

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenwood County

Honorable J. Mark Hayes, Circuit Court Judge

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S.C. SUPREME COURT

ALFONSO MORGAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO 2020-001174

APPENDIX

TAYLOR D. GILLIAM
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

BRIANNA L. SCHILL
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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1 been handled since Duncan came out with that standard,
2 with that burden of proof. There used to be an immediate
3 appeal. That was ultimately the Supreme Court reversed
4 itself and said there is no more immediate appeal. Some
5 trial Judges believe that the immunity statute would or
6 the Protection of Persons and Property Act will give you
7 the right to a jury charge on like, for instance, in this
8 case defense of vehicle. But we now have a decision
9 saying, no, we're not going to charge the immunity statute
10 to juries. Then we have Douglas which I have argued at
11 the very beginning of this that I think is incorrect. But
12 it is the law currently saying that a prerequisite to
13 establishing immunity is proving self-defense. Then you
14 look at the provisions inside of the Protection of Persons
15 and Property Act. And then finally I would say, because
16 we have the burden of proof a defendant is often at the
17 mercy of law enforcement's investigation, because we're
18 relying on what was there on the scene and we couldn't be
19 involved in that until much later after the crime has, the
20 alleged crime has already been committed. I say all that
21 to say that while it is preponderance of evidence at the
22 moment, I would like it to be preserved on the record to
23 argue for something different assuming that we were unable
24 to get past this motion which, obviously, we believe we
25 will. So if you'll permit me, the way I sort of divided

1 this up, Judge, was into four quarters. I see the first
2 quarter as being sort of what got everybody to the
3 Cabstand; the second quarter is while the defendant is
4 there at the Cabstand; the third quarter is what happens
5 while Mr. Morgan is not there at the Cabstand; and then
6 the fourth quarter is what happens after everybody's out
7 in the front door. I also divided this up into facts that
8 I believe were all in essence in agreement on versus where
9 are we, where do we actually have dispute. The facts that
10 we all agree on is that Jamaal Aiken, Brent Williams,
11 Mario, and maybe some other black males but, certainly, a
12 host of women, decided to go to the Cabstand. That was
13 the first time that most of those individuals had ever
14 been to the Cabstand, also known as the Old Folks Home and
15 the Senior Citizens Social Club where older gentlemen
16 played spades and we still had vinyl records. The
17 Cabstand was the third gathering spot, based on what we
18 heard from State's witnesses of where this group had been.
19 We also know that Al Morgan was a regular in the Cabstand
20 which means that if you were looking for him on a
21 Thursday, Friday or Saturday, that's most likely where he
22 would be. Al Morgan also was already there and, in fact,
23 had no idea that any of the rest of this group was coming
24 to the Cabstand that night. The disputed facts that we
25 have in the first quarter, and I point these out, because

1 I think they should give Your Honor a way to view the
2 credibility of the State's witnesses that are coming from
3 the deceased family. First off, Jamaal Aiken had a
4 blood/alcohol level of .119 and that's not necessarily
5 disputed, but what we heard from the witnesses on the
6 stand was that he only had a couple of Bud Lights. There
7 was just one box of beer that we took to the Cabstand. We
8 didn't stay long at these parties. Jamaal Aiken had THC
9 in his urinalysis. Nobody says that they saw Mr. Aiken
10 either with marijuana or using marijuana. Jamaal Aiken
11 was armed with a stolen pistol. Well, the guy talking
12 about gunplay was certainly not Jamaal, although we're not
13 given a name as to who it was and nobody ever saw Jamaal
14 with a gun. Mr. Aiken possessed more than an ounce of
15 marijuana which would be, in this court, a presumption of
16 an intent to distribute and, again, none of the State's
17 witnesses ever saw him with any marijuana. So that takes
18 us into the second part which is Al Morgan is at the
19 Cabstand and so is Mr. Aiken and his group. We know that
20 Al Morgan left the Cabstand shortly after Aiken, Brent
21 Williams and their company arrive. We know that Al Morgan
22 went to Ramsey's home. We know that while Mr. Morgan was
23 at Ramsey's home that a fight broke out in the Cabstand.
24 We also know that Brent Williams is related closely to
25 Quetta Jenkins and that there appeared to be some beef

1 between Quetta Jenkins and Shay Simon. In fact, if you'll
2 recall, Mr. Aiken's girlfriend blames Quetta Jenkins for
3 the fact that Jamaal is deceased. So what are the
4 disputed facts in this small portion of the overall story?
5 This is a big one. Brent Williams popped Al Morgan's hat
6 and tried to provoke him with words like grow some balls
7 or something of that nature. Well, Lenwood Ramsey saw
8 Brent Williams do that. Al Morgan told Bug about it and
9 asked to leave. Al Morgan told Tonya about it, Bug's
10 girlfriend. And the fact that it had happened was
11 discussed back at Ramsey's house after Al Morgan left with
12 Thomas Gilchrist, Bug, Lenwood Ramsey, and Tonya. Moving
13 into what happens inside the Cabstand after Al Morgan is
14 gone. Well, there is an argument that is started relating
15 to Shay Simon and Quetta Jenkins. Al Morgan is really the
16 only common denominator between these two women that we've
17 heard from either side. Brent Williams threw the first
18 punch. He told us that. He threw that punch with nothing
19 more than the provocation of words directed at Quetta
20 Jenkins and Drina Morgan from Demond Brown simply saying
21 I'm not going to let y'all mess with her. The fight,
22 well, Demond Brown went to the ground and balled up. That
23 also came from Brent Williams after he was punched in the
24 face, and the fight clearly escalated beyond just Brent
25 Williams and Demond Brown. If it had just stayed as Brent

1 Williams and Demond Brown, then this whole let's get
2 everybody out and broken up just would not have been
3 necessary as it turned out later on. And one of the
4 important things about the fact that Brent Williams hits
5 Demond Brown is it shows his level of animosity for
6 anything related to the women that he is there with. In
7 other words, it didn't take a lot to get him involved in
8 an altercation. So what else do we agree on? McCauley,
9 that's Ernest McCauley, Tommy Thomas, Mr. Cocky, they
10 begin trying to break up the fight by moving Brent
11 Williams, Jamaal Aiken, everybody that they were with to
12 the front door of the Cabstand. There doesn't seem to
13 really be any dispute over that. There was an altercation
14 at the door between, I'm just saying the old guys and
15 Aiken's crowd. We heard Drina Morgan say, yeah, there was
16 fighting going on at the door. Blows were passing at the
17 door. May be some dispute about who was throwing them,
18 but there was some stuff going on at the door. McCauley
19 got hit in the head. Nobody really denies that he got hit
20 in the head. There's some dispute over who did it and
21 whether they saw it or not, but he basically has the mark,
22 Tony sees it, and he goes to the hospital over it, and he
23 refers to it to Mr. Cocky just after it had happened.
24 Aiken and everyone with him ends up outside the front
25 door. So Shay Simon, Demond Brown and Clifton Robinson

1 are now all on the inside which makes it seem as if
2 Clifton Robinson, Demond Brown and Shay Simon were on one
3 side of this altercation and the rest of the crowd was on
4 the other side of the altercation. So here are the
5 disputed facts about what happened while Al Morgan was
6 gone. Clifton Robinson got beat up. None of the State's
7 witnesses will admit that Clifton Robinson got beat up;
8 Crip. However, he testified, he said he got hit from
9 behind, pulled down to the ground and that they were
10 beating on him. Shay Simon saw it. Shay Simon and Crip
11 told Al on the phone that Crip had been jumped. Courtney
12 Lockhart was a witness to this and if you got to take a
13 third party who doesn't seem to really be on one side or
14 the other, if you'll recall Ernest McCauley saw the guy
15 with the scar on his face on the ground getting beaten.
16 Well, that's Crip, because he's the only one that's got
17 the scar on his face. Disputed fact in this portion
18 that's important is that Jamaal Aiken was the one who hit
19 or pulled Crip to the ground. If it hadn't been Jamaal,
20 we would have heard a name from some of the State's
21 witnesses who are related to the Aiken's, because they
22 could have said no, it wasn't him, it was somebody else.
23 The absence, the fact that they won't even admit that an
24 altercation occurred with Clifton Robinson, I think, is a
25 clear indication that it was Jamaal Aiken that got in that

1 fight. That it was Jamaal Aiken who hit Ernest in the
2 head. If it wasn't, we wouldn't have got, we would have
3 gotten a name from some of the State's witnesses as to who
4 it was. It is just like the, being intoxicated, having
5 the stolen pistol, the marijuana, the facts that we should
6 all be in agreement on but which are detracting somewhat
7 from the memory of Mr. Aiken are simply either unknown by
8 the State's witnesses or denied outright. I think that's
9 a significant fact for the Judge, for Your Honor to
10 consider in looking at the overall credibility. And
11 here's my point, because I'm getting to move into where
12 the facts that are consistent. When something comes from
13 the State's witnesses that supports our version of what
14 happened and our request for immunity, then you got to
15 know that that is something that actually happened. What
16 does that lead us to? So now we're to that critical,
17 critical, critical time-period. Everybody's outside the
18 front door. Al Morgan is pulling up. What do we agree
19 on? We agree that Al Morgan came back, because he was
20 going to pick up Shay Simon and Crip. That was the phone
21 call. We heard that even from Mr. Aiken's girlfriend. Al
22 Morgan was in the backseat of Ramsey's Impala and he never
23 got out. There hadn't been a single witness that said he
24 got out of the car. Jamaal Aiken left the front door and
25 regardless of how far it was, he walked to the Impala's

1 back door. Brent Williams was close with him. That comes
2 from Brent and from Drina Morgan. Mr. Aiken is the one
3 that opened the back door. I don't believe there's really
4 any inconsistency in that. Drina Morgan right now is the
5 only witness who has said that the back door didn't come
6 open. Brent Williams said that Mr. Aiken opened the back
7 door and the unknown witness that we now know is the
8 discredited Mr. Sayles that talked to Hugh Butler on the
9 scene and gave the license tag said initially on-scene
10 that there was an argument, that the guy who got shot
11 opened the door, and then there was a shot that followed
12 or it was door opened, argument, then there was a shot.
13 So the door was opened by Mr. Aiken which puts him within
14 a few feet of Al Morgan. We also know that Mr. Aiken was
15 armed with a stolen pistol. Brent Williams said in his
16 initial interview with the investigator, this is at the
17 hospital before he's had any time to talk with other
18 family members really and come up with any different
19 scenario than maybe what happened, admitted at least that
20 Mr. Aiken asked Al, quote, a question. Al Morgan did not
21 say anything. Brent Williams says, and so does everybody
22 else frankly, the shot came from inside the vehicle's
23 backseat. The bullet wound is consistent, according to
24 the pathologist with Mr. Aiken being bent over having
25 opened the door and reaching in with his left hand. Mr.

1 Aiken fell down close to the car. Mr. Morgan shut the
2 door and told Ramsey to drive off, which they did. Ramsey
3 drove off, ultimately ending up back at the house and he
4 was arrested. So where really is the dispute about what
5 happened in the parking lot just before shots? Really, if
6 we got it down to just what is the essence of this case?
7 It is after Jamaal Aiken has opened the door, what is the
8 question that he asked and did he bend over into the car.
9 So Al says somebody at the door to the Cabstand said there
10 he goes, referring to him which is what brought Mr.
11 Aiken's attention to the black Impala to begin with.
12 Aiken had to come to Ramsey's vehicle and he did it acting
13 highly agitated. That is testimony from Mr. Gilchrist.
14 That is testimony from Al Morgan. That is testimony from
15 Mr. Ramsey. He was highly agitated. He was acting
16 consistent with someone who had been in a couple of
17 fights, three altercations inside, intoxicated on a
18 combination of alcohol and marijuana. The other disputed
19 fact would be what was Aiken's question that Brent
20 Williams said he asked Al? Well, you've got Thomas
21 Gilchrist, Ramsey, and Al Morgan all saying it was words
22 to the effect of what the F you going to do now? Most
23 importantly, I think, is to consider that Mr. Gilchrist
24 who was interviewed within a short period of time by law
25 enforcement after the shot had been fired said the same

1 thing. He was consistent. What the F you going to do?
2 That was the words that were said and that's in the
3 initial statement that comes from Mr. Gilchrist. Hugh
4 Butler's unknown witness who, again, I say would be the
5 now discredited Mr. Sayles says that there was an argument
6 prior to the shot being fired. And so I guess the final
7 disputed fact would be that Aiken was, in fact, bending
8 over and reaching into the back seat to get at Mr. Morgan.
9 However, while I'm on that, it's not necessary for us to
10 prove that that was, in fact, the position he occupied in
11 order to trigger self-defense or the Protection of Persons
12 and Property Act, defense of vehicle. All we've really
13 got to have is that there is a threat that is presenting
14 itself and that there is an attempted entry into the
15 vehicle. The other point I would make is that the State's
16 hypothetical to the pathologist on this issue had Mr.
17 Aiken back five, maybe six feet from the vehicle. That's
18 inconsistent with any of the testimony that we heard from
19 the witnesses about where Mr. Aiken was standing, in
20 particular Brent Williams who has him right at the door.
21 Morgan was prone in the backseat. To me, I'm sure that's
22 going to be a disputed fact, but that seems like an easy
23 one. He couldn't get at the pistol in his waistband while
24 he's sitting straight up. He had to lean over in order to
25 pull it out from and do, extricate it from underneath the

1 waistband. Furthermore if he hadn't done that, if he
2 hadn't been leaning over, if he's where the State wants
3 him to be which is sitting straight up in the backseat,
4 the gunshot should have come from outside the back door
5 where it was opened. In other words, to hold the gun and
6 to put it at the angle that was necessary to shoot, to be
7 consistent with the bullet wound, the trajectory, the gun
8 has to be held up a little bit and that puts it outside
9 the edge of the car. When you got pretty much everybody
10 saying no, the gunshot occurred inside the car. You also
11 have Bug and Ramsey both saying that he was leaned over in
12 the backseat. Al Morgan was in fear of serious bodily
13 injury or death. Here, I want to remind the Court that we
14 get certain statutory presumptions. Once there is an
15 attempted entry, then Mr. Morgan is entitled statutorily
16 to the presumption that he is in fear of serious bodily
17 injury or death and that the deceased has as his intent
18 the object of committing a violent crime on this
19 individual. So statutory presumptions aside, here's what
20 Al Morgan knew. He knew that Crip had been jumped by this
21 group inside the Cabstand. Thus, demonstrating that they
22 were already in a mood for violence. He also knew that
23 all of Mr. Aiken's crowd is still there at the door and he
24 believed, that is Mr. Morgan believed, that this animosity
25 was gang-related. Defendant's Exhibit number 9, we have

1 Brent Williams with his thumb over his hand and four
2 fingers pointed down. As he told us, he was showing off
3 his tattoo on his wrist. So with that summary of the
4 facts, just touching back on where are we in the law.
5 According to the Douglas, the first thing we got to do is
6 show Your Honor that we're entitled to self-defense, then
7 do we get defense of vehicle under the act and, of course,
8 stand your group which is assumed by that. Self-defense,
9 was Mr. Morgan at fault in bringing on the difficulty?
10 There is absolutely nothing that he did that was unlawful
11 and designed to provoke an attack. There was nothing that
12 happened in the parking lot. He's got a, even if he
13 potentially did something in the bar, he has withdrawn by
14 going home. The fact that he never came out of the back
15 of the vehicle, never said anything, it's just not an
16 issue in the case. So the next element can be proved two
17 different ways. Was he actually in danger or did he
18 reasonably believe that he was in danger? He was actually
19 in danger, because he was being accosted by a person who
20 was drunk, had marijuana in his system and was armed with
21 a stolen pistol. He believed that he was in danger,
22 because he knew that Mr. Aiken had, and his group and
23 already engaged in a prior altercation with Crip, that is
24 that they had jumped him. We now know that there were a
25 couple of melees that were going on inside the bar, not

1 just Crip, but also Demond Brown, and Ernest McCauley at
2 the door. Finally, did he have a duty to retreat? Well,
3 in self-defense he would, but only if there is somewhere
4 to go. He's stuck in the car, so no retreat is available.
5 The fact that he's leaning over is as far as he can go
6 anyway. So when it comes to the elements of self-defense,
7 it is our position that we certainly have proved these by
8 a preponderance of the evidence. Again, our legal
9 position would be at that point we're entitled to immunity
10 under the statute itself but following with Douglas and
11 moving into, okay, what does the act say about what we
12 also have to prove. Under the act for defense of vehicle,
13 he could not be engaged, that is Mr. Morgan, in unlawful
14 conduct. There must be an occupied vehicle. An attempt
15 to enter or actual entry. An attempt to remove or actual
16 removal. The attempt must be unlawful and forceful and he
17 must have reasonable fear of bodily injury. I'll start
18 with not engaged in unlawful conduct and I point Your
19 Honor to two sources. I anticipate that what you will
20 hear is that Mr. Morgan was engaged in unlawful conduct,
21 because he was carrying a pistol on his person without a
22 concealed weapons permit. The law is that pointing and
23 presenting a firearm shall not be construed to bridge the
24 right of self-defense. At the moment when self-defense
25 was necessary for Mr. Morgan, by presenting the pistol, he

1 is not violating the law. And then State vs. Crosby, this
2 is a 2003 case. This was actually dealing with, I
3 believe, a felon who was in possession of a firearm, who
4 had had to pull it out in order to defend himself. And
5 the law in our state is that even if you are in unlawful
6 possession of a weapon, once you pull it out for
7 self-defense, you are now deemed to be lawful in having to
8 respond that way. And that does make sense. If you will
9 look back just briefly at the legislative intent that
10 we're supposed to expand the Castle Doctrine to include
11 your vehicle. If the vehicle is your home in this
12 situation, then you don't have to have a concealed weapons
13 permit to carry around a pistol in your own home for
14 purposes of self-protection. A small point, but one I
15 wanted to make. So back to the act and this is my last
16 slide. So occupied vehicle, I think that's without
17 dispute. Was there an attempt to enter? Well, there's
18 nobody, no competent evidence that Jamaal Aiken was not
19 the one that opened the door. Was the attempt unlawful
20 and forceful and did Mr. Morgan have a reasonable fear of
21 serious bodily injury? The statute provides those in the
22 presumptions. Once you've got an illegal entry, you get
23 these two automatically. And then I've already talked
24 about not being engaged in unlawful conduct. The final
25 thing I will say is that there was one shot, Judge. As

1 close as they were, if Mr. Morgan was bent on taking Mr.
2 Aiken's life, I suggest that the waste is not where you
3 get shot and you don't stop shooting after one. This
4 bullet path and where Mr. Aiken could have been shot are
5 all indicative of a defensive measure on behalf of Mr.
6 Aiken. Thank you. That's it.

7 THE COURT: All right.

8 MR. STUMBO: Judge, I'll try to remain brief, and I
9 don't have a PowerPoint slide, but I would like to raise
10 some points related in response to what Mr. Bannister
11 discussed. Judge, our position is very clearly here that
12 immunity under the statute does not apply. It certainly
13 doesn't under the facts. It doesn't apply under the law
14 in this case. And the third argument I'm going to make is
15 one of public policy, Judge. First of all and the facts,
16 Mr. Bannister and Mr. Jones are fine lawyers, fine
17 advocates for their client. But as hard as they've tried
18 in the pretrial brief and during this case to spin the
19 facts to make Jamaal Aiken look like he's this guy this
20 night running around a mob of people looking to get in
21 fights with people, pistol-whipping, just mayhem coming
22 from Jamaal Aiken. It's just not consistent with what
23 we've heard this week, Judge, from many of the witnesses.
24 I believe that Mr. Bannister even somewhat admitted that
25 putting Jamaal in this fight inside the bar is really,

1 it's speculating that he was involved in this fight. In
2 fact, the most unbiased witnesses I think in this case,
3 there's a reason why Mr. Calvin Wells, who's the owner of
4 this bar, wasn't put up by the defense. And one of the
5 reasons is he's one of the most unbiased people there and
6 he describes Jamaal during this altercation in the club as
7 being one of the ones that was helping them, helping them
8 keep the peace, helping get Brent away from there and
9 getting him out of there. And Jamaal was never described
10 by anybody, other than by a couple of defense witnesses in
11 being aggressive in any manner the entire night,
12 particularly inside the bar. So just taking a big picture
13 view of this spinning of the facts that our victim in this
14 case, Jamaal Aiken or Smooth, was somehow provoking folks
15 that night and being violent and aggressive is just not
16 accurate, just not true and not consistent with the
17 testimony we've heard, Judge. Judge, on the facts, I'll
18 start with that. The very fact that we have so many
19 disputed facts in this case and all the orange slides that
20 Mr. Bannister put up highlighted disputed facts that are
21 really at the heart of this case. And, Judge, honestly,
22 the fact that there's that many disputed facts on very
23 critical issues is a reason why immunity shouldn't be
24 granted here. These are ultimately issues that if
25 self-defense is raised, it should be raised at trial in

1 front of a jury. And I know, Your Honor, has to sit
2 somewhat as a Judge in the facts in an immunity hearing
3 and that's your role here. But because we have so many
4 disputed facts as to several questions and I'm just going
5 to throw a few of these out here. First of all, there's
6 discrepancies as to what happened inside the club and the
7 altercations inside the club. There's some witnesses that
8 talk about this popping on the hat. Al Morgan talks about
9 that. The only other person that apparently sees that is
10 Lenwood Ramsey. But there's other witnesses including
11 Brent and those that were around them that said that never
12 even happened. Judge, as to what started the fight and
13 who was involved in the fight, we know that Brent Williams
14 and Demond Brown were involved with this fight, and
15 everyone was consistent as to that. But even Mr. McCauley
16 who the defense called says he remembers one guy on the
17 ground and four girls on top of him, which seems to be
18 very inconsistent with the other testimony we've heard.
19 So, Judge, there's great discrepancies as to the
20 altercation inside the club. One thing I would say is
21 consistent is that there's only speculation that even puts
22 Jamaal in those altercations. And the most credible
23 witnesses we heard from the witness stand actually have
24 him as the peacemaker. Let's break this fight up. Let's
25 try to get Brent out of here and to his car. To me,

1 Judge, this Johnny-come-lately testimony from Mr. McCauley
2 about Jamaal hitting him with a pistol to me was not
3 credible, Judge, and not consistent with the other
4 witnesses we heard, including Calvin Wells. If he was hit
5 and, ultimately, had to go get medical treatment for that
6 which he didn't do until three weeks later, Judge, I would
7 say based on the testimony I've heard, that was more
8 likely Brent still fighting and hyped up after his fight
9 with them trying to get him out the door. There's nothing
10 really credible that says that Jamaal is the one that hit
11 him. Judge, the second issue that is, needs to be
12 decided, I believe by a jury here, because we have varying
13 accounts is what happened as Jamaal gets outside, Smooth,
14 how he approaches the black Impala. The black Impala
15 clearly, according to witnesses, pulls in the parking lot,
16 turns back towards facing the road here, right in front of
17 the Cabstand. And as you can tell, Judge, from
18 Defendant's Exhibit 1, this is tight quarters in here.
19 This is a small parking lot. It's full of cars. There's
20 not really a whole lot of room to go. In fact, Lynwood
21 says I got to wait for this car to back out before I can
22 even get in. So when he pulls in and Jamaal and Brent and
23 some of the girls that had come outside are right there by
24 the car. So, Judge, there is varied testimony as to how
25 Jamaal walked to the car and the manner in which he did

1 so. Most of the witnesses, Judge, described him as
2 walking, not running towards the car and not necessarily
3 doing so in an aggressive manner which leads to the next
4 discrepancy, which Mr. Bannister admitted. What did
5 Jamaal say, if anything? You know, Drina Morgan and
6 Shanina, Nicole and Brent, all three of those witnesses
7 testified that Jamaal really didn't say anything
8 aggressive, to their recollection. It was simply he was
9 walking towards the car. The third discrepancy as I
10 believe is as to who necessarily opened the door. Now,
11 their witnesses say Jamaal opens the door. Brent says he
12 thinks Jamaal opens the door, but he's standing several
13 feet away. What's consistent is the door came open. We
14 have one witness who came much later on, Mr. Sayles, who
15 we think doesn't have a real good memory of what happened
16 and we certainly didn't put him up on the basis of we
17 thought that he was completely accurate. That's not our
18 theory of the case, Judge. We do believe the door came
19 open. But there are discrepancies in the testimony as to
20 who opened the door and how it was opened. Was it opened
21 in an aggressive manner. It's quite possible, Judge, that
22 Jamaal Aiken, our victim here, wasn't going to the car to
23 start a fight. There's some testimony that knew Al was
24 coming back. And Brent said Al told us before he left,
25 he's coming back up here. It's entirely possible, Judge,

1 that Jamaal is approaching the car to let him know what
2 was going on inside and hey, there's some talk the cops
3 are coming. There are several witnesses that are right
4 there by the car that do not describe Jamaal going
5 aggressively to that black Impala. And we think that's a
6 huge issue in this case, Judge, that, quite frankly is
7 unclear. It's certainly not enough to reach a
8 preponderance of the evidence to grant immunity here.
9 And, certainly, they can argue to a jury at trial. Judge,
10 the last discrepancy and I think this is the major one
11 here is the only real witness that describes Jamaal as
12 reaching in, trying to drag this defendant out of the car
13 is the defendant himself. And, Judge, if you listen to
14 his statement to law enforcement this morning which is
15 part of the record in this case now, he doesn't really
16 describe it that way. Now, he did on the stand this week.
17 He said, well, it was either him or me. That's how dire
18 this was. You know, that I had to do it. I didn't have
19 any choice but to kill him, to shoot him. Judge, that's
20 not what I heard in his statement to Lieutenant Dixon that
21 he gave in March 2014. In fact, he seems to say in that
22 case that he really doesn't give an explanation as to why
23 he shot Jamaal. And, in fact, he says I guess it's
24 something I'll have to live with. And, I guess, it's
25 something his family will have to live with. He almost

1 sounds in his statement to law enforcement, he never says
2 the words him or me, I was in fear for my life, any of
3 that, to my recollection in his statement to law
4 enforcement, Judge. The first time we've heard that from
5 Al Morgan is here this week on the stand all of a sudden
6 when it becomes convenient to need that in a Castle
7 Doctrine motion. But his statement to Lieutenant Dixon,
8 essentially said, you know, I'm not sure why I did it.
9 And, in fact, this is where we're going to transition,
10 Judge, from the facts into the law here. There's a couple
11 of issues here that I think are very important. The act
12 itself requires a reasonable belief on the behalf of the
13 person trying to assert immunity that he had a reasonable
14 fear of imminent threat, of death or bodily injury.
15 Judge, I think it's very interesting that the two other
16 witnesses that we've heard from this week that were in the
17 car with him which would be Thomas Gilchrist or Bug and
18 Lenwood Ramsey, who was driving the car, both of those
19 witnesses have not testified in any way, shape, or form
20 that they were in fear. So if the two other occupants of
21 the car don't have that sort of fear, then I'm not sure
22 that under the statute, ultimately, you go to not only an
23 actual belief but does a reasonably prudent man of
24 ordinary firmness or courage, would that, kind of a
25 reasonable man standard. And, Judge, I think you look to

1 the two other people in the car with this defendant who do
2 not indicate that they had any fear of Jamaal Aiken. And,
3 in fact, in Al Morgan's own statement to law enforcement,
4 he said he didn't have a problem with Jamaal. He had
5 never had any confrontation with him and didn't have a
6 problem with him. And so, Judge, I didn't think we're
7 anywhere close to a preponderance of the evidence on the
8 issue of whether there's a reasonable fear of imminent
9 threat. Judge, the big question here for them to get the
10 presumption of reasonable fear in a vehicle is this, did
11 Jamaal Aiken, was he in the process of unlawfully and
12 forcefully entering that vehicle. And that's straight out
13 of the statute in §440, 16-11-440 (A)(1). Was Jamaal Aiken
14 in the process of unlawfully and forcefully entering that
15 vehicle. And I think really the only person that's
16 testified to that effect that there is an unlawful and
17 forceful, which I would interpret, Judge, the threatening
18 entry is Al Morgan himself on the witness stand this week.
19 He doesn't describe it that way, even in his statement to
20 Lieutenant Dixon. Judge, the other issue and I'm not
21 going to spend a lot of time on this is was Jamaal or was
22 Alphonso Morgan, one, under a self-defense, common law
23 self-defense theory? Was he at fault at bringing on the
24 difficulty, one. And, secondly, was he engaged in
25 unlawful behavior? And I respect Mr. Bannister greatly.

1 He's a fine lawyer and the way I think he argues this and
2 he cited the Crosby case that says, well, if you're acting
3 in self-defense even if you're unlawfully carrying a
4 pistol, well, it's okay. No harm, no foul. Judge, I
5 don't necessarily think that that's imported here to, in
6 an immunity setting and here's why. Judge, and this is
7 where we're going to into kind of overlapping into a
8 public policy argument. The legislature passed this
9 statute, Judge, not for people like Alphonso Morgan. And,
10 Judge, the very fact that he flashed that gun to Crip, his
11 buddy in the bar before he left, shows an intent on his
12 behalf. To me, it shows before he even left what was on
13 his mind, that if there was another fist fight that night,
14 if there was any more threat to him or threat to his
15 friends, that he was going to jerk that pistol and he was
16 going to use it which is what he ultimately did a few
17 minutes later when he came back. Judge, there is no
18 question that if Mr. Morgan had been caught by law
19 enforcement in that bar with that pistol tucked in his
20 waistband that night that he could have been arrested for
21 unlawful carrying of a pistol. No question about that
22 that he was engaged in unlawful activity when he was in
23 the bar before this happened. And, Judge, I would submit
24 to you while he was in the car without a concealed weapons
25 permit and we've had cases to this effect. There again,

1 Judge, when I, you know, when those traveling cars with
2 guns and they are transporting a gun, where is it supposed
3 to be? It's supposed to be in the glove box. That wasn't
4 where it was. It was in his waistband, because he was
5 ready to roll that night. He was ready to use it. And,
6 Judge, so I would submit to you that the very fact that
7 after the call he knew what was going on in that bar.
8 It's clear even from Shay Simon's testimony that she told
9 him what was going on. There was a fight up there and
10 there had been people jumped and there was a fistfight
11 going on. That's the way she described it. You need to
12 come pick us up. So when he asked Lenwood Ramsey to take
13 him back up there, he knew what situation he was walking
14 back into and he was walking back into that situation with
15 a gun.

16 THE COURT: Well, he didn't walk. That's a
17 mischaracterization of what happened.

18 MR. STUMBO: Well, he drove. Right. But he went, he
19 entered back into that situation. I'm using walking back
20 into it as a term of art here, Judge, not literally. When
21 he went back to that club that night, he knew what was up
22 there. He knew that there was a fight going on. He had a
23 gun tucked in his waistband and he was ready to use it,
24 Judge. And it is absolutely incomprehensible to me, based
25 on everything we've heard before this week, until now all

1 of the sudden we have a story of Jamaal Aiken or Smooth
2 trying to get at him in the car. There is no question,
3 Judge, that Jamaal Aiken should still be alive today. And
4 I think most of the witnesses would testify that that
5 night, he didn't act in any way to provoke the response
6 that he got. Quite frankly, Judge, those, and this is my,
7 I think the legislative intent is not, is clear based on
8 what I've seen in the case law. But, Judge, the
9 legislature did not pass the Protection of Persons and
10 Property Act to protect people who bring pistols to
11 gunfights and that's what Alphonso Morgan did that night,
12 ultimately. He came back to a situation where he knew his
13 friends had been in a fight and he brought a gun to it and
14 unprovoked, as Jamaal Aiken approaches the car, he pulls
15 that pistol and shoots and kills him. And, Judge, quite
16 frankly, we believe that's an unjustified killing. That
17 the legislature if, their intent and it says this in the
18 opening subsection of the act. This is in 16-11-420(b)
19 and it uses the term that it's proper for law abiding
20 citizens to avail themselves of the protections of this
21 act.

22 THE COURT: Well, don't they both come in there with
23 unclean hands. They both got guns on them. Nobody sees
24 them, but they both got guns. They shouldn't have had
25 them.

1 MR. STUMBO: Yes. But I'll say another
2 uncontroverted fact and I left this out earlier, Judge.
3 Nobody, the only testimony I've heard of anybody
4 presenting a gun that night was Crip saying that Al showed
5 the gun. No one knew that Jamaal had a gun. He never
6 presented a gun.

7 THE COURT: But everybody else has that same benefit.

8 MR. STUMBO: Right. You're right. Nobody knew
9 nobody had a gun except Crip knew the defendant had one.
10 That's correct. But the only one that's dead here is
11 Jamaal; a man who never pulled a gun out who was acting as
12 a peacemaker that night. And he's the one that got shot
13 and killed. And so, Judge, you know, these are the very
14 critical issues of fact that Mr. Bannister had in his
15 orange slides are issues that, quite frankly, need to be
16 decided by a jury, Judge. And because they are disputed,
17 I think, you know, the most credible witnesses we heard
18 this week were these guys in the bar that talk about how
19 peaceful Jamaal was and he was the guy trying to get
20 everybody out. And to me, that shows his state of mind as
21 opposed to the state of mind to a guy who had already
22 flashed the gun before he even left the bar.

23 THE COURT: Well, you keep saying that. He flashed
24 it to his friend.

25 MR. STUMBO: That's correct.

1 THE COURT: As a friend. You, you, that's not an
2 aggressive move. That's, I want to get out of here,
3 that's mischaracterizing how they testified. Everybody
4 else knew nothing of that. That's not an aggressive move.
5 You keep saying that.

6 MR. STUMBO: I understand.

7 THE COURT: Explain this to me.

8 MR. STUMBO: Yes, sir.

9 THE COURT: The prior trouble with Qualo and he got
10 punched by Qualo and caught eight stitches. Why was the
11 relationship between Qualo and the decedent not presented
12 to the Court.

13 MR. STUMBO: Well, Judge, I could put his parents up
14 and tell you that he doesn't have a brother. Jamaal's an
15 only child. So the fact that Al is under the impression
16 that Qualo is Smooth's brother is just not accurate.

17 THE COURT: He's convinced of it. He said it twice.
18 Why wasn't that presented to me?

19 MR. STUMBO: Judge, quite frankly, right now I'm not
20 even sure we know exactly who Qualo is. That's why it's
21 not presented.

22 THE COURT: Well, I don't understand you not knowing.

23 MR. STUMBO: And I don't know if I could present to
24 you to tell you the guy that punched him that night. And
25 I don't want to put something in front of you that's

1 misleading, but we do know that Jamaal is an only child or
2 did not have a brother, Judge. I mean, he, whoever this
3 Qualo fellow is is not his brother. He wasn't there at
4 the bar that night. We know that. He wasn't at the club
5 that evening. I don't believe we've heard any testimony
6 to that effect.

7 THE COURT: Yeah. I remember it. But that fact and
8 belief was held by the defendant.

9 MR. STUMBO: Correct. But, Judge, and here's another
10 thing. One reason why we didn't go real deeply into that
11 prior incident is, Judge, that was a fistfight that
12 didn't, there again, didn't involve a gun.

13 THE COURT: I'm just asking. He had an understanding
14 or belief that they were kin, and that wasn't presented.

15 MR. STUMBO: Well, it was presented in the statement
16 that we gave.

17 THE COURT: Yeah. Right.

18 MR. STUMBO: That's the only reason we know about it
19 is because he said that--

20 THE COURT: All right. I understand both of your
21 arguments.

22 MR. STUMBO: Quite frank, I believe bringing Qualo
23 into the equation here based on how little we know about
24 him, Judge, would just add to the confusion. I guess,
25 that's my answer to your question if your question is why

1 I didn't bring him.

2 THE COURT: I guess I'm surprised y'all didn't answer
3 that in the negative if that was presented in that tape
4 that it was.

