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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Dec 07 2020
S.C. SUPREME COURT

Certioari to Richland County

Honorable R. Knox McMahon, Circuit Court Judge

APELLATE CASE NO. 2020-000755

VENABLE D. MITCHELL,

PETITIONER,

v.

STATE OF SOUTH CAROLINA

RESPONDENT

APPENDIX

Jason G. Soper
SC Bar #76352

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Attorney General

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ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF RICHLAND) COURT OF GENERAL SESSIONS
No. 2016 GS 40 01860

3
4 STATE OF SOUTH CAROLINA)
5)
6 versus) TRANSCRIPT OF RECORD
7)
8 VENABLE DEON MITCHELL)
9 Defendant)

Columbia, South Carolina
March 20, 2017

14 B E F O R E :
15 HONORABLE R. KNOX McMAHON, Judge Presiding

17 A P P E A R A N C E S :
18 For the State: M. WALKER, Esq.
Assistant Solicitor
19 For the Defendant: R. BAILEY, Esq.
Public Defender
20 Reporter Present: CRYSTAL HOLMES

23 HARRIET P. BENNETT
24 Reporter, S. C. Court Administration
46 Regency Oaks Drive
25 Summerville, S.C. 29485

1 (The within matter came before the Court for hearing on
2 March 20, 2017)

3 THE COURT: All right, Solicitor.

4 SOLICITOR: Thank you, Your Honor. Megan Walker for
5 the State.

6 Standing before you is Venable Mitchell with his
7 attorney, Rhodes Bailey, of the Public Defender's Office for
8 Richland County.

9 Mr. Mitchell was on the trial docket for this week. He
10 is charged with attempted murder. The victim is present
11 in the Courtroom.

12 Your Honor, it is my understanding at this time that he
13 would like to plead guilty under North Carolina versus
14 Alford to a negotiated sentence of ten years.

15 THE COURT: Typically I do not take a North Carolina
16 versus Alford plea in a case without foundation as the plea
17 is to a crime of violence. I would want to hear more from you
18 about that as we go forward.

19 Mr. Bailey, you represent Mr. Mitchell in this matter?

20 MR. BAILEY: Yes, sir, I do.

21 THE COURT: Venable Deon Mitchell?

22 MR. BAILEY: Yes, sir.

23 THE COURT: And have you explained to him the charges and
24 the possible punishment as well as his constitutional rights,
25 including his right to a jury trial?

1 DEFENDANT: Yes, Your Honor.

2 THE COURT: And in your opinion does he understand those
3 things?

4 MR. BAILEY: Yes, Your Honor, he does.

5 THE COURT: How does he indicate that he wishes to plead
6 to attempted murder?

7 MR. BAILEY: Guilty under North Carolina versus Alford,
8 Your Honor, and I can elaborate on it as requested by the
9 Court.

10 THE COURT: Yes, sir. I'll be glad to hear from you.

11 MR. BAILEY: Thank you, Your Honor. I'll just speak to
12 Alford at this time.

13 THE COURT: Yes, sir.

14 MR. BAILEY: This case was scheduled to go to trial this
15 week and we have been preparing for trial. Your Honor, Mr.
16 Mitchell has maintained his innocence since I began represent-
17 ing him a year and a half ago.

18 In this case, the victim's statements -- the State's ev-
19 idence would be limited to eye-witness testimony of this
20 victim, Your Honor.

21 I do believe that juries tend to believe eye-witness
22 testimony of individuals that they know personally, and that
23 is why, Your Honor, we are offering this plea since he be-
24 lieves there is a likelihood of conviction.

25 However, Your Honor, for his benefit we have agreed to

1 the negotiated sentence of ten years from the State. We've
2 spoken about this during the last week and we would ask Your
3 Honor to consider this plea as opposed to our going to trial.

4 Although we have a defense, Mr. Mitchell would prefer
5 not to roll the dice with a jury and to spare the State the
6 time and expense of a trial; the resources of a trial.

7 We would ask Your Honor to give consideration to this
8 plea.

9 SOLICITOR: Your Honor, could I put the reasons for the
10 negotiation on the record?

11 THE COURT: Yes, maam.

12 SOLICITOR: Your Honor, the victim as I said is here in
13 the Courtroom. The victim has been here many times on this
14 matter. There was a . . .

15 THE COURT: Where is the victim seated?

16 (Brief pause)

17 THE COURT: Thank you very much. You may be seated.

18 SOLICITOR: There was a falling-out, Your Honor, and it
19 may have been over a woman. There was also a shooting and the
20 victim believes the Defendant is responsible for that shoot-
21 ing. They were friends at one point in time.

22 On the night in question, your Honor, the victim was in
23 his room asleep or lying down in his room watching television
24 with the lights off when there was a knock on his door.

25 If I could hand up a picture, Your Honor?

1 THE COURT: Yes.

2 (Brief pause)

3 SOLICITOR: The victim went over to the window and looked
4 out. I can show you the pictures of light conditions, but he
5 said he looked through the blinds and at that point saw a man
6 who he refers to as Venable raise a shotgun and fire. The vic-
7 tim was hit. You can see what the yard looked like then.

8 At that point in time, Your Honor, the victim -- the De-
9 fendant fled and the victim was taken to the hospital where he
10 stayed for a period of weeks. Officers were not able to speak
11 to him due to the sensitive nature of his injuries.

12 I can show you further pictures if you would wish to see
13 them.

14 When the victim did speak to them he stated right out it
15 was Venable Mitchell who shot him. The officers canvassed
16 the video cameras that were nearby but Mr. Mitchell was not
17 seen on any of those video cameras.

18 They swabbed the shell casings that were left for DNA
19 and there was a profile present but it was not sufficient to
20 be interpreted.

21 He did contact law enforcement and did waive an advice of
22 rights and gave a statement that gave no indication he was
23 there nor was it incriminating.

24 There was some indication he may have been there but no
25 incriminating statement was given by the Defendant, Your

1 Honor. There was a review of phone calls made to the victim
2 as well but he makes no admissions on his cell phone calls.
3 There is some indication on his phone records that may impli-
4 cate him in this crime.

5 For those reasons we have come to the decision that has
6 been made as to the negotiated sentence.

7 (Brief pause)

8 THE COURT: You are Venable Deon Mitchell?

9 DEFENDANT: Yes, sir.

10 THE COURT: Before I can accept a plea of guilty under
11 North Carolina versus Alford, I must ask you some questions to
12 make sure you understand what you are doing in making this
13 plea and that it is voluntary.

14 If you do not understand my questions please ask me and
15 I will try to explain it to you. If you need some time in
16 which to talk to your attorney please let me know and I will
17 allow you to do so.

18 Do you understand?

19 DEFENDANT: Yes, sir.

20 THE COURT: How old are you?

21 DEFENDANT: I'm thirty-five.

22 THE COURT: How much education do you have?

23 DEFENDANT: GED.

24 THE COURT: What type of work do you do?

25 DEFENDANT: Construction.

1 THE COURT: Today are you under the influence of any
2 medication, drugs or alcohol?

3 DEFENDANT: No, sir.

4 THE COURT: Are you aware of any physical, mental or
5 emotional problems that would keep you from understanding what
6 you're doing here today?

7 DEFENDANT: No, sir.

8 THE COURT: I've been handed up an Indictment . .

9 DEFENDANT: Sir . . .

10 THE COURT: I've been handed up an Indictment, 2016 GS
11 40 01860, which alleges that you did in Richland County on or
12 about July 29, 2015, with the intent to kill, attempt to
13 kill Emanuel Evinsing, with malice aforesaid either express or
14 implied, in violation of Section 16-1-29 which is a charge of
15 attempted murder and which has been true billed by the Rich-
16 land County Grand Jury, for which you could receive a sentence
17 of up to thirty years.

18 Is that correct?

19 SOLICITOR: Yes, sir.

20 THE COURT: For which you could receive up to thirty
21 years. Do you understand that?

22 DEFENDANT: Yes, sir.

23 THE COURT: And when you plead guilty or plead guilty
24 under North Carolina versus Alford, if I accept it, you give
25 up certain important constitutional rights.

1 First, you give up your right to remain silent; that is,
2 your right to say nothing at all; your right to prevent self-
3 incrimination.

4 Second, you give up your right to have a jury trial;
5 that is, your right to have a jury decide whether or not you
6 are guilty beyond a reasonable doubt.

7 A jury would make their decision from evidence which the
8 State presents and you may put up whatever evidence you wish.

9 If you plead guilty under North Carolina versus Alford,
10 you would be giving up your right against self-incrimina-
11 tion and your right to have a jury trial.

12 Third, you would be giving up a right to confront and
13 be confronted by witnesses against you. You would have the
14 right to hear and cross examine any witnesses put up by the
15 State against you, and you could also testify if you wished at
16 your trial or to call witnesses in your own behalf.

17 If you plead guilty under North Carolina versus Alford,
18 you give up the right to remain silent, the right to a jury
19 trial, the right to confront witnesses against you and to
20 be confronted if you should decide to testify in your own
21 behalf.

22 Do you understand those rights?

23 DEFENDANT: Yes, sir.

24 THE COURT: Do you have any questions you want to ask me
25 about these very important constitutional rights?

1 DEFENDANT: No, sir.

2 THE COURT: Do you have any questions you want to ask me
3 at this point?

4 DEFENDANT: Yes, sir.

5 THE COURT: You would not receive a jury trial if you
6 enter this plea. Is that what you want to do?

7 DEFENDANT: Yes, sir.

8 THE COURT: You would be giving up these rights if you
9 plead guilty under North Carolina versus Alford. Do you
10 understand that?

11 DEFENDANT: Yes, sir.

12 THE COURT: Understanding the nature of the charge of
13 attempted murder and the consequences of this plea, that you
14 could be sentenced to as much as thirty years, how do you
15 plead to the charge of attempted murder? Guilty or guilty
16 under North Carolina versus Alford or not guilty?

17 DEFENDANT: Guilty under North Carolina versus Alford.

18 THE COURT: Your attorney has explained to you about a
19 plea of guilty under North Carolina versus Alford?

20 DEFENDANT: Yes, sir.

21 THE COURT: Why do you want to enter that plea?

22 DEFENDANT: Because I understand the amount of time I
23 could get if I went to trial.

24 THE COURT: But you understand the evidence the State
25 has against you?

1 DEFENDANT: Yes, sir.

2 THE COURT: Do you understand there was an eye-witness
3 to this offense?

4 DEFENDANT: You mean the victim?

5 THE COURT: I mean an eye-witness.

6 DEFENDANT: Yes.

7 THE COURT: Having reviewed the evidence against you
8 and understanding the State would have to prove your guilt
9 beyond a reasonable doubt, do you still want to plead under
10 North Carolina versus Alford?

11 DEFENDANT: Yes, sir.

12 THE COURT: Do you feel it would be of benefit to you?

13 DEFENDANT: Yes, sir.

14 THE COURT: What is that benefit you feel you would be
15 getting?

16 DEFENDANT: Not going to jail for thirty years.

17 THE COURT: You think that would be in your best in-
18 terests?

19 DEFENDANT: Yes, sir.

20 THE COURT: And you are wanting to enter your plea of
21 guilty under North Carolina versus Alford of your own free
22 will and accord?

23 DEFENDANT: Yes, sir.

24 THE COURT: And you understand that the negotiation of
25 your plea of guilty under North Carolina versus Alford is a

1 negotiated sentence of ten years?

2 SOLICITOR: Yes, sir.

3 THE COURT: Is that the negotiation, Mr. Bailey?

4 MR. BAILEY: Yes, sir, and they are dropping some les-
5 ser charges.

6 SOLICITOR: Yes, sir, he's also charged with malicious
7 injury to person and property.

8 THE COURT: Is that your understanding of the plea
9 negotiation?

10 DEFENDANT: Yes, sir.

11 THE COURT: And you still wish to plead guilty under
12 North Carolina versus Alford?

13 DEFENDANT: Yes, sir.

14 THE COURT: Has anybody promised you anything or held out
15 any hope of reward to get you to plead guilty under North
16 Carolina versus Alford?

17 DEFENDANT: No, sir.

18 THE COURT: Has anyone used force or threatened you to
19 get you to plead guilty under North Carolina versus Alford?

20 DEFENDANT: No, sir.

21 THE COURT: Has anyone used pressure or intimidation to
22 get you to plead guilty under North Carolina versus Alford?

23 DEFENDANT: No, sir.

24 THE COURT: Have you talked with your attorney long
25 enough to make a decision as to whether you would plead

1 guilty under North Carolina versus Alford?

2 DEFENDANT: Yes, sir.

3 THE COURT: Are you entering a plea of guilty under
4 North Carolina versus Alford of your own free will and ac-
5 cord?

6 DEFENDANT: Yes, sir.

7 THE COURT: Are you satisfied with the manner in which
8 your lawyer has advised you and represented you?

9 DEFENDANT: Yes, sir.

10 THE COURT: Have you talked with your lawyer for as of-
11 ten and for as long as you feel it is necessary for him to
12 properly represent you?

13 DEFENDANT: Yes, sir.

14 THE COURT: Do you need any more time to talk to your
15 lawyer?

16 DEFENDANT: No, sir.

17 THE COURT: Have you understood your talks with your
18 lawyer?

19 DEFENDANT: Yes, sir.

20 THE COURT: Has he done anything in this case you feel
21 he should not have done or failed to do anything you feel
22 he should have done?

23 DEFENDANT: No, sir.

24 THE COURT: Do you have any complaints you want to make
25 about your lawyer or any officer involved in the case?

1 DEFENDANT: No, sir.

2 THE COURT: Have you understood my questions?

3 DEFENDANT: Yes, sir.

4 THE COURT: Is there anything you would like to ask me
5 about what we've just been over?

6 DEFENDANT: No, sir.

7 THE COURT: You understand you have a right to appeal
8 your guilty plea under North Carolina versus Alford and the
9 sentence of the Court but you or your lawyer must do this
10 within ten days from today?

11 DEFENDANT: Yes, sir.

12 THE COURT: All right. Solicitor, give me the facts.

13 SOLICITOR: Thank you, Your Honor. This occurred on
14 July 29 of 2015 at approximately one
15 fifteen in the morning.

16 As I said earlier, Your Honor, the Defendant and the
17 victim in this case were friend but at some point there was
18 a falling out.

19 Whether that falling out was over a girl or a shooting
20 that had occurred, that caused the dissolution of their
21 friendship.

22 The victim, Your Honor, lived in the house with his
23 parents in the pictures I just showed you in the photograph.
24 that is here in Richland County.

25 He was in his bedroom lying down and watching television

1 when he heard a knock. He looked through the blinds out of
2 the window and saw the Defendant, Mr. Mitchell. He saw Mr.
3 Mitchell raise a shotgun and shoot him in the face. He
4 then screamed for help and his parents found him on the
5 floor of the home. They called nine one one and he was
6 rushed to the hospital with life-threatening injuries.

7 THE COURT: Would the victim like to speak to me?

8 (Brief pause)

9 SOLICITOR: When law enforcement arrived on the scene,
10 Your Honor, there were four shotgun shells that were found on
11 the ground. At that point they collected those, Your Honor.
12 Investigator Richburg is the lead investigator in this case
13 and he tried to contact the victim and canvassed the area,
14 talked to neighbors. None of that was fruitful.

15 The shell casings were given to SLED and they were
16 swabbed by SLED for DNA but that was insufficient as well
17 and an identification by DNA was not going to be available
18 for comparison.

19 At that point, Your Honor, weeks passed due to injuries
20 to the victim. He was injured in his arm and in his face
21 and was unable to see.

22 At that point in time his mother, having also been famil-
23 iar with the Defendant in the case, notified law enforce-
24 ment what her son was able to communicate.

25 That same morning Investigator Richburg went to the hospital

1 and there is a videotaped interview that is very brief with
2 the victim in the case who said it was this Defendant.

3 At that point he was unable to see and could not ident-
4 ify the Defendant in a photo lineup, but his mother knew who
5 he was referring to because he had been in their house several
6 times. She was actually the person who picked him out from
7 the photo lineup.

8 In looking at the case it is a blessing that he was
9 able to survive and to communicate with law enforcement. We
10 had some discussions with the victim and his family about
11 some issues in the case should the case have gone to trial.

12 While he, the victim, and law enforcement and I thought
13 we would have had success at trial we had come to believe
14 that this is the best outcome for the case.

15 THE COURT: Is there a prior criminal history?

16 SOLICITOR: It is minimal. There is a 1998 petit lar-
17 ceny, a 2000 purse snatching, and in 2001 an unlawful carry-
18 ing and possession of crack for which he got probation. In
19 2002 his probation was revoked and he went to the Depart-
20 ment of Corrections.

21 THE COURT: Victim impact?..

22 SOLICITOR: Your Honor, the victim is not seeking to ad-
23 dress the Court.

24 THE COURT: Thank you.

25 (Brief pause)

1 THE COURT: Mr. Bailey, I'll hear from you again.

2 SOLICITOR: The victim just wanted me to relay what I
3 have just relayed.

4 THE COURT: All right, thank you.

5 I would say that whether or not the Defendant realizes
6 the plea as benefitting him, I find that he wishes to enter
7 the plea. Whether he is guilty or not guilty he understands
8 he could receive up to thirty years if found guilty by a
9 jury, so I accept his plea of guilty under North Carolina
10 versus Alford.

11 The record will show that he is agreeing to take ten
12 years when his sentence could have been thirty years if he
13 was found guilty in a trial.

14 He understands that there is an eye-witness in the case
15 against him that a jury might believe. No one knows that at
16 this time, but his plea was knowingly and intelligently en-
17 tered, so I accept his plea of guilty under North Carolina
18 versus Alford to attempted murder. His plea was voluntar-
19 ily made with the advice of counsel, with whom he says he
20 is satisfied.

21 MR. BAILEY: Thank you, Your Honor. I don't have any-
22 thing further to add except that Mr. Mitchell has been incar-
23 cerated since August of 2015. That's five hundred and eighty
24 days, Your Honor.

25 I can answer any questions if there are any you would

16

1 like me to address.

2 THE COURT: Is there anything you would like to say, Mr.
3 Mitchell?

4 DEFENDANT: No, sir, Your Honor.

5 THE COURT: On 2016 GS 40 01860, on a plea of guilty
6 under North Carolina versus Alford, the Defendant is com-
7 mitted to the State Department of Corrections for a period
8 of ten years, with credit given him for all the time he has
9 served.

10 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

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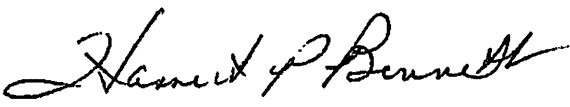
Certificate

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I, Harriet P. Bennett, Court Reporter for South Carolina Court Administration, hereby certify that the foregoing transcript was prepared from the records of Crystal Holmes to the best of my ability, having been heard in the Court of General Sessions for Richland County on March 20, 2017.

FURTHER, I certify that I am neither of kin nor counsel to any party to this matter, nor do I have any interest in the case.

September 12, 2017



2017CP4004953
In the Court of Common Pleas

STATE OF SOUTH CAROLINA

County of Richland

Venable Mitchell #283119
Full name and prison number (if any) of Applicant,

vs.

The State
Name of Respondent.

RICHLAND COUNTY
FILED

2017 AUG 17 AM 11:49

JEANNETTE W. MCBRIDE
C.C.P. & C.S.

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS — READ CAREFULLY

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

Since every application must be sworn to 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 applicant was convicted.

1. Place of detention Kershaw Corr. Inst., 4848 Goldmine Hwy.
Kershaw, S.C. 29067

2. Name and location of Court which imposed sentence: Richland County Judicial Ctr.,
1701 Main Street, Columbia, S.C. 29201

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

- (a) IND# 16 GS 40 18 60 / charge, Attempted Murder
- (b) _____
- (c) _____

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

- (a) 3-20-2017, 10 year negotiated plea.
- (b) _____
- (c) _____

5. Check whether a finding of guilty was made

- (a) after a plea of guilty: _____
- (b) after a plea of not guilty: _____
- (c) after a plea of nolo contendere: ATFORD Plea

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

NO

7. If you answered "yes" to (6), list N/A

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

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

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

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

(c) the date of each such result:

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

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

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

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) DID NOT KNOW I COULD, WAS NOT ADVISED OF SAME.
- (b) _____
- (c) _____

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

- (a) INEFFECTIVE ASST. OF COUNSEL.
- (b) PLEA WAS NOT KNOWING AND INTELLIGENTLY GIVEN.
- (c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) Refer to reverse side of this page.
- (b) Refer to reverse side of this page.
- (c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

Absent discovery materials, Counsel's advice was not wisely given

(A). In that later knowledge gathered could have convince me to use my right to trial by jury. The late materials contained conflicting concerns ripe for a trial.

(B). The plea of Alford-v-N.C. was evidence of my hesitation to surrender my due process rights and should be seen by the Court as same. My plea was induced by counsel's bad advice.

11. Prior to this application have you filed with respect to this conviction NO
- (a) any petition in a State Court under South Carolina Law? _____
 - (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? _____
 - (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? _____
 - (d) any other petitions, motions or applications in this or any other Court? _____

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application: N/A

- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

- (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

- (c) the disposition thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

- (d) the date of each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? NO

14. If you answered "yes" to (13), identify: N/A

(a) which grounds have been presented:

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

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

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

15. If any ground set forth in (9) 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) No appeal was filed or was I advised of same.
- (b) _____
- (c) _____

16. 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? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

17. If you answered "yes" to one or more parts of (16), list:

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

- i. Rhodes Bailey, 1701 Main Street, Columbia S.C., 29201
- ii. _____
- iii. _____

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

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

18. State clearly the relief you seek in filing this application.

Vacation of sentence/conviction, New Trial, Expungment of All Records of same, Departure from plea.

19. Are you now under sentence from any other court that you have not challenged? NO

STATE OF SOUTH CAROLINA

County of Richland

VERIFICATION

I, VENABLE Mitchell, 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.

Venable Mitchell
Applicant

SWORN to and subscribed before me this 25th

day of July, 192017

Catharine A. Crosson (L.S.)
Notary Public

My Commission Expires My Commission Expires December 28, 2018

RICHLAND COUNTY
FILED
2017 AUG 17 AM 11:19
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

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

I, VENABLE Mitchell, 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 therefor.

Venable Mitchell
Applicant

SWORN or affirmed to and subscribed before me this

25th day of July, 192017

Catharine A. Crosson
Notary Public

My Commission Expires My Commission Expires December 28, 2018

ELECTRONICALLY FILED - 2018 May 14 4:01 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4004953

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND)	
)	CASE NO.: 2017-CP-40-04953
)	
VENABLE MITCHELL, #283119)	
Applicant,)	
)	
vs.)	AMENDED APPLICATION FOR
)	POST CONVICTION RELIEF
STATE OF SOUTH CAROLINA,)	
)	
Respondent.)	
)	
_____)	

DEPARTMENT OF CORRECTIONS
 RICHLAND COUNTY
 2017-11-01 01:44:21
 FILED

The Applicant, VENABLE MITCHELL, now having the benefit of appointed counsel alleges the following:

1. Venable Mitchell is detained at Kershaw Correctional Institution under Inmate Number: 283119.
2. Applicant seeks vacation of sentence/conviction, new trial, expungement of all records of same and departure from plea. Applicant seeks the aforementioned relief based on Ineffective Assistance of Counsel and Involuntary Plea.
3. Applicant, by and through undersigned counsel, submits this Amended Application for Post-Conviction Relief, and alleges the following errors by trial counsel, which rendered trial counsel's assistance ineffective and but for which, there is a reasonable probability that, but for trial counsel's errors, Applicant would not have pled guilty and would have insisted on going to trial.
 - a. **Trial counsel failed to provide the Applicant with a full copy of the Rule 5 materials received from the Richland County Solicitor's Office until after Applicant pled guilty on March 20th, 2017. The Applicant was not properly advised concerning the prosecution's evidence against the Applicant or potential defenses he had waived by pleading guilty.**

b. Within the Rule 5 material the Applicant received from Mr. Bailey, after his conviction, there was evidence that he had not seen before and had not been made aware of. The evidence that Applicant had not seen prior to his guilty plea included but is not limited to the following:

- 1. A letter to Applicant from Mr. Bailey dated May 4, 2017, Mr. Bailey states that he *“was never provided discs from street cameras on South Ott or Rosewood. I was only showed a few black and white snapshots from the cameras.”* (see attached letter Exhibit #1A). However, in an e-mail dated March 15, 2017 at 3:18 PM, from the Assistant Solicitor, Meghan Walker, she provides ten (10) attachments of videos that were e-mailed to Mr. Bailey. The camera logs she provides are from cameras on South Ott and Rosewood. (see attached e-mail Exhibit #1B). This shows that the letter from Mr. Bailey contained untrue or inaccurate information. If Applicant were made aware of this evidence, he would not have pled guilty.**
- 2. Cell phone records showing that the victim in this case received a text message on June 29th, 2015 at 8:56 PM that stated: *“Hey chu be careful out there. ..it’s some strange things going on put here...watch your surroundings. ...love ya.”* (see attached Exhibit #2). This message was received from someone named Tab whose number was [REDACTED]. This shows there was evidence that the person who sent this text to the victim potentially had knowledge of someone who had a motive to shoot the victim. This information provides a defense that Applicant was not aware of and if the Applicant was made aware of this evidence, he would not have pled guilty.**

c. Applicant's attorney did not make Applicant aware of the progress hired investigators made. Information that was within his Mr. Bailey's file.

