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STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas

The Honorable G. Thomas Cooper, Jr., Circuit Court Judge

Appellate Case No. 2017-000881

Eugene A. Gardner, III,.....Respondent,

v.

State of South Carolina, ...Petitioner.

APPENDIX

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INDEX

INDEX	i
TRIAL TRANSCRIPT	1
PCR APPLICATION.....	211
RETURN.....	238
PCR HEARING TRANSCRIPT.....	244
ORDER GRANTING POST-CONVICTION RELIEF.....	347
STATE’S 59(e) MOTION TO ALTER OR AMEND.....	356
RETURN TO STATE’S 59(e) MOTION TO ALTER OR AMEND	364
ORDER DENYING 59(e) MOTION TO ALTER OR AMEND.....	365
CLERK’S RECORDS	367
SCDC RECORDS.....	370

State of South Carolina

Court of General Sessions

County of Darlington

2013-GS-16-00452

The State of South Carolina :

:

-VS-

:

TRANSCRIPT OF RECORD

:

Eugene Austin Gardner, III :

December 2 - 3, 2013

Darlington, South Carolina

B E F O R E:

The Honorable J. Michael Baxley, Judge, and
jury.

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I N D E X

Witness

Mark Luce (in camera)

Direct Examination by Mr. Holt.....	50
Cross-Examination by Ms. Wooten.....	64
Redirect Examination by Mr. Holt.....	67
Recross Examination by Ms. Wooten.....	69

William M. Hicks (in camera)

Direct Examination by Mr. Holt.....	70
Cross-Examination by Ms. Wooten.....	73

Josh Hodges (in camera)

Direct Examination by Mr. Holt.....	75
Cross-Examination by Ms. Wooten.....	78
Examination by the Court.....	80

Eugene "Tripp" Austin Gardner, III (in camera)

Examination by the Court.....	116

Susan Gardner Davis

Direct Examination by Mr. Holt.....	144
Cross-Examination by Ms. Wooten.....	161
Redirect Examination by Mr. Holt.....	175

1 **The Court:** Thank you, ladies and gentlemen. Please be
2 seated, everyone. All right. Ladies and gentlemen, welcome
3 back to the courtroom, and we are now going to proceed to
4 pick a jury in the first case for trial. And, Mr. Solicitor,
5 I'm going to ask you to call your first case for trial,
6 please.

7 **Mr. Holt:** Thank you very much, Judge. If it please the
8 Court, the State calls the following: The State of South
9 Carolina versus Eugene Austin Gardner, III. He's indicted
10 under murder, and he's represented by Ms. Julie Wooten.

11 **The Court:** All right. Very good. Then, Ms. Wooten,
12 you represent Mr. Eugene Gardner, III?

13 **Ms. Wooten:** Yes, Your Honor.

14 **The Court:** And the State has indicted him for the
15 charge of murder. How does he plead?

16 **Ms. Wooten:** Not guilty, Your Honor.

17 **The Court:** Very good. Then, ladies and gentlemen,
18 you've heard -- thank you, ma'am. You may be seated. You've
19 heard the charge called, the case announced, and you've heard
20 the entry of a plea of not guilty. Thus, the issues are
21 joined for trial and we will proceed to pick a jury in this
22 first case for trial.

23 We'll talk with you a little bit more about the
24 specifics of these allegations in just a moment, but let's
25 just talk about this process that we're getting ready to

1 enter into first. We're going to ask a series of questions
2 that are -- that have to do specifically with this case.
3 Now, earlier we asked general questions that had to do with
4 general qualifications to serve as a juror, but now we're
5 focusing on specific cases.

6 I know from just years in the courtroom that many times
7 when you sit as you do right now, you hear a question and you
8 think to yourself: Well, gosh, you know, I don't want to
9 embarrass myself. I don't think that applies to me. I'm
10 just going to sit here and be quiet. I'm going to ask you to
11 do just the opposite of that. If you have some inkling that
12 you should respond, then please stand up and give us the
13 benefit of whatever that information is.

14 There are no wrong answers in jury qualifications. The
15 process -- the purpose of this process is to ensure that
16 whatever jury we choose for this particular case and for any
17 case is a disinterested jury, and when I say disinterested I
18 don't mean that you don't care, but what I mean is that you
19 don't have some connection to the case that would make you an
20 inappropriate juror.

21 Now, we're going to begin by reintroducing counsel and
22 the principals in the case. And so counsel for the State,
23 I'd ask you to introduce yourselves again. Tell us who will
24 be your chief case officer, your chief prosecuting officer,
25 and go ahead.

1 **Ms. Parker:** Thank you, Your Honor. My name is Patti
2 McKenzie Parker. I work here for the Fourth Circuit
3 Solicitor's Office. I'm specifically assigned to Darlington
4 County. I'll be prosecuting this case this week against
5 Eugene Gardner, and my coworker, John Holt -- I'll let him
6 introduce himself a little.

7 **Mr. Holt:** John Holt. I work for Patti.

8 **The Court:** All right. And tell us who will be your
9 case officer, Ms. Parker. Who will be your chief prosecuting
10 officer?

11 **Ms. Parker:** The chief prosecuting officer with the
12 sheriff's office is Investigator Mark Luce.

13 **The Court:** All right. Thank you.

14 **Ms. Parker:** He's standing.

15 **The Court:** Thank you, Investigator Luce, and you may be
16 seated. Now, let's switch to the defense side and let's do
17 the same thing, counsel, and please introduce your client.

18 **Ms. Wooten:** Thank you. My name is Julie Wooten again,
19 and I work in Darlington County for the Fourth Circuit Public
20 Defender's Office. This right here is Mr. Eugene Tripp
21 Gardner, III, and standing -- sitting next to him is Mr. Rick
22 Jones also of the public defender's office in Darlington
23 County.

24 **The Court:** All right. Thank you. Now, ladies and
25 gentlemen, let's ask about the lawyers first. We're not

1 talking about the parties yet but the attorneys. You were
2 introduced to two of the prosecutors and two of the defenders
3 who will be defending these cases. I ask you now, ladies and
4 gentlemen, if there's any member of this jury panel related
5 to these lawyers by blood or marriage or have some close
6 personal or social or professional connection to them or
7 either now or in the past have been represented by them in
8 some other matter unrelated to this issue. If that applies
9 to you, any of that, please stand. Let's let the record
10 reflect no one has stood in response to the Court's question.

11 Now I want to ask you about -- again, still focusing on
12 the lawyers, let's ask about the connections you may or may
13 not have to the offices in which they're employed. First of
14 all, the prosecutions in this circuit, in Darlington County,
15 are conducted by what we call the Fourth Circuit Solicitor's
16 Office. That's the arm of prosecution of State government
17 that operates here in Darlington County.

18 The two prosecutors work for the solicitor's office.
19 I'm asking if there's any member of this jury panel who has
20 been represented by other lawyers in the solicitor's office,
21 that is, as a victim of crime or in some other capacity or if
22 you have some business connection to the solicitor's office
23 which has offices in four counties: Darlington, Dillon,
24 Marlboro, and Chesterfield. Perhaps you are a vendor,
25 independent contractor, or have some other connection to the

1 solicitor's office. If any of that applies to you, please
2 stand. Let's let the record reflect no one has stood in
3 response to the Court's question.

4 Now, to the defense side, we've already asked about the
5 lawyers, but they work for the public defender's office here
6 in Darlington County which is part of the Fourth Circuit,
7 again the same four counties, and I ask you if there's any
8 member of this jury panel who has had some connection to
9 other lawyers in the public defender's office of the Fourth
10 Judicial Circuit or perhaps has some connection to that
11 office such as vendor, independent contractor, or some other
12 connection. If you have some connection to the public
13 defender's office, please stand. Let's let the record
14 reflect no one has stood in response to the Court's question.

15 All right. Now, the next question that I have for you
16 has to do with the parties, not the lawyers - I've asked you
17 about them - but the parties. The chief prosecuting officer,
18 what's called the case officer, who will be with the
19 prosecution throughout the trial is Investigator Mark Luce of
20 the -- now of the Darlington County Sheriff's Office.

21 I ask if there's any member of this jury panel related
22 to him by blood or marriage, have some close business,
23 professional or social connection to him. If that applies to
24 you, please stand. All right. And, ma'am, please give us
25 your name and juror number.

1 **Juror Bryant:** Okay. Number 20, Gail Bryant. Mr. Luce
2 is a coworker of my husband, Rob, at the Darlington County
3 Sheriff's Office.

4 **The Court:** All right. And, Ms. Bryant, tell me, ma'am
5 -- and just, of course, we all live here in Darlington
6 County. We know it's a small county. It's not uncommon for
7 people who are in the jury panel to know someone who may be
8 connected to the case, but the question is this: Would the
9 fact that you know Mr. Luce in that way prevent you from
10 being fair and impartial in this case somehow if you're
11 summoned as a juror?

12 **Juror Bryant:** Yes, it would.

13 **The Court:** It would?

14 **Juror Bryant:** Uh-huh.

15 **The Court:** All right. Then I appreciate the candor of
16 your response, and what I'm going to do is I'm going to
17 remove you from this panel. I'm going to let you remain with
18 us, please, ma'am, but you just don't need to respond to any
19 further questions with regard to this case. And at the end
20 of this, then we will get back to you with further
21 information when we go to our next case, but we will not
22 include you in this jury panel. Thank you again, Ms. Bryant,
23 for the -- for the truthfulness of your answer.

24 Anyone else now who would stand and say they have some
25 connection to Mr. Luce? And, sir, please tell me your name

1 and juror number.

2 **Juror Haynie:** My name is William Haynie. I'm
3 originally from the community in which this crime was found,
4 you know. I can see one side---

5 **Court Reporter:** I can't hear him, Judge.

6 **The Court:** All right. Just one moment, sir. His
7 response was that he's a resident of the community where this
8 occurred and has a one-sided view of it. All right, sir.
9 And, Mr. Haynie, are you telling us then that it would be
10 difficult for you to be a juror in this case?

11 **Juror Haynie:** Yes, sir.

12 **The Court:** All right. So let's do this. By the same
13 token, I'm going to remove you from this particular case. We
14 will not call your name in this case and, thus, you don't
15 need to answer any more questions about this case. All
16 right, sir. I'm going to let you be seated. Thank you, sir.
17 Anyone else now who would respond and say they have some
18 connection to the investigator, Mr. Luce?

19 All right. Now, you also met the defendant in this case
20 who is Mr. Eugene Gardner, and I ask you, ladies and
21 gentlemen, if there's any member of this jury panel related
22 by blood or marriage to Mr. Eugene Gardner, have some
23 connection to him, whether it be business, professional,
24 social, whatever it may be, or think you even know Mr. Eugene
25 Gardner. If that applies to you, please stand. All right.

1 And then, sir, please tell me your name and juror number.

2 **Juror Standish:** George Standish, 143.

3 **The Court:** All right. Mr. Standish, how long has it
4 been since you've seen Mr. Gardner before today?

5 **Juror Standish:** A year or two.

6 **The Court:** Okay. And how is it that you know Mr.
7 Gardner?

8 **Juror Standish:** I've known him for 25 years.

9 **The Court:** Okay. And would then that prevent you from
10 being fair and impartial in this case if you're summoned as a
11 juror?

12 **Juror Standish:** Yes, sir.

13 **The Court:** All right. So then again I appreciate the
14 candor of your response. Mr. Standish, we will set you aside
15 from this case as well. You do not need to answer any
16 further questions with regard to this case. Anyone else now
17 who would stand to say they have some connection to the
18 defendant, Mr. Gardner? If that applies to you -- if you
19 have some business, professional, social connection to him or
20 think you even know him, please stand.

21 All right. And I did not ask the solicitor, but
22 according to the indictment - and we'll discuss this in just
23 a moment - the victim in this case -- and, ladies and
24 gentlemen, let me just immediately say: As soon as I use the
25 term "victim," the word "victim" implies that there's been

1 some crime committed and that someone was wounded by that
2 crime. I will tell you that when I use the term "victim"
3 there's not intended to be any inference from that. What's
4 happened here is for the jury to determine. The defendant
5 has pled not guilty to these charges. So ultimately the jury
6 will make the decision. Please take no inference from any
7 terms that the Court may use in simply trying to describe
8 individuals who are connected to this situation, but I will
9 tell you that the deceased in this case is Richard Todd
10 Gardner who is related to the defendant and is the brother of
11 the defendant.

12 Now, I tell you that to ask you this: Is there any
13 member of this jury panel who knows Mr. -- or knew Mr.
14 Richard Todd Gardner or has some knowledge of this incident
15 that's occurred between the two? If this applies to you, if
16 you know something about this case or these allegations or if
17 you knew Mr. Richard Todd Gardner, please stand. All right.
18 And, sir, please tell me your name and your juror number.

19 **Juror Floyd:** Carroll Floyd and 144 I think it is, but
20 on the sheet it said 37.

21 **The Court:** Yes, sir. And---

22 **Juror Floyd:** I had worked on Todd's house. I knew
23 Todd. I grew up with him.

24 **The Court:** All right, sir. And how -- how long ago was
25 this when you worked on the house?

1 **Juror Floyd:** Probably about six or seven years ago.

2 **The Court:** All right, sir. Tell me, Mr. Floyd --
3 again, we live in a small county, and people know people in
4 the county. Would the fact that you know one or both of the
5 parties in this case prevent you from being fair and
6 impartial in this case?

7 **Juror Floyd:** Probably; yes, sir.

8 **The Court:** All right, sir. Then based on what you're
9 telling me, I'm going to -- I'm going to set your name aside
10 from this case as well, Mr. Floyd. You don't need to answer
11 any further questions with regard to this case.

12 All right. Now, I'm going to ask the parties to call
13 out the names of potential witnesses who may appear in the
14 trial of the case. So just listen, if you will, to the names
15 of witnesses. Ladies and gentlemen, if you're in the
16 courtroom and you are a witness, please stand when your name
17 is called so the jury panel can see you. And, Mr. Holt, go
18 ahead, sir.

19 **Mr. Holt:** Thank you very much, Your Honor. Mark Luce
20 with the Darlington County Sheriff's Office. Brandon Peavy
21 with the Darlington County Sheriff's Office, and Joe Peavy
22 with the Darlington County Sheriff's Office. Eric Hodges,
23 Darlington County Sheriff's Office. Ray Shealy and Karen
24 Ravon are from Myrtle Beach. Todd Hardee, the coroner. Ira
25 Parnell, he's from S.L.E.D. Kelly Scarborough is from

1 S.L.E.D. Amy Stephens and Lilly Gillman (sic), both from
2 S.L.E.D.

3 Dr. Janice Ross is a pathologist from Newberry. Susan
4 Davis, who is from Mechanicsville. Terri Odom, who is from
5 Mechanicsville. [REDACTED] Minor . Mr. Abram who is -- who is
6 from Mechanicsville. A custodian from Verizon records --
7 Verizon Wireless records custodian who will not be from this
8 county.

9 Modestine Woodberry who is from Florence. Josh Hodges
10 from North Carolina. Will Hicks and Wade Colvard and Debbie
11 Pennington, four individuals from North Carolina. Chase
12 McDaniel who is with the sheriff's office here; he's from
13 Florence. Rhonda Weatherford who is from this county.

14 James Nesmith is also a local resident. Sheila Terry,
15 David Blackmon, Roger Dale Lewis - all three are local
16 residents. Amy Martin, Kevin Martin, and Danny Dorsey are
17 local residents, if you will.

18 **The Court:** All right. Thank you. Go ahead and be
19 seated, ladies and gentlemen, please. Now, when I asked you
20 about the parties, I asked you if you know the parties. What
21 I'm asking for witnesses is not so close. What I'm looking
22 for is whether you're related by blood or marriage to any of
23 these individuals who may appear as witnesses or have some
24 close business, professional, or social connection to them,
25 to any of them. If that applies to you, ladies and

1 gentlemen, please stand. Let's let the record reflect no one
2 has stood in response to the Court's question.

3 Now, we're going to ask the same question of defense,
4 but before we do that I want to say this to you: It is a
5 foundational principle of our justice system that the State
6 has the burden of proof. The burden of proof never shifts to
7 the defendant to prove himself or herself innocent. The
8 burden is on the State to prove the defendant guilty.

9 That's a high burden. It's beyond a reasonable doubt,
10 and as a result of the fact that the defendant has no burden
11 to put up a case or no burden to prove here in this
12 courtroom, the defendant is not required to testify. The
13 defendant has a right to remain silent. The defendant does
14 not have to call witnesses. The defendant doesn't even have
15 to respond to the allegations that are put forward by the
16 State.

17 But with that understanding, are there potential
18 witnesses for whom I should also query this jury who may
19 appear in the trial of this case, Ms. Wooten?

20 **Ms. Wooten:** Yes, Your Honor.

21 **The Court:** All right. Please call their names and,
22 ladies and gentlemen, please stand if your name is called and
23 you're in the courtroom.

24 **Ms. Wooten:** These are potential witnesses which might
25 be called in our case. First is Mr. Eugene Tripp Gardner,

1 III. We also have Sarah Renee Smith also known as Sarah
2 Renee Gardner. We have Taylor Gardner and finally Dr. Brian
3 K. Adler.

4 **The Court:** All right. Thank you. You may be seated.
5 All right. Ladies and gentlemen, now with regard to these
6 individuals who may appear as witnesses on the defense side
7 of the case, I ask you: Is any member of this jury panel
8 related to any of them by blood or marriage or have some
9 close business, professional, or personal connection to them?
10 If so, please stand. Let the record reflect no one has
11 stood.

12 Now, in my hand I have the indictment which you may have
13 noted was handed up by the solicitor when the case was
14 called, and the indictment is simply a set of allegations.
15 It is a piece of paper by which the State commences a
16 prosecution against an individual.

17 What's in this indictment are allegations. You heard
18 the defendant enter a plea of not guilty, meaning the
19 defendant denies the allegations in the indictment, but again
20 the defendant has no burden of proof. The defendant is
21 presumed innocent of these allegations, but I'm going to
22 publish to you what these allegations are just so I can then
23 ask you about whether you know something about this case or
24 this prosecution.

25 This indictment for murder alleges that Eugene Austin

1 Gardner, III, did in Darlington County on or about June 21st,
2 2011 - so that's the operative date, June 21, 2011 -
3 willfully, feloniously, and intentionally kill the victim,
4 Richard Todd Gardner, with malice aforethought, either
5 express or implied, by means of shooting the victim and the
6 victim did die as a proximate result thereof on or about
7 June 21st, 2011, in the county of Darlington, State of South
8 Carolina.

9 So I ask you now, based upon these allegations, if
10 there's any member of this jury panel who knows something
11 about this case other than what I've just published to you
12 from whatever source it may come. If you know something
13 about this case or this incident or this prosecution, please
14 stand. Let's let the record reflect no one has stood in
15 response to the Court's question.

16 Now, ladies and gentlemen, I have some further questions
17 for you. Some will involve your prior connections to law
18 enforcement or perhaps to past incidents in your history. I
19 will tell you that at the end of my questions, if you do not
20 wish to respond to any question that is asked of you here in
21 open court, I'm going to give everyone an opportunity who
22 wishes to come forward and speak at the court reporter's
23 stand in the presence of counsel and the Court.

24 So you're not required to stand up and answer
25 contemporaneously. We will give you the opportunity to

1 respond privately to any questions that are asked.

2 The first question I wish to ask: Is there any member
3 of this jury panel who is a member of an organization that
4 has as its purpose the advocacy for or protection of the
5 rights of law enforcement officers or victims of crime? And
6 let me hasten to say: There's absolutely nothing wrong with
7 being a member of such an organization; I'm simply asking if
8 you are. And these are organizations such as the South
9 Carolina Law Enforcement Officers Association auxiliary
10 membership. Also Mothers Against Drunk Driving which is
11 called MADD. There's CAVE which is Citizens Against Violent
12 Crime. And I ask you now if there's any member of this jury
13 panel who's a member of such an organization. If so, please
14 stand. Let's let the record reflect no one has stood in
15 response to the Court's question.

16 Now, ladies and gentlemen of the jury panel, I'm asking
17 about you, the juror, now. If you've ever been employed
18 previously in law enforcement in either a full-time paid
19 capacity or in a volunteer capacity, if you've worked in law
20 enforcement in any capacity in the past, please stand. All
21 right, ma'am. Please tell me your name and your juror
22 number.

23 **Juror Reaves:** Resena Reaves.

24 **The Court:** All right, Ms. Reaves. And tell me: What
25 law enforcement position did you have?

1 **Juror Reaves:** Now, I don't know if this would be
2 considered, but I was a dispatcher, 9-1-1 dispatcher, at one
3 point.

4 **The Court:** All right, ma'am. How long ago has that
5 been?

6 **Juror Reaves:** That's been about -- probably about
7 17 years.

8 **The Court:** Very good. Do you have the juror number?

9 **The Clerk:** Her number is 114.

10 **The Court:** All right. And, ma'am, tell me: Would the
11 fact that you've worked in that capacity in law enforcement,
12 would that prevent you from being fair and impartial somehow
13 in this case?

14 **Juror Reaves:** No.

15 **The Court:** All right. Then I find that you're
16 qualified, Ms. Reaves, by your response and you may be
17 seated. Thank you, ma'am. And, ma'am -- yes, ma'am, please
18 tell me your name and juror number.

19 **Juror Simms:** Cheryl Simms, 125.

20 **The Court:** And, Ms. Simms, tell me: What was your
21 position in law enforcement, please?

22 **Juror Simms:** I worked five years for the F.B.I., three
23 years as a supervisor and clerk for the midnight shift, and
24 two years as assistant programmer.

25 **The Court:** Okay. And where was that, ma'am?

1 **Juror Simms:** Night clerk work was in Kansas City, and
2 the programing work was in Pocatello, Idaho.

3 **The Court:** All right. Now, would the fact that you
4 have that -- I should ask: How long ago has this been?

5 **Juror Simms:** It's been probably 30 years ago.

6 **The Court:** Okay. And would the fact that you have that
7 -- those positions in your history, would that prevent you
8 from being fair and impartial in this case, in your opinion?

9 **Juror Simms:** No.

10 **The Court:** Then I find that you're qualified, Ms.
11 Simms, by your response. Thank you, ma'am. Now, I'm going
12 to define for you the term "immediate family" for purposes of
13 some questions that will follow, and your immediate family
14 are your spouse and your children, regardless of where they
15 might live, and anyone living in your household. So spouse
16 and children and anyone residing in your household. That's
17 what we mean when we say immediate family.

18 I'm going to ask you now if there's any member of this
19 jury panel who has an immediate family member, as just
20 defined, who's currently employed in some capacity in law
21 enforcement. If that applies to you, please stand. All
22 right. And, ma'am, please tell me your name and juror
23 number.

24 **Juror Luther:** Alisha Luther and my juror number is 77.

25 **The Court:** Okay. And, Ms. Luther, tell me what family

1 member you have in law enforcement.

2 **Juror Luther:** My husband.

3 **The Court:** All right. And he's with the highway
4 patrol, I believe.

5 **Juror Luther:** Yes, sir.

6 **The Court:** All right. Now, would the fact that he
7 works with the patrol prevent you from being fair and
8 impartial in this case, ma'am, in your opinion?

9 **Juror Luther:** Yes.

10 **The Court:** All right. Then, Ms. Luther, first of all,
11 thank you for your candor and your response. I will tell you
12 the highway patrol, of course, is not involved in the
13 prosecution in this case, but if you believe that it would
14 put you in a position that would compromise you or would be
15 difficult for you, then we will stand you down in this case.
16 You don't need to answer any further questions, and at the
17 end of this matter we'll move into another case for a jury
18 drawing. Okay?

19 **Juror Luther:** Okay.

20 **The Court:** Thank you, ma'am. Anyone else who would
21 stand now to say they have an immediate family member
22 currently employed in law enforcement? All right. Just one
23 moment, please. All right. Ladies and gentlemen, I want to
24 ask you now if there is any member of this jury panel that
25 you, the juror -- and, again, please remember you may come

1 forward and answer questions at the end of this process if
2 you do not wish to answer in open court. But I'm going to
3 ask you now if there's any of the jury panel -- I'm asking
4 about you, the jurors, yourselves have ever been the victim
5 of a violent crime. When I use the term violent crime, what
6 I mean is that there has been some interpersonal - again,
7 I'll use the term violence - between the alleged perpetrator
8 and you. And so if you've ever been the victim of a violent
9 crime, please stand. Let's let the record reflect no one has
10 stood.

11 If you've ever been accused -- I'm going to ask you the
12 questions from both sides because in this court there's
13 always two sides to every question, and I'm simply asking if
14 you've ever been accused of perpetrating a violent crime --
15 that would be a crime again of interpersonal violence or
16 confrontation. If that applies to you, if you've ever been
17 accused of such, please stand. Let's let the record reflect
18 no one has stood, and now let's move - I was asking about
19 jurors - to immediate family members.

20 I ask you now if there's any member of this jury panel
21 who has had an immediate family member, as previously
22 defined, who's been the victim of a violent crime. If that
23 applies to you, please stand. All right, ma'am. Please tell
24 me your name and juror number.

25 **Juror McCall:** My name is Parneatha McCall.

1 **The Court:** All right, ma'am, Ms. McCall. And tell me,
2 if you will: Which family member are you referring to?

3 **Juror McCall:** Sammy.

4 **The Clerk:** 81.

5 **Juror McCall:** Sammy.

6 **The Court:** All right, ma'am. And if you will tell us,
7 please, what happened.

8 **Juror McCall:** She was murdered.

9 **The Court:** All right. And, ma'am, first of all, I'm
10 sorry to hear that, and thank you for your response here in
11 the courtroom. And is there anything in that history that
12 would prevent you from being fair and impartial, given the
13 allegations we have here in this case?

14 **Juror McCall:** I think so.

15 **The Court:** All right, ma'am. Then based on your
16 response, we're going to stand you down for this case. We
17 will not put your name in the jury pool for this case, and
18 you don't need to answer any further questions about this
19 case. All right? Thank you, ma'am.

20 Anyone else now who would stand and say that they have
21 had a family member who's been the victim of a violent crime?
22 And now from the other perspective of that question, I ask if
23 there's any member of this jury panel who's had an immediate
24 family member who's been accused of perpetrating or
25 committing a violent crime. If that applies to you, please

1 stand. Let's let the record reflect no one has stood in
2 response to the Court's question. All right, ma'am. Yes,
3 ma'am. Please give me your name and juror number.

4 **Juror Walters:** Donna Walters, 131.

5 **The Court:** All right. It's Ms. Walters?

6 **Juror Walters:** Uh-huh.

7 **The Court:** And, Ms. Walters, please speak up a little
8 bit so we can hear you.

9 **Juror Walters:** Can I come up here?

10 **The Court:** I tell you what let's do. At the end of the
11 questions, we'll let you do that, ma'am. Thank you for your
12 patience, and we'll do that with everybody at one time which
13 will make it a little bit easier for us.

14 All right. Ladies and gentlemen, this case, as you
15 heard from the indictment, has an allegation of the use of a
16 weapon and specifically a gun in the alleged commission of
17 this crime. I'm going to ask you now if there's any member
18 of this jury panel who believes that, based upon the fact
19 that this accusation involves the use of a gun, that they
20 could not be fair or impartial for any reason. In other
21 words, they have concerns or issues about weapons that would
22 prevent someone from being fair and impartial under these
23 circumstances, if you're summoned as a juror. If that
24 applies to you or you fear that it may, please stand.

25 All right. Ladies and gentlemen, again I'm going to ask

1 a question that you may come forward at the end of the
2 questions and respond to if you wish. What I ask now: If
3 there's any member of this jury panel that you or your
4 immediate family, as I have previously described it, have
5 ever been treated for - that's treated by a physician - for
6 depression. If anyone wishes to stand now and address that,
7 please stand. Let's let the record reflect no one has stood
8 -- all right. Sir, please tell me your name and juror
9 number.

10 **Juror Brown:** James Brown, Jr. I think it's 15.

11 **The Court:** All right, Mr. Brown. And tell me, sir: Is
12 this a family member or you, sir?

13 **Juror Brown:** Me.

14 **The Court:** All right, sir. And how long ago has this
15 been?

16 **Juror Brown:** It's ongoing.

17 **The Court:** All right, sir. And if there is an issue
18 that may involve depression in this case, would that prevent
19 you somehow from being fair and impartial in your opinion,
20 sir?

21 **Juror Brown:** I don't believe so, Your Honor.

22 **The Court:** All right, sir. Then, Mr. Brown, again
23 thank you for the truthfulness of your answer. I find that
24 you're qualified by your response, sir. Anyone else now who
25 would stand and respond to that question at this time?

1 I want to ask now, ladies and gentlemen, if there's any
2 member of this jury panel who's ever attended law school at
3 any time, that is, for the full three years or part of that
4 time or worked in a law office previously. If that applies
5 to you, please stand. Let's let the record reflect no one
6 has stood in response to the Court's question.

7 All right. I'm going to come down here, but I'll speak
8 up so you can hear me. All right. Ladies and gentlemen, I'm
9 going to come down now. In just a moment we'll give you an
10 opportunity to come back here to the court reporter stand to
11 speak, but I just want to come a little closer to you. I
12 feel like you're far away.

13 As you heard from the allegations, this case involves an
14 allegation that a sibling has taken the life of a sibling. I
15 ask you, ladies and gentlemen: Is any member of this jury
16 panel, based upon what you've heard, that for whatever reason
17 -- you'll not be questioned about this; you will not be
18 confronted about it except how you feel. But I ask you if
19 there's any member of this jury panel who believes for some
20 religious or moral or family principle that you believe you
21 could not be a fair and impartial juror under these
22 circumstances and these allegations. If that applies to you
23 and you think it may, then please stand.

24 All right. Then what I'd ask you to do is I'm going to
25 ask the two of you to give me your name and juror number now

1 so we can refer to that and then come up and speak with me in
2 just a moment when I step back. Would you do that, please,
3 ma'am? What's your name and juror number?

4 **Juror Brown:** My name is Bettie Brown, juror number 12.

5 **The Court:** All right, Ms. Brown. You may be seated.
6 Thank you, ma'am. And ma'am?

7 **Juror Finora:** Jenny Finora, number 25.

8 **The Court:** All right, Ms. Finora. Thank you, ma'am.
9 Please be seated. And yes, ma'am?

10 **Juror Reaves:** Resena Reaves, 114.

11 **The Court:** All right, Ms. Reaves. Please be seated.
12 Thank you. We have that information. Anyone else now? All
13 right. Then, ladies and gentlemen, just one moment.
14 Counsel, is there anything further while we're still in
15 session that you would have me ask and query this jury with
16 regard to this case? First from the State?

17 **Ms. Parker:** None from the State.

18 **The Court:** All right. Now from defense?

19 **Ms. Wooten:** No, Your Honor.

20 **The Court:** All right. Ladies and gentlemen, are there
21 any members - and we know there are three - who have a
22 response they wish to make privately to the Court to any of
23 the questions that I've asked or anything they may wish to
24 say? We'll give you that opportunity. We have three. Are
25 there others who wish to come forward? If so, please stand

1 at this time, please. That's right; we did have four. Thank
2 you, Mr. Suggs. Mr. Brown as well; that's five. And, ma'am,
3 please tell me your name and juror number again.

4 **Juror Walters:** I'm Ms. Walters.

5 **The Court:** That's right, Ms. Walters. We asked you to
6 come forward. So anyone else other than that juror? Then if
7 you -- ladies and gentlemen, this will just take us a moment,
8 so the rest of you just remain comfortable. If you would
9 come -- those who stood, come stand right here and we'll talk
10 with you one at a time, and then we'll move forward with the
11 jury qualification.

12 **Bailiff:** 12.

13 **The Court:** Ms. Brown, I'm going to get you to come
14 right here if you would, please.

15 (The following bench conferences took place between the
16 Court, the attorneys, and each individual juror as they
17 approached the bench. Juror Brown approaches the bench.)

18 **The Court:** And, ma'am, tell me -- tell me why you wish
19 to come forward.

20 **Juror Brown:** I'm a religious person, and I don't want
21 to pass judgment on nobody.

22 **The Court:** All right. And based upon that, ma'am, I'm
23 going to let you remain with us. We will not put your name
24 in this jury draw. We will remove it from this jury draw,
25 and you may return to your seat. Thank you, Ms. Brown.

1 **Juror Brown:** Thank you.

2 (Juror Brown leaves the bench conference.)

3 **Bailiff:** 45.

4 (Juror Finora approaches the bench.)

5 **The Court:** How are you, Ms. Finora? Come in here and
6 join us if you don't mind, please, ma'am. Tell me why -- why
7 do you wish to come forward and speak to us?

8 **Juror Finora:** Two years ago my father was the victim of
9 a violent crime. He was beaten and he was ran over. We're
10 still waiting on sentencing for two of the men.

11 **The Court:** And, ma'am, I hope he's doing good.

12 **Juror Finora:** (Nodded head up and down.)

13 **The Court:** Do you believe that would prevent you from
14 being fair and impartial in this case?

15 **Juror Finora:** Very much so.

16 **The Court:** Well, first of all, on a different note we
17 appreciate what you do for Coker College and for our county,
18 and we will release you from this jury, just let you return
19 to your seat. We will not put your name in the pool to be
20 drawn. All right. Thank you, ma'am.

21 (Juror Finora leaves the bench conference.)

22 **Bailiff:** Number 15.

23 **The Clerk:** James Brown.

24 (Juror Brown approaches the bench.)

25 **The Court:** Mr. Brown, how are you, sir? Come join us

1 right here, please. Tell me why you wish to come forward,
2 sir.

3 **Juror Brown:** I didn't think about it 'til afterwards,
4 but Mr. Hardee -- he does funerals for my family. I have
5 worked on his vehicles a couple of times.

6 **The Court:** And would the fact that you've had that
7 connection to Mr. Hardee as our coroner and as a local
8 funeral director, would that prevent you from being fair and
9 impartial in this case?

10 **Juror Brown:** No, sir.

11 **The Court:** All right. Then I find that you're fully
12 qualified, and we'll let you return to your seat. Thank you,
13 sir. Thank you, Mr. Brown.

14 (Juror Brown leaves the bench conference.)

15 **Bailiff:** 131.

16 **The Court:** This is Ms. Walters, I believe.

17 **The Clerk:** Yes.

18 (Juror Walters approaches the bench.)

19 **The Court:** Okay. Ms. Walters, how are you, ma'am?
20 Come join us right here if you would, please. Tell me,
21 ma'am: Why is it that you wish to come up and speak with us?

22 **Juror Walters:** My husband was convicted of assault and
23 battery with intent to kill.

24 **The Court:** Okay.

25 **Juror Walters:** But he hasn't went to court yet.

1 **The Court:** Okay. And how long ago did that incident
2 occur?

3 **Juror Walters:** It's probably been about six years ago.

4 **The Court:** All right. And would that prevent you --
5 that incident, would that prevent you from being fair and
6 impartial in this case, in your opinion?

7 **Juror Walters:** It would.

8 **The Court:** Tell me why, ma'am.

9 **Juror Walters:** I don't know. I'm just kind of nervous.

10 **The Court:** All right.

11 **Juror Walters:** I don't think I could give good
12 judgment.

13 **The Court:** All right. Let's -- let's do this, ma'am.
14 Are you taking any medication?

15 **Juror Walters:** Yes, sir.

16 **The Court:** Tell me what medications you take.

17 **Juror Walters:** Xanax.

18 **The Court:** I'm going to release you from this case.
19 You can be at ease. We'll just remove your name from this
20 jury trial, and we'll let you return to your seat. Okay?

21 **Juror Walters:** Okay. Thank you.

22 (Juror Walters leaves the bench conference.)

23 **Bailiff:** Number 114.

24 (Juror Reaves approaches the bench.)

25 **The Court:** Hello, Ms. Reaves.

1 **Juror Reaves:** Hello.

2 **The Court:** How are you, ma'am? Come right here and
3 join us if you don't mind. Ms. Reaves, tell us: Why is it
4 that you wish to come forward?

5 **Juror Reaves:** Actually I wasn't sure about the family
6 member who may have been a perpetrator.

7 **The Court:** Okay.

8 **Juror Reaves:** And they're not in my household, but it's
9 a family member.

10 **The Court:** Okay. Is that a situation that's over with
11 and done or is it still ongoing?

12 **Juror Reaves:** The person is incarcerated.

13 **The Court:** All right. And, of course, I was going to
14 ask you: Was this a murder as well?

15 **Juror Reaves:** It was manslaughter.

16 **The Court:** Okay. And who is that family member, if you
17 don't mind telling me?

18 **Juror Reaves:** Family member is my brother.

19 **The Court:** Okay. From Darlington County?

20 **Juror Reaves:** No, never lived in Darlington County.

21 **The Court:** And do you think, having experienced that in
22 your life, ma'am, that that would prevent you from being fair
23 and impartial here in this case?

24 **Juror Reaves:** No.

25 **The Court:** Well, then, thank you for coming forward and

1 giving us this information. I'm going to let you return to
2 your seat. I find that you're fully qualified. Okay? Thank
3 you, ma'am. Okay.

4 (Juror Reaves leaves the bench conference. This
5 concludes the bench conferences.)

6 **The Court:** All right. Now, ladies and gentlemen,
7 before we begin our jury draw, I'll just ask one last time:
8 Is there anyone else who has any comments, response to
9 previous questions or comment you wish to make to the Court
10 and the lawyers before we begin the process of the jury draw?
11 All right.

12 Then seeing none, let me explain this process now that
13 we're getting ready to engage in. We have used a computer
14 program that randomizes the remaining jurors who are still in
15 the pool. We've removed the names of several and, of course,
16 you know who you are if you've been removed. Your name will
17 not be called. But for the rest of you, just in random order
18 a name will be called and then we'd ask you to stand at that
19 time.

20 What's going to happen is is that both sides of this
21 case are going to get an opportunity to either seat you or
22 excuse you, and then based upon what their decision is, we'll
23 let you either be seated where you are - just again remain
24 seated - or come join us in the jury box. Now, that was sort
25 of a cold explanation of what will happen, but actually

1 what's really going to happen is your name will be called.
2 You stand up. The folks at both tables are going to be
3 talking. You know they're talking about you; we know they're
4 talking about you. It's a little bit psychologically
5 uncomfortable, but it is a process that, as I said earlier,
6 has stood our country well for 240 years and, thus, we're
7 going to use the same process today.

8 If you are excused by either side, then please don't be
9 offended by that. In fact, that may be -- that may be your
10 preference; you may not be offended at all. But I would
11 simply say to you that if you're not chosen, it may be
12 because of some response on a jury form, something said here
13 in the courtroom today, some strategy or tactic that only the
14 lawyer knows, but I will tell you what it's not. It is not
15 because of your sex or your race. It is against the law to
16 strike for those two reasons. Both sides have the
17 opportunity to challenge the other side's strikes, and so I
18 say to you again it will not be for those reasons.

19 Now, anything further before we proceed to the jury
20 draw? From the State?

21 **Ms. Parker:** No, Your Honor.

22 **The Court:** From the defense?

23 **Ms. Wooten:** No, Your Honor.

24 **The Court:** All right. How many strikes are claimed by
25 the State?

1 **Ms. Parker:** Five.

2 **The Court:** And defense?

3 **Ms. Wooten:** Ten.

4 **The Court:** All right. The statutes are clear: The
5 State has five strikes; the defense has ten strikes. Mr.
6 Clerk, are you ready to proceed?

7 **The Clerk:** Yes, sir.

8 **The Court:** All right. Again, ladies and gentlemen,
9 when your name is called, please stand and then you'll see
10 how the procedure works from there. Go ahead, Mr. Clerk.

11 **The Clerk:** Yes, sir, Your Honor. Juror number 43,
12 Cathy Evans (white female). What saith the State?

13 **Ms. Parker:** Please present Ms. Evans.

14 **The Clerk:** What saith the defense?

15 **Ms. Wooten:** Please seat this juror.

16 **The Clerk:** Ms. Evans, if you'll come forward and have a
17 seat in the jury box. You'll bring whatever you brought with
18 you today as well. If you have a pocketbook, sweater,
19 anything, if you're coming forward, bring whatever you
20 brought with you, each person, please. Juror number 62,
21 Daniel Humphries (white male). What saith the State?

22 **Ms. Parker:** Please present Mr. Humphries.

23 **The Clerk:** What saith the defense?

24 **Ms. Wooten:** Please excuse this juror.

25 **The Clerk:** You've been excused from this particular

1 case, Mr. Humphries. Just please have a seat for me. Juror
2 number 85, Robert McFarland (black male). What saith the
3 State?

4 **Ms. Parker:** Please excuse Mr. McFarland from this case.

5 **The Clerk:** You've been excused from this particular
6 case, Mr. McFarland. If you'll just have a seat back in the
7 audience for me. Juror number 141, Geraldine Wright (black
8 female). What saith the State?

9 **Ms. Parker:** Please present Ms. Wright.

10 **The Clerk:** What saith the defense?

11 **Ms. Wooten:** Please seat this juror.

12 **The Clerk:** Please have a seat in the jury box for me,
13 Ms. Wright. Juror number 74, Latonya Knotts (black female).
14 What saith the State?

15 **Ms. Parker:** Please present Ms. Knotts.

16 **The Clerk:** What saith the defense?

17 **Ms. Wooten:** Please seat this juror.

18 **The Clerk:** Please have a seat in the jury box for me,
19 Ms. Knotts. Juror number 59, Francesca Himes (white female).
20 What saith the State?

21 **Ms. Parker:** Please present Ms. Himes.

22 **The Clerk:** What saith the defense?

23 **Ms. Wooten:** Please seat this juror.

24 **The Clerk:** Please have a seat in the jury box for me,
25 Ms. Himes. Juror number 41, Brian Eaddy (white male). What

1 saith the State?

2 **Ms. Parker:** Please present Mr. Eaddy.

3 **The Clerk:** What saith the defense?

4 **Ms. Wooten:** Please seat this juror.

5 **The Clerk:** Please have a seat in the jury box for me,

6 Mr. Eaddy. Juror number 114, Resena Reaves (black female).

7 What saith the State?

8 **Ms. Parker:** Please present Ms. Reaves.

9 **The Clerk:** What saith the defense?

10 **Ms. Wooten:** Please excuse this juror.

11 **The Clerk:** You've been excused from this particular
12 case, Ms. Reaves. If you'll just simply have a seat back in
13 the audience for me. Juror number 76, Shirley Love (black
14 female). What saith the State?

15 **Ms. Parker:** Please present Ms. Love.

16 **The Clerk:** What saith the defense?

17 **Ms. Wooten:** Please seat this juror.

18 **The Clerk:** Please have a seat in the jury box for me,

19 Ms. Love. If you'll come forward. Juror number 89, Lanie

20 McPhail (black female). What saith the State?

21 **Ms. Parker:** Please present Ms. McPhail.

22 **The Clerk:** What saith the defense?

23 **Ms. Wooten:** Please excuse this juror.

24 **The Clerk:** You've been excused from this particular

25 case, Ms. McPhail. Juror number 68, Anita Jeffery (black

1 female). What saith the State?

2 **Ms. Parker:** Please present Ms. Jeffery.

3 **The Clerk:** What saith the defense?

4 **Ms. Wooten:** Please seat this juror.

5 **The Clerk:** Please have a seat for me, Ms. Jeffery.

6 Juror number 147, Kyle Stanley (white male). What saith the
7 State?

8 **Ms. Parker:** Please present Mr. Stanley.

9 **The Clerk:** What saith the defense?

10 **Ms. Wooten:** Please seat this juror.

11 **The Clerk:** Please have a seat in the jury box for me,
12 Mr. Stanley. Juror number 49, Deanne Frye (white female).
13 What saith the State?

14 **Ms. Parker:** Please present Ms. Frye.

15 **The Clerk:** What saith the defense?

16 **Ms. Wooten:** Please seat this juror.

17 **The Clerk:** Please have a seat in the jury box for me,
18 Ms. Frye. Juror number 91, Rita Mead (white female). What
19 saith the State?

20 **Ms. Parker:** Please present Ms. Mead.

21 **The Clerk:** What saith the defense?

22 **Ms. Wooten:** Please seat this juror.

23 **The Clerk:** Please have a seat in the jury box for me,
24 Ms. Read -- Mead. Juror number 66, Makesha Jackson (black
25 female). What saith the State?

1 **Mr. Holt:** Judge, at this time if me and Ms. Wooten
2 could approach just briefly.

3 **The Court:** All right. Go ahead. And, Ms. Jackson,
4 we'll let you be seated, ma'am. We'll be right back with
5 you. Okay?

6 (Whereupon, a bench conference was held.)

7 **The Court:** All right. Thank you for your patience.
8 And, Ms. Jackson, may I get you to stand, please, ma'am?
9 Counsel advises me that you previously were a witness in the
10 -- for the State as a forensic interviewer in a previous
11 case. Is that right, ma'am?

12 **Juror Jackson:** Yes, Your Honor.

13 **The Court:** Of course, unrelated to what we're hearing
14 today.

15 **Juror Jackson:** Correct. Yes, sir.

16 **The Court:** And the fact that you've had -- and I didn't
17 ask a question during my qualifications that would have
18 brought that information out, so let me ask you: Would the
19 fact that you've worked with the State in other matters in
20 that capacity prevent you from being fair and impartial in
21 this case?

22 **Juror Jackson:** No, it would not.

23 **The Court:** All right. And just to be certain, ma'am,
24 you are not a State employee, are you?

25 **Juror Jackson:** I am.

1 **The Court:** Oh, you are?

2 **Juror Jackson:** I work for the school district. I work
3 for the State of South Carolina.

4 **The Court:** All right. And when I said State employee,
5 what I really mean is you don't work with law enforcement in
6 any way.

7 **Juror Jackson:** No, I don't.

8 **The Court:** All right. Then thank you for that
9 response, and now let's go on into the strike. And so what
10 says the State?

11 **Ms. Parker:** Please present Ms. Jackson.

12 **The Clerk:** What saith the defense?

13 **Ms. Wooten:** Please excuse this juror.

14 **The Clerk:** You've been excused from this particular
15 case, Ms. Jackson. Juror number 137, Keith Wilks (white
16 male). What saith the State?

17 **Ms. Parker:** Please present Mr. Wilks.

18 **The Clerk:** What saith the defense?

19 **Ms. Wooten:** Please excuse this juror.

20 **The Clerk:** You've been excused from this particular
21 case, Mr. Wilks. Thank you. Juror number 146, Desiree Mills
22 (white female). What saith the State?

23 **Ms. Parker:** Please present Ms. Mills.

24 **The Clerk:** What saith the defense?

25 **Ms. Wooten:** Please seat this juror.

1 **The Clerk:** Please have a seat in the jury box for me,
2 Ms. Mills. Juror number 93, Tylor Miller (white male). What
3 saith the State?

4 **Ms. Parker:** Please present Mr. Miller.

5 **The Clerk:** What saith the defense?

6 **Ms. Wooten:** Please seat this juror.

7 **The Clerk:** Please come forward and have a seat in the
8 jury box for me, Mr. Miller.

9 **The Court:** All right. Then that concludes our 12
10 jurors. Let's choose one alternate and---

11 **The Clerk:** Don't you think we better get two?

12 **The Court:** We have enough for two? All right. Then,
13 Mr. Clerk, let's choose two alternates. Ladies and
14 gentlemen, the strike for the alternates will be one for the
15 State and two for the defense as to each alternate, so please
16 proceed.

17 **The Clerk:** Juror number 69, Sheneica Jeffery (black
18 female). What saith the State?

19 **Ms. Parker:** Please excuse Ms. Jeffery.

20 **The Clerk:** You've been excused from this particular
21 case, Ms. Jeffery. Juror number 48, Paul Fox (black male).
22 Is there any show cause from the State?

23 **Ms. Parker:** There's none.

24 **The Clerk:** What saith the defense?

25 **Ms. Wooten:** Please seat this juror.

1 **The Clerk:** Please come forward and have a seat in the
2 first chair outside the jury box for me, Mr. Fox. Juror
3 number 96, Hubert Moses (black male). What saith the State?

4 **Ms. Parker:** Please present Mr. Moses.

5 **The Clerk:** What saith the defense?

6 **Ms. Wooten:** Please seat this juror.

7 **The Clerk:** If you would, Mr. Moses, if you'll come
8 forward and have a seat in the second chair outside the jury
9 box for me, please.

10 (Whereupon, the jury was impaneled at 11:48 a.m.)

11 **The Court:** Thank you, Mr. Clerk.

12 **The Clerk:** Yes, sir.

13 **The Court:** All right. Now, let me ask while we're all
14 together: Counsel, are there objections to the procedure
15 used by this Court to draw this jury or the strikes employed
16 by the other side? What says the State?

17 **Ms. Parker:** We have no objections, Your Honor.

18 **The Court:** And defense?

19 **Ms. Wooten:** No objections, Your Honor.

20 **The Court:** All right. Then, ladies and gentlemen, what
21 that means is is that you will be the jury in our first case
22 for trial, and I look forward to working with you. Now, we
23 are not going to begin this trial today. The jury portion of
24 the trial will actually begin at -- testimonial portion at
25 10:00 tomorrow.

1 This afternoon the lawyers will be preparing for the
2 trial, admitting evidence, attempting to streamline the
3 process as much as we can, but what this means is that you
4 are done for the day. So I'd ask you to be back at 10:00
5 tomorrow morning in the jury room and we'll start at 10.
6 Please be on time because we -- obviously we all need to be
7 up here on time to begin on time.

8 Now, let me ask: How many of you have served before as
9 a juror in either civil or criminal court? If you've been a
10 juror before, raise your hand, please. Okay. Well, I see
11 that we have some experience on the jury panel, but let me
12 say to you: If you find yourself today for the first time
13 where you are, don't be uncomfortable about where you find
14 yourself.

15 Jurors need two tools - and you have them both - in
16 order to serve capably and serve well, and they are, number
17 one, is your ability to listen and, number two, your
18 collective common sense. Armed with those two things, you're
19 going to find yourself in good shape.

20 Now, a couple of things I want to mention to you. First
21 of all, please do not leave the courthouse today and feel
22 that you need to go out and undertake some investigation into
23 this matter, whatever it may be, whether it's on the internet
24 or out on the street or talking to people or whatever.
25 Please don't do that. Just simply come back tomorrow well-

1 rested from the night before, and we'll be ready to begin the
2 trial.

3 Secondly, your loved ones at home, the first thing
4 they're going to say when you get there is: Well, what is
5 this case about? Well, we don't really know enough about
6 this case to have a discussion of any substance, but I'm
7 going to direct you not to discuss the facts of the case or
8 even the allegations until the case is over with and then you
9 can discuss it fully with your loved ones.

10 And the reason I ask you not to do that is because I
11 don't want someone outside of these proceedings saying
12 something that may somehow influence or bias you, prejudice
13 you one way or the other in this case, based on something
14 that may be on their minds because whatever decision you make
15 should be based upon the evidence in the courtroom and the
16 law that you're given before you make your decision, not what
17 somebody outside these proceedings says.

18 So tell your loved ones that I've asked you not to
19 discuss it, and I'll ask you tomorrow before we begin if
20 you've had a discussion with anyone concerning the facts of
21 this case. Now, just one moment.

22 (The Court talks off the record with the clerk.)

23 **The Court:** Now, I was just talking about scheduling.
24 You don't need to call the jury line tonight. You just
25 simply go home, have a good day, and come back at 10:00

1 tomorrow morning. You won't come to the courtroom. You'll
2 come to the jury room, and Mr. Medlin, our bailiff juror
3 there, will show -- the jury bailiff will show you where that
4 room is and where to come back to. And so now out of respect
5 for you, we're going to remain where we are while you depart
6 the courtroom, and have a good day, ladies and gentlemen.

7 (Whereupon, the jury was excused from open court for the
8 day at 11:52 a.m.)

9 **The Court:** All right. Anything for the record in this
10 case before we stand it down for our second jury draw? From
11 the State?

12 **Ms. Parker:** No, Your Honor.

13 **The Court:** From defense?

14 **Ms. Wooten:** No, Your Honor.

15 **The Court:** All right. Then this case will be in
16 adjournment 'til 2:00 this afternoon for motions. And,
17 Counsel, we will see you at that time.

18 (The trial concluded for the morning and resumed in the
19 afternoon as follows. Court's Exhibits 1 and 2 were marked
20 for identification only.)

21 **The Court:** Thank you, ladies and gentlemen. Please be
22 seated.

23 (Court's Exhibits 3 and 4 were marked for identification
24 only.)

25 **The Court:** All right. Ladies and gentlemen, good

1 afternoon. We're here for the pretrial motions in the matter
2 of the State versus Gardner. And, Counsel, I'll be glad to
3 hear from you. Ms. Wooten?

4 **Ms. Wooten:** Thank you, Your Honor. I believe that the
5 first motion we're going to take -- well, first, we have
6 three motions pending before this Court. One is the motion
7 to sequester witnesses. It's my understanding that the State
8 is going to consent to that motion.