5 MR. STUMBO: Judge, I think the witnesses that would
6 have been brought to do that would be his mother and
7 father who've been here all week.

8 THE COURT: I understand. But the fact that nobody
9 said anything about it is shocking. It just wasn't
10 mentioned but the investigator heard him say it twice.

11 MR. STUMBO: Right.

12 THE COURT: It was never explained.

13 MR. STUMBO: Well, we didn't put the investigator up
14 yesterday, we were trying to save time. We probably could
15 have gone back into more of the background, Judge, in
16 brief or we could have done that. I think we wanted to
17 put the statement in. We could have put the investigator
18 up and exposed him to cross and had all that fleshed out.
19 But I think, you know, at that point, you know, we think
20 that the facts in dispute here are enough in and of
21 themselves to deny immunity. And, quite frankly, give
22 Your Honor a basis for denying it because there is such a
23 discrepancy as to exactly what happened outside that bar
24 when he approached the car. And I would hope that that's
25 been at least, you know, clear that that's been our

1 position in this case. There are multiple witnesses that
2 describe Jamaal's behavior that night, Judge, and multiple
3 ones that describe his behavior as being that of, one of a
4 man of peace and not a man of aggression.

5 THE COURT: And that man, the same man had a pistol
6 in his pocket.

7 MR. STUMBO: That's correct. That he never pulled
8 out and showed to anybody, Judge. So he could have been
9 probably charged with unlawful carrying that night, too.
10 Both ways, and we would agree to that. But right now,
11 Jamaal Aiken is six feet under. He's not the one trying
12 to assert that he's immune from prosecution under the
13 Persons and Protection and Privacy Act; Al Morgan is.

14 THE COURT: I think that it is consistent that the
15 two people involved in the actual incident had very little
16 involvement with one another.

17 MR. STUMBO: Correct.

18 THE COURT: They really didn't. Very little.

19 MR. STUMBO: Which makes this even more tragic,
20 ridiculous. Yeah. Judge, it's ridiculous that Jamaal
21 Aiken is dead.

22 THE COURT: All right. I've heard enough.

23 MR. BANNISTER: I keep hearing that there's been no
24 evidence that Jamaal Aiken pulled out his pistol and
25 that's simply inaccurate. You have to take the logical

1 step and the only hard object Mr. Aiken had on his person
2 was a pistol and that Mr. McCauley got hit in the head
3 with something he described as very hard. A man who has
4 been in prison and presumably has enough experience with
5 getting hit with a fist to know the difference and saw a
6 black handle or a black object pointing only out from the
7 fist. There is evidence that that happened. And I want
8 to make myself available if there are any questions you've
9 got that I hadn't covered, in particular, and maybe about
10 how the stature procedurally works.

11 THE COURT: I understand how the stature works and
12 procedure. But I'm comfortable that, I don't think or I
13 am going to rule that the immunity under the statute is a
14 question. It has not been proven by a preponderance and
15 that this case needs go on and let a jury hear it and sort
16 it out. There's some disputed facts here that the Court
17 would be uncomfortable saying that's what happened. I
18 think twelve people can hear this thing. And so that's
19 what we are going to do. This is definitely an unusual
20 case and it's a tragedy that two people had so very little
21 involvement with one another beforehand. I find that's
22 just remarkable to me. So I'm not going to grant immunity
23 under the statute.

24 MR. BANNISTER: Thank you.

25 MR. STUMBO: Thank you, Judge. And I'm not going to

1 go any further, but I would say, you know, I remember when
2 I was coming up and we had fistfights. People would go
3 out in the field, they'd settle it and everybody would go
4 home and end up having long prosperous lives at the end of
5 it. And to me, the tragedy for me as Solicitor is we have
6 these situations now where people don't walk away and
7 because of guys carrying guns at fistfights. So just as a
8 matter of public policy, we're going to continue to pursue
9 relief. Thank you, Your Honor.

10 THE COURT: All right.

11 MR. STUMBO: And it is up first on the trial docket
12 for next week.

13 THE COURT: Don't go Judge shopping. I'll be here.

14 MR. STUMBO: Yes, sir.

15 February 5, 2016.

16 MR. STUMBO: Your Honor, I think we're ready to call
17 the defendant, Alphonso Morgan. Judge, let me know when
18 you're ready.

19 THE COURT: Oh, I'm ready now.

20 MR. STUMBO: Thank you, Your Honor. If it please the
21 Court, before you stands Alphonso Morgan. I know we've
22 already been in court already this week a good bit on this
23 case with his attorneys, Mr. Townes Jones and Mr. Jim
24 Bannister. Mr. Morgan is before you this morning, Your
25 Honor, to plead on the murder indictment that's in your

1 hand. But he's pleading to a voluntary manslaughter as a
2 lesser-included offense. He is pleading straight up to
3 that charge, Judge, and the State's ready to proceed.

4 THE COURT: Okay. Your name is Alphonso Morgan, Jr.?

5 MR. MORGAN: Yes, sir.

6 THE COURT: I have an indictment number,
7 15-GS-24-728. It's for murder and it reads in part that
8 you while in Greenwood County on the 14th day of November
9 of 2013 did kill one Jamaal Aiken by means of shooting, in
10 Greenwood County. As a proximate result passed away on
11 November 15th of 2013 and this is in violation of Code
12 Section 16-3-10. It is my understanding that you are
13 going to enter or tender a plea to the lesser-included
14 offense of voluntary manslaughter under that same code
15 section. Is that correct?

16 MR. MORGAN: Yes, sir.

17 THE COURT: Mr. Jones, you and Mr. Bannister
18 represent Mr. Morgan?

19 MR. JONES: Yes, Your Honor.

20 THE COURT: And y'all have apprized him of the
21 elements of voluntary manslaughter and the potential
22 punishment he faces?

23 MR. JONES: Yes, Your Honor.

24 THE COURT: And y'all have presented a very thorough
25 case on the Castle Doctrine and have thoroughly reviewed

1 and investigated, interviewed numerous witnesses and are
2 very aware of all the facts, circumstances involving this
3 incident?

4 MR. JONES: Your Honor, we have conducted an
5 extensive investigation and effort at assessing what we
6 believe to be evidence, facts, truth. I would like to say
7 to the Court at this point in time that in explaining to
8 Al Morgan, you know, this charge, you know, he understands
9 that it is reduced from murder and that murder requires
10 malice. It requires the element of ill-will and malicious
11 intent and devoid, a heart that is devoid of the right of
12 another human being to live and he's not having to plead
13 to that element of murder; that this is manslaughter.
14 It's still an intentional killing but one done so,
15 primarily in this case we believe, in a sudden heat of
16 passion brought on by a sufficient legal provocation by
17 the victim in this case. And I have talked to him about
18 that and that this is a case where we have gone over the
19 elements of manslaughter; it being still intentional.
20 That it carries from two to thirty years. That it's a
21 most serious offense and it's a violent offense which
22 would require him, whatever sentence Your Honor imposes
23 today to not be eligible for parole until he's served
24 eighty-five percent of whatever you sentence him to today.
25 But to answer your question about having prepared, Mr.

1 Bannister and I, along with Al and his family, his
2 brother, Greg, his mom and dad have been instrumental in
3 assisting us in preparing that motion, along with a
4 private investigator, Jimmy Powers. And it has involved,
5 needless to say, a lot of effort, a lot of ups and downs,
6 you know, he was with me the entire time during the
7 process of the motion this week, Monday, Tuesday, and
8 Wednesday. And he saw what the testimony was, what the
9 evidence was and how the Court viewed it and as a result
10 of that and some other facts that we took into
11 consideration, he decided that he wanted to go forward
12 with this plea today.

13 THE COURT: Okay. And you and Mr. Bannister agree
14 with his decision to enter this plea to this offense?

15 MR. BANNISTER: We do, Your Honor.

16 THE COURT: Okay.

17 MR. JONES: I do, Your Honor.

18 THE COURT: All right. Mr. Morgan, I'm going to have
19 you placed under oath.

20 ALPHONSO MORGAN, being
21 first duly sworn, testified as follows:

22 THE COURT: All right. Mr. Morgan, in the last 24
23 hours or the last 48 hours, did you take any alcohol,
24 drugs or medications?

25 MR. MORGAN: No, sir.

1 THE COURT: Are you clear-headed right now?

2 MR. MORGAN: Yes, sir.

3 THE COURT: Do you suffer from any disabilities
4 whether either mental, physical or emotional ones which
5 would affect your understanding of why you're here today
6 and the questions that I am asking you right now? You
7 okay?

8 MR. MORGAN: Yes, sir.

9 THE COURT: Now, as you know, the lawyers have
10 explained to you and we've partially been through the
11 process on a preliminary motion, which was basically a
12 two-day hearing.

13 MR. MORGAN: Yes, sir.

14 THE COURT: But you have the right to plead not
15 guilty and have a jury trial on the actual charge that
16 you're facing, and you understand that?

17 MR. MORGAN: Yes, sir.

18 THE COURT: During a trial, the State bears the
19 burden of proving your guilt beyond a reasonable doubt.
20 That's a different burden than the issues that we were
21 presenting this week.

22 MR. MORGAN: Yes, sir.

23 THE COURT: The State must call its witnesses and
24 present its evidence first and you don't have to disprove
25 anything, nor can you be forced to testify in your own

1 defense. The State would not be allowed to call you as a
2 witness, nor is the State allowed to comment on your
3 silence if you choose to not testify. Now, if you wish to
4 enter this plea, you must give up or waive your rights to
5 defend this voluntary manslaughter at trial. You
6 understand that?

7 MR. MORGAN: Yes, sir.

8 THE COURT: Understanding your rights to defend
9 yourself at trial, are you waiving those rights here today
10 in order to enter this plea before me?

11 MR. MORGAN: Yes, sir.

12 THE COURT: And are you giving up your rights to
13 defend yourself at trial freely and voluntarily?

14 MR. MORGAN: Yes, sir.

15 THE COURT: All right. Solicitor, normally I come
16 and ask for a factual basis for this and seeing I've heard
17 two days of testimony, if you'll just hit the highlights
18 just for the record.

19 MR. STUMBO: I will, Judge.

20 THE COURT: We got a very sufficient record from the
21 stand your ground Castle Doctrine hearing we've had.

22 MR. STUMBO: Will do, Judge, and I'll be brief. I
23 know you've heard many witnesses this week who filled you
24 in what happened that night. But it was on November the
25 13th or, excuse me, November the 14th, in the evening,

1 2013. It happened down at the Cabstand or what's
2 officially called, I think, the Triangle Senior Club and
3 Social Club, sometimes often called the Senior Club, I
4 believe, too, we heard. Judge, Jamaal Aiken is the victim
5 in this case or Smooth, as he was known to his friends.
6 Smooth went to the Cabstand that night with his fiancé,
7 Nicole Williams, who's here behind me, amongst a host of
8 other friends. They went to the bar or the club. By all
9 accounts, Your Honor, Jamaal was very calm, dapping up as
10 they say when he comes in even with the defendant and
11 everyone was getting along just fine inside the bar that
12 night or in the club. At some point, his fiancé's brother
13 ends up getting in a fight with another individual in the
14 club who was not directly connected to the case but
15 testified this week, Demond Brown. As a result of this
16 altercation, a number of the individuals, including Brent
17 Williams who's Nicole's brother, and Jamaal and others
18 ended up out in the parking lot. The defendant had been
19 there earlier but left; when he came back in a black
20 Impala with Lenwood Ramsey and Thomas Gilchrist, also
21 known as Bug. They pull into the parking lot. As we've
22 heard this week, Judge, there has been a number of
23 disputed facts about what happened in that very short few
24 seconds in the parking lot. But in any case, Jamaal Aiken
25 was shot and killed by Alphonso Morgan right there outside

1 of the black Impala or there at the doorway of the rear
2 passenger part of the car where Alphonso Morgan was
3 sitting. Very quickly after that, the vehicle left and
4 went several blocks away to Lenwood Ramsey's house. The
5 tag was taken down by someone in the parking lot, who we
6 believe now to be the individual by the name of Demecus
7 Sayles. Police end up descending on the house and put Mr.
8 Morgan in custody. At that time, take statements from
9 Lenwood Ramsey and Bug or Thomas Gilchrist and several of
10 the other people that were involved that night. Jamaal was
11 able to get away and get into the car of Nicole and Brent
12 Williams. And Nicole, his fiancé, took him to the
13 hospital where he, Jamaal Aiken, who we do have a picture
14 of him here today, Your Honor, I believe one was put into
15 evidence earlier this week, Jamaal died on the operating
16 table right here at Self Hospital that night. Judge,
17 that's a brief recitation of the facts. So we, obviously,
18 have some family members that want to address Your Honor
19 at the appropriate time.

20 THE COURT: All right.

21 MR. STUMBO: If you want to come back to us and thank
22 you for hearing from us, Judge.

23 THE COURT: All right. And the court record as to
24 those facts are consistent with the facts presented at the
25 Castle Doctrine hearing except we left out the other

1 challenged facts that the defense put forward. Those are
2 the facts consistent with the facts that was heard earlier
3 this week. Mr. Morgan, the only negotiations in this case
4 to get you to plead guilty after the hearing this week
5 were a reduction from murder to voluntary manslaughter.
6 Other than that negotiation of the charge was stepped
7 down, and I think you're pleading just to that one charge.
8 Anything, any other charges will be dismissed. Were any
9 promises made to you to get you to plead guilty other than
10 change murder down to voluntary manslaughter?

11 MR. MORGAN: No, sir.

12 THE COURT: Now, you understand if I accept your plea
13 on voluntary manslaughter, you'll be classified at the
14 Department of Corrections as a violent offender. And as a
15 violent offender, you're not entitled to the, all the
16 programs that nonviolent offenders are entitled to. Do
17 you understand that?

18 MR. MORGAN: Yes, sir.

19 THE COURT: You also understand as a violent
20 offender, you're not entitled to parole. You'll have to
21 serve eighty-five percent of the sentence the Court gives.
22 And after you've served eighty-five percent, you could be
23 eligible for a community release at that time. Do you
24 understand that?

25 MR. MORGAN: Yes, sir.

1 THE COURT: You also understand that if I accept your
2 plea, you will have a big strike or most serious
3 conviction on your record that the State can use against
4 you if any future serious offenses or most serious
5 offenses or you're accused of, in that you could be
6 subject to the State asking for a life without parole for
7 a second most serious conviction or two small serious
8 convictions if they, if that comes to pass in the future.
9 Do you understand that?

10 MR. MORGAN: Yes, sir.

11 THE COURT: So this big strike can be used against
12 you from now on by the State to enhance future punishment.
13 Do you understand?

14 MR. MORGAN: Yes, sir.

15 THE COURT: Now, have you had enough time to discuss
16 the ramifications of being declared a most serious
17 conviction on your record and be classified as a violent
18 offender; did you go over this plea with your lawyers?

19 MR. MORGAN: Yes, sir.

20 THE COURT: And you've had enough time to discuss
21 with them your defenses you may have if the case went to
22 trial and what could be presented because, arguably, their
23 posture is to present a self-defense type argument to a
24 jury for a jury to consider. You understand that?

25 MR. MORGAN: Yes, sir.

1 THE COURT: And understanding everything your lawyers
2 have told you and advised you on the law and as you
3 understand the facts, has it been your decision, after
4 having enough to talk with them, to enter this plea of
5 voluntary manslaughter?

6 MR. MORGAN: Yes, sir.

7 THE COURT: Do you need any further time to speak to
8 them now?

9 MR. MORGAN: No.

10 THE COURT: And it appears to me that your parents
11 have also been involved in some of those conversations,
12 perhaps not all of them but enough of them. Is that true?

13 MS. MORGAN: I'm his mother. That's his aunt.

14 MR. MORGAN: Yeah.

15 THE COURT: So are you comfortable that you've had
16 sufficient time to talk to your lawyers and your folks
17 about entering this plea?

18 MR. MORGAN: Yes, sir.

19 THE COURT: Do you understand if I accept this plea,
20 you're going to have limited number of days in which to
21 file a notice of intent to appeal if you believe something
22 procedurally has been done improperly?

23 MR. MORGAN: Yes, sir.

24 THE COURT: Are you pleading guilty to voluntary
25 manslaughter, freely and voluntarily?

1 MR. MORGAN: Yes, sir.

2 THE COURT: And you're pleading guilty to voluntary
3 manslaughter, because you did, in fact, commit that
4 offense as described by the State?

5 MR. MORGAN: Yes, sir.

6 THE COURT: Regarding indictment 15-GS-24, indictment
7 728, I find Alphonso Morgan, Jr., has made a free, knowing
8 and intelligent plea of guilt to the offense of voluntary
9 manslaughter. He's entered that plea with advice of
10 counsel of two very competent lawyers who has had ample
11 time to speak with him. Are you satisfied with the advice
12 of counsel your attorneys have given you thus far?

13 MR. MORGAN: Yes, sir.

14 THE COURT: He's entered his plea with advice of
15 counsel of attorney of whom he states he's satisfied and
16 the State has provided a factual basis to support this
17 plea. All right. I think what I want to do, I want to
18 hear from the victims. And then I want to hear from Mr.
19 Bannister and Mr. Morgan, in whichever order y'all deem
20 appropriate. So, Solicitor, hear from your side first.

21 MR. STUMBO: Yes, sir. And I'll introduce them to
22 you here now. Just before I do, Judge, I think the
23 witnesses that we heard from this week bore this out, even
24 ones that the defense brought that Jamaal Aiken was a
25 fairly, a very peaceful guy even that night. He was one

1 of the ones trying to get people out of the bar, which
2 makes what happened in the parking lot almost
3 inexplicable, I think, to our side as to why Jamaal was
4 shot.

5 THE COURT: It seemed to me that the two least likely
6 people to get involved in something like this are the ones
7 that end up involved with it on both sides.

8 MR. STUMBO: Correct.

9 THE COURT: More aggressive behavior by friends of
10 both sides.

11 MR. STUMBO: Right.

12 THE COURT: If you were to gauge it ahead of time
13 who'd be involved in somebody shot somebody, they'd be the
14 last two picked on both sides.

15 MR. STUMBO: That's correct, Judge, and I think
16 that's a great point and we're still trying to figure out
17 exactly why Jamaal Aiken or was known as Smooth, and that
18 is the kind of guy he was, Smooth is no longer with us
19 here today but his family members are here and they loved
20 Jamaal very much. And they are here today, and it has
21 been a long week for them hearing all of these facts and
22 they have been very patient with me and with the Court and
23 the system here this week. And I just commend them for
24 that and they have been very patient with us and we are
25 thankful for the relationships that my office has been

1 able to build. First, Judge, I'm just going to go kind of
2 right to left here. I'm going to introduce Tracy Aiken,
3 who is Jamaal's mother. At this time, Judge, she'd like
4 to say something to you.

5 MS. AIKEN: I just want to say to the defendant that
6 did not know Jamaal. He wasn't that type of person that
7 they painted him to be this week. And, Al, you knew this
8 and when you took Jamaal's life, you also took our life.
9 That was our only child, our only child, and if you would
10 have come forth and admit maybe I made a mistake, I'm
11 sorry, I could have forgiven you. But to stand up and
12 tell some of the stuff that we heard this week, you know
13 it's not true. You know it's not true. And right now, I
14 cannot find in my heart to forgive you. I cannot for what
15 you did, you know.

16 THE COURT: And, pardon me, Ms. Aiken. I'm sorry. I
17 don't, I understand your sentiments, but I need you to
18 tell me more than you, opportunity to speak with him.

19 MS. AIKEN: To speak with him.

20 THE COURT: He's accepting responsibility by entering
21 that plea up to a large degree to a lot of this saying I'm
22 at fault by saying what he just said to me. I don't have
23 any idea how bad it hurts.

24 MS. AIKEN: It hurts.

25 THE COURT: Being a mother and a father, I have three

1 children of my own. I understand it must be a tremendous
2 pain, but tell me anything you'd like for me to consider
3 also.

4 MS. AIKEN: Your Honor, it hurts. It hurts so bad to
5 know, to know that we have lost our only child for no
6 reason. And I could see if Jamaal had have been a bad
7 person or the person they painted him to be this week. He
8 was not that type of person. He was not. He didn't
9 deserve to go the way he left us. He didn't, and I just
10 want the Court to know he's not a bad person. He wasn't.
11 He wasn't.

12 THE COURT: Now, what's been presented to me in the
13 case, he was a good person. I mean, he was very peaceful,
14 so I don't think that's a question for me to, I'm not
15 challenged by that. I find that very easy to believe.

16 MR. STUMBO: Next, Your Honor, is Greg Aiken,
17 Jamaal's father.

18 MR. AIKEN: I have fought for two years and almost
19 three months to seek justice for my son leaving us
20 November 2013. From day-one, the picture was painted that
21 Jamaal was a criminal. Day-one, police gave information
22 to the index journal a deceased black young man got
23 killed. Everything was put in the paper that Jamaal had
24 this, Jamaal had that. We never saw anything about what
25 Jamaal was shot with in the index journal. Didn't come

1 out till court time and from day-one, I have fought with
2 Greenwood Police Department. I have fought with the
3 Greenwood justice system. And today, we may get a little
4 relief, but we won't get enough justice for losing our
5 child, because if you give him fifty years today, it's not
6 going to bring Jamaal back. If you give him a hundred
7 years today, it's not going to bring Jamaal back. But,
8 Judge, what I would like for you to do and this just
9 coming from my heart, you just said you had three
10 children. Just put yourself in our position. We are
11 law-abiding citizens. My wife and I have no record ever
12 in Greenwood County as far as criminals. We raised our
13 son to be the same way, peaceful, get along with
14 everybody, and try to do the right thing. He was
15 peaceful, and I certainly believe that that night,
16 although the picture been painted that he was a criminal,
17 he was angry, he was aggressive, I would go to my grave
18 today saying that Jamaal got shot out of that car and that
19 door never came open. I would go to my grave saying that
20 our son did not open the car door, the door of that car
21 and get shot. I don't care what the picture been painted.
22 You see the smile. You see the smile. That was all the
23 time. Everybody knew him as Smooth, easy going, didn't
24 talk that much, and I just do not believe today that he
25 deserved to die that way. And I want you to find it in

1 your heart to give this man as much time as you can,
2 because no matter what you give him, we're not going to be
3 satisfied. We're not going to be, we got to live with
4 this the rest of our lives losing our only child, and I've
5 cried. I've been in the hospital. I've almost lost my
6 job behind all of this since my son got killed. I mean,
7 it's just, it's just been a rough go at it and I just want
8 you to find in your heart to give him as much time as you
9 can give him. Because I feel like what he getting now, he
10 should have gotten years ago, but it came to this so he
11 could get time and go to jail. And also, Your Honor, I
12 want to think, I mean, I don't want to think, but two days
13 after we buried Jamaal, his brother and father came to our
14 house. We opened up our house to them for them to come in
15 and sit down and they talked about him. I mean, they kind
16 of throwed him under the bus. You know, he's been in
17 trouble. You know, he been making bad decisions. Well,
18 if you know this why uphold him in a situation like this.
19 I mean, we, they caught us at our most vulnerable time in
20 our life and we kind of opened up to them. And then they
21 turned around and they going to do what they have to do to
22 do it, but they turned around and like a stab in the back,
23 because they come in and we opened up to them, and then
24 this is what we get. We got to come face them in the
25 courtroom standing behind him when they know he done

1 wrong. And that's all, pretty much all I got to say.

2 MR. STUMBO: Your Honor, lastly, we have Nicole
3 Williams. Her first name is Shanina, but she goes by
4 Nicole. You've heard from her this week, and she'd like
5 to address, Your Honor.

6 MS. WILLIAMS: I just want to let you know Jamaal was
7 a great guy. I met him when I was 14 and he was my
8 best-friend, and he took him from me unnecessary, and I
9 have to deal with it every day. Some nights I don't get
10 no sleep. Some mornings, I don't want to go to work. I
11 just want to give up, but I know that's not what he
12 wanted. So all for him, I keep moving. But it's going to
13 forever hurt, and I'll never forgive him long as I live
14 and that's all I got to say.

15 MR. STUMBO: Your Honor, you have on your sheet, and
16 I didn't bring this up earlier. Mr. Morgan does have
17 several prior convictions, the last one in 2012 which was
18 years ago for failure to stop. There's possession of
19 cocaine. There's two of those. Simple assault and
20 battery on his record, as well Judge, but you have those
21 before you. We thank you for hearing from us, Judge, and
22 I mentioned this at the end of the Castle Doctrine motion
23 the other day and, quite frankly, our position and my
24 office, we got to stop this in Greenwood. We had a year
25 in 2013 where there is just all these guys, young guys

1 bringing guns to fistfights. And, you know, back when we
2 were coming up, Judge, if two guys had a problem with each
3 other, they'd have it out in a field somewhere and
4 everybody'd walk away and they'd have long prosperous
5 lives. Because these guys are bringing guns to these
6 situations now, there's people like Jamaal Aiken who go to
7 their grave way too early. And we're going to keep in our
8 office, along with law enforcement doing everything we can
9 to try to turn that around in this town and in this
10 circuit, Judge. Thank you for hearing from us and the
11 family.

12 THE COURT: Unfortunately, it's too common of a
13 problem in all communities across the state with people
14 carrying guns and they shouldn't be. They really
15 shouldn't be. I'd like to say this is the first time I've
16 seen something like this, but it's not. It's a common
17 problem, an awfully common problem. All of us as a state
18 need to work together to try to prevent this from
19 happening to other families. This is tragic. I mean,
20 these, this family over here is not a winner. I mean,
21 everybody's losing. So, all right, Mr. Bannister, I'll
22 hear from you now.

23 MR. BANNISTER: Yes, Your Honor, and I will be brief.
24 I think that the first thing I'd like to say that the
25 effort that we made in the courtroom throughout this week

1 was not to paint Mr. Aiken in a bad light. It was simply
2 to bring to the Court some of the facts that were
3 pertinent and those facts are often tragically like a lot
4 of the people that we see in here, are good people that
5 made bad decisions under the influence of drugs, alcohol
6 and some cases it's mental illness. I'd say that's 95
7 percent of the people you see in here that are tendering a
8 plea to a crime is they're good people, but once you've
9 got a blood/alcohol level of .12 and you mix in marijuana
10 with it, good people are capable of making poor decisions.
11 We have always seen this case as one that involved
12 self-defense, obviously, as we presented. And I think the
13 plea here is a recognition that in this case there was a
14 threat at the door and that the plea is a recognition that
15 maybe it was an overreaction to the threat that was there.
16 You know, he did have a gun and they both were armed and
17 there had been prior altercations but at the end of the
18 day, what I think fits voluntary manslaughter is a legal
19 provocation of self-defense. But in this case it just got
20 a little bit of an overreaction. Had it been another
21 second or two to find out what was going on, maybe things
22 turn out differently. But don't forget that while there
23 are maybe two dozen different places where things could
24 have, just a small change would have resulted in there
25 being maybe no altercation or being no shot fired. The

1 big one was walking to the car and opening the back door
2 and that was not our client's choice. That's all I have
3 to say about the aspects of the self-defense side.

4 MR. JONES: Your Honor, if you would allow me to
5 briefly address some mitigating factors in addition to
6 that. And before I do, I'd like this Court to know that
7 I've known Al for probably 15 years. I've known his mom
8 for over 20 years and his dad. His mom and his dad, like
9 Jamaal's parents are pillars of this community who are
10 people you can count on, who do good for others, who are
11 church-going, law-abiding, hardworking productive members
12 of the Greenwood community. His brother is also in that
13 same type of person, Greg Morgan, military, hardworking,
14 conscientious member of the community. And, Al, you heard
15 the convictions that Solicitor Stumbo presented to you,
16 but in spite of those, he is known in this community not
17 as a gang banger, if you will, you know, a gang member or
18 as a drug dealer or as a, you know, somebody that's
19 looking for trouble. He's just the opposite. He has five
20 children. In the club that night, there were two women
21 arguing over his affection or lack thereof. He would much
22 rather spend his time in the evening with friends or a
23 girlfriend. He was really not the kind of person that
24 would pursue this type of activity and action. Testimony
25 was clear that when he saw things getting a little bit

1 tense there, whether it was between the women or one of
2 the men and the women, he got up with his group and left,
3 Judge. Testimony was presented and it was not
4 contradicted that about a month-and-a-half prior to this
5 incident, he was hit in the face receiving eight stitches
6 and walked away from that altercation and assault. So I'm
7 confident and this plea reflects that he did not return to
8 the Cabstand to harm someone, much less kill someone. He
9 came there to pick up somebody. And the fear that had
10 become heightened in his mind and emotional state over the
11 previous couple of months and during the course of that
12 evening, and given the phone call from Shay Simon talking
13 about, you know, an assault taking place in the club.
14 This fear was heightened and, unfortunately, you know, it
15 was part of what Mr. Bannister said was a quick reaction,
16 a slightly overreaction to a threat that he truly
17 perceived was at him. So, Judge, we mention these things
18 to you so that you won't lose sight of a lot of the facts
19 that came in during the Castle Doctrine hearing, the stand
20 your ground hearing in an effort to try to mitigate this
21 as what it was, not premeditated, not desirous of it, but
22 a reaction. And like the Solicitor and you have
23 commented, you know, guns are part of the problem and they
24 are. Unfortunately, United States Congress, Senate, South
25 Carolina Senate and a lot of solicitors don't want to

1 change the gun laws in this state, all right? I'm not
2 saying this one is one of those, but I'm just saying there
3 are a lot of that, you know. We can start by telling the
4 young people don't arm yourselves, but when the people in
5 charge making the laws and running the country are saying
6 you not only can carry a gun, but you can take it into a
7 church, or a school, or a nightclub or anywhere you want
8 to, is a little bit of an inconsistent bit of preaching
9 that we're doing. Not anybody here today, but just
10 overall, Judge, to give you kind of the mindset. But back
11 to a couple of quick points and I'll be closing up. On
12 Al's behalf, he comes from very good people. Judge, I'd
13 like you briefly, I have a piece of art that Al himself
14 fashioned. That is of his five children, and then a
15 photograph of his three youngest, his 10-year-old
16 daughter, his eight-year-old daughter, and his
17 one-year-old son.

18 THE COURT: He drew this?

19 MR. JONES: Yes, sir. He did.

20 THE COURT: Amazing.

21 MR. JONES: And he's an artist, I think. I mean,
22 anybody who can do that's got artist, I put artist by
23 their name.

24 THE COURT: I would say you're right. He's an
25 artist.

1 MR. JONES: Judge, back to briefly the facts of this
2 case. Unfortunately, it is my belief and I believe that
3 the facts during the hearing bore out that there was a lot
4 of blame to go around the evening of November the 14th,
5 2013, that resulted in the tragic loss of life, the tragic
6 death of Jamaal Aiken, a lot of blame to go around.
7 Without naming parties, you heard the testimony. You
8 heard some of the activity. You know, maybe Shay Simon
9 should fall in there. Maybe Brent Williams should fall in
10 there. There are a number of people that we couldn't
11 figure out and still haven't figured out why Brent and
12 Jamaal and the four or five women accompanying them
13 decided to go the Old Folks Home that night, the first
14 time they'd ever been. But having said that, Judge, with
15 the blame to go around, the one person as you pointed out
16 earlier that is willing to accept responsibility for his
17 part in that tragedy is standing before you here today
18 facing a significant sentence. What we're going to ask
19 you to do is to take into consideration the mitigation
20 that we've presented and the circumstances that we've
21 presented that would posture this. Judge, one of the
22 difficulties we had in making our decision when Mr. Aiken,
23 Sr., mentioned, you know, I'll never believe that my son
24 opened the door or that it even came open. Well, law
25 enforcement, Greenwood City Police Department had seized

1 that vehicle within 15 minutes of this incident. That
2 door knob was never tested for DNA or fingerprints. The
3 inside of the backseat of that vehicle was never tested
4 for gunshot residue to see the positioning of where that
5 gun was when it was fired, unfortunately. Because just as
6 it may have shed some light in Mr. Aiken, it also could
7 have shed some positive light for Al Morgan and his
8 version of what took place, and we never had it. For
9 whatever reason, we couldn't get it. So in closing,
10 Judge, I'd like you to know this as well and to the Aiken
11 family. When I first met with Al in early December of
12 2013, we talked and he agreed with me completely that
13 unlike most of the people, I go to the jail and talk to
14 who wants to get out, who wants a bond, that this would
15 not be anything to do any time soon. Give this family
16 time to go through the grieving process. Don't be selfish
17 about that. Judge, I want you also to know, because the
18 family didn't get a chance to hear this, I don't think.
19 It was in the possession of the State. I don't know if
20 they've heard it. But you listened to it Tuesday evening
21 and that was a statement that Jamaal, while still in
22 prison, went back to Detective Dixon and gave him, I mean,
23 Al, while still in prison. Went back to Detective Dixon
24 and gave him, and I, you listened to it and so if what I
25 say does not fall in line with your recollection, use your

1 recollection in deciding, but this is Detective Dixon.

2 All right. I don't have any further questions. This
3 is your time. I'll give you a chance. Whatever you'd
4 like to say at the end of the statement if you'll give me
5 one. And Al said, I just, it hurt. Was just the way, you
6 know, it happened and it's something I've got to live with
7 for the rest of my life, you know. The family's got to
8 deal with it, too. I've got to deal with it. My family's
9 got to deal with it. I just hate that it happened the way
10 that it happened.

11 THE COURT: And his tone of his voice was very much
12 remorseful in my listening to it. It was, that was
13 sincerely said.

14 MR. JONES: And he and his family have wanted me to
15 convey that to Jamaal's parents and family from the
16 beginning, and so, you know, tragedy. Responsibility.
17 We're asking for measured and tempered justice in this
18 case in Your Honor's wisdom.

19 THE COURT: I recognize that had, it's just a
20 tragedy. With no guns, it may not have happened.

21 MR. JONES: In closing, Your Honor, if I might, Ms.
22 Morgan wanted me to let the Court know that this is
23 directed to the family of Jamaal Aiken that she prays
24 every single day for that family, for his parents, loved
25 ones and she has since this and it's not a false

1 presentation on her part. She truly wishes that this had
2 never happened.

3 THE COURT: Anything from you, Mr. Morgan?

4 MR. MORGAN: I want to apologize and say I'm sorry.

5 THE COURT: All right. I will accept the plea as
6 freely and voluntarily given. Considering everything,
7 there's nothing I can give them that's going to bring
8 that, your son back. And I'm sorry for that. But
9 considering everything I have been told, the sentence of
10 the Court is that Mr. Morgan will be confined for an
11 active term of twenty-five years and that's suspended upon
12 the service of twelve and a half years. Cost and
13 assessment imposed. Probation, thirty-six months after
14 his community supervision ends. And he gets credit for
15 his pretrial confinement before this case became a plea.
16 Good luck to everybody and I'm sorry. I can't fix a
17 tragedy, I hope this brings closure for you.

