

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Sumter County

Honorable Brooks P. Goldsmith, Circuit Court Judge

RICARDO DARGAN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001557

APPENDIX

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S.C. SUPREME COURT

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1 State of South Carolina

2 COUNTY OF SUMTER

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8	Ricardo M. Dargan,	)	October 17, 2016
	Defendant	)	Sumter, S.C.

9

10

11 Before the Honorable Robin B. Stilwell, Judge.

12

13

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

15

16

17 Ms. Bronwyn M. McElveen,
Attorney for the State

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19 Mr. Timothy L. Griffith,
Attorney for the Defendant

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22

23 Margaret T. Sullivan,
Court Reporter

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1 THE COURT: What case will be called for
2 this afternoon?

3 MS. MCELVEEN: Your Honor, the State would
4 like to call the State of South Carolina versus
5 Ricardo Montez Dargan. Indictment 2016-GS-43-0378.
6 And if we may approach with the witness list and the
7 indictment.

8 THE COURT: Please, yes, ma'am.

9 Ladies and gentlemen, the first thing I
10 need to do for you today, is to read the allegations
11 on the charging paper on the indictment that has
12 been prepared by the State. Now, ladies and
13 gentlemen, before I read it to, it's important for
14 me to tell you something. And that is, in this
15 case, and in every single criminal case in the
16 United States of America, the State of South
17 Carolina in the County of Sumter, a defendant is
18 presumed innocent until the State proves each and
19 every element of the offense beyond a reasonable
20 doubt. The Stat has the burden of proving to the
21 satisfaction of 12 deliberating jurors, the facts of
22 the case beyond a reasonable doubt.

23 Until such time as 12 deliberating jurors
24 have determined that the State has meet its burden
25 of proof, the defendant retains a presumption of

1 innocence. So imagine if you will that while we sit
2 here the defendant Mr. Dargan, is wearing a cloak of
3 innocence. And he will maintain that cloak of
4 innocence until 12 deliberating jurors determine
5 that the State has met its burden of proof. Now the
6 reason I tell you that is because I want to make
7 sure you know that when I read the allegations that
8 appear on the charging paper, that I am not
9 representing to you that these are the facts of this
10 case. What I am representing to is that these are
11 allegations that the State has made against the
12 defendant. I take no position with regard to the
13 facts of this case or the evidence in this case.
14 But it's important for me to let you know at the
15 threshold what this case is about so that you can
16 intelligently answer the questions that I pose to
17 you.

18 Ladies and gentlemen, this is the case of
19 the State versus Ricardo Morte Dargan. And it is
20 Docket No. 2016-GS-43-378. And this is an
21 indictment for murder. And are we also proceeding
22 under the second?

23 MS. MCELVEEN: Yes, Your Honor.

24 THE COURT: And an indictment for the
25 possession of a weapon during the commission of a

1 violent crime. Ladies and gentlemen, in this
2 indictment the State would allege that Mr. Dargan
3 did in Sumter County on or about December 3rd 2015,
4 willfully, feloniously and intentionally kill the
5 victim, David Clea, with malice aforethought either
6 express or implied by means of shooting the victim,
7 and the victim died as a proximate result on or
8 about January 31st 2016, in Sumter County.

9 Ladies and gentlemen, the second count of
10 the indictment is possession of a weapon during the
11 commission of a violent crime, wherein the State
12 alleges that Mr. Dargan did in Sumter County on or
13 about December 3rd 2015, possess a firearm or
14 visibly display what appeared to be a firearm, or
15 visibly display a knife during the commission or
16 attempted commission of a violent crime.

17 Now, Ladies and gentlemen, having said
18 that, is there anyone among you who has any prior
19 knowledge, any prior deposition, or any opinion
20 regarding the facts or the parties in this case?

21 THE JUROR: Yeah, I know the victim. I
22 know the one who got shot.

23 THE COURT: And your name and your jury
24 number?

25 THE JUROR: I don't know my number. My

1 name is Quintel Drayton, sir.

2 THE COURT: Thank you. I appreciate you
3 telling me that.

4 THE CLERK: We didn't catch his name.

5 THE JUROR: Quintel Dondell Drayton, sir.

6 THE COURT: Now let me ask you this, I
7 recognize that you knew the victim. Do you think
8 that given the fact that you knew the fact, do you
9 think you could be a fair and impartial juror in the
10 trial of this case?

11 THE JUROR: I don't think I should be
12 here, sir.

13 THE COURT: Thank you. I appreciate you
14 telling that.

15 MS. MCELVEEN: Your Honor, juror No. 55.

16 THE COURT: Juror No. 55. Yes, sir.

17 THE JUROR: Juror 44. Jawan David.

18 THE COURT: Yes, sir.

19 THE JUROR: I also know both of them.

20 THE COURT: Given that fact, sir, do you
21 think you can be a fair and impartial juror in the
22 trial of this case?

23 THE JUROR: No.

24 THE COURT: Thank you. I appreciate you
25 letting me know. Ladies and gentlemen, anyone else?

1 (Whereupon, no response.)

2 THE COURT: Ladies and gentlemen, at this
3 point and time, I am going to give defense counsel
4 and the State's counsel the opportunity to introduce
5 themselves, their clients, and or members of their
6 legal team. So let the defense go first, sir.
7 Mr. Griffith.

8 MR. GRIFFITH: Thank you, Your Honor. I
9 am attorney Timothy L. Griffith. And I work
10 in Sumter, and my office is in Sumter. I represent
11 Mr. Dargan.

12 THE COURT: Ladies and gentlemen, is there
13 anyone among you who has a personal, professional or
14 family relationship with Mr. Griffith or with the
15 defendant Mr. Dargan in this case? Yes, sir. Name
16 and juror number.

17 THE JUROR: Dana Pugh, 151.

18 THE COURT: Yes, sir.

19 THE JUROR: Yeah, I know him. I am his
20 daughter's grand -- I am a granddaddy.

21 THE COURT: Knowing that, sir, do you
22 think you can be a fair and impartial juror in the
23 trial of this case?

24 THE JUROR: Yes, sir.

25 THE COURT: What's your name and juror

1 number?

2 THE JUROR: 151 Dana Pugh.

3 THE COURT: 151. Thank you for telling
4 me. I appreciate it. Anyone else? Ms. McElveen,
5 you may make your introduction.

6 MS. MCELVEEN: My name is Bronwyn
7 McElveen. I represent the State in this matter. I
8 work under our elected solicitor, Ernest A. Chip
9 Finney, III. And you will hear names of the
10 officers sitting up here as well thank you.

11 THE COURT: Ladies and gentlemen, is there
12 any one among you who has a personal, professional
13 or family relationship with Ms. McEleveen or anyone
14 who is employed by the Sumter County Solicitor's
15 Office?

16 (Whereupon, no response.)

17 THE COURT: Let the record reflect, no
18 affirmative response. Ladies and gentlemen, I am
19 going to read to you a list of potential witnesses
20 in this case. This is a list of witnesses which may
21 be more than are potentially called. It could be
22 less. However as we sit today and right now, this
23 is a list of potential witnesses.

24 So after I've read the list of witnesses,
25 I am going to ask you the very same question that I

1 have asked before; that is, whether you have a
2 personal, professional or family relationship with
3 any of these individuals. And those are as follows:
4 W. Dubose, Sumter County Sheriff's Office.
5 S. Bonner, Sumter County Sheriff's Office.
6 C. Pomichalek of the Sumter County Sheriff's Office.
7 D. Soloman of the sheriff's office. A. Gillette of
8 the sheriff's office. M. Jordan of the sheriff's
9 office. R. Ragin of the sheriff's office. J. Dukes
10 of the sheriff's office. L. Allen of the sheriff's
11 office. M. Macaulay of the sheriff's office. K.
12 Lindsey of the sheriff's office. T. Herbert of the
13 sheriff's office. Caitlyn Thompson of Palmetto
14 Health Tuomey. Dr. Janice Ross of Newberry
15 Pathology and Associates. Dr. Michael Naylor,
16 Palmetto Health Tuomey. Dr. Ryan Zitski, Palmetto
17 Health Tuomey. David Pendarvis of EMT. Christine
18 Fox of the EMT. Marsha Heyward, Thomas Wilson,
19 S.V. , Shontell Singletary, Jerry
20 Castellini of the South Carolina Law Enforcement
21 Division, Ricardo Dargan, Vanessa Heyward, Marsha
22 Heyward, S.V. , Thomas Wilson, Cynthia
23 Dargan.
24 Ladies and gentlemen, is there anyone
25 among you who has a personal, professional or family

1 relationship with any of those potential witnesses?

2 Yes, ma'am, name and juror number.

3 THE JUROR: My name is Laura Rider, Juror

4 No. 158. I worked at the officer's club once.

5 THE COURT: Given that fact, ma'am, do you

6 feel that you could be a fair and partial juror in

7 the trial of this case?

8 THE JUROR: I think I could.

9 THE COURT: Thank you for telling me, I do
10 appreciate it.

11 THE COURT: Yes, ma'am.

12 THE JUROR: Cynthia Mouzon. Juror No.

13 136. I work at Palmetto Health Tuomey. And I am
14 familiar with some of the people that you mentioned.

15 THE COURT: Understanding you're familiar
16 with them, do you think that you could still be a
17 fair and impartial juror in this trial?

18 THE JUROR: I think I can.

19 THE COURT: Thank you. I appreciate that.
20 Yes, sir.

21 THE JUROR: Yes, sir. Quintel Drayton. I
22 know the victim.

23 THE COURT: For purposes of the record,
24 and I know who you are, because you already told me.
25 For purposes of the record, you've got to say it so

1 it will be transcribed.

2 THE JUROR: My name is Quintel Drayton.

3 I forgot my number again.

4 THE CLERK: 55.

5 THE COURT: 55.

6 THE JUROR: 55.

7 THE COURT: Thank you, sir. I appreciate
8 it. Yes, sir.

9 THE JUROR: David Burke, Juror No. 30.

10 THE COURT: Yes, sir.

11 THE JUROR: I am friend's with one of the
12 sheriff's department, Mr. Dubose.

13 THE COURT: Given that fact, sir, do you
14 think you could still be a fair and impartial juror
15 in the trial of this case?

16 THE JUROR: Yes, sir.

17 THE COURT: Thank you for telling me. I
18 appreciate it, sir. Ladies and gentlemen, is there
19 anyone among you who is a member of or a contributor
20 to an organization which advocates for criminal
21 prosecution or for victim's rights? And when I say
22 that I mean, like SADD, Students Against Drunk
23 Driving, or MADD or any other life organization
24 again that advocates for criminal prosecution or
25 victim's rights?

1 (Whereupon, no response.)

2 THE COURT: Let the record reflect, no
3 affirmative response. Ladies and gentlemen, is
4 there anyone among you who is currently or who has
5 in the past been employed by law enforcement. Yes,
6 sir.

7 THE JUROR: Willie Jones. Juror 97. I
8 retired from the Department of Corrections.

9 THE COURT: Do you think you could still
10 be a fair and impartial juror in the trial of this
11 case, sir?

12 THE JUROR: Yes.

13 THE COURT: Thank you for letting me know.
14 Yes, sir.

15 THE JUROR: Philip Pace. 143. I'm
16 formerly 133rd military police company in
17 Timmons ville.

18 THE COURT: Do you think given that fact,
19 do you think you could still be a fair and impartial
20 juror in the trial of this case, sir?

21 THE JUROR: Yes.

22 THE COURT: I appreciate it, sir. Thank
23 you for telling me. Anyone else?

24 (Whereupon, no response.)

25 THE COURT: Is there anyone among you who

1 has ever been yourself, who has -- or who has an
2 immediate family member who has been a victim of a
3 violent crime? Yes, ma'am.

4 THE JUROR: Wilson Holiday. My nephew was
5 murdered in 2001.

6 THE COURT: Ms. Holiday, what is your
7 Juror No.?

8 THE JUROR 75.

9 THE COURT: And do you think given that
10 fact that you could still be a fair and impartial
11 juror in the trial of this case?

12 THE JUROR: I will do my best.

13 THE COURT: Thank you very much. I
14 appreciate you telling me. Ladies and gentlemen, is
15 there anyone among you who feels that for whatever
16 reason you could not be a fair and impartial juror
17 in the trial of this case? Yes, sir.

18 THE JUROR: Zack Morris, 135. I am pretty
19 much biased.

20 THE COURT: Against whom?

21 THE JUROR: By pretty much any guilty
22 decisions to be read out.

23 THE COURT: I'm sorry, I just can't hear
24 you very well.

25 THE JUROR: By pretty much any guilty

1 decision to be read out from the bench.

2 THE COURT: Thank you, sir. I appreciate
3 it. Anyone else? Any additional questions and voir
4 dire from the counsel?

5 MS. MCELVEEN: Your Honor, can we
6 approach.

7 THE COURT: Sure.

8 (Whereupon, attorneys approach and confer
9 with judge.)

10 THE COURT: Ladies and gentlemen, at this
11 point what we are going to do is generate a strike
12 list. Now have from all of you that are here this
13 morning, the clerk of court is going to generate a
14 random listing of you in no particular order. The
15 computer will just randomly put you on this sheet of
16 paper. From that list, the attorneys will exercise
17 their strikes or in legal parlance peremptory
18 challenges.

19 Now attorneys can exercise strikes of
20 jurors for virtually any reason. And you may not
21 know why you may have been stricken or why you have
22 been placed on a jury. However, don't take an
23 offense either way. Now what will happen is when
24 that strike sheet is generated, the clerk of court
25 will call out your name, or call out the name in

1 order. When your name is called what I would ask
2 for you to do is just stand up exactly where you
3 are. Just stand up. The State will have the
4 opportunity to exercise a strike and then the
5 defense will have the opportunity to exercise a
6 strike. If you hear twice, words to the effect of,
7 please swear the juror, or please seat the juror,
8 then I will ask you to take all of your belongings,
9 everything you have with you, and come on up here,
10 and we'll seat you in the jury box.

11 If you hear from either side, either one
12 of them say please strike the juror or please excuse
13 the juror from the trial of this case, then you will
14 have been stricken from the trial of the case, then
15 you can just sit back down. We're going to pick 12
16 main jurors, and we're going to pick two alternates.
17 Now the reason I pick alternates is because we can't
18 proceed to verdict with a number less than 12. So
19 I have to have people who are ready to assume one of
20 the 12 primary juror slots.

21 And from time to time it comes to pass
22 that during the course of a trial somebody has to be
23 substituted for various reasons. So understand that
24 if you are an alternate on the case your service on
25 the jury is just as important as any of the primary

1 jurors, because you may be a primary juror in fairly
2 short time. Strikes if I am not mistaken are 10 for
3 the defense, and 5 for the State, am I correct?

4 MS. MCELVEEN: Yes, sir. One and two on
5 the alternates, Your Honor?

6 THE COURT: Yes, ma'am.

7 THE CLERK: Please the court, Your Honor.

8 THE COURT: Yes, sir.

9 THE CLERK: Juror 85 John Hornsby, IV.

10 (m-w) accepted. Kristina Richburg (f-b) accepted.
11 Juror No. 25 Kami Brown (f-w) accepted. 117 Melinda
12 McDowell (f-b) accepted. Juror No. 92 James
13 Jennings (m-w) defense struck. Juror No. 5 Judy
14 Anderson (f-b) state struck. Juror No. 50 Daniel
15 Dodd (m-w) defense struck. Juror No. 43 Sharon
16 Daniels (f-w) defense struck. Juror No. 158 Laura
17 Rider (f-w) defense struck. Juror No. 100 Dennis
18 Kelly (f-b) state struck. Juror No. 154 Marion Reed
19 (m-b) is defense struck. Juror No. 112 Mary Major
20 (f-b) accepted. Juror No. 124 Julia Mickens (f-b)
21 accepted. Juror No. 97 Willie Jones (m-b) accepted.
22 Juror No. 69 Wanda Garris (f-b) state struck.
23 Juror No. 136 Cynthia Mouzon (f-b) accepted. Juror
24 No. 119 Antonio McFadden (f-b) accepted. Juror No.
25 52 Virginia Dority (f-w) defense struck. Juror No.

1 143 Phillip Pace (m-w) defense struck. Juror No. 14
2 Willie Bennett (m-b) accepted. Juror No. 169
3 Justine Sosa (f-h) accepted. Juror No. 80 Douglas
4 Herbert (m-w) defense struck.

5 MS. MCELVEEN: Your Honor, the State would
6 like to note a Batson motion.

7 THE COURT: Okay. We will proceed with
8 picking of the remainder of the jury.

9 THE CLERK: Juror No. 161 Shannon Sandifer
10 (f-w) accepted.

11 THE COURT: By my count this is 12. Let's
12 pick 2 alternates.

13 THE CLERK: No. 88 Rachel Jackson (f-w)
14 accepted. Alternate Juror No. 109 Douglas Ledwell
15 (m-w) accepted.

16 THE COURT: Other than the previously
17 articulated motion, are there any matters or issues
18 of law to take up with respect to the qualifications
19 in the selection of this jury?

20 MS. MCELVEEN: Nothing from the State,
21 Your Honor, except the one that we noted.

22 THE COURT: Yes, sir.

23 MR. GRIFFITH: Nothing from the defense.

24 THE COURT: Ladies and gentlemen, I have
25 to take up a matter of law at this time. So what I

1 am going to ask all of those of you who are on the
2 jury, please follow the bailiffs, and they will take
3 you to your jury room while I take up a matter on
4 the law, then I will bring you back in. And then
5 everyone else who is in the courtroom, I'd ask you
6 to follow the bailiff and either go into the other
7 courtroom or to your jury coordination room so that
8 we can take up a matter of law before we proceed.

9 (Whereupon, the following takes place
10 outside the presence of the jury.)

11 MS. MCELVEEN: Your Honor, I believe that,
12 may I just have one second to speak with officers?

13 THE COURT: Sure.

14 MS. MCELVEEN: Your Honor, we can withdraw
15 that motion.

16 THE COURT: Good enough.

17 MS. MCELVEEN: Thank you.

18 THE COURT: So beyond that, there are no
19 other matters or issues we can take up with respect
20 to the qualifications in the selection of that jury?

21 MR. GRIFFITH: Nothing from the defense,
22 Your Honor.

23 THE COURT: Good enough. Let's just talk
24 about our mode of going forward. So you all want to
25 do the immunity hearing. I know that you are still

1 kind of thinking through some of that process. But
2 my question is, how long do you think it's going to
3 take?

4 MR. GRIFFITH: Your Honor, we would
5 present one witness.

6 THE COURT: One witness. And you will
7 have what, three short witnesses?

8 MS. MCELVEEN: Three short witnesses, Your
9 Honor.

10 THE COURT: Well given that, you know,
11 that sounds to me like it's probably less than an
12 hour. Just thinking it through. Why don't we give
13 the jury two hours for lunch, we'll take an hour and
14 do our hearing. And then we'll start at the very
15 least, opening charge and opening statements. And
16 you can put up a witness if you're prepared to put
17 up a witness today. Are you comfortable with that?

18 MS. MCELVEEN: Yes, sir. Except I'm
19 worried that the three witnesses might take longer
20 than an hour.

21 THE COURT: Okay.

22 MS. MCELVEEN: I am just being candid with
23 the court, because I realize our jury is sitting
24 back there waiting for us and getting angry.

25 THE COURT: No, I am not going to make

1 them do that. No, I am not going to do that.

2 That's what I'm not going to avoid.

3 MS. MCELVEEN: Yes, sir. And so just
4 because I know that there are three witnesses, and I
5 know one might be a little lengthier than the others
6 just because the evening starts way before this
7 incident. So that would be my concern. I am
8 happy to do it if Your Honor would like, but I would
9 like to express it may take more than an hour for
10 us.

11 THE COURT: Do you let's see, it's 12:30.
12 Would you prefer to go ahead and give them the
13 opening charge and opening statements now, releasing
14 them for the day, breaking for lunch and then coming
15 back and doing that here?

16 MS. MCELVEEN: If we can wait for them to
17 be sworn, that would be great, Your Honor. Just
18 because at that point, jeopardy attaches. But
19 whatever -- again, I'm not trying to difficult, but
20 whatever Your Honor would like to do.

21 THE COURT: Don't worry about that part.
22 But insofar as the timing is concerned, are you okay
23 with that? Are you ready to open is my question?

24 MS. MCELVEEN: We can be.

25 THE COURT: Well I don't want to push you.

1 Really this is -- I'm going to tell you something.
2 This is y'all's case. I'm here for you all. If you
3 tell me you don't want to do it until tomorrow
4 morning, okay, that's fine. Don't feel any pressure
5 from me. The questions that I am asking you are not
6 loaded questions, I promise you. They are truly,
7 what do you want to do.

8 MS. MCELVEEN: Thank you, Your Honor. I
9 believe defense and I would both prefer to do
10 opening statements in the morning, and swear the
11 jury in the morning if it suits Your Honor.

12 THE COURT: It suits me fine. Bring the
13 jury in. I'm just going to talk to them.

14 (Whereupon, the following takes place
15 within the presence of the jury.)

16 THE COURT: Ladies and gentlemen,
17 congratulations. You made the cut. I'm looking
18 forward to working with you on this case. We are
19 this afternoon, what we are going to do is, I'm
20 going to take up several matters of law with the
21 attorneys in this case. That means I am going to
22 after I talk to you for about 10 minutes, I am going
23 to excuse you for the rest of the day. We've got
24 about three or four hours of pretrial work to do
25 before we can start to introduce evidence in this

1 case.

2 So I just wanted to let you know that
3 before we get started. I also want to explain to
4 you before we get started, what your role is as
5 jurors in the trial of the case, and the process
6 that we will follow in trying the case. I know that
7 it's always better and it's helpful on the front end
8 of a case for me to explain to a jury what you're
9 supposed to do and how we're going to do it. So,
10 Ladies and gentlemen, let's first talk about your
11 role as jurors in the trial of the case. As jurors
12 in the trial of a case, you are the judges of the
13 facts. You will determine what that facts are in
14 this case. You have the sole and exclusive
15 responsibility and authorization to determine what
16 the facts are. And you'll determine what the facts
17 are based on the evidence that is presented in
18 trial.

19 Now, Ladies and gentlemen, you'll hear
20 evidence in this case. And normally evidence will
21 take the form of a witness who will take the stand,
22 take the oath of the witness and testify. And by
23 and through that introduction of evidence and
24 testimony, sometimes you will receive additional
25 evidence. It can take many different forms. It

1 could be documentary evidence. It could be audio
2 tapes, videotapes. It could be actual physical
3 objects that are put into the record, and you will
4 receive all of that evidence. And at the end of the
5 case when it's time for you to begin your
6 deliberations, you will look at that evidence, and
7 from that evidence, determine what the facts are.
8 You will then take the facts as you determine them
9 to be, and apply the law as I give it to you, to
10 those facts, and determine whether the State has met
11 its burden of proof.

12 Now, Ladies and gentlemen, that suggests
13 to you that it's my role to be the judge of the law,
14 which it is. And I will tell you what the law is,
15 and tell you what law applies to the evidence in
16 this case at the end of the case. The reason I wait
17 until the end of the case is because I'm in the same
18 position that you are right now; that is, I haven't
19 heard any of the witnesses in this case. I haven't
20 read any of the file. I know exactly what you know,
21 which is what was listed on this indictment. So
22 it's important for me to wait to hear all the
23 evidence before I give you a charge on the law.

24 Now I'll give you that charge at the very
25 end of the case. And after I give you that charge,

1 you can begin your deliberations but not until that
2 time. Now the way this case will begin is, tomorrow
3 morning we will be here at 9:30 and start the
4 introduction of the parties cases. The way we begin
5 is with opening statements from counsel. Each party
6 has the opportunity to make an opening statement.
7 Now those opening statements are not evidence. The
8 opening statement is merely an opportunity for the
9 attorneys to introduce themselves and their theory
10 of the case. Generally speaking, they are very
11 short. And after you've heard those opening
12 statements from each side, then we'll proceed with
13 the introduction of evidence.

14 Now, Ladies and gentlemen, the State goes
15 first. The State will have the opportunity to call
16 witnesses and put its case on the stand. Now I've
17 already told you something very important and I'm
18 going to restate it for you. The State goes first,
19 because the State has the burden of proof. The
20 State has the burden of proving each and every
21 element of each offense beyond a reasonable doubt.
22 The defense on the other hand, has no burden of
23 proof. The defense is not required to do or say or
24 prove anything. Therefore since the State has the
25 burden of proof, the State goes first. The State

1 will call witnesses to the stand, examine those
2 witnesses; that is, ask that witness questions. The
3 defense will have the opportunity to cross examine
4 that very same witness. And then after all the
5 questions have been posed to that witness, that
6 witness will be excused, and the next witness will
7 be called. And it will go like that until the State
8 has exhausted all of the witnesses that it intends
9 to call.

10 When the State has called all of the
11 witnesses that it intends to call, and introduces
12 all of the evidence that it intends to introduce,
13 then the State will rest. The defense will then
14 have the opportunity to present its case should he
15 elect to in his discretion. After you have heard
16 any position or any evidence from the defense, then
17 the defense will rest, and then we will proceed to
18 closing arguments. Now, Ladies and gentlemen,
19 closing arguments is like opening statements in that
20 it's not evidence. The distinction is, that at that
21 point you will have already heard all of the
22 evidence that applies to the case, and that will be
23 introduced in this case. And the parties will be
24 arguing in an attempt to persuade you to their
25 position. Essentially the attorneys will be

1 advocating for you to support their respective
2 sides.

3 After you have heard closing arguments
4 from both sides, then I'll give you a closing charge
5 on the law. Again, I'll wait until the end,
6 because I've got to see what evidence is presented
7 before I can tell you what law is relevant in this
8 case. After I've given you a charge on the law,
9 then I will ask you to return to your jury room and
10 begin your deliberations.

