young men are pleading guilty to

1 today, November the 12th.

2 We were finally able to get them to give us
3 statements as late as a couple of weeks ago.
4 Mr. Simmons has been videotaped giving his statement
5 and Mr. Morton has been videotaped giving a
6 statement implicating themselves, implicating the
7 other two co-defendants who have elected not to take
8 the offer from the State.

9 Like I said, they give us enough information,
10 even though we suspected and we thought and we had
11 some evidence that Treyvon Butler was inside the
12 house communicating in some way, it wasn't until
13 they gave their statements that I felt comfortable
14 indicting and charging Treyvon Butler. So --

15 THE COURT: Are you not-prossing anything? I
16 thought you said somebody else got shot.

17 MR. WEEKS: A charge was never made on the
18 young lady that was shot. It was apparently as a
19 result of a through-and-through from Mr. Jones that
20 she was wounded in the upper leg. She didn't know
21 she had been shot until some of the adrenaline had
22 started to escape. But she hid.

23 All of the other people that were in the house
24 that we've been able to interview say three men
25 busted in the back door. All of the family says

1 that Shane Jones always kept his door locked. The
2 door wasn't locked; it was cracked open and they
3 came busting in. The information we have is that
4 Shane Jones was alive for some period of time and
5 Mr. Morton gave a statement that he actually handed
6 them some Xanax pills that was on his person as he's
7 laying on the floor bleeding out.

8 The stupidity of this whole thing is reflected
9 by the fact that they didn't get anything; that
10 whoever had anything in the house was going out the
11 front door and the side door by the time they got in
12 the house good. There was drug use going on in his
13 residence. There was no question that Mr. Jones had
14 been involved in some drug use, there was no
15 question that perhaps one of the other people that
16 was in the house that was more of a major drug user
17 managed to get out the door and run. Ultimately the
18 law caught him for other stuff and he's cooperating
19 and giving us statements.

20 So the police didn't quit investigating the
21 case and, really, their tenacity, for lack of a
22 better word, in continuing investigate this case is
23 the reason these two men are standing here today,
24 because they didn't cooperate until right at the end
25 when confronted with all of the evidence that we

1 had.

2 So that's where the State stands. That's why
3 we made the recommendation for the negotiation we
4 had. I believe it's for both of these young men's
5 best interests to accept this negotiation. Both of
6 these lawyers, for the record, have aggravated me to
7 death for two and a half years about this case.
8 They've been through my discovery, they've been
9 through my files, they've called me dozens of times,
10 so I know they've been working on behalf of their
11 clients. So for what that's worth...

12 THE COURT: Mr. Molony?

13 MR. MOLONY: Thank you, Your Honor. May it
14 please the Court. Your Honor, Leon stands here
15 today a 20-year-old man --

16 THE COURT: Awfully young.

17 MR. MOLONY: He is, Your Honor. And if we
18 rewind to about 30 months ago, May 27th of 2013,
19 Leon was a 17-year-old senior in high school one
20 week from graduating, 3.0 GPA. On National Signing
21 Day he had signed a letter of intent to play
22 football at Morris Hill College in North Carolina,
23 going to major in business, had his whole future
24 ahead of him.

25 THE COURT: Where was he going to high school?

1 MR. MOLONY: Aiken High School. Lifelong Aiken
2 resident. Your Honor, unfortunately, as you see too
3 many times from the bench, this was truly one bad
4 decision that has affected not only Leon, but he
5 certainly understands, Mr. Jones' family and friends
6 and the lives of so many people. But this is not a
7 kid with a laundry list of juvenile record; he has
8 no prior record. But it doesn't change the facts of
9 what happened that night.

10 He is supported today by -- there's actually 33
11 members of his family in the audience who have
12 driven from Georgia, some from Aiken. But they're
13 all here to support him, let him know they're behind
14 him through this. His father, Your Honor, wrote
15 this short letter. He couldn't be here today, but
16 did want the Court to know he was at least know that
17 he is here in spirit at least.

18 THE COURT: What a poignant letter.

19 MR. MOLONY: Yes, Your Honor. Your Honor, the
20 events of May 28th, 2013, I think the State would
21 agree that it wasn't the intention -- and the
22 evidence would have shown at trial that it wasn't
23 the intention of these kids to go into this house to
24 kill anyone.

25 Leon understands that from a legal standpoint,

1 that doesn't matter for the purpose of proving
2 murder, but from a practical standpoint, someone was
3 killed and that --

4 THE COURT: Well, that's what you get when you
5 mix drugs and guns and stupidity.

6 MR. MOLONY: Yes, sir. And he also understands
7 that there's consequences for his actions.
8 Obviously he's not excited or thrilled about
9 pleading to 30 years, but he understands the
10 alternative. He does want to stand in front of the
11 Court and in front of the family of the victims and
12 the friends of the victims and admit his guilt,
13 hopefully giving them some sense of peace to move
14 on, but understanding that they can't replace what
15 has been taken from them.

16 Your Honor, with all that said, Leon would like
17 to address the Court. We ask that you do accept the
18 negotiations of Mr. Weeks and myself. And at the
19 appropriate time he would like to speak.

20 THE COURT: Well, what do you want to tell me,
21 young man?

22 THE DEFENDANT: First, Your Honor, I'd like to
23 apologize to the Court and everybody involved in
24 this situation and the circumstances that we're all
25 in. I want to send special apologies to the victim

1 and his family. I know there's nothing no one can
2 do on this earth to change what happened. I know --
3 I admit my involvement, I admit my wrongs, and I ask
4 that somewhere in their heart they forgive me, which
5 I know would be hard because he has a child that
6 won't ever know who his father was, never be able to
7 do anything with him, and I understand the
8 consequences that comes from that, that's why I take
9 responsibility to plead guilty today in front of
10 everybody.

11 I'd like to apologize for the burdens I put on
12 my lawyer, aggravating him for the past year and a
13 half, the burdens I put on the solicitor, the
14 burdens I put on you, the burdens I put on the
15 family, the burdens I put on my family dealing with
16 me and my whole situation being that the future I
17 had and everyone that looked up to that future. I'd
18 like to apologize to those who I let down.

19 And to those who support me still, I'd like to
20 thank them and thank the Court for giving me this
21 opportunity to speak. And at this time, I can say,
22 Your Honor, I take full responsibility for what my
23 actions was. And as a man, it's hard to do that,
24 but as a man, I understand I have to do that.

25 And it's only right for the victims' family to

1 feel how they feel. It's only right for them to
2 want punishment for my actions. It's only right for
3 them to seek whatever punishment that they ask for.
4 And I'd like to thank the solicitor and you and the
5 court for the negotiated plea that I receive today.
6 And that will be it.

7 THE COURT: Mr. Hayes?

8 MR. HAYES: It's been a long two and a half
9 years. And I fess up, I annoyed the mess out of the
10 solicitor about this case, going through the files,
11 asking about bond hearings. There were six motions
12 filed between me and Mr. Morton to relieve counsel.
13 I believe five were heard, one was withdrawn. Me
14 and Mr. Morton knocked heads pretty hard for a long
15 time.

16 He was 18 the first time I saw him in Aiken
17 County. The only way that I can describe it was he
18 a snot-nosed kid and it was a big chip on his
19 shoulder. At some point in time, I don't know what
20 it was while he was in Aiken County, he changed.
21 He's not the same person by a long shot that he was
22 when he first came into Aiken County. He's found
23 religion. He attended church before he went, but I
24 don't think he really dove into it until he was in
25 Aiken County.

1 His personality has changed. I think what
2 really happened though was, unfortunately, he
3 matured in Aiken County instead of maturing as a
4 young man playing football and going to college.
5 His maturity happened sitting in a jail cell.

6 Before he got involved in this mess, he was
7 working at Waffle House, he was attending Aiken High
8 School, he was playing football along with
9 Mr. Simmons here. And I know their coaches; I
10 played for the exact same coaches. So I packed up
11 my stuff one day and went over to the football
12 locker room and walked in and I chewed the fat with
13 them for a little while asking about my client and
14 trying to find information, mitigation, what was
15 their point of view of him.

16 Coach Leon Pope coached defensive backs --
17 defensive ends when I was in school, and he said
18 I'll do whatever you want me to do. He went and
19 visited Mr. Morton. After that meeting -- Coach
20 Pope was very talented -- he said, you know, this
21 devastates me, I've had family in jail, I wouldn't
22 go see them, I wouldn't go anywhere near a jail, I
23 just have a thing against jails and I do not want to
24 be in them or around them.

25 But because I asked, he actually came up and

1 spoke with him. It crushed him though because he
2 never saw it coming. He said of all the people that
3 he would have thought would be a thug or be in
4 trouble or have issues or make bonehead mistakes
5 that he sees come through playing football and just
6 going through high school and dropping out, Brian
7 wasn't one of them. He said some of the other guys,
8 yeah, sure.

9 But Brian was getting rides to and from school
10 with Coach Pope and would spend a lot of time
11 together. He played ball for him. He said he was
12 respectful, he was doing well in school; it was yes,
13 sir, no, sir, yes, ma'am, no, ma'am; he seemed to be
14 working hard, had good work ethic. He said, yes, he
15 had a hard life, everything wasn't perfect for him,
16 but he seemed to have gotten it together and was
17 going in the right direction and, all of a sudden,
18 this incident happened and it just completely
19 floored him.

20 Everybody I've talked to, that was their
21 response. All the football coaches, the teachers
22 that I was able to get in touch with, staff that he
23 worked with at Waffle House -- unfortunately, I
24 called her, she wasn't able to be here today because
25 she switched jobs recently. But she wanted me to

1 tell you that he was respectful, he worked hard.

2 He lived with her for a period of time while he
3 was working at Waffle House. He worked second
4 shift, she worked third. When he would get off, he
5 would keep her child for her and he -- she would
6 work third shift and he would watch over her
7 children.

8 She never heard anybody complain, he had great
9 manners with all of the customers, and that she
10 cannot believe this happened. Every one of them --
11 I've never had that. I have never had every person
12 I talk to say good things about my client. I can't
13 think of one that said anything different.

14 He graduated in 2013. When he was arrested it
15 was about the time he was going to be graduating, so
16 he didn't get to walk. While in Aiken County, he's
17 done his work keys and got to silver. His plans
18 were to hopefully go to college, potentially wanting
19 to go into the Air Force. He was a member of the
20 FBLA.

21 He actually laid it out; he was wanting to go
22 to Aiken Tech and then potentially any four-year
23 college and then maybe into ministry. This was
24 probably the worst decision he ever made, and he
25 realizes that. I think he has a hard time wrapping

1 his head around the hand of one is the hand of all
2 and how it actually applies, and I think that's a
3 lot of what our issues were to begin with and
4 probably still is a little bit.

5 The letter he was reading from, I went over it
6 with him in the back, and reading it from beginning
7 to end in full context, when he got done the
8 impression in the letter was not that he was mad at
9 me or that it was an issue with my representation,
10 it was that he was mad at himself that maybe he
11 didn't realize it, but -- and we talked about it. I
12 think the letter is saying that he's mad at himself
13 for getting himself into the kind of situation that
14 he finds himself in now.

15 We get along fine most of the time and I
16 actually like him quite a lot. He's got his family
17 here in the second and third rows. I believe his
18 mother in the third row would like to address the
19 Court at the appropriate time.

20 THE COURT: Anything you want to tell me, son?

21 THE DEFENDANT MORTON: Yes, sir, Your Honor.
22 It's definitely a hard pill to swallow. I'd like to
23 read the rest of this letter to you and say some
24 more things after.

25 It says: I agree there's no justification in

1 it, but it can be rationalized. For all I have done
2 wrong has been forgiven, so can I get the same
3 treatment from everybody? My family needs me, Your
4 Honor. Pleas shouldn't create a problem for
5 society's lack of forgiveness. Sending me to prison
6 for what is considered life in South Carolina is not
7 going to solve the problem. The issue is deeper
8 than what is seen.

9 I deserve time, but not time that's going to
10 make society worse. I speak my piece on Shane's
11 death, and his family, remorse for the loss
12 according to his death. I'm sorry that it happened.
13 I wish I was never a part of it because it was
14 definitely not a part of me to do such a thing.

15 I'm not sorry because I got caught, so I know
16 and understand how his family feels because the pain
17 that is shown is a reflection of how we feel. I
18 wish I could do something that could change what
19 happened, but all we got is the future, Your Honor.
20 I just plead for mercy from the family. I ask for
21 apology for my mistakes and stupidity.

22 What I can say is forgiveness is a choice.
23 When I got arrested, I was mad at the whole world,
24 you know, because I felt like something could have
25 been done by somebody else to stop me. But

1 sometimes I need to control my own actions, you
2 know. And all my life, you know, I grew up pretty
3 tough, and the words that I said didn't really mean
4 anything to anybody because I was a small guy, they
5 took advantage of me.

6 So I always believed in my actions was my
7 words. And when my words weren't being heard, it
8 was just my actions, I would get mad at everybody
9 because of something I didn't do. I was trying to
10 understand myself because I didn't have anybody to
11 understand me. I want to speak up, you know, being
12 intoxicated with marijuana just for an excuse not to
13 speak.

14 I just wish this never would've have happened,
15 but I know life goes on. I found God, you know, and
16 God is my savior, so hopefully we'll see each other
17 in Heaven, you know. If I have to spend the rest of
18 my life in prison, so be it.

19 THE COURT: Well, you're a young man. You
20 hopefully won't spend the rest of your life in
21 prison. I know it seems like a long time, but
22 it'll -- it goes by fast. Tell me, gentlemen, y'all
23 are both articulate young men. The letter got from
24 your daddy, very, very deep thoughts. Why? Why
25 would the two of you guys, no prior records, young,

1 getting ready to go off to college, doing well in
2 school, why? Tell me what I can tell other young
3 people so they won't do what you're doing. I mean,
4 why? I don't understand it.

5 THE DEFENDANT SIMMONS: There's no valid --

6 THE COURT: You don't know why?

7 THE DEFENDANT SIMMONS: -- excuse to those
8 actions but stupidity.

9 THE COURT: But what makes you want to get a
10 gun and go into somebody's house and try to take
11 things and then it ends up with somebody dead?

12 THE DEFENDANT SIMMONS: To be honest, being
13 young and to be able to think that it's that easy
14 and you might not think about everything that may
15 happen or everything that can happen, but --

16 THE COURT: Or the consequences of what would
17 happen.

18 THE DEFENDANT SIMMONS: You never think about
19 the consequences. At the time it wasn't any
20 consequences.

21 THE COURT: Were you on drugs? Were you high
22 or were you --

23 THE DEFENDANT SIMMONS: I mean --

24 THE COURT: -- just influenced or were y'all
25 just acting crazy?

1 THE DEFENDANT SIMMONS: Really just influenced
2 that it would be in and out, easy, nothing to it,
3 not like that's what we do on the daily or that's in
4 us to do it, but just as like taking a piece of
5 candy from a baby because you do this and that will
6 be that. But --

7 THE COURT: Well, how have you gotten to that
8 point where you take that candy with a gun and
9 breaking into somebody's house? And I see it all
10 the time. I'm not fussing at you. It's just sad to
11 see someone with the future you had ahead of you to
12 throw it all away over something this crazy, this
13 stupid, this whatever, and I'm trying to maybe use
14 you as an example to keep somebody else from doing
15 what you did. Hopefully that good can come out of
16 that, that somebody else will see how crazy it was
17 and that they won't do what you and this other fine
18 young man did.

19 THE DEFENDANT SIMMONS: Your Honor, I ask that
20 I please, may I add a couple words to the statement
21 I gave before to the Court?

22 THE COURT: You may.

23 THE DEFENDANT SIMMONS: Hearing the sniffles
24 and the tears, I don't got to see them, but I feel
25 them running down the victims' family's faces, my

1 family's faces. I, again, would like to apologize
2 to everyone who was attached to anyone as far as
3 co-defendants and the victim because I was a leader
4 and I could have said no. I was dumb for going with
5 it.

