

RECEIVED

DEC 04 2019

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Horry County

Honorable Kristi F. Curtis, Circuit Court Judge

BRANDON JAMES LITTELL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-000643

APPENDIX

LARA M. CAUDY
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JOHNNY ELLIS JAMES, JR.
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

INDEX

INDEX i

GUILTY PLEA TRANSCRIPT DATED FEBRUARY 26, 20151

MOTION TO RECONSIDER.....31

MOTION TO RECONSIDER WITHDRAWN.....32

NOTICE OF APPEAL.....34

RULE 203(B)(iv) WRITTEN EXPLANATION.....36

ORDER (DISMISSING APPEAL)37

REMITTITUR38

APPLICATION FOR POST-CONVICTION RELIEF39

RETURN.....46

AMENDED APPLICATION FOR POST-CONVICTION RELIEF54

POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED NOVEMBER 27, 2018 ...56

APPLICANT’S EXHIBIT NO. 1 (NOTES).....133

ORDER OF DISMISSAL.....134

INDICTMENT.....152

SENTENCE SHEET.....154

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY) 2015-GS-26-00428

STATE OF SOUTH CAROLINA,)

Plaintiff,) Transcript of Record

vs.) February 26, 2015

BRANDON JAMES LITTELL,)

Defendant.)

B E F O R E :

Honorable Larry B. Hyman, Jr.
Horry County Courthouse
Conway, South Carolina

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

Nancy Livesay, Esquire
Attorney for Plaintiff

J. Eric Fox, Esquire
Attorney for Defendant

Kay H. Richardson
Circuit Court Reporter

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

FEBRUARY 26, 2015

Pg.

Plea hearing	3
Sentence of the Court	29
Certificate of Court Reporter	30

E X H I B I T S

No.

ID

EV

(No exhibits were marked or admitted.)

State v. Littell - 2015-GS-26-00428
PLEA HEARING

3

1 (FEBRUARY 26, 2015 - 2:08 P.M.)

2 BRANDON JAMES LITTELL, HAVING BEEN
3 DULY SWORN, TESTIFIES AS FOLLOWS:

4 MS. LIVESAY: Your Honor, this is Brandon Littell. He's
5 here with his attorney, Eric Fox. He is here for indictment
6 2015-GS-26-00428. It has been true-billed by the Grand Jury.
7 He is here to plea to murder. This is without any sort of
8 recommendation or negotiation.

9 Your Honor, there are several other charges that went
10 along with this incident. The State is dismissing those
11 charges in lieu of his guilty plea today. Mr. Littell also
12 had some pending charges before this incident that we are also
13 dismissing for exchange for his guilty plea today.

14 THE COURT: All right. Mr. Littell, you are represented
15 by Mr. Fox; is that correct?

16 MR. LITTELL: Yes, sir.

17 THE COURT: And has he explained to you the elements of
18 the offense of murder?

19 MR. LITTELL: Yes, sir.

20 THE COURT: And you understand what the charge is?

21 MR LITTELL: Yes, sir.

22 THE COURT: Do you realize, Mr. Littell, that you could
23 receive a sentence of no less than thirty years but up to life
24 imprisonment?

25 MR. LITTELL: Yes, sir.

1 THE COURT: Mr. Littell, I want to advise you that you do
2 not have to plead guilty. You have an absolute right to have
3 a jury trial. Your plea is just one of the many options
4 available to you. Has Mr. Fox discussed the possibility of a
5 jury trial with you?

6 MR LITTELL: Yes, sir.

7 THE COURT: And in that regard, did he go over the
8 evidence that the State has in this case and explain to you
9 how the State would attempt to introduce that evidence in a
10 trial to be used against you?

11 MR. LITTELL: Yes, sir.

12 THE COURT: Okay. And do you Mr. Littell wish to have a
13 jury trial?

14 MR. LITTELL: No, sir.

15 THE COURT: Do you understand, Mr. Littell, that if you
16 plead guilty, you are waiving, giving up your right to a jury
17 trial permanently? You cannot come back next week or next
18 month and say I've changed my mind, I want a jury trial; do
19 you understand that?

20 MR. LITTELL: Yes, sir.

21 THE COURT: Mr. Littell, do you understand that when a
22 person gives up his right to a jury trial, and that's
23 precisely what you do if you plead guilty, you give up many
24 rights that go along with it. There are -- we can just spend
25 months talking about philosophically about all the rights that

State v. Littell - 2015-GS-26-00428
PLEA HEARING

5

1 go along with a jury trial. I always like to turn out a few
2 that at least in my opinion are some of the more important
3 ones just by way of illustration. For instance, in a jury
4 trial, you would have the right to remain silent. That means
5 that you would not have to testify, no one could make you
6 testify. If you chose not to testify, I would even tell the
7 jury they couldn't use that against you. Of course, if you
8 wanted to testify on your own behalf, you could, but you
9 wouldn't have to. Here in a guilty plea, I ask you what you
10 done, I ask you to admit the allegations made by the State.
11 You cannot simply remain silent. You give up that right.

12 MR. LITTELL: Yes, sir.

13 THE COURT: In a jury trial, the State would have to
14 prove your guilt beyond a reasonable doubt. It has to
15 convince each and every juror of that fact. Here in the
16 guilty plea, Ms. Livesay does not have to prove anything to
17 me. All she does is merely recite the factual basis upon
18 which the State proceeds in this matter and then you are asked
19 if those are true. She doesn't have to put up evidence. Do
20 you understand that?

21 MR. LITTELL: Yes, sir.

22 THE COURT: Now, knowing that you have these rights and
23 many similar rights that go along with a jury trial, do you,
24 sir, wish to enter a plea of guilty?

25 MR. LITTELL: Yes, sir.

1 THE COURT: All right. Now, Mr. Littell, tell me about
2 Mr. Fox, are you satisfied with his representation?

3 MR. LITTELL: Yes, sir.

4 THE COURT: Do you think he's done all that he could to
5 help you?

6 MR. LITTELL: Yes, sir.

7 THE COURT: You need to spend any more time with him?

8 MR. LITTELL: I have a few questions for him.

9 THE COURT: You have some questions for him?

10 MR. LITTELL: Yes, sir.

11 THE COURT: All right. Stand him aside and let's let him
12 ask the questions.

13 Do you need some time? Is this gonna be ---

14 MR. LITTELL: No, it's just one quick question.

15 THE COURT: All right.

16 (REPORTER'S NOTE: Defendant confers with Mr. Fox.)

17 MR. FOX: Very good, Judge.

18 THE COURT: All right. You all right?

19 MR. FOX: Ready to proceed.

20 THE COURT: We're good? Mr. Littell, you got the answer?
21 Do you need any more time with him?

22 MR. LITTELL: No, sir.

23 THE COURT: All right. Mr. Littell, I see here that you
24 are twenty years of age; is that right?

25 MR. LITTELL: Yes, sir.

State v. Littell - 2015-GS-26-00428
PLEA HEARING

7

1 THE COURT: And you're from Atlantic Beach?

2 MR. LITTELL: North Myrtle Beach.

3 THE COURT: North Myrtle Beach, okay. And are you
4 married?

5 MR. LITTELL: No, sir.

6 THE COURT: Do you have any children?

7 MR. LITTELL: No, sir; I don't.

8 THE COURT: Have you been working, Mr. Littell?

9 MR. LITTELL: Yes, sir.

10 THE COURT: What kind of work did you do?

11 MR. LITTELL: I used to work at Moe's.

12 THE COURT: Okay. What did you do there?

13 MR. LITTELL: Roll burritos, make tacos, run a grill.

14 THE COURT: All right. Mr. Littell, how far did you go
15 in school?

16 MR. LITTELL: I made it to 11th grade and got my GED.

17 THE COURT: All right, sir. Mr. Littell, have you ever
18 had any mental health problems, addiction issues, or anything
19 of that sort that might possibly prevent you from
20 understanding or impair your ability to understand what we're
21 doing here today? Do you understand why we're here and what
22 we're doing?

23 MR. LITTELL: Yes, sir.

24 THE COURT: Do you need to ask me any questions in that
25 regard. I can't give you legal advice but I'd be happy to

1 explain to you anything that you want to know about these
2 proceedings and the consequences of these proceedings.

3 MR. LITTELL: No, sir.

4 THE COURT: Now, have you had any drugs or alcohol in the
5 last 24 hours?

6 MR. LITTELL: No, sir.

7 THE COURT: All right. I want you to listen to Ms.
8 Livesay, she's gonna tell me why you're charged with this
9 offense.

10 MS. LIVESAY: Your Honor, just very briefly, on or around
11 June 19th of 2013, the police were called to a Little River
12 area. They had witnesses a burgundy Honda pull up, they heard
13 several shots. They see a young girl get out of the vehicle.
14 They then see a fellow, who we know now as Diaquan Johnson, to
15 get out of the car, chase her down and kick her in the head.
16 The other individual who was left in the car, drove off.
17 Through the investigation, we then discovered what truly
18 happened that day. Brandon Littell, Michael Bellamy, and
19 Diaquan Johnson all got together at Mr. Littell's house. They
20 all put on jeans, they all put on long sleeve dark shirts with
21 the intentions of killing Jason Quinn but they knew this young
22 girl was gonna be in the car because she was the person that
23 always drove Jason around. At that time they had made the
24 decision to kill both individuals. Kelsie, who was twenty-one
25 years old at the time, unarmed, drives her boyfriend to

State v. Littell - 2015-GS-26-00428
PLEA HEARING

9

1 Brandon Littell's house. She then picks the three of them up.
2 All three of them are in the backseat. Michael Bellamy then
3 leads them down this road, down in Little River, away from any
4 houses, away from anybody. At that time, he's telling them, I
5 just got a make a phone call and we can complete this
6 transaction. The transaction was between them and Jason
7 Quinn. Michael Bellamy then gets out of the car. When he
8 gets out of the car, his -- Diaquan Johnson and Brandon
9 Littell are still in the car. Brandon Littell then takes out
10 a handgun and shoots the victim Jason Quinn twice, shoots
11 Kelsie twice. Shoots her once in the neck and once in the
12 back. She is able still to get out of the car and take off
13 running towards the road. When she gets out of the car,
14 Brandon Littell and Diaquan Johnson also get out of the car to
15 go after her. Diaquan runs her down at that point and lays
16 her on the ground. While she's on the ground, all three of
17 them are standing around her. At that point, Jason Quinn is
18 able to move over into the driver's seat and take off. On his
19 way out, Brandon Littell then fires two more shots into the
20 car which strike him one more time in the arm. He's able to
21 make it to a gas station where he's able to get help. After
22 that, they take off on foot, flee from the police. The police
23 finally put into custody Brandon Littell and Diaquan Johnson.
24 The police found them hiding in the house from the police.
25

1 Now, we know that this was premeditated and we know that
2 it had been premeditated far before this day. There was a
3 statement by Michael Bellamy's girlfriend ---

4 THE COURT: Was this a robbery? I mean, was that the
5 intent?

6 MS. LIVESAY: This was a murder, Your Honor, and this is
7 why I'm telling you this part. Weeks before this ever went
8 down, Michael Bellamy's girlfriend, his own girlfriend gives a
9 statement saying weeks before this I heard Brandon Littell and
10 Michael Bellamy talking about shooting Jason Quinn and taking
11 whatever cash that he has.

12 THE COURT: Well, that was my question. Was this a
13 robbery/killing or what was the motive?

14 MS. LIVESAY: This is a straight up murder, Your Honor.
15 This is no robbery/killing. When they got in the car -- this
16 was a without a doubt -- Diaquan Johnson said there's no riff,
17 no argument, no asking for the money. Brandon Littell
18 immediately shoots twice, Jason Quinn, right in the back,
19 shoots twice, Kelsie. And Mr. Littell gave a statement to
20 cooperate. I talked to Mr. Fox, he said, please let my client
21 get a opportunity to cooperate because he was the shooter. In
22 his statement, he tells us that this is a preplanned murder,
23 that Michael Bellamy does not like Jason Quinn. At that time,
24 they made the decision to kill him and Kelsie. This was never
25 just about a robbery. It was always about a murder. They had

State v. Littell - 2015-GS-26-00428
PLEA HEARING

11

1 been talking about this weeks prior. Michael Bellamy goes in
2 the room, according to Brandon Littell and says, hey, today is
3 the day. Today is a good day to do it. And he says, I'm
4 gonna do it or you gonna do it or we'll get Diaquan to do it.
5 At that time, Brandon Littell says Diaquan is too young, I'll
6 do it. So, they knew when they got in that car what was gonna
7 happen. There was no asking for the money, there was no
8 disagreement. This was a execution style murder.

9 He does have a prior record, Your Honor. His prior
10 record is for a attempted armed robbery that was in 2012. He
11 received three years suspended to eighteen months' probation.

12 Mr. Littell did give a statement and cooperate. That
13 statement was used in the waiver hearing against Diaquan
14 Johnson. But just for the Court's knowing, I had talked to
15 Mr. Fox before he ever gave the statement. We all knew he was
16 pleading to murder. This was merely to give him a chance to
17 cooperate as to the final sentencing hearing. But this has
18 always been a murder plea. His cooperation was just to assist
19 us and to assist his own mitigation.

20 THE COURT: All right.

21 MS. LIVESAY: And the victims are here and want to be
22 heard whenever you find that time appropriate, Your Honor.

23 THE COURT: Okay. I do it at the end.

24 Mr. Littell, did you murder the victim Kelsie Ann Monin?

25 MR. LITTELL: Yes, sir.

State v. Littell - 2015-GS-26-00428
PLEA HEARING

12

1 THE COURT: And is that why you are pleading guilty?

2 MR. LITTELL: Yes, sir.

3 THE COURT: Has anyone promised you anything, threatened
4 you? Has anyone done anything inappropriate to make you feel
5 as though you had to plead guilty?

6 MR. LITTELL: No, sir.

7 THE COURT: Are you pleading freely and voluntarily?

8 MR. LITTELL: Yes, sir.

9 THE COURT: Have you had all the time you need to think
10 about this?

11 MR. LITTELL: Yes, sir.

12 THE COURT: Do you need to discuss it further with your
13 attorney, your family, anyone else?

14 MR. LITTELL: No, sir.

15 THE COURT: Do you need to ask me any questions?

16 MR. LITTELL: No, sir.

17 THE COURT: Mr. Littell, do you believe that this is the
18 best resolution of this case for you?

19 MR. LITTELL: Yes, sir.

20 THE COURT: All right, sir. I find there's a substantial
21 factual basis for the plea, that it's made freely,
22 voluntarily, knowingly and intelligently after the advice of a
23 very competent attorney with whom Mr. Littell tells me he is
24 satisfied and I will accept his plea.

25 Now, I'll hear from the victims. I'll hear from the

State v. Littell - 2015-GS-26-00428
PLEA HEARING

13

1 victims.

2 MS. LIVESAY: Yes. Thank you, Your Honor.

3 MR. MONIN: Thank you, Your Honor.

4 THE COURT: Yes, sir.

5 MR. MONIN: I'm Gabe Monin. I'm Kelsie's father. I've
6 written a statement because I didn't think I could get through
7 this just by trying to talk to you.

8 THE COURT: All right. Well, just do the best you can.

9 MR. MONIN: This also refers to all three of the
10 Defendants even though only one is in the room at the time but
11 -- the evening of June 19th, 2013, I received a call that
12 every parent fears more than anything in the world. My little
13 girl had been shot and killed. There's absolutely no way to
14 describe this feeling. If anything like this has ever
15 happened to anyone here, you have my deepest sympathy. There
16 could be no greater pain that the loss of a child in such a
17 sinful way. The feeling of helplessness and despair cannot be
18 put into words. Since that night, every empty moment has been
19 filled with visions of one of the great joys of my life lying
20 in the dirt bleeding to death because she was an inconvenience
21 to these three guys. They had no quarrel with her, she was
22 just in the way. They conspired to and ultimately did murder
23 my daughter and by some miracle attempt to but failed to
24 murder another person because either they didn't want to repay
25 a few hundred dollars they owed Jason, or they felt in some

1 way some perverted way a lack of respect from him. How these
2 murderers believe they deserve any respect is beyond my
3 comprehension. Respect is earned, it's not demanded.
4 Contempt is what they deserve. These guys talk about
5 themselves as family, quote/unquote. Let me assure you, they
6 have absolutely no idea what family means. Their family used
7 each other to do their dirty work, blamed each other and one
8 even got out of the car and hid so he could pretend he wasn't
9 involved and attempt to pin everything on the other two.
10 That's some family. What is really sad is if I know Kelsie,
11 and I think I do, she probably thought of these guys as
12 friends. She always saw the best in everything, in everyone.

13 Since the days these three destroyed so many lives,
14 including their own and their families', I have what seems to
15 be a loop playing over and over in my head and it starts with
16 Kelsie being blond and taking her first steps and saying her
17 first words. I have glimpses of her life playing on her swing
18 and getting on a bus for the first day of school and learning
19 to play baseball and volleyball and first dates and prom dates
20 and going off to college. And then one day I had to sit her
21 down and try to explain to her that mom had been diagnosed
22 with ALS, Lou Gehrig's disease and she would only be with us
23 for a short time but we'd be okay if we stuck together and
24 helped each other get through it. Maureen, Kelsie's mom only
25 survived about two more years. A little while before Maureen

State v. Littell - 2015-GS-26-00428
PLEA HEARING

15

1 died, Kelsie had gotten the lead in the school musical. She
2 played Annie and I might be just a little prejudice but she
3 was spectacular. By this time, Maureen was completely unable
4 to move and had to use a computer to speak but she told me it
5 was one of the happiest days of her life. That's just the way
6 it was with Kelsie, she could always make you smile. It must
7 be at least a hundred times a day that something reminds me of
8 Kelsie and my heart breaks all over again but I try to see her
9 smile. Some people who barely knew her would tell you how her
10 smile and her laugh would light up the room. There's so many
11 things she should've been able to do, finish school, get
12 married, have a family of her own and just enjoy her life.
13 Instead I used the money that I had set aside for her wedding
14 to pay for her funeral expenses.

15 We're here today to try to determine the punishment that
16 is just for these three. They conspired to and did in fact
17 murder my daughter during the commission of another felony.
18 South Carolina's hand of one, hand of all, should've made the
19 all liable for murder, a capital crime in this state. I
20 believe that Mr. Bellamy and Mr. Littell are conspirators,
21 murderers, cowards and likely sociopaths. You cannot have
22 this little regard for human life and be worth of any amount
23 of leniency.

24 When I first was told of Mr. Johnson's involvement, I
25 thought perhaps he was just trying for acceptance and might

1 deserve a break. In listening to the evidence, we find it's
2 something quite different. These guys, including Mr. Johnson
3 not only participated in shooting my daughter in cold blood in
4 the back and in her beautiful face but then chased her down
5 when she was able to run from the car and repeatedly kicked
6 her on the ground while she died. With any justice, there's a
7 special place in hell for these people. I would beg Your
8 Honor to use any amount of discretion available to make sure
9 they could never destroy anyone else's hopes, dreams and
10 lives.

11 Thank you.

12 THE COURT: Thank you.

13 MS. LAWRENCE: My name is Laura Lawrence, I'm Kelsie's
14 sister. On June 19th, 2013, at 11:41 P.M., my life stopped.
15 This was the moment my sister Amy called me to tell me our
16 baby sister Kelsie had been shot and killed. Our beautiful
17 little sister, the light of our lives, died on a dirt road,
18 scared and surrounded by evil. Since that moment, I have
19 watched my family struggle and suffer in ways no one should
20 ever experience. No one expected this to be how Kelsie's
21 story would end. She had such love of life and everyone she
22 met along the way. How could anyone, especially people who
23 knew her, look at her and just decide she needed to die. That
24 she was disposal. And how is it that all of this, Kelsie's
25 death, Jason's suffering, and the emotional torment both of

State v. Littell - 2015-GS-26-00428
PLEA HEARING

17

1 our families have gone through was all because someone saw the
2 death of two people as a proportionate response to being
3 insulted. I cannot wrap my mind around that fact and I've
4 come to the conclusion that I never will because that is the
5 type of evil that isn't anything I will ever understand. The
6 night I found out she died and for months after, I would just
7 sob for hours saying I don't understand and asking why. Even
8 after I heard the statements of those responsible for this
9 explaining what their motive was, I still don't understand.
10 They plotted the death of my little sister and her boyfriend
11 because one of them felt Jason had insulted him. Their pride
12 was hurt and the next logical step in their twisted mind was
13 to kill them. That type of rationale is disgusting, pathetic
14 and incomprehensible. As I've mentioned, I've heard some of
15 the statements provided by those responsible and, of course,
16 each makes themselves out to be less guilty than the others
17 but in truth they are all equally guilty in my mind of my
18 sister's murder and of the attempted murder of Jason. They
19 all treated Jason and Kelsie as someone might treat a pair of
20 cockroaches that wonder across their floor even stomping on
21 Kelsie as she was on the ground choking on her own blood and
22 bleeding to death. This was described by the 911 caller who
23 called in as she was witnessing this horrific event. My
24 family had to suffer through hearing the play-by-play of my
25 sister's death from the vantage point of someone as they were

1 seeing it happen. The recording of that phone call has
2 haunted me since I heard it last year. When my mind wanders
3 to the description of the scene, which happens every single
4 day of my life, it is her being chased down and stomped on and
5 I see it over and over again. What kind of monster could look
6 down on this beautiful young woman already in so much pain, so
7 scared, and stomp on her. Again, it is a kind of evil I
8 cannot comprehend.

9 Kelsie had three nephews, whom she loved very much.
10 Sadly, my son and my youngest nephew were only two when she
11 was brutally taken from us and they will never remember her.
12 We have pictures of Kelsie with them and we tell them all the
13 time who she was and how much she loved them. I am now three
14 months pregnant with my second child. The realization that
15 there will be no pictures of my sister cradling this baby in
16 her arms breaks my heart. I am overcome by grief when I allow
17 myself to reflect on the fact that these children will never
18 remember seeing her smile, hearing her incredible laugh or the
19 comforting feeling of one of her bone crushing hugs.