11 Now, Ladies and gentlemen, understand that
12 it's very important that you not begin your
13 deliberations until such time as I tell you to begin
14 your deliberations. Because you know from your own
15 personal experience and from your own common sense,
16 that you can't really make any important decision in
17 life unless and until you hear everything that bears
18 upon the decision to be made. So it's important
19 that you wait until you've heard everything. You
20 know that probably at some point in your life you've
21 had a child or a friend or a parent or somebody come
22 to you and tell you a story, relate to you some type
23 of story, and you were convinced of his or her
24 position, and then you heard the other side. And it
25 put it in a different perspective. Well generally

1 speaking, the court is the same way. You've got to
2 hear everything before you can begin to make up your
3 mind. So don't begin your deliberations until I
4 tell you. And that signal will be very clear. It
5 will be at the very end of the case. And I'll be
6 handing you exhibits, and I'll be handing you
7 verdict forms. So that signal will be very clear.
8 If you have to ask yourself are we supposed to
9 deliberate yet, then the answer is no, because the
10 signal wouldn't have been clear enough.

11 So, Ladies and gentlemen, when I say don't
12 deliberate about the case, that means don't talk
13 about the case with one another, okay. Don't
14 discuss witnesses, how they looked, what they said,
15 whether you think they were believable or not.
16 You're going to have all the time that you want to,
17 to deliberate in this case. So just keep your
18 powder dry, okay. Y'all get the opportunity to
19 deliberate. Also we'll be taking breaks in this
20 case. Like, for instance, this afternoon, I'm going
21 to excuse you all and ask you to be back tomorrow.
22 Please don't discuss the case when we take these
23 breaks. If your spouse is like mine, then when you
24 get home, he or she is going to be asking you
25 questions. Where have you been. What have you been

1 doing. What kind of case are you on. Really, what
2 did they say. Well what happens is if you start to
3 answer those questions, then again, if your spouse
4 is like mine, he or she is not going to be satisfied
5 with one answer. So the better thing to do is to
6 just say, let's wait and after the case is over,
7 I'll discuss the case with you. Because you know if
8 you start discussing it with somebody else, then
9 you're deliberating with somebody who is not on the
10 deliberating jury, and you are tainting your
11 ultimate deliberations in this case. So just don't
12 discuss it yet.

13 Also don't do any self help. I don't know
14 if the media reported on this case or not, I have no
15 idea. I don't think there is anything in the clerk
16 of court's file, which would tell you, give you any
17 information about this case, but don't go out and do
18 any self help and try to find out anything else
19 about this case. The only thing that's relevant to
20 your determination in this case is what you hear on
21 the stand in this trial that is elicited in
22 accordance with the rules of court, and in
23 accordance with the law.

24 So don't think about when you leave. Also
25 understand that during the course of the trial we'll

1 be taking routine breaks. For instance, when we
2 start tomorrow, we're probably going to go for about
3 an hour to an hour and a half, and then just take a
4 break. Go for another hour an hour and a half and
5 then take a break. That's because I find that most
6 people really don't have the capacity to pay
7 attention for a significantly long periods of time,
8 or it may be just be that I am just projecting
9 because I don't. But I like to take a break
10 routinely. So know that I am not going to -- I have
11 no intention of keeping you all hostage in that jury
12 box.

13 Also if at any point and time during this
14 trial any one of you needs to take a break, tell me
15 and we'll take a break, because you are most -- you
16 are the 14 most important people in this courtroom.
17 And if you're not paying attention to what's
18 happening on the witness stand and to what evidence
19 is being presented, then I would like for you please
20 raise your hand and get my attention and say, I'm
21 not hearing anything you say. We need to take a
22 break. Even if that's only 5 minutes after we may
23 have come in from a break before. Again I want you
24 to be paying attention and not thinking, boy, I wish
25 these lawyers and this judge would shut up so we can

1 take a break. Tell me that, and we'll take a break.

2 Ladies and gentlemen, when we come back in
3 tomorrow what will happen is, I'll ask the clerk of
4 court to swear you in, and y'all take another oath.
5 This morning you took an oath to tell the truth.

6 This time you will take an oath, wherein you swear
7 to truly and verily try the case in accordance with
8 the evidence and the law as I give it to you. And
9 then we'll begin with opening statements. Please be
10 here on time. If you would be here 9:25, so that
11 you all can get up here and we can start as promptly
12 at 9:30 as possible. And don't be on time out of
13 consideration or respect for me or the parties, but
14 rather for each other. Because if 13 of you show up
15 and one of you is late, then the 13 are waiting on
16 the other one.

17 So out of consideration for your fellow
18 jurors, please be on time, and we'll start this case
19 as promptly at 9:30 as we possibly can.

20 My discussions with these attorneys
21 suggest to me that this case will probably go
22 through Wednesday. I'm not sure about that. The
23 State indicates that they suspect that they will be
24 presenting witnesses and evidence up and through
25 about lunch time on Wednesday. Then the defense has

1 the opportunity thereafter to present evidence as
2 well. So I anticipate that we're either going to
3 argue and charge on Wednesday afternoon, or we're
4 going to argue and charge on Thursday morning. As
5 we go along in this trial, I'll continue to update
6 you, because I don't have secrets from you, and I
7 don't want you sitting over there wondering where
8 are we, and where are we going. So right now you
9 all know as much about this case as I do.

10 So I am going to ask you to go back to
11 your jury room and you will be told the means of
12 egress and ingress in the courthouse. That's today
13 and tomorrow. And I'll see you tomorrow morning.
14 And I hope you have a great evening. Enjoy Monday
15 night football.

16 (Whereupon, the jury is dismissed at
17 12:40 p.m.)

18 (Whereupon, the following takes place
19 outside the presence of the jury.)

20 THE COURT: Counsel, we will break for
21 lunch, and then we will come back and conduct our
22 pretrial hearings. We will be back at 2 o'clock.

23 MS. MCELVEEN: Thank you, Your Honor.

24 THE COURT: Thank you very much.

25 THE COURT: We are back on the record in .

1 the State versus Dargan. It's my understanding that
2 the defendant has a motion of immunity under the
3 protection of persons and property act of the
4 statute, is that correct? Mr. Griffith?

5 MR. GRIFFITH: Yes, Your Honor.

6 THE COURT: I'd be happy to hear any
7 testimony that you would like to put into the
8 record. And I'll prefer to you as to whether you
9 would like to make any arguments beforehand.

10 Mr. GRIFFITH: Your Honor, I would like to
11 argue.

12 THE COURT: Yes, sir.

13 MR. GRIFFITH: A little bit. Your Honor,
14 may it please the court, the solicitor has provided
15 me with evidence that wherein one of the persons,
16 one of the witnesses, stated that the victim in this
17 Mr. David Clea had said, you are going to shoot me
18 with my own gun. Then as well, Your Honor, another
19 witness will testify that he saw that victim with a
20 gun earlier in the evening. But, Your Honor, the
21 State contends that Mr. Dargan brought the gun to
22 this altercation.

23 THE COURT: Yes, sir.

24 MR. GRIFFITH: And we would like to show
25 the court through this evidence that Mr. Dargan in

1 fact was protecting himself. And I would now call
2 my witness, Your Honor, unless she has something.

3 THE COURT: Do you care to respond, Ms.
4 McElveen?

5 MS. MCELVEEN: Nothing, Your Honor.

6 THE COURT: You may call your first
7 witness.

8 MR. GRIFFITH: I would call Mr. Dargan,
9 Your Honor. He is the defendant in this case, and I
10 have talked to him about testifying at this
11 particular junction. He understands that anything
12 he said could be used against him in a subsequent
13 proceedings.

14 THE COURT: Yes, sir.

15 MR. GRIFFITH: And if you would allow, I
16 would call him at this time.

17 THE COURT: Yes, sir. You may bring him
18 up.

19 Ricardo MorteZ Dargan, being first duly
20 sworn, testified as follows:

21 THE COURT: Mr. Griffith, before we get
22 started, I am going to ask him a few questions just
23 to make sure on the record---

24 MR. GRIFFITH: Yes, Your Honor.

25 THE COURT: ---that he understands those

1 constitutional rights.

2 THE CLERK: State your name and spell your
3 last name for the record.

4 A. Ricardo MorteZ Dargan. D-A-R-G-A-N.

5 THE COURT: Mr. Dargan, you heard
6 Mr. Griffith, talking about he had discussions with
7 you about your right to remain silent.

8 A. Yes, sir.

9 THE COURT: And you understand that under
10 the constitution you can't be compelled to say
11 anything.

12 A. Yes, sir.

13 THE COURT: And in this trial that we're
14 about to have, you don't have the burden of proving
15 anything. You can't be compelled to do, say or
16 prove anything. The State has the burden of proof.
17 Do you understand that?

18 A. Yes, sir.

19 THE COURT: Now when you -- when we get
20 into the trial, you may testify if you want to, and
21 you can tell the jury your side of the story. But
22 understand that when and if you elect to testify,
23 the State can cross examine you and ask you
24 questions in an attempt to impeach you. That is to
25 put your credibility into question. Do you

1 understand that?

2 A. Yes, sir.

3 THE COURT: And in doing that, they may or
4 may not, I don't know, because I haven't looked at
5 it. They may be able to introduce evidence of other
6 crimes that you might have been convicted of. Do
7 you understand?

8 A. Yes, sir.

9 THE COURT: Now the reason that's
10 important right now is because if you elect to
11 testify now, then if you testify in trial, the
12 State will have the opportunity to cross examine and
13 can ask you questions related perhaps to what you
14 say on the stand now, do you understand that?

15 A. Yes, sir.

16 THE COURT: So it's entirely up to you.
17 I'm not telling you this because I think you're
18 making a bad decision. I just want to make sure
19 that you fully understand it, and that you are
20 making decisions with your eyes wide open---

21 A. Yes, sir.

22 THE COURT: Fully advised of all your
23 rights.

24 A. Yes, sir.

25 THE COURT: And do you have any questions

1 about you rights?

2 A. No, sir.

3 THE COURT: And it's a risk that you want
4 to assume?

5 A. Yes, sir.

6 THE COURT: Have you had the opportunity
7 to discuss those rights and this decision with
8 Mr. Griffith as much as you need to?

9 A. Yes.

10 THE COURT: Thank you, Mr. Dargan, I
11 appreciate it. Your witness, sir.

12 Direct Examination by Mr. Griffith:

13 MR. GRIFFITH: Thank you, Your Honor.

14 Q. Mr. Dargan, please state your name for
15 the record.

16 A. Ricardo Dargan.

17 Q. Mr. Dargan, you understand you're on trial
18 for murder.

19 A. Yes, sir.

20 Q. On the night in question, the gentleman,
21 David Clea, were you guys friends?

22 A. Yes, sir. Best friend.

23 Q. How long have you been friends?

24 A. Over 17 years.

25 Q. Did you ever drink together?

1 A. All the time.

2 Q. Have you ever argued about anything?

3 A. All the time.

4 Q. Up to now, had it ever come to fists or
5 guns?

6 A. No.

7 Q. And on this night, had you been out
8 drinking?

9 A. Yes, sir.

10 Q. Was Mr. Clea with you?

11 A. Yes, sir.

12 Q. How many of other people were with you
13 that you remember?

14 A. It was me, David, Marcia, and Tom, Tom
15 Wilson.

16 Q. And did you have a gun with you that
17 night?

18 A. No, sir.

19 Q. Do you own a gun?

20 A. No, sir.

21 Q. And what of guys arguing about?

22 A. We were arguing about some money that
23 David owed me.

24 Q. Why did he owe you money?

25 A. I let David borrow some money, because he

1 got locked up. And when he got out of jail, he was
2 doing kind of bad. So I just got my income tax
3 check a couple of months prior, so I still had money
4 left over. And he asked me to borrow some money,
5 because had stuff he had need to take care of.

6 Q. And what about this night, was there some
7 kind something going on or something?

8 A. Yes, sir.

9 Q. What happened?

10 A. We had a race, and I lost the race.
11 Marcia was driving, because David couldn't drive, he
12 was drunk. So Marcia drove the car, and lost the
13 race.

14 Q. And so were you trying to get some money
15 from Mr. Clea?

16 A. Yes, sir. The remaining of the money that
17 he owed me.

18 Q. So you guy were -- were you arguing about
19 that?

20 A. Yes, sir.

21 Q. Were you -- you were both drunk.

22 A. Yes, sir.

23 Q. And had you seen a gun prior to that in
24 his position?

25 A. Yes, he had the gun earlier that day

1 before we went to the nightclub.

2 Q. And what happened that caused him to bring
3 the gun out, if he did. Did he bring the gun out?

4 A. Yes, he attempted to bring it out, that's
5 when I grabbed his wrist. And when I grabbed his
6 wrist that's when the gunshot started going off into
7 the concrete.

8 Q. And did you feel like you might be in
9 danger?

10 A. Yes, sir. When he pulled that gun out, I
11 know he was going to try to shoot me.

12 Q. Why would he try to shoot his best friend?

13 A. We were arguing. And told me, he was give
14 me my money. If I wanted to get my money back, I
15 get it in blood. Those were his words.

16 Q. You guys were best friends.

17 A. Yes.

18 Q. Had you ever known him to pull a gun on
19 someone else before?

20 A. Yes, sir.

21 Q. And so when he pulled out the gun, what
22 did you do?

23 A. When he pulled out the gun, that's when I
24 went and grabbed his wrist. And that's when the gun
25 went off into the ground. He got it all the way

1 off, and the gun started going off into the ground.
2 And it had a long extended clip on the back of it.
3 I grabbed his wrist, and the back of the extended
4 clip, and forced the gun into the ground. That's
5 how the shots went into the ground.

6 Q. At any time did you have that gun in your
7 possession that he was not holding it?

8 A. No, sir, that I recall.

9 Q. Did you ever point the gun at him?

10 A. No.

11 Q. So you were trying to protect yourself?

12 A. Yes, sir.

13 Q. How did he get shot?

14 A. I guess when the gun was going off, me and
15 him was tussling. That's when I heard, I heard
16 David scream that he was shot. He said, man, you
17 shot me. You shot me with me own gun. That's when
18 he fell against the car.

19 Q. And after he was shot, did you stop
20 shooting the gun?

21 A. No, we both still had the gun. The gun,
22 that's when we booth had the gun. He feel against
23 the car. And that's when the gun -- when he
24 screamed he was shot, the gun went off a couple more
25 times after that.

1 Q. Did he get shot in the leg, or was it a
2 ricochet off the ground or do you know?

3 A. I am not sure. We were just tussling. I
4 don't know exactly how he got shot.

5 Q. So did you ever intend to harm him with a
6 gun?

7 A. No, sir. I never brought a gun there.
8 And I never had intentions of David getting shot
9 that night.

10 Q. Did you fear for your safety?

11 A. Yes, sir.

12 Q. Were you in the midst of committing a
13 crime at the time?

14 A. No, sir.

15 Q. Had you provoked him by slapping him, or
16 hitting him or something like that?

17 A. No. No, sir.

18 Q. Did you threaten him?

19 A. No, sir.

20 Q. What about when you said, give me my
21 money?

22 A. I just told him, I said, David, give me my
23 money, man. You know I need my money. I've got
24 stuff I need to take care of too. Christmas was
25 coming up, and I had a bill that was due also. And

1 we were arguing back and forth about that. And he
2 told me he would have to charge that money to the
3 gang. I said, I ain't charging no money to the
4 gang, David. He said, I've got something for you
5 then. That's when he reached and pulled the gun.
6 He said I could get it in blood.

7 Q. And after the shooting, you left the
8 scene. Is that correct?

9 A. Yes, sir.

10 Q. Why did you leave the scene?

11 A. I left the scene. Marcia came out of the
12 house. She told me she was going to get me locked
13 up. David told me to go let his fiancée know that
14 he got shot. I went straight to -- I was driving
15 down a park. I can't even think the name of the
16 road, but it's right off St. Paul Church Road, going
17 to David's house, to let his fiancée know that he
18 got shot.

19 Q. Did you try to help him?

20 A. Yes, sir. I helped -- after David got
21 shot, I helped walk David to the front of the car.
22 To the front of Marcia's car.

23 MR. GRIFFIN: I don't have any further
24 questions.

25 THE COURT: Cross examination.

1 MS. MCELVEEN: Yes.

2 Cross Examination by Ms. McElveen:

3 Q. Good afternoon, Mr. Dargan.

4 A. How are you doing, Ms. McElveen.

5 Q. So how many times did the gun go off?

6 A. I think about 4, 5, maybe 6 times.

7 Q. And so that happened all the while he was
8 pulling it out, it shot six times while both of you
9 were holding onto the gun?

10 A. Yeah, when both of us were holding the
11 gun, yeah, the gun went off about 5 or 6 times. Me
12 and him was tussling over the gun. And it was
13 going off in the ground. He was trying to shoot me
14 with gun. I was grabbing gun by the back and
15 forcing it into the ground.

16 Q. And so you shot him once, correct?

17 A. I didn't shoot David. The gun went off
18 and David got shot.

19 Q. Right. So you shot him once, and then he
20 got shot again. But all this happened so quickly,
21 it was a struggle over a gun, correct?

22 A. So David was shot twice?

23 Q. I am asking you the question.

24 A. Can you repeat the question?

25 Q. So after he was shot once.

1 A. Yes, ma'am.

2 Q. You keep shooting, and he got again two
3 times, correct?

4 A. I didn't keep shooting. David had the
5 gun in his hand. I was tussling with David over
6 the gun.

7 Q. And you said you never had the gun,
8 correct?

9 A. No, ma'am.

10 Q. Wait. That's no, you never said that or
11 no, you never had the gun?

12 A. No, I never had the gun.

13 Q. So why wasn't the gun at the scene when
14 the officers showed up?

15 A. I don't know what happened with the gun.
16 I left.

17 Q. Why didn't you stay at the scene?

18 A. David asked me to go into his fiancée's
19 house. That's where I got pulled over at, right
20 down the street from his fiancée's house.

21 Q. So he said, leave me for dead.

22 A. No.

23 Q. You go ahead and go.

24 A. We didn't know David was shot. We didn't
25 know he was hurt that bad. He said they were going

1 to call the ambulance, and I was going to met them
2 at the hospital.

3 Q. Did you met them at the hospital?

4 A. I didn't get a chance to. I went to his
5 fiancée's house, and I got pulled over.

6 Q. And when the officers pulled you over, did
7 you listen to them and comply with their commands?

8 A. I got straight out of the car, and placed
9 my hands on the back of the vehicle and then---

10 Q. Didn't they say, remain in your car? And
11 what did you do? You got out of the car?

12 A. I was out of the car before he ever got
13 there.

14 Q. And they said, quick walking and you
15 walked towards them, correct?

16 A. I walked towards the car and put my hands
17 in the air.

18 Q. And they for four and half minutes, the
19 initial officer told you to put your hands up, and
20 you did not, is that correct?

21 A. They have the video of it.

22 Q. So you shot your best friend.

23 MR. GRIFFIN: Your Honor, I would object.
24 His arrest has nothing to do with the incident that
25 occurred at the house. Other than the fact that he

1 was arrested---

2 MS. MCELVEEN: It shows his willingness to
3 cooperate with police and help with his friend. If
4 he was to go meet him at the hospital, I surely
5 would think he could compliant with the officers.

6 THE COURT: Overruled. I'll give you some
7 latitude in that regard.

8 Q. So you were noncompliant with the
9 officers. You were noncompliant with them later,
10 and you never made it to the hospital. Is that
11 correct?

12 A. Ma'am, I was arrested right there on the
13 scene.

14 Q. Correct. There were 3 other people at the
15 scene, you would say.

16 A. Marcia and Shamara. Tom came across the
17 street. When I was leaving, that's when Tom came
18 up.

19 Q. And you said this was over a car race as
20 well.

21 A. Yes, we had a race. And that was part of
22 the argument also.

23 Q. Were you legally allowed to possess a gun?

24 A. I never possessed a gun.

25 Q. But were you at the time legally allowed

1 to possess a gun?

2 A. No, I can't possess a firearm.

3 MS. MCELVEEN: Thank you. I have no
4 further questions.

5 THE COURT: Any redirect, sir?

6 MR. GRIFFITH: Just briefly, Your Honor.

7 Redirect Examination by Mr. Griffith:

8 Q. Mr. Dargan, you said you have been
9 drinking at that time?

10 A. Yes, sir.

11 Q. And you were both -- you were pretty drunk
12 when you got pulled over?

13 A. Yes, sir.

14 Q. And they took you right to the jail.

15 A. Yes.

16 Q. How far were you from his fiancée's house?

17 A. Probably two minutes.

18 Q. So you were on your way there?

19 A. Yes.

20 MR. GRIFFITH: I don't have any other
21 questions.

22 THE COURT: Any recross?

23 MS. MCELVEEN: Nothing, Your Honor.

24 THE COURT: Thank you, Mr. Dargan. You
25 may step down. I appreciate it, sir. Do you have

1 any additional evidence that you would like to put
2 in the record?

3 MR. GRIFFITH: Excuse me, me Your Honor?

4 THE COURT: Any additional evidence you
5 would like to put in the record for purposes of this
6 hearing?

7 MR. GRIFFITH: I would like to call
8 another witness, Your Honor.

9 THE COURT: Sure.

10 MR. GRIFFITH: Mr. Thomas Wilson.

11 Thomas Wilson, being first duly sworn,
12 testified as follows:

13 THE CLERK: State your name for the record
14 and spell your last name.

15 A. Thomas Wilson. W-I-L-S-O-N.

16 Direct Examination by Mr. Griffith:

17 Q. Hello, Mr. Wilson, thank you for coming in
18 to testify. I just have a couple of questions for
19 you. Did you know Mr. David Clea, and Mr. Ricardo
20 Dargan? Do you know them both?

21 A. Yes, sir.

22 Q. Did you, on the night that Mr. Clea was
23 shot, did you go with them to a bar?

24 A. Yes, sir.

25 Q. So you were all out drinking together?

1 A. Yes, sir.

2 MS. MCELVEEN: Objection leading.

3 THE COURT: Overruled. I'll give you some
4 latitude here before the court. Go ahead.

5 Q. So you knew them both pretty well?

6 A. Yes, sir.

7 Q. Did Mr. Clea have gun that night---

8 A. No, sir.

9 Q. ---that you saw?

10 A. No, sir.

11 Q. Have you ever seen him with a gun?

12 A. No, sir.

13 MR GRIFFITH: I have no further questions.

14 THE COURT: Cross.

15 MS. MCELVEEN: Yes.

16 Cross Examination by Ms. McElveen:

17 Q. Mr. Wilson, have you ever seen Mr. Dargan
18 with a gun?

19 A. Yeah, when he come back, he had left. And
20 come back and he starting down on the ground. So
21 Marcia runs inside the house, and so I run in there
22 behind her.

23 Q. And this happened December 3, 2015?

24 A. Yes.

25 Q. Who house? Where was it?

1 A. Marcia.

2 Q. And she lives on Vaughn Street.

3 A. Vaughn Street.

4 Q. Here in the County of Sumter, Sumter
5 correct? That night had there been -- what led to
6 the argument? Why were they fighting?

7 A. Over a race.

8 Q. What kind of a race?

9 A. A car race.

10 Q. And you said that they were arguing.
11 Something about Ricardo Dargan left and came back
12 with a gun?

13 A. Yes, sir.

14 Q. So Mr. Dargan didn't have a gun at first.

15 A. No, ma'am.

16 Q. And then when he came back, he had one?

17 A. Yes, ma'am.

18 Q. And what did he do? What did he say?

19 Tell us what you saw.

20 A. He just come in and just started shooting
21 down on the ground and he said, give me my money.
22 So Clea said he ain't been giving the money up.

23 Q. And then what happened? Do you?

24 A. Marcia, when she run in the house, I run
25 behind her. So the next thing we heard, Clea been

1 hollering saying he got shot. So we run outside and
2 Dargan been gone.

3 Q. So Dargan left.

4 A. Yeah.

5 Q. Did you hear any sort of conversation
6 about, go to my fiancée's house and I'll meet you.
7 Was Mr. Clea telling Mr. Ricardo or Ricky that he
8 was going to protect him. And it wasn't -- it was
9 an accident or anything? Did you hear anything?

10 A. No, ma'am.

11 Q. And you never saw Mr. Clea with a gun?

12 A. No, ma'am.

13 Q. Did he ever -- did Mr. Clea ever step to
14 him, or advance on him?

15 A. Not as I know.

16 Q. This is all Ricky. Ricardo Dargan?

17 A. Yes, ma'am.

18 Q By Ms. Mcelveen) Thank you. I have No further
19 questions.

20 THE COURT: Redirect.

21 Redirect Examination by Mr. Griffith:

22 Q. Mr. Wilson, did you to see the shooting.

23 A. Yes. Yes, sir. No, we ain't saw the
24 shooting. We saw when he come back with the gun.
25 And then so when she run in the house, we heard when

1 he holler out that he got shot.

2 Q. But you didn't see anybody get shot.

3 A. No, I didn't see nobody got shot. But I
4 saw he had the gun when he come up. When he left
5 and come back.

6 Q. Were you standing outside the all time?

7 A. All of us standing on the outside when we
8 first come back from the club.

9 Q. Did you go in to your house for awhile?

10 A. Yeah, I run in there. When she run
11 inside, I went inside.

12 Q. Do you live across the street?

13 A. Across the street?

14 Q. Or close by there?

15 A. No.

16 MR. GRIFFITH: No further questions.

17 THE COURT: Recross.

18 MS. MCELVEEN: Very quickly.

19 Recross Examination by Ms. McElveen:

20 Q. You were outside though and you watched
21 him fire the gun. You just didn't necessarily see
22 him shoot.

23 A. He shot down there by his foot. And he
24 kept jumping, jumping up twice.

25 Q. You were out there when they did that,

1 right.

2 A. Yeah.

3 Q. When he did that.

4 A. (Uh-Huh.) Affirmative.

5 Q. So you saw him firing at the ground.

6 A. Yeah.

7 MS. MCELVEEN: Thank you.

8 THE COURT: Mr. Wilson, thank you, sir. I
9 appreciate you being here. You may step down. Any
10 further witnesses?

11 MR. GRIFFITH: No further witnesses, Your
12 Honor.

13 THE COURT: Does the State have anyone you
14 would like to call, ma'am?

15 MS. MCELVEEN: Yes, sir. We would like to
16 call Marcia Hayward.

17 Marcia Hayward being first duly sworn,
18 testified as follows:.

19 THE CLERK: State your name and spell your
20 last name for the record.

21 A. Marcia Hayward. H-A-Y-W-A-R-D.

22 Direct Examination by Ms. McElveen:

23 Q. Ms. Hayward, thank you for being here
24 today. Can you tell us about the relationship you
25 had with the defendant and with the victim in this

1 case?

