

VOLUME II of III

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Honorable George M. McFaddin, Circuit Court Judge

LEVERN MCCREA,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2020-001426

APPENDIX

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1 A: Levern.

2 Q: Did you see when they drove off?

3 A: No, ma'am. I don't think so. They was already gone
4 when I got back with the children.

5 Q: So by the time you got home at 5:30 they had already
6 gone?

7 A: Yes.

8 Q: Okay. Now, when you left to go pick up the
9 children, do you know about what time that was?

10 A: About what time I left to go get the children?

11 Q: Yes.

12 A: About 5:00.

13 Q: Was the Defendant, Mr. McCrea, and Quan still at
14 your home when you left to go get your kids from
15 daycare?

16 A: Yes.

17 Q: Tell us about the next time that you saw Levern
18 McCrea after you switched vehicles with him?

19 A: Early the next morning.

20 Q: About what time?

21 A: Between two to three o'clock hour that I can
22 remember. I was asleep. But I think it was around
23 about the two o'clock hour.

24 Q: All right. Now, your voice is leaving me again, so
25 I need you to scoot up. You said you were asleep

- 1 but it was around about what hour?
- 2 A: The two o'clock hour.
- 3 Q: All right. And you said that would have been the
- 4 next day?
- 5 A: Yes.
- 6 Q: All right. So let's just assume that if they came
- 7 on Tuesday night or Tuesday, the 10th. And they
- 8 left -- or you left to go get your babies at a
- 9 quarter to five on Tuesday afternoon, the next time
- 10 you would have seen Levern McCrea would have been
- 11 the very early morning hours of the 11th?
- 12 A: Yes.
- 13 Q: All right. So that would be 2:00 a.m.?
- 14 A: Yes.
- 15 Q: Okay. All right. And what awoke you?
- 16 A: A knock on the back door.
- 17 Q: Okay. All right. And I guess you got out of your
- 18 bed and came and opened the back door?
- 19 A: Yes.
- 20 Q: Okay. Describe who was standing at your back door
- 21 when you opened your back door.
- 22 A: Levern and Quan.
- 23 Q: And Quan?
- 24 A: Yes.
- 25 Q: Okay. How were they dressed?

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1 A: They had on their normal clothes and the bottom of
2 their feet was dirty.

3 Q: The bottom of their feet were dirty?

4 A: Yes.

5 Q: Like how so?

6 A: Like they'd been in mud or something.

7 Q: And you said the bottom of their feet were dirty.
8 Are you talking about like they didn't have any
9 shoes on when they came back and the sole of their
10 feet were dirty? What do you mean?

11 A: No, they had on shoes.

12 Q: Both of them had on shoes?

13 A: Yes.

14 Q: All right. All right. So it was the bottom of
15 their shoes that were dirty?

16 A: Yes.

17 Q: All right. Did Mr. McCrea give any instructions to
18 Quan about that?

19 A: I think they took their shoes off at the back door
20 to keep from tracking dirt.

21 Q: To keep from tracking dirt in the house?

22 A: Yes.

23 Q: What type of shoes was the Defendant wearing?

24 A: I'm not sure. Most of the time they're Timberland.

25 Q: Ma'am?

- 1 A: Most of the time he likes Timberland.
- 2 Q: Most of the time he wears Timberlands?
- 3 A: Yes.
- 4 Q: Now, when you opened up the back door, did you
- 5 actually see your white Chevy Blazer in your yard?
- 6 A: Yes.
- 7 Q: All right. What happened next?
- 8 A: I went back to bed. I just let them know there was
- 9 some food on the stove.
- 10 Q: Okay. Did the Defendant ever come into the bedroom
- 11 where you were, after you opened the door for him?
- 12 A: Yes.
- 13 Q: Did he sleep in your bedroom with you?
- 14 A: Yes.
- 15 Q: All right. And would he have had access to your
- 16 bathroom before he left in your truck that day?
- 17 A: He was more willing to use it if he had to.
- 18 Q: Now, you indicated that he wanted to use your
- 19 vehicle because he said he had to haul a car or had
- 20 to haul cars or something like that?
- 21 A: Yes.
- 22 Q: Where was he hauling cars to or from?
- 23 A: I wasn't sure, but he wanted to pull a car that I
- 24 assume was his, but he didn't never say where to.
- 25 Q: In what state did he want to haul a car?

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1 A: South Carolina.

2 Q: All right. So you all get up, not the next morning
3 but actually later on that morning. Tell me about
4 your day after they came back at three o'clock in
5 the morning. How did you all begin the day?

6 A: With breakfast.

7 Q: You prepared breakfast?

8 A: Yes.

9 Q: For both of them?

10 A: Yes.

11 Q: All right. Now, when -- how many bedrooms do you
12 have in that house?

13 A: Three.

14 Q: So where would your children have been in terms of
15 laying their heads at night in your bedrooms in your
16 house?

17 A: The baby sleeps in the bedroom in a crib with me.
18 My daughter and my oldest son has their own
19 bedrooms.

20 Q: Okay. All right. Where would Mr. McCrea have slept
21 in your house?

22 A: He slept with me.

23 Q: Where would Quan have slept in your house?

24 A: He slept on the couch.

25 Q: All right. After you fixed breakfast later on that

1 morning, what happens at that point?

2 A: We just watched some movies.

3 Q: Now, did either Quan or the Defendant do anything
4 with your vehicle later on that morning or later on
5 that day?

6 A: Yes.

7 Q: Okay. Tell us about that?

8 A: Quan went outside and cleaned the vehicle out.

9 Q: Why did Quan do that?

10 A: It was a lot of dirt in the front on the passenger
11 and driver's side.

12 Q: A lot of what?

13 A: Dirt.

14 Q: Okay. On the passenger and driver's side?

15 A: Yes.

16 Q: Now, was the dirt on the passenger and driver's side
17 there when you loaned Mr. McCrea your vehicle?

18 A: No.

19 Q: Why did Quan go and clean the vehicle out?

20 A: Because I had told them to clean it, to make sure
21 they give it back to me the way I gave it to them.

22 Q: All right. So after the vehicle is cleaned up you
23 all spend most of that day watching movies and doing
24 whatever?

25 A: Yes.

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1 Q: Okay. Did the Defendant and Quan ever leave North
2 Carolina after they brought your vehicle back?

3 A: Yes.

4 Q: Now, before I ask you the next question, did you
5 ever see Quan driving your Chevy Blazer?

6 A: No.

7 Q: When was it when they left your vehicle or left your
8 home after bringing the vehicle back and after
9 cleaning it up?

10 A: When they had left it.

11 Q: When would it have been that they had left?

12 A: Later that evening.

13 Q: All right. Now, you said that you actually saw the
14 dirt on the front passenger's floorboard and the
15 driver's floorboard; right?

16 A: Yes.

17 Q: All right. And that was before they cleaned it up?

18 A: Yes.

19 Q: Now, did you ever see any blood inside the vehicle?

20 A: No.

21 Q: All right. When they left which vehicle was used
22 when they left your home?

23 A: The Mercedes.

24 Q: Okay. Who was driving that Mercedes?

25 A: I think Levern was.

- 1 Q: And when we talk about the Mercedes, we're talking
2 about his gray Mercedes, right?
- 3 A: Yes.
- 4 Q: When was the next time you saw him again after that?
- 5 A: The next day.
- 6 Q: Okay. Now, when he and Quan left that day or later
7 that day, where did they go to?
- 8 A: They said they was going home.
- 9 Q: To South Carolina?
- 10 A: Yes.
- 11 Q: Did they tell you why?
- 12 A: Said Quan was ready to go back home to his wife.
- 13 Q: Quan was ready to go back home to his wife?
- 14 A: Yes.
- 15 Q: All right. After that statement was made and they
16 left and told you they were going back home, did
17 they then return to North Carolina at any point?
- 18 A: Would you repeat that again?
- 19 Q: After the statement was made that Quan wanted to go
20 home to his wife and they went back home, did they
21 come back to your house after that?
- 22 A: Yes.
- 23 Q: All right. And how long did they stay that time?
- 24 A: Almost a week.
- 25 Q: Okay. Do you remember the day of the week that they

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1 would have come back to your home and stayed the
2 week?

3 A: Do I remember the day?

4 Q: Yes.

5 Q: Do you remember whether it was a weekday or weekend
6 when they ---

7 A: It was a weekday.

8 Mr. McCrea: You said weekday?

9 THE COURT: Yes, sir.

10 Q: All right. When they came back this time and they
11 stayed the week, when we're talking about "they,"
12 are we talking about the Defendant and Quan?

13 A: Yes.

14 Q: All right. Now, during that weeks period of time
15 when they went to bed at night, would Levern McCrea
16 share the bed with you?

17 A: Yes.

18 Q: And Quan would be again where?

19 A: On the couch.

20 Q: Now, how were the two of them interacting and
21 getting along during that weeks stretch of time?

22 A: It was fair.

23 Q: What was the Defendant's demeanor and behavior like
24 during that weekend time as it relates to Quan?

25 A: It was okay. They never argued or anything.

1 Q: How did Levern treat Quan?

2 A: It was okay. Mostly Quan was on the telephone with
3 his wife.

4 Q: Have you finished your answer?

5 A: It was fair. They never argued or anything while he
6 was there.

7 Q: Now, when you say "it was fair," tell me why you're
8 using that description. What do you mean when you
9 say "it was fair?"

10 A: Quan felt that he was just demanding.

11 Q: Say again?

12 A: Quan felt that he was demanding.

13 Q: He who?

14 A: Levern.

15 Q: Was demanding?

16 A: Towards him.

17 Q: Okay. Did you observe the Defendant being demanding
18 toward Quan?

19 A: A little.

20 Q: Okay. And when you say "demanding," what do you
21 mean?

22 A: Just asking him to do something. He want to speed
23 into it.

24 Q: Say again now?

25 A: Want to speed into whatever he's asked to do.

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- 1 Q: Levern was telling Quan what to do?
- 2 A: Yes. He was asking him, you know, pick his stuff
- 3 up, pull the covers up. And he wanted it done right
- 4 then and there.
- 5 Q: Right then and there? Did it surprise you or strike
- 6 you unusual at all that they were coming back and
- 7 forth to your house, going home, coming back, going
- 8 home, during all this time during that week?
- 9 A: I was curious.
- 10 Q: When they came back and they stayed a week, during
- 11 that period time, did you ever see a firearm?
- 12 A: Yes.
- 13 Q: How did you see the firearm?
- 14 A: He showed it to me.
- 15 Q: He who?
- 16 A: Levern.
- 17 Q: And describe the firearm to me?
- 18 A: Old handgun.
- 19 Q: Okay. And I think you described it as being ugly?
- 20 A: Yes.
- 21 Q: Now, are you familiar with firearms at all?
- 22 A: No, ma'am.
- 23 Q: Would you have any information about what kind of
- 24 manufacture it was or what type of caliber it was or
- 25 anything along those lines?

1 A: No, ma'am.

2 Q: You're about as bad as me?

3 A: Yes.

4 Q: Now, when he showed it to you, describe for us the
5 circumstances under which the Defendant showed that
6 firearm to you?

7 A: He wanted to sell it.

8 Q: Okay. Was it packaged or wrapped in any form or
9 fashion?

10 A: I think it was wrapped.

11 Q: In what?

12 A: A white cloth of some sort.

13 Q: A white cloth or a white towel?

14 A: Yes, ma'am.

15 Q: All right. And who told you that he wanted to sell
16 the firearm?

17 A: He did.

18 Q: "He," being Mr. McCrea?

19 A: Uh-huh (affirmative).

20 Q: All right. Where were the two of you when he made
21 that statement to you?

22 A: In the kitchen.

23 Q: Okay. All right. When he said he wanted to sell
24 it, did he have an idea in mind of who he might want
25 to sell it to?

1 A: My brother.

2 Q: Okay. Now, was there anything about your brother
3 that you know about that would make Mr. McCrea think
4 he'd be interested in buying a gun?

5 A: He lives in a very bad neighborhood.

6 Q: Ma'am?

7 A: That's where we took it to try to sell it, to my
8 brother's home.

9 Q: Does your brother, the one that we're talking about
10 that Mr. McCrea wanted to sell the gun to, does he
11 have a record?

12 A: I don't think so.

13 Q: All right. So you all then go to your brother's
14 house?

15 A: Yes.

16 Q: Did Levern have the gun with him when you all went
17 to your brother's house?

18 A: Yes.

19 Q: Did you see any bullets with the gun?

20 A: I'm not sure. I think so. I'm not sure.

21 Q: Tell me what happened -- well, how did you get to
22 your brother's house, what vehicle were you all in?

23 A: I don't remember what vehicle.

24 Q: So you don't know whether it was your vehicle or the
25 Defendant's vehicle?

1 A: No, ma'am.

2 Q: Now, when you got to your brother's house, what
3 happened? Did Levern have a conversation with your
4 brother?

5 A: Yes.

6 Q: About selling the gun?

7 A: Yes.

8 Q: How much did Levern want for the gun?

9 A: I think about a hundred dollars.

10 Q: Did your brother purchase the gun from him?

11 A: No.

12 Q: Why not?

13 A: He didn't have any money.

14 Q: What happened -- well, let me ask you this. Did the
15 Defendant make any statements to your brother about
16 the gun and bullets?

17 A: He said something about the gun. I didn't hear the
18 conversation.

19 Q: Who said something about the gun?

20 A: Levern say, show the gun to my brother.

21 Q: Okay. All right. And at that time when he told you
22 that, where were the bullets?

23 A: I'm not sure.

24 MS. BARR: I publish State's Exhibit Number 106.

25 THE COURT: Yes, ma'am.

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1 Q: Can you see that from where you are?

2 A: Yes.

3 Q: Were the bullets in that little pouch?

4 A: Could have been.

5 Q: Could have been, could not have been?

6 A: Yes.

7 Q: Now, I'm curious. There are -- there's some wording
8 on that pouch. Can you see that from where you are?

9 A: A little.

10 Q: Can you read the letters from where you are?

11 A: A little.

12 Q: If you need to come down you can. I can --- I can
13 zoom it.

14 A: A-L-L-E-G-A-N.

15 Q: I'm sorry. Say that again for me?

16 A: A-L-L-E-R-G-A-N.

17 Q: And that is what, Allergan, Allegan?

18 A: I would say allergan.

19 Q: All right. Now, you have a field or you have some
20 education and experience in the medical field;
21 right?

22 A: Yes.

23 Q: Now, an allergen, A-L-L-E-R-G-E-N, is like something
24 you're allergic to; right?

25 A: Yes.

1 Q: So if there's a little dog running around in the
2 courthouse and I have an allergic reaction to that
3 dog, itching, sneezing, whatever, that dog or the
4 dog's hair might be an allergen, E-N?

5 A: Right.

6 Q: Now, Allergan, what's that?

7 A: A creme, I think.

8 Q: A company?

9 A: I'm not sure. I'm not sure what it is, to be
10 honest.

11 Q: A pharmaceutical company?

12 A: I'm not sure.

13 Q: You don't recognize the writing?

14 A: I could have seen that word before, but I forgot.

15 Q: I understand. And if you had seen that word before,
16 how would it have been that you'd seen that word
17 before?

18 A: I think I'd seen it on a cup holder.

19 Q: Okay. How would you have seen the cup holder with
20 that logo and that word on it? In what capacity? I
21 mean, did you see it at a grocery store? Did you
22 see it at a night club. Did you see it at work?
23 Did you see it at school? How would you have seen
24 it?

25 A: If I'm not mistaken I think I'd seen it at a

1 conference that we had in our church.

2 Q: A conference that you have at your church?

3 A: Yes.

4 Q: And tell me, what kind of conference would that have
5 been?

6 A: Several churches come together, fellowship together.
7 And we have a couple of our supervisors that bring
8 us medical stuff.

9 Q: A couple of your supervisors who do what?

10 A: Bring us medical supplies.

11 Q: Medical supplies. To the conference?

12 A: Yes.

13 Q: And certainly that's no different than -- that's
14 part of a pharmaceutical representatives ploy,
15 right? I mean, you've seen that in terms of how
16 they try to sell doctors and nurses products, their
17 products?

18 A: Yes.

19 Q: So they'll give you free stuff?

20 A: Yes.

21 Q: And everybody likes free stuff. And you talk about
22 like a cup holder that somebody may put over a soda
23 can or something like that, that would have the drug
24 manufacturer and pharmaceutical reps name and logo
25 on it?

1 A: Yes.

2 Q: And have you had occasion where you get pens with
3 the drug manufacturer's name on it, a free pen?

4 A: Yes.

5 Q: That's not unusual?

6 A: No.

7 Q: Now, you talked about the types of classes that you
8 would have been taking in 2009 and 2010. And the
9 subject matter that you would have been studying for
10 your license. I mean, to get your CNA license and
11 phlebotomy license. You remember talking about
12 that?

13 A: Yes.

14 Q: And you indicated that one of the subjects that you
15 would have been talking about would be the human
16 body?

17 A: Yes.

18 Q: And I'm going to publish Exhibit 130, which was the
19 paper found at the scene. Does this piece of paper
20 talk about the human body?

21 A: Yes.

22 Q: And that piece of paper also talked about the
23 digestive system?

24 A: Yes.

25 Q: All right. And while you're engaging in your

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1 studies in 2009 and 2010, did you have any of your
2 school paperwork or home assignments or anything
3 like that inside your vehicle?

4 A: Yes.

5 Q: Would that have been unusual for you to just have it
6 laying about in your vehicle?

7 A: No.

8 Q: Let me let you see it. Is it possible that this may
9 have been in your vehicle March 10, 2009?

10 A: It's a possibility it could have been mine.

11 Q: Now, just to be clear, Ms. Smith. You don't know
12 who Cora Brown is?

13 A: No, ma'am.

14 Q: You've never been to her home in South Carolina?

15 A: No, ma'am.

16 Q: All right. When your brother did not buy the gun
17 from Levern McCrea, what did he do with it?

18 A: He put it in a shoe box.

19 Q: Ma'am?

20 A: Put it in a shoe box.

21 Q: Did you say "he put it in a shoe box?" or who put it
22 in a shoe box?

23 A: I got the shoe box, but he put it in there.

24 Q: Why did you get a shoe box?

25 A: He asked me did I have anything that he could put it

1 in.

2 Q: Now, at the time that he asked you if you had
3 anything that he could put it in, did you see any
4 cartridge, casings or anything within the chamber of
5 that firearm?

6 A: No.

7 Q: Did you have any reservations or concerns about
8 having a firearm in your home?

9 A: Yes.

10 Q: Why? Tell us why?

11 A: Because I have children.

12 Q: Okay. Were there any safety precautions utilized as
13 a result of your having children in the house?

14 A: Yes. The gun was empty. There was not a bullet in
15 it.

16 Q: What about in terms of its storage?

17 A: We put it on top of the cabinet in my bathroom.

18 Q: Okay. Now, during that entire weeks period of time,
19 did you ever see Quan in your bathroom?

20 A: No, ma'am.

21 Q: Where was Levern McCrea when the gun was placed in
22 the shoe box in the top of your shelf in the
23 bathroom?

24 A: Where was he?

25 Q: Yes?

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1 A: In the bathroom.

2 Q: With you?

3 A: Yes.

4 Q: Now, was Mr. McCrea working at the time?

5 A: I'm not sure, but I don't think so.

6 Q: Did you ever see Quan with that gun that you all put
7 in the shoe box?

8 A: No.

9 Q: Did you ever see Quan with any gun?

10 A: No.

11 MS. BARR: I'm going to publish State's Number 111.

12 Q: You described the firearm as being an old hand gun.

13 A: Yes.

14 Q: Was that the firearm that you saw the Defendant put
15 in the shoe box?

16 A: It may be.

17 Q: Well -- and let me ask you this. You indicated that
18 the one that you saw him put into the shoe box, did
19 it look like that?

20 A: Something similar.

21 Q: Did you ever see Mr. McCrea with more than one gun?

22 A: No.

23 Q: Did he ever try offer, in your presence, any other
24 gun other than the one that he put in the shoe box
25 in the bathroom?

1 A: No.

2 Q: All right. When he and Quan came back to your
3 residence and stayed the week, that was the longest
4 period of time that you and the Defendant, Mr.
5 McCrea, would have spent together?

6 A: Yes.

7 Q: In the entire time you've known him?

8 A: When I first meet him we spent two weeks.

9 Q: Okay. Now, when they left after that week, when was
10 the next time that you saw Levern McCrea?

11 A: My son's birthday.

12 Q: Okay. So your son's birthday would have been
13 October 2009?

14 A: Yes.

15 Q: So if he stayed there a week, he would have left in
16 March, so there was a seven-month gap between the
17 time you saw him next?

18 A: Yes.

19 Q: Now, when he and Quan came back and they stayed the
20 week, did you ever have a conversation with Mr.
21 McCrea as to why they were staying so long or why
22 they had come back?

23 A: Yes.

24 Q: Okay. Tell us about that.

25 A: He said he was going through some stuff and the

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1 needed to get away from South Carolina.

2 Q: Okay. Who said that to you?

3 A: Levern.

4 Q: He was going through some things and he needed to
5 get away from South Carolina?

6 A: Saying Christopher was having a lot of problems at
7 home.

8 Q: Now, during the time that Mr. McCrea and Quan were
9 around you, did you ever hear discussions about a
10 murder?

11 A: No.

12 Q: Did you ever hear discussions about a robbery?

13 A: No.

14 Q: Did you ever hear discussions about a shooting?

15 A: No.

16 Q: The money that you had Western Unioned to him, was
17 it a gift from you or a loan or what?

18 A: A loan.

19 Q: Did you get it back?

20 A: No, ma'am.

21 Q: Had he ever borrowed money from you before?

22 A: Yes.

23 Q: How was it that they were able to kind of travel
24 back and forth to South Carolina? I mean, when you
25 came down here, that was a good little drive, wasn't

1 it?

2 A: Yes.

3 Q: Okay. Do you know how it was they were able to
4 travel back and forth so frequently between South
5 Carolina and North Carolina?

6 A: No, ma'am.

7 Q: Do you know where they got money from?

8 A: No, ma'am.

9 Q: Did you give them any more money after you Western
10 Unioned the money to Mr. McCrea for a car payment?

11 A: No, ma'am.

12 Q: All right. At some point after they left, did you
13 have a conversation -- don't tell me the substance
14 of it. But did you have a conversation with your
15 brother?

16 A: Yes.

17 Q: And when I say "your brother," I mean the one that
18 Levern was interested in selling the gun to.

19 A: Okay.

20 Q: All right. After you had that conversation with
21 your brother, what then did you do?

22 A: (Witness pauses).

23 Q: Did you have a subsequent conversation with Levern?

24 A: Yes.

25 Q: Okay. After you spoke with your brother, the one

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1 Levern went to sell the gun to, you called Levern?

2 A: Yes.

3 Q: All right. And what did you and Levern say to each
4 other during that conversation?

5 A: I told him that my brother was looking for a gun,
6 that he knew someone that may want to buy it.

7 Q: Say again, now?

8 A: I told him that my brother had called me back. He
9 had someone that may want to buy the gun.

10 Q: All right. And about how long was that after the
11 Defendant and Quan left your home?

12 A: About three days?

13 Q: About three days after. All right. So you told
14 Levern that, listen my brother may have a buyer,
15 somebody who's interested in getting the gun?

16 A: Yes.

17 Q: All right. And what did he say?

18 A: Don't worry about it.

19 Q: What else?

20 A: That he had it with him.

21 Q: Don't worry about it. That he had it with him?

22 A: Yes.

23 Q: Did you ever talk to Quan after he and Levern left
24 your house that last time?

25 A: No.

- 1 Q: All right. Did you see Quan at any point in time
2 after he left your house, having stayed for a week,
3 up until the point where he was in court?
- 4 A: No.
- 5 Q: Now, after you had the conversation with your
6 brother, did you go and try to find a gun?
- 7 A: Yes.
- 8 Q: Okay. Were you able to find the gun ---
- 9 A: No.
- 10 Q: --- in your home?
- 11 A: No.
- 12 Q: All right. So where did you look?
- 13 A: On top of the cabinet in my bathroom.
- 14 Q: Okay. And was the shoe box still there?
- 15 A: Yes.
- 16 Q: And I'm assuming it was empty?
- 17 A: Yes.
- 18 Q: And that's when you had the conversation with
19 Levern?
- 20 A: Yes.
- 21 Q: And he says, don't worry about it. I've got it?
- 22 A: Yes.
- 23 Q: Now, have you ever been to Lumberton, South
24 Carolina?
- 25 A: No.

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1 Q: Are you okay? Do you need a break? Do you need
2 water or anything?

3 A: I'm fine.

4 THE COURT: Well, why don't we take a break now.

5 MS. BARR: Yes, sir.

6 THE COURT: We'll take a short break. Okay. Ladies
7 and gentlemen, please do not discuss anything about the
8 case while you're back there. Take them back to their
9 jury room.

10 (Jury break)

11 THE COURT: All right. Court's in recess until
12 twenty after eleven.

13 (Court stood in recess.)

14 (Jury in at 11:21)

15 THE COURT: All right. Ms. Barr, you may resume
16 your direct examination of this witness.

17 MS. BARR: Thank you, Your Honor.

18 Q: Ms. Smith, I wasn't quite sure that I heard or
19 understood your answer to a question that I asked
20 you about the bullets. And I needed to make sure I
21 understood your response. During the time in which
22 the Defendant was trying to sell the gun to your
23 brother, did you ever see a bunch of bullets in a
24 black bag or anyplace else?

25 A: I think I did.

1 Q: When would you have seen them?

2 A: I don't remember.

3 Q: Did the Defendant make any statements to your
4 brother-in-law about bullets?

5 A: I'm not sure.

6 Q: Now, when the Defendant and Quan came back to your
7 house after having had your vehicle that first
8 night, did either one of them have any bruises or
9 injuries or anything on them that you noticed?

10 A: No.

11 Q: At any point after that, did Levern McCrea ever use
12 your white Chevy again?

13 A: No, ma'am.

14 Q: At any point in time after that did Quan ever drive
15 your Chevy?

16 A: No, ma'am.

17 Q: All right. So I just need to be clear. The
18 Defendant only used your Chevy the night that he and
19 Quan first came to your house?

20 A: Yes.

21 Q: That's the only time?

22 A: Yes.

23 Q: All right. Do you know whether or not the Defendant
24 sews or makes any clothes or anything like that?

25 A: No, ma'am.

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1 Q: I'm going to hand you what's been admitted as
2 State's Exhibit Number 117, and ask you if you
3 recognize that particular exhibit?

4 A: Yes, ma'am.

5 Q: And what is it?

6 A: A letter from Levern.

7 Q: The Defendant?

8 A: Yes, ma'am.

9 Q: And it's addressed to whom?

10 A: Myself.

11 Q: Okay. What's the date on it, the date it's
12 postmarked?

13 A: May 18th, 2010.

14 Q: May 18, 2010?

15 A: Yes.

16 Q: Okay. And this letter was written by the Defendant
17 while he was in jail on these charges?

18 A: Yes.

19 MS. BARR: Permission to publish, Your Honor.?

20 THE COURT: Certainly.

21 Q: The return address portion of this exhibit has whose
22 name on it?

23 A: Levern, Levern McCrea.

24 Q: That's his handwriting?

25 A: Yes.

1 Q: And the addressee portion of it has your name and
2 your address in North Carolina?

3 A: Yes.

4 Q: And within that envelope there is a handwritten
5 letter to you?

6 A: Yes.

7 Q: Now, these letters that are in evidence, those are
8 the letters that you brought with you pursuant to
9 the subpoena?

10 A: Yes.

11 Q: And when was the first time police officers,
12 prosecutors office, or any law enforcement official
13 in South Carolina had access to these letters?

14 A: When I got here.

15 Q: So that would have been this week?

16 A: Yes.

17 Q: All right. Can you read the date on that letter?

18 A: 5/17/10.

19 Q: 5/17/10, which is 2010?

20 A: Yes.

21 Q: All right. And it is address to you?

22 A: Yes.

23 Q: Okay. Can you read the letter from where you are?

24 A: A little.

25 Q: Let me do this. Let me give you a copy -- well, I

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1 may need you to come down. Just come down.

2 (Whereupon, the witness leaves the witness stand.)

3 THE COURT: Please speak up when you're down there.

4 Q: You all right?

5 THE COURT: Can y'all switch sides so her voice is
6 coming towards the jury and the court reporter?

7 Q: All right. Can you read the letter for me?

8 A: This is Lee McCrea, your kids father. It is very
9 important that you write me as soon as possible. And
10 I hope and pray that you didn't tell the police
11 anything. You can tell them something -- you can't
12 tell them something you know nothing about.

13 Q: Okay. And let's scoot it up a little bit. Okay.

14 A: Quan is something really fuck up to me. He's the
15 reason I'm in here now. I told you about this
16 before. If the police call you, you don't know
17 nothing. I need you to write me ASAP.

18 Q: All right. Now, you are soft-spoken so I'm going to
19 make sure I understand what your response was.

20 Roberta Smith, this is Lee McCrea, your kids father.

21 It is very important -- and follow along there and
22 make sure I'm reading it correct. It is very
23 important that you write as soon as possible. And I
24 hope and pray you didn't tell the police anything.
25 You can't tell them something you know nothing

1 about. Quan did something really -- excuse my
2 language -- fucked up to me. He's the reason I'm in
3 jail now. I told you about this before. If the
4 police call you, you don't know nothing. I need you
5 to write me back ASAP. Is that what that letter
6 says?

7 A: Yes, ma'am.

8 Q: Did you respond to that letter in any form or
9 fashion, if you remember?

10 A: No, ma'am.

11 Q: You don't remember or you didn't respond?

12 A: I written him but I didn't respond according to that
13 letter.

14 THE COURT: I'm sorry. I could not hear what you
15 said.

16 Q: Turn around.

17 A: I responded to the letter, but not regards what the
18 letter was about.

19 Q: You responded to the letter but not as regards to
20 what it was about?

21 A: Yes.

22 Q: All right. I'm going to publish State's Number 118.
23 Is that also a letter from Levern McCrea?

24 A: Yes.

25 Q: Do you see his name up at the top?

1 A: Yes.

2 Q: Same handwriting?

3 A: Yes.

4 Q: Same addressee to Roberta Smith in North Carolina?

5 A: Yes.

6 Q: And the postmark date is what?

7 A: August 17th, 2010.

8 Q: Okay. And tell us how many pages the letter is and
9 if it's front and back, I need you to tell me that
10 as well?

11 A: Nine and a half.

12 Q: Okay. All right. Well, I'm not going to read all
13 the nine and a half pages, but they are in evidence.
14 I want to highlight some parts of it. If you go
15 through the first page of State's Exhibit Number
16 118-A, that letter's addressed to you?

17 A: Yes.

18 Q: All right. And the date that the Defendant wrote
19 that letter was when?

20 A: 8/11/2010.

21 Q: Okay. Now, when I issued a subpoena for you to
22 bring these letters, were you given instructions as
23 to not do anything to the letters?

24 A: Yes.

25 Q: Okay. What instructions were you given?

1 A: To bring them to you.

2 Q: What about in terms of marking them or anything like
3 that?

4 A: Yeah.

5 Q: Okay. What were your instructions?

6 A: To -- I told you there was some personal stuff in
7 there and you said if I had to, if I wanted to mark
8 out what was personal about me and him, anything
9 about the case, leave it alone.

10 Q: Okay. Did I also ask you not to do that until you
11 got to Court?

12 A: You said I could but you would prefer for me to do
13 it when I got here.

14 Q: Did you, in fact, scratch out or make some markings
15 on some of the letters before you gave them to me?

16 A: Yes.

17 Q: All right. I'm going to publish again 118-A.

18 MS. BARR: I beg the Court's indulgence?

19 THE COURT: Yes, ma'am.

20 Q: While we're getting the setup, make sure you keep
21 your voice up because you don't have the benefit of
22 a microphone. The things that you scratched out in
23 the letters, did you consider those things to be
24 personal between you and Mr. McCrea?

25 A: Yes.

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1 Q: How did you feel about having to turn over these
2 letters after you received the subpoena?

3 A: Nervous.

4 Q: Why?

5 A: Private stuff written in them.

6 Q: Turn around so she can hear you.

7 THE COURT: You have to speak up.

8 Q: How did you feel about turning over the letters
9 pursuant to the subpoena?

10 A: I felt nervous.

11 Q: Why?

12 A: Because of stuff that was written in them?

13 Q: What do you mean when you say "because of the stuff
14 that was written in them?"

15 A: He had some stuff in there written about sex.

16 Q: All right. Now, I need you to read State's Exhibit
17 Number 118 up and to the point where it says,
18 foolish. And I need you to speak aloud, okay?
19 Start at the very top.

20 A: I hope all is well in your household. Roberta,
21 first of all, I need to explain something to you,
22 that you are seriously in the blind about.
23 Secondly, this is not a game. My life depends on
24 you writing that statement for me. I'm looking at
25 life in prison.

- 1 Q: Okay. Now, stop right there. When he writes to you
2 that, "my life depends on you writing that statement
3 for me," what statement is he talking about?
- 4 A: He wanted me to write a letter ---
- 5 Q: Turn around so they can see.
- 6 A: He wanted me to write a letter stating that he was
7 in North Carolina during that week.
- 8 Q: The week that Cora was murdered?
- 9 A: Yes. Stating that he was there the entire time.
- 10 Q. He wanted you to write a letter saying that?
- 11 A. Yes.
- 12 Q: Did you do it?
- 13 A: No.
- 14 Q: Why not?
- 15 A: Because it was wrong.
- 16 Q: Was he, in fact, there the whole time?
- 17 A: No, ma'am.
- 18 Q: All right. Let's see if we can go to page four of
19 that letter. Start at this sentence here when it
20 starts with the word, or the letter A?
- 21 A: A not let's see what I saw in your house. I could
22 have never ask a woman to come to my house if I was
23 guilty. But that's just me. Roberta, I don't have
24 anything bad to say about to you anymore, anyone.
25 And I didn't, don't hate you and I never did. I

1 truly believe that you are a good woman who would
2 give her life for her kids. And I love you and all
3 of your kids and I always will. My son, [REDACTED],
4 means the world to me.

5 Q: All right. Stop for a minute. He says my son, [REDACTED]
6 [REDACTED] Is that what he calls your little boy, [REDACTED]
7 [REDACTED]?

8 A: Yes.

9 Q: Okay. Please continue?

10 A: Means the world to me. Roberta, I am trying to have
11 a life with him, but how can I with my back up
12 against the wall.

13 Q: Okay. All right. We're going to read page five of
14 that same exhibit, publish page five. And the
15 letter contains some profanity but it's a court
16 exhibit so you just have to say what it says, okay?
17 I asked that you be excused and forgiven. But I
18 need you to read that page for me starting with the
19 word, all, at the top.

20 A: All this shit I have done for Quan Briggs and he
21 turn around and do this shit to me. I'm looking at
22 life in prison and you're willing to help him out
23 and not me, your kids father. What's wrong with
24 you. What's wrong with the picture.

25 Q: Does it say what's wrong with you?

1 A: What's wrong with the picture.

2 Q: What's wrong with this picture?

3 A: This picture.

4 Q: Okay. Go ahead.

5 A: Quan Briggs, the police to your house. Quan Briggs
6 bringing the police to your house, putting you and
7 the kids in this mess and you are defending him.
8 This is what got me piss off or maybe this is
9 something that you country people do. This is how
10 real this is and I want you to listen very
11 carefully. If this boy had done this to one of my
12 other baby moms, what Quan did to you, they would
13 have ---

14 Q: Start that sentence all over again. If this boy,
15 starting there.

16 A: If this boy had done this to one of my other baby
17 moms, what Quan did to you, they would have wrote
18 and signed and would...

19 Q: Now that blue X there, who put that blue X there?

20 A: I did.

21 Q: Was that something you were trying to scratch out?

22 A: Yes. He was --- what he ask me, that wasn't
23 pertaining to the case. So I didn't scratch it out,
24 I just put a X on it.

25 Q: Did you not want me to see him, his words to that

effect?

A: That's why I put the X on it, just in case you needed to.

Q: All right. Start with the top of page six, which is the next page. And I think you left off with they would have wrote and signed and would. Start there, would.

A: Would have been ready to testify in court for me.

Q: Now, when he says they would have wrote and signed and been ready to testify in Court for me, who is he talking about would have been ready and wrote and signed and testify in court for him?

A: He say his other baby mother.

Q: His other babies mamas would do what he wanted you to do?

A: Yes.

Q: All right. Please continue.

A: With no problem if they knew I would save me, if they knew it would have saved me from going to prison, that's what a real baby mother would do. Not talk that talk like you.

Q: Okay. Now, these blue marks with the Xs, who made those blue marks with the Xs?

A: I did.

Q: All right. Now, read the next sentence after that

1 says that's what a real baby's mother would do, not
2 talk that talk like you. Read that next sentence
3 for me?

4 A: You think about that Roberta. I remember.

5 Q: All right. Now, after the word remember, there's
6 blue ink where things are scribbled out on there.
7 Did you do that?

8 A: Yes.

9 Q: All right. And did you mark it out before you gave
10 it to me?

11 A: Yes.

12 Q: For what reason?

13 A: It was something that, something back in '08.

14 Q: Now, the blue writing with the circle, marks that's
15 written out. Can you still see his writing
16 underneath those circles?

17 A: A little.

18 Q: And when he's writing to you, he's using a pencil?

19 A: Yes.

20 Q: And you would have read that sentence and know what
21 it said before you marked it out, right?

22 A: Yes.

23 Q: All right. Let's sort though this. After the
24 words, I remember. What is that word?

25 A: (Witness pauses).

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1 Q: Or what do you remember being what his words were
2 before you scratched it out. I guess we'll start
3 there?

4 A: He remember a time he had ask me if he ever done
5 anything wrong, would I tell on him. That's what
6 that statement say.

7 Q: That says, I remember asking you one time if I had
8 ever did anything wrong, would you lie for me;
9 right?

10 A: Yes.

11 Q: That's what the Defendant wrote; right?

12 A: Yes.

13 Q: All right. And can you see the word saying here, S-
14 A-Y-I-N-G?

15 A: Yes.

16 Q: Can you see the word, to, T-O?

17 A: Yes.

18 Q: Can you see the word Y-O-U, you?

19 A: Yes.

20 Q: Can you see the word, the letters, I-F, if?

21 A: Yes.

22 Q: Can you see the letters A-N-Y-T-H-I-N-G, anything?

23 A: Yes.

24 Q: Can you see the letters W-A-S, was?

25 A: Yes.

1 Q: Can you see the letters, T-O, to?

2 A: Yes.

3 Q: Can you see the letters H-A-P-P-E-N?

4 A: Yes.

5 Q: Happen?

6 A: Yes.

7 Q: Okay. Can you see the letters A-N-D?

8 A: Yes.

9 Q: And?

10 A: Yes.

11 Q: Do you know what that word is?

12 A: I can't make it out.

13 Q: All right. What about this word, can you see the
14 letters K-N-E-W?

15 A: Know or No.

16 Q: Okay. Can you see that letter, K-N-E-W, knew?

17 A: About.

18 Q: About.

19 A: Knew about it.

20 Q: Knew about it?

21 A: Yes.

22 Q: This word after that?

23 A: That's would.

24 Q: W?

25 A: Yes. W-O-U-L-D.

1 Q: What's that word?

2 A: Would.

3 Q: What's that word?

4 A: Tell.

5 Q: T-E- ---

6 A: L-L.

7 Q: What is that word?

8 A: On me.

9 Q: On me?

10 A: Yes.

11 Q: So if you read that sentence, in conjunction with
12 the part that you scratched out, it would read, I
13 remember saying to you if anything was to happen and
14 you knew about it, would you tell on me?

15 A: Yes.

16 Q: Read the next sentence for me. Let me scoot it up a
17 little bit. Okay.

18 A. I know the answer to that Roberta. When you say
19 that you would not write that letter for me, that
20 what told me that you can never be trusted. It
21 tells me that you ---

22 Q. Okay. Now, the next part of that sentence. It
23 tells me that you -- and you scratched this part
24 out, right?

25 A. Yes.

1 Q. What is your recollection as to what he wrote to
2 complete that sentence?

3 A. It tells me that I will only lie when I'm only
4 helping myself, that's what it says.

5 Q. And continue the remainder of that page?

6 A. Not your kids father, but I'm not country like these
7 Niggers.

8 Q: All right. Let's go to the next page. All right.
9 Will you read the first sentence of page seven?

10 A: What you fail to realize is I'm looking for a strong
11 woman who got my back no matter what. You talk that
12 talk in your letter, but you are too blind to see
13 the test is right now. I need that real woman to
14 held my back now. So what the hell are you talking
15 about. And to make it so bad both of my baby mother
16 got me and living with them and they still write me
17 at least once a week. And don't complain like you
18 do.

19 Q: All right. Let me ease it up a little more so you
20 can finish the letter, that page of the letter.

21 A: And I wrote to both of them telling them that I
22 needed to write a letter.

23 Q: Say that again. That I needed, what now?

24 A: I mean, I wrote to both of them telling them I
25 needed you to write a letter for me to help me from

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1 going to prison for life. And both of them said if
2 that's all it took, you would have ...

3 Q: Let's flip it over and go to page eight. And ...

4 A: You would ...

5 Q. For continuity -- hold on for a second for me.

6 Continuity. It says, and the both of them said that
7 if that's all it took, you would have ...

8 A. Had that letter already.

9 Q. Please continue?

10 A. Those are real baby mothers that want me to be in my
11 daughter's life.

12 Q. Okay. Please stop right there. And just to be
13 clear, the blue ink that reflect -- that these parts
14 are scratched through or whatever, who placed the
15 ink there?

16 A: I did.

17 Q: All right. Start at this part where it says, they.
18 In the middle of that letter.

19 A: They had enough to want to see me in my daughter's
20 life. What does that say about you, Roberta? This
21 is the real test Roberta. All I can say to you is
22 if you even want ...

23 Q: Is that even or ever?

24 A: All I can say to you is if you ever want our son
25 to have a chance at having his own father to be in

1 his life and raise him to be a man, that letter and
2 you willing to do what it takes to help me. If that
3 is the only one thing that would help.

4 Q: All right. Let's start on page nine of that same
5 letter. All right. If you'll start reading at the
6 top?

7 A: I be going to a bond hearing soon and I'm going to
8 need to have that letter that I can give to my
9 lawyer. That is if you're gonna help me. There is
10 one picture that I must have and that's the picture
11 with me and my son with him sitting on the hood of
12 my car and me holding him. Please send me that
13 picture now. Like I said, Roberta, I never hate
14 you. I don't know where you got that from because
15 that's not a good word to be saying about someone.
16 You need to start thinking about what we say to
17 people before we say it.

18 Q: All right. When he is talking to you about I'll
19 never hate you. I don't know where you got that
20 letter from or where you got that from, what was he
21 saying in response to?

22 A: He was thinking that ---

23 Q: Speak up. Turn around.

24 A: He hated that I dislike each other because he didn't
25 show up for the baby's birth.

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1 Q: Oka. And flip that over to page ten. And read the
2 rest of that for me.

3 A: Well, Ms. Smith, all I can say is that I'm gonna
4 need all the help I can get. If you really love me
5 and want me in our son life or you want me in your
6 life, you know what you must do. I hope you do the
7 right thing, Roberta.

8 Q: All right. Again, and when we're talking about what
9 he's trying to get you to do, tell us what it is
10 that he's trying to get you to do?

11 A: Write a statement saying that he was in North
12 Carolina and never left and get it notarized.

13 Q: All right. Now, quick question -- I need to go back
14 very briefly. In the May 17th, 2010 letter that he
15 wrote to you, he indicates that Quan did something
16 to me really fucked up. He's the reason I'm in jail
17 now. Does he at any point in that letter say that
18 Quan killed Cora Brown?

19 A: No, ma'am.

20 Q: In the second letter that you read, that nine and a
21 half, ten-page letter, does he ever mention in the
22 letter dated August the 11th, 2010 that Quan Killed
23 Cora Brown?

24 A: No, ma'am.

25 Q: All right. I'm going to publish State's Exhibit

1 Number 119. That is also a letter that you received
2 from Levern McCrea?

3 A: Yes.

4 Q: And it has his name there?

5 A: Yes.

6 Q: And it has a postmark date of?

7 A: November 16th, 2010.

8 Q: It's addressed to you?

9 A: Right.

10 Q: And how many pages are within that letter?

11 A: Three.

12 Q: Okay. Three pages.

13 A: Yes.

14 Q: I'm going to publish the first page. When does the
15 Defendant date that letter?

16 A: November 15, 2010.

17 Q: All right. And, again, it's addressed to you?

18 A: Yes.

19 Q: All right. Can you read that page for me?

20 A: I'm writing you because it's important right now.

21 I'm about to have a special trial, a speedy trial in
22 the next two or three months, only because they do
23 not have no evidence at all to charge me with
24 murder. The gun that Quan gave the police is not
25 the weapon used in the crime they said I did. That

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1 was the best news ever.

2 Q: Wait a minute. He underlines certain portions of
3 that letter?

4 A: Yes.

5 Q: The first portion of the letter that he underlined
6 begins where?

7 A: Two or three months.

8 Q: Okay. And what's the next portion of the letter
9 that he underlines?

10 A: Do not have no evidence at all to charge me with
11 murder.

12 Q: And the next portion of that letter that he
13 underlines?

14 A: That were the best news ever.

15 Q: And when he said, that was the best news ever, he's
16 talking about the weapon used in the crime or
17 something about the gun that Quan gave to the police
18 he says was not the weapon used in the crime?

19 A: Yes.

20 Q: That's what the Defendant says?

21 A: Yes.

22 Q: All right. Okay. Please continue now. After, that
23 was the best news ever.

24 A: That lie he told on me just changed the whole case
25 for the better. Now, my lawyer has been trying to

1 call you. All he wants to know from you is that I
2 was in North Carolina on the week of 3/10/09 until
3 3/17/09. That's all I need you to tell him,
4 Roberta.

5 Q: Okay. Now, I'm going to publish page two of that
6 very same letter. Is that a number 2 at the top of
7 that page?

8 A: Yes.

9 Q: All right. If you'll read that for me?

10 A: Now I have a chance to raise my only son and watch
11 him grow up to be a man. Don't take this away from
12 me because you mad at me. I want to raise my son.
13 My lawyer have been trying to contact you. So I
14 need you to please call him and only talk to him or
15 his secretary. Do not mention anything about the
16 letter I wrote to you, asking you to write for me
17 because I don't need it now. Quan hurt himself by
18 trying to set me up.

19 Q. All right. Now, is there a part of that -- the
20 second part of that page that's underlined?

21 A. Yes.

22 Q. And what part of that page, what part of that letter
23 does he underline here?

24 A. Do not mention anything about the letter I wrote to
25 you asking you to write for me because I don't need

1 it now.

2 Q. Okay. Read the last page of that letter?

3 A. Attorney Cezar McKnight.

4 Q: Hold up for a second for me. Is there a number at
5 the top of that letter?

6 A. Page three.

7 Q: All right. Start at the beginning.

8 A: My lawyer name and address Attorney Cezar McKnight
9 106 East Main Street, Lake City, South Carolina
10 29560. Telephone 343-374-4529.

11 Q: Read that -- I'm sorry. Is it 343 or 843?

12 A: 843.

13 Q: All right. Please continue.

14 A: You must call him now, Roberta. He's waiting to
15 hear from you. I need you to write him now. I will
16 not have a chance to raise my own son. You must
17 call my lawyer now and write me, letting me know
18 what he said.

19 Q: Okay. Did you, in fact, ever call Attorney
20 McKnight?

21 A: No, ma'am.

22 Q: All right. Now, as it relates to State's Exhibit
23 Number 119, did the Defendant within this letter
24 dated 11/14/2010 ever say Quan killed Cora Brown?

25 A: No.

1 Q: All right. Let's go to State's 120. Tell me how
2 many pages are in that letter?

3 A: Five.

4 Q: Okay. Are you okay? Do you need water? You can
5 get it. What's the date on that letter?

6 A: 7/22/2011.

7 Q: All right. And read the first page of that letter,
8 please?

9 A: Ms. Smith, thank you for writing to me and letting
10 me know that my son is doing well. I'm really
11 happy. I also hope that the other two kids are
12 doing well, doing good as well. A while back I was
13 really upset with you, Roberta and I explain that to
14 you when you come to see me. That is, if you're not
15 lying to me again. I hate when someone lies to me
16 so don't do it. By the time you get this letter, I
17 will have your name on a visiting list. Because you
18 from a different state all you have to do is call
19 over here and let them know that you are coming to
20 see me. You have a North Carolina address ID. You
21 can come to see me anytime Monday through Friday,
22 but you must call first so that they can fill you in
23 a slot to see me. My son's name don't have to be on
24 my list. Just bring him. Please come.

25 Q: So page two? Do you see the number two up in the

1 upper lefthand corner?

2 A. Yes.

3 Q. All right. Read that second page for me?

4 A. Just to inform you of situation so far, they do not
5 have any evidence on me but hearsay evidence from
6 Quan who keeps on changing his story, which will
7 only help my case when I go to trial. This bastard
8 tried to set me up for his murder. After all the
9 shit I helped him and his wife with, but it's all
10 right because I'm going to get paid really big after
11 I win my case.

12 Q. All right. He says, but it's all right because I'm
13 going to paid really big after I win my case. And
14 is there a symbol or something after the word case?

15 A. Two dollar signs.

16 Q. Two dollar signs. All right. Please finish reading
17 the rest of that letter.

18 A. Listen very carefully. Do not talk to anyone unless
19 I tell you to. The State's attorney office has been
20 trying to be slick. You don't know anything to tell
21 anything anyway, Roberta. If someone calls you or
22 come by your house asking you any kind of questions,
23 you tell them you don't know nothing about nothing.

24 Q. Is that page three?

25 A. Yes.

1 Q. All right. Now, read that page.

2 A. Like I told you before, I have receipts of where I
3 was at your house in North Carolina from two stores
4 that I was in. And I also have those receipts that
5 you left in my car when you bought those curtains
6 that I put up for you, which proves that I was in
7 North Carolina when Quan committed that crime. I
8 didn't bring him to the house until a week later.
9 That was after he committed that crime that I knew
10 nothing about. He tried to use me, that son of a
11 bitch. The police took the receipt from me. Now
12 they can't find them but it don't matter because
13 it's on my transcript and they can't deny it.

14 Q. All right. The next part of that letter is also
15 scratched out as well; is that right?

16 A. Yes.

17 Q. Do you recollect what the Defendant wrote? I'm
18 assuming that was scratched out by you?

19 A. Yes.

20 Q. Do you recollect what the Defendant as the last
21 sentence on that page?

22 A. I can't remember.

23 Q. Can you read any of the lettering that's contained
24 underneath that scribble?

25 A. Not from the screen, I cannot.

1 Q. All right. Read page four. First of all, that's a
2 number four at the top of that page?

3 A: Yes.

4 Q: Okay. Read that for me.

5 A: I was supposed to go to another bond hearing two
6 weeks ago, but my lawyer tried to play me and I
7 fired his ass. So now I'm waiting to go back to
8 court on a ---

9 Q: Pro se?

10 A: Pro se motion ---

11 Q: All right.

12 A: --- to dismiss counsel. Hopefully, it will be this
13 month because they've got to give me a bond. If
14 they give me a bond less than two hundred thousand
15 dollars, I could be out the same day. They've set
16 bond on me and I already got a bondsman waiting to
17 get me out. Now, this is very important, Roberta.
18 You must stay in touch with me at all the times now.
19 I need you to go to Wal-Mart and get me a retail
20 card so I can call you. This is very important.

21 Q: All right. Now, did you ever visit the Defendant
22 while he was incarcerated?

23 A: No, ma'am.

24 Q: Was that ever the source of any conflict between the
25 two of you when you all were writing each other back

1 and forth?

2 A: No, ma'am.

3 Q: The February 2011 letter to you was the first time
4 where he had accused Quan of committing the murder?

5 A: Yes.

6 Q: About a year after he was arrested?

7 A: Yes.

8 Q: All right. State's Exhibit 121. Again, that's a
9 letter that Mr. McCrea wrote to you?

10 A: Yes.

11 Q: His name appears in the address part of it?

12 A: Yes.

13 Q: Your name appears here?

14 A: Yes.

15 Q: And on the postmark date that the letter was mailed,
16 can you read the date there?

17 A: No, ma'am.

18 Q: All right. Let me let you actually physically look
19 at it. Can you read it there?

20 A: It says June the 3rd, I believe.

21 Q: Okay. Does that letter have a date on it at the top
22 of that letter?

23 A: Yes.

24 Q: What's the date at the top of that letter?

25 A: 6/20/2011.

1 Q: Okay. Now, up until this point, was the Defendant
2 aware that the police had come to your residence in
3 North Carolina in March of 2010?

4 A: I think so.

5 Q: Now, do you recall deputies coming up there and you
6 giving a statement to them?

7 A: Yes.

8 Q: And within that statement, what, if anything, did
9 you tell law enforcement in March of 2010 regarding
10 Mr. McCrea or a Quan?

11 A: Could you repeat that question again?

12 Q: What did you tell law enforcement when they came up
13 to your house in North Carolina in March of 2010?

14 A: What did I tell them?

15 Q: Yes? And I need to make sure that you keep your
16 voice up. What did you tell them?

17 A: Everything that they asked.

18 Q: Okay. At that point in time, did they know to ask
19 you about whether or not you'd actually seen a gun?

20 A: Yes.

21 Q: Do you know whether or not they had -- I'm assuming
22 you don't know when they recovered a gun?

23 A: No.

24 Q: Did you mention anything in your statement when the
25 police officers came to your house in March of 2010,

1 did you mention anything to them in your statement
2 about Mr. McCrea having a gun.

3 A: No.

4 Q: Did you mention anything to the police in your March
5 2000 statement about the Defendant trying to sell a
6 gun to your brother?

7 A: No.

8 Q: And tell me why you omitted telling the police that
9 information?

10 A: At the time they got there and told me about the
11 murder, it shook me up and it scared me.

12 Q: Okay. All right. We have indicated that this
13 letter is dated June the 20th of 2011. How many
14 pages is that letter?

15 A: Seven. Nine.

16 Q: Okay. Now, when you were responding back to the
17 Defendant, you were writing back to him?

18 A: Yes.

19 Q: Okay. What kinds of things were you telling him
20 when you were writing back to him in response to the
21 letters that you received from him?

22 A: About the baby and God.

23 Q: Okay. Telling him to pray and that sort of thing?

24 A: Yes.

25 Q: Did you, in fact, give him pictures of your son?

1 A: Yes.

2 Q: All right. That's page two of the June 20th, 2011?

3 A: Yes.

4 Q: All right. If you would, please, ma'am, read that
5 page for me.

6 A: But anyway, thank you for the pictures. He is
7 definitely a handsome little man and I miss him. I
8 just hope and pray that I will be able to help you
9 raise him up and come a strong man before I'm dead.
10 Now, I need you to listen to me very carefully,
11 Roberta. I just received a statement where you
12 talked to the police. Why didn't you tell me that
13 you gave them a taped recorded statement? Why would
14 you do that, Roberta? You didn't have to tell them
15 anything. All you had to say was I don't or I don't
16 know or can't remember. I told you not to say
17 anything to police.

18 Q: And had he, in fact, given you those instructions in
19 terms of not talking to the police?

20 A: Yes.

21 Q: All right. Page six of that statement. If you can
22 read that for me?

23 A: That bastard was saying that I bought my car after I
24 committed this crime with this lady's money. I was
25 in Anderson, South Carolina working at a hotel when

1 I bought my car. This is how jealous those niggers
2 are of me in the country. Listen to me, you must
3 stay in contact with me from now on because I could
4 be going to trial soon. I'll be sending my mother a
5 picture of her grandson. She'll like that. I'll be
6 in touch with you to keep you informed as to what's
7 going on in my case.

8 Q: All right. You can take your seat.

9 (Whereupon, the witness returns to the witness stand.)

10 Q: Ma'am, the day that Mr. McCrea took your vehicle,
11 did he take it to South Carolina the same day he
12 arrived with Quan?

