

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to York County

Honorable Roger E. Henderson, Circuit Court Judge

DONQUAVIOUS DASHON DAVIS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-002281

APPENDIX

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S.C. SUPREME COURT

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State of South Carolina.,)

In the General Sessions
Court of York

County of York.)

Case No.: 2014-GS-46-03509
2014-GS-46-03509(A)
2014-GS-46-03510

State of South Carolina.,)

Plaintiff.,)

-vs-)

Transcript of Record

Donquavious Dashon Davis.,)

Defendant.)

November 20-21, 2014
January 30, 2015
June 23, 2015
York, South Carolina

B E F O R E:

The Honorable John C. Hayes, III., judge.

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

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COPY

Wanda Nelson, CVR-M
Official Court Reporter
To the Honorable John C. Hayes, III

I-N-D-E-X

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD.</u>
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No Exhibits were received into the record.

1 (COURT IN SESSION THURSDAY, NOVEMBER 20, 2014 AT 02:17
2 P.M..)

3 SOLICITOR THOMPSON: Donquavious Davis.

4 (BLACK MALE, DEFENDANT, ENTERS COURTROOM.)

5 THE COURT: All right.

6 SOLICITOR THOMPSON: May it please the court, Your
7 Honor. This is the state of south Carolina versus
8 Donquavious Dashon Davis Indictments 2014-GS-46-0-3-5-0-9
9 where he's indicted with murder. And then 0-3-5-0-9-(A)
10 for possession of a firearm during the commission of a
11 violent crime.

12 Also Indictment 2014-GS-46-0-3-5-1-0 for burglary
13 first degree. He's represented by Melissa Inzerillo of the
14 Public Defender's Office and he was appointed to the Public
15 Defender's Office, Your Honor, and on Thursday morning of
16 last week we had a bond hearing before Judge Alford in
17 which the defendant's bond was denied.

18 Immediately after that apparently he informed his
19 attorney that he didn't wish for her to represent him any
20 longer and Ms. Inzerillo came to me about that at that
21 point in time. Unfortunately we weren't able to get it
22 back in front of Judge Alford last week because he already
23 had plans to be gone Friday and was in the middle of a
24 trial for the rest of the day Thursday.

25 So we're bringing him before the court now for him to

1 ask that if he could be relieved of counsel.

2 THE COURT: So, Mr. Davis, you don't want to have an
3 attorney?

4 MR. DAVIS: No, sir. I would like a new attorney.

5 THE COURT: Well you don't get new attorneys. You get
6 the attorney you are appointed. Why - What's your problem
7 with Ms. Inzerillo?

8 MR. DAVIS: Well, my life is on the line and I don't
9 feel like she's putting forth her best effort on my case.
10 And I kind of feel like she's against me I need someone
11 that's gonna represent me and fight for me and work with
12 me.

13 THE COURT: Well you have the right to hire an
14 attorney but you ask for an appointed attorney and you got
15 one and if you fire your attorney - your appointed attorney
16 then you don't have an attorney. You will have to hire one
17 or proceed to trial without an attorney which is very
18 dangerous. Do you understand that?

19 MR. DAVIS: Yes, sir, I understand.

20 THE COURT: But you don't get to choose your attorney
21 or apply for as an indigent and ask the court to appoint
22 you an attorney and you get the attorney that's assigned to
23 you and you don't get to choose. Do you understand that?

24 MR. DAVIS: Yes, sir.

25 THE COURT: Do you want to fire Ms. Inzerillo?

1 MR. DAVIS: Yes I would like a new attorney.

2 THE COURT: Well no, you don't get a new attorney.
3 That's what I'm trying to tell you. You've got an
4 attorney. You're not gonna get another one from the state.
5 The state has agreed to pay Ms. Inzerillo through her
6 public Defender's Office to represent you. If you don't
7 like being represented by the Public Defender's Office then
8 you go out and hire somebody but I'm not gonna appoint you
9 somebody else to represent you. You've been appointed an
10 attorney.

11 MR. DAVIS: Okay. Yes I would like to fire her.

12 THE COURT: You want to fire her?

13 MR. DAVIS: Yeah.

14 THE COURT: All right. Well I'm gonna - I find that
15 Mr. Davis understands the danger of self-representation and
16 the benefits of having an attorney and by his own choosing
17 is choosing to release Ms. Inzerillo from further
18 representation of him. That means that you can hire an
19 attorney or when your case is tried you will be tried
20 without an attorney. Do you understand that?

21 MR. DAVIS: Yes, sir.

22 THE COURT: All right. Thank you.

23 MS. INZERILLO: Thank you, Your Honor.

24 SOLICITOR THOMPSON: Thank you, Your Honor.

25 (COURT AT EASE.)

FARETTA HEARING:

-7-

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(COURT BACK IN SESSION IN THE MATTER OF STATE V.
DONQUAVIOUS DASHON DAVIS FRIDAY, NOVEMBER 21, 2014 AT 09:41
A.M..)

THE COURT: Good morning. Please take your seats.
Thank you.

SOLICITOR THOMPSON: Good morning, Judge.
Donquavious Davis.

(DEFENDANT DONQUAVIOUS DASHON DAVIS, BLACK MALE,
REENTERS COURTROOM.)

SOLICITOR THOMPSON: May it please the Court, Your
Honor. This is the state of South Carolina versus
Donquavious Dashon Davis. He is charged in Indictments
2014-GS-46-3-5-0-9 wherein he's charged with murder, and
3-5-0-9-(A) for possession of a firearm during the
commission of a violent crime. Also 2014-GS-46-3510
wherein he's charged with burglary first degree.

Both of these indictments have been True Billed by the
Grand Jury, Your Honor. This is a continuation of the
hearing that was before the court yesterday when the
defendant informed the court that he wished to fire his
attorney Melissa Inzerillo with the Public Defender's
Office.

She is present in the courtroom in case she is needed
this morning, however, as the court ruled yesterday the

1 defendant or the defendant requested yesterday he was given
2 permission to represent himself. The state is bringing him
3 back before the court at this time basically for just a
4 little further delving into either Feretta warnings to - so
5 the defendant is - understands completely what he is now
6 getting himself into.

7 THE COURT: Mr. Davis, I think the Solicitor's Office
8 and myself are very - You have every right to do what you
9 want to do. We're very concerned that someone who is
10 facing a murder charge opts to go without an attorney and
11 that as I told you is very dangerous and there is a benefit
12 in having an attorney. How old are you?

13 MR. DAVIS: Twenty.

14 THE COURT: Do you have a job? I mean how far did you
15 go in school?

16 MR. DAVIS: Eleventh - twelfth grade.

17 THE COURT: You didn't graduate?

18 MR. DAVIS: No.

19 THE COURT: Have you had jobs before you got
20 incarcerated?

21 MR. DAVIS: No. I worked for my grandfather.

22 THE COURT: What does he do?

23 MR. DAVIS: He do all kind of construction work.

24 THE COURT: Okay. A handyman sort of stuff?

25 MR. DAVIS: Yeah.

FARETTA HEARING:

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1 THE COURT: Well have you ever been in court for any
2 other offense? Have you ever gone through a criminal trial
3 of any type?

4 MR. DAVIS: No.

5 THE COURT: Have you ever been before the court and
6 pled guilty to any charge?

7 MR. DAVIS: Yeah.

8 THE COURT: So you had an attorney at that time?

9 MR. DAVIS: Yeah.

10 THE COURT: And that I would think you are up to a
11 comfort level in dealing with the issues before the court
12 and what you're dealing with is not - I remind you that
13 there is a benefit in you having an attorney because an
14 attorney could be of a benefit to you in knowing motions,
15 evidence rules, procedural rules, and there is a danger in
16 you representing yourself since you're not an attorney and
17 don't have the expertise to do those things I just talked
18 about. I'm not gonna try to talk you into it but keeping
19 Ms. Inzerillo that's not my business, but I'm must
20 suggesting to you that for you to be better served by
21 having an attorney than by going forward without one.

22 But you have the right to go forward without one. Do
23 you still want to do that?

24 MR. DAVIS: Yeah.

25 THE COURT: You do? You still want to proceed without

FARETTA HEARING:

-10-

1 an attorney?

2 MR. DAVIS: Yeah.

3 THE COURT: All right. Well I'm gonna have the public
4 Defender's Office appoint somebody to be what's called
5 standby counsel, someone you can ask questions. They will
6 not appear for you, they will not make motions for you, and
7 they will attend the trial with you to help you with
8 procedural matters. They will get that information to you
9 later on. Again I think it's not for me to determine
10 whether you're making a mistake or not but I think it's
11 very - it's not the wisest thing in the world to go to
12 trial with a murder charge where you could face life
13 imprisonment without an attorney. That's just my thinking.

14 All right. Well I'll have the Public Defender's
15 Office appoint someone other than Ms. Inzerillo to be your
16 standby counsel. They will tell you what that means in
17 more detail.

18 SOLICITOR THOMPSON: And, Your Honor, if I could just
19 so that I could put a few things on the record ---

20 THE COURT: Okay.

21 SOLICITOR THOMPSON: --- in case it were necessary
22 later. As the court had inquired of the defendant whether
23 he had been charged with before and that he had been
24 represented on, I have a number of charges that he has been
25 represented on before in the past month he may not have

FARETTA HEARING:

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1 gone to trial he certainly did work out deals in these
2 cases, his attorneys work it out and the case dismissed,
3 and so I would point out to the court and for the record
4 that as a juvenile he had a number of charges. In 2004
5 carrying a weapon on school property which was a BB gun
6 that he went through juvenile court on and was represented
7 in 2007 simple assault and battery which involved this
8 shooting of another young person with the BB gun which went
9 through at the time in Family Court as well and he was
10 represented on.

11 Carrying weapon on school property which was actually
12 a .38 pistol that he sold to another student to which he
13 was convicted of in Juvenile Court and represented and that
14 was in 2009. As well in 2009 unlawful carrying of a pistol
15 which would have been from that same incident. Then
16 possession of marijuana in 2011 also in Juvenile Court,
17 also at some point that he had representation on.

18 Then as an adult he's been charged in 2011 with
19 attempted murder, possession of a firearm during the
20 commission of a violent crime and possession of a pistol
21 under eighteen. In that case he was alleged to have shot
22 at his uncle. His uncle quit cooperating and ask that the
23 case be dismissed so ultimately he was not prosecuted on
24 that but he was represented through that, went through the
25 normal things such as the arrest, the bond hearing,

1 attorney meetings and that sort of thing where his attorney
2 worked with him before that case was dismissed.

3 Then in 2012 he was charged with burglary second and
4 petty larceny in which he was represented ultimately pled
5 guilty to a trespassing and that into a petty larceny and
6 so he had representation in that but obviously it
7 benefitted him in the way that it was worked out.

8 Then in 2012 also a threatening public official and
9 disturbing schools for which he was convicted of and
10 represented for. At that time I believe a criminal
11 domestic violence and I'm not sure if he was represented in
12 2013 on with criminal domestic violence or not but he was
13 found guilty of that I believe at trial in city court and
14 sentenced to thirty days at that time.

15 So he has had some records and some dealings with the
16 court so he's familiar with kind of how the system works
17 but I don't know that he's ever actually gone through a
18 trial with representation. Then as well the other point
19 that I would make is one of the prongs that we possibly
20 look at is whether doing this is a reason for delay. I
21 would just put on the record again he's been represented
22 since the beginning of July by Melissa Inzerillo. He was
23 charged - The crime occurred on June 29th of this year. He
24 was arrested on July 1st and he's been presented since the
25 beginning of July by Ms. Inzerillo.

FARETTA HEARING:

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1 I've been dealing with Ms. Inzerillo on the case so I
2 know she's been having contact with him during that period
3 of time. I would point out that when finally they did ask
4 for a bond hearing last week it was immediately after bond
5 was denied last week that he then indicated to her because
6 she had indicated to me he said he wishes to fire me at
7 this point in time so there is some indication in my
8 opinion that this could be a delay tactic of some sort
9 because we had already come to the point where a plea offer
10 had been given. We had a general idea of when we would go
11 to trial where we had not set a date.

12 We knew at the beginning of the year if he hadn't pled
13 by this year that a trial would come soon and would be in
14 January and I didn't expect as late as February but if we
15 were talking about some time in January so I rely that and
16 put that on the record that that is another thing the court
17 ultimately on appeal if the defendant gets to that point
18 would be able to consider because it is something that I
19 know the defendant's commonly do in the detention center as
20 the trial dates become closer and things become more solid
21 regarding a trial date and not liking the plea offer and
22 that sort of thing those things happen.

23 THE COURT: Well I don't think Mr. Davis is doing this
24 for delay. I don't believe its that. They wanted bond set
25 and didn't get it set, wasn't satisfied that went that way

FARETTA HEARING:

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1 and decided to - he didn't want her to represent you; isn't
2 that kind of the deal?

3 MR. DAVIS: No. I don't want her representing me.
4 Like I said it's like she's against me.

5 THE COURT: Okay. All right. Well I'm not gonna ask
6 you why but she - I can assure you under oath she's not
7 against you but that's your decision. Again it's not mine.

8 When do you plan to try the case?

9 SOLICITOR THOMPSON: We would just pick a term in
10 January. We will talk to the defendant about the trial
11 time if you have any witnesses subpoenaed that he wishes to
12 have subpoenaed.

13 THE COURT: So there will be a trial within - probably
14 within two or three months. You got that?

15 All right. And standby counsel could assist you if
16 you have people you want to subpoena standby counsel would
17 help you figure out how to do that and get the subpoena's
18 out. Again, standby counsel cannot make motions for you,
19 or question witnesses for you, or appear in court for you,
20 or even with you other than as an auxiliary person to run
21 questions through so my best to you. Again I'm not sure
22 this is wise of course but I'm not you. All right. Thank
23 you.

24 SOLICITOR THOMPSON: Thank you, Your Honor.

25 (COURT AT EASE.)

DEFENDANT'S MOTION FOR CONTINUANCE:

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1 (COURT BACK IN SESSION JANUARY 30, 2015 AT 10:20
2 A.M..)

3 THE COURT: Thank you. You may be seated. Good
4 morning. Mr. Thompson, we'll take care of your matter
5 first.

6 SOLICITOR THOMPSON: All right. Thank you, Your
7 Honor.

8 THE COURT: You can be seated.

9 (DEFENDANT, DONQUAVIOUS DASHON DAVIS, BLACK MALE,
10 REENTERS COURTROOM.)

11 SOLICITOR THOMPSON: May it please the Court, Your
12 Honor.

13 THE COURT: Yes, sir.

14 SOLICITOR THOMPSON: This is the state of South
15 Carolina versus Donquavious Dashon Davis Indictments 2014-
16 GS-46-0-3-5-0-9 and 0-9(A) wherein he's indicted for murder
17 and possession of a firearm during the commission of a
18 violent crime, as well as 2014-GS-46-0-3-5-1-0 for first
19 degree burglary. And it's also been True Billed by the
20 Grand Jury.

21 The defendant is represented himself in this case,
22 Your Honor, however, the court has appointed Mr. Smith,
23 Phil Smith as standby counsel. Mr. Smith is here and the
24 defendant of course is here. The defendant has indicated
25 to me that he wishes to make a motion for a continuance in

1 the case. To let the court know we had set a trial date
2 for February 17th. In speaking with the defendant since
3 he's been representing himself each time I've spoken with
4 him Mr. Smith has been with him at that time. We spoke
5 with him one other time we spoke with him on January 6 when
6 the - a plea offer was expiring and we were finalizing that
7 but we also told him that it would likely be a trial date
8 in February and then on the 12th of January of this year we
9 notified him in person that the trial date was February
10 17th. He has indicated through Mr. Smith and then through
11 speaking to him just last week that he does wish to make a
12 motion to continue the case and so I'm bringing him before
13 the court for him to make that motion today.

14 THE COURT: All right. Mr. Davis, do you want to
15 reconsider and rehire Mr. Smith to represent you? He's
16 apparently still helping you out and doing a good job.
17 I'll be glad to reappoint him.

18 MR. DAVIS: You will?

19 THE COURT: Yes.

20 MR. DAVIS: Yes, sir.

21 THE COURT: Do you want Mr. Smith back?

22 MR. DAVIS: I never had one. He's my standby counsel.

23 THE COURT: Well I know. I can't remember the history
24 of this.

25 SOLICITOR THOMPSON: Melissa Inzerillo, Your Honor, I

DEFENDANT'S MOTION FOR CONTINUANCE:

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1 believe was appointed initially to the case.

2 THE COURT: Do you - Mr. Smith, would you be willing
3 to undertake full representation of Mr. Davis?

4 MR. SMITH: I can, Your Honor.

5 THE COURT: I think I'm gonna do a little changing of
6 my own because of the magnitude of the charges. And I
7 think Mr. Davis understands that he doesn't get to chose an
8 attorney but I kind of chosen one for him. So based on
9 that I will continue the case but Mr. Smith will now be the
10 official counsel. I'd like to go ahead and do it that way
11 and I will continue the case beyond the February term.

12 When will be the next term?

13 SOLICITOR THOMPSON: Well, Judge, I'll have to - I
14 have another case scheduled in March so I may have to put
15 him past March into April as - for this to a trial date if
16 I can't do it in February.

17 THE COURT: All right. Well, would you rather go
18 ahead and have it in February or have that extra time to
19 work with your attorney?

20 MR. DAVIS: Yeah. Your Honor, I think I need a lot
21 more time than February or March.

22 THE COURT: All right. Well we'll continue it beyond
23 February and not - I'm not setting a time. That's up to
24 the solicitor to. I don't run their schedule I couldn't.
25 It would be bad if I tried to run everybody's schedule. I

1 have enough trouble running my own.

2 So we'll continue it beyond the February term.

3 Mr. Smith - I'll enter an order appointing him to
4 represent you and if you for some reason are dissatisfied
5 at some point with Mr. Smith I would not in the past unless
6 there's some really overriding reason not to give you
7 another attorney. Do you understand that?

8 MR. DAVIS: Yes, sir.

9 THE COURT: And I don't mean that to threaten you or
10 to scare you. I want you to be happy with whatever you do
11 but like I told you before once you get an attorney
12 appointed that's usually it because you're not entitled to
13 choose your attorney when you have an appointed one. And
14 if you can't get along with your attorney that's your
15 problem. But sometimes there are over riding reasons and I
16 do make adjustments and I'm doing that in this one so we'll
17 continue it beyond February.

18 SOLICITOR THOMPSON: Thank you, Judge. There is one
19 other matter I would ask the Court just to make note of it.
20 It may resolve itself rather quickly now that Mr. Smith is
21 presenting the defendant, and that is that we had served
22 the defendant with an alibi notice or a request for alibi
23 back in December 12th. We gave him until early this month
24 to give us the alibi. While he has given us an oral
25 recitation of his alibi and it's not complete, for instance

DEFENDANT'S MOTION FOR CONTINUANCE:

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1 one of the key alibi witnesses he only knows according to
2 what he's told us as Maddie. We don't know if that's her
3 real name or nickname. We don't know her full name, we
4 don't have an address or an address of exactly where he was
5 during the time that this occurred other than it was at
6 Mattie's house.

7 And so I would ask for a complete answer in writing to
8 the alibi that gives the proper notification of time,
9 address, and full names and that sort of thing.

10 THE COURT: Mr. Smith, have a consultation with Mr.
11 Davis to the extent that it can be confirmed up and tend to
12 that as promptly as you can. And the rule I thought
13 required a certain - We don't give 'em alibi's - a certain
14 time out that is required. You set a date.

15 SOLICITOR THOMPSON: Yes.

16 THE COURT: But that date has been moved I guess by
17 moving the case.

18 SOLICITOR THOMPSON: Correct.

19 THE COURT: Okay.

20 MR. SMITH: Yes, Your Honor.

21 THE COURT: We all understand it?

22 MR. SMITH: Yes, Your Honor.

23 SOLICITOR THOMPSON: Yes, Your Honor.

24 THE COURT: Thank you.

25 SOLICITOR THOMPSON: Thank you, Your Honor.

DEFENSE'S MOTION TO RELIEVE MR. SMITH:

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1 (COURT AT EASE.)

2 (COURT BACK IN SESSION TUESDAY, JUNE 23rd, 2015 AT
3 02:22 P.M..)

4 THE COURT: All right. Mr. Brackett.

5 SOLICITOR BRACKETT: May it please the Court, Your
6 Honor. This is in reference to Docket Numbers 2014-GS-46-
7 3509 and 3509(A). This is a True Billed Indictment
8 charging Donquavious Dashon Davis with the charges of
9 murder, possession of a firearm during the commission of a
10 violent crime. And 2014-GS-46-3510 State versus
11 Donquavious Dashon Davis a True Billed Indictment for
12 burglary in the first degree.

13 Mr. Davis is present in the courtroom with his
14 appointed attorney Mr. Phil Smith of the Public Defender's
15 Office and we have been informed by Mr. Smith that the
16 defendant in this case having been noticed for trial on
17 these charges on July the 13th of this year we informed him
18 in June - from June the 10th of this year that we intend to
19 take him to trial on these charges on July the 13th.

20 We are now told that the defendant seeks to discharge
21 the services of Mr. Smith and wants to fire him. We have
22 an issue with that, Your Honor. Perhaps some procedural
23 background on this case, the administrative background
24 might help inform the court ---

25 THE COURT: It would and you may.

DEFENSE'S MOTION TO RELIEVE MR. SMITH:

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1 SOLICITOR BRACKETT: --- in making it's decision.

2 This incident occurred on June the 29th of 2014, in
3 Rock Hill. The defendant was arrested for these charges on
4 July the 1st of 2014, and appointed a public defender. The
5 defendant had a bond hearing in November in front of the
6 Honorable Lee Alford and waived arraignment on a direct
7 indictment at that time.

8 A week later while we were in discussions about a
9 trial date in December or January with his then appointed
10 counsel Ms. Inzerillo with the Public Defender's Office the
11 defendant upon learning the trial was imminent indicated
12 that he did not wish to have Ms. Inzerillo represent him
13 any more; that he wished to represent himself.

14 He appeared before Your Honor and you questioned him
15 and he released Ms. Inzerillo; you instructed him that he
16 was either going to represent himself pro se or that he
17 would be required to retain his own attorney. On the next
18 day, November 21st, Your Honor had a Faretta Hearing in
19 which you advised him of the dangers of self representation
20 and you offered to appoint standby counsel for him to
21 assist him if he needed it during the course of the trial.

22 We worked with the defendant for some period of time
23 over the next two months making a plea offer, attempting to
24 resolve the case by plea negotiations, working directly
25 with the defendant, and when that failed we started to

1 schedule the case for trial in February.

2 At the end of January upon learning that we were
3 moving forward with the trial in February he appeared again
4 in front of Your Honor and indicated that he did wish to
5 have an attorney at which point you appointed Mr. Smith to
6 represent him and that representation continues to this
7 day.

8 During the next few months while Mr. Smith was getting
9 ready and himself up to speed in preparation for trial, we
10 of course had several other cases of homicide by child
11 abuse we tried in the spring, there were two other murder
12 cases we prepared to go to trial that pled out, and then
13 this one was by the time some months had passed Mr. Smith
14 had had some time to get up to speed and we told him in
15 June that this was the next case up in July and we again
16 are faced with the prospect of him discharging Mr. Smith.

17 The state has subpoenaed all of our witnesses. A
18 tremendous amount of effort of course has gone into getting
19 this case ready to go to trial. In the middle of July
20 people have scheduled vacations; in anticipation of it they
21 would have to be working that week. Obviously it's hard to
22 get a case together in the summer, a case with this many
23 witnesses because so many people go on vacation during the
24 summer. So the state is requesting the court to allow us
25 to move forward regardless of whether he's represented or

DEFENSE'S MOTION TO RELIEVE MR. SMITH:

-23-

1 pro se. This has been a long time, it's been a year, we
2 tried to call this three times now.

3 The victims want closure, we want to give them that,
4 we need to move this case. We would ask that the court
5 allow us to proceed to trial regardless of whether Mr.
6 Smith is representing him.

7 THE COURT: Mr. Smith, do you want to comment before I
8 talk to your client?

9 MR. SMITH: Yes, Your Honor. As the solicitor
10 indicated at first I was the standby counsel that was
11 placed and he indicated he wanted me to represent him. I
12 had met with him obviously numerous times had gone over
13 things. At a recent meeting my assessment of our likely
14 outcome in front of a jury seemed to upset Mr. Davis and
15 that's when he indicated that he thought I shouldn't be on
16 his case and he wished to be brought before the court.

17 THE COURT: Mr. Davis, anything you want - I've told
18 you its dangerous to go without an attorney and I told you
19 that the defendant doesn't have an attorney and I told you
20 that you are entitled to have an attorney appointed if you
21 cannot retain one and that has happened twice now. You
22 have had two attorneys appointed.

23 This case is scheduled for July the 1st and I'm gonna
24 allow the state to go forward and try it. You can do that
25 with Mr. Smith as your attorney or you can do that pro se

1 without Mr. Smith as your attorney. In that case I'll
2 appoint Mr. Smith to be standby counsel. This case is
3 going forward on July 1st so do you want --

4 Isn't that the date?

5 SOLICITOR BRACKETT: No, Your Honor. Its July the
6 13th.

7 THE COURT: July the 13th. July the 13th.

8 So that's where we are. Do you still want to let Mr.
9 Smith go and just be your standby counsel and try the case
10 yourself?