18 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
19
20
21
22
23
24
25

1 CERTIFICATE OF REPORTER
2
34 State of South Carolina)
5 County of Newberry)
6
78 I, Joy E. Holston, Official Court Reporter for the
9 Eighth Judicial Circuit of the State of South Carolina, do
10 hereby certify that the foregoing is a true, accurate and
11 complete transcript of record of the proceedings had and
12 evidence introduced in the trial of the captioned case,
13 relative to appeal, in the County of Spartanburg, South
14 Carolina on the 1st of February, 2016.15 I do further certify that I am neither of kin,
16 counsel nor interest to any party hereto.
1718 August 6, 2016
1920 *Joy E. Holston*
21

22 Joy E. Holston, Court Reporter

23 My Commission expires: May 2, 2026
24
25

STATE OF SOUTH CAROLINA)

County of GREENWOOD)ALFONSO MORGAN, JR. #257372)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2018-CP-24 00705

APPLICATION FOR

POST-CONVICTION RELIEF

2018 AUG 3 PM 3:48
CP 8th Jud Cir Greenwood, SCINSTRUCTIONS - 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 KIRKLAND CORR. INST. 4344 BROADVIEW RD.
COLUMBIA SC 29210
2. Name and location of Court which imposed sentence GREENWOOD COUNTY
COURT OF GENERAL SESSIONS
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 15 GS-24-0728, 25 YEARS, SUSP. 12 1/2 YEAR + 36 M-PROBATION
 - (b) N/A

- (c) N/A
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 2-5-16, 25 YEARS Susp. 12½ AND 36 MONTHS PROBATION
- (b) N/A
- (c) N/A
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty N/A
- (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. COURT OF APPEALS
- ii. N/A
- iii. N/A
- (b) the result in each such Court to which you appealed:
- i. AFFIRMED
- ii. N/A
- iii. N/A
- (c) the date of each such result:
- i. FILED June 6, 2018
- ii. N/A
- iii. N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. SELF DEFENSE FAILED BECAUSE OF COUNSEL'S LACK OF
- ii. INVESTIGATION AND AS SUCH ALSO FALLS UPON
- iii. THE STATE SOLICITOR ALSO.
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) N/A

- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) SEE ATTACHED PAGES, REFERENCE MATERIAL (A) +
- (b) ARGUMENT (PAGES 1-10)
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE ATTACHED PAGES, REFERENCE MATERIAL (A) +
- (b) ARGUMENT (PAGES 1-10)
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(c) the disposition thereof:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(d) the date of each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

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

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

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

NO

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

(a) which grounds have been presented:

- i. N/A
- ii. N/A
- iii. N/A

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

- i. N/A
- ii. N/A
- iii. N/A

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) COUNSEL WAS DEFICIENT / INEFFECTIVE
 (b) DID NOT HAVE DOCUMENTATION OR KNOW THE LAW TO PRESENT IT.
 (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? N/A
 (c) your sentencing? YES
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
 (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. W. TOWNES JONES, IV
1116 COURT AVE W., GREENWOOD, SC 29646
 ii. JAMES W. BANNISTER, BANNISTER, WYATT & STALURY LLC
P.O. Box 10007 GREENVILLE SC 29603
 iii. ROBERT M. DUDICK APPELLATE DEFENSE
P.O. Box 11589, Columbia SC 29210
 (b) the proceedings at which each such attorney represented you:
 i. ARRAIGNMENT, SENTENCING
COMMUNITY MOTION, PLEA, APPEAL
 ii. COMMUNITY MOTION, PLEA
SENTENCING, APPEAL
 iii. APPEAL

19. State clearly the relief you seek in filing this application:

SEE ATTACHED PAGES REFERENCE MATERIAL (A) +
ARGUMENT/PLEA (PAGES 1-10)

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

NO

STATE OF SOUTH CAROLINA)

County of Green Wood)

VERIFICATION

I, Alphonso Morgan, 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.

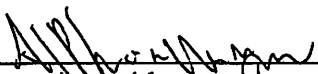
Alphonso Morgan

SWORN to and subscribed before me this 10
 day of July, 2018.

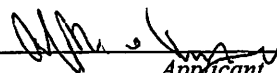
Melissa Spivey (L.S.)
 Notary Public

My Commission Expires: Dec. 1, 2025

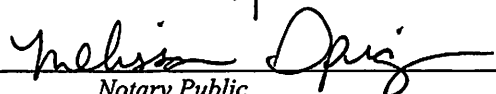
**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

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.


Applicant

SWORN or affirmed to and subscribed before me this
11 day of July, 2018.


Notary Public

My Commission Expires: Dec. 1, 2025

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions

Eugene C. Griffith, Jr., Circuit Court Judge

Case No.: 2016-000269

The State, ... Respondent.
v.
Alphonso Morgan, Jr., ... Appellant.

STATEMENT PURSUANT TO RULE 203(d)(1)(B)(iv)

Appellant was granted an immunity hearing pursuant to the Protection of Persons and Property Act. The hearing was held between February 1, 2016 and February 3, 2016. Immunity was denied on February 3, 2016. Appellant pled guilty to a reduced charge on February 5, 2016. Undersigned counsel files this appeal at the request of Appellant and pursuant to In re Anonymous Member of the Bar, 303 S.C. 306, 400 S.E.2d 483 (1991). Counsel believes the client has an issue arising from his immunity hearing. In addition, Appellate Defense is aware of this appeal and, ultimately, will be handling the matter.

The issue to be raised on appeal relates to whether the trial court erred in determining that immunity did not apply pursuant to the Protection of Persons and Property Act. Specifically, the South Carolina Court of Appeals has held that a defendant asserting immunity must first demonstrate the elements of self-defense. After a showing of self-defense, an additional showing based on the statutory subsections contained in the Protection of Persons and Property Act is necessary. *State v. Douglas*, 411 S.C. 307, 318, 768 S.E. 2d 232, 238-239 (Ct. App. 2014).

The Defendant argued to the contrary at the immunity hearing. To wit, South Carolina Code § 16-11-450(A) states in pertinent part that:

“A person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force.”

(Emphasis added). The term “or” indicates that there are two different sources of immunity for a person who uses deadly force

First, the language “as permitted by the provisions of this article,” includes the factual scenarios described in S.C. Code § 16-11-440.

South Carolina Code § 16-11-440 has two separate provisions, found in sub-section (A) and sub-section (C), describing scenarios where deadly force is permitted. These sub-sections overlap to some extent, but ultimately describe two different types of confrontations. Sub-section (A) can best be described as the “Defense of Vehicle” immunity whereas sub-section (C) can best be described as the “Stand Your Ground” immunity.

Second, “as permitted by . . . another applicable provision of law” includes the common-law concept of self-defense. The common-law provision of self-defense permits the use of deadly force, and is, therefore, included in the statutory grant of immunity.

Important to this appeal, these two separate sources for potential immunity should, according to statutory interpretation, be applicable independently.

The Defendant in this case was entitled to immunity under S.C. Code § 16-11-440(A) and (C). The requirements of these subsections is not co-terminus with the requirements of self-defense. The testimony was virtually undisputed that the Defendant was attacked inside of the backseat of the vehicle. The Defendant’s assertion of immunity under 440(A) had significant evidentiary support for each element. Proof of self-defense by a preponderance of the evidence, on the other hand, was made difficult by deficiencies in the investigation. In other words, the Defendant had the necessary proof under S.C. Code § 16-11-440(A) and (C), but the elements of self-defense were more difficult.

The Defendant raised this issue at the immunity hearing, but the trial court was bound by the precedent established in *Douglas*. That precedent required proof of self-defense first, then the additional proof to satisfy § 16-11-440(A) and/or (C).

In *State v. Duncan*, 392 S.C. 404, 410, 709 S.E.2d 662, 665 ((2011), the Supreme Court held that “by using the words ‘immune from criminal prosecution,’ the legislature intended to create a true immunity, and not simply an affirmative defense.” Appellant’s position is that he was immune from further prosecution after the immunity hearing. Therefore, any proceeding after the Appellant was erroneously denied immunity, including the guilty plea, was *void ab initio*.

COUNTY OF GREENWOOD

IN THE COURT OF COMMON PLEAS

ALFONSO MORGAN, JR. #257372
Plaintiff(s)

CIVIL ACTION COVERSHEET

vs.

-CP - -

State of South Carolina

Defendant(s)

2018-CP-24 00705Submitted By: ALFONSO MORGAN #257372
Address: WILLIAMS CREEK WEST
4344 BROADWAY RD
COLUMBIA SC 29210

SC Bar #:

Telephone #:

Fax #:

Other:

E-mail:

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing cases that are NOT E-Filed. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint. This form is NOT required to be filed in E-Filed Cases.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|--|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ General (130)
☐ Breach of Contract (140)
☐ Fraud/Bad Faith (150)
☐ Failure to Deliver/Warranty (160)
☐ Employment Discrim (170)
☐ Employment (180)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 -NI- -
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Assault/Battery (370)
☐ Slander/Libel (380)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☒ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Incapacitated Adult Settlement (790)
☐ Other (799) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Pre-Suit Discovery (670)
☐ Sexual Predator (510)
☐ Permanent Restraining Order (680)
☐ Interpleader (690) | | |

Submitting Party Signature:

Date:

7/24/18

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Advanced Private Investigations, LLC

Investigative Report

Morgan Case

Morgan 141201IR100 Brent Williams

December 1, 2014

2018 AUG 9 PM 3:48
CP 8th Jd Cir Greenwood, SC

While conducting a review of the interview of Brent Lamar Williams that was conducted at Self Regional Health Care in reference to a shooting that just occurred at 610 Seaboard Avenue by detective Dixon on November 14, 2013 at 11:28 AM, Investigator Powers documented the following statements that are critical to the case:

00:28 Brent Williams stated to Detective Dixon that Jamal Aiken (aka "Smooth") was his brother in law. He said Jamal had been going with his sister for 13 years. They are not married yet.

00:56 Brent Williams stated to Detective Dixon that the Cab Stand Club was letting out. An argument started inside the club and led to the outside.

01:06 Brent Williams stated to Detective Dixon that he does not know who was involved in the argument.

01:22 Brent Williams stated to Detective Dixon that when they got outside, Jamal Aiken opened the right back door of Linwood Ramsey's vehicle to ask a question, and he heard a gunshot. Jamal fell.

01:55 Brent Williams stated to Detective Dixon that the door was not half way open when he heard the gun shot.

02:15 Brent Williams stated to Detective Dixon that "We asked him if he had been shot". He said, "He said hell yea, Al shot me".

Note: At **04:29** into the interview, Brent Williams makes a statement that makes me think he did not really understand what Jamal Aiken actually said after the shot. Need to listen to statement.

Note: This statement is not consistent with the statement that Demecus Sayles gave. There is no mention here of Jamal running around the building.

03:15 Detective Dixon makes a leading statement: "You say Smooth does not beef with a whole lot of people that's how he gets his name".

Note: During this interview and prior to this statement, there is no information that was provided to Detective Dixon that would provide him information that leads him to think Smooth don't beef with people.

04:46 Detective Dixon asked Brent Williams what Al was wearing. Brent said, "I cannot tell you exactly what he was wearing; but I know it was him, because he got in the car with him".

Brent Williams stated to Detective Dixon that the car sped away.

03:38 Brent Williams stated to Detective Dixon the following people were at the scene and observed what happened: Hazel Williams, Shanena Williams, Brent Williams, and Drena Morgan.

Detective Dixon stated to Brent Williams after he says my sister, Shanena Williams, "She is the one I talked to a second ago".

Note: I do not see a statement from Drena Morgan.

05:50 Brent Williams stated to Detective Dixon, "He felt like the man that owned The Cab Stand Club let them in with them pistols because when they were arguing inside they were talking about gun play".

Note: Why was this line of questioning not pursued with follow up questions? Who was talking about gun play? What were they saying? Where was the statements made? Why were the statements made? Were threats made?

Note: Hazel Williams stated in her recorded statement that the people in the black car were gone from the club before the argument on the inside started.

Note: Brent Williams just said in this recorded statement that he did not know who was arguing inside.

Note: A stolen pistol was found on Jamal at the hospital. Why did the management let him in with a gun?

Brent Williams stated to Detective Dixon he lives at 304 Stone Haven Drive.

Brent Williams stated to Detective Dixon that he is not employed at the time.

Detective Dixon ended the statement at 11:36 PM. This is an interview with a cooperative witness on a serious shooting at a night club. **The interview was eight minutes long.**

Alphonso Morgan jr. Vs. State

First issue :

I know he previously worked at the Attorney Generals office.

David Stumbo : His daughter attends private school with Alphonso Daughter . (same classroom) she came to class telling the students that Alphonso Morgan is a killer, This child was 7 at the time and she had to heard her father discussing this at home. We did inform our Attorney Townes Jones, But we wanted to wait after my brothers case goes to court before we address this.

Second issue :

I Hired Townes Jones to represent my brother on a murder charger, Which was self defense and his case was strong. Townes notified me a couple of months before the immunity hearing that he was hiring James Bannister to assist with the case and hearing, Also he would pay him out of the money that i had paid him. He said that Bannister had a strong track record with self defense hearings, I told it was fine with me if he felt like he needed him. OK fast-forward, The first 2 days of the hearing went extremely well. The last day, For some reason the judge flipped and i mean the evidence and testimony was favored for us but the judge didn't grant immunity.

We all gathered back at Townes office in his conference room to talk about a jury trial, James Bannister took my brother into Townes office and convince him to take a plea. because he had a felony charge back in 1999 and that the Solicitor would turn it over to the feds and he would get 10 years just for the gun charge. That scared my brother into taking a plea. this is what i found out, James Bannister and the Solicitor David Stumbo are good friends . Bannister's family supported him when ran for Solicitor. The sentencing sheet that my brother signed was changed from what he had agreed to, Which I didn't want him to take a plea. What they did was unethical, misrepresentation and they coherse him in to taking a plea to help the solicitors office out because he is up for reelection and his office has performed poorly. Failed or no investigations and the

taxpayers have been putting pressure on him. Activist like Jack Logan have put pressure on his office about poor investigations. They failed to investigate my brothers case no forensics, gun powder, etc.. they even let my brother where the same clothing he was arrested in out on bond. I paid for jimmy Powers to investigate the case and he conducted interview with all the key witnesses .

1. During a meeting with Als Attorney the day before the hearing. Townes Jones (his att.), Contacted former Cpt. Futch who was the lead investigator when the incident occurred . Townes was arranging for him to testify at the hearing, He had him on speaker phone which, Al, Myself and investigator Jimmy powell listened in. During that conversation former Cpt. Futch Stated that he had informed the solicitor that they deemed the incident to be self defense, But the solicitor (he didn't state a name) told him that they would leave it as Murder. He also stated that he didn't believe a jury would convict Al. Futch didn't testify at the hearing.
2. Demecus Sayles a witness that testified for the state, Testified that Al shot the victim reaching out the window and the victim ran around the building. Which was a lie, Every witness stated that the victim fell to the ground. Also this witness was intoxicated reeked of alcohol .

2018 AUG 3 PM 3:48
Jd CP 8th, Jud Cir Greenwood, SC

AL Morgan CURRENT Disposition/Goal as of 2/3/2016

1. AL has a possession of CC that carries 3 years or 5. Under state law, he's lawfully in possession of a firearm. In **FEDERAL** law, he is **NOT** lawfully in possession of that firearm.
2. If an **acquittal**, the Aiken family will take AL's sworn statement that he was in possession of a firearm and the Feds will prosecute it. On the federal side, they go through sentencing guidelines and one of the things that enhance the calculation of what should be AL's sentence is that there was a person shot and killed by the gun that he possessed. When that is factored into his sentence, this is about 8 years in Federal charges. He'd do 85% of that time and he'd get no time served as credit towards this sentence b/c they're separate cases.
3. Right NOW, get AL a deal with the Solicitor for less than 8 ½ years and an agreement that they won't send this case to federal. Suggest Voluntary Manslaughter : 20 years suspended to a service of a 10-year sentence. Of that 10 years, Aiken's family won't be aware that AL will get credit for 2 ½ years served. That equates to AL doing 6 years at a medium-security state facility. When finished with jail time, he'd have probation.

REFERENCE MATERIAL

- STATEMENT PURSUANT TO RULE 203.6(1)(B)(IV)
CHIEF APPELLATE DEFENDER, ROBERT M. DUDEK (2016) (2 PAGES)
- STATEMENT - GREG HACKETT (2 PAGES)
(HIRED MR. TOWN'S)
STATEMENT - GREG HACKETT (1 PAGE)
- ADVANCED PRIVATE INVESTIGATIONS, LLC.
REPORT OF MORGAN CASE:
BRENT WILLIAMS INTERVIEW (2 PAGES)
BY: JIMMY POWERS (2014)
- W. TOWNS JONES DISPOSITION REPORT OF CASE
- MR. MORGAN BELIEVED AFTER FAILURE OF
IMMUNITY HE WAS PLEADING TO THE INFORMED
SENTENCE OF 20 SUSPENDED TO 8 1/2 YEARS AND
PROBATION.
- SENTENCING SHEET: INDICTMENT # 15GS24-0728
COUNTY OF GREENWOOD
25 YEARS SUSPENDED TO 12 1/2 W/ 36 MONTHS
PROBATION.

2018 AUG 3 PM 3:49
sd CP 8th Jnd Cir Greenwood, SC

2018 AUG 3 PM 3:49
 1000 L.F. 8th and Dr. Greenwood, SC

HERE WITHIN PLEASE FIND THE FOLLOWING ISSUES, ARGUMENTS AND FACTUAL BASIS FOR POST CONVICTION RELIEF.

THE DEFENDANT STATES THE FOLLOWING IN SUPPORT OF HIS POST CONVICTION RELIEF APPLICATION:

DEFENDANTS REPRESENTING COUNSEL, W. TOWNSEND JONES AND WILLIAM BANNISTER WERE DEFICIENT IN THE OFFICIAL DUTIES AND CAPACITY AS TO REPRESENTING DEFENDANT ON AN ARRAY OF ISSUES LEADING TO INEFFECTIVE ASSISTANCE OF COUNSEL SHOWN IN THE PCR APPLICATION BEFORE THIS HONORABLE COURT.

COUNSEL FOR DEFENDANT PREJUDICED DEFENDANT INTO ACCEPTING A NON NEGOTIATED OR RECOMMENDATION PLEA UNDER THEIR DIRECTION AND ADVISEMENT THAT WAS NOT FAVORABLE TO THE DEFENDANT BASED FROM THE STATES OWN EVIDENCE. WHERE IF THE DEFENDANT HAD HAD THE ACTUAL DOCUMENTATION OF THE STATES CASE, (LEAD INVESTIGATOR - CAPT. FUTCH'S INVESTIGATION REPORT, CASE SUMMARY REPORT OF SELF DEFENSE, FORENSIC READINGS) THERE IS REASONABLE PROBABILITY THAT BUT FOR COUNSEL'S UNPROFESSIONAL ERRORS, THE RESULT OF THE PROCEEDINGS WOULD HAVE BEEN DIFFERENT, LAFLER V. COOPER 182 L.R. 2d 398 (2012).

THE 6TH AMENDMENT REQUIRES EFFECTIVE ASSISTANCE OF COUNSEL AT CRITICAL STAGES OF CRIMINAL PROCEEDINGS, NOT SIMPLY TO PROTECT DEFENDANT AT TRIAL.

DEFENDANTS HAVE THE RIGHT TO EFFECTIVE ASSISTANCE

OF COUNSEL AT EVERY STAGE OF THE COURT PROCESS INCLUDING PROPER COLLECTION OF DOCUMENTS, STATEMENTS OF INVESTIGATORS, ANY RESULTS OF SCIENTIFIC TESTS OR EXPERIMENTS THAT WHICH ARE WITHIN THE POSSESSION, CUSTODY OR CONTROL OF THE PROSECUTION, AS EVIDENCE IN CHIEF INTENDED FOR ANY PROCEEDINGS LEADING UP TO TRIAL, INCLUDING TRIAL.

THOSE OF WHICH ARE MATERIAL TO THE PREPARATION OF THE DEFENDANT'S DEFENSE, THE EXISTANCE OF WHICH IS KNOWN, OR BY THE EXERCISE OF DUE DILIGENCE MAY BECOME KNOWN, TO THE ATTORNEY FOR THE PROSECUTION, AND WHICH ARE MATERIAL TO THE REPRESENTATION OF THE DEFENSE OR ARE INTENDED FOR USE BY THE PROSECUTION AS EVIDENCE IN CHIEF DURING OR FOR ANY PART OF THE CASE UP TO TRIAL, INCLUDING THE IMMUNITY HEARING AND PLEA NEGOTIATIONS OF MITIGATING FACTORS AND AGREEMENTS.

PURSUANT TO RULE 6, SOUTH CAROLINA CRIMINAL PROCEDURES, ANY REPORTS OR PAPERS MENTIONED IN SECTIONS (a) OR (b) OF 6, ADDITIONALLY ANY AND ALL EVIDENCE, DOCUMENTATION, NOTES, AFFIDAVITS, WARRANTS USED AT OR DURING THE GRAND JURY USED TO ARREST, CHARGE, INDICT OR USE IN ANY MANNER IN ANY PART OF THE DEFENDANT'S CASE.

UNDER THE U.S. SUPREME COURT DECISION IN BRADY V. MARYLAND 373 U.S. 83, 83 SUP. CT 1194 (1963), THE SOLICITOR HAS AN OBLIGATION TO PROVIDE ALL BRADY MATERIAL FOR THE DEFENDANT WELL IN ADVANCE OF THE

SCHEDULED TRIAL DATE, MOTIONS (IMMUNITY HEARING) AND PLEA NEGOTIATIONS FOR USE OF MITIGATING FACTORS AT SENTENCING.

DEFENDANT CLAIMS UNDER BRADY AND ITS PROGENY, AS WELL AS THE LANGUAGE AND SPIRIT OF Kyles v. Whitley 514 U.S. 419, 115 Sup Ct 1555 (1995), Giglio v. U.S. 405 U.S. 105 (1972), Napue v. Illinois 79 Sup Ct. 1173 (1959), Mooney v. Hallahan 294 U.S. 103 (1935); THAT DEFENDANT IS ENTITLED TO ANY AND ALL REPORTS, MEMORANDA AND DOCUMENTS AS WELL AS A STATEMENT OF THE CIRCUIT SOLICITOR AND ALL APPROPRIATE STATE, FEDERAL, AND LOCAL LAW AGENCIES AS TO :

ALL STATEMENTS, ALL HAND WRITTEN NOTES MADE BY POLICE OR OTHER INVESTIGATING OFFICERS OF THEIR INTERVIEW OR CONVERSATION WITH THE DEFENDANT, ANY WITNESS AND ANY OF THE STATE PROSECUTION.

ANY ORAL, WRITTEN OR RECORDED STATEMENTS MADE BY ANY PERSON TO THE SOLICITOR'S OFFICE - EITHER DIRECTLY OR INDIRECTLY CONNECTED TO THE DEFENDANT'S CASE INCLUDING THE GRAND JURY AND IMMUNITY HEARING.

ANY AND ALL INVESTIGATION REPORTS, INFORMATION OR MATERIAL WHICH TENDS TO ESTABLISH THE DEFENDANT'S INNOCENCE, TO MITIGATE PUNISHMENT AT ANY PROCEEDING INCLUDING IMMUNITY HEARING, OR TO IMPEACH, DISCREDIT, OR CONTRADICT THE TESTIMONY OF ANY WITNESS WHERE THE STATE WILL OR MAY CALL TO THE GRAND JURY, USE TO CONTROL OR INDUCE PLEA NEGOTIATIONS OR AT TRIAL, Giles v. Maryland 386 U.S. 46 (1967) Napue v. Illinois 79 Sup Ct. 1173 (1959) (3)

ANY AND ALL PHOTOGRAPHS TAKEN AT THE SCENE, ANY SCIENTIFIC OR MEDICAL REPORTS WHICH TENDS TO ESTABLISH THE DEFENDANT'S INNOCENCE, ASHLEY J. TEXAS 317 F.2d 80 (5th Cir) (1963).

DEFENDANT WAS ENTITLED AND IS ENTITLED TO ANY OF THE MATERIAL CONCERNING THE INVESTIGATION OF THIS CASE.

THAT THE INDIVIDUAL PROSECUTOR OR PROSECUTORS IN THIS CASE HAS A DUTY TO LEARN OF ANY FAVORABLE EVIDENCE KNOWN TO OTHERS ACTING ON THE GOVERNMENT'S BEHALF IN THIS CASE INCLUDING INVESTIGATING OFFICERS AND REGULAR POLICE.

THAT RECOGNIZING THAT BRADY AND OTHER AUTHORITIES CITED REQUIRE THAT INFORMATION FAVORABLE TO THE DEFENDANT BE MADE AVAILABLE.

HERE, THE STATE, SOLICITOR AND THE DEFENDANT'S COUNSEL OF RECORD FAILED TO DO - PROVIDE THESE PROVISIONS OF LAW. WHEN A DEFENDANT OR DEFENDANT'S COUNSEL AT ANY TIME PRIOR TO SENTENCING THE JURY PROCESS CLAUSE AND THE U.S. CONSTITUTION REQUIRES ALL BRADY MATERIAL, IT IS THE RESPONSIBILITY OF THE STATE TO MAKE SURE THAT ANY AND ALL EVIDENCE, MATERIAL IS PRESENTED TO THE DEFENDANT FOR HIS PERSONAL INSPECTION SO THAT HE IS KNOWINGLY AWARE OF THE CASE AND UNDERSTANDING THE MATERIAL AS IT IS IMPERMITIVE FOR THE DEFENDANT TO KNOW WHAT HE IS TO DEFEND AGAINST AND NOT JUST TRUST WHAT HIS COUNSEL MAY OR MAY NOT PROVIDE, PARKUS V. DELL 33 F.3d 933 (8th Cir 1994).

DEFICIENT PERFORMANCE CREATED AN EFFECTIVE ASSISTANCE OF COUNSEL FROM LACK OF DUE DILIGENCE WORKS OF PRODUCED THE INVESTIGATION REPORTS, STATEMENT OF CAPTAIN FUTCH AND SECURED HIS TESTIMONY, THE CHIEF INVESTIGATOR FOR THE STATE WHO DURING A CONFERENCE CALL TO MR. TOWNS ABOUT HIS CONVERSATION WITH THE SOLICITOR ABOUT HIS FINDINGS, PRESENT AT THE CONVERSATION WAS MR. GREG WACKETT (MR. MORGAN'S BROTHER), MR. MORGAN AND INVESTIGATOR JIMMY POWER IN MR. TOWNS OFFICE WHERE CAPT. FUTCH, LEAD INVESTIGATOR GAVE A STATEMENT OF THE FACTS AND HIS DETERMINATION BY THE STRENGTH OF THE EVIDENCE AND FACTS IS THAT IT WAS SELF DEFENSE BY DEFENDANT, MR. MORGAN. THIS STATEMENT WAS MADE TO EVERYONE AND CAPT. FUTCH STATED THAT HE DID ADVISE THE SOLICITOR'S OFFICE OF HIS FACTUAL FINDINGS OF SELF DEFENSE, THUS THE STATES INVESTIGATION AND FACTS FROM WITNESS'S STATEMENTS CONCLUDED BEYOND DOUBT, MEETING THE REQUIREMENTS IN STATE V. DOUGLAS FOR SELF DEFENSE AND STAND YOUR GROUND IF NOT FOR THE UNPROFESSIONAL ERRORS.

THE 6TH AMENDMENT REFERS SIMPLY TO "COUNSEL" NOT SPECIALIZING PARTICULAR REQUIREMENTS OF EFFECTIVE ASSISTANCE. IT RELIES INSTEAD ON THE LEGAL PROFESSIONAL'S MAINTENANCE OF STANDARDS SUFFICIENTLY TO JUSTIFY THE LAW'S PRESUMPTION THAT COUNSEL WILL FULFILL THE ROLE IN THE ADVERSARY PROCESS THAT THE AMENDMENT ENVISIONS MICHAEL V. LOUISIANA 350 U.S. 91 100101955

THE PROPER MEASURE OF ATTORNEY PERFORMANCE REMAINS SIMPLY REASONABLENESS UNDER PREVAILING PROFESSIONAL NORMS, STRICKLAND V. WASHINGTON 104 S.Ct. 2052 (1984).

REPRESENTATION OF A CRIMINAL DEFENDANT ENTAILS CERTAIN BASIC DUTIES, TO ASSIST THE DEFENDANT, HENCE COUNSEL OWES THE CLIENT A DUTY OF LOYALTY, A DUTY TO AVOID CONFLICTS OF INTEREST, CUYLER V. SULLIVAN SUPRA 446 U.S. @ 346 - HERE MR. TOWN VIOLATED THIS TRUST BY OUT-SOURCING TO MR. BANISTER NOT ONLY FAILED AT CALLING MR. FUTCH AS A WITNESS FOR THE DEFENSE BUT WHO ALSO WAS A POLITICAL RELATIONSHIP WITH THE SOLICITOR - DAVID STUMBO CREATING PREJUDICE AND A SERIOUS CONFLICT OF INTEREST (ATTACHED STATEMENT).

COUNSEL'S FUNCTION AS ASSISTANT TO THE DEFENDANT DERIVE THE OVERREACHING DUTY TO ADVOCATE THE DEFENDANT'S CAUSE AND THE MORE PARTICULAR DUTIES TO CONSULT WITH THE DEFENDANT ON IMPORTANT DECISIONS AND TO KEEP THE DEFENDANT INFORMED OF IMPORTANT DEVELOPMENTS IN THE COURSE OF THE PROSECUTION.

REEVES V. STATE 415 S.C. 366 (2015) DEFENDANT'S TRIAL COUNSEL WAS DEFICIENT FOR FAILING TO CALL WITNESS'S CAPT. FUTCH - LEAD INVESTIGATOR AND JIMMY POWERS - PRIVATE INVESTIGATOR TO CHALLENGE STATES CASE AND PROVE SELF DEFENSE, U.S.C.A. WITH CONST. AND

COUNSEL FAILED TO ARTICULATE A VALID STRATEGY FOR FAILING TO CALL EITHER INVESTIGATOR TO TESTIFY AT THE COMMUNITY HEARING AS SUCH DEFENDANT'S

TRIAL COUNSEL WAS DEFICIENT FOR FAILING TO CALL EITHER INVESTIGATIVE EXPERT TO CHALLENGE THE STATES ALLEGED CLAIM OF MURDER, ALTHOUGH STAND YOUR GROUND WAS PROVEN AT IMMUNITY HEARING PRIOR TO BEING FORCED TO PLEA WHILE NOT KNOWINGLY OR INTELLIGENTLY DOING SO.

COUNSEL DID NOT CALL TO THE STAND EITHER INVESTIGATOR WITNESS DURING THE HEARING, EVEN THOUGH HE KNEW THE STATE WOULD ATTEMPT TO ADMIT EVIDENCE OF NO SELF DEFENSE.

THE STATES INVESTIGATOR CAPT. FUTCH STATED THAT IT WAS ACTUAL SELF DEFENSE, THE STATE IN RESPONSE REFUSED TO ACCEPT ITS OWN OFFICERS REPORT AND PROCEEDED WITH A CHARGE OF MURDER. WHERE LATER DEFENDANT PLEAD TO LESSER OFFENSE OF MANSLAUGHTER WHERE DEFENDANT UNDER ADVICE FROM COUNSEL BELIEVED THAT HE WOULD RECEIVE 20 YEARS REDUCED TO SERVICE OF $8\frac{1}{2}$ WITH PROBATION BECAUSE OF THE MITIGATING CIRCUMSTANCES THAT WERE PRESENT AT THE IMMUNITY HEARING.

THUS THESE ELEMENTS PREJUDICED DEFENDANT AS ELEMENTS OF INEFFECTIVE ASSISTANCE OF COUNSEL, SINCE CAPT. FUTCH'S INVESTIGATION PROVED SELF DEFENSE TESTIMONY THAT REASONABLY COULD HAVE RESULTED IN A DIFFERENT OUTCOME AT IMMUNITY HEARING OR AT TRIAL THUS MEETING THE 2 REQUIREMENTS OF THE PRONGS STRICKLAND V WASHINGTON 461 U.S. 468 (1984) WHERE COUNSEL'S PERFORMANCE FELL BELOW AN

OBJECTIVE STANDARD OF REASONABLENESS AND PREJUDICE AND IF NOT FOR THE COUNSEL'S ERRORS AND DEFICIENT PERFORMANCE, THE RESULT OF THE PROCEEDINGS WOULD HAVE BEEN DIFFERENT FRANKLIN J. CATER 552 S.E.2d 718, 722 (2001)

IN ADDITION THE DEFENDANT'S COUNSEL WAS CLEARLY DEFICIENT IN THE COURSE OF INVESTIGATION OF THE CASE TO ADEQUATELY REPRESENT DEFENDANT CREATING INEFFECTIVE COUNSEL BEFORE THE JUDICIAL HEARING, DURING PLEA NEGOTIATIONS, AND AT SENTENCING, ABA STANDARDS FOR CRIMINAL JUSTICE, 4-1.1, 4-8.6 2ND ED (1980) (CAPATED 2018).

THE STATE CREATED BIAS AND PREJUDICE BY VIOLATING OUR PROCESS RIGHTS OF DISCLOSURE UNDER BRADY S/LC MATERIAL AND NOT PROVIDING ALL CASE MATERIAL AND WITHHOLDING POLICE NARRATIVE REPORTS TO THE DEFENDANT FOR HIS PERSONAL INSPECTION AND TO THE COURT FROM ITS OWN INVESTIGATION FROM CAPT. FLITZ, THE STATES 1ST INVESTIGATOR OF THE CASE BEFORE THIS HONORABLE COURT, U.S. J. STOKES 124 F.3d, 39, 45 (1ST CIR 1997) "IT IS HENRY BROOK LAW THAT A FEDERAL COURT MAY DISMISS AN INDICTMENT IF THE ACCUSED PRODUCES EVIDENCE OF ACTUAL PROSECUTORIAL VINDICTIVENESS SUFFICIENT TO ESTABLISH A DUE PROCESS VIOLATION, OR EVEN IF HE DEMONSTRATES A LIKELYHOOD OF VINDICTIVENESS SUFFICIENT TO JUSTIFY PRESUMPTION". TO EVEN PRESENT THIS CASE TO THE COURTS ANY FURTHER AFTER THE SOLICITOR FOUND

(8)

FROM THE LEAD INVESTIGATOR, CAPT. FATCH THAT THE CASE WAS ACTUAL SELF DEFENSE AND THEN EVEN THE TRANSMITTAL OF THIS CASE TO THE GRAND JURY SHOWS "FRAUDULANT INTENT", U.S. V. KELLUM 568 F.3d 125 (2009), U.S. V. LEE 658 F.3d App. 125 (2016).

PRESENTING THIS FRAUDULANT INFORMATION TO THE COURT CLEARLY REPRESENTS THE USE OF UNLAWFUL INFLUENCE ON BEHALF OF THE SOLICITOR. WHEN THE STATE VIOLATES ANY FORM OF THE JURISPRUDENCE AT HAND, THE DEFENDANT BECOMES PREJUDICED AND AS A RESULT DOES NOT RECEIVE FAIR ENTITLEMENT TO HIS FEDERALLY PROTECTED CONSTITUTIONAL RIGHTS 4th, 5th, 6th, AND 14th U.S.C.A. AMENDMENTS.

SUBSEQUENTLY WITNESS'S THAT WERE CALLED BY THE STATE DID SUBSTANTIATE WITHOUT DISPUTE, STAND YOUR GROUND (SEE: STATEMENT PURSUANT TO RULE 203(b)(1)(B) (IV) CHIEF APPELLATE DEFENDANT, ROBERT M. DUDERIL (2016)).

YET THE COURT CALLED THE SOLICITOR WITH BOTH COUNSEL FOR DEFENDANT TO THE BENCH AND A DISCUSSION WAS HELD, SUBSEQUENTLY THE DEFENSE NEVER CALLED EITHER OF THE 2 INVESTIGATORS TO USE THEIR CASE FINDINGS THAT SPECIFICALLY STATED SELF DEFENSE, TO ACTUALLY COMPLETE THE DUE PROCESS CLAUSE AND RIGHT TO AN ACTUAL FAIR HEARING, WHERE DEFENDANT WOULD OF BEEN GRANTED IMMUNITY FROM SUFFICIENTLY FINDING OF SELF DEFENSE.