2 A. Ricardo is my first cousin. Our moms are
3 sisters. And David, me and him was best friends.

4 Q. And Mr. Dargan was best friends with him
5 too, is that correct?

6 A. Yes.

7 Q. Tell us about what happened on December 3,
8 2015.

9 A. Okay that night me and David was together.
10 We saw Ricky walking down the street.

11 Q. And Ricky is Ricardo Dargan, the
12 defendant.

13 A. Yes. And we all went to this older
14 lady's house, named Ms. Gloria. We was over there
15 drinking. And Ricky said that he was going to the
16 club. So David asked me did I want to go, I told
17 him no. So we left and we went to my house. And we
18 were in the bed. And Ricardo came and knocked on my
19 room window, and got us up. And we went on to the
20 club.

21 Q. To a club where?

22 A. In Paxville.

23 Q. Was anyone else with you besides the three
24 of you? Was it just you and Ricky and Mr. Clea?

25 A. And Tom.

1 Q. Tom.

2 A. Uh-huh. (Affirmative.)

3 Q. Thomas Wilson.

4 A. Yes.

5 Q. And what did you all do? How did you

6 drive there? What happened with the cars? Tell us

7 that.

8 A. I drove. I was the one driving. We went

9 there and we drank -- we was drinking, we left the

10 club. Clea and Ricky was talking about racing

11 Clea's car---

12 Q. And that's the car---

13 A. ---and Ricky's truck.

14 Q. ---you were diving?

15 A. Yes.

16 Q. What kind of car was that?

17 A. A Grand Marquis.

18 Q. A Grand Marquis.

19 A. Yes.

20 Q. What color?

21 A. A tannish color. Gray and silver.

22 Q. What happened?

23 A. So me and Ricky raced. They bet \$500.

24 They race. Me and Ricky we race. And he wanted his

25 money back.

1 Q. So you guys got Ricky's car. You got him
2 to his car.

3 A. His car was already parked in Ms. Gloria's
4 yard.

5 Q. So from the club you drove him---

6 A. We raced right there by Ms. Gloria's
7 house.

8 Q. So you got him to his car. What kind of
9 car does he drive?

10 A. So his -- Ricky drive a red and white
11 truck. And the truck was already at Ms. Gloria's
12 house. So he got in this truck. And we lined up
13 and we race right down Wilder Street. And that's
14 right by Ms. Gloria's house.

15 Q. And that's in Sumter County?

16 A. Yes. So after we left, after we did the
17 race, Ricardo wanted his money, he was asking for
18 him for his money back. He is telling him he wasn't
19 giving him back nothing, he lost. So me and David
20 and Tom went to my house. And we was -- I was
21 getting out of the car. We was getting out of the
22 car at the driveway. That's when Ricardo pulled up
23 in his truck, and it took him a few minutes to get
24 there, because where he used to stash the gun at,
25 was right down the street from my house. And he

1 went -- and when he pulled up, he jump out of the
2 truck with the gun. And he had the gun in his hand.
3 And I said, Ricky what you -- I said what that. He
4 said, I want my money. He walked up to Clea, and
5 said, give me my money. And Clea said, I ain't
6 giving you back nothing.

7 So he kept, that's when he pulled the gun
8 out, and he started shooting the gun. When he shot
9 the gun the first time, I asked him why are you
10 doing that by my house, my kids and stuff, what's
11 wrong with you. And he shot again. And the
12 bullets, I was standing real close to David.

13 Q. Show me. Come show me. Say I'm you, and
14 I'm you and David. And you be Mr. Dargan. Show me
15 what happened.

16 (Whereupon, witness steps down from the
17 witness stand.)

18 A. Me and Clea was standing like, I was
19 standing like in front of Clea. Like that. And
20 Ricardo when he came shooting, the bullets was just
21 going all around my feet. We both going like this
22 right here. I am begging him to stop.

23 Q. Where is Mr. Dargan compared to Mr. Clea?
24 To David.

25 A. Right.

1 Q. And like you're Mr. Dargan.

2 A. Right here.

3 Q. So he's shooting that close.

4 A. Yes.

5 Q. Okay.

6 A. And the bullets was going all around my
7 feet. Luckily, I'm still here to tell the truth.
8 And luckily I'm still alive to be able to take care
9 of my children, because I can't imagine my kid's
10 life with me being here. That bullet could have
11 went in my leg, just as well it went into David's
12 leg. When he kept repeatedly shooting the gun, my
13 daughter, she came to the door. That's when I went
14 up the steps to my daughter. Tom come running
15 behind me, because he was scared. This is a drunk
16 man with a gun shooting erratically in my front
17 yard. So by the time I got up to the front step,
18 and get my kids back in the house, that's when I
19 heard David said, oh, I'm shot.

20 Q. Did he say -- was there a bad word in
21 there?

22 A. Yeah. And that's when I ran back to
23 David, and he like spinning around. And I grab him
24 before he hit the ground. And he been like, my leg,
25 my leg. And then that's when he hit the ground, and

1 he was out of it.

2 Q. Before all this treatment, and we'll get
3 into that in the main case. Did you at any point
4 see David advance on Ricky or Ricardo? Did you see
5 him?

6 A. No, David is not that type of person.

7 Q. Did David have a gun?

8 A. No, ma'am.

9 Q. Now I know that there will be testimony
10 from your daughter saying that she heard, you
11 shot -- you're going to shoot me with my own gun.

12 A. Yes.

13 Q. Tell us about this gun.

14 A. David did purchase a gun, but Ricardo was
15 known for toting the gun. He always tote that gun.
16 David never did know where that gun was at. He's
17 not a a gun toting person. And the lifestyle they
18 was living, they are drug dealers and stuff. They
19 had guns, but David did not. He did not have the
20 gun. Ricardo was always was the gun man.

21 Q. Uh-huh. And so Mr. Clea did not a gun
22 that night.

23 A. No, ma'am. Ricardo went and got that gun,
24 and brought that gun to my house. Because he
25 didn't -- he didn't took it to the club with us. So

1 I'm thinking it was his tuck, or he either he went
2 and get it from the spot where he used be at with
3 the gun.

4 Q. So Mr. Clea never had a gun.

5 A. No, ma'am.

6 Q. Did he ever advance towards him, and try
7 to physically threaten him?

8 A. No, ma'am.

9 Q. Did Mr. Clea tell him to stop?

10 A. David. We all was begging him to stop.

11 MS. MCELVEEN: I have no further questions
12 at this time in regards to this motion. Thank you.

13 THE COURT: Cross examination, sir.

14 Cross Examination by Mr. Griffith:

15 Q. Ms. Hayward, once you guys arrived at your
16 house, and when David -- I mean when Ricardo
17 arrived, did he ever leave and come back?

18 A. Who, Ricardo?

19 Q. Ricardo.

20 A. We wasn't at my house, sir. We was at Ms.
21 Gloria's house. So when we pulled up, Ricardo
22 pulled up a little short while behind us. He
23 couldn't come directly behind us. Your client went
24 to go get that gun, and then he came.

25 Q. So you weren't all there at one time, and

1 then he left and came back? Where you ever all
2 there at the same time?

3 A. At Ms. Gloria's house, we always was
4 there.

5 Q. And then did Ricardo leave there and then
6 come back?

7 A. Not that to my knowledge, no.

8 MR. GRIFFITH: i have no further
9 questions.

10 THE COURT: Redirect?

11 MS. MCELVEEN: Nothing, Your Honor.

12 THE COURT: Thank you. I appreciate you
13 being here. You can step down.

14 MS. MCELVEEN: The State would call
15 S.V.

16 S.V. , being first duly sworn,
17 testified as follows:

18 THE CLERK: State your name for the
19 record, and spell your last name for the record.

20 A. S.V.

21 DIRECT EXAMINATION by Ms. McElveen:

22 Q. Good afternoon, S.V. . Thank you
23 for being here. I'm going to be very brief. I'm
24 not going to get in to a lot of the facts with you
25 today. I am just going to ask you a couple of quick

1 questions. Were you there to see the -- did you see
2 Mr. Dargan shoot Mr. Clea?

3 A. No, I was inside the house.

4 Q. You were inside the house.

5 A. Yes, ma'am.

6 Q. Did you hear any -- did you hear Mr. Clea,
7 did Mr. Clea threaten Mr. Dargan at all?

8 A. I was in the bed asleep. That's when I
9 heard the gunshots and I woke up, then I got on the
10 floor. Because me and my little brother was home,
11 so I wanted to go check on him. That's when I heard
12 my mom knocking on the door. So I went to the door
13 and answered the door. And then that's when I heard
14 him saying, where's my money. And then gunshot just
15 going off. And K.V. woke up. So he was scared.
16 So my mom came to check. When I opened the door,
17 she was coming to check on us. And she came put
18 keys on the counter, and she went back outside. And
19 I followed her, because I wanted her to come back in
20 the house.

21 Q. And you, did you see -- who was saying,
22 where my money at?

23 A. Ricky?

24 Q. Did you see Ricky with the gun?

25 A. It was dark.

1 Q. You heard gunshots though.

2 A. Yes, ma'am. That's what woke me up.

3 Q. Did you see Ricky or did you see Mr. Clea
4 trying to hurt Ricky at all?

5 A. No, ma'am.

6 MS. MCELVEEN: I have no further
7 questions. Thank you.

8 THE COURT: Cross, sir?

9 Cross Examination by Mr. Griffith:

10 Q. S.V. ?

11 A. Yes, sir.

12 Q. Is that how you pronounce it? Did you
13 ever see a time when both of them had a hold of the
14 gun at the same time, or could you see that well?

15 A. The porch light was on, and I didn't see
16 who had the gun.

17 Q. So you couldn't really see who had the
18 gun.

19 A. No, sir.

20 Q. But did you hear Clea say, you'd shoot me
21 with my own gun?

22 A. Yes, sir, he said that.

23 MR. GRIFFITH: I have no further
24 questions, Your Honor.

25 THE COURT: Redirect, ma'am?

1 MS. MCELVEEN: Nothing Your Honor.

2 THE COURT: You can step down. Thank you
3 for being here. Any additional witnesses from the
4 State.

5 MS. MCELVEEN: Nothing Your Honor.

6 THE COURT: Anything in addition from the
7 defense?

8 MR. GRIFFITH: I have nothing further,
9 Your Honor.

10 THE COURT: Would either of you like put
11 arguments on the record, or are you ready for me?

12 MR. GRIFFITH: Your Honor, I have
13 concluded. And I would give it you, and I don't
14 have any statements.

15 THE COURT: Ms. McElveen, anything you
16 need to put on the record?

17 MS. MCELVEEN: Your Honor, we would like
18 you to deny their request for immunity under the
19 protection of persons and property act. Because
20 there is testimony that the defendant went and got
21 the gun. Mr. Clea was not seen with the gun at any
22 point during this altercation. Mr. Dargan is only
23 the one that was seen with the gun. And it seems
24 like he went and got the gun from somewhere, and
25 came back to the scene to approach the victim in

1 this case. Their -- everybody, all the witnesses
2 have stated they did not see Mr. Clea threaten him
3 in any way, or advance upon him. Only Mr. Dargan
4 shooting at Mr. Clea. We respectfully request that
5 you deny the defense counsel's motion for immunity.

6 THE COURT: I will respectfully deny the
7 motion for immunity. In looking and reviewing the
8 matter in the totality of the evidence that has been
9 presented, I find that the defense has failed to
10 demonstrate by a preponderance of the evidence that
11 he should be afforded protection under the relevant
12 or subject statute. Any number of reasons for that,
13 but there is several factual questions which are
14 outstanding as to who had the gun, and I can't
15 determine based on the evidence that's been
16 presented that by preponderance of the evidence that
17 it was decedent who actually had the gun, and
18 brought about the controversy thereby affording
19 Mr. Dargan the protections of the statute.

20 I'll also say that there within the
21 statute there is a requirement that the person
22 claiming immunity under the statute, must not be
23 engaged in any unlawful activity. It would appear
24 to me that they were engaged in some sort of
25 unlawful activity by admission. And that would be

1 racing at the very least. But it also it would
2 appear to me that there was a -- that the parties
3 willfully engaged in mutual combat at a minimum. So
4 there's a question in my mind at this point as
5 whether in fact they were engaged in unlawfully
6 activity at the time. For all of those reasons, I
7 respectfully deny the motion. Anything further?

8 MR. GRIFFITH: Thank you, Your Honor. But
9 I put on the record an objection in that the race
10 which was illegal, had concluded. They would no
11 longer engaged in that activity.

12 THE COURT: I understand.

13 MR. GRIFFITH: As a matter of record.

14 THE COURT: And understand that's not the
15 basis of my ruling.

16 MR. GRIFFITH: I understand.

17 THE COURT: I just point that out, that
18 there's a question in mind of whether they were in
19 fact engaged in unlawful activity. But the salient
20 portion of the ruling of course that the defendant
21 failed meet his burden of demonstrating by a
22 preponderance of the evidence that he is afforded
23 immunity under the statute; that is, that he was
24 lawfully defending himself as contemplated under the
25 subject statute.

1 MR. GRIFFITH: Thank you, Your Honor.

2 THE COURT: No problem.

3 MS. MCELVEEN: Nothing, Your Honor. Are
4 there any other pretrial motions?

5 MR. GRIFFITH: No, Your Honor. No other
6 motions until tomorrow.

7 MS. MCELVEEN: I'm sorry. I thought that
8 would be a lot longer. You were right. I was
9 wrong.

10 THE COURT: Can I put that on the record
11 and send it to my wife, and let her know that I
12 actually was right one time.

13 MS. MCELVEEN: I'm probably the only
14 female that is going to say that to you today.

15 THE COURT: That's exactly.

16 MS. MCELVEEN: That's actually a running
17 joke we have in our office. We say that a lot.

18 THE COURT: Well then we'll come back at
19 9:30 tomorrow morning. And I'll be here earlier
20 than that. So if y'all need me, let me know. Now
21 and understand that when we get here at 9:30 I want
22 to start the trial, as promptly as possible. So if
23 you have any issues that need to be resolved
24 beforehand, e-mail today, and then we'll get here
25 tomorrow morning, and we'll take them up before the

1 jury gets here. And I don't anticipate any of that,
2 but stranger things have happened. Also in some of
3 the testimony, that was elicited, I know that you
4 were listening to the same testimony I was, you
5 might want to clean up a little bit of that, okay.
6 Because I think some of what was said, might or
7 might be admissible in front of a jury.

8 MS. MCELVEEN: And I do, that is one
9 thing, I guess I should address the court. I do --
10 well I am sure going to address it when the defense
11 --if the defendant decides to take the stand. But
12 any reference to the victim's ability to like being
13 in trouble and being in and out of jail, we would
14 obviously object to character bashing of the
15 witness, I mean, the victim, since he cannot be here
16 to testify for himself.

17 MR. GRIFFIN: Your Honor, on the other
18 side, if the victim has a history of carrying a gun
19 for which he has been incarcerated or arrested for
20 using a firearm during the commission of a crime, I
21 think that that would be certainly relevant.

22 MS. MCELVEEN: Your Honor, that's more
23 prejudicial than probative. Probative.

24 THE COURT: Maybe. I understand that it's
25 a very fine line, so I am not going to issue an

1 order in limine. What I will tell you is that I
2 think generally specific acts of bad conduct would
3 be inadmissible. Now if your -- if the questions
4 are appropriately tailored, then may be all right.
5 But I am going to withhold saying absolutely until
6 such time they as I hear the questions posed and the
7 answers offered. Because I don't know whether in
8 the context of all of the evidence that's been
9 presented as I sit here right now whether it will be
10 possibly be admissible or not. It can change as the
11 trial continues.

12 So I am not going to make any -- I'm not
13 going to make a ruling as to that right now. But I
14 will tell you that any evidence offered related to
15 that will be limited, okay.

16 MS. MCELVEEN: Thank you, Your Honor.

17 MR. GRIFFITH: Thank you, Your Honor.

18 THE COURT: Anything else?

19 MS. MCELVEEN: Nothing.

20 THE COURT: Then I will see you all
21 tomorrow morning.

22 ----End of Requested Transcript of Record-----

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1 Certificate

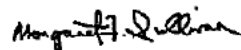
2

3 I, Margaret T. Sullivan, Court Reporter,
4 for the Third Judicial Circuit of the State of South
5 Carolina, do hereby Certify that the foregoing is a
6 true, accurate and complete Transcript of Record of
7 the proceedings had and evidence introduced in
8 General Sessions on October 17, 2016, in Sumter
9 County, Sumter, South Carolina.

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

12

13 3/25/19
14 Date



Margaret T. Sullivan
Court Reporter

My Commission expires: 9/7/21

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1 State of South Carolina

2 County of Sumter

3

4 The State of South Carolina, General Sessions Pleas
Plaintiffs 2016-GS-43-00375

5 2016-GS-43-00376

6 2016-GS-43-00377

7 2016-GS-43-00378

8

9 vs.

10 Ricardo Dargan
Defendant

October 18, 2016
Sumter, S.C.

11

12

13

Before the Honorable Robin B. Stilwell, Judge.

14

15

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

17 Ms. Bronwyn M. McElveen,
Assistant Solicitor for the State

18

19 Mr. Timothy Lee Griffith,
Attorney for Defendant

20

21

22 Margaret T. Sullivan,
Court Reporter

23

24

25

1 MS. MCELVEEN: Your Honor, I have spoken
2 with defense counsel this morning. I am under the
3 impression the defendant Mr. Dargan would like to
4 plead guilty to a reduced voluntary manslaughter
5 charge. And the same possession of a weapon during
6 the commission of a violent crime associated with
7 Indictment 2016-43-0378. Also pending in our
8 office, Mr. Dargan is also pleading guilty today to
9 3 counts of distribution of crack cocaine, or
10 cocaine base first offense. Indictments
11 2016-GS-43-375, 376 and 377. Your Honor, if I may
12 pass up the sentencing sheet.

13 THE COURT: Yes, ma'am.

14 MS. MCELVEEN: And he has indicated he
15 wishes to plead guilty by signing the sentencing
16 sheets. There is no offer and no recommendations on
17 any of these charges. But we have reduced the
18 murder to voluntary manslaughter?

19 THE COURT: Good enough. Mr. Griffith,
20 are we prepared to proceed, sir?

21 MR. GRIFFITH: I'm sorry, Judge?

22 THE COURT: Are you prepared to proceed
23 with him to plead guilty, sir?

24 MR. GRIFFIN: Yes, Your Honor.

25 THE COURT: Mr. Dargan, would you stand

1 please sir.

2 (Whereupon, the defendant is sworn.)

3 THE COURT: Mr. Griffith, have you had the
4 opportunity to discuss with Mr. Dargan his
5 constitutional rights, and the ramifications of his
6 plea?

7 MR. GRIFFITH: Yes, Your Honor.

8 THE COURT: Is it your understanding that
9 he understands these rights and is freely and
10 voluntarily waiving the same?

11 MR. GRIFFITH: Yes, Your Honor.

12 THE COURT: And do you agree with his
13 decision, sir?

14 MR. GRIFFITH: Yes, Your Honor.

15 THE COURT: Mr. Dargan, I am going to
16 explain to you initially your rights as they are
17 related to the charges that are before the court.
18 And then I am going to ask you questions to ensure
19 that you both understand those rights, and that you
20 are freely and voluntarily giving up the same.
21 Okay.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: If you have any questions
24 while we're going forward just stop me and ask me,
25 okay.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: You have a right to a jury
3 trial, as you know, and we have a picked a jury to
4 proceed on this case. If you were to proceed with a
5 jury trial, the State would have the burden of
6 proving you guilty beyond a reasonable doubt to that
7 jury of 12 of your peers. In that proceeding,
8 understand you would not have the burden of proving
9 yourself innocent, because under the constitution,
10 you have a right to remain silent, a right against
11 self incrimination. And what that means is, is that
12 you would not be compelled to do or say or prove
13 anything to the jury, because the State has the
14 burden of proving each and every element of each
15 offense beyond a reasonable doubt.

16 Now understand that in that jury trial if
17 you elected to, you could waive your right to remain
18 silent. You could take the stand, and you could
19 testify to the jury and explain your side of the
20 story. You could present evidence and witnesses on
21 your behalf. You could present legal defenses. You
22 could make motions to protect your rights and
23 interests. You could cross examine any of the
24 State's witnesses, including those persons who are
25 accusing you of the crime. To the extent that any

1 of these may not have true billed, you understand
2 that you have the right to have these indictments
3 presented to a grand jury for a true bill as well.

4 Now, sir, having explained to you all of
5 those rights, do you understand them, sir?

6 THE DEFENDANT: Yes, sir.

7 MR. GRIFFITH: Let me stop you about true
8 bill.

9 MS. MCELVEEN: Your Honor, all of them are
10 true billed.

11 THE COURT: They are. Then that's a moot
12 point. Understanding all of those rights, sir, do
13 you wish to waive them and plead guilty today?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Sir, I am going to publish the
16 charges and tell you the maximum possible penalty
17 for each of the offenses. Now before we even start,
18 you need to understand that all of time on all of
19 the respective offenses could be consecutive to each
20 other, and run in addition to one another. Do you
21 understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: You are pleading guilty to a
24 voluntary manslaughter. Do you recognize that you
25 can receive up to 30 years in prison for that, sir?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do also recognize that that is
3 classified as both a violent and most serious
4 offense, sir?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And you realize that because
7 it's classified as violent, it could effect how you
8 serve any period of incarceration in the Department
9 of Corrections. That is, it could affect where
10 you're housed, and it could effect the calculation
11 of max out date?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: You also understand that
14 because it's most serious, it is a strike under the
15 law. And at a later date and time in your life, if
16 you are convicted of another most serious offense,
17 or a serious offense, you could potentially be
18 subject to a sentence of the life without the
19 possibility of parole. Do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Knowing that, sir, how do you
22 wish to plead to voluntary manslaughter?

23 THE DEFENDANT: Guilty.

24 THE COURT: You're pleading guilty to
25 possession of a weapon during the commission of a

1 violent crime. Do you recognize that you could
2 receive 5 years in addition on that charge, sir?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: How do you wish to plead to
5 that?

6 THE DEFENDANT: Guilty.

7 THE COURT: You're pleading guilty to
8 possession with intent to distribute, or is that
9 what it is?

10 MS. MCELVEEN: It was an actual
11 distribution offered as a confidential informant.

12 THE COURT: You understand in three of
13 these indictments, the remaining three, you are
14 pleading guilty to distribution of cocaine base
15 first offense. You recognize that you could receive
16 15 years on each of those charges, sir?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And how do you wish to plead
19 to those three charges, sir?

20 THE DEFENDANT: Guilty.

21 THE COURT: Understanding that you want to
22 plead guilty, has anyone forced or threatened or
23 made you plead guilty, sir?

24 THE DEFENDANT: No, sir.

25 THE COURT: Are you pleading guilty of

1 your own free will because you are in fact guilty of
2 the offense?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Has anyone promised you
5 anything in exchange for your plea today, sir?

6 THE DEFENDANT: No. No, sir.

7 THE COURT: Are you under the influence of
8 any drugs or alcohol, sir?

9 THE DEFENDANT: No, sir.

10 THE COURT: Do you suffer any mental
11 sickness that would affect your ability to
12 understand and appreciate what we are doing here
13 today?

14 THE DEFENDANT: No, sir.

15 THE COURT: Have you had the opportunity
16 to discuss this matter as much as you needed to with
17 your attorney?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Has he answered all your
20 questions and done everything you've asked him to
21 do?

22 THE DEFENDANT: Yes.

23 THE COURT: Are you satisfied with his
24 services?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Have you understood all the
2 questions and explanations that I have offered you
3 today?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you have any questions at
6 this point that you'd like to ask me or Mr. Griffith
7 regarding your rights or this proceeding, before I
8 listen to the facts of the case?

9 THE DEFENDANT: No, sir.

10 THE COURT: You have 10 days to appeal the
11 sentence that I hand down. I'll be happy to hear
12 the facts, ma'am.

13 MS. MCELVEEN: Yes, sir. Regarding the
14 voluntary manslaughter charge, you've heard some of
15 the testimony, but just to clean it up a little bit
16 from yesterday, On December 3rd 2015, this defendant
17 went with the victim and two other individuals to a
18 night club about 1 o'clock in the morning. On the
19 way home, a consideration started about a car race.
20 The -- Ms. Hayward was driving the victim's car, a
21 Grand Marquis. And they dropped the defendant off
22 at his truck, an older red and white truck. They
23 had a car race. There was a \$500 wager placed.

24 Mr. Clea the victim, was holding the
25 money. Mr. Clea and Ms. Hayward thought that

1 Mr. Dargan lost the race. Mr. Dargan wanted his
2 money back. He followed them to Ms. Hayward's house
3 in his truck and got out and started demanding his
4 money. They said they weren't going to give him --
5 the victim said he wasn't going to give him the
6 money.

7 Mr. Dargan left the scene, went and got a
8 gun that had been purchased by Mr. Dargan, but was
9 held more frequently by Mr. -- was purchased by
10 Mr. Clea, and held more frequently by Mr. Dargan.
11 He left and got a gun. Came back to the scene, and
12 started shooting at his feet, give me my money, give
13 me my money, give me my money. The two other
14 individuals moved towards the house. Mr. Clea is
15 then shot. Mr. -- he falls to the ground.
16 Mr. Dargan digs in his pocket, and leaves the scene
17 without rendering aid. EMS shows up. Officers show
18 up. He has a tear in his femoral artery. He
19 undergoes surgery, and he has a bullet wound in his
20 ankle. He would undergo two or more orthopedic
21 surgeries along with a vascular surgery the night
22 of. Almost loses his leg. Does not lose his leg.
23 Spends a month and a few days in the hospital. But
24 57 days after the accident, he dies from this bullet
25 wound, two bullet wounds from an infection.