20 Kelsie was beautiful every -- in every way and she was
21 ripped out of our lives leaving my family in tatters. We will
22 never fully recover from this. Kelsie suffered at the hands
23 of these people for a matter of a few terrifying minutes and
24 my family and I will be perpetually suffering because of their
25 actions. I hope that Your Honor sees it fit to ensure that no

State v. Littell - 2015-GS-26-00428
PLEA HEARING

19

1 other families have to suffer the way mine has by keeping
2 these people away from society for as long as possible.

3 THE COURT: Thank you.

4 MS. CAPPUZELLO: I'm Amy Cappuzello (spelled
5 phonetically). Kelsie is my baby sister, and though we do not
6 share the same mother, people always remark on how much we
7 resembled each other. I lost my little twin and I feel alone.
8 I was fifteen when Kelsie was born and the age difference made
9 her much more like a daughter to me than a sister. I feel as
10 though I've lost a child. I am the oldest. I am supposed to
11 go first. I should not have to say goodbye to her. Kelsie
12 was the aunt to my two wonderful little boys. My younger son
13 will not remember Kelsie and my older one can't bear to talk
14 about her. He has told me that he just wants to forget. This
15 is absolutely devastating to me. An eight-year-old should not
16 have to carry so much.

17 Kelsie suffered briefly but we suffer every day. My life
18 has changed dramatically. I cannot sleep without replaying
19 the nightmare I see over and over. I cannot unhear father on
20 the phone telling me that Kelsie was shot and killed and my
21 utter disbelief, this can't be real, this happens on TV.

22 I had to wash the blood from her jewelry that was
23 returned to us from the coroner. I cannot unsee that. I have
24 to take medicine and see a psychologist in order to stay
25 somewhat calm and function day to day. I cannot bring myself

1 to discuss it with my father, the man I trust and respect most
2 in my life because I don't want to upset him. I feel like I
3 need to be the strong one and protect him. I now yell too
4 much at my children, the little people I would gladly die for.
5 My relationship with my husband is loving but strained. I am
6 terrified that something terrible will happen again, anything,
7 every day. This is no way to live. And Kelsie wouldn't want
8 me to dwell but it is so hard not to let the despair swallow
9 me up. I have to try to be happy every day. This is no way
10 to live.

11 The Defense might have you believe that they acted the
12 way they did because of their troubled life circumstances.
13 Well, I'm not a social worker or a psychologist but I am an
14 inner city school teacher. I think I have a pretty good grasp
15 on a teenage mind and I have known thousands of students who
16 come from very similar backgrounds. I can tell you that they
17 are the exception to the rule. My students insult each other,
18 bully each other, and as they say do each other dirty on a
19 daily basis. The difference is that they retaliate with words
20 or a brief scuffle in the hall. What they don't do is plan
21 and carry out capital murder. My students will become to
22 varying degrees contributing members of society. The
23 Defendants will not and should not be given the opportunity to
24 even try. Kelsie was well on her way to do just that, make
25 something of herself. When Diaquan Johnson chased her down

State v. Littell - 2015-GS-26-00428
PLEA HEARING

21

1 and kicked her while she bled to death, this not normal
2 rational humanlike behavior.

3 In preparing myself for this day over the last eighteen
4 horrific months, I struggled with many things. Most
5 profounding, why, there's just no good answer and I will have
6 to live with that for the rest of my life. The other struggle
7 was my internal monologue about how to refer to the three
8 Defendants. Men, they certainly are not. They exemplified
9 cowardness in their actions on June 19th, 2013 but shooting
10 two people in the back and running away to hide. People, I
11 can't even call them that. A rational person would not kick a
12 bleeding, unarmed girl while she died. They were trying to be
13 big, tough thugs, thugs that ran and hid. Monsters, that is
14 the word that keep reverberating. Every time I think of
15 Kelsie, I think of the real life monster that took her from
16 me. Monsters are not -- monsters are the characters in books
17 and movies that kill indiscriminately and that everyone fears.
18 Monsters do not deserve to live amongst us. Kelsie was
19 important and she was gonna make something of her life. Her
20 chance was taken from her by these three monsters.

21 I beg Your Honor to give us some semblance of peace and
22 justice. I beg Your Honor to punish them all to the fullest
23 extent of the law.

24 Thank you.

25 MS. LIVESAY: Your Honor, just briefly, Kelsie's father

1 mentioned something that I didn't mention in the facts. He
2 said that they call themselves a family. These boys were
3 trying to start a gang called Family First and both Brandon
4 Littell and Michael Bellamy have matching tattoos that are
5 symbolic of this Family First group they were trying to start.

6 There had been drug transactions between Jason Quinn and
7 these boys, never Kelsie. They knew she was gonna be there.
8 She was only killed because they knew that she was gonna be
9 with Jason Quinn. This was never set up to be an armed
10 robbery. This is never set up to be anything other than a
11 murder and they had been talking about this for weeks before
12 this day.

13 THE COURT: All right. Mr. Fox, let me hear from you.

14 MR. FOX: Thank you, Your Honor. Judge, I'll start with

15 ---

16 THE COURT: One second, Mr. Fox. The sentencing sheet
17 contains a notation of recommendation; is that right?

18 MS. LIVESAY: I'm sorry, Your Honor?

19 THE COURT: The sentencing sheet says there's a
20 recommendation by the State.

21 MS. LIVESAY: No recommendation, Your Honor, it should
22 be X'd no recommendation or negotiation.

23 THE COURT: All right. Well, it was marked and I just
24 wondered. I hadn't heard anything about that.

25 All right. Go ahead.

State v. Littell - 2015-GS-26-00428
PLEA HEARING

23

1 MR. FOX: And that's my understanding, Your Honor. Ms.
2 Livesay told you there has never been hope held out for
3 Brandon that this would be anything other than a plea of
4 murder. I will say this on Brandon's behalf. He's now 20
5 years old. He was 18 years old when these events occurred.
6 Not a fully formed human being. Certainly old enough to be
7 completely and is completely responsible for his own actions
8 and he stands before you today taking that responsibility.
9 Judge, he did run and hide immediately but they were
10 apprehended overnight. I believe it was less than 24 hours.
11 That was on June the 20th. Five days later, I met with
12 Brandon and told him we were gonna have the most important
13 conversation he'd ever had in his life, and he immediately
14 told me everything that transpired, exactly the way it
15 transpired, how it happened and what his own involvement was
16 without any prodding from me, without any necessity to insist
17 that he be more forthcoming. He never at any time tried to
18 downplay his own involvement as related to anybody else. We
19 very soon after contacted Ms. Livesay and indicated that he
20 wished to cooperate, obviously in hopes that that may help him
21 when this day came, but also because it has been very
22 important for the family and to the State that they prepare
23 their prosecution. I think at the time that Brandon was
24 giving these statements, talking to myself and the Solicitor,
25 we didn't yet know what the posture Mr. Bellamy or Mr. Johnson

1 would be.

2 THE COURT: Does your client appreciate the fact that
3 this could've been elevated to a capital case?

4 MR. FOX: Absolute, absolutely. In fact, we discussed
5 when I first met with him the possibility that that very well
6 may happen. He absolutely knows that, Judge.

7 THE COURT: All right. Go ahead.

8 MR. FOX: At the time that we -- and I don't have the
9 exact date, but within a very short period of time, he was
10 meeting with the Solicitor and their investigators to give a
11 full statement of what he knew. And at that point, they were
12 still in the process of investigation and sorting out who
13 would bear the most responsibility. And, it was very
14 important to them because it was very important to this young
15 lady's family to know who had the responsibility for chasing
16 her down that road, and Brandon helped clarify some of that.
17 I'm not here to speak about Mr. Johnson or Mr. Bellamy, they
18 have lawyers who can do a far better job. Brandon is not in
19 any way attempting to shift the blame away from himself. He
20 has admitted at the beginning that he knew what was gonna
21 happen and that he is the one that had the gun and pulled the
22 trigger.

23 I would disagree somewhat with the characterization of
24 how these things came to be but not with the fact that this
25 young lady was no part of any issue they had with the young

State v. Littell - 2015-GS-26-00428
PLEA HEARING

25

1 man that was also in the car. She was completely outside of
2 that other than the fact that she happened to know everybody.
3 I would not agree characterization as to why they went to do
4 this. I would not agree with calling this very small group
5 that they had a gang, but frankly, Judge, those are just --
6 those are not important at all in the scheme and so I disagree
7 with some of the characterizations but not on the important
8 issue that he's here for the killing and the murder are the
9 only -- had absolutely no involvement with...

10 Judge, frankly, we're not here asking -- Brandon is not
11 here asking for any respect. He knows that he's committed a
12 monstrous act. He is asking, I'm asking on his behalf because
13 I'm not sure he would ask for it himself because I'm not sure
14 that he would ask for it himself, asking for mercy. Mercy in
15 its purest form is not to be granted only to those who are
16 supposedly deserving but to those who are perhaps the least
17 deserving. I think Brandon -- there are reasons -- he did a
18 monstrous act. I do not think he himself is a monster. He's
19 a very intelligent young man. He's -- seems strange to say
20 but actually a very caring young man, a man who was more than,
21 than what he is here pleading guilty to.

22 Judge, I -- he wanted me to point out to you that he was
23 more than that. He brought with him some drawings that he did
24 during his time in jail. I won't hand those up to you but you
25 can -- with just pencil and paper he is capable of making some

1 truly remarkable pieces of art. There is more to this young
2 man that what he did on June 20th a year and half ago.

3 I don't know what Your Honor will sentence him to, but
4 there is at least some chance that he may still be younger
5 than I am when he serves his sentence. There is that
6 possibility depending on what you might sentence him to. That
7 seems fantastic to him but he will likely have a -- very
8 possibly have a substantial stretch of his life still to live.
9 And I do believe very strongly that even the worst of us --
10 there is always some hope of redemption. Again, he has
11 committed a monstrous act but I do not believe that that is
12 the entirety of his life.

13 We're simply asking, Judge -- the final thing I'd say,
14 Judge, is he did a very cowardly thing, he would agree with
15 that. He's now doing what I think is one of the bravest
16 things a person can do. He's standing here without any
17 negotiation or recommendation from the State of South Carolina
18 as to a sentence. We recognize that he could very well
19 receive a sentence of life which would be until the day he
20 dies, which for him could be 50 or 60 years. He can't undo
21 what he did but since that time he has tried to do everything
22 in the right way both in assisting the State in sorting
23 everything out and telling them everything that he knew and
24 today in pleading guilty without recommendation.

25 I believe Brandon would like to very briefly address Your

State v. Littell - 2015-GS-26-00428
PLEA HEARING

27

1 Honor.

2 MR. LITTELL: Your Honor, I didn't know how or what I was
3 gonna say when I came here today. And what I really -- this
4 is more for the family than anything. I can't take back what
5 happened, what got taken from them on June 19th. I know it's
6 got to be hard but I can't -- I can't explain how sorry I am
7 for or how deeply I regret what happened that day. I don't
8 know how I let my Codefendant misguide me and I don't know why
9 I did it. I can't explain why -- what happened that day but I
10 just -- I just want to come in here and I take responsibility
11 for what I did. And I know I'm considered to be monster for
12 what happened but I just -- I regret it every day. I've had
13 dreams that I can't -- I couldn't sleep when I first got
14 locked up. I was -- but I just -- I want to ask the family
15 for, you know, their forgiveness but I can't ask them for that
16 because I don't deserve it and I understand this, but I just
17 want them to know that I'm sorry for what happened.

18 MR. FOX: Very, very briefly, the last thing I meant to
19 say it but it struck me as I've listened to the young lady's
20 family speak so movingly about her. As you'll probably
21 notice, Brandon is here without family. It's not an excuse.
22 An awful lot of people in various tough circumstances do not
23 resort to anything remotely like this but not everybody is
24 made the same and not everybody goes through the same. And
25 his experience growing up, I would just say is -- would not be

1 at all similar to what that young lady certainly had.

2 That'll be it, Your Honor.

3 THE COURT: Mr. Littell, did you intend on that night to
4 kill both of these victims?

5 MR. LITTELL: We were assuming that Jason was gonna be
6 the only one in the car and Kelsie was driving that day.

7 THE COURT: Well, she was there when you committed the
8 act, did you intend to kill them both?

9 MR. LITTELL: Yes, sir.

10 THE COURT: Answer this question very carefully. Why?

11 MR. LITTELL: (No response.)

12 THE COURT: There was a reason. Why?

13 MR. LITTELL: Kelsie just happened to be there.

14 THE COURT: She happened to be there? Why was anybody
15 gonna be killed?

16 MR. LITTELL: Michael Bellamy didn't like Jason.

17 THE COURT: Didn't like him. You know, Mr. Littell, it's
18 by the grace of the State of South Carolina that you're not
19 facing execution at this time. Do you understand that?

20 MR. LITTELL: Yes, sir.

21 THE COURT: How could you do that, Mr. Littell? How can
22 you take a gun and shoot two people? How can you do that?

23 MR. LITTELL: I don't know, Your Honor.

24 THE COURT: I have a judge friend of mine that says that
25 we're put here to separate the wayward from the wicked. And

State v. Littell - 2015-GS-26-00428
SENTENCE OF THE COURT

29

1 there are many wayward people who come before me who I believe
2 will straighten out, can be redeemed, but there are people
3 with such a deep-rooted wickedness that I don't know if we can
4 ever do anything about it.

5 SENTENCE OF THE COURT:

6 THE COURT: Mr. Littell, I have no choice in this matter
7 than to give you a life sentence and that's what I sentence
8 you to.

9 Mr. Littell, I will tell you this, you may spend the rest
10 of your life in prison as a convicted murderer and have your
11 life stand for absolutely nothing until the day you die. Or,
12 if you are truly sorry for what you have done, perhaps you can
13 embark on some course of conduct in prison to help redeem
14 yourself. Regardless of the circumstances that we find
15 ourselves in, there's always some channel of redemption, and
16 for your sake, I hope you can find that, Mr. Littell.

17 Good luck to you.

18 (ADJOURNED - 2:50 P.M.)

19

20

21

22

23

24

25

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF GENERAL SESSIONS
OF THE FIFTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,)

-VS-)

MOTION TO RECONSIDER

BRANDON LITTELL
DEFENDANT)

RECEIVED

SEP 04 2015

SC Court of Appeals

2015 FEB 27 PM 1:35
CLERK OF COURT
SECURITY

FILE # 26A13-00001970

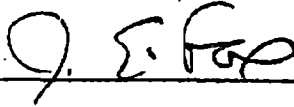
TO: ASSISTANT SOLICITOR NANCY LIVESAY: YOU WILL PLEASE TAKE NOTICE
that as soon as he may be heard by the court, Defendant, by and through his attorney,

J. Eric Fox, will move as follows:

Defendant entered a plea of Guilty on the charge below on Febraury 26,
2015 before the Honorable Larry B. Hyman, Jr. and received a sentence of Life
Imprisonment:

2013A2610201579 Murder / Murder

Defendant hereby moves for a Reconsideration of said sentence.



ERIC FOX
Public Defender
Attorney For The Defendant
Horry County Public Defender
203 Laurel Street
Conway, SC 29526
843-915-5385

HORRY COUNTY
CLERK OF COURT
2015 SEP -1 PM 4:33
CERTIFIED COPY

S32

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
IN THE COURT OF GENERAL SESSIONS)

ORDER IN A CRIMINAL CASE

WARRANTS:

2013 A2610201579

STATE OF SOUTH CAROLINA

VS.

BRANDON J. LITTELL
DEFENDANT

This Form Order Submitted by:
ERIC FOX
Horry County Public Defender

Attorney for : State Defendant
or
 Self-Represented Litigant

RECEIVED

DISPOSITION TYPE

- DECISION BY THE COURT.** This action came to a hearing before the court. The issues have been heard and a decision rendered. See below for additional information.
- DECISION BY THE COURT AFTER STATUS CONFERENCE.** This case came for a status conference before the court. The status of this case and pending issues in this case were discussed and a decision rendered. See below for additional information.
- MOTION:** To Reconsider

SEP 04 2015

SC Court of Appeals

GRANTED DENIED CONTINUED WITHDRAWN

WITHDRAWN BY MOVING PARTY: J. E. Fox
Signature of Moving Party

OTHER

FILED
HORRY COUNTY
2015 SEP -1 PM 3:11
MELANI HIGDON, CLERK OF COURT

IT IS ORDERED AND ADJUDGED: See Order below See attached Order
 Formal Order to follow to be prepared by State Defendant Other

ORDER INFORMATION

This Order ends does not end the case.

Additional Information for the Clerk of Court

Melani Higdon
Clerk of Court
Horry County

Circuit Court Judge

Judge Code Date
2015 SEP -1 PM 4:33

CERTIFIED COPY

For Clerk of Court Office Use Only

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

ATTORNEY FOR THE STATE
NANCY LIVESAY

ATTORNEY FOR THE DEFENDANT
ERIC FOX
HORRY COUNTY PUBLIC DEFENDER

CLERK OF COURT

Court Reporter:

Melissa Kingwood
CLERK OF COURT
HORRY COUNTY
2015 SEP -1 PM 4: 33
CERTIFIED COPY

S84

STATE OF SOUTH CAROLINA
In The Court Of Appeals

RECEIVED

APPEAL FROM HORRY COUNTY
Court of General Sessions SEP 04 2015
Larry B. Hyman, Circuit Court Judge
SC Court of Appeals

CASE NO: 2015GS2610201579



The State, Respondent,

v.

Brandon Littell, Appellant.

NOTICE OF APPEAL

FILED
HORRY COUNTY
2015 SEP - 1 PM 4:32
MELANIE L. GINS MARR
CLERK OF COURT

Brandon Littell, appeals the conviction and sentence in this case. The sentence was imposed by the Honorable Larry B. Hyman, on February 26, 2015.

September 01, 2015

Eric Fox
Public Defender
Horry County Public Defender Office
Post Office Box 1666
Conway, SC 29528
843-915-5385
Attorney for Appellant

Other Counsel of Record

Nancy Livesay
Solicitor
Post Office Box 1276
Conway, SC 29528
843-915-5460
Attorney for Respondent

Melanie L. Gins Marr
Clerk of Court
HORRY COUNTY
2015 SEP - 1 PM 4:33
CERTIFIED COPY

STATE OF SOUTH CAROLINA
In The Court Of Appeals

RECEIVED

SEP 04 2015

APPEAL FROM Horry COUNTY
Court of General Sessions
Larry B. Hyman, Circuit Court Judge

Court of Appeals

CASE NO: 2015GS2610201579

The State, Respondent,

V.

Brandon Littell, Appellant.

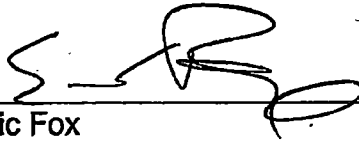
FILED
HORRY COUNTY
CLERK OF COURT
2015 SEP -1 PM 4:32

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by depositing a copy of the Notice in the United States Mail, postage prepaid, on September 2, 2015, addressed to the attorney of record:

Nancy Livesay
Solicitor
Post Office Box 1276
Conway, South Carolina, 29528
Attorney For Respondent

September 2, 2015


Eric Fox
Public Defender
Horry County Public Defender Office
Post Office Box 1666
Conway, SC 29528
843-915-5385
Attorney for Appellant

2015 SEP -1 PM 4:33
CERTIFIED COPY

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

2015 SEP 16) AM 10: 13

STATE OF SOUTH CAROLINA
MELANIE HUGGINS-WARD
CLERK OF COURT

RULE 203 (B) (iv)

WRITTEN EXPLANATION OF

-VS-

NO

BASIS FOR APPEAL

BRANDON LITTELL 363181

DEFENDANT

RECEIVED

SEP 18 2015

PERSONALLY appeared before me Eric Fox, who being duly sworn Court of Appeals

deposes and says :

1. I represented the above named defendant before Larry B. Hyman on February 26, 2015 at

which time the defendant enter a guilty plea to his/her pending charges.

2. No issues of law or fact, were raised before the Judge at that time that could be the basis for an Appeal in this matter.

3. The defendant requested this appeal be filed based on the language used by the plea judge informing the client he has the right to appeal his guilty plea within ten (10) days.

4. I informed defendant that there were no issues to appeal.

5. Defendant requested the Appeal be filed.

Sworn to and Subscribed before me
15th day of Sept, 2015

Melanie Huggins-Ward
Notary Public for South Carolina
My Commission expires March 16, 2017

2015 SEP 16 AM 12: 13
CERTIFIED COPY
MELANIE HUGGINS-WARD
CLERK OF COURT
HORRY COUNTY

J. Eric Fox
Signature of Attorney for Defendant
J. Eric Fox
Print name of Attorney for Defendant

The South Carolina Court of Appeals

The State, Respondent,

v.

Brandon Littell, Appellant.