13 A: Yes.

14 Q: No question about that?

15 A: No.

16 Q: How long was he gone from your house between the
17 time he left and the time they came back in the
18 early morning hours of that next day?

19 A: How long were they gone?

20 Q: Yes, ma'am?

21 A: At least six hours or more. At least six hours.

22 Q: Let's try to do the math. If they left somewhere
23 between four and five, let's assume at the latest
24 five o'clock p.m., okay?

25 A: Yes.

1 Q: What time was it when they returned to your house
2 the next day, the early morning hours of the next
3 day?

4 A: It was about two in the morning. Between two and
5 three.

6 Q: Okay. So count the hours up for me. Five o'clock,
7 six?

8 A: Seven, eight, nine, ten, eleven, twelve.

9 Q: Eleven, twelve. Now, twelve a.m. And then the next
10 hour would be one.

11 A: One, two.

12 Q: That's how many hours that he was gone with your
13 car?

14 A: That's ten hours.

15 Q: Is that eight.

16 A: It's about nine.

17 Q: Okay. How long did it take you to get to South
18 Carolina to come here in court for your subpoena,
19 from your home?

20 A: About three hours.

21 MS. BARR: Beg the Court's indulgence. That's all
22 the questions that I have of her. And, Judge, I don't
23 know whether or not you want to start cross-examination
24 now or if you want to break for lunch. Whatever the
25 Court wants.

1 THE COURT: Mr. McCrea, do you have a preference
2 when we break for lunch?

3 MR. MCCREA: Oh, no, I'd rather proceed.

4 THE COURT: Okay. We'll proceed.

5 CROSS-EXAMINATION

6 BY MR. MCCREA:

7 Q: Ms. Roberta Smith, while you were pregnant and about
8 to have the baby, and you wanted Mr. McCrea to be at
9 the hospital with you while you were about to have
10 the baby, if you can remember, what was Mr. McCrea's
11 reason for not being able to be there to watch as
12 our son being born.

13 MS. BARR: Judge, we'd have to object based on
14 relevancy.

15 THE COURT: Sustained, there's no relevance to that.

16 MR. MCCREA: Excuse me?

17 THE COURT: There's no relevance and that statement
18 goes back two years from the baby being born.
19 Irrelevant. Move forward.

20 MR. MCCREA: Your Honor. There's relevance due to
21 the fact that I didn't have an automobile at the time.

22 THE COURT: This was for two years earlier. It's
23 irrelevant. Proceed with the next question.

24 Q: Ms. Smith, Mr. McCrea called you on March the 14th,
25 2009, that Saturday morning to tell you that he was

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1 bringing someone with him because he was going to
2 need some help in a few days in towing his car back
3 from North Carolina. Do you recall that?

4 A: I recall you calling me and telling me you was
5 coming to borrow the truck to move a car.

6 Q: That he was going to need some help in towing his
7 car back from Anderson, South Carolina?

8 A: I just remember you telling me you was borrowing the
9 truck to move a car.

10 Q: Was that the reason that Mr. McCrea ask you to
11 borrow your car, because he let you drive his
12 Mercedes?

13 A: Yes.

14 Q: Ms. Smith, after McCrea and Mr. Briggs came back
15 with the truck trying to tow his car, was Mr. McCrea
16 acting strange at all?

17 A: Not at all. I went back to bed. I didn't notice
18 nothing strange.

19 Q: But you stated a few minutes ago that I was bossy
20 and that you seen dirt on my shoes. But if you was
21 tired, how could you possibly see dirt on my shoes
22 when you stated you opened the door, and just stated
23 that there was food on the stove?

24 A: Yes. I did notice mud on your shoes.

25 Q: You stated that you was tired.

1 A: Yes.

2 Q: And you went back to bed because you were sleepy;
3 correct?

4 A: Yes.

5 Q: Ms. Smith, the next morning that you saw Mr. Briggs,
6 was he acting like something was wrong with him?

7 A: No, other than he had problems with his wife.

8 Q: And that was the reason I was bossing him around?

9 A: No.

10 Q: Ms. Smith, was Mr. Briggs, was Mr. Briggs acting
11 like he was ready to go home and frightened or
12 anything while he stayed with us at your house?

13 A: He acted like he was ready to go home.

14 Q: But you stated he came back; correct?

15 A: Could you repeat that question?

16 Q: Remember when Ms. Barr ask you why he was coming
17 back and forth? He came back?

18 A: Yes.

19 Q: Correct?

20 A: Yes.

21 Q: So if he was ready to go home, why would he come
22 back Ms. Smith?

23 A: I don't know.

24 Q: What's the purpose of Mr. McCrea coming back and
25 forth to your house, anyway?

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1 MS. BARR: Judge, we'd object. Speculation. She's
2 already answered that. She doesn't know.

3 THE COURT: Sustained. Requires speculation on her
4 part.

5 Q: Ms. Smith, does Mr. McCrea have a son by you?

6 A: Yes.

7 Q: Would that be more of a reason to come?

8 A: Yes.

9 Q: So that's -- wouldn't you say that Mr. McCrea was
10 coming back because you never made an attempt to
11 bring his blood son to come see him?

12 A: That could be a reason why he was coming. He was
13 coming to see the baby, but there was a lot of
14 traveling going on at the time.

15 Q: What do you mean by a lot of traveling?

16 A: Two days, a lot of travel going on, back and forth.

17 Q: Back and forth where?

18 A: From North Carolina to South Carolina, from South
19 Carolina to North Carolina. There was a lot of
20 traveling going on in two days.

21 Q: Two days. So you're stating or saying here that Mr.
22 McCrea traveled with your car in two days, back and
23 forth to South Carolina?

24 A: Just one day.

25 Q: You just said it was a lot of traveling back and

1 forth for two days, Ms. Smith?

2 A: I didn't say which vehicle.

3 Q: You just said that.

4 THE COURT: Wait up. Let her answer her question.

5 A: I never said which vehicle. But it was a lot of
6 traveling going on. You only took my vehicle once.

7 Q: Ms. Smith, was Mr. Briggs enjoying himself at your
8 house, being there twice like you stated?

9 A: I assume he did.

10 Q: You assume?

11 A: Yes.

12 Q: He came back; correct?

13 A: Yes.

14 Q: He stated he was having problems with his wife;
15 correct?

16 A: Yes.

17 Q: So would it appear that Mr. McCrea was looking out
18 for Mr. Briggs because he was going through so many
19 problems?

20 A: Yes. You stated that's what you were doing.

21 Q: Ms. Smith, what's the name of the truck that you
22 drive again?

23 A: A 2000 Chevy Blazer.

24 Q: Is it a dually truck? Meaning, does it have two
25 wheels on your back on both sides?

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1 A. Yes.

2 Q. Two wheels on both sides. So it would be a total of
3 four wheels, two on each side of the back row?

4 A. Yes.

5 MR. MCCREA: Your Honor, I would like to -- Your
6 Honor, I believe Ms. Barr -- I can't seem to find the
7 pictures of Ms. Smith's automobile.

8 THE COURT: Weren't they in evidence?

9 MR. MCCREA: Yes, sir.

10 MADAM COURT REPORTER: 122 through 125.

11 THE COURT: 122 through 125?

12 MADAM COURT REPORTER: Yes, sir.

13 THE COURT: They're here.

14 MS. BARR: It's four, I think.

15 MR. MCCREA: Thank you.

16 Q: Ms. Smith, can you see this picture right here?

17 A: Yes.

18 Q: You're telling me that your truck had two wheels on
19 the back on this side and two wheels on the other
20 side?

21 A: No. That's not what I was saying.

22 Q: What were you saying?

23 A: That it just has those two wheels on the back. It's
24 two wheels on the back, one on each side.

25 Q: Right. I stated two on each side? Was it a dually

1 truck? That means to have ...

2 A: I don't have the slightest idea what a dually truck
3 is.

4 Q: Yes, ma'am. I understand that. But I'm trying to
5 explain it to you, Ms. Smith. That it would be two
6 wheels on the back.

7 A: Just one on each side.

8 Q: Yes, ma'am. That's what I thought. It was a dually
9 indentions in the grass -- that's the reason I ask
10 you -- of the victim's residence. You don't have a
11 dually truck?

12 A: No.

13 Q: It doesn't have two wheels on each side, which would
14 total four wheels, two on each side. That's not the
15 kind of truck that you drive; correct?

16 A: That's not the truck that I would drive?

17 Q: This is -- yes, ma'am. No. This is the actual
18 truck that you drive?

19 A: Yes.

20 Q: But it does not have two wheels on each side, which
21 would total four wheels on your back; correct?

22 A: If that's what a dually truck is, yes.

23 Q: Ms. Smith, do you remember at any time you and Mr.
24 McCrea leaving Mr. Briggs at your house by himself,
25 at any time?

1 A: We did.

2 Q: You do remember that?

3 A: I'm not for sure, but I'm pretty sure, yes.

4 Q: Do you remember the date that we allegedly left ...

5 A: No.

6 Q: ... Mr. Briggs by himself at your house?

7 A: No.

8 Q: Did we leave him with the kids?

9 A: No.

10 Q: So you're pretty sure that we left Mr. Briggs and
11 what was the purpose of us leaving, to leave Mr.
12 Briggs at your residence?

13 A: We went several places without him. It was just me
14 and you and the kids. But he wasn't with us.

15 Q: Okay. Ms. Smith, the second time that Mr. Briggs
16 came back with Mr. McCrea, was Mr. Briggs enjoying
17 himself? Was he having fun?

18 A: I think so.

19 Q: But you stated I was -- he was there; correct?

20 A: Yes.

21 Q: And he slept on the couch when he was there;
22 correct?

23 A: Yes.

24 Q: You seen him quite a bit; correct?

25 A: Yes.

1 Q: So by you seeing him as much as you seeing me, you
2 should be able to tell if he was enjoying himself;
3 right?

4 A: Yes. We had plenty of entertainment at the house so
5 I do believe he was enjoying himself.

6 Q: But you stated that he wanted to go back home, but
7 he came back?

8 A: Yes.

9 Q: When Ms. Barr was asking you about some rubber
10 gloves, are you saying that Mr. McCrea took the
11 rubber gloves from your house?

12 A: I never said that you did.

13 Q: Ms. Smith, how are you so sure of the date of when
14 Mr. McCrea came with Mr. Briggs? Because you state
15 -- excuse me. All right. I'll let you answer that.

16 A: Can you ask the question one more time?

17 Q: How are you so sure of the date of when Mr. McCrea
18 came with Mr. Briggs, a year later?

19 A: The day when Mr. Briggs came?

20 Q: Yes. A year later. I'm sorry?

21 A: I gave her two dates. I said Tuesday or Wednesday
22 because I wasn't quite sure.

23 Q: And you're still not quite sure because you said
24 Tuesday or Wednesday?

25 A: Yes.

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1 Q: But in your statement on March the 28th, 2010, you
2 stated Wednesday or Thursday, Ms. Smith?

3 A: I said I wasn't sure of the date. But it was the
4 week, the second week of March.

5 Q: Well, obviously, because you say Monday, Tuesday.
6 And then you state Wednesday/Thursday. So that's
7 confusing to me. So you wasn't sure exactly?

8 A: Not the exact day. No, I wasn't.

9 Q: But the time that we came, me and Mr. Briggs came
10 back with your truck, we were trying to tow my car
11 in Anderson, South Carolina, we came back with an
12 excessive amount of dirt on our shoes you stated?

13 A: Yes.

14 Q: And it was late in the night?

15 A: Yes.

16 Q: And you remember that out of anything else?

17 A: Yes.

18 Q: So you're uncertain about Mr. McCrea the times that
19 he did come to your house was mainly because of, due
20 to the fact that he had a brand new son?

21 A: I don't understand your question.

22 Q: Wouldn't you think that Mr. McCrea was coming to
23 your house because of the new baby?

24 A: Yes. That's the reason you said. You was coming to
25 see the baby.

1 Q: But you stated I was just coming to be coming,
2 making plenty of trips on the road. And you never
3 mentioned once about the baby at all until I'm
4 asking you right now?

5 A: I did. I stated that you came to see the baby. And
6 I also stated that y'all had left and went back and
7 then you came back, came again. But you did say you
8 was coming to see the baby.

9 Q: Yeah. But you never mentioned that until my
10 question?

11 A: Yes. I have mentioned it before.

12 Q: Ms. Smith, when Mr. McCrea first met you on the
13 phone, did he ask you to send him a picture of
14 yourself?

15 MS. BARR: Judge, objection to relevance.

16 THE COURT: Sustained. Sustained.

17 Q: Ms. Smith, when Mr. McCrea first came to your house,
18 wasn't your house a complete mess?

19 A: I wouldn't say that, but I told you I was moving. I
20 had boxes packed up. And, yes, I had a lot of boxes
21 piled up in the corner. That's what a moving house
22 looks like.

23 Q: Ms. Smith, was your sink completely full of dishes?

24 A: My sink was stopped up. But I don't think that's
25 got nothing to do with your case.

1 Q: Ms. Smith, was your trash can overfilled to the
2 floor?

3 MS. BARR: Judge, objection as to relevance.

4 THE COURT: Sustained. This line of questioning is
5 totally irrelevant.

6 Q: Ms. Smith, did Mr. McCrea at any time say to you
7 during his visit that why would you invite a man
8 over to your house looking like that?

9 MS. BARR: Your Honor, again, objection to
10 relevance.

11 THE COURT: Sustained.

12 Q: Ms. Smith, after the visit, Mr. McCrea visit at your
13 house, he wanted nothing else to do with you;
14 correct?

15 A: Yes.

16 Q: Isn't it true that Mr. McCrea also called the police
17 on you to have them, to tell you to leave him alone
18 because he didn't want anything to do with you;
19 correct?

20 A: I was calling you to let you know you had a baby on
21 the way. And you had the cops to tell me to stop
22 calling you. You didn't want to hear about the
23 pregnancy, I guess.

24 Q: Wasn't it due to the fact of his experience at your
25 house that he wanted nothing to do with you?

1 A: No. But once again, this ain't got nothing to do
2 with your case.

3 Q: But you do recall Mr. McCrea calling the police to
4 ask them to assist him in phone harassment; correct?

5 A: It wasn't no phone harassment. I called you several
6 times to let you know you had a child on the way.

7 Q: Ms. Smith, on March the 28th, 2010, page 13, numbers
8 14 ---

9 THE COURT: Provide her a copy.

10 MR. MCCREA: Excuse me, sir?

11 THE COURT: Provide her a copy of what you're
12 reading from.

13 A: Give me the page number?

14 Q: Page 13, Ms. Smith. Number 14, you were asked the
15 question, Ms. Smith. And I'll read the question and
16 I'd just like you to look at your answer on number
17 15, okay? You were asked, have you ever seen him
18 with a weapon, a gun, or a knife or anything like
19 that? And would you please read number 16 in your
20 response?

21 A: No. Other than a pocket knife that most guys would
22 carry around.

23 Q: You stated, no. But when Ms. Barr ask you, you
24 said, yes, you even put it in a box?

25 A: Yes.

1 Q: So you lied actually?

2 A: At the time when Detective Brown and his partner
3 came to the house to ask me about the gun, like I
4 said, when they asked me and told me about the
5 murder, I was scared for my life, my kids, my mom,
6 everyone. I was shaking. And my mind was ... But
7 the truth is there was a gun.

8 MR. MCCREA: Your Honor, I would like to grab a
9 picture, the actual picture of the weapon here?

10 THE COURT: Yes, sir.

11 MS. BARR: I'm sorry, which picture?

12 THE COURT: A picture of the gun.

13 MS. BARR: Judge, I need to also make sure that we
14 get the exhibits back. I know I have a tendency if I
15 keep them near me, that I'll end up putting it in my
16 stuff.

17 THE COURT: All right.

18 MS. BARR: I think he had the exhibits of the cars,
19 of the truck. I need to make sure we get them back. I
20 found the one of the gun.

21 Q: Ms. Smith, can you say without a doubt that this was
22 the gun that I allegedly showed you?

23 A: I know nothing about guns, but it was a gun. I'm
24 unsure about that.

25 Q: You said it was a gun, but you're not sure if this

1 was ...

2 A: I'm not sure.

3 Q: But when you were ask on page 13, you stated, no?

4 A: Yes, I did.

5 Q: Now you're here today and you have a lot more
6 information. When you had opportunity to let the
7 officers or the investigators know at that
8 particular time when they came to see you; isn't
9 that true, Ms. Smith?

10 A: Once again, I told you I was scared for my family,
11 and my life. My mind was running information that
12 the officer, Detective Brown, had given me.

13 Q: Ms. Smith, isn't it true that you're only up here
14 because Mr. McCrea doesn't want to be with you?

15 A: No, sir. I prefer not to be here at all.

16 Q: So that isn't the reason, Ms. Smith?

17 A: No, ma'am -- no, sir.

18 Q: But he did call the police on you; correct?

19 A: What's that got to do with anything? It don't have
20 anything to do with this.

21 Q: But Mr. McCrea did call the police?

22 MS. BARR: Objection, relevance, Your Honor.

23 THE COURT: Sustained. You've already been told
24 that one time, Mr. McCrea. Don't ask it again.

25 Q: Ms. Smith, how long did Mr. McCrea and Mr. Briggs

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1 stay at your house? If you can remember what dates?

2 A: Y'all came one day and left the same, came back.

3 You left again, and then you stayed about almost a

4 week.

5 Q: So Mr. McCrea never came by himself at all before he

6 brought Mr. Briggs?

7 A: You came in February and stayed by yourself.

8 Q: Never once in March?

9 A: Not that I remember.

10 Q: Are you sure about that?

11 A: Not that I can remember.

12 Q: Not that you can remember. So you're not sure about
13 that?

14 A: I don't remember you coming back until [REDACTED]

15 birthday.

16 Q: Do you remember Mr. McCrea coming on a Saturday
17 morning?

18 A: No.

19 Q: You gave a statement, Ms. Smith, that Mr. McCrea --
20 excuse me.

21 MR. MCCREA: Excuse me, Your Honor.

22 Q: Ms. Smith, you stated that Levern and his cousin,
23 Christopher, did come the weekend of 3/14 and they
24 stayed for a week. You don't remember that, the
25 first time that they came and borrowed the truck?

1 A: Can you tell me what page you're on?

2 Q: Do you remember making that statement?

3 MS. BARR: Your Honor, again, I think the witness
4 has asked about ...

5 THE COURT: You need to point it to her if you're
6 going to impeach her on it.

7 MS. BARR: Judge, I think the Defendant may be
8 referring to a police officer's report as opposed to the
9 witnesses own statement. If that's the case, we would
10 object to that.

11 THE COURT: Sustained. It's not her statement.

12 Q: So you stated that you're not sure that ---

13 THE COURT: Are you going to give her the page and
14 the line? If you're asking from her statement, please do
15 so.

16 MR. MCCREA: Your Honor, it's on this supplemental
17 report.

18 MS. BARR: We'd object to that. If it's a
19 supplemental ---

20 THE COURT: Objection's sustained. It's not her
21 report. It's not her statement.

22 Q: Ms. Smith, but you do or do you recall Mr. McCrea's
23 Lincoln breaking down on him before you were about
24 to go in and have the baby?

25 A: You told me it was down.

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1 Q: You don't recall Mr. McCrea telling you the reason
2 why he was unable ---

3 A: Yes. You said you didn't have a way.

4 Q: Meaning?

5 A: Your car was down.

6 Q: That I had broken down on the highway. Ms. Smith,
7 do you recall or not the real reason why Mr. McCrea
8 asked you to borrow your truck? Because he wanted
9 to pick up his car.

10 THE COURT: No, hold on. You can't testify. You
11 can ask her questions.

12 MR. MCCREA: Okay.

13 Q: Do you remember the real reason why Mr. McCrea asked
14 you to borrow your truck?

15 A: Yes, to move a car.

16 Q: To move or to go get his car?

17 A: (Witness pauses).

18 Q: So you do remember the Lincoln Town Car?

19 A: Yes.

20 Q: Do you remember Mr. McCrea in Anderson, South
21 Carolina?

22 A: That's where you told me you lived.

23 Q: During the time you was pregnant?

24 A: That's what you told me.

25 Q: Ms. Smith, when was the next time that Mr. McCrea

1 was able to buy another car to come see you, his son
2 after ...

3 MS. BARR: Objection. Relevance.

4 THE COURT: Sustained. And requires speculation.

5 Q: Ms. Smith, so you are definitely unsure if it was
6 Monday, Tuesday, Wednesday, Thursday or Friday when
7 Mr. McCrea came to see you?

8 A: It was Tuesday or Wednesday.

9 Q: Ma'am?

10 A: It was Tuesday or Wednesday.

11 Q: Now, you're saying it's Tuesday or Wednesday?

12 A: Yes.

13 Q: Ms. Smith, on page 7 you were ask, page 7, please?

14 A: I got it.

15 Q: Number 20. I'll read the question and I'd like you
16 to read your response once I'm done? Did they say
17 anything to you about what happened or what they
18 were doing once they got back?

19 A: And I said, I was asleep. But I got up and unlocked
20 the back door for them. I just told them there was
21 food up on the stove, they could help themselves. I
22 ask did they get everything done that needed to get
23 done. And they said that the guy that they were
24 looking for didn't show up, but somebody else was
25 there to pull some cars. I don't know what kind of

1 car that they were pulling or what they were looking
2 for. I really didn't ask that many questions
3 because I was pretty sleepy. I was pretty much
4 sleepy.

5 Q. So if you was pretty much sleepy like you stated,
6 how would you know how dirty their shoes or boots
7 were?

8 A. I wasn't that sleepy that I didn't notice that.

9 Q. Ms. Smith, you're up here trying to lie about Mr.
10 McCrea because of what?

11 A. Could you repeat that question again?

12 Q: You're up here today trying to lie about Mr. McCrea
13 because of what?

14 A: Sir, I did not lie. I'm not going to lie before God.
15 I'm not going to lie up here about -- I'm not lying
16 about you. Why you feel that way, I don't
17 understand. But I'm not lying. I have no reason to
18 lie.

19 Q: Did Mr. McCrea ever tell you about him causing harm
20 to anyone?

21 A: No, you didn't.

22 Q: Ms. Smith, on page 10. I read the question and like
23 you to respond to the answer. On number 5. You
24 were ask, what kind of person would you say Levern
25 is as far as dealing with someone?

1 A: Would you give me that number again, what page
2 number?

3 Q: On page 10, number 5.

4 A: Page 10, number 5?

5 Q: Yes. The question was, what kind of person would
6 you say Levern is as far as dealing with someone,
7 with somebody? I'm sorry.

8 A: Mine says something totally different.

9 Q: Excuse me?

10 THE COURT: What page are you looking at?

11 MR. MCCREA: This is the same transcript, March 28,
12 2010 transcript, page ten.

13 A: I'm on page 10. And my number 5 question is --
14 there's not a question on number 5. It's an answer.
15 That question would be on number 3.

16 Q: Well, I just read that to you, Ms. Smith?

17 A: But you said number 5?

18 Q: I'm asking you to read number 5, please, of what you
19 said?

20 A: Number 5, me and him are two totally different
21 people.

22 Q: What do you mean by that, Ms. Smith?

23 A: Well, I'm more of a nice, laid-back, honest, God-
24 fearing person. And you, on the other hand, is
25 bossy, tough, just Lee. That's all I can say. You

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1 just totally different.

2 Q: Just Lee?

3 A: Yes.

4 Q: Has Mr. McCrea ever showed any aggression towards
5 you, any physical aggression?

6 A: No. You never physically laid hands on me, no.

7 Q: Has Mr. McCrea physically abused you in any other
8 way?

9 A: Physically?

10 Q: Abused you in any other way, Ms. Smith?

11 A: No, you haven't.

12 Q: But you say Mr. McCrea is bossy?

13 A: Yeah. You are.

14 Q: Well, I like living in a clean place, Ms. Smith.

15 THE COURT: Sir, do not make comments. If you have
16 a question ---

17 MR. MCCREA: Yes, sir.

18 THE COURT: --- you can ask it.

19 MR. MCCREA: Yes, sir.

20 THE COURT: I've warned you on that. I'm not going
21 to warn you again.

22 MR. MCCREA: Yes, sir.

23 THE COURT: Do you understand that?

24 MR. MCCREA: Yes, sir. I do. I do, Your Honor. I
25 apologize.

1 Q: Ms. Smith, on page 12, number 22 two. But I'll read
2 number 21. Was it strange for him to borrow your
3 truck?

4 A: And I said it was okay.

5 Q: So it didn't seem out of the ordinary for him to ask
6 you to borrow the truck to go pick up a car?

7 A: When you ask me to borrow my truck, no, it wasn't
8 strange because you said you were going to pull a
9 car at that time. No, it wasn't strange.

10 Q: Again, number 13, Ms. Smith.

11 THE COURT: Read your question to her.

12 MR. MCCREA: Yes, sir.

13 Q: Have you ever seen him with a weapon or a gun or a
14 knife or anything like that?

15 MS. BARR: Judge, we're going to object to that.

16 That's been asked and answered.

17 THE COURT: Sustained. Asked and answered.

18 Q: Ms. Smith, who is your nephew? What is his name
19 that called me, please?

20 A: My nephew name is Richard Smith.

21 Q: And he's the one that called me to tell me that you
22 were ---

23 MS. BARR: Objection to hearsay, Your Honor.

24 THE COURT: Sustained. All right. Mr. McCrea,
25 while you're trying to figure out what other questions

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1 that you're going to ask, we're going to take a lunch
2 break. You're still on the stand, ma'am. You're not
3 going to be able to discuss the case. You may want to
4 ...

5 MR. MCCREA: I apologize, Your Honor. Thank you.

6 THE COURT: I'm talking. We will take a recess, you
7 may resume your cross-examination at 2:30. So, ladies
8 and gentlemen you're excused for lunch. Be back here at
9 2:30 when we will resume the testimony of this at that
10 time. Please do not discuss anything with anyone while
11 you're having lunch. Thank you.

12 (Jury exited courtroom at 1:08 p.m.)

13 **10-20-11GS.pm**

14 The Court: Bring the jury in.

15 (Jury enters court room 2:32 p.m.)

16 The Court: All right. When we took our recess, Mr.
17 McCrea was cross examining Ms. Smith. Do you want to
18 continue your cross examination Mr. McCrea?

19 Mr. McCrea: Yes sir. Your Honor, I'd like to have
20 someone hand this to Ms. Smith.

21 The Court: Is that in evidence or just for ...

22 Mr. McCrea: Yes it is. Say it again, Your Honor.

23 The Court: Or just for identification?

24 Mr. McCrea: Its in evidence.

25 Ms. Barr: That's fine, Judge. I believe a smaller

1 version of that is in evidence.

2 The Court: That picture is in evidence, is that
3 correct?

4 Ms. Barr: Yes. Just i.d.

5 Mr. McCrea: Thank you.

6 Continued Cross Examination of Ms. Smith by Mr. McCrea:

7 Q: Ms. Smith?

8 A: Yes.

9 Q: Do you know how to even read that paper right there
10 that you have?

11 A: Some of the words, some of the words, I do not.

12 Q: Can you start from the beginning of that paper,
13 please.

14 A: The third nine weeks, Human Body Project. Dated
15 March 20, 2009. Digestion, salivary glands and a
16 whole lot of other medical words. Then its got acid
17 ph, acid ph acid ph, liver and a lot of other things.

18 Q: Ms. Smith, there was a high school kid in Hemingway,
19 South Carolina about that paper. So, you stated
20 that you were unsure if that belong to you or not.
21 Were you taken test during that time in February or
22 March?

23 A: No I wasn't. It was said it was not sure if it was
24 mind or not.

25 Q: So you weren't taken test during that time but you

1 stated to Ms. Barr there was a possibility that that
2 could be yours.

3 A: I did.

4 Q: So you lied?

5 A: No, I didn't. I said it was a possibility it ...

6 Q: And you weren't taken ...

7 A: ... may not be mines.

8 Q: If you weren't taking test during February or March
9 so how could it be a possibility, Ms. Smith?

10 A: Like I said it's a possibility that it could not be
11 mine, it could be somebody else's. It's a
12 possibility that the paper could not be mines.

13 Q: Is that actual date up there? The due date was
14 March 20, 2009, so if you weren't taking test in
15 February or March, it's impossible for that test to
16 be yours when they questioned a South Carolina high
17 school kid about that test, Ms. Smith.

18 Ms. Barr: Objection, Judge, the Defendant is
19 testifying.

20 The Court: Sustained. You're asking questions not
21 in evidence. She couldn't know that.

22 Mr. McCrea: Okay.

23 Q: Ms. Smith, why are you really here today lying?

24 Ms. Barr: Objection

25 The Court: Asked and answered.

1 Mr. McCrea: No further questions.

2 The Court: Thank you. Any redirect?

3 Ms. Barr: Just very briefly, if Your Honor, please.

4 Ms. Smith - Redirect Examination by Ms. Barr:

5 Q: Ms. Smith, in February and March of 2009 were you
6 taking any classes the subject of which would have
7 been human body as part of your nursing program?

8 A: I'm not sure. But as I was saying y'all can call
9 the school to get my school records to verify if I
10 was or not. You all can call the school to verify
11 that.

12 Q: Is that why you say it could or could not be?

13 A: Yes ma'am.

14 Q: Because it could or could not be?

15 A: Yes ma'am.

16 Q: And, of course, I wouldn't expect you to know the
17 exact classes from two years ago.

18 A: No ma'am.

19 Q: Now in terms of the dates that we are talking about
20 that this murder occurred. You indicated that you
21 knew it was, in terms of when the defendant came
22 over and borrowed the truck; you indicated that you
23 knew it was the second week of March.

24 A: Yes.

25 Q: And now when the deputies came to meet with you at

1 your home in North Carolina on March 2010, did they
2 bring a calendar from March 2009 to present to you?
3 Do you remember ever seeing a calendar? Now in
4 terms of the activities of so forth, that can kind
5 of help you narrow down the time frame, Judge may I
6 approach the witness?

7 The Court: You may.

8 Q: Did you go to family dollar in any point that week
9 or the week we are talking about in March of 2009?

10 A: I may have.

11 Q: All right, is that a receipt available?

12 A: Yes ma'am it is.

13 Q: Now what's the date on the receipt?

14 A: 3-10-09.

15 Q: About what time?

16 A: 11:26.

17 Q: And what was purchased?

18 A: A sheet set and two panel sets and a shower curtain.

19 Q: You bought those things?

20 A: Yes ma'am. I remember the curtains.

21 Q: Now how were those items paid for?

22 A: Receipt says paid by debit.

23 Q: Now on that receipt the debit card that was used,
24 does the receipt show the last four digit of that
25 debit card number?

1 A: Yes.

2 Q: Does that match your number for your debit card?

3 A: I believe so.

4 Q: All right and I believe that in terms of the timing,
5 in one of the letters Mr. McCrea references the
6 receipt?

7 A: Yes.

8 Q: And he references that he helped you put curtains
9 up.

10 A: Yes.

11 Ms. Barr: Beg the court's indulgence.

12 The Court: Yes ma'am.

13 Ms. Barr: That's all the questions I have. Thank
14 you.

15 The Court: Thank you. Mr. McCrea, do you have any
16 re-cross based on her re-direct?

17 Mr. McCrea: No I don't Your Honor, thank you.

18 The Court: Alright. Thank you, ma'am. You may step
19 down. Any objection to this witness being excused?

20 Ms. Barr: Judge, we would ask for her to be
21 excused.

22 The Court: Any objection to her being excused, Mr.
23 McCrea?

24 Mr. McCrea: Not at all.

25 The Court: Okay. Thank you ma'am. You're excused.

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1 Ms. Barr: The State calls Investigator Willie Brown?
2 (Investigator Brown sworn to tell the truth)

3 Mr. Brown - Examination by Ms. Barr:

4 Q: Sir state your full name for the record.

5 A: William Patrick Brown.

6 Q: And tell me where you are employed.

7 A: Williamsburg County Sheriff's Department.

8 Q: And how long have you been working there?

9 A: Seventeen years.

10 Q: You are a certified police officer?

11 A: Yes ma'am.

12 Q: And what is your current assignment in the Sheriff's
13 office?

14 A: I am assigned as an investigator.

15 Q: Now sir I am going to take you in the interest of
16 time just going to take you back to the night of
17 March 12, 2009 and the early morning hours of March
18 13, 2009. At those specific times, did Williamsburg
19 County Sheriff's Office investigation unit respond
20 to the home of Cora Brown?

21 A: That's correct.

22 Q: And her residence is located within Williamsburg
23 County?

24 A: That's correct.

25 Q: Now in terms of your involvement, were you on the

1 scene that night?

2 A: I did respond.

3 Q: You observed the victim's body?

4 A: Yes I did.

5 Q: Help me understand right quick if you can. I'm
6 going to publish states exhibit 48. I was kind of
7 curious about this. You all found the victim face
8 down in her home?

9 A: That's correct.

10 Q: Can you see where you are?

11 A: Yes ma'am.

12 Mr. McCrea: Excuse me Your Honor.

13 The Court: Yes sir.

14 Mr. McCrea: I object to questioning this picture.
15 He's not an expert.

16 The Court: Overruled. I don't think she's going to
17 put it in evidence.

18 Ms. Barr: No I'm not.

19 Q: I'm just curious, in the photograph, it is apparent
20 that the victim has a gun shot wound to her back.

21 A: That's correct.

22 Q: But there is no blood in that photograph?

23 A: That is correct.

24 Q: Now I'm going to publish State's number 94 which is
25 evidence. That is a photograph of the victim at

1 autopsy.

2 A: That is correct.

3 Q: There appears to be blood to her back.

4 A: That's correct.

5 Q: And that's different from the crime scene photos?

6 A: It is.

7 Q: Do you know why?

8 A: It would indicate to me through years of law
9 enforcement I have that the individual had been
10 laying down when they received the wound to the
11 back, the gunshot to the back.

12 Q: Okay.

13 A: To indicate that the blood was away from the wound.
14 I guess when they rolled the body over it came back
15 to the surface.

16 Q: All right when they rolled the body over ...

17 Mr. McCrea: Excuse me Your Honor, objection. Not an
18 expert.

19 The Court: Overruled. Proceed.

20 Q: When they turned the body over, rolled the body
21 over, are you talking about the coroner or EMS?

22 A: That's correct.

23 Q: And where was Cora Brown's body taken once you all
24 removed it from her home that night or leading up to
25 the early morning hours?

1 A: It would be transported by the funeral home to MUSC.

2 Q: Who actually --- when you have a murder scene, who
3 is the individual or the agency that would remove
4 her body from her house or remove a murder victims
5 body from a house?

6 A: The coroner actually will give authorization to the
7 funeral home to take possession of the body and
8 transport it.

9 Q: And by what means is the victim's body transferred?
10 I guess you put them in a body bag or they are put
11 in a body bag?

12 A: A body bag.

13 Q: And do you know whether or not and if you do that's
14 fine and if you don't that's fine, do you know
15 whether or not the victim's body was removed from
16 the home and transported to a funeral home or MUSC
17 for autopsy, do you know whether they have the body
18 face up or face down?

19 A: Normally the ones I've seen it's face up.

20 Q: Face up?

21 A: Yes ma'am.

22 Q: All right now there was testimony in the case that
23 one of the deputies who works with you I believe
24 that's Kenneth Grayson ...

25 A: That's right.

1 Q: ... observed what appeared to be -- the tracks of a
2 duel wheeled vehicle in the yard of the victim?

3 A: That is correct.

4 Q: And did your investigations ever reveal or ever
5 indicate anything to you as to what may have caused
6 those tracks to be in her yard?

7 A: Yes. After talking to some of the family members, I
8 can't exactly remember who indicated she had just
9 recently had work done to the roof of her residence
10 and the vehicle that they was tossing the old
11 shingles was a dump truck and I think Investigator
12 Lambert made contact to confirm and they found it.
13 They indicated they put in a five gallon bucket some
14 where in the yard.

15 Q: All right and I'm going to publish State's Exhibit
16 number 21. The tracks of the duel wheel vehicle, is
17 here on this side of the residence?

18 A: That's correct.

19 Q: And you mentioned to me about a five gallon bucket.
20 Do you see that in this photograph?

21 A: Yes ma'am. It's just under the yellow tape.

22 Q: Did law enforcement --- How many bullets did law
23 enforcement recover from either the crime scene or
24 the body of the victim in connection with this case?

25 A: I believe it was one that was recovered from her

1 body from her hair.

2 Q: What about from autopsy?

3 A: It was an additional one also.

4 Q: Now were you here on yesterday when the pathologist
5 testified about the autopsy and her findings?

6 A: Yes I was.

7 Q: And did you hear her say the victim was shot four
8 times total?

9 A: That's correct.

10 Q: And to be clear, did Williamsburg County Sheriff's
11 Department ever recover a fourth bullet?

12 A: No ma'am.

13 Q: Now the glove that is shown in some of the
14 photographs were recovered from the yard, did you
15 know at the time whether or not that glove would
16 contain any DNA?

17 A: It did not.

18 Q: And what did you all want to happen with the glove
19 when it was recovered?

20 A: We did send it to SLED to see if we could test it
21 for any DNA.

22 Q: And, of course, those individuals were here on
23 yesterday?

24 A: That's correct.

25 Q: And you were in court when they testified?

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1 A: Yes I was.

2 Q: And you understood their testimony to be that
3 neither Christopher Briggs nor Levern McCrea's DNA
4 was found on the glove?

5 A: That's correct.

6 Mr. McCrea: Objection Your Honor. My DNA was not
7 on any glove. I have the test results right here.
8 That's a lie right there.

9 The Court: Sir, you're out of line. She just ...
10 repeat your question.

11 Q: Did you understand the testimony of Catherine Leisy
12 from SLED, the DNA expert who testified yesterday?
13 Did you understand her testimony to be that neither
14 the defendant's blood or DNA or Christopher Brigg's
15 DNA was recovered?

16 A: That's correct. It was not.

17 Q: And both of them were excluded as leaving DNA on the
18 glove?

19 A: That's correct.

20 Q: I wanted to make sure I am clear about that. Now
21 did you all have to interview a number of people in
22 connection with the murder?

23 A: Yes ma'am we did.

24 Q: And one of the person's who you interviewed within
25 two to three weeks after the murder was Christopher

1 Briggs? Is that correct?

2 A: That's correct.

3 Q: And agreed to talk with you and gave you a
4 statement?

5 A: That's correct. He talked to Investigator Lambert
6 the initial time, first initial time.

7 Q: Now in terms of your experience as an investigator,
8 is it unusual for you to interview a witness or a
9 suspect more than once?

10 A: No ma'am that's not unusual.

11 Q: How would you describe the frequency of which a
12 suspect gives multiple statements?

13 A: It's indicated he's not telling the whole story or
14 trying to hide something or he's, you know, afraid
15 to tell us the whole story. We try to talk to him
16 as many times as he will talk to us.

17 Q: Now I thought about something else I needed to ask
18 you about. You all, according to the calendar,
19 found the victim's body on a Thursday night. Can
20 you see that from where you are?

21 A: Yes.

22 Q: March 12?

23 A: Yes ma'am.

24 Ms. Barr: I beg the court's indulgence.

25 The Court: Yes ma'am.

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1 Q: Now I believe that inside the victim's residence
2 were several lottery tickets?

3 A: That's correct.

4 Q: I believe that we have already heard testimony that
5 one of the lottery tickets was dated Monday March 9,
6 2009.

7 A: That's correct.

8 Q: There were two other lottery tickets dated March 10,
9 2009.

10 A: That's correct.

11 Q: Now I'm particularly interested in State's exhibit
12 number 81. Tell me what that is.

13 A: That's the Kingstree Newspaper.

14 Q: Now the date that's listed on Kingstree's newspaper
15 is what date? Can you read it from there?

16 A: I believe I see March 11.

17 Q: Do you see the day of the week that's listed at the
18 top?

19 A: I can't see it.

20 Q: I probably just need to bring it to you.

21 A: Wednesday.

22 Q: Do you know when the Kingstree newspaper is made
23 available to the public if it's dated Wednesday
24 March 11, 2009?

25 A: It would be available the day before.

1 Q: March 10?

2 A: The tenth.

3 Q: Now, by March 1, 2010 had there been an arrest made
4 in the case involving the murder of Cora Brown?

5 A: No ma'am.

6 Q: Now Mr. McFadden was here yesterday and he talked
7 about making a trip to North Carolina to speak with
8 Ms. Smith.

9 A: Yes ma'am.

10 Q: Did you accompany him on that trip?

11 A: I did.

12 Q: And as a result of that trip and talking with her,
13 did you and Mr. McFadden conduct a second interview
14 of Christopher Briggs?

15 A: We did.

16 Q: And based upon your investigation, did Mr. Briggs
17 have a nickname or a name that he was commonly known
18 by?

19 A: They called him Quan.

20 Q: Do you know why that is that he was called Quan?

21 A: I believe it's part of his middle name.

22 Ms. Barr: May I approach the witness Your Honor?

23 The Court: You may.

24 Q: Does this refresh your memory as his middle name?

25 A: LeQuan.

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1 Q: Christopher LeQuan Briggs?

2 A: That's right.

3 Q: Now Mr. McFadden testified that you all went to the
4 Georgetown County Detention Center to re-interview
5 Mr. Briggs?

6 A: That's correct.

7 Q: Now did you receive a letter from Mr. Briggs saying
8 that he wanted to talk to you or he wanted to
9 confess or anything along those lines?

10 A: No ma'am. I didn't.

11 Q: Did you tell him that you had spoken to Roberta
12 Smith the day before?

13 A: He indicated that we went there and made contact
14 with her.

15 Q: Tell us what he said. Did his demeanor change in
16 any way?

17 A: I'm trying to remember. He was like I need to go
18 ahead and get straight with y'all but I mean he
19 pretty much told us what he ...

20 Mr. McCrea: Objection. That's your opinion.

21 The Court: What is your objection?

22 Mr. McCrea: He is basing his opinion on being a
23 mind reader, Your Honor and he's not.

24 The Court: He was asking about this demeanor.

25 Overruled.

1 Q: Now at that point in time when you met with Mr.
2 Briggs on March 29, 2010, did you have more
3 information about the death of Cora Brown than you
4 had six months earlier?

5 A: We did.

6 Q: Did you consider it to be a break in the case?

7 A: We did.

8 Q: Were you at the location on Old River Road in
9 Florence County when the firearm was recovered?

10 A: Yes I was.

11 Q: And was Mr. Briggs also there with you?

12 A: He was.

13 Q: All right once you all recovered the firearms, where
14 was Mr. Briggs taken to?

15 A: Back to Georgetown Detention Center.

16 Q: Back to the jail?

17 A: That is correct.

18 Q: And you sought and arrest warrants were issued
19 against Mr. Briggs?

20 A: That's correct.

21 Q: For misprision of a felony?

22 A: That is correct.

23 Q: And also against who else?

24 A: Mr. Levern McCrea.

25 Q: Okay. For murder?

1 A: That's correct.

2 Q: Now after Mr. Briggs was formally served his arrest
3 warrants, did you all ask him to submit a buckle
4 swab?

5 A: Yes ma'am we did.

6 Q: And tell us what a buccle swab is.

7 A: It is a collection of DNA, through saliva from your
8 mouth, back corner of your mouth.

9 Q: When you asked him to do that, did he voluntarily do
10 that?

11 A: Yes ma'am.

12 Q: He signed a piece of paper saying I agreed to do
13 that?

14 A: I give consent.

15 Q: Now what happens in the event that an individual
16 refuses to give his or her DNA sample to law
17 enforcement? What recourse do you all have at that
18 point if you need to get it or want to get it?

19 A: We have to go through what they call a Schmerber
20 Hearing.

21 Q: Is that a court order?

22 A: Yes.

23 Q: Now following the arrest of Mr. McCrea, as one of
24 the investigators did you have an opportunity to
25 attend various witness hearings concerning his

1 charge?

2 A: Yes ma'am.

3 Q: Now one of the hearings that you attended was a
4 preliminary hearing?

5 A: Yes.

6 Q: Tell the jury what a preliminary hearing is.

7 A: A preliminary hearing is a hearing that is issued or
8 granted to a defendant to see if the state has
9 probable cause for a hearing.

10 Q: And during Mr. McCrea's preliminary hearing, was he
11 represented by council?

12 A: He was represented by Mr. Charles David Barr.

13 Mr. McCrea: Excuse me Your Honor I would like to
14 object to this line of questioning about previous
15 attorney.

16 The Court: Overruled.

17 Q: And State's exhibit number 119, which is November
18 the 16, 2002 letter from, I'm sorry November 16,
19 2010 letter from Mr. McCrea.

20 Mr. McCrea: Objection Your Honor.

21 The Court: It's already in evidence. Overruled.

22 Q: Does he identify another lawyer?

23 A: He identified attorney Cezar McKnight.

24 Q: In terms of your participation in various hearings
25 with this defendant, did any other attorney appear

1 on his path other than Mr. McKnight or Mr. Barr?

2 A: Yes I received a letter from Mr. Hank Anderson.

3 Q: Did Mr. Anderson actually come to court on a number
4 of occasions with Mr. McCrea?

5 A: He did.

6 Q: Now at the time that you all traveled to North
7 Carolina in March of 2010 to meet with Ms. Smith,
8 did you all have a gun at that point or was it later
9 that you all got a gun?

10 A: It was later.

11 Q: All right now at that point when you're talking with
12 her and asking her questions, did you know whether
13 or not she'd actually seen a gun?

14 A: We did.

15 Q: Those letters that have been marked and admitted
16 into evidence from the Defendant, of course, those
17 would have come after. But in terms of the bullets
18 and so forth, did you know anything about that?

19 A: No ma'am.

20 Q: Did you have any inclination or did you speak with
21 Ms. Smith about the defendant trying to sell a gun
22 to her brother at that time?

23 A: We did not.

24 Q: Now sir, one of the items that was collected along
25 with the firearm was a fanny pack, is that right?

1 A: That's correct.

2 Q: Was the black bag that was recovered from the
3 location on Old River Road?

4 A: Yes ma'am it was.

5 Q: All right now does that particular black bag does
6 that contain any writing?

7 A: It does. Allergan with a symbol.

8 Q: How do you spell Allergan that's on that pack?

9 A: A-L-L-E-R-G-A-N

10 Q: I don't know if I will be able to display on the
11 projector but I'm going to try. That's the word
12 allergan there?

13 A: Yes ma'am.

14 Q: And is that the little symbol you talked about?

15 A: Yes ma'am.

16 Q: Now do you know what that word and the symbol, what
17 those things mean?

18 A: Not right off hand, no ma'am. I assume ...

19 Q: No, that's okay. I don't want you to tell me
20 assumptions. When did you first learn that the
21 paper that was found in the victim's front yard may
22 have been school papers belonging to Ms. Roberta
23 Smith.

24 A: I think once we read it, it indicated there was some
25 type of term, so it was some type of school paper.

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1 Q: In terms of discovering that Ms. Smith had some
2 nursing background and so forth, when did you
3 actually find that out? Was that this week, last
4 week, a year ago or when?

5 A: This week.

6 Q: Mr. Brown, I showed Ms. Smith a copy of the Family
7 Dollar receipt. Do you have the original of that
8 receipt?

9 A: Yes we do.

10 Q: Is it in the courtroom, or where?

11 A: It's in the office?

12 Q: Judge, can we take a quick break and have somebody
13 go get it. Thank you.

14 The Court: We will take a break. Ladies and
15 gentlemen please do not discuss anything while you are in
16 the jury room. All right court is in recess for ten
17 minutes.

18 (Jury break was taken 3:12)

19 (Jury enters courtroom 3:25)

20 The Court: All right are we ready to proceed?

21 A: The state is ready.

22 The Court: All right, you may continue.

23 Q: Mr. Brown, I believe I asked you before we were on
24 break to get the original Family Dollar receipt and
25 did you do that for me?

1 A: Yes ma'am.

2 Q: And is that what I have in my hand?

3 A: Yes ma'am.

4 Q: Stapled to a larger piece of paper?

5 A: Yes ma'am.

6 Q: And where did you get this Family Dollar receipt?

7 A: Received it from the Defendant, Levern McCrea.

8 Q: And where physically did he get it from when he gave
9 it to you?

10 A: I believe it was from out of his wallet.

11 Ms. Barr: I want to have this marked as an exhibit.

12 The Court: Any objections Mr. McCrea?

13 Mr. McCrea: Yes sir.

14 The Court: What's your objection?

15 Mr. McCrea: They've had from the beginning ...

16 The Court: Speak up I can't hear you.

17 Mr. McCrea: They've had from the beginning, Your
18 Honor we asked for any evidence that they have. We've
19 asked for any evidence that they have entered in any
20 exhibits that they have that they do so a lot earlier in
21 this case, You Honor.

22 The Court: Overruled.

23 Ms. Barr: And Your Honor, for the record, we've
24 also provided a copy for the defendant.

25 The Court: He's been provided a copy?

- 1 Ms. Barr: He has admitted into evidence.
- 2 The Court: Over the objection Exhibit 148 is in.
- 3 Ms. Barr: Permission to publish, Your Honor.
- 4 The Court: Yes.
- 5 Q: And sir, can you see that from where you are?
- 6 A: I can see it.
- 7 Q: The name that's at the top of that receipt is what?
- 8 A: Family Dollar Store.
- 9 Q: And the city and state in which that receipt came
- 10 from?
- 11 A: Mt. Olive, North Carolina.
- 12 Q: And what were the items that selected as being
- 13 purchased with that receipt?
- 14 A: Thumbtacks, sheet set, panel set, two panel sets,
- 15 shower curtains.
- 16 Q: And I don't know if it's all that clear on the
- 17 display but what was the date of purchase?
- 18 A: 3-10-2009.
- 19 Q: And the time?
- 20 A: 11:26.
- 21 Q: And how was the purchase paid for?
- 22 A: By debit.
- 23 Q: And does the receipt reflect a particular card
- 24 number?
- 25 A: Yes it does.

1 Q: And are there digits reflected on that debit card
2 transaction?

3 A: Yes.

4 Q: What are the last four digits reflected?

5 A: 0816.

6 Q: All right you may have a seat. Now the defendant at
7 the same time also produced another receipt.

8 A: Yes, he did.

9 Q: And tell us about that additional receipt.

10 A: There was a receipt for McDonald's dated the same
11 date a few minutes earlier or a few minutes later.

12 Mr. McCrea: Objection Your Honor that's ...

13 The Court: You will have an opportunity to cross
14 examine him. Proceed.

15 Q: All right you were given a McDonald's receipt by the
16 defendant and do you recall the McDonald's location
17 that was reflected on that receipt in terms of the
18 city and state?

19 A: It was Lumberton, North Carolina.

20 Q: Do you recall whether or not you retained that
21 receipt?

22 A: No ma'am I believe I returned the receipt to the
23 defendant.

24 Q: Now the piece of paper that that receipt was
25 attached to, can you tell us what that is.

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1 A: This is known as a victim's rights sheet.

2 Q: And what's the date on it?

3 A: 10-23-07

4 Q: 10-23-07? October 23, 2007?

5 A: Yes ma'am.

6 A: Who is reflected as the victim on that piece of
7 paper?

8 A: The victim is Levern McCrea.

9 Q: And who is the name of that suspect on the paper?

10 A: Carmen Pressley.

11 Q: Carmen Pressley?

12 A: That's correct.

13 Q: So in October of 2007, Levern McCrea made a
14 complaint to the Williamsburg County Sheriff's
15 Department involving Carmen Pressley?

16 Ms. Barr: Mr. Brown I believe that's all the questions I
17 have for you. Please answer any questions that ...

18 The Court: Mr. McCrea, do you have any cross
19 examination of this witness?

20 Mr. McCrea: Yes I do, Your Honor.

21 The Court: All right. You may proceed.

22 Mr. Brown - Cross Examination by Mr. McCrea:

23 Q: Investigator Brown, you also heard Ms. Smith say
24 that she didn't attend any school classes in
25 February or March of 2009, correct?

1 Ms. Barr: Judge, we would object.

2 The Court: That's pitting one witness against the
3 other. Overruled.

4 Mr. McCrea: Excuse me, Your Honor.

5 Ms. Barr: That mis-states the facts. The witness
6 stated she had not taken any tests February or March.
7 Not that she didn't attend school.

8 Mr. McCrea: That's the question that I asked her,
9 Your Honor.

10 The Court: Ask your question.

11 Mr. McCrea: She said she was not taking test or
12 going to school.

13 The Court: Ask the question.

14 Q: Investigator Brown, on March the 29th, 2010, you
15 conducted an interview with Mr. Christopher Briggs
16 along with you was Investigator Wayne McFadden,
17 right?

18 A: That's correct.

19 Q: What led you to conduct this interview with Mr.
20 Briggs?

21 A: Do you want me to read the whole interview?

22 Q: I'm asking you from your mind what...

23 A: I don't understand what ...

24 Q: I'm asking you to describe the contents of this
25 interview and how or what led you to conduct this

1 interview with Mr. Briggs?

2 The Court: That's a compound question, ask him one
3 question.

4 Q: What led you to conduct this interview with Mr.
5 Christopher Briggs?

6 A: We did an interview with Ms. Roberta Smith and as a
7 result we went and talked with Christopher Briggs.

8 Q: What was the purpose in talking to Ms. Roberta
9 Smith?

10 A: I believe Investigator McFadden received a phone
11 call stating that we needed to follow up with her
12 with regards to some information on the murder case.

13 Q: You received a phone call from ...

14 Ms. Barr: Objection, Your Honor. He is not the
15 witness that took the call.

16 The Court: Sustained.

17 Mr. McCrea: It's hearsay evidence.

18 The Court: It was not the witness who took the call.

19 Mr. McCrea: But this is hearsay evidence.

20 The Court: You can ask him what they did as a result
21 of the phone call.

22 Q: Investigator Brown, at which point did Mr. Briggs
23 implicate the Defendant as the person who allegedly
24 committed this crime?

25 A: We did an interview with him on March 29th in

1 Georgetown Detention Center.

2 Q: So what you're telling me is Mr. Briggs was in jail,
3 in trouble, at the Georgetown County jail for almost
4 killing his wife a year after this crime?

5 Ms. Barr: Objection, Your Honor.

6 The Court: Sustained.

7 Ms. Barr: I move to strike that.

8 The Court: Last question will be stricken.

9 Q: Investigator Brown did you find Mr. Briggs interview
10 to be credible, yes or no?

11 A: Yes sir. After the interview we issued a warrant.

12 Q: Okay. You answered. Yes you did. Okay.

13 Investigator Brown, so you're telling me you found
14 no doubt in his entire interview of Mr. Briggs, yes
15 or no?

16 Ms. Barr: Judge we would, again, object to him
17 asking the witness to comment on someone else's
18 credibility, that's improper.

19 The Court: Sustained. Please proceed.

20 Mr. McCrea: Excuse me, Your Honor. Your Honor, I
21 have a question for you.

22 The Court: No, sir. I don't answer questions. You
23 put it up and they object to it. I'll rule on it.

24 Mr. McCrea: Okay. Yes sir.

25 Q: Do you recall informing Mr. Briggs that you found

1 his DNA on the alleged mask at the crime scene? Can
2 you answer that for me, please sir.

3 A: I don't recall.

4 Q: You don't recall that?

5 A: Not from memory.

6 Q: Would you please look on March 31, 2010 transcript.

7 Page 7 ...

8 Mr. McCrea: Page 17, Your Honor.

9 Q: Let me read this to you, Investigator Brown. Would
10 the fact that that DNA was in that mask, you need to
11 clear that up for us. That's one of the major
12 questions that we have in this case in involving
13 you. Why would your DNA be on a mask recovered from
14 the residence? Can you answer that for, please?

15 A: There was no DNA found in the mask.

16 Q: That was the statement you made to Christopher
17 Briggs.

18 A: Yes, I did.

19 Q: So you lied Investigator Brown.

20 A: We told him that so he wouldn't give us a different
21 answer ...

22 Q: No, excuse me, you lied.

23 The Court: Let him answer the question.

24 Q: You basically lied Investigator Brown?

25 A: I told him that statement so he wouldn't give us a

1 different answer.

