

State of South Carolina
County of Lexington

COPY

In the Court of Common Pleas
For the Eleventh Judicial Circuit

John Henry #299199
vs. Applicant

C/A: 2012-CP-32-2180

State of South Carolina
Respondent

AFFIDAVIT
Statement of Facts

LISA M. COMER
CLERK OF COURT
LEXINGTON SC

2017 NOV 16 PM 2:11

FILED

I John Henry duly sworn under penalty to say the
content of this Affidavit below is known to be true
and correct as stated:

JANUARY 7, 2016 Honorable Judge
William T. Keesley of the Eleventh Judicial Circuit
provided above Applicant with copy of Co-defendant
Quincy M. May guilty plea and sentencing phase transcripts.
After receive above Applicant submitted correspondence
to Judge Keesley in which Judge Keesley return a memo
that is file with Clerk of Court. I found out the content
of the hearing of Co-defendant through Facebook comments.

[Signature]

Applicant: John Henry #299199
Lee Carr Inst. F#-2132
990 Wisacky Hwy
Bishopville SC 29010

Sworn and subscribed before me
this 13 day of Nov. 2017
[Signature]
Notary Public For South Carolina
My Commission Expires: 3/3/2024

APPENDIX 1

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29010

\$3.18
R2305H128708-00

William P. Keesley, Judge
The Circuit Court of the Eleventh Judicial Circuit
Post Office Box 10
127 Courthouse Square
Edgefield, SC 29824-0010

F4-2132

RECEIVED

JAN 7 2016

LEE CI MAIL ROOM

Mr. John Henry, #299199
Lee Correctional Institution, F4-2107
990 Wisacky Highway
Bishopville, SC 29010

APPENDIX 2

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON) COURT OF GENERAL SESSIONS

THE STATE) ** VOLUME I **
) TRANSCRIPT OF RECORD
V.) 03-GS-32-1942
) 03-GS-32-1943
JOHN HENRY,) 03-GS-32-1944
) 03-GS-32-1946
DEFENDANT.) 03-GS-32-3348

JANUARY 12-14, 2004

LEXINGTON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE MARC H. WESTBROOK, JUDGE; AND A JURY.

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

A. G. SWARAT, ASSISTANT SOLICITOR
ROBERT MADSON, ASSISTANT SOLICITOR
ATTORNEYS FOR THE STATE

ROBERT T. WILLIAMS, SR., ESQUIRE
ATTORNEY FOR THE DEFENDANT

SHARON L. VIZER
CIRCUIT COURT REPORTER

APPENDIX 3

QUINCY MCCOY - DIRECT BY MR. SWARAT

- 1 A. Yes, sir.
- 2 Q. Two days after the first?
- 3 A. Yes, sir.
- 4 Q. Who did you tell them went inside the house on the
- 5 second statement?
- 6 A. Me and L. J.
- 7 Q. Did you say anything about Kurtino going in the
- 8 house?
- 9 A. No, sir.
- 10 Q. Do you want to check out your statement?
- 11 A. As a matter of fact, I remember. I think I told
- 12 them that Kurtino kicked down the back door.
- 13 Q. That Kurtino kicked down the back door?
- 14 A. Yes, sir.
- 15 Q. Did you ever tell them Terry went inside the house?
- 16 A. No, sir.
- 17 Q. At some point, did you tell Detective McIntosh that
- 18 Kurtino wasn't there?
- 19 A. Yes, sir.
- 20 Q. Sometime after this second statement?
- 21 A. Yes, sir.
- 22 Q. Who did you tell them was really there?
- 23 A. Whelthy.
- 24 Q. Was that a written statement or did you just tell
- 25 him that face-to-face?

APPENDIX 4

QUINCY MCCOY - DIRECT BY MR. SWARAT

1 A. Just told him.

2 MR. SWARAT: Your Honor, I would move this into
3 evidence. It's a summary chart.

4 THE COURT: Any objection?

5 MR. WILLIAMS: No objection.

6 THE COURT: Without objection.

7 (WHEREUPON, State's Exhibit No. 44, a Summary Chart,
8 was marked and admitted into evidence.)

9 BY MR. SWARAT:

10 Q. Mr. McCoy, I called your case to trial, I believe,
11 sometime might have been October, November?

12 A. Yes, sir.

13 Q. Along with Nyikrenda Keith?

14 A. Yes, sir.

15 Q. Did you know her before all this night?

16 A. No, sir.

17 Q. You know now that's the girlfriend?

18 A. Yes, sir.

19 Q. Of Terry?

20 A. Yes, sir.

21 Q. And did you make a decision when your case was
22 called for trial?

23 A. Yes, sir.

24 Q. What did you do?

25 A. Pled guilty.

- 1 Q. You've pled guilty to kidnapping?
- 2 A. (Nodded).
- 3 Q. Kidnapping that lady right there. The one that was
- 4 trying to get in that car, right?
- 5 A. Yes, that's her. Yes, sir.
- 6 Q. You pled guilty to burglary in the first degree?
- 7 A. Yes, sir.
- 8 Q. For going inside that man's house?
- 9 A. (Nodded).
- 10 Q. At night with those guns without permission?
- 11 A. Yes, sir.
- 12 Q. You pled guilty to criminal conspiracy for being
- 13 part of this group and this plan?
- 14 A. Yes, sir.
- 15 Q. You've pled guilty to attempted armed robbery for
- 16 trying to rob that household?
- 17 A. Yes, sir.
- 18 Q. And you've pled guilty to voluntary manslaughter for
- 19 your part in shooting Paul Keith?
- 20 A. Yes, sir.
- 21 Q. You know that you can get 30 years in prison for
- 22 voluntary manslaughter?
- 23 A. Yes, sir.
- 24 Q. You can get 30 years in prison for kidnapping.
- 25 A. Yes, sir.

QUINCY MCCOY - DIRECT BY MR. SWARAT

1 Q. You can get 20 years in prison for attempted armed
2 robbery.

3 A. Yes, sir.

4 Q. You can get five years for criminal conspiracy.

5 A. Uh-huh.

6 Q. And you can get 15 years to life for burglary in the
7 first degree.

8 A. Yes, sir.

9 Q. Has anybody made you any deal whatsoever about what
10 kind of time you're going to get?

11 A. I wish they would have but unfortunately they
12 didn't.

13 Q. Who's going to decide how much time you catch,
14 Mr. McCoy?

15 A. I think Judge Keesley.

16 Q. Or maybe another judge?

17 A. Yes, sir.

18 Q. You pled in front of Judge Keesley, is that correct?

19 A. Yes, sir.

20 Q. You know he can give you life in prison.

21 A. Yes, he told me.

22 Q. And this means you'll die in prison?

23 A. Yes, sir.

24 Q. And he can give you anything between 15 years to
25 life.

QUINCY MCCOY - CROSS BY MR. WILLIAMS

1 Q. So he's standing there with you there, and then the
2 lady comes out and he's got both guns. And she comes out then
3 he gives you the gun?

4 A. Yes, sir.

5 Q. Well, now you all have been walking for a good
6 little ways to get to the house, hadn't you?

7 A. No.

8 Q. How far did you have to walk to get to the house?

9 A. Right up the street. We can see the house from the
10 street. We can look straight up and see the house.

11 Q. And he's walking all the way to the house carrying
12 both guns?

13 A. Yeah.

14 Q. And he doesn't give you the gun before you get
15 there?

16 A. No, sir.

17 Q. Now, the deal you got, the plea you got, you got
18 charged with murder, didn't you?

19 A. Yes, sir.

20 Q. Okay. But you're not pleading to murder, are you?

21 A. No, sir.

22 Q. You're pleading to involuntary manslaughter?

23 A. Voluntary manslaughter.

24 Q. Voluntary manslaughter?

25 A. Yes, sir.

APPENDIX 8

QUINCY MCCOY - REDIRECT BY MR. SWARAT

1 Q. Now, do you know why you're not pleading to murder?

2 A. They told me if I pled guilty that's what they'll
3 drop it to.

4 Q. All right. And did they mention anything about
5 wanting you to testify?

6 A. Not at first. They subpoenaed me. I got a subpoena
7 Monday saying I had to come here.

8 Q. Okay. And that's the only reason why you're
9 testifying is because you've been subpoenaed?

10 A. Yes, sir.

11 Q. So you can go to somebody's house and you can kidnap
12 people, and you can rob them, and you can shoot them, and you
13 can kill them and that stuff doesn't scare you, but you get a
14 subpoena and you're right up there wanting to tell the gospel;
15 is that right?

16 A. Yes, sir.

17 Q. That's a powerful weapon, isn't it, that subpoena?

18 A. Yes, sir.

19 MR. WILLIAMS: I don't have any question, Your
20 Honor.

21 THE COURT: Any redirect?

22 MR. SWARAT: Yes, sir.

23 REDIRECT EXAMINATION

24 BY MR. SWARAT:

25 Q. Mr. McCoy, you know you can get up to life in prison

1 for what you pled to?

2 A. Yes, sir.

3 Q. And the Judge is going to sentence you. And if you
4 get life in prison, you're going to die in prison.

5 A. Yes, sir.

6 Q. You can't get any more time than that, can you?

7 A. No, sir.

8 Q. He's going to have discretion to give you 15 to
9 life.

10 A. Yes, sir.

11 Q. If you pled to murder, he'd have discretion to give
12 you 30 to life. You know you're going to get hammered for
13 what you've done?

14 A. I already know.

15 Q. I'm going to show you page five of your statement.
16 Remember him talking about Terry being in the house?

17 A. Yes, sir.

18 Q. You got that page out?

19 A. Yes, sir.

20 Q. At the top of the page you see a question there from
21 Detective Frier?

22 A. Yes, sir.

23 Q. I'll read his question. Where did you shoot him?
24 What was your answer?

25 A. In his thigh.

THE STATE)
)
 vs.) TRANSCRIPT OF RECORD
)
 QUINCY M. MCCOY .)

OCTOBER 20, 2003
LEXINGTON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE WILLIAM P. KEESLEY, JUDGE

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

TAV SWARAT, SOLICITOR
ATTORNEY FOR THE STATE

WALIS ALVES, ESQ.
ATTORNEY FOR NYIKRAENDA L. KEITH

STEVE SOLTIS, ESQ.
ATTORNEY FOR QUINCY MCCOY

(NO EXHIBITS WERE INTRODUCED)

JOY HOLSTON
OFFICIAL COURT REPORTER

1 MR. SWARAT: YOUR HONOR, AS I UNDERSTAND IT THE
2 FAMILY OF MS. ALVES' CLIENT IS PRAYING ON WHAT HER
3 CLIENT'S GOING TO DO. I'M GOING TO GO CHECK WITH THEM
4 REAL QUICK.

5 CLERK OF COURT: INDICTMENT 2003-GS-32-1961,
6 THE STATE VERSUS NYIKRAENDA KEITH, INDICTED FOR
7 ACCESSORY AFTER THE FACT OF MURDER. THE DEFENDANT IS
8 PUT BEFORE THE BAR AND ARRAIGNED. UPON HER
9 ARRAIGNMENT PLEADS GUILTY AS CHARGED. SIGNED PROPERLY
10 AND ATTESTED TO, TRUE BILLED. REPRESENTED BY MS.
11 ALVES.

12 INDICTMENT 2003-GS-32-3393, THE STATE VERSUS
13 QUINCY MCCOY, INDICTED FOR MURDER, PLEADING TO
14 VOLUNTARY MANSLAUGHTER.

15 INDICTMENT 2003-GS-32-1987, THE STATE VERSUS
16 QUINCY MCCOY, INDICTED FOR KIDNAPPING.

17 INDICTMENT 2003-GS-32-1983, THE STATE VERSUS
18 QUINCY MCCOY, INDICTED FOR ATTEMPTED ARMED ROBBERY.

19 INDICTMENT 2003-GS-32-1988, THE STATE VERSUS
20 QUINCY MCCOY, INDICTED FOR BURGLARY 1ST.

21 INDICTMENT 2003-GS-32-1985, THE STATE VERSUS
22 QUINCY MCCOY, INDICTED FOR POSSESSION OF A FIREARM OR
23 A KNIFE DURING THE COMMISSION OF A VIOLENT CRIME.

24 AND INDICTMENT 2003-GS-32-1984, THE STATE VERSUS
25 QUINCY MCCOY, INDICTED FOR CRIMINAL CONSPIRACY. THE

APPENDIX 12

1 DEFENDANT IS PUT BEFORE THE BAR AND ARRAIGNED, UPON
2 HIS ARRAIGNMENT PLEADS AS CHARGED ON ALL COUNTS. THEY
3 ARE ALL SIGNED AND PROPERLY ATTESTED TO. THEY ARE ALL
4 TRUE BILLED, HE IS REPRESENTED BY MR. SOLTIS. RAISE
5 YOUR RIGHT HANDS PLEASE.

6 NYIKRAENDA LATREL KEITH, AFTER BEING
7 DULY SWORN, TESTIFIED AS FOLLOWS:

8 QUINCY MCCOY, AFTER BEING DULY SWORN,
9 TESTIFIED AS FOLLOWS:

10 THE COURT: YOU'RE NYIKRAENDA LATREL KEITH,
11 MA'AM?

12 MS. KEITH: YES, SIR.

13 THE COURT: MS. KEITH, THIS INDICTMENT
14 CHARGES THAT IN LEXINGTON COUNTY ON OR ABOUT -- IT
15 DOESN'T ALLEGE ANYTHING ABOUT LEXINGTON COUNTY. THE
16 BODY OF THE INDICTMENT--

17 MR. SWARAT: YOUR HONOR, WE MOVE TO AMEND
18 THAT.

19 THE COURT: SURE. YOU'RE QUINCY MARQUETTE
20 MCCOY?

21 MR. MCCOY: YES, SIR.

22 THE COURT: MR. MCCOY, I HAVE AN INDICTMENT
23 THAT CHARGES YOU WITH CRIMINAL CONSPIRACY. IT ALLEGES
24 THAT YOU ALONG WITH JOHN HENRY, TERRY HALTIWANGER,
25 WHEALTHY, W-H-E-L-T-H-Y, MCKUNE, M-C-K-U-N-E AND

APPENDIX 13

1 NYIKRAENDA LATREL KEITH DID IN LEXINGTON COUNTY ON OR
2 ABOUT NOVEMBER 13TH, 2002, UNLAWFULLY AND WILFULLY
3 UNITE, COMBINED, CONSPIRED, CONFEDERATE AND AGREE AND
4 HAD A TACIT UNDERSTANDING WITH THOSE SAME PEOPLE FOR
5 THE PURPOSE OF ACCOMPLISHING CRIMINAL ACTS.
6 SPECIFICALLY, BURGLARY IN THE FIRST DEGREE OR ARMED
7 ROBBERY. UPON YOUR ARRAIGNMENT THAT CHARGE, IT
8 APPEARS YOU WISH TO PLEAD GUILTY TO CRIMINAL
9 CONSPIRACY, IS THAT CORRECT?

10 MR. MCCOY: YES, SIR.

11 THE COURT: I HAVE ANOTHER INDICTMENT THAT
12 CHARGES THAT YOU ALONG WITH JOHN HENRY DID IN
13 LEXINGTON COUNTY ON OR ABOUT NOVEMBER 13TH, 2002,
14 WILFULLY AND UNLAWFULLY HAVING IN YOUR POSSESSION OR
15 VISIBLY DISPLAY A FIREARM DURING THE COMMISSION OF A
16 VIOLENT CRIME OR CRIMES. SPECIFICALLY MURDER, AS
17 RECITED IN THE INDICTMENT IN VIOLATION OF CODE SECTION
18 CITED THEREIN. THAT'S THE INDICTMENT FOR POSSESSION
19 OF A FIREARM OR KNIFE DURING THE COMMISSION OF A
20 VIOLENT CRIME, IT APPEARS YOU WISH TO PLEAD GUILTY, IS
21 THAT CORRECT?

22 MR. MCCOY: YES, SIR.

23 THE COURT: IN ANOTHER INDICTMENT IT'S
24 ALLEGED THAT YOU ALONG WITH JOHN HENRY, TERRY
25 HALTIWANGER AND WHELTHY MCKUNE DID IN LEXINGTON COUNTY

APPENDIX 14

1 ON OR ABOUT NOVEMBER 13TH, 2002, WILFULLY AND
2 UNLAWFULLY ENTER A DWELLING BELONGING TO PAUL KEITH
3 LOCATED AT [REDACTED] IN LEXINGTON
4 COUNTY, SOUTH CAROLINA WITHOUT CONSENT WITH THE INTENT
5 TO COMMIT A CRIME THEREIN. AND THAT YOU ENTERED
6 DURING THE NIGHTTIME. THAT'S THE INDICTMENT OF
7 BURGLARY IN THE FIRST DEGREE AND UPON YOUR ARRAIGNMENT
8 IT APPEARS YOU WISH TO PLEAD GUILTY, IS THAT RIGHT?

9 MR. MCCOY: YES, SIR.

10 THE COURT: ANOTHER INDICTMENT CHARGES YOU
11 WITH ATTEMPTED ARMED ROBBERY. IT ALLEGES THAT ON OR
12 ABOUT NOVEMBER 13TH, 2002, THAT YOU ALONG WITH JOHN
13 HENRY, TERRY HALTIWANGER AND WHEALTHY MCKUNE IN
14 LEXINGTON COUNTY WHILE ARMED WITH A DEADLY WEAPON OR
15 WHAT APPEARED TO BE A DEADLY WEAPON OR WHAT YOU
16 REPRESENTED TO BE A DEADLY WEAPON, SPECIFICALLY A
17 FIREARM, ATTEMPTED TO FELONIOUSLY TAKE FROM THE PERSON
18 IN THE PRESENCE OF THE VICTIM, PAUL KEITH, BY MEANS OF
19 FORCE OR INTIMIDATION GOODS OR MONIES OF MR. KEITH'S
20 WITH THE INTENT TO PERMANENTLY DEPRIVE HIM OF THE
21 PROPERTY. THAT'S AN INDICTMENT FOR ATTEMPTED ARMED
22 ROBBERY AND UPON YOUR ARRAIGNMENT IT APPEARS YOU WISH
23 TO PLEAD GUILTY, IS THAT CORRECT?

24 MR. MCCOY: YES, SIR.

25 THE COURT: ANOTHER INDICTMENT THAT CHARGES

1 YOU WITH KIDNAPPING. IT ALLEGES THAT ON OR ABOUT
2 NOVEMBER 13TH, 2002, IN LEXINGTON COUNTY YOU ALONG
3 WITH JOHN HENRY, TERRY HALTIWANGER AND WHELTHY MCKUNE
4 WILFULLY, FELONIOUSLY AND UNLAWFULLY SEIZED AND
5 CONFINED, INVEIGLED, DECOYED, KIDNAPED, ABDUCTED OR
6 CARRIED AWAY ESQUEN, E-S-Q-U-E-N MERRITT BY ANY MEANS
7 WHATSOEVER WITHOUT AUTHORITY OF LAW. UPON YOUR
8 ARRAIGNMENT ON THAT CHARGE OF KIDNAPPING, IT APPEARS
9 YOU WISH TO ENTER A PLEA OF GUILTY, IS THAT RIGHT?

10 MR. MCCOY: YES, SIR.

11 THE COURT: AND THEN I HAVE AN INDICTMENT
12 THAT CHARGES IN LEXINGTON COUNTY ON OR ABOUT NOVEMBER
13 13TH, 2002, YOU ALONG WITH JOHN HENRY, TERRY
14 HALTIWANGER OR WHELTHY MCKUNE WILFULLY, FELONIOUSLY
15 AND WITH MALICE AFORETHOUGHT KILL PAUL KEITH BY MEANS
16 OF SHOOTING HIM WITH A FIREARM. AND THAT HE DIED AS A
17 PROXIMATE RESULT THEREOF IN LEXINGTON COUNTY ON OR
18 ABOUT NOVEMBER 13TH, 2002. THAT'S AN INDICTMENT FOR
19 MURDER. UPON YOUR ARRAIGNMENT IT APPEARS YOU WISH TO
20 ENTER A PLEA OF GUILTY TO VOLUNTARY MANSLAUGHTER, IS
21 THAT CORRECT?

22 MR. MCCOY: YES, SIR.

23 THE COURT: ALL RIGHT. MS. KEITH BACK TO
24 YOUR CASE. THE INDICTMENT CHARGES YOU WITH HAVING
25 DONE THE FOLLOWING IN LEXINGTON COUNTY ON OR ABOUT

1 NOVEMBER 13TH, 2002. IT'S ALLEGED THAT ON THAT DATE
2 AND ON THE DATES THEREAFTER YOU HAD KNOWLEDGE THAT
3 PAUL KEITH HAD BEEN MURDERED BY WHEALTHY MCKUNE, QUINCY
4 MCCOY, JOHN HENRY OR TERRY HALTIWANGER. AND THAT YOU
5 HARBORED, AIDED, OR ASSISTED THE PRINCIPAL FELONS
6 NAMED IN THE INDICTMENT WITH THE INTENTION OF ENABLING
7 THEM TO ESCAPE DETECTION, ARREST OR PUNISHMENT IN
8 VIOLATION OF COMMON LAW. THAT'S INDICTMENT FOR
9 ACCESSORY AFTER THE FACT OF MURDER. AND UPON YOUR
10 ARRAIGNMENT IT APPEARS THAT YOU WISH TO WAIVE
11 PRESENTMENT TO THE GRAND JURY ON THE AMENDED
12 INDICTMENT AND ENTER A PLEA OF GUILTY, IS THAT RIGHT?

13 MS. KEITH: YES, SIR.

14 THE COURT: ALL RIGHT. COUNSEL, HAVE EACH OF
15 YOU EXPLAINED TO YOUR RESPECTIVE CLIENT'S THE NATURE
16 AND ELEMENTS OF THE OFFENSES, THE POSSIBLE SENTENCE
17 THEY MAY RECEIVE AND THEIR CONSTITUTIONAL RIGHTS
18 INCLUDING A TRIAL BY JURY. MS. ALVES?

19 MS. ALVES: YES, SIR.

20 THE COURT: MR. SOLTIS?

21 MR. SOLTIS: YES, SIR. I HAVE.

22 THE COURT: ARE EACH OF YOU SATISFIED THAT
23 THERE IS A FACTUAL BASIS FOR YOUR CLIENT'S PLEA OR
24 PLEAS? MS. ALVES?

25 MS. ALVES: YES, SIR.

1 THE COURT: MR. SOLTIS?
2 MR. SOLTIS: YES, SIR.
3 THE COURT: DO YOU AGREE WITH YOUR CLIENT'S
4 DECISION TO ENTER A PLEA OF GUILTY? MS. ALVES?
5 MS. ALVES: YES, SIR.
6 THE COURT: AND MR. SOLTIS?
7 MR. SOLTIS: YES, SIR.
8 THE COURT: ALL RIGHT. MS. KEITH AND MR.
9 MCCOY, TODAY ARE YOU UNDER THE INFLUENCE OF ANY
10 MEDICINES, DRUGS, ALCOHOL, ANYTHING AT ALL THAT WOULD
11 AFFECT YOUR THINKING TODAY?
12 MS. KEITH: NO, SIR.
13 THE COURT: MS. KEITH?
14 MS. KEITH: NO, SIR.
15 THE COURT: MR. MCCOY?
16 MR. MCCOY: NO, SIR.
17 THE COURT: DO YOU HAVE ANY PHYSICAL OR
18 MENTAL PROBLEMS THAT AFFECT YOUR THINKING TODAY? MS.
19 KEITH?
20 MS. KEITH: NO, SIR.
21 THE COURT: AND MR. MCCOY?
22 MR. MCCOY: NO, SIR.
23 THE COURT: SO YOU'RE CLEARHEADED TODAY? YOU
24 KNOW WHAT YOU'RE DOING, MS. KEITH?
25 MS. KEITH: YES, SIR.