9 **Mr. Holt:** It is, Your Honor. We're not prepared to
10 fight that.

11 **The Court:** Okay. And what exceptions from the
12 sequestration are you asking for?

13 **Mr. Holt:** My lead investigative officer.

14 **The Court:** Okay.

15 **Mr. Holt:** There will be some---

16 **The Court:** So Officer Luce and anyone -- anyone else?

17 **Mr. Holt:** I think the only family I have are going to
18 be witnesses as well, but if I could just bring it up at that
19 time, then they could stay after their testimony is complete,
20 just join me table.

21 **The Court:** All right. Certainly they could do that.
22 And then the defendant, of course, is to be excepted from the
23 sequestration order. Is there anyone else you're requesting
24 to be excepted from it?

25 **Ms. Wooten:** Yes, Your Honor. We would ask that Ms. Sue

1 - excuse me - Ms. Renee Smith and also Ms. Taylor Gardner be
2 excepted from this. I don't intend to call them as witnesses
3 for my defense unless I need to to disprove any facts from
4 the State.

5 **The Court:** Well, Counsel, even without taking argument
6 from the State on that, I believe it would be unfair for me
7 to do that. If you believe you have a potential witness, we
8 would need to exclude them under the sequestration rule. The
9 defendant, of course, is an exception to that because he has
10 a right to be here, but anyone else who may be a witness
11 would gain potentially an unfair advantage that would defeat
12 the sequestration order. So if you -- if you wish for the
13 State's witnesses to be sequestered, I would have to do the
14 same for the defense witnesses.

15 **Ms. Wooten:** If it's possible, could I withdraw some of
16 the names off of my list for tomorrow, if I was to decide not
17 to call them as our---

18 **The Court:** Certainly. Certainly. If anyone that you
19 wish and tell the Court will not be called as a witness, then
20 they're certainly welcome to be in the courtroom.

21 **Ms. Wooten:** Great. Thank you, Your Honor. The next
22 motion we have before the Court, I believe, we're going to
23 take up now is the defense's motion to suppress the
24 defendant's statement given on March 30th, 2012.

25 **The Court:** All right. And how do you wish to proceed?

1 I'm told that there is a video statement. Do you wish to see
2 the video first and then have arguments and motions or do you
3 wish to proceed to the viewing of it with your motions?

4 **Ms. Wooten:** It's my understanding that the burden is on
5 the State to prove the voluntariness of this -- of this
6 motion. We are contesting the voluntariness of his statement
7 under Jackson v. Denno and also to determine whether or not
8 an intelligent waiver of his Miranda rights was given.

9 If Your Honor would like for the defense to go first, we
10 can, but it's my understanding the burden begins the State.

11 **The Court:** All right. Well, I would agree with that
12 but -- that the burden is on the State, but typically there
13 is not a requirement for Jackson v. Denno unless there is
14 some issue. So tell me what is the issue that you raise with
15 regard to voluntariness.

16 **Ms. Wooten:** Thank you, Your Honor. Specifically, I
17 would like to address a number of circumstances. I would
18 like to address the fact of the time of the interrogation
19 which was began at 12:20 in the morning when he was arrested
20 the previous morning from his place of employment. He was
21 detained for approximately 15 hours before his questioning.
22 We would also like to question whether or not he was allowed
23 to sleep or eat before his interrogation. We would also like
24 to -- the Court to address an issue of threats made by law
25 enforcement during the actual interview itself.

1 So we have several factors to take up, and if Your Honor
2 would like, I have made a list with times from our video
3 where we have statements which we find objectionable as to
4 the threats or coercion.

5 **The Court:** All right. And just so I'll understand the
6 body of evidence, the coercion and the threats you're talking
7 about are on the video. They're not any that are off the
8 video or in some prior or subsequent discussion.

9 **Ms. Wooten:** Yes, Your Honor.

10 **The Court:** This is all on video.

11 **Ms. Wooten:** Yes, Your Honor.

12 **The Court:** All right. Thank you. Then do you wish --
13 would you hand that up, please, Ms. Wooten?

14 (Ms. Wooten complies.)

15 **The Court:** All right. Thank you. And, Mr. Holt, do
16 you want to reply in -- just in a preliminary fashion before
17 we review the video?

18 **Mr. Holt:** Just briefly, Your Honor. I think the video
19 is going to show that none of these things really bear any
20 fruit. Also the testimony of Investigator Mark Luce is going
21 to -- is going to answer any question as to why it was at
22 12:30. This was an arrest that took place out of Darlington
23 County. They were in the middle of a trip, and they decided
24 to leave early. I think once Your Honor hears everything,
25 we're not going to have a problem at all.

1 **The Court:** All right. Now, the sequestration request,
2 was this for trial only or are we talking about during these
3 motions as well? What says the State to that?

4 **Mr. Holt:** I -- Judge, I think it's definitely for trial
5 only.

6 **The Court:** All right.

7 **Mr. Holt:** I don't think it's necessary for right now.

8 **The Court:** Thank you. What says defense?

9 **Ms. Wooten:** Could we have just one moment, please, Your
10 Honor?

11 **The Court:** Go ahead.

12 (Whereupon, an off-the-record discussion takes place
13 between Ms. Wooten, Mr. Jones, and Mr. Gardner.)

14 **Ms. Wooten:** We don't have any objections, Your Honor.

15 **The Court:** No objection to all the witnesses remaining
16 in the room during the course of the Jackson v. Denno
17 hearing?

18 **Ms. Wooten:** Yes, Your Honor.

19 **The Court:** All right. Are you ready to play the tape?
20 Mr. Holt?

21 **Mr. Holt:** Yes, sir, Your Honor. The State is prepared.

22 **The Court:** Please do.

23 **Mr. Holt:** At this time we'd like to call Mark Luce to
24 the stand, please.

25 **The Court:** All right, sir. Please come forward and

1 take the oath of the witness.

2 Mark Luce, after being duly sworn, testified as
3 follows in camera:

4 Direct Examination

5 By Mr. Holt:

6 Q. Investigator Luce, could you just briefly summarize how
7 long you've been in law enforcement and what your position
8 is, where you work, that type of information?

9 A. I'm an investigator with the Darlington County Sheriff's
10 Office, and I've been employed there for about 30 years.

11 Q. And did you have occasion to work Todd Gardner's murder?

12 A. Yes, I did.

13 Q. And during that, did you have occasion to arrest Tripp
14 Gardner in North Carolina?

15 A. Yes, I did.

16 Q. Okay. And were you there for his statement?

17 A. Yes, I was.

18 Q. Did you record a statement?

19 A. I did.

20 Q. Okay. Where did you record the statement?

21 A. At the Ashe County Jail.

22 Q. And did the defendant appear to be under the influence
23 of any drugs or alcohol?

24 A. He did not.

25 Q. Did he appear to have any physical or mental disability?

1 A. He did not.

2 Q. And about how long did you question him for that night
3 that you arrested him?

4 A. About an hour and 20 minutes.

5 Q. Was he allowed to take breaks?

6 A. Yes, he was.

7 Q. And was the defendant at any time denied access to a
8 telephone, a bathroom, food or drink?

9 A. No, sir.

10 Q. Were any threats or promises made in exchange for his
11 statement?

12 A. No, sir.

13 **Mr. Holt:** Okay. Now, at this time if I could approach,
14 Your Honor.

15 **The Court:** Uh-huh.

16 By Mr. Holt:

17 Q. I'd like to show you what's been previously marked as
18 State's Exhibit 4. Without telling anybody what that is, do
19 you recognize that?

20 A. I do.

21 Q. And since the last time you've seen it, have any
22 changes, alterations, or deletions been made in any way
23 whatsoever?

24 A. Other than the court stamp on it.

25 Q. Okay. And could you tell the judge what that is?

1 A. This is a Darlington County Sheriff's Office statement
2 of rights or Miranda waiver.

3 **Mr. Holt:** Okay. Your Honor, at this time the State
4 would ask to move that into evidence.

5 **The Court:** Is there an objection?

6 **Ms. Wooten:** If I may see it, Your Honor, for a second.

7 **The Court:** Go ahead.

8 **Ms. Wooten:** No objection, Your Honor.

9 **Court Reporter:** That's Court's 4.

10 **The Court:** Thank you. For purposes of this hearing,
11 then Number 4 in evidence for the State without objection.

12 **Mr. Holt:** I apologize.

13 By Mr. Holt:

14 Q. Investigator Luce, can you tell us what that is and how
15 it pertains to this case and why you've created that
16 document?

17 A. This is advising Mr. Gardner of his Miranda rights.

18 Q. And could you read it to the Court, please, so we can
19 put it on the record as to what exactly is in it?

20 A. Case number 201106-0580, Darlington County Sheriff's
21 Office, statement of rights and Miranda form, Miranda waiver.

22 Name: Eugene Austin "Tripp" Gardner, III. Social Security
23 number [REDACTED]. Date of birth [REDACTED]/61. Place: Ashe
24 County Jail in Jefferson, North Carolina. Date is 3/30/2012.
25 Time 12:24 a.m.

1 It reads, "Before we ask you any questions, you must
2 understand your rights. You have the right to remain silent.
3 Anything you say can be used against you in court. You have
4 the right to talk to a lawyer for advice before we ask you
5 any questions and have him with you during questioning. If
6 you cannot afford a lawyer, one will be appointed for you
7 before questioning if you wish. If you decide to answer
8 questions now without having a lawyer present, you will still
9 have the right to stop answering at any time. You also have
10 the right to stop answering at any time until you talk to a
11 lawyer."

12 Waiver of rights: "I have read the statement of my
13 rights and I understand what my rights are. I am willing to
14 make a statement and answer questions. I do not want a
15 lawyer at this time. I understand and know what I am doing.
16 No promises or threats have been made to me, and no pressure
17 or coercion of any kind has been used against me," signed
18 Eugene Gardner, III. Witness: Mark Luce. Witness, Joe
19 Peavy.

20 Q. Okay. And was the defendant under arrest when he signed
21 that?

22 A. He was.

23 Q. All right. And what's the purpose in your office of
24 producing that document before an interview?

25 A. It's to document that he was advised of his rights and

1 he's given a copy of it, so he understands that his rights --
2 and he's questioned and he's asked if he wants to waive those
3 rights.

4 Q. Okay. And he did waiver those rights?

5 A. He did.

6 Q. Okay. And during the course of your investigation, did
7 you discover if Tripp Gardner had any mental defaults?

8 A. None that I could -- none that I saw.

9 Q. Okay. And did he receive any education?

10 A. He has -- he has told me that he's attended college.

11 Q. And about how old was he when you gave him the
12 interview?

13 A. He was about 50 years old.

14 Q. Okay. All right. Did you go over each and every right
15 on that paper with him?

16 A. Twice.

17 Q. And did he sign that paper?

18 A. Yes, he did.

19 **Mr. Holt:** Permission to approach again, Your Honor?

20 **The Court:** You may.

21 By Mr. Holt:

22 Q. Investigator Luce, I'm going to show you what's been
23 marked as State's Exhibit 3, and do you recognize that
24 document?

25 A. I do.

1 Q. Since the last time you've seen it, have there been any
2 changes, alterations, or deletion made in any way?

3 A. Other than the court number 3 stamp.

4 Q. And can you tell us what that document is?

5 A. This is an introduction of a video/audio recorded
6 statement.

7 **Mr. Holt:** Permission to put State's Exhibit 3 into
8 evidence, Your Honor, for the purposes of this hearing.

9 **The Court:** All right. Do you want to take a look at
10 Number 3, Ms. Wooten?

11 (Ms. Wooten looks at Exhibit 3.)

12 **Ms. Wooten:** No objection.

13 **The Court:** Without objection then, State's 3 for
14 purposes of this hearing in evidence.

15 **Court Reporter:** These are actually marked as Court's
16 exhibits, Judge. I was told to mark them as Court's
17 exhibits, not State's.

18 **The Court:** All right. Then we'll leave it as Court's
19 Exhibit Number 3, in evidence. Thank you.

20 By Mr. Holt:

21 Q. I'm sorry, Mark -- Investigator Luce. Could you tell us
22 what that document purports to be and why you create one
23 before you do a video interview?

24 A. This form is created to make an introduction as to who
25 all is present during the interview and what the time and the

1 location we were -- that we were there and what we're there
2 to talk about.

3 Q. All right. And did the defendant sign that as well?

4 A. He did.

5 Q. And any time he would sign any one of those documents,
6 did the defendant appear to have any trouble understanding
7 his rights or the documents?

8 A. No, sir.

9 Q. And did his -- did his questions -- did his answers to
10 your questions appear rational and responsive and not overly
11 emotional?

12 A. I thought that his answers were intelligently made and I
13 could understand every -- I thought that he or I felt that he
14 understood every question I asked and his answers in return.

15 **Mr. Holt:** Okay. All right. Permission to approach one
16 more time, Judge?

17 **The Court:** Yes, you may. You don't have to ask. Go
18 ahead.

19 (Court's Exhibit 5 was marked for identification only.)

20 By Mr. Holt:

21 Q. And, Investigator Luce, I want to show you what's been
22 marked as Court's Exhibit 5 for the purposes of this hearing,
23 and do you recognize that?

24 A. Yes, sir, I do.

25 Q. And did you create that?

1 A. I did.

2 Q. And how can you tell?

3 A. Because it's my writing on the edge of the disk.

4 Q. All right. And since the last time -- and have you had
5 occasion to view it?

6 A. I have.

7 Q. And since the last time you viewed it, have there been
8 any changes, alterations, or deletions made?

9 A. No, sir.

10 Q. And can you tell me what that is?

11 A. This is the video/audio recording of a statement that I
12 take -- I took from Mr. Gardner on March the 30th of 2012.

13 **Mr. Holt:** Okay. And, Your Honor, at this time the
14 State would ask, for the purposes of this hearing, that that
15 be made a Court's exhibit.

16 **Ms. Wooten:** No objection, Your Honor.

17 **The Court:** Without objection then, Court's exhibit in
18 evidence.

19 By Mr. Holt:

20 Q. Okay. And, Investigator Luce, can you briefly describe
21 to the Court how your day worked the day that you created
22 that, what time you woke up, where you went, all the way
23 until you get to 12:30 at night, the approximate time of this
24 interview?

25 A. We had for -- an arrest warrant for murder was signed

1 against Mr. Gardner. I learned that he lived in Boone, North
2 -- around Boone, North Carolina, Wilkesboro. I got his
3 address. Since he was in another state - North Carolina - we
4 had -- we asked for the assistance of U.S. marshals to
5 forward that warrant to North Carolina and to arrest Mr.
6 Gardner.

7 Sergeant Peavy and myself, we left Darlington at about
8 6:00, 6:00, 6-ish. We arrived up in North Carolina about
9 9:30 or so. We went to Wilkesboro or the Jefferson Police
10 Department where -- I'm trying to get the county straight.
11 There's a -- there's a Wilkesboro and then there's a
12 Jefferson County or Wilkes County.

13 I learned that Mr. Gardner had been arrested. I wanted
14 to get a search warrant for Mr. Gardner's new home and hoped
15 that we would find the weapon that was used. That took 'til
16 about -- after executing the search warrant and going to Mr.
17 Gardner's residence, searching the house, we finished there
18 maybe about 11:30. We got some lunch.

19 Once I learned Mr. Gardner was arrested, there was a car
20 that was impounded, his vehicle.. And that went -- after
21 lunch, getting the search warrant to secure that, that went
22 on 'til about 3:30, 4-ish o'clock, 4:00 or so.

23 While we was doing the search warrant for the car, we
24 learned that Mr. Gardner had made a call or tried to make a
25 call to his home that we had previously searched, telling

1 or -- and there was -- there was some conversation that was
2 heard by Mr. Gardner saying that -- make sure that the police
3 don't find a blue duffle bag or a blue bag.

4 Well, once we learned that information, I realized that
5 maybe we did miss a blue bag, and plus Mr. Gardner had
6 indicated to -- or the conversation was overheard that the
7 bag was hidden behind the chimney. So it took awhile to
8 secure that search warrant and to get another search warrant.
9 I was in touch with Special Agent Colvard with the North
10 Carolina S.B.I. That went on for a few hours trying to
11 re-secure that search warrant and get an affidavit that was
12 going to a judge and getting them to sign that search
13 warrant.

14 Well, then it became around 6:30, 7:30-ish. We was --
15 we had stopped to get a bite to eat, and I was trying to get
16 in contact with Agent Colvard about the search warrant and if
17 a gun had been found because I wanted to talk to Mr. Gardner
18 then, but I said, well -- well, I was thinking that if I had
19 information that a gun was found behind the chimney that we
20 missed where he was trying to misdirect law enforcement to
21 find it, then that would be more information I could present
22 at Mr. Gardner at the time of the interview.

23 Trying to get in touch with Mr. Colvard by cell phone,
24 due to the mountainous region of that particular part of the
25 state, contact was off and on, couldn't get any -- couldn't

1 find out, you know, if the search warrant began, if they had
2 found the gun. So we were over a little over an hour away,
3 so we decided to drive over there to Mr. Gardner's home to
4 find out if a gun had been found.

5 Once we got there, they had just completed the search.
6 A gun had been found. We checked. It was the weapon that
7 was stolen.

8 Q. Where was the gun found?

9 A. Behind the chimney.

10 Q. Okay.

11 A. In a blue bag. After -- during that time, there was
12 some paperwork processed and they turned the evidence over to
13 us and some conversation about how the search went. I also
14 talked to Mr. Colvard about his conversation with Ms. -- with
15 Ms. Gardner and their daughter because they were there the
16 first time we did the search and it would be interesting to
17 know what they had to say about the gun actually being found
18 at that home.

19 So that -- we finished that at about 10:30 or 11:30.
20 Then we went to -- then armed with that information, I
21 thought the interview would be better with Mr. Gardner. And
22 going back to the Ashe County Jail which is in the next
23 county which was a over a little over an hour away, plus we
24 had to stop and get some gas and then we could only find one
25 gas station open and we had to go out of the way... By the

1 time we made it to the jail, it was a little after 12:00.

2 Q. So the arrest of Eugene Gardner, his detention, his
3 home, and your other trips, how many counties were you in and
4 out of that day in North Carolina?

5 A. Three counties back and forth all day long.

6 Q. So all this did not happen within a small confined area.

7 A. No.

8 Q. Now, why did you choose to interview him then instead of
9 the next day in North Carolina or coming home after driving
10 home the next day? You know, why did you -- why did you go
11 for the interview right there at 12:30 at night?

12 A. I knew somewhere during the morning that we were there
13 that Mr. Gardner was taken to a judge because of the --
14 because of the two states. There's some extradition hearing
15 which Mr. Gardner has the option of waiving extradition or
16 fighting extradition. I found out that he had waived
17 extradition and was ready to come back to South Carolina.

18 Once -- if you're -- if you're asking another state to
19 make an arrest for you and they waive that extradition, they
20 expect you to go and pick them up and bring them back to your
21 state. And if -- one portion of the interview, since I knew
22 I was going to bring him back that day and the morning being
23 that day, I just thought it was easier to -- while we're
24 there -- we've got to drive back anyway. He was willing to
25 drive back -- to come back with us anyway because he had

1 already waived extradition, bring him back.

2 I thought it also best to go ahead and do a final
3 interview with him because with him in the car there surely
4 might have been some conversation in that car from Ashe
5 County back to Darlington, South Carolina, which is a lot of
6 miles and a lot of hours in between, and I didn't want him to
7 say something that I couldn't use in court or just -- because
8 of there being so many questions on the way back, I just
9 thought it would be better to go ahead and get a formal
10 interview before we left.

11 **Mr. Holt:** Okay. Your Honor, at this time the State
12 would like to play the video.

13 **The Court:** Yes, sir, you may.

14 (Whereupon, Court's Exhibit 5 was played.)

15 **The Court:** Mr. Holt, would you step up here, please?

16 (Pause in proceedings.)

17 **The Court:** All right. Mr. Holt, let's -- let's... If
18 you want to step out and leave, you're welcome to or go to
19 the back, that's fine.

20 (Mr. Gardner's wife leaves the courtroom.)

21 **The Court:** Mr. Holt, do you have further questions for
22 the witness?

23 **Mr. Holt:** Yes, sir, just a few.

24 **The Court:** All right. Go ahead, please.

25 By Mr. Holt:

1 Q. Okay. Investigator Luce, we just watched Tripp talk
2 about where the gun was, but you knew where the gun was
3 before that; correct?

4 A. Yes, sir. We had already found it.

5 Q. Okay. And can you explain the steps of how you found it
6 and how you would have known that he would have had an
7 accomplice of some sort?

8 A. During the course of the investigation, I started
9 investigating the money trail, the money that was put in Mr.
10 Gardner and his sister's care, the money was supposed to be
11 to take care of his father which Tripp was taking care of,
12 was in charge of -- actually the caregiver for his father
13 during this time. And I got watching to money trail and
14 there was some money that was spent in the spirit of the
15 power of attorney in that that money was supposed to be used
16 to take care of his father, but I saw -- also saw some of
17 that money was going other places.

18 I also found out that there were debit -- there were
19 credit cards issued to that account. One was issued to his
20 wife. There was some -- I would think the best way to
21 describe it was lavish expenditures: Diamond rings,
22 furniture, tanning beds. And then with the conversation then
23 I learned where Tripp had called his house while he was in
24 jail, instructing his wife to hide a blue bag behind the
25 chimney. That also gave me some suspicions that Ms. Gardner

1 may be involved.

2 Q. Okay. He said at the start of the interview that he
3 didn't know where the gun was at all. At that time whose
4 possession was the gun in?

5 A. It was in my possession.

6 Q. Okay. And were you ever planning on arresting anyone
7 else?

8 A. Not at that time I was not.

9 Q. Okay. And using misdirection of the facts, is that a
10 common interrogation or interview technique?

11 A. It's a common practice.

12 **Mr. Holt:** Okay. And I think that's all the questions I
13 have for Investigator Luce, Judge.

14 **The Court:** All right. Is there cross-examination?

15 **Ms. Wooten:** Yes, Your Honor. Thank you.

16 Cross-Examination

17 By Ms. Wooten:

18 Q. How are you this afternoon?

19 A. Fine.

20 Q. From your testimony to Mr. Holt, it's my understanding
21 that you believe that Tripp's wife, Renee Gardner, was
22 somehow involved in this crime or covering it up afterwards?

23 A. I have some suspicions.

24 Q. Okay. So watching this video with Tripp Gardner, I
25 noticed that he takes one tone in the beginning of the

1 interview and then a different tone at the end. Did you
2 happen to notice that? In the beginning, just to give you an
3 example, he was loud and kind of cut you off when you talked
4 and argumentative, and then at one point he stopped being so?

5 A. Yes.

6 Q. Okay. Some of the statements I wrote down from this
7 video that you made to Mr. Gardner -- I'll repeat some of
8 them. Approximately 32 minutes in you say, "I'm probably
9 going to have to put a couple more people in jail." Do you
10 remember that---

11 A. Yes.

12 Q. ---saying that? Who were you referring to?

13 A. His friends, family members.

14 Q. Possibly Renee?

15 A. Could be.

16 Q. Okay. Do you also remember saying to them, "If anyone
17 covers up for you, they are guilty of accessory after the
18 fact and any overt acts to cover something else up?"

19 A. Yes.

20 Q. Okay. How about, "Do I have to go any further?" Or,
21 "Want to bring others down with you?"

22 A. I'm not sure about bringing others down; I'm not sure of
23 that sentence.

24 Q. I wrote it down approximately 42 minutes in, but if you
25 don't recall it, that's fine. Do you recall saying, "I'm

1 giving you an opportunity to see what kind of man you are,
2 and then I'm going to do what I have to do"?

3 A. Yes.

4 Q. Okay. At some point you say to him, "I will work with
5 you." Do you remember that?

6 A. Yes.

7 Q. Also you said, "You want help? I will help you."

8 A. Yes.

9 Q. Okay. How about he says to you, "How can you help me?"
10 And you say, "A lot of ways. Look at where I am right now;
11 look at where you're at." About 43 minutes in.

12 A. Yes.

13 Q. Okay. You also say to him that, "Things will get worse,
14 and you may not be by yourself," about 44 minutes in. Were
15 you again referring to possibly other people getting
16 arrested?

17 A. Yes.

18 Q. Okay. You also said, "And it's going to cost other
19 people for something." You were putting yourself in that
20 scenario. You said something I did, but you were trying to
21 empathize with him. Do you remember that? You were
22 referring to: Had it been you, you would man up to it
23 because you said, "And it's going to cost other people for
24 something I did." If you don't remember, that's fine.

25 A. I don't remember exactly that.

1 Q. Okay. And then you also said to him, "What I do in
2 Darlington, how far I go in Darlington is all up to you." Do
3 you remember that?

4 A. Yes.

5 Q. Okay. And then it was after this, shortly after this,
6 you say to him, "Some things we can prevent from happening.
7 Some things we can't change, and some things we can prevent
8 from happening." Do you remember that?

9 A. Yes.

10 Q. Then right after that he goes into the story about what
11 happened that night. Do you remember?

12 A. Yes.

13 **Ms. Wooten:** Okay. Just one second, please, Your Honor.
14 I have no further questions, Your Honor.

15 **The Court:** Any redirect?

16 **Mr. Holt:** May it please you, Judge? Just briefly.

17 Redirect Examination

18 By Mr. Holt:

19 Q. Investigator Luce, Ms. Wooten has got all your
20 statements marked down here. "I'm going to give you an
21 opportunity and see what kind of man you are. Then I'm going
22 to do what I have to do," and on down. Were you basically --
23 what kind of way out were you trying to offer the defendant
24 with that line of questioning?

25 A. A peace of mind in order to resolve this and help him

1 get through with it and a chance for him to explain to his
2 family what happened.

3 Q. Okay. Was all your questioning some veiled threat that
4 you were going to throw the man's wife and daughter in
5 prison?

6 A. No.

7 Q. Okay. Were you offering him a way out to anything up
8 under murder maybe?

9 A. If his explanation would be enough to satisfy the courts
10 on how his brother died, I was willing to go along with it.

11 Q. Okay. And do you oftentimes actually go through with
12 your offers to help defendants---

13 A. I usually do.

14 Q. ---once they confess?

15 A. I usually do.

16 Q. Do you call the solicitor and ask him to help them with
17 their charges?

18 A. Yes, I have.

19 Q. And let them know that they cooperated with you?

20 A. I have.

21 Q. And that's pretty common for you?

22 A. Yes, it is.

23 **Mr. Holt:** Thank you very much, Investigator Luce.

24 **The Court:** Follow-up?

25 **Ms. Wooten:** Just a quick question.

Recross Examination

By Ms. Wooten:

Q. You just told Mr. Holt that it was not a veiled threat to put somebody in jail; right?

A. It's not a threat.

Q. You told me standing right over there that it was a possibility that you might arrest his wife and his friends; correct?

A. I said it could be his friends or it could be family members.

Q. Including his wife, I clarified, and you said, "Yes."

A. It could if the -- if the investigation would have led further.

Ms. Wooten: Thank you. That's all I have.

The Court: All right, sir. You may step down, and please watch your step. Are there further witnesses for the State?

Mr. Holt: There are, Your Honor.

The Court: All right. Go ahead.

Mr. Holt: Two. Can I get Will Hicks up here, please?

The Court: Please come forward and take the oath of the witness.

William M. Hicks, after being duly sworn, testified as follows in camera:

Direct Examination

By Mr. Holt:

Q. Could you please give your whole name and where you work and what you do for a living for the Court, please?

A. My full name is William Marshall Hicks. I work for the West Jefferson Police Department in Ashe County, North Carolina. I've been there for three and a half years.

Q. And how were you involved in the case at hand, the arrest of Todd Gardner -- I mean Tripp Gardner?

A. The U.S. Marshal Service contacted us the morning of the 29th of March, 2012, stating that there was a subject that was wanted for murder out of Darlington County, South Carolina, working at a business within our jurisdiction, asked if we would assist.

Q. And did you assist with Tripp Gardner's arrest?

A. I did. I'm the detective at the department, so I took it upon myself to, you know, to help out and do all the paperwork, stuff like that.

Q. And were you there when they arrested him?

A. I was.

Q. Okay. And were you there when he was taken to -- where was he taken?

A. Ashe County Jail.

Q. And can you describe to us what happened after that?

Where did y'all take him? What did y'all do with him? Where

1 did you keep him?

2 A. After he was arrested, he was taken to the Ashe County
3 Jail where we took him in the Sally Port and then into the
4 booking room. In the booking room there's some benches along
5 the wall there where, you know, they could sit and talk to
6 the booking jailer or whatever and use the telephone or
7 whatnot.

8 Q. And are they -- are they allowed mats if they want to go
9 to sleep?

10 A. Well, if they're going to be in the booking room and not
11 put back into general population which would be the case with
12 Mr. Gardner, then they'll usually -- they've got three
13 holding cells up front in booking and they'll place them in a
14 holding cell. You know, they've got access to food, water, a
15 mat if they're tired or whatever they need. All they have to
16 do is ask for it.

17 Q. And are they allowed to make phone calls?

18 A. They are.

19 Q. And are they given meals served out at the jail?

20 A. They are.

21 Q. Okay. And are they denied any basic human rights?

22 A. They are not. Most of the time they can make just about
23 as many phone calls as they want to. It just depends on what
24 the jailer says.

25 Q. Okay. And did you have occasion to see that Tripp was

1 put into one of these holding cells?

2 A. I was -- I do not recall seeing him placed in there.

3 Q. But did you take him there?

4 A. To the holding cell?

5 Q. Yes, sir. I mean to the -- to the booking room.

6 A. Yes, to the booking room. Yes.

7 Q. All right. And did you also take him to his court
8 appointment?

9 A. Yes, we did.

10 Q. And did you take him back to the booking room after the
11 court appointment?

12 A. Yes, sir.

13 Q. And at any time like that was he mistreated?

14 A. No, sir.

15 Q. Was he kept awake?

16 A. Yes, sir.

17 Q. I mean, for the whole entire 15 hours was he kept---

18 A. I'm not familiar -- after -- after we got back from
19 court, I went ahead and started my paperwork and everything.
20 So I mean, you know, it would be up to, you know, his own
21 free will if he wanted to go to sleep or not.

22 Q. Okay. All right. Thank you very much. Please answer
23 any questions that the defense counsel might have.

24 A. Okay.

25 **The Court:** Cross-examination.

1 **Ms. Wooten:** Yes, please. Thank you.

2 Cross-Examination

3 By Ms. Wooten:

4 Q. Sorry. I didn't catch your name. Officer?

5 A. Hicks.

6 Q. Hicks. Are you Josh Hicks?

7 A. No, ma'am.

8 Q. What's your---

9 A. Will Hicks.

10 Q. Will Hicks. Okay. Thank you. And what -- do I call
11 you Officer? What's your title?

12 A. Detective.

13 Q. Detective Hicks. Okay. You said that you were there
14 when Mr. Gardner got arrested; is that right?

15 A. Yes, ma'am.

16 Q. And he was arrested from his place of employment?

17 A. Yes, ma'am.

18 Q. What time was that?

19 A. I'm not familiar with what time it was.

20 Q. Was it morning?

21 A. I believe that it was around 8:30.

22 Q. Okay. 8:30 in the morning on the 29th?

23 A. Yes, ma'am.

24 Q. Okay. So he was transported to the Ashe County Jail.
25 Is that right?

1 A. Yes, ma'am.

2 Q. And you described there's benches along the wall and
3 then if they're held there for a long time they might get put
4 in a holding cell?

5 A. Yes, ma'am.

6 Q. Do you know or can you testify to what happened
7 specifically to Mr. Tripp Gardner?

8 A. I cannot---

9 Q. Okay.

10 A. ---testify specifically, you know, for the whole time of
11 which he was kept there, just for the time that I observed
12 him.

13 Q. And how long were you with him specifically?

14 A. I couldn't answer specifically. The estimated amount of
15 time, you know, could be between 30 minutes to an hour and a
16 half that I was, you know...

17 Q. Okay. So roughly an hour maybe---

18 A. Yeah, probably.

19 Q. ---give or take 30 minutes? So he was arrested at 8:30
20 in the morning. He was questioned at 12:20 the next night.
21 So if my math is right, that's about 16 hours; right?

22 A. Uh-huh.

23 Q. And you observed him for maybe an hour.

24 A. Yeah, maybe.

25 Q. Okay. Tell me about the holding cell. How big is it?

1 A. I'm not sure the exact dimensions. Probably roughly 10
2 by 10, 12 by 12.

3 Q. Okay. And when you were there observing Mr. Gardner,
4 did you see him get moved into a holding cell or get a mat or
5 did you personally observe any of this?

6 A. No, I do not recall personally observing any of that. I
7 do remember, you know, him sitting on a bench out there by
8 the telephone.

9 Q. Okay. Those are all the questions I have. Thank you.

10 A. You're welcome.

11 **The Court:** Any redirect?

12 **Mr. Holt:** No, sir, Your Honor.

13 **The Court:** All right sir. You may step down. Please
14 watch your step there as you leave the witness chair.

15 **The Witness:** Thank you.

16 **Mr. Holt:** Just one final witness, Judge.

17 **The Court:** Go ahead.

18 **Mr. Holt:** Officer Josh Hodges.

19 Josh Hodges, after being duly sworn, testified as
20 follows in camera:

21 Direct Examination

22 By Mr. Holt:

23 Q. Could you please give your whole name and where you
24 work, what you do for a living, and what your duties entail
25 for the Court, please?

1 A. I'm Josh Hodges. I work for the West Jefferson Police
2 Department as a patrol officer.

3 Q. Okay. And were you involved in the arrest of Tripp
4 Gardner?

5 A. Yes, sir, I was.

6 Q. And in what way were you involved?

7 A. I basically just assisted with the arrest with the U.S.
8 marshals and also with the inventory of his vehicle.

9 Q. All right. And at any time did you have occasion to
10 listen to his phone calls from the jail?

11 A. Yes, sir, I did.

12 Q. And what did those phone calls entail?

13 A. He was basically speaking to someone on the phone while
14 he was on the bench at the jail. He was speaking of a blue
15 bag. As he was talking to 'em, he just said -- he asked the
16 person on the phone if they had taken care of the blue bag.
17 I also heard him say, "Just do it. Put it in the chimney or
18 something." And he was speaking to 'em in a very aggressive
19 tone while he was on the phone with 'em. And I also heard
20 him say they can't find the blue bag. And like I said, I was
21 just sitting there on the bench and overheard his
22 conversation.

23 Q. Sitting on the bench where? In what room were y'all in?

24 A. It was basically in the booking room where---

25 Q. Okay. And did you have occasion to witness the

1 defendant in the booking room?

2 A. Yes, sir, I did.

3 Q. All right. And was he deprived of anything while he was
4 there?

5 A. No, he was not.

6 Q. In fact, he was on the phone when you saw him.

7 A. That's correct.

8 Q. Okay. And about how long did you witness him in the
9 booking room?

10 A. I would say I was there with him probably 20 minutes
11 roughly.

12 Q. Okay. And did you witness him being mistreated in any
13 whatsoever?

14 A. No, sir, I did not.

15 Q. And do you spend a lot of time in the booking room in
16 your county?

17 A. Yes, sir. It just depends on, you know, what's going on
18 with...

19 Q. I mean, is it common practice to allow inmates use of
20 the telephone?

21 A. That's correct. They are always given the opportunity
22 once -- it's been my experience that once I take somebody to
23 the jail, they're given the opportunity to utilize the phone.

24 Q. And when defendants are taken to gen. pop, are their
25 clothes taken from them and prison uniforms given to them

1 just like we do here in Darlington?

2 A. Could you repeat -- could you repeat the question?

3 Q. When somebody leaves booking and goes to gen. pop in
4 your county, do they let them go in there in their regular
5 clothes or do they make them wear like an orange jumpsuit or
6 a black-and-white-striped jumpsuit or something like that?

7 A. You're referring to gen. pop?

8 Q. Gen. pop in your county.

9 A. Okay. They're placed in a black-and-white-striped suit.

10 Q. Okay. Do you know if -- and you might not know, but do
11 you know if Tripp was ever placed into Jim Hop?

12 A. I do not. Like I said, I just was sitting with him
13 there on the bench, and I believe I actually went over to the
14 courthouse with Detective Will Hicks, escorted Mr. Gardner
15 over there, and then we left the jail. So I didn't actually
16 see him go into the holding cell.

17 Q. All right. Thank you very much.

18 A. Yes, sir.

19 **Mr. Holt:** Please answer any questions the defense might
20 have.

21 **The Court:** Cross-examination.

22 **Ms. Wooten:** Thank you.

23 Cross-Examination

24 By Ms. Wooten:

25 Q. You are Officer Josh Hodges; is that right?

1 A. Yes, ma'am. That's correct.

2 Q. So your testimony to Mr. Holt was: You were with Mr.
3 Gardner for about 20 minutes.

4 A. Roughly.

5 Q. Okay. What time was that 20 minutes that you spent with
6 him?

7 A. He was probably arrested at his place of business around
8 - I don't know - 9:00. It's hard to say. But I was with him
9 at the jail, like I said, for roughly 20 minutes.

10 Q. What 20 minutes was that? 9:20? 10:00 in the morning?

11 A. Do what?

12 Q. What 20 minutes? Would you say it's 9:30 in the morning
13 or 4:00 in the afternoon?

14 A. His phone conversation occurred I believe around 9:30.

15 Q. In the morning.

16 A. That's correct.

17 Q. Okay. And you overheard him make a phone call.

18 A. Yes, ma'am, I did.

19 Q. Was this phone call recorded?

20 A. Do what?

21 Q. Was the phone call recorded, to your knowledge?

22 A. I'm not sure.

23 Q. Okay. And so this 20 minutes you spent with him, did he
24 -- you said he didn't get moved into a holding cell; is that
25 correct?

1 A. That's correct.

2 Q. Okay. I think that's all the questions I have. Thank
3 you very much.

4 A. Yes, ma'am.

5 Examination by the Court

6 Q. Sir, let me ask you: So the conversation you heard, you
7 overheard just his end of that conversation. Is that
8 correct?

9 A. That's correct.

10 Q. Because you were in the same room.

11 A. That's correct. I was actually sitting on a bench right
12 beside him.

13 Q. All right. So you weren't -- you didn't have a
14 listening device where you heard both ends of that
15 conversation.

16 A. Oh, I could hear somebody speaking on the other line,
17 but it was -- it's hard to -- I don't know who it was. I
18 just heard his conversation.

19 Q. All right. And when you said they couldn't find the
20 blue bag, is the "they" referred to -- was he referring to
21 the police or was he referring to the people who were on the
22 other end of the phone?

23 A. To be honest with you, Your Honor, I'm not sure who he
24 was referring to.

25 **The Court:** All right. Thank you. Any follow-up

1 questions now from the State?

2 **Mr. Holt:** None from the State, Judge.

3 **The Court:** From defense on those issues?

4 **Ms. Wooten:** No, Your Honor. Thank you.

5 **The Court:** All right. Then, sir, you may step down.

6 Please watch your step. Thank you. Are there further

7 witnesses for State?

8 **Mr. Holt:** No, sir, Judge.

9 **The Court:** All right. Are there witnesses for defense?

10 **Ms. Wooten:** No, Your Honor. I would just like to

11 address the Court at some point.

12 **The Court:** Very good. Well, let's first hear from the
13 State who has the burden of showing by a preponderance of the
14 evidence that the statement is admissible. Go ahead.

15 **Mr. Holt:** Thank you very much, Your Honor. I think
16 most of defense counsel's argument has involved the alleged
17 threats, but just briefly I'd like to say to Your Honor that
18 not only did Investigator Luce testify to it, but we were
19 shown the documented (verbatim) proof of his Miranda being
20 given. We can obviously tell Mr. Gardner is a somewhat
21 college-educated man, 50 years old. He's not a small child.
22 He's not mentally incompetent in any way that's been proven.
23 Nothing that the case law talks about would say that -- would
24 make the statement involuntary from that point.

25 I think he himself in the -- in the interview is some of

1 our best evidence. He says that he had a mat to sleep on.
2 He says that he had a pretty good lunch but that he was so
3 upset about this stuff he didn't eat it. Well, you know, not
4 30 minutes later he's confessing to shooting his brother, so
5 that could have been what he was upset about or... You know,
6 the police -- and it shows that the police provided food to
7 him. It's certainly not his fault if he doesn't eat it.

8 He let himself out of the room to go get water during
9 the interview. I think you see him get up and go get water.
10 He wasn't placed there by any threat from Mark Luce to stay
11 where he was and mind his behavior. Investigator Joe Peavy
12 got up and got him water any time the defendant wanted it.

13 He was given adequate warning for someone his age about
14 his rights. He was kept out of Jim Hop. He was not exposed
15 to a rigorous prison environment. He was essentially in
16 booking where all testimony agrees he could call as many
17 people as he wanted to. He could get as much water, as much
18 food as they provided him with which was more than adequate,
19 and he was allowed a mat to sleep on.

20 He made more than one phone call, one of which was to
21 somebody to cover up evidence or we wouldn't even have had,
22 you know, most of what the interview was about. When
23 Investigator Luce tells him that there are other people that
24 could go down for this, certainly somebody could who was
25 covering up evidence for you or somebody involved in stealing

1 money. But I don't think what Investigator Luce was getting
2 at was bringing other people down. I think he makes one
3 remark about that at the 42-minute mark about ten minutes
4 before Tripp Gardner actually starts breaking down and
5 admitting to shooting his brother.

6 The remainder of the comments that defense counsel has a
7 problem with: "I'm giving you an opportunity to see what
8 kind of man you are. Then I'm going to do what I have to do.
9 I will work with you. You won't help? I will help you. How
10 can you help me? A lot of ways. Things will get worse and
11 you may not be by yourself, meaning other people are going to
12 get hurt by a father" -- I think he even brings it up and
13 says that a father, a husband, a family member, going down
14 for something like this.

15 And the gist of it I got was: It's better to go down
16 for a lesser included than murder. Come out and tell us the
17 truth of what actually happened there. I understand it may
18 be complicated. Let's hear your version of events.

19 I don't think anybody who watched that video can see
20 that Investigator Luce was in any way threatening Tripp.
21 Tripp could have -- could have gotten quiet at any time and
22 just rode back to Darlington. I think more than likely what
23 happened in that video was Tripp became aware from
24 Investigator Luce that they had more evidence showing he was
25 at that house, that they had a witness there. These are all

1 things that were brought out.

2 To take 50 minutes of an interview and throw out eight
3 or so statements made during that interview and to allege
4 them threats and to say that's why somebody broke, you can't
5 do that, Judge. I have to show by a preponderance of the
6 evidence that it was voluntary, and I think that everything
7 I've pointed to says he wasn't threatened or coerced in any
8 manner whatsoever and certainly proved that by a
9 preponderance of the evidence.

10 **The Court:** All right. Mr. Holt, the conversation from
11 the jail, is there a recording device at the jail? Do you
12 have the other end of that conversation?

13 **Mr. Holt:** There was not -- the specific phone in
14 booking that day, there was not a recording made.

15 **The Court:** All right.

16 **Mr. Holt:** It was common practice for booking officers
17 -- if they were not there when you used the phone, then they
18 would they would let other people like -- the two officers
19 from West Jefferson, they were sitting there by the phone, so
20 the people from booking let them listen. The people from
21 booking were going about the rest of their business. They
22 didn't engage in the practice of using that phone to tap
23 phone calls or whatever.

24 **The Court:** All right. And then the last thing is
25 you're using a term about whether the defendant was put in

1 Jim Pop? Is that the name you were -- what was the word you
2 used?

3 **Mr. Holt:** General population, Your Honor.

4 **The Court:** I see.

5 **Mr. Holt:** It was my understanding that if Ms. Wooten
6 was -- and that's just something I got from T.V. I'm sure
7 that that's not the correct term but that Ms. Wooten was
8 saying that he could have been exposed to something and
9 perceived it as a threat, maybe being thrown in jail for the
10 day for the 15 hours because that is a problem. Okay?

11 You know, 12:30 at night, usually the first thing that
12 pops into my head is that is probably not the average
13 protocol for that type of thing, but I think we have to
14 remember that police are forward-looking. You know, right
15 now from the benefit of hindsight, we're looking back on what
16 happened, but Investigator Luce's statement that: It's a
17 long ride back to Darlington; he waived extradition; we want
18 to get on the road... The worst thing about this interview
19 is -- is the time it took place.

20 **The Court:** All right.

21 **Mr. Holt:** If you talk about just the duration of the
22 interview, 50 minutes, Judge, is not a lengthy interview and
23 then to begin where he started that interview: A hundred
24 percent I'd never hurt my brother; you don't have anything...
25 Fifty minutes later he's breaking down going, "I did it; I

1 shot my brother."

2 **The Court:** All right, sir. Thank you. Do you want to
3 be heard, Ms. Wooten?

4 **Ms. Wooten:** Yes, please. Thank you. First I will
5 start with a review of the facts that we heard during
6 testimony. I agree wholeheartedly with Mr. Holt that Tripp
7 Gardner had one attitude in the beginning of the interview
8 and then a markedly different attitude at the end, and I
9 would propose to this Court that the reason why it comes at
10 32 minutes and 10 seconds in when Detective Luce says, "I'm
11 going to probably have to put more people in jail..."

12 It was also the testimony of Detective Luce when I
13 cross-examined him that he was referring possibly to Susan
14 Gardner, his wife, maybe his family, maybe his friends.
15 Detective Luce makes several statements. I'll categorize
16 these into two sections: Ones as threats and ones as
17 promises. The threats section I have: "Probably have to put
18 a couple more people in jail. If anyone covers up for you,
19 they are guilty of accessory after the fact and any overt
20 acts to cover something else up. Do I have to go any
21 further? Do you want to bring others down with you? Do I
22 have to go any further? I'm giving you an opportunity to see
23 what kind of man you are. Then I'm going to do what I have
24 to do."

25 Later on he says, "Things will get worse, and you may

1 not be by yourself." He says, "And it's going cost other
2 people for something you did." He also says, "What I do in
3 Darlington, how far I go in Darlington is all up to you,"
4 followed about a minute later with, "With the stuff with what
5 I have to do, I will do it."

6 Lastly, before my client does make an incriminating
7 statement, he says, "Some things that happen we can't change
8 and some things we can prevent from happening." After a few
9 minutes of almost near silence, my client proceeds to make an
10 incriminating statement. I will point out the -- I'm sorry.
11 Those are the threats.

12 The promises: In the middle of this, Detective Luce
13 says, "I will work with you." He also says, "You want help?
14 I will help you." The last thing he says is when my client
15 says, "How can you help me?" Detective Luce says, "A lot of
16 ways. Look at where I am right now. Look at where you're
17 at," pointing out the very different perspectives of power
18 and authority.

19 My client was arrested, based on the testimony, around
20 8:30 in the morning from his place of employment by U.S.
21 marshals and also local police. He was in custody for
22 roughly 16 hours before he was interviewed.

23 We have Detective Will Hicks who was with him for
24 approximately an hour to observe him. Officer Josh Hodges
25 was with him about 20 minutes, and any neither one of them

1 can testify as to whether he was put in a holding room,
2 whether or not he ate, whether or not he slept. They can't
3 testify as to any of that. We don't have anybody to talk
4 about those 16 hours.

5 **The Court:** Why didn't your defendant take the stand and
6 testify to that?

7 **Ms. Wooten:** I discussed it with my client and he
8 didn't -- we didn't feel like I needed to proceed with his
9 testimony to make this argument.

10 **The Court:** Very good.

11 **Ms. Wooten:** Also something that Mr. Holt said when he
12 was talking to the Court, he said that my client was allowed
13 to leave the room and get water. He was clearly under
14 arrest. That was the testimony that was given. This was a
15 custodial interrogation after 16 hours of being held where
16 Detective Luce gives a series of threats, threatening my
17 client's family and threatening potentially arresting people,
18 interspersed with some promises to help, then again followed
19 up with threats before my client finally does give his
20 incriminating statement.

21 It's obvious that the demeanor of my client at the
22 beginning of the interview was markedly different from the
23 end, and the thing that makes that change is that first
24 threat: I'm probably going to have to put more people in
25 jail."

1 Based on those facts, I would like to start by
2 addressing some of the law on point. I am referring to the
3 State v. Miller which is a South Carolina Court of Appeals
4 case. It says that, "Coercive police activity is a necessary
5 predicate to finding a statement is not voluntary." Very
6 importantly it says, "Coercion is determined from the
7 perspective of the suspect, not from the detective, not from
8 anybody else but from the perspective of the suspect
9 himself." It goes on further to say, "A statement may not be
10 extracted by any sort of threats or violence or obtained, any
11 direct or implied promises, however slight, or obtained by
12 the exertion of improper influence."

13 There's a fourth circuit case from 1997, U.S. v. Braxton
14 which says, "For a threat or an implied promise to validate a
15 defendant's statement, the pressure, in whatever form, or
16 however slight must be sufficient to cause the petitioner's
17 will to be overborne."

18 I would submit to the Court that based on the evidence
19 we have heard from Detective Luce, which I would categorize
20 as threats and promises and the law does say "however
21 slight," and given the fact that it has to come from the
22 perspective of the suspect himself and given the fact that we
23 don't have any testimony from the State to talk about the
24 16 hours of his custodial period before his interrogation
25 with the exception of 20 minutes and 1 hour, I would submit

1 to this Court that this statement was not voluntarily given
2 and that it must be suppressed.

3 **The Court:** Okay. Thank you. Just one moment, please.
4 The Court is prepared to rule. Let me just, if I may, review
5 some of the evidence and some of the issues that the Court
6 sees in this testimony. First, ultimately, whether or not a
7 statement is admissible is up to the Court. If it is
8 admitted eventually, of course, these arguments we've heard
9 today as to voluntariness may be made to the jury as well by
10 counsel because the jury is the ultimate arbiter of whether
11 any statement made is voluntary once that statement is
12 admitted into evidence.

13 Counsel here complains or raises the issue that there
14 was some perhaps 16 hours after the defendant was initially
15 taken into custody, around 8:30 or 9 in the morning, before
16 this interrogation occurred, but the Court finds that the
17 explanation given for that is somewhat -- is reasonable.
18 First of all, evidence was still developing, based upon the
19 overheard telephone call. The police, the Darlington County
20 Police - Officer Luce, Officer Peavy - are having to go
21 between different jurisdictions in North Carolina and also
22 are several hours away from home. The defendant has waived
23 extradition, thus I'm certain there is a push by the holding
24 authorities in North Carolina to go ahead and remove someone
25 from the jails who is not really their responsibility and is

1 certainly long-term and doesn't have to be short-term if the
2 person can be transferred to the prosecuting jurisdiction.

3 And I also agree with Investigator Luce that it is
4 probably a better course of events, rather than to take a
5 vehicle ride in a small compartment of a car with someone who
6 has not made a statement, even if they're Mirandized, because
7 of the potential for either an incriminating statement that
8 might be deemed voluntary or arguably would not be taken
9 within the confines of Miranda, if Miranda was given at the
10 beginning of the ride and the statement made at the end of
11 the ride. It just raises many issues.

12 And so while I realize that the defense has an argument
13 here that the defendant was taken into custody and then 16
14 hours elapsed before a statement was given, the Court doesn't
15 find that to be dispositive. When I look at the demeanor of
16 the defendant on the tape, I see that, first of all, he's
17 cogent. His responses are appropriate. He clearly knows --
18 in fact, he has what I've noted to be almost a dogmatic and
19 assertive demeanor with the questioner. He clearly
20 understands the questions and clearly denied any
21 responsibility for this most unfortunate incident.

22 Counsel takes the position that -- defense argues that
23 he may have been -- that food may have been withheld. He may
24 have been uncomfortable. He may not have slept while he was
25 in the jail, but the evidence before me in this hearing today

1 is that food was made available to him, that there was a
2 place where he could sleep. Even if it was something he
3 wouldn't be used to sleeping on, it would be a mat in a
4 private holding room that...

5 I just simply do not find here that the will and the
6 understanding of the defendant was somehow overborne by a
7 series of circumstances that caused him to make a statement
8 that was coerced or was involuntary. The defendant could
9 have taken the stand to address these matters, but I suppose
10 the defendant did not because it was just simply not the case
11 that food was withheld or water withheld or some other
12 threatening or coercive actions taken before the statement
13 was given. And so I don't find anything in the circumstances
14 that precede this statement, even though again he was in
15 custody for 16 hours, that would render the statement
16 involuntary and, thus, inadmissible.

17 Now let's go forward to the statement itself. The Court
18 finds that the tactics that were used by Investigator Luce to
19 be typical, appropriate police tactics and comments in
20 discussing a set of circumstances with a defendant. While
21 the defendant did say and it's recorded at 9:19 on the tape
22 that he is tired, it certainly doesn't appear from the tape
23 that he is so tired or beaten down that his will was overcome
24 because, again, his responses are cogent. They're abrupt.
25 They're somewhat curt even in places, that he clearly

1 understood the questions and clearly gave answers that were
2 appropriate to the questions that were being asked.

