

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Honorable Jocelyn J. Newman, Circuit Court Judge

RECEIVED

FEB 18 2020

S.C. SUPREME COURT

TONY LAMONT YOUNG,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2019-001105

APPENDIX

TAYLOR D GILLIAM
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
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ATTORNEYS FOR RESPONDENT

I N D E X

Plea

WITNESS/DESCRIPTIONPAGE NO.

EXHIBITS:

NO EXHIBITS WERE MARKED TO THIS PROCEEDING

Certificate of Court Reporter 23

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1 THE COURT: All right. Let's get going.

2 RICHLAND COUNTY SOLICITOR: The State calls Tony
3 Young.

4 THE COURT: Where's Mr. Young.

5 (WHEREUPON, Tony Lamont Young was
6 sworn to tell the truth.)

7 THE COURT: All right. You are Mr. Tony Young?

8 DEFENDANT YOUNG: Yes sir, Your Honor.

9 THE COURT: And, Mr. Young, you are twenty-three
10 years of age?

11 DEFENDANT YOUNG: Yes sir, Your Honor.

12 THE COURT: And where do you live? I note that
13 you don't have a permanent address; is that correct?

14 DEFENDANT YOUNG: No, sir, Your Honor.

15 THE COURT: Are you married?

16 DEFENDANT YOUNG: No, sir.

17 THE COURT: Any children?

18 DEFENDANT YOUNG: Yes, sir.

19 THE COURT: How many children do you have?

20 DEFENDANT YOUNG: I have one that I know of and
21 eight suspected.

22 THE COURT: And what?

23 DEFENDANT YOUNG: Eight suspected.

24 THE COURT: Eight?

25 DEFENDANT YOUNG: Yes, sir.

1 THE COURT: And how far did you go in school?

2 DEFENDANT YOUNG: Tenth grade.

3 THE COURT: Where?

4 DEFENDANT YOUNG: Airport High School.

5 THE COURT: All right. You want to enter a guilty
6 plea on the charge of murder?

7 DEFENDANT YOUNG: Yes, sir.

8 THE COURT: I understand this is a negotiated
9 sentence of forty years; is that correct?

10 DEFENDANT YOUNG: Yes, Your Honor.

11 THE COURT: With a cap of forty years. In other
12 words you have a sentence of forty.

13 RICHLAND COUNTY PUBLIC DEFENDER: Capped at, Your
14 Honor. I believe there's also an armed robbery.

15 THE COURT: Well, I haven't gotten to that yet.

16 RICHLAND COUNTY SOLICITOR: All right, Your Honor.

17 THE COURT: And there's an armed robbery, which
18 you could get up to thirty years. And I assume whatever
19 that is, it's just going to roll in. It's supposed to run
20 concurrent; is that correct?

21 RICHLAND COUNTY PUBLIC DEFENDER: Yes, Your Honor.

22 THE COURT: Is that your understanding Mr. Young?

23 DEFENDANT YOUNG: Yes sir, Your Honor.

24 THE COURT: And you want to enter a guilty plea to
25 both of these charges?

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1 DEFENDANT YOUNG: Yes sir, Your Honor.

2 THE COURT: All right. And you have filled out
3 this advice of rights form?

4 DEFENDANT YOUNG: Yes, sir, Your Honor.

5 THE COURT: Did you have the assistance of your
6 attorney?

7 DEFENDANT YOUNG: Yes, sir, Your Honor.

8 THE COURT: Did you understand all the questions?

9 DEFENDANT YOUNG: Yes, sir, Your Honor.

10 THE COURT: Are your answers truthful and
11 complete?

12 DEFENDANT YOUNG: Yes, sir, Your Honor.

13 THE COURT: All right. And have you told Ms.
14 Walker everything you know about this matter?

15 DEFENDANT YOUNG: Yes, sir, Your Honor.

16 THE COURT: Has she answered all your questions,
17 done everything you've asked her to do?

18 DEFENDANT YOUNG: Yes, sir, Your Honor.

19 THE COURT: Are you satisfied with her services?

20 DEFENDANT YOUNG: Yes, sir, Your Honor.

21 THE COURT: Ms. Walker, you concur with your
22 client entering a guilty plea on these two charges pursuant
23 to your negotiated plea arrangement?

24 RICHLAND COUNTY PUBLIC DEFENDER: I do, Your
25 Honor.

1 THE COURT: You think it's in the best interest of
2 your client to do so?

3 RICHLAND COUNTY PUBLIC DEFENDER: I do, Your
4 Honor.

5 THE COURT: And that the State most probably would
6 prevail if he went to trial on these charges?

7 RICHLAND COUNTY PUBLIC DEFENDER: Yes, Your Honor.

8 THE COURT: Mr. Young, you understand I don't have
9 to accept this negotiated plea arrangement, but I've advised
10 your attorney and the solicitor that if I elect not to do
11 so, I'll allow you to withdraw your plea and you can do what
12 you deem appropriate at some point in time in the future;
13 you understand that?

14 DEFENDANT YOUNG: Yes, sir, Your Honor.

15 THE COURT: You understand that?

16 DEFENDANT YOUNG: Yes, sir, Your Honor.

17 THE COURT: All right. And you understand you
18 don't have to plead guilty. You're presumed to be innocent.
19 The State would have to prove you guilty beyond a reasonable
20 doubt. But by pleading guilty, you remove that burden from
21 the State?

22 DEFENDANT YOUNG: Yes, sir, Your Honor.

23 THE COURT: And by pleading guilty you're waiving
24 some of your constitutional rights. You have a
25 constitutional right to a jury trial, let twelve citizens of

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1 this county hear the evidence and they would ultimately
2 determine whether you're guilty or not of these particular
3 charges. You understand?

4 DEFENDANT YOUNG: Yes sir, Your Honor.

5 THE COURT: And you have a constitutional right to
6 confront any witnesses the State may have with respect to
7 these charges. The State would have to bring in witnesses.
8 You would have the opportunity to see who they are. If they
9 testified, your lawyer would have an opportunity to examine
10 those witnesses, but you waive that right with this plea; do
11 you understand that?

12 DEFENDANT YOUNG: Yes sir, Your Honor.

13 THE COURT: And you have a constitutional right to
14 remain silent. You would not have to say anything, do
15 anything, help the state in any way. You wouldn't have to
16 testify at a trial. If you elected not to testify, the
17 Court would instruct the jury they couldn't even consider
18 that fact in the course of their deliberations, but by
19 pleading guilty you give up your right to remain silent; do
20 you understand that?

21 DEFENDANT YOUNG: Yes, sir, Your Honor.

22 THE COURT: All right. And, of course, by giving
23 up your right to a trial and entering this plea, you're
24 giving up your right to testify at that trial, to tell your
25 side of the story with respect to these charges; you

1 understand that?

2 DEFENDANT YOUNG: Yes sir, Your Honor.

3 THE COURT: By giving up your right to a trial,
4 you're giving up your right to contest any evidence the
5 State may have through any motions in limine or motions to
6 suppress; do you understand that?

7 DEFENDANT YOUNG: Yes, sir, Your Honor.

8 THE COURT: And by giving up your right to a trial
9 you're giving up your right to put up any defenses you may
10 have to these charges at that trial; do you understand that?

11 DEFENDANT YOUNG: Yes, sir, Your Honor.

12 THE COURT: Knowing all that, you wish to continue
13 to go forward with this guilty plea; is that correct?

14 DEFENDANT YOUNG: Yes, sir, Your Honor.

15 THE COURT: All right. Other than this negotiated
16 plea arrangement, has the State or anyone else offered or
17 promised you anything to get you to plead guilty?

18 DEFENDANT YOUNG: No, sir, Your Honor.

19 THE COURT: Anybody threaten you, coerce you,
20 force you or pressure you into pleading guilty?

21 DEFENDANT YOUNG: No, sir, Your Honor.

22 THE COURT: You're pleading guilty freely and
23 voluntarily?

24 DEFENDANT YOUNG: Yes, sir, Your Honor.

25 THE COURT: And you're pleading guilty because you

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1 are guilty?

2 DEFENDANT YOUNG: Yes, sir, Your Honor.

3 THE COURT: You're admitting as true the
4 allegations in the indictments; is that correct?

5 DEFENDANT YOUNG: Yes, sir, Your Honor.

6 THE COURT: Have you had any alcoholic beverages
7 in the last twenty-four hours?

8 DEFENDANT YOUNG: No, sir, Your Honor.

9 THE COURT: Have you taken any drugs, had any
10 medication in the last twenty-four hours?

11 DEFENDANT YOUNG: No, sir, Your Honor.

12 THE COURT: Are you under the influence of any
13 kind of substance here today?

14 DEFENDANT YOUNG: No, sir, Your Honor.

15 THE COURT: Are you being treated by a
16 psychiatrist or other professional for any mental illness or
17 other emotional problems?

18 DEFENDANT YOUNG: Besides ADHD, no, sir, Your
19 Honor.

20 THE COURT: All right. You say you're being
21 treated for ADHD. Are you taking any medication for that?

22 DEFENDANT YOUNG: No, sir, Your Honor.

23 THE COURT: When's the last time you saw a doctor
24 as a result of your ADHD?

25 DEFENDANT YOUNG: When I was a child.

1 THE COURT: All right. It's been some time?

2 DEFENDANT YOUNG: Yes sir, Your Honor.

3 THE COURT: The fact that you have that condition,
4 does that prevent you from understanding the charges or the
5 penalties?

6 DEFENDANT YOUNG: No, sir, Your Honor.

7 THE COURT: Does it prevent you from communicating
8 with your lawyer?

9 DEFENDANT YOUNG: No, sir, Your Honor.

10 THE COURT: Does it prevent you from understanding
11 the proceeds you're involved in here today?

12 DEFENDANT YOUNG: No, sir, Your Honor.

13 THE COURT: You understand on your murder charge
14 there's a mandatory minimum of thirty years under any
15 situation; you understand that?

16 DEFENDANT YOUNG: Yes, sir, Your Honor.

17 THE COURT: You understand whatever you're
18 sentenced to under the murder charge is day-for-day?

19 DEFENDANT YOUNG: Yes, sir, Your Honor.

20 THE COURT: All right. Now, Ms. Walker, have you
21 seen anything from your client by virtue of his having an
22 ADHD condition that would indicate to you that he's not
23 competent to go forward with the plea?

24 RICHLAND COUNTY PUBLIC DEFENDER: No, Your Honor.
25 I believe Mr. Young is competent to go forward. He has

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1 indicated that he had childhood treatment for ADHD, but
2 hasn't. --

3 THE COURT: You believe you're competent to go
4 forward with your plea, Mr. Young?

5 DEFENDANT YOUNG: Yes, sir, Your Honor.

6 THE COURT: All right. I'm going to find that
7 while you had a history as a child of some treatment for
8 ADHD, that you understand the charge, understand the
9 penalty, understand the proceedings and communicate with
10 your lawyer.

11 DEFENDANT YOUNG: Yes, Your Honor.

12 THE COURT: And you believe you're competent to go
13 forward with the plea. Your attorney says she's had some
14 conversations with you and you appear to be competent to
15 her. Your responses have been appropriate to the questions
16 I've asked. I'm going to find you competent to go forward
17 with this plea.

18 Now, you understand when I sentence you here today,
19 you'll have ten days to appeal this sentence?

20 DEFENDANT YOUNG: Yes, sir, Your Honor.

21 THE COURT: All right. Have you understood all my
22 questions?

23 DEFENDANT YOUNG: Yes, sir, Your Honor.

24 THE COURT: Have your answers been truthful and
25 complete?

1 DEFENDANT YOUNG: Yes, sir, Your Honor?

2 THE COURT: All right. Do you have any complaints
3 with the Solicitor's office?

4 DEFENDANT YOUNG: No, sir, Your Honor.

5 THE COURT: Any complaints with law enforcement?

6 DEFENDANT YOUNG: No, sir, Your Honor.

7 THE COURT: Any complaint with anybody at the
8 jail?

9 DEFENDANT YOUNG: No, sir, Your Honor.

10 THE COURT: How long you been in jail?

11 DEFENDANT YOUNG: Twenty months.

12 THE COURT: Twenty months?

13 DEFENDANT YOUNG: Yes, sir, Your Honor.

14 RICHLAND COUNTY PUBLIC DEFENDER: Six hundred and
15 eight days, Your Honor.

16 THE COURT: All right. Mr. Young, as to
17 indictment 2014-GS-40-1751, murder wherein the indictment
18 alleges you did, in Richland County, on or about December 7,
19 2013, kill the victim Derek Land with malice aforethought,
20 either expressed or implied by means of stabbing. And the
21 victim did die as approximate result thereof. How do you
22 plead?

23 DEFENDANT YOUNG: Guilty, Your Honor.

24 THE COURT: As to indictment 2014-GS-40-8317,
25 armed robbery, wherein the indictment alleges that you did,

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1 in Richland County, on or about December 10, 2013, commit
2 robbery be feloniously taking from the person or presence of
3 Derek Land by means of force or intimidation, goods or
4 monies of Derek Land, such goods or monies being described
5 as U.S. currency and/or a cellular phone. And you did so
6 with the intent to deprive the owner permanently of such
7 property and while armed with a pistol, knife, slingshot,
8 metal knuckles, razor or other deadly weapon or while
9 alleging, either by actions or words, that you were armed
10 while using a representation of a deadly weapon or any
11 object, which a person present during the commission of a
12 robbery reasonably believed to be a deadly weapon. How do
13 you plead?

14 DEFENDANT YOUNG: Guilty, Your Honor.

15 THE COURT: I find this Defendant to be
16 represented by competent counsel. He's satisfied with the
17 services of his attorney. I further find Defendant's
18 pleading guilty freely and voluntarily and his guilty plea
19 is entered knowingly and intelligently and I will accept his
20 plea.

21 RICHLAND COUNTY PUBLIC DEFENDER: Your Honor, may
22 we approach.

23 THE COURT: Yes.

24 RICHLAND COUNTY PUBLIC DEFENDER: I apologize. I
25 didn't mean to interrupt.

1 THE COURT: Yeah.

2 (Off the record bench conference with counsel and the
3 Court.)

4 THE COURT: All right. Mr. Solicitor, what you
5 want to tell me?

6 RICHLAND COUNTY SOLICITOR: Thank you, Your Honor,
7 may it please the Court. Standing with me is Investigator
8 Brandon Rast and Sergeant John Caldwell of the Richland
9 County Sheriff's Department. Also in the courtroom is Ms.
10 Shelia Land, the victim's mother; Yvonne Kershaw Watson, the
11 victim's aunt; LaMarcus Land, the victim's brother; Shakira
12 Land, the victim's sister, and she would like to speak at
13 the appropriate time. And Adrian McDaniel, who is a witness
14 who actually found Mr. Land the night of the incident. This
15 took place on December 6, 2013. The victim Derek Land had
16 the day off from work and got up that morning and went to
17 the corner store, bought some lottery tickets and some
18 alcohol. He drank for most of the day. At around 10:00
19 p.m. went back to the corner store.