1 And Mr. Dargan at no point cooperated with
2 the police. But we do feel the voluntary
3 manslaughter is the proper outcome in this case, and
4 we would appreciate the court entertaining that,
5 Your Honor. As to the drugs, as to drug
6 distributions, Your Honor, the first one July 28th
7 2015, officers with the sheriff's office used a
8 confidential informant to place a \$60 purchase in
9 documented funds for a gentleman -- from a gentleman
10 named Rick. The drug transaction took place. The
11 drugs were entered into evidence, tested positive as
12 .77 of a gram of crack cocaine. And Mr. Ricardo
13 Dargan was picked out of a six person photo lineup
14 by the confidential informant.

15 A similar occurrence July 31st 2015. A
16 confidential informant returned provided with
17 another \$60 to buy crack cocaine from Rick. The
18 drug transaction takes place. The drugs are put
19 into evidence, and this time, 1.01 of a gram of
20 crack cocaine is found. Again, the six person photo
21 lineup confirmed that it's Ricardo Dargan.
22 August 6th 2015, another confidential informant
23 purchased \$60 in documented funds. Hand to hand
24 drug transaction, crack cocaine. Placed into
25 evidence, tested. Came back as a .72 of a gram of

1 crack cocaine. And again, this six person photo
2 lineup confirmed that it's Mr. Ricardo Dargan. And
3 then all of these events happened in Sumter County,
4 Your Honor.

5 THE COURT: Mr. Dargan, you heard those
6 factual allegations, sir. Is that what happened?

7 THE DEFENDANT: No, sir.

8 THE COURT: Well what do you take
9 exception?

10 THE DEFENDANT: I never -- when I came to
11 Marcia's house, I never left again. I never went
12 and got a gun.

13 THE COURT: But do you take exception to
14 any of the other allegations?

15 THE DEFENDANT: The drug cases, I sold the
16 drugs also.

17 THE COURT: The thing that I'm interested
18 in the most is the allegation that you shot into the
19 ground, and it had the effect of entering and
20 severing his femoral artery. Is that what happened?

21 THE DEFENDANT: I shot the gun in the
22 ground. We were in his yard arguing. I shot the
23 gun. Also, I never went in his pocket and take any
24 money from him.

25 THE COURT: With those exceptions, I do

1 feel that there is a substantial factual basis for
2 the plea. And I'll accept the same. It's been
3 entered freely and voluntarily with the advice of
4 counsel with whom Mr. Dargan indicates that he is
5 satisfied. Any prior record?

6 MS. MCELVEEN: Yes, sir, Your Honor. He
7 has a discharging a firearm into a vehicle while
8 it's occupied in 2007. Along with possession of a
9 stolen pistol charge. He got 10 years provided upon
10 100 days and two years probation. He also had an
11 open container from 2011. And a marijuana charge
12 from 2010 in Georgia. That is his criminal record,
13 Your Honor.

14 THE COURT: Mr. Dargan, does that sound
15 like a a fair account of your criminal record, sir.

16 MR. DARGAN: Yes, Your Honor.

17 THE COURT: MR. Griffith, I'll be happy to
18 hear from you.

19 THE DEFENDANT: I just one question.

20 THE COURT: Sure.

21 THE DEFENDANT: The charge was running
22 from 2007.

23 THE COURT: Fair enough. Mr. Griffith,
24 anything you would like to tell me?

25 MR. GRIFFITH: Yes, Your Honor. You heard

1 the testimony yesterday. This is drunk friends out
2 shooting. And of course I've explained to
3 Mr. Dargan that if you purposely shoot into the
4 ground and someone is injured, you may be charged
5 with voluntary assault or if that person dies or
6 manslaughter. And he does understand that. Your
7 Honor, we would ask that you take into consideration
8 also on these drug charges, Your Honor, these are
9 first offenses.

10 Also if you listen to the amounts,
11 .7 grams, a very small amount. This is not
12 indicative of, you know, a large scale operation.
13 At the same time, Your Honor, we do want you to take
14 into consideration that a 5-year weapon's charge is
15 consecutive, and that it will add to any amount of
16 time that you decide to impose. We would also,
17 after hearing the testimony yesterday, these were
18 people who were outside, and they were drunk, and
19 they were doing stupid things. I hope the judge
20 will consider that in his allocation of the time and
21 his sentence; in that, there was no intention to
22 kill anybody, but it was still an intention to pull
23 out the gun and it was of course guilty of intent.
24 But, Your Honor, I would hope that you would
25 consider those things, understanding that some of

1 his previous charges happened when he was in his --
2 just becoming 20's or when he was a kid. But he
3 certainly has learned a lot from these occurrences.
4 And he tells me that when he gets out, he's got to
5 be a lot older. And he does not plan to do anything
6 in the meantime again.

7 I believe also, Your Honor, that the
8 witnesses that were present at the time may have an
9 opportunity to speak to Your Honor concerning
10 sentencing, before you impose sentencing. We would
11 appreciate it if you would allow that if the
12 solicitor agrees to.

13 THE COURT: Sure, I will hear from anybody
14 who would like to be heard. Anything else from the
15 State?

16 MS. MCELVEEN: Your Honor, I believe
17 Ms. Hayward who was present at the scene, and was in
18 a relationship with the victim, would like to speak.

19 THE COURT: Ms. Hayward. Yes, ma'am.

20 MS. HAYWARD: My cousin is not a bad
21 person. We're always drinking. He never got any
22 gun intentionally angry at David and shot him.
23 And, You know, it's not a situation where it's a win
24 situation for me, because it's like I'm losing both
25 of them. So I'm just asking you to please have

1 mercy on my cousin, because he's not a bad person.
2 He's not an evil person. He didn't did this with
3 intention, because he could have shot him upper body
4 or wherever. He was shooting at the ground. And my
5 last conversation with David before he passed, you
6 know, he know that Ricky didn't not intentionally
7 shot him. And he didn't want to see him go away for
8 a long time. My cousin is a single father. He is
9 raising his daughter. And she is very young. And I
10 know she's going to she need him. So I am asking
11 you to please have mercy on my cousin. He is not a
12 bad person. Just have mercy on him.

13 THE COURT: Thank you, Ms. Hayward. I
14 appreciate you being here.

15 MS. MCELVEEN: And, Your Honor, you can
16 see that this is a little interesting situation to
17 have a family that's separated by this incident.
18 However, you know, from our side, reducing the
19 charge from murder to voluntary manslaughter is a
20 gift. And the fact that he's not going to serve day
21 to day, 30 to life if the jury found him guilty,
22 that's certainly in our eyes is a generous offering.
23 And we would like you to consider that in sentencing
24 as well.

25 THE COURT: I understand the concession.

1 MS. MCELVEEN: Thank you, Your Honor.

2 THE COURT: Anything further from the
3 defense?

4 MR. GRIFFITH: Your Honor, she was
5 referring to her cousin. Of course she was
6 referring to Mr. Dargan.

7 THE COURT: I do understand that it's
8 Mr. Dargan.

9 MR. GRIFFITH: Nothing further, Your
10 Honor.

11 THE COURT: Mr. Dargan, anything that you
12 would like say, sir?

13 THE DEFENDANT: Yes, sir. I just want to
14 apologize to the family.

15 THE COURT: Sure.

16 THE DEFENDANT: Marcia, you know I love
17 you all. And I love you all's people. You know it
18 wasn't intentional. It was an accident. You know,
19 I had no hard feelings towards him or nothing. You
20 know what I'm saying. I love all of you. It was
21 an accident. I was drinking. I shot into the
22 ground. We had an argument. I wish he was here
23 today, you know.

24 THE COURT: Thank you, Mr. Dargan.

25 THE DEFENDANT: And I would like to

1 apologize to you yesterday when I was stand. And I
2 apologize for that, you know, and many other things.
3 Me and have tussle over the gun. We did have a
4 little -- we were both tussling over the weapon. I
5 shot the gun in the ground. And I would like to
6 apologize for that. Ms. Bronwyn, you did a great
7 job here. And I would like to thank my attorney.

8 THE COURT: Mr. Dargan, I appreciate that.
9 You certainly don't owe me an apology. I think
10 you've extended your apologies to the family. And I
11 recognize that you feel some genuine contrition
12 after having shot somebody that you care about, and
13 this is a tragic accident. I recognize this is a
14 unique set of circumstances. And I also recognize
15 that you didn't mean to kill him. Having said that,
16 Mr. Griffith was exactly right. And that is, if you
17 actually shoot into the ground, and it has the
18 effect of killing a person, then you are guilty of
19 in the very least, at the very least, manslaughter.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: It is unfortunate that you and
22 the people who care about Mr., do you a -- pronounce
23 that Cree or Gree---

24 MS. MCELVEEN: Clea.

25 THE COURT: Clea, are in this situation.

1 How much time has Mr. Dargan already served?

2 MR. GRIFFITH: Your Honor, he's been in
3 custody about 10 months.

4 MS. MCELVEEN: He was arrested the night
5 of the incident December 3rd 2015.

6 THE COURT: Been in continuously since 3
7 December 2015.

8 MS. MCELVEEN: Yes, sir.

9 THE COURT: Is that right, Mr. Dargan?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Mr. Dargan, with respect to
12 your possession of a weapon during the commission of
13 a violent crime, the sentence is 5 years in the
14 State Department of Corrections. Consecutive to the
15 time on the additional charges. That's by virtue of
16 the operation of law.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: With respect to your
19 distribution, 15 years in the Department of
20 Corrections, concurrent. Credit for time served.
21 The same is for the sentence for all 3 distribution
22 charges. On the manslaughter, sir, the sentence of
23 the court is you be committed to the Department of
24 Corrections for a period of 15 years, concurrent.
25 Credit for time served. So in the aggregate it's

1 20 years. Mr. Dargan, I wish you luck, sir.

2 THE DEFENDANT: Thank you, Your Honor.

3 ----End of Requested Transcript of Record---

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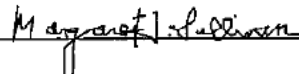
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C-E-R-T-I-F-I-C-A-T-E

I, Margaret T. Sullivan, Court Reporter,
for the Third 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
General Sessions Court, on October 18, 2016, in
Sumter County, Sumter, South Carolina.

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

3/26/18



DATE

COURT REPORTER

My Commission expires: 9/7/21

2017 JUL-5 PM 4:02

IN THE COURT OF COMMON PLEAS
JAMES C. CAP...
CLERK OF THIRD JUDICIAL CIRCUIT

Case 10-11011
CERTIFIED TRUE COPY
OF ORIGINAL FILE
DA

2017-CP-43-12 SJ

#37 0197

y.

State of South Carolina

Barbara Thayer
DEPUTY CLERK OF COURT
SUMNER COUNTY
NORTH CAROLINA
POST-CONVICTION REVIEW

POST-CONVICTION RELIEF

S.C. Code Ann. § 17-27-45(A)

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

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

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

1. Place of detention MCI / 3816 Redemption Way, McCormick
South Carolina 29899
2. Name and location of Court which imposed sentence The Court of General
Session, Courthouse, Room 302, Sumter, S.C 29586
3. Name(s) of co-defendant(s) (if any) no/A no
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) To extensive. See attachment
(b)

Form 5

4. The indictment number or numbers upon which and the offenses for which sentence was imposed;

- a. 2016-GS-43-0375 - Drugs / manufacture, distribution, etc. of cocaine base, 1st
- b. 2016-GS-43-0376 - Drugs / manufacture, distribution, etc. of cocaine base, 1st
- c. 2016-GS-43-0377 - Drugs / manufacture, distribution, etc. of cocaine base, 1st
- d. 2016-GS-43-0378^{*} - Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death ^{Issue} ^{Fall} of particular
- e. 2016-GS-43-0378^{*} - Manslaughter / Voluntary manslaughter

Form 5

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

a. October 18, 2016 - 15 years concurrent

b. October 18, 2016 - 15 years concurrent

c. October 18, 2016 - 15 years concurrent

d. October 18, 2016 - 5 years concurrent

e. October 18, 2016 - 15 years concurrent

- ~~(c)~~ _____
5. The date upon which sentence was imposed and the terms of the sentence:
 (a) To extensive for this space. See Attachment
~~(b)~~ _____
~~(c)~~ _____
6. Check whether a finding of guilty was made:
 (a) after a plea of guilty Yes
 (b) after a plea of not guilty N/A
 (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence?

8. If you answered "yes" to (7), list:
 (a) the name of each Court to which you appealed:
 i. No
~~ii.~~ _____
~~iii.~~ _____
 (b) the result in each such Court to which you appealed:
 i. No
~~ii.~~ _____
~~iii.~~ _____
 (c) the date of each such result:
 i. No
~~ii.~~ _____
~~iii.~~ _____
 (d) if known, citations of any written opinion or orders entered pursuant to such results:
 i. No
~~ii.~~ _____
~~iii.~~ _____
9. If you answered "no" to (7), state your reasons for not so appealing:
 (a) Was not ripe for review
~~(b)~~ _____

- ~~(c)~~ _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) To extensive for this space. See Attachment
- ~~(b)~~ _____
- ~~(c)~~ _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) To extensive for this space. See Attachment
- ~~(b)~~ _____
- ~~(c)~~ _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ~~ii.~~ _____
- ~~iii.~~ _____
- ~~iv.~~ _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ~~ii.~~ _____
- ~~iii.~~ _____
- ~~iv.~~ _____

Form 5

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

a. Involuntary Plea

b. Brady violation

c. Ineffective Assistant of Counsel

1. That counsel, Timothy Griffith, esq., was ineffective for not challenging the State charges against Applicant when the charge of murder or voluntary manslaughter would be a misrepresentation of the facts and vindictive prosecution.

2. That counsel failed to take Applicant case to trial and show the jury that the victim, David Clea own negligence was the superseding cause of death, bearing his own responsibility for his death and not Applicant.

Form 5

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

Facts

This does arise out of a guilty plea to voluntary manslaughter, possession of a weapon and three (3) accounts of distribution of drugs, which Applicant was sentence to fifteen years. The claim of ineffective assistance of counsel arise out of counsel, Timothy Griffith, esquire, failure to communicate, share or explain the evidence, failure to interview witness particularly two witnesses, Thomas Wilson and S.V. , and prosecutors actions pose a realistic likelihood of prosecutorial misconduct or/and vindictiveness.

Mr. Griffith prejudice Applicant outcome by not following through with a trial.

An interesting thing in this case is that, in fact, the State relied heavily on David Clea complications i.e., the gunshot wound to his right leg, prior to his demise (death).

During a self-defense hearing, the State relied heavily upon testimony of Thomas Wilson and S.V.

These two testimony was only a diversion from the main issue, "Should Applicant bear the responsibility for the death of David Clea, when David Clea own negligence is the superseding

Form 5

caused of death.

There is no confession made, because Applicant is innocent. Without the benefit of the State misinterpretation of its own evidence, it was unreasonable for Mr. Griffith arg., to have advise Applicant to plea, than, to evaluate that evidence before a jury. It was unreasonable for Mr. Griffith to induce Applicant to plea when he disagree with the State facts. Moreover, Mr. Griffith to rely upon the understanding of the evidence as interpreted by the State, at the eleventh hour. Applicant further argue that Mr. Griffith was ineffectual and that it prejudice the outcome because there is a lack of foundation, underlying foundation to the charge of murder, based on the evidence and the foundation of Applicant's plea to voluntary manslaughter.

Certainly there was a decision made in this case i.e., imperfect self-defense. The question is whether or not Mr. Griffith afforded him a intelligent platform e.g., that a person being attacked or face with a threaten battery is allowed to stand his or her ground or repel the attack or threat, without, the fear of prosecution or before he stood up in front of the bench.

The plea in this particular case was ignorant because of the admitted testimony by the State was inappropriate and misrepresented. Mr. Griffith sided to go along with the State interpretation and sentencing threat, rather than analyzing and.

standing firm to the plain facts of the case. There is an element of ignorance in this case leading up to the plea because of the way Mr. Cribbith handled this case. Example: In a typical manslaughter cases, the defendant either defends self against the victim's threat with unreasonably deadly force. In this case, the victim made a threat, pulled his weapon, there was a scuffle over the weapon. The gun goes off hitting the victim in his right leg, (aggravated battery). It was not a life threaten wound. Even if this original act is not link to the cause of death, it may have been chargeable as Assault and battery with High Aggravated Nature. The State committed fraud, along with Applicant's counsel to enforce Applicant to plea,

1. Applicant never possession a weapon;
2. Applicant never gave a verbal threat or gesture; and
3. The State could neither assigned intent or premeditation.

Basically, Mr. Cribbith springboard for his determination to take Applicant case to trial was the plain facts of the case. The State had determined at the very least Applicant was guilty of murder before he pled.

Applicant respectfully ask the Court to review the record, the evidence and agree that Mr. Cribbith was was not only ineffectiveness, but his ineffectiveness in helping Applicant make a knowing decision before he pled guilty before a judge prejudiced his case. out-come.

(c) the disposition thereof:

i. N/A

~~ii.~~ _____

~~iii.~~ _____

~~iv.~~ _____

(d) the date of each such disposition:

i. N/A

~~ii.~~ _____

~~iii.~~ _____

~~iv.~~ _____

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

i. N/A

~~ii.~~ _____

~~iii.~~ _____

~~iv.~~ _____

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

No

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

(a) which grounds have been presented:

i. N/A

~~ii.~~ _____

~~iii.~~ _____

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

i. N/A

~~ii.~~ _____

~~iii.~~ _____

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

(a) 2/1
 (b)
 (c)

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

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

No

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

(a) the name and address of each attorney who represented you:

i. Timothy Grubbs, Esquire
7 East Hampton Avenue
 ii. Sumter, South Carolina 29151

iii.

(b) the proceedings at which each such attorney represented you:

i. Plea and sentencing

ii.

iii.

19. State clearly the relief you seek in filing this application: To issue its Order to set aside, grant a new trial or in the alternative, to order an evidentiary hearing as a gateway for issuance of the order, infra. Relief is available
20. Are you now under sentence from any other court that you have not challenged?

under the miscarriage of justice standard established in United States v. Mikalajunas, 186 F.3d 490, 492-493 (4th Cir. 1999). [Citation correct]

STATE OF SOUTH CAROLINA)
)
County of Sumter)

VERIFICATION

I, Ricardo Morte Dargan #370197, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this 29
day of June, 2017.

JC Frankler (L.S.)
Notary Public

My Commission Expires: 12.16.2019

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

I, Ricardo Morte Dargan #32089 hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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

Ricardo Dargan
Applicant

SWORN or affirmed to and subscribed before me this

29 day of June, 2017.

JA Franklin
Notary Public

My Commission Expires: 12-16-2019

2017 JUL -5 PM 4:03
 RECORDED
 JAMES C. CAMPBELL
 CLERK OF COURT
 SUMTER COUNTY, S.C.

STATE OF SOUTH CAROLINA
 County of Sumter
 RECORDED
 2017 JUL -5 PM 4:04

IN THE COURT OF COMMON PLEAS
 THIRD JUDICIAL CIRCUIT

Ricardo Mor ~~JAMES C. CAMPBELL~~
 CLERK OF COURT
 SUMTER COUNTY, S.C.

v.

CERTIFICATE OF SERVICE

State of South Carolina
Respondent

I hereby certify that I have served the Application for Post-Conviction Relief upon James C. Campbell Clerk of Court, Courthouse, Room 308, Sumter, S.C. 29150 by depositing a copy of the application in the United States Mail, postage prepaid:

cc: John McIntosh, Esquire
 Chief Deputy of Attorney General
 1000 Assembly Street Rm 519
 Columbia, South Carolina 29201

Dated:

Ricardo Morte
 Ricardo Morte Dargan
 McCormick 2-B-121
 386 Redemption Way
 McCormick, S.C. 29849

STATE OF SOUTH CAROLINA

County of Sumter

IN THE COURT OF COMMON PLEAS

RECORDED

THIRD JUDICIAL CIRCUIT

2017 JUL -5 PM 4: 04

Ricardo Morte. Dargan
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

v.

SUMMONS

State of South Carolina

Respondent

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within sixty (60) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

McCormick, South Carolina

Date:

Ricardo Dargan
Ricardo Morte. Dargan
McCormick 213-121
386 Redemption Way
McCormick, S.C. 29899

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	FOR THE THIRD JUDICIAL CIRCUIT
	)	
Ricardo Dargan, #370197,	)	
	)	Case No.: 2017-CP-43-1253
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the application for post-conviction relief filed by Ricardo Dargan (Applicant) on July 5, 2017, Respondent would show this Court:

I.

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Applicant was indicted at the March 2016 term of the Sumter County Grand Jury for murder and possession of a weapon during the commission of a violent crime (2016-GS-43-0378) and three counts of distribution of crack cocaine base (2016-GS-43-0376, -77, and -78).

The murder and weapons charges stem from a December 2015 incident in which Applicant and the Victim agreed to "street race" on a public road for \$500 dollars. Applicant and the Victim each gave their \$500 dollars to a third party to hold during the duration of the race. After the race (which Applicant ultimately lost), Applicant demanded his money back, brandished a firearm and fired multiple times into the ground, striking the Victim in the femoral artery. The Victim ultimately died from his wounds.¹ The crack cocaine charges all stem from

¹ The Victim underwent four surgeries in under a 24 hour time period, yet ultimately perished 57 days later from the bullet wounds he suffered from Applicant's shot.

three instances between July and August 2015, in which confidential informants with the sheriff's office purchased crack from Applicant.

Timothy Lee Griffith, Esquire. represented Applicant, and Assistant Solicitor Bronwyn K. McElveen, Esquire. of the Third Circuit Solicitor's Office, prosecuted the case. On October 18, 2016, Applicant pled guilty to a reduced charge of voluntary manslaughter and as indicted to possession of a weapon during the commission of a violent crime (2016-GS-43-0378). Applicant also pled guilty to all three counts of distribution of crack cocaine. The Honorable Robin B. Stilwell sentenced Applicant to imprisonment for concurrent terms of fifteen years for voluntary manslaughter and fifteen years for each of the three distribution charges. Additionally, Judge Stilwell sentenced Applicant to five years for the weapons charge, to be served consecutively to all the other charges, resulting in an aggregate sentence of twenty years.

Applicant filed a notice of appeal on November 15, 2016 through plea counsel Timothy L. Griffith. By Order dated January 12, 2017, the South Carolina Court of Appeals dismissed Applicant's appeal for Applicant's failure to timely serve the Notice of Appeal on Respondent as required by Rule 203(b) of the South Carolina Appellate Court Rules. State v. Dargan, S.C. Ct. App. Order Filed January 12, 2017. The Remittitur was issued on February 2, 2017.

II.

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

1. Involuntary guilty plea
2. Brady violation
3. Ineffective assistance of counsel
 - a. "That counsel, Timothy Griffith, Esq., was ineffective for not challenging the state charges against Applicant when the charge of murder or voluntary manslaughter would be a misrepresentation of the facts and vindictive prosecution."

- b. "That counsel failed to take Applicant'[s] case to trial and show the jury that the victim, David Clea own negligence was the superseding case of death, bearing his own responsibility for his death and not applicant."
- c. Applicant believes it was unreasonable for trial counsel to advise Applicant to plead guilty.²

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

III.

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

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

² See attached application for additional facts.

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness, and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial instead. See Roscoe v. State, 345 S.C.16, 20, 546 S.E.2d 417, 419 (2001); see also Richardson v. State, 310 S.C. 360, 362 426 S.E.2d 795, 797 (1993).

The record before the court shows Applicant testified at the guilty plea that he was not under the influence of drugs or alcohol, he did not suffer from any mental sickness that would affect his ability to understand his plea, and he was not promised anything or threatened or forced to plead guilty. Tr. 7-8. Applicant testified he was satisfied with his attorney's services and he had the opportunity to discuss his case as much as he needed to with his attorney. Tr. 8. Applicant was advised by the plea court that he would have ten days to appeal the sentence from that date. Tr. 9, line 10-11. Respondent submits the guilty plea transcript shows the knowing and voluntary nature of Applicant's plea. However, the allegation probably raises questions of fact that are not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing to resolve any issues of fact.

IV.

Applicant alleges that the State failed to disclose evidence in its possession in violation of Brady v. Maryland, 373 U.S. 83 (1963). "Brady requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment." Clark v. State, 315 S.C. 385, 388, 434 S.E.2d 266, 268 (1993). "A Brady claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was

suppressed by the prosecution, and (4) it was material to guilt or punishment.” Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). “Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.” Clark, 315 S.C. at 388, 434 S.E.2d at 268 (citing U.S. v. Bagley, 473 U.S. 667 (1985)). In the context of a guilty plea, a Brady violation is material “when there is a reasonable probability that, but for the government’s failure to disclose Brady evidence, the defendant would have refused to plead guilty and gone to trial.” Gibson, 334 S.C. at 525, 514 S.E.2d at 325.

Respondent submits Applicant’s allegation of a Brady violation is without merit. However, the allegation probably raises questions of fact that are not conclusively refuted by the record. Respondent requests an evidentiary hearing on this ground for relief. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

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

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386

S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

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

VI.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments *will be opposed by the State at an evidentiary hearing* pursuant to §§ 17-27-10 to -160 of the South Carolina Code

of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCPP; Mangal v. State, 421 S.C. 85, 805 S.E.2d 568 (2017). All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCPP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCPP.

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

VII.

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

[Signature on Following Page]

VIII.

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

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

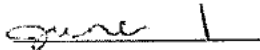
MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JULIE A. COLEMAN
Assistant Attorney General

By:



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

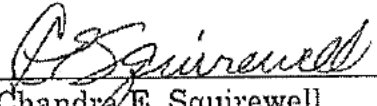
 2018

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	
	)	
	)	2017-CP-43-1253
RICARDO DARGAN, #370197	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

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

Lance S. Boozer, Esquire
 1400 Laurel Street; Suite 4-A
 Columbia, SC 29201

DATED this 1ST day of June, 2018.


 Chandra E. Squirewell
 Legal Assistant For Respondent

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF SUMTER)

COURT OF COMMON PLEAS
2017-CP-43-1253

3
4 Ricardo M. Dargan,)

5 Plaintiff,)

6 vs.)

