

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Aiken County

R. Scott Sprouse, Circuit Court Judge

BRIAN Z. MORTON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001205

APPENDIX

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State of South Carolina
County of Aiken

Court of General Sessions

State	)	
	)	
	)	Transcript of Record
v.	)	2013-GS-02-1737
	)	2013-GS-02-1727
Brian Morton and	)	
Leon Simmons	)	
	)	
<u>Defendants.</u>	)	

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

	I N D E X	
1		<u>WITNESS</u>
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7	(No Witnesses.)	
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E X H I B I T S

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(No Exhibits.)

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P R O C E E D I N G S

* * *

LEON SIMMONS

being first duly sworn, testified as follows:

THE DEFENDANT SIMMONS: Yes, ma'am.

BRIAN MORTON

being first duly sworn, testified as follows:

THE DEFENDANT MORTON: Yes, ma'am.

THE COURT: Good morning, gentlemen.

Mr. Weeks?

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

THE COURT: All running concurrent?

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

THE COURT: All right.

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

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 notwithstanding 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. CrepponBethanie K. Creppon
Circuit Court Reporter

NOTICE OF INTENT TO APPEAL
THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
FROM AIKEN COUNTY.

The Honorable Doyet Early, III

November 19, 2015

Indictment # 2013GS0201737, 2013GS0201738 & 2013GS0201739

THE STATE OF SOUTH CAROLINA -- Respondent

VS.

Brian Morton - Appellant

NOTICE OF INTENT TO APPEAL

Brian Morton pled and was sentenced on November 12, 2015 before the Honorable Doyet A. Early III. He appeals his plea and sentence.


C. David Hayes
Attorney for Defendant

Other Counsel of record is:

John William Weeks
Second Judicial Circuit
P.O. Drawer 3368
Aiken, SC 29802

RECEIVED

NOV 24 2015

SC Court of Appeals

NOTICE OF INTENT TO APPEAL

State of South Carolina

Vs:

Brian Morton - Appellant

2013 GS 02 01737, 2013 GS 02 01738 & 2013 GS 02 01739

RECEIVED

NOV 24 2015

SC Court of Appeals

CERTIFICATE OF SERVICE

I, Lekehia Hammond, do hereby certify that I have this day served the original of Appellate's Notice to Appeal upon the South Carolina Court of Appeals, and copies of Appellate's Notice of Intent to Appeal to the Clerk of Court of Aiken County, and to J. Strom Thurmond, Solicitor, Second Judicial Circuit, by placing same in the United States Mail properly addressed and with correct postage affixed thereto:

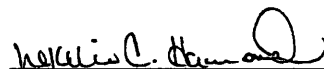
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

South Carolina Commission
Of Appellate Defense
P. O. Box 11589
Columbia, SC 29211

Clerk of Court
Aiken County Judicial Circuit
Post Office Box 583
Aiken, SC 29802

The State of South Carolina Office of the Solicitor
Second Judicial Circuit
Post Office Box 3368
Aiken, SC 29802

Dated this 19th day of November, 2015



Lekehia C. Hammond
Secretary to Appellant's Attorney
Post Office Drawer 2247
Aiken, SC 29802
803-642-1732

Public Defender for the Second Judicial Circuit

410 Barnwell Avenue N.W.

Post Office Drawer 2247

Aiken, South Carolina 29802

(803)642-1732 Office (803)642-1739 Fax

November 19, 2015

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NOV 24 2015

SC Court of Appeals

South Carolina Commission
On Indigent Defense
Attention: Lorie French
P. O. Box 11589
Columbia, SC 29211

RE: NOTICE OF INTENT TO APPEAL

Brian Z. Morton

2013 GS 02 01737, 2013 GS 02 01738 & 2013 GS 02 01739

Dear Mrs. French:

Please find enclosed copies of Notice of Intent to Appeal, Indictment 2013 GS 02 01737, 2013 GS 02 01738 & 2013 GS 02 01739 Arrest Warrants 2013 A02 201 00520, 2013 A02 201 00521 and 2013 A02 201 00522, defendant's affidavit of indigency and defendant's sentence sheet.

Brian Morton pled and was sentenced on November 12, 2015 before the Honorable Doyet A. Early III. Mrs. Bethanie Creppon served as the Court Reporter. Her address is P.O. Box 85411 Lexington, SC 29073.

I am available to discuss this case if you so desire.

Sincerely,



C. David Hayes
Assistant Public Defender

LCH:cdr
Enclosure

STATE OF SOUTH CAROLINA

vs.

Brian Z. Morton,

Defendant.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALSIndictment #'s: 2013-GS-02-01737
2013-GS-02-01738
2013-GS-02-01739**RECEIVED**

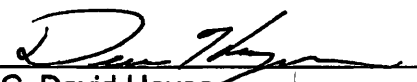
NOV 24 2015

SC Court of Appeals

RULE 203(d)(1)(B)(iv) EXPLANATION

Pursuant to Rule 203(d)(1)(B)(iv), the undersigned asserts that he does not have a good faith basis to believe that any issues are properly before the Court of Appeals, and the undersigned did not object to the sentence or file a motion to reconsider the sentence. Nevertheless, the undersigned consulted with the Appellant about his right to appeal, and after consultation, the undersigned has filed the instant appeal at the request of the Appellant because the Sixth Amendment requires counsel to follow the Appellant's request. *See Frazer v. South Carolina*, 430 F.3d 696, 706 (4th Cir. 2005) ("A defendant has a right to pursue a direct appeal, even if frivolous, which counsel must assist as 'an active advocate on behalf of his client.'" (quoting *Anders v. California*, 386 U.S. 738, 744 (1967))).

Respectfully submitted,


 C. David Hayes
 Aiken County Public Defender
 Post Office Drawer 2247
 Aiken, SC 29802
 (803) 642-1732

 Aiken, South Carolina
 November 19, 2015



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX (803) 734-1839
www.sccourts.org

December 23, 2015

Mr. Charles David Hayes, Esquire
PO Drawer 2247
Aiken SC 29802

Re: The State v. Brian Z. Morton
Appellate Case No. 2015-002612

Dear Counsel:

This Court has received your explanation for appealing.

Please forward your explanation to your client, along with a statement that your client has twenty (20) days from the date of your transmittal letter to inform this Court in writing of any arguable basis that there are issues preserved for appeal. Please provide your client with the Court's address:

South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Please send your letter to your client within ten (10) days, with a copy to this Court, or this appeal may be dismissed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Robert Michael Dudek, Esquire
Alan McCrory Wilson, Esquire
John Benjamin Aplin, Esquire
John William Weeks, Esquire

410 Barnwell Avenue NW
Post Office Drawer 2247
Aiken, South Carolina 29802

RECEIVED

JAN 06 2016

SC Court of Appeals

January 4, 2016

Brian Z. Morton 00366047
Kirkland Reception and Evaluation Center
4344 Broad River Road
Columbia, SC 29210

re: State v. Brian Z. Morton
Appeal Case Number 2015-002612

Dear Mr. Harper:

Under Rule 203(B)(iv) of the South Carolina Rules of Appellate Procedure, an appeal from a guilty plea may be dismissed unless you can identify issues that were preserved for appeal or make a sufficient showing to the Court that there are issues which can be argued on appeal. I do not believe that there were any issues preserved for appeal, however, I did file an appeal since you specifically asked me to do so. The paperwork that I filed is enclosed for your review.

You must now contact the appellate court yourself in writing to advise the Court of any issues you feel you may have on appeal.

You must send a written statement to the South Carolina Court of Appeals within twenty (20) days from the date of this letter to inform the Court of any argument you have that there are issues preserved for appeal. Your statement should include your case number as shown above. The address of the Court is:

South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Wishing you well, I am

Very truly yours,


Charles D. Hayes

/DH

Enclosure:

cc: V. Claire Allen, Deputy Clerk of the SC Court of Appeals

Telephone: (803) 642-1732

Fax: (803) 642-1739

RECEIVED

January 17, 2016
69

JAN 25 2016
SC Court of Appeals

re: State v. Brian Z. Morton
Appeal Case Number
2015-002612

To whom this my concern,

I was advised by my lawyer Charles D. Hayes to inform you all with a written statement explaining issues preserved for an appeal. When I got sentenced to 30 years on November 12, 2016. Judge Early advised me and Leon Simmons, which is one of my co-defendants that was there with me and got sentenced with me in court, that if we was to refuse the plea our trial will start on that following Monday and also the plea would be taken off of the table. He also advised us that we was getting charged with the hands of one hands of all law so if we took it to trial we could get charged with the Max for Murder with the Armed Robbery and the Burglary 1st degree ran concurrent. with it, or we could beat all except one charge and get the max for it, or all the charges could get ran consecutive if found guilty of them all. He also stated that all 5 of us was getting offered the same plea with no charges dropped down. With all that said my conscience was more willing to plea, not to mention the pressure of my lawyer telling me that the State had incriminating evidence on me. Charles D. Hayes told me that if I was to confess and tell the story like it is he would be able to get the Murder dropped down to voluntary manslaughter or involuntary manslaughter, get the Burglary 1st thrown out, and get the Armed Robbery dropped down to Strong Armed Robbery. On October 28, 2015 unknowingly I was taken to Aiken Department of Public Safety to confess prior to my lawyer telling me if I confessed and cooperated he would be able to get the charges dropped down to the above mentioned charges, so I did so. Thirteen days latter once again unknowingly I was taken to General Sessions Court to accept or decline a plea of 30 years for Murder, Armed Robbery, and Burglary 1st. As mentioned before that was not the plea or deal me and my lawyer agreed to. Shortly after me and my lawyer discussed this issue, he advised me that deal has been canceled for some strange odd reason. While in discussion with him he told me, me and my co-defendants were only up there for roll call advising Judge Early if we were going to plea or go to trial, if trial a trial date will be set. He advised me that on that following Thursday, my co-defendants and I would go in front of Judge Early to make a decision to plead guilty or not guilty. So on November 12, 2015 I plead guilty to the above charges.

After pleading guilty one of my co-defendants Rashawn Issac goes to court in December after refusing the plea and get offered another plea of 25 years with the charges Voluntary Manslaughter, Armed Robbery, and Burglary 1st degree. In which he plead to. Then on January 7, 2015 my other co-defendant Markeese East went to trial after refusing both of them pleas, and lost receiving a sentenced of 30 years with the charges Murder, Burglary 1st, and Armed Robbery. I strongly believe that I was forced by my lawyer and the Judge to take the plea. My lawyer failed to uphold the integrity of his profession by failing to fulfill his obligation provided in Rules 1.3, 1.4 of the S.C. Rules of professional conduct by an attorney. I've tried to relieve Charles D. Hayes six times on many occasions for the same overall reasons. He didn't feel confrontation when providing service to me in the preparation of my defense. He never assigned an investigator to seek out material fact in the case or mitigating circumstances. Counsel also misinformed me concerning my options in the case as well as adequate defenses many times. The fact that Judge Early stated that there was not going to be no more pleas offered and the 30 year plea was going to be taken off the table if refused is another reason why I took the plea. But on the other hand my codefendant Issac he refused that same plea on that same day. Then the next month he was offered 25 years with lesser charges which was Voluntary Manslaughter. How could that be when judge Early stated that we all will be charged with the same charges, offered the same plea with no charges dropped, and given the same amount of time to go to trial after refusing the plea. Then Markeese East go to trial in January which is 2 months from November, lose and get the same amount of time I get, the same charges, and I plead guilty off of the words of Judge Early saying that I will get more than 30 years if found guilty of anything at trial. And my co-defendant Trevonne Butler still in the County fighting his case now. I believe I should give at least some of my time back off of these facts not to mention that I didn't kill anyone, confessed to my part, and I'm not guilty as charged based on evidence and confession. The crime does not match the criteria of murder, it was not intentional at all, and it was a struggle over the gun. According to the crime, there was no Burglary 1st. Witnesses stated that it was a party/get together in the house so people can come and go as they please with no permission from the home owner. Also we was let in the house, and after entering the house nothing was damaged. So how could that be burglary? I pray that if the appeal that my attorney filed for me comes in effect with this

letter he told me to write to you all. I have not recieved my sentencing
papers nor my sentencing transcript of November 12, 2015 yet. I told my
lawyer I need it he havnt sent it to me. Thank you for your time and
consideration.

Respectfully Submitted,

Brian Z. Morton

Brian Z. Morton

The South Carolina Court of Appeals

The State, Respondent,

v.

Brian Z. Morton, Appellant.

Appellate Case No. 2015-002612

ORDER

Appellant has failed to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules (SCACR). Accordingly, this matter is dismissed, and the remittitur will be sent as required by Rule 221(b), SCACR.



FOR THE COURT

Columbia, South Carolina

cc:

Robert Michael Dudek, Esquire
Charles David Hayes, Esquire
Alan McCrory Wilson, Esquire
John Benjamin Aplin, Esquire
John William Weeks, Esquire

FILED

June 13, 2016



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11829
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

June 30, 2016

The Honorable Liz Godard
PO Box 583
Aiken SC 29802-0583

REMITTITUR

Re: The State v. Brian Z. Morton
Lower Court Case No. 2013GS0201737, 2013GS0201738, 2013GS0201739
Appellate Case No. 2015-002612

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Brian Z. Morton, 366047
Robert Michael Dudek, Esquire
Charles David Hayes, Esquire
Alan McCrory Wilson, Esquire
John Benjamin Aplin, Esquire
John William Weeks, Esquire

FORM 5

STATE OF SOUTH CAROLINA)

County of Aiken)

Brian Z. Morton #366047)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

2017CP0200591
IN THE COURT OF COMMON PLEAS

FILED 3.14.17

Robert J. White
Clerk of Court
Anita Knoepfle
Deputy Clerk

APPLICATION FOR

POST-CONVICTION RELIEF

S.C. Code Ann. § 17-27-45(A)

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 McCormick, 386 Redemption Way, McCormick, SC 29899
2. Name and location of Court which imposed sentence General Sessions
Aiken County Court of General Sessions
3. Name(s) of co-defendant(s) (if any) Markese East, Leon Simmons,
Reshawn Isaac and Trevor Butler
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013-GS-020-1737 (Murder)
 - (b) 2013-GS-020-1739 (Burglary - first degree)

- (c) 2013-65-020-1738 (Robbery/Armed Robbery)
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) November 17, 2015 / 30 years, concurrent - Murder
- (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~~ Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Remittitur filed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. filed November 19, 2015 (Appeal)
- ii. June 30 2016 (remittitur filed)
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Remittitur ordered
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Counsel
- (b) See Attached Application
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10): See also attached Application
- (a) Appeal Brief filing; failure to review possible defenses;
- (b) lack of communication; failure to disclose evidence; failure
- (c) to interview witnesses and not following through with negotiated plea.
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. _____
- ii. N/A
- iii. _____
- iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

no

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

(a) which grounds have been presented:

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

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

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

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

(a) _____
 (b) was not ripe for review
 (c) _____

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

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

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. David C. Hayes, Esquire, Public Defenders
office, P.O. Box 2247, Aiken SC 29802
 ii. _____
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. arraignment, plea, sentencing and appeal/motion
 ii. _____
 iii. _____

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

vacated conviction and sentence, New Trial

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

no

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Aiken)

I, Brian Zyguize Morton, 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.

X [Signature]

SWORN to and subscribed before me this 13th
day of March, 2017.
[Signature] Michael Camore
Notary Public (L.S.)

My Commission Expires: July 09, 2026

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

I, Brian Zygusie Morton, 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.

X Brian Zygusie Morton
Applicant

SWORN or affirmed to and subscribed before me this

13th day of March, 2017.
Michael Camere
Notary Public

My Commission Expires: July 09, 2026

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Brian Zyquice Morton
Applicant

Case No.

SUMMONS

v.

STATE OF SOUTH CAROLINA

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within sixty (60) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

McCormick, South Carolina

Date: 2/2/17

Brian Zyquice Morton
Brian Zyquice Morton
McCormick Cor Inst
386 Redempt-on Way

STATE OF SOUTH CAROLINA
COUNTY OF Aiken

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Brian Zyquize Morton
Applicant

Case No:

v.

APPLICATION FOR
POST-CONVICTION RELIEF

STATE OF SOUTH CAROLINA

X

Applicant, pursuant to S.C. Code § 17-27-10 et. seq.,
would respectfully show:

1. That Applicant is currently incarcerated at the McCormick Correctional Institution in the county of McCormick, state of South Carolina
2. That Applicant was convicted/sentence at Aiken County Court of General Session, P.O. Box 583, Aiken, S.C. 29802.
3. Markese East, Leon Simmons and Rashawn Isaac are Applicants co-defendants.
4. That Applicant was indicted for the following offenses:
 - a. Murder - 2013-GS-020-1737
 - b. Robbery/Armed Robbery - 2013-GS-020-1738
 - c. Burglary - First degree - 2013-GS-020-1739
 - d. Possession of a controlled substance
5. That Applicant was convicted after a plea of guilty, and judgment was entered against Applicant of thirty (30) years for Murder, Robbery and Burglary.