11 MR. DAVIS: No. I would rather have him be my lawyer.

12 I thought I was gonna be able to come in and speak on
13 why I thought --

14 THE COURT: You can tell me why but - I'm getting the
15 picture. I'm not --

16 MR. DAVIS: Would it matter if I told you why?

17 THE COURT: Probably not but I'll listen to you
18 because you've got - Well, the reason it probably wouldn't
19 is that this is the third experience we've had with you
20 wanting an attorney and not wanting an attorney.

21 MR. DAVIS: Your Honor, I hadn't been notified of -
22 nobody has said anything to me about the trial date
23 whatsoever. I mean it's been - Since he's been my lawyer
24 Mr. Phil Smith or no one has ever said anything about a
25 trial date.

DEFENSE'S MOTION TO RELIEVE MR. SMITH:

-25-

1 THE COURT: Okay. What do you want to tell me?

2 MR. DAVIS: Oh I just want to tell you that you know
3 since Mr. Phil Smith has been representing me I have
4 requested many things and he has failed to give me all of
5 these things to go over with me like things for my motion.

6 And you know he's lied to me and my family - family
7 several times. And he told me - Just recently he told me
8 that he feels that if I go to trial that I will get life
9 and that I should take a plea and save my life but you know
10 me knowing - me being smart enough to know what I know he
11 can't - he can't just say that I will be able to get - I'll
12 get life just going to trial. You know I haven't even been
13 able to prepare for a defense. I don't even have all of my
14 evidence to prepare for a defense, Your Honor.

15 THE COURT: Well you shared - Mr. Smith, have you
16 shared with him the discovery?

17 MR. SMITH: He has full discovery, Your Honor.

18 He makes reference to wanting a report from an object
19 that was not taken into evidence so I can't recreate a
20 report of something that was not taken into evidence.

21 He also wants certain witnesses for me to talk to them
22 and they refuse to talk to me so I cannot do that either.

23 I can simply ask to talk them to talk to me. He's
24 aware that the trial is scheduled for next month, the exact
25 date I can't say if he knows, but he knows that at that

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term of court he will be tried. And there have been no
deceit given to here exactly.

THE COURT: Well the case is scheduled for the
thirteenth and I'm gonna leave Mr. Smith on your case. If
between now and then you want to fire him and appear pro se
I will let you do that of course and appoint him as standby
counsel but at the current time Mr. Smith will remain your
attorney. Thank you.

SOLICITOR BRACKETT: Thank you, Your Honor.

MR. SMITH: Thank you, Your Honor.

(END OF TRANSCRIPT OF RECORD.)

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STATE OF SOUTH CAROLINA

-----x

STATE,

Plaintiff,

Case No.

-against-

2014-GS-46-03509; 10

DONQUAVIOUS DASHON DAVIS,

Defendant.

-----x

July 1, 2015

York, S.C.

B E F O R E:

HONORABLE DANIEL D. HALL

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

WILLY THOMPSON

Assistant Solicitor

HARRY DEST AND PHILIP SMITH

Attorneys for the Defendant

Aileen Butler

Official Court Reporter

E X H I B I T S 4 .

1	<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
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1 MR. THOMPSON: If it please the Court, Your Honor.

2 THE COURT: Yes solicitor.

3 MR. THOMPSON: I believe they are finishing up the
4 signature just use now.

5 (WHEREUPON, Donquavious Dashon Davis was sworn by
6 the clerk.)

7 THE COURT: All right solicitor.

8 MR. THOMPSON: If it please the Court, Your Honor.
9 This is the State of South Carolina versus Donquavious
10 Dashon Davis. He is charged in Indictments
11 2014-GS-46-03509 for murder wherein he is pleading
12 guilty to voluntarily manslaughter. Also on that
13 Indictment the second count, 2014-GS-46-03509A
14 possession of firearm during the commission of a
15 violent crime. He is pleading guilty as charged to
16 that charge. Then the second Indictment
17 2014-GS-46-03510 for burglary first degree. The
18 defendant is pleading as charge to that Indictment.
19 That is a direct Indictment.

20 The defendant has already formerly waived
21 presentment to the Grand Jury in a prior hearing
22 regarding that Indictment.

23 The defendant is pleading guilty today to these
24 charges Your Honor. He is represented by Harry Dest
25 and Phil Smith; the Chief Public Defender and

1 Assistant Public Defender. The State has come to a
2 recommendation in the defendant's case and that is a
3 sentence range of 15 to 50 years in the South Carolina
4 Department of Corrections. We are asking to take the
5 plea today because we had the case scheduled for trial
6 for July 13th, so just in less than two weeks from
7 right after the holidays -- or after the holiday. At
8 that time we would actually do the sentencing. So
9 today we are asking just for the Court to qualify the
10 plea and defer sentencing to the week of the 13th and
11 right now we plan on doing the sentencing at two
12 o'clock on Monday the 13th of July.

13 THE COURT: All right, thank you Mr. Thompson.
14 Mr. Smith and Mr. Dest, you all represent
15 Donquavious Davis in this matter?

16 MR. DEST: Yes, Your Honor.

17 MR. SMITH: We do Your Honor.

18 THE COURT: And have you had plenty of time to
19 talk to him about the charges and the nature of the
20 charges and the potential penalty that he might
21 receive?

22 MR. DEST: We have Your Honor.

23 THE COURT: And does he understand what he is
24 charged with, the potential penalty and for a
25 voluntarily manslaughter he could get up to 30 years?

1 MR. DEST: Yes.

2 THE COURT: And the possession of firearm during
3 the commission of violent crime carries five years and
4 there is a requirement that he would do that for
5 day-to-day for the five years.

6 MR. DEST: Yes.

7 THE COURT: Does he understand that?

8 MR. DEST: Yes.

9 THE COURT: And the burglary first degree carries
10 a minimum of 15 and up to life under the
11 circumstances, does he understand that?

12 MR. DEST: Yes, Your Honor, and of course as the
13 solicitor indicated the range would be 15 to 50 which
14 of course would preclude the possibility of a life
15 sentence.

16 THE COURT: And understanding all those Mr. Dest
17 how does your client wish to plea?

18 MR. DEST: Guilty Your Honor.

19 THE COURT: Mr. Davis let me talk to you just a
20 little bit. I need to ask you some basic questions.
21 You understand that today I am not going to sentence
22 you but we are going to go through everything up to
23 the point of sentencing and another judge will do that
24 on the 13th, do you understand that?

25 THE DEFENDANT: Yes.

1 THE COURT: Let me ask you a couple of questions
2 Mr. Davis. How old are you?

3 THE DEFENDANT: Twenty.

4 THE COURT: How far did you go in school?

5 THE DEFENDANT: Eleventh grade.

6 THE COURT: Are you married?

7 THE DEFENDANT: No.

8 THE COURT: Do you have any children?

9 THE DEFENDANT: Yes.

10 THE COURT: How many children?

11 THE DEFENDANT: One.

12 THE COURT: How old is that child?

13 THE DEFENDANT: A year and six months.

14 THE COURT: And what's the last job you had.

15 THE DEFENDANT: I haven't worked.

16 THE COURT: You never worked.

17 Mr. Davis I have in front of me three Indictments
18 -- I'm sorry two Indictments, 2014-GS-46-3509 and on
19 that same Indictment 3609A, a second count. The first
20 count is for murder. It appears by your signature and
21 what your lawyers told me and what the solicitor has
22 told me that you will be pleading guilty to
23 voluntarily manslaughter. Do you understand that
24 voluntarily manslaughter carries a potential sentence
25 of up to thirty years?

1 THE DEFENDANT: Yes.

2 THE COURT: And then you are also charged on that
3 Indictment possession of a firearm during the
4 commission of a violent crime and that carries a
5 potential sentence of up to five years; do you
6 understand that?

7 THE DEFENDANT: Yes, sir

8 THE COURT: And do you understand, has it been
9 explained to you that both -- that the voluntarily
10 manslaughter is a violent most serious offense. Has
11 your lawyers talked to you about that?

12 THE DEFENDANT: Yes.

13 THE COURT: And the consequences of that and your
14 lawyers and the Court can't tell you how the
15 Department of Corrections will deal with that but
16 those will certainly effect what programs you may or
17 may not be eligible for and your parole eligibility
18 once you are sentenced. Do you understand that?

19 THE DEFENDANT: Yes.

20 THE COURT: And I ask you on both of those charges
21 how do you plea?

22 THE DEFENDANT: Plead guilty.

23 THE COURT: To the voluntarily manslaughter and
24 to the possession of weapon during the commission of a
25 violent crime?

1 THE DEFENDANT: Guilty.

2 THE COURT: We are going to talk about that
3 manslaughter -- voluntarily manslaughter charge in
4 just a minute. Let me talk to you a little bit about
5 the burglary charge. On that Indictment it's a direct
6 Indictment, 2014-GS-46-03510 that Indictment is for
7 burglary first degree. That Indictment alleges that
8 on or about June the 29, 2014 that you went and
9 entered the dwelling of a Kadeem (phonetics) Cobb
10 located on Baker Street in the City of Rock Hill here
11 in York County and during that time you went in
12 without his consent to commit a crime and you were
13 armed with a deadly weapon and you caused physical
14 injury to a person who was not a participate of the
15 crime, you used the deadly weapon, you displayed the
16 firearm and that it took place in the night time.

17 Do you understand what you are charged with on that
18 Indictment?

19 THE DEFENDANT: Yes.

20 THE COURT: Do you understand that the potential
21 penalty for a burglary first degree.

22 THE DEFENDANT: Yes.

23 THE COURT: And how do you plead to that charge?

24 THE DEFENDANT: Guilty.

25 THE COURT: And I notice that you have waived

1 presentment of this to the Grand Jury and what has
2 been told to me is that you have done that at a
3 previous hearing, is that correct?

4 THE DEFENDANT: Yes.

5 THE COURT: And I'm going to talk to you a little
6 bit about the Grand Jury on the manslaughter charge.
7 On that Indictment, the murder, you are charged with
8 murder. That Indictment alleges that on or about June
9 the 29, 2014 here in York County, feloniously,
10 willfully and with malice of forethought you did kill
11 a Shantario McCoy by shooting him and that he died.
12 That's the basis for the charge of murder but the
13 State is allowing you to plea to voluntarily
14 manslaughter.

15 Do you understand what you are charged with on that
16 Indictment?

17 THE DEFENDANT: Yes.

18 THE COURT: Again, I ask you on the charge of
19 murder and the allegation of the Indictment how do you
20 plead?

21 THE DEFENDANT: I plead guilty.

22 THE COURT: And then of course at the same time on
23 June the 29, 2014 during the commission of that
24 violent crime you had a firearm. How do you plead to
25 that charge?

1 THE DEFENDANT: Guilty.

2 THE COURT: It appears by your signature that you
3 are -- and I had a discussion with your lawyers and
4 the solicitor briefly in chambers back in my office
5 about voluntarily manslaughter and the State is
6 allowing to you plea to that charge. It carries a
7 less penalty than a murder. There is some question
8 about whether it's -- under the facts of this case
9 whether it is a lesser included offense and so out of
10 an abundance of caution I'm going to talk to you just
11 a little bit about the Grand Jury on that charge. Do
12 you understand a Grand Jury here is 16 people that get
13 together here in York County once a month and law
14 enforcement presents some evidence to them and those
15 16 people listen to it and they determine whether
16 there is probable cause to go forward with a case.
17 And in fact the solicitor can't go forward with a
18 charge against you unless a Grand Jury has True Billed
19 the Indictment. They agree that there is probable
20 cause. In this case the State has told the Court that
21 they are ready to go forward with the murder charge
22 and that has been to the Grand Jury. In fact they
23 would be ready to go trial on July 13th. However, by
24 pleading guilty to voluntarily manslaughter you would
25 be giving up your right for the Grand Jury to hear any

1 evidence about a voluntarily manslaughter.

2 Do you want me to -- do you want to step down and
3 let the Grand Jury listen to the facts on a True Bill
4 -- to determine whether there is a True Bill
5 Indictment or do you want to go forward today and give
6 up your right to a Grand Jury on that charge?

7 THE DEFENDANT: I give up my right.

8 THE COURT: All right. You have signed this. Is
9 this your signature on the Indictment saying that you
10 are giving up that right, waiving?

11 THE DEFENDANT: Yes.

12 THE COURT: Let's get you to initial. There is a
13 place on the sentencing sheet where I will ask you to
14 initial that you are also giving that up and your
15 lawyers are going to show that to you. If you would
16 initial that and that will be part of the record as
17 well.

18 Mr. Davis, I have in front of me the sentencing
19 sheet where it appears you have just initialed. You
20 are waiving or giving up your right to the Grand Jury
21 to hear any factual basis a for voluntarily
22 manslaughter; is that correct?

23 THE DEFENDANT: Yes.

24 THE COURT: Okay. I also have in front of me what
25 is a entitled a plea waiver form. Let's have this

1 marked a Court's Exhibit.

2 (Court's Exhibit one, Plea Waiver, received in
3 evidence as of this date.)

4 THE COURT: I have in front me what has been
5 marked Court's Exhibit One. This is a document it
6 appears to be a document entitled a plea waiver form.
7 Have you seen this plea waiver form?

8 THE DEFENDANT: Yes.

9 THE COURT: Has your lawyer gone over -- have you
10 all been over every part of this plea waiver form?

11 THE DEFENDANT: Yes.

12 THE COURT: There are one, two, three, four, five
13 pages and on the last page there is a place where it
14 says the defendant's signature and it's dated June the
15 29th. Is that your signature on that document?

16 THE DEFENDANT: Yes.

17 THE COURT: All right, and then it appears that
18 also that there are initials by each statement in that
19 in that document. Are those your initials in the
20 boxes on each of those pages?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Did you understand what they were
23 talking to you about when you went through that plea
24 waiver form?

25 THE DEFENDANT: Yes.

1 THE COURT: Understanding again everything that is
2 on that plea waiver form how do you plead to these
3 charges?

4 THE DEFENDANT: Guilty.

5 THE COURT: Do you understand I am going to go
6 over some of these rights with you. Do you understand
7 that by pleading guilty you are giving up certain
8 important rights and one of those most important
9 rights is you have a right to a jury trial, and in a
10 jury trial that is where 12 jurors would come. It
11 would be people from here in York County and they
12 would come in the courtroom. If you plead not guilty
13 which you would have a right to do, the State would
14 have to put up evidence to prove your guilt beyond a
15 reasonable doubt. In fact they would bring those 12
16 jurors in here. You wouldn't have to say anything.
17 You wouldn't have to put up any evidence. We will
18 talk about that in just a minute. But the burden
19 would be on the State to prove your guilt beyond a
20 reasonable doubt to those 12 jurors. In fact those 12
21 jurors, all 12 of them would have to unanimously agree
22 that you were guilty before you could be found guilty.
23 That's an important right in a jury trial.

24 In a jury trial you would also have a right to
25 confront witnesses. It's called the right to

1 confrontation. That means the State when they bring
2 their witnesses in here your lawyer could cross
3 examine those witnesses. You would be able to sit
4 there and see them, listen to them. Your lawyer again
5 can cross examine. That's called the right to
6 confrontation. At trial you would not be required to
7 testify. That's called the right to remain silent.
8 You wouldn't have to say anything about your case. In
9 fact you wouldn't have to put up any evidence. The
10 burden again is clearly on the State to prove your
11 guilt beyond a reasonable doubt. The fact that you
12 didn't testify the Court would tell the jury that they
13 couldn't use that against you or not even consider it
14 in determining your guilt or your innocence. Do you
15 understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: In a trial you would be what we call
18 it, cloaked with the robe of innocence throughout the
19 trial. You would be presumed to be not guilty until
20 the State proved you guilty beyond a reasonable doubt.
21 Do you understand all those rights in a jury trial?

22 THE DEFENDANT: Yes.

23 THE COURT: Understanding those rights do you
24 want to go forward with your plea today or do you want
25 to set the case for trial on July the 13th.

1 THE DEFENDANT: I'll go forward with the plea.

2 THE COURT: Have you had plenty of time to talk to
3 -- and we will make the plea affidavit will be part of
4 the court record.

5 Have you had plenty of time to talk to Mr. Dest and
6 Mr. Smith about this case?

7 THE DEFENDANT: Yes.

8 THE COURT: Have you all gone over all of the
9 evidence and information that has been provided to you
10 by the solicitor's office; documents, statements, all
11 the discovery? Have you all talked about the case in
12 detail?

13 THE DEFENDANT: Yes.

14 THE COURT: Have you had plenty of time to talk to
15 them about it?

16 THE DEFENDANT: Yes.

17 THE COURT: Are you satisfied with the way Mr.
18 Dest and Mr. Smith have represented you in this
19 matter?

20 THE DEFENDANT: Yes.

21 THE COURT: Have you all talked about any possible
22 defenses that you might have and any witnesses that
23 you might know of that might be helpful in your case?
24 Have you all had plenty of time to talk about all
25 that?

1 THE DEFENDANT: Yes.

2 THE COURT: Are you under the influence of kind of
3 medication today?

4 THE DEFENDANT: No.

5 THE COURT: Do you take any medication?

6 THE DEFENDANT: No.

7 THE COURT: Have you ever been treated for mental,
8 emotional condition?

9 THE DEFENDANT: No.

10 THE COURT: You understand what we are doing here
11 today?

12 THE DEFENDANT: Yes.

13 THE COURT: Have you got any complaints today
14 about your lawyers, about law enforcement, about the
15 jail, about the solicitor's office, the Court? Have
16 you got any complaints you want to talk about today?

17 THE DEFENDANT: No.

18 THE COURT: Are you pleading guilty today of your
19 own free will and accord?

20 THE DEFENDANT: Yes.

21 THE COURT: Are you in fact guilty of these three
22 charges?

23 THE DEFENDANT: Yes.

24 THE COURT: I find the decision of this defendant
25 to plead guilty to voluntarily manslaughter,

1 possession of weapon during a commission of a violent
2 crime and burglary first degree to be freely,
3 voluntarily, intelligently made. He has had the
4 representation of a competent attorneys with whom he
5 says he is satisfied. I will accept his plea.

6 Let me ask you one other thing before I go any
7 further. We talked about -- did your lawyers talk
8 about these being violent, serious offenses and all
9 the consequences? It appears -- it depends on what a
10 judge gives you, but if you parole -- get out on
11 parole at some point in the future if you commit
12 another violent or serious, most serious offense you
13 could then be looking -- no matter what it is -- the
14 State could then if they desire to go forward and seek
15 a life without parole sentence against you. Do you
16 understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: Has that been explained to you?

19 THE DEFENDANT: Yes.

20 THE COURT: And you understand what these charges
21 are?

22 THE DEFENDANT: Yes.

23 THE COURT: And you understand that you have ten
24 days -- and the sentencing judge is going to tell you
25 this because actually you will have ten days from the

1 date from when the judge sentences you in which you
2 would have a right to appeal. So if you are sentenced
3 on July the 13th in ten days of that date if you
4 disagree with the sentence or there is some error that
5 I may have made or that judge makes in Court you have
6 ten days in which to appeal. You do that by
7 contacting your lawyers. Do you understand your right
8 to appeal?

9 THE DEFENDANT: Yes.

10 THE COURT: What I will need to do now and I am
11 not sentencing you but I need to hear from the
12 solicitor some of the facts so that I can make sure
13 that there is a factual basis for me to accept your
14 plea. So what I am going to do is listen to what he
15 tells me happened and then I will ask you some
16 questions about those facts when he gets through. Do
17 you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: Solicitor, has the victim been
20 notified of this hearing today?

21 MR. THOMPSON: Yes, Your Honor. We have complied
22 with the victim's right act and some of the victim's
23 family are here right now.

24 THE COURT: All right, and do they understand that
25 today I would not be hearing from them. This is just

1 to qualify the plea and they understand they will have
2 an opportunity to address the Court as far as
3 sentencing and their position when I assume it's going
4 to be on the 13th?

5 MR. THOMPSON: Yes, they do.

6 THE COURT: That has been explained to the
7 victims?

8 MR. THOMPSON: Yes.

9 THE COURT: I want to thank them for being here.
10 It is important for you to be here. I am sorry you
11 had to go through this.

12 All right, solicitor, tell me what happened.

13 MR. THOMPSON: If it please the Court. Your
14 Honor, this happened on June 29th of last year here in
15 York County in the City of Rock Hill at ■ Bakers
16 Street extension. That is the home of Kadeem Cobb who
17 is a mutual friend of both Shantario McCoy who is the
18 victim in this case who was only 25 years old at the
19 time of this, and also the defendant. That particular
20 night the defendant was with his girlfriend Elda
21 Ashley. Miss Ashley had been the girlfriend of the
22 defendant prior to this several months before and they
23 have a child in common, but she had been broken up
24 with him for several months and had been dating Mr.
25 McCoy during that time. Mr. McCoy was with Miss

1 Ashley at Kadeem Cobb's house. There were a few other
2 people or couple of other people who were in a back
3 bedroom who did not see what happened that day but Mr.
4 Cobb and Mr. McCoy were simply playing video games in
5 the living room and as they played video games and the
6 night got a little longer it was around midnight or so
7 they heard a knock at the sliding glass door there in
8 the living room. The light outside was not on. It
9 had bothered them the night before going off and on.
10 It was on a motion sensor so they had actually
11 unscrewed the light bulb to stop it from coming on
12 when they had a group over there. So they couldn't
13 quite see who was right outside the glass door, and
14 Mr. McCoy actually went to answer the door and when he
15 looked out he said he couldn't tell quite who it was
16 although he knew the defendant by sight. He couldn't
17 quite tell who it was because it was dark on the other
18 side but he gave a description of someone who looked
19 like they might have dreads and at that point he slid
20 open the glass door. The defendant came in to the
21 residence at that time. From what I understand
22 pushing his way in or at least stepping in without
23 being completely invited or if he had been invited it
24 would have been a situation in which obviously his
25 intentions were unknown to the people inside at that

1 point in time. He had a pistol in his hand. He
2 struck the victim in the head with the pistol and then
3 shot him in the chest while yelling something out to
4 him and to Elda Ashley at the time. He then ran out
5 of the residence and took off. Mr. Cobb of course was
6 right next to Mr. McCoy and saw. Mr. Cobb recognized
7 the defendant and identified him as the person who had
8 done this because he was very familiar with him and of
9 course the victim as well had being yelling, "No
10 Dashon, no Dashon" he came in, and she as well
11 immediately recognized him and thought she was going
12 to be shot as well but she was not obviously.

13 There was one shot fired. It was a revolver. The
14 defendant disappeared out of the residence at that
15 time. 911 was called. The police arrived. The
16 victim unfortunately died very quickly and was dead on
17 scene when EMS folks got there and as the police
18 arrived -- and it did not take long for them to get
19 there. They got there rather quickly but he had
20 already expired. It severed the aorta and caused him
21 to bleed out rather quickly.

22 When the police immediately began looking for the
23 defendant because Elda Ashley immediately told them
24 who it was. As a matter of fact you can hear that on
25 some of the cash dam -- cash board -- or hashboard

1 (sic) cameras that the officers had on and you can
2 hear some of the conversations they are having with
3 the people in the residence. They immediately went to
4 the defendant's residence to try and find him there
5 and couldn't find him there. Right after that went to
6 another residence known to be that of his mother and
7 her boyfriend and was he not there either. They
8 continued to look for him for a couple days.
9 Ultimately he turned himself in on July 1st of last
10 year and was charged with the crimes at that time.

11 In addition to that evidence, Your Honor, a short
12 time later -- a couple months later, while the police
13 had not recovered a gun at that point in time
14 Detective Delton with our office actually heard a jail
15 call from the defendant to Mercedes Bland in which
16 Miss Bland was describing to the defendant something
17 she needed to tell him but couldn't say over the phone
18 and in that ultimately she did tell him that someone
19 she did call Brown had been arrested with a gun and
20 that seemed to cause the defendant great concern. So
21 immediately Investigator Dalton contacted Rock Hill
22 Police Department. Told them that he suspected that
23 the gun that Mr. Brown had or this guy named Brown had
24 would have been the gun possibly used in this crime.
25 They sent that to SLED and the gun did come back as

1 positive match. It was the gun used in the crime.
2 They figured out Brown was a man by the name of
3 Demetrius Graham who was a good friend of the
4 defendants. When they ultimately interviewed Mr.
5 Graham while he hemmed and hawed initially he
6 ultimately did say he was with the defendant that
7 night. That him and another lady, Miss Johnson, a
8 Rakisha Johnson, had been out with the defendant that
9 night. That they had been doing drugs. They had gone
10 out to get some cigars from a local convenience store
11 and on the way back the defendant noticed Miss
12 Ashley's car in the driveway of Kadeem Cobb and that
13 he immediately stops saying something to the effect of
14 no, or hell no, getting out with a gun in his hand.
15 They both watched him go up to the residence and go in
16 and that when he went in they immediately heard a
17 woman screaming no Dashon and then one gunshot. That
18 he ran back out. That he told them that he had shot
19 the person in the chest and that they left at that
20 time and ultimately he gave the gun to Mr. Graham.
21 Mr. Graham claims he actually paid him forty dollars
22 for gun. I'm not sure whether that part is true or
23 not quite honestly, but obviously he gave the gun to
24 Mr. Graham at that time. He told about that and we
25 reached Miss Johnson who also confirmed that story so

1 those were the people we were going to have to present
2 at trial.