Appellate Case No. 2015-001884

The Honorable Larry B. Hyman, Jr.
Horry County
Trial Court Case No. 2015GS2600428

ORDER

Appellant has failed to show an issue which can be reviewed on appeal, as required by Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc:

Jonathan Eric Fox, Esquire
Robert Michael Dudek, Esquire
Nancy R. Livesay, Esquire
Alan McCrory Wilson, Esquire
John Benjamin Aplin, Esquire

FILED
1/26/16 BH



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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

February 11, 2016

The Honorable Melanie Huggins-Ward
PO Box 677
Conway SC 29528-0677

REMITTITUR

Re: The State v. Brandon Littell
Lower Court Case No. 2015GS2600428
Appellate Case No. 2015-001884

Dear Clerk of Court:

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

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Jonathan Eric Fox, Esquire
Robert Michael Dudek, Esquire
Nancy R. Livesay, Esquire
Alan McCrory Wilson, Esquire
John Benjamin Aplin, Esquire

Jan

FORM 5

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
Brandon James Lettell 00363181)
 Full name and prison number (if any) of Applicant.)
)
 v.)
)
 State of South Carolina)
)

IN THE COURT OF COMMON PLEAS

20 16 CP26 5257

APPLICATION FOR
POST-CONVICTION RELIEF

2016 AUG -8 PM 2:33
HARRIS COUNTY

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 particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

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

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

1. Place of detention Lee Correctional Institution, Bishopville, SC.
2. Name and location of Court which imposed sentence General Sessions, Conway, SC
3. Name(s) of co-defendant(s) (if any) Michael Bellamy, Diquan Johnson
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2015GS2601428
 - (b) N/A
 - (c) N/A
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) Feb. 26, 2015 - Life sentence (Natural) - Violent - Most Serious
 - (b) N/A

(c) N/A

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ✓ - yes

(b) after a plea of not guilty N/A

(c) after a plea of nolo contendere N/A

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

yes

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

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

i. Horry County Court of General Session (Sep. 2, 2015)

ii. N/A

iii. N/A

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

i. unknown

ii. N/A

iii. N/A

(c) the date of each such result:

i. unknown

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

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

(a) N/A

(b) N/A

(c) N/A

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

- (a) Ineffective Assistance of Counsel
- (b) N/A
- (c) N/A

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

- (a) This plea was not taken knowledgeable, was not fully aware,
- (b) my lawyer didn't explain what I was truly facing, this
- (c) plea was made unintelligently, and he did not represent me to the best of his ability.

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

- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? Yes

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. Motion of Reconsideration
 - ii. N/A
 - iii. N/A
 - iv. N/A
- (b) the name and location of the Court in which each was filed:
 - i. Horry County General Sessions, Conway, SC
 - ii. N/A
 - iii. N/A
 - iv. N/A
- (c) the disposition thereof:
 - i. Withdrawn
 - ii. N/A
 - iii. N/A

- iv. N/A
- (d) the date of each such disposition:
- i. Sep. 1, 2015
- ii. N/A
- iii. N/A
- iv. N/A
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. unknown
- ii. N/A
- iii. N/A
- iv. N/A
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- no
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. N/A
- ii. N/A
- iii. N/A
- (b) the proceedings in which each ground was raised:
- i. N/A
- ii. N/A
- iii. N/A
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) N/A
- (b) N/A
- (c) N/A
17. Were you represented by an attorney at any time during the course of:

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

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

- (a) the name and address of each attorney who represented you:
- i. Eric Fox, 203 Laurel Street, Conway, SC 29526
- ii. N/A
- iii. N/A
- (b) the proceedings at which each such attorney represented you:
- i. Plea and Sentencing
- ii. Motion to reconsider
- iii. Direct Appeal

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

Case Reversal or Renegotiation of Sentence

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

NO

STATE OF SOUTH CAROLINA)

County of Horry)

VERIFICATION

20 16 CP23 5251

I, Brandon James Little, 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.

Brandon Little

SWORN to and subscribed before me this 4
day of Aug, 2016.

Debra Eastridge (L.S.)
Notary Public

My Commission Expires: 3/3/2024

COPY COUNTY
2016 AUG -8 PM 2:33
CLERK OF COURT

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

20 16 CF26 5251

I, Brandon James Little, 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.

Brandon Little
Applicant

SWORN or affirmed to and subscribed before me this
4 day of Aug, 2016.

Diana Eastroy
Notary Public

My Commission Expires: 3/3/2024

CLERK OF COURT
2016 AUG -8 PM 2:33
CLERK OF COURT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY)	
Brandon James Littell,	)	Case No.: 2016-CP-26-05251
S.C.D.C. No. 363181,)	
)	
Applicant,)	
	)	RETURN
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
)	

In response to the application for post-conviction relief filed by Brandon James Littell (Applicant) on August 8, 2016, Respondent would show this Court:

I.

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the January 2015 term of the Horry County Grand Jury for murder (2015-GS-26-00428), attempted murder (2015-GS-26-00429), and armed robbery (2015-GS-26-00430). Applicant was further indicted at the July 2013 term for burglary, second degree (2013-GS-26-02843), and larceny, value between \$2,000 and \$10,000 (2013-GS-26-02844). J. Eric Fox, Esquire represented Applicant, and Nancy Livesay, of the Fifteenth Circuit Solicitor’s Office, prosecuted the case. On February 26, 2015, Applicant pled guilty to murder; all other charges were dismissed *nolle prosequi*. In the course of the plea proceeding, the State offered underlying facts as follows:

Your Honor, just very briefly, on or around June 19th of 2013, the police were called to a Little River area. They had witnesses a burgundy Honda pull up, they heard several shots. They see a young girl get out of the vehicle. They then see a fellow, who we know now as Diaquan Johnson, to get out of the car, chase her down and kick her in the head. The other individual who was left in the car, drove off.

Through the investigation, we then discovered what truly happened that day. [Applicant], Michael Bellamy, and Diaquan Johnson all got together at [Applicant's] house. They all put on jeans, they all put on long sleeve dark shirts with the intentions of killing Jason Quinn but they knew this young girl was gonna be in the car because she was the person that always drove Jason around. At the time they had made the decision to kill both individuals.

Kelsie, who was twenty-one years old at the time, unarmed, drives her boyfriend to [Applicant's] house. She then picks the three of them up. All three of them are in the backseat. Michael Bellamy then leads them down this road, down in Little River, away from any houses, away from anybody. At that time, he's telling them, I just got [to] make a phone call and we can complete this transaction. The transaction was between them and Jason Quinn. Michael Bellamy then gets out of the car. When he gets out of the car, his - Diaquan Johnson and [Applicant] are still in the car. *[Applicant] then takes out a handgun and shoots the victim Jason Quinn twice, shoots Kelsie twice. Shoots her once in the neck and once in the back. She is able still to get out of the car and take off running towards the road. When she gets out of the car, [Applicant] and Diaquan Johnson also get out of the car to go after her. Diaquan runs her down at that point and lays her on the ground. While she's on the ground, all three of them are standing around her. At that point, Jason Quinn is able to move over into the driver's seat and take off. On his way out, [Applicant] then fires too more shots into the car which strike him one more time in the arm. He's able to make it to a gas station where he's able to get help. After that, they take off on foot, flee from the police. The police finally put into custody [Applicant] and Diaquan Johnson. The police found them hiding in the house from the police.*

...

In his statement, [Applicant] tells us that this is a preplanned murder, that Michael Bellamy does not like Jason Quinn. At that time, they made the decision to kill him and Kelsie. This was never just about a robbery. It was always about a murder.

Tr. 8 - 11 (emphasis and formatting added). The plea was entered without a negotiated term or recommendation by the state; plea counsel confirmed to the Court that "there has never been hope held out for [Applicant] that this would be anything other than a plea of murder." Tr. 23, ll. 2-4. Upon inquiries by the Honorable Larry B. Hyman, Jr., Applicant was unable to give

substantive reasons for the murder other than Michael Bellamy's disfavor for Jason Quinn, prompting Judge Hyman to preface his sentence:

I have a judge friend of mine that says we're put here to separate the wayward from the wicked. And there are many wayward people who come before me who I believe will straighten out, can be redeemed, but there are people with such a deep-rooted wickedness that I don't know if we can ever do anything about it.

Tr. 28 – 29. Judge Hyman sentenced Applicant to imprisonment for a term of life. Applicant filed a motion to reconsider the sentence on February 27, 2015, but thereafter withdrew that motion on September 1, 2015.

Applicant filed a timely notice of appeal. By order filed January 26, 2016, the South Carolina Court of Appeals dismissed the appeal for failure to show an issue that could be reviewed. The Remittitur was issued on February 11, 2016.

II.

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

1. "Ineffective Assistance of Counsel" and Involuntary Guilty Plea
 - a. "This plea was not taken knowledgeable [sic], was not fully aware,"
 - b. "My lawyer didn't explain [what] I was truly facing, this plea was made unintelligently, and he did not represent me to the best of his ability."

Applicant requests relief as follows:

- "Case Reversal or Renegotiation of Sentence"

Attached to and incorporated herein are the records of the Horry County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the plea transcript, Applicant's appellate records, and the current application for relief. Respondent reserves the right to amend this Return upon receipt of relevant information.

III.

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

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would

not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985).

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

IV.

Applicant further claims his plea was not entered knowingly or voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harris v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

The transcript reflects that the guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. See Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir.1985)). Applicant

presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing.

An Applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness, and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial instead. See Roscoe v. State, 345 S.C.16, 20, 546 S.E.2d 417, 419 (2001); see also Richardson v. State, 310 S.C. 360, 362 426 S.E.2d 795, 797 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

V.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments *will be opposed by the State at an evidentiary hearing* pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCF; Mangal v. State, Op. No. 27726 (S.C.Sup.Ct. filed July 19, 2017) (Shearouse Adv.Sh. No. 27 at 47). All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCF. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCF.

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

VI.

Respondent denies each allegation not expressly admitted, qualified, or explained.

VII.

WHEREFORE, Respondent respectfully requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel and involuntary guilty plea.

Respectfully submitted,

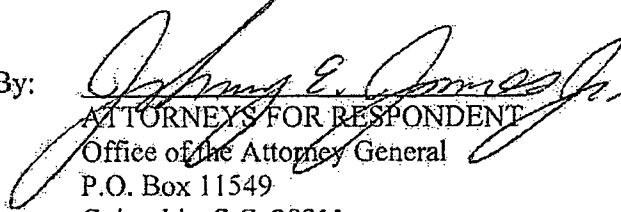
ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JOHNNY ELLIS JAMES JR.
Assistant Attorney General

By:


ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

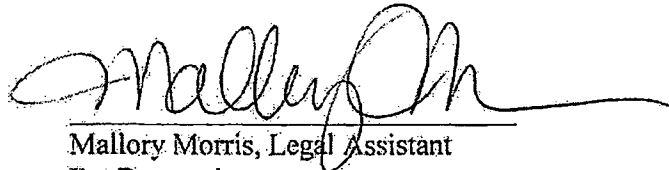
27 July 2017

STATE OF SOUTH CAROLINA)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF Horry)	
)	
	)	2016-CP-26-5251
BRANDON J. LITTELL, #363181,)	
)	
Applicant,)	
)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
)	
STATE OF SOUTH CAROLINA,)	
)	
Respondent.)	
<hr/>		

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

Steven W. Fowler, Esquire
1018 Highway 17 South
North Myrtle Beach, SC 29582

DATED this 27th day of July, 2017.



 Mallory Morris, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 Brandon James Littell #00362181,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina.)
 _____)

COURT OF COMMON PLEAS
 FOR THE 15th JUDICIAL CIRCUIT
 Case No.: 2016CP3605251

**AMENDED POST-CONVICTION
 RELIEF APPLICATION**

2018 NOV 20 PM 3:28
 Horry County
 RENE E. HARRIS
 CLERK OF COURT
 HORRY COUNTY, SC

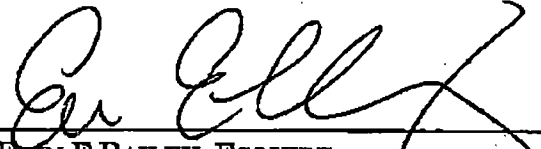
The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on August 8, 2016, to add the following allegations:

Ineffective Assistance of Counsel as to Eric Fox:

- a. Failed to fully review the evidence with the Defendant before recommending that the Defendant give a self-incriminating statement.
- b. Failed acquire all of the evidence and documentation in the case, specifically the statement of Brandon Littell given to Law Enforcement the day he was arrested.
- c. Failed to effectively communicate and advise the effect of the Proffer agreement.
- d. Failed to object when the Solicitor did not adhere to the prior plea agreement.
- e. Failed to object when the Solicitor violated the Proffer agreement by not communicating the extent of the Defenant's cooperation to the Judge.
- f. Failed to effectively and fully communicate.

Furthermore, the Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application and this Amended Application. See Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,



ERIN E BAILEY, ESQUIRE
The Law Office of Erin E. Bailey LLC
P.O. Box 2560
Georgetown, S.C. 29440
843-606-0764
ebailey@erinbaileylaw.com
SC Bar No. 76016
ATTORNEY FOR APPLICANT

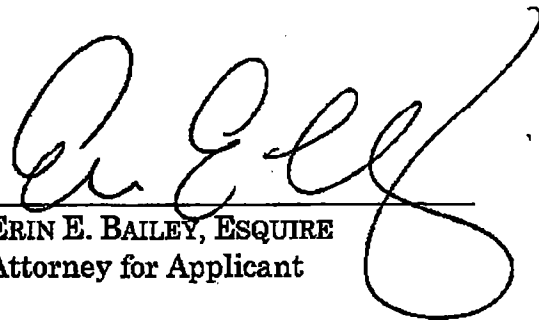
November 19, 2018

CERTIFICATE OF SERVICE

I certify that I have served this document via US Mail to:

Johnny Ellis James Jr.
Assistant Attorney General
SC Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549

This 19th Day of November, 2018.



ERIN E. BAILEY, ESQUIRE
Attorney for Applicant

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	2016-CP-26-05251
BRANDON JAMES LITTELL,)	
Applicant,	)	Transcript of Record
vs.	)	(Post-Conviction Relief)
STATE OF SOUTH CAROLINA,	)	November 27, 2018
Respondent.)	

B E F O R E:

Honorable Kristi F. Curtis
Horry County Courthouse
Conway, South Carolina

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

Erin E. Bailey, Esquire
Attorney for Applicant

Johnny Ellis James, Jr., Esquire
Attorney for Respondent

REPORTED BY:

Dixie C. Eubank
Retired Circuit Court Reporter

PREPARED BY:

Kay H. Richardson
Circuit Court Reporter

Littell v. State - 2016-CP-26-05251

2

INDEX

1	<u>I N D E X</u>	
2	<u>NOVEMBER 27, 2018</u>	<u>Pg.</u>
3		
4	By Mr. James	3
5	Brandon James Littell	
6	Direct by Bailey	4
7	Cross by James	21
8	Redirect by Bailey	26
9	Eric Fox	
10	Direct by Bailey	27
11	Cross by James	57
12	Redirect by Bailey	63
13	Closing Argument by Bailey	67
14	Closing Argument by James	72
15	By the Court	76
16	Certificate of Court Reporter	77

17

18

E X H I B I T S

19

No.IDEV

20

21

A1 Applicant's Supplemental Motion

40

22

23

24

25

Littell v. State - 2016-CP-26-05251
BY MR. JAMES

3

1 NOVEMBER 27, 2018

2 THE COURT: Okay. We have Mr. Brandon Littell.

3 MR. JAMES: If it may please the Court.

4 THE COURT: Yes, sir.

5 BY MR. JAMES:

6 MR. JAMES: This is the matter of Brandon James Littell
7 versus State of South Carolina, docket number 2016-CP-26-
8 05251. Mr. Littell is present here in the courtroom today and
9 is represented by Ms. Erin Bailey, Esquire.

10 Mr. Littell was indicted at the January 2015 term of the
11 Horry County Grand Jury for murder, attempted murder, and
12 armed robbery. He was further indicted at the July 20 -- at a
13 later term for burglary second degree and larceny valued
14 between 2,000 and \$10,000. Mr. Eric Fox, Esquire represented
15 Mr. Littell on those charges and Nancy Livesay of the
16 Fifteenth Circuit Solicitor's Office prosecuted the case. On
17 February 26, 2015, he pled guilty to murder and all other
18 charges were dismissed.

19 Your Honor, upon that plea, the Honorable Larry B. Hyman,
20 Jr. sentenced him to imprisonment for a term of life. He
21 filed a motion to reconsider that sentence on February 27th,
22 2015 but thereafter withdrew that motion on September 1st,
23 2015. He filed a timely notice of appeal and by order filed
24 January 26, 2016, the South Carolina Court of Appeals
25 dismissed the appeal for failure to show an issue that could

Littell v. State - 2016-CP-26-05251
BRANDON JAMES LITTELL - DIRECT BY BAILEY

4

1 be reviewed and the remittitur was issued February 11th, 2016.

2 He filed his application for post-conviction relief on
3 August 8, 2016. Since the time of his filing of the
4 application, Ms. Bailey, on behalf of her client has filed an
5 amendment dated November 19th, 2018. I apologize, I do not
6 have a clocked copy but I just want to confirm that I have a
7 copy of the amended allegations in the Judge's packet that has
8 been provided.

9 THE COURT: November 19th.

10 MR. JAMES: Yes. Thank you, Your Honor.

11 With that set forth, I will cede the floor to Ms. Bailey.

12 MS. BAILEY: Thank you.

13 Thank you, Your Honor.

14 I'll call Brandon Littell.

15 BRANDON JAMES LITTELL, HAVING BEEN
16 DULY SWORN, TESTIFIED AS FOLLOWS:

17 CLERK: Please have a seat and state your name for the
18 Court and spell your last name.

19 MR. LITTELL: Brandon James Littell, B-R-A-N-D-O-N, L-I-
20 T-T-E-L-L.

21 DIRECT EXAMINATION OF BRANDON JAMES LITTELL BY MS. BAILEY:

22 Q: Thank you, Brandon. Can you tell the Judge -- there's no
23 jury in this trial. The Judge, who is sitting over here, is
24 gonna be the one deciding today. Can you tell the Judge what
25 your current sentence is?

1 A: My current sentence is a natural life sentence, no
2 parole.

3 Q: And did that come about through a plea, a guilty plea or
4 through a trial?

5 A: Fox actually said it was a plea. I was under the
6 understanding it was gonna be a 30-year plea.

7 Q: Okay. We'll come back to that in just a minute. But, so
8 it was a guilty plea on February 26th of 2015; does that sound
9 right?

10 A: Uh-huh, (affirmative response).

11 Q: Okay. And did you have a lawyer through that?

12 A: Yes.

13 Q: Who was that?

14 A: Fox.

15 Q: Do you remember his first name?

16 A: Eric Fox.

17 Q: And was he your lawyer through the entire time that these
18 charges were pending?

19 A: Yes, ma'am.

20 Q: In fact, had he been your lawyer before that, too?

21 A: Yes, previously on -- previously for the burglary second,
22 the grand larceny, and I actually was -- 2012, he was also my
23 lawyer, but I had him replaced and I had to hire a lawyer.

24 Q: Okay. But through the entire pendency of your murder
25 charge, Eric Fox was your lawyer; is that right?

Littell v. State - 2016-CP-26-05251
BRANDON JAMES LITTELL - DIRECT BY BAILEY

6

1 A: Yes, ma'am.

2 Q: And you were arrested on June 20th of 2013; is that
3 right?

4 A: Uh-huh, (affirmative response).

5 Q: Okay. How soon after that did -- I'm sorry?

6 COURT REPORTER: Answer yes or not, please.

7 A: Oh, yes, ma'am.

8 Q: And how soon after that did you get to meet with Mr. Fox?

9 A: I believe it was a few weeks.

10 Q: Okay. If I told you it was June 25th, does that sound
11 right? Just a few days after?

12 A: Yeah, I believe it was somewhere in there.

13 Q: Okay. And then over the course of the next few months,
14 did you and Mr. Fox meet a couple of times?

15 A: Yes, ma'am.

16 Q: Okay. Did you get your discovery right away?

17 A: No, I believe it was a few months after.

18 Q: Okay. And when Mr. Fox met with you, did he have any
19 advice right off the bat as to what -- as to the way he
20 thought your case should go?

21 A: Well, when we talked, he actually, he told me in his
22 opinion, he believed that we should be -- it's gonna be a plea
23 case. I told him personally, I believe I wanted to go to
24 trial. I didn't believe that there was any grounds for me to
25 be arrested in the first place. He said there was enough

1 evidence. He's like, being that I had codefendants, he would
2 like for me to actually think about more considerate on a
3 plea. And he said that he had already -- I'm sorry.

4 Q: It's okay. You want some water?

5 A: No. I'm all right. I'm all right.

6 Q: I know you're nervous.

7 A: He told me he would like to try and stay focused on --
8 just focusing for a plea being that it'd be a quick case.

9 Q: So, to be clear, was it his idea or your idea for it to
10 be a plea instead of a trial?

11 A: His idea.

12 Q: It was his idea to have a plea? Okay. Did you ever
13 receive a copy of your discovery?

14 A: Yes, ma'am.

15 Q: Did you and Mr. Fox go over that discovery?

16 A: No, we didn't. He set it down in front of me but we
17 didn't actually go into and talk about what was against me.

18 Q: Okay. So, the evidence -- your lawyer, Mr. Fox, did he
19 ever review your discovery with you?

20 A: No.

21 Q: Okay. Now, there was paper discovery, right? And that
22 got mailed to you at the jail?

23 A: Yes, ma'am.

24 Q: There were some -- were you aware that there were some
25 audio interviews as well?

Littell v. State - 2016-CP-26-05251
BRANDON JAMES LITTELL - DIRECT BY BAILEY

8

- 1 A: Yes, ma'am. I actually requested for him to let me hear
2 those. He told me that his investigator would come down to
3 the jail and -- excuse me -- and would eventually let me hear
4 those and I actually sat there and we spent a couple of
5 months. But by the time then it had been to the point where
6 we had talked to the solicitor already and I guess he felt
7 like I didn't need to hear them no more. But I still had told
8 him I would like to hear them and he never got back to me.
- 9 Q: Okay. So, you never heard any of the interviews that
10 were given by your codefendants, right?
- 11 A: No.
- 12 Q: And you never heard the 911 calls?
- 13 A: No, I never heard the 911 calls.
- 14 Q: Okay. So, you never reviewed any electronic recordings
15 in this case; is that right?
- 16 A: No, ma'am.
- 17 Q: Okay. Now, after Mr. Fox advised you that this is a case
18 where in his opinion you should plea, did he recommend a
19 course of action to get you to a plea?
- 20 A: Yes. He said talking to the solicitor would be the best
21 way.
- 22 Q: Talking to the solicitor?
- 23 A: Yes, ma'am.
- 24 Q: And can you tell us more, what do you mean by talking to
25 the solicitor?

1 A: He said -- he asked me, he -- well, he didn't ask me. He
2 said the best way would be for you to explain exactly what
3 happened on this day or what -- who was there and such like
4 that if -- about my knowledge and what I had known.