20 THE COURT: Do you have an age on the victim, Mr.
21 Solicitor?

22 RICHLAND COUNTY SOLICITOR: Yes, sir, Your Honor.

23 THE COURT: Twenties, thirties, forties?

24 RICHLAND COUNTY SOLICITOR: Thirty years old.

25 THE COURT: All right.

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1 RICHLAND COUNTY SOLICITOR: He went back home to
2 his mother's apartment. She asked him to stay at home but
3 he did go back to the corner store that evening and that was
4 the last time he saw his mother. A short time later he
5 encountered the Defendant, Tony Young, near the corner
6 store. That day Tony Young, by his own admission, was told
7 by his girlfriend to go get Pampers for the baby. Instead,
8 he bought marijuana and then spent the day pretending to
9 sell people marijuana. And then when they went and pulled
10 out money, he got -- he quote unquote, got 'em for it. He
11 robbed them of their money. It was at that corner store
12 that Tony saw an intoxicated Derek Land, an easy target, and
13 decided to rob him. According to Tony's own statement, Tony
14 offered to sell him some weed and when Derek pulled out the
15 money, Tony forcibly grabbed it from Derek. And when the
16 victim attempted to stop him and get his money back, that's
17 when Tony pulled out this knife and stabbed him eight times,
18 all in the back, along the spine and left him to die. It
19 was after this he ran to his friend's apartment, two
20 buildings down, where he hid two knives in his closet and
21 the people in the apartment were Jaquanda Ball, Darius
22 Jones, Damerius Banks and Joshua Banks. They found out
23 about the murder the next morning and began to get -- they
24 got real suspicious about Tony Young's actions that evening.
25 They knew Tony always carried knives on his person. And

1 actually, Tony referred to himself as a swordsman. And when
2 they saw him that night, he was acting awkward and Jaquanda
3 Ball actually asked him if he'd committed the murder and he
4 just sort of laughed it off. Eventually, Jaquanda Ball
5 decided to make a call to crime stoppers and report that
6 they knew who had done it. It was at that point that a tip
7 came -- that she gave a tip to Richland County Sheriff's
8 Department who were already working with SLED because the
9 Defendant was wanted out of West Columbia for stabbing his
10 girlfriend two days prior. They found the victim's
11 cellphone lying in the breezeway of the apartment when they
12 were about to serve a search warrant, but were let in and
13 arrested Mr. Young and found two knives in the apartment
14 without incident. Investigators interviewed Mr. Young who
15 admitted that he'd been robbing people that day and when he
16 saw Derek Land. He admitted that when they were walking
17 around the apartment complex before the incident, he
18 actually had a conversation with Mr. Land where Mr. Land
19 informed him that he was from Union County and that he had a
20 thirteen-year-old child. It was after that, that Tony
21 murdered Derek Land and left him on the streets that
22 December night to die.

23 Now, on top of that, Your Honor, we've listened to Mr.
24 Young's jail phone calls where actually at one point he goes
25 as far as to say he's going to have to murder another

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1 motherfucker in here and has showed little remorse for what
2 happened that evening. And we can play the jail call if you
3 would like, Your Honor.

4 THE COURT: Whatever you want to do.

5 RICHLAND COUNTY SOLICITOR: I can just play a
6 portion of it.

7 (Portion of jail phone calls played
8 for the court.)

9 RICHLAND COUNTY SOLICITOR: In that excerpt, Your
10 Honor, he's referring to his baby mama making him mad and
11 that he's going to have to murder another motherfucker in
12 here, while he's in jail. It's because of this horrendous
13 set of circumstances, the State is asking for forty years.

14 THE COURT: All right. Do you have somebody you
15 want me to hear from?

16 RICHLAND COUNTY SOLICITOR: I do. Ms. Land.

17 THE COURT: Tell me your name if you would,
18 please, ma'am.

19 RICHLAND COUNTY SOLICITOR: The victim's sister,
20 Shakira Land has prepared a statement but she's now telling
21 me she couldn't read it and she'd like me to read it for
22 her.

23 THE COURT: All right.

24 (Ms. Brown read prepared statement
25 of victim's sister to The Court.)

1 THE COURT: Thank you, ma'am.

2 Anything else, Mr. Solicitor?

3 RICHLAND COUNTY SOLICITOR: Nothing, Your Honor.

4 THE COURT: What's his prior record?

5 RICHLAND COUNTY SOLICITOR: A simple assault back
6 in 2009.

7 THE COURT: What happened to the charge in West
8 Columbia?

9 RICHLAND COUNTY SOLICITOR: I believe it's still
10 pending, Your Honor.

11 THE COURT: All right. Ms. Walker?

12 RICHLAND COUNTY PUBLIC DEFENDER: Thank you, Your
13 Honor. May it please the Court. Your Honor, I guess I
14 should begin by certainly offering our deepest condolences
15 to the family of Mr. Young.

16 I will tell you that he is twenty-two years old. He
17 went up to the tenth grade and at that point he describes
18 that at that point in his life he just kind of gave up.
19 Tony is incredibly talented. He can sing. His ability to
20 recite verses and recite songs and remember things and give
21 advice as truly one that I haven't seen in a client before.
22 He's very articulate. He's very intelligent. I have no
23 doubt had he chosen a different path in life that he would
24 be a college grad and a sports star but unfortunately
25 that's not how things went. He did suffer a drug addiction

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1 at the time. That's no excuse by any stretch of the
2 imagination and this whole thing was fueled by that. His
3 conduct is not excusable. He would be the first to tell you
4 that and that his -- I think a lot of people say that the
5 reason that a lot of defendants have remorse is because they
6 got caught but I don't -- in this situation, I certainly
7 don't think that's true. I think that he has remorse that
8 he was responsible for the taking of another life and that's
9 something that he is going -- regardless of the sentence --
10 is going to suffer through as well. But certainly we
11 understand that the family is suffering and he offers his
12 deepest apologies for being the cause of that. That being
13 said, Your Honor, Tony has always been up front with his
14 responsibility in this case. He's always been disgusted
15 with the person that he was at the time this was committed.
16 But he has always wanted to accept responsibility and he did
17 not enter in this decision lightly. He's a thoughtful
18 individual, an intelligent individual and, Your Honor, I
19 think he is twenty-two years old and I think that Tony will
20 make something out his life. I don't think this next thirty
21 years of his life will be taken lightly or will be without
22 suffering. To use the phrase that Ms. Land used to rot in
23 jail. I hope he doesn't use the opportunity to rot in jail.
24 I hope he uses that opportunity to make something out of
25 himself and I have no doubt that he will. He's been a

1 pleasure to represent. Certainly in my eight years of
2 practicing he's been one of my favorite clients. And I
3 would respectfully ask Your Honor to enter in the sentence
4 of thirty years. He has a credit for sixty hundred and
5 eighty days.

6 Would you like to say anything?

7 RICHLAND COUNTY PUBLIC DEFENDER: Yes, I'll just
8 be brief, Your Honor, for the sake of being redundant. I
9 met with Mr. Young a couple of times and as Ms. Walker has
10 stated, he is very intelligent and you can just tell that by
11 talking to him a couple of times. He's a pleasure to work
12 with, a pleasure to talk to. He talked about his daughter
13 and as Ms. Walker said, he's disgusted with what he's done.
14 But despite what has happened, I think that he does have a
15 good future in front of him just because he is so
16 intelligent. And we are just requesting that you give him
17 thirty years, Your Honor.

18 RICHLAND COUNTY PUBLIC DEFENDER: And, Your Honor,
19 his family is here. Mr. Young, his uncle and then Tyrell,
20 his brother. He has a lot of other family members, his
21 mother and his other brother are in Oklahoma, so
22 unfortunately they couldn't be here today but they certainly
23 offer their utmost support for Tony. He has a number of
24 other family members that I have spoken with and they are
25 certainly very supportive of him.

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1 Would you like to speak, Mr. Young?

2 MR. YOUNG: Yes, ma'am.

3 RICHLAND COUNTY PUBLIC DEFENDER: Your Honor, my
4 client's uncle would like to speak to you.

5 If you'd just come to this microphone, Mr. Young.

6 (Mr. Young, Defendant's uncle,
7 addressed the Court.)

8 THE COURT: Anything further?

9 RICHLAND COUNTY PUBLIC DEFENDER: Your Honor, I
10 think Tony would like to address Your Honor. He a very
11 eloquent speaker, Your Honor. I know today might be a
12 little bit --

13 DEFENDANT YOUNG: I'd like to give my condolences
14 to the family first. I am sorry for my actions and I a
15 better man than I was that day. I wasn't even a man at all
16 that day. I was just a child. I was just a child. I was
17 mislead. Nothing was never intentional that day. It never
18 was. I was just striving to take care of my family. I'm
19 not a mean person. I'm not a cruel person. I just ask for
20 your forgiveness. That's the only thing I wanted, Your
21 Honor, from the family is just your forgiveness and I can
22 live on that for what I've done to your family. That's all
23 I have to say, Your Honor.

24 THE COURT: All right. All right. The charge of
25 murder 2014-GS-40-1751, the sentence of this Court is you're

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1 to be committed to the Department of corrections for a term
2 of thirty-five years, plus costs and assessments as
3 applicable. 2014-GS-40-8317, armed robbery, the sentence
4 of this Court is you be committed to the Department of
5 corrections for a term of twenty years plus cost and
6 assessments as applicable. That'll run concurrent. You'll
7 be given credit for six hundred and eight days time served
8 and pay all costs upon a hundred and twenty days of release.
9 Good luck to you.

10 RICHLAND COUNTY PUBLIC DEFENDER: Thank you, Your
11 Honor.

12 RICHLAND COUNTY SOLICITOR: Thank you, Your Honor.
13 (This proceeding was concluded.)
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C-E-R-T-I-F-I-C-A-T-E

I, THE UNDERSIGNED HILDA M. JORDAN, CVR-M, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDING IN THE CAPTIONED CAUSE, IN THE COURT OF GENERAL SESSIONS FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 10 DAY OF AUGUST, 2015.

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

Hilda M. Jordan, CVR-M

July 1, 2017

FORM 5

STATE OF SOUTH CAROLINA

County of RichlandTony Lamont Young Jr. #365002
Full name and prison number (if any) of Applicant

v.

State of South Carolina

2016 CP4003441
IN THE COURT OF COMMON PLEASAPPLICATION FOR
POST-CONVICTION RELIEFJUL 13 2016
2016 JUN 13 PM 1:57
RICHLAND COUNTY
FILEDINSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Broad River Corrections Institute
2. Name and location of Court which imposed sentence Richland County
General Sessions 1701 mainst Columbia SC 29202
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 14-GS-4001751
 - (b) 14-GS-4008317

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) July 10, 2015 20 yrs Armed Robbery 35 yrs Murder.
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) ☒ after a plea of guilty _____
- (b) ☐ after a plea of not guilty _____
- (c) ☐ after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) At the time I didn't know enough of the law to fight.
- (b) _____

(c) _____

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

(a) I didn't have sufficient counsel.(b) I believe I've received too much time for the incident.

(c) _____

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

(a) My lawyer never thoroughly went over my case with me
 (b) I could not after I read guilty. I think there was really no evidence to convict me.
 (c) I was defending myself, standing my grounds my weapon of choice was just more effective. And the forensic labs could prove it.

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

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

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

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

No. This is my first, back a few months I wrote the Clerk of Court and asked to appeal it, but I backed out and chose to PCR.

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

(a) which grounds have been presented:

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

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

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

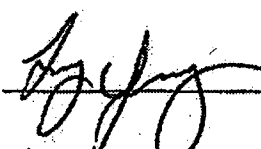
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) I didn't know nor understand the law enough to fight the case.
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes
- (b) your trial, if any? _____
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
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. Anastasia Walker 1701 Main Street Post Office Box 192
Columbia SC 29201
- ii. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Arraignment ap and plea.
- ii. Sentencing
- iii. _____

19. State clearly the relief you seek in filing this application:
The relief of being sane and having a sense of peace. To be
proven innocent, in the eyes of the court.
20. Are you now under sentence from any other court that you have not challenged?
No.

STATE OF SOUTH CAROLINA)
)
 County of Richland)

VERIFICATION

I, Tony Lamont Young # 315002, 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.



SWORN to and subscribed before me this 6
 day of June, 2016.

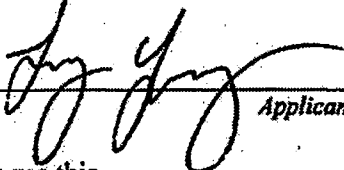
Charles M. McCreary (L.S.)
 Notary Public

My Commission Expires: 6/10/2018

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

I, Tony Lament Young # 365002, 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.


Applicant

SWORN or affirmed to and subscribed before me this

16 day of June, 2016.


Notary Public

My Commission Expires: 6/17/2018

RICHLAND COUNTY
 FILED
 2016 JUN 13 PM 1:57
 JEANETTE W. HERNANDZ
 CLERK, R.C.S.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Tony Lamont Young, #365002,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

2016-CP-40-3641

RETURN

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed on June 13, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. Applicant was indicted at the March 2014 term of the Grand Jury for Richland County for murder (2014-GS-40-1751) and later at the December 2014 term for armed robbery (2014-GS-40-8317). Applicant was represented by Anastasia Walker, Esquire. Assistant Solicitor Meghan Walker prosecuted the case. The Honorable James Barber, III sentenced Applicant to twenty years' imprisonment for Armed Robbery and thirty-five years for Murder to be served concurrently. Applicant also received 680 days' credit for time served. He did not appeal his convictions or sentences.

Attached herewith and incorporated herein by reference are the records of the Richland County Clerk of Court regarding the subject convictions, the transcript from Applicant's plea, Applicant's records for the Department of Corrections, and the records of this action. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

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

1. Ineffective Assistance of Counsel

- a. "My lawyer never thoroughly went over my case with me."
- b. "I founded after I plead guilty that there was really no evidence to convict me."

III.

Applicant claims ineffective assistance of counsel. Respondent contends that Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, Applicant bears the burden of proving the allegations in their application. See Butler, 286 S.C. at 442, 334 S.E.2d at 814. Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. See Strickland, 466 U.S. at 669. Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland, 466 U.S. at 688). 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 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. See Hill v. Lockhart, 474 U.S. 52, 52 (1985).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record, a question of fact is raised which can only be resolved by an evidentiary hearing. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983). If the court does determine that Applicant's alleges specific instances of ineffective assistance which are not conclusively refuted by the record, then Respondent would request an evidentiary hearing to fully resolve this issue.

IV.

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

Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. Respondent 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), SCRCP.

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.

V.

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

VI.

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

Signature follows.

Respectfully submitted,

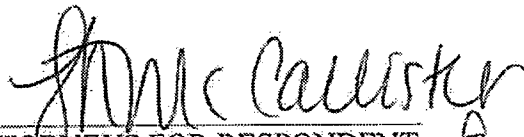
ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Deputy Attorney General

JESSICA E. KINARD
Assistant Attorney General

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

By: 
ATTORNEYS FOR RESPONDENT for JER

7/21, 2017

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

TONY LAMONT YOUNG, JR., #365002,)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent,)

IN THE COURT OF COMMON PLEAS

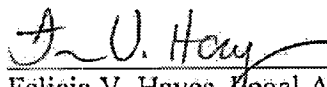
2016-CP-40-3441

AFFIDAVIT OF SERVICE BY MAIL

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

Leah B. Moody, Esquire
Law Office of Leah B. Moody, LLC
Post Office Box 1015
Rock Hill, SC 29730

DATED this the 21st day of July, 2017.