3 In addition to that, there was a man who came out
4 of the residence just before the shooting occurred who
5 also is familiar with the defendant but it was very
6 dark outside and he saw someone in the yard and that
7 person asked if Shantario was still inside and he said
8 yes. Initially he thought it was someone else that he
9 knew but then when he left he realized that was Dashon
10 Davis, that was the defendant and later on said to the
11 police now I realize that was him that was out there
12 asking if Shantario was still inside. But that
13 witness also identified that there was a white car
14 which was Mr. Graham's car and the car that he admits
15 that they drove that night that was parked just
16 outside the residence. That there was a black man
17 that was reclined back which that witness wouldn't
18 have known otherwise because we didn't know it until
19 Mr. Graham confirmed that he did -- was back reclined
20 in his seat. And in addition to that he saw a woman
21 with dreads in the back of the car which matches the
22 description of Miss Johnson.

23 So, that is the evidence that we would present at
24 trial, Your Honor. The basic evidence. In addition
25 as the investigation continued there were things such

1 as threats that were made by the defendant through
2 texts to the victim, in particular to Elda Ashley in
3 threatening to both harm her and kill her as well as
4 to kill Shantario McCoy and that happened over a
5 course of a couple months prior to this and we would
6 have presented those things as well.

7 So the those are the basic facts of the case, Your
8 Honor, without going further, but I think they do
9 cover completely the actual burglary of the residence
10 because he -- from what the witnesses would say that
11 he pushed his way in once the door was open. But even
12 if he had not pushed his way in he came in with the
13 intent to shoot someone which obviously you wouldn't
14 let someone in your house if that was going to be the
15 case. So I believe it would also fit under trick or
16 artifice for the burglary.

17 THE COURT: And again, what's the recommendation
18 solicitor?

19 MR. THOMPSON: The recommendation is 15 years is
20 the minimum with a maximum of 50 years as a sentence.

21 THE COURT: Mr. Davis, you've heard what the
22 solicitor said and let's talk a little bit about the
23 recommendation. The recommendation in this case is a
24 minimum of 15. That's the least you can get.

25 Burglary first degree carries a mandatory minimum of

1 15 and then they are recommending a cap of 50 years.
2 It will be left up to the judge who sentences you to
3 determine that.

4 Has there been anything else promised to you in any
5 way to get you to plead guilty?

6 THE DEFENDANT: No.

7 THE COURT: Have you been threatened or coerced in
8 any way to get you to plead guilty today?

9 THE DEFENDANT: No.

10 THE COURT: Again I ask you, are you pleading
11 guilty of your own free will and accord?

12 THE DEFENDANT: Yes.

13 THE COURT: You heard what the solicitor said
14 about the facts of the case. Do you disagree in any
15 way with what the solicitor has told the Court?

16 THE DEFENDANT: Yes, I do on parts, yes.

17 THE COURT: All right. Let's hear what do you
18 disagree with.

19 THE DEFENDANT: I disagree about the fact that he
20 said that I went to the house to commit a crime and
21 even the fact that I went in to the house.

22 THE COURT: All right. Are you telling the Court
23 that you never went in the house?

24 THE DEFENDANT: Yes.

25 THE COURT: Then how can you plead guilty to

1 something -- so, did you shoot the guy?

2 THE DEFENDANT: Yes.

3 THE COURT: You did shoot him?

4 THE DEFENDANT: Yes.

5 THE COURT: Where were you when you shot him?

6 THE DEFENDANT: I was outside the house.

7 THE COURT: You were outside the house. Where were
8 you outside the house?

9 THE DEFENDANT: On the steps.

10 THE COURT: So what you are telling me you agree
11 with the facts that this is a voluntarily
12 manslaughter?

13 THE DEFENDANT: Not -- not -- not really -- but,
14 I really I don't have a choice unless I want to go to
15 trial. I would be facing life and I don't have a good
16 chance of going to trial and fighting for
17 self-defense.

18 THE COURT: All right, let's talk about that a
19 little bit. The trial is scheduled for July the 13th,
20 is that right?

21 THE DEFENDANT: Yes.

22 THE COURT: And I believe they've informed me you
23 have already been in front of another judge and he's
24 told you that you would have to be ready on July the
25 13th?

1 THE DEFENDANT: Yes.

2 THE COURT: And do you understand the facts what
3 the solicitor has told me, those are the facts that
4 they would present at trial. Do you understand that?

5 THE DEFENDANT: Yes.

6 THE COURT: Lawyers approach just a moment.

7 (WHEREUPON, there was an off the record
8 discussion.)

9 THE COURT: Mr. Davis, I find that there is a
10 factual basis by which to accept your guilty plea to
11 the voluntarily manslaughter and to the possession of
12 a weapon during the commission of a violent crime.
13 I'm going to allow your lawyers to talk to you just a
14 little bit about what's called an Alford plea. They
15 are going to explain that to you and then once they've
16 explained that to you they will step back and talk to
17 you a little bit. When we come back out here on the
18 record I will explain to you about what an Alford plea
19 is and we will do that when you come back. All right.

20 THE DEFENDANT: Yes.

21 THE COURT: Again, I find there is a factual basis
22 and also which the State facts as far as the
23 voluntarily -- the facts stated by the State as to the
24 voluntarily manslaughter of which also the defendant
25 agrees to the factual basis of the voluntarily

1 manslaughter, possession of a firearm during the
2 commission of a violent crime.

3 I do find that there is a factual basis if the
4 defendant after talking with his lawyers desires to
5 enter an Alford plea to burglary first degree there
6 would be a factual basis for that. However at this
7 point his lawyers have informed me they have not
8 talked to him about an Alford plea on the burglary
9 first degree and so I will give them an opportunity to
10 step down and talk to him and we will go back on the
11 record and reassume after they had time to talk to you
12 all right thank you.

13 (WHEREUPON, there was a recess in the
14 proceedings.)

15 THE COURT: Mr. Davis, we are back on the record
16 in the case of State versus Donquavious Dashon Davis.
17 We had gotten to the point where Mr. Davis you
18 disagreed with the factual basis for burglary first
19 degree and we talked about -- just briefly, about an
20 Alford plea. Have you had time to talk to your
21 lawyers about what an Alford plea is?

22 THE DEFENDANT: Yes.

23 THE COURT: Do you understand that by pleading
24 guilty under what we call State V Alford or North
25 Carolina versus Alford, is that if I ask you how you

1 plea you say you are going to plead guilty under
2 Alford. That means that you would agree that the
3 facts that the State would present is very likely that
4 a jury would find you guilty and that you want to take
5 advantage of the offer that they have given you on the
6 burglary first degree and the sentencing range would
7 be the basis for that plea. So you don't actually
8 have to say that you agree with the facts. You agree
9 that the facts that they will present would likely
10 result in a jury convicting you. Do you understand
11 that?

12 THE DEFENDANT: Yes.

13 THE COURT: Do you have any questions about what
14 an Alford plea is?

15 THE DEFENDANT: No.

16 THE COURT: All right. I will ask you on the
17 charge of burglary first degree, how do you plea?

18 THE DEFENDANT: I plead guilty under North
19 Carolina versus Alford.

20 THE COURT: And you understand what that means.
21 That's treated the same way as guilty plea, do you
22 understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: And you will have a record for being
25 convicted of a burglary first degree, do you

1 understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: And all the consequences that I talked
4 to you about a conviction for burglary earlier still
5 apply. Do you understand all that?

6 THE DEFENDANT: Yes.

7 THE COURT: All right. I find there is a factual
8 basis for which he has entered his Alford plea and I
9 will accept the plea.

10 Anything else solicitor.

11 MR. THOMPSON: No, Your Honor, I don't believe so.

12 THE COURT: Mr. Dest, Mr. Smith.

13 MR. DEST: No, sir.

14 MR. SMITH: No, Your Honor.

15 THE COURT: Do you have have any questions Mr.
16 Davis for the Court?

17 THE DEFENDANT: No, sir.

18 THE COURT: All right, then that concludes this
19 hearing. Do you understand that when you come back
20 the week of the 13th there will be another judge and
21 he will decide what type of sentence to give you. Do
22 you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: All right, and also at that time he is
25 going to have to hear the facts all over again because

1 he was not here today and he would not know what the
2 facts are. So, when you come back in that judge will
3 listen to the facts as the State gives them again. Do
4 you understand all that?

5 THE DEFENDANT: Yes.

6 THE COURT: Thank you. That concludes this
7 hearing and the sentencing will be deferred until the
8 week of July the 13th.

9 Thank you.

10 MR. THOMPSON: Thank you, Your Honor.

11

12 (END OF TRANSCRIPT)

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I, the undersigned Aileen Butler, Official Court Reporter for the 16TH 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 in the captioned case, in the Circuit Court for York County, South Carolina, on the 1st day of July, 2015.

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

December 2, 2016

S/Aileen Butler

State of South Carolina.,) In the General Sessions
) Court of York
)
) Case No.: 2014-GS-46-03509
) 2014-GS-46-03509(A)
) 2014-GS-46-03510
 County of York.)

State of South Carolina.,)
)
 Plaintiff.,)
)
 -vs-) Transcript of Record
) Deferred Sentencing
 Donquavious Dashon Davis.,)
)
 Defendant.)

July 13, 2015
 York, South Carolina

B E F O R E:

The Honorable John C. Hayes, III., judge.

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

Mr. Kevin Brackett, Solicitor
 Mr. Willy Thompson, Deputy Solicitor
 Sixteenth Circuit Solicitor's Office
 1675-1A York Highway York, SC 29745
 (803) 628-3020
 For the Plaintiff

Mr. Harry Dest, Chief Public Defender
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 Fax: (803)-684-3054
 For the Defendant

Wanda Nelson, CVR-M
 Official Court Reporter
 To the Honorable John C. Hayes, III

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I-N-D-E-X

E-X-A-M-I-N-A-T-I-O-N

WITNESS

BY:

PAGE NO.

No Witnesses were called.

I-N-D-E-X

E-X-H-I-B-I-T-S

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
St.1	Photo/scene incident		P.27
St.2	Photo/scene incident		P.27
St.3	Photo/scene incident		P.27
St.4	Photo/rear view/Cadillac		P.27
St.5	Photo/scene incident/outside . . .		P.27
St.6	Photo/scene incident/outside . . .		P.27
St.7	Photo/scene incident thru Patio door		P.27
St.8	Photo/victim on floor		P.27
St.9	Photo/victim's forehead		P.27
St.10	Phot/victim's throat		P.27
St.11	Photo/scene incident		P.27
St.12	Photo/white car		P.27
Ct.1	Plea Transcript 7/1/15		P.27

Reporter's Note: All Exhibits were filed with the York
County Clerk of Court's Office.

1 (COURT BACK IN SESSION AT 02:36 PM.)

2 THE COURT: Thank you. You may take your seats.

3 Good afternoon.

4 SOLICITOR BRACKETT: Donquavious Davis.

5 (DEFENDANT, DONQUAVIOUS DAVIS, BLACK MALE, ENTERS
6 COURTROOM.)

7 THE COURT: All right, Mr. Brackett.

8 SOLICITOR BRACKETT: May it please the court, your
9 Honor. We are here today on Docket Numbers 2014-GS-46-
10 3-5-0-9 and 3-5-0-9 (A), the State versus Donquavious
11 Dashon Davis. These are True Bill Indictments charging him
12 with count one murder and court two possession of a firearm
13 during the commission of a violent crime. And 2014-GS-46-
14 3-5-1-0. This is a direct True Billed Indictment charging
15 Donquavious Dashon Davis with burglary in the first degree.

16 Mr. Davis is present in the courtroom represented by
17 his counsel Circuit Public Defender Harry Dest and
18 Assistant Public Defender Phil Smith.

19 Your Honor, the posture of this case is that the
20 defendant on July the 1st of this year waived his rights
21 and entered pleas of guilt to these indictments. On the
22 3509 count one murder the charge was reduced to voluntary
23 manslaughter. He pled guilty to the possession of a
24 firearm during the commission of a violent crime and to the
25 burglary first degree as charged.

1 The pleas were entered in front of the Honorable Dan
2 Hall on, as I said, July the 1st and sentencing was
3 deferred until this date so that we could gather all the
4 interested parties for the purposes of sentencing.

5 We are present in the courtroom and the State is ready
6 to go forward with sentencing at this time.

7 THE COURT: All right. Mr. Davis, I'm Judge John
8 Hayes. You appeared before Judge Hall back on the first,
9 twelve days ago. I have reviewed the transcript that has
10 already been typed up by Ms. Butler, the court reporter,
11 and I was given it earlier today by the Solicitor but with
12 the agreement of your attorney. Although it's a court
13 record I could have looked at it whether anybody wanted me
14 to or not. So I have reviewed that and see where Judge
15 Hall went over with you your rights and the charges and you
16 entered a plea. I believe an Alford Plea on the burglary.

17 SOLICITOR BRACKETT: Yes, sir, that is correct.

18 THE COURT: And a plea of guilt on voluntary
19 manslaughter and on the pistol charge, a firearm charge.

20 I'm here today to determine what sentence you are to
21 -- what sentence to be imposed and I believe it was between
22 fifteen and fifty years ---

23 SOLICITOR BRACKETT: Yes, sir.

24 THE COURT: --- of the agreement, at lease your
25 understanding of the parties at the time you entered the

1 plea. Now. before I turn it back over to the Solicitor for
2 his presentation, is there anything that Judge Hall went
3 over that you now have a question about?

4 MR. DAVIS: No, sir.

5 THE COURT: Is there anything you want me to go over
6 again that Judge Hall went over with you about your rights
7 and what you were doing and the impact of these pleas?

8 MR. DAVIS: No.

9 THE COURT: So you're ready to go forward today and
10 make a presentation through your attorneys after the State
11 makes their presentation. You're ready to go forward with
12 the presentation on both the State's behalf and your behalf
13 as to what sentence I as the sentencing judge should
14 impose. You ready to go forward with that?

15 MR. DAVIS: Yes, sir.

16 THE COURT: Okay. Mr. Brackett.

17 SOLICITOR BRACKETT: Yes, sir, your Honor.

18 To start out I would ask Mr. Willie Thompson with my
19 office to apprise the court of the facts and circumstances
20 that led up to this incident on June 29th of 2014. The
21 background of this is relevant for the purposes of
22 sentencing and it's important for the Court to understand
23 the parties, who they were, and how they came to be where
24 they were on June the 29th when the murder or when the
25 homicide occurred. So I'll turn it over to Mr. Thompson

1 for that.

2 SOLICITOR THOMPSON: May it please the Court, your
3 Honor. The main characters that I'm gonna be dealing with
4 right now would be the defendant Dashon Davis as well as
5 Elda Ashley who was his girlfriend for quite some time for
6 a couple of years prior to this. But they broke up in
7 January of 2014 and that's kind of a key date as well.

8 And as well we'll be talking about the victim who was
9 killed Santario McCoy. Mr. McCoy was twenty-five when he
10 was killed at the end of June of last year and Mr. McCoy
11 had begun to date Elda Ashley after she had broken up with
12 the defendant Dashon Davis.

13 Dashon Davis and Ms. Ashley had had a baby together.
14 Her name is Aniah. She was born [REDACTED] of 2013 so
15 around the time this occurred she would have been around
16 eighteen months old at the actual shooting but at the time
17 of their breakup just a little over a year old at that
18 point in time when the two of them broke up.

19 Their relationship is very rocky and a classic
20 domestic violence type relationship. There are three
21 incident reports from 2013 with the Rock Hill Police
22 Department regarding criminal domestic violence acts
23 between the two of them, two of which the defendant is
24 named as the suspect and one in which she is named as the
25 suspect.

1 But in one of these on May the 20th of 2013 there was
2 actually a charge against the defendant Mr. Davis and he
3 was convicted of that charge actually in June of last year
4 just shortly before this crime occurred. Going into that
5 however, your Honor, I would like to talk about there were
6 a number of text messages recovered by law enforcement from
7 Elda Ashley who still had him on her phone; had saved them,
8 and we were able to of course recover those when she gave
9 the phone to the police.

10 And in doing that we see kind of a great history of a
11 classic domestic violence that escalates by the defendant
12 in this case after they had broken up. It literally is
13 comprised of somewhere in the neighborhood of a thousand
14 text. And I would loosely say these are text conversations
15 because their almost solely the defendant texting her with
16 vary minor or no response at all from her but it would set
17 him off as he texted. And you can see the progression of
18 him getting angry from the fact that she's not answering
19 the text; from the fact that he's complaining that he's not
20 seeing the child enough. But unfortunately Ms. Ashley
21 would say every time he saw the child it set him off and he
22 began doing what she considered crazy things again which
23 we'll see in some of the text messages here.

24 And I'll ask the Court to excuse the language in these
25 because it's graphic and it's bad but I think it's

1 appropriate for the court to know exactly what he was
2 sending to her and saying to her going into this period of
3 time.

4 He actually starts to threaten her with physical harm
5 as early as January 23rd of 2014 right after their breakup
6 when he says that I quote I'll hurt you in one of the text.
7 And of course that's filled with colorful language prior to
8 that but he literally says that at one point he will hurt
9 her. He talks about how he hates her and how she's a whore
10 and keeps going on about things of that nature throughout
11 January and then into some of the text in February. And
12 then into March and March is when he starts becoming even
13 more graphic about what exactly he's gonna do.

14 As a matter of fact on March the 12th of 2014 in a
15 conversation that they had by text there was a time that
16 the victim wrote actually a very nice long text about how
17 she would like for him to be in the baby's life but that
18 the two of them are not together any more, but she expects
19 him to take up his role as a father and she wants him to be
20 a part of that. It's actually a very nice text but
21 unfortunately that breaks down as the defendant gets very
22 defensive when she says that and starts in and ultimately
23 ends up saying, "You been talking to people and stuff. I
24 want you back. I don't want you looking for niggers or
25 having them around my child because I will go for murder."

1 And that's the first time he mentions something about the
2 possibility of killing someone.

3 But as that goes on he keeps changing, vacillating
4 back and forth to hating her to saying I love you and I
5 want to be back together to hating her. And then later in
6 the same month on the 24th of March of 2014 he was about to
7 have a court appearance on his domestic violence charge and
8 they talked about it a little bit and ultimately he ask her
9 if she was with her boyfriend. And she said that he does
10 not work with me because she was at work at the time. And
11 at that point the defendant went off again. You can see in
12 the text as he says, "Fuck you, you fucking ho, ass bitch,
13 dumb bitch. I want you fucking die. You sick ho, I hate
14 you. I'll fucking kill you and your fucking nigger."

15 And then he goes on a little bit later in the same
16 group of texts says "I hate you, girl. And I'll kill you,
17 fuck you." And then he goes on a little later in the same
18 text and says, "I'll kill y'all. I'll beat him while you
19 watch and beat your ass too." And then he goes into April
20 and in April they again continue one of the -- on April 5th
21 and 6th going through those two days of 2014 there's a
22 hundred and forty-nine text messages from the defendant,
23 fourteen of which are from the victim in reply to him at
24 some point. Once again very short and to the point, him
25 however going on and on. And in this point in time it's

1 actually interesting to note that the defendant was taking
2 care of the child at this time. She had allowed him to see
3 the child. He actually had the child with him and instead
4 of being happy to have his child with him, which would be
5 the claim that he's making through a number of the text
6 messages, he instead focuses only on what Elda is doing and
7 who she might be with.

8 And he goes on in this talking about loving her and
9 then hating her. Talking about her being with other --
10 that she's around other men. And then he goes on and says
11 "I'll be in jail over your fucking ass". And tells her
12 that -- Then after that goes back into talking about the
13 baby and how he loves her and then gets mad again and it's
14 just kind of a back and forth type of thing.

15 Then on April the 10th he sends her a text message
16 apparently trying to rile her up. And he says, "I have
17 another child on the way." And he tells her that he's with
18 another woman. And he says, "Fuck you." She simply
19 replies with Kaddy as in Okay. And the defendant
20 immediately goes off and says, "You're a dumb ass bitch.
21 Now watch when I see you. Bitch, I'm going to shoot you."
22 And then he goes on and says "He's buys shit, that's what
23 -- "he buying shit" talking about the person that he thinks
24 she is with, "but that's his fucking baby" and "Bitch, I'm
25 gonna hurt you, you fucked up. Dumb ass, girl, you gonna

1 die behind this shit and that nigger.

2 Bitch, you stupid I'm gonna hurt you. Answer your
3 fucking phone you dead bitch. You think I'm that joke that
4 toy. He will die you too ain't playing. Bitch, I'll kill
5 y'all. You are dead, Bitch, and that nigger. You dead
6 Bitch. Have fun now. You gonna see you a dead bitch."

7 And that's just the next string of emails for that
8 day. Then it goes on through a string of emails that goes
9 all the way from April 24th all the way to April 30th. And
10 in those emails, once again it's back and forth about how
11 much he loves her and wants to be with her and wants to be
12 with the baby. And then how much he hates her and F you
13 and all those sorts of things. It's just a continuous
14 thing with him.

15 Then on the 30th it culminates. He texted her saying
16 he wants to be a family. He wants the three of them to be
17 a family. And then when she doesn't answer him he says,
18 "You never loved me. You had my child and started
19 something with somebody else. I'm gonna kill you. I hate
20 you, Elda." And then he says, "I'm gonna show you how it's
21 gonna go down. And you love that nigger. That hurts me so
22 much. And you putting it out there that was a no no. No,
23 no. Get the fuck off the phone with that nigger I'm gonna
24 kill him I'm gonna fuck you up."

25 And then that's early in the day on the 30th.

1 Sometime during that day a fight occurs between the
2 defendant and Santario McCoy. And according to the emails
3 or the text that the defendant sends to Elda Ashley, and
4 according to the witnesses, the defendant started that
5 fight with Mr. McCoy.

6 Now if you look at the text the defendant acts as if
7 he won that fight handedly but from the people who actually
8 saw it the defendant jumps Mr. McCoy and Mr. McCoy was
9 actually successful in fending him off. But you can see in
10 the text that come after that where he's talking about how
11 "Your nigger just ran." And then he keeps bragging and
12 trying to antagonize her about the fact that he can't
13 protect her. Then it goes on.

14 And then we go into May of 2014. And then he talks
15 about wanting to see his child on May the 2nd but then in
16 that same string of text and wanting to see his child he
17 says "I don't want you hurt you, Elda." And so he even
18 when he's trying to be nice he puts in things that would be
19 threatening to someone. It continues throughout that month
20 and then again on the 9th he talks about wanting to see the
21 baby and he talks about Elda's boyfriend. And then he says
22 "I'm gonna fuck you up and your boyfriend too. Don't ever
23 involve a nigger with my child, Elda. I'm trying to hold
24 back" as if somehow this is an amazing thing that he can
25 hold back at this point in time.

1 It keeps on throughout that month and then going into
2 June the 4th he tells her "I still have feeling for you,
3 baby momma." But then later in that conversation it says
4 that he's gonna be in jail for a while and I hate you. And
5 then on the 11th of June, this is gonna be the last time
6 that he has contact with her by cell phone because on the
7 13th of June she let her cell phone lapse so that she
8 didn't pay the bill so that -- and she did that because she
9 didn't have the money at the time but that prevented him
10 then from texting her any more, so this is the last contact
11 she has with him and prior to the killing.

12 But on June 11th early around 2:30 a.m., in the
13 morning, he's texting and starts saying he wants to talk.
14 And then the victim says she's with her Ba right now
15 meaning her boyfriend right now. And then he immediately
16 goes where is my daughter and she tells him asleep. And he
17 said, "So my daughter is around another man, Elda? And she
18 said, "Yes, and his kids are too." And then he goes off
19 once again how he could be so fucking stupid. "You're
20 gonna pay for this shit. You don't text - - And then she
21 texted him back and said, "Don't text or call me" but he
22 kept on. Not right at that moment but later in the day
23 that evening around 9:41 he starts texting again, "What's
24 up?" And then ultimately goes into "I'm gonna try to kill
25 you when I see you."

1 That's why -- And then she texted back and said
2 "That's why you can't see her" meaning the daughter. "And
3 you will have to go to court" telling him he's gonna have
4 to go to court to then see his daughter because every time
5 he begins to talk about his daughter he gets violent with
6 her and gets violent that she may be seeing someone else.

7 And it's a classic case I think of control that
8 defendant's do in domestic violence cases. Then the
9 defendant says "I'm gonna fuck you up very bad and go to
10 jail for it, bitch. That's what I'm gonna go to court for.
11 I'm gonna try and kill your dumb ass." And then as the
12 conversation goes on and he says "You're gonna need that
13 check to fix your teeth I promise you. You're gonna need
14 God. I promise you this shit I'm gonna kill you." And one
15 of the last things he says to her by text is "You gonna beg
16 me not to kill you."

17 And it goes on for a little bit after that and it's
18 unpleasant in what he says but that gives you kind of an
19 idea of what's leading up to the point when this occurs and
20 how violent the defendant is getting, really within his own
21 mind, because no one is doing things to him outward. These
22 are all text and almost exclusively text by him to Elda
23 Ashley. Very few of them are back to him in comparison to
24 the number of text sent.

25 But that gives you kind of the background as to what

1 leads up to this day when ultimately at the crime scene as
2 Mr. Brackett will now go into.