2 Q: A different answer. Okay. And he did?

3 The Court: You can't testify.

4 Mr. McCrea: Right, right.

5 The Court: You can't testify, please.

6 Mr. McCrea: Yes, sir.

7 The Court: The jury will strike the last statement.

8 Q: Investigator Brown, can you explain how many
9 interviews you've conducted with Mr. Briggs in
10 regard to this matter?

11 A: I think myself along with McFadden done two
12 interviews.

13 Q: Two?

14 A: Two, yes.

15 A: Two interviews.

16 Q: Two?

17 A: That is correct.

18 Q: Are you sure about that, Investigator Brown?

19 A: As far as I recall we had two.

20 Q: Well, I have one from April 1st, 2009 ...

21 A: Myself and ...

22 Q: Excuse me?

23 A: Myself and who?

24 Q: Investigator Lambert. You don't recall that?

25 A: No sir. Not right off hand I don't.

1 Q: April the 1st, 2009.

2 Ms. Barr: Judge, may I approach the witness?

3 The Court: You may.

4 Ms. Barr: I don't know if he has a copy.

5 A: Okay. Yes sir.

6 Q: Does it look familiar?

7 A: Yes.

8 Q: What was the purpose Investigator Brown of three
9 interviews if you found his first interview to be
10 credible?

11 A: As I said before we talk to individuals more than
12 one time to see if we can get more information to
13 help with the case.

14 Q: Yes sir. Three interviews though. You interviewed
15 him three times.

16 A: That is correct.

17 Q: Investigator Brown, do you recall the interview with
18 Mr. Briggs on April 1, 2009 and how long did the
19 interview last?

20 A: I do recall the interview and I'm not exactly sure
21 how long it lasted but it started at 1:47 p.m.

22 Q: You don't have an ending time?

23 A: No sir.

24 Q: What's the purpose of that sir?

25 A: I don't have it.

1 Q: I understand that. But what's the purpose of it.
2 Normally everything is documented, correct?

3 A: We don't always document every time conclude a
4 statement.

5 Q: Investigator Brown, you have them on the other two.

6 A: There is no time on March 31st. There is one on
7 March 29th.

8 Q: So you do recall the interview on March 29th, how
9 long did that last Investigator Brown?

10 A: This one lasted from nine until 11:31.

11 Q: Do you recall the interview Investigator Brown on
12 March 31, 2010 and how long did this interview last
13 on and off the record?

14 A: Again it doesn't give an ending time frame but it
15 started at 4:53.

16 Q: Investigator Brown, do you recall going off the
17 record with this interview on March 31, 2010 for
18 approximately thirty five minutes?

19 A: It's possible. I'm not --- I don't know but it's
20 possible.

21 Q: Yes it is.

22 The Court: Mr. McCrea ...

23 Mr. McCrea: Excuse me.

24 The Court: ... I'm not going to tell you.

25 Q: Well, on March 31st, 2010, they started at 4:15 but

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1 the record shows 4:50 which indicates a thirty five
2 minute discussion before recording the statement.

3 Please tell me what was the nature of this off the
4 record discussion for thirty five minutes.

5 A: I have no record of a off the record discussion.

6 Q: Weren't you accompanied by Investigator McFadden?

7 A: Yes sir.

8 Q: You are not sure what took place with this thirty
9 five minute delay?

10 A: From what you said on the stand you stated that we
11 had a tape malfunction ...

12 Q: I'm asking you for your opinion, sir.

13 A: ... but I don't have a record of an off the record
14 discussion if there was one.

15 Q: But you do recall going off the record for thirty
16 five minutes when you were talking with Mr. Briggs
17 for the third time?

18 A: I'm not sure how long the malfunction was.

19 Q: Now you say malfunction and you said you didn't
20 remember a few minutes ago.

21 The Court: Ladies and Gentlemen, please stand. Let
22 me as you to return to the jury room for a break.

23 (Jury exits courtroom 3:45 p.m.)

24 The Court: Mr. McCrea I have warned you repeatedly
25 time and time again about your editorializing the answers

1 of somebody on the stand. You may ask them follow up
2 question but I am sick and I am tired of your making
3 comments when a question is answered that is not what you
4 wanted the answer to be. You may ask a follow up
5 question but if you do it one more time --- the right to
6 cross-examination is a very substantial right but you can
7 abuse it. Do you understand?

8 Mr. McCrea: I do Your Honor.

9 The Court: If you abuse it again, I'm going to sit
10 you down. Do you understand?

11 Mr. McCrea: Your Honor, Yes I do. I do fully.

12 The Court: I'm not going to tell you how to try a
13 case ...

14 Mr. McCrea: I know, I know and I understand that but
15 he's given me his opinion on what someone else has said
16 when I'm asking ...

17 The Court: You're asking him a question. I'm not
18 going to argue with you about it. I'm not going to tell
19 you how to try your case. What I'm going to tell you if
20 is you violate my rule on this one more time I'm going to
21 sit you down. Do you understand that?

22 Mr. McCrea: Yes sir. I do.

23 The Court: Bring the jury back.

24 Ms. Barr: Judge I'm sorry, may I say something
25 before we bring the jury back?

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1 The Court: Yes ma'am.

2 Ms. Barr: I don't know whether or not the defendant
3 intends to cross examine the witness about a statement
4 made by him on March 25, 2009, Your Honor, to the extent
5 that he does, we're taking the position that it's
6 hearsay. We haven't offered any statement of the
7 Defendant to police in evidence. So we would take the
8 position that if he intends to question him about it , I
9 can go ahead and object now and ask the court to make a
10 ruling as it relates to that matter.

11 The Court: Do you intend to offer that statement?

12 Mr. McCrea: Which statement is that, ma'am?

13 The Court: I don't know.

14 Mr. McCrea: Neither do I.

15 Ms. Barr: It's the Defendant's March 25, 2009
16 statement to the police.

17 The Court: What is that statement, what does he
18 state?

19 Ms. Barr: He's got a transcript of the statement.

20 The Court: It's a self serving statement.

21 Ms. Barr: He's talking about I wasn't here. I
22 wasn't in South Carolina. I didn't kill this woman. I
23 didn't know this woman. I don't have any ...

24 The Court: That's not self serving. I'm not going
25 to allow it. Do you understand?

1 Mr. McCrea: Yes sir.

2 The Court: You also made a motion in limine and I
3 have ruled on it concerning the polygraph.

4 Mr. McCrea: Yes sir. I understand that.

5 The Court: All right. Thank you. Bring the jury
6 back in.

7 (Jury enters courtroom 3:48 p.m.)

8 The Court: Mr. McCrea you may continue with your
9 cross examination.

10 Mr. McCrea: Thank you sir.

11 Q: Investigator Brown, did you ever recover the alleged
12 gun?

13 A: Yes we recovered a gun on the Old River Road in
14 Florence County.

15 Q: Did you ever recover the original gun?

16 A: We recovered a gun that Christopher Briggs stated
17 that you used to do the murder.

18 Q: A gun.

19 A: He said the gun.

20 Q: Okay. Was ballistic test done on that gun?

21 A: It was sent to Sled for testing.

22 Q: Can you tell me the results?

23 A: I think they were not able to be compared.

24 Q: Inconclusive, right. Not a match?

25 A: That's correct.

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1 Q: Investigator Brown, did you recover a white towel
2 that Mr. Briggs alleged that gun was wrapped inside,
3 inside a black towel?

4 A: We didn't recover a white towel.

5 Q: A white towel?

6 A: No sir.

7 Q: Thank you, sir. Investigator Brown after conducting
8 these ballistics test, did you confirm that my
9 fingerprints or DNA were anywhere on this alleged
10 weapon at the crime?

11 A: Your fingerprints neither Mr. Briggs fingerprints
12 were found.

13 Q: Not a match?

14 A: That's correct.

15 Q: So basically what you're telling the court here
16 today is your only alleged connection to me to this
17 crime is the word of Mr. Briggs?

18 A: Mr. Briggs, Ms. Roberta Smith and your letters to
19 Roberta.

20 Q: You said my letters that I sent to her?

21 A: Yes sir to Roberta Smith.

22 Q: Confirms what?

23 A: Roberta Smith.

24 Q: Yes.

25 A: That you wanted her to lie for you in reference to

1 your whereabouts at the time of the murder.

2 Q: Okay. But you do have a receipt stating that on
3 March the 10th of 2009 that I was in North Carolina,
4 correct?

5 A: That's correct.

6 Q: Investigator Brown was the mask recovered from the
7 residence?

8 A: I think the mask was recovered on Old River Road.

9 Q: Along with the gun, the alleged gun?

10 A: That's correct.

11 Q: That doesn't match?

12 A: That's correct.

13 Q: Investigator Brown, you've interviewed Mr. Briggs
14 three different times and he's given you three
15 different stories of this alleged crime. Each time
16 you've interviewed him ...

17 Ms. Barr: Judge, we would object to that question.
18 That question assumes facts not in evidence.

19 The Court: Sustained.

20 Q: Investigator Brown, can you give me the exact date
21 that you spoke with Ms. Roberta Smith again?

22 A: Her statements on the table. We did an interview
23 with here June 28, 2010.

24 Q: Investigator Brown, is it true that you spoke with
25 her after the 25th, March 25th, 2009 or on that same

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1 day, March 25th 2009?

2 A: I don't recall it if I did. By phone or in person?

3 Q: By telephone or in person.

4 A: Called her sometime right before the interview.

5 Mr. McCrea: Your Honor, there's a date within the
6 supplemental report that states ...

7 The Court: The supplemental report is hearsay. You
8 can ask him if he did an interview on a particular date.

9 Mr. McCrea: It had 3-18-2009.

10 Q: Investigator Brown, have you interviewed her on 3-
11 18-2009?

12 A: I don't recall interviewing her on 3-18-2009. I
13 don't recall.

14 Q: Investigator Brown, on March 29, 2010 transcript,
15 page 5. Investigator Brown, you were asking Mr.
16 Briggs what was my reasons for borrowing Ms. Smith's
17 truck.

18 A: What line you on?

19 Q: I'm on 13. You were asking the question. At what
20 point did Levern tell her why he needed to borrow
21 the truck. That's what you stated?

22 A: That's correct.

23 Q: Okay. And Mr. Briggs stated that, I think he said
24 to tow the car or something.

25 A: That's correct.

1 Q: On March the 29th transcript, page seven, number 21
2 and 22, you asked Mr. Briggs another question. Can
3 you read that for me, please?

4 A: What kind of vehicle were you all traveling in from
5 North Carolina to South Carolina?

6 Q: Could you read what Mr. Briggs stated?

7 A: Mercedes.

8 Q: You said no, no in response to that. What was the
9 purpose of that Investigator Brown?

10 A: The vehicle she indicated she drove was a white
11 chevy Jimmy or something like that, a blazer.

12 Q: Could it be that he wasn't following your
13 directions? You were telling him what you wanted him
14 to know?

15 A: That's not true.

16 Q: You stated no, no, once he said Mercedes because he
17 wasn't sure about the vehicle?

18 A: That's correct and then he said a white chevy Jimmy
19 or something like that.

20 Q: He was unsure, correct?

21 A: Correct.

22 Q: On March 31st transcript, 2010 page 5. Forget about
23 that question. I have another question for you
24 Investigator Brown. Did Mr. McCrea ever admit any
25 type of remission of guilt in regards to this crime

1 at anytime during this case to you?

2 Ms. Barr: Objection. Hearsay. Your Honor.

3 The Court: Sustained.

4 Q: On March 25, 2009, transcript page 60.

5 A: March 25th?

6 Q: Yes sir.

7 Ms. Barr: And Your Honor, obviously we would renew
8 our objection as previously noted in the recent recess.

9 The Court: All right. I, of course, made my ruling.

10 Mr. McCrea: That will be all, thank you sir.

11 The Court: Any redirect, Ms. Barr?

12 Ms. Barr: Yes sir. Just a few.

13 Redirect Examination of Mr. Brown by Ms. Barr:

14 Q: Mr. Brown, since Mr. McCrea asked you about several
15 SLED reports I need to follow up on that line of
16 questioning, if I may. And let me show you the SLED
17 reports as it relates to the firearms. Mr. McCrea
18 asked you the ballistics report or the firearms
19 report indicate that that gun was no match to the
20 bullets that we recovered from the floor or ground.
21 Do you remember him asking you those questions?

22 A: I do.

23 Q: Now in terms of the quote ballistics report, does it
24 actually say that, that it's no match or is it the
25 result that it's inconclusive based on the condition

1 of the bullets?

2 A: It was inconclusive based on the condition of the
3 bullets.

4 Q: Alright.

5 Mr. McCrea: Excuse me, Your Honor. Objection, Your
6 Honor. The expert that tested the gun ...

7 The Court: Overruled. You already opened the door
8 on that.

9 Q: In terms of the fired bullets that were recovered
10 from the victim, the ballistic report indicates what
11 type of gun would have fired those bullets?

12 A: A 38 Special and 357 magnum.

13 Q: Now that gun that you all got off of Old River Road
14 ...

15 A: Ma'am.

16 Q: The gun you all got off Old River Road on March I
17 think it was the 29th or 30th, 2010. What kind of
18 gun was that?

19 A: A 38 Smith and Wesson.

20 Q: Now in terms of the fingerprint evidence that he was
21 asking you about and those Sled reports. I believe
22 that he asked you whether or not his fingerprints
23 were recovered from the Smith and Wesson firearm.
24 Do you remember that line of questioning?

25 A: I do.

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1 Q: And in terms of the SLED report about the
2 fingerprints, were any fingerprints found on the
3 gun?

4 A: It says no fingerprints was put in evidence from the
5 gun.

6 Q: From the gun?

7 A: From the gun.

8 Q: Now, Mr. McCrea asked you about the McDonald's
9 receipt and in response to one of the questions that
10 he posed to you, you said that I'm not doubting that
11 you were in North Carolina 3-10-2009. Do you
12 remember making that statement?

13 A: That's correct.

14 Q What do you mean when you say you aren't doubting
15 that he was in North Carolina on 3-10-2009?

16 A: What I was referring to is it's possible he was
17 there that morning because she indicated 11:00 that
18 morning.

19 Q: Okay.

20 A: You know, he had a chance to make it there and back
21 to commit the murder.

22 Mr. McCrea: Objection.

23 The Court: What's your objection.

24 Mr. McCrea: He's speculating Your Honor.

25 Speculation.

1 The Court: Sustained.

2 Q: Let me ask you this. The McDonald's receipt that he
3 showed you. When did he show you that McDonald's
4 receipt?

5 A: It was the same day we looked at the Family Dollar
6 receipt.

7 Q: And that would have been what date specifically?

8 A: That would have been for the date March 25, 2009.

9 Q: So March 25, 2009 he showed you a McDonald's receipt
10 and a Family Dollar receipt, both of them from North
11 Carolina?

12 A: That's correct.

13 Q: All right and you indicated that, what time was
14 reflected on the McDonald's receipt?

15 A: It was eleven --- 11:00 or 11:26 of the Family
16 Dollar receipt.

17 Q: All right now the Family Dollar receipt has a time
18 stamp of what?

19 A: 11:26.

20 Q: All right so the McDonald's receipt had a time span
21 of what?

22 A: 11:10.

23 Q: Now when you went to go get, not go get, but when
24 you went to speak with Roberta in person on March
25 28, 2010, how long did it take you to get to

1 Williamsburg County to her house?

2 A: To Williamsburg County it was three hours give or
3 take 30 minutes.

4 Q: Okay. Now on March 25, 2009 when you got those
5 receipts from Mr. McCrea, did either you or anyone
6 else within the Sheriff's department call Ms.
7 Roberta Smith that day?

8 A: I believe Investigator Lambert or Investigator
9 Collins called her.

10 Q: Investigator Brenda Lambert?

11 A: That's correct.

12 Q: Or Investigator Collins?

13 A: That's correct.

14 Q: If that call was made by one of those ladies, would
15 that have been recorded, like the transcript that we
16 talk about when you went up there to North Carolina
17 to interview her?

18 A: No ma'am.

19 Q: Now when you met with Christopher Briggs on 3-31-
20 2010, how long had you actually had the gun, ski
21 mask and fanny pack?

22 A: We had it ...

23 Q: When did you get the gun, the ski mask and the fanny
24 pack?

25 A: It was after we met with Christopher Briggs on the

1 29th and rode out to the scene.

2 Q: All right on March 29, 2010, you met with
3 Christopher Briggs at the jail in Georgetown.

4 A: That's correct.

5 Q: When did you take him to Florence County, Old River
6 Road?

7 A: The same day.

8 Q: The same day. Let me make sure I'm asking the right
9 question. Do you have your reports up there with
10 you?

11 A: I do.

12 Q: You have your police reports or the states ---

13 A: Well, the day we took the statement from him.

14 Q: All right so that would have been, give me the date
15 again that you found the firearm and ski mask?

16 A: I believe it was the 31st --- I'm corrected it was
17 the 29th. That's correct.

18 Q: March 29 of what year?

19 A: 2010.

20 Q: That's when you recovered the firearm and ski mask?

21 A: That's correct.

22 Q: All right so you do this additional recorded
23 statement with Mr. Briggs on the 30th and 31st of
24 March 2010?

25 A: 31st. That's correct.

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1 Q: Now, you tell him --- I believe Mr. McCrea asked
2 you, why would your DNA be on the ski mask that was
3 found? Why did you ask him that?

4 A: We usually do that to see if the person is lying to
5 us. Kind of like a self checking question just to
6 say it's not on there but why is yours ...

7 Q: Okay.

8 A: It's just a test question

9 Q: Is that a part of your interrogation technique?

10 A: Yes.

11 Q: Now would you have really gotten the DNA results
12 back in a day or two, that fast?

13 A: No.

14 Q: Okay. You wanted to see what he was going to say?

15 A: That's correct.

16 Q: Now Mr. McCrea asked you if the only thing you were
17 relying on in this case is the word of Christopher
18 Briggs.

19 A: He did.

20 Q: All right in terms of what you're relying on in this
21 case, tell me again what you're relying on to show
22 that the defendant committed this murder.

23 A: Christopher Briggs ...

24 Q: Okay.

25 A: ... statement and Ms. Roberta Smith's statement.

1 Q: Okay.

2 A: The fact that he sent those letters indicates he
3 wanted Roberta to lie for him.

4 Ms. Barr: That's all the questions I have, thank
5 you.

6 The Court: Any re-cross based upon her re-direct,
7 Mr. McCrea?

8 Mr. McCrea: None, Your Honor.

9 The Court: All right you may step down. Thank you.

10 Ms. Barr: Your Honor at this time the State rest.

11 The Court: All right ladies and gentlemen of the
12 jury I'm going to send you all out while I take up some
13 matters. Thank you.

14 (Jury break)

15 The Court: Are there any motions to be made at this
16 time by the state?

17 Ms. Barr: Nothing on behalf of the State, Your
18 Honor.

19 The Court: Mr. McCrea?

20 Mr. McCrea: No, Your Honor.

21 The Court: Mr. McCrea, please stand.

22 Clerk: Please raise your right hand. Do you
23 solemnly swear that the evidence and testimony you give
24 this court will be the truth, the whole truth, and
25 nothing but the truth so help you God?

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1 Mr. McCrea: I do.

2 The Court: Mr. McCrea, at this time I'm going to
3 explain to you certain rights. If you do not understand
4 anything I say please let me know. If you want me to
5 explain anything in detail if you'll let me know as well.
6 Do you understand?

7 Mr. McCrea: Yes sir.

8 The Court: We have now reached the stage of this
9 trial where you may present your defense. You have a
10 right to claim protections given to you by the Fifth
11 Amendment of the United States Constitution which impart
12 states that no person shall be compelled in any criminal
13 case to be a witness against himself. This means that you
14 cannot be required to testify in this case. You have a
15 right to, you do have a right to testify on your own
16 behalf, however, no one can make you testify. This is a
17 personal right. No one can waive this right except for
18 you. If you decide to testify, you will be subject to
19 the same rules that govern other witnesses and you may be
20 examined and cross examined on any relevant issue in this
21 case. In addition, if you have any convictions involving
22 dishonesty or false statement or for crimes punishable by
23 imprisonment of more than one year and this court
24 determines that the probative value of admitting this
25 evidence outweighs its prejudicial effect to you, the

1 solicitor will be able to introduce your record to attach
2 your credibility. Now, if you decide to testify this
3 decision on your part must be made freely, voluntarily
4 and intelligently with knowledge of the protections given
5 to you by the fifth amendment and the consequences of
6 your decision to testify. If you decide not to testify,
7 I will instruct the jury that they cannot give the fact
8 that you did not testify any consideration whatsoever and
9 that there is to be absolutely no prejudice to you
10 because you did not testify. It is left entirely up to
11 you whether you want to testify. If you need to talk to
12 some family or friends or anyone else you may do so, but
13 the final decision is left entirely up to you. Do you
14 understand what I have explained to you?

15 Mr. McCrea: Yes Your Honor.

16 The Court: Do you have any questions about what I
17 explained to you?

18 Mr. McCrea: No sir.

19 The Court: Do you wish to testify?

20 Mr. McCrea: I do not.

21 The Court: You do not wish to testify?

22 Mr. McCrea: I do not.

23 The Court: All right thank you. Are ready to call
24 your first witness? Are you ready to call?

25 Mr. McCrea: Yes, yes.

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1 The Court: Let's give the jury a few more minutes.
2 All right let's bring our jury in.

3 (Jury enters courtroom at 4:28 p.m.)

4 The Court: All right Mr. McCrea you may call your
5 first witness.

6 Mr. McCrea: I'd ask to recall Christopher Briggs.

7 The Court: You can call him as a witness. You ask
8 him direct questions.

9 Mr. McCrea: I have nothing to say.

10 The Court: Sir?

11 Mr. McCrea: I have nothing to say.

12 The Court: You don't want to call him?

13 Mr. McCrea: No sir.

14 The Court: Okay. Do you have any other witnesses?

15 Mr. McCrea: No Your Honor.

16 The Court: The Defense rest?

17 Mr. McCrea: Yes, sir.

18 The Court: All right ladies and gentlemen the State
19 obviously has no reply.

20 Ms. Barr: No reply.

21 The Court: All right. Ladies and Gentlemen, that is
22 all the testimony that you are going to hear in this
23 case. I am going to send you home for the weekend and
24 the attorneys will do their arguments and then I will
25 charge you the law in the morning. I am going to send

1 you home for tonight. Do not discuss this case or do any
2 research or anything like that. Again, have a nice
3 evening, get a good nights rest and we will see you here
4 at 10:00 tomorrow morning. Thank you.

5 (Jury excused for evening 4:31 p.m.)

6 The Court: All right, my clerk is preparing a draft
7 of the charge. Well, first of all, is there any motions
8 on behalf of the State?

9 Ms. Barr: No motions on behalf of the State.

10 The Court: Any motions on behalf of the defense?

11 Ms. McCrea: No Your Honor.

12 The Court: The proposed charge is written and typed
13 out. He's going to print it off in a moment. That will
14 give you an opportunity to look over it overnight and it
15 will also give the prosecution an opportunity to look at
16 it overnight. Again, right before we start tomorrow
17 morning before the closing argument you will have the
18 charge. So, I'll dismiss everyone else but you all can
19 stay for just a moment. Okay. Court is adjourned until
20 10:00 tomorrow morning.

21 **10-21-11gs.young.am**

22 The Court: Mr. McCrea, I didn't know whether you
23 wanted a alibi instruction? Do you want an alibi
24 instruction to the jury?

25 Mr. McCrea: Can you explain it to me?

1 The Court: No sir. Do you want a alibi instruction?
2 You had plead in some of your correspondence or discovery
3 that you had an alibi. Do you still want to propose the
4 alibi instruction to the jury?

5 Mr. McCrea: Of that statement, yes.

6 Ms. Barr: Your Honor we don't have any objection to
7 that.

8 The Court: Since the state has no objection, I'll
9 allow it. Although there's very little evidence other
10 than that statement is the only reference. If you want
11 to put it back in, I have no objection if the defendant
12 wants it.

13 Mr. McCrea: I would like to have a copy.

14 The Court: We'll give you a copy. We are going to
15 print it out. I would remind the plaintiff and the
16 defendant that in closing arguments, you may only argue
17 what is the evidence, you cannot argue anything that has
18 not already been put into evidence. That is not the
19 time. The record and adding or subtracting what is in
20 evidence is the only thing that you have.

21 Mr. McCrea: May I show pictures Your Honor?

22 The Court: If they are in evidence, yes sir.

23 Mr. McCrea: Yes sir.

24 The Court: Since the defendant has placed evidence
25 on the record the State will open and close. All right

1 the only thing that's changed is the alibi charge.

2 Ms. Barr: Yes sir.

3 The Court: Are you ready to proceed?

4 Ms. Barr: The state's ready Your Honor.

5 The Court: Mr. McCrea are you ready?

6 Mr. McCrea: Yes sir.

7 The Court: All right let's bring our jurors in.

8 (Jury enters courtroom 10:15)

9 The Court: Good morning ladies and gentlemen, I
10 hope you had a good night rest. This morning as I told
11 you yesterday all the evidence that you've heard in this
12 case has been given to you. Now is the time that their
13 turn in the prosecuting and defendant will give you their
14 closing argument. As to what you should do with the
15 evidence that's before you. After that I will charge you
16 the law that you will use to apply the facts in coming up
17 with your verdict. Is the state ready to proceed?

18 Ms. Barr: The State's ready, Your Honor

19 The Court: Is the defense ready to proceed?

20 Mr. McCrea: Yes sir.

21 The Court: Madam Solicitor, you may proceed.

22 Ms. Barr: Thank you, Your Honor. May I please the
23 court. Good-morning Ladies and Gentlemen. I am sure you
24 are very pleased that this is the last day of court and I
25 know that it's been a tough journey for you all to sit

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1 here and see and hear some of the things that you've
2 heard in this case. And it makes my comments to you all
3 even more important because it emphasizes the fact that
4 you on Tuesday all have made a sacrifice in this case and
5 again I want to start today as I started on Tuesday and I
6 thank you all for that sacrifice. Now the way that
7 things will kind of proceed from this point in time, I'll
8 kind of give you kind of a preview as to what I think the
9 judge is going to tell you, what the law is and I'll sit
10 down so I'll be very brief to you this time. Mr. McCrea
11 will have the opportunity to address to you his closing
12 statement and the law permits the prosecution since we
13 have the burden of proof to address you all again for the
14 final time and so on that final time I'll probably be a
15 lot longer than I am today. But the judge told you
16 earlier in the case that he is the judge of the law which
17 means that once everybody sits down and kind of talks to
18 you all the judge is going to tell you what the law is in
19 the State of South Carolina as it relates to the issues
20 in this case. If he hasn't already he's going to tell
21 you members of the jury are the judges of the facts. And
22 so you all have the final authority to make a decision on
23 the facts of this particular case. Now again, the
24 defendant is charged with murder and possession of a
25 weapon during the commission of a violent crime. Murder

1 is the unlawful killing of another human being with
2 malice aforethought. Now we all know what the first part
3 of the elements of the crime is. The unlawful killing of
4 another human being. Unlawful killing means it's not
5 justified. It's not, for example, self defense.
6 Somebody kills another person when they are defending
7 themselves, that wouldn't be an unlawful killing. So you
8 have with the murder case the state has to prove the
9 defendant took the life of another human being with
10 malice aforethought. Malice aforethought just simply
11 means, aforethought means that it talks about pre-
12 meditation and planning and so when you all are trying to
13 figure out how this crime happened and if the defendant
14 is guilty of murder you should consider and very
15 seriously consider the pre-meditation planning that took
16 place with regard to this crime. Malice talks about a
17 sort of ill will and it's a state of mind, if you will.
18 Malice concerns what's in a person's heart so you all
19 will have to determine whether or not when Cora Brown was
20 killed if her killer had any ill will or malice in his
21 heart toward her. Folks, we would submit that the
22 evidence in this case has clearly established that. Now,
23 the Defendant is also charged with possession of a weapon
24 during the commission of a violent crime. In the State of
25 South Carolina when you commit murder, and murder is

1 classified as a violent crime. If you commit a murder
2 while you have a firearm, which is a deadly weapon the
3 State of South Carolina classifies that as a separate
4 offense. So, if you find the Defendant guilty of murder
5 and you find that he had possession of the firearm, he's
6 the one that shot the victim and he participated in this
7 crime then you should also find him guilty of possession
8 of a weapon during the commission of a violent crime.

9 Now you all have heard from a number of witnesses in
10 the case and one of the things the Judge is going to tell
11 you is you have to consider the credibility of the
12 witness. And we use the term credibility in the legal
13 sense but actually folks you all judge a person's
14 credibility every day in your own life. You don't call
15 it credibility but you do that every day. For example,
16 if you all have children, if anybody on the jury has
17 jury, you have two young children and you are downstairs
18 and the kids are upstairs and you hear something break,
19 you go upstairs and both of the kids are standing there
20 with a broken vase on the ground and both of them say I
21 didn't do it, you have as parents, you have your good old
22 fashioned common sense and you judge the credibility and
23 so you do that in your every day normal lives and you are
24 certainly allowed to do that and bring that with you.
25 When you're talking about credibility of witnesses what

1 you really want to say, what you really want to judge is
2 can I believe what this person is telling me is true.
3 And one of the things that the Judge is going to tell you
4 that can help you is if you have a witness who says I saw
5 John Doe run a red light. You ask yourself well how do I
6 know what that person is telling me is true. Any one of
7 the things the judge is going to tell you is you can look
8 at other evidence in the case. Does the other evidence
9 in the case corroborate what that witness is telling you
10 because if you've got some other evidence in the case
11 that corroborates what John Doe is saying then you can
12 say, well, I believe John Doe is credible. I believe
13 that I can trust what he's saying. So that's the type of
14 thing the judge will tell you to rely on when you are
15 back there deliberating the case. Another thing that I
16 submit to you that the court is going to tell you is the
17 judge is going to give you an instructions on what is
18 called an alibi defense. An alibi defense is in effect I
19 couldn't have committed this crime because at the time
20 the crime was committed I was some place else. And so
21 you will have to again, as part of your consideration
22 about the credibility of witnesses you will have to
23 determine whether or not the defendant has a plausible,
24 reasonable alibi defense in this case. So you will have
25 an opportunity to consider all of those different

1 factors. Again I'm going to do something that lawyers
2 don't normally do but I'm going to sit down and be quiet
3 for right now. I thank you all again for your attention
4 during this trial. I have tried many of cases and I'm
5 not proud to say it but I have tried many of cases where
6 during the course of the trial, I'm looking over at the
7 jurors and they're nodding off and I'm like on goodness
8 that's not good for us. But I am satisfied that we have
9 an attentive jury. I noticed that throughout the trial
10 of the case that you were focused on those witnesses and
11 focused on the evidence as it was displayed. And really
12 the only thing that Mr. McCrea and I will ever agree on
13 in this case is that we appreciate that. So again I look
14 forward to addressing you all in my second closing
15 statement and again thank you.

16 The Court: Thank you Ms. Barr.

17 Mr. McCrea: Your Honor.

18 The Court: Yes sir.

19 Mr. McCrea: I'd really like to do my closing at the
20 end.

21 The Court: No sir. The state has the right to do
22 the final closing.

23 Mr. McCrea: Okay. Thank you.

24 Closing by Mr. McCrea:

25 Good morning ladies and gentlemen of the jury. Good

1 morning. Ladies and gentlemen of the jury. As you have
2 seen and witnessed this entire trial and the inconsistent
3 testimony of every witness presented on behalf of the
4 prosecutor. This entire case is based upon nothing
5 besides a desperate, violent criminal, Mr. Christopher
6 Briggs who has a history of abusing women. As I've
7 mentioned at the very beginning of this trial, the
8 prosecutor's case replies upon nothing other than theory.
9 This alleged co-defendant, Mr. Christopher Briggs has
10 stated many different lies as to what occurred. And what
11 is really ironic is that the investigating officers knew
12 of this and said nothing. Ms. Roberta Smith who has also
13 committed perjury before this court. In her original
14 statement she indicated that she never seen a gun but now
15 she takes the stand under oath indicating a lie stating
16 she knew I was selling a gun. A desperate and vindictive
17 baby mother who is out to bring about all of the lies
18 that she can. In this criminal case so as what the
19 defendant is now being faced, that is now facing the
20 burden of finding the defendant guilty has to be
21 established beyond a reasonable doubt. What constitute
22 reasonable doubt ladies and gentlemen of the juror is the
23 fingerprints, the weapon, the DNA, and an eyewitness, et
24 seq. Those are all undisputed facts to conclude beyond a
25 reasonable doubt. As you've witnessed and heard the

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1 prosecutor has failed to establish any reasonable doubt.
2 All evidence presented before you is circumstantial
3 evidence, basically theory. You've heard so many
4 different theories from the DA about what allegedly
5 happened but there's nothing supporting beyond a
6 reasonable doubt that the defendant actually committed
7 this crime? As ballistics and forensic tests has
8 concluded that the defendant is not guilty. Members of
9 this jury, I am a forty seven year old man with no
10 violent history at all.

11 Ms. Barr: Judge, we're going to object to that. Not
12 in evidence.

13 The Court: Sustained. You may only argue what is in
14 evidence.

15 Mr. McCrea: A proud father. I work hard for
16 everything that I have. I have a few certificates of
17 honorable tasks such as helping under privileged kids.

18 Ms. Barr: We object to that.

19 The Court: Sustained. It's not in evidence. You may
20 only argue what is in evidence.

21 Mr. McCrea: Excuse me Your Honor. Ladies and
22 Gentlemen of the jury, I stand here before you today
23 falsely accused of a crime I have no knowledge of. And
24 the accuser is a desperate violent criminal who has
25 attempted to harm his own wife on numerous occasions.

1 Yet still the prosecutor allow this man to stand before
2 this court knowing that Mr. Briggs is the actual man who
3 committed this crime and not by my words only but the
4 actual evidence confirms this. Ladies and gentlemen,
5 after witnessing and hearing the facts as opposed to the
6 lies it's clear that you can only reach one verdict. The
7 evidence speaks the same verdict, not guilty. The gun do
8 not match. Not guilty. How many other ways can facts be
9 presented as opposed to the theory of credibility of a
10 repeat violent criminal who has nothing but assault
11 charges on his record for assaulting women. Members of
12 the jury, you've listened to the lies, the trips and
13 these coercion of these law enforcement officers. Ladies
14 and gentlemen of the jury, the defendant can only present
15 the facts before. The defendant has no theories to
16 present only facts that establishes beyond a reasonable
17 doubt that the defendant is not guilty of any of these
18 charges before you today. Ladies and gentlemen of the
19 jury, the law is the law and the facts are the facts.
20 The experts have told you that the gun do not match. The
21 DNA do not match, the fingerprints do not match. Members
22 of this jury, today is your last judgement which
23 determines the facts as opposed to theory is e. Motive.
24 Facts. Circumstances. Reasonable doubt. Reasonable
25 doubt is, established by three elements and they work in

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1 conjunction with each other like a triangle. It has
2 there points. Motive, forensic, ballistics,
3 circumstances of one of these points, if the
4 circumstances of one of these points are missing, the
5 reasonable doubt is gone. This case is built upon lies,
6 perjury, assumption and theory. This case has no
7 evidence of facts, everybody who testified on this stand
8 before this court as you have witnessed has lied and or
9 changed their statement from the start of this
10 investigation. I find it very ironic that his facts have
11 gone unquestioned or abolished by the court. The
12 investigators have stated they found Mr. Briggs DNA and
13 not the defendants then Mr. Briggs takes the stand with
14 eight or nine different tales to what allegedly happened
15 and he actually pointed --- he has actually pointed
16 towards a gun that wasn't even used in this crime nor was
17 it ever in the defendant's possession. Then Mr. Briggs
18 cut out the DA's presenting the glove mentioned that the
19 fingers were cut from the gloves, the glove found at the
20 crime scene. Then my distressed kids mother's kids takes
21 the stand indicating I was going to sell her brother a
22 gun but never reported it but changed her original
23 statement. Members of the jury, or may be it's me but
24 I'm sure one plus one equals two. They allege two people
25 committed this crime. Now you have one witness

1 indicating her brother was sold a gun, you have Mr.
2 Briggs whose DNA was at the scene ...

3 Ms. Barr: Objection Your Honor.

4 The Court: Sustained, that is not evidence.

5 Mr. McCrea: Ladies and gentlemen of the jury, I'm
6 not a certified investigator, but Einstein has a famous
7 quote. "Look at the things as they are and not what they
8 should be ... Members of the jury, the only reasonable
9 doubt you can conclude is that the defendant is not
10 guilty of this alleged crime. Thank you.

11 The Court: Thank you Mr. McCrea.

12 Mr. McCrea: Thank you Your Honor.

13 Ms. Barr - Reply Closing:

14 Ms. Barr: May it please the court?

15 The Court: Yes, Ms. Barr.

16 Ms. Barr: Let me say this, Mr. McCrea has really
17 done an impressive job in this courtroom today. I have
18 had lawyers that didn't perform as well as he did. He
19 made an appropriate objection and appropriate arguments
20 and I'll concede really quite impressive. And you know
21 what that tells me about him? He's a pretty smart fella.
22 I mean he really is. But, then again, I guess it would
23 take a pretty smart fellow to plan this crime and commit
24 this crime and destroy evidence like he is. One of the
25 things that I know, one of the lawyers that previously

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1 represented Mr. McCrea, Mr. Barr, he and I have had many
2 cases together in this court room and I always joke to
3 Charles and I always say, Charles, I know you tell your
4 defendants to go put a nice suit on and come into court
5 and present a good image. I know you do that and he kind
6 of laughs it off. But that's kind of what he's doing.
7 The person that you see and you saw all week at the
8 defense table, that's not the Levern McCrea that his
9 friends and family know. It's not, what you've seen
10 today presented by this defendant all week. That's a
11 fraud which again, lets me know that he is a very
12 intelligent fellow. He is very mannerable, very
13 considerate; yes, Your Honor; no, Your Honor; Ms. Barr,
14 can I please show the witness x, y and z. That's a smart
15 cookie siting over there you all. But you know sometimes
16 folks there are people out there they can be so smart,
17 they are almost too smart. He's from the big city. He's
18 a big city fella here. Connecticut. And when he talks
19 in those letter about those country folks down here, I'll
20 concede I'm one of them country folks he's talking about.
21 I'm a country girl and proud of it. There's nothing more
22 than I love more then some grits. But see he's so smart.
23 He runs his mouth too much for one thing. If he ain't
24 writing, he's talking and ultimately Mr. Big City, Mr.
25 Smart Man, his mouth just might be his --- He's going

1 around a month before this murder was committed to
2 anybody who would listen to him. People I want to get.
3 I got people I want to get. Telling Christine. Telling
4 Christopher. Christine said, I'm not the only person you
5 told that to. Because he's, you know, he's smart, he's
6 big city, running his mouth. He's telling all these
7 people here. Cora Brown, one of them and Carmen Presley
8 another one. He put his mama and his sister on the list.
9 Now, that was interesting to me because I remember in one
10 of these investigator's file that the defendant had
11 actually filed a police report on Carmen Presley about a
12 year and a half before Cora was murdered. So there's
13 some evidence of some links between Carmen and the
14 defendant, which sort of, in my mind, remember I was
15 talking about credibility of witnesses and corroboration,
16 that sort of boost the credibility of what Christine and
17 Christopher were both saying. He's the kind of fellow, I
18 think it's pretty clear now, that has to be in control.
19 He's like the person that has all of these various chess
20 pieces and they're the ones --- he's the type of fella
21 that's making all the moves. I mean you can kind of see
22 how he was asking witness questions, you can kind of see
23 in those letters. He's the one in control. He's the one
24 doing the planning. He's the one doing the manipulation.
25 You know that. He's constantly telling someone else what

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1 to do. Now, the part about that is because it relates to
2 the roles those two fellas had that night. The night
3 that Cora was killed. Let me go ahead and tell you
4 folks, I know some of you all are thinking in the back of
5 your mind, maybe you all are thinking in the back of your
6 mind, um Ms. Barr, I'm not too sure about Christopher
7 Briggs. He might know more than what he's saying. Tell
8 me you all are thinking that. I know you all are
9 because it ran through my mind as well. He might have
10 seen a little more than he letting on but, well not but.
11 Let me tell you this. I'm not going to get up here with
12 a straight face and say that Christopher Briggs is all
13 innocent, he's a choral boy. I'm not going to say that.
14 Not with a straight face anyway. But Christopher Briggs,
15 I would submit to you is the lesser of two evils. But
16 the evil one, let there be no doubt, the evil one is
17 right there. He is the one who is clearly, clearly in
18 control. Christopher Briggs sort of strikes me as a
19 follower. He sort of strikes me as the type of person
20 that, he just, for lack of a better word, he's lacking.
21 And quite frankly, he very possibly could have been the
22 look out. Let me tell you why you should be satisfied
23 within your spirits and your soul that Christopher Briggs
24 is not the one who killed Cora Brown. A couple of
25 reasons. One, when the police officers went and talk to

1 Roberta Smith at her home in North Carolina at the end of
2 March. They came and they went to Mr. Briggs at the
3 Georgetown County jail and they said "Listen, you know,
4 we know something" That whole year, Christopher
5 basically kept the lie going, kept his mouth shut. Oh,
6 we were in North Carolina. That was the story he was
7 telling the cops the whole year and the police officers,
8 you know, you only know what you know. The police
9 officers at that point really didn't have a lot to push
10 back against him with. So when they speak to Roberta and
11 they find out that Christopher Briggs and Levern McCrea
12 had been to her house the day the lady Ms. Cora Brown was
13 killed and used her vehicle to come back to South
14 Carolina. See, they knew something at the end of March
15 of 2010 that the police didn't know before. So when they
16 go and confront Christopher, Christopher, oh, shoot, they
17 know this. Busted. So there's no point for him to
18 continue the lie. Quite frankly, if Christopher was in
19 fact the killer, let's just throw that little nonsense
20 out there, you think he's going to even say he was in
21 South Carolina, let alone in the victim's front yard when
22 that woman got killed. If he's the killer. Wouldn't the
23 killer say no, Ms. Smith's mistaken, we didn't take her
24 vehicle to South Carolina we went to some other place in
25 North Carolina. So she's mistaken about the place.

1 That's not true. I mean the killer is going to cover his
2 behind to the end right. He's going to carry that lie to
3 the very end. The killer is going to carry the lie to the
4 point where he's in court doing his closing statement.
5 That's how long the killer is going to take that lie.
6 But the person who is just there, once they are
7 confronted with that information, they are going to come
8 clean. Now, one of the times that let's me know that Mr.
9 Briggs was not in that house because you remember his
10 testimony about how the vehicle was positioned in the
11 yard. He spoke about how Ms. Smith's vehicle, remember
12 we heard that this is the roadway. Remember how he
13 talked about the vehicle was pointed, Ms. Smith's vehicle
14 was pointed facing the roadway such that the back of her
15 vehicle would have been to the house. And he talked
16 about I heard the gun shot and started looking around,
17 and he was describing the cars. Now how would he know
18 what kind of cars were coming by if he were not in that
19 vehicle. That let me know right there, he's not the
20 killer. Then I think about, well, after, you know, he
21 gets his statement and he is arrested and charged for,
22 you know, not telling the place what he knew, the police
23 said okay I want to get your DNA, at some point later I
24 need to get your DNA. He said okay sure. Tell me where
25 to sign. Tell me, you know, you all can go ahead and

1 take it out my mouth. I'd do that voluntarily. Would a
2 killer do that? I don't know. And then when the police
3 says to him, during one of the interviews, you know what
4 you need to tell me how that DNA got on that mask. We
5 found your DNA on that mask. That was one of the police
6 scare tactics. They wanted to kind of push it out there
7 to see how he would react to that. What did Investigator
8 Brown tell you all --- he was almost adamant, you ain't
9 going to find no DNA on a ski mask, you ain't going to
10 find my DNA on a ski mask. And really, the type of
11 individual Mr. McCrea is, he ain't going to let nobody
12 else hold his gun. He ain't going to let nobody else
13 drive his girl's car. He wants to do that. He wants to
14 kind of run things. He might tell Christopher go out
15 there and change the tags. Killing. That's what he
16 wants. Now, when I saw in that letter again about
17 country folk, Mr. McCrea thinks that because we country,
18 we slow. Investigator Brown who testified yesterday,
19 he's country just like me. But see, Mr. Big City thinks
20 we in the south, we just slow. He's fast talking now.
21 So what he thinks he can do is he thinks he can kind of
22 talk his way out of all of this. He thinks if I talk
23 fast enough these slow people down here, you know, they
24 want get it. But he shot himself in the foot. Let me
25 tell you how. March 25, 2009, Investigator Brown says

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1 that Mr. McCrea gives him two receipts. Now, y'all,
2 y'all know what the purpose of them receipts are. That
3 was supposed to create an alibi. He can tell these folks
4 down here that I got proof I couldn't have done it, it
5 was impossible. I was in another state. Well, he tells
6 Robertta Smith in one of his letters that, you see, I
7 showed him my receipts and that proved I was in North
8 Carolina. But, you know, Mr. Brown started looking at
9 the receipts and he was like, wait a minute now. This
10 McDonald's receipt in Lumberton was dated March 10, 2009
11 at 11:10 am. Now you've given me this, and that's March
12 10th, 11:10 a.m. and then turn around and give me this
13 receipt for Family Dollar dated fifteen minutes later
14 that's in Mt. Olive. How can you be from Lumberton to
15 Mount Olive fifteen minutes later?

16 Mr. McCrea: Sir, there was evidence I was in there.

17 The Court: It was testified too. You may proceed.

18 Ms. Barr: So, Investigator Brown wasn't supposed to
19 catch that because see this the fast talker because he
20 think well, I'll just give him this. And two things
21 about those restricts that struck me as odd. One, the
22 McDonald's receipt from the testimony is dated March 10th,
23 now I asked Investigator Brown, where physically did Mr.
24 McCrea get these receipts from. He said he pulled them
25 from his wallet. Now, who keeps a McDonald's receipt

1 where you're getting a burger or whatever you're getting
2 from McDonald's in your wallet for two weeks. Who does
3 that. Somebody who needs a alibi does that. Then the
4 second receipt time stamped sixteen minutes later in Mt.
5 Olive, North Carolina for Family Dollar, we already know
6 that was Roberta's receipt where she already both the
7 curtains and things and the shower curtains and all the
8 other stuff because her little debit card number is on
9 there. So, why would Levern McCrea need Roberta Smith's
10 Family Dollar receipt with Mt. Olive, North Carolina on
11 it dated March 10, 2009. Why would you need somebody
12 else's receipt. They've already hung the curtains, you
13 ain't taking them back. Why would you need that?
14 Because you need an alibi. We country but God blessed us
15 with good sense. The level of planning that it took to
16 carry out this murder has got to be the most disturbing
17 part of this case and I quite frankly have never seen
18 anything like it in sixteen years of practice of law.
19 You know, people watch tv nowadays and I'm telling you
20 what, some of those programs that comes on the television
21 set, it is like the blueprint of how to commit a murder
22 and get away with it. I mean, these CSI programs and
23 forensic file programs. I love them, I watch them too.
24 I mean, I don't have any ill intent when I'm watching
25 them. I'm just watching them because this is what I do

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1 for a living. But you know, there are some folks who
2 while the rest of us are laying our heads down at night
3 and getting a good night's sleep, plotting and planning
4 on how to hurt people. There are some people out there
5 who the first thing they do when they get up in the
6 morning is plot and plan how to hurt somebody. Now
7 you've information on the internet and t.v. that tells
8 you how to do it and how to get away with it. When I
9 think about the preparation it took, it's unbelievable.
10 I almost have no words for it. You have and I prosecuted
11 situations where a person goes in somebody's house to
12 commit a robbery. They just want quick money, quick
13 property or something they can pawn real fast and in a
14 hurry. They get in the house, confront the homeowner, it
15 goes bad in a matter of seconds. There's no
16 premeditation. You're not going in there to hurt
17 anybody, you're just going in there to steal something.
18 But, you know, some things happen real quick in the spur
19 of the moment, God forbid the homeowner gets killed. This
20 is not that type situation. He's not that type fellow.
21 This was plotted and planned and premeditated. Cora
22 Brown made the fatal decision, mistake to call Levern
23 McCrea a faggot. That was her fatal mistake. That was
24 her fatal flaw in this case. Because you don't call a
25 person like him that kind of name and not to live to tell

1 about it. For the longest it was difficult for me to
2 concede, wait a minute somebody got killed because they
3 called somebody a name. That's not what you do to him.
4 Because she did that, he began a month before, I'm going
5 to take her out. And then somewhere during the early
6 part of March 2009, he starts plotting on how he's going
7 to do it. And he decides, as this intelligent person,
8 well, let's see I got this Mercedes. Everybody know I
9 drive a Benz so I can't use my car. This the kind of
10 fellow that he's got Benz dreams, he has these Mercedes
11 dreams but he's on the Budweiser budget so he's driving
12 around in this Benz but he ain't even got the money to
13 pay the car payment. So, he figures out well, can't go
14 there and use my car because too many people know my car.
15 Too many people down here jealous because I got this
16 Mercedes Benz. I'm going to go see my baby mama and I'm
17 going to tell her I'm coming up there. So, he calls her
18 and tells her I need to borrow a \$150.00 and she says
19 well, I don't have \$150 but she says I can give you a
20 \$100. She Western Unions that money to him. Now mind
21 you he's taking money out of his baby's mouth so he can
22 do whatever he's got to do. Anyway he goes up here. She
23 goes to meet him because she had just moved and she is
24 surprised when this other fella is in the car. She says I
25 didn't know you were bringing company. So, in any event,

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1 they go up there and they socialize or whatever for a
2 couple of hours and he tells her I need to borrow your
3 car because I need to tow a vehicle or haul a vehicle,
4 whatever story he gives her. She says okay, fine. You
5 can borrow my car. So they switch cars and he and Quan,
6 or Mr. Briggs, they did leave North Carolina about 5:00.
7 Ms. Smith, to her credit is trying to better her life
8 style for her and her kids. She's going to school. She
9 is advancing herself in her medical career which is
10 commendable. Part of her training and her studies she
11 has plastic gloves, hospital gloves inside her vehicle.
12 And when she testified about how she would have the smock
13 and have the hospital gloves in her pocket and how she
14 may have kept them in her vehicle. I said, where did I
15 hear that before. Christopher Briggs said that Levern
16 McCrea had on hospital gloves. And you know that he is
17 smart enough to wear hospital gloves so that he couldn't
18 do what, leave his DNA. Planning. Anyway he goes to
19 North Carolina and gets the girlfriend or the ex-
20 girlfriend or his son's mother vehicle and he realizes
21 okay she's got North Carolina plates on her car and if I
22 go by Cora's house, you know, in case somebody happens to
23 be passing down the roadway because again her house is on
24 the main street, I don't want anybody to see the tag. So
25 that's why he backs into the yard so if anybody comes by

1 they can't see the tag. And he's planning such that when
2 he kills her and he gets out of the house when he pulls
3 out of the yard somebody just happens to come in behind
4 him, I got to take the North Carolina plates off so I can
5 put the paper tag on so that nobody can say when the
6 police find this body and they go around the community
7 did you all see any out of the way cars out there. Did
8 you all see anything suspicious around that time nobody
9 can say well, I saw a white Chevy Blazer with North
10 Carolina plates on it. The only thing somebody can say
11 is well I saw a white truck that didn't have plates on it
12 so that he couldn't be tied back to Roberta's vehicle.
13 So anyway he has the presents of mind to take the plates
14 off of her vehicle and put a temporary tag. He then gets
15 in her yard, he --- and again Ms. Smith was clear, I gave
16 my car to Mr. McCrea, not Mr. Briggs, Mr. McCrea. Well,
17 folks he then gets out of the yard and he goes and knocks
18 on Ms. Cora's front door. And this isn't late, late
19 folks, I mean, this isn't one, two o'clock in the
20 morning. Ms. Cora still had on regular clothes, so we
21 know that based on what Christopher said about the time
22 frame being, I think he said between 9:45 and 10:00, that
23 is probably reasonable by how she was dressed. But, in
24 any event, he goes to the door and knocks on the door and
25 frankly I wonder why it was that she would open the door

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1 for him after knowing the things that she said about him
2 in terms of calling him the name, and I started to ask
3 myself, I said, well, you see this little porch area
4 here. I wonder if he came and knocked on the door and
5 stood over in this area so she couldn't see his face.
6 Because if you look at the enlarged picture of her front
7 door there appears to be some little peep hole, it ain't
8 a big one, I don't know whether that's a peep hole, I
9 don't know what that is but it's all the way at the top
10 of the door and it very well could have been she couldn't
11 see who was at her door. And again, it's not one or two
12 o'clock in the morning where you think a burglary is at
13 your door. He knocked on the door and maybe she called
14 and called who is it and nobody responded. She might
15 have cracked open the door, perhaps even seen in her
16 window that's located right next to the front door
17 perhaps looking in there and seeing a white vehicle in
18 the yard. So, it's very possible that she might have
19 opened the door and once she gave that little in he
20 forces himself into the house. Now, when that happens ---
21 Levern McCrea, at the time he enters her home, he's high
22 on cocaine, he's desperate for money and he has vengeance
23 in his heart. So, when he goes into the house we know
24 based on the testimony of the sled agent Vicki Hallman
25 that's it obvious that several personal items were on the

1 floor underneath the victim as if someone were going
2 through her purse. So, I can very well imagine that the
3 Defendant is holding the gun to her forehead and rifling
4 through her purse looking for money. And while he is
5 demanding money or whatever he is because he's unemployed
6 and Roberta didn't give him enough money to make his car
7 note, he then fires a bullet into the skull of Cora
8 Brown.

9 Now, let me tell you why I would submit to you that
10 he shot her first in the head. One of the things that
11 the sled agent tells us is that there was blood spatter
12 on the wall in the kitchen going towards the kitchen,
13 there's Ms. Brown's arm there (indicating), there's the
14 wall where she measured it that goes up to sixty inches
15 high, that's five feet. That's consistent with a bullet
16 shot to the head because of the height and the spray
17 pattern of the blood. And that's also consistent, if you
18 all remember, the pathologist said one shot through the
19 head the bullet went through and through. Now, we never
20 recovered that bullet that went through and through. I
21 would submit to you that that bullet is what took her
22 down. I don't know once it went through and through and
23 we have a situation where the Defendant goes and get it
24 off the floor, I don't know, but it goes through and
25 through and that bullet takes her down. And while he's

1 standing there pointing the gun at her head, she's doing
2 like this (indicating) and folks the evidence is clear,
3 the barrel of that gun is less than five inches from her
4 head. And I can see him. What you got, what you got.
5 Give me what you got and her doing like this. And you
6 know that she had her hand near her head when she was
7 shot because she has the soot on the palm of her hand.
8 Just like that. And you know how the pathologist lined
9 it up to the soot on her ear and the gunshot wound to her
10 head, just like that (indicating). He takes hers out
11 with that and she's laying on the ground. Folks, a
12 gunshot wound to the head, you're dead. You're dead. Nine
13 times out of ten you're not surviving that. Let me tell
14 you how this wasn't just an ordinary, burglary, robbery.
15 I don't want you all to think that there is some
16 imaginary killer out there on the loose. There's not,
17 we've got the right one. He's right here. He shot here
18 in the head and took her down. The person who then goes
19 and stands over her, within five inches, and then shoots
20 her in the back. Then he shoots her two more times in
21 the head, that's a person who has hatred for that victim.
22 That's the person who says you won't be calling nobody
23 else a faggot. Because if this was just an ordinary
24 robbery, you shoot them one time, you kill them and you
25 go on about your business. But when you've got to do it

1 three more times that personal, that's vengeance.

