

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

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Honorable Jocelyn J. Newman, Circuit Court Judge S.C. SUPREME COURT

MICHAEL K. PETERSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001816

APPENDIX

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STATE OF SOUTH CAROLINA	)	
	)	GENERAL SESSIONS COURT
COUNTY OF RICHLAND	)	2012-GS-40-05901
	)	
	)	
	)	
STATE OF SOUTH CAROLINA,	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
MICHAEL K. PETERSON,	)	
DEFENDANT.	)	
_____	)	

November 4, 2015
Columbia, South Carolina

B E F O R E:

THE HONORABLE CLIFTON NEWMAN, JUDGE.

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

DOLLY GARFIELD, ESQ.
Attorney for the Plaintiff

VICTOR LI, ESQ.
Attorney for the Defendant

KAREN AMBROZIAK
Circuit Court Reporter

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I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

MICHAEL PETERSON, after being duly sworn, testified as follows:

MS. GARFIELD: Thank you, Your Honor. May it please the Court.

THE COURT: Yes.

MS. GARFIELD: Before you is Michael Peterson. He is in Court today with his court-appointed attorney, Victor Li. Your Honor, at this time, it's my understanding Mr. Peterson is prepared to enter a guilty plea to one count of murder and one count of kidnapping. These are both cases he was charged with and pleading guilty to.

The State is recommending a cap of 45 years.

THE COURT: All right. Mr. Li, is that right?

MR. LI: That's correct, Your Honor.

THE COURT: Have you explained to him the nature of the charges, the possible punishment and his Constitutional rights, including the right to have a jury determine his guilt or innocence on these charges?

MR. LI: Absolutely, Your Honor.

THE COURT: Do you think he understands all that?

MR. LI: Yes, sir.

THE COURT: And do you agree with his decision to plead guilty?

MR. LI: I do.

1 THE COURT: All right. Mr. Peterson, you want to
2 plead guilty?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And you're guilty of these charges?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: The offense of murder carries 30 years to
7 life imprisonment and kidnapping carries what --
8 Thirty years?

9 MS. GARFIELD: Yes, sir.

10 THE COURT: Up to 30 years. Do you understand?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And kidnapping is a most serious offense.
13 Murder is a most serious offense. Do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And do you understand that the Court may
16 or may not accept the recommendation of the sentence in
17 the case?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Now, you stand before me, at this moment
20 in time, you're presumed to be not guilty of these charges
21 and that presumption of innocence carries with it your
22 right to remain silent, your right to require the State to
23 prove your guilt beyond a reasonable doubt to a jury, your
24 right to confront any witnesses against you and have your
25 lawyer challenge any evidence the State can offer against

1 you and bring any witnesses that you might have to testify
2 in your own behalf. Do you understand?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: When you plead guilty, you give up those
5 important Constitutional rights. Do you know that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And you want to waive those rights and
8 plead guilty?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Are you today under any kind of mental or
11 physical disability that might affect your ability to
12 understand what you're doing?

13 THE DEFENDANT: No, sir.

14 THE COURT: Are you satisfied with the representation
15 of Mr. Li in this case?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Has he done everything that you think he
18 could or should have done to help you out?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Have you been mistreated by anyone in
21 connection with this case?

22 THE DEFENDANT: No, sir.

23 THE COURT: And are you freely and voluntarily giving
24 up your Constitutional rights to have a jury trial?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And do you understand that you have the
2 right to appeal any plea or sentence, but if you do so,
3 you must do so within 10 days?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. And understanding the nature
6 of the charge and the possible punishment, how do you
7 plead?

8 THE DEFENDANT: Guilty, sir.

9 THE COURT: All right.

10 MS. GARFIELD: Thank you, Your Honor, may it please
11 the Court. To my right, for the record, is Investigator
12 Clarence Sumter. He was the lead investigator in this
13 case from the City of Columbia Police Department.

14 Your Honor, at this time, this is something I've not
15 done in the past. The victim's family, some members would
16 like to leave the courtroom. The details of this case are
17 quite graphic and they just simply don't want to be
18 exposed to that. So, Your Honor, at this time, I'd just
19 ask for a moment to allow those family members to leave.

20 THE COURT: Okay.

21 (Pause.)

22 MS. GARFIELD: Thank you, Your Honor.

23 THE COURT: All right.

24 MS. GARFIELD: Your Honor, this is a situation that
25 involves a domestic situation. So with that, I believe I

1 need to give you some background information that led up
2 to these events that we're in court for today. The victim
3 in this case was Brenda Witherspoon. She was 54 years of
4 age. She lived in a home on English Avenue right off of
5 West Beltline. She was a home health giver and she had
6 four grown sons.

7 Around late 2010, early 2011, she met the Defendant,
8 Michael Peterson. His sister, it's my understanding, was
9 a neighbor of Ms. Witherspoon. They began a relationship
10 and subsequently got married in April of 2011. By all
11 accounts, the relationship -- essentially, the honeymoon
12 period didn't last very long. Members of the family tell
13 me that problems began because the Defendant began to use
14 crack cocaine and that brought violence into the home.
15 There began a pattern of violence between Ms. Witherspoon
16 and the Defendant, at which point, she would usually call
17 her sons for help. The sons, particularly one individual,
18 Lisco Donte Jeffcoat, did not get along with the Defendant
19 and that was very obvious by all accounts.

20 Ms. Witherspoon called police several times,
21 specifically, in September of 2011, as she actually went
22 to the Columbia Police Department to report an incident
23 where she believed the Defendant had slashed her tires.
24 She met with a victim advocate there, Ms. Teresa Dixon.
25 She explained to Ms. Dixon how she was afraid of the

1 Defendant. Ms. Dixon was very afraid for her and strongly
2 encouraged her to leave her house and go to Sistercare or
3 go stay with another family member. However,
4 Ms. Witherspoon cared for her older ill brother, who lived
5 with her. She did not want to abandon him. As well as
6 she also did routine dialysis and had an in-home dialysis
7 machine that would have been quite burdensome on her to
8 have to be relocated, so she decided to stay at the house.

9 Fast forward to December 18th, 2011. My
10 understanding is there was an incident where she and the
11 Defendant got into an altercation over some financial
12 matters. She also served him with notice of eviction and
13 an argument did escalate. She did call her son,
14 Mr. Jeffcoat, to come over and there were words exchanged
15 between Mr. Jeffcoat and the Defendant.

16 At that time, she called the police, and I do have a
17 9-1-1 call where she is calling the police and asking for
18 them to come to the assistance because her husband,
19 Michael Peterson, is threatening to kill her. Columbia
20 Police Department did come to the location. And by the
21 time they got there, Ms. Witherspoon was the only person
22 at the house. She explained to them that her husband had
23 just walked down the street and all she wanted was for him
24 to leave her home.

25 Law enforcement found the Defendant in the One Love

1 convenience store, which is near her house. They
2 instructed him that he needed to leave the house and they
3 escorted him back to the home to get some personal
4 belongings.

5 I've met with all the law enforcement that responded
6 to the house that day and they all tell me that it was an
7 unusual amicable situation between the two of them.
8 Ms. Peterson was trying to find his wallet. Ms.
9 Witherspoon helped him find his wallet. And she was in
10 the process of cooking some food in the kitchen and she
11 pulled the food out of the oven and actually fixed him a
12 to-go plate to leave. Law enforcement watched the
13 Defendant leave the house and walk on down the street.
14 They stayed at the house for almost a half an hour to
15 make sure he did not come back before clearing out the
16 house. Legally, I believe that is the extent of all they
17 could have done. They had no reason to act any further.

18 I'm now fast-forwarding, Judge, to the day in
19 question that we're in court for today to December 19th,
20 2011.

21 THE COURT: That was fast forward how long?

22 MS. GARFIELD: From the law enforcement coming would
23 have been the next morning.

24 THE COURT: The next morning.

25 MS. GARFIELD: Ms. Hazel Butler, who was the sister

1 of the deceased victim, received a phone call from her
2 sister, so she thought it was from her sister because
3 that's what the caller ID showed. She answered the
4 telephone and Michael Peterson was on the other end. At
5 that point, he told her he had just killed her sister.

6 Ms. Butler just could not believe this, certainly,
7 didn't think this was true. She hung up the phone and
8 called her nephew, Mr. Jeffcoat, the same individual that
9 allegedly had had an altercation with him the night
10 before, and told him to go to the house and check on her
11 sister.

12 Mr. Jeffcoat did immediately go to his mother's
13 house. He went inside to her back bedroom, found the
14 bedroom door to be closed. He knocked the door down to
15 find his mother on the floor dead. Her throat had been
16 cut and she was in a pool of blood.

17 Ms. Butler had also called law enforcement and they
18 immediately responded to the scene. Obviously,
19 Ms. Witherspoon was found to be dead on the scene. She
20 was found to be bound and, obviously, dead from,
21 essentially, drowning in her own blood through the course
22 of the injuries sustained.

23 Obviously, a BOLO goes out with the description of
24 Mr. Peterson since he has made the phone calls indicating
25 that he was the one who did this. A man hunt team is

1 formed at the metro region with the Columbia Police
2 Department in just a few hours from that time. They were
3 just about to go out looking for Mr. Peterson when
4 Mr. Peterson did appear at metro headquarters and told
5 them I believe you're looking for me. At that time, he
6 was taken into custody and Officer Brink with the Columbia
7 Police Department put him in his patrol car to take him to
8 headquarters. On the way there, he routinely asked
9 Officer Brink is she dead.

10 When they got there, Investigator Sumter, who is here
11 in the courtroom, began an interview with Mr. Peterson.
12 Mr. Peterson was very forthright with investigators. He
13 informed them that he had gone over there about 7:30 or
14 8:00 o'clock in the morning. His original plan was to
15 kill Ms. Witherspoon's son, the individual that he had
16 gotten into an altercation with the night before. He had
17 gone over to his house and, essentially, laid in wait for
18 him, but he never came home. He also indicated he had
19 smoked crack cocaine all night along. And the next
20 morning, he had decided that he would go to the house and
21 kill his estranged wife because, essentially, he felt that
22 was the best way to get back at Mr. Jeffcoat was to kill
23 his mother.

24 He indicated he got there and she was in her bed.
25 She was playing solitaire on the computer. He goes on

1 into -- they got into more of an altercation over money,
2 over the fact that she was trying to evict him. He
3 thought that she owed him some money. He had given her
4 some money for bills and didn't understand why he needed
5 to continue to pay when she was kicking him out.

6 Judge, just to give you a little summary of what he
7 indicated happened, I'll just read to you a small portion
8 of the statement he gave Investigator Sumter.

9 And at this point, I just want to say if any more
10 family members want to leave, this would be the time.

11 Okay. This is exactly how I did it. In the bedroom,
12 I asked her if she was going to give me money or her life.
13 I asked her if she was going to give her money or her
14 life. She tried to reach for the phone, so I slapped her
15 ass upside the head a couple of times, and I said, You
16 better not bullshit me. That's what I told you. If your
17 son ever bothered me like that again, I'm going to get
18 your ass because you the start of it, simple as that.
19 Called him over here with that bullshit and then you twist
20 it on the phone and then he come over here wanting to try
21 to do something to me. I'm going to do my damnedest to
22 stay out of F'ing jail, but you push me to the F'ing
23 limit. I said if I go to jail, I'm going to kill your
24 stupid ass, simple as that.

25 He goes on to explain. I told her to give me her

1 card and pin number. And I said if it's wrong, I'm going
2 to kill you. But I decided what the hell, I'm going to
3 kill her any way. I cut the cord off the lamp, tied her
4 up, put a gag in her mouth after she gave me the card
5 number and I cut her throat a few times. She wasn't
6 bleeding fast enough, so I struck the knife against her
7 and cut her some more. Investigator Sumter asked, You
8 stuck a knife where? His answer, In her throat. After I
9 cut her, you know, she wasn't bleeding fast enough, so I
10 stuck the knife in and cut her some more.

11 That is the gist of what he explained he did to his
12 wife and he was subsequently arrested for murder and
13 kidnapping.

14 Judge, he was taken to the Alvin S. Glenn Detention
15 Center and he was -- came into contact just three days
16 later with a nurse who was working at the jail. And in
17 the course of discussions with the nurse, he claims to
18 her -- give you some background, at that time,
19 Mr. Jeffcoat, the son that he had the strong feelings
20 against at that time, his wife was also a nurse at Alvin
21 S. Glenn Detention Center. Her name was Tammy.

22 He talked to this nurse, Nurse Daniel Jones, for the
23 purposes of wanting to get this information back to Tammy.
24 He told her Nurse Tammy, tell her, Nurse Tammy, I'm her
25 father-in-law. Tell her I said hello and keep me on her

1 Christmas list. Tell Tammy to tell her boyfriend that he
2 spit in my face, but look what I did to his mom.

3 He then came into contact with Lieutenant Kenneth
4 Sly. As you know, Judge, he works at the Alvin S. Glenn
5 Detention Center. And in the course of the conversation
6 with Lieutenant Sly, he asked him if he had been on TV.
7 He was told no, he had not. And then he was asked why he
8 was in jail. He replied, he was in jail for murdering his
9 wife. He stated that every time he and his wife would get
10 into an argument that she would get her sons and try to
11 jump on him and at one point, he spit in his face. So he
12 walked away -- and he's referencing to that night before
13 the murder, Judge. He tells Lieutenant Sly that he walked
14 away. He thought about it, and he decided that he was
15 going to kill the son. He went on top of some building
16 because he knew that the son was a drug dealer and that he
17 knew that is where he would be to try to sell it. He
18 stated he had something like a hammer and that was what he
19 was going to use if the son would have showed up. He got
20 tired of waiting and he left. And that's when he decided
21 that he was going to go home and kill his wife. He said
22 that she was the type where the whole family looked up to
23 her, so if he killed her, then he could hurt the whole
24 family.

25 When he got home, he asked for all of the insurance

1 money and she stated that is when the bank -- that is in
2 the bank and she has -- but she has an ATM card. He asked
3 her for the ATM card and he knew that she was lying,
4 referencing the pin number, and he thought she gave him
5 the wrong code. He asked his wife, Do you remember what I
6 told you I would do the next time I see you? And that's
7 when he stabbed her in the neck.

8 While she was dying, he told her, Bitch, I told you I
9 was going to kill your ass and now you are going to die.
10 He stated to me that it seems not enough blood was coming
11 out, so he stabbed her again to make the hole bigger and
12 he sat there and watched her die. And he stated to her,
13 Bitch, I told you I was going to kill you.

14 Judge, sometime after his arrest, we have had two
15 informants come forward. They were interviewed in
16 preparation for this trial. One of the informants
17 informed us that Mr. Peterson told him that he had gone to
18 her house to retrieve some items when an argument -- when
19 there was an argument between him and his wife's grown
20 son. His wife's son pulled a gun on him. He ran away,
21 but he went back to the house. He was met by some police
22 officers. He went and purchased some beer and crack
23 cocaine.

24 After drinking the beer and using the crack cocaine,
25 he went to the son's house where he picked up a

1 screwdriver and waited for him to come home so he could
2 kill him. He climbed up on a roof and waited until sun
3 up. He said he was prepared to kill anyone who came to
4 the house with the son so as not to leave any witnesses.
5 After daylight, he went to his wife's house where he and
6 his wife got into a fight and he accidentally stabbed her
7 in the neck with a screwdriver. She fell to the floor.
8 And while she was making gurgling noises, he looked at her
9 and said, Why don't you die, Bitch, and then stabbed her
10 in the neck a second time. He ran from the house. In a
11 short time, he's arrested by police.

12 Your Honor, he tells Investigator Sumter that the
13 weapon used was a knife. He's told others it was a
14 screwdriver and/or a hammer. However, there was a knife
15 found by law enforcement when they arrived on the scene.
16 The knife was analyzed. It did not have any blood on it,
17 but it was analyzed by the Columbia Police Department. A
18 print was lifted and it did match a fingerprint belonging
19 to Mr. Peterson.

20 Beg the Court's indulgence?

21 (Pause.)

22 MS. GARFIELD: Just for the record, the other
23 informant was very similar in his facts relayed to
24 Mr. Madden. And Judge, I believe that is all the facts of
25 the case. If I can ask if the family members want to come

1 back before processing with my presentation?

2 THE COURT: Are all those facts true, Mr. Peterson?

3 THE DEFENDANT: No, sir.

4 THE COURT: All right. What portion of the facts are
5 not true?

6 THE DEFENDANT: To start with, Your Honor, the police
7 report from the officer, she has the report. An argument
8 didn't start with her son -- I mean, it didn't start with
9 my wife. I never did argue with my wife, I argued with
10 her son because she let him take my CDs out of the house.
11 The part about the crack cocaine, yes, I started doing
12 crack cocaine on Saturday night because I found my wife
13 and her son in the bed together. So I left and I --

14 (Pause.)

15 MR. LI: Just tell him, basically, what happened.

16 THE DEFENDANT: Oh, okay.

17 THE COURT: Aside from all of that, are all the other
18 things she said true?

19 MR. LI: You'll get a chance to talk.

20 THE DEFENDANT: No, sir.

21 THE COURT: With regard to killing her, are all those
22 facts true and tying her up?

23 THE DEFENDANT: Yes, sir, I did tie her up, sir.

24 THE COURT: And you did kill her?

25 THE DEFENDANT: Yes, sir, I did.

1 THE COURT: All of that's true?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Okay. You can continue however you want
4 to.

5 MS. GARFIELD: Thank you, Your Honor. His record
6 begins right around his 21st birthday. 1988 convictions
7 for disorderly conduct and trespass and strong arm
8 robbery. He received a sentence under the Youthful
9 Offender Act to strong arm robbery. He has an attempted
10 possession of crack cocaine conviction from 1990. He
11 received a probationary sentence. In 1991, malicious
12 injury to real property, trespass, resisting arrest and
13 two counts of simple assault. He received a straight
14 100-day sentence. In 1992, malicious injury to real
15 property, 10-day sentence, and petit larceny and simple
16 assault, 30 days. A subsequent petit larceny, 30 days,
17 and a purse snatching, he received 18 months. In 1994, he
18 received a burglary second and malicious injury to
19 personal property convictions. His sentence was 10 years
20 suspended to five years followed by two years probation.
21 In 1998, he received strong arm robbery and burglary
22 second convictions. He got a sentence of 10 years
23 suspended to 25 months and five years probation. In 2000,
24 he had a conviction for criminal domestic violence of a
25 high and aggravated nature. He got three years for that

1 conviction. And a burglary second strong arm robbery,
2 seven-year sentence. All three of those charges were
3 separate, but he did plead at the same time. In 2007, he
4 got pre-2010 assault and battery of a high and aggravated
5 nature conviction. He received a 10-year sentence. And
6 in 2009, a trafficking crack cocaine conviction. He
7 received a five-year sentence before the Honorable
8 Michelle Childs. He had been out of prison for
9 14-and-a-half months at the time of this incident. He was
10 released on September 1st, 2010.

11 Your Honor, the State is recommending a cap of 45 for
12 a couple of reasons. One, we factored in Mr. Peterson's
13 age as well as to disclose to the Court Mr. Peterson
14 provided information in the investigations of State vs.
15 Lorenzo Young. Your Honor, that would be the Defendant
16 most commonly known in this courthouse as the bakery
17 murder of the execution of Kelly Honeywell. He did
18 provide that information of his own free will to law
19 enforcement and our office and did, ultimately, testify in
20 that trial. I was a part of that trial. I did not do
21 that testimony, but he did testify. He was very
22 forthright and very credible. In my opinion, I do believe
23 he made a difference in that case. With those factors to
24 be considered, we believe a cap of 45 as opposed to a life
25 sentence is just in this case.

1 THE COURT: Was the defendant convicted in that case?

2 MS. GARFIELD: Yes, sir, and he did ultimately
3 receive a life sentence, as well.

4 Judge, the oldest brother, Mr. Jeffcoat, would like
5 to address the Court at the appropriate time, Mr. Anthony
6 Jeffcoat.

7 THE COURT: All right. I'll be happy to hear from
8 you. Yes, sir.

9 VICTIM'S SON: Good morning. I'm Anthony Jeffcoat.
10 Mr. Peterson continues to slam my mother here in court
11 after what he did. He tried to break up my family, but he
12 could not. We've only gotten stronger. Since mom died,
13 Mr. Peterson, I've had a son. The guy that you hate so
14 much has had a son and my other brother has had a
15 daughter. My family continues to grow.

