VOLUME III OF III

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

Honorable Brooks P. Goldsmith, Circuit Court Judge

JOEL ROBINSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-000575

APPENDIX

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A. Right.
Q. Plead guilty on --
A. No, that's not even an option in that. I already -- this is not something that I'm trying to prove that I didn't do. I was trying to get the best option out of this situation.
Q. Okay.
A. I didn't deny that I didn't do it or say that it wasn't wrong or anything. I went off my counsel's advice.
Q. So their advice was, pretty much, you did this crime, you've admitted to it, you're candid with that, but that best case scenario you'd get convicted of voluntary. Okay?
A. (Nods head.)
Q. But that didn't play into your decision of rejecting the offer at that point, did it? Your reasons for rejecting the offer were different than -- that didn't have anything to do with you rejecting the offer, though, right?
A. It wasn't that I wasn't considering it. I was told that my best option was the voluntary -- the trial, voluntary. If I got convicted the minimum that I would have got anyway would have been 30 years for murder.
Q. And that was the offer so you took your chances at

trial, right?
A. (Shrugs shoulders.)
MR. MITCHELL: No further questions. Thank you.
MS. SHURLING: Okay.

REDIRECT EXAMINATION

BY MS. SHURLING:
Q. When you turned down the offer to plead to murder for 30 years, your expectation was that you were going to go to trial and have a chance for -- and the jury decide whether it was murder or voluntary manslaughter, correct?
A. Yes, ma'am.
Q. Now he asked you very skillfully whether you turned down -- when you turned down the offer you knew that there was a chance that you might not get a voluntary manslaughter charge. Okay? Did you mean that you turned -- when you turned it down, you knew there was a chance the jury might not find voluntary manslaughter?
A. Yes, ma'am.
Q. Did you at any time in any shape, form or fashion understand that the jury might not ever even have the choice to convict you of voluntary manslaughter versus murder if the judge didn't allow it?
A. No, ma'am. I did not know that it was going -- the judge was going to have to rule whether voluntary

manslaughter would be even considered.
Q. Okay. So, when you turned down, and the judge put it far more articulately than me a little while ago, but when you turned down the 30-year offer it was knowing that if you went to trial the jury might find you guilty of voluntary manslaughter as you hoped or they might find you guilty of murder?
A. Yes, ma'am.
Q. And thinking that that chance was there and weighing 30-year minimum for murder day for day versus 30 year 85 percent, all of that, you decided you wanted to go for it and hopefully convince the jury this was a voluntary manslaughter situation?
A. Yes, ma'am.
Q. Correct?
A. Yes, ma'am.
Q. If you had known that there was a chance that when the jury was making a decision they might not even get to consider voluntary manslaughter as an option, would that have made a difference in whether you did or didn't accept that plea bargain?
A. Yes, ma'am. It would have.
Q. Would you have taken it if you had understood that even getting a voluntary manslaughter charge to the jury as an option was up to the judge and might or might not

happen?
A. Yes, ma'am. I knew I would have took the plea.
Q. And again, responding as to -- you knew all about voluntary manslaughter, right?
A. (Nods head.)
Q. Okay. You and I have spent a tremendous amount of time talking about voluntary manslaughter, haven't we?
A. Yes, ma'am.
Q. And we've talked about what the case law says constitutes sufficient legal provocation?
A. Yes, ma'am.
Q. We've talked about cooling-off periods?
A. (Nods head.)
Q. We talked about what the cases say about whether or not fighting words alone can be sufficient?
A. Yes, ma'am.
Q. Haven't we?
A. Yes, ma'am.
Q. And basically when I told you fighting words alone could not constitute sufficient legal provocation, that played right back into the fact that you were acting on this man's threats, right?
A. Yes, ma'am.
Q. And it's your testimony here today that if you had understood the law relating to voluntary manslaughter as

you now understand it, that even back when the offer was made to you, you would have taken it?
A. Yes, ma'am.
Q. Okay. And now -- and then after you discovered that it might not ever even get to the jury as a choice that reinforces that?
A. Yes, ma'am.
Q. Correct?
A. Yes, ma'am.
Q. Okay. And when Mr. Leddy recalls, kind of sad that when he was getting ready to do closing arguments you said now that we're not going, you know, now that we're not getting voluntary manslaughter charge to the jury I don't know why you even bother doing closing arguments. Do you remember saying that?
A. Yes, ma'am.
Q. Were you shocked at trial when there was this long debate about whether or not the jury was even going to hear about voluntary manslaughter?
A. Yes, ma'am, because I didn't know that we was going to have to. It was almost like a trial before, a hearing before they even was charged with it. I didn't know that the judge was going to have to decide whether or not the jury would even hear that.
Q. Okay. And, just to be clear before the trial --

Vanessa Shipley had -- pardon me.

Long day. Jennifer Davis had told you before the trial had been started that she had attempted, was going to see if she could get the offer back on the table?

A. Yes, ma'am.

Q. And that if she could the best it would be would be that murder for 30?

A. Yes, ma'am.

Q. And so you knew before the trial even started that she had not been successful in getting that back on the table, right?

A. Yes, ma'am.

Q. So and your lawyer had told you that your best hope was to be found guilty of voluntary manslaughter?

A. Yes, ma'am.

Q. And that hope had been taken away from you by Judge Childs' ruling, right?

A. Yes, ma'am.

Q. At that point you didn't have anywhere to go, did you?

A. No, ma'am.

MS. SHURLING: No further questions.

THE COURT: Anything further, Mr. Mitchell?

MR. MITCHELL: No, Your Honor.

THE COURT: Okay. And, Mr. Robinson, one quick question to you. I understand that you heard about this plea offer from Mr. Leddy.

Do you have any sense of the time? Like, was it a month before trial? Was it six months before trial? Do you have any recollection of when that offer was on the table?

THE APPLICANT: No, ma'am.

THE COURT: Okay.

THE APPLICANT: And the only reason that I remember Ms. Davis knowing that, she came right before the trial, like, it might have even been on a Sunday and the trial was supposed to start, but I know she came right before the trial.

THE COURT: Okay.

THE APPLICANT: And told me that.

THE COURT: Okay. All right. Thank you. You may step down.

MS. SHURLING: Your Honor, I would just add one thing to the record and this is not a criticism.

But I did not ask when I was given the file to review, I did not ask whether it had been sanitized and I do not mean that quite as negatively as it sounds. But some lawyers take

the position that they have the right to remove any notes that they have taken, any personal work product on the file and remove such matters from the files before they allow me access to them.

That is generally not the policy of the public defender offices. I run into that more frequently with private counsel than I do with public defenders offices. So I cannot represent that to the Court that I asked that magic question.

But I think if we're going to look through the file, I would ask that if Mr. Leddy is going to be reviewing material that I was not given access to that I would also have the opportunity to look at that material as well.

THE COURT: Okay.

MS. SHURLING: Thank you.

THE COURT: I think we have a clear record from having recalled Mr. Robinson.

However, I would still like to have Mr. Leddy -- I'd like to give Mr. Leddy the opportunity to look through the file to see if there are any written notes that help him refresh his recollection.

I also would like some testimony from

Ms. Goldberg, formerly Ms. Grafton. I understand that Mr. Robinson's testimony is that he had discussed this with Mr. Leddy but I do think that Ms. Goldberg would be able to give us some, possibly some information as well considering she was lead counsel for Mr. Robinson at least at some point.

Again I pose the question to counsel. I am happy to have another hearing on this matter or we can do this via some sort of telephone deposition. You tell me what you guys are willing to do or what our options are.

MR. MITCHELL: I would prefer us to have another hearing if that's okay.

THE COURT: That's fine with me.

MS. SHURLING: I personally prefer to have another hearing, Your Honor. There's no such cheaper.

THE COURT: And at that point we can call Mr. Leddy and he'll have the file with you at that time.

Let's go ahead and look at our calendars so we can --

MS. SHURLING: Your Honor, I can tell the Court that my father is having major surgery

sometime in the next 10 or 11 days. He's 85 years old and he'll be in the hospital for approximately 10 days. And I'm an only child, so I would be very wary of trying to set anything up in the next three weeks, I would say, for that reason.

THE COURT: Okay.

MS. SHURLING: Although we certainly could and then I could just make the Court aware if I was unavailable for that reason but ...

THE COURT: All right. We have -- I will be in Richland County the week of October the 4th and the week of October the 12th, and the week of October 19th. October is a grand time for us to schedule this from my perspective if that works for y'all.

MS. SHURLING: Your Honor, I am involved in a big wedding as I believe you will be the weekend before the 4th. So, it might be better if we were going to be planning on early in the week to go with the week of the 12th.

THE COURT: Okay. Mr. Mitchell, the week of the 12th?

MR. MITCHELL: I've got oral arguments scheduled that week. They haven't assigned

dates. It's Monday, Tuesday or Wednesday, I think.

THE COURT: Sure.

MR. MITCHELL: Maybe --

THE COURT: What about Monday the 19th?

MS. SHURLING: Sold.

MR. MITCHELL: I think it works.

THE COURT: Mr. Leddy?

MR. LEDDY: That's great.

THE COURT: Mr. Mitchell, you said something?

MR. MITCHELL: No, that's fine. It's the week after.

THE COURT: Well, let's go ahead and do nine o'clock, October the 19th.

MS. SHURLING: Thank you, Your Honor.

THE COURT: Mr. Mitchell, Ms. Shurling, make sure you can transport Ms. Robinson. I don't know who takes care of the transport orders. I just want to make sure he can be here.

MR. MITCHELL: He can do it without a transport order. I'd have to get an order.

THE COURT: Mr. Mitchell?

MR. MITCHELL: That's no problem.

THE COURT: I guess that's what you're used

to doing. I'm just trying to make sure I have all my ducks in a row.

MS. SHURLING: And, Your Honor, what would normally be an ex parte matter but I certainly don't mind discussing it in front of them.

I'm court appointed in this matter and at this point I am very close to the $1,000 cap unless I get a ruling from Your Honor allowing me to exceed that cap for my billing for OID, I mean, SCCID.

At this point I would ask that the Court entertain an order allowing me to bill up to 2,000 instead of 1,000. I think it will come in much lower somewhere close toward the middle in there but I haven't really sat down and gone through all my hours yet.

THE COURT: Are you already over the $1000 limit now?

MS. SHURLING: I don't know for sure

THE COURT: Okay. Well, go ahead. What I'd like you to do is file a written motion with your, the amount that you're requesting and I will certainly entertain that motion.

MS. SHURLING: Thank you very much, Your

Honor.

And I was, if I go ahead and do that, I go ahead and get all my time entered and add it up I may find that I'm only at $800 or something at which point then I can reduce my request significantly.

THE COURT: Okay.

MS. SHURLING: So that's a more practical way to do it.

THE COURT: Okay. Well, thank you very much. I know this was a long afternoon for everybody but I appreciate it. And we will see you all back October the 19th.

MR. MITCHELL: Thank you, Your Honor.

MS. SHURLING: Thank you.

THE COURT: Thank you.

END OF DAY: 5:11 p.m.

***

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

I, Cheri L. Young, Registered Professional Reporter and Official Court Reporter for the State of South Carolina, Second Circuit-At Large, do hereby certify that the foregoing proceedings were written stenographically by me using computer-aided translation; further, that the foregoing is a true, accurate and complete record, to the best of my skill and ability, of all the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of Common Pleas for Richland County, on the 25th day of August, 2015.

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

I have hereunder set my hand this 23rd day of June, 2016.

Cheri L. Young, RPR
Official Court Reporter

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

I, Cheri L. Young, Registered Professional Reporter and Official Court Reporter for the State of South Carolina, Second Circuit-At Large, do hereby certify that the foregoing proceedings were written stenographically by me using computer-aided translation; further, that the foregoing is a true, accurate and complete record, to the best of my skill and ability, of all the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of Common Pleas for Richland County, on the 25th day of August, 2015.

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I have hereunder set my hand this 23rd day of June, 2016.

Cheri L. Young, RPR
Official Court Reporter

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2014-CP-40-07560

Joel Antwan Robinson

State of South Carolina 2013

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____ | **Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _Dismissed without prejudice_____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

RICHLAND COUNTY FILED 2015 AUG 26 PM 4:23 JEANNETTE W. McBRIDE C.C.P. & G.S.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : The record in this action is held open to until the next hearing on 10/19/2015 to receive testimony from Applicant's former attorneys Kristy Grafton Goldberg and T. Micah Leddy

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		$
		$
		$

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge Jamie D. Gee **Judge Code** 2756 **Date** 8/26/2015

For Clerk of Court Office Use Only

This judgment was entered on the ____ day of _____, 20 ____ and a copy mailed first class or placed in the appropriate attorney's box on this 27 day of Aug, 20 15 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

SCRCP Form 4C (10/2011)

SCANNED

State of South Carolina)
)
County of Richland)

In the Court of Common Pleas
Fifth Judicial Circuit
2013-CP-40-7560

Joel Robinson,

Applicant,

vs.

State of South Carolina,

Respondent.

Transcript of Record

October 19, 2015
Columbia, South Carolina

B E F O R E:

The Honorable Brooks P. Goldsmith, Judge

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

Tara Dawn Shurling, Esquire
Attorney for Applicant

J. Clayton Mitchell, III, Esquire
Attorneys for Respondent

Maryann S. Nevers, CVR-M-CM
Circuit Court Reporter

I N D E X

E X H I B I T S

NO.	DESCRIPTION	I.D.	EVID.
R-1	Correspondence		15

TRANSCRIPT OF RECORD

(Whereupon, the proceeding was commenced at 2:16 p.m.)

THE COURT: All right. We are here for a PCR in the case of *Joel Robinson v. the State*. We had been here at the end of August and heard testimony in this case. And I held the matter open to be able to receive testimony from the applicant's former attorneys, Kristy Goldberg and Micah Leddy. And that is why we're back on the record in this case. Is that a fair recitation of what we've done so far?

MR. MITCHELL: Yes, ma'am, that is.

THE COURT: All right. Ms. Shurling, you can call your witness.

MS. SHURLING: Well, Your Honor, I'm -- I'm somewhat at a loss at this point as to whether I would be the party calling Kristy Goldberg or whether the state ---

THE COURT: All right.

MS. SHURLING: --- would.

THE COURT: Mr. Mitchell, do you plan to call Ms. Goldberg? Would you like her to be your witness? It sounds like Ms. Shurling doesn't want her to be hers.

MR. MITCHELL: That's fine. I'll call Ms. Goldberg.

THE COURT: Okay.

MS. SHURLING: Thank you.

(Whereupon, the witness came forward.)

KRISTY GOLDBERG, having been first duly sworn,

testified as follows:

(Off the record briefly.)

DIRECT EXAMINATION

BY MR. MITCHELL:

Q Good afternoon, Ms. Goldberg.

A Good afternoon.

Q Thanks for being here with us today. Let's see. So when did you represent Mr. Robinson?

A When I represented Mr. Robinson -- looks like our file was opened February 20th -- or February 19th of 2007. I was appointed. So I first met with him on February 26th of 2007. And I represented him until I left the office.

And looks like my last note in the file is June 18th of 2008. So it would've been somewhere around there. I'm not exactly sure. I -- I've got a transfer memo here, but it doesn't have a date on it. But it would've been -- I represented him for a little over a year.

Q Okay. And this is when you were leaving the public defender's office. Then you transferred the case to Mr. Leddy and Ms. Davis; is that right?

A I -- I transferred the case to Micah Leddy. And I think that's because I had been preparing for trial, and I had asked him to be my second seat on this case. So I think the case went to him, and then he asked Ms. Davis to be his second seat.

Q Okay. Now, there was some testimony, as I recall, earlier in this hearing that there was an offer made by the solicitor's office. And it was a 30-year offer to murder? Was that made to you?

A In -- in my transfer memo, which is basically just a short little paragraph that I wrote Mr. Leddy when I left the office, letting him know the status of the case, I wrote that Vanessa Shipley, his solicitor, had told me that if he did plead to murder, she would not ask for more than 30 years and that Mr. Robinson wanted a plea offer of voluntary, but that hadn't been extended.

Q So you never had -- there was no offer made under voluntary; it was just murder at that point?

A I had asked for a voluntary offer several times, and she, at this point was -- had said no.

Q Okay. So this 30-year offer, did you review that with Mr. Robinson?

A I would assume I did. I believe -- I remember having conversations with him where I was very aware of he wanted, so -- and I knew that we weren't there yet. So he knew that what he wanted wasn't an option yet.

Q So was this -- was this open at the time you transferred the case?

A That's what -- yeah. My transfer memo says (As read): Vanessa has said that if he does plead, she won't ask for

more than 30. He would be willing to plead to voluntary, especially if he could get less than 30, but that is not an option right now.

Q Now, in your representation of Mr. Robinson, did you review the elements of murder?

A Yes.

Q Did you review the elements and what would need to be proven as to voluntary?

A Yes.

Q In your discussions with Mr. Robinson -- so it seemed to be that he wanted an offer to voluntary; that's right?

A Yes.

Q Okay. And what was your advice to him on that?

A What I recall about Mr. Robinson is that he was one of the clients that I had at the public defender's office that I always remembered as sticking out as being extremely intelligent and very easy to talk to, very easy to get him to understand information. And I -- I did not typically have a habit of printing out case law and mailing it to inmates. But he's one of the few people that I actually did do that, because I thought he would understand it. I didn't think he would misread it; I didn't think he would misinterpret it.

So I sent him case law on voluntary. And in doing so, I wrote him a letter, where I said that I -- I did believe

-- this is what I said (As read): Upon review of this information, I do believe that in a jury trial, the lesser-included offense of voluntary manslaughter, as well as a defense of duress, would not be available as options. Therefore, you would likely be found guilty of murder.

My plan was still to go forward and try and let the evidence present a voluntary option. But it -- just in my preliminary review, that was my warning to him, is that I did not -- I would not count on it as an available option.

Q So you advised him that it was not likely that he was going to be successful getting a voluntary manslaughter charge?

A Correct. I -- I told him all along that that's what we were going to try for. But I told him, based on my review of the law, I did not necessarily think that it was going to be an option.

Q Okay. So you had specific discussions with him about this voluntary manslaughter charge if the case was to go to trial?

A Yes.

Q Okay. Do you believe he understood those ---

A Yes.

Q --- discussions?

And you mentioned he's an intelligent guy?

A Yes.

MR. MITCHELL: No further questions.

THE COURT: All right. Ms. Shurling?

CROSS-EXAMINATION

BY MS. SHURLING:

Q May I see the letter that you're referencing?

MS. SHURLING: May I approach, Your Honor?

A Yes, ma'am.

MS. SHURLING: A moment's indulgence.

Q And this was in your file?

A Yes, ma'am.

Q Okay. It's not signed, I notice.

A Yes, ma'am.

Q Are -- are -- do you have any way of being certain that this letter was ever mailed?

A I actually remember that letter being mailed, because attached to it was this report from the clerk -- our law clerk, along with the case law. So I remember sending that. Probably made the copy before and just signed the original. But I do remember it.

Q Okay. And -- and if I can see it one more second. I'm ---

A Yes.

Q --- sorry. And the language, of course, which you've already shared with us, is that you ---

A I worded it kind of funny, but ---

Q Well, I do believe that in a jury trial, the lesser-included offense of voluntary manslaughter, as well as the defense of duress, would not be available as options, and therefore, you would likely be found guilty of murder.

A Correct.

Q Okay. That's a direct quote. Did you ever have a discussion with him in which you told him that you did not believe that voluntary manslaughter would even be submitted to the jury as a possible verdict?

A Well, I -- I wrote -- this letter is from March of 2008. And I stayed with the public defender's office until June or July of 2008. So I -- I believe I would've met with him -- and let me see if there's a note about it. Yes.

All right. I met with him on May 14th. And I don't have an independent recollection of that date, but I'll read my notes.

Q Okay. The ---

A It's not ---

Q --- date ---

A --- long.

Q I'm sorry. The date of the letter was what?

A The date of the letter was March 4th.

Q March 4th. Okay. And that's 2008?

A Yes.

Q All right. And then, you met with him on May ---

A --- 14th.