1. Within the file was information that the hired investigator (Lee Connelly of Info, Inc. Investigations) stopped pursuing leads as to who may have shot the victim due to lack of funds. There is evidence that reveals the investigators were on track to get information that was vital to the Applicant's defense, but the investigation was stopped due to lack of payment from Mr. Bailey's office. There were pictures of the crime scene that were not taken because of "the funding situation." There was also the possibility of confirming the Applicant's alibi, yet the investigator stated he didn't make contact with the alibi witness because he "wasn't on the clock." (see attached Exhibit #3) There was opportunity for the investigator to make contact with a potential alibi witness but it was not done due to lack of payment from Mr. Bailey's office. If Applicant had been made aware that the investigation was cut short due to lack of payment or funds, he would not have pled guilty.

4. Applicant's plea cannot be considered knowing and voluntary based on his lack of knowledge of the material evidence that was in his attorney's possession and in the prosecutor's possession. Gibson vs. State 334 S.C. 523
5. Applicant has additional concerns in regard to how he was identified as the shooter in this case.

a. In an incident report (SC0400100) (see Exhibit #4) prepared on the day of the incident (07/29/17) Mr. Jones, the father of the victim, who resided in the same home as the victim, is reported to have said "he did not see or hear anyone prior or after the shooting."

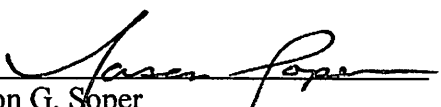
The victim was unable to see or speak due to his injuries, therefore he could only write out a statement as to who the shooter was. The State found that the Applicant's name had been written down by the victim, yet the written statement is illegible (see attached Exhibit #5).

The Applicant was picked out in a lineup that was presented to the victim's mother, Mozzell H. Jones (see Exhibit #6). This is despite the fact that it had already been stated in the previously mentioned report (see Exhibit #4) that she and the victim's father were both asleep and did not "see or hear anyone prior or after the shooting." It is the Applicant's position that the lineup was improper, inaccurate and unconstitutional and therefore Mr. Bailey's decision to not object and/or challenge the State's lineup prejudiced his case.

6. Finally, Applicant alleges that his trial counsel pressured and scared Applicant's mother in an effort to have her convince her son, the Applicant, to plead guilty on March 20th, 2017. This is in spite of Applicant's desire to go to trial. Applicant had always maintained his innocence, including at the plea hearing by going forward with an "Alford" plea. Therefore, Applicant's plea was not entered into voluntarily due to the pressure trial counsel placed on Applicant's mother to convince Applicant to plead guilty out of fear of losing her son for thirty years.

This Amended Application is in addition to relief already requested within the Applicant's application filed with this Court on August 17th, 2017. Wherefore, based on this Amended Application, the Applicant requests that a hearing on the merits be scheduled.

Respectfully submitted,


Jason G. Soper
Attorney for Applicant

Charleston, South Carolina
October 20, 2019

EXHIBITS 1A

Letter from Mr. Bailey & E-mail from Investigator Richbourg

RICHLAND COUNTY PUBLIC DEFENDER
RICHLAND COUNTY JUDICIAL CENTER

1701 MAIN STREET
POST OFFICE BOX 192
COLUMBIA, SC 29201

PHONE (803) 765-2592
FAX (803) 929-6156

May 4, 2017

Mr. Venable Deon Mitchell
#00283119
Kirkland Reception & Evaluation
4344 Board River Rd.
Columbia, SC 29210

*
Evidence 1A

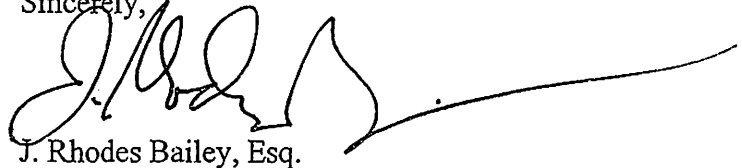
Mr. Mitchell;

I am writing in response to your letter mailed from Kirkland Correctional on May 1, 2017, which I just received yesterday. In that letter, you mention that you want to file an appeal. Unfortunately, the time period in which to file an appeal has passed. You pled guilty on March 20, 2017. I am in receipt of your letter that was mailed from Kirkland on March 29, 2017. At no time did you request that I file an appeal of your guilty plea. Because I did not receive that request within 10 days, we cannot request an appeal. ~~There are no extensions for the appeal period.~~

In response to your request for discovery items, I have mailed you the entirety of the paper discovery that I had in your file (all that I was able to print). ~~That was done on March 29, 2017, and noted with the accompanying letter. I do not have possession of, nor was I ever provided discs from street cameras on South Ott or Rosewood. I was only showed a few black and white snapshots from the cameras. I do not possess audio recordings of any hearings in General Sessions Court. The courts and court reporters do not grant us access to the actual audio recordings.~~ You should already possess transcripts of everything I have a transcript for.

The lawyer at SCDC is not completely sure what items you will be allowed to keep in your living space. SCDC will make decisions about what items you are allowed to possess while in prison. Our office sent your file to archives in late March, but I have just requested your file be sent back to us so that I can get copies of all audio discs or CDs therein. It will take some time for the file to arrive in possession. I will send the discs and CDs to Kirkland at that time.

Sincerely,



J. Rhodes Bailey, Esq.

Evidence 1a

Richbourg, Andrew C

From: [REDACTED]
Sent: Thursday, July 30, 2015 11:03 AM
To: Richbourg, Andrew C
Subject: Re: Shooting

I believe I have the car. Its a dark ford explorer
Came from Plowden and left on plowden. Turned off before s beltline. Will drop off cd by 1:00

On Thursday, July 30, 2015, Richbourg, Andrew C [REDACTED] wrote:

07-29-2015 at approx. 0115 hours

17 Kolob Street
Columbia, SC 29205

Never SEEN!

Can you check around this time and area and see if there is anything on this shooting. We believe they may have left by vehicle. We don't have a lot to go on right now.

Thanks,

Inv. AC Richbourg
Columbia Police Department
Criminal Investigations Division
Violent Crimes Against Persons

[REDACTED]

EXHIBIT 1B

E-mail from Solicitor Meghan Walker to Mr. Bailey, Esq.

* Evidence 1B ✓

Rhodes Bailey

From: Meghan Walker
Sent: Wednesday, March 15, 2017 3:18 PM
To: Rhodes Bailey; EMILY KUCHAR
Cc: Lucas Hawks
Subject: camera log

Proof He had camera
log from video boxes
that I still haven't
seen.

- 1) Ch. 01 - South Ott and Rosewood 0118-0135
- 2) Ch. 01 - South Ott and Plowden 0119-0133
- 3) Ch. 02 - South Ott and Rosewood 0118-0135
- 4) Ch. 02 - South Ott and Plowden 0119-0126
- 5) Ch. 02 - South Ott and Plowden 0126-0133
- 6) Ch. 03 - South Ott and Rosewood 0118-0128
- 7) Ch. 03 - South Ott and Plowden 0119-0133
- 8) Ch. 03 - South Ott and Rosewood 0128-0135
- 9) Ch. 04 - South Ott and Rosewood 0118-0135
- 10) Ch. 04 - South Ott and Plowden 0119-0133

This is from 2 camera boxes. Each camera box has 4 cameras on it (the Ch.).



Meghan Walker
Assistant Solicitor
Fifth Judicial Circuit

1701 Main Street
Columbia, SC 29201
Tel.: 803-576-1815
Fax: 803-576-1718

EXHIBIT 2

**Victim's cell phone records
(message received 06/29/15)**



SOUTH CAROLINA ELECTRONIC CRIMES TASK FORCE



US Secret Service
107 Westpark Blvd. Suite 301
Columbia, SC 29210
Main 803-772-4015

Summary

Connection Type	Cable No. 100
Extraction start date/time	9/4/2015 1:17:36 PM -04:00
Extraction end date/time	9/4/2015 1:50:12 PM -04:00
Extraction Type	Logical
Extraction ID	8FF055AC-584E-4E0F-9B74-B0C0F1579011
Report type	Phone
Selected Manufacturer	Motorola CDMA
Selected Device Name	XT1528 Moto E
Unit Identifier	5919577
Unit Version	Software: 4.2.6.5 UFED, Full Image: 2.13K25, Tiny Image:
UFED Physical Analyzer version	4.2.6.4
Version type	
Time zone settings (UTC)	(UTC-05:00) New_York (America)
Case number	15-20337
Case name	N/A
Evidence number	N/A
Requesting Agency	COLUMBIA POLICE DEPARTMENT
Requesting Agent / Officer	INV A RICHBOURG
Type of Incident	ATTEMPTED MURDER
Suspect	UNKNOWN
Forensic Examiner	J VanHouten

Device Information

#	Name	Value	Delete
1	Agency Case Number		Intact
2	Client Used for Extraction	Yes	Intact
3	DeviceInfoDetectedManufacturer	motorola	Intact
4	DeviceInfoDetectedModel	XT1526	Intact
5	DeviceInfoPhoneDateTime	9/4/2015 2:17:53 PM -04:00	Intact
6	DeviceInfoRevision	5.0.2 LXI22.50-14.8 30	Intact
7	Examiner		Intact
8	Generic	MMS Drafts are not extracted. SMS drafts and threads created using Hangouts as an SMS application, will not be extracted. When restoring SMS messages to an Android v4.4 and above device: If needed, approve the pop-up messages that appear at the start and end of the process.	Intact
9	ICCID	89011201000200469193	Intact
10	IMSI	311008035562820	Intact
11	MEID	256691562200413957 (HEX: 99000626065105)	Intact
12	MSISDN	8036361628	Intact
13	MSISDN Type	MDN	Intact
14	Requesting Agency		Intact

586	From 9329	7/1/2015 10:20:43 AM(UTC-4)	Read	BSTFreeMsg You used 85 percent of your data usage cap. Once you reach 1024.000MB of usage, we'll reduce your data speeds through 07/28/2015.	Intact
587	From [REDACTED] Angel *	6/30/2015 10:17:22 PM(UTC-4)	Read	About to take a shower	Intact
588	From [REDACTED] Angel *	6/30/2015 10:10:37 PM(UTC-4)	Read	I'm ok wbu?	Intact
589	From [REDACTED] Angel *	6/30/2015 10:09:35 PM(UTC-4)	Read	Hey hun	Intact
590	From [REDACTED] Tamara *	6/30/2015 4:33:34 PM(UTC-4)	Read	ldk	Intact
591	From [REDACTED] Tamara *	6/30/2015 4:33:23 PM(UTC-4)	Read	chilling	Intact
592	From [REDACTED] Angel *	6/30/2015 4:14:00 PM(UTC-4)	Read	Nothing much just at work	Intact
593	From [REDACTED] Tamara *	6/30/2015 2:57:36 PM(UTC-4)	Read	what's up	Intact
594	From [REDACTED] Megan *	6/30/2015 2:11:40 PM(UTC-4)	Read	2154750048	Intact
595	From [REDACTED] Angel *	6/29/2015 11:43:08 PM(UTC-4)	Read	Sup	Intact
596	From [REDACTED] Tab *	6/29/2015 8:59:18 PM(UTC-4)	Read	Okay! !!	Intact
597	From [REDACTED] Tab *	6/29/2015 8:56:27 PM(UTC-4)	Read	Hey chu be careful out there. ..it's some strange things going on put here...watch your surroundings. ..love ya	Intact
598	From [REDACTED] Megan *	6/29/2015 6:22:10 PM(UTC-4)	Read	kk im bout to shower and I'm otw	Intact
599	From [REDACTED] Megan *	6/29/2015 6:13:33 PM(UTC-4)	Read	idk bout to go to eric house till shooi call me thenbwe drinking again where snoop?	Intact
600	From [REDACTED]	6/29/2015 6:12:31 PM(UTC-4)	Read	THAT G6 GT FAST ANY	Intact
601	From [REDACTED] Megan *	6/29/2015 5:59:39 PM(UTC-4)	Read	nun	Intact
602	From [REDACTED]	6/29/2015 5:10:50 PM(UTC-4)	Read	[REDACTED] your Google verification code.	Intact
603	From [REDACTED] Megan *	6/29/2015 4:48:34 PM(UTC-4)	Read	kk	Intact
604	From [REDACTED] Megan *	6/29/2015 4:47:32 PM(UTC-4)	Read	me to lol	Intact
605	From [REDACTED] Megan *	6/29/2015 4:44:38 PM(UTC-4)	Read	nun	Intact
606	From [REDACTED] Megan *	6/29/2015 4:42:57 PM(UTC-4)	Read	wyd wya	Intact
607	From [REDACTED] Megan *	6/29/2015 4:40:38 PM(UTC-4)	Read	yoooo	Intact
608	From [REDACTED]	6/29/2015 3:04:13 PM(UTC-4)	Read	BstFreeMsg: Select privacy choices for new account or line(s). More info on how to opt in/out of Mobile Ads & Reporting programs at boostmobile.com/privacy.	Intact
609	From [REDACTED] Mac T *	6/29/2015 2:19:04 PM(UTC-4)	Read	I'm praying for my dog...	Intact
610	From [REDACTED] Mac T *	6/29/2015 1:09:46 PM(UTC-4)	Read	Bruh, I hope all is well with you....	Intact
611	From [REDACTED] Megan *	6/28/2015 9:37:43 PM(UTC-4)	Read	its megan call me	Intact
612	From [REDACTED]	6/28/2015 7:14:08 PM(UTC-4)	Read	THIS EARL	Intact
613	From [REDACTED]	6/28/2015 5:20:47 PM(UTC-4)	Read	603 7075	Intact
614	From [REDACTED]	6/28/2015 5:11:34 PM(UTC-4)	Read	603 7075	Intact
615	From [REDACTED] Keith *	6/28/2015 1:50:33 PM(UTC-4)	Read	5563201	Intact
616	From [REDACTED] Nik *	6/28/2015 1:45:44 PM(UTC-4)	Read	What's up?	Intact

EXHIBIT 3

E-mail records from Investigator Lee Connelly

Lee emails from January

1/12/17

After our meeting yesterday, I went to 17 Kolob Street, the incident scene. Kolob Street runs between S. Ott and Rose Streets (If on S. Ott, you can turn right onto Rose and that curves around. Right after the curve, turn left onto Kolob). If facing 17 Kolob (without getting out of the car), it looks like there are no flood lights on either side of the house. There appears to be a light on the front porch and on the right-hand side of the house, at the back, where there is another door that has a regular light just outside the door.

There does appear to be an SCE&G security pole light between the 2 houses behind 17 Kolob, on Rose Street, in their backyards. Those houses are 2 Rose Street and 6 Rose Street and it appears that the light would be unobstructed, however, if facing 17 Kolob, the SCE&G light would be more illuminating of the right-side of 17 Kolob than the left-hand side where the incident occurred.

17 Kolob appears vacant so I went to the Register of Deeds Office and found out that the owners are [REDACTED] (800, 770-1202). I placed a call to them this morning, but have not yet received a call back.

I am hoping to meet with Venable today or tomorrow.

Attached you will find the Certificate of Mailing, the Subpoena and the correspondence that was served upon Hampton Park Apartments via certified mail as their office was closed when I tried to personally serve it last week.

1/12/17

I called the owners of 17 Kolob last week and never received a return call. I will go by their house today to seek permission to photo inside and outside the house.

Lee

1/17/17

Attached you will find the Certificate of Mailing, the Subpoena and the correspondence that was served upon Hampton Park Apartments via certified mail as their office was closed when I tried to personally serve it last week.

I called the owners of 17 Kolob last week and never received a return call. I will go by their house today to seek permission to photo inside and outside the house.

Lee

1/18/17

Attached is the Report from my interview with Venable Mitchell.

Also is a copy of the FOIA Request I am sending to the City of Columbia today.

Venable suggested that we might want to get Mozell's phone records to prove that she texted him the Mother's Day after Chuma had Venable shot, that he called her at her request, to help establish a pattern that after Venable told Mozell that her son had arranged him (Venable) being shot, she feared retaliation and then after having seen Venable at the gas station and then her husband seeing Venable at a local restaurant that when Chuma was shot, they automatically assumed it was him.

I went to the home of the owners (R [REDACTED]) of 17 Kolob Street yesterday, leaving a card, but haven't received word back from them. When additional funds are approved, I'll follow up again and just go out Kolob Street in the day time to photo the house/yard.

Venable said that the shed would have blocked any light from the security light in the backyard.

1/24/17

I'm getting confused about this one. The \$85.00 bill that I sent in to your office in March of 2016 (for work from 02/15/16 through 02/16/16), I believe, was already paid to ya'll by OID. I just never received the check. If a stop payment can be placed on that check, and one issued to me, that'd be great. In case ya'll couldn't do that, I added the \$85.00 to the bill I sent in to Margie on January 18, 2017, making that outstanding bill \$389.41 (for work from 02/15/16 through 01/14/17). The total amount pre-approved was \$500.00. Was additional funding granted on this? I haven't gotten an additional contract from Margie.

For work I've done from 01/17/17 through 01/19/17 that totals \$295.75. I haven't sent in the bill to Margie for this work because it would've taken us over the \$500.00 pre-approved amount. For the total unpaid bills to date on the Mitchell case, it is \$685.16.

2/1/17

I've gotten a call from [REDACTED] owner of the house where the incident occurred, but haven't returned that call because of the funding situation. I believe he would let me take photos from inside the house. I'm just waiting on the word from you.

I did send the FOIA Request to the City of Columbia Police Department.

I also did ride out (didn't try to make contact with) to the apartments where Venable said we could locate Keisha, sister of Thomas Mixon (currently in Kershaw CI, I worked on his case with Alicia Goode), who might be able to give us the name of a person where rumors in the neighborhood re: white guy looking for Chuma. There was an apartment there that had some of the items Venable was talking about, but I did not try to make contact with her because I was not "on the clock" when I rode out there. Also, if we want to make sure to get the name of the person right, we might want to go to Charlie Kennedy (not in jail, I worked on his case with Megan Eigenbrot) or Marquise Wilson (currently in Turbeville CI) or Thomas Mixon directly. Let me know....

When Venable was moved to a different dorm at RCDC, he was placed in the dorm with the guy that actually shot him that night at Chuma's....Dominique Lewis (DeLoc). Do you want me to look into him or do a FOIA for information on him?

This is as far as I've gotten...

Lee

3/3/2017

I spoke with [REDACTED] this morning. I explained who I was and that I was working for you and that we would like to take a look at his property at 17 Kolob Street. He indicated that he's a

chimney sweep and is swamped for the next month, but that he would leave a key for us to go through the house (mentioned that he hadn't changed the carpet yet or the screen). I told him that certainly we wouldn't want to go through without him being there and that right now we were interested in "getting a lay of the land." I told him that if we decided that we needed to go in, we would call him back. He gave permission for us to look around and said that if there was a problem with the neighbors to just call him.

The mother and father of the guy that got shot there had lived there for 10 years. The guy that got shot lived there was about 14 when they moved in. He was in and out and lived there part-time.

Mr. Rust indicated that his daughter is a criminal attorney and that he might be interested in having the person convicted of the incident pay for the damages. I provided him your name and Venable's and reminded him that Venable hadn't been convicted, just accused of doing it. He understands.

I think the sooner we go, the better. I could go anytime on Tuesday March 7th; anytime Wednesday March 8th up to 3:30 P.M. (I have plans after that); anytime on Thursday March 9th; anytime on Friday March 10th.

Lee

(03/03/17)

EXHIBIT 4

Supplemental Incident Report dated 7/29/2015

Contains statement from victim's parents

City of Columbia Police Department
SC0403100

INCIDENT REPORT

INFORMATION ONLY

CASE NUMBER
150020337

NCIC
INQ. INTD.

EVENT

VICTIM NO.

SUBJECT NO.

ARRIVAL

PROPERTY

ADMINISTRATIVE

INCIDENT TYPE	COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM
1. 16-03-0029 ATTEMPTED MURDER 13A AGGRAVATED ASSAULT	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	RESIDENCE/HOME		<input checked="" type="checkbox"/> Individual <input type="checkbox"/> Business <input type="checkbox"/> Financial Inst <input type="checkbox"/> Government <input type="checkbox"/> Relig. Orgn. <input type="checkbox"/> Soc./Public <input type="checkbox"/> Other <input type="checkbox"/> Unknown <input type="checkbox"/> Police Off.
2.	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO			
3.	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO			

INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)
17 KOLOB ST, COLUMBIA, SC

INCIDENT DATE	24 HR. CLOCK	TO	DATE	24 HR. CLOCK	DISPATCH DATE/TIME 24 HR. CLOCK	DISP. DATE	DISP. TIME	TIME ARRIVED	DEPART. TIME	LOCATION NO.
07/29/2015	01:15		07/29/2015	01:30	07/29/2015	01:27	01:31	04:20		669

COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)
JONES, BERNARD

RELATIONSHIP TO SUBJECT
#1 ST #2 #3

RESIDENT J RACE B SEX M AGE 61 ETH N DAYTIME PHONE [REDACTED] EVENING PHONE [REDACTED]

ADDRESS 17 KOLOB ST CITY COLUMBIA STATE SC ZIP CODE 29205- LOCATION NO. 669

VICTIM'S NAME (LAST, FIRST, MIDDLE)
UDENSI, EMANUEL, C

RELATIONSHIP TO SUBJECT
#1 RU #2 #3

RESIDENT J RACE B SEX M AGE 25 ETH N DAYTIME PHONE [REDACTED] EVENING PHONE [REDACTED]

HEIGHT WEIGHT HAIR EYES FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.

ADDRESS 17 KOLOB ST CITY COLUMBIA STATE SC ZIP CODE 29205- LOCATION NO. 669

W/SE INJURY (MCT-1) YES NO EXPLAIN- COMPLAINT OF ANY NON-WEAPONS INJURIES YES NO

VICTIM(S) USING ALCOHOL YES NO UNK. DRUGS: YES NO UNK. TYPE: TWO MAN VEH ONE MAN VEH DETECTIVE PLASMT. OTHER ALONE ASSISTED

<input checked="" type="checkbox"/> SUSPECT	NAME (LAST, FIRST, MIDDLE) UNKNOWN, UNKNOWN	RACE U SEX U AGE 00 / 00 ETH U DATE OF BIRTH HEIGHT WEIGHT HAIR EYES
<input type="checkbox"/> RUNAWAY	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.	
<input type="checkbox"/> WANTED	RELATED OFFENSE(S) 13A	DAYTIME PHONE [REDACTED] EVENING PHONE [REDACTED]
<input type="checkbox"/> WARRANT	ADDRESS UNKNOWN CITY COLUMBIA STATE SC ZIP CODE [REDACTED] LOCATION NO. [REDACTED]	
<input type="checkbox"/> ARREST	SUBJECT(S) USING ALCOHOL <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK. ARRESTED NEAR OFFENSE SCENE <input type="checkbox"/> YES <input type="checkbox"/> NO DATE/TIME OF OFFENSE DATE/TIME OF ARREST	
<input type="checkbox"/> JAIL	SUMMONS <input type="checkbox"/> CRUGS <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK. TYPE TOTAL # ARRESTED	

DAY OF THE WEEK HOW REPORTED A= OFFICER DISPATCHED ON CALL D= COMPLAINT WRITTEN IN DIFF. FACTOR
S M T W T F S UNK B= REPORT TAKEN BY PHONE E= OFFICER INITIATED N
C= COMPLAINANT WALKED IN F= OTHER

ORIGINAL
ON THE ABOVE DATE AND TIME AT THE INCIDENT LOCATION, THE VICTIM WAS SHOT WITH A .410 GAUGE SHOTGUN THROUGH THE REAR BEDROOM WINDOW BY THE UNKNOWN SUSPECT(S). THE SUSPECT(S) FLED BY FOOT IN A UNKNOWN DIRECTION. THE VICTIM WAS ASLEEP IN HIS BED WHEN THE SHOTS WERE FIRED THROUGH THE BEDROOM WINDOW STRIKING HIM IN THE FACE AND RIGHT FOREARM. 4 .410 SHOTGUN SHELLS WERE OBSERVED OUTSIDE BELOW THE REAR BEDROOM WINDOW.

JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY	JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY
---	--

TYPE (GROUP)	TOTAL VALUE
STOLEN	\$0.00
DAMAGED	\$2,500.00
BURNED	\$0.00
RECOVERED	\$0.00
SEIZED	\$0.00

SUBJECT IDENTIFIED YES NO SUBJECT LOCATED YES NO S.F. AN ACTIVE ADM. CLOSED UNFOUNDED ARRESTED UNDER 18 EX-CLEAR UNDER 18 ARRESTED 18 AND OVER EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE 1. OFFENDER DEATH 2. NO PROSECUTION PROSECUTION 3. EXTRADITION DENIED 4. VICTIM DECLINES COOPERATION 5. JUVENILE NO CUSTODY.

REPORTING OFFICER(S) KRAFT JEFFREY A DATE 07/29/2015 03:03:47 UNIT NUMBER 23658 APPROVING OFFICER MORRIS CHRISTOPHER M DATE 07/29/2015 04:40:24 UNIT NUMBER 20033

FOLLOWUP INVESTIGATION YES NO OFFICER

AGENCY : City of Columbia Police
 ORI # : SC0400100
 Report Date/Time : 07/29/2015 01:15
 Incident # : 150020337

**INCIDENT REPORT
 ADDITIONAL OTHERS**

PERSON TYPE PARENT	NAME (LAST, FIRST, MIDDLE) JONES, MOZELL				RELATIONSHIP SUBJECT #1 ST #2 #3			RESIDENT J	RACE B	SEX F	AGE 58 /	D.O.B. 04/23/1957	ETH N
	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECUALIARITIES, ETC.						RELATED OFFENSE(S)		
	ADDRESS 17 KOLOB ST				CITY COLUMBIA	STATE SC	ZIP CODE 29205-	LOCATION NO. 669	DAYTIME PHONE [REDACTED]		EVENING PHONE [REDACTED]		H B
VIOLENCE: <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> EXPLAIN- _____ COMPLAINT OF ANY NON-VIOLENCE: <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/>													
USING: ALCOHOL <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK <input type="checkbox"/> DRUGS: <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK <input type="checkbox"/> TYPE: _____													

PERSON TYPE	NAME (LAST, FIRST, MIDDLE)				RELATIONSHIP SUBJECT #1 #2 #3			RESIDENT	RACE	SEX	AGE /	D.O.B.	ETH
	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECUALIARITIES, ETC.						RELATED OFFENSE(S)		
	ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.	DAYTIME PHONE		EVENING PHONE		H B
VIOLENCE: <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> EXPLAIN- _____ COMPLAINT OF ANY NON-VIOLENCE: <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/>													
USING: ALCOHOL <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK <input type="checkbox"/> DRUGS: <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK <input type="checkbox"/> TYPE: _____													

PERSON TYPE	NAME (LAST, FIRST, MIDDLE)				RELATIONSHIP SUBJECT #1 #2 #3			RESIDENT	RACE	SEX	AGE /	D.O.B.	ETH
	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECUALIARITIES, ETC.						RELATED OFFENSE(S)		
	ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.	DAYTIME PHONE		EVENING PHONE		H B
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PERSON TYPE	NAME (LAST, FIRST, MIDDLE)				RELATIONSHIP SUBJECT #1 #2 #3			RESIDENT	RACE	SEX	AGE /	D.O.B.	ETH
	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECUALIARITIES, ETC.						RELATED OFFENSE(S)		
	ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.	DAYTIME PHONE		EVENING PHONE		H B
VIOLENCE: <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> EXPLAIN- _____ COMPLAINT OF ANY NON-VIOLENCE: <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/>													
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PERSON TYPE	NAME (LAST, FIRST, MIDDLE)				RELATIONSHIP SUBJECT #1 #2 #3			RESIDENT	RACE	SEX	AGE /	D.O.B.	ETH
	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECUALIARITIES, ETC.						RELATED OFFENSE(S)		
	ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.	DAYTIME PHONE		EVENING PHONE		H B
VIOLENCE: <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> EXPLAIN- _____ COMPLAINT OF ANY NON-VIOLENCE: <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/>													
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PERSON TYPE	NAME (LAST, FIRST, MIDDLE)				RELATIONSHIP SUBJECT #1 #2 #3			RESIDENT	RACE	SEX	AGE /	D.O.B.	ETH
	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECUALIARITIES, ETC.						RELATED OFFENSE(S)		
	ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.	DAYTIME PHONE		EVENING PHONE		H B
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USING: ALCOHOL <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK <input type="checkbox"/> DRUGS: <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK <input type="checkbox"/> TYPE: _____													

SUPPLEMENTAL REPORT

INFORMATION ONLY

CASE NUMBER
150020337

NCIC
INQ. ENTD.

<input type="checkbox"/> ORIGINAL REPORT	<input checked="" type="checkbox"/> SUPPLEMENTAL REPORT	<input type="checkbox"/> ADDITIONAL VICTIMS	<input type="checkbox"/> ADDITIONAL STOLEN PROPERTY	PAGE <u>1</u> of <u>1</u> PAGES
<input type="checkbox"/> MODIFIES ORIGINAL	<input type="checkbox"/> CASE STATUS CHANGE	<input type="checkbox"/> ADDITIONAL OFFENDERS	<input type="checkbox"/> ADDITIONAL RECOVERED PROPERTY	

ORIGINAL INCIDENT TYPE ATTEMPTED MURDER		ORIGINAL INCIDENT DATE 07/29/2015	
ORIGINAL INCIDENT LOCATION 17 KOLOB ST COLUMBIA SC 29205		TIME 01:15	
NAME OF COMPLAINANT BERNARD JONES		LOCATION NO. 669	
SUSPECTS NAME	RACE	SEX	DATE OF BIRTH
UNKNOWN UNKNOWN	U	U	
SUSPECTS ADDRESS	HEIGHT	WEIGHT	HAIR
UNKNOWN			

INVESTIGATIVE

ON 07-29-2015 AT 0127 I WAS DISPATCHED TO 17 KOLOB ST IN REFERENCE TO A SHOOTING WITH 1 PERSON HIT. I WAS THE FIRST OFFICER TO ARRIVE ON SCENE AT 0131. I WAS FLAGGED DOWN BY THE VICTIMS FATHER MR. JONES WHO STATED HIS SON WAS SHOT AND IS INSIDE THE HOUSE. I ENTERED THE HOUSE AND OBSERVED THE VICTIM MR. UDENSI LAYING ON THE GROUND IN A POOL OF HIS OWN BLOOD WITH SEVERE INJURIES TO HIS FACE AND ARM. MR. UDENSI WAS CONSCIOUS AND BREATHING BUT WAS UNABLE TO SPEAK AT THAT TIME. AFTER SECURING THE SCENE EMS ARRIVED AND TRANSPORTED MR. UDENSI TO PALMETTO HEALTH RICHLAND WHERE HE UNDERWENT EMERGENCY SURGERY.

MR. JONES STATED THAT WHILE HIMSELF, WIFE AND SON WERE ASLEEP, HE HEARD SEVERAL LOUD BANGS AND LOOKED OUT THE FRONT WINDOW, THINKING IT WAS A POWER POLE TRANSFORMER THAT BLEW UP. AT THAT TIME MR. UDENSI OPENED HIS BEDROOM DOOR AND YELLED FOR HELP, THEN FALLING TO THE GROUND. MR. JONES THEN CALLED 911.

OFFICER GLEATON AND SCHAFFER ARRIVED ON SCENE AND OBSERVED 4 .410 SHOTGUN SHELLS BELOW THE REAR WINDOW OF THE VICTIM, MR. UDENSI'S ROOM. MR. UDENSI'S BEDROOM IS IN THE REAR OF THE HOME AND HIS BED IS PLACED AGAINST THE REAR WINDOW WHERE THE SHOTS WERE FIRED THROUGH. THE REAR BEDROOM WINDOW WAS BROKEN DUE TO THE SHOTS BEING FIRED BY UNKNOWN SUSPECT(S) THROUGH THAT WINDOW AT MR. UDENSI.

K9 UNIT WALKER ARRIVED ON SCENE. I RAN WITH K9 FOR THE TRACK STARTING AT THE REAR OF THE HOUSE WHERE THE SHOTGUN SHELLS WERE FOUND. K9 TRACKED FROM THE REAR OF THE HOUSE TOWARDS THE FRONT YARD, TURNING RIGHT ALONG THE STREET ENDING AT THE INTERSECTION ON ROSE DR AND KOLOB ST AT THAT POINT K9 WALKER CALLED OFF THE TRACK. THE CRIME SCENE WAS MAINTAINED AND SECURED.

MR. JONES STATED THAT HE DID NOT SEE OR HEAR ANYONE PRIOR OR AFTER THE SHOOTING. MR. JONES IS UNAWARE OF ANY UNUSUAL OR SUSPICIOUS ACTIVITY FROM MR. UDENSI RECENTLY, BUT STATED THAT THERE HAS BEEN SEVERAL FIGHTS INVOLVING MR. UDENSI AND OTHERS IN THE PAST AT OR NEAR THIS LOCATION WITH ONE PRIOR INCIDENT INVOLVING A GUN AND SHOTS BEING FIRED.

SHIFT SUPERVISOR CPL. MORRIS ARRIVED ON SCENE. SGT. MCCracken WAS NOTIFIED BY PHONE. CAPT. ROWSON WAS NOTIFIED AND ARRIVED ON SCENE. OSI TECH T. MOORE ARRIVED ON SCENE AT 0232 TO PROCESS THE SCENE. AT 0346 INV. RICHBURG ARRIVED ON SCENE.

CPD VIDEO BOXES ARE LOCATED AT S. OTT AND FLOWDEN RD (BOX#C022), AS WELL AS S. OTT AND ROSEWOOD DR (BOX#C023).

NARRATIVE

ADMINISTRATIVE

SUBJECT IDENTIFIED <input type="checkbox"/> YES <input type="checkbox"/> NO	SUBJECT LOCATED <input type="checkbox"/> YES <input type="checkbox"/> NO	S. F. <input type="checkbox"/>	<input type="checkbox"/> ACTIVE <input type="checkbox"/> ADM. CLOSED <input type="checkbox"/> UNFOUNDED	<input type="checkbox"/> ARRESTED UNDER 18 <input type="checkbox"/> ARRESTED 18 AND OVER	<input type="checkbox"/> EX-CLEAR UNDER 18 <input type="checkbox"/> EX-CLEAR 18 AND OVER
REASON FOR EXCEPTIONAL CLEARANCE: 1. <input type="checkbox"/> OFFENDER DEATH 2. <input type="checkbox"/> NO PROSECUTION 3. <input type="checkbox"/> EXTRADITION DENIED 4. <input type="checkbox"/> VICTIM DECLINES COOPERATION 5. <input type="checkbox"/> JUVENILE NO CUSTODY					
REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER MORRIS CHRISTOPHER M	DATE 07/29/2015	UNIT NUMBER 20033
FOLLOWUP INVESTIGATION <input type="checkbox"/> YES <input type="checkbox"/> NO			OFFICER		

EXHIBIT 5

Victim's illegibly written statement

150020337 2 10-75

Emmanuel Udeni

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EXHIBIT 6

Victim's mother, Mozell H. Jones, signed identification of Applicant



City of Columbia Police Department

"The Positive Difference"

DATE: 08-18-2015

PHOTO LINE-UP

On this date Investigator(s) Richburg showed me 6
pictures at 3301 Harder Street.
(location)

I picked out a picture 4
(identify photo)

which is the person (male/~~female~~, white/~~black~~), who committed the crime of Shooting
Vernoble Mitchell at
17 Kolob St. on 07-29-2015
(location) (date of incident)

I hereby swear and certify the above is the truth.

Mozell H. Jones
(signed)
409 Loun Street W. Columbia
(address) 29169 SC
803-363-4546
(phone)

Mozell H. Jones

Sworn to and Subscribed before me this
18 day of August, 2021.

[Signature]
Notary Public for South Carolina

My commission expires: 02/01/2021



STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
))
Venable Deon Mitchell., #283119)
))
Applicant,)
))
v.)
))
State of South Carolina,)
))
Respondent.)
_____)

IN THE COURT OF COMMON PLEA
FOR THE FIFTH JUDICIAL CIRCUIT

Case No.: 2017-CP-40-4953

**RETURN AND MOTION FOR MORE
DEFINITE STATEMENT**

FILED
MAY 11 2017
1:30 PM
CLERK OF COURT
S. G. MCBRIDE

The State (Respondent), making its Return to the application for Post-Conviction Relief filed on August 17, 2017, would respectfully show this Court:

I. Procedural History

Venable Deon Mitchell (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. In April 2016, the Richland County Grand Jury indicted Applicant for attempted murder (2016-GS-40-01860) and weapons/discharging firearms into a dwelling (2016-GS-40-01862). The charges resulted from an incident that occurred on July 29, 2015, in which Applicant shot a shotgun multiple times through the bedroom window of the victim, which resulted in the victim losing his vision and his nose.

Assistant Public Defender Rhodes Bailey represented Applicant. Assistant Solicitor Meghan Walker prosecuted the case. On March 20, 2017, Applicant appeared in the Richland County Court of General Sessions before the Honorable R. Knox McMahan, where he pled guilty to all indicted charges pursuant to Alford v. North Carolina, 400 US. 25 (1970). Pursuant to the negotiations between Applicant and the State, Judge McMahan sentenced Applicant to imprisonment for ten years for attempted murder. Applicant did not appeal his conviction or

sentence.

II. Allegations and Relief Sought

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

1. Ineffective Assistance of Counsel
 - a. "Absent discovery materials, Counsel's advice was not wisely given. In that later knowledge gather could have convinced me to use my right to trial by jury. The late materials contained conflicting concerns ripe for a trial"
2. Involuntary Guilty Plea
 - a. "My plea was induced by counsel's bad advice"
 - b. "The plea of Alford v. NC was evidence of my hesitation to surrender my due process rights and should be seen by the court as same. My plea was induced by counsel's bad advice."

As requested relief, Applicant seeks "vacation of sentence/conviction, New Trial, Expungement of All records of same, departure from plea."

Attached to this return and incorporated by reference are the records of the Richland County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the guilty plea transcript, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III. Response to Allegations of Ineffective Assistance of Counsel

Applicant alleges ineffective assistance of counsel, but has wholly failed to set forth any facts to support this allegation. Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008).

In a post-conviction relief action, an 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 [it] cannot be relied upon as having produced a just result.” Strickland, 466 U.S. 668. 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, 466 U.S. 668. First, an 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 an 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). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the 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 (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 requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV. Response to Allegations of Involuntary Guilty Plea

Applicant also asserts his plea was involuntary. Applicant has failed to state with any specificity the specific facts giving rise to this allegation. In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56 (1985). Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." Id. at 771.

The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). A defendant's knowing

and voluntary waiver of statutory or constitutional rights must be established by a complete record, and “may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both.” Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). Further, “[a] guilty plea is a solemn, judicial admission of the truth of the charges” against the applicant; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton, at 137–38, 654 S.E.2d at 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)). “In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing.” Id. at 138–39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

In this case, the record refutes any allegation that Applicant did not knowingly enter his guilty plea. At the guilty plea hearing, Applicant was advised of the charges and testified that he understood them. (Tr. p. 8). Plea Counsel also testified that he believed Applicant understood. (Tr. p. 8). Applicant was also advised of the rights he would waive by pleading guilty, including the right to a trial, which Applicant testified he understood. (Tr. p. 9). Furthermore, Applicant testified he was pleading guilty because he was indeed guilty as charged, and was not promised anything in exchange for his guilty plea. (Tr. pp. 9-10).

Respondent submits the record fully supports the knowing and voluntary nature of

Applicant's plea. However, allegations regarding the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V. Motion for a More Definite Statement

Respondent also hereby moves for a more definite statement. Applicant has failed to set forth any facts to "support each ground" or to explain with any specificity whatsoever the facts upon which his claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

VI. Any Future Amendments

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), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. 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), SCRPC.

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. Response to Any and All Other Allegations

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

VIII. Request for an Evidentiary Hearing


Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

May 11, 2018

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STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF RICHLAND

-----x

VENABLE MITCHELL,)
)
 Applicant,)
)
 vs.)
)
 STATE OF SOUTH CAROLINA,)
)
 State.)

Transcript of Record
2017-CP-40-4953

-----x

October 28, 2018

B E F O R E:

The Honorable Brian M. Gibbons, Presiding Judge

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

Jason Soper, Esq.
Attorney for the Applicant

Lindsey A. McCallister, Esq.
Attorney for the State

Court Reporter: Bonnie Kelly

Transcribed by Bobbi Fisher, RPR, CET

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P R O C E E D I N G S

(Whereupon, the following proceedings commenced as follows:)

THE COURT: All right. Madam AG, if you'll introduce the case for us.

MS. McCALLISTER: Thank you, Your Honor. This is Venable Deon Mitchell versus the State of South Carolina, 2017-CP-40-4953. Your Honor, Mr. Mitchell was indicted in April of 2016 by the Richland County Grand Jury for one count of attempted murder and one count of discharging a firearm into a dwelling. The charges resulted from an incident that occurred on July 29th, 2015, in which Mr. Mitchell shot a shotgun multiple times through the bedroom window of the victim, which resulted in the victim actually losing his vision and his nose. He was represented on that charge by assistant public defender Rhodes Bailey.

On March 20 of 2017, he appeared before Judge Knox where he pleaded guilty as indicted to all charges pursuant to Alford v. North Carolina, and pursuant to the negotiated agreement between Applicant and the State, Judge McMahon sentenced him to imprisonment for ten years. He did not appeal the conviction or sentence; however, he did file timely this PCR application on August 17th, 2017.

He has retained Mr. Jason Soper to represent him. Mr. Soper and Mr. Mitchell are present in the courtroom. And, actually, Mr. Soper amended the application on August 20th,

1 which I believe there should be an application in your packet.
2 If there's not, I can hand you one.

3 And so it's my understanding that the allegations that
4 are going forward today are four or five allegations in the
5 amended complaint. I will turn it over to Mr. Soper's case at
6 this time.

7 THE COURT: All right. Mr. Soper, anything you'd like to
8 present before you start testimony?

9 MR. SOPER: I don't believe so, Your Honor. Appeal the
10 application (indiscernible). I guess a quick question about
11 the exhibits that we're going to submit. The Court has a copy
12 of all these and so does opposing counsel. Would you like me
13 to still introduce the evidence through the witness?

14 THE COURT: Well, is there any objection to the
15 admissibility of the documents coming in from the State?

16 MS. McCALLISTER: No, Your Honor, I don't believe so.
17 They're all from defense counsel's file.

18 THE COURT: All right. Y'all can go ahead -- have they
19 been marked by my court reporter?

20 MR. SOPER: They have not.

21 THE COURT: Why don't we go ahead and do that, and then
22 that will free things up. Just hand her whichever ones you
23 want and have them marked 1 through however many, and we'll go
24 from there.

25 And for the record, these are all admitted without

1 objection.

2 (Applicant's Exhibit 1-A, Letter from Mr. Bailey, was
3 marked for identification.)

4 (Applicant's Exhibit 1-B, Email from Investigator, was
5 marked for identification.)

6 (Applicant's Exhibit 2, Email from Solicitor Walker, was
7 marked for identification.)

8 (Applicant's Exhibit 3, Victim's Cellphone Records, was
9 marked for identification.)

10 (Applicant's Exhibit 4, Email from Investigator, was
11 marked for identification.)

12 (Applicant's Exhibit 5, Supplemental Incident Report, was
13 marked for identification.)

14 (Applicant's Exhibit 6, Signed Document from Applicant,
15 was marked for identification.)

16 (Applicant's Exhibit 7, Victim's Written Statement, was
17 marked for identification.)

18 (Applicant's Exhibits 1-7 were received into evidence.)

19 THE COURT: All right. You may call your witness.

20 MR. SOPER: I call Mr. Venable Mitchell.

21 THE COURT: All right, sir. I know you've got on
22 restraints. Just place your left hand on the Bible, sir.

23 VENABLE MITCHELL,

24 the Applicant, after having been duly sworn, was examined and
25 testified to as follows:

1 THE COURT: Thank you, sir. You may have a seat back
2 here.

3 MR. SOPER: Thank you, Your Honor.

4 THE COURT: Yes, sir, Mr. Soper.

5 DIRECT EXAMINATION

6 BY MR. SOPER:

7 Q Good afternoon, Mr. Mitchell.

8 A Good morning.

9 Q Is it true that you pled guilty on March 20th, 2017?

10 A Yes, sir.

11 Q And was it your intention to go to trial up until that
12 point?

13 A Yes, sir, it was.

14 Q And when did you decide to take the guilty plea or plead
15 guilty?

16 A That would be the 19th of March before I took the plea.

17 MR. SOPER: Excuse me, I'm just going to grab my pen,
18 Your Honor.

19 THE COURT: All right.

20 BY MR. SOPER:

21 Q And how were you -- how did you come to decide to take
22 the plea or to plead guilty to the charge?

23 A Well, the attorney that I had in my defense just give me
24 the influence that the jury was going to decide for the victim
25 due to his scars and symptoms and things of that nature. And,

1 also, what finalized me to take the plea was my prior attorney
2 went and got my mother and influenced her to help me take this
3 plea by coming from Charleston to Columbia, South Carolina,
4 and telling her the things that he told her to influence me to
5 take that plea, Your Honor.

6 **Q** What are some of the things that were told -- you were
7 told that influenced you for the guilty plea?

8 **A** Well, I was told that all of my alibis or witnesses,
9 everything was a dead end -- everything led to a dead end. I
10 was told the jury would put this victim up on the stand with a
11 piece of his face blown off and pieces of arm shot off, and
12 the jury would side for the poor little guy, the words of my
13 attorney, that got me to plead to this charge.

14 **Q** And what words did your mother tell you? You said -- you
15 told the Court that your mother --

16 **MS. McCALLISTER:** Your Honor, I would object to him
17 testifying about what his mother said.

18 **THE COURT:** I'm going to overrule the objection.

19 Hang on. You're right. It's hearing, but I'm sitting
20 non-jury --

21 **MR. SOPER:** And she's here.

22 **THE COURT:** Okay. Well, that's fine. I tend to let
23 everything in when I do a non-jury and I can assess his
24 credibility.

25 **BY MR. SOPER:**

1 Q Go ahead, Mr. Mitchell.

2 A Could you repeat that, please?

3 Q Just how -- can you just tell the Court how your mother
4 influenced you to plead guilty when you really didn't want to?

5 A Well, that was a lot of (indiscernible) for a term of 19
6 or 20 months, and that Sunday before I took this plea, I had a
7 personal visit downstairs with my attorney, which I ain't
8 never had in 20 months. So I come down the steps and I peep
9 inside first because I know enough that I'm not supposed to
10 talk to my case with no other attorney or anything like that.
11 So I peeped inside first. And when I peeped inside, I see my
12 attorney, Rhodes Bailey. So I feel it's safe to go inside
13 here and talk to him.

14 So I opened the door, and when I completely opened the
15 door, it's my mom sitting there just crying really bad, you
16 know, snot coming out and telling me, "Go ahead and take the
17 plea." I'm going to get 30 -- they're going to give me 30
18 years. She's reciting the same thing Mr. Bailey told me about
19 they going to side for him out of sympathy and his scars. And
20 my mom also told me that, if I take this charge, she would be
21 here with me the whole way through. She would not leave my
22 side. So that's when I decided to take that plea.

23 Q So you had no intention of taking that plea until you
24 spoke with your mom; is that correct?

25 A Correct, sir. My mother's last letter to me states for

1 my shoe size and that she has my trial uniform. So I was
2 going to trial, sir.

3 Q And so do you feel your plea was involuntary?

4 A Sir?

5 Q Are you saying that you believe that your plea was
6 involuntary?

7 A Yes, sir.

8 Q Okay. So there's also another issue, is that correct, in
9 terms of not receiving Rule 5 materials?

10 A Yes, sir.

11 Q Did you receive all Rule 5 materials prior to deciding to
12 plead guilty?

13 A No, sir. I received my Rule 5 discovery after I took the
14 guilty plea. Once I was incarcerated in SCDC, I was given a
15 full motion and discovery.

16 Q Did you receive any Rule 5 material prior to trial?

17 A I have, and it was pictures of the victim in the hospital
18 bed. It was pictures of a shot-up blanket or a shot-out
19 window. And I seen a video that I seen when the victim was
20 supposedly supposed to be writing this statement that he
21 wrote.

22 Q Okay. So although you did receive some Rule 5 material
23 prior to pleading guilty, you did not receive (indiscernible)?

24 A No, sir. That's correct.

25 Q And you did receive a letter from Mr. Bailey, is that

1 correct, stating that he mailed you the entirety of the Rule 5
2 record?

