

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

Feb 01 2021

S.C. SUPREME COURT

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

The Honorable D. Craig Brown, Circuit Court Judge

Appellate Case No. 2020-000654

State of South Carolina.....Respondent,

v.

Fonnelze T. Delane.....Petitioner.

APPENDIX

Elizabeth A. Franklin-Best
Elizabeth Franklin-Best, P.C.
2725 Devine Street
Columbia, South Carolina 29205
elizabeth@franklinbestlaw.com
(803) 331-3421
Attorney for Petitioner

Other Counsel of Record:
Lindsey McCallister
Assistant Attorney General
P.O. Box 11549
Columbia, South Carolina 29211-1549
Attorney for Respondent

INDEX

Plea Transcript, dated October 7, 2013	1
Application for Post-Conviction Relief, filed Feb. 10, 2014.....	117
State’s Return.....	126
Evidentiary Hearing Transcript, Jan. 30 2018	133
Application for Post-Conviction Relief, filed Feb. 7, 2019.....	192
Consent Order Granting Belated Appellate Review	229
Justin Kata Affidavit.....	234
Order of Dismissal, filed October 8, 2018	241

INDEX

	Page
Qualification of panel	4
Grouping of Panels	44
Guilty plea:	49
Qualifying of defendant	54
Facts given by Mr. Clements	64
Remarks by Mr. Hoffmeyer	78
Remarks by mother of defendant	82
Remarks by the defendant	83
Remarks by the investigators	87
Remarks by the victim's family	91
Sentence of the Court	110

(There were no exhibits submitted.)

1 THE COURT: All right. Ladies and
2 gentlemen, I'm gonna recognize the Solicitor to call
3 the first case.

4 MR. CLEMENTS: Thank you, Your Honor. If
5 it please the Court, the State would call indictment
6 number 2012-GS-21-897, the State of South Carolina
7 versus Fonnelle Travis Delane. This is a multiple
8 count indictment, Your Honor. Count 1 is an
9 indictment for murder, that Fonnelle Travis Delane
10 did in Florence County on or about September 1st,
11 2009 feloniously, willfully, and with malice
12 aforethought kill one Billy Lee Hall, II by means of
13 aiding and abetting Montez Monharelle (ph) Barker
14 and/or Laross Antonio Graham and shooting said
15 victim Billy Lee Hall, II in the back of the head
16 with a handgun; and that the said Billy Lee Hall, II
17 did die as a proximate result thereof in violation
18 of Section 16-3-10 and 20 and 16-1-60 of the South
19 Carolina Code of Laws as amended.

20 Count 2, Your Honor, is a count of
21 accessory before the fact, that Fonnelle Travis
22 Delane did in Florence County on or about September
23 1st, 2009 and on days prior thereto did aid in the
24 commission of or was an accessory before the fact in
25 the commission of a felony, to wit, the murder of

1 Billy Lee Hall, II by advising, aiding, counseling,
2 encouraging, hiring, or otherwise procuring the said
3 felony to be committed by hiring Laross Antonio
4 Graham and/or Montez Barker to murder the said Billy
5 Lee Hall, II in violation of Sections 16-1-40 and 50
6 of the South Carolina Code of laws.

7 Count 3, Your Honor, is a count for
8 murder, that Fonnelle Travis Delane did in Florence
9 County on or about September 1st, 2009 feloniously,
10 willfully and with malice aforethought kill one
11 Talya Jeanette Poston by means of aiding and
12 abetting Montez Barker and/or Laross Antonio Graham
13 and shooting said victim Talya Jeanette Poston with
14 a handgun and that the said Talya Jeanette Poston
15 did die as a proximate result thereof in violation
16 of Section 16-3-10 and 16-3-20 and 16-1-60 of the
17 South Carolina Code of Laws as amended.

18 Count 4 is accessory before the fact to
19 murder, that Fonnelle Travis Delane did in Florence
20 County on or about September 1st, 2009, and on days
21 prior thereto did aid in the commission of or was an
22 accessory before the fact in the commission of a
23 felony, to wit, the murder of Talya Jeanette Poston
24 by advising, aiding, counseling, encouraging,
25 hiring, or otherwise procuring the said felony to be

1 committed by hiring Laross Antonio Graham and/or
2 Montez Barker to murder the said Talya Jeanette
3 Poston in violation of Section 16-1-40 and 16-1-50
4 of the South Carolina Code of Laws.

5 Count 5, Your Honor, and count 6 are both
6 solicitation to commit murder. Count 5, that
7 Fonnelize Travis Delane did in Florence County on or
8 about July 14th, 2009, to September 1st, 2009
9 willfully and unlawfully and maliciously solicit,
10 entice or otherwise endeavor to persuade another
11 person, to wit, Laross Antonio Graham to commit the
12 felony of the murder of Billy Lee Hall, II in
13 violation of common law and Section 17-25-30 of the
14 South Carolina Code of Laws.

15 And count 6, solicitation to commit
16 murder, that Fonnelize Travis Delane did in Florence
17 County on or about July 14th, 2009 to September 1st,
18 2009 willfully, unlawfully and maliciously solicit,
19 entice or otherwise endeavor to persuade another
20 person, to wit, Laross Antonio Graham to commit the
21 felony of the murder of Talya Jeanette Poston in
22 violation of common law in Section 17-25-30 of the
23 South Carolina Code of Laws as amended.

24 Count 7, Your Honor, is a count for
25 conspiracy, that Fonnelize Travis Delane did in

1 Florence County on or about July 14th, 2009 to
2 September 1st, 2009 unlawfully, willfully,
3 knowingly, wickedly and feloniously unite, combine,
4 conspire, confederate, agree between and among
5 Laross Antonio Graham and/or Montez M. Barker and
6 have tacit understanding with each other and with
7 diverse other persons whose names are unknown to the
8 grand jurors for the purpose of committing the crime
9 of murder of Billy Lee Hall, II and/or Talya
10 Jeanette Poston in violation of Section 16-17-410 of
11 the South Carolina Code of Laws as amended.

12 THE COURT: All right. Ladies and
13 gentlemen, you've heard that the State has called
14 the case of the State of South Carolina versus
15 Fonnelize Travis Delane and you've heard the
16 Solicitor go through the charges that the State has
17 brought against Mr. Delane. Now I will tell you, at
18 this stage of any criminal proceeding a defendant, a
19 person charged with criminal offenses, is presumed
20 innocent and that these are at this stage the
21 allegations the State has made against this
22 individual. Now this case and under the charges
23 from which the State has brought, this case is what
24 is commonly referred to as a capital case. It is a
25 case where it may at some point during the course of

1 the proceeding, the question of whether or not the
2 death penalty is appropriate in this particular case
3 will be a question that may have to be addressed.
4 Because of that, State law requires that we go into
5 further questioning of the jury panel. To do that
6 and to make it more expeditious, not just for the
7 court but for you as jurors and to try to economize
8 and not waste your time, we are going to in just a
9 moment I'm gonna ask you to -- the bailiffs and
10 deputies will show you the way. We're gonna -- I'm
11 gonna ask you as a panel to go down to the tenth
12 floor, and you can reconvene in that courtroom. And
13 there are restrooms and things of that nature for
14 you to use.

15 And what we're going to do is we're going
16 to for purposes of this additional questioning,
17 we're going to break you up into panels; and we're
18 going to do the remainder of the questioning in
19 small groups or panels. And so some of you will
20 remain here today while we do that, and the rest of
21 you will be excused and brought back tomorrow while
22 we go through this process.

23 But before I excuse you to go down to the
24 tenth floor I have an instruction that I need to
25 give to you so I'd ask that you please listen

1 carefully, and it's important that you listen
2 because of this day and age that we currently live
3 in with electronic devices. Many of you have cell
4 phones, computers, and other electronic devices.
5 Even though you have not yet been selected as a
6 juror there are some strict rules that you must
7 follow about using your cell phones, electronic
8 devices and computers. You must not use any device
9 to search the internet or to find out anything
10 related to this case in this courthouse. Between
11 now and when you have been discharged from jury duty
12 by the judge you must not provide or receive any
13 information about your jury service to anyone and
14 that includes friends, coworkers and family members.

15 You may tell those who need to know where
16 you are that you have been called for jury duty and
17 that you're at the courthouse. If you are picked
18 for a jury you may tell people that you've been
19 picked for a jury and how long you believe the case
20 may take; however, you must not give anyone any
21 information about the case itself or the people
22 involved in the case. You must also warn people not
23 to try to say anything to you or to write to you
24 about your jury service or this case. This includes
25 face to face, telephone, or computer communications.

1 In this age of electronic communication I
2 want to stress that you must not use electronic
3 devices or computers to talk about this case; and
4 that includes tweeting, texting, blogging, emailing,
5 posting information on a website or a chat room, or
6 any other means at all. Do not send or accept any
7 messages including emails and text messages about
8 your jury service. You must not disclose your
9 thoughts about your jury service or ask for advice
10 on how to decide any case. After you are called to
11 the courtroom the judge will give you specific
12 instructions about these matters. A judge will tell
13 you when you are released from this instruction.
14 All of us are depending on you to follow these rules
15 so that there will be a fair and a lawful resolution
16 to every case.

17 Now if you would — Mr. Propps and Sammy
18 and some of the deputies — I'm gonna excuse you now
19 to go down to the tenth floor. I'm gonna ask you,
20 again, have no conversation about this case; you're
21 not in a position to do that at this time. If you
22 need to use the restrooms and stuff they're down
23 there, and we'll get back with you and give you
24 further instructions shortly, okay. So everyone
25 please file out quietly.

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

(Jury panel was removed from the
courtroom at 12:09 p.m.)

(WHEREUPON, counsel approached the Bench
for an on-the-record discussion.)

MR. SALEEBY: Your Honor, can we approach
a minute.

THE COURT: Yes, sir.

MR. SALEEBY: Are you going to ask them
the general questions about do you know the
defendant, do you know the family, do you know the
lawyers, do you know the witnesses to them as a
ground, or that might call your group out? If not,
you'll be repeating it for every panel.

THE COURT: We had talked about that.

MR. CLEMENTS: I thought that's what you
were —

MR. HOFFMEYER: I don't really — 50 or
60.

THE COURT: We had talked about that, and
we were gonna do that, 50 or 60 or 50.

MR. HOFFMEYER: But I guess —

MR. SALEEBY: Is that on the back end or
the front end?

THE COURT: This is my thought, but it,
really we can do it — this was my thought but I may

1 have missed the boat on it. I wasn't thinking in
2 terms of it actually limiting some of these people.
3 I was thinking in terms of as if these people stood
4 up and they gave us that information, then we had to
5 deal with that whether they were excused or not. It
6 may be they're not one of the fifty anyway because
7 they may not qualify. They might not be death
8 penalty qualified. But so my thought process was to
9 do it with the fifty; but you're right, I mean, it
10 —

11 MR. SALEEBY: You whittle it out because
12 if you had somebody stood up say first cousins or
13 something like that or —

14 THE COURT: Or I know —

15 MR. SALEEBY: Yeah, I know so and so and
16 whatever, you know, what your general questions are
17 in that way just to —

18 THE COURT: You're talking about just the
19 questions dealing with —

20 MR. SALEEBY: Association.

21 THE COURT: —the lawyers and
22 associations, not whether they know anything about
23 the case?

24 MR. CLEMENTS: Well, wait till we have
25 fifty. We might cut down that fifty by so many, and

1 we won't have enough to draw.

2 MR. SALEEBY: Yeah. In other words, you
3 go ahead and get fifty people and then out of the
4 fifty maybe twenty of them say, yeah, I read this
5 thing in the paper so.

6 MR. CLEMENTS: I ate at Carol's Kitchen
7 all the time, or Mr. Hall's a good friend of mine,
8 or I know Jim Hoffmeyer.

9 MR. HOFFMEYER: I'm a lone wolf, all by
10 myself.

11 MR. SALEEBY: What you don't want to do, I
12 don't think, you don't want ask every panel or every
13 individual because that will wear you out and
14 everybody else.

15 THE COURT: And we don't have time. We've
16 only got an hour.

17 MR. SALEEBY: We won't have time to do
18 that. And if you wait till the back end, then what
19 Ed says we truly might wind up with some people who
20 answer every other question right that maybe didn't
21 volunteer, yeah, I know the Halls, I know the
22 Postons, we're the best of friends forever.

23 THE COURT: Yeah.

24 MR. SALEEBY: I just think it's from an
25 economy measure, I mean, —

1 THE COURT: I mean, so we don't have a
2 problem with —

3 MR. SALEEBY: —It's going to take some
4 time right now whether it's an hour or an
5 hour-and-a-half.

6 THE COURT: Right.

7 MR. SALEEBY: But on the other end of it,
8 I don't think you want to wind up with all those
9 people and then realize that nobody asked the
10 question are they kin to us.

11 THE COURT: We don't want to get — well,
12 that, yeah.

13 MR. CLEMENTS: They needed a break now
14 anyway, Judge. We'll call them back.

15 THE COURT: Well, let me ask you this,
16 the — okay. Well, we can't — the panel I was
17 going to say, could we go ahead and set the panels
18 even if we have people we excused out?

19 MR. SALEEBY: What about —

20 THE COURT: That way after we do this —

21 MR. SALEEBY: What if you picked them one
22 through hundred and then went through this process,
23 and then if you had to strike people off of it you
24 could do that.

25 THE COURT: Right.

1 MR. SALEEBY: So if you had to take out
2 number 150, number 20, number 25, they'd still be
3 compressed and, yet, still have six people groups.
4 In other words, she could go ahead and pull from one
5 to one hundred; and if we lose 15 or 20 people, she
6 just compresses that from 1 to 80. So she doesn't
7 have to wait till you do this next examination start
8 what she's doing now.

9 THE COURT: And then we can — and then we
10 can tell, we can look at our time. We can see how
11 many panels we will get to today and we can do the
12 rest of them to go home.

13 MR. SALEEBY: You can give them a time to
14 say, okay, if you're panel number 4 you come in
15 tomorrow at 10:00.

16 THE COURT: Tomorrow at 10:00.

17 MR. SALEEBY: If you're panel number one.

18 THE COURT: Panel number five you —

19 MR. SALEEBY: If you're this panel you
20 call in at 11:00.

21 THE COURT: Right.

22 MR. SALEEBY: You have to give it that
23 kind of flow. You want to keep them stocked. You
24 don't want to get over backed up.

25 THE COURT: And that will give them this

1 opportunity to use the restroom and stuff and then
2 we'll bring them back up and we'll do that. And
3 then from here after we're done with that, we can
4 send those away that need to go away and the ones
5 we're gonna deal with today we can deal with today.

6 MR. SALEEBY: You know, the general
7 question about do you know any of those people so
8 much that it would keep you from rendering an
9 opinion, or the question about have you read
10 something and such, don't tell me what it is -- like
11 you normally do -- that would make it impossible to
12 do and then you bring them up here.

13 MR. CLEMENTS: Yeah.

14 THE COURT: Well, do you want to submit
15 your standard questions that you like to ask?

16 MR. HOFFMEYER: Standard.

17 THE COURT: Let Dudley and Ed look at
18 them?

19 MR. SALEEBY: That's gonna work. I think
20 you're gonna find that will work better.

21 THE COURT: Well, you know what, it does
22 make sense. You make a good point. If we do it
23 with the fifty we may lose too many.

24 MR. SALEEBY: Yeah. And if they're all
25 golden after we qualify them, then you find out we

1 probably — what I'm open to is we can get to
2 Wednesday evening and have enough to be able to pick
3 from, if we lose four or five whether it was 50 or
4 45, when we got to that point which we come in
5 Thursday and tell them to bring bags and —

6 THE COURT: We'll still have enough.

7 MR. SALEEBY: Yeah, we can cross that
8 bridge but I think you'll be happier this way.

9 THE COURT: Yeah, that sounds good. I
10 appreciate you mentioning that, Dudley. We'll give
11 them time to do the restroom thing.

12 (WHEREUPON, a recess was taken from the
13 proceedings.)

14 THE COURT: Let's just tell them that the
15 lunch hour has come upon us so we're going to go
16 ahead and ask them to please be back here at 1:30
17 and back up on the eleventh floor courtroom and
18 we'll start back at 1:30 for them to go to lunch.

19 THE CLERK OF COURT: I think that's a
20 better idea.

21 THE COURT: That's a good idea. They'll
22 be aggravated if we keep them up here to answer
23 those questions.

24 THE CLERK OF COURT: You're looking at a
25 couple of hours probably, plus us dividing them up

1 as well.

2 THE COURT: I'll go down and tell them
3 that.

4 Ed or Jim or Paul, step down with me.

5 MR. SALEEBY: Excuse the panel and have
6 them come back.

7 (WHEREUPON, a lunch break was taken.)

8 (Attorneys approached the Bench for an
9 on-the-record discussion.)

10 MR. HOFFMEYER: I marked through the ones
11 that aren't covered in the questionnaires.

12 THE COURT: Okay.

13 MR. HOFFMEYER: And then there are some
14 that I believe that you're gonna cover. You can
15 kind of cover over them, but there's things though,
16 anybody and they can be fair.

17 THE COURT: All right.

18 MR. HOFFMEYER: That's really groups,
19 things like that.

20 THE COURT: That's not covered in the
21 questionnaire.

22 MR. HOFFMEYER: If you've been a victim,
23 is it — asking if you are a member of any groups.
24 Did you want to ask about a victim?

25 MR. CLEMENTS: And Judge, I don't object

1 to questions, if you could add a question, ask if
2 you have a close family member who's ever been
3 prosecuted by the Twelfth Circuit Solicitor's Office
4 resulting in dismissal or not.

5 THE COURT: Okay.

6 (End of on-the-record Bench conference.)

7 THE COURT: Ladies and gentlemen, if I can
8 have your attention now. Ladies and gentlemen, I'm
9 going to — you have heard the State earlier this
10 morning call the case of the State of South Carolina
11 versus Fonnelle Travis Delane. I'm going to first
12 inquire of the State to ask them to stand and
13 introduce themselves, and then defense counsel, and
14 I'll have some questions to ask you regarding that.

15 Solicitor.

16 MR. CLEMENTS: Thank you, Your Honor, if
17 it please the Court, good afternoon, ladies and
18 gentlemen. My name is Ed Clements. I am the
19 solicitor for the Twelfth Judicial Circuit.
20 Assisting me and also prosecuting this case with me
21 is former Solicitor for the Twelfth Judicial Circuit
22 Mr. Dudley Saleeby.

23 THE COURT: All right.

24 MR. CLEMENTS: Seated here at our table is
25 Investigator Thomas McFadden with the Florence

1 County Sheriff's Office and Investigator Chad
2 Collins with Florence County Sheriff's Office which
3 were the key investigators on this case.

4 THE COURT: Thank you, sir.

5 Ladies and gentlemen, is there any member
6 of the jury panel who is related by blood, connected
7 by marriage, or who has any close business or
8 personal relationship with or who has ever been
9 represented by either Mr. Clements or Mr. Saleeby,
10 if so, please stand.

11 (There was no response.)

12 THE COURT: Thank you. There are none.
13 Mr. Hoffmeyer.

14 MR. HOFFMEYER: Thank you. May it please
15 the Court. Good afternoon, ladies and gentlemen,
16 I'm Jim Hoffmeyer and I represent Mr. Delane —
17 stand up — who is seated here with the other lawyer
18 who also represents Mr. Delane, Paul Cannarella.

19 CANNARELLA: Good afternoon.

20 THE COURT: Thank you, gentlemen. Ladies
21 and gentlemen, is there any member of the jury panel
22 who is related by blood, connected by marriage, or
23 who has any close business or personal relationship
24 with or who has been represented either currently or
25 formerly but by either Mr. Hoffmeyer or

1 Mr. Cannarella, if so, please stand.

2 All right, let me start over here. Ma'am,
3 your name please.

4 THE POTENTIAL JUROR: Reshelle Springs.

5 THE COURT: All right.

6 DEPUTY CLERK OF COURT: 25. 25.

7 THE COURT: All right. Ms. Springs, who
8 do you know?

9 THE POTENTIAL JUROR: Well, I just want on
10 record Mr. Cannarella's office closes mortgage loans
11 for them, quite a few.

12 THE COURT: Okay, all right. You with
13 Wells Fargo. All right, the fact that
14 Mr. Canarella's office handles a lot of that
15 business, would that in any way affect your ability
16 to be fair and impartial?

17 THE POTENTIAL JUROR: No, I just wanted
18 that, wanted that known so.

19 THE COURT: Thank you. I appreciate that,
20 ma'am. Thank you.

21 Yes, ma'am. Your name please.

22 THE POTENTIAL JUROR: Marilyn Hoffmeyer.

23 THE CLERK OF COURT: Number 132.

24 THE POTENTIAL JUROR: My husband is a
25 distant relative to Mr. Hoffmeyer. I don't know Mr.

1 Hoffmeyer personally. I just know he's kin to my
2 husband's family.

3 THE COURT: Okay. The fact that there's
4 that distant relationship, would that in any way
5 affect your ability to give both the State and the
6 Defense a fair trial?

7 THE POTENTIAL JUROR: No, sir.

8 THE COURT: Thank you very much, ma'am.
9 You may have a seat.

10 Ladies and gentlemen, you met Mr. Delane.
11 Is there any member of the jury panel who is related
12 by blood, connected by marriage, or who has any
13 close business or personal relationship with the
14 defendant in this case Mr. Fonnelle Travis Delane,
15 if so, please stand.

16 (There was no response.)

17 THE COURT: Thank you. There are none.
18 Now that question that I just asked you as it
19 relates to Mr. Delane, that is, related by blood,
20 connected by marriage, have any close business or
21 personal relationship, that's the question that I'm
22 gonna be asking you as I announce these names that
23 I'm about to go over. The folks' names that I'm
24 about to call out are folks who are potential
25 witnesses that may appear during the trial of this

1 case. They may or may not testify, but these are
2 potential witnesses. Keeping that question in mind,
3 if as I go through these names if you hear a name
4 and that question would apply to you, whether you're
5 related by blood, connected by marriage or have some
6 relationship, please stand. Now I have several
7 names which I'm gonna be calling out so it may be
8 that you know more than one individual on this list.
9 So if you would please, if you do stand continue to
10 listen because it may be that there are several
11 folks that you may know or have some relationship
12 with. As I said, these are folks that are potential
13 witnesses that may appear during the course of this
14 trial. If any of these folks are in the courtroom,
15 I would ask that you stand, face the jury panel just
16 for a brief moment, and then have a seat, okay. And
17 if I mispronounce anyone's name please correct me.
18 Mac Atkinson, Doctor Nicholas Batalis, Thomas Bell,
19 Melissa Price Brock, Corporal Andrew Clendenin,
20 Investigator Chad Collins, Patreese Cooper, James C.
21 Cox, Jr., Jason Dore, John R. Etheridge, Jr., Laross
22 Graham. Is it Lakavis Harrison. Telly Isaiah, John
23 C. Jepertinger, Donna L. Knight, Keith Von Lutcken,
24 Investigator Brad McDowell, Investigator Thomas
25 McFadden, Investigator Jay McLaurin, Scott Nutter,

1 Investigator Patrick O'Hara, Kelvin O'Neal, Tiffany
2 O'Neal, Ira B. Parnell, Keith Patterson, Valerie
3 Paul, Deputy Jason Plowden, Lieutenant Allen Rhodes,
4 Antron Rush, Jonika Shank, Joseph Sierra, Jennifer
5 Turner, Anthony Wingate, Sharon Lunn, Felicia Lunn,
6 Shavon Lunn, Thad Damon, Georgia Brown,
7 Joseph McDaniel, Shaneese Williamson, Fanoria
8 Peterson.

9 MR. HOFFMEYER: Yes, sir, Your Honor.

10 THE COURT: Thank you. Barbara Damon,
11 Jennifer Turner, David Lunn, James E. Aiken,
12 Margorie Hammock.

13 Ma'am, can I get your name please.

14 THE POTENTIAL JUROR: Rebecca Anderson,
15 juror number 5.

16 THE COURT: Ms. Anderson, who on that list
17 did you know, ma'am?

18 THE POTENTIAL JUROR: John Etheridge.

19 THE COURT: All right. Are you related to
20 Mr. Etheridge, you know him?

21 THE POTENTIAL JUROR: No, sir, I've just
22 known him many years.

23 THE COURT: Now the fact that you know
24 Mr. Etheridge in the fashion that you know him in,
25 would that in any way have any affect on your

1 ability to be fair and impartial giving both the
2 State and the Defense a fair trial?

3 MR. HOFFMEYER: No, sir.

4 THE COURT: Thank you very much, ma'am.
5 You may have a seat.

6 Is there any member of the jury panel or
7 member of your immediate family who is a contributor
8 either through financial means or through
9 volunteering of your time to any organization such
10 as MADD, Mothers Against Drunk Drivers; SADD,
11 Students Against Drunk Drivers; CAVE, Citizens
12 Against Violence, the South Carolina Troopers
13 Association, South Carolina Sheriff's Association,
14 the Fraternal Order of Police, any types of
15 organizations such as that that you are either a
16 contributor by financial means or by volunteering of
17 your time, if so, please stand.

18 (There was no response.)

19 THE COURT: Thank you. There are none.
20 Is there any member of the jury panel or member of
21 your immediate family who is a contributor, again,
22 either through financial means or of your time to
23 any group whose primary focus is the preventness of
24 crime or victim's rights, if so, please stand.

25 (There was no response.)

1 THE COURT: Thank you. There are none.
2 Is there any member of the jury panel, and you heard
3 earlier when the solicitor read to you the
4 allegations of the charges contained in the
5 indictment, is there any member of the jury panel
6 who knows anything about this case or who has had
7 any discussions with anyone involving this case, if
8 so, please stand.

9 I'm gonna start over on this side. Sir,
10 if I could get your name please.

11 THE POTENTIAL JUROR: Gavin Jackson, 144.

12 THE COURT: All right, Mr. Jackson. Now
13 I'm not going to ask — let me find your name here.
14 144, okay. Mr. Jackson, I'm not going to ask any
15 details as to what you heard or know; but based on
16 what you heard or what you know, would that in any
17 way affect your ability to be fair and impartial
18 giving both the State and the Defense a fair trial?

19 THE POTENTIAL JUROR: I believe so. I
20 work with the Morning News and I know a good bit
21 about this case.

22 THE COURT: All right. Mr. Jackson, I'm
23 gonna excuse you from participating in this case,
24 and so I'm gonna — you're free to go. I'm gonna
25 excuse you, sir.

1 Ms. Anderson, is that correct, juror
2 number 5.

3 THE POTENTIAL JUROR: Yes, sir.

4 THE COURT: Ms. Anderson, whatever it is
5 that you know regarding this matter, would that in
6 any way affect your ability to be fair and impartial
7 giving both the State and the Defense a fair trial?

8 THE POTENTIAL JUROR: I believe so, sir.

9 THE COURT: All right. I'm gonna excuse
10 you, Ms. Anderson from, the trial of this case.

11 THE POTENTIAL JUROR: Thank you.

12 THE COURT: Sir, your name please.

13 THE POTENTIAL JUROR: Partee Bell, juror
14 number 14.

15 THE COURT: All right. And Mr. Bell, I
16 see you also work for the Morning News. Is that the
17 source of your information?

18 THE POTENTIAL JUROR: Yes, sir, printer.

19 THE COURT: Would that information that
20 —

21 THE POTENTIAL JUROR: I think it would.

22 THE COURT: —you have — all right, I'm
23 gonna excuse you from this matter, sir.

24 THE POTENTIAL JUROR: Thank you, sir.

25 THE COURT: Thank you. Your name please.

1 THE POTENTIAL JUROR: Corey Derry.

2 THE COURT: Give me one more — Mr. Derry,
3 let me find you.

4 THE CLERK OF COURT: 80.

5 THE COURT: Mr. Derry, the information or
6 the things you know regarding this case or what
7 you've heard regarding this case, would that in any
8 way affect your ability to be fair and impartial?

9 THE POTENTIAL JUROR: I don't believe so.

10 THE COURT: All right, sir, thank you very
11 much. I'll be happy to have you have a seat please.

12 Is there any member of the jury panel or
13 member of your family who has ever worked for the
14 Solicitor's Office here in the Twelfth Judicial
15 Circuit or for any of the law enforcement agencies
16 which are made up here in the circuit as the
17 Sheriff's Department, the Police Department, or
18 SLED, FBI, anyone of that nature, if so, please
19 stand.

20 All right, sir, your name please.

21 THE POTENTIAL JUROR: Jacob Williams, 285
22 I believe.

23 THE COURT: Mr. Williams, yourself or
24 anyone of your family?

25 THE POTENTIAL JUROR: An

1 ex-brother-in-law.

2 THE COURT: All right. And where did he
3 work?

4 THE POTENTIAL JUROR: Florence City
5 Police.

6 THE COURT: All right. Now the fact that
7 your ex-brother-in-law has had that relationship
8 with the police department, would that in any way
9 effect your ability to sit and be a fair and
10 impartial juror in this case?

11 THE POTENTIAL JUROR: No, sir.

12 THE COURT: Thank you, sir. You may have
13 a seat.

14 Ma'am, your name please.

15 THE POTENTIAL JUROR: Sherry Birt, juror
16 number 20. My cousin is on SLED.

17 THE COURT: All right. And ma'am, would
18 that relationship have any affect on your ability to
19 be fair and impartial?

20 THE POTENTIAL JUROR: No, sir.

21 THE COURT: Thank you, Ms. Birt, you may
22 have a seat.

23 Yes, ma'am, your name please.

24 THE POTENTIAL JUROR: Kimberly Sims.

25 THE COURT: All right.

1 THE POTENTIAL JUROR: 245.

2 THE COURT: Number 245, Ms. Sims, who do
3 you know or what agency or department?

4 THE POTENTIAL JUROR: Thirteen years ago I
5 was a reserve deputy sheriff.

6 THE COURT: Here in Florence?

7 THE POTENTIAL JUROR: Yes, sir.

8 THE COURT: Ma'am, would that have any
9 affect on your ability to be fair and impartial?

10 THE POTENTIAL JUROR: No, sir.

11 THE COURT: Are you currently a
12 commissioned law enforcement officer?

13 THE POTENTIAL JUROR: No, sir.

14 THE COURT: Thank you very much. You may
15 have a seat.

16 Yes, sir, please.

17 THE POTENTIAL JUROR: Eugene Hyman, 139.

18 THE COURT: All right, Mr. Hyman.

19 THE POTENTIAL JUROR: I've known Warren
20 Poston. He's my cousin. And Barry Gause.

21 THE COURT: All right, sir. The fact that
22 you have those relationships in your family who are
23 associated with law enforcement, would that in any
24 way affect your ability to be fair and impartial?

25 THE POTENTIAL JUROR: No, it would not.

1 THE COURT: Thank you, Mr. Hyman. I
2 appreciate that.

3 And Ms. Hoffmeyer; is that correct?

4 THE POTENTIAL JUROR: 132. I have a
5 son-in-law who is a deputy sheriff with the
6 Sheriff's Department.

7 THE COURT: And would that in any way,
8 ma'am, affect your ability to be fair and impartial
9 listening to the evidence and giving both the State
10 and the Defense a fair trial?