16 Your Honor, I want you to give him the maximum you
17 can. I don't want to see him out on the street because
18 not for fear of Mr. Peterson, but for fear of what we
19 would do to Mr. Peterson, and that's just the facts.

20 Mr. Peterson preyed on a 54-year-old woman who was
21 taking dialysis three times a day, who had four grown
22 sons, who at any time could have harmed Mr. Peterson,
23 myself included, but he was protected by my mother, who he
24 continues to slam today.

25 She informed him to go in the room. He ran in the

1 room. I left. We didn't have any more altercation. We
2 parted together after that. It was water under the
3 bridge. There was nothing but love from my family for
4 Mr. Peterson. But he continued and went ahead and
5 proceeded to murder my mother and continues to slam her in
6 court today. Give him the maximum you can, Your Honor.
7 By all means, do not let him out of jail not while I'm
8 alive. Thank you.

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

10 MS. GARFIELD: Judge, for the record, he has served
11 as of today 1,417 days. If you'll just mind finding that
12 this is not a sexual related case for the kidnapping
13 statute.

14 THE COURT: All right. First, I accept the guilty
15 plea.

16 Anything else from the State?

17 MS. GARFIELD: Not at this time, Judge.

18 THE COURT: All right. Mr. Li.

19 MR. LI: Thank you, Your Honor. May it please the
20 Court. As you heard the Solicitor say, Mr. Peterson is 48
21 years old. Your Honor, he's a graduate of C.A. Johnson.
22 He's a lifelong resident of Columbia, South Carolina.
23 After high school, he joined the military. He was there
24 for four years and he was honorably discharge. Your
25 Honor, after that, he worked at Whitash as a furniture

1 delivery person and worked odd jobs here and there.

2 He got in trouble with the law. He has a lengthy
3 record. He has a lengthy record that the State and the
4 prosecution knows about, Your Honor.

5 What I could tell you about Mr. Peterson is that the
6 first day my paralegal calls me and tells me that while
7 I'm at the jail, go see the new-appointed client, Michael
8 Peterson. I don't know what he's charge with. I don't
9 know anything that's going on. I go and talk with
10 Mr. Peterson and there is no way I would believe that he
11 was charged with murder. Mr. Peterson is friendly and
12 straightforward and just -- he was an easy client to work
13 with given the charges that he's charged with.

14 Your Honor, I can tell you that he has always
15 accepted responsibility for what he did. He never wasted
16 the State's time or money by going on some manhunt. He
17 turned himself in. He walked into the station, gave a
18 full confession right then and there. Knew what he did
19 was wrong and gave a full confession at that time, Your
20 Honor. From the time I met him and I'm sure from the time
21 prior to my representation of him, I don't think he's ever
22 asked for a trial. He didn't want to waste the Court's
23 money, the State's money. He didn't want to come up here
24 and give you some crazy self-defense story or some crazy
25 heat of passion defense, Your Honor. He knows what he

1 did. He's manning up. He takes responsibility for it.
2 He accepts responsibility.

3 Your Honor, as the solicitor has mentioned,
4 throughout the process of him being incarcerated, he has
5 cooperated with the State against Trenton Barnes and
6 Lorenzo Young in the bakery case. He took the stand. He
7 provided substantial assistance to the government,
8 testified on their behalf. And, Your Honor, he did
9 provide substantial assistance to the government, you
10 know, in putting away two defendants who the State
11 believed was a high profile bakery case, Your Honor. They
12 made the choice to use his testimony. They believed in
13 him enough. They believed in his character, his
14 integrity. They knew about his record. Ms. Garfield knew
15 about the gruesome nature of this crime and she still put
16 him up on the stand.

17 And what I want to tell you, Judge, the only thing I
18 have to compare this to is a federal case. In federal
19 cases, many times defendants are faced with mandatory
20 life, mandatory 30 to life, and what they do is they
21 cooperate. When they cooperate, they sign a proffer
22 agreement. The proffer agreement says if you provide
23 substantial assistance that leads to the arrest or the
24 conviction of somebody else that we deem important and we
25 deem is valuable information, we will cut you a break. We

1 will even find a way for you to break down the mandatory
2 minimums. A lot of times, the drug cases are 30 years to
3 life. There's no way to break the 30-year barrier unless
4 you cooperate. Many client cooperate. If they do good,
5 if they do well, they break down the wall of the 30 years.

6 Your Honor, in this case, we're not asking for it to
7 be reduced, the charge of murder, to voluntary
8 manslaughter. We're not asking for it to break below the
9 mandatory minimum of 30. Your Honor, at the end of this
10 spiel, I'm going to tell you that we're going to ask for a
11 30-year sentence.

12 Your Honor, the way that the federal government does
13 that is different than the way the State does it. I want
14 to briefly tell you what Mr. Peterson went through and the
15 way he was cooperative. They get brought over here from
16 the jail. They go to a back room, either with an
17 investigator or with a solicitor. I don't know at this
18 point in time if it was with the solicitor or not, but I
19 know there was an investigator there. The standard spiel
20 is this, we can't make you any promises. We can't put
21 anything in writing because if we do, when you put
22 yourself on the stand, the defense attorney is going to
23 cross-examine you. They're going to ask you, is there
24 anything in writing? Did you sign something to cooperate.
25 But it is in your best interest to help, wink, wink. It

1 is in your best interest to help and to play along and
2 give us cooperative testimony and we're going to help you
3 out at the end. They never actually say that, Your Honor.
4 I'm not going to say that they say that. But for all
5 intents and purposes, that's the veiled promise that they
6 give you.

7 Wherein Federal Court, they put it right there on a
8 sheet of paper. Cooperative agreement, they sign it.
9 They let the defense attorney cross-examine them and then
10 they rehabilitate their witnesses through standard lines
11 of questioning. Here, they do it a little bit differently
12 and I understand that.

13 But Mr. Peterson went through and fulfilled his side
14 of the promise. He went there and he testified against
15 two people. It was the high profile bakery case murder.
16 That doesn't justify what he did. That doesn't change the
17 gruesome nature of this crime. That doesn't change his
18 criminal history. But I can tell you that through my
19 discussions with the solicitor, at some point -- I'm not
20 saying that she changed her offer because she never made a
21 complete offer. She was the most straight-up person I've
22 ever dealt with. But at some point, we mentioned -- we've
23 talked about this, threw around the idea of 35 years,
24 okay. She never made an official offer, but that was her
25 mindset and my mindset. I even went to the jail and told

1 Mr. Peterson that's where we were. But she said I have to
2 wait and talk to the victims.

3 THE COURT: I can tell you this. And I'll listen to
4 everything you say, but I have very little regard for
5 solicitors' attempts to control sentences.

6 MR. LI: I understand.

7 THE COURT: The responsibility for sentencing is the
8 judge.

9 MR. LI: Yes, sir.

10 THE COURT: The solicitors negotiate pleas and the
11 judge does the sentencing. So except under some
12 exceptional circumstances based on evidentiary matters and
13 all the like, I have very -- I give very little weight to
14 any attempt of the State to control the sentence. I think
15 their burden is hard enough in trying to prove guilt.

16 MR. LI: I understand that, Your Honor.

17 THE COURT: Than to forego that duty and
18 responsibility of focusing on proving a case to try and
19 control the ultimate disposition. So where there's a
20 negotiated sentence, either I accept it or I do not accept
21 it. Where there's a recommendation, I'll consider it.
22 The ultimate responsibility for sentencing is with the
23 judge.

24 MR. LI: And that I understand, Your Honor.

25 THE COURT: All right.

1 MR. LI: And I respect that. It's just -- and I
2 understand their job is to find the evidence to prosecute
3 the case, but there's some things that are outside of that
4 realm which is when you're getting cooperation, when
5 you're doing things to go around and actually focus on
6 this case itself. There are promises that are made.
7 They're not in writing. They're not promises, they're
8 veiled promises.

9 THE COURT: Well, promises are in writing when
10 there's a negotiated sentence.

11 MR. LI: I agree. I agree, Your Honor. And that's
12 what I'm telling you is I understand there's a different
13 duty and they're not involved in sentencing, but there is
14 a veiled promise to quote, unquote, help the person who is
15 cooperating.

16 THE COURT: But aside from all of that, my focus is
17 on the justice of this case and what the -- the victim's
18 family is entitled to justice.

19 MR. LI: I understand, Your Honor.

20 THE COURT: Not relating to what occurred with some
21 other case.

22 MR. LI: That's fair, Your Honor.

23 THE COURT: I cannot shift the focus to what happened
24 some place else and any effort to, you know, redeem
25 himself from this crime by helping some place else with

1 some other crime. You know, that comes into focus when --
2 in some instances, but I don't see too clearly it coming
3 into focus in this instance, but go ahead. You have a --
4 I'm just explaining your uphill battle with me.

5 MR. LI: I understand that, Your Honor, but here's
6 the bottom line. That is part of the justice system we
7 work in. There are deals made and there's cooperation and
8 people come and testify to help and they expect help. And
9 I understand you obviously focus on the case here. But it
10 happens in the federal system and it happens here all the
11 time.

12 THE COURT: Well, I look at this and this offense
13 happened in 2011, 12/19/2011, and we're now 11/04/2015.

14 MR. LI: Absolutely.

15 THE COURT: So all of those -- you know, this is not
16 a delayed arrest or anything. This appears to be an
17 immediate arrest, immediate confession, immediate
18 everything.

19 MR. LI: That's right.

20 THE COURT: So here we are almost four years later.
21 So whatever your explanation of the workings of the
22 justice system, you know, all of that has been through
23 this four-year period.

24 MR. LI: I understand.

25 THE COURT: And we're at the culmination now.

1 MR. LI: Yes, sir. And the fact that -- I know it
2 hadn't been discussed with Mr. Peterson and I don't think
3 Ms. Garfield. I think that was just the nature -- he has
4 never asked to put off a jury trial. He's never wanted to
5 do anything but accept responsibility for what he's done,
6 Your Honor.

7 At the appropriate time, I'll let Mr. Peterson
8 address the Court, tell you his side of what he wants to
9 tell you. And, Your Honor, we would respectfully ask,
10 taking his cooperation into account, taking his acceptance
11 of responsibility -- Your Honor, I know the case was
12 gruesome. I know that he has a lengthy record, but all I
13 can tell you is the solicitor knew that and wanted
14 cooperation from him. He fulfilled his side of the
15 bargain. You take that into account the way you take that
16 into account, but that is what he did.

17 THE COURT: I got you.

18 Mr. Peterson.

19 THE DEFENDANT: How are you doing, Your Honor?

20 THE COURT: I'm fine.

21 THE DEFENDANT: The first thing I want to say, I do
22 not hate no one in that family, Your Honor. I don't have
23 no hate in my heart for no one. All I ever tried to do
24 was -- when I got out of prison, I met Ms. Witherspoon
25 approximately about a week after I got out of prison.

1 THE COURT: I'm sure Judge Childs would be proud of
2 you. You came here in --

3 What year was that?

4 MS. GARFIELD: 2009, I believe.

5 THE COURT: 2009 with a trafficking --

6 THE DEFENDANT: Sir, sir, may I interrupt, please? I
7 was in prison at that time. I was in prison from 2005 to
8 2010, September.

9 THE COURT: Well, tell me about that. Judge Childs's
10 sentence --

11 THE DEFENDANT: No, no.

12 THE COURT: We'll get back to you. Hold up. Let me
13 hear from her and then we'll come back to you.

14 MS. GARFIELD: Judge, I have a sentencing sheet with
15 the Defendant's name and same date, same age. He's
16 indicating it's not him.

17 THE COURT: What offense was it?

18 MS. GARFIELD: Trafficking.

19 THE COURT: Trafficking?

20 MS. GARFIELD: Crack cocaine, first offense.

21 THE COURT: Of course, you called out a bunch of
22 other drug offenses. It wouldn't have been a first
23 offense.

24 MS. GARFIELD: That's correct.

25 THE COURT: It sounded like it -- without the,

1 perhaps, negotiations and all the system workings that Mr.
2 Li was talking about, it would have been a trafficking
3 third offense actually.

4 MS, GARFIELD: On the sheet, it just has lesser
5 included, but Mr. Peterson is disputing this is him.

6 THE COURT: Well, if it's -- well, since you called
7 it, he said Judge Childs. She was one of my best friends
8 on the bench and in life. He was facing 30 years in
9 prison for a drug charge of trafficking. And it wasn't
10 his first drug offense, he was facing at least 30 years
11 and she gave him five.

12 MR. LI: Your Honor, we don't dispute Mr. Peterson
13 has a lengthy record.

14 THE COURT: Well, the point being that he stood
15 before her and someone convinced her not to give him a
16 full load and that created his freedom to do this crime.
17 And, you know, those are things that I look at because
18 when I say the responsibility is for the Court, you know,
19 the Court has the opportunity to impose a sentence that
20 protects the public. In this instance, a sentence that
21 was imposed allowed him to get out and within two years
22 later, he's killing someone. Aren't those the facts?

23 MS. GARFIELD: Judge, in all fairness, as Mr. Li
24 says, I try to be as straight up as possible. In
25 preparation for this case, I got all the certified

1 sentencing sheets I could find. That is a Michael
2 Peterson, same age, pled to trafficking crack cocaine
3 before Judge Childs in 2009. It is not on his rap sheet.

4 THE COURT: Well, it might be another Michael
5 Peterson. That scenario doesn't apply to you, so go
6 ahead.

7 MR. PETERSON: Yes. From May 2005 to 2010, I was in
8 prison.

9 THE COURT: For doing what?

10 MR. PETERSON: Assault and battery of a high and
11 aggravated nature.

12 THE COURT: What did you do?

13 MR. PETERSON: I was accused of criminal sexual
14 conduct, but they dropped the charge down.

15 THE COURT: All right. Well, you could have gotten
16 30 years for that, so the scenario is back on you.

17 THE DEFENDANT: Well -- but that wasn't true either,
18 I did that plea so I didn't get the wrong sentence.

19 THE COURT: Well, how about this one, is this one
20 true?

21 THE DEFENDANT: Yes, sir, it's true, Judge.

22 THE COURT: So it's not going to be what they said I
23 did.

24 THE DEFENDANT: No, no, I'm guilty of this crime.

25 THE COURT: Go ahead.

1 THE DEFENDANT: But, Your Honor, when we got
2 married -- when we got married -- I met Ms. Witherspoon.
3 Three days later, you know, we got together, you know, had
4 sex and all that kind of stuff. Six days later, she
5 proposed to me. I told her, I said, You need to get to
6 know me. She said, Well, I know enough --

7 THE COURT: How long were you married before you
8 killed her?

9 THE DEFENDANT: Eight months, sir.

10 THE COURT: Eight months?

11 THE DEFENDANT: Yes, sir. I stalled her for six
12 months, you know, trying not to get married, but the sons
13 kept telling me, told me, If you hurt my mother, we're
14 going to come looking for you and all this here.

15 THE COURT: Well, they must have really gotten a good
16 reading of what kind of guy you were.

17 THE DEFENDANT: No, they was talking about just
18 hurting her heart, you know, if I don't come to the
19 wedding, you know. Her son, Lisco, told me that. Because
20 the night before that, I got drunk, to be honest with you.
21 But I never -- you know, I was under a lot of emotional
22 strain and stress, Your Honor. I had a sister die and I
23 had a nephew die. And I had a head-on accident about two
24 months before the incident. And then every time something
25 happened around the house, Your Honor, I always had to

1 answer to the family. Because they told me when we got
2 married, I thought they was joking, they said I was
3 marrying the family.

4 THE COURT: Well, you married someone with grown
5 children, right?

6 THE DEFENDANT: Yeah, but I didn't expect every time
7 we get in a simple argument that you call your grown
8 children and they try to tell me what to do. So on the
9 night -- on Saturday night -- well, Saturday, my wife took
10 me to breakfast. It wasn't nothing to say about no
11 divorce, no eviction notice or nothing like that. But I'm
12 going to get to that. But Saturday morning, she took me
13 to breakfast. So when I went to work on Saturday, a
14 little later after that, I decided I'm going to get off
15 work early and take her to dinner.

16 So when I got home, I kind of eased open the bedroom
17 door and I hear a rumbling. So when I walk in the room, I
18 looked around beside the bed and her son laying on the
19 floor naked. So I took \$200 and I went and got high. I
20 got high and I got drunk. I went and see a person I knew
21 from the military and I got intoxicated. I came back home
22 that evening and I started staying in the living room in a
23 recliner. That's why they found the knife in the recliner
24 because we got in an argument and I asked where my CDs
25 was. And she told her son took them. And I said, You

1 know I don't mess with your son. I said, I don't deal
2 with your son, period. I said, Why did you let him take
3 my CDs out of our home? Oh, he just wanted to borrow
4 them. He just wanted to borrow them. I said, You need to
5 call him and ask him to bring them back to me. And I
6 didn't raise my voice or nothing. I'm going to call, get
7 the hell out of my face.

8 So she called him and he said he lost them. He lost
9 him. So when she hung up the phone, I said, Well, you're
10 going to have to pay me for them because I said that's my
11 property. I said, I'm not going to deal with your son.
12 So she calls, Come over here and give this mother fucker
13 his CDs and get him the hell out of my face.

14 So when he came over there, he drew a gun on me and
15 tell me I need to stay out of his mother fucking mama's
16 face, just like that. So I said, All I did was ask for my
17 property. That's all I did was ask for my property.
18 Mother fucker, I could kill you and it would be a
19 justified homicide. And his mother steady telling him,
20 Shoot him, shoot his ass, shoot his ass. So I'm sitting
21 there in the chair. When she called him to come over
22 there, I already had a knife in the chair because I know
23 he was going to come with a gun. That's why she found my
24 fingerprint on the knife. That's how it got in the chair.
25 So he spit in my face. He said, Mother fucker, get up.

1 I'm going to shoot you and it will be a justified
2 homicide. I said, Mother fucker -- I told him, I don't
3 know who you think you're playing with, but I could kill
4 you. Then he backed up to his mother and he told her, he
5 said, Mother, get this nigga out your house before I kill
6 him. I said, You better kill me before you walk out that
7 door.

8 At that point, he left. And she called the police,
9 right, so I walked a block down the street to the store.
10 By the time I got almost to the store, the police passed
11 me going to the house. So when I got back across the
12 street going back to the house, Officer Hodges stopped me
13 and he asked me, he said, Mr. Peterson, were you in an
14 argument? I said he took my CDs and he spit in my face at
15 gunpoint. I would like to sign a police report. And he
16 started laughing. He said, Now, Mr. Peterson, it would be
17 your word against his. I said, You going to file a police
18 report? He said, No, we need you to come back down to the
19 house so we can ask you to leave, so you can get you some
20 stuff and leave. He actually said we'd talk about it.

21 So I got down to the house and as soon as I walk in
22 the door, he said, We need you to leave for the night till
23 things cool off. I said, What need cooling off? I said,
24 I wasn't arguing with my wife, I was arguing with her son.
25 He said, Just get your stuff and leave. So that part

1 about my wife cooking something, I was cooking some
2 chicken in the oven. I said, Let me get what I'm cooking
3 and find my wallet, so y'all don't stop me down the street
4 with no ID.

5 So I left, I left and I went and got me some more
6 drugs. Because I'm trying to calm my nerves because this
7 guy done spit in my face at gunpoint. To me, that's
8 obviously disrespect. So I went around that night, stayed
9 in the woods a while. And when it got light, I said the
10 best thing for me to do is go get my stuff, get my stuff
11 and leave before I do something to these people.

12 So when I went back to the house, I asked my wife --
13 she opened the door and then she went back in the room. I
14 followed her in the room. I said, I want you to please
15 give me my money back so I can go stay somewhere before I
16 hurt y'all around here. I said, Y'all don't know what's
17 going on spitting in people's face. She snatched the
18 knife up off the bedside table and she said my son's going
19 to shoot you in the face and she spit on me. She didn't
20 spit in my face, she spit on me.

21 MR. LI: And Your Honor --

22 THE DEFENDANT: I was -- excuse me. I was severely
23 provoked, Your Honor. I'm not the kind of person try to
24 hurt nobody.

25 VICTIM'S SON: He's bullshitting man. That man is

1 bullshitting. That man is bullshitting, Your Honor.