WHEREFORE THE DEFENDANT WAS PREJUDICED BY THE
(9)

STATE, THE SOLICITOR AND HIS COUNSEL BY NOT USING THE INVESTIGATOR'S EVIDENCE THAT WAS FOUND BY CAPT. FLETCH, COUNTY LAW ENFORCEMENT BUT BY PRIVATE INVESTIGATOR JIMMY POWERS TO SUBSTANTIATE SELF DEFENSE.

RELIEF

DEFENDANT RESPECTFULLY REQUESTS THIS HONORABLE COURT TO APPOINT EFFECTIVE COUNSEL, TO GRANT HIS APPLICATION FOR POST CONVICTION RELIEF. THAT HE MAY ARGUE FOR A NEW JUDICIAL HEARING BASED FROM THE FACTS OF THE DEFICIENT COUNSEL, DUE PROCESS VIOLATIONS, PREJUDICE AND BIAS WITH BRADY VIOLATIONS.

RESPECTFULLY,

M. Morgan 7-10-18

ALPHONSO MORGAN JR.

#257372, E-B2-17

KIRKLAND CORR. INST.

4344 BEAS RIVER RD.

COLUMBIA SC 29210

11 July 2018

Melissa Spig

Dec. 1, 2025

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

Alfonso Morgan, Jr., #257372

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

Case No.: 2018-CP-24-00705

**RETURN AND MOTION FOR
MORE DEFINITE STATEMENT**

The State (Respondent), making its Return to the application for post-conviction relief filed on August 3, 2018, would respectfully show this Court:

I. Procedural History

Alfonso Morgan, Jr. (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenwood County Clerk of Court. During the May 2015 term, the Abbeville County Grand Jury indicted Applicant for murder (2015-GS-24-0728). Townes Jones, Esquire and James W. Bannister, Esquire represented Applicant. Solicitor David M. Stumbo and Assistant Solicitor Yates Brown of the Eighth Circuit Solicitor's Office prosecuted the case.

In January of 2016, Applicant filed a motion seeking immunity from prosecution pursuant to the South Carolina Protection of Persons and Property Act. On February 1, 2016, a pre-trial hearing was commenced on the motion in the Greenwood County Court of General Sessions before the Honorable Eugene C. Griffith, Jr. At the conclusion of the multiday hearing, Judge Griffith denied Applicant's request for immunity from prosecution. Thereafter, on February 5, 2016, Applicant pled guilty to the lesser-included offense of voluntary manslaughter. After accepting Applicant's plea, Judge Griffith sentenced Applicant to twenty-five years suspended upon service

of twelve and a half years with three years probation after the end of the community supervision.

Applicant filed a timely notice of appeal raising the following issues:

1. The trial court's denial of immunity in a hearing under the Protection of Persons and Property Act is appealable after a defendant pleads guilty to a lesser-included offense.
2. The trial court erred in denying appellant immunity under the Protection of Persons and Property Act because appellant was sitting in the back seat of a car when he was attacked by the decedent.

Robert M. Pachak, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on June 6, 2018. State v. Morgan, Op. No. 2018-UP-233 (S.C. Ct. App. filed June 6, 2018). The remittitur was returned to the circuit court on June 22, 2018.

II. Factual History

On the night of November 14, 2013, Captain Hugh Butler of the Greenwood Police Department was alerted of a fight taking place at the Triangle Social and Senior Citizens Club, which was colloquially known as the Cabstand, and quickly began heading to that location. (Hearing Tr. 311.) As he made his way there, Captain Butler received a follow-up report indicating someone had been shot at the club. (Hearing Tr. 311.) Moments later, he arrived at the scene and observed numerous people running around in a frantic manner. (Hearing Tr. 312.) Captain Butler then attempted to ascertain what had transpired but received no assistance from most of the people present at the scene. (Hearing Tr. 307.) However, one individual approached him and reported he saw the victim engaged in an argument with an unknown person seated in a black Chevrolet Impala, the door to that vehicle swung open, the victim was shot, and the vehicle sped off. (Hearing Tr. 313-314.) Critically, that individual also provided Captain Butler with the license tag number of the vehicle

involved in the shooting, and the captain quickly alerted his fellow officers to be on the lookout for the shooter's vehicle. (Hearing Tr. 314.)

Shortly thereafter, Jamaal Aiken ("Victim"), the person who was shot in the parking lot of the club during the incident, died at the hospital as a result of the injuries he sustained in the shooting.¹ (Hearing Tr. 174, 182, 260, 285-286, 312, 318.) Meanwhile, officers quickly tracked down and arrested Applicant at the home of Lenwood Ramsey, the owner of the black Chevrolet Impala involved in the shooting.² (Hearing Tr. 203, 212-213, 364-365.) Following his arrest, Applicant was transported to the police department and interviewed. (Hearing Tr. 365-366.) However, he invoked his rights and declined to provide a statement that night. (Hearing Tr. 367.)

Thereafter, several months later, Applicant arranged to speak with officers with the assistance of defense counsel and provided a statement about the shooting. (Hearing Tr. 369.) In that statement, Applicant alleged he went to the Cabstand on the night of the shooting with a .44-caliber revolver he purchased after "doing time."³ Once there, Applicant indicated he got a "funny feeling" and left. After that, Applicant stated he was alerted one of his friends had been "jumped" and he returned to the club in response. When he got back to the club, Applicant claimed Victim approached his car in an "enraged" manner and snatched the door open. At that point, Applicant stated he shot Victim. Then, Applicant stated he directed the driver of the vehicle he was in to go, they travelled to Ramsey's house, he hid the gun he used to shoot Victim underneath a pile of leaves, and he was eventually arrested by the police.

¹ While Victim was at the hospital, his pants were removed and a stolen .380-caliber pistol was discovered in his pocket along with twenty-eight grams of marijuana. (Hearing Tr. 256-258.)

² During the immunity hearing, Tonya Fuller indicated law enforcement officers arrived at that location only five minutes after Ramsey and Applicant returned to the home after the shooting. (Hearing Tr. 1193-194, 200.)

³ Notably, Applicant did not have a concealed weapons permit for that weapon. (Hearing Tr. 499.)

Following the interview, Applicant was indicted for murder as a result of Victim's death, and he filed a motion seeking immunity from prosecution before his case was called to trial. (Hearing Tr. 9-12.) In response, the circuit court judge conducted a pre- immunity hearing in regard to Applicant's motion. (Hearing Tr. 7.)

During the hearing, defense counsel presented the testimony of numerous witnesses who offered varying accounts of the shooting. (Hearing Tr. 18-68, 186-228, 260-319.) Regarding those accounts, Thomas Gilchrist, who was known as "Bug," testified he went to the Cabstand with Applicant on the night of the incident, they stayed for a little while, Applicant indicated he wanted to leave before anyone got into trouble, and they left the club. (Hearing Tr. 18-20, 28-30.) A short time later, Gilchrist stated Applicant received a call and indicated they needed to return to the club, they returned together in Ramsey's car, they observed a commotion near the door to the club, Victim walked alone towards their car "in a frenzy," Victim opened the rear door of the car and made an insulting comment to Applicant, and then Victim tried to reach into the car and pull Applicant out. (Hearing Tr. 31-36, 57-59, 68.) At that point, Gilchrist indicated Applicant suddenly shot Victim before closing the door and directing Ramsey to drive them away. (Hearing Tr. 37, 59.) After that, Gilchrist indicated they returned to Ramsey's home, he eventually returned to the scene of the shooting, and he falsely claimed to have observed the incident from outside the vehicle to a police officer he encountered there. (Hearing Tr. 38- 43, 65.) Similarly, Ramsey testified he went to the Cabstand on the night of the incident before returning to his home with Applicant and some other individuals after Brent Williams ("Brent") slapped Applicant's hat and cursed at him inside the club. (Hearing Tr. 202 – 208, 217.) After that, Ramsey indicated he returned to the club with Applicant and Gilchrist after Applicant was advised someone had "jumped on" an individual called "Crip," they pulled into the club's parking lot, he heard the door

to the car open, he heard Victim yell some angry words, he heard a gunshot, and then Applicant directed him to drive away. (Hearing Tr. 208-212, 221.) Conversely, Brent testified he went to the Cabstand on the night of the incident with Victim and some other people, he got into a fight with Brown after Brown looked like he was going to hit his female cousin, Victim broke up the fight and helped get everyone outside of the club, and they exited the club. (Hearing Tr. 258, 267-268, 275- 278, 294.) Once they were outside, Brent stated Victim walked over to Ramsey's car possibly to let Applicant and his associates know the club had been closed, Victim appeared to partially open the vehicle's door and greet Applicant, and then Applicant suddenly shot Victim. (Hearing Tr. 279-283, 285-286, 299- 300.) Brent further asserted Victim did not curse at Applicant, hit anyone, behave in an aggressive manner, or pull out a gun before he was shot.⁴ (Hearing Tr. 285, 293, 296, 300.) Additionally, Captain Butler recounted what he was told at the scene by the unknown eyewitness to the shooting. (Hearing Tr. 313-314.)

In addition to that testimony and evidence, Applicant elected to personally testify during the immunity hearing about what allegedly transpired on the date of the incident. (Hearing Tr. 360.) Specifically, Applicant indicated he went to the Cabstand that night, Brent slapped his hat and told him to "get some balls" while he was at the club, he got a "funny feeling" about what occurred, he left the club after showing the concealed pistol he was carrying to "Crip," and he returned to Ramsey's home. (Hearing Tr. 361, 370, 374-377, 382-383, 395.) While there, Applicant asserted he was contacted and alerted "Crip" had been jumped so he returned to the club.⁵ (Hearing Tr. 361-362, 384, 397.) Thereafter, Applicant stated they pulled into the parking

⁴ Regarding the victim, Brent noted Victim was known as "Smooth" based on his cool, calm, collected, and easy going personality. (Hearing Tr. 305.)

⁵ During the immunity hearing, Shay Simon, who was the person that allegedly contacted Applicant about the fight that occurred inside the club after he left, testified on Applicant's behalf but indicated she did not actually observe the shooting in light of the fact she was not outside when it occurred. (Hearing Tr. 344, 350-351.) However, she did claim to have observed Victim grab or punch Robinson during the fight that occurred inside the club prior to the shooting. (Hearing Tr. 349, 355.)

lot, Victim walked alone towards the vehicle with a "mean look on his face," Victim yanked the door opened and leaned in, Victim cursed him, Victim reached into the vehicle, and he responded by pulling out a gun and shooting Victim. (Hearing Tr. 362-364, 384- 386, 398- 399, 408.) After that, Applicant stated he returned to Ramsey's home, hid the gun he used to shoot Victim in Ramsey's backyard, and was subsequently arrested. (Hearing Tr. 364-365, 403.) Applicant further claimed he thought Victim was going to pull him from the vehicle to assault him and believed it was "[Victim's] life or [his own]" at the time he fired the fatal shot. (Hearing Tr. 385, 387.)

Furthermore, defense counsel presented the testimony of Dr. Brett Woodard, who conducted Victim's autopsy and was an expert in forensic pathology. (Hearing Tr. 169-170.) During his testimony, Dr. Woodard discussed the trajectory the bullet Applicant fired took through Victim's body and opined it could have been consistent with the narrative defense counsel presented to him, which was Victim was shot while reaching into the vehicle Applicant was seated in. (Hearing Tr. 193, 178-179.) However, Dr. Woodard expressly indicated the narrative presented by defense counsel constituted just one possibility as to how Victim was shot and was not the only possibility, and he stated he could not conclude any one possibility was more probable than another without having additional evidence. (Hearing Tr. 180.) Dr. Woodard further opined Victim could have been shot as he approached the vehicle and indicated he believed Victim "would have [had] to be back more than five to six feet in order to get the terminal ballistics" seen in Victim's body. (Hearing Tr. 181, 185.)

Beyond the testimony and evidence presented by defense counsel, the solicitor offered the testimony of several witnesses who presented accounts of the shooting that differed sharply from the accounts offered by Applicant and his witnesses. (Hearing Tr. 409-413, 416-449, 454-475, 479-497.) Regarding those accounts, Demecus Sayles, who was present at the club on the night

of the incident, testified he was in the club's parking lot when a Chevrolet Impala pulled up without parking, the vehicle's back window rolled down, and someone fired a shot from inside. (Hearing Tr. 416-420.) Sayles further stated Victim did not approach the vehicle, open the vehicle's door, say anything to anyone inside the vehicle, or engage in an argument with anyone inside of the vehicle prior to being shot right after he walked outside of the club. (Hearing Tr. 420-422, 431, 437.) Similarly, Drina Morgan testified she was at the club on the night of the incident, she observed Victim help break up a fight that occurred inside the club after Applicant had left, she went outside of the club with Victim after the fight, she saw Ramsey's car pull into the club's parking lot with its headlights off, and she watched Applicant shoot Victim from inside the vehicle before the vehicle quickly sped away. (Hearing Tr. 454, 457-462, 469.) Morgan further testified Victim did not approach Ramsey's vehicle, grab the vehicle's door, open the vehicle's door, or argue with anyone inside the car prior to the shooting. (Hearing Tr. 463, 465, 472, 474.) Additionally, Shanina Williams ("Shanina"), who was Victim's fiancée at the time of his death, testified she was present at the club on the night of the shooting, observed Victim help get her brother outside the club after her brother got into a fight, saw a car pull into the club's parking lot with its headlights off, heard a gunshot, and then heard Victim state he had been shot by Applicant. (Hearing Tr. 479-480, 483-488.) Shanina further indicated Victim did not hit anyone, pull anyone to the ground, say anything to Applicant, or do anything to prompt Applicant to shoot him on the night of the incident. (Hearing Tr. 491-492, 497.)

Furthermore, the solicitor introduced a recording of Applicant's statement to police in regard to the shooting, and the circuit court judge reviewed that recording.⁶ (Hearing Tr. 399-400.)

⁶ During his immunity hearing testimony, Applicant acknowledged he did not indicate in his statement to law enforcement Victim was reaching into the vehicle at the time of the shooting. (Hearing Tr. 399-400.) After making that acknowledgement, Applicant initially attempted to explain that significant omission by claiming he was not

Following the presentation of that testimony and evidence, defense counsel readily acknowledged some of the facts involved in Applicant's case were in dispute but nonetheless argued Applicant had satisfied his burden of establishing he was entitled to immunity from prosecution. (Hearing Tr. 500-515.) In support of that argument, defense counsel contended Victim had alcohol and marijuana in his system at the time of his death while further noting Victim was in possession of a stolen pistol on the night he was killed. (Hearing Tr. 503.) Furthermore, defense counsel contended the "competent" evidence presented during the immunity hearing established Victim approached the black Chevrolet Impala and opened the door, which he asserted triggered the protections of the immunity statute and permitted Applicant to act in self-defense and in defense of the vehicle. (Hearing Tr. 507-508, 510, 512, 514.) In rebuttal, the solicitor argued Applicant was not entitled to immunity from prosecution based on the testimony and evidence that had been presented. (Hearing Tr. 510-530.) In support of that argument, the solicitor noted numerous facts were in dispute in Applicant's case and contended those factual disputes could best be resolved by a jury. (Hearing Tr. 516-517.) Specifically, the solicitor pointed out factual disputes existed in regard to what happened inside the club while Applicant was still present, what happened inside the club after Applicant left, what role Victim played in the fight that occurred inside the club, and what actions Victim took towards the vehicle Applicant was in after exiting the club. (Hearing Tr. 517-520.) Furthermore, the solicitor contended Applicant's testimony during the immunity hearing was the only testimony presented suggesting Victim was trying to remove him from the vehicle and was inconsistent with Applicant's earlier statement about the shooting. (Hearing Tr. 520-521.) For those reasons, the solicitor asserted the evidence supported a conclusion the

asked that question during the interview before contending he actually physically demonstrated Victim was reaching into the car while speaking to the detective who conducted the interview. (Hearing Tr. 399-400.)

shooting was unjustified and Applicant's request for immunity should be denied. (Hearing Tr. 525.)

Thereafter, upon considering the arguments of counsel, the circuit court judge denied Applicant's motion seeking immunity from prosecution. (Hearing Tr. 531.) In denying the motion, the circuit court judge concluded Applicant failed to meet his burden of establishing by a preponderance of the evidence he was entitled to immunity from prosecution in light of the factual disputes that existed regarding what actually occurred. (Hearing Tr. 531.) Due to the existence of those factual disputes, the circuit judge concluded Applicant's case should properly be resolved by a jury. (Hearing Tr. 531.)

Following Judge Griffith's ruling, Applicant decided to enter a guilty plea two days later to the lesser-included offense of voluntary manslaughter and appeared before the circuit court judge to do so. (Hearing Tr. 532-533.) During the plea hearing, Applicant indicated he wished to waive his right to trial and plead guilty, and he confirmed he wanted to enter a guilty plea after considering everything associated with his case, including the defenses he could present. (Hearing Tr. 533, 537, 540-542.) Likewise, defense counsel confirmed Applicant understood he was pleading guilty to an intentional killing and indicated he was in agreement with Applicant's decision to plead guilty. (Hearing Tr. 534-535.) Applicant then pled guilty to voluntary manslaughter and indicated he did, in fact, commit the offense. (Hearing Tr. 542-543.)

Following the entry of that plea, defense counsel confirmed he believed the facts of what transpired fit the offense of voluntary manslaughter. (Hearing Tr. 550-552.) Applicant then apologized and expressed remorse, and Judge Griffith accepted Applicant's guilty plea. (Hearing Tr. 558.) Applicant was then sentenced to a twenty-five-year term of imprisonment and directed

the remaining balance of that sentence be suspended to a three-year term of probation following the service of twelve-and-a-half years of the sentence. (Hearing Tr. 558.)

III. Allegations Raised and Relief Sought

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

1. Ineffective Assistance of Counsel
 - a. “where if the defendant had had the actual documentation of the states case, there is reasonable probability that for counsel’s unprofessional errors, the result of the proceedings would have been different”
 - b. “deficient performance created ineffective assistance of counsel from lack of due diligence would of produced the investigation reports, statement of Captain Futch and secured his testimony...”
 - c. “The states investigation and facts from witness statements concluded beyond doubt, meeting the requirements in State v. Douglas, for self-defense and stand your ground if not for the unprofessional errors”
 - d. “Here Mr. Town violated this trust by out-sourcing to Mr. Bannister not only failed at calling Mr. Futch as a witness for the defense but who also has a political relationship with the solicitor David Stumbo creating prejudice and a serious conflict of interest”
 - e. “Counsel failed to articulate a valid strategy for failing to call either investigator to testify at the immunity hearing as such defendant’s trial counsel was deficient for failing to call either investigative expert to challenge the state’s alleged claim of murder, although stand your ground was proven at immunity hearing prior to being induced to plea while not knowingly or intelligently doing so.”
 - f. “Counsel did not call to the stand either investigator witness during the hearing, even though he knew the state would attempt to admit evidence of no self-defense”
 - g. “thus these elements prejudiced defendant as elements of ineffective assistance of counsel since captain futch’s investigation proved self-defense testimony that reasonably could have resulted in a different outcome at immunity hearing or at trial thus meeting the 2 requirements of the prongs Strickland v Washington, 466 US 668 (1984) where counsel’s performance fell below an objective standard of reasonableness and prejudice and if not for the counsel’s errors and deficient performance, the result of the proceedings would have been different.”
2. Involuntary Guilty Plea
 - a. “Counsel for defendant prejudiced Defendant into accepting a non-

negotiated or recommendation plea under their direction and advisement that was not favorable to the defendant based from the state's own evidence"

3. Brady violations

- a. "The state created bias and prejudice by violating due process rights of disclosure under Brady 5/6 material and not providing all case material and withholding police narrative reports to the defendant for his personal inspection and to the court from its own investigation from Capt. Futch, the state's first investigator of the court before this honorable court, US v. Stokes"
- b. "Here, the state, solicitor and the defendant's counsel of record failed to do-provide these provisions of law. When a defendant or defendant's counsel at any time prior to sentencing, the due process clause and the US constitution requires all Brady material, it is the responsibility of the state to make sure that any and all evidence, material is presented to the defendant for his personal inspection so that he is knowingly part of the case and understanding the material as it is imperative for the defendant to know what he is to defend against and not just trust what his counsel may or may not provide, Parkus v Delo, 33 F.3d 933 (8th cir. 1994)."

As requested relief, Applicant requests that the court "appoint effective counsel, to grant his application for post-conviction relief, that he may argue for a new immunity hearing based from the facts of the deficient counsel, due process violations, prejudice and bias with Brady violations".

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

III. Response to Allegation of Ineffective Assistance of Counsel

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, an applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so

undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, the applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

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

IV. Involuntary Guilty Plea

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

The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). Further, "[a] guilty plea is a solemn,

judicial admission of the truth of the charges” against the applicant; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton, at 137–38, 654 S.E.2d at 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions “made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements.” Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). “In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing.” Id. at 138–39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

In this case, the record refutes any allegation that Applicant did not knowingly enter his guilty plea. At the guilty plea hearing, Applicant was advised of the charges and testified that he understood them. (Hearing Tr. 540-543). Applicant was also advised of his rights he would waive by pleading guilty, including the right to a trial, which Applicant testified he understood. (Hearing Tr. 540-543.) Furthermore, Applicant testified he was pleading guilty because he was indeed guilty as charged, and was not promised anything in exchange for his guilty plea. (Hearing Tr. 540-543.)

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

V. Brady Violations

Respondent interprets Applicant's allegation of Brady⁷ violations as one of prosecutorial misconduct for failing to comply with the requirements of Brady and Rule 5, SCCrimP. It is Applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989).

Brady requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment. Clark v. State, 315 S.C.385, 388, 434 S.E.2d 266, 268 (1993). Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment. Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. Clark, 315 S.C. at 388, 434 S.E.2d at 268 (citing U.S. v. Bagley, 473 U.S. 667 (1985)).

The requirements of Rule 5, as opposed to the constitutional dictates of Brady, are judicially created discovery mechanisms for use in criminal proceedings. Rule 5(a)(1)(C) requires:

Upon request of the defendant the prosecution shall permit the defendant to inspect and copy books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the prosecution, and which are material to the preparation of his defense or are intended for use by the prosecution as evidence in chief at the trial, or were obtained from or belong to the defendant.

State v. Kennerly, 331 S.C. 442, 453-54, 503 S.E.2d 214, 220 (Ct. App. 1998). The definition of "material" for purposes of Rule 5 is the same as that used in the context of Brady. Id. (citation

⁷ Brady v. Maryland, 373 U.S. 83 (1963).

omitted). “Once a Rule 5 violation is shown, reversal is required only where the defendant suffered prejudice from the violation.” Id. (citations omitted).

Applicant has failed to set forth any facts to support this ground or to explain with any specificity whatsoever the facts upon which this claim is based. Therefore, Respondent requests Applicant be required to amend his application to set forth specifically the grounds on which his claims are based. Respondent reserves the right to move for dismissal of this allegation should Applicant fail to amend the application.

VI. Any Future Amendments

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

VII. Response to All Other Allegations

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

VIII. Request for an Evidentiary Hearing

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of plea counsel and involuntary guilty plea.

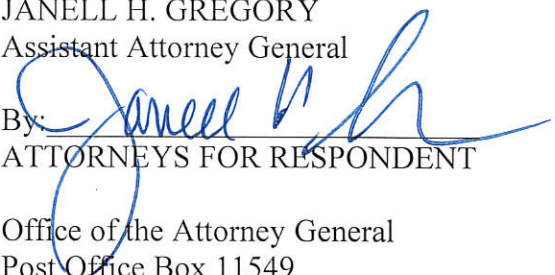
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JANELL H. GREGORY
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

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

Nov. 30, 2018

**COURT OF COMMON PLEAS
FOR THE 8th JUDICIAL CIRCUIT
Case No.: 2018-CP-24-00705**

AMENDED POST-CONVICTION RELIEF APPLICATION

1. Ineffective Assistance of Counsel of W. Townes Jones, IV, & James W. Bannister:

A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel's performance was deficient and (2) there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty. Johnson v. Catoe, 336 S.C. 354, 520 S.E.2d 617 (1999); Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997); Satterwhite v. State, 325 S.C. 254, 481 S.E.2d 709 (1997).

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even though counsels tried diligently to render him effective assistance. Murdock v. State, 308 S.C. 143, 417 S.E.2d 543 (1992).

b. Counsels were ineffective when they did not call Nick Futch as a witness in the stand your ground hearing.

Furthermore, the Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. *See Simpson v. Moore*, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,



ASHLEY A. MCMAHAN, ESQUIRE

McMAHAN & TAYLOR ATTORNEYS, LLC

PO Box 5501

West Columbia, SC 29171

803-219-1110

ashley@mcmahantaylor.com

SC Bar No. 71676

ATTORNEY FOR APPLICANT

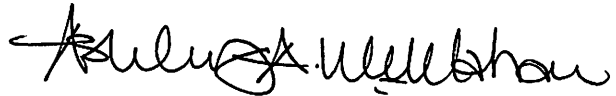
February 28, 2020

CERTIFICATE OF SERVICE

I certify that I have served this document via email to:

Janell H. Gregory
Assistant Attorney General
jgregory@scag.gov

This 28th Day of February, 2020.

A handwritten signature in black ink, appearing to read "Ashley A. McMahon", written over a horizontal line.

ASHLEY A. MCMAHAN, ESQUIRE
Attorney for Applicant

State of South Carolina)
) Court of Common Pleas
 County of Greenwood)
 2018-CP-24-00705
 Post Conviction Relief

Alfonso Morgan, Jr.)
 vs.) Transcript of Record
)
)
 State of South Carolina)
 Defendant)

March 13, 2020
 Laurens, South Carolina

B E F O R E:

Honorable J. Mark Hayes, II, Judge

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

Janell H. Gregory, Assistant Attorney General
 Attorney for the State

Ashley A. McMahan
 Attorney for the Applicant

Joy E. Holston
 Official Court Reporter

I N D E X O F W I T N E S S E S

(IC) - Denotes In Camera
(AW) - Denotes Defense Witness
(SW) - Denotes State's Witness

(AW) Nick Futch

Direct examination by Ms. McMahan: 7

Cross-examination by Ms. Gregory: 17

(AW) Alfonso Morgan, Jr.

Direct examination by Ms. McMahan: 20

Cross-examination by Ms. Gregory: 29

Redirect examination by Ms. McMahan: 36

(AW) Townes Jones

Direct examination by Ms. McMahan: 38

Cross-examination by Ms. Gregory: 61

Redirect examination by Ms. McMahan: 72

(SW) James W. Bannister

Direct examination by Ms. Gregory: 79

Cross-examination by Ms. McMahan: 93

Certificate of Court Reporter 100

1 THE COURT: Yes, ma'am.

2 MS. GREGORY: Your Honor, before you is Alfonso
3 Morgan. This is case number 2018-CP-24-00705. During the
4 May, 2015 term the Greenwood County Grand Jury indicted
5 Mr. Morgan for murder. Mr. Morgan was represented by
6 Attorneys W. Townes Jones, IV; and James W. Bannister. In
7 January of 2016 Mr. Morgan filed a motion seeking immunity
8 from prosecution pursuant to the South Carolina Protection
9 of Persons and Property Act. The immunity hearing started
10 on February 1st, 2016 before Judge Griffith. At the
11 conclusion of the multi-day hearing Judge Griffith denied
12 Mr. Morgan's motion for immunity. Thereafter Mr. Morgan
13 pled guilty without negotiation or recommendation on
14 February 5th, 2016 to the lesser included offense of
15 voluntary manslaughter. Mr. Morgan was sentenced to 25
16 years suspended on the service of 12 and a half years with
17 three years probation after the end of community
18 supervision. Mr. Morgan was also given credit for 812
19 days time served in custody and on house arrest prior to
20 his plea. Mr. Morgan filed a timely appeal which was
21 perfected by Appellate Defender Robert Paycheck, (sic)
22 Dudek of the Office of Appellate Defense. The South
23 Carolina Court of Appeals affirmed Mr. Morgan's conviction
24 on June 6th of 2018 in an unpublished opinion. The
25 remitter was issued June 22nd of 2018. Applicant filed

1 his PCR application on August 3rd, 2018 alleging
2 involuntary guilty plea, ineffective assistance of
3 counsel, and various Brady allegations. Mr. Morgan issued
4 an amended application on February 28th, 2020 alleging
5 ineffective assistance of counsel, alleging counsel was
6 ineffective when they informed the Applicant he would be
7 pleading to a 10 year deal, not the 12 years he ended up
8 with; and counsels were ineffective when they did not call
9 Nick Futch as a witness in the stand your ground hearing.
10 Applicant is present today represented by Ms. McMahan.
11 And, Your Honor, we would just ask that they confirm the
12 allegations going forward on today in this hearing.

13 MR MCMAHAN: Your Honor, yes. The allegations we are
14 going forward in my amended application.

15 THE COURT: All right.

16 MS. MCMAHAN: There's--

17 THE COURT: Pardon?

18 MS. MCMAHAN: If you review minutes to the initial
19 application, I believe on the -- a lot of this just kind
20 of goes to the two main allegations.

21 THE COURT: All right. You're Mr. Tyson?

22 MR. MORGAN: Sir?

23 THE COURT: You're Mr. Tyson?

24 MR. MORGAN: No, sir. Morgan.

25 THE COURT: I'm sorry. You're Alfonso Morgan?

1 MR. MORGAN: Yes, sir.

2 THE COURT: Sir, Mr. Morgan, it's a pleasure meeting
3 you.

4 MR. MORGAN: Same.

5 THE COURT: Mr. Morgan, my understanding is that you
6 have filed an application for post-conviction relief and
7 that in the event -- I just want to be sure the record's
8 clear, this lady's sitting in front of me is the court
9 reporter. She's taking down everything that's said. So
10 when you speak to me, please speak up loud enough so that
11 both she and I can hear you.

12 MR. MORGAN: Yes, sir.

13 THE COURT: And if ever in this process you cannot
14 hear me or one of the other lawyers, just let me know and
15 I'll have them to speak up. Okay?

16 MR. MORGAN: Yes, sir.

17 THE COURT: All right. And, Mr. Morgan, my
18 understanding, based upon what's been shared with me, is
19 that part of your post-conviction relief is that you are
20 complaining that you were supposed to get a 10 year
21 sentence as opposed to 12 and a half years?

22 MR. MORGAN: Yes, sir.

23 THE COURT: Now, Mr. Morgan, you do understand that
24 as part of a post-conviction relief, that in the event
25 that you are successful with this post-conviction relief

1 that I could not impose that 10 year sentence?

2 MR. MORGAN: Yes, sir.

3 THE COURT: That all that I could do was say, okay,
4 you get a do over. You go back to the beginning. And
5 that would mean that your exposure -- potential criminal
6 exposure then -- this was a murder charge?

7 MS. MCMAHAN: It was originally a murder charge, Your
8 Honor.

9 THE COURT: That it could go back to the murder
10 charge and then you could face possibly a life sentence?

11 MR. MORGAN: Yes, sir.

12 THE COURT: And you still wish to proceed with this
13 PCR?

14 MR. MORGAN: Yes, sir.

15 THE COURT: Okay. All right. I just want to be sure
16 that we're clear. If ever during this process you want to
17 talk to your lawyer just let me know and I'll let you do
18 so in private. Okay?

19 MR. MORGAN: All right.

20 THE COURT: Yes, ma'am.

21 MS. MCMAHAN: Your Honor, at this time the Applicant
22 calls Nick Futch.

23 THE COURT: Mr. Futch, just come right up here and
24 let the Clerk of Court swear you in.

25 NICK FUTCH, being

1 first duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 By Ms. McMahan:

4 Q Would you please state your name for me.

5 A Nicholas Futch.

6 Q Mr. Futch, back in November of 2013 what -- what did
7 you do?

8 A I was the Commander of the Greenwood City Police
9 Department's Detective Division.

10 MADAM COURT REPORTER: I can't hear, Judge.

11 THE COURT: Move up to the microphone.

12 MADAM COURT REPORTER: Or just move that mic to you.

13 THE WITNESS: Is this better?

14 MADAM COURT REPORTER: Yeah, that's good.

15 A I was the Commander of the Greenwood City Police
16 Department's Detective Division. I held the rank of
17 Captain.

18 Q And so, as part of that job what was your job duties?

19 A I essentially oversaw the criminal investigations,
20 you know, of crimes that occurred within the city limits
21 of Greenwood. My role essentially was, you know, I would
22 assign -- assign the cases out to a detective who would
23 handle followup and I kind of oversaw the investigation
24 from an administrative standpoint.

25 Q So you're kind of like the supervisor of all the

1 investigators?

2 A Yes, ma'am.

3 Q Typically when y'all would get a call at all hours of
4 the day, if there was something where investigations had
5 to get involved, would you normally go out to the scene?

6 A Mostly an officer and I would go. You know,
7 depending on the severity of the crime, you know, lesser
8 things I may not go out on. But all the serious offenses
9 I certainly would respond.

10 MADAM COURT REPORTER: Can you move that mic toward
11 you.

12 THE WITNESS: Okay, I didn't know it would move.

13 Q And -- sorry. I lost my train of thought now. Hold
14 on. So once you would go out to the scene on some certain
15 cases would you the keep the case yourself and investigate
16 it or would you assign it to an investigator?

17 A I almost always would assign it out, unless my guys
18 were just completely overwhelmed, I may even take on some
19 myself. And by that, I mean, you know, keeping the case
20 file, maintaining the case file, you know, things like
21 that. I mean, I had a general knowledge of all of the
22 ones that they were working. But as far as maintaining
23 the case file myself it would -- it would be, like I say,
24 I wouldn't say rare, it would be common.

25 Q And do you recall this particular case that involved

1 Mr. Morgan and the shooting at the --

2 A I remember aspects of it.

3 Q Okay.

4 A That -- when all of that was happening we had had a
5 rash of things going on in the city. I mean, lots of
6 shootings. I don't remember the exact number of homicides
7 we had, but it -- it was high. So I remember aspects of
8 Mr. Morgan's case. To tell you I remember it well would
9 be a mischaracterization for sure.

10 Q So would it be normal -- in the normal course of
11 business you said it would -- let me back up. In the
12 normal course of business you said it would be par for the
13 course for you to assign this out to somebody else after
14 you initially arrived at the scene?

15 A Yes. So typically, you know, once we get there, you
16 know, there's a lot of moving parts. We have a scene to
17 assess and to see what type of -- you know, what we would
18 need as far as analyzing the scene, working the scene.
19 But once we got to a point where -- you know, time is
20 always of the essence. But once that initial, you know,
21 we need to have the direction that this investigation is
22 headed. You know, either we -- we have suspects in mind,
23 we have witnesses we need to try to -- whatever. You
24 know, once the initial has calmed down a bit, you know,
25 the next day or so my involvement is going to be reduced.

1 It's going to be assigned out to someone for them to
2 maintain the case and to followup on it.

3 Q So would you say you had involvement in determining
4 what the possible charges would be?

5 A You know, any time we were going to sign warrants on
6 someone, especially for this type of offense, I'll let it
7 known that it was going to happen. You know, I would have
8 been okay with the facts that they had been, you know,
9 tied to or added into the warrant narrative. But as far
10 as negotiating of sentence or a plea offer, I would have
11 been made aware of it. Our -- you know, essentially we
12 let our thoughts be known. But we always, you know, allow
13 the Solicitor's Office to handle that. That was their
14 area. I tried not to, you know, step on anyone's toes.

15 Q So you might consult with the Solicitor's Office on
16 possible charges that could be brought, but not
17 necessarily interject as to what you think a sentence or a
18 defense or any type of negotiation should be on a plea?