3 SOLICITOR BRACKETT: Your Honor, this incident took
4 place -- the actual homicide just after midnight on June
5 the 29th. That evening a little earlier about ten o'clock
6 Ms. Ashley and her boyfriend, the victim in this case
7 Santario McCoy, had gone to the home of Kadeen Cobb ■
8 Baker Street Extension here in the city of Rock Hill in
9 York County.

10 And they met there with Mr. Cobb and a number of other
11 people that were hanging out at the house that night. It
12 was mostly young people that were playing, I believe, X-
13 box. There were numerous people in the house hanging out
14 in different rooms listening to music playing the X-box
15 drinking a couple of beers nothing out of the ordinary.
16 These are all good kids. The victim in this case Mr. McCoy
17 had no criminal conviction history at all.

18 Present in the room in addition to Ms. Ashley and the
19 victim were Mr. Cobb the owner of the house. He was the
20 owner of the X-box. Sam Wilson and his brother Deon Stuart
21 and a number of other folks who were in a back bedroom and
22 didn't see what actually transpired.

23 They played X-box for some period of time and shortly
24 before midnight after playing X-box with the victim Mr.
25 McCoy, Sam Wilson decided that he was going to go home and

1 spend some time with his girlfriend and so he left. His
2 house was just a few doors down so it's a short walk from
3 there. According to Ms. Ashley's statement a few minutes
4 after he left there was a knock at the door. After Mr.
5 Wilson left though it's important to note that he ran into
6 somebody in the carport area after he left and somebody
7 ultimately identified as the defendant Mr. Davis.

8 Mr. Davis ask Mr. Wilson if Mr. McCoy was in the home.
9 Mr. Wilson told the defendant that he was in fact inside
10 the house and then Mr. Wilson went on his way and thinking
11 nothing of it.

12 Shortly a minute or two after that Mr. Wilson's
13 brother Deon Stuart also left the house. He didn't report
14 seeing anybody. And then according to Ms. Ashley a few
15 more moments passed and then there was a knock at the door.
16 Mr. McCoy got up and went over to the door to see who it
17 was; looked out because the lighting was poor he couldn't
18 see too well and he just identified the individual as
19 somebody who was outside with dreds. He couldn't see
20 exactly who it was.

21 He opened the door and then, according to the
22 witnesses in the house Ms. Ashley and the other witnesses,
23 what happened next was Mr. Davis stepped into the house,
24 struck Mr. McCoy quickly in the face ultimately pistol
25 whipped him, drove him back a bit and then shot him almost

1 one instantaneous sort of blitz attack on him, Mr. McCoy,
2 that did not have much time to react or respond or even
3 know what was happening. Before a few seconds had passed
4 he had been shot in the chest with a .38 caliber and fell
5 on the floor in the living room ultimately dying from those
6 wounds.

7 Mr. Davis fled the scene. Now he had come to the
8 scene in a car with Keisha Johnson a friend of his who was
9 in the back seat and another individual Demetrius Graham
10 who pled earlier in front of your Honor to accessory after
11 the fact. He pled earlier today to accessory after the
12 fact. And he, Mr. Graham, was waiting in the car, it was
13 Mr. Graham's car, and Mr. Graham saw the entire event; saw
14 him leave the car walk up to the house and ultimately saw
15 him, heard the gunshot, heard somebody say they shot him,
16 no, and then saw the defendant run back to the car get in
17 with the gun in his hand and they drove off ultimately
18 dropping Mr. Davis off and then going to his house.

19 And I believe you heard from the facts given in that
20 case that when Mr. Graham arrived at his house several
21 moments later the defendant came to him and sold him the
22 gun that he had used for forty dollars which was the basis
23 of his accessory after the fact charge.

24 Mr. Graham took the gun and kept it and ultimately
25 when he was arrested about a month later he, the

1 defendant's girlfriend, in a sort of cryptic telephone
2 call with the defendant through the jail indicated that Mr.
3 Graham had been arrested and he had been arrested with a
4 gun and said in such a way that it alerted law enforcement
5 to the possibility that the gun may be involved in the
6 murder. Mr. Graham was located and the gun was tested and
7 ultimately that gun tested positive as being the weapon
8 fired; the .38 caliber bullet that killed Santario McCoy on
9 June 29th.

10 The autopsy indicates that he was killed by a single
11 gunshot wound to the chest. The bullet severed the
12 esophagus of Mr. McCoy. There was a blood sample taken. I
13 don't know whether that will come in on the defenses
14 presentation of facts but in case it is, the esophagus was
15 severed by the bullet. Some of the stomach contents
16 flooded into the chest cavity including beers he was
17 drinking.

18 The blood alcohol that was taken from blood from the
19 chest indicated a blood alcohol level of .5 but that could
20 not have been - - that is almost a fatal amount of alcohol
21 in your system. It's the opinion of the pathologist that
22 alcohol from the stomach flooded into the chest cavity
23 mixed with the blood there and tainted the sample giving us
24 an unreliable reading on the blood alcohol level.

25 Those are in essence the facts of the case, your

1 Honor. Present in the courtroom -- the State has complied
2 with the Victim Rights Act -- and present in the courtroom
3 the mother, Lanette Mullins the mother of the victim is
4 present. Also Larry Mullins who would like to address the
5 court on behalf of the victim's family.

6 THE COURT: Now would be the time to hear them.

7 MS. MULLINS: Your Honor, today yet another difficult
8 day for us, my family and friends, but we certainly are
9 here for absolute justice for Santario Jemarr McCoy. We
10 love and miss him dearly. And a piece of us is gone
11 suddenly and unfairly due to Mr. Davis' actions. Santario
12 was a great son, brother, father and friend. His three
13 children to this day ask and speak of their father. It is
14 unfair to his children that he won't be here physically to
15 watch them grow but he would definitely live on through his
16 children.

17 We won't ever let them forget that he was a great
18 father to them. Not only was he a father to his own
19 children but he also was a father to Mr. Davis' daughter as
20 well when she did visit our home. And I'm so grateful that
21 God loaned us Santario for the short time that he did.
22 Santario was a protector and so many people depended on him
23 and looked up to him. So much is taken from me on June the
24 29th of 2014.

25 Your Honor, I have the duty as a mother to see that

1 justice is rendered here today when I request that Mr.
2 Davis receive full punishment that is allowed for his
3 malicious careless act and who shows absolutely no remorse
4 for murdering my son Santario.

5 MR. MULLINS: Your Honor, I'm proud of my son for
6 walking away from that fight. I taught him to do such
7 things. I know I wasn't aware of all the details of those
8 texts. On the way here today as his kids start to hear the
9 name Santario rather than dad his daughter ask why isn't
10 Santario here today. It would take me a life time to
11 explain to my family why he is not here today. I don't
12 know what I was gonna say when I came here today. I did
13 write some things down.

14 I do know how much I love my son. I know how much his
15 friends and family love him. I know how much he loved his
16 children. There are no words to fully express the impact
17 that this toil of this action has taken on my family. Even
18 with a sentence of fifty years he still has a chance to
19 live life. He still has a chance for his family to see
20 him, feel him, touch him.

21 Your Honor, that hurts. As much as I've taught my son
22 to walk away from fights I would much rather this situation
23 be turned around and I could look at him today and see him
24 standing over there and be able to know one say that I at
25 least will be able to touch my son again.

1 This young man's admitted to murder. He deserves to
2 go to jail for life for taking the life of someone else.
3 As a child my son spent plenty of time in time out. He was
4 a very stubborn child. This young man deserves being in
5 time out for life. Fifty years is a light sentence in this
6 case. Your Honor, please honor the life of my son and give
7 him the maximum sentence afforded by your authority.

8 I do not want to spend another day another second in
9 the presence of this murderer and I'm so happy this is over
10 today. Thank you, your Honor, for all your service, all
11 your time, and all you've done. I do not have to explain
12 to you what sorrow is. You've seen it in your courtroom
13 all the time. This man deserves not to see another day.

14 Thank you.

15 THE COURT: Thank you.

16 SOLICITOR BRACKETT: Your Honor, also present in the
17 courtroom is Elda Ashley who was present in the room that
18 day. She does not feel that she can address the court
19 however she did ask us to relay some information to you.

20 Mr. Davis was a violent boyfriend. He was a violent
21 man. He abused her during the course of their relationship
22 and as you can tell from the text messages that this is how
23 he was when he talked. You can only imagine how he was
24 when he was with her. But she managed to get away from
25 him; she felt like -- But she wasn't able to get away from

1 him. Ultimately he found her and killed the man that she
2 was trying to build a life with. She ask me to relate to
3 the court her desire to see this defendant receive the full
4 fifty years in this case as well.

5 Your Honor, this defendant has a criminal record that
6 dates back to the age of ten. His first conviction in
7 Family Court at the age of ten was for carrying a BB gun to
8 school in 2004. In 2007 he was charged and convicted for
9 shooting someone with a BB gun. In 2009 he was convicted
10 of possession of marijuana and trespassing. In 2009 he was
11 convicted of carrying a .38 caliber handgun to school and
12 to sell it to someone else at the school. In 2011 he was
13 convicted of possession of marijuana in Family Court.

14 As an adult he was convicted in 2012 driving without a
15 license. In 2012 trespassing and petty larceny. In 2012
16 he was convicted of threatening a public official and
17 disturbing schools. This took place at the Renaissance
18 Academy in Rock Hill. He was there working with an
19 outstanding educator, Jamie Quinn, who ran the Renaissance
20 Academy and they did everything in their power to try to
21 help Mr. Davis. They were unable to and ultimately Mr.
22 Davis threatened to kill a teacher while at the Renaissance
23 Academy and that was the basis of that charge.

24 And then in 2013 he committed a criminal domestic
25 violence in which Ms. Ashley was the victim and he was

1 convicted of that on June the 16th of 2014 in his absence
2 in City Court. That charge in which the warrant for him to
3 be picked up on a bench warrant from City Court was pending
4 and they were actively seeking him at the time of this
5 incident.

6 Since his arrest, your Honor, this defendant has done
7 everything that he can to avoid being held responsible.
8 His behavior in the jail has been less than exemplary.
9 He's had a number of infractions in there. And also while
10 pending he has attempted on a number of occasions to secure
11 perjured testimony. He ask his girlfriend to -- Mercedes
12 Bland -- to testify; to come in and give a statement to say
13 that he was with her at the time of this incident; that he
14 wasn't the person who is responsible and tried to fabricate
15 an alibi. He does not I believe even to this day accept
16 responsibility for what he's done and the damage that he's
17 done.

18 Mr. Thompson at the outset referred to this situation
19 and in addition to that the one thing I did miss, he sent a
20 number of letters to Elda Ashley while he was in jail.
21 Ultimately we secured a restraining order to prohibit him
22 from sending any communications to her. It was the same
23 sort of thing without the threats. He was attempting to
24 ingracciate himself back into her life in the same fashion
25 that he would do with a text. I love you we can live a

1 life together all you need to do, you know, intimate that
2 he -- she was the principle witness against him and she --
3 he needed her help in that regard, again, trying to evade
4 being held accountable for this terrible crime.

5 This is a classic domestic violence situation. This
6 is an individual who wants to control and then if he can't
7 control and have he wants to destroy. He refuses to accept
8 reality and it led him to Baker Street that night and led
9 us to this courtroom. This is a cautionary tale I think
10 for women everywhere who are involved in a relationship
11 with the likes of Mr. Donquavious Davis. I hope that any
12 woman who reads about this and ask herself am I -- is the
13 fellow I'm with engaging in this kind of behavior. I hope
14 that that woman takes a chance to evaluate that
15 relationship and find safety.

16 Also for men. Are they behaving like this. Are they
17 treating a woman in this fashion, controlling and
18 dominating and abusing. If they are I hope they seek help
19 because they're wrong and they shouldn't do that. And
20 obviously its led Mr. Davis to where he stands now.

21 Every tale has an end and a moral. In this tale the
22 end and the moral I submit needs to be a fifty-year
23 sentence. He has spared this family the trauma of a trial.
24 That's true. The price of that was waiving the murder
25 charge which carried a mandatory day for day thirty years

1 up to life. He's not facing that. Instead he's facing
2 fifteen to fifty. That is all the concession he deserves.
3 He deserves every minute of the fifty years that he's
4 earned and I would ask the court to impose a fifty-year
5 sentence in this case. Thank you.

6 SOLICITOR THOMPSON: And one final thing, your Honor,
7 before we hand it over to the defense. If those here for
8 Mr. McCoy and Elda Ashley would please stand and they
9 wanted to be recognized.

10 (MULTIPLE PEOPLE STOOD.)

11 SOLICITOR THOMPSON: You can see it's half of the
12 courtroom, your Honor. While many of them did wish to
13 speak we didn't want to over burden the court with that and
14 so we wanted them to be recognized for coming in with their
15 support today.

16 THE COURT: Thank you.

17 SOLICITOR BRACKETT: I have State's Exhibit One
18 through Twelve which are photographs of the crime scene
19 that day showing the house, the interior of the residence.

20 All of these have been provided to the defense in
21 discovery. They've been marked as State's One through
22 Twelve. We would ask that those photographs as well as the
23 transcript that your Honor referenced earlier be made
24 Court's Exhibits or part of the record in this case.

25 THE COURT: Any objection to the photographs being

1 made a part of the record?

2 MR. SMITH: No objection, your Honor.

3 THE COURT: Any objection to the -- Obviously the
4 record is the record from the hearing, the transcript be
5 made -- incorporated into this hearing also?

6 MR. SMITH: No, objection, your Honor.

7 (WHEREUPON, STATE'S EXHIBIT ONE THROUGH TWELVE,
8 IDENTIFIED AND MARKED, RECEIVED INTO THE RECORD.)

9 (WHEREUPON, COURT'S EXHIBIT NUMBER ONE, IDENTIFIED AND
10 MARKED, RECEIVED INTO THE RECORD.)

11 THE COURT: How long has Mr. -- How many days has Mr.
12 Davis served already?

13 SOLICITOR BRACKETT: Three hundred and seventy-seven
14 days, your Honor.

15 THE COURT: All right. Mr. Dest, or Mr. Smith.

16 MR. SMITH: Thank you, your Honor, may it please the
17 court. Your Honor, Dashon is young. He's appearance, his
18 crime, and often his attempts to mask any emotion sometimes
19 hide that fact but any extended exposure to him sort of
20 reveals that. Your Honor has seen that some in dealing
21 with representation in this case. He's too young to know
22 what to do when faced with any of these type issues. Your
23 Honor has seen it when he's tried to decide on should
24 someone represent him, should he represent himself; should
25 someone else represent him and these type things.

1 He just doesn't know and he doesn't know because he's
2 young. And he's not equipped with some of the things maybe
3 other individuals have, other advantages they have.

4 Your Honor, Dashon's family is gonna be introduced to
5 you by Mr. Dest here today but you won't meet his mother
6 because she's behind that door awaiting going into the
7 other courtroom for a guilty plea of her own today.

8 He's had some issues some of which he has dealt with
9 very poorly but those things have existed in his life and
10 have existed there for years. I hope the court realizes
11 from the statement of the facts that on June 29th of last
12 year Dashon did not intend that day to go kill Santario
13 McCoy. It just wasn't a plan that he had made.

14 The incident location, Mr. Kadeen Cobbs' house was not
15 where Mr. McCoy lived so Dashon would have had no reason to
16 even assume that Mr. McCoy would have been there that day.
17 This pops up in the statements of some of the State's
18 cooperating witnesses as to how he sees a car and it
19 surprises him. I know that the State talked about one
20 witness who they say was asked by Mr. Davis was Mr. McCoy
21 in the house. But, your Honor, the total of that statement
22 that individual originally was not cooperative with law
23 enforcement and then he said he thought originally that the
24 person who ask him if Santario was inside was his brother;
25 his own brother, and that it was only later when he got

1 news of the shooting that he started thinking well maybe
2 that must have been Mr. Davis.

3 Your Honor, we submit that that just doesn't fit any
4 of the other evidence; that Dashon had no way of knowing
5 Mr. McCoy was in the house when he approached the house.
6 Who he knew was there was Elda Ashley, the young lady with
7 whom he has the relationship. That's verified by both the
8 State's cooperating witnesses from the car that Mr. Davis
9 rode in. He's driving down the road he sees her car at
10 this house and he immediatley says oh no and pulls a U-
11 turn.

12 In some ways, your Honor, it's a crime of passion
13 mixed with youth, mixed with weapons, mixed with poor
14 decisions. As you heard Aniah is a daughter that Mr. Davis
15 has with Ms. Ashley -- Beautiful young child -- and he was
16 not equipped for dealing with that relationship. They
17 weren't equipped for dealing with being a parent and all
18 the struggles that were going on and they handled it as he
19 would concede poorly in many cases, your Honor.

20 His relationship that the State characterized with Ms.
21 Ashley has been turbulent. They mentioned incident reports
22 and it is true that sometimes he's listed as the aggressor
23 but she is as well, your Honor. There are times where he
24 has marks and injuries he does not wish to pursue but that
25 they do list that he has been abused by her in the case.

1 And then in another incident that's not an incident
2 report one of their cooperating witnesses says that the way
3 he knew that was her car that night was that not long
4 before that Ms. Ashley had tried to run him over and run
5 Dashon over. Tried to kill them. That's how he knew what
6 car it was that he saw that night.

7 The location of her car at this incident location
8 which is a place that has a reputation and for less than
9 reputable things to be going on there. And as your Honor
10 has heard from some of these text he believes that she's
11 taking his daughter along with her to some of the places
12 that he's going. And he saw the car there and he made a
13 horribly poor decision to step out of the vehicle with a
14 weapon and to go and investigate.

15 What he did after that happened very quickly. He
16 makes a quick U-turn and he goes to the house in a hurry
17 with a weapon in his hand. And, your Honor, what you
18 didn't hear from the State is that there is a gun that is
19 depicted in two crime scene photos. It was never taken
20 into evidence. Now they describe it as a pellet gun and
21 that that's why the crime scene officer didn't take it into
22 evidence. But no doubt it's in the room where the shooting
23 occurred. It's described as a pellet gun but it doesn't
24 have an orange tip on it. And while nobody on the scene
25 makes mention of that weapon being used, we've received a

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1 statement as recently as this afternoon from the State who
2 talks about a witness saying that Dashon did describe that
3 he thought Santario was reaching for something that night
4 when he came to the door.

5 Regardless, Dashon fired this gun only once, your
6 Honor. Didn't shoot multiple times, didn't shoot multiple
7 people, then he ran away. He was ill equipped; perhaps
8 anybody would be ill equipped with what to do at that point
9 after emotion, reflection, consultation with his
10 grandfather Mr. Robinson, who Mr. Dest wanted to introduce
11 you to, he turns himself in. And for us the most
12 difficult part in dealing with these cases is they can't be
13 undone.

14 Obviously there's a hurting family that we can't make
15 someone undead. We can't bring a loved one back. But it
16 is also difficult to watch a young man come to that
17 realization to realize as much as he may want to change
18 what he has done he can't. He can't undo it and that's
19 difficult to watch.

20 Your Honor, Mr. Davis' family is here. I've known
21 many of them for some time. They've known many struggles,
22 they've known many tragedies in their life and this is
23 certainly another one of those. But it's been a difficult
24 year in jail for Dashon and he's been forced to come to
25 some realizations about himself and about his actions that

1 have scared him. Its my plea to your Honor today whatever
2 sentence your Honor gives is obviously very serious and
3 very impactful and it's a long sentence regardless under
4 this range but that your Honor give some type sentence that
5 allows him potentially to have some relationship when he
6 gets out of it with a loving particular grandfather who Mr.
7 Dest is going to introduce you to.

8 Your Honor, if I may Dashon would like to address the
9 court.

10 THE COURT: All right.

11 MR. DAVIS: Yes, your Honor, I'd just would like to
12 apologize to Santario McCoy's family. I made a mistake.
13 I'm young. Everyone makes mistakes. Everyone makes
14 mistakes but the problem comes when you don't run from your
15 mistakes. I been here a year and I've learned a very lot.
16 And I was put in a situation that's hurtful and it's
17 brought my family a lot of pain. It's brought the McCoy's
18 -- The McCoy's family a lot of pain and I'm truly sorry. I
19 hope that you will have mercy on me. I hope that the court
20 can forgive me. I hope that my family can forgive me. I
21 hope that Santario McCoy's family can forgive me for what
22 I've done.

23 THE COURT: Thank you. Mr. Dest.

24 MR. DEST: May it please the Court. Your Honor, first
25 I'd like the court to recognize all the people here on

1 behalf of Donquavious' family.

2 If they may rise and show the court.

3 (MULTIPLE PEOPLE STOOD.)

4 MR. DEST: Judge, again there are numerous family
5 members here who wanted to -- some will speak but not all
6 of them, your Honor. They wanted me to relate to the court
7 that regardless of what happens today they recognize the
8 pain and suffering that Dashon's actions has caused. They
9 are here to support him regardless of what sentence is
10 imposed by the Court today. And, your Honor,---

11 You may be seated now --- this is a difficult case.
12 As Mr. Smith said we can't undo something that has created
13 so much pain and tragedy. But what perhaps we can do is
14 add a little bit more perspective. As you know through Mr.
15 Smiths' rendition of the facts in our presentation there
16 has been some instability in his life, a lot of
17 instability. As he indicated his mother is actually right
18 behind these doors about to be sentenced with Judge Burch
19 this afternoon for an incident.

20 His father is non-existent in his life. He does have
21 a strong relationship with his grandfather who I'll
22 introduce in a few moments. But, Judge, there are people
23 who do know him in a different context. And I recognize
24 what has been portrayed regarding Dashon today but there
25 are people who love him; there are people how are here to

1 support him and people who want to address the court.

2 So if I may, your Honor, first introduce Antonio Davis
3 his uncle to come forward.

4 Mr. Davis, if you will please address the court.

5 MR. DAVIS: First of all I do want to apologize to the
6 family.

7 THE COURT: We need to be able to hear what you have
8 to say. Come between those desk right there. You can turn
9 and speak to them if you wish but make sure you do -

10 ANTONIO DAVIS: First of all -

11 THE COURT: Make sure you speak loudly because this
12 lady has to take it down and I want to hear what you have
13 to say also.

14 MR. DAVIS: All right, sir. I'm sorry for y'all's
15 loss of y'all family member. You know and that's basically
16 the only thing that I really can say because I can't
17 express the way I would feel about y'all also.

18 My nephew who was born when I was twelve he's been in
19 my life for all my life because I love him. He's a A and B
20 Honor Roll Student. He did Martial Arts. He was great in
21 sports; great in basketball, great in football. But I just
22 -- You know I just want to say, you know, just have mercy
23 on him. Regardless we can't bring him back. You know if I
24 could bring him back I would try. You know I would do it.
25 I would do it but I know I can't and I know I can't try to

1 make them feel any better. The only thing that I can say
2 is what I said just now. But for him I know him. I know
3 him. He's a great man. He's a great young man. He's just
4 loved too hard that's the only problem. He loved to hard.
5 He loved his child. He don't know. He don't know how to
6 -- He didn't know how to go about this situation. And you
7 know it's always two sides to a story. I mean we heard one
8 side but we don't know. It's always a motive to every
9 subject everything. I just ask the court to please have
10 mercy on him regardless of his misunderstanding or his
11 mishaps. I'm just so apologetic to the family also because
12 I have a heart. My nephew also have a heart. He never
13 been in nothing like this. And I can't speak no farther on
14 the case but I know his heart. I know that he wouldn't do
15 it for no reason. That's all I have to say.

16 MR. DEST: Thank you. Your Honor, the next family
17 member is Delacey Davis who is the grandmother.

18 Please state your name before you address the court.

19 A. Delacey Davis. I'm Dashon's grandmother.

20 First of all I want to say I'm sorry for the loss to
21 the family. And I wanted to say please have mercy on my
22 grandson. My grandson never got in trouble. Everybody in
23 the neighborhood including the people in this house where
24 the incident happened loved him. He never got in a mess
25 like this before. And he always -- He was looking for a

1 job. I always had one when I was on Highway 21 where I
2 been working. Everyday he'd get up and go; he'd come home
3 every night. Never got in a mess. No argument with nobody
4 or nothing 'till this incident. I just ask -- I'm just
5 asking you to please have mercy on him. He's got his whole
6 life ahead of him. I know that the other guy don't but I'm
7 sorry. I just ask please have mercy on my grandson.
8 That's all I have to say.

9 THE COURT: Thank you.

10 MR. DEST: Your Honor, the next person is Paul
11 Robinson his grandfather. Your Honor, I recently became
12 involved in this case. I know you're acquainted with the
13 history of it but I've had numerous conversations with Mr.
14 Robinson and in my opinion based upon what I understand
15 about Dashon's life and the family life Mr. Robinson by far
16 is the most stable individual in the family who I believe
17 has the most positive impact on him and is someone who my
18 client trust more than probably anyone in the world. And
19 Mr. Robinson as Mr. Smith said was very influential in
20 talking not only with us being heavily engaged in this case
21 and the process but also had certain influence over Dashon
22 as well in terms of coming to understand everything
23 involved in this case.

24 And so, in talking with Mr. Robinson he certainly is a
25 man who works almost everyday. He came into our office

1 after working on a roof, a hundred degree weather, he works
2 almost seven days a week and he has contributed greatly to
3 I believe the healing process of this case hopefully.