6 I could have stopped them from doing it. I
7 could have said, no, don't do this, that, and the
8 third. I'm not saying they would have listened.
9 But I could have did something, but I went along
10 with it. I'd like to apologize to my co-defendants
11 for my actions and by me not stepping in and saying,
12 no, don't do this.

13 And to everyone out behind me, I ask that if
14 y'all could please forgive me, because if y'all
15 don't, I won't be able to forgive myself. It's
16 nothing I can do to change anything --

17 THE COURT: No, you can't change it. But I was
18 hoping you would tell me what we can tell other
19 young people so they wouldn't do it.

20 THE DEFENDANT SIMMONS: I have a story lined up
21 me and lawyer is working on. But --

22 THE COURT: Well, you're bright and you're
23 intelligent. Maybe you ought to finish that story
24 and maybe it will help some other people in the
25 future.

1 All right. Who in the family wants to speak?

2 MR. MOLONY: His mother.

3 THE COURT: Good morning, ma'am. Tell me your
4 full name, please.

5 MS. SMITH: Mary Jane Smith.

6 THE COURT: Ms. Smith, how are you related to
7 these young men?

8 MS. SMITH: I'm Leon Simmons' grandmother. And
9 I would just like to say to the Court I thank God
10 for him admitting, you know, to his part in what
11 happened.

12 First of all, I would like -- if any of the
13 Jones family is here, I would like to say I am
14 sorry, and I have been prying not just for my
15 grandson, but all of the young men involved, for the
16 deceased family, because we've all lost here today.

17 And I would just like Leon to know we still
18 love him no matter what. We're going to support you
19 no matter what. He's always been a respectable
20 young man. I've never had any problem with him.
21 And his dad, my son, couldn't be here today because,
22 emotionally, he couldn't take this. And I'm just
23 sorry.

24 Ever since I heard it over two years ago, I
25 prayed and asked the Lord to have mercy. And I have

1 seen his mercy in action in those two and a half
2 years. And now I'm asking the Court to please have
3 mercy on not just my grandson, but all of the young
4 men.

5 THE COURT: Thank you, ma'am.

6 Anyone else?

7 Good morning, ma'am. Your name, please?

8 MS. ROBINSON: Tashika Robinson. I'm Brian
9 Morton's mom. And I want to just apologize because
10 he wasn't raised like this. He just got caught in
11 the moment, and I know he totally understands. And
12 I'm still proud of him because he's manned up. And
13 I do apologize to anyone that's in the Jones family.
14 I apologize to everyone. But do know that this is
15 not how Brian is. He just caught up in the moment.

16 He's headstrong, had everything going for
17 himself. And just know I love you and I back you
18 100 percent and I'm here for you. I'm going through
19 tough times right now, but I love you, son. And I
20 apologize to anyone out there, everybody. I love
21 you.

22 THE COURT: Thank, you ma'am.

23 MR. HAYES: Judge I'd like the Court to know he
24 has been incarcerated for the last 897 days.

25 MR. MOLONY: That's both of them, Your Honor.

1 THE COURT: Yes, ma'am? Your name for the
2 record, please?

3 MS. SIMMONS: Lawanda Simmons. I'm the mother
4 of Leon Simmons. I'd just like to say, first and
5 foremost, I want to extend my condolences to the
6 family of the Joneses. I can't say I know how it
7 feels to lose a loved one such as Mr. Jones. I can
8 only imagine the pain of such loss. I am the mother
9 of Leon Simmons and I'm sorry for the actions that
10 were taken during this tragic event.

11 Leon was one who excelled in sports and
12 academics and was awarded a scholarship for Morris
13 Hill in April of 2013 for football. He was a role
14 model for his younger siblings and set a highly
15 intelligent example of success. He's a highly
16 intelligent man which we love. And I want to say,
17 son, I love you so much and I am so proud of you of
18 you for standing up to your responsibilities.

19 THE COURT: Thank you, ma'am.
20 Anyone else?
21 Your name, please?

22 MR. SHAFFER: Wyatt Shaffer, sir. And I'm a
23 family friend of Mr. Morton. I would like to start
24 off by saying that I don't know Mr. Morton's family
25 that well. I know him very well. This is by far

1 the most intelligent and the most down-to-earth and
2 spiritual person I know. I didn't know Mr. Jones
3 and I don't know Mr. Simmons, but I do know that
4 this man's actions cannot be justified enough if you
5 look at this in a worldly perspective.

6 If you look at what he's done, it is a very
7 hard thing to go through. And I can say that to
8 anybody, we've all had it. But when it comes down
9 to who somebody is inside, everybody stripped,
10 everybody is stone, and what do you do, beat
11 yourself up about it? No. You move on about it and
12 you grow as a person that you are and the person
13 that God created you to be.

14 I loved this man with every single bit of my
15 body. He's helped with me with my relationship with
16 the Lord and my understanding of how to live in this
17 world. I've seen him do it to others. I've heard
18 it from him -- well, not only him but from other
19 people about who he used to be, about the things he
20 used to do, stories that probably nobody else has
21 ever heard.

22 I can tell you one thing, this man is the most
23 strongest person that I know, the most kindhearted,
24 the most selfless person that I know. And I
25 understand that whatever happens today is a part of

1 God's will because I know that he is there with you.
2 I love you, brother.

3 THE COURT: Anybody from the victim's family?

4 Yes, ma'am. Your name, please?

5 MS. HOWARD: Peggy Howard. I just want to say
6 that I'm here to speak on behalf of Shane Jones
7 today because I do hear a lot of things about
8 Mr. Jones this and Mr. Jones that. But at the same
9 time, Your Honor, I want you to understand the
10 horrificness of the crime and what happened and why
11 it happened.

12 I understand everybody has a role, everybody
13 played their part. I understand we're all not
14 innocent, we're all not perfect, we all mistakes and
15 things like that. I understand everybody has
16 family, everybody has a mother, a father, all those
17 things in here today, and we all feel some type of
18 way today.

19 But at the same time, the thing of -- that gets
20 me with the whole case and everything that went on
21 is what went on and the people that did what they
22 did or how it happened. You know, this is not a
23 crime that happened amongst enemies or this is a
24 crime that happened among people -- like, you look
25 around this courtroom today and there's lot of us in

1 here that do not know each other.

2 That's what bothers me the most about this
3 case; that this case came about by our loved ones,
4 people that we ate, that we slept, that we fed, that
5 we have cried with, these same people -- Shane was
6 killed in May. These same people helped us to carry
7 my mother's coffin, to bury her in the ground, and
8 told us that they will be our friends and be there
9 for us.

10 This wasn't somebody that said we don't love
11 Shane or we hate you-all, it wasn't a crime of that.
12 And that is one thing that makes it so unbearable to
13 know that you are the same people that we took in
14 just like Shane, that we loved, and you just don't
15 do family -- you don't do people that you love and
16 that loves you the same way, you don't do them like
17 that.

18 That's like the standard story of Cain and
19 Abel; one brother killed the other, you don't do
20 that. How do you kill your brother? How do you
21 leave your brother sitting there dying to walk past
22 him to go find other goods? It wasn't a crime of,
23 oops, we shot him, let's go back this way. No. You
24 left him right where he was.

25 Yeah, they say he was on cocaine. He might

1 have been on cocaine. What were you on? What made
2 you go to do what you did? How did you just walk
3 across a man with three holes that you shot laying
4 there and left him like that? You ain't going to
5 tell me you wasn't on something.

6 You didn't stop at my kitchen. You walked
7 through my living room and shot one more girl,
8 wherever the bullet came from or however. You
9 didn't stop right there and say, oh, my God, we shot
10 somebody else. No, you did not do that. You went
11 through my living room, you stopped and you went
12 through where Heather was, his pregnant girlfriend,
13 and you opened the door. You took time to take her
14 phone.

15 You didn't stop right there because I had
16 another bedroom right there. You went in that room
17 to see what was in there. I know what was in there.
18 You didn't stop right there, you went to the next
19 room too; you didn't stop right there, you went on
20 to the other room, and you continued to go through
21 that home until you was finished doing what you
22 wanted to do.

23 They say, yeah, Shane Jones was alive an hour
24 or something later. Oh, so you mean to tell me you
25 had an hour and something later to go through there

1 and finish doing whatever it was you wanted to do
2 while he was laying there begging for the same thing
3 that you are looking for today, mercy; pleading I
4 have a child fixing to be born in that room, don't
5 make me leave this earth today. I know he asked you
6 because I know my brother. I know he said don't do
7 that to me, I got a sister and a brother sitting
8 over there, they're coming home, they need me.

9 I just put my father in the ground, then I
10 turned around and I put my mother in the ground, and
11 then not even a month later I turned around and had
12 to lay my brother to rest. For what? Because he
13 got high? So? Those children lived in that house
14 and I paid those bills for those kids and made sure
15 that they were all right. I made sure one finished
16 schools after she left me with them and I made sure
17 he got a good job when he went on with his life.

18 If you go -- I know police are looking through
19 Facebook and all that. One of the last posts Shane
20 Jones put on Facebook was, oh, my God, I did not
21 know work was so much horrible, I did not know how
22 much the work world was horrible, because he had to
23 get up and become a man, he was fixing to have a
24 baby, regardless if his body was full of cocaine.

25 How long was my mother dead or how long did

1 those children live in there? And we stayed in
2 Crosland Park. Not one time is there an officer
3 here to say they were called to that house for
4 disturbances, and I had 17, 18, and 19-year-old
5 children in that house. Not one time can any of the
6 officers say there was a party going on. And the
7 police know my mama was dead because I paid them to
8 escort us to the funeral. So they can't say they
9 didn't know there wasn't no grown, grown folks in
10 the house.

11 But how many complaints did you get on those
12 kids? He might have been full of cocaine, he might
13 have been. I can't say. But do your officers -- do
14 you got any complaints? Everybody on both sides of
15 Shane was grown folks. How many times will those
16 people tell you, oh, those kids was loud, they was
17 up?

18 Nobody didn't even know my mama wasn't even in
19 that house, because even though they did whatever it
20 was they did, they still was respectable. Whether
21 he was on cocaine or whatever he was on, he was
22 inside his home. He was not bothering anybody, he
23 wasn't making no noise, there was no disturbances.
24 You can't even fall back a track record from 911
25 calls or anything where those children were being

1 out of hand or anything.

2 Nobody didn't even know what was going on in
3 his house but the people that were coming in there
4 and, well, we're going to go over there and end this
5 party. Why? What did he have that you wanted that
6 he would not have given you?

7 Somebody said, oh, we killed him for spring
8 break money or senior week, whatever it was. What
9 senior week? Anybody in here that knows Shane Jones
10 knows that there wasn't car lined up for every one
11 of his friends, so I know that's not the deal. If
12 you wanted to go, you would have been there; if I
13 want today go there, he would have made sure I got
14 there.

15 THE COURT: Thank you.

16 MR. HAYES: Judge, there is a possession of
17 controlled substance that Mr. Morton has, the Xanax
18 pills in question. When he was arrested, he had
19 them on him. I believe that's being dismissed as
20 part of this.

21 THE COURT: All right. Let's bring it to a
22 close. One more person.

23 Yes, ma'am. Your name, please?

24 MS. ARTHUR: Shannon Arthur.

25 THE COURT: How are you related to whom?

1 MS. ARTHUR: My niece is Heather. The baby is
2 my great nephew.

3 THE COURT: Okay.

4 MS. ARTHUR: It's hard. We're raising a baby.
5 My whole family helps with him as much as we can.
6 But to think that in 30 years they'll be 50, and I
7 look at it like I'm 50, I still got a lot of life
8 left. They'll get to continue with their lives
9 where Shane doesn't. And how do we tell this baby
10 30 years from now when they're getting out of
11 prison, these are the people that took your father's
12 life, the reason you can't be with your father?

13 It's just hard to understand how you do
14 something like that and to think that they wanted it
15 for drugs. You know, that's all they wanted was
16 drugs. And it's just not worth it.

17 THE COURT: Certainly not. Thank you.

18 MS. ARTHUR: Uh-huh.

19 THE COURT: All right. Mr. Simmons, as to
20 Indictment 2013-GS-02-1727 for the offense of
21 murder, the sentence of the Court is that you be
22 committed to the state department of corrections for
23 a period of 30 years. As to the offense of armed
24 robbery, that, likewise, is a 30-year sentence, and
25 as to the burglary in the first degree, that too is

1 a 30-year sentence, all running concurrent, credit
2 for your time served.

3 Mr. Brian Morton, as to Indictment
4 2013-GS-02-1737 for the offense of murder, the
5 sentence of the Court is that you be committed to
6 the state department of corrections for a period of
7 30 years. You'll be given credit for your time
8 served. As to the offenses of armed robbery and
9 burglary in the first degree, those, likewise, are
10 30-year sentences running concurrent to your murder
11 sentence. Good luck to both of you gentlemen.

12 -- END OF TRANSCRIPT OF RECORD --
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C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Criminal Court for Aiken County, South Carolina, on the 12th of November, 2015.

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

June 23, 2017

s/Bethanie K. Creppon

Bethanie K. Creppon
Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA

County of Aiken

Leon Simmons #26604A
Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2013A0220100526
2013A0220100527
2013A0220100528

APPLICATION FOR

POST-CONVICTION RELIEF

2016CP0201133

FILED May 13 2016
D. G. [Signature]
CLERK OF COURT
[Signature]
DEPUTY CLERK
1135

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lee Correctional Institute

2. Name and location of Court which imposed sentence Court of General Sessions Second Judicial Circuit Aiken, SC

3. Name(s) of co-defendant(s) (if any) Marhese East, Brian Morton, ShaShaun Issac, Trevon Butler

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Armed Robbery - 2013GS0201728, Murder 2013GS0201727
 - (b) 1st degree Burglary 2013GS0201729

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 (a) MURDER 30 yrs. / ARMED ROBBERY, 1st DEGREE BURGLARY CONCURRENT
 (b) _____
 (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 "yes" to (7), list:
 (a) the name of each Court to which you appealed:
 i. _____
 ii. N/A
 iii. _____
 (b) the result in each such Court to which you appealed:
 i. _____
 ii. N/A
 iii. _____
 (c) the date of each such result:
 i. _____
 ii. N/A
 iii. _____
 (d) if known, citations of any written opinion or orders entered pursuant to such results:
 i. _____
 ii. N/A
 iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
 (a) I didn't appeal because I didn't know the proper steps to do so
 (continued on back of paper)
 (b) A direct appeal from a guilty plea would have been
 pointless.

(c)

- 10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: The Applicant recieved Ineffective Assistance of Counsel prior and during his plea. involation of his rights pursuant to the 6th and 14th Amendments to the U.S. Constitution, as well as Article I, section 14 of S.C. Constitution.
 - (a) and 14th Amendments to the U.S. Constitution, as well as Article I, section 14 of S.C. Constitution.
 - (b) The Applicants plea of guilty were not voluntary and intelligently entered. The judgement and sentence against the Applicant were entered in violation of his rights to due process of law and effective asst. of counsel.
 - (c) The Applicants plea of guilty were not voluntary and intelligently entered. The judgement and sentence against the Applicant were entered in violation of his rights to due process of law and effective asst. of counsel.

- 11. State concisely and in the same order the facts which support each of the grounds set out in (10): Trial Counsel failed to provide Applicant effective assistance of counsel
 - (a) during Applicant's Plea Proceeding.
 - (b) Counsel failed to provide client effective assistance of counsel prior to and during his guilty pleas proceeding. The Applicant plea of guilt were coerced by counsel's failure to provide adequate representation.
 - (c) by counsel's failure to provide adequate representation.