APPENDIX 18

1 THE COURT: MR. MCCOY?

2 MR. MCCOY: YES, SIR.

3 THE COURT: WHEN YOU PLEAD GUILTY YOU GIVE UP
4 VERY IMPORTANT CONSTITUTIONAL RIGHTS, INCLUDED AMONG
5 THOSE IS YOUR RIGHT TO REMAIN SILENT AND YOUR RIGHT TO
6 A JURY TRIAL. DO YOU KNOW ALL THOSE THINGS, MS.
7 KEITH?

8 MS. KEITH: YES, SIR.

9 THE COURT: MR. MCCOY?

10 MR. MCCOY: YES, SIR.

11 THE COURT: IF YOU WANTED A JURY TRIAL YOU
12 WOULD BE PRESUMED TO BE INNOCENT. THE STATE WOULD
13 HAVE THE ENTIRE BURDEN OF PROVING, WOULD HAVE TO PROVE
14 YOU GUILTY TO ALL TWELVE JURORS BEYOND A REASONABLE
15 DOUBT IN ORDER FOR YOU TO BE CONVICTED. YOU
16 UNDERSTAND ALL THAT, MS. KEITH?

17 MS. KEITH: YES, SIR.

18 THE COURT: MR. MCCOY?

19 MR. MCCOY: YES, SIR.

20 THE COURT: IN A JURY TRIAL SETTING YOU HAVE
21 THE RIGHT TO CONFRONT THE WITNESSES AGAINST YOU AND
22 WHAT THAT BASICALLY MEANS IS THAT YOU SIT AT COUNSEL
23 TABLE AND YOU GET TO SEE, HEAR AND HAVE YOUR LAWYER
24 CROSS-EXAMINE EVERY WITNESS AGAINST YOU. YOU
25 UNDERSTAND ALL THAT, MS. KEITH?

APPENDIX 19

1 MS. KEITH: YES, SIR.

2 THE COURT: MR. MCCOY?

3 MR. MCCOY: YES, SIR.

4 THE COURT: IF YOU HAD A JURY TRIAL AND YOU
5 CHOSE NOT TO TESTIFY, I WOULD TELL THE JURY THEY COULD
6 NOT HOLD YOUR SILENCE AGAINST YOU IN ANY WAY AT ALL.
7 THEY COULDN'T DISCUSS IT IN THEIR DELIBERATIONS. IT
8 WOULD BE SOMETHING THAT WOULD NOT ENTER THEIR MIND OR
9 COULD NOT ENTER THEIR MIND WHEN THEY, IN DECIDING THE
10 CASE. YOU UNDERSTAND ALL THAT, MS. KEITH?

11 MS. KEITH: YES, SIR.

12 THE COURT: MR. MCCOY?

13 MR. MCCOY: YES, SIR.

14 , THE COURT: NOW, IF YOU PLEAD GUILTY YOU GIVE
15 UP ANY DEFENSES YOU HAVE. YOU GIVE UP ANY CHALLENGES
16 YOU MAY HAVE TO THE EVIDENCE. YOU GIVE UP ALL THESE
17 RIGHTS WE'VE DISCUSSED AND YOU ADMIT THAT YOU'RE
18 GUILTY OF THE CHARGES TO WHICH YOU'RE PLEADING. YOU
19 UNDERSTAND ALL THAT, MS. KEITH?

20 MS. KEITH: YES, SIR.

21 THE COURT: MR. MCCOY?

22 MR. MCCOY: YES, SIR.

23 THE COURT: DO YOU WANT A JURY TRIAL, MS.
24 KEITH?

25 MS. KEITH: NO, SIR.

1 THE COURT: MR. MCCOY, DO YOU WANT A JURY
2 TRIAL ON ANY OF YOUR CASES?

3 MR. MCCOY: NO, SIR.

4 THE COURT: ALL RIGHT. I WANT YOU TO LISTEN
5 TO THE SOLICITOR, WHEN HE'S FINISHED I'M GOING TO ASK
6 YOU IF WHAT HE TOLD IS TRUE, SO LISTEN CAREFULLY.

7 MR. SWARAT: MAY IT PLEASE THE COURT, YOUR
8 HONOR?

9 THE COURT: YES, SIR.

10 MR. SWARAT: YOUR HONOR, MR. PAUL KEITH IS
11 THE VICTIM IN THIS CASE. HE WAS KILLED ON NOVEMBER
12 13TH OF 2002. THE EVENTS THAT LED UP TO HIS DEATH
13 HAPPENED ABOUT A WEEK BEFORE. YOU MAY HAVE NOTICED,
14 YOUR HONOR, BY THE INDICTMENTS THAT PAUL KEITH AND
15 NYIKRAENDA KEITH HAVE THE SAME LAST NAME. THEY'RE
16 ACTUALLY FIRST COUSINS. THEY WERE INVOLVED IN A, I
17 WANT TO SAY A DOMESTIC ALTERCATION AT THEIR
18 GRANDMOTHER'S FUNERAL PROCEEDING ON NOVEMBER 5TH OF
19 THAT SAME YEAR, ABOUT EIGHT DAYS BEFORE THE MURDER.

20 THE COURT: HOLD ON ONE SECOND.

21 MR. SWARAT: YES, SIR.

22 THE COURT: GO AHEAD. THEY WERE AT A FUNERAL
23 PROCEEDING?

24 MR. SWARAT: YES, SIR. THAT WAS ON NOVEMBER
25 5TH OF 2002. DURING THAT SERVICE IT WAS SORT OF A

APPENDIX 21

1 VISITATION AT A FAMILY MEMBER'S HOUSE. PAUL KEITH,
2 THE DECEASED, ACCUSED HIS COUSIN, LATREL KEITH, THE
3 DEFENDANT, OF DISTRIBUTING MARIJUANA IN THE PARKING
4 LOT. THEY GOT INTO A VERY HEATED ARGUMENT. DURING
5 THAT ARGUMENT SOME THREATS WERE MADE TO PAUL KEITH BY
6 LATREL KEITH AND ALSO BY SOME OF HER FAMILY MEMBERS,
7 ESSENTIALLY THAT HE DIDN'T RUN THINGS IN THEIR FAMILY,
8 HE HAD NO BUSINESS GETTING INVOLVED IN THAT
9 TRANSACTION AND VOICING HIS DISAGREEMENT WITH IT AND
10 THAT THEY WOULD GET HIM BACK FOR BUTTING INTO THEIR
11 BUSINESS. IT WAS A, IT WAS A HEATED ENOUGH DISCUSSION
12 THAT THE POLICE WERE CALLED TO THE SCENE. AFTER THE
13 POLICE WERE CALLED MS. KEITH AND HER BOYFRIEND, A
14 GENTLEMAN BY THE NAME OF TERRY HALTIWANGER, LEFT THE
15 SCENE IN HER CAR. POLICE ARRIVED AT THE FUNERAL
16 PROCEEDING AND THEY WERE INFORMED ABOUT THE MARIJUANA
17 DEALING OUT OF MS. KEITH'S CAR. ONE OF THOSE OFFICERS
18 WAS OFFICER THOMAS STOKES, WHO IS PRESENT IN THE
19 COURTROOM. HE WENT TO AN AREA IN LEXINGTON COUNTY
20 CALLED PARK NORTH APARTMENTS WHERE HE MET UP WITH MS.
21 KEITH AND HER BOYFRIEND, TERRY HALTIWANGER. THEY WERE
22 STILL IN HER CAR, IT WAS A RED GEO. HE ASKED CONSENT
23 TO SEARCH THEIR CAR, TALKED TO THEM ABOUT THIS DISPUTE
24 AT THE FAMILY GATHERING. AND DURING THAT SEARCH FOUND
25 SOME MARIJUANA SEEDS, SOME STEMS, I BELIEVE A SET OF

APPENDIX 22

1 SCALES AND PLASTIC BAGGIES. HE ENDED UP CHARGING MS.
2 KEITH WITH AN OFFENSE IN THE TOWN'S JURISDICTION, GAVE
3 HER A \$1,000 DOLLAR TICKET. I KNOW FROM MY TALKS WITH
4 MR. HALTIWANGER, WHO HAS ALREADY PLEAD GUILTY TO HIS
5 INVOLVEMENT IN THIS CRIME, THAT THEY THREW OUT THE
6 BULK OF THE MARIJUANA AS THEY WERE HEADED TO PARK
7 NORTH APARTMENTS. AFTER THAT HAPPENED, AFTER THE
8 ALTERCATION BETWEEN PAUL KEITH AND HIS COUSIN AND
9 AFTER HER GETTING CHARGED WITH THE CRIME WHICH SHE
10 RECEIVED A \$1,000 DOLLAR FINE, THEY VOWED TO GET HIM
11 BACK. AND DURING THE COURSE OF THE NEXT WEEK,
12 ACCORDING TO MR. HALTIWANGER, MS. KEITH GOT
13 INFORMATION THAT PAUL KEITH, HER COUSIN, WAS GOING TO
14 HAVE A QUANTITY OF MARIJUANA AT HIS RESIDENCE WHICH IS
15 AT [REDACTED], THAT'S IN THE WEST
16 COLUMBIA AREA OF LEXINGTON COUNTY. HE WOULD HAVE SOME
17 MARIJUANA ON A WEDNESDAY NIGHT. AND SHE TOLD TERRY
18 THAT SHE WANTED THAT MARIJUANA AND WANTED SOMEBODY TO
19 GO IN AND ROB HIM OF THE MARIJUANA. THEY WERE GOING
20 TO USE WHATEVER THEY GOT OUT OF THAT HOUSE TO PAY OFF
21 THE FINES THAT SHE RECEIVED AND ALSO JUST TO GET HIM
22 BACK FOR BUTTING INTO HER BUSINESS. TERRY TOOK THAT
23 INFORMATION ABOUT THE MARIJUANA THAT WAS GOING TO BE
24 DELIVERED AND ALSO THE ENCOURAGEMENT BY MS. KEITH TO
25 GET SOMEBODY TO ROB PAUL KEITH. AND HE WENT TO

APPENDIX 23

1 RICHLAND COUNTY AND FOUND THREE INDIVIDUALS THAT WERE
2 WILLING TO DO THIS BREAK-IN, TO ROB PAUL KEITH OF
3 WHATEVER MARIJUANA OR WHATEVER THEY FOUND IN HIS HOUSE
4 AND ALSO ANY MONEY THEY WERE ABLE TO RECOVER WITH A
5 PROMISE THAT THEY COULD KEEP A PORTION OF WHATEVER
6 THEY RETRIEVED AT THE HOUSE. THOSE INDIVIDUALS WERE
7 QUINCY MCCOY, JOHN HENRY, WHO ALSO GOES BY L.J. AND
8 ANOTHER MAN BY THE NAME OF WHELTHY MCKUNE. TERRY
9 HALTIWANGER, HER BOYFRIEND, AT HER INSISTENCE WENT AND
10 MET THOSE GENTLEMEN AT AN ADDRESS ON HIGH CIRCLE NOT
11 TOO FAR AWAY FROM RICHLAND MEMORIAL HOSPITAL. HE WAS
12 PROVIDED WITH HER CAR AND HER CELL PHONE. HER CELL
13 PHONE TO COMMUNICATE BOTH WITH THE ROBBERS THEY WERE
14 RECRUITING AND ALSO WITH HER, LETTING HER KNOW HOW
15 THINGS WERE GOING IN THIS PLAN. SHE WOULD, HE WAS
16 GIVEN HER CAR SO THAT HE COULD GO OVER THERE AND MEET
17 THEM. THEY MET UP ON HIGH CIRCLE, HE GOT OUT OF HER
18 RED GEO, GOT TOGETHER WITH THESE OTHER INDIVIDUALS AND
19 THEY RODE TO THE NEIGHBORHOOD OF [REDACTED].
20 SO IT WAS TERRY HALTIWANGER, WHELTHY MCKUNE, JOHN
21 HENRY, WHO GOES BY L.J. AND QUINCY MCCOY. TWO OF
22 THOSE MEN WERE ARMED. QUINCY MCCOY WAS ARMED WITH A
23 .22 RIFLE. L.J., JOHN HENRY WAS ARMED WITH A .40
24 CALIBER SEMIAUTOMATIC. THEY CASED THE NEIGHBORHOOD,
25 DURING THE TIME THEY WERE CASING THE NEIGHBORHOOD THEY

APPENDIX 24

1 WEREN'T, TERRY WAS NOT FAMILIAR WITH PAUL KEITH'S
2 RESIDENCE. HE HAD NEVER BEEN THERE, NEVER BEEN INSIDE
3 THE RESIDENCE. HE GOT INFORMATION FROM LATREL KEITH A
4 COUSIN, THE DEFENDANT, ABOUT THE DESCRIPTION OF THE
5 HOUSE AND ALSO THE TYPE OF CAR THAT PAUL KEITH DROVE,
6 WHICH WAS RELAYED TO HIM AS A GALLANT. THEY WERE ABLE
7 TO FIND THE HOUSE THROUGH TALKING TO LATREL KEITH AND
8 ALSO PAUL KEITH'S SISTER, WHO WAS NOT CHARGED BUT THE
9 POLICE SERIOUSLY CONSIDERED CHARGING HER. THE TWO MEN
10 THAT WERE ARMED, JOHN HENRY AND QUINCY MCCOY WERE LET
11 OUT DOWN THE STREET FROM PAUL KEITH'S RESIDENCE AND
12 THEY WENT TO HIS YARD. THERE'S EVIDENCE FROM THE
13 CRIME SCENE THAT THEY ATTEMPTED TO PRY OPEN SOME
14 WINDOWS AT THAT RESIDENCE, BUT WERE NOT ABLE TO GAIN
15 ENTRY THROUGH THE WINDOWS. IT WAS AROUND 8:00 O'CLOCK
16 AT NIGHT, YOUR HONOR, WHEN THIS OCCURRED. AS THEY
17 WERE OUT IN THE YARD ARMED, A ESQUEEN MERRITT WAS IN
18 ONE OF THE INDICTMENTS ON THE KIDNAPPING INDICTMENT,
19 SHE CAME OUT OF THE HOUSE GETTING READY TO GO TO THE
20 STORE. SHE WAS CONFRONTED BY QUINCY MCCOY AND JOHN
21 HENRY AT GUNPOINT IN THE YARD. ACTUALLY DRUG OUT OF
22 HER CAR, A MITSUBISHI GALLANT WHICH FITS THE
23 DESCRIPTION RELAYED BY LATREL KEITH. THEY PUT THE
24 GUNS TO HER HEAD, BOTH QUINCY MCCOY AND JOHN HENRY,
25 AND TOLD HER THEY WANTED ENTRY TO THE HOUSE. THEY

APPENDIX 25

1 FORCED HER TO GO AND UNLOCK THE FRONT DOOR, WHERE
2 QUINCY MCCOY AND JOHN HENRY WENT IN AND WENT TO THE
3 BEDROOM OF PAUL KEITH AND VICKIE, HIS COMMON LAW WIFE
4 WAS PRESENT. THE LAYOUT OF THE HOUSE WAS NOT KNOWN TO
5 TERRY HALTIWANGER. HE GOT THE INFORMATION ABOUT THE
6 LAYOUT OF THE HOUSE FROM LATREL KEITH, PAUL KEITH'S
7 FIRST COUSIN. THEY WENT TO THAT BEDROOM, VICKIE WAS
8 ON THE BED WATCHING TV. PAUL KEITH WAS SITTING ON THE
9 BED WITH HIS SIX YEAR OLD SON PLAYING A CARD GAME.
10 JOHN HENRY AND QUINCY CONFRONTED THEM, SAID GIVE UP
11 WHAT YOU'VE GOT; GIVE US EVERYTHING YOU HAVE. PAUL
12 SAID I DON'T HAVE ANYTHING. I DON'T KNOW WHAT TO GIVE
13 YOU. QUINCY MCCOY SHOT HIM IN HIS LEG WITH A .22
14 RIFLE THAT HE WAS HOLDING. JOHN HENRY PUT THE GUN TO
15 THE HEAD OF THE SIX YEAR OLD BOY AND HAD A LASER SIGHT
16 ON IT. HE PUT THE LASER SIGHT TO HIS FOREHEAD AND
17 SAID I'LL KILL YOUR SON IF YOU DON'T GIVE ME WHAT
18 YOU'VE GOT. AT THAT TIME ONE OF THE MEN, I CAN'T
19 REMEMBER WHICH GRABBED VICKIE'S POCKETBOOK AND DUMPED
20 THE CONTENTS ON THE FLOOR. THERE WAS NO MONEY, THERE
21 WERE SOME CREDIT CARDS AND SOME CHECK CARDS. AND SAID
22 GIVE ME WHAT YOU'VE GOT. PAUL AGAIN SAID I DON'T HAVE
23 ANYTHING. THEY GRABBED HIM AND HE HAD BEEN SHOT ONCE
24 IN THE LEG. THEY MARCHED HIM DOWN THE HALLWAY INTO
25 HIS LIVING ROOM. AT THE SAME TIME QUINCY WAS KIND OF

APPENDIX 26

1 IN THE HALLWAY GOING IN AND OUT OF TWO ROOMS. GOING
2 INTO THE BEDROOM OF VICKIE AND PAUL AND ALSO GOING
3 INTO THE BEDROOM OF ESQUEEN MERRITT AND HER SON, WHO
4 AT THE TIME WAS EIGHT YEARS OLD. THIS WAS ON A
5 WEDNESDAY NIGHT. HE KEPT THEM AT GUNPOINT AND UNDER
6 THREAT TO MAKE SURE THEY DIDN'T GET TO A PHONE AND
7 CALL 911. WHEN THEY WENT INTO THE LIVING ROOM PAUL
8 KEITH TRIED TO GRAB QUINCY MCCOY'S GUN. WHEN HE DID
9 QUINCY FIRED IT ONE MORE TIME. THAT BULLET GRAZED
10 PAUL. HE WAS ABLE TO TAKE IT AWAY FROM HIM, DISLODGED
11 THE CLIP WHICH HAD 19 UNFIRED ROUNDS IN IT, THROW THAT
12 ACROSS THE ROOM. WHEN HE DID THAT JOHN HENRY, L.J.
13 OPENED FIRE ON PAUL KEITH WITH THAT .40 CALIBER
14 SEMIAUTOMATIC, SHOT HIM SEVEN TIMES. AND IN THE, IN
15 THE FRAY SHOT QUINCY MCCOY IN THE LOWER LEG. THEY
16 WERE ABLE TO, TO ESCAPE OUT OF A BACKDOOR THAT WAS
17 KICKED IN BY ANOTHER CODEFENDANT BY THE NAME OF
18 WHELTHY MCKUNE. THEY RAN THROUGH THE NEIGHBORHOOD,
19 QUINCY MCCOY BEING SHOT LEAVING A BLOOD TRAIL GOING
20 THROUGH THE NEIGHBORHOOD TO A RENDEZVOUS POINT AT THE
21 CORNER OF DAWSON DRIVE AND ALLENDALE WHERE THEY WERE
22 PICKED UP BY TERRY HALTIWANGER IN WHELTHY MCKUNE'S
23 CAR. THEY LOADED UP, QUINCY'S BEEN SHOT. ONE GUN'S
24 LEFT BEHIND THAT PAUL KEITH TOOK AWAY. THEY PROCEEDED
25 TO TAKE QUINCY MCCOY TO RICHLAND MEMORIAL HOSPITAL AND

APPENDIX 27

1 DROP HIM OFF ABOUT A HALF BLOCK DOWN FROM THE
2 HOSPITAL. HE GOES TO THE HOSPITAL, CHECKS IN, TELLS
3 THE ADMINISTRATION THERE THAT HE'S BEEN SHOT DURING A
4 ROBBERY ATTEMPT. SOMEBODY TRIED TO ROB HIM AND HE WAS
5 SHOT. THE CITY OF COLUMBIA POLICE ARRIVED AND TREAT
6 HIM AS A VICTIM, TAKE A STATEMENT FROM HIM. HE GIVES
7 A LONG AND CONVOLUTED STATEMENT ABOUT HIS ATTACKERS
8 AND ABOUT WHERE, WHERE THIS ROBBERY ATTEMPT TOOK
9 PLACE. THEY GO AND TRY TO CORROBORATE HIS STORY AND
10 NOTHING MATCHES ANYTHING THAT HE'S SAYING. DURING THE
11 TIME THAT THEY HAVE GONE TO CORROBORATE HIS STORY THE
12 HOSPITAL MAKES A MISTAKE AND DISCHARGES HIM. HE'S
13 GONE. PAUL KEITH IS TRANSPORTED TO THE SAME HOSPITAL.
14 HE WAS ALIVE AT THE SCENE, BUT PASSED AWAY SHORTLY
15 AFTER 11:00 O'CLOCK THAT NIGHT. WHEN THE POLICE
16 ARRIVED, ARRIVED AT THE SCENE AND STARTED CHECKING
17 THROUGH EVERYTHING THERE INCLUDING THE CRIME SCENE AND
18 ALSO TALKING TO THESE EYEWITNESSES. THERE WAS ALSO A
19 12 YEAR OLD GIRL IN THE HOUSE. THEY WERE ABLE TO
20 GATHER INFORMATION ABOUT THIS FAMILY FIGHT AND ABOUT
21 THIS FEUD THAT HAD TAKEN PLACE ABOUT A WEEK BEFORE.
22 USING THAT INFORMATION AND ALSO FINDING THE BLOOD
23 TRAIL, THEY KNEW TWO THINGS: THEY KNEW THEY WANTED TO
24 TALK TO TERRY HALTIWANGER AND HIS GIRLFRIEND, LATREL
25 KEITH. AND THEY ALSO WANTED TO CHECK LOCAL HOSPITALS

APPENDIX 28

1 AND FIND OUT IF ANYBODY HAD BEEN TRANSPORTED WITH A
2 GUNSHOT WOUND. THEY WERE ABLE TO TALK TO TERRY
3 HALTIWANGER AND MS. KEITH THAT NIGHT, THE NIGHT OF THE
4 HOMICIDE. MS. KEITH COVERED FOR MR. HALTIWANGER, SAID
5 SHE HADN'T SEEN HIM SINCE ABOUT 7:00 O'CLOCK THAT
6 NIGHT AND THAT SHE HAD BEEN AT WORK THE ENTIRE TIME,
7 DIDN'T KNOW ANYTHING ABOUT HER COUSIN'S SITUATION.
8 IT'S CLEAR FROM LOOKING AT HER CELL PHONE RECORDS THAT
9 SHE IS IN CONSTANT CONTACT WITH TERRY HALTIWANGER,
10 JUST PRIOR TO ENTRY INTO THE HOUSE. I TOLD YOU BEFORE
11 HE WAS KILLED AROUND 8:00 O'CLOCK AT NIGHT. THEIR
12 LAST CELL PHONE COMMUNICATION WAS ABOUT SIX MINUTES
13 BEFORE THE BREAK-IN. THEN THERE'S CONVERSATION ON HER
14 CELL PHONE DIRECTLY AFTER THEY LEAVE THE CRIME AND
15 TAKE QUINCY MCCOY TO THE HOSPITAL. AND BOTH OF THOSE
16 ARE FAIRLY LENGTHY CONVERSATIONS. WE ALSO WERE ABLE
17 TO OBTAIN THE TAPE FROM HER JOB AT SPEEDWAY AND IT'S
18 CLEAR FROM THAT TAPE THAT AFTER MR. HALTIWANGER LEFT
19 HIS CODEFENDANTS HE WENT STRAIGHT TO HER AND ARRIVED
20 AT ABOUT 8:46 AT THE SPEEDWAY. SHE LIED TO LAW
21 ENFORCEMENT ABOUT THE LAST TIME SHE HAD SEEN HIM. HE
22 STAYED THERE WITH HER UNTIL A LITTLE AFTER 10 O'CLOCK.
23 AND WE TRACKED INFORMATION FROM HER CELL PHONE RECORDS
24 TO A PHONE OWNED BY WHEALTHY MCKUNE, ONE OF THE MEN
25 THAT WAS INVOLVED AS A PRINCIPAL IN THIS HOMICIDE AND

APPENDIX 29

1 ROBBERY. AND I BELIEVE THAT COVERS EVERYTHING AS TO,
2 AS TO BOTH OF THEIR INVOLVEMENTS IN THE CRIME.
3 ANYTHING ELSE YOU WOULD LIKE ME TO ADD I WOULD BE
4 HAPPY TO. I KNOW THAT VICKIE, PAUL'S, PAUL'S WIFE
5 WOULD LIKE TO ADDRESS THE COURT AS TO LATREL KEITH.
6 MR. MCCOY IS NOT GOING TO BE SENTENCED TODAY. HE'S
7 JUST GOING TO BE QUALIFIED. THE SENTENCING IS GOING
8 TO BE DEFERRED UNTIL AFTER HE TESTIFIES AGAINST THE
9 TWO REMAINING CODEFENDANTS, JOHN HENRY AND WHEALTHY
10 MCKUNE. AND I ANTICIPATE THAT TRIAL WILL TAKE PLACE
11 ON JANUARY 26TH, AFTER WE MOVE INTO THE NEW
12 COURTHOUSE. SHE WOULD LIKE TO TALK TO YOU ABOUT
13 LATREL KEITH AND ALSO THIS IS NEAL HALTIWANGER, WHO IS
14 A FIRST COUSIN OF MS. KEITH. HE WOULD ALSO LIKE TO
15 ADDRESS THE COURT.