3 **A** Yes, sir. And that was after I took the guilty plea.

4 MR. SOPER: May I approach the witness?

5 THE COURT: Yes, sir.

6 BY MR. SOPER:

7 **Q** Is this a copy of that letter?

8 **A** Yes, sir, it is.

9 **Q** Do you want to just read what it says?

10 **A** It says, "Mr. Mitchell, I'm writing in response to your
11 letter mailed from Kirkland on May 1st, 2017, which I just
12 received yesterday. In that letter, you mentioned you wanted
13 to file an appeal. Unfortunately, that time period in which
14 to file an appeal has passed. You plead guilty on March 20th,
15 2017, and receipt of your letter that was mailed from Kirkland
16 on March 29th. At no time did you request that I file an
17 appeal of your guilty plea. Because I did not receive that
18 request within ten days, we cannot request an appeal. There
19 are no extensions for an appeal period.

20 "In response to your discovery items, I have mailed the
21 entirety of your paper discovery that I had in your file or
22 that I was able to print. That was done on March 29th, 2017,
23 and noted with an accompanying letter. I do not have
24 possession of nor was I ever provided discs from street
25 cameras on South Ott (ph) or Rosewood Drive. I was only

1 showed a few black and white snapshots from the cameras. I do
2 not possess audio recordings of any hearing in general
3 sessions courts. The courts and court reporters do not grant
4 us access to the actual audio recording. You should already
5 possess transcripts of everything I have.

6 "The lawyer at SCDC is not completely sure what items you
7 will be allowed to keep in your living space. SCDC will make
8 decisions about what items you are allowed to possess while in
9 prison. Our office sent your files to archives in late March,
10 but I just requested your file be sent back to us so that I
11 can get copies of all audio discs or CDs therein.

12 "I will need some time for the file to arrive in
13 possession. I will send the discs and CDs to Kirkland at that
14 time."

15 **Q** Okay. And so he -- in that letter, he stated that he
16 mailed you discovery on March 29th, 2017; correct?

17 **A** Correct, nine days after I took the guilty plea.

18 **Q** Okay.

19 COURT REPORTER: Nine days? 90?

20 THE WITNESS: Nine days prior to the plea. Nine days
21 after I took the guilty plea.

22 BY MR. SOPER:

23 **Q** And also in that same letter that you just read, you
24 mention that you were never provided discs from street
25 cameras; is that correct?

1 **A** Yes, sir, that is correct.

2 **Q** Okay. But did you receive email -- a copy of an email in
3 your discovery? Did you notice that -- or showing that the
4 Solicitor did email your return of the videos?

5 **A** The ten cameras -- footage of the ten cameras that was
6 sent to my prior attorney from the Solicitor, but my attorney
7 told me he never received it.

8 MR. SOPER: Your Honor, present you with a copy of the
9 email. This is Exhibit No. -- already been marked as Exhibit
10 No. 2.

11 THE COURT: All right. Exhibit 2.

12 BY MR. SOPER:

13 **Q** Is that a copy of the email that you received in your
14 Rule 5 material?

15 **A** Yes, sir, it is.

16 **Q** What does that email state?

17 **A** That email states that Megan Walker, on Wednesday, March
18 15th, 2017, at 3:18 p.m., sent Rhodes Bailey ten camera
19 shots --

20 THE COURT: Hang on, let me stop you. You don't have to
21 read it; I can read it.

22 THE WITNESS: Oh, okay.

23 THE COURT: I get it. Let's move along. I can read all
24 the exhibits; I have got them right here in front of me.

25 THE WITNESS: All right.

1 THE COURT: Go ahead.

2 BY MR. SOPER:

3 Q Okay. Mr. Mitchell, why is this important for your case?

4 A I feel that's important to my case because it's things on
5 these cameras that I could have saw that would have shown that
6 I was not in the area at the time that this incident took
7 place. I also could have looked at this video and maybe
8 helped them with what I seen on the video.

9 Q If you had been aware of this evidence prior to pleading
10 guilty, would you have still pled guilty?

11 A No, sir, I would have not pled guilty.

12 Q Is there -- did you also receive the victim's cellphone
13 records prior or after?

14 A After I took the plea, I received the victim's cellphone
15 records in the motion of discovery.

16 MR. SOPER: Your Honor, I'm just going to present Exhibit
17 3 to Mr. Mitchell. It's a copy of text messages that we have
18 marked.

19 THE COURT: Right. That's these right here.

20 MR. SOPER: Yes, sir.

21 THE COURT: Yes, sir.

22 MR. SOPER: I'm not going to read those into the record.

23 BY MR. SOPER:

24 Q Mr. Mitchell, can you just explain -- you don't have to
25 read the text messages, but can you just explain why these

1 text messages would have been and are important to your case.

2 **A** These text messages found in the victim's phone, it gives
3 me -- it would have gave me an idea of the things that the
4 victim had going on. There was all sorts of problems and
5 fights that the victim has been going through leading up to
6 the day that he was shot. That would have gave me -- that
7 would have gave me more enlightenment. It's kind of hard to
8 explain.

9 **Q** It would have provided you with a defense?

10 **A** Right. I would have had a defense. That would have
11 helped me in court.

12 **Q** If you had seen those prior to pleading guilty, would you
13 have pled guilty?

14 **A** No, sir, I wouldn't have pled guilty.

15 **Q** And just to note for the record, those text messages, you
16 haven't been able to (indiscernible) when this took place?
17 They're prior to the incident; is that correct?

18 **A** Yes, sir. Days prior to the incident.

19 **Q** Mr. Mitchell, you also have a concern that you were made
20 aware of information regarding the investigation that your
21 attorney did, that an investigator had been hired. Can you
22 explain to the Court your concerns about that.

23 **A** The defense in my case had hired a private investigator
24 to follow my alibi witnesses, and when I gave my attorney my
25 alibis and I gave the private investigator my alibis and my

1 witnesses, where to go to to look for, the private
2 investigator was complaining about not being funded. So
3 sometimes she would find an alibi but she would never pursue
4 the alibi because she wasn't being paid and she wasn't being
5 paid by the defense -- by my defense.

6 **Q** Were you made aware of this prior --

7 **A** I wasn't aware of this prior, Your Honor.

8 MR. SOPER: I'm just going to submit Exhibit No. 4 to
9 Mr. Mitchell. It's a copy of emails from the investigator.
10 And I don't think we need to read those into the record.

11 THE COURT: Yes, sir, I got them.

12 BY MR. SOPER:

13 **Q** And, Mr. Mitchell, if you had received this information
14 prior to pleading guilty, if you had known that this
15 investigation had -- was cut short due to funding and certain
16 things weren't followed up on, would you have still pled
17 guilty?

18 **A** No, sir. I definitely wouldn't have took that plea. I
19 wouldn't have pled guilty, sir, because that kind of
20 prejudiced my defense when I'm putting up the defense of
21 alibis, but the needs not being met because they're not paying
22 the private investigator in my defense. She was not receiving
23 the funds that she needed.

24 **Q** Okay. And so an additional concern that you made the
25 Court aware of through your application is that -- in terms of

1 ways that you were identified.

2 **A** Yes, sir.

3 **Q** Okay. The record shows that, within the file, it shows
4 that the victim's mother, Ms. Jones, identified you out of a
5 group of pictures; is that correct?

6 **A** That's correct.

7 **Q** Isn't it true that there's an incident report saying that
8 his parents didn't see anybody come before or after?

9 **A** There's -- there is a report from his parents stating
10 they didn't see anyone prior to the shooting or after the
11 shooting. They were in their bed, asleep, at home.

12 **MR. SOPER:** Your Honor, I'm just going to hand up Exhibit
13 No. 5, which is the incident report that Mr. Mitchell just
14 spoke about.

15 **THE COURT:** Yes, sir.

16 **MR. SOPER:** Exhibit 6, Your Honor, just shows that the
17 victim's mother is the one who was used to identify
18 Mr. Mitchell.

19 **THE COURT:** Yes, sir.

20 **BY MR. SOPER:**

21 **Q** And so the parents (indiscernible) in the incident report
22 seem to say that they didn't see or hear anything before or
23 after the incident occurred, yet, you are identified by the
24 victim's mother. But the victim did write your name down in a
25 statement; is that correct?

1 **A** The victim read --

2 **Q** Or it appears that way at least. That's what's argued?

3 **A** Yeah, that's what's argued, that they used what the
4 victim wrote as a sign of -- to get a warrant signed for my
5 arrest.

6 **Q** But your argument that the statement that they got from
7 me is illegible. It's not readable, is it?

8 **A** It is not readable, Your Honor.

9 MR. SOPER: Your Honor, (indiscernible) Exhibit 7, a
10 copy --

11 THE COURT: All right.

12 COURT REPORTER: A copy of who?

13 MR. SOPER: I'm sorry. A copy of the victim's --

14 THE COURT: Illegible written statement.

15 THE WITNESS: And this statement, Your Honor, is not
16 legible, and I don't see how they even use that to get a
17 warrant signed for my arrest.

18 THE COURT: Yes, sir.

19 BY MR. SOPER:

20 **Q** And, finally, Mr. Mitchell, are there any witnesses that
21 you asked Mr. Bailey to --

22 **A** I had asked -- I had asked the private investigator and
23 my defense attorney, Mr. Rhodes Bailey, to go after two alibi
24 witnesses of mines: Charlie Kennedy and a Thomas Mixon.

25 I got Ms. Carlindes (ph), the private investigator in the

1 case, I had her notes where she's stating that these
2 individuals -- one individual is not incarcerated, and the
3 other individual didn't -- led to a dead end also. But
4 these -- when I got to Kershaw Correctional Facility, the same
5 inmates that I sent my defense attorney to go at about my
6 alibi was incarcerated the whole time. So no one ever made an
7 attempt to go search for an alibi for me or to look for no
8 witness who can say they was with me or anything. They never
9 did try to reach out for an alibi for -- I don't know if it
10 was the lack of the funds, because throughout her other
11 letters, she's just complaining about not being paid on
12 several different -- on several different situations.

13 So for them to not go after my alibi, that's all I had
14 was an alibi, and they didn't even pursue it whatsoever. And
15 those guys are incarcerated, and they are willing to come to
16 trial to testify.

17 **Q** Do you have anything that you can provide the Court?

18 **A** Oh, I have one letter from Thomas Mixon that states that
19 the defense team never came at them about my case.

20 **Q** Is that a letter or affidavit?

21 **A** No, it's a letter. It's a notarized letter written from
22 Thomas Mixon.

23 **Q** So you know they're true and accurate and original?

24 **A** Yes, sir.

25 **MR. SOPER:** Your Honor, I would --

1 THE COURT: Objection from the State?

2 MS. McCALLISTER: Yes, Your Honor.

3 THE COURT: Objection overruled. I can judge the
4 credibility of the document. I will allow a copy of that to
5 come into evidence.

6 Do you want to go ahead and hand it to the court reporter
7 to have it marked?

8 MR. SOPER: We have the original, I believe. Do you have
9 a copy?

10 THE WITNESS: I believe I do, sir.

11 THE COURT: All right. Because, you know, once my court
12 reporter has it, it's not yours anymore.

13 THE WITNESS: No, it's in that pad right there on the --
14 on my papers. No, not this one. I think it's under yours.
15 Oh, I do have one.

16 THE COURT: Okay. Thank you. All right. That will be
17 marked and introduced as whatever is next in order, over the
18 State's objection.

19 MR. SOPER: Thank you, Your Honor.

20 (Applicant's Exhibit 8, Letter from Mixon, was marked for
21 identification and received into evidence.)

22 MR. SOPER: I have no further questions. Is there
23 anything else you'd like to say?

24 THE WITNESS: I'd like to address the Court, Your Honor,
25 with a message that I wrote.

1 THE COURT: Yes, sir, go ahead.

2 THE WITNESS: Dear, Your Honor. I'm a lifelong citizen
3 in South Carolina and an eight-year resident of Richland
4 County and the City of Columbia. Sir, I assure you my actions
5 in 38 years of life has never warranted such violence. I'm
6 sure, sir, that you can put yourself in my shoes because I
7 wouldn't (indiscernible). Your Honor, I live day-to-day, tear
8 by tear, that nightmare of a story we all know about but
9 believe it couldn't happened to us.

10 No, Your Honor, I did not know I could protect my
11 innocence because there are laws and rules of evidence. I did
12 not know the lack of funding would prejudice an investigation
13 in my defense, also my innocence. Your Honor, I did not know
14 the jury could not find me guilty out of sympathy and
15 observations of the victim's scars but by evidence alone,
16 without a shadow of a doubt.

17 Your Honor, I was never enlightened to any of this
18 knowledge or defense. Your Honor, I was misled by assistance
19 and advice that totally persuaded my decision to accept this
20 plea. My pleading to North Carolina vs. Alford was a
21 hesitation on my pleading guilty. Your Honor, I felt alone.
22 I was given no other option to exhaust from this attorney, who
23 was supposed to be out for my best interest, but the advice he
24 was telling me that prosecutors going to throw this poor guy
25 up on the stand, with part of his face blown off, and the jury

1 will look at this and side for the victim out of sympathy, and
2 I certainly would be getting 30 years, this is inaccurate
3 defense. This is coming from the only person in my corner
4 that I had besides my mother, and that prejudiced my defense
5 of wanting to fight. Because if I knew what I knew now from
6 the later-discovered evidence, sir, I have no one
7 (indiscernible). Instead, I have had my constitutional rights
8 infringed by not being supplied with the full discovery
9 evidence, never being supplied due process, never having my
10 constitutional rights protected.

11 My defense was asked to perform a certain assignment that
12 would place the defense, and neither got done. Your Honor, I
13 sat incarcerated inside of Alvin S. Glen for a term of 20
14 months. My defense had my case and decided to pay a defense
15 three days prior to my plea. The lack of due process was
16 intolerable restraints because the ground my attorney
17 influenced me to plea on and not go to trial behind was not
18 intelligently given within the law or my constitutional
19 rights. The private investigator in my defense never made a
20 full effort to locate my alibi or my witness.

21 Upon reviewing the newly discovered evidence, I filed for
22 a response during my private investigator in my case stating
23 that my alibi witness was not incarcerated where I have
24 evidence that my alibi certainly indeed was incarcerated.

25 Your Honor, I was also prejudiced -- Your Honor, that

1 also prejudiced my defense because the lack of evidence did
2 not provide me with one. I was continuously told everything
3 else led to a dead end. Your Honor, I couldn't even explain
4 this to my mother, in which I had looked -- in which me had
5 looked at me such -- in which may have looked at me from time
6 to time as such a person behind these accusations.

7 But, Mom, you did a great job because I did -- you didn't
8 raise (indiscernible) a human being. I'd do just about
9 anything to keep tears from your pain so (indiscernible)
10 influence you were given to (indiscernible) with this plea has
11 changed my life forever, but I do thank you for still keeping
12 your words and staying by my side.

13 MR. SOPER: Mr. Mitchell, just please answer any
14 questions that --

15 THE COURT: Thank you, sir.

16 All right. Madam AG.

17 CROSS-EXAMINATION

18 BY MS. McCALLISTER:

19 Q Okay. Mr. Mitchell, you -- do you recall the day that
20 you pleaded guilty and when you went in front of the judge?

21 A Yes, ma'am.

22 Q Okay. Do you recall that the judge talked to you about
23 what you were doing at that time; correct?

24 A Correct.

25 Q Okay. And, Judge McMahon, he asked you if he -- if you

1 understood your constitutional rights to have a jury trial and
2 if you wanted to give that right up in order to plead guilty;
3 correct?

4 **A** Correct.

5 **Q** And you told us -- or you told Judge McMahon that you
6 didn't; correct?

7 **A** Correct.

8 **Q** Okay. And you told Judge McMahon that you understood the
9 evidence against you, including the eyewitness identification
10 by the victim and that you understood that the State was
11 giving you a benefit by dropping this down to ten years;
12 correct?

13 **A** That wasn't decided before I received my motion for a
14 motion of discovery. So I was not aware about the evidence
15 against me.

16 **Q** Okay. How many times do you think you met with
17 Mr. Bailey while he worked for you?

18 **A** Three.

19 **Q** Three times?

20 And he did come to meet with you sort of, like, on that
21 Friday or over the weekend before you ended up entering this
22 plea; correct?

23 **A** Yes, ma'am.

24 **Q** Okay. And, at that time, did you ask him about these
25 witnesses that you say weren't being checked out?

1 **A** Yes, ma'am. I was told everything was -- led to a dead
2 end.

3 **Q** Okay. And so your testimony is that you only changed
4 your mind now because you see these other documents that were
5 in the full file that Mr. Bailey turned over to you after the
6 plea.

7 **A** Correct, ma'am.

8 **Q** Okay. I think that's all the questions I have.

9 THE COURT: All right. Any redirect?

10 MR. SOPER: No, sir.

11 THE COURT: Thank you, sir. You may step down.

12 The Applicant may call his next witness.

13 MR. SOPER: Thank you, sir. My next witness, I call
14 Ms. Grace Mitchell.

15 THE COURT: All right.

16 GRACE MITCHELL,

17 the witness, after having been duly sworn, was examined and
18 testified to as follows:

19 THE COURT: Thank you. Very much. You can be seated
20 there.

21 All right. Mr. Soper, your witness.

22 MR. SOPER: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY MR. SOPER:

25 **Q** Good afternoon, Ms. Mitchell. How are you?

1 **A** I'm fine.

2 **Q** Can you state your name.

3 **A** Grace Mitchell.

4 **Q** And your relation to my client.

5 **A** The mother of Venable Mitchell.

6 **Q** Did you listen to his testimony?

7 **A** Yes, sir.

8 **Q** You heard him testify that he was forced into pleading
9 guilty based off of conversations with you and his attorney;
10 is that correct?

11 **A** Yes, sir.

12 **Q** Do you believe that to be true?

13 **A** Yes, sir.

14 **Q** And why is that?

15 **A** Like I said earlier, I'm not sure if I called Mr. Bailey
16 or Mr. Bailey called me. All I know, we were in a
17 conversation about Venable case, and he did ask me to come to
18 Columbia to talk with Venable to take the plea. He also told
19 me that he felt as though Venable probably didn't have a
20 chance because, when the victim walked in, the jury will look
21 at the victim.

22 Prior -- before we had Mr. Bailey, we had attorney
23 Derrick Mobley, and I came up here to Columbia one day to
24 spend time at -- maybe six hours with Derrick, and Derrick
25 told me that he believed that the mother was the one --

1 MS. McCALLISTER: Your Honor --

2 THE COURT: All right. Hang on.

3 MS. McCALLISTER: Just for the record, I'm objecting to
4 her testifying about what someone else told her who is not
5 here to testify.

6 THE COURT: All right. Objection overruled and noted.

7 Go ahead, ma'am.

8 **A** Okay. But he told me that he believed the mother was the
9 one calling Venable name. I also read in the report that the
10 mother was saying where some of his friends were calling him,
11 checking on him, but one of his friends told her they got an
12 idea who did it -- who did shot her son. So, evidently, that
13 particular friend told the mother it was my son, and from
14 then, my son name was called.

15 **Q** Okay. And so getting back to the day before day in
16 court, was it your understanding the week before the guilty
17 plea that your son was going to go to trial?

18 **A** Well, before I -- before I came here -- no, that was the
19 day I came for him to ask him to please take the plea. I sat
20 and I talked with Mr. -- with Mr. Bailey for quite some time,
21 and my belief and how I felt about our conversation was he
22 wasn't in favor of my son because it was all about the victim.
23 Because, like, I went to the bond hearing twice; the victim
24 changed his story. I mentioned that to Mr. Bailey. But he
25 still made me feel on the inside Venable didn't have a chance.

1 Q So after speaking with his attorney, Mr. Bailey, you felt
2 scared or threatened --

3 A Yes.

4 Q -- that your son didn't have a chance.

5 A Yes. And I begged him to take the plea because I told
6 him, I said, Well, you take the plea. When you get out, there
7 won't even be (indiscernible) year, because I was afraid he
8 was going to get the 30 years, because I felt like Mr. Bailey
9 was trying to put this case together within a week.

10 Q Do you feel that he would have pled guilty if you did
11 not --

12 A No, no.

13 Q Do you think that (indiscernible)? I mean, you speaking
14 with him, is that why he pled guilty?

15 A Because I begged him -- I cried and I begged him to take
16 the plea because I was afraid for his life.

17 Q But you didn't have confidence in what Mr. Bailey was
18 telling you; is that correct? You didn't feel like he was
19 adequately prepared? Is that what --

20 A He wasn't prepared because he didn't make me feel as
21 though, okay, Venable got a chance. No, he didn't make me
22 feel as though Venable had a chance. I even watched a video
23 with the victim and his mother in the hospital.

24 Q I have no further questions for you. Please answer any
25 questions that opposing counsel may have.

1 THE COURT: All right.

2 MS. McCALLISTER: I don't have any questions.

3 THE COURT: Thank you, ma'am. You may step down.

4 THE WITNESS: Thank you.

5 THE COURT: You may call your next week.

6 MR. SOPER: Your Honor, I call a hostile witness,

7 Ms. Christina Grooms.

8 THE COURT: All right. Ms. Christina Grooms. Okay.

9 Other hand. There you go. Raise your right.

10 CHRISTINA GROOMS,

11 the witness, after having been duly sworn, was examined and

12 testified to as follows:

13 THE COURT: Thank you. Be seated.

14 COURT REPORTER: Spell your name for me.

15 THE WITNESS: C-h-r-i-s-t-i-n-a.

16 COURT REPORTER: And last name?

17 THE WITNESS: G-r-o-o-m-s.

18 DIRECT EXAMINATION

19 BY MR. SOPER:

20 Q Good afternoon. Please state your name for the record
21 and your relationship.

22 A Christina Grooms. I'm a friend of Mr. Mitchell's.

23 Q And why are you here? What do you want to testify?

24 A Because I have read a lot of his paperwork that he's

25 mailed to me, and there's absolutely no evidence that he

1 committed this crime.

2 MS. McCALLISTER: Your Honor, I'm going to object to
3 this.

4 THE COURT: I sustain that objection.

5 MS. McCALLISTER: Thank you, Your Honor.

6 BY MR. SOPER:

7 Q Do you have anything besides sort of an opinion on what
8 happened in this case that's material in terms of being
9 developed in court here today in terms of pleading guilty
10 voluntarily or based off of (indiscernible)?

11 A He pled guilty. Yeah, he pled guilty because he was
12 failed. He was failed by his attorney. He was failed by
13 the --

14 MS. McCALLISTER: Your Honor, again, I would object.

15 THE COURT: I'll sustain it. Thank you, ma'am.

16 MR. SOPER: Your Honor, those are the questions.

17 THE COURT: Thank you, ma'am. You can step down.

18 All right. Anything further from the Applicant?

19 MR. SOPER: No, sir.

20 THE COURT: All right. Thank you. Applicant rests.

21 Anything from the State?

22 MS. McCALLISTER: The State calls Rhodes Bailey.

23 THE COURT: All right, sir.

24 RHODES BAILEY,

25 the witness, after having been duly sworn, was examined and

1 testified to as follows:

2 THE COURT: Thank you. You can be seated.

3 DIRECT EXAMINATION

4 BY MS. McCALLISTER:

5 Q Mr. Bailey, can you -- how did you get involved in this
6 case?

7 A Well, I was appointed to Mr. Mitchell's case. It would
8 have been about -- I think it was late -- yeah, late summer of
9 2015. I had it for awhile and then they hired another lawyer,
10 Derrick Mobley, in 2016. But then Mr. Mitchell approached me
11 at the jail and his mom called me and they weren't happy
12 with -- and I'm not assuming they said anything negative of
13 Mr. Mobley. They just weren't happy with the relationship.
14 And we had already been relieved by the Court. So the file
15 was reopened and then I just told my boss to give it to me
16 again when they had to reopen the file, since I'm familiar --
17 I knew Venable and the case and I represented him from that
18 point on.

19 Q Do you feel that you had plenty of time with the file and
20 the case in order to be prepared to advise him about how he
21 should resolve the case?

22 A Yes.

23 Q Okay. Do you know the investigator on the case?

24 A I did. Lee Cumming (ph). She did a lot of work on it.

25 Q Is she something that was -- how was she being paid? Was

1 she through the public defender's office?

2 **A** What we normally do is we get an order from the
3 administrative judge, and then the judge signs off on it for
4 investigators, and then that money comes from Indigent
5 Defense, which is a state group. And she had, I believe,
6 several -- several orders. Like she was paid -- we had a
7 contract with her, and then we give her more funding, maybe
8 two or three times.

9 **Q** Okay. So in order to continue to pay your investigators,
10 is that something where, like, maybe you would have to go back
11 to the Court and get another order?

12 **A** That's correct, yes.

13 **Q** Before the funds could be released?

14 **A** That's correct.