Q Okay. Now, to rephrase my question: Do you have a specific recollection of telling him what you meant by you didn't believe it would be available as an option? And as I read that language, it -- it really doesn't -- if you're not a lawyer, is not clear to me whether you would mean that the jury would not even be considering voluntary manslaughter or whether you mean ---

A He ---

Q --- that they can find it.

A He had written to me.

Q Pardon?

A He had written to me in January. And he was asking me if voluntary was an option at trial. My response -- my letter was a response to his question.

Q Okay. And my question is: Do you have any notes in your file or any independent recollection of explaining that what you meant by it not being an option ---

A Uh-huh.

Q --- was that the jury would never even hear about voluntary manslaughter?

A I can't say if I ever phrased it that way.

Q Okay.

A I -- my impression at the time was that he understood

exactly what we were talking about. But I can't tell you -- and on any independent recollection of any particular words I used.

Q I understand. So you went over the elements of voluntary manslaughter with him?

A Yes.

Q And you went over the elements of self-defense, if it were to be a defense in this case ---

A Right.

Q --- with him?

A Right.

Q And then you told him you just didn't think either one of those were really going to even be an option at trial?

A Right.

Q And my question is: Do you have anything more specific that lets us know whether he was ever told that the jury might not even ever hear about voluntary manslaughter; that it might not be an option for the jury to consider, as opposed to your opinion that you don't think the jury is going to find voluntary manslaughter? Do you understand the distinction I'm making? I'm not being very articulate. I apologize.

A I -- I do understand the distinction you're making. And I don't have anything in writing that says specific whether it was worded that way.

Q In other words, it -- it -- it -- as I -- I will sometimes tell jurors, when -- I mean, clients, when they say, "Well, how about a lesser-included?"

And I've had occasion to explain to them: Well, it's not that simple. First, you've got to -- the evidence is heard, and then you've got to convince the judge that the evidence warrants the jury even hearing about the lesser-included and that then, if the jury hears about the lesser-included, there's still the question of whether or not the jury's going to go with that verdict option ---

A Right.

Q --- that they may not go with that verdict option. They may still find you guilty of the greater.

I -- I guess what I'm saying is what do we have, to the best of your recollection or in your notes, to show that -- that Mr. Robinson understood that distinction: whether you were saying ---

A Right.

Q --- that you didn't think the jury would go with that option as a verdict or whether you meant you didn't think that they'd ever even hear about it?

A If that was what I had meant, then I would have said we would -- we would have to hope the jury believes the voluntary. I would've specifically been talking to the jury's perspective.

Now, I have no possibility of having anything that reflects what Mr. Robinson's perspective of what I was saying was.

Q I'm ---

A I -- I don't have that.

Q Okay. So you don't have anything in your file that -- that clearly tells him, you know, the jury might not -- the jury might not even be charged on voluntary manslaughter; the jury might not ever even hear about voluntary manslaughter?

A Let me look at this. This would be the only thing I could possibly think of. I don't have anything.

Q Okay. And -- and we do, as lawyers here in the courtroom, we -- we talk about the verdict options we give jurors, don't we?

A I'm sorry?

Q You know, well, I mean, it -- it -- we look at the -- at the verdict sheet and we talk about what options the jury's being given on the verdict sheet?

A Uh-huh.

Q And . . .

MS. SHURLING: Moment's indulgence.

(Whereupon, Ms. Shurling and the applicant conferred.)

MS. SHURLING: Nothing further, Your Honor.

THE COURT: All right. Any redirect?

MR. MITCHELL: Very -- very briefly.

REDIRECT EXAMINATION

BY MR. MITCHELL:

Q So in that letter, you advised Mr. Robinson that it's not likely that he'll be entitled to a voluntary charge; is that right?

MS. SHURLING: Objection, Your Honor. That's not the testimony.

MR. MITCHELL: Okay. Your Honor, we move to have the letter admitted.

THE COURT: Yes.

THE WITNESS: And this is ---

MS. SHURLING: Without objection.

THE WITNESS: --- from the file. I don't know if you want to make a copy and enter it to keep ---

MR. MITCHELL: Yeah.

(Off the record briefly.)

(Whereupon, Respondent's Exhibit No. 1 was marked and entered into evidence.)

Q Okay. And the letter speaks for itself. But, I mean, your advice to Mr. Robinson deals with the voluntary manslaughter charge in that you didn't think it was likely that it was going to be a successful argument?

A My letter specifically said that I didn't think it was going to be an option.

Q And what did you mean by that, "as an option"?

A What I meant by that was that it wasn't even going to be put up in front of the jury.

Q Okay.

A Now, what he read that to mean, I can't say. But my -- the way I phrased it was it wasn't even going to be an option.

MR. MITCHELL: And that's all the questions I have.

THE COURT: All right. Thank you. You may step down.

MS. SHURLING: Nothing further.

THE WITNESS: Thank you.

(Whereupon, the witness exited the witness stand.)

MS. SHURLING: Got any other witnesses?

MR. MITCHELL: I guess I'll call Micah. Yeah. Your Honor, the state recalls Mr. Micah Leddy.

(Whereupon, the witness came forward.)

MICHAH LEDDY, having been first duly sworn, testified as follows:

(Whereupon, Ms. Shurling and Mr. Mitchell conferred.)

MS. SHURLING: Your Honor, I would object to him being recalled. He's already been called by the state.

THE COURT: Yes. But as you will recall from my order previously, I wanted him to be able to review the file and we were going to receive additional testimony from Mr. Leddy.

MS. SHURLING: Yes, ma'am. I -- I would just like to place on the record my objection to anything that would be proffered at this point as being from the file. I have contacted opposing counsel on more than one occasion and asked if any -- if that renewed search of the file yielded anything and asked to be made aware if there was anything else that -- any new ground to be plowed and was not advised of there being anything further that had been located.

THE COURT: Okay.

MS. SHURLING: Just ---

THE COURT: Your objection ---

MS. SHURLING: --- note my objection.

THE COURT: --- is noted for the record. I would still like to hear from Mr. Leddy now that he has reviewed the file. As I recall, that was one of my concerns from the previous hearing. Mr. Leddy was not able to answer several questions because he had not reviewed the file. So go ahead, Mr. Mitchell.

MS. SHURLING: Yes, ma'am. Thank you.

MR. MITCHELL: Thank you.

DIRECT EXAMINATION

BY MR. MITCHELL:

Q Good afternoon, Mr. Leddy.

A Good afternoon.

Q Thanks for being back here with us.

A All right.

Q Okay. After you looked at the file, did you -- were you then able to determine any plea offers that were made to Mr. Robinson by the solicitor's office?

A Only thing is from what Ms. Grafton-Goldberg has testified to: her letter to Joel about Vanessa not asking for more than 30 on a plea. I still don't have an independent recollection of that. I did find a note in my file from July of '08, where Joel told me he would take a plea, but not for more than 20 years.

And then, there was a letter from Joel to another attorney in our office, Nicole Singletary, what we would refer to as "jail mail," which is just a form that is available in the jail for people to write to various public defenders. And they can mark off a box as to which public defender they want it to go to. You typically send it to your public defender.

But he had asked Ms. Singletary to get involved in his case so that he could get a decent plea. I think that's how he called it, something decent. And that was in January of the year when -- January of '09. And we had a trial in March.

So I don't have any independent recollection. But it seems to me that the plea that he wanted was nothing more

than 20. And I know that we never got a voluntary offer.

So that's probably why I don't really remember talking about pleas with him, because he wanted 20 and we were at a 30-to-life charge. So it was my understanding, when I got the file, that it was probably going to be a trial. And I think that's what's indicated in the transfer memo.

Q So it's just -- there was no voluntary plea ever made, so there's no chance of getting down to what would be acceptable to Mr. Robinson?

A Right.

Q Okay.

MR. MITCHELL: One second, Your Honor.

THE COURT: Okay.

Q There was no issue with the offer being conveyed to Mr. Robinson, right? I mean, he knew that that offer was out there, as far as you can recall?

A Best of my knowledge. It was made before I was even lead counsel.

Q And there was testimony that made some attempts to try to revive that offer at some point? Do you recall when that happened?

A No.

Q Okay.

MR. MITCHELL: No further questions.

THE COURT: Okay. Ms. Shurling?

CROSS-EXAMINATION

BY MS. SHURLING:

Q Was there anything in the file, as you reviewed it again, that indicated you or one of your predecessors had asked the state to consider a plea to voluntary manslaughter?

A No.

Q But it -- there were no e-mails or letters or notes from telephone calls documenting any effort by any of y'all to get an offer to voluntary manslaughter?

A I didn't see any notes to that. No.

Q Okay.

A Or e-mails. No.

Q Anything in writing about a voluntary manslaughter plea?

A Not ---

Q Anything with the solicitor's office, that is?

A Not that I saw. No.

Q Okay. And as you proceeded to trial, fair still to say that your -- your goal was to try to get a voluntary manslaughter verdict?

A Yes.

Q And you had discussed that as your strategy with your client?

A Yes.

MS. SHURLING: Nothing further.

THE COURT: Any redirect?

MR. MITCHELL: One second, Your Honor.

THE COURT: Yeah. You can take a minute. Looks like you're looking through some stuff.

MR. MITCHELL: Yeah.

(Off the record briefly.)

MR. MITCHELL: One second, Your Honor.

(Whereupon, Mr. Mitchell and Ms. Shurling conferred.)

MS. SHURLING: A moment's indulgence, Your Honor. I've never read this e-mail before. Or if I have, it's been quite a while.

(Whereupon, Mr. Mitchell and Ms. Shurling conferred.)

REDIRECT EXAMINATION

BY MR. MITCHELL:

Q Mr. Leddy, you -- you testified you didn't believe there was anything in the file that -- where any defense lawyers asked whether there could be a voluntary plea -- where -- or that requested a plea for voluntary?

A Well, the -- I just I think that the question was anything additional. And I thought -- took that to mean anything more than what Ms. Grafton-Goldberg had testified to about the asking Vanessa Shipley, the solicitor, repeatedly. And I think she remembers asking repeatedly. And ---

Q Repeatedly for ---

A --- a voluntary ---

Q --- a voluntary offer?

A Yeah.

Q Okay.

A And I remember asking Ms. Shipley for plea offers on lots of occasions. But I just don't specifically remember it on this case. So I don't want to testify that I remember it when I can't say for sure that I do. It's been so long.

But there may be something in that file. If you have something, then I won't be terribly surprised. But I'm sure that we did have those conversations. I just don't -- didn't remember anything in addition to that transfer memo or the letter in the file.

Q So -- I mean, it was your understanding, when you took the case, that there was multiple -- that Ms. Goldberg requested a plea offer that would be acceptable to Mr. Robinson, which would be something under 30, before you got on the case? Was that ---

A Yes.

Q So you knew there had been discussions about a plea to voluntary before you were on, right?

A Yes.

Q Okay. And you likely made those same requests when it

was your case?
A Yes.
Q So you would've asked Ms. Shipley -- or at least had discussions of some type of plea to voluntary?
A Yes.
Q Okay.
MR. MITCHELL: No further questions.
MS. SHURLING: Very briefly.

RECROSS-EXAMINATION

BY MS. SHURLING:
Q But I believe you've already testified that you have no specific recollections about asking for a voluntary manslaughter deal ---
A Right.
Q --- yourself?
A That's right.
Q And you have nothing in your file to indicate that you did so either?
A Right.
Q Okay. And again, just so we're real clear: You had discussed the fact with your client that the state was not offering voluntary manslaughter?
A Yes.
Q Is that correct?
A Yes.

Q Okay. But the fact that the state wasn't offering voluntary manslaughter as a plea bargain didn't, in your mind, mean that it wouldn't be available as a potential outcome at a jury trial, right?

A Yes.

Q And you had, in fact, discussed with your client that your trial strategy going forward to trial -- to trial was going to be to get a verdict of voluntary manslaughter, as opposed to murder?

A Yes.

Q And I believe we resolved last time that you have no independent recollection of ever discussing with him the fact that the judge would have to agree to give voluntary manslaughter in order to for that to even be a verdict option?

A Yeah. I've thought about this since our last time in court. And I just -- I just don't remember having that conversation. I think it would be extremely unlikely that -- that we wouldn't have had a -- a conversation about that. I mean ---

Q Okay.

A --- just ---

Q Thank you.

A But I would say that it was not -- the implication of the judge refusing to give the jury instruction for

voluntary and what that meant to our case was not lost on Mr. Robinson when it happened. It wasn't surprising. And how important it was, was not -- it was something that he understood. So I think we must have talked about it.

Q Oh. It -- it -- well, you had talked about your trial strategy being to get a voluntary manslaughter judgment, as opposed to murder, correct?

A Yeah. That ---

Q And you ---

A --- was the ---

Q --- have no ---

A --- goal.

Q --- independent recollection of ever telling him that all of that assumes first that we convince the judge that a voluntary charge is warranted and get the judge to charge a jury on voluntary manslaughter, correct?

A Yeah. I don't remember having a -- that conversation.

Q And since -- your strategy at trial was not to get him found not guilty; your goal wasn't an acquittal, right?

A Well, I wouldn't say that that wasn't a goal. But I thought our best chance was to get a voluntary.

Q Isn't that ---

A We explored ---

Q --- what ---

A --- the ideas of self-defense or imperfect self-

defense, which is not recognized here.

Q Exactly. And in that -- those potentials were weighed against what you saw as the more appropriate trial strategy, which was to try to get a judgment for the lesser-included of voluntary manslaughter?

A Right.

Q And he knew in advance of his jury trial that that's what y'all were going for -- quote/unquote, going for? That was your goal, right?

A Yeah.

Q So it would be fair to see that -- say that it would come as quite a shock if he all of a sudden knew that wasn't even going to be on the table for the jury, right?

A Well, if that were the case, yes.

Q Okay. Thank you.

THE COURT: All right. You may step down.

(Whereupon, the witness exited the witness stand.)

(Off the record briefly.)

THE COURT: All right. I know it's been some time since we first heard this case. So, Ms. Shurling, if you'd like to do some summation of your arguments that you're making to the Court for why PCR should be granted?

MS. SHURLING: Your -- Your Honor, actually, I have a favor to ask. In the interim since we last met, a tumor was discovered on my dad's pancreas. My 85-year-old

father's been in cardiac ICU for 2 1/2 weeks and just got released from the hospital. And, of course, there was the great flood. I've got 3 feet of water in -- had in my house, in my basement.

As a result of that, I have not been able to go back over my notes as carefully as I would like to have in order to summarize all of my arguments in this case and would ask if Your Honor would consider receiving proposed orders in lieu of oral argument at this time ---

THE COURT: Okay.

MS. SHURLING: --- so that I would have adequate time to go back and look back over my notes.

THE COURT: Any objection from the state?

MR. MITCHELL: I have no objection to proposed orders.

THE COURT: All right. Well, that's what we'll do. I'll ask for proposed orders from both parties. Is 30 days enough time for those proposed orders?

MR. MITCHELL: May -- maybe a few more.

THE COURT: I know we've got ---

MR. MITCHELL: Yeah.

THE COURT: --- a lot going on. Today's October the 19th. What is the date -- what's the first Monday in November? November 2nd? Can we get orders in by November 2nd?

MR. MITCHELL: I think that's doable.

THE COURT: Ms. Shurling?

MS. SHURLING: Is -- that's ---

MR. MITCHELL: Well, that's ---

MS. SHURLING: --- less than ---

MR. MITCHELL: Yeah. That'd be ---

MS. SHURLING: --- 30 days. You mean ---

MR. MITCHELL: You mean December?

MS. SHURLING: --- did -- did you ---

THE COURT: Oh. I mean ---

MS. SHURLING: --- say December 2nd?

THE COURT: I'm sorry.

(Whereupon, the Court conferred with the law clerk.)

THE COURT: How about by December 7th?

MS. SHURLING: That's wonderful, Your Honor. Thank you very much.

THE COURT: Okay. All right. Now, I need to stay fresh on this case too. I've got good notes, but let's try not to ask for a continuance beyond December the 7th.

MS. SHURLING: I'm good with that ---

THE COURT: All right.

MS. SHURLING: --- Your Honor. I'll do my best.

THE COURT: Wonderful. I'll expect proposed orders then. Thank you.

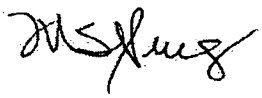
(Whereupon, the proceeding was concluded at 2:52 p.m.)

--- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED MARYANN S. NEVERS, CERTIFIED VERBATIM REPORTER - MASTER, CERTIFICATE OF MERIT, OFFICIAL COURT REPORTER FOR THE EIGHTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR SUMTER COUNTY, SOUTH CAROLINA, ON THE 19TH DAY OF OCTOBER, 2015.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



MARYANN S. NEVERS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

AUGUST 17, 2016

RICHLAND COUNTY PUBLIC DEFENDER
RICHLAND COUNTY JUDICIAL CENTER

1701 MAIN STREET
POST OFFICE BOX 192
COLUMBIA, SC 29201

PHONE (803) 765-2592
FAX (803) 929-6156
TDD # (803) 748-4999

March 4, 2008

Mr. Joel Antawan Robinson
Inmate Number: 48860 Juliet Dorm
201 John Mark Dial Drive
Columbia, SC 29209-

Mr. Robinson;

I have received your letter addressing your legal concerns. Upon review, I asked a legal clerk in our office review your file and do the legal research relevant to what you included in your letter. I am attaching her written memo and the relevant case law. Ultimately upon review of this information I do believe that in a jury trial the lesser included offense of voluntary manslaughter as well as the defense of duress would not be available as options, and therefore, you would likely be found Guilty of murder.

Please review these materials and we will speak in detail about them next time I return to the jail.

Sincerely,

Kristy M. Grafton
Assistant Public Defender

km

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Joel Robinson, #251879,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2013-CP-40-07560

ORDER OF DISMISSAL

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed December 16, 2013. Respondent made its Return on April 7, 2014, requesting an evidentiary hearing be convened. Kristy G. Goldberg, Esquire was initially appointed by the Richland County Clerk of Court to represent Applicant. Counsel Goldberg was relieved because she represented Applicant when she was with the Richland County Public Defender's Office. Tara D. Shurling, Esquire, was then appointed by the Richland County Clerk of Court on February 21, 2014. An evidentiary hearing was held on August 25, 2015, at the Richland County Courthouse. Applicant was present and represented by Counsel Shurling. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent.

At the PCR hearing, Applicant testified on his own behalf. Also testifying were Applicant's counsel, Micah T. Leddy, Esquire, and Jennifer C. Davis, Esquire. The record was held open to allow Counsel Leddy to further prepare and review his case file and to receive testimony from Counsel Goldberg. The hearing was reconvened on October 15, 2015. This Court had before it the Richland County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the appellate records, the PCR application, the Return, and the transcript.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was indicted during the June 2007 term of the Richland County Grand Jury for Murder (2007-GS-40-2040), Use of a Firearm During the Commission of a Violent Crime (2007-GS-40-2038), and Assault and Battery with Intent to Kill (2007-GS-40-2039). He was also indicted at the February 2009 term of the Richland County Grand Jury for Possession of Crack Cocaine – Second Offense (2009-GS-40-1345) and Possession of Cocaine – Second Offense (2009-GS-40-1346). On March 3-5, 2009, Applicant proceeded to a jury trial before the Honorable J. Michelle Childs, where he was convicted as indicted. Applicant was represented by Counsel Leddy and Counsel Davis at trial. Judge Childs sentenced Applicant to life imprisonment for Murder, twenty (20) years' for Assault and Battery with Intent to Kill, five (5) years' for Use of a Firearm during the Commission of a Violent Crime, and time served for Possession of Cocaine – Second Offense and possession of Crack Cocaine – Second Offense. The sentences were to be served concurrently.

Applicant filed a notice of appeal and an appeal was perfected on his behalf. Following briefing, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences by unpublished order filed March 21, 2012. A subsequent Petition for Rehearing was denied. Applicant then petitioned the South Carolina Supreme Court for certiorari, which was denied by the Court on August 8, 2013. The Remittitur was issued on August 15, 2013.