6. Date sentence was imposed: November 12, 2015.
7. Applicant did file an Appeal November 19, 2015
8. A petition was filed with South Carolina Court of Appeals. The Court affirmed his conviction. Remittitur was filed June 30, 2016.
9. That Applicant incorporates by reference this first application, and seeks post-conviction relief for the reasons set forth herein.
10. That Applicant concisely state the following allegation:
 - a. Ineffective assistance of counsel;
 - b. Failure to review possible defenses;
 - c. Lack of communication;
 - d. Failure to share or explain the evidence;
 - e. Failure to interview witnesses and
 - f. Not following through with the negotiated plea

11. That Applicant states the following facts:

This does arise out of a guilty plea to murder, Burglary - first and robbery, thirty years. Again the claim is ineffective assistance of counsel, lack of communication, failure to share or explain the evidence, failure to interview witness, not following through with negotiated plea.

An interesting thing in this case is that in fact, David C. Hayes (Hayes), during preliminary hearing relied, if you take out whatever confession Applicant made, without the benefit of the evidence has been of Mr. Hayes advising him of the value of that evidence at trial, there was no other evidence other than what Mr. Hayes indicated was his understanding of the

evidence as interpreted by the state, which is kind of interesting.

Applicant would argue that Mr. Hayes was ineffective and that it prejudiced his case. There is a lack of foundation to charge of murder, Burglary and robbery based on the evidence. Applicant relied on Mr. Hayes to interpret that evidence and give him an intelligent platform from which to make a decision. Certainly there was a decision made in this case. The question is whether or not Mr. Hayes afforded him a platform to make that decision before he stood up in front of the bench.

The plea in this case was ignorant because of the admitted lack of communication and also because Mr. Hayes is telling him what the evidence is in this case but Mr. Hayes is going on the interpretation by the State of what the evidence is and not even analyzing it for himself.

It was interesting in this case when Mr. Hayes and counselor oh co dependent baggier Applicant about co-dependent statement and confession; infringing upon lawyer client confidentiality.

There is an element of ignorance in this case leading up to the plea because of the way Mr. Hayes handled this case and admittedly he is an experienced defense attorney handling a lot of cases and the claim in this particular case, the evidence is clear he did not give Applicant a chance because Mr. Hayes didn't give the case the time it needed. Applicant was not charge with petty larceny. Mr. Hayes relied on the State's interpretation. Applicant

contends that his case is due its independent analysis, test that evidence and not rely on what the solicitor say they have.

Any confession which appears to be basically a springboard for Mr. Hayes' determination, as he testified before, had Mr. Hayes investigated, the state may have determined at the very least Applicant was guilty as an accessory after the fact before he even pled, getting in Applicant's mind 'he is guilty' without even testing the evidence. And the claimant would argue to and ask the Court to review this evidence and agree that Mr. Hayes was not only ineffectual, but his ineffectiveness in helping Applicant make a knowing decision before he pled guilty before a judge, that prejudiced his case.

12. That Applicant was represented by David C. Hayes, Esquire, Office of the Public Defender, Post Office Box 2247, Aiken, South Carolina 29802 at his arraignment and plea.
13. That Applicant is not under sentence from any other Court.

Conclusion

For those foregoing reasons, Applicant respectfully submit that the record does not disclose that the Applicant voluntarily and understandingly entered his plea of guilty. Applicant is entitled to relief. This Court should vacate the conviction and sentence,

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEA
SECOND JUDICIAL CIRCUIT

Brian Zyquize Morton
Applicant

VERIFICATION

v.

State of South Carolina

I, Brian Zyquize Morton, 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 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.

Brian Zyquize Morton
Brian Zyquize Morton
#366047
3866 Redemption Way
McCormick, S.C. 29859

SWORN to and subscribed before
me this 2nd day of March 2017
Michael Camore
My Commission Expires: July 09, 2026

Application To Proceed Without
Payment Of Costs And Affidavit
In Suppo + Thereof

I, Brian Zyquire Morton, 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.



Brian Zyquire Morton

#366047

386 Redemption Way
McCormick, S.C. 29849

Sworn to and subscribed before
me this 2nd day of March 2017
 Michael Camarero

My Commission Expires: July 09, 2026

STATE OF SOUTH CAROLINA
County of AIKEN

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Brian Zyquize Morton
Applicant

case no

v

CERTIFICATE OF SERVICE

STATE OF SOUTH CAROLINA

I certify that, on this date, I served a copy of the Post Conviction Relief application in this action, dated: March 2, 2017 by mailing it to: Liz Godard Aiken County Clerk of Court, P.O. Box 583, Aiken, S.C. 29802 and Chief Deputy of Attorney General Office, John McIntosh, Esquire, 1000 Assembly Street Rm 519, Post Office Box 11549, Columbia, South Carolina 29201.



Brian Z. Morton #366047

MCC

386 Redemption Lby
McCormick, S.C. 29859

Liz Goddard
Clerk of Court
P.O. Box 583
Aiken, S.C. 29802

Re. Post Conviction Relief
Application

Mrs. Goddard

Enclosed please find Applicant's Post-Conviction
Relief Application to be filed with this Court.

Please return a docket number copy back for my
files.

Thank you

Brian Z. Morton #366047
MCC
386 Redemption Way
McCormick, S.C. 29579

ARREST WARRANT

2013A0220100520

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

City of Aiken

13-31788

THE STATE
against

Brian Z Morton

Address:

Aiken, SC 29805-

Phone: _____ SSN: _____

Sex: M Race: B Height: 5 9 Weight: 180

DL State: _____ DL #: _____

DOB: 1994 Agency ORI #: SC0020100Prosecuting Agency: Aiken Public SafetyProsecuting Officer: David E SavageOffense: MURDEROffense Code: 116Code/Ordinance Sec. 16-03-0010This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to
defendant Brian Mortonon 5-30-2013 1:30Sgt. Dennis 5971

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Aiken Municipal Court
251 Laurens St., N.W.
Aiken, SC 29801

ORIGINAL

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

City of Aiken

Personally appeared before me the affiant David E Savage whobeing duly sworn deposes and says that defendant Brian Z Mortondid within this county and state on 05/28/2013State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of City of Aiken)

in the following particulars.

DESCRIPTION OF OFFENSE:

MURDER

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts.On or about May 28, 2013 the residence located at 1377 Aldrich Street was entered unlawfully by masked individuals
and was intentionally, willfully shot with malice aforethought to death by one or more of the persons
invading the residence. The undersigned alleges that Brian Morton was one of the four individuals who planned,
executed and committed the Murder, Armed Robbery and Burglary 1st at this residence. Investigation by the Officers
and through statements of co-defendants, indicate that Brian Morton was an active participant in these crimes. Xanax,
phones, and money was stolen from the residence. This crime being in violation of the SC Code of Laws.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

City of Aiken

Affiant's Address 251 LAURENS ST NWAIKEN, SC 29801-Affiant's Telephone (803)642-7620 x 0000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on 05/28/2013 defendant Brian Z Mortondid violate the criminal laws of the State of South Carolina (or ordinance of City of Aiken) as set forth below
☐ County/ ☒ Municipality of

DESCRIPTION OF OFFENSE:

MURDER

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable.

Sworn to and subscribed before me

on 05/30/2013

Signature of Issuing Judge (L.S.)

Judge Code: 005

Judge's Address

Judge's Telephone

Issuing Court

☐ Magistrate☐ Municipal☐ Circuit

ORIGINAL

Form Approved by
S.C. Attorney General
April 27, 2003
SCCA 518

06

BAIL set by
Judge W. J. [Signature]
on 5-30-13
Type and Amount [Signature]
Name of Surety, _____

PRELIMINARY HEARING held by

Judge _____
on _____
Defendant Attorney _____
Decision _____

DISPOSITION before

Judge _____
on _____
by _____
(indicate jury trial, bench trial, plea, nol. pros., etc.)
Disposition _____
Sentence _____

JURORS

WITNESSES

Name _____
Address _____
Telephone _____

Name _____
Address _____

Telephone _____

Name _____
Address _____

Telephone _____

Name _____
Address _____

Telephone _____

Name _____
Address _____

Telephone _____

Name _____
Address _____

Telephone _____

Name _____
Address _____

Telephone _____

Name _____
Address _____

Telephone _____

CODEFENDANTS

COUNTY OF Aiken
STATE VS.
Brian Z Morton
AKA: _____
Race: _____ Sex: M Age: 20
DOB: 1994 SS#: _____
Address: _____
City, State, Zip: Aiken, SC 29801
DL#: _____ SID#: _____

*CDL Yes ☐ No ☒ CMV Yes ☐ No ☒ Hazmat Yes ☐ No ☒
In disposition of the said indictment comes now the Defendant who was
TO: Murder / Murder

INDICTMENT/CASE#: 2013QS0201737
A/W#: 2013A0220100520
Date of Offense: 5/28/2013
S.C. Code §: 16-03-0010; 16-03-0020
CDR Code #: 0116

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

In violation of § 16-03-0010, 16-03-0020 of the S.C. Code of Laws, bearing CDR Code # 0116
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or 1.5wd Act) ☐ §17-25-45

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentation to Grand Jury (defendant's initials)
Details: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

A John W. "Bill" Weeks 5989 SC Bar# Defendant John W. Weeks TT889 SC Bar# Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 days/months/years of ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

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

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Pmb)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)		\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

PT/JP _____ days/hours Public Service Employment

(Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/F beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

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

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, § 47-12 requires \$500 be paid to Clerk during probation.

Clerk of Court/Deputy Clerk Ann Sanders

Court Reporter Bethanie Cheppon

SCCA/217 (03/2011)

Presiding Judge TTB Cook Jr

Judge Code: 0136

Sentence Date: 11/12/15

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 **BRIAN Z. MORTON**, 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 the 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.


STROM THURMOND, SOLICITOR

WITNESSES

Aiken Department Of Public Safety

David E Savage

Law Enforcement Case #: 13-31768

JWW

ARREST WARRANT NUMBER

2013A0220100520

FILED Oct. 31 2013
Dei. Hadard
CC P. & G. S.
Shannon Thompson
Deputy Clerk

ACTION OF GRAND JURY

TRUE BILL

Ronnie M. Hall

Foreperson of Grand Jury
Date: October 31, 2013

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013GS0201737

**The State of South Carolina
County of Aiken**

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2013

**THE STATE
vs.**

BRIAN Z. MORTON

CDR #: 0116

Indictment for

MURDER

§ 16-03-0010

J. STROM THURMOND, SOLICITOR

ARREST WARRANT

2013A0220100521

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

City of Aiken

13-31768

THE STATE

against

Brian Z Morton

Address

Aiken, SC 29805-

Phone

SSN

Sex M Race B Height 5 9 Weight 180DL State SC DL #DOB 1994 Agency ORI # SC0020100Prosecuting Agency Aiken Public SafetyProsecuting Officer David E SavageOffense: ROBBERY/ WHILE ARMED W/DEADLY WEAOffense Code 139Code/Ordinance Sec: 16-11-0330(A)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law

(L.S.)

Signature of Judge

Date

RETURN

A copy of this arrest warrant was delivered to
defendant Brian Mortonon 5-30-2013 1300597 St. Dennis
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Aiken Municipal Court
251 Laurens St., N.W.
Aiken, SC 29801

ORIGINAL

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

City of Aiken

AFFIDAVIT

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 515Personally appeared before me the affiant David E. Savage whobeing duly sworn deposes and says that defendant Brian Z Mortondid within this county and state on 05/28/2013 violate the criminal laws of theState of South Carolina (or ordinance of ☐ County/ ☒ Municipality of City of Aiken)

in the following particulars

DESCRIPTION OF OFFENSE: ROBBERY/ WHILE ARMED W/DEADLY WEAPOI further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following factsOn or about May 28, 2013 the residence located at 1377 Aldrich Street was entered unlawfully by masked individuals
and was intentionally, willfully shot with malice aforethought to death by one or more of the persons
invading the residence. The undersigned alleges that Brian Morton was one of the four individuals who planned,
executed and committed the Murder, Armed Robbery and Burglary 1st at this residence. Investigation by the Officers
and through statements of co-defendants, indicate that Brian Morton was an active participant in these crimes. Xanax,
phones, and money was stolen from the residence. This crime being in violation of the SC Code of Laws.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

City of Aiken

Affiant's Address 251 LAURENS ST NWAIKEN, SC 29801-Affiant's Telephone (803)642-7620 x 0000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on 05/28/2013 defendant Brian Z Morton

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of City of Aiken) as set forth belowDESCRIPTION OF OFFENSE: ROBBERY/ WHILE ARMED W/DEADLY WEAPOHaving found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable

Sworn to and subscribed before me

on 05/30/2013

Judge's Address

Signature of Issuing Judge

(L.S.)

Judge's Telephone

Judge Code: 005

Issuing Court

☐ Magistrate☐ Municipal☐ Circuit

ORIGINAL

BALE set by
Judge Y. H. [Signature]
on 5-30-13
Type and Amount (b) bond
Name of Surety _____

PRELIMINARY HEARING held by

Judge _____
on _____
Defendant Attorney _____
Decision _____

DISPOSITION before

Judge _____
on _____
by _____
(indicate jury trial, bench trial, plea, not pros., etc.)
Disposition _____
Sentence _____

JURORS

WITNESSES

Name _____
Address _____
Telephone _____

Name _____
Address _____

Telephone _____

Name _____
Address _____

Telephone _____

Name _____
Address _____

Telephone _____

Name _____
Address _____

Telephone _____

Name _____
Address _____

Telephone _____

Name _____
Address _____

Telephone _____

Name _____
Address _____

Telephone _____

CODEFENDANTS

COUNTY OF Aiken
 STATE VS.
Brian Z Morton
 AKA:
 Race: Sex: M Age: 20
 DOB: 1994 SS#:
 Address:
 City/State/Zip: Aiken, SC 29803
 DL#: SID#:
 *CDL Yes ☐ No ☒ CMV Yes ☐ No ☒ Hazmat Yes ☐ No ☒
 In disposition of the said indictment comes now the Defendant who was
 TO: Robbery / Armed Robbery

INDICTMENT/CASE#: 2013GSU201738
 A/W#: 2013A0220100521
 Date of Offense: 5/28/2013
 S.C. Code § 16-11-0330(A)
 CDR Code #: 0139

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS 10y → 30y

in violation of § 16-11-0330(A) of the S.C. Code of Laws, hearing CDR Code # 0139
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or 2nd Act) ☐ §17-25-45

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)
 The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEYS: John W. "Bill" Weeks SC Bar# 5989 Defendant Attorney for Defendant SC Bar# 77884

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2013-GS-02-01737
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP
 Total: \$ plus 20% fee: \$

Payment Terms:
☐ Set by SCDPPPS

Recipient:

*Fine:	\$	
§ 14-1-206 (Assessments 107.5%)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.00
TOTAL:	\$	\$ 133.96

Clerk of Court/ Deputy Clerk Ann Sanders
 Court Reporter Bethanie Crepper
 SCCA/217 (03/2011)

Presiding Judge
 Judge Code: 0136
 Sentence Date: 11/2/15

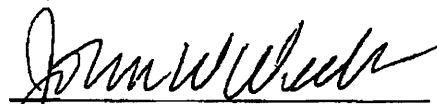
STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

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 **BRIAN Z. MORTON**, 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 person or presence of 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


J. STROM THURMOND, SOLICITOR

WITNESSES

Aiken Department Of Public Safety

David E Savage

Law Enforcement Case #. 13-31768

DOCKET NO. 2013GS0201738

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

ARREST WARRANT NUMBER

Oct. 31, 13

NOVEMBER TERM 2013

2013A0220100521

L. J. Anderson
J.C.C.P. & G.S.
Shannon Thompson
Deputy Clerk

THE STATE
vs.

BRIAN Z. MORTON

ACTION OF GRAND JURY

TRUE BILL

Ronnie M. Hall

Foreperson of Grand Jury

Date: October 31, 2013

VERDICT

Foreperson of Petit Jury

Date:

CDR #: 0139

Indictment for

ARMED ROBBERY

§ 16-11-0330(A)

J. STROM THURMOND, SOLICITOR

ARREST WARRANT

2013A0220100522

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

City of Aiken

13-31768

THE STATE
against

Brian Z Morton

Address

Aiken, SC 29805-

Phone

Sex: M Race: B Height: 5 9 Weight: 180

DL State

DOB: /1994 Agency ORI #: SC0020100

Prosecuting Agency: Aiken Public Safety

Prosecuting Officer: David E Savage

Offense: BURGLARY/burglary (post 6/20/85) 1st degree

Offense Code: 79

Code/Ordinance Sec: 16-11-0311

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of

The accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date

RETURN

A copy of this arrest warrant was delivered to
defendant Brian Morton

on 5-30-2013 1301

Sgt. G. [Signature] 5971 Sgt. Davis
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Aiken Municipal Court
251 Laurens St., N.W.
Aiken, SC 29801

ORIGINAL

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

City of Aiken

AFFIDAVIT

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

Personally appeared before me the affiant David E Savage who
being duly sworn deposes and says that defendant Brian Z Morton
did within this county and state on 05/28/2013 violate the criminal laws of this
State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of City of Aiken)
in the following particulars

DESCRIPTION OF OFFENSE: BURGLARY/burglary (post 6/20/85) 1st degree

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts.