16 THE COURT: I'LL BE HAPPY TO HEAR FROM
17 ANYBODY THAT WANTS TO SPEAK. THE CONSPIRACY OCCURRED,
18 YOU SAID THEY GOT TOGETHER, IT OCCURRED IN RICHLAND OR
19 LEXINGTON COUNTY?

20 MR. SWARAT: THE HOMICIDE ITSELF OCCURRED IN
21 WEST COLUMBIA, IN LEXINGTON COUNTY.

22 THE COURT: WHAT ABOUT THE CONSPIRACY?

23 MR. SWARAT: BACK AND FORTH BETWEEN THE TWO.

24 THE COURT: WHAT HE'S PLEADING TO HERE
25 OCCURRED IN LEXINGTON COUNTY?

1 MR. SWARAT: YES, SIR. IT WOULD BE OUR
2 POSITION THE CONSPIRACY CONTINUED UP UNTIL THEY MAKE
3 ENTRY INTO THE HOUSE AND CONTINUES AFTERWARDS AFTER
4 THEY'RE PICKED UP BY THE SAME MEN.

5 THE COURT: ALL RIGHT. MS. KEITH, IS WHAT
6 THE SOLICITOR TELLING ME TRUE AS TO YOUR INVOLVEMENT?

7 MS. KEITH: YES, SIR.

8 THE COURT: MR. MCCOY, IS WHAT THE SOLICITOR
9 TELLING ME TRUE AS TO YOUR CASE, CASES?

10 MR. SOLTIS: JUDGE, WE'VE HAD SOME DISCUSSION
11 ON THAT AND THERE ARE A FEW MINOR DISCREPANCIES. WE
12 DON'T KNOW OBVIOUSLY WHAT HAPPENED IN REGARD TO THE
13 CONSPIRACY BETWEEN LATREL AND TERRY HALTIWANGER. BUT
14 AS TO OURS, THERE ARE A FEW MINOR DISCREPANCIES IN THE
15 SOLICITOR'S STATEMENT, BUT IT'S NOT ENOUGH TO MAKE A
16 DIFFERENCE IN WHETHER THEY CAN PROVE WHAT THEY CAN
17 PROVE OR NOT.

18 MR. SWARAT: AND YOUR HONOR, WE WOULD HAVE
19 BEEN PROCEEDING AGAINST MR. MCCOY UNDER THE THEORY OF
20 ACCOMPLICE LIABILITY, UNDER THE HAND OF ONE IF WE
21 PROCEEDED TO TRIAL TODAY.

22 THE COURT: ALL RIGHT. MR. MCCOY, DO YOU
23 ADMIT YOU'RE GUILTY OF ALL THESE CHARGES?

24 MR. MCCOY: YES, SIR.

25 THE COURT: AND YOU'RE SURE THAT THERE ARE

1 FACTS, WHAT YOU DID SUPPORTS CONVICTIONS FOR EACH OF
2 THESE OFFENSES?

3 MR. MCCOY: YES, SIR.

4 THE COURT: HAS ANYONE FORCED YOU, THREATENED
5 YOU, COERCED YOU IN ANY WAY TO GET YOU TO WAIVE YOUR
6 RIGHTS AND ENTER THESE PLEAS OF GUILTY? MS. KEITH?

7 MS. KEITH: NO, SIR.

8 THE COURT: MR. MCCOY?

9 MR. MCCOY: NO, SIR.

10 THE COURT: ANY PLEA BARGAIN THE STATE'S MADE
11 WITH YOU? THAT INCLUDES ANY AGREEMENTS ABOUT DROPPING
12 CHARGES, REDUCING CHARGES, RECOMMENDING SENTENCES,
13 ANYTHING LIKE THAT. THEY HAVE TO SAY THOSE THINGS IN
14 OPEN COURT ON THE RECORD TO ME OR YOU LOSE WHAT
15 THEY'VE NOT TOLD ME ABOUT. DO YOU UNDERSTAND THAT MS.
16 KEITH?

17 MS. KEITH: YES, SIR.

18 THE COURT: MR. MCCOY?

19 MR. MCCOY: YES, SIR.

20 THE COURT: MS. ALVES, WHAT'S THE PLEA
21 AGREEMENT AS TO YOUR CLIENT?

22 MS. ALVES: YOUR HONOR, THE STATE'S DROPPING
23 THE ACCESSORY BEFORE THE FACT TO BURGLARY 1ST AND THEY
24 ARE DISMISSING THE ACCESSORY BEFORE THE FACT TO
25 ATTEMPTED ARMED ROBBERY.

1 MR. SWARAT: AND ITS A NEGOTIATED 15 YEAR
2 SENTENCE ON ACCESSORY AFTER THE FACT OF MURDER.

3 THE COURT: ALL RIGHT. MS. KEITH, OTHER THAN
4 WHAT'S ON THE RECORD DID ANYBODY PROMISE YOU ANYTHING
5 OR OFFERED YOU ANY HOPE OF REWARD TO GET YOU TO PLEAD
6 GUILTY?

7 MS. KEITH: NO, SIR.

8 THE COURT: MR. SOLTIS, WHAT'S THE AGREEMENT
9 WITH YOUR CLIENT?

10 MR. SOLTIS: JUDGE, WE ARE PLEADING GUILTY AS
11 STATED. THE ONLY CONCESSION IS THEY HAVE DROPPED THE
12 MURDER TO VOLUNTARY MANSLAUGHTER.

13 THE COURT: SO, MR. MCCOY, OTHER THAN WHAT'S
14 ON THE RECORD HAS ANYONE PROMISED YOU ANYTHING OR
15 OFFERED YOU ANY HOPE OF REWARD TO GET YOU TO ENTER
16 THIS PLEA OF GUILTY?

17 MR. MCCOY: NO, SIR.

18 THE COURT: PLEADS OF GUILTY, I'M SORRY.
19 HAS ANYBODY PROMISED YOU ANYTHING ELSE?

20 MR. MCCOY: NO, SIR.

21 THE COURT: ARE EACH OF YOU FULLY SATISFIED
22 WITH YOUR ATTORNEY? MS. KEITH ARE YOU?

23 MS. KEITH: YES, SIR.

24 THE COURT: MR. MCCOY?

25 MR. MCCOY: UH-HUH.

1 THE COURT: YOU'RE NOT FULLY SATISFIED WITH--

2 MR. MCCOY: OH, YES, SIR.

3 MS. ALVES: YOUR HONOR, IF I MAY ALSO I'M
4 SORRY. THERE WAS ANOTHER INDICTMENT THAT WAS
5 PRESENTED TO THE GRAND JURY FOR MS. KEITH ON
6 CONSPIRACY. THE SOLICITOR WAS NEVER, WAS NOT GOING TO
7 PROCEED WITH THAT CASE AT TRIAL TODAY AND HE'S
8 INFORMED ME HE'S ALSO DISMISSING THAT CHARGE AS WELL.

9 MR. SWARAT: THIS WILL COVER THE BALANCE OF
10 HER CHARGES WHEN SHE PLEADS TO THIS ONE.

11 THE COURT: ALL RIGHT. MS. KEITH, OTHER
12 THAN WHAT'S ON THE RECORD HAS ANYBODY PROMISED YOU
13 ANYTHING, OFFERED YOU ANY HOPE OF REWARD TO GET YOU TO
14 PLEAD?

15 MS. KEITH: NO, SIR.

16 THE COURT: AND BACK TO YOU MR. MCCOY TO MAKE
17 SURE YOU UNDERSTAND MY QUESTION. ARE YOU FULLY
18 SATISFIED WITH THE SERVICES OF YOUR LAWYER?

19 MR. MCCOY: YES, SIR.

20 THE COURT: IS THERE ANYTHING ELSE THAT YOU
21 WANT YOUR ATTORNEY TO DO ON YOUR CASE THAT HE OR SHE
22 HAS NOT DONE OTHER THAN SPEAK FOR YOU ON YOUR CASE,
23 MR. MCCOY, CONTINUE TO REPRESENT YOU AS TO LATER IN
24 THE SENTENCING? ANYTHING ELSE YOU WANT THEM TO DO UP
25 TO THIS POINT THAT THEY HAVE NOT DONE? MS. KEITH?

1 MS. KEITH: NO, SIR.

2 THE COURT: MR. MCCOY?

3 MR. MCCOY: UH-UH.

4 THE COURT: HAVE YOU HAD ENOUGH TIME TO MEET
5 WITH YOUR LAWYER AND DISCUSS EVERYTHING YOU NEED TO
6 DISCUSS WITH YOUR ATTORNEY SO THAT HE OR SHE CAN
7 REPRESENT YOU PROPERLY? MS. KEITH?

8 MS. KEITH: YES, SIR.

9 THE COURT: MR. MCCOY?

10 MR. MCCOY: YES, SIR.

11 THE COURT: HAVE YOU HAD ENOUGH TIME TO MAKE
12 UP YOUR OWN MIND ABOUT THIS? MS. KEITH?

13 MS. KEITH: YES, SIR.

14 THE COURT: MR. MCCOY?

15 MR. MCCOY: YES, SIR.

16 THE COURT: DO YOU HAVE ANY COMPLAINTS OF ANY
17 KIND AGAINST YOUR ATTORNEY, LAW ENFORCEMENT, ANYBODY
18 AT ALL THAT DEALT WITH YOUR CASE? MS. KEITH?

19 MS. KEITH: NO, SIR.

20 THE COURT: MR. MCCOY?

21 MR. MCCOY: NO, SIR.

22 THE COURT: MS. KEITH, YOUR INDICTMENT
23 ORIGINALLY DID NOT ALLEGE THAT THE OFFENSE OCCURRED IN
24 LEXINGTON COUNTY. THE INDICTMENT HAS TO ALLEGE THAT
25 IT OCCURRED IN A COUNTY. SO, IN ORDER FOR YOUR CASE

1 TO GO FORWARD WHAT THEY WOULD HAVE TO DO IS GET
2 ANOTHER INDICTMENT OR ATTEMPT TO GET ANOTHER
3 INDICTMENT. INSTEAD THEY AMENDED THE INDICTMENT AND
4 YOU HAVE SIGNED INDICATING THAT YOU'RE WAIVING
5 PRESENTMENT TO THE GRAND JURY ON THE AMENDED
6 INDICTMENT. DO YOU UNDERSTAND EVERYTHING I'VE TOLD
7 YOU?

8 MS. KEITH: YES, SIR.

9 THE COURT: YOU HAVE AN ABSOLUTE RIGHT TO
10 HAVE THIS CASE GO BACK BEFORE THE GRAND JURY ON
11 ANOTHER INDICTMENT. IF YOU WANT THAT DONE AT LEAST 12
12 OUT OF 18 GRAND JURORS WOULD HAVE TO AGREE YOU'RE
13 PROBABLY GUILTY OR THE CASE WOULD STOP THERE. YOU
14 UNDERSTAND?

15 MS. KEITH: YES, SIR.

16 THE COURT: NOW THESE PAPERS THAT THEY'VE
17 HANDED ME INDICATE YOU'RE GIVING UP THE RIGHT TO HAVE
18 THE GRAND JURY CONSIDER THE AMENDED INDICTMENT, IS
19 THAT CORRECT?

20 MS. KEITH: YES, SIR.

21 THE COURT: IS THAT YOUR OWN DECISION MADE OF
22 YOUR OWN FREE WILL?

23 MS. KEITH: YES, SIR.

24 THE COURT: ALL RIGHT. HAVE YOU ALL CHECKED
25 ON THESE PENALTIES BECAUSE THERE'S SO MANY OF THEM, I

APPENDIX 36

1 WANT TO MAKE SURE I DIDN'T LEAVE ANYTHING OUT. ACCESSORY
2 AFTER THE FACT OF MURDER, MS. KEITH, IS A FELONY THAT
3 CARRIES UP TO 15 YEARS IN PRISON AS A POSSIBLE
4 PUNISHMENT. YOU UNDERSTAND THAT?

5 MS. KEITH: YES, SIR.

6 THE COURT: IS THAT WHAT YA'LL HAVE?

7 MS. ALVES: YES, SIR.

8 THE COURT: ALL RIGHT. MR. MCCOY, CRIMINAL
9 CONSPIRACY IS A FELONY THAT CARRIES UP TO 5 YEARS IN
10 PRISON AND A \$5,000 DOLLAR FINE. YOU UNDERSTAND THAT?

11 MR. MCCOY: YES, SIR.

12 THE COURT: POSSESSION OF A FIREARM DURING
13 THE COMMISSION OF A VIOLENT CRIME IS A FELONY THAT
14 CARRIES UP TO, THAT CARRIES 5 YEARS IN PRISON. AND
15 UNLESS YOU RECEIVE A GREATER SENTENCE THAN 5 YEARS YOU
16 HAVE TO RECEIVE AT LEAST 5 YEARS. DO YOU UNDERSTAND
17 THAT?

18 MR. MCCOY: YES, SIR.

19 THE COURT: WHATEVER SENTENCE THE JUDGE GIVES
20 YOU ON THAT CHARGE, THE JUDGE CANNOT SUSPEND IT OR
21 GIVE YOU ANY TYPE OF PROBATION. DO YOU UNDERSTAND
22 THAT?

23 MR. MCCOY: YES, SIR.

24 THE COURT: IF YOU PLEAD GUILTY TO THAT UNDER
25 NO CIRCUMSTANCES WOULD YOU EVER BE ELIGIBLE FOR WORK

1 RELEASE OR EXTENDED WORK RELEASE OR ANY PROGRAM LIKE
2 THAT.

3 MR. MCCOY: YES, SIR.

4 THE COURT: YOU UNDERSTAND?

5 MR. MCCOY: YES, SIR.

6 THE COURT: AND YOU LOSE ANY CLAIM TO THE
7 WEAPON. YOU UNDERSTAND THAT?

8 MR. MCCOY: YES, SIR.

9 THE COURT: THERE'S SOME MORE THINGS ABOUT
10 IT, BUT I'M GOING TO COME BACK TO THOSE, COVER THOSE
11 WHEN I COVER THESE OTHER THINGS. BURGLARY IN THE 1ST
12 DEGREE CARRIES 15 YEARS IN PRISON, UP TO LIFE
13 IMPRISONMENT AS A POSSIBLE PUNISHMENT. DO YOU
14 UNDERSTAND THAT?

15 MR. MCCOY: YES, SIR.

16 THE COURT: IT'S ALSO A FELONY. YOU
17 UNDERSTAND THAT?

18 MR. MCCOY: YES, SIR.

19 THE COURT: IT'S CLASSIFIED BY THE
20 LEGISLATURE AS A MOST SERIOUS OFFENSE, WELL, BUT I'LL
21 COME BACK TO THAT IN A MINUTE. BURGLARY HAS A
22 GRADUATED ASPECT TO IT. YOU VIOLATE BURGLARY LAWS IN
23 THE FUTURE, YOU CAN GET BUMPED UP TO HIGHER PUNISHMENT
24 JUST BY VIRTUE OF THE FACT YOU HAVE A PRIOR BURGLARY
25 CONVICTION ON YOUR RECORD. YOU UNDERSTAND THAT?

APPENDIX 38

1 MR. MCCOY: YES, SIR.

2 THE COURT: ATTEMPTED ARMED ROBBERY, I'VE GOT
3 20 YEARS AS A POSSIBLE PUNISHMENT, IT'S A FELONY. IS
4 THAT WHAT YA'LL HAVE?

5 MR. SWARAT: YES, SIR.

6 THE COURT: DO YOU UNDERSTAND THAT, MR.
7 MCCOY?

8 MR. MCCOY: YES, SIR.

9 THE COURT: KIDNAPPING CARRIES UP TO 30 YEARS
10 AND IT'S ALSO A FELONY. DO YOU UNDERSTAND THAT?

11 MR. MCCOY: YES, SIR.

12 THE COURT: IF THE CONDUCT INVOLVED ANY TYPE
13 OF CRIMINAL SEXUAL CONDUCT, THEN YOU WOULD BE REQUIRED
14 TO REGISTER AS A SEX OFFENDER. IF THE JUDGE FINDS
15 THERE WAS NO CRIMINAL ACTIVITY, NO SEXUAL ASPECT TO
16 THE CRIME, THEN THE JUDGE CAN ORDER THAT HE NOT BE ON
17 THE SEX OFFENDER REGISTRY. THE JUDGE HAS TO MAKE THAT
18 FINDING ON THE RECORD. DO YOU UNDERSTAND THAT?

19 MR. MCCOY: YES, SIR.

20 THE COURT: I HAD ACTUALLY ALREADY WRITTEN
21 THAT ON THE SENTENCE SHEET BECAUSE I DIDN'T KNOW HE
22 WASN'T GOING TO BE SENTENCED TODAY.

23 MR. SOLTIS: WE WERE GONNA, WE WERE GOING TO
24 ASK YOU TO CLARIFY THAT ANYWAY. I DIDN'T KNOW WHETHER
25 YOU WANTED TO DO IT OR WAIT FOR THE SENTENCING, JUDGE,

APPENDIX 39

1 TO DO THAT.

2 THE COURT: I'M GOING TO LEAVE IT ON THERE
3 BECAUSE IT DOESN'T EVEN SEEM TO BE AN ISSUE. SO YOU
4 COULD GET UP TO 30 YEARS ON KIDNAPPING. YOU
5 UNDERSTAND THAT?

6 MR. MCCOY: YES, SIR.

7 THE COURT: VOLUNTARY MANSLAUGHTER IS ALSO A
8 FELONY THAT CARRIES UP TO 30 YEARS IN PRISON. DO YOU
9 UNDERSTAND THAT?

10 MR. MCCOY: YES, SIR.

11 THE COURT: OKAY. NOW, MR. MCCOY, THE
12 LEGISLATURES ENACTED CERTAIN LAWS WHICH ARE COMMONLY
13 CALLED TWO STRIKES YOU'RE OUT AND THREE STRIKES YOU'RE
14 OUT. TECHNICALLY THEY ARE CALLED MOST SERIOUS
15 OFFENSES AND SERIOUS OFFENSES. DO YOU UNDERSTAND THAT
16 VOLUNTARY MANSLAUGHTER IS A MOST SERIOUS OFFENSE?

17 MR. MCCOY: YES, SIR.

18 THE COURT: DO YOU UNDERSTAND THAT KIDNAPPING
19 IS A MOST SERIOUS OFFENSE?

20 MR. MCCOY: YES, SIR.

21 THE COURT: DO YOU UNDERSTAND THAT ATTEMPTED
22 ARMED ROBBERY IS A MOST SERIOUS OFFENSE?

23 MR. MCCOY: YES, SIR.

24 THE COURT: DO YOU UNDERSTAND THAT BURGLARY
25 IN THE 1ST DEGREE IS A MOST SERIOUS OFFENSE?

APPENDIX 40

1 MR. MCCOY: YES, SIR.

2 THE COURT: THAT MEANS THAT THOSE THINGS ARE
3 STRIKES UNDER THE TWO STRIKES LAW. IF YOU GET THE
4 RIGHT COMBINATION OF STRIKES YOU MUST DO LIFE IN
5 PRISON WITHOUT POSSIBILITY OF PAROLE. DO YOU
6 UNDERSTAND THAT?

7 MR. MCCOY: YES, SIR.

8 THE COURT: SO, BASICALLY, IF YOU GET ANOTHER
9 STRIKE, I DON'T KNOW ANYTHING ABOUT YOUR PRIOR RECORD,
10 I'M ASSUMING YOU DON'T HAVE ANYTHING THAT WOULD
11 TRIGGER THIS, BUT YOU GET ANOTHER STRIKE YOU, YOU DIE
12 IN PRISON. DO YOU UNDERSTAND THAT?

13 MR. MCCOY: YES, SIR.

14 THE COURT: NOW THE LEGISLATURES ALSO ENACTED
15 A LAW WHICH IS CALLED TRUTH-IN-SENTENCING.
16 TECHNICALLY IT'S CALLED THE NO PAROLE OFFENSES. AND
17 WHAT THAT BOILS DOWN TO IS THAT IF SOMEONE PLEADS
18 GUILTY ON A NO PAROLE OFFENSE THEY CANNOT BE RELEASED
19 FROM PRISON SOONER THAN EIGHTY-FIVE PERCENT OF THE
20 TIME THEY'RE SENTENCED TO SERVE AND THAT'S DAY FOR DAY
21 TIME. YOU UNDERSTAND?

22 MR. MCCOY: YES, SIR.

23 THE COURT: THAT'S NO GUARANTEE YOU WOULD GET
24 OUT AT EIGHTY-FIVE PERCENT, THAT'S THE LEAST TIME YOU
25 COULD DO. YOU UNDERSTAND THAT?