19 A You know, I don't remember in my time there ever
20 having an issue with anything the Solicitor's Office was
21 going to offer to -- you know, put my foot down and say,
22 no, I disagree with that. In this particular case I feel
23 confident that there was discussions. You know, Mr.
24 Morgan was charged originally with murder. We recognized
25 from, you know, a standpoint of, you know, what he may

1 ultimately be convicted of. I knew the chances of him
2 being convicted of murder probably weren't extremely high,
3 just due to the circumstances. But, you know, the
4 elements of the crime, as we knew it at the time,
5 certainly fit the charge of murder.

6 Q And were you subpoenaed to testify at a stand your
7 ground hearing, do you recall?

8 A Honestly, I don't recall. That would have been -- if
9 I understood right, when she was giving the dates earlier,
10 that would have been after -- I left the police department
11 in March of 2015. So anything from March 2015 on, I had
12 very limited involvement in. I don't have the luxury of
13 having read the case file in the past, let's see, seven
14 years.

15 Q And you don't get down to the police department--

16 A -- no, not at all. They don't make that stuff
17 available to me.

18 Q Do you remember having any conversations with Townes
19 Jones about this case?

20 A I don't remember any conversations. You know, Townes
21 and I always had a decent working relationship, so it's
22 possible that we discussed it. I know that Jimmy Powers,
23 who was his investigator, he was a former Greenwood City
24 Police Officer. So -- so when he and I -- you know, we
25 had somewhat a closer relationship. So, you know, a good

1 chance I talked with Jimmy. And then a good chance I may
2 have talked with Townes, but I don't recall any specific
3 conversation.

4 Q Was it a normal course of business for you to say
5 something to Townes or Powell that -- like what you felt
6 -- like whether or not you felt there was an adequate
7 defense or anything like that?

8 A A normal -- no, I don't think it would have been
9 normal. You know, it would probably be more being on the
10 receiving end of being told, you realize you'll never get
11 a conviction for murder on this, you know, something to
12 that effect. Me going to them and suggesting a defense
13 would be unprecedented, and then I think would have been
14 made a huge issue of if ever went to trial or anything
15 like that.

16 Q So it would be more likely that a defense attorney
17 would tell you, hey, you're -- do you realize that you're
18 not probably going to get murder on this but probably
19 something else?

20 A That probably happened in eighty percent or more of
21 the cases I worked in, you know. And it was -- you know,
22 it was always -- you know, I understood they were fighting
23 for their client's best interests. We were fighting for
24 the best interest of the State. You know, our opinions of
25 what would ultimately happen were generally on opposite

1 ends of the spectrum, you know. I always felt confident
2 in the charges we made. They always felt confident in
3 their abilities to defend.

4 Q Would you ever have had conversation with Townes
5 about what the Solicitor told you about this case, like
6 whether it was self-defense or really involuntary
7 manslaughter or anything like that?

8 A Any discussion like that I always would have in the
9 presence of a representative from the Solicitor's Office.
10 I don't remember --

11 Q Okay.

12 A -- you know, for me to circumvent them like that
13 would be, you know, if nothing else, it would be pretty
14 damaging to my career. You know, I wouldn't have
15 circumvented the Solicitor's Office and had that
16 conversation, especially if the -- you know, my words were
17 going to be damaging to our case.

18 Q Okay.

19 MS. MCMAHAN: Court's indulgence.

20 Q And you said typically, you know, you would go to the
21 scene on particular types of cases?

22 A Right. Yes, ma'am.

23 Q Do you recall going to the scene in this particular
24 case?

25 A And I apologize if I misspeak on this, because this

1 has been, what, seven years ago now. If I remember
2 accurately, in this case it was essentially, there were
3 multiple scenes. You had the scene at the club where the
4 shooting actually took place. We had a separate scene at
5 the hospital where Mr. Aiken had been transported to, and
6 then we had a third scene. And I'm not ranking these in
7 any kind of order. But there was a separate scene at a
8 residence. I don't remember if it was Mr. Morgan's
9 residence or a relative of his residence that was up on --
10 I forget the name of the roads, Durst Avenue or Reynolds.
11 I'm not sure which one. But there was a separate scene
12 there. My recollection is I went to that scene, the one
13 that was on Reynolds or Durst. And again, this is -- this
14 is a vague memory. But Captain Butler, I believe, at the
15 time who was a very experienced patrol supervisor, I'm
16 almost confident he had control of the scene at the
17 nightclub and I think I had detectives at the hospital.
18 So I believe, if I remember accurately, I was at the house
19 on Durst or Reynolds, whichever it was.

20 Q Wouldn't you have filed a report on that?

21 A So there's -- we kept -- I mean, we kept it in a
22 three-ringed binder. So there's always -- there's an
23 initial report that's going to be wrote by the responding
24 officers to the scene, the patrol officers. Once they
25 turn that over to us we kept everything -- essentially it

1 would be supplemental reports, this is what I specifically
2 done in this scenario. And it kind of was a little bit
3 different than the traditional supplemental where you were
4 expected to have, you know, two or three supplementals to
5 a -- you know, a burglary or something of that nature,
6 where we knew we were going to be talking to, you know,
7 tons of witnesses and things like that. So we kind of
8 kept it in a different style, but it still was essentially
9 a supplemental report. So anything that I did
10 specifically that, you know -- I guess the best way I can
11 explain it is to say if me and another detective were
12 standing there and we noticed a piece of evidence we
13 thought was important, chances are he's going to write
14 that supplemental.

15 Q Okay.

16 A I may have noticed it. I may have even have pointed
17 it out, but he's probably going to write the supplemental.
18 Yeah, delegation, I guess, is the best way I'm going to
19 describe it. I may have been there, but generally that --
20 the report writing would have been delegated to him.

21 Q Well, if you had been there and written a report,
22 would it have been common then for another detective to
23 also write a report about followup or anything else that
24 happened that day?

25 A I mean, if -- you know, if our involvement in it

1 differed. You know, for example -- and this is purely
2 hypothetical. If someone was to walk up to me on a scene
3 like that this and say, I saw who did it. It was John
4 Smith --

5 Q Yeah.

6 A -- I'm going to write something about that. But then
7 if I ask, you know, Detective Lewis, to then take that
8 person and interview them, they're probably going to
9 reference what I told them and why -- you know, how they
10 got involved with this particular witness. But there is
11 something else going to include, you know, I took them
12 back to the office. I interviewed them. This is what
13 they said. So, yeah, you may have multiple supplemental
14 reports about the same incident from different points of
15 view, I guess.

16 Q So if you were walking up on a piece of evidence on
17 the ground and there was another detective with you, you
18 might -- you probably wouldn't write a report saying, hey,
19 I walked up and found this evidence and told this
20 detective to take it. Rather it would be --

21 A No, I mean --

22 Q -- Detective so and so was writing a report about how
23 --

24 A Right. We essentially found it together, you know,
25 but they would more likely than not write the report, not

1 myself.

2 MS. MCMAHAN: One second, Your Honor. Nothing
3 further, Your Honor.

4 THE COURT: Yes, ma'am.

5 MS. GREGORY: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 By Ms. Gregory:

8 Q Thank you for being here, Mr. Futch.

9 A Yes, ma'am.

10 Q You were not the lead investigator in this case?

11 A No. It wasn't assigned to me --

12 Q It wasn't assigned --

13 A -- in followup.

14 Q You assigned it out as the Captain of the --

15 A Yes, ma'am.

16 Q Okay. And you -- if I understand your testimony
17 correctly, you never told Mr. Morgan, Mr. Jones, Mr.
18 Bannister or anyone from the Defense that this was a
19 self-defense case?

20 A You know, my recollection of the facts of this case,
21 even now, I wouldn't feel like self-defense was
22 appropriate.

23 Q Do - sorry.

24 A I may have, in conversation with them -- I don't -- I
25 don't deny that there was a conversation between me and

1 him where murder in self-defense may have been said. I do
2 not believe that I would have been the one that said it
3 unless I was objecting to it.

4 Q So did you believe this was a self-defense case?

5 A No. My recollection -- and again, this is a long
6 time ago and I haven't had the luxury of the case file
7 since, is that there was some type of altercation at this
8 club. Mr. Morgan left, became armed and went back. My
9 ignorant understanding of self-defense kind of precludes a
10 situation like that.

11 Q Okay. So with the proceeding on a murder warrant,
12 would you have stepped in had you believed it didn't fit
13 the elements?

14 A I would be -- I would be derelict in my duties if I
15 didn't. You know, my intention wasn't to arrest somebody.
16 It was to find the person responsible.

17 Q So your memory was better back then; is that correct?

18 A It could be, yes.

19 Q So the fact that they went forward with those kinds
20 of warrants, do you believe this could have been a
21 self-defense case?

22 A No.

23 MS. GREGORY: No further questions, Your Honor.

24 THE COURT: Any redirect of what she went into?

25 MS. MCMAHAN: One moment, Your Honor. Nothing

1 further, Your Honor.

2 THE COURT: Thank you, sir. You may step down.
3 Watch your step as you're stepping down. Any reason why
4 the witness cannot be excused?

5 MS. MCMAHAN: No, Your Honor.

6 THE COURT: Sir, you may be excused as well. Thank
7 you for coming.

8 (Whereupon, the witness stepped down from the witness
9 stand.)

10 MS. MCMAHAN: Your Honor, the Applicant calls Mr.
11 Morgan.

12 THE COURT: Mr. Morgan, just come right over here.

13 ALFONSO MORGAN, JR., being
14 first duly sworn, testified as follows:

15 THE COURT: Mr. Morgan, watch your step. Just step
16 up and have a seat in the chair.

17 THE WITNESS: Yes, sir.

18 THE COURT: And pull the chair up to the microphone
19 and your lawyer will help you with the microphone, pulling
20 it to you.

21 THE WITNESS: That's fine.

22 MS. MCMAHAN: Do a little test run.

23 THE WITNESS: Yes.

24 MS. MCMAHAN: Is that good, Joy?

25 MADAM COURT REPORTER: Yes, thank you.

DIRECT EXAMINATION

By Ms. McMahan:

Q Would you state your name for the record, please.

A Alfonso Morgan, Jr.

Q Did you file this PCR?

A Yes, ma'am.

Q And part of the issues that you've had with Mr.

Jones, Mr. Bannister, one of them was about the --

ultimately the plea offer that you pled to. What was your understanding of what you were going to plead to?

A I thought I was going to plead to eight years.

Q So like expand on that a little bit for me. So what kind of conversations did you have with Mr. Jones about it?

A Okay. I did a immunity hearing at Mr. Jones office. And Mr. Jones, mother and father and Mr. Bannister--

MADAM COURT REPORTER: You've got to back him up a little bit. Okay?

A Mr. Bannister, we walked in Townes' office, back room. And he came to me and told me like, if I go to the Solicitor with a eight year plea would you take it. And so, I thought about it and then I was like, yeah, I take it. And then he went in there and talked to Townes.

Townes came back and I asked him -- because I felt like

Townes even more -- was a friend of the family. So I -- I

1 trusted him. So I asked him about the eight year plea
2 deal and he was like it probably the best way to go
3 because, you know, I don't want to take my momma and them
4 back through a trial. So I went along with it. And he
5 was like, oh, well, I'm going over here and discuss it
6 with them and I'll get back with you before five o'clock.
7 So we returned back to my mother's house. And before five
8 o'clock he come and he told me, like he went for the deal.
9 And so, I was like can I wait until Monday and do it. And
10 he was like, no, it got to be done Friday because the
11 Judge going to leave. So I'm like, I don't got but one
12 day to spend with my family? And he was like, yeah, it's
13 got to be done Friday. So Friday morning is when I went
14 in and signed the paper.

15 Q So the day that you go and talk to Townes and Jim at
16 Townes office, was that a Thursday or a Wednesday?

17 A That was Wednesday. That was the day after the
18 immunity hearing.

19 Q Yeah.

20 A But the day that the Judge denied it.

21 Q And so, that Wednesday night is when Mr. Jones calls
22 you and says --

23 A Yeah, before five o'clock.

24 Q So you spent Thursday -- Thursday with your family
25 and then Friday morning you went to court?

1 A Yes, ma'am.

2 Q And so, when you went to court and you were pleading
3 in front of the Judge, was your understanding still that
4 it was going to be an eight year sentence?

5 A Yes, ma'am. That's why when he asked me was I
6 promised anything I didn't tell him. I say no because I
7 don't know what Townes told him. I thought it was on
8 paper.

9 Q So you told the Judge no because why again?

10 A Because I thought it was a plea deal. I would have
11 never took that.

12 Q So when the Judge said, besides what you're pleading
13 here today has anybody offered -- promised anything, you
14 said no because it was your understanding based on what
15 you had signed it was going to be an eight year plea deal?

16 A Yes, ma'am.

17 Q So after -- after the sentencing and all that did you
18 talk to Mr. Jones or did you talk to Bannister about it?

19 A The thing is, may I speak?

20 Q Uh-huh.

21 A The thing is, Townes don't really, really didn't
22 know, I guess he didn't really have a clear vision of that
23 stand your ground. So he, and he pulled Bannister along
24 with him. So my trust and faith was in Townes, not
25 Bannister, you know. You know, because -- anything and I

1 had -- I wouldn't put my faith and trust in him. That's
2 why I want to do. So, you know.

3 Q So at the plea, after you got sentenced to 12 and a
4 half, did you get a chance to ask him what was going on or
5 anything like that?

6 A Yeah, I talked to him, you know, the night before in
7 the holding cell. And he said he didn't know what went
8 wrong. That's all he would keep telling me. So ain't too
9 much I really could say because I signed the papers. Only
10 thing I know, I put my trust in him, you know. And I
11 thought when you put some trust in your lawyer that's the
12 way it's supposed to go.

13 Q And as far as the stand your ground hearing, you
14 alluded to the fact that Mr. Bannister was brought in by
15 Townes to assist with that. Is that correct?

16 A Correct.

17 Q When did Mr. Jones tell you that he was going to do
18 that?

19 A Really, ma'am, I really couldn't tell you. That
20 discussion was between him and my brother.

21 Q Okay. So that discussion between Townes bringing in
22 Jim happened more with your brother and less with you?

23 A Correct.

24 Q Were you in the detention center the whole time, out
25 on bond the whole time?

1 A I did. I was in the detention center about nine
2 months and the rest on house arrest.

3 Q So for like two years and three months you were on
4 house arrest?

5 A Correct.

6 Q And what kind of conversations did you have with Mr.
7 Jones about getting prepared for the stand your ground
8 hearing?

9 A He just, you know, took me through the procedure of
10 cross-examining me, you know.

11 Q Did he explain what the stand your ground hearing
12 was?

13 A He broke it down to me. You know, he told me, you
14 know, it's just a hearing seeing if I, you know, can get
15 immunity from it.

16 Q Did he explain why he was raising this as a defense,
17 the immunity?

18 A I felt like I had strong issues in my case. I should
19 have been -- I should have been entitled to it. You know,
20 on my behalf on the codes. South Carolina Code 16-11-440,
21 Section 8(c), stand your ground. You know, I felt like I
22 was entitled to it.

23 Q So when the Judge denied it, what was running through
24 your mind?

25 A A lot, you know. Ma'am, I know I made -- I made a

1 mistake in my life, you know. You know, and things
2 happened. But the only thing I know, I defending myself.

3 Q Yeah. And so, at the hearing do you remember if Mr.
4 Futch was called as a witness?

5 A He never was.

6 Q Was he subpoenaed to be called as a witness?

7 A No, ma'am. May I speak?

8 Q Yeah.

9 A And I felt like -- see, in the beginning of it
10 Captain Futch, he was the lead investigator over the case.
11 So I felt like he felt like he had to put a statement in
12 the night before when it's -- when he was on the scene.
13 And so, the next day Mike Gibson was over the case. So it
14 was kind of funny that, you know, you have got a lead
15 investigator and one was taken off of it and another one
16 was put on.

17 Q So Futch had written a report the night before, and
18 then the next day, the next report comes out with somebody
19 different as an investigator?

20 A I felt like it was because he had to turn a report
21 in.

22 Q Uh-huh, okay.

23 A But, you know, the next day Futch, I mean Gibson was
24 the one on the case. He was never called, you know. I
25 state all my opinion.

1 Q Okay. What was -- what did Mr. Jones explain to you
2 that you had to meet in order to get immunity from this?

3 A You said what?

4 Q So when you met -- how many times did you meet with
5 Mr. Jones?

6 A Throughout the year?

7 Q Uh-huh.

8 A I would say a few times when I was in the county and
9 a few times when I was out on house arrest.

10 Q So like a total of maybe six to 10 or --

11 A I can't really say.

12 Q Okay.

13 A And I don't want to tell a story.

14 Q Do you remember what you guys talked about most of
15 the time when you were together?

16 A Most time we talked about the case, you know.

17 Q Uh-huh.

18 A And right before the case started we -- you know,
19 like I said, he cross-examined me a couple of times
20 getting me ready for it, you know. And I give a statement
21 so, and--

22 Q So he did a kind of run through of a
23 cross-examination a few times since you were going to have
24 to testify to stand your ground?

25 A Correct.

1 Q Did you guys discuss about who you wanted or who you
2 guys thought should be called at the stand your ground
3 hearing?

4 A Like I said, most of that discussion was with my
5 brother.

6 Q Did you ever talk to Mr. Bannister at all about your
7 case?

8 A I think me and my brother went to his office like one
9 or two times.

10 Q His office up in Greenville?

11 A Yeah. Yes, ma'am. We went up there one -- one or
12 two times. I think about one time that I recall.

13 Q And do you remember what you guys talked about?

14 A Well, he did about the same thing really, you know.
15 Getting me ready so I wouldn't be so jittery. And like
16 the same thing. You know, he went into a couple things
17 about -- I think at one point in time he -- I think he
18 said he had a case he had to come to Laurens or something.
19 And he was, whatever, what do you think about five years,
20 we should take it, you know what I'm saying.

21 Q So Jim -- I mean, Mr. Bannister kind of threw out a
22 possible plea to five years?

23 A Yeah, he had thrown it out to me, you know. You
24 know, he told me to take it. At that time, you know--

25 Q So at that point you were -- you weren't really

1 interested in kind of pleading; is that what you're
2 saying?

3 A Yeah.

4 Q Anything else you wanted to tell the Court today
5 about this case, about what you feel Mr. Jones and Mr.
6 Bannister should have done regarding the stand your ground
7 hearing?

8 A I look at -- I look at a lot of deficiencies in the
9 investigation, you know. You know, gun -- gun residue,
10 you know, tamper with evidence, you know.

11 MS. GREGORY: Your Honor, I'm going to object. This
12 isn't part of the allegations he's alleged in his
13 application.

14 MS. MCMAHAN: Your Honor, I was going to followup
15 with some questions.

16 THE COURT: Go ahead.

17 Q Did you have a conversation with Mr. Jones or Mr.
18 Bannister regarding those deficiencies in the
19 investigation?

20 A At that time they was already speaking of a bond,
21 spoke of bond.

22 Q So you didn't really have like a specific sit down
23 conversation about it but you guys had brought it up a few
24 times in conversation?

25 A Correct. Mostly the conversations that they had, you

1 know, was about the case. But most of them about, you
2 know, they had discussed with my brother. You know what
3 I'm saying? I was on the side.

4 Q So did Mr. Jones or Mr. Bannister tell you that in
5 order to challenge the evidence and all that kind of stuff
6 that you would have had to go to trial?

7 A No.

8 MS. MCMAHAN: Answer any questions Ms. Gregory may
9 have.

10 CROSS-EXAMINATION

11 By Ms. Gregory:

12 Q Good morning, Mr. Morgan.

13 A Good morning.

14 Q Sorry about my voice. If you can't hear me or
15 understand me just let me know. You retained Mr. Jones;
16 is that correct?

17 A My family did.

18 Q Your family did, okay. And Mr. Bannister came in
19 after the fact, and that was through Mr. Jones. Is that
20 what I understood your testimony to be?

21 A Correct.

22 Q Okay. And did you meet with them together mostly, or
23 was it usually just Mr. Jones, or how did you -- how were
24 your meetings done?

25 A The meetings were done separate.

1 Q Separate.

2 A You know. May I speak?

3 Q Sure, yeah.

4 A Yeah, because like I said, Mr. Jones is my lawyer.

5 Q Okay.

6 A That's my family guy, not Mr. Bannister.

7 Q But you met with Mr. Bannister as well; is that
8 right?

9 A Correct.

10 Q And for most of your meetings was it just you and Mr.
11 Jones, or was it you, Mr. Jones and Mr. Bannister?

12 A Mostly Mr. Jones.

13 Q Okay. And then you're saying that was about six to
14 eight times, or you don't know?

15 A I can't -- can't recall.

16 Q Do you recall like going over the discovery in your
17 case? Going over all the evidence in your case?

18 A With--

19 Q -- and who was that with?

20 A That would have been Mr. Jones.

21 Q With Mr. Jones, okay.

22 A Yeah.

23 Q Did you ever discuss going to trial?

24 A Trial. We never did. You know, it was on the table.

25 Q Okay.

1 A You know, really -- may I speak?

2 Q Yes.

3 A Yes. The Castle Doctrine mostly, that's where they
4 was going at.

5 Q But they explained to you that you could proceed to
6 trial after -- if the immunity hearing didn't go well
7 could you proceed to trial? Did they discuss that with
8 you?

9 A Not at trial. After the immunity hearing.

10 Q After the immunity hearing?

11 A Yes, ma'am.

12 Q Did you discuss any pleas prior to the immunity
13 hearing?

14 A I don't believe.

15 Q Yeah, okay. So you were basically in immunity
16 hearing mode in the initial discussions of your case; is
17 that correct?

18 A Correct. May I speak?

19 Q Sure.

20 A What I was saying, the only thing I said was, well,
21 my plea was -- Mr. Bannister said -- made me the offer.
22 And he was like, well, if I talk to the Solicitor about
23 five years, you know. That was the only thing I really
24 heard, you know.

25 Q And that was before the immunity hearing?

1 A Yes, ma'am. That was -- yeah, that was before the
2 hearing. Yes, ma'am.

3 Q Okay. And during the -- so after the immunity
4 hearing you chose to plead guilty after that was denied;
5 is that correct?

6 A Yes, ma'am.

7 Q Okay. And during the colloquy with the Judge do you
8 recall telling -- do you recall Mr. Jones telling the
9 Judge at the beginning of that plea hearing that you had
10 discussed voluntary manslaughter and that it carries two
11 to 30 years? Do you recall that?

12 A No.

13 MS. GREGORY: Your Honor, may I approach?

14 THE COURT: Yes.

15 Q This is a transcript of your hearing. This is the
16 immunity hearing and this is the guilty plea.

17 A Uh-huh.

18 Q I'm going to reference some pages. Can you reach
19 that?

20 A Yeah.

21 Q If you could turn to page 534. And I've highlighted
22 some of the areas. On line 20 does it say that Mr. Jones
23 explained to the Court that you could receive anywhere
24 from two to 30 years?

25 A Yeah, that's it.

1 Q And on page 534, line 24, it was discussed with you
2 that you, that you would have to do eighty-five percent of
3 whatever the Court sentenced you to? Do you see that?

4 A Yes, I see that.

5 Q And on page 540. Can you turn to page 540, lines
6 eight through 11. Do you recall Judge Griffith asking you
7 if you were promised anything to plead guilty and you told
8 him no?

9 A May I speak?

10 Q You can.

11 A Like I said, why I told him that, because I trusted
12 Mr. Jones even when I signed the plea deal. Me, Mr.
13 Bannister and my mother, before I signed the paper. And I
14 asked him and he said it was the same deal that he told me
15 about.

16 Q So he promised you you would receive that?

17 A Yes, ma'am. He promised that, so that's why I signed
18 the paper.

19 Q Okay. And on page 540. It's the same page, lines
20 three to five. Do you recall Judge Griffith explaining to
21 you that the only negotiation in this plea was that you
22 were going to be able to plea to a lesser included offense
23 of voluntary manslaughter? That's lines three and five.
24 Do you see that? It's on the same page, 540.

25 A You said 540? What section?

1 Q Lines three and five.

2 A Okay.

3 Q Judge Griffith explains to you that the only
4 negotiation in your plea is that you're going to get the
5 benefit of the lesser included offense of voluntary
6 manslaughter.

7 A Okay. Yes. Yes, ma'am.

8 Q Okay. And do you also see on page 540, lines 21 to
9 22 that Judge Griffith is telling you you're going to have
10 to serve eighty-five percent of the sentence of whatever
11 the Court gives you? Do you see that?

12 A Yeah, I see that.

13 Q And you recall Judge Griffith telling you you're
14 pleading guilty to voluntary manslaughter because you, in
15 fact, committed that offense? Do you recall telling him
16 that? That you were, in fact, guilty of voluntary
17 manslaughter? That's on page 543.

18 A Uh-huh.

19 Q Line 205 -- two through five.

20 A Okay.

21 Q Does it say -- do you recall that? Do you recall
22 telling him you were, in fact, guilty of voluntary
23 manslaughter?

24 A Yeah. That was a plea.

25 Q Okay.

1 A You know, but may I speak?

2 Q Sure.

3 A You know, the thing that you're running by me, if I
4 understand what you're saying is, is that what the Judge
5 said.

6 Q Right.

7 A But I'm going by what my lawyer telling me I was
8 pleading to. So I'm agreeing to everything they was
9 saying because I'm thinking that's what the plea agreement
10 is.

11 Q Okay. But he told you it wasn't negotiated and he
12 told you you could get from two to 30 years?

13 A Ma'am, may I speak again. But he --

14 Q Go ahead.

15 A Yeah, but the thing is, he was telling me this was
16 negotiated. It had been a negotiated plea if he --
17 saying, well, it's got to be done by Friday. So if it
18 wasn't a negotiated plea I would just -- we just would
19 have waited. But he said it had to be done by Friday
20 before the Judge leave.

21 Q And you're telling me that Townes Jones promised you
22 that's what the plea was that you were going to get?

23 A For eight years. Yes, ma'am.

24 Q And do you recall telling Mr. Griffith -- or Judge
25 Griffith, sorry, that you had enough time to talk to your

1 attorneys?

2 A Yes, ma'am.

3 Q Do you recall waiving your constitutional rights?

4 A Yes, ma'am.

5 MS. GREGORY: May I approach, Your Honor?

6 THE COURT: Yes.

7 MS. GREGORY: Thank you. No further questions, Your
8 Honor.

9 THE COURT: Any redirect limited to what she went
10 into?

11 MS. MCMAHAN: Sure, just briefly.

12 REDIRECT EXAMINATION

13 By Ms. McMahan:

14 Q Did you know that you were immediately going to have
15 to go to trial that Monday if you lost that Castle
16 hearing?

17 A Correct.

18 Q Did you feel like you guys were ready to go to trial
19 that Monday?

20 A I felt like, you know, we were -- may I speak? I
21 felt like we was ready. But at the end of the day, you
22 know, like I said, Mr. Jones, we decided to talk before I
23 came up there and we signed with a plea. And he told me
24 -- I asked him what did he think and he told me, he say,
25 you know, you don't want to take your momma back through

1 all this, you know, we just went through this. So I think
2 it's a good deal. That's exactly what he told me. So
3 that's why I felt like I put my trust in him.

4 Q And did Mr. Jones tell you how to answer the
5 questions that the Judge was going to ask you at the plea
6 or anything?

7 A No, ma'am.

8 Q Did he go over and explain what kinds of questions
9 the Judge was going to ask?

10 A No, ma'am.

11 Q He just said you're going to get eight years. I
12 think it's a good offer. You don't want to put your mom
13 through this, so you should take it.

14 A Have to go to trial, you know. Basically -- well, I
15 already had, you know, two years and change on my house
16 arrest. So, you know, I figured I'd be doing about five
17 or six years, you know, all together.

18 Q So you thought going in that you ultimately would end
19 up having to go to SCDC for about six, serve about five of
20 that?

21 A Yes, ma'am.

22 MS. MCMAHAN: Nothing further, Your Honor.

23 MS. GREGORY: No further questions, Judge.

24 THE COURT: Watch your step as you're stepping down.

25 Okay?

1 (Whereupon, the witness stepped down from the witness
2 stand.)

3 MS. MCMAHAN: Your Honor, the Applicant calls Townes
4 Jones.

5 THE COURT: Just come up here, Mr. Jones.

6 TOWNES JONES, being
7 first duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 By Ms. McMahan:

10 Q Would you state your full name for the record,
11 please?

12 A My name is William Townes Jones, IV.

13 Q And did you represent Mr. Morgan in this action?

14 A Yes.

15 Q How long did you represent him in this?

16 A I was retained sometime in November of -- I believe
17 it was 2013 or '14, 2014. And I represented him until the
18 day he plead guilty on February the 5th, 2016.

19 Q So tell me about how you guys got to that guilty
20 plea.

21 A In detail?

22 Q Yes, please.

23 A Well, initially I was reluctant to take the case. I
24 had known Al's mother, Willa Morgan, for a number of years
25 prior to this incident. She was a caregiver to my best

1 friend's father, Dr. Jack Scurry, for years and years. My
2 best friend being William P. Wick Scurry. And after his
3 dad passed she made herself available to assist with my
4 elderly mother who was in a decline, both dementia and
5 poor health. And she with two or three other women would
6 come by and assist with my mother's healthcare. That
7 working relationship ended prior to my mother's demise.
8 But nevertheless, during the course of Ms. Willa's help
9 with my mother I would go by on a regular basis to visit
10 with my mom when time allowed. I had developed a close
11 relationship with Willa myself. And it's always difficult
12 to take on a case when you're close to, you know, the
13 people involved, and the more serious the case the more
14 difficult it is. I had represented Al on a number of
15 occasions with some criminal charges prior to this
16 incident and had been successful primarily in getting what
17 I would consider to be excellent outcomes with those
18 cases. But I did hesitate at first. And then Willa
19 pleaded, other family members came forward, and I made the
20 decision primarily to -- to help Willa, in spite of the
21 fact that I was told by my best friend, you will never be
22 able to please him. Either you'll get him off and you
23 cost too much, or you won't get him off and you're a
24 terrible lawyer. But I went forward anyway. And before I
25 went to speak to Al, who was in jail at the Greenwood

1 County Detention Center, I do what I usually try to do
2 before I take on a very serious case, and that is to speak
3 to the investigators who had the firsthand response and
4 get some idea of what kind of evidence they have, what
5 witnesses they have, what inclinations they might have in
6 discussing with the Solicitor, if given the opportunity,
7 what a good outcome would be with the case, knowing full
8 well that the Solicitor has a lot of -- a lot of areas
9 they have to consider before they come to a decision about
10 what kind of outcome to offer. They've got victims family
11 members they have to deal with. And in a murder case they
12 can be very, very, very important for the Solicitor to
13 deal with their issues. And then you've got law
14 enforcement, and then you've got the community
15 expectations in a Solicitor.

16 Q And you have that experience because you used to be a
17 Solicitor?

18 A I was. I was fortunate enough to serve as Solicitor
19 of the Eighth Judicial Circuit from 1985 to 2005. For 20
20 years. I was reelected without opposition for five terms.
21 But having said that, I -- four year terms. I understand
22 those things, which gave me some idea of the insight about
23 how it might be in my best interest, and ultimately my
24 client's best interest, to go forward with this effort of
25 finding out what law enforcement thought about the case.

1 And we would then -- of course, I couldn't get the
2 discovery until I had a letter of representation for me,
3 but I would talk with them. And in talking with some of
4 the officers they said, look, we've already taken
5 statements from the two men that were in the car with Al.
6 His friends who drive him to the nightclub that was on the
7 corner of Seaboard Avenue and West Cambridge -- East
8 Cambridge. I'm sorry, East Cambridge. And they said Al
9 shot him. They said the victim told us before he died at
10 the hospital, Al shot me. We had two witnesses that were
11 standing within several feet of the victim when he was
12 shot who know Al Morgan and told us Al Morgan shot him
13 without being provoked. And so, at that time I knew that
14 we had at least three fairly credible witnesses, two of
15 them being Al's friends. Two of them being men that were
16 in the car with him who had already told police Al Morgan
17 shot him. And so, I knew that -- that, you know, we were
18 going to have to plan a course of action that would -- to
19 help out that would revolve -- involve some substantial
20 litigation, if not self-defense. So I went to the
21 investigator, I believe it was Dixon, and said, look, you
22 talked to Al. You arrested Al. What did he say to you?
23 He said, Al said you got the wrong guy. I don't know why
24 you charging me with attempted murder or murder anything.
25 I didn't do it. I was there. I was leaving the club when

1 it happened. I said, oh, he did? Yeah. So I said, okay,
2 what else did these witnesses say? And he said, well, two
3 guys with Al said Al shot him, and after he shot him the
4 guy fell to the ground and Al yelled at them, go, go, go.
5 Drive, go, and I went to those witnesses and they
6 confirmed that. And I said, why did you drive off. And
7 they said, he had a gun and we were afraid. I said, where
8 did you go? Well, they left the parking lot of the
9 nightclub and drove about a block across East Cambridge
10 Avenue to a gas station where they stopped. And the
11 driver, who was either Lynwood Ramsey or Thomas Gilchrist,
12 said, get out, Al. Get out. Let us go. You just live
13 right down the street. And Al said, drive to your house.
14 Drive to your house. So they got onto -- I don't think it
15 was Dirsk or Durst, I think it was Cokesbury, and drove
16 about another half mile to the corner of Cokesbury and
17 Reynolds where the driver of the car lived, and they
18 pulled up in the front yard. One of the passengers in the
19 car got in his car and drove away. The driver of the car
20 went into his home where his girlfriend was and he said
21 that Al -- he told the police this, walked behind the
22 house, was gone for a while and came back inside and
23 didn't have the gun when he came back. So when the police
24 arrested Al they looked in the backyard for the gun and
25 they couldn't find it. That's what the police told me.

1 So I said all right, I'll take the case. But I explained
2 to his mother we've got some work to do and this isn't
3 going to work because Al's saying he didn't do it and very
4 believable credible witnesses, along with, you know,
5 possibly more witnesses are going to testify that Al did
6 do it. And -- and, you know, we've got a problem with
7 that. I didn't do it, slash, you know, alibi defense.
8 But we've got a problem trying to get the self-defense
9 because this is what it appeared that -- that the majority
10 of the testimony would be. Al not only shot this man
11 without provocation and killed him, but he fled the scene.
12 And I explained to Al that the evidence of flight can be
13 used by the prosecutor to ask a Judge to charge the jury
14 is evidence of guilt and that they would do that. And not
15 only did he flee the scene, but he hid the gun in the
16 backyard under some leaves. And that is evidence of
17 guilt. Tampering with evidence, obstruction of justice.
18 So I explained to him, I'd go talk to Al, see if he wanted
19 to try to convincingly explain to the police that he was
20 very scared and nervous when it happened, which is why he
21 acted the way he did. And that he just tuned them out and
22 didn't want to talk to them about what happened, but that
23 he was ready to -- explain to them about how nervous,
24 apprehensive he was when it happened, but how the victim,
25 the deceased was extremely aggressive and cursed at him

1 and threatened him. Was -- yanked the door open and was
2 about, in Al's mind, to attack him. Assault him. And Al
3 even slid across the backseat to try to evade that
4 assault. But when he didn't think he had any other choice
5 he fired a shot to defend himself. And that he would be
6 able to produce the gun by getting my investigator to go
7 look at it and turn it back over to them. And Al agreed
8 to do that, as I talked with him in his jail cell at the
9 Greenwood County Detention Center. But before I did that
10 I explained to him how important it was that while telling
11 the truth of what happened to the police you need to be
12 convincing. You need to be thorough. You need to be
13 assertive. You need to explain to them how much fear you
14 have of this man. You need to explain to them how you had
15 no other choice but to do what you did. And so, I said,
16 we're not going to do it now. We're going to wait until
17 you've had time to convince yourself that you can do it.
18 And so, when Al told me he was ready to go talk to them
19 and the police agreed to reinterview him, we went forward
20 in that fashion. You know, sometimes I digress when I
21 pontificate and I can't remember exactly what your
22 question was. But if I'm off -- I apologize. And if
23 you'll give it to me again I might be able to get back
24 focused on trying to answer properly.