15 **Q** Okay. Ultimately, to your knowledge, did your office or
16 Indigent Defense pay her for her work in this case?

17 **A** Yes. I don't have all those files, but we paid her
18 numerous times. And sometimes after cases are closed, she'll
19 still have bills. So the kind of joke with Lee is that she's
20 a great investigator but sometimes she'll keep going and then
21 we'll kind of run a small debt with her, and we haven't gotten
22 her approved for new funds yet, so we kind of had to, like,
23 slow -- I mean, but for the most part, she's real thorough,
24 you know.

25 **Q** And, to your knowledge, did she perform all the

1 investigative tasks that you asked her to perform?

2 **A** Yes. And a lot of it was very last-minute too, and she
3 did everything I asked her to do and more. That's the thing
4 about -- she'll follow up with something and continue looking
5 sometimes even before following up with me.

6 **Q** Okay. And why was it last-minute? Was it because you
7 got information from Mr. Mitchell about --

8 **A** Yeah, some of it was that. I mean -- and I don't want to
9 over -- I guess I should answer the question I'm asked, but
10 initial witnesses that he gave us, Jermaine Yelverton, who I
11 actually talked to myself at some point and said he didn't
12 know anything and couldn't help. And then, at some point,
13 some people (indiscernible). Initial people, she couldn't
14 find anybody. Later, Lee and I went to the crime scene a few
15 times ourselves, and at the last minute, I guess about a week
16 or so before, Mr. Mitchell had some other information, and she
17 went out and tried to dig something up. But, I mean, it
18 frequently just wouldn't lead anywhere. I mean, I was looking
19 for any hard name or date.

20 Near the end, even though we were past the ten-day
21 period, Mr. Mitchell wanted a certain alibi claim but he
22 couldn't really -- it would be stuff like go to a certain
23 location and find somebody named -- that Quincy's sister knows
24 who that person's name is, and, you know, stuff like that.
25 And it just kind of never really -- "go to this place and ask

1 them about a white guy that has a shotgun" or something. It
2 would just be very broad.

3 **Q** Okay. So it wasn't like this person's first name, last
4 name, phone number, address?

5 **A** I'm sure he gave some of that to Lee. I don't have all
6 her notes, but -- and Lee was thorough, man. I mean, she was
7 fast-talking, energetic. It was like she was always on
8 coffee. She would jump all over town. Just this place, that
9 place, this place, that place. And she just -- every time I
10 talked to her, it would be -- I mean, it just never went
11 anywhere.

12 **Q** Did you have any concerns that the potential witnesses or
13 potential alibis were not being tracked down?

14 **A** I feel like we were doing the best we could and Lee was
15 doing the best -- the best she could. Because the last thing
16 I want to do is not follow up on a lead. I mean, that just --
17 I would be -- I would feel like I wasn't doing my job. It
18 would feel like she wasn't doing her job.

19 And, yes, as a lawyer, sometimes if you're an
20 investigator, you're delegating them and you're relying on
21 what their work is, but...

22 **Q** And I assume she -- you would delegate but she would come
23 back and report to you.

24 **A** Right.

25 **Q** And submit some written reports.

1 **A** And I can't -- yes. And I can't remember specifically
2 how many times she talked to -- she might have talked to
3 Venable once or twice. I don't remember because it was a
4 while ago, but any information he would have given her
5 independent of me, I would have told her, you know, absolutely
6 follow up on it and use your judgment and do what you can with
7 it.

8 **Q** And so she was reporting back to you that these leads
9 weren't going anywhere, and did you relay that to
10 Mr. Mitchell?

11 **A** Yes.

12 **Q** Okay. Can you just kind of back up a little bit but just
13 talk briefly about what happened in this case, what the State
14 alleged, and what the evidence was.

15 **A** Okay. Sure. So the allegation was that the -- who Densy
16 (ph) had called him Shuma (ph), the victim in this case,
17 was -- well, he was in his bedroom at nighttime, and somebody
18 came -- he was laying on his bed, watching TV. This was over
19 kind of behind the Rosewood area. If you're from Columbia,
20 you might not know where that is, but it was over in a
21 neighborhood kind of behind the Rosewood area. And then
22 his -- his statements were that he was watching TV, he heard a
23 tap on the window, he removed his blinds, then he saw -- and
24 he says he saw Mr. Mitchell shoot him four times with a .410
25 shotgun, which, if you don't know what a .410 is, it's a

1 little shotgun. It's like a little shell. And he was shot
2 several times in the face, and I guess arms a little bit too,
3 through the windows. That was a tap on the window and that --
4 and then he was kind of unconscious or whatever for a while.
5 He lost most of his nose or a lot of his nose, and he was
6 saying some blindness. He didn't see for a while. He
7 eventually got some of his sight back and some of it was
8 permanent blindness.

9 And so it was -- I mean, it was a substantial injury, but
10 he was -- this is kind of a full background and timeline of
11 the case. So he was in the hospital for a while. Eventually,
12 the police talked to him. I don't know what their exact
13 timeline was, but he had a lot of tubes and things still in
14 his face and couldn't really talk. It was on video. And he
15 and his mama were videotaped. They asked him who did it and
16 he writes "Venable Mitchell" on a piece of paper. I mean, he
17 can't see it. You know, he can't see what he's writing, but
18 it looks like you can see. I mean, I think it was one
19 exhibit. It looks like it says "Venable Mitchell shot me" or
20 whatever.

21 Then the mom pointed out an ID line-up of Mitchell
22 because she knew Mitchell and then, from that point, they went
23 and arrested him. So the first time that Venable, he says,
24 you know, absolutely, I didn't do this, and he said that there
25 would be evidence at the bond hearing that absolved him, that

1 they said something strange. So I was clearly interested.

2 I got a recording of the bond hearing as quickly as
3 possible, but it really didn't -- it wasn't the way he
4 remembered it. It was just sort of -- it was just sort of
5 regular bond hearing.

6 We went over the video together, and at this point, I
7 realized the best theory of the case is, well, we don't really
8 know if this guy remembered or knew exactly who shot him. It
9 was a substantial injury. This would have been my approach at
10 trial. And that the mom was there to help him in identifying
11 Mr. Mitchell.

12 So, you know, the opposition or the enemy in this case
13 was not going to be the victim itself but the fallible human
14 memory and the fact that an overzealous mom may have coached
15 him and led him to picking the wrong person up.

16 Now, the motivation here is Mr. Mitchell had been shot
17 around October of 2014, and he told me that the victim in this
18 case had set up the robbery where the victim -- the victim who
19 didn't -- what was his name again?

20 **Q** Emanuel?

21 **A** Emanuel (indiscernible). Sorry. And Venable told me
22 early on, he said, the reason why they think I did this is
23 because I was set up and robbed and shot by a friend of
24 Emanuel Odensity (ph) or Shuma. So that kind of cut both
25 ways, right? On one hand, you're thinking, okay, this gives

1 us -- this is why Odensity's mom thinks that Venable shot her
2 son. Again, this is kind of -- this is motive. You know, the
3 State is going to have to prove it.

4 So I thought about it and I went through this. I have
5 spent a lot of time on this case. I thought it was a really
6 interesting case, and I thought about how human memory is
7 fallible. I even -- Donna Whistler (ph), the Winthrop
8 professor, I retained her, and she was going to testify at
9 trial about how memory was not perfect and how it was very
10 possible that Mr. Odensity himself could have started to
11 believe it was Mitchell if the mom told him that enough.

12 Now, I'm kind of giving you this insight into my case.
13 Right? So, you know, I started to feel fairly confident about
14 our approach to put up a sound, you know, reasonable -- you
15 know, reasonable sort of a defense. You know, that was my
16 plan. And we had an expert there. I'm sorry; I'm already
17 answering questions. But that was the plan.

18 Now, we still had a tough situation because every time we
19 went to court, we still had the victim, and the victim was,
20 you know, mutilated in his face. And it was -- and he --
21 whether or not he had been coached, he believed at this point
22 that -- or he was going to get on the stand and say
23 Mr. Mitchell did this.

24 The thing that concerned me most always was that
25 Mr. Mitchell was -- he seemed really angry at the victim and

1 he seemed really preoccupied with the victim. And I said,
2 Listen, if we get in there, you know, you can't be angry at
3 the victim because the jury -- you know, the guy did get shot
4 in the face. The argument is it is not you. We can't be mad
5 at the victim. We can't say that the victim was conspiring
6 against you. You know, we need to focus on the fact that
7 maybe the investigation, the way it was done, was not done
8 properly, and that the victim might not have been in his right
9 mind when he identified you or in the months leading up to it.

10 **Q** Okay. So if I'm hearing everything that you just said,
11 your strategy, then, was sort of you were kind of doing two
12 things at once. You were running down whatever alibis or
13 witnesses that he was giving you.

14 **A** Yeah.

15 **Q** But that wasn't going anywhere. So you had developed
16 your own defense based on the fallacy of memory and the fact
17 that this identification was made in the hospital and maybe he
18 was -- I'm assuming he was probably on pain meds --

19 **A** Right.

20 **Q** -- and who knows what Mom had suggested to him before the
21 police came.

22 **A** Sure.

23 **Q** That was going to be your strategy.

24 **A** I thought that was a conceivable theory. Whether or not
25 the jury would, you know, take that over Mr. Odensity's

1 testimony, I mean, that would be the amount of trauma based on
2 Nixon (ph) by getting a witness up there.

3 Q Okay. So the weakness was going to be that this victim,
4 who is sympathetic because he's clearly been shot by someone,
5 was going to get up on the stand and say the someone was
6 Mr. Mitchell.

7 A Right. And I mean, as a lawyer, you see -- you see
8 injured people a lot. You see, you know, all types of photos
9 a lot. And I try to convey to clients and folks that the jury
10 has not seen somebody who has had their nose blown off their
11 face before. And so we have got to be -- you know, we have
12 got to be aware of that. And we have got to make sure that
13 we are sensitive of the fact that the man is injured because
14 we're not attacking him. We have got -- you know, we're
15 attacking the process of the investigation and potentially the
16 victims -- you know, and I would have loved an alibi witness
17 that was -- I mean, he came up at the very last minute on the
18 17th of March 2017 when me and his mom met him in the jail.
19 He did start to say, Well, maybe I have got somebody. And I
20 said, Well, who is it? And then he sort of backed off.

21 And then a couple of days before that, it was something
22 about Quincy's sister. Okay. Yeah, yeah, yes, this is kind
23 of important. On the 15th, which would have been, I guess,
24 about the Wednesday or so before, he started saying, Well, I
25 can find alibi witnesses. At this point, we're going to

1 trial. Right?

2 And I said, Okay, well, where -- who are they?

3 He goes, "Well, I don't remember where I was." I
4 remember typing this up because I took very careful notes
5 because I always wanted Mr. Mitchell to understand I was being
6 thorough. He said, "I don't really remember where I was on
7 July 29th, 2015, but I was doing drugs with somebody, and one
8 of my friends is going to be able to tell you." Like -- yeah,
9 and so I noted -- the biggest problems, which I communicated
10 yesterday, our defendant gives more than one possible place or
11 person that would or could be an alibi witness and that he
12 doesn't remember exactly where he was himself, however, he
13 swears that these witnesses -- and I didn't get names,
14 although maybe he gave some delayed -- whatever we had, we
15 followed up on -- they will know where he was despite the fact
16 that he doesn't know. Part of this type of defense would
17 involve him selling the drugs to people, which in this vague
18 context might not be the best defense. I'm not saying I
19 wouldn't use "I'm selling drugs; therefore, I didn't commit in
20 crime," but, I mean, that's not my number one. I'd rather he
21 be in Bible study or something.

22 Q Okay. So -- okay. So all of this, then, these are
23 conversations that you were having with Mr. Mitchell. You're
24 explaining to him the problem with establishing an alibi
25 (indiscernible), and he was aware that you were unable to do

1 that.

2 **A** Yes. And, at this point, we were -- by the end of that,
3 the week before, we had been passed -- I believe we were
4 already past the alibi 10 days, because that kind of went away
5 for awhile.

6 **Q** And you explained that to him.

7 **A** Yes. I'm pretty sure I did. But I mean, I still would
8 have tried to see what you could do and maybe squeeze it out
9 another week or continue it or something if possible, you
10 know.

11 **Q** Okay. But you had developed this other defense about the
12 memory, and you explained that to him as well?

13 **A** Oh, yeah. I think he and his mama were really excited
14 about it.

15 **Q** Okay. So he knew that, if he wanted to go to trial, he
16 had a defense and you had an expert and you had something that
17 you were going to present.

18 **A** Right.

19 **Q** Okay. Let's go back and talk about the identification
20 before. You talked about the -- there was a video that was
21 done of the victim in the hospital room with his mother and
22 police officers when he did the identification; correct?

23 **A** Mm-hmm.

24 **Q** And you watched that video with Mr. Mitchell?

25 **A** Right. I mean, I believe we did.

1 Q Okay. I think he testified that he saw the video as
2 well.

3 A Yeah.

4 Q And the way that I'm hearing you say it happens is the
5 police officers asked the victim who did this, and the victim
6 writes something on a piece of paper that maybe he can't see
7 what he's writing because he's all bandaged up. Because you
8 reviewed that piece of paper as well; correct?

9 A Yes.

10 Q And, in your opinion, it could have said it's Venable
11 Mitchell.

12 A I think it was one of the exhibits. I thought it said --
13 you know, it looks like somebody closed their eyes and wrote
14 something, but I mean, it looks like it says Venable Mitchell
15 to me.

16 Q Okay. So you have that piece of paper and you had that
17 statement from the victim and you discussed it with
18 Mr. Mitchell?

19 A Yes.

20 Q Okay. And then once the victim wrote down Mr. Mitchell,
21 his mom is the one who identified Mr. Mitchell in a line-up
22 and said this is the person that I know to be Venable Mitchell
23 that he's talking about; correct?

24 A Right. And that was -- I mean, that was for
25 clarification of who the suspect was, not because she saw him

1 do it or anything.

2 **Q** Okay. So the State never -- was never contending that
3 anyone other than the victim actually saw the shooting and
4 could identify Mr. Mitchell.

5 **A** That's right, no. His, like, dad was in the house and
6 stuff, but nobody ever said they saw him.

7 **Q** Okay. So his mom was the one who was making
8 identification because the victim could not see at that time;
9 correct?

10 **A** That's right. It wasn't -- yeah, it won't like a Biggers
11 issue where -- this was a situation where they knew who they
12 thought the suspect was. Like, he wasn't a random person that
13 they did not know.

14 **Q** Right. Her son and Mr. Mitchell had a relationship, and
15 she knew who the person -- when her son said Venable Mitchell,
16 she could identify the person that her son was --

17 **A** Yeah, I think that was just so the police knew which
18 person they were getting.

19 **Q** So you were aware of all of these kind of moving pieces,
20 and you talked about this with Mr. Mitchell ; correct?

21 **A** Yes.

22 **Q** Okay. Okay. And then Mr. Mitchell has also raised an
23 issue here about some cameras, and I believe you heard him
24 sort of read the letter that you wrote him when you sent him
25 the discovery. And in that letter, you say that there are

1 no -- or that you never had videos from Rosewood and Oz;
2 correct?

3 **A** Right. And this email is not an email with files
4 attached to it or cameras. This is, like, a log of some
5 pictures from camera boxes that the Solicitor -- and this is
6 the week before trial. And a lot of times when,
7 unfortunately, we get stuff pretty late, and the Solicitor
8 asked me to come up, I mean, sometime near the end of that
9 week and look at some still photos taken from cameras on
10 Rosewood. And this is a log of -- this is a log of where the
11 snaps were or where the cameras were in the time period. This
12 was -- she didn't email me pictures or -- she didn't email me
13 videos.

14 **Q** Okay. So she didn't email you videos or pictures. She
15 just emailed you some kind of log so that you could interpret
16 the videos and pictures that you viewed in her office.

17 **A** Right. And they're not usually trying to be tough guys
18 about it, but a lot of times, they'll just say come up -- you
19 know, the trial is coming up. Just come up and look in my
20 office, rather than me give you a hard copy right now, yeah.

21 **Q** And your office and their office are in the same
22 building.

23 **A** Right. And we walked up and looked at it.

24 **Q** Okay. And on those videos, what were they looking for on
25 the videos or still pictures?

1 **A** It was -- it was -- I mean, they were -- okay. There was
2 an email, and Mr. Mitchell put it in there. And I can
3 certainly see why he was interested in it. There was another
4 email from the investigators that I did not get until later,
5 but it said something -- I mean, I didn't get it right away --
6 where he said, I think I found the car. It's a dark Ford
7 Explorer. That was an exhibit -- you have to -- I apologize
8 to the Court.

9 **Q** Exhibit 1.

10 **A** Yeah, yeah. So this wasn't like the smoking-gun thing.
11 It was just they have a -- they have a private security guy
12 that handles all the cameras in Columbia, and they'll say --
13 the police will say, Hey, you know, what do you see around
14 this area? And so he was probably like, Oh, this is probably
15 your guy or something like that.

16 And there is what looks to be a dark Ford Explorer just
17 back and forth on these roads. Now, I mean, if you're on that
18 scene, you know, and you can get to that neighborhood and that
19 street without being on these particular roads. I want to say
20 I had, in passing, mentioned something about an SUV or talked
21 to them. I can't remember; it was a few years ago now. But
22 it never really -- like, no lights went off with, like, an SUV
23 or something. It wasn't going to, like, help or hurt. It was
24 just a car that was around the area.

25 **Q** And that was -- that dark SUV was not --

1 **A** It wasn't on the street.

2 **Q** And the State wasn't alleging, like, that was the getaway
3 car or that was the car that was shooter came and left in.

4 **A** Right. The State never said this is Mitchell's car and
5 this is somebody else's car.

6 **Q** Okay.

7 **A** They also never -- it also, in looking at it, it did not
8 seem to be something that was exculpatory. Keep in mind, this
9 is a camera that's not, like, on the street where it happened.
10 It was just the camera on the closest and biggest road.

11 **Q** Okay. So this is just in the (indiscernible)?

12 **A** Yeah.

13 **Q** And there could have been other ways to get to it on the
14 victim's house that wouldn't have been caught on camera.

15 **A** Right. Like, if we had a suspect of somebody that we
16 thought had done it that had a Ford Explorer or something,
17 that could have been a big deal. But I remember -- I think I
18 remember asking Mr. Mitchell, like, do you know anybody that
19 drives a Ford Explorer that might have anything to do with
20 anything? And it was just kind of, no.

21 **Q** Okay. So Mr. Mitchell, then, was aware of what the
22 videos and photos showed, even if he didn't have a chance to
23 view them himself?

24 **A** Which we talked about it, yeah.

25 **Q** Okay. Can you talk a little bit about what happened at

1 the jail with Mr. Mitchell's mom.

2 **A** Sure.

3 **Q** How did she come to be at the jail?

4 **A** So I talked with Mr. Mitchell's -- and I actually met
5 with Venable a lot in the jail. It was certainly more than
6 three times. But -- and, you know, there was a lot happening
7 since I was his lawyer and then he hired another lawyer and
8 then our office, you know, took his case back. And I remember
9 thinking I don't know if anybody else is going to be as into
10 this defense or ready for this particular defense as I am,
11 just because we were already had something in the pipes.

12 So literally the week before this trial, the prosecutor
13 said, You know, so what's the deal? You know, is there
14 anything your guy will take?

15 And, you know, I just didn't see -- I certainly didn't
16 see Mr. Mitchell pleading to something that involved, you
17 know, 20 years or whatever the victims wanted. And I said
18 certainly nothing more than 10, if he will plead to anything.

19 And then the prosecutor said -- she got right back to me
20 and was like, Okay, I can offer ten.

21 And so then I went and -- and I was actually surprised
22 she gave me this offer because -- I mean, I knew -- I thought
23 it was one of those cases you were going to have to go to
24 trial because there would not be these numbers.

25 So I'm -- so I related it to Venable. Then he wanted me

1 to go back with seven, which, from looking at my notes, I went
2 back with seven, and she said, No, it's ten. And then her
3 supervisor was like, I don't even know if she should be giving
4 you ten.

5 And so I talked to his mom and I said, Listen, I was
6 like, you know, we will try this case and we'll try the heck
7 out of it. I mean, I feel good about our ability to try the
8 case, but I'm worried about -- I do think they're going to be
9 sympathetic. It's not like (indiscernible) your son. It's
10 about these people in the jury. And I'm worried about -- I
11 don't -- I don't know how Venable is going to do on the stand,
12 and I just don't -- I'm worried, I think his anger toward the
13 victim might come across or his frustration might come across,
14 and we don't really have an alibi. You know? We don't have a
15 legitimate alibi.

16 And, honestly, I'm afraid -- I have tried a lot of cases.
17 I have been fortunate to -- I'm the litigation supervisor at
18 the Richland County public defender's office. I'm fortunate
19 to have won a few of them here and there and you can kind of
20 tell a loser and you can kind of tell a winner, and you can
21 still go in and try your hardest on one that -- and we had a
22 chance, but -- and I certainly would have tried, but then
23 Ms. Mitchell was like, He's going to take it. I'm going to
24 talk to him. He's going to take it. I remember her saying it
25 kind of like that.

1 And I was like, Well, Venable has a very strong
2 personality. She seems very confident in her ability to
3 convince him. I remember thinking about that, and she's like,
4 No, I'm going to talk to him. He's going to take it.
5 Something to that effect. This was, like, three years ago, so
6 I don't really...

7 So I said, Okay. I was able to arrange for a meeting at
8 the jail, which doesn't happen usually, but that usually we
9 have to talk to them on the computer monitor type thing on the
10 outside of the jail, but I was able to arrange it so she could
11 meet him.

12 And we talked. Talked with him and her. At first he
13 (indiscernible) and then "I want a trial." And then she
14 talked to him alone. I walked away and let her talk to him
15 alone. Then, after it was over, he said, No, okay, I want to
16 plead guilty.

17 **Q** Okay. So is it your testimony that she's the one who
18 really kind of initiated the "I'm going to talk to him about
19 this" kind of deal?

20 **A** Yeah. I cannot remember whose idea it was. I mean, she
21 had come up just to talk to me before.

22 **Q** She came up to talk to you before?

23 **A** Yes. We had met at some point.

24 **Q** Okay.

25 **A** And she used to call me when she was not pleased with

1 what was going on with Mr. Mobley or however things were
2 going. So we talked a lot. And she called on his behalf.
3 But I don't -- I mean, I honestly can't remember if she was
4 willing to come up. I certainly worked hard to make sure the
5 scheduling worked, but the -- I mean, I thought it was smart
6 to take this deal, yes, that's true. But I was not going to
7 try to arm-twist him because I kind of feel like -- I thought
8 that maybe it would benefit him to talk to her because she
9 seemed to understand the risk involved. Because if we would
10 have lost, it was going to be 30 years, you know.

11 **Q** And did you feel that maybe he wasn't fully understanding
12 the risk involved and that he needed someone to talk to him?

13 **A** Yeah. I mean, I think that -- I think having a family
14 member that can look at all of it from the outside and also
15 knows you makes a difference, yes.

16 **Q** Did you force Ms. Mitchell to go and talk to him?

17 **A** No, no, of course not. She's a very sweet lady.

18 **Q** And you said she's been involved and she's been --
19 Ms. Mitchell and Mr. Mitchell kind of were both involved in
20 the defense and in the case; correct? She was involved in
21 talking to you and had been involved all along; correct?

22 **A** Yes.

23 **Q** And he gave permission for her to know about the case and
24 be involved; correct?

25 **A** Yes.

1 Q Okay. So you went -- so, originally, it was the three of
2 you together talking about the case. Then you walked away and
3 they spoke for however long they wanted to speak, I assume,
4 and then he said he would take it.

5 A Yes.

6 Q And once he decided that -- once he said he would take
7 it, did he ever indicate to you, up until the time the plea
8 was entered, that he felt pressured or he didn't want to do
9 it?

10 A Not really. And I was -- you know, I wasn't sure,
11 because that was a Friday. And then, on Monday, the
12 prosecutor said that the victim was getting squeamish and
13 didn't want -- was maybe wanting to do more than ten years,
14 but she was still going to go forward. I went down and did
15 paperwork with Mr. Mitchell. We went over his rights. I do
16 have a copy of that and I forgot -- I mean, I do -- I go
17 through your rights and we sign it and date it, and I went
18 through all that. Basically the same stuff he goes through
19 with the judge.

20 At that point, he was -- this is what he wanted to do it.
21 It didn't change between that Friday and Monday, which
22 sometimes it can, right, but it hadn't at that point.

23 Q Okay. So you actually spoke to him again before you went
24 into the courtroom --

25 A Yes.

1 Q -- and made sure that was still what he wanted to do.

2 A Yes.

3 Q And did you feel like, at that time, you had reviewed all
4 the discovery and evidence with him that he needed in order to
5 make a decision about the case?