2 Teach his ass. How the fuck I provoked --

3 THE DEPUTY: Get him outside.

4 THE COURT: All right. Anything else, Mr. Peterson?

5 THE DEFENDANT: I really, Your Honor, I just let you
6 know I was provoked. Your Honor, I'm a real humble
7 person. Every time we get into a simple basic argument, I
8 got to face four -- well, three guys and their friends
9 coming over there. Her son, Lisco, he's in jail right now
10 with felony drug charges, he came over there one day
11 because I was fired off the job I had. I was working
12 remodeling a house. He told me he could paint. The next
13 day, he come over there drunk with his shirt off with a
14 bottle in his hand. He hit me in my mouth with the
15 bottle. So I called the police, but nothing never
16 happened with it. I walked down to the police station a
17 couple of times with him drawing a gun on me. The police
18 made it seem like it was me. I told them about the guy
19 drawing a gun on me. The police come to the house and
20 said your wife told me she didn't see her son drawing a
21 gun on you. I said, Well, it happened down the street.
22 How she going to see it anyway? So he was taking her
23 side.

24 MR. LI: Your Honor --

25 THE DEFENDANT: All of this stuff here went on over a

1 period of eight months.

2 THE COURT: So you killed their mother in retaliation
3 for your trouble?

4 THE DEFENDANT: No.

5 THE COURT: Instead of killing the sons?

6 THE DEFENDANT: No, sir, I didn't want to kill her
7 sons. The reason I did it, Your Honor, I flipped out at
8 the moment.

9 THE COURT: You flipped out?

10 THE DEFENDANT: All that stuff had done built up. It
11 built up over an eight-month period.

12 THE COURT: So the drugs didn't calm your nerves
13 after all?

14 THE DEFENDANT: Well, they calmed my nerves that
15 night. But when I went back and she spit on me, it just
16 opened everything back up, Your Honor.

17 MR. LI: And, Your Honor, I don't want you to think
18 -- I don't want the Court to think he's making -- this is
19 what he's told me from the beginning. This is what it is.
20 He takes responsibility for the crime. Never thought
21 about a trial, never thought about putting up any kind of
22 crazy defenses. Any negotiations I had with the solicitor
23 has been leading up to this plea, Your Honor.

24 THE COURT: All right.

25 MR. LI: So we'd beg for mercy, Your Honor. He's 48

1 years old. He's done what he can in the process. He's
2 done everything he can afterwards for someone who has done
3 something as bad as this. He's 48 years old. I think a
4 30-year sentence --

5 THE COURT: I guess he was around 45 at the time.

6 MR. LI: I believe so, Your Honor. That's right,
7 Your Honor. And that's what we'd ask -- we're not asking
8 for anything crazy. We're asking for something around 30
9 years.

10 THE COURT: All right. Ms. Garfield?

11 MS. GARFIELD: Judge, we have nothing in reply.

12 THE COURT: It's rare that a person, a killer or a
13 murderer comes in on a case or even a confession where
14 they really go back and recant all the details on the
15 murder. Most of them are in denial as to what they did
16 and they don't give you the specifics of how they did it
17 and all that. And the manner in which Mr. Peterson was
18 able to recount these details just shows the -- in my
19 mind, the degree of premeditation that was involved with
20 him committing this murder, which is -- just makes it that
21 much more tragic to me.

22 All right. Regarding catching a break, I'm guessing
23 the State considered that to some extent in their
24 recommendation of a 45-year sentence. In my mind, where
25 the crime involves this type of horrific killing of

1 someone is senseless, you know, a life sentence is what
2 the person typically would receive, especially with his
3 criminal history. Of course, in my mind, a 45-year
4 sentence is a life sentence for someone who is about 45
5 years old. He's 48 now, I guess.

6 Is that right?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: So we'll lock him on the 45. He is about
9 45, so I'm going to give him the 45 years. Forty-five and
10 45 is 90. If he --

11 Do you have any health issues.

12 THE DEFENDANT: I may now, but no, sir, not at the
13 moment.

14 THE COURT: Well, we'll see. That's beyond the
15 regular life expectancy. I don't know that they ever let
16 anyone out of prison at 90 anymore, or if they make it
17 that far. It's, in effect, a life sentence. So I'm
18 giving that 45 years on the murder and 30 years on the
19 kidnapping and give him the credit for the time he has
20 done and the sentences will run concurrent.

21 MR. LI: Thank you, Your Honor.

22 MS. GARFIELD: Thank you, Judge.

23 MR. LI: And we can put on the sentencing sheet no
24 sexual registry.

25 THE COURT: Well, he's --

1 MR. LI: If he gets out.

2 THE COURT: At age 90, I don't think they'll be
3 worried about having sex.

4 MS. GARFIELD: Thank you, Judge.

5 MR. LI: Thank you.

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

I, PENNY M. JOHNSON, Official Court Reporter for the
Second Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate, and
complete Transcript of Record of the proceedings had and the
evidence introduced in the hearing of the captioned case,
relative to appeal, in General Sessions Court for Richland
County, South Carolina, on the 4th day of November, 2015.

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

February 7, 2017

Penny M. Johnson

Penny M. Johnson Court Reporter

My Commission Expires: 06/16/2018

STATE OF SOUTH CAROLINA

County of RICHLANDMICHAEL K. PETERSON, #210616*Full name and prison number (if any) of Applicant,*

vs.

STATE OF SOUTH CAROLINA*Name of Respondent.*2016 CP400 4487
In the Court of Common PleasAPPLICATION FOR
POST-CONVICTION RELIEFJEANETTE W. MCBRIDE
C.C.P. & S.

2016 JUL 27 PM 3:54

RICHLAND COUNTY
FILED**INSTRUCTIONS — READ CAREFULLY**

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

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

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

1. Place of detention Perry Correctional Institute; 430 Oaklawn Road;
Pelzer, SC 29669
2. Name and location of Court which imposed sentence Court of General Sessions; Post
Office Box 2766, Columbia, SC 29202
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2012-GS-40-5900 Murder
 - (b) 2012-GS-40-5901 Kidnapping
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) November 5, 2015; forty-five (45) years
 - (b) November 5, 2015; thirty (30) years
 - (c) _____

5. Check whether a finding of guilty was made

(a) after a plea of guilty XX

(b) after a plea of not guilty

(c) after a plea of nolo contendere

6. Did you appeal from the judgment of conviction or the imposition of sentence?

No

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

i. _____

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. _____

iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) Counsel failed to advise Applicant of right to appeal.

(b) _____

(c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Please see supplemental attachment (open for amendment)

(b) " " " " " " "

(c) " " " " " " "

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) " " " " " " "

(b) " " " " " " "

(c) " " " " " " "

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law? No

(b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? No

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? No

(d) any other petitions, motions or applications in this or any other Court?
No

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

(a) Matters raised in this application not cognizable on appeal.

(b) _____

(c) _____

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

(a) your arraignment and plea? Yes

(b) your trial, if any? No (guilty plea)

(c) your sentencing? Yes

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

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

17. If you answered "yes" to one or more parts of (16), list:

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

i. Mark Sawyer; 1701 Main St.; Columbia, SC 29201

ii. Victor Li; 2127 Park St.; Columbia, SC 29201

iii. _____

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

i. Preliminary Hearing

ii. Plea and Sentencing

iii. _____

18. State clearly the relief you seek in filing this application.

Negotiated plea for manslaughter or vacation of plea and remand for trial.

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

No

STATE OF SOUTH CAROLINA

County of RICHLAND

VERIFICATION

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

Michael Peterson

SWORN to and subscribed before me this 19th

day of July, 19 2016

Nancy C. Merchant (L.S.)
Notary Public

My Commission Expires: 1-23-2023

JEANETTE WILCOX
C.C.P. & S.

2016 JUL 27 PM 3:54

RICHLAND COUNTY
FILED

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

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

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

Michael Peterson
Applicant

SWORN or affirmed to and subscribed before me this

19th day of July, 19 2016

Nancy C. Merchant
Notary Public

My Commission Expires 1-23-2023

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT

Michael K. Peterson, #210616

Applicant,

v.

State of South Carolina,

Respondent.

C/A No: 2016-CP- _____

SUPPLEMENT IN SUPPORT
OF PCR APPLICATION

PURSUANT TO S.C. Code of Laws, § 17-27-90 and S.C. Rules of Civil Procedure (SCRCP), Rule(s) 12 & 71.1, the above-captioned Applicant hereby offers this supplement in support and continuation of his Form 5 / PCR Application. Applicant's expanded answers to questions nine (9) & ten (10); page two (2) of the application are, therefore, set-forth below:

9. GROUND'S SUPPORTING ALLEGATIONS:

- (a) Right to remain silent in violation of U.S. Constitution, Amendment V.
- (b) Right to [effective] assistance of counsel in violation of U.S. Constitution, Amendment VI.
- (c) Right to due process and equal protection of law in violation of U.S. Constitution, Amendment XIV.

10. FACTS SUPPORTING GROUND'S:

- (a) Law enforcement officials continually violated Applicant's Fifth Amendment right to be free from self-incrimination by coercive tactics and questioning after Applicant clearly and repeatedly invoked his right to remain silent.
- (b) Counsel's representation fell below objective standard of reasonableness by:

i. Failing to protect Applicant's Fifth Amendment right to remain silent, prior to Applicant's guilty plea, by challenging use, or potential use, of an unconstitutionally obtained confession;

ii. failing to investigate all facts and circumstances to determine existence of plausible line of defense;

iii. failing to discover and/or disclose, prior to Applicant's guilty plea, exculpatory forensic evidence regarding Applicant's clothing and a knife allegedly used in homicide;

iv. failing to object to and/or correct erroneous showing of an alleged prior drug conviction not belonging to Applicant-but which belonged to another defendant with same name as Applicant; and

v. failing to advise Applicant of his right to appeal the guilty plea.

- (c) Applicant's due process rights were violated due to loss of liberty resulting from the illegally obtained confession and trial judge's sentencing bias regarding erroneous belief of a prior drug conviction which belonged to someone else.

Therefore, the above matters are intended to be incorporated by reference into Applicant's original PCR application and verified by page five (5) of the same.

Respectfully submitted,

Date: 7-19-2014
Greenville County

Michael K. Peterson
Michael K. Peterson, #210616
Perry Correctional Institute
430 Oaklawn Rd. / Q3B
Pelzer, SC 29669

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
IN THE FIFTH JUDICIAL CIRCUIT

Michael K. Peterson, #210616,)
Applicant,)

Case No.: 2016-CP-40-4487

v.)

RETURN

State of South Carolina,)
Respondent.)

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR")
filed on July 27, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. In November 2012, the Richland County Grand Jury indicted Applicant for murder (2012-GS-40-5900) and kidnapping (2012-GS-40-5901). Victor Li, Esquire represented Applicant. Assistant Solicitor Dolly Garfield, Esquire prosecuted the case. On November 4, 2015, Applicant pleaded guilty as indicted to all charges before the Honorable Clifton Newman. Pursuant to a recommendation by the State, Judge Newman sentenced Applicant to imprisonment for concurrent terms of forty-five years for murder and thirty years for kidnapping, with no sexual registry. Applicant did not appeal his conviction or sentence.

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

II.

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

1. Ineffective Assistance of Counsel
 - a. "Failure to protect Applicant's Fifth Amendment right to remain silent, prior to Applicant's guilty plea, by challenging use, or potential use, of an unconstitutionally obtained confession"
 - b. "Failing to Investigate all facts and circumstances to determine existence of plausible line of defense"
 - c. "Failing to discover and/or disclose, prior to Applicant's guilty plea, exculpatory forensic evidence regarding Applicant's clothing and a knife allegedly used in homicide"
 - d. "Failing to object to and/or correct erroneous showing of an alleged prior drug conviction not belonging to Applicant but which belonged to another defendant with same name as Applicant"
 - e. "Failing to advise Applicant of his right to appeal the guilty plea"
2. Due Process Violation
 - a. "Applicant's due process rights were violated due to loss of liberty resulting from the illegally obtained confession and trial judge's sentencing bias regarding erroneous belief of a prior drug conviction which belonged to someone else."

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must

prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985).

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

IV.

Applicant alleges a denial of due process of law. Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, Applicant fails to set forth with specificity the grounds upon which these constitutional

violations are based. The Uniform Post-Conviction Procedure Act requires that Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). If such a showing is made, the threshold for an Applicant to prevail on due process violations is a high one. As stated in Welch, "effective representation by counsel in compliance with due process of law does not mean perfection on the part of attorneys. A lack of effective assistance of counsel must be of such nature as to shock the conscience of the Court and make the trial proceedings a farce and mockery of justice in order to suffice as grounds for the issuance of a writ of habeas corpus." Welch, 246 S.C. at 258, 143 S.E.2d at 456.

Respondent submits Applicant cannot satisfy the burdens placed upon him by due process analyses. However, the allegation of due process violations probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

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

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

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VI.

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

VII.

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

Signature follows.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JESSICA E. KINARD
Assistant Attorney General

By: *Jessica E. Kinard*
ATTORNEYS FOR RESPONDENT

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

July 20, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
	)	2016-CP-40-4487
MICHAEL K. PETERSON, #210616,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Leah B. Moody, Esquire
Law Office of Leah B. Moody, LLC
235 E. Main St., Ste 115
PO Box 1015
Rock Hill, SC 29730

DATED this 28th day of July, 2017.



 Mallory Morris, Legal Assistant
 For Respondent

State of South Carolina	)	In the Court of Common Pleas
	)	Fifth Judicial Circuit
County of Richland	)	2016-CP-40-4487

Michael K. Peterson,	)
	)
Plaintiff,	)
	)
vs.	)
	)
State of South Carolina,	)
	)
Defendant.	)
	)
	)

January 25, 2018
Columbia, South Carolina

B e f o r e:

The Honorable Jocelyn Newman, Judge

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

Leah B. Moody, Esquire
Attorney for the Plaintiff

Jessica Kinard, Esquire
Attorney for the Defendant

Bonnie H. Kelly, CVR
Circuit Court Reporter

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DIRECT CROSS REDIRECT RE-CROSS

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV</u>
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-- NO EXHIBITS ENTERED --

1 (On the record at 10:15 a.m.)

2 THE COURT: Yes, ma'am.

3 MS. KINARD: Thank you, Your Honor. May it please the
4 Court?

5 This is the matter of *Michael K. Peterson vs. the*
6 *State of South Carolina*, case No. 2016-CP-40-4487. We're
7 before the Court on an application for post conviction
8 relief that was filed July 27, 2016. Mr. Peterson is
9 presently confined in the South Carolina Department of
10 Corrections pursuant to orders of commitment from the
11 Richland County Clerk of Court.

12 In November, 2012, the Richland County Grand Jury
13 indicted him for murder and kidnaping. Victor Li
14 represented him at his guilty plea which was prosecuted by
15 Assistant Solicitor Dolly Garfield.

16 On November 4, 2015, Mr. Peterson pled guilty as
17 indicted to all charges before The Honorable Clifton
18 Newman. Pursuant to a recommendation by the State, Judge
19 Newman sentenced him to imprisonment of concurrent terms
20 for 45 years for murder and 30 years for kidnaping with no
21 sexual registry. He did not appeal his conviction or
22 sentence.

23 The State is present and ready to proceed. Mr.
24 Peterson is present and represented by Leah Moody to whom
25 the State will defer.

1 THE COURT: Ms. Moody.

2 MS. MOODY: Thank you, Your Honor. At this time Mr.
3 Peterson is present, and we have a motion before we proceed
4 if the Court will allow it.

5 THE COURT: Yes, ma'am.

6 MS. MOODY: Your Honor, at this time Mr. Peterson
7 wishes to request a continuance based on, and as the Court
8 has heard, that the Honorable Clifton Newman was the
9 sentencing judge in this case, and he feels that -- that
10 Your Honor would have a conflict of interest in this case
11 to hear his post conviction relief application here today.

12 THE COURT: Okay. It appears from the application
13 that the allegations are ineffective assistance of counsel.
14 There are -- are a number of ways in which the applicant
15 alleges that Mr. Li was deficient in his representation.
16 There is also an allegation of a due process violation
17 regarding an illegally obtained confession, none of which
18 involve the plea judge.

19 Of course, I'll just state for the record, that
20 Clifton Newman is my father. So I understand why in other
21 circumstances a recusal or continuance might be warranted,
22 but in this case because this is not a direct appeal where
23 this Court will rule on any errors of law or improper
24 decisions by the other Judge Newman; and because it was a
25 guilty plea, so it does not involve any rulings on

1 objections or -- or anything like that, based on the nature
2 of the allegations, I do not believe recusal is warranted
3 because this Court will be examining the performance of Mr.
4 Li and, I guess, law enforcement with respect to the due
5 process allegation regarding the confession. Therefore,
6 your motion is denied.

7 MS. MOODY: Thank you, Your Honor. Beg the Court's
8 indulgence.

9 THE COURT: Yes, ma'am.

10 (Ms. Moody confers with the Applicant)

11 MS. MOODY: Your Honor, at this time I would call Mr.
12 Peterson to the stand.

13 MICHAEL K. PETERSON, having been
14 first duly sworn, testifies as follows:

15 THE BAILIFF: State your full name for the record and
16 spell it for me, please.

17 THE APPLICANT: Michael Peterson. M-i-c-h-a-e-l P-e-
18 t-e-r-s-o-n

19 DIRECT EXAMINATION

20 BY MS. MOODY:

21 Q Thank you, Mr. Peterson. Where are you currently
22 incarcerated?

23 A Perry Correctional Institution.

24 Q All right. And can you state for the record what are
25 the charges you are incarcerated for?

DIRECT EXAMINATION BY MS. MOODY - MICHAEL PETERSON

1 A Murder and kidnaping.

2 Q Okay. And when did those convictions -- when were you
3 convicted of murder and kidnaping?

4 A December the 4, 2015.

5 Q And at the time of that ---

6 A November -- November the 4th.

7 Q I'm sorry?

8 A November the 4, 2015.

9 Q 2015. Okay. And at the time, who was your attorney?

10 A Mr. Victor Li.

11 Q Okay. Did you have any other attorneys representing
12 you in this case?

13 A At the beginning I had Ms. Courtney Gibbes.

14 Q Okay. And what happened with Courtney Gibbes?

15 A She went to private practice.

16 Q Okay. And at that time you were assigned to another
17 lawyer?

18 A Yes. I can't think of his name. I can't think of his
19 name, but he was before Mr. Li.

20 Q Okay.

21 A He wasn't long, though.

22 Q Okay. So how long did Courtney Gibbes represent you?

23 A Approximately -- about a year.

24 Q Okay. And the other attorney -- you can't remember
25 his name -- his first name's Mark.

DIRECT EXAMINATION BY MS. MOODY - MICHAEL PETERSON

1 A Oh, Mark Sawyer.

2 Q Okay. So how long did Mark Sawyer represent you?

3 A Probably about four months.

4 Q About four months. And then you were assigned to Mr.
5 Li.

6 A Yes.

7 Q Okay. And how long did Mr. Li represent you?

8 A Approximately 18/20 months, something like that.

9 Q 18 or 20 months. And during that 18 to 20 months, how
10 often did you meet with Mr. Li?

11 A Approximately -- I seen Mr. Li probably four times.

12 Q Okay. And during those meetings, what if anything did
13 you all discuss?

14 A We discussed, on the first meeting, the nature of the
15 charges and that was it.

16 Q Okay. And when you say "the nature of the charges"
17 ...

18 A He asked me what happened.

19 Q Okay. Did you discuss any information regarding the
20 sentence that you were possibly facing?

21 A Yes.

22 Q Okay. So when you say "the nature of charges," the
23 charges and what they carried in terms of a sentence.

24 A Well, not what they carried in -- in terms of the
25 sentence, but what I could possibly get. Yes.

DIRECT EXAMINATION BY MS. MOODY - MICHAEL PETERSON

1 Q Okay. All right.

2 A Same thing.

3 Q Yeah. So when you talked to Mr. Li on the first
4 instance where you told him about what happened, did he
5 have present with him any discovery?

6 A No.

7 Q At what point did you get an opportunity to review
8 your discovery with Mr. Li?

9 A Opportunity to present my -- to go over my discovery?
10 Excuse me for saying this here, but I never did go over my
11 discovery with Mr. Li.