25 Q Okay. So you initially went and met with the

1 Applicant at the Detention Center?

2 A Yes.

3 Q Did you file a bond hearing or anything for him to
4 try to get out?

5 A No. It's my practice that when something like this
6 happens and there's a significant amount of evidence that
7 would tend one to believe, at least from a probable cause
8 standpoint that you did it, you've got someone who's
9 dying, who's dead, that you give the family some degree of
10 respect and time, allow them to go through their mourning
11 process and allow people to kind of settle down a little
12 bit and not have the first response from you, it's about
13 me. It's about me. It's all about me. What am I doing
14 here?

15 Q So in that respect you didn't file for a bond hearing
16 until after the Applicant told you he was ready to talk to
17 the police?

18 A No, I -- yes, until after that. Correct, correct.

19 Q So did the Applicant go talk to the police?

20 A He did.

21 Q And how did that go?

22 A Well, he gave a statement that we had concluded was
23 the truth, but I don't know how convincing it was. It was
24 -- it was, you know -- it was tightened up and it was
25 sufficient to establish Al's version of what occurred,

1 keeping in mind, you know, what other witnesses had stated
2 happened. So it went okay.

3 Q And how many times do you think you met with him
4 between the Detention Center and him out on house arrest?

5 A Before he was released from the Detention Center, I
6 would say between eight to 10 times.

7 Q And what did those discussions revolve around?

8 A Well, of course, the first two or three or four were
9 focused on how he was going to prepare himself to have
10 that statement with the police. And I explained to him
11 what I'd learned about some of the witnesses, particularly
12 Lynwood Ramsey and Mr. Thomas Gilchrist. And how I would
13 have to get with them and make sure that they would
14 continue to testify as they had given their original
15 statements. If those statements were coerced from them or
16 if they were the truth and if they were going to testify
17 that way. We went on for -- what I was doing as far as
18 investigating his case and what I was doing with the
19 witnesses, and that I was trying to convince them not to
20 let anybody from the victim's family or anybody from the
21 police department get them to be less accurate.

22 Q Did you meet with them, those witnesses?

23 A I did.

24 Q And were their statements consistent?

25 A Pretty much, yes. You mean between each other or

1 from the original until the time they testified at the
2 Castle Doctrine?

3 Q Both.

4 A Yes.

5 Q So at what point did it turn to, hey, let's prepare
6 for this Castle Doctrine hearing?

7 A Pardon me?

8 Q At what point in your representation would the
9 Applicant did it turn to, let's prepare for this Castle
10 Doctrine hearing?

11 A Well, if I could give you a little bit of background.
12 In going forward with his defense I hired a private
13 investigator, Jimmy Powers, who was a 25 year veteran of
14 Greenwood City Police Department, and an officer that I
15 had come to know and respect with regard to his integrity
16 and his work ethic and his ability. And he was offering
17 himself in the community as a private investigator.
18 Advanced Professional Investigations is the name of his
19 company. So I brought him in and -- I started my criminal
20 defense practice in 2005. This was about 2014, '15 now.
21 I had successfully defended one murder case with a
22 self-defense acquittal. And I had defended one assault
23 and battery of a high and aggravated nature under the new
24 law, a 20 year offense, with a successful standing your
25 ground defense. So I was familiar with the law in either

1 area and understood how very difficult achieving those
2 results are. But when Al's brother was -- was wanting to
3 know why I wasn't pursuing more aggressively a stand your
4 ground defense I said, well, we can do that. I said, I
5 don't disagree with you. I haven't stopped completely in
6 formulating, and always try to keep open as many options
7 as possible when negotiating a murder charge. We had gone
8 to the preliminary hearing and I had been able to convince
9 the Judge presiding over that -- the City Judge Lee
10 Miller, to dismiss the murder charge because the officer
11 there, Dixon, I argued did not establish malice, which was
12 necessary for the charge of murder. And the Judge
13 dismissed it, but told the police officers immediately
14 before we tried to move to have Al released that they
15 could get a warrant for manslaughter and he would sign it.
16 So they did, and he did, and we continued to prepare Al's
17 defense knowing and understanding that even without it the
18 Solicitor had every legal authority and probably would
19 indict for murder before we went forward. But I decided
20 that because of the need to have as good a defense as
21 possible for Al that I would ask around in the circuit,
22 good lawyers that knew, appellate lawyers, defense
23 lawyers, who was the best that they knew in the stand your
24 ground work and Jim Bannister came up almost unanimously.
25 And Mr. Bannister had been successful in a couple stand

1 your ground defenses with murder charges in Laurens
2 County, Greenville. And his brother, who is a State
3 Legislature, had authored a good bit of the stand your
4 ground law. So I went to talk to Mr. Bannister and asked
5 him if -- what I would need to pay him out of my operating
6 account to come on board and not only participate but lead
7 our effort in the stand your ground defense. We spent a
8 good couple hours with me explaining to him what the case
9 was about. He agreed to come on board, not only with the
10 standing ground but throughout the case. And then I
11 mentioned it to Al and his brother that I wanted to
12 associate Mr. Bannister and they met with him and they
13 agreed. I paid him, they didn't. I hired him, they
14 didn't. I associated him, they didn't. But they didn't
15 oppose him.

16 Q Was it common for you to meet with the Applicant and
17 his brother at the same time?

18 A Well, you mean in this case?

19 Q Yeah.

20 A Almost mandatory. The only time I can remember not
21 meeting with him, when I met with Al, was when I met with
22 Al at the jail in the attorney's room. And when I went to
23 Al's girlfriend's home where he was supposed to be staying
24 on house arrest, I tried to convince Al if he didn't
25 discontinue the behavior he was engaging in his -- his

1 house arrest would result in him being returned to the
2 Greenwood County Detention Center. His brother wasn't
3 there for that. That was kind of an emergency meeting
4 that I had to have with Al and his girlfriend, the mother
5 of some of his children.

6 Q So did the Applicant agree to, I guess, as far as
7 attorney/client privilege goes, that it was okay for his
8 brother to be present?

9 A He did.

10 Q And so, I think the last thing we stopped at was you
11 associated Jim Bannister with stand your ground. What --
12 so just to skip over that part just for a little bit.

13 What were the plea offer discussions like on this case?

14 A They weren't willing to make any type of plea offer
15 in this case. Solicitor Stumbo and Deputy Solicitor Yates
16 Brown worked it together, prosecuted it together.

17 Q So did you ever get a plea offer from them at all?

18 A Well, what happened, Ms. McMahan, was that at the
19 conclusion of the stand your ground hearing, when Judge
20 Griffith ruled that we had not established a basis to
21 dismiss the case based on that law, we were about to get
22 up, of course, we were shaking our heads. We thought Mr.
23 Bannister had done a wonderful job and the things had gone
24 about as well as they could have, with the exception,
25 unfortunately, of Al's testimony. But with that exception

1 we thought things had gone pretty well. So we were kind
2 of, you know, thinking back. We thought we had it. We
3 didn't. But before we left the courtroom Judge Griffith
4 said, Solicitor Stumbo, Jones, Bannister, let me -- let me
5 ask you a question. Have you all not tried to negotiate
6 some sort of a plea in this thing? And we explained to
7 the Judge no. And the Judge said, well, would your client
8 be willing to take anything? And my recollection is,
9 Judge, you know, we don't know, but surely it would have
10 to be in a manslaughter range so it could be under the 30,
11 and we would think on the very low end of manslaughter.
12 Like, you know, 10 at the most. And he turned to Stumbo
13 and said, well, what do you think? He said, Judge, it's
14 kind of up to you. We -- I guess we could come to
15 manslaughter if you think we should. But the sentencing,
16 I'm not going to recommend anything. I'm not going to
17 negotiate anything. But, you know, you're going to do
18 what you're going to do, so I'm not going to oppose what
19 you do. Well, the Judge didn't say he was going to --
20 what I had said and Mr. Bannister and I had said, was,
21 we'll try to see if Al would consider something in the
22 range of 10 years, Judge, if that's what you say you can
23 consider yourself. And he said, well, I can. Why don't
24 you go find out what he would do. So we left the
25 courtroom and we went to my office which is located about

1 a half a block from the courthouse. We walked down with
2 Al's mother, Ms. Willa, Al and his brother. His name is
3 Greg, by the way. And Mr. Bannister was there, and we
4 were talking in my conference room. I think my paralegal
5 was present for some period, if not all of the
6 discussions. She had assisted significantly. I can't
7 remember if Jimmy Powers came by. I know he was there a
8 good bit during the Castle Doctrine hearing. He was
9 present for the preliminary hearing, and he may have been
10 there part of the plea. But back to the -- the issue of
11 the plea offer and the negotiations and discussions. We
12 had a spirited discussion with Al and the input of his
13 brother. His mother was -- was understandably shaken. I
14 don't know if she was crying, but she was fretting and
15 just, you know, the motherly type of concern and dismay
16 and the pressure and the stress. And his brother was --
17 had input about what to do, and we were trying to get the
18 most important response from Al, is there anything you
19 would consider doing. And it was just a lot of back and
20 forth and confusing. And finally Mr. Bannister said,
21 Townes, Al -- Al, I'd like to see you back in Townes'
22 office, which is in the back portion of my office, and
23 alone. And Al said okay. And Jim went back with Al and
24 they had a discussion for about, I don't know, somewhere
25 between 15 and 30 minutes. This was all taking place

1 between 3:00 and 5:00. You know, I think we concluded
2 closer to 5:00 than 3:00. But Mr. Bannister came back up
3 front with Al and said, he says that if we can get the
4 Judge to kind of consider a 10 year sentence, that given
5 the fact that he could be sentenced if the Feds were
6 brought in under a Federal statute that carries 10 years,
7 if he's convicted of being a felon being in possession of
8 a firearm. Given those issues, and given the fact that we
9 lost the Castle Doctrine hearing, which had some bearing
10 on how well a self-defense defense would work in trial --
11 because again, as I explained to Al repeatedly prior to
12 the Castle Doctrine hearing, and prior to the plea, man,
13 you've got to be convincing. When you go on a stand and
14 testify you've got to convince that Judge, just like I
15 told you to convince that police officer, how afraid you
16 were, how violent this man was to you, how violent his
17 words were to you, how much he -- you thought he was going
18 to kill you with his bare hands, and you slid across the
19 backseat of the car and tried to shoot him. You've got to
20 be emphatic with your testimony about that, and it just
21 didn't come across that way in the courtroom. Al said
22 some of those things, but it just didn't come across that
23 way and we had some concerns. We thought he did well
24 enough for the Judge to rule with us, but I'm afraid the
25 Judge didn't think he did well enough to rule with us.

1 For some reason the Judge had for ruling against us, for
2 some reason the Judge had for ruling against us. We
3 thought the elements were there. But at some point in
4 time we said, okay, Al, we'll go back up here. I think
5 the Judge is waiting on us, and we'll go see what we can
6 find out. And we went back up there with the
7 understanding that the goal was to get a plea to
8 manslaughter with roughly a 10 year sentence. That's our
9 goal. We went up there and -- and what we got was the
10 Judge reiterating that he could certainly consider 10
11 years in this case. We said, well, can we have credit for
12 the two and a half time served? He said, well, I don't
13 have to give that, but probably so. Yeah, I guess so.
14 Yeah. So Judge Griffith said, I'll consider all of it,
15 Jones. And I recall, but sometimes, you know, in the heat
16 of negotiations, trial, things get jumbled a little bit.
17 But I thought Solicitor Stumbo said to the Judge, Judge,
18 could you -- if you -- if you're going to give him 10, if
19 you end up in that area, could you put 20 on top of it, 20
20 suspended to 10. And I said, well, Judge, it's an
21 eighty-five percent crime. So, you know, a 20 isn't going
22 to impact any parole eligibility. That doesn't bother us
23 if -- because he looked at us after Stumbo said that.
24 Would that break your plea down if I do that. And my
25 response was, no, sir. And this is why. And this is what

1 I explained to my client. But it was clear when we left
2 there that he was going to give strong consideration and
3 lean much towards a 10 year sentence than he would a 20
4 year sentence for voluntary manslaughter, or a 10 year
5 sentence than he would a 15 year sentence for that matter.
6 So we let Al know that. And I said, Al, you got to make
7 up your mind by tomorrow because they're wanting to do the
8 plea on Friday. That's the latest date we can put it off,
9 because if you don't want to do it, that Solicitor is
10 going to get ready for trial. We're ready now. We've
11 prepared this thing for trial. The work has been done.
12 The witnesses are subpoenaed.

13 Q Would the trial have started that Monday?

14 A It would have. And we were there on Wednesday. And
15 the interesting part about it was when Al called and said,
16 can I have until Monday? I want to spend some time with
17 my kids. I said a couple of things to Al. Al, you can
18 spend some time with them today and tonight. I'd advise
19 you to do that. As a matter of fact, sleep with your baby
20 tonight. And I said, Al, I'm not trying to criticize you
21 here, but you've had over a year to spend time with your
22 children. I haven't been keeping up with how much time
23 he'd been spending with them, but it should have been the
24 best year of your life with your children. I told you
25 that in the beginning. But he wanted one more night and

1 one more weekend or something and it just wasn't going to
2 happen. I also told him when we were discussing a
3 self-defense defense prior to the plea negotiation, look,
4 they put some witnesses up in this Castle Doctrine hearing
5 that fell on their face. They've learned a lot about
6 their case during this process and you won't see those
7 same witnesses getting on that stand in your self-defense
8 trial. They'll have a completely altered and restructured
9 prosecution. The witnesses that didn't do well won't be
10 there. Ours are ours, you, Al, are ours. You, Al, is who
11 is going to have to get on the stand and convince 12
12 people that you had no choice but to shoot that man in the
13 chest. That's where this self-defense falls is with you,
14 Al. Are you going to be able to do it. Are you going to
15 be able to get on that stand. Are you going to be able to
16 convince the jury. I guess I worked with Al before this
17 Castle Doctrine hearing. I know I did, in his brother's
18 presence. Not just cross-examining him. Telling him to
19 memorize it. To go home with his brother and practice it
20 all night long for weeks before the Castle Doctrine
21 hearing, in his brother's presence. Go with Al. Make
22 sure he's got this. Make sure he'll do better when we do
23 it again next time. Make sure he'll do it better when we
24 do it again the time after that. I tell people to come in
25 -- look, I don't have a magic wand, I can't make this go

1 away. And I don't have a crystal ball, I can't see in the
2 future and see what's going to happen. What I don't tell
3 them is that I can't make chicken salad out of chicken --

4 Q So leading to that, how would you have classified Mr.
5 Morgan's testimony at the stand your ground hearing?

6 A Unimpressive.

7 Q Why is that?

8 A He just didn't seem to understand that it was the
9 most important speech he was ever going to give in his
10 life. He didn't once turn to the Judge and say, Your
11 Honor, I had no choice. I didn't go out there to kill
12 this man. I didn't want to kill this man. I had to. He
13 made me. He forced it. I'm just glad I had a gun because
14 I don't know what would have happened to me if I hadn't.
15 But I am so sorry that I had to do this. That he made me
16 do this. And, you know, Ms. McMahan, along those lines,
17 and we'll get to this shortly just before I forget, Al
18 didn't say anything like that at his guilty plea either,
19 which is another chance to impress the Judge that he truly
20 was remorseful and he truly was forced to do something
21 that was just not in his nature. Not anything he would
22 have wanted to do to anybody. I think he had a three word
23 response to the Judge when the Judge asked him if he had
24 anything to say in his plea on his own behalf. Yeah. I'm
25 sorry. It happened, or something like that. It's in the

1 transcript.

2 Q So at -- going back to the stand your ground hearing.

3 A Yes.

4 Q What was -- was Mr. Futch subpoenaed at all?

5 A I talked to Detective Futch -- Captain Futch about
6 this. I thought we had subpoenaed him. I tried to get
7 Powers' invoices. I know I talked to Futch, and he was
8 there for the last day of the stand your ground hearing.
9 We didn't call him because he never said that he thought
10 it was self-defense to us, and the best we could get out
11 of him is, I won't oppose manslaughter.

12 Q So the best thing Futch said to you on the phone or
13 in person --

14 A Yeah.

15 Q -- was I won't impose manslaughter?

16 A Yeah. If the Solicitor wants to go along with it, I
17 won't oppose it.

18 Q But he never told you specifically that it was
19 self-defense?

20 A Never.

21 Q You never had a conference call with him or anything
22 with Mr. Powers there that said --

23 A I can't remember if Powers left. I remember talking
24 to him on the phone. I remember talking to him -- or
25 trying to speak to him at his restaurant here in Laurens.

1 It's a sandwich shop, Migs Pizza Castle. But he never
2 said that either in one-on-one personal conversation, on
3 the telephone with me, on the telephone with Powers, Al,
4 Greg, or anybody else.

5 Q Do you have a copy of the application in front of
6 you?

7 A Application?

8 Q Yeah, the PCR hearing?

9 A I have several copies of --

10 Q Well, I'm just going to -- I'll just show you mine.

11 A Okay. Is it the amended one?

12 Q No. It's the original.

13 A Oh, okay.

14 Q There's -- at the top of the page it says, Al
15 Morgan's current dispositions goal as of 2/3/2016.

16 A Yes.

17 Q What -- where did those goals come from?

18 A Those goals were goals that were generated after the
19 Castle Doctrine hearing was denied in that two or three
20 hour meeting in my office with Mr. Bannister, Al, Ms.
21 Willa and his brother, Greg. And my paralegal generated
22 this so that we would memorialize what our goals were and
23 the basis for forming them to the best of our ability at
24 that time and in that timeframe. She typed it up. I gave
25 Al a copy. And, you know, we knew what our goals were,

1 but she typed it up. I probably directed her to do it.

2 Q So --

3 A But I didn't dictate it.

4 Q So number three, was that an accurate description of
5 conversations you guys had about the offers and stuff?

6 A As a goal, yes. It was not anything that was -- had
7 been negotiated or had been offered or had been
8 solidified. That was the goal.

9 Q So that was something you were going to try to take
10 to the Solicitor after that conversation?

11 A We did. The Solicitor never agreed to do anything
12 that's there other than make an effort and, in fact,
13 contact the Assistant United States Attorney in Greenville
14 and ask them not to go forward on any gun-related charge
15 that the Federal authorities might be able to in this case
16 --

17 Q Were the Feds going to --

18 A -- if he got a plea to manslaughter.

19 Q Were the Feds going to -- was it a threat that the
20 Feds were going to come do the felony possession?

21 A No. Just trying to cover our basis. I knew that
22 this victim's family was extremely, extremely upset.
23 Stumbo had said that to me when we were trying to get them
24 to give us an offer. He had said it to the Judge when we
25 were trying to negotiate a deal. And I had a feeling that

1 if -- if, you know, it went south for him, both from a
2 community safety standpoint and from a victim satisfaction
3 standpoint, he may contact the United States Attorney and
4 get them to seek notification from charging this man.

5 Okay.

6 Q And you were -- and so, you were essentially trying
7 to cover all basis with not only Stumbo, but any Federal
8 things that could come up --

9 A Yes.

10 Q -- down the line so there weren't really any
11 surprises?

12 A Yes.

13 MS. MCMAHAN: Answer any questions Ms. Gregory has.

14 CROSS-EXAMINATION

15 By Ms. Gregory:

16 Q Good morning, Mr. Jones.

17 A Good morning, Ms. Gregory.

18 Q You've answered a lot of my questions already.

19 A Yeah, probably with too much -- but I apologize.

20 Q You're fine. Just to go back real quick. How long
21 have you been practicing law?

22 A Let's see. I was admitted to the South Carolina Bar
23 after graduating the University of South Carolina School
24 of Law in April of 1982.

25 Q And the majority of your career has been in criminal

1 law?

2 A That's 38 years; right? Coming up on 38 years.

3 Q I'm not that good at math.

4 A Okay. Me either, I guess. What was your next
5 question?

6 Q Most of it has been in criminal law?

7 A Yes. As a prosecutor for 20 years, and the bulk of
8 my practice -- my private practice now for the last 16
9 years is criminal defense. Probably eighty to ninety
10 percent of what I do is criminal defense.

11 Q And how many times would you say you met with Mr.
12 Morgan?

13 A Counting the visit to the jail which totaled either
14 eight to 10, another --

15 Q Those were in person?

16 A Yes.

17 Q And did you meet with him over the phone as well?

18 A In the jail, no.

19 Q What about after he was out, did you discuss the case
20 over the phone as well?

21 A Not much. We usually met in my office or at crime
22 scenes. But the number of times would be somewhere
23 between 35 and 50 times that I met with him in preparation
24 for his defense. The bulk of those would have been the
25 two months leading up to the trial for preparation.

1 December and January. December of 2015, January of 2016.

2 Q And you're the one that got Mr. Bannister involved
3 regarding the stand your ground situation; is that
4 correct?

5 A Correct.

6 Q And would you consider yourself the lead attorney
7 then in this case?

8 A Correct.

9 Q And did you review the charges with Mr. Morgan and
10 the possible sentences he faced?

11 A I did.

12 Q And you went over his constitutional rights with him
13 and he was aware that he was aware he was entitled to a
14 jury trial and things like that?

15 A Yes. Could I explain to you --

16 Q Sure.

17 A -- how I did that. It was done on a number of
18 occasions in Al's presence in my office, not only his
19 constitutional rights and not only the law and the
20 punishment, but the defenses. We went over a lot of
21 different law and a lot of different scenarios, not to
22 mention discussing what we were getting with these
23 witnesses we were trying to locate, from the pathologist
24 who did the autopsy; Dr. Brett Woodard in Anderson. We
25 drove up there to have him -- try to demonstrate with him

1 to see where he may fall if he testified on what -- about
2 this shot that went from midsection of the stomach down
3 towards the lower part of the back with his -- of his
4 spine. But, you know, all of that was done, you know,
5 when we could with Al. Now, what I really emphasize and
6 specifically focused on Al's constitutional rights is when
7 we signed what is referred to as a sentencing sheet. We
8 have sentencing sheets now where the prosecutor signs on
9 the line, the Defendant signs on the line, and the
10 attorney signs on the line with your bar number listed out
11 by the side. And at the top of that sheet are some
12 rights. I read all of that sheet to every client that
13 pleads guilty, including the charge they are pleading to
14 and the amount of time they can get for the charge. And I
15 go over with every client that one time, listen, when you
16 plead guilty you give up a number of constitutional
17 rights. The first right you're going to give up is the
18 right to remain silent. The Judge is going to put you
19 under oath and ask you questions, and one thing I am going
20 to assure you, you better answer honestly, because if you
21 don't you'll be in contempt of court and that's a six year
22 -- potential six year offense and you can be jailed for
23 that. So answer those questions honestly, and if you
24 don't understand the question, turn to me and I'll try to
25 explain it to you. Then I say, and the next right you

1 give up is your right to a jury trial. When you plead
2 guilty you give up your right to have this case tried by
3 12 jurors, which involves you and me forcing the State of
4 South Carolina, Solicitor Stumbo, to prove this case
5 against you beyond any and all reasonable doubt. And they
6 have to do that by bringing these witnesses in,
7 introducing this evidence. We can object to some of it
8 and we get to cross-examine these witnesses to try to make
9 them look like liars, or see if maybe they have made a
10 mistake in their testimony and in their investigation.
11 But you give up that right when you plead guilty. You
12 won't get to have that done. Also, you give up your right
13 to any defense that you might have. Like a self-defense
14 defense. Any mitigation, we can argue the plea, but you
15 give up your defenses when you -- and you give up your
16 right to testify on your own behalf. You don't have to
17 testify, and if you don't the Judge will charge the jury
18 that they can't hold that against you. They can't even
19 discuss it back there in the jury room. So, Al, these are
20 your rights. But what I also point out to him is, what
21 else is contained on this sentencing sheet. Al, this
22 little box here that the Solicitor can check, it says
23 recommendation. A recommended sentence is one where the
24 Judge doesn't have to go along with it. If the Solicitor
25 recommends 10 years, the Judge can give you more than 10

1 or less than 10.

2 Q And how was that checked on his sentencing --

3 A It--

4 Q -- is this the sentencing sheet he's referring to in
5 his testimony?

6 A I can't remember what he was referring to. Didn't he
7 say he signed something or I signed?

8 Q Correct. He signed something prior to --

9 A Yeah.

10 Q -- to pleading guilty.

11 A Yeah. This -- I sat down with Al, as I do with every
12 client, and went over this sentencing sheet with him in
13 front of his mother, because I knew that this is the time
14 that he's got to understand. And we're hoping that the
15 Judge will sentence him like we've asked the Judge to
16 consider. And I told Al, Al, are you sure? I kept
17 saying, are you sure? I said, you know, it's not
18 guaranteed. I can't -- it's not guaranteed. I feel
19 comfortable -- I feel ninety percent comfortable he's
20 going to sentence you like this in this range. And
21 whether he does or doesn't, I assure you I feel
22 one-hundred percent comfortable that this is the best
23 Judge you could be in front of for this sentencing
24 purpose. And so, I would advise you to go forward with
25 it, but you don't have to. We can go to trial. And it

1 won't start until Monday, and we're ready to go to trial.
2 And if you don't want to do this then you need to tell us
3 now, or at any time during the plea. And I said, but it's
4 not a guarantee. And I said, there's another box here,
5 Al. It's called -- see what it says, negotiated. This
6 was not a negotiated plea, Al. You're going in there with
7 the understanding that this Judge can give you anything
8 from two to 30. And he, very -- I said, Al, I think it's
9 going to be somewhere in the 10 year range, and I think
10 you're going to get credit for your time served. But I
11 can't guarantee you that. I can't promise you that. And
12 if you tell him that you've been promised that, which you
13 can if you want to, or that you don't want to do this
14 plea, which you can if you decide that's what you want to
15 do, then you can do it. But the alternative will be to go
16 to trial. I told him also when he said, can't we put it
17 off until Monday. It wasn't, we got to take this deal.
18 The deal was manslaughter. We go to trial on Monday it's
19 not on manslaughter, it's murder. We get Stumbo working
20 all weekend recalibrating his witnesses, they're going
21 forward. They're not going to jerk this family around --
22 the victim's family around like this. All the witnesses
23 around like this. He's ready to go. He's already seen
24 where our witnesses are and he's seen where his witnesses
25 are and he's going to adjust them.

1 Q So looking at the sentencing sheet, it was not -- was
2 it filled out with an eight year sentence at the time he
3 signed it?

4 A No.

5 Q And you explained to him at that time that it's not
6 negotiated or recommended sentence and you explained to
7 him what that meant. Did he seem to understand that?

8 A Ms. Gregory, not only do I always do that, I
9 specifically recall being in that room with Ms. Willa
10 Morgan, his mother, and Al and going over that with him.
11 And the reason I specifically recall it, because even
12 though I'm sure, you know, he was much more nervous than I
13 was, it was important for me to get it right and make sure
14 he understood what he was doing and to make sure I did it
15 ethically and correctly and properly. Okay?

16 Q Did you ever promise him an eight year sentence?

17 A No. No, ma'am. I did not.

18 Q What were the benefits of him pleading? You
19 indicated that there was a Federal charge that wouldn't be
20 pursued?

21 A Right.

22 Q And he was able to plead to the lesser included
23 offense. Was there anything else?

24 A Well, if we went to trial, you know, it would have
25 been a self-defense defense.

1 Q Isn't that a tough defense?

2 A I think it would have been very difficult at that
3 point in time for a number of reasons, as I've already
4 testified some this morning. Number one, after the man
5 was shot Al didn't stop at the -- at the gas station
6 across the street and wait for the authorities to get
7 there. In spite of the fact that no one from the club was
8 chasing them, he chose to flee further to a location where
9 he could hide the gun. All that was going to come in, and
10 you're claiming I did it in self-defense. They're going
11 to get all that evidence in about your actions. Your
12 actions that demonstrate guilt under the law and under any
13 commonsense jurors' assessment in trying to decide what
14 the truth of the matter is. And in addition to that,
15 there was one other problem just as big. The first thing
16 Al had said to the police officers was, I didn't do it.
17 You've got the wrong guy. I didn't shoot anybody. I
18 mean, that was going to come up in a jury trial. That's
19 pretty important. If it's self-defense, the first thing
20 you say to a police officer is, hey, man, wait a minute.
21 I had to do it. You don't understand. He was coming at
22 me. I think that as afraid as Al was of the deceased in
23 this case, he was just as aware that he shot a man that
24 didn't have a weapon out. He didn't have a gun pulled on
25 him. He didn't have a knife pulled on him. He didn't

1 have brass knuckles on him. He didn't have a baseball bat
2 on him. He had no weapon whatsoever and Al shot him dead.
3 And I think that is what concerned Al the most about
4 leaving the scene and getting rid of the gun and telling
5 the police, I didn't do it. A very simple naive
6 elementary way to respond to a very tragic and stressful
7 situation. And I also think, Ms. Gregory, as unfortunate
8 as it is, that in spite of Al telling the truth on the
9 witness stand, he didn't do so with the kind of passion
10 and conviction and convincingness that we were attempting
11 to elicit from him because deep down inside he just didn't
12 feel it. That's the only thing I can come up with to try
13 to explain it how he did not once, but twice, thrice --
14 initial conversation with police, the second opportunity
15 to give them a statement, third opportunity to testify
16 under oath in front of the Judge. It baffled me the
17 nonchalant and kind of laid back approach to the whole
18 thing.

19 Q And going quickly back to the court when you guys had
20 a discussion with the Judge, did you leave that meeting
21 with him committing to anything? The Judge committing to
22 sentencing?

23 A What he admitted to was, I will give strong
24 consideration to a 10 year sentence.

25 Q And so, he could have sentenced him anywhere between

1 two and 30 years?

2 A Yes.

3 Q Mr. Morgan was aware of that? Did you explain that
4 to him?

5 A I did. I told him the Judge could give him two, he
6 could give him five, he could give him 10, he could give
7 him 15.

8 Q And whose decision was it to plead guilty?

9 A Al's.

10 Q Did you believe it was in his best interest?

11 A Without question, without a doubt.

12 Q Why is that?

13 A But I -- but I also told him that we were ready to go
14 to trial if he wanted to that day. The day of the plea.
15 He understood that.

16 Q So if he wanted to go to trial you would have taken
17 this case to trial?

18 A I certainly would have.

19 Q And regarding the Captain Futch allegation, you
20 mentioned in your previous testimony that you did not call
21 him because you did not think he would be a favorable
22 witness; is that correct?

23 A I sure didn't. Based on what he told me. He never
24 -- he never told me that he was going to say it was a
25 manslaughter case. He said, you know, I won't oppose a

1 manslaughter case if that's what the Solicitor wants to
2 do.

3 MS. GREGORY: No further questions, Your Honor.

4 THE COURT: Any redirect limited to what she went
5 into?

6 MS. MCMAHAN: Just briefly.

7 REDIRECT EXAMINATION

8 By Ms. McMahan:

9 Q You heard Mr. Morgan talk about he thought he was
10 getting eight years. Where is the idea coming from that
11 he thought he was getting eight years? Was there a
12 discussion about if you got 10 you'd only serve eight and
13 a half? Like where -- where is this eight coming from?

14 A Actually, the discussion was multifaceted. But, you
15 know, the proposition was, you know, if you get a 10 year
16 sentence you're entitled to about two years time served if
17 the Judge decides to give it to you. And if that were to
18 happen, you would serve eighty-five percent.

19 Q So your discussion with him was the Judge said -- and
20 I'm not trying to put words in your mouth. I'm just
21 trying to summarize, so if at any point I --

22 A Go right ahead, I'll try to clear it up if you are
23 anywhere off base.

24 Q So your discussion was the Judge said he'd consider
25 10 years. You know, if he -- if he gives you credit for

1 time served, because it was house arrest, so he doesn't
2 have to give credit for house arrest --

3 A Uh-huh.

4 Q -- that he would probably serve somewhere around
5 eight years of that.

6 A Yes. The discussion was basically in the office
7 before we went to the Judge --

8 Q Uh-huh.

9 A -- explaining to Al if we could get the Judge to
10 consider 10, these are the things that would -- that would
11 occur if he did that.

12 Q Okay.

13 A That he would get -- we would ask for credit for time
14 served, and that he would serve eighty-five percent of
15 what he got. Those were the discussions, if we could get
16 him to do that. Okay? So, you know, there was never --
17 it was always couched with if, if. And it was also
18 couched that if we could get him to consider 10, this is
19 the best case scenario we're going to be able to get.
20 Okay.

21 Q And then you -- but you also discussed the worst case
22 scenario which would have been the 30?

23 A Of course. Worst case scenario under the plea. The
24 worst case scenario of a trial --

25 Q -- would have been --

1 A -- would be 30 to life.

2 Q Yeah. So that Monday you all were ready to start a
3 trial based on a murder charge?

4 A Correct.

5 Q And the whole deal pleading on Friday, if I'm
6 understanding your testimony, was he had to plea on Friday
7 because starting Monday that voluntary manslaughter offer
8 was no longer on the table because they were -- it was
9 going to be murder and that's it?

10 A Correct. The jury panel was coming in. They had
11 already brought them in, about 150 of them, and the Judge
12 was going to be ready to start and they were not going to
13 offer the manslaughter deal.

14 Q Okay. And that --

15 A If it wasn't -- if it wasn't done Friday.

16 Q Okay. And would it have been the same Judge in the
17 murder trial or --

18 A Yes.

19 Q -- a different Judge?

20 A Yes.

21 Q It was a two term court kind of thing with Judge
22 Griffith?

23 A Yes.

24 MS. MCMAHON: Court's indulgence, Your Honor.

25 Q Did you have a discussion with him about if he didn't

1 take the plea then that the -- it might be another Judge
2 showing up the next week that may not be as favorable to
3 him?

4 A No. The only thing I said was that if -- if Stumbo
5 decides that he wants to call it in front of another
6 Judge, and Judge Griffith doesn't direct him to call it,
7 then he would have that option. And the reason I
8 characterized any other Judge as not being as favorable as
9 Judge Griffith, if he wound up in front of another Judge,
10 is because my review of the six months docket at that
11 time. And my experience with Judges was that the Judges
12 left on the trial -- on the General Sessions docket for
13 the remaining six months would not have been nearly as
14 favorable as Judge Griffith. Judge Griffith at that time,
15 and continues to today, to have a reputation for being not
16 only fair but a compassionate, generous, and he just has
17 the willingness to approach any situation with an open
18 mind. And I'm not saying that other Judges don't, but I'm
19 saying that other Judges sometimes feel like their sense
20 of justice is more, you know, erring on the side of Attila
21 The Hun as opposed to, you know, somebody that wants to be
22 a little more reasonable and fair about things. But not
23 unfair, just harsh. You follow what I'm saying?

24 Q I've got you.

25 MS. MCMAHAN: I have no further -- oh, wait I do have

1 one more question. I'm sorry.

2 Q Did you meet with the Defendant's brother at any time
3 by yourself without the Applicant present?

4 A You know, you talking about Greg?

5 Q Yes, sir.

6 A He -- he didn't come by the office the morning of the
7 plea. I don't know if he drove by the -- I remember I saw
8 him in my office and saying Greg must be upset about
9 something. And I don't remember talking to him in the
10 courtroom other than after the plea later back in the back
11 with me and Al and Willa. But he did call me a couple of
12 times after the plea. As a matter of fact, I saved one of
13 his calls on my phone. Would you like to hear it?