6 A Yes. And I don't remember all the specifics, but we went
7 over a lot of it. Now, later, he wanted copies of it, and I
8 sent him everything I could or everything that was in the
9 file. And I was hesitant to send discs at first because I
10 didn't know what the access -- what access they had to that.
11 Or sometimes there's rules about SCDC not getting pictures,
12 but immediately, he said, "I want my (indiscernible)." Okay.
13 And I sent it in.

14 Then he wrote me a letter and the file had been sent to
15 archives, but I got it back. And I wrote another letter,
16 after the one he wrote, which I can read but I'll just answer
17 the questions I'm asked; otherwise, lawyers will go on
18 forever.

19 And I -- I responded, and then I said, you know --
20 basically, I remember thinking Venable is not going to be
21 happy until I give it every scrap of whatever I can so that I
22 got a clerk to just get a photocopy and stuff to disc, and I
23 talked to SCDC and they said there are will be a storage place
24 for it. You know, you won't get in trouble for sending it.
25 He'll get what he can and keep it or he'll put it somewhere

1 else.

2 So, at that point, I was just -- I wanted to give him
3 every scrap of whatever so he was not feeling like I was -- we
4 were holding out on him or anything like that.

5 **Q** Okay. Okay. I think you have explained the issue with
6 the pictures and the cameras, that that was not -- there was
7 nothing attached to that email, but you did view the pictures
8 that you referenced?

9 **A** Right, yeah.

10 **Q** Okay. And you spoke to Mr. Mitchell about those.

11 **A** Mm-hmm.

12 **Q** He's also got text messages in here. Do you recall
13 reviewing the victim's text messages?

14 **A** Yeah, there were a ton of -- I mean, this is just one
15 page. There were a ton of text messages from the victim.
16 There were a ton of text messages from Mr. Mitchell. I mean,
17 everything from all the photos they had looked at on their
18 phones and all this phone data and all this stuff. So, yeah,
19 I did go through the text messages.

20 **Q** And nothing in the text messages that you recall
21 suggested an alibi or suggested an alternative suspect or
22 anything like that?

23 **A** I mean, nothing that I could find. The text that he's
24 focused on also says, like -- it says a couple other things,
25 but I have no idea who that was.

1 Q Okay. I mean, the text messages may indicate that maybe
2 he -- that maybe the victim, you know, looked like he was
3 drinking and maybe he was being kind of obnoxious or something
4 like that, that there was maybe something else going on, but
5 it wasn't anything that was related to the shooting.

6 A I didn't see -- yeah, the testimony that he focused on
7 today was a full month before this shooting.

8 Q Okay.

9 A So I just didn't see -- it wasn't -- if something had
10 said "be careful," like, right around the shooting time, I
11 guess it would make more sense. It was mainly the victim,
12 like, flirting the women and meeting (indiscernible) and stuff
13 like that.

14 Q And the "be careful" text just is kind of a vague,
15 there's stuff going on. It doesn't mention any names and it
16 doesn't mention what is going on.

17 A No. It's about a month ahead of time.

18 Q And it's a month ahead of time. Okay.

19 MS. McCALLISTER: Beg the Court's indulgence. I think
20 I'm done.

21 BY MS. McCALLISTER:

22 Q Oh, I think you -- it's covered in your letter to him,
23 but did he ever ask you to appeal within the ten-day time
24 period?

25 A No. Later on, after that was done, he wrote me -- or it

1 might have been the Court had written me and it was past that
2 period. Because I -- I mean, I was expecting -- I would not
3 have been surprised if he would have asked me to because I --
4 you know, he was always wanting transcripts of things. There
5 weren't transcripts of some things, and so I was trying to
6 be -- trying to keep the lines of communication open so, you
7 know, I responded if he had wanted me to do that.

8 Q That's all the questions I have.

9 THE COURT: All right. Cross?

10 MR. SOPER: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. SOPER:

13 Q Good afternoon, Mr. Bailey.

14 A Good afternoon, Mr. Soper. Soper? Did I say it right?

15 Q Perfect.

16 A Soper. Okay. Great. I'll get it.

17 Q All right. Thank you.

18 I'm not sure if you received this. Did you have a chance
19 to look at the supplemental exhibit or Exhibit 2, the text
20 messages?

21 A Is this one that came with the amended complaint or
22 something else?

23 Q I think it was (indiscernible).

24 A Okay.

25 Q Exhibit 3.

1 **A** Yeah. I have got one that says "be careful" or "look" --
2 you're talking about this one that says, "Hey, Shuma, be
3 careful" or is it something else?

4 **Q** The supplemental text messages that we submitted I'm told
5 are text messages that you populated maybe during your
6 investigation?

7 **A** That I highlighted?

8 **Q** Not on this actual piece of paper but, like, through the
9 stuff you --

10 **A** Probably. I mean, I spent hours going through these
11 things. So I would -- in fact, I probably highlighted them
12 all in different colors as potentially important or not.

13 **Q** Okay. (Indiscernible). Anyway, I guess the question is,
14 you know, if you provide these text messages to Mr. Mitchell
15 and you took it (indiscernible), did you follow up on any of
16 the folks that did the text messaging, the numbers provided
17 and names sort of sometimes?

18 **A** Some of these were V-Visy, V-Vicky. You know, this is
19 supposed to be to Shuma. I mean, there were tons of phone
20 numbers.

21 **Q** If you look at the top of the exhibit, it says who it's
22 from. I think those are to Shuma.

23 **A** Okay. Something about I was jacked -- I got jacked --

24 **THE COURT:** Hang on. The question was, Did you follow up
25 with any of the text messages.

1 THE WITNESS: Oh, thank you.

2 THE COURT: It's either a yes-or-no answer --

3 THE WITNESS: I --

4 THE COURT: -- and then you can explain it. Hang on.

5 Don't interrupt. It's either a yes or no.

6 Now, look here, I'm saying, at 11:30, y'all told me it
7 wasn't going to take too much longer, and here it is five
8 after 1:00. Okay? So y'all need to wrap this up. All right?
9 I want to get to you. Did you want to take a break so you can
10 fully explore things for cross-examination?

11 MR. SOPER: If Your Honor would like to take a break --

12 THE COURT: I think that would be best, is that I'm
13 asking. I don't want to limit you on cross-examination.

14 MR. SOPER: Well, Your Honor, I don't want to -- I'm fine
15 to take a break.

16 THE COURT: Let's take a break.

17 MR. SOPER: Yes, sir.

18 THE COURT: We're down for lunch. We'll be back at 2:30.

19 (A lunch recess was taken.)

20 THE COURT: All right, Mr. Mitchell. You can have a seat
21 back there with your lawyer. We're waiting on -- I think I
22 saw your mama here. Is she out in the waiting area?

23 MS. McCALLISTER: They're outside.

24 THE COURT: Okay.

25 (Pause in the proceedings.)

1 THE COURT: All right. Mr. Bailey, you can come on back
2 up to the witness stand, please, sir. I'll remind you, you're
3 still under oath.

4 THE WITNESS: Yes, sir.

5 THE COURT: And Mr. Soper.

6 MR. SOPER: Thank you, Your Honor.

7 THE COURT: Yes, sir.

8 CONTINUING CROSS-EXAMINATION

9 BY MR. SOPER:

10 Q Hello again, Mr. Bailey.

11 A Good afternoon.

12 Q I guess just to kind of pick up where we left off, you
13 mentioned the text messages that were in the exhibits that
14 were submitted. Have you had a chance to read over those?

15 A Not really. Or not recently.

16 Q It's my understanding that those were provided to my
17 client, highlighted by you. But not these -- I highlighted
18 basically where you --

19 A Uh-huh, and that's fine. I'll take your word for it.

20 Q But I guess the question was -- and I don't think I got
21 an answer -- but did you -- were you able to follow-up on
22 those text messages? Because I do have phone numbers and
23 names.

24 A A lot of times what you'll do is there were search
25 engines and things that you can -- that you can check them. I

1 think I did go through the numbers and try to find if they
2 were registered to anybody anymore. But so many people,
3 especially, you know, certain -- you know, since this guy was
4 supposed to be maybe a small-time pill dealer or something, I
5 mean a lot of these -- a lot of these numbers were temporary
6 or weren't, you know, weren't attributed to anybody.

7 Give me just a moment; I'm reading the thing that you
8 highlighted.

9 It says something about a woman kicked him and somebody
10 jumped him. And I don't -- he said, "I jack filled on bitch
11 and left her and called another bitch to meet my house. On
12 the way to my house, got jumped. Went to Aaron's house and
13 then dropped me off at my other chick's house. Then I flipped
14 on her. She kicked me out, and then I jumped on bike and
15 started riding. Car pulled beside me and asked for their bike
16 back. I gave it to them and walked home and got into an
17 argument with my mom."

18 I guess that's -- I mean, I see what you're --

19 **Q** Is this potential for some sort of conflict --

20 **A** What, with these women that he's fighting with? I mean,
21 that's how I interpreted it were these were several women he
22 was getting into a fight with.

23 **Q** So the question is, you're not quite sure if you followed
24 up on those?

25 **A** I mean, if you saw me highlighting something, I thought

1 it was relevant. I don't know if I highlighted this one or
2 not, but -- I mean, maybe I tried to flesh it out, but this
3 didn't look like a situation where he's fighting with a woman
4 about taking her bike or something. That didn't strike me as
5 a situation where I would expect that would make him -- make
6 that -- I mean, that just didn't strike me as relevant of
7 something shooting him in his bedroom window, but I mean,
8 maybe I'm -- I guess I could be wrong.

9 **Q** Okay.

10 **A** And I'm not entirely sure what it means anyway.

11 **Q** Right. I'm not sure anyone can understand what it means.
12 I guess the question is, you know, it seems like it could be
13 some conflict there of maybe somebody who got in an argument
14 with someone that --

15 **A** I mean, maybe, but I have practiced law for 13 years or
16 not quite 13 years, and I don't really -- I would not think
17 that a mystery person -- a woman -- who he gets in a fight
18 with a bicycle with would necessarily be a motive for him to
19 be shot, but, you know, I mean, I have to go through a lot of
20 stuff -- a lot of material to determine what's material or
21 not. I mean, I just don't -- I think a jury would laugh if
22 you put that in front of them, if you're asking my opinion on
23 it.

24 **Q** Well, I'd certainly ask about the jury about pursuing the
25 person who sent it.

1 **A** Okay. Well, I -- I don't know -- it's Snoop. It looks
2 like it was somebody named Snoop.

3 **Q** Okay.

4 **A** No, I didn't follow-up on that.

5 **Q** Understood. And then, also, doesn't it say somewhere in
6 there about being jumped on and (indiscernible)?

7 **A** Yeah, again, jumped only by the woman or two women. I
8 don't...

9 **Q** Okay.

10 **A** I don't see a lot of -- I mean, that's what it looks like
11 to me.

12 **Q** We can move on.

13 And what was your -- do you recall what Mr. Mitchell's
14 position was on the trial, taking a plea? And was he always
15 adamant about going to trial? It's my understanding that he
16 did.

17 **A** Yeah, from most of my representation of him, he was
18 adamant about it, and I didn't expect it to be a plea. When
19 the Solicitor asked me, I said I could not see any situation
20 where he did anything or where he pled guilty to anything that
21 was over ten years. And we were just sort of speaking. And
22 then she came back and said, Well, I'll do ten years. I tried
23 to get her in single digits. I have in my notes that I spoke
24 with Mr. Mitchell about it, and then he said he would do seven
25 non-violent -- I don't remember exactly. The pleading offer,

1 like in other cases, didn't come until a lot later. But I
2 didn't think so until -- and, you know -- and then, of course
3 I talked to his mom. I was still kind of surprised we got
4 that particular offer. You know, I was talking to my
5 colleagues. They're like, How did you get an offer for ten on
6 that?

7 **Q** Okay. And your testimony before -- it seemed like you
8 were unsure if you had contacted his mother or she had
9 contacted you. By understanding is that you contacted
10 Mr. Mitchell's mother to go speak with Mr. Mitchell about
11 trying to convince him to take the deal. Is that your --

12 **A** Well, at that point, we would have been contacted anyway
13 because the trial would have been next week. And she called
14 me frequently. So I wouldn't have had to look far to talk to
15 her or track her down or anything. She called on the phone
16 frequently. And I think she was planning to come up for trial
17 the next week, and then I told her, you know, here's the
18 offer, here's what's going on. You know, I always get that
19 from the family, what do you think?

20 And I said, Well, I have got to be honest. I mean, it's
21 a roll of the dice, and it is really going to come down to no
22 matter what type of fantastic lawyering we may accomplish
23 until we come down to does the jury believe the victim or do
24 they, you know, like Mr. Mitchell more for it. And then I
25 told her it was ten, and she goes, He's going to take it. I'm

1 going to talk to him and he's going to take it. Something
2 like that. I'm paraphrasing.

3 But I remember being surprised how confident she was, but
4 then, sure enough, when she spoke with him, he immediately
5 said, Yes, I want to take it.

6 **Q** So it's your opinion that you didn't pressure his mother
7 or Mr. Mitchell into taking the agreement?

8 **A** I mean, I -- no. I mean, I told her I thought that was
9 the best idea, and she wanted to speak to him. I certainly
10 wouldn't have pressured -- I shouldn't -- I couldn't have
11 pressured her to come all the way from Charleston.

12 **Q** So in terms of time, having time available to prepare the
13 case, you were the attorney on the case (indiscernible).
14 About how much time would you have once the attorney was
15 relieved or Mr. Venable (indiscernible)?

16 **A** Yeah, it looks like he was relieved -- first, we were
17 relieved I guess for about three months. I think he did a
18 bond motion or something for him. They wanted to part ways.
19 So he really -- and I got the case again in June of 2016. And
20 then this was March of 2017.

21 **Q** So you thought you had plenty of time or adequate time to
22 prepare for the trial?

23 **A** Yes.

24 **Q** Did you discuss with Mr. Mitchell -- when you became his
25 attorney again, did you guys sort of discuss a plan in terms

1 of -- it's my understanding that you made it clear that you'd
2 fight for him and that would be part of him, I guess, going
3 back to public defender's office or having to be his attorney
4 again; is that true?

5 **A** Right. And we're always in a tricky situation when we're
6 at the jail a lot because we're down there a lot more
7 sometimes than certain private lawyers just because we have
8 got a lot of clients. And so if somebody hires a private
9 lawyer, sometimes they'll approach you at the jail and say,
10 Hey, this guy is coming to see me. And I'm not talking about
11 Mr. Mobley. Or they start to talk to you and you just say,
12 "I'm not your lawyer anymore."

13 And so -- but once we ended up together again, I guess,
14 at least at that point, they liked me, so I -- you know, we
15 talked about it, and I -- you know, I was never, until the
16 end, even suggesting him to plead to anything because there
17 was an offer, and it didn't seem to be something he was
18 interested in at that time. So I was always telling him, you
19 know, we're going to -- we're going after the woman's memory
20 or say that mom thought she was doing the right thing and that
21 she was kind of steering the ship and trying to help her son
22 identify, you know, identify you.

23 But, yeah, I mean, I told him what our plan was. I had
24 told his mom what our plan was. She was really involved.

25 **Q** The plan being to fight it.

1 **A** Yeah, sure, yeah.

2 **Q** And then I guess the big question or one of the biggest
3 questions is, why weren't you or can you explain why you
4 weren't able to provide him a full copy of the Rule 5
5 material.

6 **A** Well, you know --

7 **Q** Prior to --

8 **A** -- if -- and this is my policy and, basically, our
9 office's policy. When someone asks for the discovery, the
10 first thing I might say is there are a lot of people that
11 would go through discovery in the jail and they will sort of
12 become a false snitch or whatever. And this happens all the
13 time at Ellis (ph) Quinn; I can't speak to Charleston or
14 Chester but it happens all the time here. And then I say, you
15 know, "Are you sure you want to do this?" And advise against
16 it.

17 Most of the time, clients will say, "That's all right.
18 Okay. That's fine." Or then I might even say, "Well, maybe
19 you'd like to keep it for a week or something; I can come
20 back." But, usually, Venable wanted to talk about other
21 stuff. Like he didn't want to usually talk about what I
22 showed him or anything. He wanted to talk about -- he always
23 had sort of his own ideas and sort of theories, so they would
24 kind of go in other places. Or he would ask me for
25 transcripts or recordings, but there would be hearings that

1 there weren't any transcripts for.

2 You know, it was very easy for me to sort of go in a
3 direction that he sort of wanted to go and he never -- you
4 know, if he had insisted on a copy of it, absolutely, I would
5 have just given it to him and I would have made him sign a
6 form that says I have been advised, you know, about this. But
7 usually, he wasn't -- when I wanted to point to facts or
8 discovery, especially if it were bad facts, he wasn't really
9 interested in seeing it or sort of dwelling on it. I never --
10 I never said you can't have this or stopped it from happening.

11 **Q** But is it your testimony that he did not receive the full
12 copy of the Rule 5?

13 **A** My testimony is, if he did not, it's because he didn't
14 ask for it. I think that's material. He never said "I need a
15 copy of all this stuff with me," because if he would have, I
16 would have given it to him rather than fight over it.

17 **Q** But, of course, he's not aware of -- is it your testimony
18 that, if you do not provide him with it, you at least told him
19 about it?

20 **A** Yeah, I would have -- if there's something he had not
21 seen -- if there's something he had not seen, he didn't ask or
22 we would have gone over it. Keep in mind, I mean, I'm talking
23 I had hundreds of pages of cellphone records, including
24 pornography in all the cellphone stuff. I mean, it was just
25 tons and tons of it, and most of it was junk data.

1 Q But he can't ask for something that he doesn't know
2 exists.

3 A I told him what was in it. I told him all his
4 pornography was in there and stuff too, and then he kind of
5 didn't want to talk about it anymore.

6 Q Now, the emails that are in the exhibit -- I forget which
7 one but there's emails from the investigator, Lee, there's
8 mention of some witnesses that maybe even South Carolina -- a
9 South Carolina detention center? Do you recall any of that?

10 A If there's a name, I would send it the Lee Conley, and
11 she could find them or not find them. And I remember one or
12 two people had not -- were not in the jail anymore at that
13 point. I don't know if they went straight to the Department
14 of Corrections. I don't know. I mean, I don't have an answer
15 to that.

16 Q I believe there's mention that there's someone to look
17 into that's at a South Carolina detention center that wasn't
18 followed through, even though that would seemingly be an easy
19 person to find since they're incarcerated.

20 A I mean, you know, if it was -- I mean, who are you
21 referring to? I mean, that's the problem. It would always be
22 like -- it would always be, like, follow this person, and then
23 I wouldn't really -- a name, the name would change. Jermaine
24 Yelverton. He told me to talk to Jermaine Yelverton many
25 times, and he would say, Jermaine Yelverton talked to Shuma,

1 and Shuma said maybe I wasn't involved with it. And then I'll
2 call Jermaine, and he said, I don't know what you're talking
3 about. I haven't seen Shuma. I don't have anything to do
4 with this. I don't know anything about this.

5 Q But they all have my client's emails and --

6 A Sure.

7 Q -- specifically point out (indiscernible).

8 A Actually, I found the Jermaine Yelverton stuff. He said
9 that he had heard in the neighborhood that Venable didn't do
10 it and then he had also heard some people say that he did do
11 it, not that that has anything -- but that was one of the --
12 that was the witness he always wanted me to talk to, was that
13 guy, and that guy said he said he didn't know anything about
14 it but he had had plenty of people saying negative things too.

15 Q And he's pointing to the second-to-last page of the
16 emails where it says Thomas Mixon. Do you recall that person
17 and pursuing information about that person?

18 A I remember -- I think I remember the name, Thomas Mixon,
19 but I don't remember -- I'm sure -- I mean, and keep in mind,
20 just an email with Lee isn't the only thing. I spoke to her
21 on the phone too. So -- you know, I don't know. She said --
22 if she said there were people I want to look at, I would have
23 told her.

24 Q Okay. And --

25 A I can't remember if she spoke to him or not, but I do

1 remember she looked at a lot of things that kind of went
2 nowhere. It would be out of character for Lee to think there
3 was somebody substantial and didn't do anything about it,
4 because I remember --

5 **Q** Well, he submitted an affidavit which the Court already
6 has a copy of --

7 **A** Did it say that he had strong alibi testimony? What was
8 he supposed to say?

9 THE COURT: You got it, madame court reporter?

10 THE WITNESS: I think so.

11 Well, I mean, I don't know how many investigators you
12 hired, Mr. Soper, but an investigator trying to -- I mean, you
13 can try to locate somebody and not find them, and if they had
14 been in and out of the correction system and they're not in
15 the correctional system and you can't pull up the website --
16 let's see, it just says -- I know that there was a white man
17 named Doug looking for Mr. -- okay, Doug is the first time I
18 have heard the name Doug. He sold Doug some fake drugs. This
19 reason I know is because Doug approached me about the
20 situation, the drug deal and was looking for Odensky. Also,
21 he was very irate, saying, when he finds out, he is going to
22 kill him for selling him fake drugs.

23 Okay. I had never seen this, if that answers your
24 question.

25 BY MR. SOPER:

1 Q You have never seen the email about a person named Mixon?

2 A I remember him -- I'm sorry?

3 Q Mixon. I'm sorry. Thomas Mixon? So no follow-up on
4 Thomas Mixon?

5 A I mean, I don't remember. I mean, I can't tell you how
6 many hours a week -- I'm sorry; I'll let you talk to your
7 client.

8 Q He's -- are you asking Mr. Thomas Mixon and Charles
9 Kennedy, but that doesn't ring a bell?

10 A I mean, I remember -- I think -- I don't -- every time
11 when we got somebody, Lee would try and talk to them, and she
12 either couldn't find them or they would say, no, I don't know
13 anything about this; I can't help you. And that was sort of
14 inconsistent.

15 Q Did you make Mr. Mitchell aware of sort of the progress
16 that the investigators made (indiscernible)?

17 A As I -- yeah, I mean -- Venable would (indiscernible). I
18 couldn't -- I was constantly trying to make him feel informed
19 about what was happening. And then I didn't have any reason
20 to not share what was happening.

21 Q Now, the line-up video at the hospital, do you recall
22 that?

23 A Yes.

24 Q Can you just, I guess, explain your thoughts on that. Is
25 that a proper procedure, the way they (indiscernible) the

1 line-up?

2 **A** Well, it depends on what kind of line-up you're talking
3 about. I don't know if you know the Biggers case. Biggers
4 deals with in-court identifications. And to be allowed to do
5 an in-court identification, you have to make sure that it was
6 a legitimate sort of procedurally done thing. And I have
7 argued a lot of Biggers hearings, and some of the Biggers
8 hearings deal with, you know, a show-up ID, you have got a
9 photo line-up ID, that kind of thing.

10 The thing is, you know, this wasn't a case where they
11 were picking some random guy to picture and they didn't do his
12 name. The identification for these purposes was to follow up
13 and identify it to the police who Venable Mitchell was. It
14 wasn't the same kind of an ID, if that makes any sense. It's
15 kind of like arguing the Miranda rights argument when nobody
16 made a confession.

17 But, I mean, what it comes down to is the procedures and
18 practices. There might be plenty to kick the tires on that,
19 and I certainly would have done that not only pre-trial but
20 during the trial. The thing I thought was -- you know, what I
21 wanted to know more about was what they had done before the
22 videotape came, you know, things like that. I mean, that was
23 the stuff I was interested in, but honestly, you know, a lot
24 of that stuff is sort of speculative.

25 I mean, did I think it was the best procedure? No. But

1 if I had -- you know, if I had a dollar for every -- if I had
2 a dollar for every police procedure and discovery that I
3 thought could have been done better...

4 **Q** I guess my client's main concern was that (indiscernible)
5 it sounds like, at the bond hearing, the officer stated that
6 the only other person that had the information --

7 **MS. McCALLISTER:** I'm sorry; I'm objecting to his
8 characterization of what was said at the bond hearing. I
9 don't think that's in evidence anywhere. We don't have a
10 transcript of that so I object.

11 **THE COURT:** All right. Objection noted. Overruled.
12 Go ahead.

13 **BY MR. SOPER:**

14 **Q** Just the bond hearing, (indiscernible) that the victim
15 identified my client (indiscernible) his mother; is that
16 correct?

17 **A** The bond hearing was -- I was trying to find it.

18 **Q** I know --

19 **A** I mean, I remember I listened it to and it was like, this
20 doesn't help. It doesn't -- it wasn't what -- you know,
21 because I played it for Venable, and he didn't like what it
22 sounded like. And he said, Well, let's get a transcript. And
23 I said -- I was like, this is the hearing. This is the
24 recording, you know? The transcript is not going to be any
25 different.