On or about May 28, 2013 the residence located at 1377 Aldrich Street was entered unlawfully in the nighttime by
masked individuals and [redacted] was intentionally, willfully shot with malice aforethought to death by one or more
of the persons invading the residence. The undersigned alleges that Brian Morton was one of the four individuals who
planned, executed and committed the Murder, Armed Robbery and Burglary 1st at this residence. Investigation by the
Officers and through statements of co-defendants, indicate that Brian Morton was an active participant in these crimes.
Xanax, phones, and money was stolen from the residence. This crime being in violation of the SC Code of Laws.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

City of Aiken

Affiant's Address: 251 LAURENS ST NW

AIKEN, SC 29801-

Affiant's Telephone: (803)642-7620 x 0000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe

on 05/28/2013 defendant Brian Z Morton

did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County/ ☒ Municipality of City of Aiken) as set forth below

DESCRIPTION OF OFFENSE: BURGLARY/burglary (post 6/20/85) 1st degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable

Sworn to and subscribed before me

on 05/30/2013

Signature of Swearing Judge (L.S.)

Judge Code: 005

Judge's Address

Judge's Telephone

Issuing Court ☐ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

BAK by
Judge W. J. Jones
on 5-30-13
Type and Amount Denial
Name of Surety _____

PRELIMINARY HEARING held by

Judge _____
on _____
Defendant Attorney _____
Decision _____

DISPOSITION before

Judge _____
on _____
by _____
(Indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition _____
Sentence _____

JURORS

WITNESSES

Name _____
Address _____
Telephone _____

Name _____
Address _____

Telephone: _____

Name _____
Address _____

Telephone _____

Name _____
Address _____

Telephone _____

Name _____

Address _____

Telephone _____

Name _____

Address _____

Telephone _____

Name _____

Address _____

Telephone _____

Name _____

Address _____

Telephone _____

CODEFENDANTS

COUNTY OF
STATE

Aiken

VS.

Brian Z Morton

AKA:

Race:

Sex: M

Age:

20

DOB:

-1994

SS#:

Address:

City, State, Zip:

Aiken, SC 29803

DL#:

SID#:

*CDL Yes ☐ No ☒ CMV Yes ☐ No ☒ Hazard Yes ☐ No ☒

In disposition of the said indictment comes now the Defendant who was

FO: Burglary - First degree

INDICTMENT/CASE#: 2013GS0201739

A/W#: 2013A0220100522

Date of Offense: 5/28/2013

S.C. Code §: 16-11-0311

CDR Code #: 0079

SENTENCE SHEET

☐ CONVICTED OF or☒ PLEADS

in violation of § 16-11-0311 of the S.C. Code of Laws, hearing CDR Code # 0079

☐ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS(CSC
w/minor 1st or Lewd Act)☐ §17-25-45The charge is: ☒ As Indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentation to Grand Jury

(defendant's initials)

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

ATTES:

Weeks, John W. "Bill"

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections,☐ County Detention Center,

for a determinate term of

30

days/months/years or

☐ under the

Youthful Offender Act

not to exceed

years

and/or to pay a fine of \$

provided that upon the service of

days/months/years and/or payment

of \$

probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on.☐ The Defendant is to be given credit for time served pursuant to S.C. Code

§ 24-13-40 to be calculated and applied

by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code

§17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered

PTUP

Total: \$

plus 20% fee: \$

days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

\$

§ 14-1-211(A)(1) (Conv. Surcharge)

\$100

\$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge)

\$100

\$

§ 56-5-2995 (DUI Assessment)

\$12

\$

§ 56-1-286 (DUI Breath Test)

\$25

\$

Proviso 47.9 (Public Def/Prob)

\$500

\$

§ 14-1-212 (Law Enforce. Funding)

\$25

\$ 25.00

§ 14-1-213 (Drug Court Surcharge)

\$150

\$

§ 50-21-114(BUI Breath Test Fee)

\$50

\$

§ 56-3-2942(1) (Vehicle Assessment)

\$40/ea

\$

Proviso 90.5 (SCCA Surcharge)

\$5

\$ 5.00

3% to County (if paid in installments)

\$

\$ 3.90

TOTAL

\$ 133.90

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning

\$ paid to Public Defender fund

Other

☐ Appointed PD or appointed other counsel.§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

0136

11/12/15

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 **BRIAN Z. MORTON**, along with others, did in Aiken County on or about May 28, 2013, wilfully and unlawfully enter the dwelling of [REDACTED] located at [REDACTED] [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

WITNESSES

Aiken Department Of Public Safety

David E Savage

Law Enforcement Case #: 13-31768

DOCKET NO. 2013GS0201739

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2013

ARREST WARRANT NUMBER 2013A0220100522

L. J. Hall
DC C.P. & G.S.
Spencer Thompson
Deputy Clerk

THE STATE
vs.

BRIAN Z. MORTON

ACTION OF GRAND JURY

TRUE BILL

Ronnie M. Hall

Foreperson of Grand Jury
Date: October 31, 2013

VERDICT

CDR #: 0079

Indictment for

BURGLARY IN THE FIRST DEGREE

§ 16-11-0311

Foreperson of Petit Jury
Date:

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Brian Z. Morton, #366047,

Case No.: 2017-CP-02-0591

Applicant,

RETURN

v.

State of South Carolina,

Respondent.

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR") filed on March 14, 2017, 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.

On May 28, 2013, an Aiken County home was invaded by five individuals. Gunshots were fired inside the home and the resident was killed as a result of multiple gunshot wounds. After the victim was shot, the individuals went through the house and took several items, including a few phones and some pills. One defendant eventually was turned in and subsequently gave a statement implicating himself, along with two other individuals, including Applicant. Warrants were then issued, which led to the arrest of Applicant, who immediately denied any involvement in the matter. Further investigation into one of the stolen phones led to the discovery that a friend of the victim was inside the house texting information to the defendants, letting them know the appropriate time to come into the house. Upon further investigation, investigators learned that Applicant was one of the primary individuals who planned the home invasion and even recruited others to get involved with

assigned roles. Applicant eventually gave a videotaped statement implicating himself and two other co-defendants.

In November 2013, the Aiken County Grand Jury indicted Applicant for murder (2013-GS-02-1737), armed robbery (2013-GS-02-1738), and first degree burglary (2013-GS-02-1739). Assistant Public Defender C. David Hayes, 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. Judge Early sentenced Applicant pursuant to a negotiated sentence to imprisonment for concurrent terms of thirty years for each charge.

Applicant filed a timely notice of appeal on November 19, 2015 through Plea Counsel Hayes. However, Plea Counsel also provided an explanation stating that there was a good faith basis to believe that there were no issues properly before the South Carolina Court of Appeals, as Applicant did not object to the sentence or file a motion to reconsider the sentence. The South Carolina Court of Appeals dismissed Applicant's appeal on June 13, 2016, stating that Applicant failed to provide a sufficient explanation for appealing. State v. Morton, Op. No. 2015-002612 (S.C. Ct. App. filed June 13, 2016). The Remittitur was sent on June 30, 2016.

Attached to this Return and incorporated by reference 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 guilty 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 Counsel"
 - a. "Appeal brief filing"
 - b. "Failure to review possible defenses"
 - c. "Lack of communication"
 - d. "Failure to disclose evidence"
 - e. "Failure to interview witnesses and not following through with negotiated plea"
 - f. "Any confession which appears to be basically a springboard for Mr. Hayes' determination, as he testified before, had Mr. Hayes investigated, the State may have determine at the very least Applicant was guilty as an accessory after the fact before he even pled, getting in Applicant's mind "he is guilty" without even testing the evidence."
2. Involuntary Guilty Plea
 - a. "Applicant relied on Mr. Hayes to interpret that evidence and give him an intelligent platform from which to make a decision."

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).

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)).

Respondent 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.

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), SCRPC. 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.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted

leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VI.

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

VII.

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

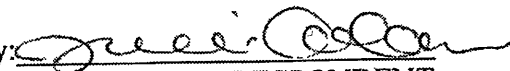
Respectfully submitted,

ALAN WILSON
Attorney General

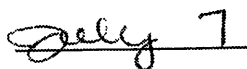
ROBERT BOLCHOZ
Chief Deputy Attorney General

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

 July 7, 2017

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

BRIAN MORTON, #366047)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)
_____)

IN THE COURT OF COMMON PLEAS

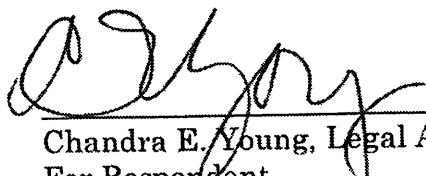
2017-CP-02-0591

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 in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Arthur K. Aiken, Esquire
 2231 Devine St., Ste 203
 Columbia, SC 29205

DATED this 7TH day of July, 2017.


 Chandra E. Young, Legal Assistant
 For Respondent

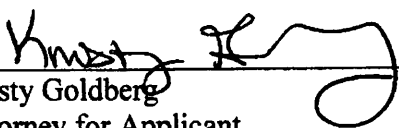
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	
	)	
Brian Z. Morton,	)	2017-CP-02-591
SCDC # 366047,	)	
	)	
Applicant,	)	
	)	AMENDED APPLICATION
v.	)	FOR POST CONVICTION RELIEF
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Based upon further investigation and research, the Post-Conviction Relief Application filed on behalf of the above named Applicant is hereby Amended as follows:

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Ineffective assistance of counsel – counsel failed to adequately advise client regarding all facts and circumstances leading up to advising the Applicant to give a second statement to law enforcement.
- (b) Ineffective assistance of counsel – counsel was ineffective in improperly advising Applicant to give a statement to law enforcement, effectively precluding the Applicant's opportunity to have a meaningful jury trial.
- (c) Ineffective assistance of counsel – counsel improperly coerced Applicant to enter into plea agreement.
- (d) Ineffective assistance of counsel – counsel failed to sufficiently review discovery materials with client.
- (e) Ineffective assistance of counsel – counsel failed to sufficiently explain charges to client.
- (f) Ineffective assistance of counsel – counsel failed to investigate and interview potential witnesses.
- (g) Ineffective assistance of counsel – counsel informed Applicant that he would receive a plea offer to voluntary or involuntary manslaughter after giving statement to law enforcement.

- (h) Ineffective assistance of counsel – counsel failed to object to the fact that the Applicant was charged as a principal and failed to request that he be allowed to plead to a Conspiracy charge.



Kristy Goldberg
Attorney for Applicant

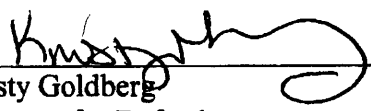
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Columbia, South Carolina

This 3rd day of April, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	
	)	
Brian Z. Morton,	)	2017-CP-02-591
SCDC # 366047,	)	
	)	
Applicant,	)	
	)	
v.	)	CERTIFICATE OF SERVICE
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

I certify that on this date I served the Amended Application for Post-Conviction Relief in this case on The State of South Carolina by delivering a copy of this application to the Office of the Attorney General via U.S. mail at Post Office Box 11549, Columbia, South Carolina 29211-1549.


 Kristy Goldberg
 Attorney for Defendant

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Columbia, South Carolina

This 3rd day of April, 2018

State of South Carolina)	In the Court of Common Pleas
County of Aiken)	Second Judicial Circuit
	2017-CP-02-00591

Brian Z. Morton,	)
	)
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:

Kristy Goldberg, Esquire
Attorney for the Plaintiff

Julie Coleman, Esquire
Attorney for the Defendant

Bonnie H. Kelly, CVR
Circuit Court Reporter

I N D E X

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>
A-1	Letter from Solicitor, dated 7/1/15	4	14
A-2	Letter from Co-defendant, dated 10/22/15	4	24

1 (Pre-marked Applicant Exhibit No. 1, letter from
2 solicitor, dated 7/1/2015.)

3 Pre-marked Applicant Exhibit No. 2, letter from co-
4 defendant, dated 10/22/2015.)

5 MS. COLEMAN: This is *Brian Z. Morton vs. the State of*
6 *South Carolina*, docket No. 2017-CP-02-0591. Applicant is
7 presently confined in the South Carolina Department of
8 Corrections pursuant to orders of commitment of the County
9 Clerk of Court.

10 In November, 2013, the Aiken Count Grand Jury indicted
11 Applicant for murder, armed robbery, and first degree
12 burglary. Assistant Public Defender C. David Hayes,
13 Esquire represented the Applicant. Deputy Solicitor John
14 William Weeks, Esquire prosecuted the case.

15 On November 12, 2015, Applicant pled guilty as
16 indicted to all charges before the Honorable Doyet A. Early
17 III. Judge Early sentenced Applicant, pursuant to a
18 negotiated sentence, to imprisonment for concurrent terms
19 of 30 years for each charge.

20 Applicant filed a timely notice of appeal on November
21 19, 2015. Plea counsel also provided an explanation
22 stating there was -- there was no good faith basis to
23 believe there were issues properly before the South
24 Carolina Court of Appeals, as Applicant did not object to
25 the sentence or file a motion to reconsider.

The South Carolina Court of Appeals dismissed Applicant's appeal on June 13, 2016, and the remittitur was sent on June 30, 2016.

Applicant filed a timely application for post conviction relief on March 14, 2017, alleging that he was being held in custody unlawfully based on the following allegations: Ineffective assistance of counsel and involuntary guilty plea.

The State filed its return on Jul 7, 2017. Applicant filed an amended application on April 6, 2018, which should be in our packet as well. And he is present today and represented by Kristy Goldberg.

THE COURT: Thank you. All right. Ms. Goldberg.

MS. GOLDBERG: Thank you, Your Honor. May it please the Court. We are proceeding today on the amended application that was electronically filed on April 6, 2018. Do you have a copy of that?

THE COURT: Yes, ma'am. Amended application.

MS. GOLDBERG: That is what we are going forward on.
At this time I would call Brian Morton as our first
witness.

THE COURT: All right. Mr. Morton, if you'd come around to the witness stand, please, sir.

(The witness complies.)

BRIAN MORTON, having been first

DIRECT EXAMINATION BY MS. GOLDBERG - BRIAN MORTON

6

1 duly sworn, testifies as follows:

2 DIRECT EXAMINATION

3 BY MS. GOLDBERG:

4 Q All right, sir. State your name for the record.

5 A Brian Morton.

6 Q And spell your last name, please.

7 A M-o-r-t-o-n.

8 Q Mr. Morton, when were you -- you are here today for
9 post app -- post conviction relief application that you
10 have filed. What charges are you currently in SCDC for?

11 A Murder, burglary first, and armed robbery.

12 Q When were you arrested on these charges?

13 A I was arrested May 29, 2013.

14 Q On that date, were you arrested for any additional
15 charges?

16 A Yes, ma'am. I was arrested for controlled substance.

17 Q After your arrest, did you bond out or did you remain
18 in jail?

19 A I remained in jail.

20 Q Had you ever been arrested before May 29, 2013, for
21 anything?

22 A No, ma'am.

23 Q When you were arrested -- well, let me ask you this:
24 Were you arrested by police at a location, or did you walk
25 into the police department and turn yourself in?

1 A I was arrested by police at a location: [REDACTED] Wire
2 Road.

3 Q At the time you were arrested, did you already have an
4 attorney?

5 A No, I did not.

6 Q When you went to the police station you -- after your
7 arrest, did you give an initial statement in this case?

8 A It was -- yes. It was an alibi.

9 Q Alibi? And you denied involvement, correct?

10 A Right. Correct.

11 Q That was without the assistance of an attorney.

12 A Right. Correct.

13 Q How long after your arrest did you receive an
14 attorney?

15 A Maybe after a week?

16 Q Who was it?

17 A David Hayes.

18 Q Was he appointed or retained?

19 A Appointed.

20 Q Now, you went to court on November 12 or 2015; is that
21 accurate?

22 A Yes, ma'am.

23 Q Did Mr. Hayes represent you for that entire two-and-a-
24 half-year period?

25 A Yes, ma'am.

DIRECT EXAMINATION BY MS. GOLDBERG - BRIAN MORTON

8

1 Q Did you sit in jail for that entire two-and-a-half-
2 year period?

3 A Yes, ma'am.

4 Q During his representation, did Mr. Hayes go to the
5 jail and meet with you?

6 A Yes, ma'am.

7 Q Is this something he did frequently? not frequently?

8 A Not frequently.

9 Q Do you have any idea how often?

10 A I say out of the whole two and a half years maybe six
11 times.

12 Q During his visits with you, did he bring and share and
13 review discovery information and evidence with you?

14 A No. He -- I had to ask the Clerk of Court for my
15 motion of discovery. He didn't bring it to me.

16 Q Who -- did you -- did you obtain a physical copy of
17 your discovery to keep and have yourself?

18 A From the Clerk of Court.

19 Q The Clerk of Court sent it to you?

20 A Yes, ma'am.

21 Q Was that to your -- to the best of your understanding
22 and knowledge at this time, was that discovery information
23 complete?