3 Ms. Wooten, you take the position that there was a
4 threat given at minute 32 and 10 seconds on the tape which
5 was a threat of having others placed in the jail, your
6 position being that was a veiled threat that his wife or
7 other people close to the defendant would be jailed as a
8 result of what was happening there in that conference room or
9 his not coming forward and implicating himself that that was
10 going to be the result. I simply don't find that to be a
11 threat.

12 While you may argue the words intended there, I just
13 simply don't find that that's what the investigator was
14 telling your client. It is inherently stressful to be in
15 police interrogation for the murder of a sibling. While the
16 Court realizes that some level of stress would be expected, I
17 just simply don't find the tactics of the police to be
18 overbearing.

19 I also don't find that there is a direct, really, or an
20 indirect threat to arrest other people in the defendant's
21 family if he doesn't cooperate or come forward and implicate
22 himself. I simply find that in this situation where the life
23 of the brother has been taken and the officer is discussing
24 with the defendant that this is more than just the defendant
25 involved here, there are -- there's a conscience to deal

1 with. There's a long-term implication of what's happening.
2 There are other people that are involved. I find that to be
3 a reasonable and appropriate approach. Thus, I'm going to
4 respectfully deny any efforts or any motion that you would
5 make to suppress this evidence.

6 I find clearly the defendant was in custody. Clearly he
7 was Mirandized. Clearly he understood the warnings of
8 Miranda that -- and he was fully advised of his Fifth and
9 Sixth Amendments -- rights under the Constitution of the
10 United States, that he was advised he could remain silent,
11 that he -- if he waived his right to remain silent and made a
12 statement that such statement could be used against him in a
13 court of law, that he was advised he could have an attorney,
14 that if he couldn't afford one, one would be likely appointed
15 for him or would be appointed at no cost for him, that he
16 could consult with that attorney, that he could stop at any
17 point in the interrogation if he wished to consult with an
18 attorney or simply stop answering questions and stop the
19 interrogation, that I find the defendant understood all these
20 things and knowingly made and voluntarily made a waiver of
21 his Fifth and Sixth Amendment rights.

22 For all these reasons, the Court finds that the -- here
23 by a preponderance of the evidence in this hearing that the
24 statement is admissible, and that is the ruling of the Court.
25 Now, are there other issues for which we need to or which we

1 need to resolve prior to the beginning of the trial tomorrow?
2 From the State?

3 **Ms. Parker:** Your Honor, Julie had filed another motion
4 to suppress the gun that was found as a result of a search
5 warrant at the house in North Carolina.

6 **The Court:** Very good. Now -- but nothing from the
7 State. This is the defense motion. Anything from the State?

8 **Ms. Parker:** No, sir, nothing from the State, just---

9 **The Court:** All right. Now, do you wish to persist in
10 your suppression motion?

11 **Ms. Wooten:** Yes, Your Honor.

12 **The Court:** All right. I have an understanding of the
13 evidence, so if you just wish to argue, I'll be glad to hear
14 from you.

15 **Ms. Wooten:** Absolutely. Your Honor, I'm sure, is aware
16 there were actually two search warrants which were executed.
17 The first one was executed on March 29th of 2012 sometime
18 around morning or lunchtime hours, and from the search
19 nothing was recovered. Then there was a second search
20 warrant obtained late in the afternoon. Contact actually was
21 made with the judge at I believe at 4:40 in the afternoon and
22 the judge was leaving town at 5:00, and the officers met the
23 judge near his house in order to secure a second search
24 warrant and provided to the judge an affidavit, probable
25 cause affidavit.

1 On this probable cause affidavit the defense takes issue
2 with items number 11 and 12, specifically. Item 11 is after
3 the execution of the warrant, Captain Carolyn Gentry of the
4 Ashe County Sheriff's Office provided to S.A. Colvard that
5 Eugene Austin Gardner, III, made statements about a blue bag
6 that he did not want officers to find until one of the
7 detention officers---

8 **The Court:** All right. Just a moment. That's quick.
9 Please slow down for our court reporter.

10 **Ms. Wooten:** Number 12, that I believe special -- I
11 believe special agent is S. slash A. -- Special Agent Colvard
12 spoke to Jailer Sharon Price at the Ashe County Detention
13 Center who advised that she overheard Gardner make reference
14 to a blue bag in the chimney of his residence that he did not
15 wish investigators to find.

16 Those two statements are what the defense takes issue
17 with mostly because Colvard also provided us with affidavits
18 from the persons mentioned in the warrant, and specifically
19 Sharon -- Jailer Price who, according to the affidavit, said
20 Gardner made references to a blue bag in a chimney. She
21 specifically says -- just one moment, Your Honor. I'm
22 getting the affidavit.

23 She specifically says that she did not recall Gardner
24 saying anything about a chimney in front of her but that
25 Carrow (phonetic) might have overheard this. Flipping

1 through to Ms. Carrow's statement which was taken and
2 provided to us as well, she stated that she did not hear
3 Gardner make a specific statement about where the bag was, to
4 her recollection, but he did mention a blue bag.

5 We would argue specifically that this search warrant
6 contains false information upon which a judge issued a search
7 warrant in haste at 5:00 in order to beat the clock, and it
8 was in this haste that the officers obtained this search
9 warrant, put false, inaccurate information into the search
10 warrant itself and, therefore, the search warrant itself
11 should be deemed invalid and the evidence which was secured
12 as a result of it suppressed, and I have case law if Your
13 Honor would like to hear about it.

14 **The Court:** Go ahead.

15 **Ms. Wooten:** Specifically, the first one I would point
16 to is a South Carolina case, State versus McKnight. In that
17 it says that sometimes a search warrant can be deemed invalid
18 on constitutional grounds, but there is also a statutory
19 violation which should be taken into account, and that is
20 exactly what I'm speaking of in the statutory violation.

21 The officers used incorrect information and swore to it
22 to a judge in order to obtain a search warrant, and it's from
23 this inaccurate information that they were able to convince a
24 judge to sign a second search warrant. It is -- South
25 Carolina mandates that a search warrant shall be issued only

1 upon an affidavit sworn to before the magistrate, municipal
2 judicial officer or a judge of the court of record, and it
3 says that sworn oral testimony standing alone does not
4 satisfy the statute. We're looking exactly at what the
5 officer provided to the judge which is a statement which
6 inaccurately relays the information itself.

7 It's our position that it was reckless. It was a rush
8 in order to obtain a search warrant because it was at the end
9 of the day, and in their haste they put inaccurate
10 information in the search warrant which the judge relied on
11 in order to issue this search warrant and, therefore, we
12 would argue that this should be suppressed.

13 There is another case, if I may, Your Honor, just one
14 second... It's The State versus Jones, Supreme Court case in
15 South Carolina from 2000, and in that the facts of that were
16 the officer who was trying to get the search warrant
17 mentioned that an agent gave information to him in order to
18 secure the search warrant. It was false information included
19 in the affidavit because instead of the term "agent," he
20 should have used the word "informant." And in that regard,
21 the Court held that the evidence should have been suppressed
22 because of the false affidavit, and it circumvented the
23 affidavit requirement of the South Carolina code.

24 I also understand that this search warrant was secured
25 in North Carolina. North Carolina actually has a more

1 stringent search warrant requirement than South Carolina
2 does, and if Your Honor would care to see, I have the statute
3 for the North Carolina search warrant requirements if you'd
4 like to reference it.

5 Specifically, I take issue with: Even if the State were
6 to say that there was oral testimony given at the time to --
7 to help supplement this inaccurate information in the search
8 warrant, North Carolina search warrant requirements state
9 that: Before acting on the application of search warrant,
10 the issuing official may examine on oath the applicant or any
11 other person who may possess pertinent information, but
12 information other than that contained in the affidavit may
13 not be considered by the issuing official in determining
14 whether probable cause exists for the issuance of the warrant
15 unless the information is either recorded or
16 contemporaneously summarized in the record or on the face of
17 the warrant by the issuing official. And, therefore, I would
18 say that even if the State were to produce oral testimony to
19 try and supplement their affidavit, it shouldn't be taken
20 into consideration.

21 We would point specifically to points number 11 and 12
22 where the officer obtaining the search warrant gave
23 inaccurate information to the judge. And the judge, based on
24 number 11 and 12, issued that second search warrant which, in
25 turn, produced a gun which, in turn, is trying to be used in

1 the prosecution of my client.

2 **The Court:** All right. Well, let's hear from the State,
3 and we'll come back and let you reply, Ms. Wooten.

4 **Ms. Wooten:** Thank you.

5 **The Court:** Do you want to respond?

6 **Ms. Parker:** Your Honor, these are some complicated
7 issues and I was actually prepared to call Agent Colvard to
8 the stand, but I can kind of summarize the issues and maybe
9 there's another avenue in which the Court would rule---

10 **The Court:** Go ahead.

11 **Ms. Parker:** ---setting these search warrant issues
12 aside. I just wanted to be clear and hit on one issue
13 specifically with the second -- what happened was they got --
14 they got an initial search warrant and I think that -- there
15 was nothing wrong with that search warrant. They executed it
16 at the house and they were looking for the gun. They really
17 did not find the gun and did not find anything.

18 Agents picked up the defendant at his job early that
19 morning, as you've already heard, and took him to the county
20 jail. The defendant is on the phone in booking, and you have
21 some officers from the West Jefferson Police Department.
22 Those two have already testified, Josh Hodges in particular,
23 that they can hear him on the phone, just his side of the
24 conversation - the conversation was not recorded - telling
25 someone they can't find the blue duffle bag. Just stash it

1 in the fireplace or the chimney or somewhere, making
2 statements of that nature almost in like a panicked kind of
3 way.

4 So when that new information came to light, Agent
5 Colvard then wanted to secure a second search warrant to go
6 back to the residence and, of course, look in the fireplace.
7 He spoke with the captain of the jail and administrator at
8 the jail and got some information and then put in the
9 affidavit of his search warrant mistakenly that Sharon Price
10 had heard the defendant make that statement specifically
11 about the chimney, and that's item 12 on the -- on the search
12 warrant affidavit. That's item number 12.

13 Now, at the time that Agent Colvard put that item in the
14 affidavit -- and I don't think there was any problem when the
15 affidavit was sworn to. They met Judge McClain in the
16 parking lot. He was about to go out of town. The search
17 warrant was also supplemented with some oral testimony in
18 which they told him also these West Jefferson police officers
19 heard him talking about putting the bag in the chimney.

20 And so the search warrant was signed, and they go and
21 execute it and, of course, they find the gun in the bag right
22 where they suspected it would be. There was a paneling
23 pulled out the side of the fireplace and there was a little
24 hidden area and there was the gun inside the bag.

25 But the point that I'm trying to make is that I don't

1 think there's any issue with item number 11 in the search
2 warrant. I think item number 11 is correct. He interviews
3 -- I don't believe he got a statement from that witness he
4 relied on for item number 11 and then got inconsistent
5 information. I don't think there's any -- I don't think
6 there's any issue with item number 11.

7 I think item number 12 on the search warrant is
8 problematic because he states the name Sharon Price. Sharon
9 Price overheard the defendant talking on the phone in booking
10 and saying that -- you know, to put the bag in the fireplace.
11 That was incorrect information, but I believe that at the
12 time Agent Colvard thought that was correct information. And
13 as a matter of fact, as a procedural thing that he was doing
14 the next day, just to be complete, he was following up.
15 They're not affidavits. They're -- they're summaries of
16 phone interviews.

17 He went back the next day just to complete his file
18 after all this was over and interviewed Sharon Price, and
19 when he talked to her on the phone and during this interview
20 he learned that she did not actually hear the defendant
21 mention fireplace. So -- but at the time he thought that
22 that information was correct.

23 The point I'm trying to make to the Court is there was
24 no deliberate false statement made in obtaining that search
25 warrant, and even if you omit item number 12 from the second

1 search warrant, he did give some oral testimony to that judge
2 that the West Jefferson police officer had also heard the
3 defendant make that statement.

4 He called Sharon Price the next day and I think
5 expecting her to say that she had heard the defendant make
6 that statement. He was very shocked when he realized that he
7 had made that mistake and had inadvertently put her name in
8 the search warrant, and he was relying on some information
9 that he thought she had heard it. But I think the point is
10 that there was information coming from the jail that the
11 defendant was on the phone and he was overheard saying: Put
12 the blue duffle bag in the fireplace.

13 And I think it was just -- it was just a mistake of who
14 actually heard it, but at the time that he filled out the
15 affidavit for the search warrant and swore to the magistrate,
16 there was no intentional misleading, trying to mislead the
17 judge or to make an intentional false statement at all. And
18 I think that you have to show a reckless disregard for the
19 truth or an intentional falsehood to even get to the Franks
20 standard which is what would, you know, then open the door
21 for an evidentiary -- an evidentiary hearing on the veracity
22 of the search warrant, and I don't think -- I don't think
23 we've got it.

24 **The Court:** What about the North Carolina statute that
25 says that if there is oral testimony, it must either be

1 indicated on the face of the affidavit or it must be taken on
2 the record?

3 **Ms. Parker:** Well, it certainly was not taken on the
4 record and I don't think it was indicated on the face of that
5 search warrant that that -- that it was supplemented, but
6 Agent Colvard did clarify that and I thought was very
7 thorough in his notes and in his case file that he did
8 provide that information to the judge.

9 Setting all these issues aside, I would like to talk to
10 the Court about the doctrine of inevitable discovery because
11 it's the State's position that even if you find that the
12 search warrant was no good, you just watched the video of
13 Mark Luce interviewing the defendant, and without telling the
14 defendant that they found the gun in the fireplace -- which I
15 think at this time I think they had already found it. They
16 had already executed the second search warrant and secured
17 the gun.

18 They didn't confront him with that information, but when
19 they question him and he gives his voluntary statement, he
20 tells them where the gun is in the interview, tells them
21 exactly where it is. So I think -- I mean, inevitable
22 discovery is a recognized doctrine in South Carolina. State
23 v. Spears, which is 393 South Carolina 466, recognizes it. I
24 printed an extra copy for the Court. And also United States
25 -- of course, the Nix v. Williams case which is a United

1 States Supreme Court case that goes back to 1984 that talks
2 about the doctrine of inevitable discovery. It has been
3 adopted here in South Carolina, and all that the State would
4 have to show would be that just on the basis of the
5 preponderance of the evidence that we would have found the
6 evidence anyway through lawful means.

7 So I think the defendant's own statement -- I mean,
8 after that statement if they had not found the gun by then,
9 they, of course, would have then gone to the house and found
10 the gun, so -- because he told them precisely where it was.

11 **The Court:** All right. Thank you. Ms. Wooten, let me
12 ask you to tailor your argument -- first of all, you take the
13 position that this was false information. I'd like for you
14 to tell me whether you believe if it was just simply an error
15 as opposed to an affirmative false act, that it was just a
16 mistaken identification of the individual who had overheard
17 it. What's your position as to whether or not the law would
18 permit that search warrant to stand?

19 **Ms. Wooten:** My position under Franks v. Delaware is
20 that there's two different ones. Deliberate falsehood is
21 one. Second is reckless disregard. I would go with the
22 reckless disregard argument based on all the facts that we
23 have.

24 Specifically, they were in a rush. They were trying to
25 secure a second search warrant, and in their haste they put

1 in inaccurate information, and that does meet the Franks
2 standard for reckless disregard of the truth.

3 If I may address a few points that Ms. Parker had made.
4 As to the oral testimony, she admits that it would not meet
5 the North Carolina statutory requirement because oral
6 testimony cannot be used to supplement the written affidavit
7 unless it has certain requirements.

8 **The Court:** Well, let me ask you about that. Which law
9 applies here in Darlington County?

10 **Ms. Wooten:** Your Honor, I think that it would -- the
11 law of where it was issued would apply.

12 **The Court:** And what basis do you have for that
13 argument?

14 **Ms. Wooten:** It was issued in North Carolina, and North
15 Carolina jurisdiction would control issuance of it.

16 **The Court:** Okay. But what case law do you have that
17 stands for that proposition?

18 **Ms. Wooten:** I don't have any case law in front of me,
19 Your Honor.

20 **The Court:** Okay. Go ahead.

21 **Ms. Wooten:** However, even if the -- even if South
22 Carolina law would apply, I would still say that oral
23 testimony standing on its own cannot be used in the place of
24 an affidavit as we do have a South Carolina case on point
25 which is State versus Jones, but definitely for sure under

1 the North Carolina search warrant requirements which is where
2 these officers worked -- secured a warrant from, from a North
3 Carolina judge, it does not meet North Carolina statutory
4 requirements.

5 Secondly, I would say that Ms. Parker brought up a very
6 good interesting point about the testimony that we heard from
7 Josh Hodges, and that testimony - I will remind Your Honor -
8 he said that he sat with him. It was probably 9:30 in the
9 morning when he heard him make this phone conversation.

10 The first search warrant was obtained I believe at 11:50
11 if my -- if my search warrant is correct here. That's the
12 first search warrant. So had Mr. Hodges actually heard the
13 conversation about a blue bag in a chimney at 9:30 in the
14 morning, it would not make sense to me that that would have
15 been included in the 5:00 search warrant and not the 11:58
16 which was issued two and a half hours after the 9:30
17 statement was allegedly made.

18 So to dispute what the testimony was given -- because
19 the first search warrant was already -- had not even been
20 issued at that point. It wasn't 'til the second search
21 warrant was issued that suddenly this blue bag and chimney
22 argument comes in. As to -- are there any other issues that
23 I need to address, Your Honor?

24 **The Court:** Yes, inevitable discovery .

25 **Ms. Wooten:** Inevitable discovery. Okay. It is the

1 State's testimony from their witnesses that they believe that
2 Mr. Gardner had a partner in trying to cover up this crime,
3 and given that, it was important -- the State specifically
4 said in their notes - not the State, excuse me - the officer
5 specifically said in their notes why it was so important to
6 get that warrant before the judge left at 5:00 is because
7 they were afraid that the evidence might have been destroyed
8 or disposed of. So that was their haste in getting this
9 search warrant.

10 Mr. Gardner did not tell them where the gun was until
11 1:30 in the morning which would give it about eight and half
12 hours. If the State was correct that there was a partner in
13 crime trying to cover up something, that would have given
14 that person eight and a half hours to dispose of it in any
15 means necessary. We have no idea and we don't know whether
16 or not that gun still would have been there at 1:30 in the
17 morning, eight hours after a second search warrant was
18 secured.

19 So I would argue that the doctrine of inevitable
20 discovery should not apply because there -- even if the State
21 would say that Mr. Gardner had a potential cohort in trying
22 to cover up this crime -- and that's what they were afraid of
23 and that's why in their haste to secure a second search
24 warrant they put reckless information into their search
25 warrant affidavit upon which the judge based his decision to

1 issue a search warrant.

2 **The Court:** All right. Thank you.

3 **Ms. Wooten:** Thank you.

4 **Ms. Parker:** May I reply?

5 **The Court:** Go ahead, please.

6 **Ms. Parker:** Ms. Wooten keeps relying on the Franks
7 case. There's one quote that I really like from the Franks
8 case that I think applies here: Assumption that factual
9 showing of probable cause in an affidavit for a search
10 warrant will be truthful showing does not mean truthful in
11 the sense that every fact relied on in the warrant affidavit
12 is necessarily correct, for probable cause may be founded
13 upon hearsay and upon information received from informants as
14 well as upon information within the affiant's own knowledge
15 and sometimes must be garnered hastily, but showing is to be
16 truthful in the sense that the information put forth is
17 believed or appropriately accepted by the affiant as true.

18 I just want to submit to the Court that I think when
19 Agent Colvard acted and got that second search warrant he
20 thought he was relying on truthful information. The
21 difference with the Jones case that Ms. Wooten relied on
22 which is a South Carolina case -- and there's an appellate
23 brief from the Court of Appeals, and also the Supreme Court
24 granted cert and issued an opinion on it as well.

25 In that case that was over in Florence. The officers

1 put in the warrant affidavit that it was an agent instead of
2 a C.I., on purpose, because they didn't want to -- to alert
3 the defendant that the C.I. had been watching him. And so
4 what he did was is he lied on the face of the affidavit and
5 called the person they got the information from an agent but
6 then gave oral testimony to the magistrate basically that
7 said: Okay, I'm telling you he's not an agent; he was really
8 a C.I., but I'm doing this on the face of this search warrant
9 to protect the C.I.

10 And so I think that's what happened in the Jones case,
11 and so the South Carolina courts have held, you know -- I
12 mean, that case is just completely different because it was
13 an intentional falsehood that was put in the affidavit.

14 **The Court:** All right.

15 **Ms. Parker:** And I would just submit inevitable
16 discovery to the Court once again -- I mean, certainly with
17 this statement happening at -- in the middle of the night at
18 midnight, 1:00, I'm sure that they would have been in a
19 magistrate's office as soon as it opened the next morning or
20 as soon as, you know, reasonably possible to get another
21 search warrant to get in that house had they not already
22 gotten the second search warrant because he told them right
23 where it was at in the video interview.

24 **The Court:** All right. Any final argument -- final
25 comment?

1 **Ms. Wooten:** Just that it seemed like Ms. Parker was
2 alluding to a good-faith exception, and I would say that that
3 would be an exception for constitutional grounds and not
4 statutory grounds which is exactly what I'm attacking this
5 one on.

6 **The Court:** All right. Thank you. Just a moment,
7 please. May I see the Franks case, please?

8 (Ms. Parker hands it up to the Court.)

9 **The Court:** And may I see the affidavit, please, that
10 was handed up?

11 **Ms. Wooten:** Yes, Your Honor. I have attached it to my
12 motion.

13 (Ms. Wooten hands it up to the Court.)

14 **The Court:** Thank you. Tell me again, Ms. Wooten:
15 What's wrong with paragraph 11? What -- I know the State
16 says they believe it to be appropriate, but tell me what you
17 believe is incorrect. And do you need your copy back?

18 **Ms. Wooten:** I'm just -- I think I have it in front of
19 me. Actually, yes, Your Honor, two things. We don't have a
20 summary of the telephone conversation from Colvard as we do
21 for Sharon Price, the jailer, but what I would say is
22 specifically this: The fact that Carolyn Gentry made
23 statements about a blue bag -- she doesn't make any
24 statements about potentially where this blue bag could be
25 found, where it was hidden or any such thing which would not

1 direct the law enforcement officers to the house itself
2 specifically.

3 Standing on its own, that statement doesn't give any
4 indication as to where a blue bag might possibly be found.
5 We don't have a phone interview to follow up on to verify the
6 accuracy of that statement, and I would say basically that
7 it's possible in the haste to secure the search warrant that,
8 because we know that number 12 is inaccurate, number 11 may
9 not be as accurate as we would like for it to be. However,
10 even if taken on its face, it doesn't give you any indication
11 where a blue bag might be found, especially not a residence,
12 anybody's residence.

13 **The Court:** All right. Just a moment. All right. Here
14 the Court is asked to really balance the -- what appears to
15 be an error as to the name of a particular law enforcement
16 officer or personnel who overheard something versus what
17 appears to be the defendant's affirmative effort to secret
18 evidence by placing a telephone call from the jail which is
19 certainly -- has no expectations of privacy to an individual
20 to assist him in secreting that evidence.

21 Ms. Wooten, your position was that the agents in North
22 Carolina affirmatively falsified or recklessly made incorrect
23 the affidavit that supported the issuance of the search
24 warrant, and I decline to make that finding. I find that
25 what we have here is what appears to be an incorrect name

1 added or put into the affidavit, but that's a far cry from
2 the Jones case where there was fraud, if you wish to call it,
3 and certainly false information which appeared to make the
4 search warrant's affidavit more credible than it really was.

5 Here, what we have is a law enforcement officer's name
6 that apparently was an incorrect name, but then we heard
7 today from an officer -- law enforcement officer as well who
8 did indeed overhear the conversation. So this takes me back
9 to the situation in Franks where, as pointed out by Ms.
10 Parker, that the fact that every particular point in an
11 affidavit for a search warrant does not have to be completely
12 accurate in order for the search warrant to be valid.

13 Basically, there's a requirement that it be truthful but
14 meaning that the information put forth is believed or
15 appropriately accepted to be true. Here we have -- this is
16 not some C.I. or a confidential informant or some unknown
17 person. It's a reference to a law enforcement officer, and
18 indeed there was a law enforcement officer who overheard the
19 conversation, but there was not one mentioned in the
20 affidavit but both of which were at the jail. And I just
21 respectfully decline to find there's any fraud or shark
22 practice or reckless inaccuracy here that would render the
23 search warrant invalid.

24 Furthermore, I have to accept that the argument -- I
25 find it meritorious that there was going to be inevitable

1 discovery here. It would be different if Investigator Luce
2 had used the finding of the weapon as a club and wielded that
3 during the investigation which then broke the will of the
4 defendant, but that's not what happened. He did not confront
5 the defendant with that information, and ultimately the gun
6 was found in the place where it was anticipated that it would
7 be.

8 The defendant came forward with that information in the
9 statement and, thus, I believe ultimately the evidence would
10 have been discovered. So for these -- for those multiple
11 reasons, I'm going to deny the motion to suppress the weapon.

12 Now, are there any further issues that we need to take
13 up before we conclude these proceedings for the day? From
14 the State?

15 **Ms. Parker:** I just wanted to ask on the record was Ms.
16 Wooten going to have an objection -- the defendant gave four
17 previous statements to law enforcement that -- he was not in
18 custody or anything, but he gave four previous statements to
19 the sheriff's office. Is she going to have any objection to
20 the admission of those tomorrow when the State begins the---

21 **The Court:** Let me -- just to make sure I understand.
22 The four statements that involve his guilt or innocence in
23 this matter? Is that what you're saying?

24 **Ms. Parker:** Just four previous statements to the
25 sheriff's office. We were going to put all of his statements

1 in before the jury to show a progression I guess of how the
2 story changed.

3 **The Court:** Okay. But just to make -- again, I'm sure
4 we're trying -- are these oral statements or this is some
5 written document or a videotaped document?

6 **Ms. Parker:** Three are video. Three additional video
7 statements.

8 **The Court:** So this we saw today was the fourth
9 statement?

10 **Ms. Parker:** Yes, sir, and the only one she had filed a
11 motion against. So he was not in custody with those three
12 previous statements and no arrest had been made.

13 **The Court:** All right.

14 **Ms. Parker:** He just voluntarily came into the sheriff's
15 office and they questioned him.

16 **The Court:** Okay. On the same day that this occurred?

17 **Ms. Parker:** No, sir. He gave a statement on June 24th,
18 June 28th, January 17th, and then this statement occurred in
19 March that the Court saw today.

20 **The Court:** I see. All right. Well, Ms. Wooten, do you
21 have a position on that?

22 **Ms. Wooten:** I am not going to have an objection as to
23 the previous statements other than, of course, I'll renew my
24 objection to the March 30th statement.

25 **The Court:** All right. Very good. So noted. You have

1 your answer.

2 **Ms. Parker:** Okay. And we'd also stipulated that the
3 defendant was competent, and so I didn't know if we needed to
4 mark the evaluation from the Department of Mental Health as a
5 Court's exhibit. I just wanted to put that on the record
6 that we previously discussed it, and you said you'd stipulate
7 to his competency. There would be no objection. If we could
8 make the evaluation a Court's exhibit.

9 **The Court:** All right. Is there a Blair issue?

10 **Ms. Wooten:** His competency is not an issue today.

11 **The Court:** All right. Do you wish for me to discuss
12 that matter with the defendant, Ms. Wooten?

13 **Ms. Wooten:** I think it would be best, Your Honor, yes.

14 **The Court:** Okay. Let's do this. Then, Mr. Gardner,
15 would you please just stand where you are and accept the oath
16 of a witness from our clerk?

17 Eugene "Tripp" Austin Gardner, III, after being
18 duly sworn, testified as follows in camera:

19 Examination by the Court

20 Q. How are you, sir?

21 A. I'm fine.

22 Q. All right.

23 A. Could be better.

24 Q. Very good. Are you currently in custody at the
25 Darlington County Detention Center?

1 A. Yes, sir.

2 Q. How long have you been there, sir?

3 A. Twenty months.

4 Q. All right. Can you tell me: What was the bond that you
5 were given when you were initially arrested?

6 A. 150.

7 Q. \$150,000 surety?

8 A. Yeah.

9 Q. All right, sir. And you've been unable to meet that
10 bond at any time during your incarceration?

11 A. Yes, sir.

12 Q. All right. How long have you been working with Ms.
13 Wooten as your lawyer?

14 A. November is when I first met her.

15 **Ms. Wooten:** Of 2012, Your Honor.

16 **The Witness:** Yes, sir.

17 By the Court:

18 Q. All right. So this has been more than a year?

19 A. Yes, sir.

20 Q. All right. And let me ask you, Mr. Gardner: Are you
21 satisfied with her services---

22 A. Very much.

23 Q. ---to this point? And have you understood the various
24 things she's explained to you about where you find yourself?

25 A. Yes, sir.

1 Q. All right. And tell me what part -- what pod are you in
2 at the detention center?

3 A. A.

4 Q. And now that this trial has occurred, have you had a
5 change of custody at any of the pods now that you're on
6 trial?

7 A. No, sir.

8 Q. So you've been in A. throughout the entire---

9 A. Yes, sir.

10 Q. ---time? All right, sir.

11 A. Well, I was in B. one time. They moved me back to A.

12 Q. All right. Can you tell me today's date, Mr. Gardner?

13 A. Sir?

14 Q. Can you tell me what today's date is?

15 A. The second of December.

16 Q. Okay. And the year?

17 A. 2013.

18 Q. All right, sir. I asked you a series of questions about
19 your incarceration before you got here and about this
20 proceeding today. Did you understand the questions that I
21 asked you?

22 A. Yes, sir.

23 Q. All right, sir. Do you have anything further that you
24 wish to say?

25 A. No.

1 Q. All right, sir. I'll let you be seated. Very good.
2 Thank you. All right. I've had the benefit of speaking with
3 Mr. Gardner clearly. That occurred here on the record. I
4 find that he's certainly oriented to person, time, and place.
5 He has an understanding of the things that counsel has
6 explained to him today. His responses were indeed
7 responsive; they were cogent.

8 I don't see any issues here that would give the Court an
9 indication that Mr. Gardner is not competent and, thus, I
10 find that he is competent to proceed. I didn't ask you: Mr.
11 Gardner, are you taking any kind of medication now, sir?

12 A. Yes, sir.

13 Q. Tell me what meds are you taking.

14 A. Blood pressure, gout. I'm not quite sure.

15 Q. All right, sir.

16 A. My wife usually takes care of that.

17 Q. Very good. Are you getting those medicines at the jail?

18 A. Yes, sir.

19 Q. All right, sir. And I heard earlier a reference to
20 depression. Have you ever been diagnosed with depression?

21 A. Yes, sir.

22 Q. All right, sir. Are you taking any medications for
23 depression at this time?

24 A. No, sir. No, I don't think so.

25 Q. Okay. How long has it been since you've had any

1 medications for depression?

2 A. Right before I got in -- in custody.

3 Q. Okay. What medication were you taking at that time?

4 A. I'm not sure.

5 Q. Okay. Very good. Thank you.

6 A. Xanax? Is it Zexpro (phonetic)? I'm not sure. I'm not
7 sure, sir.

8 **The Court:** All right. Thank you. Very good. All
9 right. And that further discussion has not changed the
10 Court's opinion. Is there anything further on this issue
11 from the State?

12 **Ms. Parker:** No, sir.

13 **The Court:** And let's mark -- if you have a previous
14 report, let's mark it as a Court's exhibit.

15 (Court's Exhibit 6 was marked for identification only.)

16 **The Court:** Court's Exhibit 6 then in evidence for
17 purposes of this hearing and for the trial tomorrow. All
18 right. Thank you. Anything further then, Ms. Wooten, before
19 we end these proceedings for the day?

20 **Ms. Wooten:** No, Your Honor.

21 **The Court:** All right. Just one moment. All right.
22 Ladies and gentlemen, sometime ago we set a -- of course, not
23 really knowing what the circumstances would be, we set a
24 motion to suppress in a Chesterfield case tomorrow morning at
25 9:30, and it will not take more than 30 minutes. That's why

1 I told the jury we would begin at 10.

2 So what I would ask us all to do here is to be in place
3 and ready to go by 10. I want to start promptly with the
4 jury at 10, but this court will be -- begin proceedings in
5 another case tomorrow morning at 9:30, and we will recess
6 then until 9:30.

7 (Whereupon, the trial concluded for the day at 4:57 p.m.
8 and resumed the following day, December 3, 2013, as follows.)

9 **The Court:** Thank you. Please be seated. All right.
10 Mr. Medlin, I'm told that the jury is present and ready.

11 **Bailiff:** Yes, sir.

12 **The Court:** And please bring in the jury.

13 **Bailiff:** All right.

14 **The Court:** Thank you.

15 (Whereupon, the jury was brought into open court at
16 10:09 a.m.)

17 **The Court:** Ladies and gentlemen of the jury, welcome to
18 the courtroom. I trust you had a nice evening since we were
19 last together, and thank you for coming back on time. I had
20 told you we would beginning at 10 this morning. As you can
21 see, we're approximately 10 minutes late and I regret that,
22 but we were making some last-minute arrangements with
23 evidence and other matters so that we could go forward in the
24 case. Thank you for your patience. We know your time is
25 valuable and important.

1 We're going to begin this trial with you accepting the
2 oath as jurors in this specific case. Please follow our
3 clerk's instructions.

4 (Whereupon, the jury was sworn at 10:10 a.m.)

5 **The Court:** All right. Let's let the record reflect
6 that all of our jurors are seated now; thus, all have taken
7 the oath. And, ladies and gentlemen, let me ask: Since we
8 were last together, is there any member of this jury panel
9 who has had a discussion about the facts of this case with
10 anyone? If that applies to you, please raise your hand.
11 Let's let the record reflect no one has raised their hand,
12 and thank you again for complying with the Court's request in
13 that regard.

14 What I'd like to do now is begin this trial with what I
15 call the introduction to the trial of a criminal case. This
16 is a few comments that I believe you need to know at the
17 start of the case. This is not intended to take the place of
18 a more detailed charge on the law that I'll give you at the
19 end of the case. Again, these are a few things we need to
20 know going into the case.

21 First of all, this is a criminal case, as we discussed
22 yesterday, and the case is commenced by an indictment which I
23 had in the courtroom yesterday, and the indictment alleges --
24 the State alleges against the defendant, Eugene Austin
25 Gardner, III, that he has committed murder in Darlington

1 County, and these are the allegations against the defendant.

2 Now, please understand that this piece of paper is
3 simply that: It is a set of allegations. It is not to be
4 accepted as evidence because it's not evidence. It's not to
5 be accepted as the truth automatically because whatever the
6 truth is is going to be -- is going to come from the
7 witnesses and the exhibits in the trial, not because it says
8 something on a piece of paper.

9 So please understand that the defendant pled not guilty
10 to these charges, and even if the defendant had not entered a
11 plea, he is presumed innocent of these charges, and the State
12 has the burden of proving each of the essential elements of
13 this charge against the defendant beyond a reasonable doubt.

14 I will tell you that one of the traditions in our
15 courtroom is that the party with the burden of proof sits
16 closest to the jury, and if you'll look in the courtroom
17 arena you will see that the State, the prosecution, is seated
18 at the table closest to you, and throughout this trial they
19 will not change places with the defendant. The State will
20 retain the burden of proof throughout this trial, and the
21 purpose of this trial to determine whether or not the State
22 can meet the burden and it is a high burden of proving that
23 the defendant is guilty beyond a reasonable doubt. And the
24 defendant is presumed innocent throughout this trial unless
25 and until the State can prove the elements of this charge,

1 each and every one, beyond a reasonable doubt.

2 So now that we understand that very basic component,
3 let's talk about our roles in this trial. And let me first,
4 if I may, speak about my role. I'll be the presiding officer
5 which means I'll be the judge of the law here in the
6 courtroom. And so if there's a question about the law or if
7 there's some dispute on an evidentiary matter, well, I'll
8 resolve that during the course of the trial, and then at the
9 end of the case I'll give you the South Carolina law on
10 the -- that apply to these charges. Now, that's my role.

11 But your role is more important than that. Your role is
12 that you are the judges of the facts. While I'm the judge of
13 the law, you are the judges of the facts. So what that
14 really means is that you will listen to the testimony of the
15 witnesses and this is why you'll sit where you are and the
16 witnesses will come sit right where they are, and you'll
17 review the exhibits and from that you will decide what the
18 facts are, and you will apply those facts to the law that I
19 give you, and that's how, working together, we'll reach a
20 verdict in this case.

21 Now, I will tell you: Just like you, I've not heard the
22 evidence in this case, but I know from many years of
23 experience here in the courtroom that in trials, whether it's
24 civil or criminal, we'll have witnesses that may take the
25 stand and say things that seem sometimes inconsistent and

1 sometimes absolutely mutually exclusive and cannot be
2 reconciled.

3 I'm not telling that you someone is going to be
4 dishonest with you. That's for you to decide, but I think we
5 all know from human experience that when people observe an
6 event or something happens that you'll hear descriptions of
7 that event that are so varied, you wonder: Is this the same
8 event everyone is talking about? Because peoples'
9 perceptions are different.

10 So if we have testimony that seems inconsistent or
11 mutually exclusive, you as the judges of the facts must
12 decide which of the witnesses are more believable and
13 credible in order to decide what the facts are. Now, while
14 that sounds a little bit complicated, it's really not because
15 if you think about it, it's something that we do all day
16 every day with people with whom we speak, whether they're an
17 adult, a child, a friend, or a stranger. We gauge those
18 individuals for credibility and believability of what they're
19 telling us. And so you should employ those same factors you
20 use in everyday life and everyday commonsense in deciding who
21 is credible and who is believable if we have inconsistent
22 evidence.

23 But some other factors you may want to look to here in
24 the course of the trial -- I tell you this now so you can
25 observe the witnesses and ponder these issues while the

1 witnesses are testifying. What is the demeanor of the
2 witness while they're testifying? Is it hesitant? Is it
3 straightforward? What is the ability of that witness to know
4 what they're in here testifying about?

5 Is the witness' testimony consistent with itself? Is it
6 weakened or strengthened by other evidence in the case, and
7 in light of the global evidence in the case how reasonable is
8 what that witness is saying? And then, finally, might there
9 be a reason a witness would want to help or hurt one side or
10 the other of the case? Might that witness have a bias or a
11 prejudice? These are some things you should consider while
12 the witnesses are testifying.

13 All right. Now that we've discussed that, let's talk a
14 little bit about our procedure. When I conclude these
15 comments to you in just a moment, both sides of the case,
16 lawyers for the State and the defendant, will come forward in
17 opening statement. An opening statement is not some big,
18 persuasive event like you might perceive from watching
19 television. It's an opportunity for the lawyers to tell you
20 what they believe the evidence will or will not show and what
21 the law is in South Carolina, if they wish to discuss that.
22 And after both sides have opening statement, then we'll
23 proceed into the State's case.

24 The State has the burden of proof; the State goes first.
25 The State calls their witnesses one after another, and every

1 time the State calls a witness, that witness is subject to
2 direct examination by the prosecutor and cross-examination by
3 defense counsel. And I tell you that because the rules are a
4 little different for cross and direct examination. You may
5 see that during the course of the trial. And we take the
6 State's witnesses one after another in that fashion. Then
7 the State rests after they've called all their witnesses, and
8 then the defendant, who has no burden of proof, not required
9 to put up a case, not required to call witnesses, not
10 required to testify, but if the defendant wishes to put up a
11 case, then the defendant may do so at that time, call their
12 witnesses one after another which will be subject to direct
13 examination by defense counsel and cross-examination by
14 State's counsel.

15 Then all the testimony closes. The lawyers come before
16 you in closing argument which is an opportunity for the
17 lawyers to argue persuasively to you as to what they believe
18 evidence has shown. I give you the charge on the law. You
19 retire to deliberate. In a nutshell, that's how this process
20 is going to work.

21 Now, a couple of other things I want to tell you before
22 I close these comments. I usually go about an hour and a
23 half or so before we take a break, but that's not set in
24 stone. It depends on where we are with a particular witness
25 or what's happening in the courtroom. And I don't want you

1 worried about it, watching the clock for that. Of course,
2 it's hard for you to watch the clock in this courtroom
3 because it's behind you on the wall, but I will say to you
4 that if you need to take a break before we reach a break
5 point, please raise your hand. I'll understand what that
6 means. We'll stop immediately and we'll take a break, no
7 questions asked.

8 I do that for two reasons. Number one, you are giving
9 your time or just about giving it for a very high and
10 important civic duty and an important public responsibility.
11 I want you to be comfortable about what you're doing. But,
12 secondly, I don't want you worried about something else. I
13 want you to be able to listen to the testimony and decide
14 what the facts are when you retire to deliberate.

15 Now, when we do take a break, please don't go back among
16 yourselves and discuss the case. It would be inappropriate
17 to do that. You should not discuss this case until it's
18 given to you for deliberations at the end of the case, and
19 the reason for that is this: If we took one witness or maybe
20 just the direct examination of a witness, took a break, went
21 back, and the jury made some preliminary decision that drove
22 the rest of the case, that would be unfair. And so please
23 don't discuss the case among yourselves or with anyone until
24 it's given to you for deliberations. Then and only then
25 should you discuss it.

1 Now, a couple of other thoughts: We operate this
2 courtroom on a system of rules that we call the rules of
3 criminal procedure and the rules of evidence. And when one
4 side or the other thinks the other is breaking those rules,
5 well, they call that to our attention by an objection. Just
6 like you're sitting over there minding your business, I'm
7 doing the same over there. I don't know what the objections
8 are or when they're going to come, but when they do, I rule
9 on them based on my training of South Carolina's procedural
10 and substantive law, my understanding of South Carolina law,
11 my experiences as a judge for many years in the courtroom and
12 as a lawyer before that.

13 But never do I rule on some issue before me to somehow
14 send you a message about how I feel about a particular issue
15 because please understand: I don't have a position on the
16 facts. If I did, I'd be invading your province. You are the
17 judges of the facts, not me. And so please take no inference
18 from any rulings the Court may make during the course of the
19 proceeding other than the fact there was some issue that
20 needed to be decided and was decided at that time.

21 Now, the last thing I want to mention to you is when the
22 lawyers come before you in just a moment in opening and then
23 at the end of the case in closing, you'll notice that the
24 lawyers are not under oath and they're not under direct and
25 cross-examination. The lawyers are advocates for the parties

1 here, so what the lawyers tell you in opening and closing is
2 not evidence.

3 The evidence is what the witnesses say. They're the
4 ones who are under direct and cross-examination and under
5 oath, and the evidence is what the exhibits show. And any
6 exhibits placed in the record you'll have with you in the
7 jury room when you retire to deliberate.

8 So I'm not telling you the lawyers are going to be
9 dishonest with you; please don't misunderstand me. I'm just
10 simply saying: Please appreciate the distinction between a
11 lawyer's argument and the evidence in the case.

12 Ladies and gentlemen, I look forward to working with
13 you. At this time the Court recognizes the State's counsel,
14 prosecution, for opening statement.

15 **Ms. Parker:** Thank you, Your Honor. May it please the
16 Court?

17 **The Court:** Yes, Ms. Parker.

18 **Ms. Parker:** Ms. Wooten, Mr. Jones. Good morning. Let
19 me get some things out of the way for just a second. Ladies
20 and gentlemen, I wanted to talk to you this morning about a
21 thing called greed. Greed is a powerful thing and it's a
22 very powerful force. Greed will eat somebody up from the
23 inside out. Greed will, once it overcomes you, will drive
24 someone to do the unthinkable, to do the unimaginable and,
25 ladies and gentlemen, that's why we're here this week because

1 the defendant sitting over there at that table did the
2 unthinkable and did the unimaginable when he shot and killed
3 his brother on June 21st, 2011. There was a single -- the
4 evidence in this case will show there was a single bullet
5 wound to the back of the head.

6 Now, I believe that the State's case will paint a very
7 clear picture of what things were like before the victim's
8 death - his name was Todd Gardner - before Todd's death.
9 Before Todd's death, Todd was the caretaker of their father.
10 Todd lived with his father, and Todd's name was on the
11 checking account.

12 After Todd's murder, the defendant became the caretaker
13 of their father. The defendant moved their father down to
14 the beach where he was living and lived with his father, had
15 his father move in with him. The defendant got power of
16 attorney over his father and began to get access to the
17 money. And, ladies and gentlemen, the State through the
18 evidence and through the testimony this week will show that
19 that's what the defendant had to benefit from murdering his
20 brother.

21 But this case is about so much more than just how he
22 benefitted. I want to talk to you a little bit about the
23 evidence in this case. You will hear from witnesses. First
24 off, you'll hear from Susan Gardner who is the ex-wife of the
25 deceased, the victim in this case, and on June 21st, 2011,

1 she couldn't find him. He didn't answer his cell phone. He
2 didn't show up at church, and so she goes by the residence
3 where he was living. And with her children in the car, she
4 goes in the back door and she finds her husband, the father
5 of her children, dead and lifeless on the kitchen floor in a
6 pool of blood with a bullet wound to the back of the head.

7 Law enforcement responds, and you'll hear all about law
8 enforcement's involvement and how initially with an
9 investigation they will cast the net wide, so to speak.
10 That's what I like to call it: They cast the net wide. They
11 try to gather as much information as possible. They question
12 people in the community. They try to come up with some
13 leads. They try to figure out and piece together what could
14 have happened. Were there any eyewitnesses?

15 And, ladies and gentlemen, in this case there are two
16 things that I want you to remember as you hear law
17 enforcement witnesses testify this week, two things about
18 that crime scene. One, there was no forced entry and, two,
19 there were valuable items left behind in the residence.

20 So early on, after speaking with members of the
21 community, after exhausting a lot of ideas and possibilities,
22 their investigation turns inward, and what I mean by that is
23 they began to consider maybe Todd, the victim in this case,
24 knew his murderer. Maybe he let them in the house; maybe
25 this was personal.

1 And after they began to look and consider that it was
2 personal, you'll hear law enforcement testify about how they
3 obtained phone records and they obtained the phone records of
4 the victim and they noticed the pattern and they see who was
5 calling him that day on the date of his death. And then they
6 obtained the phone records of the defendant seated over there
7 at that table, and it doesn't take them long to figure out
8 that the defendant was in the area of Mechanicsville here in
9 Darlington County on the day of the murder as well as the day
10 before the murder.

11 Early on they talk to Tripp. That's the defendant's
12 name. His name is Eugene Gardner. He's commonly -- will
13 commonly be referred to throughout the course of this trial
14 as Tripp. Early on they talk to Tripp, and they try to
15 gather some information from him and get some information.

16 Well, very early on they see that what he's saying
17 doesn't add up and doesn't check out. He maintains that he
18 did not come to Darlington County at all on the day before
19 the incident, and he maintains that on the day of the
20 incident he and his brother had a meeting and were supposed
21 to go to HealthSouth to meet with nurses and staff there
22 about their father's care. And he states that on the day of
23 the murder he drives to HealthSouth, and I don't know if
24 you're familiar but that's the rehabilitation center that's
25 right across the road from McLeod over in Florence.

1 But on the day of the murder he goes to HealthSouth and
2 then he goes straight back home, and at the time he was
3 living in the Myrtle Beach area in Horry County. But the
4 phone records showed otherwise.

5 Throughout the course of this investigation, law
6 enforcement talks to the defendant several times, and each
7 time - time and time and time and time and time again - he
8 maintains that simple story: That he stayed home sick the
9 day before the murder and that on the day of the murder he
10 only went to HealthSouth. He did not go to Todd's house.
11 And only when he's confronted -- and this investigation
12 continues for over nine months.

13 Only in the very end of the investigation when he is
14 confronted with the fact that the police not only had his
15 phone records to show he was calling his brother but actually
16 had the positioning of what towers he was pinging - I call it
17 pinging - what towers he was hitting off of so that they knew
18 his actual physical location -- only when he was confronted
19 with that information did the defendant then begin to give a
20 different story.

21 And, ladies and gentlemen, you'll hear all of these
22 interviews that the defendant gave law enforcement, but the
23 final -- in the final interview the defendant concedes that
24 he did go to his brother's house on the day of this murder.
25 He went to the house, and you'll hear his story and he

1 explains the situation where he claims that the gun
2 accidentally went off and that it was an accidental death.

3 Ladies and gentlemen, the State, through testimony and
4 through evidence, intends to show that the meeting they were
5 supposed to have at HealthSouth was not a prescheduled
6 meeting or an appointment or a necessary meeting that the
7 staff at HealthSouth had scheduled. This was an encounter
8 that the defendant had arranged, and I believe the evidence
9 will show that the defendant had made a phone call to
10 HealthSouth to tell them that he was stopping by that day.

11 Ladies and gentlemen, as you hear the witnesses in this
12 case, I want you to pay attention to little details like that
13 that towards the end of this case the State will argue that
14 there was premeditation, that this was a well-executed plan
15 on the part of the defendant to have a reason to come to
16 Darlington County that day or to have a reason to come to the
17 area that day to meet him at HealthSouth, and then he follows
18 up with all these phone calls to his brother because what
19 he's doing is he's creating a plan so that when law
20 enforcement talks to him, his story can be verified. And I
21 want you to pay attention to the little details like that
22 that the State's theory believes leads to premeditation.

23 Ladies and gentlemen, the victim in this case was shot
24 with his own gun. It was a nine millimeter that was used,
25 and that nine millimeter was found in the possession of the

1 defendant. He was trying to hide it; he was trying to cover
2 it up. And the testimony and the evidence will show that he
3 had actually reported that firearm missing from the
4 residence.

5 He knew his brother owned a nine millimeter, and he told
6 police after the murder that that gun was taken, that he
7 couldn't account for it, that it was lost, and the police
8 even put it in the national database as a stolen firearm. It
9 was in his possession the whole time, and law enforcement --
10 we'll show through evidence and testimony that law
11 enforcement found that gun hidden in a very secretive
12 compartment or area of the fireplace where the defendant was
13 living at the time of his arrest in North Carolina. And
14 through ballistics evidence and firearm experts, the State
15 intends to show that that was the murder weapon that was used
16 to kill Todd Gardner.

17 Ladies and gentlemen, there's some important pieces --
18 some point important things I want you to pay attention
19 throughout the duration of this case, and I identified five
20 things that I want you to pay attention as the witnesses
21 testify, and look for a preplanned -- a premeditated plan
22 that was executed when he murdered his brother and then this
23 case is also about money.

24 After the power of attorney was obtained, the evidence
25 will show there was a large amount of his father's money that

1 was spent, money that he gained access to after he killed his
2 brother. That's number two.

3 Three, I want you to look, as each interview is played
4 and as each witness testifies, to look for little tidbits of
5 things that the defendant tried to say to -- that I think
6 show to a cover-up. He tells law enforcement about things
7 that he thinks that were going on. He's trying -- he's
8 leading them to different possibilities of who else might
9 have done this.

10 And, four, I think this case is about a gun that was
11 found in North Carolina in a chimney and, five, finally, and
12 one of the most important things that I want you to think
13 about is this case largely is in part and relies on -- and
14 the big part of it is the defendant's statement in North
15 Carolina, his confession, when he finally after nine months
16 changes his story and tells law enforcement: Yeah, I was at
17 my brother's house. Yeah, I did fire the gun, but it was an
18 accident. And I want you to take all those things into
19 consideration as you listen to the evidence in this case and
20 the testimony in this case, and I just ask you to pay
21 attention and use your common sense.

22 I want to touch on briefly this morning on the concept
23 of reasonable doubt, and that's the standard of proof here in
24 criminal court. We have to prove that defendant over there
25 is guilty beyond a reasonable doubt. The judge told you

1 yesterday: That indictment is just a piece of paper. It is
2 just a charge. It is just an allegation, but the State -- we
3 have to prove to you that he killed his brother beyond a
4 reasonable doubt for the offense of murder, for the
5 premeditated offense of murder.

6 Ladies and gentlemen, that's an honor that myself and my
7 coworker that we bear proudly. Reasonable doubt is what
8 makes our country different from other countries in the
9 world. It's what makes our country a free state instead of a
10 police state. We can't just be thrown in jail without good
11 evidence or good cause or a showing, and in our country we
12 have to be tried in front of our peers. And so I submit to
13 you this morning that we'll have no problem with reasonable
14 doubt, once you've seen and heard all the evidence in this
15 case.

16 And I've talked a lot about the evidence, and I want to
17 touch on briefly about the different types of evidence you're
18 going to hear. Generally, in criminal law there are two
19 types of evidence. There's direct evidence and there's
20 circumstantial evidence. Direct evidence is just that: You
21 have direct knowledge of what's occurred. If you go outside
22 and it's a shower of rain and you stand outside in the rain
23 and you look at the rain and the rain touches your face and
24 you see and you feel and you know that it's raining because
25 you observed it, that is direct evidence.