11 THE POTENTIAL JUROR: No, sir.

12 THE COURT: Thank you, Ms. Hoffmeyer. You
13 may have a seat.

14 Sir, your name please.

15 THE POTENTIAL JUROR: Luther Tanner, 263.

16 THE COURT: Mr. Tanner.

17 THE POTENTIAL JUROR: My cousin was a
18 sheriff's officer. He's retired now.

19 THE COURT: All right. The fact that you
20 have that relationship in your family, would that in
21 any way affect your ability to be fair and
22 impartial, sir?

23 THE POTENTIAL JUROR: No, sir.

24 THE COURT: Thank you, sir.

25 Yes, ma'am, your name please.

1 THE POTENTIAL JUROR: Coyzetta Bazen,
2 number 13.

3 THE COURT: All right, Ms. Bazen.

4 THE POTENTIAL JUROR: My son is a State
5 trooper.

6 THE COURT: Ms. Bazen, would that in any
7 way affect your ability to be fair and impartial,
8 ma'am?

9 THE POTENTIAL JUROR: No.

10 THE COURT: Thank you very much.

11 THE POTENTIAL JUROR: Teresa Cusaac, my
12 son-in-law is an investigator.

13 THE COURT: Ms. Cusaac, would that in any
14 way affect your ability to be fair and impartial?

15 THE POTENTIAL JUROR: No, sir.

16 THE COURT: Thank you, ma'am.

17 Yes, ma'am.

18 THE POTENTIAL JUROR: Kathryn Geiger, 106.

19 THE COURT: Ms. Geiger, who do you know or
20 —

21 THE POTENTIAL JUROR: My grandpa was in
22 the FBI for 30 years.

23 THE COURT: Ma'am, would that in any way
24 affect your ability be fair and impartial?

25 THE POTENTIAL JUROR: No.

1 THE COURT: Thank you, ma'am. You may
2 have a seat.

3 Sir.

4 THE POTENTIAL JUROR: Timmy Owens, 208.
5 My wife works in the federal building.

6 THE COURT: All right, sir.

7 THE POTENTIAL JUROR: Human resource.

8 THE COURT: Would — oh, at the federal
9 courthouse?

10 THE POTENTIAL JUROR: Yes, sir.

11 THE COURT: Would that in any way have any
12 affect on your ability to be fair and impartial?

13 THE DEFENDANT: No, sir.

14 THE COURT: Thank you, sir. You may have
15 a seat.

16 Yes, sir.

17 THE POTENTIAL JUROR: Robert Bacote. My
18 wife's family, they have — there's a judge who
19 works up here. I'm not sure what his name is.

20 THE CLERK OF COURT: 10.

21 THE COURT: Sir, would that in any way
22 affect your ability to be fair and impartial if you
23 were selected on this panel?

24 THE POTENTIAL JUROR: No.

25 THE COURT: Thank you very much. You may

1 have a seat.

2 Is there any member of the jury panel who
3 has — or a member of your immediate family who has
4 been prosecuted by the Twelfth Circuit Solicitor's
5 Office, whether or not that prosecution ended in a
6 conviction or dismissal or an acquittal, is there
7 any member of the panel whose, either yourself or a
8 member of your family, has ever been prosecuted by
9 this Twelfth Circuit Solicitor's Office, if so,
10 please stand.

11 (There was no response.)

12 THE COURT: Thank you. There are none.
13 Any, at this point any further questions from the
14 State?

15 MR. CLEMENTS: No, Your Honor, thank you.

16 THE COURT: Anything from the Defense at
17 this point?

18 MR. HOFFMEYER: No, sir. Thank you, Your
19 Honor.

20 THE COURT: All right. Ladies and
21 gentlemen, let me do this before I, we move to the
22 next phase. It's basically a catch-all question
23 that I like to ask of juries, and it's simply this.
24 As you can tell from the questions that I've asked
25 the obviously underlying theme is can you be fair

1 and impartial giving both the State and the Defense
2 a fair trial. I could ask questions all afternoon
3 to try to determine if there's something that would
4 affect that, but let me just simply ask this,
5 whether I've asked the question or not. Is there
6 any member of the jury panel who knows of any reason
7 why you would not be able to give both the State and
8 the Defense a fair and impartial trial, if so,
9 please stand.

10 Let me ask if y'all would step around and
11 I'll take your responses up here.

12 Your name please.

13 THE POTENTIAL JUROR: Marie Stokes.

14 THE CLERK OF COURT: I think it's 258.

15 THE COURT: All right, ma'am, let me get
16 you to step up here please.

17 Potential juror approached the bench for an
18 on-the-record discussion.)

19 THE COURT: Ms. Stokes.

20 MR. HOFFMEYER: I think it's 258.

21 THE COURT: Ms. Stokes, if I could get you
22 to step up a little closer.

23 THE POTENTIAL JUROR: My husband's
24 business has been robbed, arm robbery, six times.
25 There was only a conviction one time. People pled

1 out without us being notified. We had TV cameras on
2 arrest. People were never arrested. That causes us
3 to have trust issues and profiling just to be
4 honest.

5 THE COURT: Sure, I mean, I can understand
6 that. But I guess what my question would be, is —
7 and I don't make any excuses for anything, just to
8 simply ask this. Do you think you — I mean,
9 apparently you feel like you could not put aside to
10 this case based solely on the evidence that's
11 presented during this case. Do you think you could
12 do that?

13 THE POTENTIAL JUROR: No.

14 THE COURT: Okay.

15 THE POTENTIAL JUROR: There's a lot of
16 issues and things that weren't rectified so I find
17 it hard.

18 THE COURT: So you don't think regardless,
19 even though this has nothing to do with that, you
20 could set that aside and judge this case?

21 THE POTENTIAL JUROR: I don't know. I
22 can't answer that truthfully. I don't know. It
23 just depends on what comes up, you know, because
24 I've had my mother-in-law had at knife her neck. My
25 daughters have had guns at their heads. So, you

1 know, I don't really know how to answer that
2 truthfully. I may be able to, but I'm not positive.

3 THE COURT: Okay.

4 THE POTENTIAL JUROR: So I'll leave that
5 at your discretion.

6 THE COURT: Sure. Well, you know,
7 obviously we will all have experiences. We — one
8 thing that I ask of any juror, and that is, if you
9 can set aside those personal experiences, and look
10 at these facts based on the evidence that's
11 presented, take the law that I give, apply that law
12 to these facts and to reach a verdict without being
13 biased about your own personal experiences. So
14 that's really the — and if you can do that or if
15 you feel you can do that, then that's great. But if
16 you don't think you can, then that's where we have a
17 problem.

18 THE POTENTIAL JUROR: Yeah, I don't know
19 that I can to be perfectly honest but...

20 THE COURT: All right. Well, I'm gonna
21 excuse you from this case, and Ms. Stokes —

22 THE POTENTIAL JUROR: Thank you.

23 THE COURT: Thank you. Ms. Stokes is
24 excused. 258.

25 (End of on-the-record Bench discussion.)

1 THE BAILIFF: Juror number 182, Mr.
2 Mazgaj.

3 (Potential juror approached the Bench for an
4 on-the-record discussion.)

5 THE COURT: Yes, sir.

6 THE POTENTIAL JUROR: You said this is a
7 capital case?

8 THE COURT: Yes, sir.

9 THE POTENTIAL JUROR: My religion is
10 against the death penalty. I would not be able to
11 be impartial. I would not be able to say guilty if
12 I have, know that they're to be executed so that's
13 conscience, objective, religious grounds.

14 THE COURT: If I hear you correctly that
15 under no scenario would you ever be willing to vote
16 in favor of death penalty in any case; is that
17 correct?

18 THE POTENTIAL JUROR: Correct.

19 THE COURT: Okay, all right. I'm gonna
20 excuse you from the trial of this case. You're
21 excused. You're excused from this case. I'm gonna
22 have them transfer your service to another term of
23 court that doesn't involve a capital case so they'll
24 transfer your service sometime in either the end of
25 this year or maybe next year.

1 THE POTENTIAL JUROR: Okay. Do I have to
2 come back tomorrow?

3 THE COURT: No. Juror number 182 is going
4 to be transferred to next year.

5 (End of on-the-record Bench conference.)

6 THE BAILIFF: Number 104, Ms. Frazier.
7 104.

8 (Potential juror approached the Bench for an
9 on-the-record discussion.)

10 THE COURT: Come forward, ma'am.

11 THE POTENTIAL JUROR: Based on the fact
12 you said earlier it could end in death penalty for
13 him, my Bible training, my conscious will not allow
14 me to go through with being —

15 THE COURT: Let me ask you, I just want to
16 make sure I understand what you're saying.

17 THE POTENTIAL JUROR: Uh-huh.

18 THE COURT: Is what you're saying is that
19 regardless of the outcome of this case after hearing
20 all of the evidence —

21 THE POTENTIAL JUROR: Uh-huh.

22 THE COURT: Under no scenario would you
23 ever be able to vote for death penalty? Is that
24 what you're saying?

25 THE POTENTIAL JUROR: Yes, especially if

1 he comes forth saying he's repented to his crime. I
2 have a problem with that.

3 THE COURT: Okay. Is there — do you
4 know, is there a scenario where you would vote for
5 death penalty?

6 THE POTENTIAL JUROR: No, I don't think
7 so.

8 THE COURT: I'm gonna excuse you from this
9 trial. I'm gonna transfer you, your service to
10 another term that has nothing involved with a
11 capital case.

12 (End of on-the-record discussion.)

13 THE BAILIFF: 101, Mr. Floyd. 101.

14 (Potential juror approached the Bench for an
15 on-the-record discussion.)

16 THE COURT: Mr. Floyd, how are you, sir?

17 MR. HOFFMEYER: I just want it to be known
18 I suffer from post-traumatic stress disorder, and I
19 have PTSD. I range four, five now. I don't feel I
20 can render fair to anything but it's your decision.

21 THE COURT: Okay. As far as being able to
22 listen to testimony and listen to evidence?

23 THE POTENTIAL JUROR: I'm fine.

24 THE COURT: I tell you what — and I
25 appreciate your giving us that heads up. I'm gonna

1 get you to remain with us. If at any time you have
2 any difficulties let me know.

3 THE POTENTIAL JUROR: Yes, sir, I just
4 wanted to let you know.

5 THE COURT: Mr. Floyd is going to remain
6 with us. Thank you.

7 (End of on-the-record discussion.)

8 THE COURT: Thank you, ladies and
9 gentlemen. We're gonna, getting some lists here
10 prepared and so what I'm gonna do is this. I'm
11 gonna ask you if you don't mind, don't leave the
12 eleventh floor; but if you need to use the restroom
13 or you want to get a sip of water, I'll let you do
14 that. We're gonna relax here for just a minute.
15 Let me explain to you what the process, what we're
16 doing, and we're doing this hopefully to help
17 everybody. We have, as I told you earlier, by state
18 law we're having to ask some additional questions
19 regarding your various positions and your feelings
20 about certain matters that are involved in this
21 case. And to do that it's more efficient, rather
22 than have all of you stay here at the courthouse and
23 we go through this process, we're going to — what's
24 gonna happen here is your names, those of you that
25 are remaining, your names are on our juror list and

1 in alphabetical order. Ms. O'Hara has got a program
2 on her computer that's gonna take your name, gonna
3 completely randomly reshuffle your names in random
4 order and put your names back on a list. Then from
5 that list we're gonna break you down into what we
6 call panels, the six person panels. And so the
7 first six will be panel one, the next six panel two,
8 panel three, panel four, and on down the line. Once
9 we get that sheet down and we have those lists
10 broken up into panels, Madam Clerk is going to go
11 through and announce the folks that make up panel
12 one, panel two, panel three, and we're going to go
13 through that list, and then we're gonna assign you a
14 time to come back, okay. Now more than likely,
15 those of you who make up panels one, two and three
16 will more than likely remain here at the courthouse
17 today so we can go ahead and go through the
18 questions with you. And I'm just gonna call this
19 out as an example. This may not be the schedule but
20 let's say we have panels one through three remain
21 here today. Then those of you who make up panel
22 four will be instructed to be back here at 9:00 in 9
23 in the morning. Those who make up panel five will
24 be instructed to be back here 10:00 in the morning.
25 Panel six, 11:00, and so forth. And we're gonna

1 assign you times when to be back. And so depending
2 on what panel you're on, you're gonna be excused
3 until you need to be back for your time slot. And
4 so we'll go through that process and try not to keep
5 you here at the courthouse all day, okay. So
6 I'll — we're making up that list.

7 We're gonna be at ease. So if, like I
8 said, if you want to step out, please do not leave
9 the eleventh floor. And you're welcome to talk
10 among yourselves as long as you don't get too
11 terribly loud. If you need to use the restroom or
12 go get a drink of water. And we'll get started back
13 in just a moment.

14 (WHEREUPON, a recess was taken from the
15 proceedings.)

16 THE COURT: Those three jurors that were
17 not here this morning would you come up here please.

18 (WHEREUPON, counsel approached the Bench
19 for an off-the-record discussion.)

20 THE COURT: If I can just get your name
21 for the record please.

22 THE POTENTIAL JUROR: Michael McMillan,
23 Oliver G. Tucker, Russell Howell.

24 THE COURT: Just folks, what happened this
25 morning?

1 JUROR TUCKER: I'm a full time minister.
2 I had one of my parishioner's sisters was buried in
3 Columbia. I just went blank. I forgot I had jury
4 duty. I was on my way to Columbia and got a call to
5 turn back around and came to jury duty. I just
6 forgot, sir. I'm sorry, I was in the hospital and
7 got carried away, forgot the time.

8 THE COURT: You work at the hospital?

9 JUROR TUCKER: Yes, sir.

10 THE COURT: Mr. Howell?

11 JUROR HOWELL: I just got confused on the
12 day I was supposed to be here. That's —

13 (Defense attorneys approach the Bench.)

14 THE COURT: These are the three jurors
15 that were on the list. They were not here this
16 morning, just for your information. And you
17 wouldn't know your juror numbers?

18 JUROR OLIVER: I don't know.

19 JUROR McMILLAN: I think I'm 194, former
20 minister.

21 THE COURT: Let Mr. Cannarella and
22 Mr. Hoffmeyer get your names again.

23 DEPUTY CLERK OF COURT: Russell Howell,
24 137; Oliver, 271.

25 THE COURT: Guys, people make mistakes all

1 the time. It's not the end of the world, but it can
2 be difficult so, you know, I get it. We all make
3 mistakes. What I'm gonna do is transfer your
4 service to a term of court December 9th, okay. But
5 here's what I'm gonna do and I need you to make a
6 concerted effort. If you need to put it on the
7 refrigerator, on a visor in your car, we'll send you
8 another notice, send you another summons. When you
9 get that, please note that time and place 'cause
10 Ms. O'Hara is gonna have a note that your service
11 was transferred for your failure to appear here this
12 morning. And again, it's not -- nobody's condemning
13 you for forgetting or getting distracted; it
14 happens. But second time around, if you're not here
15 on that date, then they're gonna actually issue a
16 bench warrant for contempt of court, okay. So make
17 sure you put that notice somewhere with you. Don't
18 forget. And then we'll see you back here whatever
19 that summons tells you. I think it's the 9th, but
20 whatever it says, okay. It'll be another jury
21 summons like you get this time, okay.

22 (Jurors were excused.)

23 (WHEREUPON, a recess was taken from the
24 proceedings.)

25 THE COURT: Ladies and gentlemen, if I can

1 have your attention now I'm gonna give you some
2 instruction here. In just a moment, Madam Clerk,
3 we've got the panels. Now this is where you being
4 responsible adults comes in because we're gonna tell
5 you what panel you're on. You need to remember that
6 'cause it's very important that you remember your
7 panel so that you'll know when to come back to the
8 courthouse, okay. And if remembering two numbers is
9 too difficult, we're gonna tell you what panel
10 you're on, okay, and we're gonna tell you what time
11 you need to be back. So you might not remember what
12 panel you're on, if you just remember I've got to be
13 back tomorrow afternoon at 2:00. It's really
14 important you remember when you need to be back.

15 Are you ready? All right. I was gonna
16 have them remain where they're at until we get
17 through this, then I was going to excuse the folks.
18 Don't leave, just note what time you have to be
19 here, okay.

20 DEPUTY CLERK BETHEA: All right, this is
21 panel one: Juror 186, Jimmy McDaniel; 190, Sarah
22 McFaddin; 187, Amy McDonald; 173, Yolanda Mack; 245,
23 Kimberly Sims; 147, Whitney Green.

24 THE COURT: That panel time is?

25 DEPUTY CLERK BETHEA: That panel time is

1 3:00 for panel one. Today at 3:00. Everybody got
2 that?

3 THE COURT: Okay.

4 DEPUTY CLERK BETHEA: Panel two: 285,
5 Jacob Williams; 275, William Waldrop; 227, Susan
6 Purvis; 259, Jennifer Stone; 97, Terrance Epps; 35,
7 Dwayne Brown. That is panel two. You will report
8 today at 4 p.m. on the sixth floor.

9 Panel 3: 26, Latasha Brand; 132, Marilyn
10 Hoffmeyer; 193, Danny McLeod; 236, Kimberly Rogers;
11 number 3, Sheila Allen; 94, Sandra Eaddy. You need
12 to report today at 4:30 on the sixth floor.

13 Panel 4: 48, John Carter; 272, Kevin
14 Turnage; 58, David Commander; 96, Johnathan Ellison;
15 59, Patrick Commander; 30, Sandra Britt. That is
16 panel 4. You will report tomorrow morning at 9 a.m.
17 on sixth floor.

18 Panel 5: 37, Paul Buchenroth; 22,
19 Clarence Blanton; 229, Kenneth Ramirez; 65, James
20 Cottingham; 264, Joanne Taylor; 261, Grace Summers.
21 You are panel 5. You're to report tomorrow at 10
22 a.m. on the sixth floor.

23 Panel 6: 114, Tyshon Graham; 243, Michael
24 Shepherd; 68, Donna Crighton; 72, Teresa Cusaac;
25 246, Loretta Singletary; 85, Sharon Dixon. You are

1 panel 6. You are to report tomorrow morning at
2 11 a.m. on the sixth floor.

3 Panel 7: 155, Brian June; 286, Latisha
4 Williams; 139, Eugene Hyman; 260, Clinton Stroman;
5 268, Melissa Timmons; 20, Sherry Birt. Report
6 tomorrow afternoon at 1 p.m. on the sixth floor.

7 Panel 8: 145, Rosa Jackson; 226, Mary
8 Price; 291, Fred Wilson; 133, Janice Hollowell; 95,
9 Karen Elender; 296, Eric Witt, which is panel 8.
10 You are to report tomorrow afternoon at 2 p.m. on
11 the sixth floor.

12 Panel 9: 24, Brian Bocks; 99, Tommy
13 Evans; 281, Ida Wilcox; 113, Janice Gordon; 43,
14 Terence Cain; 90, Knite Duncan. You are panel 9.
15 You are to report tomorrow afternoon at 3 p.m. on
16 the sixth floor.

17 Panel 10: 115, Wendy Grainger; 161, Teena
18 Kyer; 185, Amy McClary; 240, John Sarvis; 106,
19 Kathryn Geiger; 17, Calvin Benton. That's panel 10.
20 You are to report Wednesday morning at 9 a.m. on the
21 sixth floor.

22 Panel 11: 206, Joshua Nelson; 231, Barron
23 Reddin; 60, James Cook; 19, Mark Bierworth; 146,
24 Tianeshia Jackson; number 6, Tarsha Anderson. You
25 are panel 11. You are to report Wednesday morning

1 at 10 a.m. on the sixth floor.

2 Panel 12: 101, Walter Floyd; 300, Dianne
3 Zong; 52, Elisabeth Clarke; 160, Amanda Kramlich;
4 255, Rechelle Springs; 283, John Wilder. You are
5 panel 12. You are to report Wednesday morning at
6 11 a.m. on the sixth floor.

7 Panel 13: 263, Rupert Tanner; 154, Marc
8 Joyner; 290, Wesley Willis; 196, Judy McQueen; 148,
9 Tonya Jett; 208, Timmy Owens. You are to report
10 Wednesday afternoon at 1 p.m. on the sixth floor.

11 Panel 14: 293, Andre Wingate; 278, Amy
12 Taylor Wells; 159, William Knots; 66, Devan Cribb;
13 80, Corey Derry; 217, Karen Pickens. You are to
14 report Wednesday afternoon at 2 p.m. on the sixth
15 floor.

16 Panel 15: Michael Lewellen, 169; 170,
17 Tara Lowery; 254, Dustin Springs; 54, Susan Coccola,
18 79; Joshua Deas, 269; Michael Todd. You are to
19 report Wednesday afternoon at 3 p.m. on the sixth
20 floor.

21 Panel 16: 295, John Witherspoon; 10,
22 Robert Bacote; 13, Coyzetta Bazen; and 12, Jason
23 Bass. You are to report Wednesday afternoon at
24 4 p.m. on the sixth floor.

25 THE COURT: All right. So then everyone

1 should be assigned a panel and a time. You do not
2 have to be back to the courthouse but I would ask
3 you to do me a favor. If your — and I just throw
4 this out. Let's say you're 10:00 tomorrow. Please
5 be here prior to 10:00 because what we hope to do is
6 to call that panel up here at 10. So if you would
7 please be here a few minutes before your scheduled
8 time. Now having said that, please again, let me
9 remind you of the instruction that I gave you
10 earlier regarding electronic devices, computers, or
11 trying to do any of your own independent
12 investigation. Please, please, please, it is
13 imperative you follow those instructions that you do
14 not do anything. My suggestion is that you put this
15 matter completely out of your mind until your
16 appointed time to come back, don't forget that. But
17 be here when you're supposed to be here and have no
18 conversation with anyone about the case.

19 Do not try — at this point, even though
20 no one has been selected for this panel, I need for
21 you to not read any newspaper articles, if there are
22 any. I need for you not to, if you, if there's a
23 television news report — I don't know that there
24 would be — but if there was and it involved this
25 matter, you are to turn that off. You are to begin

1 doing everything within your power to protect and
2 guard your ability to be fair and impartial and to
3 judge this case based solely on the evidence that is
4 presented in this courtroom so if you would do that
5 for me.

6 Now I'm going to excuse everyone to be
7 back at your appointed time. Panel 1, 2, and 3.
8 Panel 1, we're gonna get with you in just a little
9 bit so don't go very far. Actually you can go down
10 to the sixth floor. Panels 1, 2 and 3, if you would
11 report to the sixth floor initially and then of
12 course, panel two, you're not supposed to be back
13 until 4, and panel three, you're not supposed to be
14 back until before 5. So you don't have to stay in
15 the sixth floor area that we have for you. If you
16 want to you're welcome to. We have bailiffs down
17 there. They'll — if you need something to drink or
18 snack or something they'd help you out with that.
19 Or if you want to leave the courthouse and come back
20 for your appointed time feel free to do that, okay.
21 Everyone else, you're excused and we'll see you back
22 at your appointed times, okay.

23 (WHEREUPON, a recess was taken from the
24 proceedings.)

25 MR. CLEMENTS: If it please the Court,

1 Your Honor. Your Honor, it is my understanding that
2 we have a plea. And what we would like to do, Your
3 Honor, because of, both the defendant who does not
4 have some family members present and he would like
5 to have this family members present, and the State
6 who has some of the victims here but not all of
7 them, what we'd like to do at this time is qualify
8 this plea and accept this plea and defer sentencing
9 until tomorrow morning.

10 MR. HOFFMEYER: Yes, sir, and that's
11 correct. Yes, sir, Your Honor.

12 THE COURT: Yeah, I have no problem with
13 that.

14 MR. CLEMENTS: Your Honor, what we have
15 here is a plea to two charges of accessory before
16 the fact of a felony, the felony being murder, which
17 carries 30 years to life. And Your Honor, those are
18 on indictment 2012-GS-21-897. He's pleading to two
19 counts on that indictment, the counts being count 2,
20 accessory before the fact to murder regarding the
21 murder of Billy Hall, II; and count 4, accessory
22 before the fact of murder on the murder of Talya
23 Jeanette Poston, counts 2 and counts 4 of the
24 indictment. Count 1, murder, count 3, murder, count
25 5 and 6 which are both solicitation to commit

1 murder, and count 7, conspiracy are being nol
2 prossed by the State pursuant to this plea. The
3 accessory before the fact of murder carries 30 years
4 to life, Your Honor. These two pleas on these two
5 charges are without recommendation or negotiation,
6 other than the dismissal of the other charges, Your
7 Honor, and I'll pass up those two sentencing sheets.

8 Also, Your Honor, Mr. Delane is entering a
9 plea on indictment 2009-GS-21-707, Your Honor, and
10 that indictment contained two counts of distribution
11 of cocaine base, a third offense, and those
12 distributions were made to Mr. Billy Hall who was
13 the CI for the State on that case on those two
14 controlled buys. I believe you have reviewed the
15 videos on those two buys on when we had evidentiary
16 questions involving those videos so you're familiar
17 with those facts, Your Honor. Talya Poston was his
18 driver on those occasions, Your Honor. And the
19 first distribution occurred on 9/16/2008 and the
20 second distribution occurred on 9/26/2008. Both of
21 them at the Country Hearth Motor Lodge or motel
22 there on Irby Street where Hornes Restaurant is, and
23 both of those distributions happened when they met
24 in the parking lot in exchange of drugs for money
25 was made.

1 As far as prior record of Mr. Delane, Your
2 Honor, he had — I can't read Mr. Jepertinger's
3 writing very well here; but he had prior trafficking
4 marijuana in 2006, unlawful weapon 2003, possession
5 of other controlled substance schedule I to V so
6 that would make these drug offenses a third offense.

7 There's also, Your Honor, other charges on
8 indictment 2009-707 that the State is dismissing
9 pursuant to this plea. Also, Your Honor, there's
10 another indictment that we're nol prossing pursuant
11 to this plea. It is indictment 2009-GS-21-106 which
12 is a possession with intent to distribute cocaine
13 base, another charge that was made by the narcotics
14 unit of the Florence County Sheriff's Office. And
15 those are the only charges we're dismissing pursuant
16 to this plea. We are recommending that the drug
17 charges that he is pleading to, the two distribution
18 third offense, that Your Honor sentence him
19 concurrent with whatever you decide to sentence him
20 on to the accessory before the facts of murder. And
21 those cases, Your Honor, both carry 15 to 30 years
22 and/or fifty thousand dollar fine but a mandatory 15
23 year sentence and up to 30 years, Your Honor.

24 THE COURT: All right. Mr. Delane, sir,
25 on indictment 2012-GS-21-897, counts 2 and counts 4

1 of that indictment charges you with the charge of
2 accessory before the fact to murder. That charge
3 carries a maximum penalty — well, it carries a
4 penalty of not less than 30 years up to life in
5 prison, and it's classified as a most serious
6 offense. Do you understand that, sir?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And then, Mr. Delane, on
9 indictment 2009-GS-21-707, and I don't have, I don't
10 have that indictment in front of me. But there are
11 two charges on that indictment charging you with the
12 offense of a distribution of cocaine base, that
13 being a third offense or greater. Those charges,
14 sir, carry a penalty of not less than 15 years up to
15 30 years and/or a fine of up to fifty thousand
16 dollars. Do you understand that, sir?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right.

19 MR. CLEMENTS: And Your Honor, there's one
20 distribution count on that indictment that will be
21 nol prossed.

22 THE COURT: That is being dismissed, okay.

23 Now as to the charges that I've just
24 reviewed with you, Mr. Delane, as to those charges,
25 understanding the nature of the charges against you

1 and the possible punishment that is associated with
2 those offenses, how do you plead to those charges,
3 sir, guilty or not guilty?

4 THE DEFENDANT: Guilty.

5 THE COURT: And Mr. Hoffmeyer,
6 Mr. Cannarella, y'all represent Mr. Delane; is that
7 correct?

8 MR. HOFFMEYER: Yes, sir, Your Honor.

9 MR. CANNARELLA: Yes, Your Honor.

10 THE COURT: Have you reviewed — I'm
11 confident you have, but for purposes of the record,
12 you've reviewed with him the charges that he's
13 before the Court on, his constitutional rights to a
14 trial as well as the plea offer and the pleas that
15 he's entering into today, you've reviewed those
16 things with him?

17 MR. HOFFMEYER: Yes, sir, Your Honor.

18 THE COURT: All right. Mr. Delane, am I
19 correct, sir, you're 30 years of age?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. Do you recall —
22 Mr. Delane, since the charges that you were arrested
23 on involving the accessory before the fact, have you
24 been in jail since those, since you were arrested on
25 those charges?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Have you ever had a bond on
3 those?

4 THE DEFENDANT: No, sir.

5 THE COURT: Do you recall when that was
6 that you were arrested?

7 THE DEFENDANT: September 16th, 2009.

8 MR. CLEMENTS: That is correct, Your
9 Honor.

10 THE COURT: Okay. Mr. Delane, I'm going
11 to review with you your constitutional rights and I
12 know you've talked with Mr. Cannarella and
13 Mr. Hoffmeyer, but I'm gonna review those rights
14 with you. If at any time, whether it involves the
15 rights or anything else that I go over, if you have
16 any questions about anything that I go over and you
17 need to talk with your attorneys, if you will just
18 let me know I'll stop and I'll give you whatever
19 time you need, okay.

20 THE DEFENDANT: Okay.

21 THE COURT: Okay. And just for the record
22 I've got, that's 1,482-days. Now you understand
23 that you have a right to a jury trial and you have
24 the right to remain silent; but when you enter
25 guilty pleas, then for purposes of your plea, that

1 you waive or you give up those two important
2 constitutional rights. Do you understand, sir?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And Mr. Delane, when you give
5 up that right to a jury trial there are other rights
6 that are associated with it; and so if you give up
7 the jury trial right, you give up these rights that
8 are connected to it and I'm gonna go over those with
9 you. When anyone is charged with a criminal offense
10 they have the right to a jury trial. If they
11 exercise that right to a jury trial they are
12 presumed innocent of the charges that they are
13 facing, and that presumption of innocence places the
14 burden of proof on the State to prove guilt. And
15 the way the State would attempt to do that is,
16 during the course of a jury trial they would call
17 witnesses to the stand and those witnesses would
18 testify. More than likely they would testify
19 against your best interest.