12 Q Okay. So you never saw the ---

13 A I got ---

14 Q --- documents ---

15 A I got my discovery seven months after I plead [sic].

16 Q Seven months from whom?

17 A From Mr. Li.

18 Q Okay. And ---

19 A By mail.

20 Q Go ahead.

21 A By mail, seven months later.

22 Q Okay. And so when he came to see -- he came to
23 physically see you.

24 A Right.

25 Q Okay. Did he not have a file?

DIRECT EXAMINATION BY MS. MOODY - MICHAEL PETERSON

1 A No.

2 Q Okay. And so you were able to discuss your case at
3 that point in time.

4 A Well, I -- we discussed the case, but you know, he
5 wrote down a few notes, but you know, we didn't -- he
6 didn't have no information really. He was just getting
7 information from me really.

8 Q Okay. So that was the first meeting.

9 A Right.

10 Q Okay.

11 A After that, we never discussed the case other than
12 trying to get a plea or when the court date was.

13 Q Okay. And when you discussed those other occasions,
14 did he have any copies of your file then?

15 A No. Not that I know of. I ain't never seen them.

16 Q All right. So how did you know fully what the Court
17 had against you in terms -- not the Court, but the State
18 had against you in terms of this case?

19 A Well, I had a couple of police reports from Ms.
20 Courtney Gibbes and a couple of police statements.

21 Q Okay.

22 A A couple of officer statements and the investigator
23 statements.

24 Q Okay. And so did Mark Sawyer give you any ---

25 A No.

DIRECT EXAMINATION BY MS. MOODY - MICHAEL PETERSON

1 Q --- discovery?

2 A No.

3 Q So the discovery that you received, you're testifying
4 here today that you received the items that you just stated
5 from Courtney Gibbes.

6 A Yeah. Those -- yeah, those items, police reports.

7 Q Did you ever learn that any other discovery was
8 obtained from the State from Mr. Li?

9 A No. The only other discovery I got was seven months
10 later, and then I -- then I fully knew what I had then.

11 Q Okay.

12 A I full -- I fully knew what they had against me
13 because they kind of compelled me to plea before I even had
14 a chance to go over my discovery.

15 Q Okay. And so that takes us into you ultimately pled
16 to the charges involved.

17 A Right.

18 Q Okay. So were you ever going forward on a trial?

19 A If I would've knew what the evidence -- if I knew the
20 evidence what it -- what it is now, I would have went
21 forward on a trial.

22 Q All right. So in your application, you alleged that
23 Mr. Li was ineffective assistance of counsel.

24 A Yes.

25 Q Okay. And one of the grounds that you state is that

DIRECT EXAMINATION BY MS. MOODY - MICHAEL PETERSON

1 Mr. Li (as read): "Failed to protect your Fifth Amendment
2 right to remain silent prior to your application -- prior
3 to you guilty plea, by challenging the use or the potential
4 use of an unconstitutional obtained statement."

5 A Right.

6 Q Okay. Can you explain to the Court what you mean that
7 your rights were violated?

8 A Well, my right was violated because the simple fact
9 that Mr. Li -- he didn't even challenged it and they used
10 the -- a coerced confession in the -- in the Court, which
11 they wasn't supposed to use.

12 Q Okay. So you went to the plea ---

13 A Right.

14 Q --- and was there, like, a extend -- how long did your
15 plea take to go forward in front of the Court?

16 A How long did it take? Approximately -- I'm not sure.
17 Probably about 15/20 minutes.

18 Q Okay. And so during that plea, that's when the -- the
19 State used the -- the statement?

20 A Yeah. She used a coerced confession off the top. She
21 said that Ms. -- she said that -- she said that I waived my
22 rights.

23 Q When you say "she" ...

24 A Ms. Garfield. She said that I waived my rights and
25 gave a statement, which I did not waive my rights at any

DIRECT EXAMINATION BY MS. MOODY - MICHAEL PETERSON

1 time.

2 Q And did you tell Mr. Li this?

3 A Yes.

4 Q Did you tell him ---

5 A Tell him that numerous times.

6 Q Okay. So in your different meetings, you discussed
7 with Mr. Li that you were coerced to make a statement.

8 A Yes.

9 Q Okay. And what, if anything, did Mr. Li say ---

10 A Huh?

11 Q What, if anything, did Mr. Li say in response to that
12 statement?

13 A Well, he told me -- he said he doesn't think that it
14 really mattered. He say they had evidence other than that,
15 which they used the evidence from the confession to -- I
16 believe, to convict me.

17 Q Okay. So that day in court, the prosecutor used the
18 confession.

19 A Right. In order to get the sentence that she wanted
20 I'm -- I assume.

21 Q Okay. So now, you wanted -- did you want Mr. Li to
22 object during the plea as to that statement?

23 A Well, from my understanding, she wasn't going to use
24 that as aggravated evidence against me.

25 Q I'm -- I'm sorry.

DIRECT EXAMINATION BY MS. MOODY - MICHAEL PETERSON

1 A She wasn't gonna use ---

2 Q I didn't understand what you just said. You said she
3 was not gonna use that --

4 A I was told that she was not gonna use that coerced
5 confession -- the confession, period, as aggravated
6 evidence against me...

7 Q Okay. And so you're stating that she changed ---

8 A Used it anyway.

9 Q --- her mind.

10 A Yeah. She used it anyway, yeah.

11 Q Did you tell Mr. Li during the hearing?

12 A Well, he was sitting right there, yeah. I asked him -
13 - I asked him, I said -- I asked him why is she -- why
14 she's contesting it. And he -- she wasn't supposed to
15 contest it like that, and he -- he didn't say nothing.

16 Q Okay. Did you say anything to the Court?

17 A Huh?

18 Q Did you say anything to the Court at that time?

19 A No, I didn't.

20 Q Okay. Your next allegation for ineffective assistance
21 of counsel is that (as read): "Mr. Li failed to instigate
22 -- investigate all the facts and circumstances determined -
23 - to determine the existence of a plausible line of
24 defense."

25 A Defense, yeah.

DIRECT EXAMINATION BY MS. MOODY - MICHAEL PETERSON

1 Q Yes. What -- wait. Let me ask the question. The --
2 what do you mean by "plausible line of a defense"?

3 A Well, if he -- if he would've -- if we -- if he
4 would've told me about the *Jackson v. Deno* hearing, which I
5 would've known they could not use the coerced confession
6 then, that would've been a line of defense right there.
7 You understand what I'm saying?

8 Q So you're saying that had he challenged the statement
9 ---

10 A The statement -- the State [sic] use of the coerced
11 confession. If he would've challenged the -- the State's
12 use of the coerced confession, then I would've had a better
13 chance at getting a different sentence or a trial.

14 Q Now, let's back up so that the Court understands where
15 you're coming from.

16 A Okay. Go ahead.

17 Q You're state -- stating the Mr. Li should have held a
18 *Jackson v. Deno* hearing?

19 A Yes. Or at least had told me about it. I didn't know
20 about it until in hindsight. That's when I found out about
21 *Jackson vs. Deno* hearing, and that's why -- that's why I
22 figure that convicted me was the use of the coerced
23 confession.

24 Q Okay. And this was a plea?

25 A Yeah.

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1 Q Okay. So when you ---

2 A But I mean, if he -- if he would've told me about the
3 *Jackson vs. Deno* hearing before the plea, informed me of
4 it, of the -- the line of defense I could use, then yeah.

5 Q So okay. I'm curious on this.

6 A Okay. Go ahead.

7 Q When you're -- when you're talking to your attorney
8 and you're telling him that your statement was coerced, he
9 didn't mention the strength of that statement or that your
10 rights were violated at any point in time?

11 A No. No.

12 Q Okay. And so what you're saying is that you went
13 forward with your plea without that knowledge.

14 A Yes.

15 Q Okay. All right. So that's one defense that you're
16 thinking he should've, like, protected.

17 A Yeah.

18 Q Okay. Is there any other defense that he should've
19 protected?

20 A Well, you know, for certain *McMann vs. Richardson* say
21 he's supposed to insulate me from the use of the coerced
22 confession.

23 THE COURT REPORTER: I'm sorry, what versus
24 Richardson?

25 A McMann. *McMann vs. Richardson*. It says a reasonable,

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1 competent lawyer is supposed to insulate me from the use of
2 a coerced confessions. So the -- by the impact of the
3 coerced confession is what got me convicted and continue to
4 prejudice my case and influence my decision regarding my
5 plea, whether plea or to go to trial.

6 Q Okay. Did you and Mr. Li discuss going to trial?

7 A Yeah.

8 Q And what did y'all discuss?

9 A I asked him -- he -- he told me -- he said, "We -- we
10 trying to get some numbers." You know, that -- that means
11 I -- I -- I take that as meaning that we're not trying to
12 get you a life sentence. We're just, you know, trying to
13 get you a sentence with some numbers. That's what I took
14 that as. So ...

15 Q Okay. Well, when you speak of numbers for a sentence,
16 did you have an understanding that that was a plea?

17 A Yeah.

18 Q Okay. And at that time did you tell him that you
19 didn't want a plea?

20 A Well, no. I told him I said -- well, he told me her
21 first plea was like -- I think it was like 35 years or
22 something like that.

23 Q When you say "her," you're talking about the
24 solicitor?

25 A Ms. Dolly -- Dolly Garfield.

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1 Q Okay. And so ---

2 A He said she had offered 35 years.

3 Q Oh. Let me finish my question first.

4 A Okay.

5 Q We gotta keep the record clean. Okay?

6 A Yes, ma'am.

7 Q So when you say "she," you're talking about Dolly
8 Garfield, the State making you an offer for a plea.

9 A Right.

10 Q Okay. So at any point did you tell Mr. Li that you
11 wanted to plea and to get offers?

12 A Yes. I told him that at the beginning. I asked him -
13 - I asked him.

14 Q You asked him about ...?

15 A If they offering an plea, were they offering a plea.

16 Q Okay. And so at one point in time you wanted to plea.

17 A Yeah.

18 Q Okay. And had you known about the challenge through
19 *Jackson v. Deno*, you would not have accepted a plea?

20 A That's right.

21 Q Okay. All right. So again, were there any other
22 defenses that you feel that Mr. Li should have asserted on
23 your behalf?

24 A Yeah.

25 Q Well, can you tell us ---

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1 A I believe if he would've investigated -- investigated
2 the circumstances surrounding the case, you know, I
3 would've had a better defense. You know ---

4 Q And can you tell the Court what that defense was ---

5 A I don't think -- he didn't even have the -- he didn't
6 even have those -- my D, Exhibit D. He didn't even have
7 those statements from victims -- my -- well, families and
8 friends of mine just to tell just things that going on in
9 the -- in the relationship that's provoking me. You know
10 what I'm saying?

11 Q Okay. When you speak of "Exhibit D," the Court
12 doesn't have your exhibit.

13 A Oh.

14 Q Okay?

15 A Okay.

16 MS. MOODY: So Your Honor, if I may approach?

17 THE COURT: Yes.

18 (Ms. Moody approaches the witness)

19 Q So can you please state, when you say "Exhibit D,"
20 what you're alleging that Mr. Li did not have.

21 A He -- I allege that he did not have the statements
22 from families and friends that showed that, you know, I
23 been provoked, and you know, I'm -- I'm having -- going
24 through problems with this family and stuff like this.
25 That would've helped.

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1 Q Okay. So ---

2 A Help investigate the circumstances surrounding the
3 case.

4 Q And so when you -- there's a title to the exhibit,
5 right?

6 A Yeah.

7 Q Okay. And those are statements that were obtained
8 through an investigator?

9 A Those statements were, yeah.

10 Q Okay. And who was the attorney that got -- initiated
11 that investigation on your behalf?

12 A Ms. Courtney Gibbes.

13 Q Okay. So did you know whether or not she left those
14 statements in the file?

15 A You have those statements.

16 Q I -- I understand that.

17 A Did she have them in the file? No.

18 Q Okay.

19 A No. I had got those by -- I had got those before she
20 left.

21 Q So you got those statements from Ms. --

22 A Ms. Gibbes.

23 Q -- Ms. Gibbes.

24 A Yeah.

25 Q Did you ---

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1 A They came through the mail from Ms. Leigh Connelly
2 [phonetic].

3 Q Right.

4 A Okay.

5 Q So did you discuss the fact that you had these
6 statements with Mr. Li?

7 A Yes, I told him about it.

8 Q So you told him about it, and he did nothing with
9 those statements.

10 A No. I told him to get a copy of them because at the
11 time I didn't have the copy with me. But I told him, you
12 know, get his -- get him a copy of them from -- and I gave
13 him her name, Leigh Connelly, and address and all that.

14 Q Okay. So then, based on those statements, how did you
15 -- and you had a copy to read those copies, how did you see
16 those statements coming in -- or those witnesses coming and
17 testifying on your behalf?

18 A How did I see it?

19 Q Yes.

20 A I see it as a help, helping my defense.

21 Q To show the provocation.

22 A Yeah. The provocation, yeah.

23 Q Okay.

24 A I told him about the provocation also, and plus I have
25 provocation from police statements. You know, it can -- it

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1 can show you where I was -- I was being provoked, you know.
2 The police statement -- the officer -- well, should we go
3 back to the Exhibit 1, I mean, Officer Harley's statements?
4 It's in, let me see here ...

5 THE COURT: Hold on a second. While you're looking
6 for that, just for organization purposes, do you intend to
7 introduce this as an exhibit?

8 MS. MOODY: I will. Yes.

9 THE COURT: Do you want to do --

10 MS. MOODY: I was giving her time ---

11 THE COURT: Yeah. Is there any objection to that?

12 MS. KINARD: Yes, ma'am.

13 THE COURT: Okay. Let me hear that.

14 MS. KINARD: I don't know where this came from. Mr.
15 Li's never seen it. It's not signed, it's not
16 authenticated, there's no one here to -- to speak as to how
17 it was prepared, why it was prepared, or that they prepared
18 it. This could have been written by anybody.

19 THE APPLICANT: Well, her name's on it.

20 MS. KINARD: I -- I see no name on it. As far as ---

21 THE APPLICANT: You're talking ---

22 THE COURT: Okay. Hold on.

23 THE APPLICANT: I'm sorry.

24 THE COURT: Hold on.

25 (Brief pause.)

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1 MS. MOODY: Your Honor, if I may, I'll just say that
2 I'm showing it to him for the purpose of there was an
3 investigation done and it came out of the file that Ms.
4 Gibbes had -- has, and I need to ask Mr. Li whether he saw
5 it. So...

6 THE COURT: Okay. Let's wait on ---

7 MS. MOODY: At that time, I'll wait to --

8 THE COURT: Yeah.

9 MS. MOODY: At this time I'll wait to move it into
10 evidence.

11 THE COURT: Okay. That's fine. I thought it was
12 something that could be done now so we don't get mixed up,
13 but we'll wait.

14 MS. KINARD: Thank you, Your Honor.

15 MS. MOODY: Okay.

16 BY MS. MOODY:

17 Q Mr. Peterson --

18 A Yes.

19 Q -- we were talking about the investigation was done,
20 the -- or Ms. Gibbes -- and these were friends that you
21 knew --

22 A Right.

23 Q -- that could talk about the relationship that existed
24 with the victim's family.

25 A Right.

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1 Q Okay.

2 A With the victim also, yeah.

3 Q Okay. And so after you told Mr. Li about this -- the
4 circumstances, what, if anything, do you know that he did
5 to follow up on the -- those -- that theory?

6 A Nothing.

7 Q Did you ask him about it?

8 A Yes, numerous times.

9 Q And so his response was nothing?

10 A I kept asking him to file a motion to compel to get
11 the rest of the information from Ms. Garfield, but he never
12 did file the motion. If he did, I never did get the
13 information 'til after I went to the plea in.

14 Q Is it possible that any of the information you gave
15 him helped with your -- the plea offers that you received
16 from Ms. Garfield?

17 A Would it have helped with the plea offer?

18 Q Yes.

19 A I don't know would it help the plea offer, but I know
20 if I had the information that I got after I went to the
21 plea, I would've took a trial.

22 Q Okay. So I guess what I'm getting at is Ms. Garfield
23 made a first offer to you.

24 A Right.

25 Q Obviously you declined that.

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1 A Well, that's what I thought we was going on, but when
2 we got down to the courtroom, he told me she changed it
3 from 30-to-45 instead of 35.

4 Q Okay. And why did she change it?

5 A I have no idea. Matter of fact, he -- he did tell me.
6 He say 'cause the family wanted more time.

7 Q He said what?

8 A The family wanted more time.

9 Q The family wanted more time.

10 A Yeah. That's what he said. The family wouldn't agree
11 to it. They wanted more time.

12 Q Okay. And so did you plea on that same day when he --
13 the offer changed?

14 A Well, the offer -- the offer was, if I didn't plead
15 then, I was going to trial on Monday and that was on a
16 Wednesday.

17 Q So had y'all prepared for trial?

18 A So no.

19 Q I'm sorry?

20 A No, we didn't prepare for no trial.

21 Q Okay. So at that point, you decided to still go
22 forward with your plea.

23 A Well, I felt like I had -- I must because I don't know
24 what -- what they really had against me, I don't know what
25 I'm fighting against. So instead of them trying to

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1 railroad me, I just say, "Okay. I'll just go on ahead and
2 take it."

3 Well, not actually railroad, but you know, they got
4 evidence that I don't even know then, and I'm not gonna
5 find out about it 'til I get into court 'cause I don't have
6 it now. So I don't have a chance to go over it to, you
7 know, examine it.

8 Q Okay. So again, going back to going over discovery
9 with Mr. Li, when you made the decision not to go to trial,
10 what did y'all discuss?

11 A Well, he just say we trying to get some numbers and --
12 and she got -- what did he say? He has -- she has a -- she
13 thinks she has a fool-proof case against you and all this
14 here.

15 A Okay. But did you not ask him what was the evidence
16 that he had against you?

17 Q Yeah, he -- he wouldn't -- he wouldn't tell me nothing
18 in specific. He just say she got more than what you --
19 what you got. She got more than a coerced confession,
20 that's what he tell me. She got more. He -- he ain't say
21 more of what. I mean, you know, like statements or
22 nothing.

23 Then yeah -- then he told me about a statement from a
24 individual that was in jail with me. But he say she still
25 had more than that, but he wouldn't tell me what the more

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1 was.

2 Q So did you discuss any of this with Courtney Gibbes?

3 A No.

4 Q Did you discuss any of this with Mark --

5 A Sawyer? No. I hadn't seen him but once when he came
6 and introduced hisself [sic] to me and that was it.

7 Q Okay. All right. So as to your defenses, they're --
8 you had no other defense other than what you suggested to
9 Mr. Li, which would've been the prior history with the
10 victim and the victim's family.

11 A Say again.

12 Q In terms of your defense ---

13 A Yes, ma'am.

14 Q --- that you had at the time that you were entering a
15 plea, the only thing that you offered or that y'all
16 discussed was the prior relationship with the victim ---

17 A Yes, and I told -- yes. I told him I was provoked,
18 and it was basically a heat of passion defense I was trying
19 to get him to do.

20 Q Okay. And what, if anything, did he say to any of
21 that before the plea?

22 A He didn't say nothing. He said he'd check into it.

23 Q Okay. All right. One of your -- your third
24 allegation you indicate that (as read): "Mr. Li failed to
25 discover and disclose prior to the applicant's" or you --

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1 "the guilty plea exculpatory and forensic evidence
2 regarding your clothing and a knife allegedly used in the
3 murder."

4 A Right.

5 Q How did you find out about any exculpatory evidence?

6 A Well, I found out about it in -- during the plea.

7 Q Okay.

8 A Ms. Garfield said that -- that a knife -- the -- the
9 weapon that was found, she said it was negative from --
10 test for blood. She said that it was not the murder
11 weapon, but the investigator -- the investigator said that
12 it was the murder weapon that was being tested.

13 Q So when the investigator -- and this -- that happened
14 at a different time, correct?

15 A Right.

16 Q Okay.

17 A That was in the preliminary -- preliminary hearing,
18 actually.

19 Q Okay. So they found a knife.

20 A Right.

21 Q And that knife was being tested for any DNA.

22 A Right.

23 Q Okay. And essentially, you're saying you didn't find
24 out the results.

25 A I didn't find out the results until the plea hearing.

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1 Q Okay. Did you ask about them?