1 MR. MCCOY: YES, SIR.

2 THE COURT: WHEN SOMEONE COMES OUT ON A NO
3 PAROLE OFFENSE THEY AUTOMATICALLY COME OUT ON A PERIOD
4 OF COMMUNITY SUPERVISION OF 2 YEARS UNDER THE CURRENT
5 LAW. AND IF A PERSON VIOLATES THE TERMS OF THE
6 SUPERVISION, THAT PERSON CAN GET A YEAR IN PRISON JUST
7 FOR VIOLATING THE SUPERVISION. AND THEN WHENEVER THEY
8 COME OUT THEY START A NEW 2 YEAR PERIOD OF SUPERVISION
9 AND THAT CAN CONTINUE ON EACH CASE UP TO DOUBLE THE
10 AMOUNT OF THE ORIGINAL SENTENCE. YOU UNDERSTAND THAT?

11 MR. MCCOY: YES, SIR.

12 THE COURT: SO FOR EXAMPLE, ON A 20 YEAR
13 SENTENCE SOMEBODY CAN DO 40 YEARS IF THEY CONTINUE TO
14 MESS UP EACH TIME THEY GET OUT.

15 MR. MCCOY: YES, SIR. I UNDERSTAND.

16 THE COURT: THAT'S JUST FOR VIOLATING
17 SUPERVISION. IF MESSING UP MEANS THEY COMMIT ANOTHER
18 CRIME THEN THEY HAVE TO FACE THE CONSEQUENCES THAT
19 FLOW FROM THAT. YOU UNDERSTAND?

20 MR. MCCOY: YES, SIR.

21 THE COURT: ALL RIGHT. NOW, VOLUNTARY
22 MANSLAUGHTER, KIDNAPPING -- I'M SORRY, --. ALL RIGHT,
23 VOLUNTARY MANSLAUGHTER, KIDNAPPING, ATTEMPTED ARMED
24 ROBBERY AND BURGLARY IN THE 1ST DEGREE ARE ALL, AND
25 POSSESSION OF A FIREARM DURING THE COMMISSION OF A

APPENDIX 42

1 VIOLENT CRIME, ALL ARE MOST, ARE NO PAROLE OFFENSES.
2 DO YOU UNDERSTAND THAT?

3 MR. MCCOY: YES, SIR.

4 THE COURT: THEY'RE ALL EIGHTY-FIVE PERCENT
5 MINIMUM SERVICE TIME OFFENSES. YOU UNDERSTAND?

6 MR. MCCOY: YES, I UNDERSTAND.

7 THE COURT: ALL RIGHT. NOW, KIDNAPPING,
8 VOLUNTARY MANSLAUGHTER, ATTEMPTED ARMED ROBBERY,
9 BURGLARY IN THE 1ST DEGREE, THOSE ARE ALL VIOLENT
10 CRIMES. YOU UNDERSTAND THAT?

11 MR. MCCOY: YES, SIR.

12 THE COURT: DO YOU UNDERSTAND THAT THE
13 LEGISLATURE TREATS PEOPLE DIFFERENTLY WHO HAVE A
14 VIOLENT OFFENSE THAN THEY DO PEOPLE WHO HAVE
15 NONVIOLENT OFFENSES. I'M SORRY, LEGISLATURE DOES, BUT
16 I MEANT TO SAY THE DEPARTMENT OF CORRECTIONS. YOU
17 UNDERSTAND THAT?

18 MR. MCCOY: YES, SIR.

19 THE COURT: VIOLENT OFFENDERS DON'T GET THE
20 SAME HOUSING THAT NONVIOLENT OFFENDERS GET. THEY GO
21 TO DIFFERENT INSTITUTIONS AT TIMES. THEY DON'T GET
22 ELIGIBILITY FOR PROGRAMS NONVIOLENT OFFENDERS GET
23 ELIGIBILITY FOR. THERE'S A WHOLE GAMUT OF
24 CONSEQUENCES THAT CAN FLOW FROM A VIOLENT OFFENSE.
25 YOU UNDERSTAND?

1 MR. MCCOY: YES, SIR. I UNDERSTAND.

2 THE COURT: NOW, SOME OF THIS IS GOING TO BE
3 OVERCOME BY THE FACT THAT YOU'VE GOT EIGHTY-FIVE
4 PERCENT SENTENCES HERE, BUT JUST TO MAKE SURE YOU
5 UNDERSTAND THAT ON A VIOLENT OFFENSE A PERSON CANNOT
6 BE RELEASED FROM PRISON SOONER THAN ONE-THIRD OF THE
7 TIME THEY'RE SENTENCED TO SERVE. AGAIN, YOU'RE GOING
8 TO HAVE EIGHTY-FIVE PERCENT HANGING OVER YOU ON THESE
9 CASES SO IT REALLY DOESN'T MEAN ANYTHING IN YOUR
10 INSTANCE. BUT ON A SECOND VIOLENT CRIME, THE PERSON
11 HAS TO DO THE FULL AMOUNT OF TIME WITHOUT ANY
12 POSSIBILITY OF EARLY RELEASE. AND ON A THIRD VIOLENT
13 TIME THE PERSON WOULD BE REQUIRED TO DO LIFE. DO YOU
14 UNDERSTAND?

15 MR. MCCOY: YES, SIR.

16 THE COURT: THAT'S A DIFFERENT LAW THAT
17 AFFECTS YOU EVEN, OTHER THAN THAT TWO STRIKES YOU'RE
18 OUT, THREE STRIKES YOU'RE OUT LEGISLATION. OKAY? YOU
19 DON'T HAVE ANY PRIOR VIOLENT CRIMES, DO YOU?

20 MR. MCCOY: NO, SIR.

21 THE COURT: IF YOU DID YOU UNDERSTAND YOU
22 HAVE TO DO THE FULL TIME?

23 MR. MCCOY: YES, SIR.

24 THE COURT: AND THIS IS REALLY NOT ALL THAT
25 SERIOUS A CONSEQUENCE. I WOULD THINK THAT, MR. MCCOY,

APPENDIX 44

1 IF YOU PLEAD GUILTY TO THESE OFFENSES YOU'RE GOING TO
2 HAVE TO PROVIDE A SAMPLE OF YOUR DNA FROM YOUR BLOOD.
3 YOUR DNA WILL BE PUT INTO A CENTRAL COMPUTER REGISTRY,
4 THEY'LL KEEP, THEY KEEP FINGERPRINTS SO IF THEY HAVE A
5 CRIME SCENE WITH DNA THEY CAN RUN IT THROUGH THE
6 COMPUTER AND IF IT MATCHES YOUR DNA THEY'RE GOING TO
7 COME LOOKING FOR YOU. YOU UNDERSTAND?

8 MR. MCCOY: YES, SIR.

9 THE COURT: ALL RIGHT. UNDERSTANDING
10 EVERYTHING WE'VE BEEN OVER, ARE YOU SURE THAT YOU WANT
11 TO GIVE UP ALL YOUR RIGHTS THAT WE DISCUSSED AND ENTER
12 YOUR PLEA OF GUILTY, MS. KEITH?

13 MS. KEITH: YES, SIR.

14 THE COURT: MR. MCCOY?

15 MR. MCCOY: YES, SIR.

16 THE COURT: CAN YA'LL THINK OF ANYTHING I
17 LEFT OUT ON THE SENTENCING POSSIBILITIES?

18 MR. SWARAT: NO, YOUR HONOR.

19 MR. SOLTIS: NO, SIR.

20 THE COURT: ALL RIGHT. IF I'M LOOKING AT
21 THIS CORRECTLY, MR. MCCOY, YOU'RE FACING LIFE PLUS,
22 LIFE PLUS 90 YEARS.

23 MR. MCCOY: YES, SIR.

24 THE COURT: IS THAT YOUR UNDERSTANDING?

25 MR. MCCOY: YES, SIR.

1 THE COURT: ALL RIGHT. EACH OF THESE
2 INDIVIDUALS MADE A FREE, KNOWINGLY AND VOLUNTARILY,
3 INTELLIGENT DECISION, WAIVING THEIR RIGHTS AND
4 PLEADING GUILTY. THEY'VE DONE SO UPON THE ADVICE OF
5 COUNSEL WITH WHOM THEY'RE COMPLETELY SATISFIED.
6 THERE'S A FACTUAL BASIS FOR EACH PLEA. MS. KEITH HAS
7 MADE A FREE, KNOWINGLY AND VOLUNTARILY INTELLIGENT
8 DECISION TO WAIVE PRESENTMENT TO GRAND JURY. THEY'VE
9 MADE THEIR DECISIONS UPON THE ADVICE OF COUNSEL WITH
10 WHOM THEY'RE FULLY SATISFIED. ALL RIGHT. NOW, THE
11 VICTIMS WANTED TO ADDRESS MR. MCCOY'S CASE OR NOT?

12 MR. SOLTIS: NO, YOUR HONOR. WE'LL RESERVE
13 THAT AT THE TIME HE IS SENTENCED.

14 THE COURT: MR. MCCOY, YOU'RE BEING HELD
15 UNTIL A LATER DATE AND YOU'LL BE SENTENCED AT A LATER
16 TIME. ALL RIGHT?

17 MR. MCCOY: YES, SIR.

18 THE COURT: THANK YOU, SIR. ALL RIGHT. THEY
19 WISH TO BE HEARD ALSO?

20 MR. SWARAT: AND THIS IS, FOR THE RECORD THIS
21 IS VICKIE MERRITT, PAUL KEITH'S WIDOW.

22 THE COURT: YES, MA'AM.

23 MS. MERRITT: MY NAME IS VICKIE MERRITT.
24 THIS HAS BEEN, MY KIDS HAD TO WALK OUT THEIR ROOMS
25 DOOR AND SEE THEIR FATHER DYING IN THE LIVING ROOM.

1 MY DAUGHTER HEARD SOMEBODY OUTSIDE A WINDOW. MY KIDS
2 HAVE BEEN IN COUNSELING EVER SINCE. MY SON CAN'T
3 SLEEP BECAUSE HE HEARS A GUNSHOT. WE WAS HOMELESS FOR
4 TWO MONTHS. BUT WE'RE IN COUNSELING NOW. WE HAD TO
5 MOVE BACK INTO THE HOUSE WHERE THE THING, YOU KNOW,
6 WHERE IT HAPPENED AT BECAUSE WE DON'T HAVE NO PLACE TO
7 GO. THEY WERE SO CRUEL TO COME INTO THE HOUSE WITH
8 THE KIDS THERE, PUT THE GUN TO THEIR HEAD. I DON'T
9 KNOW IF THEY'LL EVER FORGET. BUT IT'S TIME NOW, WE
10 NEED TO HEAL, I WAS REALLY SCARED. BUT WE CAN PUT OUR
11 LIFE BACK TOGETHER. HOPEFULLY THEY'LL JUST TAKE IT
12 DAY BY DAY. I CAN'T DO ANYTHING TO BRING MY KIDS
13 FATHER BACK. THANK YOU.

14 THE COURT: THANK YOU VERY MUCH.

15 MS. MERRITT: YOU'RE WELCOME.

16 THE COURT: IS THERE SOMETHING, NOW YOU WOULD
17 LIKE TO SAY SOMETHING, I'LL HEAR FROM YOU.

18 MR. SWARAT: YEAH, THIS IS NEIL HALTIWANGER.
19 THIS IS LATREL KEITH'S FIRST COUSIN, ALSO PAUL KEITH'S
20 FIRST COUSIN.

21 THE COURT: YOU SPELL NEAL, N- E- A- L?

22 MR. SWARAT: E- I- L.

23 MR. HALTIWANGER: YES, SIR. WHAT HAPPENED
24 THEY PUT A, I MEAN MADE A GREAT IMPACT ON THE FAMILY.
25 AND I GREW UP IN A DYSFUNCTIONAL FAMILY, THERE WERE

APPENDIX 47

1 FIGHTS EVERY DAY. I THINK IT'S RELEVANT TO THE CASE
2 AND I THINK THAT WHAT HAPPENED, SHE HAD SOMETHING TO
3 DO WITH IT AND CAPABLE OF HAVING SOMETHING TO DO WITH
4 IT.

5 THE COURT: I'M SORRY, SAY THAT LAST THING
6 AGAIN.

7 MR. HALTIWANGER: I SAID I THINK THAT--

8 THE COURT: I CAN'T HEAR.

9 MR. HALTIWANGER: I THINK SHE, I THINK SHE'S
10 CAPABLE OF HAVING SOMETHING DONE AS FAR AS, AND I GREW
11 UP IN A DYSFUNCTIONAL FAMILY AND THERE'S FIGHTS
12 EVERYWHERE, VIOLENT FAMILY. AND NOW THE FAMILIES
13 PRETTY MUCH SPLIT APART, YOU KNOW WHAT I'M SAYING. A
14 BIG IMPACT ON THE FAMILY. I THINK THESE THINGS WILL
15 BRING US CLOSER.

16 THE COURT: THANK YOU, VERY MUCH.

17 MR. HALTIWANGER: YOU'RE WELCOME.

18 THE COURT: ALL RIGHT. MS. ALVES.

19 MS. ALVES: YOUR HONOR, MAY IT PLEASE THE
20 COURT. YOUR HONOR, MS. KEITH IS 24 YEARS OLD AND
21 SHE'S STANDING HERE TODAY ADMITTING GUILT IN BEING
22 ACCESSORY AFTER THE FACT OF THIS. I KNOW SHE DOES
23 REGRET EVERYTHING THAT HAS HAPPENED WITH THIS CASE.
24 YOUR HONOR, TO TELL YOU SOMETHING ABOUT MS. KEITH, AT
25 THE TIME THIS OCCURRED SHE WAS GOING TO SCHOOL AND SHE

1 WAS WORKING TWO JOBS, ONE AT THE SPEEDWAY WHICH HAS
2 BEEN REFERENCED BY THE SOLICITOR AND SHE WAS ALSO
3 WORKING AT K-MART. SHE, AT THE TIME THAT THIS
4 OCCURRED SHE WAS LIVING WITH MR. HALTIWANGER, THE
5 PERSON MENTIONED THROUGHOUT THIS CASE; HOWEVER, YOUR
6 HONOR, SHE'S HERE WITH HER MOTHER AND SOME OTHER OF
7 HER FAMILY MEMBERS HERE TODAY. SHE DOES HAVE TWO
8 YOUNGER BROTHERS WHO SHE HELPED HER MOTHER OUT WITH,
9 ONE OF THEM IS A YEAR YOUNGER THAN HER AND HE'S
10 HANDICAPPED. AND THE OTHER ONE IS ABOUT 10 YEARS OR
11 EXCUSE ME, 12 YEARS YOUNGER THAN HER. AND SHE HELPED
12 HER MOTHER RAISE HIM. AND THAT JUST GIVES YOU AN IDEA
13 OF WHAT TYPE OF PERSON THAT SHE IS AND HOW UNUSUAL IT
14 IS THAT SHE COULD EVEN BE INVOLVED IN SOMETHING LIKE
15 THIS. YOUR HONOR, I KNOW THERE'S NOT MUCH ROOM HERE
16 BECAUSE TO ARGUE FOR ANYTHING ON HER BEHALF BECAUSE IT
17 IS A NEGOTIATION BETWEEN MYSELF AND THE SOLICITOR IN
18 REGARDS TO THIS PLEA. BUT I JUST WANTED TO LET YOU
19 KNOW WHAT TYPE OF PERSON THAT SHE WAS PRIOR TO THIS
20 INCIDENT OCCURRING. HER FAMILY IS HERE AND I BELIEVE
21 SOMEONE MAY WANT TO SPEAK ON HER BEHALF.

22 THE COURT: I JUST NEED FOR YOU TO STATE YOUR
23 NAME SO THAT THE COURT REPORTER CAN TAKE THAT DOWN
24 BECAUSE SHE HAS TO PUT DOWN EVERYTHING WE SAY. SO WE
25 HAVE TO KNOW WHOSE TALKING AND SHE MAY NEED THE

1 SPELLING OF YOUR NAME.

2 MS. JIMMERSON: MY NAME IS CHARNEA JIMMERSON.

3 THE COURT: SPELL YOUR FIRST NAME FOR ME.

4 MS. JIMMERSON: C-H-A-R-N-E-A.

5 THE COURT: SOMEBODY TALKING. TRY AGAIN.

6 MS. JIMMERSON: C-H-A-R-N-E-A.

7 THE COURT: AND YOUR LAST NAME.

8 MS. JIMMERSON: JIMMERSON, J-I-M-M-E-R-S-O-N.

9 THE COURT: OKAY.

10 MS. JIMMERSON: YES, I'VE KNOWN HER, I KNOW
11 HER AS TREL BECAUSE WE ALL CALLED HER TREL. AND I'VE
12 BEEN AROUND HER FOR OVER SIX YEARS. I'VE NEVER KNOWN
13 TREL TO GET INTO ANY TROUBLE FOR ANYTHING. ME AND
14 TREL ARE CLOSE. WE GO TO CHURCH TOGETHER. WE PRAY
15 TOGETHER. ALL I KNOW TREL TO DO IS TO BE THE TYPE OF
16 PERSON TO HELP HER MOM OUT WITH HER BROTHER BECAUSE
17 SHE LOVES HER BROTHERS. ESPECIALLY THE ONE THAT'S
18 HANDICAPPED AND CAN'T HARDLY SPEAK. AND HE LOVES TREL
19 TO DEATH. AND I ALSO KNOW THAT TREL IS THE TYPE OF
20 PERSON ALL SHE DO IS WORK. TREL NEVER SMOKED OR
21 DRINKED OR GO OUT. WE NEVER DID ANYTHING. I JUST
22 KNOW HER AS BEING JUST TREL, TO DO NOTHING AT ALL, BUT
23 JUST WORK AND GO TO SCHOOL. I'VE NEVER KNOWN HER TO
24 GET ANY, INTO TROUBLE OR ANYTHING. THANK YOU.

25 THE COURT: THANK YOU, VERY MUCH. ANYONE

1 ELSE?

2 MS. MITCHELL: MY NAME IS LASHAWNDA MITCHELL.
3 LASHAWNDA, THAT'S L-A-S-H-A-W-N-D-A MITCHELL. I'VE
4 KNOWN LATREL 10 YEARS. WE WENT TO HIGH SCHOOL
5 TOGETHER TILL WE GRADUATED. ME AND TREL DID
6 EVERYTHING TOGETHER. TREL HAS NEVER BEEN IN ANY
7 TROUBLE. SHE'S NEVER SMOKED, DRANK, YOU KNOW, WE
8 ALWAYS WANTED SOMETHING OUT OF LIFE. WE WANTED TO GO,
9 WE WENT TO SCHOOL BECAUSE WE WANTED TO BECOME A NURSE.
10 I WENT, I USED TO GO AND PICK TREL UP EVERYDAY TO GO
11 TO SCHOOL BECAUSE WE WANTED TO BE SOMETHING AND I, I
12 MISS MY BEST FRIEND. SHE CAN'T BE A NURSE WITH ME,
13 YOU KNOW, WE CAN'T TAKE CARE OF PEOPLE TOGETHER.
14 SHE'S MY ONLY FRIEND, I DON'T HAVE ANY MORE FRIENDS.

15 THE COURT: THANK YOU. ALL RIGHT. ANYONE
16 ELSE?

17 MS. ALVES: NO, SIR.

18 THE COURT: MS. KEITH, IS THERE ANYTHING YOU
19 WOULD LIKE TO SAY?

20 MS. KEITH: NO, SIR.

21 THE COURT: THEY'RE NOT SEEKING RESTITUTION
22 FOR HER, ARE THEY?

23 MR. SWARAT: NO, YOUR HONOR.

24 THE COURT: ALL RIGHT. IF THERE'S NOTHING
25 FURTHER, THE COURT ACCEPTS THE PLEA OF GUILTY AS TO

1 MS. KEITH. THE SENTENCE OF THE COURT IS THAT YOU BE
2 COMMITTED TO THE SOUTH CAROLINA DEPARTMENT OF
3 CORRECTIONS FOR A PERIOD OF 15 YEARS PLUS PAY THE
4 COSTS AND ASSESSMENTS APPLICABLE. YOU'RE GIVEN CREDIT
5 FOR JAIL TIME SERVED PURSUANT TO SECTION 24-13-40 OF
6 THE CODE, TO BE CALCULATED AND APPLIED BY THE
7 DEPARTMENT OF CORRECTIONS. RESTITUTION IS WAIVED.
8 THERE ARE CERTAIN CHARGES WHICH I CANNOT WAIVE. I
9 HAVE TO IMPOSE \$125.00 DOLLARS PLUS 3 PERCENT. YOU
10 HAVE 90 DAYS FROM THE TIME YOU GET OUT OF PRISON IN
11 WHICH TO PAY THAT CHARGE TO THE CLERK'S OFFICE. IF YOU
12 DON'T PAY IT, YOU CAN GET A YEAR IN JAIL AS PUNISHMENT
13 FOR CONTEMPT OF COURT, YOU WOULD STILL OWE THE MONEY
14 SO, TRY TO GET YOUR FAMILY TO GO AHEAD AND PAY THAT SO
15 IT'LL BE BEHIND YOU. YOU UNDERSTAND YOUR SENTENCE,
16 MS. KEITH?

17 MS. KEITH: YES, SIR.

18 THE COURT: SHOULD YOU WISH TO APPEAL
19 ANYTHING FROM THIS PROCEEDING YOU MUST DO SO IN
20 WRITING. YOU MUST DO SO PROMPTLY. SO SHOULD YOU WISH
21 TO FILE ANY TYPE OF APPEAL YOU MUST LET MS. ALVES KNOW
22 IT RIGHT AWAY. YOU UNDERSTAND?

23 MS. KEITH: YES, SIR.

24 THE COURT: GOOD LUCK TO YOU.

25 MS. ALVES: THANK YOU, YOUR HONOR.

APPENDIX 52

1 THE COURT: I DIDN'T SAY ON THE RECORD THAT I
2 ACCEPTED HIS PLEA.

3 MR. SWARAT: WELL, DO YOU WANT THEM BACK?

4 THE COURT: I DON'T THINK WE HAVE TO DO IT
5 RIGHT NOW OR ANYTHING LIKE THAT, BUT I JUST THINK
6 MAYBE WE NEED TO PUT ON THE RECORD THAT I ACCEPT HIS
7 PLEA.

8 (WHEREUPON, THE PROCEEDINGS WERE
9 CONCLUDED.)

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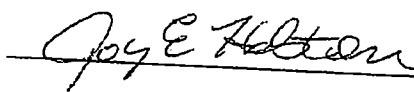
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

I, JOY HOLSTON, OFFICIAL COURT REPORTER FOR THE
8TH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA,
DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE,
ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL
OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE
COURT OF GENERAL SESSIONS FOR LEXINGTON COUNTY, SOUTH
CAROLINA, ON THE 20TH DAY OF OCTOBER, 2003.

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

JANUARY 22, 2003



JOY HOLSTON, COURT REPORTER

MY COMMISSION EXPIRES: 3-13-06

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF LEXINGTON

03-GS-32-1983 - 1985

03-GS-32-1987 - 1988

03-GS-32-3393

THE STATE OF SOUTH CAROLINA

-VS-

QUINCY MARQUETTE MCCOY

TRANSCRIPT OF RECORD

APRIL 6, 2004

LEXINGTON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE MARC H. WESTBROOK, JUDGE.