20 Now the constitution of the United States
21 says that any person that's charged with a criminal
22 offense has the right to confront or to face their
23 accusers; and essentially what that means is, that
24 if you were to go forward with a jury trial then you
25 would have the right through your attorneys

1 Mr. Cannarella and Mr. Hoffmeyer to question those
2 witnesses or cross-examine them about their
3 testimony before the jury. That's your right of
4 confrontation. You understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Well, when someone enters a
7 guilty plea, then by entering that plea of guilt
8 they give up or they waive the right to the
9 presumption of innocence and they relieve the State
10 of the burden of proof and so the State is not
11 required to bring those people into court. And so
12 because they're not required to do that, you waive
13 or you give up the right to confront those
14 witnesses. Do you understand, sir?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Okay. Now the State is not
17 the only one that can call witnesses in a trial.
18 You could call witnesses in your defense. You
19 yourself could take the witness stand and testify in
20 your own defense if you chose to do that. However,
21 you're not required to do anything. In this country
22 no person is ever required to prove their innocence.
23 The burden of proof is on the State to prove guilt;
24 and I tell you that to tell you this, a person in
25 your situation could exercise your right to remain

1 silent and not testify. And if you did that, when I
2 gave the jury the charge on the law I would instruct
3 them that the fact that you chose to remain silent
4 could not be considered by the jury in any way in
5 their decisions on your guilt or innocence. You
6 understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: As a matter of fact,
9 Mr. Delane, I would tell the members of the jury
10 that the fact that you chose to remain silent could
11 not be discussed in the jury room at all, that
12 that's something that they're not to consider in any
13 way in their decision. You understand, sir?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Okay. Now as I said earlier,
16 the State carries the burden of proof. They have to
17 prove guilt beyond a reasonable doubt to a unanimous
18 decision. In other words, if you had a jury trial
19 all twelve members of the jury would have to agree
20 that you were guilty or they could not convict you
21 of these offenses. Now if you did have a jury trial
22 and if you were convicted, you could appeal those
23 convictions to a higher court if you felt that was
24 appropriate. You understand that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And with regards to this plea
2 today, if at the conclusion of this proceeding if
3 you wish to appeal these proceedings you may do that
4 as well, but you must file a notice of intent to
5 appeal within ten days of today's date. You
6 understand, sir?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Understanding that you have
9 these rights but that you waive or you give them up
10 when you enter a plea of guilty, understanding those
11 things, Mr. Delane, do you still wish to go forward
12 with your guilty plea, sir?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. Now, just so that
15 I'm clear — and I know both of your lawyers,
16 they're outstanding attorneys in their field, and I
17 know they've reviewed this but I want to make sure
18 you understand that with regards to the accessory
19 before the fact to a felony in this case murder,
20 those charges are classified under South Carolina
21 law as most serious offenses. You understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And the two drug distribution
24 charges are classified as serious offenses. You
25 understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And the significance of that,
3 Mr. Delane, is that when a crime is classified under
4 those categories it means that in the future if you
5 were to receive convictions — for example, if you
6 were to be charged with another most serious offense
7 and you were convicted of a second most serious
8 offense, regardless of what the sentence that charge
9 carries, the State can seek life without parole
10 because it is a second conviction of a most serious
11 offense. You understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Okay. Now this is my
14 understanding of the negotiations; and please, and
15 please listen carefully so that I know that we're on
16 the same page, that you have the same understanding.
17 On this indictment of 897, you are pleading to count
18 2 and count 3 — excuse me, count 2 and count 4.
19 Count 1 of murder, count 2 of murder, excuse me,
20 count 3 of murder, count 5 of solicitation to commit
21 murder, count 6 of solicitation to commit murder,
22 and count 7 of conspiracy. Those charges are being
23 dismissed pursuant to your pleas to count 2 and
24 count 4. Is that your understanding?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And as to those charges the
2 State is taking no position with regards to
3 sentencing. You understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: As to the indictment 2009-707,
6 that's actually a three count indictment for
7 distribution of cocaine base, a third offense or
8 greater; however, one charge of that you're before
9 the Court pleading guilty to two counts and that
10 third count is being dismissed pursuant to your
11 plea. You understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And as to those charges the
14 State is making the recommendation that the Court
15 run those concurrent, or together, and to run them
16 concurrent with your accessory charge. Is that your
17 understanding?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And Solicitor, am I correct,
20 that basically takes care of any pending charges
21 Mr. Delane has in Florence County; is that correct?

22 MR. CLEMENTS: Yes, sir. And Your Honor,
23 those — the two distributions are the ones that
24 occurred on 9/16 and 9/26. The one that occurred on
25 January is the one we're dismissing, Your Honor,

1 which did not involve —

2 THE COURT: January 28.

3 MR. CLEMENTS: Did not involve the victim
4 in this case.

5 THE COURT: All right, okay. Now,
6 Mr. Delane, other than those negotiations that we
7 just went over, other than that, has anybody
8 promised you anything, held out any hope of reward,
9 or threatened you in any way to get you to enter
10 into these pleas?

11 THE DEFENDANT: No, sir.

12 THE COURT: Are you satisfied with the
13 representation and the advice that Mr. Hoffmeyer and
14 Mr. Cannarella have provided?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you have any complaints
17 against either of these gentlemen or any members of
18 their office with regards to their representation?

19 THE DEFENDANT: No, sir.

20 THE COURT: Sir, have you shared with both
21 of these gentlemen, have you shared with them
22 everything that you know so that they could look
23 into these matters on your behalf so that they could
24 explore any possible defenses that you may have,
25 have you cooperated with them as far as any possible

1 witnesses that you may have in your defense?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right, sir. And have they
4 investigated this matter and as far as you can tell
5 talked to the folks that you've asked them to talk
6 to and investigated this case on your behalf?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. Is there anything
9 that they have not done for you that you have needed
10 for them to do?

11 THE DEFENDANT: No, sir.

12 THE COURT: All right. Now you understand
13 that as I go through this and I'm talking about your
14 discussions with your lawyers regarding your
15 defenses or your possible defenses, you understand
16 that I'm not, at this stage I'm not asking you to
17 reveal, I'm not asking anybody to reveal
18 investigations or defenses; but I just want to make
19 sure that you're clear that you understand that any
20 possible defenses you may have to these charges,
21 that by entering a plea of guilty, that for purposes
22 of your plea that you waive those defenses and that
23 you're in essence giving up any defenses you may
24 have in pleading guilty. You understand that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Okay. Now as you stand before
2 the Court today have you — are you under the
3 influence of any substance that would affect your
4 ability to understand what it is you're doing here
5 today?

6 THE DEFENDANT: No, sir.

7 THE COURT: Are you entering these pleas
8 on these charges of guilt of your own free will,
9 Mr. Delane?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And are you guilty of these
12 four charges that we're discussing here today?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. I'm going to get
15 the Solicitor to go over the facts briefly and ask
16 you to listen carefully, and then I'll get back with
17 you in just a moment, sir.

18 And Solicitor, I'll just hear from you
19 with your rendition of the facts on these cases.

20 MR. CLEMENTS: Thank you, Your Honor.
21 Your Honor, on indictment 2009-707, on
22 September 16th, '08 and September 26th, '08, Billy
23 Hall was wired up by the Florence County narcotics
24 unit with a video camera and audio, and he called
25 Mr. Delane and those phone calls were recorded. And

1 he met up with Mr. Delane at the place they agreed
2 to which was the Country Hearth Inn here on Irby
3 Street, and there was a transaction of crack sold
4 for moneys. I think both were 60 if I'm not
5 mistaken. I know at least one of them was a 60. I
6 think both buys, both distributions was a 60 rock of
7 crack cocaine. It was videoed. Mr. Delane is
8 clearly visible in the van that he drove. One time
9 he was in the back seat and the other time he was
10 sitting in the front seat.

11 He was represented by Mr. James C. Cox,
12 Jr. Mr. Jepertinger was prosecuting that case.
13 That case was ready to go to trial. He offered him,
14 Mr. Jepertinger offered 15 year sentence.
15 Mr. Delane could not do that and he ended up
16 dismissing Mr. Cox as his attorney. Before that
17 though they looked at the video. Normally what we
18 do as our matter of course is we'll take a still
19 photograph that shows the defendant passing along
20 the drugs because we don't want to burn our CIs or
21 put them in danger. In this case it was right up
22 before trial, discussed it with law enforcement, and
23 cut the audio off because the CIs were not visible
24 at all, as you can recall because you looked at the
25 video. You cannot see who the defendant is -- I

1 mean, who the CI is, and the audio was off so you
2 couldn't hear any voices. And he looked at that and
3 talked with his lawyer.

4 And then his girlfriend at that time who
5 her name is Ms. Valerie Paul, he told her, you know,
6 he just had to get rid of him or prevent them from
7 coming to court, and he thought it might be who he
8 was. He thought about it and he saw something in
9 the car that made him think it was Billy Hall and
10 Billy Hall's girlfriend Talya Poston. She suffered
11 from some physical ailments where she had an oxygen
12 tank with clear surgical oxygen tubes that she would
13 wear at times. She carried them in her car. She
14 had a handicapped sticker hanging from her rearview
15 mirror. She had the tube hanging from rearview
16 mirror and across where the visor is, according to a
17 person that worked there at the restaurant run by
18 Mr. Hall's parents, Jennifer Turner, who was a
19 friend of both Billy and Talya. And she did verify
20 that they had the oxygen tank and had oxygen tubing;
21 you could see it. And that is what Mr. Delane
22 related to Ms. Paul and said he had to do something.
23 She was worried that something might be done to
24 those people. She thought they were going to beat
25 him up or something so she tried to get in contact

1 with Allen Rhodes, and anonymously. Allen Rhodes
2 didn't know who she was. Finally, Allen talked to
3 her. Allen is with the narcotics unit. She said,
4 I'm scared he's going to beat these people up. And
5 before anything could happen — this was right at
6 the time period — boom, their bodies were
7 discovered dead. And Florence County Sheriff's
8 Office was right on the scene within minutes when it
9 happened. Miss Poston was shot running down the
10 road with her cell phone on the phone with 9-1-1
11 identifying where they were, and Florence County
12 Sheriff's Office immediately jumped on it.

13 Allen Rhodes talked to Investigator
14 McFadden, found out who Valerie Paul was. They met
15 her at Francis Marion. And they reviewed the phone
16 records and the investigation went from there. And
17 also, they had Montez Barker involved. Laross
18 Graham worked for Mr. Delane, sold drugs for him.
19 Mr. Delane had gotten him a car to drive, a Chevy
20 Lumina, provided him drugs to sell. He worked for
21 him. And he said, I need to get rid of these
22 people, can you do it; and Laross Graham says, well
23 I don't have a gun. And he went and got him, went
24 in his apartment off of Hoffmeyer Road, brought back
25 out to the car a gun, gave it to Laross Graham, then

1 they went to Doc's and bought bullets for it.
2 Mr. Graham was — said he would do it, but he was, I
3 guess for lack of a better word he was kind of
4 chicken. He got Montez Barker involved. Montez had
5 just gotten out of prison. He knew Montez was mean.
6 And according to what Mr. Graham told us in
7 statements he made to us is that Mr. Barker acted
8 like he had done something like this before and
9 didn't mind doing it.

10 There was in the month preceding this,
11 there were hundreds of cell phone calls back and
12 forth according to the records we have, telephone
13 records between Mr. Graham and Mr. Delane, between
14 Mr. Graham and Talya Poston. We checked those cell
15 phone numbers out that we could relate to those
16 people and found the connections there.

17 On the night before this happened
18 Mr. Graham said he was at Mr. Delane's studio which
19 is right near McLeod Park, and he had a rap studio
20 where you recorded music. And Mr. Delane said, you
21 got to make this happen, you got to get it done, you
22 got to get it done tomorrow. That morning there was
23 more than 20 something calls and text messages back
24 and forth between Mr. Graham and Mr. Delane right up
25 until the time period that he had -- and there were

1 also phone calls to Talya Poston right up unto the
2 time period where Talya Poston and Billy Hall picked
3 what Laross Graham and Montez Barker up at Greenpack
4 over in east Florence. And then the phone calls
5 stopped for about 30 minutes until the next phone
6 call was a 9-1-1 phone call from Miss Poston's phone
7 to 9-1-1 saying, I've been shot, we've been shot,
8 people are shooting at me. And she told them she
9 was on Isaiah Road off of Flowers Road.

10 At the time Mr. Graham did not know that
11 part of the conditions that Mr. Barker had of being
12 out on parole was that he had an electronic ankle
13 monitor, and so Mr. Barker was able to be tracked
14 everywhere they were when the phone calls were made.
15 When they disposed of Miss Poston's vehicle he's
16 tracked there where he burned up the vehicle after
17 the murders. And so all those pieces fell together
18 and with the quick work of the Florence County
19 Sheriff's Office they arrested Mr. Barker, they
20 arrested Mr. Graham, then they arrested Mr. Delane.
21 There is a cousin of Mr. Delane, Anthony Wingate,
22 who Mr. Delane actually sent to pick up Mr. Graham
23 after the murder was committed and then told
24 Mr. Wingate to get rid of the weapon, which was a 38
25 revolver.

1 Mr. Wingate was cooperating with the
2 State. Mr. Graham initially gave a statement to
3 Investigator McFadden which says basically he was
4 just there. We went back to him and told him, you
5 know, that he was up for the death penalty; he
6 needed either to come completely clean or no
7 half-stepping. And he told us, even though
8 everything he told us made him look really bad, his
9 part he gave what we believe to be completely honest
10 information. We polygraphed him; he passed a
11 polygraph that Mr. Barker was the shooter. Mr.
12 Graham was basically the go-between. And Mr. Delane
13 was the brains and the whole factor and linchpin for
14 this to happen.

15 We had an interesting legal issue that was
16 going to be litigated here in this trial if the
17 trial had gone forward regarding whether Mr. Delane
18 was actually a principal and constructively present
19 by the electronic cellular communications where his
20 voice was there, his encouragement was there, or
21 whether he was an accessory. Now that was a
22 question we thought the jury was going to have to
23 decide. As Your Honor is aware, death penalty does
24 not apply to accessory before the fact of a murder
25 but does apply to a murder so that was going to be

1 an interesting legal twist. We believe this plea is
2 justice. And that is basically what the facts are,
3 Your Honor.

4 THE COURT: All right. Mr. Delane, the
5 facts that the Solicitor shared with the Court
6 regarding the four charges that you're before the
7 Court on, are those facts essentially correct, sir?

8 THE DEFENDANT: Can I speak to my lawyer
9 for a second?

10 THE COURT: Yeah, sure.

11 (Attorney Hoffmeyer confers with defendant.)

12 MR. CLEMENTS: Your Honor, if I may,
13 before Mr. Hoffmeyer — I got one other little
14 factual situation that may relate to what he's going
15 to say that I forgot. Your Honor, that is that
16 Mr. Graham says he was paid two stacks, which is
17 basically I guess two thousand dollars and some
18 drugs for doing this and he gave some money to
19 Mr. Barker. Also, Your Honor, we had Lakavis
20 Harrison and other people that could verify and also
21 a cousin of Mr. Delane verify that Kelvin O'Neal was
22 sent to get the money and come back. And also,
23 Lakavis Harrison says that he was in sales next with
24 a vent connecting him, and Mr. Delane in the jail
25 for a period of about a year and that Mr. Delane

1 told him that he had him killed for two stacks and
2 some drugs. And Mr. Harrison also had knowledge of
3 other facts that we felt like he could not know
4 unless Mr. Delane told him so he seemed to be
5 credible to us because of that, but that is what the
6 contract was for.

7 THE COURT: Mr. Hoffmeyer.

8 MR. HOFFMEYER: Thank you, Your Honor. I
9 think that the issue for Mr. Delane surrounds some
10 of the factual allegations that don't have an impact
11 on the fact that he meets the elements and agrees
12 that factually the State can establish and would
13 establish the elements of the offense of accessory
14 before the fact. As the Court's aware this case has
15 been ongoing; and there are statements from Mr.
16 Graham, the first statement, that many of the things
17 he says are not believable. The second statement,
18 many of the things are quite frankly not believable.
19 However, Mr. Delane, in understanding the lack of
20 credibility, also understands that there are things
21 in there that he believes are accurate and would
22 support the State's theory of this case. And the
23 same is true for Mr. Lakavis Harrison, that we
24 naturally have been preparing for related to the
25 credibility issues of these two.

1 But absent those things, the truth of the
2 matter is Mr. Cannarella and myself and my client —
3 and I'm sure my client will agree with me saying
4 this — agree that the elements as far as him aiding
5 and abetting and assisting and the things that
6 support that that the State has alleged, do support
7 his guilty plea and he wants to enter that plea.

8 THE COURT: You agree with that,
9 Mr. Delane?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right. And I understand
12 that every fact that the Solicitor gave the Court
13 you probably don't agree with everything, every
14 single fact; but you do understand that whether or
15 not the Court can accept someone's plea of guilt
16 really needs to go toward those facts that are
17 essential to the elements that make up the crime, in
18 this case of accessory before the fact of murder.
19 And so even though there may be some extraneous
20 facts that you disagree with, you do agree with
21 those essential elements that make up the charges
22 that you're before the Court on?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right. I find that the
25 State has provided a substantial factual basis to

1 support the charges that Mr. Delane has pled guilty
2 to. I find that his decision to — let me, and just
3 so because I just want the record to be clear so
4 that I don't miss anything. And again, I don't know
5 the facts well enough to go into any details about
6 the facts. But essentially, Mr. Delane, what you're
7 pleading to is on the drug distribution charges is
8 that you were involved in the passing or the
9 distribution of crack cocaine on these two, on these
10 two occasions. Were those facts accurate?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: You agree to those?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And with regards to the
15 accessory before the fact of murder — and again,
16 you, even though all the details you don't agree
17 with, you are pleading guilty to and admitting to
18 being involved in with Mr. Graham — and I don't
19 know if you were involved with Mr. Barker or if that
20 was Mr. Graham that brought Mr. Barker in, but the
21 bottom line is you were involved with Mr. Graham and
22 eventually Mr. Barker in the death of Mr. Hall and
23 Miss Poston; is that correct?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right, sir. I find that

1 the facts do support, that were presented, support
2 the charges that Mr. Delane has pled guilty to, and
3 I find that his decision to enter these pleas has
4 been done freely, voluntarily, intelligently. He
5 has had the advice and counsel of two outstanding
6 attorneys in Mr. Cannarella and Mr. Hoffmeyer, and
7 Mr. Delane has indicated to the Court that he is
8 satisfied with the representation that they have
9 provided. He has worked with them. He has
10 cooperated with his attorneys in his case and that
11 he is satisfied with the work and the representation
12 they have provided him, and I'm going to accept his
13 plea to these charges.

14 Now my understanding, Mr. Delane, your
15 friends or family have not had an opportunity to be
16 notified of this today; is that correct?

17 THE DEFENDANT: No, sir, not yet.

18 THE COURT: And Mr. Hoffmeyer, you and
19 Mr. Cannarella can be in touch with those folks?

20 MR. HOFFMEYER: Yes, sir, Your Honor.

21 THE COURT: And Mr. Clements, with regards
22 to the victim, some of them are here but there are
23 others that you need to get in touch with?

24 MR. CLEMENTS: Yes, Your Honor.

25 THE COURT: All right. What time do you

1 want to reconvene then for purposes of this plea?

2 MR. CLEMENTS: Your Honor, I would request
3 9:30 in the morning if defense counsel agrees.

4 THE COURT: Does that sound okay?

5 MR. CANNARELLA: Yes, sir.

6 MR. HOFFMEYER: Yes, sir, Your Honor.

7 THE COURT: Well what we'll do is, we'll
8 withhold sentencing until that point; and then at
9 that point, if the State wishes to be heard any
10 further with regard to sentencing I'll hear from
11 you. And of course, Mr. Hoffmeyer and
12 Mr. Cannarella, Mr. Delane, I'll hear from you with
13 regards to sentencing at that point as well.

14 MR. HOFFMEYER: Thank you, Your Honor.

15 THE COURT: All right. Thank you,
16 gentlemen.

17 (Court resumed on October 8, 2013.)

18 THE COURT: All right. For the record,
19 we're back here today. Yesterday Mr. Delane came
20 before the Court and entered guilty pleas to counts
21 2 and count 4 on indictment 2012-GS-21-897. Those
22 were two counts of accessory before the fact to a
23 felony, that being murder, and also entered guilty
24 pleas on indictment 2009-GS-21-707 to counts 1 and 3
25 of that indictment. Both of those were charges of

1 distribution of cocaine base, that being a third
2 offense or greater, and the remaining counts on both
3 of those indictments were dismissed as a result of
4 his pleas to these four charges. I discussed with
5 Mr. Delane his guilty pleas yesterday. We went
6 through and qualified those. The Court found that
7 those pleas were, in fact, entered into freely,
8 voluntarily, and intelligently, and those pleas were
9 accepted, and I then adjourned court to give both
10 the families of the victims and the families of Mr.
11 Delane an opportunity to be present for sentencing.
12 And so that's what we're here for now to proceed to
13 sentencing.

14 Mr. Hoffmeyer, is there anything from the
15 Defense before I — I'm gonna first recognize the
16 State. I tell you what, let me do this, well, I
17 don't need to because we've already qualified the
18 plea so I will begin with the defense.

19 MR. HOFFMEYER: Your Honor, we will come
20 around —

21 THE COURT: Yes.

22 MR. HOFFMEYER: —with the Court's
23 permission.

24 THE COURT: Thank you.

25 MR. CLEMENTS: Your Honor, while they're

1 coming forward, on indictment 2009-707, Your Honor,
2 I think we have the spelling of Mr. Delane's name
3 D-E-L-A-I-N-E. The correct spelling is on
4 indictment 12-897 which is D-E-L-A-N-E, and I would
5 move to amend the spelling of his name to be correct
6 on indictment 2009-707.

7 THE COURT: Any objection to that
8 correction?

9 MR. HOFFMEYER: No, sir, Your Honor.

10 THE COURT: Mr. Delane, your last name is
11 in fact spelled properly D-E-L-A-N-E; is that
12 correct, sir?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. We'll certainly
15 have that reflected as the appropriate spelling.

16 Mr. Hoffmeyer.

17 MR. HOFFMEYER: Thank you, Your Honor.
18 This is obviously a very tragic circumstance that
19 brings us here before this court and most tragic for
20 the Hall and the Poston family. There is no doubt
21 about that whatsoever and there are no excuses, and
22 there is simply no way to make up to these families
23 the suffering that they've been put through.

24 There's no way that my family, Mr.
25 Delane — this is his mother here, his sister, and a

1 very good friend of hers, of Mr. Delane's rather,
2 here with us here. There is no way that they can
3 feel the loss that these two families have, and
4 nothing that I say or anybody would say on his
5 behalf means to detract from that whatsoever.

6 Judge, you heard Mr. Delane yesterday
7 admit his involvement; and it's like so many
8 criminal cases that come before the Court,
9 oftentimes people think, well, why doesn't the
10 defendant immediately admit his guilt, plead guilty,
11 and things of this nature. And when you're dealing
12 with these types of factual situations, when you're
13 dealing with statements and witnesses and things
14 that have to be considered, oftentimes, sometimes it
15 makes it even more difficult for a defendant because
16 he knows some of the allegations against him, some
17 of the things that are alleged that he did are not
18 accurate, but many are. But in the thought process
19 and taking responsibility sometimes those hurdles,
20 those things get in the way.

21 But when it comes to Mr. Delane, when he
22 looked inside his heart, and that's what he wants
23 everyone to understand, when he considers and looks
24 inside his heart he knows that he's responsible and
25 he knows that he needs to take responsibility and he

1 knows that he needs to in the meager way he can do
2 it in terms of their loss try and make up for it.
3 And that's why he wanted to plead guilty, he has
4 pled guilty, and wants to express his remorse. And
5 he will, of course, address the Court at the
6 appropriate time.

7 Your Honor, as we prepared the case,
8 naturally given the stance of the case with a
9 potential death penalty out there to be considered,
10 we of course did a mitigation investigation. And
11 what that mitigation investigation showed and what
12 would have been testified to by numerous people that
13 know Mr. Delane is his respectfulness, his love for
14 his family, and the fact that he would do anything
15 for his nieces, his nephews, his mother, his
16 sisters, his dad, his step-mom, and went out of his
17 way to still be a part of their lives even as he
18 grew older. He did not — and this is certainly no
19 knock on his mother, his father, his family, he did
20 not grow up in a good situation. That doesn't
21 excuse or diminish anything. But he did not, and I
22 guess sometimes you wonder what I or anyone would do
23 dependent upon if I had grown up in those situations
24 or that situation or without the benefit of some
25 things. He has no violence in his history

1 whatsoever, and of course, that was something that
2 as we reviewed mitigation and potential aggravation
3 we wanted to consider. There doesn't — there is
4 none, and we looked high and low when it came to
5 that because naturally that would be a concern for
6 us.

7 Judge, he is 30 years old and we know that
8 the potential sentence in this case is 30 years to
9 life. He, and I on his behalf and his family on his
10 behalf and of course Mr. Cannarella as well, would
11 respectfully request that the Court consider
12 fashioning a sentence that will, of course, put him
13 in prison for an extended period of time which is a
14 minimum of 30 years and he's 30 years old now. And
15 during that time, clearly based upon what I know
16 about him and based upon what people tell me about
17 him, every day, probably every hour if not more
18 often, he will reflect on this. He will think about
19 the damage he did to families. He will think about
20 the things that he set in motion that led to these
21 tragedies, and so he will in some respects pay a
22 price of having to wake up every morning and go to
23 bed every night in prison knowing what he did to
24 these people, and I know him and what we know about
25 him indicates he will.

1 And then, Your Honor, if the Court would
2 consider, we will respectfully request that a much
3 older, a man that's sat in prison every day thinking
4 of all those things and hopefully being productive
5 in his life in prison will then have the opportunity
6 to get out and live a productive life outside of
7 prison a much older man, a man who will have sat in
8 a prison cell every day for 30 years thinking about
9 what he did and a man that hopefully will
10 continue — in fact, I know he will — he will
11 continue for the rest of his life if he lives to, if
12 Your Honor fashions a sentence if he lives to make
13 it out of prison. But I am confident that he will
14 never ever do two things: He'll never be able to
15 make up for what he's done, but he'll never ever
16 forget it and have remorse for it.

17 So we would respectfully request that you
18 consider a 30 year sentence in this case. And on
19 behalf of everyone I'm very sorry.

20 THE COURT: Thank you, Mr. Hoffmeyer.

21 Is there anyone that would like to address
22 the Court? Ma'am, I'll be happy to hear from you.
23 If I can just get your name for the record please.

24 THE MOTHER OF DEFENDANT: Sharon Lunn, I'm
25 his mother.

1 THE COURT: Ma'am, I'm happy to hear from
2 you.

3 THE MOTHER OF DEFENDANT: I'm sorry about
4 what happened to the family and ask them to forgive
5 us. And I'm asking -- he's a good boy, he's real
6 good. I love him. That's my only son and I love
7 him and his family love him and I'm asking you to
8 have mercy on his soul, and you know, take it easy
9 on him because I love him.

10 THE COURT: All right. Thank you for
11 being up here, ma'am, I appreciate that.

12 Anyone else that would like to address the
13 Court? Mr. Delane, you're not required to; but if
14 you would like to, I'll be more than happy to hear
15 from you.

16 THE DEFENDANT: Yes, sir. First and
17 foremost I would like to give condolences to the
18 family, you know, 'cause I feel like that's the
19 proper thing to do in this situation. I mean, it's
20 a tragic situation, but you know, it's happened.
21 Really, there's nothing I can say to change the past
22 or make it seem better; and by me saying this, you
23 know, it might seem that it's not enough to some
24 people and it might not seem like anything to some
25 others. But you know, I feel like by me being up

1 here and saying that I'm sorry and I apologize for
2 the situation that, you know, that's a start for me,
3 you know. So in my heart I feel like, you know,
4 that this situation, it could have been avoided and
5 it could have been happened way different, you know.
6 And as I sat in jail whatever, I was there for maybe
7 four years in the same room. I really didn't have
8 any disciplinary problems within jail, you know. I
9 really didn't cause any major problems period so I
10 had time to think and reflect on the situation, and
11 it's helped me mature as a person.

12 And to be honest with you, Judge, if I
13 know if I would have got out on bond or something
14 like that, then it's possibly that I would never
15 become the person that I am right now at the moment.
16 And I may not ever see these guys again, but to
17 Judge Anderson and Judge Nettles, I will say thank
18 you for denying my bond because by me sitting in
19 jail it help me grow as a man, you know. So I mean,
20 there's not too much I can say because, like I say,
21 it's a tragic situation; and I can't really change
22 the past, I mean, and I can't really do much for
23 tomorrow, you know. I only can do for what's going
24 on today, I mean, that's try to, you know, make
25 myself better and show the Court that I'm really

1 apologetic for the situation.

2 THE COURT: All right. Thank you, Mr.
3 Delane. I agree with the things you said. I
4 appreciate your comments.

5 Anything else, Mr. Hoffmeyer, from the
6 Defense?

7 MR. HOFFMEYER: No, sir, Your Honor.
8 Thank you very much.

9 THE COURT: Solicitor, I think I'm
10 familiar with Mr. Delane's prior history. I think I
11 got that yesterday from you.

12 MR. CLEMENTIS: Your Honor, you got part of
13 it.

14 THE COURT: Okay. I'll be happy to hear
15 from the State.

16 MR. CLEMENTIS: I just told you what made
17 it a third offense.

18 THE COURT: Okay.

19 MR. CLEMENTIS: And Your Honor, in regards
20 to us being here today, one simple thing could have
21 kept all these families from being here and that is
22 that Mr. Delane has accepted responsibility on
23 indictment 2009-707 back in 2009, and we would not
24 be here today and there would not be three groups of
25 heartbroken families. If he'd had either just

1 accepted responsibility then or even just went ahead
2 and gone to trial without interfering with
3 government's witnesses, we would not be here.

4 His prior criminal history, Your Honor, as
5 far as our jurisdiction he had an unlawful pistol
6 that was prosecuted by Assistant Solicitor Robert
7 Wells on indictment 2001-71. Also on that it had a
8 count of possession of marijuana more than an ounce
9 on that same indictment. He had another unlawful
10 pistol on indictment 2003-1114. And he had a
11 indictment from the county of Chesterfield 05-1091
12 which Mr. Cox, Jim Cox represented him on, where he
13 got a trafficking in marijuana ten pounds or more of
14 less than one hundred pounds in the county of
15 Chesterfield. Your Honor, he had some other minor
16 offenses like DUSs, disturbing school, failure to
17 return a driver's license after suspension, and
18 that's his criminal history.

19 Your Honor, I have Investigator Chad
20 Collins, Investigator Thomas McFadden. I'm gonna
21 ask they address the Court, Your Honor. They
22 investigated this case, spent hours and hours of
23 their time investigating this case. And I also want
24 to recognize members of the victim's family and ask
25 that at the appropriate time, Your Honor, that you

1 hear from them. But first I'd like to identify them
2 and ask them to raise their hand when I state their
3 name so you'll know who they are.

4 THE COURT: All right.

5 MR. CLEMENTS: First, Your Honor, we have
6 the father of Talya Poston, Mr. Billy Poston on the
7 front row there. Her son Gabriel, Poston and her
8 aunt Debbie Ross, and a family friend Kenneth
9 Goodie. The Hall family, Your Honor, seated on the
10 back row. We have Bill Hall and Carol Hall which is
11 the parents of Billy Hall. We have Tracey Helms who
12 is his sister and William A. Hall who is his
13 brother, of Billy, Your Honor. They're all here.

14 First, Your Honor, I defer to the
15 investigators for the Florence County Sheriff's
16 Office.

17 THE COURT: All right.

18 MR. CLEMENTS: State your name please.

19 THE INVESTIGATOR: Investigator Thomas
20 McFadden, Your Honor. This case, when he was
21 speaking of the facts on this case, the evening of
22 this incident when we found the two victims on that
23 dirt road on Isaiah Road, we thought — I'm gonna be
24 honest, I didn't think it was as big as a murder for
25 hire. I just thought maybe something went wrong

1 until we kept looking into the facts, and that's all
2 I told the Solicitor. We only followed the facts.
3 And one another nark was saying that I need to check
4 on certain names, that I need to talk to certain
5 people which end up being Mr. Delane. And I was
6 like, okay, it might not be this big, let me finish
7 following the facts, let me do phone records. Then
8 as I stated, I did phone records. We got to it led
9 us to Laross Graham. Actually it led us to his
10 girlfriend who said nobody had anything in their
11 name. All of them had phones in the girlfriend's
12 name, houses in girlfriend name, nobody had anything
13 in their name. That which led to Laross Graham and
14 when she mentioned a nickname Laross which was too
15 and the information we received earlier about Mr.
16 Delane getting individual involved name too, I was,
17 like, whatever the facts. We went to Laross's
18 house. That when we met Barker because he was
19 actually walking up the road that evening when we
20 was going to get Laross Graham who was on the porch.
21 And the first name that came our of his mouth when
22 he got in the car, I said we got you but you need to
23 be totally honest; and he said Travis Delane, he got
24 us all involved in this.