24 A No, ma'am.

25 Q Is there anything that you believe -- let me ask it

1 this way: Did Mr. Hayes give you anything additional that
2 supplemented that discovery?

3 A No, ma'am.

4 Q Did he ever give you anything?

5 A No, ma'am.

6 Q Did he ever review with you anything separately that
7 the Clerk of Court didn't give you?

8 A No, ma'am.

9 Q Okay. Is there any discovery information or evidence
10 that you don't believe you ever received that exists or do
11 you think you have it all?

12 A I believe I do not have it all. That would be
13 including the impediment [sic] documents upon my -- my --
14 my -- what is it called when you get -- the indictments,
15 the indictments, the Grand Jury indictments.

16 Q Uh-huh.

17 A They did not include that.

18 Q Okay.

19 A And also they did not include DNA analysis that was
20 supposed to be done, and that was about it.

21 Q To your knowledge, was a DNA analysis ever done?

22 A No, ma'am.

23 Q So there would not be any results, correct?

24 A Correct.

25 Q Or are you saying you don't know?

DIRECT EXAMINATION BY MS. GOLDBERG - BRIAN MORTON 10

1 A I really do not know. It wasn't no [sic] results.

2 Q During Mr. Hayes's representation of your case, did he
3 fully explain with you your charges and the law surrounding
4 them and the elements the State would need to convict you?

5 A No, he did not.

6 Q What -- what do you feel like he didn't sufficiently
7 explain to you?

8 A He didn't officially [sic] explain to me the -- the --
9 the tying and the element of the charges --

10 Q Okay.

11 A -- that -- you know, that explained the -- basically
12 the case, you know.

13 Q He didn't explain the case.

14 A Yeah. He didn't explain the element of the charges
15 that -- you know, that combine with the case.

16 Q Okay.

17 A He didn't explain that.

18 Q Specifically, is there anything about the law or the
19 charges themselves that -- that you know now that you
20 didn't understand or didn't know then?

21 A Well, now that I know, you know, for -- for a murder,
22 you know, there has to be, you know, an aforethought and
23 there has to be an official forethought that you was going
24 to murder someone.

25 Q Murder requires malice aforethought.

1 A Right.

2 Q You didn't realize that.

3 A I didn't realize that. ;

4 Q How does that make a difference?

5 A It makes a difference in this case due to the fact
6 that there wasn't a malice forethought [sic].

7 Q So you think that particular legal element could have
8 been challenged.

9 A Yes.

10 Q And your lawyer didn't explain that.

11 A He did not explain it nor object to it.

12 Q Is there any other legal issue that you didn't
13 understand that he should have explained?

14 A Well, I didn't understand the fact of the DNA
15 analysis. You know, he told -- I have a couple of papers
16 here that explains that DNA analysis was supposed to be
17 done, but was not done. And the -- SLED stated that if it
18 wasn't done, it was gonna get something back, and you know,
19 it was gonna get eradicated. And he did not, you know,
20 explain to me how would that work or you know how would
21 that work in the trial, how would it change anything. You
22 know, I did not know any of that until I got to prison.

23 Q What was your relationship with your attorney like?

24 A Bad.

25 Q Why?

DIRECT EXAMINATION BY MS. GOLDBERG - BRIAN MORTON 12

1 A I filed seven relief of counsels on him and was never
2 able to get him off my case.

3 Q You -- seven?

4 A Seven.

5 Q Motions asking to have him relieved?

6 A Yes.

7 Q Did you have hearings for all seven motions?

8 A Yes. Not -- not all seven. I had four hearings out
9 of the seven I filed.

10 Q Did you go in front of same judge? different judges?

11 A Different judges.

12 Q And all of them were denied?

13 A All of them was denied.

14 Q What was the basis -- was it always the same basis to
15 ask to have him relieved or did it change?

16 A It was all the same basis. I mean, you know, it was -
17 - it was the same basis.

18 Q And what was that?

19 A It was the fact that he was not communicating with my
20 family, was not communicating with me, and his lack of
21 performance, you know, led to, you know, this -- this plea
22 thing.

23 Q Now, were there any -- you were arrested May 29, 2013,
24 and as we've said, you were in jail for two and a half
25 years. During the bulk of that two and a half years, were

1 you planning on entering a plea of some sort, or were you
2 planning on having a jury trial?

3 A No, ma'am. I was planning on having a jury trial.

4 You know, I wrote Mr. Hayes several case synopses of trial
5 strategies and that was completely ignored.

6 Q Did you always want a jury trial?

7 A Always wanted a jury trial.

8 Q Did you ever receive any plea offers to your
9 knowledge?

10 A Yes. On July the 1, I received a plea that I denied
11 which was this 30 years that I have now.

12 MS. GOLDBERG: And may it please the Court, I'm gonna
13 hand Mr. Morton what's been previously marked as
14 Petitioner's Exhibit No. 1. The Attorney General does have
15 a copy of this.

16 (Ms. Goldberg hands a document to the Court.)

17 Q Mr. Morton, do you recognize that document?

18 A Yes, I do.

19 Q Is -- where did you receive that document?

20 A I received this at -- being at Aiken County Detention
21 Center.

22 Q Did you get it from your lawyer?

23 A Yes, I had got it from my lawyer.

24 Q And generally, what is it?

25 A It is a plea agreement to murder, burglary first, and

DIRECT EXAMINATION BY MS. GOLDBERG - BRIAN MORTON 14

1 armed robbery of 30 years negotiated concurrent sentence.

2 Q It's the plea offer.

3 A It's a plea offer.

4 MS. GOLDBERG: Okay. At this time, Your Honor, I'd
5 ask to offer this Exhibit 1 into evidence.

6 MS. COLEMAN: No objection.

7 THE COURT: Applicant's Exhibit No. 1 will be admitted
8 without objection.

9 (Applicant's Exhibit No. 1, plea offer letter,
10 admitted into evidence.)

11 MS. GOLDBERG: Thank you, Your Honor. And I've got a
12 courtesy copy.

13 (Ms. Goldberg hands a document to the Court.)

14 Q Did you actually receive that from your lawyer around
15 the time it was written, so around July of 2015?

16 A Yeah, around there. But at this time, he was out on
17 vacation.

18 Q Uh-huh.

19 A So I was told it had gotten extended into that.

20 Q Uh-huh.

21 A You know, so around -- probably maybe a week after,
22 you know, I received -- after, like, July 1, I received it.

23 Q Okay. So but close to the time. It was new.

24 A Right. Right.

25 Q It wasn't something you received much later after the

1 fact.

2 A Correct.

3 Q And he shared that plea offer with you.

4 A Yes, ma'am.

5 Q And your decision on it was ...

6 A I denied it.

7 Q You did not want to accept that plea offer.

8 A Correct.

9 Q That was for a negotiated 30 years, correct?

10 A Yes, ma'am.

11 Q And not for a less -- was it for murder or was it for
12 a lesser charge?

13 A It was for murder, burglary first, and armed robbery.

14 Q So after you rejected that plea offer, are you -- did
15 you still intend to proceed with a jury trial?

16 A Yes, ma'am.

17 Q What issues did you want to present at trial?

18 A The involvement and also these statements of co-
19 defendants without any evidence to prove the involvement.

20 Q Explain that a little bit more.

21 A Well, at -- at trial, I was gonna cross-examine my co-
22 defendants upon the statements that I was involved in this.
23 And also I was going to -- I was going to challenge the --
24 I was gonna challenge the -- the -- the DNA, you know, and
25 --

DIRECT EXAMINATION BY MS. GOLDBERG - BRIAN MORTON

16

1 Q Or point out that there was no DNA.

2 A Yeah. Correct.

3 Q And challenge the statements of your co-defendants.

4 A Yes, ma'am.

5 Q Was there any other particular issues that you wanted
6 to present in trial that you thought were worth going to
7 trial for?

8 A That -- that was, you know, really about it, about the
9 charges and my involvement because that was -- that was all
10 that was on there, you know, that was against me was my --
11 the statements of the co-defendants.

12 But now -- so at the beginning, you know, when I was
13 detained, I was detained unlawfully due to the authorities
14 coming to the house without any consent and arresting me
15 and obtained my -- my phone, which they was going to use
16 against me in trial, you know. And -- and when I -- when
17 went with this plea hearing was to -- was -- you know, was
18 about those charges the -- the -- the control substance
19 charge got dropped, you know, and I was going to challenge,
20 you know, my -- me being detained unlawfully without any
21 representation due to a murder that they said happened.
22 And the reason why they was coming to my house and the
23 reason they was at my house was because -- to charge me
24 with murder.

25 And when they went in, they was just -- went fishing

1 around for stuff. Due to the fact they didn't find
2 anything pertaining to a murder, they had to charge me with
3 something to detain me in order, you know, to place the
4 charges on me.

5 Q Now, you're preparing for trial. In your mind, you
6 expect that you're going to trial, and then in October of
7 2015, everything changes ---

8 A Everything changes.

9 Q --- correct? Tell me how that started.

10 A Okay. Well, on the day of -- I believe it was October
11 the 22, I was -- I was visited by Simmons' attorney and
12 also my attorney which was David Hayes; and Simmons'
13 attorney was Kevin Maloney.

14 And Kevin Maloney -- he had a paper in his hand that -
15 - that said that Simmons was going to cooperate and that I
16 should also. And I told my attorney that I was not going
17 to do that, I wanted a trial. And -- and from there --
18 from that situation, after I denied the plea, that took
19 place. And then on the -- on October the 28, I was called
20 to go to magistrate -- magistrate court, not having any
21 magistrate charges.

22 I go to -- I was taken to Aiken County Public Safety
23 where I met Bill Weeks, Detective Hembree, Detective Lano
24 [phonetic], the chief investigator, Savage. All of them
25 was there, and I was told by my attorney that I was there

1 to cooperate and give a statement. You know, my -- I
2 denied it. I told him no. After being threatened that I
3 would receive -- I would receive life and after being
4 promised that if this -- if this does happen, the murder
5 would get dropped down to a manslaughter and the armed
6 robbery get dropped down to a strong arm and the burglary
7 first would get -- you know, get eliminated.

8 And -- and after doing that, you know, I was coerced
9 to giving a statement that -- that explained the
10 involvement -- my lawyer told me -- David Hayes told me to
11 place the -- place myself in the shoes that I already had
12 been placed in and say the same thing as my co-defendants.

13 Q So you went to the Department of Public Safety not
14 expecting to go, and you said you saw all these people.
15 You were originally approached that day about giving a
16 statement, and you told me that you said "no."

17 A Correct.

18 Q Okay. So you -- when you arrived that day, you were
19 telling them that you did not want to give ---

20 A Correct.

21 Q --- a statement. And who did you say that to?

22 A I said that to -- Detective Hembree was in there.

23 THE COURT REPORTER: I'm sorry. Who?

24 THE WITNESS: Detective Hembree.

25 A He was in there and my attorney at that time, David

1 Hayes, was also in there. I didn't see any of -- I didn't
2 see Detective Savage or Bill Weeks until after the
3 statement was given.

4 Q Then you mentioned that after you originally said no,
5 there were -- I think the words you used were "threats and
6 promises." Who was present for those conversations?

7 A Hembree and my counsel, David Hayes, at the time.

8 Q Okay.

9 A You know, I was told --

10 Q And I just -- I'm just going to break them down so
11 that they're separate.

12 A Okay.

13 Q Tell me what threats were made and by whom.

14 A Well, it was by my counsel David Hayes.

15 Q Okay.

16 A You know, Hembree's just sitting there taking notes.

17 Q Okay.

18 A So David Hayes told me that -- you know, that my co-
19 defendant, actually, Simmons, had came a day before and
20 gave a statement. And he told me that all three statements
21 and other things would be used against me at trial and I
22 would get life in prison.

23 Q Now, the -- the fact that the other co-defendants had
24 given statements against you, you already knew that to be
25 true, correct?

DIRECT EXAMINATION BY MS. GOLDBERG - BRIAN MORTON 20

1 A Correct.

2 Q The fact that Mr. Simmons had given a statement the
3 day before, was that information true?

4 A Supposedly it was true. I did not know. You know,
5 that's what they was telling me.

6 Q Okay. And then the fact that -- and then Mr. Hayes --
7 he told you he believed you'd receive a life sentence if
8 you'd gone to trial.

9 A Correct.

10 Q And that's what you took to be a threat.

11 A Correct.

12 Q Anything else as far as a threat?

13 A That's -- you know, that's about it. He just told me
14 that I would receive life in prison, and that -- that's --
15 that was it.

16 Q And then you mentioned some promises that were made.
17 Who made these promises?

18 A David Hayes.

19 Q Okay. What were they?

20 A The promise was that the -- the murder would get
21 dropped down to a manslaughter and the -- the armed robbery
22 would get dropped down to a strong arm, and the burglary
23 first would get eradicated.

24 Q And did he -- what was the context? And I guess I'll
25 give you the option: Was he saying that that was a done

1 deal? Was he saying we'll ask for it? Was he saying if
2 you do this, then this will happen?

3 A Right.

4 Q What did he say?

5 A He was saying that if I do this, that will happen.

6 Q If you give the statement, you will receive these plea
7 offers.

8 A Correct.

9 Q Okay. Did he show you any paperwork verifying that?

10 A No. He didn't show any paperwork. He just -- you
11 know, just told me that that would be the issue.

12 You know, and after thinking 'bout it and after seeing
13 my life ahead of me, you know, I did not want to receive
14 life in prison, you know. So by the advice of counsel, I -
15 - I -- I took his advice and you know, his error in this.
16 I would have had a fair trial, you know, without it.

17 Q So at -- so based on that promise that was made, you
18 gave a statement to law enforcement.

19 A Yes. Yes.

20 Q And you -- go ahead.

21 A The statement was that he told me to just fill the
22 shoes of what I was already placed in from my co-
23 defendants. So that's what I did, said the same thing as
24 them.

25 Q And you implicated yourself in the incident.

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1 A Right. In the shoes that I was placed in already.

2 Q So what happens next after you give the statement?

3 A What happens next, a week later I go to court and I'm
4 receiving sentencing sheets.

5 Q You did receive a sentencing sheet?

6 A Yes. I received sentencing sheets that Monday.

7 Q Is this the same day you went in front of the judge or
8 was this a different day?

9 A This is same -- well, we came here -- all four of us
10 came here and we all received sentencing sheets.

11 Q On a Monday.

12 A On the Monday. And -- and on the Thursday -- on that
13 Thursday, the hearing would be placed, you know, the -- the
14 plea -- the plea to it or whatever.

15 Q Okay. So on Monday, who gave you a sentencing sheet?

16 A David Hayes.

17 Q And what did he say about it?

18 A He said that this is -- you know, "This is the
19 sentencing. Either you take it or your don't. If you
20 don't take it, you know what's going to happen. Like I
21 told you, you'll receive life in prison."

22 Q And what was the sentencing sheet for?

23 A The same -- the same plea that I denied in July 1 was
24 the -- was the same sentencing: 30 years negotiated
25 sentence, ran concurrent with murder, burglary first, and

1 armed robbery.

2 Q So what did you respond with when your lawyer gave you
3 that and told you.

4 A I was confused. You know, I -- then seeing that --
5 seeing that I had so much stuff against me due to the
6 statement I involved myself in because of his advice, I had
7 no other choice. And that's what I said in the plea
8 hearing.

9 Q What benefit did you get by giving that statement?

10 A None. I am incarcerated at the worst prison in South
11 Carolina, Lee Correctional Institution.

12 Q Let me back up. I forgot --

13 MS. GOLDBERG: Beg the Court's indulgence and
14 approach.

15 Q I'm handing you what's been pre-marked as Applicant's
16 Exhibit No. 2. This was -- has been shown to the Attorney
17 General. Mr. Morton, what is that that you're looking at?

18 A This is the paper that Mr. Kevin Maloney and David
19 Hayes gave me.

20 Q And what is it?

21 A It is explaining that Leon Simmons was cooperating and
22 that he signed this and -- and thinking that I'm going to
23 cooperate also --

24 Q Okay.

25 A -- without me signing or without me saying I agree,

DIRECT EXAMINATION BY MS. GOLDBERG - BRIAN MORTON 24

1 you know, this -- that's what this is.

2 MS. GOLDBERG: I'd ask to admit this document into
3 evidence.

4 THE COURT: Any objection?

5 MS. COLEMAN: No objection.

6 THE COURT: So Applicant's Exhibit No. 2 would be
7 admitted without objection.

8 MS. GOLDBERG: Thank you, Your Honor. And I'll go
9 ahead and pass up a courtesy copy of this as well.

10 (Applicant's Exhibit No. 2, letter by co-defendant,
11 admitted into evidence.)