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

A. TAV SWARAT, ESQUIRE
ATTORNEY FOR THE STATE

STEPHEN R. SOLTIS, JR., ESQUIRE
ATTORNEY FOR THE DEFENDANT

DAPHNE D. HELMS
CIRCUIT COURT REPORTER

E X H I B I T S

1			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u> <u>EV.</u>
3	C-1	STATEMENT OF MR. MCCOY	14
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1 THE CLERK: QUINCY MCCOY. INDICTMENT
2 2003-GS-32-3393, THE STATE VERSUS QUINCY MCCOY, INDICTED FOR
3 MURDER, PLEADS TO VOLUNTARY MANSLAUGHTER. INDICTMENT
4 2003-GS-32-1988, THE STATE VERSUS QUINCY MCCOY, INDICTED FOR
5 BURGLARY FIRST. INDICTMENT 2003-GS-32-1987, THE STATE VERSUS
6 QUINCY MCCOY, INDICTED FOR KIDNAPPING.

7 INDICTMENT 2003-GS-32-1895 (SIC), THE STATE VERSUS
8 QUINCY MCCOY, INDICTED FOR POSSESSION OF A FIREARM OR KNIFE
9 DURING THE COMMISSION OF A VIOLENT CRIME. AND INDICTMENT
10 2003-GS-32-1984, THE STATE VERSUS QUINCY MCCOY, INDICTED FOR
11 CRIMINAL CONSPIRACY. THE DEFENDANT -- EXCUSE ME. I HAVE ONE
12 MORE. INDICTMENT 2003-GS-32-1983, THE STATE VERSUS QUINCY
13 MCCOY, INDICTED FOR ATTEMPTED ROBBERY WHILE ARMED WITH A
14 DEADLY WEAPON.

15 THE DEFENDANT WAS PUT TO THE BAR AND ARRAIGNED ON
16 OCTOBER THE 20TH OF 2003. THE PLEA WAS ACCEPTED AT THAT TIME
17 AND SENTENCE WAS DEFERRED. THIS IS FOR SENTENCING PURPOSES
18 ONLY, YOUR HONOR. RAISE YOUR RIGHT HAND, PLEASE, SIR.

19 QUINCY MARQUETTE MCCOY, AFTER BEING DULY SWORN,
20 TESTIFIED AS FOLLOWS:

21 THE COURT: ALL RIGHT. MR. SOLTIS, YOU'VE ADVISED
22 MR. MCCOY OF WHAT'S GOING ON TODAY?

23 MR. SOLTIS: YES, SIR.

24 THE COURT: DO YOU FEEL LIKE HE UNDERSTANDS IT?

25 MR. SOLTIS: OH, YES.

1 THE COURT: ALL RIGHT. SOLICITOR?

2 MR. SWARAT: MAY IT PLEASE THE COURT, YOUR HONOR?

3 MR. MCCOY IS THE LAST REMAINING CO-DEFENDANT THAT WAS
4 INVOLVED IN THE HOMICIDE OF PAUL KEITH. YOUR HONOR, THIS IS
5 THE CASE WE TRIED THE FIRST PART OF THIS YEAR WITH JOHN HENRY
6 WHO ENDED UP BEING CONVICTED OF THE MURDER OF MR. KEITH AND
7 WAS SENTENCED TO LIFE IN PRISON.

8 YOUR HONOR, MR. MCCOY'S INVOLVEMENT WAS SUBSTANTIAL
9 AT THE SCENE OF THE CRIME. HE WAS INVOLVED IN THE KIDNAPPING
10 OF MS. MERRITT STANDING TO MY LEFT. HE WAS INVOLVED IN THE
11 HOME INVASION ITSELF. HE WAS ALSO INVOLVED IN THE ATTEMPTED
12 ARMED ROBBERY OF MR. KEITH IN HIS HOME IN THE PRESENCE OF HIS
13 WIFE AND CHILDREN, AND HE ACTUALLY SHOT MR. KEITH ONE TIME IN
14 THE LEG. IT WAS NOT A FATAL SHOT. MR. KEITH WAS ULTIMATELY
15 KILLED BY MR. HENRY WITH A 40 CALIBER SEMIAUTOMATIC, SHOT
16 SEVEN TIMES BY MR. HENRY.

17 YOUR HONOR, MR. MCCOY WAS SHOT ALSO AT THE SAME TIME
18 THAT MR. KEITH WAS KILLED. HE WAS HIT WITH A STRAY BULLET
19 DURING THE TUSSELE THAT THEY HAD IN THE LIVING ROOM OF THAT
20 HOUSE. HE WAS ULTIMATELY TRACKED TO RICHLAND MEMORIAL
21 HOSPITAL WHERE HE HAD BEEN SEEN AS A PATIENT THAT NIGHT. HE
22 EVENTUALLY TURNED HIMSELF IN TO LAW ENFORCEMENT.

23 YOUR HONOR MAY HAVE REMEMBERED: HE GAVE A NUMBER OF
24 STORIES WHEN HE WAS FIRST ARRESTED DETAILING SOME INVOLVEMENT
25 IN THE CRIME BUT KIND OF MINIMIZING HIS ACTIVITY. ULTIMATELY

1 HE -- HE TOLD US THE TRUTH, AGREED TO PLEAD GUILTY AND
2 TESTIFY FOR THE STATE. YOUR HONOR, HE DID TESTIFY. HE ALSO
3 MET WITH ME ON A NUMBER OF OCCASIONS. HE LED ME IN FINDING
4 PIECES OF EVIDENCE I PROBABLY COULDN'T HAVE DETAINED WITHOUT
5 MR. MCCOY, INCLUDING THE WHEREABOUTS OF THAT 40 CALIBER
6 SEMIAUTOMATIC THAT WAS USED TO KILL MR. KEITH.

7 WE WEREN'T ABLE TO RECOVER THE GUN, BUT HE DID LEAD
8 ME TO THE PERSON WHO HAD PURCHASED THE GUN AND IT ENDED UP
9 A.T.F. ARRESTED THAT INDIVIDUAL FOR POSSESSION OF A NUMBER OF
10 AUTOMATIC WEAPONS, A VERY LARGE STASH OF WEAPONS. SO WE GOT
11 A LOT OF GUNS OFF THE STREET BECAUSE OF MR. MCCOY'S HELP. HE
12 DID TESTIFY AT TRIAL.

13 YOUR HONOR, HIS DEAL WAS THIS AND THIS ONLY:
14 FIFTEEN YEARS TO LIFE, WHATEVER YOUR HONOR SEES FIT. YOUR
15 HONOR, HE WAS VERY INVOLVED IN THE CRIME THAT NIGHT. THERE
16 ARE NO RECOMMENDATIONS FROM THE STATE AS TO WHAT YOU SHOULD
17 GIVE HIM. I DID TELL MR. MCCOY AND HIS ATTORNEY THAT I WOULD
18 DETAIL HIS COOPERATION WITH THE STATE.

19 YOUR HONOR, AT THIS TIME VICKY MERRITT (PHONETIC)
20 WHO IS PAUL KEITH'S WIDOW WOULD LIKE TO ADDRESS THE COURT AS
21 TO SENTENCING AND SO WOULD CASSANDRA MERRITT WHO WAS HELD AT
22 GUNPOINT BY MR. MCCOY THAT NIGHT. SHE WOULD LIKE ALSO TO
23 TALK WITH YOU ABOUT THE IMPACT THIS HAS HAD ON THEM AND ALSO
24 ON THEIR CHILDREN.

25 THE COURT: YES, MA'AM. YES, MA'AM.

1 MR. SWARAT: THIS IS CASSANDRA MERRITT.

2 THE COURT: OKAY.

3 MS. CASSANDRA MERRITT: MY NAME IS CASSANDRA
4 MERRITT, AND THIS HAS PUT A REALLY IMPACT ON MY LIFE AND THE
5 LIFE OF MY CHILD. MY CHILD WAS IN THE HOUSE AT THE TIME, AND
6 HE BEEN HAVING NIGHTMARES AND I HAD TO SEND HIM TO FLORIDA
7 FOR A LIMITED TIME 'TIL THIS ALL GET SETTLED. HE'S BEEN
8 HAVING BAD NIGHTMARES. I HAD TO SEND HIM TO COUNSELING.
9 THAT PUT A FEAR IN MY LIFE FOR LIKE BEHIND THIS -- ALL THIS
10 PUT A FEAR IN CONTROL OF MY LIFE, AND I'M GLAD IT'S ALL OVER
11 WITH AND I'M JUST READY TO GO ON WITH MY LIFE AND PUT THIS
12 ASIDE.

13 MR. SWARAT: YOUR HONOR, THIS IS VICKY MERRITT.

14 THE COURT: YES, MA'AM.

15 MS. VICKY MERRITT: YES. MY NAME IS VICKY. MY KIDS
16 WAS ALSO AT HOME. MY SON RIGHT NOW IS STILL GOING THROUGH
17 TREATMENT. MY SON RIGHT NOW STILL TALK ABOUT THAT NIGHT. MY
18 DAUGHTER, SHE IS -- SHE WAS THE ONE THAT ACTUALLY HAD BUMPED
19 INTO ONE OF THE GUNSMEN (SIC) THAT NIGHT. THEY WERE SO
20 SCARED. RIGHT NOW THEY STILL SLEEP IN THE ROOM WITH ME.

21 BUT RIGHT NOW WE'RE READY TO MOVE ON. WE WANT TO
22 FEEL SAFE IN OUR OWN HOME AGAIN. WE WANT TO BE ABLE TO GO
23 OUTSIDE TO OUR CAR AND GO TO THE STORE WITHOUT THINKING
24 SOMEBODY IS GOING TO WALK UP IN OUR NEIGHBORHOOD WITH GUNS
25 AGAIN. I WANT THIS RIGHT HERE TO BE AN EXAMPLE; NO ONE

1 SHOULD HAVE TO STAY IN THEIR OWN HOME WITH FEAR.. THAT'S ALL
2 I GOT TO SAY.

3 MR. SWARAT: THANK YOU, YOUR HONOR.

4 THE COURT: ANYTHING ELSE?

5 MR. SWARAT: NO, SIR.

6 THE COURT: ALL RIGHT. ALL RIGHT. MR. SOLTIS?

7 MR. SOLTIS: THANK YOU, YOUR HONOR. YOUR HONOR, MR.

8 MCCOY HAS A NUMBER OF ITEMS HE WANTS TO PASS UP TO THE COURT
9 FOR YOUR VIEWING. IN ADDITION TO THAT, I'D ALSO LIKE TO TELL
10 YOU THAT -- AS YOU KNOW, YOU'VE TRIED THIS CASE. YOU'VE
11 HEARD ALL THE FACTS INVOLVED IN IT. YOU HEARD MR. MCCOY COME
12 IN COURT AND BASICALLY COME TO JESUS AND TELL HIS VERSION OF
13 WHAT HAPPENED IN THERE WHICH WAS, I BELIEVE, THE TRUTH IN
14 COURT... YOU OBVIOUSLY HAVE HEARD THAT HE GAVE A COUPLE OF
15 DIFFERENT STATEMENTS BEFORE COURT WHICH IS UNDERSTANDABLE. I
16 WOULD IMAGINE IF YOU'RE ARRESTED, YOU'RE NOT GOING TO WANT TO
17 GIVE UP YOUR FRIEND'S NAME AND THAT'S WHAT HE DID BASICALLY.

18 AS TO THE -- AS TO THE FACTS INVOLVED, AS YOU HEARD,
19 HIS ROLE -- HIS INVOLVEMENT IN THIS IS THAT HE DID SHOOT MR.
20 KEITH. HE DID SHOOT HIM IN THE LEG AND DID GO NO FURTHER
21 INTO THE ALTERCATION THAN THAT. HE WAS EVENTUALLY -- MR.
22 KEITH WAS EVENTUALLY SHOT SEVEN TIMES BY THE CO-DEFENDANT WHO
23 WAS FOUND GUILTY.

24 HE WAS VERY COOPERATIVE. HE TESTIFIED COMPLETELY
25 AND TRUTHFULLY BEFORE THE COURT. HE'S GOT A TREMENDOUS

1 FAMILY BACKGROUND WITH HIM. UNFORTUNATELY, THERE'S ONLY A
2 FEW OF THEM WITH HIM TODAY, BUT NORMALLY WHEN WE'VE BEEN UP
3 HERE - AND THIS HAS BEEN ABOUT THE LAST THREE OR FOUR TIMES
4 WE TRIED TO PLEAD THIS, TO SENTENCE HIM - HE'S HAD ABOUT TEN
5 PEOPLE HERE IN COURT WITH HIM. THEY'RE VERY SUPPORTIVE OF
6 HIM.

7 HE HAS NO PRIOR RECORD OF ANY SUBSTANTIAL
8 IMPORTANCE. HAD THIS BEEN A CASE NOT INVOLVING A DEATH OR A
9 FIRST DEGREE BURGLARY, I THINK THIS PROBABLY WOULD HAVE BEEN
10 A FAIRLY GOOD CASE TO PUT SOMEBODY ON PROBATION FOR. NOW,
11 WE'RE NOT FOOLISH ENOUGH TO STAND HERE IN FRONT OF YOU AND
12 ASK YOU TO PUT HIM ON PROBATION BECAUSE HE REALIZES THE BEST
13 HE CAN POSSIBLY HOPE FOR TODAY WOULD BE A 15-YEAR SENTENCE.

14 IN LIGHT OF HIS RESPONSIBILITIES AND THINGS, WE --
15 BETWEEN THE TWO OF US AND -- WE BELIEVE THAT PROBABLY A GOOD
16 SENTENCING RANGE WOULD BE IN THE 15-TO-20-YEAR RANGE. WE
17 REALIZE THAT YOU HAVE MORE DISCRETION THAN THAT, AND WE'RE
18 NOT TRYING TO -- TO USURP YOUR DISCRETION IN ANY WAY, SHAPE,
19 OR FORM, BUT WE THINK THAT THAT IS PROBABLY APPROPRIATE IN
20 LIGHT OF THE COOPERATION AND IN LIGHT OF HIS ENROLL --
21 INVOLVEMENT IN THIS ACTIVITY, HIS LACK OF SUBSTANTIAL
22 CRIMINAL RECORD.

23 AND HE'S BASICALLY, JUDGE, A GOOD KID. I'VE KNOWN
24 HIM SINCE THE DAY HE WAS ARRESTED, THE DAY I GOT APPOINTED TO
25 REPRESENT HIM. I'VE BEEN SPEAKING WITH HIM. HE'S NEVER COME

1 UP AND SAID, LOOK, I DIDN'T DO ANYTHING. HE'S ALWAYS BEEN
2 PRETTY STRAIGHTFORWARD ABOUT THE FACTS. HE REALIZES HE'S IN
3 A BURDEN; HE'S GOT A PROBLEM. HIS BEST OPPORTUNITY WAS TO
4 COOPERATE WITH THE STATE AND COME CLEAN; HE DID THAT.

5 AS I SAID, HE WANTS TO ADDRESS THE COURT. I'M SURE
6 HE'LL DO THAT, AND HE HAS SOME DOCUMENTS THAT I'LL PASS UP TO
7 THE COURT IF YOU'D LIKE TO SEE THEM. HE'S HERE WITH -- HIS
8 MOTHER IS HERE WITH HIM AND I'M SURE SHE'D LIKE TO TALK TO
9 THE COURT AS WELL.

10 THE COURT: ALL RIGHT. MA'AM, I'LL ASK THE MOTHER
11 IF SHE'D LIKE TO SAY ANYTHING. WE'LL LET MR. MCCOY WAIT 'TIL
12 THE END.

13 MRS. MCCOY: I TRIED EARLIER, BUT I DID WANT TO
14 APOLOGIZE TO THE FAMILY. I AM VERY SORRY AND I CANNOT EVEN
15 BEGIN TO FEEL YOUR PAIN, AND I DO UNDERSTAND THAT NOBODY
16 WANTS TO WALK IN FEAR AND ALL I CAN DO IS APOLOGIZE, AND I'M
17 VERY SORRY FOR THAT. I'M A CHRISTIAN AND I'VE BEEN LIVING
18 FOR GOD FOR A LONG TIME. AND QUINCY KNOWS JESUS. QUINCY HAS
19 NEVER BEEN A PERSON THAT HAS EVER GOTTEN INTO ANY TYPE OF
20 TROUBLE LIKE THIS, BUT AT THE TIME, YOU KNOW, OUR FAMILY HAD
21 BEEN GOING THROUGH A LOT ALSO. AND, I MEAN, THAT DOES NOT,
22 YOU KNOW -- I CAN'T -- I JUST CANNOT BEGIN TO TELL YOU HOW
23 SORRY I AM FOR THE LOSS OF YOUR FAMILY MEMBER, AND I DO
24 APOLOGIZE.

25 I WANT TO SAY ON QUINCY'S BEHALF THAT I'VE NEVER

1 REALLY HAD A PROBLEM OUT OF QUINCY. QUINCY HAS NEVER BEEN A
2 PROBLEM CHILD. WE'VE ALWAYS BEEN RAISED UP IN THE CHURCH
3 WITH MY GRANDMOTHER, AND I TRIED -- I RAISED QUINCY THE BEST
4 I COULD. AND I JUST -- WE JUST GIVE MERCY TO GOD. WE JUST
5 ASK THAT GOD'S WILL BE DONE TODAY BECAUSE NOW THAT'S ALL WE
6 CAN DO. AND HE'S A GOD THAT'S BIG AND HE KNOWS OUR PROBLEMS
7 AND HE KNOWS EVERY CIRCUMSTANCE AND HE'S A GOD THAT CAN DO
8 THINGS TO SET PEOPLE FREE. SO I WOULD JUST ASK FOR THE MERCY
9 OF THE COURT.

10 THE COURT: MR. MCCOY, DID YOU WANT TO SAY ANYTHING?

11 MR. MCCOY: YES, SIR. FIRST OF ALL, I'M SORRY.

12 TERRY AIN'T NEVER TELL ME THAT THERE WAS GOING TO BE WOMEN
13 AND KIDS IN THE HOUSE. TERRY SAID THIS WAS A CRACK HOUSE.
14 TERRY SAID THIS WAS A CRACK HOUSE. I AIN'T --- I NEVER KNEW
15 Y'ALL WAS GOING TO BE IN THERE. I'M SO SORRY; I REALLY AM.

16 I'M NOT SAYING THIS JUST BECAUSE I MADE A DECISION
17 -- I REALLY AM SORRY FOR WHAT I DID. I AM. I JUST HOPE THAT
18 ONE DAY YOU CAN FORGIVE ME; I REALLY DO. AND OTHER THAN THAT
19 I CAN'T -- I CAN'T REALLY SAY I FEEL YOUR PAIN, BUT I FEEL
20 THAT GOD -- GOD HAS PUNISHED ME FOR WHAT I HAVE DONE BECAUSE
21 LIKE THAT NIGHT THAT TERRY -- I MEAN THAT PAUL DIED, I HAD AN
22 EIGHT-MONTH-OLD SON, YOU KNOW, AND PAUL DIED ON THE 14TH OF
23 NOVEMBER. JANUARY 14TH MY EIGHT-MONTH-OLD SON DIED. JUST
24 LIKE I SHOT PAUL IN THE LEG, MY CO-DEFENDANT SHOT ME IN THE
25 LEG.

1 AND I DON'T WANT Y'ALL TO SAY -- I WANT TO ALSO SAY
2 WHEN I TESTIFIED I ALSO -- I TESTIFIED IN HOPES OF GETTING 15
3 YEARS, BUT I ALSO TESTIFIED BECAUSE L.J. DIDN'T EVEN HAVE TO
4 KILL PAUL. PAUL DIDN'T -- PAUL DIDN'T -- PAUL DIDN'T PUT UP
5 A FIGHT OR ANYTHING. PAUL ONLY -- WHEN PAUL GRABBED MY GUN
6 IS WHEN L.J. TOLD ME TO SHOOT PAUL AGAIN. I TOLD L.J. NO.
7 WHEN L.J. SHOT ME, THAT'S WHAT MADE PAUL PANIC AND GRAB MY
8 GUN. THAT -- OTHERWISE, I'M SORRY. I NEVER KNEW THEY WERE
9 GOING TO TRY TO -- THEY WAS GOING TO SHOOT PAUL LIKE THAT. I
10 DIDN'T; I REALLY DIDN'T. I JUST WANT TO SAY I'M SORRY; I
11 REALLY AM. I'M SORRY.

12 ALSO, YOUR HONOR, I'D JUST ASK MERCY FOR THE COURT,
13 YOUR HONOR. WHEN I ORIGINALLY ENTERED THIS PLEA BEFORE I
14 PLED GUILTY, I WAS TOLD I WAS PLEADING GUILTY 15 TO 30 YEARS.
15 I NEVER KNEW AT ALL I WAS PLEADING GUILTY TO 15 TO LIFE. MY
16 LAWYER TOLD ME THAT IF I -- I WAS PLEADING GUILTY TO 15 TO 30
17 YEARS AND, IF I TESTIFIED, I WOULD MOST LIKELY GET THE 15
18 YEARS.

19 OTHER THAN THAT, YOUR HONOR, I WOULD HAVE NEVER PLED
20 GUILTY TO 15 TO LIFE, BUT I TAKE FULL RESPONSIBILITY FOR WHAT
21 I'VE DONE AND I'M SORRY. I'M SORRY TO TAKE UP YOUR TIME
22 TODAY FOR THIS FOOLISHNESS I DID. I JUST ASK FOR YOUR MERCY,
23 YOUR HONOR:

24 THE COURT: YES, SIR.

25 MR. SWARAT: YOUR HONOR, I WANT TO PUT SOMETHING ON

12
5

1 THE RECORD.

2 THE COURT: YES, SIR.

3 MR. SWARAT: I WAS IN THE PRESENCE OF MR. SOLTIS AND
4 MR. MCCOY WHEN THERE WERE DISCUSSIONS ABOUT HIM PLEADING
5 GUILTY. I CAN TELL YOU MR. SOLTIS NEVER EVER INSINUATED TO
6 MR. MCCOY---

7 MR. MCCOY: HE WASN'T---

8 MR. SWARAT: ---THAT HE WOULD GET 15 TO 30.

9 MR. MCCOY: EXCUSE ME, STEVE.

10 MR. SWARAT: NO, SIR.

11 MR. MCCOY: HE WASN'T---

12 THE COURT: NO, LET HIM -- MR. MCCOY, LET HIM TALK
13 AND I'LL LET YOU RESPOND IF YOU WANT TO. OKAY?

14 MR. MCCOY: YES, SIR.

15 MR. SWARAT: I ADVISED HIM ALSO IN THE PRESENCE OF
16 MR. SOLTIS THAT HE WAS LOOKING AT 15 YEARS TO LIFE AND I
17 WOULD NEVER RECOMMEND A SENTENCE FOR HIM; IT WOULD BE UP TO
18 THE COURT. HE KNEW THAT AND HE KNEW IT WELL. I KNOW WHAT
19 HE'S TRYING TO DO RIGHT HERE, BUT IF HE'S TRYING TO SET UP A
20 P.C.R. AGAINST MR. SOLTIS, HE WAS ADVISED WELL BY HIS
21 ATTORNEY AND ALSO ME. I JUST WANT TO MAKE SURE THAT'S CLEAR
22 ON THE RECORD.