5 Q: So, Mr. Fox recommended that you give a full statement to
6 the solicitor; is that right?

7 A: Yes, ma'am.

8 Q: Okay. Now, let's back up for just a second. When you
9 were arrested, but before you had a lawyer on the murder
10 charge, did you give a statement to police?

11 A: Yes, ma'am. I don't -- I believe they had the recording,
12 too, but I told Detective -- I believe it was Troy Large, I
13 told him that I had been walking on the beach, smoking weed,
14 and I had just got home that night. And he ---

15 Q: It's okay. It's all right.

16 A: And he didn't exactly tell me what all I was facing
17 against. He just told me I was being charged with murder and
18 attempted murder. Apparently, somebody I had known had got
19 shot.

20 Q: Okay. But in that statement that you gave to Troy Large,
21 right after -- right around the time that you were arrested
22 ---

23 A: Yes, ma'am.

24 Q: Did you talk about the murder in question at all?

25 A: No, ma'am.

Littell v. State - 2016-CP-26-05251

10

BRANDON JAMES LITTELL - DIRECT BY BAILEY

1 Q: Okay. So, in your initial statement to the police, you
2 gave no self-incriminating evidence; is that right?

3 A: No, ma'am.

4 Q: Other than smoking a little weed?

5 A: Yes, ma'am.

6 Q: And in fact, during that initial interview with the
7 police, did you end the interview?

8 A: Yes, ma'am. I made -- I kinda made a comment on his
9 shirt, and after that it was over.

10 Q: Okay. Did you request a lawyer in that interview?

11 A: Yes, ma'am. As soon as he read me my rights, he told me,
12 do you understand them? And I said, no. And that's when I
13 was supposed to get a lawyer.

14 Q: And there was no further interview after that, right?

15 A: No. I went straight to J. Reuben Long and was booked.

16 Q: Okay. So, when you were first arrested, you tell the
17 police that you would like a lawyer before making any further
18 statement, right?

19 A: (Indicates affirmatively.)

20 THE COURT: Answer out loud.

21 A: Yes, ma'am.

22 Q: Fast forward three months, four months to October and now
23 you have a lawyer, who is Eric Fox, right?

24 A: Yes, ma'am.

25 Q: And Eric Fox's advice to you was that you should speak

1 with the solicitor and be completely truthful and tell them
2 everything, right?

3 A: Yes, he did, he said you should let them know what
4 happened.

5 Q: Okay. And to the best of your knowledge, when you gave
6 that statement, which was -- that statement was on October
7 28th of 2013, does that sound right?

8 A: I don't know the exact date.

9 Q: But a couple of months after you were arrested; does that
10 sound right to you?

11 A: Yes, ma'am.

12 Q: When you gave that statement to the solicitor, first of
13 all, do you know the solicitor's name?

14 A: Ms. Nancy Livesday [sic].

15 Q: Was there any sort of negotiation that you were made
16 aware of as to the outcome of your case in exchange for you
17 making that statement to her?

18 A: The day that we had made -- that she asked me to come in
19 there and to make the statement to her, I was under -- well, I
20 didn't understand there exactly how she put it, but she told
21 me that she would be offering 25 years and she would try to
22 keep it under that for my cooperation.

23 Q: And did Eric Fox explain that to you?

24 A: We -- I believe he was there and he understood it, but I
25 don't ---

Littell v. State - 2016-CP-26-05251
BRANDON JAMES LITTELL - DIRECT BY BAILEY

12

1 Q: But it was your understanding at that time that in
2 exchange for you talking about everything that happened, that
3 what would happen?

4 A: I would be given a time under 25 or under.

5 Q: Okay. So, you gave your statement to the solicitor in
6 October. Then did they polygraph you shortly after?

7 A: Yes, ma'am.

8 Q: Okay. Then did a good bit of time go by before anything
9 happened?

10 A: Yeah. There was a few times he came down and see me, but
11 we really didn't talk about what the solicitor was doing. He
12 just let me know that he'd emailed the solicitor, talked to
13 her, said she was still gonna do something, and they'll talk
14 about the case further down the line.

15 Q: Okay. So, through really the entire year of 2014, you
16 met with your attorney a few times; is that right?

17 A: Yes, ma'am.

18 Q: But there was -- did he ever go over discovery with you
19 in that time?

20 A: No, he still -- he still had gone over the discovery with
21 me.

22 Q: Okay. And did any new discovery get sent to you during
23 that time?

24 A: No, ma'am.

25 Q: Okay. And then in January of 2018, did he come to you

1 with some new information, new news about what was gonna
2 happen in your case?

3 A: I believe it was -- yeah, I didn't get any new
4 information until about a week before I had took the plea.

5 Q: Okay. What was that information?

6 A: He talked to me and said that the solicitor was gonna go
7 in front of the Judge and offer me 30, and ---

8 Q: Did he tell you about a meeting that he had with the
9 Judge and the solicitor?

10 A: He did have a preset meeting, yes.

11 Q: And did he tell you what happened at that meeting?

12 A: He said they talked more on the lines of what they were
13 going to sentence me but not exactly what it could be.

14 Q: Okay. And what did he tell you to expect or did he tell
15 you to expect anything?

16 A: Thirty years.

17 Q: Okay. So, then we get to the day of your plea, and did
18 your lawyer meet with you again?

19 A: Yes. He brought the plea in front of me.

20 Q: Okay. And the morning of your plea, what did you expect
21 was gonna happen based on your conversations with your lawyer?

22 A: I had -- really, I was looking at it and it said 30 to
23 life and I assumed that that was just letting me know, well,
24 this is what this charge holds. So, I didn't think on
25 anything to ask is it whether open or not open. And so I went

Littell v. State - 2016-CP-26-05251
BRANDON JAMES LITTELL - DIRECT BY BAILEY

14

1 ahead and I signed it thinking that, okay, well, it says 30 on
2 the paper, so I guess that's what I'm going to get. And I get
3 in the courtroom, that's when they charge me and they gave me
4 natural life.

5 Q: Okay. And based on your conversations with your lawyer
6 Eric Fox, when you entered that plea, what sentence did you
7 expect you were gonna get?

8 A: Thirty years.

9 Q: Okay. During the actual plea hearing, the solicitor
10 recited some facts; is that right?

11 A: Yes, ma'am.

12 Q: Okay. Did you agree with the facts as the solicitor
13 recited them?

14 A: There were certain things that she said -- I don't
15 remember the exact facts that she stated, but she did state
16 that they was, I guess, a premeditated murder. It was
17 supposedly a drug transaction that went wrong. Some of that I
18 don't necessarily agree with but I didn't know how to say that
19 in the courtroom. So, I just really sat there and listened.

20 Q: Did your lawyer object to any of those facts?

21 A: No, ma'am.

22 Q: Okay. To the best of your knowledge, did your lawyer
23 ever file a motion to enforce a plea agreement?

24 A: You said a motion?

25 Q: Motion to enforce the plea agreement?

1 A: I don't know if it was a motion. I just know that they
2 had a few meetings and discussions through emails.

3 Q: Okay. And during that plea hearing, did your lawyer
4 ever, to the best of your recollection object to the way that
5 the plea hearing was going?

6 A: No, ma'am. He didn't object at all. He -- I was kind of
7 feeling like he was siding with the solicitor a little bit
8 somewhere in the line, because I mean she -- I'm not saying
9 that she slandered my character, but she did agree with the
10 family and called me a monster.

11 Q: She called you wicked, didn't she?

12 A: Yeah, wicked, and I didn't believe I was -- she didn't
13 really know me, she just went off I guess what was in the case
14 file. And I've done community service, I'm not saying that
15 I'm a good person, I'm not saying that I'm a bad person, but I
16 don't really believe that I should've been judged that way.

17 Q: Okay. So, do you know what mitigation is?

18 A: No, ma'am.

19 Q: That's a big lawyer word. Let me put it this way, did
20 your lawyer present anything good about you to the Judge?

21 A: No. No, he didn't.

22 Q: Anything that you can remember?

23 A: No. I may've believed he talked -- I had brought some
24 pictures in for the -- to show that I'm not worthless -- I
25 mean, you know, I'm an artist, I like to draw. I like to

Littell v. State - 2016-CP-26-05251
BRANDON JAMES LITTELL - DIRECT BY BAILEY

16

1 preserve life. I'm not just -- he didn't even -- they didn't
2 see my drawings. I guess it didn't have nothing to do with
3 the Court at the time.

4 Q: Okay.

5 A: But ---

6 Q: So, other than the drawings, can you think of a single
7 thing that the lawyer -- that your lawyer did in mitigation?
8 Mitigation just means nice things about you.

9 A: No, he didn't say anything nice. It's just -- he
10 provided his cooperation and, you know, he help solve a crime
11 or ---

12 Q: Okay. Do you ever recall any plea offer or plea
13 agreement in writing of any kind?

14 A: There was one a non-negotiable recommended.

15 Q: And that was just a sheet of paper that was issued early
16 on, right?

17 A: Yeah, I believe that came a few weeks after I was locked
18 up.

19 Q: Right. Before discovery, right?

20 A: Yes, ma'am.

21 Q: And it just said there's no recommendation at this time?

22 A: Yeah.

23 Q: Okay. So, subsequent to that, after that, do you ever
24 recall seeing any kind of written plea offer ever?

25 A: Huh-uh, (negative response).

1 Q: Okay. Do you recall seeing anything called a proffer?

2 A: What is that?

3 Q: You don't know what it is, then ---

4 A: No, ma'am.

5 Q: I can't explain it. But if you don't know what it is,
6 you don't recall seeing it, right?

7 A: No, ma'am.

8 Q: Okay. Do you recall your lawyer objecting at all to
9 mischaracterization of the way the -- how the plea was going
10 or the mischaracterization of the level of your cooperation?

11 A: No, ma'am.

12 Q: Okay. Do you recall your lawyer actually saying some
13 things about you in that plea hearing that were not so good
14 for you?

15 A: I don't remember the full agreement ---

16 Q: You don't recall?

17 A: No, ma'am. I just ---

18 Q: It's okay if you don't remember. I'm just asking if you
19 remember.

20 A: Certain stuff, it's just -- it's a little hazy but I just
21 -- I know that it wasn't really something that -- I don't
22 believe he did what he was supposed to.

23 Q: Okay. Now, let's talk about a few other issues. You've
24 already mentioned that your lawyer never went over any of the
25 discovery with you, right?

Littell v. State - 2016-CP-26-05251
BRANDON JAMES LITTELL - DIRECT BY BAILEY

18

1 A: Yes, ma'am.

2 Q: Did your lawyer ever discuss potential defenses to your
3 case?

4 A: No, he didn't. After we basically -- when we did receive
5 it, he let me know that what I had talked to him about, he
6 said that it was gonna -- he's been talking about a plea from
7 the beginning. I told him that I had wanted to go to trial.
8 I told him from the beginning I really didn't think that there
9 was evidence for them to arrest me. He told me there really
10 isn't a trial I cannot believe that we could win. He -- he
11 didn't even talk about a defense, period. I wanted to ask him
12 certain stuff but after -- I really wanted to hear the
13 recordings, but when the recordings never came, I really --
14 I'm not gonna say I didn't have an opportunity, but I couldn't
15 research the law myself. I was 19. For me to -- I don't have
16 access to the law, so I can't go around him. I had to go with
17 what he assumed or tried to predict to me. So, I did my best
18 with what I could and he really -- he was really pressing for
19 a plea. He really ---

20 Q: Okay. Did he ever discuss a defense of duress with you?

21 A: No, ma'am.

22 Q: Till I said it to you earlier today, you never heard the
23 word duress?

24 A: Yeah, when we discussed it in there, I didn't -- I didn't
25 even understand what duress means is like something happened,

1 somebody got threatened or ---

2 Q: You don't ---

3 A: I just ---

4 Q: It's okay. Did he discuss any potential self-defense
5 claims or even discuss with you what a self-defense looks
6 like?

7 A: No, ma'am. Yeah, he didn't even discuss that.

8 Q: Did he talk to you about a lineup?

9 A: No, ma'am. The only photo lineup that I thought that I
10 was really going against was my codefendant and that was being
11 that he had to identify me, I guess, that he picked out -- I
12 have Facebook pictures in there.

13 Q: Did your lawyer ever discuss with you ways that photo
14 lineups can be challenged in court?

15 A: No, he didn't.

16 Q: Did your lawyer discuss any other potential legal
17 defenses or strategies with you?

18 A: He really -- he really didn't. We just discussed this
19 plea and he never -- when the plea came around, it wasn't like
20 he was trying to get it lowered or anything. It was like,
21 well, hey, you're pleaing to murder and this is what's gonna
22 happen. I mean, it's not like I had a -- basically, he left
23 me with one option and that one option was just the worst one
24 I could've took, I guess.

25 Q: And really, once you gave that interview to the solicitor

Littell v. State - 2016-CP-26-05251
BRANDON JAMES LITTELL - DIRECT BY BAILEY

20

1 back in October of 2013, that interview was fairly self-
2 incriminating, wasn't it?

3 A: Yes, ma'am. I -- from ---

4 Q: And you did that on the advice of your lawyer, right?

5 A: Yeah, I did that on the advice of Fox.

6 Q: And in fact, a lot of the details from that interview
7 were brought up in your own plea hearing; is that right?

8 A: Yes, it were, but they never brought out the fact that I
9 did -- I originally said I didn't have a part in it. They
10 just made the part of my cooperation and then went off.

11 Q: If your lawyer had not advised you to plead guilty, what
12 would you have wanted to do?

13 A: I would've wanted to go to trial.

14 Q: That covers my list, but I know you've been sitting in
15 prison for several years.

16 A: Yes, ma'am.

17 Q: Is there anything else that you -- this is your PCR. Is
18 there anything else that you would like the Court to know?

19 A: I did request for Fox to put me up there for a bond
20 hearing. And I know a bond really doesn't matter in certain
21 points in a murder trial, but I asked him original also, I
22 signed a paper trying to be present during my preliminary
23 hearing so I could know what evidence I really was facing and
24 what was the reason for me being arrested. I was never
25 allowed to be present at that. And I think that played

1 another major part because I should've known -- I didn't even
2 know who my codefendants were and when I was charged a month
3 later with the armed robbery to go along with these charges,
4 they brought me up there from the courthouse -- as a matter of
5 fact, Detective Troy Large requested them to come up there and
6 brought me up there with Michael Bellamy, who I didn't even
7 know was my codefendant yet it. And so I really -- I'm not
8 saying that plays a part, but I would've liked to know that
9 from the beginning who was involved in this case and who they
10 were. I never -- and at the bond hearing, I could've brought
11 that up if I would've went in front of the Judge and actually
12 asked, well, listen, this is what I really wanted to know. I
13 didn't get to know. I didn't get the information I needed. I
14 wasn't really interested in the bond because I understand bond
15 on murder could be high and I'm not exactly made of money.
16 So, I just -- I was trying to get my mind ---

17 Q: Okay. Anything else that you want the Court to know?

18 A: No.

19 MS. BAILEY: I have no further questions at this point
20 for Mr. Littell.

21 THE COURT: Mr. James?

22 CROSS EXAMINATION OF BRANDON JAMES LITTELL BY MR. JAMES:

23 Q: Mr. Littell, do you recall about how many times you met
24 with Mr. Fox?

25 A: I do not remember the exact number.

Littell v. State - 2016-CP-26-05251
BRANDON JAMES LITTELL - CROSS BY JAMES

22

1 Q: All right. Do you have a rough estimate?

2 A: Maybe eight, eight to nine times.

3 Q: And you indicated that Mr. Fox never reviewed your
4 discovery with you?

5 A: No, sir.

6 Q: Isn't it true that when you appeared in front of Judge
7 Hyman for your guilty plea that he asked you if Mr. Fox went
8 over the evidence that the state has in this case and
9 explained to you how the state would attempt to introduce that
10 evidence in a trial to be used against you, and you said you
11 did?

12 A: Yes, sir. I did say that.

13 Q: Why did you say that?

14 A: I said that because if considering that he brought in
15 front of me, and we talked about the case, that does include,
16 I guess he going over it. But if going over it is that, why
17 wasn't I allowed to know about certain evidence that wasn't in
18 my motion originally?

19 Q: Were you aware of that evidence before you pled guilty?

20 A: No, I wasn't. I actually didn't find out -- I believe
21 Ms. Bailey actually brought something to my attention today.
22 There was a photo lineup from a Mr. Jason Quinn in there who
23 was shot, and it wasn't originally in my motion of discovery
24 that he brought up to me, and he never made it known to me at
25 that. And then following along with the recordings as well.

1 Q: Did you tell Mr. Fox your version of events of what
2 happened?

3 A: Yes, sir, I did.

4 Q: There as some discussion about the facts that were
5 presented by the state at the plea proceeding. Do you recall
6 those facts that were presented?

7 A: Not word for word.

8 Q: Okay. But you indicated you disagreed with parts of it?

9 A: Yes, sir.

10 Q: Which parts did you disagree with?

11 A: The part where she -- she made it seem like it was a drug
12 transaction and then talked about it was premeditated, I
13 believe.

14 Q: So, your position is that it was not premeditated?

15 A: No, sir. No, sir, not exactly, no.

16 Q: Thank you. I apologize if you answered. I have a hard
17 time hearing sometimes.

18 You may've answered this already, but did you and Mr. Fox
19 discuss the elements of the offense of murder?

20 A: What do you mean by elements?

21 Q: The things that the state had to prove in order to prove
22 murder against you?

23 A: I believe -- I mean, he told me that as long as somebody
24 died it was considered to be murder.

25 Q: Did he discuss the elements of attempted murder?

Littell v. State - 2016-CP-26-05251
BRANDON JAMES LITTELL - CROSS BY JAMES

24

1 A: I was -- I was -- I assumed attempted murder was when
2 somebody tries to kill somebody.

3 Q: Did he discuss the elements of armed robbery?

4 A: No, not the armed robbery so much.

5 Q: Okay. You indicated in your initial statement -- you
6 indicated on the stand that in your initial statement, you
7 claimed to be on the beach smoking marijuana; is that correct?

8 A: Yes, sir.

9 Q: All right. Did you give Mr. Fox any leads or witnesses
10 to try and support a defense?

11 A: He -- actually, he didn't ask me. He never asked me.

12 Q: You indicated that really from the beginning you wanted
13 to have a jury trial; is that correct?

14 A: Yes, sir.

15 Q: All right. Do you recall at the plea proceeding Judge
16 Hyman explaining to you that you have the right to a jury
17 trial?

18 A: Yes, sir.

19 Q: And he explained to you some of the rights that go along
20 with a jury trial; do you remember that?

21 A: Yes, sir.

22 Q: All right. And he asked you if you wanted to waive that
23 right to a jury trial and all the rights that go along with
24 it; isn't that correct?

25 A: Yes, sir.

1 Q: And you told him that you did in fact want to waive that
2 jury trial?

3 A: Yes, sir.

4 Q: Why did you want to waive the jury trial?

5 A: Being the fact that I was under the assumption that the
6 plea was gonna be for 30.

7 Q: Do you recall the Judge asking you if you were satisfied
8 with Mr. Fox as your attorney?

9 A: Yes, I do -- I do recall that.

10 Q: Okay. And did you tell him that you were satisfied with
11 Mr. Fox?

12 A: Yes, sir.

13 Q: And isn't it true that he gave you a little bit of time
14 to stand to the side with Mr. Fox and ask him some questions?

15 A: Yes, he did.

16 Q: Okay. And did Mr. Fox answer your questions at that
17 time?

18 A: Yes.

19 Q: Okay. May I ask what those questions were? Do you
20 remember?

21 A: To be exactly, I don't.

22 Q: That's understandable. It's ---

23 A: I'd have to go back and read what we were talking about
24 beforehand.

25 Q: That's understandable. It's been a few years. I can't

Littell v. State - 2016-CP-26-05251
BRANDON JAMES LITTELL - REDIRECT BY BAILEY

26

1 remember the facts of all the cases that I handled yesterday,
2 so...

3 Thank you very much, Mr. Littell.

4 I have no further questions for this witness.

5 REDIRECT EXAMINATION OF BRANDON JAMES LITTELL BY MS. BAILEY:

6 Q: I just have one brief follow-up. Brandon you were
7 arrested on June 20th of 2013 in the five years since then,
8 have you ever had a lawyer sit down and go through detail by
9 detail your discovery in your murder case?

10 A: No, ma'am; I have not.

11 Q: Other than you reviewing it alone in your jail cell, has
12 anyone ever gone over your discovery with you?

13 A: No, ma'am; I have not.

14 Q: No further questions.

15 MR. JAMES: Nothing further from the state.

16 THE COURT: You may step down.

17 MS. BAILEY: Your Honor, if I may have a moment to
18 confer.

19 We'll call Eric Fox next.

20 ERIC FOX, HAVING BEEN DULY

21 SWORN, TESTIFIED AS FOLLOWS:

22 CLERK: Please have a seat and state your name for the
23 Court.

24 MR. FOX: Eric Fox.

25 DIRECT EXAMINATION OF ERIC FOX BY MS. BAILEY:

1 Q: Thank you, Mr. Fox. I'll start -- now this was five
2 years ago; is that right?

3 A: Yes, I think, five and half from the beginning, yes.

4 Q: We'll start with did you represent Brandon Littell on a
5 murder charge?

6 A: I did.

7 Q: And did you represent him on some other charges as well?

8 A: I had -- well, there was the attempted murder and armed
9 robbery associated with this, and then I had previously
10 represented him on -- I'm looking at my -- the burglary that
11 was dismissed and another charge, and as he indicated he
12 retained a private attorney. So, I'd represented him once
13 before and then all his charges relating to this murder.

14 Q: Okay. And because this was five years ago, do you have
15 -- do you need something to help reflect -- refresh your
16 recollection as to your interactions with Mr. Littell?

17 A: I do have -- I printed out my case notes from our
18 computer database. I believe you have a copy of those as
19 well. So, I've been able to look at those, review those, and
20 refresh my memory about what happened then.