In this action, Applicant alleges that he is being held in custody unlawfully for the following reasons:

I. Ineffective assistance of trial counsel in
   a. Failing to move to suppress Applicant's statement;

b. Failing to argue Applicant was subjected to an unlawful search and seizure; and
c. Failing to advise Applicant that the decision of whether to instruct the jury on voluntary manslaughter is discretionary with the trial judge.

II. APPLICABLE LAW

In a post-conviction relief action, Applicant bears the burden of proving the allegations in the 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 the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order 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. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the trial transcript, appellate records, records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Ineffective Assistance of Trial Counsel

Failing to move to suppress Applicant's statement

First, Applicant alleges Counsel were ineffective in failing to move to suppress Applicant's statement to law enforcement. Applicant argues Counsel should have argued that he was intoxicated and therefore did not give his statement voluntarily.

A Jackson v. Denno hearing was held pre-trial. Applicant stated to a transport officer that the victim had disrespected him several times. (Trial Tr. p. 106, lines 12-17). Applicant also confessed and stated that he killed the victim and that the victim was dead. (Trial Tr. p. 110, lines 16-22; p. 111, line 15; p. 112, line 2). Later, Applicant gave a written statement to investigators after being Mirandized and after signing a waiver of rights consent form. In nearly an hour-and-a-half long interview, Applicant detailed the events leading up to the murder and gave a full confession. Investigator Kevin Reese, who took Applicant's statement, testified that Applicant

did not appear intoxicated and that his statement made "absolute sense." (Trial Tr. p. 127, lines 1-12). The State argued that the initial statements Applicant made were completely unsolicited by the officers and should be admitted. (Trial Tr. p. 136, lines 3-12). Counsel Leddy argued that the initial statement was not given voluntarily and cited the fact that Applicant had not yet been Mirandized. (Trial Tr. p. 138, lines 7-14).

At the PCR hearing, Applicant testified he was under the influence of drugs such as ecstasy, cocaine, crack cocaine, and alcohol when he was taken into custody. He described the effect those drugs had on him, specifically that they made him paranoid. He testified he discussed his intoxication with Counsel Goldberg. He further testified that a drug test was never administered to help show his level of intoxication at the time he gave a statement. Counsel Leddy testified that Applicant did not tell him he was using a number of drugs or that he was intoxicated when he gave his statement to law enforcement. Judge Childs found the statement was given voluntarily and indicated that it would be admitted when offered. (Trial Tr. p. 144, lines 9-14).

This Court finds this allegation is without merit. "The fact that one is intoxicated at the time a confession is made does not necessarily render him incapable of comprehending the meaning and effect of his words." State v. Saxon, 261 S.C. 523, 529, 201 S.E.2d 113, 117 (1973). "Therefore, proof that an accused was intoxicated at the time he made a confession does not render the statement inadmissible as a matter of law, unless the accused's intoxication was such that he did not realize what he was saying." Id. Based on this case law, it was reasonable for trial counsel not to object on the basis of intoxication and not to call Applicant as a witness during the Denno hearing. The testimony at the Denno hearing shows that Applicant had full use of his facilities and that he was thinking clearly and logically when he gave his statements. (Trial

Tr. p. 127, lines 1-12). This Court finds that a motion to suppress Applicant's statement on the grounds that he was intoxicated would have been futile. Applicant's statement was properly admitted. See State v. Collins, 266 S.C. 566, 673, 225 S.E.2d 189, 193 (1976) (the evidence regarding the defendant's intoxicated condition at the time he made a statement to police "presented a factual situation which the judge determined unfavorably to the defendant. We cannot say he erred."). There is also overwhelming evidence of Applicant's guilt so he cannot prove prejudice. This Court denies and dismisses this allegation.

Failing to argue Applicant was subjected to an unlawful search and seizure

Next, Applicant alleges Counsel were ineffective in failing to challenge the initial stop made by officers. Specifically, Applicant argues there was no probable cause for the officers to stop him.

During pre-trial motions, Counsel Leddy argued that the search and subsequent seizure was in violation of the 4th Amendment. He argued that any evidence recovered pursuant to an unlawful stop would have been fruit of the poisonous tree. Counsel Leddy expounded upon this argument: "the stop was initially made because he was suspected. It was a suspicion stop, not a probable cause stop. It was a suspicion stop, that he matched the description of somebody wanted in a shooting, and then investigator Dow came." (Trial Tr. p. 210, lines 19-23). The State took the contrary position and noted that the officers conducted a proper Terry frisk and then a proper search incident to arrest (Trial Tr. p. 212, lines 7-12). Judge Childs ruled that the motion to suppress was denied. (Trial Tr. p. 212, line 13). Counsel Davis testified that Applicant matched the description of the murder suspect in that he was bald, light-skinned, and wore a tan jacket. She testified that it was the defense's strategy to challenge the suggestive show-up identification made by Jeffrey Smith.

This Court finds Applicant failed to meet his burden in proving Counsel were ineffective in failing to challenge the search and subsequent seizure of Applicant and the recovery of the murder weapon. For one thing, Counsel Leddy did challenge the officer's initial stop of Applicant while walking down North Main Street. This issue was ruled upon by Judge Childs. Thus, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant could have raised this issue on appeal. Regardless, this Court finds the stop to have been proper and not in violation of the 4th Amendment. Furthermore, Applicant has failed to prove any resulting prejudice because of the overwhelming evidence of his guilt.

Failing to advise Applicant that the decision of whether to instruct the jury on voluntary manslaughter is discretionary with the trial judge

Applicant alleges Counsel were ineffective in failing to advise him that a voluntary manslaughter jury instruction was discretionary. Applicant alleges that if he had known that there was a chance he would not receive the voluntary manslaughter instruction, then he would have accepted the State's plea offer of thirty (30) years' to murder.

This Court finds this allegation is without merit because Applicant *was* properly advised by Counsel on the issue. This Court finds Counsel Goldberg's testimony credible and persuasive. Counsel Goldberg thoroughly explained to Applicant that there was no guarantee that he would be entitled to a voluntary manslaughter charge. See State's Exhibit 1. Counsel Goldberg went so far as to send Applicant a memorandum detailing her analysis and attached relevant case law for him to analyze. This Court also notes Counsel Goldberg's unsuccessful efforts in attempting to

solicit an offer of voluntary manslaughter. This Court also finds Counsel Davis's testimony credible in that a thirty (30) year offer to murder was made and rejected by Applicant. Counsel Davis and Counsel Leddy also advised Applicant regarding voluntary manslaughter and reviewed the relevant penalties with him.

This Court finds Applicant rejected the plea offer after it was fully and properly conveyed to him. This Court finds Applicant was not credible when he testified that he would have accepted the plea offer of thirty (30) years' if he had known there was a possibility that he would not be entitled to a voluntary manslaughter charge. Notably, Applicant testified that he rejected the plea offer of thirty (30) years' because he did not want to serve that much time on a day-for-day sentence.

Finally, this Court notes that there exists overwhelming evidence of Applicant's guilt which bars a finding of prejudice on any alleged deficiency. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001), cert. denied, 535 U.S. 1114, 122 S.Ct. 2332, 153 L.Ed.2d 162 (2002) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of the defendant's trial); Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt). The State presented several eyewitnesses to the murder who identified Applicant as the shooter. Applicant also gave a detailed confession and account of how he believed his life was in danger and that if he did not take action, then he would be killed himself. This Court denies relief.

All Other Allegations

As to any and all allegations that were raised in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations.

Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. CONCLUSION

Based on the foregoing, the Court finds Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate counsels' performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice; and

2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 25 day of January, 2016.

Tanya A. Gee
Presiding Judge

Columbia, South Carolina

STATE OF SOUTH CAROLINA)) COUNTY OF RICHLAND)	IN THE COURT OF COMMON PLEAS
JOEL ROBINSON, #251879, Applicant, v. STATE OF SOUTH CAROLINA, Respondent.	2013-CP-40-07560 RULE 59(e) SCRCP, MOTION TO ALTER OR AMEND

NOW COMES the Applicant in the above-captioned case, acting by and through undersigned counsel, respectfully moving this Court pursuant to Rule 59(e), SCRCP, to alter or amend its Order of Dismissal filed January 25, 2016. The Application for Post-Conviction Relief in this matter was filed on December 16, 2013. An evidentiary hearing was convened on August 25, 2015, in which the State was represented by Assistant Attorney General, J. Clayton Mitchell and the Applicant was represented by Tara Dawn Shurling, Esquire. The evidentiary hearing was recessed at the conclusion of that proceeding and was reconvened on October 15, 2015 for further testimony. In support of this motion, the Applicant would show unto this Honorable Court the following with regard to issues, or aspects of allegations raised, which were either not addressed in the Order of Dismissal, or, were inadequately addressed.

The issues asserted in the *Pro Se* Application for Post -Conviction Relief were more narrowly defined by his PCR Counsel at the outset of the August 25, 2015 evidentiary hearing. Those claims, as articulated for the Court, were:

1). Defense Counsel was ineffective for failing to adequately argue a Motion to Suppress Applicant's statements, and other evidence, on the following grounds:

A) The State failed to establish that Officer Dutton was an unavailable witness at trial prior to the introduction of statements attributed to Dutton thereby violating Applicant's right to confront all the witnesses against him in violation of the Confrontation Clause of the United States Constitution.

B) Defense Counsel was ineffective for failing to investigate and argue the fact that Applicant was under the influence of drugs at the time of his statements to law enforcement to a degree that he could not enter a knowing and voluntary waiver of his rights.

C) Defense Counsel was ineffective for failing to request a recess to give the defense the opportunity to explore presenting Officer Dutton as a potential witness for the defense.

D) Defense Counsel was ineffective for failing to adequately argue that the absence of Officer Dutton denied Applicant the opportunity for cross-examination of this witness concerning the existence of a sufficient legal basis for Applicant's stop and detention. Defense Counsel failure to argue, in a timely manner, that the State's failure to present this witness resulted in a lack of proof concerning legality of Applicant's stop and detention negatively impacted Applicant's ability to argue that all the evidence flowing from that stop was inadmissible including, but not limited to, statements allegedly made by Applicant as a consequence of that stop.

E) Defense Counsel was ineffective for neglecting to explore the potential benefit of using Officer Dutton as a witness for the defense and for neglecting to subpoena her where the record indicates that the defense had the opportunity to do so.

2). Applicant alleged that Defense Counsel was ineffective for failing to exercise due diligence in the plea bargaining process. Specifically, Applicant alleged the following with regard to this claim:

A) Defense Counsel was ineffective for failing to adequately explain the legal standards for obtaining a jury instruction on the lesser-included offense of voluntary manslaughter.

B) Defense Counsel was ineffective for neglecting to adequately explain to Applicant that the trial judge would ultimately decide whether, or not, the evidence supported a request for a jury charge on the lesser-included offense of voluntary manslaughter.

C) Defense Counsel was ineffective for allowing Applicant to reject a plea offer by the State with out a comprehensive understanding of the fact that, at a jury trial, the presiding judge could deny a request for a jury instruction on the lesser-included offense of voluntary manslaughter and thereby deny him the opportunity to have his jury even consider finding him guilty of that crime instead of murder.

During the testimony and evidence presented at the two evidentiary hearings held in this case, Applicant also argued that,

3) Defense Counsel was ineffective for failing to advise him that he could present testimony during the *Jackson v. Denno*, hearing held in his case without waving his right to the closing argument to the jury.

With regard to Applicant's allegation that Defense Counsel was ineffective for failing to move to suppress his statements to law-enforcement, Applicant most respectfully asserts that the Order of Dismissal entered in his case neglects to make findings of fact and ruling of law with regard to important component of his Sixth Amendment claims.

Failure to Move to Suppress Applicant's Statement

Order of Dismissal pages 4 – 6.

The Order of Dismissal addresses Applicant's claim that Defense Counsel neglected to investigate and present arguments concerning the fact that he was intoxicated at the time he was initially detained by law-enforcement and therefore, was not capable of making a knowing and voluntary waiver of his right to remain silent. The Order of Dismissal does not, however, address Applicant's claim that Defense Counsel was ineffective for neglecting to argue that his

statements should be suppressed as the fruit if an unlawful stop which was not supported by probable cause, or even the lesser standard of reasonable suspicion. *State v. Hewins*, 409S.C. 93, 760 S.E.2d 814 (S.Ct. 2014); *State v. Morris*, 411 S.C. 571, 769 S.E.2d 854 (S.Ct. 2015). The Order of Dismissal issued by this Honorable Court does not address Applicant's claim that Defense Counsel neglected to argue that all statement allegedly made by him following his illegal stop and detention would be the fruit of the poisonous tree. *Wong Sun v. United States*, 371 U.S. 471, 83 S.Ct. 407 (1963).

Applicant specifically argued that Defense Counsel was ineffective for neglecting to argue that the State could not meet its burden of proof with regard to the legal basis for Applicant's stop and detention where they neglected to present the testimony of the officer who made the stop, Sergeant Dutton. Applicant further argued that Defense Counsel was deficient for neglecting to argue that the State failed to meet its burden of proof with regard to establishing that Dutton was an unavailable witness within the meaning of Rule 804, SCRE.

The testimony of all the other law-enforcement officers at Applicant's trial who responded to the location where he was stopped and detained indicates that they were dispatched as backup after Applicant was stopped and was being detained by Sergeant Dutton.

In the context of the *Neil v. Biggers*[1] hearing, Defense Counsel did indicate that the defense had "a problem with" the introduction of the statement made by Sergeant Dutton. Tr. p. 75, l.15-p.85, l.17. During that hearing Officer Fisher testified that he went to where Applicant had been stopped to provide backup for Dutton. His testimony establishes that when he arrived at the location, Dutton already had Applicant stopped and was checking his ID card. He specifically testified that "we went and backed her up." Tr. 86, l. 3-p. 87, l. 10. Officer Bailey testified that he was riding with Officer Fisher on the night in question and remembered being

[1] Neil v. Biggers, 409 U.S. 188, 93 S.Ct. 375 (1972).

sent as back up for Sergeant Dutton. Tr. 93,l. 17- p. 94, l. 9. Upon arrival he saw Dutton standing next to her vehicle and he believed she was running the suspects ID. He testified that she "had his ID card" when they arrived at the scene. Tr. 94, ll. 7- 17. Officer Fisher testified that he heard the dispatch describe the shooting suspect as "a light skinned black male." He further testified that he heard Dutton inquire as to whether there was any clothing description and then heard a response stating, "a tan jacket." Tr. 86, ll. 10-19. Officer Bailey testified that he heard the description of the suspect over the radio describing "a light skinned black gentleman with a bald head such as myself." Tr. 93, ll. 4-16. He testified that upon arrival the individual he saw with Dutton did fit the description of the shooter that he had previously heard over the radio. Tr. 94, l.10- p. 95, l. 3.

Following the trial court's ruling on the Motion to Suppress the identification of Applicant by Lavern Smith, an individual who had participated in a one man show up at the location where Applicant was stopped and detained by Dutton, the Court proceeded with a hearing on Applicant's Motion to Suppress his statements. Tr. 102, ll.12-19. The State's first witness during the *Jackson v. Denno*[2] hearing was Brian Carrol, an officer with the Columbia Police Department. He testified that he was the officer assigned to transport Applicant from where he was stopped by Dutton to the headquarters. Tr. 102,l. - p. 104, l. 19. He testified that during the approximately 6 minute drive to headquarters he did not have any conversation with Applicant. He testified that upon arrival at headquarters, he was in an interview room with Applicant for approximately 10 minutes while waiting for Investigator Reese to arrive. During that time period, he testified that Applicant made several statements to the effect that "the victim disrespected him." Tr. 105, l. 7-p. 206, l. 15. Officer Fisher, who previously testified during the *Neil v. Biggers* hearing, also testified for the State during the *Jackson v. Denno* proceeding. He

[2] Jackson v. Denno, 378 U.S. 368, 84 S.Ct. 1774 (1964).

testified that while they were at the scene of Applicant's detention, Investigator Reese allowed Applicant to smoke a cigarette. When Reese "turned to do something" Fisher testified that he heard Applicant say "I killed him. He's dead." Tr. 110, l. 6- p. 111, l. 15.

Fisher testified that this statement by Applicant was spontaneously made and that the utterance was not in response to any action by him intended to elicit a response. He further testified that he attempted to *Mirandize* Applicant after this spontaneous admission, but investigator Reese stopped him from doing so and took Applicant into his custody. Tr. 111, l. 6- p.112, l. 24.

Investigator Reese also testified during the *Jackson v. Denno* hearing. He confirmed that he did not personally hear the statement alleged to have been spontaneously made by Applicant while he was smoking a cigarette. He acknowledged stopping Fisher from saying anything further to Applicant. He asserted that he stopped Fisher from Mirandizing Applicant because it was not Fisher's job to advise him of his rights and because he was in charge of interviewing Applicant; not Officer Fisher. He did testify to Fisher relating to him what had supposedly been said by Applicant while he was smoking the cigarette he had allowed Applicant to smoke. Tr. 118, l. 10- p. 119, l. 13.

Investigator Reese proceeded to testify that he fully Mirandized Applicant on February 16, 2007 at 12:47 AM. He testified to the content of the advice of rights he administered to Applicant and then described Applicant's demeanor at the time of his interview. Tr. 120, l. 2- p.123,l. 21. He proceeded to describe the interview process and to identify State's Exhibit No. 7 as the written statement given by Applicant. Tr.120, l. 4-p. 135, l. 16.

The trial court ruled that all the statements attributed to Applicant by Carol, Fisher and Reese were admissible. Following that ruling, the State indicated that the only remaining pretrial matter was a Motion to Suppress by the defense. In response to the statement, Defense Counsel stated, "I guess we are going to have to subpoena Sergeant Dutton, Your Honor." Defense Counsel went on to advise the Court that the defense had not been aware that Sergeant Dutton no longer worked for the police department and explained that was why the defense did not have her under subpoena. Defense Counsel noted that the legality of the initial detention was critical to a Fourth Amendment analysis of any evidence obtained after that stop. Tr. 143,l. 17- p. 145, l. 13. Thereafter an off-the-record bench conference was held and, following a short break, the trial proceeded with jury selection. Tr. 145, l. 15- p. 146, l. 14.

Following jury selection, the Court proceeded with pretrial matters. The State advised the Court that Investigator Dow was present, but ill, and asked that his testimony be taken first so that the State could "just get him up and running..." Tr. 180, ll. 10-17. Investigator Dow testified to the facts and circumstances surrounding the one man show-up conducted at the scene of the stop initiated by Dutton. During his testimony he expressly denied calling Dutton on the evening in question. Tr. 180,l. 20-p. 188,l. 16. During an earlier portion of the *Neil v. Biggers* hearing, Dutton's own statement was read into the record. In that statement, Dutton indicated that after initiating the stop, she got Applicant's ID "and went to my car to run his information. That's when I was informed that Investigator Dow was bringing a witness by." Tr. 81,l. 11- p. 83, l. 2. After the State read Dutton's entire statement into the record, Defense Counsel argued that the State needed to produce her as a witness. In response, the State argued that the prosecution had already established the threshold requirements for the admission of the witness's identification of Applicant under the requirements of *Neil v. Biggers, supra.* They simply noted

that Dutton no longer worked at the Columbia Police Department. Tr. 83,l. 11- p. 84, l. 11. At no time, did the State indicate that any effort has been made secure Dutton as a witness for the State. They made no effort whatsoever to submit that she was an unavailable witness within the meaning of Rule 804, SCRE.

Significantly, when the hearing on pretrial motions was resumed after jury selection, the defense never fully articulated the basis for its Motion to Suppress evidence. While Defense Counsel had initially alluded to a Fourth Amendment challenge predicated upon an illegal stop, that position was never fully articulated for the record. Tr.78; l. 13-p. 79, l.12. Although Defense Counsel did not object when the prosecution stated that, "let's just go ahead and make her statement part of the record" they did ultimately challenge Dow's statement being read into the record by the State, and moved to strike it from the record, but not until after it had been read into the record. The Court to not initially rule on a Defense Counsel's Motion to Strike Dutton's statement from the record, but rather indicate that the Court had not yet ruled on whether or not Dutton's testimony was necessary. Tr. 83,l. 11- p.85, l. 9. Following lengthy arguments concerning why the eye witness who participated in the one man show-up should not be permitted to identify Applicant in Court, the trial judge ruled that the State had sufficiently met it's burden of proof and ruled that the identification by this witness was admissible.[3] Tr. 98, l. 1-p. 102, l. 14. No objection was made by Defense Counsel to the Court's ruling based upon the State's failure to produce Dutton as a witness. Neither did Defense Counsel renew its request for a ruling on Applicant's Motion to Strike the publication of Dutton's statement on the record.