7 State of South Carolina,)

8 Defendant.)

TRANSCRIPT OF RECORD

9 July 30, 2019
10 Sumter, South Carolina

11
12
13 B E F O R E:

14 THE HONORABLE BROOKS P. GOLDSMITH, JUDGE.
15

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

18 JAMES K. FALK, ESQ.
Attorney for the Plaintiff

19 JANELL H. GREGORY, ASSISTANT ATTORNEY GENERAL
20 Attorney for the Defendant

21
22
23
24 DEBORAH M. McCURDY, RPR
25 Official Court Reporter

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JULY 30, 2019

(WHEREUPON, the hearing began at 9:51
a.m.)

MS. GREGORY: Ricardo Dargan. May it please
the Court? Before you is Ricardo Dargan,
2017-CP-43-642. In March 2016, Mr. Dargan was
indicted by the Sumter County Grand Jury for
murder, possession of a weapon during the
commission of a violent crime, and three counts of
distribution of crack cocaine base.

On October 18, 2016, after an immunity
hearing, Mr. Dargan pled guilty before Judge
Stilwell to reduce the charge to voluntary
manslaughter and as indicted to the possession of a
weapon during the commission of a violent crime.
Mr. Dargan also pled guilty as indicted to all
three counts of distribution of crack cocaine.

Mr. Dargan was sentenced to concurrent terms
of 15 years for voluntary manslaughter and drug
offenses, and a consecutive five years for the
weapons offense, resulting in an aggregate sentence
of 20 years.

Mr. Dargan filed a notice of appeal on
November 15, 2016, which was dismissed by the South
Carolina Court of Appeals for failure to timely

1 serve the notice of appeal on Respondent as
2 required by Rule 203(b). The remittitur was issued
3 February 2nd of 2017.

4 Applicant did file a timely PCR application on
5 April 10, 2017, alleging involuntary guilty plea,
6 Brady violations, ineffective assistance of
7 counsel, specifically claiming that counsel was
8 ineffective for not challenging the State's charges
9 against Applicant when the charge of murder or
10 voluntary manslaughter would be a misrepresentation
11 of the facts and vindictive prosecution; and also
12 that counsel failed to take Applicant's case to
13 trial and show the jury that the victim's own
14 negligence was the superceding cause of death
15 bearing his own responsibility for his death and
16 not Applicant.

17 He is present today and represented by
18 Mr. Falk.

19 THE COURT: Mr. Falk?

20 MR. FALK: Thank you, Your Honor. May I just
21 be excused for a second? He thought his family
22 might be here. I just want to make sure.

23 THE COURT: That's fine. Certainly. We will
24 be at ease.

25 (Pause.)

1 THE COURT: Are you ready?

2 MR. FALK: We will call Mr. Dargan to the
3 stand.

4 THE COURT: All right.

5 (Witness approaches.)

6 THE BAILIFF: Place your left hand on the
7 Bible, raise your right hand, and state your full
8 name.

9 THE WITNESS: Ricardo Dargan.

10 THE BAILIFF: Do you solemnly swear and affirm
11 to the testimony to this Court to be the whole
12 truth, and nothing but the truth, so help you God?

13 THE WITNESS: Yes, sir.

14 THE BAILIFF: Step around, sir.

15 (Witness seated.)

16 THE BAILIFF: State your full name, and spell
17 your last name for the record, please, sir.

18 THE WITNESS: Ricardo MorteZ Dargan,
19 D-A-R-G-A-N.

20 RICARDO M. DARGAN,
21 after being duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. FALK:

24 Q Mr. Dargan, who represented you in this case?

25 A Timothy Griffith.

1 Q And what kind of communications did you have with
2 him?

3 A We talked about two or -- about three times.

4 Q And how long were you in custody prior to the date
5 that you pled?

6 A About eight months, eight or nine months, something
7 like that.

8 Q Okay. And had you received all the discovery in
9 your case?

10 A I received everything except for -- he gave me a
11 statement from S.V. the day of the
12 trial.

13 Q Okay.

14 A And with the medical records and all I got the day
15 of trial.

16 Q Okay. So were there any -- there were no
17 videotapes in this case then, were there?

18 A I didn't see any.

19 Q Okay. So just to -- can you explain sort of what
20 happened on the night of the arrest?

21 A Okay, on the -- when the whole -- how -- you want
22 me to explain the whole situation, how it
23 transpired?

24 Q Just what your -- what was -- well, I mean, you
25 testified at your self-defense hearing?

1 A Yes.

2 Q Is that correct?

3 A Yes.

4 Q And it is your testimony at the self-defense
5 hearing -- you were under oath and you were
6 swearing?

7 A Yes. To tell the truth.

8 Q And that would still be your testimony today, would
9 it not?

10 A Exactly. Exactly. I never brought a gun to that
11 scene. I never possessed a gun that day. Yeah.
12 That's the -- that's the truth. I never pulled out
13 a gun. David had the gun the whole time. When he
14 pulled the gun, me and him touselled over that
15 weapon, and that is how he got shot.

16 Q All right, let me just kind of take it in pieces
17 here. So you were friends with the victim, is that
18 correct?

19 A Yes.

20 Q And how do I pronounce his last name?

21 A Klee.

22 Q Klee?

23 A Yes.

24 Q Okay. You and Mr. Klee were friends, is that
25 right?

1 A Yes.

2 Q And y'all were out together that night, is that
3 right?

4 A Correct.

5 Q And there was quite a bit of drinking going on?

6 A Yes.

7 Q That was not uncommon for y'all?

8 A No.

9 Q Okay. What was the deal about the race?

10 A We raced. I mean, it was never any money that
11 exchanged hands, or anything like that. I
12 explained to Mr. Griffith that David owed me some
13 money before the race, like \$1,500, something like
14 that. We had just -- it was around tax season. I
15 had just let him borrow some money. And we was
16 arguing about the race. And then I told him that
17 he needed to pay my money, and all that. So he
18 told me if I was going to get my money back it was
19 going to be in blood. That's how the gun got
20 involved with the whole situation.

21 Q Because the way the return reads from the State, it
22 sounds like the notion was that y'all each put up
23 \$500, you lost the race, and then you wanted to get
24 your money back.

25 A When I got arrested, you can check, I had no money

1 on me, like \$3- or \$400. David had no money on him
2 when he went to the -- it was no money involved.
3 With the \$500, it should have been \$1,000
4 somewhere. Where it went to?

5 Q So the dispute between you and Klee?

6 A Was about a prior -- a prior dealing.

7 Q It had nothing to do with the race?

8 A Yeah, it was part of -- we had the race, and all of
9 that transpired. But it was more about the money
10 that he owed me from before.

11 Q Okay.

12 A That's why I said that I wanted my money back, and
13 all this and that.

14 Q I understand. I understand. Okay. And so your
15 testimony was that Klee pulled a gun out of the, I
16 guess his waistband?

17 A Yeah. He was trying to pull it out.

18 Q And you grabbed the gun?

19 A Yes.

20 Q So both of y'all's hands were on the gun?

21 A Exactly.

22 Q And then he got -- and the gun got discharged into
23 the gravel?

24 A Yes, concrete driveway.

25 Q One of the shots, I don't know, did it ricochet up

1 and hit his arm -- leg?

2 A Yes. I never -- when I was at trial, that's how I
3 found out. Ms. McElveen told me he got shot twice.

4 Q Uh-huh.

5 A Said he got -- a bullet went in his -- a fragment
6 went in his leg or in his ankle, or something like
7 that, and he got hit in the femoral artery.

8 Q Okay. And then he passed a couple of months later?

9 A About two months later.

10 Q Yeah, okay.

11 A And I don't know if he wrote a statement or what
12 happened. I never received that. I just remember
13 that the detective said that he said that he didn't
14 know what happened. I don't know. I never seen a
15 statement from him, or anything of that nature.

16 Q So in your discussions with Mr. Griffith, what was
17 your all's trial strategy?

18 A We were supposed to go to trial. He said we
19 weren't taking the plea, we were going to take it
20 to trial, go do a self-defense hearing. And when
21 we did the self-defense hearing, came the next day,
22 and that is when he came to me with a plea for 20
23 years.

24 Q Okay. Had there been any plea negotiations in this
25 case?

1 A Right before I went -- like a week before they
2 offered me 15 years.

3 Q Okay. So a week before the self-defense hearing?

4 A Yes.

5 Q They -- there was an offer for 15 years?

6 A Yes.

7 Q And what did you tell them about that offer?

8 A When he came to me, we spoke to him about it. He
9 talked to my mother and he told my mother, We are
10 going to go to trial, we are going to beat this.

11 I said, We are going to beat this at trial?

12 He said, Yeah, we are going to -- I feel real
13 good about this case. We need to go to trial.

14 I agreed with him. We went to trial.

15 Q But you were on trial for murder, is that correct?

16 A Yes.

17 Q And did he tell you the sentencing range for
18 murder?

19 A No.

20 Q Do you know what it is?

21 A I just knew like life or -- 30 years or life, or
22 something like that.

23 Q Thirty years to life?

24 A Yes.

25 Q So if you got a plea offer for 15, it would

1 certainly be less than the worst that you could --
2 than the best you could have gotten had you gone to
3 trial?

4 A Oh, definitely. Definitely.

5 Q And so were there any discussions about lesser
6 included offenses?

7 A No, he just said the self-defense hearing. He
8 had -- he was kind of banking on that we would go
9 to the self-defense hearing, and that was basically
10 it.

11 MR. FALK: Your Honor, may I approach?

12 THE COURT: You may.

13 BY MR. FALK:

14 Q I'm going to show you Page 12 of your -- of the
15 transcript of your plea hearing.

16 A Uh-huh.

17 Q And if you could look at Lines 10 through 12 and 21
18 through 24. Just sort of read those to yourself.

19 A (Witness complies.) Yes, I see it.

20 Q Okay. So the judge had -- prior to this time, the
21 judge had heard from the Solicitor sort of the
22 facts of the case, is that right?

23 A Uh-huh.

24 Q And you had some disputes with the facts of the
25 case?

1 A Yes.

2 Q Is that correct? And so what did you -- so the
3 Court asked you what you take exception to?

4 A Yes.

5 Q And you said, I never -- when I came to Marcia's
6 house, I never left again?

7 A Yes.

8 Q I never went and got a gun?

9 A Yes.

10 Q So what did you mean by that?

11 A Because they were testifying that I left and went
12 and got a gun. Marcia said when I came to her
13 house I never left, but she testified that when we
14 had the race, that I must have had the gun in the
15 car. But Thomas Wilson testified that I left her
16 house. And I was telling them that I never left
17 her house, I never went and got a gun, that David
18 had the gun the whole time.

19 And as far as when -- she also said that I
20 robbed him, I went in his pocket and took some
21 money from him. And I was saying I never did that.
22 I said I was owning up to, yeah, we touselled over
23 the gun and the gun went off. We were shooting --
24 we were both shooting the gun, but that was it.

25 Q So the Court asked you, The thing I'm interested in

1 the most is the allegation that you shot into the
2 ground and it had the effect of entering and
3 severing his femoral artery, meaning Mr. Klee's
4 femoral artery?

5 A Uh-huh.

6 Q Is that what happened?

7 A Yes. When me and him was tousling over the gun, I
8 wrote -- I never knew how he got shot, like as far
9 as where he got shot, in his leg, or whatever. He
10 just screamed that he got shot. You know, so we
11 were both tousling over the gun. So that is how he
12 had to actually get shot. I thought he just got
13 shot in the ankle, or whatever, you know what I'm
14 saying. But when they told me about it, they said
15 he got shot in the femoral artery. And that was a
16 major question that the judge did ask. He said, If
17 he was shooting in the ground, how did he get shoot
18 in the femoral artery?

19 Q But you never admitted, or I guess the term we use
20 here is allocuted, to the fact that you brought the
21 gun?

22 A No.

23 Q To the fight?

24 A I didn't, no.

25 Q You never -- you didn't have one with you when

1 y'all were racing?

2 A No.

3 Q And that the gun that was fired was actually --

4 A That was David's gun.

5 Q Okay. And actually there was some testimony --
6 there was some testimony about a statement that Mr.
7 Klee had made, was there not?

8 A I don't -- I don't -- I don't remember.

9 Q Was there --

10 A As a matter of fact, I remember that the officer,
11 he got on the stand, and he was saying that --
12 whatever Klee told him at the hospital, but I never
13 saw a written statement from him, I just went off
14 what the officer, Wayne DuBose, testified.

15 Q Well, do you recall at the hearing, at the
16 self-defense hearing, that one of the witnesses
17 testified --

18 A Saying that it was his gun?

19 Q That, You shot me with my gun?

20 A Exactly.

21 Q Okay. So I guess I'm trying to get to the point
22 of, you went through this self-defense hearing?

23 A Uh-huh.

24 Q And there was some conflicting testimony?

25 A Yes.

1 Q As to what happened?

2 A (Nods affirmatively.)

3 Q There certainly was conflicting testimony as to
4 whose gun shot who?

5 A Exactly.

6 Q Who brought a gun?

7 A Exactly.

8 Q What everybody was doing?

9 A (Nods affirmatively.)

10 Q So how did you get to the point that you decided
11 you had to plead?

12 A When I came to court after the self-defense
13 hearing -- we did the self-defense hearing, and the
14 judge was like, Would we have time to do all of
15 that the same day? So they was like, No, we will
16 have to do it tomorrow. So after we did the
17 self-defense hearing, we came -- he let the jury
18 go, came back to court the next morning, and that
19 is when he told me, Mr. Griffith said, They offered
20 us a 20-year plea.

21 And I was like, What are we taking the 20-year
22 plea for? My family was sitting right behind me.
23 He talked to my family, my grandmother, my mother.
24 That's why I wish they was here now. I didn't know
25 about us going to court today, so they wasn't

1 informed to be here today to testify to what he --
2 what all he said. But he told them that we needed
3 to take a 20-year plea.

4 And I was like, We came here to go to trial.
5 We started off going to trial. He told me to turn
6 down the 15 years, now he is asking me to take a
7 20-year plea with five years running for a gun that
8 is not even mine.

9 Q Okay. So your testimony is that it was his
10 suggestion a week earlier to turn down a 15-year
11 plea, is that right?

12 A Exactly. Yes. He said, We are going to go to
13 trial. He said, I feel very confident about this
14 case.

15 Q But you all were both in agreement?

16 A Yes.

17 Q To turn down the 15-year offer?

18 A Yes, I did agree with.

19 Q And he told you a week prior to this that you all
20 were going to beat this?

21 A Yes, that we were going to go to trial, I feel real
22 good about this case. He told my mother the same
23 thing, Don't worry about it.

24 Q Did he explain why he felt y'all were going to beat
25 it?

1 A He was saying I was going to get self-defense. He
2 was basically saying I was going to get the
3 self-defense.

4 Q So when you had your self-defense hearing, did he
5 tell you that, If we lose this hearing, we are
6 going to go ahead and plead?

7 A No.

8 Q I mean, was there any kind of discussion like that?

9 A No, we never had that type of discussion.

10 Q All right. So you recall pleading guilty?

11 A Yes.

12 Q And I'm sure that -- well, I mean, the judge asked
13 you all the right questions?

14 A Yes.

15 Q He asked if you were satisfied with Mr. Griffith?

16 A I remember that.

17 Q Had he done everything. Why did you answer yes?

18 A Because at the time, I felt like he really did a
19 good job. As I went -- got locked up, went to the
20 law library, started learning more about the law
21 and seeing what other avenues he could have took to
22 help me out, it was like he just -- he dropped the
23 ball.

24 Q What avenues do you think he could have taken? He
25 should have followed?

1 A Me personally?

2 Q Beg your pardon?

3 A Here come my family. They just came in.

4 (Pause.)

5 Q Can you identify who just walked in?

6 A My mother, my grandmother, my daughter, and my
7 sister.

8 Q Can you -- let's back up. What is your mother's
9 name?

10 A Cynthia Dargan.

11 Q Your grandmother?

12 A Wilhelmenia Dargan.

13 Q You said your sister?

14 A Yes, Carmella, Carmella McDaniel.

15 Q Okay. And?

16 A My daughter, Mikala Dargan.

17 Q Okay.

18 MR. FALK: Would you mind reading me my last
19 question? I'm sorry.

20 (Question read.)

21 BY MR. FALK:

22 Q Oh, yes. And so you said that you went on and did
23 some law library work, or whatever?

24 A Yes.

25 Q And you thought there was some stuff he could have

1 done for you?

2 A Yes.

3 Q What did you -- what conclusion did you reach?

4 A At the most, I feel like he could have -- we could
5 have went all the way through the trial, because I
6 pled guilty to voluntary manslaughter, got the max.
7 I think I got 20 years, which -- I got 15 years and
8 five years running concurrent -- or consecutive --
9 for a gun that wasn't mine. I think he could have
10 got -- he could have interviewed more witnesses.
11 He called a witness to the stand that the State was
12 trying to put against me, he called them as a
13 Defense witness for me.

14 Q And that is Thomas Wilson?

15 A Yes, Thomas Wilson. I couldn't -- I didn't realize
16 why he did that.

17 Q What was your concern? And this is at the
18 self-defense hearing the day before?

19 A Yes.

20 Q What was your concern about Thomas Wilson's
21 testimony?

22 A When he called Thomas Wilson to the stand, Thomas
23 Wilson testified for the State and on -- supposed
24 to be for my behalf, but everything that he
25 testified saying that he said that I went and got a

1 gun, I left the scene and, you know what I'm
2 saying, he was a witness to hurt me. He wasn't a
3 witness to help try to bring forth the facts of the
4 case from my point of view. He was a witness
5 basically for the State. So he called a witness
6 against me as a -- and he was my defense attorney.

7 Q He testified that he did not see Klee having a gun,
8 did he not?

9 A Yes. So I feel like that really prejudiced --
10 like, it just -- it hurt me bad for him to call the
11 witness against me that was supposed to help me in
12 the case, and you call -- you call him? Why? I
13 don't understand why he called him to the stand.

14 Q Okay. Do you understand what would happen if the
15 judge were to grant your PCR relief today? You
16 would go back to trial in Sumter County?

17 A Yes. Yes.

18 Q And so this -- and so you would be back facing a
19 murder charge, is that right?

20 A Uh-huh.

21 Q And so --

22 A And the truth will come out. Witnesses will get
23 interviewed properly. I will get a proper
24 attorney. And the facts of the case will be
25 proven. That's all I need is a chance to prove

1 that I was innocent in that case and that they
2 dropped -- they railroad me on this. I never
3 brought a gun to the scene. I'm telling you I
4 never brought a gun to the scene. They know it was
5 his gun. They got witnesses out there that said it
6 was his gun. And now they just -- people that just
7 was mad about the situation that happened, they
8 turned around and went with the prosecutor and came
9 out and said I had a gun when everybody knows the
10 true facts of the case that I never brought a gun
11 to the scene. I never shot David. Me and him was
12 best friends. I never intentionally wanted none of
13 this to happen. And one of the witnesses say,
14 Marcia say she know it wasn't intentional. So why
15 would I be charged with murder and one of the
16 witnesses knows it was no malice or anything with
17 this case and that nothing was intentional about
18 it? David pulled that gun out, died two months
19 later. He had a chance to come out. If he wanted
20 to say that I pulled the gun out on him, that man
21 had a chance to speak to law enforcement and tell
22 them that I came there with a gun to shoot him.
23 That never happened.

24 MR. FALK: I have no further questions.

25 THE COURT: Cross-examination?

1 MS. GREGORY: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MS. GREGORY:

4 Q Mr. Dargan, how many times did you say you met with
5 Mr. Griffith?

6 A About two -- about three times. I'd say about
7 three times.

8 Q About three times?

9 A Yes, ma'am.

10 Q And in those three times, you reviewed your
11 discovery with him?

12 A Yes. When he came -- he had the paper with all the
13 like prongs on it telling me what it was all in the
14 case, and everything.

15 Q Okay. What didn't you get in your discovery? You
16 have a Brady violation alleged in your application.

17 A I didn't get -- when I got to court, that's when I
18 got my -- the medical records. That's when I got
19 the medical records from court. And that is when I
20 got S.V. i's written statement, the

21 morning that we went to our self-defense hearing.

22 Q All right. During your guilty plea, do you recall
23 waiving your constitutional rights?

24 A Yes, ma'am.

25 Q And do you recall telling the judge that nobody

1 forced you or coerced you to plead guilty?

2 A Yes, nobody forced me or coerced me. It just -- I
3 leaned off his understanding of the case, because
4 it is just like me walking in the courtroom now, my
5 daughter just came in, she knows nothing about the
6 proceedings or anything that is going on in here.
7 We blind to what is going on. So I'm leaning on
8 his understanding, because this is what we does.

9 Q Do you recall telling the judge you wish to plead
10 guilty to each of your charges?

11 A Yes.

12 Q And do you recall telling the judge that you wish
13 to plead guilty of your own free will --

14 A Yes.

15 Q -- because you were, in fact, guilty? Even after
16 you explained the facts that you took issue with,
17 you did tell him you wanted to plead guilty?

18 A The main facts I took issue with were, I never
19 brought a gun to the scene, so if I never brought a
20 gun to the scene --

21 Q Right, but you told the judge that?

22 A Yes.

23 Q And still pled guilty, correct?

24 A Yes, ma'am.

25 Q And you told the judge you had enough time to

1 discuss your case with your attorney?

2 A Yes.

3 Q And you said that he didn't call any witnesses.

4 Did you give him any witnesses --

5 A Yes.

6 Q -- to contact?

7 A Yes.

8 Q You did?

9 A Yes, ma'am.

10 Q And he never contacted them?

11 A He contacted -- he contacted Valencia Heyward.

12 Q I couldn't hear you.

13 A Valencia Heyward, which is Marcia Heyward's mother.

14 He contacted her. I don't think he was able to get

15 in touch with her. So that's when me and him had

16 the conversation about getting a private

17 investigator involved. And that's when

18 Ms. McElveen said if I wanted a private

19 investigator to get involved with the case, that we

20 would definitely be going to trial.

21 And I said, Okay, I'm cool with that. I wrote

22 it in my letter. I wrote Mr. Griffith a letter

23 stating what he told me. I said, I'm cool with us

24 getting an investigator to go to trial as long as

25 the facts of the case come out.

1 Q So then why did you enter a guilty plea?

2 A Because when I went to trial, he called a witness .
3 against me that was for the State.

4 Q Because he never talked to any of the witnesses
5 that you gave him, right?

6 A He told me that he contacted Valencia Heyward.
7 He -- I mean, I can't speak exactly who he
8 contacted. He is right there. He will be able to
9 tell you who all he talked to.

10 Q Right. We will get to his testimony.

11 A Yes.

12 Q But what other witnesses did you give him besides
13 Ms. Heyward?

14 A Randy Johnson and Shawn, Dennis McFadden.

15 Q And do you recall telling the judge that your
16 attorney had answered all of your questions and
17 that you were satisfied with his services? Do you
18 recall that?

19 A That's what it says?

20 Q Yes, sir. I can give you the transcript if you
21 would like to see it.

22 A Yes, ma'am.

23 (Pause.)

24 MS. GREGORY: It is Page 8, Your Honor, for
25 your reference.

1 May I approach, Your Honor?

2 THE COURT: You may.

3 BY MS. GREGORY:

4 Q And it is down here. You can read it.

5 A Which number you said it was?

6 Q Start here and go down.

7 A Yes, ma'am, I remember that.

8 Q Okay. You remember that you said you were
9 satisfied with his services and he had answered all
10 of your questions?

11 A Yes, ma'am.

12 Q Okay. And do you recall thanking your attorney
13 during the plea hearing?

14 A Yes, I did. But, as I said earlier, if I don't
15 know what is going on and somebody is advising me,
16 I can think you doing a good job right now fixing
17 my car, and when I leave and get up the street, I
18 thank you and everything, when I get up the street
19 the car broke down. I mean, so that is how exactly
20 how I feel, like the joke is on me, because he
21 really didn't do a good job. I really put my faith
22 in him thinking he did do a good job. And when I
23 left and got in the courtroom, I mean, got into the
24 books and started reading, that's when I realized,
25 Man, nah, he didn't -- he didn't do a good -- he

1 didn't do what he supposed to do. I wish I could
2 go back and say that with the knowledge I have now,
3 which is why I'm here to say, No, he didn't do what
4 he was supposed to do.

5 Q Do you recall the judge explaining to you that if
6 you actually shot the ground, which you admitted
7 during the guilty plea that you did, you said you
8 shot the gun?

9 A Yes.

10 Q Several times?

11 A Yes, we both had the gun.

12 Q And it has an effect of killing somebody, that you
13 were at the very least guilty of manslaughter? Do
14 you remember him telling you that?

15 A Yes, ma'am.

16 Q And that was during your guilty plea, right?

17 A Yes, ma'am.

18 MS. GREGORY: All right. No further
19 questions, Your Honor.

20 THE COURT: Any redirect?

21 MR. FALK: No redirect.

22 THE COURT: You may step down, sir.

23 THE WITNESS: Yes, sir.

24 (Witness steps down.)

25 MR. FALK: Your Honor, may I have a moment to

1 talk?

2 THE COURT: You may.

3 MR. FALK: Thank you.

4 THE COURT: We will be at ease a few moments.

5 (Pause.)

6 MR. FALK: Thank you, Your Honor. We will
7 call Cynthia Dargan to the stand.

8 THE COURT: All right.

9 MS. GREGORY: Your Honor, we would object.
10 I'm not really sure these witnesses are relevant as
11 they are not part of the case. I'm not sure what
12 the relevance of these witnesses are.

13 MR. FALK: I think the relevance is, he -- it
14 is whether -- I mean, it is how we go from this
15 case, that it looks like it is an accident,
16 involuntary manslaughter case, all of a sudden
17 pleading guilty to voluntary manslaughter. And my
18 client testified as that there were conversations
19 between Mr. Griffith and his family about the case
20 and why they were turning down a plea offer. And
21 all I want to do is have them sort of corroborate
22 that testimony. I'm not going to have them talk
23 about the -- I don't think they know anything about
24 the underlying facts that they would know
25 first-hand, but they would know something about

1 conversations and the recommendations that his
2 lawyer was making.

3 MS. GREGORY: Your Honor, if it is limited to
4 just the involvement with Mr. Griffith, then that
5 would be fine, as long as it is only limited to
6 that.