2 And because he's just a careful planner, controller
3 and manipulator, you know, he's assessing his crime scene
4 at this point and he's saying I better make sure I don't
5 leave anything behind when I was touching and pushing her
6 and demanding money, I missed and touched her. So, she's
7 laying there with a shirt on, gunshot wound and he
8 realizes oops I touched her, I touched her shirt, oops
9 not smart. So, he says you know what I'll correct that.
10 He takes her shirt off, because I want to be careful. I
11 don't want to leave my DNA behind. So, he does that.
12 And for the longest I was looking at that picture right
13 there and I kept saying why is her arm like that. That's
14 kind of a weird place for her arm to be. You know a lot
15 of people when they get shot there arms are underneath
16 them or --- but her right arm was all like this
17 (indicating) and her left arm was underneath. I was like
18 why is her arm like that and she's face down. You all
19 know why her arm is like that and she is face down? He
20 pulled her shirt off. That's why her arm is like that
21 because he pulled the shirt over her head and stretched
22 out her arms. So, he, I guess, searches and searches and
23 searches. He goes through her stuff I don't know I guess
24 looking for money. And we know that this is not just
25 some ordinary robbery because an ordinary robber goes in

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1 to rob somebody or to take their property they try to get
2 as many valuables as they can get. They don't leave the
3 watch behind because that is something they can pawn.
4 You don't leave that behind. This ain't no ordinary
5 robbery. An ordinary robber don't leave the t.v. behind.
6 You can pawn the t.v. The pawn shop will give you at
7 least twenty-five dollars I would imagine. An ordinary
8 robber you don't leave the cell phone behind. This for
9 Mr. McCrea was personal. So, he realizes that he's got a
10 limited time so he goes in and runs back out. Now, let
11 me just be clear, he really meant to kill her. For Cora
12 Brown her life was going to end that night. Now was he
13 also a smart man and was going to take advantage of the
14 opportunity to get some money. Sure he was. I mean if
15 cash is in her purse he ain't going to leave it. He
16 does this. Runs out of the house, runs so fast, jumps I
17 the car, papers flying out the far, gets in the car looks
18 at Quan where's my glove. They haul tail, get out of
19 there and somewhere on the way back to North Carolina he
20 gets out to urinate and puts the North Carolina plate
21 back on. And he tells Quan, while holding the gun, now I
22 ain't going to have to worry about you, right. I mean,
23 you not going to say anything because if I got to worry
24 about you, let me know and I can take care of that right
25 now. And Quan, no, no, no, no, no, you ain't got to

1 worry about me. Alright because if you run your mouth,
2 I'm going to put you right up in it. And you know what
3 he kept his promise, didn't he. He didn't just put him
4 in it, he put it on him. And I would submit to you that
5 Quan knows what kind of person Levern is. He's not the
6 kind of person where you can be wishy-washy. I'm telling
7 you all folks, if Quan had panicked, man what you done
8 gone and done. I'm going to call the police. You think
9 that Quan would be sitting here in this courtroom today.
10 You remember Ms. Briggs got on the stand and he said,
11 well, Mr. McCrea, me kind of knowing how you are and
12 knowing who you are and how you roll and who you hang
13 with, nah, I want to keep, I want to stay under you
14 because I don't want you to try and put it on me. And it
15 very well may be that the old adage is true. You keep
16 your friends close and your enemies closer.

17 So they get back to North Carolina and the Defendant
18 takes the victims bloody blouse or shirt, whatever she
19 was wearing, whatever she wants to get rid of and the
20 plastic glove, he has the presence of mind, the intellect
21 to dump the clothing in a Dumpster in North Carolina.
22 Now, see, folks we couldn't find them, the clothes are
23 all gone by then, they are not just going to sit there.
24 He goes back to North Carolina. He is content with
25 having used Roberta for a hundred dollars and having used

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1 her vehicle and goes back in and is going to use her some
2 more. Have her fix some food and using her place to kind
3 of lay low during the week after this murder, so he goes
4 back in and I guess he wants to use her some more. Talk
5 to your brother. I got this gun, let me talk to him and
6 see if he's interested in buying a gun. I will sell it to
7 him. Her brother don't have the money so he says I'll
8 let Levern know if I find somebody who wants it. So, he
9 kind of lays low in North Carolina ...

10 Mr. McCrea: Objection, Your Honor. This isn't in
11 evidence.

12 The Court: I think this was in evidence. This was
13 in evidence. You may proceed.

14 Mr. McCrea: The brother was not in evidence, Your
15 Honor.

16 The Court: The testimony is already in evidence.
17 You may proceed.

18 Ms. Barr: So Roberta recalls seeing what she called,
19 it was an old gun and you know we asked her whether or
20 not that was the particular gun and she said I don't know
21 could be or couldn't be. I would submit to you that she
22 was probably trying to stay as far away from that gun as
23 she possibly could. And she talked about it when the
24 Defendant had it, it was wrapped in a white towel. And
25 so, I said, white towel where did I hear that from. Quan

1 Briggs. He said when I saw it in the bedroom of Roberta
2 it was wrapped in a white towel. You know why he had it
3 wrapped in a white towel? He didn't want no
4 fingerprints. You mean to tell me that gun found a year
5 later it didn't have no fingerprint on it so nobody every
6 handled that gun. He wiped it down. So, after he leaves
7 North Carolina, third, fourth, fifth time, however many
8 times it was, Roberta gets a call from her brother. Then
9 she calls Levern and she says, well, I just talked to my
10 brother and he says he's got somebody to buy the guy.
11 Well, what does Levern say. No, don't worry about it. I
12 got it. Did Roberta ever see that gun in anybody's
13 possession other than the Defendant? When you got a gun,
14 you talk about control. You see somebody in control.
15 You want to get control of somebody or a situation, you
16 have a gun in your hand. You going to get it. No back
17 talk from nobody else because that's the ultimate form of
18 control. I'm going to relinquish that. You all give me
19 two more minutes and I'm going to be done. Now, I know,
20 as a prosecution, I'm a fan of the show, I know, ah, when
21 that DNA lady was testifying the other day I declare I
22 looked over there at you all and you were waiting on your
23 seat, waiting to hear if one of these persons DNA was on
24 that glove. I know you were. Would I have loved to have
25 had it, absolutely. But, folks, it wasn't there. You

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1 know why it wasn't there because he took the necessary
2 precautions so that it wouldn't be there. Now, I do
3 remember the sled agent talking about there was
4 somebody's DNA on the inside of the glove and it wasn't
5 Mr. Briggs and it wasn't Mr. McCrea. And, folks, I don't
6 know whose DNA it was. I don't know whether when the
7 glove was first bought, when it was sold in the store. I
8 don't know --- I don't know. But if you have plastic
9 gloves you, your DNA is not going to be on them, I do
10 know that. But, in any event, he comes back to South
11 Carolina and the whole time Quan is whining about I'm
12 ready to go home, I'm ready to go home. So, in any
13 event, he comes back to South Carolina and he is arrested
14 and charged with murder. He would have you all believe
15 that everybody is lying. Everybody? I mean, everybody
16 you know is lying on you. Your cousin who told you on
17 the stand I love you as a cousin but Vern you said that.
18 What reason does she have to lie because according to him
19 he did all this stuff for her. So what possible reason
20 would she have to get on that stand and said you said
21 that if you didn't. Levern, the whole time he was in
22 jail, he was writing and she was sending him baby
23 pictures. That relationship is kind of ironic to me
24 because he got --- while he had her on the stand he's
25 talking about, ah you just saying all this stuff because

1 I don't want you no more. I wasn't there when the baby
2 was coming. That's your motive for telling those lies.
3 I said you know what that's funny to me because when he
4 needed her car, when she could do something for him
5 everything was alright. When he needed some money from
6 her everything was all great. When he needed a alibi,
7 oh, I love you, I love our son. I want to be there for
8 our son. But now when she get up in here and she do what
9 she sworn on the Bible that she was supposed to do on now
10 you don't like me, you know, you just doing this out of
11 spite. That's funny. You know if she really wanted to
12 hurt him. If she really wanted to hurt him. If she
13 really wanted to put the nail in his coffin so to speak
14 and just do stuff out of spike I declare she could do a
15 whole lot. She could have got up on that stand and said
16 well, yeah, I know for certain, a hundred percent
17 certainty that that was the gun and Levern told me one
18 night when we were talking on the phone or while we were
19 cuddling together that yeah he killed Ms. Cora because,
20 you know, she was calling him ... if she just wanted to
21 hurt him, right? I mean, she could have said he
22 confessed but that woman told the truth. And the
23 Defendant's cross examination of LeQuan Briggs I think
24 was the most telling in this whole case. Now, Quan
25 Briggs was arguably the State's star witness. I mean,

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1 he's the witness that provides the Defendant with motive,
2 with means and with opportunity to kill Cora Brown. He
3 puts him there, says he planned it, says that reason why,
4 says he had the gun, all that. You know what when he was
5 asking him questions, when Mr. McCrea was asking him
6 questions, you know asking him stuff about his wife, two
7 years ago and all this other stuff. Didn't I help you,
8 feed you when you were homeless and didn't you give me
9 some money to buy a car and didn't ask him one single
10 question about that murder. He didn't even go there.
11 Didn't even talk about that night. Now, you the main
12 witness against and Mr. Briggs you said you saw him
13 running out the house after you heard the gunshot. Now,
14 tell me when I was running out the house what did I
15 supposedly say. You say that I changed the tags. Tell
16 me when did I supposedly change the tags on the car,
17 where were we at. You ask details about stuff because
18 all that other stuff is irrelevant. If somebody says you
19 committed a murder and you don't go there at all? He
20 didn't want to go there. He didn't want to go there
21 because he didn't want to slip and say something that he
22 wasn't supposed to say. Smart fellow, smart fellow.

23 When you talk about, one more thing, all these
24 people who are supposed to sell him out and conspire
25 against him and lie on him and all of this other stuff,

1 I'm particularly curious about something. Roberta Smith,
2 when she provided these letters, she didn't want to give
3 them up, they were court ordered. She didn't have a
4 choice. There was some part of her, I will submit to
5 you, that was inflicted because they do have a child
6 together. There was a part of her that even after all
7 this, she still wanted to protect her. She scratches out
8 one of the most incriminating statements that he had ever
9 given. She scratched it out. She didn't want me to see
10 it. Still trying to look out for him. I went through
11 that statement with her and that statement says, I
12 remember saying to you if anything was to happen and you
13 knew about it, would you tell on me. See all his baby's
14 mamas would have done what she refused to do and that was
15 lie under oath by giving a notarized statement saying no
16 he was with me. And, you know, that it was important to
17 him that she does not write a letter but that her letter
18 made sure to say I was in North Carolina the week of
19 March 10, 2009 til March 17, 2009. Now, are the
20 defendant's words in those letters the words of a
21 innocent man. You see if on this day, at this hour, if
22 somebody is murdered in Lumberton, North Carolina and
23 Lumberton, North Carolina Police Department comes to my
24 house and says Ms. Barr you're a suspect in a murder and
25 we'll going to have to take you downtown to talk to you,

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1 I would promise you I'd be telling the Lumberton Police
2 Department you need to call all y'all in here, please
3 call and talk to them and let them know I was some place
4 else and couldn't have done it. This guy. Don't talk to
5 the police. Don't do anything without telling me first.
6 The only thing I want you to do is write this letter to
7 my lawyer and say that I wasn't there. And one more
8 thing about the letter that is odd to me, he talks about
9 in one of the letters that Quan did --- he puts it on
10 Quan for the first time after about a year in jail. Quan
11 robbed this lady for her lottery money. The first time I
12 saw that letter was Monday when the young lady brought it
13 from North Carolina. And I said now how would somebody
14 know that the lottery was related somewhere to the victim
15 unless they were in the house and saw the lottery tickets
16 at her feet. Only the killer would know that. And that
17 tells me all I need to know about this case. Now, Mr.
18 McCrea is a big fan of CSI and I will submit to you ...

19 Mr. McCrea: Objection Your Honor. That's her
20 opinion. She doesn't know the type person I am.

21 The Court: She's just making an inference. Proceed
22 it's closing argument.

23 Ms. Barr: I submit to you he has followed a script
24 from a lot of that CSI, forensic stuff. I'm also a fan
25 of those type shows. I have a favorite show and I

1 believe it's the discovery channel and it's called I
2 almost got away with it. Folks, at the end of the day
3 when all is said and done and you all have to come back
4 in this courtroom and render judgment in this case I hope
5 that the t.v. show that best describes Levern McCrea's
6 life from this point on is I almost, almost got away with
7 it. You all find him guilty. Don't reward the type of
8 killer he is and his efficiency for wiping off
9 fingerprints and DNA by setting him loose. Don't do it.
10 You all find him guilty. Thank you.

11 The Court: Thank you. All right. Ladies and
12 Gentlemen, we will take a short break before I give you
13 my closing charge. Please do not discuss anything about
14 this case while you are in there. Thank you. We'll take
15 about a ten minute recess.

16 (Jury break 11:32 a.m.)

17 **10-21-11gs.young.chargesverdict**

18 The Court: All right let's bring our jury back in.
19 (Jury enters court room 12:06)

20 The Court: Ladies and gentlemen, all of the
21 testimony and other evidence to be presented to you in
22 this case has now been presented. The attorney and the
23 defendant have made their closing argument. Now is the
24 time of this trial when I charge you with the law to be
25 applied to this case.

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1 I remind you that, during this trial, you and I have
2 certain duties to perform, as the trial judge, it is my
3 responsibility to preside over the trial of this case,
4 and I also have the duty to rule on the admissibility of
5 the evidence offered during this trial. You are to
6 consider only the competent evidence before you. If there
7 was any testimony ordered stricken from the record in
8 this case during this trial, you must disregard that
9 testimony. You are to consider only the testimony which
10 has been presented from this witness stand, any exhibits
11 which have been made a part of the record in this case,
12 and any stipulations of counsel.

13 I have the additional duty to charge you the law
14 applicable to this case. As the presiding judge, I am
15 the sole judge of the law of this case, and it your duty
16 as jurors to accept and apply the law as I now state it
17 to you. If you already have any idea as to what the law
18 is or what the law ought to be and it does not agree with
19 what I now tell you the law is, you must abandon that
20 idea because you are sworn to accept the law and apply
21 the law exactly as I state it to you.

22 In every case tried in this court before a jury, the
23 jury become the sole and exclusive judge of the facts in
24 a case. As a trial judge I cannot intimate, state,
25 comment on, or make any statement to a trial jury about

1 the facts in a case. Since you, the jury, are the sole
2 judge of the facts in this case, you are not to infer
3 from what I have said during the progress of this trial
4 in ruling upon the admissibility of evidence, or
5 otherwise, or anything that I say now during the course
6 of this instruction to you, that I have any opinions
7 about the facts in this case. The law does not allow me
8 to have an opinion about the facts in this case. This is
9 a matter solely for you, the jury, to determine. As
10 jurors, it is your duty to determine the effect, the
11 value, the weight, and truth of the evidence presented
12 during this trial.

13 The indictment charges the defendant with various
14 crimes. I remind you that the fact the Defendant was
15 arrested, charged, and indicted in this case, is not
16 evidence in this case and cannot be considered by you as
17 evidence of guilt in this case, nor does it create any
18 presumption or inference of guilt. These indictments are
19 simply the formal written instruments that contain the
20 charges made against the Defendant. They are the formal
21 documents by which his case is brought into this court.

22 The indictments in this case alleges two different
23 offences against the defendant. The charges are:
24 Indictment Number One: Murder, 2010-GS-45-135; Indictment
25 Number Two, Possession of a firearm during the commission

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1 of a violent crime (2010-GS-45-135).

2 Each indictment charges a separate and distinct
3 offense. You must decide each indictment separately on
4 the evidence and the law applicable to it uninfluenced by
5 your decision as to any other indictment. The Defendant
6 may be convicted or acquitted on either or all of the
7 offenses charged. You will be asked to write a separate
8 verdict of guilty or not guilty for each charge.

9 The Defendant has pled not guilty to the charges in
10 the indictments, and that plea puts the burden on the
11 State to prove the Defendant guilty. A person charged
12 with committing a criminal offense in South Carolina is
13 never required to prove himself innocent.

14 I charge you that it is an important rule of the law
15 that the Defendant in a criminal trial, no matter what
16 the seriousness of the charge may be, will always be
17 presumed to be innocent of the crime for which the
18 indictment was issued unless guilt has been proven by
19 evidence that satisfies you of that guilt beyond a
20 reasonable doubt. This presumption of innocence does not
21 end when you begin your deliberations, but it accompanies
22 the Defendant throughout the trial until you reach a
23 verdict of guilt based on evidence that satisfies you of
24 that guilt beyond a reasonable doubt.

25 The presumption of innocence is like a robe of

1 righteousness placed about the shoulders of the Defendant
2 which remains with the Defendant until it has been
3 stripped from the Defendant by evidence satisfying you of
4 the Defendant's guilt beyond a reasonable doubt.

5 The presumption of innocence is not a mere legal
6 theory. It is not just a legal phrase. It is a
7 substantial right to which every defendant is entitled
8 unless you, the jury, are satisfied from the evidence of
9 the Defendant's guilt beyond a reasonable doubt.

10 The State has the burden of proving the Defendant
11 guilty beyond a reasonable doubt. What is reasonable
12 doubt. Some of you may have served as jurors in civil
13 cases, where you were told that it is only necessary to
14 prove that a fact is more likely true than not true, such
15 as by the greater weight or preponderance of the
16 evidence. In criminal cases, the State's burden of proof
17 must be more powerful than that. It must be beyond a
18 reasonable doubt.

19 Proof beyond a reasonable doubt is proof that leaves
20 you firmly convinced of the defendant's guilt. There are
21 very few things in this world that we know with absolute
22 certainty, and in a criminal cases the law does not
23 require proof that overcomes every possible doubt, if,
24 based upon your consideration of the evidence, you are
25 firmly convinced that the Defendant is guilty of the

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1 crimes charged, you must find the Defendant guilty. If,
2 on the other hand, you think there is a real possibility
3 that the Defendant is not guilty, you must give the
4 Defendant the benefit of the doubt and find him not
5 guilty.

6 During a trial there are generally two types of
7 evidence which are generally presented. Direct evidence
8 and circumstantial evidence.

9 Direct evidence is the testimony of a person who
10 claims to have actual knowledge of a fact, such as an
11 eyewitness. It is evidence which immediately establishes
12 the main fact to be proved.

13 Circumstantial evidence is proof of a chain of facts
14 and circumstances indicating the existence of a fact. It
15 is evidence which immediately establishes collateral
16 facts from which the main fact may be inferred.

17 Circumstantial evidence is based on inference and not on
18 personal knowledge or observation.

19 The law makes absolutely no distinction between the
20 weight or value to be given to either direct or
21 circumstantial evidence. Nor is a greater degree of
22 certainty required of circumstantial evidence than of
23 direct evidence. You should weigh all of the evidence in
24 this case. After weighing all the evidence, if you are
25 not convinced of the guilt of the Defendant beyond a

1 reasonable doubt, you must find the Defendant not guilty.

2 I instruct you and I emphasize the fact the
3 Defendant did not testify is not a factor to be
4 considered by you in any way in your deliberations and in
5 your consideration of the question of the guilt or
6 innocence of the Defendant. It must not be considered by
7 you in any matter whatsoever. A Defendant has the
8 constitutional right to remain silent, and the assertion
9 of this right must not be considered by you in your
10 deliberations. I repeat, under your oath, you are to
11 draw no conclusion whatsoever from the fact that the
12 Defendant in this case did not testify. The fact that
13 the Defendant did not testify should not even be
14 discussed in the jury room. The burden of proof, as I
15 have stated to you, is on the State. The Defendant is
16 not required to prove his innocence. The burden of proof
17 remains on the State to prove guilt beyond a reasonable
18 doubt.

19 Necessarily, you must determine the credibility of
20 the witnesses who have testified in this case.
21 Credibility simply means believability. It becomes your
22 duty as jurors to analyze and to evaluate the evidence
23 and determine which evidence convinces you of its truth.

24 In determining the believability of witnesses who
25 have testified in this case, you may believe one witness

1 over several witnesses or several witnesses over one
2 witness. You may believe a part of the testimony of a
3 witness and reject the remaining part of the testimony of
4 that same witness. You may believe the testimony of a
5 witness in its entirety or reject the testimony of a
6 witness in its entirety. You may consider whether the
7 witness has exhibited to you any interest, bias,
8 prejudice, or other motive in this case. You may also
9 consider the appearance and manner of a witness while on
10 the witness stand.

11 Ladies and Gentlemen during this trial you've heard
12 from expert witnesses. The rules of evidence ordinarily
13 do not permit witnesses to testify to opinions or
14 conclusions. An exception to this rule exists for
15 witnesses we call "expert witnesses". A witness who, by
16 education and experience, has become expert in some art,
17 science, profession, or calling may state an opinion as
18 to relevant and material matter, in which the witness
19 claims to be an expert, and they may also state the
20 reason for their opinion.

21 You should consider any expert opinion received in
22 evidence in this case and, like any other evidence, give
23 it the weight you think it deserves. If you decide that
24 the opinion of an expert witness is not based on
25 sufficient education and experience, or if you conclude

1 that the reasons given in support of the opinion are not
2 sound, or that the opinion of the expert is outweighed by
3 other evidence, you may disregard the opinion entirely.

4 An expert witness' testimony is to be given no
5 greater weight than that of other witnesses simply
6 because the witness is an expert. Further, you are not
7 required to accept an expert's opinion, even though it is
8 not contradicted.

9 The Defendant is charged with murder. The State must
10 prove beyond a reasonable doubt that the Defendant killed
11 another person with malice aforethought.

12 Malice is hatred, ill-will, or hostility towards
13 another person. It is the intentional doing of a
14 wrongful act without just cause or excuse and with an
15 intent to inflict an injury or under circumstances that
16 the law will infer an evil intent.

17 Malice aforethought does not require that malice
18 exists for any particular time before the act is
19 committed, but malice must exist in the mind of the
20 Defendant just before and at the time the act is
21 committed. Therefore, there must be a combination of the
22 previous evil intent and the act.

23 Malice aforethought may be express or inferred.
24 These terms, "Express" or "Inferred" do not mean
25 different kinds of malice but merely the manner in which

1 malice may be shown to exist. That is either by direct
2 evidence or by inference from the facts and circumstances
3 which are proved. Express malice is shown when a person
4 speaks words that express hatred or ill will for another
5 or when the person prepared beforehand to do an act which
6 was later accomplished; For example, lying in wait for a
7 person or any other acts of preparation going to show
8 that the deed was within the Defendant's mind would be
9 express malice.

10 Malice may be inferred from conduct showing a total
11 disregard for human life. Inferred malice may also arise
12 when the deed is done with a deadly weapon. A deadly
13 weapon is any article, instrument, or substance which is
14 likely to cause death or great bodily harm. Whether an
15 instrument has been used as a deadly weapon depends on
16 the facts and circumstances of each case.

17 A pistol or revolver is an example of an instrument
18 which may be a deadly weapon. A gun may be a deadly
19 weapon even if it is not operating.

20 The Defendant is also charged with possession of a
21 weapon during the commission of, or attempt to commit, a
22 violent crime. The State must prove beyond a reasonable
23 doubt that the Defendant was in possession of a firearm
24 or visibly displayed what appeared to be a firearm during
25 the commission of a violent crime.

1 A firearm means any weapon which will, is designed
2 to, or may be readily converted to expel a projectile.
3 This would include a pistol or revolver.

4 In order to find the Defendant guilty of possession
5 of a weapon during the commission of a violent crime.
6 You must first find the Defendant guilty of either
7 committing a violent crime or attempting to commit a
8 violent crime, murder is a violent crime.

9 The Defendant has raised the defense of alibi. In
10 order to establish an alibi, it must be shown that the
11 Defendant was at another specified place at the time the
12 crime was committed, and that it was, therefore,
13 impossible for the Defendant to have been at the scene of
14 the crime. Mere denial of presence at the scene of a
15 crime does not constitute an alibi.

16 There is no burden on the Defendant to prove an
17 alibi. The burden is on the State to prove beyond a
18 reasonable doubt that the Defendant was actually present
19 at the scene of the crime, actually participated in it,
20 and was not somewhere else. In other words, the State
21 has the burden of disproving the Defendant's alibi
22 defense.

23 There are two possible verdicts which you may find
24 in this case on the charges of murder and possession of
25 firearm during the commission of a violent crime:

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1 Under count one of the Indictment 2010-GS-45-135 for
2 the charge of Murder you can find the defendant Not
3 Guilty or Guilty.

4 Count two of Indictment 2010-GS-45-135 for the
5 charge of Possession of firearm during the commission of
6 a violent crime you may find the defendant Not Guilty or
7 Guilty.

8 There is no significance whatsoever in the order in
9 which I state these possible verdicts; it is simply that
10 one must be stated first.

11 Ladies and Gentlemen, your verdict must be a
12 unanimous one. All twelve of you must agree on the
13 verdict. Your decision must not be based on sympathy,
14 passion, prejudice, emotion or any other consideration
15 that is not in evidence in this case. Madam forelady,
16 when the jury agrees on the verdict, you will write the
17 verdict on this sheet of paper and check the box and then
18 sign your name at the bottom. Then please knock on the
19 jury room door and inform the bailiff that you have
20 reached a verdict. At that time, we will receive you
21 back into the courtroom for publication of your verdict.
22 I ask that you now return to your jury room but do not
23 begin deliberations until you are told to do so by the
24 clerk or the bailiff. There are some matters which must
25 be discussed with the attorneys before you begin your

1 deliberations. Thank you.

2 (Jury break 12:06)

3 The Court: Are there any objections from the state
4 on the charges?

5 Ms. Barr: No sir.

6 The Court: Are there any objections from the
7 defendant of these charges?

8 Mr. McCrea: No Your Honor.

9 The Court: All right, thank you. All right gather
10 the evidence and we will tell the jury to begin their
11 deliberations.

12 (Jury Deliberations begin 12:13)/(Verdict Reached 1:43)

13 The Court: All right, I have been informed that the
14 jury has reached a verdict. Let me remind everyone that
15 the jury has had a long, hard week here. As all of us
16 have and the Court will not tolerate any appeals and
17 emotions that would discredit this jury. If anyone does
18 not thing they can keep their emotions to themselves,
19 this would be a good time to leave. All right, let's
20 bring the jury in.

21 (Jury enters courtroom 1:45)

22 The Court: Madam forelady has the jury reached a
23 verdict?

24 Foreperson: Yes.

25 The Court: Is the verdict unanimous?

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1 Foreperson: Yes.

2 The Court: Will the clerk please publish the
3 verdict. If the defendant will stand.

4 Clerk: The State vs. Levern McCrea, as to the
5 charge of murder, we the jury unanimously find the
6 defendant guilty. As to the charge of possession of a
7 weapon during a violent crime, we the jury unanimously
8 find the defendant guilty. If these are your verdicts so
9 say you all, please let it be known by raising your right
10 hands.

11 (Jurors comply)

12 Clerk: Thank you.

13 The Court: Thank you. You may sit down. Please
14 pole the jury.

15 Clerk: Nicole Cunningham were those your verdicts
16 and are they still your verdicts?

17 A: Yes

18 Clerk: Tyrone Morris, were those your verdicts and
19 are those still your verdicts?

20 A: Yes.

21 Clerk: April Boyd, were those your verdicts and are
22 those still your verdicts?

23 A: Yes.

24 Clerk: Danette Frye, were those your verdicts and
25 are those still your verdicts?

1 A: Yes.

2 Clerk: Wendell McGee, were those your verdicts and
3 are those still your verdicts?

4 A: Yes.

5 Clerk: Patrick Powell, were those your verdicts and
6 are those still your verdicts?

7 A: Yes ma'am.

8 Clerk: Jasper Brockington, Jr. were those your
9 verdicts and are those still your verdicts?

10 A: Yes ma'am.

11 Clerk: Mary Chinnes, were those your verdicts and
12 are those still your verdicts?

13 A: Yes.

14 Clerk: Clerk: Shannon Daniel, were those your
15 verdicts and are those still your verdicts?

16 A: Yes.

17 Clerk: Ada Waterman, were those your verdicts and
18 are those still your verdicts?

19 A: Yes ma'am.

20 Clerk: Faye Parsons, were those your verdicts and
21 are those still your verdicts?

22 A: Yes ma'am.

23 Clerk: Wilbur L. Cooper, were those your verdicts
24 and still your verdict?

25 The Court: All right thank you. The verdict

1 stands. The jury has been polled. Ladies and gentlemen,
2 let me take this opportunity to thank you for your
3 service here this week. You know, until you sit on a
4 jury you don't realize the weight that sits on jurors.
5 It is never easy holding someone else's life in your
6 hands and being the finders of fact but ladies and
7 gentlemen you have upheld the oath that you took to
8 evaluate the evidence and apply it to the law and reach a
9 verdict. Now ladies and gentlemen, I would tell you this
10 even if you had found him not guilty because I know you
11 were an attentive jury this week and you did your job
12 admirably and honorably as I knew you would do.

13 Now ladies and gentlemen throughout this trial, I
14 have told you, do not discuss this case with anyone.
15 That is now over with. You may discuss it with whoever
16 you want to for as long as you want. But if someone
17 persists and wants to speak to you about it and you don't
18 want to talk about it, it's up to you. This is a heavy
19 burden. You had to search your hearts in this matter.
20 If you don't want to talk about it with anybody, you
21 don't have to. But if someone bothers you about wanting
22 to talk with you please contact one of the bailiffs to
23 get in touch with me and I'll make sure that is not a
24 problem. Ladies and gentlemen, this satisfies your
25 service on the jury so therefore you do not have to serve

1 as a juror for the next three years. Of course, if can
2 if you like. You don't have to for the next three years.
3 Ladies and gentlemen, I am fully aware that the small
4 amount of money that the county of Williamsburg is going
5 to pay you for the service here this week fails in
6 comparison to what you have done for this county and this
7 state. Again, we live in a nation where people like you
8 resolve these differences where a person is innocent
9 until proven guilty. That is how we do it. It is not
10 the judges. It is not the lawyers. It is not the police
11 or anybody else that makes this country great. Although
12 they contribute to it. It's people like you who take
13 time from their jobs, your families and everything else
14 that you have important going on to come here and spend a
15 week and listen and render a verdict. Thank you. It
16 will be my honor to shake your hand as I dismiss you. If
17 you would like to stay, I am going to sentence the
18 defendant for approximately fifteen minutes after both
19 sides and you are welcome to stay. If you would like to
20 go on home to your families you are welcome to do that as
21 well. You may be dismissed. Thank you for your service.

22 Clerk: We have certificates for them at the door.

23 The Court: Thank you for your service.

24 (Jurors are excused from their service)

25 The Court: All right are there any motions from the

Levern McCrea vs. State of South Carolina

636

1 state?

2 Ms. Barr: No motions from the state.

3 The Court: Are there any post-trial motions from the
4 defendant?

5 Mr. McCrea: None Your Honor.

6 The Court: I have not sentenced you yet but I am
7 going to remind you now and I'm going to remind you after
8 I sentence you. You will only have ten days in which to
9 file an appeal on the verdict of this jury and the
10 sentence that I give you. I am going to recess for
11 fifteen minutes. Then I'll hear from the State and the
12 defendant as far as mitigation and what sentence the
13 State is requesting. All right thank you. Court will be
14 in recess for fifteen minutes.

15 (Court break was taken)

16 The Court: All right, madam solicitor, will you
17 please publish his prior record.

18 Ms. Barr: Your Honor, if it please the court. Mr.
19 McCrea had distribution of drugs to charges in New Haven,
20 Connecticut back in 1999 and a possession of cocaine
21 charge in New Haven, Connecticut also '86. It appears
22 that in 1999, Myrtle Beach Police Department South
23 Carolina arrested him for assault and battery of a high
24 and aggravated nature. That charge was later dismissed.
25 He was convicted in 1993 out of Williamsburg County for

1 possession of intent to distribute cocaine. And Your
2 Honor he was arrested by a Williamsburg County Sheriff's
3 Office in 2006 and he was charged with assault and
4 battery of a high and aggravated nature. The alleged
5 victim in that case was Willie Snow and he told law
6 enforcement that he was beaten by defendant Levern McCrea
7 with a pipe. The case was eventually dismissed because
8 we couldn't make contact with the victim. And so that
9 didn't result in any conviction. He was also arrested by
10 the Sheriff's Department, the same month of this incident
11 when Mr. Snow happened, March of 2006 and charged with
12 armed robbery and possession of a weapon during a violent
13 crime. The alleged victim in that case was Lander (sic)
14 Presley stating he was robbed at a club house by Mr.
15 McCrea and that he, Mr. McCrea demanded that he give him
16 everything he have while holding a gun to him. He gave
17 him his wallet and it had two hundred and fifty dollars
18 and asked him not to kill him. Judge, the reason why I
19 bring this case up is because at that time in 2006, Mr.
20 Lander Presley says that the defendant advised him that
21 he didn't come all the way from the beach for nothing
22 because there is others that he had to handle and called
23 names of a Terry Bryant and Carmen Presley. And I
24 thought that was interesting because Carmen Presley was
25 on the list of people who he wanted to get.

Levern McCrea vs. State of South Carolina

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1 The Court: But he was never convicted of that?

2 Ms. Barr: That's correct Your Honor. We attempted
3 to subpoena the victim in connection of that case and was
4 unable to do so. As a result that case was dismissed as
5 well.

6 The Court: So the only convictions Mr. McCrea has
7 is 1993 possession with intent to distribute?

8 Ms. Barr: To distribute cocaine. That's correct.

9 The Court: And then one from Williamsburg County a
10 possession with intent, is that correct?

11 Ms. Barr: The intent to distribute is out of
12 Williamsburg County in 1993. He was charged with
13 distributing drugs in Conneicut in the '90, but I'm not
14 sure what the disposition. It's not showing the
15 disposition so I don't know whether he was convicted or
16 not to be honest with you.

17 The Court: All right well at this time would any
18 member of the victim's family like to speak.

19 Ms. Barr: Yes sir Your Honor. Mr. Willie Brown
20 would like to speak. State your name for the record.

21 Mr. Brown: William Brown. Judge I don't know what
22 I can or what I can't say. My sister lost her life.

23 The Court: Say anything you want.

24 Mr. Brown: She won't be there for Christmas. There
25 won't be no more birthdays. She won't sing in the choir

1 no more. My sister's life was took from her like an
2 animal. She was shot and gunned down in her house. And
3 the person that took her, it took a whole year to track
4 him down and today I'm glad that the court brought
5 justice for me and my family because ain't nobody deserve
6 to be shot and killed like that. I lost two of my
7 parents by natural death and one with a heart attack.
8 They weren't shot down. My sister was. Her life just
9 took form her. Judge I ask of you whatever the maximum
10 penalty is for him, I want it. I want it, I want it.
11 She can't answer. She can't come back. Her life was
12 just token from her. Me and my family, we a close
13 family. We share birthdays, we share weekends and now my
14 sister's not here because someone decided to take her
15 life for some reason for calling a name. My sister's not
16 here and you put a gun to her head point blank and just
17 shot her in the head, shot her in the back. She couldn't
18 defend herself. And I feel whatever the maximum penalty
19 --- I want maximum penalty and off this street because he
20 is a dangerous person. I don't know what he might do to
21 someone else or someone else's family. We all have
22 sisters. We all have daughters and someone like him on
23 the street, no one is safe. I mean no one because there
24 ain't no telling what he might do. Your Honor, whatever
25 the maximum sentence is, I wish this court would give it

Levern McCrea vs. State of South Carolina

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1 to him.

2 The Court: Thank you sir. Anyone else?

3 Ms. Barr: Anyone else wish to speak? State your
4 name for the record.

5 Mr. Brown: Brian O'Neil Brown.

6 The Court: Yes sir.

7 Mr. Brown: She was my mother. I'm glad that this
8 is finally coming to an end because I don't know what I
9 would have done because this is my mother he took from
10 me. He's lucky that the justice system has him. Me and
11 my mother was real close and I want you to know he took
12 my mother away from me. Your Honor, he don't need to say
13 daylight again. The next time he needs to be coming out
14 is in a box.

15 The Court: Thank you sir. Anyone else? Anything
16 further from the prosecution?

17 Ms. Barr: No sir, Your Honor. Thank you.

18 The Court: Mr. Levern McCrea, you have been tried
19 by a jury of your peers and they have evaluated the
20 evidence which has been presented and found you guilty on
21 the charge of murder and possession of a firearm during a
22 violent crime. At this time you will make a statement to
23 the court.

24 Mr. McCrea: No I don't Your Honor.

25 The Court: Mr. McCrea I have had the opportunity to

1 listen to the evidence that was presented this week and I
2 did watch the jurors. They were very attentive. In my
3 opinion, the evidence is overwhelming of your guilt. And
4 this was a heinous crime. This was a crime where the
5 lady was in her own home and for whatever reason you felt
6 that you had the power of life or death over her. From
7 the forensic evidence, you shot her from behind and she
8 never had a chance. She was gunned down like a dog. The
9 jury, I believe, got it right and you just don't work
10 well in a civilized community. Therefore for the charge
11 of murder it is ordered that you be committed to the
12 State Department of Corrections for the balance of your
13 life. On the charge of possession of a weapon during a
14 crime, a violent crime, the sentence is that you be
15 committed to five years to the State Department of
16 Corrections. I find because of the nature of these
17 crimes that these shall run consecutively. You have ten
18 days to file an appeal. That's the ruling of the court.
19 Thank you.

20 Court is adjourned.

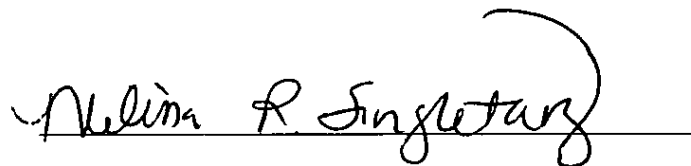
21 (Court adjourned for week)
22
23
24
25

CERTIFICATE

This is to certify that **Volume Three (final)** of the hearing in the matter of Levern McCrea vs. The State of South Carolina, consisting of pages 416-641 is a true and correct transcript; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am not employed by any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 6th day of December, 2013.

A handwritten signature in cursive script, reading "Melissa R. Singletary", is written over a horizontal line.

Melissa R. Singletary
Certified Court Reporter

Notary Public for South Carolina
My Commission Expires: 3-5-2014

STATE OF SOUTH CAROLINA

COUNTY OF WILLIAMSBURG

LEVERN MCCREA, # 348291

Plaintiff(s)

vs.

STATE OF SOUTH CAROLINA

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

12 CP45 36 3

(Please Print)

Submitted By: LEVERN McCrea

Address: Lieber Correctional Inst.

P O BOX 205

Ridgeville, S.C. 29472

SC Bar #:

Telephone #:

Fax #:

Other:

E-mail:

NOTE: The cover sheet 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. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

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 (certificate attached).

NATURE OF ACTION (Check One Box Below)

☐ Contracts	☐ Torts - Professional Malpractice	☐ Torts - Personal Injury	☐ Real Property
☐ Constructions (100)	☐ Dental Malpractice (200)	☐ Assault/Slander/Libel (300)	☐ Claim & Delivery (400)
☐ Debt Collection (110)	☐ Legal Malpractice (210)	☐ Conversion (310)	☐ Condemnation (410)
☐ Employment (120)	☐ Medical Malpractice (220)	☐ Motor Vehicle Accident (320)	☐ Foreclosure (420)
☐ General (130)	☐ Notice/ File Med Mal (230)	☐ Premises Liability (330)	☐ Mechanic's Lien (430)
☐ Breach of Contract (140)	☐ Other (299)	☐ Products Liability (340)	☐ Partition (440)
☐ Other (199)		☐ Personal Injury (350)	☐ Possession (450)
		☐ Wrongful Death (360)	☐ Building Code Violation (460)
		☐ Other (399)	☐ Other (499)
-
☐ Inmate Petitions	☐ Judgments/Settlements	☐ Administrative Law/Relief	☐ Appeals
☐ PCR (500)	☐ Death Settlement (700)	☐ Reinstate Driver's License (800)	☐ Arbitration (900)
☐ Sexual Predator (510)	☐ Foreign Judgment (710)	☐ Judicial Review (810)	☐ Magistrate-Civil (910)
☐ Mandamus (520)	☐ Magistrate's Judgment (720)	☐ Relief (820)	☐ Magistrate-Criminal (920)
☐ Habeas Corpus (530)	☐ Minor Settlement (730)	☐ Permanent Injunction (830)	☐ Municipal (930)
☐ Other (599)	☐ Transcript Judgment (740)	☐ Forfeiture (840)	☐ Probate Court (940)
	☐ Lis Pendens (750)	☐ Other (899)	☐ SCDOT (950)
	☐ Other (799)		☐ Worker's Comp (960)
			☐ Zoning Board (970)
			☐ Administrative Law Judge (980)
			☐ Public Service Commission (990)
			☐ Employment Security Comm (991)
			☐ Other (999)
-
☐ Special/Complex/Other	☐ Pharmaceuticals (630)
☐ Environmental (600)	☐ Unfair Trade Practices (640)
☐ Automobile Arb. (610)	☐ Out-of State Depositions (650)
☐ Medical (620)	
☐ Other (699)	

Submitting Party Signature: Levern McCreaDate: 5-29-2012

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.

FORM 5

12 CP45 36 3

STATE OF SOUTH CAROLINA)

County of WILLIAMSBURG)

IN THE COURT OF COMMON PLEAS

LEVERN MCCREA, #348291)

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

v.)

A CERTIFIED TRUE COPY

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

CAROLYN F. WILLIAMS

CLERK OF COURT

WILLIAMSBURG COUNTY

FILED
12 JUL -9 PM 4:14
CLERK OF COURT
WILLIAMSBURG
KIMBERLY G.

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lieber Correctional Inst., P.O. BOX 205,
Ridgeville, S.C. 29472
2. Name and location of Court which imposed sentence Williamsburg County
General Sessions Court
3. Name(s) of co-defendant(s) (if any) Christopher LaQuann Briggs
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2010-GS-45-0135) (MURDER)

- (b) _____
- (c) _____

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

- (a) 10/21/ 2011, Life Without parole
- (b) _____
- (c) _____

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____

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

YES

8. If you answered "yes" to (7), list:

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

i. ~~SSS~~ S.C. COURT OF APPEALS.

ii. _____

iii. _____

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

i. Dismissed

ii. _____

iii. _____

(c) the date of each such result:

i. April 20, 2012

ii. _____

iii. _____

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

i. See exhibit no; (1).

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Denied the right to appeal
- (b) Defendant's waiver of right to counsel was not knowing
- (c) and voluntary. (see attached sneets)
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Applicant did not voluntary and intelligently waive
- (b) his right to appeal. (b) Defendant was not warned of
- (c) dangers of self-representation. (see attached sneets)
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? YES
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A
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. writ of Habeas Corpus
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. United States District Court, Florence Division
- ii. _____
- iii. _____

iv. _____

(c) the disposition thereof:

i. Dismissed without prejudice

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. 2/01/12

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

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

NO

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

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) applicant did not waive his right to appeal
 - (b) Applicant did not voluntary and intelligently waive
 - (c) his right to counsel.
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? yes
 - (b) your trial, if any? no
 - (c) your sentencing? no
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? no
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? no
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. Charles David Barr, King Stree, SC
 - ii. Hank Anderson, PO BOX 1904, Florence, SC 29403
 - iii. _____
 - (b) the proceedings at which each such attorney represented you:
 - i. Charles D. Barr) Bond hearing
 - Hank Anderson) Bond Hearing
 - ii. _____
 - iii. _____

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

vacate conviction and sentence for murder

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA)
)
County of DORCHESTER)

VERIFICATION

I, Lavern McCrea, 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.

Lavern McCrea

SWORN to and subscribed before me this 29th
day of May, 2012.

Ludieann Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

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

I, Lelvern McBreen, 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.

Lelvern McBreen
Applicant

SWORN or affirmed to and subscribed before me this
29th day of May, 2012.

Ludhean Bryant
Notary Public

My Commission Expires: May 26, 2016

ATTACHED SHEETS

1. Petitioner did not knowing and voluntary waive his right to counsel before trial.

MEMORANDUM OF LAW

To established a valid wavier of counsel, Faretta^{*} require the accused be (1) be advised of his right to counsel, (2) adequately warned of the dangers of self representation. Bridwell v State, 413 S.E.2d 30 (S.C. 1982), however, in a post conviction relief (PCR) action if the record fails to demonstrate the petitioner made an informed choice to proceed, pro-se, with "eyes open" then, the petitioner, did not make a knowing and voluntary waiver of counsel, and the case should be remanded for new trial. Gardner v. State, 570 S.E.2d 184 (S.C. 2002).

RELIEF

The Petitioner request an evidentiary hearing pursuant to §17-27-80 of the S.C. Code of Law and the Uniform Post Conviction Act. to determine whether he made an informed choice to proceed pro-se, with eyes open.

2. Petitioner was denied a right to direct appeal.

* Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525 (1975).

MEMORANDUM OF LAW

(1) If a defendant did not fully, voluntarily, and intelligently waive his right to appeal or trial counsel otherwise failed to properly perfect the appeal, the following procedure applies;

(1) When the post-conviction relief judge has affirmatively found that the right to a direct appeal was not knowing and intelligently waived, the petition shall contain a question raising this issue along with all other post-conviction relief issues petitioner seeks to have reviewed. S.C. APP. Cf. R. 243(i).

See also White v State, 208 S.E.2d 35, 39 (S.C. 1974). "The Petitioner contends that his direct appeal was dismissed because he did not served opposing counsel."

RELIEF

The applicant request a evidentiary hearing on this claim pursuant to §17-27-80 of the South Carolina Code of Laws.

Dated

May 29 2012

Levern McCrea
Levern McCrea #348491

The South Carolina Court of Appeals

The State,

Respondent

v.

Levern McCrea,

Appellant.

The Honorable Doyet A. Early, III
Williamsburg County
Trial Court Case No. 2010-GS-45-00135

FILED
12 JUL -9 PM 1:14
CAROLYN F. WILLIAMS
CLERK OF COURT
KIMPTREE, S.C.

ORDER of DISMISSAL

The above entitled case is pending on appeal in this Court. Due to the failure of Appellant to timely serve the Notice of Appeal on opposing counsel, as provided for in Rule 203 of the South Carolina Appellate Court Rules,

IT IS ORDERED that the above captioned appeal be and hereby is dismissed. Pursuant to Rule 221(b) of the South Carolina Appellate Court Rules, the remittitur in this case will be sent to the Clerk of Court for Williamsburg County after fifteen (15) days, exclusive of the date of filing this Order.

JOHN CANNON FEW, CHIEF JUDGE

BY V. Claire Allen, Deputy
Clerk

Columbia, South Carolina

cc: Chief Appellate Defender Robert M. Dudek
Levern McCrea #348291
Senior Assistant Deputy Attorney General Salley W. Elliott
The Honorable Carolyn F. Williams

FILED
JUL 12 2012
JRS

CERTIFICATE OF SERVICE

The undersigned hereby certify that he cause to be mail the foregoing Post Conviction Application to Carolyn Williams, Clerk of Court for Williamsburg County this 29 day of May 2012, by depositing the same in the U.S. mail postage prepaid.

Levern McCrea

Levern McCrea, #348291

CC: OFFICE OF ATTORNEY GENERAL

FILED
12 JUL -9 PM 4: 14
CAROLYN F. WILLIAMS
CLERK OF COURT
KINGS TREE, S.C.

THE STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

LEEVERN MCCREA / Applicant Appellant

V.S.

THE STATE OF SOUTH CAROLINA / Respondent

FILED
12 JUL -9 PM 4:15
CAROLYN F. WILLIAMS
CLERK OF COURT
KINGSTREE, S.C.

To: Williamsburg County Clerk of Court
Carolyn Williams, Clerk
125 West Main Street
Kingstree, S.C. 29556

Mr. LEEVERN MCCREA #348291
LIEBER CORRECTIONAL INST.
P.O. Box 205
Ridgeville, S.C. 29472

Dear Clerk of Court,

ENCLOSED please find a copy of the "MOTION" in the above captioned case. This matter comes before the court pursuant to an application for post-conviction relief filed with your court on June 28, 2012, if you would please file these documents in your court and forward a copy to the Administration Judge of the Third Judicial Circuit, it would be most appreciated. I would also sincerely appreciate it, if you would return a copy of this MOTION to me when it has been clocked in at your court. I thank you for your assistance in advance, if you have any questions, please do not hesitate to contact me.

RESPECTFULLY REQUESTED

* Ledwren McCray

SWORN OR AFFIRMED TO AND SUBSCRIBED BEFORE ME
this 18th day of June, 2012.

Ludrean Bryant
Notary Public

My Commission Expires: May 21, 2020

THE STATE OF SOUTH CAROLINA

COUNTY OF WILLIAMSBURG

FILED

LEEVERN MCCREA Applicant / Appellant

VS.

THE STATE OF SOUTH CAROLINA / Respondent

12 JUL 2011
CAROLYN E. WILLIAMS
CLERK OF COURT
KINGSTREEIN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
"MOTION"REQUEST FOR IMPANELMENT
DOCUMENTS, PURSUANT TO
RULE (5) FIVE DISCLOSURE
TRANSCRIPTS, RECORDED
PROCEEDINGS

1 OF 2

Pursuant to RULE (5) FIVE DISCLOSURE, CONST. AMEND. 14; CODE 1976 §§ 14-7-1700, 14-7-1720, 14-7-1770, AND RULES OF CRIMINAL PROCEDURE, THAT THE APPLICANT/APPELLANT, WOULD AT THIS TIME, RESPECTFULLY MAKE AN TIMELY REQUEST FOR THE IMPANELMENT DOCUMENTS, TRANSCRIPTS RECORDED PROCEEDING OF THE WILLIAMSBURG COUNTY GRAND JURY, DATE OF RETURN ON JULY 11, 2011 INDICTMENT NUMBER: 2010-GS-45-0135 IN THE THIRD JUDICIAL CIRCUIT. FURTHER PURSUANT TO RULE (5) FIVE, THE APPELLANT MR. LEEVERN MCCREA, WOULD ASK TO INSPECT, AND COPY ANY DOCUMENTS, REPORTS MADE IN CONNECTION WITH THESE PARTICULAR INDICTMENTS RECORDED PROCEEDING THEREOF WITHIN THE DATES. AT THIS TIME I, THE APPELLANT IN THIS "MOTION" AM MOUNTING AN COLLATERAL ATTACK ON THE SUFFICIENCY OF THE INDICTMENT, RECORDED PROCEEDING, TRANSCRIPTS, AND THE TESTIMONY BEFORE THE WILLIAMSBURG COUNTY GRAND JURY ON SAID DATE.

LEEVERN MCCREA VS. STATE, That I,

LEEVERN MCCREA, the applicant, /appellant in this
"MOTION" (P-C-R) Post Conviction RELIEF, would re-
spectfully request these documents, in perfect-
ing my (P-C-R) to the Court of Common Pleas in
the County of Williamsburg the Third Judicial
Circuit:

Respectfully Requested
x Leevern McCrea

LEEVERN MCCREA #348291

This 18 day of JUNE, 2012
IN the County of Dorchester,

CC: FILE

- : Administration Judge of the Third County Circuit Court
- : South Carolina Court of Administration
- : Carolyn Williams, Clerk of Court Williamsburg County

x Leevern McCrea

SWORN or Affirmed to and Subscribed before me this
18th day of June, 2012

Ludrean Bryant
Notary Public

My Commission Expires: May 26, 2020

12 CP45 363

Williamsburg County Clerk of Court
Carolyn Williams, Clerk
125 W. Main Street
Kingstree, S.C. 29556

FILED
12 JUL -9 PM 4:14
CAROLYN WILLIAMS
CLERK OF COURT
KINGSTREE, S.C.

Dear Clerk,

Enclosed would you please find one original and one ✓
copy of the foregoing post conviction application for filing,
please file the original and return time stamp copy to me.

CC: OFFICE OF ATTORNEY GENERAL

Sincerely,

Lelvern McGee

STATE OF SOUTH CAROLINA)
)
 COUNTY OF WILLIAMSBURG)
)
)
)
 Leverne McCrea, #348291)
 Applicant pro Se,)
)
 VS.)
)
 State Of South Carolina)
 Respondents,)
)

IN THE COURT OF COMMON PLEAS

C/A No. 12-Cp-45-363

Certificate

of

Service

FILED
 10/22/12
 Williamsburg County
 Clerk of Court
 Kingstree SC

Applicant herein certify that he has served the below named Respondents On This 19th Day Of October, 2012 with the following Documents (1.) Amendment to Original Application for P.C.R. Pursuant to S.C.R.Civ.P Rule 15; (2.) Motion to Address All Issues Presented Pursuant To: S.C. Code Ann § 17-27-80; (3.) Motion For Leave To Conduct Discovery Pursuant To S.C. Code Ann § 17-27-150 (A); (4.) Motion To Invoke Full Discovery Pursuant to S.C. Code Ann § 17-27-150 (A); (5.) Motion For Expenditure of Funds For Investigative and Expert Services, Pursuant to §17-3-50 (b); (6.) Certificate Of Service.

(1.) Williamsburg County Clerk's Office
 Attn: Ms. Carolyn Williams, Clerk
 125 West Main St.
 Kingstree, S.C. 29556

(2.) Office Of Attorney General
 P.C.R. Division
 Attn: Mr. Allan Wilson, Attorney General
 P.O. BOX 11549
 Columbia, S.C. 29211-1549

Respectfully Submitted,

18/ Leverne McCrea
 Leverne McCrea, #348291
 Applicant Pro Se

Leverne McCrea, #348291
Lieber Corr. Inst. W-D-281
P.O. BOX 205
Ridgeville, S.C. 29472

October 12, 2012

Williamsburg County Clerk's Office
Attn: Ms. Carolyn Williams, Clerk
125 West Main St.
Kingstree, S.C. 29556

Re: Filing of Amendment to original Application for P.C.R.
Pursuant to S.C.R.Civ.P. Rule 15; Motion to Address all issues
pursuant to S.C. code Ann §17-27-80; Motion For Leave to Conduct
Discovery pursuant to S.C. code Ann §17-27-150(A); (4), Motion to
invoke Full Discovery pursuant to S.C. Code Ann §17-27-150 (A);
Motion For Expenditure of Funds For Investigative and Expert
services, pursuant to §17-3-50 (b); certificate of service.
C/A No. 12-CP-45-363 /pending p.c.r.

Dear Ms. Williams,

Please find here enclosed herein for filing in the above
referenced matter please clock stamp and file my Documents, I
have served herein Courts Original and a copy for my Files
please forward to me in the envelope herein a clocked copy for
my files. Thank you for all your time and help with this matter.

Respectfully Submitted,

181 Leverne McCrea

Leverne McCrea, #348291

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

Leverne McCrea, #348291
Applicant, Pro se

VS.

State Of South Carolina
Respondents,

IN THE COURT OF COMMON PLEAS
C/A No. 12-CP-45-363

AMENDMENT TO ORIGINAL
APPLICATION FOR POST CONVICTION
RELIEF Pursuant to: S.C.R.Civ.P
RULE 15

Petitioner herein respectfully moves this Honorable Court to Amend the Original Application for Post Conviction Relief in the above captioned Pursuant to S.C.R.Civ.P Rule 15.

In support of his claim for Post- Conviction Relief, the Applicant alleges that all (3) Three Trial Counsels prior to Trial rendered Ineffective Assistance, Counsel's, and the Court Forced Applicant to Proceed without any warning against Representing himself, in a violation of Applicants 6th Amendment because he did not waive his right to Counsel and was not informed of the Dangers inherent in Self-Representation. The 6th Amendment mandates that all criminal proceeding the accused shall have the right to assistance of Counsel for his Defense. U.S. Const. Amend. VI. Applicant is entitled to New Trial.
See: Attached Issues 1 -5 Herein.

/s/ Leverne McCrea

Leverne McCrea, #348291
Applicant Pro Se

ISSUE-1

1.)Applicant Argues/Contends that he did not waive his right to Counsel,and was not informed of the dangers inherent in Self - Representation,and the record is proof,and the Court did not appoint a Substitute Counsel,nor did the Court Appoint a Standby Counsel in a violation of Applicants 6th Amendment Right to the Assistance of Counsel for his Defense,and a violation of his Right to Due Process of Law and Equal Protection of Law under the 14th Amendment,U.S. Const.Amend.VI,and therefore the Trial Court Erred.