Following the Court's ruling on the identification issue, the State proceeded with a *Jackson v. Denno* hearing on the admissibility of statements attributed to Applicant. Tr. 102, ll.

[3] It is less than clear whether Defense counsel was arguing for the suppression of testimony concerning Smith's identification of Applicant during the show-up procedure. Dow did not, however, testify in the presence of the jury

15-18. At that proceeding to stay present a testimony from Officer Brian Carrol, Officer Rodney Fisher and Investigator Kevin Reese. Tr.107, 19- p.135,l. 17. Following arguments by the parties, the trial court ruled that both the oral statements of Applicant and his written statement or admissible. Tr. 135, l. 18- p. 144,l. 16.

As previously noted, following the Trial Court's rulings on both the identification issue, and the challenge to Applicant's statements, there was a discussion on the record concerning the fact that the defense was apparently "going to have to subpoena Sergeant Dutton..." Tr. 144, l. 17-p.145, l. 16. At no time, however, did Defense Counsel argue with specificity that the Court should find that both Applicant's alleged statements to law enforcement, and his in-court identification by an eye witness who participated in a one man show-up orchestrated by the police, should be suppressed as the fruit of an illegal stop. Likewise, although briefly alluding to such a challenge, Defense Counsel never articulated its position that the State could not meet its burden of proof in response to such a Motion to Suppress absent production of Dutton as the only eye witness to, and participant in, Applicant's initial stop and detention. Likewise, the record before this Court indicates that Defense Counsel failed to challenge the Court's rulings on both the identification issue and the admissibility of Applicant's statements to law enforcement on the ground that all evidence stemming from the initial illegal stop would be inadmissible as the fruit of the poisonous tree; the illegal stop. While Defense Counsel expressed indignation and concern over the fact that Dutton was not presented by the prosecution as a witness available for cross-examination, the defense never directly challenged the introduction of any of this evidence as the fruit of the poisonous tree. Although Dutton's statement read into the record during the *Neil v. Biggers* hearing arguably asserted that Applicant voluntarily consented to hand

over his ID card once he was stopped by Dutton, Dutton was not available to be cross-examined on this crucial point.

Following the *in-camera* testimony of Investigator Dow, the State renewed their request that the prosecution be permitted to introduce the eyewitness identification testimony of Jeffrey Smith despite his participation in the one man show-up. Tr. 192, l. 18- p. 199,l. 3. The trial court ruled that the show up procedure employed was not unduly suggestive and further found adequate evidence of and independently reliable statement by this identification witness. Tr. 199, ll. 3-18.

Following the Court's ruling on the identification issue, and the admissibility of Applicant's statements, Defense Counsel for the first time raised a Sixth Amendment challenge pursuant to *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354 (2004), alleging a violation of Applicant's right to confront his accusers resultant from the State's failure to present Sergeant Dutton as a witness. Interestingly, Defense Counsel allowed the State to announce to the Court the nature of the defense motion, characterizing it simply as a "Motion to Suppress the Evidence." Tr. 199, ll. 22 - 24.

While Defense Counsel argues that the drugs found on Applicant at the time of his detention and the weapon that was seized from him would be inadmissible absent a showing that the initial stop was proper, Defense Counsel did not argue that Applicant's statements, previously ruled admissible by he court, were the fruit of an illegal stop. Likewise, Defense Counsel did not argue that the out-of-court identification of Applicant by Jeffry Smith during the show-up was the fruit of an illegal stop or that any subsequent in-court identification of Applicant by this witness was tainted by the illegal show-up flowed from the initial illegal stop. Applicant is certainly mindful that there was testimony that Dow just happened to pass by the location of the

stop while transporting Smith to headquarters for further questioning. Dutton's statement, as read into the record, directly disputed that claim and documented the fact that she was contacted and told an office was on the way to her location with a witness. Defense Counsel was unable to further explore this point with Dutton at trial since she was not called as a witness by the State and Defense Counsel had not interviewed her prior to trial. Defense Counsel focused its challenge on the failure of the State to present Dutton as a witness and the improper admission of her statement into evidence. Interestingly, the defense did not argue that without the introduction of her statement, the State failed meet its burden of proof concerning the legality of the stop. Tr. 199, l. 24- p. 203, l. 8.

Just as Defense Counsel was finally beginning to approach the subject of the description of the suspect as it related to Applicant's stop by Dutton, the prosecution interrupted Defense Counsel and proceeded with witness testimony from the officers who seized drugs and a weapon from Applicant after he was detained. Tr. 203, l. 13-p. 211, l. 23. At no point did Defense Counsel argue that, absent testimony from Dutton, the State could not establish the legality of the stop. They never argued that the limited description provided by dispatch was not sufficient provide reasonable suspicion justifying the stop of any light skinned black male wearing a neutral colored jacket. Furthermore, Defense Counsel did not argue that the State had failed to meet its burden of proof with regard to a claim that Dutton wasn't unavailable witness under Rule 804. Although Defense Counsel did attempt some sort of challenge to the consideration of Dutton's statement pursuant to *Crawford, supra*, they only did so only after allowing the Court to make a final ruling, without objection, on the admissibility if the eye witness identification testimony, and Applicant's statements, in the absence of any sort of testimony concerning the legality of the initial stop.

Applicant respectfully submits that the testimony and arguments addressed above graphically demonstrate Defense Counsels deficient representation on these crucial issues. The Order of Dismissal entered in this matter fails to address these important components of Applicant's Sixth Amendment claims. For this reason, Applicant asks that this Honorable Court reconsider its denial of relief on this allegation and grant Applicant relief. Alternatively, Applicant submits that the Order of Dismissal as entered is deficient in that it fails to make findings of fact and rulings of law on all these issues advanced by Applicant that are related to this ground. Accordingly, if the Court should decide against granting relief on these allegations, Applicant asks for this Court to issue an Amended Order of Dismissal making findings of fact and rulings of law concerning the issues addressed herein.

Failure to Argue Applicant was subjected o an Unlawful search and Seizure

The Order f Dismissal notes the Fourth Amendment arguments advanced by Defense Counsel in support of the Motion to Suppress argued after the trial court had already ruled on the identification issues before the Court and the admissibility of Applicant's statements made following his stop. *See*, Tr. 210, l. 19-p. 212, l. 13. Applicant most respectfully notes that the Order of Dismissal neglects to address Applicant's argument that Defense Counsel was ineffective for neglecting to advance these arguments, with more specificity, before the trial judge's rulings on the identification issue and the court's rulings on the admissibility of the statements made after the illegal stop. The Order notes Defense Counsel's PCR testimony in which he simply concedes that Applicant met the description of the suspect wanted in connection with this shooting. The Order fails to address Defense Counsel's failure to argue that the description in question was too vague, and provided too little information, to provide a reasonable suspicion that Applicant was the shooter and therefore, was not sufficient to support

the stop. Likewise, as noted *supra*, the arguments made by Defense Counsel were not advanced in a timely manner where they were not made until after the Court ruled on the admissibility of the Applicant's identification by Smith and the admissibility of Applicant's statements. Even when finally advanced, Defense Counsel failed to argue that the State could not meet its burden of proof in response to this challenge to the legality of this stop without producing testimony from the law enforcement officer who conducted the stop. Even at that late time in the proceedings, defense counsel still failed to fully articulate why the publication of Dutton's statement on the record was improper in the absence of any showing that this witness was unavailable to testify for the state and to be cross-examined by the defense.

This Court concludes that this issue could have been argued on direct appeal. Applicant respectfully submits that this d=finding indicates a misreading of the record below. By the time Applicant finally argued that any evidence found as a result of the unlawful stop was inadmissible, the trial court had already ruled on the admissibility of some of the most damaging evidence arising from that stop. Defense Counsel waived any argument that might have been advanced on direct appeal concerning the fact that Smith's identification of Applicant was tainted by a show-up that flowed from the unlawful stop and detention of Applicant by Dutton. Likewise, by the time the arguments were advanced concerning an illegal stop, Defense Counsel had already waived any argument along these lines concerning Applicant's statements to law enforcement.

This Order of Dismissal finds, without any findings of fact, or conclusions of law, that the stop in question did not violate Applicant's Fourth Amendment rights and was proper. Order of Dismissal.

Failure to ask for a recess to subpoena Officer Dutton for the Defense

The Order of dismissal also fails to address Applicant's assertion that Defense Counsel should have subpoenaed Dutton as a witness for the defense. As previously noted, Defense Counsel at one point in the pretrial motions portion of this three day trial, stated that he guessed he was going to have to subpoena Dutton himself since the State was not being required to produce her. At that juncture the trial judge noted that she had not yet ruled on the question of whether Dutton's testimony was necessary. The fact remains that Defense Counsel allowed the pretrial motion hearing to go forward without asking for the opportunity to subpoena this witness for the defense since she was not being produced by the State. This trial lasted several days. Trial Counsel has provided no reasonable explanation for why he could not have had officer Dutton subpoenaed to appear. The content of her statement, as read in Court, indicated that someone told her a witness was being brought to her for an orchestrated show-up. Defense Counsel could have questioned her on the record concerning that portion of her statement and could have questioned her concerning her claim that Applicant consented to giving her his ID card.

Failure to Advise Applicant that the Decision of Whether to Instruct the Jury on Voluntary Manslaughter is Discretionary with the Trial Judge and for failing to more thoroughly explain the requirements for a finding of voluntary manslaughter.

The Order of Dismissal entered in Applicant's case relies strongly on State's Exhibit 1, a letter written to Applicant by Public Defender originally assigned to his case, Christie Grafton (hereafter referenced by her married name Goldberg) for the proposition that "there was no guarantee that he would be ***entitled to a voluntary manslaughter charge***." Order of Dismissal, page 7. (Emphasis added). The Order goes on to reference Goldberg's statement in this letter

that she provided Applicant a memorandum on her analysis of this question. The Order drafted by Respondent, and adopted by this Honorable Court, goes on to find that Applicant's PCR testimony that he would've accepted the plea offer of 30 years if he had known there was a possibility that he would not be entitled to a voluntary manslaughter charge was not credible in light of the fact that he had admittedly turned down the 30 year deal for a plea to murder. The same Order gives credence to Applicant's testimony that he rejected the plea offer of 30 years "because he did not want to serve that much time on a day-for-day sentence." Order of Dismissal, page 8. Applicant now most respectfully asserts that the Order of Dismissal significantly overstates the significance of the letter written to Applicant by his first Public Defender and fails to take into account other key aspects of Applicant's argument. The letter written to Applicant, introduced as Respondent's Exhibit 1, admittedly states that "ultimately upon review of this information I do believe that in a jury trial they lesser included offense of voluntary manslaughter as well as the defense of duress would not be available as options, and therefore, you would likely be found guilty of murder." This significance of this letter is greatly overstated in this Court's Order of Dismissal, where it fails to take into accounts multiple important points. They are:

- The correspondence in question clearly states that Goldberg assigned *a law clerk* at the Public Defender's Office to review Applicant's file and do the legal research relevant to questions that had been put to Goldberg in a letter. The letter goes on to state that based on a review of the law clerk's research, Goldberg concluded that voluntary manslaughter and to the defense of duress "would not be available as options" at a jury trial. thus, Applicant may not have had confidence in this advice inasmuch as it did not come from Defense counsel's own research.

- While the letter in question was introduced as an exhibit during the Post-Conviction Relief hearing, the memorandum referenced in that correspondence was not. Relying solely on the evidence before the Court, we are left only with the assertion found in the letter itself wherein Goldberg expressed the view that the lesser included offense of voluntary manslaughter would not be "an option" should Applicant go to trial. This simple statement, is a far cry from specific legal advice concerning the manner in which

lesser included charges are potentially submitted to the jury for their consideration. This letter does not advise Applicant that a trial judge would have to decide whether the evidence presented at trial supported a request for a jury charge on voluntary manslaughter as a verdict option. Nor did it clearly tell him that the jury would never even hear about voluntary manslaughter if the trial judge declined to issue the charge on this lesser-included offense.

- While it is true that Applicant acknowledged that he declined the offer of 30 years for a plea to murder because he did not want to serve a 30 year day-for-day sentence, it ignores the fact that Applicant specifically testified that he would have taken that plea offer if he had understood that he might not even have the opportunity for the jury to consider the lesser-included offense of voluntary manslaughter if he proceeded to trial. The fact that a defendant might be willing to risk a potential life sentence in exchange for a chance that a jury might find him guilty of lesser included offense, which carried a maximum term of 30 years which did not have to be served day for day, is not, as the Order of Dismissal suggests, proof that he would not have excepted the 30 year offer for a plea to murder him if he had understood that, depending on the ruling of a trial judge, a jury might not ever have the option of considering the lesser included offense of voluntary manslaughter.

- Applicant expressly testified that if he had understood the law concerning the requirements for a finding of voluntary manslaughter at the time of the plea offer, the way he did at the time of his PCR hearing, he would have taken the deal offered by the State to plead to murder for a negotiated 30 year sentence.

For these reasons, Applicant now respectfully asks that this Court reconsider its decision to deny relied on this ground. In the alternative, Applicant requests that this Court issue an Amended Order of Dismissal fully addressing this issue. Applicant seeks finds of fact and rulings of law on these allegations in order that his position might be fully preserved for review on appeal.

Applicant notes that this Honorable Court has found that there existed overwhelming evidence of his guilt which bars a finding of prejudice on any alleged deficiency. Applicant respectfully submits that this finding fails for the following reasons.

- The right to effective assistance of counsel has been found to extend to representation in the plea negotiation process. *Davie v. State*, 381 S.C. 601, 675 S.E.2d 416 (2008). The strength of the State's case is not the operative consideration in deciding whether Applicant has been prejudiced by the failure of Defense Counsel to give him adequately legal advice in the context of deciding whether to accept a plea offer made by the State.

Indeed, the fact that the case against Applicant may have been strong, would be a factor which would go toward the wisdom of accepting any such plea bargain extended by the State. Applicant would submit that in order to be valid, a plea of guilty must be entered with a comprehensive understanding of a number of factors including the strength of the prosecutions case against the defendant and the consequences of a plea. *State v. Hazel*, 275 S.C. 392, 271 S.E.2d 602 (1980); *State v. Lambert*, 266 S.C. 574, 225 S.E.2d 340 (1976).

- Here, the record supports Applicant's position that he believed accepting the plea bargain would mean giving up the right to have the jury decide whether he was guilty of murder or guilty of voluntary manslaughter. It is clear from the testimony presented during the Post-Conviction Relief proceeding, Applicant did not have the benefit of knowing that he a trial judge might not even let the jury consider that verdict alternative. The language in the letter relied upon by Respondent is such that it could easily have been interpreted by Applicant to mean that *the jury* might not even consider voluntary manslaughter to be a reasonable alternative to a finding of Murder; an interpretation which would have left Applicant with hope that Counsel could persuade the jury otherwise.

In addition, the evidence cited in the Order of Dismissal as supporting a lack of prejudice ,even if Defense Counsel were found deficient, is not conclusive on that point for two very important reasons.

- The fact that the State presented several eyewitnesses who identified Applicant as the shooter, is not dispositive of the question of whether a jury might have found that shooting to have constituted voluntary manslaughter versus murder.

- Likewise, the fact that Applicant gave a detailed confession in which he asserted that he believed his life was in danger and that he would be killed if you did not take action, does not negate Applicant's claims. Had the lower court found that Applicant's statements were the fruit of an illegal stop, any such confession would have been excluded at trial. Even if admitted, the content of the statements in question would not have conclusively eliminated the possibility of a jury finding a voluntary manslaughter. There are many cases in this State where a defendant has been found to be entitled to a jury charge on a lesser-included offense despite the assertion of another defense to the charge. There is no reason to conclude Applicant would have believed that the fact that his statements to law enforcement might come into evidence, necessarily eliminated the possibility that a jury might find him guilty of the lesser included offense of voluntary manslaughter.

For these reasons, Applicant most respectfully submits that the conclusion of this Honorable Court that he could not demonstrate prejudice in light of these factors is not supported by the facts or the law. The prejudice to Applicant from the errors addressed herein is clear. Had he understood that he was not guaranteed the opportunity to at least have the jury consider voluntary manslaughter as a verdict as opposed to murder, he would have accepted the proposed plea to murder in exchange for a negotiated sentence of 30 years.

Defense Counsel was ineffective for failing to advise him that he could present testimony during the *Jackson v. Denno*, hearing held in his case without waving his right to the closing argument to the jury.

The Order of Dismissal filed in this matter neglects to make any finds with regard to this issue which was developed by the testimony during the PCR hearings in this matter. Defense Counsel did not present Applicant as a witness during his *Jackson v. Denno* hearing. He admitted in his PCR testimony that he had no recollection of advising Applicant that he could present testimony during that pre-trial motion hearing without forfeiting his right to the last argument to the jury. Applicant's testimony confirms that he would have testified during this proceeding had he know he could do without forfeiting his right to the final argument.

Conclusion

Applicant now respectfully submits that this Honorable Court's Order either fails to take into account the issues addressed herein, or fails to make adequate ruling on components of those Sixth Amendment claims. For that reason, he now respectfully asks that this Honorable Court reconsider it's decision to deny him relief on all the Sixth Amendment claims advanced by him in this Post-Conviction relief action. Alternatively, he asks this Court for an Amended Order of

Dismissal making specific findings of fact and rulings of law regarding all the issues addressed herein.

Respectfully submitted,

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Attorney for the Applicant

This 8th day of February, 2016.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

JOEL ROBINSON, #251879,

Applicant,

v.

STATE OF SOUTH CAROLINA,
Respondent.

IN THE COURT OF COMMON PLEAS

2013-CP-40-07560

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Motion to Alter or Amend Pursuant to Rule 59(e), SCRCP, in the above matter has been served on the Honorable Tanya A. Gee, Circuit Court Judge, by U. S. Mail this 8th day of February, 2016 to:

The Honorable Tanya A. Gee
Circuit Court Judge
P. O. Box 192
Columbia, SC 29202

The original having been mailed to the Richland County Clerk of Court for filing.

Tara Dawn Shurling
Attorney and Counselor at Law

SWORN TO BEFORE ME this 8th day of February, 2016.

Suzanne Graham (L.S.)
Notary Public for South Carolina

My Commission Expires: 2/28/24

STATE OF SOUTH CAROLINA)) COUNTY OF RICHLAND)	IN THE COURT OF COMMON PLEAS
JOEL ROBINSON, #251879, Applicant, v. STATE OF SOUTH CAROLINA, Respondent.	2013-CP-40-07560 **CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that one copy of the Motion to Alter or Amend Pursuant to Rule 59(e), SCRCP in the above-entitled cause has been served upon, Assistant Attorney General, J. Clayton Mitchell, by U. S. Mail on this the 8th day of February, 2016 to:

J. Clayton Mitchell
Assistant Attorney General
Office of the Attorney General
P. O. Box 11549
Columbia, SC 29211

The original having been mailed to the Richland County Clerk of Court for filing.

Tara Dawn Shurling
Attorney and Counselor at Law

SWORN TO BEFORE ME this 8th day of February, 2016.

Suzanne Graham (L.S.)
Notary Public for South Carolina
My Commission Expires: 2/28/24

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

2013-CP-40-07560

JOEL ROBINSON, #251879,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

MEMORANDUM IN SUPPORT OF APPLICATION FOR POST-CONVICTION RELIEF

NOW COMES the Applicant in the above-captioned case, acting by and through undersigned counsel, who would show unto this Court the following in support of his Application for Post-Conviction Relief.