7 THE COURT: I think that is what we have been
8 told. We'll see. Under those circumstances, we'll
9 permit it.

10 MR. FALK: Thank you.

11 THE COURT: Overruled. So there is not an
12 objection anymore?

13 MS. GREGORY: No, sir.

14 (Witness approaches.)

15 THE BAILIFF: Place your left hand on the
16 Bible, raise your right hand, and state your full
17 name.

18 THE WITNESS: My name is Cynthia Dargan.

19 THE BAILIFF: Do you solemnly swear and affirm
20 to the testimony to this Court to be the whole
21 truth, and nothing but the truth, so help you God?

22 THE WITNESS: Yes, sir.

23 THE BAILIFF: Step around, please, ma'am.

24 (Witness seated.)

25 THE BAILIFF: State your full name and spell

1 your last name for the record, please, ma'am.

2 THE WITNESS: My name is Cynthia Dargan,
3 D-A-R-G-A-N.

4 CYNTHIA DARGAN,
5 after being duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. FALK:

8 Q How are you related to Ricardo Dargan?

9 A That's my son.

10 Q Okay. You may have been walking into the courtroom
11 when he was testifying, but at some point in his
12 testimony he was talking about conversations that
13 his lawyer had with his family.

14 A Yes, sir.

15 Q So did you have conversations with Mr. Griffith?

16 A Yes, I did.

17 Q And, without saying specifically what Mr. Griffith
18 said, because he can say that, what was your
19 recollection about what the trial strategy might be
20 in this case?

21 A My recollection was that it was just like an open,
22 you know, come in, and the case wasn't going to be
23 a long case. He said that the case would be an
24 open and door -- open and shut case.

25 Q So was he ever trying to convince you to talk to

1 your son to take a plea?

2 A No.

3 Q And after your conversations with him, did you feel
4 confident about your son's --

5 A I felt very confident.

6 Q And was that partially based on the confidence that
7 Mr. Griffith had?

8 A Yes. He was very confident.

9 Q Did you take part in any kind of conversations on
10 the second day after the self-defense hearing when
11 he -- when your son pled guilty?

12 A Did I do what?

13 Q Did anybody consult with you or talk with you when
14 your son went in to plead guilty on the second day?

15 A Yes. We went in the room, went back there, and we
16 talked. And the understanding I got, that
17 everything was -- would be fine. Everything was
18 going to be just fine.

19 Q That he was going to go in and plead?

20 A He was going to go in and we were going back home
21 with him.

22 Q Okay.

23 A That he was going back home with us. That was my
24 understanding. That was just an open -- it wasn't
25 going to be no long trial or anything, it was just

1 going to be an open -- in and out. That's my
2 understanding.

3 Q Was anything explained to you that if he was found
4 guilty for murder, he would go away for at least 30
5 days day-for-day?

6 A Well, I think he did say something like that.

7 Q Okay. And he could go away for life?

8 A Yes, sir.

9 MR. FALK: No further questions.

10 THE COURT: Cross-examination.

11 MS. GREGORY: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MS. GREGORY:

14 Q Good morning, Ms. Dargan.

15 A Good morning.

16 Q Just a couple of questions. Did you say that they
17 did discuss a plea with you or they did not discuss
18 a plea with you?

19 A That who discussed a plea with me?

20 Q Mr. Griffith. I'm sorry, Mr. Griffith.

21 A Mr. Griffith called us -- me and family in the room
22 right there, and he stated that he feel like this
23 was a good case, he got everything under --
24 everything was great, and he feel like it wouldn't
25 have been no problem, we was going to have --

1 Q Right. But was there a plea ever involved? Did he
2 ever --

3 A He didn't --

4 Q He never discussed a plea?

5 A He never discussed it with me.

6 Q Okay. Were you always involved in the
7 conversations Mr. Griffith had with your son? Were
8 there conversations outside of your presence?

9 A Outside of my presence. Because he -- we talked
10 when I was on my lunch break at work.

11 Q Sure. So your son and Mr. Griffith had meetings
12 when you weren't there?

13 A I'm not sure what they had.

14 Q Okay. All right.

15 MS. GREGORY: No further questions, Your
16 Honor.

17 MR. FALK: No redirect.

18 THE COURT: All right, thank you, ma'am. You
19 may step down.

20 (Witness steps down.)

21 THE COURT: You may call your next witness.

22 MR. FALK: I would call trial counsel to the
23 stand, Mr. Griffith.

24 (Witness approaches.)

25 THE BAILIFF: Place your left hand on the

1 Bible, raise your right hand, and state your full
2 name.

3 THE WITNESS: Timothy L. Griffith.

4 THE BAILIFF: Do you solemnly swear and affirm
5 to the testimony to this Court to be the whole
6 truth, and nothing but the truth, so help you God?

7 THE WITNESS: I do.

8 THE BAILIFF: Step around, sir.

9 (Witness seated.)

10 THE BAILIFF: State your full name and spell
11 your last name for the record, please, sir.

12 THE WITNESS: Timothy L. Griffith,
13 G-R-I-F-F-I-T-H.

14 TIMOTHY L. GRIFFITH,
15 after being duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. FALK:

18 Q Mr. Griffith, were you appointed to this case or
19 were you retained?

20 A I was appointed.

21 Q Okay. Is that because there was a conflict?

22 A Yes.

23 Q Okay. So you also have a private criminal defense
24 practice?

25 A I do.

1 Q Okay. Mr. Dargan and his mother both testified
2 that prior to the self-defense hearing you
3 certainly were very optimistic about this case. Is
4 that an accurate reflection?

5 A I was very optimistic.

6 Q Okay. When did that optimism change?

7 A After the hearing to determine whether it was
8 self-defense.

9 Q The thing that is not in any record, and I didn't
10 know if possibly there was some type of
11 conversations that you had with the Court, but was
12 there any kind of discussion with the judge as to
13 what types of charges he might be considering?

14 A We didn't discuss it with the judge, but the
15 prosecution and I talked about -- I had -- she had
16 made an offer about voluntary manslaughter early in
17 our communications, and I had been trying to
18 convince her to go with involuntary manslaughter,
19 but that, barring that, we were going to proceed
20 with a self-defense defense. And we had discussed
21 asking the judge to include in his instructions the
22 voluntary manslaughter and involuntary
23 manslaughter.

24 Q But there was no -- I mean, you know how sometimes
25 trials go, you go back and you talk to the judge in

1 chambers, and especially after this self-defense
2 hearing, that was pretty much the whole case, that
3 self-defense hearing, is it not? I mean, as far as
4 all the witnesses were called who were going to
5 wind up testifying at trial as to how Klee got
6 shot, is that accurate?

7 A I believe so.

8 Q And the judge would have heard -- would have known
9 pretty much what the State's case was going to look
10 like after sitting through the self-defense
11 hearing, is that accurate?

12 A That is accurate.

13 Q Okay. But there was no discussion with -- I just
14 want to make sure, there was no discussion with the
15 Court as to whether or not the judge would consider
16 charging an accident?

17 A No, there was no discussion with the Court, that's
18 correct.

19 Q Okay.

20 A I don't believe there was -- I don't remember
21 exactly -- but I don't think so.

22 Q You would agree that -- would you agree that if the
23 trial played out exactly like the self-defense
24 hearing played out, would you agree there is
25 reasonable doubt as to whether or not Mr. Dargan

1 had any malice?

2 A There may have been doubt as to whether he had
3 malice, that's correct. And actually I was
4 prepared to go to trial. I've got my trial
5 notebook here with me that I had already prepared
6 ready for trial. And he and I discussed the fact
7 that we would ask the judge for an instruction for
8 involuntary manslaughter, because of course the
9 self-defense had already gone through and we had
10 lost that motion. Then, but, I was still
11 optimistic that we may be able to get a voluntary,
12 I mean, an involuntary. Then I talked to Bronwyn
13 about it and asked if she was still making the
14 offer for voluntary. I discussed with him that our
15 chances at trial were that he could be found guilty
16 of murder, or he could be -- the judge -- if the
17 judge would go along with the instructions for
18 voluntary and involuntary, that he could be found
19 guilty of one of those. But I said, of course, you
20 know, with a jury, we don't know what the jury is
21 going to do. I said, listening to the testimony
22 myself, I said, the people all sounded very
23 credible and believable, but that it was up to him,
24 it was always up to him, and that I would love to
25 go to trial because I like going to trial.

1 Q The standard for self-defense in -- for a
2 self-defense hearing is preponderance, is it not?

3 A Yes.

4 Q Do you think that you still could have gotten an
5 instruction on self-defense had this case gone to
6 trial and the witnesses testified as they did?

7 A I don't think I could have.

8 Q What are the four factors on self-defense that you
9 had concerns about?

10 A Well, I had been concerned because everyone had
11 testified that he went to get a gun. And,
12 secondly, he was the -- he had testified when he
13 was on the stand that the two of them were fighting
14 over the gun. It wasn't a clear self-defense. It
15 was plausible he could have gotten involuntary, but
16 I didn't think self-defense would work.

17 Q Well, what about the statement that was attributed
18 to Mr. Klee, that one of the witnesses was going to
19 testify that Mr. Klee said, You are shooting me
20 with my own gun, or, I got shot with my own gun?

21 A I had tried to contact all the witnesses. And, in
22 fact, I had talked to his mom about witnesses and
23 potential witnesses and tried to contact the people
24 that he gave me, a list of names. And some of them
25 wouldn't talk to me. And the one that did said,

1 I'm just going to tell the truth. And so, you
2 know, I just depended upon them telling the truth.
3 But I never -- I forget the gist of your question.
4 Somebody is going to testify, You shot me with your
5 own gun. Mr. Dargan had told me that, but he was
6 the only person I knew of that had told me that.

7 Q Do you have a copy of the pretrial transcript?

8 A No.

9 MR. FALK: Can I approach?

10 THE WITNESS: Sure.

11 THE COURT: Certainly.

12 BY MR. FALK:

13 Q If you can just sort of acquaint yourself to that
14 testimony on Page 6 and 3 as to who was testifying.

15 A You would like for me to read it?

16 Q Well, I'm just -- because I am going to ask you
17 some questions about it.

18 A Okay. Yes, I have read it.

19 Q So who was Shamar McKenzie?

20 A He was one of the witnesses he told me was present
21 at the case -- at the time.

22 Q And did that witness testify that Mr. Klee said,
23 You shot me with my own gun?

24 A It says that on the transcript, yes.

25 Q Okay. What was the explanation -- I mean, so what

1 is the theory that --

2 A According to what I had talked to Mr. Dargan about
3 prior to this self-defense hearing, the reason we
4 went forward with the self-defense hearing is he
5 told me the same story all along, that Mr. Klee had
6 pulled out the gun. But at the hearing, the
7 witnesses said that Mr. Dargan went back to his car
8 and got the gun. So I had -- you know, I was
9 believing everything he said and we were prepared
10 to go forward with what he said. And when he --
11 when we went through the self-defense hearing,
12 again, I spoke with him and told him that, Well,
13 all these people are going to testify to these same
14 things at the hearing, but it is a matter of
15 whether the jury believes you or believes what they
16 are going to testify about. And, actually, the
17 people that testified were the list of people that
18 he had given me as witnesses, and so, you know,
19 that left me with no other witnesses. So I told
20 him that, you know, we are taking our chances on
21 whether the jury believes you or believes them.

22 Q But that is corroboration? That statement does
23 corroborate Mr. Dargan's testimony that Klee pulled
24 out the gun and he was trying to stop from being
25 shot by the gun and they had both hands on the gun?

1 A It corroborates the fact that Mr. Klee owned the
2 gun.

3 Q Well, and then, Shoot me with my own gun?

4 A I have no idea what Mr. Klee was saying.

5 Q Okay.

6 A He is -- I mean, what he meant by that.

7 Q Okay.

8 A I have no idea.

9 Q And then you called Mr. Wilson to the stand as one
10 of your witnesses?

11 A I forget the name of the guy, but it was one of the
12 people that he told me --

13 Q Right.

14 A -- would be a witness.

15 Q Did you talk to him?

16 MR. FALK: May I grab my transcript back?

17 THE COURT: Certainly.

18 BY THE WITNESS:

19 A He was one of the guys that told me he was just
20 going to tell the truth.

21 Q Yes. And so you called -- did you talk to Thomas
22 Wilson before putting him on the stand?

23 A I believe I contacted him, and he didn't really
24 want to talk to me, but he said he was just going
25 to tell the truth.

1 Q Okay. What was your goal in calling him as a
2 witness?

3 A Because Mr. Dargan had told me that he was going to
4 testify to the facts as Mr. Dargan had given them.

5 Q It was not helpful when he testified that -- when
6 Mr. Wilson testified that he never saw Klee with
7 the gun, is that accurate?

8 A It was not helpful at all.

9 Q Not only that he did not see him that night with a
10 gun, but he went on and testified that he had never
11 seen him with a gun, is that not correct?

12 A I don't recall his exact testimony, but it was not
13 helpful to my client.

14 Q I mean, it is in the record if you just like at
15 Page 42, I think.

16 A Page 42?

17 Q Or thereabouts.

18 A Where you have got underlined?

19 Q Can I -- let me -- may I approach?

20 A You need to point it out.

21 Q I'm going to show you Page 49.

22 A Down here, Mr. Wilson?

23 Q Yes.

24 A Have you ever seen Mr. Dargan with a gun?

25 Yes, when he came back. He left and came back

1 and he started down to the ground.

2 Q Anything else to say he had never seen Mr. Klee
3 with a gun?

4 A Reading on.

5 Q I apologize. Let me find it. I thought I had
6 located it.

7 A Well, here is where he is talking about Mr. Dargan
8 with the gun. Well, I can tell you it was not very
9 helpful at all.

10 Q Right here. Did you see -- I'm looking at Line 7
11 on Page 49. Did you see Mr. Klee have a gun that
12 night?

13 A Okay. And he testified that he had not.

14 Q And then further on he was asked whether or not he
15 was ever seen with a gun, is that correct?

16 A And he testified that he had not seen him with a
17 gun.

18 Q Okay. And that is on Page 49?

19 A Yes.

20 Q Now, was there a plea offer made for 15 years
21 earlier?

22 A She had offered for him to plead to voluntary
23 manslaughter. I don't think that she gave a number
24 at the time. And so there was an offer made for
25 voluntary manslaughter, which carries like up to

1 25, I think.

2 Q What is your recollection of your discussions with
3 Mr. Dargan about that plea offer?

4 A I told him about the plea offer, of course, and we
5 discussed it. I discussed the difference between
6 that and murder as to what the possibilities are.

7 At that time, of course, we were -- the story
8 he was telling me, I was right on board with it and
9 thought that there was no reason to accept that
10 offer, that we should go forward with the
11 self-defense. I mean, if she were to come up with
12 something a whole lot less, like involuntary, which
13 carries only up to five, because I was concerned
14 that at trial it might turn out that it was at
15 least involuntary. But with the self-defense, we
16 thought we would go forward with that first.

17 Q And it is fair to say that when you are going back
18 to Mr. Wilson, when he testified, you did not know
19 what he was going to say?

20 A I didn't know for certain what he was going to say,
21 no. I thought I knew what he was going to say
22 because Mr. Dargan had told me that he knew what he
23 was going to say and that he was going to give
24 exactly the same story that Mr. Dargan gave me.

25 Q And your testimony as to why you didn't think you

1 could get a self-defense instruction was the
2 evidence by some of the witnesses that Mr. Dargan
3 went and brought the gun to the altercation?

4 A I didn't think that the judge would go along with
5 it. I mean, I was the -- I'm always going to ask
6 the judge for everything I can try to get, but I
7 don't believe I would have gotten one. But I
8 didn't ask the judge because we never got to that
9 point of asking the judge for instructions. I was
10 discussing asking the judge for instructions with
11 Bronwyn, but we never got to that point.

12 Q So did you recommended that he take this plea offer
13 of 20 years?

14 A No. I told him that it was up to him, I cannot
15 make a recommendation, it is not my life. I
16 said -- I always tell my clients that I'm perfectly
17 happy to go to trial, and I give them an opinion.
18 I told him that there was a chance he could be
19 found guilty of the manslaughter, voluntary
20 manslaughter, and that would be up to 25 years, but
21 there was a chance he could be found guilty of the
22 involuntary, and then there was a chance he could
23 be found not guilty. And I left it up to him to
24 make that decision; whereas, though, she had made
25 an offer then at that time. I believe she made an

1 offer to recommend 15 years. I don't remember if
2 the judge just gave him 15 or if she made a
3 recommendation, I don't remember, but she made an
4 offer for him to plead to voluntary. And so he
5 decided he would take it.

6 Q Is it accurate that Mr. Klee was in the hospital or
7 was -- it was almost two months after the shooting
8 that he passed?

9 A As far as I know, he -- it was a couple of months
10 after he passed, at least a month. I don't
11 remember how long.

12 Q And in all that time, did Mr. Klee ever make a
13 statement incriminating --

14 A The way I understand it, --

15 Q -- Mr. Dargan?

16 A -- he never made a statement as to who was present
17 or who shot him. That's the way I understood it.
18 However, there were other witness there.

19 Q But that would have been something that you could
20 have brought out with the case agent when he was
21 testifying, that the victim never made a statement?

22 A We definitely would have brought that out,
23 absolutely. They were very good friends, actually.

24 Q So the offer that was given about a week prior to
25 the self-defense hearing, you said that you

1 recommended that he not take it, or you agreed that
2 he not take it?

3 A I always leave it up to them as to whether they
4 want to take it or not. He didn't want to take it.
5 And I said, That's fine, I'm glad that we'll go
6 forward, I think that we -- I thought we had a real
7 good chance at the self-defense hearing because of
8 what -- the story he had told me.

9 Q And why did -- then on the day he pled guilty, why
10 did you think he no longer had a good chance?

11 A Based on the testimony, if they were going to
12 testify to the same thing, that, you know, he went
13 and got the gun, then it would have been a toss of
14 the coin as to whether the jury believed him or
15 believed them. And they were very credible. Very,
16 very credible witnesses.

17 Q Because there was testimony, one of the witnesses,
18 I guess, is it possibly Marcia Heyward, said he
19 never left and came back?

20 A I don't recall.

21 Q Let me show you Page 61. Do you have my transcript
22 up there?

23 A Yes.

24 Q Yes, look at Page 61, Line 5.

25 A Line 5 on the left or on the right. There it is.

1 I had asked him the question evidently, and he
2 said, no, he never left.

3 Q So some witnesses -- did you not feel that that
4 witness was -- you said that witnesses had
5 credibility?

6 A They seemed very credible, yes.

7 Q Here is a witness saying that he never left?

8 A That's what the transcript says. But, I mean,
9 given the complete testimony of all the people,
10 that didn't seem good. And I didn't make the
11 decision that he would be denied the motion. I was
12 working hard to try and get the motion through that
13 it was self-defense. The judge made the decision
14 that it did not fall under self-defense.

15 I mean, there is certainly some positive
16 aspects that -- I was not afraid to go forward. I
17 was concerned as to our chances, whether it would
18 be very high chances of being found innocent, and I
19 told him as much.

20 Q And there was plenty of doubt?

21 A There was doubt. I was prepared to go forward with
22 the trial.

23 MR. FALK: I have no further questions.

24 THE COURT: Cross-examination.

25 MS. GREGORY: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. GREGORY:

Q While it is fresh in your mind, I'm going to just revisit the Page 61. That was the testimony that Mr. Falk just showed you. And I'm going to show you, that same witness testified a little bit earlier in her statement --

MS. GREGORY: May I approach, Your Honor?

THE COURT: Certainly.

BY MS. GREGORY:

Q A little earlier in her testimony. This was during her direct cross-examination. Can you say what she --

A It says, Ricardo went and got that gun and brought that gun to my house.

Q Okay. So there was testimony like conflicting indicating that he left from that same witness, correct?

A Yes.

MS. GREGORY: And, I'm sorry, Your Honor, may I approach again?

THE COURT: You may.

BY MS. GREGORY:

Q She never said that he never left her house. What did she say in response to your question?

1 A Not to my knowledge.

2 Q Okay. So it wasn't that she was confident that he
3 never left the residence, right?

4 A That's correct.

5 Q I'm going to backtrack a little bit just to get
6 some preliminary things on the record. How long
7 have you been practicing law?

8 A Since 2008, which is -- I guess it is coming on 11
9 years.

10 Q All right. And how much of that has been in
11 criminal law?

12 A Probably 75 to 85 percent.

13 Q Okay. And you said you were appointed in this
14 case?

15 A I was.

16 Q And did you file Rule 5 and Brady motions?

17 A Absolutely.

18 Q Mr. Dargan has alleged some Brady violations here.
19 Did you receive everything from the State?

20 A I did. I was appointed March 24th, and on
21 March 26th we sent -- I believe the 26th -- we sent
22 letters asking for the discovery. We asked for all
23 of his discovery. And we were given all of his
24 discovery pretty quickly. We got the discovery,
25 and on, let's see, on March 31st I copied the

1 discovery to take to give him a copy of it. And on
2 that same day, March 31st, we had a preliminary
3 hearing with him where I handed him his copy of his
4 discovery.

5 Q Okay. And you reviewed that with him?

6 A I then reviewed that discovery with him. I visited
7 him in the jail, it looks like a total of eight
8 times.

9 Q Okay. So you met with him at least eight times
10 during your representation?

11 A And talked with him on the phone from the jail many
12 other times.

13 Q Okay. Were you his only attorney for this case?

14 A I believe so.

15 Q Okay. Did you explain the potential sentences he
16 was facing on each of those charges, including his
17 drug charges?

18 A Absolutely. I went over his charges to the
19 potential that each one carried. I went over the
20 discovery with him in detail. We sat down in his
21 jail cell and we went over it in person. And then
22 we had several discussions and a couple of letters.

23 Q And did you review his version of the facts?

24 A Absolutely.

25 Q Okay. And you keep referring during your direct

1 examination to his story. At some point did you
2 not believe his story?

3 A There was never a point where I didn't believe his
4 story.

5 Q Okay.

6 A I'm kind of gullable that way, maybe.

7 Q Well, what do you mean by gullable? Do you
8 think --

9 A No, I was giving him every benefit that he was
10 telling me the truth. I tell you what, he is a
11 very personable young man. He came across to me
12 like somebody who was remorseful as to what had
13 happened. He was very good friends with Mr. Klee,
14 who was his good friend, and that -- I believed all
15 along that this was just a horrible circumstance of
16 accident, if you will, and that neither of them
17 really meant to hurt each other. But I believed
18 him when he told me that Mr. Klee pulled out the
19 gun.

20 Q And you had an immunity hearing because you
21 believed that story?

22 A Absolutely.

23 Q Did your impression of his story change after the
24 immunity hearing?

25 A Well, the witnesses, as I said, were very, very

1 credible.

2 Q Okay.

3 A And because they were credible, I did discuss with
4 him the fact that the jury is going to hear them
5 and is going to hear him.

6 Q Okay. And what was the conversation after the
7 immunity hearing regarding the pleas?

8 A Right after the immunity hearing, I approached
9 Ms. McElveen about -- and asked her if the offer
10 for manslaughter was still open. In the meantime,
11 during the course of this time before the trial, I
12 had been trying to convince her that it was at the
13 most involuntary manslaughter, but I couldn't get
14 her to go along with that.

15 Q Right.

16 A And so she said, Yes, that offer is still open.
17 And in the mean -- and so I discussed with him that
18 the offer was still open --

19 Q Okay.

20 A -- if he wanted to take it, but that, of course,
21 there was an opportunity for trial.

22 Q Okay. And was it ever disputed that the victim
23 owned the gun? Wasn't that the State's theory,
24 that the victim did own the gun?

25 A I don't recall what the State's theory of that was.

1 Q Okay.

2 A Mr. Dargan had always told me that it was his gun.

3 Q Mr. Dargan told you that it was whose gun?

4 A Mr. Klee's gun.

5 Q Mr. Klee's gun. Okay. Now, did he provide you
6 witnesses?

7 A He gave me a list of people that would testify on
8 his behalf. And I tried reaching out to many of
9 them. In fact, I have got in my notes that I
10 called his cousin a possible witness, talked to his
11 mother about potential witnesses. I talked to a
12 Valencia Heyward, a potential witness. And then I
13 talked with some other folks, tried to get to talk
14 to them, and most of them wouldn't talk to me.

15 Q Okay. And Mr. Wilson was part of the witnesses
16 that he gave you?

17 A List.

18 Q And if you had not called Mr. Wilson, would the
19 State have called Mr. Wilson?

20 A He was on the State's witness list.

21 Q Okay. Now, there is an allegation regarding
22 ineffective assistance of counsel for not
23 challenging the State's charges against him because
24 it is a misrepresentation of the facts. Did you
25 discuss the elements of the charges with

1 Mr. Dargan?

2 A Yes, I did.

3 Q And did you feel like those charges fit the facts
4 according to the State's evidence?

5 A Well, the State was charging murder, and I didn't
6 think that it fit murder.

7 Q Okay.

8 A I did think that it could possibly fit either
9 manslaughter or involuntary.

10 Q Okay. And you went over that with him?

11 A Yes.

12 Q And at the -- was Mr. Dargan's testimony at the
13 immunity hearing consistent with his admission at
14 the guilty plea?

15 A No. No.

16 Q What was inconsistent about it?

17 A Well, at the immunity hearing, he testified to the
18 same story that he told me.

19 Q Sure.

20 A And then afterwards he was asked -- when Bronwyn
21 gave the statement of the facts, he was asked if
22 those facts were true, and he said yes.

23 Q Okay.

24 A And prior to that, he had apologized to me for
25 having not been truthful with me.

1 Q He apologized to you on the record?

2 A No, back there.

3 Q Okay. He apologized for not being truthful?

4 A Yes.

5 Q Mr. Dargan has also alleged that his case should
6 have been taken to trial to show that the victim's
7 own negligence caused the death. Did you think
8 that was a component to his case?

9 A In our defense in the -- my theory of the case, the
10 victim was negligent in my theory of the case.

11 Q Sure.

12 A Based on what I found out. And in looking at the
13 hospital stuff, it didn't really say that much
14 about him taking care of himself. My thought was
15 he wasn't taking as good of care of himself as he
16 should have. I would have used that in the trial.
17 I found out coming close to the trial that he
18 actually had been to the doctor on times he was
19 supposed to, but I was still going to use that in
20 the case because, even if he went to the doctor,
21 that doesn't mean that he was totally taking care
22 of himself.