12 Q This letter was presented to you in part of the
13 conversations trying to get you to make that statement.

14 A Yes. To basically the whole thing of the coercion.

15 Q Say that again?

16 A The whole thing of the coercion, you know, to coerce
17 me to -- because from the first plea, it says that in order
18 for us to take the plea on July 1 -- said that in order for
19 us to take the plea, we have to be completing a brief,
20 which means we have to give our involvement. We have to
21 say our involvement.

22 And seeing that I denied the plea, there was -- they
23 had -- David Hayes had to come with -- come up with some
24 type of way to make me take the plea. So when he brought
25 this to me, you know, to say that Leon Simmons was gonna

1 cooperate, he's thinking that I'm gonna cooperate also, you
2 know. So I denied it and come to find out it's the same
3 thing at the end.

4 Q The same plea in the end.

5 A Yeah.

6 Q So you didn't receive any benefit for the -- giving
7 the statement.

8 A No benefit at all.

9 Q Why do you think your attorney -- or how do you think
10 your attorney was ineffective, generally, in your case?

11 A I believe my attorney was ineffective due to the
12 erroneous advice that he gave me to give a -- give a
13 statement without having a fair trial. You know, and --
14 and -- and he was also ineffective by telling me, you know,
15 to give a statement even though there was no evidence
16 against me, and also seeing that I was very adamant about
17 going to trial to prove my innocence.

18 Q He always knew you were adamant that you wanted a
19 trial.

20 A Yes. Yes.

21 Q You wanted your day in court.

22 A Yes.

23 Q Do you believe if you had gone to trial, your outcome
24 would have been different?

25 A Yes, I really do believe that. And -- and counsel --

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1 or counsel -- his erroneous advice just -- you know, just -
2 - just was wrong. It was unlawful and he violated my -- my
3 Fourth Amendment and my Fourteenth Amendment of due
4 process.

5 Q The advice that you should give a statement?

6 A Yes.

7 Q That's specifically what you're talking about?

8 A Yes.

9 Q Because that virtually did away with your opportunity
10 to have a meaningful trial.

11 A Correct. Correct. That was against my will.

12 Q Now, when you were charged in this case, you were
13 charged with under a "hand of one, hand of all" theory.

14 A Correct.

15 Q You have a problem with that ---

16 A Yes.

17 Q --- correct?

18 A Yes, I do.

19 Q And what is that?

20 A The problem is is that instead of being charged as a
21 principle, I was charged as conspiracy. And after the plea
22 was -- you know, after the plea hearing, Rashawn Isaac was
23 offered a plea and it was manslaughter and it was 22 years.
24 And after that, Trevon Butler was offered a plea and it was
25 5 years probation. And -- and due to, you know, the hands

1 of one, hands of all, the -- the deprivity [phonetic] of
2 the sentence is -- you know, is unlawful.

3 Q Explain that more.

4 A The deprivity [phonetic] of the sentence is that, you
5 know, due to the "hands of one, hands of all" here in South
6 Carolina, everyone's supposed to get, you know, the same --
7 same charge, same sentence, you know, and then East -- East
8 went to trial and got the same sentence, 30 years, murder,
9 burglary first, and armed robbery.

10 Q You believe the co-defendants should have gotten the
11 same sentence as you if it was truly "hand of one, hand of
12 all" case.

13 A Yes. Or I should have got the same sentence as them.

14 Q Right. And then do you have a problem legally with
15 the fact that you were charged under "hand of one, hand of
16 all"?

17 A Yes, yes. That I -- legally that -- violation of my
18 due process. You know, it doesn't give me a opportunity or
19 equal opportunity to a trial or to any plea sentencing or -
20 - you know, anything.

21 MS. GOLDBERG: Beg the Court's indulgence.

22 (Brief pause.)

23 Q Is there -- Mr. Morton, is there anything else that
24 you need to explain to the Court about how your lawyer was
25 ineffective or have you covered the majority of your

1 concerns?

2 A Well, my lawyer -- my lawyer was, you know,
3 ineffective due to the erroneous advice -- of the advice
4 and -- and that's really -- that's really it, you know. He
5 just advised me of the wrong thing. He went against his
6 license, you know, and his -- you know, his demand as an
7 attorney is to -- you know, to -- as the Sixth Amendment
8 say you have to go with the -- with the -- the applicant --
9 the -- the defendant. You have to listen to the defendant
10 as a -- as a -- as a lawyer. You know, and that's what he
11 didn't do.

12 And he also, you know, just told my family different
13 things and didn't stick to it, you know, stick to his
14 license that he was -- you know, he was appointed to me by
15 the State to defend me and he did not defend me. He did
16 not help me.

17 Q All right. Please answer any questions from the
18 Attorney General. Thank you.

19 THE COURT: Ms. Coleman.

20 CROSS-EXAMINATION

21 BY MS. COLEMAN:

22 Q Good morning, Mr. Morton.

23 A Good morning.

24 Q So you pled guilty to these charges; is that right?

25 A Under advice of counsel.

1 Q And you -- you were sentenced to 30 years?

2 A Yes, ma'am.

3 Q That's the sentence you're currently serving, right?

4 A Yes, ma'am.

5 Q Okay. If you had gone to trial, you could have been
6 sentenced to two terms of life imprisonment and an
7 additional 30 years; is that right?

8 A Correct.

9 Q And they could have been run consecutively instead of
10 concurrently; is that right?

11 A Correct.

12 Q But instead you chose to plead to a 30-year concurrent
13 sentence, right?

14 A Under advice of counsel.

15 Q Okay. And you testified a moment ago that you got no
16 benefit for pleading guilty. Don't you think a 30-year
17 sentence is a benefit instead of two terms of life and 30?

18 A Well, under advice of counsel, I do not believe that
19 it's not no benefit because that was against my will.

20 Q Okay. So if you win today on your PCR, you get a new
21 trial and you'll face two terms of life and an additional
22 30 years again. Do you still want a new trial?

23 A Yes.

24 Q Okay. Now, there were -- you had three co-defendants;
25 is that right?

1 A No. It was four.

2 Q Okay. So there was you, Leon Simmons, right, and
3 Markese East, and Reshawn Isaac, right?

4 A Uh-huh.

5 Q And then Trevon Butler, is that the fourth one?

6 A Uh-huh.

7 Q Several of those co-defendants had given statements
8 against you, right?

9 A Correct, from my knowledge.

10 Q Okay. And which ones were those? Isaac ---

11 A Isaac --

12 Q East.

13 A -- and East.

14 Q Okay. And then Leon Simmons gave a statement.

15 A From -- from -- I never seen it, but from -- from what
16 I was told.

17 Q Okay. And you an Simmons pled together; is that
18 right?

19 A Under the advice of counsel.

20 Q Okay. And you both did the guilty plea together and
21 you both went before the judge at the same time and had a
22 joint plea, right?

23 A Under advice of counsel.

24 Q Okay. Were you and Simmons friends?

25 A We was football -- we played football together.

1 Q Okay. So y'all had known each other before this,
2 right?

3 A Correct.

4 Q Okay. Did you and Simmons have any kind of agreement
5 that you were gonna stick with it together, go to trial
6 together, or plea together?

7 A Not at all.

8 Q You testified a moment ago that Mr. Simmons -- his
9 attorney came to visit you in jail and gave you that letter
10 that's Exhibit No. 2; is that right?

11 A Correct.

12 Q What did that letter say?

13 A The -- the letter explained that he would be
14 cooperating with the understanding that I would be also.

15 Q Okay. And the letter was from Simmons, right, Leon.

16 A It was from Kevin Maloney.

17 Q Okay. But was it signed from Leon?

18 A Yeah. From -- from the paper, yeah.

19 Q Okay. And did it have your pictures on there from
20 your football team?

21 A Yes. Yes, it did.

22 Q And he -- Leon hand wrote something on there, right?

23 A Well, I believe that's his handwriting. I -- you
24 know, like I said, I wasn't present when --

25 Q Right.

1 A -- you know --

2 Q So you don't know if it was him or not.

3 A Right. Right. I really don't.

4 Q But they -- you were told that it was from Leon,
5 right?

6 A Yeah. That's what I was told.

7 Q Is that part of the reason why you decided to give
8 your statement?

9 A No, it's not. Not at all. I was under the advice of
10 counsel and I was threatened and it was against my will.

11 Q Okay. But Leon sent you this letter and he told you
12 that he was gonna give a statement and he was gonna
13 cooperate with law enforcement.

14 A Yeah. From -- from -- from the letter, you know, it
15 was -- from the letter.

16 Q Okay. So you had Leon Simmons, Markese East, and
17 Rashawn Isaac all give statements against you, right?

18 A Well, yes. And all them statements was recanted.

19 Q They were recanted?

20 A Yes.

21 Q Before the -- when was this?

22 A Before the trial.

23 Q Okay.

24 A Before --

25 Q Were the co-defendants gonna testify at your trial?

1 Do you know?

2 A From -- from -- from the advice of counsel, yes.
3 That's what he was telling me.

4 Q Okay.

5 A Because that's what, you know, led to, you know, the -
6 - the -- the unwilling and the -- the -- the involuntary
7 statement, the false -- the false --

8 Q Did you ever see any text messages from your phone?

9 A Yes. I -- yes, I did see some text messages from -- I
10 was told it was extracted from the phone of -- from my
11 phone. But due to the -- the -- me being detained
12 unlawfully, that's how they received my phone.

13 Q Okay. And those text messages were gonna come in at
14 trial, right?

15 A Supposedly.

16 Q Okay. You remember telling the judge at your guilty
17 plea that nobody was threatening you or promising you
18 anything to plead guilty?

19 A Due to the advice of counsel, counsel told me to just
20 -- just plead -- just take the plea. You know, I was
21 trying my best to explain the fact that I didn't
22 understand, you know. But due to, you know, the -- the
23 advice of him telling me that, you know, I would get life
24 and that -- you know, that, you know, this really ain't
25 gonna win the chance and I should say the same thing as my

1 co-defendants.

2 Q But you testified that your attorney promised you that
3 they would drop the burg charge and they would drop the
4 other charges down to lesser included offenses, right?

5 A Yes.

6 Q Why didn't you mention that to the judge at your
7 guilty plea?

8 A Because I was told by him that it didn't matter, it
9 didn't matter at all.

10 Q And you told the plea judge that you were not
11 satisfied with your attorney, right ---

12 A Correct.

13 Q --- at the plea? And you explained to him all of your
14 problems; is that right?

15 A Not -- not every last one, but I explained to him in
16 the best way that I could at that time. You know, what I -
17 - you know, exposing -- exposing his un --
18 unprofessionalism. Yeah.

19 Q And the plea judge knew that you had filed several
20 motions to relieve him as counsel, right?

21 A Yes.

22 Q Okay. And even after all that --

23 MS. COLEMAN: Judge, for your reference, this starts
24 on page 15 of the trial transcript, at line 1. And it
25 continues on through page 21, around line 12.

1 Q Judge Early says (as read): "You plead guilty
2 notwithstanding the fact that you're not completely
3 satisfied with Mr. Hayes." And you said ---

4 A Correct.

5 Q --- yes; is that right?

6 A Correct.

7 Q You remember that? Okay.

8 So you got -- you voiced your concern about it, and
9 you chose to plead guilty anyway, right?

10 A Under advice of counsel.

11 Q Okay. But that was also based on the evidence against
12 you?

13 A Yes. Supposedly, you know, from what counsel was
14 telling me, I had a lot of evidence against me, and like I
15 said, he would -- he said I would get life in prison. And
16 ...

17 Q Do you remember telling the plea court that you were
18 guilty of this crime and you did participate in it?

19 A No, I do not -- say that again.

20 Q You remember telling the judge that you were guilty.
21 You wanted to plead guilty because you were guilty, right?

22 A Well, under advice of guilty --

23 Q Okay.

24 A -- from the plea hearing. Yes, I see that.

25 Q But you did participate in this crime, right?

1 A From the advice of counsel and the statement they told
2 me to give, you know, that's -- that's -- you know, he told
3 me to fill the shoes. So I'm -- I'm innocent.

4 Q But today, I'm asking you, you say you're innocent?

5 A Yes.

6 Q Okay. You did not participate in this crime at all.

7 A Correct.

8 Q Okay. And you made a statement to the plea court and
9 you owned up to your mistakes, right, during sentencing
10 there?

11 A Under advice of counsel.

12 Q Okay.

13 MS. COLEMAN: Your Honor, that's on page 43, at line
14 21, just for your reference.

15 Nothing further. Thank you.

16 THE COURT: Re -- redirect.

17 MS. GOLDBERG: Brief follow up.

18 REDIRECT EXAMINATION

19 BY MS. GOLDBERG:

20 Q Mr. Morton, the letter that the Attorney General asked
21 you about, again, that's Exhibit No. 2 --

22 A Uh-huh.

23 Q -- prior to that date, have you -- had you ever told
24 anybody you were gonna give a statement?

25 A No. No, not at all.

1 MS. GOLDBERG: Nothing further.

2 THE COURT: All right. Anything further from this
3 witness?

4 (No audible response.)

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

7 (The witness complies.)

8 MS. GOLDBERG: Your Honor, at this time the Applicant
9 would call witness Leon Simmons, who is ---

10 MR. BOOZER: Your Honor, I represent Mr. Simmons. May
11 I have a word while he walks out?

12 THE COURT: Yes, sir.

13 MR. BOOZER: Thank you.

14 THE COURT: Do we need to take a break or you ---

15 MR. BOOZER: I don't believe so.

16 THE COURT: Okay.

17 (Brief pause.)

18 LEON SIMMONS, having been first
19 duly sworn, testifies as follows:

20 CLERK OF COURT: Please take a seat in the witness box
21 and state your full name for the Court.

22 (The witness complies.)

23 CLERK OF COURT: Mr. Simmons, will you please state
24 your name for the record?

25 THE WITNESS: Leon Simmons.

DIRECT EXAMINATION BY MS. GOLDBERG - LEON SIMMONS

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DIRECT EXAMINATION

BY MS. GOLDBERG:

Q Mr. Simmons, my name's Kristy Goldberg. I'm Brian Morton's attorney for his post conviction relief case. You and I haven't spoken prior today, correct?

A Correct.

Q You are currently represented by Lance Boozer for your PCR?

A Correct.

Q And he's here today, correct?

A Correct.

Q You talked to him?

A Correct.

Q Do you need to talk to him any more?

A I do not at this time.

Q Okay. Let me know if you do.

A All right.

Q Mr. Simmons, I'm going to hand you what has already been introduced as Applicant's Exhibit No. 2. Can you tell me if you recognize this document.

A I do recognize this document. This document was a mere suggestion from my attorney at the time, Kevin Maloney. It's not something that I requested him to do or requested him to give Mr. David Hayes or Brian Morton because this was never intentioned [sic] for me -- I never

1 got a response from Mr. Morton or Mr. David Hayes
2 pertaining to the statement on this piece of paper in this
3 document.

4 So this document was something that Kevin Maloney did
5 at his own doing. I did advise him that I didn't insist on
6 this, and he said it would just be a suggestion to Mr.
7 Morton and his lawyer. It won't be a action. This is
8 basically a thought.

9 Q All right. So I'll kind of start simple. The letter
10 that you're looking at, is that your signature on it?

11 A This is my signature.

12 Q And that handwriting on it, is that your handwriting?

13 A It is my handwriting.

14 Q Now, the letter itself, you were in the jail -- the
15 detention center when that letter was created, correct?

16 A Correct.

17 Q You didn't type that letter or create that letter
18 itself.

19 A I did not.

20 Q Do you know who did?

21 A I do not.

22 Q Do you have -- to the best of your understanding, do
23 you have any idea where the letter was generated from?

24 A I do not.

25 Q Okay.

1 A To my best understanding --

2 Q Uh-huh.

3 A -- this is -- was a random document that my attorney,
4 Mr. -- at the time, Mr. Maloney, came to me with that I
5 totally disagreed with. And he said it was a mere
6 suggestion to Mr. Morton and his attorney. And that's the
7 purpose of my signature, basically I'm assuming at that
8 time me having knowledge of the letter, but not the --
9 basically giving him validation to go about -- to even
10 present this to Mr. Morton.

11 Q So you were aware the letter existed.

12 A Right.

13 Q You did write on it.

14 A Right.

15 Q And -- but you did not -- are you -- and I'm gonna
16 clarify here: Are you telling me that you didn't authorize
17 Maloney to ---

18 A I didn't ---

19 Q --- do it at all or did you just not instruct him to
20 or is there a difference?

21 A I didn't authorize or request Mr. Maloney to do
22 anything with this document. This document was a surprise
23 to me because this wasn't my intentions on giving a false
24 complaint confession [sic] or a confession of any kind to
25 law enforcement or investigators about the case.