14 Q I think you can just summarize it for us. That would
15 be helpful.

16 A I was in court in -- in Greenwood. It was February
17 24th, I think. And he said, hey Townes, it's Greg. I
18 talked to momma. She told me about the appeal. What's
19 this business about Bannister? You still dealing with
20 Bannister. Unethical son of a gun. What do you think? I
21 don't understand you. I'm going to take this to the
22 Attorney General and higher if I have to. And if I have
23 to take you with him, I'll take you with him. I'll take
24 you both down.

25 Q And so, that was basically in a nutshell the last

1 conversation you had with his brother?

2 A No. I -- the last thing he said on his message, the
3 best of my recollection was, so now you don't answer your
4 phone. Well, my phone was on vibrate because I was in
5 court in General Sessions in Greenwood. But I did call
6 him back when I saw that he called and I talked to him
7 then. And I explained to him I didn't appreciate the
8 insinuations that he was making, and that I was doing
9 everything I could for Al and his appeal and doing it the
10 right way. And he called me one other time. I was
11 working on a Saturday at the office. He must have driven
12 by and seen my car. I answered the phone. He went into
13 the same tenor, an accusatorial conversation. And I said
14 to him then, look, Greg, I'm getting kind of -- you're
15 starting to harass me. And if you call me again the
16 police are going to be involved in this. Okay? So let's
17 just forget it.

18 Q But this is just with Greg?

19 A Yeah, just Greg.

20 Q But in your -- in your representation of Mr. Morgan
21 were there any times prior to the plea or the stand your
22 ground hearing where you would have just met with Greg?

23 A I can't recall. I mean, there may have been an
24 occasion. If anything, what kind of causes me to think I
25 did, it would have been to sit down with him and discuss

1 the finer points of stand your ground law and how that
2 works. He was very focused on making sure that I didn't
3 -- that I did not, you know, go forward with something
4 like that. Okay.

5 Q And so, the whole idea of the stand your ground, did
6 that -- did that come up as part of a possibility when you
7 were talking to Greg, or was that always kind of a defense
8 that you were thinking of from the beginning?

9 A I certainly had -- had knew of it, had used it, and
10 -- you know, but Greg was very persistent in wanting me to
11 begin to fashion Al's defense in that way. So, you know,
12 I did.

13 MS. MCMAHAN: Okay. I have nothing further, Your
14 Honor.

15 THE COURT: Thank you, sir. You may step down. Just
16 watch your step as you're stepping down.

17 THE WITNESS: Thank you, Judge.

18 (Whereupon, the witness stepped down from the witness
19 stand.)

20 MS. MCMAHAN: Your Honor, at this time the Applicant
21 rests.

22 THE COURT: Does the State have any witnesses?

23 MS. GREGORY: Yes, Your Honor. The State would call
24 Jim Bannister.

25 JIM BANNISTER, being

1 first duly sworn, testified as follows:

2 THE COURT: Sir, watch your step, but please have a
3 seat in the chair and pull the chair up to the microphone.

4 DIRECT EXAMINATION

5 By Ms. Gregory:

6 Q Thank you for being here Mr. Bannister.

7 A Good morning.

8 Q Good morning. How long have you been practicing law?

9 A Twenty-four and a half years.

10 Q How much of that has been criminal law?

11 A In the last half of that I'd say eighty, ninety
12 percent.

13 Q And how did you get involved with this case?

14 A I got a phone call from Mr. Jones. He said he had a
15 murder case in Greenwood and that he thought it had some
16 stand your ground indications, and that he wanted my help
17 in that -- in putting together a stand your ground motion
18 and doing a stand your ground presentation.

19 Q Do you know when you got involved? Like how far into
20 the process they were?

21 A Let's see. I've got -- I have, I guess, an official
22 conference call with him on November the 17th of 2015.

23 Q And did you meet with Mr. Jones and Mr. Morgan at
24 some point?

25 A I did.

1 Q Do you know how many times you met with them?

2 A So I can tell you that I was in Greenwood on -- on
3 eight different occasions, not including the stand your
4 ground.

5 Q Okay.

6 A That would have been for, you know, several hours.
7 Half the day or three-quarters of the day. And then there
8 was one time on January 29th where Mr. Morgan came to my
9 office in Greenville so that we could practice his
10 cross-examination that we were expecting the State, you
11 know, and probably did a little bit of direct too, at that
12 time.

13 Q And that was with Mr. Morgan?

14 A That was with Mr. Morgan, yes. The individual.

15 Q Did you always meet with Mr. Morgan with Mr. Jones
16 present or did you ever meet with him alone?

17 A I think that meeting on January 29th was just me and
18 Mr. Morgan.

19 Q Okay. And were you -- you probably heard Mr. Jones
20 classify himself as lead attorney. Would you agree with
21 that classification?

22 A Yes. I saw myself as second chair.

23 Q Okay. Would you have gone over Mr. Morgan's
24 Constitutional rights or anything like that with him?

25 A I can't say that I did. I don't have a specific

1 recollection of going through, you know, how is the -- how
2 the plea colloquy is going to go in court. On the day of
3 the plea, that would be normally what -- I was in charge,
4 would have gone through, you know, here are the questions
5 that are going to be asked, here is the answers, here is
6 what it means. I got down here -- well, I say here. I
7 got to Greenwood from Greenville. I talked to Mr. Jones.
8 I think I said, is Al ready to go? He said, yes, we're
9 good. I've been over everything with him. So, and then I
10 was in the courtroom for the plea.

11 Q Okay. And did you assist in any of the investigation
12 for the stand your ground?

13 A Yes. So on any one of these eight different
14 occasions that I was down in Greenwood physically there it
15 would have been in Townes' office. We were meeting with
16 witnesses. We were going through really what their trial
17 stand your ground hearing testimony was going to be. You
18 know, following up and making sure that we have a good
19 sequence. He understood the questions. On one occasion
20 we went with the -- I went with the investigator, Mr.
21 Jones, I want to say we even took the car and went to the
22 location to be able to kind of get a sense of where it
23 was, everything physically. So I was with him on that
24 occasion for sure.

25 Q Okay. And did your investigation include meeting

1 with former Captain Futch? Nick Futch with the --

2 A I don't think I spoke with Captain Futch. I know
3 that we went over all the potential witnesses that were
4 going to be in -- all potential witnesses to anything that
5 would have relevance to the stand your ground, we either
6 talked to them or looked at what they were going to say
7 and made decisions about what would be the strongest
8 presentation for stand your ground defense.

9 Q Did you discuss calling Captain Futch during the
10 stand your ground hearing?

11 A So I don't recall that Captain Futch had anything
12 that was not -- that was firsthand. I mean, he was the
13 investigator, so he put a lot of this information
14 together. But at the end of the day it was going to be
15 hearsay testimony, it was going to be what other people
16 told him. And so, I don't have any recollection that he
17 had anything firsthand to offer other than maybe his
18 interactions with Mr. Morgan and -- I don't think Mr.
19 Jones, or I thought that was going to be helpful to Mr.
20 Morgan's case.

21 Q Do you recall Mr -- or Captain Futch ever telling you
22 this was a self-defense case or anything along those
23 lines?

24 A No. I don't recall speaking to Captain Futch. So,
25 no.

1 Q Okay. What was your involvement in the discussions
2 with Mr. Morgan after the immunity was denied?

3 A So we were in Greenwood. We'd been in trial pretty
4 much at least Monday through Thursday is my recollection.
5 I think we -- we certainly had an indication that the
6 Judge was interested in us trying to see if there was a
7 way to get a plea on the case as we were going to trial on
8 Monday. You know, despite the fact that we had a ruling
9 denying the stand your ground motion, I still felt like at
10 least the element of the victim having reached inside the
11 car, or having made an attempt to get inside the car fit
12 one of the elements of stand your ground. And, therefore,
13 at least on paper it was a strong position legally. And I
14 think everybody -- all the lawyers certainly recognized
15 that that was part of what was in the matrix here of what
16 was getting ready to happen next week. So we were -- I
17 felt like it was one of those moments where if we were
18 going to be able to get a plea that would be reasonable,
19 this was the time, the only time -- because there's a
20 certain buildup of things sometimes where you've got to
21 strike while the iron is hot and this was one of those
22 moments. I think the Solicitor recognized he had some
23 issues with this case. I think the Judge recognized there
24 were going to be some really tricky legal issues. And I
25 think we had seen there was certainly some weaknesses to

1 our case in terms of self-defense.

2 Q What were those weaknesses?

3 A Well, primarily we weren't going to get -- I don't
4 think this was the point in time where you were -- I don't
5 think we were going to be allowed to have a jury charge on
6 the stand your ground issues. So we were back into common
7 law self-defense. And the fact that the victim was not
8 armed just made things very difficult. Add to that -- Mr.
9 Jones had gone into this in some detail. But add to that
10 fact that he had left the scene, that he had had the story
11 about how he was not involved. Those were not good facts,
12 I thought, for a jury. It was going to make his assertion
13 that he was in fear for his life suspect. I had -- at
14 that point I think I tried maybe seven different murder
15 cases, six of which had been self-defense, one was a who
16 done it. And of those six we were successful, but one of
17 the things I thought was a key piece of evidence was we
18 had 911 calls from the Defendant in all of those where the
19 Defendant is saying, I just shot somebody. He was trying
20 to kill me. Send somebody out here. And then they're
21 talking to them on the phone, put the gun down. Where is
22 it. Law enforcement, stay where you are. That's a
23 powerful, powerful thing in front of the jury. We just
24 weren't going to have that in this case and we probably
25 should have.

1 Q Okay. So after the conversation with the Judge where
2 you kind of felt like he was pushing you guys to maybe
3 figure out if you could work this out, what was your
4 involvement with the plea at that point?

5 A So we went back to Townes' office. Townes was with
6 the family, and I think I met with Al back in -- my memory
7 is in Mr. Jones' actual personal office.

8 Q Just you and Mr. Morgan?

9 A I think it was just me and Mr. Morgan, yes. And we
10 were talking back there, and I told him -- I remember
11 telling him this part. I said, you know, when I first
12 looked at this case, before I knew you, before I talked to
13 any witnesses, my statement to Mr. Jones was is if we can
14 get anything under 15 you really probably need to take it.

15 Q And why is that?

16 A Well, I have a -- I don't know. Maybe this is a
17 unique way of looking at cases. But I say, all right, if
18 we try this case 10 times what do I think the likely
19 outcome is going to be from the evidence. In this case I
20 was thinking, okay, I think the jury probably compromises
21 if they got murder or manslaughter, we're going to end up
22 with manslaughter. I think Mr. Morgan's probably going to
23 get somewhere around 25 with the gun being involved with
24 an unarmed victim. That's just my experience in picking
25 these numbers out of the air now. So there's no real

1 science to it. But five times 25 is 125 years. I thought
2 we had at least twice where murder could ultimately be the
3 charge. That's 30 a piece. So 125, 30 and 30. That was
4 185. I thought we might get not guilty for self-defense
5 maybe two out of 10, maybe three. I know these aren't
6 exact. But if you did that math and said, okay, 185 years
7 divided by the 10 times in average, Al Morgan was looking
8 at 18 and a half years.

9 Q Okay.

10 A Anything under 15 in my view was a good solid offer
11 that you need to consider. So I would have told him that.
12 We had already, I think had and put out there the number
13 10 with the Judge who seemed inclined that that was
14 something that would be a reasonable amount of time based
15 on the facts that he -- he just basically heard the trial
16 of the case.

17 Q Right.

18 A You know, there were some elements of self-defense
19 there. It's probably just an overreaction self-defense at
20 the end of the day. But -- or at least that was my view
21 of it. And so, I think part of the discussion -- well,
22 any time I talk to somebody about a plea like this we talk
23 -- I was telling Mr. Morgan, you know, if we can get
24 anything close to 10 then you really ought to take this.
25 I think this would be a mistake. You know, if you're

1 asking me, you paid -- or we've been hired to help you and
2 we can see this objectively. And 10 is a really good
3 place to be if we can get there. The two and half years,
4 or two years that he had on his ankle monitor was in play.
5 And so, I know we discussed, okay, here's -- here's the
6 best case scenario. So you would have taken the 10 and
7 taken off the two, could talk about eighty-five percent,
8 some of the fifteen percent credits you got. But also
9 talk about worse case scenarios. I said if you go to
10 trial next week, you know, you could be looking at life
11 without parole. I mean, this is not -- I mean, it's on
12 the table. It's probably not -- where you end up with 30
13 is definitely on the table. I said, and if we win -- and
14 this was the key for me. I said if we win, the problem
15 you've got is that you've still got this -- you are a
16 prohibited person under Federal law and your testimony --
17 they can take the -- law enforcement can take the
18 transcript of your testimony. You had a gun. You were
19 here with the issues you had in your background, they can
20 take that over to the Federal Prosecutors and say here is
21 a -- they caught a felon in possession, in this case, a
22 prohibitive person in possession of a firearm. I said I
23 have -- I had had at that point experience with Greenwood
24 and Laurens, in particular, that if somebody was on the
25 streets and they kept getting probationary sentences or

1 getting off or felt like this was a person that needed to
2 be taken out of the community, then those cases were
3 getting handed up to the Feds for prosecution. It was the
4 Federal way of helping community policing in both of these
5 communities. And I had two or three cases from Greenwood,
6 and in those cases a minimum sentence has been about three
7 and a half years, and the maximum had been somewhere
8 around seven and a half, eight. And I was like, you know,
9 you're in the ballpark already with this 10 year sentence.
10 If we can get them to take the Federal out of the mix -- I
11 mean, the problem was he could win, and then end up going
12 to Federal prison for, in essence, roughly the same amount
13 of time. And so, I didn't see any point in risking 30
14 years or life when you're getting this good -- you could
15 probably get -- there was no Federal prosecution imminent.
16 It was just, after being in a week of trial and seeing how
17 emotional that situation was for all the parties involved,
18 I certainly saw it as a real possibility, and that's we
19 took the extra steps to try to make sure that didn't
20 happen.

21 Q And in those discussions regarding the plea did you
22 explain to him the difference between negotiation,
23 recommendation and a straight up plea?

24 A I think I had that specific type of discussion. I
25 think I did say, of course, the effect -- this is going to

1 be a kind of dicey plea. I mean, we're not going to have
2 a recommendation. So you need to be ready when we get in
3 there. This would be a good opportunity to take some
4 responsibility for what happened, to express remorse,
5 especially to the victim's family. You know, try to use
6 it as an opportunity to kind of heal the community. You
7 all both have families that are still out there. Folks
8 that are still interacting with each other. This was a
9 bad situation that went -- went wrong in a lot of
10 different ways. It could have been different at any
11 point. If, a hundred different things had not lined up
12 the way they had we wouldn't even be here. I said
13 something like that would be helpful, because if the Judge
14 is going to be able to help you you've got to give him a
15 base on which to stand to do that.

16 Q Did he do that?

17 A When we got -- so, I said a little bit at the plea.
18 I tried to kind of set it up a little bit. Like say, hey
19 look, you know, everybody owns some piece of this pie.
20 This was a situation that happened and there's some fault
21 that can be assigned to every party that was involved.
22 And that's why we went so hard on stand your ground. And
23 I was thinking, okay, that's a good segue for Al to come
24 in, and then be able to play it out. Mr. Jones spent a
25 good bit of time talking about, you know, the situation

1 and, you know, how it wasn't something that Al had planned
2 and it was just -- he was making split second decisions.
3 And then what Al said -- all he said, I recall, is I'm
4 sorry. And when he said it, the way he said it, it came
5 across more like I'm sorry that I got to plea than I'm
6 sorry for what I've done. Now, I don't know that he meant
7 it that way. I didn't feel like he meant it that way. I
8 just knew that's what he sounded like to everybody else in
9 the courtroom, and in particular I was thinking golly,
10 that's just not good. That was not good.

11 Q Did you evaluate the atmosphere of the room,
12 potentially that affecting his sentence at all?

13 A I suspected it played a part, yes.

14 Q And I don't know if you heard Mr. Morgan's testimony
15 earlier, but he said he was promised an eight year plea
16 offer. Did you ever extend any of your plea offer and
17 promise that to him?

18 A No. I know we talked about here's what credit time
19 served would do for you on a 10 year sentence. And I'll
20 be honest. I didn't even -- if the Judge said 10 instead
21 of 12 and not given him credit for time served I don't
22 even think we'd be here. But because it was 12 with
23 credit and time served, you know, I saw that as the
24 Judge's way of getting to 10, but having a sentence that
25 reflected the seriousness of the offense.

1 Q Was -- from your conversations with Mr. Morgan did he
2 understand he could be sentenced anywhere between two and
3 30 years?

4 A Yes, I think so. I mean, I can't speak for what was
5 in his brain, but we certainly had talked about best case
6 scenario, worst case scenario, and why this kind of a plea
7 offer made sense for him.

8 Q Did he ever tell you he wanted to go to trial?

9 A No. I think when he left my office he -- I'm sorry.
10 When he left Mr. Jones' office after I had spoken with
11 him, the impression I had was that he was going -- he
12 wanted to think about what I said, if he was going to
13 consider it very seriously. So I think my expectation was
14 that I thought he was going to get back to us and say,
15 look, I want to do the deal. I mean, it was happening
16 fast. This was, I want to say, on a Thursday, at earliest
17 maybe Wednesday. But we were looking at a plea on Friday,
18 so this was -- things were going to be moving pretty
19 quick.

20 Q So in your conversations with Mr. Morgan nothing --
21 no part of the plea was ever promised or guaranteed?

22 A No, and I -- no. I mean, we did not have a
23 recommendation. We didn't have a negotiation. No.

24 Q Right. And who's decision was it to plead guilty?

25 A It was his.

1 Q Did you agree with that decision?

2 A I did, and even more so now. One of the things I was
3 -- when we were walking through all the hypothetical's,
4 you know, I said, look, if you lose, you do have an appeal
5 potentially on the stand your ground, because I did still
6 feel strongly that the element and the presumptions you
7 get when somebody's trying to carjack you, I felt like
8 that fit at least the words that were used in the statute.
9 What's changed between then and now is that the
10 application of stand your ground has been so severely
11 limited and -- in my opinion, and contrary to the words in
12 the statute. But in any event, it's clear that the
13 Appellate Courts have worked hard to clip stand your
14 ground wings to keep it from becoming more than it already
15 is. And so, I would have valued the appeal at a higher
16 level back in 2015 than I do today.

17 Q Okay. And if Mr. Morgan wanted to proceed to trial
18 what would you have done?

19 A We were ready to go. I mean, I had blocked off two
20 weeks. First week for the stand your ground and the
21 second week for the trial. As a matter of fact, it was
22 still on my calendar when I went back and pulled it up to
23 see what time I had spent in Greenwood, so we -- I know we
24 were ready to go. I mean, this was -- stand your ground
25 was a dress rehearsal.

1 Q So you would have taken it to trial if he wanted to
2 go to trial?

3 A Yes, absolutely.

4 Q And you felt prepared to do so?

5 A We were beyond prepared, yeah.

6 MS. GREGORY: No further questions, Your Honor.

7 CROSS-EXAMINATION

8 By Ms. McMahan:

9 Q In 2016 did you appeal the stand your ground between
10 the denial of that hearing and a trial?

11 A I don't think so. Now, you're pushing me on dates.
12 I know I had had -- I think that was one of maybe three
13 lawyers that actually got to argue a direct appeal from a
14 trial denial of stand your ground, but then they issued
15 opinions.

16 Q So in order to really fully appeal the stand your
17 ground kind of, I hate using this term, flush out that
18 subject, you would have had to continue on to a trial?

19 A You know, that wasn't exactly clear. I think I
20 talked to -- it is now, I think. But at the time I had a
21 phone call with Appellate Defense just to see what they
22 thought, whether or not the plea was going to cut you off
23 from immunity. I've been through the ringer with that in
24 a death penalty case, although it didn't involve immunity.
25 It involved being able to have a jury trial and a

1 sentencing. So I was really up to speed on what a plea
2 meant and how the Supreme Court had interpreted that. And
3 I thought maybe if you're immune from being prosecuted on
4 the front end, then the plea is really irrelevant. You
5 were either immune before you gave the plea or you
6 weren't. But I thought at least a colorful issue there,
7 enough to call Appellate Defense about it.

8 Q And did you hear Mr. Morgan's testimony earlier that
9 you guys had a conversation where he suggested to you
10 would you take five years? Do you remember anything like
11 that?

12 A I don't -- I don't remember -- I don't remember
13 talking about five years. I'm not saying that that didn't
14 happen. I have -- I was -- I had another case that I was
15 doing in Laurens that was involving stand your ground.
16 And so, I was having ongoing communications with the
17 Solicitor and Assistant Solicitor about those cases, and
18 this would have maybe been very early in the process. I
19 knew we didn't have any offer. I figured, well, if we
20 start out five maybe I can get them to move a little bit
21 so I don't have to go through stand your ground. But that
22 didn't go anywhere.

23 Q Do you recall ever having a phone conversation with
24 Futch on a speaker phone and talking to him with Mr.
25 Powers there too, in Townes' office?

1 A I just -- I can't say that didn't happen, but I don't
2 have an independent recollection of that.

3 Q And so, at the time during the plea offer Mr. Jones
4 testified that you kind of took him back -- when I say
5 him, Mr. Morgan back into Townes' office --

6 A Right.

7 Q -- and it was just you two.

8 A That's correct.

9 Q Was that like kind of one of the first times that you
10 guys had met privately without a family member present
11 with Mr. Morgan?

12 A No. I'm virtually certain on the 29th -- January
13 29th, when he came to my office in Greenville and we
14 practiced his cross-examination, that would have been just
15 me and Mr. Morgan. And I say his brother wasn't there. I
16 remember we talked a little bit afterwards. But my
17 general practice is I do that in my office with the --
18 with the client so we had a little bit of privacy in case
19 something comes up with attorney/client privilege.

20 Q So there might be a family member that's sitting in
21 the waiting room but they're not in your office?

22 A Right. My memory is it was just me and Mr. Morgan
23 either in my -- in my office or my conference room going
24 through his cross-examination.

25 Q And so, then the conversation you had in Townes'

1 personal office, what was the basis just of that
2 conversation?

3 A We were trying to see if we could get this case to a
4 position to where it could be plead. That's what I think.

5 Q Do you recall any specifics about that conversation?
6 Anything that Mr. Morgan had asked you or you guys
7 discussed?

8 A When I was -- previously when I was answering that
9 question, you know, I went through -- if you want to go
10 back through it, you know, I will. But --

11 Q No, no. I have like -- I have those --

12 A I don't remember anything -- yeah, I don't remember
13 anything additional than what I just talked about.

14 Q So you don't remember anything like specific
15 questions he may have asked? Just kind of what you've
16 already testified to as to what the general conversation
17 was about?

18 A He may have said, well, what do you think. And
19 that's when I would have said, you know, look, you've
20 hired us to give you advice objectively. You know, we're
21 not -- the emotions of it, you know, we're not the ones
22 that -- you know, we're looking at this with experience
23 and being able to say this is what we see and why we think
24 this is a good deal. So I would have said, if I'm in your
25 shoes I'd take this. You know, I couldn't come up with a

1 reason why it made sense to go to trial if we were in the
2 ballpark of 10, because I really felt like with the
3 potential of a Federal offense out there, it just didn't
4 make any sense. He could end up doing jail time even if
5 we won the case, and significant time on the Federal, so.

6 Q And so, you had said earlier that you had a couple of
7 times at least, I guess, from the Eighth Circuit had
8 issues come up like that where the Solicitor had contacted
9 the AUSA.

10 A Right, yeah. Probably it was -- they had a guy they
11 couldn't -- they just couldn't get good evidence on for
12 drugs or whatever. And so, then they might find a gun
13 near him, and then they would -- they knew they weren't
14 going to be able to get -- you can be a felon in
15 possession in Federal Court and not in State Court. You
16 can be prohibited in Federal and not in State Court.

17 Q Uh-huh.

18 A It has to be a violent offense in State Court. It
19 doesn't have to be a violent offense in Federal Court.
20 Just have to be carrying more than a year, or some other
21 prohibitive aspect of it. So yes, I have seen that
22 happen. I have represented clients who were otherwise not
23 really doing anything. Like one guy was on probation and
24 the officers came in and found a gun in one of the
25 bedrooms. And at the end of the day I was pretty

1 convinced, they felt like he was still involved in drugs
2 but they couldn't catch him. So this was the easiest way
3 to get him out of the community.

4 Q Okay. So it had been your experience with that?

5 A Yes. I had clients from Laurens and from Greenwood
6 that have gone through that. I think it was called the
7 Summer of Silence, or something. I mean, it was like a
8 Federal program.

9 Q Okay.

10 MS. MCMAHAN: Court's indulgence, Your Honor. I have
11 nothing further, Your Honor.

12 THE COURT: Any redirect related to what she went
13 into?

14 MS. GREGORY: No, Your Honor.

15 THE COURT: Thank you, sir. You may step down.
16 Watch your step as you're stepping down. Any reason why
17 the witness could not be excused?

18 MS. GREGORY: No, Your Honor.

19 MS. MCMAHAN: No, Your Honor.

20 THE COURT: Thank you, sir. You may be excused.

21 (Whereupon, the witness stepped down from the witness
22 stand.)

23 MS. GREGORY: The State rests, Your Honor.

24 THE COURT: Any witnesses in reply?

25 MS. MCMAHAN: No, Your Honor.

1 THE COURT: Okay. I'll let you know.

2 MS. GREGORY: Thank you, Your Honor.

3 MS. MCMAHAN: Thank you, Your Honor.

4 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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1 CERTIFICATE OF REPORTER
2
34 State of South Carolina)
5 County of Newberry)
6
78 I, Joy E. Holston, Official Court Reporter for the
9 Eighth Judicial Circuit of the State of South Carolina, do
10 hereby certify that the foregoing is a true, accurate and
11 complete transcript of record of the proceedings had and
12 evidence introduced in the trial of the captioned case,
13 relative to appeal, in the County of Greenwood, South
14 Carolina on the 13th day of March 2020.15 I do further certify that I am neither of kin,
16 counsel nor interest to any party hereto.
1718 October 26, 2020
1920 *Joy E. Holston*
21 _____

22 Joy E. Holston, Court Reporter

23 My Commission expires: May 2, 2026
24
25

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

Alfonso Morgan, Jr., #257372,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEA
FOR THE EIGHTH JUDICIAL CIRCUIT

Case No.: 2018-CP-24-00705

ORDER OF DISMISSAL

This matter comes before this Court by way of an application for post-conviction relief filed on August 3, 2018, by Alfonso Morgan, Jr. (Applicant). The State (Respondent) filed a return and motion for more definite statement on December 4, 2018, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on March 13, 2020, at the Laurens County Courthouse. Applicant was present at the hearing and represented by Ashley A. McMahan, Esquire. Assistant Attorney General Janell H. Gregory of the South Carolina Attorney General's Office appeared on behalf of Respondent. At the hearing, Applicant testified on his own behalf. W. Townes Jones (Jones), Esquire, James W. Bannister (Bannister), Esquire, and former Captain of the Greenwood Police Department, Nick Futch (Futch) also testified. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof and denies and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenwood County Clerk of Court. During its May 2015 term, the Greenwood County Grand Jury indicted Applicant for murder (2015-GS-24-0728).



Applicant was represented by Jones and Bannister. Solicitor David Stumbo, and Assistant Solicitor Yates Brown of the Eighth Circuit Solicitor's Office prosecuted the case. In January 2016, Applicant filed a motion seeking immunity from prosecution pursuant to the South Carolina Protection of Persons and Property Act. On February 1, 2016, a pre-trial hearing was commenced on the motion in the Greenwood County Court of General Sessions before the Honorable Eugene C. Griffith, Jr. At the conclusion of the multi-day hearing, Judge Griffith denied Applicant's motion for immunity from prosecution. Thereafter, on February 5, 2016, Applicant pled guilty to the lesser-included-offense of voluntary manslaughter. After accepting Applicant's plea, Judge Griffith sentenced Applicant to twenty-five years suspended upon service of twelve-and-a-half years with three years' probation after the end of the community supervision.

Applicant filed a timely notice of appeal raising the following issues:

1. The trial court's denial of immunity in a hearing under the Protection of Persons and Property Act is appealable after a defendant pleads guilty to a lesser-included offense.
2. The trial court erred in denying appellant immunity under the Protection of Persons and Property Act because Appellant was sitting in the back seat of a car when he was attacked by the decedent.

Appellate Defender Robert M. Pachak of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction in an unpublished opinion on June 6, 2018. State v. Morgan, Op. No. 2018-UP-233 (S.C. Ct. App. filed June 6, 2018). The remittitur was returned to the circuit court on June 22, 2018.

Applicant filed a timely application for post-conviction relief on August 3, 2018, alleging:

1. Ineffective Assistance of Counsel
 - a. "where if the defendant had had the actual documentation of the states case, there is reasonable probability that for counsel's unprofessional errors, the result of the proceedings would have been different"
 - b. "deficient performance created ineffective assistance of counsel from lack of due diligence would of produced the investigation

reports, statement of Captain Futch and secured his testimony..."

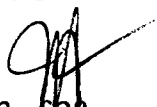
- c. "The states investigation and facts from witness statements concluded beyond doubt, meeting the requirements in State v. Douglas, for self-defense and stand your ground if not for the unprofessional errors"
- d. "Here Mr. Town violated this trust by out-sourcing to Mr. Bannister not only failed at calling Mr. Futch as a witness for the defense but who also has a political relationship with the solicitor David Stumbo creating prejudice and a serious conflict of interest"
- e. "Counsel failed to articulate a valid strategy for failing to call either investigator to testify at the immunity hearing as such defendant's trial counsel was deficient for failing to call either investigative expert to challenge the state's alleged claim of murder, although stand your ground was proven at immunity hearing prior to being induced to plea while not knowingly or intelligently doing so."
- f. "Counsel did not call to the stand either investigator witness during the hearing, even though he knew the state would attempt to admit evidence of no self-defense"
- g. "thus these elements prejudiced defendant as elements of ineffective assistance of counsel since captain futch's investigation proved self-defense testimony that reasonably could have resulted in a different outcome at immunity hearing or at trial thus meeting the 2 requirements of the prongs Strickland v Washington, 466 US 668 (1984) where counsel's performance fell below an objective standard of reasonableness and prejudice and if not for the counsel's errors and deficient performance, the result of the proceedings would have been different."

2. Involuntary Guilty Plea

- a. "Counsel for defendant prejudiced Defendant into accepting a non-negotiated or recommendation plea under their direction and advisement that was not favorable to the defendant based from the state's own evidence"

3. Brady violations

- a. "The state created bias and prejudice by violating due process rights of disclosure under Brady 5/6 material and not providing all case material and withholding police narrative reports to the defendant for his personal inspection and to the court from its own investigation from Capt. Futch, the state's first investigator of the court before this honorable court, US v. Stokes"
- b. "Here, the state, solicitor and the defendant's counsel of record failed to do-provide these provisions of law. When a defendant or defendant's counsel at any time prior to sentencing, the due process clause and the US constitution requires all Brady material, it is the responsibility of the state to make sure that any and all evidence, material is presented to the defendant for his personal inspection so that he is knowingly part of the case and understanding the material



as it is imperative for the defendant to know what he is to defend against and not just trust what his counsel may or may not provide, *Parkus v Delo*, 33 F.3d 933 (8th cir. 1994).”

On March 3, 2020, Applicant filed an amended application setting forth two additional allegations of ineffective assistance of counsel:

1. Ineffective Assistance of Counsel

- i. Counsels were ineffective when they informed the Applicant he would be pleading to a ten-year plea deal; not the twelve years he ended up with.
- ii. Counsels were ineffective when they did not call Nick Futch as a witness in the stand your ground hearing.

On March 13, 2020, Applicant proceeded to an evidentiary hearing before the Honorable J. Mark Hayes, II, at the Laurens County Courthouse. Applicant was represented by Ashley A. McMahan, Esquire. Assistant Attorney General Janell H. Gregory of the South Carolina Attorney General’s Office represented the State.

SUMMARY OF FACTS

On the night of November 14, 2013, Captain Hugh Butler of the Greenwood Police Department was alerted of a fight taking place at the Triangle Social and Senior Citizens Club, which was colloquially known as the Cabstand, and quickly began heading to that location. (Hearing Tr. 311.) As he made his way there, Captain Butler received a follow-up report indicating someone had been shot at the club. (Hearing Tr. 311.) Moments later, he arrived at the scene and observed numerous people running around in a frantic manner. (Hearing Tr. 312.) Captain Butler then attempted to ascertain what had transpired but received no assistance from most of the people present at the scene. (Hearing Tr. 307.) However, one individual approached him and reported he saw the victim engaged in an argument with an unknown person seated in a black Chevrolet Impala, the door to that vehicle swung open, the victim was shot, and the vehicle sped off. (Hearing Tr. 313-314.) Critically, that individual also provided Captain Butler with the license tag number

of the vehicle involved in the shooting, and the captain quickly alerted his fellow officers to be on the lookout for the shooter's vehicle. (Hearing Tr. 314.)

Shortly thereafter, Jamaal Aiken (Victim), the person who was shot in the parking lot of the club during the incident, died at the hospital as a result of the injuries he sustained in the shooting.¹ (Hearing Tr. 174, 182, 260, 285-286, 312, 318.) Meanwhile, officers quickly tracked down and arrested Applicant at the home of Lenwood Ramsey, the owner of the black Chevrolet Impala involved in the shooting.² (Hearing Tr. 203, 212-213, 364-365.) Following his arrest, Applicant was transported to the police department and interviewed. (Hearing Tr. 365-366.) However, he invoked his rights and declined to provide a statement that night. (Hearing Tr. 367.)

Thereafter, several months later, Applicant arranged to speak with officers with the assistance of defense counsel and provided a statement about the shooting. (Hearing Tr. 369.) In that statement, Applicant alleged he went to the Cabstand on the night of the shooting with a .44-caliber revolver he purchased after "doing time."³ Once there, Applicant indicated he got a "funny feeling" and left. After that, Applicant stated he was alerted one of his friends had been "jumped" and he returned to the club in response. When he got back to the club, Applicant claimed Victim approached his car in an "enraged" manner and snatched the door open. At that point, Applicant stated he shot Victim. Then, Applicant stated he directed the driver of the vehicle he was in to go, they travelled to Ramsey's house, he hid the gun he used to shoot Victim underneath a pile of leaves, and he was eventually arrested by the police.

¹ While Victim was at the hospital, his pants were removed and a stolen .380-caliber pistol was discovered in his pocket along with twenty-eight grams of marijuana. (Hearing Tr. 256-258.)

² During the immunity hearing, Tonya Fuller indicated law enforcement officers arrived at that location only five minutes after Ramsey and Applicant returned to the home after the shooting. (Hearing Tr. 193-194, 200.)

³ Notably, Applicant did not have a concealed weapons permit for that weapon. (Hearing Tr. 499.)

Following the interview, Applicant was indicted for murder as a result of Victim's death, and he filed a motion seeking immunity from prosecution before his case was called to trial. (Hearing Tr. 9-12.) In response, the circuit court judge conducted a pre-immunity hearing in regard to Applicant's motion. (Hearing Tr. 7.)