PROCEDURAL HISTORY

This PCR action was filed on December 16, 2013. An evidentiary hearing was convened on August 25, 2015, in which the State was represented by Assistant Attorney General, J. Clayton Mitchell and the Applicant was represented by Tara Dawn Shurling, Esquire. The evidentiary hearing was recessed at the conclusion of that proceeding and was reconvened on October 15, 2015 for further testimony. At the conclusion of the evidentiary hearings held in this case, the Court agreed to allow the parties to provide written submissions in lieu of closing arguments.

The issues asserted in the *Pro Se* Application for Post-Conviction Relief were more narrowly defined by his PCR Counsel at the outset of the August 25, 2015 evidentiary hearing. Those claims, as articulated for the Court, were:

1). Defense Counsel was ineffective for failing to adequately argue a Motion to Suppress Applicant's statements, and other evidence, on the following grounds:

A) The State failed to establish that Officer Dutton was an unavailable witness at trial prior to the introduction of statements attributed to Dutton thereby violating Applicant's right to confront all the witnesses against him in violation of the Confrontation Clause of the United States Constitution.

B) Defense Counsel was ineffective for failing to investigate and argue the fact that Applicant was under the influence of drugs at the time of his statements to law enforcement to a degree that he could not enter a knowing and voluntary waiver of his rights.

C) Defense Counsel was ineffective for failing to request a recess to give the defense the opportunity to explore presenting Officer Dutton as a potential witness for the defense.

D) Defense Counsel was ineffective for failing to adequately argue that the absence of Officer Dutton denied Applicant the opportunity for cross-examination of this witness concerning the existence of a sufficient legal basis for Applicant's stop and detention. Defense Counsel failure to argue, in a timely manner, that the State's failure to present this witness resulted in a lack of proof concerning legality of Applicant's stop and detention negatively impacted Applicant's ability to argue that all the evidence flowing from that stop was inadmissible including, but not limited to, statements allegedly made by Applicant as a consequence of that stop.

E) Defense Counsel was ineffective for neglecting to explore the potential benefit of using Officer Dutton as a witness for the defense and for neglecting to subpoena her where the record indicates that the defense had the opportunity to do so.

2). Applicant alleged that Defense Counsel was ineffective for failing to exercise due diligence in the plea bargaining process. Specifically, Applicant alleged the following with regard to this claim:

A) Defense Counsel was ineffective for failing to adequately explain the legal standards for obtaining a jury instruction on the lesser-included offense of voluntary manslaughter.

B) Defense Counsel was ineffective for neglecting to adequately explain to Applicant that the trial judge would ultimately decide whether, or not, the evidence supported a request for a

jury charge on the lesser-included offense of voluntary manslaughter.

C) Defense Counsel was ineffective for allowing Applicant to reject a plea offer by the State with out a comprehensive understanding of the fact that, at a jury trial, the presiding judge could deny a request for a jury instruction on the lesser-included offense of voluntary manslaughter and thereby deny him the opportunity to have his jury even consider finding him guilty of that crime instead of murder.

During the testimony and evidence presented at the two evidentiary hearings held in this case, Applicant also argued that,

3) Defense Counsel was ineffective for failing to advise him that he could present testimony during the *Jackson v. Denno*, hearing held in his case without waving his right to the closing argument to the jury.

Failure to Move to Suppress Applicant's Statement

Applicant asserts that Defense Counsel neglected to investigate and present arguments concerning the fact that he was intoxicated at the time he was initially detained by law-enforcement and therefore, was not capable of making a knowing and voluntary waiver of his right to remain silent. During his PCR hearing, Applicant testified he was under the influence of drugs including ecstasy, cocaine, crack cocaine, and alcohol when he was taken into custody. In his PCR testimony, he described the effect those drugs had on him, specifically that they made him paranoid. He testified that he advised his original Public Defender, Kristy Goldberg that he was under the influence of these substances at the time he was interrogated by law enforcement. He further testified that he never received a drug test at the time of his arrest which would helped him prove his level of intoxication at the time he gave his statement. Counsel Leddy testified that Applicant did not tell him he was using a number of drugs or that he was intoxicated when he

gave his statement to law enforcement. At trial, Judge Childs found Applicant's statement was voluntarily and intelligently made. The statement was admitted into evidence. Trial Tr. p. 144, lines 9-14. Applicant claims that Defense Counsel was ineffective for neglecting to argue that his statements should be suppressed as the fruit of an unlawful stop which was not supported by probable cause, or even the lesser standard of reasonable suspicion. *State v. Hewins*, 409S.C. 93, 760 S.E.2d 814 (S.Ct. 2014); *State v. Morris*, 411 S.C. 571, 769 S.E.2d 854 (S.Ct. 2015). It is Applicant's claim that Defense Counsel neglected to argue that all statements allegedly made by him following his illegal stop and detention were the fruit of the poisonous tree. *Wong Sun v. United States*, 371 U.S. 471, 83 S.Ct. 407 (1963).

Applicant specifically argues that Defense Counsel was ineffective for neglecting to argue that the State could not meet its burden of proof with regard to the legal basis for Applicant's stop and detention where they neglected to present the testimony of the officer who made the stop, Sergeant Dutton. Applicant further submits that Defense Counsel was deficient for neglecting to argue that the State failed to meet its burden of proof with regard to establishing that Dutton was an unavailable witness within the meaning of Rule 804, SCRE. The testimony of all the other law-enforcement officers at Applicant's trial who responded to the location where he was stopped and detained indicates that they were dispatched as backup after Applicant was stopped and was being detained by Sergeant Dutton.

In the context of the *Neil v. Biggers*[1] hearing held at trial, Defense Counsel indicated that the defense had "*a problem with*" the introduction of the statement made by Sergeant Dutton. Tr. p. 75, l.15-p.85, l.17. During that hearing, Officer Fisher testified that he went to where Applicant had been stopped to provide backup for Dutton. His testimony established that when he arrived at the location, Dutton already had Applicant stopped and was checking his ID card.

[1] *Neil v. Biggers*, 409 U.S. 188, 93 S.Ct. 375 (1972).

He specifically testified that "*we went and backed her up.*" Tr. 86, l. 3-p. 87, l. 10. Officer Bailey testified that he was riding with Officer Fisher on the night in question and remembered being sent as back up for Sergeant Dutton. Tr. 93,l. 17- p. 94, l. 9. Upon arrival he saw Dutton standing next to her vehicle and that he believed she was running the suspects ID. He testified that she "*had his ID card*" when they arrived at the scene. Tr. 94, ll. 7- 17. Officer Fisher testified that he heard the dispatch which described the shooting suspect as "*a light skinned black male.*" He further testified that he heard Dutton inquire as to whether there was any clothing description and then heard a response stating, "*a tan jacket.*" Tr. 86, ll. 10-19. Officer Bailey testified that he heard the description of the suspect over the radio describing "*a light skinned black gentleman with a bald head such as myself.*" Tr. 93, ll. 4-16. He testified that upon arrival the individual he saw with Dutton did fit the description of the shooter that he had previously heard over the radio. Tr. 94, l.10- p. 95, l. 3.

Following the trial court's ruling on the Motion to Suppress the identification of Applicant by Lavern Smith, an individual who had participated in a one man show-up at the location where Applicant was stopped and detained by Dutton, the Court proceeded with a hearing on Applicant's Motion to Suppress his statements. Tr. 102, ll.12-19. The State's first witness during the *Jackson v. Denno*[2] hearing was Brian Carrol, an officer with the Columbia Police Department. He testified that he was the officer assigned to transport Applicant from where he was stopped by Dutton to the headquarters. Tr. 102,l. - p. 104, l. 19. He stated that during the approximately 6 minute drive to headquarters he did not have any conversation with Applicant. His testimony established that upon arrival at headquarters, he was in an interview room with Applicant for approximately 10 minutes while waiting for Investigator Reese to arrive. He testified that during that time period, Applicant made several statements to the effect

[2] *Jackson v. Denno*, 378 U.S. 368, 84 S.Ct. 1774 (1964).

that "*the victim disrespected him.*" Tr. 105, l. 7-p. 206, l. 15. Officer Fisher, who previously testified during the *Neil v. Biggers* hearing, also testified for the State during the *Jackson v. Denno* proceeding. He recalled that while they were at the scene of Applicant's detention, Investigator Reese allowed Applicant to smoke a cigarette. Fisher testified that when Reese "*turned to do something*" he heard Applicant say "*I killed him. He's dead.*" Tr. 110, l. 6- p. 111, l. 15. At trial Fisher testified that this statement by Applicant was spontaneously made and that the utterance was not in response to any action by him intended to elicit a response. He further testified that he attempted to *Mirandize* Applicant after this spontaneous admission, but investigator Reese stopped him from doing so and took Applicant into his custody. Tr. 111, l. 6-p.112, l. 24.

Investigator Reese also testified during the *Jackson v. Denno* hearing. He confirmed that he did not personally hear the statement alleged to have been spontaneously made by Applicant while he was smoking a cigarette. He acknowledged stopping Fisher from saying anything further to Applicant. He asserted that he stopped Fisher from Mirandizing Applicant because it was not Fisher's job to advise him of his rights and because he was in charge of interviewing Applicant; not Officer Fisher. He testified that Fisher reported to him what Applicant had said to him while he was smoking the cigarette. Tr. p. 118, l. 10- p. 119, l. 13.

Investigator Reese proceeded to testify that he fully Mirandized Applicant on February 16, 2007 at 12:47 AM. He repeated the content of the advice of rights he had administered to Applicant. Next he described Applicant's demeanor at the time of his interview. Tr. 120, l. 2-p.123, l. 21. He then described the interview process and identified State's Exhibit No. 7 as the written statement given by Applicant. Tr.120, l. 4-p. 135, l. 16.

The trial court ruled that all the statements attributed to Applicant by Carol, Fisher and Reese were admissible. Following that ruling, the State indicated that the only remaining pretrial matter was a Motion to Suppress by the defense. In response to the statement, Defense Counsel stated, "*I guess we are going to have to subpoena Sergeant Dutton, Your Honor.*" Defense Counsel went on to advise the Court that the defense had not been aware that Sergeant Dutton no longer worked for the police department and explained that this was why the defense did not have her under subpoena. Defense Counsel noted that the legality of the initial detention was critical to a Fourth Amendment analysis of any evidence obtained after that stop. Tr. 143,l. 17- p. 145, l. 13. Thereafter, an off-the-record bench conference was held and, following a short break, the trial proceeded with jury selection. Tr. 145, l. 15- p. 146, l. 14.

Following jury selection, the Court proceeded with pretrial matters. The State advised the Court that Investigator Dow was present, but ill, and asked that his testimony be taken first so that the State could "*just get him up and running...*" Tr. 180, ll. 10-17. Investigator Dow testified to the facts and circumstances surrounding the one man show-up conducted at the scene of the stop initiated by Dutton. During his testimony he expressly denied calling Dutton on the evening in question. Tr. 180,l. 20-p. 188,l. 16. During an earlier portion of the *Neil v. Biggers* hearing, Dutton's own statement was read into the record. In that statement, Dutton indicated that after initiating the stop, she got Applicant's ID "*and went to my car to run his information. That's when I was informed that Investigator Dow was bringing a witness by.*" Tr. 81,l. 11- p. 83, l. 2. Her statement did not indicate who informed her that Investigator Dow was in route to her location. After the State read Dutton's entire statement into the record, Defense Counsel argued that the State needed to produce her as a witness. In response, the State argued that the prosecution had already established the threshold requirements for the admission of the witness's

identification of Applicant under the requirements of *Neil v. Biggers, supra.* The State simply noted that Dutton no longer worked at the Columbia Police Department. Tr. 83,l. 11- p. 84, l. 11. At no time did the State indicate that any effort has been made secure Dutton as a witness for the State. They made no effort whatsoever to submit that she was an unavailable witness within the meaning of Rule 804, SCRE.

Significantly, when the hearing on pretrial motions was resumed after jury selection, the defense never specifically stated the basis for its Motion to Suppress evidence. While Defense Counsel had initially alluded to a Fourth Amendment challenge predicated upon an illegal stop, that position was never fully articulated for the record. Tr.78, l. 13-p. 79, l.12. Although Defense Counsel did not object when the prosecution stated that, "*let's just go ahead and make her statement part of the record*" they did ultimately challenge Dutton's statement being read into the record by the State, and moved to strike it from the record, but not until after it had been read into the record. The Court did not initially rule on a Defense Counsel's Motion to Strike Dutton's statement from the record, but rather indicated that it had not yet ruled on whether or not Dutton's testimony was necessary. Tr. 83,l. 11- p.85, l. 9. Following lengthy arguments concerning why the eye witness who participated in the one man show-up should not be permitted to identify Applicant in Court, the trial judge ruled that the State had sufficiently met it's burden of proof and ruled that the identification by this witness was admissible.[3] Tr. 98, l. 1- p. 102, l. 14. No objection was made by Defense Counsel to the Court's ruling based upon the State's failure to produce Dutton as a witness. Neither did Defense Counsel renew its request for a ruling on Applicant's Motion to Strike the publication of Dutton's statement on the record.

[3] It is less than clear whether Defense counsel was arguing for the suppression of testimony concerning Smith's identification of Applicant during the show-up procedure. Dow did not, however, testify in the presence of the jury

Following the Court's ruling on the identification issue, the State proceeded with a *Jackson v. Denno* hearing on the admissibility of statements attributed to Applicant. Tr. 102, ll. 15-18. At that proceeding to stay present a testimony from Officer Brian Carrol, Officer Rodney Fisher and Investigator Kevin Reese. Tr.107, 19- p.135,l. 17. Following arguments by the parties, the trial court ruled that both the oral statements of Applicant, and his written statement, was admissible. Tr. 135, l. 18- p. 144,l. 16.

As previously noted, following the Trial Court's rulings on both the identification issue, and the challenge to Applicant's statements, there was a discussion on the record concerning the fact that the defense was apparently "*going to have to subpoena Sergeant Dutton...*" Tr. 144, l. 17-p.145, l. 16. At no time, however, did Defense Counsel argue with specificity that the Court should find that both Applicant's alleged statements to law-enforcement, and his in-court identification by an eye witness who participated in a one man show-up orchestrated by the police, should be suppressed as the fruit of an illegal stop. Likewise, although briefly alluding to such a challenge, Defense Counsel never articulated its position that the State could not meet its burden of proof in response to such a Motion to Suppress absent production of Dutton as the only eye witness to, and participant in, Applicant's initial stop and detention. The record before this Court verifies that Defense Counsel failed to challenge the Court's rulings on both the identification issue and the admissibility of Applicant's statements to law enforcement on the ground that all evidence stemming from the initial illegal stop would be inadmissible as the fruit of the poisonous tree; the illegal stop. While Defense Counsel expressed indignation and concern over the fact that Dutton was not presented by the prosecution as a witness available for cross-examination, the defense never directly challenged the introduction of any of this evidence as the fruit of the poisonous tree. Although Dutton's statement read into the record during the

Neil v. Biggers hearing arguably asserted that Applicant voluntarily consented to hand over his ID card once he was stopped by Dutton, Dutton was not available to be cross-examined on this crucial point.

Following the *in-camera* testimony of Investigator Dow, the State renewed their request that the prosecution be permitted to introduce the eyewitness identification testimony of Jeffrey Smith despite his participation in the one man show-up. Tr. 192, l. 18- p. 199,l. 3. The trial court ruled that the show-up procedure employed was not unduly suggestive and further found adequate evidence of an independently reliable statement by this identification witness. Tr. 199, ll. 3-18.

Following the Court's ruling on the identification issue, and the admissibility of Applicant's statements, Defense Counsel for the first time raised a Sixth Amendment challenge pursuant to *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354 (2004), alleging a violation of Applicant's right to confront his accusers resultant from the State's failure to present Sergeant Dutton as a witness. Interestingly, Defense Counsel allowed the State to announce to the Court the nature of the defense motion, characterizing it simply as a "Motion to Suppress the Evidence." Tr. 199, ll. 22 - 24.

While Defense Counsel argued that the drugs found on Applicant at the time of his detention and the weapon that was seized from him would be inadmissible absent a showing that the initial stop was proper, Defense Counsel did not argue that Applicant's statements, previously ruled admissible by the court, were the fruit of an illegal stop. Likewise, Defense Counsel did not argue that the out-of-court identification of Applicant by Jeffry Smith during the show-up was the fruit of an illegal stop or that any subsequent in-court identification of Applicant by this witness was tainted by the illegal show-up which flowed from the initial illegal stop. Applicant

is certainly mindful that there was testimony that Dow just happened to pass by the location of the stop while transporting Smith to headquarters for further questioning. Dutton's statement, as read into the record, directly disputed that claim and documented the fact that she was contacted and told an officer was on the way to her location with a witness. Defense Counsel was unable to further explore this point with Dutton at trial since she was not called as a witness by the State, Defense Counsel had not interviewed her prior to trial and did not have her under subpoena for this trial. Defense Counsel focused its challenge on the failure of the State to present Dutton as a witness and the improper admission of her statement into evidence. Significantly, the defense did not argue that without the introduction of her statement, the State failed meet its burden of proof concerning the legality of the stop. Tr. 199, l. 24- p. 203, l. 8.

Just as Defense Counsel was finally beginning to approach the subject of the description of the suspect as it related to Applicant's stop by Dutton, the prosecution interrupted Defense Counsel and proceeded with witness testimony from the officers who seized drugs and a weapon from Applicant after he was detained. Tr. 203, l. 13-p. 211, l. 23. At no point did Defense Counsel argue that, absent testimony from Dutton, the State could not establish the legality of the stop. Applicant's Defense Counsel never argued that the limited description provided by dispatch was not sufficient provide reasonable suspicion justifying the stop of any light skinned black male wearing a neutral colored jacket. Furthermore, Defense Counsel did not argue that the State had failed to meet its burden of proof with regard to a claim that Dutton wasn't unavailable witness under Rule 804. Although Defense Counsel did attempt some sort of challenge to the consideration of Dutton's statement pursuant to *Crawford*, *supra*, they only did so only after allowing the Court to make a final ruling, without objection, on the admissibility if

the eye witness identification testimony, and Applicant's statements, in the absence of any sort of testimony concerning the legality of the initial stop.

Applicant respectfully submits that the testimony and arguments addressed above graphically demonstrate Defense Counsel's deficient representation on these crucial issues. On the facts of this case, Counsel's errors and omissions as discussed herein, where highly prejudicial to Applicant. Applicant submits there is a reasonable probability that the outcome of his trial would have been different, but for Defense Counsel's deficient representation. Additionally, even if the rulings of the trial court had been adverse to Applicant on these issues, he would have been able to raise these issues on direct appeal had they been properly preserved at trial by proper motions and objections.

Failure to Argue Applicant was subjected o an Unlawful search and Seizure

The Fourth Amendment arguments advanced by Defense Counsel in support of the Motion to Suppress were not argued until after the trial court had already ruled on the identification issues before the Court and the admissibility of Applicant's statements made following his stop. *See*, Tr. 210, l. 19-p. 212, l. 13. Applicant respectfully submits that Defense Counsel was ineffective for neglecting to advance these arguments, with more specificity, before the trial judge's rulings on the identification issue and the court's rulings on the admissibility of the statements made after the illegal stop. In Defense Counsel's PCR testimony he asserted that Applicant met the description of the suspect wanted in connection with this shooting. He failed to acknowledge his failure to argue that the description in question was too vague, and provided too little information, to provide a reasonable suspicion that Applicant was the shooter and therefore, was not sufficient to support the stop. Likewise, as noted *supra*, the arguments made by Defense Counsel were not advanced in a timely manner where they were not made until after

the Court ruled on the admissibility of the Applicant's identification by Smith and the admissibility of Applicant's statements. Even when finally advanced, Defense Counsel failed to argue that the State could not meet its burden of proof in response to this challenge to the legality of this stop without producing testimony from the law enforcement officer who conducted the stop. Even at that late time in the proceedings, defense counsel still failed to fully articulate why the publication of Dutton's statement on the record was improper in the absence of any showing that this witness was unavailable to testify for the state and to be cross-examined by the defense.