2 A I did asked about them months ago. I was trying -- I
3 was trying to get results of the -- of the knife for the --
4 for at least a year and half.

5 Q Okay. And what, if anything, did Mr. Li say about the
6 knife?

7 A He say he didn't never [sic] get it from Ms. Garfield.
8 Never get the results.

9 Q Okay. So he didn't say that there were no results or
10 he didn't get any?

11 A He say he never did get them.

12 Q Okay. Listen to what I'm saying, okay?

13 A Uh-huh.

14 Q Did he say he received a report that said there was no
15 DNA, or did he say he never got the report which would've
16 shown that there were no ---

17 A He never got the report.

18 Q Okay.

19 A That's what he said. He never got the report.

20 Q Okay. Did he say why he did not seek to obtain the
21 report?

22 A No. He just said, "We working on it."

23 Q Okay. And so how would that have changed you -- how
24 would that have changed your entering a plea?

25 A How would that change me entering a plea?

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1 Q Yes.

2 A Because simple fact that the investigator was trying
3 to make it seem like they had all this evidence against me,
4 right? Come to find out they didn't have the evidence they
5 thought they had. I mean, he -- he said up under oath in
6 preliminary hearing that he had a knife, the actual murder
7 weapon, right? And it's a lot of things that he said under
8 oath that it's not true, simply it's not true and can't be
9 proven, so...

10 Q Well, he had the knife.

11 A Yeah. He had the knife, but he say it was the murder
12 weapon.

13 Q Okay. All right. And so that would've changed
14 whether you ---

15 A Yes.

16 Q --- would've gone forward ---

17 A Yes.

18 Q --- with the plea.

19 A Right.

20 Q Okay. All right. Just let me remind you, to keep the
21 record clean, let me talk and then you answer.

22 A All right.

23 Q Because otherwise ---

24 A Yeah.

25 Q --- the people ---

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1 A Confusion. All right.

2 Q Okay. All right. Your next allegation that you state
3 is that your (as read): "Attorney failed to object to and
4 to correct erroneous showing -- an erroneous showing of an
5 alleged prior drug conviction, not belonging to you, but
6 belonged -- that belonged to another defendant with the
7 same name."

8 A Right.

9 Q And when did this occur?

10 A During the plea.

11 Q Okay. And so this was the portion where the judge is
12 asking for your prior record?

13 A Yes.

14 Q Okay. And did you tell your attorney -- well, I take
15 that back. Prior to your plea, did you go over your prior
16 record with your attorney?

17 A No.

18 Q Okay. And during the plea, did you state to the
19 attorney that that was not your conviction?

20 A Yes. I was stating to the judge several times before
21 Ms. Garfield corrected it.

22 Q Okay. And how ---

23 A Cause she kept -- she kept saying that we had -- we
24 had the -- we had -- we are the same age and stuff like
25 that, which we're not the same age, me and the other guy

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1 that's named Michael Peterson; and I never been convicted
2 of a drug charge.

3 Q And so that error -- your attorney failing to object,
4 that error prejudiced you some -- in some form?

5 A Yeah. Because he -- the judge stated that, "Mr.
6 Peterson," he say, "you got out of prison from doing one
7 violent crime, committed another one." I said, "No, sir."
8 I said, "That's not me."

9 Q Okay. And did your attorney -- obviously it's in the
10 transcript.

11 A He didn't -- he didn't say nothing then. Then -- then
12 he -- he -- the judge kept talking, and I say -- I kept
13 saying, "This is not me, sir. That's not me. That's not
14 my drug charge." I say, "I didn't have that drug charge." I
15 say, "I was in prison during the time that guy -- I was in
16 prison for a year when that guy got that drug charge."

17 Q Okay. And did it get cleared up?

18 A Then -- then -- then the solicitor -- she, "Your
19 Honor, they have the same name and same birth date," which
20 we did not.

21 Q Okay.

22 A And then he -- he say -- then he say, "Okay then,
23 nevertheless." And then he just kept on going.

24 Q Okay.

25 A But I believe -- I believe it made him biased.

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1 Q So you felt your attorney should've spoken up ---

2 A Yes.

3 Q --- regarding that. Okay.

4 All right. Your next allegation you state that your
5 attorney failed to advise you of your right to an appeal of
6 the guilty plea.

7 A Right.

8 Q Let's talk about your guilty plea. Did you have a
9 recommendation from the State as to what the Court should
10 sentence you to?

11 A Yeah.

12 Q And that recommendation went from one plea offer to 45
13 years.

14 A Right.

15 Q Okay. And when you went through that process, did
16 your attorney talk to you about if something happens in the
17 plea, you would still have a right to appeal?

18 A No.

19 Q And you feel that you should have known that because
20 why?

21 A Well, I feel I should've known that -- I should've
22 known that if there was an error during the plea process, I
23 could appeal or I could withdraw my plea, which I didn't
24 know I could withdraw it.

25 Q And what do you mean by "withdraw it"?

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1 A Like tell him that I -- I -- I withdraw my plea.

2 Q Oh, tell the judge --

3 A Yes, tell the judge.

4 Q --- that you wish to ---

5 A Yeah.

6 Q --- not go forward with the plea.

7 A Right.

8 Q Okay. And somewhere in there did you think the judge
9 would allow you to withdraw your plea?

10 A I thought it was the law.

11 Q Well, no. I'm -- I'm asking you the question. You
12 felt like had you known that information -- had you known,
13 I guess, something was going on in the hearing ---

14 A Uh-huh.

15 Q --- or as to the bias --

16 A Right.

17 Q -- you feel the judge would've let you step down from
18 your plea.

19 A Well, I know now that I could have -- I could have
20 withdrawn it from what I've read in the law. I know now I
21 could have withdrawn it, yeah.

22 Q And you would have gone forward on that following week
23 for a trial?

24 A Yeah.

25 Q Okay. Did you discuss at any point that you wanted

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1 to, like, reconsider your plea since the solicitor changed
2 the offer or the recommendation?

3 A No, I didn't really say nothing. I didn't really say
4 nothing because I really -- I didn't know at the time.

5 Q Okay. All right. After the plea was over, did you
6 talk with Mr. Li?

7 A Yes. He caught me on the way going to the elevator,
8 talking 'bout, "It is what it is. We tried."

9 Q Who -- who -- wait a minute. "It is what it is. We
10 tried." is that what you said?

11 A That's what Mr. Li told me.

12 Q Okay. So you didn't go into any kind of deep
13 discussion of ---

14 A Nothing.

15 Q Let me finish. You didn't go into a deep discussion
16 about what would happen next ---

17 A No.
18 on your plea?

19 A No.

20 Q Okay. Now, you indicated in your application also
21 that you had some due process violations. That -- in the
22 application, you state that your (as read): "Due process
23 rights were violated due to the loss of liberty, resulting
24 from the illegally obtained confession" ---
25

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1 A Right.

2 Q --- which we talked about.

3 A Uh-huh.

4 Q "As well as the trial judge's sentencing bias
5 regarding erroneous" -- well, the prior drug conviction
6 that belonged to someone else.

7 A Right.

8 Q So can you explain to the Court what you mean by "due
9 process violation"?

10 A Well, I believe my due process was violated because
11 simple fact that the judge -- he -- he used that -- he used
12 that -- he used that -- that -- that -- the charge of -- the
13 drug charge trying to make it seem like I committed one --
14 one crime, violent crime, and then went out and committed
15 another one.

16 Q Okay. And so what about the confession?

17 A The confession -- it was a -- a coerced confession.

18 Q Okay. But you were going to do the plea.

19 A Going -- yeah.

20 Q You went forward with the Court to do the plea.

21 A Right.

22 Q Okay. You recall going through your rights with the
23 judge?

24 A Yeah.

25 Q Okay. Did your attorney say anything as to that

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1 confession -- or the confession that Ms. Garfield discussed
2 with the Court?

3 A No.

4 Q What did you feel he should've discussed with the
5 Court as to the ---

6 A He should've -- he should've told me that I could've
7 had it and not allow it into --

8 Q Listen to my question. What do you feel that Mr. Li
9 should have told the Court on your behalf as to that
10 confession?

11 A Well, ain't nothing he really could've told the Court
12 after the confession.

13 Q Okay. So like, if your attorney had an opportunity to
14 speak to the judge, right?

15 A Yeah. He had a opportunity, but he didn't say
16 nothing.

17 Q Right. So I'm saying what do you feel that he
18 should've said at that time ---

19 A I -- I figure -- I figure he would've let them know
20 that it was coerced. It was a coerced confession.

21 Q Hold on one second and listen to what I'm saying.

22 THE COURT REPORTER: Please speak -- please speak one
23 at a time.

24 THE APPLICANT: Yes, ma'am.

25 THE COURT REPORTER: I can only take one speaker at a

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1 time.

2 THE COURT: Right. And I want you to wait 'til she --

3 -

4 THE APPLICANT: Finish?

5 THE COURT: --- finishes. So you can take a moment to
6 make sure she's finished, and then speak.

7 THE APPLICANT: All right.

8 THE COURT: Okay.

9 Q Okay. At the time you're standing in front of the
10 judge and the State presents it -- what evidence they would
11 have presented in a trial, then your attorney is given a
12 opportunity to speak about your case, what your defense
13 was, right? So do you feel that your attorney should have
14 said at that point in time that the confession was coerced?

15 A Yes.

16 Q Okay. And you're saying here today that he did not
17 say that.

18 A No, he didn't.

19 Q Did you ask him why he didn't talk about the
20 confession?

21 A I didn't have time to talk to him after that.

22 Q No, no. I'm saying while you're standing in the
23 courtroom, at the time when the judge was getting ready to
24 sentence you, you're standing right beside him, right?

25 A Right.

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1 Q Okay. You didn't ask him to mention the confession?

2 A No.

3 Q Okay. So all of this happened in the context of the
4 representation and then at the plea?

5 A Right.

6 Q How has that, your attorney's representation,
7 prejudiced you -- as you're serving a 45 year sentence, how
8 has it prejudiced you outside of that sentence?

9 A Well, he didn't consult with me on all of the stuff
10 that I could've used in a trial.

11 Q Okay.

12 A If I -- if I'd known that I could've used the *Jackson*
13 *vs. Deno*, and you know, get the confession throwed [sic]
14 out, I would've went to trial.

15 Q Okay. So --

16 A I was not informed.

17 Q So in terms of discussing a trial and what are the
18 steps in a trial, did you have an opportunity to discuss
19 that with Mr. Li?

20 A No.

21 Q Okay. And so what relief are you seeking from the
22 Court here today?

23 A What relief I'm seeking? Well, either reduce the
24 charge to manslaughter or a trial.

25 Q You do realize that this Court -- this judge cannot

DIRECT EXAMINATION BY MS. MOODY - MICHAEL PETERSON

1 change your sentence?

2 A Okay.

3 Q And as she stated earlier in our motion, you recall
4 her stating that it is to discuss the conduct or the
5 performance of your attorney?

6 A Correct.

7 Q Okay. And that means that if your attorney's found
8 ineffective assistance of counsel, you would start over;
9 you understand that?

10 A Correct.

11 Q Okay. So you get that she would not be able to reduce
12 your -- your charge or your sentence.

13 A Right.

14 Q Okay. So what relief are you seeking?

15 A A trial.

16 Q So you would like for her to find your attorney
17 ineffective assistance of counsel --

18 A Right.

19 Q -- and grant you a new trial?

20 A Correct.

21 Q Okay. Is there anything else you wish to tell the
22 Court here today?

23 A No, I guess that's it.

24 Q You're sure?

25 A No. No, ma'am.

CROSS-EXAMINATION BY MS. KINARD - MICHAEL PETERSON

1 Q You're not sure?

2 A I said no.

3 Q So you have nothing else to tell the Court?

4 A Oh, yes. I wish that you'd grant me ineffective
5 assistance of counsel so I can get a new trial. That's all
6 I can do.

7 THE COURT: I understand. Okay.

8 MS. MOODY: No further questions for this witness.

9 Please answer any questions the State may have.

10 THE COURT: Ms. Kinard.

11 MS. KINARD: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MS. KINARD:

14 Q All right, Mr. Peterson, so in this case, did you give
15 a written -- written statement or did you do an interview
16 with the police?

17 A It was a interview with the police.

18 Q So was it video recorded?

19 A No, not video. Audio only.

20 Q Audio only?

21 A Yes.

22 Q During that time did they ask you if you wanted to
23 give up your right to an attorney?

24 A Yes, I believe they did.

25 Q Okay.

CROSS-EXAMINATION BY MS. KINARD - MICHAEL PETERSON

1 A I believe they did.

2 Q Was that before they questioned you?

3 A Excuse me?

4 Q They did that before they started questioning you?

5 A Yes, ma'am.

6 Q Okay. So everything you told the police was after
7 they gave you your Miranda warnings.

8 A Right.

9 Q Okay. And you -- you ended up with the police because
10 you walked in there and -- and said, "Hey, I think you're
11 looking for me." Is that correct?

12 A That's true.

13 Q Okay. So how do you feel that your confession was
14 coerced?

15 A Because they asked -- they asked me numerous times,
16 you know, do I understand. I -- I didn't even answer when
17 it came to -- when it came -- after they read me my rights.
18 I didn't even answer when they asked me if I understood my
19 rights. And then the next question they asked me is, "You
20 don't wanna talk to us?" I said, "No."

21 I continuously told them not -- I didn't want to talk
22 to them. Continuously. For ten pages, matter of fact,
23 that I told them that I did not wanna talk to them. They
24 kept badgering and badgering and badgering.

25 Q But you did ultimately tell them your story.

CROSS-EXAMINATION BY MS. KINARD - MICHAEL PETERSON

1 A Yeah.

2 Q Okay.

3 A After I see they would not let me go 'cause I asked to
4 go -- I asked to leave at least 15 times, and I told them
5 numerous times I didn't want to talk to them. So pursuant
6 to *Miranda vs. Arizona*, that's coercion.

7 Q Now, the story that you gave them was -- was long and
8 detailed; is that correct?

9 A Yes.

10 Q Okay. And -- and you argued with some of the facts
11 that were represented by the State during your plea; is
12 that correct?

13 A A couple of them.

14 Q Okay. But weren't you asked several times by Judge
15 Newman if you were guilty?

16 A Yes.

17 Q And didn't, every time, you admit that you were
18 guilty?

19 A Yeah, I did.

20 Q Did he specifically ask you, "Did you tie her up and
21 did you kill her?" And you said, "Yes, I did."

22 A Uh-huh.

23 Q Are you saying ---

24 THE COURT REPORTER: Is that a "yes"?

25 THE APPLICANT: Yes, ma'am.

CROSS-EXAMINATION BY MS. KINARD - MICHAEL PETERSON

1 Q Are you saying that that was not accurate when you
2 said that?

3 A Well, it was accurate at the time.

4 Q Can you elaborate a little bit please?

5 A Excuse me?

6 Q Can you elaborate a little bit?

7 A Yes, I did tell him that.

8 Q Okay. The State also presented information that two
9 informants came forward during their investigation; do you
10 recall that?

11 A I got one statement from an informant. That -- that
12 was it. I had got one statement.

13 Q Do you recall Ms. Garfield telling the Court that two
14 informants had come forward?

15 A I remember her saying that, but I didn't get the
16 statement from but one.

17 Q Okay.

18 MS. KINARD: And that's on page 16, for the Court's --
19 15, excuse me, for the Court's reference.

20 Q So despite all of this, you -- you did admit before
21 the judge that you were guilty; is that correct?

22 A At the time I did, yes.

23 Q Yes. And you knew that the cap of your sentence was
24 gonna be 45 years?

25 A Yeah. I know the cap was, yeah.

CROSS-EXAMINATION BY MS. KINARD - MICHAEL PETERSON

1 Q Okay. And did you talk with Mr. Li about what these
2 charges carried as far as time?

3 A No.

4 Q Okay. But you knew you were facing murder and
5 kidnaping charges.

6 A That's true.

7 Q Okay. Did they say on the record how much time this -
8 - these charges carried; do you recall?

9 A Did who say? Did the judge say?

10 Q Did the judge say?

11 A I'm not -- I can't recall that. I can't recall that.

12 Q Okay.

13 MS. KINARD: I -- I believe that -- that he did, on
14 page 4, for the Court's reference.

15 A Page 4?

16 Q Uh-huh. And furthermore, he stated on page 6, if
17 you'd like to look with me, lines 1 through 4, about your
18 right to appeal.

19 A Okay.

20 Q So would you agree with me by looking at the -- the
21 record that you were informed by the Court you had the
22 right to appeal?

23 A Yeah. I was informed by the Court, but not by my
24 lawyer.

25 Q Okay. Now, you talked a little bit about the -- the

CROSS-EXAMINATION BY MS. KINARD - MICHAEL PETERSON

1 drug charge that was somebody else's.

2 A Yes.

3 Q Do you remember what your attorney did say about that?

4 A "Yes, Your Honor, we" -- this -- well, these was his
5 words, "Yes, Your Honor. Mr. Peterson said that's not
6 him."

7 Q Those were his words?

8 A I believe that what it was. Because it not me.

9 Q Okay. Well, here's -- here's why I'm asking because
10 in the scheme of things, you had a pretty lengthy record,
11 didn't you?

12 A Yes.

13 Q You did? Okay. I believe that takes up about two
14 pages worth of the transcript listing your record.

15 And Judge Newman actually talks about this charge, and
16 you said you were actually in jail on another charge when
17 that happened; is that correct?

18 A That's right. Yes, ma'am.

19 Q Okay. All right. So Ms. Moody asked you about
20 preparation for this case with Mr. Li, and you said you
21 discussed going to trial. Did y'all develop any defenses?

22 A I was -- I was trying -- I was sending him information
23 on heat of passion defense.

24 Q Heat of passion defense.

25 A Yes.

CROSS-EXAMINATION BY MS. KINARD - MICHAEL PETERSON

1 Q Okay.

2 A As far as being provoked, someone spitting in your
3 face, which is in South Carolina Criminal Law, I think it's
4 page 211, where it says that if someone spit in your face
5 or pull you around by the ear, that's provoking you as far
6 as a manslaughter charge.

7 Q Did y'all talk about whether that would be successful
8 or not?

9 A No. I -- I sent that to him 'cause I had found it in
10 a law book inside the County jail library, and I sent it to
11 him -- the information to him. I didn't hear no more about
12 it after that.

13 Q So your intent would've been to -- to plead not
14 guilty, maintain your innocence, and go to trial on a heat
15 of passion defense.

16 A Ma'am?

17 Q You wanted to maintain your innocence by pleading not
18 guilty and go to trial on a heat of passion defense.

19 A Yes.

20 Q Okay. And did you discuss -- well, no, you didn't. I
21 withdraw that.

22 Now, when you spoke with Mr. Li, did he talk to you
23 about your -- what he thought your chances for success at
24 trial would have been?

25 A No.

CROSS-EXAMINATION BY MS. KINARD - MICHAEL PETERSON

1 Q Did you ever really tell him that you wanted to go to
2 trial?

3 A Yes.

4 Q Can you tell me a little bit more about the forensic
5 evidence, about your clothing and the knife allegedly used
6 in the homicide.

7 A Well, I was waiting on the results. I was waiting on
8 the results from the clothing and the knife.

9 Q Okay. So you ---

10 A I was waiting on that, you know, in order to make a
11 decision on whether I wanted to plea or go to trial, but
12 they never did send it. Matter of fact, I don't have the
13 results -- I don't have the results in paperwork of the
14 knife yet.

15 Q Okay. Did Mr. Li help you work out, not a deal, but
16 something to help you reduce your time?

17 A Yeah.

18 Q And did that involve providing information about other
19 defendants?

20 A Yes.

21 Q All right. Can you describe that a little bit for me?

22 A Well, I told him about a situation where the lady was
23 killed in a bakery on -- what's that -- Beltline Boulevard.

24 Q And do you recall if the solicitor mentioned taking
25 that into account when ---

CROSS-EXAMINATION BY MS. KINARD - MICHAEL PETERSON

1 A No, she didn't.

2 Q --- offering you this plea deal?

3 A She didn't say nothing actually. I didn't even speak
4 to the solicitor.

5 MS. KINARD: For the Court's reference, I'd point to
6 page 19 where the solicitor says (as read): "The State's
7 recommending a cap for a couple of reasons, including that
8 he provided information ---

9 A Oh. Yeah, yeah. Okay. That. Yeah.

10 Q Did you ever talk to Mr. Li about asking for more
11 consideration from the Court if you could provide help
12 after your plea?