- 12. Prior to this application have you filed with respect to this conviction:
 - (a) any petition in a State Court under South Carolina Law? No
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 - (d) any other petitions, motions or applications in this or any other Court? NO

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

- (a) the specific nature thereof:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____

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) PCR action presents first appropriate opportunity for review of
- (b) these collateral issues
- (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? no trial
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? n/a
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
n/a

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

- (a) the name and address of each attorney who represented you:
 - i. Molony Law LLC, 208 Newberry St, NW,
Aiken S.C. 29801
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Guilty Plea Proceeding and Sentence.
 - ii. _____
 - iii. _____

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

Vacation of Judgment and sentence. Applicant
SEEKS NEW TRIAL.

Applicant also seeks new and lesser sentence and/or dismissal of sentence

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

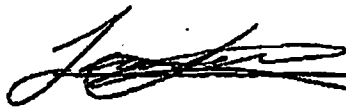
No

STATE OF SOUTH CAROLINA)

County of Aiken)

VERIFICATION

I, Leon J. Simmons, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this 9th
day of May, 2016.

Debra Eastwood (L.S.)
Notary Public

My Commission Expires: 3/3/2026

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

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

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


Applicant

SWORN or affirmed to and subscribed before me this
day of May 2011.


Notary Public

My Commission Expires: 3/3/2012

STATE OF SOUTH CAROLINA)
 COUNTY OF AIKEN)
)
 Leon Simmons, #366048,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SECOND JUDICIAL CIRCUIT

Case No.: 2016-CP-02-1133

**RETURN AND MOTION FOR
 MORE DEFINITE STATEMENT**

Respondent, making its Return to the application for Post-Conviction Relief ("PCR") filed on May 13, 2016,¹ would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. In November 2013, the Aiken County Grand Jury indicted Applicant for murder (2013-GS-02-1727), armed robbery (2013-GS-02-1728), and first degree burglary (2013-GS-02-1729). The charges resulted from Applicant's involvement in a late-evening home invasion on May 28, 2013, in Aiken County that left a victim dead as a result of three gunshot wounds. (Tr. p. 26). Kevin Molony, Esquire represented Applicant. Deputy Solicitor John William Weeks, Esquire prosecuted the case. On November 12, 2015, Applicant pled guilty as indicted to all charges before the Honorable Doyet A. Early, III. Pursuant to a negotiated sentence, Judge Early sentenced Applicant to imprisonment for thirty years each for murder, armed robbery, and first degree burglary, to be served concurrently. Applicant did not appeal his conviction or sentence.

¹ Respondent notes it did not receive the application until February 7, 2017.

Attached to this Return are the records of the Aiken County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "Applicant received ineffective assistance of counsel prior to and during his plea in violation of his rights pursuant to the 6th Amendment and 14th Amendment to the U.S. Constitution, as well as Article I of the U.S. Constitution."
 - b. "Judgment and sentence against Applicant were in violation of his rights to due process law and assistance of counsel."
2. Involuntary Guilty Plea
 - a. "Applicant's pleas of guilty were not voluntarily and intelligently entered."
 - b. "Counsel failed to provide client effective assistance of counsel prior to and during his guilty plea proceeding. Applicant's pleas of guilt were coerced by counsel's failure to provide adequate representation."

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having

produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

At the guilty plea hearing, Applicant testified that he was totally and completely satisfied with his representation. (Tr. p. 15). Applicant even reaffirmed his satisfaction later in the hearing. (Tr. p. 22). Moreover, Applicant would have been facing the possibility of life imprisonment had he gone to trial on his charges for which there was overwhelming evidence of his involvement. (Tr. p.

17). Applicant testified that he was pleading guilty because he was actually guilty. (Tr. p. 24). Therefore, the record indicates that Applicant's representation was neither deficient nor prejudicial.

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant also asserts his plea was involuntary. In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant 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). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56 (1985). Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." Id. at 771.

The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the 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)). Further, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton, at 137–38, 654 S.E.2d at 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). "In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing." Id. at 138–39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

Applicant twice affirmed his satisfaction with his plea counsel at the plea hearing. (Tr. p. 15, p. 22). Applicant also testified that he had enough time to speak with his lawyer, understood his charges and rights, was promised nothing, and wanted to voluntarily waive his rights to plead guilty. (Tr. p. 8, 14, 21). As explained in the above section, Applicant would have faced a possible life sentence had he gone to trial on these serious charges for which there was overwhelming evidence of

his involvement. (Tr. p. 17). Furthermore, Applicant testified that he was pleading guilty because he was actually guilty. (Tr. p. 24).

Respondent therefore submits the record fully supports the knowing and voluntary nature of Applicant's plea. However, allegations regarding the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Respondent hereby moves for a more definite statement. Applicant has failed to set forth any facts to support each ground or to explain with any specificity whatsoever the facts upon which his claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

VI.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All

claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

VII.

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

VIII.

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

[Signature block on following page]

IX. Conclusion

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of plea counsel and involuntary guilty plea.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JULIE A. COLEMAN
Assistant Attorney General

By 
ATTORNEYS FOR RESPONDENT

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

October 17, 2017

STATE OF SOUTH CAROLINA)
)
 COUNTY OF AIKEN)
)
 LEON SIMMONS, # 366048)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent,)
 _____)

IN THE COURT OF COMMON PLEAS

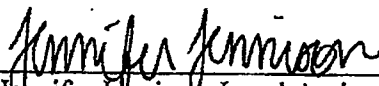
2016-CP-02-1133

AFFIDAVIT OF SERVICE BY MAIL

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 and Motion for More Definite Statement** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Lance S. Boozer, Esquire
 The Boozer Law Firm, LLC
 1400 Laurel Street, Suite 4A
 Columbia, SC 29201

DATED this the 17th day of October, 2017.



 Jennifer Jannison, Legal Assistant
 For Respondent

ELECTRONICALLY FILED - 2017 Oct 19 12:55 PM - AIKEN - COMMON PLEAS - CASE#2016CP0201133

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN)	C/A NO: 2016-CP-02-1133
)	
Leon Simmons, #366048,)	
)	
Applicant,)	AMENDMENT TO PCR APPLICATION
)	
v.)	
)	
State of South Carolina,)	
)	
<u>Respondent.</u>)	

The Applicant, through appointed counsel below, makes the following additional claims and amendments to his prior application for post-conviction relief:

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 - (a) Applicant believes he was misled to believe a co-defendant was entering a statement against him, ultimately prejudicing his case.
 - (b) Applicant believes counsel manipulated Applicant into entering plea.
 - (c) Applicant believes counsel failed to investigate and pursue possible defenses and otherwise present or review legal challenges to evidence..
 - (d) Applicant alleges counsel failed to prepare for trial.

Respectfully submitted,



Lance S. Boozer
 Attorney for Applicant
 1400 Laurel Street, Suite 4A
 Columbia, SC 29201
 Phone: (803) 608-5543
 Fax: (803) 926-3463

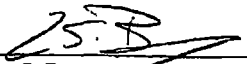
Columbia, South Carolina
 January 10, 2018

AFFIDAVIT OF SERVICE

I, the undersigned, of the Boozer Law Firm, LLC, Attorney for Applicant, do hereby certify that I served the foregoing Amendment to Prior PCR Application upon the persons below-listed by placing a copy, postage prepaid, in the United States Mail, addressed as follows:

Julie Coleman
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211

THE BOOZER LAW FIRM, LLC


Lance S. Boozer
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Columbia, South Carolina
January 10, 2018

ELECTRONICALLY FILED - 2018 Jan 12 1:22 PM - AIKEN - COMMON PLEAS - CASE#2016CP0201133

State of South Carolina)	In the Court of Common Pleas
)	Second Judicial Circuit
County of Aiken)	2016_CP-02-01133

Leon Jacob Simmons,)
)
Plaintiff,)
)
vs.)
)
State of South Carolina)
)
Defendant,)
)
)

May 7, 2018

Aiken, South Carolina

B e f o r e:

The Honorable R. Scott Sprouse, Judge

A p p e a r a n c e s:

Lance Boozer, Esquire
Attorney for the Applicant

Julie Coleman, Esquire
Attorney for the Defendant

Bonnie H. Kelly, CVR
Circuit Court Reporter

I N D E X

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>
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1 MS. COLEMAN: May it please the Court.

2 THE COURT: Yes, ma'am.

3 MS. COLEMAN: Thank you, Your Honor. This is Leon
4 Simmons vs the State of South Carolina, docket No. 2016-CP-
5 02-1133. Applicant is presenting confined in the South
6 Carolina Department of Corrections pursuant to orders of
7 commitment of the Aiken County Clerk of Court.

8 In November, 2013, the Aiken County Grand Jury
9 indicted Applicant for murder, armed robbery, and first
10 degree burglary. Kevin Molony, Esquire, represented the
11 Applicant. Deputy Solicitor John William Weeks, Esquire,
12 prosecuted the case. On November 12, 2015, Applicant pled
13 guilty as indicted to all charges before the Honorable
14 Doyet A. Early III.

15 Pursuant to a negotiated sentence, Judge Early
16 sentenced Applicant to imprisonment for 30 years each for
17 murder, armed robbery and first degree burglary to be
18 served concurrently. Applicant did not appeal his
19 conviction or sentence.

20 Applicant filed a timely application for post
21 conviction relief on May 13, 2016, alleging he was being
22 held in custody unlawfully based on the following
23 allegations: Ineffective assistance of counsel and
24 involuntary guilty plea.

25 The State filed its return and motion for more

DIRECT EXAMINATION BY MR. BOOZER - LEON SIMMONS

5

1 definite statement on October 17, 2017. Applicant filed an
2 amended application on January 10, 2017, and is present
3 today represented by Mr. Lance Boozer.

4 THE COURT: Mr. Boozer.

5 MR. BOOZER: Thank you, Your Honor. If it pleases the
6 Court. Judge, we'll go ahead and call Mr. Simmons to the
7 stand.

8 THE COURT: Mr. Simmons, come around to the witness
9 stand, please, sir.

10 (Mr. Simmons complies.)

11 LEON SIMMONS, having been first
12 duly sworn, testifies as follows:

13 CLERK OF COURT: Please take a seat in the witness box
14 and state your full name for the record.

15 THE WITNESS: Leon Simmons.

DIRECT EXAMINATION

16
17 BY MR. BOOZER:

18 Q Mr. Simmons, how you doing today?

19 A I'm all right.

20 Q Okay. If you would, just keep your voice up. Okay.

21 A All right.

22 Q Mr. Simmons, do you know what you're here doing today?

23 A I do.

24 Q Okay. What is that, what are we here for?

25 A For my post conviction relief.

1 Q For your post conviction relief application.

2 A Right.

3 Q All right. And what are you currently incarcerated
4 for?

5 A Armed robbery, burglary in the first degree, and
6 murder.

7 Q All right. What were you originally charged with?

8 A Armed robbery, burglary first, and murder.

9 Q All right. Now, do you understand that the only thing
10 that this Court can do is grant you a new trial on your
11 original charges?

12 A I do.

13 Q Okay. And you understand with that there are
14 certainly some risks, of course, because you'll go back to
15 trial. You understand that there are some risks involved?

16 A Correct.

17 Q And is it your decision to go forward with your PCR
18 case?

19 A It is.

20 Q All right. Now, in this case, what you're
21 incarcerated for, you entered a guilty plea?

22 A By the advice of my attorney only.

23 Q Okay. Who was your lawyer?

24 A Kevin Molony.

25 Q And did you -- did you have any co-defendants?

DIRECT EXAMINATION BY MR. BOOZER - LEON SIMMONS

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1 A I did.

2 Q And who were they?

3 A Trevon Bulter, Rashawn Isaac, Brian Morton, and
4 Markese East.

5 Q And to your knowledge, did some of those folks enter
6 guilty pleas and then one also convicted at trial?

7 A They did enter -- enter guilty pleas and one was
8 convicted at trial.

9 Q All right. Now, obviously, you filed an application
10 initially before I came onto your case for PCR; is that
11 right?

12 A Correct.

13 Q So let's just kind of go over your allegations. Okay.

14 A All right.

15 Q In your original application, you had indicated that
16 you received ineffective assistance of counsel prior to and
17 during your plea in violation of your due process rights?

18 A Correct.

19 Q Another allegation is that you think the judgement and
20 sentence were in violation of your due process rights; is
21 that another one?

22 A Correct.

23 Q And you've also alleged that your guilty plea was
24 involuntary?

25 A Correct.

1 Q All right. And that your lawyer was, of course,
2 ineffective and -- and your pleas of guilt were coerced by
3 his representation.

4 A Correct.

5 Q And then we filed an amendment. Do you recall that?

6 A Correct.

7 Q Is one of your allegations in that amendment that you
8 believe you were misled to believe a co-defendant was
9 going to make a statement against you?

10 A Correct.

11 Q All right. On one of those other allegations in the
12 amendment is that -- that you believe that counsel
13 manipulated you into entering the plea?

14 A Correct.

15 Q And another allegation, do you believe that counsel
16 failed to investigate and pursue defenses and otherwise
17 present or review legal challenges to the evidence?

18 A Correct.

19 Q And you've also alleged that counsel failed to prepare
20 for trial.

21 A Correct.

22 MR. BOOZER: And Your Honor, do you have a copy of the
23 file as amended?

24 THE COURT: Yes, sir.

25 MR. BOOZER: Okay.

DIRECT EXAMINATION BY MR. BOOZER - LEON SIMMONS

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THE COURT: The January 10th?

MR. BOOZER: Correct, Your Honor.

THE COURT: I have that.

BY MR. BOOZER:

Q All right. Mr. Simmons, when were you first arrested for these charges?

A I was arrested May 29, 2013.

Q All right. When did you first get an attorney?

A I got an attorney to my -- the best of my knowledge roughly three or so months after arrest, and my first attorney was Mr. Andy Smith.

Q Was Andy Smith?

A Andy Smith.

Q Okay. And what happened to him?

A Andy Smith was relieved off my case due to issues that I do not know of. While attending a preliminary hearing with Andy Smith out of the Public Defender's Office, at that time, Mr. Morton did have a Public Defender as well, Mr. David Hayes. And as time went by, I don't know what the relief was, but I'm assuming that a conflict of interest had arisen [sic] due to multiple representation. But at that time, we had already went through preliminary hearings and certain proceedings in the court.

Q Okay. And so it's your understanding that he may have been relieved because your co-defendant was being

1 represented by the Public Defender's Office?

2 A I have no idea why he was relieved. I would be
3 assuming if I would say yes.

4 Q Okay. After he was relieved, who then took over the
5 case?

6 A Kevin Molony.

7 Q All right. Was he appointed or did you hire him?

8 A He was appointed.

9 Q All right. So about three months after your arrest,
10 you began being represented by Mr. Molony?

11 A Mr. Andy Smith, and then --

12 Q What -- yeah. Then, after that, was ---

13 A Then it was Mr. Molony.

14 Q Okay. And he -- he represented you through the plea.

15 A Correct.

16 Q All right. How many times do you think you met with
17 Mr. Molony in total.

18 A From -- the total of 20 months, maybe, me and Mr.
19 Molony met roughly around 5 times.

20 Q Where would these meetings occur?

21 A Well, Aiken County Detention Center and our last
22 meeting was the Aiken County Detention Center.

23 Q All right. When you would meet with Mr. Molony, would
24 y'all discuss the facts of the case or would y'all discuss
25 any sort of trial strategy or defense?

DIRECT EXAMINATION BY MR. BOOZER - LEON SIMMONS 11

1 A When the meetings with Mr. Molony occurred, I would
2 mention certain defenses because at that time I was 17,18,
3 19 years old and have much knowledge about any kind of
4 legal prospective on anything. So I was giving him certain
5 suggestions to my best knowledge, you know, after I did
6 review my Rule 5 on my own. I mean, his conversation never
7 was, you know, a defense for trial. It never was anything
8 basically that I insisted on it being. It basically always
9 was the opposite.

10 Q Okay. When you were meeting with your lawyer, and
11 throughout this entire time prior to the plea that occurred
12 in November of 2015, were you looking at having a trial or
13 were you looking at entering a plea?