21 MS. BAILEY: I'm sorry. Assistant Attorney General, do
22 you have a copy of those case notes?

23 MR. JAMES: I have no objection to him reviewing his case
24 notes.

25 MS. BAILEY: Okay.

Littell v. State - 2016-CP-26-05251
ERIC FOX - DIRECT BY BAILEY

28

1 BY MS. BAILEY:

2 Q: So, let's start by establishing a timeline in your
3 representation of him. Brandon Littell was arrested on June
4 20th, 2013; does that sound right to you?

5 A: Yes.

6 Q: And you already represented him at that point on other
7 pending charges; is that right?

8 A: I believe so. I think the ---

9 Q: So, you had a pre-existing relationship?

10 A: Yes. I'd met and talked with Brandon before on his other
11 charges.

12 Q: And so when was the first time you met with him on this
13 murder charge?

14 A: I went out -- we opened the file, I think, the very same
15 day, because very often in our office, when we see people in
16 the paper who have been arrested on a murder, my boss will go
17 ahead and open a file. So, I was out there on the 25th of
18 June, five days after he was arrested.

19 Q: Okay. And then when did you file a Rule 5 motion for
20 discovery?

21 A: Well, it would've been done the same day we opened the
22 file. Actually, it would've been on June the 20th. Our
23 office opened the file the same day they send the Rule 5 as
24 well as a letter of representation to the solicitor and the
25 clerk, so it would've been on June 20th.

1 Q: Okay. And did you -- how long did it take for discovery
2 to come in?

3 A: It took -- I know I had to do a supplemental request. In
4 October, I still did not have any. And I believe around the
5 10th or 11th of October, about four months after, I still
6 hadn't received anything. So, we did a supplemental request.
7 I don't recall exactly when we -- well, we did. I have a note
8 that we mailed the discovery to the jail on the 12th of
9 October, so we got that -- the supplemental request was -- we
10 then got those things. So, but it took about four months.

11 Q: Okay. And in between when you first met with him five
12 days after his arrest and when you got the discovery, did you
13 meet with him a couple of times?

14 A: Again, I met with him that time in June and it looks like
15 I met once or twice in addition.

16 Q: So, did you meet with him on August 21st of 2013?

17 A: Yes, I did.

18 Q: And October 2nd of 2013?

19 A: Yes.

20 Q: Okay. And both of those meetings, you still had not
21 received any discovery; isn't that right?

22 A: That's correct.

23 Q: Okay. So, October 12th, you mailed him his discovery,
24 right?

25 A: That's correct.

Littell v. State - 2016-CP-26-05251
ERIC FOX - DIRECT BY BAILEY

30

1 Q: If I told you that your discovery was stamped received on
2 October 11th, would that sound correct to you?

3 A: Yes.

4 Q: Okay. So, after you received discovery on October 11th,
5 and then when did you go back out to talk to Brandon? Was it
6 on October 23rd of 2013?

7 A: Yes.

8 Q: So, from October 11th of 2013 to October 23rd of 2013,
9 that was the window in which you reviewed the discovery packet
10 as it came in, right?

11 A: Yes.

12 Q: Okay. And based on your prior discussions before
13 discovery came in, was this case already on a certain
14 trajectory at that point?

15 A: It was. We had started down a path looking to
16 cooperation with the solicitor. That was my recommendation to
17 Brandon based on what I knew about it, myself, and that
18 initial conversation I had with Brandon back in June.

19 Q: Okay. So, the initial idea that this was gonna be on a
20 plea track instead of trial track, whose idea was that?

21 A: I certainly brought it up. I think after that first
22 discussion with Brandon based on what he relayed to me
23 happened and other things, I did tell him that I thought that
24 we need to at least explore that. I don't recall anything
25 like, you know, you can't have a trial, shouldn't have a --

1 don't have a trial, but I do not recall him making that
2 request. I don't doubt -- disagree with anything he said
3 today. It was more along the lines of, all right, based on
4 what you're telling me, what I know independently that the
5 state, I believe they can prove, yeah, we need to -- there
6 were two codefendants. I felt very strongly we needed to be
7 first in line to cooperate.

8 Q: Okay. And to the best of your memory, had the other two
9 codefendants given statements to police upon their arrest?

10 A: There was a juvenile and -- I honestly don't recall, the
11 adult codefendant, last name was Bellamy, had -- and I think
12 he had basically denied involvement. So, I knew he had -- I'm
13 not sure I had his statement yet. We usually get a -- with
14 something like this, we'll get, of course, the warrants.
15 Quite often, we'll get sort of a skinny police report. So, I
16 had some idea of what they were saying but I didn't have the
17 actual statements yet.

18 Q: So, your recommendation to Brandon Littell that he speak
19 with the solicitor and cooperate with the solicitor was before
20 you had had the opportunity to review all of those statements?

21 A: Yes.

22 Q: Okay. Do you recall if Brandon Littell made any
23 incriminating statements to the police upon his arrest?

24 A: He did not. That's exactly what he testified today.

25 Q: Before Brandon Littell went into that interview with the

Littell v. State - 2016-CP-26-05251
ERIC FOX - DIRECT BY BAILEY

32

1 solicitor, with Nancy Livesay, on October 28th of 2013, had
2 you reviewed his discovery with him?

3 A: We had -- I was out to see him shortly before, I think
4 the 25th. He had it by that point. I know we reviewed -- I
5 don't disagree we did not go through it page by page. A lot
6 of it was in the context of, again, what he had told me in our
7 initial interview. And when I say what I knew about this
8 case, you need to keep in mind, there were two victims. One,
9 of course who died, a young lady who died. There was a male
10 victim who was the victim of the attempted murder, armed
11 robbery. He and Brandon were known to each other. They had
12 sold marijuana back and forth to each other, they knew each
13 other -- I'm not sure if they knew from school, but his
14 identification, I felt a little bit stronger than a stranger
15 identifying. He was able -- he knew who got in the car with
16 him, he knew who was behind him, and he knew who he saw
17 driving when he drove back to get out of there. And so that
18 fact, which I was aware of, and partly because of Brandon
19 telling me that was a major -- one of the major reasons we
20 were -- I felt we needed to go down the cooperation path.

21 Q: To the best of your recollection, did Brandon ever get to
22 listen to the interviews with his codefendants?

23 A: I doubt him. I know that he requested that. I certainly
24 would've -- I don't recall specifically, but what he said
25 would've been my practice to give it to one of our

1 investigators. At that time, we had -- we definitely had one,
2 Mr. Randall and Mr. Livingston was at least doing some of
3 that, although he was also a paralegal. I don't have any
4 notes where I directed anybody to do that. And I honestly
5 don't recall. I have no reason to doubt Brandon that he
6 hadn't heard them. The ones that he's asking about, some of
7 them were interviews with the codefendant's family, because
8 they went -- when they were looking for these people, the
9 police went and talked to Mr. Bellamy's family. Several of
10 those were interviews with them and they basically said, we
11 don't know what he did. You know, there wasn't a whole lot to
12 that -- and he had every right to hear them, but ---
13 Q: There were multiple 911 calls in this case?
14 A: There's 911 -- yes, there were.
15 Q: And some of those 911 calls had conflicting information;
16 isn't that right?
17 A: There was. I think there were a couple of people in
18 apartments nearby, the back of their apartments or condos,
19 they could see -- this was sort of a countryish road up in
20 Little River, kind of dead end. But the back of a couple of
21 apartments and people called in with -- to report hearing
22 shots and at least one seeing something.
23 Q: And did he ever have the opportunity to hear those 911
24 calls?
25 A: Not as far as I know.

Littell v. State - 2016-CP-26-05251
ERIC FOX - DIRECT BY BAILEY

34

1 Q: Did you ever discuss the elements? Do you recall going
2 through the elements of murder, armed robbery, or attempted
3 armed robbery with Brandon?

4 A: Yes, I think we did from the very beginning to explain
5 this is what -- in that first meeting, here's what you're
6 charged with, this is what that means. Now, whether we --
7 never felt that we had to belabor it, he seemed to understand
8 that and discussions where I kind of a different way but, yes,
9 we definitely covered that.

10 Q: Did you ever discuss any potential defenses with Brandon?

11 A: Well, he mentioned or you might've mentioned self-
12 defense, that -- from what he was telling me and from what I
13 knew, and then once we got discovery, there was not element of
14 self-defense that I saw. It just wasn't a self-defense case.

15 I don't know that we used or talked about duress because
16 one of the things that Brandon had said in his proffer was
17 that the codefendant, Bellamy, and more or less forced him
18 into this. It varied some whether it was at gun point.
19 They'd met up before at one of their houses, discussed meeting
20 the victim, and took the gun -- had the gun there and took it
21 with them. At one point, Brandon said that's when there was,
22 hey, you're gonna do this. At another point he indicated it
23 was more when they got there in the car. The difficulty I saw
24 from our point was that Mr. Bellamy was out of the car at the
25 time of the actual shooting. He said, I didn't do that, I got

1 out to go to the bathroom and I don't know what that crazy
2 person did. So, didn't discuss self-defense, there was some
3 discussion of duress.

4 Q: So, I hear you articulating the reasons that you may not
5 have been able to pursue a duress claim.

6 A: Yes.

7 Q: Did you fully flush those out with Brandon in discussions
8 with him?

9 A: I have to go to what Brandon was telling me in terms of
10 how we went. At the first meeting, we discussed bond issues,
11 we discussed general things like, don't talk about your case
12 in jail. If we send you discovery, be really careful with it,
13 very general things. He did say that he was told to do it by
14 Bellamy but that they were basically partners, that they kind
15 of ran around together, they sold some marijuana. It sounded
16 like kind of a small-time thing, to high school students,
17 including Mr. Quinn. Brandon described himself, I think maybe
18 a little grandiosely as the enforcer and when they had any
19 issues, then he'd be one to show up and say, hey, pay up or do
20 whatever. I don't think he ever hurt anybody. They were
21 under the impression that Mr. Quinn might be snitch, might be
22 an informant, and/or that he might be holding back money from
23 them and that possibly he was -- he was in a relationship with
24 the young woman that Brandon had had feelings for, Mr. Monin,
25 and they suspected that Mr. Quinn was abusive to her, so there

Littell v. State - 2016-CP-26-05251
ERIC FOX - DIRECT BY BAILEY

36

1 were sort of several things. And Brandon's statement to me
2 meeting was might've been Bellamy's idea. He told me we were
3 gonna do this, but you know, I had the gun, I went, they took
4 dark clothes to put over, they prepared to go. The sat in the
5 backseat. At some point, Mr. Bellamy slid the gun -- the
6 juvenile was in the middle and Mr. Bellamy slid the gun behind
7 to Brandon and Brandon shot the two from behind, you know,
8 pretty much at point-blank range. I didn't think that was any
9 kind of self-defense. There may've been some duress leading
10 up, maybe, but he didn't say once they were in the car and got
11 to that dirt road that there were any - did anything. He
12 accepted the gun when it was slid to him. And once the gun
13 was in his hand, he pulled the trigger.

14 Q: Did you discuss all of this in a context of a legal
15 defense of duress with Brandon?

16 A: I can't say that I did, because once those things came
17 that way -- I know we talked about some of the issues about at
18 the time that he accepted the gun and did what he did was he
19 really under any kind of pressure. I don't know if I used the
20 word duress with it. And so the context was very much, okay,
21 you just told me you're the trigger man, that a person you
22 know can identify you, and two codefendants can identify you.
23 Didn't have any word yet that they had spoken to the police --
24 the codefendants had spoken to the police, but that's when the
25 conversation took a turn, not that he couldn't have a trial

1 but it definitely became a different approach at that point
2 for sure.

3 Q: Now, how long have you been doing this?

4 A: It'll be 25 years -- I've been a lawyer since 1990 and
5 mostly criminal work since -- it'll be 25 years in January.

6 Q: Would you agree with me that there is a difference
7 between what clients tell their lawyer and the avenues in
8 which they want to pursue?

9 A: Quite often.

10 Q: Okay. So, when Brandon told you, as his lawyer, some
11 self-incriminating things ---

12 A: Yes.

13 Q: Would you agree with me that it's still possible that
14 Brandon may have wanted a trial?

15 A: Yes.

16 Q: Would you also agree with me that it's still possible
17 that the state could not prove any of that against Brandon?

18 A: He did -- what we looked at and what I brought to his
19 attention was again, we felt the state could prove his
20 presence, I felt the state could prove his presence through
21 the -- Mr. Quinn, who survived. I was prepared for one or
22 both of the codefendants to look to cut a deal. You had the
23 juvenile who was -- I don't remember his exact age, but he was
24 not automatically waived up, so there was a waiver hearing.
25 And the state was very eager for him to come to General

Littell v. State - 2016-CP-26-05251
ERIC FOX - DIRECT BY BAILEY

38

1 Sessions and he was very eager to stay in Family Court. And I
2 could certainly see where he may be trying to give information
3 to stay in Family Court. And I had an adult codefendant, Mr.
4 Bellamy, who from all the information I had was not in the car
5 at the time of the shooting and was represented by an attorney
6 that I love and respect very much, Barbara Pratt, but whose
7 reputation is to run get a deal as quick as she can for her
8 client, when it's practical, when that's the right move, but
9 who does not waste any time doing that. So, those were on my
10 mind when we talked about it.

11 Q: But isn't it true that you had not fully reviewed all of
12 the discovery in this case before you made the recommendation
13 that Brandon self-incriminate to the state?

14 A: It is true.

15 Q: Okay. So, neither you nor Brandon fully understood what
16 evidence that state had on him and what they could or could
17 not prove?

18 A: Well, I didn't know what else might be out there. When
19 we got discovery, it -- there was nothing that led me to
20 change my opinion. We had a pretty good idea or what was
21 gonna come, in part because Brandon was very complete and
22 truthful with me about what had gone on. But it is true I had
23 not gone through -- I hadn't received it yet at that point.
24 You know, if there hadn't been a final -- I would say in my
25 mind there wasn't a final determination of -- number one, I'm

1 sure I told Brandon, it can't be my call; it's not my call
2 again, it's his right to a trial. But my advice was
3 definitely, we need to be thinking about this. Do you need --
4 I believe you should give me permission to approach the
5 solicitor. And that's what we did.

6 Q: You'll agree with me that Brandon is young, was young?

7 A: I think he was 18 at the time.

8 Q: Did you find that he went with your lead? Was he
9 combative with you or did he -- what was your relationship
10 like?

11 A: I felt it was good in the sense that it was not
12 combative, number one. Number two, he did not try to -- I got
13 no sense that he was withholding any information of any kind,
14 whether it was good for him or bad. He answered all of my
15 questions. He offered some things. So, I felt it was good.
16 I would also agree, and I think he said as much, that he
17 basically put his trust in my opinion, my advice.

18 Q: Do you think if you had recommended a trial, Brandon
19 would've gone to trial?

20 A: He may have. I truly don't recall him saying to me, I
21 want a trial, I want a trial, I want a trial. I don't recall
22 that. If he had -- if I had said, go to trial, yes. I think
23 he was gonna follow the advice I gave him, I do.

24 Q: After you reviewed discovery, and according to the
25 timeline that we've established, it was about 12 days from

Littell v. State - 2016-CP-26-05251
ERIC FOX - DIRECT BY BAILEY

40

1 when you received discovery until you went out and had the
2 pivotal meeting with Brandon before you spoke with the
3 solicitor?

4 A: Yes.

5 Q: Did you notice that there were things missing from
6 discovery that you needed to specifically request?

7 A: There were -- I think there were a couple statements.
8 And I believe several of those were those family statements --
9 the codefendant's family. I believe the 911 call was
10 something else that was included. I had a list that I had
11 written up.

12 Q: At this time I'm gonna mark Applicant's -- so I'm gonna
13 mark Applicant's Exhibit 1 at this point for ID only. Do you
14 recognize that document?

15 A: I do. That's my handwriting and I've written
16 supplemental motion and then listed the things that I was
17 asking for.

18 MS. BAILEY: At this time, I'd like to move Applicant's
19 Exhibit 1 into evidence.

20 MR. JAMES: Without objection.

21 THE COURT: It is entered.

22 APPLICANT'S EXHIBIT 1

23 ADMITTED INTO EVIDENCE

24 BY MS. BAILEY:

25 Q: And can you put into the record what the list of

1 supplemental evidence was that you wanted to obtain from the
2 state?

3 A: I did. There was -- I kind of broke it into categories.
4 One was tapes or statements, recordings, for Janice Bellamy,
5 Jalena Bellamy, and Jamie Saunders. These were relatives of
6 the codefendant, Mr. Bellamy, Michael Bellamy. As well as the
7 witness contact information for them and another person, Carl
8 Bellamy. The interview with Michael Bellamy -- with the
9 codefendants. They'd each given statements. There was a --
10 in the discovery we had from the police, it was mentioned that
11 there was a white sheet of paper with phone numbers and email
12 addresses of witness, so contact information for potential
13 witnesses, and then the 911 calls.

14 Q: Okay. And did you put this all into a formal written
15 motion and file it with the Court?

16 A: I believe so, yes.

17 MS. BAILEY: Your Honor, I'm gonna hand up Applicant's 1.

18 BY MS. BAILEY:

19 Q: And did you ever receive any of that evidence? Do you
20 have any record that you received any of that after you filed
21 that supplemental motion?

22 A: I'm gonna double check. I don't show that I do.
23 Normally, in our database when something comes in, it's
24 physically placed in the file, a physical file and then also
25 notations made on the computer. And I do not see -- I see

Littell v. State - 2016-CP-26-05251
ERIC FOX - DIRECT BY BAILEY

42

1 where the motion was filed but I do not see when we received
2 those things.

3 Q: Okay. And in this case, was there physical evidence
4 collected that had to be sent to SLED for processing?

5 A: I believe there was.

6 Q: Was there shoe prints, shoe casts taken from the dirt
7 where the body was?

8 A: I don't recall, but from your question, I'm assuming
9 there was.

10 Q: Okay.

11 A: I honestly don't recall about the shoe prints.

12 Q: Was there DNA swabs taken from several items of clothing
13 that were collected near the scene?

14 A: Yes.

15 Q: Okay. And did you ever receive the results of any SLED
16 forensic testing in this case?

17 A: No.

18 Q: Did you ever file a motion to request those results?

19 A: No.

20 Q: And you certainly didn't have any of that before you
21 recommended that Brandon Littell self-incriminate with his
22 statement; is that right?

23 A: I did not.

24 Q: Now, when he -- when you and Brandon Littell and Nancy
25 Livesay met, who else was present?

1 A: One of the solicitor's investigators, I don't recall if
2 it was Ginger Pop or one of the others, but they actually did
3 the statement -- my recollection was Ms. Livesay didn't even
4 stay, that she met and was there -- I know she didn't do the
5 questioning. My recollection was she -- we did it here at the
6 courthouse, actually, in one of the courtrooms, was that she
7 was there initially and then left and left it to the
8 investigator to do the actual interview.

9 Q: Did you have any agreement in writing before Brandon gave
10 that statement?

11 A: No. Sometime -- we didn't do a proffer agreement. Some
12 solicitors will have a formal document listing exactly what's
13 expected, and we did not. And some solicitors don't, and Ms.
14 Livesay didn't. So, we didn't have anything in writing. And
15 certainly nothing about any plea offer or deal at that point.

16 Q: Okay. So, there was no offer in writing. Was there any
17 consideration given at that point for Brandon Littell self-
18 incriminating?

19 A: No, and typically there's not. Solicitors will almost
20 never agree to something up front, because they don't know yet
21 what the defendant is gonna say. Some defendants, frankly,
22 don't offer any useful information or even deny altogether
23 what they're there for. So, I've never had a solicitor
24 beforehand make any commitment other than, you be truthful
25 with us, we'll help you out. And it's always a vague what

Littell v. State - 2016-CP-26-05251
ERIC FOX - DIRECT BY BAILEY

44

1 that means exactly.

2 Q: Okay. Did Solicitor Livesay even make that kind of vague
3 promise, we'll help you out if you're truthful with us?

4 A: Well, I wouldn't even go so far as to say a promise.
5 Yes, she made those kind of comments, but I didn't really take
6 it as any kind of promise at that point even.

7 Q: Okay.

8 A: And again, to put -- at that time, the juvenile was still
9 in family court. You had the adult codefendant and they were
10 -- they were extremely interested in two things. They did
11 want to know who pulled the trigger, but the state was most
12 interested in making sure the juvenile was treated as an
13 adult, and when the girl, Ms. Monin ran from the car -- she
14 survived initially, ran from the car, and two of the three
15 people present chased her down and I think she stumbled, but
16 they sat on her and kicked and stomped her and that's what the
17 people that were in the nearby apartments saw. It was very
18 important to that girl's family and to the state to identify
19 who did that even though it was generally accepted that the
20 bullet wound was the cause of death, that the family was
21 understandably horrified by that and they were extremely
22 interested, the state was, in which of the two was it that did
23 that. And that was one of the things that Brandon ---

24 Q: And Brandon spoke on that?

25 A: He did, and in fact it was -- he said it was the juvenile

1 -- Mr. Bellamy had said, go, you know, go get her, and then
2 Mr. Bellamy and the juvenile had run after her and kicked her.

3 Q: Do you recall any discussion of 25?

4 A: I do not recall anything about 25. I do not, because
5 that would've involved a reduction. I was very interested in
6 trying to get it below. Murder, of course, is a mandatory
7 minimum 30. I don't recall at any point the solicitor -- that
8 number coming out or really any discussion about voluntary
9 other than me bringing it up.

10 Q: Now, over the course of the next year or so, you went to
11 see Brandon a couple of times; isn't that right?

12 A: I did. We were kind of in a holding pattern for a while.

13 Q: So, on April 22nd, 2014, did you go see him again?

14 A: I did.

15 Q: Do you recall or have any notes as to what that
16 discussion was about?

17 A: We did talk about bond again. I updated him -- what was
18 happening was the juvenile's case was working its way through.
19 It took a while to -- because that's a mini-trial. A waiver
20 hearing is a mini -- is a trial in all essence. And I know
21 there was a lot of fits and starts to get heard. And then
22 there was an appeal from that to the circuit court and kind of
23 a kind of a redoing of that. So, some of the discussion
24 explained to Brandon was this is why we're waiting because
25 waiting to see what happens with the juvenile's case. The

Littell v. State - 2016-CP-26-05251
ERIC FOX - DIRECT BY BAILEY

46

1 state is waiting.