1 Circumstantial evidence is different in the fact that
2 circumstantial evidence, with that same analogy, would be
3 that you walk out your front door and there's puddles of
4 water and the grass is wet and there's water everywhere and
5 that smell is in the air, and so you can assume and you can
6 infer that it rained. That's circumstantial evidence.

7 Ladies and gentlemen, I just wanted to point out to you
8 this morning that what circumstantial evidence is not is some
9 crazy conclusion. If you go outside your house and there's
10 water everywhere and there's mud puddles, you know, an insane
11 or unreasonable explanation for that would be that aliens
12 stopped by and dumped buckets of water from their spaceship
13 out into your front yard. That's not reasonable.

14 So I want to urge you this week and this morning to use
15 your collective common sense. All of you come into this
16 thing with different life experiences. You've dealt with
17 children; you've raised children. You've dealt in marriages.
18 You've dealt with people on your job, different educational
19 backgrounds, and you all bring to the table a different
20 experience, but collectively you all possess your common
21 sense.

22 And this morning when you drove up to the courthouse,
23 you parked your car either in the square or in one of these
24 parking lots and you left your car in the square, but you
25 didn't leave your common sense down in the parking lot. You

1 brought it upstairs with you, and I want you to think about
2 that as you listen and hear all the testimony and all the
3 evidence and all the different things you'll hear this week.

4 Use your common sense. What's reasonable? What makes
5 sense? And finally -- and I don't know if I mentioned this
6 previously, but my name is Patti Parker. I work for the
7 solicitor's office. My coworker, John Holt, is seated over
8 there at that table. He's going to be prosecuting this case
9 with me, and we look forward to working with you this week
10 and I just thank you in advance for your attention.

11 This is not easy. This is a huge task that has been
12 placed in your lap to decide the guilt or the innocence of a
13 man, and you took an oath to listen to the evidence and to
14 apply the law, and that's a difficult thing to do.

15 And this isn't like T.V. and it's not as glamorous and
16 as exciting and interesting as some of the law shows that you
17 might see on T.V., and I apologize for that in advance.
18 Sometimes it's even a little boring, but I just thank you in
19 advance for your attention. And, ladies and gentlemen, at
20 the conclusion of this case, me and my co-counsel are going
21 to ask you that once you've heard all the facts and
22 considered all the evidence that you find the defendant,
23 Tripp Gardner, seated over there at that table, guilty of
24 murder, of murdering his brother. Thank you.

25 **The Court:** And now for the defendant.

1 **Ms. Wooten:** May it please the Court?

2 **The Court:** Yes, Ms. Wooten.

3 **Ms. Wooten:** Mr. Holt. Ms. Parker. Good morning,
4 ladies and gentlemen. What happened on June 21st, 2011, was
5 a tragedy. A man's life ended that day, but it was an
6 accident. On June 21st, 2011, my client, Mr. Tripp Gardner,
7 went to his little brother's house. He was going there
8 because the two of them were going to go to Florence to talk
9 about their father's healthcare and how he should be treated
10 and possibly extending his stay at the rehab facility.

11 Tripp went in broad daylight. He got out of his car. I
12 believe a neighbor was driving by at the time. He entered
13 his little brother's house, Todd's house, and when he went
14 into the house he saw many things at once. He saw the
15 general state of disrepair of the house, how it usually was.

16 He saw his brother sitting in an easy chair not dressed
17 for the meeting, and then he saw a gun sitting on the table
18 right next to his brother. You're going to hear testimony
19 about Todd, the little brother's battles with depression, and
20 the first thing that went through Tripp's mind was fear and
21 concern for his brother.

22 They had a brief conversation. They had a brief
23 struggle, and the gun went off. And it was an accident, and
24 an accident is not a crime.

25 What happens next, however, is what brings Tripp here

1 before you. He made two very, very poor choices. First, he
2 didn't call 9-1-1., Second, he lied to the police, and he
3 lied and he lied and he lied, and the State is going to
4 provide evidence of that and that is all true.

5 You're going to hear reasons why he did what he did and
6 why he didn't call 9-1-1, why he lied to the police, and it
7 may not be a choice you or I would have made at the time, but
8 from Tripp's point of view he was doing the best he could to
9 protect his family.

10 The judge has already told you that the State has the
11 burden of proving Tripp Gardner guilty of murder and that is
12 true. They sit right next to you during the duration of the
13 trial. They speak to you first. They put on evidence first.

14 Tripp doesn't have to do or say anything. He is an
15 innocent man. He sits before you innocent. He remains
16 innocent up until and only if all of you find him guilty of
17 every element of the crime of murder.

18 We live in America, one of the greatest countries in the
19 world. Our criminal justice system is modeled across other
20 countries because we have a system where my client is
21 innocent and he doesn't have to do or say or prove his
22 innocence to you whatsoever. It is the State's burden and
23 only their burden to prove to you that a crime has been
24 committed.

25 Ms. Parker talked a little bit about reasonable doubt.

1 We're going to talk about that. The judge is going to
2 instruct you at the very end, but what I want to have you put
3 in your mind is reasonable doubt is a doubt which makes you
4 pause. It's a doubt which makes you go, "Hmmm."

5 Now, we all have jobs here today. Mr. Holt, Ms. Parker,
6 they work for the government, and they're here to prosecute
7 the case. I myself, I'm Julie Wooten. I work for the public
8 defender's office. Seated over there at the table is also
9 Mr. Rick Jones. We're public defenders, and our job is to
10 advocate for our client.

11 The judge sits and rules on issues of law. The court
12 reporter will take down every word everybody says to make
13 sure we have an accurate record, but you, each one of you
14 here today, has the most important job because you get to
15 decide what the truth is. You get to decide the facts of
16 this case.

17 The State is going to try to explain why to you. That's
18 their most important job I would say here is to try to give
19 you a reason why, why this could have happened, why Tripp
20 could have done this. They're going to give you theories
21 about money. They're going to give you theories about greed.
22 They're going to give you possibly theories about fighting,
23 but here's the truth: When you hear all the evidence, there
24 is no why. It was an accident.

25 When you've heard all of the evidence here over the next

1 couple of days and you've listened to the witnesses and you
2 have a chance to weigh it all out, there is only one possible
3 conclusion you can come to and that is not guilty. The
4 tragedy that happened on June 21st, 2011, was horrible, but
5 it was not a crime. So we ask that you, when you find my
6 client not guilty, send him home to heal and help rebuild his
7 family. Thank you very much.

8 **The Court:** Madam Solicitor, please call your first
9 witness.

10 **Mr. Holt:** Your Honor, at this time the State would like
11 to call Susan Gardner to the stand.

12 **The Court:** All right. Ladies and gentlemen, I should
13 tell you that the witnesses have been sequestered, meaning
14 that before they testify they are not permitted to come in
15 the courtroom. So we'll have to send for the witnesses when
16 we bring them in. They're not all together. We have one
17 side of witnesses in one room and the other side in the
18 other, but they're not in the courtroom. Thank you.

19 Susan Gardner Davis, after being duly sworn,
20 testified as follows:

21 Direct Examination

22 By Mr. Holt:

23 Q. Hey, Ms. Gardner. Could you please give your whole name
24 for the jury and the court reporter?

25 A. Susan Gardner Davis.

1 Q. All right. And how old are you?

2 A. Forty-two.

3 Q. And where are you from?

4 A. I'm actually from Darlington, but I recently relocated
5 to Clinton, South Carolina.

6 Q. All right. And what do you do for a living?

7 A. I'm a special education teacher.

8 Q. Where do you teach at?

9 A. At Eastside Elementary School in Clinton.

10 Q. All right. And about how old were you when you started
11 dating Todd?

12 A. Seventeen.

13 Q. And about how long did y'all date before you got --
14 about what time did you get married?

15 A. I was about 23. We dated and were engaged for about six
16 or seven years.

17 Q. All right. And when you were married, how many children
18 did you have?

19 A. We have three. Minor is 14, and we have twin girls
20 that are seven.

21 Q. All right. Now, during those 12 and a half years that
22 y'all were married roughly, did you have occasion to live
23 near Tripp?

24 A. We did. We all lived on family land near each other.

25 Q. When you say you all lived on family land, who do you

1 mean?

2 A. Todd and myself lived across the field from his parents,
3 and then Tripp and Renee lived right down a dirt road near
4 our house.

5 Q. Now, during those 12 and half years, did you have
6 occasion to see how Tripp and Todd interacted?

7 A. I did, especially because we dated and were married.

8 Q. Now, how would you describe their relationship from what
9 you witnessed personally?

10 A. It was very up and down. Todd always wanted Tripp's
11 approval and looked up to him as a big brother, but he didn't
12 agree with a lot of things that Tripp did. And Tripp would
13 often get upset with Todd about things. You know, he wasn't
14 doing good enough. He wasn't helping his parents enough.
15 And several occasions, you know, he called or would come up
16 to the house yelling and carrying on with Todd about things
17 that he wasn't doing right.

18 Q. What do you think prompted those occasions when Tripp
19 came up and yelled at Todd?

20 A. He didn't think Todd was doing enough for his family,
21 and he always was very conceited and thought he could do
22 better.

23 Q. Did you and Todd during the course of your marriage ever
24 inherit a large sum of money?

25 A. We did. Todd's aunt passed away, his mom's sister, and

1 we inherited at the end about \$75,000.

2 Q. And who else inherited?

3 A. His sister, Terri. It was originally supposed to be
4 split between Tripp, Todd, and Terri.

5 Q. Were they the only siblings: Tripp, Todd, and Terri?

6 A. Yes.

7 Q. All right. Who were their parents?

8 A. Skeet and Libby Gardner.

9 Q. All right. You say Skeet. Was that the regular name?

10 A. I'm sorry. No, his name was Eugene Austin Gardner, Jr.

11 Q. All right. And Gardner, Jr., Skeet, he only had three
12 children.

13 A. Yes.

14 Q. All right. Now, why did Tripp not inherent with that as
15 well?

16 A. When their mother, Libby, died, it was at the -- I
17 believe at the funeral, Aunt Ally, the one that we inherited
18 the money from, made a statement to Tripp's son---

19 **Ms. Wooten:** Objection. Hearsay.

20 **The Court:** Hearsay.

21 **The Witness:** Sorry.

22 **The Court:** All right. Just one moment. Let's talk
23 about that for a moment.

24 **The Witness:** Okay.

25 **The Court:** The objection is hearsay, and typically when

1 you come into court you can't testify about what someone else
2 said. The best evidence is to bring that other person in and
3 let them say what they said. I think we probably all as
4 children played a game where you would sit in one point and
5 you'd whisper something, go around the circle, and it would
6 come back and it would be completely different.

7 So the hearsay rules typically prevent someone from
8 testifying about some out-of-court statement made by some
9 other person.

10 **The Witness:** Okay.

11 **The Court:** Now, there are many exceptions to the
12 hearsay rule. So we may see that during the course of this
13 trial, but I'm going to sustain the objection unless you can
14 lay some basis for an exception to the hearsay rule. Please
15 move to your next question.

16 **Mr. Holt:** Thank you very much, Judge.

17 By Mr. Holt:

18 Q. Did you ever hear Tripp talk to your Aunt Ally?

19 A. I did. After the funeral we were all at Libby and
20 Skeet's house eating and we all -- we -- we, meaning Todd and
21 myself and Tripp, went outside, and Tripp called Ally and I
22 heard him. You know, he cussed her out and told her that she
23 should never have talked to his son at the funeral and that
24 he was sad and upset, too, and so he yelled at her and
25 everything and then hung up.

1 Q. And did you ever talk with your aunt about her will?

2 A. We did. Not long after that, Ally told Todd and
3 myself---

4 **Ms. Wooten:** Objection.

5 **The Court:** I sustain that.

6 **The Witness:** Sorry.

7 **Mr. Holt:** 804(a)(4), Judge, declarant unavailable due
8 to death. She's saying what the aunt told her.

9 **The Court:** All right. Just a moment. All right.

10 Again, as I mentioned to you, there are many exceptions to
11 the hearsay rule and so -- but we're going to take a look and
12 see if this falls within the exception. And what rule did
13 you say?

14 **Mr. Holt:** 804, Section A., Subsection 4.

15 **The Court:** And what do you say to that, Counsel?

16 **Ms. Wooten:** Just one moment, please, Your Honor.

17 **The Court:** Now, I should tell the jury, just so you'll
18 be aware, this is the rule book. I told you we work under
19 the rules of evidence. Well, here it is right here, so you
20 can see that it's fairly substantial and there are exceptions
21 to the hearsay rule, some of which are contained in the book,
22 and counsel has referred to one.

23 I'm going to give the other side an opportunity to
24 respond to what counsel says, but I'll tell you again: The
25 purpose of the hearsay rule is not to trip people up and make

1 it difficult to come in here and testify. It's just a rule
2 of credibility and reliability, that the best evidence of
3 what someone said is that person themselves, what they said
4 and come in and testify as opposed to what someone heard them
5 say.

6 You can testify about what someone did because that's
7 not -- that's not words. That's not spoken. That's an
8 action. And you can testify about what you did as a result
9 of what someone said, but you're just limited to testifying
10 about what other people say.

11 **Ms. Wooten:** Your Honor, we would continue to object
12 under -- even under Rule 804(a)(4) because Ms. Ally is not
13 here to be cross-examined.

14 **The Court:** All right. Just a moment, please. All
15 right, counsel. Mr. Holt, the definitions under 804(a) state
16 that when someone is deceased, then they are unavailable, but
17 in order to be unavailable and for it to be a hearsay
18 exception, it must fall under 804(b). And so tell me which
19 one of the exceptions under 804(b) you believe this testimony
20 would meet the criteria.

21 **Mr. Holt:** Statement under belief of impending death is
22 what I would say first, Judge. We've already heard testimony
23 that it was the aunt's will she was making out. That would
24 be my only point.

25 **The Court:** I'm going to sustain the objection. Again,

1 ladies and gentlemen, let's just think about this a moment
2 and we stop and we think about it. I'm certainly not saying
3 that's what's happened here, but, of course, someone can come
4 in and testify and say that anyone said anything. And so
5 just for reasons of credibility and reliability, we have the
6 hearsay rule. The Court does not find that meets the
7 appropriate parameters of the rule and, thus, I'm going to
8 sustain the objection.

9 **Mr. Holt:** All right. Thank you very much, Judge.

10 **The Court:** Thank you.

11 By Mr. Holt:

12 Q. Did Tripp ever borrow money from you and Todd?

13 A. Yes, he did. Before we were married, he borrowed
14 several thousand dollars that we were going to use to go on
15 our honeymoon.

16 Q. All right. And did he ever pay you back?

17 A. He did eventually.

18 Q. All right. Now, after your divorce from Todd, where did
19 he live?

20 A. He lived in the restaurant with his father.

21 Q. All right. And during the occasion -- during your
22 marriage to Todd, did y'all ever have occasion to purchase a
23 gun at Norman's Gun Exchange?

24 A. We did. Shortly after we were married, we went and he
25 bought a nine millimeter Ruger.

1 Q. All right. And what happened to that gun?

2 A. Todd had it.

3 Q. All right. Now---

4 **The Court:** Counsel, I'm going to get you to check and
5 see is that weapon -- does it have a trigger lock?

6 **Mr. Holt:** It's got a zip tie through the entire
7 chamber, Your Honor.

8 **The Court:** Very good. It's unloaded as well?

9 **Mr. Holt:** There are no bullets available in the
10 courtroom.

11 **The Court:** All right. Thank you. Then you may mark
12 that if you wish.

13 **Mr. Holt:** I just want to have that marked.

14 (State's Exhibit 62 was marked for identification only.)
15 By Mr. Holt:

16 Q. Now, during the course of your and Todd's marriage, did
17 he ever get violent with you?

18 A. No, never.

19 Q. Okay. Did he ever get violent or hurtful toward the
20 children?

21 A. Huh-uh. Certainly not.

22 Q. Would he ever throw a hissy fit, throw things around the
23 house or break cabinets or pull out drawers?

24 A. No. He really -- not -- it was never anything usual for
25 him to get upset. He very rarely got really mad. We did not

1 argue. But I never saw any kind of violent tendency.

2 Q. All right. Now, would you mind telling us a little bit
3 about why you and Todd divorced?

4 A. We had been married for about 12 and a half years, and
5 at the time -- several months before we separated, he was not
6 working and through the course of our marriage was not making
7 a lot of money, and we had three children, two of which were
8 under two, and I was working full-time making the money and
9 trying to work, and I was going in the evening to get my
10 master's in Columbia and trying to take care of them, and he
11 just did not help me a lot and I had to pretty much do it on
12 my own. So I decided that if I was going to do it on my own,
13 I wasn't going to take care of him, too, that I had the three
14 kids to look out for and take care of and that was my job.
15 That's what I had to do.

16 Q. Now, after the divorce, what was Todd's mood like? How
17 was he with you and how was he with the children? How did he
18 interact with y'all?

19 A. He really realized -- well, he spent a lot more time
20 with the children after we separated. He saw them every
21 weekend just about or every other weekend. He took them
22 every Saturday to go and do something with him. He really
23 was trying to get himself together.

24 Q. Was he paying child support?

25 A. Initially he was not. We had gone to court several

1 times, but in the six to eight months before he died, he had
2 started paying and actually paying more than what was
3 initially ordered and the month -- June, the month he died,
4 at the beginning of that month I had told him that if we can
5 continue like that that I would drop it in the court, that we
6 would do it ourselves, because he really had stepped up to
7 try to help and pay and take care of things like field trips
8 and things like that that they were going on as far as -- and
9 as well as everyday things with the kids.

10 Q. How was his relationship like with the children at that
11 time?

12 A. It was very good. He -- they enjoyed having him there
13 and coming -- him coming to see them, taking -- he took them
14 places, you know, to the movies, to the park, things like
15 that, to the mall. So it was good.

16 Q. Thank you. Now, how about [Minor], his son? How did he
17 treat [Minor]?

18 A. He spent a lot of time with [Minor] one on one, I guess.
19 They talked a lot of hunting and fishing, and football was
20 their favorite thing to discuss. They were a lot of times
21 more like buddies than they were father and son. He called
22 him his buddy several times in front of me.

23 Q. Even when Todd hit rock bottom, were you -- did you ever
24 suspect he might harm himself?

25 A. Certainly not.

1 Q. Now, June 21st, 2011, can you tell the jury how you
2 became aware that Todd had been murdered?

3 A. That week they had Bible school at Todd's church, and he
4 was supposed to -- on that Tuesday he was supposed to pick
5 the kids up to take them to Bible school because he was
6 helping teach [Minor]'s class at church. And he did not -- we
7 called earlier that day. I called him just to make sure he
8 was still coming, couldn't get him, and it got to be about
9 5:15. I got concerned, you know, because he hadn't come yet
10 to pick him up. He was supposed to come pick him up.

11 We called and couldn't get him, and I thought that maybe
12 our signals got crossed and I was supposed to take him out
13 there. So we got in the car and drove out there. We drove
14 out to the restaurant.

15 I saw that the car was there, so I knocked on the door.
16 Didn't get any answer and I thought maybe he had taken his
17 dad's truck to the church and we missed him. So we went back
18 to the church, drove around the parking lot, didn't see the
19 truck.

20 So then I was concerned that something was wrong. So we
21 drove back to the restaurant. I went around to the back. I
22 still had a key to the restaurant. I told the children to
23 make sure they stayed in the car. I was going to go in and
24 check on him. I went back through the kitchen, went through
25 swinging door into the main restaurant part, and he was

1 laying there on the floor.

2 Q. What did you do then?

3 A. I immediately went back out and told the kids that he
4 was hurt, that their dad was hurt, and I called 9-1-1. She
5 asked me some questions. I went back in and checked to -- I
6 thought he was gone, but I went back in and I felt his neck,
7 you know, to see if he was breathing, and I told her he was
8 not. And I went back outside and told the kids that, you
9 know, their dad was really hurt and I waited and I said, "We
10 have to wait for ambulance." So we waited for the ambulance.

11 Q. And how did you break the news to your children?

12 A. Several hours after that I stayed out there. My dad
13 came and got the children, and I went to my parents' house
14 and sat all three of them on the couch and told them that
15 their dad was gone, that, you know, I was sorry, but, you
16 know, he was gone and he was in heaven, and all three of
17 them, you know, started crying.

18 Minor went in the kitchen by himself and sat on the
19 floor, and I went in there with him and we sat probably for
20 about an hour just crying and talking and...

21 Q. After -- after the murder, did you have occasion to
22 interact with Tripp and did anything catch your attention for
23 how he started acting toward you?

24 A. I did. He came to my parents' house the next day saying
25 he needed a key to the restaurant to go in there and check

1 and see if anything was missing. I had the feeling that, you
2 know, he -- Renee especially was very uncomfortable around
3 me.

4 Anyway, then at the funeral home the night of
5 visitation, he told [Minor] that -- I heard him say, you know,
6 "I'm your dad now. You can just look at me and talk to me,"
7 and that kind of struck me, you know, as kind of strange.
8 And then the day of the -- after the funeral, we were all in
9 the fellowship hall and he told me that he wanted to take
10 [Minor] the next weekend off fishing for the weekend on his
11 boat. And at that point, you know, I thought, well, I don't
12 -- you know, I don't want [Minor] away from me, you know. His
13 dad was just killed and, you know, I don't want to be away
14 from him. I don't think he wants to be away from me. And he
15 continued probably two weeks after---

16 Q. Now, if I could just interrupt you.

17 A. Sorry.

18 Q. I want you to continue with that train of thought. But
19 was everybody aware that Todd talked to [Minor] like an equal,
20 what you testified to earlier? Was everybody in the family
21 aware of that?

22 A. I would think so because a lot of people said -- well,
23 he -- when he talked to [Minor], it was more like they were
24 friends.

25 Q. Uh-huh.

1 A. Yes.

2 Q. Okay. And I didn't mean to interrupt.

3 A. He called me and he wanted the kids' social security
4 numbers because he said that they were eligible for social
5 security and he was going to try to take care of that and he
6 was going to get any money that Todd had in the account and
7 he was going to get that in the social security and put it in
8 trust funds for the kids. And I thought, well, I don't need
9 you to do that. You know, I'll see about the social
10 security, and I wouldn't give them to him.

11 And then he wanted to take [Minor] to Charlotte with him
12 and Taylor to go somewhere for work. He had to go up there
13 and deliver a van, and then he wanted him to go to the beach
14 for the weekend and I finally just told him, you know, "I
15 don't want [Minor] to be away from me, and I don't think
16 [Minor] needs to be away from me. I want him to be with me."

17 On the phone when he told me about the social security,
18 he said, "Well, my friend said you could -- they'll probably
19 get 200 each a month. That's a lot more than you ever got
20 when he was alive," and I---

21 Q. Tripp said that to you?

22 A. Yes, on the telephone and I thought it was very cold
23 considering, you know, Todd had just been murdered two weeks
24 earlier.

25 Q. You said they were in Bible school that week?

1 A. Uh-huh.

2 Q. Todd was teaching?

3 A. He was. He was helping with **Minor**'s class with the
4 preacher, and that's why it was so important, you know, that
5 he wanted **Minor** there.

6 Q. And how many days was Bible school supposed to run?

7 A. It ran Monday through Friday, I believe.

8 Q. And just to clarify for the jury, June 21st, 2011, what
9 day was that?

10 A. It was a Tuesday.

11 **Mr. Holt:** All right. Your Honor, if the witness could
12 step down so we can look at the diagram.

13 **The Court:** She may.

14 By Mr. Holt:

15 Q. Using this diagram, can you tell me about where you
16 walked in, where you saw the body, kind of walk me through
17 your progression and what you noticed?

18 A. Okay. This was where we first -- when I first knocked
19 on the door. That was the door that they used to go in the
20 restaurant and I had -- couldn't get any answer, so we drove
21 around to the back which is here, the back door of the
22 restaurant, and the kids -- we were in the car. I told them
23 to stay in there. So I went, unlocked the door, pushed it
24 open, and when I went in I started calling and I went---

25 Q. So just to clarify, that door was locked.

1 A. Yes.

2 Q. Okay.

3 A. Yes, it was. So I went in and we were -- that was the
4 kitchen. The pit was here. I went around, went through the
5 kitchen. I called him again. And I went through the
6 swinging door into the main part, the restaurant, and that's
7 where I found Todd on the floor.

8 Q. All right. And why didn't you go in the front door?

9 A. Because I believe it was locked. It was locked, and so
10 I couldn't go in that way and I knew -- I remembered I had
11 the key to the back, and so I went in the back door.

12 Q. All right. Thank you so much.

13 A. Okay.

14 **Mr. Holt:** Now -- permission to approach, Judge?

15 **The Court:** You may.

16 By Mr. Holt:

17 Q. Let me show you what's been marked previously as State's
18 Exhibit 62. You're not a gun expert, are you?

19 A. No.

20 Q. But you remember that you and Todd bought a gun at
21 Norman's Gun Exchange.

22 A. Yes, we did.

23 Q. And does -- does this appear to be that gun?

24 A. It does.

25 Q. All right. Please answer any questions that defense

1 counsel might have.

2 A. Okay.

3 **The Court:** Now cross-examination.

4 Cross-Examination

5 By Ms. Wooten:

6 Q. Good morning, Ms. Davis.

7 A. Good morning.

8 Q. You're now Susan Gardner Davis; correct?

9 A. Yes.

10 Q. When did you get remarried?

11 A. I got remarried in the February following -- February of
12 2012.

13 Q. '12? Okay. A few things about your testimony with --
14 with Mr. Holt I want to ask you about. You said Todd lived
15 in the restaurant. Correct?

16 A. Uh-huh.

17 Q. This restaurant?

18 A. Yes.

19 Q. Here where you found him?

20 A. Uh-huh.

21 Q. And---

22 A. There was a separate room they had built within the
23 restaurant.

24 Q. Would you mind stepping down for a second? So you were
25 saying there was a separate room that they built. Which room

1 is that?

2 A. It was here at the front.

3 Q. Is that this right here?

4 A. I believe so.

5 Q. And you went in this door down here, the rear of the
6 building?

7 A. Yes.

8 Q. Which door did the family normally use when they came
9 and went out of the restaurant? Did they go in this door?

10 A. You mean when they were living there---

11 Q. Yes.

12 A. ---after the restaurant was closed?

13 Q. Yes, ma'am.

14 A. Yeah, I think Todd and Skeet used that door.

15 Q. Okay. Thank you. You can have a seat.

16 A. Okay.

17 Q. So the size of that apartment that they built on, who
18 was living there or who had been living there the few weeks
19 before Todd died?

20 A. Todd and Skeet were living there, but Skeet was in
21 rehab.

22 Q. Okay. And what would you say was the size of that
23 apartment, roughly? Was it big? Was it little?

24 A. No, I mean it was -- it was small.

25 Q. Okay.

1 A. But it had -- you know, it had a fireplace. It had a
2 kitchen area. It had a refrigerator, you know, that kind of
3 -- a sink and all that they could use.

4 Q. Did you go there much while---

5 A. No. I'm sorry.

6 Q. How would you describe the way things looked on the
7 inside the few times you did go? Was it neat?

8 A. It was okay.

9 Q. It was okay?

10 A. I mean, I -- I didn't like it because it was just part
11 of the restaurant to me.

12 Q. Right.

13 A. So I didn't -- you know, but it -- I mean, it was -- you
14 know, the bed was made and it seemed straight to me.

15 Q. It was well kept?

16 A. I mean, when I went it was.

17 Q. Okay. So when Todd spent time with the children, did he
18 normally do that at your house or his house?

19 A. My house.

20 Q. Okay. And Todd was on disability when he died. Is that
21 correct?

22 A. He was.

23 Q. Do you remember how much a month it was?

24 A. I think it was \$765 maybe?

25 Q. Okay. And how much was he paying you child support

1 every month?

2 A. It was \$13 a child per month.

3 Q. \$13 a child?

4 A. (Witness nodded head up and down.)

5 Q. Okay. So you had three children; right?

6 A. Uh-huh.

7 Q. That would be \$39?

8 A. (Witness nodded head up and down.) That he was ordered.

9 Q. Do you remember Skeet - that's Eugene Austin Gardner,
10 Jr., Todd's daddy - do you remember Skeet ever paying 6500 in
11 back child support for Skeet -- for Todd? Do you remember
12 that?

13 A. Uh-huh.

14 Q. \$6500.

15 A. I don't think it was 6500. I think it was like -- more
16 like 4500. I'm not -- I'm not positive. I don't remember,
17 but it was a large...

18 Q. I'm confused because if it's \$4500 that he owed and he's
19 only paying \$39 a month -- I'm just -- I'm concerned about
20 the math.

21 A. Before, when we first separated and went to court the
22 first time, Todd was not on disability.

23 Q. Okay.

24 A. He was -- had gotten a job with Ken Gunter with Florence
25 Builders, and he was making a certain amount. So based on

1 that amount, they had -- they said that they have some
2 certain way that they calculate how much they have to pay.
3 And so, according to that, at that time he had to pay more.

4 Q. Do you remember how much he was paying?

5 A. I think he was supposed to pay like a hundred and
6 something a month.

7 Q. Per child?

8 A. I believe. I don't -- I'm sorry. I don't remember.

9 Q. 300 a month and he paid somewhere -- Skeet paid
10 somewhere between 4500 and 6500. So he was way behind in his
11 child support for awhile is what you're saying.

12 A. At one point he was, yes.

13 Q. Okay. But generally, after the divorce, y'all got along
14 pretty well.

15 A. We did.

16 Q. Okay. So you said that he and Minor were very close.

17 A. They were.

18 Q. And he was also very close with Tripp before he died.
19 Is that correct?

20 A. No, I wouldn't say that.

21 Q. Okay. Do you remember giving a statement to the police
22 officers June 24th, 2011?

23 A. Yes.

24 Q. And it was a long conversation. About an hour. Over an
25 hour?

1 A. Uh-huh.

2 Q. Okay. Well, you said several things in that statement
3 that I'm going to ask you about. You said that Todd told you
4 that he and Tripp were going to open up a restaurant at the
5 beach. Do you remember that?

6 A. Uh-huh.

7 Q. Okay. So he wasn't close with his brother, but yet they
8 were going to open a business together.

9 A. Well, he did tell me that, but the week or so before
10 Todd died, we -- or probably a couple of weeks before Todd
11 died, he said that this was -- he told me [Minor]'s room -
12 [Minor] was laying on the bed in there - that that's what he
13 said, but he wasn't sure that that was going to come to
14 fruition.

15 Q. Okay. And Todd was a very -- he wasn't an aggressive
16 person; correct?

17 A. No.

18 Q. He was gentle. He was nice.

19 A. For the most part, yeah.

20 Q. Okay. Again, about the statement you gave in June, you
21 explained to Detective Luce and Peavy -- you explained to
22 them the reason for your divorce in 2009, and you said almost
23 the same thing you said here to Mr. Holt. You said that he
24 wasn't working and y'all were struggling financially, and you
25 just couldn't take care of him anymore.

1 A. Yeah.

2 Q. But the first thing you told them was that he was
3 depressed. Is that true?

4 A. When we first separated, he was upset, yes.

5 Q. Okay.

6 A. He was down because we separated.

7 Q. Right.

8 A. He was depressed because he -- initially when we
9 separated.

10 Q. I understand. And later on, about three minutes later,
11 you said that he had, quote, a lot of bouts of depression,
12 but he had been more positive in the last two months. Do you
13 remember saying that?

14 A. I would say I don't -- I don't recall exactly what I
15 said then.

16 Q. Okay.

17 A. But he was -- when we separated -- right before we
18 separated and right after we separated, he did have several
19 bouts of depression.

20 Q. Okay.

21 A. But in the six or eight months, you know, before his
22 death, he was a whole different person. He just seemed to
23 have a whole new sense of seeing life and we were getting
24 along very well. And he was doing so much with the children
25 and he was helping more financially with them, not just the

1 \$13 but helping with everyday needs for them.

2 **Ms. Wooten:** Okay. Your Honor, at this time -- she gave
3 a statement to law enforcement 6/24/2011. It was not reduced
4 to writing, but I do have the video available with the time
5 slots. I'd like to play it to refresh her recollection as to
6 her statement about depression.

7 **The Court:** What says the State?

8 **Mr. Holt:** I'm going to object, Judge. She's on the
9 stand. She's telling Ms. Wooten everything she told them.

10 **Ms. Wooten:** I would like to---

11 **Mr. Holt:** I don't think there's a need for the video.
12 She's testifying right now.

13 **Ms. Wooten:** I would like to impeach her as to her
14 statement. It's a very different statement as to what she
15 gave the police. I have the time marked where it would only
16 be that small snippet of space.

17 **The Court:** All right. And what rule do you rely upon
18 to refresh her memory with a video as opposed to a written...

19 **Ms. Wooten:** If I may approach my rule book, please?

20 **The Court:** Please do.

21 **Ms. Wooten:** Thank you. And there is no written
22 statement by Ms. Gardner, first of all. Your Honor, I'll
23 move on and let co-counsel look up the rule---

24 **The Court:** Go ahead.

25 **Ms. Wooten:** ---while I continue with the witness.

1 **The Court:** Please move to your next set of questions.

2 **Ms. Wooten:** Thank you.

3 By Ms. Wooten:

4 Q. In your statement do you also recall telling Sergeant
5 Peavy and also Investigator Luce that Skeet - Eugene Gardner,
6 Jr. - had health issues right before Todd died? Do you
7 remember that?

8 A. He did.

9 Q. He did. He spent some time in the hospital. Correct?

10 A. Uh-huh.

11 Q. And then time in rehab.

12 A. Uh-huh.

13 Q. Also, you told the investigator and the sergeant that
14 there was talk about Skeet going to live possibly with Terri
15 Odom, his daughter.

16 A. Yes.

17 Q. Do you remember that? But you said that Skeet didn't
18 want to go live with Terri? Do you remember saying that?

19 A. Yes.

20 Q. Okay. And then---

21 A. He didn't want to go live with Terri because he wanted
22 to be more independent, and he didn't like the idea of having
23 to go live somewhere instead of being more on his own.

24 Q. Right. He was a very independent person; correct?

25 A. Yes.

1 Q. Strong-willed. Correct?

2 A. They all were.

3 Q. Couldn't tell him what to do. He was going to do what
4 he wanted to do.

5 A. Yes.

6 Q. Okay. So you also talked about Todd and how Todd
7 himself was also bad with money. Is that correct?

8 A. Uh-huh.

9 Q. Wasn't very good at managing money. And you talked
10 about Skeet giving money to Tripp over the years. Correct?

11 A. Uh-huh.

12 Q. Did Skeet ever not give him money when he needed money
13 or wanted money, to your knowledge?

14 A. I don't---

15 **Mr. Holt:** I'm going to object at this time, Your Honor.
16 The witness certainly doesn't know what another individual
17 gave another individual outside of her presence.

18 **Ms. Wooten:** Your Honor, she testified previously as to
19 the money that Skeet gave Tripp. I'm simply asking her more
20 questions about that.

21 **The Court:** I'm going to overrule the objection and
22 allow you to go into that you because it was touched on in
23 direct. You may proceed.

24 By Ms. Wooten:

25 Q. So, to your knowledge, was there a time where Skeet

1 didn't give Tripp money when he asked, to your knowledge?

2 A. I think that -- I'm not -- I don't remember exactly.

3 Q. If you don't remember exactly then---

4 A. Then, no, I don't know.

5 Q. Okay. But he did give Skeet -- I mean, he did give
6 Tripp money over the years.

7 A. To bail him out because---

8 Q. Correct.

9 A. ---because he got in trouble with money.

10 Q. Okay. Thank you. And he also gave money to Todd, too,
11 correct, to bail him out for child support, for example?

12 A. He did.

13 Q. Okay.

14 A. Because he was going to go to jail and he didn't want
15 him to go jail.

16 Q. Understandably. He loved his kids; correct?

17 A. He did.

18 Q. Okay. The month before Todd died, Skeet also bought a
19 little Nissan car.

20 A. Uh-huh.

21 Q. Do you remember that? And he paid cash for it; Skeet
22 did. About \$14,000?

23 A. I don't -- I don't know.

24 Q. Okay.

25 A. I mean, I know they got it, but I don't know...

1 Q. Right. And in your statement to the police you said
2 that he bought it with cash.

3 A. Oh.

4 Q. Do you remember saying that?

5 A. I'm sorry.

6 Q. You said that Tripp sometimes would fuss at Todd because
7 he wasn't trying enough; right? He wasn't living up to his
8 potential, wasn't doing what he needed to do; correct?

9 A. Uh-huh.

10 Q. But you yourself said---

11 **The Court:** Excuse me, Counsel. Would you do this,
12 ma'am? Since we're making a record here -- and I know when
13 we talk, we normally say uh-huh or huh-uh -- if you'd say yes
14 or no, it would be helpful to us.

15 **The Witness:** Okay. I'm sorry.

16 **The Court:** No. That's fine. Don't apologize. Go
17 ahead.

18 By Ms. Wooten:

19 Q. And then you said the time you and your husband
20 separated you did so because he wasn't trying enough and you
21 were frustrated with him. Is that correct?

22 A. He was not working, and I was making the money.

23 Q. So at times Todd could be frustrating with people that
24 he loved; is that correct? Is that an accurate statement?

25 A. He could be what?

1 Q. Frustrating because he wasn't trying enough. You got
2 frustrated with him; correct?

3 A. I did, but I didn't love -- I did not love him or kill
4 him.

5 Q. You didn't love him?

6 A. I mean, I did love him but---

7 Q. Right.

8 A. ---I certainly would never have gotten frustrated enough
9 to do anything to him.

10 Q. Oh, I completely understand. My point was is just that
11 he could be frustrating - that was your testimony - because
12 he wasn't trying?

13 A. It was frustrating because I was working hard.

14 Q. And you were raising three kids practically by yourself.

15 A. Yes.

16 **Ms. Wooten:** Okay. Just one second, please, Your Honor.

17 **The Court:** Thank you.

18 **Ms. Wooten:** As to the showing of the video, I would do
19 so under Rule 613, prior statement of witness, Subsection B.,
20 extrinsic evidence of prior inconsistent statement.

21 **The Court:** All right. And, counsel, you would propose
22 to simply play it for the witness?

23 **Ms. Wooten:** And eight-second span of time which I have
24 marked in the video.

25 **The Court:** What says the State?

1 **Mr. Holt:** Judge, I think the rest of Subsection B.,
2 613, says that if the witness does not admit that he or she
3 has made a prior inconsistent statement, it's admissible, and
4 if she does admit, then it's inadmissible. I think the
5 witness in this case admitted that she made a prior
6 statement. She didn't remember exactly everything she said,
7 and then she gave her testimony for what she believed true
8 and accurate at this time.

9 **The Court:** All right. I'm going to overrule your
10 objection and permit you to play it. If you have a section
11 of the tape, you may play it.

12 **Ms. Wooten:** Yes, Your Honor. Thank you.

13 **The Court:** You may play it.

14 By Ms. Wooten:

15 Q. Okay. I'm just going to play the brief statement where
16 you talk about his bouts of depression.

17 A. Okay.

18 (A portion of a videotape is played.)

19 By Ms. Wooten:

20 Q. Do you remember making that statement now?

21 A. Now that you play it. I'm sorry. It was two years ago.
22 I don't remember everything exactly as I said it.

23 Q. I understand.

24 A. But I didn't specify in that tape when the depression
25 was.

1 **The Court:** Anything further?

2 **Ms. Wooten:** Those are all the questions I have right
3 now, Your Honor. Thank you.

4 **The Court:** All right. Very good. When the witness is
5 presented, we have direct. Then we have cross, and then we
6 go back on redirect if the proponent of the witness wish to
7 address anything new that was brought up during cross. Is
8 there redirect for the witness, Counsel?

9 **Mr. Holt:** There is, Your Honor, just briefly.

10 **The Court:** All right. Please proceed.

11 Redirect Examination

12 By Mr. Holt:

13 Q. Ms. Wooten asked you about a restaurant, and you said
14 you didn't think it was going to come to fruition. Why did
15 you not think that?

16 A. When we talked that night, when Todd told me he didn't
17 think it was going to come to fruition, he said that -- and
18 often Tripp had promised things to him that did not come to
19 fruition like -- like the restaurant. Todd said, "I'm not
20 counting on that because Tripp usually counts his chickens
21 before they hatch. I'm going to go on and try to get my
22 C.D.L. license," which is what he wanted to do so that he
23 could take care of the children.

24 Q. Now, in the video and just prior to that when you were
25 on the stand, you said that Tripp was depressed, but then

1 right before the murder he was---

2 A. Todd?

3 Q. Todd. I'm so sorry.

4 A. That's okay.

5 Q. That Todd was a little bit depressed and then right
6 before the murder he wasn't.

7 A. Yeah. Probably the six or eight months before the
8 murder he was a completely different person.

9 Q. So what was really different from what you said on the
10 stand than what you said two years ago?

11 A. Nothing.

12 **Mr. Holt:** Okay. Thank you.

13 **The Court:** Ma'am, we're going to let you step down.
14 Please watch your step as you exit the witness chair.

15 **The Witness:** Thank you.

16 **The Court:** You're free to remain here if you wish or
17 you're free to leave.

18 **The Witness:** Thank you.

19 **The Court:** Thank you. All right. Ladies and
20 gentlemen, we'll take our morning break at this time. We'll
21 be on recess for approximately 20 minutes or so. If someone
22 wishes to go outside to take a break, let's give them that
23 opportunity. Please don't discuss the case, and you may
24 return to the jury room.

25 (Whereupon, the jury was excused from open court at

1 11:27 a.m.)

2 **The Court:** All right. Court's in recess now
3 20 minutes.

4 **Mr. Holt:** Thank you very much, Judge.

5 **The Court:** Thank you.

6 (Whereupon, a short break was taken.)

7 **The Court:** Thank you. Please be seated, ladies and
8 gentlemen. All right. Counsel, please step up if you would.

9 (Pause in proceedings.)

10 **The Court:** Step up, counsel, if you will. All right.
11 Ladies and gentlemen, just so we'll all have an understanding
12 of what we're about to do here, it would be the Court's
13 intention that we would discuss the acceptance of a plea, the
14 waiver of rights that make a plea possible, the admission of
15 guilt, and once we reach that point, then the plea actually
16 becomes irrevocable and we can bring the jury in. Remember,
17 the jury is sitting in the back and has been this entire time
18 while they were -- began this process on the 20-minute break.
19 And so that would be the Court's intention.

20 So Mr. -- or, Madam Solicitor, is there anything you
21 wish to state before we begin this matter?

22 **Ms. Parker:** Your Honor, just so the record will be
23 clear, he's pleading guilty to voluntary manslaughter which
24 is a lesser included of murder, and that is on indictment
25 number 2013-GS-16-0452.

1 Eugene Austin "Tripp" Gardner, III, after being
2 duly sworn, testified as follows:

3 **The Court:** All right. And then before we begin, Ms.
4 Parker, I want to make sure that those who are here on behalf
5 of the victim's family -- are they satisfied with this
6 resolution?

7 **Ms. Parker:** Yes, Your Honor, they are.

8 **The Court:** All right. Very good. All right. Very
9 good.

10 **Mr. Holt:** Yes, sir, Your Honor. This is -- I will
11 identify everybody for the record. This is [Minor],
12 the victim's son. His ex-wife, Susan Gardner, who testified.
13 His sister, Terri Odom, as well as her husband. These are
14 the family members that will be up here. The rest is law
15 enforcement.

16 **The Court:** We also have officers standing with us from
17 both South and North Carolina. Ladies and gentlemen and
18 [Minor] particularly, welcome to the courtroom. I know you've
19 been in the back previously, and what we'd like to do is,
20 first of all, talk with the defendant about his position with
21 regard to this plea. The fact that we speak to him first
22 doesn't mean his rights are any greater than yours because
23 they're not. Victims of crime have numerous rights in this
24 process, one of which will be the right to be heard in this
25 process before any sentence is imposed. Is that satisfactory

1 to you, Ms. Davis?

2 **Ms. Davis:** Yes.

3 **The Court:** All right. And then, Mr. [REDACTED] Minor, is
4 that satisfactory to you, sir?

5 [REDACTED] Minor: Yes, sir.

6 **The Court:** All right. Very good. Then, Ms. Wooten,
7 have you had ample time to discuss with Mr. Gardner the
8 elements of the penalty of murder as well as the lesser
9 included offenses that may be appropriate, the penalty for
10 these various charges, and his right to a trial on these
11 charges?

12 **Ms. Wooten:** Numerous times, Your Honor, and we are
13 ready and prepared to proceed in trial if that was his
14 option.

15 **The Court:** All right. And this plea has been somewhat
16 quickly arranged this morning between the parties, and I ask
17 you: Have you had sufficient time to discuss with your
18 client the ramifications of this plea, the fact that it's not
19 reversible, and that it would be a plea straight up for a
20 sentence imposed by the Court, and has your client understood
21 all these things, in your opinion?

22 **Ms. Wooten:** Yes, Your Honor. We've had conversations,
23 previous to his trial even being called, about potential
24 outcomes and we had numerous conversations this morning. He
25 is fully aware of what he is doing. He understands the

1 consequences.

2 **The Court:** Okay. And today do you believe there are
3 any Blair or competency issues here?

4 **Ms. Wooten:** I do not, Your Honor.

5 **The Court:** And do you believe that what your client is
6 doing is in his best interest?

7 **Ms. Wooten:** I do, Your Honor.

8 **The Court:** And do you believe he's fully understood the
9 various things you've explained to him?

10 **Ms. Wooten:** Yes, Your Honor.

11 Examination by the Court

12 Q. All right. Then, Mr. Gardner, your lawyer tells me that
13 you intend to plead guilty to the charge of voluntary
14 manslaughter. Is that true, sir?

15 A. Yes, sir.

16 Q. So the first thing I ask you then is: Are you guilty of
17 voluntary manslaughter, meaning that you killed your brother
18 in the sudden heat of passion?

19 A. Yes, sir.

20 Q. And do you admit that you did that, sir?

21 A. Yes, sir.

22 Q. All right, sir. Here in this courtroom today are you
23 taking any kind of medication?

24 A. No, sir.

25 Q. And do you have---

1 A. Well, yes, sir.

2 Q. All right. Tell me what you're taking.

3 A. Blood pressure.

4 Q. Okay. And when you take your blood pressure medicine,
5 does it confuse you?

6 A. No, sir. I'm fine.

7 Q. And so you fully understand you're pleading guilty to a
8 charge that carries up to 30 years in prison?

9 A. Yes, sir.

10 Q. Are you aware that that's a non-parolable offense,
11 meaning that you must serve at least 85 percent of any
12 sentence that's imposed by the Court and may serve day for
13 day? Do you understand that?

14 A. Yes, sir.

15 Q. All right, sir. Do you have any type of emotional or
16 mental condition that prevents you from understanding what
17 we're doing here today?

18 A. No, sir.

19 Q. And do you have any alcohol or illegal drugs in your
20 system?

21 A. No, sir.

22 Q. All right. So then you fully understand you're pleading
23 guilty to a charge that carries up to 30 years in prison?

24 A. Yes, sir.

25 Q. All right. Now, Mr. Gardner, we're right here in the

1 middle of a trial, and obviously you're aware of your trial
2 rights. Tell me why you've made this decision to stop the
3 trial and enter a plea of guilty to a lesser offense. Now, I
4 want you to tell me, sir, not someone else.

5 A. (Mr. Gardner talks off the record with his attorneys.)
6 I didn't mean for any of this to happen.

7 Q. Okay, sir.

8 A. And I don't want my family going through this anymore,
9 both sides.

10 Q. All right, sir. I realize that those are considerations
11 for it, but I ask you: Do you believe this is in your best
12 interest, sir, what you're doing here?

13 A. Yes, sir.

14 Q. Do you have any doubt about that?

15 A. I'll always have doubt; yes, sir.

16 Q. All right, sir. I want you to understand though, that
17 once we take this plea and bring this jury in, it's not
18 something that can be reversed. There can be no change of
19 mind. It's a permanent decision that's going to result in
20 you going to the department of corrections for a substantial
21 period of time. Do you understand that, sir?

22 A. Yes, sir, I understand.

23 Q. And understanding that, do you still wish to go forward
24 in this trial?

25 A. Yes, sir.

1 Q. I mean with this plea?

2 A. Yes, sir.

3 Q. All right, sir. I want to make sure you understand that
4 you give up multiple constitutional rights when you come
5 forward to plead guilty, which you're already exercising
6 during the fact that we're having a trial here. First of
7 all, you have the right to remain silent in this courtroom
8 and not incriminate yourself which is what you're getting
9 ready to do. You are presumed innocent of these charges.
10 You have the right to remain silent. Do you understand that
11 you're waiving these protections today by pleading guilty?

12 A. Yes, sir.

13 Q. All right, sir. Now, I said a moment ago that you're
14 presumed innocent, but let's talk a little bit about how this
15 trial would have unfolded if we went forward. First of all,
16 you've already helped us pick a jury. You would have the
17 right in your portion of the case to testify to that jury to
18 tell your version of events.

19 You'd have the right through your lawyer to confront any
20 evidence or witnesses against you which you've already -- the
21 first witness has already been cross-examined. You'd have
22 the right to compel other people in here with a subpoena to
23 testify on your behalf, all this so the jury would hear your
24 version of whatever happened here, not just the State's
25 version. So do you realize you're waiving these trial rights

1 by stopping now and entering a guilty plea?

2 A. Yes, sir.

3 Q. All right, sir. I told you that you would be presumed
4 innocent in this courtroom. What I mean by that is this:
5 You have nothing to prove here. The State bears the burden
6 of proof and it's a high one, and the State must prove beyond
7 a reasonable doubt that you're guilty of the offense of which
8 you're charged and they must convince all 12 jurors
9 unanimously or you would not be found guilty of that offense.
10 So you are waiving the presumption of innocence by entering
11 this guilty plea. Do you understand that?

12 A. Yes, sir.

13 Q. All right, sir. Even if you were convicted by the jury
14 - because, again, the State must convince all 12 jurors
15 unanimously - you have the right to appeal that jury
16 decision, and you're waiving that right as well today because
17 there won't be a jury decision in this case. Do you
18 understand that as well?

19 A. Yes, sir.

20 Q. I want you to understand that this plea is being entered
21 with no recommendation and it is what we call a straight-up
22 plea, meaning the Court can sentence you anywhere between
23 zero and 30 years incarceration. Do you understand that?

24 A. Yes, sir.

25 Q. Now, this decision to plead guilty, is it yours or

1 someone else's?

2 A. It's mine.

3 Q. All right, sir. Has anyone tried to force you to do
4 this?

5 A. No, sir.

6 Q. So you're telling me that, based on where you find
7 yourself, you've made this decision yourself voluntarily to
8 enter this guilty plea.

9 A. Yes, sir.

10 Q. Are you satisfied with Ms. Wooten and Mr. Jones'
11 services?

12 A. Very much so.

13 Q. Do you think they've done a good job for you?

14 A. Yes, sir, I really do.

15 Q. Do you have any complaints at all about the way they've
16 represented you?

17 A. No, sir.

18 Q. Do you feel that anyone has coerced you this morning in
19 coming forward to enter this decision?

20 A. No, sir.

21 Q. So tell me again one more time why you're making this
22 decision at this moment already in trial to enter a guilty
23 plea.

24 A. I just -- I just feel like I want this to end for my
25 family on both sides.

1 Q. All right, sir. Then I'm going to ask the last question
2 which would be the same question that we asked and began
3 with. Do you again admit that on the date in question which
4 is June 21st, 2011, you killed your brother in the heat of
5 passion after sufficient legal provocation? Do you admit
6 that, sir?

7 A. Yes, sir.

8 **The Court:** All right. Now, is there anything further
9 the State would have me ask the defendant before we bring in
10 the jury, explain the situation, give the jury an opportunity
11 to leave if they wish or -- and then proceed? What says the
12 State?

13 **Ms. Parker:** No, Your Honor. I think you covered
14 everything.

15 **The Court:** Is there anything further the defense would
16 have me ask the defendant before we bring in the jury?

17 **Ms. Wooten:** No, Your Honor.

18 **The Court:** All right. Then one last opportunity, sir.
19 The jury has no knowledge of what we've just done. Once that
20 jury comes in this room, this plea is confirmed and we go
21 forward. Is that what you wish to do, sir?

22 **Mr. Gardner:** Yes, sir.

23 **The Court:** All right. Please bring in the jury.

24 (Whereupon, the jury was brought into open court at
25 12:15 p.m.)

1 **The Court:** All right. Please be seated, ladies and
2 gentlemen. And sir and ma'am, I want you -- just shift to
3 the left just a little bit. To the right, I mean. Thank
4 you; that's good.