14 A I was looking at having a trial from the day of
15 arrest. When Mr. Molony was appointed to my case, I
16 advised him that I was looking forward to a trial, and
17 that's the only thing that it was going to be is a trial.
18 I would have to be proven guilty above -- you know, upon
19 reasonable doubt amongst a jury. And every meeting I
20 insisted on that.

21 I told him that over and over, and his response would
22 be, you know, you need to plead guilty or we're -- we're
23 trying to get a guilty plea worked out or we're trying to,
24 you know, figure out some kind of way that we can get you a
25 good offer if you was to testify against a co-defendant or

1 something in that nature instead of preparing a defense for
2 trial.

3 Q What was your response to all of those suggestions by
4 your attorney?

5 A My response was as it is today: "You know, Mr.
6 Molony, it really doesn't matter about, you know, your
7 suggestions because I'm telling that I do want a trial. I
8 do want to go to trial."

9 And you know, with each response of me letting him
10 know that I do want a trial, his responses never changed
11 his improvement on preparing a defense for trial. It never
12 progressed throughout the time as he was my attorney.

13 And my response [sic] have always been the same as if,
14 you know: I do want a trial. I'm going to trial. I don't
15 know why you keep suggesting a plea of guilt. I don't know
16 why you keep suggesting a confession to implement [sic] me
17 to the scene or to me to indicate another co-defendant on
18 the scene.

19 Q Well, let me ask you this: Prior to the ultimate plea
20 to the 30 years, was there any offer during that time Mr.
21 Molony was representing you?

22 A Yes. To my knowledge, if -- if I'm correct, I believe
23 July -- in the month of July, 2015, Mr. Bill Weeks, our
24 solicitor, offered me and my co-defendants a plea to 30
25 years, and that plea required us all to engage in testimony

DIRECT EXAMINATION BY MR. BOOZER - LEON SIMMONS 13

1 of certain involvement in the case. And at that time, as I
2 told Molony -- Mr. Molony numerous times, I'm not pleaing
3 guilty, I'm going to trial. And that plea was denied in
4 July for 30 years.

5 Q Okay. So you -- you denied that 30-year offer that
6 was made in July.

7 A I did.

8 Q All right. Prior to July, had you ever given any sort
9 of statement either implicating yourself ---

10 A I ---

11 Q Hand on -- hand on a second --- or anyone else in this
12 case?

13 A I never gave any statements on anyone prior to that,
14 nor did I have any intentions on doing so.

15 Q Okay. Let's -- let's fast forward a little bit.

16 MR. BOOZER: Your Honor, may I approach --

17 THE COURT: Yes, sir.

18 MR. BOOZER: -- the witness? I'm sorry.

19 Q Mr. Simmons, I'm going to hand you a copy of a
20 document that's dated October 22, 2015. If you could
21 identify that for me.

22 A This document is something that Mr. Molony -- I don't
23 know who he got to type this up and I don't know where he
24 got this suggestion from, but this was something that he
25 presented to me which I totally disagreed with, which I

1 totally ---

2 Q , Let's stop for one second there. Just -- if -- this
3 is a copy -- does it report to be a letter that is from
4 you, but on letterhead and typed out on Mr. Molony's
5 letterhead to Brian Morton -- or to Brian? Is that what it
6 appears to be?

7 A Can you say that again and --

8 Q Sure.

9 A -- explain it kind of?

10 Q Does this appear to just be a copy of a letter that's
11 dated October 22, 2015, that is signed by you and appears
12 to be typed and placed on Mr. Molony's letterhead to Brian?
13 Is that what appears -- is that what this letter appears to
14 be?

15 A That is what it appears to be.

16 Q Okay. Have you seen this before?

17 A I have seen this before.

18 Q And is that your signature on it?

19 A That is my signature.

20 Q Okay.

21 MR. BOOZER: Your Honor, at this time, I would to move
22 to enter this as Applicant's Exhibit 1.

23 THE COURT: Any objection?

24 MS. COLEMAN: No objection, Your Honor.

25 THE COURT: All right. Applicant's Exhibit No. 1

1 would be admitted without objection.

2 (Applicant's Exhibit No. 1, letter dated October 22,
3 2015, in evidence.)

4 Q Mr. Simmons, you had just indicated a moment ago that
5 all along, I guess, you -- they were trying to get you to
6 make some sort of statement; is that correct?

7 A Correct.

8 Q All right. And you -- you would not give one.

9 A Correct.

10 Q And your intention was to go to trial.

11 A Correct.

12 Q If you would, explain this October 22, 2015 letter.
13 Tell -- tell us how this all came about or what -- tell us
14 what you remember about it.

15 A To my best knowledge and to what I remember is on this
16 date, Mr. Molony came to me and -- while I was housed at
17 Aiken County Detention Center, and he presented this letter
18 to me and it was to cooperate with investigators and to
19 give statements and a testimony pertaining to my
20 involvement and my co-defendants's involvement.

21 Q Okay. Let me stop you there. You -- you said that
22 Mr. Molony came to you with this letter to talk about
23 giving a statement against co-defendants and to talk about
24 your alleged involvement.

25 A Correct.

1 Q All right. Prior to seeing this letter that's marked
2 Exhibit 1, had you had any discussion with Mr. Molony about
3 giving a statement?

4 A I have had comments, which I told him that I was not
5 giving any statements. Upon arrest, and once Mirandarized
6 [sic] upon arrest, I did request an attorney and I stated
7 to him there was no difference from my first day being
8 arrested or been upon arrest and what's dated on this
9 document, October 22, 2015; that I did not wish to give any
10 statements and that was not my intentions.

11 Q Okay. But let -- let's talk about the letter. So the
12 letter says "Brian." And it's got a caption of a
13 photograph and it looks like a player, a football player.
14 Who is that supposed to be?

15 A To my knowledge, I'm assuming, since it has Brian name
16 beside it, it's supposed to implement [sic] Mr. Morton.

17 Q Brian Morton?

18 A Yes. And that's because of his ---

19 Q Okay. And it says ---

20 A --- name that's beside it.

21 Q It says (as read): "This letter is to inform you that
22 I do intend to cooperative with investigators and tell the
23 entire truth about the events that took place on May 28,
24 2013."

25 Did you ask him to put this letter together?

DIRECT EXAMINATION BY MR. BOOZER - LEON SIMMONS

17

1 A I did not ask him to put this letter together. I did
2 not request this letter to be put together, nor did I have
3 any knowledge once it was submitted and given to me to
4 sign.

5 Q Okay. What did Mr. Molony tell you about this letter
6 when he presented it to you?

7 A At this time, Mr. Molony basically explained to me
8 that it was a mere suggestion. This isn't something that
9 is to happen. This isn't something was to be placed in
10 action. It was actually to be a suggestion to Mr. Morton.

11 And if we would go about giving any kind of testimony
12 on the incident, I did request beforehand that me, Mr.
13 Morton, and our two attorneys come to a common level of
14 understanding to specifically just understand what it is
15 that we're testifying to and what charges and what would
16 take place prior to the testimony and after the testimony,
17 which that hearing or that meeting amongst us four never
18 happened.

19 Q Okay. So your understanding was that although you
20 didn't come up with the language of this letter, that this
21 was presented to you. And when you read it, you were under
22 the impression that this would then cause a meeting to
23 occur between you, your lawyer, Mr. Morton, and Mr.
24 Morton's lawyer.

25 A Correct. Because this wasn't -- as I stated before,

1 it wasn't an action to take place. It was a suggestion to
2 weigh the options on -- from his opinion and from what his
3 input was to me was to weigh the options on the best
4 possibility of the outcome of the case.

5 So once the letter was presented to me, I did sign it
6 because I was assuming that once Mr. Morton did get a hold
7 of it and if he was, you know, in agreement or if he wasn't
8 in agreement, beforehand -- a testimony was given, we would
9 have a meeting first. And that was the purpose of me
10 signing it to make sure that we have a meeting beforehand.

11 Q Okay. In the letter, the language says, "I'm doing so
12 with the understanding that you'll be cooperating and
13 telling the truth to investigators."

14 Is that something you asked to be included in there,
15 or was that already written and you just signed it?

16 A I never asked for this letter to be even presented to
17 me or Mr. Morton. So the -- everything that was typed and
18 implemented in this letter was to my lawyer's own ability
19 and on his own doing.

20 Q Now, you said that your impression was that you guys -
21 - this letter would be the catalyst to then have a meeting
22 with everyone.

23 A Right.

24 Q Were you under that impression because your lawyer
25 told you that, or were you under that impression because

1 that's just what you thought?

2 A I was under that impression because that is what I
3 requested from my lawyer to take place, and that he did
4 state will take place before any testimony is given from
5 either party before ---

6 Q When you say "testimony," you mean any statements are
7 given if that's what's gonna happen.

8 A Right. If that was going to happen.

9 Q All right. So -- so what happens after October 22,
10 2015?

11 A After this date, I can't recall what date it was, but
12 I was called outside of my cell while housed at Aiken
13 County Detention Center. And I was then escorted downtown
14 to Aiken Department of Public Safety for reasons which was
15 unknown to me. And once arrival, Mr. Molony was in a room
16 awaiting my presence, and once me and him was in
17 conversation, I asked him, you know, what the purpose of
18 this -- or what the purpose of me being here was. And he
19 then stated that it was for me to give my testimony of my
20 involvement in the situation.

21 And at that time, I told Mr. Molony to tell them to
22 take me back to the county jail. At that time, I told Mr.
23 Molony that that's not my plan on doing because at that
24 time, there was no meeting with me, Mr. Hayes, or Mr.
25 Morton and Mr. Molony.

1 So that went against everything I had told him and I -
2 - at that time I told him that went against everything that
3 we'd spoken about, and he insisted on if, you know, I did
4 not move forward with my testimony, if I did not cooperate,
5 that he would relieve hisself [sic] from my case, that he's
6 worked too hard to prepare a meeting with the solicitor to
7 get them here for testimony, which is something that I did
8 not request or something that I did not want or was my
9 intentions. And he did, you know, let me know that he
10 would not represent me at trial if I do wish to go to
11 trial.

12 And at that time, I felt like I was -- you know, had
13 exhausted my remedies in certain outcomes of the case due
14 to that I had been arrest for roughly two and a half years
15 at that time.

16 Q Okay. So when you -- when you respond to Mr. Molony
17 with what you just said, what was his response?

18 A His response was ---

19 Q Besides "I want to be relieved," what then happened
20 next?

21 A Well, his body language, you know, was -- I had no
22 choice, you know. Basically and verbal language was, you
23 know, I had no choice but to do this. This isn't something
24 that I can choose to or choose not to do. He was basically
25 stating that since he had already gotten everything

1 together -- meaning the solicitors and the transportation
2 to Aiken Department of Public Safety -- that I had no
3 choice but to give a statement. And it didn't matter what
4 I said, I just needed to say something. And in that
5 statement, he did want me to indicate my co-defendants
6 involvement.

7 And I told Mr. Molony that once I got arrested, I
8 request an attorney and if I was gonna give any testimony,
9 that testimony would have been given upon arrest, which it
10 wasn't, so I don't understand what the difference is here
11 today. And he insisted on, you know, I can't leave unless
12 I give a statement, regardless what I say, which led me to
13 give a false complaint [sic] confession.

14 Q Okay. When did you give -- ultimately give that
15 statement?

16 A Roughly 40 minutes to a hour after me and Molony --
17 Mr. Molony had a few exchange of words, you know, while
18 arrival at Aiken Department of Public Safety.

19 Q Okay. So you ended up giving it after this exchange
20 that you just recapped?

21 A Yes.

22 Q All right. Were you under any sort of impression that
23 Mr. Morton was also going to be giving a statement, or were
24 you under the impression that he had already given one?

25 A Well, I was under the impression that he had already

1 given one and that it will be used against me at trial and
2 he will be taking the stand on me at trial if I pleased to
3 go forward with trial.

4 Q Why -- why did you think that?

5 A That's what my lawyer, Mr. Molony, advised me of prior
6 to giving my false complaint [sic] confession.

7 Q All right. Do you recall in any detail what he told
8 you that Mr. Morton was going to say?

9 A I recall him saying that, you know, Mr. Morton had
10 stated I was the one, you know, who pulled the trigger, I
11 was -- basically, my involvement, you know, in the case and
12 certain other -- he -- he explained to me that, you know,
13 he was going to testify on other co-defendants besides me
14 as well, co-defendants such as Trevon Butler.

15 Q Today -- as we sit here today, do you know if Mr.
16 Morton had actually given a statement when you gave a
17 statement?

18 A To -- as today, it is my knowledge that Mr. Morton, in
19 fact, had not given a statement at that time, but it is my
20 knowledge that after I had given my statement -- thinking
21 that Mr. Morton had already given his, but after I had
22 given mine, that Mr. Morton did ultimately give a
23 statement, but it came later on.

24 Q Okay. Had -- had you known that Mr. Morton had not --
25 assuming that's true, had you known that Mr. Morton had not

1 yet given a statement and had you -- would you have ever
2 made a statement?

3 A That was -- giving a statement was never my intention
4 regardless, you know. And at that time I did, I was under
5 the impression that he had given a statement. And if he
6 haven't [sic], if I wasn't under that impression, I
7 wouldn't have gave [sic] a statement ultimately. But if he
8 did or if he haven't, I had already insisted and told Mr.
9 Molony numerous of times that I was going to trial and I
10 wasn't going to give a statement.

11 Q Going back to the letter just marked as Exhibit 1,
12 when you signed that letter, was anyone else around?

13 A There wasn't.

14 Q Okay. Do you recall if Mr. Molony was there or Mr.
15 Hayes was there ---

16 A Well ---

17 Q --- or anyone like that?

18 A Once I did sign the letter, Mr. -- me and Mr. Molony
19 was the only two present.

20 Q Okay. Did you want that letter to go to Mr. Morton?

21 A I never intended on this letter being, you know, put
22 together. I had no knowledge of it. But due to the fact
23 that Mr. Molony told me this is a mere suggestion, it
24 didn't matter, you know, if it was presented to Mr. Morton
25 because before a testimony would be given, I was under the

1 impression that we'd become on common grounds for
2 understanding purposes.

3 Q Let me -- let me ask you a question: Had you not been
4 approached with this letter that's dated October 22, 2015,
5 do you think you would have entered a plea or would you
6 have gone to trial?

7 A If I never would have been presented this letter and
8 coerced and manipulated to give a false complaint [sic]
9 confession, I never would have entered a -- I -- I didn't
10 even enter a plea of guilt. I never would have went
11 forward with a plea of guilt hearing. That proceeding
12 never would have been about. I never would have gave [sic]
13 a confession because that was never an intention or a
14 thought on my behalf.

15 So once this did come about, as I stated before, it
16 was a suggestion for ---

17 Q For the meeting.

18 A --- Mr. Morton. This wasn't something to happen. It
19 was just a suggestion and which I never got a response from
20 Mr. Morton. I never got a response from Mr. Morton's
21 lawyer stating that, you know, we're gonna do this or we're
22 gonna, you know, schedule a meeting for us to -- to come to
23 a common understanding or you know, how this is gonna play
24 out. I never got a response for anyone's [sic].

25 So even after the signature of this letter, I still

DIRECT EXAMINATION BY MR. BOOZER - LEON SIMMONS

25

1 had no intentions on giving any kind of confession until
2 that happened, and that never happened. So I never
3 intended on giving a confession.

4 Q Okay. Had you known that Mr. Morton had not given a
5 statement when you gave a statement, would you have given
6 one?

7 A I would have not.

8 Q Okay. And had you not given a statement, would you
9 have instead insisted on a trial as you had been set to do?

10 A Correct.

11 Q Okay. Now, is this -- does this kind of go along with
12 your allegation that you felt like your lawyer manipulated
13 you into entering a plea, or are there other things that
14 kind of back that up that you feel like?