FACTS

Applicant was represented by Charles Barr,Esq. as his First Retained Counsel of Record and at the Bond Hearing,he Knew nothing about Applicant,much less his name,and he just started making up stuff.The Applicant Addressed the Court and Fired his Retained Counsel.The Court then tried to Appoint an Attorney who addressed the Court and said he was a Relative of alleged victim at the Preliminary Hearing,Applicant addressed the Court saying that they were trying to take his Preliminary Hearing,Applicant was informed no one was going to take that Right away from him.The Court then Appoints Mr. Cezar E. Mcknight,Esq. and Mr.McKnight put a Motion in with the Court because he did not want to Represent the Applicant,and Court granted Mr. McKnight request. Mr. Henery M. Anderson,Esq. was Appointed then to Represent the Applicant,he put in for Rule 5/Discovery Material,and before my Complete Rule 5 was disclosed to Mr. Anderson,he also put in a Motion to be relieved as Counsel and the Court also Granted Mr. Andersons Motion to be relieved.The Court then told me I had 2 weeks to prepare for Trial on a Partial Discovery/Rule 5 and the record really speaks for itself[I WAS NEVER INFORMED OF THE DANGERS INHERENT IN SELF REPRESENTATION NOR DID I EVER WAIVE MY RIGHT TO COUNSEL."]

DISCUSSION

SEE: State V. Boykin, 478 S.E. 2d 689, 324 S.C. 552 (App. 1996)

The S.C. Supreme Court ruled that the Trial Judge erred in dismissing his Court-Appointed Attorney without appointing Substitute Counsel, and that the Court erred by failing to inform Boykin of the dangers inherent in Self-Representation, and that he did not waive his right to counsel.

Applicant Submits that his case mirrors that in Boykin's ruling by the S.C. Supreme Courts, and S.C. Const. and U.S. Const. under Due process of Law and Equal protection and to Deny applicant the relief of a New Trial would also violate Equal Protection and Due Process.

The 6th Amendment mandates that all criminal proceedings, the accused shall have the right to the assistance of Counsel for his defense, U.S. CONST. AMEND. VI.
SEE: Gideon V. Wainwright, 372 U.S. 335, 344 83 S. Ct. 792, 796-97, 9 L. Ed 2d 799 (1963).

SEE: Chapman V. California, 386 U.S. 18, 23n. 8, 87 S. Ct. 824, 828n. 8 17 L. Ed 2d 705 (1967).

SEE: Morris V. Slappy, 461 U.S. 1, 13-14, 103 S. Ct. 1610, 1617-18 75 L. Ed 2d 610 (1983).

Preliminary Hearing, Coleman V. Alabama, 399 U.S. 1, 90 S.Ct. 1999, 26 L. Ed 2d 387 (1970)

SEE: Faretta V. California, 422 U.S. 806, 95 S. Ct. 2525, 45 L. Ed 2d 562 (1975).

SEE: State V. Brewer, 328 S.C. 117, 492 S.E. 2d 97 (1997)

The Applicants case should be remanded back to General Sessions Court for New Trial, and further be given legal Counsel to be represented its clear that the Constitution was violated as well as Clearly established Federal law. The Court misapplied Clearly Established United States Supreme Court Presidents.

ISSUE-2

2.) Was Applicant 3 Trial Counsels Ineffective Prior to Applicants TRIal, which forced Applicant to proceed to Trial with no Trial Counsel, or Standby Counsel and Applicant never waived his Rights to Counsel in a Violation of Applicants Const. Rights of the U.S. under the 6th Amendment, and a violation of Applicants Due Process and Equal Protection under their 14th Amendment?

FACTS

Applicant First RETAINED Mr. Charles Barr, Esq. and he failed to Motion the Court for a Rule 5/Discovery Pursuant to Brady V. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963).

It's clear Counsel Should have Filed Brady Motion. On or about June 9, 2012 at my first Bond Hearing Mr. Barr just started making up stuff about me, he barely knew my name, he failed to even object even after I told him that what Solicitor Kimberly Barr was saying to the Court was not true. I fired Mr. Barr, about 1 1/2 weeks later at my Preliminary Hearing. Then Court then Appointed Mr. Cezar McKnight as my 2nd trial Attorney, and he was no better than Mr. Barr, as far as motion for Discovery, he only Motion the Court to be relieved as Counsel and the Court Granted that request. The Court then Appointed Mr. Henery M. Anderson, Esq. as my 3rd TRIal Counsel and he only obtained a partial Discovery/Rule 5, he failed to perform any type of Investigation both factual or legal. He then also put in a Motion to be relieved as Counsel, and Court Granted his request. The Court made me Self-REpresented without any type of warning on the Dangers of SELF-REPRESENTATION, and further more failed to give me any standby Counsel, Or Appoint me another Counsel to Represent me. I was then given only 2 weeks to prepare for Trial with a partial Discovery/Rule 5. And the Court was allow-
-ing Ms. Kimberly Barr/Solicitor to turn over Rule 5/BRADY material 2-3 days into Trial as she presented her case.

DISCUSSION

Applicant submits that all 3 Counsel's rendered Ineffective Assistance of Counsel and the applicant was prejudiced to the extent that there existed a probability that the conduct of all 3-Legal Counsel forced him to proceed to Trial SELF-REPRESENTATION.

The Judge was at error and all 3 Trial Counsel's Performance affected the outcome of my proceeding. I never waived my right to my Preliminary Hearing it was just taken away from me after I Fired my Attorney Mr. Charles Barr at the start of my Preliminary Hearing. I was then Brought back to Court and was given an Attorney who was related to my Alleged Victim, he was relieved at the same time as being ^{appointed} retained. I was then told my Preliminary Hearing was going to be Rescheduled, and until this day I never waived my Right to a Preliminary Hearing, nor had it. See: Strickland V. Washington, 466 U.S. 668 (1984). The 6th Amendment to the U.S. Const. provides "in all Criminal prosecutions, the accused shall enjoy the right.. to have the Assistance Of Counsel for his Defense. U.S. Const. Amend. VI. At the heart of effective Representation is the independent duty to Investigation "must be more than perfunctory", Counsel has and affirmative duty to conduct appropriate Investigation, both factual and legal. See: Coles V. Peyton, 389 F.2d 224, 226 (4th Cir.) cert. Denied 393 U.S. 849 (1968). The failure to ascertain and Investigate possible defenses has often resulted in finding that the defendants was denied adequate Representation. See: Goodwin V. Swenson, 287 F. Supp. 166, 176-86 (W.D. Mo. 1968).

ISSUE -3

3.) Did the Investigators commit Investigative Misconduct in a violation of Applicants U.S. Constitutional right under the 14th Amendment under Due Process and Equal Protection of Law?

FACTS

Applicant submits that the following investigators committed Investigative misconduct for the following reasons.

1.) Invest. Willie Brown; 2.) Invest. Brenda Lambert;
3.) Invest. McFadden; 4.) Also Court Reporter Melissa Singletary

Altered Supplimentary reports; Transcript of Applicants interview was Falsified /things were left out to benefit the state. Dates were also Falsified.

Dates were changed of the alleged day the alleged victim was killed.

Co-Defendant/alleged Co-Defendant Christopher Briggs gave the Investigators a gun which came up inconclusive as the alleged to be used to commit alleged Murder.

Alleged Co-Defendants D.N.A. was found in a hat at the crime scene.

Someone ~~else~~ D.N.A. was found at the crime scene.

The Applicant will Testify at the P.C.R. hearing and present Evidence and witnesses to fully prove this issue herein.

DISCUSSION

Applicant submits the U.S. Constitutional rights Amendments V;VI;VIII to Due process of Law; By the Investigators, and Court Reporter above deprived Applicant of Life; Liberty; and Due Process of Law. SEE: State V. Ouattlebaum, 338 S.C. 441, 527 S.E. 2d 105 (S.C. S.Ct.2000); App. Ct. Rule 407).

ISSUE-4

4.)Did the Solicitor commit Prosecutorial Misconduct in a violation of Applicants U.S. Constitutional right under the 14th Amendment under Due Process and Equal Protection of Law?

FACTS

Applicants submits that the Solicitor Kimberly Barr, committed prosecutorial Misconduct in applicants case here at hand she was dishonest about several things, one instance she told the court at my First Bond Hearing On or About June 9, 2010 that I was on Parol & Probation in another state, I was at that time Represented by Charles Barr, Esq. I was informed that they may even be related and thats the reason he was allowing her to be untruthful to the Court and if thats the case It would have been a clear case of Conflict. She told the Court I had assault charges & Armed Robbery Charges and I told Mr. Barr that was not true, and he allowed her to do it any way. And all through her handling my case she continued to be Dis- Honest, she was still turning over Brady material as she presented her case. In a violation of Clearly Established Federal Law in Brady V. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963). 2 and 3 days into my Trial I was Self-Representation no stand-by Counsel, and I never waived my right to Counsel and was never warned by the Court of the Dangers of Self-Representation. At Pcr evidence, testimony, will be given to prove this issue

DISCUSSION

SEE: State V. Ouattlebaum, 338 S.C. 441, 527 S.E. 2d 105 (S.C. S. Ct. Rule 407). Applicant submits the U.S. Constitution rights Amendments V, VI, VIII to Due process of Law; By the Solicitor above deprived Applicant of Life; Liberty; and Due Process of Law. See: Berger V. U.S., 295 U.S. 78, 88 (1935), see: ABA standards for Criminal Justice: Prosecution Functions & Defense Function, Standard 3-1.2(c) (3d ed. 1993) ("the duty of the prosecution is to seek

justice, not merely to convict") Nat'l Dist. Attys. Ass'n National Prosecution Standards, Standard 1.1 (2nd ed. 1991)
See: State V. Porter, 526 N.W. 2d 359, 362-63 (Minn. 1995); Salitros, 499 N.W. 2d at 817, See: ABA Standards for criminal justice, Prosecution Functions, Standards 3-5.9 (prosecution)
See: State V. King, 71 S.E. 2d 793 (1952)
See: State V. Durden, 212 S.E. 2d 587 (1975).

Applicant herein encompasses the Judicial Misconduct as a part of this issue.

ISSUE -5

5.) Did the Trial Judge commit Judicial Misconduct in his handling of this case in a violation of Applicant's Constitutional right under the 14th Amendment under Due Process and Equal Protection of Law?

FACTS

Applicant submits that the trial Judge committed Judicial misconduct in the way he handled this trial, the record actually speaks for itself.

The Judge sent the Jury out about 8 or 9 times during Trial I would tell him your Honor I do not know what I'm doing and he would respond ["I'm not here to teach you"]. He further would pick and choose what he wanted me to ask a witness when in fact the Solicitor never even Objected, which amounts to Abuse of Discretion that resulted in resulting prejudice, See: State V. Commander, 396 S.C. 254, 721 S.E. 2d 413 (2011); See: State V. Jennings, 394 S.C. 473, 477-78, 716 S.E. 2d 91, 93 (2011).

He failed to give me stand-by Counsel, failed to inform me of the Dangers of Self-Representation, which I never waived my rights to Counsel, I just wanted an Effective Counsel all I ask.

He allowed the Solicitor to disclose Brady/Rule 5 as she presented her case.that she had never Disclosed,to me.

He only allowed me 2 weeks to prepare for Trial on a partial Discovery.

Applicants submits that he will present testimony and evidence/ Exhibits at the P.C.R. to prove this issue.

"FARETTA" ERROR IS STRUCTURAL See:McKaskie V.Wiggins,465U.S.168 (1984).

DISCUSSION

To establish a valid waiver of counsel,the defendant must be advised of the right to counsel and adequately warned of the dangers of Self-Representation.Bridwell V.State,306 S.C. 518,413 S.E.2d 30 (1992);See Also:Wroten V. State,301 S.C. 293,391 S.E. 2d 575 (1990).;see:City of Columbia V. Brown,316 S.C. 432,450 S.E 2d 117 (Ct. App.1994) Arizona V. Fulminante,499 U.S.279 (1991).

In this case at hand the Judge misapplied clearly established Federal See:Faretta V. California, 422 U.S. 806,95 S. Ct. 2525,45 L. Ed, 2d 562 (1975);SEE also:State V. Sanders,269 S.C.215,237 S.E. 2d 53 (1977)U.S. V. Russell,411 U.S.423 (1973)OUTRAGEOUS.

The Judge was in violation of the S.C.A.C.Rule 501 Judicial Conduct,in his handling of this instant case.

ISSUE - 6

6.)Applicant raises the claim of Actual Innocent,and he should be released from the custody of the state he is being held in a violation of his constitutional rights under the 14th Amendment to Due Process of Law and Equal Protection Of Law.

FACTS

Applicant was never placed at the alleged crime scene and there was no evidence presented that could tie the Applicant to this alleged crime.

DISCUSSION

See:Schlup V. Delo,513 U.S. 298(1995)Actual Innocence("Gateway" Claim")

See:State V.Eddie lee ARNOLD,

CONCLUSION

Applicant herein submits that for the following 6 issues he should be released from the custody of the state of South Carolina, as a matter of State, Federal Law and under the U.S., Constitution And/or his case be remanded back to General Sessions For a NEW TRIAL/and/or Vacated without re-indictment.

Respectfully Submitted,

/s/ Leverne McCrea

Leverne McCrea, #348291

Applicant Pro Se

Date: October 15, 2012

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF WILLIAMSBURG	)	FOR THE THIRD JUDICIAL CIRCUIT
	)	
	)	2012-CP-45-363
	)	
Levern McCrea, #348291,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

The Respondent, making its Return to the application for post-conviction relief filed July 9, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Williamsburg County Clerk of Court. The Applicant was true billed indicted at the September 2008 term of the Williamsburg County Grand Jury for Murder, Possession of a Weapon During a Crime, and Misprison of a Felony (2010-GS-45-135). Applicant elected to proceed pro se in his case and represented himself at trial. Applicant proceeded to a jury trial and was found guilty as indicted for Murder and Possession of a Weapon During a Crime. On October 20, 2011 the Honorable W. Jeffrey Young, sentenced Applicant to life in prison for Murder, and five years imprisonment for Possession of a Weapon During a Crime to run consecutively with the sentence for Murder.

Applicant subsequently filed for appeal. The Applicant failed to timely serve the Notice of Appeal on opposing counsel, as provided for in Rule 203 of the South Carolina Appellate

Court Rules. Applicant's pending appeal was dismissed by Order dated April 20, 2012. The Remittitur was issued on August 3, 2012.

Attached herewith and incorporated herein by reference are the records of the Williamsburg County Clerk of Court regarding the subject convictions, records from the South Carolina Department of Corrections, and appellate records. The trial transcript will be forwarded upon receipt. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Denied the right to appeal
 - a. Applicant did not voluntarily and intelligently waive his right to appeal.
2. Defendant's waiver of right to counsel was not knowing and voluntary
 - a. Defendant was not warned of dangers of self-representation
3. "Was Applicant 3 trial counsels ineffective prior to Applicants trial, which forced Applicant to proceed to trial with no trial counsel, or standby counsel and applicant never waived his rights to counsel in a violation of Applicants Const. rights of the U.S. under the 6th Amendment , and a violation of Applicants due process and equal protection under ther 14th Amendment?"
4. "Did the investigators commit investigative misconduct in a violation of Applicants U.S. Constitutional right under the 14th Amendment under De Process and Equal Protection of law?"

Any claims not specifically enumerated in the post-conviction application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

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, 334 S.E.2d 813 (1985). Where the

application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. 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.

The Respondent submits that the Applicant cannot satisfy either 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, the 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.

The Respondent submits that Applicant's claim of "Investigative Misconduct" should be summarily dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160 (2003). An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy.... S.C. Code Ann. § 17-27-20 (1976).

Even if the facts alleged by the Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. The allegations presented by Applicant raises direct appeal issues that are procedurally barred by S.C. Code Ann. § 17-27-20(b) (1985). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised this issue at trial or on appeal. His failure to do so has waived these allegations as grounds for relief. Therefore, the Court should summarily

dismiss this allegation.

V.

The Applicant further alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

VI.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

[signature block on following page]

VII.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

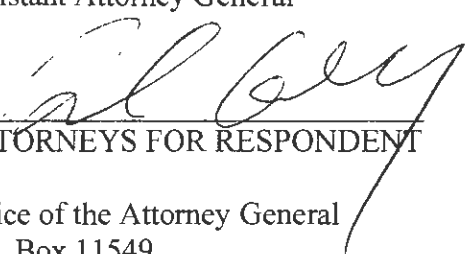
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

September 4, 20 13.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF WILLIAMSBURG	)	
	)	
	)	2012-CP-45-363
	)	
LEVERN MCCREA, #348291,	)	
	)	
Applicant,	)	
	)	
vs.	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

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

Charles T. Brooks, Esquire
Law Office of Charles T. Brooks, III
309 Broad St.
Sumter, SC 29150

DATED this 4th day of September, 2013.



Caroline Kaiser, Legal Assistant
For Respondent

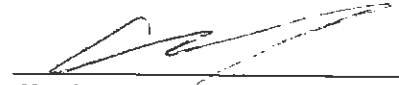
STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
	)	
COUNTY OF WILLIAMSBURG	)	
	)	DOCKET NO.: 2012-CP-45-0363
LEVERN MCCRAY, 348291	)	
	)	
Applicant	)	AMENDED APPLICATION FOR POST
	)	CONVICTION RELIEF
	)	
STATE OF SOUTH CAROLINA	)	
	)	
Respondent,	)	
_____	)	

FILED
2014 OCT 20 PM 5:17
CLERK OF COURT
WILLIAMSBURG, S.C.

The Applicant through undersigned Counsel wishes to Amend his Post Conviction Application filed on October 12, 2009, as follows:

1. Preliminary hearing taken, in State v McClure, 277 S.C. 432, 289 S.E. 2d 158;
State v Funderburke, 259 S.C. 256, 191 S.E. 2d 520. S. C. Code Law 17-23-160.
2. That July 12, 2009 to July 8, 2010, indictment is flawed. It has been rubber
Stamped. State v Rector, 158 S.C. 212, 155 S. E. 385.
3. Direct Appeal taken, State v White, 208 S.E. 2d 35, 39.
4. Sixth Amendment right to counsel was violated and Fourteenth Amendment
Right to due process of law was violated. Gardner v State, 570 S.E. 2d 184; U. S.
V Midgett, 342 F. 3d 321.
5. State made Applicant wear shackles during trial and the jurors saw them when he
sat down and stood up. Deck v State of Missouri, 125 S.Ct. 200 (2005). This prejudiced
Applicant.

RESPECTFULLY SUBMITTED ON BEHALF OF
APPLICANT, LEVERN MCCREA



Charles T. Brooks, III
Attorney for Applicant
309 Broad Street
Post office Box 3512
Sumter, South Carolina, 29150
(803) 418-5708

October 15, 2014

STATE OF SOUTH CAROLINA)

COUNTY OF WILLIAMSBURG)

LEVERN MCCREA)

APPLICANT)

v.)

STATE OF SOUTH CAROLINA)

RESPONDENT)

IN THE COURT OF
COMMON PLEAS

CASE NO. 2012-CP-45-0363

MOTION FOR DEFAULT

SHARON H. STAGGINS
CLERK OF COURT
KIMSTREE, S.C.

2014 OCT 23 PM 3:56

FILED

This matter comes before the Court upon the filing a Motion for Default Judgment by the Applicant against the Respondent..

Grounds for this Motion are that the Applicant's Post Conviction Relief Application was filed on July 9, 2012. Applicant contends that the Lower Court is in default for not disposing of his Post Conviction Relief action within the proper time restraints.

THEREFORE, it is respectfully requested that a default judgment be entered against the Respondent in this matter.



Charles T. Brooks, Esquire
Attorney for Applicant
309 Broad Street
Post Office Box 3512
Sumter, South Carolina 29151
(803) 418-5708

Sumter, South Carolina
October 20, 2014

The Brooks Law Offices, LLC

CHARLES T. BROOKS, III,
Attorney

309 Broad Street
Sumter, South Carolina 29150
Post Office Box 3512, Sumter, SC 29151
OFFICE: (803) 418-5708
FAX: (803) 934-9618 TOLL FREE: (877) 770-8792
Email: cbrooks@ctbrooks.com

IRMA R. BROOKS
Attorney

October 20, 2014

Williamsburg County Clerk of Court
Attn: Common Pleas
Post Office Box 330
Kingstree, South Carolina, 29556

RE: Levern McCrea v State of South Carolina

Dear Sir or Madam:

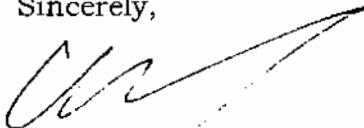
Enclosed you shall find an Original along with two (2) additional copies of a Motion for Default to PCR for filing on the above matter in Williamsburg County. Enclosed is a prepaid envelope for your convenience in returning these documents to my office once filed.

I would like to thank you for your consideration of this matter. If you should have any questions or if I can be of assistance to you, please contact my office at the number listed above.

If you have any questions, please contact my office at the number listed above.

With kind regards, I am,

Sincerely,



Charles T. Brooks, III
CTB/jlb

Enclosures as stated

FILED
2014 OCT 23 PM 3:56
SHARON W. STAGGERS
CLERK OF COURT
KINGSTREE, S.C.

STATE OF SOUTH CAROLINA

COUNTY OF WILLIAMSBURG

Levern McCrea

☒ Plaintiff

v.

State Of South Carolina

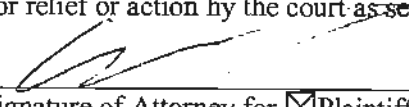
☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2012-CP-45-0363

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Charles T. Brooks, Iii, Bar No. 11762 Address: 309 Broad Street, Sumter, South Carolina, 29150 phone: (803)418-5708 fax: (803) 934-9618 e-mail: other:	Defendant's Attorney: , Bar No. Address: phone: fax: e-mail: other:
2014 OCT 23 PM 3:56 FILED SHARON W. S. CLERK OF COURT KINGSTREE ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO	
SECTION II: Motion/Order Type	
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for ☒ Plaintiff / ☐ Defendant October 20, 2014 Date submitted	
SECTION III: Motion Fee	
☐ PAID - AMOUNT: ☒ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☒ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE _____ CODE: _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____	
☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____	

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRD JUDICIAL CIRCUIT
COUNTY OF WILLIAMSBURG	)	
	)	
Levern McCrea, 348291,	)	C/A No.: 2012-CP-45-363
	)	
Applicant,	)	
	)	
v.	)	NOTICE OF MOTION AND MOTION
	)	FOR SUMMARY JUDGEMENT
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

FILED
2014 DEC -8 PM 4:54
CLERK OF COURT
WILLIAMSBURG, S.C.

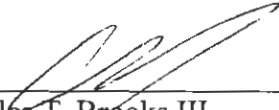
Now comes the Applicant, Levern McCrea, whom through it's Attorney will Motion to the presiding Judge at the Williamsburg County Court, located in Kingstree, South Carolina, not sooner than ten (10) days from the date of service hereof upon you or as soon after counsel may be heard, or at such a time or place be set by the Court for an Order granting defendant Summary Judgment to the Applicant, Levern McCrea, pursuant to SCRCF Rule 56, on all of the Applicant's causes of action against the Respondent.

This Motion is made on the grounds that there are no genuine issues of material facts to be decided in this matter. The Applicant was not advised by the Court properly as it related to self-representation at the General Sessions trial in this matter and did not knowingly and intelligently waive his right to the assistance of counsel, in accordance with Faretta vs. California, 422 U.S. 806, 95 S.Ct. 2525 (1975).

The Applicant believes the record fails to demonstrate that the Applicant made an informed choice when proceeding pro-se at his General Sessions trial and that he did not

knowingly and voluntarily waive counsel in this matter, and as such the case should be remanded for a new trial.

RESPECTFULLY SUBMITTED

BY: 
Charles T. Brooks III
Attorney for the Applicant
309 Broad Street
Post Office Box 3512
Sumter, South Carolina 29151
(803) 418-5708

December 3, 2014
Sumter, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
		12-CP-45-363
COUNTY OF WILLIAMSBURG	)	
Levern McCrea,	)	
	)	
Applicant,	)	
	)	
vs	)	ORDER
	)	
State of South Carolina,	)	
	)	
Respondent,	)	

2015 APR 17 PM 12:24
CLERK OF COURT
JAMES E. BOOZER

This matter was before the court on April 14, 2015 for hearing of the applicant's grounds for relief in this PCR action. When the hearing began, the applicant advised the court that he wished for counsel to be appointed to represent him.

The record reflects that Charles T. Brooks, III, Esquire, represented the applicant until he was relieved by Judge Newman on or about March 15, 2015. Mr. Brooks contended that the applicant was verbally abusive toward him and filed two separate grievances with ODC. Mr. McCrea denies that he was abusive. It should be noted that Mr. McCrea was represented by three attorneys at different times while the underlying murder charge was pending. All three lawyers were relieved from representation.

The court advised Mr. McCrea that it would appoint Lance S. Boozer, Esquire, to represent him in this matter, but that it was incumbent upon him to deal with Mr. Boozer civilly and professionally. The court also advised him that if it was established that he did not treat Mr. Boozer civilly and professionally, he would not receive appointment of substitute counsel. This admonishment is necessary because of this court's first-hand experience in addressing trial counsel's concerns in the underlying murder case.

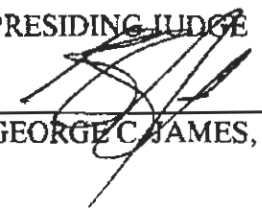
Based on the foregoing, it is



ORDERED that Lance S. Boozer, Esquire, is appointed to represent the applicant in these proceedings.

AND IT IS SO ORDERED.

PRESIDING JUDGE


GEORGE C. JAMES, JR.

Sumter, South Carolina

April 14, 2015

STATE OF SOUTH CAROLINA)
COUNTY OF WILLIAMSBURG)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Levern McCrea, #348291,)

Case No. 2012-CP-45-0363

Applicant,)

**MEMO IN OPPOSITION TO
SUMMARY JUDGMENT**

v.)

State of South Carolina,)

Respondent.)

2015 JUL 15 PM 12:24
CLERK E.S.C.

This matter is before this Court by way of an Application for Post-Conviction Relief filed July 9, 2012. Applicant claims that he did not knowingly and intelligently waive his right to the assistance of counsel, in accordance with Faretta vs. California, 422 U.S. 806, 95 S.Ct. 2525 (1975).

PROCEDURAL HISOTRY

The September 2008 Williamsburg County Grand Jury true bill indicted Applicant for murder, possession of a weapon during a crime, and misprision of a felony (2010-GS-45-135). Applicant originally retained Charles Barr, Esquire to represent him on the charges. The Applicant eventually fired Mr. Barr due to irreconcilable differences. The court appointed Cezar McKnight, Esquire, to represent him. Mr. McKnight filed a motion to be relieved as counsel on November 24, 2010. A hearing was held on December 6, 2010, in front of the Honorable George C. James, Jr. After hearing from both Mr. McKnight and Applicant, the court relieved Mr. McKnight and appointed Hank Anderson, Esquire. Mr. Anderson filed a motion to be relieved as counsel, citing irreconcilable differences. A hearing was held on June 22, 2011, in front of the Honorable Howard P. King. Judge King denied the motion to be relieved after

hearing from Mr. Anderson, Applicant, and Assistant Solicitor, Kimberly Barr. Judge King advised Applicant that if he continued his course of conduct then he would have no choice but to relieve Mr. Anderson and require Applicant proceed pro-se. Shortly thereafter, Applicant wrote Mr. Anderson various letters stating that Mr. Anderson was lying, would not represent him properly, and explaining that he wanted Mr. Anderson relieved and he would represent himself. By Order filed September 14, 2011, Judge King relived Mr. Anderson. The Court noted that Applicant was “very difficult if not impossible to deal with, not only as a client but as an individual. He has been abusive, vile, and profane to Anderson as evidenced by letters dated February 9, 2011 and May 17, 2011.” Applicant proceeded pro-se at trial and was convicted of murder and possession of a weapon during a crime. The Honorable W. Jeffrey Young sentenced Applicant to life in prison for murder and five year term of imprisonment for the weapons charge.

ARGUMENT

I. **Applicant forfeited his Sixth Amendment right to counsel due to his continued irreprehensible behavior towards his three separate defense counsels.**

Applicant argues that he did not knowingly and intelligibly waive his right to counsel. Respondent’s submits that Applicant’s continuous egregious conduct towards his three attorneys amounted to a forfeiture of his Sixth Amendment right to counsel.

“It is well-established that an accused may waive the right to counsel and proceed pro se.” State v. Brewer, 328 S.C. 117, 119, 492 S.E.2d 97, 98 (1997) (citing, inter alia, Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975) and State v. Dixon, 269 S.C. 107, 236 S.E.2d 419 (1977)). “Although a defendant’s decision to proceed *pro se* may be to the defendant’s own detriment, it ‘must be honored out of that respect for the individual which is the

lifeblood of the law.’ ” *Id.* (quoting *Faretta*, 422 U.S. at 834, 95 S.Ct. at 2541). Furthermore, “a defendant may surrender his right to counsel through (1) waiver by affirmative, verbal request; (2) waiver by conduct; and (3) forfeiture.” *State v. Thompson*, 355 S.C. 255, 262, 584 S.E.2d 131, 134 (Ct.App.2003).

A defendant can forfeit his right to counsel irrespective of his knowledge of either the consequences of his actions or the dangers of self-representation. *United States v. Goldberg*, 67 F.3d 1092, 1100 (3d. Cir.1995). Forfeiture results in the loss of the right regardless of the defendant's knowledge of either the consequences of his actions or the dangers of self-representation. *Id.* Situations where a defendant's own conduct forfeits his right to counsel are unusual, typically involving a manipulative or disruptive defendant. *State v. Coleman*, 253 Wis.2d 693, 644 N.W.2d 283, 288 (Ct.App.2002).

In *State v. Boykin*, the South Carolina Court of Appeals found Boykin's single act of verbal abuse and physical threat towards his defense counsel while at the detention center was not sufficient conduct to constitute forfeiture. *State v. Boykin*, 324 S.C 552, 478 S.E.2d 689 (Ct. App 1996). The court distinguished *United States v. McLeod*, 53 F.3d 322, 325 (11th Cir.1995) and *United States v. Jennings*, 855 F.Supp. 1427 (M.D.Pa.1994), *aff'd* 61 F.3d 897 (3d Cir.1995) finding that both *McLeod* and *Jennings* involved defendants that exhibited a continuous course of conduct more egregious than the single incident in *Boykin*.

In *United States v. McLeod*, 53 F.3d 322, 325 (11th Cir.1995), the defendant, after having dismissed his first attorney, had verbally abused and threatened to harm his second attorney. He had also “threatened, on at least four occasions, to sue [his attorney], and had attempted to persuade him to engage in unethical conduct in connection with the case.” *Id.* The Eleventh Circuit Court of Appeals found that McLeod's behavior was repeatedly abusive,

threatening and coercive. *Id.* at 326. Although the court was “troubled by the fact that McLeod was not warned that his misbehavior might lead to pro se representation,” the court stated, “we cannot say that the district judge erred by concluding that McLeod had forfeited this right to counsel.” *Id.* at 326.

In United States v. Jennings, 855 F.Supp. 1427 (M.D.Pa.1994), *aff’d* 61 F.3d 897 (3d Cir.1995), the defendant was charged with assaulting a corrections officer with a deadly weapon while imprisoned in Lewisburg, Pennsylvania. *Id.* at 1430. After the judge denied his motion for appointment of new counsel, Jennings punched his attorney, who fell to the floor of the courtroom. *Id.* at 1432-33. Six marshals were required to restrain him. *Id.* at 1433. Thereafter, Jennings threatened the life of the Assistant United States Attorney, corrections officers and his former counsel. *Id.* While the court found Jennings “waived” his right to counsel by his actions, the court actually employed a forfeiture analysis, since Jennings was not warned of the consequences of his actions. The court stated, “We are aware that deeming the right to counsel as waived by the conduct of a defendant is an extreme sanction. However, the conduct of Jennings in this instance was extreme and outrageous.” *Id.* at 1444.

The courts have found forfeiture when the defendant's conduct does not rise to a level of physical violence. See Bultron v. State, 897 A.2d 758, 766 (Del.2006) (“Violence is not the *sine qua non* of extremely serious misconduct.”). In Bultron, the defendant had directed “continuing profanity and insulting conduct” at his counsel. *Id.* Deferring to the trial court's findings “that Bultron's behavior fell just short of violence and was intended to force [counsel] to withdraw,” the court upheld a finding of forfeiture. *Id.*

The Third Circuit, in US v. Thomas, found that a defendant may forfeit his right to counsel if his behavior is sufficiently egregious. US v. Thomas, 357 F.3d 357 (3rd Cir. 2004). In

Thomas, the defendant was verbally abusive to his appointed counsel, refused to cooperate with him, and tried to force him to file meritless claims. Id. at 363. In Thomas, the finding of forfeiture depended, in part, on the defendant's unworkable relationship with multiple attorneys. Id. "Perhaps most critically, Thomas engaged in this sort of misconduct not once, but in relationships with four attorneys." Id.

Similar to Thomas, Applicant engaged in his egregious behavior through three attorneys. Applicant's first attorney, Charles Barr, Esquire, was retained on April 5, 2010, (June 22, 2011 Mot. Tr. p. 13 lines 2-5). Applicant accused Charles Barr of intentionally ignoring his letters and phone calls for nine and a half weeks. (June 22, 2011 Mot. Tr. p. 13 lines 6-9). Applicant stated Charles Barr asked his name and information two minutes prior to appearing before a judge on May 14, 2010. (June 22, 2011 Mot. Tr. p. 13 lines 9-14). Applicant stated Charles Barr had nothing to refute the "lies and inflated charges" against him. (June 22, 2011 Mot. Tr. p. 14 lines 2-4). Applicant accused Charles Barr of conspiring with the State's attorney's office Ms. Kimberly Barr. (June 22, 2011 Mot. Tr. p. 14 lines 5-6). When pressed by the court for evidence of Charles Barr's conspiracy with the State, Applicant merely cited to his lack of communication for nine and a half weeks. (June 22, 2011 Mot. Tr. p. 14 lines 11-16). Applicant stated that he was forced to fire Charles Barr at the start of his preliminary hearing, because of "ineffective assistance of counsel." (June 22, 2011 Mot. Tr. p. 15 lines 6-9).

Applicant's second attorney, Cezar McKnight was appointed by the court in July 2010. (December 6, 2010 Mot. Tr. p. 3 line 25—p. 4 line 1). Counsel McKnight filed a motion to be relieved due to an acrimonious relationship with Applicant. (December 6, 2010 Mot. Tr. p. 3 lines 15-18). Counsel McKnight stated Applicant recently wrote him a letter in which he told Counsel McKnight "to go to hell." (December 6, 2010 Mot. Tr. p. 4 lines 16-18). Counsel

McKnight stated Applicant continuously accused him of an active conspiracy with Ms. Kimberly Barr. (December 6, 2010 Mot. Tr. p. 4 lines 20-22). Counsel McKnight stated Applicant accused him of trying to “railroad him.” (December 6, 2010 Mot. Tr. p. 4 lines 21-22). Counsel McKnight referenced a letter dated October 20, 2010, in which Applicant used various profane language and accused Counsel McKnight of “basically BS.” (December 6, 2010 Mot. Tr. p. 4 line 23—p. 5 line 1). Counsel McKnight stated that he could “not work in a situation where someone greets [him] with profanity.” (December 6, 2010 Mot. Tr. p. 5 lines 19-20). Counsel McKnight further stated that he had a fear of being accosted by the Applicant when he would visit him at the detention center. (December 6, 2010 Mot. Tr. p. 5 lines 22-25). Counsel McKnight further noted that Applicant had filed grievances with the office of disciplinary committee. (December 6, 2010 Mot. Tr. p. 16 lines 17-19). Counsel McKnight stated that he had continually written Applicant explaining “why we can’t do what it is he wants us to do.” (December 6, 2010 Mot. Tr. p. 5 lines 7-11).

In response and in front of the court, Applicant stated that he had the upmost respect for Counsel McKnight and originally requested Counsel McKnight to be appointed to his case. (December 6, 2010 Mot. Tr. p. 10 line 21—p. 22 line 2). Applicant acknowledged that he may have gone “a little overboard in addressing attorney McKnight.” (December 6, 2010 Mot. Tr. p. 11 lines 8-9). However, Applicant accused Counsel McKnight of lying to him about filing various motions. (December 6, 2010 Mot. Tr. p. 9 lines 6-8). Applicant then accused Counsel McKnight of conspiring with the State. (December 6, 2010 Mot. Tr. p. 17 lines 19-21).

The court noted that Applicant claimed that both his prior attorneys were “conspiring with the state.” (December 6, 2010 Mot. Tr. p. 17 lines 19-21). During the course of the hearing, Applicant continuously interrupted the court, prompting a warning that he would be

held in contempt of court. (December 6, 2010 Mot. Tr. p. 14 line 2-4). The court further stated that “the record show that [Applicant], all he chooses to do is when anybody else is talking including me, is to sit there and smirk and shake his head.” (December 6, 2010 Mot. Tr. p. 14 lines 6-9). The court warned Applicant that he needed to examine his own attitude and conduct. (December 6, 2010 Mot. Tr. p. 20 lines 14-16). The court noted that a pattern was beginning to develop. (December 6, 2010 Mot. Tr. p. 20 lines 14-16). The court further found that Applicant’s attitude “is that if somebody doesn’t do exactly what you think ought to be done they’re engaged in a conspiracy and they’re not, and they’re not doing their job.” (December 6, 2010 Mot. Tr. p. 20 lines 18-21). Ultimately the court relieved counsel McKnight and appointed a third attorney.

Applicant’s third attorney, Hank Anderson, Esquire, filed a motion to be relieved due to an acrimonious relationship. Counsel Anderson stated that he was appointed to represent Applicant in December 2010 and he had done everything Applicant had requested him to do. (June 22, 2011 Mot. Tr. p. 8 lines 8-16). Counsel Anderson stated that he had probably talked to Applicant’s girlfriend and family in excess of twenty five times. (June 22, 2011 Mot. Tr. p. 8 lines 16-20). Counsel Anderson stated that Applicant filed a complaint to the office of disciplinary counsel in February 2011. (June 22, 2011 Mot. Tr. p. 8 lines 21-25). Counsel Anderson stated he received multiple letters from Applicant questioning his motives and relationship with the State’s attorney. (June 22, 2011 Mot. Tr. p. 9 lines 14-19.) Counsel Anderson stated Applicant requested that he relieve himself from the case, did not want anything else to do with him, and forbade him from talking to his girlfriend or family. (June 22, 2011 Mot. Tr. p. 9 lines 19-22). Counsel Anderson stated that “it’s hard enough in these cases when you have got someone helping you. But when you have got someone who is pulling against you

and questioning everything you do and fussing at you and cussing at you, it just makes the job a lot harder.” (June 22, 2011 Mot. Tr. p. 10 lines 3-8).

During the hearing, Applicant stated that they were present at the motion hearing due to the “ineffectiveness and lies that [he] has to deal with.” (June 22, 2011 Mot. Tr. p. 23 lines 7-10). Applicant accused Counsel Anderson of deliberately lying to him on the very first day they met. (June 22, 2011 Mot. Tr. p. 18 lines 13-16). Applicant stated that “he read through the lies and many letters that Mr. Anderson have sent to me like I am stupid or something. Lies that I’m constantly lying to me like this is some shoplifting charge. (June 22, 2011 Mot. Tr. p. 18 lines 20-24). Applicant stated Counsel Anderson had his case since December 19, 2010 and had sent “dozens of letters, lies from the time on until the first week of May” 2011. (June 22, 2011 Mot. Tr. p. 19 lines 13-16). Applicant concluded that “he does not trust attorney Anderson. [Applicant] honestly believe[d] that [Counsel Anderson] [was] not in [his] best interest.” (June 22, 2011 Mot. Tr. p. 31 lines 17-19). Applicant stated that he ha[d] given Counsel Anderson a list of twenty things and he ha[d] not done one thing off of the list. (June 22, 2011 Mot. Tr. p. 32 lines 3-4).

The court noted that they were present at the motion hearing because of Applicant’s disrespect for his counsel by the type of letters that he continuously writes. (June 22, 2011 Mot. Tr. p. 23 lines 11-14). The court noted Applicant’s letter dated February 9, 2011, sent to Counsel Anderson by Applicant was the most “vilest, worst letters I have ever read from a client to an attorney.” (June 22, 2011 Mot. Tr. p. 19 lines 20-22). The court noted that it was approximately a ten page letter “calling [Counsel Anderson] all kind of vile names and everything else.” (June 22, 2011 Mot. Tr. p. 20 lines 1-4). When questioned by the court as to why he would send such a horrible letters to Counsel Anderson, Applicant merely responded that he was upset because of

all the lies perpetrated. (June 22, 2011 Mot. Tr. p. 20 lines 11-20). The court noted that Applicant was going through attorneys like a “hot knife through butter.” (June 22, 2011 Mot. Tr. p. 29 lines 18-20). The court further noted that Applicant continually asked Counsel Anderson to do inappropriate things. (June 22, 2011 Mot. Tr. p. 32 lines 13-22). Towards the conclusion of the hearing, the court warned Applicant that he was going to be held in contempt of court for his incessant remarks. (June 22, 2011 Mot. Tr. p. 40 lines 3-5). At the conclusion of the hearing, Applicant stated that he would keep Counsel Anderson. The court warned Applicant that if he continued his disrespectful behavior, then Counsel Anderson would be relieved. (June 22, 2011 Mot. Tr. p. 40 line 19—p. 41 line 17). In its order filed August 2, 2011, the court noted that “it was clear from [Applicant’s] rambling presentation to the court that he wanted to control every aspect of Anderson’s representation and that he expected Anderson to do his bidding and follow his directions regardless of whether the request were appropriate, reasonable, or proper. (Order filed Aug. 11, 2011 p. 2).

Approximately one month after the hearing, Counsel Anderson submitted a second motion to be relieved on September 1, 2011. In his cover letter, Counsel Anderson advised the court that he had met with Applicant nine separate times, obtained various documents, and subpoenaed various witnesses for trial since the June 22, 2011 hearing. (Order filed Sept. 11, 2014, p. 3). Counsel Anderson advised the court that Applicant, despite the court’s previous warning, continued to send vile letters. *Id.* Counsel Anderson noted that Applicant was accusing him of deliberately betraying him for a third time. *Id.* Counsel Anderson further stated Applicant told him that he no longer needed his lying assistance and that he needed to file a motion to be relieved. (Order filed Sept. 11, 2014, p. 6). In his letter, Applicant stated that he would represent himself and he did not “give a damn.” *Id.* Based off Counsel Anderson’s

motion and Applicant's letter, the court relieved Counsel Anderson by order filed September 11, 2014. In its Order the court noted Applicant:

has been very difficult if not impossible to deal with, not only as a client but as an individual. He has been abusive, vile, and profane to Anderson as evidenced by the letters dated Feb. 9, 2011 and May 17, 2011, which the court reviewed prior to the earlier hearing. Not only has he been uncivil and rude, and in general very obnoxious as an individual, he has been unruly and overbearing as a client who refuses to accept the advice and recommendations of his attorney and thinks he knows more about the law and the way the case should be handled than a knowledgeable, experienced criminal defense attorney.

(Order filed Sept. 11, 2014, p. 1). The Court further noted that Applicant's behavior and attitude had not improved, despite the court's prior warning. *Id.* at 1-2. The court ultimately relieved Counsel Anderson and advised Applicant that he had fifteen days to retain an attorney or proceed *pro-se*. *Id.*

Respondent notes that Applicant's behavior has continued into the PCR process. Applicant is now on his third PCR attorney. Applicant second attorney, Charles T. Brooks, III, requested to be relieved citing irreconcilable differences. Counsel Brooks also noted that Applicant had filed two separate grievances with the office of disciplinary counsel. Respondent received various letters from Applicant detailing Applicant's assertion that Counsel Brooks was conspiring with the State.

Unlike Boykin, it is clear that Applicant's conduct was a continuous pattern of disrespectful behavior that continued to grow even more reprehensible over the course of time. Respondent notes that Applicant accused each of his three attorneys of conspiring with the State's attorney. Yet Applicant failed to provide any credible evidence of such a conspiracy. Applicant continuously wrote various letters to each counsel using profane and vile language. One such letter prompted a circuit court judge to remark that it was the most "vilest, worst letters

[the court] ha[d] ever read from a client to an attorney.” (June 22, 2011 Mot. Tr. p. 19 lines 20-22). Applicant’s second attorney, Counsel McKnight was in fear of being physically assaulted by Applicant during visitation. (December 6, 2010 Mot. Tr. p. 5 lines 22-25). Applicant filed grievances with the office of disciplinary committee on at least two of his three attorneys. Additionally, Applicant showed a blatant disrespect to the court over the course of multiple hearings. Notably, Applicant was threatened with contempt of court by two different circuit court judges.

Applicant’s behavior towards his three counsels was repeatedly abusive, threatening, and coercive. It is clear by Applicant’s letters, admissions during the various motion hearings, counsels’ statements, and the court’s remarks that Applicant was an uncivil, rude, obnoxious person, who refused to heed the advice of three experienced criminal defense attorneys. Based off of the foregoing, Applicant’s continuous and repeated egregious behavior amounts to a forfeiture of his sixth amendment right to counsel.

II. Applicant waived his Sixth Amendment right counsel via conduct.

If this Court finds that Applicant’s continuous and repeated egregious behavior did not amount to forfeiture, then Respondent submits that Applicant waived his Sixth Amendment right to counsel via conduct.

A defendant may waive his right to counsel through his conduct. Goldberg, 67 F.3d at 1100. Once a defendant has been warned that his misconduct will thereafter be treated as a waiver of his right to counsel, any subsequent misconduct is treated as a “waiver by conduct.” Id. Most courts have held there can be no “waiver by conduct” unless the defendant is first warned of the consequences of his actions. State v. Boykin, 324 S.C. 552, 556, 478 S.E.2d 689, 690 (Ct. App. 1996). “[T]o the extent that the defendant’s actions are examined under the doctrine of

‘waiver,’ there can be no valid waiver of the Sixth Amendment right to counsel unless the defendant also receives Faretta warnings.” Goldberg, 67 F.3d at 1100.

To establish a valid waiver of counsel, Faretta requires the accused be: (1) advised of his right to counsel; and (2) adequately warned of the dangers of self-representation. Bridwell v. State, 306 S.C. 518, 413 S.E.2d 30 (1992); Prince v. State, 301 S.C. 422, 392 S.E.2d 462 (1990); see also Wroten v. State, 301 S.C. 293, 294, 391 S.E.2d 575, 576 (1990) (“Faretta requires that a defendant ‘be made aware of the dangers and disadvantages of self-representation so that the record will establish he knows what he is doing and his choice is made with eyes open.’ ”) (citation omitted). In the absence of a specific inquiry by the trial judge addressing the disadvantages of a pro se defense as required by the second Faretta prong, the appellate court will look to the record to determine whether petitioner had sufficient background or was apprised of his rights by some other source. Bridwell, 306 S.C. at 519, 413 S.E.2d at 31; Prince v. State, 301 S.C. at 424, 392 S.E.2d at 463.

a. Applicant had a sufficient background to make a valid waiver of counsel despite the trial judge’s failure to make a specific inquiry addressing the disadvantages of a pro-se defense.

Respondent submits that the record reveals that Applicant had a sufficient background to make a knowingly and intelligent waiver of counsel, despite the trial judge’s failure to make a specific inquiry addressing the disadvantages of a pro-se defense.

In State v. Cash the court listed ten factors in determining whether a defendant had sufficient background to make a valid waiver of counsel. Specifically, the court listed: (1) the accused’s age, educational background, and physical and mental health; (2) whether the accused was previously involved in criminal trials; (3) whether he knew of the nature of the charge and of the possible penalties; (4) whether he was represented by counsel before trial or whether an

attorney indicated to him the difficulty of self-representation in his particular case; (5) whether he was attempting to delay or manipulate the proceedings; (6) whether the court appointed stand-by counsel; (7) whether the accused knew he would be required to comply with the rules of procedure at trial; (8) whether he knew of legal challenges he could raise in defense to the charges against him; (9) whether the exchange between the accused and the court consisted merely of pro forma answers to pro forma questions; and (10) whether the accused's waiver resulted from either coercion or mistreatment. State v. Cash, 309 S.C. 40, 43, 419 S.E.2d 811, 813 (Ct.App.1992).

In applying the factors listed above, the court found that Cash had sufficient background to understand the disadvantages of self-representation. Specifically, the court noted Cash was forty-six years old, had six years of college, and had been previously involved in criminal proceedings. Id. at 44. The court noted that Cash understood the nature of the charges against him and the possible penalty. Id. The court noted that there was no indication that Cash was represented by counsel before trial or that an attorney advised him of the difficulty of self-representation, the record showed that Cash appreciated the difficulty of his particular case. Id. The court cited to Cash's statement that he could do a better job of preparing his defense than a public defender. Id. The court cited that there was no indication Cash was attempting to delay or manipulate the proceeding in declining the assistance of counsel. Id. at 45. The trial judge appointed stand by counsel for Cash. Id. The court noted that Cash was aware that he would be required to comply with the procedural rules. Id. The court noted that Cash was aware prior to trial of possible legal challenges he could raise in defense to the charge against him. Id. The court noted during the pretrial hearing in which Cash declined the assistance of counsel, the exchange between the judge and cash did not consist of merely pro forma questions.

In State v. McLauren, the South Carolina Court of Appeals applied the Cash factors to determine whether defendant had a sufficient background to make a valid waiver of the right to counsel. State v. McLauren, 349 S.C. 488, 563 S.E.2d 346 (2002) (citing State v. Cash, 309 S.C. 40, 43, 419 S.E.2d 811, 813 (Ct.App.1992)). The court noted McLauren was a mature man with both formal and informal education. There was no evidence in the record of any physical or mental impairment. Id. at 495. McLauren was involved in prior criminal proceedings and knew of the nature of the charges. Id. McLauren addressed questions by the court and made motions. Id. Although McLauren was not assigned an attorney before trial and appeared pro se at his arraignment, the court appointed him stand by counsel during trial. Id. There was no indication that McLauren was attempting to delay or manipulate the proceedings. Id. The court noted that the record indicated that McLauren knew to comply with the procedural rules and had at least some familiarity with the rules. Id. Specifically, the court cited the fact that McLauren made motions, called several witnesses, and objected at times to the prosecutor's questions. Id. McLauren knew of the legal challenges he could raise in defense to the charges against him. Id. The court noted that the exchange between McLauren and the court did not consist merely of pro forma questions. Id. The court noted McLauren language and actions at trial indicated he had an understanding of the legal system. Id. Finally, the court noted that there was no evidence that McLauren's waiver resulted from coercion or mistreatment. Id.

In the instant case, Applicant had sufficient background to make a valid waiver under the Cash factors. First, Applicant was born June 12, 1964 and was forty-seven years old at the time of trial. There was no evidence in the record of any physical or mental impairment.

Second, Applicant had been previously involved in criminal proceedings. The record indicates that he had a criminal record dating back to 1986. (Tr. p. 636 line 18—p. 638 line 16).

Third, Applicant was well aware of the nature of the charge. Notably, during the motion to relieve Counsel Anderson, the Assistant Solicitor recited the charges against Applicant and gave a brief factual context of the State's evidence against Applicant. (June 22, 2011 Mot. Tr. p. 2 line 23—p. 4 line 20). Furthermore, Applicant continuously referenced during a pre-trial conference that he was not facing a "shoplifting charge." (December 12, 2011 Mot. Tr. p. 17 lines 14-16; p. 18 lines 6-11). Based off of the record, it is apparent that Applicant was well aware of the serious nature of the charges he faced.

Fourth, Applicant was represented by three separate attorneys prior to trial. Specifically, Applicant retained Charles Barr, Esquire. Subsequently, Applicant fired Charles Barr because he "deliberately and intuitionally ignored [his] letters and phone calls for 9 and an a half weeks." (June 22, 2011 Mot. tr. p. 13 lines 6-8). Applicant accused Charles Barr of "conspire[ing] with the State's attorney's office Ms. Kimberly Barr." (June 22, 2011 Mot. Tr. p. 14 lines 5-6). Applicant was then appointed Cezar McKnight. Counsel McKnight filed a motion to be relieved as counsel on November 24, 2010. A hearing was held on December 6, 2010, in front of the Honorable George C. James, Jr. During the hearing, Counsel McKnight stated that there existed an acrimonious relationship between the two of them. (December 6, 2010 Mot. Tr. p. 3 lines 15-19). Counsel McKnight noted that Applicant told him to go to hell and accused him of conspiring with the State in attempt to "railroad him." (December 6, 2010 Mot. Tr. p. 4 line 20—line 1). Applicant advised the court that he "requested Attorney McKnight to represent him." (December 6, 2010 Mot. Tr. p. 10 lines 21-23). Applicant opined that Counsel McKnight is a "great attorney." (December 6, 2010 Mot. Tr. p. 10 lines 21-23). After hearing all arguments, Judge James relieved Counsel McKnight and ordered Applicant be appointed another attorney. Applicant was then appointed Counsel Anderson. Counsel Anderson filed a motion to

be relieved. A hearing was held on June 22, 2011, in front of the Honorable Howard P. King. Judge King. In support of his motion to be relieved, Counsel Anderson noted that Applicant had filed complaints with the office of disciplinary counsel, Applicant questioned his motives and relationship with the State's attorney, and Applicant stated that he would no longer talk to him. (June 22, 2011, Mot. Tr. p. 8 line 21—p. 9 line 23). Judge King noted that Applicant's letter dated February 9, 2011 was one of the most "vilest, worst letters" he had ever read from a client to an attorney. (June 22, 2011, Mot. Tr. p. 19 lines 18-22). Applicant stated that he did "not trust attorney Anderson" and believed that he was not in his best interest. (June 22, 2011 Mot. Tr. p. 31 lines 17-20). At the conclusion of the hearing, Judge King advised Applicant that he was going to require Counsel Anderson to continue to represent him. However, Judge King advised Applicant that if he continued to disrespect Counsel Anderson then he would waive his right to counsel and be required to proceed pro-se or retain private counsel. (June 22, 2011 Mot. Tr. p. 40 line 19---p. 41 line 16). Following the hearing, Counsel Anderson submitted a second motion to be relieved citing various letters from Applicant. In the letters, Applicant stated "I no longer need your lying assistance. I will now represent myself in my case when the time comes. Now, you can put in the paper work to Judge King or Judge James, I don't give a damn!" (September 14, 2011, Order p. 6). Judge King issued an order dated September 14, 2011, relieving Counsel Anderson, advising Applicant to retain counsel within 15 days, and noting that the case is set for date certain on October 17, 2011.

Fifth, there is no indication that Applicant was attempting to delay or manipulate the proceedings. On the contrary, he continuously attempted to have his case dismissed based off of a speedy trial violation. It is clear that Applicant wanted his case brought to trial as quickly as possible.

Sixth, the record is clear that Applicant knew to comply with procedural rules and had at least some familiarity with the rules. Applicant made several motions, legal arguments, cross examined several witnesses, and objected to the prosecutor's questions. During a pre-trial conference, Applicant claimed that the State had violated Rule 5 and Brady. The Court engaged in lengthy colloquy regarding whether the State had complied with Brady and Rule 5. Furthermore Applicant requested a list of the State's witnesses and the juror list prior to trial. (December 12, 2011, Mot. Tr. p. 52 lines 21-22). Applicant continually requested documents or arguments be noted for the record for an Appeal. (December 12, 2011, Mot. Tr. p. 4 lines 6-19; Tr. t. p. 48 lines 6-14)

Seventh, the record reveals Applicant knew of the legal challenges he could raise in his defense to the charges against him. During a pre-trial conference he stated to the judge that he had a list of witnesses that he needed to contact. (December 12, 2011, Mot. Tr. p. 55 lines 1-4). Applicant provided their names and information to the court in an effort to subpoena them for trial. (December 12, 2011, Mot. Tr. p. 55 lines 5—p. 56 line 22). The court specifically noted that it had "provided reasonable assistance for [Applicant] to get witnesses for his defense. (December 12, 2011, Mot. Tr. p. 56 lines 23-24). Applicant provided the court with various documents that he intended to introduce at trial. Applicant further requested copies of Investigator's Brown, Investigator Wayne McFadden and Investigator Lambert's infractions or complaints. (Tr. p. 41 lines 4-8).