1 Q So the time you signed that document, you were not
2 planning on giving a statement?

3 A I was not. At this time, Mr. Maloney had discussed
4 with me -- as I said before, it was a mere suggestion. And
5 I had told Mr. Maloney before anything happens far as a
6 confession on the current case, that me, him, Mr. Morton,
7 and Mr. Hayes will need to be together at a point of time
8 and have a complete understanding on what's been said, why
9 it's being said, and the charges that will be -- the
10 statements will be pertaining to, which it did not happen.

11 Q The meeting that you suggested never ---

12 A It never happened.

13 Q --- happened. Now, you -- after the -- you were aware
14 of the letter and signed it, it's already been testified to
15 that that letter was presented to Brian Morton at some
16 point in time.

17 Do you have memory or knowledge of anything happening
18 between the day you received that letter and the day you
19 did get a statement? What happened between that -- in that
20 period of time?

21 A To my knowledge, nothing because Mr. Maloney never
22 told me that, you know, Brian was in agreement or I never
23 was under the knowledge that that's what his intentions was
24 or this is something that he wanted to do because from my
25 understanding at that time, I was going to trial. I never

1 intended on giving any kind of confession on guilty or
2 anything like that, and that was Morton's intention as well
3 being that we had been in the county jail roughly around
4 two and a half years at the time of this letter.

5 Q At the time of that letter, were you told that Mr.
6 Morton was planning on giving a statement or that he wasn't
7 planning on giving a statement or did your lawyer say
8 anything about that at all?

9 A Well, at the time that my lawyer gave me this letter,
10 as I said before, I didn't have any knowledge about the
11 letter because this wasn't something I told him or
12 instructed him to do. And he said the reason that he did
13 submit this and did come about this was to protect me from
14 Morton's statement against me if he was planning on going
15 to trial -- or if I was planning on going to trial and he
16 was planning on testifying against me. And at that time, I
17 told him, you know, both of us are going to trial.

18 I really can't speak for Morton, but it's been two and
19 a half years. Neither one of us has given a statement of
20 any kind of guilt. And at our first and second appearance,
21 which was in 2013, we did tell the judge and at that time,
22 the Courts did have knowledge of that. We wasn't pleading
23 guilty.

24 Q Right.

25 A And at this time, that was still the Court's

1 knowledge, that we wasn't pleading guilty.

2 So at the time that my lawyer did give me this, I
3 didn't have any knowledge that, you know, he was gonna
4 implement a statement against me; but my lawyer advised me
5 that was the purpose of this, to protect me from that
6 statement.

7 Q Just in case.

8 A Right. And --

9 Q Not that it was definitely happening, but just in
10 case.

11 A Right. But he -- after the fact that he came back and
12 the statement was actually given, you know, he told me that
13 Mr. Morton -- that was Mr. Morton's plan. You know, Mr.
14 Morton is gonna testify against you. He is gonna, you
15 know, implement [sic] you and him in the case. He is gonna
16 take the stand against you.

17 And if I can recall correctly, at the time of the
18 confession, I -- to my knowledge, I think I gave one first.
19 But at the time, my lawyer advised me that Mr. Morton had
20 already given a statement, and Mr. Morton had already
21 implemented [sic] on the scene.

22 Q So when were you told that Mr. Morton had decided he
23 is going to give a statement?

24 A Prior to my confession and arriving at Aiken Public --
25 Aiken Department of Public Safety.

DIRECT EXAMINATION BY MS. GOLDBERG - LEON SIMMONS

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1 Q Prior to that day.

2 A That day.

3 Q That same day.

4 A Right.

5 Q You were told that Morton was giving a statement ---

6 A Right. He -- he ---

7 Q --- or had given ---

8 A He had given a statement.

9 Q That he already had given one ---

10 A Right.

11 Q --- prior to yours.

12 A Right.

13 Q Did you ever intend that that letter go to Mr. Morton?

14 A Ma'am?

15 Q Did you ever intend that that letter go - actually go
16 to Mr. Morton?

17 A No, ma'am, because this isn't something -- this wasn't
18 my intention at all. The letter itself, what the letter
19 states, this is something totally that my lawyer did at his
20 own will for reasons I don't know.

21 Q Why did you give a statement -- like, at the end of
22 the day ultimately, why did you give a statement?

23 A Ultimately I was called out of my cell unaware of a
24 hearing being -- well, a meeting with investigators and the
25 solicitors being put together because I did advise Kevin if

1 a statement would be given, it would only be given if I was
2 receiving a involuntary manslaughter charge or a lesser
3 charges than what I was charged with; and only if me,
4 Morton, him, and Mr. Hayes have spoken and got on common
5 grounds and came to an understanding fully on what was
6 going on, which none of that ever happened. So once the
7 meeting with the investigators did come about, I advised
8 Mr. Kevin Maloney that I did not want to give a statement
9 and that I do want to go back to the county jail.

10 Q Okay.

11 A Mr. Kevin Maloney then stated to me that if I don't
12 give a statement, he's going to relieve himself off my case
13 and he would not represent me at trial.

14 At that time, I felt as if I had to give a false
15 complaint confession [sic], and he told that it doesn't
16 matter what I say. I need to say something or he's not
17 going to represent me any more. He's not gonna pursue with
18 the case. And at that time, I had -- felt like I exhausted
19 my remedies being in the county jail close to 28/30 months
20 or so. I felt like I had exhausted my remedies on
21 basically trying to prepare our defense on my own, and --
22 which led me to give a false complaint confession,
23 basically just taking all the statements that my co-
24 defendants had already stated, Rashawn Isaac and Markese
25 East; and basically just giving a story upon what they had

1 already said.

2 Q So you're ---

3 A And then that statement ---

4 Q --- saying that your statement was not true.

5 A It was not true. And in that statement, I did not
6 implement [sic] anyone and anyone's involvement in the
7 situation but myself pertaining to what my co-defendants
8 had already said my participation was.

9 Q Did Mr. Maloney tell you that you had any plea offers
10 that day?

11 A No, ma'am. At that time --

12 Q His only remark was if you don't give a statement, I -
13 - I'm gonna relieve myself from your case.

14 A Well, me and Mr. Maloney went back and forth for maybe
15 close to 40 minutes before actually me giving a statement.
16 And those 40 minutes consisted of very heated conversation
17 on me trying to tell him that I don't want to give a
18 statement. I'm going to trial that will basically
19 undermine my due process rights, and basically go against
20 everything that I'm trying to do.

21 And he wouldn't let me do that. He was stating that
22 he worked too hard to set the meeting up with the
23 solicitors, which I told him not to do, you know, unless,
24 as I stated before, everyone was on common ground and had a
25 -- fully understanding on what was going on.

1 And at that time, a plea of a lesser charges was not
2 mentioned or was not offered. So at that time, I was not
3 intending on giving a confession or a statement on anything
4 because certain things that I told him was a necessity for
5 those confessions did not ---

6 Q Didn't happen.

7 A -- happen.

8 MS. GOLDBERG: Beg the Court's indulgence.

9 (Brief pause.)

10 MS. GOLDBERG: Nothing further.

11 THE COURT: Yes, ma'am.

12 MS. COLEMAN: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MS. COLEMAN:

15 Q Mr. Simmons, you just testified that you lied in your
16 statement; is that right?

17 A I gave a false complaint statement.

18 Q Okay. Under oath, right?

19 A I don't know if I was under oath at that time.

20 Q Okay. So you were lying to law enforcement about your
21 involvement?

22 A Only at advice of Mr. Kevin Maloney.

23 Q Okay. Are you lying today?

24 A No, ma'am.

25 Q Okay.

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1 MS. COLEMAN: May I approach, Your Honor?

2 THE COURT: Yes, ma'am.

3 MS. COLEMAN: Thank you.

4 Q I'd like to take a look at this letter. If you please
5 hand -- thank you very much.

6 Okay. So this is Applicant's Exhibit No. 2, and this
7 is the letter that you sent that you -- you say you did not
8 authorize your attorney to send; is that right?

9 A I did not authorize my attorney to type the letter,
10 suggest a letter, or to do anything. Actually, when he
11 presented it to me, I denied it and tried to give it back,
12 which he wouldn't allow and insisted on signing and doing
13 this ---

14 Q Uh-huh.

15 A --- what you see on the paper.

16 Q Okay. So the letter is dated October 22, 2015; is
17 that right?

18 A That's correct.

19 Q Okay. And it reads -- this -- and it -- is says (as
20 read): "Brian -- to Brian, this letter is to inform you
21 that I do intend to cooperate with investigators and tell
22 the entire truth about the events that took place on May
23 28, 2013. I'm doing so with the understanding that you
24 will also be cooperating and telling the truth to
25 investigators about the events that took place on May 28,

1 2013. I think it is in both of our best interests to do so
2 at this point. I have spoken with my attorney about this
3 letter, and I have given my attorney my consent to show
4 Brian Morton and his attorney, Dave Hayes, this letter."

5 Is that right?

6 A That's what that letter reads.

7 Q Okay. And then you've signed it at the bottom, right?

8 A At advice of my lawyer, I did.

9 Q Okay. So that's your signature.

10 What are these pictures on here?

11 A I don't know. That's something that you'll have ask
12 Kevin Maloney because -- or whoever typed that letter.

13 Q Okay. And it looks like pictures of football players.
14 Did you play football in high school?

15 A I did.

16 Q Did you play with Mr. Morton? Were y'all teammates?

17 A I did.

18 Q Okay. What number was your football number?

19 A Number 5.

20 Q Okay. And here at the bottom, it's signed (as read):
21 "Leon 5 Simmons -- No. 5 Simmons"; is that right?

22 A Yes, that is right.

23 Q Okay. And then over here on the left, we've got
24 something handwritten. You say that's your handwriting,
25 right?

1 A Correct. Right.

2 Q And the handwriting says (as read): "We gonna see
3 where this takes us, Bruh. It don't look good." Is that
4 right?

5 A That is correct.

6 Q Okay. And you wrote that yourself.

7 A At advice of my lawyer.

8 Q Okay. So you didn't tell your attorney that he could
9 give this to Mr. Morton?

10 A I didn't authorize my attorney to do anything with
11 that letter. As I stated numerous times, this letter was a
12 mere suggestion from Mr. Kevin Maloney to me, and I denied
13 fully.

14 Once -- upon signature of the letter -- which was a
15 mere suggestion, not an action -- this letter wasn't
16 something that was stating we were gonna do because I
17 advised Mr. Maloney specifically if a confession was to be
18 made, certain things needs [sic] to take place before that
19 happens. And that certain things was a meeting with me,
20 Mr. Morton, and our two attorneys to come on common grounds
21 to fully understand the charges that we'll be testifying to
22 or the confession that we will be actually making. And
23 none of that happened.

24 I never got a response from Mr. Morton at this time,
25 and this letter does -- reads (as read): "I'm doing so

1 with the understanding that you will also be cooperating
2 and telling the truth to investigators about the event that
3 took place on May 28, 2013."

4 At this time, we were having the intentions on going
5 to trial. So there was no intentions on, you know, giving
6 a statement that implements [sic] us to the crime itself or
7 the scene itself unless certain requirements and certain
8 things happen beforehand, which it didn't.

9 Q Did -- was this letter written before or after you got
10 the text messages that the State was gonna use at trial?

11 A I can't recall.

12 Q Okay. And you also have a pending PCR action; is that
13 right?

14 A I do.

15 Q So you're trying to win a new trial as well, right?

16 A I'm trying to exercise my right to have my sentence
17 vacated, set aside, or a new trial, yes.

18 Q Okay. So you're trying to get a new trial, and your
19 hearing is today, right?

20 A Right.

21 Q Okay. And Brian Morton is your friend, right, from
22 high school?

23 A He's my teammate from football.

24 Q Your teammate. And you want to do anything you can to
25 help him out, right?

CROSS-EXAMINATION BY MS. COLEMAN - LEON SIMMONS

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1 A I would do anything that helps anybody.

2 Q Okay.

3 A Him specifically is no different from you.

4 Q Nothing further. Thank you.

5 MS. GOLDBERG: Nothing further from this witness.

6 THE COURT: Anything you -- you need anything from
7 this witness?

8 MS. COLEMAN: Nothing further.

9 THE COURT: (To the witness) Thank you, sir. You can
10 step down.

11 (The witness complies.)

12 MS. COLEMAN: And I would just ask that he be returned
13 to the holding cell 'til his hearing. Thank you.

14 MS. GOLDBERG: Your Honor, that would be the end of
15 the Applicant's case.

16 THE COURT: Okay.

17 MS. COLEMAN: And the State calls David Hayes.

18 DAVID HAYES, having been first
19 duly sworn, testifies as follows:

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

22 THE WITNESS: Charles David Hayes, H-a-y-e-s.

23 DIRECT EXAMINATION

24 BY MS. COLEMAN:

25 Q Good morning, Mr. Hayes.

1 A Good morning.

2 Q How long have you been practicing law?

3 A Right at nine years.

4 Q And where are you currently employed?

5 A Aiken County Public Defender's Office.

6 Q And how long have you been employed there?

7 A Right at nine years.

8 Q And were you appointed to this case?

9 A I was.

10 Q And how long did you represent Mr. Morton before his
11 plea?

12 A I was appointed on May 30 to the possession of
13 controlled substance; on May 31, 2013, to murder and armed
14 robbery, burglary first and possession of a weapon during a
15 violent crime.

16 Q And what year is that?

17 A 2013.

18 Q Okay. About how many times did you meet with the
19 Applicant before he pled?

20 A On November 14, 2014, it was no less than 13 phone
21 calls, 10 visits at the jail, spoke with his family on four
22 occasions. We had gone before Judge Young, Judge Barber,
23 and Judge Early, respectfully 6/18/14, 3/12/14, and
24 10/16/13, asking for bond and every time he asked for me to
25 be relieved as his attorney.

DIRECT EXAMINATION BY MS. COLEMAN - DAVID HAYES

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1 Q Okay. What was the result of his -- the motions he
2 filed to have you relieved? What were the results of
3 those?

4 A Well, he can't file motions having dual hybrid
5 representation; but every time he informed me that he
6 wished to fire me, I informed the solicitors and had him
7 brought over to ask the Court to relieve me.

8 Q Okay. And were all those motions denied?

9 A All of them.

10 Q Okay.

11 A I believe on the last -- one of the last ones, I even
12 indicated to the Court the relationship had deteriorated
13 and that we were having difficulty communicating.

14 Q Do you believe that that difficulty communicating
15 affected your representation by the point of the guilty
16 plea?

17 A No. I think he understood exactly what we were
18 discussing and what the seriousness of the situation was.
19 And he kept asking for a high misdemeanor and a five year
20 probationary sentence after this incident. I told him that
21 was unrealistic and wasn't going to happen. And we argued
22 about everything as to what the law was, what the situation
23 was as to how trial would go. And if I said turn left, he
24 wanted -- it was right, and we argued about that all the
25 time. But he fully understood what he was facing and what

1 trial would entail.

2 Q Did y'all ever reach any kind of agreement to work
3 together on this or did you argue the entire
4 representation?

5 A It was bipolar. He would have good days and bad days.

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

7 A Yes.

8 Q And did you review the discovery with the Applicant?

9 A Multiple times.

10 Q What kind of evidence did the State have or intend to
11 present at trial?

12 A First off, I can't remember if it was West or Isaac
13 gave a full confession when -- the next morning after the
14 incident. His grandfather or father, once figured out what
15 happened, told him to go to Aiken Public Safety and give a
16 full confession. He did so.

17 On the night of the incident, the victim's cell phone
18 was stolen and was pinging. They tracked that to Brian
19 Morton's vehicle, tracked Brian Morton all the way back to
20 his address on [REDACTED] Wire Road, and arrested Mr. Morton.

21 Then Mr. -- the other individual, East or West --
22 can't remember which one was first, gave a confession --
23 and indicated they would testify against us at trial.

24 As to the DNA he was referring to, there was a ski
25 mask and gloves, I believe, found on the side of the road

1 that was -- I was suspecting going to be tested for DNA;
2 however, the State chose not to after the confessions and
3 cooperating co-defendants.

4 They also had video of the -- I can't remember who,
5 but it might have been the whole party -- in the gas
6 station about 5 or 10 minutes prior to the incident and
7 less than a few blocks away from where the incident
8 happened.

9 Q The ski mask and gloves you testified the State chose
10 not to test them for DNA. Did you consider having those
11 items tested for DNA or was that something you wanted to
12 do?

13 A After he had told me he had done it, I did not want to
14 ask for DNA on a mask that potentially had the -- had his
15 DNA on it.

16 Q So Mr. Morton confessed to the crime to you?

17 A To me.

18 Q And he eventually gave a statement; is that right?

19 A Yes.

20 Q Okay.

21 A That was on 10/28, October 28.

22 Q What was the -- the substance of his statement that he
23 gave to law enforcement?

24 A Notes indicate that we met at Aiken Department of
25 Public Safety. I met with him and discussed what was

1 happening, that the truth is best, and that the deal will
2 be better in the long run if he were to give the truth.