2 Q: So, is that pretty much your next three meetings? So,
3 April 22nd, 2014, June 25th, 2014, and August 19th of 2014, is
4 that pretty much what you'd be talking about ---

5 A: Pretty much, mostly.

6 Q: --- in that timeframe?

7 A: Mostly.

8 Q: Then in the beginning of 2015, it looks like you had
9 caused to have a conference with Judge Hyman; is that right?

10 A: We did. As -- somewhere the end of -- middle or end of
11 2014, the juvenile was waived up, his appeal was denied. So,
12 he was gonna be there in general sessions. And then the
13 discussion became is he gonna be a plea or a trial. We began
14 -- I say we -- the state, to look at resolving Mr. Littell's
15 case. They felt -- and all of them, if they could. We began
16 looking at the first of year and looking at available court
17 dates and judges, et cetera. And we had -- the state had --
18 Ms. Monin's family was from Ohio and they had to coordinate
19 with their ability to get here. But we did go and meet -- I
20 believe it was end of January. I can't recall exactly but we
21 did go meet with Judge Hyman once we determined he would be
22 the plea judge. Myself, Ms. Livesay and the attorneys for the
23 two codefendants, because by that point they had determined
24 that they were at least exploring a plea. And we met in Judge
25 Hyman's chambers basically to explain what we were gonna be

1 bringing in front of him and to kind of gauge a response.

2 Q: So, tell me more about that meeting.

3 A: All right. Well, Judge Hyman, I remember this very
4 clearly, looked at me and said, Mr. Fox, you give me the facts
5 because I know you'll tell me everything. And so I made a
6 point of telling him everything. I was certainly trying to
7 point out and did Brandon's cooperation and the fact that the
8 other two lawyers were probably there primarily because of
9 what he had told the state. And but trying not to hold back
10 anything, because I didn't want him to hear bad facts for the
11 first time in the courtroom. And so, I did my best to lay all
12 of it out. The other attorneys were given a chance to speak
13 and I also noted very clearly Judge Hyman asking the
14 solicitor, do you have -- is that right? Do you have anything
15 you want to add or explain or anything? And she, no, no
16 Judge, that's all. We agree with all that. There was no
17 agreement on time, but the juvenile was -- and I do not recall
18 what he was actually pleading to, but he was looking at 10,
19 that was sort of understood. And the adult codefendant, 20.
20 And Brandon, the solicitor was unwilling to move off of
21 murder, but she -- my very strong impression, she had no
22 objection to whatever the Judge wanted to do. In other words,
23 if he was comfortable with 30, that was perfectly fine with
24 her. She never once said, Judge, this is awful, he's
25 monstrous, this was an execution and, you know, he needed to

Littell v. State - 2016-CP-26-05251
ERIC FOX - DIRECT BY BAILEY

48

1 get life or 40 or 50 or anything like that. There was nothing
2 on that. Judge Hyman even joked that if the victim's family
3 got up and read a statement, that he was gonna give them all
4 probation. I remember that very clearly. And as we walked
5 out the door -- it might've been the next time, but at one
6 point as we walked out the door, he pointed at the attorneys
7 and said 30/20/10. Now, I never thought that was any kind of
8 commitment for him for a 30-year sentence. But, I certainly
9 thought, okay, that went well. He didn't raise up and fuss
10 and seem to have a problem with what we were doing for any of
11 them, and that he didn't say, no, Mr. Fox, Ms. Livesay, no, if
12 he does plead, then -- which judges often will, under no
13 obligation to, but they -- that's why you go back there is to
14 get some sense of -- some guidance or some sense of what they
15 may do. And I had absolutely no indication that it was gonna
16 be what had turned out. Then we went -- I guess it was about
17 a week or two later, the day of the actual plea, we basically
18 did it all over again, to remind him. A little bit shorter
19 version but it was very much the same process. Solicitor
20 didn't jump up and say anything. Judge gave no indication he
21 had any problems with it. And, you know, I passed that along
22 -- and still no commitment on time, though, so...

23 Q: Now, on February 11th of 2015, you went to see Brandon at
24 the jail; is that right?

25 A: Yes.

1 Q: And can you tell us what your notes say about the content
2 of that meeting?

3 A: I'm sure these are slightly out of order from the
4 different ---

5 Q: That's gonna be at the bottom of Page 2, towards the
6 bottom of Page 2.

7 A: Okay. Thank you. Yeah, we talked about that first
8 conference meeting we'd had with Judge Hyman. And, you know,
9 and I told him, I didn't hear anything that scared me. The
10 Judge heard everything -- I think part of what I was trying to
11 do was do the mitigation in chambers. So, I did tell him -- I
12 remember very clearly telling Brandon, this is from my point
13 of view, there were no red flags, and, you know, I think we
14 should continue with this path.

15 Q: Did you say a number?

16 A: I know I told Brandon about the Judge doing 30/20/10 and
17 I know I said, that's not a commitment and we don't have a
18 deal, but I'm hoping to keep it -- I don't know if I said a
19 number, I know I explained, don't assume it's going to be 30,
20 but I was hopeful for that. In my mind, I was hoping to keep
21 it 35 and below and I thought that as realistic based on
22 everything.

23 Q: Okay. Now, February 26th of 2015.

24 A: Yes.

25 Q: Brings us to the plea.

Littell v. State - 2016-CP-26-05251
ERIC FOX - DIRECT BY BAILEY

50

1 A: Right.

2 Q: Have you had an opportunity to review that transcript?

3 A: You know, I honestly have not. I have not.

4 Q: I believe there's one in the Court's file that I would
5 like to enter as an exhibit.

6 MR. JAMES: The state's position is that the transcript
7 is already a part of the record before the Court, so I don't
8 think that's really necessary.

9 THE COURT: If you want to put in the record what pages
10 you're referring to.

11 MS. BAILEY: Sure.

12 MR. JAMES: And if Mr. Fox needs something to refer to --
13 I will admit there's a couple of highlights in here but no
14 snarky commentary -- I will lend him my own.

15 THE COURT: Thank you.

16 MR. JAMES: May I approach the witness?

17 THE COURT: Sure.

18 A: Thank you.

19 BY MS. BAILEY:

20 Q: All right. The qualification of the plea was
21 unremarkable; is that fair?

22 A: Yes.

23 Q: At one point, Brandon did stop to ask you a question. Do
24 you recall the content of that?

25 A: I really don't, and perhaps in context I could -- I

1 really don't recall. My suspicion it was something
2 procedural, you know, within the qualification rather than,
3 you know, the substance of the plea.

4 Q: Now, on Page 8 of the transcript, halfway through, is
5 where Solicitor Livesay begins her recitation of the facts.

6 A: Yeah.

7 Q: These facts that she's referencing, the first question is
8 this, many of these facts come from the self-incriminating
9 statement that Brandon gave to Ms. Livesay; isn't that right?

10 A: No question.

11 Q: Okay. They didn't have -- a lot of these facts, they
12 didn't have any other way?

13 A: That's right, without -- in this case it was Brandon, but
14 without one of -- yes.

15 Q: Okay. So, the facts that Brandon gave in his statement
16 to the solicitor in an attempt to help himself were used
17 against him in the guilty plea hearing?

18 A: It ended up being that way, yes.

19 Q: Okay. Did you hear, during the recitation of the facts,
20 which is from the middle of Page 8 through -- it gets real
21 heated around the middle of Page 10.

22 A: Yes.

23 Q: Did you hear facts that were not as you understood them?

24 A: I don't know if I'd put that -- I definitely heard --
25 what I was hearing was a certain characterization. So, I

Littell v. State - 2016-CP-26-05251
ERIC FOX - DIRECT BY BAILEY

52

1 don't know that I disagreed at the time with specific facts,
2 but what was extremely striking to me and what this transcript
3 can't begin to show was the tone, the tone was extremely
4 aggressive, extremely -- I would use the word vicious. I
5 thought it was more appropriate to the closing argument that
6 you would give in a sentencing phase of a death penalty case
7 rather than a plea with a cooperating witness, defendant. So,
8 I'm not saying they're aren't facts in there that aren't
9 correct, but at the time, I was thinking much more about the
10 tone. But even then, I thought, well, this is a lot of show
11 for the -- because Ms. Monin's family was there. I knew at
12 the time, at least I was hoping that that was really more of a
13 show for the family than, than an effort to get the Judge to
14 impose a maximum sentence, but ---

15 Q: Did you ever object?

16 A: I did not.

17 Q: There were some facts that you disagreed with, hard
18 facts?

19 A: Looking back, yes.

20 Q: Okay. And did you object to those?

21 A: No.

22 Q: To the way that those facts were characterized?

23 A: No.

24 Q: At one point, the Court asks, and those of us who
25 practice in front of Judge Hyman and know him well, this is an

1 important fact to him ---

2 A: Right.

3 Q: Was this a robbery or a killing?

4 A: Right.

5 Q: And Solicitor Livesay says, this is a straight up murder,
6 this is no robbery or killing. And did you object to that?

7 A: I did not. The transcript speaks for itself. I didn't.

8 Q: There was -- you testified earlier there was a, at least
9 implicit if not explicit promise that if Brandon helped them,
10 Brandon helped the solicitor, that they would help him in some
11 way.

12 A: No doubt. No doubt in my mind, anyway.

13 Q: And during this plea hearing, did the solicitor help, did
14 the state help Brandon in any way?

15 A: Exactly the opposite.

16 Q: And did you object to that?

17 A: I didn't.

18 Q: Okay. Now, the juvenile waiver hearing, that happened
19 before this plea.

20 A: Yeah.

21 Q: Brandon's testimony was used in that juvenile waiver
22 hearing, was it not?

23 A: Absolutely.

24 Q: Brandon didn't testify live?

25 A: No.

Littell v. State - 2016-CP-26-05251
ERIC FOX - DIRECT BY BAILEY

54

1 Q: But much of the evidence was admitted through hearsay and
2 his statement was used?

3 A: I believe so. I wasn't present for that but that's my
4 understanding and the state was just now aware of the
5 circumstances that allowed them to present their case -- with
6 that information to present that case in an obviously more
7 effective way.

8 Q: So, the information that Brandon gave was useful to the
9 state; is that right?

10 A: Not only -- no question. I don't believe that juvenile
11 would've been waived up without it.

12 Q: Okay. Did the state sufficiently communicate that
13 cooperation and its usefulness to the Judge in this plea
14 hearing?

15 A: I think the transcript kind of speaks for itself. No,
16 looking back, I would say not.

17 Q: And did you object to that?

18 A: No. Partly what was going on in my own mind was I've
19 been in similar situations where each -- you know, the
20 solicitor has a role of things they need to say and I
21 hopefully know, based on conversations, what the outcome is
22 gonna be. And sometimes it's some theatre, and that's what I
23 was hoping it was. As it started to go very differently, I
24 was still thinking in my mind, well, we've settled this, more
25 or less, in chambers and we're still gonna get to the right

1 place and the Judge will probably say some tough words, but
2 then hand down the sentence in line with what we expect,
3 because I've seen that many times, but, you know, I didn't --
4 the transcript, I mean, it's clear. I didn't object or add or
5 take exception to anything that she was saying.

6 Q: And the victims in this case asked for the maximum
7 punishment under the law; isn't that right?

8 A: They did. And that was -- they did and that was one of
9 the things we discussed with the Judge in chambers that they
10 would be present, that they would be seeking the maximum. So,
11 he was aware -- that was not a surprise.

12 Q: Okay. But did you object to that as a violation of the
13 no recommendation, no negotiation?

14 A: No, I mean again, that's -- I didn't.

15 Q: Now, towards the end of the transcript -- I'm gonna
16 direct you to Page 22 is where we start your section on
17 mitigation. Your case for mitigation of the sentence on the
18 record was that Brandon was young; is that right?

19 A: Yes.

20 Q: That Brandon has some drawings that he did in jail; is
21 that right?

22 A: Yes, he had something he wanted me to hand up and -- in
23 the moment, I decided that was not the best way but, yes, I
24 did mention that he'd given me some.

25 Q: And that he was pleading guilty.

Littell v. State - 2016-CP-26-05251
ERIC FOX - DIRECT BY BAILEY

56

- 1 A: Yes, and I did discuss, although briefly, I did discuss
2 his cooperation and taking responsibility, not trying to
3 minimize his own involvement in the ---
- 4 Q: Did you at all go into Brandon's family?
- 5 A: No.
- 6 Q: Brandon's education?
- 7 A: No.
- 8 Q: Brandon's background?
- 9 A: No.
- 10 Q: Brandon's hobbies and activities as a child?
- 11 A: No.
- 12 Q: Any other typical mitigation that is presented -- was
13 there any other mitigation presented other than those facts
14 that I summarized earlier?
- 15 A: No, that's right -- no.
- 16 Q: Okay. And in fact, on Page 25, it looks like Line 18,
17 can you read into the record the sentence that starts -- well,
18 it starts on Line 17. I think Brandon ---
- 19 A: I said, I think Brandon -- there are reasons -- I'm
20 referring to something I said previously -- I think Brandon,
21 there are reasons he did a monstrous act.
- 22 Q: And also Page 26, Line 14.
- 23 A: Uh-huh, (affirmative response).
- 24 Q: Can you read Line 14?
- 25 A: Judge -- I'll go up one line -- the final thing I'd say,

Littell v. State - 2016-CP-26-05251
ERIC FOX - CROSS BY JAMES

57

1 Judge, is he did a very cowardly thing, he would agree with
2 that.

3 Q: So, in your mitigation portion, you called Brandon's
4 actions monstrous and cowardly; is that right?

5 A: I did. There was a context to both but I absolutely used
6 those words, absolutely.

7 Q: I am just about done. Thank you for your patience. I
8 have a few technical things I want to make sure that I've
9 covered.

10 A: Okay.

11 Q: You never filed a motion to enforce any kind of plea
12 offer for 25 years that Brandon thought was on the table at
13 some point?

14 A: I didn't. In my mind, we never had that agreement. So,
15 I didn't.

16 Q: And you never filed a motion to enforce a plea agreement
17 even for the general consideration of we'll help you, we'll --
18 Brandon will help the state and the state will help Brandon?

19 A: No.

20 Q: And I think that actually covers all of the technical
21 aspects that I wanted to go through. So, I have no further
22 questions for you. Thank you.

23 CROSS EXAMINATION OF ERIC FOX BY MR. JAMES:

24 Q: Mr. Fox, regrettably I became a lawyer because I didn't
25 want to do too much counting and there were a great many dates

Littell v. State - 2016-CP-26-05251
ERIC FOX - CROSS BY JAMES

58

1 that were set forth for when you met with your client.

2 A: Yes.

3 Q: Precisely how many times did you meet with Mr. Littell?

4 A: I agree with him -- I didn't count myself, but I agree
5 with him it was probably eight or nine times.

6 Q: Okay.

7 A: I feel there were some probably communications through
8 letters, but face-to-face, eight or nine times.

9 Q: And you indicated that you filed a supplemental motion
10 for discovery?

11 A: I did. Initially because we hadn't received any. When I
12 filed that, we received it very quickly after.

13 Q: Okay. Did you receive everything very quickly after?

14 A: There was still some of those things that Ms. Bailey
15 asked me about, some of the contact information, 911 call, and
16 the DNA stuff -- while we're aware it was there being tested,
17 I don't believe we ever got result -- I don't think the
18 solicitor ever got results for those.

19 Q: Okay. Just to be clear, you don't think the solicitor
20 had the results of those tests yet?

21 A: Not the DNA, no; I don't.

22 Q: Okay. All right. Was this an issue that was on the
23 trial docket or likely to come up on the trial docket soon?

24 A: If it hadn't been resolved with all three defendants --
25 you know, it was being talked about. They pled in February.

1 Likely, if it hadn't been resolved sometime in the next few
2 months, or through the summer, you know, the next say six
3 months, it probably would have. So, it wasn't imminent but,
4 you know, it was getting closer if it was gonna be a trial for
5 any of them.

6 Q: But there was still gonna be a little bit of time before
7 a potential trial came along if he chose not to plead guilty?

8 A: Yes. It wasn't gonna happen that next week, you know,
9 after he pled, you know, that plea date. It wasn't gonna be
10 next week or even next month.

11 Q: And so there was still time in the judicial process for
12 the solicitor to produce and then produce to you certain items
13 of discovery and whether they were forensic reports or this,
14 that, or the other?

15 A: Practically, yes. I would've probably objected or had
16 issues, discovery issues with the timeliness of things but,
17 you know, reality is I expect we would've had everything and
18 we could've addressed continuances or other issues if I
19 didn't.

20 Q: And just one of the unfortunate realities of criminal
21 practice is that discovery in many respects is ongoing, it
22 just keeps coming?

23 A: It is an ongoing obligation and it frequently trickles
24 through, sometimes even during trial.

25 Q: Okay. And so you frequently have to advise your clients

Littell v. State - 2016-CP-26-05251
ERIC FOX - CROSS BY JAMES

60

1 and make decisions as to how to advise your clients before you
2 have all the information in front of you, correct?

3 A: Sometimes, yeah.

4 Q: Okay. Would it be an accurate description of your
5 testimony to say that there as something of a time crunch due
6 to the concern, your concern, about the codefendants who could
7 identify Mr. Littell striking a deal that would be adverse to
8 Mr. Littell?

9 A: Yes. And I couldn't say exactly what that timeframe was
10 gonna be. It's just my experience told me you've got this
11 juvenile who is gonna be just much less serious to be
12 sentenced in family court than as an adult for these kind of
13 charges in terms of how much time you could get. So, I felt
14 very strongly, he would be looking for a way to avoid coming
15 to general sessions, which would include or quite possibly
16 discussing Brandon's involvement and then again, knowing the
17 lawyer, that I do was that was representing the adult, she
18 does not let any dust gather on her heels and it wouldn't be
19 -- now, if Mr. Littell had said, don't matter, this is a trial
20 all the way, then -- you know, that's a whole different thing.
21 But, yes, I felt like we needed to be first in line.

22 Q: And that played an element in the nature of the counsel
23 that you gave to Mr. Littell?

24 A: Yeah. I know I discussed that with him as well, that
25 fact, as, you know. It's kind of like a chair game, you know,

1 there's so many chairs and you've got to be the -- get to one.

2 Q: And to be clear, these individuals are already
3 identified, they were already known to law enforcement?

4 A: They were. I think they were all arrested, if not the
5 same day, very close together, they were.

6 Q: So, it's not like they were potential codefendants who
7 were floating out there unknown to law enforcement?

8 A: No, they were known and arrested.

9 Q: Did you -- there was a blink-and-you-miss-it moment in
10 your testimony where you indicated that nobody brought up
11 voluntary manslaughter until perhaps you did. Did you ever
12 mention the possibility of voluntary manslaughter to Mr.
13 Littell?

14 A: I honestly don't recall. We may've discussed, you know,
15 possible outcomes -- it might be that -- I know we -- I
16 explained to him, all right, look, murder is gonna be 30 to
17 life, mandatory minimum 30, day for day, you know, you can't
18 get probation, can't be reduced, can't be suspended. So, I
19 don't specifically recall, but in terms of there are things we
20 can hope for. We may've discussed trying to get it down. I
21 would say that was a no-starter from the beginning with Ms.
22 Livesay, and that never changed.

23 Q: Did you ever tell him he would receive 30 years if he
24 pled guilty?

25 A: Never as this is what will happen. I told him about my

Littell v. State - 2016-CP-26-05251
ERIC FOX - CROSS BY JAMES

62

1 conversations with -- what I was hoping to get, no doubt, was
2 to keep it down there, and the reasons I thought we had a good
3 shot. And I relayed that pretrial status conference we had
4 with Judge Hyman that made me hopeful. But I tried to be
5 careful not to -- I think I -- I know I said it, I don't know
6 if I emphasized it enough, look, we still -- we don't have a
7 deal, you're still in the Judge's hands, 30 is not locked
8 down.

9 Q: You indicated that there was context for using the terms
10 monstrous act and cowardly. What was that context?

11 A: If you could -- let me see. Let me get back to those.

12 Q: We're looking back to pages ---

13 A: Well, with the monstrous, I said, he's done a monstrous
14 act, but he's not a monster.

15 Q: Right.

16 A: And then with the cowardly, I said this was a cowardly
17 act, but now he's doing the bravest thing he can, which is to
18 take responsible -- and has done, he's taken responsibility,
19 you know, he's admitted his involvement, he's put himself in
20 jeopardy, and he's been willing to testify, because we didn't
21 know until really a week or so before whether the others would
22 go to trial and he'd be in a position of being a witness in a
23 trial against people that were his friends, so...

24 Q: So, in the full context, it wasn't just, oh, this is
25 monstrous; it was this is monstrous but, this was cowardly

1 but...

2 A: That was my intention. I hope it came across that way.

3 Q: All right. In your experience as a defense attorney, do
4 you generally find extended discussion of your client's
5 cooperation to be effective mitigation?

6 A: It depends on the content. That's one of the main
7 reasons to cooperate is sometimes you have a very specific
8 deal. A lot of times you don't in more serious cases. So,
9 you certainly expect it and hope it would. That's one of the
10 reasons to cooperate.

11 Q: I beg a moment -- if the Mr. Littell had said that he
12 didn't want to go forward with the plea and that he wanted to
13 take you -- take this to trial, would you have been prepared
14 to do so or could you have been prepared to do so?

15 A: Oh, yeah. It's -- not on the day he pled, but yes, of
16 course.

17 MR. JAMES: I have no further questions for this witness,
18 Your Honor.

19 MS. BAILEY: Just a couple of questions on redirect.

20 REDIRECT EXAMINATION OF ERIC FOX BY MS. BAILEY:

21 Q: You just testified that when you went to see Brandon and
22 told him about your conference with Judge Hyman, you told him
23 we don't have a deal, it's still in the Judge's hands.