23 Q Okay. And you discussed that with him?

24 A Yes.

25 Q And he still chose to plead guilty?

1 A Yes.

2 Q Did you believe it was in his best interest to
3 plead guilty?

4 A At that time, I did think that it was in his best
5 interest because that is what he wanted. I was
6 perfectly willing to go to trial, but I didn't
7 think his chances at trial would be that he would
8 be exonerated. I did not think there was any
9 chance of that, but -- based on their testimony.
10 And so I thought it was in his best interest to
11 take a lesser than 25 years.

12 Q Okay. And whose decision was it to take that plea?

13 A His.

14 Q Would you have taken this case to trial?

15 A Absolutely. I love trials.

16 MS. GREGORY: No further questions, Your
17 Honor?

18 THE COURT: Redirect?

19 MR. FALK: No redirect.

20 THE COURT: Thank you, sir. You may step
21 down.

22 THE WITNESS: Thank you, Your Honor.

23 (Witness steps down.)

24 MR. FALK: We have no further witnesses.

25 THE COURT: The Applicant rests.

1 MS. GREGORY: The State would call Bronwyn
2 McElveen.

3 (Witness approaches.)

4 THE BAILIFF: Place your left hand on the
5 Bible, raise your right hand, and state your full
6 name.

7 THE WITNESS: Bronwyn McElveen.

8 THE BAILIFF: Do you solemnly swear and affirm
9 to the testimony to this Court to be the whole
10 truth, and nothing but the truth, so help you God?

11 THE WITNESS: I do, yes, sir.

12 THE BAILIFF: Step around, please, ma'am.

13 THE WITNESS: Thank you.

14 (Witness seated.)

15 THE BAILIFF: State your full name and spell
16 your last name for the record, please, ma'am.

17 THE WITNESS: It is Bronwyn, and I will spell
18 my first name too for the court reporter, it is
19 B-R-O-N-W-Y-N, McElveen, M-C-E-L-V-E-E-N.

20 BRONWYN MCELVEEN,
21 after being duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MS. GREGORY:

24 Q Thank you for being here this morning. How long
25 have you been practicing law?

1 A I have been practicing law for 11 years as well. I
2 was a law clerk for now Justice James, and then I
3 can I came to the Solicitor's Office, and I have
4 been there for 10 years in September.

5 Q And how did you get involved with Mr. Dargan's
6 case?

7 A I was the prosecutor assigned to the case in full.

8 Q And did you comply with the Brady and Rule 5
9 motions filed?

10 A Yes, ma'am. I have our Rule 5 receipts and what
11 dates everything was provided, if you would like.

12 Q Was there anything that was not provided to the
13 State -- or to Mr. Griffith that you would have
14 used at trial had it gone to trial?

15 A No, ma'am. We did provide a supplemental Rule 5
16 disclosure that was the serology analysis from a
17 SLED lab. That was provided October 3rd, 2016. So
18 that was a SLED analysis that just took a while to
19 come back, and it showed the victim was -- had no
20 intoxicants in his system at the time of his death.

21 Q Okay. What were the facts of the case?

22 A So, basically, December 3rd, 2015, two, I would
23 even say best friends had a night out. And in the
24 early morning they were on their way home.

25 Ms. Marcia Heyward was with them. They had been

1 out I think at a club. And on the way back they
2 bet \$500 on a car race. Ms. Heyward was to hold
3 the money. And at the conclusion of the race,
4 Mr. Dargan had been declared the loser, Mr. Klee
5 had been declared the winner. Mr. Dargan was not
6 pleased about that outcome. And evidently Mr. Klee
7 and Mr. Dargan were so close they shared a gun,
8 they both used a gun, although Mr. Klee was
9 technically the owner of said gun. There was
10 varying testimony as to where the gun was stored,
11 but we were under the impression it was at a
12 abandoned house right around the corner. So
13 Mr. Dargan left, went around the corner, got their
14 gun, this gun in common, and came back and started
15 shooting at the ground saying, Give me my money,
16 Klee, give me my money.

17 And at this point, Ms. Marcia Heyward was
18 outside. She witnessed this. And her -- one of
19 her children were inside sleeping, and one of the
20 children, S.V. , also woke up
21 during these gunshots, and she came outside and saw
22 it too, but Ms. Heyward and Ms. VanBuren witnessed
23 Mr. Dargan shoot in the ground saying, Give me my
24 money, give me my money. And then a bullet, either
25 it shot his leg or it ricocheted. We cannot

1 determine if it ricocheted or if it was shot
2 directly into his leg, but it hit his -- the
3 victim's femoral artery. At that point he dropped
4 to the ground, obviously bleeding out. Mr. Dargan
5 went into his pocket, got the money out, and left
6 the scene. So he got the \$500 from the car race
7 and left the scene.

8 A neighbor had heard -- on the other side of
9 the driveway had heard it. She came out.
10 Ms. Heyward was obviously in a panic because there
11 was a lot of blood. They applied pressure. And,
12 per EMS, that victim -- that neighbor and the
13 pressure she put probably saved Mr. Klee's life at
14 that time. He then went to the hospital.

15 When he woke up, officers spoke with him. He
16 did not remember the incident. He could not give
17 facts as to what happened. He knew he was shot.

18 I spoke with Dr. Michael Naylor up at Toumey.
19 He performed an emergency vascular surgery to try
20 to close up the femoral artery and the bleed, but
21 there was -- he said when there is a dirty bullet
22 that fragments and you have emergency vascular
23 surgery, it is one of the highest rates of
24 infection possible.

25 And Mr. Klee was released from the hospital,

1 but he returned -- I'm sorry, he was released from
2 the hospital January 6th of 2016, so he had been in
3 the hospital for over a month, a month and three
4 days. He was then released January 6th.

5 January 22nd, 2016, he returned to the hospital
6 with infection. He had an additional surgery. He
7 started on the way to recovery. He started to
8 improve, but the infection then took over.

9 He died -- he passed away January 31st, 2016.
10 An autopsy was performed February 1st of 2016 and
11 revealed that -- we wanted to make sure the victim
12 was taking care of himself, because that was my
13 concern as well, and sure enough he had a clean
14 autopsy, no alcohol, no drugs, nothing in his
15 system. And the doctors had said that his wound
16 care was impeccable.

17 Q Okay. So the evidence that you would have been
18 able to show at trial, you would have called that
19 doctor?

20 A Dr. Naylor. Yes, ma'am. I had over 23 witnesses
21 listed. Among them, Dr. Michael Naylor, with
22 Palmetto Health Toumey; Dr. Ryan Zitzke, who did
23 the orthopedic surgery; Dr. -- or David Pendarvis,
24 with EMT; Kristine Fox, also an EMT. So those were
25 some medical professionals that we would have

1 called. Also Caitlin Thompson, who I'm guessing
2 was a treating nurse. And, of course,
3 unfortunately, Dr. Janice Ross eventually for the
4 autopsy.

5 Q Okay. So what led you to provide a plea offer in
6 this case?

7 A Well, the whole time I had spoken with the victim's
8 family, the deceased's family. And I actually
9 e-mailed Mr. Griffith on March 29th of 2016 at
10 11:06 a.m. and offered to reduce the murder to
11 voluntary manslaughter, drop one of the gun
12 charges, and drop the possession of a weapon during
13 commission of a violent crime. He would plead
14 straight up to the voluntary manslaughter and two
15 drug charges.

16 Then, Friday, July 29th, 2016, I met with the
17 victim's family and his fiancée, and I maintained
18 that we could only offer a voluntary manslaughter
19 plus the gun charge for the plea, could not reduce
20 it any more, and the drug charges. But I remember
21 that Mr. Griffith was putting a lot of pressure on
22 it being involuntary.

23 And I said, I will talk to the family, but I
24 think the facts are there for voluntary a hundred
25 percent. I'll talk to them. And they reluctantly

1 allowed us to even plead it to voluntary
2 manslaughter. They wanted murder. They were very
3 upset, obviously. They had lost a loved one.

4 Q Sure. Do you feel like you could have gone forward
5 with a murder charge at trial?

6 A I do. I mean, he left the scene. But, I mean, I
7 was aware that there were going to be hurdles with
8 the fact that he left the hospital and came back
9 with an infection. That concerned me more than the
10 gun. And, frankly, I really wasn't that worried
11 because I had two eyewitnesses saying they saw him
12 shooting at the victim saying, Give me my money,
13 give me my money. He might not have been shooting
14 his face, but he was shooting low on him, and it
15 could have easily killed him. So I had two
16 eyewitnesses, but I did -- I did have some worry
17 about him leaving the -- the victim leaving the
18 hospital --

19 Q Okay.

20 A -- and coming back with an infection, which
21 ultimately led to his death, but for --

22 Q Did you still have those concerns after talking to
23 the Dr. Naylor?

24 A No, I did not. And I -- that's why I met with our
25 medical professionals so much, because I said, I

1 need to get over this hurdle. And they said, Oh,
2 well, but for the bullet wound, he would not have
3 this infection. Then I asked about his
4 post-operative care. And then the autopsy results
5 where his toxicology screen is absolutely clean.
6 And then the doctors actually commented on the
7 quality of his wound care.

8 Q Okay.

9 A I felt very comfortable.

10 Q Did you ever extend a 15-year plea?

11 A No, ma'am. It was always straight up to voluntary
12 manslaughter.

13 Q Did he accept your plea offer at first?

14 A No, ma'am.

15 Q Were you prepared to go to trial?

16 A Yes, ma'am, I was.

17 Q And do you recall what you were able to show during
18 the immunity hearing that would have been
19 beneficial to your case?

20 A Essentially the facts that I put forward. And I
21 know that Marcia Heyward had mentioned that he left
22 the scene to get the gun. And I believe the
23 gentleman Tome -- when I met with Ms. Heyward, she
24 mentioned Tome, which we figured out was Thomas
25 Wilson, and from what I recall, we tried to get in

1 touch with Mr. Wilson a few times and tried to
2 serve subpoenas on him and never really got in
3 touch with him well. When he showed up for the
4 Defense, I saw that he was there, but we wanted to
5 hear what he said. So, frankly, his testimony, I
6 didn't know how it was going to go. And, luckily,
7 it went, you know, he went in line with exactly
8 what we assert happened.

9 Q Sure.

10 A You know, everybody is saying the same thing. We
11 assume that is the truth and that is what happened
12 that day. Only Mr. Dargan was saying something
13 different.

14 Q Okay. So Mr. Wilson's testimony aligned with your
15 eyewitnesses' testimony?

16 A Yes, ma'am.

17 Q Okay.

18 A Even though I had never met with him, which was
19 very fortunate.

20 Q Okay.

21 MS. GREGORY: No further questions, Your
22 Honor.

23 THE COURT: Cross-examination.

24 CROSS-EXAMINATION

25 BY MR. FALK:

1 Q The serology, that was post-mortem?

2 A Yes, sir.

3 Q Was there any serology -- toxicology taken when he
4 went to the hospital, when the victim went to the
5 hospital?

6 A I don't know. I mean, they both admitted to
7 drinking, so that really wasn't a concern. I mean,
8 we knew that they were both drinking.

9 Q Okay. So it is your testimony that you never got
10 any type of statement from Mr. Klee as to what
11 happened?

12 A No, sir. He -- when asked, he said he didn't
13 remember. He woke up in the hospital, doesn't
14 remember how it happened. That's how he -- what he
15 told officers. I mean, I think he remembers -- I
16 think he remembered what happened before and
17 obviously woke up in a hospital. He remembers what
18 happened -- he remembered what happened afterwards,
19 but I think he just -- he just -- he never knew
20 what happened, which is common in a trauma of that
21 nature.

22 Q When Ms. Heyward testified at the sentencing
23 hearing, she said that her last statement with
24 David before he passed, you know, He know that
25 Ricky didn't intentionally shoot him. So

1 Ms. Heyward spoke with him afterwards, with the
2 victim prior to his death?

3 A I had a feeling that was more opining that he
4 would -- Mr. Dargan would never mean to
5 intentionally hurt him, but I don't know, I wasn't
6 present for that, and I certainly can't answer that
7 question now, if that happened.

8 Q I just -- did y'all ever go back? After the police
9 interviewed him at the hospital, did you ever go
10 back?

11 A No, sir, because he was deceased.

12 Q No, no, there was about two months --

13 A Oh, the attempted murder? When he was charged with
14 attempted murder?

15 Q Let me back up. So there was two months after the
16 shooting to when he died. I guess it is 57 days
17 later. Is that roughly accurate?

18 A That's correct.

19 Q Okay. And so the police came to him at the
20 hospital, and he had no recollection. And you said
21 that you didn't think that was uncommon with
22 trauma. Did they ever go back and talk to him?

23 A It looks like -- let me see -- officers made
24 contact with Mr. Klee at the hospital, I'm guessing
25 they came to the hospital that night that it

1 happened. They also made contact with him on
2 December 21st, 2015, spoke with him about the
3 incident. He advised the officer he did not
4 remember anything about the incident and does not
5 remember who shot him. Officers were notified
6 January 31st, 2016, that Mr. Klee had died while at
7 Toumey.

8 Q Okay.

9 A And he was transported for an autopsy. And on
10 January 31st -- I guess while speaking further --
11 Klee was released from Toumey on January 6th, 2016,
12 and sent home to recover from his injuries. On
13 January 22nd, 2016, he returned to Toumey Hospital
14 after he began running a fever. He was admitted to
15 the hospital with an infection from the gunshot
16 wound he received. He had an additional surgery
17 and was moved into a room to recover and started to
18 improve. On January 31st, 2016, Mr. Klee had
19 complications and started to bleed. He died from
20 the complications as a result of the gunshot wound.
21 And on February 1st, 2016, officers went to
22 Newberry Pathology for the completion of an
23 autopsy.

24 A search warrant was assigned to obtain
25 Mr. Klee's medical records. The search warrant was

1 served at Toumey, and the records were obtained.

2 Q I was really more interested in law enforcement's
3 attempts to interview him other than at the
4 hospital that night.

5 A I don't really know how many times they tried, but
6 I know that -- I think he might have been in -- for
7 a while I think he was in a medically induced coma,
8 I think for a while.

9 MR. FALK: I have no further questions.

10 MS. GREGORY: No redirect, Your Honor.

11 THE COURT: Thank you, ma'am. You may step
12 down.

13 THE WITNESS: Thank you, sir.

14 (Witness steps down.)

15 MS. GREGORY: Your Honor, the State has no
16 further witnesses.

17 THE COURT: The State rests.

18 MR. FALK: Your Honor, could I please call my
19 client just to rebut one thing counsel said?

20 THE COURT: Certainly.

21 Mr. Dargan, I remind you you are still under
22 oath.

23 THE WITNESS: Yes, sir.

24 (Mr. Dargan retakes the stand.)

25 RICARDO M. DARGAN,

1 after being duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. FALK:

4 Q You were obviously in the courtroom when
5 Mr. Griffith was testifying, is that correct?

6 A Yes.

7 Q And you heard him say that you apologized to him
8 for lying?

9 A Yeah. That is not true.

10 Q So did you ever apologize to him for lying?

11 A No. Never. I never did that. I don't know why
12 you would say that, Mr. Griffith. I never told you
13 I was lying. And the truth is going to come out.
14 I mean, I wish the other witnesses were here to
15 really tell the true story, but the truth is going
16 to come out.

17 MR. FALK: I have no further questions.

18 MS. GREGORY: No questions, Your Honor.

19 THE COURT: Thank you, sir. You may step back
20 down.

21 (Witness steps down.)

22 THE COURT: Anything else?

23 MR. FALK: No, Your Honor.

24 THE COURT: Anything else from the State?

25 MS. GREGORY: No, Your Honor.

1 THE COURT: I will be glad to hear argument
2 now.

3 MR. FALK: Your Honor, this is an interesting
4 plea case because, really, because of the way it
5 came out, you sort of got a little preview of what
6 the trial was going to be. If you would read the
7 transcript of the Stand Your Ground hearing,
8 whatever you want to call it, self-defense,
9 immunity hearing, you really sort of got a pretty
10 good view of what the testimony was going to be in
11 this case. And there clearly was testimony that
12 was developed at the immunity hearing, or I think
13 we call it the self-defense hearing, that would
14 have created ample reasonable doubt in the jury's
15 mind, possibly ample doubt as to whether or not he
16 would have been entitled to a -- if the jury would
17 have found that it was self-defense or possibly
18 even whether or not it was an accident. The story
19 about whether or not Mr. Klee pulled the gun and
20 they were both wrestling with the gun and that the
21 gun goes off. That is sort of almost a typical
22 situation of how you can go to court and actually
23 be entitled to both an involuntary and a accident
24 instruction on the same set of facts.

25 There is conflicting testimony of what the

1 witnesses said about where the gun came from,
2 whether or not he ever left the house, whether or
3 not he got it from his clothes. There was plenty
4 of doubt in this case. And how this turned from a
5 case where Mr. Griffith is very confident that Mr.
6 Dargan's parents are going to be taking him home
7 after the day of the trial to having him go ahead
8 and plead to an 18-year sentence with five on the
9 gun, it just seems like -- it is hard to understand
10 how a lawyer would have recommended or even
11 suggested that he plead guilty under these facts.

12 And, again, this was a case where if you look
13 at the trial transcript of this self-defense
14 hearing, there is all kinds, and had this been a
15 transcript that you had been reading from the
16 trial, you would see that this is a case that -- I
17 mean, it is hard to believe that he would have
18 gotten anything worse than voluntary manslaughter
19 had he gone to trial. I mean, the only thing that
20 possibly could have been worse is he could have
21 gone, he could have gotten convicted of voluntary
22 manslaughter and then got max on the 25 years. But
23 it is hard to believe that after witnesses
24 testified as they did at this hearing, that he
25 would ever have any situation worse than what he

1 wound up pleading to.

2 And we think that my client expressed his
3 intention that he wanted to go forward, he wanted
4 to have a trial, and that the reason why he pled
5 guilty was his lawyer told him he had to plead
6 guilty.

7 Thank you.

8 THE COURT: Thank you.

9 MS. GREGORY: Thank you, Your Honor. May it
10 please the Court?

11 Based on the testimony here today and the
12 allegations that Mr. Dargan has alleged, we believe
13 they are meritless. The plea court conducted an
14 extensive colloquy with Mr. Dargan where he
15 testified he was entering the plea freely and
16 voluntarily, he was in fact guilty of voluntary
17 manslaughter. He said he was satisfied with his
18 attorney and not coerced into entering the plea.
19 The testimony shows Mr. Dargan's decision to go
20 forward with the plea rather than continue with his
21 trial, which Mr. Griffith testified he believed was
22 in his best interest.

23 Additionally, the testimony today shows that
24 Rule 5 and Brady were complied with.

25 And regarding the ineffective assistance of

1 counsel claim, the testimony from Mr. Griffith
2 shows that he investigated the case. He could not
3 go forward with anyone -- he could not find anyone
4 to substantiate Mr. Dargan's version of the events.
5 Mr. Dargan's version of the facts was presented
6 during his immunity hearing, which was not only
7 inconsistent with what he admitted to during the
8 guilty plea, but was also inconsistent with the
9 testimony of the State's witnesses during the
10 immunity hearing.

11 Mr. Dargan's claim that the victim's own
12 negligence somehow absolves him of the
13 responsibility is also meritless. As Ms. McElveen
14 testified, her investigation shows that the victim
15 was keeping up with his wound. His autopsy shows
16 that he was clean of any drugs or alcohol. And the
17 doctors that she would have called during the trial
18 would have even commented on his ability to care
19 for himself and come to the hospital for his wound
20 care. So clearly that would not contribute to the
21 cause of his death that would have absolved
22 Mr. Dargan of any of his liability here.

23 And Mr. Dargan was told by Mr. Griffith and
24 Judge Stilwell that under those circumstances where
25 he was shooting into the ground he could have been

1 found guilty of voluntary manslaughter at the very
2 least, and he continued to go on with his guilty
3 plea.

4 So, based on the testimony and the record,
5 Your Honor, we would ask that you dismiss this
6 application.

7 THE COURT: Anything in reply, Mr. Falk?

8 MR. FALK: Nothing further.

9 THE COURT: All right. The Court agrees with
10 the arguments made by the Attorney General and the
11 position of the State in this matter. The Court
12 finds that the Applicant has failed to meet the
13 Applicant's burden of proof, and therefore the
14 Court is compelled to deny the Applicant's
15 post-conviction relief application.

16 And, Ms. Gregory, would you please prepare an
17 order consistent with that?

18 MS. GREGORY: Yes, sir, Your Honor. Is that
19 20 days, Your Honor?

20 THE COURT: Twenty days.

21 MR. FALK: Your Honor, could I just make --
22 one thing I guess I should have brought up, and
23 just make sure the order does address, the
24 testimony of Thomas Wilson, the fact that we called
25 the witness to the stand at the hearing but we

1 didn't know what they were going to say and the
2 testimony turned out to be prejudicial at the
3 hearing.

4 THE COURT: Okay.

5 MS. GREGORY: Sure. Yes, sir.

6 THE COURT: That was testified to. Certainly.

7 MS. GREGORY: Yes, sir.

8 (WHEREUPON, the hearing was adjourned at
9 11:23 a.m.)

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25 (END OF TRANSCRIPT)

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

I, Deborah M. McCurdy, Official Court Reporter for the Fifth 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 Common Pleas for Sumter County, South Carolina, on the 30th day of July, 2019.

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

November 27, 2019

s/Deborah M. McCurdy, RPR

Deborah M. McCurdy, RPR
Fifth Circuit Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

2017-CP-43-1253

Ricardo Dargan, #370197,

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

CERTIFIED TRUE COPY
OF ORIGINAL FILED

Sherry H. Hester
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

RECORDED
2019 SEP -6 PM 4:45
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief filed on July 5, 2017, by Ricardo Dargan (Applicant). The State (Respondent) filed a Return on June 5, 2018, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on July 30, 2019, at the Sumter County Courthouse. Applicant was present at the hearing and represented by James K. Falk, Esquire. Assistant Attorney General Janell H. Gregory of the South Carolina Attorney General's Office appeared on behalf of Respondent. At the hearing, Applicant testified on his own behalf. Timothy L. Griffith, Esquire (Counsel), and Applicant's mother, Cynthia Dargan (Cynthia), also testified. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof and denies this application.

PROCEDURAL HISTORY

The records before this Court establish Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Sumter County Clerk of Court's order of commitment. During its March 2016 term, the Sumter County Grand Jury indicted Applicant for murder and possession of a weapon during the commission of a violent crime (2016-GS-43-0378) and three counts of distribution of crack cocaine base (2016-GS-43-0376, -77, and -78). Counsel represented

Applicant on the charges. Assistant Solicitor Bronwyn K. McElveen of the Third Circuit Solicitor's Office prosecuted the case. On October 17, 2016, Applicant proceeded to an immunity hearing before the Honorable Robin B. Stillwell. At the conclusion of that hearing, Judge Stillwell denied Applicant's immunity motion. Thereafter, on October 18, 2016, Applicant pled guilty to a reduced charge of voluntary manslaughter and as indicted to possession of a weapon during the commission of a violent crime (2016-GS-43-0378). Applicant also pled guilty to all three counts of distribution of crack cocaine. Judge Stillwell sentenced Applicant to imprisonment for concurrent terms of fifteen years for voluntary manslaughter and fifteen years for each of the three distribution charges. Additionally, Judge Stilwell sentenced Applicant to five years for the weapons charge, to be served consecutively to all the other charges, resulting in an aggregate sentence of twenty years.

Applicant filed a notice of appeal on November 15, 2016 through plea counsel Timothy L. Griffith. By Order dated January 12, 2017, the South Carolina Court of Appeals dismissed Applicant's appeal for Applicant's failure to timely serve the Notice of Appeal on Respondent as required by Rule 203(b) of the South Carolina Appellate Court Rules. State v. Dargan, S.C. Ct. App. Order Filed January 12, 2017. The remittitur was issued on February 2, 2017.

SUMMARY OF FACTS

Murder and Weapon Charge

The murder and weapons charges stem from a December 2015 incident in which Applicant and Victim agreed to "street race" on a public road for \$500 dollars. (GP Tr. 9.) Applicant and Victim each gave their \$500 dollars to a third party to hold during the duration of the race. (GP Tr. 10.) Applicant lost the race and demanded his money back from Victim. (GP Tr. 10.) According to the facts presented by the State, at that point, Applicant left the scene and returned with a firearm that was purchased by Victim, but used by Applicant. (GP Tr. 10.) Applicant brandished the



firearm and began shooting at Victim's feet while demanding his money back. (GP Tr. 10.) Victim was struck with a bullet in the femoral artery and falls to the ground. (GP Tr. 10.) Applicant went into Victim's pockets and fled the scene without rendering aid. (GP Tr. 10.) Victim was transported to the hospital where he underwent several surgeries nearly losing his leg. (GP Tr. 10.) Victim spent a little over a month in the hospital, but died fifty-seven days after the incident from the bullet wound. (GP Tr. 10.)

Crack Cocaine

The crack cocaine charges all stem from three instances between July and August 2015, in which confidential informants with the sheriff's office purchased crack from Applicant. (GP Tr. 11-12.)

ALLEGATIONS RAISED

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

1. Involuntary guilty plea
2. Brady violation
3. Ineffective assistance of counsel
 - a. "That counsel, Timothy Griffith, Esq., was ineffective for not challenging the state charges against Applicant when the charge of murder or voluntary manslaughter would be a misrepresentation of the facts and vindictive prosecution."
 - b. "That counsel failed to take Applicant'[s] case to trial and show the jury that the victim, David Clea own negligence was the superseding case of death, bearing his own responsibility for his death and not applicant."
 - c. Applicant believes it was unreasonable for trial counsel to advise Applicant to plead guilty.

On July 30, 2019, an evidentiary hearing was convened. Applicant proceeded with the hearing on all of the allegations set forth in his application.