25 So when you say the families messed up,

1 not if you accept the charges, maybe just that one
2 situation would have been done with it, he would
3 have did — whatever he did, four years, he'd
4 probably be almost home by now. He got several
5 families involved, Laross, Montez Barker, all these
6 people. Then other people afraid because they had
7 to testify in this case because they felt like he
8 was untouchable because everybody took charges for
9 him or went to jail. Nobody — he never had to face
10 charges. So that was the scary part about it. And
11 when we told Laross, I think he was saying what
12 certain facts. Laross gave a statement like he was
13 a victim in the beginning like, oh, he was forced to
14 do this. He didn't come forward until he met with
15 his attorney and said, his attorney, when me and the
16 solicitor told him that he had to be truthful,
17 honest. I told him even if he sound like the devil
18 he had to tell everything. And that when it got
19 real serious. You'd have heard facts on the stand
20 when it came that GPS system placed on the victim's
21 car, that they were tracking him. And I don't want
22 to say put a address out there, but this was not
23 going to either happen on the dirt road if it would
24 have happened one night off of Third Loop at the
25 victim's house you'd had even the parents killed

1 because they wanted to go in the house at that point
2 in time to kill and you'd have had to kill some of
3 the family members if you went in that house. So
4 that how bad, how serious it got. So after we got
5 the facts I was like, well, maybe Laross was right,
6 different kind of dangers. Then the phone records
7 came and it tied everybody to that link, not just
8 two families but five or six families were involved
9 and more people could have went to jail. So that's
10 how serious it got.

11 So Travis, yeah, thinking, and he probably
12 matured after all that time; but the thought process
13 at that point in time not to go to jail and take
14 lives and you can never take that back. And like
15 Miss Poston said, she didn't pretty much like me
16 when I first came there to tell them about this but
17 they appreciate me now, but that how serious it was
18 once we got to the bottom of it, that this was
19 actually a murder for hire, instead of just taking
20 the charge and getting it over with and involving
21 all these families and doing something that you can
22 never change, can never go back.

23 THE COURT: All right, thank you, sir.

24 THE INVESTIGATOR: Chad Collins.

25 THE COURT: Yes, sir.

1 THE INVESTIGATOR: Thank you, Your Honor.
2 I've worked with Investigator McFadden on several
3 cases. This one, this one was a tough one due to
4 the fact that we had to piece a lot of information
5 together. We saw several families' lives destroyed
6 in the process, not only the victims' families but
7 also the defendant's families and friends and their
8 families.

9 I will add that being out there that day
10 and seeing the brutality of the deaths of these two
11 who probably had no idea what was gonna happen to
12 them that day, really touched a lot of people. I
13 will also add that I believe that Mr. Delane is
14 being remorseful; I will add that today. However,
15 that doesn't diminish the fact that two people were
16 killed and several lives of families and friends
17 were messed up for the rest of their lives. I will
18 add, Judge, that I think that appropriate sentence
19 needs to be placed on the two lives and the families'
20 and friends' lives that were destroyed in this
21 incident. Thank you.

22 THE COURT: Thank you.

23 MR. CLEMENTS: Your Honor, if you would
24 hear from any of the family members. I know —

25 THE COURT: I'll be happy to.

1 MR. CLEMENTS: —some of them wish to
2 speak.

3 THE COURT: And I'll be happy to hear from
4 anyone if you'd just please identify yourself for
5 the record please.

6 MR. HALL: Good morning, Your Honor.

7 THE COURT: Yes, sir.

8 MR. HALL: My name is William Hall. I'm
9 the second eldest, Bill Hall. I guess yesterday I
10 was not fortunate to be here to witness what went on
11 in the courtroom; but I guess hearing the words
12 death penalty will open your eyes up and make you
13 realize, you know, my death is on the table here and
14 I better plead guilty and so I can save my life.
15 And talk about life, you know, our parents bring us
16 into the world, they mold us, love us, cherish us.
17 We go to elementary school, and we talk about being
18 police officers, doctors, lawyers. We grow up. We
19 go to high school. Come out of high school then we
20 realize we got to face reality, what are we gonna
21 with the rest of our life. Well, be a lawyer,
22 doctor, CFO, judge, drug dealer. We make decisions
23 in our life that affect us. We make decisions in
24 our professional life that may affect other people.
25 This individual decided to take two lives, ruin six

1 families, so there's his life. Two lives in the
2 grave, six families ruined. Life. I leave it at
3 that. Thank you.

4 THE COURT: Thank you, Mr. Hall.

5 MRS. HALL: I'm carol Hall.

6 THE COURT: Yes, ma'am.

7 MRS. HALL: I just want to read a brief
8 statement.

9 THE COURT: Yes, ma'am.

10 MRS. HALL: On September 1st, 2009 we were
11 going about our daily chores and the coroner walked
12 in. Life as we knew it was changed forever. Not
13 only were our lives torn apart, but also Talya's
14 family. And then there are the families of the
15 other people that Mr. Delane involved in the murders
16 when he decided to have Billy and Talya killed. I'm
17 sure he came and thought to all of the people that
18 would be affected including his own family. Mr.
19 Delane is trying to avoid the death penalty by
20 pleading guilty; he wants to live. But he did not
21 stop to think that Billy and Talya wanted to live
22 too, but he didn't give them a chance. When you
23 look at his record he continues to break the law and
24 his crimes get worse each time.

25 Your Honor, we ask that Mr. Delane be

1 given the maximum sentence possible for what he did,
2 life in prison. That would give us some sense of
3 relief and closure. At least we would know that he
4 is being held accountable for Billy and Talya's
5 death, and that he would never be able to hurt
6 anyone like this again. Thank you.

7 THE COURT: Thank you, Mrs. Hall.

8 FATHER OF VICTIM HALL: Bill Hall, father
9 of my son Billy. Your Honor, this young man worked
10 for me. He was groomed to take over the restaurant
11 when I got disabled, which I am now. And we would
12 go home and sit on the side of the bed, he was
13 getting ready to get married, talk about
14 grandchildren, what they were gonna plan, what they
15 were gonna do. They lived in my home. I loved
16 them, every one, and I tried to take care of them.
17 And we'd play music together at the restaurant; I
18 miss that. And somewhere down the line that was
19 taken away from us, and I just don't think it's
20 right.

21 There's a story about the Bald Knobbers in
22 Arkansas going into Missouri raiding and wasn't
23 obeying (ph) the leader, they hung him, and found
24 him and hung him in an oak tree in Ozark, Missouri.
25 That tree flourishes now. We won't give him death

1 but he should have to stay in prison the rest of his
2 life. The only way he leaves will be in a pine box.
3 Thank you, sir.

4 THE COURT: Thank you, Mr. Hall.

5 MR. GABRIEL POSTON: Your Honor, I'm
6 Gabriel Poston, Talya's son. He says that he had a
7 hard life and four years ago I lost my mother. I
8 saw a smile on my face today. I let it make the
9 best of me. I've had a hard life as well. That's
10 no excuse for him to have his actions — he's made
11 his actions before. He's had ample opportunities to
12 do right in life but he hasn't, and I really don't
13 want to see him come out of prison 30 years from
14 now. I want him to have life and leave in a wooden
15 box. I don't want him sit in a room and have a
16 television, have three meals a day. I want him to
17 have the worst life he can possibly have, and I'm a
18 really humble person and I would never wish that
19 upon anybody else other than him. Thank you.

20 THE COURT: Thank you, sir.

21 MS. ROSS: I'm Debbie Ross, and I'm the
22 aunt. And I'm strong in the lord number one, and I
23 want to talk on behalf of my sister who cannot be
24 here today; she's still broken hearted. And I want
25 to talk on behalf of my mother, Talya's grandmother

1 who is 89, that's still traumatized by the day when
2 we found out everything. And I mentioned to
3 Detective McFadden yesterday that I didn't like him
4 the first day he came when my sister and I were
5 attending a luncheon and I had talked to Talya that
6 morning, and she was gonna come help us with our
7 yorkies. She bred yorkies and they were beautiful,
8 they were championship. And she was gonna come that
9 afternoon. We had plans with her. We all had plans
10 with her. After the luncheon when I got — I
11 checked on my mother, and she was rocking Angel, her
12 yorkie, from Talya and I told her, I said, mom,
13 we'll be back later today, Talya and I will, mom.
14 When I got home and my nephew Joshua, Talya's
15 brother had a voice mail on the answering machine,
16 Aunt Debbie, Aunt Debbie, call. And I called him
17 and he said Talya is dead, and I about dropped the
18 phone. I said, well I just talked to her this
19 morning. And but Joshua told me he had to go and
20 that they were coming to try to find mom, but nobody
21 could find mom. They'd already been to Billy's
22 office. They'd been to Carol and Bill's restaurant.
23 They went to my sister's home, and they — I said,
24 who are "they" and he said the coroner and the
25 detectives and now they're going to grandmamas. I

1 said, let me get back to grandma. She don't —
2 she's been through a lot. She's a 28 year breast
3 cancer survivor. We had lost my dad just recently
4 before this tragedy happened.

5 I got back to my moms, I didn't even knock
6 on the door. This is God in here. As soon as I got
7 inside and she was still rocking the baby yorkie and
8 she said Debra, did you forget something. I said it
9 this quick, I said, mom, Talya is in heaven. And
10 the door bell rang and I told her I would handle it.
11 And I went there and Detective McFadden and Chad,
12 the coroner, the yard was full of cars. And I
13 didn't invite y'all in, I'm sorry. But I said, all
14 I know is my niece is gone. And this is how God
15 worked though. Bubba Matthews asked me, we cannot
16 find your sister, we need to tell her what's
17 happened to her daughter. And all I could do was
18 look down Indian Drive and my sister was coming to
19 check on my mom too, and that's how we found out
20 about it. That's kind of ironic that the
21 grandmother, the aunt, and the mother of dear Talya
22 found out about it, all three of us pretty much
23 together.

24 But I need to read a few things and I
25 don't care if I'm taking the court time right now.

1 This was supposed to be a two week thing on the
2 docket and we need our time now to share. And Your
3 Honor, if I'm out of place please tell me.

4 THE COURT: Ma'am, listen to me, you go
5 ahead.

6 MS. ROSS: Okay. Thank you.

7 THE COURT: Go ahead.

8 MS. ROSS: I've got some pictures too I'd
9 like for you to see. I haven't even shown her
10 father and I hope these are okay. And I've got
11 Billy, I've got it cut up in chronological order
12 from a baby to where Billy gave her a diamond. They
13 were gonna get married; they had plans. I even have
14 a picture of —

15 (Mother of defendant falls.)

16 MR. HOFFMEYER: Your Honor.

17 THE AUNT: —hope chest that —

18 MR. HOFFMEYER: Your Honor, I apologize.

19 THE COURT: Wayne, y'all need to call
20 somebody?

21 THE DEFENDANT: Mom. Mom.

22 SISTER OF THE DEFENDANT: And she's a
23 diabetic. Her medicine is in the car.

24 (Pause in proceedings while awaiting EMS.)

25 THE COURT: All right, Ms. Ross.

1 MS. ROSS: Your Honor, I'm sorry about
2 what just happened. And in May, the other
3 defendant, I remember being able to apologize to
4 that mother and tell her I was sorry it was Mother's
5 Day coming Sunday; but that my mother was unable to
6 be there at that hearing and that Talya's mother was
7 unable to be there at that hearing, but that we have
8 forgiven the five guys that are involved in this but
9 we need closure and we need justice for our loved
10 ones.

11 Tuesday, September the 1st, 2009, at 11:30
12 Talya Poston and Billy Hall were shot and left to
13 die on Isaiah Street. It took ten days, Your Honor,
14 to capture two of the killers and then five more
15 days to capture the planner. This has been
16 extremely agonizing, and we have lived and breathed
17 this for four years one month and eight days. We
18 feel Talya's love and presence, also the love and
19 support from hundreds of people who have been
20 touched by Talya's and Billy's life and her family's
21 enduring example of courage, strength, and dignity.
22 I'm asking — we prayed. Ed Clements prayed with us
23 before we came in here a little while ago, and I
24 thank him for that. We do not want to see any of
25 Talya and Billy's killers or accomplices anymore.

1 We have been to a lot of hearings these four years.
2 It has — he, Ed Clements told us it would put a
3 toll on us, and it has, but we're through. God's
4 grace and strength, we're here.

5 Now, you know, today is the day of
6 accountability, taking responsibility for your
7 actions that led to murder Talya and Billy. Today
8 is accountability day. Talya was a beacon of hope.
9 Her presence has been ripped from our lives. We
10 cannot get that back. That's unreplace—
11 irreplaceable. People she will never get to help
12 anymore. She was a consultant for hours and hours
13 helping people learn how to feed the baby yorkies,
14 cook them brown rice, cut up little — Kenneth knows
15 all about that; we all do. And she would especially
16 train her people that when she bred her yorkies to
17 how to feed them properly. They were like little
18 babies. We have one. My husband and I have one of
19 hers and my mom still has Angel. But people she'll
20 never get to help. She was a self-made
21 veterinarian. She could have been a doctor. Her
22 grandma, she never recovered from the shock that
23 day of rocking Angel and finding out that her only
24 granddaughter had been murdered. It's just unreal
25 what she looks at pictures sometimes and says, why,

1 why, why did they take my only granddaughter from
2 me. What was she thinking when Billy got shot first
3 and then her, but we know she was strong in the
4 lord. She was able to get out of the car and run.
5 She was already shot, but then the killer shot her
6 again after knowing that she made a 9-1-1 call.

7 People I see everywhere, all of us, it's
8 not — no days go by that we don't see people that
9 remind us of Talya and Billy everyday. Every day
10 we go somewhere we see — not a single day goes by
11 that we don't think of Talya and Billy and the
12 precious memories to all we have left of her. Talya
13 and Billy never got to live their dreams. They had
14 so much potential.

15 Future dangerness to our society having
16 people like the defendants making plans to kill
17 people? They don't ever need to make any plans
18 again to do that. They need to be put away and
19 think about the things that they did, their
20 mastermind, all this stuff that they did. To me and
21 Talya's family and over one hundred people that went
22 to the funeral paying their respects, saying
23 good-byes to this warm, happy, loveable, funny, and
24 deeply caring human being, our lives are poorer for
25 not — for having lost Talya and Billy, all because

1 of a cowardly act of stupidity will forever change,
2 and it will be the legacy which the shooter, the
3 planner, the accomplices will have to live with.

4 Friends, they had to stop what they were
5 doing. They had to leave work early. They had to
6 buy and bring food. We have so many cards, I mean,
7 I brought — we have cards. They sent flowers.
8 They attended for celebration along with Billy's
9 celebration — I'm not gonna call it a funeral; it
10 was a celebration. It was a joyful time to know
11 that they were with the lord together as celebrating
12 what they were gonna do on earth but now they're in
13 heaven.

14 Talya was a caregiver for an elderly man.
15 And after she was murdered Mr. — the man had to
16 move to Columbia. The nephew moved him to Columbia
17 to go into an assisted living. This wonderful man
18 is now 93 years old, and every time I talk to him he
19 cries wanting to know why Talya was — Talya and
20 Billy were great caregivers to this man. He lived
21 on Hillcrest Drive. This man gave Talya and Billy a
22 hope chest. I've got a picture of the hope chest.
23 I'd like, Your Honor, when you deliberate if you
24 will please look at the pictures. The hope chest, I
25 went upstairs, the hope chest is in my house

1 upstairs right now. Mr. Phillips gave Talya and
2 Billy a nice hope chest because they were planning
3 to get married. He'd given her a diamond ring.
4 They were planning to have children. One of the
5 pictures, when I opened the hope chest they had it
6 full of baby clothes already. They had stuffed,
7 animals, toys, and I pulled out a couple of them and
8 I took a picture of that the other day to show you
9 that they were planning to do this. And but anyway,
10 now when I go up there and see that beautiful wood
11 hope chest I can only think of what would have been
12 happening real soon after this senseless murder took
13 place. The community lost a wonderful young lady
14 who was a caring person, physical, emotional,
15 financial, social, spiritual cost to the crime.
16 These five guys hurt a lot of families. It's not
17 just our family like they explained; it's their
18 families too. We're all hurting. We all lost our
19 dear people and they — the ones that did this, the
20 ones that made the decisions, they have to live with
21 this the rest of their life to know what kind of
22 choice they made that day. Actions have far
23 reaching effects.

24 Doing the right thing should have been the
25 only option an ethical or moral person would have

1 done. Murder is permanent and forever. The words
2 I'm sorry do not heal hearts that have been broken
3 by violence or bring Talya or Billy back. Talya was
4 a true doer and a listener. She could not do enough
5 for others. Our families have endured all the
6 holidays, birthdays. Talya would have been 37
7 Saturday. And Sunday, my church and I, I'm, I got a
8 thank you list. Last night I was up at wee hours
9 trying to jot some things down. But my church had a
10 special prayer for this situation and we also sang
11 Talya's favorite song Sunday, How Great Thou Art was
12 one of them. But they lifted all us up and it was
13 her birthday; she would have been 37 Saturday. And
14 all the birthdays that we've missed, Billy and
15 Talya, and all the holidays we've had to endure
16 without her has been hard.

17 We ask Your Honor to consider rendering a
18 sentence that you would give to someone who took
19 your loved one away. These people had no regard to
20 human life. They took orders. They made choices.
21 They didn't think they were going to get caught;
22 that's the main thing. They planned it, but it fell
23 apart. It fell apart with good people like Kenny
24 Boone and his people. The family of Talya Poston
25 has been gravely traumatized both emotionally and

1 physically by this senseless act of violence. A
2 permanent picture in our minds and hearts of the
3 last moment, Talya running from the killer calling
4 9-1-1 to seek help to let them know she'd been shot,
5 they've been shot, Isaiah and Flowers. And even
6 doing that, the killer decided to shoot her again,
7 and he didn't have any remorse. He didn't have any
8 conscience to know that she was trying to leave and
9 try to get away and get help, but he shot her again.

10 Time will not heal these wounds; but it,
11 perhaps it will ease our pain. We want to thank the
12 hundreds of people who've been praying for us,
13 people from United States of course, Hawaii, China,
14 and there's other places that we know of people that
15 have been praying. I'm gonna say it again, I want
16 to thank -- and my pastor is here today for support;
17 he's been very supportive. All of my fellow, the
18 congregation have been. They want justice. They
19 know that God is in this. But I want to especially
20 thank Patricia Burkette. I don't believe she's here
21 today; but she insisted when this thing happened,
22 she made several phone calls to us wanting
23 interviews and we declined. We said, no, no, no.
24 But she told us, she said, nobody's been caught yet.
25 We did give an interview and she zoomed, zoomed

1 right on Talya's favorite card. Talya kept it with
2 her all the time. Isaiah 4031. The camera zoomed
3 in that; and how ironic that Talya's favorite verse
4 is Isaiah 4031 about waiting on the lord and running
5 and not be weary and she died. She got murdered and
6 died and went to heaven on Isaiah. But I want to
7 thank her for doing that because she zoomed in and
8 then just remember us saying it's only a matter of
9 time that you get caught, go ahead and give up, in
10 God's eyes you're already caught. I just remember
11 her doing that.

12 I want to thank — I got a couple more to
13 thank. I want to thank Tonya Brown for always being
14 there, for all the hearings, and any time we'd see
15 her in some of the functions she'd always come up
16 and ask how we're doing, she's praying for us, and
17 to hang in there. I want to thank Tracy Bridges. I
18 believe she's here. She writes the truth, and the
19 truth will set you free, for the Morning News.
20 There's some other — there's a gentleman that's
21 always here too. He comes to all — we've been to a
22 lot of things, a lot of things. Thank you to
23 Detective McFadden for standing up for our family
24 and cleaning up as many criminals as you can, get
25 them off the street, I appreciate it. Thanks also

1 to Detective Chad for all your help. I know this
2 has been tough on y'all 'cause y'all saw everything.
3 Kenny Boone, I appreciate your fine staff
4 that has worked hard getting these pieces of
5 information together because if it hadn't been for
6 this good staff — and I'm not through. I want to
7 thank you, Dudley Saleeby, he's worked tireless on
8 preparing and getting the facts straight,
9 everything. And Ed Clements, I can't thank you
10 enough for your Christian stand, all the hours you
11 put in helping for this tragedy and helping our
12 families get justice for our precious Talya and
13 Billy. And I wanted to thank all the others 'cause
14 there's others to thank; but with this fine staff
15 here it took, like I said, the people that did these
16 tragedies, they didn't, they had no idea they were
17 going to get caught. They thought they were smart.
18 They made their choices. They did all the things
19 that they thought were going right but, and I don't,
20 I don't really believe that they knew that Talya
21 ended up being strong as she was to be able to have
22 that adrenaline and have that strength to be able to
23 dial 9-1-1 when a killer is coming after you after
24 even being shot. That's why I just — they don't
25 have any remorse. They may say they do and I hope

1 they do because they'll have to answer to God one
2 day.

3 Now, Talya did a lot of poetry. I've got
4 poetry, some of her poetry on the back of that
5 poster, if you could have, you can look at some of
6 that. But she loved butterflies. One little, I —
7 she's got so many things that could have been
8 brought into the courtroom, Your Honor, for you to
9 see how creative Talya has been all her life. But
10 she — she would write notes to her mom, to me,
11 grandmama, her son, and I was just gonna read just
12 one little part. She says, my aunt Debbie, thanks
13 for all you've done, you're my angel Aunt Debbie, my
14 hero, my forever butterfly. And she has a little
15 butterfly; that's one of them. She just said God
16 knew what he was doing when he gave me Debbie
17 Jeanette for my aunt. I love you for a million
18 reasons, a billion reasons, and a trillion reasons,
19 you're the best. I love you forever, your only
20 niece, Talya Jeanette. She would send a lot of
21 things to her grandmother who is 89. Dearest
22 grandmother, you're the best grandmother any
23 granddaughter could ask for. God made you perfect,
24 I know this. This is the first holiday without our
25 beloved granddaddy, but I know he's in heaven and

1 looking down on us and smiling, he loved you so
2 much. And y'all were together 64 years. Wow, what
3 amazing love story, I am so proud of you. I love
4 you truly. You are a true inspiration to me and all
5 women. You have endured so much. She's my mom.
6 Talya's grandmother is a 28 year breast cancer
7 survivor. Talya's mother is also a breast cancer
8 survivor. I love you, Talya.

9 The only other thing I want to read is
10 just, I just highlighted a little bit of where she
11 used to write little notes and actually write
12 little, put little flowers and you'll see on there,
13 the poster but, and make it real fancy looking.
14 This was to her mom. I'm not gonna — I only got a
15 little bit too highlighted, but she would write
16 notes to my sister all the time and her son. "Well,
17 just wanted to have a little reminder in writing
18 written to you, mama, that you, that tell you that I
19 love you." And it's got a little heart. "I love
20 you so very much more than all the stars and all the
21 galaxies. Your only daughter, Talya."

22 Your Honor, this has truly been a
23 devastating situation. We're coping with it as best
24 we can through the love of the community, our
25 churches, our friends, our loved ones, and most of

1 all through God; but we are -- we expect the maximum
2 for the defendant today. It was -- it was gonna be
3 a death penalty case which we were all in favor of
4 once it got down to that because of the horrendous
5 crime committed to two human beings that he had
6 no -- that they had no regard to. So we expect, we
7 look towards you to give us wisdom in what you
8 render; but we, all of us, expect the maximum. We
9 do not ever want to hear that the defendant can be
10 out in 30 years or more. We need closure and need
11 to know that the defendant will never ever harm
12 another human being on earth. His place is in
13 prison for the rest of his remaining natural life.
14 Thank you, Your Honor.

15 THE COURT: Thank you, ma'am.

16 Solicitor, anything further?

17 THE FATHER OF VICTIM POSTON: My name is
18 Billy Poston. I'm Talya's dad.

19 THE COURT: Yes, sir.

20 THE FATHER OF VICTIM POSTON: Probably few
21 of the family really know what her name means, and
22 it's quite appropriate, her name Talya means heavens
23 due. It's Isrealian, and it's quite appropriate.
24 That's where she is now. My request is that the
25 maximum sentence of life without parole be given;

1 and not out of anger, and I think mostly so that
2 somebody else will not be damaged or hurt at a later
3 time. And I'm past the point of anger and have only
4 pain, sadness. Thank you, sir.

5 THE COURT: Thank you, Mr. Poston.

6 MR. CLEMENTS: That's all, Your Honor.

7 THE COURT: If you don't mind passing that
8 to me.

9 (Pause.)

10 THE COURT: I want to take a second to
11 just give my deepest appreciation and thanks to
12 Sheriff Boone, to the investigators. You know, I
13 hear lawyers in court a lot of times tell juries
14 that, you know, I know y'all see CSI on TV and
15 that's television and life isn't CSI. And all
16 that's true, but I will tell you, Sheriff, your
17 office and your folks, they're not far from it.
18 They're outstanding investigators, the things that
19 were done in this case to put this case together and
20 to find the truth. Unfortunately, in so many other
21 jurisdictions would have gone unsolved. I just
22 think that your folks have — are just a good
23 example of excellence in law enforcement. And I
24 know it doesn't occur without outstanding leadership
25 and then also the men and women who were in the

1 streets with the dedication that they have and so I
2 want to thank you and your staff. It may, it may
3 have been that the killers were found, but I don't
4 know that it would have been resolved to true
5 justice and gotten everyone that was involved
6 without their efforts. So it makes me feel good
7 that I live in a jurisdiction that has that type of
8 law enforcement in place.

9 Everything that has been said I
10 appreciate. Mr. William Hall, I appreciate your
11 comments. That was very insightful and truthful.
12 We all have to live with the decisions that we make.
13 I have people tell me all the time, Judge, my son or
14 my daughter, they're not bad, they're not a bad
15 person, they're not — they're a good person,
16 they're this, they're that. But the truth is, we
17 pretty much are a result of the decisions we make.
18 I don't know what makes a person a bad person versus
19 a good person other than the decisions they make,
20 and so it's hard to — and I don't sit in judgment
21 of people's character, but I do sit in judgment of
22 decisions and so I appreciate your words with
23 regards to that.

24 And Ms. Ross, you made a statement and I
25 appreciate and I understand that statement, but

1 unfortunately it's not something that I can do. And
2 you made a statement, you said, Judge, I hope you'll
3 make a decision based on as if it was your loved one
4 that was taken. And I understand that, I get that,
5 but that would be improper. The legislature has
6 entrusted me with a position that calls for me to
7 be, to the extent we can do it as humans, to be
8 impartial and detached and to make decisions based
9 solely on the law and the circumstances. And so
10 even though I certainly understand that request,
11 it's not something that would be appropriate. I'm
12 trying — and I try to do that, always to detach
13 myself and look at cases based solely on the facts
14 and the circumstances, the protection of the
15 community as a whole, and that the appropriate
16 sentence be administered based on the facts of that
17 case.

18 This is a case that is, it's frightful.
19 It's rather disconcerting to believe that we live in
20 a society where people can actually have other
21 people killed. I'm not naive enough to believe that
22 doesn't go on, but you don't ever expect it to occur
23 in your community. And it's also disconcerting that
24 it would be in such a capacity where it was to
25 thwart and interfere with our system of justice and

1 to interfere with, to interfere with the criminal
2 justice system as a whole and to manipulate it.
3 That won't be tolerated. It can't be tolerated in a
4 civil society. There has to be the respect and for
5 the system of justice, and it can't be manipulated
6 such as was attempted here. And the message to the
7 community has to be that that type of conduct, not
8 only will it not be tolerated but it will be met
9 with the strictest of punishment.

10 On indictment 2009-GS-21-707, there are
11 two counts for distribution of cocaine base third
12 offense, the sentence of the Court is that you be
13 committed to the State Department of Corrections for
14 a period of 30 years and pay a fine of fifty
15 thousand dollars on each of those counts. On
16 indictment 2012-GS-21-897, as to the two counts of
17 accessory before the fact of a felony, that being
18 murder, the sentence of the Court is that you be
19 committed to the State Department of Corrections for
20 the remainder of your natural life without the
21 possibility of parole. Those sentences are to run
22 concurrent each other. I don't think there is any
23 other sentence that would be appropriate based on
24 the facts and circumstances that were presented to
25 the Court in this case. Good luck to you, sir.

C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, FRANCES BAKIS-RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Twelfth Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 26th day of July, 2014.

Frances B Ray

FRANCES BAKIS-RAY, RPR

FILED
FORM 5

2014 FEB 10 PM 4:44

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

IN THE COURT OF COMMON PLEAS

20 14 CP 21 369

Fonnelze T. Delane #298183
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

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 clear to which question any such continued answer refers.

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

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

1. Place of detention Lee Correctional 990 Wisacky Hwy Bishopville, S.C.
2. Name and location of Court which imposed sentence General Sessions Florence County
3. Name(s) of co-defendant(s) (if any) Montez Barker and Laross Graham
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Accessory Before the fact of Murder (2 counts)
 - (b) Distribution of Crack
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) October 8th 2013
 - (b) _____

CERTIFIED: A TRUE COPY
Connie Reel Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) My lawyer advised me that it would be no use to do so.
- (b) My attorney did not advise me that I had appeal rights.
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: The words are written on white paper connected

10.

I.

Applicant was denied his right to the Effective Assistance of counsel guaranteed by the sixth and fourteenth amendments to the United States constitution's more specifically alleged below:

(a) counsel advised applicant to plead guilty only, because counsel DID NOT want to go to trial.

1) Lead attorney as well as assistant attorney advised applicant that they were not good enough to win at trial, so therefore it would be in his best interest to accept the plea bargain being offered by the Solicitors Office.

2) Applicant advised counsel several times that he wasn't interested in the plea that was being offered, but the counsel on numerous occasions repeatedly presented the offer as if he were trying to persuade the applicant that pleading guilty was the only alternative.

3) Due to counsel's lack of determination of not wanting to proceed to go thru with trial, was a key to influencing the applicant by way of words and actions that he wouldn't properly represent the applicant to the fullest extent and the trial taking place, because it was clear counsel wanted to surrender.

(b) counsel failed to appeal and file motion of re-consideration after applicant asked him to.

1) Counsel was asked by applicant to file motion of re-consideration immediately after sentencing and was questioned about the process before sentencing and the effect it could have on sentence, but counsel was ineffective and insufficient to inform applicant if he could even file an appeal.

2) Counsel advised client that it would be no reason to file such a motion, because the judge would still uphold the same sentence and he didn't intend to file motion. Which I clearly believe it's not the counsel's job to decide that, but it is his job to file motions on the client's behalf that are significant to representation within the laws, guidelines, and requirements to fully represent the applicant.