23 THE COURT: YES, SIR.

24 MR. MCCOY: YOUR HONOR, MAY I SAY SOMETHING?

25 THE COURT: YES, SIR.

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1 MR. MCCOY: YES. STEVE, CAN'T YOU VOUCH FOR THAT,
2 STEVE, THAT BEFORE I EVEN -- I NEVER TALKED TO MR. SWARAT.
3 BEFORE I PLED GUILTY, I NEVER TALKED TO HIM. I ONLY TALKED
4 TO STEVE WHEN I WAS SIGNING MY GUILTY PLEA PAPERS. STEVE
5 SOLTIS TOLD ME THAT I WAS PLEADING GUILTY TO 15 TO 30 YEARS.
6 HE DIDN'T TELL ME LIFE, AND I'M PRETTY SURE STEVE WOULD NOT
7 LIE TO YOU, YOUR HONOR. HE NEVER TOLD ME THAT.

8 THE COURT: ALL RIGHT. MR. SOLTIS, DO YOU HAVE
9 ANYTHING TO ADD?

10 MR. SOLTIS: NO, SIR.

11 THE COURT: ALL RIGHT.

12 MR. SWARAT: I DO HAVE ONE MORE THING.

13 THE COURT: YES, SIR.

14 MR. SWARAT: HE WAS ALSO ADVISED BY JUDGE KEESLEY
15 THE RANGE OF SENTENCE HE WAS LOOKING AT WHEN HE PLED GUILTY.

16 THE COURT: YES, SIR. ALL RIGHT. ON THE FIREARMS
17 CHARGE AND CONSPIRACY CHARGE, I'LL ORDER MR. MCCOY COMMITTED
18 TO THE DEPARTMENT OF CORRECTIONS FOR FIVE YEARS, ON THE
19 ATTEMPTED ARMED ROBBERY FOR TWENTY YEARS, AND ON THE
20 MANSLAUGHTER, BURGLARY, AND KIDNAPPING CHARGES FOR A TERM OF
21 THIRTY YEARS. THESE SENTENCES WILL ALL RUN CONCURRENTLY WITH
22 EACH OTHER. WE'LL, OF COURSE, GIVE CREDIT FOR TIME SERVED.
23 THANK YOU.

24 MR. SWARAT: THANK YOU, YOUR HONOR.

25 MR. MCCOY: YOUR HONOR. YOUR HONOR, I WOULD LIKE TO

1 SUBMIT THESE TO -- FOR THE COURT.

2 THE COURT: OKAY. LET ME TAKE A LOOK AT THEM. GIVE

3 ME JUST ONE SECOND; OKAY? (PAUSE.) ALL RIGHT. I'LL GIVE

4 THIS TO THE COURT REPORTER IN JUST A MOMENT TO MARK, AND I'LL

5 NOTE THAT I'VE READ THE STATEMENT THAT MR. MCCOY HAS HANDED

6 UP AND IT DOESN'T CHANGE THE SENTENCE. AND, AGAIN, THE -- IT

7 REFLECTS WHAT HE SAID WHICH IS THAT HE THOUGHT IT WAS 15 TO

8 30, AND THE 30 YEARS IS WITHIN THE RANGE OF WHAT HE ASKED --

9 OF WHAT HE INDICATED. ALL RIGHT. THANK YOU.

10 (COURT'S EXHIBIT 1 WAS RECEIVED IN EVIDENCE.

11 WHEREUPON, THE PROCEEDINGS WERE CONCLUDED.)

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I, THE UNDERSIGNED DAPHNE D. HELMS, OFFICIAL COURT REPORTER FOR THE ELEVENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR LEXINGTON COUNTY, SOUTH CAROLINA, ON THE 6TH DAY OF APRIL, 2004.

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

SEPTEMBER 21, 2004



DAPHNE D. HELMS, COURT REPORTER

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
: ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON)

QUINCY MARQUETTE MCCOY,)
)
)
 Plaintiff,)
)
) 04-CP-32-03142
 -vs-)
)
)
 STATE OF SOUTH CAROLINA,)
)
)
 Defendant.)

June 27, 2006

* * * *

Before the Honorable
Alexander S. Macaulay

APPEARANCES:

For the Applicant:
Mr. Taylor, Esquire

For the State:
Ms. Todd, Esquire

Hilda M. Jordan, CVR
Circuit Court Reporter

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1 THE COURT: All right. Call your next case.

2 MS. TODD: Your Honor?

3 THE COURT: Just a minute.

4 MS. TODD: Yes, Your Honor.

5 THE COURT: Yes, ma'am.

6 MS. TODD: I just wanted to let the Court know

7 that I have contacted my office and the victim I

8 anticipated would be here is not planning to attend today.

9 THE COURT: Is not planning to attend. All right.

10 Is this the case of Quincy Marquette McCoy verses the
11 State?

12 MS. TODD: Yes, Your Honor.

13 THE COURT: All right. Mr. Taylor, do you
14 represent --

15 MR. TAYLOR: I do, Your Honor.

16 THE COURT: State is represented by Ms. Todd.

17 This is action number 2004-CP-32-3142.

18 Mr. McCoy, if you'd come around, please, sir.

19 All right, Ms. Todd, anything from the State before we
20 begin?

21 MS. TODD: Your Honor, this is a violent crime.

22 The applicant was brought into -- helped with a home

23 burglary. The ring-leaders had a personal score to settle

24 with the victim. The -- this was a guilty plea. The

25 factual recitation was that the applicant shot the victim

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1 in the leg and the victim was additionally shot seven more
2 times. The applicant shot and -- the applicant himself was
3 shot and was left at the hospital by the people he was
4 with.

5 The applicant pled guilty to voluntary manslaughter,
6 burglary first, attempted armed robbery, criminal
7 conspiracy, kidnaping, and possession of a weapon during
8 the commission of a violent crime. He received a total of
9 30 years with a recommended range offered by the State of a
10 sentence of 15 to life.

11 He has filed an application for a Post Conviction
12 Relief on August 31, 2004, and has alleged, generally,
13 ineffective assistance of counsel and involuntary guilty
14 plea.

15 The State would ask that Mr. Taylor please state for
16 the record the allegations on which the applicant wishes to
17 proceed.

18 THE COURT: All right, Mr. Taylor, if you would,
19 please, what are the grounds for the application?

20 MR. TAYLOR: If it please the Court, Your Honor,
21 to state them as succinctly as possible, basically, the
22 primary allegation is ineffective assistance of counsel by
23 virtue of, basically, what we would consider -- I think the
24 best way to say it is an uncounseled plea.

25 Mr. McCoy contends that he did not fully understand

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1 everything when he was going into this plea. You will hear
2 on the record that this was a -- it was a sort of a
3 bifurcated plea, if you will, Judge. He took then plea,
4 then there was a trial in which Mr. McCoy agreed to
5 testify. Then, some months later Judge Westbrook sentenced
6 him.

7 So Mr. McCoy -- Mr. McCoy will go through all of that;
8 but basically that contention is that but for the alleged
9 errors on behalf of plea counsel, Mr. McCoy would not have
10 proceeded with the plea and would have insisted on his
11 right to go to trial. We believe that satisfies the
12 standard under State v. Cherry.

13 Second, Your Honor, and I understand -- I've discussed
14 this in dept with my client. There is one other allegation
15 he has raised. There is some law throughout the country
16 that requires or some states require an individual to be
17 sentenced by the same judge in which he pled before. I
18 discussed that with my client and he understands there is
19 no South Carolina law on that issue, but we would like to
20 preserve that, and you will hear some testimony on that.
21 That is was, basically, potentially a constitutional
22 violation that my client was not allowed to be sentenced by
23 Judge Westbrook, by Judge Keesley.

24 Again, there is some law out there that requires that
25 to begin with. We would recognize South Carolina has not

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5

1 adopted that at this juncture.

2 THE COURT: All right. Let me see what I've got
3 now. The ineffective assistance of counsel is based on --
4 the State did not counsel plea, in other words, not a
5 knowing, intelligent, freely voluntary plea?

6 MR. TAYLOR: Yes, sir.

7 THE COURT: Then, also, further ground of due
8 process of having the sentencing judge, the judge who
9 accepted the plea?

10 MR. TAYLOR: Yes, sir.

11 THE COURT: All right. Very good.

12 Anything from the State?

13 MS. TODD: Nothing from the State.

14 THE COURT: All right.

15 Mr. Taylor you can call your first witness.

16 MR. TAYLOR: If it please the Court, Your Honor,
17 we call Mr. McCoy.

18 THE COURT: If you would, please.

19 CLERK: If you would place your left hand on the
20 Bible and raise your right hand.

21 Do you solemnly swear or affirm that the evidence you
22 give before the Court in this matter shall be the truth,
23 the whole truth, and nothing but the truth so help you God?

24 MR. MCCOY: Yes, ma'am.

25 CLERK: Have a seat, and state your name for the

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1 court reporter.

2 MR. MCCOY: Your Honor, if it please the Court, my
3 name is Quincy McCoy.

4 THE COURT: Is it Quincy?

5 MR. MCCOY: Quincy, Q-U-I-N-C-Y.

6 THE COURT: And Marquette?

7 MR. MCCOY: Yes.

8 THE COURT: M-A-R-Q-U-E-T-T-E?

9 MR. MCCOY: Yes, sir.

10 THE COURT: McCoy, M-C, capital C-o-y?

11 MR. MCCOY: Yes, Your Honor.

12 THE COURT: Very good. Thank you, sir.

13 You may proceed.

14 MR. TAYLOR: May it please the Court.

15 QUINCY MARQUETTE MCCOY - DIRECT EXAMINATION

16 BY MR. TAYLOR:

17 Q Mr. McCoy, before we get int the specifics of this, I
18 want to make sure -- some things you and I talked about are
19 on the record.

20 Now, you understood that if Judge Macaulay were to
21 grant your application for PCR you could, one of two
22 things, you could receive a new trial or a re-sentencing;
23 do you understand that?

24 A Yes, sir.

25 Q You understand you could, if you received a new trial,

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1 be again tried for murder and could receive life without
2 parole if you were convicted then?

3 A Yes, sir.

4 Q And you understand that if it's just a re-sentencing
5 you could receive up to life on the burglary charge, right?

6 A Yes, sir.

7 Q And it's still your intention to proceed today?

8 A Yes, sir.

9 Q Okay. Mr. McCoy in 2003, you were charged, I believe,
10 with criminal conspiracy, unlawful possession of a weapon
11 in the commission of a violent crime, burglary first,
12 attempted armed robbery, kidnaping and murder; is that
13 correct?

14 A Yes, sir.

15 Q You plead to all those charges except murder, which
16 was reduced to voluntary manslaughter; is that correct?

17 A Yes, sir.

18 Q Who was your attorney?

19 A Mr. Steve Soltis.

20 Q Now, did Mr. Soltis advise you of the nature and
21 elements of the charges against you?

22 A No, sir. Particularly, the burglary. He never told
23 me the mandatory maximum sentence with was life in prison.

24 Q Well, we'll get there in a second, Mr. McCoy, but did
25 he actually advise you of what the State was going to have

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8

1 to prove as far as the nature and elements of those
2 charges?

3 A No, sir. He basically told me if I didn't plead
4 guilty I was going to receive the death penalty.

5 Q Okay. And did he advise you of all the possible
6 punishments of each individual charge?

7 A No, sir.

8 Q What did you think the maximum sentence you could
9 receive?

10 A Fifteen years.

11 Q All right. Now, you mentioned something about the
12 death penalty; tell the Court about that?

13 A Basically, from the beginning, I was convicted, I will
14 state I was a victim in this case, also, being that my co-
15 defendant and shot me also. But, basically, Steve promised
16 me that, basically, take these 15 years, testify against
17 your co-defendant, you'll get 15 years if you don't go to
18 trial. Nobody is going to buy your defense, you're going
19 to face the death penalty.

20 Q That's what he told you about all the punishments you
21 could receive?

22 A Yes, sir.

23 Q Did you ultimately plead guilty?

24 A Yes, sir.

25 Q Who did you plead guilty in front of?

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9

1 A Judge Keesley.

2 Q Now, did Judge Keesley go through the possible
3 punishments you could receive?

4 A Yes, sir. That's -- that was my first time hearing
5 the maximum sentence I could receive when Judge Keesley did
6 the plea.

7 Q And that was when you learned you could receive life?

8 A Yes, sir.

9 Q Did anyone tell you you could withdraw the plea?

10 A I tried a some times. Steve said on the record that
11 we tried to plea this numerous times and because of that I
12 tried to withdraw my plea numerous times after I found out
13 that the maximum punishment. I asked Steve -- he never
14 went in the Judge's chambers or anything, he just told me
15 basically, the judge is not going to let you withdraw your
16 plea.

17 Q So he told you there was no way you could withdraw
18 your plea?

19 A Yes, sir.

20 Q Do you know if any effort was made by Mr. Soltis to
21 see if you could withdraw your plea?

22 A We were sitting in the bench, and when he told me
23 that, I left, you know, I left. I never seen him go in the
24 Judge's chambers or anything.

25 Q So you were essentially told that you couldn't

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10

1 withdraw the plea?

2 A Yes, sir.

3 Q And you plead guilty on October 20th, 2003?

4 A Yes, sir.

5 Q Were you sentenced that day?

6 A No, sir.

7 Q Why not?

8 A Because the deal was there -- it was a deal that if I

9 testified against my co-defendant I would get 15 years.

10 Q Okay. Did you testify?

11 A Yes, sir.

12 Q Were you truthful?

13 A No, sir.

14 Q You weren't truthful?

15 A No, sir.

16 Q Okay. What do you mean?

17 A Because basically they deterred me from the truth, and

18 I had to go along with the prosecutors theory in order to

19 receive the 15 years.

20 Q Did you do anything else to help the prosecutor prior

21 to your sentencing?

22 A Whatever they asked, I did it.

23 Q Did you show them anything about any guns?

24 A Yes, sir.

25 Q Okay, and they were able to actually make a rather

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1 large federal case?

2 A Yes, sir.

3 Q Based on the gun information?

4 A Yes, sir.

5 Q Did you think you were going to be sentenced by Judge
6 Keesley?

7 A Yes, sir. Steve told me that Judge Keesley was going
8 to be a good judge to plea before because originally I did,
9 I told Steve I didn't want to plead in front of Judge
10 Westbrook. That's what I originally told Steve, so he got
11 the plea in front of Judge Keesley, but in the end,
12 ultimately Judge Westbrook sentenced me.

13 Q Okay. Did you know whether or not you were going to
14 be sentenced before Judge Keesley in October of 2003?

15 A No, sir. Nobody knew, even the judge himself, stated
16 on the record he didn't know I was going to -- the sentence
17 was going to be deferred.

18 Q Okay. So you didn't know when you were going into
19 that plea that the sentencing would not take place that day
20 before Judge Keesley?

21 A No, sir, I didn't know.

22 Q You were ultimately sentenced by Judge Westbrook, I
23 believe, on April 6, 2004?

24 A Yes, sir.

25 Q What was your sentence?

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1 A Thirty years in prison.

2 Q And, again, I think you testified that you were told
3 to expect 15 years as your sentence?

4 A Yes, sir.

5 Q Did anybody ever tell you that day, before Judge
6 Westbrook, you could have gotten life?

7 A Not even that day, no, sir.

8 Q Other than what Judge Keesley had told you before?

9 A Yes, sir.

10 Q Now, you stated that Mr. Soltis told you you would get
11 15 years; did anybody else tell you that?

12 A When I signed the guilty papers, Steve -- Steve told
13 them that I was pleading guilty to 15 years. Okay, now,
14 the prosecutor never stated an amount of time, but when he
15 came in front of me and Steve, he just said that I wanted
16 to do that for you if you testify against your co-
17 defendants.

18 Q Okay. What did you take that to mean?

19 A I take that to mean that I was going to receive 15
20 years.

21 Q And that was the prosecutor, Mr. Tav Swarat?

22 A Yes, sir.

23 Q So you understood based on his conversations in front
24 of you with Mr. Warren or with Mr. Soltis that you would
25 get 15 years?

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- 1 A Yes, sir.
- 2 Q That the prosecutor would, in fact, recommend 15
- 3 years?
- 4 A Yes, sir.
- 5 Q Did he recommend 15 years?
- 6 A No, sir.
- 7 Q Would you have pled if you knew you would get more
- 8 than 15 years?
- 9 A Not at all. I would have proceeded to trial.
- 10 Q Had you been offered, at one time, prior to that, 30
- 11 years?
- 12 A Yeah, the original plea was for 30 years.
- 13 Q Okay.
- 14 A And I turned that plea down and insisted on going to
- 15 trial.
- 16 Q So but for they told you you would get 15 years by Mr.
- 17 Soltis and apparently Mr. Swarat would recommend that would
- 18 you have pled guilty?
- 19 A No, sir, not at all.
- 20 Q You would have gone to trial?
- 21 A Yes, sir.
- 22 Q What were you told about your arrest events?
- 23 A He told me, basically, jury is not going to buy it.
- 24 You're going to receive the death penalty if I didn't plead
- 25 guilty.

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1 Q Okay. And that's why you pled?

2 A Yes, sir.

3 That's all the questions I have -- oh, one more thing.
4 I ask you if you can identify this document?

5 A Yes, sir. That's the statement I wrote out to give to
6 the judge when I found out I was facing life before I got
7 sentenced I wrote this to put on the record that I never
8 knew the mandatory maximum was until I was sentenced.

9 Q Okay. You gave this to Judge Westbrook the day you
10 pled guilty on April 6, 2004?

11 A Yes, sir.

12 MR. TAYLOR: Your Honor, we'd offer this -- it's
13 already marked as a Court's Exhibit. I may be in your
14 file, but we'd offer this as the Applicant's --

15 THE COURT: It's marked as Court's Exhibit No. 1
16 --

17 MR. TAYLOR: Yes, sir.

18 THE COURT: It's a part of the record, statement
19 dated April 6, 2004, from the Applicant Quincy McCoy to --

20 MR. TAYLOR: To the clerk.

21 THE COURT: -- to the Clerk of Court, Lexington
22 County.

23 MR. TAYLOR: Okay.

24 BY MR. TAYLOR:

25 Q And Mr. McCoy, why did you write this statement?

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1 A Because I found out that everything that I was
2 promised throughout the pleading was not true. I was
3 facing a life sentence. That was my last hope.

4 Q You were -- you wanted -- you gave this statement up
5 to Judge Westbrook didn't you?

6 A Yes, sir.

7 Q That's all the questions I have for you. Please
8 answer any questions Ms. Todd may have.

9 MS. TODD: May I have just a moment, Your Honor.

10 THE COURT: Yes, ma'am. Certainly.

11 QUINCY MARQUETTE MCCOY - CROSS-EXAMINATION

12 BY MS. TODD:

13 Q Mr. McCoy, Judge Keesley went over with you the
14 potential sentences, correct?

15 A Yes, ma'am.

16 Q And actually you were told during your plea that you
17 were facing life plus 90 years and you that, correct?

18 A On Page 23 of that transcript you have, it shows that
19 -- that was because I was confused at that time, but Steve
20 tapped and gave me a nod like everything's going to be
21 okay. After that, that's when I told them, yes, I
22 understood.

23 Q Okay. And you're talking about Page 23 of the
24 transcript?

25 A Yes, ma'am.

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1 Q Okay. I would like to refer your attention to Page 35
2 of the transcript. Do you have a copy with you?

3 A It's in my file. I'm pretty familiar with it.

4 Q Okay.

5 MS. TODD: If I may approach the witness?

6 THE COURT: Certainly.

7 BY MS. TODD:

8 Q I have a copy of the transcript. Now, if you will
9 look with me on Line 20 of Page 35 the judge says, if I'm
10 looking at this correctly Mr. McCoy, you're facing life
11 plus 90 years.

12 A Yes, ma'am. That was --

13 Q And you say, yes. And he says, is that your
14 understanding, and you say, yes.

15 A Yes, ma'am.

16 Q Okay. Now, are you saying that you were not being
17 truthful with Judge Keesley?

18 A No, ma'am. It was -- it was a deal -- Steve and the
19 prosecutor made me think strictly the deal was going to be
20 verbal, that if it comes out in open court it will look bad
21 on my testimony, when I got and testify against my co-
22 defendants.

23 Q So you're -- you were telling Judge Keesley one thing
24 that you understood you were facing life plus 90, but you
25 had this side deal with the State and with Mr. Soltis; is

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- 1 that correct?
- 2 A Yes, ma'am.
- 3 Q And now, did Judge Keesley ask you about that?
- 4 A Yes. That's what I'm telling you --
- 5 Q Did anybody promise you anything or offer you any type
- 6 of reward to get you to plead guilty; that's the judge's
- 7 question, correct?
- 8 A Yes, ma'am.
- 9 Q So -- and you told the Judge, that no, no one had
- 10 promised you anything; correct?
- 11 A Yes, ma'am.
- 12 Q But you're saying that that's just not true?
- 13 A That's not true at all.
- 14 Q Okay. So you lied to that judge?
- 15 A Yes, ma'am.
- 16 Q And you testified, I believe, on direct examination
- 17 that you lied at the trial of your co-defendant; correct?
- 18 A Yes, ma'am. With the prosecutor and my attorney's
- 19 help.
- 20 Q Now, you said, I believe, on direct examination, that
- 21 you considered yourself to be a victim in this case?
- 22 A Yes, ma'am.
- 23 Q You were, in fact, shot during the home invasions;
- 24 correct?
- 25 A Yes, ma'am.

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1 Q But you went in there with these people to commit a
2 crime in that person's home, correct; the victims home?

3 MR. MCCOY: Your Honor, I would like to connect my
4 rights being that if you do grant me a new trial what I say
5 now can't be used against me at that trial.

6 MS. TODD: Your Honor, State would submit that he
7 has already pled guilty to these crimes and that he does
8 not enjoy, at this moment, privileges --

9 THE COURT: Mr. Taylor?

10 MR. TAYLOR: I believe my client is correct by
11 asserting his fifth amendment right here. If he is granted
12 a retrial the State will then have -- if he tells what he
13 believes is the truth here today, the State would have then
14 yet another version to attempt to impeach him with at
15 trial.

16 THE COURT: Well, I certainly can't give him
17 immunity. I'm going to permit him to exercise his fifth
18 amendment right.

19 MS. TODD: Okay.

20 THE COURT: Very well.

21 MS. TODD: I believe there is case law on this
22 matter. I did not anticipate this being an issue and did
23 not bring it with me.

24 THE COURT: You may proceed.

25 BY MS. TODD:

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1 Q You admitted, however, at your guilty plea, that you
2 were guilty of this offense?

3 A Under the circumstances that I receive 15 years plea.

4 Q Okay. But you did admit your guilt at the plea?

5 A Under the circumstances that I received 15 years plea.

6 Q Okay. So you don't have a problem with lying to get a
7 better --

8 A Uh -- I understand where you're coming from Ms. Todd,
9 but also with respect that the prosecutor also gained by me
10 lying because he helped me to lie.

11 Q The judge asked you on Page 21 of the transcript, Line
12 5. All right -- I'm sorry, on Line 8. Mr. McCoy, is what
13 the solicitor telling me true as to your case?