 Felicia V. Hayes, Legal Assistant
 For Respondent

State of South Carolina	)	In the Court of Common Pleas
	)	Fifth Judicial Circuit
County of Richland	)	2016-CP-40-03641

Tony Lamont Young, Jr.,	)
	)
Plaintiff,	)
	)
vs.	)
	)
State of South Carolina,	)
	)
Defendant.	)
	)

January 25, 2018

Columbia, South Carolina

B e f o r e:

The Honorable Jocelyn Newman, Judge

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

Leah B. Moody, Esquire
Attorney for the Applicant

Jessica Kinard, Esquire
Attorney for the Defendant

Bonnie H. Kelly, CVR
Circuit Court Reporter

I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE NO.</u>
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DIRECT CROSS REDIRECT RECROSS	
TONY YOUNG	
Ms. Moody 6	40
Ms. Kinard	25
ANASTASIA WALKER	
Ms. Moody 42	
Ms. Kinard	57
Ms. Moody/Closing Argument	63
Ms. Kinard/Closing Argument	65
Reply Closing/Ms. Moody	69
Decision by the Court	70
Certificate Page	72

EXHIBITS

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

1 (On the record at 12:06 p.m.)

2 (Ms. Walker is present via telephone.)

3 MS. KINARD: Your Honor, may it please the Court?

4 THE COURT: Yes, ma'am.

5 MS. KINARD: This is the matter of *Tony Lamont Young*
6 *vs. the State of South Carolina*, case No. 2016-CP-40-03641
7 [sic.] We're before the Court on an application for post
8 conviction relief that was filed June 13, 2016. Mr.
9 Young's presently confined in the South Carolina Department
10 of Corrections pursuant to orders of commitment of the
11 Richland County Clerk of Court.

12 He was indicted at the March, 2014 term of the Grand
13 Jury for murder and later at the December, 2014 term for
14 armed robbery. He was represented at -- excuse me -- at
15 his plea by Anastasia Walker and Solicitor Megan Walker
16 prosecuted the case.

17 The Honorable James Barber III sentenced Mr. Young to
18 20 years imprisonment for armed robbery and 35 years for
19 murder to be served concurrently. He also received 680
20 days credit for time served.

21 A notice of appeal was filed, but it was dismissed for
22 failure to file an explanation pursuant to the -- the Rules
23 of Civil Procedure and Appellate Procedure, and it was
24 dismissed April 7, 2016.

25 In his application Mr. Young alleges that Ms. Walker -

1 - Ms. Walker never thoroughly went over his case with him
2 and he found, after he pleaded guilty, that there was
3 really no evidence to convict him.

4 At this time the State is present and ready to
5 proceed. Mr. Young is present and represented by Leah
6 Moody.

7 THE COURT: All right. Ms. Moody, call your first
8 witness.

9 MS. MOODY: Thank you, Your Honor. May it please the
10 Court? I would call Tony Lamont Young, Jr.

11 TONY LAMONT YOUNG, JR., having
12 been first duly sworn, testifies as follows:

13 THE BAILIFF: Have a seat in this witness stand here
14 for me.

15 THE COURT: And also, Ms. Walker, if can hear me, mute
16 your phone.

17 MS. WALKER: I'm sorry?

18 THE COURT: Can you mute your phone. We're hearing
19 some background noise.

20 MS. WALKER: Yes, ma'am. Hold on one moment.

21 (Brief pause.)

22 MS. KINARD: Thank you.

23 THE BAILIFF: State your full name for the record and
24 spell your name for me.

25 THE APPLICANT: Tony Lamont Young, Jr. T-o-n-y,

1 space, L-a-m-o-n-t, space, Y-o-u-n-g J.r.

2 DIRECT EXAMINATION

3 BY MS. MOODY:

4 Q Okay. You did that pretty well. Mr. Young, could you
5 tell the Court where you're currently incarcerated?

6 A At Lee County Correctional.

7 Q And how long have you been at Lee County?

8 A Roughly give or take eight months. Eight or nine
9 months.

10 Q Okay. Nine months. Okay. But you've been in custody
11 at another location, too, correct?

12 A Yes, that's correct.

13 Q And where was that?

14 A Barnwell Correctional Center.

15 Q Okay. And so you entered a plea of guilt on August
16 10, 2015?

17 A Correct.

18 Q All right. And at that plea, who were you represented
19 by?

20 A Anastasia Walker.

21 Q Okay. And was Ms. Walker your attorney throughout the
22 entire process of this -- in this case?

23 A No, she was not.

24 Q Okay. Who else represented you?

25 A Jacqueline Bambach [phonetic.]

DIRECT EXAMINATION BY MS. MOODY - TONY YOUNG, JR.

7

1 Q Say -- can you say her name?

2 A Jacqueline Bambach.

3 Q Jacqueline Bambach. And so how long did Ms. Bambach
4 represent you?

5 A Roughly four -- six -- four to six months.

6 Q Okay. And during that time did you have an
7 opportunity to receive any discovery in your case?

8 A From Ms. Bambach? She -- she only -- she only gave me
9 certain parts of my case. The DNA forensics was not in my
10 case, so I wouldn't consider that my full discovery. I
11 wouldn't consider that my -- my discovery.

12 Q But did you receive a good bit of it?

13 A Yes. I received -- I received all statements. Mines,
14 [sic] statements from people that's lived in the house that
15 I was arrested in, you know, some other paper -- some other
16 -- some other police work, but nothing very valuable that
17 it -- that can help me.

18 Q Okay. And so why did Ms. Bambach cease to be your
19 attorney?

20 A That I was never fully told on. All I knew was that
21 she went to Indianapolis to do something that -- that -- to
22 do what, I don't know, but she stopped and she had went to
23 Indianapolis.

24 Q So she moved?

25 A Basically.

1 Q Oh, okay. All right. And then your next attorney was
2 whom?

3 A Anastasia Walker.

4 Q Okay. And so did you have an opportunity to meet with
5 Ms. Walker?

6 A Yes, on multiple occasions.

7 Q Okay. And what, if anything, did you all discuss when
8 you were able to meet?

9 A Well, first thing I told her to look into was coercion
10 of the statement. We also discussed the fact that I did
11 give a statement -- a confession, and how -- how did she --
12 -- and she asked me how did she think I want to go by -- how
13 do I think I want to go by getting around that confession
14 because I asked her to look into it by being -- because I
15 thought it was coerced, which I know it was coerced.

16 And another thing we discussed was that if she didn't
17 go to -- that if -- that if we didn't go to this route --

18 Q Go this route?

19 A Yeah. The route of -- the route of challenging the
20 confession, what would I want to do if she can't -- if the
21 solicitor was to come at me with "X" amount of years, would
22 I -- would I take a plea? I told her "no." I wanted to
23 look into things first before I said -- say anything
24 because she can use that against me if I -- if -- for this
25 situation right here.

DIRECT EXAMINATION BY MS. MOODY - TONY YOUNG, JR.

9

1 Q So you said you -- you didn't want the solicitor to be
2 able to use anything against you as far as, like, saying
3 you were willing to plea.

4 A Yes.

5 Q Okay. And so you met with her and -- and did you all
6 have an opportunity to go over your discovery?

7 A Not thoroughly. The main thing that she would always
8 bring up, after I would say what I -- after I would get my
9 say-so in about the discovery, is that she doesn't -- she --
10 - she's been doing this for a little while, you know, and
11 the fact that I -- the fact that I confessed, you know, in
12 my statement, I -- in my statement, she said that I built a
13 strong character witness against myself.

14 So it gave me -- I -- I felt like, well, dang, you
15 know, I mean, you know. It's -- it's -- it's -- that's my
16 best option to plea. That's -- that's -- that's the
17 feeling I was getting.

18 Q Okay. And so you talked about the case and I'm -- I'm
19 going to jump straight to your application. Your
20 application says that your lawyer never thoroughly went
21 over your case with you --

22 A Uh-huh.

23 Q -- and you found out after your guilty plea that there
24 were -- there was really no evidence against you to convict
25 you.

1 A Yes.

2 Q So can you tell the Court what you mean by that. What
3 was the evidence?

4 A Yes. Well, the evidence was there was no DNA nor
5 fingerprint of mine on the knife and there was no DNA of
6 the victim, of that of Derrick Land, on the knife either.
7 I asked her to look into that, you know, before I -- before
8 we even got to talking about a guilty plea, before we even
9 -- before -- before we even got to talking about going to
10 trial, I said, "Listen," to look into that because it was
11 important.

12 I also asked her if she could show me some paperwork
13 about the DNA forensic analysis, but she never showed that
14 paperwork. It was never in my motion. This is why I asked
15 about it because the one thing that I know is it's a
16 murder, so therefore there's gonna be forensic DNA
17 analysis.

18 I never received that paperwork until after I came
19 here and you had sent it to me, 'til after I got
20 incarcerated and -- and got convicted and went to prison.
21 You sent it to me after I filed for my PCR and asked you to
22 send me rest of my information and my motion.

23 Also, Ms. Anastasia sent it to me after I wrote her a
24 letter saying that I'm requesting the information that I
25 was told about after I pled guilty, you know, about the

DIRECT EXAMINATION BY MS. MOODY - TONY YOUNG, JR.

11

1 DNA. And she sent a letter back not denying it, saying
2 here's the paperwork that you asked for.

3 Q Okay. So what you're saying is the biggest issue in
4 the case was the DNA?

5 A That and the statement. But in the beginning, I
6 never said anything about wanting to plea. I was always
7 saying that I wanted to go to trial. But she -- you know,
8 me not knowing too much of the law -- which my ignorance of
9 the law does not give me any leeway, but she didn't -- she
10 wasn't -- she wasn't very competent, you know, being that
11 this is a murder case, you know, I'm entitled to competent
12 also, you know, of my counsel, the intelligent competent of
13 my counsel [sic.]

14 So by her knowing the case that I -- by her knowing
15 what I've told her about the case, the truth that I told
16 her, she should've looked into certain things like my
17 confession. There was no recording, no video, or audio.
18 She should've looked into things like it could've -- well,
19 then it may have been coerced, you know, things like that.

20 Also I told her that when -- before they asked me --
21 before they read me my Miranda rights, I told them then I
22 didn't want to speak. Then they read me my Miranda rights,
23 I told them again I didn't wanna speak to them. And then
24 when I went -- on -- on the way -- on the way to the
25 precinct, he asked me again, you know, some questions

1 pertaining to the case, basically trying to get me to
2 confess. I told him I didn't wanna speak until I talked to
3 my lawyer. So I did enact my Sixth Amendment right.

4 So the main issue was that statement, and also I asked
5 her to look into other statements because they could help
6 me also by what was said.

7 Q Okay. So when you say "other statements," are you
8 talking about the witnesses?

9 A No. Well, the statements -- the statements of Joshua
10 Banks and -- well, really Joshua Banks statement's the one
11 that really helps me out.

12 Q Okay. And so what, if anything, did she do as to --
13 as it relates to Joshua Banks?

14 A Well, as -- as -- as I required, as -- I mean, as I
15 recollect -- if I recollect correctly, she's not the lawyer
16 that actually even sent out a PI to get a statement from --
17 from any -- from anybody about anything that I brought up -
18 - any issue that I brought up. Jacqueline did what -- it
19 came up to be no help because she didn't really send -- she
20 didn't sent him out to everyone that I gave her a list of
21 names for.

22 Q So -- so -- let me stop you right there. And please
23 hold on to what you were getting ready to say. But you're
24 saying that when you talked with Jacqueline Bambach, right?

25 A Uh-huh.

DIRECT EXAMINATION BY MS. MOODY - TONY YOUNG, JR. 13

1 Q When you talked to her, you gave her information of
2 who might be able to help you ---

3 A Yes.

4 Q --- as far as this case was concerned.

5 A Yes, ma'am.

6 Q Okay. And was -- did Ms. Bambach and Anastasia Walker
7 work in the same office?

8 A I'm -- I'm pretty sure they did, yeah. 1701?

9 Q Okay. The Public Defender's Office?

10 A Yes.

11 Q Okay. So the file -- you're saying all of this
12 information would've been in the file that Ms. Bambach ---

13 A Had.

14 Q --- had.

15 A Exactly.

16 Q Okay. So then you indicated that she -- Ms. Bambach
17 initiated the process of getting these folks spoken to.
18 Were any of them spoken to?

19 A I haven't seen the statements on any of them, so I'm
20 gonna assume no.

21 Q Okay. And so -- well, did you tell Ms. Walker about
22 that list that you gave?

23 A I don't think I told her about the names on the list,
24 but I did tell her that I wanted her to do the same -- the
25 same thing, you know, to go and talk to certain people to

1 help build a good characteristic [sic] against me, you
2 know, against me or for me. And also about the fact that -
3 - to go talk to those people that lived in the house where
4 I was arrested and to ask them about who had the knife,
5 where the knife was at when the police came and arrested
6 me, and where was I at -- where was I when they arrested me
7 and where was the knife. And also to ask them about the
8 intoxication of us -- of us all that night.

9 Q Say -- the what?

10 A Our intoxication.

11 Q Oh. That you were under the influence of alcohol or
12 drugs.

13 A Yes.

14 Q Okay. And so what, if anything, came of that?

15 A Nothing.

16 Q Nothing.

17 A I -- I -- I haven't seen -- I haven't seen no work
18 done -- done in that area.

19 Q Okay. So like, obviously you wouldn't physically see
20 it, but did she come back and talk to you about it?

21 A No.

22 Q Okay. All right. Is there anything else as to the
23 evidence or the biggest issues?

24 A Yes. The main thing is the undeniable fact that if
25 she had done solely her job, that -- and if -- if I would

DIRECT EXAMINATION BY MS. MOODY - TONY YOUNG, JR.

15

1 have known before we even talked about guilty pleas of --
2 of the evidence, there would have never been talk of a
3 guilty plea. I would've went to trial -- given my own
4 confession, I would've went to trial, tried to file a
5 motion to suppress all statements, and other -- and other
6 alignments to -- to better my chances of coming out in
7 trial of the situation.

8 So if she had -- anyone, I -- I believe anyone, no
9 matter what they've said about their self in this crime,
10 knowing that there was never any evidence, would go to
11 trial and take that chance because they remember what they
12 said and in their own confession. So they would -- they
13 would take that chance to go against that confession and
14 fight them and try to win.

15 Q Okay.

16 A That's just common sense.

17 Q All right. So you also stated on your application,
18 (as read): "I was defending myself and standing my
19 grounds. My weapon of choice was just more effective and
20 the forensics lab could prove it."

21 A Exactly.

22 Q What do you mean by that?

23 A Well, when I was arrested, first of all, they -- they
24 -- they arrested me for murder and arm -- and armed
25 robbery. In a armed robbery case, you -- you have to --

1 the -- the possessions of that person have to be found on
2 your -- say, in your house or in your home. None of that
3 happened. When they arrested me, they said -- it also says
4 in the paper -- in the -- in the -- in the police statement
5 that the -- that the -- that his belongings were found in
6 the hallway.

7 Q The victim's belongings?

8 A Yeah. The victim's belongings were found in the
9 hallway of the apartment complex that they came and
10 arrested me from. So that's not my belongings, that's not
11 on my persons, you know, I mean, it's not on my persons.

12 Also she -- Anastasia -- I asked her if -- if -- when
13 -- when the -- when the solicitor, Megan Walker, came and
14 said 40 years, she -- off the top she just said 40 years,
15 she kept saying 40, kept saying 40, three times -- I think
16 three times or two times she said 40 years. I asked
17 Anastasia, I said, "Well, listen," -- I said -- I asked Ms.
18 Walker, I said, "Well, listen, you're my attorney. I'm
19 gonna ask you for your advice, not for your decision
20 making, but for your advice; and then your experience in
21 this field." And I asked her, and she said, "It's the best
22 -- the best decision being that I gave my own statement and
23 that she has a case built up against me because of
24 something else that happened, another crime that happened."
25 Q What -- when you say "she," who are you speaking of?