13 A Yes.

14 Q Okay. So y'all talked about the possibility of what
15 we call a "downward departure motion" if you could help the
16 State more?

17 A Yeah.

18 Q Okay. So that was something you had considered.

19 A I wrote -- I wrote that in a letter actually. I wrote
20 it in a letter.

21 Q All right.

22 A We didn't talk about it. I wrote it in a letter.

23 Q You wrote it in a letter.

24 A Yes.

25 Q Okay. So when you went to this plea, you understood

CROSS-EXAMINATION BY MS. KINARD - MICHAEL PETERSON

1 that the cap of time, you were gonna get was 45 years.

2 A Yeah.

3 Q And despite all that, you went forward with this plea.

4 A (No audible response.)

5 Q Please answer verbally.

6 A Yes, ma'am.

7 Q And you said several times to Judge Newman, "Yes, I
8 did it."

9 A That's correct.

10 Q Okay. And though you disagreed with some of the --
11 the facts that the State portrayed, which is reflected in
12 the record, you continued to -- to admit your guilt.

13 A Right.

14 Q Okay. I have no further questions. Thank you.

15 THE COURT: Ms. Moody, anything else?

16 MS. MOODY: No.

17 THE COURT: Okay. You can go sit back next to your
18 lawyer.

19 THE WITNESS: All right.

20 (The witness complies.)

21 THE COURT: Any additional witnesses, Ms. Moody?

22 MS. MOODY: No.

23 THE COURT: Okay. Ms. Kinard.

24 MS. KINARD: Thank you, Your Honor. The State calls
25 Victor Li.

DIRECT EXAMINATION BY MS. KINARD - VICTOR K. LI

1 VICTOR LI, having been first duly
2 sworn, testifies as follows:

3 THE BAILIFF: State your full name for the record, and
4 spell it for me.

5 THE WITNESS: Victor K. Li. V-i-c-t-o-r, K period,
6 space L-i

7 DIRECT EXAMINATION

8 BY MS. KINARD:

9 Q Good morning, Mr. Li. Thank you for being here.

10 A Good morning.

11 Q Did you represent Michael Peterson?

12 A Yes, ma'am.

13 Q How did you come to do that?

14 A I was appointed.

15 Q Was this a conflict appointment?

16 A I believe so.

17 Q So you were aware that he was previously represented
18 by attorneys in the Public Defenders Office?

19 A Yes, ma'am.

20 Q Did you have the benefit of their files?

21 A I did not.

22 Q Is that typical; do you know?

23 A Sometimes the Public Defender will give me their file,
24 sometimes they won't. It just -- it's -- it's pretty
25 random.

DIRECT EXAMINATION BY MS. KINARD - VICTOR K. LI

1 Q Did you attempt to get their files?

2 A No. I filed a discovery request, and the Solicitor's
3 Office provided me with their file. I usually like to get
4 it from the Solicitor's Office themselves because if they
5 don't give me something, then I can hold them accountable
6 for it rather than getting it from a defense attorney; and
7 then if they forget something, I can't really hold the
8 Solicitor's Office accountable for it.

9 Q Okay. Do you recall approximately how many times you
10 met with Mr. Peterson?

11 A I don't know off hand. It was definitely more than
12 four. I would've had this case -- this case was running on
13 for a while. But I -- I -- I felt like we had a -- I felt
14 like we had a good -- good relationship and I felt like we
15 -- we met on plenty -- plenty of -- plenty of occasions.
16 More than 4, maybe less than 20.

17 Q Would you agree with his recollection that you
18 represented him I think it was 18 to 20 months or so?

19 A Probably.

20 Q Did you review all of the discovery that you obtained
21 with Mr. Peterson?

22 A A lot of it -- the most important part of it was on
23 video, and we could not get the -- it was more difficult to
24 get the audio in to -- to be able to -- be able to play it
25 for Mr. Peterson. Throughout our conversation --

DIRECT EXAMINATION BY MS. KINARD - VICTOR K. LI

1 throughout our conversations and -- and our strategies, it
2 -- or discussion of -- of strategy, it was never mentioned
3 to -- to -- to me that the confession was coerced or -- or
4 anything like that.

5 You know, and I -- and I listened to the tape. Mr.
6 Peterson does ask to leave a couple times, but was given a
7 chance to stop, but then he didn't stop. And as he kept
8 answering more questions, he would say things like -- on
9 the video, it would say, like, "Well, I wanna stop. I want
10 my attorney." And then the people would leave and then
11 they'd make a offhand, you know, kind of like a law
12 enforcement strategy, and just -- you know, they would --
13 they would say something, and then he would start talking
14 again.

15 And so there was a lot of voluntary talking, even
16 though after he stopped -- I mean, he asked to stop, but he
17 just kept talking, you know, about the -- about -- about
18 the incident.

19 So look, the audio for the -- for the tape, I didn't
20 bring that in to Mr. Peterson. I should've brought that in
21 to Mr. Peterson, but that was never really in -- that was
22 never really in question because our only defense going in
23 was a heat of passion defense and we talked about that.

24 He had mentioned that his -- his -- his son, the --
25 his stepson had slept with his own mother and that he

DIRECT EXAMINATION BY MS. KINARD - VICTOR K. LI

1 walked in on them, and that there was a lot of provocation.
2 He gave me a lot of examples of -- he did tell me about
3 spitting in the face and the disrespect from the son and
4 from the mother, the victim -- the -- well, the alleged
5 victim.

6 The -- you know, he -- he -- he -- we mentioned a lot
7 about -- we talked at length about that kind of stuff, and
8 so we were preparing for a heat of passion. If we were
9 gonna go to trial, it would've -- it would've been only a
10 heat of passion defense. Suppressing the video was never
11 really in our -- well, one, it was never really brought to
12 my attention that that was something he wanted to do or
13 that I saw anything was plausible to defend that.

14 But that's kind of a conflicting theory because if he
15 -- if we went -- if we went with a heat of passion defense
16 -- if we went with a heat of passion defense, the
17 confession didn't matter because he'd admitted he had -- he
18 was the actor in the situation, right? And so if you fight
19 to get -- even if we had a time machine and go back and got
20 the time -- got the -- the confession suppressed, that
21 doesn't necessarily help him with his heat of passion
22 defense because then we would've been saying, well, he
23 wasn't the actor who actually did the -- the murder,
24 justified or not.

25 So we focused only on if -- if we went to trial -- and

DIRECT EXAMINATION BY MS. KINARD - VICTOR K. LI

1 it was a very low percentage chance that we went to trial -
2 - but if we'd gone to trial, it would've only been on a
3 heat of passion defense because he never told me about the
4 challenging of the -- the confession and he -- I mean, of
5 the -- of the -- of the audio tape of the interview that he
6 did with CPD. And he never really questioned any of the
7 events that happened.

8 So that leads me to the -- that leads me to the -- the
9 DNA and the -- and the forensic evidence. Because I did
10 tell Mr. Peterson -- when the DNA result from the knife
11 came back negative, I went and told Mr. Peterson, I said,
12 "Hey, look. We got, you know, the -- the results came back
13 and -- and it's turned out not to be you. You were right.
14 It turned out not to be you." Because he had told me from
15 the beginning, he said, "Check the knife, check the knife.
16 It's not -- it's not the one that was -- that was used."

17 And so Ms. Garfield gave me the results for it, and --
18 gave me the results for it, and lo and behold, he was
19 right. It was not the result -- I mean, it was not -- it
20 did not match the murder weapon.

21 But that doesn't matter because whether that was the
22 murder weapon or not, his defense that he wanted me to push
23 was a heat of passion defense. So a heat of passion
24 defense, it doesn't matter if it was that knife or not. I
25 mean, it probably was another knife. According to his own

DIRECT EXAMINATION BY MS. KINARD - VICTOR K. LI

1 -- according to our own theory, it would've had to have
2 been another -- another knife. So that really didn't
3 factor in at all.

4 The clothes -- if we went along with the heat of
5 passion defense, none of the DNA or none of the forensic
6 stuff mattered. It was only whether or not this fit into a
7 heat of passion defense. And so -- go ahead, I'm sorry.

8 Q Okay. Sorry. You said a lot. So I just wanna unpack
9 it a little bit.

10 A Sure.

11 Q The only defense he found and you found would've been
12 heat of passion.

13 A That's right.

14 Q Because he never denied committing these actions.

15 A That's right.

16 Q He always said, "I tied her up, I killed her."

17 A Well, it doesn't matter what he says to me. I don't --
18 -- I'm gonna fight for him anyway. It matters what they --
19 he never actually asked me to -- to look into the tape --
20 to look into the interview to explore suppression issues,
21 and it wasn't his job -- obviously, it wasn't his job to
22 that, but I looked at the suppression -- I looked at the
23 video. I didn't see anything that was qualified. And if
24 something did qualify to be suppressed or a motion to be
25 filed to suppress the -- the -- the -- the -- the audio

DIRECT EXAMINATION BY MS. KINARD - VICTOR K. LI

1 recording of it, then I clearly would be in the wrong if
2 there was something, but I didn't see -- in my opinion, I
3 didn't see anything that was a -- I guess, a -- you know, a
4 useful or a probable challenge to the suppression of the
5 audio.

6 Q Okay. And you mentioned in the video/audio, whichever
7 we're looking at -- because they are of the same interview,
8 correct?

9 A Yes.

10 Q Okay.

11 A I believe it was just an audio.

12 Q It was just an audio. Okay. You stated that he would
13 keep talking, would say, "No, I want a lawyer," and then
14 start talking again.

15 A Yeah. It was -- he had a lot to say that morning. I
16 think he had been up all night, and I don't know if he was
17 in the -- you know, and -- and maybe I should've explored
18 those possibilities. You know, he -- he might be right. I
19 mean, maybe I should've explored the fact that he was under
20 duress, or you know, that he was not in the right frame of
21 mind or -- but Miranda rights were read to him. He seemed
22 very cogent in the -- in the interview.

23 But maybe I should've explored those, but those are
24 things that we never discussed because our defense was --
25 if anything, was always going to be heat of passion.

DIRECT EXAMINATION BY MS. KINARD - VICTOR K. LI

1 You know, he would tell me all these incidents and all
2 these things about his stepson and how he disrespected him;
3 how he pulled a gun out on him one time, and how he caught
4 him in bed with his -- his -- his -- his own mother, and
5 that they were just pushing him and pushing him and -- you
6 know, so he -- we did go into detail about that.

7 Q Okay. So as many times as you met and talked, he
8 never expressed any concern about the validity of the
9 confession.

10 A That's right. That's right. That's right. There's -
11 - there was never any hint towards, like, looking more into
12 that direction.

13 Q And as you said, when you listened to it, you heard no
14 reason to explore it to suppress it, whether it was state
15 of mind or duress or anything else.

16 A And then at that point -- correct. To answer your
17 question, yes. I did not see anything through my legal
18 training that I -- that would -- would be a meaningful
19 challenge, you know, to -- to a suppression.

20 He -- he walked in to them -- he walked in to CP -- he
21 walked into the -- to the headquarters voluntarily. It was
22 not -- they didn't drag him in there. I'm not even sure he
23 was in handcuffs. I'm not sure. I don't -- I -- I
24 couldn't tell, but I don't know if he was in -- under
25 constraints.

DIRECT EXAMINATION BY MS. KINARD - VICTOR K. LI

1 So he didn't seem like that was a plausible -- and in
2 -- in reality, it didn't matter. You know, it didn't
3 matter because if we suppressed it, it would've been more
4 lending towards the theory of he didn't do it. It -- it
5 was -- you know, it wasn't him that did it. But that was
6 never the theory that we were going under.

7 Q All right. To move on to some of his other
8 allegations, he alleged that you (as read): "Didn't
9 investigate all facts and circumstances determining the
10 existence of a plausible line of defense." Do you feel
11 that, other than heat of passion, there was anything you
12 could've found? Did -- did you fully develop the case
13 legally in order to make that determination?

14 A We -- we -- we -- we talked. We talked at length
15 about what -- you know, what we wanted to do. And it was
16 either gonna be that. I gave him my opinion as to how -- I
17 gave him my opinion as to what I think our chances were of
18 winning the heat of passion, and eventually we -- we swayed
19 from that and moved to, you know, trying to find a good
20 plea offer, try to find some -- get some sort of number,
21 you know, the -- I explained to him that the heat of
22 passion, if someone spits in your face or if you actually
23 caught somebody in bed with your wife, that if at that
24 moment you killed them, then yes, it leads more to a heat
25 of passion defense. Like if I spit in your face and

DIRECT EXAMINATION BY MS. KINARD - VICTOR K. LI

1 immediately you come and stab me in the face, that's more
2 of a heat of passion defense if it's right then and there.

3 But there was a time element to this case where there
4 was preparation done, there was staying up all night, there
5 was drinking involved, I believe, although we could've
6 explored that. But there was definitely a long period of
7 time in planning that went into the act or the alleged act
8 that would've made it more difficult for the heat of
9 passion defense to work. There was -- the heat of passion
10 -- the -- the time element threw a wrench in the heat of
11 passion defense.

12 So yes, we certainly developed that. And so in terms
13 of developing self-defense or in terms of developing, you
14 know, wrong -- wrongful identity, we really didn't explore
15 any of those. So he's correct. We didn't explore -- no,
16 we didn't explore, you know, other possibilities or
17 necessity or duress. You know, we didn't explore those
18 really.

19 Q And you didn't explore them because, based on the
20 information in your conversations, there was nothing to
21 lead you towards those defenses.

22 A That's correct.

23 Q So you saw no -- no reasonable basis to begin to
24 explore them.

25 A That's right.

DIRECT EXAMINATION BY MS. KINARD - VICTOR K. LI

1 Q Okay. Briefly going over the forensic evidence, you
2 said that you did get the DNA back on the knife, and there
3 was no DNA of his on the knife; is that correct?

4 A There was no DNA of his or -- and there was no DNA of
5 the -- he had told me from the beginning -- he had said,
6 "Look into the knife. That's the wrong knife."

7 And so I went to Ms. Garfield. I said, "Look, get the
8 results for the knife." The knife came back, he was right
9 on the knife. And I came -- I remember I -- I didn't have
10 the -- the paperwork -- I mean, the paperwork for a DNA
11 result is misleading anyway, but I went and talked to him
12 at the jail about a day or two after the results came in
13 and I told him, "Hey, you were right. The DNA didn't match
14 the knife." It just didn't change anything.

15 Q Was there a fingerprint lifted from that knife,
16 though?

17 A I don't remember.

18 Q I think the record will reflect that there was. And I
19 can find that page ...

20 A The knife -- the knife -- the results of the knife
21 came back good for us if our theory was it wasn't him. It
22 didn't help us if the theory was: "I killed her in the
23 heat of passion."

24 Q Okay. That's on page 16. I'm not necessarily sure
25 it's relevant to the line of questioning.

DIRECT EXAMINATION BY MS. KINARD - VICTOR K. LI

1 Let's go into the alleged prior drug conviction. So
2 really the only statement you make about that is you don't
3 dispute that Mr. Peterson has a lengthy record. That's
4 lines 12 and 13 on page 31.

5 Can you describe your memory of how this came up at
6 the plea and your reaction and how you dealt with it.

7 A Sure. As -- as best that I -- I can recall, and --
8 and -- and from reading the transcript, I believe Ms.
9 Garfield was reading out, as the solicitors do, you know,
10 prior record. And then Mr. Peterson tapped me on the
11 shoulder and said, "That's not me. That wasn't -- that
12 wasn't me."

13 You know, and so I -- I either went over to Dolly or -
14 - or I -- I said something to the -- the judge and said,
15 you know, "My -- my -- Your Honor, my -- my client disputes
16 that -- that charge."

17 And I think we got into it -- into the details of it a
18 little bit, but the end result was this: The end result
19 was Mr. Peterson said, "It couldn't have been me because I
20 was in jail for an assault and battery -- for an assault
21 and battery." And I think Judge Newman said something to
22 the effect of, "Oh, okay. Well, it doesn't really change
23 anything because my point was you had just got out of jail
24 and then you committed, you know, more -- allegedly
25 committed more crimes."

DIRECT EXAMINATION BY MS. KINARD - VICTOR K. LI

1 So we straightened it out. This wasn't a drug case.
2 The allegations of a murder was already -- were already
3 horrific and horrendous enough. I didn't think Judge
4 Newman took that into account. You know, maybe he did.
5 Maybe I should've made more of a fuss about it. I don't
6 know. But it just -- at that point, you know, the Court
7 was definitely aware of it.

8 And I don't think -- I don't actually think -- I don't
9 remember Ms. Garfield actually holding her ground on it.
10 She said what she said about it being the same name and
11 birth date and all that, but then once Mr. Peterson
12 challenged it again, I don't think she put up a big fuss
13 about it anyway. So I -- I could be wrong on that.

14 Q No. I believe the record reflects that. Bottom of
15 page 31 into 32.

16 A What did she say on that?

17 Q She said (as read): "I tried ---

18 MS. MOODY: Objection.

19 THE COURT: Sustained. It speaks for itself.

20 Q It speaks for itself and --

21 THE COURT: And you can't ask questions.

22 MS. KINARD: Yeah. That's true. I got wrapped up.
23 Sorry.

24 Q But yes. You're -- you're correct, and the record
25 does speak for that from the bottom of page 31 into 32.

DIRECT EXAMINATION BY MS. KINARD - VICTOR K. LI

1 Mr. Peterson also alleged that you did not advise him
2 of his right to appeal the guilty plea. Do you have any
3 recollection of discussing that with him?

4 A No, he's correct on that.

5 Q Okay. However, during the guilty plea, was he advised
6 by Judge Newman that he could appeal?

7 A I believe so.

8 Q Did you see any reason, from your legal professional
9 standpoint, why he would want to appeal?

10 A Yes, from a legal standpoint? Yeah, I do. Because he
11 just got 45 years and might as -- might as well.

12 Q Do you think he would've been successful in an appeal?

13 A No, ma'am.

14 Q His last allegation is about due -- due process
15 violation, but it refers to the allegedly coerced
16 confession and prior drug conviction. Do you think that
17 the way those came up during the plea in any way deprived
18 him of his right to due process?

19 A The -- the drug --- the erroneous ---

20 Q The ---

21 A --- drug allegation.

22 Q The erroneous drug conviction --

23 A And then ---

24 Q -- and the allegedly coerced confession?

25 A I don't think the drug conviction mattered to Judge

DIRECT EXAMINATION BY MS. KINARD - VICTOR K. LI

1 Newman at that time. And in terms of the confession, I
2 think if he were to get a new trial and somebody did see
3 something in there that I did not see, then yeah, I think
4 he would've been prejudiced. But the way that our
5 conversation and our legal battle plan was laid out, it did
6 not matter in terms of our plan as to how it went.

7 So yes, if -- if there was something in the video that
8 I did not catch or that I did not see, and he actually had
9 a right to -- to challenge it, and another attorney were to
10 find that and -- and challenge that, then maybe his due
11 process rights were violated in that case.

12 But from my standpoint, I did not see anything. In my
13 legal opinion, I did not see anything. And in fact, even
14 if I did see something, for this case and for our purposes,
15 it wouldn't have mattered because that was never brought up
16 as a part of our defense.

17 Our defense was heat of passion defense from the
18 beginning. And then once we explained to him the heat of
19 passion defense had low probability of winning, then it
20 was, "Get me the lowest number possible." And then that's
21 how we started into the other -- that's when we started
22 looking into the other avenues of trying to get either a
23 cap or trying to limit exposure or try to get as -- the
24 lowest time possible.

25 Q Okay. And those are my -- my last questions for you

DIRECT EXAMINATION BY MS. KINARD - VICTOR K. LI

1 would be about the plea negotiation. Was -- were there any
2 offers other than this 45-year cap?

3 A No. There -- she was coming up with some numbers and
4 maybe in the beginning she had -- she had talked about some
5 -- I don't specifically remember 35, I'm not saying that's
6 wrong. I'm not saying that -- I'm not saying that Mr.
7 Peterson is incorrect in remembering that she made an
8 offer, but whatever offer she makes, I always tell the --
9 tell the clients. So he may be correct on that.