Eighth, the exchange between Applicant and the court did not consist of merely pro forma questions. To the contrary, the Applicant was advised by several different courts about the right to counsel and the dangers of proceeding pro-se. Specifically, the Judge James advised Applicant in December 6, 2010, that he cannot continue to "play this game of being dissatisfied

with things going exactly as you want and provoking a change in lawyer. It's not going to happen again." (Dec. 6, 2010, Mot. Tr. p. 11 line 25—p. 12 line 3). Judge James further advised Applicant that "you're presumed innocent, you're entitled to a fair trial but you have to examine your own attitude and conduct and I'm beginning to see a pattern. You've had two excellent attorneys represent you....your attitude is that if somebody doesn't do exactly what you think out to be done they're engaged in a conspiracy." (Dec. 6, 2010, Mot. Tr. p. 20 lines 13-21). On June 22, 2011, Judge King advised Applicant that you do not get your choice of appointed counsel. (June 22, 2011, Mot. Tr. p. 10 lines 14-17). Judge King advised Applicant that Counsel Anderson was a highly respected and well thought of criminal defense attorney and that Applicant was not an attorney. (June 22, 2011, Mot. Tr. p. 11 lines 7-9; p. 32 lines 10-12). Judge King further advised Applicant that Counsel Anderson knows "what is appropriate to do... he has the judgement and the training to do those things that are appropriate to be done, not you Mr. McCrea. You have admitted to me that you are not an attorney." (June 22, 2011, Mot. Tr. p. 32 lines 5-10). Judge King advised Applicant that if he relived Counsel Anderson, the court will not and is not going to appoint a new lawyer. (June 22, 2011, Mot. Tr. p. 35 lines 1-7). Judge King further advised Applicant that he could either retain counsel or appear pro-se if he wanted to relieve Counsel Anderson. (June 22, 2011, Mot. Tr. p. 35 line 4-8). Applicant initially advised Judge King that he wanted to relieve Counsel Anderson and proceed pro-se. (June 22, 2011, Mot. Tr. p. 35 lines 2-8). However, after asking several times, Applicant chose to proceed to trial with Counsel Anderson. (June 22, 2011, Mot. Tr. p.40 lines 13-15). Judge King advised Applicant that if he did not treat Counsel Anderson with respect, then he would sign an order relieving Counsel Anderson and requiring Applicant to proceed pro-se. (June 22, 2011, Mot. Tr. p. 40 line 19—p. 41 line 16). Notably, during pre-trial, Applicant informed the trial judge that

Judge King had already advised him the disadvantages of proceeding pro-se. (Tr. p. 34 line 25—p.35 line 9)

Ninth, there was no evidence that Applicant's waiver resulted from coercion or mistreatment. While Applicant claimed that he "forced" to relieve all three attorneys due to their conspiring with the State, Respondent would note that three separate circuit court judges rejected Applicant's claims. Instead, three experienced criminal defense attorneys were relieved due to Applicant's repeatedly abusive, threatening, and coercive behavior towards his various counsels.

Based off of the foregoing, Respondent submits Applicant's had sufficient background to make a knowingly and intelligent waiver of counsel.

b. Applicant was apprised of the dangers of proceeding pro-se by some other source such that the Trial Court's failure to make a specific inquiry addressing the disadvantages of a pro-se defense is cured.

Respondent submits Applicant was advised of the dangers of proceeding pro-se through his various hearings on his counsels' motions to be relieved. Specifically, Judge James advised Applicant in December 6, 2010, that he cannot continue to "play this game of being dissatisfied with things going exactly as you want and provoking a change in lawyer. It's not going to happen again." (Dec. 6, 2010, Mot. Tr. p. 11 line 25—p. 12 line 3). Judge James further advised Applicant that "you're presumed innocent, you're entitled to a fair trial but you have to examine your own attitude and conduct and I'm beginning to see a pattern. You've had two excellent attorneys represent you....your attitude is that if somebody doesn't do exactly what you think out to be done they're engaged in a conspiracy." (Dec. 6, 2010, Mot. Tr. p. 20 lines 13-21).

On June 22, 2011, Judge King advised Applicant that you do not get your choice of appointed counsel. (June 22, 2011, Mot. Tr. p. 10 lines 14-17). Judge King advised Applicant that Counsel Anderson was a highly respected and well thought of criminal defense attorney and

that Applicant was not an attorney. (June 22, 2011, Mot. Tr. p. 11 lines 7-9; p. 32 lines 10-12). Judge King further advised Applicant that Counsel Anderson knows “what is appropriate to do... he has the judgement and the training to do those things that are appropriate to be done, not you Mr. McCrea. You have admitted to me that you are not an attorney.” (June 22, 2011, Mot. Tr. p. 32 lines 5-10). Judge King advised Applicant that if he relived Counsel Anderson, the court will not and is not going to appoint a new lawyer. (June 22, 2011, Mot. Tr. p. 35 lines 1-7). Judge King further advised Applicant that he could either retain counsel or appear pro-se if he wanted to relieve Counsel Anderson. (June 22, 2011, Mot. Tr. p. 35 line 4-8).

Applicant initially advised Judge King that he wanted to relieve Counsel Anderson and proceed pro-se. (June 22, 2011, Mot. Tr. p. 35 lines 2-8). However, after asking several times, Applicant chose to proceed to trial with Counsel Anderson. (June 22, 2011, Mot. Tr. p. 40 lines 13-15). Judge King advised Applicant that if he did not treat Counsel Anderson with respect, then he would sign an order relieving Counsel Anderson and requiring Applicant to proceed pro-se. (June 22, 2011, Mot. Tr. p. 40 line 19—p. 41 line 16). Notably, during pre-trial, Applicant informed the trial judge that Judge King had already advised him the disadvantages of proceeding pro-se. (Tr. p. 34 line 25—p. 35 line 9).

Based off of the foregoing, Respondent submits that Applicant was sufficiently advised of the dangers of proceeding pro-se such that the Trial Court’s failure to make a specific inquiry addressing the disadvantages of a pro-se defendant is cured.

CONCLUSION

Based off of the foregoing, Respondent submits that there is genuine issue of material fact that necessitates an evidentiary hearing. Respondent therefore requests that Applicant’s

motion for summary judgment be denied and this case be set for an evidentiary hearing on the next available Third Circuit PCR roster.

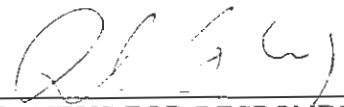
Respectfully submitted,

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By: 
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July 12, 2015.

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

IN THE COURT OF COMMON PLEAS

2012-CP-45-0363

LEVERN MCCREA, #348291,

Applicant,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

AFFIDAVIT OF SERVICE BY MAIL

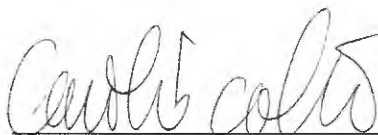
CLERK OF COURT
KINGSLEE, S.C.

2015 JUL 15 PM 12:24

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

Lance S. Boozer, Esquire
The Boozer Law Firm, LLC
807 Gervais Street, Suite 203
Columbia, South Carolina 29201

DATED this 13th day of July, 2015.



Caroline Collins, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF WILLIAMSBURG	)	FOR THE THIRD JUDICIAL CIRCUIT
	)	
Levern McCrea, #348291,	)	2012-CP-45-363
	)	
Applicant,	)	
	)	MEMO IN SUPPORT OF MOTION
v.	)	FOR SUMMARY JUDGMENT
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed July 9, 2012. The State made its Return on September 4, 2013. The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Williamsburg County Clerk of Court. The Applicant was true bill indicted at the September 2008 term of the Williamsburg County Grand Jury for Murder, Possession of a Weapon During a Crime and Misprision of a Felony (2010-GS-45-135). Applicant proceeded *pro se* at trial and was convicted of Murder and Possession of a Weapon During a Crime. On October 20, 2011, the Honorable Jeffery Young sentenced Applicant to life in prison.

Applicant subsequently attempted to file an appeal, however, the *pro se* appeal was dismissed for failure to serve the Notice of Appeal on opposing counsel.

Applicant then filed a PCR application. Applicant, through prior appointed counsel, filed a Motion for Summary Judgment regarding his PCR application and his claim that he was not advised of the dangers of *pro se* representation and that he was denied his right to counsel at his trial. This brief follows.

TIMELINE

June 2010 - Attorney Charles Barr relieved (Upon information and belief, no transcript is available.)

December 6, 2010 - Attorney Cezar McKnight's Motion to Be Relieved granted by the Honorable George C. James, Jr. (Transcript available and part of record)

June 22, 2011 - Attorney Henry Anderson's Motion to Be Relieved denied by the Honorable Howard P. King (Transcript available and part of PCR record)

August 30, 2011 - Bond Hearing held before the Honorable R. Ferrell Cothran (Transcript available and part of PCR record)

September 12, 2011 - Attorney Henry Anderson relieved as counsel by Judge King. Upon information and belief, no hearing was held. Applicant was ordered to retain private counsel within fifteen (15) days or proceed *pro se*.

October 12, 2011 - Pre-trial hearing held before the Honorable Clifton Newman. Applicant appeared *pro se*. (Transcript available and part of PCR record)

October 17 - 21, 2011 - Jury trial held before the Honorable W. Jeffrey Young. Applicant appeared *pro se*. (Transcript available and part of PCR record)

CASE LAW AND ARGUMENT

- A. There are no material issues of fact whether the Applicant was advised of his right to counsel, warned of the dangers of pro se representation and ultimately denied the assistance of counsel at trial.**

"The Sixth and Fourteenth Amendments of our Constitution guarantee that a person brought to trial in any state or federal court must be afforded the right to the assistance of counsel before he can be validly convicted and punished by imprisonment." Faretta v. California, 422

U.S. 806, 807, 95 S.Ct. 2525 2527, 45 L.Ed.2d 562, 566 (1975); accord Gideon v. Wainwright, 372 U.S. 335, 339-40, 83 S.Ct. 792, 794, 9 L.Ed.2d 799, 802-03 (1963). Moreover, an indigent criminal defendant may request the court to appoint an attorney to represent him. Gideon, 372 U.S. at 344, 83 S.Ct. at 796-97, 9 L.Ed.2d at 802; see Scott v. Illinois, 440 U.S. 367, 367, 99 S.Ct. 1158 1159, 59 L.Ed.2d 383, 389 (1979) ("The Sixth and Fourteenth Amendments require that no indigent criminal defendant be sentenced to a term of imprisonment unless the State has afforded him the right to assistance of appointed counsel in his defense ...").

"Of all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive for it affects his ability to assert any other rights he may have." United States v. Cronin, 466 U.S. 648, 654, 104 S.Ct. 2039 2044, 80 L.Ed.2d 657, 664 (1984). The erroneous deprivation of a defendant's fundamental right to the assistance of counsel is per se reversible error. State v. Boykin, 324 S.C. 552, 555, 478 S.E.2d 689, 690 (Ct.App.1996) (citing Chapman v. California, 386 U.S. 18, 23 n. 8, 87 S.Ct. 824, 828 n. 8, 17 L.Ed.2d 705 (1967)). "Actual or constructive denial of the assistance of counsel altogether is legally presumed to result in prejudice." McKnight v. State, 320 S.C. 356, 358, 465 S.E.2d 352, 353 (1995) (quoting Strickland v. Washington, 466 U.S. 668, 692, 104 S.Ct. 2052 2067, 80 L.Ed.2d 674, 696 (1984)).

A defendant may waive his Sixth Amendment right to counsel. A waiver is an intentional and voluntary relinquishment of a known right. United States v. Goldberg, 67 F.3d 1092, 1099 (3d Cir.1995); Maxwell v. Genez, 350 S.C. 563, 571, 567 S.E.2d 496, 500 (Ct.App.2002). The courts indulge every reasonable presumption against waiver of fundamental constitutional rights, and do not presume acquiescence in the loss of fundamental rights. Johnson v. Zerbst, 304 U.S.

458, 464, 58 S.Ct. 1019 1023, 82 L.Ed. 1461, 1466 (1938); Pitts v. North Carolina, 395 F.2d 182, 188 (4th Cir.1968).

1. Waiver by Affirmative, Verbal Request

Waiver is most commonly understood as an affirmative, verbal request. United States v. Goldberg, 67 F.3d 1092, 1099 (3d Cir.1995); State v. Boykin, 324 S.C. 552, 556, 478 S.E.2d 689, 690 (Ct.App.1996). To effectuate a valid waiver of the right to counsel, the two-pronged Faretta test must be met in which the accused is (1) advised of his right to counsel and (2) adequately warned of the dangers of self-representation. Prince v. State, 301 S.C. 422, 423-24, 392 S.E.2d 462, 463 (1990) (citing Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975)). The trial judge must determine whether there is a knowing and intelligent waiver by the defendant. State v. Dixon, 269 S.C. 107, 236 S.E.2d 419 (1977) (citing Johnson v. Zerbst, 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938)). If the trial judge fails to address the disadvantages of appearing pro se, as required by the second prong of Faretta, "this Court will look to the record to determine whether petitioner had sufficient background or was apprised of his rights by some other source." Prince, 301 S.C. at 424, 392 S.E.2d at 463; accord Wroten v. State, 301 S.C. 293, 294, 391 S.E.2d 575, 576 (1990). While a specific inquiry by the trial judge expressly addressing the disadvantages of a pro se defense is preferred, the ultimate test is not the trial judge's advice but rather the defendant's understanding. Gardner v. State, 351 S.C. 407, 411-12, 570 S.E.2d 184, 186 (2002); Wroten, 301 S.C. at 294, 391 S.E.2d at 576. If the record demonstrates the defendant's decision to represent himself was made with an understanding of the risks of self-representation, the requirements of a voluntary waiver will be satisfied. *Id.*

Absent a specific inquiry by the trial court into the hazards of proceeding *pro se*, a court will examine the record to determine whether the accused was advised of his rights from some other source or had sufficient background to intelligently waive his right to counsel. Gardner, 351 S.C. at 413. Determining if an accused has a sufficient background to understand the dangers of self-representation, courts consider many factors including: (1) the accused's age, educational background, and physical and mental health; (2) whether the accused was previously involved in criminal trials; (3) whether the accused knew the nature of the charge(s) and of the possible penalties; (4) whether the accused was represented by counsel before trial and whether that attorney explained to him the dangers of self-representation; (5) whether the accused was attempting to delay or manipulate the proceedings; (6) whether the court appointed stand-by counsel; (7) whether the accused knew he would be required to comply with the rules of procedure at trial; (8) whether the accused knew of legal challenges he could raise in defense to the charge(s) against him; (9) whether the exchange between the accused and the court consisted merely of pro forma answers to pro forma questions; and (10) whether the accused's waiver resulted from either coercion or mistreatment. State v. Cash, 309 S.C. 40, 43, 419 S.E.2d 811, 813 (Ct.App.1992) (citations omitted); see also State v. McLauren, 349 S.C. 448, 563 S.E.2d 346 (Ct.App.2002).

Applicant respectfully submits he did not waive his right to counsel. Even assuming, *arguendo*, that Applicant's letter to former counsel,¹ Mr. Anderson, acted as an affirmative waiver which Applicant contends it did not, all of the transcripts available and referenced in the timeline above unequivocally reveal Applicant was neither advised of his right to counsel nor

¹ Please see letter from Applicant to Mr. Anderson dated August 29, 2011, and attached to Judge King's Order dated September 12, 2011.

adequately warned of the dangers of self-representation. More importantly, no colloquy ever occurred between the trial court either at the pre-trial hearing or the actual trial into whether the Applicant desired to have counsel present or knew of the risks of *pro se* representation.

Also, Applicant's case differs greatly from Cash and McLauren where the courts found defendants affirmatively waived their rights to counsel. In Cash, the defendant actually asserted his right to self-representation. State v. Cash, 419 S.E.2d 811 at 812. The defendant had six (6) years of college. Id. at 813. The defendant had been in the court system since he was a juvenile and had even appeared *pro se* to argue his Petition for Writ of Habeas Corpus three (3) months before his trial. Id. More importantly, the defendant was provided with standby counsel who actually sat with the defendant throughout trial and suggested motions and questions to the defendant. Id. at 814. Finally, the trial judge conducted an inquiry into the defendant's age, background and legal experience before allowing him to proceed *pro se*. Id. at 815.

Likewise, the defendant in McLauren affirmatively elected to represent himself at trial. State v. McLauren, 349 S.C. 448 at 492. The defendant actually held himself out to be a lawyer and signed documents and filings "esq." Id. at 491. Accordingly, the defendant was facing charges on the unauthorized practice of law. Id. The trial court repeatedly questioned the defendant's desire to represent himself and that he had attorneys on standby to represent him. Id. at 492. The defendant repeatedly declined the court's offer and made it clear he wanted to represent himself. Id. Finally, and most importantly, an attorney from the public defender's office was appointed standby counsel and sat with the defendant throughout the duration of his trial and even answered questions from the court. Id. at 495-496.

Unlike the defendants in Cash and McLauren, Applicant never affirmatively waived counsel before any judge. Additionally, Applicant had only an eighth grade education. Upon information and belief, Applicant only had one prior conviction and had never represented himself. The trial court never questioned the Applicant's desire to proceed *pro se* or inquired into his background. Finally, and most importantly, Applicant was not afforded the assistance of standby counsel in his five (5) day trial.

Accordingly, no issue of material fact exists whether the Applicant waived his right to counsel by affirmative, verbal request and was never warned of the dangers of self-representation.

2. Waiver by Conduct

A defendant may waive his right to counsel through his conduct. United States v. Goldberg, 67 F.3d 1092, 1100 (3d Cir.1995); State v. Jacobs, 271 S.C. 126, 128, 245 S.E.2d 606, 608 (1978); State v. Boykin, 324 S.C. 552, 556, 478 S.E.2d 689, 690 (Ct.App.1996). Most courts have held that the defendant must first be warned that his misconduct will thereafter be treated as a waiver. Boykin, 324 S.C. at 556, 478 S.E.2d at 691. "[T]o the extent that the defendant's actions are examined under the doctrine of 'waiver,' there can be no valid waiver of the Sixth Amendment right to counsel unless the defendant also receives Faretta warnings." Goldberg, 67 F.3d at 1100. Any subsequent misconduct will be treated as a "waiver by conduct." Boykin, 324 S.C. at 556, 478 S.E.2d at 690.

Applicant respectfully submits there is no genuine issue of material fact whether Applicant waived his right to counsel through conduct. First, Applicant's conduct did not amount to misconduct. Secondly, even assuming that Judge King gave the Applicant a choice of

proceeding *pro se* or continuing with Mr. Anderson as counsel at the hearing on June 22, 2011, a review of the hearing transcript reveals Applicant never received the appropriate Faretta warnings. The hearing transcript actually reflects that Judge King indicated if Mr. Anderson were ever relieved, Mr. Anderson would standby to advise the Applicant of the procedural issues at his trial.² The record reflects the Applicant was never even afforded this limited assistance of counsel at trial.³

Accordingly, no issue of material fact exists whether the Applicant waived his right to counsel by conduct, and, if even his conduct amounted to a waiver, he was never warned of the dangers of self-representation in accordance with Faretta.

B. Forfeiture

Some courts recognize forfeiture as a means to waive the Sixth Amendment right to counsel. A defendant can forfeit his right to counsel irrespective of his knowledge of either the consequences of his actions or the dangers of self-representation. United States v. Goldberg, 67 F.3d 1092, 1100 (3d. Cir.1995). "[B]ecause of the drastic nature of the sanction, forfeiture would appear to require extremely dilatory conduct. On the other hand, a 'waiver by conduct' could be based on conduct less severe than that sufficient to warrant a forfeiture." Id. at 1101. Situations where a defendant's own conduct forfeits his right to counsel are unusual, typically involving a manipulative or disruptive defendant. State v. Coleman, 253 Wis.2d 693, 644 N.W.2d 283, 288 (Ct.App.2002).

² At the hearing on June 22, 2011, Judge King stated "He's a capable lawyer. He is going to do what is required. And if you don't treat him with respect, I want Mr. Anderson to advise me; in which case I will relieve him without a motion. And require you to appear *pro se*, and have him stand by just to advise you with procedure in the courtroom." Trans. p. 41, ll. 9 - 15.

³ Judge King's Order dated September 12, 2011, relieving Mr. Anderson as counsel gave Applicant fifteen (15) days to retain private counsel or proceed *pro se*.

The Eleventh Circuit Court of Appeals in United States v. McLeod identified methods in which a defendant could forfeit counsel:

The Sixth Amendment right to counsel, for example, may be forfeited by a defendant's failure to retain counsel within a reasonable time, even if this forfeiture causes the defendant to proceed *pro se*. See Fowler, 605 F.2d at 183. Additionally, a defendant who misbehaves in the courtroom may forfeit his constitutional right to be present at trial. See e.g., Illinois v. Allen, 397 U.S. 337, 90 S.Ct. 1057, 25 L.Ed.2d 353 (1970); Foster v. Wainwright, 686 F.2d 1382, 1388-89 (11th Cir.1982), cert. denied 459 U.S. 1213, 103 S.Ct. 1209, 75 L.Ed.2d 449 (1983). A defendant who causes a witness to be unavailable for trial forfeits his right to confrontation. See United States v. Thevis, 665 F.2d 616, 630 (5th Cir. Unit B 1982), cert. denied, 459 U.S. 825, 103 S.Ct. 57, 74 L.Ed.2d 61 (1982). A defendant who escapes from custody during his trial waives his Sixth Amendment rights to be present and to confront witnesses during the trial. See Golden v. Newsome, 755 F.2d 1478, 1481 (11th Cir.1985). By analogy, we conclude that under certain circumstances, a defendant who is abusive toward his attorney may forfeit his right to counsel.⁵³ F.3d 322, 325 (11th Cir.1995) (footnotes omitted).

McLeod had verbally abused and threatened to harm counsel in a telephone conversation, at least four times had threatened to sue him, and had attempted to persuade counsel to engage in unethical conduct. Id. at 325. His behavior was "repeatedly abusive, threatening, and coercive." Id. at 326. Consequently, McLeod forfeited his right to counsel. Although the court was "troubled by the fact that McLeod was not warned that his misbehavior might lead to *pro se* representation," the court stated, "we cannot say that the district judge erred by concluding that McLeod had forfeited this right to counsel." Id. at 326.

The South Carolina Court of Appeals has examined instances of misconduct by a defendant directed at counsel. State v. Boykin, 324 S.C. 552, 478 S.E.2d 689 (Ct.App.1996). Boykin verbally abused and physically threatened defense counsel. Id. at 690. Boykin's counsel alleged the defendant cursed him and physically approached him, requiring a prison guard to intervene. Id. The judge granted the request of counsel to be relieved. Id. at 689-90. The

judge warned the defendant that it would not appoint another attorney but would allow an attorney to sit with the defendant at trial to advise him on procedural issues. Id. The judge further stated “...I conclude that you have waived your right to a trial- -to an attorney. I will not permit any defendant to abuse that attorney.” Id. The defendant was subsequently convicted at trial. Id.

On appeal, the court found that the record reflected the defendant was neither warned of the consequences of his actions, nor of dangers inherent in self-representation. Id. at 692. The court further found that because waiver implies the intentional relinquishment of a known right, defendant could not have waived his right to counsel, either expressly or by his conduct. Id. The court then employed a forfeiture analysis. Id. The court noted that only two courts have held a defendant’s conduct serious enough to warrant a forfeiture. The court analyzed Mcleod, discussed in detail above, and United States v. Jennings, 855 F.Supp. 1427 (M.D.Pa. 1994), afford 61 F.3d 897 (3d Cir. 1995). In Jennings, the defendant punched his attorney, then threatened the life of the Assistant United States Attorney, corrections officers and his former counsel. Id. at 1432-1433. The court found that the defendant’s conduct was so “extreme and outrageous” as to warrant forfeiture Id. at 1433.

Ultimately, the Boykin court found that the defendant’s actions were not so severe as to permanently deprive him of counsel. Boykin, 478 S.E.2d 689 at 692. The court noted that the trial judge was justified in relieving counsel, however, substitute counsel should have been appointed. Id. The court reversed and remanded the case for a new trial. Id.

Similar to the defendant in Boykin, Applicant was never warned of the dangers of self-representation. Furthermore, the defendant in Boykin attempted to physically intimidate and

threaten counsel in addition to verbally abusing him. The Applicant has never once attempted to physically assault, intimidate or threaten his counsel prior to trial. Applicant did make the choice to voice his displeasure through letters to counsel and testimony during hearings, however, Applicant's actions cannot be categorized as so "extreme and outrageous" as to result in the forfeiture of counsel. Accordingly, Applicant respectfully requests that his Motion for Summary Judgment be granted and that he receive a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "L.S. Boozer", is written over a horizontal line.

Attorney for Applicant

Lance S. Boozer

807 Gervais Street, Ste. 203

Columbia, SC 29201

Ph: 803-608-5543

Fax: 803-926-3463

THE BOOZER LAW FIRM, LLC

November 10, 2015

Columbia, South Carolina.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF WILLIAMSBURG) FOR THE THIRD JUDICIAL CIRCUIT

Levern McCrea #348291,) Case No. 2012-CP-45-00363

Applicant,)

vs.)

State of South Carolina,)

Respondent.)

ORDER

FILED
2016 FEB -8 AM 10:51
SHARON L. McNEEL
CLERK OF COURT
KINGSTREE, S.C.

On November 18, 2015, this Court heard the following motions from the Applicant: a motion for default judgment, a Rule 5 motion, a request for transcripts and a motion for summary judgment. After carefully considering the Applicant's motions, the State's response, and the parties' arguments I deny the Applicant's motion for default judgment and summary judgment, and I grant the Rule 5 motion as modified and transcript requests.

I. Motion for Default Judgment

The Applicant argues that this Court should enter a default judgment against the State because it did not file a return within thirty days of his filing an application for post-conviction relief. The procedure for post-conviction relief is provided by the Uniform Post-Conviction Procedure Act, S.C. Code Ann. §§ 17-27-10 to -120 (the Act). The South Carolina Rules of Civil Procedure apply only to the extent they are not inconsistent with the Act. See Rule 71.1(a), SCRPC.

Pursuant to § 17-27-70(a), the State shall respond "[w]ithin thirty days after the docketing of the application, or within any further time the court may fix." As our Supreme Court found in

1063 JAG

Guinyard v. State, "[t]his section specifically grants to the trial court authority to extend the time for the filing of any pleading. Compliance with the thirty day time limit prescribed by the statute is, therefore, not mandatory, ..., but discretionary with the trial court." 260 S.C. 220, 225, 195 S.E.2d 392, 394 (1973). I find, in my discretion, that the State's response is timely.

II. Rule 5 Motion and Transcript Requests

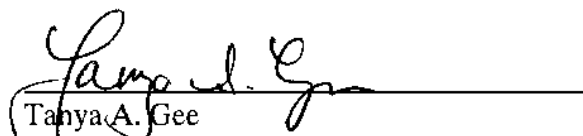
Next, Applicant seeks Rule 5 material from the State, and the State consents to this motion. This Court orders that the Williamsburg County Solicitor's office provide counsel for the Applicant a complete copy of his Rule 5 materials. However, some items Applicant seeks are not subject to Rule 5 disclosure. Specifically, Applicant seeks an order requiring his previous PCR counsel, Charles Brooks, to provide him with a copy of the abusive letters Mr. Brooks claimed to have received from the Applicant, which the State referenced in their memorandum in opposition to Applicant's motion for summary judgment. Applicant argues that he is entitled to a copy of these letters if the State intends to use them against him in his underlying PCR. The State consents to providing any copies of these letters it may have to counsel for the Applicant. If there are additional letters not in the possession of the State, these letters are not subject to Rule 5 disclosure as they deal with a collateral matter between Applicant's previous PCR counsel and Applicant. Accordingly, Applicant must attempt to retrieve these letters through some other means.

Applicant further requests that he receive a copy of prior PCR hearing transcripts dated October 2, 2014; April 14, 2015; July 13, 2015; and, of the hearing related to this Order held November 18, 2015. This Court grants Applicant's requests and further orders that the State order the requested transcripts and provide a copy to counsel for the Applicant.

III. Motion for Summary Judgment

Finally, the Applicant moves for summary judgment, arguing that all the evidence from the record establishes, as a matter of law, that he did not knowingly and intelligently waive his right to the assistance of counsel. *See* S.C. Code Ann. § 17-27-70(c). Although I agree there is no evidence in the record that a judge apprised the Applicant of the dangers of self-representation, a defendant may surrender his right to counsel absent a specific colloquy with the judge addressing the disadvantages of a pro-se defense. *See Bridwell v. State*, 306 S.C. 518, 413 S.E.2d 30 (1992) (explaining that, in the absence of a specific inquiry by the trial judge addressing the disadvantages of self-representation, the appellate court will look to the record to determine whether the defendant had sufficient background or was apprised of his rights by some other source); *State v. Thompson*, 355 S.C. 255, 262, 584 S.E.2d 131, 134 (Ct. App. 2003) (finding that "a defendant may surrender his right to counsel through (1) waiver by affirmative, verbal request; (2) waiver by conduct; and (3) forfeiture").

I find that issues of material fact exist regarding whether the Applicant had a sufficient background to understand the dangers of self-representation or was apprised of his rights by some other source. I also find that issues of material fact exist with regard to whether the Applicant forfeited his right to counsel based on his behavior. Accordingly, the Applicant's motion for summary judgment is denied.


Tanya A. Gee
Circuit Court Judge

Columbia, South Carolina

February 4, 2016

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

Levern McCrea, #348291,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
C/A NO: 2012-CP-45-363

**MOTION CHALLENGING ACCURACY
OF TRANSCRIPT AND REQUEST FOR
AUDIO RECORDING**

By Order dated February 4, 2016, Applicant was granted various transcripts of prior proceedings. On June 17, 2016, undersigned counsel received the transcripts and delivered the same to Applicant. Applicant believes the transcript of hearing held on April 14, 2015, before the Honorable George C. James, Jr., in Sumter County and in this case, is not an accurate transcription of the hearing and believes there are errors/omissions in the records. Pursuant to Rule 607, SCACR, Applicant respectfully challenges the accuracy of the transcript. Applicant further requests that this Court order that the court reporter deliver to both Applicant and the State a copy of the audio recording of the hearing held on April 14, 2015, and that no tapes be reused or destroyed. Pursuant to Rule 11, SCRCP, counsel for the Applicant has conferred with counsel for the State who objects to Applicant's request.

[Signature Block Follows]

THE BOOZER LAW FIRM, LLC



Lance S. Boozer

Attorney for Applicant

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Phone: (803) 608-5543

June 23, 2016

Columbia, South Carolina

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August 16, 2016

Margaret T. Sullivan, Court Reporter
504 Henderson Street
Sumter, SC 29150

RE: Levern McCrea, #348291 v. State of South Carolina
2012-CP-45-363

Dear Ms. Sullivan:

I represent Mr. McCrea in his above-referenced PCR case. As you are aware, Mr. McCrea recently filed a Motion challenging the accuracy of a transcript made by you on April 14, 2015, before the Honorable George C. James, Jr. Following a hearing on the Motion, the Honorable Jocelyn Newman requested that I provide directly to you what exactly my client is challenging in the transcript. As I was not Mr. McCrea's attorney on April 14, 2015, I have no first-hand knowledge of what was said at the hearing. For the sake of thoroughness in challenging the transcript, I have requested that Mr. McCrea provide to me for delivery to you the exact items he contends are errors, omissions and inaccuracies in the transcript. I have enclosed a copy of his challenges for your review. Upon receipt and per her Honor's instructions, it appears that you are then to review the audio recording of the hearing and report your findings to us. Following your report, should my client continue to have concerns and with the showing of good cause, a hearing for review of the audio recording will be scheduled before Judge Newman. Should you have any questions or concerns, please do not hesitate to contact me.

Yours very truly,


Lance S. Boozer

cc: Julie Coleman, AAG (w/enclosure)
Levern McCrea, #348291 (w/enclosure)

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August 18, 2016

The Honorable Sharon W. Staggers
Clerk of Court
125 W Main St.
Kingstree, SC 29556

RE: Levern McCrea, #348291 v. State of South Carolina
2012-CP-45-363

Dear Madam Clerk:

I represent Mr. McCrea in the above-referenced action. Enclosed for filing, please find communications made to Madam Court Reporter Margaret Sullivan as it relates to a pending Motion to Challenge a Transcript on behalf of Mr. McCrea. The same has been sent under separate cover to both Ms. Sullivan and Ms. Coleman.

Should you have any questions or concerns, please do not hesitate to contact me. I appreciate your assistance in this matter.

Yours very truly,

Lance S. Boozer

cc: Julie Coleman, AAG

Mr. LEVERN McCrea

#348291 F-5-D-139

LEE Correctional Institution

990 Wisceley Highway

Bishopville, S.C. 29010

August 11, 2016 ⁷⁸⁵

Your Honor, This is what Occurred:

On April 14, 2015, I was here at the Sumter County Court House, in front of Judge James Pro-se. Who then Appointed Attorney Lance Boozer to represent me in my Post-Conviction Hearing.

After Judge James Appointed Attorney Boozer, I then tried to Explain to Judge James, that during October 2, 2014 hearing. That Judge Clifton Newman, had granted and instructed, Solicitory Kimberly Barr and Assistant Attorney General, Daniel Gourley, to give me my RULE-5 Brady Motion.

But Mr. Gourley, very rudely cutt me off from addressing the Court by stating on the record and I quote:

"That's not true your Honor, I called and spoke with Judge Newman personally and he told me that he DENIED that motion". IN QUOTE

Your Honor. That's the statement that's missing from page 9 at NO: 8 to 20.

Right after Mr. Gourley made that statement on the record. Then I said to the Court: "That's not true"

Then Judge James said to me: "Do not interrupt."

Immediately after, the Assistant Attorney General committed perjury;

I begin looking for my Order that Judge Newman had signed in my paper work. ONCE I found that Order, I requested to address the Court, by handing the officer the order to give to Judge James. ONCE Judge James received the order, he begin to read it on the record, there after.

But Judge James. Neglected to address the blatten lie that Mr. Gourley just told, ON the record, only to protect his colleagues. CONSCIENCE wrong doing... The ONLY way for me to prove my claim, is for the Court to hear the tape of April 14, 2015 hearing. And will see by the record, that someone instructed the court reporter, Margaret T. Sullivan to alter that transcripts.

I am also requesting the Court to review pg. 9 at numbers 3 to 7 where Judge James committed Judicial Misconduct and misrepresented the truth. Which is clear by the record, that he lied to Deny me my right to Due Process of Law. 14th Amendment. Because two other Judges already granted my request for my Rule-5 Brady Motion.

I am also requesting the Court to review pg. 10 at NO: 9 to 12 of April 14, 2015 hearing. Where the Court asked Solicitor Kimberly Berr, if she was aware of Judge Newman, instructing herself and Mr. Gortley to give me my Rule-5 Brady motion, and she lied.

I am also requesting the court to review pg. 10 at NO: 13 to 17. Where the court asked Solicitor Leimbecky Barr. if she given me *ALL* RULE-5 Brady discovery *Prior* to trial and she Lied again.. WHEN does it STOP!!

I have Attached the records of transcripts to prove that misconduct, perjury and fraud on the court, has been Committed before and during my whole case.

I've Attached:

1. October 2, 2014 Hearing Transcripts pgs. 6 and 7.
2. Judge Clifton Newmans Signed order ^{October} 27, 2014
3. April 14, 2015 Hearing Transcripts, pgs. 8, 9 and 10.
4. October 17, 2011 Trial Transcripts, pgs. 29, 30, 41, 42, 45, 46 and 47.

Your Honor, it is clear under the United States Constitution: When Officers of the Court, whether it be Judges, Attorney Generals, State Solicitors, police investigators, or State Appointed, or retained Attorneys. Who use their instrument of Authority, for the purpose of obstructing, hindering and to tamper with the Administration of Justice, in any Court, in any manner, committing, criminal Activity and fraud on the Court. To illegally Affirm a conviction, in depriving any plaintiff or defendant, any rights guaranteed him, or her, under the United States Constitution.. Penalties and Sanctions shall Lie...

"And for those reasons "Your Honor.""

When the Court hears the tape, or see the revised transcripts from the Court reporter. And see that Everything that I stated to be true;

Then the ONLY remedy to cure this deliberate and intentional obstruction of justice and conspiracy to deny me my right to Due process of Law. Would be to *VACATE* my SENTENCE and conviction with prejudice. And to impose, what EVER sanctions on the perpetrators the Court deems appropriate. BECAUSE Government officials, who participate in UNETHICAL Wrong doing, should NOT get a free pass to protect their colleagues when it's convenient.

Respectfully requesting,
/ Lovell M. Green

1 misconduct allegation; but anything outside of that
2 is essentially moot because he proceeded pro se. He
3 can't claim ineffective assistance for a PCR.

4 THE COURT: This is a PCR against himself?

5 MR. GOURLEY: Not technically, Your Honor.

6 MR. BROOKS: We wouldn't put it in that
7 term, Judge, 'cause obviously you can allege issues
8 such as prosecutorial misconduct, but that's why we
9 think it's important to get a copy of the
10 solicitor's file and have an investigator to hash
11 out these issues and these issues for Mr. McCrae.
12 He only gets one bite at the apple. We just think
13 it's very prudent considering the seriousness of
14 what he was convicted of and he's been sentenced to
15 be able to obviously explore that and be prepared
16 for his post-conviction relief application hearing.

17 THE COURT: Now the — I guess, ultimately
18 it was a pro se at trial, but there are other
19 counsel involved prior to trial I would think?

20 MR. GOURLEY: Multiple, Your Honor.

21 THE COURT: Multiple counsel. So the
22 court will grant the order to the extent of
23 permitting discovery of rule, of prior counsel's
24 file and Rule 5 materials from the State to the
25 extent it was not turned over by prior counsel. And

1 the court will authorize investigative fees up to
2 one thousand dollars.

3 MR. BROOKS: Okay. I think I submitted --
4 did I submit for 25?

5 THE COURT: Did you have an amount in
6 there?

7 MR. GOURLEY: I don't have a copy of your
8 --

9 THE COURT: You have an amount in there?

10 MR. BROOKS: I did ask for like 2500.
11 That's usually custom. I usually use Glen Harold
12 who's a pretty good investigator, former deputy and
13 --

14 THE COURT: We'll authorize it up to 1500.
15 You can seek further approval if necessary.

16 MR. BROOKS: Thank you, Judge.

17 THE PETITIONER: Your Honor, if I may.

18 THE COURT: Yes, sir.

19 PETITIONER MOCRAE: I appreciate it.

20 Thank you.

21 THE COURT: Yes, sir.

22

23 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

24

25

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF WILLIAMSBURG)

CASE NO.: 2012-CP-45-0363

Levern McCrea, 348291)

Applicant)

vs)

ORDER FOR FUNDING

State of South Carolina)

Defendant)

) This matter comes before me on a Motion from the Applicant, by and through his undersigned attorney, requesting that the services of an expert to investigative and related services. The Applicant further requests that the funds be approved to compensate the expert at an estimated rate of One thousand five hundred (\$1500.00) dollars out of funds available to the Office of Indigent Defense (OID) to be applied toward payment of such expenses as may be necessarily incurred.

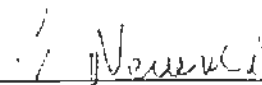
Mr. Brooks seeks approval to contract for experts in investigation, which he believes is necessary to the preparation of this case.

As grounds for this motion, the Applicant submits the following, which he believes to be based upon information and belief:

1. That Charles T. Brooks, III, was properly appointed by this Court on June 28, 2013.
2. That the Applicant went to trial and was found guilty of Murder, Possession of a Weapon during a Crime, and Misprison of a Felony.
3. These are serious crimes. However, applicant ^{can} ~~feels~~ ^{believe} that he is in need of funds to secure an expert to examine the evidence in order to present his case properly in his Post Conviction Relief Hearing.

IT IS SO ORDERED:

That this Court authorizes the payment of approximately One thousand five hundred (\$1500.00) dollars for the Applicant to contract an expert investigator.



The Honorable Clifton Newman
South Carolina Circuit Court

Date: Oct 27, 2014

1 MR. GOURLEY: Your Honor, if I may have
2 one moment to speak with Ms. Barr.

3 THE COURT: You all can step outside if
4 you would like, or you can sit right there.

5 MR. GOURLEY: Your Honor, if it pleases
6 the court, I don't have any objection to Mr. McCrea
7 having another appointed counsel.

8 THE COURT: I am appointing Mr. Lance
9 Boozer.

10 MR. GOURLEY: Yes, sir.

11 THE COURT: He will be your counsel. I
12 will notify him by order that he has been appointed
13 to represent you. And I expect that you will to
14 fulfill your word to me, that you will deal with him
15 professionally, civilly and as a gentleman.

16 THE PLAINTIFF: I absolutely will, Your
17 Honor.

18 THE COURT: This case is continued until
19 the July 13th term. It will be in front of Judge
20 John, who will be presiding that week.

21 THE PLAINTIFF: Your Honor, I have another
22 issue.

23 THE COURT: Okay.

24 THE PLAINTIFF: This is in reference to
25 Brady. I went to court October 2nd, and the court

* start *

1 granted the investigator, as well as the attorney
2 general to turn over my Rule 5 Brady motion.

3 THE COURT: There is no Rule 5 and Brady (1)
4 in a PCR. If you're talking about what was ordered
5 to be turned over as a matter of force in the
6 underlying criminal matter, that goes without
7 question. Mr. Gourley, can you help me out on that? (2)

8 MR. GOURLEY: Yes, Your Honor. Just for
9 clarification's sake, I received a letter from
10 Mr. McCrea a few weeks ago. Since he was pro se, I
11 sent him everything that I have. Of course Your
12 Honor's knows, I am not in possession of a
13 solicitor's file, nor any material from the
14 solicitor's file. Mr. McCrea outlined that I sent
15 him. So Mr. McCrea has everything that I have, as
16 far as his case is concerned. As far as the order (3)
17 from Judge Newman, Your Honor, I think the public
18 index and my file, there is no order granting an
19 investigator in discovery, so I am not sure where
20 that is coming from. ~~XXXXXXXXXXXXXXXXXXXX~~ (H)

21 THE PLAINTIFF: There is, Your Honor.

22 THE COURT: Don't interrupt. Go ahead,
23 Mr. Gourley.

24 MR. GOURLEY: And I may be mistaken, Your
25 Honor, but I've checked my file. I didn't see

Mr. Gourley said and I quote: That
not true, I called and talked to
Judge Newman personally and
he told me he denied the mo-
tion.

1 anything. And if it was, Your Honor, of course that
2 would have been on Mr. Brooks to retrieve that
3 information, not on me.

4 THE COURT: Mr. McCrea.

5 THE PLAINTIFF: Yes, sir. And, Your
6 Honor. I have the actual order.

7 THE COURT: Please hand it to the officer,
8 and he will hand it to me.

Start * 9 THE COURT: And, Ms. Barr, you are not
10 under oath, but you are an officer of the court.
11 Are you aware of what he's talking about?

12 MS. BARR: I am not, Judge. *stop*

13 THE COURT: I will take a look at the
14 order when he hands it up. Was all Rule 5 and Brady
15 material disclosed to the defense prior to the
16 trial?

17 MS. BARR: It was, Your Honor. *Liar*

18 THE PLAINTIFF: Your Honor, partial.

19 THE COURT: I would like to see the order
20 that you said you have a copy of.

21 THE PLAINTIFF: That's for the
22 investigator. And Judge Newman granted the
23 investigator, as well as, the attorney general's
24 office to turn over Rule 5.

25 THE COURT: Let me take a look at this,

Levern McCrea vs. State of South Carolina

29

1 The Court: All right ladies and gentlemen, you have
2 been selected as our jurors for this case. Now this case
3 is not going to start until tomorrow. I'm going to
4 release you for the afternoon. Please do not discuss
5 this case with anyone. Ladies and gentlemen, all that
6 information will be given to you during the course of the
7 trial as you sit and hear it. Now, ladies and gentlemen,
8 I'm going to release you for the evening. Have a nice
9 day. We will see you back here tomorrow morning at 10:00
10 a.m. Thank you.

11 (Jury excused for today)

12 The Court: All right, I understand there's a number
13 of matters of law that need to be taken care of, why
14 don't we have lunch and we will start right at two
15 o'clock with pre-trial matters.

16 Ms. Barr: Yes sir. Thank you.

17 (Court Lunch Break was taken/Back on the Record)

18 The Court: All right, you ready to proceed?

Start → 19 Ms. Barr: Your Honor, if it please the court? We
20 are back on the record for indictment 2010-GS-45-135 and
21 there are several matters that I would like to address
22 before the court.

23 The Court: All right.

24 Ms. Barr: The first concerns supplemental discovery
Step → 25 that was served on Mr. McCrea. He should have received

Start --> 1

2 this morning a copy of the SLED crime scene report and
3 that's actually dated November 16th of 2009 there were
4 probably about ten Sled reports in the case and I think
5 through an oversight that was not given to him but Judge,
6 I wouldn't think that it would change the defense or come
7 as a surprise to him because there is nothing in there
8 that is exculpatory. So I wanted the record to reflect
9 that he has received that. He's also received ...

10 The Court: You said nothing in it is exculpatory?

11 Ms. Barr: That is correct. Judge, he's also
12 received a latent print Sled report dated October 17,
13 2011 it was faxed to me as some point this afternoon and
14 I've given that to him as well. We had a pretrial
15 conference on last Wednesday and during that time that
16 Sled report had not been done because we just received
17 it. It was about a month or so ago. That's been done
18 and I've given that to him as well.

19 The Court: As soon as you got it, you gave it to
20 him?

21 Ms. Barr: Yes sir.

Stop --> 21

22 The Court: All right.

23 Ms. Barr: Your Honor we were initially served with
24 a Rule 5 request from the defendant's first attorney, Mr.
25 Cezar McKnight, and that was done in, I believe, October
of 2010 and I'll make that response as Court's Exhibit

Levern McCrea vs. State of South Carolina

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1 Ms. Barr: No sir.

Start

2 The Court: Mr. McCrea do you have any motions at
3 this time?

4 Mr. McCrea: Yes sir, Your Honor. I requested
5 copies of Investigator Brown, Wayne McFadden and
6 Investigator Lambert document infractions or complaints
7 against them and or acts of misconduct towards them, Your
8 Honor.

9 The Court: Do they relate to this case?

10 Mr. McCrea: Yes they are testifying to what they
11 discovered in reference to this case.

12 The Court: These were what now?

13 Mr. McCrea: Infractions and misconduct reports.

14 The Court: You're asking for that now?

15 Mr. McCrea: Yes sir.

16 Ms. Barr: Your Honor, I don't know that there's
17 been an infractions or reports. Well, first of all, I
18 don't know if these things even exist but they certainly
19 don't relate to the investigation of this case. So, Your
20 Honor, we would submit to the court that information,
21 should it exist is irrelevant.

22 The Court: Why would it be relevant in this matter
23 and why are you asking for it the day of the trial?

24 Mr. McCrea: Well, Your Honor, I haven't had an
25 opportunity to prevail due the fact that I'm still

Stop

Start — 7 1

2 getting late undisclosed evidence and then all of a
3 sudden I am representing myself pro se.

4 The Court: I understand that but that's because you
5 have relieved three attorneys.

6 Mr. McCrea: Yes and I've entered those exhibits in
7 for a reason to show cause as well.

8 The Court: Does the state know of any records such
9 as that?

10 Ms. Barr: Your Honor, not as it relates to this
11 case. I don't know the witnesses that the defendant
12 talks about but certainly. There was some sort of
13 complaint or something about an officer some time ago,
14 but completely unrelated to this case. To my knowledge
15 there's never been any complaint to this case.

16 The Court: She has nothing concerning the officers
17 of this case. That's where we stand.

Stop — 7

18 Mr. McCrea: Yes sir, that's not what I was asking.
19 Your Honor I object to Mr. Briggs's entire testimony and
20 request, Your Honor, that he was coerced.

21 The Court: Who is Mr. Briggs?

22 Mr. McCrea: He is the alleged witness, Your Honor.

23 The Court: You're welcome to cross examine. That's why
24 we have cross examination.

25 Mr. McCrea: Due to the fact that Mr. Briggs at one
point was asleep. ____

54p

Levern McCrea vs. State of South Carolina

45

1 Mr. McGee: I see him, you know, because I, you
2 know, because I live in Andrews, I'm in and out.

3 The Court: Small town. Would the fact that you might
4 know him make it so that you can't be fair and impartial
5 to the State or the defense in this case?

6 Mr. McGee: I don't know nothing about the case now.

7 The Court: But you think you could be fair to the
8 State and to the Defendant?

9 Mr. McGee: Right.

10 The Court: Okay, anything further?

11 Ms. Barr: Nothing Your Honor.

12 The Court: Mr. McCrea do you have any questions?

13 Mr. McCrea: Nothing.

14 The Court: Alright thank you, we're going to leave
15 you on the jury. Thank you. Anything further.

Start — 16 Start Ms. Barr: Nothing further in regard to the issue of
17 the jury. Judge I just want to put you on the record that
18 on yesterday I gave the Defendant four photographs of Ms.
19 Roberta Smith's vehicle. Those photographs were taken on
20 Sunday and so I handed them to him on yesterday. In
21 addition Judge, there were two SLED reports from the
22 latent prints department, one that relates to a piece of
23 paper that was found in the yard of the Defendant and
24 that's why we had the Defendant's palm print and I gave
Step — 7 25 that to him on yesterday. Today I also gave him a copy of

Start → 1 the latent prints report from SLED also dated October 17,
2 2011 that relates to the firearm that was recovered in
3 the case and they indicated there was no prints
4 identifiable, but I just handed him that.

5 The Court: There were nothing ...

6 Ms. Barr: Right. So I just handed that to him.
7 Judge in addition, I subpoenaed Roberta Smith to come
8 here from North Carolina; after I subpoenaed her, I
9 issued a second subpoena duces tunc for her to bring any
10 letters that she may have written to the Defendant or the
11 Defendant may have written to her while he was
12 incarcerated. Yesterday, she did in fact bring several
13 letters and I have copied those letters that the
14 defendant wrote to her and I have given them to him.

15 The Court: This was his witness right?

16 Ms. Barr: Yes sir. This was his alibi witness. And
17 Judge if the record would reflect so that it's clear I
18 gave him a copy of a letter that he wrote to her August
19 11, 2010, a letter he wrote to her November 15, 2010, a
20 letter he wrote to her March, I'm sorry, June 20, 2010,
21 May 17, 2010 and February 22, 2011.

22 The Court: Mr. McCrea do you have those documents?

23 Mr. McCrea: Yes I do, Your Honor.

24 The Court: Those were your letters that you sent to
25 her, is that correct?

Lavern McCrea vs. State of South Carolina

47

1 Mr. McCrea: Yes I did Your Honor and well Ms. Barr
2 to write her and ask her and even talk to her again is
3 illegal.

4 The Court: No sir.

5 Mr. McCrea: Why not?

6 The Court: She's a witness. They can talk to her if
7 they want to. A witness is a witness, not for the State
8 or defense, it's just a witness.

Start —> 9 Mr. McCrea: Your Honor, the comment on this just
10 like I stated to you yesterday, Your Honor, I've been
11 spoon fed discovery that I should have had years ago and
12 here's one example.

Stop —> 13 The Court: Well, let me ask you. Didn't you just
14 tell them last week that you were going to call her as a
15 alibi witness?

16 Mr. McCrea: Right.

17 The Court: Wait a minute, let me ask her a question.
18 Is that correct?

19 Mr. McCrea: Yes.

20 The Court: So they didn't know she was an alibi
21 witness until last week?

22 Mr. McCrea: Well, no they had knowledge of her long
23 before then. My point is this, Your Honor, speaking in
24 reference to this report here dated October 17th and I'm
25 just now receiving this stating that she's just now

1 receiving this. I don't believe that at all, Your Honor.
2 This is one of the indictment done long ago, so we had
3 these prints back long before ...

4 The Court: Tell me how you're prejudiced by a SLED
5 report that says there's no prints?

6 Mr. McCrea: No, I'm not, what I'm saying was due to
7 the fact that she's been spoon feeding me, that's
8 exculpatory to me, that's my point, Your Honor. Also, I
9 have another issue. What took place in reference to, I'd
10 like to have this on the record for the appeal. Yesterday
11 you allowed them to change the date on an indictment for
12 their case because she, she, declare oversight on the
13 victim's death. I don't understand that part, Your
14 Honor.

15 The Court: Sir, you're not prejudiced because of the
16 fact that the discovery that they gave you well over a
17 year ago was clear on the dates that they were claiming
18 that the murder might have taken place, so they're not,
19 you weren't prejudiced by that. It was, it was a
20 technicality that did not effect you.

21 Mr. McCrea: On who's part?

22 The Court: It's on their part.

23 Mr. McCrea: Well yes, and that's a defective
24 indictment, Your Honor.

25 The Court: No sir.

THE BOOZER LAW FIRM, LLC

Lance S. Boozer, Esq.*

*Also admitted in Florida

807 Gervais Street, Suite 203
Columbia, SC 29201

Telephone: 803-608-5543
Fax: 803-926-3463

Email: lsb@boozerlawfirm.com
Website: www.boozerlawfirm.com

September 1, 2016

VIA EMAIL

The Honorable Jocelyn Newman
Post Office Box 192
Columbia, SC 29202-0192

**RE: Levern McCrea, #348291 v. State of South Carolina
2012-CP-45-363**

Dear Judge Newman:

As your Honor is aware, I represent Mr. McCrea in the above-captioned PCR matter. Following a hearing challenging a transcript before your Honor on July 28, 2016, we were instructed to notify madam court reporter, Margaret Sullivan, of my client's exact challenge to the transcript she previously transcribed from a hearing on April 14, 2015. Ms. Sullivan responded to my request on August 18, 2016. A copy of Ms. Sullivan's response is attached to this correspondence. As you can see, Ms. Sullivan indicates that following a review of the audio tape, she did not find any major changes and noted there was a minor change on the wording of one of my client's in court statements. I have since provided my client with Ms. Sullivan's response. He is in adamant disagreement with her response and believes there still remains an omission of testimony specifically in regard to statements allegedly made by the Assistant Attorney General. At this time, my client believes he has demonstrated good cause to request a review of the audio tape before your Honor per the Court's previous instructions. My client has further requested that an independent expert review the audio tape and transcription to determine if any portions of the recording have been altered.

Please consider this letter my client's request for a review of the hearing audio tape before your Honor as well as an independent expert to review the audio recording. I certainly appreciate your Honor's time and consideration. Please do not hesitate to contact me should you have any questions.

Yours very truly,



Lance S. Boozer

cc: Julie Coleman, AAG (via email)
Levern McCrea, #348291 (via U.S. Mail)
Clerk of Court (via U.S. Mail)

August 18, 2016

THE BOOZER LAW FIRM, LLC
Lance S. Boozer, Esq.
807 Gervais Street, Suite 203
Columbia, S.C. 29201

2016 SEP -6 PM 12:33
CLERK OF COURT
KIMBERLY E. S.C.

Dear Lance,

I received your packet on Mr. Levern McCrea. I took the PCR Continuance Hearing on 4-14-15. I checked the pages you sent 8-10 and there were no major changes. Page 9, line 21. The Plaintiff said, Yeah, there is, Your Honor. The hearing on October 2, 2014 was taken by Frances Ray. And Melissa Singletary typed the trial on October 17, 2011.

Sincerely,



Margaret T. Sullivan,
Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

FILED

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
NO: 2012-CP-45-363

2016 OCT 26

PM 4:58

Levern McCrea, #348291,

CLERK OF COURT
WILLIAMSBURG, S.C.

Applicant,

v.

State of South Carolina,

Respondent.