5 Ladies and gentlemen, your break, as you saw, was much
6 longer than 20 minutes, and the reason that the break took
7 longer was that the parties, through their lawyers, have
8 talked among themselves, and the defendant has made a
9 decision to enter a guilty plea to a lesser included offense
10 of the charge of murder.

11 I will tell you that these criminal cases, just like
12 civil cases, they do not occur in a vacuum. Obviously there
13 are real families here and there are real lives that are
14 significantly impacted by these decisions. The parties have
15 the right and ability through their lawyers to talk between
16 themselves to see if they can resolve this case. Ultimately
17 the Court makes the decision of sentencing, but the parties
18 can reach a decision as to whether there will be an entry of
19 a guilty plea or not.

20 We were a little late starting this morning at 10:00,
21 and the reason we were - I didn't tell you at the time - was
22 because of counsel at the time were discussing a guilty plea
23 and the potential for a guilty plea. That discussion
24 continued during the beginning of our break that we took
25 after the first witness and reached what I'm going to call

1 fruition during the break at which time the defendant came
2 forward - this is the defendant's decision and no one else's
3 - and stated that he wished to enter a guilty plea.

4 While you've been back in the jury room, I have talked
5 to Mr. Gardner and I've gone through the following questions
6 with him. First of all, I've asked him is he of sound mind
7 today. Is he under the influence of any alcohol or drugs?
8 Does he take any sort of medication that would alter his
9 thinking and make his thinking unclear about what he's doing?
10 He's assured me that he's not.

11 I've gone over some significant rights with him,
12 including the right to remain silent in this trial, that if
13 he wishes to participate in the trial he also has the right
14 to testify, that he has the presumption of innocence about
15 him, that the State has the burden of proof, that that's a
16 high burden of proof, that he has the right to confront the
17 witnesses who come in here against him through his counsel in
18 cross-examination.

19 He has the right to summon others in here. He has a
20 right himself to testify to you, to tell you his version of
21 events, and all this is so his side of the story will come
22 forward to the jury.

23 He has no burden of proof. The burden of proof is a
24 high one which is beyond a reasonable doubt and that he gives
25 up all these rights, including the right to appeal any jury

1 decision, when he steps forward to plead guilty. And he
2 tells me and has told me - you may hear it again in a moment
3 - that he has made this decision, that it is in his best
4 interest, that it is a decision to the lesser included
5 offense of voluntary manslaughter as opposed to a murder
6 charge, and that no one has coerced him to do this, that he
7 voluntarily waives these rights and he admits that he killed
8 his brother in the heat of passion on the date in question.

9 All these things occurred outside of your presence
10 because obviously if we brought the jury out and began the
11 plea and then something happened that the defendant either
12 backed out or there was some decision that a particular right
13 was not waived and the plea could not go forward, well, then,
14 you couldn't be the jury because you'd already heard a
15 significant part of the plea arrangement and it just would
16 not be appropriate, so that's why you were in the back while
17 this occurred. But after taking that information and
18 reaching the decision among the lawyers and the Court and the
19 parties involved that this was a voluntary decision to enter
20 this plea and give up the right to trial, the Court has
21 decided to take the plea.

22 Now, I tell you that just for your information, and in
23 our system the jury makes the decision as the judge of the
24 facts of guilt or innocence, but the judge is tasked with the
25 responsibility of sentencing. The only exception to that is

1 capital cases, but this is not a capital case. But in South
2 Carolina juries make the decision for capital punishment, but
3 that's the only crime. In all other crimes the Court makes
4 the decision.

5 I will tell you that the charge of murder, if you're
6 convicted of murder, carries 30 years minimum. It is non-
7 suspendible. It cannot be reduced and it cannot be -- it
8 cannot be released on parole to shorten the sentence, and it
9 requires a day-for-day sentence if you're convicted of
10 murder. That's 30 years to life, day for day.

11 Voluntary manslaughter, on the other hand, carries from
12 zero to 30 years and, thus, the defendant was confronted with
13 the decision, which he has made himself, to enter the plea to
14 the lesser offense which carries a lesser penalty, enter that
15 plea straight up. We're getting ready to have a sentencing
16 proceeding where we're going to hear from both sides of the
17 case and then make a decision - the Court will - as to what's
18 an appropriate sentence. I bring you out to tell you all
19 that because you've invested now two days, and you are
20 willing to invest more in this case and you have a right to
21 know where we are and what's happened to this point.

22 Now, however, I don't require you to remain for this.
23 Jurors have different approaches to jury service. Some come
24 and want to leave as soon as they can, and because this case
25 will not go to a jury, your task ultimately is done. And so

1 I'm going to release you, if you wish to go, but we're
2 certainly going to let you remain if you wish to stay.

3 What I'm going to do -- the way I'm going to do that is
4 I'm going to come down in just a moment and I'm going to
5 thank you for your service as a juror. I know you say:
6 Well, gosh, I didn't do anything. This is the easiest job
7 I've ever had, but actually that's not true because your
8 presence here, your willingness to make a difficult decision
9 that ultimately would have had to have been made is what's
10 brought all this to bear, and when a case is resolved by a
11 plea, then it's a better disposition because, first of all,
12 there's closure. Sad as it is, it at least ends one portion
13 of this, and then all the lives move forward and heal as best
14 they can.

15 If it was a jury verdict, there could be an appeal.
16 There could be proceedings on. There could be a reversal on
17 appeal for some reason, come back, be tried again, and it
18 just goes on and on. So this is finality and there's a lot
19 to be said for finality for many reasons, and so you've
20 brought that about just by your presence here. I'm grateful
21 for that, ladies and gentlemen.

22 Again, these are not easy tasks which we're called upon
23 to do, but I'm grateful that you've accepted that mantle of
24 service and discharged your responsibility in what actually
25 became a plea but only because you were here to make a

1 decision. Now, in a few days the county is going to send you
2 a small check. It's not going to be enough for anybody to
3 retire on, but it is going to be the county's expression of
4 gratitude for your services.

5 I'm going to come down now and shake your hand as my
6 expression of gratitude for a job well done, for your
7 willingness to accomplish this task which now is
8 accomplished. What I'm going to let you do is go back in the
9 back, and then if you wish to join us, then come back around
10 and be seated out in the audience. That way you can leave at
11 any time. You can leave immediately and not be involved and
12 hear the rest of this, but if you wish, you certainly are
13 welcome to remain, but you're just not bound and compelled to
14 do so by being -- remaining seated in the jury box. All
15 right?

16 So let me come around and say thank you. Mr. Clerk, any
17 further instructions for our jury panel?

18 **The Clerk:** That ends your service for the week.

19 (Whereupon, the jury was excused from the trial at
20 12:24 p.m.)

21 **The Court:** All right. Ladies and gentlemen, we're
22 going to be at ease just a moment, just standing where we
23 are. If anyone wishes to pull up a chair, please feel free
24 to do so, and we're going to wait and give the jury the
25 courtesy of coming back around and joining us if they wish.

1 (Pause in proceedings.)

2 **The Court:** I'm going to ask you to speak up, ladies and
3 gentlemen, so that everyone can hear in this proceeding.
4 We're going to hear first from the State. And, Ms. Parker,
5 do you have either a sentencing recommendation, do you have
6 comments, or do you have someone who wishes to speak on
7 behalf of the victim's family? We'll be glad to hear from
8 you now.

9 **Ms. Parker:** Your Honor, I think I do have a few
10 comments. I think I would speak for the whole family when I
11 say this family has experienced a lot of loss. Todd died in
12 June of 2011. He left behind three children, one of which
13 stands here today, and I believe he may want to address the
14 Court in a moment, two twin girls that aren't here that are
15 still young in age.

16 Shortly after his death, their father, who is known in
17 the community as Skeet, went to live down in Horry County
18 with the defendant, was in rehab for sometime and then lived
19 with Todd, and due to his health complications he passed away
20 the following January. So he didn't -- he didn't even live
21 six months past his son's death. And then there's a sister
22 here, Terri, who, you know, she's lost a parent, she's lost a
23 brother, and now standing here at this proceeding.

24 So I think the family has experienced a lot of loss but
25 just wanted the Court to be aware that the victim was the

1 father of three children, and I believe **Minor** did have a few
2 words he would like to say. And John Holt may want to say a
3 few words. He's worked tirelessly on this case, along with
4 me. We've worked on this together.

5 **The Court:** And tell me, Madam Solicitor: What is the
6 financial information that you referred to in opening
7 argument that the State has deduced concerning the
8 defendant's use of his father's money?

9 **Ms. Parker:** He -- shortly after -- shortly after Todd
10 was murdered, the defendant -- the defendant, along with his
11 sister, Terri, got a power of attorney, but it was an "or."
12 It was the defendant or Terri. And with that power of
13 attorney, he then had authority over all the defendant's
14 finances. And there was -- specifically, a lot of bank
15 records had been subpoenaed, but at trial we were going to
16 bring forward someone -- a records custodian from Wells Fargo
17 that would have shown numerous, numerous withdrawals from the
18 father's account that, if I'm not mistaken, the amount
19 exceeded a hundred and about -- \$125,000 in a span of like
20 four months, so just money that was just blown through.

21 And it's not like it was debit card transactions or
22 checks written for business. I mean, we're talking about a
23 lot of cash, just cash counter withdrawals that were made out
24 of that account and money just blown through and just -- you
25 know, a large part unaccounted for. And I think reasonably

1 he was caring for his father. There might have been a nurse
2 that they paid to watch. His father may have needed medicine
3 and food, but it was just an out -- just I think an
4 outstandish (verbatim) amount of money and I think the family
5 thought so as well and continued his spending even after the
6 father passed away and the matter went into probate, was
7 still spending.

8 Then, of course, I think probate kind of got a hold of
9 the finances, but Mark Luce in the sheriff's office had
10 subpoenaed a lot of financial records to that effect, and I
11 think even an annuity was cashed in while he had power of
12 attorney because of the way it was worded: Him or his
13 sister, Terri. He had the authority to act alone in a lot of
14 what he did, and I don't think Terry was aware of what was
15 going on with the money at first.

16 **The Court:** All right. Thank you. Any other facts that
17 the State wishes to provide at this time other than comments
18 from members of the family?

19 **Ms. Parker:** Your Honor, he -- and I've mentioned this
20 in my opening. He initially became a suspect because law
21 enforcement learned very quickly and early on through cell
22 phone records that he was lying about his whereabouts. And
23 so they continued to get statements from him, and time after
24 time he continued to lie and he continued to try to point
25 their emphasis or their direction towards other individuals

1 in the community, and nothing was adding up because there was
2 no forced entry. There were valuables left behind in the
3 residence, and early on he became a suspect.

4 And after -- things kind of came to fruition after law
5 enforcement realized the amount of money that was being spent
6 and what they already had about his location and about the
7 fact that the meeting at HealthSouth was not a prearranged
8 meeting but, rather, an impromptu - he was going to stop by -
9 along with the fact of the financial stuff. They obtained
10 warrants. And this was after his father's death. He had
11 moved up to North Carolina and was staying in a cabin in
12 Wilkesborough, North Carolina, and the defendant was arrested
13 up there and then they got search warrants and found a gun
14 and that was the gun that the defendant had lied about the
15 entire time, that it was actually the murder weapon.

16 **The Court:** And what was -- where was that gun found,
17 please?

18 **Ms. Parker:** He was -- and I'll say this for the record.
19 He was overheard in booking, after he was arrested that
20 morning by the marshals, talking to someone on the phone to
21 move the bag. They can't find the gun. Stash it in the
22 fireplace. And the gun was actually found in a bag in a
23 hidden compartment behind the stone. In fact, it was like a
24 wooden panel that you could pull out and was stashed in that
25 area. You would not be able really to know that that piece

1 of the mantle actually pulled back unless you actually, you
2 know, were looking, and that's where they found the gun.

3 **The Court:** All right. Very good. And do you have some
4 witnesses or family members who wish to speak?

5 **Ms. Parker:** I do, Your Honor. Susan Gardner, now
6 Davis.

7 **Ms. Davis:** Yes.

8 **The Court:** All right. And, Ms. Davis, please remember,
9 ma'am, that you remain under oath from your previous
10 testimony, and we'll be glad to hear from you.

11 **Ms. Davis:** I just wanted to speak on behalf of the
12 girls. I know everybody has experienced loss, but his
13 children, especially them, have experienced the greatest and,
14 you know, never will they have their dad to walk them down
15 the aisle or to spend time or to see **Minor**'s first football
16 game, and all those things have been taken away, years that
17 he could have spent with them because somebody took his life
18 away from him. And, you know, I just want to say that his
19 family loved him very much and that he was a wonderful person
20 and that certainly he never deserved to have his life ended
21 like this.

22 **The Court:** All right. Thank you. Thank you, ma'am.
23 And, Mr. **Minor**, did you wish to speak?

24 **Minor**: Yes, sir.

25 **The Court:** All right, sir. Well, let's do this. Would

1 you accept the oath of a witness from our clerk?

2 [Minor], after being duly sworn, testified
3 as follows:

4 Examination by the Court

5 Q. And, Mr. [Minor], tell me: How old are you, sir?

6 A. Fourteen.

7 Q. Fourteen?

8 A. (Witness nodded head up and down.)

9 Q. I'm going to get you to come a little closer to the
10 microphone so that we can all hear you and let's -- let me
11 say, sir, I appreciate your courage. I know this is not easy
12 for you to be here today. I realize that you've lost your
13 dad, and I'm grateful that you have the courage and the
14 strength to be here. And if you have something you wish to
15 say, we'll be glad to hear from you.

16 A. I just -- I just wanted to say that, you know, you lose
17 a lot of people through life. You know, you lose friends;
18 you lose people. But you only have one father, and this is
19 not the way that I was supposed to lose him. And there's a
20 lot of things that we could have done, and I loved him and so
21 did my sisters and just he'll always be missed. He shouldn't
22 have been -- it shouldn't have happened like this.

23 **The Court:** All right, sir. Thank you. And fortunately
24 you had your dad with you for some years, and you'll always
25 have him with you and I wish you well as you move forward.

1 You'll have him with you in your heart. Good luck to you,
2 sir. Is there anything further now from the State?

3 **Ms. Parker:** No, Your Honor.

4 **The Court:** And now from defense, Ms. Wooten, what do
5 you have to say for your client, ma'am?

6 **Ms. Wooten:** Thank you, Your Honor. First of all, I'd
7 like to say that---

8 **The Court:** Can I get you to move close to a microphone
9 so everyone can hear you?

10 **Ms. Wooten:** Thank you, Your Honor. First of all, I
11 would like to say that up until this morning my client was
12 set on a trial and I was prepared and ready to go forward
13 with that trial, to protect his rights and to maintain his
14 defense. After speaking with my client this morning and
15 after having friends and family members talk with him, he
16 made his own choice that the plea would be in his best
17 interest.

18 I would like to talk very briefly about the facts. This
19 was a very tight-knit family; I think everybody can agree
20 upon that. He was very close with his brother. He loved his
21 brother; they were close. Many people in the community knew
22 him and knew his relationship with him. He was close with
23 his father.

24 As to -- a few things I'd like to address from the State
25 very briefly because we didn't have a chance to put on our

1 case: The HealthSouth meeting that the State's referring to
2 was because he was set to be released -- Skeet was set to be
3 released two days after my client went to go have that
4 meeting. So it may have been an impromptu meeting, but it
5 was a necessary meeting. It wasn't just a pretense to be in
6 the area. He had to go there. He had to have that meeting
7 to extend Skeet's stay so he could be in HealthSouth. So
8 that was not maliciously or premeditatedly done.

9 I would also like to say that as regard to the money,
10 when my client's father was living with him and he did have a
11 validly executed power of attorney, my client still maintains
12 that the money that was spent was either for his father's
13 interests or for his family's interests, so he does deny
14 that.

15 He does not deny the events that happened. He admits
16 his responsibility in that. He expresses regret for putting
17 his family, his ex-wife and his daughter and his son, through
18 all of this, and he has expressed to me numerous times over
19 the past 13 months that I've had interactions with him how
20 horrible he feels for the rest of the family, how horrible he
21 feels for **Minor** not having a father and everybody having to
22 feel this loss. So he has expressed that regret to me
23 numerous times in our conversation.

24 I'm not -- I wasn't prepared so much to give a
25 mitigation today because I was prepared to go forward in

1 trial. So I'm trying to point out all the relevant facts to
2 Your Honor. I do have some medical records to present to the
3 Court just to give you an idea about Tripp Gardner's health
4 issues and his problems and his state of mind around the time
5 of the incident.

6 Exactly one week before Todd died, Tripp went to his
7 family physician for confusion and anxiety. He would be in
8 parts of his own hometown and he wouldn't know how to get
9 home; he'd have to call his wife. She's going to speak about
10 this. And that was one week before his brother died.

11 The reason I'm bringing this up is I feel it's important
12 for Your Honor to realize that for -- he would have episodes
13 of stress, anxiety, confusion, and then six months after his
14 brother died he went back to his physician and it was noted
15 that he had been treated for depression since his brother's
16 death. He was on Lexapro - he needed to up his dosage - and
17 he was on Xanax. So his brother's death did take a toll on
18 him physically and emotionally afterwards. He didn't do this
19 without any kind of remorse afterwards. It affected him.

20 I also have medical records to show that he had -- as
21 early as 2010 he had M.R.I.'s done to his brain because it
22 was addressing an altered mental status of confusion, and
23 they found lesions on his brain in areas of white matter
24 tracks which had changes in it. Speaking with his doctor, we
25 weren't able to determine whether or not that would have an

1 effect on this case, but I would like Your Honor to be aware
2 of his mental status before the incident and also his mental
3 and emotional status after the incident which goes to show
4 that this took a toll on him as well. I understand that he
5 was the cause of the death, but at the same time it did take
6 a toll on him.

7 His ex-wife, Renee, now Smith, is present in the
8 courtroom, and she has been remarkably supportive here at the
9 time of this trial. She bought him an entire week's worth of
10 clothes to come to court because he is indigent. She has
11 tried to help him through emotionally this process. It's
12 been devastating to her. It's been devastating to their two
13 children. He has a son that lives in Greenville. He has
14 daughter, Taylor, who is present in the courtroom.

15 And, in fact, I believe that my client's care and
16 concern for his ex-wife and his daughter helped him to make
17 this decision and to take responsibility for his actions. He
18 expressed to me that he didn't want them to suffer anymore
19 and be through any more pain through this trial. I do
20 believe Renee Smith would like to address the Court, if
21 that's appropriate.

22 **The Court:** All right.

23 **Ms. Wooten:** And also I believe Mr. Gardner at the very
24 end would like to address Your Honor.

25 **The Court:** All right. Ms. Smith, we'll be glad to hear

1 from you, ma'am. If you'll come forward and accept the oath
2 of a witness from our clerk.

3 Renee Smith, after being duly sworn, testified as
4 follows:

5 Examination by the Court

6 Q. Ma'am, please, if you would, speak closely to that
7 microphone so we can all hear you. Thank you.

8 A. What Julie was saying about Tripp's mental status and
9 all since 2010 was correct. He would be out working and he
10 would call home needing directions. Once he had his open
11 heart surgery, he needed five bypasses. They were able to do
12 four.

13 It seems like after -- after that surgery, things did
14 start deteriorating with him as far as his mental status. It
15 would even be something as simple as if we were going to the
16 grocery store and we ran into someone that we knew, he would
17 kind of shy back and want me to take over the conversation
18 because he just, you know, could not answer questions, could
19 not think clearly enough to have a conversation with the
20 person.

21 He has had T.I.A.'s in the past. The M.R.I.'s and the
22 cat scans -- I'm sorry, mini strokes in the past, and the
23 scans that they did do of his brain did show a demyelinating
24 white matter disease which we had not been able to get
25 addressed. He did have appointments at M.U.S.C. to try to

1 follow up on that. I was being led to believe that he had an
2 early form of dementia at that time and that that was some of
3 the first signs. And I'm just -- I'm very sorry for all of
4 us.

5 **The Court:** All right, ma'am. Thank you for being here
6 today and for speaking on behalf of the defendant.

7 **Ms. Wooten:** And, Your Honor, the reason why I bring
8 this to your attention is that my client is 52 years old. He
9 has been incarcerated ever since his arrest which was
10 March 30th, 2012. I believe that would be 614 days that he's
11 been incarcerated so far. I bring this to your attention.

12 Mr. Gardner does not have a criminal record. Mr.
13 Gardner has health issues that I would hope that Your Honor
14 would take into consideration. He has expressed remorse, and
15 I believe that he would like to address the Court before
16 we're finished here.

17 **The Court:** All right. Very good. Mr. Gardner, I'll be
18 glad to hear from you, sir.

19 **Mr. Gardner:** Yes, sir. Your Honor, I'm---

20 **The Court:** We're going to ask you to please accept the
21 oath of a witness.

22 Eugene Austin "Tripp" Garder, III, after being duly
23 sworn, testified as follows:

24 Examination by the Court

25 **The Witness:** Your Honor, I am very sorry for everything

1 -- for my family going through this for so many months. I
2 did love my brother more than anybody can imagine. I did
3 everything to take care of him, and this is tragic and I just
4 want it to stop for everybody. I mean, I love my sister. I
5 love my wife -- ex-wife and my children. My daughter is here
6 and I know it's killing her, and I just couldn't stand it
7 anymore. It will be with me the rest of my life, no matter
8 what happens, and I'm so, so sorry.

9 By the Court:

10 Q. All right, sir. Mr. Gardner, tell me, sir: Why did you
11 -- if you tell us today that this is an accident, why did you
12 plunge your family into the horror of a -- of murder being
13 occurred by an unknown assailant and not assist your brother
14 after -- if it was an accident when he was wounded, to call
15 the ambulance, to try to save his life? You simply left the
16 scene, sir. Why did you do that?

17 A. Your Honor, that day I went to see him because of my
18 father's concerns. He -- he -- he was going through a
19 depression and I understand why, and now I really understand
20 why, and that day when it happened I was so scared.

21 I mean, it was emotions that I've never even -- I don't
22 even want anybody to have. I mean, there he was, my brother,
23 and I left. I wanted to go back; I just couldn't make myself
24 do it.

25 I should have called 9-1-1, but after talking to him and

1 going there, that's not what I should have done. I should
2 have called the preacher to meet me there to talk to my
3 brother, and if that would have been done, Frankie Tanner
4 would have been there; I know he would have. And I know -- I
5 know all I had to do was call my wife at that time and she
6 would have told me: Get him to the beach; we'll work it out.
7 I know she would have; she's done it before. He's stayed
8 with us.

9 He was going to move with us once we got Daddy settled,
10 and I just couldn't -- I just -- I was so scared. And then
11 the next day when we told him that Todd was gone, Daddy had a
12 stroke, and the first thing Dad asked me -- because I think
13 Terri, Renee -- I can't remember all who was there,
14 everybody, Eddie -- I told Dad that Todd was gone, and the
15 first thing Dad asked me was, "Did he do it?" And I said,
16 "No, sir," and he said, "Thank God." And that's just -- it
17 kept going.

18 I was going to wait until after the funeral, but when
19 Dad had the stroke, I just had to figure out something else
20 to do. Even the day that they arrested me, I had called Mark
21 or talked to Mark Luce on a Monday, and Wednesday I called
22 him back. I wanted to come to Darlington. I had just
23 started a job the Thursday before. And we talked good. I
24 told him where I was, where I worked, everything, and then
25 Thursday they sent a marshal.

1 I was going to be there Friday, between 9 and 9:30 is
2 what I told him, and Mark and them did an excellent job. I
3 mean, they did their job. He talked to me so professional
4 and everything, and I really thought that we were going to
5 meet Friday and I was going to get it out of here. I was
6 going to get it off my chest and I was going to get things
7 settled because Dad had passed. I had my family settled at
8 the mountain house.

9 It took us awhile. We had electrical problems. We had
10 plumbing problems. We had bats in the house, and once I got
11 my mother-in-law and my wife and my daughter settled, it was
12 time.

13 And as far as just not telling anybody, it was so hard
14 the day -- the night that I met with Mark. It was hard to
15 tell him then. It took me forever to tell him. I hadn't
16 told my wife yet. She knew nothing of anything; nobody did.
17 And it was -- it was -- I'm not a killer. I loved my
18 brother, and everybody knows I loved my brother.

19 He stayed with me any time he wanted to. He called me.
20 We talked to each other two or three times a day. And I
21 would never, never intentionally just kill anybody. And I
22 kept the gun. I kept the gun because I couldn't throw it
23 away. I knew it was going to happen. I knew this was going
24 to happen, not all this. I just knew that Friday I was going
25 to walk in with everything and sit down with them and talk to

1 them face to face because Mark -- I could talk to Mark.

2 The night that I was acting so aggravated when they
3 first got me, I felt a little betrayed because I was -- I
4 called him Wednesday morning and I told him, "I will be
5 there." I had already talked to my boss; I had just started
6 a job. And I was going to be there. But, I mean, he was
7 just doing his job, so...

8 Q. All right.

9 A. I mean, that's it. I mean, I am so, so sorry.

10 **The Court:** All right, sir. Just one moment, please.
11 Anything further now from the State?

12 **Ms. Parker:** No, Your Honor.

13 **The Court:** Anything from defense?

14 **Ms. Wooten:** No, Your Honor.

15 **The Court:** Mr. Gardner, this is an unspeakable tragedy,
16 sir, that you have caused, and whatever sentence this Court
17 imposes, the ramifications and the results of what you've
18 done will go far beyond these years. But based upon what I
19 have before me, based upon your reluctance to accept
20 responsibility until this matter was called to trial, based
21 upon the actions that occurred there at the event in which
22 your brother's life was taken, I sentence you to 20 years in
23 the department of corrections.

24 I'll credit you for the time you have served while you
25 have been waiting -- awaiting this trial in custody and will

1 now remand you to the department of corrections. That is the
2 sentence of the Court. Good luck to you, sir. Please go
3 with the officers.

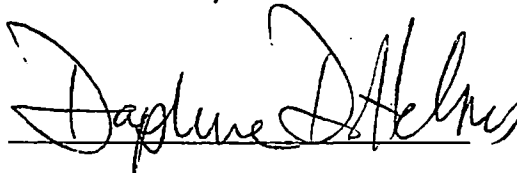
4 All right. Ladies and gentlemen, again, there's no
5 remedy here that can heal these wounds. I just wish you well
6 as you move forward to a better life. Good luck. This case
7 is now adjourned.

8 (Whereupon, the proceedings were concluded. Court
9 reporter's note: All exhibits were returned to the
10 Darlington County Sheriff's Office.)

1 I, the undersigned Daphne D. Helms, official court
2 reporter for the Fifth Judicial Circuit of the State of South
3 Carolina, do hereby certify that the foregoing is a true,
4 accurate, and complete transcript of record of all the
5 proceedings had and evidence introduced in the trial of the
6 captioned case, relative to appeal, in the circuit court for
7 Darlington County, South Carolina, on the 2nd and 3rd of
8 December, 2013.

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

11
12
13 December 22, 2014

14 
15

16 Daphne D. Helms, court reporter
17
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COPY

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF

EUGENE A. GARDNER III

SCDC # 357996

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

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

14CP160672

APPLICATION FOR

POST-CONVICTION RELIEF

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 PCI
2. Name and location of Court which imposed sentence Darlington
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) 2013-45-16-0452
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 12/3/13
 - (b) _____

TRUE CERTIFIED COPY,

 Scott B. Suggs
 CLERK OF COURT/RMC
 DARLINGTON COUNTY, SC

Revised 3/2003

 2014 AUG 12 PM 2:41
 SCOTT B. SUGGS
 CLERK OF COURT/R.M.C.
 DARLINGTON COUNTY, S.C.

FILED

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO - My lawyer never advised me - before or after trial about an
8. If you answered "yes" to (7), list: appeal. She + the clerk of court told me to
plea. I didn't know about a
plea an appeal - she never
spoke to me after sentencing.
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____ N/A
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____ N/A
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____ N/A
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____ N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) MY LAWYER NEVER TALKED TO ME ABOUT AN
- (b) APPEAL - I KNEW NOTHING / SHE TOLD ME TO PLEA!
- (c) HER AND THE CLERK OF COURT, SHE TOLD ME TO LIE!
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: Ineffective assistance of Counsel

- (a) ineffective assistance of counsel
 (b) "SEE ATTACHED"
 (c) "

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

- (a) "SEE ATTACHED"
 (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. _____
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. _____
 ii. _____
 iii. _____
 iv. _____
 (c) the disposition thereof:
 i. _____
 ii. _____
 iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

NO

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

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) NOTHING - MY LAWYER NEVER DISCUSSED APPEAL OR ANYTHING(b) SHE TOLD ME TO LIE + PLEAD, THEN I NEVER SAW OR HEARD(c) FROM HER AGAIN. SHE + THE CLERK OF COURT TOLD ME TO

17. Were you represented by an attorney at any time during the course of: PLEA, DURING THE FIRST RECESS - DETAILS ARE ATTACHED

(pages 12-15)
(page 16)
Revised 3/2003

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

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

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

i. _____

ii. _____

iii. _____

Julie Wooten
Darlington County Public Defender's
300 Russell St.
Darlington, S.C. 29540

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

i. Arraignment ~~_____~~

ii. trial ~~_____~~

iii. sentencing/plea

19. State clearly the relief you seek in filing this application: *(TISDALE V. STATE - page 10)*
Re-sentence/new trial - I would accept involuntary manslaughter/accident.
I would have never pled guilty if not for counsel and the clerk of court.
20. Are you now under sentence from any other court that you have not challenged? *(see attached)*
(pages 12-15)
NO

Counsel also told me to lie
and perjury myself (pg. 16)

STATE OF SOUTH CAROLINA)

County of DARLINGTON, S.C.)

VERIFICATION

EUGENE A. GARDNER III

I, V, 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.

Eugene A. Gardner III

SWORN to and subscribed before me this 4th
day of August, 2014.

Garry A. Muchant (L.S.)
Notary Public

My Commission Expires: 1-23-2022

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

EUGENE A. GARDNER III

I, ***E***, 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.

Eugene A. Gardner III
Applicant

SWORN or affirmed to and subscribed before me this
4th day of *August*, 2014.

Nancy C. Muehler
Notary Public

My Commission Expires: *1-23-2021*

Applicant contends that his conviction and sentence was in violation of the United States Constitution and the South Carolina Constitution and laws of this state.

The applicant is asserting a 5TH, 6TH, and 14TH Amendment violation which sets forth the prima facie violation of his constitutional rights.

Grounds are constitutional deprivations. The fundamental defects alleged are standards that require establishment of complete miscarriage of justice and an omission consistent with the rudimentary demand of fair procedure.

The following acts and omissions by counsel constituted ineffective assistance of counsel.

It would be a denial of due process not to give the applicant an evidentiary hearing on the applicant's constitutional claims.

Argument:

10a) Applicant was denied the right to effective assistance of counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I §§ 3 and 14 of the South Carolina Constitution during the preparation phase of his trial.

11a) Supporting facts: Trial counsel's performance during the preparation phase of trial was both unreasonable and prejudicial. See *Strickland v. Washington*, 466 U.S. 668 (1984). Counsel's omission of defendant's medical history and records was detrimental to the defendant's case. Also, there were no witnesses on the defendant's witness list. The defendant's doctor, nor the counties psychological nurse's evaluation were presented by counsel to the court. (See exhibit 1)

1. The defendant had a history of Transient ischemic attacks (TIA's). TIA's are minor strokes, which usually clear up in a day, but cause

Cause short term memory loss, confusion, depression, fainting, dizziness, slurred speech, unusual movements ect... Testimony by the defendant's doctor - Brian Adler, would have explained the defendant's reaction to the accident.

2. The county psychological nurse's statement, "I know you would not hurt anyone, your actions were normal (panic, scared, confusion) you didn't handle the situation right - your brother had just died in front of you - you were in "shock". She also said, the defendant was in a "traumatic haze." This statement was made after 4 or 5 sessions.

3. Counsel told the defendant, she was arranging an appointment with a neurologist, which was never done. Counsel failed to use any of this information or medical records as mitigating evidence.

4. The defendant was actually on sick leave for the 2 weeks prior to the accident. He was to return work the next day. He was suffering from "sleep apnea" and was diagnosed after a sleep study was done by Aerocare in Myrtle Beach, S.C.. TIA's were also a major issue. He was under the care of Dr. Brian Adler - Southstrand Medical - Surfside Beach, S.C.. All of this information was never brought to the attention of the solicitor or the court.

LOUD V. WHITNEY, 977 F.2d 149, 156 (5TH Cir. 1992) (Citing Strickland v. Washington supra)). 466 U.S. 668, 667, 104 S.Ct. 2052, 2064, 80 L.Ed. 2d 674 (1984) - Absence of testimony by independent psychologist during sentencing phase, that the capital murder defendant was experiencing ~~substantial~~ substantial, pre-existing mental defects, was prejudicial.

1. The defendant and his brother had never been in a physical altercation. The defendant does not even own a gun. The gun belonged to the defendant's brother. The brother's son even told police, "My dad was depressed about the divorce and money. He always carried that gun with him." The defendant reportedly told counsel, he was trying to take the gun from his brother, because of concerns their dad had for the brother (Todd

220
slander) and comments his brother had made. Because of divorce, losing his house, losing his house and the family restaurant closing after 40 years, the only job Todd ever had. Everyone was concerned about Todd's well being. Todd was going to move to the beach to live with defendant after their dad was settled at the defendant's home. Todd had lived with the defendant for about 3 months. During this time, Todd was asked by the defendant to put the gun away a few times. Again, none of this was brought to the attention of the solicitor or the court.

TISDALE V. STATE, 462 S.E2d 514 (S.C. 2008) - Counsel found effective in murder case for failing to request charges of involuntary manslaughter and accident. Counsel's conduct was deficient because the defendant's testimony supported an involuntary manslaughter charge by providing evidence of a struggle over a weapon and supported an accidental charge of a gun.....

'0b) Applicant was denied the right to effective assistance of counsel-guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I §§ 3 and 14 of the South Carolina Constitution during the guilt-innocence phase of his trial.

'b) Supporting facts: Trial counsel's performance during the questioning of the trial was both unreasonable and prejudicial. See Strickland v. Washington, 464 U.S. 468 (1984). Counsel failed to object during questioning.

- During questioning, the first and only witness (Todd's ex-wife) was making slanderous and prejudicial statements about the defendant and his family. Counsel asked the witness a question about her leaving Todd and was responsible for his depression. As counsel was walking back to the defense table, the witness blurted out, "at least I didn't shoot him," referring to the defendant. There was no objection from counsel, nor the court.

MATIRE V. MAINWRIGHT, 811 F.2d 1430 (1987) - Counsel's failure to object to improper comments that violate the defendant's 5TH Amendment rights was found to constitute substandard performance in violation of defendant's 6TH Amendment rights.

10c) Applicant was denied the right to effective assistance of counsel - guaranteed by the Sixth and Fourteen Amendments of the United States Constitution and by Article I §§ and 14 of the South Carolina Constitution during the preparation phase of his trial.

11c) Supporting facts: Trial counsel's performance during the preparation phase of trial was both unreasonable and prejudicial. See *Strickland v. Washington*, 466 U.S. 668 (1984). Counsel violated the defendant's attorney-client privilege.

1. Counsel allowed Darlington County Corrections Officer, Purvis, to sit in and assist with defendant's trial preparations and discussions. C.O. Purvis (officer of the court) was actually giving the defendant advice about court procedures, what to and not say ect... He also helped counsel demonstrate how the accident occurred and would be presented in court. After trial C.O. Purvis and Deputy August, transported the defendant back to DDC and told him, "you got screwed in there today." Now the defendant fully understands their statement.

S.C. CODE OF LAWS: RULE 407 - PROFESSIONAL CONDUCT

Rule 1.6 - Confidentiality of Information:

a) a lawyer shall not reveal information relating to the representation of a client, unless the client gives informed consent, the disclosure ~~is~~ is impliedly authorized in order to carry out representation or the disclosure is permitted by paragraph (b)

The defendant trusted counsel and did not know to question her actions. This was all new to the defendant. This is just another example of the trust the defendant had in everyone and the misrepresentation he was receiving.

10d) Applicant was denied the right of effective assistance by counsel - guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I §§ 3 and 14 of the South Carolina Constitution during the guilt-innocence phase of his trial.

11d) Supporting facts: Trial counsel's performance during the guilt-innocence phase of trial was both unreasonable and prejudicial. See *Strickland v. Washington*, 466 U.S. 468 (1984).

- Counsel allowed a court official (Scott B. Suggs - clerk of court), who had summoned the defendant into a room in the courtroom to discuss his case, advise counsel and the defendant. Suggs made the statement, "I've seen 500 trials and this is not going good. The jury will not believe her (counsel). You need to plea now." Counsel entered the room and allowed the clerk to continue giving his opinions, discussing the case with her and the defendant. Defendant's ex-wife (Renee Smith) and daughter (Taylor Haulner) entered and were asked to come by counsel. Suggs told everyone again what was being discussed. Suggs told defendant, "I know you would never hurt Todd, but something had to be done now." Counsel had changed everything - a plea had never been an option, but this was scaring the defendant. All confidence in counsel was gone - the room was chaos - everyone was upset.

Counsel and Suggs, both, shocked and totally took the defendant by surprise. The entire time - 20 months - 10 with counsel (Julie Wooten) counsel was all about telling the "truth" and what really happened. She told defendant, "you are the only one that knows the truth"

Counsel knew everything and never brought any of the information to the prosecutor at the court. There was no evidence of intent, malice, murder - only a struggle for a weapon - accident. How the defendant was scared, panicked, shook and left. How he told his father the next day and he had another stroke. How he told his good friend Jay Cox - chief of police, who was going to help the defendant get all of this straightened out, but had a heart attack

before he could help. How he talked to Det. Mark Luce, two times (Monday and Wed) to inform him, defendant would be there that Friday morning and the sheriff's office sent a U.S. Marshal to arrest the defendant that Thursday morning. How Sheriff Byrd had lied about the defendant confessing, where she said she checked the interview video and said "you didn't confess." She even called the defendant's son (Trey Harder) to let him know also. All of this would have lead to much more testimony and evidence that would prove the defendant's innocence. Testimony from his doctor that would explain the defendant's reaction of panic, scared, confusion, ect... and leaving the scene.

Counsel, the entire 10 months, told the defendant his testimony would be his best witness. "All you had to do was call 911" - "It is so nice to have a client we know is innocent, because most of these people are not."

Counsel would ask defendant if he would take a plea and he would always answer, "No - I AM NOT PLEADING TO SOMETHING I DID NOT DO!" Now, the defendant was being "slapped" in the face by counsel after talking to Suggs and everything changing in a matter of minutes. This misrepresentation by counsel was clearly a "miscarriage of justice."

STRICKLAND V. WASHINGTON, 466 U.S. 668 (1984): Deprivation or Allowance of Counsel: Government violates right to effective assistance of counsel when it interferes in certain ways with ability of counsel to make independent decisions about how to conduct defense. U.S.C.A. AMENDMENT 6.

STRICKLAND V. WASHINGTON - Counsel's function in representing a criminal defendant is to assist and hence counsel owes client duty of loyalty, a duty to avoid conflicts of interest.

- After trial, in the same room, the coroner - Todd Harder came to see the defendant, Deputy August left the room, when asked to by Harder. He asked the defendant to sit down and to tell him what happened.

The defendant told Hardee to stand up - showed him how the accident happened. The defendant told Hardee, "I told them what happened, I asked to take a lie detector test, I tried to talk to Will Rogers (schitor) - where were you all of this time?" Hardee said "It would have been a 'conflict of interest', but I know what Scott did (clerk of court)." "I know you couldn't hurt Todd (brother)." The counsel, Suggs, Hardee, the Co's all knew it was an accident and they all knew how it happened. - There were 2 witnesses that heard a shot between 3:00-3:30 PM and Hardee (coner) said Todd Gardner died at the same time. The defendant got out of his car at around 10:30 AM, waved to a neighbor, and went inside and shortly after the accident happened. Panicked ~~and~~ and scared, according to the County psychological nurse, was in "shock" and went back to the beach. Was at the beach all afternoon and got a call from a friend, saying they had found his brother. The defendant, finally called the detective to try and do the right thing. The defendant knew he was wrong by not calling for help. The defendant did not have to say anything, tell them he was there, about the accident - NOTHING! But he did! He always knew he would have to tell, it was his brother. The defendant was guilty of being scared out of his mind, not of killing his brother! The defendant called the detective after he got his family settled in his dad's mountain home. His dad had passed and the defendant knew it was time. He had tried in the beginning, but his dad had a stroke (the record in months) and his friend that was going to help him, died of a heart attack. He was not going to lose his dad!

If counsel did not withhold this information, along with other facts, the defendant would have not been found guilty. Defendant would probably, never gone to trial.

UNITED STATES V. SCOTT, 625 F.2d 623 (1981) - A conviction of a guilty plea that is entered solely as a result of faulty legal advice is a miscarriage of justice.

- The defendant never had any intentions of any plea at all - he had said over and over "I know I made a mistake by not calling for help. I was scared out of my mind, but I am innocent, I would never hurt my brother. We talked every day, sometimes 3 times. He was coming to live with us after I got dad settled. I loved my brother."

A plea of any kind was never an option.

MARCHIBRODA V. UNITED STATES, 368 U.S. 487, 7L. Ed. 2d 473, 82 S.Ct. 510 (1962) A guilty plea induced by "promise or threat", which deprive it of character of voluntary act "is void and open to collateral attack"

- This is a very clear violation of defendant's constitutional rights, by counsel allowing a court official - clerk of court, to interfere with the case and trial decisions. It is also clearly a violation of professional conduct.

UNITED STATES V. SANCHEZ-BARRETO, 93 F.3d 17 (1996) - Defense counsel coerced defendant's guilty plea in order to conceal his UNPREPAREDNESS for trial, which constitutes ineffective assistance of counsel.

- The defendant asked counsel "When will we go over the details of my case?" She said "DURING TRIAL." Counsel told the defendant numerous times, how her office had too many clients and no time. The defendant last met with counsel, the Tuesday before Thanksgiving and did not see her again until the following Monday at trial. When they finally discussed trial strategy, CO Purvis assisted.

Not only did counsel tell the defendant, how too many clients she had and too little time, the first (3) public defenders, the defendant spoke with said the same thing. The first left and more told anyone, the second was rumored to have been fired, the third came and told

the defendant she was going to represent him and 2 weeks later, Julie Wooten came and said she was his attorney. After 10 months, the defendant sat in jail and nothing was being done. The defendant only saw an attorney for a total of about 45 minutes. When the defendant finally met with Wooten, he told her, he had not confessed. "Watch the interview video, my family and everyone thinks I confessed." Three months later, Wooten came back and said, "you didn't confess." She called the son, Trey Gardner and told him.

Counsel never brought this "no confession" information to the court's attention.

10 e) Applicant was denied the right to effective assistance of counsel - guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I §§ 3 and 14 the South Carolina Constitution during the guilt-innocence phase of his trial.

11 e) Supporting facts: Trial counsel's performance during the preparation phase of trial was both unreasonable and prejudicial. See *Strickland v. Washington*, 466 U.S. 668 (1984). Counsel told the defendant to lie, ~~perjure~~ ^{perjury} himself and assisted.

- After the clerk of court had left and counsel was discussing, again the room was chaos. Everyone was upset and the defendant was confused and did not know what or why everything had changed at this time. He asked counsel, "you want me to go back into that courtroom, lie to that judge, perjure myself and plea to something I did not do?" She said "yes". The clerk of court, counsel and family knew the defendant's plea was a lie. The entire time, there was no thought of a plea. Defendant had made this clear. With defendant's testimony and testimony of

witnesses for the defendant, which were removed or never placed on the witness list. by counsel, everyone would have heard the truth. The only statements the solicitor had were openminded, unfounded and simply not true. Another surprise to the defendant "at trial" - no doctors or witnesses at all. Counsel actually put the "burden of proof" on her client.

Counsel knew all of this and could have had all of this cleared up a long time before trial. The defendant tried to meet with the Sheriff's office to clear things up, he asked to take a lie detector test, he asked to talk to Solicitor Will Rogers when he was first brought to Darlington. Defendant sat in DCDC for 10 months and only talked to a public defender for a total of about 30 minutes. He was only told how many other clients she (Chelmer) had and how busy she was.

Counsel informed the defendant right before trial, that 6 months prior, the solicitor told her, that if ~~the~~ ~~the~~ the defendant's sister had not pushed an issue, that they would have "never pursued this case." Defendant told counsel that this "issue" could have been explained with fact and cleared up. Counsel knew all of this and never arranged for defendant to clear this up.

Between, the clerk of court discussing the case with counsel, defendant and family was about 30 minutes. All of this last minute pressure was thrown on the defendant. The clerk of court telling the defendant that the jury would not believe counsel, counsel charging her entire demeanor, counsel telling defendant to "lie" and "plea" to something both she and the clerk of court knew defendant didn't do, was overwhelming to the defendant.

The clerk of court had left and discussions were unclear and

very confusing. Everyone was upset, especially Taylor Hatcher (daughter) and at this point the defendant was "numb" and trying to figure out what had happened. The clerk of court stuck his head in the door and said, "you have 20 minutes," "the judge is ready to continue with trial" and he left. Frustrated, confused, upset, defendant asked counsel, "What do I do?" She wrote on a yellow piece and said, "say this and nothing else, the judge might change his mind." - "you may not get another chance" - "If you do start to say too much, I will touch your back." She actually touched defendant's back, while he was answering the judge.

Between all of the chaos, the change of everything, being told to lie, and now he had minutes to make a decision based on all of this mentioned is a miscarriage of justice. Defendant did not know what else to do with all of the pressure put on him by counsel, allowing this all to happen.

UNITED STATES V. MAGINI, 973 F.2d 261 (1992) - Trial counsel's failure to explore plea negotiations due to conflict of interest may constitute ineffective assistance of counsel and required an evidentiary hearing.

South Carolina Code of Laws:

- Rule 407 - Professional Conduct - Rule 3.4 - Fairness to Opposing Party and Counsel
- A lawyer shall not:
- unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act.
 - falsify evidence, counsel or assist a witness to testify falsely or offer an inducement to a witness that is prohibited by law.
 - knowingly disobey an obligation under the rules of tribunal...

d) in pretrial procedure, make a frivolous request or fail to make a diligent effort to comply with a legally proper discovery request by an opposing party.

Rule 3.5 - Impartiality and Decorum of Tribunal:

A lawyer shall not: b) Communicate ex parte with such a person during the proceeding, unless authorized by law or court order.

Comment under Rule 3.5: [2] During a proceeding a lawyer may not communicate with persons serving in an official capacity in the proceedings such as a judge, master or juror unless to do so by law or court order.

- Counsel allowed a court official (Scott Suggs - clerk of court) who was involved with the trial, to advise defendant and counsel which obviously influenced her original defense. This clearly undermined all confidence between defendant and counsel. The clerk of court saw that counsel was not giving the defendant the representation he deserved. The erroneous advise given to the defendant was out of desperation because of misrepresentation, which resulted in professional misconduct and clearly a miscarriage of justice and due process.

Rule 4.1 - Truthfulness in Statements to Others:

[4] Under Rule 1.2(d) a lawyer is prohibited from counseling or assisting a client that the lawyer knows is criminal or fraudulent.

- Counsel told defendant to perjure himself because of her lack of preparedness and the influence of a court official. Again this is clearly not our justice system. Defendant never had a chance to tell his side - "the truth." Counsel not only violated very serious professional conduct rules, but the defendant's constitutional rights as well. Amendments 5TH, 6TH and 14TH.

230

UNITED STATES V. RUMEY, 698 F.2d 764 (1983) - Trial counsel induced defendant's guilty plea based on erroneous advice renders the guilty plea itself involuntary and unintelligently entered and constitutes ineffective assistance.

MOORE V. U.S., 950 F.2d 656 (10th Cir. 1995) Coercion by trial counsel or the prosecutor to induce a guilty plea renders the plea involuntary.

UNITED STATES V. SANDERSON, 595 F.2d 1021 (1979) - Trial counsel's misrepresentation of material facts, withholding information and exerted pressure on defendant to induce a guilty plea, constitutes ineffective assistance and requires an evidentiary hearing to resolve claim.

- The defendant never had a chance to tell his side of the story. He tried to come to Darlington on his own. Counsel had no witnesses, no medical history was presented to the court. She allowed a court official to advise herself and the defendant. Counsel showed serious misrepresentation, violated the defendant's constitutional rights, professional misconduct was very evident - she told and assisted the defendant in perjury because of her unpreparedness.

Rule 407: Misconduct 8.4 a) violate or attempt to violate the rules of professional conduct, knowingly assist or induce another to do so through the acts of others.

*) Counsel told the defendant to lie and assisted him in doing so. Counsel was obviously not prepared or she would have never allowed the clerk of court to even talk with defendant, must less engage in the discussion. Allowed another court official (CO. Purvis) to be involved also with trial discussions the night before.

c) Commit a criminal act involving moral turpitude.

- Counsel told defendant to lie and perjure himself.

d) engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

- Counsel knew all of the information that has been mentioned. Perjury, conflict of interest, coercion, due process, professional misconduct, attorney-client violations and the entire time defendant was trusting counsel and the judicial system. Clearly a miscarriage of justice.

e) engage in conduct that is prejudicial to the administration of justice.

- Counsel did not represent her client in a just and professional way. Counsel could have presented this information to the solicitor and the court. Counsel knew, information the solicitor's office was using was wrong, and could have been proven, if counsel would have done the right thing. All of the errors, misconduct violations, etc., prove representation was more than ineffective, it was a miscarriage of justice.

Defendant was naive and totally trusting in counsel and the pressure put on defendant to plea was enormous. Even at the end, counsel never told defendant anything. Never explained that he could appeal, because counsel knew all of this was wrong. Everything happened, so fast and without notice. Counsel could have corrected all of this before trial and especially when an officer of the court summoned the defendant, during trial and influenced counsel's entire defense. Counsel convinced defendant to lie and plea to something counsel & clerk of court both knew he didn't do, because of counsel's misrepresentation.

LUCKETT V. STATE, 462 S.E. 2d 858 (S.C. 1995) (per curiam) - Petitioner "did not knowingly and intelligently waive his right to direct appeal."

MARROW V. U.S., 772 F.2d 525 (1985) - Trial counsel has a duty to advise defendant of right to appeal, if there is an error during the guilty plea proceedings. - (There were obviously errors committed by counsel)

Conclusion:

In establishing an ineffective assistance of counsel claim from a guilty plea, an applicant must prove that, but for counsel's deficiencies there is a "reasonable probability" applicant would not have pled guilty and in this case would have "Continued on with his trial." HILL v. LOCKHART, 474 U.S. 52, 106 S.Ct. 366, STATE v. DAVIS, 468 S.E. 2d 747. Using the facts stated, there are numerous deficiencies and prejudice was the reason for counsel's actions as they did affect the petitioner's decision to plead guilty.

Wherefore, for the foregoing reasons, the Honorable Court should reverse conviction and sentence on behalf of the applicant.

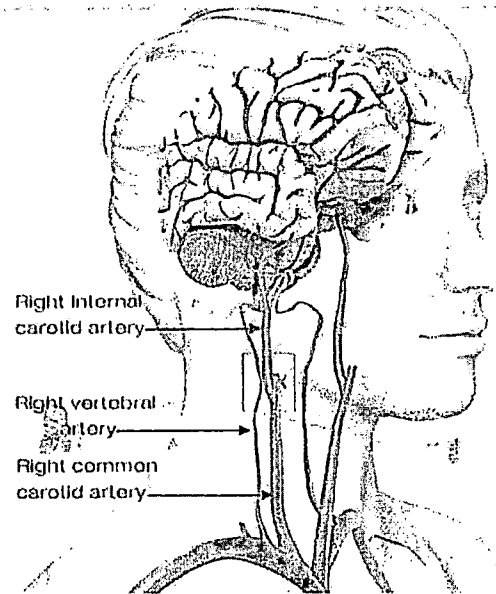
Applicant, also reserves the right to amend at a later date after appointed counsel.

Respectfully Submitted
 /s/ Eugene A. Gardner III
 EUGENE A. GARDNER III
 SCDC # 357996
 PERRY CORRECTIONAL INST.
 430 OAKLAWN RD.
 PELZER, S.C. 29669

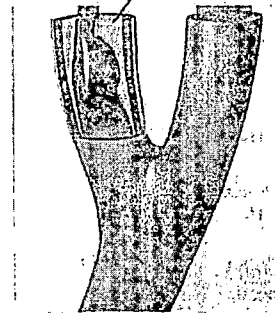
▶ Transient Ischemic Attack

Select a Topic

"mini stroke" that occurs when a blood clot blocks an artery for a short time. The only difference between a stroke and TIA is that with TIA the blockage is transient (temporary). TIA symptoms occur rapidly and last a relatively short time. Unlike a stroke, when a TIA is over, there's no permanent injury to the brain. There's no way to tell if symptoms of a stroke will lead to a TIA or a major stroke. It's important to call 9-1-1 immediately for any stroke symptoms.