3 As that was testified earlier, there was a plea deal
4 offer in June or July that was going to expire very quick -
5 - fairly quickly from the time it was made, but I was on
6 vacation and under protection. When I came back, I found
7 out about the offer from my emails. I talked to Solicitor
8 Weeks, he said he would leave it open. The offer was a
9 concurrent 30 to everything. It expired. In our
10 discussions, he had rejected it several times.

11 Then we got the text messages which indicated that one
12 person was inside and they were talking back and forth
13 about when to hit the house, and that one of the phones was
14 Brian Morton's and I can't remember who the other phone
15 was. It might have been Leon's.

16 We had those. I went straight to the jail and met
17 with Mr. Morton and discussed those.

18 A very short order later I was contacted by Mr.
19 Maloney and was informed that Mr. Simmons wanted to give it
20 up and enter a plea deal. Wanted to see if he was going to
21 go with him.

22 We could not get the two in the same room because they
23 were keep separate at the jail. So we -- Mr. Maloney was
24 told what to tell Brian and typed it up. Later on I met
25 Mr. Maloney at the jail. We both went to -- I believe it

DIRECT EXAMINATION BY MS. COLEMAN - DAVID HAYES

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1 was C-Pod where Leon was at, and I watched Leon sign the
2 letter and say that's what he wanted.

3 We then went immediately down the hall to -- I believe
4 it was either D or E, where Mr. Morton was, and I watched -
5 - I gave the letter to Mr. Morton under the supervision of
6 Kevin Maloney. There was no promises made, no discussions
7 as to this is -- this is what Leon is saying, here's the
8 letter showing it. And I witnessed Leon sign it and he
9 witnessed Brian read it. As to that, I don't know what any
10 discussions with Mr. Maloney or Leon was.

11 Q Okay.

12 A After that, we discussed giving this statement here
13 and that would have been 10/28 when we did it. And he --
14 looks like he gave a discussion as to each person's role,
15 and he ID'd Trevon as a person that was involved.

16 Q What were your discussions with Mr. Morton after he
17 received this letter from Simmons?

18 A One, it would have been about the statement. And I
19 got the phone call from Kevin Maloney on 10/5/15. And
20 then, on October 15, after getting this information --
21 'cause that's when we got the text messages -- I met with
22 Michael Routzong, who is my teammate, and we both went
23 straight to the jail and met with Mr. Morton.

24 The following was discussed -- and his shorthand says
25 (as read): "I told Simmons that -- I told Brian Morton

1 that Simmons is flipping and he's gonna cooperate with the
2 State. State wants to get the inside man" -- what was, I
3 believe, Mr. Butler. "Simmons is going to the Solicitor.
4 Simmons wants -- said he was not at -- the time he gave the
5 defendants name. Talked about the possession -- the
6 possibility of a voluntary state -- manslaughter offer, but
7 was only a possibility. Everyone else except East and
8 defendant wanted a trial. Then I discussed with him the
9 text messages info provided by the State. Discussed the
10 inside man as Trevon Butler, and we had a long discussion
11 about that."

12 And then No. 9, Mr. Routzong's notes indicate (as
13 read): "Defendant says he is tired of fighting and feels
14 more comfortable now, and indicated that he wanted to give
15 the statement."

16 Q Did you ever promise Mr. Morton that the State would
17 give an offer for voluntary manslaughter?

18 A The only promise I ever made is I'd fight hard.

19 Q Did you ever mention anything about the burglary first
20 charge being dismissed?

21 A No.

22 Q Or the armed robbery being dropped down to a strong
23 arm robbery?

24 A No.

25 Q Okay.

DIRECT EXAMINATION BY MS. COLEMAN - DAVID HAYES

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1 A He indicated that I never told him what his charges
2 were, but on 6/6/13, our first jail visit, I -- I told him
3 possession of a controlled substance is six months; that
4 everything after that is day-for-day, 80 -- or 85 percent.
5 Murder, 30 years to life and potentially eligible for death
6 penalty due to the facts; that it is a day-for-day;
7 burglary first is 85 percent, 15 to life; armed robbery is
8 15 to 30 at 85 percent. Went over most serious and
9 serious; his constitutional right to jury trial; and
10 violent.

11 Q So was Mr. Morton aware of his potential sentencing if
12 he'd gone to trial?

13 A From Day One.

14 Q Okay. From the first day.

15 Did you give him any advice as to what you believe he
16 might get if convicted at trial realistically?

17 A More than 30, potentially life.

18 Q And what sentence was he eventually sentenced to at
19 the plea?

20 A A negotiated 30 concurrent.

21 Q Why did Mr. Morton want to take the negotiated plea?

22 A After being told that Leon was gonna plea, he decided
23 he was gonna take the plea. Told -- in his -- his words to
24 us, me and Michael Routzong at the time, was that he was
25 "tired of fighting and feels more comfortable now."

1 Q Did you discuss with the Applicant the concept of the
2 "hand of one, hand of all"?

3 A Yes.

4 Q Did he seem to understand that?

5 A Yes, but we argued about it.

6 Q Do you believe Mr. Morton could have been convicted
7 under "hand of one, hand of all"?

8 A Oh, yes.

9 Q Okay. How would you describe or characterize the
10 State's evidence against him?

11 A I believe we would have been fighting an uphill battle
12 at trial. More likely than not a conviction.

13 Q What would your strategy or defense have been if you
14 had proceeded to trial?

15 A First, as he was indicating, as to the entry into the
16 house, I would have tried to make motions that were
17 possible as to that, trying to suppress the phones;
18 however, the biggest issue is the phones that got him
19 arrested to start with, which was the victim's phones, he
20 has no standing on. And he wanted to try to suppress it,
21 and we argued about that. He has no standing to suppress
22 it.

23 He indicated about other witnesses. I interviewed and
24 ran down all the witnesses he gave me and had discussions.
25 One was a Ryan Johnson who, while he was in jail, I was

1 given a letter stating that Brian wasn't involved. After
2 he had -- I was given the letter he had bonded out or it
3 was resolved. It was a magistrate issue.

4 So I took my investigator and went to his house and
5 met with him and his mother, and discussed the issue and
6 interviewed him. And it came to light that he only signed
7 this recantation that he alleged -- or is alleged in -- as
8 a recantation of a statement only because he was approached
9 in jail and forced -- that he felt like he needed to sign
10 it for self preservation.

11 He also wanted to -- Mr. Morton wanted to suppress the
12 statements of the co-defendants, which I informed him as to
13 *Bruton*, if he was tried together, that might be a
14 possibility; however, if they were tried separately, he has
15 no standing. And if they were going to cooperate against
16 him and take the stand and testify, there was no *Bruton*
17 issue as well.

18 Q Would you just describe briefly the facts of the case
19 as the State was alleging.

20 A I got a grievance answer. I think I summed it up
21 pretty well. (As read) "It is alleged that Mr. Morton and
22 three co-defendants conspired to rob Shane Jones at his
23 home. Three of the suspects entered the home. During the
24 robbery, Shane Jones was killed. After the incident, the
25 suspects fled and were all apprehended within 24 hours.

1 All gave statements to the police. In Mr. Morton's
2 original statement, he claimed that he was not present at
3 the crime scene. The three co-defendants all confessed to
4 the crime and implicated Mr. Morton as a participant. The
5 statements also implicate a fifth person as a participant."

6 Q And who was that fifth person?

7 A Trevon Butler.

8 Q Okay. Did you review the Applicant's constitutional
9 rights with him immediately before the plea?

10 A Yes. I always go over the sentencing sheet from top
11 to bottom.

12 Q Did he ever tell you he didn't understand something?

13 A If he did, I would have instructed him as to what it
14 was and asked him to ask me questions so that I fully
15 understood what he was not following. But that was not the
16 case, I believe, with Mr. Morton.

17 Q And did Mr. Morton raise any concerns about you and
18 your representation at the guilty plea?

19 A Not at the guilty plea, but other than complaining
20 about he wasn't happy with my -- my representation.

21 Q Okay.

22 A And at that point, I quit listening. So I -- I did
23 not review the transcript and I didn't listen when he was
24 complaining. That's between him and the judge.

25 Q Ultimately, who's decision was it to plead guilty?

CROSS-EXAMINATION BY MS. GOLDBERG - DAVID HAYES

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1 A Mr. Morton's.

2 Q Did you agree with that decision at the time?

3 A I believe that was in his best interest.

4 Q Do you still agree with the decision?

5 A I do.

6 Q And why is that?

7 A The evidence against him and at trial, he's
8 potentially looking at a sentence that ends in life or a
9 sentence that is so long, that it might as well be life.

10 MS. COLEMAN: Beg the Court's indulgence one moment.

11 (Brief pause.)

12 MS. COLEMAN: Nothing further. Thank you.

13 MS. GOLDBERG: Yes, sir. May it please the Court.

14 CROSS-EXAMINATION

15 BY MS. GOLDBERG:

16 Q Good morning, Mr. Hayes.

17 A Good morning.

18 Q You mentioned on direct that at some point Mr. Morton
19 confessed the crime to you in your discussions with him.

20 A Yes.

21 Q Is that something that happened early on in your
22 representation or later, closer to the time he actually
23 made the statement to law enforcement? Or do you recall?

24 A I believe it was early on that they were going to do
25 the lick to get money for senior week and heard he had a

1 large amount of drugs and cash.

2 Q During the majority of your representation of Mr.
3 Morton, was it your understanding that his intention was to
4 go to trial or was he looking for a plea agreement?

5 A I'm sorry. To more specifically answer your question
6 --

7 Q Yes, sir.

8 A -- as the first one, 6/30/13, on our first visit, he
9 told me that everybody had guns except Trevon. Trevon was
10 in the house hanging out. Defendant and Markese got guns,
11 but they were unloaded.

12 Q Okay. So the next was, was it your understanding that
13 he wanted a trial in this case or that he wanted --

14 A Trial.

15 Q Okay. You -- you knew that. He always wanted a
16 trial.

17 A Uh-huh.

18 Q The phone that you mentioned that belonged to the
19 victim, that was tracked to Mr. Morton's car allegedly,
20 that was actually never recovered, correct?

21 A It was never found.

22 Q So the phone wasn't found in his car to be entered
23 into evidence to tie him to anything.

24 A No.

25 Q Would you agree that the bulk of the evidence against

1 Mr. Morton consisted of his co-defendants's statements?

2 A Yes.

3 Q Up until the time he provided his statement itself.

4 A Yes.

5 Q The letter -- thank you, ma'am -- that's been
6 previously admitted into evidence ---

7 A I'm familiar with it.

8 Q Yes. I'm going to just hand it to you because I'm
9 going to talk about the language. But you're familiar with
10 that document.

11 A Yes.

12 Q That document states that -- actually let me look at -
13 - look over your shoulder just to read the line.

14 (Brief pause.)

15 Q That letter from October 22 states Mr. Simmons --
16 allegedly it states Mr. Simmons intended to testify or to
17 provide a statement, correct?

18 A Yes.

19 Q And it says, "I'm doing so with the understanding that
20 you will be providing a statement and telling the truth,
21 too." I may have missed some of the words and the exact --
22 -

23 A That's the gist of the letter.

24 Q Okay. Prior to October 22, had Mr. Morton ever sent
25 you to go get a statement?

1 A No.

2 Q So that's not correct information that Mr. Simmons
3 had.

4 A No. That is Mr. Simmons asking him to join him.

5 Q It does say, am I correct, "I'm doing this with the
6 understanding that you will be doing it, too."

7 A Yes.

8 Q So if Mr. Simmons believed at the time that letter was
9 signed, let's say, that Mr. Morton had already promised to
10 give a statement, that would be incorrect information.

11 MS. COLEMAN: Objection. Calls for speculation.

12 A I don't ---

13 THE COURT: Overruled.

14 Q Go ahead.

15 A I don't know the answer to that. I don't know what
16 his discussions with Mr. Maloney were.

17 Q The -- aside from your witnessing the signature of
18 that letter, you -- you didn't create it obviously,
19 correct?

20 A No. Mr. Maloney typed the letter out.

21 Q That's your understanding of how it's created.

22 A Yes.

23 Q You mentioned at some point in time, close to when the
24 statement was provided, it might have been your meeting
25 with Mr. Morton before that, that you did talk about the

1 possibility of a voluntary offer. I think that you got
2 that out of your notes.

3 A Discussions of plea deals we discussed throughout the
4 whole time.

5 Q So more specifically, what was the discussion on this
6 particular day?

7 A That a -- on that particular day, that the possibility
8 of getting a voluntary manslaughter, the chances were
9 higher if he were to cooperate with the State, which I
10 believe he testified to as one of the other co-defendants
11 was offered a voluntary or two, and that was Mr. East and
12 West, and that's because they were the first two that
13 cooperated with the State. And with their cooperation,
14 which led to the convictions of Leon and Brian, they were
15 given voluntary.

16 One of them, I believe, accepted the offer. The other
17 one rejected it and went to trial -- I learned during the
18 trial from watching it, it was abundantly clear that the
19 client was forced to go forward by the family. And the
20 result, Judge Early gave him the same sentence: 30 years.

21 Q Do you know if the co-defendants that you just
22 mentioned had been given the offer to voluntary, like,
23 around the same time or before Morton ---

24 A Around the -- they was all done at the same time, if I
25 remember right. It was in an email.

1 Q So those were their offers to begin with.

2 A I believe so.

3 Q You talked -- so essentially, in having that
4 conversation, you told Mr. Morton that you were going to
5 ask for this offer?

6 A Yes.

7 Q Okay. And you did ask for this offer?

8 A I did.

9 Q And -- and the response was?

10 A No.

11 Q The day that Mr. Morton went to Public Safety to
12 provide a statement, you were present, correct?

13 A I was, 10/28.

14 Q Do you recall Mr. Morton testified that when he
15 arrived that day, he initially said, "I'm not giving a
16 statement"?

17 A No.

18 Q Is that accurate?

19 A No, that's not accurate.

20 Q Do you recall any conversations leading up to giving
21 the statement that day?

22 A My first initial notes was that I met with him at
23 Aiken Department of Public Safety. I discussed with him
24 what was happening and that truth was best and that the
25 possibility of getting the deal that he's asking for it'd

1 be better in the long run if -- of actually getting it if
2 he were to cooperate. At no time did he ever indicate to
3 me, by my notes, that he wished to pull the plug and
4 withdraw.

5 Q What benefit did Mr. Morton -- let me -- let me
6 rephrase this. Once Mr. Morton gave that statement
7 himself, his opportunity to go to trial and be successful
8 were hindered. Would you agree with that?

9 A Yes. They were more hindered than what they were
10 beforehand.

11 Q Before he gave a statement. What advantage did he get
12 from giving that statement?

13 A He got a negotiated concurrent sentence of mandatory
14 minimum.

15 Q What would have happened if he didn't provide that
16 statement?

17 A He would have gone to trial, and my prediction is is
18 he would have got a sentence somewhere between life and 30.

19 Q You mentioned that you discussed the "hand of one,
20 hand of all" concept, but you argued about it?

21 A We argued about every concept of law.

22 Q What specifically was the argument around that ---

23 A I don't ---

24 Q --- to the best of your --

25 A I don't remember.

1 MS. GOLDBERG: Beg the Court's indulgence.

2 (Brief pause.)

3 MS. GOLDBERG: Nothing further.

4 MS. COLEMAN: Nothing further.

5 THE COURT: Any objection to this witness being
6 excused?

7 MS. GOLDBERG: No, Your Honor.

8 THE COURT: All right. Thank you, sir. You are
9 excused.

10 (The witness exits the stand.)

11 MS. COLEMAN: And the State has no further witnesses
12 for this case.

13 THE COURT: Anything further from the Applicant?

14 MS. GOLDBERG: No reply, Your Honor.

15 THE COURT: I will take this under advisement so that
16 I can read all the materials.

17 MS. COLEMAN: Thank you, Your Honor.

18 MS. GOLDBERG: Thank you, Your Honor.

19

20 -- END OF TRANSCRIPT RECORD --

21

22

23

24

25

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 Second 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/s BONNIE H. KELLY

Bonnie H. Kelly, CVR

Official Court Reporter

Columbia, South Carolina

August 15, 2018



The State of South Carolina
Office of the Solicitor
Second Judicial Circuit

J. Strom Thurmond
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& Barnwell Counties

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July 1, 2015

Kevin Molony, Attorney for Defendant
237 Barnwell Avenue, NW
Aiken, SC 29801

RE: STATE V. LEON SIMMONS

David Hayes, Attorney for Defendant
P.O. Box 2247
Aiken, SC 29802

RE: STATE V. BRIAN MORTON

Kevin Beck, Attorney for Defendant
P.O. Box 1068
Langley, SC 29834

RE: STATE V. MARKESE EAST

Michael Chesser, Attorney for Defendant
P.O. Box 1018
Aiken, SC 29802

RE: STATE V. RASHAWN ISAAC

TRANSMITTED BY U.S. MAIL & EMAIL

Dear Counsel,

The time is past due to resolve these cases. My plan is to begin trying the cases in August, primarily for two reasons: Illness of the Chief Investigator and leave of Court of Mr. Hayes. As it stands now my thoughts are to try Simmons and Morton at one time, the thought being they have NEVER cooperated and the other two did. I would propose the use them (and their statements) as evidence in the trial of Morton and Simmons.