Respondent argues that this issue could have been argued on direct appeal. Applicant respectfully submits that this position indicates a misreading of the record below. By the time Applicant finally argued that any evidence found as a result of the unlawful stop was inadmissible, the trial court had already ruled on the admissibility of some of the most damaging evidence arising from that stop. Therefore, Defense Counsel waived any argument that might have been advanced on direct appeal concerning the fact that Smith's identification of Applicant was tainted by a show-up that flowed from the unlawful stop and detention of Applicant by Dutton. Likewise, by the time the arguments were advanced concerning an illegal stop, Defense Counsel had already waived any argument along these lines concerning Applicant's statements to law enforcement.

Failure to ask for a recess to subpoena Officer Dutton for the Defense

Applicant asserts that Defense Counsel should have subpoenaed Dutton as a witness for the defense. As previously noted, Defense Counsel at one point in the pretrial motions portion of this three day trial, stated that he guessed he was going to have to subpoena Dutton himself since the State was not going to produce her. Defense Counsel made this statement without

raising any challenge to the State's inability to meet their burden of proof without her testimony or to the consideration of her statement in the face of the State's failure to establish Dutton was an unavailable witness pursuant to 804, SCRE. At that juncture the trial judge noted that she had not yet ruled on the question of whether Dutton's testimony was necessary. The fact remains that Defense Counsel allowed the pretrial motion hearing to go forward without asking for the opportunity to subpoena this witness for the defense since she was not being produced by the State. This trial lasted several days. Trial Counsel has provided no reasonable explanation for why he could not have had officer Dutton subpoenaed to appear. The content of her statement, as read in Court, indicated that someone told her a witness was being brought to her for an orchestrated show-up. Defense Counsel could have specifically questioned her concerning that portion of her statement and could have questioned her concerning her claim that Applicant consented to giving her his ID card. Significantly, Defense Counsel could have challenged the sufficiency of the basis for Applicant's stop through testimony from Dutton. He should have been prepared to do so.

Failure to Advise Applicant that the Decision of Whether to Instruct the Jury on Voluntary Manslaughter is Discretionary with the Trial Judge and for failing to more thoroughly explain the requirements for a finding of voluntary manslaughter.

Respondent strongly relies on State's Exhibit No. 1, a letter written to Applicant by Public Defender originally assigned to his case, Christie Grafton (hereafter referenced by her married name Goldberg) for the proposition that "***there was no guarantee that he would be entitled to a voluntary manslaughter charge.***" The Respondent notes Goldberg's statement in this letter that she provided Applicant a memorandum on her analysis of this question. Respondent asserts that Applicant's PCR testimony that he would've accepted the plea offer of 30 years if he had known there was a possibility that he would not be entitled to a voluntary

manslaughter charge is not credible in light of the fact that he had admittedly turned down the 30 year deal for a plea to murder. The State attaches great significance to Applicant's testimony that he rejected the plea offer of 30 years "*because he did not want to serve that much time on a day-for-day sentence.*" Applicant respectfully asserts that Respondent overstates the significance of the letter written to Applicant by his first Public Defender and fails to take into account other key aspects of Applicant's argument. The letter written to Applicant, introduced as Respondent's Exhibit 1, admittedly states that "*ultimately upon review of this information I do believe that in a jury trial the lesser included offense of voluntary manslaughter as well as the defense of duress would not be available as options, and therefore, you would likely be found guilty of murder.*" The weight of this letter as evidence in this PCR action pales when closely examined in light of multiple important points. They are:

- The correspondence in question clearly states that Goldberg assigned *a law clerk* at the Public Defender's Office to review Applicant's file and do the legal research relevant to questions that had been put to Goldberg in a letter. The letter goes on to state that based on a review of the law clerk's research, Goldberg concluded that voluntary manslaughter and to the defense of duress "would not be available as options" at a jury trial. Thus, Applicant may not have had confidence in this advice inasmuch as it did not come from Defense counsel's own research.

- While the letter in question was introduced as an exhibit during the Post-Conviction Relief hearing, the memorandum referenced in that correspondence was not. Relying solely on the evidence before the Court, we are left only with the assertion found in the letter itself wherein Goldberg expressed the view that the lesser included offense of voluntary manslaughter would not be "an option" should Applicant go to trial. This simple statement, is a far cry from specific legal advice concerning the manner in which lesser included charges are potentially submitted to the jury for their consideration. This letter does not advise Applicant that a trial judge would have to decide whether the evidence presented at trial supported a request for a jury charge on voluntary manslaughter as a verdict option. Nor did it clearly warn him that the jury would never even hear about voluntary manslaughter if the trial judge declined to issue the charge on this lesser-included offense.

- While it is true that Applicant acknowledged that he declined the offer of 30 years for a plea to murder because he did not want to serve a 30 year day-for-day sentence, he also

specifically testified that he would have taken that plea offer if he had understood that he might not even have the opportunity for the jury to consider the lesser-included offense of voluntary manslaughter if he proceeded to trial. The fact that a defendant might be willing to risk a potential life sentence in exchange for a chance that a jury might find him guilty of lesser included offense, which carried a maximum term of 30 years which did not have to be served day for day, is not, as the Respondent suggests, proof that he would not have excepted the 30 year offer for a plea to murder him if he had understood that, depending on the ruling of a trial judge, a jury might not ever have the option of even considering the lesser included offense of voluntary manslaughter.

- Applicant also expressly testified that if he had understood the law concerning the requirements for a finding of voluntary manslaughter at the time of the plea offer, the way he did at the time of his PCR hearing, he would have taken the deal offered by the State to plead to murder for a negotiated 30 year sentence.

For these reasons, Applicant respectfully asserts that he is entitled to relief on this ground.

Applicant most respectfully argues that the evidence adduced at his trial did not constitute overwhelming evidence of his guilt which would bar a finding of prejudice on any alleged deficiency. Applicant asks this Court to note the following:

- The right to effective assistance of counsel has been found to extend to representation in the plea negotiation process. *Davie v. State*, 381 S.C. 601, 675 S.E.2d 416 (2008). The strength of the State's case is not the operative consideration in deciding whether Applicant has been prejudiced by the failure of Defense Counsel to give him adequately legal advice in the context of deciding whether to accept a plea offer made by the State. Indeed, the fact that the case against Applicant may have been strong, would be a factor which would go toward the wisdom of accepting any such plea bargain extended by the State. Applicant would submit that in order to be valid, a plea of guilty must be entered with a comprehensive understanding of a number of factors including the strength of the prosecutions case against the defendant and the consequences of a plea. *State v. Hazel*, 275 S.C. 392, 271 S.E.2d 602 (1980); *State v. Lambert*, 266 S.C. 574, 225 S.E.2d 340 (1976).
- Here, the record supports Applicant's position that he believed accepting the plea bargain would mean giving up the right to have the jury decide whether he was guilty of murder or guilty of voluntary manslaughter. It is clear from the testimony presented during the Post-Conviction Relief proceeding that Applicant did not have the benefit of knowing that a trial judge might not even let the jury consider voluntary manslaughter as a verdict alternative. The language in the letter relied upon by Respondent is such that it could easily have been interpreted by Applicant to mean that *the jury* might not even consider voluntary manslaughter to be a reasonable alternative to a finding of Murder; an interpretation which would have left Applicant with hope that Counsel could persuade the jury otherwise.

- Where Applicant has argued that Defense Counsel was ineffective in the manner in which he represented Applicant in arguing pre-trial motions to suppress, the overall strength of the prosecution's case against Applicant should be evaluated in light of the weight of the remaining evidence had a Motion to Suppress all the evidence flowing from his illegal stop been excluded from evidence.

In addition, Applicant respectfully submits that the deficiencies of Defense Counsel were highly prejudicial to his ability to make a knowing decision about a plea offer made by the State, and his right to a fair trial. Further, the errors and omissions in question were not rendered harmless by the weight of the State's case. Applicant asks that this Court consider the following:

- The fact that the State presented several eyewitnesses who identified Applicant as the shooter, is not dispositive of the question of whether Applicant would have believed a jury might conclude the shooting to have constituted voluntary manslaughter versus murder.

- Likewise, the fact that Applicant gave a detailed confession in which he asserted that he believed his life was in danger and that he would be killed if he did not take action, did not negate his claims. Had the lower court found that Applicant's statements were the fruit of an illegal stop, any such confession would have been excluded at trial. Even if admitted, the content of the statements in question would not have conclusively eliminated the possibility of a jury finding a voluntary manslaughter. There are many cases in this State where a defendant has been found to be entitled to a jury charge on a lesser-included offense despite the assertion of another defense to the charge. There is no basis for to concluding that Applicant would have believed that the fact that his statements to law enforcement might come into evidence, necessarily eliminated the possibility that a jury might find him guilty of the lesser included offense of voluntary manslaughter.

The prejudice to Applicant from the errors addressed herein is clear. Had he understood that he was not guaranteed the opportunity to at least have the jury consider voluntary manslaughter as a verdict option, as opposed to murder, he would have accepted the proposed plea to murder in exchange for a negotiated sentence of 30 years. Had Applicant's Defense Counsel properly argued his Motions to Suppress, there exists a reasonable probability that all the evidence flowing from his illegal stop would have been suppressed. Had the evidence from the stop been

excluded from evidence, there is a reasonable probability the outcome of Applicant's trial would have been different.

Defense Counsel was ineffective for failing to advise him that he could present testimony during the *Jackson v. Denno*, hearing held in his case without waiving his right to the final closing argument to the jury.

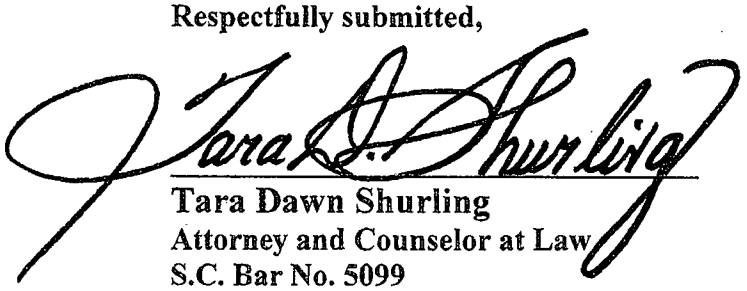
Defense Counsel did not present Applicant as a witness during his *Jackson v. Denno* hearing. He admitted in his PCR testimony that he had no recollection of advising Applicant that he could present testimony during that pre-trial motion hearing without forfeiting his right to the last argument to the jury. Applicant's testimony confirms that he would have testified during this proceeding had he known he could do without forfeiting his right to the final argument. The record therefore establishes that Defense Counsel was ineffective in failing to adequately advise Applicant concerning this crucial issues.

Conclusion

For all these reasons, Applicant now respectfully asserts that he has met his burden of proof concerning all the Sixth Amendment claims advanced by him in this Post-Conviction relief action. Any issues raised by Applicant in his pleadings, and addressed by the testimony and evidence presented at his evidentiary hearings, which may not be covered in this proposed memorandum *are not* being waived. On any such issues, Applicant relies upon the allegations as raised in his Post-Conviction Application and the testimony and evidence related thereto presented at his evidentiary hearings held on August 25, 2105 and October 15, 2015.

He asks this Honorable Court to grant him a new trial.

Respectfully submitted,



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ATTORNEY FOR APPLICANT

This 2nd day of March, 2016.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

2013-CP-40-07560

JOEL ROBINSON, #251879,

Applicant,

v.

STATE OF SOUTH CAROLINA,
Respondent.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that one copy of the Memorandum in Support of Post-Conviction Relief in the Form of a Proposed Order in the above-entitled cause has been served upon, Assistant Attorney General, J. Clayton Mitchell, by U. S. Mail on this the 2nd day of March, 2016 to:

J. Clayton Mitchell
Assistant Attorney General
Office of the Attorney General
P. O. Box 11549
Columbia, SC 29211

The original having been mailed to the Richland County Clerk of Court for filing.

Tara Dawn Shurling
Attorney and Counselor at Law

SWORN TO BEFORE ME this 2nd day of

March, 2016.

Suzanne Graham (L.S.)
Notary Public for South Carolina
My Commission Expires: 2/28/24

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

2013-CP-40-07560

JOEL ROBINSON, #251879,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Memorandum in Support of a Post-Conviction Relief in the Form of a Proposed Order, in the above matter has been served on the Honorable Tanya A. Gee, Circuit Court Judge, by U. S. Mail this 2nd day of March, 2016 to:

The Honorable Tanya A. Gee
Circuit Court Judge
P. O. Box 192
Columbia, SC 29202

The original having been mailed to the Richland County Clerk of Court for filing.

Tara Dawn Shurling
Attorney and Counselor at Law

SWORN TO BEFORE ME this 2nd day of March, 2016.

Notary Public for South Carolina (L.S.)

My Commission Expires: 2/28/24

1098

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2013CP407560

Joel Robinson #251879

PLAINTIFF(S)

State of South Carolina

DEFENDANT(S)

Submitted by: _____	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** *(CHECK REASON)*: ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other Dismissed without prejudice

☐ **ACTION STRICKEN** *(CHECK REASON)*: ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

RICHLAND COUNTY FILED
2016 MAR 8 PM 3:39
JEANETTE W. McBRIDE
CLERK OF COURT

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : After careful consideration, Applicant's Motion for Reconsideration is denied.

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		$
		$
		$

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge Tanya A. Lee **Judge Code** 2756 **Date** March 8, 2016

For Clerk of Court Office Use Only

This judgment was entered on the ____ day of _____, 20 ____ and a copy mailed first class or placed in the appropriate attorney's box on this 10 day of Mar, 20 16 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

SCRCP Form 4C (10/2011)

SCANNED

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

2013-CP-40-07560

JOEL ROBINSON, #251879,

Applicant,

v.

STATE OF SOUTH CAROLINA,
Respondent.

AMENDED RULE 59(e) SCRCP,
MOTION TO ALTER OR AMEND

NOW COMES the Applicant in the above-captioned case, acting by and through undersigned counsel, respectfully moving this Court pursuant to Rule 59(e), SCRCP, to alter or amend its Order of Dismissal filed January 25, 2016. The Application for Post-Conviction Relief in this matter was filed on December 16, 2013. An evidentiary hearing was convened on August 25, 2015, in which the State was represented by Assistant Attorney General, J. Clayton Mitchell and the Applicant was represented by Tara Dawn Shurling, Esquire. The evidentiary hearing was recessed at the conclusion of that proceeding and was reconvened on October 15, 2015 for further testimony. In support of this motion, the Applicant would show unto this Honorable Court the following with regard to issues, or aspects of allegations raised, which were either not addressed in the Order of Dismissal, or, were inadequately addressed.

The issues asserted in the *Pro Se* Application for Post -Conviction Relief were more narrowly defined by his PCR Counsel at the outset of the August 25, 2015 evidentiary hearing. Those claims, as articulated for the Court, were:

1). Defense Counsel was ineffective for failing to adequately argue a Motion to Suppress Applicant's statements, and other evidence, on the following grounds:

A) The State failed to establish that Officer Dutton was an unavailable witness at trial prior to the introduction of statements

attributed to Dutton thereby violating Applicant's right to confront all the witnesses against him in violation of the Confrontation Clause of the United States Constitution.

B) Defense Counsel was ineffective for failing to investigate and argue the fact that Applicant was under the influence of drugs at the time of his statements to law enforcement to a degree that he could not enter a knowing and voluntary waiver of his rights.

C) Defense Counsel was ineffective for failing to request a recess to give the defense the opportunity to explore presenting Officer Dutton as a potential witness for the defense.

D) Defense Counsel was ineffective for failing to adequately argue that the absence of Officer Dutton denied Applicant the opportunity for cross-examination of this witness concerning the existence of a sufficient legal basis for Applicant's stop and detention. Defense Counsel failure to argue, in a timely manner, that the State's failure to present this witness resulted in a lack of proof concerning legality of Applicant's stop and detention negatively impacted Applicant's ability to argue that all the evidence flowing from that stop was inadmissible including, but not limited to, statements allegedly made by Applicant as a consequence of that stop.

E) Defense Counsel was ineffective for neglecting to explore the potential benefit of using Officer Dutton as a witness for the defense and for neglecting to subpoena her where the record indicates that the defense had the opportunity to do so.

2). Applicant alleged that Defense Counsel was ineffective for failing to exercise due diligence in the plea bargaining process. Specifically, Applicant alleged the following with regard to this claim:

A) Defense Counsel was ineffective for failing to adequately explain the legal standards for obtaining a jury instruction on the lesser-included offense of voluntary manslaughter.

B) Defense Counsel was ineffective for neglecting to adequately explain to Applicant that the trial judge would ultimately decide whether, or not, the evidence supported a request for a jury charge on the lesser-included offense of voluntary manslaughter.

C) Defense Counsel was ineffective for allowing Applicant to reject a plea offer by the State with out a comprehensive understanding of the fact that, at a jury trial, the presiding judge could deny a request for a jury instruction on the lesser-included offense of voluntary manslaughter and thereby deny him the opportunity to have his jury even consider finding him guilty of that crime instead of murder.

During the testimony and evidence presented at the two evidentiary hearings held in this case, Applicant also argued that,

3) Defense Counsel was ineffective for failing to advise him that he could present testimony during the *Jackson v. Denno*, hearing held in his case without waving his right to the closing argument to the jury.

With regard to Applicant's allegation that Defense Counsel was ineffective for failing to move to suppress his statements to law-enforcement, Applicant most respectfully asserts that the Order of Dismissal entered in his case neglects to make findings of fact and ruling of law with regard to an important component of this Sixth Amendment claim.

Failure to Move to Suppress Applicant's Statement

Order of Dismissal pages 4 – 6.

The Order of Dismissal addresses Applicant's claim that Defense Counsel neglected to investigate and present arguments concerning the fact that he was intoxicated at the time he was initially detained by law-enforcement and therefore, was not capable of making a knowing and voluntary waiver of his right to remain silent. The Order of Dismissal does not, however, address Applicant's claim that Defense Counsel was ineffective for neglecting to argue that his statements should be suppressed as the fruit of an unlawful stop which was not supported by

probable cause, or even the lesser standard of reasonable suspicion. *State v. Hewins*, 409S.C. 93, 760 S.E.2d 814 (S.Ct. 2014); *State v. Morris*, 411 S.C. 571, 769 S.E.2d 854 (S.Ct. 2015). The Order of Dismissal issued by this Honorable Court does not address Applicant's claim that Defense Counsel neglected to argue that all statements allegedly made by him following his illegal stop and detention would be the fruit of the poisonous tree. *Wong Sun v. United States*, 371 U.S. 471, 83 S.Ct. 407 (1963).

Applicant specifically argued that Defense Counsel was ineffective for neglecting to argue that the State could not meet its burden of proof with regard to the legal basis for Applicant's stop and detention where they neglected to present the testimony of the officer who made the stop, Sergeant Dutton. Applicant further argued that Defense Counsel was deficient for neglecting to argue that the State failed to meet its burden of proof with regard to establishing that Dutton was an unavailable witness within the meaning of Rule 804, SCRE.

The testimony of all the other law-enforcement officers at Applicant's trial who responded to the location where he was stopped and detained indicates that they were dispatched as backup after Applicant was stopped and was being detained by Sergeant Dutton. In the context of the *Neil v. Biggers*[1] hearing, Defense Counsel did indicate that the defense had "a problem with" the introduction of the statement made by Sergeant Dutton. Tr. p. 75, l.15-p.85, l.17. During that hearing Officer Fisher testified that he went to where Applicant had been stopped to provide backup for Dutton. His testimony establishes that when he arrived at the location, Dutton already had Applicant stopped and was checking his ID card. He specifically testified that "*we went and backed her up.*" Tr. 86, l. 3-p. 87, l. 10. Officer Bailey testified that he was riding with Officer Fisher on the night in question and remembered being sent as back up for Sergeant Dutton. Tr. 93, l. 17- p. 94, l. 9. He testified that upon arrival he saw Dutton

[1] *Neil v. Biggers*, 409 U.S. 188, 93 S.Ct. 375 (1972).

standing next to her vehicle and that he believed she was running the suspects ID. He testified that she "*had his ID card*" when they arrived at the scene. Tr. 94, ll. 7- 17. Officer Fisher testified that he heard the dispatch describe the shooting suspect as "*a light skinned black male.*" He further testified that he heard Dutton inquire as to whether there was any clothing description and then heard a response stating, "*a tan jacket.*" Tr. 86, ll. 10-19. Officer Bailey testified that he heard the description of the suspect over the radio describing "*a light skinned black gentleman with a bald head such as myself.*" Tr. 93, ll. 4-16. He testified that upon arrival the individual he saw with Dutton did fit the description of the shooter that he had previously heard over the radio. Tr. 94, l.10- p. 95, l. 3.