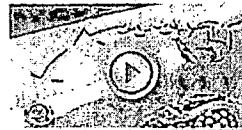
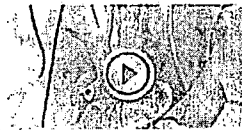
If the plaque ruptures, tiny pieces of plaque and clotted blood can travel in the bloodstream to the brain.



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(EXHIBIT 1)



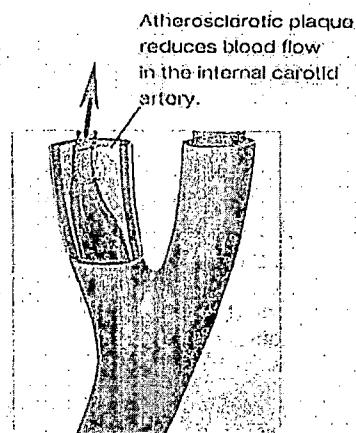
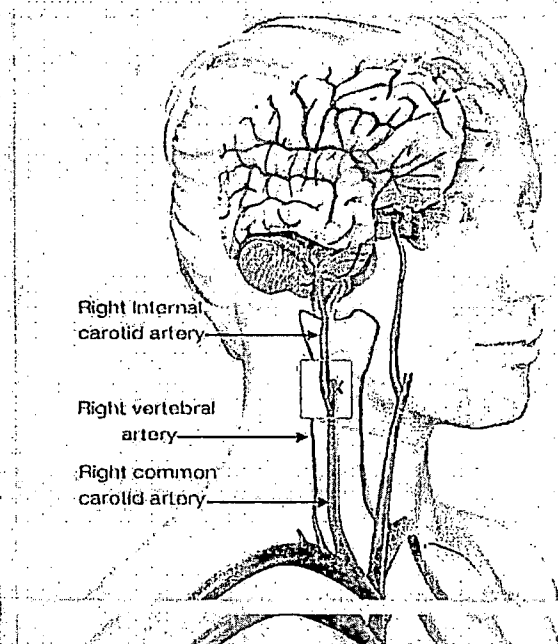
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▶ Transient Ischemic Attack

Select a Topic

TIA, or transient ischemic attack, is a "mini stroke" that occurs when a blood clot blocks an artery for a short time. The only difference between a stroke and TIA is that with TIA the blockage is transient (temporary). TIA symptoms occur rapidly and last a relatively short time. Unlike a stroke, when a TIA is over, there's no permanent injury to the brain. There's no way to tell if symptoms of a stroke will lead to a TIA or a major stroke. It's important to call 9-1-1 immediately for any stroke symptoms.



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Causes and Risk Factors

Such attacks can be caused by a variety of factors, including:

Small pieces of fatty material or calcium that have built up on an artery wall and then broken off and lodged in the small blood vessels of the brain

Cerebral artery stenosis

Spasms in the walls of the arteries

High blood pressure

A lack of oxygen in the blood flowing to the brain, which can occur when a person is severely anemic, has carbon monoxide poisoning or has leukemia or polycythemia (a condition that produces abnormal blood cells and clotting function).

Diagnosis

Many disorders (seizures, tumors, migraines or abnormal blood sugar levels) have symptoms similar to those of transient ischemic attacks. While sudden neurologic symptoms suggest clues about which area of the brain is affected, careful evaluation is necessary. Tools like computed tomography (CT) or magnetic resonance imaging (MRI) scans, which are useful in diagnosing a stroke involving brain damage, are not useful for diagnosing transient ischemic attacks that caused no permanent brain damage. Several techniques can be used to confirm an attack if the blockage occurs in one or both carotid arteries, common signs of which can be blindness in one eye, weakness or sensation abnormalities. Diagnostic techniques include:

Listening to the sound of the blood flow in the carotid arteries using a stethoscope. The uneven flow creates sounds (bruits). However, bruits can be present without any significant blockage.

Ultrasound scan and Doppler flow study. These tests are done at the same time to measure the size of the blockage and how much blood can flow around it.

An MRI scan or cerebral angiography can be performed if a severe narrowing of the artery is present. In a cerebral angiography, a fluid is injected into an artery while X-rays of the head and neck are taken.

Computed tomography (CT) angiography

Treatments

Treatment of transient ischemic attacks is aimed at preventing stroke. The major risk factors for stroke are:

High blood pressure

High cholesterol levels

Smoking

(EXHIBIT 1)

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235



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Transient Ischemic Attack

A transient ischemic attack is a brief episode during which parts of the brain do not receive enough blood. Because the blood supply is restored quickly, brain tissue does not die as it does in a stroke. These attacks are often early warning signs of a stroke.

Symptoms

A transient ischemic attack starts suddenly and lasts about two to 30 minutes. (Rarely, some can last more than two hours.) The effects vary depending on what part of the brain is deprived of blood and oxygen. Symptoms of an attack can include:

- Loss of (or abnormal) sensations in an arm, leg or one side of the body
- Weakness or paralysis of an arm or leg or one side of the body
- Partial loss of vision or hearing
- Double vision
- Dizziness
- Slurred speech
- Problems thinking of or saying the right word
- Inability to recognize parts of the body
- Unusual movements
- Loss of bladder control
- Imbalance and falling
- Fainting

The symptoms are similar to those of a stroke, but they do not last and are reversible. However, these attacks tend to recur. A person may have several in a day or only two or three in several years. In approximately one-third of cases, a transient ischemic attack is followed by a stroke, and roughly half of such strokes occur within a year of having an attack.

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Date: AUGUST 4, 2014

CLERK OF COURT - DARLINGTON COUNTY

SCOTT B. SUGGS

P.O. BOX 1177

DARLINGTON, S.C. 29540

14CP160672

Dear Mr. Suggs,

Enclosed please find my original Application for Post-Conviction Relief (PCR) and Memorandum of Law in Support of same for filing with your office. I have also enclosed a self-addressed ~~envelope~~ envelope for your return to me, clocked-stamped copies of these documents.

Thank you for your kind attention to this matter.

cc: file

Sincerely yours,
At Eugene A. Gardner III
 EUGENE A. GARDNER III
 PERRY CORRECTIONAL INST.
 430 OAKLAWN RD.
 PELZER, S.C. 29669

SCOTT B. SUGGS
 CLERK OF COURT/R.O.D.
 DARLINGTON COUNTY, S.C.

2014 AUG 12 PM 2:41

FILED

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DARLINGTON	)	FOR THE FOURTH JUDICIAL CIRCUIT
Eugene A. Gardner, #357996,	)	Case No. 2014-CP-16-0672
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the Application for Post-Conviction Relief filed August 12, 2014, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Darlington County Clerk of Court. In February 2013, the Darlington County Grand Jury indicted Applicant for murder (2005-GS-16-0452). Julie R. Swilley, Esquire, and J. Richard Jones, Esquire, represented Applicant. On December 2, 2013, Applicant proceeded to trial before the Honorable J. Michael Baxley and a jury. On December 3, 2013, Applicant pled guilty to the lesser-included offense of voluntary manslaughter. Judge Baxley sentenced Applicant to twenty (20) years imprisonment. Applicant did not appeal his plea or sentence.

II.

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

1. "Applicant was denied the right to effective assistance of counsel [...] during the preparation phase of his trial."
 - a. "Trial Counsel's performance during the preparation phase of trial was both unreasonable and prejudicial"

- i. "The defendant has a history of transient ischemic attacks (TIA's)."
 - ii. "The county psychological nurse's statement, 'I know you would not hurt anyone, your actions were normal (panic, scared, confusion) you didn't handle the situation right – your brother had just died in front of you – you were in 'shock.'"
 - iii. "Counsel told the defendant she was arranging an appointment with a neurologist, which was never done."
 - iv. "The defendant was actually on sick leave for the 2 weeks prior to the accident."
- b. "Loud v. Whitney, 977 F.2d 149, 156 (5th Cir. 1992) (citing Strickland v. Washington supra))."
- i. "The defendant and his brother had never been in a physical altercation."
- c. "Tisdale v. State, 662 S.E2d 514 (S.C. 2008) – Counsel found effective in murder case for failing to request charges of involuntary manslaughter and accident."
- 2. "Applicant was denied the right to effective assistance of counsel [...] during the guilt-innocence phase of his trial"
 - a. "Supporting facts: trial counsel's performance during the questioning of the trial was both unreasonable and prejudicial."
- 3. "Applicant was denied the right to effective assistance of counsel [...] during the preparation phase of trial."
 - a. "Counsel allowed Darlington County Corrections Officer, Purvis, to sit in and assist with defendant's trial preparations and discussions."
- 4. "Applicant was denied the right to effective assistance by counsel [...] during the guilt-innocence phase of his trial."
 - a. "Supporting facts: Trial counsel's performance during the guilt-innocence phase of trial was both unreasonable and prejudicial"
 - i. "Counsel allowed a court official (Scott B. Suggs – clerk of court), who had summoned the defendant into a room in the courtroom to discuss his case, advise counsel and the defendant."
 - ii. "There were 2 witnesses that heard a shot between 3:00-3:30 PM and Hardee (coroner) said Todd Gardner dies at the same time."
 - iii. "The defendant never had any intention of a plea at all – he has said over and over 'I know I made a mistake by not calling for help. I was scared out of my mind, but I am innocent, I would never hurt my brother. We talked every day; sometimes 3 times. He was coming

- to live with us after I got dad settled. I loved my brother.”
- iv. “The defendant asked counsel ‘when will we go over the details of my case?’ She said ‘during trial.’”
5. “Applicant was denied the right to effective assistance of counsel [...] during the guilt-innocence phase of his trial.”
- a. “Supporting facts: Trial counsel’s performance during the preparation phase of trial was both unreasonable and prejudicial.”
 - i. “After the clerk of court had left and counsel was discussing, again the room was chaos.”
 - ii. “Counsel did not represent her client in a just and processional way.”

Respondent denies Applicant is entitled to relief on any of these claims, and demands strict proof thereof. Any claims not specifically enumerated in the application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRCP.

Attached to this return and incorporated herein are the records of the Darlington County Clerk of Court regarding the subject conviction(s), Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III.

Respondent submits Applicant’s allegations of ineffective assistance of plea counsel are without merit. In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of plea counsel as a ground for relief, the applicant must prove “counsel's conduct so undermined the proper functioning of the adversarial process” that the plea

proceedings "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes plea counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, the Applicant must prove plea counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, plea counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show 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, 59 (1985).

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

IV.

Respondent denies each and every allegation not hereinbefore expressly admitted, qualified, or explained.

V.

WHEREFORE, having made its return, Respondent requests an evidentiary hearing be held.

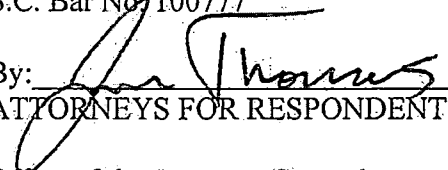
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

JOSHUA L. THOMAS
Assistant Attorney General
S.C. Bar No. 100777

By: 
ATTORNEYS FOR RESPONDENT

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

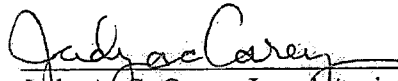
June 11, 2015

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DARLINGTON	)	
	)	
	)	2014-CP-16-0672
	)	
EUGENE A. GARDNER, 357996	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

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

Lance S. Boozer, Esquire
The Boozer Law Firm, LLC
807 Gervais Street; Suite 203
Columbia SC 29201

DATED this 11th day of June, 2015.


 Judy A.C. Carey, Legal Assistant
 For Respondent

In Circuit Court of the
Fourth Judicial Circuit
2014-CP-16-0672

EUGENE GARDNER,
Plaintiff,

VS.

THE STATE,
Defendant.

Transcript of Record

Marlboro, South Carolina
January 10, 2017

B E F O R E:

The Honorable G. Thomas Cooper, Jr.

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

Mr. Lance S. Boozer, Esquire
Attorney for Plaintiff

Ms. Valerie Giovanoli, Esquire
Attorney for Defendant

Lisa Carter
Circuit Court Reporter

I N D E X

WITNESSESPAGE

Eugene Gardner:

Direct Examination by Mr. Boozer 5

Cross Examination by Ms. Giovanoli 37

Scott Suggs:

Direct Examination by Mr. Boozer 50

Cross Examination by Giovanoli 60

Taylor Parker:

Direct Examination by Mr. Boozer 65

Julie Swilley:

Direct Examination by Ms. Giovanoli 71

Cross Examination by Mr. Boozer 86

Redirect Examination by Ms. Giovanoli 94

Rick Jones:

Direct Examination by Mr. Giovanoli 97

Cross Examination by Mr. Boozer 101

I N D E X

NO.DESCRIPTIONEV.

(NO EXHIBITS INTRODUCED DURING HEARING)

Eugene Gardner- Direct Examination by Mr. Boozer:

4

1 THE COURT: Is the State ready to proceed?

2 MS. GIOVANOLI: Yes, Your Honor.

3 THE COURT: The defendant -- Mr. Boozer, you ready
4 to proceed?

5 MR. BOOZER: We are, Your Honor.

6 THE COURT: All right. Madam Attorney General call
7 your next case.

8 MS. GIOVANOLI: Thank you. May it please, the Court?
9 Eugene A. Gardner versus the State of South Carolina. This
10 is case number 2014-CP-16-0672. We're before the Court on
11 application for post-conviction relief filed on August 12,
12 2014. The applicant is presently confined in the South
13 Carolina Department of Corrections pursuant to the orders
14 of commitment of Darlington County Clerk of Court. In
15 February 2013, the Darlington County Grand Jury indicted
16 applicant for murder. It's indictment number 2005-GS-16-
17 0452. Julie R. Swilley, Esquire and J. Richard Jones,
18 Esquire represented the applicant. On December 2, 2013 the
19 applicant proceed to trial before the Honorable J. Michael
20 Baxley and a jury. On December 3, 2013 applicant pled
21 guilty to the lesser included offense of voluntary
22 manslaughter. Judge Baxley sentence applicant to twenty
23 (20) years imprisonment. Applicant did not appeal his plea
24 or sentence. The State is present and ready to proceed.
25 The applicant is also present and represented by Mr. Lance

Eugene Gardner- Direct Examination by Mr. Boozer:

5

1 Boozer and I will hand it over to counsel.

2 THE COURT: Mr. Boozer?

3 MR. BOOZER: Thank you, Your Honor. If it pleases,
4 the Court? Judge we'd go ahead and call Mr. Gardner to the
5 stand.

6 THE COURT: Come around, Mr. Gardner.

7 THE CLERK: Raise your right hand. Do you swear to
8 tell the truth, the whole truth, and nothing but the truth
9 so help you God?

10 MR. GARDNER: I do.

11 THE CLERK: Have a seat and state your name for the
12 record.

13 MR. GARDNER: Eugene Austin Gardner, III.

14 EUGENE GARDNER, first being
15 duly sworn, testified as follows:

16 **Direct Examination by Mr. Boozer:**

17 Q. Mr. Gardner, how are you doing today?

18 A. Fine. Thank you.

19 Q. All right. Mr. Gardner, do you know why you're here
20 today?

21 A. Yes.

22 Q. Why is that?

23 A. To, um, the PCR hearing.

24 Q. Okay. Now, what are you currently serving a sentence
25 for?

Eugene Gardner- Direct Examination by Mr. Boozer:

6

1 A. Manslaughter.

2 Q. Voluntary manslaughter?

3 A. Voluntary -- yes.

4 Q. Is that a result of a plea?

5 A. Yes.

6 Q. And what type of sentence did you receive?

7 A. Twenty (20) years.

8 Q. Now, obviously, you filed an application for post-
9 conviction relief to get here today?

10 A. Yes.

11 Q. And do you understand that if you are successful in
12 your application for post-conviction relief, really the
13 only thing that this court can do for you is to give you a
14 new trial on your original charge?

15 A. Yes.

16 Q. And your original charge is what?

17 A. Murder.

18 Q. You understand that this judge can't, his Honor, can't
19 reduce your time or reduce your sentence or let you out
20 early or make you parole eligible, but the only thing his
21 Honor can do, is grant you a new trial?

22 A. Yes.

23 Q. And that's -- is that what you want?

24 A. Yes.

25 Q. Okay. Now, who represented you for your plea?

Eugene Gardner- Direct Examination by Mr. Boozer:

7

1 A. For my plea?

2 Q. Well, let me ask you this. When were you first
3 arrested on these charges?

4 A. Excuse me.

5 Q. When were you first arrested for these charges?

6 A. March 29, 2012, no -- '13 -- '12, I believe.

7 Q. Okay. Did you immediately get a lawyer?

8 A. They appointed me one.

9 Q. Who was appointed to represent you?

10 A. Her first name was Chelsea. I don't know her last
11 name.

12 Q. Okay. And what happened to her?

13 A. I -- well, I thought she was my attorney but she,
14 undoubtedly, she left and months and months later Rick
15 Jones, finally, you know, let me know, he did apologize.
16 Nobody really knew that she left. I never did understand
17 that.

18 Q. Okay. So she was appointed to represent you from the
19 public defender's office?

20 A. Yes.

21 Q. But she -- your understanding she left and she was no
22 longer your lawyer?

23 A. Yeah.

24 Q. And then after she left, who then became a lawyer?

25 A. Well, when she met with me the two times, a young lady

Eugene Gardner- Direct Examination by Mr. Boozer:

8

1 named, Tiffany, was with her and I didn't see her either.
2 There were rumors that she got fired. I'm not quite sure.
3 And then Christie Wise came and told me that she was going
4 to be my attorney. And then a couple of weeks, I guess,
5 later Julie, at the time it was Wooten, I understand she's
6 been married, was my lawyer then.

7 Q. Okay. So Julie, it was Wooten at the time and her
8 name is Julie Swilley now?

9 A. Oh, it is Swilley, okay.

10 Q. And Rick Jones was also your lawyer?

11 A. Well, he was, I guess, with her, I guess, an advisor
12 sort of. I never did talk to him too much not until the
13 end near trial.

14 Q. Okay. Now, initially in this case, ultimately, it
15 ended up being a plea, is that right?

16 A. Yes.

17 Q. Did you initially proceed to trial?

18 A. Yes.

19 Q. And how far through a trial did you go?

20 A. We went through pretrial and the jury selection. The
21 second day we went through one witness.

22 Q. Okay. And then you ended up entering a plea?

23 A. Huh?

24 Q. And then, ultimately, you ended up entering a plea?

25 A. Yeah, eventually, yeah.

Eugene Gardner- Direct Examination by Mr. Boozer:

9

1 Q. Okay. Now I want to go through your PCR application,
2 okay?

3 A. Okay.

4 Q. And you've alleged a number of items and we'll talk
5 about each one of them as we go through. But your first
6 allegation is you alleged that you were denied the
7 ineffective assistance of counsel during the preparation
8 phase of the trial and that you feel like your trial
9 lawyer, their preparation was both unreasonable and
10 unprofessional, is that one of your allegations?

11 A. Yes. We -- - we went through that whole period of
12 time, like I say, I never saw Ms. Chelsea. The only thing
13 she did was take me through the bond which I received. And
14 then later on Julie came, she got me a bond reduction.
15 But, no, we never -- I never did really talked to anybody.
16 And then Julie came and we did talk but not until the end,
17 very end, right before trial. That's when we really
18 started going over some stuff. That's the best I know of,
19 of what was happening.

20 Q. Okay. Under that tab of ineffective assistance of
21 counsel, you've got four other allegations. One of which
22 is, you said you had a history of transient ischemic
23 attacks?

24 A. Yes. That was something that she told me that we will
25 get a neurologist to look at and I don't really think it

Eugene Gardner- Direct Examination by Mr. Boozer:

10

1 had anything to do with the accident itself. It had to do
2 with the reaction I had the day it happened. The
3 confusion, the depression and all that. But she never did
4 come through with that. I never did understand that
5 either.

6 Q. So your lawyer never got a neurologist to ---

7 A. No. No. She said, I'm not hundred percent sure but I
8 think it had to do with money.

9 THE COURT: It had to do with, what?

10 A. Money. Not being able to pay for the neurologist.

11 THE COURT: Okay.

12 Q. All right. Now, you also allege under that same sort
13 of tab that the county psychological nurses statement, I
14 know you would not hurt anyone, your actions were normal,
15 you didn't handle the situation right, your brother had
16 just died in front of you, you were in shock." Explain
17 what you mean by that allegation.

18 A. Yeah, what happened was, she met with me three, four
19 times, I'm not quite sure ---

20 THE COURT: Who?

21 A. The nurse. I can't remember her name. A real nice
22 lady. And she had an escort, Mr. Jerry, I remember him.
23 And she came to me one day and I told her, you know, she
24 wanted to talk to see if I was okay, that kind of thing.

25 And I said, "well I just need to ask you a question," -- II

Eugene Gardner- Direct Examination by Mr. Boozer:

11

1 couldn't understand why I left that day. I just couldn't
2 understand because I love my family and I've always taken
3 care of them.

4 THE COURT: Tell me a little bit more about what do
5 you mean, why you had left?

6 A. I left -- I left the day the accident happened. I
7 left. I could make myself go back. I tried -- and I
8 couldn't understand why.

9 Q. If you would, just by way of a little bit of
10 background, what is alleged that you had done?

11 A. I shot my brother.

12 Q. Okay.

13 THE COURT: Your brother?

14 A. Yes, sir. And what it was I tried to take the gun and
15 it went off. He had a history of depression. There was a
16 lot of things going on. My whole family knew it. My dad
17 was really worried about him and my dad had a stroke and he
18 was at HealthSouth at the time and we were going to have
19 dad moved. So me and my brother talked about it and we
20 decided that he would come live with me because the things
21 that Todd was going through were like he lived at our
22 restaurant, we owned a restaurant in Mechanicsville, South
23 Carolina right there in Darlington for forty (40) years and
24 did end up closing and he was -- he was -- his wife had
25 left him and there were some things going on in that aspect

Eugene Gardner- Direct Examination by Mr. Boozer:

12

1 that really, really bothered him. He was in bad shape. He
2 eventually was going to come live with us. So I went that
3 day and we were going to meet and get my dad prepared to
4 move to the beach. My daughter, my wife, took great care
5 of my daddy and when I called him, he said, he couldn't
6 meet me and we have been planning this for a while because
7 dad was in re-hab, like I said, with the stroke. And when
8 I called him, he said, he couldn't meet me. And it was
9 kind of out of the blue because we had plan this and he had
10 to meet somebody. That's all I ever need. Well, when he
11 was talking to me he said, "well, you know, you just get
12 tired of things sometimes," and he kind of hung up on me.
13 So I went to the restaurant, it's out in the country before
14 I went to Florence, and, of course, that's when things
15 happened. And when it happened I left. I couldn't
16 comprehend my brother being there.

17 Q. Did you discuss your version and recollection of the
18 events with your attorney?

19 A. Yes. Yes. As far as that part goes, yes.

20 Q. Okay. Let's continue to go through your allegations.

21 A. Okay.

22 Q. And I think your third that you've got you told --
23 counsel told the defendant that she was arranging an
24 appointment with the neurologist which was never done.

25 We've already discussed that ---

1 A. Right. Right.

2 Q. You've also got that the defendant was actually
3 meeting you, was actually on sick leave two weeks prior to
4 the accident. Explain what you mean by that?

5 A. I was going through a sleep apnea problem. I had the
6 machine now and everything. And, like I said, it had
7 nothing to do with what happened. It was just the reaction
8 that I had. And what that statement that she made whenever
9 I asked her, I said, I felt like I was in tunnel vision, I
10 didn't -- I can't understand why I left and the way I
11 acted. And she said, you weren't in tunnel vision, you
12 were on what we call dramatic haze and the duress state.
13 But, your brother, you know, just died in front of you.
14 You were in shock. That kind of thing. And, I mean, I
15 even ask the nurse at Perry, the first place I went, she
16 ever knew what dramatic haze was because I was trying to
17 really find out why I left. I mean, any of my family
18 members will tell you I would die for them. There's no --
19 there's no doubt about it and when this happened it blew my
20 mind. And I will never -- if I would've called our
21 preacher to meet us there that day none of this would've
22 happened.

23 Q. Mr. Gardner ---

24 A. I'll never forgive myself for that.

25 Q. What exactly -- do you know what your trial strategy

Eugene Gardner- Direct Examination by Mr. Boozer: 14

1 was going into trial?

2 A. To tell the truth. I mean, to tell what happened. To
3 let them know the history of what my brother and I were all
4 about and what he was going through. And, I don't know,
5 that was, basically, it, just tell what happened.

6 Q. You got a couple of other allegations under B and C
7 where you alleged, the defendant and his brother have never
8 been in a physical altercation?

9 A. Yeah. We -- we didn't fight. We, I mean, ---

10 Q. Is that something that you discuss with your lawyer?

11 A. Yes, she knew that.

12 Q. Okay. Was there ever any evidence of that presented
13 at trial or ---

14 A. We never had a chance. That's the thing. Whenever we
15 get to the part of why or how the plea went, I'll explain
16 that to you.

17 Q. Okay. And that's really the biggest part what we're
18 getting to in a moment is why you plead.

19 A. Right.

20 Q. Well, let's continue to go through these so we can
21 make a record of it. You cite some case law and I can't
22 tell if this is quite an allegation or just a citation of
23 case law. You've got, counsel found, I think it supposed
24 to be ineffective, but it reads effective in murder case
25 for failing to request charges of involuntary manslaughter

Eugene Gardner- Direct Examination by Mr. Boozer:

15

1 an accident?

2 A. Yeah. The whole time we knew that, she knew, that it
3 was a struggle over a weapon, I mean, I didn't even own a
4 weapon. It was his.

5 Q. But you didn't even get to this part of the trial ---

6 A. No, sir.

7 Q. --- because it was a plea?

8 A. We never did because I know what Tisdale vs. State
9 says.

10 Q. All right. And you've also got that you were denied
11 ineffective assistance of counsel through the
12 guilt/innocence phase of your trial and you state the trial
13 counsel's performance during the questioning of the trial
14 was unreasonable and prejudicial. Now, are you talking
15 about the trial itself?

16 A. Well, the first witness was just -- it was my ex-
17 sister-in-law. She is the one that put my brother ---

18 THE COURT: Who was it?

19 A. My ex-sister-in-law, I think her name is Smith now,
20 Susan Smith.

21 THE COURT: Okay.

22 A. She's the one -- she destroyed my brother by leaving
23 him, taking the kids. They had some money issues. They
24 lost a brand-new house on the family farm. The restaurant
25 was closing after forty (40) years and Todd just, he

Eugene Gardner- Direct Examination by Mr. Boozer:

16

1 couldn't take it. I mean, he loved those kids. My brother
2 was probably the most loving person you'll ever meet and
3 everybody in Darlington knew him. I mean, we had the
4 restaurant for forty (40) years.

5 Q. Let me stop you right there. Talking about your ex-
6 sister-in-law testifying, she actually testified, did your
7 lawyer cross-examine her at the trial?

8 A. Yeah, and she did a decent job with that but there
9 were some things that she said was just, me my brother not
10 getting along and she even made a statement that she didn't
11 love my brother and made a mistake by saying that. Well,
12 it's in the transcript. I don't know exactly how it's
13 stated but it just wouldn't, it wouldn't hitting the
14 points.

15 Q. You've also got that you were denied ineffective
16 assistance of counsel during the preparation of your trial.
17 And your specific allegation is that you alleged your
18 lawyer allowed a Darlington County correction's officer to
19 sit in and assist with your trial preparation and
20 discussions?

21 A. Yeah.

22 Q. Tell the judge what happened.

23 A. In the very beginning, what happened, when I was in
24 county I was helping a friend. I wrote a complaint about
25 an officer that messed his radios and stuff up ---

Eugene Gardner- Direct Examination by Mr. Boozer:

17

1 THE COURT: About what?

2 A. About messing his radios, doing some damage to them
3 very blatantly. This will lead to this real quick. And
4 that's when I got tased and put in lockdown for something
5 that -- and then they fired him for doing drugs and what he
6 did to me. But they kept me in lockdown for two weeks even
7 though they fired him. I couldn't never understand I
8 couldn't get out of there but when Julie came to talk to me
9 a couple of times, the times she did, we started to get
10 into the details finally after all of those months of what
11 really happened. But then it was right before Thanksgiving
12 and I never saw her again. And I had asked her when will
13 we go over the details, you know, keep going, she said,
14 during trial and that's -- I saw her at trial.

15 Q. What specifically, though, about the correction's
16 officer sitting ---

17 A. Oh ---

18 Q. --- in on conversations?

19 A. When we got to trial, the day before, I said we went
20 through the jury selection and the pretrial, well we were
21 going to go over how the accident happened and during the
22 accident the transportation officer, I think he is now
23 Captain Purvis, good guy, but he sat in with us and gave me
24 court advice because of his experience and went over how
25 the whole thing happened. I mean, it's kinda like, you

Eugene Gardner- Direct Examination by Mr. Boozer:

18

1 know, I don't think he should have been in listening to
2 everything we did, I mean, ---

3 THE COURT: This during jury selection?

4 A. No, sir, the night after. The night after. Went into
5 a conference room and, I mean, that part of it I didn't
6 quite understand why he would even be there. I mean, I had
7 -- I felt like two good lawyers, I had Julie and I had Rick
8 Jones is probably the best reputation in Darlington, you
9 know, and -- but that kind of stuff just kind of didn't add
10 up ---

11 THE COURT: Did you say anything?

12 A. Sir?

13 THE COURT: Did you say anything?

14 A. I really didn't -- I kind of went with the flow, Your
15 Honor. I had never been in trouble in my life and never
16 been in a courtroom. I -- I -- I just went along with it.
17 I mean, whatever I was told because, I mean, really trusted
18 these two. And, like I said, especially Mr. Jones, he has
19 a great reputation.

20 Q. All right. Now, let's talk about what happened at
21 trial that, ultimately, led to you entering a guilty plea?

22 A. Okay.

23 Q. And this goes along with your allegations for that
24 your lawyer you feel was ineffective during the
25 guilt/innocent phase of the trial. Specifically, you

Eugene Gardner- Direct Examination by Mr. Boozer:

19

1 alleged that counsel allowed a court official, Scott B.
2 Suggs, the Clerk of Court, who had summoned the defendant
3 into a room, in the courtroom to discuss his case, advise
4 counsel and the defendant. Tell the Court sort of start
5 with the trial and how far did you go in the trial?

6 A. Like I say, after Susan step down there was a recess
7 called and I was at the table, the defendant's table and,
8 um, Mr. Suggs he called me to the back room and started
9 telling me his opinions ---

10 Q. Well, Let me stop you right there. Who's Mr. Suggs?

11 A. Scott Suggs, the Clerk of Court.

12 Q. Of where?

13 A. Darlington.

14 Q. Is that where you're from?

15 A. Yes.

16 Q. All right. Tell -- continue to walk the Court
17 through what happened.

18 A. Well, that's the main part. I went back. He told me
19 about his experience. You've got to know -- it wasn't
20 going good in his opinion. We need to do this. You need
21 to do that.

22 THE COURT: Were the lawyers present?

23 A. Not at that time. But then Julie came in and asked
24 what we were talking about and they, and Scott told her
25 what we were talking about. And -- I mean, there again I

Eugene Gardner- Direct Examination by Mr. Boozer:

20

1 trusted ---

2 Q. Be specific. You say this and that. Be specific
3 about what you and Mr. Suggs were talking about.

4 A. Well, Scott told me that, you know, he had seen five
5 hundred trials in his career. This isn't going good. You
6 can get life. You know, at that point everything was kind
7 of a blur, I mean, you know, I was there for trial and
8 then, now I'm going over a whole different thing with
9 somebody else, you know.

10 Q. And your lawyer's were or were not present?

11 A. At that point, no. But then she came right in the
12 door after that and then Scott ---

13 Q. How long were you speaking with Mr. Suggs without your
14 attorneys present?

15 A. Minutes.

16 Q. How do you know or do you know Mr. Suggs?

17 A. Well, Darlington is small, I mean, we know everybody.
18 Scott's got brothers I played ball with and against Scott,
19 I did. We had a mutual friend, Joe Joe Strickland, we
20 played golf with but, I mean, that's, basically, what it
21 was. I mean, Scott comes from a well-known family in
22 Darlington. His dad is a great guy. My dad knew him.
23 But, you know, that was just about it. We were -- I'm
24 older than Scott.

25 Q. Well, did you feel that you were receiving any advice

Eugene Gardner- Direct Examination by Mr. Boozer:

21

1 from Scott about what you should, whether you should go to
2 trial or whether you should plead?

3 A. Yes.

4 Q. Okay. What you feel like that advice was?

5 A. Um -- to plead -- to do something. And then Julie
6 would make the decision, I guess, that's how it's supposed
7 to work.

8 Q. Okay. Did -- what was your response to him when he
9 was telling you what you said he told you?

10 A. I said Scott, you know I wouldn't do this. I mean,
11 everybody knows us well enough even though were not, you
12 know, friends, everybody in Darlington but, at least, they
13 know who you are. I mean ---

14 Q. When you say, even though we're not friends, who are
15 you talking about?

16 A. Well, I mean, Scott -- we're acquaintances but it's
17 not like we called each other up and said, you know, come
18 over to the house and cookout or nothing, you know, it's
19 not like that but, they know your reputation. I mean, my
20 brother and I love each other and everybody knew that. It
21 kills me every day.

22 Q. All right. You said that took over the course of a
23 few minutes when you were with Mr. Suggs by yourself ---

24 A. Yeah.

25 Q. --- do you recall where you were in the courthouse?

Eugene Gardner- Direct Examination by Mr. Boozer:

22

1 A. There was a room behind the bench.

2 Q. Okay.

3 A. I guess a holding room or whatever. I'm not sure.
4 Just a room.

5 Q. All right. After these few minutes elapsed, did you
6 indicate that your lawyer then entered the room?

7 A. Yeah. She came in and asked

8 Q. Okay. And keep ---

9 A. and what we were ---

10 Q. Well, hang on a second. Keep going and tell the Court
11 what happened at that point?

12 A. I can't tell you the time span because it's all -- but
13 when she came in ---

14 Q. When you say she, you're talking about ---

15 A. Julie ---

16 Q. Okay.

17 A. --- my lawyer, came in and they started talking,
18 telling what should be done and what they thought should be
19 done.

20 Q. Who is they?

21 A. Her, Scott and I can't -- I think that was it at the
22 time and I was just kind of listening because I had
23 prepared to be at trial. I mean, I never got a chance to
24 tell what really happened or had any of these folks help me
25 because there's one other aspect, too, that when I first

Eugene Gardner- Direct Examination by Mr. Boozer:

23

1 got to trial the second day, I think it was the second day,
2 Julie told me that she took all my witnesses -- I mean,
3 witnesses -- my wife was going to -- my ex --, well my wife
4 at that time, ex-wife, at that time -- yeah, we had already
5 been divorced, she left me during jail, but she said, she
6 took her off my list. She said, you are our best witness.
7 And now that I've read and gone over things, you know,
8 that's kinda of like putting the burden, proof on your own
9 client. I don't think that's ---

10 Q. Mr. Gardner, let's stay on one allegation kind of at a
11 time.

12 A. Okay.

13 Q. You've, obviously, alleged that you felt like your
14 lawyer was ineffective for allowing Mr. Suggs to speak with
15 you?

16 A. Yeah.

17 Q. Okay. That your plea was involuntary because of that?

18 A. Yeah.

19 Q. Continue to walk the Court through those conversations
20 that you said occurred sort of behind closed doors in a
21 room during the trial and before the plea?

22 A. Oh, okay, I'm sorry. Well, Scott left and they just
23 kept talking, I think, there's Mr. Jones over -- but Rick
24 came in, I guess, everybody was talking, I guess, the
25 solicitor -- yeah, I saw him, John Holt was in there. And

Eugene Gardner- Direct Examination by Mr. Boozer:

24

1 when things finally settled down, I just said, do you mean
2 to tell me that you want me to go back in that courtroom
3 and lie to something I didn't do.

4 Q. And what was your lawyer's response?

5 A. The answer was, yes. I mean, not -- I can't remember
6 if it's yes, yes you better, you know, it was like, yeah.
7 I mean, we're at this phase and -- I mean, even my daughter
8 was in there, Taylor Baker, and she was upset. I mean,
9 because she was telling me about the grandchildren I
10 wouldn't see and I was upset and everybody was upset. I
11 mean ---

12 Q. Was there, prior to your trial, was there ever a plea
13 offer ---

14 A. No.

15 Q. --- made?

16 A. The only thing Julie ever did was say that, "you
17 wouldn't take a plea, would you?" I said, "no. I'm not
18 going to plead anything I didn't do."

19 Q. Were you adamant about having the trial in this case?

20 A. I was very adamant.

21 Q. Okay. Now, your specific allegations says, that
22 counsel allowed a court official, okay, basically, back
23 there with you. At that time you're at trial in
24 Darlington, how did you feel Mr. Suggs was speaking to you?
25 Was he there as your friend or did you feel like he was

Eugene Gardner- Direct Examination by Mr. Boozer:

25

1 there as a court official?

2 A. No. I mean, I think that he had best interest at
3 heart but it confused everything. I mean, it wouldn't --
4 the little bit that we talked about -- to prepare -- it
5 wouldn't, it had nothing to do with what we were going to
6 do.

7 Q. Did that influence you in any way in deciding to plead
8 guilty?

9 A. Sure. I lost all confidence in everything. I mean, I
10 kept hearing, you know, life and the grandchildren and --
11 because I've got -- I've got, I consider five grandchildren
12 because Taylor loves her husband and I love those kids just
13 because but, you know, those kind of things. They were his
14 kids first. But -- yeah, it confused everything. I mean,
15 I was there to go to trial.

16 Q. Well, let me ask you this, ultimately, obviously, you
17 ended up pleading guilty?

18 A. Yeah.

19 Q. Why is it that you pled guilty in this case?

20 A. Because, basically, I was, you know, told to.

21 Q. By who?

22 A. By Julie.

23 Q. Anybody else tell you to plead guilty?

24 A. No, not -- not -- no, nobody actually told me to do
25 it. There were suggestions like I say, from Scott but,

Eugene Gardner- Direct Examination by Mr. Boozer:

26

1 nobody told me to -- what happened too, was Scott came back
2 in and said we had to hurry up, you know, kinda make a --
3 hurry up -- the judge wants to go on with the trial so
4 that's when I asked Julie, "okay, what do I do?" "What do
5 I do", I mean. And she wrote on a yellow piece of paper,
6 I'll never forget it, tore it off and handed it and she
7 said, "say this." Just kind of go along with, you know,
8 what's going on. If you say too much I'll touch you.

9 Q. And when you're talking about say this, is she talking
10 about when you're answering the ---

11 A. The judge.

12 Q. --- judges questions during the plea?

13 A. Yes.

14 Q. Okay. Now, obviously, you reviewed -- I provided you
15 with the transcript of the plea?

16 A. Yes.

17 Q. Okay. Have you reviewed it?

18 A. Yes.

19 Q. Okay. Now, obviously, during the plea you had
20 admitted to certain things and indicated that you were
21 guilty?

22 A. Yes, I did.

23 Q. Okay. Why did you make those types of statements to
24 the Court that day?

25 A. Because what I was told to do.

Eugene Gardner- Direct Examination by Mr. Boozer:

27

1 Q. And which was what?

2 A. Was to go along with whatever he says.

3 Q. All right. You've also got an allegation that ---

4 THE COURT: Let me ---

5 MR. BOOZER: Yes, Your Honor.

6 THE COURT: If here was a plea, was there some
7 understanding or a recommendation as to sentencing?

8 A. No, sir.

9 MR. BOOZER: The Court's indulgence, Your Honor.

10 THE COURT: I'm going to let your lawyer answer
11 that.

12 A. Oh, okay.

13 MR. BOOZER: There were no recommendations, Your
14 Honor.

15 A. Yeah, I had nothing in writing. I had nothing -- it
16 was just a wham because even the judge mentions in the
17 transcript that this was a speedy plea, you know, I forgot
18 who he was talking to. It's in the -- I can find it but he
19 actually says about how this is kind of unusual, I guess,
20 and it was a speedy guilty plea.

21 Q. Now, obviously, the Court also asked you some
22 questions about whether you were being coerced or forced
23 into pleading guilty?

24 A. Yes.

25 Q. And you told the Court, no?

Eugene Gardner- Direct Examination by Mr. Boozer:

28

1 A. Yes.

2 Q. Why did you tell the Court, no?

3 A. Because I didn't want the judge to change his mind to
4 whatever she told me because that was what was on the
5 yellow piece of paper. The judge might change his mind.
6 And -- and after seeing my daughter the way she was upset,
7 I mean, I needed some relief from that because that's what
8 happened. Ever sense I went to that back room and it all
9 started that entire time because the last thing in the
10 world I want to do is see my daughter upset and I just -- I
11 was tired and ---

12 THE COURT: Had you been in jail since the
13 incident?

14 A. Yes, sir.

15 THE COURT: Never made bond?

16 A. No, sir. Well, I may bond but I didn't do it. I
17 didn't take the bond because I just didn't want to put the
18 financial burden on my family and I even got a reduction,
19 it cut in half and I just, I mean, -- that's all it's
20 about. The bottom line. And anybody knows it's all about
21 family and I just didn't want to -- I didn't want to
22 financially burden them and then when I got put in that the
23 lock-up situation I wasn't able to call anybody, tell
24 anybody, but, now I have some issues with that also going
25 on.

Eugene Gardner- Direct Examination by Mr. Boozer:

29

1 Q. Have we covered everything in regards to what you feel
2 like your conversations were with Mr. Suggs, have we
3 covered the entire topic or is there -- this is your day in
4 court, is there anything else that you need to tell, His
5 Honor, about your conversations with Mr. Suggs or why you
6 ended up pleading guilty?

7 A. Well, that was the basis of it. I mean, after the
8 conversation with Scott and the suggestions and the advice
9 I was getting was totally different from what I was getting
10 from my lawyer and it just got confusing, overwhelming. I
11 mean, like I say, I've never been in a courtroom in my life
12 before. I'll never watch Law and Order again because it's
13 not like that.

14 Q. You've got a couple of allegations that I do want to
15 get to where you allege that there were two witnesses that
16 heard a shot between three and 3:30 and the coroner said,
17 Todd Gardner, dies at the same time. What -- explained
18 that allegation.

19 A. What that was was just letting them know I had -- I
20 knew what happened. I had -- they were all wrong.
21 Everything they had going on was wrong. Julie and I did
22 look at some pictures while I was in lock-up to go over
23 right before the trial and I explained to her what was
24 going on. And she was like, well, that makes sense. That
25 statement is -- I was told that they had two witnesses

Eugene Gardner- Direct Examination by Mr. Boozer:

30

1 heard a shot between three and 3:30, well ---

2 THE COURT: Was this in the morning ---

3 A. No, sir.

4 THE COURT: --- or in the afternoon?

5 A. In the afternoon. Well, when it happened it was like
6 10:30 and I had left and that's when I panicked and went
7 back home to figure out what in the world to do. They
8 called me, they'd found Todd. So the next morning I went
9 straight to my father and told him what happened. And left
10 there to go to talk to the funeral home director which is
11 the coroner too, Todd Hardee, and they called me and said
12 my dad had another stroke. So I left straight from there
13 and went back to the hospital and they got dad stabilized
14 and I knew right then I had to figure out something to do
15 because I was not going to lose my daddy too. He made me
16 promise that he was going to stay -- that I was going to --
17 that he was going to stay with me and I had to figure out
18 what to do. So later I waited and I told a friend of mine,
19 a very good friend, chief police, Jay Cox, what had
20 happened and he was -- he was upset, but, we can handle it
21 - but we can do something, you know, to get this fixed and
22 he died of heart attack. So

23 THE COURT: Were there any witnesses to the
24 shooting?

25 A. To the shooting? No, sir, it was me and my brother.

Eugene Gardner- Direct Examination by Mr. Boozer:

31

1 THE COURT: Where were you?

2 A. At the restaurant. They had built a small apartment
3 after the restaurant closed and he was living in that
4 apartment. And like I say, it wasn't to -- wasn't a very
5 nice place so he was going to come live with me but ---

6 THE COURT: So there were no witnesses?

7 A. No, sir.

8 THE COURT: How about ---

9 Q. But the two witnesses that I'm talking about that
10 heard the shot, I don't even know where that came from
11 because I knew ---

12 THE COURT: Did they have a statement? Did he give
13 a statement?

14 Q. Did you give a statement?

15 A. Later, yes. Yes, I told them what happened.

16 THE COURT: How about the forensics?

17 A. I don't know anything about it. I never saw anything.
18 No, sir.

19 THE COURT: I mean, did they find the gun?

20 A. No -- I took -- I took the gun and that was the issue.
21 I just -- I don't even know why but I picked up the gun.

22 THE COURT: Did the police get the gun?

23 A. Yes, sir, eventually.

24 THE COURT: Did they ---

25 A. I told him where it was.

Eugene Gardner- Direct Examination by Mr. Boozer:

32

1 THE COURT: Did they do ballistics on it?

2 A. I -- I guess -- I'm sure they did, I guess, but I
3 never saw anything. No, sir. No, sir.

4 THE COURT: All right. Just trying to fill in the
5 blanks.

6 MR. BOOZER: I understand, Your Honor.

7 Q. Mr. Gardner, a couple of these allegations, I think
8 you've already discussed, but I do want to go back over
9 them and make sure, you've got another allegation where
10 you've got, where you have no intentions of a plea at all.
11 You know you made a mistake by not calling for help. Have
12 you reviewed that already? You've discussed that already?

13 A. Yeah, I'm pretty sure, yes, sir.

14 Q. Okay. And you've also got in your quotes "that the
15 defendant asked counsel, when will we go over the details
16 of my case?" She responded, "during trial."

17 A. That was -- that was the time I mentioned while we
18 were in lock-up.

19 Q. Let me ask you this. How many times between the day
20 that you get appointed counsel and the day of your trial do
21 you think you've met with either Mrs. Swilley or Mr. Jones?

22 A. I can't -- I can't even name the times. But every
23 time we did, I mean, we had good conversations. Rick was
24 always, you know, supportive if I needed him but, I mean, I
25 just talked to Julie mostly. Like one time, Julie came by

1 the jail on a Friday, I'll never forget it, and just pull
2 me out and I said, " you know, what's up?" And she said,
3 "well, I just came see how you were doing and, you know,
4 it's just good to have a client that I know is innocent."
5 That made me feel good. You know, and then Rick came and
6 Ms. Wise came and she left and went on about her business
7 but we never -- I mean, we didn't really start talk detail
8 until near the end.

9 Q. And when you say the end, what do you mean by that?

10 A. Right before trial. When I got put in lock-up. I
11 mean, that's when it all -- because see the whole time I
12 was told if I had called 911, you wouldn't even be here
13 right now, and things of that nature. I think, Mr. Jones
14 made a comment one time, it's a perfect small town high
15 profile case.

16 Q. Well, what trial preparations did you and your lawyer
17 make together?

18 A. Before the trial -- I didn't know what to expect. I
19 knew -- I knew that I was told to, you know, be calm.
20 Don't let the solicitor get you upset. Don't show
21 emotions. Those kind of things. But like I said, I've
22 never been in a courtroom in my life and it's not exactly
23 what I thought it would be.

24 Q. What witnesses do you -- were you aware of what
25 witnesses you guys would call in your defense or if you

1 would call any witnesses at all?

2 A. I thought for sure, you know, I would call people that
3 knew me. The neurologist. My doctor that diagnosed me
4 with the pre-dementia so it's mentioned at the end of the
5 transcript and I thought for sure the lady that diagnosed
6 -- that told me, you know, why I was acting the way I did
7 the day it happened. I thought for sure she'd be there.

8 Q. You got another allegation that you felt like your
9 lawyer was ineffective and then you have in quotes, "after
10 the clerk of court left and counsel was discussing, the
11 room was chaos", what's that about?

12 A. Like I said, with Taylor upset and everything had
13 changed.

14 Q. And Taylor is her daughter?

15 A. Yes. She's sitting out there now with her husband.
16 And that's the main thing, I mean, I was there to go to
17 trial to tell my side and I never got a chance and that's
18 what I want.

19 Q. Between the time that y'all took a break from the
20 trial after, I think, you said your ex sister-in-law
21 testified ---

22 A. Yes, sir.

23 Q. --- between that time and the time that you returned
24 to the courtroom to actually enter the plea, do you recall
25 how much time has elapsed?

Eugene Gardner- Direct Examination by Mr. Boozer:

35

1 A. Well it says, I think if I'm not mistaken, like two
2 hours but I'm not sure. Everything just went so fast. It
3 really did. I had no -- no judgment of time. Like I said,
4 I had a thousand things going on in my head because it just
5 wasn't the way it was supposed to be done.

6 Q. Did you feel pressured during that break between the
7 trial and the plea to enter a plea?

8 A. Between the -- while I was in the room?

9 Q. Correct.

10 A. Yes.

11 Q. Okay.

12 A. Like I say, everything changed now. I didn't know the
13 best thing to do....

14 Q. And you want a trial in this case?

15 A. Yes. Or at least, I want to be up to sit down with
16 the solicitor and let's go over some issues to that have
17 come up but until that time, yes.

18 Q. Mr. Gardner, obviously, like I said before this is
19 your day ---

20 A. Yes, sir.

21 Q. --- in court. Is there anything that we have not
22 covered that you've alleged in your application about
23 either why your plea was involuntary or decisions your
24 lawyer made or actions or inactions your attorney took that
25 you want to bring to this Court's attention? Is there

Eugene Gardner- Direct Examination by Mr. Boozer:

36

1 anything we've left out?

2 A. I think we pretty much hit on it. Like I say, right
3 at the end of -- oh, whenever I did go into the courtroom
4 after -- and he said he was going to bring the jury in,
5 Judge Baxley said that he was going to bring the jury in,
6 he said you can't change your mind. And then -- he said it
7 twice -- so in my mind I had a court official tell me what
8 to do. I had Julie telling me things that she knew was an
9 accident why -- if you're so prepared why are we even
10 listening to anybody talk to me even if it's right or wrong
11 about a plea. I had her telling me don't -- just go with
12 the flow. And then I had the judge telling me that you
13 can't change your mind. But then I listening to all this
14 other stuff going on and I'm saying I can't change my mind,
15 I ---

16 Q. Had Mr. Suggs not spoken to you during this recess of
17 your trial, would you have pled guilty?

18 A. No.

19 Q. Would you have insisted on continuing the trial that
20 was already on going?

21 A. I was there to go to trial.

22 Q. Okay.

23 MR. BOOZER: Mr. Gardner, that's all the questions I
24 have for you.

25 A. Okay. Thank you.

Eugene Gardner- Cross Examination by Ms. Giovanoli: 37

1 THE COURT: Cross examination?

2 MS. GIOVANOLI: Thank you, Your Honor.

3 Cross Examination by Ms. Giovanoli:

4 Q. Okay. I'm going to start back when you said that
5 Chelsea, someone, was appointed to your case ---

6 A. Yes.

7 Q. --- and then you said, you never talked to her for
8 that whole period of time?

9 A. No. I talked to her briefly when I first met her.

10 Q. Okay.

11 A. Because she took me to the bond. And after that we
12 never really talked, I mean, that was thirty minutes maybe
13 in all those months.

14 Q. Okay. And how long a time frame did you not speak to
15 an attorney between that time?

16 A. Probably eight (8) months, you know, somebody directly
17 to me.

18 Q. And ---

19 A. I mean, I'd see Mr. Jones there all the time. You
20 know, I did never really -- we'd speak but not about this.

21 Q. Okay. So who came to you after that eight (8) month
22 period?

23 A. For the first one, like I say, the little Tiffany
24 girl. I really didn't know her but she was with Chelsea
25 all the time. But after that it was, Christie Wise, came

Eugene Gardner- Cross Examination by Ms. Giovanoli:

38

1 in and said she was going to be my attorney but then
2 shortly after maybe a week or two, I don't -- I'm not sure.
3 Julie came and that was it. She was my attorney.

4 Q. When you say Julie came, she came where?

5 A. To the jail.

6 Q. Did you not get bond with Chelsea?

7 A. I got the bond but I didn't -- I didn't bond out.

8 Q. Okay. And then you said Julie got your bond reduced?

9 A. Right. By half.

10 Q. And at that time you were released?

11 A. No. I never left.

12 Q. Oh, you never left.

13 A. Never left. Like I said, I didn't want to put the
14 financial obligation on my family.

15 Q. And in this case you stated that Rick and Julie were
16 representing you but Julie did the bulk of the work?

17 A. At trial, yeah. I think it's called second seat or
18 something.

19 Q. Mmm, hmm. And you also stated that you had two of the
20 best attorneys ---

21 A. I felt like ---

22 Q. --- representing you?

23 A. I felt like it at the time, I did, I mean, like I
24 said, Julie was young. I don't know her experience. I
25 felt good until things started getting heated but, I mean,

1 I've always felt good about Rick Jones being around me
2 because like I say of his reputation -- but like I say,
3 Julie was doing the work. I guess, Rick was there for
4 support, you know, but that's, basically, what....