DIRECT EXAMINATION BY MS. MOODY - TONY YOUNG, JR.

17

1 A Anastasia -- I mean, not Anastasia Walker, Megan
2 Walker.

3 Q Oh. The -- the ---

4 A The solicitor.

5 Q Okay. Okay. I'm sorry.

6 So Megan Walker was the solicitor and you're saying
7 that Megan Walker -- Anastasia told you that Megan Walker
8 had a good case.

9 A Had a good case built against me.

10 Q Okay. All right. And so at what point did you all
11 start talking about the 40 years? Was that after ...

12 A Well, after what? I have to remember to stop talking.

13 Q Yeah. After -- after you met with her the first
14 meeting and went over some discovery and she was supposed
15 to look into some stuff, or was it like months later on
16 that you started talking about 40 years?

17 A It was -- it was -- I wanna say give or take three
18 months after we was talking about -- after I brought up the
19 fact that I wanted her to look into this type -- this
20 evidence and look into the statements, you know, any -- any
21 and everything that could help me.

22 Also I did bring up several times the issue of
23 coercion and -- and I -- I actually brought up a case to
24 determine that, *Chief v. Jackson*. And I asked her to look
25 into it.

1 THE COURT REPORTER: What versus Jackson?

2 THE APPLICANT: *Chief vs. Jackson*

3 THE COURT REPORTER: Chief? As in "Indian Chief"?

4 THE APPLICANT: Yes.

5 THE COURT REPORTER: *Chief vs. Jackson?* Okay.

6 THE APPLICANT: Yes. All right.

7 A And when I brought it to her, she said, well, she
8 doesn't think that it would be useful because they didn't
9 record it or nothing. So now it's like their word against
10 mine, I mean, my word against theirs. And that gave me a
11 sense of hopelessness knowing that they're all a part of
12 the same system that's -- that I'm -- that I'm going
13 against today. So that gave me a sense of like -- like,
14 "Yeah. She's right. It's -- it's pointless, honestly."

15 Q Oh. So you're saying that she told you because there
16 was no video or audio, that there was no need to challenge
17 the confession?

18 A Yes.

19 Q Okay. And so at that point you entertained a offer --
20 a plea offer?

21 A Yeah. That's when we got discussing a negotiated
22 plea. I said, "Well, listen, I'm not trying to take 40
23 years. You know, I have a child. That means she's gonna
24 be 43 when she -- when I get out. I'm gonna be 61, 60
25 something." But I asked her, I said, "What about a

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19

1 negotiated plea? Say, get it dropped down to manslaughter
2 being that I am pleaing, which that is a law -- being that
3 I am pleaing, it should be dropped down to a lesser charge,
4 say, voluntary manslaughter, which could still carry, like,
5 5 to -- 5 to 30 years or 10 to 30 years."

6 Q Wait. Wait. Let's stop. So you all went -- y'all
7 talked -- did you all talk about negotiated plea?

8 A Yes. She came -- she -- when I told her -- I asked
9 her first, I said, "Well, see if she'll take it down."
10 That's -- that was the first -- that was the first question
11 I asked after I got that sense of hopelessness was see if
12 she ---

13 Q Take what down?

14 A The number -- the number of the plea.

15 Q Oh, the years.

16 A Yeah, the years. From 40 to 20-something. And she
17 went -- she -- she went up, she asked. She came back down.
18 She said, "She's not going for it." And I waited. She
19 said, "Do you want you -- do you want to plea?" I said,
20 "No. You know -- you know, I want to see if she can come
21 down first."

22 So she went back two more times. She came -- the
23 second time she didn't come down. Third time she said, "30
24 to 40. 30 to 40." That -- that -- that's the best she
25 could do for me, 30 to 40.

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1 And I'm thinking to myself, like, is it really? Given
2 all -- given all of the -- all of the information and
3 evidence and all of -- all of the -- given the -- the nooks
4 and crannies that's inside of this case, is that really the
5 best that I can get? Is that really the best offer?

6 Knowing now that they had no evidence, there could
7 have been a better offer because they know in their mind
8 that I could've went to trial.

9 Q So knowing now that -- so if they didn't have any
10 evidence, you're saying you still would've plead guilty?

11 A Huh?

12 Q You just said, "Knowing now that they didn't have any
13 evidence ---"

14 A No.

15 Q --- it could've been ---

16 A I wouldn't have pled guilty. I would have went to
17 trial if I'd have known then that they didn't have any
18 evidence.

19 Q Okay.

20 A I said knowing now that they don't have -- that they
21 didn't have -- or don't have any evidence, then it would've
22 never been no negotiation plea.

23 Q Okay.

24 A It would've never been nothing about a plea in the
25 beginning.

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21

1 Q Okay. All right. I just want to be clear.

2 A Okay. Appreciate it.

3 Q Okay. So how -- so can you explain to the Court how
4 you feel that Mrs. Walker's performance prejudiced you in
5 this particular case?

6 A Yes. Give me a second to get all my paperwork.

7 (Brief pause.)

8 A Okay. This is why I say she was ineffective -- she
9 was ineffective assistance of counsel. She has -- she had
10 received my whole entire motion from Jacqueline Bambach
11 [phonetic] or whoever she received it from.

12 Q When you say "motion," you mean the discovery?

13 A Motion of discovery.

14 Q Okay.

15 A Yeah. Motion of discovery. And that includes the DNA
16 forensics. So before you asked me about -- you -- before
17 you recommended me to plea or said that, "Yes, this would
18 be a good plea," you knew about that. You could have told
19 me about that then. We never went over that. If I had
20 known that then, like I said, I would have never even cared
21 about the -- the confession. It wouldn't have mattered
22 because my -- my attack was gonna be the -- the coercion,
23 my Fifth Amendment -- my Sixth amendment right being
24 violated because of the -- because of the evidence that was
25 -- that was obtained pursuant to the conversation initiated
26 by the police officers after I asked them that I wanted to

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1 talk to my lawyer and I don't wanna talk to them until I
2 did that.

3 THE COURT REPORTER: I'm sorry. Can you slow down a
4 little bit?

5 THE APPLICANT: I do talk fast.

6 A Okay. Well, by her knowing that there was no DNA
7 evidence on me from the beginning, she should've told me
8 that while I was still in the county jail.

9 So I feel it was ineffective on her behalf because her
10 in -- inselet [phonetic] in that area should have -- should
11 have told her that, "Hey, they didn't record it. It is his
12 word against theirs, but listening to this individual
13 speak, he is -- he is very -- kind of intellectual. You
14 know, so he could -- he could argue his own argument -- he
15 could argue his own confession."

16 Now, we talked about that, and she said, "Well, I
17 don't believe ..." -- how -- I can't remember verbatim,
18 word-for-word what she said, but she did say that --
19 something along the lines that she don't believe that --
20 that because I know how to argue in my own confession that
21 basically that it doesn't mean that I'm gonna be able to go
22 to trial and win.

23 So all around I was given a sense of hopelessness, but
24 -- but I -- I was what I would call being honest with
25 myself in saying that, "Okay, she knows what she's talking
26 about more than I do." I didn't wanna just be big headed

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1 and say, "Nah, I know more than you and I think you against
2 me."

3 But in the end that's what it turned out to feel like.
4 That I was -- like the deck stacked against me.

5 Q Okay. So because there was no -- you're saying that
6 because there was no DNA, and she needed to challenge the
7 confession --

8 A Yeah.

9 Q -- that you should have challenged -- you should have
10 taken it to trial.

11 A Yes.

12 Q Okay. And based on that, it would've been a different
13 outcome?

14 A Yes. And also -- also, in the statement that Joshua
15 Banks gave, I asked her to look into this also -- I asked
16 her to look into this also the statement that Joshua Banks
17 gave stated that every time I -- I would come over, I would
18 bring some weed to smoke and you know, and we'll -- you
19 know, we'll smoke. So what is the difference from the
20 night that they arrested me and I gave that statement --
21 confession, than the nights before that I'd come over and
22 would bring weed and -- you know, bring marijuana and
23 things like that to the house? What is that -- what is the
24 difference? When y'all came in the house, y'all saw it was
25 smoke in there. Y'all say, "Oh, y'all smoking?"

26 So I asked her to look into that, but that -- that

1 didn't happen. Not that I know of. It was nothing ever
2 brought back to me about that -- about that incident, but
3 we did read over the cases -- over the statement that
4 Joshua gave.

5 Q All right. So you feel that she prejudiced you and
6 you went forward with a plea and you could've gone forward
7 with a trial --

8 A Yes.

9 Q -- to protect your -- well, to -- to find you not
10 guilty.

11 A Yes. Whichever -- whichever decision the judge may
12 have, but of course my -- my -- my -- my intention to going
13 to trial is to be found not guilty. But I -- either way --
14 either way -- either way it would've turned out, whether I
15 would've got -- would've got found guilty or not, I still
16 would have went to trial regardless.

17 Q Okay. So in effect you're saying because she didn't
18 go over the discovery with you, you were not able to make
19 an informed decision?

20 A Exactly.

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

23 A To be granted -- to be granted another trial.

24 Q Okay. And you realize if you're granted the
25 opportunity to have a trial, that -- that means you go --
26 you start over, it's reset.

CROSS-EXAMINATION BY MS. KINARD - TONY YOUNG, JR. 25

1 A Yes, ma'am. I do understand.

2 Q And understanding that being charged with --

3 A A murder. They can bring me back and give me life.

4 Q Yes. You understand that?

5 A Yes, ma'am. I understand.

6 Q And you still want to go forward?

7 A Yes, ma'am.

8 Q No further questions. Please answer any questions the
9 State may have.

10 CROSS-EXAMINATION

11 BY MS. KINARD:

12 Q Okay. Mr. Young, so you testified that you wish Ms.
13 Walker had gone over evidence against you that you believe
14 she had at hand.

15 A Yes, ma'am.

16 Q And that is the evidence -- excuse me -- the DNA
17 analysis of anything that was found?

18 A Yes, ma'am. Of -- of the -- of the murder weapon not
19 being in my possession, not having my DNA on it nor the DNA
20 of the victim; and also that it was -- yeah, like I said,
21 not found in my possession and it wasn't in my home.

22 Q Weren't knives found in your home?

23 A No.

24 Q They were not?

25 A No, ma'am.

26 Q Okay. I believe the record would disagree with that.

1 A I have no home. I had no home at the time.

2 Q The place that you were staying.

3 A That -- I wasn't staying at my brother's. They went
4 in his house and looked for my clothes because I went to
5 his house the day before. They went to the house to look
6 for my clothes because I went there after the crime also,
7 and they just found a steak knife in the house, But that
8 was no -- that was nowhere near the murder weapon.

9 In the statement -- in -- in the paperwork it stated
10 that the murder weapon was a Bowie style. A steak knife is
11 a -- it's a -- it's a domestic home knife that you use. So
12 that's not just saying that that -- that knives were found
13 in my apartment -- were found in my house, you know,
14 because, one, that wasn't my house; two the -- the murder
15 weapon or anything wasn't found. And the knife that they -
16 - they -- the two -- the three knives that they found total
17 was the Bowie style, that was claimed to be the murder
18 weapon; a 32-inch knife with a right angle handle; and a
19 machete.

20 Q Okay. Were you known for carrying knives?

21 A Yes. Yes, I -- yes, I -- yes, I was known for
22 carrying knives. That's no denying. It's in the motion.

23 Q You stated you believe Ms. Bambach sent out an
24 investigator, but she might not have spoken to everybody
25 that you wanted her to?

26 A Yes, ma'am.

CROSS-EXAMINATION BY MS. KINARD - TONY YOUNG, JR.

27

1 Q Okay. Did you talk to Ms. Walker about that
2 investigator?

3 A Yes, I did. I can't remember -- I can't really
4 remember his name, but I did ask her to do the same thing,
5 to send out a PI or whoever she -- whomever she gonna have
6 to send out to look into someone to -- to look into a list
7 of names of people that I would -- may give her to look --
8 to be able to better -- build a better character witness
9 against me.

10 Q Do you know ---

11 A Or for me.

12 Q Do you know if Ms. Walker -- and just for purposes of
13 the record, I -- when I say "Ms. Walker," I'm talking about
14 your lawyer unless ---

15 A I know. I know.

16 Q --- otherwise. Do you know if Ms. -- Ms. Walker had
17 the benefit of Ms. Bambach's file?

18 A Could you further elaborate?

19 Q Since they worked -- both worked for the Public
20 Defenders Office, do you think Ms. Walker had the notes and
21 investigation and all that that Ms. Bambach had conducted?

22 A I would assume so, yes.

23 Q Okay. And you reviewed the discovery with both Ms.
24 Bambach and Ms. Walker?

25 A Yes. Not thoroughly, but yes.

26 Q Was this case on what we call the "trial docket" when

1 Ms. Walker took it over? Do you know?

2 A What -- what -- what is the trial docket?

3 Q It -- it was set for trial. You had a trial date?

4 A That I don't know of.

5 Q Don't know? Okay. Did you review the case with Ms.
6 Walker?

7 A Yes, but not thoroughly. We spoke on just, you know,
8 few -- few points here and there. I -- like I said, I
9 brought up my -- the -- my statement to her, 'bout the --
10 'bout the coercion of my statement. That was -- that was
11 ignored. I don't know if it was intentionally, but I felt
12 as if it was intentionally ignored. And a few other things
13 that I brought up that just -- I didn't see feedback on.
14 Not just in -- not -- not just in the physical aspect, but
15 in -- later on -- later on down the line when I did, you
16 know, get -- get offered a plea.

17 When I did get offered a plea, I didn't see anything
18 that I asked her to look into that could defer -- that
19 could change my plea offering. I didn't see any of that.

20 Q I'm sorry. I didn't follow that last part. You
21 didn't see?

22 A I didn't see anything that I asked her to look into --
23 I didn't see any feedback ---

24 Q Actually being looked into?

25 A I didn't see -- I didn't see anything I asked her to
26 look into actually being looked into. No feedback was

CROSS-EXAMINATION BY MS. KINARD - TONY YOUNG, JR. 29

1 given. Only thing that she -- that I remember her really
2 doing -- really doing that I asked -- the only thing that I
3 really remember her doing that I asked is asking -- asking
4 Ms. Megan Walker to drop the plea down.

5 Q And what was the result of that?

6 A After the third time that I asked, it -- it went from
7 40 to -- 30 to 40.

8 Q And so you pled to a negotiated sentence with a cap of
9 40 years; is that correct?

10 A Yes.

11 Q Okay. And stepping back to prep -- preparing for
12 case, were you preparing for trial when you decided to
13 plea?

14 A Meaning -- what do you mean?

15 Q Were you and Ms. Walker reviewing your case and
16 preparing it in order to take it to trial?

17 A If I decided to?

18 Q Uh-huh.

19 A No. Not that I -- not that I recall.

20 Q Okay. Did you always want to plea?

21 A No.

22 Q Okay. So tell me how that decision was made about
23 pleading. Is that what you discussed with Ms. Moody about
24 how you felt the deck was stacked against you?

25 A Yes. When I asked -- when I asked for her -- for her
26 professional advice, the advice that was given gave me a

1 sense of hopelessness. I was -- honestly, I really -- I
2 really pled out of duress, you know what I mean, and
3 confessed out of duress. You know, in a situation like
4 that, you know, neither parties are happy, you know, me for
5 what I've done and him for where he's at.