To be clear I am not promising any of them ANYTHING, except the following offer. I am making the same offer to each of your clients.

o A Guilty Plea to Murder, Armed Robbery, and Burglary. I will recommend a negotiated concurrent sentence of 30 years

The planning, acquiring weapons, transportation and carrying out of this Armed Robbery and Burglary which resulted in the Murder of the victim, Shane Jones, requires that each Defendant man up and plead to this offer. To various degrees each of them has been waiting for Christmas.



Page 2
Offer Letter
July 1, 2015

This deal will require them all to be completely debriefed if they are inclined to accept. I am not taking the first plea until all four are resolved.

Your clients have been more worried about their bonds than getting this case resolved to their benefits.

This offer expires on July 13, 2015.

I will be glad to discuss collectively or individually this offer.

Sincerely,



John W. "Bill" Weeks
Sr. Deputy Solicitor
Second Judicial Circuit

JW W:srp



MOLONY LAW, LLC

237 Barnwell Avenue, NW
Aiken, SC 29801

Kevin N. Molony, Attorney At Law

Phone: 803.648.0706
Fax: 803.648.2996

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 takes
us back. It don't look good.

Leon "5" Simmons



STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Brian Z. Morton, #366047,

2017-CP-02-0591

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

A TRUE AND CORRECT COPY

Robert J. Harte

By: *Aimee Knepper* Date: *6/11/18*
Deputy Clerk

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on March 14, 2017. Respondent submitted its Return on July 7, 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 Kristy Goldberg, 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 Leon Simmons. Respondent presented testimony from C. David Hayes, 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-02-1737), armed robbery (2013-GS-02-1738), and first degree burglary (2013-GS-02-

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1739). 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). Assistant Public Defender C. David Hayes, 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. Judge Early sentenced Applicant pursuant to a negotiated sentence to imprisonment for concurrent terms of thirty years for each charge.

Applicant filed a timely notice of appeal on November 19, 2015 through Plea Counsel Hayes. However, Plea Counsel also provided an explanation stating that there was a good faith basis to believe that there were no issues properly before the South Carolina Court of Appeals, as Applicant did not object to the sentence or file a motion to reconsider the sentence. The South Carolina Court of Appeals dismissed Applicant's appeal on June 13, 2016, stating that Applicant failed to provide a sufficient explanation for appealing. State v. Morton, Op. No. 2015-002612 (S.C. Ct. App. filed June 13, 2016). The Remittitur was sent on June 30, 2016.

II. ALLEGATIONS

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

1. "Ineffective Counsel"
 - a. "Appeal brief filing"
 - b. "Failure to review possible defenses"
 - c. "Lack of communication"
 - d. "Failure to disclose evidence"
 - e. "Failure to interview witnesses and not following through with negotiated plea"
 - f. "Any confession which appears to be basically a springboard for Mr. Hayes' determination, as he testified before, had Mr. Hayes investigated, the State may have determine at the very least Applicant was guilty as an accessory after the fact before he even pled, getting in Applicant's mind "he is guilty" without even testing the evidence."
2. Involuntary Guilty Plea

- a. "Applicant relied on Mr. Hayes to interpret that evidence and give him an intelligent platform from which to make a decision."

Applicant filed an amended application on April 6, 2018, adding the following allegations:

- (a) Ineffective assistance of counsel—counsel failed to adequately advise client regarding all facts and circumstances leading up to advising the Applicant to give a second statement to law enforcement.
- (b) Ineffective assistance of counsel—counsel was ineffective in improperly advising Applicant to give a statement to law enforcement, effectively precluding the Applicant's opportunity to have a meaningful jury trial.
- (c) Ineffective assistance of counsel—counsel improperly coerced Applicant to enter into plea agreement.
- (d) Ineffective assistance of counsel—counsel failed to sufficiently review discovery materials with client.
- (e) Ineffective assistance of counsel—counsel failed to sufficiently explain charges to client.
- (f) Ineffective assistance of counsel—counsel failed to investigate and interview potential witnesses.
- (g) Ineffective assistance of counsel—counsel informed Applicant that he would receive a plea offer to voluntary or involuntary manslaughter after giving statement to law enforcement.
- (h) Ineffective assistance of counsel—counsel failed to object to the fact that Applicant was charged as a principal and failed to request that he be allowed to plead to a Conspiracy charge.

III. SUMMARY OF RELEVANT TESTIMONY PRESENTED

Applicant's testimony

At the evidentiary hearing, Applicant testified he was arrested on May 29, 2013 for these charges and gave a statement denying his involvement in the crime after his arrest. He stated he was appointed an attorney, Plea Counsel, a week later, and he met with him a total of six times before his guilty plea two and a half years later. Applicant testified he never reviewed discovery with Plea Counsel, and Plea Counsel never fully explained to him the elements of the charges. He stated he did not realize at the time that murder required malice aforethought, and there was none in his case, so they could have challenged this at trial. He stated he did not understand what happened with the DNA analysis that was supposed to be done but was not.

Applicant testified he filed seven motions to relieve counsel and had four hearings with different judges over his motions, but all were denied. He stated his motions were all filed on the same basis—Plea Counsel was not communicating with him or his family, and he was lacking in his performance. Applicant stated he was planning on having a jury trial, and he wrote to Plea Counsel with trial strategies, but his suggestions were ignored. He stated he was given a plea offer on July 1st for a thirty year sentence, but he denied it. Applicant testified that he wanted a trial because the State had no evidence to prove his involvement in the crime.

Applicant testified that he was visited on October 22nd by Plea Counsel and the attorney who represented his co-defendant, Leon Simmons. He stated they brought him a letter allegedly from Simmons to inform him that Simmons was going to give a statement to law enforcement. He stated he told Plea Counsel that he did not want to give a statement and he wanted to go to trial. He stated Plea Counsel told him that if he gave a statement the State would drop or lower some of the charges against him, so Plea Counsel coerced him into pleading guilty. He stated that when he was taken to give his statement to law enforcement, Plea Counsel told him Simmons had given a statement the day before, which he later found out was not true, but this coerced him to give his own statement. He stated Plea Counsel threatened him by telling him he would get life in prison if he went to trial.

Applicant testified he ended up taking the same plea offer that was given in July for thirty years concurrent. He stated he was confused, and he had so much stuff against him that he felt he had no choice but to plead guilty. He stated he got no benefit from giving the statement, although he later agreed that he could have been convicted of two life sentences and an additional thirty years if convicted at trial. Applicant testified Plea Counsel gave erroneous advice to give a statement because there was no evidence against him up until that point. Applicant stated he and

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his co-defendants all should have gotten the same sentence. He testified that he was innocent, and he did not participate in the crime.

Leon Simmons' testimony

Leon Simmons 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 by an attorney on his pending PCR action, and he had spoken to his attorney before testifying at the hearing. He testified that the letter he allegedly sent to Applicant about giving a statement to law enforcement was only supposed to be a mere suggestion from his attorney, and he did not ask his attorney to send the letter because it was not his intention to send the letter. He stated that he did not type the letter, but it is his signature and his handwriting on the letter. Simmons testified he told his attorney he wanted to get together with Applicant and their attorneys to discuss giving statements, but they never did. He stated his attorney told him they were writing the letter to protect him from Applicant's statement if he chose to give one. He stated the only reason he gave a statement to law enforcement is because Applicant had already given one, so he gave a false statement in hopes of getting a lesser charge.

Plea Counsel's testimony

At the evidentiary hearing, Plea Counsel testified he met with Applicant no less than ten times at the jail, as well as four times with Applicant's family, and he spoke on the phone with him thirteen times. He stated the evidence against Applicant consisted of multiple statements from co-defendants, the victim's cell phone that was stolen and used to track Applicant's car to his house, where he was arrested, and a ski mask and gloves, which the State chose not to test for DNA after the co-defendants gave statements. Plea Counsel testified he did not want to test the DNA because he did not want to create evidence that could be used against his client. He stated

Applicant confessed his guilt to him early on in his representation. He testified that Applicant rejected the State's plea offer several times until they received the text messages that would be used as evidence in the case, showing Applicant's involvement in planning the crime before it was executed.

Plea Counsel testified the attorney who represented co-defendant Leon Simmons told him Simmons wanted to take a plea deal and "give it up." He stated they could not get Applicant and Simmons together in one room because of a keep away order from SCDC, so they knew they could not all meet together. Plea Counsel testified he had discussions with Applicant about giving a statement, and he told him Simmons was going to flip sides. He stated he was familiar with the letter from Simmons, and it was typed up by Simmons' attorney, but he saw Simmons sign it himself. He stated they discussed a possibility of a voluntary manslaughter offer, but he explained that this was only a possibility, not a promise, and giving a statement would make it more possible to get this reduced charge. He stated that he did ask the State for a voluntary manslaughter offer, but the State did not extend the offer.

Plea Counsel testified that Applicant would likely have gotten more than thirty years if convicted at trial, and potentially life in prison. He stated the evidence against him would have been an uphill battle at trial, and it was more likely than not that Applicant would be convicted. He stated he was preparing for trial and would have gone to trial if Applicant had chosen to do so, and his strategy would have been to move to suppress the text messages from Applicant's phone. He stated he would not have had standing to move to suppress the information collected from the victim's stolen cell phone. Plea Counsel testified it was Applicant's decision to plead guilty, and he agrees with that decision. He stated by pleading guilty Applicant got the benefit of

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a negotiated thirty year concurrent sentence, rather than getting a sentence ranging from thirty years to life in prison at trial.

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).

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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. The testimony presented at the evidentiary hearing shows Plea Counsel investigated the case and was preparing a defense for trial which included moving to suppress the cell phone records, 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. This Court finds Applicant has failed to present any credible evidence that he was coerced or tricked into giving a statement to law enforcement or pleading guilty.

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

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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 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 his co-defendants 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 25. Applicant testified at the plea hearing that he was not satisfied with his attorney, and he was given the chance to voice all his complaints against his attorney at the plea. Tr. 15, line 1. Despite his complaints, Applicant pled guilty notwithstanding the fact that he was not completely

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satisfied with Plea Counsel. Tr. 21, line 12. 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.

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

Wallula, South Carolina

WITNESSES

Aiken Department Of Public Safety

David E Savage

Law Enforcement Case #: 13-31768

DOCKET NO. 2013GS0201737

The State of South Carolina

County of Aiken

JWW

ARREST WARRANT NUMBER

2013A0220100520

FILED Oct 31 **2013**

Luis Adland
A.C.C.P. & G.S.

Sharon Thompson
Deputy Clerk

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2013

THE STATE

vs.

BRIAN Z. MORTON

ACTION OF GRAND JURY

TRUE BILL

Ronnie M. Hall

Foreperson of Grand Jury

Date: October 31, 2013

VERDICT

Foreperson of Petit Jury

Date:

CDR #: 0116

Indictment for

MURDER

§ 16-03-0010

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)

INDICTMENT FOR
MURDER

COUNTY OF AIKEN)

§ 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 **BRIAN Z. MORTON**, 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 the 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

COUNTY OF Aiken
STATE VS.
Brian Z Morton

AKA: _____

Race: _____ Sex: M Age: 20

DOB: 1994 SS#: _____

Address: _____

City, State, Zip: Aiken, SC 29801

DL#: _____ SID#: _____

*CDL Yes ☐ No ☒ CMV Yes ☐ No ☒ Hazmat Yes ☐ No ☒

In disposition of the said indictment comes now the Defendant who was

TO: Murder / Murder

INDICTMENT/CASE#: 2013QS0201737

A/W#: 2013A0220100520

Date of Offense: 5/28/2013

S.C. Code §: 16-03-0010; 16-03-0020

CDR Code #: 0116

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-03-0010; 16-03-0020 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45

w/minor 1st or 1.4wd Act)

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury (defendant's initials)

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

ATTORNEY: Bill Weeks, John W. "Bill" SC Bar# 5989 Defendant John W. "Bill" Attorney for Defendant TTB89 SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center.

for a determinate term of 30 days/months/years of ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$

§ 14-1-206 (Assessments 107.5 %) _____ \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2993 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Pnrb) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ 3.90

TOTAL \$ 133.90

PT/IP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

0136

11/12/15

WITNESSES

Aiken Department Of Public Safety

David E Savage

Law Enforcement Case #: 13-31768

DOCKET NO. 2013GS0201738

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

ARREST WARRANT NUMBER

Oct. 31 13

NOVEMBER TERM 2013

2013A0220100521

L. J. Anderson
U.C.C.P. & G.S.

Shannon Thompson
Deputy Clerk

THE STATE

vs.

BRIAN Z. MORTON

ACTION OF GRAND JURY

TRUE BILL

Ronnie M. Hall

Foreperson of Grand Jury
Date: October 31, 2013

VERDICT

Foreperson of Petit Jury
Date:

CDR #: 0139

Indictment for

ARMED ROBBERY

§ 16-11-0330(A)

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 **BRIAN Z. MORTON**, 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 person or presence of 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.


J. STROM THURMOND, SOLICITOR

STATE OF 2013 CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATEAiken
VS.

Brian Z Morton

AKA:

Race: Sex: M Age: 20

DOB: 1994 SS#: [REDACTED]

Address: [REDACTED]

City/State/Zip: Aiken, SC 29803

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☒ CMV Yes ☐ No ☒ Hazmat Yes ☐ No ☒In disposition of the said indictment comes now the Defendant who was
TO: Robbery / Armed Robbery

INDICTMENT/CASE#: 2013GSU201738

A/W#: 2013A0220100521

Date of Offense: 5/28/2013

S.C. Code §: 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

☐ CONVICTED OF or☒ PLEADSin violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or 1ewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentation to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.ATTORNEYS: John W. "Dill" Weeks SC Bar# 5989 Defendant [Signature] Attorney for Defendant TT884 SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2013-GS-02-01737
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (DUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL:	\$ 133.90

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel.
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 0136

Sentence Date: 11/12/15

WITNESSES

Aiken Department Of Public Safety

David E Savage

Law Enforcement Case #: 13-31768

DOCKET NO. 2013GS0201739

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2013

ARREST WARRANT NUMBER

2013A0220100522

JWW
Oct 31 13
L. J. Hadard
J.C.C.P. & G.S.
Shannon Thompson
Deputy Clerk

THE STATE

vs.

BRIAN Z. MORTON

ACTION OF GRAND JURY

TRUE BILL

Ronnie M. Hall

Foreperson of Grand Jury

Date: October 31, 2013

VERDICT

Foreperson of Petit Jury

Date:

CDR #: 0079

Indictment for

BURGLARY IN THE FIRST DEGREE

§ 16-11-0311

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 **BRIAN Z. MORTON**, along with others, did in Aiken County on or about
May 28, 2013, wilfully and unlawfully enter the dwelling of [REDACTED] located at [REDACTED]
[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

COUNTY OF Aiken
STATE VS.Brian Z Morton

AKA:

Race: Sex: M Age: 20DOB: SS#: Address: City, State, Zip: Aiken, SC 29803DL#: SID#: *CDL Yes ☐ No ☒ CMV Yes ☐ No ☒ Hazmat Yes ☐ No ☒

In disposition of the said indictment comes now the Defendant who was

FO: Burglary - First degreeINDICTMENT/CASE#: 2013GS0201739
A/W#: 2013A0220100522
Date of Offense: 5/28/2013
S.C. Code § 16-11-0311
CDR Code #: 0079

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-11-0311 of the S.C. Code of Laws, hearing CDR Code # 0079
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTES: John W. "Bill" Weeks SC Bar# Defendant Attorney for Defendant SC Bar# 77884WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2013-GS-02-01737
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-24-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient: *Fine: \$ § 14-1-206 (Assessments 107.5 %) \$ § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ § 56-5-2995 (DUI Assessment) \$12 \$ § 56-1-286 (DUI Breath Test) \$25 \$ Proviso 47.9 (Public Def/Prob) \$500 \$ § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§ 14-1-213 (Drug Court Surcharge) \$150 \$ § 50-21-114(BUI Breath Test Fee) \$50 \$ § 56-5-2942(f) (Vehicle Assessment) \$40/ea \$ Proviso 90.5 (SCJA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ 3.90TOTAL \$ 133.90PTUP days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel.
§ 47.12 requires \$500 be paid to Clerk
during probation.Clerk of Court/ Deputy Clerk Ann SandersCourt Reporter Bethanie Cropper

SCCA/217 (03/2011)

Presiding Judge Judge Code: 0136Sentence Date: 11/12/15