24 A: Yes.

25 Q: You tried to effectively communicate that to him, that

Littell v. State - 2016-CP-26-05251
ERIC FOX - REDIRECT BY BAILEY

64

1 was your testimony, right?

2 A: Yeah. I also relayed the, you know, the 30/20/10 story,
3 but yes I tried to -- I guess, lower expectations on his end.

4 Q: As a very experienced criminal defense attorney, you have
5 done over the years very difficult straight-up pleas with no
6 negotiation or recommendation, right?

7 A: Rarely, but yes.

8 Q: And when there is truly no negotiation or representation,
9 don't you often bring in family, preachers ---

10 A: I have done it and unfortunately sometimes my clients
11 really don't have anyone to stand with them. But, yes, that's
12 a very common thing.

13 Q: School records?

14 A: And even -- and even when you have a recommendation,
15 which of course isn't a guarantee, sure.

16 Q: So, you've done what some of us call the full dog-and-
17 pony show in mitigation?

18 A: I have, yes.

19 Q: With records, and letters, and all kinds of available
20 mitigation?

21 A: No question.

22 Q: Yet in this case, you did not; isn't that right?

23 A: That's correct.

24 Q: So, while you, according to your testimony were telling
25 Brandon, we don't have a deal, it's still in the Judge's

1 hands, your actions, you were acting as if you did have a
2 deal; isn't that right?

3 A: I wouldn't disagree with that.

4 Q: And in fact, your prior testimony that you didn't object
5 to a lot of what was happening in the courtroom was because

6 ---

7 MR. JAMES: I'm going to object. This is beyond the
8 scope of cross examination.

9 THE COURT: I'm gonna allow it.

10 BY MS. BAILEY:

11 Q: Your prior testimony that you didn't object to a lot of
12 what was happening in the courtroom that was unexpected, that
13 was because you thought you had a deal, right?

14 A: Yes. And I think I very arrogantly thought, well, they
15 won't -- this won't happen to me, and by conjunction with my
16 client, quite frankly. That I can do this. It doesn't matter
17 despite what people are saying here in the courtroom before my
18 very eyes, what I've heard before is gonna override all of
19 that and it's not gonna matter. And that was a disaster.

20 Q: Do you wish that you'd handled this case differently?

21 A: I don't -- I would on the same facts still advise the
22 same -- at least initially the same path, and look to
23 cooperation. But absolutely would have given all the players
24 involved, meaning the solicitor and the Judge, I would not do
25 anything without some kind of recommendation. I had probably

Littell v. State - 2016-CP-26-05251
ERIC FOX - REDIRECT BY BAILEY

66

1 the two lawyers, whose opinion I respect the most, tell me
2 don't do that that way with that judge. And these are very
3 experienced -- not just experienced lawyers but experienced
4 criminal lawyers in this county. And two of them said exactly
5 the same thing.

6 Q: Did they say ---

7 A: That way with that judge.

8 Q: Did they say that to you before the plea or after?

9 A: Before. And I thought, well, that might apply to
10 everybody else but it doesn't apply to me.

11 Q: And did you make any attempt, when it was clear that the
12 plea was taking a left turn into -- in a direction that you
13 did not expect, did you make any attempt to stand it down to
14 regroup?

15 A: No. I did not. To be perfectly honest, even the way
16 things were going, as I said, I thought really a lot of it was
17 -- truly was kind of a show. And until Judge Hyman began to
18 speak, it was pretty clear at that point where he was going.
19 I still really did think this is gonna -- I mean, this is
20 fine. Everyone has said their peace and they've said it the
21 way they need to and that's all well and good. So, I didn't
22 at that point. I felt it was too late. Now, after, there was
23 all kinds of scrambling from everybody including the
24 solicitors and the head solicitor, Mr. Richardson, and Judge
25 Hyman, and of course, the codefendants' lawyers and for

Littell v. State - 2016-CP-26-05251
CLOSING BY BAILEY

67

1 several -- anyway, it -- there was lots of chickens running
2 around with their heads cut off after the fact.

3 Q: I have no further questions.

4 MR. JAMES: Nothing further from the state.

5 THE COURT: You can step down, sir.

6 MR. FOX: Thank you.

7 MS. BAILEY: Your Honor, this was in my written
8 pleadings, but I would ask that the petition be amended to
9 incorporate all the allegations that were made today.

10 THE COURT: Any objection?

11 MR. JAMES: That's a skosh vague. If there can be a
12 specific articulation of which allegations were testified to
13 other than those set forth in the amended application for
14 post-conviction relief.

15 MS. BAILEY: I believe that they've all been covered.
16 Some of them overlap. How about this, let me make my closing
17 argument. I do have a brief closing argument for Your Honor,
18 and then I think that will be clearer. Does that make sense?

19 MR. JAMES: I would defer to Your Honor.

20 THE COURT: Sure.

21 MS. BAILEY: Thank you, Your Honor.

22 CLOSING ARGUMENT BY BAILEY:

23 MS. BAILEY: Your Honor, as you consider what you just
24 heard, I would ask you to look at *Nance v. Ozmint*, which is
25 367 S.C. 547. That is a South Carolina case that incorporates

Littell v. State - 2016-CP-26-05251
CLOSING BY BAILEY

68

1 and references a United States Supreme Court case, which is
2 *United States v. Cronin*. Those two cases address what they
3 terms the breakdown of the adversarial process. That when it
4 happens that a criminal case goes from start to finish and
5 there has never been any adversary from the defendant's side
6 towards the state that prejudice can be presumed.

7 In the South Carolina case, the *Nance* case, there is even
8 a reference to the attorney in that case called his client a
9 very sick man who did a very sick thing. And that's one of
10 the reasons that was referenced, that the attorney throughout
11 the course of the representation, all the way up through trial
12 never provided any meaningful adversarial relationship with
13 the state. And that when you have that situation that there's
14 no need to show prejudice, that prejudice is actually
15 presumed.

16 I would argue, Your Honor, that this case is analogous to
17 that. Mr. Fox in fact handed the state the evidence that they
18 used ultimately to get a life sentence on Brandon Littell.
19 Many of the facts that were recited at his own plea hearing
20 came out of his own mouth. He only gave that statement
21 because his lawyer told him to go give the statement. When
22 Brandon was arrested, he actually had the good sense to say, I
23 want a lawyer. I don't want to talk to the police until I
24 have a lawyer. He invoked his rights. Then he talks to the
25 lawyer, that lawyer did not fully review the discovery either

1 for his own purposes or with Brandon. And the lawyer advises
2 Brandon to go self-incriminate. That self-incriminating
3 statement, which was only given on the advice of a lawyer with
4 no -- zero consideration, nothing in writing, no consideration
5 that anybody can remember that's enforceable. Those self-
6 incriminating statements cannot then be used to say under the
7 PCR standard that, well, there's no prejudice because he
8 would've been convicted anyway. There is prejudice because
9 all of that came from his own statement which he only gave
10 because his lawyer told him to.

11 Brandon was 19 years old. As Mr. Fox testified, Brandon
12 was gonna do what Mr. Fox told him to do. Mr. Fox told him he
13 needed to cooperate, he needed to plea, he needed to get on
14 board. And so that's what Brandon did and he got a life
15 sentence. He got zero consideration for self-incrimination.
16 And not just self-incrimination but he helped with a juvenile
17 waiver hearing, helped to get that juvenile up to adult court.
18 And he helped the family with some of the important details of
19 their daughter's death, helped suss out who did what, which
20 both of which were important to the state. The state got what
21 they wanted out of Brandon and then they used it against him.
22 And through the entire process, Eric Fox never objected. He
23 didn't object when the plea was going south. He didn't object
24 when the facts were not as he understood them. He didn't
25 object when it was clear what was gonna happen was not what he

Littell v. State - 2016-CP-26-05251
CLOSING BY BAILEY

70

1 expected to happen. He didn't even fully prepare a mitigation
2 as we are used to seeing in any murder case.

3 Your Honor, I would encourage you to read the mitigation
4 portion of the transcript before you make a decision.

5 Literally the mitigation was, Brandon is 18, he draws some
6 pictures, and he's up here admitting guilt. That was it. He
7 had nothing else nice to say about this young man at a murder
8 plea, which was wide open and he could've received life.

9 Your Honor, I was able to elicit some testimony from Mr.
10 Fox that I think is important for your consideration, which is
11 that he's saying what we all say as criminal defense lawyers
12 which is, well I did advise my client that he could get
13 anything, that he could get anywhere from 30 to life. Mr. Fox
14 acknowledged that his own actions were consistent with an
15 understanding that there as an agreement on the low end of
16 that for 30. He didn't prepare a full mitigation. He didn't
17 object when objectionable things were happening in the
18 courtroom because he assumed it was all for theatre, because
19 in his mind, they already had a deal. In his mind, his client
20 was locked in for 30.

21 Your Honor, I would submit that that had been
22 communicated to Brandon as well, because it was communicated
23 here in the courtroom and it was communicated through his
24 actions.

25 Also, I would say that Mr. Fox was ineffective for

Littell v. State - 2016-CP-26-05251
CLOSING BY BAILEY

71

1 failing to object to -- or failing to file a motion to enforce
2 a plea agreement. I would point Your Honor to *Custodio v.*
3 *State*, which is a South Carolina Supreme Court case. It's 373
4 S.C. 4. That particular case says that the defendant must
5 detrimentally rely on the plea agreement in order for it to be
6 enforceable. In this case, Mr. Littell certainly did rely on
7 it because he self-incriminated and that self-incriminating
8 statement was later used against him, and he didn't even get
9 the benefit of any kind of bargain. So, it was ineffective
10 for Mr. Fox to not file some kind of motion or make some kind
11 of objection either before or during that plea hearing that
12 that agreement was enforceable.

13 I would also point Your Honor to *Jackson v. State*, that's
14 342 S.C. 95, again South Carolina Supreme Court. That case
15 specifically addresses guilty pleas and the standard for PCR
16 and guilty pleas that it is possible to have a PCR in a guilty
17 plea but that the key prejudice element, should Your Honor not
18 chose -- should Your Honor not see this case in light of the
19 presumed prejudice that I talked about a few minutes go. You
20 are examining the second element for prejudice, the *Jackson*
21 case that -- would be the one and it says that the key to
22 prejudice in a guilty plea case is that the defendant would
23 not have pled guilty but for the counsel's errors. And that
24 testimony came from Mr. Littell when he was on the stand. He
25 said that he pled guilty because Eric Fox told him to self-

Littell v. State - 2016-CP-26-05251
CLOSING BY JAMES

72

1 incriminate. Eric Fox told him to plead guilty without a
2 recommendation. He says that if Eric Fox had told him to go
3 to trial, he would've gone to trial.

4 So, under that *Jackson* analysis, that prong of prejudice
5 is met because Brandon wouldn't have pled guilty if he wasn't
6 led to do so and if those errors weren't made. And Eric Fox,
7 trial counsel, even admitted the same thing. He said Brandon
8 was gonna do whatever way I led him. And, Your Honor, *Johnson*
9 *v. Catoe*, 336 S.C. 354 also stands for that same proposition.

10 So, in conclusion, Your Honor, the worst possible thing
11 that can happen to someone in a non-capital murder case, is
12 that they receive life without parole, that they receive
13 natural life. In this case, Brandon Littell listened to his
14 lawyer every step of the way, every single step of the way.
15 He did exactly as Eric Fox instructed him to do. And on a
16 plea, on a guilty plea, he still received life without parole.
17 I think that the ineffective assistance of counsel and the
18 prejudice speak for themselves in that situation.

19 Thank you.

20 THE COURT: Thank you.

21 Mr. James?

22 CLOSING ARGUMENT BY JAMES:

23 MR. JAMES: Your Honor, Mr. Fox was assigned to Mr.
24 Littell and from the get-go, the clock was ticking. He gets a
25 story out of his client to indicate that he and some of his

1 friends are riding along with two victims. And as they're
2 going along, they shoot them. And as the female victim goes
3 to try and get away, try and run away, his friends chase her
4 down, beat her to death with a cinder block, stomp her to
5 death, and she parishes. Somehow by the miraculous -- miracle
6 of providence, the male victim gets away and survives.

7 Now, Mr. Fox understands right away that there are
8 multiple codefendants, two of them at the very least, who can
9 identify Mr. Littell, and that plays into his calculus as to
10 what it is that Mr. Littell should do. Because as he
11 indicated from that stand, it's a game of musical chairs if
12 you're gonna try and cooperate and get anything resembling
13 mercy from the Court when you inevitably plead guilty, let
14 alone to go trial.

15 Mr. Fox is subject to the same general imperfections of
16 the criminal justice system as any other attorney. We don't
17 ask our defense attorneys to be held to a standard that
18 presumes that they know everything, that presumes that they
19 can know everything, that presumes that they can wait until
20 they know everything before the counsel their clients. We ask
21 -- we hold them to a standard of reasonableness under
22 prevailing professional norms. And a reasonableness under the
23 facts that are before them and as the evidence and as the
24 testimony shows, Mr. Fox was more than reasonable in his
25 counseling of Mr. Littell.

Littell v. State - 2016-CP-26-05251
CLOSING BY JAMES

74

1 Your Honor, there's been some extended discussion as to
2 what Mr. Fox could've done, should've done in the course of
3 his mitigation for his client, Mr. Littell. I would
4 respectfully submit to you that we're left with mere
5 speculation as to what sort of additional mitigation should've
6 been submitted other than perhaps Mr. Littell's age, what kind
7 of family upbringing he may've had. I didn't actually hear
8 what kind of family upbringing he may've had. There were no
9 family members presented as witnesses, there were no pastors
10 presented as witnesses, not teachers, no friends. And under
11 the standard of post-conviction relief, without those kind of
12 witnesses here, we're left with mere speculation and you
13 cannot find prejudice.

14 Your Honor, I respectfully submit that *Cronic* just does
15 not apply. There is clear evidence that there was
16 representation of Mr. Littell, that there was thoughtful
17 representation of Mr. Littell in the context of all the
18 general difficulties that every defense attorney must deal
19 with when they're trying to represent an individual who is
20 alleged to have committed extraordinarily grave, horrid
21 crimes.

22 Your Honor, ultimately, the decision to plead was on Mr.
23 Littell. He knew that he had the right to trial. He knew
24 that he could stop what he was doing and go get one. He
25 affirmed the facts that were presented by the state, he

1 affirmed that he had reviewed his discovery on the record, he
2 affirmed that he in fact committed murder. He was told
3 blatantly he'd get 30 to life. And he can say well, I didn't
4 understand this way, I didn't understand that way. And it's
5 very understandable that he would testify to that effect now
6 that he's gotten the absolute worst that he could've possibly
7 gotten. There is no question about that. Short of possibly
8 that this case could've been brought up as a capital case,
9 he's gotten the worst sentence available. But that doesn't
10 change the fact that Mr. Fox was reasonable in every judgment
11 he made. He's articulated why he made every judgment he made.
12 He has expressed the understandable regrets of a defense
13 attorney who didn't get the outcome that he wanted for his
14 client. He has admitted to the arrogance of experience, which
15 is understandable to believe that -- well, we had the
16 discussion in chambers, it went this way, I got a good read of
17 it, I think things are gonna go well. It's understandable to
18 see that he would've thought that things would've gone well
19 despite the efforts of the state and perhaps more importantly
20 the victims in the course of the plea proceeding.

21 One thing that I would note, because I don't think
22 there's really all that much more to say, is that towards the
23 end of the plea proceeding in the transcript that you see,
24 it's very evident that Judge Hyman is upset, even on the cold
25 transcript. And that he asks Mr. Littell what happened, why

Littell v. State - 2016-CP-26-05251
BY THE COURT

76

1 did this happen? Why did this have to happen? Why did he try
2 to kill them both? And he goes on Page 28, Line 10, he asks:
3 Answer this question very carefully. Why? Mr. Littell gives
4 no response. He asks again, there was a reason why. And Mr.
5 Littell responds Kelsie just happened to be there. For
6 everything else that happened, for everything else that was
7 said, for everything else that was offered by the state, for
8 everything else that offered by the victims, Your Honor, I
9 respectfully submit to you that it was that answer and that
10 answer alone that sealed Mr. Littell's fate if he was going to
11 get a life sentence. The clean free admission that somebody
12 died just out of the outrageous consequence that they were
13 there. Ms. Livesay was accurate when she set forth the facts
14 at the plea proceeding. This was just a murder.

15 Thank you.

16 I ask that you deny the application for post-conviction
17 relief.

18 BY THE COURT:

19 THE COURT: Thank you. I'll take it under advisement.

20 MS. BAILEY: Thank you, Your Honor.

21 ADJOURNED.

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of Brandon James Littell v. State of South Carolina, held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on 27th, 2018, are reported by Dixie C. Eubank.

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



Kay H. Richardson
Official Court Reporter

July 2, 2019.

	<u>1</u>	
	<u>LITTEL</u>	
	<u>SAR-Motion</u>	
	①	Witness contact info * tapes
		a) Jenica Bellamy *
		b) Johna Bellamy *
		c) Carl Bellamy
		4) Jennie Sanders *
	②	* interview of Michael Bellamy + interview of Digen Johnson
	③	HKPD witness record "I will sheet of paper w/ ph #'s + EMAIL ADDRESSES
	④	9-1-1 calls

~~check
HKPD~~

EXHIBIT
Applicants
dec 1 11-27-18

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY)	
Brandon James Littell,	)	Case No.: 2016-CP-26-05251
S.C.D.C. No. 363181,)	
)	
Applicant,	)	ORDER OF DISMISSAL
)	
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

This matter comes before the Court by way of an application for post-conviction relief filed by Brandon James Littell (“Applicant”) on August 8, 2016, amended by and through counsel on November 20, 2018. Respondent made its return on or about July 27, 2017. The Court convened an evidentiary hearing into the matter on Tuesday, November 27, 2018, at the Horry County Government & Justice Center in Conway, South Carolina. Applicant was present at the hearing and represented by Erin E. Bailey, Esq. Johnny Ellis James Jr., of the South Carolina Attorney General’s Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant’s plea counsel, J. Eric Fox, Esq. (“Counsel”) also testified. The Court had before it Applicant’s records from the South Carolina Department of Corrections, a copy of the original plea transcript, the records of the Horry County Clerk of Court regarding the subject convictions, Applicant’s direct appeal records, the exhibits introduced at the evidentiary hearing, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the January 2015

term of the Horry County Grand Jury for murder (2015-GS-26-00428), attempted murder (2015-GS-26-00429), and armed robbery (2015-GS-26-00430). Applicant was further indicted at the July 2013 term for burglary, second degree (2013-GS-26-02843), and larceny, value between \$2,000 and \$10,000 (2013-GS-26-02844). J. Eric Fox, Esquire represented Applicant, and Nancy Livesay, of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On February 26, 2015, Applicant pled guilty to murder; all other charges were dismissed *nolle prosequi*. The Honorable Larry B. Hyman, Jr. sentenced Applicant to imprisonment for a term of life.

Applicant filed a timely notice of appeal. By order filed January 26, 2016, the South Carolina Court of Appeals dismissed the appeal for failure to show an issue that could be reviewed. The Remittitur was issued on February 11, 2016.

Present Application

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

1. "Ineffective Assistance of Counsel" and Involuntary Guilty Plea
 - a. "This plea was not taken knowledgable [sic], was not fully aware,"
 - b. "My lawyer didn't explain [what] I was truly facing, this plea was made unintelligently, and he did not represent me to the best of his ability."

Applicant requests relief as follows:

- "Case Reversal or Renegotiation of Sentence"

By and through PCR counsel, Applicant amended his application by filing on November 20, 2018, to allege the following additional grounds for relief:

1. "Ineffective Assistance of Counsel as to Eric Fox:"
 - a. "Failed to fully review the evidence with the Defendant before recommending that the Defendant give a self-incriminating statement."
 - b. "Failed [to] acquire all of the evidence and documentation in the case, specifically the statement of Brandon Littell given to Law Enforcement the day he was arrested."

- c. "Failed to effectively communicate and advise the effect of the Proffer agreement."
- d. "Failed to object when the Solicitor did not adhere to the prior plea agreement."
- e. "Failed to object when the Solicitor violated the Proffer agreement by not communicating the extent of the Defendant's cooperation to the Judge."
- f. "Failed to effectively and fully communicate."

Applicant further preemptively requested to be permitted to amend the application to conform to the evidence presented at the PCR hearing.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

A. Ineffective Assistance of Counsel - Strickland

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Butler, 286 S.C. at 442, 334 S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

"[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler, 286 S.C. at 442, 334 S.E.2d at 814 (quoting Strickland, 466 U.S. at 690). The applicant must overcome this

presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). “Judicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” Strickland, 466 U.S. at 689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). “[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

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, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688). Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 694). With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland, 466 U.S. at 696. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is

easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

1. Failure to Acquire, Review Evidence with Applicant

Applicant alleges Counsel was ineffective in failing to review all of the evidence with him before recommending he proffer a self-incriminating statement to the prosecution. The brevity of time spent by an attorney in consultation with his client, without more, does not establish that counsel was ineffective. *Harris v. State*, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (citing *Easter v. Estelle*, 609 F.2d 756, 759 (5th Cir. 1980)). In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. *Id.*, 377 S.C. at 75-76, 659 S.E.2d at 145-46 (citing *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. *Id.* (citing *Davis v. State*, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); *Skeen v. State*, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. *Id.*, 377 S.C. at 75, 659 S.E.2d at 145 (citing *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

At the evidentiary hearing, Applicant testified he met Counsel "a couple of times" after he was arrested on June 20, 2013. Applicant recalled receiving discovery a few months later. Applicant testified that although he wanted a trial, Counsel believed the case had to be resolved by a plea bargain. Applicant claimed Counsel did not review the discovery with him, but only made a copy of the materials available to him. Applicant asserted that he wanted to hear recordings

in evidence, but that he never got them. Nonetheless, Counsel recommended cooperating with the prosecution and that Applicant explain exactly what happened. Applicant recalled he gave a statement to law enforcement when he was first arrested, and that he had told police he had been smoking marijuana on the beach on the night in question. Applicant denied ever seeing a written plea offer and expressed that he did not know what a proffer was at the time of the evidentiary hearing. Applicant testified Counsel did not discuss potential defenses with him. Applicant testified he did not believe the State had a case against him. Applicant testified there was no discussion of self-defense and no discussion of photographic lineups, but only discussions about pleading. Based upon Counsel's advice, Applicant gave a proffered statement to the prosecution. Applicant noted he asked for a bond hearing and wanted to be present for a preliminary hearing in order to learn the identities of his co-defendants. On cross-examination, Applicant criticized the thoroughness of Counsel's review of the case with him, and asserted all Counsel did was look at the discovery with him.