6 But -- so therefore my mind wasn't really there. I
7 was duressed [sic]. I'm not gonna lie. I -- I told her
8 that I didn't feel as if -- I don't feel as if I'm really
9 ready to go plea right now, but she said, "Listen, it's
10 just the best thing for you to do," basically.

11 Q Okay. When you were talking to her about your case,
12 did you tell her your version of events?

13 A My version of events?

14 Q Uh-huh.

15 A Further elaborate on my version of events.

16 Q Did you tell her what happened that night from your
17 perspective?

18 A Yes, I did. Yes, I did. We ---

19 Q And ---

20 A --- we went over that probably twice.

21 Q Okay. And from there did she use that and talk to you
22 to help form possible defenses?

23 A No, no, no, Your Honor [sic]. No, she did not.

24 Q If you had gone to trial, what do you think your best
25 defense would've been?

26 A My best defense would've been, first of all, to

CROSS-EXAMINATION BY MS. KINARD - TONY YOUNG, JR. 31

1 suppress all statements and if they wouldn't suppress it,
2 then to redact some -- some -- you know, a redact [sic]
3 statement. And then I would've went on the fact that there
4 was no evidence, first of all. First and foremost, there
5 was no evidence on the weapon that's -- that's claimed to
6 be the murder weapon. I have paperwork right here to prove
7 that it -- (as read): "There was omission of at least
8 three individuals. No DNA on like that of the victim,
9 Derrick Land, found as the major contributor to this
10 mixture. Tony Young is excluded as a contributor to this
11 mixture also."

12 So the forensic lab conclude that there was no
13 physical evidence or substantial evidence or DNA evidence
14 stacked against me, but I didn't know these things.

15 So if I had known these things, yes, I would've went
16 to trial, and this would've been one of my main arguments.

17 Also -- well, basically, new found evidence because I
18 didn't -- because she didn't -- not -- not new found
19 evidence, I would've went to trial on the fact that I've --
20 I've been wrongly arrested because in the beginning, you
21 know, when y'all got the murder weapon, you know -- when
22 you got the murder weapon, and you did DNA analysis, and
23 when I -- and when I -- what -- what is it called, the
24 first -- the first hearing that you have?

25 Q Preliminary?

26 A Yeah. Your preliminary hearing. That's -- that's

1 when that gets brought up. That's when all of that gets
2 brought up. The DNA, the autopsy, all of that -- well, the
3 forensics and autopsy. It wasn't brought up then. I don't
4 -- I don't -- I don't recall. It wasn't brought up because
5 I -- as I was told, the autopsy report wasn't in yet. And
6 it's been well over, what, 30 -- almost 60 days at that
7 time.

8 So I feel as if I should have been known about this
9 even before I even had her assigned to me because that's
10 when they speak on those things at that -- at that meeting
11 -- at that hearing. So yes, if I would've known that,
12 regard -- regardless of the statement that I gave,
13 regardless of the characteristic that was built against me
14 by myself and by those that gave statements -- Jaquanda
15 Ball and Demetrius Ball and Darius Ball -- I mean, Jaquanda
16 Ball, Demetrius Banks, and Darius Banks -- regardless of
17 those statements, I would've still went to trial. And I
18 believe -- I really believe in my heart that anybody
19 would've regardless.

20 Because if they made -- they told them they self [sic]
21 or they said this against they self, they should know how -
22 - how to argue that.

23 THE COURT REPORTER: The names again? Darius Ball ...

24 THE APPLICANT: No. Jaquanda Ball, Darius ---

25 MS. KINARD: J-a-q-u-a-n-d-a.

26 THE APPLICANT: Darius Banks and Demetrius Banks.

CROSS-EXAMINATION BY MS. KINARD - TONY YOUNG, JR. 33

1 Q All right. We've talked a lot about -- actually, no.
2 Let's go to your statement. You testified on direct that
3 when you were arrested, you said you didn't want to talk to
4 anybody?

5 A I did not. Nah, I did ---

6 Q You didn't say that?

7 A I'm saying, yes, I did not want to talk to anybody.

8 Q Okay. They read you your Miranda rights?

9 A After the first time they tried to get me to talk,
10 yes.

11 Q And then you said again you didn't want to talk to
12 anybody without a lawyer.

13 A Yes, ma'am.

14 Q What led you to give your statement?

15 A Well, like I said, at first I was under the -- under -
16 - under the influence, first and foremost. They knew that.
17 When they came in the house, bottles was everywhere, weed
18 was everywhere, blunts was still rolled up on the -- on the
19 -- on the table. When they came -- when they came and
20 arrested me out of the back room, I couldn't even stand up
21 I -- I was -- I was so out of it. I couldn't really stand
22 up.

23 So Rass had arrested me, set me outside of the
24 apartment by the door on the -- on the ground because I
25 couldn't stand up. So he picked me up after they -- after
26 they talked to people in the house, got some statements

1 from them, he picked me up, walk -- started walking me to
2 the car and asking me questions about the crime.

3 Now, I know that you could smell the alcohol on my
4 breath and I know that you could smell the marijuana on my
5 clothing. First of all, you could see it and smell it in
6 the house. So you're an officer, you know that, "Wow,
7 they're under the influence." So for -- so for you to ask
8 me that, you broke the law right there. You -- you
9 violated my Sixth Amendment right, my Fifth Amendment
10 right.

11 After I told him that I don't want to talk to him,
12 once he asked me about the case, he continued to ask me.
13 And I told him I don't -- I wanted to speak to a lawyer.
14 He continued to ask me before -- as -- on the way to his
15 car, as we was walking out of the building because he put
16 me in his car, in his Impala, and he drove me to the
17 station himself. He continued to ask me -- actually in the
18 front seat.

19 He continued to ask me if I knew anything that
20 happened about the case, about the murder, because see,
21 when they first came to arrest me, I didn't know why I was
22 getting arrested.

23 So he asked me, "Well, do you know anything about the
24 murder that happened?" And I say, "Well, I can just tell
25 you what I heard on the news."

26 So when I told him what I heard on the news, he kept

CROSS-EXAMINATION BY MS. KINARD - TONY YOUNG, JR. 35

1 saying, "Hmm. Oh, yeah. Okay. Hmm. I can -- I can use
2 that." I shut up.

3 From there, we went to -- we went to the precinct,
4 Brandon Rass and Investigator Tolson or Tolon -- I -- I
5 can't really pronounce his name. I don't remember what his
6 name is. But they sat me in a room, and they continued to
7 ask me -- cross-examine -- cross-examinable [sic]
8 questions. He would ask me one question, and he would ask
9 the same question but in a different -- in a different
10 turn.

11 Now, I really -- I wasn't really catching -- I wasn't
12 really catching on at that time, but -- but either way it
13 go, I did tell y'all that I wanted to speak to a lawyer and
14 I -- y'all know that I'm under the influence.

15 I said, "I want to speak to a lawyer." That -- at
16 that time, he said, "Okay, well, sign right here."

17 After -- now, he been over at the computer typing, you
18 know, while we was talking, and he said, "Well, sign right
19 here stating that you -- that you asked for a lawyer and
20 that -- and that we not -- we not gonna talk to you no
21 more." And all I saw was my -- "I, Tony Young".

22 And I was like, okay, yeah. He make sure -- he make
23 sure I ask for my lawyer. He make sure I get a lawyer. So
24 I signed that, and he didn't tell me what I was really
25 signing, but he lied to me and said -- Brandon Rass lied to
26 me and said that this is signing showed that I asked for a

1 lawyer, and that they can't speak to me no more. So I -- I
2 was -- I was under the impression that, you know, they was
3 following the rules, they was leaving me alone.

4 And when I -- when I finally got to -- got my motion
5 of discovery and I read the statement, it was two
6 statements. And I only said to -- something to them one
7 time. It was two -- it's two different statements and I
8 was trying to find out where the second statement come
9 from, and that's when it hit me, they -- they -- they
10 coerced the statement because they knew that I was -- you
11 know, that I was out of it. And they didn't record it,
12 audio nor video, which is -- I don't know if it's required
13 by law, but it should be.

14 Q So when did you give this other statement?

15 A I never gave the other statement. I only -- I only
16 talked to them once.

17 Q Okay.

18 A That's why I was still trying to figure -- and then
19 you know, he said -- he said, "Yeah" -- he -- he gave me
20 two sheets of paper. He said, "All right, here" -- well,
21 no, three -- three or four sheets of paper. He say, "Here,
22 sign right here."

23 I signed right there. All this is just saying that I
24 agree that -- that I can -- that I won't speak to you, and
25 things like that, so I was lost.

26 Q Okay. Let's move on to other things that were in

1 consideration --

2 A Uh-huh.

3 Q -- at the time of your plea. You were -- had another
4 charge against you pending; is that correct?

5 A That's correct.

6 Q And that was for a stabbing that took place two days
7 before?

8 A That's correct.

9 Q Okay. And they also played some phone calls from the
10 jail; is that correct?

11 A That's correct.

12 Q Do you remember the content of those calls?

13 A I remember everything that I said on that call.

14 Q And do you admit that those calls were from you?

15 A Yes, they were from me, but not about what I -- but
16 not about this -- not about this case, and it was used as a
17 metaphor.

18 Q Okay. Was Ms. Walker aware of all that information
19 going into your plea?

20 A Yes. Yes, ma'am.

21 Q And did she talk to you about how that might work
22 against you in your plea?

23 A Yes. Yes. She -- she -- she told me -- she said,
24 "Well" -- she said, "Well, they" -- actually, she said
25 since I'm pleaing -- this is exactly what I was told,
26 verbatim, word for word, too: "Since I'm pleaing, that

1 he's not -- the solicitor doesn't have to bring up the
2 evidence to show that you committed this crime because
3 you're pleading to the crime." But evidence was still
4 brought forth. Every bit of evidence was still brought
5 forth.

6 Q Well, you were informed that you lose the ability to
7 challenge the evidence against you because you're pleading.
8 Do you remember ---

9 A No.

10 Q --- being informed of that?

11 A No, I don't remember that.

12 Q Did Ms. Walker do an advice of rights form with you
13 beforehand, where you -- she went through the questions the
14 judge was gonna ask you so you knew what to expect on the
15 way in there?

16 A You say an "advice of rights"?

17 Q It's called an "advice of rights" form. But it's --
18 it's a few pages where she'd go with you through what the
19 judge would ask, what kind of questions you could expect,
20 so you'd know how the plea was gonna go.

21 A I -- I -- I -- if -- if I recall correctly, yes, she
22 did at the cage -- at the cage upstairs, well, downstairs I
23 saw her.

24 Q Okay. So you knew what you were going in there for
25 and the kinds of questions that were gonna be asked.

26 A Give or take, yes.

CROSS-EXAMINATION BY MS. KINARD - TONY YOUNG, JR. 39

1 Q And you'd gone over with her the evidence against you
2 and what -- what the State had, including those different
3 things I just listed. Oh, as well as the crime stoppers
4 tip?

5 A Yes. Jacquanda Ball.

6 Q From Jacquanda Ball, who was living in the house that
7 you were staying in? Where you were arrested?

8 A I wasn't staying there. I was arrested there, though.

9 Q You were arrested there. Okay.

10 And you reviewed the evidence with Ms. Walker, and you
11 made this decision to plead guilty based on those
12 discussions with her.

13 A Yes, the advice that was given, yes.

14 Q Okay.

15 A And the sense of hopelessness that was given.

16 Q Okay. I understand. No further questions, thank you.

17 A Okay.

18 THE COURT: Anything else, Ms. Moody?

19 MS. MOODY: Yes, ma'am. Just want to clarify
20 something.

21 REDIRECT EXAMINATION

22 BY MS. MOODY:

23 Q Initially you said -- and I just want to make sure I
24 understood what you were saying. You didn't learn about
25 evidence until a preliminary hearing or were you speaking
26 of your bond hearing?

1 A No. I didn't learn of the evidence until after I
2 pled. I -- I -- I have it right here in my -- in my
3 application.

4 Q After you ---

5 A After I pled, I learned of the evidence -- of the --
6 of the no evidence that they didn't have against me. But I
7 was told by the officer that they had against me, so you
8 know, when -- because they took pictures of my -- of my
9 right pinkie, saying that, "Oh, yeah".

10 Q Right. I'm just saying, at the beginning of the case
11 when you got arrested, you mentioned to the State that you
12 were -- the information that you should've received at that
13 time, you did not receive it. And are you speaking of your
14 preliminary hearing or are you talking about your bond
15 hearing?

16 A Oh. My preliminary hearing.

17 Q Okay. All right.

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

19 THE COURT: All right. You want him to stay there or
20 ...

21 MS. MOODY: (No audible response.)

22 THE COURT: Okay. You can stay there. Any other
23 witnesses, Ms. Moody?

24 MS. MOODY: No, ma'am.

25 THE COURT: Ms. ---

26 MS. MOODY: Yeah -- well, I would call Ms. Walker.

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1 THE COURT: Okay.

2 MS. MOODY: All right. Ms. -- Ms. Walker, are you
3 there?

4 MS. WALKER: Yes.

5 MS. MOODY: Okay. Good Afternoon.

6 THE COURT: We need her sworn as well.

7 MS. MOODY: Oh.

8 ANASTASIA WALKER, after having
9 first been duly sworn testifies as follows via telephone:

10 THE BAILIFF: State your full name for the record and
11 spell your name.

12 THE WITNESS: My name is Anastasia Walker. A-n-a-s-t-
13 a-s-i-a W-a-l-k-e-r.

14 THE BAILIFF: Thank you.

15 DIRECT EXAMINATION

16 BY MS. MOODY:

17 Q Good afternoon, Ms. Walker.

18 A Good afternoon.

19 Q This is Leah Moody speaking to you.

20 A Yes, ma'am.

21 Q Okay. How long do you recall representing Mr. Young?

22 A Ms. Bambach left our office, according to my notes, in
23 January of -- hold on just one second. It looks like she
24 left in January of 2015. I received the case and
25 represented him for about eight months.

26 Q Okay. For about eight months.

1 A Actually seven months. More like seven.

2 Q Okay. And did you receive her actual physical file?

3 A I did.

4 Q Okay. And did you have an opportunity to review that
5 file?

6 A I did.

7 Q In that file were -- was there any kind of information
8 as to potential witnesses on behalf of Mr. Young?

9 A In preparation for this hearing, I called the county -
10 - the Richland County Public Defenders Office to obtain my
11 file as I am out of state. They were unable to send it to
12 me, so I do not have my file.

13 I do not recall what Ms. Bambach's notes -- other than
14 what has been entered in the computer is what I have in
15 front of me. So her handwritten notes I do not have for
16 review, and I cannot recall that in particular.

17 Q Okay. What, if anything, did you do on behalf of Mr.
18 Young to investigate this case?

19 A I have my notes. I don't recall that we had an
20 investigator on this case. Ms. Bambach's notes mention
21 speaking to Russell Dean in our office, but according to my
22 representation of him, I did not have an investigator.

23 Q Okay. So when you came onto the case and you met with
24 Mr. Young, you didn't yourself do any investigation; is
25 that what you're saying?

26 A Other than through discovery, I did not interview any

1 witnesses personally, no.

2 Q Okay. As far as the -- as far as the confession was
3 concerned, what, if anything, did you do related to the
4 confession?