15 A This is one. There are other inquiries that led up to
16 me stating my lawyer manipulated me ---

17 Q Well, let's talk about that.

18 A --- to plead guilty.

19 Q Why do you feel like your lawyer manipulated you into
20 entering a plea?

21 A Well, Mr. Molony -- as -- as I stated to him numerous
22 of times I wanted to go to trial, he had stated to me that
23 I had a hearing coming up with the judge, and it was to
24 basically state whether I was going to trial or whether I
25 was going to enter a plea of guilt. And to my

1 understanding or -- and to my knowledge at that time, I'm
2 thinking it's an arraignment, you know, it's a final
3 arraignment basically to let the judge know ---

4 Q Are you talking about the day of the plea, November
5 12?

6 A Right.

7 Q Okay.

8 A And that date was never given. A date was never
9 given. He just stated that I had a hearing coming up to
10 state to the judge whether I was gonna plead guilty or I
11 was gonna go to trial. And even after that false complaint
12 [sic] confession, my intentions on him and -- was still to
13 go to trial.

14 And out of the blue, you know, without my knowledge of
15 a hearing, I was called out of my cell again to the Aiken
16 County Courthouse that I had a court hearing. And in my
17 mind, you know, I had never went in front of the judge to
18 admit was I going to trial or was I going to take a plea
19 until, you know, my first and second appearances, which was
20 in 2013. So once he did bring that up, I'm assuming that
21 that's what I was attending.

22 While -- in court on November 12, 2015, upon arrival
23 and in a brief with Mr. Molony, Mr. Molony handed me
24 sentencing sheets on a negotiated plea of 30 years. At
25 that time, I told Mr. Molony that I never negotiated nor

DIRECT EXAMINATION BY MR. BOOZER - LEON SIMMONS

27

1 did he never negotiate with me or my family members or me
2 and my co-defendants the terms of a 30-year plea or a plea
3 hearing proceeding. That was Monday, November 12.

4 I then told Mr. Molony that I would not sign 30-year
5 sentencing sheets, that we did not discuss this, and I
6 still insisted on going to trial.

7 That day court was cancelled. We then went back to
8 court November 15, that Thursday or Wednesday, and that's
9 when we actually proceeded with a plea hearing. And at
10 that time, again, I told Mr. Molony, you know, the
11 sentencing sheets was checked "negotiated," when I had no
12 knowledge about a plea of guilt. I had no knowledge about
13 30-year guilty plea being that in that same year, a few
14 months prior to the month of November, in July, Mr. Bill
15 Weeks, our solicitor, offered me and my co-defendants a 30-
16 year guilty plea which was denied.

17 So at this date, November 12 and November 15, I had no
18 knowledge about a negotiated plea of 30 years because I had
19 already denied a plea of guilt.

20 Q And -- and there was a 30-year offer before you had
21 even made any statement.

22 A Yes. There was a 30-year plea that was offered before
23 any confessions from me and Morton was given, and that plea
24 was denied.

25 Q Now, at the actual plea, of course, the Court asked

1 you and Mr. Morton a number of questions. Do you recall
2 that?

3 A I do recall.

4 Q Okay. Obviously, you responded, of course, that you
5 were guilty of -- of the crimes; is that your recollection?

6 A I responded with "by the advice of Mr. Molony" because
7 me and Mr. Molony had a few exchange of words that Monday,
8 and I told him I'm not -- I'm not signing sentencing sheets
9 for 30 years because I'm -- I -- my thought and assumption
10 was that it was an arraignment, not a plea hearing. And
11 while I'm here, I'm being served sentencing sheets meaning
12 I had already been sentenced, which I had no knowledge
13 about.

14 So leading up to the actual plea hearing on the 15th,
15 prior to the hearing, Mr. Molony, you know, had a brief.
16 And at that time, basically he advised me of everything to
17 say, you know. All the questions that the judge would ask,
18 he advised me how to answer. So every question that was
19 asked by Mr. Judge Early at that time was only answered by
20 the advice of Mr. Kevin Molony.

21 And at that time, he was promising me certain things
22 that I presented to him for defense at trial. He was
23 promising me that we would present those things after the
24 hearing's over. We'd present those things, you know, once
25 the hearing was over. We're just gonna get this out of the

DIRECT EXAMINATION BY MR. BOOZER - LEON SIMMONS

29

1 way. Say "yes, sir." Agree to everything. Just going
2 ahead and get this hearing out the way, and then we're
3 gonna deal with the certain defenses that you had.

4 And at that time, I had no knowledge that once the
5 hearing was over, Mr. Molony won't be my lawyer any more.
6 I didn't have knowledge of that. I didn't have knowledge
7 that once this hearing's over, I would be appointed to
8 someone else and it would be other legal steps to take. He
9 didn't mention that.

10 Q Like what?

11 A Such as the hearing that we're at today, PCR hearing.

12 Q Okay.

13 A At that time -- and once the hearing was over, I did,
14 you know, request that Mr. Molony file a motion for
15 reconsideration. I did request that Mr. Molony, you know,
16 file a motion for a direct appeal. And I do understand
17 that a guilty plea kind of defeats the purpose of a direct
18 appeal, but I do understand that once a direct appeal is
19 mentioned from a defendant and requested amongst a lawyer,
20 he can be filed ineffective for not filing one. And as the
21 Court's has [sic] stated, no appeal of any kind was made on
22 my behalf.

23 Q Okay. Let's -- let's talk about your other allegation
24 in detail to make sure we got everything that you feel like
25 your lawyer didn't investigate or pursue defenses. Explain

1 that a little bit.

2 A Well, I have certain evidence in my Rule 5 such as co-
3 defendants statements, such as witness statements, and if
4 I'm not mistaking [sic], statements from Mr. Molony himself
5 that states that -- quote page 36 in my plea hearing
6 transcript, he stated to Judge Early that the events on May
7 28, 2013 -- this is his -- what he quoted (as read): "I
8 think the State would agree that it wasn't the intention
9 and the evidence would have shown at trial that it wasn't
10 the intention of these kids to go into this house and kill
11 anyone."

12 At that time of the hearing, you know, that was Mr.
13 Molony's statement and it's evidence that -- physical
14 evidence, autopsy reports, trajectory angles of the
15 bullets, gunshot residue found on only the victim palm of
16 his hands, and other things that implements [sic] a lesser
17 included charges or implements the non-guilt of murder
18 because it's certain requirements that we do know that
19 murder is, such as malice and -- and intention of kill.
20 And it's evidence that states and supports the exact
21 opposite of that. And one of those statements is Mr.
22 Molony's.

23 Q Let -- let me ask you this: With regard to your
24 lawyer failing to prepare for trial, you had indicated --,
25 you know, for approximately two -- two years, you were

DIRECT EXAMINATION BY MR. BOOZER - LEON SIMMONS 31

1 indicating your desire to go to trial. You had, in fact,
2 turned down a plea offer. During that time period, what
3 exactly had you and Mr. Molony done to prepare for a trial?

4 A At that time, Mr. Molony hadn't done anything. Since
5 Mr. Molony has been appointed to me, I've always suggested
6 certain things for a trial defense, and in return, Mr.
7 Molony never had given me a defense. He never supported
8 any of my reasons on going to trial. And on his behalf, he
9 never prepared any defense, to my knowledge, that he showed
10 me and discussed with me about going to trial or preparing
11 for trial.

12 Q Okay. Mr. Simmons, obviously this is your day in
13 court. You filed this PCR application which we've amended.

14 I -- I think that we've covered all of your
15 allegations, but I want to make sure. Is there anything
16 that we have not discussed regarding your PCR case or how
17 your plea was involuntarily entered or your lawyer was
18 ineffective that we have not gone over?

19 (Brief pause.)

20 A There isn't, but at this time, I would like to state
21 that if it wasn't, you know, for his unprofessionalism and
22 for his advice only and his doing only, I would have
23 insisted and I would have went [sic] to trial.

24 Q Okay. Please answer any questions the State may have
25 for you.

1

CROSS-EXAMINATION

2

BY MS. COLEMAN:

3

Q Mr. Simmons, it was your idea to give a statement,
4 wasn't it?

5

A It was not.

6

Q Okay.

7

A Only be advice of my lawyer.

8

Q But you signed this letter that your attorney wrote
9 for you. You signed it to Brian Morton, your co-defendant,
10 that said, "I'm about to tell the entire truth about the
11 events to law enforcement and cooperate with them," right?

12

A No -- no, ma'am. I'm assuming you have the wrong
13 perspective of that. That was a mere suggestion. That
14 wasn't an action to take place.

15

Q You had no idea ---

16

A Only to take ---

17

Q --- this was going to be sent to Brian?

18

A I did know that was gonna be suggested to Brian, not
19 something to be put in place unless certain things happened
20 prior to a testimony being given from either ---

21

Q And you were given ---

22

A --- one of us.

23

Q Excuse me. You were handed this letter that says (as
24 read): "I do intend to cooperate with investigators and
25 tell the entire truth," and you signed it, right?

CROSS-EXAMINATION BY MS. COLEMAN - LEON SIMMONS

1 A Correct. I did.

2 Q Okay. And then you wrote on it. In your handwriting
3 on the bottom there -- do you have a copy of this -- or do
4 you recall --

5 A Yeah. I have a copy of it.

6 Q Okay. Your handwriting is on the side. Is that your
7 handwriting?

8 A It is.

9 Q And it says (as read): "We're gonna see where this
10 takes us, Bro. It don't look good," right?

11 A That is my handwriting.

12 Q Okay. Why did you write that?

13 A By advice of my lawyer, and as I stated before, this
14 is something that was to be suggested to Mr. Morton. This
15 wasn't an action to take place. I was not planning on
16 giving any statements unless certain things happened prior
17 to a statement being given.

18 Q Because y'all -- you said you wanted to get together
19 and decide what you're gonna testify and what you're not
20 gonna testify.

21 A No. If -- if actually we were gonna go through with a
22 testimony, as I stated numerous of times, this is a
23 suggestion.

24 Q Right.

25 A This isn't something to take place. It was a

CROSS-EXAMINATION BY MS. COLEMAN - LEON SIMMONS

1 suggestion to Mr. Morton. It was a suggestion to me, which
2 he already knew how I felt upon giving any kind of
3 testimony or to proceed with any kind of admission of
4 guilt.

5 Q And you did give a statement to law enforcement,
6 right.

7 A Only by advice and coerce of Mr. Molony.

8 Q And you testified that statement was false; is that
9 right?

10 A A false complaint confession [sic].

11 Q Okay. So it was a lie.

12 A It was a lie based upon the facts that my co-
13 defendants had already presented.

14 Q Okay. So your co-defendants had already given
15 statements, right?

16 A Mr. Isaac and Mr. East had only given statements.
17 Those are the only two.

18 Q And they were both going to testify against you at
19 trial, right?

20 A No. Because Mr. East, in fact, went to trial. I was
21 assuming that -- and to Mr. Molony's advice -- that their
22 statements would be submitted as evidence, and the State
23 would be able to call them as a witness on those
24 statements.

25 Q Okay. And then Brian Morton gave a statement, right?

CROSS-EXAMINATION BY MS. COLEMAN - LEON SIMMONS

1 A Correct.

2 Q Okay. And the State had text messages that they
3 intended to introduce at trial; is that right?

4 A Correct.

5 Q Do you remember what those text messages were?

6 A At this time, I do -- I -- I don't.

7 Q Okay. Did those have anything to do with your
8 decision to plead guilty or give a statement?

9 A They did not because at that time, I don't -- I don't
10 recall if the messages -- the knowledge of the messages was
11 before or after the confession. But I was aware that the
12 way the evidence was obtained was unlawfully
13 unconstitutional, not on my behalf, but from the person
14 that they was [sic] confiscated behalf.

15 So at that time, my plan was to continue to go to
16 trial and to actually file motions to have that evidence
17 disclosed and dismissed because the unlawful
18 unconstitutional way it was obtained.

19 Q Okay. So let's go to your guilty plea, the day of
20 your guilty plea. You chose to plead guilty, correct?

21 A By advice of Mr. Molony.

22 Q Okay. And during the guilty plea, the judge asked you
23 if you had any complaints about your attorney, and you said
24 no, you were totally satisfied with him, right?

25 A Only by the advice of Mr. Molony.

CROSS-EXAMINATION BY MS. COLEMAN - LEON SIMMONS

1 Q Because the judge asked you if you were satisfied and
2 you were under oath, sworn to tell the truth. Why didn't
3 you say "no," you weren't satisfied?

4 A Because at that time, Mr. Molony did advise me that
5 certain things would take place after the hearing. So I
6 thought those things would take place. I didn't have any
7 knowledge that he won't be my attorney once the hearing was
8 over. And by his advice and his advice only, I answered
9 those questions the way I did.

10 Q And you told the plea court that nobody was
11 threatening you or promising you anything to plead guilty,
12 right?

13 A Correct. By Mr. Molony advice.

14 Q Okay. You said you didn't need any more time to think
15 about it before you pled guilty, right?

16 A Yes, by Mr. Molony's advice.

17 Q Okay. And you apologized to everybody on the record,
18 didn't you?

19 A I did apologize to the Court and my co-defendants on
20 the behalf of the time that has been wasted and the energy
21 and the feelings and emotion that was involved.

22 Q All right. And you apologized to the victim's family
23 and you apologized to your family and everybody else and
24 your attorney, right, didn't you?

25 A Yes, I did. By his advice as well.

DIRECT EXAMINATION BY MR. BOOZER - BRIAN MORTON

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1 Q He told you to do that?

2 A He told me to do as everything I did.

3 Q Okay. Thank you. No further questions.

4 THE COURT: Any redirect?

5 MR. BOOZER: No redirect, Your Honor.

6 THE COURT: All right. Thank you, sir. You can step
7 down.

8 (The witness complies.)

9 MR. BOOZER: Your Honor, we call Brian Morton to the
10 stand.

11 BRIAN MORTON, having been first
12 duly sworn, testifies as follows:

13 COURT CLERK: Have a seat in the witness chair, and
14 state your full name.

15 THE WITNESS: All right. Brian Morton.

16 DIRECT EXAMINATION

17 BY MR. BOOZER:

18 Q Mr. Morton, how you doing today?

19 A I'm doing all right.

20 Q Okay. Mr. Morton, my name's Lance Boozer and I
21 represent Leon Simmons in his post conviction relief
22 application. Okay?

23 A All right.

24 Q Okay. Mr. Morton, have I ever spoken to you?

25 A No.

1 Q You're represented in your PCR application by Ms.
2 Kristy Goldberg?

3 A Yes, sir.

4 Q All right. Have you had enough time to speak with Ms.
5 Goldberg about your case and about testifying today?

6 A Yes, sir.

7 Q Okay. Do you need to speak with her any further?

8 A No, sir.

9 Q Okay. Mr. Morton, has anyone asked you or promised
10 you anything to get you to appear here today to testify?

11 A No, sir.

12 Q All right. So you're doing this of your own volition,
13 your own free will.

14 A Correct.

15 Q Okay. Mr. Morton, where are you currently
16 incarcerated?

17 A At Lee County Correctional Institution.

18 Q For what?

19 A For murder, burglary first, and armed robbery.

20 Q All right. What type of sentence did you receive?

21 A A 30-year negotiated concurrent sentence or murder,
22 burglary first, and armed robbery.

23 Q Okay. And did you have some co-defendants?

24 A Yes, sir.

25 Q Who were they?

1 A It was Leon Simmons, Rashawn Isaac, Markese East, and
2 Trevon Butler.

3 Q All right. When were you arrested?

4 A I was arrested May 29, 2013.

5 Q May 29, 2013?

6 A Yes, sir.

7 Q And then your plea ended up being in November of 2015?

8 A Yes, sir.

9 Q Okay. Let's -- let's nail down some dates here.
10 Between the time you were arrested and October -- we'll say
11 October of 2015 --

12 A Okay.

13 Q -- have you ever given any sort of statement to law
14 enforcement either implicating yourself or implicating Mr.
15 Simmons in this case?