Counsel testified the public defender's office opened a file for Applicant and filed motions for discovery the same day as his arrest—June 20, 2013. Counsel and Applicant met for the first time on June 25, 2013. Counsel recalled it took about four months for discovery to be provided, at which time he mailed a copy to the jail, and that no discovery was available for Counsel and Applicant's first couple of meetings. In particular, Counsel recalled a period of receiving and reviewing discovery from October 11, 2013, to November 23, 2013.

Counsel testified the case was set on "a plea track" based upon what Applicant told him in their meetings and what he understood the State already knew. Counsel recalled telling Applicant that he needed to be the first in line to cooperate. Counsel admitted he did not yet have the statements of Applicant's codefendants at the time of the recommendation, but had the "skinny"

report of the investigation. Counsel testified he met with Applicant prior to the proffer and that while they did not review all of the materials provided in discovery "page-by-page," they did review specific items of concern. In particular, Counsel noted there was strong evidence to identify Applicant as one of the perpetrators. One of the victims of the shooting survived, and there were two co-defendants, all of whom were known to Applicant. Counsel conceded that he had no notes to indicate sending copies of recordings to Applicant, and explained he received recordings of 911 calls and of the codefendants' statements. Counsel testified he reviewed with Applicant the elements of the offenses charged. Counsel opined he could find nothing to support a self-defense strategy, but rather explained Applicant told him a codefendant forced him to shoot the victims; thus there was some discussion of duress. Counsel was unsure if he specifically analyzed the law of duress with Applicant.

Counsel admitted he made his recommendation of cooperation to Applicant before receiving all of the discovery, but noted that nothing later received in discovery changed his opinion. Counsel explained he had been very concerned about the likelihood that the codefendants would identify his client and cut their own deals with the prosecution, especially as one had retained an attorney¹ whose typical practice is to quickly cut very favorable plea deals in exchange for her clients' cooperation. Counsel testified there was no written offer, and explained that the prosecutors don't give a firm offer prior to receiving any statements because they do not know the value of what the proffered statement would be. Instead, Counsel recalled the solicitor gave a vague assurance that the State would help his client. Counsel denied any discussion of the possibility of a 25 year sentence. Applicant thereafter proffered. On cross-examination, Counsel

¹ Barbara Pratt, Esq.

described the case as a game of musical chairs, such that whichever defendant was left standing when the music stopped would lose.

The Court finds no deficiency on the part of Counsel, nor any prejudice to Applicant from the deficiency alleged. The Court finds that although Counsel did initially recommend to Applicant that he cooperate with the State prior to receiving complete discovery, he did so for valid reasons—namely that any delay in fully cooperating would risk losing favorable treatment to codefendants who could themselves inculcate Applicant, and that there was a surviving victim who could identify Applicant. Having articulated a reasonable basis for his advice to Applicant, this Court cannot find ineffectiveness on the part of Counsel. See Smith, 386 S.C. at 567, 689 S.E.2d at 632. Further, the Court finds Counsel did review evidence in his possession with Applicant as it came in. Counsel credibly testified that nothing later received in discovery would have changed his advice to proffer and cooperate with the prosecution, and Applicant testified he proffered in reliance and trust upon Counsel's advice.

The Court does not find credible Applicant's testimony that Counsel did not review evidence and discovery with him at some point prior to his pleading guilty. Applicant has not presented any evidence which, had it been discussed prior to the proffer, would have changed either Counsel's advice or Applicant's decision to rely upon Counsel's advice and cooperate. Applicant's assertion that he did not know the identity of his co-defendants at the earliest stage of proceedings against him is not credible where he ultimately inculpated them, resulting in their own guilty pleas and sentences. Applicant has offered little more than mere speculation, and thus failed to meet his burden of showing anything to result in a different outcome. For all of these reasons, the Court finds no deficiency in Counsel's advice to cooperate with the prosecution, nor any

prejudice to Applicant resulting therefrom. Accordingly, Applicant's request for relief by way of allegations restated as 1.a and b, above, is **DENIED**.

2. Failure to Advise of Effect of Proffer Agreement, Enforce Agreement

Applicant alleges Counsel was ineffective in failing to adequately advise him of what the effect of what proffering a statement would be, and for thereafter failing to enforce what he believed to be a plea agreement. "Absent an actual plea of guilty, a defendant may enforce an oral plea agreement only upon a showing of detrimental reliance on a prosecutorial promise in plea bargaining." Custodio v. State, 373 S.C. 4, 10, 644 S.E.2d 36, 39 (2007) (citing Reed v. Becka, 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999); State v. Peake, 345 S.C. 72, 545 S.E.2d 840 (Ct. App. 2001)). Where a defendant can enforce a plea agreement under the detrimental reliance exception, and where his counsel fails to do so, that counsel's conduct constitutes deficient performance. Id., 373 S.C. at 12-13, 644 S.E.2d at 40. The appropriate remedy where there is a showing of detrimental reliance on a plea agreement which subsequently goes unenforced is specific performance of the breached agreement. Id., 373 S.C. 13, 644 S.E.2d at 40.

At the very outset of the plea proceeding, the State introduced the case to the plea court and stated the plea was "without any sort of recommendation or negotiation." (Tr. 3). The State did dismiss "several other charges" in light of the guilty plea, as explained in the procedural history set forth in Section I, above. Judge Hyman informed Applicant that the Court could impose a sentence of no less than thirty years and up to life imprisonment, which Applicant acknowledged. (Tr. 3, ll. 22-25). Judge Hyman offered Applicant the opportunity to ask him questions, which Applicant declined. (Tr. 7-8). The State articulated a detailed statement of facts providing that Applicant, alongside codefendants Michael Bellamy and Diaquan Johnson, planned the murder of Jason Quinn, and that Applicant shot him and Kelsie Ann Monin, Quinn's girlfriend who only

happened to be present in the car; Quinn escaped with his life, Monin did not. (Tr. 8-11). The solicitor cited throughout its factual recitation that the facts were as provided by Applicant, and acknowledged his cooperation at the conclusion:

Mr. Littell did give a statement and cooperated. That statement was used in the waiver hearing against Diaquan Johnson. But just for the Court's knowing, I had talked to Mr. Fox before he ever gave the statement. We all knew he was pleading to murder. This was merely to give him a chance to cooperate as to the final sentencing hearing. But this has always been a murder plea. His cooperation was just to assist us and to assist his own mitigation.

(Tr. 11, ll. 12-19). Applicant thereafter affirmed he murdered Monin, and his doing so was why he was pleading guilty. (Tr. 11-12). Applicant denied being promised anything to plead guilty, and affirmed he was pleading freely and voluntarily. (Tr. 12, ll. 3-8). Presented a final opportunity to further consider the matter, consult with Counsel, or ask the court any questions, Applicant declined, and affirmed he believed pleading guilty was the best resolution of his case. (Tr. 12, ll. 9-19). The family of the victims spoke at some length and revealed further facts in their understanding of the case, including that the perpetrators "chased [Monin] down when she was able to run from the car and repeatedly kicked her on the ground while she died." (Tr. 13-22) (quotation at Tr. 16, ll. 4-6). Laura Lawrence, a sister of Monin, asked Judge Hyman to keep "these people away from society for as long as possible." (Tr. 18-19). Amy Cappuzello, also a sister, asked Judge Hyman to "punish them all to the fullest extent of the law." (Tr. 21, ll. 22-23). Based on remarks by Monin's father, the solicitor thereafter added that Applicant and codefendants had been trying to start a gang. (Tr. 21-22).

Counsel, in mitigation, noted Applicant's youth and asserted Applicant was standing before the court to take responsibility for his actions. (Tr. 23, ll. 1-8). Counsel revealed Applicant had openly and completely divulged his involvement to Counsel during their first meeting, and "very soon after contacted Ms. Livesay and indicated that he wished to cooperate[.]" (Tr. 23, ll. 9-23).

Counsel noted that at the time Applicant gave statements to the prosecution, they did not yet know the codefendants' postures towards their own charges. (Tr. 23-24). Upon prompting by the plea court, Counsel acknowledged the case could have been elevated to a capital case. (Tr. 24, ll. 2-7). Counsel acknowledged Applicant "committed a monstrous act" but was asking for mercy. (Tr. 25, ll. 10-21). Counsel offered drawings made by Applicant while incarcerated as some evidence of something "more to this young man [than] what he did on June 20th a year and [a] half ago." (Tr. 25-26). Counsel contrasted the cowardice of the killing to the bravery of pleading guilty without negotiation or recommendation, and Applicant's effort "to do everything in the right way both in assisting the State in sorting everything out and telling them everything that he knew and today in pleading guilty without recommendation." (Tr. 26, ll. 13-24). Applicant expressed his remorse, that he was misguided by his codefendants, and that though he wished for forgiveness he understood he did not deserve it. (Tr. 27, ll. 2-17). Counsel followed up and noted that while numerous members of the victim's family spoke on her behalf, no family appeared for Applicant, and implied an upbringing of some difficulty. (Tr. 27-28).

Judge Hyman engaged in a brief colloquy upon the conclusion of Counsel's mitigation:

THE COURT: Mr. Littell, did you intend on that night to kill both of these victims?

MR. LITTELL: We were assuming that Jason was gonna be the only one in the car and Kelsie was driving that day.

THE COURT: Well, she was there when you committed the act, did you intend to kill them both?

MR. LITTELL: Yes, sir.

THE COURT: Answer this question very carefully. Why?

MR. LITTELL: (No response.)

THE COURT: There was a reason. Why?

MR. LITTELL: Kelsie just happened to be there.

THE COURT: She happened to be there? Why was anybody gonna be killed?

MR. LITTELL: Michael Bellamy didn't like Jason.

THE COURT: Didn't like him. You know, Mr. Littell, it's by the grace of the State of South Carolina that you're not facing execution at this time. Do you understand that?

MR. LITTELL: Yes, sir.

(Tr. 28, ll. 3-20). Judge Hyman thereafter sentenced Applicant to life. (Tr. 28-29).

At the evidentiary hearing, Applicant testified he believed he was pleading in exchange for a sentence of thirty years. Applicant also testified he was told of an offer in or about October 2013 that he could plead guilty and serve no more than twenty-five years in prison. However, when he was prepared about a week before pleading guilty, Applicant testified he was told the State would offer, ask for, or expect a thirty year sentence. Applicant explained that when he heard "thirty to life" during the plea proceeding, he believed that was the description of the potential sentence murder carried, not what actually constituted the potential range applicable to him. Applicant asserted Counsel made no motion to enforce the plea agreement, and criticized Counsel for not doing anything in mitigation but offering that he cooperated. Applicant testified he never saw a written plea offer, and was not familiar with the concept of a proffer. Applicant testified he disagreed with some of the factual assertions made by the prosecution during the recitation of facts, and on cross-examination explained he disagreed with the description of the killing as drug-motivated or premeditated. Applicant again asserted he thought he was pleading in exchange for a thirty year sentence.

Counsel articulated the underlying facts succinctly: Applicant and Bellamy were small-time partners in the drug business who thought Quinn was a snitch, so they prepared, Bellamy slipped a gun to Applicant, and Applicant shot both victims point blank in the backs of their heads. Counsel described a good attorney-client relationship, that Applicant trusted him, followed his

advice, and did not withhold any information from him. Counsel explained there was no written offer, but that the prosecution only gave the vague assurance that they would help Applicant in exchange for his cooperation. In particular, the State was interested to know who chased Monin from the vehicle after she was shot. Counsel did not recall any discussion of a plea in exchange for a sentence of twenty-five years.

Counsel recalled meeting with Judge Hyman, solicitor Livesay, and counsels for the co-defendants in January 2015. The purpose of the meeting was to explain the nature of the case to Judge Hyman before the pleas were actually entered. Judge Hyman specifically asked Counsel to articulate the facts of the case, and Counsel complied. Counsel explained the extent of Applicant's cooperation, but also admitted bad facts. The solicitor added nothing to Counsel's recitation. No firm agreement resulted from the meeting in chambers, but Counsel testified there was an understanding that a thirty year sentence was acceptable to the parties, and recalled Judge Hyman jokingly pointing at each of the lawyers in succession, stating "thirty, twenty, ten," as though to indicate Applicant would receive a thirty year sentence and his codefendants would receive twenty and ten. Counsel clarified he never interpreted Judge Hyman's remark to constitute any guarantee of a particular sentence. Counsel again met with Applicant in February 2015, and communicated the results of the meeting in chambers. Counsel recalled telling Applicant that he perceived no red flags from Judge Hyman, and nothing alarming. Counsel could not remember if he told Applicant about Judge Hyman's "thirty-twenty-ten" jest, but did recall warning him that the Judge could sentence anywhere from thirty to life.

Counsel expressed his opinion of the State's presentation at the plea proceeding as "vicious" in tone. Counsel did not believe the State helped in any way, but rather did the "exact opposite of that." Counsel argued that Applicant's cooperation was very helpful to the State's

investigation and prosecution of all three defendants, but that the prosecution did not do much to communicate the value of Applicant's assistance. Nonetheless, Counsel believed the prosecution's tone was "victim theater" and that, given the prior conference in chambers, Applicant would still get a favorable sentence. Counsel did not file any motion to enforce because he did not believe there was an enforceable agreement where any understanding was little more than a generalized "you help us, we'll help you."

On cross-examination, Counsel testified he met with Applicant eight or nine times in the course of his representation. Counsel testified he did not recall ever discussing the possibility of pleading to voluntary manslaughter with Applicant. Counsel asserted he never firmly told Applicant he would get or could expect a sentence of thirty years. On redirect, Counsel recalled explaining to Applicant after the chambers conference that they did not have a deal, and that the outcome was still in Judge Hyman's hands. Nonetheless, asked on the stand if he believed he had a deal, Counsel replied "yes" and criticized his own arrogance. Counsel testified that given the same facts, he would still advise a course of cooperation, but would seek some kind of recommendation, and would not "do that, that way, with that judge." Counsel recalled scrambling alongside the State afterward to speak with Judge Hyman regarding his sentence, but perceived no likelihood he would reconsider it.

The Court finds no deficiency on the part of Counsel, nor any prejudice to Applicant therefrom. The Court finds Counsel's testimony credible, and finds that Counsel explained to Applicant the nature of proceedings and negotiations, explained that there was no firm plea agreement, and explained that sentencing was wholly in Judge Hyman's discretion. The Court is strained to identify any agreement which could be enforceable, and ultimately must conclude there was none. To the extent the generalized understanding (or misunderstanding) between the State

and Counsel could be interpreted to represent an enforceable agreement, the State abided by it and “helped” Applicant by not making an adverse sentencing request, by dismissing all other pending charges against Applicant excepting the murder charge, and by acknowledging Applicant’s cooperation with the investigation, limited though that acknowledgement may have been.

The Court does not find credible Applicant’s testimony that there was any discussion of a twenty-five year plea offer, or that he was ever instructed or expected a sentence of thirty years. The Court finds Applicant was afforded multiple opportunities throughout the plea proceeding to ask questions or raise concerns about his sentencing exposure if, in fact, he believed he was to be sentenced to a specific term of incarceration. The Court finds Counsel adequately and thoroughly explained to Applicant the evidence that was available to him, the nature of negotiations with the State, Counsel’s perceptions from the chambers conference, Applicant’s sentencing exposure, and the elements of the offenses charged. Applicant has failed to show any deficiency on the part of Counsel by way of this allegation, or any prejudice therefrom. Accordingly, Applicant’s request for relief by way of amended allegations restated above as 1.c, d, e, and f, is **DENIED**.

B. Ineffective Assistance of Counsel - Cronic

Applicant, in closing at the evidentiary hearing, argued that he should be entitled to relief by virtue of the breakdown of the adversarial process, such that prejudice should be presumed. “[T]he right to the effective assistance of counsel is recognized not for its own sake, but because of the effect it has on the ability of the accused to receive a fair trial.” United States v. Cronic, 466 U.S. 648, 658 (1984). Generally speaking, attorneys are presumed competent to provide “the guiding hand that the defendant needs,” such that “the burden rests on the accused to demonstrate” a violation of the Sixth Amendment. Id. However, there are “circumstances that are so likely to prejudice the accused that the cost of litigating their effect in a particular case is unjustified.” Id.

Prejudice may be presumed *per se* in three circumstances: (1) when a defendant is completely denied counsel at a critical stage of his trial; (2) when there has been a constructive denial of counsel from an attorney's complete failure to subject the prosecution's case to meaningful adversarial testing; and (3) when circumstances of trial are such that the likelihood that any lawyer, even a fully competent one, could provide effective assistance is so small that the presumption of prejudice is appropriate without inquiry into the actual conduct of the trial. Nance v. Ozmint, 367 S.C. 547, 551-52, 626 S.E.2d 878, 880 (2006); Cronic, 466 U.S. at 659-60. "A finding of *per se* prejudice under any of these three prongs is 'an extremely high showing for a criminal defendant to make.'" Nance, 367 S.C. at 552, 626 S.E.2d at 880 (quoting Brown v. French, 147 F.3d 307, 313 (4th Cir. 1998)). Presumption of prejudice as a standard is only used for those cases where counsel fails to "function in any meaningful sense as the Government's adversary." Id., 367 S.C. at 552, 626 S.E.2d at 881 (quoting Florida v. Nixon, 543 U.S. 175, 190 (2004)).

The relevant facts are already set forth in Section II.A., above. The Court finds that none of the three circumstances providing for the presumption of prejudice are applicable to Applicant's case. Applicant was certainly not completely denied counsel at a critical stage of trial; to the contrary, Applicant's representation was assumed by the public defender's office with considerable haste and continued until the resolution of his charges. Second, the circumstances of the case were not such that no attorney, however competent, could have provided competent assistance—Counsel and Applicant had adequate time to meet, to discuss evidence, and to discuss how to best resolve the charges against Applicant. Third, Counsel did not fail to conduct "meaningful adversarial testing" in advising Applicant to cooperate and plead guilty—Counsel gave his advice based on the facts available to him from Applicant and the early stages of the investigation, confirmed the validity of his advice upon review of additional evidence as it became

III. CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 25th day of March, 2019.

Kristi F. Curtis
 KRISTI F. CURTIS
 Presiding Judge
 Fifteenth Judicial Circuit

Sumter, South Carolina

DOCKET NO. 2015-GS-26-00428

The State of South Carolina
County of Horry

Nancy Livesay 13H03124

COURT OF GENERAL SESSIONS

JANUARY, 2015 TERM

THE STATE

vs.

Brandon James Littell
/ M
31St Ave S Apt
Atlantic Beach, SC 29582-4766
DOB: 1994
SSN:

ATTORNEY: J. Eric Fox

Indictment for

Murder

Jimmy A. Richardson, II, Solicitor

ORIGINAL

WITNESSES

Troy Large Horry County Police Department

ARREST WARRANT NUMBER

2013A2610201579
CDR: 0116 16-03-0010, 0020
DOA: 6/20/2013

ACTION OF GRAND JURY
TRUE BILL

[Signature]
Foreperson of Grand Jury

Date: JAN 09 2015

VERDICT

Foreperson of Petit Jury
Date:

FILED
HORRY COUNTY

2015 JAN 27 AM 8:53

MELANIE HUGGINS-WARD
CLERK OF COURT

DATE RECEIVED FROM:

GRAND JURY
MELANIE HUGGINS-WARD
CLERK OF COURT
DATE
PLED GUILTY/TRIAL

2015 FEB 26 PM 4:53

HORRY COUNTY

STATE OF SOUTH CAROLINA)
)
COUNTY OF Horry)

INDICTMENT


At a Court of General Sessions, convened on JANUARY 22, 2015, the Grand Jurors of Horry County present upon their oath:

MURDER

CDR: 0116 16-03-0010,0020

That Brandon James Littell did in Horry County, on or about June 19, 2013, willfully, feloniously, and intentionally kill the victim, Kelsie Ann Monin, with malice aforethought, either express or implied, by means of gun shot, and the victim did die as a proximate result thereof on or about June 19, 2015 in Horry County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

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



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

(30 - LIFE)

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Horry
STATE VS.
Brandon James Littell

INDICTMENT/CASE#: 2015GS2600428
A/W#: 2013A2610201579
Date of Offense: 6/19/2013
S.C. Code § : 16-03-0010, 0020
CDR Code #: 0116

AKA: _____
Race: _____ Sex: M Age: 20
DOB: 1994 SS#: _____
Address: 31St Ave S Apt
City, State, Zip: Atlantic Beach, SC 29582-4766
DL#: _____ SID#: _____

SENTENCE SHEET

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

CONVICTED OF or PLEADS

in violation of § 16-03-0010, 0020 of the S.C. Code of Laws, bearing CDR Code # 0116
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45
w/minor 1st or 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: [Signature] SCB75159 Brandon Littell [Signature] 15123
Livesay, Nancy SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of LIFE 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 probation for _____

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

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

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-21 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
 Set by SCDPPPS _____

PTUP _____
_____ days/hours Public Service Employment

Recipient: _____

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

Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning _____
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____

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

Clerk of Court/ Deputy Clerk Melanie Huggins-Ward
Court Reporter Kay Richardson

Presiding Judge [Signature]
Judge Code: 2152
Court Date: 2-26-15

FILED
CLERK
RECORDS
2015 FEB 26 PM 4:53