5 A I know that Mr. Young and I discussed the confession.
6 That seemed to be a very prominent point in his case, per
7 my memory, and we discussed if we went that -- you know,
8 pleading versus trial, and that a trial would involve a
9 challenge of that statement and it was at that time that we
10 would challenge that statement.

11 And based on my experience, my advice to him was I did
12 not believe at trial that that -- that that statement would
13 be suppressed, although that would be the effort that would
14 be -- have been made at trial.

15 Q And -- and why did you feel like it wouldn't have been
16 suppressed?

17 A If I recall, going over the factors with Mr. Young
18 regarding what was coercive versus non-coercive, and that
19 Richland County's practice does not involve audio or video,
20 that he would testify as to what his experience was
21 regarding the confession; the arresting officer, whoever
22 interviewed him, would testify; and then based on other
23 factors, I did not believe that the outcome would be that
24 it'd be suppressed.

25 Q So in other words, it would be his word against their
26 word?

1 A To some extent. There was -- other than the
2 statement, and I would imagine -- as I said I don't have my
3 file for this case. They were unable to send it to me --
4 that Richland County typically fills out a Miranda form,
5 and other than the Miranda form and what was written on the
6 paper, that there was no outside evidence.

7 Q So now, you -- you -- your -- you keep saying that the
8 -- I guess when you say "they were unable to send you your
9 file" --

10 A Uh-huh?

11 Q -- who is the "they" that you're speaking of?

12 A Oh, I apologize. The Richland County Public Defenders
13 Office. Due to it's volume, they were unable to scan it
14 and/or mail it to me.

15 Q So now, we've been on the docket for quite some time,
16 haven't we?

17 A For Mr. Young?

18 Q Yes.

19 A Not that I'm aware of.

20 Q So ---

21 A This is the first -- I think this is the first
22 subpoena I've received regarding Mr. Young.

23 Q Okay. That's my ---

24 A I could be wrong, if -- if I'm wrong on that, I
25 apologize. But that's -- that's my recollection.

26 Q Okay. Well, we're gonna check on that. I just wanna

1 understand ---

2 A Yeah. I could be wrong. I -- I have requested --
3 like I said, I requested my file, but without funding, they
4 were unable to send it to me.

5 Q Okay. And so of the notes that you have in the file,
6 what would've ---

7 A Uh-huh.

8 Q What would've been the notes that you would've been
9 seeking? Would it have been your handwritten notes?

10 A Yes. I always take handwritten notes, and then we had
11 a computer program we would enter in notes from our
12 handwritten notes.

13 Q Okay.

14 A Though it's not word-for-word what's in my handwritten
15 notes, usually just a summary.

16 Q Okay. So you're saying they couldn't email you the
17 computer notes?

18 A They did email me the computer notes.

19 Q Oh.

20 A That's what I was able to obtain.

21 Q Oh, okay.

22 A And then I have -- and then I received the transcript
23 of the hearing from the case.

24 Q Okay. All right. So in your notes, did you notate
25 whether or not you went through the discovery -- all the
26 discovery that was obtained from the State with Mr. Young?

1 A I did note that on May 26 I reviewed his discovery.

2 Q Okay. Did you review it with him is what I'm asking.

3 A Yes. I wrote -- I said that I had a conference at the
4 jail. I reviewed the discovery.

5 Q Okay. And so is that the time in which you talk about
6 his confession?

7 A I -- I know that we've talked about the confession
8 more than once. And then the case was docketed in August,
9 so I know closer to trial we would've met more frequently.
10 And if I remember correctly, that was one of the main
11 issues that Mr. Young had regarding his case and one of the
12 main issues that would have involved the defense in his
13 trial.

14 Q Okay. So as to the DNA on the knife, at the time that
15 he accepted the plea offer, had you had an opportunity to
16 discuss that lack of DNA?

17 A I do not have anything in my notes regarding the DNA,
18 and I cannot recall in my memory anything about the DNA.

19 Q So -- well, what -- what -- what was your opinion,
20 from your recollection, as to the importance of the DNA on
21 the knife?

22 A I really -- I -- I cannot recall.

23 Q Okay.

24 A I can't recall what the -- I can't recall the
25 importance of the -- or I can't recall what the -- I -- I
26 don't even recall what the DNA results were regarding the

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1 knife to be honest with you.

2 Q And -- well, what was your strategy in this case, or
3 what would have been your strategy had he denied -- or did
4 not accept the offer?

5 A The plea offer?

6 Q Yes.

7 A If I recall correctly, we talked about a number of
8 defenses during this time. I remember stand your ground
9 being a huge issue. We discussed stand your ground, we
10 discussed self defense, we discussed a number of other
11 defenses, and why I did not think that they would be
12 successful at trial.

13 I thought our best defense at trial was to -- I -- I
14 thought -- if I -- if I remember correctly, that the
15 statement was one of the more detrimental things about his
16 case, and that that would be the main focus at trial for me
17 to try to suppress it.

18 Q So how did y'all get to stand your ground?

19 A I -- I don't recall. I just -- just thinking of
20 available defenses. And Mr. Young, I believe, wrote that
21 in his PCR that he thought that stand your ground was a
22 viable defense. And I don't -- it -- it wasn't. My
23 recollection was it was not.

24 Q So -- Okay. So was stand your ground -- was there any
25 kind of altercation between the victim and Mr. Young?

26 A There was a physical back and forth, I believe. But I

1 don't -- I -- I can't tell you why I know that if I know
2 that just from his statement or there was another witness
3 statement, because I can't recall.

4 Q You're saying there was a physical back and forth?

5 A I believe that it was a -- some situation in some sort
6 of, like, minor -- I think somebody put their hands on the
7 other person and the other person reacted. But I can't
8 remember who was first or what it was, and I can only
9 remember that there was a short, physical altercation of
10 sorts.

11 Q So when you say "minor," was there any kind of, like,
12 physical evidence on Mr. Young or anything?

13 A I know that they took -- I -- I can recall that they
14 took pictures of Mr. Young following his arrest, which off
15 the top of my head I cannot recall how close that was to
16 the actual events that occurred. But that his pictures did
17 not show any defensive wounds, and I don't believe he had
18 any blood or any DNA or anything on him. I don't believe
19 there was any physical evidence on him regarding -- on his
20 actual person, if I remember correctly.

21 Q Did he tell you anything about any kind of injuries
22 that he might have received?

23 A I do not recall.

24 Q So in your notes that you have in your system, you did
25 not make any notes about any physical injuries that he
26 received in the back and forth?

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1 A All I have is -- oh, it's not even my portion of the
2 notes. So in my portion of the notes, I don't have
3 anything regarding the injuries that he received.

4 Q Well, in the portion of notes from his previous
5 attorney, which you received her file, was there any kind
6 of notes of any injuries sustained by Mr. Young?

7 A Her notes indicate (as read): "No wounds." And "the
8 photos were taken of him when arrest several hours after
9 the stabbing" is what her notes say.

10 Q Okay. Is there any mention that he indicates to her
11 that he received some kind of injury?

12 A No. Not that I can see from a review of her notes.

13 Q Okay. If you need to take a second to look, please do
14 so. I realize we're on the phone.

15 A Certainly. If you'll give me two seconds, I'll be --
16 I've read through them a few times, but just to be sure.

17 Q Okay.
18 (Brief pause.)

19 A I do not see anything in Ms. Bambach's notes regarding
20 injury, I don't see anything in my notes regarding injury,
21 but also Ms. Bambach had handwritten notes in the file as
22 well, and I had handwritten notes in the file as well that
23 I do not have in front of me.

24 Q Okay. All right. So if you were given those
25 handwritten notes or they were sent to you, would you be
26 able to look at your notes and -- I guess what I'm -- I'm

1 asking, you haven't been able to look at anybody's
2 handwritten notes that are in the larger file?

3 A No.

4 Q Okay. All right. If you were given those notes,
5 would your -- is it possible that your testimony would
6 change?

7 A Depending on those notes. Like I said, if Ms. Bambach
8 -- they would be in her notes, and I was not -- I did not -
9 - I guess I -- what I'm trying to say is that our
10 representation of Mr. Young did not overlap.

11 Q Okay.

12 A I did not receive the file until she had already left
13 the office. So I would have -- yeah, it's possible that it
14 could change and my memory could be different.

15 Q Okay. But something led you -- I guess what I'm
16 getting at is something led you to stand your ground and
17 the other defenses -- I'm sorry, I did not get the other
18 defenses that you expressed, but you -- you had a number of
19 them that you came up with?

20 A I -- I don't -- I -- I -- if they were my suggestion
21 or his suggestion, I can't recall, but I -- I know that
22 they were -- I know that we talked about them.

23 Q Okay. All right. And so from there, going over the
24 defenses, you gave him your advice?

25 A I did.

26 Q And what was your advice?

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1 A I believe that I did not believe that he would be
2 successful at trial, and so my advice to him was to plead
3 guilty.

4 Q Okay. Now, were you up for trial within, like, weeks?

5 A I received -- when I received the file, it was up for
6 trial. There's notes in the file we asked for a
7 continuance, and it obviously was granted. That was in
8 January of 2015, since I'd just received the file.

9 The next time we were on the docket was August of
10 2015, and it was -- yes. We were preparing for trial prior
11 to -- he -- I think he pled the week prior to his scheduled
12 trial date.

13 Q Okay. And at that time, how did Mr. -- oh. And do
14 you recall how Mr. Young felt about the case at that time?

15 A I can recall discussing the case with him and his -- I
16 -- I think during the -- my representation of him, the
17 offer stood at 40 for a long time, and then it was only
18 quite close to trial that the offer went to 30 to 40.

19 Q Okay.

20 A And so I -- I recall him asking what my opinion was,
21 what he should do, and I told him my honest opinion, and I
22 don't believe he made the decision lightly at all. But he
23 did eventually decide to accept the plea offer.

24 Q Okay. And so ...

25 MS. MOODY: I beg the Court's indulgence.

26 THE COURT: Yes, ma'am.

1 Q So -- okay. I know what it was. This was a
2 negotiated plea, right?

3 A Yes.

4 Q Okay. And so the negotiation of the plea was 30 to 40
5 years? That's the range it was stay in.

6 A Yes.

7 Q Okay. And that was the extent of the negotiations?

8 A The armed robbery was to run concurrent, and I believe
9 that was the extent.

10 Q Okay. And did you have a opportunity to explain that
11 to Mr. Young?

12 A Explain the plea offer?

13 Q Well, explain what a negotiated plea is.

14 A Yes. That's something I -- I believe that's included
15 on the advice of rights, but if not, I would have expressed
16 exactly what a negotiated plea meant.

17 Q Okay. And when you're talking about the advice of
18 rights, you're talking about a plea -- is this a plea
19 affidavit?

20 A It's paperwork that I drew up -- very -- that I went
21 over for every plea, just basically asking the questions
22 that a judge would go through in a plea colloquy.

23 Q Okay. And on your -- your standard -- I guess that's
24 a standard form you use. And on that form, does it explain
25 the difference between a recommendation, a negotiation, or
26 pleading straight up?

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1 A I don't believe it expresses specifically what the
2 difference is, but it does express whether the plea is
3 negotiated, recommended, and I would've gone over that with
4 Mr. -- with Mr. Young.

5 Q Okay. So you're saying you would've gone over the
6 differences verbally with him as to negotiated versus
7 recommendation?

8 A Yes.

9 Q Okay. All right. So after you went through the
10 advice of rights form with Mr. Young, what happened after
11 that; do you recall?

12 A I went through the -- I would have gone through the
13 advice of rights. There was a few occasions where I went
14 through it, like, the day before the plea, but I don't
15 recall that in Mr. Young's case. I believe we did the plea
16 paperwork the day of his plea in the holding cell of the
17 courthouse, and after that we would have gone to the
18 courtroom. After I finished all of his paperwork and we
19 went over anything he wanted to say, anything that his
20 family wanted to say, we would've gone to the courtroom and
21 waited for our turn to plea.

22 Q And at that time did he appear to understand what you
23 went over with him and discussed with him?

24 A Yes.

25 Q Okay. Now, at any point was there any hesitation as
26 to whether he should go forward on this plea?

1 A If I -- not that I recall. After -- prior, when we
2 discussed the trial -- discussed a plea offer, he did -- I
3 -- I know that there was some decision making involved.
4 But once the plea paperwork was filled out, I don't recall
5 any other hesitation, either afterwards or during the
6 actual hearing.

7 Q Okay.

8 A I do recall that -- that Mr. Young was very emotional
9 that day.

10 Q Okay. Did he tell you why he was emotional?

11 A I -- I -- I don't -- I'm not sure if he told me --
12 well, I -- he may have told me specifically why. It was --
13 it wasn't a decision that was entered into lightly. It was
14 a very stressful day, so I believe that's why he was
15 emotional.

16 Q And did he maintain his innocence throughout the time
17 that you were his attorney?

18 A Did he maintain his innocence?

19 Q I mean, at any point did he say that he didn't do
20 this, that he didn't commit this crime?

21 A I don't have anything in my notes indicating that -- I
22 -- I can't remember. I'm trying to think -- I'm trying to
23 think if he specifically said, "I wasn't involved" or not.
24 I can't -- I can't recall that.

25 Q And from the beginning of this -- I mean -- I guess
26 I'll just say -- did he always -- did he want a trial at

DIRECT EXAMINATION BY MS. MOODY - ANASTASIA WALKER 55

1 the beginning and then subsequently switch to having a --
2 wanting to entertain a plea?

3 A At the time -- at the beginning of -- of representing
4 him, I believe it was a trial at the time of it being 40
5 years. I think -- I -- I'm not sure what Ms. Bambach
6 discussed with him, but once we were able to get it under
7 40 years is when he decided to think about it, I guess, and
8 to consider it.

9 Q And so do you think it was in his best interest to
10 enter the plea?

11 A I do.

12 Q All right.

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

14 THE COURT: Ms. Kinard.

15 MS. KINARD: Thank you, Your Honor.

16 MS. MOODY: Thank you, Ms. Walker.

17 MS. WALKER: Yes, ma'am.

18 CROSS-EXAMINATION

19 BY MS. KINARD:

20 Q Ms. Walker, did Mr. Young express to you that he felt
21 like his statement was coerced?

22 A I -- there may have been talk about his feeling of why
23 he thought that -- I -- I believe that -- I -- I can't
24 recall exactly in my notes, but I feel like we talked about
25 what factors involved coercion.

1 Q Okay. That's what I was trying to clarify. You did
2 testify ---

3 A Right.

4 Q --- you spoke with him about what would be coercion
5 and what wasn't. Do you feel like that satisfied him that
6 his statement wasn't coerced, or that -- well, let me stop
7 there. Do you think that ---

8 A Well -- go ahead. I'm sorry.

9 Q No, go ahead. I'm done.

10 A I -- I know that the statement was -- would have been
11 a major part of our defense had we gone to trial. So in my
12 professional advice, I told him that I did not think that
13 we would be successful in the *Jackson v. Dennis* hearing,
14 that his statement wouldn't be suppressed because of
15 whatever factors. I can't remember specifically what they
16 were, but that's what my recollection is. I can't recall
17 specifically. I -- I know that he just testified and I
18 listened to what he said, but I don't recall that
19 specifically.

20 Q Okay. So certainly that weighed into trial versus
21 plea.

22 A Right.

23 Q Can you recall some other factors that might've
24 weighed into your decision to advise him to plea?

25 A I know that there was a -- from what I can recall, I

1 know that the statement was a large part of it. There were
2 also some items found that were consistent with other
3 witness statements.