10 But towards the end, towards the final months when we
11 realized that we weren't going to go to trial, then my goal
12 was either try to talk her into -- talk her into, you know,
13 a manslaughter charge or voluntary -- you know, voluntary
14 charge or try to get -- negotiate some number; or at the
15 very end, try to negotiate some -- some limit to exposure.
16 You know, it was 30 to life -- 30 to life, you know, charge
17 and we try to cut it down to as -- as much as possible.

18 I mean, 45 may not have been meaningful, but it was
19 the best that we could get and he did help himself in -- in
20 doing the things that he did to get -- to allow me to have
21 some bargaining chip with -- with Ms. -- Ms. Garfield.

22 But yeah, it -- it ended up being the best we could
23 get. We weren't going to go to trial. Do I think it was
24 great? I don't think it was great. I don't think it was a
25 great offer, but we limited it from life to 45. You know,

DIRECT EXAMINATION BY MS. KINARD - VICTOR K. LI

1 it is what it is.

2 But you know, that's -- that's -- that's what the plea
3 negotiation -- it was the -- the -- the details were -- the
4 details were horrendous, the victims were upset. She
5 didn't really have -- she didn't have anything to lose by
6 going to murder. She was going to get a conviction. She
7 didn't have -- her case was not weak enough to where she
8 would have to drop it to manslaughter.

9 There was a confession that was pretty clear on audio,
10 and the heat of passion defense was gonna be weak at best
11 even though there was provocation. You know, there was
12 definitely provocation, but it was nothing at that moment.

13 Q Those are all the questions I have. Is there anything
14 else you'd like to tell the Court about your representation
15 of Mr. Peterson?

16 A No. I -- I -- I do not.

17 Q Thank you. Please answer any questions Ms. Moody may
18 have.

19 A Sure.

20 THE COURT: Ms. Moody.

21 MS. MOODY: Yes, ma'am?

22 THE COURT: Oh. I'm sorry. Your witness.

23 MS. MOODY: Thank you. May it please the Court?

24 CROSS-EXAMINATION

25 BY MS. MOODY:

CROSS-EXAMINATION BY MS. MOODY - VICTOR K. LI

1 Q Good after -- well, good morning, Mr. Li.

2 A Good morning.

3 Q So you talked about the discovery, all of the issues
4 that might have been present, but basically it seems that
5 you had a strategy.

6 A I got -- I developed my strategy from my -- my talks
7 with Mr. Peterson. He was the one that told me about the
8 history 'cause he was the one that was telling me about the
9 history of him and -- and the victim and the son,
10 specifically the son of the -- the victim.

11 So he -- he was giving me this background, and we --
12 he guided me towards the -- the heat of passion defense.
13 He never steered me towards "It wasn't me" defense.

14 Q Okay. So when you -- okay. So basically, he gave you
15 facts of what happened with him and then you suggested the
16 heat of passion or he suggested the heat of passion.

17 A I think he -- he was knowledgeable enough to know
18 about the heat of passion, so we talked about it together.

19 Q Okay. And so ---

20 A I didn't have to explain that to him. He kind of
21 already was hinting at -- he was using some words that led
22 me -- led me to believe that he understood that a
23 manslaughter -- or a voluntary charge was a better charge
24 than -- than murder.

25 Q Okay. And so one other clarification. The son that

CROSS-EXAMINATION BY MS. MOODY - VICTOR K. LI

1 you speak of, you're talking about the victim's son, but
2 his stepson?

3 A That's right, that's right.

4 Q Okay. All right. So when you met with him, you
5 indicated that you were not able to get the audio in of the
6 interview from the confession.

7 A I don't know if I -- I mentioned that to him right at
8 the beginning. It was just never -- that confession --
9 although it was a crucial part in the -- in the -- in the
10 case, it was never a crucial part in our conversations. It
11 was always just like, "Well, I did this and I -- and I --
12 and I -- and I gave a confession and I did this." But it
13 was never like, "I wanna hear it," or "I wanna see the --
14 the details of it." There was -- there was never any,
15 like, meaningful questioning of -- of that part of it.
16 Even though it was a crucial part of the case, just our
17 conversations, there was never like, "We should go into
18 this -- we should listen into detail of this tape," or "We
19 should, you know, see if we can get this tape thrown out."
20 You know, there was never anything like that.

21 So yeah, I -- I -- I told him -- at some point I told
22 him that we couldn't get it in because there was audio, but
23 it was never -- that was never a big deal.

24 Q Okay. So he never complained of any ill treatment
25 during the confession, period.

CROSS-EXAMINATION BY MS. MOODY - VICTOR K. LI

1 A You mean during -- on the tape?

2 Q Right -- well, not -- just forget the tape.

3 A Okay.

4 Q He -- he never said ---

5 A Never.

6 Q --- to you that, "I was coerced"?

7 A Never.

8 Q Is that what you're saying?

9 A Never. Because ---

10 Q Okay. So ---

11 A Because that -- right, because he's never said that
12 because it was always, "I did it, but it was in the heat of
13 passion."

14 Q Okay. All right. So when you say all from
15 conversations with him you developed your strategy, it was
16 -- was it an agreement as to that being the strategy?

17 A I believe so. I mean, there was never any other
18 strategy suggested in -- in the beginning.

19 Q Well, I -- I know he's not suggesting a strategy. I'm
20 saying you -- you didn't have any objection coming from ---

21 A Right.

22 Q --- Mr. Peterson ---

23 A Right.

24 Q --- that this -- we shouldn't go this way.

25 A Right.

CROSS-EXAMINATION BY MS. MOODY - VICTOR K. LI

1 Q Okay. You indicated that he walked into the
2 headquarters. Did he actually walk into the headquarters?
3 How did that exchange occur where he gave -- he came in
4 contact with law enforcement and gave a confession?

5 A I think he literally walked in to -- to headquarters
6 and -- and said, "You're lookin' for -- for me." I believe
7 that's ---

8 Q Okay.

9 A The case was awhile ago, but I don't -- I don't
10 remember there being a big kerfuffle about -- about how he
11 was brought in or if he was dragged in or something like
12 that.

13 Q Okay.

14 A Yeah.

15 Q All right. And so you indicated in your testimony
16 with the State that the goal was for manslaughter. Did you
17 ask for manslaughter at the beginning when you started
18 talking about a plea?

19 A With Ms. --

20 Q Garfield.

21 A Garfield?

22 Q Yes.

23 A I'm -- I'm sure I did.

24 Q Okay. And did she just say "no" to manslaughter?

25 A Basically, yeah.

CROSS-EXAMINATION BY MS. MOODY - VICTOR K. LI

1 Q Okay. And you indicated that she didn't have a weak
2 case?

3 A I don't -- in -- in my legal opinion, I did not think
4 that she had a weak -- a weak case.

5 Q All right. And so as to the 45 years for a plea, did
6 that occur on the day of the plea, the offer? Did the
7 offer come on the day of the -- the cap of 45, did ---

8 A I don't think so. I think -- I think that was relayed
9 -- that was relayed to Mr. Peterson prior to taking the
10 plea.

11 Q Okay. Let's talk about how you prepare a person for a
12 plea.

13 A Right.

14 Q When you -- when you decide a person's gonna plea and
15 there's a offer from the State, whether it's negotiated,
16 recommendation ---

17 A Right.

18 Q --- straight-up plea, is it your -- what is your
19 process in preparing the client for a plea?

20 A I get -- I get the final offer from -- from the
21 solicitor. If it's -- if they're on bond, I usually call
22 them to come to my office and we sit down and talk. If
23 they're incarcerated, I go to the jail and explain to them
24 what the -- the best plea I could get, you know, for them
25 is. You know, I -- I don't think I ever try to sell it as.

CROSS-EXAMINATION BY MS. MOODY - VICTOR K. LI

1 this is a super, great plea. You know, that it wasn't --
2 it wasn't something I was jumping up and down for, but it
3 was some limit to exposure and so it's better than life.
4 It's some limit to exposure.

5 I don't -- I -- I know -- I know for a fact 'cause I
6 know myself, I would not have been happy about this plea.
7 I would not have been jumping up and down and saying, "Hey,
8 look, we got a great offer", okay? I just think it was the
9 best offer we could get with the case that she had and the
10 details and the victims, and you know -- and basically part
11 of it is the history. You know, like, it clearly -- they
12 had history of -- 'cause there are police reports and all
13 that stuff. So they had history of it being Mr. Peterson.
14 And so the --

15 Q Well, let me stop you.

16 A No, I'm sorry. Go ahead.

17 Q When you say, "the history of it being Mr. Peterson,"
18 what do you mean?

19 A Well, there's history as to bad blood between Mr.
20 Peterson and the son, Mr. Peterson and -- and the -- and
21 the victim. There were police reports, there were details
22 of provocation on both sides, you know, so it would've led
23 towards a motive. And he -- the -- what he was saying on
24 the -- what Mr. Peterson was saying on the stand, the
25 things that he thought could have helped him, those were

CROSS-EXAMINATION BY MS. MOODY - VICTOR K. LI

1 actually things that were bad for him because those are
2 actually things that showed a history of negative feelings
3 towards each other from the -- you know, from the past.

4 But that being the point, your question was how do I
5 generally prepare somebody. I go down to the jail, I tell
6 them the offer. I say, "Hey, look, you know, this is the
7 best offer we can get." You know, it's not -- for him I
8 know I would've said, "It's not great. But unless you
9 wanna go to trial on it, we can -- we can go to trial on it
10 if you want to on the heat of passion. I think it's a weak
11 -- I think it's a weak case because of the time element
12 because all these things that you're telling me that are
13 provocations, those didn't happen the day of, those all
14 happened, you know, days and weeks prior, you know, to --
15 to the incident."

16 And there were details that he had time to -- to -- to
17 plan and to -- to set things -- set things up. Basically,
18 he -- there was some evidence indicating that he camped
19 out, you know, waiting for something. So -- and I -- I
20 don't -- I don't wanna divulge any information I don't need
21 to divulge, but we made a conscious decision to take the
22 plea together.

23 Q Okay.

24 A Knowing it wasn't a great plea.

25 Q Okay.

1 MS. MOODY: I think that's all that I have, Your
2 Honor. No further questions for this witness.

3 THE COURT: Anything else, Ms. Kinard?

4 MS. KINARD: Just a couple.

5 REDIRECT EXAMINATION

6 BY MS. KINARD:

7 Q Based on your last statement, do you believe that it
8 was in Mr. Peterson's best interest to take this plea?

9 A I think it was his decision. I think it was --
10 strategically you can -- strategically you can look at it
11 in different ways. I mean, if you knew he was gonna get 45
12 and being his age, maybe he should've -- we should've
13 rolled the dice on -- on pleading -- I mean, on taking it
14 to trial, but it wasn't in his bad interest. It -- it
15 wasn't in his negative interest to take the plea.

16 But in retrospect, was it in his best interest to take
17 the plea? I think he made a conscious decision to take it
18 rather than risking life and getting a number. But if
19 you're under the impression that 45 is the same thing as
20 life, then maybe he should -- maybe, you know, we should've
21 rolled the dice and -- and to put it -- put it up against
22 12 jurors.

23 But no. He definitely made an informed decision and
24 he made a decision thinking that it was the best because we
25 did have the opportunity to get 30. And we did -- we

REDIRECT EXAMINATION BY MS. KINARD - VICTOR LI

1 legitimately had it because we had mitigating circumstances
2 and we had the fact that he cooperated with the Solicitor's
3 Office.

4 So my goal was to limit the exposure, give him some
5 leverage during mitigation so that we could try to get him
6 the 30. My whole goal was for 30. You know, that was my
7 whole goal at that point to get the plea, was to -- to try
8 to get it to 30, and it -- it didn't work.

9 But yes, to answer your question, I think at that time
10 he made a conscious decision that it was in his own best
11 interest to take the plea and it was knowledgeable and it
12 was informed.

13 Q Thank you very much.

14 MS. KINARD: I have no further questions.

15 THE COURT: All right. Thank you, Mr. Li.

16 (The witness exits the stand.)

17 MS. KINARD: Your Honor, Mr. Li's still under my
18 subpoena, and I ask that he be excused.

19 THE COURT: Any objection?

20 MS. MOODY: No objection.

21 THE COURT: You're free to go.

22 Any additional witnesses from the State?

23 MS. KINARD: No, Your Honor. No additional witnesses.

24 THE COURT: Let me hear argument, Ms. Moody.

25 MS. MOODY: Well, Your Honor, based off of the

1 testimony from my client, he indicates that he felt that
2 his attorney, regardless of a heat of passion defense,
3 should have looked into the confession and challenged the
4 State on the confession.

5 I didn't hear any testimony coming from Mr. Li that
6 states that he discussed the confession with the State as
7 to how it occurred. I think he admitted that, in his -- in
8 his own testimony, that he did not pay attention to that on
9 the audio, but he did have audio for the confession.

10 As to the investigation, there was no specific
11 statement as to the investigation. He talked to my client
12 and discussed what happened. It appears that he discussed
13 with my client the nature of the relationship between the
14 victim and another family member. I'm not sure whether
15 there was any other investigation that was taken upon by
16 Mr. Li.

17 I would point out that Mr. Li -- I -- I understand
18 that he got the file from the Solicitor's Office because he
19 wanted to hold them responsible for any missing information
20 from the discovery such as confessions, DNA results, and
21 what have you; however, I do think that when he takes over
22 a conflict file and it has been out there for some time,
23 that there possibly is some investigation that would have
24 occurred on behalf of the previous two attorneys which one
25 was Ms. Gibbes and the second was Mr. ---

1 THE APPLICANT: Sawyer.

2 MS. Moody: Mr. Sawyer. His name keeps escaping me.

3 But Mr. Sawyer represented my client, and so I think
4 that in itself, Your Honor, goes to lack of investigation
5 because there were reports that were obtained on behalf of
6 my client that talk to family members to corroborate any
7 theories -- that could've gone further to corroborate any
8 theory that -- as to his disposition and the -- the
9 tensions -- I shouldn't say "tensions," but the tense --
10 the ---

11 THE COURT REPORTER: Contentions?

12 THE COURT: Contentions.

13 MS. MOODY: --- the tension in the relationship
14 between the victim's family and my client.

15 As to the objection, I get that he thinks that it --
16 Mr. Li might have felt that the prior record -- or the
17 State feels that my client had a lengthy prior record;
18 however, at this point when he's facing, you know, 45 years
19 and he's trying to mitigate his situation, I think
20 everything helps. And so for the fact that it was
21 important, that is something that he -- he did not object
22 to to the level that I think -- because it's painting a --
23 a picture of who my client is to the Court, and it does
24 have some effect on what the judge might sentence the
25 client to. And I -- I would rely on the record on that

1 'cause the judge does go back and specifically say his
2 point was that it was commission of crimes.

3 As to the appeal, Your Honor, I -- the law is if the
4 judge says it from the bench and informs you of your right
5 to appeal, that cures the defect of counsel not advising of
6 the right to appeal.

7 As to his due process rights, I guess it goes back to
8 the confession -- looking at the confession and what might
9 have been there. And I guess it's up to a person's
10 personal perception of the interrogation or the
11 conversation with the Defendant as to whether or not it was
12 coerced or under duress.

13 I think there's a lot of things that you would have to
14 look at in terms of determining whether a *Jackson v. Deno*
15 hearing would've been appropriate in that situation. The
16 length of the time, how he was confined, if he was trying
17 to leave, whether he was a suspect. All of those things, I
18 think, play a part, and even if you do have a defense, I
19 think that you have to look at whether or not the heat of
20 passion is gonna be a great defense or is it weak. So then
21 you have to consider what other possible defenses in --
22 ignoring the confession, I think that that might've been
23 something that Mr. Li should not have kind of tossed out
24 the window because it could have pointed out the State that
25 their case was weaker in terms of what they would have

1 against the Defendant.

2 Outside of that, Your Honor, I would say that Mr.
3 Peterson is prejudiced if Mr. Li states from the stand
4 that, in fact, due to his age -- he is at least 50 or
5 above, and 45 years I would say is a life sentence for a
6 person of his age and the stakes are high for him as to
7 whether or not he's able to walk around and -- and that's
8 not dismissing the nature of the facts.

9 The victim, there's a person who is deceased, that's
10 not dismissing that. But at that point, I think Mr. Li's
11 role was to be more so concerned with my client's
12 livelihood or -- or his freedom.

13 So for -- based on those reasons, Your Honor, we ask
14 that you grant him an opportunity to receive a new trial,
15 recognizing that he would start all the way over, but we
16 would ask the Court to grant him his relief.

17 THE COURT: Ms. Kinard.

18 MS. KINARD: Thank you, Your Honor. Before I get into
19 each of the allegations, I -- I want to say that I believe
20 this is a case with overwhelming evidence. There -- there
21 is uncontroverted evidence in the record that not only did
22 Mr. Peterson commit these crimes, he walked into the police
23 station and confessed.

24 As Mr. Li said, he -- he listened to the audio tape,
25 found no reason to -- to -- to quash, to believe this was a

1 coerced confession in his professional legal opinion.

2 Not only did Mr. Peterson confess, he told the story
3 about this event to two informants who are -- whose stories
4 were also relayed at the plea hearing.

5 That being stated, to address the individual
6 allegations, as I said, there's -- there's no evidence this
7 was coerced. In their numerous meetings together, Mr.
8 Peterson never told Mr. Li he felt like the officers had
9 done anything to coerce a confession from him. This has
10 never arisen until his PCR application. So Mr. Li had no
11 way to -- to -- to fight against that, no reason to look
12 into the confession because he had no -- no information
13 from his client that it might've been coerced or
14 unjustified in anyway.

15 He never additionally received any information from
16 Mr. Peterson about an investigation that may have been
17 performed, that was alluded to with this exhibit, which the
18 State would ask you to ignore as it has not been presented
19 formally before the Court. That was never presented to Mr.
20 Li. If Mr. Peterson knew it existed, he certainly could've
21 asked about it. He could've asked Mr. Li to do more of an
22 investigation. That was never done. Mr. Li's testimony,
23 which I believe came across as very credible, is that they
24 discussed his best defenses, and the only one they could
25 come up with was heat of passion. And they talked at

1 length about the likelihood of that success, which was low,
2 due to the time line, as Mr. Li testified to. So because
3 of that, he represented that it was a slim chance of him
4 being successful on the heat of passion argument.

5 And he -- Mr. Peterson never denied committing these
6 crimes. He -- he admitted to it several times in the
7 record. He admitted to it again on the stand. That was
8 never an issue. So it was always going to have to be a way
9 to justify it.

10 Regarding the other drug charge that was brought up at
11 the plea, it simply doesn't have any bearing. It's not
12 prejudicial in terms of the PCR to Mr. Peterson. His
13 record as presented at the guilty plea was over two pages
14 of the transcript. He was in there on a negotiated of a
15 cap of 45 years. So it was just a matter of whether this
16 one charge, in a litany of others, would've had any effect
17 on the judge's decision to charge between 30 and 45 years.

18 Regarding the DNA, I believe Mr. Li testified credibly
19 to that as well. They spoke about it, but ultimately it
20 did not really play a factor in this case. I -- I would
21 allege that there are no due process violations here. Mr.
22 Li's testimony was very -- very gracious and -- in playing
23 out some hypotheticals and some what if's, and you know,
24 "Maybe another lawyer would see this, maybe someone would
25 see that," but based on his professional experience, which

1 certainly did not fall below any norms of our practice,
2 this is how he saw the case, this how they played it out.
3 They talked through everything, and they made their
4 decisions together. Mr. Peterson certainly made an
5 informed, knowledgeable, intelligent choice to plead
6 guilty. One could argue that he did that as the benefit of
7 the bargain.

8 I would argue that the stakes are not higher for Mr.
9 Peterson due to his age. He could've taken that into
10 consideration if he wanted to roll the dice so to speak, but
11 he -- he knew his age, he knew what he was facing when he
12 went into that plea, and he still decided to plead.

13 Overall there simply is no prejudice on the part of
14 Mr. Peterson by anything that Mr. Li did or did not do. So
15 based on the standards of law that we have regarding trials
16 and guilty pleas, there is no prejudice, there is no
17 deficient performance by Mr. Li, and the State asks that you
18 deny and dismiss this with prejudice.