During the hearing, defense counsel presented the testimony of numerous witnesses who offered varying accounts of the shooting. (Hearing Tr. 18-68, 186-228, 260-319.) Regarding those accounts, Thomas Gilchrist, who was known as "Bug," testified he went to the Cabstand with Applicant on the night of the incident, they stayed for a little while, Applicant indicated he wanted to leave before anyone got into trouble, and they left the club. (Hearing Tr. 18-20, 28-30.) A short time later, Gilchrist stated Applicant received a call and indicated they needed to return to the club, they returned together in Ramsey's car, they observed a commotion near the door to the club, Victim walked alone towards their car "in a frenzy," Victim opened the rear door of the car and made an insulting comment to Applicant, and then Victim tried to reach into the car and pull Applicant out. (Hearing Tr. 31-36, 57-59, 68.) At that point, Gilchrist indicated Applicant suddenly shot Victim before closing the door and directing Ramsey to drive them away. (Hearing Tr. 37, 59.) After that, Gilchrist indicated they returned to Ramsey's home, he eventually returned to the scene of the shooting, and he falsely claimed to have observed the incident from outside the vehicle to a police officer he encountered there. (Hearing Tr. 38- 43, 65.) Similarly, Ramsey testified he went to the Cabstand on the night of the incident before returning to his home with Applicant and some other individuals after Brent Williams (Brent) slapped Applicant's hat and cursed at him inside the club. (Hearing Tr. 202 - 208, 217.) After that, Ramsey indicated he returned to the club with Applicant and Gilchrist after Applicant was advised someone had "jumped on" an individual called "Crip," they pulled into the club's parking lot, he heard the door



to the car open, he heard Victim yell some angry words, he heard a gunshot, and then Applicant directed him to drive away. (Hearing Tr. 208-212, 221.) Conversely, Brent testified he went to the Cabstand on the night of the incident with Victim and some other people, he got into a fight with Brown after Brown looked like he was going to hit his female cousin, Victim broke up the fight and helped get everyone outside of the club, and they exited the club. (Hearing Tr. 258, 267-268, 275-278, 294.) Once they were outside, Brent stated Victim walked over to Ramsey's car possibly to let Applicant and his associates know the club had been closed, Victim appeared to partially open the vehicle's door and greet Applicant, and then Applicant suddenly shot Victim. (Hearing Tr. 279-283, 285-286, 299-300.) Brent further asserted Victim did not curse at Applicant, hit anyone, behave in an aggressive manner, or pull out a gun before he was shot.⁴ (Hearing Tr. 285, 293, 296, 300.) Additionally, Captain Butler recounted what he was told at the scene by the unknown eyewitness to the shooting. (Hearing Tr. 313-314.)

In addition to that testimony and evidence, Applicant elected to personally testify during the immunity hearing about what allegedly transpired on the date of the incident. (Hearing Tr. 360.) Specifically, Applicant indicated he went to the Cabstand that night, Brent slapped his hat and told him to "get some balls" while he was at the club, he got a "funny feeling" about what occurred, he left the club after showing the concealed pistol he was carrying to "Crip," and he returned to Ramsey's home. (Hearing Tr. 361, 370, 374-377, 382-383, 395.) While there, Applicant asserted he was contacted and alerted "Crip" had been jumped so he returned to the club.⁵ (Hearing Tr. 361-362, 384, 397.) Thereafter, Applicant stated they pulled into the parking

⁴ Regarding the victim, Brent noted Victim was known as "Smooth" based on his cool, calm, collected, and easy going personality. (Hearing Tr. 305.)

⁵ During the immunity hearing, Shay Simon, who was the person that allegedly contacted Applicant about the fight that occurred inside the club after he left, testified on Applicant's behalf but indicated she did not actually observe the shooting in light of the fact she was not outside when

lot, Victim walked alone towards the vehicle with a "mean look on his face," Victim yanked the door opened and leaned in, Victim cursed him, Victim reached into the vehicle, and he responded by pulling out a gun and shooting Victim. (Hearing Tr. 362-364, 384- 386, 398- 399, 408.) After that, Applicant stated he returned to Ramsey's home, hid the gun he used to shoot Victim in Ramsey's backyard, and was subsequently arrested. (Hearing Tr. 364-365, 403.) Applicant further claimed he thought Victim was going to pull him from the vehicle to assault him and believed it was "[Victim's] life or [his own]" at the time he fired the fatal shot. (Hearing Tr. 385, 387.)

Furthermore, defense counsel presented the testimony of Dr. Brett Woodard, who conducted Victim's autopsy and was an expert in forensic pathology. (Hearing Tr. 169-170.) During his testimony, Dr. Woodard discussed the trajectory the bullet Applicant fired took through Victim's body and opined it could have been consistent with the narrative defense counsel presented to him, which was Victim was shot while reaching into the vehicle Applicant was seated in. (Hearing Tr. 193, 178-179.) However, Dr. Woodard expressly indicated the narrative presented by defense counsel constituted just one possibility as to how Victim was shot and was not the only possibility, and he stated he could not conclude any one possibility was more probable than another without having additional evidence. (Hearing Tr. 180.) Dr. Woodard further opined Victim could have been shot as he approached the vehicle and indicated he believed Victim "would have [had] to be back more than five to six feet in order to get the terminal ballistics" seen in Victim's body. (Hearing Tr. 181, 185.)

Beyond the testimony and evidence presented by defense counsel, the solicitor offered the testimony of several witnesses who presented accounts of the shooting that differed sharply from

it occurred. (Hearing Tr. 344, 350-351.) However, she did claim to have observed Victim grab or punch Robinson during the fight that occurred inside the club prior to the shooting. (Hearing Tr. 349, 355.)

the accounts offered by Applicant and his witnesses. (Hearing Tr. 409-413, 416-449, 454-475, 479-497.) Regarding those accounts, Demecus Sayles, who was present at the club on the night of the incident, testified he was in the club's parking lot when a Chevrolet Impala pulled up without parking, the vehicle's back window rolled down, and someone fired a shot from inside. (Hearing Tr. 416-420.) Sayles further stated Victim did not approach the vehicle, open the vehicle's door, say anything to anyone inside the vehicle, or engage in an argument with anyone inside of the vehicle prior to being shot right after he walked outside of the club. (Hearing Tr. 420-422, 431, 437.) Similarly, Drina Morgan (Drina) testified she was at the club on the night of the incident, she observed Victim help break up a fight that occurred inside the club after Applicant had left, she went outside of the club with Victim after the fight, she saw Ramsey's car pull into the club's parking lot with its headlights off, and she watched Applicant shoot Victim from inside the vehicle before the vehicle quickly sped away. (Hearing Tr. 454, 457-462, 469.) Drina further testified Victim did not approach Ramsey's vehicle, grab the vehicle's door, open the vehicle's door, or argue with anyone inside the car prior to the shooting. (Hearing Tr. 463, 465, 472, 474.) Additionally, Shanina Williams (Shanina), who was Victim's fiancée at the time of his death, testified she was present at the club on the night of the shooting, observed Victim help get her brother outside the club after her brother got into a fight, saw a car pull into the club's parking lot with its headlights off, heard a gunshot, and then heard Victim state he had been shot by Applicant. (Hearing Tr. 479-480, 483-488.) Shanina further indicated Victim did not hit anyone, pull anyone to the ground, say anything to Applicant, or do anything to prompt Applicant to shoot him on the night of the incident. (Hearing Tr. 491-492, 497.)

Furthermore, the solicitor introduced a recording of Applicant's statement to police in regard to the shooting, and the circuit court judge reviewed that recording.⁶ (Hearing Tr. 399-400.) Following the presentation of that testimony and evidence, defense counsel readily acknowledged some of the facts involved in Applicant's case were in dispute but nonetheless argued Applicant had satisfied his burden of establishing he was entitled to immunity from prosecution. (Hearing Tr. 500-515.) In support of that argument, defense counsel contended Victim had alcohol and marijuana in his system at the time of his death while further noting Victim was in possession of a stolen pistol on the night he was killed. (Hearing Tr. 503.) Furthermore, defense counsel contended the "competent" evidence presented during the immunity hearing established Victim approached the black Chevrolet Impala and opened the door, which he asserted triggered the protections of the immunity statute and permitted Applicant to act in self-defense and in defense of the vehicle. (Hearing Tr. 507-508, 510, 512, 514.) In rebuttal, the solicitor argued Applicant was not entitled to immunity from prosecution based on the testimony and evidence that had been presented. (Hearing Tr. 510-530.) In support of that argument, the solicitor noted numerous facts were in dispute in Applicant's case and contended those factual disputes could best be resolved by a jury. (Hearing Tr. 516-517.) Specifically, the solicitor pointed out factual disputes existed in regard to what happened inside the club while Applicant was still present, what happened inside the club after Applicant left, what role Victim played in the fight that occurred inside the club, and what actions Victim took towards the vehicle Applicant was in after exiting the club. (Hearing Tr.

⁶ During his immunity hearing testimony, Applicant acknowledged he did not indicate in his statement to law enforcement Victim was reaching into the vehicle at the time of the shooting. (Hearing Tr. 399-400.) After making that acknowledgement, Applicant initially attempted to explain that significant omission by claiming he was not asked that question during the interview before contending he actually physically demonstrated Victim was reaching into the car while speaking to the detective who conducted the interview. (Hearing Tr. 399-400.)

517-520.) Furthermore, the solicitor contended Applicant's testimony during the immunity hearing was the only testimony presented suggesting Victim was trying to remove him from the vehicle and was inconsistent with Applicant's earlier statement about the shooting. (Hearing Tr. 520-521.) For those reasons, the solicitor asserted the evidence supported a conclusion the shooting was unjustified and Applicant's request for immunity should be denied. (Hearing Tr. 525.)

Thereafter, upon considering the arguments of counsel, the circuit court judge denied Applicant's motion seeking immunity from prosecution. (Hearing Tr. 531.) In denying the motion, the circuit court judge concluded Applicant failed to meet his burden of establishing by a preponderance of the evidence he was entitled to immunity from prosecution in light of the factual disputes that existed regarding what actually occurred. (Hearing Tr. 531.) Due to the existence of those factual disputes, the circuit judge concluded Applicant's case should properly be resolved by a jury. (Hearing Tr. 531.)

Following Judge Griffith's ruling, Applicant decided to enter a guilty plea two days later to the lesser-included offense of voluntary manslaughter and appeared before the circuit court judge to do so. (Hearing Tr. 532-533.) During the plea hearing, Applicant indicated he wished to waive his right to trial and plead guilty, and he confirmed he wanted to enter a guilty plea after considering everything associated with his case, including the defenses he could present. (Hearing Tr. 533, 537, 540-542.) Likewise, defense counsel confirmed Applicant understood he was pleading guilty to an intentional killing and indicated he was in agreement with Applicant's decision to plead guilty. (Hearing Tr. 534-535.) Applicant then pled guilty to voluntary manslaughter and indicated he did, in fact, commit the offense. (Hearing Tr. 542-543.)

Following the entry of that plea, defense counsel confirmed he believed the facts of what transpired fit the offense of voluntary manslaughter. (Hearing Tr. 550-552.) Applicant then apologized and expressed remorse, and Judge Griffith accepted Applicant's guilty plea. (Hearing Tr. 558.) Applicant was then sentenced to a twenty-five-year term of imprisonment and directed the remaining balance of that sentence be suspended to a three-year term of probation following the service of twelve-and-a-half years of the sentence. (Hearing Tr. 558.)

ALLEGATIONS RAISED

On March 13, 2020, Applicant's post-conviction relief hearing was held at the Laurens County Courthouse. Applicant was represented by Ashley A. McMahan, Esquire. Assistant Attorney General Janell H. Gregory of the South Carolina Attorney General's Office represented the State. At the evidentiary hearing, Applicant proceeded on the following allegations:

1. Ineffective Assistance of Counsel

- i. Counsels were ineffective when they informed the Applicant he would be pleading to a ten-year plea deal; not the twelve years he ended up with.⁷
- ii. Counsels were ineffective when they did not call Nick Futch as a witness in the stand your ground hearing.

SUMMARY OF TESTIMONY AT EVIDENTIARY HEARING

Applicant's Testimony

Applicant testified after his arrest he was in the detention center for nine months, and then on house arrest once he was released. Applicant testified Jones was retained by his family to represent him. Applicant testified Bannister joined his defense after Jones retained his services to assist him with the immunity hearing. Applicant testified he met with Jones a few times when he

⁷ This allegation is also construed as an involuntary guilty plea allegation.

was in the detention center and a few times when he was on house arrest. Applicant testified they went over a discovery during those meetings.

Applicant testified the ultimate issue he has with Jones and Bannister is the plea offer. Applicant testified his understanding was that he would receive an eight year sentence when he pled guilty. Applicant testified after his motion for immunity was denied, he went back to Jones' office and was asked if he would take an eight year plea offer. Applicant testified he trusted Jones and Jones said the plea was the best way to go. Applicant testified Jones told him the plea had to be done by Friday. Applicant testified he went in and signed papers on Friday morning. Applicant testified he told the judge he had not been promised anything during the plea colloquy because he thought it would still be an eight year sentence. Applicant testified, had he known it was not an eight year sentence, he would not have taken the plea offer. Applicant testified after the plea hearing he spoke to Jones and Jones told him he did not know what went wrong.

Applicant testified Bannister was brought in to help Jones with the immunity hearing. Applicant testified he believed he had a strong defense in his case because he believed he met all of the criteria for the stand your ground defense. Applicant testified he had conversations with Jones regarding the immunity hearing. Applicant testified, prior to the immunity hearing, Bannister asked him if he would take a five year plea offer, but Applicant testified he was not interested in pleading guilty at that time. Applicant testified Futch was the lead investigator in his case. Applicant testified several different reports were entered regarding the incident by police officers and Futch. Applicant testified Futch was not subpoenaed by Jones or Bannister and he was not called as a witness during the immunity hearing.

On cross-examination, Applicant testified going to trial was "on the table." Applicant testified after his motion for immunity was denied he chose to plead guilty. Applicant testified he

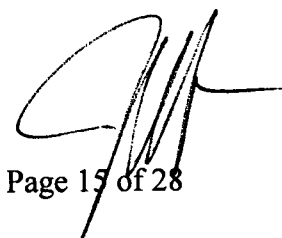
did not recall Judge Griffith telling him the penalty for voluntary manslaughter was two to thirty years. (GP Tr. 534, line 20.) Applicant testified he recalled telling Judge Griffith that he was not promised anything in exchange for his guilty plea, but testified that he told Judge Griffith that because he trusted Jones and had signed the plea deal. Applicant testified he recalls Judge Griffith stating the only negotiation for the plea was that he be allowed to plead guilty to the lesser-included-offense of voluntary manslaughter. (GP Tr. 540.) Applicant testified he recalled Judge Griffith explaining he would have to serve 85% of the sentence imposed by the court. (GP Tr. 540.) Applicant testified he recalled telling Judge Griffith that he was in fact guilty of voluntary manslaughter. (GP Tr. 543.) Applicant testified he recalled waiving his constitutional rights and telling Judge Griffith that he had enough time to talk to his attorneys. Applicant testified he provided those answers to the court because he was doing what his attorney told him to do. Applicant testified Jones told him it was a good deal, so he put his trust in Jones. Applicant testified Jones did not tell him how to answer the questions during the colloquy. Applicant testified Jones did not tell him the questions Judge Griffith would ask him during the plea hearing. Applicant testified he was aware that he would have to proceed to trial on Monday if he did not enter his guilty plea on Friday.

Jones's Testimony

Jones testified he has been practicing law for over thirty-five years. Jones testified he was the elected solicitor for many years. Jones testified his private practice was 80-90% criminal defense. Jones testified he was retained in November 2014 and represented Applicant up until his guilty plea on February 5, 2016. Jones testified he met with Applicant eight to ten times while he was in the detention center, and a total of thirty to fifty times in preparing Applicant's defense. Jones testified he had successfully represented Applicant on several other charges prior to this

incident. Jones testified he spoke to the investigators in Applicant's case prior to meeting with Applicant. Jones testified investigators had already taken statements from the two friends Applicant was in the vehicle with at the time of the incident. Jones testified the two statements both stated that Applicant shot Victim. Jones testified there were several other fairly credible witnesses who also told officers Applicant shot Victim. Jones testified Applicant told officers they had the wrong guy when he was arrested. Jones testified Applicant told officers he was leaving the club when the shooting happened. Jones testified he went and confirmed the statements with the witnesses who were in the vehicle with Applicant at the time of the incident and they all said Applicant yelled, "Go, Go, drive!" after the shooting. Jones testified the witnesses drove to the gas station after the shooting because they were scared. Jones testified the witnesses stated Applicant made them drive to one of the witness's residence. Jones testified the witnesses stated Applicant had the gun when he got out of the vehicle, however, when he came inside the residence a little while later, he did not have the gun. Jones testified he told Applicant's mother they had work to do because they had an issue with witnesses. Jones testified Applicant shot Victim without provocation, fled the scene, and hid the gun in one of the witness's backyard under some leaves. Jones testified he explained to Applicant that fleeing the scene can be charged to the jury as evidence of guilt. Jones testified he explained to Applicant that hiding the firearm under the leaves was also evidence of guilt.

Jones testified the first few meetings he had with Applicant was about getting him re-interviewed by law enforcement. Jones testified he got the police to re-interview Applicant so he could explain that he was scared of Victim. Jones testified he told Applicant he needed to tell the police the truth and be convincing and thorough about his fear of Victim. Jones testified Applicant



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provided a statement that he concluded to be the truth, but he does not know how believable the statement was. Jones testified it was sufficient enough to establish Applicant's version of the facts.

Jones testified he hired a private investigator to assist him in investigating Applicant's case. Jones testified Applicant's brother questioned why they were not pursuing a "stand your ground" defense more aggressively. Jones testified he told Applicant's brother they could do that and that is why Jones asked around about what attorney was the best in presenting a stand your ground defense. Jones testified Bannister's name came up many times, so he approached him about assisting Jones with Applicant's case. Jones testified he discussed Bannister's involvement with Applicant and his family and they did not object to Bannister's involvement. Jones testified he paid Bannister, not Applicant. Jones testified he was the lead attorney on Applicant's case.

Jones testified Applicant's testimony at the immunity hearing was unimpressive. Jones testified Applicant did not seem to understand that it was the most important testimony he would ever give in his life. Jones testified he did not once turn to the judge and explain he had no choice, he had to shoot Victim. Jones testified Applicant never told the judge Victim made him do it. Jones testified he believes he did subpoena Futch for the immunity hearing. Jones testified Futch was present at the immunity hearing and he spoke to him. Jones testified he did not call him to the stand because Futch never believed this was a self-defense case. Jones testified the best thing Futch said was that he didn't oppose a manslaughter charge. Jones testified Futch never said Applicant's case was a self-defense case.

Jones testified the solicitor's office was not initially willing to make a plea offer in this case. Jones testified after the immunity hearing, Judge Griffith asked them to start negotiations. Jones testified they discussed manslaughter and that the sentence would be two to thirty years. Jones testified Solicitor Stumbo (Stumbo) would not recommend a sentence or provide a

negotiated plea in Applicant's case. Jones testified he told Judge Griffith and Stumbo that he would try to get Applicant to consider a plea around ten years. Jones testified he, Bannister, Applicant, and Applicant's family went back to Jones' office where they had a "spirited discussion" about how they would proceed. Jones testified Bannister asked to speak to Applicant alone in Jones' office. Jones testified they were in his office for about thirty minutes. Jones testified when Bannister came back out, he was told Applicant would take the plea if they could get the judge to consider a ten year sentence. Jones testified Applicant's decision was based on losing the immunity hearing and the possibility of being charge federally for a firearm violation. Jones testified the goal was to have Applicant plea to a manslaughter charge and hopefully get a ten year sentence. Jones testified he got the judge to agree that he would consider the ten year sentence and credit for time served. Jones testified Stumbo asked Judge Griffith, if he were to give Applicant ten years, to give Applicant twenty years suspended to ten years. Jones testified he explained to Applicant that he would have to make up his mind and enter a plea on Friday, because, if Applicant decided not to enter the plea, they are headed for a trial on Monday. Jones testified he was prepared for trial on Monday.

On cross-examination, Jones testified, prior to the plea, he discussed Applicant's constitutional rights with him, possible defenses, and reviewed the sentencing sheet with Applicant. Jones testified he reads the sentencing sheet with every client that pleads guilty. Jones testified he explained sentencing recommendations and negotiations and pointed out to Applicant that neither were marked on his sentencing sheet as Applicant's was not negotiated and the State was not providing a sentencing recommendation. Jones testified the sentencing sheet was not filled out when he signed it, nor did it state the sentence was eight years. Jones testified he told Applicant many times that the ten years he hoped to receive was not guaranteed. Jones testified

he told Applicant he felt 90% sure the judge would sentence him in the range of ten years. Jones testified he told Applicant that he could go to trial. Jones testified he never promised Applicant an eight year sentence. Jones testified the judge did not commit to any sentence during their discussion. Jones testified the judge said he would give "strong consideration" to the ten year sentence, but could have sentenced Applicant anywhere from two years to thirty years. Jones testified he explained that to Applicant.

Jones testified he believes Applicant's decision to plead guilty was in his best interest. Jones testified the benefit of Applicant pleading guilty was that he plead to the lesser-included offense of voluntary manslaughter, federal charges were not going to be pursued, and a defense of self-defense at trial would have been a tough defense to pursue.

Bannister's Testimony

Bannister testified he has been practicing law for almost twenty-five years. Bannister testified that almost half of his practice has been 80-90% criminal law. Bannister testified he became involved with Applicant's case after he got a call from Jones explaining there were stand your ground implications in Applicant's case. Bannister testified he went to Greenwood on eight different occasions and Applicant came to his office in Greenville once to practice his direct and cross-examination. Bannister testified he was assisting Applicant's lead attorney, Jones, in Applicant's case.

Bannister testified he assisted in the investigation in Applicant's case. Bannister testified he met with witnesses and took the vehicle to the scene of the shooting. Bannister testified he does not think he spoke to Futch. Bannister testified he did not believe Futch had any firsthand knowledge, but that he had information that had been put together in the investigation. Bannister testified Futch never told him it was a self-defense case.

Bannister testified after the immunity motion was denied, that was Applicant's best time to plea, because Bannister believe the solicitor saw issues with the State's case. Bannister testified Applicant's case had weaknesses as well. Bannister testified there was no 911 call by Applicant where he claims he was in fear of his life and had to shoot Victim. Bannister testified the fact that Victim was not armed would make it hard for the jury to believe that Applicant was in fear for his life. Bannister testified he has a matrix he uses to calculate a defendant's chance in a self-defense or stand your ground case. Bannister testified, based on his calculations, any offer under fifteen years would be a solid offer Applicant needed to consider.

Bannister testified the judge seemed to believe a sentence around ten years was reasonable. Bannister testified he never extended an eight year offer to Applicant. Bannister testified Applicant had about two years to two-and-a-half years on an ankle monitor and that Applicant may be able to get credit for time served to include that time on house arrest. Bannister testified he told Applicant he did not see any reason to risk a thirty year to life sentence by going to trial. Bannister testified the federal prosecution was not eminent, but believed it was a realistic possibility, which is why they took extra steps to make sure it did not happen. Bannister testified he discussed best and worst case scenarios with Applicant.

Bannister testified he told Applicant this was a "dicey plea" because there was no recommendation. Bannister testified he told Applicant he needed to be ready to show remorse and take responsibility. Bannister testified he told Applicant he had to give the judge a base to stand on if he wanted a favorable sentence. Bannister testified he and Jones tried to set Applicant up to provide a strong statement to the judge, however, Bannister testified Applicant stated he was sorry, but that it came across that he was sorry he had to plead guilty, not that he was remorseful for the incident. Bannister testified Applicant's failure to communicate remorse at the plea probably

affected his sentence. Bannister testified it was Applicant's decision to enter a guilty plea. Bannister testified he agreed with Applicant's decision to plead guilty. Bannister testified he felt "beyond prepared" to go to trial on Monday if Applicant had decided to go to trial.

On cross-examination, Bannister testified he does not recall extending a five year offer to Applicant. Bannister testified he does not have an independent recollection of having a conversation on speaker phone with Applicant's brother and Futch. Bannister testified he explained to Applicant that even if they won the case, Applicant could end up doing jail time on federal charges.

Futch's Testimony

Futch testified he was the Captain over investigations in November 2013. Futch testified his duties included assigning cases out to the detectives he supervised. Futch testified he almost always assigned cases out, but if the detectives were overwhelmed, he would keep cases on a rare occasion. Futch testified on serious cases he would respond to the scene. Futch testified that once the case got to the point where witnesses needed to be interviewed or a suspect was developed, he would assign the case out and just follow-up on it as needed.

Futch testified he recalled aspects of Applicant's case. Futch testified he would have been made aware of the charges being sought in Applicant's case. Futch testified he would let his thoughts be known to the solicitor's office, but the solicitor's office was in charge of negotiating or making a plea offer. Futch testified he does not recall having an issue with the plea offer in Applicant's case. Futch testified he knows Applicant was originally charged with murder, but thought a murder conviction would be difficult because of the circumstances. Futch testified the facts of Applicant's case fit the elements of murder. Futch testified he recalled there being several scenes in Applicant's case (club, residence, and hospital). Futch testified he believes he went to

the scene at the residence where Applicant was located. Futch testified if he did file a report in the case it would have been a supplemental report. Futch testified if he and another officer were present when a piece of evidence was found, he would instruct the other officer with him to do the report.

Futch testified he does not recall being asked to testify at the immunity hearing. Futch testified his involvement was very limited after March 2015. Futch testified he could have had a conversation with Jones and his investigator, but it was not in the normal course of business for him to discuss the case with defense attorneys. Futch testified any discussion regarding his opinion on the case would have been in the presence of a representative from the solicitor's office. Futch testified he did not feel this was a self-defense case. Futch testified he vaguely remembers having a conversation where self-defense was mentioned, but he would have been objecting to it.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the evidence presented at the evidentiary hearing, observed the witnesses, passed upon their credibility, and weighed the testimony and evidence accordingly in its discussion below. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, as well as the pretrial hearing transcript, guilty plea transcript, and appellate records. This Court finds the combined record of the transcripts and the testimony at the evidentiary hearing establishes Applicant received effective assistance of counsel, and this application should be denied. Set forth below are the relevant findings of fact and conclusion of law as required by section 17-27-80 of the South Carolina Code of Laws.

Applicant alleges he received ineffective assistance of counsel such that his guilty plea was rendered involuntary. In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel’s performance was deficient. Id. Under this prong, the court measures an attorney’s performance by its “reasonableness under professional norms.” Id. (quoting Strickland, 466 U.S. at 688 (1984)). Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id. at 117-18, 386 S.E.2d at 625. When there has been a guilty plea, the applicant must prove counsel’s representation was below the standard of reasonableness, and but for counsel’s unprofessional errors, there is a reasonable probability he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered

by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668.

This Court finds Applicant has failed to prove Jones and Bannister were deficient in their performance in any way, and Applicant was not prejudiced by their performance. Jones met with Applicant between thirty and fifty times prior to his immunity hearing and guilty plea and reviewed with him the evidence and discovery in the case. Jones and Bannister discussed Applicant's version of the facts and possible defenses in preparation for the pretrial immunity hearing and trial. This Court finds Futch was not called to testify at the immunity hearing because he had nothing of substance to offer that would have changed the outcome of Applicant's immunity hearing. This Court also finds Applicant ultimately chose to enter a guilty plea, and this decision was made freely and voluntarily knowing he could receive a sentence between two and thirty years for voluntary manslaughter. Therefore, for the reasons stated below, the Court denies relief and dismisses the allegations with prejudice.

Ineffective assistance of counsels rendering Applicant's guilty plea unknowing and involuntary

Applicant alleges his guilty plea was involuntary because his attorneys acted deficiently by promising him that he would receive an eight year sentence if he pled guilty, but he ended up with a twelve year sentence. Applicant testified had he known he would have received a twelve year sentence, he would not have taken the plea offer.

Jones testified he reviewed Applicant's constitutional rights, and explained multiple times that the plea was not negotiated. Jones testified he explained to Applicant that the penalty for voluntary manslaughter was two to thirty years imprisonment. Jones testified he never promised or guaranteed Applicant that he would receive an eight year sentence. Jones testified he explained

to Applicant that their goal was to get him a ten year sentence and credit for the nearly two-and-a-half years Applicant spent either in the detention center or on house arrest. Jones testified he explained to Applicant that Judge Griffith would consider that sentence, but it was not guaranteed.

Bannister testified he never promised Applicant he would receive an eight year sentence if he pled guilty to voluntary manslaughter. Bannister testified he told Applicant this was a “dicey plea” because there was no recommendation on the sentence. Bannister testified Applicant’s lack of remorse when he addressed the court prior to being sentenced most likely affected his sentence.

In Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997), Wolfe pled guilty to assault and battery with intent to kill (ABIK) and possession of a firearm or knife during the commission of a violent crime. Wolfe received the maximum possible sentence of twenty years for ABIK and five years for the weapon charge. Id. at 162, 485 S.E.2d at 369. Wolfe later filed a post-conviction relief action alleging, in part, that his guilty plea was induced by his trial counsel’s representation to him that the trial judge would give him a reduced sentence if he pleaded guilty to the charges. Id. at 164, 485 S.E.2d at 370. Wolfe testified at the evidentiary hearing that trial counsel informed him that he has not known this judge to “backstep on a representation that he would impose a reduced sentence.” Id. at 165, 485 S.E.2d at 371. Wolfe further testified trial counsel told him “the trial court’s questions concerning the plea were ‘routine’ questions.” Id.

The Supreme Court of South Carolina held “any possible misconceptions on Wolfe’s part were cured by the colloquy during the actual guilty plea hearing. . . . the judge repeatedly asked Wolfe about the range of sentencing, and asked Wolfe *twice* whether he understood that there were no promises and that no sentencing recommendations were binding on the judge. Wolfe indicated he understood there were no such promises.” Id. at 164-165, 485 S.E.2d at 370. The Court also noted trial counsel’s statement to the judge during the guilty plea hearing that there had been no

promises made as to the actual sentence the trial court would impose on Applicant. Id. The Court further noted, "The transcript of Wolfe's guilty plea hearing reflects that the trial judge questioned Wolfe extensively about the plea, asking him, *inter alia*, whether he understood that he could get twenty years for ABIK and five years for possession of a firearm or knife during the commission of a violent crime and whether he had been promised anything for pleading guilty." Id. at 161, 485 S.E.2d at 369. Ultimately, the Court found Applicant's "[w]ishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentence, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made." Id. at 165, 485 S.E.2d at 371.

Here, Applicant is alleging his attorneys were ineffective for promising him he would receive an eight year sentence if he entered a guilty plea. However, this Court finds, as in Wolfe, Applicant was informed by his attorneys that he could receive a sentence between two to thirty years for entering a guilty plea to voluntary manslaughter. This Court also finds Applicant was not promised an eight year sentence by his attorneys as this Court finds the testimony of Jones and Bannister credible as to this allegation and Applicant's testimony not credible. Further, as in Wolfe, the record of the guilty plea shows Judge Griffith conducted a very detailed colloquy with Applicant, which clearly shows the plea court explained the sentencing range Applicant was facing by entering a guilty plea to voluntary manslaughter. Further, Applicant testified during the plea hearing that he had not been promised anything in exchange for his guilty plea. (GP Tr. 540.)

This Court finds the testimony of Jones and Bannister regarding this allegation credible whereas Applicant's testimony is not credible. Applicant has failed to establish Jones and Bannister were constitutionally ineffective as both Jones and Bannister credibly testified they discussed the terms of the plea with Applicant and explained numerous times that the plea was not

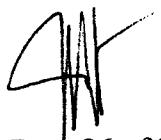
negotiated. Additionally, both Jones and Bannister credibly testified they did not promise Applicant an eight year sentence and the record supports their testimony that Applicant was aware of the sentencing range he faced and was not promised anything in exchange for his plea.

Applicant has also failed to establish any resulting prejudice as to the alleged deficiency as it is unreasonable to believe Applicant would have chosen to proceed to trial alleging self-defense after losing his immunity motion, especially since both of his attorneys believed pleading guilty was in his best interest. Both Bannister and Jones credibly testified about the numerous challenges Applicant faced in proceeding to trial on a claim of self-defense. By taking the plea offer and receiving a twelve year sentence, which after receiving credit for time served was actually a ten year sentence, Applicant received a favorable outcome considering the strength of the State's case. Therefore, based on the standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing Counsel was constitutionally ineffective and this allegation is denied and dismissed with prejudice.

Ineffective assistance of counsel for failing to call Futch to testify at the immunity hearing.

Applicant alleges his attorneys were ineffective for failing to call Futch to testify at the immunity hearing. Applicant testified he felt Futch should have been called as a witness because of inconsistency in the reporting. Applicant testified that Futch put in a report after the initial report was already filed.

Jones testified Futch was present at the immunity hearing and he spoke to him in court that day. Jones testified that the best thing Futch said was he would not oppose a manslaughter charge for Applicant. Jones testified Futch was not called because Futch never believed Applicant's case was a self-defense case. Bannister testified Futch never told him Applicant's case as a self-defense case.



Futch testified he never believed Applicant's case was a self-defense case. Futch testified he believed the incident supported Applicant's murder charge, but did not oppose a manslaughter charge. Futch testified he may have done a report in Applicant's case, but it would have been a supplemental report to the main investigation report.

This Court finds the testimony of Jones, Bannister, and Futch credible as to this allegation, whereas Applicant's testimony is not credible. This Court finds Jones and Bannister were not deficient for failing to call Futch as a witness during the immunity hearing as Futch had nothing of substance to provide to the court that would have changed the outcome of Applicant's immunity hearing. As such, Applicant has also failed to show this Court any resulting prejudice from the alleged deficiency as Futch's testimony would not have changed the outcome of his immunity hearing. Therefore, based on the standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing Jones and Bannister was constitutionally ineffective as to this allegation and this allegation is denied and dismissed with prejudice.

A handwritten signature in black ink, appearing to be 'J. M. Jones' or similar, with a large loop at the top and a cross-like flourish at the bottom.

CONCLUSION

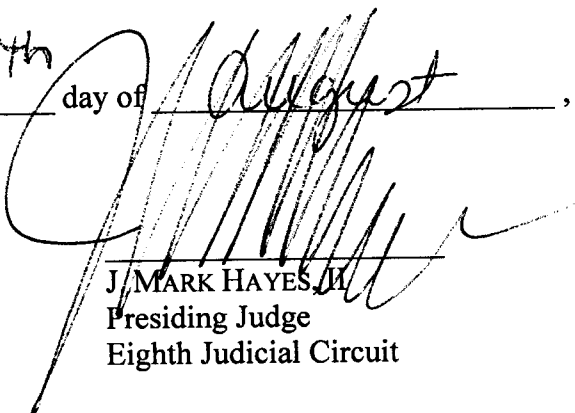
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty days from post-conviction relief counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant is to remain in the custody of Respondent.

AND IT IS SO ORDERED this 17th day of August, 2020.


 J. MARK HAYES, III
 Presiding Judge
 Eighth Judicial Circuit

Dreenwood, South Carolina

WITNESSES

Jeremy Adams
Greenwood Police Department

WARRANT NUMBER

DIRECT INDICTMENT

2015D2400100008

True Bill

[Signature]

Foreman of the Grand Jury

Date:

5/8/15

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

May Term, 2015

Indictment # 15GS24- 0728

THE STATE

vs.

Alphonso Morgan Jr.

INDICTMENT FOR

MURDER

§ 16-03-0010

CDR: 0116

ATTEST A TRUE COPY
Chastity Copeland
CHASTITY COPELAND
CCCP AND GS
GREENWOOD COUNTY
S. C.

THE STATE OF SOUTH CAROLINA

INDICTMENT FOR

COUNTY OF GREENWOOD

MURDER
§ 16-03-0010

At a Court of General Sessions, convened on the 8th day of May, 2015, the Grand Jurors of Greenwood County present upon their oath:

That Alphonso Morgan Jr., on or about November 14, 2013, in Greenwood County, willfully, feloniously, and with malice aforethought kill one Jamal Anton Aiken by means of shooting and that the said Jamal Anton Aiken did die in Greenwood County as a proximate result thereof on or about November 15, 2013, in violation of Section 16-3-10 of the South Carolina Code of Laws, 1976, as amended.

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



Assistant Solicitor