1 Q Well, was there anything you could have done to help that
2 situation in terms of the way that he was ID'd?

3 A Okay, I -- I'm trying to understand what you're asking.
4 You can move this -- okay. Forget the ID for a second. I
5 mean, just basically in the criminal law. Like, if you take
6 his mom from the -- from the, you know, the equation, okay, he
7 writes down Venable Mitchell. You know, conceivably, you
8 know, time passes before he can talk again, and he eventually
9 did see and talk and he spoke in open court. He could say to
10 him -- he could say to the police, independent of the mom,
11 it's eyewitness testimony. It wasn't -- it wasn't that he
12 picked out a random name on a suspect. So I'm not entirely
13 sure what you're -- I'm not sure why you're asking of the ID
14 procedure.

15 I mean, do I think -- I mean, do I like how it went
16 about? I felt like he could have been susceptible to
17 coaching, absolutely, but that isn't really about ID -- ID
18 practices.

19 Q So I just think it's concerning that you have concerns
20 about it. Was there anything that (indiscernible) that wasn't
21 done?

22 A The only thing I could have done about my concerns was
23 attack the integrity of the investigation at trial, which I
24 was fully ready to do.

25 Q And so would you have gone to trial if Mr. Mitchell had

1 insisted that you go to trial?

2 **A** Yes. At the very end, if he had said he didn't want to
3 take the deal, yes.

4 **Q** But going back to the video of the victim writing down my
5 client's name, was my client's name called out prior to the
6 victim writing the statement? Meaning coached (indiscernible)
7 sort of alluded to that admission but....

8 **A** I looked at the video a bunch of times. I didn't look at
9 it before the hearing today. I remember he writes it on
10 camera or you see him writing. I mean, I don't know
11 specifically (indiscernible) what he's writing. I mean, I
12 can't remember -- I mean, I remember -- you know, the issue is
13 that they keep asking the mom to sort of translate for him,
14 since he can't really talk and he's got stuff in his mouth and
15 everything.

16 **Q** It's your testimony here today that all those concerns
17 and issues that he has about that and even you have about it,
18 where would be the appropriate place for you to have done
19 that? At trial; is that correct?

20 **A** That's true, yes.

21 MR. SOPER: Nothing further, Your Honor.

22 THE COURT: All right. Any redirect?

23 MS. McCALLISTER: Yes, just briefly.

24 REDIRECT EXAMINATION

25 BY MS. McCALLISTER:

1 Q I think these notes -- the investigator's notes that you
2 refer to as emails, but they look like just notes maybe that
3 she was typing up for activities?

4 A That's probably right. She would send you reports and
5 sometimes she'd send them to emails and sometimes not.

6 Q Okay. So if there's nothing on these that look like it's
7 being sent by email, it may be just something that she typed
8 up in a Word document and she would send you that at some
9 point but -- and I think you also said you would have phone
10 calls and emails with her; correct?

11 A Right. In this case, what we're looking at I think is a
12 situation where she sent me a few different emails and I cut
13 and pasted them and dated them and put them in one place
14 because I didn't want to go through a stack of them and I
15 didn't want to have him print it out. This is part of it.
16 And she also would submit her own reports on paper to me too.

17 Q Okay. Got it.

18 So just because something is written in here doesn't mean
19 it's the only thing that was done, though. There could be --
20 you could have had a phone conversation or an in-person
21 conversation that reported a follow-up on these items.

22 A That's correct, yes.

23 Q And -- okay. And so you have looked at this affidavit
24 that was submitted today from Thomas Mixon, and it describes
25 some guy named Doug in the neighborhood. Is that sort of the

1 sort of tip that Lee was trying to run down in general for
2 Mr. Mitchell?

3 **A** I'm sorry; which part?

4 **Q** The affidavit I think we looked at just a minute ago.

5 **A** Oh. I mean, I -- all I heard was that there was -- there
6 was a white guy that maybe had been sold fake drugs. I don't
7 ever remember hearing the name Doug. I could be mistaken, but
8 that seems new to me. And at one point, there was -- he asked
9 about a shooting that had happened at some apartments, and I
10 asked Lee to get that, and she said they didn't have any
11 record of it.

12 **Q** Okay. So this is something that was known to you and
13 known to Lee, and you guys were trying to track it down?

14 **A** Well, I don't -- I remember this being a story. I
15 don't -- I certainly don't remember a Doug.

16 **Q** Yeah, not the Doug part but just the sort of general idea
17 that there was some white guy in the neighborhood that you
18 guys were trying to --

19 **A** Right. And every time she talked to somebody, it just
20 didn't -- it just fell flat. There wasn't any -- and I don't
21 think she'd lie to me. I mean, I don't know what happened
22 with Mixon or why he was not found.

23 **Q** Okay. And we don't have Mixon or Doug here today to talk
24 about that.

25 **A** No, that's right.

1 Q Okay. And you, again, explained all this -- the problems
2 with this alibi and finding another third party to blame. You
3 explained all that to Mr. Mitchell prior to him going to court
4 (indiscernible)?

5 A Well, third-party guilt is really complicated, the law
6 under third-party guilt, but, yeah, I just -- we didn't have
7 anything to work with at that time.

8 Q Thank you. That's all the questions.

9 THE COURT: Any recross based upon redirect?

10 MR. SOPER: I do not, Your Honor.

11 THE COURT: All right. Thank you, sir, you may step
12 down.

13 THE WITNESS: Thank you, Your Honor.

14 THE COURT: The State may call its next witness.

15 MS. McCALLISTER: Nothing further.

16 THE COURT: All right. I'll be happy to have you
17 (indiscernible).

18 MR. SOPER: In closing argument, I'd just ask the Court
19 to --

20 THE COURT: Okay. No evidence to offer in reply to that?

21 MR. SOPER: No, sir.

22 THE COURT: Okay. Let's hear argument then. Yes, sir,
23 Mr. Soper.

24 CLOSING ARGUMENT ON BEHALF OF THE APPLICANT

25 MR. SOPER: That's all I have, Your Honor, is --

1 everything that we presented to the Court today, I believe, is
2 covered in the amended application that we filed, and we'd
3 just ask the Court to grant the relief that we requested.

4 THE COURT: Thank you.

5 Madam AG?

6 CLOSING ARGUMENT ON BEHALF OF THE STATE

7 MS. McCALLISTER: Your Honor, I just would say that I
8 think the exhibits that have been introduced today, I think
9 they all contradict the allegations just themselves. I think
10 it's alleged that he's identified by the mom, and I think
11 that's clearly not true. The victim wrote down the name. And
12 he and his attorney watched the video. They went over all of
13 this evidence together, and, you know, his mom spoke to him,
14 and I think that's a valid thing to do is to take the advice
15 of your family members, and he's available to testify in
16 detail about the investigation that was done, about the
17 defense (indiscernible). Mr. Mitchell was aware of all of
18 these issues, and he still decided to enter a guilty plea, and
19 we submit that that was a free and voluntary choice.

20 THE COURT: All right. Well, what I'm going to do -- let
21 me explain it to you, Mr. Mitchell, what's going to happen.
22 I'm going to take the matter under advisement. I want to read
23 some more, especially your amended petition that your lawyer
24 filed on your behalf. I want to go through all that, along
25 with the exhibits that have been introduced, reconstruct the

1 record as much as I can, and think about it before I just make
2 a decision off the cuff. Okay?

3 For that reason, you won't get a decision today,
4 obviously. I'm going to think about it. I'm an out-of-town
5 judge, meaning I don't live here in this area, so I'm going to
6 take it back to my home circuit, think about it, deliberate,
7 and I'll issue a decision in the coming weeks. Okay? I don't
8 like to take things under advisement just -- you know, you'll
9 have a decision in the next couple of weeks. Okay?

10 I will notify your attorney via email through my law
11 clerk as well as the State's attorney of my decision, and then
12 if I grant your application, your lawyer will have to do an
13 order for my signature. Okay? If I deny your application,
14 the State's lawyer will have to do an order for my signature.
15 And of course lawyers, since they're officers of the Court,
16 they'll make sure the language is right before it comes to me.
17 Okay?

18 So that's the process. I just want to make sure you're
19 aware of that. Okay?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. That concludes the hearing in
22 this case. Wish the very best of luck to you, sir.

23 MR. SOPER: Thank you, Your Honor.

24 THE COURT: All right. Thank you all. Thank you, sir.

25 (The above hearing concluded.)

1 CERTIFICATE OF TRANSCRIBER

2 CASE/NO.: Venable Mitchell vs. State of SC

3 2017-CP-40-4953

4 DATE OF PROCEEDING: October 28, 2019

5 COURT REPORTER: Bonnie Kelly

6
7 I, Bobbi J. Fisher, do hereby certify that the
8 foregoing transcript is a true and correct record of the
9 recorded proceedings; **that said proceedings were transcribed**
10 **to the best of my ability from the audio recording and**
11 **supporting information;** and that I am neither counsel for,
12 related to, nor employed by any of the parties to this case,
13 and I have no interest, financial or otherwise, in its
14 outcome.

15
16 17 _____
18
19 Bobbi J. Fisher, RPR, CET

20 NCRA Registered Professional Reporter (RPR)

21 AAERT Certified Electronic Transcriber No. CET-1148

22 Prepared: August 25, 2020
23
24
25

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Venable Deon Mitchell, #283119,)

C.A. No. 2017-CP-40-4953

)
Applicant,)

ORDER OF DISMISSAL

)
v.)

)
State of South Carolina,)

)
Respondent.)
_____)

RICHLAND COUNTY
 FILED
 2020 APR -8 AM 10:11
 COURT REPORTER & VIDEO

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Venable Deon Mitchell (Applicant) on August 17, 2017, and amended through counsel on October 20, 2019. Respondent made its Return and Motion to Dismiss on May 11, 2018. An evidentiary hearing into the matter was convened on October 28, 2019, at the Richland County Courthouse before the undersigned. Jason G. Soper, Esquire, represented Applicant. Assistant Attorney General Lindsey A. McCallister represented Respondent.

At the hearing, Applicant testified on his own behalf. His mother, Grace Mitchell, and a friend, Christina Grooms, also testified for Applicant. Respondent called Applicant's plea counsel, J. Rhodes Bailey. This Court also had before it a copy of the Richland County Clerk of Court's records regarding the subject convictions, records from the South Carolina Department of Corrections, the application and amendments, Respondent's Return, and the plea transcript. 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 relief.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. In April 2016, the Richland County Grand Jury indicted Applicant for attempted murder (2016-GS-40-01860) and discharging a firearm into a dwelling (2016-GS-40-01862). The charges resulted from an incident that occurred on July 29, 2015, in which Applicant shot a shotgun multiple times through the bedroom window of the victim, which resulted in the victim losing his vision and his nose.

Assistant Public Defender J. Rhodes Bailey (Counsel) represented Applicant. Assistant Solicitor Meghan Walker prosecuted the case. On March 20, 2017, Applicant appeared in the Richland County Court of General Sessions before the Honorable R. Knox McMahon, where he pleaded guilty as indicted to all charges pursuant to Alford v. North Carolina, 400 U.S. 25 (1970). Pursuant to the negotiations between Applicant and the State, Judge McMahon sentenced Applicant to imprisonment for ten years for attempted murder. Applicant did not appeal his conviction or sentence.

ALLEGATIONS

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

1. Ineffective Assistance of Counsel
 - a. "Absent discovery materials, Counsel's advice was not wisely given. In that later knowledge gather could have convinced me to use my right to trial by jury. The late materials contained conflicting concerns ripe for a trial"
2. Involuntary Guilty Plea
 - a. "My plea was induced by counsel's bad advice"
3. "The plea of Alford v. NC was evidence of my hesitation to surrender my due process rights and should be seen by the court as same. My plea was induced by

counsel's bad advice."

In his amended application, Applicant further alleges:

1. Ineffective Assistance of Counsel

- a. "Trial Counsel failed to provide Applicant with a full copy of Rule 5 materials received from the Richland County Solicitor's Office until after Applicant plead guilty on March 20, 2017. The Applicant was not properly advised concerning the prosecution's evidence against the Applicant or potential defenses he had waived by pleading guilty."
- b. "Within the Rule 5 material the Applicant received from Mr. Bailey, after his conviction, there was evidence that he had not seen before and had not been made aware of. The evidence the Applicant had not seen prior to his guilty plea included but is not limited to the following:
 - i. A letter from Applicant to Mr. Bailey dated May 4, 2017, Mr. Bailey states that he "was never provided discs from street cameras on South Ott or Rosewood. I was only shown a few black and white snapshots from the cameras." However, in an email dated March 15, 2017, at 3:18 PM, from the Assistant Solicitor, Meghan Walker, she provides ten attachments of videos that were emailed to Mr. Bailey. The camera logs she provides are from cameras on South Ott and Rosewood. This shows that the letter from Mr. Bailey contained untrue or inaccurate information. If Applicant were made aware of this evidence, he would not have pled guilty.
 - ii. Cell phone records showing that the victim in this case received a text message on June 29, 2015, at 8:56PM that stated: 'Hey chu be careful out there... it's some strange things going on put (sic) here... watch your surroundings... love ya.' This message was received from someone named Tab whose number was [REDACTED]. This shows there was evidence that the person who sent this text to the victim potentially had knowledge of someone who had a motive to shoot the victim. This information provides a defense that Applicant was not aware of and if the Applicant was made aware of this evidence, he would not have plead guilty."
- c. "Applicant's attorney did not make Applicant aware of the progress hired investigators made. . . .
 - i. Within the file was information that the hired investigator (Lee Connelly of Info, Inc. Investigations) stopped pursuing leads as to who may have shot the victim due to lack of funds. There is evidence that reveals the investigators were on track to get information that was vital to the Applicant's defense, but the investigation was stopped due to lack of payment from Mr. Bailey's office. There were pictures of the crime scene that were not taken due to 'the funding situation.' There was also the possibility of confirming the Applicant's alibi, yet the investigator stated he

did not make contact with the alibi witness because he 'wasn't on the clock.' There was an opportunity for the investigator to make contact with a potential alibi witness but it was not done due to lack of payment from Mr. Bailey's office. If the Applicant had been made aware that the investigation was cut short due to lack of payment or funds, he would not have plead guilty."

- d. "Applicant's plea cannot be considered knowing and voluntary based on his lack of knowledge of the material evidence that was in his attorney's possession and the prosecutor's possession. . . ."
- e. "Applicant has additional concerns in regard to how he was identified as the shooter in this case."
 - i. "In an incident report (SC0400100) prepared on the day of the incident (07/29/17) (sic) Mr. Jones, the father of the victim, who resided in the same home as the victim, is reported to have said 'he did not see or hear anyone prior or after the shooting.' The victim was unable to see or speak due to his injuries, therefore he could only write out a statement as to who the shooter was. The State found that the Applicant's name had been written down by the victim, yet the written statement is illegible. The Applicant was picked out in a lineup that was presented to the victim's mother, Mozell H. Jones. This is despite the fact that it had already been stated in the previously mentioned report that she and the victim's father were both asleep and did not 'see or hear anyone prior or after the shooting.' It is the Applicant's position the lineup was improper, inaccurate and unconstitutional and therefore Mr. Bailey's decision not to object and/or challenge the State's lineup prejudiced his case."
- f. "Finally, the Applicant alleges that his trial counsel pressured and scared Applicant's mother in an effort to have her convince her son, the Applicant, to plead guilty on March 20, 2017. This is in spite of Applicant's desire to go to trial. Applicant had always maintained his innocence, including at the plea hearing by going forward with an 'Alford' plea. Therefore Applicant's plea was not entered into voluntarily due to the pressure trial counsel placed on Applicant's mother to convince Applicant to plead guilty out of fear of losing her son for thirty years."

At the evidentiary hearing, Applicant proceeded on the allegations in his amended application, which encompasses and expands upon the allegations in his original application. At the outset of the hearing, the parties agreed to mark the following exhibits, all of which were later admitted: (1) May 4, 2017 Letter to Applicant from Counsel; (2) March 15, 2017 email from Assistant Solicitor Meghan Walker to Counsel; (3) Copy of text messages from June 29, 2015, from victim's cell

phone; (4) Copy of email chain from investigator to Counsel; (5) July 29, 2015 incident report; (6) State's lineup; (7) Victim's written statement identifying perpetrator; (8) Affidavit of Thomas Mixon.

SUMMARY OF TESTIMONY AT EVIDENTIARY HEARING

Applicant testified he pleaded guilty on March 20, 2017. According to Applicant, until then, he intended to go to trial, and he only decided to plead guilty the day before. Applicant testified his attorney influenced him to believe the jury would side with the victim due to the victim's scars and ongoing symptoms. Applicant testified his attorney informed him all of his alibi witnesses were a dead end, and he was facing a victim with pieces of his face blown off, and his attorney said the jury would side with the victim.

Applicant also testified his attorney recruited Applicant's mother to convince him to accept the plea. Applicant explained he had been incarcerated at Alvin S. Glenn Detention Center for approximately nineteen or twenty months at that point. According to Applicant, the Sunday before the plea hearing, he had a personal visit with his attorney which he had not done since he had been there. Applicant testified he thought it was only Counsel in the room, but when he opened the door completely, his mom was sitting there, crying, and telling him to take the plea, or the State would give him thirty years. Applicant explained she was saying the same thing Counsel had told him about the jury siding with the victim out of sympathy. Applicant testified his mom told him if he pleaded guilty, she would be there the whole way through, and that is when he decided to accept the plea offer. Applicant testified he did not intend to plead guilty until he spoke to his mother, and he felt the plea was entered involuntarily.

Applicant testified he did not receive his Rule 5 materials until after he entered the guilty plea and was in SCDC. Applicant testified the only material he had prior to the plea were pictures of the victim in the hospital, a “shot up blanket,” and a “shot out window”; and the video of the victim writing his statement. Applicant testified he received a letter from Counsel stating Counsel had mailed the entire Rule 5 record after the guilty plea.¹ Applicant testified that letter states Counsel did not receive any discs from the street cameras surrounding the incident location, but the discovery materials included an email from the Assistant Solicitor to his attorney saying she had emailed the videos from the cameras.² Applicant explained he felt this information was important to his case because he believes there was evidence on the cameras that would have shown he was not in the area, and if he had been able to see the video he could have helped with what he saw. Applicant testified if he had known about this evidence prior to pleading guilty, he would not have entered his plea.

Applicant additionally testified he received the victim’s cell records as part of the Rule 5 materials sent to him after the plea.³ Applicant explained he believe this materials was important to case because it gave him an idea of the things the victim had going on, including problems and fights the victim had been involved in leading up to the day he was shot. Applicant stated he felt it provided a defense that would have helped him in trial. Applicant testified he would not have pleaded guilty if he had seen the text messages prior to the plea.

¹ Applicant’s Exhibit 1.

² Applicant’s Exhibit 2.

³ Applicant’s Exhibit 3.

Next, Applicant testified his attorney did not make him aware of the status of the investigation performed by the investigator Counsel hired. Applicant explained a private investigator was retained to follow up on Applicant's alibi witnesses. Applicant testified he gave his attorney and the investigator his alibi, the names of witnesses to support the alibi, and possible locations to find the witnesses. Applicant testified, however, the investigator was complaining about not being paid, so sometimes she would find the alibi witness but not pursue it because not being paid. Applicant testified he learned this information from emails between his attorney and the investigator which he received after the plea.⁴ Applicant testified if he had known the investigation was cut short or there were witnesses not followed up on, he would not have pleaded guilty, and he believed this prejudiced his ability to present an alibi defense.

Applicant testified he told Counsel to find two alibi witnesses, Charlie Kennedy and Thomas Mixon. Applicant testified he received materials where the investigator indicating one was no longer incarcerated and the other lead to a dead end. However, Applicant testified he spoke with both inmates in Kershaw County, and they told him no one ever made an attempt to contact them about his alibi. Applicant stated both men are incarcerated and willing to testify on his behalf. Applicant introduced a notarized affidavit from Thomas Mixon, over the State's objection.⁵

Applicant further testified to his concerns about the way he was identified as the shooter in this case. Applicant explained the record shows the victim's mother identified him⁶ by picking his

⁴ Applicant's Exhibit 4.

⁵ Applicant's Exhibit 8.

⁶ Applicant's Exhibit 6.

photograph out of a group of pictures, but the incident report⁷ says the victim's parents did not see anything before or after the shooting because they were in bed asleep. Applicant acknowledged the victim wrote Applicant's name down in his statement, and that's what the State used what victim wrote as the basis for the arrest warrant. Applicant testified, in his opinion, the victim's statement⁸ was illegible, and he did not understand how it could be used for an arrest warrant.

Finally, Applicant stated he did not know about the lack of funding, which prejudiced his defense; and he did not know the jury had to have evidence rather than relying on the victim's appearance. Applicant testified Counsel gave him bad advice to accept the plea offer, and he did it as an Alford plea because he was hesitating. Applicant testified Counsel advised him that the State would call the victim with "his face blown off," the jury would side with them out of sympathy, and he would receive a thirty-year sentence. Applicant explained he relied on this advice because Counsel was the only person "in [his] corner" other than his mother, but if he knew then what he knows now, he could have fought for his freedom. Applicant reiterated he had been in the county detention center for twenty months and only decided to plead guilty three days before going to court. Applicant testified his attorney influenced him to accept the plea offer, and it was not intelligently given. Applicant stated he was continuously told every investigative avenue lead to dead end, and his mother's influence on him to plead guilty changed his life forever.

On cross-examination, Applicant conceded he recalled the plea hearing and acknowledged the plea judge reviewed his constitutional rights, which he informed the judge he wished to waive.

⁷ Applicant's Exhibit 5.

⁸ Applicant's Exhibit 7.

Applicant further agreed he informed the plea judge he understood the evidence against him, including the eyewitness identification, but he wished to waive his right to trial and enter the plea in order to avoid a thirty-year sentence. However, Applicant stated that was before he received a full copy of the discovery. Applicant testified he only met with Counsel three times during the course of the case, and Counsel always told him the investigation had only lead to dead ends.

Next, Applicant's mother, Grace Mitchell (Mitchell), testified on his behalf. Mitchell testified she heard Applicant say in his testimony that he felt forced into pleading guilty, and she believed that to be true because Counsel asked her to come to Columbia from Charleston to talk to Applicant about accepting the plea offer. Mitchell testified Counsel told her he felt Applicant did not have any chance of success at trial because the jury was going to look at the victim. Over the State's objection, Mitchell testified Applicant's previous attorney, Derrick Mobley, told her that he believed the victim's mother was the one "calling [Applicant's] name." Mitchell testified she read in the report that the victim's mother said some of the victim's friends were calling him and checking on him, and one friend told her Applicant was the person who shot the victim, and "that's when [Applicant's] name was called."

Mitchell further testified she spoke with Counsel for quite some time in the days leading up to the plea, and she felt was he was not "in favor of" Applicant, and it was all about the victim. According to Mitchell, the victim changed his story from bond hearing, but Counsel still made her feel Applicant did not have a chance of success at trial. Mitchell testified she was afraid of Applicant going to trial, and she begged him to accept the plea agreement, pointing out that his daughter would not even be in middle school yet when he gets out. Mitchell explained she was

afraid Applicant would be sentenced to thirty years at trial. Mitchell further stated she thought Counsel trying to put the case together within a week. Mitchell testified she did not think Applicant would have pleaded guilty if she had not spoken to him. According to Mitchell, she cried and begged Applicant to enter a guilty plea because she was afraid for his life because Counsel was not prepared, and he did not make her feel as though Applicant had a chance of success at trial.⁹

Counsel testified he was initially appointed to case late in the summer of 2015. Counsel explained he had the case for a short period of time, then Applicant hired Derek Mobley. Applicant was not happy with Mobley, so the Public Defender's Office reopened the file, and Counsel resumed representation. Counsel testified he received the case a second time in June 2016, and Applicant pleaded guilty in March 2017, so Counsel had plenty of time to prepare for trial.

Counsel testified he met with Applicant frequently, and certainly more than three times as Applicant testified. Counsel testified Applicant always wanted to talk about issues other than the things Counsel tried to show him. Counsel stated Applicant had his own ideas about the case, and Applicant wanted to see things like transcripts that did not exist. Counsel testified the discovery in this case was hundreds of pages, and Applicant avoided talking about it. Counsel further testified Applicant did not want to talk about bad facts, and Applicant would take the discussion off in other directions when Counsel brought them up.

⁹ Applicant also called a friend of his named Christina Grooms. Grooms attempted to testify about her review of the discovery provided to her by Applicant, but the Court sustained the State's objections to her testimony as she had no firsthand knowledge of any of the events leading to the entry of Applicant's guilty plea.