16 A No, sir.

17 Q All right. Who represented you for your plea?

18 A David Hayes.

19 Q All right. Was it your intention when you were being
20 represented by Mr. Hayes to have a trial in this case?

21 A Yes, sir.

22 Q All right. And you're actually challenging your --
23 your plea; is that not correct?

24 A Yes, sir.

25 Q All right.

1 MR. BOOZER: Now, may I approach the witness, Your
2 Honor?

3 THE COURT: Yes, sir.

4 Q Mr. Morton, I'm going to hand you a copy of a document
5 that's been marked Exhibit 1. If you would just take a
6 moment and take a look at that for me, and just let me know
7 when you're done.

8 (The witness complies.)

9 A I'm done.

10 Q All right. Do you recognize the document that's been
11 marked Exhibit 1?

12 A Yes, sir.

13 Q All right. And it appears to be a letter dated
14 October 22, 2015, to you from Leon Simmons, but typewritten
15 on Mr. Molony's letterhead. Did you receive a copy of
16 that?

17 A Yes, sir. I did receive a copy of that from David
18 Hayes.

19 Q All right. When did you get that copy from Mr. Hayes?

20 A On this date right here.

21 Q On that exact date, on October 22?

22 A Yes, sir.

23 Q All right. When you got that letter from Mr. Hayes --
24 when you got this from Mr. Hayes, what was your
25 understanding of it?

1 A Well, my understanding at this time, with Kevin Molony
2 present, was that this was supposedly came from Mr.
3 Simmons, and that, you know, from -- from what it said, you
4 know, that was gonna happen. And -- and before then, you
5 know, I believe we were trying to get -- get a visit
6 between us so we can -- we can discuss anything about the
7 upcoming trial, you know, that's what we was telling --
8 well, that's what I was telling Mr. Hayes and Mr. Molony.

9 Q All right. So you were talking to Mr. Hayes and Mr.
10 Molony, and y'all were -- you were talking about trying to
11 get together with Mr. Simmons?

12 A Correct.

13 Q Did that ever happen?

14 A No, it's not -- it did not happen.

15 Q Okay. Ultimately, did you end up giving a statement?

16 A Yes, by the advice -- under advice of counsel.

17 Q Okay. When did -- do you know when you gave that
18 statement?

19 A It was October the 28, 2015.

20 Q When you gave a statement on October 28, 2015, were
21 you under the impression that Mr. Simmons had already given
22 a statement?

23 A Yes. That -- that's what I was told.

24 Q Okay. Who told you that?

25 A Mr. Hayes.

1 Q All right. Do you now, as we sit here today in 2018,
2 whether Mr. Simmons had initially given a statement or
3 whether you actually were the first one to give a
4 statement?

5 A I do not know at all.

6 Q Okay. Did you want to actually give a statement or
7 no?

8 A No, sir. No, sir.

9 Q All right. Why did you end up giving one?

10 A Due to the -- the -- the -- the promises and the
11 threats of my attorney, explaining that I would receive
12 life. And also that I have a lot of evidence against me
13 because co-defendants was gonna testify against me.

14 Q Was that including Mr. Simmons?

15 A Yes, sir.

16 Q Okay.

17 A And yeah, that's about it.

18 Q To -- to your knowledge, was Mr. Simmons ever going to
19 testify against you?

20 A No, sir.

21 Q Okay. Other than this letter and your conversations
22 with your lawyer and Mr. Molony, were you ever gonna
23 testify against Mr. Simmons?

24 A No, sir.

25 Q And the statement that you gave was not true.

DIRECT EXAMINATION BY MR. BOOZER - BRIAN MORTON

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1 A Correct.

2 Q Okay.

3 MR. BOOZER: Beg the Court's indulgence, Your Honor.

4 (Brief pause.)

5 Q Mr. Morton, you -- you pled guilty the same day that
6 Mr. Simmons did?

7 A Yes, sir.

8 Q How did you become aware of that plea date?

9 A I was not aware. I think -- believe on that Monday,
10 on the 12th of November, 2000 -- 2015, I was received some
11 sentencing sheets when we came to court. And that's how I
12 was known of the plea.

13 Q Okay. Did -- you didn't know that you were going up
14 that day to actually ---

15 A No.

16 Q --- plea?

17 A No, I did not.

18 Q Did you have any idea why you were going up there that
19 day?

20 A No, I did not.

21 MR. BOOZER: Thank you, Mr. Morton.

22 THE WITNESS: All right.

23 THE COURT: Any questions from the State?

24 MS. COLEMAN: Just briefly, Your Honor. Thank you.

25

CROSS-EXAMINATION

1 BY MS. COLEMAN:

2 Q Mr. Morton, you testified your statement that you gave
3 to law enforcement was false; is that right?

4 A Correct.

5 Q So you lied on your statement?

6 A Under the advice of counsel, I was told to give the
7 same statement that my co-defendants gave, to fill the
8 shoes of what I was already placed in.

9 Q Okay. Did you actually commit this crime?

10 A No, sir. I mean, no, ma'am.

11 Q So you lied at your guilty plea?

12 A From -- under advice of counsel..

13 Q Okay. You told the Court that you were guilty of this
14 crime, but you weren't, right?

15 A Under advice of counsel.

16 Q Okay. Nothing further. Thank you.

17 THE COURT: Anything further from this witness?

18 MR. BOOZER: Nothing further, Your Honor.

19 THE COURT: Thank you, sir. You can step down.

20 (The witness complies.)

21 MR. BOOZER: No further witnesses on behalf of the
22 applicant.

23 THE COURT: Ms. Coleman?

24 MS. COLEMAN: The State calls Kevin Molony.

25 KEVIN MOLONY, having been first

CROSS-EXAMINATION BY MS. COLEMAN - BRIAN MORTON

45

1 duly sworn, testifies as follows:

2 COURT CLERK: Have a seat in the witness chair, and
3 state your full name.

4 THE WITNESS: Kevin Nicholas Molony. It's M-o-l-o-n-
5 y.

6 DIRECT EXAMINATION

7 BY MS. COLEMAN:

8 Q Mr. Molony, how long have you been practicing law?

9 A Seven and a half years, I guess.

10 Q And where are you currently employed?

11 A I'm in private practice here in Aiken, in my own
12 private practice.

13 Q Where were you employed before that?

14 A I was actually on my own at that point as well.

15 Q Okay. Were you appointed or retained to this case?

16 A I was appointed on September 16 of 2014. I do believe
17 there was some sort of conflict with Andy Smith, who was
18 Public Defender -- was initially representing Mr. Simmons
19 and then he moved. So I don't know -- I don't remember
20 which one it was, if there was a conflict or his moving.

21 Ultimately, September 14 -- or September 16 of 2014,
22 is when I was appointed.

23 Q Okay. So how long did you represent him before his
24 guilty plea?

25 A A little over a year.

1 Q How many times do you think you met with the Applicant
2 during this time?

3 A I was probably at the jail around 15 or so times, 10
4 to 15. I'm not -- not sure.

5 Q Did you file any Rule 5 or *Brady* motions?

6 A All that had been done. So all the discovery was
7 handed over me. I did -- you know, through the order from
8 the Court appointing me -- you know, received any future
9 Rule 5 pursuant to Andy's -- Andy Smith's initial request.
10 So ...

11 Q Did you review the discovery materials with the
12 Applicant?

13 A I did.

14 Q Okay. And was there new evidence coming to you
15 throughout the course of your representation, or did you
16 get it all up front?

17 A No. There was certainly new evidence coming as
18 recently as -- you know, up until October, right prior to
19 the guilty pleas actually.

20 Q Did Mr. Simmons indicate to you that he wished to go
21 to trial on these charges?

22 A For the majority of the time, yes.

23 Q Were you preparing for a trial?

24 A Yes, I was.

25 Q Okay. What would your -- well, what were the -- the

1 facts as the State was alleging?

2 A Ultimately that Mr. Simmons and two others entered a
3 home here in Aiken County, that there was an inside man at
4 the time who was kind of providing information as to who
5 was in there, how much money, were there any guns, et
6 cetera; that they -- they were ultimately trying to get
7 money to go to senior week.

8 The next morning two -- three of the defendants, I
9 guess, gave statements. Two gave statements that would
10 have implicated directly Mr. Simmons. He and I went
11 through their statements at length, one of which -- one of
12 the co-defendants was pretty air tight. It was -- it was --
13 - you know, we had our -- our plan.

14 The other had given multiple statements. I believe it
15 was Markese East. So I do believe we would have had a, you
16 know, strong likelihood of being able to at least challenge
17 his credibility, you know, at trial.

18 So up until October, it was certainly -- Leon's plan
19 was to -- was to go to trial, which is what I'd been doing
20 for the previous however many months.

21 I -- there was an offer made in July, and July 13 is
22 when the offer was withdrawn. That same day I did get Leon
23 a bond and he never bonded out, but there was a bond
24 entered at that point. And from that point on, we were
25 preparing for trial. I think the State -- I don't know if

1 they had necessarily determined whether or not they were
2 going to try he and Mr. Morton together or separately. But
3 the plan, until October, was trial.

4 Q Okay. Did the Applicant ever admit his guilt to you
5 before the plea, I guess?

6 A Yes, he did.

7 Q Okay. When was that?

8 A It was after we received the phone records. When I
9 took the case over, Mr. Andy Smith had -- had mentioned to
10 me, you know, this case is a plea. And he had spoken,
11 obviously, with Mr. Simmons at length.

12 When I took it over, I -- I certainly felt I owed it
13 to Leon that you don't tell me anything -- let me have the
14 opportunity to look through this file, which I did. And
15 frankly, I'd -- I'd seen stronger cases for the State in
16 these sorts -- you know, with -- with what he was looking
17 at.

18 So while we were picking through the evidence
19 together, we did not get into -- I didn't ask Leon
20 necessarily what -- what -- what happened.

21 And then we received the phone records, and everything
22 changed, in Leon's mind certainly.

23 Q What were the phone records you're referring to?

24 A Yeah. So on October 13 of 2015, I received the
25 records from the State which was obviously a significant

1 time after they -- they actually took the phones.

2 But from Brian Morton's cell phone, which obviously,
3 there are standing issues there for -- for my client,
4 Leon's phone, which was taken off of him after his arrest
5 was -- they were unable to pull the -- the cell phone data.
6 We -- we received the data from the actual carrier, but the
7 Cellebrite system, which is a machine the City uses -- they
8 can extract all the data from the cell phone, deleted or
9 not deleted. It -- it was unable to do it with Leon's
10 phone.

11 Well, we received Morton's information on October 13,
12 extremely damning evidence in my opinion and in Leon's
13 opinion at that point, from the -- two of their cell phones
14 communicating the night of the murder and burglary and et
15 cetera.

16 Q Now, you mentioned a moment ago there were standing
17 issues for your client. Can you explain that a little
18 more? Did you have any plans to file a motion to suppress
19 this information?

20 A Well, I -- you know, as it -- as it relates to the
21 information that came from Brian Morton's cell phone, we
22 would have a difficult time.

23 Q And why is that?

24 A Because Mr. Simmons would have a hard time objecting
25 to anything that wasn't his that he -- in which he did not

1 have standing ultimately.

2 Q Is that because his constitutional protections don't
3 cover the phone of someone else?

4 A Correct.

5 Q Okay. Essentially. Okay.

6 A Specifically the text messages, if -- if I may. I
7 won't get into all of them. There's some choice language
8 here and there.

9 Ultimately what I learned from Mr. Simmons is Trevon
10 Butler was in the home with Brian Morton's cell phone.
11 Trevon did not have his own cell phone. He actually had
12 Brian Morton's phone, which matches up with what was said
13 through the text messages.

14 Leon Simmon's cell phone was texting back and forth.
15 The times match directly up with the other portions of the
16 State's evidence, but it -- ultimately, from Mr. Simmon's
17 phone to Brian Morton's phone, roughly an hour, hour and a
18 half before the actual crime took place, Leon Simmons's
19 cell phone states, "Yes. We've got the shotty, 9, and
20 rifle. It might gotta be a three man thing if there's a
21 lot of blanks in there."

22 It continues to go down. It is a very damning time
23 line from the phone taken off of Mr. Simmons the day after
24 the murder, and from his cell phone, in which he'd already
25 -- we'd already received the records from, but again, the

DIRECT EXAMINATION BY MS. COLEMAN - KEVIN MOLONY

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1 information did not come from the -- that extract. It did
2 from the search warrant returned from Mr. Morton's phone.

3 Q Okay. What was the Applicant's reaction after
4 receiving these text messages?

5 A I believe I actually even typed them out, and so -- so
6 it wouldn't have the full report. I brought the full
7 report, but to make it easier to read and understand -- and
8 his reaction was, "Oh, s-word."

9 And it -- it was -- I -- he knew at that point that
10 the party was over from the standpoint of it only being two
11 cooperating co-defendants in which we could try to shoot
12 holes in their statements. Now it's his cell phone,
13 texting with a man inside the house, explaining exactly
14 what they were about to do; and then afterwards, talking
15 about -- texting with Brian Morton, asking if he was good.
16 Brian Morton says, "Yes. But they found a shirt out
17 there." Leon Simmons's phone says, "They found a shirt?"
18 Brian Morton, "Yes. That's what I been told." Leon
19 Simmons: "It ain't ours." Brian Morton: "I know."

20 So not only do we have connections between the two
21 before exactly -- explaining exactly what was gonna happen,
22 exactly what it was like inside the house per the pictures
23 and per the other -- the testimony from the defendants, the
24 text messages were -- I prosecuted for five years, I guess.
25 Tried multiple types of these cases. These were -- this

1 was extremely damning evidence at this point.

2 And at that point, I think his exact question was:

3 Where do we go from here.

4 Q Okay.

5 MS. COLEMAN: Your Honor, may I approach the witness?

6 THE COURT: Yes, ma'am.

7 MS. COLEMAN: Thank you.

8 Q Do you have a paper copy of those text messages in
9 your file?

10 A I -- I -- the applicable ones, I do. The reports are

11 --

12 (The witness hands documents to Ms. Coleman.)

13 Q Thank you.

14 A These are the highlighted ones there.

15 Q Do you mind if I make a copy of this?

16 A No.

17 Q Okay.

18 A And here's some more.

19 Q Thank you. Okay. You've just handed me some
20 documents from your file. I'm going to see if we can get
21 Madam Clerk to make a copy for us at some point.

22 But these are documents that came from your file; is
23 that correct?

24 A That's correct.

25 Q Okay. And I'll show a copy to opposing counsel who

1 may have an objection.

2 MS. COLEMAN: But Your Honor, at this time I would
3 move to introduce this as the State's Exhibit 1 as
4 discovery evidence that came from plea counsel's file.

5 MR. BOOZER: Court's indulgence, Your Honor.

6 THE COURT: Yes, sir.

7 (Ms. Coleman hands documents to Mr. Boozer and a brief
8 pause follows.)

9 MR. BOOZER: Your Honor, on behalf of my client, I
10 would object. Obviously, there's no one here from the cell
11 provider to authenticate the records. It just says
12 numbers. I have no idea who's numbers are. I would submit
13 that this is clearly hearsay. I would object to the
14 introduction.

15 THE COURT: I'll sustain the objection.

16 MR. BOOZER: Thank you, Your Honor.

17 Q I'll hand those back to you (hands documents to the
18 witness.)

19 And in referring to those text messages, I really need
20 to ask you about them in terms of this was evidence you
21 received from the State. This is something that you and
22 your client discussed and considered in your -- in his
23 decision to plead guilty; is that right?

24 A Absolutely. Yes, ma'am.

25 Q Okay. What were your discussions with him regarding

1 his choice to go to trial or plead guilty after you
2 received these messages?