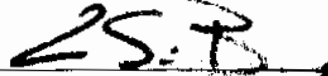
**MOTION TO ENFORCE PRIOR ORDER
AND MOTION FOR PRODUCTION OF
DOCUMENTS**

By Order dated February 6, 2016, the Honorable Tanya A. Gee granted in part Applicant's request that the Solicitor's office provide to him a complete copy of his Rule 5 materials from his prior criminal case. Although the Order was signed February 6, 2016, neither party received notice of the Order until June 2016. Subsequently undersigned counsel notified the Solicitor's office of the Order and requested the Rule 5 materials. To date, the materials have not been provided. The Applicant, at his request, respectfully moves for the Court to hold a hearing and order that the Solicitor's office comply with Judge Gee's prior Order and deliver to the Applicant a copy of the Rule 5 materials.

Additionally, Applicant seeks any and all grand jury impanelment documents as it relates to indictment 2010-GS-45-0135. Evans v. State, 363 S.C. 495, 611 S.E.2d 510 (2005). Applicant respectfully requests that the Court order the Williamsburg County Clerk of Court to provide to him all grand jury impanelment documents related to the term of court dated July 8, 2010, and indictment 2010-GS-45-0135. Pursuant to Rule 11, SCRCP, counsel for the Applicant has

conferred with counsel for the State who objects to Applicant's request regarding the impanelment documents

THE BOOZER LAW FIRM, LLC



Lance S. Boozer

Attorney for Applicant

807 Gervais Street, Suite 203

Columbia, SC 29201

Phone: (803) 608-5543

October 21, 2016
Columbia, South Carolina

CERTIFICATE OF SERVICE

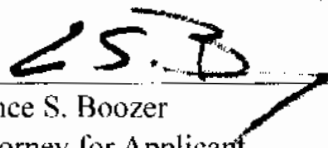
I, the undersigned of the Boozer Law Firm, LLC, Attorney for Applicant, do hereby certify that I served the foregoing Motion upon the persons below-listed by placing a copy, postage prepaid, in the United States Mail, addressed as follows:

Julie Coleman
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211

Kimberly V. Barr
Assistant Solicitor
125 West Main Street
Kingstree, SC 29556

FILED
2016 OCT 26 PM 4:51
CLERK OF COURT
COLUMBIA, S.C.

THE BOOZER LAW FIRM, LLC



Lance S. Boozer
Attorney for Applicant
807 Gervais Street, Suite 203
Columbia, SC 29201
Phone: (803) 608-5543
Fax: (803) 926-3463

Columbia, South Carolina
October 21, 2016

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRD JUDICIAL CIRCUIT
COUNTY OF WILLIAMSBURG	)	C/A NO: 2012-CP-45-363
	)	
Levern McCrea, #348291,	)	
	)	
Applicant,	)	
	)	ORDER
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

FILED
2016 DEC -7 PM 12:17
CLERK OF COURT
SUMTER COUNTY, SC

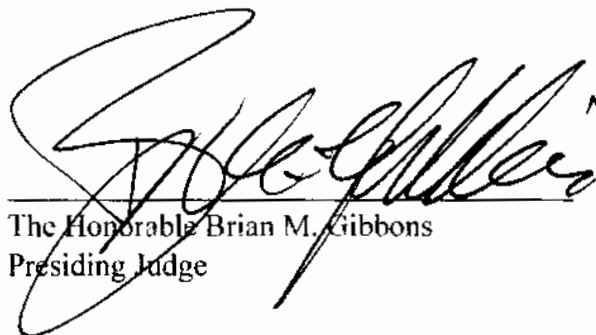
This matter comes before the Court by way of Applicant's "Motion to Enforce Prior Order and Motion for Production of Documents" dated October 21, 2016. A hearing into these matters was held on November 9, 2016, at the Sumter County Courthouse. Applicant was present at the hearing and represented by Lance S. Boozer, Esq. Assistant Attorney General Julie Coleman appeared on behalf the State.

By Order dated February 6, 2016, the Honorable Tanya A. Gee granted in part Applicant's request that the Solicitor's office provide to him a complete copy of his Rule 5 materials from his prior criminal case. Counsel for the Applicant indicated that although the Order was signed February 6, 2016, neither party received notice of the Order until June 2016. Counsel further stated he subsequently notified the Solicitor's office and Assistant Solicitor Kimberly Barr of the Order and requested the Rule 5 materials on multiple occasions. Counsel indicated he has not yet received the materials and requested that this Court enforce Judge Gee's Order. This Court finds that the Solicitor's office and Assistant Solicitor Barr are in violation of Judge Gee's Order. This Court orders that the Solicitor's office and/or Assistant Solicitor Barr are to deliver to

Applicant through Applicant's counsel by December 9, 2016, a complete copy of the Applicant's initial Rule 5 materials as previously ordered by Judge Gee. At the hearing into this Motion, Applicant requested to address the Court. Applicant requested that this Court impose sanctions against Assistant Solicitor Barr for failing to comply with Judge Gee's prior Order. Although this Court agrees that sanctions may be appropriate, Assistant Solicitor Barr was not present for purposes of this hearing. Accordingly, this Court orders that a sanctions hearing be held at the next term of PCR court to determine whether sanctions should be imposed for failure to comply with Judge Gee's Order.

Additionally, Applicant requested any and all grand jury impanelment documents as it relates to indictment 2010-GS-45-0135. Evans v. State, 363 S.C. 495, 611 S.E.2d 510 (2005). The State opposed this request. This Court finds the Applicant is entitled to these grand jury materials and orders that the State, through the Attorney General's office, provide these items to counsel for the Applicant on or before February 9, 2017.

AND IT IS SO ORDERED.



The Honorable Brian M. Gibbons
Presiding Judge



_____, South Carolina
11/23, 2016

STATE OF SOUTH CAROLINA
COUNTY OF
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-45-363McLearState of SC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the 7th day of Dec, 2016 and a copy mailed first class or placed in the appropriate attorney's box on this 7th day of Dec, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Atty Boozer

ATTORNEY(S) FOR THE PLAINTIFF(S)

Attorney General

ATTORNEY(S) FOR THE DEFENDANT(S)

Shawn W. Stagger

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

Levern McCrea, #348291,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
THRID JUDICIAL CIRCUIT

2012-CP-45-363

**RESPONSE TO ORDER
FOR DISCOVERY**

This matter comes before the Court by way of an application for post-conviction relief filed on July 9, 2012. On December 7, 2016 an order issued by the Honorable Brian M. Gibbons was filed, ordering that the Respondent, the South Carolina Attorney General's Office, provide any and all grand jury impanelment documents relating to indictment 2010-GS-45-0135 to Applicant on or before February 9, 2017.

Respondent has contacted all parties involved in the prosecution of this indictment, including the Williamsburg County Solicitor's Office and the Williamsburg County Clerk of Court, and they have indicated that no such documents exist. See attached correspondence. The Clerk of Court explained that grand jury proceedings are private by their nature, and no records are kept or notes taken. No transcript from the proceeding exists. The only document from the meeting of the grand jury is the resulting true bill indictment.

Therefore, since no such documents exist, Respondent submits that this filing should satisfy its requirements as ordered in the discovery Order filed December 7, 2016.

[signature page to follow]

2017 FEB 10 AM 10:37

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

JULIE A. COLEMAN
Assistant Attorney General

By: Julie A. Coleman
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

February 7, 2017.

Julie Coleman

From: Anderson, Warren <Warren.Anderson@wc.sc.gov>
Sent: Friday, January 27, 2017 4:14 PM
To: lsb@boozerlawfirm.com; Julie Coleman
Cc: Richardson, Sharron
Subject: State v. McCrea- 2010-135
Attachments: 001.tif

Follow Up Flag: Worldox

Lance and Julie,

I spoke with both of you today about discovery in the McCrea case. The photos should be headed Lance's way in Monday's mail. However, the Solicitor's Office does not keep records of the Grand Jury's Proceedings. I spoke with Sharron Richardson at the Clerk of Court and she gave me the attached message. Our office cannot turn over something that is not in our custody and may not exist at all. If there is anything further our office can do to help either of you, don't hesitate to call me. My cell is [REDACTED].

Warren Anderson

Assistant Solicitor
3rd Judicial Circuit Solicitor's Office
Williamsburg County
125 West Main Street
Kingstree, SC 29556

(843) 355-9321 Ext. 7200

From: Cain, Chris
Sent: Friday, January 27, 2017 3:49 PM
To: Anderson, Warren
Subject:

Chris Cain

Assistant Solicitor
3rd Judicial Circuit Solicitor's Office
Williamsburg County
125 West Main Street
Kingstree, SC 29556

Main: (843) 355-9321 Ext. 7200
Ph: (843) 355-9321 Ext. 7203
Fax: (843) 355-1578

To the extent that any of the county grand jury records you are seeking may exist, they would be in the custody of clerk of court and any request for those documents would need to be made to that clerk of court. Please note that grand jury proceedings have historically been held in private and no minutes are maintained or taken when the Grand Jury is deliberating or voting. The only documentation that results from these types of grand jury proceedings is an indictment of true bill or no bill. Please see *Anderson v. State*, 338 S.C. 629, 527 S.E.2d 398 (2000) (clerk of court is under no duty to provide a transcript of the proceedings before the county grand jury); *Ex parte McLeod*, 272 S.C. 373, 252 S.E.2d (1979) (In a case involving a county grand jury, the Court stated "the investigation and deliberations of a grand jury should be conducted in secret, and that for most intents and purposes all its proceedings are legally sealed against divulgence" and denied the Attorney General's request to have a court stenographer present during the presentation of evidence to the grand jury based on this rule of secrecy.).

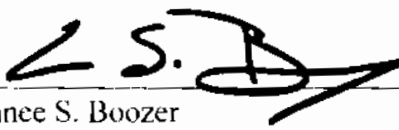
As to the terms of the circuit court, information regarding the terms of the circuit court back to 2002 are available on the South Carolina Judicial Department Website at www.sccourts.org/calendar/scmapimg.cfm.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRD JUDICIAL CIRCUIT
COUNTY OF WILLIAMSBURG	)	C/A NO: 2012-CP-45-363
	)	
Levern McCrea, #348291,	)	
	)	
Applicant,	)	
	)	PCR APPLICATION AMENDMENT
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Applicant, at his request and through appointed counsel below, makes the following additional claims and amendments to his prior application for post-conviction relief:

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) "That July 12, 2009 to July 8, 2010 indictment is flawed. It has been rubber stamped. State v. Rector, 158 S.C. 212, 155 S.E. 385."

THE BOOZER LAW FIRM, LLC


 Lance S. Boozer
 Attorney for Applicant
 1400 Laurel Street, Suite 4A
 Columbia, SC 29201
 Phone: (803) 608-5543

Columbia, South Carolina
 May 3, 2017

2017 MAY -5 AM 10:36

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRD JUDICIAL CIRCUIT
COUNTY OF WILLIAMSBURG	)	C/A NO: 2012-CP-45-363
	)	
Levern McCrea, #348291,	)	
	)	
Applicant,	)	
	)	CERTIFICATE OF SERVICE
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

I, the undersigned of the Boozer Law Firm, LLC, Attorney for Applicant, do hereby certify that I served the foregoing Amendment upon the persons below-listed by placing a copy, postage prepaid, in the United States Mail, addressed as follows:

Julie Coleman
 Assistant Attorney General
 P.O. Box 11549
 Columbia, SC 29211

2017 MAY -5 AM 10:26

THE BOOZER LAW FIRM, LLC


 Lance S. Boozer
 Attorney for Applicant
 1400 Laurel Street, Suite 4A
 Columbia, SC 29201
 Phone: (803) 608-5543
 Fax: (803) 926-3463

Columbia, South Carolina
 May 3, 2017

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012CP450363

Levern McCrea

The State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____ This matter is continued.

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge



Judge Code 2161

Date

3-28-18

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Clerk of Court

FILED

4-6-2018
Williamsburg County
Clerk of Court
Kingstree SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF WILLIAMSBURG	)	FOR THE THIRD JUDICIAL CIRCUIT
	)	
Levem McCrea, #348291,	)	Case No. 2012-CP-45-0363
	)	
Applicant,	)	PRE-HEARING BRIEF IN
	)	OPPOSITION TO
v.	)	POST-CONVICTION RELIEF
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	—)	

This matter is before this Court by way of an Application for Post-Conviction Relief filed July 9, 2012. Applicant claims that he did not knowingly and intelligently waive his right to the assistance of counsel, in accordance with Faretta vs. California, 422 U.S. 806, 95 S.Ct. 2525 (1975).

PROCEDURAL HISTORY

The September 2008 Williamsburg County Grand Jury true bill indicted Applicant for murder, possession of a weapon during a crime, and misprision of a felony (2010-GS-45-135). Applicant originally retained Charles Barr, Esquire to represent him on the charges. The Applicant eventually fired Mr. Barr due to irreconcilable differences. The court appointed Cezar McKnight, Esquire, to represent him. Mr. McKnight filed a motion to be relieved as counsel on November 24, 2010. A hearing was held on December 6, 2010, in front of the Honorable George C. James, Jr. After hearing from both Mr. McKnight and Applicant, the court relieved Mr. McKnight and appointed Hank Anderson, Esquire. Mr. Anderson filed a motion to be relieved as counsel, citing irreconcilable differences. A hearing was held on June 22, 2011, in front of the Honorable Howard P. King. Judge King denied the motion to be relieved after

hearing from Mr. Anderson, Applicant, and Assistant Solicitor, Kimberly Barr. Judge King advised Applicant that if he continued his course of conduct then he would have no choice but to relieve Mr. Anderson and require Applicant proceed pro-se. Shortly thereafter, Applicant wrote Mr. Anderson various letters stating that Mr. Anderson was lying, would not represent him properly, and explaining that he wanted Mr. Anderson relieved and he would represent himself. By Order filed September 14, 2011, Judge King relived Mr. Anderson. The Court noted that Applicant was "very difficult if not impossible to deal with, not only as a client but as an individual. He has been abusive, vile, and profane to Anderson as evidenced by letters dated February 9, 2011 and May 17, 2011." Applicant proceeded pro-se at trial and was convicted of murder and possession of a weapon during a crime. The Honorable W. Jeffrey Young sentenced Applicant to life in prison for murder and five year term of imprisonment for the weapons charge.

ARGUMENT

I. Applicant forfeited his Sixth Amendment right to counsel due to his continued irreprehensible behavior towards his three separate defense counsels.

Applicant argues that he did not knowingly and intelligibly waive his right to counsel. Respondent's submits that Applicant's continuous egregious conduct towards his three attorneys amounted to a forfeiture of his Sixth Amendment right to counsel.

"It is well-established that an accused may waive the right to counsel and proceed pro se." State v. Brewer, 328 S.C. 117, 119, 492 S.E.2d 97, 98 (1997) (citing, inter alia, Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975) and State v. Dixon, 269 S.C. 107, 236 S.E.2d 419 (1977)). "Although a defendant's decision to proceed *pro se* may be to the defendant's own detriment, it 'must be honored out of that respect for the individual which is the

lifeblood of the law.' " *Id.* (quoting Faretta, 422 U.S. at 834, 95 S.Ct. at 2541). Furthermore, "a defendant may surrender his right to counsel through (1) waiver by affirmative, verbal request; (2) waiver by conduct; and (3) forfeiture." *State v. Thompson*, 355 S.C. 255, 262, 584 S.E.2d 131, 134 (Ct.App.2003).

A defendant can forfeit his right to counsel irrespective of his knowledge of either the consequences of his actions or the dangers of self-representation. *United States v. Goldberg*, 67 F.3d 1092, 1100 (3d. Cir.1995). Forfeiture results in the loss of the right regardless of the defendant's knowledge of either the consequences of his actions or the dangers of self-representation. *Id.* Situations where a defendant's own conduct forfeits his right to counsel are unusual, typically involving a manipulative or disruptive defendant. *State v. Coleman*, 253 Wis.2d 693, 644 N.W.2d 283, 288 (Ct.App.2002).

In *State v. Boykin*, the South Carolina Court of Appeals found Boykin's single act of verbal abuse and physical threat towards his defense counsel while at the detention center was not sufficient conduct to constitute forfeiture. *State v. Boykin*, 324 S.C 552, 478 S.E.2d 689 (Ct. App 1996). The court distinguished *United States v. McLeod*, 53 F.3d 322, 325 (11th Cir.1995) and *United States v. Jennings*, 855 F.Supp. 1427 (M.D.Pa.1994), *aff'd* 61 F.3d 897 (3d Cir.1995) finding that both McLeod and Jennings involved defendants that exhibited a continuous course of conduct more egregious than the single incident in Boykin.

In *United States v. McLeod*, 53 F.3d 322, 325 (11th Cir.1995), the defendant, after having dismissed his first attorney, had verbally abused and threatened to harm his second attorney. He had also "threatened, on at least four occasions, to sue [his attorney], and had attempted to persuade him to engage in unethical conduct in connection with the case." *Id.* The Eleventh Circuit Court of Appeals found that McLeod's behavior was repeatedly abusive,

threatening and coercive. *Id.* at 326. Although the court was "troubled by the fact that McLeod was not warned that his misbehavior might lead to pro se representation," the court stated, "we cannot say that the district judge erred by concluding that McLeod had forfeited this right to counsel." *Id.* at 326.

In United States v. Jennings, 855 F.Supp. 1427 (M.D.Pa.1994), *aff'd* 61 F.3d 897 (3d Cir.1995), the defendant was charged with assaulting a corrections officer with a deadly weapon while imprisoned in Lewisburg, Pennsylvania. *Id.* at 1430. After the judge denied his motion for appointment of new counsel, Jennings punched his attorney, who fell to the floor of the courtroom. *Id.* at 1432-33. Six marshals were required to restrain him. *Id.* at 1433. Thereafter, Jennings threatened the life of the Assistant United States Attorney, corrections officers and his former counsel. *Id.* While the court found Jennings "waived" his right to counsel by his actions, the court actually employed a forfeiture analysis, since Jennings was not warned of the consequences of his actions. The court stated, "We are aware that deeming the right to counsel as waived by the conduct of a defendant is an extreme sanction. However, the conduct of Jennings in this instance was extreme and outrageous." *Id.* at 1444.

The courts have found forfeiture when the defendant's conduct does not rise to a level of physical violence. See *Bultron v. State*, 897 A.2d 758, 766 (Del.2006) ("Violence is not the *sine qua non* of extremely serious misconduct."). In Bultron, the defendant had directed "continuing profanity and insulting conduct" at his counsel. *Id.* Deferring to the trial court's findings "that Bultron's behavior fell just short of violence and was intended to force [counsel] to withdraw," the court upheld a finding of forfeiture. *Id.*

The Third Circuit, in *US v. Thomas*, found that a defendant may forfeit his right to counsel if his behavior is sufficiently egregious. US v. Thomas, 357 F.3d 357 (3d Cir. 2004). In

Thomas, the defendant was verbally abusive to his appointed counsel, refused to cooperate with him, and tried to force him to file meritless claims. *Id.* at 363. In Thomas, the finding of forfeiture depended, in part, on the defendant's unworkable relationship with multiple attorneys. *Id.* "Perhaps most critically, Thomas engaged in this sort of misconduct not once, but in relationships with four attorneys." *Id.*

Similar to Thomas, Applicant engaged in his egregious behavior through three attorneys. Applicant's first attorney, Charles Barr, Esquire, was retained on April 5, 2010, (June 22, 2011 Mot. Tr. p. 13 lines 2-5). Applicant accused Charles Barr of intentionally ignoring his letters and phone calls for nine and a half weeks. (June 22, 2011 Mot. Tr. p. 13 lines 6-9). Applicant stated Charles Barr asked his name and information two minutes prior to appearing before a judge on May 14, 2010. (June 22, 2011 Mot. Tr. p. 13 lines 9-14). Applicant stated Charles Barr had nothing to refute the "lies and inflated charges" against him. (June 22, 2011 Mot. Tr. p. 14 lines 2-4). Applicant accused Charles Barr of conspiring with the State's attorney's office Ms. Kimberly Barr. (June 22, 2011 Mot. Tr. p. 14 lines 5-6). When pressed by the court for evidence of Charles Barr's conspiracy with the State, Applicant merely cited to his lack of communication for nine and a half weeks. (June 22, 2011 Mot. Tr. p. 14 lines 11-16). Applicant stated that he was forced to fire Charles Barr at the start of his preliminary hearing, because of "ineffective assistance of counsel." (June 22, 2011 Mot. Tr. p. 15 lines 6-9).

Applicant's second attorney, Cezar McKnight was appointed by the court in July 2010. (December 6, 2010 Mot. Tr. p. 3 line 25-p. 4 line 1). Counsel McKnight filed a motion to be relieved due to an acrimonious relationship with Applicant. (December 6, 2010 Mot. Tr. p. 3 lines 15-18). Counsel McKnight stated Applicant recently wrote him a letter in which he told Counsel McKnight "to go to hell." (December 6, 2010 Mot. Tr. p. 4 lines 16-18). Counsel

McKnight stated Applicant continuously accused him of an active conspiracy with Ms. Kimberly Barr. (December 6, 2010 Mot. Tr. p. 4 lines 20-22). Counsel McKnight stated Applicant accused him of trying to "railroad him." (December 6, 2010 Mot. Tr. p. 4 lines 21-22). Counsel McKnight referenced a letter dated October 20, 2010, in which Applicant used various profane language and accused Counsel McKnight of "basically BS." (December 6, 2010 Mot. Tr. p. 4 line 23-p. 5 line 1). Counsel McKnight stated that he could "not work in a situation where someone greets [him] with profanity." (December 6, 2010 Mot. Tr. p. 5 lines 19-20). Counsel McKnight further stated that he had a fear of being accosted by the Applicant when he would visit him at the detention center. (December 6, 2010 Mot. Tr. p. 5 lines 22-25). Counsel McKnight further noted that Applicant had filed grievances with the office of disciplinary committee. (December 6, 2010 Mot. Tr. p. 16 lines 17-19). Counsel McKnight stated that he had continually written Applicant explaining "why we can't do what it is he wants us to do." (December 6, 2010 Mot. Tr. p. 5 lines 7-11).

In response and in front of the court, Applicant stated that he had the upmost respect for Counsel McKnight and originally requested Counsel McKnight to be appointed to his case. (December 6, 2010 Mot. Tr. p. 10 line 21-p. 22 line 2). Applicant acknowledged that he may have gone "a little overboard in addressing attorney McKnight." (December 6, 2010 Mot. Tr. p. 11 lines 8-9). However, Applicant accused Counsel McKnight of lying to him about filing various motions. (December 6, 2010 Mot. Tr. p. 9 lines 6-8). Applicant then accused Counsel McKnight of conspiring with the State. (December 6, 200 Mot. Tr. p. 17 lines 19-21).

The court noted that Applicant claimed that both his prior attorneys were "conspiring with the state." (December 6, 2010 Mot. Tr. p. 17 lines 19-21). During the course of the hearing, Applicant continuously interrupted the court, prompting a warning that he would be

held in contempt of court. (December 6, 2010 Mot. Tr. p. 14 line 2-4). The court further stated that "the record show that [Applicant], all he chooses to do is when anybody else is talking including me, is to sit there and smirk and shake his head." (December 6, 2010 Mot. Tr. p. 14 lines 6-9). The court warned Applicant that he needed to examine his own attitude and conduct. (December 6, 2010 Mot. Tr. p. 20 lines 14-16). The court noted that a pattern was beginning to develop. (December 6, 2010 Mot. Tr. p. 20 lines 14-16). The court further found that Applicant's attitude "is that if somebody doesn't do exactly what you think ought to be done they're engaged in a conspiracy and they're not, and they're not doing their job." (December 6, 2010 Mot. Tr. p. 20 lines 18-21). Ultimately the court relieved counsel McKnight and appointed a third attorney.

Applicant's third attorney, Hank Anderson, Esquire, filed a motion to be relieved due to an acrimonious relationship. Counsel Anderson stated that he was appointed to represent Applicant in December 2010 and he had done everything Applicant had requested him to do. (June 22, 2011 Mot. Tr. p. 8 lines 8-16). Counsel Anderson stated that he had probably talked to Applicant's girlfriend and family in excess of twenty five times. (June 22, 2011 Mot. Tr. p. 8 lines 16-20). Counsel Anderson stated that Applicant filed a complaint to the office of disciplinary counsel in February 2011. (June 22, 2011 Mot. Tr. p. 8 lines 21-25). Counsel Anderson stated he received multiple letters from Applicant questioning his motives and relationship with the State's attorney. (June 22, 2011 Mot. Tr. p. 9 lines 14-19.) Counsel Anderson stated Applicant requested that he relieve himself from the case, did not want anything else to do with him, and forbade him from talking to his girlfriend or family. (June 22, 2011 Mot. Tr. p. 9 lines 19-22). Counsel Anderson stated that "it's hard enough in these cases when you have got someone helping you. But when you have got someone who is pulling against you

and questioning everything you do and fussing at you and cussing at you, it just makes the job a lot harder." (June 22, 2011 Mot. Tr. p. 10 lines 3-8).

During the hearing, Applicant stated that they were present at the motion hearing due to the "ineffectiveness and lies that [he] has to deal with." (June 22, 2011 Mot. Tr. p. 23 lines 7-10). Applicant accused Counsel Anderson of deliberately lying to him on the very first day they met. (June 22, 2011 Mot. Tr. p. 18 lines 13-16). Applicant stated that "he read through the lies and many letters that Mr. Anderson have sent to me like I am stupid or something. Lies that I'm constantly lying to me like this is some shoplifting charge. (June 22, 2011 Mot. Tr. p. 18 lines 20-24). Applicant stated Counsel Anderson had his case since December 19, 2010 and had sent "dozens of letters, lies from the time on until the first week of May" 2011. (June 22, 2011 Mot. Tr. p. 19 lines 13-16). Applicant concluded that "he does not trust attorney Anderson. [Applicant] honestly believe[d] that [Counsel Anderson] [was] not in [his] best interest." (June 22, 2011 Mot. Tr. p. 31 lines 17-19). Applicant stated that he ha[d] given Counsel Anderson a list of twenty things and he ha[d] not done one thing off of the list. (June 22, 2011 Mot. Tr. p. 32 lines 3-4).

The court noted that they were present at the motion hearing because of Applicant's disrespect for his counsel by the type of letters that he continuously writes. (June 22, 2011 Mot. Tr. p. 23 lines 11-14). The court noted Applicant's letter dated February 9, 2011, sent to Counsel Anderson by Applicant was the most "vilest, worst letters I have ever read from a client to an attorney." (June 22, 2011 Mot. Tr. p. 19 lines 20-22). The court noted that it was approximately a ten page letter "calling [Counsel Anderson] all kind of vile names and everything else." (June 22, 2011 Mot. Tr. p. 20 lines 1-4). When questioned by the court as to why he would send such a horrible letters to Counsel Anderson, Applicant merely responded that he was upset because of

all the lies perpetrated. (June 22, 2011 Mot. Tr. p. 20 lines 11-20). The court noted that Applicant was going through attorneys like a "hot knife through butter." (June 22, 2011 Mot. Tr. p. 29 lines 18-20). The court further noted that Applicant continually asked Counsel Anderson to do inappropriate things. (June 22, 2011 Mot. Tr. p. 32 lines 13-22). Towards the conclusion of the hearing, the court warned Applicant that he was going to be held in contempt of court for his incessant remarks. (June 22, 2011 Mot. Tr. p. 40 lines 3-5). At the conclusion of the hearing, Applicant stated that he would keep Counsel Anderson. The court warned Applicant that if he continued his disrespectful behavior, then Counsel Anderson would be relieved. (June 22, 2011 Mot. Tr. p. 40 line 19-p. 41 line 17). In its order filed August 2, 2011, the court noted that "it was clear from [Applicant's] rambling presentation to the court that he wanted to control every aspect of Anderson's representation and that he expected Anderson to do his bidding and follow his directions regardless of whether the request were appropriate, reasonable, or proper. (Order filed Aug. 11, 2011 p. 2).

Approximately one month after the hearing, Counsel Anderson submitted a second motion to be relieved on September 1, 2011. In his cover letter, Counsel Anderson advised the court that he had met with Applicant nine separate times, obtained various documents, and subpoenaed various witnesses for trial since the June 22, 2011 hearing. (Order filed Sept. 11, 2014, p. 3). Counsel Anderson advised the court that Applicant, despite the court's previous warning, continued to send vile letters. *Id.* Counsel Anderson noted that Applicant was accusing him of deliberately betraying him for a third time. *Id.* Counsel Anderson further stated Applicant told him that he no longer needed his lying assistance and that he needed to file a motion to be relieved. (Order filed Sept. 11, 2014, p. 6). In his letter, Applicant stated that he would represent himself and he did not "give a damn." *Id.* Based off Counsel Anderson's

motion and Applicant's letter, the court relieved Counsel Anderson by order filed September 11, 2014. In its Order the court noted Applicant:

has been very difficult if not impossible to deal with, not only as a client but as an individual. He has been abusive, vile, and profane to Anderson as evidenced by the letters dated Feb. 9, 2011 and May 17, 2011, which the court reviewed prior to the earlier hearing. Not only has he been uncivil and rude, and in general very obnoxious as an individual, he has been unruly and overbearing as a client who refuses to accept the advice and recommendations of his attorney and thinks he knows more about the law and the way the case should be handled than a knowledgeable, experienced criminal defense attorney.

(Order filed Sept. 11, 2014, p. 1). The Court further noted that Applicant's behavior and attitude had not improved, despite the court's prior warning. *Id.* at 1-2. The court ultimately relieved Counsel Anderson and advised Applicant that he had fifteen days to retain an attorney or proceed *pro-se*. *Id.*

Unlike Boykin, it is clear that Applicant's conduct was a continuous pattern of disrespectful behavior that continued to grow even more reprehensible over the course of time. Respondent notes that Applicant accused each of his three attorneys of conspiring with the State's attorney. Yet Applicant failed to provide any credible evidence of such a conspiracy. Applicant continuously wrote various letters to each counsel using profane and vile language. One such letter prompted a circuit court judge to remark that it was the most "vilest, worst letters [the court] ha[d] ever read from a client to an attorney." (June 22, 2011 Mot. Tr. p. 19 lines 20-22). Applicant's second attorney, Counsel McKnight was in fear of being physically assaulted by Applicant during visitation. (December 6, 2010 Mot. Tr. p. 5 lines 22-25). Applicant filed grievances with the office of disciplinary committee on at least two of his three attorneys. Additionally, Applicant showed a blatant disrespect to the court over the course of multiple hearings. Notably, Applicant was threatened with contempt of court by two different circuit

court judges.

Applicant's behavior towards his three counsels was repeatedly abusive, threatening, and coercive. It is clear by Applicant's letters, admissions during the various motion hearings, counsels' statements, and the court's remarks that Applicant was an uncivil, rude, obnoxious person, who refused to heed the advice of three experienced criminal defense attorneys. Based off of the foregoing, Applicant's continuous and repeated egregious behavior amounts to a forfeiture of his sixth amendment right to counsel.

II Applicant waived his Sixth Amendment right counsel via conduct.

If this Court finds that Applicant's continuous and repeated egregious behavior did not amount to forfeiture, then Respondent submits that Applicant waived his Sixth Amendment right to counsel via conduct.

A defendant may waive his right to counsel through his conduct. Goldberg, 67 F.3d at 1100. Once a defendant has been warned that his misconduct will thereafter be treated as a waiver of his right to counsel, any subsequent misconduct is treated as a "waiver by conduct." *Id* Most courts have held there can be no "waiver by conduct" unless the defendant is first warned of the consequences of his actions. State v. Boykin, 324 S.C. 552, 556, 478 S.E.2d 689, 690 (Ct. App. 1996). "[T]o the extent that the defendant's actions are examined under the doctrine of 'waiver,' there can be no valid waiver of the Sixth Amendment right to counsel unless the defendant also receives Faretta warnings." *Goldberg*, 67 F.3d at 1100.

To establish a valid waiver of counsel, Faretta requires the accused be: (1) advised of his right to counsel; and (2) adequately warned of the dangers of self-representation. *Bridwell v. State*, 306 S.C. 518, 413 S.E.2d 30 (1992); *Prince v. State*, 301 S.C. 422, 392 S.E.2d 462 (1990); see also Wroten v. State, 301 S.C. 293, 294, 391 S.E.2d 575, 576 (1990) ("Faretta requires that a

defendant 'be made aware of the dangers and disadvantages of self-representation so that the record will establish he knows what he is doing and his choice is made with eyes open.' ") (citation omitted). In the absence of a specific inquiry by the trial judge addressing the disadvantages of a pro se defense as required by the second Faretta prong, the appellate court will look to the record to determine whether petitioner had sufficient background or was apprised of his rights by some other source. *Bridwell*, 306 S.C. at 519, 413 S.E.2d at 31; *Prince v. State*, 301 S.C. at 424, 392 S.E.2d at 463.

- a. Applicant had a sufficient background to make a valid waiver of counsel despite the trial judge's failure to make a specific inquiry addressing the disadvantages of a pro-se defense.

Respondent submits that the record reveals that Applicant had a sufficient background to make a knowingly and intelligent waiver of counsel, despite the trial judge's failure to make a specific inquiry addressing the disadvantages of a pro-se defense.

In *State v. Cash* the court listed ten factors in determining whether a defendant had sufficient background to make a valid waiver of counsel. Specifically, the court listed: (1) the accused's age, educational background, and physical and mental health; (2) whether the accused was previously involved in criminal trials; (3) whether he knew of the nature of the charge and of the possible penalties; (4) whether he was represented by counsel before trial or whether an attorney indicated to him the difficulty of self-representation in his particular case; (5) whether he was attempting to delay or manipulate the proceedings; (6) whether the court appointed stand-by counsel; (7) whether the accused knew he would be required to comply with the rules of procedure at trial; (8) whether he knew of legal challenges he could raise in defense to the charges against him; (9) whether the exchange between the accused and the court consisted merely of pro forma answers to pro forma questions; and (10) whether the accused's waiver

resulted from either coercion or mistreatment. State v. Cash, 309 S.C. 40, 43, 419 S.E.2d 811, 813 (Ct.App.1992).

In applying the factors listed above, the court found that Cash had sufficient background to understand the disadvantages of self-representation. Specifically, the court noted Cash was forty-six years old, had six years of college, and had been previously involved in criminal proceedings. Id. at 44. The court noted that Cash understood the nature of the charges against him and the possible penalty. Id. The court noted that there was no indication that Cash was represented by counsel before trial or that an attorney advised him of the difficulty of self-representation, the record showed that Cash appreciated the difficulty of his particular case. Id. The court cited to Cash's statement that he could do a better job of preparing his defense than a public defender. Id. The court cited that there was no indication Cash was attempting to delay or manipulate the proceeding in declining the assistance of counsel. Id. at 45. The trial judge appointed stand by counsel for Cash. Id. The court noted that Cash was aware that he would be required to comply with the procedural rules. Id. The court noted that Cash was aware prior to trial of possible legal challenges he could raise in defense to the charge against him. Id. The court noted during the pretrial hearing in which Cash declined the assistance of counsel, the exchange between the judge and cash did not consist of merely pro forma questions.

In State v. McLauren, the South Carolina Court of Appeals applied the Cash factors to determine whether defendant had a sufficient background to make a valid waiver of the right to counsel. State v. McLauren, 349 S.C. 488, 563 S.E.2d 346 (2002) (citing State v. Cash, 309 S.C. 40, 43, 419 S.E.2d 811, 813 (Ct.App.1992)). The court noted McLauren was a mature man with both formal and informal education. There was no evidence in the record of any physical or mental impairment. Id. at 495. McLauren was involved in prior criminal proceedings and knew of the nature of the charges. Id. McLauren addressed questions by the court and made motions.

Id. Although McLauren was not assigned an attorney before trial and appeared pro se at his arraignment, the court appointed him stand by counsel during trial. Id. There was no indication that McLauren was attempting to delay or manipulate the proceedings. Id. The court noted that the record indicated that McLauren knew to comply with the procedural rules and had at least some familiarity with the rules. Id. Specifically, the court cited the fact that McLauren made motions, called several witnesses, and objected at times to the prosecutor's questions. Id. McLauren knew of the legal challenges he could raise in defense to the charges against him. Id. The court noted that the exchange between McLauren and the court did not consist merely of pro forma questions. Id. The court noted McLauren language and actions at trial indicated he had an understanding of the legal system. Id. Finally, the court noted that there was no evidence that McLauren's waiver resulted from coercion or mistreatment. Id.

In the instant case, Applicant had sufficient background to make a valid waiver under the Cash factors. First, Applicant was born June 12, 1964 and was forty-seven years old at the time of trial. There was no evidence in the record of any physical or mental impairment.

Second, Applicant had been previously involved in criminal proceedings. The record indicates that he had a criminal record dating back to 1986. (Tr. p. 636 line 18-p. 638 line 16).

Third, Applicant was well aware of the nature of the charge. Notably, during the motion to relieve Counsel Anderson, the Assistant Solicitor recited the charges against Applicant and gave a brief factual context of the State's evidence against Applicant. (June 22, 2011 Mot. Tr. p. 2 line 23-p. 4 line 20). Furthermore, Applicant continuously referenced during a pre-trial conference that he was not facing a "shoplifting charge." (December 12, 2011 Mot. Tr. p. 17 lines 14-16; p. 18 lines 6-11). Based off of the record, it is apparent that Applicant was well aware of the serious nature of the charges he faced.

Fourth, Applicant was represented by three separate attorneys prior to trial. Specifically, Applicant retained Charles Barr, Esquire. Subsequently, Applicant fired Charles Barr because he "deliberately and intuitionally ignored [his] letters and phone calls for 9 and an a half weeks." (June 22, 2011 Mot. tr. p. 13 lines 6-8). Applicant accused Charles Barr of "conspire[ing] with the State's attorney's office Ms. Kimberly Barr." (June 22, 2011 Mot. Tr. p. 14 lines 5-6). Applicant was then appointed Cezar McKnight. Counsel McKnight filed a motion to be relieved as counsel on November 24, 2010. A hearing was held on December 6, 2010, in front of the Honorable George C. James, Jr. During the hearing, Counsel McKnight stated that there existed an acrimonious relationship between the two of them. (December 6, 2010 Mot. Tr. p. 3 lines 15-19). Counsel McKnight noted that Applicant told him to go to hell and accused him of conspiring with the State in attempt to "railroad him." (December 6, 2010 Mot. Tr. p. 4 line 20-line 1). Applicant advised the court that he "requested Attorney McKnight to represent him." (December 6, 2010 Mot. Tr. p. 10 lines 21-23). Applicant opined that Counsel McKnight is a "great attorney." (December 6, 2010 Mot. Tr. p. 10 lines 21-23). After hearing all arguments, Judge James relieved Counsel McKnight and ordered Applicant be appointed another attorney. Applicant was then appointed Counsel Anderson. Counsel Anderson filed a motion to be relieved. A hearing was held on June 22, 2011, in front of the Honorable Howard P. King. Judge King. In support of his motion to be relieved, Counsel Anderson noted that Applicant had filed complaints with the office of disciplinary counsel, Applicant questioned his motives and relationship with the State's attorney, and Applicant stated that he would no longer talk to him. (June 22, 2011, Mot. Tr. p. 8 line 21-p. 9 line 23). Judge King noted that Applicant's letter dated February 9, 2011 was one of the most "vilest, worst letters" he had ever read from a client to an attorney. (June 22, 2011, Mot. Tr. p. 19 lines 18-22). Applicant stated that he did "not trust attorney Anderson" and believed that he was not in his best interest. (June 22, 2011 Mot.

Tr. p. 31 lines 17-20). At the conclusion of the hearing, Judge King advised Applicant that he was going to require Counsel Anderson to continue to represent him. However, Judge King advised Applicant that if he continued to disrespect Counsel Anderson then he would waive his right to counsel and be required to proceed pro-se or retain private counsel. (June 22, 2011 Mot. Tr. p. 40 line 19---p. 41 line 16). Following the hearing, Counsel Anderson submitted a second motion to be relieved citing various letters from Applicant. In the letters, Applicant stated "I no longer need your lying assistance. I will now represent myself in my case when the time comes. Now, you can put in the paper work to Judge King or Judge James, I don't give a damn!" (September 14, 2011, Order p. 6). Judge King issued an order dated September 14, 2011, relieving Counsel Anderson, advising Applicant to retain counsel within 15 days, and noting that the case is set for date certain on October 17, 2011.

Fifth, there is no indication that Applicant was attempting to delay or manipulate the proceedings. On the contrary, he continuously attempted to have his case dismissed based off of a speedy trial violation. It is clear that Applicant wanted his case brought to trial as quickly as possible.

Sixth, the record is clear that Applicant knew to comply with procedural rules and had at least some familiarity with the rules. Applicant made several motions, legal arguments, cross examined several witnesses, and objected to the prosecutor's questions. During a pre-trial conference, Applicant claimed that the State had violated Rule 5 and Brady. The Court engaged in lengthy colloquy regarding whether the State had complied with Brady and Rule 5. Furthermore Applicant requested a list of the State's witnesses and the juror list prior to trial. (December 12, 2011, Mot. Tr. p. 52 lines 21-22). Applicant continually requested documents or arguments be noted for the record for an Appeal. (December 12, 2011, Mot. Tr. p. 4 lines 6-19; Tr. t. p. 48 lines 6-14)

Seventh, the record reveals Applicant knew of the legal challenges he could raise in his defense to the charges against him. During a pre-trial conference he stated to the judge that he had a list of witnesses that he needed to contact. (December 12, 2011, Mot. Tr. p. 55 lines 1-4). Applicant provided their names and information to the court in an effort to subpoena them for trial. (December 12, 2011, Mot. Tr. p. 55 lines 5-p. 56 line 22). The court specifically noted that it had "provided reasonable assistance for [Applicant] to get witnesses for his defense. (December 12, 2011, Mot. Tr. p. 56 lines 23-24). Applicant provided the court with various documents that he intended to introduce at trial. Applicant further requested copies of Investigator's Brown, Investigator Wayne McFadden and Investigator Lambert's infractions or complaints. (Tr. p. 41 lines 4-8).

Eighth, the exchange between Applicant and the court did not consist of merely pro forma questions. To the contrary, the Applicant was advised by several different courts about the right to counsel and the dangers of proceeding pro-se. Specifically, the Judge James advised Applicant in December 6, 2010, that he cannot continue to "play this game of being dissatisfied with things going exactly as you want and provoking a change in lawyer. It's not going to happen again." (Dec. 6, 2010, Mot. Tr. p. 11 line 25-p. 12 line 3). Judge James further advised Applicant that "you're presumed innocent, you're entitled to a fair trial but you have to examine your own attitude and conduct and I'm beginning to see a pattern. You've had two excellent attorneys represent you your attitude is that if somebody doesn't do exactly what you think out to be done they're engaged in a conspiracy." (Dec. 6, 2010, Mot. Tr. p. 20 lines 13-21). On June 22, 2011, Judge King advised Applicant that you do not get your choice of appointed counsel. (June 22, 2011, Mot. Tr. p. 10 lines 14-17). Judge King advised Applicant that Counsel Anderson was a highly respected and well thought of criminal defense attorney and that Applicant was not an attorney. (June 22, 2011, Mot. Tr. p. 11 lines 7-9; p. 32 lines 10-12).

Judge King further advised Applicant that Counsel Anderson knows "what is appropriate to do... he has the judgement and the training to do those things that are appropriate to be done, not you Mr. McCrea. You have admitted to me that you are not an attorney." (June 22, 2011, Mot. Tr. p. 32 lines 5-10). Judge King advised Applicant that if he relived Counsel Anderson, the court will not and is not going to appoint a new lawyer. (June 22, 2011, Mot. Tr. p. 35 lines 1-7). Judge King further advised Applicant that he could either retain counsel or appear pro-se if he wanted to relieve Counsel Anderson. (June 22, 2011, Mot. Tr. p. 35 line 4-8). Applicant initially advised Judge King that he wanted to relieve Counsel Anderson and proceed pro-se. (June 22, 2011, Mot. Tr. p. 35 lines 2-8). However, after asking several times, Applicant chose to proceed to trial with Counsel Anderson. (June 22, 2011, Mot. Tr. p.40 lines 13-15). Judge King advised Applicant that if he did not treat Counsel Anderson with respect, then he would sign an order relieving Counsel Anderson and requiring Applicant to proceed pro-se. (June 22, 2011, Mot. Tr. p. 40 line 19-p. 41 line 16). Notably, during pre-trial, Applicant informed the trial judge that Judge King had already advised him the disadvantages of proceeding pro-se. (Tr. p. 34 line 25-p.35 line 9)

Ninth, there was no evidence that Applicant's waiver resulted from coercion or mistreatment. While Applicant claimed that he "forced" to relieve all three attorneys due to their conspiring with the State, Respondent would note that three separate circuit court judges rejected Applicant's claims. Instead, three experienced criminal defense attorneys were relieved due to Applicant's repeatedly abusive, threatening, and coercive behavior towards his various counsels.

Based off of the foregoing, Respondent submits Applicant's had sufficient background to make a knowingly and intelligent waiver of counsel.

- b. Applicant was apprised of the dangers of proceeding pro-se by some other source such that the Trial Court's failure to make a specific inquiry addressing the disadvantages of a pro-se defense is cured.

Respondent submits Applicant was advised of the dangers of proceeding pro-se through his various hearings on his counsels' motions to be relieved. Specifically, Judge James advised Applicant in December 6, 2010, that he cannot continue to "play this game of being dissatisfied with things going exactly as you want and provoking a change in lawyer. It's not going to happen again." (Dec. 6, 2010, Mot. Tr. p. 11 line 25-p. 12 line 3). Judge James further advised Applicant that "you're presumed innocent, you're entitled to a fair trial but you have to examine your own attitude and conduct and I'm beginning to see a pattern. You've had two excellent attorneys represent you your attitude is that if somebody doesn't do exactly what you think out to be done they're engaged in a conspiracy." (Dec. 6, 2010, Mot. Tr. p. 20 lines 13-21).

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Based off of the foregoing, Respondent submits that Applicant was sufficiently advised of the dangers of proceeding pro-se such that the Trial Court's failure to make a specific inquiry addressing the disadvantages of a pro-se defendant is cured.

CONCLUSION

Based off of the foregoing, Respondent submits that Applicant cannot meet his burden of proving he was denied his Sixth Amendment right to counsel. Accordingly, post-conviction relief should be denied.

Respectfully submitted,

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State of South Carolina	)	In the Court of Common Pleas
	)	Third Judicial Circuit
County of Sumter	)	2012-CP-45-00363

Levern McCrea,	)
	)
Plaintiff,	)
	)
vs.	)
	)
State of South Carolina,	)
	)
Defendant.	)
	)
_____	)

June 1, 2018

Sumter, South Carolina

B e f o r e:

The Honorable George M. McFaddin, Judge

A p p e a r a n c e s:

Lance Boozer, Esquire
Attorney for the Plaintiff

Julie Coleman, Esquire
Attorney for the Defendant

Bonnie H. Kelly, CVR
Circuit Court Reporter

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1 (On the record at 9:52 a.m.)

2 THE COURT: Mr. Boozer?

3 MR. BOOZER: Your Honor.

4 THE COURT: Are you ready, sir?

5 MR. BOOZER: I am, Your Honor.

6 THE COURT: Ms. Coleman?

7 MS. COLEMAN: I am, Your Honor.

8 THE COURT: All right. Proceed.

9 MS. COLEMAN: Your Honor, this is *Levern McCrea v the*
10 *State of South Carolina*, docket No. 2012-CP-45-363.

11 Applicant is presently confined in the South Carolina
12 Department of Corrections pursuant to orders of commitment
13 of the Williamsburg County Clerk of Court. Applicant was
14 true bill indicted at the September 2008 term of the
15 Williamsburg County Grand Jury for murder, possession of a
16 weapon during a crime, and misprision of a felony, 2010-
17 GS-45-135.

18 After three attorneys were relieved from his case,
19 Applicant proceeded pro se and represented himself at
20 trial. Applicant proceeded to a jury trial before the
21 Honorable W. Jeffrey Young and was found guilty as
22 indicted for murder and possession of a weapon during a
23 crime.

24 On October 20, 2011, Judge Young sentenced Applicant
25 to life in prison for murder and a consecutive five years

1 imprisonment for possession of a weapon during a crime.

2 Applicant subsequently filed a notice of appeal.
3 Applicant failed to timely serve the notice of appeal on
4 opposing counsel as required by Rule 203 of the South
5 Carolina Appellate Court Rules. Applicant's appeal was
6 dismissed by order dated April 20, 2012. The remittitur
7 was issued on August 3, 2012.

8 Applicant filed a timely application for post
9 conviction relief on July 9, 2012, alleging that he was
10 being held in custody unlawfully based on the following
11 allegations: He was denied the right to a direct appeal,
12 his waiver of his right to counsel was not knowing and
13 voluntary, ineffective assistance of counsel for his three
14 prior attorneys, and investigative misconduct and judicial
15 -- or excuse me -- prosecutorial misconduct.

16 The State submitted it's return on September 4, 2013,
17 and Applicant filed amended applications on October 22,
18 2012; October 20, 2014; and May 5, 2017. He's present
19 today and represented by Mr. Lance Boozer.

20 And Your Honor, I might at this time just make sure
21 that we've got everything in the judges's packet, which
22 should be before you there. And I'll just list out
23 everything that should be part of the record before you
24 today, and Mr. Boozer -- if I miss anything, he's welcome
25 to jump in and correct me; or if something is missing, we

1 can get that to you after the hearing.

2 But you should have a copy of the application and all
3 three of his amendments from October 22, 2012; October 20,
4 2014; and May 5, 2017. The State's return should be
5 included. There are several pretrial transcripts in
6 there, and they -- there should be a motion to be relieved
7 as counsel filed by Cezar McKnight on November 24, 2010; a
8 transcript from a motions hearing December 6, 2010, with
9 Judge James; the order relieving counsel Cezar McKnight on
10 December 6, 2010. Then we've got a motions hearing
11 transcript from June 22, 2011; a transcript from August 30
12 -- it says "2014." I believe that's an error. It was
13 actually 2011 -- an order relieving counsel signed by
14 Judge King, filed September 14, 2011, that's relieving
15 Hank Anderson. And then there is a motions hearing
16 transcript, October 12, 2011. And then you should have
17 three volumes of the trial transcript and his -- the order
18 and the remittitur from his direct appeal -- dismissing
19 his direct appeal and that should be everything.

20 THE COURT: They are here, ma'am.

21 MS. COLEMAN: Great. Thank you very much. I
22 appreciate that. I know this is kind of a big case. I
23 wanted to be sure we had all the pieces.

24 THE COURT: Sure.

25 MS. COLEMAN: I will hand it over to Mr. --

1 THE COURT: All right. Mr. Boozer?

2 MS. COLEMAN: -- Boozer.

3 MR. BOOZER: Thank you, Your Honor. If it pleases
4 the Court? Judge, as Your Honor is aware, we do have a
5 couple of preliminary matters at -- that I'd like to
6 address for the Court.

7 The first, Your Honor, just by way of background, and
8 I'm happy to hand up any of these documents if Your Honor
9 does not have them. Previously back, by order dated
10 February 6, 2016, as part of the Applicant's request,
11 Judge Gee had ordered that the Williamsburg County
12 Solicitor's Office turn over a complete copy of the
13 Applicant's Rule 5 materials. Although that order was
14 signed in February, for -- for some reason, the
15 Williamsburg County Clerk of Court did not notify anybody
16 of the entry of that order until about June of 2016.

17 At that time, as counsel, I immediately forwarded
18 that order over to the Solicitor's Office and notified
19 them of the ruling that they were to turn over the Rule 5
20 materials to me to provide to my client.

21 I continued to engage in correspondence via
22 telephone, via email with the Solicitor's Office. On
23 October 26, 2016, still not having received those Rule 5
24 materials, I filed a motion in part to enforce Judge Gee's
25 prior order. And we actually had a hearing on that motion

1 to enforce the prior order before Judge Gibbons on
2 November 9, 2016. And of course, at that hearing I
3 informed the Court of this similar history that I'm
4 reciting and asked the Court to direct the Solicitor's
5 Office to -- to hand that over to us.

6 During that hearing, my client asked to -- to address
7 the Court, and during that time he requested that the
8 Court issue some sanctions against the Solicitor's Office
9 and Ms. Barr for failing to comply with that prior order
10 from Judge Gee.

11 Judge Gibbons entered an order November 23, 2016,
12 finding that the Solicitor's Office and Ms. Barr were, in
13 fact, in violation of Judge Gee's order to provide that
14 discovery and directed that the Solicitor's Office turn it
15 over within, I think, about two weeks, by December 9,
16 which we did receive those documents, Judge.

17 But additionally, Judge Gibbons indicated that,
18 although he agreed that sanctions might be appropriate,
19 Ms. Barr was not at that hearing, and he indicated he
20 didn't want to proceed with actually a sanctions hearing
21 without her present. So he ordered that a sanctions
22 hearing be held before his -- his PCR hearing when we in
23 fact would have his PCR hearing.

24 So Judge, that's -- we are here on that issue as a
25 preliminary matter as to whether sanctions should be

1 entered against the Solicitor's Office and for Ms. Barr
2 for failing to comply with Judge Gee's order. At --
3 again, I'm happy to hand up those -- those prior orders
4 from both Judge Gee and Judge Gibbons if Your Honor does
5 not have those.

6 THE COURT: What did Judge Gibbons mean by "holding a
7 sanctions hearing before the PCR hearing"? Does he mean
8 on the day of the PCR hearing?

9 MR. BOOZER: That -- that's how we were going to do
10 it. This case has been set multiple times for a PCR
11 hearing, and it was the intention to just have the hearing
12 -- to have the -- the sanctions hearing right before the
13 PCR hearing to ---

14 THE COURT: All right.

15 MR. BOOZER: --- determine if sanctions should be ---

16 THE COURT: All right.

17 MR. BOOZER: --- 'cause part of his application that
18 the Solicitor's Office didn't turn over --

19 THE COURT: Okay.

20 MR. BOOZER: -- certain evidence he still believes is
21 not being complied with.

22 THE COURT: All right. Who all was present at that
23 motion hearing or that time when Judge Gibbons issued his
24 order? He said Judge -- he said that Solicitor Kimberly
25 Barr wasn't present, right?

1 MR. BOOZER: Correct, Judge.

2 THE COURT: All right. Who else was present then
3 that needs to be present now about the sanctions issue?

4 MR. BOOZER: That would be it, Judge. It -- it would
5 just be Ms. Barr. Ms. -- Mr. Anderson, who is now in the
6 Solicitor's Office -- he is here today is my
7 understanding, and of course Ms. Coleman. But that's all
8 that would need to be present for -- for purposes of that.

9 THE COURT: All right.

10 MS. COLEMAN: And Your Honor, I'd like to point out
11 it was through no fault of Ms. Barr's that she wasn't
12 present at that hearing.

13 THE COURT: Well, I ---

14 MS. COLEMAN: There was no reason for her to be there
15 that day, and she was not able to make it. I ---

16 THE COURT: I don't know --

17 MS. COLEMAN: --- don't think he meant it as a ---

18 THE COURT: No.

19 MS. COLEMAN: --- punitive issue for her not being
20 there that day.

21 THE COURT: No. And I -- I don't mean to imply or
22 infer anything in that direction at all. All right.

23 So Ms. Coleman, what are your thoughts about
24 entertaining this sanctions hearing on the day of the PCR
25 and what are your thoughts?

1 MS. COLEMAN: Your Honor, I take no position on it.
2 We've got Ms. Barr here to kind of explain, I guess, or
3 answer any questions that Mr. Boozer ---

4 THE COURT: Okay.

5 MS. COLEMAN: --- has about complying with the
6 discovery.

7 THE COURT: Okay.

8 MS. COLEMAN: But I think it's -- I do think the
9 issues tie in very closely to the PCR issues. So I think
10 it's okay that it's held on the same day.

11 THE COURT: All right.

12 MR. BOOZER: And Judge, I'm happy to provide any
13 clarification. Part of his application is that he's
14 alleging prosecutorial misconduct in that discovery was
15 being withheld and provided to him, as -- as he indicated
16 in the trial transcript, basically being spoon-fed
17 discovery. We have -- I have engaged in correspondence
18 and discussions with the Solicitor's Office about the
19 discovery.