4 And so I ask the court to hear from him now.

5 THE COURT: Mr. Robinson.

6 MR. ROBINSON: Yes, sir. Judge, your Honor, if I
7 could I would like to address the court.

8 THE COURT: Okay.

9 MR. ROBINSON: I'm deeply sorry for y'all's loss.

10 I mean truly sorry. There is nothing else to say. I
11 know I can't -- I don't know how hurt you are. I'll never
12 know. If I lost my kid I'd never know how hurt you are so
13 I'm so sorry.

14 Your Honor, I raised Dashon from a little baby cause
15 he was born -- he was born when my daughter was, I think,
16 fourteen years old. And Dashon really is a smart guy. I
17 mean he's fun to be around. I used to coach him in
18 football. I used to get out with him and play basketball,
19 softball, whatever it might be.

20 Judge, your Honor, to tell the truth this is -- this
21 is my heart. I love this guy with everything I have. If
22 you will find any way, Judge, your Honor, to please have
23 mercy on my grandson it would be having mercy on me.

24 We can't change what happened. He knows he's got to
25 be punished for his actions but, your Honor, I'm just

1 asking you to please have mercy that's in your heart.

2 THE COURT: Thank you.

3 MR. ROBINSON: Thank you, sir.

4 MR. DEST: Your Honor, I know its very difficult in
5 cases like this because you have two families who have been
6 greatly impacted by a senseless act of one individual.
7 And you've heard from all of our family members, of course,
8 our client as well talk about mercy. And, Judge, in my
9 view mercy as it's been said is the greatest virtue in the
10 law. I would submit, your Honor, that the purest form of
11 mercy often is given to those who don't deserve it; given
12 to those who don't truly understand the impact of it once
13 it's bestowed on them.

14 But, Judge, mercy reaffirms our belief that someone
15 someday years from now can be a different person even
16 though they committed a senseless irrational act that has
17 impacted so many people's lives in a destructive way.
18 Mercy, your Honor, is still a cornerstone -- a cornerstone
19 of our system.

20 And I ask the court to consider that you have a young
21 man here twenty-years-old and I recognize the cries for
22 fifty years are what has been put before the court, but,
23 Judge, fifty years is the equivalent to a life sentence.
24 Fifty years in the Department of Corrections -- I know
25 looking at statistical data very few people live beyond

1 twenty-five years in the Department of Corrections.
2 Dashon must atone for what he has done and he has to do
3 that. But, Judge, I would ask the court respectfully to
4 think about structuring a sentence on the lower end of the
5 scale.

6 Fifteen, twenty years would be a long long time in
7 prison but still gives him the chance to change; still
8 gives him a chance to be productive and gives him a chance
9 to atone for what he has done in a productive way.

10 In talking with Mr. Robinson the other day, and who is
11 fifty-six years old, he told me he said, Mr. Dest, all I
12 want is for some day to see him alive outside the
13 Department of Corrections while I'm still alive. By
14 fashioning a sentence in the way that I have suggested,
15 your Honor, it would be possible for that. I respectfully
16 ask that you sentence my client in such a way.

17 Thank you.

18 SOLICITOR BRACKETT: May it please the Court, your
19 Honor.

20 THE COURT: Yes, sir.

21 SOLICITOR BRACKETT: I just -- one factual issue I
22 need to clear up. The -- Mr. Smith referenced a pellet gun
23 in the residence and the way he stated it it was a little
24 confusing. It could have led your Honor to the impression
25 that there was a witness in the home that said that they

1 saw the victim going for a gun.

2 There was a statement that was provided to the defense
3 today from Mercedes Bland who is the girlfriend of the
4 defendant. That statement -- In that statement Mercedes
5 Bland told us, today, here in an interview in the MOSS that
6 the defendant told her that he thought he was going for
7 something. The pellet gun that he's referencing was under
8 some debris in the corner. This wasn't even the victim's
9 home. There is no evidence that he even knew that the
10 pellet gun was there. And he certainly didn't have time
11 from all the accounts of the witnesses to go for anything.
12 This was an immediate attack. Mr. -- The defendant busted
13 in, Mr. Davis busted in, came in the door, the door opened,
14 and he was immediately struck in the face and then shot.
15 And the only thing that the defendant said was "What now,
16 fuck niggers" and then shot.

17 So this wasn't a situation where -- And even if he had
18 he had every right to defend himself. The man was menacing
19 a gun but that's ridiculous. It was a pellet gun, it was
20 under some debris in the corner. And Mr. Davis made
21 statements to the police early on saying he was drunk and
22 he didn't remember anything about this event that night.

23 So there's no indication until he saw the photograph
24 of the pellet gun in the State's evidence this wasn't even
25 an issue and he tried to build a defense on it. So, I

1 think that's a red herring, your Honor.

2 THE COURT: Well arguably anything less than fifty
3 years would, in my opinion, constitute an act of mercy. I
4 do not believe the facts of this case warrant mercy, much
5 mercy, beyond that created by the plea agreement. However
6 I will give Mr. Davis some credit for coming forward and
7 entering this plea today or actually entering his plea
8 twelve days ago.

9 Unfortunately a sentence can never reflect the value
10 of a life lost and unfortunately for Mr. Davis's family
11 when a young loss -- a life is lost in these -- in this
12 context, it equals at least two lives lost.

13 On the possession of a pistol the sentence is -- All
14 of these are to run concurrent; give him credit for three
15 hundred and seventy-seven days. Possession of a pistol or
16 a firearm during the commission of a violent crime is five
17 years. The sentence on the voluntary manslaughter is
18 thirty years. And the sentence on the burglary first
19 degree is forty years. Thank you.

20 SOLICITOR BRACKETT: Thank you, your Honor.

21 THE COURT: All right. We'll be at ease for a few
22 minutes.

23 SOLICITOR BRACKETT: Yes, sir, your Honor.

24 (COURT AT EASE AT 03:36 PM.)

25 (END OF TRANSCRIPT OF RECORD.)

The South Carolina Court of Appeals

The State, Respondent,

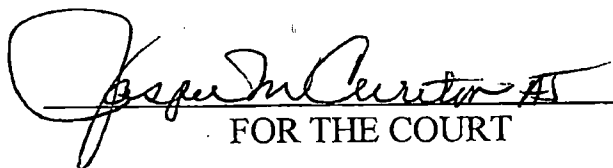
v.

Donquavious Dashon Davis, Appellant.

Appellate Case No. 2015-001584

ORDER

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


FOR THE COURT

Columbia, South Carolina

cc:

Harry Alfred Dest, Esquire
Robert Michael Dudek, Esquire
Walter William Thompson, Sr., Esquire
Salley W. Elliott, Esquire
Alan McCrory Wilson, Esquire

FILED
10/23/15



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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

December 08, 2015

The Honorable David Hamilton
PO Box 649
York SC 29745-0649

REMITTITUR

Re: The State v. Donquavious Dashon Davis
Lower Court Case No. 2014GS4603509, 2014GS4603510
Appellate Case No. 2015-001584

Dear Clerk of Court:

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

Very truly yours,


CLERK

Enclosure

cc: Donquavious Dashon Davis, 00364690
Harry Alfred Dest, Esquire
Robert Michael Dudek, Esquire
Walter William Thompson, Sr., Esquire
Alan McCrory Wilson, Esquire
John Benjamin Aplin, Esquire

FORM 5

2016CP4602450

STATE OF SOUTH CAROLINA)

County of York)

Dongquious Dashon Davis #364690)

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

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR
POST-CONVICTION REVIEW

DAVID H. HAMILTON
Clerk of Court
YORK COUNTY, SC

2016 AUG 18 AM 11:35

FILED-RECEIVED

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lee Correctional Institution FI-B-1227;
990 Wilsacky Hwy.; Bishopville, South Carolina 29010
2. Name and location of Court which imposed sentence York County of General
Sessions; P.O. Box 649; York, South Carolina 29745
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2014 FS-46-03-510 1st degree Burglary
 - (b) 2014 FS-46-03-509 Voluntary Manslaughter

(c) 2014-ES-46-03-59A Possession of a Weapon During Commission of Violent Crime

5. The date upon which sentence was imposed and the terms of the sentence:

(a) July 13th, 2015 40 years Concurrent

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

Yes

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

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

i. The S.C. Court of Appeals

ii. _____

iii. _____

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

i. Appeal Dismissed

ii. Received Remittitur

iii. _____

(c) the date of each such result:

i. Order of Dismissal October, 23, 2015

ii. Received Remittitur December, 8th 2015

iii. _____

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

i. Appellate Case No. 2015-001584

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) _____

(b) _____

(c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Trial Counsel
- (b) Prosecutorial Misconduct
- (c) Trial ^{Court} Error

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

- (a) See; Intial Brief of Applicant for All grounds C:ted
- (b) _____
- (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? NO

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

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

- (c) the disposition thereof:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____
- (d) the date of each such disposition:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____

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

N/A

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

- (a) which grounds have been presented:
 - i. N/A
 - ii. _____
 - iii. _____
- (b) the proceedings in which each ground was raised:
 - i. N/A
 - ii. _____
 - iii. _____

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

- (a) All grounds Cited in (10) Are First Time Challenged
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? Yes
- (b) your trial, if any? N/A
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
No

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

- (a) the name and address of each attorney who represented you:
 - i. Phillip Lee Smith, Esq.
York County Public Defender's Office
 - ii. Harry A. Deot, Esq.
York County Public Defender's Office
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Plea Proceedings, Arraignment
 - ii. Direct Appeal
 - iii. _____

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

Conviction and Sentence for Voluntary Manslaughter, and
1st Degree Burglary Vacated or New Trial

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

No

STATE OF SOUTH CAROLINA)
County of York)

VERIFICATION

I, Donyavious Dashon Davis, # 364690, 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.

Donyavious Dashon Davis
Donyavious Dashon Davis

SWORN to and subscribed before me this 17
day of May, 2014.

Debra Eastbridge (L.S.)
Notary Public

My Commission Expires: 3/3/2024

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

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

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

Donquarius Dethon Davis
Applicant

SWORN or affirmed to and subscribed before me this

17 day of May, 2014.

Debra Eastwood
Notary Public

My Commission Expires: 3/3/2024

Ineffective Assistance of Counsel

1.) Failed to investigate The main Elements of the Case:

(A) The elements of the gun found at the crime scene
(Chain of custody and/or the disappearance of) -

(B) Why was this gun at the crime scene -

(C) The Fact that the house did not belong to the person
Indicated on the warrant

(D) Proper evidence to prove that a Burglary was not committed
in this case/incident

(E) Did not question witnesses to whether statements would
have been material to defendants defense and/or innocence

2.) Failed to give sufficient advice to Defendant -
Counsel advised defendant to plea instead of going to trial
and challenging:

(A) Fraudulent warrants and Indictments

(B) The Elements of murder and Burglary

(C) All evidence, and representation of the innocence of the Defendant

3.) Failed to Challenge and/or object to the Courts to Elicit
whether defendant committed every element of Crime -

Defendant made a statement about self-defense, but the court
failed to go into further detail of the mentioning of this Defense
to see whether his plea was involuntary

4.) Failed to Challenge the states evidence produced at defendants
Plea sentencing -

(A) A statement by Mercedes Bland was produced at the plea sentencing
defendant did not have knowledge of this statement, and therefore
did not have time to prepare a defense for this statement

(B) There was evidence presented at the plea sentencing which was
completely unknown to the defendant, and critical this was information
about a weapon, defendant did not have time to prepare for the New
information

Prosecutorial Misconduct

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1.) Failed to disclose sufficient/material evidence that was relevant to a lesser offense -

A gun was found at the scene of the crime, that was not placed into evidence or was suppressed which could have rendered the plea of self defense

2.) Prosecutor made improper comment about evidence or his testimony was false -

Prosecutor introduced evidence about a weapon that can not be proven by any legal documents or testimony

3.) Failed to produce evidence, used in defendant's guilty plea, to the defendant -

A statement was produced on the day of defendant's guilty plea therefore denying defendant the right to prepare a defense

Trial Court Error

1.) Failed to Elicit whether defendant committed every Element of the crimes -

Defendant indicated that because of the circumstances he could not plea self-defense, But no one questioned defendant to find out whether defendant was making this plea voluntarily/actually committed the crimes as charged/warranted

State of South Carolina
County of York

Dorquavious Dashon Davis
#364690

In the Court of Common Pleas
16th Judicial Circuit

Case #
2014-JS-46-03-510
2014-JS-46-03-509

vs.

State of South Carolina

Request For Production
of Documents

Pursuant to Rule 34 of the SC Rules of Civil Procedure
The defendant Request that the state produce for Inspection
and Copying the Following Documents:

- 1.) Statement alleged to have been made by Mercedes Blund on July 13, 2015 that was presented during guilty plea. This statement was never presented to me in order to prepare a defense.
- 2.) All statements recorded made by Demetrius Graham. These statements could Prove the individual is not a credible witness.
- 3.) A letter that was alleged to have been written by Elda Asheley on July 13, 2015 the day of defendants guilty plea. This will show whether the prosecutor used false evidence or if the letter is actually true.
- 4.) There was a weapon found at the crime scene of 432 Baker St, Extension which was a firearm all defendant received was two pictures of the weapon Defendant would like any and all notes, fingerprints, DNA any test done to it / statements ect.... This information would have shown defendant was unable to prepare a complete Defense and that no investigation was done.

5.) Plea Transcripts dated July 1, 2015 and also July 13, 2015
so defendant can use for appealable arguments

115

6.) Proof of Documents showing the Kadeem Cobb has legal possession
of the home on 432 Baker Street Extension of Rock Hill, SC York County.
This will show that defendant was lead to believe false information
which put defendant at a disadvantage towards charges alleged.

7.) Proof of Documents to show that prosecutors comment
during guilty plea "that weapon-firearm was not put into
because it was a b.b. gun". Defendant was never aware of this
information. this would be considered new evidence or false comments.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK)	SIXTEENTH JUDICIAL CIRCUIT
)	
Donquavious Dashon Davis, #364690)	2016-CP-46-2450
)	
Applicant,)	
)	
v.)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed on August 18, 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 Clerk of Court for York County. Applicant was indicted by the November 2014 term of the Grand Jury for York County for Murder (2014-GS-46-3509), First Degree Burglary (2014-GS-46-3510), and Possession of a Weapon during the Commission of a Violent Crime (2014-GS-46-3509a). Applicant was represented by Harry Dest and Philip Smith, Esquires. On July 1, 2015, Applicant appeared before the Honorable Daniel D. Hall and pled guilty as indicted to both first degree burglary and possession of a weapon during the commission of a violent crime, but pleaded guilty to voluntary manslaughter as a lesser included offense of murder. On July 13, 2013, Applicant was sentenced by the Honorable John C. Hayes, III, pursuant to a recommendation to imprisonment for forty years for first degree burglary, thirty years for voluntary manslaughter, and five years for possession of a weapon during the commission of a violent crime, to be served concurrently.

Applicant filed a timely notice of appeal. On October 23, 2015, the South Carolina Court of Appeals dismissed Applicant's appeal for failure to file a sufficient Rule 203 explanation. The Remittitur was returned on December 8, 2015.

Attached herewith and incorporated herein by reference are the records of the York County Clerk of Court regarding the subject convictions; the transcripts from Applicant's pre-trial motions, guilty plea, and sentencing; Applicant's appellate records; and Applicant's records for the Department of Corrections. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

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

1. Ineffective Assistance of Trial Counsel
 - a. "Failed to investigate the main elements of the case."
 - b. "Failed to give sufficient advice to Defendant – Counsel advised Defendant to plea instead of going to trial and challenging."
 - c. "Failed to challenge and/or object to the courts to elicit whether Defendant committed every element of the crime."
 - d. "Failed to challenge the state's evidence produced at sentencing."
2. Prosecutorial Misconduct
 - a. "Failed to disclose sufficient/material evidence that was relevant to a lesser offense."
 - b. "Prosecutor made improper comment about evidence or his testimony was false."
 - c. "Failed to produce evidence used in Defendant's guilty plea to the Defendant."
3. Trial Court Error
 - a. "Failed to elicit whether Defendant committed every element of the crimes."

III.

Applicant alleges ineffective assistance of counsel in his application. Respondent contends Applicant's counsel rendered adequate assistance and provided representation within

the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." 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 pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant also alleges prosecutorial misconduct. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989). Therefore, this allegation should be dismissed.

V.

Applicant finally alleges "trial court error" for an alleged failure by the trial court to "elicit whether defendant committed every element of the crimes." This allegation does not state a viable claim for post-conviction relief. This allegation should be dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160.

An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;

4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20.

For these reasons and pursuant to Rule 12(b)(6), SCRCP, the Court shall dismiss the allegation for failing to state a cognizable claim for which relief can be granted under the Post-Conviction Relief Act.

VI.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments *will be opposed by the State at an evidentiary hearing* pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. Respondent will move to strike any amendments withheld until the last minute where such amendments result in prejudice to Respondent. See Rules 15(a)-(b), SCRCP.

VII.

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

VIII.

WHEREFORE, having made its Return, Respondent requests that a hearing be held on the claim of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

JUSTIN HUNTER
Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3737

December 22, 2016

1 STATE OF SOUTH CAROLINA

2 -----x

3 DONQUAVIOUS D. DAVIS,

4 Petitioner,

5 Case No.

6 -against-

2016-CP-46-2450

7 STATE,

8 Respondent.

9 -----x

10 April 16, 2018

11 York, S.C.

12

13 B E F O R E:

14 HONORABLE ROGER E. HENDERSON

15

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

17 JEREMY A. THOMPSON Esquire

18 Attorney for the Petitioner

19

20 JUSTIN HUNTER, Esquire

21 Attorney for the Respondent

22

23 Aileen Butler

24 Official Court Reporter

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	<u>I N D E X.</u>			
	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u> <u>RECROSS</u>
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3	DONQUAVIOUS DASHON DAVIS			
4	Mr. Thompson	7		28
5	Mr. Hunter		24	
6	PHIL SMITH			
7	Mr. Hunter	29		
8	Mr. Thompson		39	
9	WALTER WILLIAM THOMPSON			
10	Mr. Hunter	43		
11	Mr. Thompson		48	
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EXHIBITS.

1	<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
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1 THE COURT: All right, sir.

2 MR. HUNTER: May it please the Court. The next
3 case is Donquavious Davis versus the State of South
4 Carolina, 2016-CP-46-2450.

5 Your Honor, he was indicted in November 2014 for
6 murder, possession of a weapon during the commission
7 of a violent crime. He actually waived presentment on
8 the burglary first degree. He was represented by
9 Harry Dest and Phil Smith of the Public Defender's
10 Office. On July 1, 2015 he appeared before Judge Hall
11 and plead guilty. He plead guilty to voluntarily
12 manslaughter on the murder charge and to burglary on
13 the weapon's charge. On July 13th, 2015, he had a
14 sentencing hearing before Judge Hayes and pursuant to
15 recommendation he was sentenced to five years on
16 weapons charge, forty for burglary and thirty for
17 voluntary manslaughter. The sentences to run
18 concurrent.

19 He did filed a Notice of Appeal on October 23,
20 2015 and the Court of Appeals dismissed for failure to
21 file a 203 explanation. Remittitur was sent 2018. He
22 filed this current action August 18th, 2016. He is
23 present today represented by Jeremy Thompson.

24 MR. THOMPSON: May it please the Court, Your
25 Honor.

1 THE COURT: Yes, sir, Mr. Thompson.

2 MR. THOMPSON: Just by way of a brief background,
3 I am a little late to this party. I don't believe I
4 was the first attorney on this case. I came on
5 subsequently but I am currently applicant's counsel of
6 record.

7 He alleges generally that he received ineffective
8 assistance of counsel in violation of his 6th and 14th
9 Amendment rights under the United States Constitution
10 as well as corresponding provisions in South Carolina
11 Constitution.

12 He just has one primary allegation here today.
13 That is ineffective assistance of counsel for failing
14 to effectively completely advise Mr. Davis of his
15 ability to present a defense of self-defense if he
16 went to trial. And Your Honor, just a couple of kind
17 housekeeping notes.

18 First, there are three transcripts I believe that
19 should be in the packet. There is a one that has
20 different days on it; November 20th and November 24th,
21 2014, January 30th 2015, June 23, 2015, and then this
22 is the July 1st, 2015 and July 13, 2015 transcript.
23 In order, the one with all those dates deals with Mr.
24 Davis's various motions and issues regarding
25 representation of counsel. He was represented by

1 Melissa Inzerillo of the public defender's office
2 initially. He had her relieved and then was
3 proceeding pro se for a period of time before Mr. Phil
4 Smith was appointed as shadow counsel at that point in
5 time, and then Mr. Smith came on as full counsel and
6 was counsel at the time of the plea.

7 So I just want to make sure for clarification
8 purposes that this is not a situation where he was pro
9 se throughout the entire majority of the case or
10 anything along those lines. He was pro se for a while
11 but that at least leading up to the plea he was
12 represented by counsel.

13 By way of brief factual background, Your Honor,
14 this case involved a homicide. Mr. Davis shot and
15 killed his ex-girlfriend's boyfriend. He had a child
16 in common with his girlfriend. He killed her new
17 boyfriend at a residence in a dispute is how that
18 happened.

19 The State's position was that he came in to the
20 house, pistol whipped the victim and then shot him in
21 the chest. My client's rendition as you will hear is
22 significantly different. That he fired a shot. Never
23 even entered the house and fired a shot because he was
24 in fear of his life. So with that background, Your
25 Honor, I would call the applicant as our first

1 witness.

2 THE COURT: All right. Come forward sir.

3 MR. THOMPSON: Your Honor, I'll have him bring the
4 copies of transcript up for reference.

5 DONQUAVIOUS DASHON DAVIS, called as a witness,
6 having been duly sworn by The Clerk, was examined and
7 testified as follows:

8 DIRECT EXAMINATION

9 BY MR. THOMPSON:

10 Q Could you say your name Mr. Davis.

11 A Donquavious Davis.

12 Q Now, I apologize. Normally I like to call my client
13 for by his first name, but yours is a bit of mouthful so I will
14 call you Mr. Davis throughout the course of this testimony.
15 Okay?

16 A Yes, sir.

17 Q All right. Now, I just want to go over a bit of
18 procedural background with you on your case.

19 Could you tell the Court who was your first attorney on
20 these charges?

21 A Miss Inzerillo.

22 Q And what happened with her? Was she your attorney
23 throughout your entire case?

24 A No, she wasn't. She represented me for a few months.
25 I am a not sure exactly how long, but basically what happened is

1 she came to see me a few times and I basically asked her to do
2 some things for me and, you know, it didn't work out the way
3 that I wanted and I think we had a bond hearing and after the
4 bond hearing I just wanted to get rid of her because I felt she
5 wasn't in my best interest.

6 Q Let me break that down a little bit. You said you
7 wanted to get rid of her. Did you file a motion to have her
8 relieved as your attorney?

9 A I am not sure exactly how it went. Either I filed a
10 motion or I told her that I wanted to relieve her and she filed
11 a motion.

12 Q And you went to court and that was on November 24th
13 before Judge Hayes?

14 A I think so.

15 Q Is that when you ended up going pro se for a time?

16 A Yes, sir.

17 Q And it looks like you were pro se for how long? How
18 long do you remember?

19 A Probably like three and a half, four months, four and a
20 half months.

21 Q Now, your difficulties with Miss Inzerillo were they
22 related -- what were they related to? What did you want her to
23 do?

24 A Basically I wanted her to go and speak with the
25 witnesses. She had a private investigator. I think she had a

1 private investigator that was like for me or for her and I asked
2 them to go and speak to the witnesses. Just to ask the
3 witnesses questions just based off of inconsistencies and the
4 statement that I had. And I told her that I felt if they was
5 going to go and ask the witnesses certain questions that new
6 evidence would be discovered or evidence that wasn't spoken of
7 before would have been brought forth. And the private
8 investigator said he didn't agree to that or he didn't -- he
9 thought that would not be like helpful or something of that
10 sort. And I told him, well, you know, I think you should go and
11 speak to those witnesses and then he still didn't go and do it
12 and then basically after that it was just like no more. I
13 didn't hear from no private investigator anymore. I was just
14 talking to Melissa back and forth after that.

15 Q Let me stop you. Okay. Was it your intent to go to
16 trial?

17 A Yes.

18 Q Did you want to fight these charges?

19 A Yes, I wanted to fight the charges from the beginning.
20 All the way even to the guilty plea.

21 Q And is that what you had conveyed to Miss Inzerillo?

22 A She wasn't even my counsel during that phase. We
23 wasn't even really talking about a plea when she was my lawyer.
24 Phil Smith was my lawyer then when I kind of expressed to him
25 throughout the time that he was my lawyer that I wanted to go to

1 trial.

2 A Now, you just mentioned Mr. Smith's name. How did you
3 end up with Mr. Smith as your attorney.

4 A Well, I went -- I think they were thinking about I
5 guess they were going to take me to court -- take me to trial
6 while I was representing myself and then the judge just so
7 happen to say, you know, do I want to hire Mr. Phil Smith as my
8 lawyer or do I want him on my case and I said, yeah, I wouldn't
9 mind having him.

10 Q You would rather have an attorney then have to do your
11 trial yourself?

12 A Yeah.

13 Q Now, you testified earlier Miss Inzerillo came to meet
14 with you. Did you ever make bond on these case?

15 A No, I never got a bond. No.

16 Q And you also testified that you had bond denied. So
17 were you housed at the detention center throughout the course of
18 this case?