4 There were -- I -- I can't recall the DNA at all in
5 this case, what -- what it said and where it was from, I
6 can't recall. But there was corroborative evidence through
7 witness statements, whether to the actual incident or
8 conduct afterward. And there were a number of statements -
9 - not a number of statements, but there were also, I guess,
10 what would be, like, party admissions I believe would have
11 come in at trial that would've been hard to overcome.

12 Q Are you referring to the jail phone calls?

13 A That's one of them that I recall. There may have been
14 a text message or a statement made to another individual
15 regarding the incident that I believe also probably
16 could've come in.

17 Q So due to the abundance of evidence, including his own
18 statement, you advised Mr. Young that he [sic] thought it
19 would be best to plead guilty?

20 A Yes.

21 Q And did he initially express surprise at that or push
22 back at -- against that suggestion?

23 A I believe initially -- prior to trial and prior to
24 coming down to the trial docket, we discussed both
25 possibilities and what they could result in. I don't

1 recall Mr. Young ever being surprised -- he was -- Mr.
2 Young was very mild mannered and very respectful on our
3 conversations. His -- I believe we had very in depth
4 conversations about both possibilities, but I don't recall
5 a surprise of any sort.

6 Q So you felt like y'all had a good rapport, you
7 understood each other, he could ask questions, things like
8 that?

9 A I felt that we did. That was my personal take.

10 Q Did Mr. Young ever give you names of witnesses to
11 investigate?

12 A That I don't recall.

13 Q Did he ever give you the name of another potential
14 suspect that might've committed this crime?

15 A I don't believe so, but that's not specifically in my
16 notes. That's something I do not recall happening either.

17 Q How did the plea negotiations go in this? We haven't
18 -- I don't recall any testimony about that so far other
19 than, "It was at 40." Can you recall how everything went
20 down?

21 A I believe Ms. Bambach had a sort of unofficial offer
22 of 40 if he wanted to plea, it'd probably be at 40. I
23 believe that Mr. Young, when I first started representing
24 him, that he wanted to go to trial. So we acted
25 accordingly and whatever my advice became at what point to

1 plea versus trial and what he would like me to do.

2 I don't believe that Ms. Walker and I reached this
3 offer until either the week before trial or possibly the
4 week before that. But it was very close to his trial date
5 before that offer was changed from 40 to a negotiated 30 to
6 40.

7 Q And at that time you took it to him and explored the
8 pros and cons of taking this offer?

9 A Yes. I do -- I -- never mind. I don't recall. I --
10 I -- I mean, I recall that. Yes, we did discuss the pros
11 and cons. I was trying to think if I remembered something
12 else. I'm sorry.

13 Q Okay. And you testified on direct that you did an
14 advice of rights sheet with him?

15 A Yes. I have a two page -- well, one page, front and
16 back. But in my -- I -- I guess cases that -- that were
17 more complex, I usually did a four page. So two page,
18 front and back. And I feel like I did that in Mr. Young's
19 case.

20 Q And you felt that going into the plea he understood
21 everything that was going to be asked and required of him?

22 A For the plea?

23 Q Yes.

24 A Yeah.

25 Q And you testified that this was already docketed for

1 trial when you got on it, you -- you requested one
2 continuance, and then it was set for about seven months
3 later. So was this a relatively quick investigation?

4 A If it was a case that I had represented from beginning
5 to end, I would have been quick. In my experience in
6 Richland County, and eight month period of time for a
7 murder case or a serious felony case would have been fairly
8 quick.

9 Q Did you have enough time to get all the information
10 you needed and to help Mr. Young decide whether to go to
11 trial or plead?

12 A I believe that I put all the factors that we could
13 have available in front of Mr. Young to make him make an
14 informed decision, so yes.

15 Q And you believe he made a -- a free, intelligent,
16 knowing decision to plead guilty?

17 A I do.

18 Q And that was based upon your professional advice?

19 A Based upon my professional advice, and as -- as I said
20 before, I know that Mr. Young had to think about some
21 things. So -- well, what he considered personally, I -- I
22 do not know, but I do know that my advice was to plead
23 guilty and that -- and that that was what his ultimate
24 decision was at the time.

25 Q Thank you, Ms. Walker.

1 MS. KINARD: I have no further questions.

2 THE COURT: Anything else, Ms. Moody?

3 MS. MOODY: No, ma'am.

4 THE COURT: All right. Thank you, Ms. Walker.

5 MS. KINARD: Ms. Walker, would you like to stay on the
6 phone during argument and resolution? Anastasia?

7 MS. WALKER: I'm sorry. Say -- you cut out. I'm
8 sorry.

9 MS. KINARD: Sorry. Would you like to stay on the
10 phone to hear the rest of the matter?

11 MS. WALKER: Sure. I'll -- I'll put it on mute so
12 there's no background noise.

13 MS. KINARD: Okay. Thank you.

14 MS. WALKER: Thank you.

15 THE COURT: All right. Y'all stay close so she can
16 hear you. Let me hear argument, Ms. -- I'm sorry. Does
17 the State have additional witnesses?

18 MS. KINARD: No. Thank you, Your Honor.

19 THE COURT: Okay. Let me hear argument, Ms. Moody.

20 MS. MOODY: Your Honor, we'd ask the Court to grant --
21 we'd ask the Court to grant Mr. Young's relief based on the
22 testimony -- after talking to his lawyer and going back
23 through -- and I will say that she doesn't have the full
24 file.

25 But Mr. Young testified that he gave his first
26 attorney, Ms. Bambach, the list of witnesses that could

1 help him in his case. Ms. Walker received the complete
2 file from Ms. Bambach, and so I think it was alluded to
3 that he didn't tell of any other witnesses; however, there
4 is a paper file -- there is a paper trail in which counsel
5 had copy of -- a copy of, and it start -- been started by
6 Ms. Bambach.

7 And at some point Mr. Young was trying -- he was
8 contemplating whether or not to plea or to go forward on a
9 trial. I think it's been testified that he was going to
10 trial. But for the conversation that he had with Ms.
11 Walker, he would have probably gone on to trial.

12 She indicated by her own testimony that she did not do
13 any other investigation or employ another investigator.
14 Not saying to employ an investigator is a requirement to do
15 your job, it's just that there was some question as to the
16 confession and whether it was coerced or not.

17 He changed his mind.

18 Given that there was DNA, and I -- I can't recall
19 whether or not Ms. Walker testified as to the DNA that was
20 involved in this, but there was no DNA based on what
21 information Mr. Young received that his DNA was not -- his
22 blood was not on the actual weapon -- or the weapon they
23 said was the weapon for this murder.

24 So I believe the testimony was -- because I believe
25 you're looking back at the transcript -- there was another
26 knife. His testimony was there was a -- he described it as

1 a domestic -- a domestic knife. I'm not up on knives. But
2 that there was another knife involved, and based on what he
3 has received, that this was not the knife that was the
4 murder weapon.

5 And I guess based on his testimony, what he's saying
6 is that point in the case was not thoroughly discussed. I
7 know Ms. Walker testified that she discussed about the
8 confession, but Mr. Young feels that the knife -- the
9 murder weapon, his list of witnesses that would've come to
10 testify on his behalf or help him create a defense, they
11 were not discussed or investigated.

12 The other ground that he alludes to is the stand his
13 ground -- stand my ground as far as protecting himself and
14 I believe Ms. Walker testified that she discussed this
15 defense with him, and I think that was the first one that I
16 mentioned with her -- or she mentioned, but that was
17 discussed with him. So I'm not necessarily saying that she
18 thoroughly discussed it with him as to the first issue, but
19 she testified that she did discuss it.

20 But based on the information with the confession,
21 based on the DNA that was later obtained, and the actual
22 murder weapon, Mr. Young changed his opinion as to whether
23 he should go to trial or not. Even if it is for a
24 significant amount of time, he changed his mind as to
25 whether or not he should go to trial, and we would ask the
26 Court to grant his relief that he seeks which is stated on

1 his application is that he would like to have the Court
2 give him opportunity to a new trial.

3 THE COURT: Ms. Kinard.

4 MS. KINARD: Thank you, Your Honor. Quite simply this
5 is a case of Mr. Young confessing and having that before
6 the Court and then trying to figure out how to get around
7 it if that -- that was possible. With the evidence at
8 hand, the investigation done by Ms. Walker, she determined
9 in her professional opinion that it would be very hard, if
10 at all possible, to overcome that confession at trial. So
11 that was the first factor that Mr. Young had against him.

12 She testified that she reviewed the standards of
13 trying to determine whether coercion -- excuse me -- a
14 confession was coerced, didn't believe that this case met
15 that. So both of them testified fully to their
16 understanding of the confession and what part that played,
17 and in Ms. Walker's professional opinion, she thought it
18 could not be overcome. So regardless of -- of Mr. Young's
19 testimony, theories, ideas about whether it was coerced or
20 not, legally Ms. Walker exercised her professional opinion
21 and responsibility in relaying to him, after investigation,
22 what the Court would likely do with that confession.

23 Other than that, there was other evidence that was
24 presented at the plea and not controverted by Mr. Young,
25 such as his outstanding charge, there was a crime stoppers
26 tip, there was other information that Ms. Walker testified

1 to that could come into play against Mr. Young.

2 Ms. Walker's testimony was that, based on the
3 information she had, whether that had been in Ms. Bambach's
4 file or anything given to her from the applicant, she
5 investigated it to the extent necessary, she reviewed all
6 of it with Mr. Young, they had many conversations --

7 MS. MOODY: I -- I'm gonna have to object to that,
8 Your Honor, because I think most of her testimony was that
9 she didn't recall and she didn't have her full file. And
10 all she had was her notes and maybe some written notes, but
11 she -- well, her notes that came from the system, and not
12 the written notes out of the file from Ms. Bambach.

13 THE COURT: Yeah. Her testimony was frankly -- your
14 objection is overruled. Obviously, her testimony is what
15 it is, but it -- it was, I will say, contradictory in some
16 places.

17 She did testify that she was preparing for trial, that
18 she reviewed evidence with Mr. Young. She had previously
19 testified that she did not interview any witnesses and did
20 not hire an investigator, so I -- maybe it's incomplete at
21 least, the testimony, in that I don't know what trial
22 preparation there was if no witnesses were interviewed, no
23 investigator retained.

24 But I did take notes about that, but continue Ms.
25 Kinard.

26 MS. KINARD: Yes, ma'am. I don't -- to speak to that

1 point, I don't think that it's necessary for her to have
2 her full file to testify adequately. I don't believe that
3 what she testified to is necessarily contradictory.

4 Yes, they were on the trial docket. Yes, they were
5 looking into different defenses to which she testified to
6 extensively regarding the stand your ground, self-defense,
7 and other ways that they could attempt to defend Mr. Young
8 at trial.

9 I think realistically Ms. Walker knew that this
10 confession was going to be very difficult to get around,
11 and it was going to be very hard to present a defense based
12 on that and the other factors against him.

13 Different elements were brought up regarding whether
14 it's the DNA evidence or other types of evidence that may
15 have helped Mr. Young, and I just -- it -- it seems like
16 there was some confusion about whether he had the right to
17 contest evidence at his guilty plea, which of course he
18 does not.

19 Ms. Walker testified that she vetted these different
20 defenses that I just discussed, and I believe the testimony
21 shows that she discussed them with Mr. Young and
22 ultimately, in her professional opinion, advised him that
23 they would not be effective and that his best interest
24 would be to plead guilty.

25 She testified that he had a hard time making this
26 decision, which is certainly understandable; but she

1 believed he used all the information available to both of
2 them to make that decision, and it was ultimately a free,
3 knowing, intelligent decision based on her advice and his
4 own personal thoughts.

5 For those reasons I don't believe there is any
6 evidence of deficient performance by Ms. Walker. I believe
7 she thoroughly vetted the case, she spoke with her client,
8 and he ended up making the best decision for him based on
9 her professional advice.

10 Based on all these, I don't believe there is any
11 prejudice to Mr. Young. He made the best decision that he
12 could for him in that time frame, and I believe the record
13 reflects that.

14 So based on the *Hill v. Lochart* standard for
15 determining attorney performance in guilty pleas, I don't
16 believe there is any prejudice -- excuse me -- deficiency
17 or prejudice in this matter, and the State would ask you to
18 deny and dismiss this matter with prejudice.

19 THE COURT: Did you want to make any further argument,
20 Ms. Moody?

21 MS. MOODY: Well, I would say this, from my client's
22 standpoint, he feels that he was misled as to his best
23 decision. I recognize from her opinion that she was giving
24 him advice, that she didn't think she could overcome the --
25 the -- the -- the confession in a *Jackson v. Denno* hearing
26 before the Court; however, it -- kind of like is based off

1 of her looking at the sheet of paper there, she does know
2 that there's no audio, there's no video; however, she did
3 not look beyond that point. She just said it was not going
4 -- well, I -- I take that back. She did say she went over
5 some factors. I'm not sure what those factors are.
6 There's been no testimony as to the specific factors or the
7 issues as to why it's not gonna be a coercive statement,
8 other than it would be his word against their word as to
9 whether he invoked his right to an attorney, whether he
10 wanted to talk to them, whether he wanted to end the
11 conversation with them, or what have you.

12 That's the testimony as I recall it, and if it's
13 something different, I would rely on the Court's
14 understanding of the evidence.

15 THE COURT: Okay. The -- the application for post
16 conviction relief is denied.

17 As to the potential *Denno* hearing, Ms. Walker
18 testified that she gave her professional opinion, based on
19 her experience, as to whether they could be successful in a
20 challenge to the statement. Certainly there's been no
21 showing here today that there could have been a successful
22 challenge to the statement, and to the extent that that is
23 alleged by Mr. Young, he has not met his burden here today
24 of -- of showing that there is a reasonable probability
25 that he would not have pled guilty but for that.

26 As to the forensic evidence, again there's been no

1 showing here today that anything would have been different.
2 There would've been a different outcome. But -- and I
3 don't know that there could have been such a showing
4 because like the previous case with Mr. Peterson, they just
5 -- the defenses discussed in this case were self-defense,
6 stand your ground, not actual innocence. And so whether
7 the weapon in question was in fact the murder weapon,
8 whether it had DNA on it, fingerprints, and who those DNA
9 and fingerprints belonged to, that would really be
10 immaterial considering that there was never an assertion of
11 actual innocence.

12 And in fact, during Mr. Young's testimony, he
13 suggested that he should've been charged with or convicted
14 of or pled guilty to voluntary manslaughter, which, as he
15 sits here today, admits the culpability and -- and frankly
16 the identity of the perpetrator of the crime. The only
17 difference would be the circumstances leading up to the
18 commission of a crime -- commission of a homicide; but as I
19 said, he's not met his burden on that issue either.

20 Based on Ms. Walker's recollection, there was
21 overwhelming evidence of Mr. Young's guilt, and -- and in
22 reading the guilty plea transcript, there apparently --
23 there apparently was evidence, although Mr. Young asserts
24 that there wasn't. There were crime stoppers tips, other
25 witness statements, etcetera, and he has not demonstrated
26 here today anything to the contrary; and for all those

1 reasons, the application is denied.

2 MS. KINARD: Thank you, Your Honor.

3 MS. MOODY: Thank you, Your Honor.

4 THE COURT: I ask Ms. Kinard to get me an order.

5 MS. KINARD: Yes, Your Honor.

6 -- END OF TRANSCRIPT OF RECORD --

7 (Off the record at 1:30 p.m.)