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING*Applicant's Testimony*

Applicant testified that he was represented by Counsel and that he talked to him two or three times. Applicant testified he was in custody about eight or nine months before he pled guilty. Applicant testified he received everything in his discovery except a statement and medical records that were given to him in court.

Applicant testified at the self-defense hearing. During that hearing, Applicant testified he never brought a gun to the scene and never pulled a gun out. Applicant testified he was friends with the victim, they were out together the night of the incident, and there was quite a bit of drinking going on. Applicant testified that he was never provided with a statement from the Victim. Applicant testified that Counsel felt good about going to trial. Applicant testified Counsel never told him what the potential sentences were for the murder charge. Applicant testified Counsel only mentioned the self-defense hearing and never discussed lesser included offenses with him.

Applicant testified that during the guilty plea he disputed the facts presented by the State. Applicant testified he never left the scene and got a gun. Applicant testified there was conflicting testimony as to who brought the gun and who shot the gun during the incident. Applicant testified he decided to plead after the self-defense hearing because the State offered him a twenty year plea. Applicant testified Counsel talked to his family and told them Applicant needed to take the twenty year plea offer. Applicant testified it was Counsel's recommendation earlier to turn down the fifteen year plea offer. Applicant testified Counsel told him they were going to beat the case because Applicant was going to be successful at his self-defense hearing.

Applicant testified he told the plea judge he was satisfied with his attorney because at the time he thought Counsel had done a good job. Applicant testified he has since learned at the law



library that there were other avenues they could have taken that Counsel did not pursue. Applicant testified that Counsel should have interviewed more witnesses. Applicant testified Counsel called Thomas Wilson (Wilson) as a witness during the self-defense hearing and his testimony supported the State's theory.

Applicant testified he understood the consequences of post-conviction relief and wants to go forward with his application because he never brought a gun to the scene. Applicant testified it was not his gun and there were witnesses that knew he did not have a gun. Applicant testified he did not want any of this to happen and that he did not have any malice or anything.

On cross-examination, Applicant testified he met with Counsel about three times and he reviewed discovery with him. Applicant testified he received the medical records and a statement when he got to court.

Applicant testified he recalled waiving his constitutional rights. Applicant testified he recalls stating no one coerced him or threatened him to plead guilty. Applicant testified he recalled telling the plea judge that he wanted to plead guilty. Applicant testified he recalled telling the plea judge he was pleading guilty out of his own free will. Applicant testified he recalled telling the plea judge that he was satisfied with his attorney and did not have any questions for Counsel.

Applicant testified he gave Counsel names of witnesses to interview, which included Sean McFadden, and Randy Johnson. Applicant testified he recalled thanking Counsel during the plea hearing. Applicant testified he recalled the plea judge telling him that if he shot the gun, which he admitted to doing, he was at the very least guilty of manslaughter.

Testimony of Cynthia Dargan

Applicant's mother, Cynthia Dargan (Cynthia), testified on Applicant's behalf during the post-conviction relief hearing. Cynthia testified she had conversations with Counsel and she recalled Counsel telling her Applicant's case was not going to be a long case. Cynthia testified



she felt very confident about Applicant's case because Counsel was confident. Cynthia testified she thought Applicant was going to go back home with them when he went to plead guilty. Cynthia testified she thought his case would be "in and out."

On cross-examination, Cynthia testified Counsel called her and the family into a room and stated he felt good about the case. Cynthia testified Counsel never discussed the plea with her. Cynthia testified she was not sure if there were meetings with Counsel and Applicant outside of her presence.

Testimony of Counsel

Counsel testified he was appointed because there was a conflict in the public defender's office. Counsel testified he was very optimistic about Applicant's case, but that changed after the self-defense hearing. Counsel testified the State discussed making an offer for voluntary manslaughter and he tried to convince the prosecutor to consider involuntary manslaughter. Counsel testified they would have proceeded with a self-defense defense at trial. Counsel testified he was going to request the judge to instruct on voluntary and involuntary manslaughter. Counsel testified there was no discussion with the court on charging accident. Counsel testified he believed there was reasonable doubt as to whether there was malice. Counsel testified he discussed with Applicant that he could be found guilty of murder, voluntary manslaughter, or involuntary manslaughter depending on what the judge would allow the jury to be instructed on. Counsel testified he did not think he would have been able to get an instruction on self-defense because everyone testified during the self-defense hearing that Applicant went to get the gun and that Applicant and Victim were fighting over the gun.

Counsel testified he contacted all of the witnesses Applicant gave him. Counsel testified a witness stated hearing Victim say, "you shot me with my own gun." Counsel testified that is in the plea transcript. (GP Tr. 63.) Counsel testified it is a matter of whether the jury would believe



Applicant or the witnesses. Counsel testified he did not know what Wilson was going to say when he called him as a witness. Counsel testified he tried to talk to Wilson before the self-defense hearing, but Wilson would not talk to him. Counsel testified he believed Wilson would testify in line with Applicant's version of the facts based on what Applicant told him, however, Wilson's testimony was not helpful as he testified he saw Applicant with the gun. Counsel testified Wilson also testified that he never saw Victim with a gun. Counsel testified he was told by Applicant that Wilson would be a favorable witness. Counsel testified he was not aware of any statement made to law enforcement by Victim.

Counsel testified he does not recall the State giving them a fifteen year plea offer, he testified the offer was just for voluntary manslaughter. Counsel testified he discussed the difference between manslaughter and murder with Applicant. Counsel testified he did not ask the judge for a self-defense instruction because they never got to that point. Counsel testified he would have taken Applicant's case to trial, but the decision was up to Applicant. Counsel testified he was perfectly happy taking Applicant's case to trial, but told Applicant he could not make that decision for him. Counsel testified Applicant's chances at trial would have been a toss of the coin as to whether the jury believed him. Counsel testified the witnesses that testified during the self-defense hearing were very credible and their testimony was not favorable to Applicant.

On cross-examination, Counsel testified he has been practicing law for eleven years and about 75-85% of that time has been in criminal law. Counsel testified he filed Rule 5 and Brady motions and the State complied with his discovery requests. Counsel testified he went over Applicant's charges and potential sentences. Counsel testified he met with Applicant at least eight times during his representation.

Counsel testified he is gullible and believed Applicant's story. Counsel testified Applicant is a personal young man and thought it was just horrible circumstances. Counsel testified he tried



reaching out to the witnesses Applicant provided him, but most of them would not talk to him. Counsel testified Wilson was on his and the State's witness list, so if he did not call him, the State would have called Wilson to testify.

Counsel testified he did not think the charge of murder fit the facts of the case, but potentially voluntary or involuntary manslaughter. Counsel testified he believed Victim was negligent with his medical care based on his theory of the case and would have used Victim's medical records at trial. Counsel testified he discussed that theory with Applicant, but Applicant ultimately chose to plead guilty. Counsel testified he believed it was in Applicant's best interest to plead guilty. Counsel testified he would have taken Applicant's case to trial, but does not believe Applicant would have been exonerated. Counsel testified Applicant's testimony at the self-defense hearing was inconsistent to his admissions at the guilty plea hearing. Counsel testified Applicant apologized to him for not being truthful with Counsel.

Testimony of Assistant Solicitor Bronwyn McElveen

McElveen testified she has been practicing law for eleven years and has been with the solicitor's office for nearly ten years. McElveen testified she complied with Counsel's discovery motions and filed supplemental responses that contained SLED analysis that the solicitor's office received after the initial discovery.

McElveen testified the State believed the gun was a shared gun, which was owned by Victim and Applicant jointly. McElveen testified after the shooting, Applicant went into Victim's pockets and then fled the scene. McElveen testified Victim died from an infection caused by a bullet fragment in his leg. McElveen testified she researched Victim's medical care since he died after being discharged from the hospital. McElveen testified she discovered Victim's wound care was "impeccable." McElveen testified Dr. Naylor - the vascular surgeon she consulted with - told her the kind of injury and surgery Victim had caused the highest possible chance of infection.

McElveen testified Victim's toxicology from his autopsy showed he was clean – no drugs or alcohol in his system. McElveen testified Dr. Naylor would have testified at trial had Applicant proceeded to trial. McElveen testified she had twenty-three witnesses that would have testified, which included the EMT who told McElveen that a man at the scene who applied pressure to Victim's leg after the shooting saved his life initially. McElveen testified she could not get in touch with Wilson, despite her efforts. McElveen testified Wilson's testimony aligned with what her other witnesses said.

McElveen testified she initially emailed Counsel and offered to drop one of the gun charges if Applicant pled to the drug charges and voluntary manslaughter. McElveen testified Counsel tried to get her to drop the charge to involuntary manslaughter, and she told him she would check with Victim's family. McElveen testified Applicant's pleas were always to voluntary manslaughter and she never offered a fifteen year plea.

On cross-examination, McElveen testified Victim did not give a statement to law enforcement because when he regained consciousness he could not remember what happened. McElveen testified she believes Victim was in a medically induced coma for a while at the hospital and does not know how many times law enforcement attempted to talk to him.

Applicant's Rebuttal Testimony

Applicant was recalled to the stand in rebuttal. Applicant testified he never apologized to Counsel for lying. Applicant testified, "the truth is going to come out."



APPLICABLE LAW

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 300 S.C. 115. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 300 S.C. 115. With respect to guilty plea counsel, the applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

This Court viewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony

accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the immunity hearing transcript, guilty plea hearing transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

This Court finds Applicant has failed to meet his burden of proving he is entitled to post-conviction relief on any of his allegations of ineffective assistance of counsel. Applicant has failed to prove both deficiency on the part of Counsel and any prejudice therefrom.

Counsel was ineffective for failing to challenge the State's charges against Applicant when the charge of murder or voluntary manslaughter would be a misrepresentation of the facts and vindictive prosecution.

Applicant alleges Counsel was ineffective for failing to challenge the State's charge against him because he did not feel the facts supported his charge of murder or voluntary manslaughter. However, Counsel testified they challenged the State's theory of the case in the self-defense hearing, but were unsuccessful. Counsel testified he tried to get the State to offer involuntary manslaughter, but the State only offered a plea to voluntary manslaughter, which Applicant decided to accept. Counsel testified he would have taken Applicant's case to trial, but it was Applicant's decision to accept the plea.

McElveen testified she investigated Victim's follow-up medical care after he was discharged and his medical records indicated he was diligent in his wound care. McElveen testified his autopsy showed he had "impeccable" wound care and his toxicology screening showed he was not using drugs or alcohol at the time of his death. McElveen testified she consulted with vascular surgeon, Dr. Naylor, who would have testified during the trial that Victim's surgery and injury

caused the highest possible risk of infection, which ultimately led to Applicant's death despite his diligent care.

Upon review of this record, it is clear Applicant was informed of his charges and possible sentences by Counsel and the plea judge prior to entering his guilty plea. (GP Tr. 5-6.) It is also clear Counsel challenged the State's version of the facts by proceeding with the immunity hearing, however, the witnesses supported the State's version of the facts, rather than Applicant's. Counsel testified those witnesses came off very credible during the hearing. Counsel also testified Applicant told him Wilson would testify in line with Applicant's version of the facts, however, his testimony supported the State's theory.

This Court finds the testimony of Counsel and McElveen with respect to this allegation very credible, whereas Applicant's testimony is not credible. This Court finds Applicant has failed to establish any deficiency on behalf of Counsel or any vindictive motivation on behalf of McElveen. Counsel challenged the State's theory of Applicant's case by way of the immunity hearing, which was ultimately denied. During the immunity hearing, it was clear the State's theory of the case was more credible based on the testimony of numerous witnesses. Counsel testified he would have proceeded to trial if Applicant wanted to, however, Applicant chose to enter a guilty plea to voluntary manslaughter.

Additionally, Applicant has failed to establish any resulting prejudice from any alleged deficiency as Applicant was clearly aware of his charges and potential sentences prior to entering his guilty plea. Based on the forgoing, Applicant has failed to meet his burden to establish deficiency or prejudice as set forth in Strickland and this allegation must be denied and dismissed with prejudice.



Counsel failed to take Applicant's case to trial to show the jury that Victim's own negligence was the cause of his death and not Applicant. Counsel was unreasonable for advising Applicant to plead guilty.

Applicant alleges Counsel was constitutionally ineffective for failing to take Applicant's case to trial. Applicant alleges Counsel should have taken Applicant's case to trial to show Victim's negligence caused his death, not Applicant. Counsel testified he would have used Victim's medical records at trial to show Victim's own actions or inaction ultimately led to his death, however, Applicant made the decision to plead guilty.

McElveen testified, based on her investigation into Victim's medical records, Victim took impeccable care of his wound and received regular wound care at the hospital. McElveen also testified Dr. Naylor would have been a State's witness at trial and would have testified that the surgery Victim requires after the shooting and his injury created the highest level of risk for infection, which ultimately killed Victim. McElveen testified Victim's autopsy report confirmed Victim's wound care was impeccable and his toxicology report indicated he was not using drugs or alcohol at the time of his death.

A review of the record shows Applicant knew of his constitutional right to a jury trial and waived that along with his other constitutional rights during his guilty plea. The record also shows Applicant's testimony between the immunity hearing and the guilty plea was not consistent.

This Court finds the testimony of McElveen and Counsel with respect to these allegations very credible whereas Applicant's testimony is not credible. This Court finds Applicant has failed to show how Counsel was deficient as Counsel testified he would have presented Victim's medical records at trial to show Victim was ultimately responsible for his own death, not Applicant. However, Applicant ultimately chose to plead guilty to the lesser charge of voluntary manslaughter, therefore precluding such a theory from being presented at trial. Additionally, based on the testimony of the witnesses during the immunity hearing, and the medical evidence obtained



by the State regarding Victim's injury, it is was not unreasonable for Counsel to have agreed with Applicant's decision to enter a guilty plea in this case. (GP Tr. 3.)

Applicant has also failed to establish any resulting prejudice from the alleged deficiency. Counsel testified he would have taken Applicant's case to trial. Counsel testified it was Applicant's decision to enter his guilty plea after his motion for immunity was denied. Based on the forgoing, Applicant has failed to meet his burden to establish deficiency and prejudice as set forth in Strickland and these allegations must be denied and dismissed with prejudice.

Involuntary Guilty Plea¹

In evaluating issues concerning guilty pleas, this Court will consider the entire record, including the transcript of the guilty plea proceeding and the evidence presented at the post-conviction relief hearing. Roddy v. State, 339 S.C. 29, 528 S.E.2d 418 (2000). Voluntariness of a guilty plea is not merely determined by an examination of a specific inquiry by the plea court alone but rather is determined by the record of both the guilty plea proceeding and the post-conviction relief hearing. Id. In order to find a guilty plea was knowingly and voluntarily entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238 (1969). Further, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, an applicant's right to contest the validity of such a plea is usually foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975)); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

¹ Applicant did not provide any specific allegations as to this claim.

Counsel testified he went over Applicant's constitutional rights with him prior to Applicant entering his guilty plea. Counsel testified he would have taken Applicant's case to trial if Applicant wanted to proceed to trial. Counsel testified it was Applicant's decision to plead guilty.

A review of the record shows the plea judge informed Applicant that a jury had already been selected in his case and he had the right to proceed to a jury trial. (GP Tr. 4.) Applicant testified he wanted to waive his right to a jury trial. (GP Tr. 5.) The plea judge also reviewed Applicant's charges and potential sentences with him, which Applicant testified he understood before entering a guilty plea after each charge. (GP Tr. 5-8.) Applicant testified he was entering his guilty plea of his own free will because he was in fact guilty. (GP Tr. 8.) Applicant testified he was not promised anything in exchange for his plea and was not under the influence of drugs or alcohol. (GP Tr. 8.)

During the plea colloquy the plea judge and Applicant had the following exchange:

Judge: The thing that I'm interested in the most is the allegation that you shot into the ground, and it had the effect of entering and severing [Victim's] femoral artery. Is that what happened?

Applicant: I shot the gun in the ground. We were in his yard arguing. I shot the gun. Also, I never went in his pocket and take [sic] money from him.

(GP Tr. 12.) Later, Applicant was given the opportunity to address the court and he again admitted that he shot the gun into the ground and he apologized. (GP Tr. 18.) The plea judge told Applicant, "I recognize you did not mean to kill him. Having said that, [Counsel] was exactly right. And that is, if you actually shoot into the ground, and that has the effect of killing a person, then you are guilty of in the very least, at the very least, manslaughter." (GP Tr. 18.) It is clear from Counsel's testimony and the record that Applicant was fully aware of his charges, potential sentence, and his constitutional rights prior to entering his guilty plea.



This Court finds this allegation is without merit, and Applicant has failed to carry his burden of proving his guilty plea was involuntary. The records before this Court, and particularly the transcript of Applicant's plea proceeding, show Applicant engaged in a thorough colloquy with the court before electing to forgo his constitutional rights and knowingly, voluntarily, and intelligently enter a plea of guilty. This Court finds Applicant knew the charges he was facing and understood the plea he was entering. This Court also finds Applicant was properly and fully advised of his constitutional rights and knowingly and voluntarily waived those rights to accept a favorable plea.

Therefore, this Court finds Applicant had a full understanding of the consequences of his plea and the charges against him, and the plea court correctly found Applicant's plea was freely, voluntarily, and intelligently made. Based on these findings, Applicant's allegations regarding his plea being involuntary are denied and dismissed with prejudice.

Discovery Violation²

"A Brady claim is based on the requirement of due process." Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). In order to be successful on a Brady claim, the applicant must demonstrate: (1) the evidence was favorable to the accused; (2) it was in the possession of or known to the prosecution; (3) it was suppressed by the prosecution; and (4) it was material to guilt or punishment. Id. (citing Kyles v. Whitley, 514 U.S. 419 (1995); Brady v. Maryland, 373 U.S. 83 (1963); State v. Von Dohlen, 322 S.C. 234, 471 S.E.2d 689 (1996)). This rule applies to not only exculpatory evidence but also impeachment evidence. Id. (citing United States v. Bagley, 473 U.S. 667 (1985)).

Applicant alleges generally that there was a Brady violation in his case. During the

² Applicant provided no specific claims in support of his discovery violation allegation.

hearing, Applicant testified he did not receive medical records or a witness statement until he was in court. Counsel testified he filed Rule 5 and Brady motions and received discovery from the State. Counsel testified he went over discovery with Applicant. McElveen testified she complied with Counsel's discovery requests and provided supplemental discovery as information came into her office from SLED on this case.

This Court finds the testimony of Counsel and McElveen credible as to this allegation whereas Applicant's testimony is not credible. This Court finds Counsel's performance was reasonable under professional norms, as he filed his discovery motions and received ongoing discovery from the State. Applicant has failed to show this Court that any favorable information was withheld from him or Counsel in this matter. Therefore, this Court finds Applicant has failed to establish any deficiency on the part of Counsel or any resulting prejudice. This allegation must be denied and dismissed with prejudice.

CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

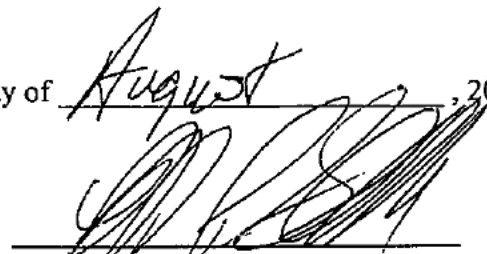
The Court notes Applicant must file and serve a notice of appeal within thirty days from post-conviction relief counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, provides that if Applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.



IT IS THEREFORE ORDERED THAT:

1. The application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 28 day of August, 2019.


BROOKS P. GOLDSMITH
Presiding Judge
Third Judicial Circuit


_____, South Carolina

WITNESSES

S. Sherod Sumter County Sheriff
T. Mims Sumter County Sheriff

Have brown *Sumter Co Sheriff*

ARREST WARRANT NUMBER

2015A4310100684

ACTION OF GRAND JURY

Robert E. Halloway
Foreperson of Grand Jury
Date: *5/17/16*

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016-GS-43-0375

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

MARCH TERM 2016

THE STATE

vs.

RICARDO MORTEZ DARGAN

Indictment for

Drugs / manufacture, distribution, etc. of cocaine base

Ernest A. Finney III

ERNEST A. FINNEY, III, SOLICITOR

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SUMTER)

INDICTMENT FOR

Drugs / manufacture, distribution, etc. of cocaine base

CERTIFIED TRUE COPY
OF ORIGINAL FILE

Barbara Dargan
 DEPUTY CLERK OF COURT
 SUMTER COUNTY
 SOUTH CAROLINA

At a Court of General Sessions, convened on March 17, 2016 the Grand Jurors of

SUMTER County present upon their oath:

COUNT ONE
DISTRIBUTION COCAINE BASE (CRACK)

That in Sumter County, South Carolina, on or about July 28, 2015, the Defendant, Ricardo Morte Dargan, did manufacture, distribute, dispense, deliver, purchase; or did aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase; or did possess with the intent to distribute, dispense or deliver a controlled substance or a controlled substance analogue, to wit: Cocaine Base; in violation of 44-53-375 of the South Carolina Code of Laws (1976) as amended.

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

Solicitor

Ernest A. Frazier III

WITNESSES

Trevor Brown Sumter County Sheriff
T Mims Sumter County Sheriff

DOCKET NO. 2016-GS-43-0376

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

MARCH TERM 2016

THE STATE

vs.

RICARDO MORTEZ DARGAN

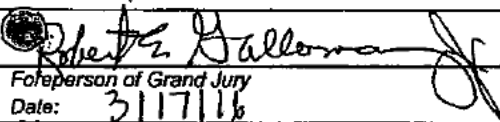
ARREST WARRANT NUMBER

2015A4310100722

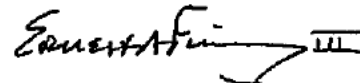
ACTION OF GRAND JURY

Indictment for

Drugs / manufacture, distribution, etc. of cocaine base


Foreperson of Grand Jury
Date: **3/17/16**

VERDICT



ERNEST A. FINNEY, III, SOLICITOR

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SUMTER)

INDICTMENT FOR

Drugs / manufacture, distribution, etc. of cocaine base

At a Court of General Sessions, convened on March 17, 2016 the Grand Jurors of
 SUMTER County present upon their oath:

Grand Jurors of
 CERTIFIED TRUE COPY
 OF ORIGINAL FILE
Barbara Shaper
 DEPUTY CLERK OF COURT
 SUMTER COUNTY
 SOUTH CAROLINA

COUNT ONE
DISTRIBUTION COCAINE BASE (CRACK)

That in Sumter County, South Carolina, on or about July 30, 2015, the Defendant, Ricardo Morte Dargan, did manufacture, distribute, dispense, deliver, purchase; or did aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase; or did possess with the intent to distribute, dispense or deliver a controlled substance or a controlled substance analogue, to wit: Cocaine Base (Crack); in violation of 44-53-375 of the South Carolina Code of Laws (1976) as amended.

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

Solicitor

Ernest A. Finley III

WITNESSES

S. Sherod Sumter County Sheriff
T. Mims Sumter County Sheriff

Ther Brown Sumter Sheriff

ARREST WARRANT NUMBER

2015A4310100683

ACTION OF GRAND JURY

Robert E. Hallom
Foreperson of Grand Jury
Date: 3/17/16

VERDICT:

Foreperson of Petit Jury
Date:

DOCKET NO. 2016-GS-43-0377

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

MARCH TERM 2016

THE STATE

vs.

RICARDO MORTEZ DARGAN

Indictment for

Drugs / manufacture, distribution, etc. of cocaine base

Ernest A. Finney III

ERNEST A. FINNEY, III, SOLICITOR

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF SUMTER)

Drugs / manufacture, distribution, etc. of cocaine base

CERTIFIED TRUE COPY
OF ORIGINAL FILE*Barbara Morgan*
DEPUTY CLERK OF COURTSUMTER COUNTY
SOUTH CAROLINA

At a Court of General Sessions, convened on March 17, 2016 the Grand Jurors of

SUMTER County present upon their oath:

COUNT ONEDISTRIBUTION OF COCAINE BASE (CRACK)

That in Sumter County, South Carolina, on or about August 6, 2015, the Defendant, Ricardo Morte Dargan, did manufacture, distribute, dispense, deliver, purchase; or did aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase; or did possess with the intent to distribute, dispense or deliver a controlled substance or a controlled substance analogue, to wit: Cocaine Base (Crack); in violation of 44-53-375 of the South Carolina Code of Laws (1976) as amended.

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

Solicitor

Ernest A. Fin

WITNESSES

W. Dubose

Sumter County Sheriff

T. Mims

Sumter County Sheriff

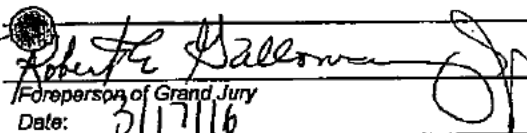


ARREST WARRANT NUMBER

2016A4310100066

2015A4310100862

ACTION OF GRAND JURY


Foreperson of Grand Jury
Date: 3/17/16

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016-GS-43-0378

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

MARCH

TERM

2016

THE STATE

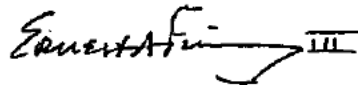
vs.

RICARDO MORTEZ DARGAN

Indictment for

Murder / Murder

**Weapon/ Poss. Weapon during Commission of a Violent
Crime**



ERNEST A. FINNEY, III, SOLICITOR

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SUMTER)

INDICTMENT FOR

Murder / Murder
 Weapon/ Poss. Weapon during Commission of a Violent Crime

CERTIFIED TRUE COPY
 OF ORIGINAL FILE
[Signature]
 DEPUTY CLERK OF COURT
 SUMTER COUNTY
 SOUTH CAROLINA

At a Court of General Sessions, convened on March 17, 2016 the Grand Jurors of
 SUMTER County present upon their oath:

COUNT ONE MURDER

That Ricardo Morte Dargan did in Sumter County, on or about December 3, 2015, willfully, feloniously, and intentionally kill the victim, David Clea, with malice aforethought, either express or implied, by means of shooting the victim, and the victim did die as a proximate result thereof on or about January 31, 2016 in Sumter County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

COUNT TWO POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That Ricardo Morte Dargan did in Sumter County, on or about December 3, 2015, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

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

Solicitor

[Signature]