19 A Yes.

20 Q So did all of your meetings with your attorney did they
21 occur in and around this building?

22 A Yes, sir.

23 Q How many meetings would you say you had with Mr. Smith?
24 If you -- you might not be able to break it down, but he was
25 your shadow counsel to begin with?

1 A Yes.

2 Q All right. How many times would you say you met with
3 him while he was your shadow counsel?

4 A Probably a couple of times. Maybe three times.

5 A And after he became your attorney, your formal
6 attorney, how many times would you say that you meet with him?

7 A Probably about the same time, three times.

8 Q So six times total?

9 A Five or six times total. Best of my memory.

10 Q And how long did these meetings last? What was the
11 shortest meeting?

12 A If he would come to see me it was always the same
13 thing. I was basically saying the same thing to Phil Smith
14 every time that he came to see me and it was in regards to
15 issues that I had problems with or that I wanted to raise
16 certain issues at trial and he wouldn't -- I mean he wasn't
17 basically putting any effort towards what I wanted.

18 Q How how long would your meetings last?

19 A Probably 15 minutes. Ten minutes possibly.

20 Q Did they go longer?

21 A No. Well, we had a contact visit. We had a contact
22 visit and that was like before -- before -- like the actual plea
23 process or like going to trial. We had contact visit with my
24 family where I was able to touch my family and that was probably
25 30 minutes, 35 minutes.

1 Q Is that probably the longest meeting you can recall?

2 A Yes.

3 Q Now, I want to get back to Mr. Smith for a minute and
4 your discussions with him but I want to get into kind of the
5 facts of the case.

6 MR. THOMPSON: Your Honor, I think the plea and
7 the sentencing they both set forth the facts from the
8 State's point of view pretty well, so I will just talk
9 about his version here.

10 Q So, did -- do you admit to shooting Mr. McCoy, the
11 victim in this case?

12 A Yes, sir.

13 Q Do you admit going into the home that he was found in?

14 A No, sir. I never went inside of the home.

15 Q And you were consistent with that during your plea?

16 A Yes, sir.

17 Q You actually ended up offering an Alford plea to the
18 burglary because you would not admit to going into the house,
19 right?

20 A Well, I didn't agree to the facts of the case with the
21 burglary or the murder or the manslaughter.

22 Q But you offered an Alford plea to the burglary because
23 you said you never went in the house?

24 A Basically.

25 Q Now, take us through the events that led you to that

1 house? Who were you with at the time?

2 A I was with a friend of mine. Well, two friends of mine
3 basically on a Friday night. Basically we stopped by the house
4 only because I wanted to go to the house to see whether I saw a
5 car. It was a friend of mine. And I stopped at the house to
6 see was my child's mother there and knowing that at that house
7 they sell drugs or what not. I wanted to stop and get my
8 child's mother out, my daughter inside the house if so can we
9 talk about that so I could get my child. It was well-known drug
10 house and basically that's why I went to the house.

11 Q Hang on. Let me stop you.

12 Q So you stopped at that house. Were you driving?

13 A No, I don't think I was driving that night.

14 Q Did you ask the driver to stop at the house?

15 A Yes.

16 Q And was that out of concern as you testified for your
17 child?

18 A Yes, it was out of concern. I mean I stopped there.

19 Q Did you know that your child's mother was at the house?

20 A No.

21 Q I had know way of knowing who was there. I just seen
22 her car so I figured.

23 Q You saw her car in the driveway?

24 A Well, it looked like her car.

25 Q So you wanted to go check on her?

1 THE COURT: Yes or no?

2 A Yes. Yes, sir.

3 Q So it was not in an attempt to go harm anybody at the
4 house that night?

5 A No, sir.

6 Q But did you have a firearm on your person?

7 A Yes.

8 Q Why did you have a firearm?

9 A Well, I had a firearm because in the neighborhood that
10 I live in over the years I have been living in that area it
11 would be best that you carry a firearm if you were out any time
12 at night time in the area. Pretty much most people know that.
13 It's a pretty violent area nighttime just from walking to a
14 house. Home invasions. People get killed in the area where I
15 live so I was pretty much known to carry a weapon. Pretty much
16 at all times.

17 Q And you said -- you testified this was a known drug
18 dealer's house as well?

19 A Yes, it was a drug related place. Home.

20 Q So you armed yourself in anticipation in preparation
21 that you might be attacked for your own safety?

22 A Yes. Pretty much at all times once you get out of the
23 car at night time in that neighborhood basically when you go to
24 a house even if you are going to your own house it is best to be
25 protected. It is best you have a weapon because you might get

1 robbed.

2 Q Now, you testified that you never made it into the
3 house. What stopped you from making it into the house?

4 A Basically I knocked on the door. Basically they asked
5 me who is at the door. I gave them my name and the guy who I
6 ended up shooting he is the one that came to the door. That's
7 pretty much what stopped me.

8 Q Why did you fire a shot at him? What made you fire a
9 shot?

10 A He started to reach. Like he went to reach. He did a
11 very fast body movement and he went to reach and that's what
12 made me fire.

13 Q Did know this individual?

14 A No, I never really known him. I just probably seen him
15 twice.

16 Q But would you have recognized him on sight? Did you
17 know he was your child's mother's boyfriend when he opened the
18 door?

19 A Yeah. It was a glass door so basically he'd seen me.
20 I saw him. It was that way, you know. It was a glass door so
21 basically both of us were able to see each other.

22 Q And describe his movement? What actually happened?

23 Q His movement was when he saw me and basically when he
24 slid open the door it was like he -- it was like he was reaching
25 and that's what made me say, well, I have a weapon on me so I

1 shot and I didn't shoot to kill him so I still was conscious
2 enough to shot at his arm. The same arm where he was reaching
3 for the weapon. That's what I figured.

4 MR. THOMPSON: Your Honor, let the record reflect
5 that the motion he made was towards the side of his
6 body as if someone was reaching for a firearm quickly.

7 THE COURT: All right.

8 A And he was shot here. (Indicating) He was shot right
9 here. So it wasn't like a shot to kill you. It was a shot to
10 -- I mean, I am not going to say I wanted to shoot him to kill
11 him but at the same time I would rather shoot him in the arm
12 that he is reaching for the gun.

13 Q Were you afraid that he was going to shoot you?

14 A Yes.

15 Q That is why you pulled out your firearm and shot him?

16 A Yes.

17 Q Were you afraid for you life?

18 A Yes.

19 Q Did you feel like you had time or opportunity to run
20 away?

21 A No, not in a situation like that. I don't think it
22 would be good for anyone to turn their back or run. You know,
23 not knowing what the next person is thinking and being -- seeing
24 that they were reaching for a weapon or what I believed was a
25 weapon.

1 I wouldn't have turn my back and run. Not if I had a weapon.
2 I wouldn't have turn my back and run.

3 A Did you believe you had any other choice other than to
4 fire this shot.

5 A No.

6 Q For your life's sake?

7 A No.

8 Q And your safety?

9 A No, sir. Not at the moment, no.

10 Q I am going to come back, as I said earlier, back to
11 your representation by Mr. Smith.

12 Did that information that you just testified to about what
13 happened, did you provide that information to your attorney?

14 A I provided to him in multiple different ways. I kind
15 of explained to him how can I go to trial if I don't have the
16 main pieces of evidence. Can you help me. I wrote him asking
17 him can you help me for trial strategy or are you willing to
18 help. Multiple letters that I wrote him and I didn't bring
19 them, but I mean -- but I'm pretty sure I wrote them multiple
20 times asking him -- telling him I wanted to go to trial. That I
21 wasn't guilty of murder or first degree burglary all the way up
22 to trial and even once we went in the plea. Before the plea.

23 The day of the plea I told him can I go in and explain to
24 the judge everything. My side of the story.

25 Q Now, again, your side of the story, what you testified

1 to, about how you shot Mr. McCoy, did you tell Mr. Smith about
2 that?

3 A Yes.

4 Q You had that conversation with him?

5 A Yeah. We had multiple conversations about it. Yeah.

6 Q Now, what did he tell you were your chances at trial?

7 A He felt -- he felt that I was going to get life.

8 Q And were you still asking him to take the case to trial
9 even though he was giving you that advice?

10 A Yes.

11 Q Did you discuss the defense of self-defense with him?

12 A No.

13 Q Now, I am going to refer you to the transcript. This
14 is the July 1st, 2015 transcript. It is on page 27, lines 13
15 through -- primary lines 15 through 17.

16 MR. THOMPSON: Your Honor, I am going to read it
17 into the record.

18 THE COURT: All right.

19 Q I will start at line ten. The Court asks you, "So what
20 you're telling me you agree with the facts that this is a
21 voluntarily manslaughter?" The defendant. "Not really, but I
22 really I don't have a choice unless I want to go to trial. I
23 would be facing life and I don't have a good chance of going to
24 trial or fighting self-defense."

25 So during your plea you mentioned self-defense. So did you

1 discuss self-defense? I mean was that just your self knowledge
2 of the defense? Why did you make that statement?

3 A Yeah, that was myself. I never got advised about
4 self-defense or any -- that's the argument that I wanted to
5 raise if I had went to trial. I never got any knowledge from my
6 counsel of that.

7 Q So did your attorney go through with you the elements
8 of self-defense?

9 A No, sir.

10 Q Did he go through with you the aspects of the defense
11 of self-defense that once it is raised it must be disproved
12 beyond a reasonable doubt?

13 A No, sir.

14 Q Did he talk about that with you at all?

15 A No, sir.

16 Q Did he tell you that your version of the the facts
17 would provide a complete defense to the charges?

18 A No, sir.

19 Q That you did not go into the house and you weren't
20 guilty of burglary and that you weren't trying to rob anyone?
21 He didn't talk to you about any of that?

22 A No, nothing in regards to going to trial. He didn't
23 speak about it at all.

24 Q Now, I am not going to read all of it, Your Honor. It
25 is quite a bit of the July 1st transcript. It is pages 26

1 through 31.

2 During your plea, there was a colloquy that occurred.
3 Lengthy discussion about an Alford plea and we touched on that a
4 little bit earlier. Do you recall that coming up during the
5 plea?

6 A You said about the Alford plea, yes, I remember the
7 judge asking me was I aware of it and I told him no and then he
8 asked Mr. Phil Smith did he explain it to me and Mr. Smith said
9 no that he didn't. So he gave me time to take me outside the
10 courtroom and explain it to me.

11 Q How did that come about? What wouldn't you admit to
12 doing?

13 A You say what sir?

14 Q What wouldn't you admit to doing?

15 A What wouldn't I admit to doing?

16 Q Yes. Why did you have to take an Alford plea? What
17 charge did you take an Alford plea?

18 A I think it came about because I didn't agree right
19 before -- I didn't agree with the facts of the case or the facts
20 of burglary or the facts of murder or manslaughter, so that's
21 when the judge kind of like asked a few questions and then he
22 stopped me and asked have I ever heard of that Alford Plea.

23 Q And that was specifically with regard to the burglary
24 and the fact that you said you did not enter the house?

25 A Right. It was more than burglary, but I just -- I just

1 -- yeah, it was more dealing with the burglary but at the same
2 time with manslaughter. It was basically the same thing. I
3 just somehow ended up satisfying whatever the judge wanted to
4 hear at that time.

5 Q But, with regards to burglary, you -- so you went
6 through your version of the facts with your attorney prior to
7 going to court, right?

8 A Yes.

9 Q Okay. So you told him you never went in the house?

10 A Yes.

11 Q Did he discuss with you an Alford plea before you got
12 to court that day?

13 A No, he never explained it to me what an Alford plea
14 was.

15 Q Even though you had told him you never went in the
16 house?

17 A Yes.

18 Q And I told him I didn't agree with the facts of the
19 case. That I wasn't guilty of murder or manslaughter or first
20 degree burglary?

21 Q During your discussions with your attorney, Mr. Smith,
22 based upon your knowledge, do you believe that Mr. Smith
23 understood the facts as you presented them to him?

24 A I feel like he understood what I wanted but I guess
25 trying to be a good lawyer he wanted what was best for me and

1 that was coming from him was taking a plea. So therefore he was
2 just overlooking that I wanted to go to trial and everything
3 that I wanted dealing with my trial strategy. He didn't really
4 care for that and he just wanted me to take a plea. He felt
5 that was the best thing for me to do.

6 I can't understand why he would try everything to get me to
7 take a plea and disregard what I wanted.

8 Q Now, would you had gone to trial had you known that you
9 could present several defenses through your own testimony?

10 A Yes.

11 Q Would you have gone to trial had you known that you
12 could argue to the jury you believed you were not guilty?

13 A Yes.

14 Q Is that what you had wanted all along?

15 A That is what I wanted. I kind of expressed that to
16 him. Yes, I kind of expressed that -- well, I did express that
17 to my lawyer that's what I wanted to do.

18 Q And that's what you want to do today, you want that
19 opportunity to go back and take this case to trial?

20 A Yeah, even if he feels that is not the best thing for
21 me I still -- that's what I want.

22 Q Now, you received an aggregate forty year sentence on
23 these charges, correct?

24 A Yes.

25 Q But you could have gotten more technically. You were

1 facing multiple life sentences? Do you understand that?

2 A Yes, I understand that.

3 Q And understand that if this judge grants your
4 application for post conviction relief and you get a new trial
5 you could get more than forty years in prison?

6 A Yes.

7 Q Knowing that you still want to go forward today?

8 A Yes, sir.

9 Q You still want to have the chance to go back to trial?

10 A Yes, sir.

11 Q And present your side of the case?

12 A Yes.

13 Q This is in all likelihood your one and only chance of a
14 PCR so I think we covered everything that we discussed that we
15 wanted to talk about regarding your case about you.

16 This is your one and only chance. Is there anything else
17 you feel you need to tell the judge in order to understand your
18 case?

19 A Yes. Yes, I would like to -- I would like to say from
20 the beginning of the case that is basically what I wanted. Once
21 Phil Smith was my lawyer I would rather just go to trial and to
22 actually have a fair chance of explaining myself and at least
23 still having my rights because taking a plea I don't have any
24 rights.

25 Throughout the case my lawyer knew that I wanted to go to

1 trial, yet I guess like him trying to be a good lawyer he felt
2 that was not -- that wouldn't be the best thing for me. So, if
3 that is something I could get that is what I would like. I
4 would have liked to have the opportunity to represent -- not
5 represent myself but to have have a fair chance at trial and be
6 able to go to court and explain my side of the story in front of
7 a jury because there's multiple different -- multiple gaps in
8 the case. That's something I would like the chance to go to
9 court and fight for myself or explain my side of the story.

10 MR. THOMPSON: I believe that is all the questions
11 I have, Your Honor.

12 MR. HUNTER: Just a few things.

13 CROSS EXAMINATION

14 BY MR. HUNTER:

15 Q So that guilty plea hearing, not the sentencing
16 hearing, but the one before that.

17 MR. HUNTER: And, Your Honor, I am just looking at
18 the bottom of page 14.

19 Q Now, the judge went over with you your right to trial,
20 your constitutional rights. Do you remember that?

21 A The judge?

22 Q Yes.

23 A Yes, sir.

24 Q And the judge asked you do you want to plead guilty or
25 do you want the case set for July 13th and you told him I will

1 go forward with the plea. Do you remember that?

2 A Yes, sir, I remember.

3 Q How come you didn't tell him, no, I want a trial
4 because I always wanted a trial?

5 A Well, the reason I didn't do that is because at that
6 time I wasn't -- I wasn't -- I didn't know what all I could say
7 when I was in front of the judge or going to court and that
8 happens with a lot of people that we are just getting in the
9 courtroom and we get stuck and its like what all I can say. I
10 don't know if my lawyer is going to accept me saying this or the
11 court is going to accept me saying that. So that is the only
12 reason why I didn't just state the truth.

13 That's what I wanted to do from the beginning is explain my
14 side of the story. Go to trial. That's the only reason why I
15 didn't do it, sir.

16 Q So you plead guilty because someone told you to?

17 A Basically. You know, basically talking to my lawyer
18 before court. I had two lawyers present. The reason, you know,
19 when talking to them before I went to court I was like can I go
20 in still and explain my side of the story to the judge. No,
21 don't worry about it. We'll handle that part and you going in
22 and you just do your part.

23 Basically, you just listen to the judge and answer the
24 questions and say yes. That's basically what I was told to do.
25 So that's what I did. And I wouldn't -- if I would have known

1 what I know now I would have went in front of the judge and I
2 would have stated everything that I needed to say as far as my
3 case.

4 Q But you had the opportunity to say you wanted a trial
5 and you said no, is that correct?

6 A Yeah, I said no because I didn't know what all I could
7 say. Meaning I didn't want to go in front of the judge and
8 start talking and the reason -- well, the real reason why I
9 didn't do that because I didn't know my limitations. And there
10 is a lot of people come through the court system and they don't
11 know what to say. A lot of people come in the same position I'm
12 in and they don't know what to say and they don't know what all
13 they can say and they don't say everything they need to say. I
14 didn't say, yes, I would like to go through a trial.

15 Q Okay. And that's because Mr. Smith told you go in
16 there and just say yes? I mean, are you saying that Mr. Smith
17 told you to plead guilty even though you didn't want to?

18 A Basically, yes, sir.

19 Q And even during when the judge asked you are you
20 satisfied with your attorney you said yes?

21 A Yes. I still said yes and in back of my mind I was
22 saying no, I am not satisfied with him, but I still went through
23 and said yes. I still said yes.

24 Q So you would rather plead guilty and do what they want
25 then rather challenge them and go to trial?

1 A No, basically what I'm saying is I was weak and I
2 didn't know what all I could say as far as being in the
3 courtroom. As far as what my trying to go against my lawyer and
4 basically I don't know. It was just the hard decision to make
5 and it happens a lot. It happened before. I didn't know what
6 to say. I didn't know what to say. I didn't know whether I
7 should say yes or whether I should say no.

8 MR. HUNTER: Beg the Court's indulgence.

9 Q And just to make sure, either way, you agreed with what
10 your attorney told you and made the decision to plead guilty,
11 correct?

12 A Yeah, I made the decision. I mean, I had no choice but
13 to. Maybe I'll admit whether I was coerced or whether I was
14 manipulated into doing it or whether everyone basically
15 influenced me to take a plea and basically that is what happened
16 with me. I was influenced to take a plea. I wanted to go to
17 trial but I was influenced to take a plea.

18 MR. HUNTER: Thank you. Nothing else.

19 THE COURT: Counsel.

20 MR. THOMPSON: Briefly Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. THOMPSON:

23 Q Did you believe that you had anything you could present
24 at trial? If you went to trial, did you believe there was any
25 argument you could make to a jury where they would find you not

1 guilty based on your conversations with your attorney?

2 A Based off the conversations, yes, but I mean the lawyer
3 he never talked -- he never talked about what I wanted to talk
4 about like I said.

5 Q What I am asking you is, you didn't understand
6 self-defense?

7 A No, I didn't understand it.

8 Q And had you been convinced by your attorneys that you
9 had no chance at trial?

10 A Yeah, I was pretty much convinced and influenced and
11 they used my family to have as the biggest influence to get me
12 to plead.

13 Q And if you had known you could present the defense of
14 self-defense or argue that your testimony should be believed and
15 that you were not guilty would you have gone to trial?

16 A Yes, sir.

17 Q And because you did not know that, is that why you
18 pleaded guilty?

19 A Yes, sir.

20 MR. THOMPSON: No further questions.

21 THE COURT: Thank you, sir.

22 MR. THOMPSON: That would be all the witnesses
23 that we have.

24 MR. HUNTER: Your Honor, the State would call Mr.
25 Phil Smith.

1 PHIL SMITH, called as a witness, having been duly
2 sworn by the clerk, was examined and testified as
3 follows:

4 DIRECT EXAMINATION

5 BY HUNTER:

6 Q Good morning. Could you please state your name for the
7 record?

8 A Phil Smith.

9 Q And where are you currently employment?

10 A I work for the York County Public Defender's Office.

11 Q Is that how you became involved in this case?

12 A Yes.

13 Q And can you just explain -- I know we heard some
14 procedural history about it, but how you became -- you
15 personally became involved?

16 A Our office was appointed. The case was initial
17 assigned to Melissa Inzerillo in our office. At some point
18 based upon my reading of the transcript it appears Mr. Davis
19 became unsatisfied with her representation. He was brought
20 before Judge Hayes and asked to have her relieved. Judge Hayes
21 -- well, first he asked for another attorney. Judge Hayes said
22 he would not appoint another attorney. Asked if he wanted to
23 represent himself. He said he did at that point and that was
24 end of that hearing.

25 Then he was brought back and Judge Hayes decided to appoint

1 standby counsel. I was asked to be appointed as that standby
2 counsel and served in that position and would relay messages
3 from Mr. Davis to Solicitor Thompson during that timeframe.
4 They had some negotiations. Some discussion of discovery
5 requests. And there was a meeting even held that I went with
6 concerning Mr. Thompson, one of his investigators. Mr. Davis
7 and they were attempting to schedule the trial of that case and
8 then at some point Mr. Davis requested that I be appointed to
9 represent him. I believe Judge Hayes again granted that
10 request. He and I then continued discussing this case and going
11 forward.

12 He then at some point became dissatisfied with my service and
13 asked again to be brought in front of the court involving Judge
14 Hayes and asked to have me relieved. Judge Hayes indicated he
15 was not going to relieve me unless he wanted to represent
16 himself. At that point Mr. Davis said he didn't want to
17 represent himself. That he would rather I stay on as counsel so
18 I stayed on. And that's sort of was my history of how I came to
19 represent him.

20 Q Okay. So during your representation and we will using
21 your formal representation of him not standby. How many times
22 would you say you met with him?

23 A He named three or four. I had Mr. Dest meet that many
24 times with him and that was at the end of the case. But many
25 times before that.

1 Q So would you say close to ten?

2 A Yes. Sure. And a meeting that included his family
3 members.

4 Q Okay. And I believe you already said, your office you
5 received full Discovery, is that correct?

6 A Yes.

7 Q And can you just outline regarding some version of the
8 facts? Can you just outline what the State was planning to
9 present at trial as you understood it?

10 A I assumed that their case would have said that there
11 was some people at home. That people were doing nothing out of
12 the ordinary. Playing video games. And at some point they
13 heard a knock on the door. The door gets opened. As the door
14 gets opened to Mr. Davis and someone says, "No Dashon, no
15 Dashon" and Mr. Davis then shoots his ex-girlfriend's current
16 boyfriend.

17 Q And did you explain all this, this is the State's
18 version of the events? Did you explain all that to Mr. Davis?

19 A Oh, yeah. He knew it before even I was involved in the
20 case.

21 Q And did he give you his version of the events?

22 A He gave me numerous versions of his version of the
23 defense including alibi.

24 Q Okay. Can you just explain what he told you what
25 happened?

1 A Well, sometimes he told me he wasn't there. Some times
2 he told me he wanted me to check on witnesses that would verify
3 he wasn't there. Sometimes he told me that he was high or drunk
4 and didn't know what had happened. Sometimes he told me that he
5 got startled. Sometimes he told me that dude had grabbed a gun
6 and that ultimately Discovery revealed some type of weapon
7 having been found in the home.

8 Sometimes he would tell me that he had seen that gun. That
9 somebody had that gun. And then ultimately the version that you
10 got today is that he didn't see a gun. He just saw some sort of
11 motion. So I had been informed of so many versions.

12 Q And so I guess the version we heard today is that the,
13 I guess, the ultimate version you heard?

14 A Until you ask him again I wouldn't know.

15 Q So, going into that plea, can you just explain your
16 plea negotiations with the solicitor's office?

17 A Yes. They were pretty set with the evidence that they
18 had. They didn't really move from what the initial offer that
19 was given to Miss Inzerillo. Dashon mentioned I was concerned
20 for him. I am. He has a wonderful family. I have known some
21 of them for a long time.

22 I was concerned about the decision he was making and some of
23 the things that he was going to do or potentially what can
24 happen at trial.

25 I asked Mr. Dest, my boss, our public defender to speak

1 with Mr. Davis. He did and he involved Mr. Davis's family as
2 well out of concern for him with what might happen.

3 Mr. Dest then took up the negotiations with the solicitor's
4 office and ultimately they were willing to change the charges
5 from the offer. In other words, murder down to manslaughter,
6 still a burglary and possession of weapon charge but they did
7 agree to give a range that was 15 to 50 years potential
8 exposure. Benefit to us is that it avoided a life sentence for
9 him and an opportunity for them is they could ask in excess of a
10 30-year sentence.

11 Q And these offers, did you explain that to Mr. Davis?

12 A Oh, yes.

13 Q And defenses. I believe you said he provided -- first,
14 I will start with alibi?

15 A Correct.

16 Q Did you follow up on any of those?

17 A Yes, that first came up when I was appointed standby
18 counsel. He was giving me an alibi and I was trying to explain
19 to him what an alibi notice requirement was. The State was not
20 comfortable with the notice that had been given. He was giving
21 the names of persons to talk to, to help assist him in gaining
22 addresses and what those persons might say. It was not
23 ultimately fruitful and we abandoned that and decided he did not
24 want to use alibi as defense.

25 Q From there, can you just explain did you guys go over

1 self-defense?