3 A I -- I mean, I -- again, immediately after going
4 through these messages, he knew that the likelihood of
5 success at trial was next to none. I went through and
6 tried to describe different options as to what I thought we
7 could try to do in order to -- in any way potentially help.
8 If -- remember how the testimony is so far, the offer of 30
9 -- negotiated 30 expired in July, the same day that I got a
10 bond for Mr. Simmons. Okay.

11 So I knew that at that point, you know, he had already
12 basically told them what he had done through these text
13 messages, that it was in his best interest if we could, if
14 he wanted, right.

15 His main concern was Mr. Morton. Obviously the two
16 are really close friends. Leon and Mr. Morton played
17 football together, which we had tons of conversations about
18 through all the time I spent with Leon, was he was a great
19 -- he was a great athlete, great student. And his concern
20 was that Morton would be upset with him or vice versa.
21 Wanted to make sure they were on the same page, as he
22 testified to ultimately.

23 The jail, obviously, is not going to let two co-
24 defendants in a murder case go and sit down and discuss
25 things together. So in an effort to try to do what he

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1 wanted me to do, which was ultimately make sure that Brian
2 knew what was going on, I wanted to put it in writing as --
3 for this reason, actually, sitting here today.

4 What the letter says is exactly what he wanted me to
5 say. And there was some -- some indication at that point --
6 -- again, this was after the cell phone data was returned.
7 And I don't remember what, necessarily, if it was a
8 conversation or -- between Dave Hayes and I or if there was
9 some -- I really do not remember. But there was some
10 indication that Mr. Morton was willing to cooperate should
11 -- should Leon and vice versa. But there was no doubt at
12 that point that Leon was going to cooperate.

13 And -- and he wanted to make sure that Mr. Morton knew
14 the letter was from him. In an effort to do so, these
15 pictures were put on, which I did. I ran back to the
16 office and just said how do I -- how can I make sure this
17 is from him. I asked Leon what his nickname was, what they
18 -- and 5 was in parenthesis at the bottom per Leon's
19 request. And then Leon hand wrote on there exactly what
20 was going on in his mind at that point, which was (as
21 read): "It doesn't look good." This is basically based
22 off these text messages between their two phones that were
23 just received week -- a week prior. So ...

24 Q So was it your understanding at this time that Leon
25 intended to give a statement and cooperate with law

1 enforcement?

2 A Absolutely. Yes.

3 Q Was this a mere suggestion to Mr. Morton as -- as Mr.
4 Simmons testified today?

5 A It was exactly what he signed.

6 Q Okay.

7 A That -- that was why we -- and ultimately did it that
8 way was there are no questions as to what was going on at
9 that point because that's what was in the letter as to Leon
10 planning on cooperating with investigators and planning on
11 providing a statement about the truth of the events that
12 took place.

13 Q Okay. In your opinion or based on your discussions,
14 did you think Mr. Simmons was going to give a statement
15 even if Mr. Morton didn't?

16 A Yes. I -- it was not in lieu of Mr. Morton providing
17 a statement. Again, very damning evidence that he was
18 aware of from the cell phone records. His plan at that
19 point was to cooperate, to do the best we could.

20 And -- and I don't remember specifically my,
21 conversations with him after this -- after his statement to
22 law enforcement or not. I want to say that I told him the
23 best I can do at this point is if you cooperate, right,
24 that gives me something, if nothing else, to stand in front
25 of the Court to try to get either your -- the negotiated

1 sentence back on the table or to do better, but it doesn't
2 hurt at this point if this is what you decide to do. It
3 can only help at least my -- opportunity for me to try to
4 lessen -- lessen the blow.

5 Q Do you recall the date that Mr. Simmons gave his
6 statement or how far after this letter was ---

7 A I do not.

8 Q Okay. Do you recall if Mr. Morton had given a
9 statement before Mr. Simmons?

10 A No, I do -- I do not.

11 Q Okay. Did you ever tell Mr. Simmons that Mr. Morton
12 had already given a statement?

13 A Not that I recall. I -- I -- it just -- at that point
14 it wasn't -- it wasn't anything that we had discussed any
15 further, but ultimately the -- the knowledge -- the purpose
16 of the letter, as far as Leon was concerned, was to let --
17 make sure that Mr. Morton was aware of what was going on.

18 Q Okay. Did you ever promise him anything or threaten
19 him in order to make him give the statement?

20 A No, I did not.

21 Q Before the guilty plea, did you review the Applicant's
22 constitutional rights with him?

23 A I did, at length.

24 Q Did he seem to understand that discussion?

25 A Yes. I actually went to the jail, went through it

1 all, and as he -- as he testified. I -- I went through
2 everything, as I do in all my cases with my client, to let
3 them -- make sure they're not surprised by anything the
4 judge asks.

5 I think we had 30-something members of his family here
6 that day. So the fact of it being an arraignment or a
7 hearing, it was made very clear as to what was going on. I
8 spoke with his father at my office the week prior and the
9 week of. So I was in communication with both the family
10 and obviously Leon prior to the -- the guilty plea.

11 Q Did you agree with Mr. Simmons's decision to plead
12 guilty?

13 A Yes, I did.

14 Q Do you still agree with that decision?

15 A Yes, ma'am, 100 percent.

16 Q Nothing further. Thank you.

17 THE COURT: Mr. Boozer.

18 MR. BOOZER: Thank you, Your Honor. If it pleases the
19 Court.

20 CROSS-EXAMINATION

21 BY MR. BOOZER:

22 Q How you doing?

23 A Hey. Good, buddy.

24 Q Good. Going back to the July 2015 plea offer
25 discussion --

1 A Yeah.

2 Q I think you had testified that it was withdrawn. Was
3 that something that was withdrawn or was it something that
4 he declined? Was it withdrawn ---

5 A He -- he -- he declined ---

6 Q --- or did he decline.

7 A --- and -- and the time had run. You with me? Yes.
8 He did not accept the plea offer.

9 Q Okay. So he -- he declined it and indicated he wanted
10 a trial.

11 A Correct.

12 Q Okay. And it was pretty much -- he was in trial mode
13 this entire time. That was at least his indication to you?

14 A A long with bond mode there for a little while. But
15 yes, hand in hand, bond mode and trial mode was where we
16 were headed at that point.

17 Q Okay. Fast forward to the October 22, 2015, letter.
18 Do you still have a copy of it?

19 A Yeah. I got the original.

20 Q Just taking a look at that, sort of -- did you come up
21 with this language and introduce it to Mr. Simmons, or did
22 y'all have a meeting, talked about, you went back to your
23 office and prepared it? How did that work?

24 A Honestly, I don't remember. I know that as far as the
25 actual language itself, the nuts and bolts of what he

1 wanted me to -- to relay to Mr. Morton is exactly why I did
2 the letter. The two of them could not meet. Okay. The
3 jail does not -- would not allow it. They couldn't sit
4 down and come up with whatever -- they couldn't discuss it.

5 So in an effort to try to relay what information I
6 could from him to Mr. Morton, I did -- I did exactly at the
7 point -- at that point in time what he told me to do, and
8 in as far as putting these football pictures on to make
9 sure that Mr. Morton knew it was coming from his buddy, his
10 teammate.

11 Q Let -- let me ask you this: On the -- there's a
12 specific line in there. It's basically the second sentence
13 (as read): "I'm doing so with the understanding you will
14 also be cooperating and telling the truth to
15 investigators."

16 A Right.

17 Q Why that language? Was he -- were you guys under the
18 impression that, in fact, Mr. Morton had already said,
19 "Hey, I'm telling -- I'm going to make a statement," or was
20 this something y'all kind of just put in there on your own?

21 A I -- I really don't remember. There would have been
22 some indications at that point that I would have -- that I
23 would have provided Leon that our understanding was that he
24 was going to be giving a statement, right, that one was --
25 and if I remember correctly, the -- through -- through Dave

1 Hayes, there was a conversation ultimately that my -- my
2 client wants to cooperate, but won't unless yours does.
3 And that was ultimately the same thing Leon told me.

4 And so at some point it was, okay, we're gonna be able
5 to put this in with -- with him signing it, allowing me to
6 -- to translate that from Leon to Mr. Morton in a way that
7 at least there's proof that is exactly what he wanted to
8 say.

9 Q So if I'm hearing what you're saying correctly, it was
10 -- your understanding was that each client was under the
11 impression that the other one was gonna cooperate. They
12 would only do so if the other one did.

13 A My impression was that both -- both were worried about
14 the other from -- from a not wanting to hurt the other's
15 feelings to -- to -- to making sure that they were on the
16 same page, right. And -- and without being able to pass
17 notes and things in the jail, this was the best I could do.

18 I can tell you that at the time of those text messages
19 what Leon's plan was -- 'cause that's all I can test -- you
20 know, ultimately testify to -- is Leon's plan was he's
21 going to cooperate and plead guilty.

22 So this wasn't -- this wasn't -- there was not a
23 question in here for Mr. Morton to respond to. This was
24 him telling him what he was gonna do, and that was exactly
25 what was going on in actuality at that time between --

1 Q But going back to kind of what you were saying, he
2 wasn't going to do it if it upset Mr. Morton.

3 A No. He -- he didn't want to upset Mr. Morton without
4 letting Mr. Morton know that he was doing it, if that makes
5 sense. He was -- he was doing it one way or the other.
6 But in an effort to try to make sure that Mr. Morton knew
7 what was happening -- and again, this isn't I'm telling
8 different stories or this -- I'm going to tell the truth
9 about what happened to investigators. And -- and with both
10 of them, this new idea of "maybe it's in our best interest
11 to cooperate," again, is directly related to these text
12 messages.

13 Q Do you -- do you know exactly when Mr. Simmons gave
14 his statement?

15 A I do not.

16 Q Do you know when Mr. Morton gave his statement?

17 A I don't. No, other than what they testified to today.

18 Q Do you know whether one was before the other or --

19 A I mean, it had to have been one before the other
20 because it's the same detectives that, you know, did both
21 interviews.

22 And as far as Leon's interview itself, I remember it.
23 I don't remember there being any issues for 45 minutes.

24 What I do remember is at one point asking if I can
25 speak to my client alone, and at that point, the detective

1 walked out. Mr. Simmons was, as he testified to, providing
2 information as to his involvement in it. And would not
3 provide any -- any statements as to Trevon Butler's
4 involvement, who was the individual inside the house,
5 right.

6 I wanted to make sure that my client knew at that
7 point that that would probably be extremely helpful
8 information, the truth, to provide the State if he wanted.

9 He decided he did not want to give any information
10 about anybody else, which was up to him. But he needed to
11 know that I felt like that could help him some by just
12 being completely truthful as opposed to just what he did.

13 So if there was any conversation, it would have been
14 about that specifically.

15 Q When the day came to make the statement, I guess --

16 A Uh-huh.

17 Q -- did you set all that up, or how did that come
18 about?

19 A I -- I don't know. I mean, obviously at the time this
20 letter took place; however, the -- I'm sure I would have
21 told them, yeah, he's -- he's wanting to make a statement.
22 But I don't remember who set it up or where.

23 Q Do you remember when he arrived, I guess, to wherever
24 the statement was ultimately given --

25 A Uh-huh.

1 Q -- if he had some surprise about what he was doing
2 there?

3 A No, not at all.

4 Q Okay.

5 A In fact, he was pretty adamant, right at the
6 beginning, is that he was going to be there and he was
7 going to tell them exactly what he -- he did; and then the
8 main thing was he was not gonna -- going to rat on Trevon
9 Butler who was inside the house. And he was adamant about
10 that, and he didn't in the end.

11 Q Following the plea, did you have any interaction,
12 either by letter or telephone or in person, with Mr.
13 Simmons?

14 A Yeah. I -- and you know, this -- at some point -- and
15 I'm trying to think. The -- the plea was November. I
16 remember writing him a letter, you know, at -- throughout
17 this whole time, I'd -- I'd gotten pretty close with Leon
18 and his family, frankly, and -- and remember writing him.
19 I don't remember exactly. I think I had a picture, some
20 pictures of football stuff, I think a girl he was dating at
21 the time, some Bible verses maybe. Just kind of letting
22 him know that I was thinking about him, praying for him
23 type deal. I -- I really don't remember the nuts and bolts
24 of it.

25 Q Sure. Would that have been prompted by a letter from

1 Mr. Simmons to you?

2 A I don't remember. I remember getting one back from
3 him where he was alleging that I colluded with the State,
4 where he was alleging all kinds of things. And so I
5 responded to that one simply by saying I -- I actually have
6 that. I disagree with -- with, you know, your remarks in
7 your last letter. I will provide you all the information
8 you've requested, good luck to you, type of deal. I
9 realized at that point the friendship was over, you know,
10 if there was one. I was a little naive, I reckon.

11 Q Did y'all ever have any discussion about any sort of
12 motion to reconsider or appeal?

13 A No.

14 Q Okay.

15 A No. Not that I remember. I -- I don't know if I took
16 it upon myself at some point to file a notice of appeal. I
17 -- I don't remember. But I never talked to Leon about
18 appealing anything. In fact, when we left, he was happy as
19 somebody could be leaving a guilty plea to murder, you
20 know.

21 THE COURT: Do you have anything further, Mr. Boozer?

22 MR. BOOZER: Nothing further, Judge.

23 THE COURT: All right. Any -- anything further from
24 this witness?

25 MS. COLEMAN: Nothing further.

1 THE COURT: All right. Thank you, sir.

2 THE WITNESS: Thank you.

3 THE COURT: You can step down.

4 THE WITNESS: Thank you, Judge.

5 (The witness complies.)

6 MS. COLEMAN: And the State has no further witnesses.

7 THE COURT: Any reply?

8 MR. BOOZER: Nothing further, Your Honor.

9 THE COURT: All right. I'll need to read everything,
10 so I'll take this under advisement.

11

12 -- END OF TRANSCRIPT OF RECORD --

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CERTIFICATE

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the First Circuit Court, for Aiken County, South Carolina, on the 7th day of May, 2018.

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

E/ BONNIE H. KELLY

Bonnie H. Kelly, CVR
Official Court Reporter

Columbia, South Carolina

August 22, 2018



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October 22, 2015

RE: State v. Leon Simmons
State v. Morton

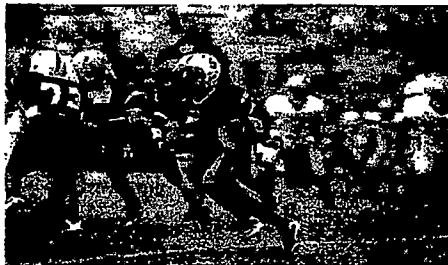
Brian "



":

This letter is to inform you that I do intend to cooperative with investigators and tell the entire truth about the events that took place on May 28, 2013. I'm doing so with the understanding that you will also be cooperating and telling the truth to investigators about the events that took place on May 28, 2013. I think it is in both of our best interest to do so at this point.

I have spoken with my attorney about this letter, and I have given my attorney my consent to show Brian Morton and his attorney, Dave Hayes, this letter.



*We gone see where dis talkes
us Bruh. It dont look good.*

Leon "S" Simmons

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN)	SECOND JUDICIAL CIRCUIT
Leon Simmons, #366048,)	
)	2016-CP-02-1133
Applicant,)	
)	
v.)	ORDER OF DISMISSAL
)	
State of South Carolina,)	
)	
Respondent.)	

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on May 13, 2016. Respondent was served with the application on February 7, 2017, and submitted its Return on October 17, 2017. An evidentiary hearing into the matter was convened on May 7, 2018, at the Aiken County Courthouse. Applicant was present at the hearing and was represented by Lance S. Boozer, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from Brian Z. Morton. Respondent presented testimony from Kevin Molony, Esquire ("Plea Counsel"). This Court had before it the records of the Aiken County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. In November 2013, the Aiken County Grand Jury indicted Applicant for murder (2013-GS-02-1727), armed robbery (2013-GS-02-1728), and first-degree burglary (2013-GS-02-

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1729). The charges resulted from Applicant's involvement in a late-evening home invasion on May 28, 2013, in Aiken County that left a victim dead as a result of three gunshot wounds. (Tr. p. 26). Kevin Molony, Esquire represented Applicant. Deputy Solicitor John William Weeks, Esquire prosecuted the case. On November 12, 2015, Applicant pled guilty as indicted to all charges before the Honorable Doyet A. Early, III. Pursuant to a negotiated sentence, Judge Early sentenced Applicant to imprisonment for thirty years each for murder, armed robbery, and first degree burglary, to be served concurrently. Applicant did not appeal his conviction or sentence.