3) After sentencing applicant mailed a letter by mail to assistant attorney once again requesting the filing of motion, or the avenues in which applicant should take to file on behalf of himself.

II.

Applicant was denied his fourteenth Amendment right to Due Process where the guilty plea was NOT entered knowingly, voluntarily, and intelligently

and was entered, because of the ineffective assistance of counsel.

a) Applicant plead guilty, because counsel provided applicant with no other reasonable alternative.

1) Applicant was appointed two attorneys (Pro Bono), because he was unable to retain a private attorney, so applicant felt that if he'd complain about improperly being represented that, because he lacked the funds he would have to remain with same attorneys after filing complaint. Therefore would've caused the attorneys work ethic to be even more ineffective.

2) Both appointed attorneys unreasonably used their positions of trust to scare applicant into believing that if he went to trial he definitely would be found guilty and put to death.

3) After counsel filed a Motion to Elect and it was denied with several other motions that were filed on applicant's behalf. Counsel became presumptively unreliable and asked the applicant why were they still putting up a fight, because he didn't want him to be on death row which was inevitable.

b) Counsel was ineffective in failing to ensure that the trial was held outside of Florence County, because applicant would not receive a fair trial in Florence County. Therefore since counsel refused to do anything about it applicant decided, because of the unfairness he would be against. He shouldn't risk being sentenced to death by a jury of "Killers" as his attorneys referred to his prospective jurors.

1) Applicant's case was highly publicized within the community and some surrounding areas. This was done via news, newspaper and several other media outlets.

2) Counsel told applicant that with the jurors that were remaining to be selected for trial would not be a jury of his peers and stated that they were a group of Killers, because several of them were connected to law enforcement in some way, so this type of verbiage surely and definitely drove applicant into claiming guilt.

3) Victims family had a tremendous financial impact on political people as well as community persons and possible jury members who could've been easily manipulated by the sheer power and influence of both victim's families which would've forced jury members to be incompetent, bias, and **impartial** when making a decision.

4) Jury members were given instructions other than what South Carolina law dictates for Death Penalty cases.

Furthermore representation from both counsels fell below objective standards, or reasonableness and their conduct caused applicant to plead guilty. Had they shown better preparation and willingness to proceed with trial applicant wouldn't have plead.

- (a) _____
- (b) _____
- (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10): These words are also connected on white page attached

- (a) _____
- (b) _____
- (c) _____

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

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

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

(a) the specific nature thereof:

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

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

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

(c) the disposition thereof:

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

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

No

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) _____ PCR was the first process to appeal that I knew of

(b) _____

(c) _____

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

- (a) your arraignment and plea? Yes
- (b) your trial, if any? No, didn't go to trial
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

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

- (a) the name and address of each attorney who represented you:
 - i. Scott Suggs - 506 West Evans St. Florence, S.C. 29501
 - ii. Johnny Etheridge - 2184 West Evans St. Florence, S.C. 29501
 - iii. Jim Hoffmeyer 125 Warley St. Florence, S.C. 29501
- (b) the proceedings at which each such attorney represented you:
 - i. Scott Suggs - arraignment and bond hearings
 - ii. Johnny Etheridge - arraignment and bond hearings
 - iii. Jim Hoffmeyer - sentencing

19. State clearly the relief you seek in filing this application: If my guilty plea could be withdrawn that would be good relief, but if not a re-consideration and reduction of my sentence would be sufficient.

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

No

STATE OF SOUTH CAROLINA)
)
County of Florence)

VERIFICATION

I, _____, 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.

Frome Delore

SWORN to and subscribed before me this 17th
day of February, 2014.

Mischa Michel (L.S.)
Notary Public

My Commission Expires: 9-3-2014

FILED
2014 FEB 10 PM 4:44
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY
Connie Reel Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

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

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

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

Fionnefe Delane
Applicant

SWORN or affirmed to and subscribed before me this
7th day of February, 2014.

Muscha Michel
Notary Public

My Commission Expires: 9/3/2014

FILED
2014 FEB 10 PM 4:44
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY
Connie Reel Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

)
)

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

Fonelze T. Delane, #298183,

)
)

Case No. 2014-CP-21-369

Applicant,

)
)

v.

)
)

RETURN

State of South Carolina,

)
)

Respondent.

)
)

Respondent, making its Return to the Application for Post-Conviction Relief filed February 10, 2014, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. In March 2009, the Florence County Grand Jury indicted Applicant for possession of cocaine base with intent to distribute (2009-GS-21-106). In June 2009, the Grand Jury indicted Applicant for three counts of distribution of cocaine base (2009-GS-21-707). While awaiting trial on these charges, Applicant was arrested for his involvement in the death of two confidential informants. In July 2012, the Grand Jury issued indictments for two (2) counts of murder, two (2) counts of accessory before the fact to murder, two (2) counts of solicitation to commit murder, and a single count of conspiracy (2012-GS-21-897). W. James Hoffmeyer, Esquire, and Paul V. Cannarella, Esquire represented Applicant on all of his charges.

On March 5, 2010, the State served Applicant and his attorneys with a notice of intent to seek the death penalty. The state alleged the aggravating factors warranting the death penalty were that

the murders were committed by another person as Applicant's agent or employee, that the murders were of two people pursuant to one scheme or course of conduct, and that the murders were of witnesses for the purpose of impeding or deterring the prosecution of a crime. The Honorable Thomas A. Russo was appointed to preside over Applicant's case.

On October 8, 2013, the State withdrew its notice of intent to seek the death penalty and allowed Applicant to plead to two (2) counts of accessory before the fact to murder and two (2) counts of distribution of cocaine base. In exchange for the plea, the State dismissed the remaining charges. Applicant entered his plea without negotiations or recommendations as to sentencing, and Judge Russo sentenced Applicant to concurrent terms life without the possibility of parole on each count of accessory before the fact to murder and thirty (30) years for each count of distribution of cocaine base. Applicant did not appeal his plea or sentence.

II.

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

1. Ineffective Assistance of Counsel
 - a. "Counsel advised applicant to plead guilty only, because counsel DID NOT want to go to trial."
 - b. "Counsel failed to appeal and file motion of reconsideration after applicant asked him to."
2. Involuntary Guilty Plea
 - a. "Applicant plead guilty, because counsel provided applicant with no other reasonable alternative."
 - b. "Counsel was ineffective in failing to ensure that the trial was held outside of Florence County, because applicant would not receive a fair trial in Florence County. Therefore, since counsel refused to do anything about it applicant decided, because of the unfairness he would be against. He shouldn't risk being sentenced to death by a

jury of 'Killers' as his attorneys referred to his prospective jurors.”

Any claims not specifically enumerated in the application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRPC.

Attached to this return and incorporated herein are the records of the Florence County Clerk of Court regarding the subject conviction(s), Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III.

Respondent submits Applicant's allegation of ineffective assistance of plea counsel is without merit. In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of plea counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process" that the plea proceedings "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court

strongly presumes plea counsel 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 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 plea counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, plea 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. With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of plea counsel probably raises questions of fact 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.

Respondent further submits Applicant's allegation his guilty plea was involuntary is without merit. In post-conviction relief 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) (citing Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993)). 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) (citing Hill v. Lockhart, 474 U.S. 52; Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)). 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. at 56. Furthermore, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). 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. at 137-38, 654 S.E.2d at 874 (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)).

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 questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper, 279 S.C. 264, 305 S.E.2d 247.

V.

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

VI.

WHEREFORE, having made its return, Respondent requests an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

JOSHUA L. THOMAS
Assistant Attorney General
S.C. Bar No. 100777

By: 
ATTORNEYS FOR RESPONDENT

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

June 30, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)
)
)
FONNELZE T. DELANE, #298183)
)
)
Applicant,)
)
vs)
)
STATE OF SOUTH CAROLINA,)
)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS

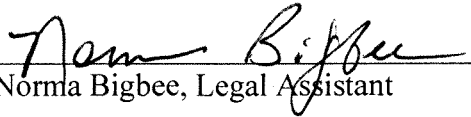
2014-CP-21-369

AFFIDAVIT OF SERVICE BY MAIL

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

Tristan Michael Shaffer, Esquire
4701 Oleander Drive
Myrtle Beach, SC 29577

DATED this 30th day of June, 2014.


Norma Bigbee, Legal Assistant

State of South Carolina	)	Court of Common Pleas
	)	Twelfth Judicial Circuit
County of Florence	)	Case No. 2014-CP-21-00369
)	
Fonnelze T. Delane,)	
)	
Plaintiff,)	
)	
-vs-	)	Transcript of Record
)	
)	
State of South Carolina,)	
)	
Defendant.)	
)	

January 30, 2018
Florence, South Carolina

B E F O R E:

The Honorable Michael G. Nettles, Judge

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

Justin Kata, Esquire
Attorney for the Applicant

Lindsey McCallister, Esquire
Attorney for the Respondent/State

Krystal J. Smith
Circuit Court Reporter

I N D E X

WITNESS/DESCRIPTION	PAGE NUMBER
Paul Cannarella	
Direct by Mr. Kata.....	6
Cross by Ms. McCallister.....	13
W. James Hoffmeyer	
Direct by Mr. Kata.....	16
Cross by Ms. McCallister.....	23
Redirect by Mr. Kata.....	30
Direct by the Court.....	31
Fonnelze Delane	
Direct by Mr. Kata.....	33
Cross by Ms. McCallister.....	39
Redirect by Mr. Kata.....	48
Applicant Rests.....	49
Motion to Amend Pleadings.....	49
W. James Hoffmeyer	
Direct by Ms. McCallister.....	51
Direct by the Court.....	52
Cross by Mr. Kata.....	53
State Rests.....	54
Arguments of Counsel.....	54
Court Reporter Certification.....	59

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

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
------------	--------------------	------------	------------

(No Exhibits Presented)

COURT REPORTER LEGEND

dashes --	intentional or purposeful interruption or change in thought
ellipses . . .	trailing off
[ph]	phonetically written
[sic]	written as said

1 JANUARY 30, 2018

2 (WHEREUPON, the proceedings began at 9:36 a.m.)

3 THE COURT: Good morning, everybody.

4 MS. MCCALLISTER: May I approach?

5 THE COURT: Yes.

6 Yes, ma'am, you're recognized.

7 MS. MCCALLISTER: Thank you, Your Honor.

8 This is Fannelze Delane versus the State of South
9 Carolina, 2014-CP-21-0369. Mr. Delane filed this application
10 for post-conviction relief on February 10th, 2014. He is
11 presently confined in the South Carolina Department of
12 Corrections pursuant to orders of commitment of the Florence
13 County Clerk of Court.

14 In March of 2009, he was indicted for possession of
15 cocaine base with intent to distribute. In June of 2009, he
16 was indicted for three counts of distribution of cocaine
17 base. And while awaiting trial on those charges, he was
18 arrested for his involvement in the death of two confidential
19 informants.

20 In July of 2012, he was indicted for two counts of
21 murder, two counts of accessory before the fact to murder,
22 two counts of solicitation to commit murder, and a single
23 count of conspiracy. He was represented on those charges by
24 James Hoffmeyer and Paul Cannarella.

25 On March 5th, 2010, the State served Mr. Delane and his

1 attorneys with a notice of intent to seek the death penalty
2 alleging the aggravating factors that the murders were
3 committed by another person at his agent -- as his -- as Mr.
4 Delane's agent or employee, that the murders were of two
5 people pursuant to one scheme or course of conduct, and that
6 the murders were of witnesses for the purpose of impeding or
7 deterring the prosecution of a crime. Judge Thomas A. Russo
8 was appointed to preside over the case.

9 On October 8th, 2013, the State withdrew the notice of
10 its intent to seek the death penalty and applicant pleaded
11 guilty to two counts of accessory before the fact to murder
12 and two counts of distribution of cocaine base. The
13 remaining charges were dismissed in exchange for that plea.
14 He entered the plea without negotiations or recommendation as
15 to sentencing, and Judge Russo sentenced Mr. Delane to
16 concurrent terms of life without the possibility of parole on
17 each accessory count and 30 years each on the distribution of
18 cocaine base.

19 He did not appeal his plea or his sentence. He is
20 represented in this post-conviction relief action by Mr.
21 Justin Kata, who is present in the courtroom today.

22 THE COURT: Now, where is Mr. Delane?

23 Yeah, you can come and have a seat over here if you'd
24 like.

25 Mr. Kata, you're recognized. I'd be glad to hear from

1 you.

2 MR. KATA: Thank you, Your Honor. May it please the
3 Court. Mr. Delane would call his first witness, Mr. Paul
4 Cannarella.

5 THE COURT: All right. Mr. Cannarella, if you could,
6 place your left hand on the Bible and raise your right hand
7 as the clerk administers the oath.

8 THE CLERK: Do you swear the testimony you give in this
9 case to be the truth, the whole truth, and nothing but the
10 truth, so help you God?

11 THE WITNESS: I do.

12 THE CLERK: Please be seated and state your name for the
13 record.

14 THE WITNESS: Paul Cannarella.

15 MR. KATA: May it please the Court.

16 THE COURT: Yes.

17 PAUL CANNARELLA, being first
18 duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. KATA:

21 Q: Mr. Cannarella, please tell the Court how did you become
22 involved in this case?

23 A: Court-appointed.

24 Q: Okay. You were court-appointed?

25 A: Yes, sir.

1 Q: Okay. And was this a case that was a little bit
2 different than any of the others?

3 A: Well, I guess in the sense that it wasn't clearly
4 evident, that there was going to be a question of fact as to
5 whether or not he was a principal participant as a principal
6 felon. As I recall, there was an issue of whether or not he
7 was present at the scene and participating and could the
8 State convince a jury that he was a principal in the first or
9 second degree by being present at the scene, as I recall.

10 Q: Okay.

11 A: That's what I think.

12 Q: All right. Thanks. And when I asked if it was
13 different than any other case, I guess I should have
14 specifically said, you know, this was a death penalty
15 situation.

16 A: Yeah. I mean it was kind of unique in a lot of
17 different ways, if you want me to expound on that a little
18 bit.

19 Q: Okay.

20 A: You want me to?

21 Q: Go ahead.

22 A: Well, it was a textbook *Lyle* case. I'll tell you that
23 right now. That was a significant thing that sticks out in
24 my mind because he was accused of having two witnesses
25 against him in a pending drug case killed, and that would be

1 a textbook *Lyle* case to me.

2 Q: Okay.

3 A: So I thought it was unique in that regard.

4 Q: Okay. All right. So when you received the death
5 notice, was any other counsel appointed to you at that time
6 or was there previous counsel?

7 A: I think Jim Hoffmeyer was already in the case, I
8 believe.

9 Q: Okay. So was he appointed first or were you appointed
10 first?

11 A: I can't remember that. I thought Jim was appointed
12 first. Maybe not. I don't know.

13 Q: Okay. All right. So both of you were appointed to the
14 case. It's a death penalty case, the State has filed the
15 death notice, and you guys have it?

16 A: Right.

17 Q: Okay. Now at that point in time, I mean did you guys,
18 you know, come up with some sort of plan of how we're going
19 to tackle this? I mean did you -- did you take some duties
20 and Mr. Hoffmeyer took some duties?

21 A: I think it was shared. You know, we didn't specifically
22 pick out a part of the case to handle, you know, like the
23 guilt phase I do and the penalty phase Jim does. We didn't
24 do that. We just shared.

25 Q: Okay.

1 A: It was all shared.

2 Q: Okay. So both of you shared all the duties?

3 A: I'd say so, yeah.

4 Q: Okay. All right. Did you guys hire a mitigation
5 specialist?

6 A: I hired a lady.

7 Q: Okay. What was her name?

8 A: I can't remember.

9 Q: Okay.

10 A: And Jim was -- Jim handled most of the getting her on
11 board with us.

12 Q: Okay. So Mr. Hoffmeyer?

13 A: Right.

14 Q: That took --

15 A: He's going to know a lot more --

16 Q: -- kind of took the charge on that in the case?

17 A: He's going to remember a lot more and know a lot more
18 about this case then I will because he -- you know, he was
19 over here in Florence and we worked -- both worked on it
20 together, but I'd say Jim probably had a few more hours in it
21 than I did, to be -- to be quite straightforward about it. I
22 mean every time I worked on something, it wasn't with Jim in
23 Florence or we didn't sit down all the time and work
24 together. We were working on it. I worked on it some in my
25 office without him and he did the same in his.

PAUL CANNARELLA - DIRECT BY MR. KATA

1 Q: I understand, but you can't recall the name of the
2 mitigation specialist that was hired?

3 A: I can't remember. Jim got her. I just -- I haven't
4 reviewed anything. It's been however many years ago.

5 Q: I understand.

6 A: And I just can't remember her name, but I know she was
7 qualified in all respects.

8 Q: Okay. Do you remember where she was based out of or any
9 kind of details?

10 A: I think she might've been based out of Columbia.

11 Q: Okay. Was she white? Was she black?

12 A: I think she was a white female.

13 Q: Okay. I mean do you remember who she interviewed?

14 A: You know, she interviewed the defendant. She -- I
15 assume she interviewed every important family member. If I
16 had something in front of me, I probably could answer those
17 questions --

18 Q: Okay.

19 A: -- better, but just going from memory on this, I don't
20 remember it exactly and I haven't really opened the file up
21 and prepared --

22 Q: Okay.

23 A: -- in advance for all the questions you're going to ask
24 me.

25 Q: Okay. All right. So we're leading up to jury

1 selection.

2 A: Okay.

3 Q: Okay. And as far as you're concerned, I mean this case
4 is a trial at that point; correct?

5 A: That's right.

6 Q: Okay. And -- well, I mean what did you do to prepare
7 for that trial?

8 A: Anything I'd normally do. I mean we had a jury
9 consultant there, I think, and whatever I would normally do,
10 I mean get prepared to cross-examine witnesses. I can't tell
11 you specifically what I did. Do you want to -- do you want
12 to know? I mean I can't answer that question specifically.

13 Q: Okay.

14 A: What I would normally do to get prepared to try any
15 trial.

16 Q: Okay. Do you remember how many times you met with the
17 defendant?

18 A: No.

19 Q: I mean can you estimate? One? Ten? A hundred?

20 A: I would probably say five times.

21 Q: Okay. Within how long of a span? I mean was it all
22 direct before the trial or was it spread out evenly?

23 A: No. It was over a period, I would say over a period of
24 a year maybe.

25 Q: Okay.

1 A: And more intense as you got closer to the trial date
2 because I think this case was pending for -- for two years
3 before we went to trial.

4 Q: All right. So we get to jury selection and you guys
5 begin picking the jury; is that correct?

6 A: Right.

7 Q: Okay. I mean at what point in time did this turn into
8 -- into a plea situation? I mean do you recall that?

9 A: I think the second day.

10 Q: Okay. And I mean did you have a conversation with the
11 defendant about pleading?

12 A: I'm sure we did. I can -- I'm sure we did. Yeah, we
13 had a conversation with him. I don't remember specifically
14 exactly everything we talked about.

15 Q: Okay. Do you remember bringing his mom up to the
16 courthouse and arranging a meeting with the defendant and his
17 mother?

18 A: No.

19 Q: You don't recall that?

20 A: Huh-uh. I'm not saying it didn't happen. Now, you
21 understand I'm -- you're asking me if I remember something
22 specifically --

23 Q: Okay.

24 A: -- and I'm telling you I don't.

25 Q: Okay. I mean I know you don't remember the mitigation

1 specialist, but I mean was she -- was she present at jury
2 selection?

3 A: You know, I think she was.

4 Q: Okay. And of course, you were appointed on this case.
5 The State is funding it. I mean did you apply to the Court
6 for funding for the mitigation specialist or did Mr.
7 Hoffmeyer?

8 A: Jim did.

9 Q: Jim applied?

10 A: Yeah.

11 Q: Okay. And as far as you know, I mean that funding was
12 approved?

13 A: Yes, sir.

14 Q: Okay.

15 MR. KATA: I beg the Court's indulgence, Your Honor.
16 No more questions, Your Honor.

17 THE COURT: Very good.

18 MR. KATA: Thank you.

19 THE COURT: Yes, ma'am. You're recognized.

20 MS. MCCALLISTER: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MS. MCCALLISTER:

23 Q: Okay. You testified just a minute ago that you -- you
24 and Mr. Hoffmeyer shared the duties on this case, but you
25 felt that Jim maybe put in more hours; is that correct?

PAUL CANNARELLA - CROSS BY MS. MCCALLISTER

1 A: Yes, ma'am.

2 Q: So was Jim sort of the lead person on the case, the lead
3 attorney?

4 A: I'd say so. Yes, ma'am.

5 Q: Okay. And so then your role was assisting him with --
6 did he delegate tasks to you or you guys just kind of figured
7 it out?

8 A: We just kind of shared the responsibilities.

9 Q: Okay.

10 A: You know, one -- one thing in particular I remember
11 focusing a lot of my research on was the issue of whether or
12 not you could really seek the death penalty against him --
13 against the defendant if he were not present and
14 participating in the event, and there was some issues
15 regarding that and I remember reading some scholarly articles
16 about that and some cases about that and how you can't put
17 him to death if he was an accessory.

18 Q: Okay.

19 A: And that's why I believe we ended up doing what we did
20 because he pled to what we believed the State could prove.

21 Q: Okay. And did you have -- you said you met with him
22 approximately five times --

23 A: And, ma'am --

24 Q: -- over the course of your --

25 A: Yes, ma'am.

1 Q: -- representation?

2 A: And that's just a -- that's just a --

3 Q: Okay.

4 A: -- a guess.

5 Q: That's just a guess, but do you recall did you ever meet
6 with him alone without Mr. Hoffmeyer present?

7 A: I don't think so.

8 Q: Okay. So all -- every -- every meeting that you had
9 with him would have been a joint meeting?

10 A: I think so.

11 Q: Okay.

12 MS. MCCALLISTER: I think those are all the questions I
13 have, Your Honor.

14 THE COURT: Any redirect?

15 MR. KATA: No redirect, Your Honor.

16 THE COURT: You may -- you may step down and you're free
17 to leave.

18 THE WITNESS: Thank you, Judge.

19 THE COURT: You're welcome to stay though if you would
20 like.

21 THE WITNESS: Okay.

22 THE COURT: All right.

23 All right. You may call your next witness.

24 MR. KATA: Mr. Jim Hoffmeyer, please.

25 THE COURT: Mr. Hoffmeyer, if you could please come

W. JAMES HOFFMEYER - DIRECT BY MR. KATA

1 forward and place your left hand on the Bible and raise your
2 right hand as the clerk administers the oath.

3 THE CLERK: Do you swear the testimony you give in this
4 case to be the truth, the whole truth, and nothing but the
5 truth, so help you God?

6 THE WITNESS: I do.

7 THE CLERK: Please be seated and state your name for the
8 record.

9 THE WITNESS: My name is Jim Hoffmeyer.

10 W. JAMES HOFFMEYER, being
11 first duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. KATA:

14 Q: Mr. Hoffmeyer, please tell the Court how you became
15 involved in this case?

16 A: I, like Mr. Cannarella, was appointed by the Court to
17 represent Mr. Delane.

18 Q: Okay. And at the time you were appointed, I mean you
19 were aware that this was a death penalty?

20 A: I believe so. Uh-huh.

21 Q: What -- what role did you take in the preparation of
22 this trial?

23 A: I would say that we shared it, but I was probably
24 slightly more dominant as far as lead counsel in the case.

25 Q: Okay. Were you the one in charge of the hiring a

1 mitigation specialist?

2 A: Yes, sir. I handled all that kind of stuff.

3 Q: Okay. Do you remember who you hired?

4 A: Carolyn Graham, and I believe she is out of Columbia.

5 Q: Do you know where she works?

6 A: I believe she's out of Columbia. She had an
7 investigation type --

8 Q: She owned her own business?

9 A: Yes, sir. And had done this for a while.

10 Q: Okay. Do you remember who she interviewed in the course
11 of preparation for trial?

12 A: She, of course, interviewed Mr. Delane, went to his home
13 in Darlington County, interviewed all those -- all his family
14 members. She also received records through me, school
15 records, all kind of records that she reviewed. She probably
16 did some interviews that spun off of those records and, of
17 course, met with me and Paul regularly, particularly me,
18 either met with me or by phone as to what she was finding,
19 what additional records she needed, all those types of
20 things.

21 Q: Okay. Do you remember how many times you met with her?

22 A: Not specifically, but I would say I met with her
23 personally around eight to ten times. We talked on the phone
24 numerous times.

25 Q: Okay. And when she would interview people, I mean how

1 would she report back to you? I mean would she draw up a
2 report that she would write and then give it to your office
3 or would she just --

4 A: Some of it was documented, some of it was by phone to
5 determine where she wanted to go from there, that type of
6 thing.

7 Q: Okay. But do you remember how many were documented and
8 how many were by phone?

9 A: I do not know that off the top of my head.

10 Q: Okay. Let me draw your attention to this transcript,
11 you know, in this case and specifically the portion where you
12 begin to present the mitigation evidence.

13 MR. KATA: Actually, Your Honor. Strike that. Let me
14 back up a little bit further.

15 BY MR. KATA:

16 Q: Mr. Hoffmeyer, I mean at what point in time did this
17 turn from a fully contested death penalty trial to a plea? I
18 mean when did that happen?

19 A: That occurred when jury selection began. The jurors
20 were put into panels and we received a list of the panels,
21 and we had a jury selection expert at jury selection with us.
22 And as we were going through that process of reviewing the
23 panels and that type of thing -- and, of course, the
24 discussion about a potential plea had been ongoing for some
25 time. So it wasn't as if it just was addressed or came up at

1 that point. It was something that he had been considering,
2 we have been discussing since really the beginning. I'm sure
3 you understand that.

4 Q: Okay. Do you recall setting up a meeting during jury
5 selection with -- where you brought his mother to the Court?

6 A: I believe that at some point his mother was brought up,
7 but as I recall, if I'm remembering correctly, that was done
8 perhaps in the Solicitor's Office such that she came up to
9 the courthouse. It wasn't the day of jury selection, I do
10 not believe, but another day where we had time in the
11 conference room to discuss things with her, that type of
12 thing.

13 Q: Okay. And in that conversation, I mean were you
14 advising him to plead guilty?

15 A: No. I advised him the pluses and minuses of all of it
16 and then it was his decision as to whether to plead guilty or
17 not.

18 Q: Okay.

19 A: It's always the horns of the dilemma in a death penalty
20 case because we certainly couldn't say that this jury will
21 not put you to death, but obviously, we wouldn't tell him
22 they definitely would. We don't know until the jury comes
23 back.

24 Q: Okay. So it looked like during jury selection this
25 turns into a plea -- okay? -- and it ended up being a plea.

1 Describe to the Court -- I mean what -- what happened in
2 terms of, you know, right now we're going to go into
3 sentencing or I mean did you get a break? I mean did you --
4 when did they schedule the sentencing? Was it the same day?

5 A: I believe, if I recall correctly, the sentencing was
6 scheduled for the following day, following morning.

7 Q: Okay. So they scheduled it for the following morning,
8 and I believe the judge asked if you could get in touch with
9 the people that you needed to get in touch with. Who did you
10 go contact to be present at the sentencing?

11 A: I don't recall who we contacted. His family was not
12 very involved in the case. I went and met with his mother
13 and our private investigator. I don't -- I'm not sure if Mr.
14 Cannarella was there on that occasion, and it wasn't a
15 circumstance like some cases where you have multiple people
16 calling you, multiple people saying they want to participate,
17 they want to be present. Some cases you have that, some
18 cases you don't. That was not the situation here.

19 Q: Okay. And, Mr. Hoffmeyer, I mean you -- you argued to
20 the Court in mitigation at sentencing that he did not grow up
21 in a good situation. I mean was that part of the basis for
22 your saying that was that his family was uninvolved? What
23 was the basis for that statement?

24 A: Part of the basis was that he did not have a family that
25 was very actively involved and the fact that my mitigation

1 person had informed me about the upbringing in terms of
2 finances and his family in terms of the connections and
3 whether you have very actively involved people. I'd also
4 been to the residence itself in Darlington County and met
5 with his mother and, I believe, a sister at that time and so
6 I had a general idea as to the circumstances that he grew up
7 in.

8 Q: Okay. So -- and you gathered all of that from your own
9 home visit, from the information that the mitigation
10 specialist had collected, and essentially from the facts of
11 her findings?

12 A: That, and I believe I had his school records. So I was
13 aware of his school history. Mr. Delane did not have
14 significant counseling or mental health issues like you see
15 in some cases, that type of thing.

16 Q: Okay. You also argued to Judge Russo that -- and I'm
17 quoting this from page 81, lines 11 through 13, that, you
18 know, what would have been testified to by numerous people if
19 this went to a sentencing hearing. I mean what numerous
20 people are you talking about? Do you remember?

21 A: Well, I don't know what you're specifically talking
22 about, but part of what would have been the sentencing phase
23 was there was a good bit of drug involvement by the victims
24 in the case, and that's a difficult thing to address in
25 court, particularly when you have victims to your left who

1 have lost two people, but I was trying to give the Court an
2 idea that he was accepting responsibility, we weren't -- we
3 were not putting the family or the Court through a sentencing
4 phase, hopefully to garner some mitigation and perhaps a
5 lesser sentence.

6 Q: Okay. Did you submit any exhibits to the Court?

7 A: No.

8 Q: Okay. Who all spoke on the defendant's behalf at
9 sentencing?

10 A: I know that myself and Mr. Cannarella probably spoke,
11 but you would have the transcript; so you'd have to --

12 Q: I mean if I told you -- if I told you that it was just
13 you and his mother, would that surprise you?

14 A: No, it wouldn't surprise me.

15 Q: Okay.

16 A: I mean if Mr. Cannarella, who I have the utmost faith
17 in, believed that we had said what needed to be said, then I
18 have no problem with that. Mr. Delane, as I recall, did not
19 -- as some clients do, did not give me a list of people to
20 contact and he wanted there and those types of things. That
21 just did not occur. He and I had a good relationship. I
22 worked with him for quite a long period of time. It's a
23 tragedy, but I did what I thought I could for him.

24 Q: Okay. But the mitigation specialist had a list of
25 names; correct?

1 A: I suppose she did, but everybody that I was given by her
2 she interviewed, we discussed, this type of thing, whether
3 they would be beneficial or not and potentially would have
4 been called in the sentencing phase, depending on our
5 interviews with them and things such as that as the case
6 proceeded. But again, this was not a situation which there
7 were folks coming forward.

8 Q: Okay. But all those people that you would have called
9 in the sentencing phase type situation were not called for
10 the mitigation though at the plea?

11 A: I may have called them in the sentencing phase. I do
12 not know, but they were not called in the plea and then
13 subsequent sentencing, no.

14 Q: Okay. And Mr. Delane was looking at a range of 30 up to
15 life?

16 A: That is correct.

17 Q: Okay.

18 MR. KATA: I beg the Court's indulgence, Your Honor.
19 No more questions, Your Honor.

20 THE COURT: All right. Yes, ma'am. Cross-examination.

21 MS. MCCALLISTER: Okay.

22 CROSS-EXAMINATION

23 BY MS. MCCALLISTER:

24 Q: Mr. Hoffmeyer, at the time that you were appointed on
25 this case, how much experience did you have practicing in

1 criminal law?