2 A In sort of various forms as he described. He would
3 somewhat -- he would somewhat withhold details when you would
4 ask him exactly what you think it would be at trial. He would
5 explain, sort of tell me what the defense should be. His
6 stories changed constantly and we would describe if you're
7 talking about self-defense particularly when we talked about
8 item of a gun that was shown in a photo, we would talk to him
9 about the elements of self-defense and specifically we talked
10 about you can't be at fault for bringing on the difficulty.

11 He had some knowledge of a Castle Doctrine argument. We
12 explained because it is not his home that was not a viable
13 defense. So we had gone through it in sort of various forms as
14 he described.

15 Q Can you explain you mentioned earlier, but I just want
16 to go over it again about some sort of gun ultimately found at
17 that residence. Can you explain what happened there?

18 A I shouldn't have said ultimately. It was found that
19 night. I believe first Miss Inzerillo noticed that it was not
20 listed with evidence from the crime scene. It turns out that it
21 was a fake gun. It was not an actual firearm. Was some type of
22 pellet gun. That's why it was not taken into evidence and that
23 it was many feet away from where the shooting would have
24 occurred at the doorway. So it was not deemed relevant by law
25 enforcement therefore not taken into evidence.

1 Q And just in your analysis of the case did you see that
2 as a potential defense?

3 A If we had been forced to trial it would have been what
4 I would have been left with.

5 Q Left with. Can you explain that?

6 A I think the odds would have been difficult.

7 Q Okay. And as far as self-defense goes, the version
8 that we heard about reaching for a gun, if you can, in your
9 analysis of the case, how do you believe that would have worked
10 out at trial?

11 A It would have been difficult. It didn't comport with
12 what the other witnesses from inside the home described. It
13 didn't comport with what other persons heard even outside the
14 home with someone screaming, "No Dashon". He would have had to
15 take the stand and ethically from what I had heard already about
16 potential defenses it could have posed a problem at trial.

17 Q Okay, and you just mentioned to present self-defense he
18 would have to testify?

19 A I don't know that the law says you have to but I don't
20 see any other way.

21 Q Did you explain that to him?

22 A Yes.

23 Q And did you explain I guess what he could be exposed to
24 if he did testify?

25 A Yes.

1 Q And you believe he understood that?

2 A Oh, Yes.

3 Q Now, I will go to the plea affidavit or the plea waiver
4 form. Were you there when he filled this out?

5 A Yes.

6 Q Okay. And did you go over everything where his
7 signature is, did you go over those sentences with him?

8 A Yes.

9 Q Do you believe after filling this out that he
10 understood exactly what he was facing?

11 A I do.

12 Q Did he ever say either at this point or leading up to
13 the plea, did he ever say I do not want to plead guilty, I want
14 to go to trial?

15 A Many times throughout my representation he had said
16 that but you are talking when we were filling out the form?

17 Q Yes.

18 A No.

19 Q Okay. And prior to the plea hearing, did you or Mr.
20 Dest coach him on what to say?

21 A No. In fact to tell him to say yes doesn't make sense
22 because some of the correct answers are no.

23 Q So what did you tell him leading up to that plea?

24 A We told him what would happen. He would want to make
25 sure you are not under the influence of anything like drugs or

1 alcohol. That he'd want to make sure you understand all your
2 constitutional rights which are largely the right to trial. So
3 he will ask you the same questions on this sheet or similar
4 questions and they want to make sure you don't have any other
5 issues or questions.

6 So we explained to him that the judge would give him the
7 opportunity to say all those things.

8 Q And can you just explain kind of what went on in his
9 hearing about his disagreements of the facts?

10 A Yes. That would be the second hearing. Now, when we
11 told him this was not a time to talk about the facts he may be
12 referring to the first plea when we were not doing mitigation at
13 that point. So he would be accurate that we told him we will
14 not be giving our side of the case during the entry of the plea.
15 But during the portion when Judge Hall was questioning him that
16 morning Mr. Davis had talked about potential issues with a
17 burglary defense and we had told him that even the slightest
18 entry into a home counted as burglary. So if he reached in to
19 shoot that would count as entry into the home or the pushing
20 into the doorway which was described by the State. So first
21 time we had heard it up there at the plea he then decides to say
22 he didn't even reach into the house. He stayed outside. And at
23 that point Judge Hall sensed some hesitancy in his desire to
24 accept a guilty plea and then stopped the plea at that point.

25 We talked to Mr. Davis about if he wanted to go forward with

1 an Alford plea and ultimately that was the way that the plea was
2 fashioned.

3 Q And did you explain to him what an Alford plea was and
4 what all that meant?

5 A Once the judge gave me a break to do that, I and Mr.
6 Dest did.

7 Q So that was during a break in the plea hearing?

8 A That's correct.

9 Q That did not happen before?

10 A Did not happen before. That's correct.

11 MR. HUNTER: I beg the Court's indulgence for one
12 second.

13 THE COURT: All right, sir.

14 Q And just to go over, did you ever get any indication
15 during the plea hearing that he didn't understand what was going
16 on?

17 A No, he understood.

18 Q Did you ever get any indication from him that he didn't
19 understand what the consequences would be?

20 A He understood.

21 Q And do you believe he understood the parameters of the
22 recommendation?

23 A Yes.

24 MR. HUNTER: That's all thank you sir.

25 MR. THOMPSON: Just briefly Your Honor.

1 CROSS EXAMINATION

2 BY MR. THOMPSON:

3 Q How are you doing this afternoon?

4 A Doing all right.

5 Q I have just a few questions for you.

6 A Okay.

7 Q So, you kind of touched a bit on self-defense and I
8 recognize that you said that Mr. Davis gave you a number of
9 different versions of the events?

10 A That's correct.

11 Q And there was potentially a struggle over the gun this
12 was potentially an alibi. Was there a version where he told you
13 that he fired a shot in self-defense?

14 A Because at some point he was claiming he had seen the
15 guy with the gun so yes.

16 Q Okay. So what you heard him testify to today is
17 something that he told you during your representation of him?

18 A Parts of some, correct, I have heard. You can take
19 pieces of some that he has told me and I heard all of what he
20 has said. Yes.

21 Q Now, did you discuss the possibility of raising
22 self-defense with him at trial?

23 A Oh, yes. That would be all we had.

24 Q Say that again?

25 A That would be all we had.

1 Q That would be all you had was self-defense?

2 A Correct.

3 Q Did you go over elements of self-defense?

4 A Yes, at various time.

5 Q At various times?

6 A Correct.

7 Q Did you sit down and go through elements one through
8 four with him?

9 A I don't know, but we certainly told him you can not be
10 at fault in bringing on difficulty. We told him that you have
11 to believe your in threat of death or serious bodily injury. If
12 it is believed it has to be a reasonable, so yes, we did go
13 over. I can not tell you I stated the same four elements every
14 time but we did go over particularly, was he in danger and was
15 he without fault in bringing on the difficulty.

16 Q And do you believe that if his testimony that he'd
17 given today was presented at trial would he have been entitled
18 to a self-defense charge?

19 A Yes.

20 Q Did you advise him of that? Did he know that?

21 A Did he know that he would be entitled to a self-defense
22 charge if he testified the way he testified at subsequent
23 hearings, no.

24 Q Okay. But you said he gave that version of events?

25 A Correct.

1 Q Various versions?

2 A Correct. I didn't know the version of events he would
3 give at trial but we certainly know that we could consider
4 self-defense and he'd have to testify.

5 Q And did you go over the burden? Who bore the burden of
6 proving or disproving self-defense with him?

7 A Well, we told him the State has to prove -- well, he
8 would tell me the State has to prove his case and I would
9 confirm that with him and then, yes, we talked about it. They
10 would have to be disprove as far as self-defense goes. But I
11 don't know that I explained how that occurred.

12 Q Did you testify on direct that he told you on numerous
13 occasions that he wanted to go to trial, is that correct?

14 A That's correct.

15 Q Was he consistent throughout most of your
16 representation of him that's what he wanted to do?

17 A At times he would think he could get a better plea but
18 he never seemed concerned about going to trial to the level I
19 would have expected. So I would answer your question by and
20 large, yes, he seemed willing to go to trial throughout my
21 representation.

22 Q What do you think was the catalyst for switching to a
23 plea?

24 A That trial was close. Every time the trial got close
25 he attempted to fire an attorney and get a new attorney. Be pro

1 se. Do something like that. I think all that would be
2 exhausted and I was hopeful that his family was able to make him
3 realize that it was decision time for him.

4 Q Now, with regard to the burglary charge, as I
5 understood -- I want to make sure I understood your testimony
6 correctly. He had never told you before the plea that he didn't
7 make any entry into the house whatsoever?

8 A That's correct. The fact that his hand didn't even
9 come in. We had always explained to him even reaching in does
10 it. So that had shifted. That became the new thing the day of
11 the plea.

12 Q So he had told you before that he had at least put his
13 hand inside the door?

14 A Well, a lot. A lot of times he conceded he stepped in.
15 Some times he had been invited in. Sometimes he had just
16 reached in. I explained even the slightest entry counts. I
17 guess at some point later this defense of he didn't even reach
18 across the threshold.

19 Q So you didn't believe you needed to discuss the Alford
20 plea with him because you thought he would admit to at least
21 going into the house somewhat?

22 A Correct. He did, yes.

23 MR. THOMPSON: All right. Beg the Court's
24 indulgence.

25 THE COURT: Sure.

1 MR. MR. THOMPSON: No further questions, Your
2 Honor.

3 THE COURT: All right.

4 MR. HUNTER: Nothing else for this witness.

5 THE COURT: Thank you, you may step down.

6 MR. HUNTER: Your Honor, the State would call
7 Deputy Solicitor Willy Thompson.

8 WILLY THOMPSON, called as a witness, having been
9 duly sworn by The Clerk, was examined and testified as
10 follows:

11 DIRECT EXAMINATION

12 BY MR. HUNTER:

13 Q Please state your name for the records?

14 Q Walter William Thompson and I go by Willy.

15 Q And where are you currently employed?

16 A Solicitor's office.

17 Q Can you explain how you became involved in Mr. Davis's
18 case?

19 A I handle and have for many years all of the homicide
20 cases that come through York County and so when this case
21 occurred I became involved with law enforcement as far as making
22 sure things were done, finding what is happening and to get our
23 feet on the ground as far as prosecution goes from the
24 beginning.

25 Q Okay. And I will not get into details, but can you

1 explain the State's version of events based on the evidence, I
2 guess that you found?

3 Q Sure. Ultimately, when I think all of the evidence was
4 in it was very clear that the defendant was guilty of the crimes
5 with which he was charged. He had a long standing relationship
6 with the woman who was in the residence at the time. Not her
7 residence. This was another man's residence. But the young man
8 who was killed she was now dating and had been for a few months.
9 Prior to that she had dated the defendant.

10 That became a volatile relationship. While they had a
11 child together he became abusive. There were multiple prior
12 domestic violence calls that involved him and her. In addition,
13 leading up to this, we had a plethora of texts from the
14 defendant to her with him threatening to kill her, threatening
15 to kill the new boyfriend. Very unreasonable type threats that
16 were constant. Almost all of the text messages would be in some
17 way threatening her and then the next one might be I love you
18 you. We need to get back together. The three of us need to be
19 a family. And all she would have to do is answer a text in any
20 way. It could be as easy or simple as please don't text me or
21 you know, okay. Or something like that. He would blowup and
22 start threatening her again and the next time he saw her he was
23 going to kill her or he was going to kill that other man or kill
24 them both or harm her. It was just variations of that
25 throughout.

1 As it came to this particular day, we ultimately found out
2 that there was another man that he was with in the vehicle with
3 another woman. They were driving along and of course this is in
4 the middle of the night. This is not like you know at three
5 o'clock in the afternoon. They are driving around. He sees the
6 vehicle. What I believe was Mr. Cox's house, and that's her
7 vehicle. So he says something to the effect according to the
8 lady that was in the car, oh, hell no. She is not going to do
9 that or something to that effect. He starts getting out of the
10 car. Takes his gun with him according to the two people that
11 were in the car, goes over to the residence, knocks on the door
12 and according to people inside the victim got up. They couldn't
13 quite see outside because the lights were off and another aspect
14 that I think the defendant has now conveniently forgotten they
15 had vertical blinds over the sliding glass doors. We're talking
16 about sliding glass doors with vertical blinds that would be
17 hanging downwards. So if he were outside to shoot in he would
18 have to shoot through which would have been evidenced by bullet
19 hole through the blind which did not occur. He slid open the
20 glass door. The defendant pushed his way in pushing him back,
21 holding the gun shouting and struck the victim in the head
22 either with his fist or with the gun and victim did have
23 indications he had been struck in the head from the autopsy.
24 Then he fired one shot into his chest as he was yelling
25 something at him and different people said different things as

1 to what he was yelling. But the young lady in the house who had
2 dated him and had a child with him was yelling out his name, "No
3 Dashon. No Dashon" during that entire time.

4 The people out in the car even heard her screaming that and
5 he still fired anyway. The defendant then ran out. Went back
6 to the car. Took off with those folks that were in the car and
7 they dropped him off a short distance away. Ultimately that
8 night he gave the gun to Mr. Graham who was in car with him and
9 Mr. Graham ended up getting caught with that pistol not too much
10 later and they didn't realize it was related to this case.

11 Ultimately one of our investigators who listened from a jail
12 call from the defendant and the woman named Mercedes described
13 to him that someone they called Brown had been arrested with the
14 gun and he was very concerned about that in the jail call. So
15 as a result of that our investigator figured out who Mr. Brown
16 was. It was Mr. Graham. He found out he had been arrested for
17 unlawfully carrying of a pistol. Found that pistol. It came
18 back as the murder weapon that was used in this crime and he
19 gave a full statement admitting what he had seen that night.
20 What had happened. Talked about the other girl and she
21 ultimately gave a statement also admitting that. So we had
22 numerous people who knew him. Watched him go in. I know the
23 people in the car said he went inside. So there was really no
24 question but that he went inside, fired the weapon, killed the
25 young man.

1 Q Okay. It was referenced to earlier, can you explain
2 this other gun that was explained at the residence?

3 A Yes. When I talked at length with police at the crime
4 scene. They took pictures of everything and I said why didn't
5 you collect this. I looked at it and it was a pellet gun. It
6 was behind the furniture and I think it was a sofa if I'm not
7 mistaken. It was covered behind the sofa against the far wall
8 where it was away from where everyone was where this occurred
9 and it was covered with clothing and papers and they had to
10 uncover to actually see that it was there. This not being the
11 victim's house, Mr. McCoy's, so the victim would have had no
12 idea that even it existed or was sitting back there and of
13 course it is not a viable weapon to use self-defense because it
14 is not a real gun. It is not going to kill someone even if he
15 was able to get it and somehow load it and shoot it which he
16 would have had to have done so. They did not collect it because
17 it seemed not to even be a part of what had occurred that night.

18 Q And can you explain I guess including information about
19 that gun just how you gave the Discovery? Did you give it to
20 Miss Inzerillo first?

21 A Yes.

22 Q And then Mr. Smith?

23 A Yes.

24 Q Did you -- did you give information to Mr. Smith or was
25 that given as far as you know from Miss Inzerillo to Mr. Smith?

1 A If I am not mistaken Miss Inzerillo asked me about that
2 at one point in time and that's when I went back to double check
3 everything if it was what I thought. So, I had relaid to her if
4 I am not mistaken and ultimately would have related to Mr. Smith
5 as well because we talked at length about the case on many
6 occasions.

7 Q Okay. And so just overall, did you share full
8 Discovery?

9 A Oh, yes, without a doubt.

10 Q Including statements?

11 A Yes. And those statements aren't even required but we
12 did.

13 MR. HUNTER: That's all I have. Thank you.

14 MR. THOMPSON: I just have a couple of questions.

15 CROSS EXAMINATION

16 BY MR. THOMPSON:

17 Q Mr. Thompson, I don't believe we are any relation, but
18 I find I have the same last name as you.

19 Did you ask your agent to go back and get the gun, get the
20 pellet gun?

21 A No, I don't believe we did. Not that I recall.

22 Q And do you realize how soon after the fact that you
23 realized a gun had been seen but not collected?

24 A I believe it was when Miss Inzeriollo discussed that
25 with me is that when I realized that it had not actually been

1 collected because I had assumed it was collected and just didn't
2 know.

3 Q And you still didn't ask the agent to go back to the
4 house to see if they could find it? Go to the residence and if
5 they could provide it?

6 A No, we knew it was a pellet pistol. It was confirmed
7 by the forensic guy who is actually a gun expert and is
8 currently the person who does all the the ballistic testing in
9 York County. So I certainly trusted that he knew what he was
10 talking about.

11 Q I understand.

12 MR. THOMPSON: Beg the Courts's indulgence. No
13 further questions Your Honor.

14 THE COURT: Anything else.

15 MR. HUNTER: Nothing else from this witness and
16 nothing else from the State.

17 THE COURT: All right you may step down.

18 All right. I will take this matter under
19 advisement. You will hear from me within the next
20 couple of days.

21 (END OF TRANSCRIPT)

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C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the 16TH 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 in the captioned case, in the Circuit Court for York County, South Carolina, on the 16th day of April, 2018.

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

February 21, 2019

s/Aileen Butler

STATE OF SOUTH CAROLINA)
 COUNTY OF YORK)
)
 Donquavious Dashon Davis, #364690,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE SIXTEENTH JUDICIAL CIRCUIT

Case No. 2016-CP-46-02450

ORDER OF DISMISSAL

DAVID HAMILTON
 J.C.P. & GS
 YORK COUNTY, SC

2019 NOV 19 PM 4: 2

FILED-RECEIVED

This matter comes before the Court by way of an application for post-conviction relief filed August 18, 2016, by Donquavious Dashon Davis (Applicant). The State (Respondent) made its return on December 22, 2016, requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened on April 16, 2018, at the Moss Justice Center before the Honorable Roger E. Henderson. Applicant was present at the hearing and represented by Jeremy A. Thompson, Esquire. Assistant Attorney General Justin J. Hunter of the South Carolina Attorney General's Office represented Respondent.

Following a thorough review of the record in its entirety, and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations and denies this application with prejudice.

PROCEDURAL HISTORY

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. During its November 2014 term, the York County Grand Jury indicted Applicant for murder (2014-GS-46-03509), possession of a firearm during the commission of a violent crime (2014-GS-46-03509a), and first-degree burglary (2014-GS-46-03510). Assistant Public

Defender Philip L. Smith and Circuit Public Defender Harry A. Dest, both of the Sixteenth Circuit Public Defender's Office, represented Applicant on these charges.¹ Sixteenth Circuit Solicitor Kevin S. Brackett and Deputy Solicitor Walter William Thompson, Sr. prosecuted the case. On July 1, 2015, Applicant appeared before the Honorable Daniel D. Hall and pled guilty to the lesser-included offense of voluntary manslaughter.² Applicant also pled guilty as indicted to first-degree burglary and the weapons charge. Judge Hall accepted the pleas and deferred sentencing. Subsequently, on July 13, 2015, Applicant appeared before the Honorable John C. Hayes, III, for sentencing. Pursuant to a recommendation by the State, Judge Hayes sentenced Applicant to a term of imprisonment of forty years for first-degree burglary, thirty years for voluntary manslaughter, and five years for the weapons charge. The sentences were to be served concurrently.

Applicant filed a timely notice of appeal. By written order dated October 23, 2015, the South Carolina Court of Appeals dismissed Applicant's appeal for failing to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv), SCACR. The remittitur was issued on December 8, 2015.

STATEMENT OF FACTS

Prior to June 29, 2014, Applicant was dating Elda Ashley, and they had a child together. Plea Tr. 19. On June 29, 2014, however, Ashley was dating Shantario McCoy³ (Victim). Plea Tr. 19. On this particular night, Ashley and Victim were at Kadeem Cobb's house, where Cobb

¹ Initially, Applicant was represented by Assistant Public Defender Melissa A. Inzerillo, also of the Sixteenth Circuit Public Defender's Office. On November 20, 2014, Applicant appeared before the Honorable John C. Hayes, III, and moved to be relieved of Assistant Public Defender Inzerillo as his counsel. Judge Hayes granted that motion, but the next day, November 21, 2014, ordered the Public Defender's Office to appoint standby counsel for Applicant, at which point Assistant Public Defender Smith was appointed. Thereafter, on January 30, 2015, Applicant again appeared before Judge Hayes, and Judge Hayes appointed Assistant Public Defender Smith as counsel for Applicant.

² Applicant waived presentment to the Grand Jury on this charge.

³ Prior to this incident night, Applicant had been sending texts to Victim, threatening to harm and kill Ashley, as well as Victim. Plea Tr. 25.

and Victim were playing videogames in the living room. Plea Tr. 19-20. Sometime around midnight, there was a knock at the sliding glass door in the living room. Plea Tr. 20. Victim went to answer the door, and Applicant came into the residence with a pistol in his hand. Plea Tr. 20-21. Applicant hit Victim in the head with the pistol,⁴ then shot him in the chest while yelling something to Ashley at the time. Plea Tr. 21. Meanwhile, Victim was pleading with Applicant, stating "No Dashon, no Dashon"⁵. Plea Tr. 21. Applicant then ran out of the house and fled. Plea Tr. 21.

911 was called; and when law enforcement arrived, Ashley immediately told them Applicant had shot Victim. Plea Tr. 21. Law enforcement, therefore, immediately went to Applicant's residence to find him. Plea Tr. 22. However, they did not locate Applicant there. Plea Tr. 22. Law enforcement then proceeded to Applicant's mother's home, but he was not there either. Plea Tr. 22. They continued to look for Applicant for a couple of days, until July 1, 2014, when Applicant turned himself in to law enforcement. Plea Tr. 22.

A few months later, Applicant called Mercedes Bland from the jail. Plea Tr. 22. Bland informed Applicant someone, who she referred to as "Brown," had been arrested with a gun. Plea Tr. 22. This information caused Applicant great concern. Plea Tr. 22. Detective Dalton, who heard the call between Applicant and Ms. Bland, then contacted the Rock Hill Police Department, informing them he suspected the gun "Brown" had been arrested with was the same gun Applicant used in this crime. Plea Tr. 22. The Rock Hill Police Department sent the gun to the South Carolina Law Enforcement Division (SLED), and the gun came back as a positive match to that used in this crime. Plea Tr. 22-23.

⁴ The gun was not recovered initially. Plea Tr. 22.

⁵ Cobb was also familiar with Applicant and identified him as the person who shot Victim. Plea Tr. 21.

Law enforcement also discovered "Brown," identified as Demetrius Graham, was a good friend of Applicant's. Plea Tr. 23. They interviewed Graham, who stated he, Rakisha Johnson, and Applicant were together that night, doing drugs. Plea Tr. 23. Graham also told law enforcement the three of them had gone out to a local convenience store to purchase some cigars; and on the way back, Applicant noticed Ashley's car in Cobb's driveway. Plea Tr. 23. Applicant stopped the car, stated "oh, hell no," and got out of the car with a gun in his hand. Plea Tr. 23. Graham and Johnson watched Applicant go up to the home and go inside. Plea Tr. 23. They immediately heard a woman screaming "no Dashon" and also heard one gunshot. Plea Tr. 23. They then observed Applicant run back out of the house. Plea Tr. 23. When Applicant got back into the car, Applicant told Graham and Johnson he had shot someone in the chest. Plea Tr. 23. All three then left, and Applicant gave the gun to Graham.⁶ Plea Tr. 23.

CURRENT APPLICATION

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

1. Ineffective Assistance of Counsel;
 - a. Failed to investigate the main elements of the case:
 - i. The elements of the gun found at the crime scene chain of custody and/or the disappearance of;
 - ii. Why was this gun at the crime scene;
 - iii. The fact that the house did not belong to the person indicated on the warrant;
 - iv. Proper evidence to prove that a burglary was not committed in this case/incident; [and]
 - v. Did not question witnesses to whether statements would have been material to the defendants [sic] defense and/or innocence [sic].
 - b. Failed to give sufficient advice to [Applicant]
 - i. Counsel advised [Applicant] to plea [sic] instead of going to trial and challenging:
 1. Fraudulent warrants and indictments;
 2. The elements of murder and burglary; [and]

⁶ Johnson also confirmed this story. Plea Tr. 23-24.

3. All evidence and representation of the innocense [sic] of [Applicant].
 - c. Failed to challenge and/or object to the court to elicit whether [Applicant] committed every element of crime—[Applicant] made a statement about self-defense, but the court failed to go into further detail of the mentioning of this defense to see whether his plea was involuntary; [and]
 - d. Failed to challenge the State's evidence produced at [Applicant's] plea sentencing.
 - i. A statement by Mercedes Blond was produced at the plea sentencing [Applicant] did not have knowledge of this statement, and therefore did not have time to prepare a defense for this statement; [and]
 - ii. There was evidence presented at the plea sentencing which was completely unknown to [Applicant], and critical this was information about a weapon [Applicant] did not have time to prepare for the new information.
2. Prosecutorial Misconduct; [and]
 - a. Failed to disclose sufficient/material evidence that was relevant to a lesser offense—A gun was found at the scene of the crime, that was not placed into evidence or was suppressed which would have rendered the pela of self defense;
 - b. Prosecutor made improper comment about evidence or his testimony was false—Prosecutor introduced evidence about a weapon that cannot be proven by any legal documents or testimony; [and]
 - c. Failed to produce evidence, used in [Applicant's] guilty plea, to [Applicant]—A statement was produced on the day of [Applicant's] guilty plea therefore denying [Applicant] the right to prepare a defense.
3. Trial Court Error.
 - a. Failed to elicit whether [Applicant] committed every element of the crime—[Applicant] indicated that because of the circumstances he could not plea [sic] self-defense, but no one questioned [Applicant] to find out whether [Applicant] was making this plea voluntarily/actually committed the crimes a charged/warranted.