Following the trial court's ruling on the Motion to Suppress the identification of Applicant by Lavern Smith, an individual who had participated in a one man show up at the location where Applicant was stopped and detained by Dutton, the Court proceeded with a hearing on Applicant's Motion to Suppress his statements. Tr. 102, ll.12-19. The State's first witness during the *Jackson v. Denno*[2] hearing was Brian Carrol, an officer with the Columbia Police Department. He testified that he was the officer assigned to transport Applicant from where he was stopped by Dutton to the headquarters. Tr. 102,l. - p. 104, l. 19. He testified that during the approximately 6 minute drive to headquarters he did not have any conversation with Applicant. He testified that upon arrival at headquarters, he was in an interview room with Applicant for approximately 10 minutes while waiting for Investigator Reese to arrive. According to his testimony, during that time period, Applicant made several statements to the effect that "*the victim disrespected him.*" Tr. 105, l. 7-p. 206, l. 15. Officer Fisher, who previously testified during the *Neil v. Biggers* hearing, also testified for the State during the *Jackson v. Denno* proceeding. He testified that while they were at the scene of Applicant's

[2] *Jackson v. Denno*, 378 U.S. 368, 84 S.Ct. 1774 (1964).

detention, Investigator Reese allowed Applicant to smoke a cigarette. Fisher testified that when Reese "*turned to do something*" he heard Applicant say "*I killed him. He's dead.*" Tr. p. 110, l. 6- p. 111, l. 15. Fisher testified that the statements by Applicant were spontaneously made and that these utterances were not in response to any action by him intended to elicit a response. He further testified that he attempted to *Mirandize* Applicant after this spontaneous admission, but Investigator Reese stopped him from doing so and took Applicant into his custody. Tr. p. 111, l. 6- p.112, l. 24.

Investigator Reese also testified during the *Jackson v. Denno* hearing. He confirmed that he did not personally hear the statement alleged to have been spontaneously made by Applicant while he was smoking a cigarette. He acknowledged stopping Fisher from saying anything further to Applicant. He asserted that he stopped Fisher from Mirandizing Applicant because it was not Fisher's job to advise him of his rights, and because he was in charge of interviewing Applicant; not Officer Fisher. He testified that Fisher related to him the statements Applicant made to him while smoking the cigarette. Tr. 118, l. 10- p. 119, l. 13.

Investigator Reese proceeded to testify that he fully Mirandized Applicant on February 16, 2007 at 12:47 AM. He testified to the content of the advice of rights he administered to Applicant and then described Applicant's demeanor at the time of his interview. Tr. 120, l. 2- p.123, l. 21. He proceeded to describe the interview process and to identify State's Exhibit No. 7 as the written statement given by Applicant. Tr.120, l. 4-p. 135, l. 16.

The trial court ruled that all the statements attributed to Applicant by Carol, Fisher and Reese were admissible. Following that ruling, the State indicated that the only remaining pretrial matter was a Motion to Suppress by the defense. Defense Counsel then stated, "*I guess we are going to have to subpoena Sergeant Dutton, Your Honor.*" Defense Counsel went on to advise

the Court that the defense had not been aware that Sergeant Dutton no longer worked for the police department and offered that as an explanation for why the defense did not have her under subpoena. Defense Counsel noted that the legality of the initial detention was critical to a Fourth Amendment analysis of any evidence obtained after that stop. Tr. 143, l. 17- p. 145, l. 13. Thereafter an off-the-record bench conference was held and, following a short break, the trial proceeded with jury selection. Tr. 145, l. 15- p. 146, l. 14.

Following jury selection, the Court proceeded with pretrial matters. The State advised the Court that Investigator Dow was present, but ill, and asked that his testimony be taken first so that the State could "just get him up and running..." Tr. 180, ll. 10-17. Investigator Dow testified to the facts and circumstances surrounding the one man show-up conducted at the scene of the stop initiated by Dutton. During his testimony he expressly denied calling Dutton on the evening in question. Tr. 180, l. 20-p. 188,l. 16. During an earlier portion of the *Neil v. Biggers* hearing, Dutton's own statement was read into the record. In that statement, Dutton indicated that after initiating the stop, she got Applicant's ID "*and went to my car to run his information. That's when I was informed that Investigator Dow was bringing a witness by.*" Tr. 81, l. 11- p. 83, l. 2. After the State read Dutton's entire statement into the record, Defense Counsel argued that the State needed to produce her as a witness. In response, the State argued that the prosecution had already established the threshold requirements for the admission of the witness's identification of Applicant under the requirements of *Neil v. Biggers, supra.* the prosecution simply noted that Dutton no longer worked at the Columbia Police Department. Tr. 83,l. 11- p. 84, l. 11. At no time, did the State indicate that any effort has been made secure Dutton as a witness for the State. They made no effort whatsoever to submit that she was an unavailable witness within the meaning of Rule 804, SCRE.

Significantly, when the hearing on pretrial motions was resumed after jury selection, the defense never fully articulated the basis for its Motion to Suppress evidence. While Defense Counsel had initially alluded to a Fourth Amendment challenge predicated upon an illegal stop, that position was never fully articulated for the record. Tr. p. 78, l. 13-p. 79, l.12. Although Defense Counsel did not object when the prosecution stated that, *"let's just go ahead and make her statement part of the record"* they did ultimately challenge Dutton's statement being read into the record by the State, and moved to strike it from the record, but not until after it had been read into the record. The Court did not initially rule on a Defense Counsel's Motion to Strike Dutton's statement from the record, but rather indicated that the Court had not yet ruled on whether or not Dutton's testimony was necessary. Tr. 83, l. 11- p.85, l. 9. Following lengthy arguments concerning why the eye witness who participated in the one man show-up should not be permitted to identify Applicant in Court, the trial judge ruled that the State had sufficiently met it's burden of proof and ruled that the identification by this witness was admissible.[3] Tr. 98, l. 1-p. 102, l. 14. No objection was made by Defense Counsel to the Court's ruling based upon the State's failure to produce Dutton as a witness. Neither did Defense Counsel renew its request for a ruling on Applicant's Motion to Strike the publication of Dutton's statement on the record.

Following the Court's ruling on the identification issue, the State proceeded with a *Jackson v. Denno* hearing on the admissibility of statements attributed to Applicant. Tr. 102, ll. 15-18. At that proceeding, the State presented testimony from Officer Brian Carrol, Officer Rodney Fisher and Investigator Kevin Reese. Tr.107; 19- p.135,l. 17. Following arguments by the parties, the trial court ruled that both the oral statements of Applicant, and his written statement, was admissible. Tr. 135, l. 18- p. 144,l. 16.

[3] It is less than clear whether Defense Counsel was arguing for the suppression of testimony concerning Smith's identification of Applicant during the show-up procedure. Dow did not, however, testify in the presence of the jury.

As previously noted, following the Trial Court's rulings on both the identification issue, and the challenge to Applicant's statements, there was a discussion on the record concerning the fact that the defense was apparently "*going to have to subpoena Sergeant Dutton...*" Tr. 144, l. 17-p.145, l. 16. At no time, however, did Defense Counsel argue with specificity that the Court should find that both Applicant's alleged statements to law-enforcement, and his in-court identification by an eye witness who participated in a one man show-up orchestrated by the police, should be suppressed as the fruit of an illegal stop. Likewise, although briefly alluding to such a challenge, Defense Counsel never articulated its position that the State could not meet its burden of proof in response to such a Motion to Suppress absent production of Dutton as the only eye witness to, and participant in, Applicant's initial stop and detention. Likewise, the record before this Court indicates that Defense Counsel failed to challenge the Court's rulings on both the identification issue and the admissibility of Applicant's statements to law enforcement on the ground that all evidence stemming from the initial illegal stop would be inadmissible as the fruit of the poisonous tree; the illegal stop. While Defense Counsel expressed indignation and concern over the fact that Dutton was not presented by the prosecution as a witness available for cross-examination, the defense never directly challenged the introduction of any of this evidence as the fruit of the poisonous tree. Although Dutton's statement read into the record during the *Neil v. Biggers* hearing arguably asserted that Applicant voluntarily consented to hand over his ID card once he was stopped by Dutton, Dutton was not available to be cross-examined on this crucial point.

Following the *in-camera* testimony of Investigator Dow, the State renewed their request that the prosecution be permitted to introduce the eyewitness identification testimony of Jeffrey Smith despite his participation in the one man show-up. Tr. 192, l. 18- p. 199,l. 3. The trial

court ruled that the show-up procedure employed was not unduly suggestive and further found adequate evidence of an independently reliable statement by this identification witness. Tr. 199, ll. 3-18.

Following the Court's ruling on the identification issue, and the admissibility of Applicant's statements, Defense Counsel for the first time raised a Sixth Amendment challenge pursuant to *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354 (2004), alleging a violation of Applicant's right to confront his accusers resultant from the State's failure to present Sergeant Dutton as a witness. Interestingly, Defense Counsel allowed the State to announce to the Court the nature of the defense motion, characterizing it simply as a "*Motion to Suppress the Evidence.*" Tr. 199, ll. 22 - 24.

While Defense Counsel argues that the drugs found on Applicant at the time of his detention and the weapon that was seized from him would be inadmissible absent a showing that the initial stop was proper, Defense Counsel did not argue that Applicant's statements, previously ruled admissible by he court, were the fruit of an illegal stop. Likewise, Defense Counsel did not argue that the out-of-court identification of Applicant by Smith during the show-up was the fruit of an illegal stop or that any subsequent in-court identification of Applicant by this witness was tainted by the illegal show-up flowed from the initial illegal stop. Applicant is certainly mindful that there was testimony that Dow just happened to pass by the location of the stop while transporting Smith to headquarters for further questioning. Dutton's statement, as read into the record, directly disputed that claim and documented the fact that she was contacted and told an officer was on the way to her location with a witness. Defense Counsel was unable to further explore this point with Dutton at trial since she was not called as a witness by the State and Defense Counsel had not interviewed her prior to trial. Defense Counsel focused its challenge

on the failure of the State to present Dutton as a witness and the improper admission of her statement into evidence. Interestingly, the defense did not argue that without the introduction of her statement, the State failed meet its burden of proof concerning the legality of the stop. Tr. 199, l. 24- p. 203, l. 8.

Just as Defense Counsel was finally beginning to approach the subject of the description of the suspect as it related to Applicant's stop by Dutton, the prosecution interrupted Defense Counsel and proceeded with witness testimony from the officers who seized drugs and a weapon from Applicant after he was detained. Tr. 203, l. 13-p. 211, l. 23. At no point did Defense Counsel argue that, absent testimony from Dutton, the State could not establish the legality of the stop. They never argued that the limited description provided by dispatch was not sufficient to provide a reasonable suspicion which justified the stop of any light skinned black male wearing a neutral colored jacket. Furthermore, Defense Counsel did not argue that the State had failed to meet its burden of proof with regard to a claim that Dutton was not an unavailable witness under Rule 804. Although Defense Counsel did attempt some sort of challenge to the consideration of Dutton's statement pursuant to *Crawford*, *supra*, they only did so only after allowing the Court to make a final ruling, without objection, on the admissibility of the eye witness identification testimony, and Applicant's statements, in the absence of any sort of testimony concerning the legality of the initial stop.

Applicant respectfully submits that the testimony and arguments addressed above graphically demonstrate Defense Counsel's deficient representation on these crucial issues. The Order of Dismissal entered in this matter fails to address these important components of Applicant's Sixth Amendment claims. For this reason, Applicant asks that this Honorable Court reconsider its denial of relief on this allegation and grant Applicant relief. Alternatively,

Applicant submits that the Order of Dismissal as entered is deficient in that it fails to make findings of fact and rulings of law on all these issues advanced by Applicant that are related to this ground. Accordingly, if the Court should decide against granting relief on these allegations, Applicant asks for this Court to issue an Amended Order of Dismissal making findings of fact and rulings of law concerning the issues addressed herein.

Failure to Argue Applicant was subjected to an Unlawful Search and Seizure

The Order of Dismissal notes the Fourth Amendment arguments advanced by Defense Counsel in support of the Motion to Suppress argued after the trial court had already ruled on the identification issues before the Court and the admissibility of Applicant's statements made following his stop. *See*, Tr. 210, l. 19-p. 212, l. 13. Applicant most respectfully notes that the Order of Dismissal neglects to address Applicant's argument that Defense Counsel was ineffective for neglecting to advance these arguments, with more specificity, before the trial judge's rulings on the identification issue and the court's rulings on the admissibility of the statements made after the illegal stop. The Order notes Defense Counsel's PCR testimony in which he simply concedes that Applicant met the description of the suspect wanted in connection with this shooting. The Order fails to address Defense Counsel's failure to argue that the description in question was too vague, and provided too little information, to provide a reasonable suspicion that Applicant was the shooter and therefore, was not sufficient to support the stop. Likewise, as noted *supra*, the arguments made by Defense Counsel were not advanced in a timely manner where they were not made until after the Court ruled on the admissibility of the Applicant's identification by Smith and the admissibility of Applicant's statements. Even when finally advanced, Defense Counsel failed to argue that the State could not meet its burden of proof in response to this challenge to the legality of this stop without producing testimony

from the law enforcement officer who conducted the stop. Even at that late time in the proceedings, Defense Counsel still failed to fully articulate why the publication of Dutton's statement on the record was improper in the absence of any showing that this witness was unavailable to testify for the State and to be cross-examined by the defense.

This Court concludes that this issue could have been argued on direct appeal. Applicant respectfully submits that this finding indicates a misreading of the record below. By the time Applicant finally argued that any evidence found as a result of the unlawful stop was inadmissible, the trial court had already ruled on the admissibility of some of the most damaging evidence arising from that stop. Defense Counsel waived any argument that might have been advanced on direct appeal concerning the fact that Smith's identification of Applicant was tainted by a show-up that flowed from the unlawful stop and detention of Applicant by Dutton. Likewise, by the time the arguments were advanced concerning an illegal stop, Defense Counsel had already waived any argument along these lines concerning Applicant's statements to law enforcement.

This Order of Dismissal finds, without any findings of fact, or conclusions of law, that the stop in question did not violate Applicant's Fourth Amendment rights and was proper.

Failure to ask for a recess to subpoena Officer Dutton for the Defense

The Order of Dismissal also fails to address Applicant's assertion that Defense Counsel should have subpoenaed Dutton as a witness for the defense. As previously noted, Defense Counsel at one point in the pretrial motions portion of this three day trial, stated that he guessed he was going to have to subpoena Dutton himself since the State was not being required to produce her. At that juncture the trial judge noted that she had not yet ruled on the question of whether Dutton's testimony was necessary. The fact remains that Defense Counsel allowed the

pretrial motion hearing to go forward without asking for the opportunity to subpoena this witness for the defense since she was not being produced by the State. This trial lasted several days. Trial Counsel has provided no reasonable explanation for why he could not have had Officer Dutton subpoenaed to appear. The content of her statement, as read in Court, indicated that someone told her a witness was being brought to her for an orchestrated show-up. Defense Counsel could have questioned her on the record concerning that portion of her statement and could have questioned her concerning her claim that Applicant consented to giving her his ID card.

Failure to Advise Applicant that the Decision of Whether to Instruct the Jury on Voluntary Manslaughter is Discretionary with the Trial Judge and for failing to more thoroughly explain the requirements for a finding of voluntary manslaughter.

The Order of Dismissal entered in Applicant's case relies strongly on State's Exhibit 1, a letter written to Applicant by Public Defender originally assigned to his case, Christie Grafton (hereafter referenced by her married name Goldberg) for the proposition that "***there was no guarantee that he would be entitled to a voluntary manslaughter charge***." Order of Dismissal, page 7. (Emphasis added). The Order goes on to reference Goldberg's statement in this letter that she provided Applicant a memorandum on her analysis of this question. The Order drafted by Respondent, and adopted by this Honorable Court, goes on to find that Applicant's PCR testimony that he would have accepted the plea offer of 30 years if he had known there was a possibility that he would not be entitled to a voluntary manslaughter charge was not credible in light of the fact that he had admittedly turned down the 30 year deal for a plea to murder. The same Order gives credence to Applicant's testimony that he rejected the plea offer of 30 years "*because he did not want to serve that much time on a day-for-day sentence*." Order of Dismissal, page 8. Applicant now most respectfully asserts that the Order of Dismissal

significantly overstates the significance of the letter written to Applicant by his first Public Defender and fails to take into account other key aspects of Applicant's argument. The letter written to Applicant, introduced as Respondent's Exhibit 1, admittedly states that "*ultimately upon review of this information I do believe that in a jury trial the lesser included offense of voluntary manslaughter as well as the defense of duress would not be available as options, and therefore, you would likely be found guilty of murder.*" The significance of this letter is greatly overstated in this Court's Order of Dismissal, where it fails to take into accounts multiple important points. They are:

- The correspondence in question clearly states that Goldberg assigned *a law clerk* at the Public Defender's Office to review Applicant's file and do the legal research relevant to questions that had been put to Goldberg in a letter. The letter goes on to state that based on a review of the law clerk's research, Goldberg concluded that voluntary manslaughter and to the defense of duress "would not be available as options" at a jury trial. Thus, Applicant may not have had confidence in this advice inasmuch as it did not come from Defense Counsel's own research.

- While the letter in question was introduced as an exhibit during the Post-Conviction Relief hearing, the memorandum referenced in that correspondence was not. Relying solely on the evidence before the Court, we are left only with the assertion found in the letter itself wherein Goldberg expressed the view that the lesser included offense of voluntary manslaughter would not be "*an option*" should Applicant go to trial. This simple statement, is a far cry from specific legal advice concerning the manner in which lesser included charges are potentially submitted to the jury for their consideration. This letter does not advise Applicant that a trial judge would have to decide whether the evidence presented at trial supported a request for a jury charge on voluntary manslaughter as a verdict option. Nor did it clearly tell him that the jury would never even hear about voluntary manslaughter if the trial judge declined to issue the charge on this lesser-included offense.

- While it is true that Applicant acknowledged that he declined the offer of 30 years for a plea to murder because he did not want to serve a 30 year day-for-day sentence, it ignores the fact that Applicant specifically testified that he would have taken that plea offer if he had understood that he might not even have the opportunity for the jury to consider the lesser-included offense of voluntary manslaughter if he proceeded to trial. The fact that a defendant might be willing to risk a potential life sentence in exchange for a chance that a jury might find him guilty of this lesser included offense, which carried a maximum term of 30 years which did not have to be served day for day, is not, as the Order of Dismissal concludes, proof that he would not have excepted the 30 year offer for a plea to murder if

he had understood that, depending on the ruling of a trial judge, a jury might not ever have the option of considering the lesser included offense of voluntary manslaughter.

- Applicant expressly testified that if he had understood the law concerning the requirements for a finding of voluntary manslaughter at the time of the plea offer, the way he did at the time of his PCR hearing, he would have taken the deal offered by the State to plead to murder for a negotiated 30 year sentence.

For these reasons, Applicant now respectfully asks that this Court reconsider its decision to deny relied on this ground. In the alternative, Applicant requests that this Court issue an Amended Order of Dismissal fully addressing this issue. Applicant seeks findings of fact and rulings of law on these allegations in order that his position might be fully preserved for review on appeal.

Applicant notes that this Honorable Court has found that there existed overwhelming evidence of his guilt which bars a finding of prejudice on any alleged deficiency. Applicant respectfully submits that this finding fails for the following reasons.