2 A: I'm not exactly sure when this case took place in terms
3 of my appointment. I've been practicing law since 1992. My
4 practice from the beginning involved criminal cases. It
5 developed more and more into a criminal practice as I -- in
6 the, you know, 3 to 5 years and plus. I, at that time, had
7 probably handled three capital cases or in the process of
8 handling another one and this one, but I know I had handled
9 at least two and I believe three.

10 Q: Okay. And do you recall how long before the trial that
11 turned into a plea you were appointed?

12 A: It was a good length of time.

13 Q: Okay.

14 A: I'm sure the Court would have an order appointing me.

15 Q: Do you -- do you recall how many times over the course
16 of your representation that you met with Mr. Delane?

17 A: Not specifically, but I would think I met with him 20
18 times.

19 Q: Okay.

20 A: Because I was in Florence and it was easier for me to
21 get out there.

22 Q: Okay. And you -- you testified that you were the person
23 who secured the mitigation expert; correct?

24 A: Yes, ma'am.

25 Q: And did you also secure the jury consultant that you

1 talked about?

2 A: Yes, ma'am.

3 Q: Okay. And then did you -- I thought you said you had a
4 private investigator?

5 A: Yes, ma'am. We had a private investigator as well.

6 Q: Okay. And so in terms of the investigation on this
7 case, what did that look like?

8 A: Well, in terms of the private investigator that we had,
9 he, along with myself -- we would go interview witnesses.
10 Sometimes he would go without me. Those were folks that
11 these victims worked at -- I think it was some type of
12 restaurant or something -- checking on their backgrounds and
13 the people and the phone calls that were being received
14 there. We went -- I remember we went to Horry County to
15 interview a potential witness in the case. Also, getting all
16 the records together, he would've been involved in that as
17 well, serving subpoenas, anything that came up like that.

18 Carolyn Graham was the mitigation person. She would
19 have done all his background stuff, met with the family, got
20 records, discussed with me and, of course, I was sharing
21 these things with Paul.

22 The jury consultant -- we got the juror information. Of
23 course, it was a capital case; so we were going to get voir
24 dire. The jury consultant was here to deal with some of
25 those issues if they arose.

1 I can't remember if we had anyone else. We may have had
2 someone else who looked over information, but no one that I
3 specifically recall.

4 Q: Okay. So if you're out tracking down witnesses and
5 getting records and things like that -- and I believe you
6 testified that you and Mr. Delane had a good relationship, a
7 good working relationship?

8 A: Yes, ma'am.

9 Q: So he was giving you information of things to check out
10 or assisting you with preparing a defense?

11 A: He -- he was assisting me. It was more of a case of us
12 discussing the discovery and what he saw in the discovery. I
13 don't recall him specifically giving me any witnesses to
14 track down.

15 Q: In terms of a defense, presenting a defense and calling
16 witnesses in your case, was there a plan for that or what
17 would your -- what would your defense have looked like?

18 A: I did not anticipate calling witnesses. Our defense was
19 going to be based upon, like so many cases, the lack of
20 credibility of those that were testifying against Mr. Delane,
21 along with the fact that there clearly was going to be
22 evidence of drug involvement by the victims.

23 And so we didn't really have third-party guilt, but I'm
24 sure that we would have tried to infer if you're dealing with
25 drug dealers, how do we know beyond a reasonable doubt that

W. JAMES HOFFMEYER - CROSS BY MS. MCCALLISTER

1 Mr. Delane was the one that set this thing in motion.

2 Q: Okay.

3 A: Mr. Graham was a witness for the state. Mr. Graham was
4 going to testify about how it transpired, getting the gun
5 with Mr. Delane's help, providing it to Mr. Barker, who shot
6 one victim in the back of the head and then, as the female
7 victim ran, shooting her multiple times.

8 And then after that, there was evidence that Mr. Delane
9 directed Mr. Graham to be picked up by Mr. Wingate, another
10 State's witness who got the gun from Mr. Graham or brought
11 Mr. Graham with the gun. The gun was later taken out to the
12 Darlington/Florence County line. They didn't find the gun.
13 They found a .38 special round, which is the rounds that were
14 used to kill the victims.

15 There were numerous text messages and calls between --
16 when I say numerous, I can't specifically remember, but
17 before and after this shooting with Mr. Delane and Mr.
18 Graham. Mr. Graham -- Mr. Delane had tried to figure out,
19 according to the evidence, who the witnesses were in his drug
20 case. He had a girlfriend, Valerie Paul, that before this
21 murder ever occurred called Allen Rhodes with the Sheriff's
22 Department and warned Mr. Rhodes that she was concerned what
23 he might do. And subsequent to that, of course, this
24 happens.

25 Q: Okay. So in terms of -- in terms of the State's

1 evidence, did you feel like they -- they would be able to
2 prove a case against Mr. Delane on the charges that he
3 eventually pleaded guilty to?

4 A: Yes, ma'am.

5 Q: Okay.

6 A: The evidence fit together. It fit together.

7 Q: For the accessory charges and the -- and the drug
8 charges?

9 A: That is correct.

10 Q: Okay. And did you -- I think you testified to Mr. Kata
11 that y'all kind of had an ongoing discussion about the pros
12 and cons of a plea versus a trial; is that correct?

13 A: That is correct.

14 Q: So over the course of your representation, is that fair
15 to say several months of discussions about this?

16 A: Yes, ma'am.

17 Q: Okay. And you testified it turned into a plea in the
18 middle of jury selection; correct?

19 A: It was actually towards the -- at the very beginning of
20 jury selection.

21 Q: Beginning of jury selection. Okay.

22 A: I can't recall, but -- specifically, but there's this
23 undercurrent off, you know, this plea isn't going to remain
24 on the table kind of thing.

25 Q: Okay.

1 A: And you don't know when that -- and I'm not sure if we'd
2 have drawn the jury and started the trial if that would have
3 still been there.

4 Q: Okay. And so the only sort of recommendation, I guess,
5 that the State gave was that they withdrew the notice to seek
6 the death penalty; is that correct?

7 A: Yes. They did not -- they said they would not recommend
8 life or anything like that. They would just withdraw the
9 death penalty.

10 Q: Okay. And let you argue for whatever you wanted to
11 argue for your client?

12 A: That is correct.

13 Q: Okay. And did you explain all of that to Mr. Delane and
14 the implications of that, of him not making a specific
15 recommendation or --

16 A: Yes, ma'am.

17 Q: -- anything like that?

18 A: He understood that he could get life. We could argue
19 for less.

20 Q: Okay. And whose decision was it to -- to stop the trial
21 process and accept a guilty plea instead?

22 A: The decision is Mr. Delane's, as it always is with a
23 client, whether they plead guilty or go to trial.

24 MS. MCCALLISTER: Your Honor, I think that's all the
25 questions I have at this time.

W. JAMES HOFFMEYER - REDIRECT BY MR. KATA

1 THE COURT: Any redirect?

2 MR. KATA: Just a few, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. KATA:

5 Q: Mr. Hoffmeyer, I mean would it be safe to characterize
6 the discussions with Mr. Delane as you approached the
7 expiration of possibly any kind of plea offer would have
8 gotten more intense with Mr. Delane or --

9 A: I think -- I think as a trial gets closer to actually
10 occurring, there's obviously more discussion, but this wasn't
11 anything new in terms of the options that are -- were
12 available. We filed a motion in the case to dismiss the
13 death penalty. There's a case that the South Carolina
14 Supreme Court says you can't have a capital -- capital
15 punishment for accessory before the fact, but in that
16 particular case the defendant was not named in the indictment
17 as a principal as well, just named as an accessory before the
18 fact.

19 And Judge Russo heard that motion and we were very
20 hopeful we would be successful on it. He denied it and, of
21 course, then we continued to prepare to go to trial. We
22 hoped at that juncture we would just be facing life and if
23 the trial would -- of course, a lot less risk, but even after
24 that point we'd been discussing it before and, of course,
25 after that point we continued to discuss the case, discuss

1 the options, the whole nine yards.

2 Q: After the plea did you discuss with Mr. Delane his right
3 to appeal?

4 A: Yes, sir. I'm sure I did. Do I specifically recall
5 that discussion in terms of the content? I imagine in the
6 colloquy with the Court he was informed of that, but I cannot
7 imagine -- I realize that's an allegation that he asked for
8 me to appeal and I didn't do that. I cannot imagine a
9 request being made and my not doing that. I guess it's
10 possible I made that mistake, but that would be something
11 that I don't think I would do.

12 Q: Are you -- are you in any -- are you in possession of
13 any written waiver of any right to appeal by Mr. Delane?

14 A: No. I don't have a waiver from him.

15 MR. KATA: I beg the Court's indulgence.

16 No more questions, Your Honor.

17 THE COURT: One question. Do you think there would be
18 any merit to an appeal?

19 THE WITNESS: No, sir.

20 MS. MCCALLISTER: Your Honor, may I just follow-up --

21 THE COURT: Sure.

22 MS. MCCALLISTER: -- on that issue?

23 THE COURT: Well, actually, it's direct, cross, and
24 redirect, and no such thing as recross.

25 MS. MCCALLISTER: Okay.

1 THE COURT: You have an obligation to object to anything
2 new that he says in redirect. Some judges do it that way,
3 but I don't think the rules really allow for --

4 MS. MCCALLISTER: Thank you, Your Honor.

5 THE COURT: -- for recross. So the answer is no. All
6 right.

7 Very good. You may step down and you're free to leave.

8 THE WITNESS: I don't -- I was under subpoena for the
9 Attorney General; so I don't know if she's okay with that or
10 not.

11 THE COURT: Well, it's okay with me.

12 THE WITNESS: Okay.

13 THE COURT: All right. You may call your next witness.

14 MR. KATA: Mr. Fonnelle Delane.

15 THE COURT: Yes. Please come forward, Mr. Delane. I'm
16 going to ask you, if you could, if you could place your left
17 hand on the Bible and raise your right hand as the clerk
18 administers the oath.

19 THE CLERK: Do you swear the testimony you give in this
20 case to be the truth, the whole truth, and nothing but the
21 truth, so help you God?

22 THE APPLICANT: Yes, ma'am.

23 THE CLERK: Please be seated and state your full name
24 for the record.

25 THE WITNESS: Fonnelle Delane is my name.

FONNELZE DELANE - DIRECT BY MR. KATA

1 FONNELZE DELANE, being first
2 duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. KATA:

5 Q: Mr. Delane, who were your -- who were your attorneys
6 that were appointed to represent you in this case?

7 A: Mr. Jim Hoffmeyer and Mr. Paul Cannarella.

8 Q: Okay. Do you recall in preparation for trial how many
9 times did you meet with them?

10 A: I have met with Mr. Cannarella only once. Mr. -- Mr.
11 Hoffmeyer came out plenty of times.

12 Q: Okay. So you primarily worked with Mr. Hoffmeyer?

13 A: Every time.

14 Q: Okay. Do you remember meeting with Ms. Caroline Graham,
15 the mitigation specialist?

16 A: Uh-huh.

17 Q: Okay. Do you remember how many times you met with her?

18 A: Maybe like three.

19 Q: Okay. Did she ask you a lot of questions?

20 A: Yeah, uh-huh.

21 Q: Okay. What did she ask you questions about?

22 A: My history, my background, like how I grew up, have my
23 -- was my parents on any drugs or was there any violence in
24 my home or, you know, basically just my upbringing to see did
25 I go through any traumatic things in my life.

1 Q: Okay. Did she ever tell you how many people she had
2 interviewed?

3 MS. MCCALLISTER: Objection, Your Honor, to what -- it's
4 going to be hearsay what someone -- what Ms. Graham told him.

5 MR. KATA: I can rephrase it.

6 THE COURT: All right. Just rephrase your question.

7 BY MR. KATA:

8 Q: Are you aware of how many witnesses she interviewed?

9 A: Not exactly right off the head, but I know it was a few,
10 quite a few people out of my family and different people to
11 present, you know, my mitigation situation.

12 Q: Okay. Would it -- would it be safe to say that in your
13 view she put a lot of work into your case?

14 A: Lots of work.

15 Q: Okay. Do you remember meeting with anybody else besides
16 her?

17 A: Yeah. There was another lady. It's a -- it's a black
18 lady. I can't remember her name. She -- I don't know which
19 part of the case she was, but it was two different ladies
20 that I met that was part of the team.

21 Q: Okay. Do you remember what topics she discussed with
22 you?

23 A: I think the black lady -- she was more like for my
24 mental state, like my schooling and things like that of that
25 nature.

FONNELZE DELANE - DIRECT BY MR. KATA

1 Q: Okay. Mr. Delane, let's go to your jury selection. Did
2 they start picking your jury?

3 A: They did the screening and the judge gave them certain
4 instructions as far as don't go in electronic devices and
5 things like that, but we never did pick them.

6 Q: Okay. At about this time, how many discussions did you
7 have with Mr. Hoffmeyer about whether you should go to trial
8 or whether you should plea?

9 A: Plenty. It's like the night before, it's like a Sunday.
10 This was the only time that I seen Mr. Cannarella, and him
11 and Mr. Hoffmeyer came and visited me on a Sunday and,
12 basically, it was like they was trying to pressure me into
13 pleading, like that was my only alternative, you know. So
14 that's, basically, when we talked about it right there when
15 it was time to go to trial.

16 Q: Did they discuss with you what could happen if you went
17 to trial?

18 A: Uh-huh.

19 Q: Okay. What was your impression of those conversations?

20 A: That I would get the death penalty.

21 Q: Did they arrange a meeting where your mother was present
22 with you?

23 A: Here or at the jail?

24 Q: Anywhere.

25 A: Yeah. We met here like three times that they made my

1 mother come up here and all of us, me, the solicitor, the
2 investigator, and a couple more people, we met in Mr. Ed
3 Clements' office. It was like -- like they were trying to
4 get me to plead through my mother or something, like they
5 were trying to talk to her to get her to get me to plea.

6 Q: Did your mother discuss with you the death penalty?

7 A: No.

8 MS. MCCALLISTER: Objection, Your Honor. It's the same
9 objection to hearsay.

10 MR. KATA: I can rephrase.

11 THE COURT: He didn't ask what he said. He was just
12 asked if it took place. He can ask that.

13 BY MR. KATA:

14 Q: Did your mother discuss with you the death penalty?

15 A: Yeah, she did. She was scared. She didn't want me to
16 get it and I guess it must be from her interpretation of
17 whatever they said she thought that I would get 30 years. So
18 she was under the impression like, okay, so, well, just take
19 the 30 years because I don't want you to die, you know, and
20 it was a lot of pressure on her as far as thinking that I
21 would get 30 years.

22 Q: Okay. You just mentioned pressure. I mean was there a
23 lot of pressure on you to plea?

24 A: Of course.

25 Q: A lot of mention of the death penalty?

FONNELZE DELANE - DIRECT BY MR. KATA

1 A: Uh-huh. Even from the jury selection -- the jury
2 consultant.

3 Q: Okay. What topics did the jury selection --

4 A: The jury consultant?

5 Q: Or jury consultant discuss?

6 A: Oh, just the day of my -- when we go to pick the jury,
7 after Mr. -- okay. When Mr. Cannarella and Mr. Hoffmeyer
8 came to visit me that Sunday, Mr. Hoffmeyer gave me his phone
9 number personally and told me to call him and let him know
10 what I decided to do, if I wanted to plea or not, which is
11 something he never really did. He never gave me his phone
12 number. He never really came to see me on a Sunday. So I
13 felt like that was out of the ordinary.

14 So then when I called him that night later on to discuss
15 with him after I talked with my father that me taking a plea
16 is something that I did not want to do, it seemed like he was
17 upset, like he was angry and he -- and I'm sure the phone
18 conversation was recorded by the jail and he said that, like,
19 I was disturbing him, but he gave me the number to call him.
20 It was like, basically, he was angry that I -- that I didn't
21 want to plea at that time.

22 Q: Okay. So you ended up entering your plea. When was the
23 sentencing scheduled?

24 A: The following day because that day the jury consultant
25 -- when we met in the room back there, the last -- the last

1 meeting I had with them, the jury consultant told me that the
2 jury that was present were kind of connected with law
3 enforcement and they would probably sentence me to death.
4 They were more likely to sentence me to death. So it kind of
5 scared me because he's a jury consultant, he's a
6 professional; so he's telling me that this jury that's out
7 there is not going to be biased enough to allow me to get a
8 fair trial.

9 Q: Was that before or after your plea?

10 A: This was before.

11 Q: Okay. All right. After your plea, did you meet with
12 Mr. Hoffmeyer or Mr. Cannarella to prepare for sentencing?

13 A: Huh-uh. Not at all.

14 Q: Okay. So --

15 A: I never seen -- the only time I talked to Mr. Hoffmeyer
16 was on the phone and then they recessed us to go and come
17 back for sentencing the next day. So we had like a -- I mean
18 I guess maybe a 13-hour period between when I decided to go
19 with that and from when I came back.

20 Q: Okay. So in that 13-hour period from the time you
21 finished your plea to the time that you came back to court
22 for sentencing, did you meet with your attorneys?

23 A: No, sir.

24 Q: Did you meet with the mitigation specialist?

25 A: No, sir.

FONNELZE DELANE - DIRECT BY MR. KATA

1 Q: Did you meet with the jury consultant?

2 A: No, sir.

3 Q: At your sentencing hearing the next morning -- okay? --
4 was the mitigation specialist able to testify or present
5 mitigation evidence on your behalf?

6 A: Are you talking about the white lady that did all the
7 work?

8 Q: Correct.

9 A: No, she wasn't there.

10 Q: Was she even in the building?

11 A: No, sir.

12 Q: Okay. Were any exhibits or reports of hers entered into
13 the record?

14 A: No, sir.

15 Q: Would you have liked for that to happen?

16 A: Yes, sir. I want the best thing that could happen to
17 help me, you know, to get the best situation I could.

18 Q: Because you were looking at a range of 30 years up to
19 life in prison?

20 A: That's correct.

21 MR. KATA: No more questions, Your Honor.

22 THE COURT: All right. Yes, ma'am.

23 MS. MCCALLISTER: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MS. MCCALLISTER:

FONNELZE DELANE - CROSS BY MS. MCCALLISTER

1 Q: Mr. Delane, you talked about prior to your decision
2 making process that led up to you taking or agreeing to enter
3 this plea agreement and you said that was -- that happened
4 while you were in the process of starting to pick a jury;
5 correct?

6 A: Uh-huh.

7 Q: And before that happened as you were preparing for
8 trial, had you had discussions with Mr. Hoffmeyer or Mr.
9 Cannarella about the possibility of a plea?

10 A: Well, I was never intending to plea. We talked about
11 maybe the solicitor may come up with a plea.

12 Q: Okay.

13 A: But my intention was to go to trial.

14 Q: Okay. So your intention was to go to trial, but they
15 had mentioned that you could potentially have an option of a
16 plea?

17 A: No.

18 Q: No?

19 A: Huh-uh.

20 Q: Okay. So when was the first time that you were given a
21 plea offer?

22 A: Here, in here that day, that 30 to life plea the day I
23 got -- the day before I got sentenced.

24 Q: Okay.

25 A: I was never offered a plea.

FONNELZE DELANE - CROSS BY MS. MCCALLISTER

- 1 Q: They -- so the day of your picking the jury and they
2 agreed to just take away the death penalty notice and let you
3 plead; correct? With no -- no recommendation?
- 4 A: I guess that's what it was.
- 5 Q: Just 30 to life?
- 6 A: Yes, I guess that's what it was.
- 7 Q: Is that what you understood the agreement to be?
- 8 A: Repeat it again?
- 9 Q: Is that what you understood the agreement to be?
- 10 A: No. I said repeat it again so I can understand the
11 question.
- 12 Q: The day that you were picking the jury --
- 13 A: Uh-huh.
- 14 Q: -- you're saying that's the first time that you ever had
15 kind of a concrete offer of this is what you can plea to, you
16 can plea to X?
- 17 A: Correct.
- 18 Q: Okay.
- 19 A: Uh-huh.
- 20 Q: And you, at that point, had your attorneys present;
21 correct?
- 22 A: At which one?
- 23 Q: At that point when you're getting this plea offer that
24 you can -- that they'll -- that the State will --
- 25 A: Yeah, yeah, yeah.

FONNELZE DELANE - CROSS BY MS. MCCALLISTER

1 Q: -- withdraw the death penalty and you can plead?

2 A: They were here, the jury consultant, my attorneys. They
3 were here.

4 Q: The jury consultant, your attorneys, and the --

5 A: That's what led me to make my decision because they kept
6 making it seem as if that I didn't have a chance.

7 Q: Okay. So your attorneys were giving you advice as to
8 what they thought was in your best interest; is that correct?

9 A: I guess.

10 Q: Okay. And you were listening to what they had to say;
11 correct?

12 A: Not really.

13 Q: No?

14 A: Because that's not something I wanted to do.

15 Q: Okay. You keep saying that's not something that you
16 wanted to do, but you did -- you remember going into the
17 courtroom; correct?

18 A: Uh-huh. Correct.

19 Q: And you were put under oath; correct?

20 A: Correct.

21 Q: And the judge asked you a bunch of questions about the
22 plea; is that correct?

23 A: Correct.

24 Q: And do you remember telling the judge that you wanted to
25 take this plea?

1 A: Correct.

2 Q: Do you remember being asked by the judge specifically
3 whether anyone had threatened or promised or coerced you into
4 taking the plea?

5 A: Correct.

6 Q: And you told the judge that no one had done anything
7 like that?

8 A: Yes, but I only did that because I was scared.

9 Q: Okay. But you understood -- you understand that you
10 were under oath and you were in front of the judge and the
11 judge was asking you whether you really wanted to do this;
12 correct?

13 A: That's correct.

14 Q: And you told the judge multiple times that you wanted
15 this plea; correct?

16 A: No. I don't recall that.

17 Q: You don't recall telling the judge you wanted to take
18 the plea?

19 A: I recall telling the judge that I wanted to take the
20 plea and plead guilty, but you said multiple times. No, I
21 didn't do it multiple times. I only did it once because I
22 was scared of fear of my life.

23 Q: Okay.

24 A: I felt like I had no other choice. I didn't have any
25 money at the time. I didn't felt -- I felt if I approach the

FONNELZE DELANE - CROSS BY MS. MCCALLISTER

1 judge and tell him that I needed new attorneys that it might
2 not happen because I didn't have the funds and we were so
3 tight on schedule. I was scheduled to go to trial. So I
4 felt like I had no other choice.

5 Q: Okay. So when the judge asked you if you were pleading
6 guilty of your own free will and you told him yes --

7 A: Uh-huh.

8 Q: You remember saying that; correct?

9 A: Yeah, I remember that.

10 Q: And you said that under oath; correct?

11 A: Uh-huh.

12 Q: Okay. And you understood -- or the judge asked you if
13 you were actually satisfied with your -- with both of your
14 attorneys and you told the judge that you were; correct?

15 A: Correct.

16 Q: Okay. You told the judge that you -- that you had given
17 them the information that you had in order to prepare a
18 defense, you told the judge that there was nothing left for
19 them to do, that they had done everything that you wanted
20 them to do; is that correct?

21 A: Uh-huh.

22 Q: Okay. And you told the judge that you weren't under the
23 influence, there was nothing physically or mentally wrong
24 with you going on, that you understood what you were doing,
25 and you wanted to plead guilty; correct?

FONNELZE DELANE - CROSS BY MS. MCCALLISTER

- 1 A: Actually, I just thought that was textbook really. That
2 was just something that goes along with it.
- 3 Q: Okay.
- 4 A: I mean I've been -- I've been in here before; so I'm
5 thinking that whatever my lawyer tells me that's going to
6 happen, whatever recommendation the solicitor makes is going
7 to happen will always happen that way. So I was under the
8 impression thinking that that may be a way to save my life.
- 9 Q: Okay. And you've talked about how then you took a break
10 and the sentencing was scheduled for the next day?
- 11 A: Uh-huh. Correct.
- 12 Q: And at that point you did have family present; correct?
13 Your mother came and spoke on your behalf?
- 14 A: The next day, yes.
- 15 Q: The next day?
- 16 A: Uh-huh.
- 17 Q: Okay. But she spoke to the judge before the judge
18 pronounced a sentence; correct?
- 19 A: Uh-huh.
- 20 Q: Okay. And I think you've also raised this issue of an
21 appeal. In terms of -- who did you ask to appeal?
- 22 A: Mr. Hoffmeyer.
- 23 Q: You asked Mr. Hoffmeyer?
- 24 A: Uh-huh.
- 25 Q: How did you ask him?

FONNELZE DELANE - CROSS BY MS. MCCALLISTER

1 A: Well, after I got sentenced, I went -- we went to the
2 back in a room back there and I said, "Mr. Hoffmeyer, are you
3 going to file an appeal for me?" And Mr. Hoffmeyer's exact
4 words were he didn't think that appeal would be fit the
5 situation. That was his exact words.

6 Q: Did you tell him you wanted him to appeal anyways?

7 A: He told me he didn't think it; so I'm going with his
8 judgment.

9 Q: Okay. So did -- after that did you write --

10 A: But I -- excuse me. But I did ask him first and
11 foremost to appeal, but his reasoning was that he didn't
12 think it would fit the situation. So that's why I shied away
13 from it because he's my lawyer and I'm thinking that he knows
14 my best benefit.

15 Q: Okay. And then after that, once he told you I don't
16 think you have anything to appeal, you didn't say I don't
17 care, I want you to appeal anyways? And did you call him or
18 write him letters or anything after that?

19 A: I mean what would be the reason? What would be the
20 reason for me asking him that if he just said he didn't see
21 what would be a reason?

22 Q: I understand. What I'm asking --

23 A: I mean I don't have no money to get another attorney.
24 He's my attorney.

25 Q: Okay.

FONNELZE DELANE - CROSS BY MS. MCCALLISTER

1 A: So I mean what should I tell him?

2 Q: I understand what your answer is. I'm just asking did
3 you have a -- did you follow-up on that discussion at any
4 point after that?

5 A: Yes. It's always been in the back of my mind.

6 Q: But did you follow-up with Mr. Hoffmeyer by calling him
7 or --

8 A: How can I?

9 Q: -- writing him a letter or anything like that?

10 A: How could I?

11 Q: Okay.

12 A: When I got to where I was going, I lost all my
13 paperwork. When I got to Kirkland, I was on lockdown for two
14 weeks.

15 Q: Okay.

16 A: So I never had a chance to even reach out to Mr.
17 Hoffmeyer and after that the deadline was up. What's the
18 deadline on direct appeal?

19 Q: Okay. So you -- you --

20 A: No, I'm asking. What's the deadline on an appeal?

21 THE COURT: One of -- the way this operates, Mr. Delane,
22 is they ask the questions and you provide the answers. You
23 can't ask questions.

24 THE APPLICANT: Oh, okay, okay, okay.

25 MS. MCCALLISTER: Okay.

1 BY MS. MCCALLISTER:

2 Q: Okay. So the -- so I just want to be clear. You went
3 in the back immediately after the sentencing phase? Is that
4 what you're saying?

5 A: After I got sentenced, yes. Correct.

6 Q: After you got sentenced? And when you say in the back,
7 what do you mean? Just in a jury room or a conference room
8 somewhere?

9 A: Whatever that room is back there.

10 Q: Okay. And you asked Mr. Hoffmeyer and he told you he
11 didn't think there was any merit to an appeal?

12 A: Correct.

13 Q: And then that's the -- that's the end of that? You
14 dropped it?

15 A: Correct.

16 Q: Okay.

17 MS. MCCALLISTER: I think that's all the questions I
18 have, Your Honor.

19 THE COURT: Yes, sir.

20 REDIRECT EXAMINATION

21 BY MR. KATA:

22 Q: Did Mr. Hoffmeyer ever discuss any deadlines that you
23 would need to meet to satisfy an appeal?

24 A: Huh-uh. Not at all. I think I remember hearing it in
25 the courtroom maybe 10 days or something like that, but he

1 never mentioned it. The only thing he said that day was that
2 he didn't think it was or see a reason and that was it. He
3 left that day and I left that day.

4 MR. KATA: No more questions, Your Honor.

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

6 Mr. Kata, you may call your next witness.

7 MR. KATA: Your Honor, there are no more witnesses. I
8 do have a motion to amend the pleadings to the testimony to
9 the trial under Rule 15.

10 THE COURT: Okay. And what is -- what specifically is
11 the amendment?

12 MR. KATA: Your Honor, we'd move to amend the allegation
13 that trial counsel was ineffective for failing to present
14 mitigation evidence relating to his family and social history
15 that was available at the time of the trial. We further
16 allege that counsel's performance for failing to submit that
17 mitigating evidence that the Court -- to the Court was
18 deficient during the sentencing and that the deficiency
19 prejudiced the defendant due to the complete absence of any
20 social history mitigation evidence that was compiled by the
21 mitigating expert and because of that failure was to such a
22 large degree that it undermines the confidence in the outcome
23 of this case.

24 THE COURT: All right. What do you have to say about
25 the amendment, Ms. McCallister?

1 MS. MCCALLISTER: Your Honor, the State would object. I
2 mean the mitigation expert hasn't been here to testify and
3 that that obviously is not an allegation that's contained in
4 the application that, you know, the State could potentially
5 answer better with having that person here, and we've had no
6 notice of that, Your Honor.

7 THE COURT: I'm going to allow the amendment, but I
8 think Ms. McCallister is right. If you're going to make that
9 contention, then it's incumbent upon you to proffer that
10 evidence since you have the burden of proof. I'm going to
11 allow you to amend it --

12 MR. KATA: Thank you, Your Honor.

13 THE COURT: -- and we'll talk about it. Very good.

14 All right. Any witnesses from the State?

15 MS. MCCALLISTER: Your Honor, may I have just one moment
16 to confer with Mr. Hoffmeyer?

17 THE COURT: Yes.

18 MS. MCCALLISTER: Your Honor, the State would call Mr.
19 Hoffmeyer.

20 THE COURT: Mr. Hoffmeyer, I'm going to recall you to
21 the stand and remind you that you're still under oath.

22 Ms. McCallister, you're recognized.

23 MS. MCCALLISTER: Thank you.

24 W. JAMES HOFFMEYER, being
25 previously duly sworn, testified as follows:

DIRECT EXAMINATION

1

2 BY MS. MCCALLISTER:

3 Q: Mr. Hoffmeyer, in terms of the issue of an appeal, do
4 you recall having this conversation with Mr. Delane that
5 occurred after sentencing?

6 A: I'm sure that we did, particularly based upon what he
7 said. I recall that after the sentencing we went back -- it
8 may have been on the 11th floor, it may have been here, I'm
9 not sure -- and discussed what had occurred. I probably did
10 give him the opinion that I did not think there was a basis
11 for appeal, but if he'd have asked me to appeal, I clearly
12 would have because I'm obligated to do that.

13 Q: Okay.

14 A: I have to notice it and then it gets turned over to
15 someone else. And, you know, we would have discussed --

16 Q: Okay.

17 A: -- that to a certain extent.

18 Q: So your -- your -- your interpretation of that
19 conversation was not him asking you specifically to file a
20 notice of appeal?

21 A: No, ma'am, it was not.

22 Q: Okay.

23 A: It was discussing any basis for it and, quite frankly,
24 there's not.

25 Q: Okay. And in terms of mitigation at sentencing, what is

1 your opinion of whether Mr. Delane had a good basis for
2 mitigation or the information that the mitigation expert
3 compiled?