5 Q. Okay. And let's fast-forward to this meeting that
6 occurred during a brief recess during the trial.

7 A. Yes.

8 Q. Now, Mr. Scott Suggs was the person who initiated this
9 meeting?

10 A. Yes.

11 Q. And where did you say this occurred?

12 A. It was in a room behind the bench in the courtroom.

13 Q. And this was directly after Susan's testimony?

14 A. Yes.

15 Q. What was your extent -- what was the extent of your
16 relationship with Scott up until this point?

17 A. Like I say, we knew each other. We played golf
18 together but we weren't, like go home buddies, you know,
19 call each other.

20 Q. How long have you known Mr. Scott Suggs?

21 A. Everybody lives in Darlington, I mean, probably all
22 his life.

23 Q. In that meeting did Scott threaten you in any way?

24 A. No. He just gave his advice, legal advice, which it's
25 not right from the clerk of court anyway.

Eugene Gardner- Cross Examination by Ms. Giovanoli:

40

1 Q. Was he speaking to you as Scott your friend or Scott,
2 the Clerk of Court?

3 A. I guess -- well, with his experience and everything,
4 Scott, the Clerk of Court. I mean, like I say ---

5 Q. Not Scott your golfing buddy?

6 A. No. We weren't -- no.

7 Q. Did he promise you anything for your guilty plea?

8 A. No. He told me that I would probably could get life
9 if I didn't do something now.

10 Q. So his advice to you was to plead guilty in order to
11 not get life?

12 A. Well, he said it could happen, I mean, you know,
13 nobody knows I guess but from his five hundred trials he
14 seen.

15 Q. And who entered the room first?

16 A. Julie.

17 Q. And so Julie and Scott were both present in the room?

18 A. Yeah. They were talking about what we were talking
19 about.

20 Q. Did anyone else enter the room?

21 A. Later, yeah. I'm sure Mr. Jones did. I know I saw
22 John Holt in there. He was the solicitor. They were
23 talking. I really don't know the extent of their
24 conversation.

25 Q. Did anyone in that room force you to plead guilty?

Eugene Gardner- Cross Examination by Ms. Giovanoli: 41

1 A. No. They just -- I guess, it's just forced, um,
2 scared me to death and coercion.

3 Q. How do they scare you to death?

4 A. Everything changed.

5 Q. What do you mean how everything changed?

6 A. While I was there to go to trial with my lawyer and
7 then I've got a court official coming and telling me
8 something totally different. The plea was never an issue.

9 Q. You say you were ready to go to trial?

10 A. I was at trial.

11 Q. But the court official, I'm assuming you are referring
12 to Scott?

13 A. Yes.

14 Q. He -- everything changed?

15 A. Yeah.

16 Q. But how did Scott effect your ability to go forward
17 with the trial?

18 A. I lost confidence in everything going on. From my
19 lawyer to not knowing what to do. My daughter getting
20 upset. The whole atmosphere changed. I mean, the pressure
21 was unreal.

22 Q. So Scott informed you of the highlight of a conviction
23 and a potential sentence to follow a guilty conviction by a
24 jury?

25 A. Yes.

1 Q. And that scared you?

2 A. Well, the -- yeah, I mean, that and the whole fact of
3 everything going on. I mean, it wasn't just one little
4 thing. It was the whole experience.

5 Q. Well, that's what I'm trying to do. I'm trying to
6 understand why you pled guilty in court. So ---

7 A. Because I was told to by my lawyer.

8 Q. Okay. But you said you were ready to go to trial ---

9 A. Yeah.

10 Q. --- and then Scott came and talked to you and
11 everything changed?

12 A. Yes.

13 Q. And you got scared?

14 A. Well, scared, confused, everything. I mean, pressure
15 that I don't feel like should've been done if I had gone
16 through the normal judicial process.

17 Q. So let's pin down the reasons why you pled guilty.
18 Let's take off number one, your lawyer told you to plead
19 guilty?

20 A. Right.

21 Q. Okay. And Scott also advised you to plead guilty?

22 A. Yes.

23 Q. And did he express to you he was advising you of that
24 in order to prevent you from receiving life?

25 A. No. Just that's what you should do, you know, you

1 could get life, is what he said. And on the fact of, you
2 know, like my daughter was in there all upset too, I mean,
3 the whole thing.

4 Q. All right. Let's stick with Scott right now and then
5 I'll get to your daughter too. So Scott informed you that
6 you could get life?

7 A. Yeah, that's what he said, I've seen five hundred
8 trials, this isn't going good, on and on about that. I'm
9 not sure exactly the words but ---

10 Q. Was that scary?

11 A. Yeah. I was scared the day I walked into the
12 courtroom.

13 Q. Okay. And then your daughter walked in later?

14 A. Yes.

15 Q. And this is during the conversations between all the
16 attorneys present ---

17 A. Right.

18 Q. --- and the clerk of court? Okay. And what did she
19 have to say to you?

20 A. She didn't understand either what was going on. I
21 mean, whatever the statement about, "do you want me to go
22 plead something I didn't do?" And she said, "yes." I
23 mean, all that upset everybody especially, Taylor, I mean,
24 you won't be able to see granddaddy, daddy we've got to do
25 something. I don't, you know, nobody knew what really to

1 do.

2 THE COURT: You keep saying ---

3 Q. Did you ---

4 THE COURT: --- something I didn't do -- make me
5 say something I didn't do.

6 A. That I did not kill my brother it was an accident and
7 that was established through with Julie the whole time, you
8 know, ---

9 THE COURT: Okay. I couldn't -- I didn't
10 understand what you meant.

11 A. Yes, sir.

12 Q. What was your daughter's advice at that point?

13 A. I mean, it wasn't really a lot, any advice, it's that
14 I want you, you want to see your grandchildren, you know,
15 so that's trying to get away from life but, you know, it's
16 just the upset of it, I mean, she was just upset.

17 Q. Okay. She was, obviously, emotionally upset but did
18 she advise you, maybe advise isn't a great word, but did
19 she express to you that pleading guilty would allow you to
20 see your grandchildren?

21 A. Yeah, I mean, that's -- that was....

22 Q. Okay. You remember -- do you ever remember receiving
23 any plea offers from the State?

24 A. No.

25 Q. You also stated that you answered the judge's

1 questions during the guilty plea ---

2 A. Mmm, hmm.

3 Q. --- according to what Julie told you ---

4 A. Yes.

5 Q. --- to say, you understand that you were under oath at
6 that proceeding?

7 A. Sure, I do.

8 Q. You know what the purpose of an oath is?

9 A. Yeah. I know exactly what it is.

10 Q. Okay. And what is that?

11 A. To tell the truth.

12 Q. So your testimony today is that you weren't telling
13 the truth ---

14 A. Right.

15 Q. --- to the judge of that time?

16 A. Exactly.

17 Q. And today you are telling the truth?

18 A. Yes.

19 Q. And also you, let's go -- this is actually going to
20 the incident, you said that you took the gun from the
21 scene?

22 A. Yes.

23 Q. What did you do with it?

24 A. Kept it.

25 Q. Do you remember where you kept it?

1 A. Yeah. I put it in a bag.

2 Q. And where did you put the bag?

3 A. I just had it at the house.

4 Q. Where in the house?

5 A. Well, I put it -- as far as where I told him it was?

6 Q. Mmm, hmm.

7 A. Oh, I put it in a chimney, oh, behind the chimney.

8 Q. Behind the chimney.

9 A. Yes.

10 Q. And how do you have access behind the chimney?

11 A. There's two big doors on each side.

12 Q. So is it safe to say that was a hiding spot?

13 A. Yeah.

14 Q. And you're also testifying here today that you told
15 the police where was, who did you tell?

16 A. To detective Luce, Mark Luce.

17 Q. Okay. So you've read the transcript in this case,
18 right?

19 A. But the -- yeah.

20 Q. Do you recall a pretrial hearing, Jackson v. Denno
21 hearing?

22 A. I didn't see the pretrial, no.

23 Q. You weren't present?

24 A. I saw the pretrial, I mean, I was at the pretrial but
25 I didn't see it in the transcript.

Eugene Gardner- Cross Examination by Ms. Giovanoli:

47

1 Q. It was all in -- it's all one transcript?

2 A. Well, I probably missed it then.

3 Q. Were you present at the Jackson v. Denno ---

4 MR. BOOZER: Judge, we actually only provided, I
5 believe, the plea portion of the transcript.

6 THE COURT: Well, all I have the ---

7 A. No, I've got ---

8 THE COURT: --- piece of ---

9 A. I'm seeing it now.

10 MR. BOOZER: You've got -- okay. That's fine.

11 A. Yeah.

12 Q. But you were present at the Jackson ---

13 THE COURT: Just hold on a minute. Does this or do
14 I not have ---

15 MS. GIOVANOLI: It's a two hundred and ten page....

16 THE COURT: Yeah, I've got that. Is the Jackson v.
17 Denno in there?

18 MR. BOOZER: I'm sorry, judge, I may have only
19 printed out the plea portion and have the electronic copy
20 of the pretrial.

21 MS. GIOVANOLI: Yes, Your Honor, I believe it's page
22 about 47 where the Jackson v. Denno hearing begins.

23 THE COURT: Okay. Because I know the transcript of
24 the first day of trial is here and I see Jackson v. Denno
25 on it. Okay.

Eugene Gardner- Cross Examination by Ms. Giovanoli: 48

1 MS. GIOVANOLI: I'm going to specifically refer to page
2 100, Mrs. Parker's testimony and then I'm going to start on
3 line eighteen (18).

4 Q. "So agents picked up the defendant at his job early
5 that morning as you've already heard and took him to the
6 county jail. The defendant is on the phone in booking and
7 he has some officers from the West Jefferson Police
8 Department, those two already testified. Josh Hodges, in
9 particular, that they could hear him on the phone just his
10 side of the conversation, the conversation was not
11 recorded, telling someone they can't find the blue duffel
12 bag, just stash it" -- I apologize I'm using an electronic
13 version -- "just stash in the fireplace or the chimney or
14 somewhere, making statements of that nature almost in like
15 a panic kind of way." So your testimony here is that you
16 told an officer where that bag was?

17 A. Sure did, during the interview.

18 Q. Okay. But in this conversation you are on the phone
19 with someone telling them to stash it there and hide it?

20 A. No. I told him I had stashed it there.

21 Q. So Mrs. Parker was lying under oath at this proceeding
22 ---

23 A. If that's ---

24 MR. BOOZER: Objection, Your Honor, to whether he
25 knows if a witness is lying.

Eugene Gardner- Cross Examination by Ms. Giovanoli: 49

1 THE COURT: Sustain. You don't have to answer
2 that.

3 Q. Okay. Moving on. So you were talking about -- let's
4 go back to the meeting during the recess -- you said that
5 it was about approximately a two hour meeting?

6 A. That's what I was looking at the time frame from
7 whenever he said it would be a twenty minute break and it
8 turned in to from ten to twelve or something like that.

9 Q. Okay. And you said you felt pressured in the room?

10 A. Yes.

11 Q. And from whom did you feel pressured?

12 A. Everything. My attorney. What Scott had told me.
13 The upset of my family. I mean, the whole -- the whole --
14 the whole deal.

15 Q. And did Mrs. Swilley ever tell you that she wasn't
16 prepared to proceed through trial?

17 A. No. She never told me that.

18 Q. Did you feel like she wasn't prepared to proceed with
19 trial?

20 A. Well, after the conversation, yeah, because, I mean,
21 we were there for trial and then after the conversation
22 with court official she doesn't protest it, I mean, kinda
23 goes along with it. That kinda tells me that you might not
24 have been as prepared as I thought you were. I mean, and
25 tell me to go along with whatever the judge says and things

Scott Suggs- Direct Examination by Mr. Boozer:

50

1 of that nature. I assumed it. I don't know because we
2 never got enough far along to see how prepared she was.

3 MS. GIOVANOLI: Nothing further, Your Honor.

4 THE COURT: Mr. Boozer?

5 MR. BOOZER: No redirect, Your Honor.

6 THE COURT: All right. All right, sir, you can
7 come down. Thank you very much.

8 MR. GARDNER: Thank you, sir.

9 THE COURT: Next witness?

10 MR. BOOZER: Thank you, Your Honor. We would call
11 Mr. Scott Suggs to the stand.

12 THE CLERK: You swear to tell the truth, the whole
13 truth, and nothing but the truth so help you God?

14 MR. SUGGS: I sure do.

15 THE CLERK: Have a seat. State your full name
16 please.

17 MR. SUGGS: Scott Bradley Suggs.

18 SCOTT SUGGS, first being
19 duly sworn, testified as follows:

20 **Direct Examination by Mr. Broozer:**

21 Q. Mr. Suggs, how are you doing today?

22 A. Good. And you?

23 Q. I'm doing fine. I appreciate you asking. Mr. Suggs,
24 where are you currently employed and what is your title?

25 A. I'm employed with Darlington County as the Clerk of

Scott Suggs- Direct Examination by Mr. Boozer:

51

1 Court for twenty (20) plus years.

2 Q. Okay. And so it's safe to say back on December 2,
3 2013, you were also the clerk of court ---

4 A. Yes, sir.

5 Q. --- for Darlington County?

6 A. Yes, sir.

7 Q. Now, you know Eugene Gardner who goes by, I guess,
8 Tripp Gardner?

9 A. I always knew him as Tripp, yes.

10 Q. Okay. How do you know Mr. Gardner?

11 A. We were in school together. We played organized
12 sports and played in backyard sports as well as he had
13 indicated earlier he and several friends of ours, we would
14 play golf as we were adults with our wives, Renée, and his
15 wife, Renée, and my wife, and we would cook out afterwards,
16 play cards, watch TV.

17 Q. Would you consider him a friend or an acquaintance
18 or....

19 A. Well, I mean, I consider him a friend. He may feel
20 differently I guess, but I've always considered Tripp a
21 friend but be that as it may, however he considers it,
22 that's just how he feels.

23 Q. Sure. Going back to December 2, 2013 or December 3,
24 2013, during that time of December 2013 in Darlington
25 County, do you recall there being a trial of Mr. Gardner?

Scott Suggs- Direct Examination by Mr. Boozer:

52

1 A. I do.

2 Q. Okay. Prior to the trial, were you somewhat familiar
3 with what was alleged that Tripp had done?

4 A. Yes, I was. Obviously, it was news throughout the
5 community. I've known his family my whole life. Prior to
6 me becoming clerk of court I was in the insurance business
7 and his family had insurance with me, his mother did and
8 his father did as well and obviously, that was news and
9 there was -- prior to that date there was, obviously,
10 several pretrial hearings prior to that on different
11 motions that were being held.

12 Q. And were you actually present -- were you present at
13 the trial that day?

14 A. I was.

15 Q. And I presume that you're present for a lot of trials,
16 it's your job?

17 A. I don't know that I've ever missed a trial that's been
18 held in that courtroom.

19 Q. So that day, particularly, were you there working as
20 clerk of court?

21 A. I was.

22 Q. Do you recall there being a break in the trial?

23 A. I do.

24 Q. And just going forward from that break, what happened?

25 A. Well, I guess, the best thing you can say is I saw

Scott Suggs- Direct Examination by Mr. Boozer:

53

1 someone that was going down a path that was probably going
2 to put him in prison for the rest of their life.

3 Q. And who is that someone you knew?

4 A. That's Tripp.

5 Q. Okay.

6 A. And, basically, all the evidence that I had looked at
7 and the things that happened, prior to the trial and
8 talking with his family, his family from his wife to his
9 daughter to Susan, his ex-sister-in-law, none of them
10 wanted a trial and they, basically, just said, you know, we
11 would be fine with not a trial, we just want to hear him
12 say he did it and they would be fine with it. And, I
13 guess, I did something that I felt was more helping a
14 friend than trying to hurt him or penalize him because I
15 wouldn't want to see him in this position. I feel sorry
16 for him. I'm sad that he finds himself where he is today.
17 Even here, not to mention sitting in prison, I couldn't
18 imagine that. I've known him my whole life. I couldn't
19 imagine that. But with that being said in talking with the
20 family they said they were happy with him pleading, talking
21 with the judge, Judge Baxley which I think most people
22 would consider was one of the, I guess, harsher sentencing
23 judges, he flat out said, if what -- the parts that he's
24 heard comes out like it is, he's going to put him in prison
25 for the rest of his life without parole and I didn't want

Scott Suggs- Direct Examination by Mr. Boozer:

54

1 to see that for Tripp. And I went and told him I said,
2 Tripp based upon what is in front of you whether you meant
3 to do it, didn't mean to do it, it was an accident,
4 whatever happened, all the evidence stacks up against you.
5 It's unfortunate. It's just you find yourself in a very
6 bad position that the evidence is totally against you.
7 There's no way twelve (12) people is going to sit in that
8 room back there, listen to that testimony and then say you
9 go free son, you're free, just go ahead go about your
10 business on your everyday life. That wasn't going to
11 happen. Anybody that's been involved in court knows that.
12 The attorneys knew it. He knew it. He should have known
13 it, if he didn't know it, then, he probably did end up
14 knowing it and that's what I tried to tell him. They
15 wanted it. And I went back to the family and I told them I
16 said, the judge -- he's not going -- we don't know what the
17 sentence is going to be, first of all, we didn't know, if
18 he took a plea. And they said, we're not worried about
19 what the sentence is if he'll just say he didn't, we'll be
20 fine with whatever the judge sentences him. I told Judge
21 Baxley that. Well, after talking with his attorneys, all
22 that part he said is true. Julie was in there. Rick was
23 in there. His daughter was in there. I don't remember who
24 else was in there, but whatever was said, he agreed to go
25 out and do a plea.

Scott Suggs- Direct Examination by Mr. Boozer:

55

1 Q. Do you know -- initially, how did you come about
2 entering a room that Tripp was in, if you recall that?

3 A. I mean, I really don't remember exactly what led me in
4 there. I know he was in the holding room. I walked in
5 there, like I said, I had been talking to the family. They
6 didn't want to see the pictures of their loved one as it
7 was, they were very gruesome pictures. They didn't want to
8 have to endure it. They didn't want to have to get on the
9 stand, sit in front of twelve (12) people, sit in front of
10 Tripp, sit in front of people and talk and talk about what
11 happened or what Tripp says happened, they were not wanting
12 to go through a trial.

13 Q. Do you know -- let me ask you this, were you in Tripp
14 by yourselves in that room for a amount of time, any amount
15 of time?

16 A. I'm sure we were, yeah.

17 Q. Okay. And then Julie and/or Rick and his daughter may
18 have been in the room at some point while you were there?

19 A. I mean, I don't have a recollection of that a hundred
20 percent. I mean, I'm positive that all that probably took
21 place in the sequence of events of how took place. I know
22 when I went in to talk to Tripp I left out. Went back to
23 the family. Talked to Judge Baxley. Came back and the
24 main thing that Judge Baxley was worried about was, as most
25 judges are, the consciousness of family, what their

Scott Suggs- Direct Examination by Mr. Boozer:

56

1 reaction would be if they're looking -- I don't know what
2 their thoughts were about -- I don't know that they had a
3 position if they wanted to see him sit in prison the rest
4 of his life either, but then if he comes out and gives them
5 something less than that, he didn't want to have to put up
6 with any backlash from it of saying you only sentenced him
7 to do this, you only sentenced him to that. I went back
8 and talk to all of them and told them we don't know what
9 the judge is going to do. He's going to hear the facts of
10 the case. He's going to hear what Tripp has to say. If
11 Tripp chooses to talk then he's going to make his decision
12 based upon that information and it could be anything.

13 Q. Did -- did you actually tell Tripp that it was in his
14 best interest to plead guilty, do you think?

15 A. I think I told him, probably, if I was in his
16 situation knowing that I was going to be sitting,
17 potentially, sitting in prison for the rest of my life or I
18 have the option of whatever the judge may do fifteen (15),
19 twenty (20), twenty-five (25)years you're going to serve
20 eighty-five percent (85%) of that. He had already been in
21 jail for however long the record said he was, two and half,
22 three years, he's already that far into it. And the fact,
23 as I said, all the evidence in the case whether it's
24 circumstantial evidence, factual evidence, is just not in
25 his favor. Everything stacked up against him.

1 Q. What was his response to you when you were telling him
2 these things?

3 A. Well, I think his initial response was first, was let
4 me show you how it happened and he went through an re-
5 enactment of the gun was here, it was there, I was grabbing
6 for it, this happened or that happened and then he said ---

7 THE COURT: Who's in the room?

8 A. Um, just Tripp and I.

9 THE COURT: Okay.

10 A. Ask your question again the part -- I might be off
11 base.

12 Q. If I can think about it ---

13 A. I might be off base on it.

14 Q. Sure I'll was asking you ---

15 A. What was his reaction ---

16 Q. --- what was his response to your ---

17 A. That was his initial response. He was showing me. I
18 said, Tripp all that's good and well but we're passed that
19 point now. We're not at that point now of you trying to
20 tell me. You don't have to convince me. That's not what
21 we're here to do. Now, we're at the phase of trying to
22 help you to where you're not spending the rest of your life
23 in prison that maybe you be able to get out and have a life
24 after that. I wasn't doing it to try to harm Tripp. I
25 would have no reason to harm him. Like I said, I consider

Scott Suggs- Direct Examination by Mr. Boozer:

58

1 him a friend. I was acting on behalf as a friend, not as,
2 I think he knew this as well and I understand he has his
3 reasons for saying different but I didn't go in there as a
4 clerk of court -- that's my job, obviously, so I was the
5 clerk of court. I don't intercede in these cases and I've
6 seen hundreds and thousands of pleas probably and hundreds
7 of cases, I don't intercede in them, I was, thought I was
8 doing a good deed for him trying to help him as he if was
9 in the same position I was in, I would've hoped he had of
10 done the same for me. I wasn't trying to harm him -- the
11 jury was going to do what they do independently of what I
12 thought the case was, obviously. But then he went on to
13 say and well -- like I said, he was trying to show what
14 happened. I said, that's good. And then he said, and if
15 my statement is incorrect then I'll let Tripp correct it,
16 but he says something along the lines of Scott, you've
17 known me you know I would not kill my brother and I
18 potentially or I believe my words were, I don't think you
19 would on a normal day but whatever happened that day
20 happened and now here is where you are, you've got to do
21 with the issues. He kept trying to want to push everything
22 out and make it like it was something different than it was
23 and he didn't look at the facts of what was in front of
24 him. It was more of just, I hate to use the word
25 delusional, but he was not thinking rationally saying this

1 is where I'm at. He was wanting to explain the situation
2 away. You can't explain it. It is what it is. The facts
3 are there.

4 Q. Said he was trying to explain to you sort of his side
5 of how everything happened?

6 A. I guess, that's what you would call it. He was, like
7 I said, he went through a reenactment and use me as, I
8 guess, Todd saying this is the way the gun was and this is
9 what happened. And like I told him I believe what you're
10 saying but the facts don't support what he was saying, I
11 guess, is the best way to say it.

12 Q. Did he ever make a statement to you to the effect of,
13 well, do I need to go out there and lie to the court or I
14 don't want to plead guilty or anything like that that you
15 recall?

16 A. No, he never said anything about lying or anything. I
17 feel sure when Julie and Rick were in the room he did say,
18 I don't want to have to say this and I think, again if I'm
19 wrong I'll be the one to say I'm wrong, Rick or somebody,
20 they were saying about the Alford plea and Judge Baxley
21 said he was not going to take an Alford plea. He said he's
22 going to have to say it. That's what the family -- the
23 reason they were going take the plea was that he was not
24 going to accept an Alford plea.

25 Q. Do you think that your conversation with Tripp at all

Scott Suggs- Cross Examination by Ms. Giovanoli:

60

1 influenced his decision to go in and enter a plea?

2 A. Well, I would think it did, yeah. I do.

3 Q. Do you think without you having spoken to him that it
4 would have continued in a trial setting?

5 A. I'm guessing it probably would have to some degree it
6 would've proceeded to trial and if -- the judge make this
7 decision he decides that, that was the one and only factor
8 that would allow a new trial then, obviously, Tripp would
9 be back at a new trial, back where he is today. He'll be
10 facing the same thing he did back then and that's the same
11 facts with the same witnesses with the same situation he'll
12 find himself in. I don't have a problem with it either
13 way. I, like I said, everything I did was for the best
14 interest of Tripp whether he accepts that or not that's up
15 to him.

16 MR. BOOZER: I beg the Court's indulgence, Your
17 Honor.

18 MR. BOOZER: Mr. Suggs, I appreciate you being here
19 and answering my questions. Thank you.

20 MR. SUGGS: Thank you.

21 **Cross Examination by Ms. Giovanoli:**

22 Q. Good morning, Mr. Suggs.

23 A. Good morning

24 Q. So going back to your relationship prior to this
25 incident with the applicant, how often would you say you

Scott Suggs- Cross Examination by Ms. Giovanoli:

61

1 guys hung out and you can do that monthly, at least twice a
2 month, once a month, twice a year?

3 A. Well, as adults I would say a couple times a month on
4 weekends when we played golf and then grilled out.

5 Q. Whenever you spoke to the applicant's wife at the
6 time, his daughter, and also the victim's wife, what was
7 your understanding of what they wanted the applicant to do?

8 A. Well, my understanding is that they all felt that
9 there were some, obviously, overwhelming evidence against
10 Tripp and they were wanting for his best as well and they
11 were wanting him to plead guilty from my conversations with
12 them. I don't know what conversations he had with them or
13 anybody else, obviously, but for my conversations they felt
14 it was in his best interest for him and the families for
15 him to plead guilty.

16 Q. Did you ever go to them, relay that desire to him, the
17 family members?

18 A. It was in that room and there was stuff being said.
19 His family was upset, crying, I think, if I remember right,
20 part of them and so I don't know that they -- what was said
21 actually.

22 Q. Was the family also present in that room?

23 A. Not initially, of course, but they ended up coming in
24 after, I think, what happened was when I came out and was
25 told -- I think, why Julie and Rick eventually made it in

Scott Suggs- Cross Examination by Ms. Giovanoli:

62

1 there is I went and told them I said I think Tripp's agreed
2 to plead guilty, you might need to go in and talk with him.
3 And, I guess, they advise him of all of his rights and
4 stuff but, I mean, that wasn't my purpose. I wasn't in
5 there to advise him for rights or anything. All I was
6 trying to do was, in lack of a better word, negotiate
7 between solicitor and the family and the judge a plea that
8 everybody could live with.

9 Q. So since you were the first person to enter the room
10 and you were alone with the applicant, what was his overall
11 demeanor when you first entered the room?

12 A. I think he was scared. I would be.

13 Q. Did he grow increasingly scared after you started
14 talking to him?

15 A. Well, I think he finally, like I say, I think he was
16 just pushing it down the line not thinking he was -- he was
17 wanting to talk about what was going to take place and what
18 he was going to say and that's understandable but he was
19 just not wanting to face the facts that where he found
20 himself on that particular day, was he was sitting there in
21 front of a jury getting ready to proceed with the trial and
22 every, unfortunately, for him every fact that had been
23 brought up before and all the pretrial hearings and the
24 evidence, was just overwhelmingly against him.

25 Q. Okay. Let's talk about the evidence. What evidence

1 exactly in this case, do you recall to your knowledge?

2 A. To my knowledge, well, watching it, I mean, I -- I-- I
3 don't want to sit here and talk about Tripp but it's just
4 everything that took place from the scene, he left the
5 scene. He didn't call the police. He didn't call the
6 ambulance. And he took the gun with him. And then the
7 other facts that came up in some of those hearings
8 involving money and stuff. So there was a lot of things,
9 like I said, everything whether it was just circumstantial
10 or not, it's just unfortunately for Tripp, it was just not
11 in his favor.

12 Q. Did you discuss that evidence with the applicant
13 whenever you were in this meeting?

14 A. I think I talked about some of it I'm sure. But, I
15 mean, I didn't go piece by piece saying this is what -- I
16 mean, the detectives -- I think it was brought up about
17 whether or not he was coming to Darlington, coming back
18 from where he was at from his residence, I think, if it's
19 in the testimony it says it, this is just for my
20 recollection I've not read it or anything, but he kept
21 telling them he was coming to talk to them about the case.
22 They were questioning him, Mark Luce, the detective was
23 trying to get him to come and for whatever reasons he had
24 not to come. Then finally, I don't know if they sent
25 somebody to get him or they went and got him and they

Scott Suggs- Cross Examination by Ms. Giovanoli:

64

1 brought him back, I mean, all of that just doesn't point
2 towards innocence, unfortunately.

3 Q. And sent someone where?

4 A. Ma'am?

5 Q. You said you don't know what if they sent someone to
6 get him, sent someone ---

7 A. Wherever he was living. I don't know if it was at the
8 beach or North Carolina, Tennessee. He was not in
9 Darlington where he was living at the time.

10 MS. GIOVANOLI: Nothing further, Your Honor.

11 THE COURT: Mr. Boozer?

12 MR. BOOZER: No further questions, Your Honor.

13 THE COURT: All right. You may come down. Thank
14 you very much.

15 MR. SUGGS: Yes, sir, judge.

16 MR. BOOZER: Your Honor, if I may have one moment.

17 THE COURT: Sure.

18 MR. BOOZER: Your Honor, we'll call Mrs. Taylor
19 Baker to the stand.

20 THE CLERK: Do you swear to tell the truth, the
21 whole truth, and nothing but the truth so help you God?

22 MRS. BAKE: I do.

23 THE CLERK: Have a seat and state your full name.

24 MRS. BAKER: Taylor Renée Baker

25 COURT REPORTER: I'm sorry what did you say?

Taylor Baker- Direct Examination by Mr. Boozer:

65

1 MRS. BAKER: Taylor Renée Baker.

2 TAYLOR BAKER, first being
3 duly sworn, testified as follows:

4 Direct Examination by Mr. Boozer:

5 Q. Mrs. Baker, how are you?

6 A. I'm fine.

7 MR. BOOZER: And if you would just gonna keep your
8 voice up a little bit so everybody can hear you, okay. And
9 say yes or no ---

10 A. Okay.

11 MR. BOOZER: --- everything verbal. She's got to
12 take everything down.

13 Q. Mrs. Baker, are you related to Tripp Gardner?

14 A. He is my father.

15 Q. Back in December of 2013, were you present at a trial
16 where your father was facing some charges?

17 A. I was.

18 Q. Okay. To your recollection, do you remember there
19 actually, a trial started?

20 A. I got there right after it started but I was there
21 about halfway through the first witness.

22 Q. Okay. And what happened at the trial or during the
23 trial, was there a break and your dad went into another
24 room?

25 A. Yes.

Taylor Baker- Direct Examination by Mr. Boozer:

66

1 Q. Okay. Did you ever go back there and see your dad?

2 A. I did.

3 Q. All right. If you would just explain sort of what you
4 just remember from that day from when you walked back
5 there?

6 A. Okay. I remember there was a recess. And I remember
7 Mrs. Julie coming to me explaining that they were offering
8 him a plea.

9 Q. And when you say Mrs. Julie was that one of his
10 lawyers?

11 A. Yes.

12 Q. Okay.

13 A. And I remember her saying at that moment she didn't
14 think he was going to take it. And I asked if I could go
15 talk him and she let me. My intentions going in were to
16 get him to take the plea because what I understood was I
17 didn't -- I'm sorry ---

18 MR. BOOZER: Take your time.

19 (Whereupon, the witness was upset during testimony)

20 Q. I was very close with my dad growing up and I didn't
21 want to lose my father forever so I told him from my
22 understanding that if he did not take the plea that he
23 would never be able to see me get married. He would never
24 be able to meet his grandchildren and things like that and
25 that was pretty much everything I said.

1 Q. And, obviously and understandably, today you are
2 visibly upset, is that right?

3 A. Yeah.

4 Q. Were you also upset when you were then speaking with
5 your father that day?

6 A. More so then. I think my skin has thicken a little.

7 Q. So time has passed but you were still very upset that
8 day?

9 A. Oh, I was very upset.

10 Q. Okay. Were you ever -- and let me ask you this, did
11 his lawyer ever tell you why they thought that he should
12 plead guilty?

13 A. Not that I recall in any detail.

14 Q. Okay. Do you -- you've see a gentleman by the name of
15 Mr. Scott Suggs testify here today?

16 A. Yes.

17 Q. Okay. Do you know him?

18 A. Personally, no.

19 Q. Okay. That day when your father was at trial and
20 there was a recess taken, do you recall see Mr. Suggs
21 there?

22 A. I recall seeing him, yes.

23 Q. Where did you see him?

24 A. I know I saw him in the courtroom but, I believe, I
25 did see him in that room. Now, I can't say that hundred

1 percent sure.

2 Q. Okay. You're not sure if you were back there while he
3 was back there?

4 A. Right.

5 Q. Did you talk to your dad about pleading guilty?

6 A. Mmm, hmm. Yes.

7 Q. Okay. Did he want to plead guilty?

8 A. I don't believe he did. I believe things that were
9 said to him in that room by myself and other people made
10 him want to do it.

11 Q. Okay. Who was present in the room while you were back
12 there that you can remember?

13 A. I know my mother was in there.

14 Q. Okay.

15 A. And Mrs. Julie and, I'm sorry, I don't know his ---

16 Q. Was there a gentleman by the name of Rick Jones that
17 would've been back there?

18 A. That would've -- yes, that's his -- yeah.

19 Q. Okay.

20 A. Do you recall your dad ever making any statements
21 either to you or to his lawyers to the effect of, "so you
22 want me to go out there and lie?"

23 A. That was the exact wording because actually he
24 interrupted me to say it.

25 Q. Okay. Let's talk about that a little bit.

1 A. Mmm, hmm.

2 Q. What happened and tell me the exact words that you
3 recall your dad saying?

4 A. Well, while I was trying to explain to him how I felt
5 and what I wanted him to do. I was scared.

6 Q. Which is what, you wanted him to plead guilty?

7 A. Well, I figured if he didn't then he never would be
8 able to be a part of my life again.

9 Q. Okay. And continue, I'm sorry.

10 A. Because from my understanding it was what life and the
11 death penalty, I don't know. I don't know what it was.
12 But my understanding I would never really see him again or
13 have a relationship with him again and I wanted to do
14 whatever it took to be able to have him again. So I told
15 him how I felt. I told him if you don't do this I don't
16 think you're ever going to be able be a part of my life
17 again as far as weddings, and children, and birthday
18 parties, and family functions, and things like that. And
19 while I was talking to him he looked at Julie and he said,
20 "so you want me to lie?" And she said, "yes." Now, after
21 that she did ask my mother and myself to speak on his
22 behalf as far as, I guess, sentencing for how many years he
23 would get and I would not do it. I didn't do it because my
24 relationship with my family has been severed and I wanted
25 to be there for him because that's the main reason I was

Taylor Baker- Direct Examination by Mr. Boozer:

70

1 there but I still wanted to have a little hope of having a
2 relationship with my family as far as my aunts and cousins
3 and all. So I do regret not speaking on his behalf but my
4 mother did but that's what happened. That's all I
5 remember.

6 MR. BOOZER: I beg the Court's indulgence. Thank
7 you, Mrs. Baker. That's all the questions I have for you.

8 MS. GIOVANOLI: I have no questions, Your Honor.

9 THE COURT: You may come down. Thank you very
10 much.

11 MR. BOOZER: And, Your Honor, Mrs. Baker is under a
12 subpoena. If she wants to stay she is more than welcome
13 but we have no problem with her leaving.

14 THE COURT: You're free to go if you wish to do so.
15 Next witness?

16 MR. BOOZER: There are no further witnesses, Your
17 Honor.

18 THE COURT: All right. The State?

19 MS. GIOVANOLI: Yes, Your Honor. The State would call
20 Julie Swilley to the stand.

21 THE CLERK: Do you swear to tell the truth, the
22 whole truth, and nothing but the truth so help you God?

23 MRS. SWILLEY: I do.

24 THE CLERK: Have a seat and state your full name.

25 MRS. SWILLEY: Julie Rochester Swilley.

Julie Swilley- Direct Examination by Ms. Giovanoli: 71

1 THE COURT: How do you spell your last name?

2 MRS. SWILLEY: S-w-I-l-l-e-y.

3 THE COURT: Thank you. You may proceed.

4 MS. GIOVANOLI: Thank you, Your Honor.

5 JULIE SWILLEY, first being
6 duly sworn, testified as follows:

7 **Direct Examination by Ms. Giovanoli:**

8 Q. Good morning.

9 A. Good morning.

10 Q. How are you, Mrs. Swilley?

11 A. Well. How are you?

12 Q. Doing well. Thank you. How long have you been
13 practicing law?

14 A. Since -- I passed the bar in 2009. I received my LLM
15 International Law in 2010 and then I began my legal career
16 shortly there afterwards. I've been practicing in criminal
17 law since 2012.

18 Q. And where are you employed?

19 A. Currently I'm employed in the Twelfth Circuit Public
20 Defender's Office.

21 Q. And at the time of this case, Mr. Gardner's case,
22 where were you employed?

23 A. The Fourth Circuit Public Defender's Office.

24 Q. Do you recall the chosen -- the charges that were
25 brought against the applicant?

Julie Swilley- Direct Examination by Ms. Giovanoli:

72

1 A. Yes, I do.

2 Q. And what were those?

3 A. They were murder and possession of a weapon during the
4 commission of a violent crime.

5 Q. And how did you become part of this case?

6 A. Initially, I was not his first attorney. He had
7 another attorney by the name of Chelsea McNeil who is a
8 public defender at the Fourth Circuit also. She left to
9 take a job in a different circuit and then I got assigned
10 his case.

11 Q. You know how far into the case when you were
12 appointed?

13 A. I can't say to an absolute certainty but I would like
14 to say it was less than a year, probably, eight (8) months.

15 Q. And where was your first meeting?

16 A. At the jail. The Darlington County Detention Center.

17 Q. Was that at a hearing or was that at ---

18 A. No. That was going out there and introducing myself
19 to Tripp and say that I'll be representing him from there
20 on.

21 Q. And was that the extent of the discussion at that
22 meeting?

23 A. In the initial meeting, usually, I like to meet with
24 my client. I like to make sure they understand what
25 they're charged with, what the penalties for that are, and

1 essentially just establish or try to establish a rapport
2 with my client to let him know that I would be taken over
3 the case, answering any initial questions, but that would
4 probably be the extent of the first meeting.

5 Q. Okay. And did you have the discovery at that time?

6 A. Yes.

7 Q. Did you review any of that with him?

8 A. At the very first meeting, I don't believe I did.

9 Q. Okay. And when was your next meeting?

10 A. We had numerous, numerous meetings at the jail. He
11 was incarcerated up until his trial date and I would go
12 visit him at a minimum of once a month, but it was usually
13 about twice a month I would see him. And if I was in the
14 jail visiting other people, he was in A pod and it's an
15 open system to where if I was visiting somebody else, I
16 would see him and I could go over there, you know, and have
17 a quick word with him but I saw him many, many, many times.

18 Q. Okay. And in these many meetings, what did you
19 discuss?

20 A. We discussed the discovery in detail. We discussed
21 his -- I explained to him he has the right to a trial. He
22 has the right to plead guilty if he chose. We discussed
23 what he might want to do going forward. We discussed the
24 discovery in detail. We discussed the statements that he
25 had made. He gave three different statements to law

1 enforcement. We discussed search warrants issues. We
2 discussed possible witnesses for his trial because Mr.
3 Gardner up until trial never wanted to plead guilty. He
4 only wanted to have a trial. And, in fact, I'm ethically
5 obligated to inform him of any plea offers made by the
6 State and there were plea offers made. I believe it was to
7 a voluntary for twenty (20) years and every time I would
8 get an offer I would go to the jail and I would tell him I
9 know you don't want to hear this but I have to tell you
10 what your offer is and he would say, okay, I don't want it.
11 We're pass that. Let's talk about the trial."

12 Q. So it is safe to say that you informed him of all of
13 his constitutional rights?

14 A. Yes.

15 Q. And the plea offers, how many plea offers, do you
16 recall?

17 A. I would say probably three different times the State
18 offered him something. I think the last time was a week or
19 two before trial, his trial date. Again offering him
20 voluntary, you know, trying to see if you might want to
21 plea and again he said, no.

22 Q. Okay. And what was your advice to him with regards to
23 the plea offers?

24 A. My advice to him is that we would have a difficult
25 case because, unfortunately, he did tell different stories

Julie Swilley- Direct Examination by Ms. Giovanoli: 75

1 to law enforcement which weren't true. I explained that
2 the physical evidence was challenging. Ultimately, it's
3 his decision as to whether he pled guilty or went to trial.
4 That is one of the things that he has absolute control over
5 and he knew that and I candid look at the evidence it
6 would've been extremely difficult case for us to win. And
7 then he discussed his position in theory of the case.

8 Q. Okay. Before we get into the evidence, I do want to
9 ask you some questions about that. I want to address the
10 timing of the time that you were appointed to the case
11 until the date of the trial, do you recall how many months
12 that was?

13 A. I think a year and half.

14 Q. A year and a half. And he was incarcerated the entire
15 time?

16 A. Yes.

17 Q. And you don't remember exactly how many meetings but
18 it was numerous?

19 A. It was numerous. Tripp was at the top of my list for
20 visiting clients because of the serious nature of his
21 charge and, frankly, because I liked visiting him. He was
22 a very nice, charming person.

23 Q. Okay. Did an issue regarding his mental incompetency
24 ever arise? Did he see a psychologist?

25 A. Not to my knowledge.

1 Q. Okay.

2 A. Not to my recollection.

3 Q. Did he ever bring up the transient ischemic attacks,
4 TIA's?

5 A. Yes, he did.

6 Q. And what is your knowledge of that?

7 A. He explained to me and he signed an authorization to
8 allow me access to his medical records which I did receive
9 and we went over together. I also spoke, with his
10 permission, to his now ex-wife about the medical issues he
11 had. He suffered a series, according to his medical
12 records, of mini strokes and the doctor, and I discussed
13 this during the eventual plea, the doctor advised and noted
14 that he had brain deterioration. He had issues with memory
15 and other health issues.

16 Q. And you mentioned mini strokes, do you know when those
17 occurred? Was this before or after the incident?

18 A. I don't have the records in front of me so that I
19 don't speak directly to that. I'm pretty sure it was
20 before the incident but again I'm not hundred percent sure.

21 Q. Did you, at any time, have any difficulty in
22 communicating with the applicant?

23 A. No.

24 Q. Did you sense that he didn't have a memory of any
25 sort?

1 A. No.

2 Q. No problems in communicating, right?

3 A. Correct. There were no problems in communicating.

4 Q. Okay. Let's go to the date of trial. There was a
5 recess after the pretrial hearing and one witness, do you
6 recall how long that recess was?

7 A. I do and actually it was day two that this plea took
8 place. On the first day, we picked a jury and I had
9 numerous pretrial motions to suppress his statements, to
10 suppress the evidence collected, specifically, the gun, to
11 suppress, I mean, just everything I could think of to do, I
12 did before trial and that was day one. That was Monday.
13 Day two morning, we came in and we did opening statements
14 and we started the trial. We had one witness. It was his
15 sister, I believe, and then there was a recess. The recess
16 was maybe ten, fifteen minutes.

17 Q. Okay. You said it was a two day trial ---

18 A. As I recall.

19 Q. Was it December 2nd and 3rd sound correct?

20 A. Yes.

21 Q. So this was on the second day of court?

22 A. Yes.

23 Q. Okay. And during that break let's start from the
24 beginning, where were you?

25 A. I believe -- I'm not entirely sure. I don't remember

Julie Swilley- Direct Examination by Ms. Giovanoli:

78

1 where I was before I entered into the room to witness a
2 conversation between Mr. Suggs and Tripp. I think I was
3 probably in my office. I'm not entirely sure but I was not
4 with Tripp Gardner at the time.

5 Q. Okay. How long until you returned to Mr. Gardner?

6 A. Ten minutes, maybe.

7 Q. And when you returned to Mr. Gardner, where did you
8 find him?

9 A. In the fifth floor of the Darlington County
10 Courthouse. There's the main courtroom. Behind the main
11 courtroom. You have judges chambers. You have a holding
12 cell where the defendant is You have a room where probation
13 would use. A conference area. And the public defender
14 office. To my memory I found -- I went to go speak to
15 Tripp and Purvis, is the name of the transport guard that
16 was there, he's always the person that transported the
17 inmates. And I said, I would like to have a word with
18 Tripp before we go back in there. And he said he wasn't in
19 the holding cell, he was right in the next room over
20 speaking with Scott Suggs.

21 Q. Okay. And you mentioned Captain Purvis, was he
22 present at any of your meetings with the applicant?

23 A. No. He was outside the room. We had privacy.

24 Q. So he was never inside the room?

25 A. Not to my knowledge. Not -- no.

Julie Swilley- Direct Examination by Ms. Giovanoli: 79

1 Q. Okay. So then after Captain Purvis told you that Mr.
2 Gardner was not in the holding cell, what did you do then?

3 A. I ask him why he allowed somebody else to speak with
4 my client without me present. He didn't have an answer for
5 me. I immediately went into the room and then I entered to
6 find Scott Suggs having a conversation with Tripp Gardner.

7 Q. What did you do at that point?

8 A. I listened to what was being said. I was very
9 concerned because again I found it to be inappropriate that
10 someone else was having a conversation with my client and
11 me not in the room but, Scott did not stop the conversation
12 immediately, he continued to speak to Tripp. Tripp looked
13 very worried. I observed that. And Scott was,
14 essentially, telling him it would be in his best interest
15 to plead guilty and he was telling him that as a friend
16 that he should plea.

17 Q. You say that he was worried, was he more worried in
18 that meeting than he was prior to that meeting?

19 A. Yes.

20 Q. And after you determine what their discussions were
21 about, what did you say?

22 A. I asked Tripp what he wanted to do and I wanted to
23 have a conversation with him by ourselves, just the two of
24 us.

25 Q. Were you able to have that conversation?

1 A. I did.

2 Q. Without Mr. Suggs present?

3 A. Yes.

4 Q. And it was just you two?

5 A. Yes.

6 Q. Not Mr. Jones, either?

7 A. I don't believe Mr. Jones being in there. Mr. Jones
8 assisted me at trial because it was a very serious trial
9 but for majority of our conversations it was just Mr.
10 Gardner and myself.

11 Q. And what happened in that discussion?

12 A. I asked him what he wanted to do and if he was okay
13 and he said, that he was very scared and worried because he
14 has spoken to Scott and Scott had advised him that he
15 thought he should take the plea. I told Mr. Gardner it was
16 his choice as to what he wanted to do. I was ready for
17 trial. We had started trial. We had went over our theory
18 of the case. We had practiced. And he was very unsure.
19 So I, at that point, I said, if you're unsure perhaps I
20 should inquire about what kind of plea could be had. So
21 then I went to speak to the solicitor again.

22 Q. Okay. So let's go a little bit back, at that time,
23 did you feel prepared to proceed with trial?

24 A. Yes.

25 Q. How many -- you had a year and half to prepare for

1 this trial?

2 A. More than a year. Maybe fourteen (14) months to
3 eighteen (18) months.

4 Q. And you said previously that the applicant had never
5 expressed the desire to plead?

6 A. He had not.

7 Q. So your preparation on the case was always, the
8 endgame was a jury trial?

9 A. Always a trial.

10 Q. Okay. At that time whenever he was scared and he was
11 being advised to plead guilty, what was your advice to him?

12 A. My advice always has been whatever it is you want to
13 do is what we're going to do. As an attorney I can tell
14 you what I think of the evidence but, ultimately, your
15 decision is trial or plea because you're the one that faces
16 prison, not me.

17 Q. What was your view of the likelihood of conviction?

18 A. I thought that there was a good chance that he would
19 be convicted and the thing that we would have is that if
20 the jury believed that it was an accident, then he would
21 walk home and I told him that. If the jury didn't believe
22 that it was an accident, he would go to prison.

23 Q. So in your opinion, was it in his best interest to
24 plead guilty?

25 A. Probably.

Julie Swilley- Direct Examination by Ms. Giovanoli:

82

1 Q. Did anyone else speak -- did anyone else come into the
2 room and speak to the applicant at that time?

3 A. That exact moment, no. Later on someone else did.

4 Q. Later on, how much later?

5 A. Very shortly after his daughter came in. I -- he was,
6 again, visibly upset. I went out and spoke to his daughter
7 and she -- I told her that, you know, he was considering a
8 plea but I'm not sure whether or not he was going to take
9 it and she said she wanted to speak with him. I said,
10 absolutely, because Mr. Gardner loved his daughter. At our
11 jail visits he would always talked about his son and his
12 daughter and his wife at the time and I asked Tripp if he
13 wanted to talk to her. He said yes, he did and she came in
14 and spoke with him as well.

15 Q. Did the daughter ever express to you what she want her
16 father to do?

17 A. She was very upset. She was crying. She was
18 emotional. She wanted him not go to prison for the rest of
19 his life.

20 Q. Did you ever tell her that he was going to go to
21 prison for the rest of his life ---

22 A. I ---

23 Q. --- if he got convicted?

24 A. Sorry. I said if he's convicted of murder he'll do a
25 minimum of thirty (30) years which would likely be the span

1 of his life, so, yes.

2 Q. Were you present when the daughter spoke to her
3 mother?

4 A. Yes, I was.

5 Q. What was the content of that conversation?

6 A. She was extremely emotional. She was crying. I
7 remember her saying, looking at him, and saying and he was
8 getting very emotional also, I remember her saying to him
9 don't you want to ever see your grandchildren.

10 Q. What emotional state was she in?

11 A. Crying.

12 Q. After that did Mr. Gardner ever say to you, "do you
13 want me to lie?"

14 A. He did.

15 Q. And what was your response to that?

16 A. My response to him, is I never want you to lie. I
17 said that they're not asking you to plead, this was after
18 we got the confirmation that yes, a voluntary plea would be
19 accepted, I said to him I always want you to tell the
20 truth. However, Judge Baxley is not going to allow you to
21 do an Alford plea. We questioned the judge -- the
22 prosecutor and I questioned the judge whether or not he
23 would accept an Alford plea. He did asked me whether or
24 not he should lie. I said, no, you should never lie to the
25 Court. However, you do have to say that you killed him not

1 murdered him if you want to plead to be accepted.

2 Q. Did you ever write on a yellow pad to tell him what to
3 say?

4 A. I can't imagine that I did. I don't think so.

5 Q. You mentioned that you got confirmation that the judge
6 would accept the plea, from whom to that confirmation come
7 from?

8 A. From the judge. The solicitor and I had a chambers
9 conference with the judge and asked whether or not he would
10 accept a plea. We had no indication of what his sentence
11 might be but he did say that he would accept a plea.

12 Q. And did you ask Mr. Gardner if he needed more time to
13 think about this?

14 A. I don't recall whether or not I did.

15 Q. Did he ever request more time?

16 A. No.

17 Q. Did you ever threatened the applicant to plead guilty?

18 A. No, absolutely not.

19 Q. Did you force him in any way?

20 A. No.

21 Q. Did anyone else threaten him or force him to your
22 knowledge?

23 A. No, not to my knowledge or viewing.

24 Q. Okay. Now, I would like to go to the evidence. You
25 claim it was a difficult case?

1 A. Yes.

2 Q. Could you maybe explain a little more in depth the
3 extent of the evidence in this case?

4 A. Sure. The victim in this case was Tripp's brother.
5 He was found dead in his home by his son after the incident
6 took place. Tripp gave three different statements to law
7 enforcement which contradicted each other. They, you know,
8 he told lies, essentially, at the beginning. They found
9 the gun via search warrant in his North Carolina mountain
10 home. There was evidence that they wish to admit, which we
11 objected to, that Tripp on a jailhouse phone try to tell
12 someone, presumably his wife, to hide the gun. There was a
13 cell phone evidence that he was in the area at the time of
14 the shooting. There was, of course, his confession at the
15 end when he finally did tell them what happened and he told
16 them it was an accident. He did put himself at the scene.
17 There were months that passed between the actual killing
18 and the date of his arrest which he didn't tell law
19 enforcement what happened. He didn't call 911. We
20 discussed all these things.

21 Q. You said he gave three different statements?

22 A. Yes.

23 Q. Can you run me through those?

24 A. Not for memory, I cannot. I just -- I remember very
25 vividly that the first one, essentially, was I wasn't

Julie Swilley- Cross Examination by Mr. Boozer:

86

1 there, I didn't do it. The second one, again, something to
2 the effect of I wasn't there, I didn't do it. And then
3 finally, when they had him with the gun, is when he
4 admitted that he was there. His brother was suffering from
5 mental health issues and depression. His brother grabbed
6 the gun. He tried to wrestle it away from him and the gun
7 went off. That was his statement.