14 A Mr. Soltis stated that, Judge, we had some discussions
15 about --

16 Q Right.

17 A -- gave up a few minor discrepancies.

18 Q And then the judge asked you on Line 22, do you admit
19 that you are guilty of all these charges, and your answer
20 was?

21 A It was yes under the circumstances that I was to
22 receive a 15 years.

23 Q Okay. And between the time of your plea and the time
24 of your sentencing you wrote this letter to the clerk of
25 court, which was handed up at your sentencing hearing?

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1 A Yes, ma'am.

2 Q Okay. And the judge did have an opportunity to look
3 at that at your sentencing hearing; correct?

4 A Yes, ma'am.

5 Q Okay.

6 MS. TODD: I have nothing further at this time,
7 but would like to have an opportunity to call this witness
8 again after Mr. Soltis testifies.

9 THE COURT: Certainly.

10 MR. TAYLOR: Nothing on redirect, Your Honor.

11 THE COURT: All right. You may step down.

12 Call your next witness.

13 MR. TAYLOR: If it please the Court, Your Honor,
14 we'd call Ms. Sylveria Outen.

15 CLERK: Do you solemnly swear or affirm that the
16 evidence you give before the Court in this matter shall be
17 the truth, the whole truth, and nothing but the truth, so
18 help you, God?

19 MS. OUTEN: I do.

20 CLERK: Have a seat, and state your name.

21 THE COURT: Could you give us your full name for
22 the record, please, ma'am?

23 MS. OUTEN: Sylveria McCoy Outen.

24 THE COURT: Spell your first name, please.

25 MS. OUTEN: S-Y-L-

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1 THE COURT: S-Y-L-

2 MS. OUTEN: -V-E-R-

3 THE COURT: -V-E-R-

4 MS. OUTEN: -I-A.

5 THE COURT: -I-A. McCoy? M-C capital C-O-Y?

6 MS. OUTEN: Uh-huh.

7 THE COURT: And your last name?

8 MS. OUTEN: Outen, O-U-T-E-N.

9 THE COURT: Thank you, ma'am.

10 SYLVERIA MCCOY OUTEN - DIRECT EXAMINATION

11 BY MR. TAYLOR:

12 Q Ms. Outen, what is your relationship with Quincy
13 McCoy?

14 A Quincy is my son.

15 Q And were you involved in and around at the time he
16 pled guilty and was also sentenced in this case?

17 A Yes, I was.

18 Q Were you helping him to try to make decisions in that
19 case?

20 A No, I wasn't because at that time he told me that
21 everything was okay, that he had talked with his lawyer and
22 --

23 MS. TODD: I object to the hearsay.

24 BY MR. TAYLOR:

25 Q You can't tell me what Quincy told you.

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1 A Yeah. So, no, I wasn't involved with actually trying
2 to designate him in the case.

3 Q Okay. Were you actually present though when some
4 conversations concerning his sentencing took place?

5 A Yes, I was.

6 Q Now, were you present when Mr. McCoy discussed this
7 case with Mr. Swarat and Mr. Soltis?

8 A No, but I was present when he discussed it with me and
9 my family.

10 Q Who?

11 A Mr. Soltis.

12 Q Okay. So Mr. Soltis discussed this case with you and
13 your family?

14 A Yes, he did.

15 Q What did he tell you about Quincy sentence?

16 A Before Quincy's sentencing, before he saw the judge,
17 me and my whole family we was all out in the area before
18 going into the courtroom, and he stated that, well, y'all
19 shouldn't worry about anything. It's going to be all right.
20 He's not going to get life. I know he's not going to get
21 30 years. He'll get no more than 15 years. That's what he
22 stated to me and my family.

23 Q Okay. Did you ever hear him tell Quincy that?

24 A I never heard him tell Quincy that; no.

25 Q Okay, but he told you that before the sentencing?

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23

1 A Yes, he did.

2 Q Okay. That's all the questions I have for you, ma'am.

3 Please answer any questions Ms. Todd may have.

4 MS. TODD: One moment, Your Honor.

5 SYLVERIA MCCOY OUTEN - CROSS-EXAMINATION

6 BY MS. TODD:

7 Q Ms. Outen, this conversation that you said that Mr.
8 Soltis had with you and your family, your son was not
9 present at that time?

10 A No, ma'am, he wasn't.

11 Q Okay. And this was after he had entered his guilty
12 plea?

13 A I thought it was.

14 Q Okay. Was it the day that he was sentenced?

15 A It was the day of the sentencing.

16 Q Okay. And you love your son; correct?

17 A Of course, I do.

18 Q And you don't like the idea of him being in prison for
19 30 years; correct?

20 A I mean, no mother would like the idea of their son
21 being in prison for 30 years, no, but I'm the type person
22 that if you do a crime -- you know, there is punishment.
23 But, also, Mr. Soltis, he did tell us that because Quincy
24 participated with the -- with the other man and that he had
25 given some -- given up something about some guns and they

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24

1 got a real big issue out of that with the guns, that he
2 would get 15 years. He did tell us that.

3 Q Now, he promised you that he was going to get 15
4 years?

5 A That's what he said. He said he -- he said, I doubt
6 if he'll get 30, but he told me and my family -- y'all
7 don't have to worry about anything, he's not going to get
8 no more than 15 years.

9 Q Okay. So he said he doubted that he'd that he'd get
10 30 years?

11 A Yeah, but then he -- he actually, after that, assured
12 us that he was only going to get 15 years.

13 Q Okay. Thank you. I have nothing further.

14 THE COURT: Re-examine?

15 MR. TAYLOR: Nothing on redirect, Your Honor.

16 That's the Applicant's case.

17 THE COURT: All right.

18 Thank you, ma'am, you may step down.

19 MS. TODD: The State would call Mr. Stephen
20 Soltis.

21 CLERK: Do you solemnly swear or affirm that the
22 evidence you give in -- before the Court in this matter
23 will be the truth, the whole truth, and nothing but the
24 truth, so help you God?

25 MR. SOLTIS: Yes, ma'am.

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25

1 CLERK: Okay. Thank you, sir.

2

3 STEPHEN SOLTIS - DIRECT EXAMINATION

4 BY MS. TODD:

5 Q Good morning, Mr. Soltis.

6 A Good morning. How are you?

7 Q I'm fine. This morning we're here Mr. Quincy McCoy's
8 PCR, tell the Court how you became involved in this case?

9 A I was appointed, I believe, sometime in May, 2003.

10 Q Did you receive Discovery in this case?

11 A Yes, ma'am.

12 Q And what was the State's case that it intended to put
13 on, to your understanding?

14 A The State -- the State's theory was that Quincy and
15 others had entered the home and that one person was armed
16 with a long rifle, one person was armed with a short
17 pistol, I believe, and their theory was that at some point
18 shots were fired, the gun was taken away from Quincy and
19 Quincy was later shot with the rifle. That was the State's
20 theory.

21 Q Okay.

22 A Quincy's theory is quite different than that and
23 that's where we went with it, but the State's theory was
24 there was a home invasion, it was over a -- some drugs that
25 were located in the house and --

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1 Q What was -- what did the Applicant tell you about the
2 crime?

3 MR. TAYLOR: Your Honor, I object to hearsay.

4 THE COURT: Just what the applicant, I think can
5 testifies as to what he says.

6 You may proceed.

7 A I'm a little concerned about the way I answer this
8 with Quincy having just taken the fifth amendment. I am
9 concerned, honestly, with he's taken the fifth amendment
10 and my testifying as to what he said may infringe on that
11 right. I look to the Court for any guidance. I'll be
12 happy to answer the question if you want. I'm just
13 concerned about his taking the fifth amendment. I've never
14 had an Applicant take one.

15 MR. TAYLOR: Your Honor, I'm not sure actually
16 what my client said about the crime is really relevant. I
17 mean, I think we're here dealing with the actual plea
18 itself. What he says, what my client may or may not have
19 said about the events of that evening, I'm not sure are
20 even relevant. I mean, I hope I've narrowed the issue
21 enough for the Court -- it's an issue of whether or not it
22 was a knowing, voluntary, intelligent plea. I'm not sure
23 the fact even matter.

24 MS. TODD: Your Honor, the Applicant is denying
25 today that the facts as recited by the State were true.

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1 And he has waived his privilege communication with Mr.
2 Soltis by filing this action. I would be happy to take a
3 moment and retrieve case law on the Applicant's ability to
4 assert his fifth amendment privilege in this setting.

5 THE COURT: I'll be glad to afford you that
6 opportunity. Let's do that. Inasmuch as we have a novel
7 issue and I been trying to find the authority here and
8 hadn't been able to as yet, either way.

9 All right. Let's -- we'll take a recess. It's about
10 -- It's five after 11:00. Will 11:30 be all right?

11 MS. TODD: That will be plenty of time.

12 THE COURT: All right. Very good.

13 You can step down now. Remember, Mr. Soltis, you are
14 under oath and you cannot discuss your testimony with
15 anyone; do you understand that?

16 MR. SOLTIS: I understand, Your Honor.

17 THE COURT: Very good. Thank you very much.

18 All right, let's stand at recess until 11:30.

19 (Court in recess 10:55 am until 11:30 am.)

20 (Court in session after recess.)

21 THE COURT: All right. We're back on the record.
22 Ms. Todd, do you have anything that you --

23 MS. TODD: Your Honor, the State would note for
24 the record that under the PCR statute, particularly 1727 -
25 -

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1 THE COURT: -- 130?

2 MS. TODD: -- 130. That the Applicant has waived
3 his right to attorney client privilege oral or written by
4 filing this PCR application and we would ask that Mr.
5 Soltis be directed to answer the questions regarding what
6 the Applicant told him regarding the crime.

7 As to the Applicant assertion of the fifth amendment,
8 I -- I apologize to Your Honor. It was my understanding
9 there was case law. I do not believe there is case law
10 regarding that issue.

11 THE COURT: Well, we've both tried to find it.

12 Okay, do you want -- Mr. Soltis is back on the stand.
13 Any further questions?

14 MS. TODD: Yes, Your Honor.

15 BY MS. TODD:

16 Q Mr. Soltis, would you please tell the Court what Mr.
17 McCoy told you regarding his involvement in the crime.

18 MR. TAYLOR: Your Honor, again, I would simply
19 renew my objection based upon relevance. We're here for a
20 limited issue, and I don't think it's relevant, but I
21 understand where the Court may be coming down on that.

22 THE COURT: I don't think this is going to be a
23 case that's going to be decided. So I'm going to sustain
24 the objection to this witness recounting anything that the
25 Defendant might have told him about the trial based on Rule

1 403.

2 All right. You may proceed.

3 MS. TODD: Thank you.

4 BY MS. TODD:

5 Q Mr. Soltis, at the sentencing hearing there was some
6 discussion about the applicant's version of events;
7 correct?

8 A (No response.)

9 Q Do you have a copy the sentencing transcript?

10 A No, ma'am.

11 Q Okay.

12 MS. TODD: If I may approach the witness?

13 THE COURT: Yes, ma'am.

14 BY MS. TODD:

15 Q Mr. Soltis, at the sentencing hearing, and I'm looking
16 at Page 10. Does not Mr. McCoy go over his version of
17 events that he was under the impression that this was a
18 crack house and he didn't know that there were going to be
19 victims present?

20 A Yes, ma'am.

21 Q Okay.

22 A Actually, yes, the transcript is pretty specific on
23 that issue.

24 Q Okay, and he talked about himself being shot, as well
25 as, the victims being shot; correct?

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1 A Yes, ma'am. It says, just like I shot Paul in the
2 leg, my co-defendant shot me in the leg.

3 Is that what you're referring to?

4 Q Yes. Now, if we could go back a little bit. Did --
5 in your discussions with him, did you ever advise him that
6 he was facing the death penalty in this case?

7 A No, ma'am. It's not a death penalty case. We talked
8 about, you know, the facts are all there for it, the
9 circumstances are all there for it, but having -- having
10 been involved in death penalty litigation before this case
11 was not the case they were going to call as a death penalty
12 case. It was clearly a home invasion, burglary, and armed
13 robbery and, you know, a death ensued during that -- during
14 that chain of events, but I didn't see it rise to the level
15 of death penalty case.

16 Q And the State, did they notice death penalty at all?

17 A No.

18 Q Did they discuss about noticing the death penalty to
19 your recollection?

20 A Not that I recall.

21 Q Was the case about to be tried or did he pled some
22 time before it was to be called; do you recall that?

23 A I'd gotten a number of calls from the solicitor
24 threatening to call the case for trial, call it for trial
25 this date, and then they were call it for trial another

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1 day. And, frankly, we were prepared to go to trial on the
2 case, had the case gone to trial, but I believe at one of
3 the times they made us an offer to allow Quincy to testify
4 against the co-defendant, and we agreed to do that.

5 Q Okay. And what was the offer?

6 A Well, there wasn't any technical offer on the table.
7 The offer was we'll give you some assistance on the back
8 end plead in front of one judge, going to be sentenced in
9 front of the trial judge, whoever that was going to be.
10 And I have no control over that, but whoever the trial
11 judge was going to be we were going to be sentenced in
12 front of. Quincy was going to testify, co-operate with
13 them in hopes of getting some kind of leniency.

14 Q Now, when you say that he would be sentenced by the
15 trial judge, you mean the co-defendant's trial judge;
16 correct?

17 A Yes.

18 Q Okay. And in that case, Judge Westbrook actually
19 presided over the co-defendant's trial?

20 A That's correct. I think at the time we pled, we -- I
21 had no idea who the trial judge was going to be for the co-
22 defendants.

23 Q Did you explain that to Mr. McCoy; did he understand
24 that?

25 A He understood that he was going to be sentenced in

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1 front of the trial judge, whomever that may be.

2 Q Okay. So he -- he was not under the impression with
3 the day he pled, to the best of your understanding, that he
4 was going to be sentenced the day he pled guilty?

5 A No. There was no question he was not going to be
6 sentenced that day, but whether or not Judge Keesley was
7 going to be the trial judge or not for the co-defendants,
8 we have no knowledge of that.

9 Q Okay.

10 A Not who the trial was going to be.

11 Q Was the offer 15 years by the State?

12 A Never.

13 Q Did you communicate to him that he was offered 15
14 years by the state?

15 A He was never offered 15 years, no.

16 Q What did you tell him about the possible sentence
17 range in this case?

18 A Sentence range was first degree burglary case is 15 to
19 life.

20 Q Uh-huh. What did you tell him about -- did you
21 promise him any particular sentence?

22 A No, ma'am. Now at the time of the plea, you're
23 talking about; correct?

24 Q Correct.

25 A No, that is correct. I did not.

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1 Q But you did discuss with him that he was facing 15 to
2 life?

3 A Yes, ma'am.

4 Q Before the plea?

5 A Yes, ma'am.

6 Q And he knew that?

7 A Yes, ma'am.

8 Q Okay. Now, what happened -- what transpired after the
9 -- after the plea; he did testify against the co-
10 defendants.

11 A Testified against the co-defendants.

12 Q Were you present during that trial?

13 A I watched a good portion, in fact, I think I watched
14 all of Mr. McCoy's testimony. I may have watched a little
15 bit of the rest of the trial as well.

16 Q Okay.

17 MS. TODD: I apologize, Your Honor. I'm trying
18 not to ask him a question that would violate your previous
19 order.

20 THE COURT: Well, then, don't.

21 MS. TODD: I'm trying to figure out how to ask
22 this question.

23 BY MS. TODD:

24 Q Mr. Soltis, were you under the impression from your
25 discussions with Mr. McCoy that he was getting untruthful

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1 testimony at his co-defendants trial?

2 A No, ma'am. I would never have counseled a client to
3 go into court to lie.

4 Q And it was your understanding that it was truthful
5 testimony?

6 A Yes, ma'am.

7 Q Were you in any discussions with Mr. McCoy and Mr.
8 Sword about Mr. McCoy lying for the State in order to get a
9 particular benefit?

10 A No, ma'am.

11 Q And you never told him to lie to get a particular
12 benefit?

13 A I never told him to lie.

14 Q Do you recall the Applicant ever telling you that he
15 did not want to pled in front of Judge Westbrook?

16 A I don't think we ever had a discussion about him
17 wanting to plead guilty in front of Judge Westbrook or not.
18 I don't recall having the conversation with him about
19 pleading guilty in front of any judge except he had a
20 tremendous reluctance to do so.

21 Q He did not want to plead guilty?

22 A No, he didn't want to pled guilty.

23 Q And whose decision was it for him to plead guilty?

24 A Completely his.

25 Q Okay. And he did receive the benefit of the murder

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1 charge being reduced to voluntary manslaughter?

2 A Yes, ma'am.

3 Q But a life sentence was still a possibility because of
4 the burglary first?

5 A That's correct.

6 Q And the recommended sentencing range was 15 to life?

7 A Yes. Being realistic he wasn't going to get life, but
8 that was the range.

9 Q Okay, well, let's --

10 A It's not a life case.

11 Q Right. Let's discuss his expectations of a possible
12 15 year sentence.

13 Do you recall any conversations regarding that issue?

14 A At the time of the plea or the sentencing?

15 Q At the time of the sentence.

16 A At the time of the sentence. Tav Swarat's and I did
17 have a discussion with Judge Westbrook in chambers prior to
18 the sentencing. Judge Westbrook was advised by me and
19 Sward that, of course, they recalled Quincy testifying on
20 behalf of the State and we were kind of hoping that the
21 Court would give him something in the range of 15 to 20.
22 Judge Westbrook said he'd -- Judge Westbrook said that that
23 was probably within the range of punishment. He had no
24 problem at all with that, but he wanted to hear what the
25 facts played out again in the sentencing.

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1 Q And he said that was a possibility, he said that that
2 sounded like an appropriate range, but he wanted to hear --

3 A Yes.

4 Q -- it all over again. To the best of your knowledge,
5 had he, at that time, received a copy of Mr. McCoy's
6 letter?

7 A I don't think so, no.

8 Q Okay.

9 A I think Mr. McCoy handed that up to the Court at the
10 time of his sentencing. I don't recall exactly when it was
11 handed up. I don't think the Judge had it prior to the
12 sentencing.

13 Q Okay. Other than --

14 A Or at least prior to the discussion that I had with
15 the Court and Mr. Sword had with the Court prior to
16 sentencing.

17 Q Other than the letter and a discussion of the letter
18 at the sentencing hearing did the sentencing go as
19 expected?

20 A No, ma'am.

21 Q Okay. Could you explain how it differed from what was
22 expected?

23 A Well, the sentencing went as expected in that the
24 Judge did sentence him, but he sentenced outside the range
25 that we had discussed and later conversations with Judge

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1 Westbrook and Mr. Sword about why that occurred was simply
2 that Quincy had attempted to manufacture a PCR at the
3 sentencing and therefore Westbrook punished him.

4 Now, Westbrook said at the sentencing, I believe, that
5 he did not give truthful testimony at the trial or
6 somewhere I -- Westbrook said that.

7 Q Okay.

8 A It may have been at the initial conversations we had
9 with Judge Westbrook. He was tending to, at that time, to
10 sentence him to the same as everybody else, because he
11 didn't believe him.

12 I think, though, that after Swarat's and I left his
13 chambers he was in -- it was clear he was in the 15 to 20
14 years range.

15 Q Okay. But that changed when the sentencing hearing
16 took place?

17 A Yes, ma'am.

18 Q What is your opinion as to the difference between the
19 possible 15 to 20 that had been discussed in chambers and
20 the 30 that he received; what do you think made the
21 difference in the judge's sentence?

22 A Quincy opened his mouth.

23 Q Could you explain a little further?

24 A Well, ma'am, the transcript is there. I think if he'd
25 just kept his mouth closed as to some of the issues that he

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1 brought up and just besides the fact that he's sorry that
2 it went on, and so forth, I think he would have gotten 15
3 to 20 range.

4 Q Okay. And --

5 A Probably closer to the 15 range.

6 Q Are you referring to him telling the Court that he
7 would not have pled if he'd known he was pleading 15 to
8 life?

9 A Yes, ma'am.

10 Q That he thought that he was going to get 15 years?

11 A Yes.

12 Q Okay. Did Mr. McCoy ever discuss with you the
13 possibility of withdrawing his plea?

14 A I believe that he did.

15 Q Okay.

16 A I don't recall all of the details regarding that. I
17 don't recall whether or not we discussed that with Judge
18 Westbrook and Judge Keesley or any judge for that matter.

19 Q Did you tell him that he could not withdraw his guilty
20 plea?

21 A No.

22 Q Did he ask you to request the withdrawal of his guilty
23 plea?

24 A I don't remember, to be honest with you. I think we
25 may have had some discussions about that. Whether or not

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1 we actually agreed to go ahead and ask the judge to
2 withdraw it, I don't recall that ever happening.

3 Q Well, let me ask you this; do you believe that there's
4 a possibility he asked you to withdraw and you refused to
5 take it to the Court?

6 A I don't think I would have refused to take it to the
7 Court, but I don't recall that actually happening.

8 Q Do you have an opinion as to what the likelihood was
9 that he would be able to withdraw his guilty plea at this
10 stage of his sentencing?

11 A (No response.)

12 Q If you don't, that's fine.

13 A I don't think he would have been able to, but it's
14 possible he would have been able to. Judge may have agreed
15 to it.

16 Q Now, you referred to -- not long ago to the other
17 defendants sentences; do you recall what range the other
18 defendants received in their sentences?

19 A I recall one defendant received a 30 year sentence. I
20 believe -- I don't recall what any of the others received.
21 And I think that's when Mr. McCoy may have wanted to
22 withdraw his guilty plea, if he did so. When one of the
23 defendants got a 30 year sentence. I think that was one of
24 the defendants that cooperated, as well, with the State.

25 Q Uh-huh.

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1 A And he was really concerned about that.

2 Q Okay.

3 MS. TODD: Beg the Court's indulgence.

4 THE COURT: Yes, ma'am.

5 BY MS. TODD:

6 Q Had Mr. McCoy advised you that he was going to pass up
7 this letter during sentencing?

8 A I didn't see -- yes. Yes.

9 Q Okay.

10 A I don't think I actually reviewed the letter --

11 Q Okay.

12 A -- prior to his passing it up, but he did tell me that
13 he had a letter to the Court.

14 Q Okay. Did you have any understanding as to the
15 contents of the letter?

16 A No, ma'am.

17 Q Mr. Soltis, is there anything else regarding
18 allegations that have been made here today that you would
19 like the Court to know regarding your representation of Mr.
20 McCoy?

21 A We were ready to go to trial on this. If Mr. McCoy
22 did not want to testify we would have been up there trying
23 the case or with the other co-defendants trying the case.
24 We were ready to go on it.

25 Q Okay. And if you don't believe that this -- causes

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1 you some concern because the Applicant has pled the fifth,
2 what would your defense have been had you gone to trial?
3 A Mr. McCoy's defense would probably have been duress,
4 he was allegedly forced to enter the residence against his
5 will.

6 Q Thank you. Please answer any questions Mr. Taylor
7 has.

8 MR. TAYLOR: Please the Court.

9 STEPHEN SOLTIS - CROSS-EXAMINATION

10 BY MR. TAYLOR:

11 Q Mr. Soltis, you mentioned that you thought if the case
12 had gone to trial Mr. McCoy may have had a duress defense
13 or that would have been the defense if he'd gone to trial?