4 A: That was part of the concern if he was convicted of
5 murder and we got to the sentencing phase of the trial. Mr.
6 Delane did not have some of the mitigation that you see in
7 some of these types of cases. He didn't have a mental health
8 history. He didn't -- he wasn't abused by his parents to any
9 large degree. He wasn't bipolar and things of this nature.
10 We didn't see the type of mitigation that you would hope in
11 these terrible circumstances to have in a sentencing phase.

12 Q: Okay.

13 A: It would have been pretty much he grow up in a tough
14 environment, but he had -- he had a mother that loved him and
15 things like that. We'd have done what we could, but we
16 didn't have that type of really strong mitigation.

17 Q: Okay. And you did, in fact, have his mother there to
18 testify on his behalf at the sentencing hearing; correct?

19 A: Yes, ma'am. You all are telling me she was there and I
20 believe she was.

21 Q: Okay.

22 MS MCCALLISTER: I think that's all the questions I
23 have, Your Honor.

24 THE COURT: The only question I have, you know, there
25 has been a contention that you were deficient in not calling

W. JAMES HOFFMEYER - DIRECT BY THE COURT

1 the mitigation expert. Would that have been effective?

2 THE WITNESS: In my opinion, no, sir, because we didn't
3 have the ability to say a whole lot other than he grew up in
4 a very low-income family.

5 THE COURT: And you covered that in your presentation to
6 the judge?

7 THE WITNESS: Yes, sir. I believe I did.

8 THE COURT: All right.

9 THE WITNESS: And, you know, there was evidence, you
10 know, he'd gotten into the music type business and, you know,
11 kind of from there that's part of the background of this
12 case.

13 THE COURT: All right. Very good. Yes.

14 CROSS-EXAMINATION

15 BY MR. KATA:

16 Q: Mr. Hoffmeyer, you're not denying that you had
17 conversations about an appeal with Mr. Delane?

18 A: My recollection of the conversation was we discussed the
19 potential for an appeal. I told him I didn't think there was
20 a basis for it, he did not ask me to appeal, and that's
21 pretty much the way the conversation went.

22 Q: Okay. And you're not -- no written waiver was executed
23 in this case?

24 A: As I believe I answered for you previously, no, sir.

25 Q: Okay. How many of Mr. Delane's family members did you

W. JAMES HOFFMEYER - CROSS BY MR. KATA

1 contact in between the plea and the sentencing?

2 A: I don't recall contacting any of them and I don't recall
3 any of them contacting his lead lawyer in a death penalty
4 case between that time period.

5 MR. KATA: No more questions, Your Honor.

6 THE COURT: All right. Any redirect?

7 MS. MCCALLISTER: No, Your Honor.

8 THE COURT: You may step down.

9 THE WITNESS: May I be excused?

10 THE COURT: Yes, you may.

11 Anything further from the State?

12 MS. MCCALLISTER: Nothing, Your Honor.

13 THE COURT: I'd be happy to hear any closing remarks if
14 you would like to do so, Mr. Kata.

15 MR. KATA: Yes, Your Honor, just briefly.

16 THE COURT: Yes.

17 MR. KATA: Your Honor, every lawyer knows that thorough
18 investigation and presenting mitigating evidence is crucial
19 in any criminal case, and that is the tail that wags the dog
20 of our criminal system.

21 Your Honor, our position is that the presentation by
22 trial counsel fell below the objective standard and it causes
23 questions to -- it causes a question of confidence in the
24 sentence. I mean this was a situation, yes, life was taken
25 off the table and that's a big deal. We're not -- we're not

1 oblivious to that fact, but, Your Honor, he's still looking
2 at a situation where he's exposed to 30 years to life in
3 prison. Okay?

4 And the testimony supports that mitigation experts were
5 brought into play. Mr. Cannarella couldn't remember who they
6 were and what they really did, Your Honor, and we just think
7 that it is very important in this system that full
8 presentations are made to the Court as to what's going to
9 happen to somebody for the rest of their life, whether it's
10 going -- whether it's getting probation, whether it's getting
11 five years, whether it's getting 30 years, whether it's
12 getting a life in sentence -- a life in prison sentence.

13 It is the cornerstone of our system, and Mr. Delane
14 believes that more should have been presented and that it
15 quite possibly could've had a very different outcome. That's
16 all, Your Honor.

17 THE COURT: Yes, ma'am.

18 MS. MCCALLISTER: Thank you, Your Honor.

19 First, I believe that in Mr. Delane's application --
20 initial application, he has an allegation that counsel was
21 ineffective for failing to file a motion to change venue. So
22 the State would move for that -- that allegation to be
23 dismissed as no evidence was presented as to that allegation,
24 Your Honor.

25 THE COURT: Which allegation again?

1 MS. MCCALLISTER: To -- failure to file a motion to
2 change venue.

3 THE COURT: Okay.

4 MS. MCCALLISTER: Your Honor, in terms of the other
5 allegations regarding the mitigation, Your Honor, Mr.
6 Hoffmeyer has explained why he didn't end up calling the
7 mitigation expert because there was nothing for her to
8 present, and he covered what she would have covered in his
9 presentation to the Court. He tells the Court that Mr.
10 Delane comes from, you know, a difficult background. His
11 mother was there to testify on his behalf.

12 And, you know, Mr. -- Mr. Hoffmeyer asked for 30 years.
13 He pointed out to the Court that Mr. Delane was a young man
14 and that 30 years would be a long time for him to reflect on
15 what he had done. And so, Your Honor, the State submits that
16 Mr. Hoffmeyer and Mr. Cannarella absolutely did what they
17 needed to do in terms of sentencing and mitigation.

18 And as to the issue of the appeal, I mean Mr. Hoffmeyer
19 has said he -- he did not interpret that conversation as Mr.
20 Delane asking for an appeal. They discussed the possibility.
21 He, as the attorney, gave the opinion he didn't think that
22 there was anything there and that was the end of it, and Mr.
23 Delane himself says he didn't press it after that.

24 Additionally, Your Honor, Mr. Delane and Judge Russo
25 engaged in a lengthy and thorough plea colloquy, and the

1 State submits that the transcript reflects very clearly that
2 Mr. Delane made this decision to plead guilty of his own free
3 will. He was asked about that multiple times. He said no
4 one pressured him, no one promised him anything, and he was
5 doing this because that's what he wanted to do. And he said
6 up there on the stand he felt like it was the way to save his
7 life, and that is a valid reason for entering a plea, Your
8 Honor.

9 And so the State submits that this application should be
10 denied.

11 THE COURT: What is the State's interpretation with
12 regard to the law as far as filing an appeal that defense
13 counsel feels is meritless?

14 MS. MCCALLISTER: Your Honor, I think -- I think here
15 when it's a guilty plea, Your Honor, I don't think there's an
16 obligation for counsel to do that unless they are
17 specifically directed by the applicant, and Mr. Hoffmeyer had
18 explained that he did not feel like that's what that
19 conversation was. It wasn't a directive to file an appeal.
20 It was just a discussion about whether there was anything
21 there to appeal and the possibility and then -- and then that
22 was -- that was the end of it once he gave his opinion that
23 there -- that there wasn't anything there.

24 THE COURT: Okay. I understand that's what his position
25 is. My question is if a client wants to appeal the case and

1 the defense lawyer thinks it has no merit, does he still have
2 to file the appeal?

3 MS. MCCALLISTER: I think if he's specifically directed
4 by the client to appeal it, then yes, even though he thinks
5 there's no merit, he can submit his -- his notice of appeal
6 and say that in the notice of appeal that he does not find
7 any meritorious claims.

8 THE COURT: Very good. All right. Anything further
9 from anybody?

10 MR. KATA: No, Your Honor.

11 THE COURT: Mr. Kata, where is a number where I can
12 reach you? I'm going to take -- this is a very important
13 case. I want to have an opportunity to review the transcript
14 and the pleadings in this case and review my notes. How can
15 I best reach you this week?

16 (WHEREUPON, the requested phone numbers were provided by
17 both counsel.)

18 THE COURT: Very good. Thank y'all.

19 MR. KATA: Thank you.

20 THE COURT: Good luck to you, Mr. Delane.

21 (WHEREUPON, the proceedings ended at 10:39 a.m.)

22

23 --- END REQUESTED TRANSCRIPT ---

24

25

20 19 CP 21 327

STATE OF SOUTH CAROLINA)
)
County of Florence)
)
Ennelze T. Delane)
Full name and prison number (if any) of Applicant)

IN THE COURT OF COMMON PLEAS

v.)

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEF

DORIS POULOS O'HANNA
CLERK
CCP & GS
FLORENCE COUNTY, SC

2019 FEB -7 AM 11:31

FILED

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 clear to which question any such continued answer refers.

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

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

1. Place of detention Lee Correctional Institution
2. Name and location of Court which imposed sentence Florence
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) (2009-GS-21-0707)
 - (b) _____

(c) _____

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

(a) October 8, 2013

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty xx

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

No

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

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

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) _____

(b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Austin Petition
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See: Attachment
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? yes
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. Post Conviction Relief
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. Florence Clerk of Court
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

i. dismissed

ii.

iii.

iv.

(d) the date of each such disposition:

i. October 4, 2018

ii.

iii.

iv.

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

i.

ii.

iii.

iv.

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

No

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

(a) which grounds have been presented:

i.

ii.

iii.

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

i.

ii.

iii.

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

- (a) No
- (b) _____
- (c) _____

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

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

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

- (a) the name and address of each attorney who represented you:
 - i. Sentence: W. James Hoffmeyer
 PCR: Justin Kata
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Trial plea
 - ii. PCR
 - iii. _____

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

Austin Petition granted

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

No

FILED

2019 FEB -7 AM 11:31

DORIS POULOS O'HARA
CCCP & ES
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA)

County of Florence)

VERIFICATION

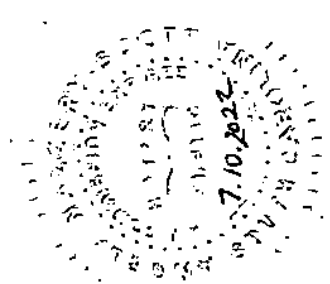
I, Fonnelze T. Delane, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and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

Fonnelze T. Delane

SWORN to and subscribed before me this 17 day of January, 2019.

Angela P. Sett (L.S.)
Notary Public

My Commission Expires: July 10, 2022



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

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

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

Fonnie J. Delane
Applicant

SWORN or affirmed to and subscribed before me this
17 day of January, 2019.

Angela P. Salt
Notary Public

My Commission Expires: July 10, 2022



FILED
2019 FEB -7 AM 11:31
DORIS POULOS ORRARA
CCCP & GS
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLIN	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	TWELFTH JUDICIAL CIRCUIT
Fonnelze T. Delane, #298183	)	C.A. No. 2014-CP-21-0369
)	
Applicant,)	
	)	AUSTIN PETITION
vs.)	
)	
State of South Carolina)	
)	
Respondent,)	

PROCEDURAL HISTORY

Applicant Fonnelze T. Delane filed a motion for post conviction relief on February 10, 2014 in Florence County Court. An evidentiary hearing was convened on January 30, 2018, Applicant was represented by Justin Kata, Esquire and The Honorable Judge Michael G. Nettles presided over the hearing. While Applicant has been patiently waiting for the court's decision, Applicant's family member recently discovered on the internet several weeks ago that the court's decision became final on October 4, 2018 without Applicant or Applicant's Attorney being made aware of.

LAW/ANALYSIS

Under the PCR rules, an applicant is entitled to a full adjudication on the merits of the original petition, or "one bite

at the appeal." Aice v. State, 409 S.E.2d 392 (1991). This "bite" includes an applicant's right to appeal the denial of a pcr application, and the right to assistance of counsel in the appeal.

An Austin, appeal is used when an applicant is prevented from seeking appellate review of a denial of his or her pcr application, such as when an attorney fails to seek timely review. See: Aice, 409 S.E.2d at 392; Hope v. State 492 S.E.2d 76 n. 1 (1997) (permitting an Austin appeal where original pcr counsel failed to appeal from the first denial of pcr). In Austin, the defendant never received a full procedural "Bite at the Apple" because he was prevented from seeking any review of the denial of his pcr application.

ARGUMENT

Applicant's position is he nor his attorney were never put on any notice that Judge Nettles made his decision on October 4, 2018. However, if Applicant was put on notice Applicant would have advised his Attorney to file a Rule 59(e) Motion to Alter or Amend Judgment or at the very least, file a "Notice to Appeal" on Applicant's behalf.

(2)

Therefore, Applicant ask The Honorable Court to grant Applicant his fundamental rights to a "full bite of the apple" which is mandated by South Carolina Jurisprudence.

Sincerely, *Fonnelze T. Delane*

Fonnelze T. Delane #298183

January 17, 2019

EXHIBIT #1

Fonnelze T. Delane Affidavit

AFFIDAVIT

In the month of January 2019, I Fannelze T. Delane discovered through family members that my pcr application was denied for the first time without being notified from the Florence Clerk's Office or my attorney. Documents is being provide from text messages stating my PCR Attorney wasn't aware that the decision was handed down leaving me not filing my notice of appeal on time. This affidavit is the truth to the best of my knowledge.

Signature: Fannelze T. Delane

SWORN or affirmed to and subscribed before me this

17 day of January, 2019

Angela N. Satt
Notary Public

My Commission Expires: 7.10.2022



EXHIBIT #2

Text Messages fro MCR Attorney Justin Kata, Esquire

Justin this is fonnelze delane ive been calling you for a few days left word at your office and called your cell a few times...im tryna get some understanding on why my pcr denial was signed off oct 4th but ive yet to receive in notification from you as to whats going on and my next step in my process

Don't know. I'll look into it after court

Will this affect my appeal being that it's past 30 day mark

I haven't received a final order yet.

That starts the clock

Please check into it as soon as possible thanks

I'll call the AG after court

Hey justin this is fonnelze delane checking to see what did you find out in reference to my pcr status



11:17 PM
Just went by the clerk of court in florence and got this so im wondering why you dont have a copy if its stating that you do?

11:21 PM
They sent it to his appointed lawyer

11:23 PM
And not to my office

11:57 PM
Why would they do that and you were hired to be his paid attorney on the matter so what is he to do now about the appeal of the pcr decision because this sounds like a big mix up that he cant afford being that time is against him

Jan 4
Hey justin goodmorning were you able to get in touch with the AG to see what's next on fonnelze's case



ALAN WILSON
ATTORNEY GENERAL

September 18, 2018

2018 OCT -8 AM 11: 09
BORIS POULOS CLERK
CCCP & GS
FLORENCE COUNTY, SC

FILED

The Honorable Michael G. Nettles
Presiding Judge, Twelfth Judicial Circuit
South Carolina Circuit Court
180 North Irby Street, MSC-XX
Florence, South Carolina 29501

Re: Fonelze T. Delane, #298183 v. State of South Carolina
2014-CP-21-0369

Dear Judge Nettles:

Enclosed please find the State's original proposed **Order of Dismissal** in the above-captioned case. If this order meets your approval, please sign and forward to the Florence County Clerk of Court to be filed and served.

Sincerely,


Lindsey McCallister
Assistant Attorney General

LM/can
Enclosures

cc: Justin Martin Kata, Esquire

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

Fonclze T. Delane, #298183,)
))
Applicant,)
))
v.)
))
State of South Carolina,)
))
Respondent.)

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

C.A. No. 2014-CP-21-0369

ORDER OF DISMISSAL

NOAH POULOS CHARRA
CCCP # 68
FLORENCE COUNTY, SC

2018 OCT -8 AM 11: 09

FILED

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Fonnclze T. Delane (Applicant) on February 10, 2014. Respondent made its Return on June 30, 2014. An evidentiary hearing into the matter was convened on January 30, 2018, at the Florence County Courthouse before the undersigned. Justin Kata, Esquire, represented Applicant. Lindsey A. McCallister, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. Paul Cannarella (Cannarella) and W. James Hoffmeyer (Hoffmeyer), Esquires, Applicant's plea counsels, was also called to testify. This Court also had before it a copy of the records of the Florence County Clerk of Court, records from the South Carolina Department of Corrections, the application, Respondent's Return, and the plea transcript.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. In March 2009, the Florence

County Grand Jury indicted Applicant for possession of cocaine base with intent to distribute (2009-GS-21-0106). In June 2009, the Florence County Grand Jury indicted Applicant for three counts of distribution of cocaine base (2009-GS-21-0707). While awaiting trial on these charges, Applicant was arrested for his involvement in the death of two confidential informants. In July 2012, the Grand Jury issued indictments for two counts of murder, two counts of accessory before the fact to murder, two counts of solicitation to commit murder, and a single count of conspiracy (2012-GS-21-0897). Hoffmeyer and Cannarella represented Applicant on all of these charges.

On March 5, 2010, the State served Applicant and his attorneys with a notice of intent to seek the death penalty. The State alleged the aggravating factors warranting the death penalty were that the murders were committed by another person as Applicant's agent or employee, the murders were of two people pursuant to one scheme or course of conduct, and the victims were witnesses who were killed for the purpose of impeding or deterring the prosecution of a crime. The Honorable Thomas A. Russo was appointed to preside over Applicant's case.

On October 8, 2013, after qualifying a jury in preparation for trial, the State withdrew its notice of intent to seek the death penalty, and Applicant pleaded guilty to two counts of accessory before the fact to murder and two counts of distribution of cocaine base. In exchange for the plea, the State dismissed the remaining charges. Applicant entered his plea without negotiations or recommendations as to sentencing, and Judge Russo sentenced Applicant to concurrent terms life without the possibility of parole on each count of accessory before the fact to murder and thirty years for each count of distribution of cocaine base. Applicant did not appeal his plea or sentence.

ALLEGATIONS

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

1. Ineffective Assistance of Counsel
 - a. "Counsel advised applicant to plead guilty only, because counsel DID NOT want to go to trial."
 - b. "Counsel failed to appeal and file motion of re-consideration after applicant asked him to."
2. Involuntary Guilty Plea
 - a. "Applicant plead guilty, because counsel provided applicant with no other reasonable alternative."
 - b. "Counsel was ineffective in failing to ensure that the trial was held outside of Florence County, because applicant would not receive a fair trial in Florence County. Therefore, since counsel refused to do anything about it applicant decided, because of the unfairness he would be against. He shouldn't risk being sentenced to death by a jury of 'Killers' as his attorneys referred to his prospective jurors."

At the conclusion of Applicant's testimony, his PCR counsel moved to amend his application to conform to the evidence presented as to ineffective assistance of counsel for failing to have the mitigation consultant present during mitigation and failing to present any exhibits or witnesses during sentencing. These additional allegations are addressed below. Further, after the presentation of both the State's and Applicant's cases, the State moved to dismiss the allegation regarding venue because Applicant failed to present any evidence on the issue. The motion is hereby granted, and that allegation is deemed abandoned and dismissed.

SUMMARY OF TESTIMONY

Cannarella testified he was appointed to this case along with Hoffmeyer, and although they both worked on the file, Hoffmeyer was the lead attorney who did the bulk of the work. According to Cannarella the main issues in the case were the State seeking the death penalty and whether

Applicant was an accessory or a principal. Cannarella testified he met with Applicant approximately five times over the course of a year, with the meetings becoming "more intense" approaching trial. Cannarella testified he applied to the court for funding for a mitigation expert, which was granted, and they hired a woman from Columbia whom Hoffmeyer recommended. Cannarella testified the mitigation specialist was present at trial when they began picking the jury, and Applicant decided to plead guilty the next day. Cannarella further testified he recalled speaking with Applicant about the decision to plead guilty, but he did not remember the specifics of the conversation.

Hoffmeyer confirmed Cannarella's testimony that they were appointed at the same time, but he was the lead attorney on the case. Hoffmeyer testified he has been practicing law since 1992, with a focus on criminal law since the beginning of his career. Hoffmeyer further testified he had handled three previous capital cases at the time of his appointment to Applicant's case. According to Hoffmeyer, he met with Applicant at least twenty times to discuss discovery and the State's evidence. Hoffmeyer also testified he used a private investigator to check witness backgrounds, gather records, and interview several witnesses.

Hoffmeyer further testified there was significant evidence in the case against Applicant. According to Hoffmeyer, the victims were witnesses in a drug case against Applicant, and the State was prepared to present text messages and phone calls between Applicant and the shooter immediately before and after the murders. Hoffmeyer also testified there was evidence Applicant directed his codefendants to dispose of the gun, and Applicant's girlfriend called police and attempted to warn them the murders were about to take place. In addition, Hoffmeyer testified

several codefendants were prepared to testify against Applicant, implicating him as the mastermind.

Hoffmeyer testified Applicant had no witnesses who could provide a defense and anyone the defense could have called would have lacked credibility compared to the State's witnesses. Hoffmeyer testified his strategy would have been to imply third-party guilt, but there was not a specific third person he could point to. Hoffmeyer testified the defense hired Carolyn Graham, a mitigation specialist. According to Hoffmeyer, she interviewed Applicant, went to his home, interviewed Applicant's family, and reviewed school records. Hoffmeyer further testified they were in constant contact with her in person and by phone, and he met with her approximately eight to ten times. Hoffmeyer testified the defense also hired a jury-selection expert, who was present during jury selection.

Hoffmeyer testified Applicant decided to plead guilty after receiving the list of prospective jury panels, although there had been ongoing discussions regarding a plea since the beginning of his involvement in the case. Hoffmeyer testified he advised Applicant of the pros and cons of pleading guilty and explained he could receive life in prison because the State was not making a recommendation, and ultimately, it was Applicant's decision to plead. Hoffmeyer also testified Applicant seemed to understand their discussions and the charges he was facing. According to Hoffmeyer, the main factor in Applicant's decision was sentencing since the State was seeking the death penalty. Hoffmeyer further testified he filed a motion to compel the State to withdraw the death penalty notice, which was denied.

Hoffmeyer testified the sentencing hearing was delayed until the following morning after the guilty plea was accepted, but he did not recall who he contacted to be present on Applicant's behalf, and no one from Applicant's family contacted him. Hoffmeyer testified he and his private investigator met with Applicant's mother and sister during the preparation of the case, and the family was not interested in being involved. However, Hoffmeyer further testified he recalled a meeting between Applicant and Applicant's mother regarding a potential guilty plea, although that meeting took place at the Solicitor's Office sometime before the plea was entered. According to Hoffmeyer, Applicant did not provide a list of people he wanted to be present on his behalf at the sentencing, although he did discuss some names with the mitigation specialist prior to the guilty plea. Hoffmeyer testified this was not a case where there were people voluntarily coming forward to support Applicant.

Hoffmeyer testified in mitigation he emphasized the victims' drug use and tried to give the court a balanced picture of the facts. Hoffmeyer further testified the mitigation report indicated Applicant did not have a good home life. Hoffmeyer testified the mitigation expert would have been present for sentencing had Applicant continued with a trial and been convicted of murder. However, Hoffmeyer also testified there was no good explanation to present for Applicant's behavior in mitigation because Applicant did not have any mental health issues or a history of abuse. According to Hoffmeyer, they did not discover any information that would explain what occurred in this case.

Finally, Hoffmeyer testified he did not file an appeal, and he testified he would have filed one if Applicant had asked. He recalled the plea court explained the process and timeline during

the plea colloquy. Further, he testified he and Applicant were able to meet in jury room after the plea and discussed the possibility of an appeal. However, Hoffmeyer testified he did not see any issues of merit for an appeal, and Applicant did not request an appeal after their discussion.

Applicant testified he met with Hoffmeyer several times and with Cannarella once, and they talked in detail about the case. Applicant further testified he remembered meeting with the mitigation specialist, and she asked about his history and background, his upbringing, and whether there had been any violence in his home. Applicant agreed she interviewed numerous people and put in a significant amount of work on his case. He also testified there was a second woman involved who interviewed him about his mental health background.

According to Applicant, he decided to plead guilty because he was pressured by "everyone" including the jury consultant. Applicant testified jury screening had begun, but they had not started the selection process when he decided to plead. He testified both Cannarella and Hoffmeyer came to visit him, and they pressured him to accept the guilty plea. Applicant also testified he met with his mother, the solicitor, and the private investigator, and his mother wanted him to plead guilty because she was afraid he would receive the death penalty. Applicant testified the jury consultant also told him the jury was likely to recommend the death penalty. According to Applicant, the sentencing hearing was scheduled for the day following the plea, so they had approximately thirteen hours to prepare. Applicant testified he did not meet with his attorneys, the mitigation specialist, or the jury consultant during that time. He also testified the mitigation specialist was not present, nor did Hoffmeyer introduce any exhibits during the sentencing hearing.

Applicant further testified after the sentence was pronounced, he met with Hoffmeyer in a room in the courthouse, and they discussed the possibility of an appeal. Applicant agreed Hoffmeyer advised him he did not think an appeal was appropriate in this situation, and Applicant dropped the issue after that discussion.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the PCR hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Applicant alleges he received ineffective assistance of counsel. 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 that, 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).

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).

This Court finds Applicant has failed to prove either Cannarella's or Hoffmeyer's performance was deficient in any way. Both counsels collectively met with Applicant numerous times, with lead counsel meeting with Applicant on at least twenty occasions, and both had a good relationship with Applicant. The defense also had ample time and resources to prepare and hired multiple experts to deal with the main concern in the case – the State's decision to seek the death penalty.

This Court has also reviewed the transcript and finds no issues with Hoffmeyer's presentation of mitigation. Hoffmeyer credibly testified he was in constant contact with the mitigation specialist throughout his preparation of the case, and even Applicant agreed she did extensive work on the case. Hoffmeyer had the benefit of her report during sentencing, and he credibly testified although the consultant concluded Applicant did not have a great home life growing up, there was nothing in his background to explain the severity of the criminal behavior in this case. Therefore, this Court finds his decision not to call her to testify was reasonable as he was unable to offer anything of value in mitigation. This Court also finds Hoffmeyer also credibly explained the mitigation expert would have been present for sentencing had Applicant continued with a trial. Finally, despite Hoffmeyer's testimony as to Applicant's family's lack of involvement in the case, the record reflects Applicant's mother and sister were in fact present for sentencing, and Applicant's mother spoke to the court on his behalf. See Tr. pp. 83-84, 99.

Further, this Court finds the plea colloquy is determinative as to all of Applicant's issues. Applicant chose to plead guilty in order to avoid possibly being sentenced to death – after being

advised to do so by his attorneys, the experts hired on his behalf, and his family – and this Court finds it was a reasonable recommendation for his attorneys to make in this situation. This Court also finds the decision to plead guilty was freely and voluntarily made. During the guilty plea, Applicant testified he understood the plea was without any negotiation or recommendation from the State as to the sentence except that the sentences for each charge would be concurrent. See Tr. p. 62. The plea judge also explained the possible sentencing range for each charge, and Applicant indicated he understood. See Tr. p. 54. Applicant testified during the plea he was satisfied with the services of his attorneys and agreed they had investigated all aspects of the case and contacted witnesses of his behalf. See Tr. pp. 63-64. 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 failed to present any such reason in this case.

Finally, this Court has observed the witnesses and finds Hoffmeyer’s testimony as to the appeal issue to be credible. This Court finds there were no issues of merit to appeal, nor did Applicant ever request Hoffmeyer to file it. Hoffmeyer is an experienced attorney who understands his responsibilities to his clients, and this Court finds he would have filed an appeal had Applicant made the request or if he had felt there were any issues of merit.

Accordingly, these allegations are denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this court to grant his application.

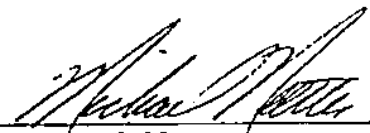
Neither Hoffmeyer nor Cannarella was deficient in any manner, nor was Applicant prejudiced by counsels' representation. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, 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 South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

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.


MICHAEL G. NETTLES
Presiding Circuit Court Judge
Twelfth Judicial Circuit

10-4, 2018

FILED
2018 OCT - 8 AM 11: 09
DORIS POLLOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
))
Fonnelze Delane, #298183,)
))
Applicant,)
))
v.)
))
State of South Carolina,)
))
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

Case No.: 2019-CP-21-327

RETURN

Respondent, making its Return to the application for Post-Conviction Relief (PCR) filed February 8, 2019, would respectfully show this Court:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. In March 2009, the Florence County Grand Jury indicted Applicant for possession of cocaine base with intent to distribute (2009-GS-21-0106). In June 2009, the Florence County Grand Jury indicted Applicant for three counts of distribution of cocaine base (2009-GS-21-0707). While awaiting trial on these charges, Applicant was arrested for his involvement in the death of two confidential informants. In July 2012, the Grand Jury issued indictments for two counts of murder, two counts of accessory before the fact to murder, two counts of solicitation to commit murder, and a single count of conspiracy (2012-GS-21-0897). Hoffmeyer and Cannarella represented Applicant on all of these charges.

On March 5, 2010, the State served Applicant and his attorneys with a notice of intent to seek the death penalty. The State alleged the aggravating factors warranting the death penalty were that the murders were committed by another person as Applicant’s agent or employee, the murders were of two people pursuant to one scheme or course of conduct, and the victims were

witnesses who were killed for the purpose of impeding or deterring the prosecution of a crime. The Honorable Thomas A. Russo was appointed to preside over Applicant's case.

On October 8, 2013, after qualifying a jury in preparation for trial, the State withdrew its notice of intent to seek the death penalty, and Applicant pleaded guilty to two counts of accessory before the fact to murder and two counts of distribution of cocaine base. In exchange for the plea, the State dismissed the remaining charges. Applicant entered his plea without negotiations or recommendations as to sentencing, and Judge Russo sentenced Applicant to concurrent terms life without the possibility of parole on each count of accessory before the fact to murder and thirty years for each count of distribution of cocaine base. Applicant did not appeal his plea or sentence.

2014-CP-21-0369

Applicant filed an application for post-conviction relief on February 10, 2014. The State filed its return on June 30, 2014. An evidentiary hearing was convened on January 30, 2018, at the Florence County Courthouse before the Honorable Michael G. Nettles. Applicant was represented by Justin Kata, Esquire. The State was represented by Assistant Attorney General Lindsey A. McCallister. On October 4, 2018, Judge Nettles signed an order denying post-conviction relief, which was filed October 8, 2018.

Applicant did not appeal the denial of his application for post-conviction relief. Applicant then filed this PCR action seeking Austin relief.

II. ALLEGATIONS

In his second and current application for post-conviction relief, Applicant raises the following allegations:

“Applicant’s position is he nor his attorney were never put on any notice that Judge Nettles made his decision on October 4, 2018. However, if Applicant was put on notice Applicant would have advised his attorney to file a Rule 59(e) Motion to Alter or Amend Judgment or at the very least, file a ‘Notice of Appeal’ on Applicant’s behalf.”

Attached to this Return and incorporated by reference are the records of the Richland County Clerk of Court regarding the subject conviction, appellate records, and the records from Applicant’s previous post-conviction relief action. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III. RESPONSE TO AUSTIN CLAIM

Applicant alleges he was denied the right to appeal the dismissal of his previous post-conviction relief application because neither he nor his attorney received notice of the entry of Order of Dismissal. Respondent submits counsel for Applicant was notified of the entry of the order by the Florence County Clerk of Court on October 8, 2018, as well as by Respondent on October 18, 2018. Because the record reflects Applicant’s counsel was on notice of the entry of the order, Respondent therefore interprets Applicant’s allegation as one of ineffective assistance of previous PCR counsel for failure to file a notice of appeal of the dismissal of Applicant’s 2014 action.

Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), a post-conviction relief applicant may petition the South Carolina Supreme Court for belated discretionary review of the dismissal of his or her application in some circumstances. A PCR applicant is entitled to an Austin appeal if the PCR judge affirmatively finds either: (1) the applicant requested and was denied an opportunity to seek appellate review; or (2) the right to appellate review of a previous PCR order was not knowingly and intelligently waived. Odom v. State, 337 S.C. 256, 262, 523 S.E.2d 753, 756 (1999). Because this allegation raises questions of fact which cannot be conclusively refuted

by the record, Respondent requests an evidentiary hearing limited to this ground for relief.

IV. DENIAL OF ALL REMAINING ALLEGATIONS

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

V. PRAYER FOR RELIEF

WHEREFORE, Respondent requests an evidentiary hearing be held limited to Applicant's claim that he was denied his right to appeal the dismissal of his 2014 PCR application.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

LINDSEY A. MCCALLISTER
Assistant Attorney General

By: _____
ATTORNEYS FOR RESPONDENT

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

September 9, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	TWELFTH JUDICIAL CIRCUIT
)	
Fonnelze Delane, #298183,	)	Case No.: 2019-CP-21-327
)	
Applicant,)	
	)	RETURN
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

Respondent, making its Return to the application for Post-Conviction Relief (PCR) filed February 8, 2019, would respectfully show this Court:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. In March 2009, the Florence County Grand Jury indicted Applicant for possession of cocaine base with intent to distribute (2009-GS-21-0106). In June 2009, the Florence County Grand Jury indicted Applicant for three counts of distribution of cocaine base (2009-GS-21-0707). While awaiting trial on these charges, Applicant was arrested for his involvement in the death of two confidential informants. In July 2012, the Grand Jury issued indictments for two counts of murder, two counts of accessory before the fact to murder, two counts of solicitation to commit murder, and a single count of conspiracy (2012-GS-21-0897). Hoffmeyer and Cannarella represented Applicant on all of these charges.

On March 5, 2010, the State served Applicant and his attorneys with a notice of intent to seek the death penalty. The State alleged the aggravating factors warranting the death penalty were that the murders were committed by another person as Applicant’s agent or employee, the murders were of two people pursuant to one scheme or course of conduct, and the victims were

witnesses who were killed for the purpose of impeding or deterring the prosecution of a crime. The Honorable Thomas A. Russo was appointed to preside over Applicant's case.

On October 8, 2013, after qualifying a jury in preparation for trial, the State withdrew its notice of intent to seek the death penalty, and Applicant pleaded guilty to two counts of accessory before the fact to murder and two counts of distribution of cocaine base. In exchange for the plea, the State dismissed the remaining charges. Applicant entered his plea without negotiations or recommendations as to sentencing, and Judge Russo sentenced Applicant to concurrent terms life without the possibility of parole on each count of accessory before the fact to murder and thirty years for each count of distribution of cocaine base. Applicant did not appeal his plea or sentence.

2014-CP-21-0369

Applicant filed an application for post-conviction relief on February 10, 2014. The State filed its return on June 30, 2014. An evidentiary hearing was convened on January 30, 2018, at the Florence County Courthouse before the Honorable Michael G. Nettles. Applicant was represented by Justin Kata, Esquire. The State was represented by Assistant Attorney General Lindsey A. McCallister. On October 4, 2018, Judge Nettles signed an order denying post-conviction relief, which was filed October 8, 2018.

Applicant did not appeal the denial of his application for post-conviction relief. Applicant then filed this PCR action seeking Austin relief.

II. ALLEGATIONS

In his second and current application for post-conviction relief, Applicant raises the following allegations:

“Applicant’s position is he nor his attorney were never put on any notice that Judge Nettles made his decision on October 4, 2018. However, if Applicant was put on notice Applicant would have advised his attorney to file a Rule 59(e) Motion to Alter or Amend Judgment or at the very least, file a ‘Notice of Appeal’ on Applicant’s behalf.”

Attached to this Return and incorporated by reference are the records of the Richland County Clerk of Court regarding the subject conviction, appellate records, and the records from Applicant’s previous post-conviction relief action. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III. RESPONSE TO AUSTIN CLAIM

Applicant alleges he was denied the right to appeal the dismissal of his previous post-conviction relief application because neither he nor his attorney received notice of the entry of Order of Dismissal. Respondent submits counsel for Applicant was notified of the entry of the order by the Florence County Clerk of Court on October 8, 2018, as well as by Respondent on October 18, 2018. Because the record reflects Applicant’s counsel was on notice of the entry of the order, Respondent therefore interprets Applicant’s allegation as one of ineffective assistance of previous PCR counsel for failure to file a notice of appeal of the dismissal of Applicant’s 2014 action.

Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), a post-conviction relief applicant may petition the South Carolina Supreme Court for belated discretionary review of the dismissal of his or her application in some circumstances. A PCR applicant is entitled to an Austin appeal if the PCR judge affirmatively finds either: (1) the applicant requested and was denied an opportunity to seek appellate review; or (2) the right to appellate review of a previous PCR order was not knowingly and intelligently waived. Odom v. State, 337 S.C. 256, 262, 523 S.E.2d 753, 756 (1999). Because this allegation raises questions of fact which cannot be conclusively refuted

by the record, Respondent requests an evidentiary hearing limited to this ground for relief.

IV. DENIAL OF ALL REMAINING ALLEGATIONS

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

V. PRAYER FOR RELIEF

WHEREFORE, Respondent requests an evidentiary hearing be held limited to Applicant's claim that he was denied his right to appeal the dismissal of his 2014 PCR application.

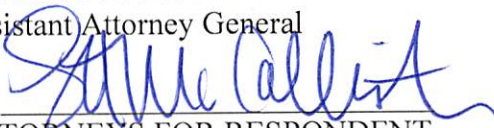
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

LINDSEY A. MCCALLISTER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

September 9, 2019

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)
)
)
)
FONNELZE DELANE, #298183)
)
)
Applicant,)
)
)
vs)
)
STATE OF SOUTH CAROLINA,)
)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS

2019-CP-21-327

AFFIDAVIT OF SERVICE BY MAIL

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

Jonathan D. Waller, Esquire
Waller Law Group, LLC
1116 Blanding Street, Suite 2B
Columbia, South Carolina 29201

DATED this the 9th of September, 2019.



Kasey Knox, Legal Asistant
For Respondent

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)
)
 Fonnelize T. Delane, #298183,)
)
 Applicant,)
)
 vs.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE TWELFTH JUDICIAL CIRCUIT

Case No. 2019-CP-21-327

2020 APR 15 AM 10:00
 DEANIS FORTIOS CHARRA
 CLERK
 C.C.P. & GS
 FLORENCE COUNTY

FILED

**CONSENT ORDER GRANTING
 BELATED APPELLATE REVIEW
 PURSUANT TO AUSTIN V. STATE**

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed February 8, 2019. Respondent made its return on September 9, 2019. An evidentiary hearing on the matter was convened on December 19, 2019, at the Florence County Courthouse. Applicant was present at the hearing and represented by Jonathan D. Waller, Esquire. Lindsey A. McCallister of the South Carolina Office of the Attorney General represented Respondent.

The Court had before it the plea transcript, the Florence County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, the records of Applicant's previous PCR action, and the current application and Respondent's return. Respondent also presented an affidavit from Applicant's previous PCR counsel, Justin Kata.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. In March 2009, the Florence County Grand Jury indicted Applicant for possession of cocaine base with intent to distribute (2009-GS-21-0106). In June 2009, the Florence County Grand Jury indicted Applicant for three counts of distribution of cocaine base (2009-GS-21-0707). While awaiting trial on these

DCB
 P. 10/15
 1
 229

charges, Applicant was arrested for his involvement in the death of two confidential informants. In July 2012, the Grand Jury issued indictments for two counts of murder, two counts of accessory before the fact to murder, two counts of solicitation to commit murder, and a single count of conspiracy (2012-GS-21-0897). Hoffmeyer and Cannarella represented Applicant on all of these charges.

On March 5, 2010, the State served Applicant and his attorneys with a notice of intent to seek the death penalty. The State alleged the aggravating factors warranting the death penalty were that the murders were committed by another person as Applicant's agent or employee, the murders were of two people pursuant to one scheme or course of conduct, and the victims were witnesses who were killed for the purpose of impeding or deterring the prosecution of a crime. The Honorable Thomas A. Russo was appointed to preside over Applicant's case.

On October 8, 2013, after qualifying a jury in preparation for trial, the State withdrew its notice of intent to seek the death penalty, and Applicant pleaded guilty to two counts of accessory before the fact to murder and two counts of distribution of cocaine base. In exchange for the plea, the State dismissed the remaining charges. Applicant entered his plea without negotiations or recommendations as to sentencing, and Judge Russo sentenced Applicant to concurrent terms life without the possibility of parole on each count of accessory before the fact to murder and thirty years for each count of distribution of cocaine base. Applicant did not appeal his plea or sentence.

2014-CP-21-0369

Applicant filed an application for post-conviction relief on February 10, 2014. The State filed its return on June 30, 2014. An evidentiary hearing was convened on January 30, 2018, at the Florence County Courthouse before the Honorable Michael G. Nettles. Applicant was

DCB
P. 2/15 2

represented by Justin Kata, Esquire. The State was represented by Assistant Attorney General Lindsey A. McCallister. On October 4, 2018, Judge Nettles signed an order denying post-conviction relief, which was filed October 8, 2018.

Applicant did not appeal the denial of his application for post-conviction relief. Applicant then filed this PCR action seeking Austin relief.

ALLEGATIONS

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

Applicant's position is he nor his attorney were never put on any notice that Judge Nettles made his decision on October 4, 2018. However, if Applicant was put on notice Applicant would have advised his attorney to file a Rule 59(e) Motion to Alter or Amend Judgment or at the very least, file a "Notice of Appeal" on Applicant's behalf.

At the call of the case, counsel for Respondent informed this Court the parties were in agreement to admit an affidavit from Applicant's previous PCR counsel, Justin Kata, as Respondent's Exhibit 1. Additionally, Respondent indicated, based on the statements contained in the affidavit, Applicant's request for relief pursuant to Austin v. State was proper and relief was appropriate in this case.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant alleges he was denied the right to appeal the dismissal of his previous post-conviction relief application. Pursuant to section 17-27-100 of the South Carolina Code, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application. See also Rule 243, SCACR ("A final decision entered under the Post-Conviction Relief Act shall be reviewed by the Supreme Court upon petition of either party for a writ of certiorari."). When an applicant is denied his right to seek

such review of his initial PCR application due to ineffective assistance of PCR counsel, the Supreme Court has directed the circuit court to hold “an evidentiary hearing on the issue of whether in fact the petitioner requested and was denied an opportunity to seek appellate review.” Austin v. State, 305 S.C. 453, 454, 409 S.E.2d 395, 396 (1991). If this Court so finds, Applicant shall have the right to petition the Supreme Court for review of the denial of his initial application. Id.

After reviewing of the facts and circumstances surrounding the waiver of the Applicant’s right to appeal the denial of allegations in the Applicant’s post-conviction relief application, both parties have indicated to this Court that they believe Applicant is entitled, pursuant to Austin, to seek belated appellate review of the decision denying relief and dismissing Applicant’s first PCR application. The parties agree Applicant did not voluntarily waive his right to appeal the post-conviction relief court’s denial and dismissal of the Applicant’s application for post-conviction relief in 2014-CP-21-0369. Counsel for Applicant has indicated in his affidavit, which Respondent submitted to this Court as an exhibit, that Applicant wished to appeal the decision denying his first application for post-conviction relief, but, through no fault of Applicant, Counsel failed to file a timely Notice of Appeal of that decision.

Based upon the foregoing, this Court finds granting Applicant the right to seek belated appellate review of the denial of Applicant’s first PCR action (2014-CP-21-0369) pursuant to Austin is warranted. Both Applicant and Respondent consent to granting Applicant the right to seek belated appellate review in this matter.

IT IS THEREFORE ORDERED:

1. Applicant shall remain in the custody of the South Carolina Department of Corrections; and
2. Applicant is granted the right to seek belated appellate review of the denial of post-

PCB
p. 4 of 5
4
232

conviction relief in 2014-CP-21-0369, in accordance with Austin v. State. Counsel for Applicant is directed to file the appropriate notice of appeal within thirty days of receipt of written notice of the entry of this order.

AND IT IS SO ORDERED this 1 day of April, 2020.



D. CRAIG BROWN
Presiding Judge
Twelfth Judicial Circuit

2020 APR 15 AM 10:00
DENIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

FILED

DCB
P 5/9/5

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF MARION) FOR THE TWELFTH JUDICIAL CIRCUIT

2019 DEC 19 PM 4:37

Fonnelze T. Delane, #298183, DORIS POULOS O'HARA No. 2019-CP-21-0327

Applicant,

CCCPS
FLORENCE COUNTY, SC

v.

AFFIDAVIT

State of South Carolina,


Respondent.

PERSONALLY appeared before me, December 17, 2019, the undersigned Notary, Justin M. Kata, who makes the following statement upon oath and affirmation of belief and personal knowledge that the following facts and matters set forth are true and correct to the best of his knowledge:

1. I was retained to represent Fonnelze T. Delane on or about August 5, 2014, to represent him in his post-conviction relief (PCR) action (2014-CP-21-0369). See Attachment 1.
2. On January 30, 2018, I appeared along with Mr. Delane for the PCR evidentiary hearing at the Florence County courthouse before the Honorable Michael G. Nettles.
3. Judge Nettles denied Mr. Delane's request for relief by written order filed October 8, 2018. The Florence County Clerk of Court notified of the entry of the order by mailing a copy of the filed Order of Dismissal via U.S. mail on the same day. See Attachment 2.
4. Assistant Attorney General Lindsey A. McCallister also notified me of the entry of the order by letter dated October 18, 2018. See Attachment 3.
5. Based on my discussions with Mr. Delane before and after the PCR hearing, I knew Mr. Delane wished to appeal the denial of his PCR action. However, through inadvertence, I failed to file a timely notice of appeal of Judge Nettles' decision. I would have filed a notice of appeal on Mr. Delane's behalf if I had realized I had received the order.

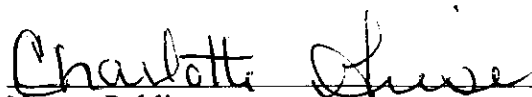
6. My signature below indicates my agreement that, based on these facts and circumstances, I rendered ineffective assistance of counsel in Mr. Delane's case as to the issue of filing a notice of appeal.

DATED this 17th day of December, 2019.



Affiant

SWORN and subscribed to me this 17th day of December, 2019.



Notary Public

My commission expires: 1/24/2021

CHARLOTTE GIESE
Notary Public, State of South Carolina
My Commission Expires 1/24/2021

Attachment 1

THE GIESE LAW FIRM, LLC
1315 BLANDING STREET
COLUMBIA, SC 29201
803-708-6767

W. BARNEY GIESE, ESQ.

KEITH GIESE, ESQ.

JUSTIN M. KATA, ESQ.

KELLY L. GIESE, ESQ.

August 5, 2014
VIA U.S. MAIL

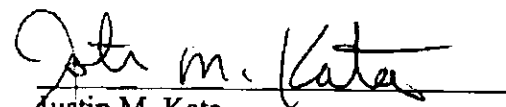
The Honorable Connie Reel-Shearin
Clerk of Court, Florence County
180 N Irby MSC-E
Room B11
Florence, SC 29501-3456

Re: Fonnelze Delane v. The State of South Carolina
Case No.: 2014CP2100369

Dear Mrs. Reel-Shearin:

Please be advised that my office as well as Kristy Goldberg have been retained to represent Mr. Fonnelze Delane in the above referenced matters.

With warm regards, I am


Justin M. Kata
Attorney at Law
The Giese Law Firm, LLC
1315 Blanding Street
Columbia, SC 29201

ATTORNEY FOR THE DEFENDANT

FILED
2014 AUG -6 PM 2:34
CONNIE REEL-SHEARIN
CLERK OF COURT
FLORENCE COUNTY, SC

Attachment 2

FILED

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP2100369

Fonnelize T Delane

South Carolina State Of

2018 OCT 8 AM 11: 20

BORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Note: Title abstractors and researchers should refer to the official court order for judgment details.

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

Circuit Court Judge

Judge Code

10/8/2018

Date

For Clerk of Court Office Use Only

This judgment was entered on **October 8, 2018**, and a copy mailed first class or placed in the appropriate attorney's box on **October 8, 2018**, to attorneys of record or to parties (when appearing pro se) as follows:

CERTIFIED: A TRUE COPY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.
Boris Poulos O'Hara

Tristan Michael Shaffer PO Box 1027 Chapin, SC 29036
Justin Martin Kata 1315 Blanding St. Columbia, SC 29201

Samuel Leonard Key Rembert C. Dennis Building 1000
Assembly St. Columbia, SC 29201

Lindsey McCallister
PO Box 11549 Columbia SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Doris P. O'Hara

Court Reporter

Doris Poulos O'Hara - Clerk of Court

Court Reporter:

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

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

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

STATE OF SOUTH CAROLINA)
 COUNTY OF FLORENCE)
 Fonelze T. Delane, #298183,)
 Applicant,)
 v.)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 TWELFTH JUDICIAL CIRCUIT

C.A. No. 2014-CP-21-0369

ORDER OF DISMISSAL

2018 OCT -8 AM 11:09
 BORIS POULOS CHAKRA
 CCCP & GS
 FLORENCE COUNTY, SC

FILED

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Fannelze T. Delane (Applicant) on February 10, 2014. Respondent made its Return on June 30, 2014. An evidentiary hearing into the matter was convened on January 30, 2018, at the Florence County Courthouse before the undersigned. Justin Kata, Esquire, represented Applicant. Lindsey A. McCallister, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. Paul Cannarella (Cannarella) and W. James Hoffmeyer (Hoffmeyer), Esquires, Applicant's plea counsels, was also called to testify. This Court also had before it a copy of the records of the Florence County Clerk of Court, records from the South Carolina Department of Corrections, the application, Respondent's Return, and the plea transcript.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. In March 2009, the Florence

CERTIFIED: A TRUE COPY
Boris Poulos Chakra
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

County Grand Jury indicted Applicant for possession of cocaine base with intent to distribute (2009-GS-21-0106). In June 2009, the Florence County Grand Jury indicted Applicant for three counts of distribution of cocaine base (2009-GS-21-0707). While awaiting trial on these charges, Applicant was arrested for his involvement in the death of two confidential informants. In July 2012, the Grand Jury issued indictments for two counts of murder, two counts of accessory before the fact to murder, two counts of solicitation to commit murder, and a single count of conspiracy (2012-GS-21-0897). Hoffmeyer and Cannarella represented Applicant on all of these charges.

On March 5, 2010, the State served Applicant and his attorneys with a notice of intent to seek the death penalty. The State alleged the aggravating factors warranting the death penalty were that the murders were committed by another person as Applicant's agent or employee, the murders were of two people pursuant to one scheme or course of conduct, and the victims were witnesses who were killed for the purpose of impeding or deterring the prosecution of a crime. The Honorable Thomas A. Russo was appointed to preside over Applicant's case.

On October 8, 2013, after qualifying a jury in preparation for trial, the State withdrew its notice of intent to seek the death penalty, and Applicant pleaded guilty to two counts of accessory before the fact to murder and two counts of distribution of cocaine base. In exchange for the plea, the State dismissed the remaining charges. Applicant entered his plea without negotiations or recommendations as to sentencing, and Judge Russo sentenced Applicant to concurrent terms life without the possibility of parole on each count of accessory before the fact to murder and thirty years for each count of distribution of cocaine base. Applicant did not appeal his plea or sentence.

ALLEGATIONS

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

1. Ineffective Assistance of Counsel
 - a. "Counsel advised applicant to plead guilty only, because counsel DID NOT want to go to trial."
 - b. "Counsel failed to appeal and file motion of reconsideration after applicant asked him to."
2. Involuntary Guilty Plea
 - a. "Applicant plead guilty, because counsel provided applicant with no other reasonable alternative."
 - b. "Counsel was ineffective in failing to ensure that the trial was held outside of Florence County, because applicant would not receive a fair trial in Florence County. Therefore, since counsel refused to do anything about it applicant decided, because of the unfairness he would be against. He shouldn't risk being sentenced to death by a jury of 'Killers' as his attorneys referred to his prospective jurors."

At the conclusion of Applicant's testimony, his PCR counsel moved to amend his application to conform to the evidence presented as to ineffective assistance of counsel for failing to have the mitigation consultant present during mitigation and failing to present any exhibits or witnesses during sentencing. These additional allegations are addressed below. Further, after the presentation of both the State's and Applicant's cases, the State moved to dismiss the allegation regarding venue because Applicant failed to present any evidence on the issue. The motion is hereby granted, and that allegation is deemed abandoned and dismissed.

SUMMARY OF TESTIMONY

Cannarella testified he was appointed to this case along with Hoffmeyer, and although they both worked on the file, Hoffmeyer was the lead attorney who did the bulk of the work. According to Cannarella the main issues in the case were the State seeking the death penalty and whether

Applicant was an accessory or a principal. Cannarella testified he met with Applicant approximately five times over the course of a year, with the meetings becoming "more intense" approaching trial. Cannarella testified he applied to the court for funding for a mitigation expert, which was granted, and they hired a woman from Columbia whom Hoffmeyer recommended. Cannarella testified the mitigation specialist was present at trial when they began picking the jury, and Applicant decided to plead guilty the next day. Cannarella further testified he recalled speaking with Applicant about the decision to plead guilty, but he did not remember the specifics of the conversation.

Hoffmeyer confirmed Cannarella's testimony that they were appointed at the same time, but he was the lead attorney on the case. Hoffmeyer testified he has been practicing law since 1992, with a focus on criminal law since the beginning of his career. Hoffmeyer further testified he had handled three previous capital cases at the time of his appointment to Applicant's case. According to Hoffmeyer, he met with Applicant at least twenty times to discuss discovery and the State's evidence. Hoffmeyer also testified he used a private investigator to check witness backgrounds, gather records, and interview several witnesses.

Hoffmeyer further testified there was significant evidence in the case against Applicant. According to Hoffmeyer, the victims were witnesses in a drug case against Applicant, and the State was prepared to present text messages and phone calls between Applicant and the shooter immediately before and after the murders. Hoffmeyer also testified there was evidence Applicant directed his codefendants to dispose of the gun, and Applicant's girlfriend called police and attempted to warn them the murders were about to take place. In addition, Hoffmeyer testified

Hoffmeyer testified the sentencing hearing was delayed until the following morning after the guilty plea was accepted, but he did not recall who he contacted to be present on Applicant's behalf, and no one from Applicant's family contacted him. Hoffmeyer testified he and his private investigator met with Applicant's mother and sister during the preparation of the case, and the family was not interested in being involved. However, Hoffmeyer further testified he recalled a meeting between Applicant and Applicant's mother regarding a potential guilty plea, although that meeting took place at the Solicitor's Office sometime before the plea was entered. According to Hoffmeyer, Applicant did not provide a list of people he wanted to be present on his behalf at the sentencing, although he did discuss some names with the mitigation specialist prior to the guilty plea. Hoffmeyer testified this was not a case where there were people voluntarily coming forward to support Applicant.

Hoffmeyer testified in mitigation he emphasized the victims' drug use and tried to give the court a balanced picture of the facts. Hoffmeyer further testified the mitigation report indicated Applicant did not have a good home life. Hoffmeyer testified the mitigation expert would have been present for sentencing had Applicant continued with a trial and been convicted of murder. However, Hoffmeyer also testified there was no good explanation to present for Applicant's behavior in mitigation because Applicant did not have any mental health issues or a history of abuse. According to Hoffmeyer, they did not discover any information that would explain what occurred in this case.

Finally, Hoffmeyer testified he did not file an appeal, and he testified he would have filed one if Applicant had asked. He recalled the plea court explained the process and timeline during

several codefendants were prepared to testify against Applicant, implicating him as the mastermind.

Hoffmeyer testified Applicant had no witnesses who could provide a defense and anyone the defense could have called would have lacked credibility compared to the State's witnesses. Hoffmeyer testified his strategy would have been to imply third-party guilt, but there was not a specific third person he could point to. Hoffmeyer testified the defense hired Carolyn Graham, a mitigation specialist. According to Hoffmeyer, she interviewed Applicant, went to his home, interviewed Applicant's family, and reviewed school records. Hoffmeyer further testified they were in constant contact with her in person and by phone, and he met with her approximately eight to ten times. Hoffmeyer testified the defense also hired a jury-selection expert, who was present during jury selection.

Hoffmeyer testified Applicant decided to plead guilty after receiving the list of prospective jury panels, although there had been ongoing discussions regarding a plea since the beginning of his involvement in the case. Hoffmeyer testified he advised Applicant of the pros and cons of pleading guilty and explained he could receive life in prison because the State was not making a recommendation, and ultimately, it was Applicant's decision to plead. Hoffmeyer also testified Applicant seemed to understand their discussions and the charges he was facing. According to Hoffmeyer, the main factor in Applicant's decision was sentencing since the State was seeking the death penalty. Hoffmeyer further testified he filed a motion to compel the State to withdraw the death penalty notice, which was denied.

the plea colloquy. Further, he testified he and Applicant were able to meet in jury room after the plea and discussed the possibility of an appeal. However, Hoffmeyer testified he did not see any issues of merit for an appeal, and Applicant did not request an appeal after their discussion.

Applicant testified he met with Hoffmeyer several times and with Cannarella once, and they talked in detail about the case. Applicant further testified he remembered meeting with the mitigation specialist, and she asked about his history and background, his upbringing, and whether there had been any violence in his home. Applicant agreed she interviewed numerous people and put in a significant amount of work on his case. He also testified there was a second woman involved who interviewed him about his mental health background.

According to Applicant, he decided to plead guilty because he was pressured by "everyone" including the jury consultant. Applicant testified jury screening had begun, but they had not started the selection process when he decided to plead. He testified both Cannarella and Hoffmeyer came to visit him, and they pressured him to accept the guilty plea. Applicant also testified he met with his mother, the solicitor, and the private investigator, and his mother wanted him to plead guilty because she was afraid he would receive the death penalty. Applicant testified the jury consultant also told him the jury was likely to recommend the death penalty. According to Applicant, the sentencing hearing was scheduled for the day following the plea, so they had approximately thirteen hours to prepare. Applicant testified he did not meet with his attorneys, the mitigation specialist, or the jury consultant during that time. He also testified the mitigation specialist was not present, nor did Hoffmeyer introduce any exhibits during the sentencing hearing.

Applicant further testified after the sentence was pronounced, he met with Hoffmeyer in a room in the courthouse, and they discussed the possibility of an appeal. Applicant agreed Hoffmeyer advised him he did not think an appeal was appropriate in this situation, and Applicant dropped the issue after that discussion.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the PCR hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Applicant alleges he received ineffective assistance of counsel. 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 that, 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).

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).

This Court finds Applicant has failed to prove either Cannarella's or Hoffmeyer's performance was deficient in any way. Both counsels collectively met with Applicant numerous times, with lead counsel meeting with Applicant on at least twenty occasions, and both had a good relationship with Applicant. The defense also had ample time and resources to prepare and hired multiple experts to deal with the main concern in the case – the State's decision to seek the death penalty.

This Court has also reviewed the transcript and finds no issues with Hoffmeyer's presentation of mitigation. Hoffmeyer credibly testified he was in constant contact with the mitigation specialist throughout his preparation of the case, and even Applicant agreed she did extensive work on the case. Hoffmeyer had the benefit of her report during sentencing, and he credibly testified although the consultant concluded Applicant did not have a great home life growing up, there was nothing in his background to explain the severity of the criminal behavior in this case. Therefore, this Court finds his decision not to call her to testify was reasonable as he was unable to offer anything of value in mitigation. This Court also finds Hoffmeyer also credibly explained the mitigation expert would have been present for sentencing had Applicant continued with a trial. Finally, despite Hoffmeyer's testimony as to Applicant's family's lack of involvement in the case, the record reflects Applicant's mother and sister were in fact present for sentencing, and Applicant's mother spoke to the court on his behalf. See Tr. pp. 83-84, 99.

Further, this Court finds the plea colloquy is determinative as to all of Applicant's issues. Applicant chose to plead guilty in order to avoid possibly being sentenced to death – after being

advised to do so by his attorneys, the experts hired on his behalf, and his family – and this Court finds it was a reasonable recommendation for his attorneys to make in this situation. This Court also finds the decision to plead guilty was freely and voluntarily made. During the guilty plea, Applicant testified he understood the plea was without any negotiation or recommendation from the State as to the sentence except that the sentences for each charge would be concurrent. See Tr. p. 62. The plea judge also explained the possible sentencing range for each charge, and Applicant indicated he understood. See Tr. p. 54. Applicant testified during the plea he was satisfied with the services of his attorneys and agreed they had investigated all aspects of the case and contacted witnesses of his behalf. See Tr. pp. 63-64. 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 failed to present any such reason in this case.

Finally, this Court has observed the witnesses and finds Hoffmeyer’s testimony as to the appeal issue to be credible. This Court finds there were no issues of merit to appeal, nor did Applicant ever request Hoffmeyer to file it. Hoffmeyer is an experienced attorney who understands his responsibilities to his clients, and this Court finds he would have filed an appeal had Applicant made the request or if he had felt there were any issues of merit.

Accordingly, these allegations are denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this court to grant his application.


Neither Hoffmeyer nor Cannarella was deficient in any manner, nor was Applicant prejudiced by counsels' representation. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), 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 South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

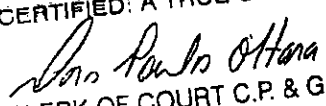
1. the Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall be remanded to the custody of the Respondent.

AND IT IS SO ORDERED.


MICHAEL G. NETTLES
Presiding Circuit Court Judge
Twelfth Judicial Circuit

10-14, 2018

FILED
2018 OCT - 8 AM 11: 09
BORIS POULOS O'HARA
C.C.P. & G.S.
FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Attachment 3



ALAN WILSON
ATTORNEY GENERAL

October 18, 2018

Mr. Justin Martin Kata
The Giese Law Firm, LLC
1315 Blanding Street
Columbia, South Carolina 29201

Re: Fonnelle T. Delane, #298183 v. State of South Carolina
2014-CP-21-0369

Dear Mr. Kata:

Enclosed please find a copy of the signed and filed **Order of Dismissal** in the above mentioned post-conviction relief case.

Sincerely,

Lindsey McCallister
Assistant Attorney General

LM/can
Enclosures

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

FONNELZE T DELANE, #298183,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Order of Dismissal** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

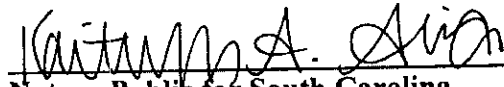
Mr. Justin Martin Kata
The Giese Law Firm, LLC
1315 Blanding Street
Columbia, South Carolina 29201

This 18th day of October, 2018.



Lindsey McCallister
Attorney for Respondent

SWORN to before me this 18th day of October, 2018.


Notary Public for South Carolina

My Commission Expires: 10/1/2025