19 THE COURT: All right. I find that Mr. Li's
20 performance did not fall below the standard or professional
21 norms. He evaluated the recorded confession, saw no defect
22 with it. It's his testimony at least, which the Court finds
23 credible, that Mr. -- the Applicant raised no issues
24 regarding coercion at the time. Even if he had, even
25 assuming that Mr. Peterson's testimony was credible on that

1 issue that it was raised, there has been no showing of
2 prejudice to Mr. Peterson. It's not sufficient to say that
3 there could have been a different outcome, but there must be
4 some showing that a different outcome is -- was likely.

5 As to the forensic evidence, taking into account both
6 Mr. Li's testimony and the testimony of Mr. Peterson, that
7 was really immaterial considering that the defense was not
8 actual innocence, but some heat of passion or -- yeah, heat
9 of passion. So the forensic evidence does not matter in
10 this case. It would not have had any bearing on the
11 outcome, and certainly there's been no showing that it -- it
12 would have had a bearing on the ultimate outcome.

13 As to the drug conviction, I've read through the
14 transcript, there's clearly some confusion between the
15 State, the Court, Mr. Peterson, and Mr. Peterson maintains
16 that that was -- that conviction was not his, and the State
17 actually concedes that it may not be and tells the Court
18 that that -- that conviction does not appear on Mr.
19 Peterson's rap sheet, and the Court appears to disregard it
20 and says something to the effect of, "So everything I just
21 said about getting out of prison and committing another
22 crime doesn't apply to you."

23 It wasn't until Mr. Peterson expounded on his
24 conviction for assault and battery of a high and aggravated
25 nature having being -- been reduced from a domestic violence

1 charge that that caught the Court's attention again, and
2 that's clear in the transcript.

3 But overall no prejudice has been shown. It's
4 unfortunate that Mr. Peterson is of the age that he is and -
5 - and has received the lengthy sentence that he has, but
6 certainly age is -- is just a -- a fact. It's a
7 circumstance. It -- there's no prejudice there because
8 someone convicted of a crime at the age of 45 or 50 is the
9 same as someone convicted of committing a crime at the age
10 of 18 or 78 or whatever. And that is not per se prejudice
11 just because it amounts to a life sentence given applicant's
12 age.

13 So for all of those reasons, the application for post
14 conviction relief is denied.

15 (Clapping from unknown persons.)

16 THE COURT: Quiet, quiet, quiet. Y'all can celebrate
17 in the hallway, not in here.

18 Ms. Kinard, get me a proposed order.

19 MS. KINARD: Yes, ma'am.

20 THE COURT: Thank you.

21 MS. MOODY: Thank you, Your Honor.

22 (Off the record at 11:46 a.m.)

23
24 -- END OF TRANSCRIPT OF RECORD --
25

CERTIFICATE

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Fifth Circuit Court for Richland County, South Carolina, on the 25th day of January, 2018.

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

e/Bonnie H. Kelly

Bonnie H. Kelly, CVR

Official Court Reporter

Columbia, South Carolina

May 27, 2018

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Michael K. Peterson (SCDC #210616),

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No. 2016-CP-40-4487

ORDER OF DISMISSAL

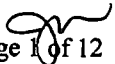
RICHLAND COUNTY
FILED
2018 SEP -6 AM 11:20
JEANETTE W. MCBRIDE
C.C.P. & C.S.

This matter comes before the Court upon Application for Post-Conviction Relief ("PCR") filed on July 27, 2016, by Michael K. Peterson (Applicant). The State of South Carolina (Respondent) filed a Return on July 28, 2017. An evidentiary hearing into the matter was convened on January 25, 2018, at the Richland County Judicial Center. Applicant was present along with his counsel, Leah B. Moody, Esquire. Assistant Attorney General Jessica Kinard of the South Carolina Attorney General's Office appeared on behalf of the State.

For the reasons set forth below, the Application for Post-Conviction Relief is DENIED, and this matter is DISMISSED WITH PREJUDICE.

FACTUAL AND PROCEDURAL HISTORY

The records before this Court establish Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Richland County Clerk of Court's order of commitment. During the November 2012 term, the Richland County Grand Jury indicated Applicant for Murder (2012-GS-40-5900) and Kidnapping (2012-GS-40-5901). Victor Li, Esquire ("plea counsel") represented Applicant. Assistant Solicitor Dolly Garfield of the Fifth Circuit Solicitor's Office prosecuted the case. On August 10, 2015, Applicant appeared with his counsel before the


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Honorable Clifton Newman and pled guilty as indicted to both charges. Pursuant to a recommendation by the State, Judge Newman sentenced Applicant to forty-five years imprisonment for Murder and thirty years imprisonment for Kidnapping, to be served concurrently. Applicant did not appeal his convictions or sentences.

Applicant filed an application for PCR on June 27, 2016, in which Applicant alleged he was being held in custody unlawfully due to ineffective assistance of counsel stating the following reasons: (1) plea counsel failed to protect Applicant's Fifth Amendment right to remain silent by not challenging Applicant's unconstitutional obtained confession; (2) plea counsel failed to investigate all facts and circumstances to determine existence of plausible line of defense; (3) plea counsel failed to discover and/or disclose exculpatory forensic evidence regarding Applicant's clothing and knife allegedly used in homicide; (4) plea counsel failed to object to and/or correct erroneous showing of an alleged prior drug conviction not belonging to Applicant but which belonged to another defendant with the same name as Applicant; (5) plea counsel failed to advise Applicant of his right to appeal the guilty plea; and (6) violation of Applicant's due process rights from illegally obtained confession; and (7) trial judge's sentencing bias regarding erroneous belief of a prior drug conviction which belonged to someone else.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. CODE ANN. § 17-27-80 (2003).


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Michael K. Peterson (SCDC #210616) v. State of South Carolina, 2016-CP-40-4487

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant alleged he received ineffective assistance of counsel due to multiple deficiencies by plea counsel which are laid out in Applicant's PCR Application and discussed further below. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). 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 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

First, the applicant must show that counsel's performance "fell below an objective standard of reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625; see Strickland, 466 U.S. at 688, 692, 104 S. Ct. at 2065, 2067 ("[T]he defendant must show that counsel's representation fell below an objective standard of reasonableness [and] . . . any deficiencies in counsel's

performance must be prejudicial to the defense in order to constitute ineffective assistance under the Constitution.”); see also Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006) (“PCR applicant must prove: (1) that counsel failed to render reasonably effective assistance under prevailing professional norms; and (2) that the deficient performance prejudiced the applicant’s case.”).

“Where counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” Watson v. State, 370 S.C. 68, 72, 634 S.E.2d 642, 644 (2006) (citing Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992)). “Counsel’s performance is accorded a favorable presumption, and a reviewing court proceeds from the rebuttable presumption that counsel ‘rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.’” Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (quoting Strickland, 466 U.S. at 690, 104 S.Ct. 2052). “Accordingly, when counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” Id. (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)). “Courts must be wary of second-guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel.” Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992) (citing Goodson v. United States, 564 F.2d 1071 (4th Cir. 1977)).

I. INVOLUNTARY PLEA

During the evidentiary hearing, Applicant testified he had been appointed three attorneys during the pendency of his case. Applicant stated he was appointed Courtney Gibbes, Mark Sawyer, and subsequently plea counsel. Applicant testified he met with plea counsel on four occasions to discuss the nature of the charges, potential sentences, and Applicant’s confession to

law enforcement. Applicant stated plea counsel never discussed or reviewed with Applicant possible discovery or forensic evidence in his case. Applicant stated plea counsel received statements from potential witnesses but never interviewed the potential witnesses.

Further, Applicant testified he told plea counsel that he believed his confession was coerced because he did not understand his constitutional rights. Applicant testified he told plea counsel numerous times about his statement being coerced and plea counsel stated he did not think it really mattered. Applicant stated he believed his confession was forced because he initially declined to speak with law enforcement, but ultimately talked because law enforcement continued to badger him to get a confession. Applicant testified he wanted to investigate his confession further and to review the case of Jackson v. Denno, 378 U.S. 368, 84 S. Ct. 1774, 12 L. Ed. 2d 908 (1964). Applicant further testified plea counsel failed to challenge Applicant's confession. Applicant contended the State used his confession against him during the plea hearing "in order to get the sentence [the State] wanted." Applicant stated had plea counsel challenged his confession and had he reviewed discovery, he would not have pled guilty and instead would have proceeded to trial. Applicant contended his decision to plead guilty was based on the initial plea offer of thirty-five (35) years. However, Applicant testified on the day of the plea, the offer changed to a range of thirty (30) to forty-five (45) years. Applicant stated his options were to accept the plea offer or to proceed to trial the following week. Applicant testified he accepted the plea offer because plea counsel was not prepared to proceed to trial.

Plea counsel also testified at the evidentiary hearing and corroborated many of Applicants allegations. Specifically, plea counsel admitted he met with Applicant on four occasions to discuss the nature of the charges and potential sentences. Plea counsel testified he reviewed audio of Applicant's confession and Applicant did ask to leave a couple of times and

also stated he wanted to stop, however, Applicant would then voluntarily start talking to law enforcement again. Plea counsel testified the defense strategy was a heat of passion defense. Plea counsel also testified Applicant stated he was provoked by the victim's son and provided plea counsel with numerous examples. Plea counsel testified that suppressing the video was never brought up by Applicant during his representation. He further testified that he did not see anything through his legal training that would have led to a meaningful challenge to suppress the statement. Plea counsel stated that if he had moved to suppress the statement it would have been leaning more towards the theory Applicant did not commit the crime, and that was never the theory Applicant and plea counsel were going with for Applicant's defense.

Further, plea counsel stated he did not discuss with Applicant the opportunity to challenge his confession at trial in accordance with Denno. However, plea counsel testified he believed Applicant challenge would had been unsuccessful because Applicant was Mirandized at the time of his confession and voluntarily made a statement to law enforcement.

Finally, Plea counsel stated that he discussed with Applicant certain defense strategies such as heat of passion, but expressed the unlikelihood of success of these strategies at trial. Plea counsel testified he did not believe Applicant would have been successful at trial because of the abundance of evidence against Applicant; thus he advised Applicant to plead guilty. Applicant pled guilty a week before Applicant's scheduled trial.

"Entering a guilty plea results in a waiver of several constitutional rights, therefore the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently by defendants." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citing Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969)). "A defendant who pleads guilty upon the advice of counsel may only attack the voluntary and intelligent character of the guilty

plea by showing that the advice he received from counsel was not within the range of competence demanded of attorneys in criminal cases." Richardson v. State, 310 S.C. 360, 363, 426 S.E.2d 795, 797 (1993) (citing Hill v. Lockhart, 474 U.S. 52, 56, 106 S.Ct. 366, 369, 88 L.Ed.2d 203, 209 (1985)).

"[A] guilty plea cannot be attacked as based on inadequate legal advice unless counsel was not 'a reasonably competent attorney' and the advice was not 'within the range of competence demanded of attorneys in criminal cases.'" Strickland v. Washington, 466 U.S. 668, 687 (1984) (quoting McMann v. Richardson, 397 U.S. 759, 770 (1970)). "When a convicted defendant complains of the ineffectiveness of counsel's assistance, the defendant must show that counsel's representation fell below an objective standard of reasonableness." Id. at 687-88.

"Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" Id. at 689 (citation omitted). Applicant has not done that here.

Having weighed the credibility of the testifying witnesses and having considered the admissions and explanations offered, this Court cannot find that plea counsel was not "a reasonably competent attorney" or that his advice was not "within the range of competence demanded of attorneys in criminal cases." This Court finds no professional errors on the part of plea counsel; therefore, no prejudice could have resulted from plea counsel's representation. Plea counsel evaluated the recorded confession and saw no defect with it and therefore, he was not deficient for failing to move for a Denno hearing. Further, while Applicant contends that he would have gone to trial but for plea counsel's advice of Applicant's right to challenge his voluntary confession to

law enforcement, this is not supported by the evidence. Rather, the credible testimony in this case is that Applicant wanted to plead guilty and hoped the plea offer made by the State would have been thirty-five (35) years. In addition, Applicant has failed to establish a different outcome would have been likely had the statement been challenged or excluded from the guilty plea hearing, especially since the defense Applicant would have asserted is not one of actual innocence. Therefore, the PCR application is denied as to these allegations.

II. DISCLOSURE OF EXCULPATORY FORENSIC EVIDENCE

Applicant contends that plea counsel failed to thoroughly go over Applicant's case with him and to notify Applicant of the amount of discovery present in the case. In particular, Applicant testified he found out during the guilty plea hearing the knife the investigator said was the murder weapon during the preliminary hearing, tested negative for blood. Applicant testified he asked plea counsel for the test results and plea counsel told him he never received a report. Applicant stated the investigator made it seem like he had a lot of evidence against Applicant, however, had he known the test on the knife was negative, it would have changed his decision to go forward with the guilty plea.

Plea counsel testified that he did inform Applicant that the DNA test on the knife came back negative. Plea counsel stated that Applicant told him to "check the knife" multiple times and plea counsel recalls telling Applicant the results. Plea counsel further testified the results of the knife was of no significance because the defense Applicant "wanted [him] to push" was a heat of passion defense. Moreover, plea counsel testified "none of the DNA or ... the forensic stuff mattered" with a heat of passion defense.

Therefore, this Court finds these allegations are also without merit, and Applicant has failed to provide any evidence that would entitle him to relief. Taking into account both Applicant and

plea counsel's testimony, the forensic evidence was immaterial considering the defense was not actual innocence, but rather heat of passion. It would not have had any bearing on the outcome, and certainly there has been no showing that it would have had any bearing on the ultimate outcome of the case. As such, the PCR application is denied as to these allegations.

III. ERRONEOUS SHOWING OF AN ALLEGED PRIOR DRUG CONVICTION

Finally, Applicant alleges plea counsel failed to object and/or correct the State's erroneous showing of an alleged prior drug conviction not belonging to Applicant, but which belonged to another defendant with the same name as Applicant. Applicant also alleges this erroneous showing violated his due process rights and biased the trial judge's sentencing.

Applicant testified plea counsel did not review his prior record with him before the guilty plea hearing. Applicant testified during the guilty plea hearing the Court attributed a drug conviction to Applicant that he did not commit. Applicant testified he told the plea judge he was in prison at the time of the drug offense. Applicant further testified he kept telling the judge, "This is not me, sir." Applicant stated he believed this erroneous showing prejudiced him because the plea judge said, "Mr. Peterson, you got out of prison from doing one violent crime [and] committed another one." Applicant testified he believed plea counsel should have corrected the error. Applicant testified he believed this biased the plea judge.

Plea counsel testified the State read Applicant's prior record during the guilty plea. Plea counsel further testified Applicant stated, "That's not me, that wasn't me." Plea counsel stated he told the plea judge that Applicant disputed the charge. Plea counsel stated they got into the details of the charge and Applicant explained to the plea judge that he was in jail at the time of the drug charge for assault and battery. Plea counsel testified the plea judge said, "Well, that doesn't really change anything because my point was you had just [gotten] out of jail and then you committed

...more crimes.” Plea counsel further testified he does not believe the plea judge took the drug charge into account. Moreover, plea counsel testified he did not recall the State holding their ground on the issue.

This Court finds, although the State did mentioned Applicant was convicted in 2009 of a federal drug trafficking offense, the State also conceded to the Court the conviction does not appear to be Applicant’s and the conviction does not appear on Applicant’s rap sheet. In addition, the Court echoed the State’s consideration that the prior 2009 drug conviction may not have been Applicant’s. Specifically, the trial judge stated, “So everything I just said about getting out of prison and committing another crime doesn’t apply to you.” Further, the trial judge stated “it might be another Michael Peterson. That scenario doesn’t apply to [Applicant], so go ahead.” Furthermore, plea counsel testified he did not think the drug conviction mattered to the plea judge “at that time.”

Therefore, based on a review of the transcript, this Court finds Applicant was not prejudiced by the erroneous showing of the drug conviction. It is evident from the record the Court recognized the drug conviction did not belong to Applicant. Further, the Court made it clear during the ruling that the imposition of the sentence was based on the “horrific killing” Applicant was pleading guilty too and not the improperly allocated drug conviction. Thus, this Court finds no prejudice has been shown and the PCR application is denied as to this allegation.

IV. APPLICANT’S RIGHT TO APPEAL GUILTY PLEA

Applicant testified plea counsel did not advise him of his right to appeal. Applicant stated that he should have been told he had the right to appeal or “withdrawn my plea” if there was an error at the plea hearing. Applicant testified if he knew he would have had the opportunity to withdrawn his plea, he would have proceeded to trial the following week. After the plea hearing,

Applicant testified plea counsel did not meet with him to discuss what would happen next. On cross-examination, Applicant testified he was informed about his right to appeal by the plea judge.

Plea counsel testified he did not advise Applicant of his right to appeal the guilty plea. He further testified the plea judge did inform Applicant of his right to appeal. Plea counsel stated that he did not believe Applicant would be successful on appeal.

Thus, in considering all the testimony, this Court finds Applicant failed to meet his burden to prove plea counsel was ineffective for failing to advise Applicant of his right to appeal his guilty plea. See Roe v. Flores-Ortega, 528 U.S. 470, 480 (2000) (“[C]ounsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal, or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing.”).

It is clear from plea counsel’s testimony that he did not see any grounds for which Applicant could have reasonably appealed his guilty plea. Further, Applicant was notified of his right to appeal by the plea judge. Therefore, this allegation must be denied.

Based on the forgoing, this Court finds and concludes Applicant has not meet his burden to establish plea counsel was ineffective regarding each of his allegations. Thus, Applicant’s PCR application must be denied and dismissed with prejudice.

IT IS THEREFORE ORDERED that the Application for Post-Conviction relief is DENIED and DISMISSED with prejudice.

IT IS FURTHER ORDERED that Applicant Michael K. Peterson be REMANDED to the custody of the State of South Carolina.



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Order of Dismissal

Michael K. Peterson (SCDC #210616) v. State of South Carolina, 2016-CP-40-4487

AND IT IS SO ORDERED.


Jocelyn Newman
Presiding Judge

September 5, 2018
Columbia, South Carolina.

WITNESSES

(S) C.E. SUMPTER – Columbia Police
Department

ARREST WARRANT NUMBER

K690391

ACTION OF GRAND JURY

TRUE BILL

Jill R. Koenig
For person of Grand Jury
Date: **NOV 08 2012**

VERDICT

156
For person of Petit Jury
Date:

DOCKET NO. 2012GS4005900

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2012

87

**THE STATE
vs.**

Michael Peterson

**Indictment for
MURDER**

**SC Code: 16-03-0010
CDR Code: 0116**

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.

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

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on NOVEMBER 7, 2012,
the Grand Jurors of Richland County present upon their oath:

MURDER

That Michael Peterson did in Richland County, on or about December 19, 2011, willfully, feloniously, and intentionally kill the victim, BRENDA WITHERSPOON, with malice aforethought, either express or implied, by means of STABBING, and the victim did die as a proximate result thereof in Richland County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

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



DAN JOHNSON, SOLICITOR

RECEIVED
CLERK OF COURT
RICHLAND COUNTY
SOUTH CAROLINA
NOV 14 2012

WITNESSES

(S) C.E. SUMPTER – Columbia Police
Department

ARREST WARRANT NUMBER

K690399

ACTION OF GRAND JURY

TRUE BILL

Bill R. Koenig
Foreperson of Grand Jury
Date: **NOV 08 2012**

VERDICT

158
Foreperson of Petit Jury
Date:

DOCKET NO. 2012GS4005901

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2012

87

**THE STATE
vs.**

Michael Peterson

**Indictment for
KIDNAPPING**

**SC Code: 16-03-0910
CDR Code: 0095**

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.

**CERTIFIED TRUE COPY
OF ORIGINAL FILED**
Jeannette W. McBride
**C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA**

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on NOVEMBER 7, 2012,
the Grand Jurors of Richland County present upon their oath:

KIDNAPPING

That Michael Peterson did in Richland County on or about December 19,
2011, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry
away one BRENDA WITHERSPOON, without authority of law, in violation
of Section 16-03-0910, S. C. Code of Laws, 1976, as amended.

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



DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
NOV 14 2012
CLERK OF COURT
JAMES A. WILSON
CLERK OF COURT