14 A I think it would have been an imperfect defense, but
15 that would have been our defense, yes, sir.

16 Q And he was actually, I think you mentioned that he was
17 reluctant to plead guilty?

18 A He was.

19 Q And did he ever tell you he wanted to go to trial on
20 this case?

21 A A number of time, yes, sir. That's why we were
22 getting ready for trial.

23 Q And he wanted the case to be -- actually wanted you to
24 present a duress defense, correct?

25 A Yes.

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1 Q And what did you tell him your opinion of the duress
2 defense was?

3 A I didn't think the duress defense was very effective,
4 but that's what we were going to go with. That's the only
5 thing we had.

6 Q Walk me through, if you can, his decision to plead
7 guilty. You told us he was very reluctant, initially.
8 When did he have this epiphany, if you will, that he needed
9 to go ahead and plead guilty?

10 A I don't remember exactly when. It was on the eve of
11 one of the solicitor's alleged, I'm going to call this for
12 trial if you don't. We made a deal with them. We hoped to
13 get some kind of leniency if he cooperated with them.

14 Q So there -- you and Mr. Sward never talked numbers
15 prior to the plea?

16 A No.

17 Q As far as years?

18 A No. Never.

19 Q So it's your testimony here today that any plea that
20 that kind of was just based upon a handshake that if he
21 cooperated they would assist with some sort of leniency?

22 A As you know, when the prosecutor comes up with a plea
23 offer like that they're not going to want to narrow it down
24 because that way they get attacked by the Defendant at
25 trial. They offered us to allow him to plead to burglary

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1 first degree, which is one of the things he was charged
2 with.

3 Q Right.

4 A And, you know, there was no written agreement, you're
5 going to get 15, you're going to get life, but we'll do
6 what we can to help you if you're truthful with us and help
7 us.

8 Q So basically, and I understand this, I'm certainly in
9 your shoes a lot, but you certainly just had to sort of
10 trust Mr. Swords --

11 A Absolutely.

12 Q -- to do the right thing?

13 A Yes.

14 Q Okay. Now, there was never any indication, at in your
15 testimony, there's never any indication that my client
16 would receive a straight 15?

17 A That's correct.

18 Q Now, you mentioned something that was very interesting
19 to me. There was a conversation with Judge Westbrook in
20 chambers; correct?

21 A That's correct.

22 Q And in that conversation I think you mentioned that
23 you thought when you walked out of there that Judge
24 Westbrook would give him somewhere between 15 and 20 years;
25 correct?

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1 A Yes, sir.

2 Q Did you communicate that to my client?

3 A Yes, sir.

4 Q And so it was then reasonable for him to expect if he
5 was standing in front of Judge Westbrook that day that he
6 would be getting 15 and no more than 20 years; correct?

7 A Absolutely.

8 Q All right. And Mr. Sward had gone along with that;
9 correct, or he didn't object to that in front of Judge
10 Westbrook did he?

11 A I think actually it was his -- his call, so to speak.

12 Q Okay.

13 A He didn't have a problem with 15.

14 Q Okay. And you also communicated that to Mr. McCoy?

15 A Yes.

16 Q I mean, like any good lawyer would, you told him about
17 the entire conversation in chambers; correct?

18 A Yes, sir.

19 Q So when he stood up and was going to plea, he thought
20 like you that it would be in the range of 15 to 20?

21 A No, sir. That happened after the sentencing.

22 Q I apologize. At the sentencing, the day of
23 sentencing, he thought he was going to get 15 to 20 years?

24 A Yes, sir.

25 Q Okay.

1 A In fact, we had actually hoped on closer to the 15.

2 Q Right.

3 A Really.

4 Q So basically, and I don't want to put words in your
5 mouth, but that day of sentencing everybody thought he was
6 going to get 15 to 20 years?

7 A Correct.

8 Q Mr. McCoy stated in his direct testimony, and I know
9 you heard him, that he was never informed of the fact that
10 he could receive life in this case until Judge Keesley said
11 that; that's not your testimony in here today?

12 A No. Sorry.

13 Q All right. Now, I'm going to turn you to the page --
14 do you have the sentencing transcript before you?

15 A Yes, sir.

16 Q Will you look at Page 13, for me. Do you see Lines 1
17 through 10?

18 A Yes.

19 Q Do you see where Mr. McCoy states that he was pleading
20 guilty to 15 to 30 and that you didn't tell him about life
21 and he's pretty sure that you wouldn't lie to the judge
22 about that?

23 A Yes, sir.

24 Q Do you see there where Judge Westbrook asked if you
25 had anything to add, and you said, no, sir?

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1 A Yes, sir.

2 Q Does that mean that you were agreeing with what Mr.
3 McCoy was saying?

4 A No, sir. I wasn't going to add anything at that
5 point.

6 Q Okay.

7 A I wasn't going to help the State with their guilty
8 plea or sentencing, and there was no way that I was going
9 to take a -- issue and Quincy on sentencing.

10 Q Right. But could you have told the Court, Your Honor,
11 based on conversations I've had with my client he thought
12 he was going to be getting 15 to 20 years?

13 A I'm not certain that at that point that would have
14 come up.

15 Q Okay.

16 A Maybe I'm not understanding your question. I don't
17 see that that would have come up at that time.

18 Q Okay. That's all the questions I have, Mr. Soltis.
19 Thank you.

20 THE COURT: Redirect?

21 STEPHEN SOLTIS - REDIRECT EXAMINATION

22 BY MS. TODD:

23 Q He understood the 15 to life was the only deal before
24 the plea; the only deal that State was offering him before
25 the plea was a recommended range, 15 to life?

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1 A Fifteen to life. He also knew that prior to the plea
2 that if he cooperated with the State on the testimony, in
3 the testimony at the trial that he would get some kind of
4 consideration. Yes.

5 Q And you believed on the day of sentencing he was going
6 to receive that consideration; correct?

7 A Absolutely, yes.

8 Q Until he opened his mouth at the plea and asserted
9 that he had never agreed to 15 to life?

10 A I believe so, and I think Judge, at that point,
11 thought that he was waffling on the whole deal and was
12 trying to set up a PCR, and I think he sentenced him
13 according. Right or wrong, I don't know. That's what I
14 felt happened.

15 Q Thank you. I have nothing further.

16 MR. TAYLOR: Nothing on recross, Your Honor.

17 THE COURT: Very good. You may step down.

18 All right. Argument. Mr. Taylor.

19 MR. TAYLOR: May it please the Court, Your Honor.

20 Judge, first I would like to hand up something, as
21 well, that my client prepared. It is -- it sort of states
22 like is in the nature of an amendment but is essentially
23 just a memorandum that he has prepared for the Court. I'm
24 going to hand up.

25 THE COURT: Certainly.

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1 MS. TODD: Your Honor, I would object on the basis
2 of hybrid representation and this is --

3 THE COURT: Well, it's all right. I'll overrule
4 your objection. I'll accept it. Thank you.

5 MR. TAYLOR: Your Honor, basically, it's the
6 position of my client that had -- but for being essentially
7 guaranteed, as he felt, a 15 years sentence he would not
8 have pled.

9 Now, certainly, Ms. Todd is going to dispute that, but
10 I think one of the most telling things we have in this case
11 right now is Mr. Soltis statement on the stand that --
12 about the conversation he had with Judge Westbrook, that he
13 and the solicitor. And that this was going to be a 15 to
14 20 years sentence, and that's what they thought. And
15 that's what my client when he stepped up the bar in front
16 of Judge Westbrook, that's what he thought he was getting.
17 Now, I know he didn't mention the 20 today, but, you know,
18 he got 30. And he stood up in front of Judge Westbrook
19 thinking he was going to get 15 to 20 years. As Mr. Soltis
20 was honest with the Court, everybody thought he was going
21 to get 15 to 20 at the most. By all accounts, he had
22 cooperated, he has testified at trial, he had helped them
23 get some guns off the street. And I think Mr. Soltis was
24 certainly reasonable in thinking that, as well.

25 Did Mr. Soltis essentially do anything wrong. I'm not

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1 sure, but by virtue of Judge Westbrook not following along
2 with the range he had given them, that makes this a -- a
3 not knowing, voluntarily intelligent plea, but for what
4 they all thought was going to happen my client would not
5 have gone along -- he could have actually moved to withdraw
6 his plea. That day at sentencing he thought he was going
7 to get 15, at the most 20. By all accounts the most would
8 be 20.

9 You Honor, I turn your attention to the case of
10 Thompson verses State. That is 531SE294, and in that case
11 the Judge -- they met in chambers, they have talked about a
12 YOA sentence. The judge said I'm not going to do that, but
13 I'm not going to give him 30 years. That defendant thought
14 essentially, I believe, thought he was going to get 20
15 years and got 25. And granting -- or affirming the PCR the
16 Court said that however the fact that the judge sentenced
17 Mr. Thompson within the range what he thought he was going
18 to get was irrelevant. They have to show -- and then they
19 go through the but for test. I'm sure the State would hear
20 arguable -- you know, Mr. McCoy says he thought he was
21 getting 15 to 30 in his transcript, and this was in that
22 range. Well, that's not relevant under State verses
23 Thompson or Thompson verses State, I'm sorry, Judge.

24 The fact of the matter remains that my client thought
25 he was getting 15, the most 20. And as the Court is well

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1 aware, you know, the question is whether after being
2 informed of my client's rights would he have still pled
3 guilty.

4 He said here today, no, he wouldn't. If he thought he
5 was getting more than that 15, he wouldn't have pled.

6 I think that's where we are. Again, I'm not sure -- I
7 don't think that Mr. Soltis did anything per se wrong. You
8 know, I think they all walked into that courtroom at
9 sentencing thinking my client is going to get 15, possibly
10 20. I think they -- for some reason Judge Westbrook wasn't
11 happy about the way things went and surprised them all.

12 Again, by virtue of that, that makes this not a
13 voluntarily, knowing, and intelligent plea and sentencing.

14 Thank Your Honor.

15 THE COURT: Ms. Todd.

16 MS. TODD: Your Honor, the Applicant pled guilty
17 one day under the advise, according to Mr. Soltis'
18 testimony that he was facing 15 to life, sentencing range,
19 having been instructed by the Court, regarding the
20 sentencing range, have been instructed by the Court that he
21 could actually be sentenced to life plus 90 years based on
22 the charges that he was facing.

23 That's what he knew that day. That's the day that
24 matters as far as his -- whether his pled was intelligently
25 entered. The day of the sentencing, which was six months

1 later, after the Applicant had testified at trial before
2 Judge Westbrook offered testimony against a co-defendant,
3 the comes to sentencing, and, yes, there's -- there's an in
4 chambers conference, and Judge Westbrook gives some
5 indication that a 15 to 20 year sentencing is appropriate,
6 but he wants to hear the facts.

7 What changed, what was the surprise was when they go
8 back in and Mr. McCoy starts saying that he would have
9 never agreed to the plea that he agreed to. He would never
10 have agreed to the deal he agreed to. And he testified
11 here today that he had lied at the co-defendant's trial,
12 that he lied to Judge Keesley, and, I think, that all
13 became rather apparent to Judge Westbrook and that is why
14 he received the sentence he received.

15 He did not have a negotiated sentence that was backed
16 out on, he had a plea with a recommended sentence of 15 to
17 life, that is the deal that the State made. They had
18 agreed to drop from murder to voluntary manslaughter, and
19 they told him they would try and help him out.

20 It appears they tried to help him out. Mr. McCoy is
21 the person that created this difficulty, not Mr. Soltis,
22 and he had -- he's not been deprived of effective
23 assistance of counsel. He failed to prove, meet his burden
24 in this case.

25 The State would also submit that he understood at the

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1 time he pled guilty that it would be the -- the sentencing
2 judge would be the judge that heard the trial of the co-
3 defendant and that they did not know at that time who that
4 would be, therefore, even if the court were to entertain
5 the possibility of some sort of -- adopting some sort of
6 law that the plea judge and the sentencing judge ought to
7 be the same judge, the applicant waived that by agreeing to
8 plead in front of one judge knowing that his sentence would
9 actually take place in front of another.

10 The State submits that the Applicant's testimony is
11 without credibility based on his admissions to having lied
12 to Judge Westbrook at the co-defendant's trial and Judge
13 Keesley at the guilty plea.

14 THE COURT: All right. Anything further?

15 MR. TAYLOR: Your Honor, I don't have much --
16 anything really further to add. Again, except that
17 possibly based upon this conversation in chambers, I think
18 my client, that's why he pled. If Judge Westbrook had
19 said, well, I'm going to give him 50, there could have been
20 a situation where my client would have demanded that Mr.
21 Soltis try to withdraw the plea.

22 Again, it -- it was all based upon that conversation,
23 I believe. That's where my client is coming from.

24 Thank you.

25 THE COURT: As I understand it, Judge Westbrook

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1 not only read the statement, which is Court's Exhibit No.
2 1, and after reading it he did not change the sentence.
3 Apparently, he thought it was appropriate, in fact, he
4 noted that in the statement -- I've read the statement of
5 Mr. McCoy as handed up. It doesn't change the sentence.

6 I say that because the statement was made that Judge
7 Westbrook's surprised us all in what he did, because Judge
8 Westbrook at the time of the sentencing noted that Mr.
9 McCoy's statement reflects what he said, which is, that he
10 thought that it was 15 to 30, and the 30 years is within
11 the range of what he indicated. So I think that statement
12 is pretty much incredible based on the record in this case.
13 And it is sustained by the transcript, Page 11 -- 11, Line
14 14 to 18 -- I was told I was pleading guilty to 15 to 30
15 years. My lawyer told me that if I was pleading guilty to
16 15 to 30 years, and if I testified most likely would get
17 the 15 years.

18 Later, on Page -- of course, he says the reason he
19 wouldn't have pled would have been -- it would have been
20 guilty to life -- 15 to life, which he didn't plead to.
21 Later, he admits that Steve Soltis at Page 13, Lines 4 to
22 5, Steve Soltis told me that I was pleading guilty to 15 to
23 30 years.

24 Now, of course, he says, on Page 11, Line 2 to 3, I
25 testified in hopes of getting 15 years. But in hopes of

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1 getting 15 years.

2 As I've already mentioned he said, he said, I was told
3 I was pleading 15 to 30.

4 The thing that probably -- and even in his own
5 statement that he handed up, he noted that -- 15 wasn't
6 anything that he was assured of.

7 Steve says -- This is on Page 2 of his statement.
8 Steve Soltis also told me that if worse comes to worse and
9 John Henry pleads guilty to 30 years in prison, then I
10 would receive 20 years in prison.

11 So it seems that even he acknowledges his
12 inconsistencies and also as Judge Westbrook understood,
13 noted in his affirmation of the 30 year sentence on Page 1
14 under Plea Understanding, Steve Soltis told me I was
15 pleading to 15 to 30 years.

16 I think the thing that concerns the Court more than
17 anything else, there is the circumstances, which apparently
18 at the time of the sentencing, the Defendant, well, he'd
19 already admitted to Judge Keesley; Mr. McCoy, do you admit
20 that you're guilty of all these charges? And Mr. McCoy
21 said, Yes, sir. That's Page 21, Lines 23 and 24 of the
22 sentencing transcript before Judge Keesley. I mean, but --
23 excuse me, the plea transcript before Judge Keesley.

24 But, in the sentencing transcript before Judge
25 Westbrook, Mr. McCoy tells the Court, first of all, I'm

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1 sorry. Terry ain't never told me that there was going to
2 be women and kids in the house. Terry said this was a
3 crack house. I am really sorry for what I did. Just like
4 I shot Paul in the leg -- this is all on Page 10 of the
5 transcript -- I've testified in hopes of getting 15 years.
6 I just want to say I'm sorry. I really am. I'm sorry.

7 Mr. Swarat acknowledges the cooperation of Mr. McCoy,
8 about he did lead the authorities to the person who had
9 purchased the gun and ended up in an arrest and the
10 individual is apparently convicted because the Defendant --
11 the Applicant testified at his trial.

12 It doesn't seem like there's anything in this
13 inconsistent with the statement and the findings by Judge
14 Keesley and Judge Westbrook in the sentencing. That this
15 was freely, knowing, intelligently entered as a plea and
16 the sentence was within everything that the Defendant or
17 Applicant understood.

18 As far as not being aware of defenses or theories or
19 whatever, the Applicant suggests that he would have been
20 relying on that he was compelled and acting under duress.
21 From his final statement in his April 6th statement, he
22 says; I think about the part I played in this crime every
23 day.. The reason I did not make the decision to go through
24 with this. At the time, I was under a lot of peer
25 pressure, and the people I thought was my friends. Don't

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1 get me wrong, I take full responsibility for my part in
2 this crime, but I'm not like that at all. I stepped
3 completely outside of my character trying to be someone I'm
4 not to please another man.

5 Then again, on the very first, he notes that Steve
6 Soltis told me I was pleading to 15 to 30 years.

7 I find that the record is complete. That the plea of
8 the Defendant was the result of knowingly and intelligently
9 exercising his rights under the circumstances. And as he
10 admitted that he had -- and accepted responsibility for his
11 actions his sentence was within the range appropriately
12 understood by the Defendant. Moreover, I find no other
13 grounds for that plea and sentencing -- to include the
14 sentencing of the Applicant after the trial by Judge
15 Westbrook, and I think -- what is it, State verses John
16 Henry, was that the co-defendant apparently took place, it
17 was understood at the time of sentencing. So I find no
18 grounds for that -- the Application is denied, and
19 dismissed with prejudice.

20 Madam Attorney General, if you would please draw an
21 appropriate order.

22 MS. TODD: Yes, Your Honor.

23 THE COURT: All right. Very good. Thank you.

24 (The proceeding was concluded.)

June 27, 2006
 APPEARANCES:

For the State:
 Ms. Todd, Esquire

For the Applicant:
 Mr. Taylor, Esquire

THERE WERE NO EXHIBITS MARKED TO THIS PROCEEDING

TESTIMONY IN ORDER OF APPEARANCE:

Quincy McCoy	direct.....	6
Quincy McCoy	cross.....	15
Sylveria M. Outen	direct.....	21
Sylveria M. Outen	cross.....	23
Stephen Soltis	direct.....	25
Stephen Soltis	cross.....	41
Stephen Soltis	redirect.....	46

FINDING OF THE COURT 52

Certificate of court reporter 58

CERTIFICATE

This is to certify that the foregoing matter, Quincy Marquette McCoy v. State of South Carolina, 04-CP-32-03142, Application for Post Conviction Relief, is a true and correct record of the testimony given by said witnesses after being duly sworn; said proceeding was reported by the method of Stenomask with backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

Hilda M. Jordan, CVR

Hilda M. Jordan, CVR
Official Court Reporter
May 3, 2007

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Lex. Co. O.C.C.P. S. D. C.

April 6, 2004

TO: MR. THOMAS COMEFORD, Clerk of Court Lexington Cnty.
205 E. Main St.
Lexington SC.

From: Quincy McRay
P.O. Box 2019
Lexington SC, 29071

RE: PLEA

DEAR SIR,

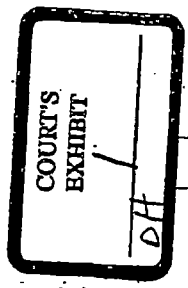
I am writing to you strictly to be put on record concerning these following discrepancies:

1. Sentencing Judge

When I entered this plea in front of Judge Keesley I was under the impression that he will be my sentencing Judge by his words "I can give you up to" the certain amount of time the charges carried. By that statement I continued on with the plea because I thought that the honorable Judge Keesley was my sentencing Judge and the fact that my Lawyer Steve Soltis said that he is a good Judge to plea in front of by me cooperating with the state.

2. PLEA Understanding

When I and my Lawyer Steve Soltis talked about this plea before I signed the guilty plea papers, Steve Soltis told me I was pleading guilty to 15-30yrs. And that if I cooperate fully with the



Solicitor Mr. Tau Swarat and testify against my co-defendant John Henry during his trial by stepping up and telling the truth to help Mr. Swarat convict John Henry I will get no more than 15yrs. in prison. Steve Soltis also told me that if worse comes to worse and John Henry pleads guilty to 30yrs in prison then I would receive 20yrs in prison. Mr. Soltis' exact words to me. Now later on while cooperating with Mr. Swarat after I have signed the guilty plea papers I learned that I plead guilty to 15yrs - Life in prison, so at this time I consulted with Steve Soltis and asked him why did he not tell me I was pleading guilty to 15yrs to Life in prison and Mr. Soltis replied technically that's what I could get in prison but if I testify against my co-defendant John Henry I would only get 15yrs. in prison. At this time I asked Mr. Soltis can he get that in writing for me and he replied that it will not look good during my testimony if the Solicitor put it in writing because it would make me look like I am lying on my co-defendant just because I made a deal so the agreement will have to be verbal between me him and the solicitor. So when I first entered this plea and numerous of times afterword and during my cooperation with the state I was under the impression that in exchange for my cooperation and my testimony against my co-defendants I will receive 15yrs in prison. That's why I plead guilty and that's why I gave my full cooperation and testimony during the trial of State vs. John Henry trusting in my Lawyer believing I was going to receive 15yrs in prison. Now everything I was promised has changed I now find out that

I may receive Life in prison ^{neither} and the solicitor or my lawyer wants to own up to the deal I was promised in the begining. I feel betrayed by my lawyer and used by the solicitor Mr. Tav Swarat. I cooperated and testified before a jury to convict John Henry and plead guilty under the impression and promises made to me by my lawyer that I will receive 15 yrs in prison. Therefore I am confused and was misled by my lawyer Mr. Soltes during this whole case and I was incompetent to the plea I made during the plea process.

3. Final Statement

In these final statements I wish to make for the record as well as for the court is that I regret and wish every day that I could turn back the hands of time and take back this whole situation or crime. I am deeply sorrowful and I think about the part I played in this crime everyday wishing I did not make the decision to go through with this. At the time I was under a lot of peer pressure and influence from people I thought was my friends but don't get me wrong. I take full responsibility for my part in this crime, but I'm not like that at all. I stepped completely outside of my character trying to be someone I'm not to please another man. I have never committed a burglary or robbery or a shooting before in my life ever. I graduated from high school and served a year in the Army but had to get a medical discharge because of my branchial Asthma. I am not a threat to society or some dreadful thing it's just on this particular night

I let 2 people I thought was my friends boost me up to do something I didn't really want to do. I know the law is hands of one hands of all but honestly I had no control over my co-defendant shooting and killing the victim, my co-defendant even shot me for disobeying his orders to shoot the victim. I am so very sorry for what happened that night God knows I am I have repented for my sins and has become closer to God. I just beg the court for mercy and a second chance to live my life the right way I have never been involved with anything like this crime ever before in my life and this is a valuable lesson learned for me. My deepest sorrow goes out to the victims family because I truly am sorry and regret what happened that night seriously and I mean that from the bottom of my heart and during my sentencing I am going to tell them myself from the bottom of my heart and the depths of my soul how I truly feel about what happened. Because I truly am sorry. I would like to close by saying I am so very sorry for what I have done and I hope the state of S.C. forgives me and pray to God that the court will show me mercy and give me a second chance at life I am 21 yrs old now and if I receive the 15 yrs in prison I was promised at 8500 violent I will be 33 yrs old which is a long time in prison but it will make me a better man and enable me to make something of my self and show the court and the state of S.C. that I can be successful and that it was not a bad idea to show mercy to me and give me a second chance.

Thank You