At the evidentiary hearing, Applicant proceeded forward the allegation counsel was ineffective for failing to advise Applicant of his ability to present self-defense at trial.



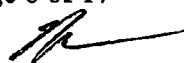
TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified on his own behalf. Respondent presented the testimony of Assistant Public Defender Smith (Counsel) and Deputy Solicitor Thompson. This Court also had before it a copy of Applicant's plea transcript, a copy of the transcript from Applicant's sentencing hearing, a copy of the transcript from the hearings on Applicant's motions to relieve counsel, the records of the York County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, and the records from this current post-conviction relief application.

During the evidentiary hearing, Applicant testified on his own behalf. Applicant testified his first attorney was Assistant Public Defender Inzerillo, but she only represented him for a few months. He elaborated he met with her a few times, and he asked her to do some "stuff." He further elaborated, however, it did not work out the way he wanted. Applicant explained he wanted her to speak with some witnesses based on inconsistencies in their statements. He further explained Assistant Public Defender Inzerillo's private investigator did not agree and did not think speaking with those witnesses would be helpful, so he did not speak with the witnesses. He further testified he relieved Assistant Public Defender Inzerillo, and he was *pro se* for approximately three-and-a-half to four-and-a-half months.

Applicant testified his intent was to proceed to trial in order to fight these charges. He testified he did not want to proceed to trial by himself, but rather he wanted to hire Counsel. He explained Counsel was initially shadow counsel. Applicant further testified he conveyed to Counsel his desire to proceed to trial.

He also testified he met with Counsel approximately three times when Counsel was his shadow counsel and three times when Counsel was his attorney. He described these meetings as



lasting between ten and fifteen minutes each. He also testified the longest meeting lasted for thirty to thirty-five minutes when he had a contact visit with his family. He testified he would tell Counsel the same "things" each time. He elaborated Counsel made no efforts towards what he wanted.

Applicant admitted to shooting the victim, but denied entering the home. He testified he was consistent to this fact during his plea and offered an *Alford*⁷ plea to the burglary charge. He further testified the plea court asked him if he was aware of an *Alford* plea, which he was not aware of at the time. Applicant testified Counsel then explained an *Alford* plea to him. He further testified although he told Counsel he did not enter the home, he and Counsel did not discuss an *Alford* plea prior to the plea.

He further testified he did not agree with the facts. Applicant also testified he was with two friends that Friday evening, and they stopped by the house to see if his ex-girlfriend and mother of his child was there. He explained drugs are sold out of that house and if his child was there, he would want to get his child away from that house. He testified he was not driving, but he asked the driver to stop. He further testified this was a concern for trial. Applicant further testified he did not know whether or not his ex-girlfriend was at the house, but he saw her car in the driveway. He testified it was not his intent to harm anyone, but he had a gun due to the neighborhood in which he lived. He elaborated it is a violent area, so it is best to carry a gun if out at night. He further elaborated he armed himself in preparation of an attack. Applicant testified he knocked on the door and gave his name, and the victim came to the door to keep Applicant from coming inside. He testified he did ^{not} know the victim, but he had seen him twice and recognized him. He further testified the victim reached, causing Applicant to fire his gun. He elaborated as the victim saw Applicant, he reached towards the side of his body, and

⁷ *North Carolina v. Alford*, 400 U.S. 25 (1970).

Applicant stated "I have a weapon" and fired, but did not shoot at the victim. He further elaborated he was afraid the victim was going to shoot him, and he feared for his life.

Applicant also testified he told Counsel what happened and also told Counsel he needed help with trial strategy. He testified he wrote Counsel multiple times. He further testified on the first day of his plea, he wanted to explain his side of the story. He also testified Counsel told him he was going to receive a life sentence, but he asked to take the case to trial. Applicant elaborated Counsel understood what Applicant wanted but told him a plea was best. He further elaborated Counsel overlooked the fact Applicant wanted to proceed to trial.

Applicant further testified he and Counsel did not discuss self-defense. He testified he had no choice but to agree with the facts at the plea. He also testified he would not agree to the facts for burglary, murder, and manslaughter. He explained he did not enter the home. Applicant testified he knew he could present self-defense through his testimony at trial, but he had no chance of proceeding to trial and asserting self-defense. He explained this was based on his own knowledge, not the advice of Counsel. He further explained he told Counsel he wanted to present self-defense, and he still wants to present self-defense. Applicant also testified he did not understand self-defense. He explained if he knew about self-defense, he would have proceeded to trial. He further explained because he did not know about self-defense, he pled guilty. He testified he wanted to raise self-defense at trial, but he and Counsel did not discuss the elements, reasonable doubt, or the fact that self-defense is a complete defense.

Applicant also testified he recalled the plea court reviewing his constitutional rights with him; and he told the court understanding those rights, he wanted to proceed with the plea. He elaborated, however, he did not tell the truth at that time because he did not know what he could say and felt as though he was stuck. He testified someone told him to plead guilty. He

elaborated that person told him not to explain his side of the story and that they would "handle it." He further elaborated that person told him to just say "yes." Applicant also testified he told the plea court he was satisfied with Counsel; but in the back of his mind, he was not satisfied. He explained he was weak and did not know what he could say. He further explained this was a hard decision to make, and he made the decision to plead guilty. He testified, however, he was influenced to take the plea.

Following Applicant's testimony, Applicant rested and Respondent presented the testimony of Counsel. Counsel testified he was appointed to represent Applicant, though Assistant Public Defender Inzerillo was initially assigned the case. He explained Applicant was not satisfied with her representation and asked to relieve Assistant Public Defender Inzerillo. He further explained at that time, Applicant was not appointed a new attorney and Applicant represented himself. Counsel further testified Judge Hayes appointed him as standby counsel in order to communicate negotiations, to discuss the discovery with the State, and to schedule the case for trial. He testified Applicant then requested Counsel be appointed to represent him, and he and Applicant discussed the case. He explained later, Applicant asked to relieve Counsel, but the court told him it would not relieve Counsel unless Applicant proceeded *pro se*, which Applicant did not want to do.

Counsel testified he met with Applicant numerous times, approximately ten times, and also met with Applicant's family. He further testified he received the discovery, and he explained the State's version of the facts to Applicant. He testified Applicant gave numerous versions of his side of the story, including an alibi, and Applicant withheld information from him. He explained Applicant told him he was not at the crime scenes and there were witnesses who could verify this. He further explained none of the witnesses Applicant provided to him

gave any beneficial information. He testified alibi was, therefore, abandoned as a defense. He further explained Applicant told him he was high or drunk and could not remember. Counsel also testified Applicant told him he was startled, the victim grabbed the gun, he saw someone with a gun, and that he did not see a gun but saw a motion. Counsel explained he was unsure which version of events Applicant would present at trial. He testified in one version of events, Applicant told him he fired a shot in self-defense and Applicant also indicated he saw the victim with a gun. Counsel testified he explained self-defense to Applicant in various forms. He further testified he explained the elements of self-defense to Applicant, particularly highlighting whether or not Applicant was in danger or at fault. He also testified he explained the burden of proof for self-defense to Applicant.

He also testified a gun was found at the residence, and Assistant Public Defender Inzerillo noticed it was not included in the list of evidence from the scene. He testified the gun found was a fake, pellet gun, so it was not taken into evidence. He further testified the gun was found many feet away from the shooting. Counsel explained had Applicant proceeded to trial, this was what they would be left with, and the odds of prevailing would have been difficult.

Counsel testified a theory of self-defense was difficult. He explained that theory did not match what the witnesses were saying, and he believed it would have been an ethical issue to put Applicant on the stand. He further explained there was no other way to present self-defense other than Applicant testifying, which he explained to Applicant and Applicant understood.

He testified Applicant discussed his issues regarding the burglary charge with him. He further testified he explained to Applicant even the slightest entry constituted a burglary and also explained even if he pushed in or reached inside to shoot, that would constitute a burglary. Counsel testified the first time Applicant ever indicated he stayed outside of the home was at the



evidentiary hearing, and Applicant never told him prior to the plea. He also testified the court stopped the plea at one point so that Counsel could explain an *Alford* plea to Applicant, which he did.

He further testified he entered into negotiations. He testified once the State was set with its evidence, the State did not move from its initial offer. He explained the State was not willing to change its offer, which would expose Applicant to a sentence of fifteen to fifty years, but would avoid a life sentence. He testified he explained this to Applicant. Counsel also testified he was concerned with Applicant's decisions, so he asked the Chief Public Defender to meet with Applicant. He testified he also explained he got Applicant's family involved. Counsel also testified as the trial neared, Applicant attempted to fire him, which was a catalyst to the plea.

He testified he explained the waiver form to Applicant, and Applicant understood what he was facing. He further testified although Applicant indicated many times he wanted to proceed to trial, Applicant did not indicate he wanted a trial when filling out the form. He also testified he did not coach Applicant at the plea, and he merely explained the questions the plea court would ask. Counsel testified Applicant understood the consequences, understood what was going on at the plea, and understood the recommendation.

Following Counsel's testimony, Deputy Solicitor Thompson testified. Deputy Solicitor Thompson testified he handles all homicide cases out of York County and was immediately involved in this case. He explained he was involved with the law enforcement officers from the beginning. He further testified it was clear Applicant was guilty of these crimes. He explained Applicant had a longstanding relationship with the woman who was now dating the victim, and the relationship between Applicant and this woman was volatile and abusive. He further explained there were text messages from Applicant threatening to kill this woman and the victim.



He also testified Applicant was with another man and woman that night, and they were driving around. He testified Applicant saw his ex-girlfriend's car at the victim's house, stated "oh hell no," and took the gun with him up to the home. He further testified the victim went to the door, and Applicant pushed his way inside and pulled the gun. He explained because it was a sliding glass door, if Applicant had not entered the home, he would have had to shoot through the blinds. Deputy Solicitor Thompson testified Applicant hit the victim in the head and fired a shot into his chest. He also testified the people in the car heard the commotion. He testified Applicant then ran out of the house and took off in the car.

Deputy Solicitor Thompson also testified Applicant gave the gun to the man in the car, who later was caught with the gun. He further testified there was a jail call, in which it was indicated "Brown" was arrested with the gun. He explained Applicant was concerned by this fact. He also testified "Brown" gave a statement to law enforcement, describing what he saw. He further testified the people in the car confirmed Applicant went inside the house and killed the victim.

He testified the gun at the residence was a pellet gun, which was found behind the couch, covered in clothing, and against the far wall from the shoot. He testified he did not ask law enforcement to collect that pellet gun into evidence. He assumed it had been collected, but he had photographs of the gun. He further testified the victim would not have known about the gun. He also testified it was not a real gun, so it would not have been considered a viable weapon in self-defense.

Deputy Solicitor Thompson testified he provided discovery first to Assistant Public Defender Inzerillo then to Counsel. He further testified he shared full discovery with the



defense, including all witness statements. He testified Assistant Public Defender Inzerillo asked him about the gun, and he relayed the information about the gun to her and to Counsel.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Applicant's sole allegation is ineffective assistance of counsel for failing to advise Applicant of his ability to present self-defense at trial.

Ineffective Assistance of Counsel

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

The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Butler*, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).



Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." *Cherry*, 300 S.C. at 117, 385 S.E.2d at 625 (citing *Strickland*). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. In order to satisfy the prejudice prong of this test following a guilty plea, the applicant "must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

After careful review based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action. Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

Counsel's alleged failure to explain self-defense to Applicant

Applicant contends Counsel was ineffective for failing to advise Applicant of the ability to present a defense of self-defense at trial. "Counsel's concern is the faithful representation of the interest of his client and such representation frequently involves highly practical considerations as well as specialized knowledge of the law." *Tollett v. Henderson*, 411 U.S. 258, 267-68 (1973). "A self-defense charge is not required unless it is supported by the evidence." *State v. Slater*, 373 S.C. 66, 69, 644 S.E.2d 50, 52 (2007) (citing *State v. Goodson*, 312 S.C. 278, 280, 440 S.E.2d 370, 372 (1994)). In order to establish a defense of self-defense, the defendant must: (1) be without fault in bringing on the difficulty; (2) have been in actual imminent danger of losing his life or sustaining serious bodily injury; (3) show that a reasonably prudent person of

ordinary firmness and courage would have entertain the belief he was actually in imminent danger and the circumstances were such as would warrant a person of ordinary prudence, firmness, and courage to strike the fatal blow in order to save himself from serious bodily harm or death, if the defense is based upon a defendant's belief of imminent danger; and (4) have had no other probable means of avoiding the danger. *Id.* at 69-70, 644 S.E.2d at 52. A defendant "who provokes or initiates an assault cannot claim self-defense unless he both withdraws from the conflict and communicates his withdrawal by word or act to his adversary." *State v. Jackson*, 384 S.C. 29, 36, 681 S.E.2d 17, 20-21 (Ct. App. 2009).

Here, Applicant testified as the victim went to the door, he reached for something towards the side of his body, causing Applicant to shoot at him. He further testified he did not shoot to kill. Applicant elaborated he thought the victim was going to shoot him, and he feared for his own life. Counsel, however, testified Applicant gave numerous versions of the events of that night, including an alibi defense and self-defense. He explained at times, Applicant would state he saw the victim grab a gun, saw someone else with a gun, and never saw a gun but rather saw a motion. He further explained based on these numerous stories, he explained self-defense to Applicant. Counsel also testified a defense of self-defense at trial would have been difficult, as Applicant's version did not comport with the other witnesses. He testified in order to present such a defense at trial, Applicant would have to testify, which he explained to Applicant.

This Court finds Counsel's testimony very credible, whereas Applicant's testimony is not credible. Moreover, by Applicant's own admission at the plea, he and Counsel had discussed possible defenses that might have been beneficial. Plea Tr. 15-16. Because Counsel fully explained the elements of self-defense to Applicant and explained the difficulties in presenting a



defense of self-defense at trial, this Court finds Applicant has failed to establish Counsel was deficient.

Similarly, this Court further finds Applicant has failed to establish any resulting prejudice from the alleged deficiency. Applicant voluntarily made the decision to plead guilty, indicating no one had promised him anything, threatened him, or coerced him into pleading guilty. Plea Tr. 26. He further indicated he was pleading guilty of his own free will and accord. Plea Tr. 26. Moreover, after the State had given its recitation of the facts, Applicant admitted to shooting the victim. Plea Tr. 27. He further admitted he did not have a good chance of presenting a defense of self-defense at trial. Plea Tr. 27. Applicant understood he could present this defense, yet chose to waive any and all defenses by pleading guilty. Based on all of the foregoing, this allegation must be denied and dismissed with prejudice.

CONCLUSION

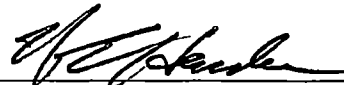
Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

1. That this application for post-conviction relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED this 8th day of November, 2018.



 ROGER E. HENDERSON
 Presiding Judge
 Sixteenth Judicial Circuit

Chesapeake, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF YORK

INDICTMENT

2016 AUG 23 PM 2:59

At a Court of General Sessions, convened on November 6, 2014, the Grand Jurors of

York County present upon their oath:

BURGLARY FIRST DEGREE

Donquavious Dashon Davis did in York County on or about June 29, 2014, willfully and unlawfully enter the dwelling of Kadeem Cobb located at [REDACTED] in the City of Rock Hill, South Carolina, without consent and with the intent to commit a crime in the dwelling. During the commission of the crime, Donquavious Dashon Davis committed one or more of the following acts: 1. He was armed with a deadly weapon; 2. He caused physical injury to a person who was not a participant in the crime; 3. He used or threatened the use of a dangerous instrument; 4. He displayed a firearm or what appeared to be a firearm; and/or 5. The entering or remaining occurred in the nighttime. All in violation of Section 16-11-311, *Code of Laws of South Carolina* (1976), as amended.

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


DEPUTY SOLICITOR

101

WITNESSES

RHPD / Haire

ARREST WARRANT NUMBER

Direct Indictment

ACTION OF GRAND JURY

TRUE BILL

Libera W. Meares
Foreperson of Grand Jury
11/6/14

VERDICT

Foreperson of Petit Jury
Date:

DIRECT
DOCKET NO. 2014-GS46-03510

The State of South Carolina
County of York

COURT OF GENERAL SESSIONS

NOVEMBER 6, TERM 2014

THE STATE

vs.

DONQUAVIOUS DASHON DAVIS

Indictment for

BURGLARY FIRST DEGREE

SC Code: 16-11-311
CDR Code: 0079

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

Defendant

Donquavious Dashon Davis
hereby appear in my own proper person and plead guilty to the within indictment or to

as charged

[Signature]
Defendant

Witness:
[Signature]
C.C.C. (P.L.S. AND G.S.)
[Signature]

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

INDICTMENT

CERTIFIED TRUE COPY
2016 AUG 23 PM 2:59

At a Court of General Sessions, convened on November 6, 2014, the Grand Jurors of York County present upon their oath:

COUNT 1 – MURDER

Donquavious Dashon Davis did in York County on or about June 29, 2014, feloniously, willfully and with malice aforethought, kill one Santario McCoy by means of shooting him and Santario McCoy died as a result thereof, all in violation of Section 16-3-10, *Code of Laws of South Carolina* (1976), as amended. The Murder occurred at or near [REDACTED] in the City of Rock Hill, South Carolina.

COUNT 2 – POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME

Donquavious Dashon Davis did on or about June 29, 2014, possess a firearm while committing the violent crime of murder in York County, South Carolina, all in violation of Section 16-23-490, *Code of Laws of South Carolina*, (1976), as amended

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

Willy Thompson
DEPUTY SOLICITOR

193
1

WITNESSES

RHPD / Haire

ARREST WARRANT NUMBER

COUNT 1: 2014A4620304997

COUNT 2: 2014A4620305006

ACTION OF GRAND JURY

TRUE BILL

Rebecca A. Means
Foreperson of Grand Jury
4/6/14

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2014-GS46- **03509**
2014-GS46- **03509a**

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

NOVEMBER 6, TERM 2014

THE STATE

vs.

DONQUAVIOUS DASHON DAVIS

Indictment for

COUNT 1 - MURDER

SC Code: § 16-03-0010

CDR Code: 0116

COUNT 2 - POSSESSION OF A
FIREARM DURING THE COMMISSION
OF A VIOLENT CRIME

SC Code: 16-23-0490

CDR Code: 0549

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

[Signature]
Defendant

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

Voluntary Manslaughter and Possession of a firearm during the commission of a violent crime

[Signature]
Defendant

Witness:

[Signature]
C.C.C. P.S. AND G.S. *Special*

194 OF YORK

VS.

DONOUAVIOUS DASHON DAVIS

INDICTMENT/CASE#: 2014GS4603510
A/W: Direct Indictment
Date of Offense: 06/29/2014
S.C. Code §: 16-11-0311
CDR Code #: 0079

AKA:
Race: Black Sex: M Age: 20
DOB: /1994 SS#:
Address:
City, State, Zip: Rock Hill, SC
DL# SID#

2016 AUG 23 PM 2: 59

SENTENCE SHEET

Handwritten initials/signature

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Burglary, First Degree
In violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
(CSC w/minor 1st or Lewd Act)

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, Negotiated Sentence, Recommendation by the State.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:
Willy Thompson, Deputy Solicitor 65118 SC Bar #
Defendant
Attorney for Defendant 66593 SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center,
for a determinate term of 40 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which
are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections. 377
The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
Total: \$ plus 20% fee: \$ days/hours Public Service Employment
Payment Terms:
Obtain GED
Attend Voc. Rehab. Or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol Testing
Fine may be pd. in equal consecutive weekly/monthly
pmts. of \$ Beginning
Paid to Public Defender Fund
Other:

Table with 3 columns: Description, Amount, Total. Includes items like §14-1-206 (Assessments 107.5%), §14-1-211 (A)(1)(Conv. Surcharge) \$100, §14-1-211 (A)(2)(DUI Surcharge) \$100, §56-5-2995 (DUI Assessment) \$12, §56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, §14-1-212 (Law Enforc. Funding) \$25, §14-1-213 (Drug Court Surcharge) \$150, §50-21-114 (BUI Breath Test Fee) \$50, §56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$, TOTAL \$130.

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

Clerk of Court/Deputy Clerk: David Hamilton
Court Reporter: Wanda Nelson
SCCA/217 (03/2011)

Presiding Judge: [Signature]
Judge Bar ID:
Judge Code: 2049
Sentence Date: 7-13-15

COUNTY OF YORK
STATE VS.

DONQUAVIOUS DASHON DAVIS

INDICTMENT/CASE#: 2014GS4603509
A/W: 2014A4620304997
Date of Offense: 06/29/2014
S.C. Code §: 16-03-0010, 0020
CDR Code #: 0116

AKA: _____
Race: Black Sex: M Age: 20
DOB: /1994 SS#: _____
Address: _____
City, State, Zip: Rock Hill, SC _____
DL# _____ SID# _____

2016 AUG 29 PM 2:59

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

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

TO: Voluntary Manslaughter

In violation of § 16-03-0050 of the S.C. Code of Laws, bearing CDR Code # 0217

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, Negotiated Sentence, Recommendation by the State.

ATTEST:

Willy Thompson 65118
Willy Thompson, Deputy Solicitor SC Bar #

Defendant

Attorney for Defendant 66593
SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center,
for a determinate term of 30 days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which
are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 7/13/15
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections. 377 days
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____
Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment
Payment Terms: _____ Obtain GED

Set by SCDPPPS _____

Recipient: _____

*Fine:		\$	
§14-1-206 (Assessments 107.5%)		\$	
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$	100
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$	
§56-5-2995 (DUI Assessment)	\$12	\$	
§56-1-286 (DUI Breath Test)	\$25	\$	
Proviso 47.9 (Public Def/Prob)	\$500	\$	
§14-1-212 (Law Enforce. Funding)	\$25	\$	25
§14-1-213 (Drug Court Surcharge)	\$150	\$	
§50-21-114 (BUI Breath Test Fee)	\$50	\$	
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$	
Proviso 90.5 (SCCJA Surcharge)	\$5	\$	5
3% to County (if paid in installments)	\$	\$	
TOTAL		\$	130

Attend Voc. Rehab. Or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling
Random Drug/Alcohol Testing
Fine may be pd. in equal consecutive weekly/monthly
pmts. of \$ _____ Beginning _____
\$ _____ Paid to Public Defender Fund
Other: _____

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

Clerk of Court/Deputy Clerk: David Hamilton
Court Reporter: Wanda Nelson
SCCA/217 (03/2011)

Presiding Judge: _____
Judge Bar ID: 7567 Judge Code: 2049
Sentence Date: 7-13-15

DONOUAVIOUS DASHON DAVIS

INDICTMENT/CASE#: 2014GS4603509a
A/W: 2014A4620305006
Date of Offense: 06/29/2014
S.C. Code §: 16-23-0490
CDR Code #: 0549

AKA: _____
Race: Black Sex: M Age: 20
DOB: /1994 SS#: _____
Address: _____
City, State, Zip: Rock Hill, SC _____
DI# _____ SID# _____

2016 AUG 23 10 2:59

SENTENCE SHEET
ORIGINAL #3

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
TO: Possession Of A Weapon During The Commission Of A Violent Crime
In violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
(CSC w/minor 1st or Lewd Act)

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

ATTEST:
Willy Thompson 65118 SC Bar # _____ Defendant
David Hamilton _____ Attorney for Defendant 66593 SC Bar # _____

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center,
for a determinate term of 5 days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which
are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 7/13/15
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections. 377 days
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____
Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment.
Payment Terms: _____ Obtain GED

Set by SCDPPPS _____

Recipient: _____
*Fine: _____ \$ _____
§14-1-206 (Assessments, 107.5%) \$ _____
§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100
§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____
§56-5-2995 (DUI Assessment) \$12 \$ _____
§56-1-286 (DUI Breath Test) \$25 \$ _____
Proviso 47.9 (Public Def/Prob) \$500 \$ _____
§14-1-212 (Law Enforce. Funding) \$25 \$ 25
§14-1-213 (Drug Court Surcharge) \$150 \$ _____
§50-21-114 (BUI Breath Test Fee) \$50 \$ _____
§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
Proviso 90.5 (SCCA Surcharge) \$5 \$ 6
3% to County (if paid in installments) \$ \$ _____
TOTAL \$ 130

Attend Voc. Rehab. Or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling
Random Drug/Alcohol Testing
Fine may be pd. in equal consecutive weekly/monthly
pmts. of \$ _____ Beginning _____
\$ _____ Paid to Public Defender Fund
Other: _____
 Appointed PD or appointed other counsel,
§47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/Deputy Clerk: David Hamilton
Court Reporter: Wanda Nelson
SCCA/217 (03/2011)

Presiding Judge: John H. ...
Judge Bar ID: 4861 Judge Code: 2049
Sentence Date: 7-13-15