Counsel explained his policy is that if a client asks for discovery, the first thing he tells them is that other inmates will go through it in the jail and become a “false snitch.” Counsel testified he usually advises clients against keeping a full copy of their discovery in the jail, but he will give it to them if they insist. Counsel further testified if Applicant had asked for a copy, he would have given it and made Applicant sign a form saying he had been advised about it. Counsel testified he never told Applicant he could not have it or stopped it Applicant from keeping a copy. According to Counsel, if Applicant did not have a copy, it was because Applicant did not ask for it. Counsel further testified even if he did not provide a full copy of all the documents to Applicant, they would have at least discussed the contents, and Counsel explained to Applicant what was in the discovery. Counsel stated if Applicant did not see a particular item of discovery it was because Applicant did not ask to see or it or did not want to see it. Counsel testified once Applicant was transferred to SCDC, he wrote Counsel a letter asking for a full copy of the discovery, and Counsel sent everything he had.

Counsel explained the basic outline of the facts of the case. Counsel stated the victim was in his bedroom watching television, when he heard a tap on window. According to Counsel, the victim claimed he saw Applicant shoot four times with a shotgun. Counsel testified the victim sustained blindness and lost part of his nose in the shooting. Counsel stated the victim was unconscious for some time after the shooting, but eventually the police spoke to him, and when they asked him who did it, he wrote down Applicant’s name – Venable Mitchell. According to Counsel, the victim’s mother then identified the person she knew as Venable Mitchell from a lineup, and Applicant was arrested.

Counsel testified he hired investigator Lee Conway to work on the case for him. Counsel explained he had to get an order signed by the trial court to cover her expenses, and then money comes from the South Carolina Commission on Indigent Defense. Counsel testified he had return to the court to get several orders to continue to get more money as the investigation progressed. Counsel stated his office paid the investigator for everything she did, and she performed all the investigative tasks he asked of her and more. Counsel testified if Applicant gave a specific name, Counsel would send it to Conway, and she would try to find the person. Counsel stated some of the people were not in the jail any longer, and he did not remember everyone Conway spoke to, but he testified if she had told him there was a lead she wanted to pursue, he would have told her to do so. Counsel testified, in his experience, she is a thorough investigator.

Counsel stated Applicant waited until the last minute to notify him of an alibi defense. According to Counsel, Applicant waited to assert an alibi claim past the ten-day, pre-trial deadline for the defense to give notice. Further, Counsel testified Applicant never gave solid names, only very broad information that he did not remember exactly where he was, but he was doing drugs, and one of his friends would be able to tell Counsel and/or the investigator where Applicant was. Counsel also testified Applicant mentioned a general idea about a potential third-party suspect – a “white guy named Doug.” Counsel stated the investigator was thorough and did the best she could to track witnesses down. Counsel explained she reported her findings back to him, and she also spoke to Applicant. Counsel testified he informed Applicant the alibi and third-party guilt investigations were “not going anywhere.”

Counsel further explained the State was not contending any other eyewitnesses saw the shooting, and the victim's mother made the identification of Applicant because the victim could not see. According to Counsel, when the victim wrote Applicant's name, she then identified the person she knew by that name. Counsel testified he watched the videotape of the interview multiple times and reviewed the victim's written statement with Applicant's name on it, and in his opinion, you can read the name clearly. Counsel stated he and Applicant also reviewed that piece of paper together and discussed it.

Counsel explained this was not a case where the witness was picking out an unknown person. However, Counsel explained he would have wanted to know more about what had been done before the videotaped portion of the interview with the victim, and he did not think it was the best procedure. Counsel testified, on the video, you could see the victim writing on the piece of paper, but the issue he saw was that the investigators kept asking the victim's mom to translate because the victim could not really speak at that time. Counsel opined "there was plenty to kick the tires on" regarding the identification and stated he would have done that at the pre-trial hearing. However, Counsel stated even if he could take the victim's mom out of it, the victim himself identified Applicant, and the victim had regained his ability to see and speak and was an eyewitness.

Counsel testified, instead of alibi, he prepared a defense based on challenging the victim's memory. Counsel testified he and Applicant reviewed the video of the identification procedure, and Counsel realized there was an argument to be made that the victim did not truly remember what happened, but rather had been influenced or coached by his mother. Counsel also stated

Applicant claimed Applicant had previously been robbed and shot by a friend of the victim, and that is why the victim's family thought Applicant shot the victim. As Counsel noted, this fact cuts both ways because it showed the victim's mom did not like Applicant, but it also gave Applicant a motive to hurt the victim. Counsel testified he hired a professor to testify as an expert regarding memory at trial. Counsel testified he felt confident about the defense's approach regarding the fallibility of memory and the victim's mother's influence on the identification.

However, Counsel explained every time Applicant went to court, the victim was there with visible injuries, and the victim believed Applicant did this and was going to testify as much. Counsel further explained Applicant seemed very angry at the victim and preoccupied with the victim, and Counsel tried to explain why the defense could not attack the victim. Counsel also testified he and Applicant discussed Applicant's claim the victim changed his story from the bond hearing, and Counsel obtained the recording of the hearing, but it did not support Applicant's version of what happened.

Counsel testified he reviewed the victim's text messages, and the highlighting on those documents indicates whether he felt it was important or not. Counsel explained he used search engines to look up the phone numbers and find out who they are registered to, and he went through the documents and tried to find any registered numbers. Counsel explained the victim was allegedly a small-time drug dealer, so many of the numbers were temporary or were not able to be attributed to anybody. Counsel also testified he read the text messages entered into evidence and believed the messages are about a woman or women Applicant was fighting with. Counsel stated the texts did not strike him as related to the shooting, and it was not clear what the texts

were talking about. Counsel testified, in his opinion, nothing in the messages suggested an alibi or an alternate suspect, and the texts did not even appear to be focused on the shooting. Counsel explained the one message Applicant focused on was a month before the shooting, and he did not consider putting the texts into evidence before the jury.

Counsel further testified he never received videos from South Ott and Rosewood. Counsel reviewed the email entered into evidence and explained it did not include any attachments, but the assistant solicitor was asking Counsel to look at still photographs. Counsel explained the accompanying document was simply a log to be used to interpret the videos or photos, listing where each shot had been captured. Regarding the investigator's email concerning video of a car, Counsel explained there was video of a dark Explorer driving back and forth, but the State never alleged or argued that was the shooter's car. Counsel stated it appeared to be simply a car in the area, and it did not seem to have exculpatory value. Finally, Counsel testified he and Applicant discussed what the video and photos showed.

Counsel further explained both Applicant and his mother were involved in preparing the defense, and Applicant gave permission for his mother to receive information about the case and be involved. Counsel agreed Applicant was focused on a trial for the majority of the case, but he explained that approximately a week before trial, the State asked if there was any plea offer Applicant would accept. Counsel responded he did not think Applicant would agree to anything over ten years. Counsel testified the State then offered ten years, and he counteroffered with seven years of non-violent time, but the Assistant Solicitor would not negotiate any further.

Counsel testified he spoke to Mitchell, Applicant's mother, about the offer and told her he thought they had a good case, but the victim was very sympathetic and he was concerned Applicant's anger was going to come across to the jury. Counsel stated he explained the outcome would come down to whether the jury believed Applicant or the victim more. According to Counsel, Mitchell then told him that Applicant was going to accept the offer, and she would talk to Applicant about it. Counsel testified he arranged a meeting at the jail with between himself, Applicant, and Mitchell. Counsel testified after Mitchell spoke with Applicant one-on-one, Applicant indicated he wished to accept the plea offer. Counsel stated he thought Applicant was smart to take deal, which he conveyed to Applicant and Mitchell, but he did not pressure Applicant to agree, nor did he force Mitchell to speak to Applicant about it. Counsel stated once Applicant decided to enter a plea, he never indicated to Counsel he felt pressured and never changed his mind. Counsel testified he spoke with Applicant again after the meeting with Mitchell, and Applicant still wished to enter the plea.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the evidence presented at the evidentiary hearing, observed the witnesses, passed upon their credibility, and weighed the testimony and evidence accordingly in its discussion below. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, as well as the plea transcript. This Court finds the combined record of the plea transcript and the testimony and evidence presented the evidentiary hearing establishes Applicant received effective assistance of counsel, and this application should be denied. Set forth below are

the relevant findings of fact and conclusion of law as required by section 17-27-80 of the South Carolina Code of Laws.

Applicant alleges he received ineffective assistance of counsel such that his guilty plea was rendered involuntary. In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel’s performance was deficient. Id. Under this prong, the court measures an attorney’s performance by its “reasonableness under professional norms.” Id. (quoting Strickland, 466 U.S. at 688 (1984)). Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id. at 117-18, 386 S.E.2d at 625. When there has been a guilty plea,

the applicant must prove counsel's representation was below the standard of reasonableness, and but for counsel's unprofessional errors, there is a reasonable probability he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668.

This Court finds Applicant has failed to prove his plea counsel's performance was deficient in any way, nor was Applicant prejudiced by his performance. Counsel met with Applicant numerous times and reviewed with him the evidence and discovery in the case, Applicant's version of the facts and possible defenses, and the State's plea offer. This Court finds Applicant ultimately chose to enter a guilty plea because he wanted to avoid facing a maximum sentence of thirty years, and this decision was made freely and voluntarily. Therefore, for the reasons stated below, the Court denies relief and dismisses the allegations with prejudice.

Ineffective assistance of counsel rendering Applicant's guilty plea unknowing and involuntary

Applicant alleges his guilty plea was involuntary because (1) Counsel was ineffective for failing to provide Applicant with a full copy of Rule 5 until after Applicant pleaded guilty, which prevented Applicant from fully understanding the State's case against him, including multiple items of allegedly exculpatory evidence which would have changed his decision to plead guilty;

and (2) Counsel improperly pressured Applicant's mother to convince her Applicant to plead guilty. This Court disagrees.

1. Failure to Advise Regarding Evidence from Street Cameras and Text Messages

Applicant alleges his counsel was constitutionally ineffective because Applicant was not properly advised concerning the prosecution's evidence against the Applicant or potential defenses he had waived by pleading guilty, and Applicant was not aware of certain pieces of evidence prior to the entry of his guilty plea. This Court disagrees and finds Counsel adequately advised Applicant as to the evidence against him.

Applicant identified three main issues he claims Counsel did not appropriately disclose or advise him about, and which he only discovered after he received a full copy of his discovery from Counsel after the entry of his guilty plea: (1) video from street cameras in the area of the shooting; (2) the victim's text messages; (3) problems with the identification of Applicant as the perpetrator. As to each of these issues, the Court finds Applicant's testimony was not credible, while finding Counsel's testimony was credible.

First, Applicant claims the discovery revealed there were videos from street cameras in the area of the shooting, which Counsel had previously told Applicant did not exist. This Court disagrees and finds no videos ever existed. Counsel credibly testified the email Applicant points to as proof of this claim did not contain video attachments, but rather simply a log that Counsel needed to interpret still photos. Counsel further explained there was video of a dark SUV in the area, but the State never alleged that vehicle was involved in this incident, and it did not appear to be related to the shooting or in any way exculpatory for Applicant. Moreover, Applicant did not

produce any videos themselves or present the testimony of any witness to confirm videos in fact exist as Applicant claims.

Next, Applicant alleges he was unaware of the existence of the victim's cell phone records, including text messages which Applicant claims are "evidence that the person who sent [the message] to the victim potentially had knowledge of someone who had a motive to shoot the victim." However, Applicant did not present testimony from the sender of the message or offer anything other than his speculation as to what the message might mean. Additionally, as Counsel pointed out, the text message in question was sent a month prior to the shooting. Counsel testified he investigated the text messages and tried to find names to match to phone numbers, but he felt this text was too remote in time and subject matter to be relevant, and he did not consider it for a possible defense.

To establish Counsel was constitutionally ineffective in preparing Applicant to make an informed decision of how to proceed with the case, Applicant must present evidence of what Counsel would have discovered or what other defenses could have been pursued had Counsel been more fully prepared. See Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (finding trial counsel not ineffective for failing to timely request discovery because the contents of the documents were not presented at the PCR hearing); Moorehead, 329 S.C. at 334, 496 S.E.2d at 417 (holding trial counsel's failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result); Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997) (denying relief where applicant failed to present witnesses or specific testimony establishing applicant would have had a defense with additional time to prepare for trial); Skeen v. State, 325 S.C. 210, 217, 481 S.E.2d

129, 133 (1997) (finding applicant was not entitled to relief where no evidence was presented at the PCR hearing to show how additional preparation would have had any possible effect on the result at trial). This Court finds Applicant has failed to meet this burden as to either of the issues or items of evidence he claims Counsel failed to fully inform him of.

Accordingly, this Court finds Counsel was not deficient, nor was Applicant prejudiced by Counsel's representation, relief is denied, and these allegations are dismissed with prejudice.

2. Failure to Advise Regarding Use of Investigator

Applicant also alleges his counsel was constitutionally ineffective because he did not properly inform Applicant of the status of the private investigator's work, and Counsel caused the investigator to stop following leads on Applicant's case by failing to timely pay her. This Court disagrees and finds Counsel was in no way deficient in conducting an investigation, nor has Applicant met his burden of proving prejudice.

"[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012) (reversed on other grounds by Walker v. State, 407 S.C. 400, 756 S.E.2d 144 (2014)). However, failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292,

454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992).

This Court finds no deficiency in how Counsel handled the investigation of Applicant's case. Counsel credibly testified he engaged a private investigator to look into Applicant's alleged alibi or potential third-party perpetrator, but neither defense could never be proven. Counsel also explained the emails from the investigator entered into evidence by Applicant and stated the investigator was fully paid for her work, and pursued every available lead, but it took some time to process all the payments because Counsel had to make multiple motions before the trial court to obtain additional funding.

Additionally, Counsel stated the alibi information given by Applicant was not specific, and Applicant did not give Counsel the information until less than ten days before trial. Further, this Court finds the affidavit of Thomas Mixon (Applicant's Exhibit 8) is insufficient to meet Applicant's burden of proof. The affidavit states only that man known as "Doug" – with no last name – threatened to kill the victim over a bad drug deal, at some unspecified point in time. The affidavit also states Counsel himself never contacted Mixon, but it does not address whether the investigator did so. In any event, Counsel credibly testified he and the investigator were aware of this potential lead, but they were unable to sufficiently develop it as a defense. Counsel credibly testified he informed Applicant that he was not planning to present an alibi or third-party defense at trial, and instead he developed a defense based on challenging the victim's memory and identification of Applicant, including the use of an expert witness. Most importantly, the record reflects Applicant was specifically asked whether Counsel had failed to do anything Applicant felt

he should have done prior to the entry of the guilty plea, and Applicant said no and indicated he was satisfied with Counsel's representation of him. Tr. p.12.

"A guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton, at 137-38, 654 S.E.2d at 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)). This Court finds Applicant has failed to present sufficient reason to disregard his sworn statements made during the plea hearing.

Because the Court finds neither deficiency in Counsel's performance nor any prejudice to Applicant, relief is denied, and these allegations are denied and dismissed with prejudice.

3. Identification of Applicant

Applicant next alleges Counsel was constitutionally ineffective for failing to object or challenge the lineup used to identify Applicant as the perpetrator. This Court disagrees and denies relief as to this issue.

The Court finds Counsel's testimony as to this issue credible, while also finding Applicant's testimony not credible. According to Applicant, the record shows the victim's mother identified him by picking his photograph out of a group of pictures, but the incident report says the victim's parents did not see anything before or after the shooting because they were in bed asleep. Applicant acknowledged the victim wrote Applicant's name down in his statement, but Applicant

characterized the victim's statement as illegible, and stated he did not understand how it could be used for an arrest warrant.

Counsel explained law enforcement used an unusual procedure for identifying the alleged shooter in this case because, due to his injuries, the victim was unable to see or speak for some period of time after the shooting. Counsel further explained the State was not contending any other eyewitnesses saw the shooting, and the victim's mother made the identification of Applicant because the victim could not see. According to Counsel, once the victim wrote Applicant's name, his mother then identified the person she knew by that name. Counsel testified he watched the videotape of the interview multiple times and reviewed the victim's written statement with Applicant's name on it, and in his opinion, you can read the name clearly.¹⁰ Counsel also stated he and Applicant reviewed the piece of paper together and discussed it.

Counsel opined "there was plenty to kick the tires on" regarding the identification and stated he would have done that at the pre-trial hearing. Counsel also credibly testified he prepared a defense based on challenging the victim's memory of the events, including whether the victim's mother had influenced the identification. This Court finds Applicant was clearly aware of this potential defense, but, as discussed more fully below, instead of proceeding to trial, he freely and voluntarily chose to enter a guilty plea instead.

The general rule is that guilty pleas, freely and voluntarily entered, act as a waiver of all non-jurisdictional defects and defenses, including the claims of a violation of a constitutional right

¹⁰ This Court has also reviewed the statement and agrees with Counsel's assessment.

prior to the plea. Whetsell v. State, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981). In fact, at the beginning of the plea hearing, Counsel explicitly told the plea court Applicant was entering the plea in order to avail himself of the State's ten-year offer, despite the fact Applicant believed he had a defense. Tr. pp. 3-4.

Accordingly, as the record and testimony from the evidentiary hearing make clear, Applicant was well aware of the potential issues regarding the identification which Counsel was prepared to use in Applicant's defense, and he chose to waive his right to present a defense at trial and plead guilty instead. This Court therefore finds Counsel was not deficient in any way regarding this issue, nor was Applicant prejudiced. Relief is therefore denied, and this allegation is dismissed with prejudice.

4. Voluntariness of guilty plea

Finally, Applicant alleges his guilty plea was not voluntarily entered because Counsel inappropriately "forced" Applicant's mother to pressure Applicant into accepting the plea. This Court disagrees and denies relief as to this issue.

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. Boykin v. Alabama, 395 U.S. 238 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, an applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63 (1977). Statements 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. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975) overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir. 1985).

The Court has reviewed the plea transcript and finds Applicant's testimony is refuted by the record and therefore is not credible. This Court finds the plea colloquy combined with Counsel's credible testimony is dispositive as to this issue, as the record clearly establishes Applicant pleaded guilty freely and voluntarily. The plea court also explained the negotiated ten-year sentence Applicant would receive, and Applicant indicated his understanding and informed the court he wished to plead guilty. Tr. p. 11. The plea court additionally explained to Applicant his right to a jury trial, to call witnesses, and to put on a defense; Applicant informed the plea court he understood these rights and wished to waive, specifically because of the potential maximum sentence he would face at trial. Tr. pp. 7-9. Counsel told the plea court Applicant was pleading guilty because the State's identification of him as the shooter was strong, and Applicant did not want to risk a trial even though he may have had a defense. Tr. pp. 3-4. The record reflects Applicant informed the plea court he had discussed the charges with his attorney and understood those discussions, he understood the State's evidence against him, and he did not need any more time to speak to Counsel, and he was satisfied with Counsel's advice. Tr. pp. 9-12. Applicant affirmed he was pleading guilty freely and voluntarily and no one had threatened him or made him any promises to get him to do so. Tr. p. 12.

Counsel also credibly testified, after Mitchell spoke with Applicant one-on-one, Applicant indicated he wished to accept the plea offer. Counsel stated he thought Applicant was smart to take deal, which he conveyed to Applicant and Mitchell, but he did not pressure Applicant to agree, nor

did he force Mitchell to speak to Applicant about it. Counsel stated once Applicant decided to enter a plea, he never indicated to Counsel he felt pressured and never changed his mind. Counsel testified he spoke with Applicant again after the meeting with Mitchell, and Applicant still wished to enter the plea.

Accordingly, based on the combined record of the plea transcript and Counsel's credible testimony at the evidentiary hearing, this Court finds Counsel's representation of Applicant was not deficient, nor was Applicant prejudiced by Counsel's representation. Counsel met with Applicant on multiple occasions to review discovery, discuss the facts of the case, and explained Applicant's constitutional rights and options for resolving the case. This Court finds Counsel investigated potential defenses of alibi and third-party guilt and was ultimately unable to substantiate either one, but nonetheless Counsel developed a defense for trial based on challenging the victim's memory – all of which Counsel explained to Applicant prior to Applicant's entry of the guilty plea. The Court further finds Applicant chose freely and voluntarily, after consultation with Counsel and his mother, not to risk a conviction at trial after the State extended a plea offer with a negotiated sentence of ten years. Therefore, this Court denies relief and dismisses this allegation with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations which would require this Court to grant relief. Counsel was not deficient in any manner, nor was Applicant prejudiced by his representation. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

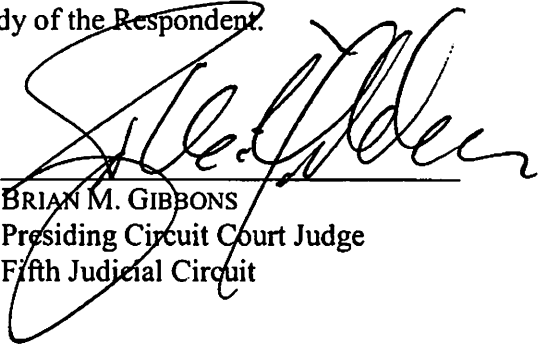
Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR (providing the appropriate procedure to perfect an appeal). Pursuant to Austin v. State, 305 S.C. 453, 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. Further, Rule 71.1(g), SCRCR, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for the appropriate procedures for appealing a judgment in a PCR action.

IT IS THEREFORE ORDERED:

1. the Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall be remanded to the custody of the Respondent.

AND IT IS SO ORDERED.

3/30, 2020


BRIAN M. GIBBONS
Presiding Circuit Court Judge
Fifth Judicial Circuit

WITNESSES

(S) Andrew C Richbourg
- Columbia Police Department

ARREST WARRANT NUMBER

2015A4021601919

ACTION OF GRAND JURY

TRUE BILL

Robert Whaley
Foreperson of Grand Jury APR 15 2016
Date:

VERDICT

Foreperson of Petit Jury
Date:

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
C.C.C.P.S.S.
RICHLAND COUNTY
SOUTH CAROLINA
Deon Mitchell

DOCKET NO. 2016GS4001860

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2016

119

THE STATE
vs.

Venable Deon Mitchell

Indictment for
ATTEMPTED MURDER

SC Code: 16-03-0029
CDR Code: 3410

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

Defendant

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

Defendant

Witness:

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

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Deon Mitchell
C.C.C.P.S.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on APRIL 13, 2016, the
Grand Jurors of Richland County present upon their oath:

ATTEMPTED MURDER

That Venable Deon Mitchell did in Richland County on or about July 29,
2015, did with the intent to kill, attempt to kill EMANUAL UDENSI with
malice aforethought, either expressed or implied. All in violation of SC
Code of Laws § 16-3-29 (1976, as amended).

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



DAN JOHNSON, SOLICITOR

WITNESSES

(S) Andrew C Richbourg
- Columbia Police Department

ARREST WARRANT NUMBER

2015A4021601920

ACTION OF GRAND JURY

TRUE BILL

Robert M. Hales
Foreperson of Grand Jury
Date: **APR 15 2016**

James W. White
C.C.C.P. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA
Foreperson of Grand Jury
Date:

VERDICT

CERTIFIED TRUE COPY,
OF ORIGINAL FILED,
APR 15 2016

DOCKET NO. 2016GS4001862

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2016

119

THE STATE

vs.

Venable Deon Mitchell

Indictment for
WEAPONS / DISCHARGING FIREARMS
INTO A DWELLING

SC Code: 16-23-0440(A)
CDR Code: 0052

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

Defendant

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

Defendant

Witness:

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on APRIL 13, 2016, the
Grand Jurors of Richland County present upon their oath:

**POSSESSION OF A WEAPON DURING THE COMMISSION
OF A VIOLENT CRIME**

That Venable Deon Mitchell did in Richland County, on or about July 29,
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.



DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
STATE VS. Venable Deon Mitchell

INDICTMENT/CASE#: 2016GS4001860
A/W#: 2015A4021601919
Date of Offense: 7/29/2015
S.C. Code §: 16-03-0029
CDR Code #: 3410

AKA:
Race: BLACK Sex: M Age: 35
DOB: SS#:
Address: 3705 Hickory St.
City, State, Zip:
DL#: SID#:

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was TO: Attempted Murder

CONVICTED OF or PLEADS
Under N.C. - v. ALFORD

in violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Walker, Meghan SC Bar# 78494 Defendant
Attorney for Defendant SC Bar# 78145

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 10 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 580 DAYS
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

PTUP days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund
Other: NO CONTACT WITH VICTIM

Table with 2 columns: Description and Amount. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 61.6 (Public Def/Probation) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, 3% to County (if paid in installments)

TOTAL \$
Clerk of Court/ Deputy Clerk: Jeanette McBride
Court Reporter:
SCCA/217 (07/2016)

Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.
CERTIFIED TRUE COPY OF ORIGINAL FILED.
Presiding Judge: Jeanette McBride
Judge Code:
Sentence Date:
HIGHLAND COUNTY SOUTH CAROLINA