II. ALLEGATIONS

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

1. Ineffective Assistance of Counsel
 - a. "Applicant received ineffective assistance of counsel prior to and during his plea in violation of his rights pursuant to the 6th Amendment and 14th Amendment to the U.S. Constitution, as well as Article I of the U.S. Constitution."
 - b. "Judgment and sentence against Applicant were in violation of his rights to due process law and assistance of counsel."
2. Involuntary Guilty Plea
 - a. "Applicant's pleas of guilty were not voluntarily and intelligently entered."
 - b. "Counsel failed to provide client effective assistance of counsel prior to and during his guilty plea proceeding. Applicant's pleas of guilt were coerced by counsel's failure to provide adequate representation."

Applicant filed an amended application on January 10, 2018, adding the following allegations:

- (a) Applicant believes he was misled to believe a co-defendant was entering a statement against him, ultimately prejudicing his case.
- (b) Applicant believes counsel manipulated Applicant into entering plea.
- (c) Applicant believes counsel failed to investigate and pursue possible defenses and otherwise present or review legal challenges to evidence.
- (d) Applicant alleges counsel failed to prepare for trial.

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III. SUMMARY OF RELEVANT TESTIMONY PRESENTED

Applicant's testimony

At the evidentiary hearing, Applicant testified he had four co-defendants in this case. He stated he was arrested on May 29, 2013, and his original attorney, Andy Smith, was appointed three months later. He stated Mr. Smith represented him at his preliminary hearing, but he was later relieved as counsel, and Kevin Molony, Plea Counsel, was appointed to represent him. He testified he met with Plea Counsel a total of five times. Applicant testified he told Plea Counsel he wanted a trial, but Plea Counsel never progressed in preparing for a trial, but kept suggesting a guilty plea instead. He stated Solicitor Weeks offered a plea deal for a thirty year sentence that would require them all to testify to their involvement in the crime, but he rejected the offer. He said he did not give a statement to law enforcement before this, and he did not intend to give one.

Applicant testified Plea Counsel brought him a letter addressed to his co-defendant, Brian Morton, in October of 2015 after they had had some discussion about the possibility of him giving a statement to law enforcement. The letter was introduced into evidence as Applicant's Exhibit One. Applicant stated he told Plea Counsel he was not giving a statement, and he did not ask Plea Counsel to put this letter together and had no knowledge that it was put together to send to Morton. He stated the letter was meant to be a mere suggestion, and he did not really mean what the letter said. Applicant testified that his condition was that in order for him to give a statement, all of them—he, Plea Counsel, Morton, and Morton's attorney—would meet to discuss what they were going to testify. He stated he made this request to Plea Counsel and Plea Counsel told him the meeting would take place, but it did not. Applicant stated he was then transported downtown to give a statement, but he did not know why he was being transported at the time.

Applicant testified Plea Counsel told him he would not represent him at trial if he did not give a statement, so Applicant gave a false confession to law enforcement. Applicant stated he gave a statement only because Plea Counsel told him that his co-defendant, Brian Morton, had already given a statement, but in reality he had not yet given his statement. Applicant stated he never intended to give a statement, and he would not have given one if he did not think Morton had already given one. He stated that if Plea Counsel had not presented him with the letter to Morton and coerced him, he would not have pled guilty. Applicant testified he still intended to go to trial even after he gave his false statements, but Plea Counsel had done nothing to prepare for a trial and had never discussed a defense for trial with him.

Brian Morton's testimony

Brian Morton testified at the evidentiary hearing that he was Applicant's co-defendant, and he pled guilty at the same time as Applicant. He stated he was represented on his pending PCR action by an attorney who was present and had spoken to him before he chose to testify. He stated that, before the guilty plea, he received a copy of the letter from Applicant on October 22, 2015. He stated he thought they were all going to meet together to discuss giving statements, but they never did. Morton testified that when he gave his statement to law enforcement he was under the impression that Applicant had already given a statement. He stated he only gave his statement because of the promises and threats his lawyer made to him. He stated his statement to law enforcement and the testimony he gave at the plea were false.

Plea Counsel's testimony

At the evidentiary hearing, Plea Counsel testified that he was appointed to this case on September 16, 2014 after Andy Smith was relieved due to a conflict. He stated he met with Applicant ten to fifteen times at the jail, and he did review the discovery with him. He stated they

were getting new evidence continuously up until the trial date, as recently as October before the plea. Plea Counsel testified that there were multiple co-defendants in this case, and three of them gave statements to law enforcement; two of those statements implicated Applicant in the crime. He stated that Applicant admitted his guilt to him after they received the cell phone records from the State, which showed Applicant text messaging his codefendants to plan the armed robbery.

Plea Counsel testified he was preparing the case for trial, and he would have proceeded to trial if Applicant had chosen to. He stated Applicant wanted a trial up until October, and their strategy was to impeach the co-defendant's testimony based on the multiple different statements Markese East had given. Plea Counsel testified that everything changed in October when they received the cell phone records. He stated the records showed text messages sent from Morton's cell phone, and he would have trouble arguing that he had standing to move to suppress based on an any illegal search or seizure because it was not Applicant's phone. Plea Counsel opined that the text messages were extremely damaging evidence because they showed Applicant and his codefendants planning the robbery and accidental murder of the victim. He stated Applicant knew it was all over after he saw the State had this evidence.

Plea Counsel testified that, in light of the evidence against Applicant before he gave his statement, their likelihood of success at trial was next to none. He stated the plea offer they were given previously had expired in July, but he knew that he might be able to negotiate a new offer from the State if Applicant agreed to give a statement of his involvement in the crime to law enforcement. He testified that Applicant and Morton were friends and had played football together in high school, and Applicant wanted to let Morton know he was going to give a statement, but he was concerned Morton would not believe a letter was coming from him. Plea Counsel stated there was no way both co-defendants would be allowed to meet together in the

jail, so he wrote the letter to Morton because it was what Applicant wanted to tell him. He stated he got personal information from Applicant to use in the letter to show it was truly sent from Applicant, such as the pictures of the two in their high school football uniforms.

Plea Counsel testified the letter was not intended to be a question, but it was Applicant telling Morton what he was going to do—give a statement to law enforcement. He stated Applicant was going to give a statement one way or another, but he wanted Morton to know what he was going to do. Plea Counsel testified Applicant was not surprised when they took him to give his statement because he was adamant that he would give a statement.

Plea Counsel testified he reviewed Applicant's constitutional rights before the guilty plea, and it was Applicant's decision to plead guilty, which he agreed with. He stated there was no discussion following the plea about filing a motion to reconsider the sentence or an appeal of the plea, and Applicant was happy when he left the guilty plea hearing.

IV. APPLICABLE LAW

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must

overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty pleas, the applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

As a matter of general impression, this Court finds Applicant's testimony to be not credible. In contrast, this Court finds Plea Counsel's testimony to be credible. These findings apply to the specific findings laid out below.

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant alleges Plea Counsel was ineffective in his representation surrounding his guilty plea. 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).

After considering the testimony, judging the credibility of the witnesses, and reviewing the materials presented to the court, this Court finds Applicant has failed to meet his burden in proving Plea Counsel was ineffective in any regard. Plea Counsel credibly testified he reviewed the discovery with Applicant and prepared the case for trial until Applicant chose to plead guilty. This Court finds Applicant's testimony that Plea Counsel told him he would not represent him if he went to trial to be not credible. The testimony presented at the evidentiary hearing shows Plea Counsel investigated the case and was preparing a defense for trial based on the inconsistencies in the co-defendant's statements, and this Court finds credible Plea Counsel's testimony that the State's evidence against Applicant was strong and their likelihood of success at trial was low, which led to Applicant's choice to plead guilty.

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This Court finds credible Plea Counsel's account of the letter sent from Applicant to Morton. Applicant was aware of the letter and chose to send it to inform Morton of his decision to give a statement to law enforcement, regardless of whether Morton chose to give a statement or not. Applicant has failed to present any credible evidence that he was coerced or tricked into giving a statement to law enforcement or pleading guilty. Plea Counsel's representation conformed with reasonable professional norms and was not ineffective in any regard.

This Court finds Plea Counsel's representation and advice was reasonable under the circumstances and nothing he did was outside the scope of reasonable professional norms. Plea Counsel thoroughly investigated the case and fully represented his client and advised him based on his best interests in light of the evidence against him, which was to plead guilty. Accordingly, Applicant has failed to prove that Plea Counsel was deficient or that he would have gone to trial but for these deficiencies, and post-conviction relief is denied.

INVOLUNTARY GUILTY PLEA

Applicant alleges his guilty plea was not given freely and voluntarily. This Court finds otherwise and concludes Applicant's plea was entered freely and voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights 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)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of

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such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S. Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

Applicant alleges he was coerced into pleading guilty because his attorney tricked him into giving a statement to law enforcement. The record and Plea Counsel's testimony clearly show Applicant was not threatened, forced, or coerced to give a statement or to plead guilty. This Court finds very credible Plea Counsel's testimony that he thoroughly discussed the evidence, the statement, and his option to plead or go to trial with Applicant and he was prepared to argue a defense if Applicant chose to proceed to trial, which he did not wish to do. It was clearly Applicant's decision to plead guilty after receiving the very damaging evidence of the records of his text messages with Morton planning the crime.

At the guilty plea, the plea court asked Applicant if anyone had threatened him or promised him anything to get him to plead guilty, and Applicant responded "No, sir." Tr. 14, line 24. Applicant testified at the plea hearing that he was satisfied with his attorney and he did not need more time to consider his decision before pleading. Tr. 15, line 6; Tr. 22, line 8; Tr. 21, line 16. Applicant has failed to prove he was coerced into pleading guilty and would have gone to trial otherwise.

Notably the South Carolina Supreme Court has held "[a] guilty plea represents a break in the chain of events which has preceded it in the criminal process." Id. (citations omitted). "When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the

deprivation of constitutional rights that occurred prior to the entry of the guilty plea." Id. (citing Rice, 401 S.C. at 332, 737 S.E.2d at 486). This Court finds Applicant has not presented any credible evidence that he should be allowed to depart from the truth of the statements he presented to the plea court. Therefore, this Court finds the plea court correctly found Applicant's plea was freely, voluntary, and intelligently made. Accordingly, this allegation must be denied and dismissed.

VI. CONCLUSION

Based on all the foregoing, this Court finds and concludes that 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.

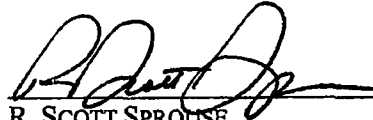
This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

[signature page to follow]

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 1 day of June, 2018.



R. SCOTT SPROUSE
Presiding Judge
Second Judicial Circuit

Waltham, South Carolina

ELECTRONICALLY FILED - 2018 Jun 11 2:35 PM - AIKEN - COMMON PLEAS - CASE#2016CP0201133

WITNESSES

Aiken Department Of Public Safety

David E Savage

Law Enforcement Case #: 13-31768

DOCKET NO. 2013GS0201727

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2013

ARREST WARRANT NUMBER

FILED Oct 31 2013
2013A0220100526

Lisa Godard

C.C.P. & G.S.

Sherry Langley **SS**
Deputy Clerk

THE STATE

vs.

LEON JACOB SIMMONS

ACTION OF GRAND JURY

TRUE BILL

Ronnie M. Hall

Foreperson of Grand Jury

Date: October 31, 2013

VERDICT

CDR #: 0116

Indictment for

MURDER

§ 16-03-0010

Foreperson of Petit Jury

Date:

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

INDICTMENT FOR
MURDER

§ 16-03-0010

At a Court of General Sessions, convened on November 4, 2013, the Grand Jurors of Aiken County present upon their oath:

That **LEON JACOB SIMMONS**, along with others, did in Aiken County on or about May 28, 2013, feloniously, wilfully and with malice aforethought, then and there kill and murder [REDACTED] by means of shooting and that the victim did die in Aiken County at [REDACTED] Aiken South Carolina as a proximate result thereof on May 28, 2013. All 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 case made and provided.


J. STROM THURMOND, SOLICITOR

WITNESSES

Aiken Department Of Public Safety

David E Savage

Law Enforcement Case #: 13-31768

DOCKET NO. 2013GS0201728

The State of South Carolina

County of Aiken

JWW

COURT OF GENERAL SESSIONS

ARREST WARRANT NUMBER

FILED

Oct 31

20 13

NOVEMBER TERM 2013

2013A0220100527

Liz Godard

C.C.R.&G.S.

Shawn Langley

Deputy Clerk

THE STATE

vs.

LEON JACOB SIMMONS

ACTION OF GRAND JURY

TRUE BILL

Ronnie M. Hall

Foreperson of Grand Jury

Date: October 31, 2013

CDR #: 0139

Indictment for

VERDICT

ARMED ROBBERY

§ 16-11-0330(A)

Foreperson of Petit Jury

Date:

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

INDICTMENT FOR
ARMED ROBBERY

§ 16-11-0330(A)

At a Court of General Sessions, convened on November 4, 2013, the Grand Jurors of Aiken County present upon their oath:

That **LEON JACOB SIMMONS**, along with others, did in Aiken County on or about May 28, 2013, while armed with a deadly weapon or while alleging either by action or words that he was armed while using a representation of a deadly weapon or an object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, to wit: a handgun and/or rifle, feloniously take from the occupants of the household by means of force or intimidation goods or monies of said occupants, such goods or monies being described as follows: Xanax and personal items, all in violation of §16-11-330, Code of Laws of South Carolina (1976), as amended.

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


STROM THURMOND, SOLICITOR

WITNESSES

Aiken Department Of Public Safety

David E Savage

Law Enforcement Case #: 13-31768

DOCKET NO. 2013GS0201729

The State of South Carolina

County of Aiken

JWW

COURT OF GENERAL SESSIONS

ARREST WARRANT NUMBER

FILED

Oct 31

20 *13*

NOVEMBER TERM 2013

2013A0220100528

Liz Godard

C.C.C.R.&G.S.

Denny Langley

Deputy Clerk

THE STATE

vs.

LEON JACOB SIMMONS

ACTION OF GRAND JURY

TRUE BILL

Ronnie M. Hall

Foreperson of Grand Jury

Date: October 31, 2013

CDR #: 0079

Indictment for

VERDICT

BURGLARY IN THE FIRST DEGREE

§ 16-11-0311

Foreperson of Petit Jury

Date:

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

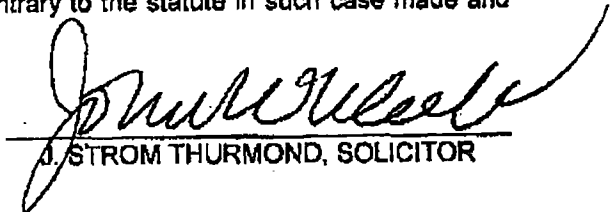
INDICTMENT FOR
BURGLARY IN THE FIRST DEGREE

§ 16-11-0311

At a Court of General Sessions, convened on November 4, 2013, the Grand Jurors of Aiken County present upon their oath:

That **LEON JACOB SIMMONS**, along with others, did in Aiken County on or about May 28, 2013, wilfully and unlawfully enter the dwelling of [REDACTED] located at [REDACTED] Aiken, South Carolina, without consent and with the intent to commit a crime therein and the defendants were armed and entered or remained during the nighttime, all in violation of §16-11-311, Code of Laws of South Carolina (1976), as amended.

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


J. STROM THURMOND, SOLICITOR