8 **CERTIFICATE**

9 I, the undersigned Bonnie H. Kelly, Official Court
10 Reporter for the Fifth Judicial Circuit of the State of
11 South Carolina, do hereby certify that the foregoing is a
12 true, accurate, and complete transcript of record of all
13 the proceedings had and evidence introduced in the hearing
14 of the captioned cause, relative to appeal, in the Fifth
15 Circuit Court, for Richland County, South Carolina, on the
16 25th day of January, 2018.

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

19
20
21 E/Bonnie H. Kelly

22 Bonnie H. Kelly, CVR

23 Official Court Reporter

24
25 Columbia, South Carolina

26 June 3, 2018

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Tony Lamont Young (SCDC #345002),

Applicant,

v.,

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No. 2016-CP-40-3641

ORDER OF DISMISSAL

FILED
2018 APR 30 AM 11:22
JESSICA KINARD, CLERK
RICHLAND COUNTY, S.C.

This matter comes before the Court upon Application for Post-Conviction Relief ("PCR") filed by Applicant Tony Lamont Young ("Applicant") on June 13, 2016. Respondent filed its Return on July 21, 2017. On January 25, 2018, a hearing was conducted at the Richland County Judicial Center. Applicant was present along with his counsel, Leah B. Moody, Esquire. The State was represented by Jessica Kinard, Esquire.

For the reasons set forth below, the Application for Post-Conviction Relief is DENIED, and this matter is DISMISSED WITH PREJUDICE.

FACTUAL AND PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was indicted at the March 2014 term of the Richland County Grand Jury in indictment 2014-GS-40-1751 for Murder. Subsequently, Applicant was indicted at the December 2014 term in indictment 2014-GS-40-8317 for Armed Robbery. Applicant was represented on these charges by Anastasia Walker, Esquire ("plea counsel").

On August 10, 2015, Applicant pled guilty to Murder and Armed Robbery. The Honorable James R. Barber, III, imposed a negotiated sentence of confinement for a period of twenty years for


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Armed Robbery and thirty-five years for Murder to be served concurrently. Applicant received 680 days' of credit for time served and did not appeal his convictions or sentences.

Applicant filed an application for PCR on June 13, 2016, in which Applicant alleged he was being held in custody unlawfully due to ineffective assistance of counsel stating the following reasons: (1) plea counsel failed to properly go over Applicant's case with him; and (2) plea counsel failed to inform Applicant of amount of evidence present in the case.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. CODE ANN. § 17-27-80 (2003).

I. TESTIMONY OF APPLICANT: INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant alleged he received ineffective assistance of counsel due to multiple deficiencies by plea counsel which are laid out in Applicant's Application and discussed further in the upcoming paragraphs. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

First, the applicant must show that counsel's performance "fell below an objective standard of reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney

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provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625; see Strickland, 466 U.S. at 688, 692, 104 S. Ct. at 2065, 2067 ("[T]he defendant must show that counsel's representation fell below an objective standard of reasonableness [and] . . . any deficiencies in counsel's performance must be prejudicial to the defense in order to constitute ineffective assistance under the Constitution."); see also Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006) ("PCR applicant must prove: (1) that counsel failed to render reasonably effective assistance under prevailing professional norms; and (2) that the deficient performance prejudiced the applicant's case.").

"Where counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Watson v. State, 370 S.C. 68, 72, 634 S.E.2d 642, 644 (2006) (citing Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992)). "Counsel's performance is accorded a favorable presumption, and a reviewing court proceeds from the rebuttable presumption that counsel 'rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.'" Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (quoting Strickland, 466 U.S. at 690, 104 S.Ct. 2052). "Accordingly, when counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Id. (citing Capron v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)). "Courts must be wary of second-guessing counsel's trial tactics; and where counsel articulates a valid reason for

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employing certain strategy, such conduct will not be deemed ineffective assistance of counsel." Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992) (citing Goodson v. United States, 564 F.2d 1071 (4th Cir. 1977)).

This Court will now address each allegation of ineffective assistance of counsel as follows:

A. Ineffective assistance of counsel for failure to properly go over Applicant's case with him

During the evidentiary hearing, Applicant testified he was first appointed Jacqueline Bambach, Esquire, of the Richland County Public Defender's Office as counsel. Applicant stated Attorney Bambach provided Applicant with some discovery but did not provide Applicant with any forensic evidence. Applicant further testified Attorney Bambach received statements from potential witnesses but never interviewed the potential witnesses.

Applicant stated Attorney Bambach moved out of state and Applicant was subsequently appointed plea counsel. Applicant testified he and plea counsel met several times and discussed Applicant's recorded confession to law enforcement. Applicant stated he told plea counsel that he believed his confession was coerced and showed plea counsel a case the Applicant referred to as "Chief v. Jackson"¹. Applicant testified he believed his confession was coerced because he initially declined to speak with law enforcement, but ultimately talked because he was under the influence of alcohol and marijuana. Applicant testified he wanted to investigate his confession further and review the recorded video. Applicant further testified plea counsel failed to challenge Applicant's confession. Applicant stated had plea counsel challenged his confession and had he reviewed forensic evidence, he would not have pled guilty and instead would have proceeded to trial. Applicant also testified, plea counsel sent him forensic evidence after his guilty plea. Applicant contended his decision to plead

¹ Applicant may have been referring to Jackson v. Denno, 378 U.S. 368, 84 S. Ct. 1774, 12 L. Ed. 2d 908 (1964).

guilty was based on plea counsel's advice that a guilty plea would be a better option than a trial.

B. Ineffective assistant of counsel for failure to notify Applicant of amount of evidence present in case.

Applicant testified plea counsel failed to review all evidence included in the case, including DNA samples. Applicant stated that the lack of information concerning discovery forced him to make an informed decision to plead guilty. Applicant admitted that he was known for carrying knives, however, Applicant stated he confessed under duress. Applicant testified his defense at trial was to suppress or redact statements Applicant made to law enforcement. Applicant further testified he believed he was wrongfully arrested.

II. TESTIMONY OF PLEA COUNSEL

Plea counsel also testified at the evidentiary hearing and corroborated many of Applicant's allegations. Specifically, plea counsel admitted that she began preliminary trial preparation, but did not hire an investigator and did not personally interview any witnesses. Plea counsel also agrees that she did not review the Applicant's physical file. However, plea counsel testified she reviewed Attorney Bambach's personnel file concerning Applicant's case.

Plea counsel stated she discussed with Applicant his confession to law enforcement. Further, plea counsel stated she discussed with Applicant the opportunity to challenge his confession at trial, however, plea counsel testified she explained to Applicant the unlikelihood of success. Plea counsel testified Applicant was Mirandized at the time of his confession and voluntarily made a statement to law enforcement. Plea counsel also testified that she discussed with Applicant certain defense strategies such as stand your ground and self-defense, but expressed the unlikelihood of success of these strategies at trial. Plea counsel stated if Applicant proceeded to trial, she would have attempted to suppress Applicant's statement to law enforcement.

Finally, plea counsel testified she did not believe Applicant would have been successful at trial because of the abundance of evidence against Applicant, thus she advised Applicant to plead guilty. Applicant plead guilty a week before Applicant's scheduled trial. Plea counsel further testified, Applicant initially wanted to proceed with a trial, however, decided to consider a plea once the State's plea offer was under forty (40) years.

CONCLUSIONS OF LAW

I. INVOLUNTARY PLEA

Applicant alleges that his guilty plea was involuntary because it was coerced by plea counsel, who failed to properly go over Applicant's case with him, and failed to inform Applicant of amount of evidence present in the case. These allegations are without merit.

"Entering a guilty plea results in a waiver of several constitutional rights, therefore the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently by defendants." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citing Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969)). "A defendant who pleads guilty upon the advice of counsel may only attack the voluntary and intelligent character of the guilty plea by showing that the advice he received from counsel was not within the range of competence demanded of attorneys in criminal cases." Richardson v. State, 310 S.C. 360, 363, 426 S.E.2d 795, 797 (1993) (citing Hill v. Lockhart, 474 U.S. 52, 56, 106 S.Ct. 366, 369, 88 L.Ed.2d 203, 209 (1985)).

"[A] guilty plea cannot be attacked as based on inadequate legal advice unless counsel was not 'a reasonably competent attorney' and the advice was not 'within the range of competence demanded of attorneys in criminal cases.'" Strickland v. Washington, 466 U.S. 668, 687 (1984) (quoting McMann v. Richardson, 397 U.S. 759, 770 (1970)). "When a convicted defendant complains of the ineffectiveness of counsel's assistance, the defendant must show that counsel's representation fell below an objective standard of reasonableness." Id. at 687-88.

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"Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" *Id.* at 689 (citation omitted). Applicant has not done that here.

Having weighed the credibility of the testifying witnesses and having considered the admissions and explanations offered, the Court cannot find that plea counsel was not "a reasonably competent attorney" or that her advice was not "within the range of competence demanded of attorneys in criminal cases." The Court finds no professional errors on the part of plea counsel; therefore, no prejudice could have resulted from plea counsel's representation. Further, while Applicant contends that he would have gone to trial but for counsel's advice of the amount of evidence against him, this is not supported by the evidence. Rather, the credible testimony in this case is that Applicant wanted to plead guilty and hoped the plea offer made by the State would be under forty (40) years. Therefore, the PCR application is denied as to these allegations.

II. INVESTIGATION AND EVIDENCE CONSIDERED

Finally, Applicant contends that plea counsel failed to thoroughly go over Applicant's case with him and to notify Applicant of amount of evidence present in the case. These allegations are also without merit, and Applicant has failed to provide any evidence that would entitle him to relief.

A PCR applicant is not entitled to relief where there is no evidence presented at his PCR hearing to demonstrate how the outcome of his case might've been different if counsel were more prepared. Skeen v. State of South Carolina, 325 S.C. 210, 213-15, 481, S.E.2d 129, 131-32 (1997). This is particularly true here, where Applicant pled guilty and wanted to plead guilty.


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Similarly, Applicant has failed to offer evidence of his claims of coercion in his confession to law enforcement. Further, any such claims are obviated by Applicant's guilty plea. Challenges regarding the arrest and his voluntary confession, in essence, claims that Applicant's constitutional rights were violated. However, any related constitutional rights were waived when Applicant pled guilty to the charge. Without evidence that Applicant's waiver of those rights was not knowing, voluntary and intelligent (which Applicant doesn't even allege), Applicant cannot prevail on this claim, and the PCR application is denied as to these allegations as well. See, e.g., Pittman v. State of South Carolina, 337 S.C. 597, 524 S.E.2d 623 (1999) (discussing guilty pleas and waiver of constitutional rights).

IT IS THEREFORE ORDERED that the Application for Post-Conviction relief is DENIED and DISMISSED with prejudice.

IT IS FURTHER ORDERED that Applicant Tony Lamont Young be REMANDED to the custody of the State of South Carolina.

AND IT IS SO ORDERED.


Jocelyn Newman
Presiding Judge

April 30, 2018
Columbia, South Carolina.

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2016CP4003641

Tony Lamont #365002 Young

State Of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(e), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Other: _____
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment In Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

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

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

4/30/2018

Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on April 30, 2018, to attorneys of record or to parties (when appearing pro se) as follows:

Tony Lamont #365002 Young Broad River Correctional
Institution 4460 Broad River Road Columbia, SC 29210
Leah E. Moody 235 E. Main St., Ste 115 PO Box 1015 Rock
Hill, SC 29730

Jessica Elizabeth Kinard PO Box 90860 Columbia, SC
29290-1860

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Jeanette W. McBride

Court Reporter

Jeanette W. McBride - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCF.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

WITNESSES**(S) B Rast****-- Richland County Sheriff**Carwell**ARREST WARRANT NUMBER****DP14350****ACTION OF GRAND JURY****TRUE BILL**Foreperson of Grand Jury **DEC 17 2014**
Date:**VERDICT**Foreperson of Petit Jury
Date:**DOCKET NO. 2014GS4008317****The State of South Carolina****County of****Richland****COURT OF GENERAL SESSIONS****DECEMBER TERM 2014****101****THE STATE
vs.****Tony Lamont Young****Indictment for
ROBBERY / ARMED ROBBERY, ROBBERY
WHILE ARMED OR ALLEGEDLY ARMED
WITH A DEADLY WEAPON****SC Code: 16-11-0330(A)
CDR Code: 0139**

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

Defendant

I Tony L. Young
hereby appear in my own proper person and plead
guilty to the within indictment or to

armed robbery**Defendant****Witness:**Walker
C.C.C. PLS. AND G.S.

RECEIVED TRUE COPY
ORIGINAL FILED
C.C.C. PLS. AND G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on December 17, the
Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That Tony Lamont Young did in Richland County on or about December 10, 2013, commit robbery by feloniously taking from the person or presence of DERRICK LAND, by means of force or intimidation, goods or monies of DERRICK LAND, such goods or monies being described as United States currency and/or cellular telephone, with the intent to deprive the owner permanently of such property, while armed with a pistol, knife, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he or she was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of §16-11-330(A), SC Code of Laws (1976, as amended)

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



DAN JOHNSON, SOLICITOR

WITNESSES**(S) B Rast****- Richland County Sheriff****ARREST WARRANT NUMBER****2013A4010204330****ACTION OF GRAND JURY****TRUE BILL**

Foreperson of Grand Jury

Date:

MAR 12 2014**VERDICT**

Foreperson of Petit Jury

Date:

DOCKET NO. 2014GS4001751**The State of South Carolina****County of****Richland****COURT OF GENERAL SESSIONS****MARCH TERM 2014****101****THE STATE****vs.****Tony Lamont Young****Indictment for
MURDER****SC Code: 16-03-0010****CDR Code: 0116**

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

Defendant

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

Defendant

Witness:

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

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

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

MARCH 12, 2014

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

MURDER

That Tony Lamont Young did in Richland County, on or about December 7,
2013, kill the victim, DERRICK LAND, with malice aforethought, either
express or implied, by means of stabbing, and the victim did die as a
proximate result thereof. All in violation of Section 16-03-0010, S. C. Code
of Laws, 1976, as amended

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



DAN JOHNSON, SOLICITOR

STATEMENT OF THE CASE

Appellant and Denzel Marquis Heyward were indicted by the Charleston County Grand Jury for the offenses of murder, attempted murder, armed robbery, and possession of a firearm during the commission of a violent crime. R. 838. Kadeem Ali Chambers was the decedent and subject of the murder indictment. Jujuain Hemingway was the brother of Kadeem Ali Chambers, the surviving witness, and the subject of the attempted murder indictment. R. 838.

The co-defendants' cases were called to trial on November 10, 2014, before the Honorable Roger M. Young. R. 1. Appellant was represented by Peter McCoy and Sara A. Turner. Co-defendant Denzel Heyward was represented by Alex Apostolou and Rodney Davis. Assistant solicitors Jennifer Kneece Shealy, Nina Savas and Daniel Cooper represented the state.

At 1:20 a.m. on November 14, 2014, the jury announced it could not reach a verdict on the murder count. However, the jury found appellant and co-defendant Heyward guilty of attempted murder, armed robbery, and possession of a firearm during the commission of a violent crime. R. 824, l. 21 – 825, l. 20.

Judge Young sentenced appellant and co-defendant Heyward to thirty years imprisonment for attempted murder, thirty years consecutive for armed robbery, and five years consecutive “on the weapons charge.” R. 837, ll. 2 – 8.

This appeal follows.