- The right to effective assistance of counsel has been found to extend to representation in the plea negotiation process. *Davie v. State*, 381 S.C. 601, 675 S.E.2d 416 (2008). The strength of the State's case is not the operative consideration in deciding whether Applicant has been prejudiced by the failure of Defense Counsel to give him adequately legal advice in the context of deciding whether to accept a plea offer made by the State. Indeed, the fact that the case against Applicant may have been strong, would be a factor which would go toward the wisdom of accepting any such plea bargain extended by the State. Applicant would submit that in order to be valid, a plea of guilty must be entered with a comprehensive understanding of a number of factors including the strength of the prosecutions case against the defendant and the consequences of a plea. *State v. Hazel*, 275 S.C. 392, 271 S.E.2d 602 (1980); *State v. Lambert*, 266 S.C. 574, 225 S.E.2d 340 (1976).

- Here, the record supports Applicant's position that he believed accepting the plea bargain would mean giving up the right to have the jury decide whether he was guilty of murder or guilty of voluntary manslaughter. It is clear from the testimony presented during the Post-Conviction Relief proceeding, Applicant did not have the benefit of knowing that the trial judge might not even let the jury consider that verdict alternative. The language in the letter relied upon by Respondent is such that it could easily have been interpreted by Applicant to mean that *the jury* might not even consider voluntary manslaughter to be a reasonable alternative to a finding of Murder; an interpretation which would have left Applicant with hope that Counsel could persuade the jury otherwise.

In addition, the evidence cited in the Order of Dismissal as supporting a lack of prejudice even if Defense Counsel were found deficient, is not conclusive on that point for two very important reasons.

- The fact that the State presented several eyewitnesses who identified Applicant as the shooter, is not dispositive of the question of whether a jury might have found that shooting to have constituted voluntary manslaughter versus murder.

- Likewise, the fact that Applicant gave a detailed confession in which he asserted that he believed his life was in danger and that he would be killed if you did not take action, does not negate Applicant's claims. Had the lower court found that Applicant's statements were the fruit of an illegal stop, any such confession would have been excluded at trial. Even if admitted, the content of the statements in question would not have conclusively eliminated the possibility of a jury finding of voluntary manslaughter. There are many cases in this State where a defendant has been found to be entitled to a jury charge on a lesser-included offense despite the assertion of another defense to the charge. There is no reason to conclude Applicant would have believed that the fact that his statements to law enforcement might come into evidence, necessarily would have eliminated the possibility that a jury might find him guilty of the lesser included offense of voluntary manslaughter.

For these reasons, Applicant most respectfully submits that the conclusion of this Honorable Court that he could not demonstrate prejudice in light of these factors is not supported by the facts or the law. The prejudice to Applicant from the errors addressed herein is clear. Had he understood that he was not guaranteed the opportunity to at least have the jury consider voluntary manslaughter as a verdict as opposed to murder, he would have accepted the proposed plea to murder in exchange for a negotiated sentence of 30 years.

Defense Counsel was ineffective for failing to advise him that he could present testimony during the *Jackson v. Denno*, hearing held in his case without waving his right to the closing argument to the jury.

The Order of Dismissal filed in this matter neglects to make any finds with regard to this issue which was developed by the testimony during the PCR hearings in this matter. Defense

Counsel did not present Applicant as a witness during his *Jackson v. Denno* hearing. He admitted in his PCR testimony that he had no recollection of advising Applicant that he could present testimony during that pre-trial motion hearing without forfeiting his right to the last argument to the jury. Applicant's testimony confirms that he would have testified during this proceeding had he known he could do so without forfeiting his right to the final argument.

Conclusion

Applicant now respectfully submits that this Honorable Court's Order either fails to take into account the issues addressed herein, or fails to make adequate ruling on components of those Sixth Amendment claims. For that reason, he now respectfully asks that this Honorable Court reconsider it's decision to deny him relief on all the Sixth Amendment claims advanced by him in this Post-Conviction relief action. Alternatively, he asks this Court for an Amended Order of Dismissal making specific findings of fact and rulings of law regarding all the issues addressed herein.

Respectfully submitted,

Tara Dawn Shurling
Attorney and Counselor at Law

3614 Landmark Dr., Suite A
Columbia, S.C. 29204
(803) 738-8622
(803) 738-1600 (fax)
tdslaw@shurlinglaw.com

Attorney for the Applicant

This 3rd day of March, 2016.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

JOEL ROBINSON, #251879,

Applicant,

v.

STATE OF SOUTH CAROLINA,
Respondent.

IN THE COURT OF COMMON PLEAS

2013-CP-40-07560

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Amended Motion to Alter or Amend Pursuant to Rule 59(e), SCRCP, in the above matter has been served on the Honorable Tanya A. Gee, Circuit Court Judge, by U. S. Mail this 3rd day of March, 2016 to:

The Honorable Tanya A. Gee
Circuit Court Judge
P. O. Box 192
Columbia, SC 29202

The original having been mailed to the Richland County Clerk of Court for filing.

Tara Dawn Shurling
Attorney and Counselor at Law

SWORN TO BEFORE ME this 3RD day of March, 2016.

Suzanne Graham (L.S.)
Notary Public for South Carolina

My Commission Expires: 2/28/24

RICHLAND COUNTY FILED
2016 MAR -9 AM 9:02
JEANETTE W. McBRIDE C.C.P. & G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

JOEL ROBINSON, #251879,

Applicant,

v.

STATE OF SOUTH CAROLINA,
Respondent.

IN THE COURT OF COMMON PLEAS

2013-CP-40-07560

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that one copy of the Amended Motion to Alter or Amend Pursuant to Rule 59(e), SCRCP in the above-entitled cause has been served upon, Assistant Attorney General, J. Clayton Mitchell, by U. S. Mail on this the 3rd day of March, 2016 to:

J. Clayton Mitchell
Assistant Attorney General
Office of the Attorney General
P. O. Box 11549
Columbia, SC 29211

The original having been mailed to the Richland County Clerk of Court for filing.

Tara Dawn Shurling
Attorney and Counselor at Law

SWORN TO BEFORE ME this 3rd day of March, 2016.

Notary Public for South Carolina
My Commission Expires: 2/28/24

RICHLAND COUNTY
FILED
2016 MAR -9 AM 9:02
JEANETTE W. McBRIDE
C.C.P. & G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on February 11, 2009, the Grand Jurors of Richland County present upon their oath:

DRUGS/POSS OF CRACK COCAINE - 2ND OFFENSE

That JOEL ROBINSON did in Richland County on or about February 15, 2007, possess or attempt to possess a quantity of Crack Cocaine, a controlled substance under provisions of Section 44-53-375(A), et. Seq., Code of Laws of South Carolina (1976, as amended), such possession not having been authorized by law such being more than a first offense.

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

W. Barry Giese

WARREN B. GIESE, SOLICITOR

WITNESSES

√ Chris Williams (S) CPD

ARREST WARRANT NUMBER

DP09034

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: FEB 13 2009

VERDICT

Foreperson of Petit Jury
Date:

1120

DOCKET NO. 2009-GS-40-1345

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2009

91

THE STATE
vs.

JOEL ROBINSON

Indictment for

DRUGS/POSS OF CRACK COCAINE 2ND OFFENSE

SC Code: 44-53-375(A)
CDR Code: 3017
Class FEL/F

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____ hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on February 11, 2009, the Grand Jurors of Richland County present upon their oath:

DRUGS/POSS OF COCAINE 2ND OFFENSE

That JOEL ROBINSON did in Richland on or about February 15, 2007, possess or attempt to possess a quantity of Cocaine a controlled substance under provisions of Section 44-53-110 et. Seq., Code of Laws of South Carolina (1976, as amended), such possession not having been authorized by law and such not being a first offense in violation of Section 44-53-370 et. Seq., 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.

W. Dan

WARREN B. GIESE, SOLICITOR

WITNESSES

✓Chris Williams CPD

ARREST WARRANT NUMBER

DP09035

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: FEB 13 2009

VERDICT

Foreperson of Petit Jury
Date:

1122

DOCKET NO. 2009-GS-40-1346

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2009

91

THE STATE
vs.
JOEL ROBINSON

Indictment for

DRUGS/POSS OF COCAINE 2ND OFFENSE

SC Code: 44-53-370(d)(1)
CDR Code: 3012
Class FEL/F

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____ hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on June 20, 2007, the Grand Jurors of Richland County present upon their oath:

USE OF A FIREARM DURING COMMISSION OF A VIOLENT CRIME

That Joel Robinson did in Richland County on or about February 15, 2007, possess or visibly display a firearm or visibly display a firearm during the commission or attempted commission of a violent crime, to wit: Murder, in violation of Code Section 16-23-490, *Code of Laws of South Carolina,* (1976), as amended.

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

WARREN B. GIESE, SOLICITOR

CERTIFIED TRUE COPY
ORIGINAL FILED,
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

WITNESSES

(S) REESE - CPD

ARREST WARRANT NUMBER

K195749

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: JUN 22 2007

VERDICT

Foreperson of Petit Jury

Date:

1124

DOCKET NO. 2007-GS-40- 2038

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

JUNE TERM 2007

91

THE STATE
vs.

JOEL ROBINSON

Indictment for

USE OF A FIREARM DURING COMMISSION OF A VIOLENT CRIME
SC Code: 16-23-0490
CDR Code: 0549
Class FEL/F

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____ hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

1125

ARREST WARRANT

K185749 K- 195749 875176

STATE OF SOUTH CAROLINA

☐ County/☒ Municipality of COLUMBIA

THE STATE

against

JOEL ANTAWAN ROBINSON

Address:

Phone: SSN:

Sex M Race B Height: 5 10 Weight: 217

DL State: DL #:

Agency ORI# SC0400100

Prosecuting Agency: CITY OF COLUMBIA

Prosecuting Officer: K REESE/MEADORS

Offense: POSS OF FIREARM DURING A VIOLENT CRIME Offense Code: FIR

Code/Ordinance Sec. 16-23-490

This warrant is **CERTIFIED FOR SERVICE** in the ☐ County/☒ Municipality of COLUMBIA. The accused is to be arrested and brought before me to be dealt with according to law.

(L.S.)
Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant

on .

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

CITY OF COLUMBIA
MUNICIPAL COURT
P. O. BOX 644
COLUMBIA, SC 29202

AFFIDAVIT

Form Approved by S.C. Attorney General April 24, 2003 SCCA 6.18

STATE OF SOUTH CAROLINA)
☐ County/☒ Municipality of COLUMBIA)

Personally appeared before me the affiant INV K E REESE who being duly sworn deposes and says that defendant JOEL ANTAWAN ROBINSON did within this county and state on 02/15/2007 violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/☒ Municipality of COLUMBIA) in the following particulars:

DESCRIPTION OF OFFENSE: POSS OF FIREARM DURING A 16-23-490 **VIOLENT CRIME**

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 2/15/07 A SHOOTING OCCURRED @ MYERS ST, COLA SC. WITNESSES REPORT THAT AN UNKNOWN B/M ENTERED THE RESIDENCE THROUGH AN UNLOCKED FRONT DOOR AND SHOT VICTIM THOMAS LEE SMITH SEVERAL TIMES ABOUT THE HEAD & BODY WITH A HANDGUN, AND ALSO SHOT VICTIM EDWINA BROWN IN THE HAND & BUTTOCK. VICTIM SMITH WAS PRONOUNCED DEAD AT THE SCENE. THE DEF WAS LATER OBSERVED ON THE 4700 BLOCK OF N. MAIN ST. HE WAS DETAINED BY POLICE BECAUSE HE MATCHED THE DESCRIPTION OF THE SUSPECT AND FOUND TO BE IN POSSESSION OF A HANDGUN. A WITNESS WAS BROUGHT

Signature of Affiant Kevin Reese

Affiant's Address #1 JUSTICE SQ
COLUMBIA SC 29201

Affiant's Telephone 5453500

STATE OF SOUTH CAROLINA)
☐ County/☒ Municipality of COLUMBIA)

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 02/15/2007 defendant JOEL ANTAWAN ROBINSON did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/☒ Municipality of COLUMBIA) as set forth below.

DESCRIPTION OF OFFENSE: POSS OF FIREARM DURING A 16-23-490 **VIOLENT CRIME**

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 02/16/2007)
[redacted] (L.S.))
Signature of Issuing Judge)
Judge Code 03003)

Judge's Address CITY OF COLUMBIA, SC
MUNICIPAL COURT, P.O. BOX 644 29202

Judge's Telephone

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on June 20, 2007, the Grand Jurors of Richland County present upon their oath:

ASSAULT AND BATTERY WITH INTENT TO KILL

That Joel Robinson did in Richland County on or about February 15, 2007, with malice aforethought commit an assault and battery upon one Edwina Brown, with intent to kill the said victim. All in violation of §16-03-620 of the 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.

Warren B. Giese

Warren B. Giese, SOLICITOR

1127

WITNESSES

(S) REESE - CPD

ARREST WARRANT NUMBER

K195748

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: JUN 2 2 2007

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2007-GS-40-2039

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

JUNE TERM 2007

91

THE STATE
vs.

JOEL ROBINSON

Indictment for

ASSAULT AND BATTERY WITH INTENT TO KILL

SC Code: 16-3-620
CDR Code: 0014
Class FEL-C(V)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____ hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

ARREST WARRANT

195748 K- 195748 075176

STATE OF SOUTH CAROLINA

☐ County/☒ Municipality of COLUMBIA

THE STATE

against

JOEL ANTAWAN ROBINSON

Home: SSN:

Sex: M Race: B Height: 5 10 Weight: 217

DOB:

Agency ORI#: SC0400100

Prosecuting Agency: CITY OF COLUMBIA

Prosecuting Officer: K REESE/MEADORS

Offense: ABIK

Offense Code: ABK

Code/Ordinance Sec. 16-3-620

This warrant is **CERTIFIED FOR SERVICE** in the ☐ County/☒ Municipality of COLUMBIA. The accused is to be arrested and brought before me to be dealt with according to law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant

on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

CITY OF COLUMBIA
MUNICIPAL COURT
P. O. BOX 644
COLUMBIA, SC 29202

1128

AFFIDAVIT

STATE OF SOUTH CAROLINA)
☐ County/☒ Municipality of COLUMBIA)

Personally appeared before me the affiant INV K E REESE who being duly sworn deposes and says that defendant JOEL ANTAWAN ROBINSON did within this county and state on 02/15/2007 violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/☒ Municipality of COLUMBIA) in the following particulars:

DESCRIPTION OF OFFENSE: ABIK 16-3-620

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 2/15/07 A SHOOTING OCCURRED @ MYERS ST, COLA SC. WITNESSES REPORT THAT AN UNKNOWN B/M ENTERED THE RESIDENCE THROUGH AN UNLOCKED FRONT DOOR AND SHOT VICTIM THOMAS LEE SMITH SEVERAL TIMES ABOUT THE HEAD & BODY WITH A HANDGUN, AND ALSO SHOT VICTIM EDWINA BROWN IN THE HAND & BUTTOCK. VICTIM SMITH WAS PRONOUNCED DEAD AT THE SCENE. THE DEF WAS LATER OBSERVED ON THE 4700 BLOCK OF N. MAIN ST. HE WAS DE-TAINED BY POLICE BECAUSE HE MATCHED THE DESCRIPTION OF THE SUSPECT AND FOUND TO BE IN POSSESSION OF A HANDGUN. A WITNESS WAS BROUGHT

Signature of Affiant

Affiant's Address #1 JUSTICE SQ COLUMBIA SC 29201

Affiant's Telephone 5453500

STATE OF SOUTH CAROLINA)
☐ County/☒ Municipality of COLUMBIA)

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 02/15/2007 defendant JOEL ANTAWAN ROBINSON did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/☒ Municipality of COLUMBIA) as set forth below:

DESCRIPTION OF OFFENSE: ABIK 16-3-620

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 02/16/2007

[redacted] Ministerial Recorder

Judge Code: 403003

Judge's Address CITY OF COLUMBIA, SC MUNICIPAL COURT, P.O. BOX 644 29202

Judge's Telephone

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

CERTIFIED TRUE COPY
RICHLAND COUNTY
SOUTH CAROLINA

Form Approved by S.C. Attorney General April 21, 2003 SCCA 619

WITNESSES

(S) REESE - CPD

ARREST WARRANT NUMBER

K195747

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

JUN 22 2007

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2007-GS-40-2040

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

JUNE TERM 2007

91

THE STATE
vs.

JOEL ROBINSON

Indictment for

MURDER

SC Code: **16-3-10**
CDR Code:**0116**
Class **FEL/EXM(V)**

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

CERTIFIED TRUE COPY OF ORIGINAL FILED, C.C.C.P.&G.S. RICHLAND COUNTY SOUTH CAROLINA

I _____ hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on June 20, 2007, the Grand Jurors of Richland County present upon their oath:

MURDER

That Joel Robinson did in Richland County on or about February 15, 2007, feloniously, willfully and with malice aforethought, kill one Thomas Smith by means of a gunshot wound and that the said victim died as a proximate result thereof. All in violation of SC Code of Laws § 16-3-10

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

Warren B. Giese

Warren B. Giese, SOLICITOR

ARREST WARRANT

K195747 K- 195747 075176

STATE OF SOUTH CAROLINA

☐ County/☒ Municipality of COLUMBIA

THE STATE

against

JDEL ANTAWAN ROBINSON

Ph: _____ SSN: _____

Sex: _____ Race: B Height: 5 10 Weight: 217

DL State: _____ DL#: _____

Agency ORI#: SC0400100

Prosecuting Agency: CITY OF COLUMBIA

Prosecuting Officer: K REESE/MEADORS

Offense: MURDER

Offense Code: HOM

Code/Ordinance Sec: 16-3-10

This warrant is CERTIFIED FOR SERVICE in the ☐ County/☒ Municipality of COLUMBIA. The accused is to be arrested and brought before me to be dealt with according to law.

_____ (L.S.)
Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to defendant _____

on _____.

_____
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

CITY OF COLUMBIA
MUNICIPAL COURT
P.O. BOX 644
COLUMBIA, SC 29202

STATE OF SOUTH CAROLINA)
☐ County/☒ Municipality of) AFFIDAVIT
COLUMBIA)

Personally appeared before me the affiant INV K E REESE who being duly sworn deposes and says that defendant JOEL ANTAWAN ROBINSON did within this county and state on 02/15/2007 violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/☒ Municipality of COLUMBIA) in the following particulars:

DESCRIPTION OF OFFENSE: MURDER 16-3-10

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 2/15/07 A SHOOTING OCCURRED @ MYERS ST, COLA SC. WITNESSES REPORT THAT AN UNKNOWN B/M ENTERED THE RESIDENCE THROUGH AN UNLOCKED FRONT DOOR AND SHOT VICTIM THOMAS LEE SMITH SEVERAL TIMES ABOUT THE HEAD & BODY WITH A HANDGUN, AND ALSO SHOT VICTIM EDWINA BROWN IN THE HAND & BUTTOCK. VICTIM SMITH WAS PRONOUNCED DEAD AT THE SCENE. THE DEF WAS LATER OBSERVED ON THE 4700 BLOCK OF N. MAIN ST. HE WAS DE-TAINED BY POLICE BECAUSE HE MATCHED THE DESCRIPTION OF THE SUSPECT AND FOUND TO BE IN POSSESSION OF A HANDGUN. A WITNESS WAS BROUGHT

Signature of Affiant Kevin Reese

Affiant's Address #1 JUSTICE SQ
COLUMBIA SC 29201

Affiant's Telephone 5453500

STATE OF SOUTH CAROLINA)
☐ County/☒ Municipality of) ARREST WARRANT
COLUMBIA)

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 02/15/2007 defendant JOEL ANTAWAN ROBINSON did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/☒ Municipality of COLUMBIA) as set forth below:

DESCRIPTION OF OFFENSE: MURDER 16-3-10

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 02/16/2007

[redacted] (L.S.)
Signature of Issuing Judge
Ministerial Recorder

Judge Code: 403003

Judge's Address CITY OF COLUMBIA, SC
MUNICIPAL COURT, P.O. BOX 644 29202

Judge's Telephone _____

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

CERTIFIED TRUE COPY OF ORIGINAL FILED, RICHLAND COUNTY, SOUTH CAROLINA

Form Approved by S.C. Attorney General April 21, 2004 SCCA 91B

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