8 Q. So did he admit after law enforcement found the gun?

9 A. Yes.

10 Q. And did they find the gun pursuant to a search
11 warrant?

12 A. Yes.

13 Q. Are you aware that the applicant inform law
14 enforcement where the gun was?

15 A. I don't recall.

16 MS. GIOVANOLI: Nothing further of this witness, Your
17 Honor. Thank you, Mrs. Swilley.

18 THE COURT: Mr. Boozer?

19 MR. BOOZER: Thank you, Your Honor.

20 **Cross Examination by Mr. Boozer:**

21 Q. Mrs. Swilley, how are you?

22 A. Very well, sir, how are you?

23 Q. I'm doing fine. Thank you. They were three plea
24 offers to your recollection prior to trial?

25 A. Yes, sir.

1 Q. Okay. And would you say that Tripp was very adamant
2 that he was not going to entertain or accept a plea offer?

3 A. Absolutely.

4 Q. And was he like that all the way up until this recess
5 that happened during the trial?

6 A. Yes.

7 Q. In your mind, was it almost not even worth it to take
8 him a plea offer but that was your duty to do as a lawyer?

9 A. I had to. Tripp told me after the first plea offer
10 that he didn't want to hear anymore plea officers, anymore
11 plea offers, not to even bring them to him. However, I
12 explained it's my duty to make sure he's informed about all
13 the offers which are extended to him.

14 Q. At any time during your representation, did you ever
15 think that this case would turn into a plea?

16 A. No.

17 Q. Okay. Going to the day or the second day, I guess, of
18 the trial when this recess occurred, did you testify that
19 you walked into, I guess, where you thought he would be
20 which was a holding cell and he was not there?

21 A. They're side-by-side. I went to go to the first door
22 where Purvis was sitting in front of, as he usually does,
23 I said I want to step in there and say hi to Tripp and he
24 said he's not in there, he's right here. The doors are
25 side-by-side.

Julie Swilley- Cross Examination by Mr. Boozer:

88

1 Q. Okay. And so when you walked into the second room, is
2 that when you found Tripp and Mr. Suggs?

3 A. Yes.

4 Q. And I think -- what was your reaction to that?

5 A. Shock, at first.

6 Q. Why was it shock?

7 A. Because no one should ever speak to my client without
8 me present.

9 Q. Okay. No matter whether your Joe Blow off the street
10 or you're the clerk of court or if you're another lawyer or
11 whoever?

12 A. Yes.

13 Q. Okay. So what was -- keep going with your reaction.

14 A. It was shock and concern. I looked immediately at
15 Tripp, I still remember what he looked like in his face.
16 He had concern on his face. He was listening to Scott
17 Suggs, who was his friend, talk to him.

18 Q. And you say he had a shocked look on his face and
19 scared, was that a different look than what he'd exhibited
20 or betrayed during the trial or during the weeks?

21 A. Yes.

22 Q. Was it more concerning to you at that point?

23 A. Yes. I became concerned when I saw that he was
24 concerned an I'd witnessed Tripp Gardner face, I'd say,
25 fifty times easily before that event.

1 Q. Did you over -- did you overhear any other
2 conversation between Mr. Suggs and Tripp?

3 A. He, Scott Suggs, paused when I came in but he didn't
4 stop the conversation immediately. Yes, I overheard part
5 of what he said to him.

6 Q. And what -- and you've already testified to this, I'm
7 sorry about this, what was it that you heard?

8 A. Mr. Suggs was telling Tripp that he was his friend and
9 he thought that the jury would convict him based on the
10 evidence and that he should take a plea.

11 Q. What was Tripp's reaction that you observed?

12 A. A little bit of stunned silence as I recall.

13 Q. Okay.

14 A. And at that point, I think I asked Scott to step out
15 so I could have a conversation with Tripp.

16 Q. Did you have any sort of separate conversation with
17 Mr. Suggs in between you then talking to Tripp?

18 A. No.

19 Q. Okay. What was your initial statement or if you
20 recall sort of, what was the initial conversation you had
21 immediately with Mr. Gardner, Tripp, after Mr. Suggs left
22 the room?

23 A. I asked him was he okay because I could see he was
24 upset.

25 Q. What was his response?

1 A. He -- as I recall it was something to the effect of,
2 you know, I'm kind of scared and I asked him whether or not
3 he wanted to go forward with the trial or did he want to
4 take a plea, what was he thinking at that point.

5 Q. Did y'all talk about sort of anything that he and Mr.
6 Suggs had talked about? Did you ask him, "hey, what was
7 that all about?"

8 A. I'm almost positive we did have that conversation. I
9 can't testify specifically as to what Tripp told me.

10 Q. Do you know the extent, if any, of what sort of
11 relationship Mr. Suggs and Mr. Gardner may have had?

12 A. To my understanding from Tripp that they knew each
13 other growing up. They were friends then. And as adults
14 I'm not sure what kind of friendship they had. I did not
15 get the impression that it was a close friendship.

16 Q. When you came up there to the holding cell and then
17 when you went into the next room, what was your purpose of
18 going up, were y'all going to get him to go back to trial?

19 A. Yes. Before we would start any session, I would go
20 back there to have a brief conference with my client,
21 check-in, see how he's doing, explain what's going to
22 happen next so there's no surprises and then I observed Mr.
23 Suggs in there.

24 Q. I think you had indicated that you went back in
25 chambers, I guess, with the solicitor may be to discuss the

1 plea with the judge?

2 A. Yes. Subsequent to this happening because Tripp was
3 being -- at that point, Tripp was not sure whether or not
4 he wanted to do a plea or continue the trial, he was just,
5 he was a little bit rattled. So I said, well, if you want
6 to even consider a plea, I need to go ask if that's still
7 an option, if we could possibly get back that voluntary
8 offer we were made before.

9 Q. Who was present in chambers during that discussion?

10 A. Judge Baxley, Pattie Parker, who was the solicitor at
11 the time, myself, and I'm wanting to say, Rick Jones, was
12 also there in chambers but I'm not hundred percent sure and
13 the law clerk to Judge Baxley, of course.

14 Q. Was anyone else there? Was Mr. Suggs there?

15 A. I don't have any recollection of that.

16 Q. Okay. Let me ask you this, you got to know Tripp
17 pretty well I would say based on what your testimony has
18 been ---

19 A. Yes, I did.

20 Q. --- would that be fair to say? Okay. So you kinda
21 know how he acts and reacts to certain things?

22 A. Yes.

23 Q. Do you think given that sort of attorney-client
24 relationship that had formed over that period of time, in
25 your opinion, do you think had Mr. Suggs not come back

1 there and had this conversation with him, do you think that
2 he would have not pled guilty had that conversation never
3 occurred?

4 A. I'm going to answer your question by way I'm
5 qualified. Mr. Suggs, in my opinion, had no ill will
6 towards Tripp when he was having that conversation. I
7 think he was doing it as a friend. I think from his point
8 of view that he thought he was helping him do what he
9 thought was in his best interest. However, had that
10 conversation not taken place, I do not believe the plea
11 would've taken place.

12 Q. And you think that y'all would probably just continued
13 on to a trial and whatever happened would've happened?

14 A. Yes. And, furthermore, I should also make it clear I
15 was concerned about Tripp being convicted of murder. I was
16 concerned that it would mean a life sentence for him if he
17 was convicted of murder. I thought that a twenty (20) or
18 an eighteen (18) year offer would give him the chance to be
19 out because, again, it was a difficult, overwhelming,
20 evidence kind of case. They would have to believe Tripp
21 over the evidence.

22 Q. Were you ever present for his daughter, Mrs. Taylor
23 Baker, ---

24 A. Yes.

25 Q. --- to meet in the room?

Julie Swilley- Redirect Examination by Ms. Giovanoli: 93

1 A. Yes, I was.

2 Q. And were you present here today when she testified?

3 A. Yes.

4 Q. Did you -- could you observe that she was visibly
5 upset today?

6 A. Yes, I could.

7 Q. During the time that you observed her during the trial
8 when you guys had a recess and the meeting, was she much
9 more upset than she was today?

10 A. Yes.

11 Q. Okay. And how about Tripp, was he pretty upset too?

12 A. Yes.

13 Q. All right. Did -- and you indicated earlier that
14 Tripp, basically, ask you, do you want me to go out and
15 lie?

16 A. Yes.

17 Q. --- before entering the plea?

18 A. He did ask me that.

19 Q. Do you recall what witnesses, if any, you guys were
20 going to present at trial?

21 A. Specifically, Tripp, because he was going to have to
22 testify as we discussed because his entire defense was that
23 it was an accident. And we -- he and I had worked on it
24 numerous times, acting out the actual shooting,
25 specifically. We were going to -- I was going to be his

Julie Swilley- Redirect Examination by Ms. Giovanoli: 94

1 brother. He was going to be himself. We were going to act
2 it out for the jury to show how it could've happened and
3 the bullet wounds could have been sustained the way that
4 they were based on his story. So he would've had to
5 testify. As far as other witnesses there was nobody there
6 at the time. The only person that could tell the story was
7 Tripp.

8 Q. Are there any other witnesses that you guys were going
9 to call?

10 A. Not to my knowledge.

11 MR. BOOZER: I begged the Court's indulgence, Your
12 Honor. Thank you, Mrs. Swilley. That's all the questions
13 I have.

14 THE COURT: Redirect?

15 MS. GIOVANOLI: Brief follow-up.

16 **Redirect Examination by Ms. Giovanoli:**

17 Q. Mrs. Swilley, would you have been less shocked if you
18 walked up to that room if a family member had been talking
19 to Mr. Suggs ---

20 A. No.

21 Q. --- excuse me, the applicant?

22 A. I would've been equally as shocked to have anybody
23 speaking to my client without me present.

24 Q. Okay. And when the daughter went in to speak to her
25 father, did she say anything to you before entering the

1 room?

2 A. She expressed concern that she didn't want her father
3 to go to prison for the rest of his life.

4 Q. Did you say anything upon her leaving the room?

5 A. She did.

6 Q. What was that?

7 A. I said to her, I asked her was she okay because she
8 was very upset in the room with Tripp and she said to me
9 she said, what she had to say.

10 Q. And how did you take that?

11 A. I felt like she told him what he needed to hear so
12 that he would take a plea.

13 Q. You know the context of their discussions?

14 A. The contexts?

15 Q. Of their discussions, the father and the daughter, the
16 applicant?

17 A. I'm not sure I understand what you're asking, I'm
18 sorry.

19 Q. You know what -- did you hear any part of their
20 discussion?

21 A. Yes. I was there for the whole thing. She was not by
22 herself.

23 Q. Okay. And what did she say to her father?

24 A. She said that your facing life in prison. You're
25 gonna -- you have an offer that's voluntary which can give

Julie Swilley- Redirect Examination by Ms. Giovanoli: 96

1 you the opportunity to get out before you die and I
2 specifically remember her saying, don't you want to be a
3 part of your grandchildren's lives one day. She wasn't
4 pregnant and didn't have any children at the time but she
5 was projected to a future date that would possibly let him
6 get out of jail.

7 Q. Okay. And just briefly touch up on the leads, did you
8 follow-up on any leads in this case?

9 A. Any and everything that Tripp asked me to follow-up
10 on, I absolutely did.

11 Q. Okay. So it's safe to say that you conducted your own
12 independent investigation?

13 A. Absolutely.

14 MS. GIOVANOLI: Okay. Thank you for your time.
15 Nothing further.

16 THE COURT: Mr. Boozer?

17 MR. BOOZER: Nothing further.

18 THE COURT: All right. You may come down. Thank
19 you very much. Next witness?

20 MS. GIOVANOLI: Yes, Your Honor. State would call Rick
21 Jones to the stand.

22 THE CLERK: Do you swear to tell the truth, the
23 whole truth, and nothing but the truth so help you God?

24 MR. JONES: I do.

25 THE CLERK: Have a seat and state your full name.

Rick Jones- Direct Examination by Ms. Giovanoli:

97

1 MR. JONES: My name is Rick Jones.

2 THE COURT: Thank you, Your Honor.

3 RICK JONES, first being
4 duly sworn, testified as follows:

5 **Direct Examination by Ms. Giovanoli:**

6 Q. How long have you been practicing law, Mr. Jones?

7 A. Since November of 1976.

8 Q. Okay. And of that time, how long have you been
9 practicing criminal law?

10 A. The whole time. Not exclusively.

11 Q. And with whom are you employed?

12 A. Right now I'm employed with the Twelfth Circuit Public
13 Defender's Office.

14 Q. And at the time of the applicant's trial, where were
15 you employed?

16 A. The Fourth Circuit Public Defender's Office.

17 Q. How did you become a part of this case?

18 A. I was always the old guy. We had an awful lot of
19 young attorneys that were in and out of the Fourth Circuit.
20 Unfortunately, we were not very well-funded and we were not
21 able to pay very much so we had them in and out. So I,
22 generally, was kind of the supervisor, if you will.

23 Q. Okay. So is it safe to say that you supervised on
24 this case?

25 A. Yes.

1 Q. What was your extent and actual involvement? Did you
2 actually meet with the applicant?

3 A. I did. And I heard his testimony and he, he was
4 correct. He was in A pod for a while and then, eventually,
5 got moved to B pod and when I was out there I would,
6 generally, see and at least say hello to him whenever I
7 went by.

8 Q. Did you ever discuss this actual case, the facts of
9 this case?

10 A. Right towards the end when Julie was very, very
11 involved in preparing then I jumped in and was helping.

12 Q. Did you participate in any investigation?

13 A. I did.

14 Q. And what -- could you elaborate?

15 A. We went out to the scene. We, of course, reviewed
16 the evidence. One of the things that I think has been
17 touched on, the last statement that Mr. Gardner gave was,
18 was it was one of the best interrogations I think I have
19 ever heard one of the investigators do, Mr. Luce, spent
20 about fifty minutes with Mr. Gardner and the gun had been
21 discovered as a result of the conversation that was
22 mentioned at the jail in North Carolina. They had gotten a
23 subpoena in North Carolina. Had gone to the house. Got
24 the gun from, the way I understood it, there was a hiding
25 place inside the chimney or around the chimney somewhere.

1 When the officer realized that they had the gun, he then
2 bore in pretty heavily on Mr. Gardner and he, eventually,
3 came up with what was, I guess, the story about his
4 involvement in the situation.

5 Q. Okay. And were you present at the trial on December
6 2nd and 3rd?

7 A. I was.

8 Q. Do you recall a brief recess that was taken on the
9 second day?

10 A. Yes.

11 Q. Where were you during that recess?

12 A. I was kind of in and out. I participated in all of
13 the actions that were described earlier in the earlier
14 testimony. I don't think I stayed in the room as long as
15 Julie did. I was kind of in and out.

16 Q. But you did -- you did go into this room?

17 A. Yes.

18 Q. Who was present in the room when you went in?

19 A. I think I went when Mr. Suggs was there talking with
20 him. Julie went in first and then I kind of followed. She
21 was upset that someone was talking to Mr. Gardner without
22 her being there. And then I was kind of in and out -- a
23 lot of times during trials you get to the point where if
24 there's going to be an offer there's a lot of scrambling
25 that takes place and I think I helped with the scrambling.

Rick Jones- Direct Examination by Ms. Giovanoli:

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1 Q. Is it common to have a guilty plea after a pretrial
2 motion is denied?

3 A. Sure.

4 Q. Did anyone say anything to you in that meeting in the
5 conference room?

6 A. I don't remember anybody addressing me directly. Like
7 I said I just kind of floated around. I was helping to
8 facilitate wherever I could.

9 Q. Did you speak with the applicant?

10 A. I -- right then at that meeting ---

11 Q. At that time, in that meeting.

12 A. I'm sure I may have said something at the time. I
13 think Julie was leading so Julie was pretty much running
14 with the ball.

15 Q. Did you advise him to plead guilty in that meeting?

16 A. I don't recall advising him. I think the choice that
17 was made was probably the best choice that he could have
18 made. It was not going to be an easy rest of the trial.

19 Q. Did you hear any of the discussions between Mr. Suggs
20 and the applicant?

21 A. If I did I don't really recall. I think I came in
22 after that conversation had stopped.

23 MS. GIOVANOLI: Okay. Nothing further, Your Honor.

24 THE COURT: Mr. Boozer, cross examination?

25 Cross Examination by Mr. Boozer:

1 Q. Mr. Jones, how are you doing?

2 A. Very well, thank you.

3 Q. Good. Did you have any discussions with Mr. Gardner
4 about pleading guilty before the trial? Were you involved
5 in any of those discussions?

6 A. Again being around and talking with him it was always
7 our understanding he wouldn't plead guilty to anything. He
8 wanted a trial.

9 Q. Okay. And he was like that up through the trial?

10 A. The whole time.

11 Q. And you have no knowledge of any of the conversations
12 that occurred between Mr. Suggs and Mr. Gardner or
13 recollection of it?

14 A. Not firsthand. I got it all secondhand and again that
15 conversation was as, I think, both of them described that,
16 basically, a friend went in to talk to him and pretty much
17 said, it doesn't look good, you better do something.

18 Q. And you're not personally aware of what sort of
19 relationship, if any, there may be between Mr. Gardner and
20 Mr. Suggs?

21 A. I had talked to Mr. Suggs and Mr. Suggs was very
22 familiar with Mr. Gardner. It sounded like they kind of
23 grew up together and knew each other very, very well.

24 Q. Okay.

25 MR. BOOZER: Thank you, Mr. Jones. That's all I

1 have.

2 MR. JONES: Thank you.

3 MS. GIOVANOLI: Nothing further question.

4 THE COURT: All right. You may come down. Thank
5 you very much. Next witness?

6 MS. GIOVANOLI: The State has no further the witnesses.
7 We rest.

8 THE COURT: Thank you. Mr. Boozer?

9 MR. BOOZER: Nothing further, Your Honor.

10 THE COURT: All right. Fine. Thank you very much,
11 counsel. Proposed orders. Thirty (30) days ---

12 MS. GIOVANOLI: Thirty day? Yes, Your Honor.

13 MR. BOOZER: Yes, Your Honor.

14 THE COURT: All right. Thank you.

15 (CONCLUSION OF HEARING DATED JANUARY 10, 2017)

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CERTIFICATE

I, the undersigned Lisa S. Carter, Official Court Reporter for the Fourth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete excerpt of transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Fourth Circuit Court for Marlboro County, South Carolina, on the 10th day of January, 2017.

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

s/ Lisa S. Carter

Lisa S. Carter

Circuit Court Reporter

June 15, 2017

STATE OF SOUTH CAROLINA

COUNTY OF DARLINGTON

Eugene A. Gardner, #357996,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
C/A NO: 2014-CP-16-672**ORDER GRANTING APPLICATION
FOR POST-CONVICTION RELIEF****PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Darlington County Clerk of Court. In February 2013, the Darlington County Grand Jury indicted Applicant for murder (2005-GS-16-452). Julie R. Swilley, Esquire, and J. Richard Jones, Esquire, represented Applicant. Initially, on December 2, 2013, Applicant proceeded to trial. Following the beginning of trial, Applicant pled guilty to voluntary manslaughter. The Honorable J. Michael Baxley sentenced Applicant to twenty (20) years imprisonment. Applicant did not appeal his plea or sentence.

Applicant initially filed an Application for post-conviction relief on May 21, 2014.

Applicant raised the following allegations:

1. "Applicant was denied the right to effective assistance of counsel during the preparation phase of his trial."
 - a. "Trial counsel's performance during the preparation trial was both unreasonable and prejudicial."
 - i. "The defendant has a history of transient ischemic attacks (TIA's)."
 - ii. "The county psychological nurse's statement, 'I know you would not hurt anyone, your actions were normal (panic, scared, confusion) you didn't handle the situation

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right - your brother had just died in from of you - you were in 'shock.'"

iii. "Counsel told defendant she was arranging an appointment with a neurologist, which was never done."

iv. "The defendant was actually on sick leave for the 2 weeks prior to the accident."

b. "Loud v. Whitney, 977 F.2d 149, 156 (5th Cir. 1992) (citing Strickland v. Washington supra))."

i. "The defendant and his brother had never been in a physical altercation."

c. "Tisdale v. State, 662 S.E.2d 514 (S.C. 2008) - Counsel found ineffective in murder case for failing to request charges of involuntary manslaughter and accident."

2. "Applicant was denied the right to effective assistance of counsel... during the guilty-innocence phase of his trial."

a. "Supporting facts: trial counsel's performance during the questioning of the trial was both unreasonable and prejudicial."

3. "Applicant was denied the right to effective assistance of counsel during the preparation phase of trial."

a. "Counsel allowed Darlington County Corrections Officer, Purvis, to sit in and assist with defendant's trial preparations and discussions."

4. "Applicant was denied the right to effective assistance by counsel during the guilt-innocence phase of trial was both unreasonable and prejudicial."

a. "Supporting facts: Trial counsel's performance during the guilty-innocence phase of trial was both unreasonable and prejudicial."

i. "Counsel allowed a court office (Scott B. Suggs - clerk of court), who had summoned the defendant into a room in the courtroom to discuss his case, advise counsel and the defendant."

ii. "There were 2 witnesses that heard a shot between 3:00-3:30 PM and Hardee (coroner) said Todd Gardner dies at the same time."

iii. "The defendant never had any intention of a plea at all - he has said over and over "I know I made a mistake by not calling for help. I was scared out of my mind but I am innocent, I would never hurt my brother. We talked every day; sometimes 3 times. He was coming to live with us after I got dad settled. I loved my brother."

iv. "The defendant asked counsel 'when will we go over the details of my case?' She said 'during trial.'"

5. "Applicant was denied the right to effective assistance of counsel during the guilt-innocence phase of his trial."

a. "Supporting facts: Trial counsel's performance during the preparation phase of trial was both unreasonable and prejudicial."

i. "After clerk of court had left and counsel was discussing, again the room was chaos."

ii. "Counsel did not represent her client in a just and processional way."

6. Counsel failed to communicate with and effectively represent Applicant.

7. Applicant denied opportunity to fully discuss plea offers with counsel.

8. Counsel failed to object to lack of factual basis for guilty plea.

The State made its Return on June 11, 2015. An evidentiary hearing was convened on January 10, 2017, at the Marlboro County Courthouse before the Honorable G. Thomas Cooper, Jr. The Applicant was present and represented by Lance S. Boozer, Esq. The State was present and represented by Valerie Giovanoli, Esq. This Court makes the following findings of fact and conclusions of law.

STANDARD OF REVIEW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's

G7

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, 268 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is 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.

Based on the record and testimony presented at the PCR hearing, this Court finds that the Applicant has met his burden of proof.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Involuntary guilty plea/Ineffective assistance of counsel and third party interference.

Applicant testified that the killing of his brother was an accident. Applicant alleged and testified that on December 2, 2013, he was proceeding to trial on the murder charge at the Darlington County Courthouse. Applicant testified it was his desire to have a trial and he would not entertain any plea offers. Applicant further testified that during the second day of trial, a recess

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was taken. During this recess, Applicant stated he was taken from the courtroom to a separate room within the courthouse to wait for the trial to resume. Applicant testified that while waiting in the room, Scott B. Suggs, ("Mr. Suggs") who Applicant knew to be the Darlington County Clerk of Court entered the room. Applicant testified at this point he was alone in the room with Mr. Suggs and counsel was not present. Applicant stated Mr. Suggs indicated to Applicant that he should plead guilty and proceeded to tell Applicant he would get a life sentence if he continued with the trial. Applicant testified Mr. Suggs indicated he was basing this advice on the fact that he had observed approximately 500 trials. Applicant indicated he knew Mr. Suggs simply from living in Darlington his entire life but denied having any sort of close relationship with him. Applicant testified that at this point, he became very frightened and immediately lost trust in the judicial process and his trial. Applicant testified that his attorney, Ms. Swilley, entered the room and found Mr. Suggs present. Applicant indicated it appeared Ms. Swilley was upset that Mr. Suggs was speaking with him. Applicant indicated he told Ms. Swilley that he was extremely frightened about the possible outcome of the trial based on the statements Mr. Suggs had just made to him. Applicant testified his daughter, Taylor Baker ("Ms. Baker") was then brought into the room. Applicant testified he discussed the case with his daughter and the statements Mr. Suggs had made to him. Applicant stated, based on the statements made by Mr. Suggs, he would enter a plea. Applicant indicated that Ms. Swilley told him he would have to admit killing the victim and that he was guilty of voluntary manslaughter. Applicant testified he told Ms. Swilley that was not true and asked whether he needed to lie to the judge. Applicant testified Ms. Swilley told him the judge would not accept the plea if he did not admit to the crime. Applicant stated he then proceeded with the plea and testified that the statements he made during the plea colloquy were false.

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Applicant testified he did not want to plead guilty and would have continued forward with the trial had Mr. Suggs not spoken to him during the recess.

The Applicant called Mr. Suggs as a witness at the PCR hearing. Mr. Suggs testified that he knew the Applicant and that they had previously played golf together and would grill out. Mr. Suggs testified that as Darlington County Clerk of Court, he was present and in the courtroom during the Applicant's trial. Mr. Suggs further testified that during a recess, he met alone with the Applicant in a separate room and felt he was giving him advice as a friend. Mr. Suggs stated that during the meeting he told the Applicant that based on his experience as Darlington County Clerk of Court, and what he had seen in past trials, the Applicant should plead guilty. Mr. Suggs testified he felt the Applicant would likely be found guilty at trial and could receive a potential life sentence. He further stated he conveyed to the Applicant his belief that the evidence was stacked against him. Mr. Suggs acknowledged that the Applicant appeared to be very scared following their conversation. Mr. Suggs testified he believes had he not spoken with the Applicant during the recess, Applicant would not have pled guilty and would have instead continued with trial.

Ms. Swilley testified that during her representation of the Applicant, she met and discussed the case with him numerous times. She further testified that Applicant never wanted to enter a guilty plea. She recalled the State making approximately three (3) separate offers for Applicant to plead guilty to voluntary manslaughter in exchange for a twenty (20) year sentence, however, Applicant declined each and insisted on a trial. She testified he was so adamant on having a trial, she felt it was futile to even approach the Applicant with any plea offers, however, she had a duty to convey them to him. Ms. Swilley indicated she along with her co-counsel Mr. Jones and the Applicant prepared the case for trial. She stated that during the second day of trial, a recess was taken. During the recess, she indicated she attempted to speak with the Applicant but did not find

him in the room she expected him to be waiting in but rather he was in another room. Upon entering the room, Ms. Swilley testified she found the Applicant visibly worried, alone and speaking with Mr. Suggs. Ms. Swilley indicated she became upset that Mr. Suggs was speaking with the Applicant and asked one of the court staff why he allowed a third party to speak with her client. Ms. Swilley recalled that when she entered the room, Mr. Suggs was telling the Applicant that it was in his best interest to plead guilty. She indicated Mr. Suggs concluded the conversation and exited the room. At this point, Ms. Swilley testified Applicant appeared to be very frightened and was unsure of what to do. Ms. Swilley stated she then allowed Ms. Baker to come and speak with the Applicant and was present in the room for the conversation. Ms. Swilley indicated that Ms. Baker was extremely emotional and upset while speaking with the Applicant. Ms. Swilley indicated that Applicant asked her if he pled guilty, did she want him to lie to the judge during the court's questioning. She stated she advised Applicant she always wants him to tell the truth and he would have to admit killing the victim, otherwise the judge would not accept the plea.

Ms. Swilley testified that over the course of her representation, she enjoyed meeting with the Applicant and felt she had come to know him. She opined that had Mr. Suggs not spoken with the Applicant during the recess, the trial would have continued and Applicant would not have pled guilty. She did not believe there was any sort of close friendship between the Applicant and Mr. Suggs.

Applicant's daughter, Ms. Baker, also testified at the PCR hearing. Ms. Baker indicated that during the trial recess, she entered the room where the Applicant was waiting. She indicated both she and the Applicant were very emotional. She further testified she recalled Applicant asking Ms. Swilley if she wanted him to lie to the court when entering the plea. Ms. Baker testified Ms.

GZ 7

Swilley told him "yes." She further testified that although she knew who Mr. Suggs was, she denied Mr. Suggs and Applicant ever maintaining any sort of friendship.

Mr. Jones testified that his involvement in Applicant's trial was limited and he was serving to assist Ms. Swilley as needed for trial. Mr. Jones indicated he was not present in the room during the meeting between Mr. Suggs and the Applicant, however, he recalled Ms. Swilley being upset about the meeting occurring.

Guilty pleas must be entered into voluntarily, knowingly and intelligently. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969); Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999). The facts and testimony involving this PCR application are unique. Applicant and Ms. Swilley both testified Applicant was intent on exercising his constitutional right to a jury trial in this case. Ms. Swilley also testified Applicant declined multiple plea offers. The record is also clear Applicant proceeded with a trial and was in the second day of his trial prior to the occurrence of the meeting between Applicant and Mr. Suggs.

This Court finds credible the testimony of the witnesses presented at the PCR hearing. It is uncontroverted that Mr. Suggs met with the Applicant during the trial recess, expressed his opinion as to the outcome of the case and strongly advised Applicant to plead guilty. It is further undisputed that had this meeting not occurred, Applicant would have proceeded with the trial and would not have pled guilty. Although this Court believes Mr. Suggs had nothing but good intentions in advising the Applicant to plead guilty, this Court finds the discussion, and setting in which it occurred, to be quite influential over the Applicant's decision on whether to continue to exercise his constitutional right to a jury trial. The Applicant was represented by counsel and should not have been subjected to outside influence from any source whatsoever regarding his trial or related decisions. This Court finds that this meeting between the Applicant and Mr. Suggs

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rendered his guilty plea involuntary.¹ This Court finds Applicant was not truthful in his responses to the plea court and further finds counsel should have been aware that Applicant intended to falsely testify when he inquired whether he should lie to the court prior to the plea. This Court finds counsel should have made the plea court aware of the circumstances leading to the plea and/or requested that the Applicant be allowed to withdraw his plea. Accordingly, this Court finds counsel was ineffective and this ineffectiveness prejudiced Applicant. This Court further finds the discussion between Mr. Suggs and Applicant rendered Applicant's guilty plea involuntary.

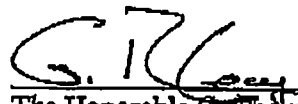
CONCLUSION

Accordingly, this Court grants Applicant's PCR application and finds Applicant's guilty plea was involuntarily entered. This Court denies and dismisses Applicant's remaining allegations.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be granted;
2. Applicant's conviction and sentence are vacated;
3. Applicant is entitled to a new trial; and
4. Applicant is remanded to the custody of Darlington County.

AND IT IS SO ORDERED this 17 day of February, 2018.


The Honorable G. Thomas Cooper,
Presiding Judge
Fourteenth Judicial Circuit

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CLERK OF COURT
DARLINGTON COUNTY, S.C.

¹ This Court is not concerned with the existence or nonexistence of any social relationship between Mr. Suggs and the Applicant or Mr. Suggs' official position as Clerk of Court but rather that this type of discussion and advice should only occur between a defendant and counsel or at counsel's request and in her presence.

STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON

Eugene A. Gardner, III, #357996,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT

2014-CP-16-00672

**NOTICE OF MOTION AND
MOTION TO ALTER OR
AMEND JUDGMENT PURSUANT
TO RULE 59(e), SCRPC**

Respondent now moves pursuant to Rule 59(e) and Rule 60, SCRPC, and all other applicable rules to alter or amend the judgement.

This matter is before this Court by way of an application for post-conviction relief (PCR). Following a hearing on the matter, this Court granted relief by order dated February 17, 2017, and filed on Friday, February 24, 2017. Respondent received the order via fax from the Fourth Circuit Solicitor's Office the following Monday, February 27, 2017. The Court granted relief on the basis that:

- (1) Applicant's guilty plea was involuntary because of the conversation between Scott Suggs ("Suggs") and Applicant during Applicant's trial.
- (2) Counsel Julie Swilley ("Counsel") was ineffective because she should have been aware that Applicant was going to lie to plea court and failed to inform the plea court of the circumstances surrounding the plea and/or request that Applicant be allowed to withdraw his plea.

DISCUSSION

In making this motion, Respondent reserves and incorporates all previous arguments and authority presented to this Court. Respondent would submit that the judgment should be altered

or amended based on the following:

A. Involuntary Guilty Plea

First, this Court erred in finding that Applicant's guilty plea was not voluntary because of a conversation that occurred between Suggs and Applicant that the Court holds should only occur between a defendant and his counsel or at counsel's request and in her presence. Respondent submits that there is no rule of law or ethics that prevents a defendant from participating in a conversation about pleading guilty with someone other than his attorney.¹ To say that Suggs's conversation with Applicant, regardless of their personal relationship or Suggs's position as Darlington County Clerk of Court, was error sufficient to render Applicant's guilty plea involuntary is to say that Applicant's conversation with his daughter was equally wrong and sufficient to allow Applicant a new trial. Respondent would submit that there is no law to support such a finding and further, that it would give rise to an overwhelming amount of new trials to any criminal defendant who discussed a guilty plea with someone other than their attorney and outside of their attorney's presence. It is not uncommon to discuss one's options when facing criminal charges with someone other than one's attorney of record and without their consent: family, friends, peers, colleagues, even other attorneys. Although initiated by Suggs, all of the testimony from both Applicant and Suggs indicated that the conversation was consensual and at no point in time did Applicant demonstrate a desire to end the conversation.

Furthermore, the conversation, though beginning outside the presence of Swilley, was completed in her presence. The undisputed testimony from all parties is that after Suggs left the room, Swilley continued the *same* discussion with Applicant and gave him the *same* advice on pleading guilty. After their conversation, Applicant's daughter entered and continued the *same*

¹ Rule 407, SCACR, Rules of Professional Conduct, Rule 4.2 prohibit the prosecuting attorney in a criminal case to communicate with a represented defendant without the defendant's attorney's consent or authorization to do so by law or court order.

discussion and encouraged the *same* guilty plea, albeit in a much more emotional fashion. Lastly, Co-counsel Jones also advised Applicant to enter a guilty plea.

This Court found Suggs's advice to Applicant to be quite influential in Applicant's decision to plead guilty, but does not render an opinion with regard to the same advice from his daughter.² The advice and encouragement to plead guilty came from four parties: Suggs, Applicant's daughter, Swilley, and Co-counsel Jones; only two of which were Applicant's attorneys. Swilley testified that she had always thought a guilty plea was in Applicant's best interest and so advised him. The combination of influence from *all* parties in conjunction with the natural stress and fear evoked by a jury trial for murder are reasonable factors in deciding to plead guilty that do not amount to duress or coercion sufficient to render a guilty plea invalid. See LoConte v. Dugger, 847 F.2d 745, 753 (11th Cir. 1988) ("Simply because the appellant was subjected to pressure from sources not associated with the state or prosecutors does not mean that his plea was necessarily involuntary."); Gustine v. State, 325 S.C. 123, 480 S.E.2d 444 (1997) (finding defendant knowingly and voluntarily entered a plea of guilty, reversing lower court's ruling that Solicitor's plea offer that was conditioned upon a defendant's foregoing another appeal and terminating his parental rights was so coercive as to render defendant's guilty plea involuntary); Wade v. State, 308 S.C. 552, 419 S.E.2d 781 (1992) (finding record reflected petitioner's knowing, intelligent, and voluntary entry of his plea of guilty, despite the fact that petitioner alleged that his guilty plea counsel had told him that if he did not plead guilty to the charges against him, his female family members, who had also been charged, would go to jail). Rather, the court must review the record as a whole, giving great weight to Applicant's responses at the plea colloquy. LoConte, supra ("The state trial court conducted an extensive colloquy,

² Applicant insisted his daughter's plea to him to plead guilty played quite an influential role in his decision to plead guilty, also.

inquiring into the appellant's understanding with respect to the waiver of rights inherent in a guilty plea and the consequences of that plea. At the plea hearing, appellant expressly stated that he had not been coerced into his plea.”)

All that is required to knowingly and voluntarily enter a plea of guilty is that a defendant have a full understanding of the consequences of his plea and of the charges against him. Gustine, supra (citing Simpson v. State, 317 S.C. 506, 455 S.E.2d 175 (1995)). Applicant certainly had a full understanding of the consequences of his plea and of the charges against him. Swilley had counseled Applicant for nearly eighteen (18) months in preparation for his trial of murder. Applicant was fully aware of the murder charge against him, the exposure to a life sentence, the high likelihood of a conviction, and the lesser-included offense of voluntary manslaughter to which he was pleading guilty.

To the extent the Court views Suggs’s quite influential conversation with Applicant as rising to the level of duress/coercion, Black’s Law Dictionary, Sixth Edition, defines duress as “any unlawful threat or coercion used by a person to induce another to act (or to refrain from acting) in a manner he or she otherwise would not (or would).” Suggs’s dose of reality was hardly an *unlawful* threat or coercion. At best (or worst), it should be admonished as unprofessional, inappropriate and discouraged in the future. However, it does not rise to the level of rendering a perfectly knowing and voluntary guilty plea invalid.

B. Ineffective assistance of counsel

This Court also erred in its finding that Swilley was ineffective and Applicant was prejudiced by her ineffectiveness. Specifically, Swilley was ineffective because she should have known Applicant intended to falsely testify to the plea court. This court also found that Applicant did in fact lie to the plea court, but finds Applicant’s testimony in the PCR hearing

credible.³ Also, Swilley was ineffective for failing to inform the plea court of the circumstances leading to the plea and/or not requesting that Applicant be permitted to withdraw his plea.

Under a two-pronged test, Applicant must first prove that counsel's performance was deficient. Attorneys are held to an objective standard of "reasonably effective assistance" under "prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E. 2d at 625, citing Strickland. The presumption will always be that counsel was effective and the applicant must overcome the presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E. 2d 624 (1989). In this case, Applicant has failed to overcome the presumption that Swilley was effective. Swilley would have to be clairvoyant to have known that Applicant intended to lie to the plea court. The testimony from Applicant was that he *asked* if he should lie to the plea court and Swilley testified that she told him to always tell the truth and further that he would have to admit to the crime. First, her advice to Applicant was to tell the truth and as such, should have expected nothing less from Applicant. Furthermore, based on the overwhelming evidence and in Swilley's view of the case, admitting to the crime would not require Applicant to lie – despite Applicant having convinced himself otherwise.⁴

With regard to Swilley not informing the plea court of the discussion between Applicant and Suggs, the Court does not specify why that information was relevant to the plea court. Swilley entered the room while Suggs was speaking to Applicant, did not disagree with what was being discussed and agreed with Suggs's advice. By not relaying that information to the plea court, Swilley exercised her professional judgment with regard to the relevancy of the prior

³ There is no distinction in the order with regard to what testimony by Applicant is credible. Respondent would submit that Applicant's dishonest testimony was well-illustrated by his PCR testimony that he voluntarily turned over to law enforcement the gun used to kill his brother. This assertion is directly contradicted by the record, testimony of Counsel, and the evidence that show the gun was found hidden behind a secret door behind the fireplace during the execution of a *second* search warrant after Applicant was overheard telling someone to hide the gun and make sure they don't find it.

⁴ Respondent would agree with the Court's ruling if it implies Applicant was lying by admitting to voluntary manslaughter when it was in fact murder.

discussion to Applicant's knowing and voluntary guilty plea. It is also reasonable to not request permission to withdraw Applicant's guilty plea, when the guilty plea was in Applicant's best interest. Keeping in line with the standard for effective assistance of counsel as set forth in Strickland, Swilley was not deficient and her representation was reasonable in light of the prevailing professional norms.

Second, assuming *arguendo* that counsel's performance was deficient, the second prong of Strickland requires that the 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. Applicant has failed to meet his burden of proving prejudice. Had Swilley informed the plea court that Applicant intended to lie and about Suggs's discussion with Applicant, and request permission to withdraw his plea, there is no evidence that the result would have been different. The plea court may have inquired as to Applicant's intention to falsely testify and, similar to Swilley's advice, reminded him not to lie under oath. Had Swilley told the plea court that Suggs had a conversation with Applicant, in which he told him things that had been told by various other people, including both of Applicant's attorneys, there is no evidence that the result would be different. The court may have admonished Suggs for not requesting permission prior to talking to Applicant, but it is not likely that the court would force Applicant through trial when Applicant was attempting to plead guilty. Further, Applicant offers no evidence that had Swilley requested to withdraw his plea, that the plea court would have allowed it or that Applicant would have withdrawn it in that moment.⁵ After all, it was Applicant's own final decision to plead guilty.

⁵ While serving his current twenty year sentence, Applicant has clearly had a change of heart.

Accordingly, Swilley's performance was not deficient and certainly did not prejudice Applicant in his decision to plead guilty. For the foregoing reasons, Respondent would request that the order be altered or amended.

Respectfully submitted,

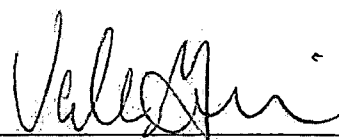
ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

DONALD J. ZELENKA
Deputy Attorney General

VALERIE GARCIA GIOVANOLI
Assistant Attorney General

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

By: 
ATTORNEYS FOR RESPONDENT

March 1, 2017

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF DARLINGTON)

2016-CP-16-0672

EUGENE A. GARDNER, III, #357996)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

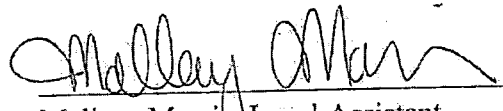
STATE OF SOUTH CAROLINA,)

Respondent.)

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

Lance S. Boozer, Esquire
 Boozer Law Firm, LLC
 1400 Laurel Street, Ste 4A
 Columbia, SC 29201-2500

DATED this 1st day of March, 2017.


 Mallory Morris, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTH JUDICIAL CIRCUIT
COUNTY OF DARLINGTON	)	C/A NO: 2014-CP-16-672
	)	
Eugene A. Gardner, III,	)	
	)	
Applicant,	)	
	)	RETURN TO RESPONDENT'S
v.	)	MOTION TO ALTER OR AMEND
	)	ORDER GRANTING PCR
State of South Carolina,	)	
	)	
<u>Respondent.</u>	)	

This Court granted Applicant's PCR application by Order dated February 17, 2017. On March 1, 2017, Respondent submitted a Motion to Alter or Amend Judgement pursuant to Rule 59(e).

In its Motion, Respondent argues this Court erred in granting Applicant's PCR application. Applicant submits that this Court's Order Granting PCR contains the proper findings of facts and conclusions of law as required by S.C. Code Ann. 17-27-80 (1976) and Rule 52(a) SCRPC. Applicant further submits that this Court properly ruled on all issues presented at the post-conviction relief hearing and Respondent's Motion should be denied.

THE BOOZER LAW FIRM, LLC



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

March 2, 2017

STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON

Eugene A. Gardner, III, #357996,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT

2014-CP-16-00672

**ORDER DENYING MOTION TO
ALTER OR AMEND JUDGMENT**

This matter comes before the Court by way of Respondent's Motion to Alter and/or Amend the Judgment pursuant to Rule 59(e), SCRPC received March 2, 2017. Specifically, Respondent asks this Court to reconsider its Order Granting Post-Conviction Relief that was filed February 24, 2017.

After careful consideration of the record in this case and the submissions of the parties, this Court is unable to discover any material fact or principle of law that has either been overlooked or disregarded and further finds no error of law or facts not appropriately considered.

Accordingly, this Court hereby **DENIES** Respondent's Motion under Rule 59(e), SCRPC, to reconsider this Court's February 24, 2017, Order Granting Post-Conviction Relief. Furthermore, pursuant to Rule 59(f), SCRPC, the Court is of the opinion that oral argument is not necessary.

IT IS SO ORDERED.

CAUDEN, South Carolina

March 9, 2017


G. Thomas Cooper, Jr.
Presiding Judge

2017 MAR 31 PM 5:00
FILED
CLERK OF COURT
DARLINGTON COUNTY, SC
TRUE COPY
SCOTT B. SUGGS
CLERK OF COURT
DARLINGTON COUNTY, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTH JUDICIAL CIRCUIT
COUNTY OF DARLINGTON	)	C/A NO: 2014-CP-16-672
	)	
Eugene A. Gardner, III,	)	
	)	
Applicant,	)	
	)	AFFIDAVIT OF SERVICE
v.	)	
	)	
State of South Carolina,	)	
	)	
<u>Respondent.</u>	)	

I, the undersigned of the Boozer Law Firm, LLC, Attorney for Applicant, do hereby certify that I served the foregoing Return to Respondent's Motion to Alter or Amend Judgment upon the persons below-listed by placing a copy, postage prepaid, in the United States Mail, addressed as follows:

Valerie Giovanoli
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211

THE BOOZER LAW FIRM, LLC


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

Columbia, South Carolina
March 2, 2017

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

367

COUNTY OF Darlington
STATE VS.Eugene Austin Gardner III

AKA:

Race: White Sex: M Age: 52DOB: 1961 SS#:

Address:

City, State, Zip:

DL#: SID#: *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Manslaughter / Voluntary manslaughterINDICTMENT/CASE#: 2013-GS-16-0452A/W#: M827189Date of Offense: 6/21/2011S.C. Code § : 16-03-0010; 16-03-0020CDR Code #: 0116

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of §. 16-03-0050 of the S.C. Code of Laws, bearing CDR Code # 0217☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Patti M Parker
McKenzie, Patti L7836
SC Bar#E. A. Gardner III
DefendantJohn H. Hest
Attorney for Defendant79374
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ 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. 3/30/12 614 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

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

PTUP days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther:

TRUE CERTIFIED COPY,
Scott B. Suggs
 CLERK OF COURT/PMC
 DARLINGTON COUNTY, SC

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.
Clerk of Court/ Deputy Clerk Michelle HartmanCourt Reporter: Daphne Helms

SCCJA/217 (03/2011)

Presiding Judge

Judge Code: 2121Sentence Date: 12/3/13

STATE OF SOUTH CAROLINA)
COUNTY OF DARLINGTON)

INDICTMENT FOR

Murder / Murder

§16-03-0010; 16-03-0020

At a Court of General Sessions, convened on February 21, 2013, the Grand Jurors of Darlington County present upon their oath:

MURDER

CDR: 0116 16-03-0010,0020

That Eugene Austin Gardner III did in Darlington County, on or about June 21, 2011, willfully, feloniously, and intentionally kill the victim, Richard "Todd" Gardner, with malice aforethought, either express or implied, by means of shooting the victim, and the victim did die as a proximate result thereof on or about June 21, 2011 in Darlington County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

TRUE CERTIFIED COPY.

Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, SC

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

William B. Rogers, Jr.

WILLIAM B. ROGERS, JR.
SOLICITOR

12.08.13
WITNESSES

Joe Peavy

Darlington County Sheriff

Law Enforcement Case #: 201106-0580

836

WAIVER OF PRESENTMENT

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

Defendant

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

Defendant

ARREST WARRANT NUMBER
M827189

ARRESTED ON: 2012-03-30

ACTION OF GRAND JURY

Grand Jury Foreperson

Date

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:
2013-GS-16-0452

The State of South Carolina

County of Darlington

COURT OF GENERAL SESSIONS

Term:
February 2013

THE STATE

vs.

Eugene Austin Gardner III

INDICTMENT FOR

Murder / Murder

§16-03-0010; 16-03-0020

CDR Code: 0116

TRUE CERTIFIED COPY;
Scott B. Suggs
CLERK OF COURT/EMC
DARLINGTON COUNTY, SC

William B. Rogers, Jr., Solicitor

12:41:05 Friday, September 05, 2014

370

CMTI330D

SCDC OFFENDER MANAGEMENT SYSTEM

09/05/14

OMCOMITA

RELEASE DATE SCREEN

C051132

SCDC# > 357996

LOC: PERRY

GARDNER III, EUGENE AUSTIN

SCDC CLASSIFICATION...: VIOLENT

OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE

SEXUAL REGISTRY...: N

SEXUAL PREDATOR...: NOT APP

DNA STATUS.....: COMPLETED

GPS REQUIREMENT...: N

PREA DECISION....:

CURRENT SENTENCE: 020-00-000

CONSECUTIVE SENTENCE ...: N

020-00-000

CURRENT SENT START DATE: 03/29/2012

PROJECTED COMPLETION DATES

MAXOUT DATE: 03/25/2029

CURRENT EWC ..: 3 F 5

YOA SIX YEAR DATE: / /

CURRENT EEC ..: NOT CURRENTLY EARNING EEC

INITIAL PAROLE DATE: 00/00/0000

NEXT PAROLE HEARING DATE: 00/00/0000

TOTAL GT DAYS EARNED: 000000

LABOR CREW/WORK PROG DATE: 99/99/9999

TOTAL EARNED WORK CREDITS ...: 000208

LABOR CREW DISQ REASON:

TOTAL EDUCATION CREDITS: 000000

MEDCLASS

TOTAL EXTRA EARNED CREDITS ..: 000

SUPERVISED REENTRY DATE...: 00/00/00

TOTAL SERVICE TIME EARNED ...: 000876

ISS.....:

PRESS PF5 FOR DATE HISTORY ...

PFKEYS: 5:HISTORY OF DATE CHANGES

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RECORD SUMMARY REPORT DATED 09/05/14

C0511

GARDNER III,EUGENE AUSTIN FBI # 186636PD8 SID# SC01314225 SCDC # 357996

OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE

INSTITUTION ... PERRY CORR INST

SECURITY/CUST.: 3 MINIMUM IN

CURR INCARC SENT...: 20 YRS 0 MOS 0 DYS

CENTRAL MONITORING.: YES

SOCIAL SECURITY #...: [REDACTED]

DORM.....: Q1B0119T

RACE....:W SEX...:M

PROJ MAXOUT DATE: 03/25/2029

PROJ PAROLE DATE: 00/00/0000

EWC JOB...: LANDSCAPE LABORER

EDUC PGM.: NO CURR EDUC PROGRAM

EWC LEVEL: 3F5 EEC LEVEL:

ASSIGNMENT...: INSIDE GRDS-MAINT D

CURRENT PROGRAM...: NO CURRENT PROGRAM

AGE...: 53 DATE OF BIRTH...: [REDACTED]/61

PREVIOUS NUMBERS:

** NO PREVIOUS NUMBERS **

CURRENT OFFENSES	SENTENCE YRS MOS DYS COUNTY	SENTENCE START V/NV CATEGORY
VOLUNTARY MANSLAUGHTER	20 0 0 DARLINGTON	3/29/2012 V 4

PRIOR COMMITMENTS OVER 90 DAYS:

MISSING PRIORS DATA

DETAINERS (HOLD,WANTED,NOTIFY):

NO DETAINERS

NO DETAINERS

ESCAPES:

3/29/12 OTHER ESCAPE RELATED CODE NOT IN TABLE

CRIMINAL CHARGES:

NO CRIMINAL CHARGES WHILE IN CUSTODY

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

NO NON-ASSAULTIVE DISCIPLINARY HISTORY

HISTORY OF MOVEMENTS:

DATE	LOCATION	STATUS	REASON
7/ 7/14	PERRY	INCARCERATED	RETURN FROM COURT
7/ 7/14	DARLINGTON CO	AUTH ABSENCE (AWL)	TO COURT
3/27/14	PERRY	INCARCERATED	ADMINISTRATIVE
3/27/14	KIRKLAND	INCARCERATED	MEDICAL
1/27/14	PERRY	INCARCERATED	ADMINISTRATIVE
1/15/14	KIRKLAND	INCARCERATED	RETURN FROM COURT
1/15/14	DARLINGTON CO	AUTH ABSENCE (AWL)	TO COURT
12/ 4/13	KIRKLAND	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
LANDSCAPE LABORER	08/21/14	0/ 0/ 0		YF5
GENERAL WORKER	06/17/14	8/20/14	LATERAL TRANSFER	YF5
FOOD SERVICE AIDE	03/04/14	6/16/14	LATERAL TRANSFER	YF5
WARDKEEPER ASSISTANT	01/28/14	3/ 3/14	LATERAL TRANSFER	YP5

HISTORY OF EARNED EDUCATION CREDITS:

EEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON

NO SCHOOL ASSIGNMENTS

***** END OF REPORT *****

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSION

372

COUNTY OF Darlington
STATE VS.Eugene Austin Gardner III

AKA:

Race: White Sex: M Age: 52DOB: 1961 SS#

Address:

City, State, Zip:

DL#: SID#: *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Manslaughter / Voluntary manslaughterINDICTMENT/CASE#: 2013-GS-16-0452A/W#: M827189Date of Offense: 6/21/2011S.C. Code §: 16-03-0010; 16-03-0020CDR Code #: 0116

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w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: McKenzie, Patti LSC Bar# 7836Defendant Eugene Austin Gardner IIIAttorney for Defendant JuliusSC Bar# 7931WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 2 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
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SPECIAL CONDITIONS:

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*Fine:

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pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.Clerk of Court/ Deputy Clerk Michelle M. HartmanCourt Reporter: Daphne Helms

SCCA/217 (03/2011)

Presiding Judge JuliusJudge Code: Sentence Date: 7/1/11