20 THE COURT: Yes, sir.

21 MR. BOOZER: And we're going to present testimony
22 from Mr. McCrea what he believes is still missing that
23 would go under a -- a *Brady* violation for terms of the PCR
24 hearing.

25 The Solicitor's Office has indicated, "We have turned

1 over everything that we've got." That's what they've
2 indicated to me, and they've done that through
3 correspondence as well, which I will, of course, enter it
4 on the record when we get into the PCR hearing.

5 It is tied into it, but for purposes of -- of where
6 we are, it -- it's just an issue that needs to be
7 determined of whether the Solicitor's Office failed to
8 comply with Judge Gee's order, and then we're ready to
9 just jump into the PCR hearing. It's -- it's really -- it
10 -- it has no affect on the PCR hearing as a whole because
11 a lot of those issues are allegations of prosecutorial
12 misconduct that he has.

13 THE COURT: What does your client want to do today?
14 Does he want to continue this so he can be satisfied he's
15 got everything he wants? What does he want?

16 MR. BOOZER: Judge, no. I don't think the hearing --
17 -

18 THE COURT: Have you talked to him about it? What
19 does he want today?

20 MR. BOOZER: Well, Judge, he ---

21 THE APPLICANT: Hold up ---

22 THE COURT: No, sir. I need to talk to your lawyer.

23 (Mr. Boozer confers with the Applicant.)

24 MR. BOOZER: Judge, he -- he and I and everyone,
25 we're ready to go forward.

1 THE COURT: Okay.

2 MR. BOOZER: The only issue is should sanctions be
3 issued because they failed to comply ---

4 THE COURT: Okay.

5 MR. BOOZER: --- with this prior order.

6 THE COURT: Okay.

7 MR. BOOZER: And Judge, I don't think it's here nor
8 there because it's sorta -- I hate to say this phrase, but
9 it is what it is. They say that they've turned over
10 everything, he says that it's not. That's an issue that
11 will be before the Court in the actual PCR hearing, but
12 we're ready.

13 THE COURT: Okay.

14 MR. BOOZER: We're ready to go forward.

15 THE COURT: All right. Now, if we don't finish
16 today, we'll finish Tuesday. I would then deem this an
17 ongoing hearing, and wherever y'all gotta be Tuesday,
18 you're gonna need to be here.

19 MR. BOOZER: Okay.

20 MS. COLEMAN: Yes, sir.

21 THE COURT: I hope we can finish today though.

22 MR. BOOZER: I hope so, too, Judge.

23 THE COURT: All right. Sir, I'm ready to proceed.

24 MR. BOOZER: Thank you, Your Honor. Well ---

25 THE COURT: All right.

1 MR. BOOZER: --- we do have the -- the sanctions
2 matter ---

3 THE COURT: All right. Let's -- let's do that then.

4 MR. BOOZER: --- of whether --

5 THE COURT: That's what I meant by let's proceed.

6 MS. COLEMAN: And how would you like to proceed with
7 that? Would you like to call Ms. Barr as witness and have
8 her testify, or just speak to you as an officer of the
9 Court? I don't know if you'd prefer questioning or -- or
10 ...

11 THE COURT: Ma'am, she's always an officer of the
12 Court, under a duty to speak the truth; however, under the
13 current atmosphere we have here today, this being a PCR
14 hearing, let's just go ahead and do it all the way.

15 MS. COLEMAN: Okay.

16 THE COURT: Under oath. Okay?

17 MS. COLEMAN: Okay. And if Mr. Boozer wants to call
18 her as his witness 'cause it's his sanctions hearing.

19 THE COURT: That's right. That's -- that's my point.
20 Mr. Boozer?

21 MR. BOOZER: That's fine with me.

22 MS. COLEMAN: Thank you.

23 MR. BOOZER: Your Honor, we call Ms. Kimberly Barr to
24 the stand.

25 THE COURT: All right, sir.

1 (Brief pause.)

2 MS. BARR: Your Honor?

3 THE COURT: Yes, ma'am.

4 MS. BARR: I'm sorry. I was speaking with Mr. Boozer
5 and also Ms. Coleman, and I'd like permission to address
6 the Court in chambers with Counsel present?

7 THE COURT: Sure. By all means.

8 MS. BARR: Thank you.

9 (Off the record at 10:04 a.m.)

10 (On the record at 10:15 a.m.)

11 THE COURT: When we left the courtroom together a few
12 minutes ago and entered the room where I work, I told the
13 attorneys and Ms. Barr that I did not feel comfortable
14 being a part of any of the communications or discussion
15 about what they wanted to talk about, and I don't think it
16 would've been proper.

17 So I stepped out of that room, they remained in there,
18 and they walked out and said they're ready to come back in.

19 I don't know what was discussed and don't want to
20 know. So I want to make sure the record fully reflects
21 that I was not a part of any conversation out there. And
22 my concern was that Ms. Barr is here today as a witness and
23 not an attorney per se. Thusly, that's why I did what I
24 did.

25 Ms. Coleman and Mr. Boozer.

1 MS. COLEMAN: Thank you, Your Honor. And we
2 appreciate you giving us the opportunity to discuss that
3 with her and not with you present.

4 Your Honor, at this time I would ask that we be given
5 until the end of the day to do the sanctions hearing. Just
6 after -- and we can proceed forward with the PCR hearing,
7 and as soon as it's over do the sanctions hearing to give
8 Ms. Barr an opportunity to gather the materials she needs
9 to fully answer the questions.

10 I think there was a communication issue, probably on
11 my part, and she was not fully prepared this morning to
12 answer those questions; but she will try to be later today.

13 THE COURT: Mr. Boozer, any objections to hearing it
14 towards the end of the hearing?

15 MR. BOOZER: Your Honor, on behalf of my client, my
16 client objects to it proceeding in that manner. He wants
17 to have it as it's been laid out. This certainly isn't his
18 fault on any miscommunication.

19 THE COURT: Uh-huh.

20 MR. BOOZER: Wants to have it first. It's really a
21 very short hearing. It's whether sanctions should or
22 should not be issued. I mean, it --that's kinda it. So he
23 doesn't want to have it after, he wants to have it before.

24 THE COURT: What prejudice or harm will come to your
25 client by having it at the end of the hearing?

1 MR. BOOZER: Well, Judge, I think that, in his mind,
2 we've been prepared for a year or a year and a half to
3 proceed in that order. So I think that in his mind he's
4 prepared to do it in that order, but obviously I am as
5 well. So I think that that -- there would be some
6 prejudice on that side of it. He's been waiting a long
7 time for this, and he -- he's ready to get -- get it over
8 and done with.

9 THE COURT: Well, I -- I understand his point of view
10 and I respect it, but I'm not -- I'm not gonna do it right
11 now. We're here -- we're talking about doing it at the end
12 of the hearing today or at the latest on Tuesday if we
13 cannot finish today. Doing it later today or two or three
14 day's from today -- from today is inconsequential as to the
15 amount of time that has passed. I'm certainly not gonna
16 put off another year to hear his -- his concern about the
17 sanctions.

18 MR. BOOZER: I understand. And Judge, if I may, just
19 for the record -- and I'm sorry to interrupt if I just did
20 it.

21 THE COURT: It's all right.

22 MR. BOOZER: If I may just make a formal objection for
23 my client in proceeding in that manner. Just have a ruling
24 -- objection on -- on the way it's proceeding?

25 THE COURT: Sure. All right.

1 MR. BOOZER: Thank you, Your Honor.

2 THE COURT: So who goes now? You said you had
3 something else, several other things, too?

4 MR. BOOZER: And just to have an -- and have a ruling
5 on that objection, Judge. I think I know it's denied, but
6 ...

7 THE COURT: It is respectfully denied.

8 MR. BOOZER: Thank you, Your Honor.

9 THE COURT: Yes, sir.

10 MR. BOOZER: Okay. Yes, sir, Your Honor. On the --
11 on the second side of things, Judge -- and this is where
12 we're really getting to the meat of -- of some of this --
13 is just a discovery issue I do want to put on the record.
14 And we, of course, will get through that as we're going
15 through the entire PCR.

16 But Your Honor, my client refutes that all of the
17 discovery has been provided to him. Upon receiving the
18 materials, I of course gave him everything. He looked
19 through it, and he believed that there were items that were
20 left out.

21 Your Honor, based on his review of the materials --
22 obviously, I wasn't at the trial, so I don't know what he
23 thinks was left out and -- and what wasn't -- but I
24 communicated with now Mr. Anderson, who's at the
25 Solicitor's Office, and gave him a list based on my

1 discussions with my client about what we believe to be
2 missing. I just want to make all this a part of the
3 record, Judge.

4 THE COURT: Sure.

5 MR. BOOZER: And if I may hand up a copy of that
6 correspondence to Mr. Anderson. And of course Ms. Coleman
7 and Ms. Barr were copied on this when I sent it. We'd ask
8 that -- that this be marked as Exhibit No. 1(a).

9 MS. COLEMAN: No objection.

10 THE COURT: All right, ma'am.

11 (Marked Applicant's Exhibit No. 1(a), letter dated
12 2/6/18 to Warren Anderson, 2 pages, in evidence.)

13 MR. BOOZER: Your Honor, if I may I approach.

14 THE COURT: Yes, sir.

15 (Mr. Boozer hands a document to the Court.)

16 MR. BOOZER: Your Honor, as you can see on that letter
17 I've outlined all of the items which my client believes
18 were missing from the discovery. As a result of that
19 letter, I received correspondence back from the Solicitor's
20 Office. I received a letter dated February 14, 2017, in
21 which we were advised -- and he had a response to each,
22 line by line, of where they said it was either sent or it
23 didn't exist or we've already furnished it to you.

24 Attached to that was a letter dated October 7, 2011,
25 sent to my client about discovery and a booking report that

1 we requested that was actually provided to us. Your Honor,
2 I would just ask that we mark that as a part of the record
3 as well.

4 THE COURT: Yes, sir.

5 MR. BOOZER: And this will be a letter from the
6 Solicitor's Office to me.

7 (Marked Applicant's Exhibit No. 1(b), letter from the
8 Solicitor's Office dated 2/14/17, 3 pages, in evidence.)

9 MR. BOOZER: May I approach, Your Honor?

10 THE COURT: Yes, sir.

11 (Mr. Boozer hands a document to the Court.)

12 MR. BOOZER: Judge, obviously Your Honor can see those
13 items which my client believes are outstanding. You can
14 certainly see the Solicitor's response to those.

15 THE COURT: Yes, sir.

16 MR. BOOZER: I do want to make the Court aware that
17 once we get into the PCR hearing, that there is -- there
18 was a supplemental report that was prepared -- an Incident
19 Report/Supplemental is how it's called -- by Investigator
20 Brenda Lambert.

21 THE COURT REPORTER: Lambert?

22 MR. BOOZER: Lambert, yes, ma'am.

23 And importantly, in that report, there's a discussion
24 where Investigator Brown and Lieutenant Collins had
25 indicated to the State's primary witness, Mr. Briggs, who

1 testified against Mr. McCrea at trial, that they had
2 prepared what comes out to be or what they phrase as some
3 sort of "letter of leniency," and we have requested that
4 from the Solicitor's Office. That was never provided to my
5 knowledge prior to trial or in our request for Rule 5
6 materials. Your Honor, if I may hand up a copy -- copy of
7 that incident report and mark it as well?

8 THE COURT: Yes, sir.

9 (Marked Applicant's Exhibit No. 1(c), incident report,
10 in evidence.)

11 MR. BOOZER: May I approach, Your Honor?

12 THE COURT: Yes, sir.

13 (Mr. Boozer hands a document to the Court.)

14 MR. BOOZER: Your Honor, that's a copy of the
15 supplemental incident report, and I have -- it does have
16 highlights on it. That's the relevant portion regarding
17 the letter of leniency. That's going to come into play in
18 the PCR hearing, but did want to put that on the record
19 that that is an issue of what my client believes is
20 outstanding discovery issues which -- which are a part of
21 his claim that there was prosecutorial misconduct, which
22 we'll, of course, address in the PCR hearing.

23 Your Honor, the last thing that I'd like to put on the
24 record and make a record of is going back to Judge Gibbons
25 ordering the Clerk of Court -- excuse me -- ordering that

1 discovery be produced. Judge Gibbons, in his prior order,
2 also ordered that any grand jury impanelment documents or
3 documents related to grand jury proceedings be provided to
4 us.

5 After contacting the Williamsburg County Solicitor's
6 Office, we were provided with a letter that indicated that
7 nothing existed, that the only thing that there was was the
8 indictment of either true bill or no bill, and that would
9 be the only evidence or documents related to the grand jury
10 proceedings. I would like to mark that a part of the
11 record for my client.

12 THE COURT: Yes, sir.

13 (Marked Applicant's Exhibit No. 1(d), Clerk of Court
14 letter dated 2/15/17, 1 page, in evidence.)

15 MR. BOOZER: May I approach, Your Honor?

16 THE COURT: Yes, sir.

17 (Mr. Boozer hands a document to the Court.)

18 MR. BOOZER: And Your Honor, with those preliminary
19 matters, with the exception of the sanctions hearing, we
20 would then be prepared to proceed into the -- the PCR
21 hearing itself.

22 THE COURT: All right. Well, I've already ruled we'll
23 deal with the sanctions later at the end of the hearing
24 today or Tuesday. And I keep saying "Tuesday" because
25 hearings have the propensity or proclivity to expand rather

1 than contract. That being said, I'm ready.

2 MR. BOOZER: Thank you, Your Honor. If it pleases the
3 Court.

4 Judge, obviously we've prepared this case multiple
5 times, and the last time we were supposed to have this
6 hearing was a freak snow event in which court was
7 cancelled. At that time when we had provided the Court of
8 course the pretrial hearing briefs.

9 THE COURT: Yes, sir.

10 MR. BOOZER: We have again, of course, provided those
11 to Your Honor, and I know Your Honor has read those
12 multiple times.

13 THE COURT: Read them again last night.

14 MR. BOOZER: Okay. And so if it pleases the Court, I
15 -- I'm happy to go through in a brief opening, or we can go
16 ahead and jump into the testimonies. I think it's all
17 captured in the pre-hearing brief.

18 THE COURT: With no jury here and my having read both
19 of those things last night and earlier, I'm ready to go.

20 MR. BOOZER: Thank you, Your Honor. Go ahead and call
21 Mr. McCrea to the stand.

22 LEVERN MCCRAE, having been first
23 duly sworn, testifies as follows:

24 THE BAILIFF: State your name, spell your last name
25 for the record, please.

DIRECT EXAMINATION BY MR. BOOZER - LEVERN MCCREA

24

1 THE APPLICANT: Levern McCrae, M-c-C-r-e-a. McCrea is
2 my last name.

3 THE BAILIFF: Spell your first name, please.

4 THE APPLICANT: L-e-v-e-r-n.

5 THE COURT: Mr. Boozer?

6 MR. BOOZER: Please the Court, Judge.

7 DIRECT EXAMINATION

8 BY MR. BOOZER:

9 Q Mr. McCrea, how you doing today?

10 A Pretty good, Mr. Boozer.

11 Q Okay. Now, Mr. McCrea, obviously I've been
12 representing you for a long time. You've been waiting a
13 long time for this day. Do you know what it is that we're
14 doing here today?

15 A Yes, sir. It's for my PCR hearing. It's been a long
16 time coming.

17 Q Okay. And do you know what it is that you're asking
18 the Court for here today?

19 A Yes, sir. Your Honor, I'm here today to challenge my
20 conviction and sentence because I was unlawfully,
21 unconstitutionally, and illegally convicted and sentenced
22 to life in prison, and deprived out of a fair trial; and
23 I'm currently being deprived of life and liberty in
24 violation of my Federal Fifth and Fourteenth Amendment
25 right to due process of law.

1 As well as my Federal Sixth Amendment right to have an
2 attorney to represent me during my trial, along with my
3 Federal Thirteenth Amendment right to be free from
4 involuntary servitude, and in violation of prosecutorial
5 misconduct and investigative misconduct and in violation of
6 judicial misconduct under 3C Canon [sic] of the
7 administration's responsibility to ensure that all of my
8 rights were protected prior and during my trial.

9 Your Honor, today is my day and I'm hoping to have my
10 fair and full-on bite at the apple because my Fourteenth
11 Amendment right to due process of law was never applied to
12 my case prior to pretrial nor during my trial.

13 And I'm grateful that Your Honor will be hearing my
14 PCR claim here today. I've heard really good things about
15 Your Honor being fair and impartial and most importantly
16 who has integrity; and that's what's most important to me
17 during the course of this hearing here today, who will
18 ensure that all of my rights are protected here today.

19 Your Honor, I'm not asking for a perfect PCR hearing,
20 just like I never asked for a perfect trial. But I am,
21 however, requesting that the Court grant me a fair one, and
22 I am respectfully requesting that the Court rule on all of
23 my exhibits of violations separately as I enter them on the
24 record, and to make his ruling here today according the
25 laws of this state and of the United State [sic]

1 Constitution.

2 In addition, Your Honor, one, I was not advised of my
3 right to counsel or warned of the dangers of pro se
4 representation and was ultimately denied the assistance of
5 counsel at my five-day trial. Two, my claims of
6 prosecutorial misconduct and perjury from Solicitor
7 Kimberly Barr for giving me late, undisclosed *Brady*
8 evidence the first, second, and third day during my trial.
9 Three, the State also made the Applicant wear a chest and
10 back remote-held shock device that were visible to the
11 jurors as I walked, sat down, and stood up. And the court
12 officers either -- even had to help unlock the shackles in
13 front of the jurors during my trial.

14 I'm also claiming investigative misconduct and perjury
15 during my trial.

16 Five, the Applicant preliminary hearing was taken
17 illegally. Six, my claim is that the September 2008
18 indictment, July the 12, 2009 to July the 8, 2010
19 indictment, and my July 7, 2011 indictment have all been
20 rubber stamped under the same indictment number, 2010 ---

21 THE COURT REPORTER: Have all been what?

22 THE APPLICANT: Rubber stamped.

23 A -- under the same indictment No. 2010-GS-45-0135 by
24 Solicitor Kimberly Barr, the Clerk of Court, and the
25 foreperson for the Kingstree Williamsburg County Court.

1 Seven, I'm also claiming that my Federal Sixth and
2 Fourteenth Amendment right to due process of law was
3 violated prior and during my trial, and that I was
4 convicted by irrelevant, prejudicial evidence. Thank you,
5 sir.

6 Q Thank you, Mr. McCrae. And we, of course, are gonna
7 go through all of your allegations, and we all appreciate
8 that -- that statement.

9 A Yes, sir.

10 Q Mr. McCrae, let -- let's sort of go through the
11 history of your case and -- and go back in time a little
12 bit. When were you first arrested?

13 A I believe it was around March the 30.

14 Q Do you recall the year?

15 A Of 2010.

16 Q Of 2010. When was it alleged that this crime
17 occurred?

18 A In March of 2009.

19 Q So sometime later you -- is when you were arrested.

20 A Yes, sir.

21 Q All right.

22 A A year later.

23 Q Now, when you were initially arrested, did you hire a
24 lawyer?

25 A Yes, sir. I believe around or about April the 3 of

1 2010 was when my mother retained Charles Barr's services.

2 Q All right. So that's who you first hired was Charles
3 Barr. That's someone y'all privately retained.

4 A Yes, sir.

5 Q All right. And Mr. Barr, he represented you until
6 about June of 2010; would that be about right?

7 A Yes, sir.

8 Q Okay. So he -- he was not on your case very long.

9 A Not that at all. If I may address that a little, if -
10 - if I may?

11 Q Yeah. We're gonna get into that.

12 A Okay.

13 Q So let's talk about what it was -- sort of y'all's
14 relationship. So he -- he comes in about April of 2010 and
15 then he's off of your case in about June of 2010; is that
16 right?

17 A Yes, sir.

18 Q All right. Let -- let's talk about what, if anything,
19 did you two do, meet, or discuss about your case?

20 A Okay. When Mr. Barr was first retained to represent
21 me I believe it was around April the 3. A week later Mr.
22 Barr came to see me at the Kingstree County Jail to tell me
23 that he was defending me on my charge of murder and
24 possession of a weapon. And during his visit, he mentioned
25 that he was gonna put in a bond hearing, preliminary

1 hearing. I agreed.

2 I then asked Mr. Barr about putting in a motion for my
3 Rule 5 *Brady* motion being that this case had taken place
4 well over a year, and that there's a strong possibility the
5 Solicitor's Office should have an excessive amount of
6 discovery that would be beneficial to my bond or
7 preliminary hearing.

8 But Mr. Barr stated to me that he do [sic] not put in
9 a motion for a Rule 5 *Brady* motion until after the
10 defendant [sic] bond and preliminary hearing is over, which
11 made no sense to me 'cause I'm saying to myself, "Well, why
12 would a highly intelligent, competent, professional
13 attorney that's in his proper state of mind, that's been
14 practicing law longer than 20 years, neglect to request for
15 whatever discovery that the State's attorney's office may
16 have?"

17 But Mr. Barr, after stating that, he looked at me
18 strange and then stated to me that he would be in contact
19 with me.

20 Now, a few weeks had passed and I haven't heard
21 anything from Mr. Barr. So I wrote letters, made phone
22 calls to no avail. Then the next time I saw Mr. Barr was
23 eight weeks later and in court. Ten minutes before I was
24 about to go in front of the Court, I sat in the room with
25 about 19 other detainees waiting to go in front of the

1 judge, Mr. Barr walks inside the room, and he starts to ask
2 me personal information that he could've gotten from me
3 during a private attorney visit and not in front of 19
4 other detainees that didn't need to know anything about my
5 business when he was paid to represent me.

6 I then tried to voice my displeasure in
7 unprofessionalism to Mr. Barr, but Mr. Barr stood up,
8 walked to the door, turned around, and I'll never forget
9 that nasty look -- repugnant look of disdain that he gave
10 me as he walked out of the door.

11 Two minutes later I'm in front of the bond hearing
12 while he was making stuff up about me. Bond denied.

13 After my bond was denied, I was really upset with Mr.
14 Barr and angry, but I wanted to speak to him before my
15 preliminary hearing, but he never respond [sic] back to any
16 letters.

17 Now, two weeks later was my preliminary hearing, and
18 the minute the Clerk of Court called me in front of the
19 Court, I began to address the Court concerning Mr. Barr
20 [sic] ineffectiveness toward my case. I then fired Mr.
21 Barr and made a request to the Court that Mr. -- that the
22 Court make Mr. Barr give my mother back her money.

23 Mr. Barr was paid to represent me, not hide from me
24 disrespectfully, and at no time did he ever consult,
25 communicate, or investigate anything concerning my case in

1 violation of my Sixth Amendment right to effective
2 assistance of counsel prior to trial. And that's what
3 started the conflict between me and attorney Charles Barr.

4 Q Okay. How many times did you guys meet?

5 A Once.

6 Q Y'all met one time?

7 A (No audible response.)

8 Q All right. And you asked that he be relieved. Did
9 that happen? Was he relieved?

10 A At the beginning of the preliminary hearing, after I
11 spoke to the Court.

12 Q All right. And so he was on your case about how long
13 would you say? You said April to June?

14 A Eight weeks.

15 Q Okay. When you were meeting with Mr. Barr, did he
16 ever explain to you or discuss with you the advantages and
17 disadvantages of proceeding without him or without any
18 other lawyer going forward pro se?

19 A He did not.

20 Q Okay. And -- and certainly there wouldn't have been a
21 reason to because what were you gonna do, hire another
22 lawyer?

23 A Right.

24 Q Is that what you were gonna do?

25 A No.

1 Q You weren't gonna hire another lawyer, you were gonna
2 have another one appointed at that point?

3 A Yeah. Yeah. At that point, after I fired him.

4 Q Okay. And then it's your understanding that there's
5 no transcript of that hearing that occurred where Mr. Barr
6 was relieved prior to that preliminary hearing?

7 A No, sir.

8 Q Okay. And all -- did the judge make any explanations
9 to you about proceeding pro se or going forward without
10 counsel?

11 A No, sir.

12 Q All right. Now, after Mr. Barr was relieved, was a
13 lawyer appointed to represent you?

14 A I believe a week and a half after I fired Mr. Barr,
15 around about June the 23 of 2010, Solicitor Barr brought me
16 back to court for this illegal preliminary hearing without
17 my knowledge and appointed me a lawyer named "Mr. Williams
18 River [sic]," who was a family member of the victim.

19 Q And did he ---

20 A And ---

21 Q --- ever actually represent you?

22 A He did not. And after I addressed the Court and found
23 out that he was a family member of the victim, I stated to
24 the Court that this was a conflict of interest. And once
25 Mr. Rivers spoke to the Court, the Court agreed that this

1 was a conflict and he relieved Mr. Rivers as counsel of
2 record.

3 Q Okay. So -- so he was -- he was appointed to your
4 case, but he shouldn't have been because there was a
5 conflict of interest with his relationship with the victim?

6 A Sure.

7 Q Okay. Now, after -- after that lawyer, which doesn't
8 really count, did you have a lawyer appointed to you after
9 him?

10 A Yes. It was around or about July the 20 of 2010. It
11 was when the Court appointed Mr. Cezar McKnight to
12 represent me.

13 Q Okay. So let's talk about Mr. McKnight. Before Mr.
14 McKnight was appointed to represent you, did you actually
15 try and retain Mr. McKnight?

16 A I did. And once the Court appointed Mr. McKnight, a
17 week later Mr. McKnight put in a motion to be relieved the
18 same week. And it -- I believe it stemmed from the fact of
19 me trying to retain his services after I fired Mr. Barr.

20 Q Let -- let me ask you this --

21 A Okay.

22 Q -- do -- do you recall that eventually Mr. McKnight,
23 ultimately was relieved from your case, and y'all had a
24 hearing on that; do you recall that?

25 A Yeah. I believe it was with Judge Clifton Newman

1 around August the 12 of 2010.

2 Q And --

3 MR. BOOZER: Your Honor, I'm gonna be referring for a
4 moment to the transcript of December 6, 2010.

5 THE COURT: Yes, sir.

6 Q Mr. McCrea, at that hearing on December 6 of 2010, do
7 you recall that actually Mr. McKnight was telling the Court
8 that you did try and hire him. And at the time, I guess he
9 had some sort of emergency appendectomy or a medical
10 procedure; do you recall that?

11 A I'm not quite sure what happened with Mr. McKnight
12 after that.

13 Q Okay. But -- but do you also recall, though -- and
14 you were getting at this just a moment ago, do you recall
15 where he even told the Court (as read): "I did file a
16 motion to be relieved because he petitioned -- when I say,
17 "he", Mr. McCrae -- begged Judge Newman to appoint me when
18 he had already paid Mr. Barr."

19 And then he says (as read): "So I'd already explained
20 to them what the fee was gonna be. So now it comes out,
21 and it seems to me patently unfair, for Charles to have the
22 money and me to have the burden. So I made the motion to
23 Judge Newman to please relieve me as counsel." Do you
24 recall that?

25 A I do.

1 Q Is it your understanding based on that that he was
2 wanting to be relieved because he didn't think it was fair
3 you had the money to pay Mr. Barr, yet he's getting
4 appointed and essentially having to do it for free?

5 A Sure. And -- and in fact, he stated that -- he stated
6 to the Court that he didn't want to represent me because he
7 believed that I was able to afford his fees.

8 And in addition to that, he also stated that everyone
9 else was getting paid to represent their client except him.
10 So he was feeling some type of way.

11 Q And -- and he said he thought you weren't indigent.
12 That you could afford to pay him.

13 A Yes, sir.

14 Q Okay. Now, on page 16 of that transcript, do you
15 recall Mr. McKnight telling the Court (as read): "I'm not
16 happy about hear -- being here, but I'm gonna do my best
17 because that's what I'm supposed to do," talking about
18 being appointed to represent you?

19 A I do.

20 Q Okay. So obviously -- was there some tension because
21 he had been appointed rather than retained?

22 A Yes, of course. Because -- due to me trying to retain
23 his services to find out the fee from after Mr. Barr was
24 relieved, clearly, he felt some type of way when the Court
25 appointed him to represent me. So being that he wasn't

1 getting the normal fee of \$25/\$30,000 to represent someone
2 that's being charged with murder, he really neglected to do
3 anything to assist me.

4 Q Let -- let's talk about that. How many times do you
5 think you met with Mr. McKnight?

6 A I think it was twice if I'm not mistaken.

7 Q All right. So step back for me. When do you think he
8 was appointed?

9 A Mr. McKnight was appointed around July the 20.

10 Q Okay. And so then he's relieved in December of 2010?

11 A Right. By Judge James.

12 Q All right. Now, during the time that he was
13 representing you, where were you being held?

14 A I was at the Florence County Detention Center.

15 Q All right. Did you ever -- when -- when he was being
16 held -- when you were being held over in Florence, did Mr.
17 McKnight ever come over to Florence to see you?

18 A He did.

19 Q All right. Was there ever ---

20 THE COURT REPORTER: Didn't?

21 THE APPLICANT: He did. Yes, ma'am.

22 Q Was there ever a time -- because Mr. McKnight tells
23 the Court in your -- in the transcript, on page 5, that he
24 felt threatened by you in Florence. He goes through this
25 whole thing where he says (as read): "It's a long walk

1 back there and once you're back there, you're all alone
2 with your client." Do you remember that?

3 A I do remember that.

4 Q Was there ever any threat made or altercation with Mr.
5 McKnight?

6 A Of course not.

7 Q Okay. And -- but in fact, that's one of the reasons
8 he gave to the Court, along with the not being paid
9 earlier?

10 A Yes, sir.

11 Q All right. Now, I think, at that hearing -- do you
12 acknowledge that you may have sent some letters that you
13 were upset with Mr. McKnight's representation? You sent
14 some letters to him?

15 A I do -- I do remember.

16 Q And -- and that -- and that's something that you
17 acknowledged and you were -- you apologized for that.

18 A I did.

19 Q All right. Obviously, you -- did you want Mr.
20 McKnight to represent you? I mean, you tried to hire him.

21 A I did. I've watched Mr. McKnight represent a client
22 in reference to obtaining discovery that was beneficial to
23 his client during a preliminary hearing. So Mr. McKnight
24 is definitely a good attorney, and I believe, again, it
25 stemmed from me not being able to hire Attorney McKnight;

1 and then the fact that the Court appointed him weeks later
2 really had him upset. So ...

3 Q Okay. Did -- let me ask you this: Who requested to
4 be relieved? Was it you asking for Mr. McKnight to be
5 relieved, or was it Mr. McKnight asking to be relieved?

6 A No. Mr. McKnight put in a motion.

7 Q Okay. And in fact, that was his second motion that he
8 had filed on his own, right?

9 A Yes, sir.

10 Q All right. During the time that Mr. McKnight was
11 representing you, did -- did Mr. McKnight ever have a
12 discussion with you and give you any sort of warnings or a
13 discussion about the advantages or disadvantages of
14 proceeding pro se?

15 A He did not.

16 Q Okay. And at the hearing -- and of course, the
17 transcript speaks for itself -- but in your mind, were you
18 ever advised or -- at that hearing where Mr. McKnight was
19 relieved -- about the advantages or disadvantages of
20 proceeding pro se?

21 A I was not.

22 Q Now, after Mr. McKnight was relieved on December 6 of
23 2010, who was appointed to then represent you?

24 A The Court appointed Mr. Anderson.

25 Q All right. Was he appointed sort of immediately after

1 that hearing or do you know about when?

2 A I believe it was around December -- I think it was
3 about December the 12, 2010.

4 Q So shortly after that motion to be relieved by Mr.
5 McKnight?

6 A Uh-huh. Yes, sir.

7 Q Okay. Now, ultimately Mr. Anderson is relieved,
8 arguably without a hearing, later on in your case; is that
9 right?

10 A He was.

11 Q All right. And that happened in September of 2011,
12 when he was relieved?

13 A Yes, sir.

14 Q Okay. How many times between December 2010 and
15 September 2011 do you think you met and discussed the case
16 with Mr. Anderson?

17 A It was more than a dozen times.

18 Q All right. How would you describe your relationship
19 with Mr. Anderson?

20 A It was good from the beginning. You know, when the
21 Court forced -- first appointed Mr. Anderson and he came to
22 visit me around December the 19, I mean, I had no problems
23 with counsel of record as he spoke to me about representing
24 me to the best of his ability.

25 But as some time passed, you know, I found myself

1 questioning more than a few inconsistencies in Mr.
2 Anderson's response to my letters. You know, for example,
3 when Mr. Anderson first came to visit me, he asked me if
4 there was anything that I could think of that would help my
5 representation. So I begin to tell Mr. Anderson about the
6 rumors and lies that people were saying in the
7 neighborhood, that I killed the victim for her lottery
8 winnings, and that's how I bought my Mercedes Benz. After
9 that, Mr. Anderson -- you know, he began to write down what
10 I had said to him ---

11 Q Uh-huh.

12 A --- and he stated that he would subpoena a copy of my
13 car contract from the Abu car -- car dealership in
14 Greenville, South Carolina to confirm the actual day of
15 purchase.

16 You know, he also stated that he was waiting for my
17 Rule 5 *Brady* motion from Solicitor Barr and that the minute
18 he received it, you know, he would send it to me.

19 You know, I agreed. You know, three months had passed
20 of me writing Mr. Anderson for a copy of the contract --
21 car contract, and a month later he writes me back stating
22 that he don't even know what car contract I'm talking about
23 which had me confused because here he writes me a letter
24 stating, okay, once he came to see me he's gonna have this
25 -- make sure that he [sic subpoena this information from

1 the car dealership, and then three months later he tells me
2 he don't even know what car dealerships I'm talking about.

3 So I'm --

4 Q Let ---

5 A --- I'm confused.

6 Q --- let me jump in here. Let -- let me interrupt
7 'cause we going -- you've got some letters you want to
8 introduce, don't you?

9 A Oh, yeah, I do.

10 Q Okay. So let's ---

11 A I was just -- okay.

12 Q --- let's go through those, Mr. McCrae. Let me ---

13 MR. BOOZER: Your Honor, may I approach the witness?

14 THE COURT: Yes, sir.

15 MR. BOOZER: Thank you.

16 (Brief pause.)

17 Q Mr. -- Mr. McCrae, I'm gonna hand you a copy of a
18 letter that is dated February 7, 2011.

19 A Uh-huh.

20 Q If you would, take a moment and look at that. Can you
21 identify that?

22 A I can.

23 Q Okay. And -- and is that -- what is that?

24 A This is a letter from Mr. Anderson.

25 Q To who?

1 A To me.

2 Q And -- and what's the date on that letter?

3 A February the 7, 2011.

4 Q Okay. I know you've got some of your handwritten
5 notes on this copy ---

6 A Uh-huh.

7 Q --- but other than the handwritten notes, is this a
8 true and accurate copy of the letter as you received it?

9 A It is.

10 Q Okay.

11 MR. BOOZER: Your Honor, at this time, I would move to
12 mark this as Applicant's Exhibit 2.

13 THE COURT: Ms. Coleman?

14 MS. COLEMAN: And Your Honor, I would just ask that
15 you disregard the handwritten notes on there if they don't
16 have a clean copy. No objection. But ...

17 THE COURT: All right.

18 MR. BOOZER: Oh, of course.

19 (Marked Applicant's Exhibit No. 2, letter dated 2/7/11
20 from Mr. Anderson, in evidence.)

21 Q Mr. McCrea, I'm gonna hand you a copy of another
22 letter. If you --

23 MR. BOOZER: May I approach the witness, Your Honor?

24 THE COURT: Yes, sir.

25 MR. BOOZER: And may I have free reign to approach --

1 THE COURT: Any time, yes, sir.

2 MR. BOOZER: Thank you, Judge.

3 Q Mr. McCrea, I'm gonna hand you a copy of another
4 letter, and if you would, please identify that for me.

5 A It's a letter from Attorney McKnight dated November
6 the 9, 2010.

7 Q Okay. And who is that written to?

8 A It's written to me.

9 Q All right. And is -- there's an attachment to that
10 letter?

11 A There is. A motion for a speedy trial and alternative
12 for release from jail.

13 Q Okay. Is that a true and accurate copy of the letter
14 as you received it from Mr. McKnight?

15 A It is.

16 MR. BOOZER: Your Honor, I'd move to mark this as
17 Applicant's Exhibit 3.

18 MS. COLEMAN: No objection.

19 THE COURT: All right.

20 (Marked Applicant's Exhibit No. 3, letter dated
21 11/9/10 from Mr. McKnight, in evidence.)

22 Q Mr. McCrea, if you would, take a moment and look at
23 those letters. I know you're familiar with them, but if
24 you would, sort of -- and I think you were getting there --
25 but what's the significance of -- of those two letters?

1 A Well, the February the 7, 2011 letter is from Attorney
2 Anderson, and he's stating to me -- and I believe it stems
3 from me writing him requesting him to put in a motion for
4 another bond hearing. And he's stating to me that -- that
5 he just wrote the solicitor to bring me over, and that
6 Cezar McKnight is the one that filed the motion for a new
7 bond and -- as well as a speedy trial.

8 And the November the 9, 2010 letter from Mr. McKnight
9 is a motion for a speedy trial and an alternative release
10 from jail.

11 Q Okay. Is there something about that, though, that led
12 to any distrust between you and Mr. Anderson?

13 A Yes. When Mr. Anderson wrote me the February the 7,
14 2011 letter, clearly Mr. McKnight -- after reviewing and
15 just knowing -- after speaking to attorney McKnight, that
16 he stated clearly that he wasn't going to put in a motion
17 for a bond because "it would be frivolous and a waste of
18 the Court's time," he states to me.

19 Q Okay. So -- so did that lead to some distrust with
20 Mr. Anderson?

21 A It did.

22 Q Okay. Now, I will also hand you and have you identify
23 for me a copy of a letter that's dated December 20, 2010.
24 Could you identify that for me, please?

25 A It's a December the 20, 2010 letter from Mr. Anderson.

1 Q Who's it to?

2 A It was sent to me.

3 Q Okay. Other than your handwritten notes on that
4 letter, is that a clear and accurate copy of the letter
5 that came to you from Mr. Anderson as you ---

6 A It is.

7 Q --- received it?

8 A It is.

9 MR. BOOZER: Your Honor, I'd move to mark this as
10 Applicant's Exhibit No. 4, of course disregarding my
11 client's notes.

12 THE COURT: Ms. Coleman?

13 MS. COLEMAN: No objection ---

14 THE COURT: All right.

15 MS. COLEMAN: --- other than the handwritten notes.

16 THE COURT: Thank you.

17 (Marked Applicant's Exhibit No. 4, letter dated
18 12/20/2010 from Mr. Anderson, in evidence.)

19 Q Mr. McCrea, I'm gonna hand you another document. If
20 you would please take a moment and identify that for me.

21 A It's a April the 25, 2011 letter from Attorney
22 Anderson.

23 Q Okay. Is that a true -- and it's to you?

24 A It is to me.

25 Q Is it a true and accurate copy of the letter as you

1 received it --

2 A Yeah.

3 Q -- other than the notes which you have on it?

4 A It is.

5 Q Okay.

6 MR. BOOZER: Your Honor, I'd move to mark this as
7 Applicant's Exhibit No. 5.

8 MS. COLEMAN: No objection other than the handwriting.

9 THE COURT: All right.

10 (Marked Applicant's Exhibit No. 5, letter dated
11 12/20/2010 from Mr. Anderson, in evidence.)

12 Q Mr. McCrea, if you would take a moment and review
13 those two letters.

14 (Brief pause.)

15 A Yes. It's a letter dated December the 20, 2010, with
16 Mr. Anderson stating -- or addressing the visit that we had
17 together; and he stated that he's in the process of
18 obtaining information for my case and that he's ordered the
19 transcripts and he would go ahead and subpoena the
20 information from the dealership in Greenville.

21 Q From -- from the car dealership that you were
22 referencing earlier?

23 A Yes, sir.

24 Q Okay. Mr. McCrea, what is it about these two letters,
25 if anything, that you find significant or that lead to some

1 distrust between you and Mr. Anderson?

2 A Well, when Mr. Anderson came to visit me, he asked me
3 if there was any information that I could give him that
4 would help my defense. I began to tell him about this, you
5 know, what the rumors and lies were being said in reference
6 to me driving this Mercedes is that -- again, that I killed
7 the victim for her lottery winnings and that's how I bought
8 that Mercedes.

9 And he -- when he said that he was going to subpoena
10 this information, I was looking forward to getting this
11 information. But as time went by and I'm writing Mr.
12 Anderson, around April the 25, 2011, he writes me back and
13 he states to me he's not even sure about what dealership
14 I'm talking about. Clearly, I'm confused.

15 Q Okay. Anything else about those letters that -- that
16 would've lead to any discord or distrust between you and
17 Mr. Anderson?

18 A Well, that lie that he told is what really created a
19 problem between me and Mr. Anderson because I'm saying, I
20 mean, if he's representing me to the best of his ability,
21 why is he lying to me or pretending that he don't know what
22 I'm talking about after writing me letters confirming
23 everything that he said during our conversation?

24 Q All right. Now, eventually did Mr. Anderson -- did he
25 asked to be relieved from your case?

1 A He did.

2 Q Was that something that you requested that he do or --
3 or was that something he was doing on his own initially?

4 A That was something that he decided to do, and there
5 was -- if I may address the fact that during my bond
6 hearing, my first bond hearing with Mr. Anderson -- I
7 believe this is what really created the problems. At my
8 first bond hearing -- yeah -- Mr. Anderson stated to me,
9 well, to the -- to the Court, I should say, that I believe
10 was prejudicial against my defense when he stated that the
11 gun has -- there was -- the -- the alleged murder weapon
12 that the State's witness led investigators to find, what --
13 during my bond hearing, he states to the Court that the gun
14 has come back. Based on the age of the gun and the
15 elements the gun has been exposed to, it is inconclusive.

16 Q Are -- are you talking about the August 30 bond
17 hearing after the motion to be relieved and the hearing?

18 A Right. That ---

19 Q Okay.

20 A --- was the first bond hearing.

21 Q Okay.

22 A Right.

23 Q Let -- let's get to that in a moment. Let -- let's
24 stay in order a little bit.

25 A Okay.

1 Q But eventually, when Mr. Anderson filed a motion to be
2 relieved, was there a hearing on that -- held on that
3 motion?

4 A There was a hearing.

5 Q Okay. And that was on June 22, 2011, before Judge
6 King?

7 A Yes, sir.

8 Q All right.

9 MR. BOOZER: And Your Honor, I'm gonna be referencing
10 the transcript of June 22, 2011.

11 Q Mr. McCrea, at that hearing, did you attempt to
12 explain sort of why you had some distrust with Mr.
13 Anderson?

14 A Yeah. I begin to address the Court and explain to the
15 Court of all the lies and inconsistencies in Mr. Anderson's
16 letters to me -- to my response. So that's what created
17 the problems 'cause I'm saying, "Well, why would he be
18 lying to me about some things when I'm looking at a murder
19 charge?"

20 Q Okay. At the hearing, do you recall the Court
21 essentially just giving you two options: That you can
22 either keep Mr. Anderson or you can go forward on your own;
23 you recall that?

24 A I do.

25 Q All right. Did you feel like you had a choice?

1 A No. Actually I was being forced to keep Mr. Anderson
2 after I tried to address the Court about the
3 inconsistencies.

4 Q All right. At that hearing, were the dangers of pro
5 se representation or the disadvantages and advantages of
6 proceeding pro se -- was that ever explained to you at that
7 hearing?

8 A No, sir. At no time was there ever any colloquial
9 [sic] of any voir dire given to me during that hearing.

10 Q All right. And on page 41 of the transcript, do you
11 recall the Court, beginning at line 10, indicating (as
12 read): "If you don't treat him with respect, I want Mr.
13 Anderson to advise me, in which case I'll relieve him
14 without a motion and require you to appear pro se and have
15 him stand by just to advise you on the procedure in the
16 courtroom." Do you recall that?

17 A I do.

18 Q Okay. Was it your understanding that in the event,
19 for whatever reason, if Mr. Anderson were ever relieved,
20 that he would still be serving as -- as what's called
21 "stand-by counsel"?

22 A Yes, sir.

23 Q Okay. And would that have been -- would you have
24 desired stand-by counsel?

25 A Absolutely not.

1 Q Well, if -- if you couldn't have -- if you couldn't
2 have a lawyer representing you, would you have wanted at
3 least a lawyer in some capacity advising you on procedures
4 and technicalities?

5 A No, sir. 'Cause under Rule 602 of indigent defense,
6 it clearly states if trial counsel is released for any
7 reason, that "the Court shall immediately ..." -- and
8 immediately and shall is binding -- appoint substitute
9 counsel.

10 Q Let me ask you this: After that hearing on June 22,
11 2011, Mr. Anderson stayed on as your lawyer; is that right?

12 A He did.

13 Q Okay. And you were getting to this momentarily, but
14 did you have a bond hearing after that on August 30, 2011?

15 A Yes, sir. There was another bond hearing, and after
16 the first bond hearing, I wrote Mr. Anderson and I
17 requested that he come visit with me. A week later he came
18 to see me, and I addressed the fact of the statement that
19 he made that was prejudicial towards my -- towards me
20 getting a bond hearing because he's not a qualified gun
21 ballistic expert to make any assessments about any gun
22 being found outside in the element. He's a licensed
23 attorney. So to state that for the record clearly
24 prejudiced my bond hearing.

25 Q And -- and you're talking about -- are you talking

1 about the gun that was used? Is that what you were talking
2 about?

3 A I am.

4 Q Okay.

5 MR. BOOZER: And Your Honor, on page 8 of the August
6 30, 2011 bond hearing transcript, that's what my client's
7 referencing, at line 17 through 18.

8 THE COURT: Yes, sir.

9 Q Did that cause you to lose some faith in your lawyer?

10 A Absolutely.

11 Q And why -- why is that?

12 A Again, I'm being charged for murder, not shoplifting.
13 And if he's supposed to defend me, then why would he make
14 prejudicial statements to the Court when he's not an expert
15 or qualified to do so? That didn't help my bond or me --
16 the Court granting me a bond.

17 Q Did -- did you have any correspondence or discussion
18 with Mr. Anderson after that bond hearing?

19 A I did. I -- I stated to Mr. Anderson that, "Why would
20 you make a statement like that to the Court when you're not
21 qualified to do so? And to make any assessment of any kind
22 for any weapon being found outside in the elements clearly,
23 again, prejudiced my -- prejudiced me from getting a bond
24 hearing."

25 Q Did you receive any response to that?

1 A Well, he stated that his statement did not sway the
2 Court's decision in denying me a bond.

3 Q Okay. After that bond hearing, did Mr. Anderson send
4 directly to Judge King a request, essentially, to be
5 relieved?

6 A He did.

7 Q All right. And was there ever a hearing on that
8 request to be relieved?

9 A It was not.

10 Q All right. And then, by order dated September 12,
11 2011 ---

12 MR. BOOZER: And Your Honor, you do have a copy of
13 that.

14 THE COURT: Yes, sir.

15 Q By order dated September 12, 2011, did Judge King
16 relieve Mr. Anderson without a hearing?

17 A He did.

18 Q Okay. And -- and would not appoint you a lawyer. Do
19 you recall that?

20 A Right.

21 Q At that point were you able to afford private counsel?

22 A I was not.

23 Q All right. Did you want a lawyer to represent you?

24 A Absolutely.

25 Q All right. Was there ever anything expressed to you,

1 with the signing of that September 2011 order, about the
2 dangers of proceeding pro se or representing yourself?

3 A There was never any colloquial [sic] of any voir dire
4 given to me.

5 Q All right. And did Mr. Anderson ever have any
6 discussion with you about the dangers of proceeding pro se?

7 A He did not.

8 Q Did you ever feel that you actually elected to
9 represent yourself, or do you feel that you were forced to
10 represent yourself?

11 A Clearly forced to represent myself.

12 Q Okay. Now, on October 12, 2011, did you have a
13 pretrial hearing before Judge Newman?

14 A I did.

15 Q You did. Okay.

16 MR. BOOZER: And Your Honor, we looking at the
17 transcript dated October 12, 2011. There may be an error
18 and it's labeled December.

19 Q Did you appear pro se at that hearing?

20 A I did.

21 Q And was that -- there were some discovery issue? Is
22 that what that was about?

23 A Yes, sir.

24 Q Did Judge Newman ask you whether you wanted to be
25 represented by counsel at that hearing?

1 A He did not.

2 Q Did Judge Newman ever offer to appoint you a lawyer or
3 provide you with stand-by counsel?

4 A He did not.

5 Q Did -- did Judge Newman, on the record, ever provide
6 you with any warnings about the danger of proceeding pro
7 se?

8 A He did not.

9 Q Even at that time, did you want an attorney to
10 represent you?

11 A Absolutely.

12 Q All right. Now, shortly thereafter, you actually
13 proceeded to trial; is that right?

14 A Forced to do so. Yes, sir.

15 Q Okay. And -- and you were there without an attorney?

16 A Yes, sir.

17 Q And this -- your trial started on October 17, 2011?

18 A It did.

19 MR. BOOZER: And Your Honor, I'm gonna begin referring
20 to the trial transcript.

21 THE COURT: Mr. Boozer, just a minute.

22 MR. BOOZER: Yes, sir.

23 THE COURT: May I speak with you and Ms. Coleman
24 outside? Nothing's wrong, nothing's bad. I just want to
25 ask you a question about, sort of, where we are right now.

DIRECT EXAMINATION BY MR. BOOZER - LEVERN MCCREA

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1 MR. BOOZER: Certainly.

2 (Off the record at 11:10 a.m.)

3 (On the record at 11:13 a.m.)

4 THE COURT: I'm sorry. Proceed, sir.

5 MR. BOOZER: May I have a moment to ---

6 THE COURT: Sure.

7 MR. BOOZER: --- let my client know what the
8 discussion was?

9 THE COURT: Well, let me put on the record ---

10 MR. BOOZER: Please.

11 THE COURT: --- what we -- what I talked about. I --
12 I had the feeling we were at that point in the trial where
13 we were phasing in from his concerns about his
14 representation to concerns about judges and then trials.
15 And I was gonna make the suggestion that we go ahead and
16 address the lawyer portion of it -- his complaints with the
17 lawyers in one segment because it helps me keep my notes
18 better when I'm in the same section. But those lawyers are
19 not here, so we will forge ahead.

20 MR. BOOZER: Okay. Thank you, Your Honor.

21 DIRECT EXAMINATION

22 BY MR. BOOZER:

23 Q Mr. McCrea, we were segueing into your trial on
24 October 17, 2011. Did you proceed to trial before Judge
25 Young?

1 A Yes, sir.

2 Q Okay.

3 MR. BOOZER: And Your Honor, now I'm gonna be
4 referencing the trial transcript.

5 THE COURT: Yes, sir.

6 Q Looking at the trial transcript, on page 15, Volume 1,
7 do you recall the solicitor -- Solicitor Barr stating that,
8 (as read): "Mr. Crae -- Mr. McCrea has elected to
9 represent himself and the State is ready for trial"?

10 A I do.

11 Q Would you agree with that statement?

12 A Absolutely not.

13 Q Okay. Why not?

14 A Because I don't -- for one, I have no trial
15 experience; two, Sixth amendment of the United State [sic]
16 Constitution guarantees me the right to effective
17 assistance of counsel during trial.

18 Q Okay. And did the Court at any time ask you any
19 questions about represent -- why you were there
20 representing yourself?

21 A They did not.

22 Q Did the Court ask you whether you wanted a lawyer?

23 A He did not.

24 Q Did the Court ask you or offer to provide you with
25 stand-by counsel?

1 A He did not.

2 Q Anywhere in that transcript did the Court provide you
3 with any warnings about the dangers of representing
4 yourself?

5 A Faretta warning was not given.

6 Q Okay.

7 A No, sir.

8 Q And actually, on page 62 of the transcript, in your
9 opening statement, you actually make the statement, on line
10 21, that you've been forced to represent yourself; is that
11 right?

12 A Yes, sir.

13 Q All right. And nothing further was really asked about
14 it by the Court, was there?

15 A Was not.

16 Q All right. Following -- let me skip ahead because I
17 think this is important. Following your conviction, after
18 you were convicted at trial, did you file a notice of
19 appeal?

20 A I attempted to.

21 Q All right. And -- and did you do that on your own?
22 Did you have a lawyer who helped you file the appeal?

23 A I did not.

24 Q And -- and was it -- was your appeal dismissed?

25 A It was.

1 Q Why was your appeal dismissed?

2 A That I didn't serve opposing counsel and that would be
3 the Clerk of Court, they stated.

4 Q Okay. And -- and is that because you're not trained
5 as a lawyer, you don't know how to do that?

6 A Of course not.

7 Q All right. And were you ever appointed a lawyer for
8 your appeal?

9 A I was not.

10 Q All right. Mr. McCrea, let's get back to your
11 allegations, specifically with allegations that you believe
12 the State committed prosecutorial misconduct. And you --
13 you've asked that I address some issues that are marked in
14 your transcript. So we're gonna lay those out for the
15 Court, okay?

16 A (No audible response.)

17 Q On page 30 of the transcript -- do you have a copy of
18 the transcript with you?

19 A I do not.

20 Q Okay. Do --

21 MR. BOOZER: May I approach, Your Honor?

22 (Mr. Boozer hands a transcript document to the
23 witness.)

24 Q Mr. McCrea, just take your time. On page 30 of the
25 transcript -- we're gonna be referencing a few page

1 numbers: Page 30, 41, and 45 through 47.

2 (Brief pause.)

3 Q Are you reviewing those?

4 A Yeah.

5 Q Okay. And -- and just take your time.

6 A Uh-huh. Okay.

7 Q All right. On page 30, what's the significance of
8 that as to why you believe there was prosecutorial
9 misconduct?

10 A Maybe see that again.

11 Q Sure.

12 (Brief pause.)

13 A For the Court actually to allow Solicitor Barr to hand
14 me exculpatory, impeaching *Brady* evidence that was material
15 to my defense the first, second, and third day during my
16 trial clearly prejudiced my defense.

17 Q Okay. And that's what you're referencing on page 30?

18 A Yes.

19 Q Was -- was that ongoing throughout your trial?

20 A Yes, sir, it was.

21 Q Okay. And did you actually address to the Court --
22 and -- and you used the language that you felt like you
23 were being "spoon-fed" discovery; is that right?

24 A Yes, sir. I stated to the Court that I'm still being
25 given *Brady* evidence that I should've had years ago. And

1 here's one example: For the Court to allow Solicitor Barr
2 to hand me discovery during trial, clearly was no way
3 possible that I could've prepared defense in two weeks
4 anyway.

5 Q Okay. Now, you've asked to note another page in your
6 transcript which is page 41. If you would, take a moment.
7 And that's in relation to some of your statements about
8 some things you wanted in relation to some investigators I
9 believe.

10 (Brief pause.)

11 A Right. Those reports were in reference to copies of
12 any infractions from Investigator Willie Brown or McFadden.

13 Q Okay. And were those things that you believed
14 should've been turned over to you so you could cross-
15 examine investigators?

16 A I do.

17 Q Okay. Is that why you raised that there in trial?

18 A Yes, sir.

19 Q All right. Let -- let's flip over -- and I want you
20 to take a moment 'cause this is gonna be multiple pages --

21 A Uh-huh.

22 Q -- of page 45 through 47 of the trial transcript.

23 A Okay.

24 (Brief pause.)

25 A Okay.

1 Q All right. And with regard to those page numbers that
2 you wanted to raise, what do you believe -- how do you
3 believe that supports your claim that there was misconduct
4 by the State?

5 A Mr. McGee was a family member who lied once the Court
6 questioned him as if he had any ties or was he related by
7 blood to the defendant at that time. He stated, "No."

8 And as the trial proceeded, Solicitor Barr requested
9 to address the Court and brought up the issue again that it
10 had come to her knowledge that Mr. McGee was a family
11 member, and she wanted to bring that to the Court's
12 attention.

13 My belief that the Court was supposed to relieve him
14 due to the fact that he committed perjury, but the Court
15 kept him as a juror.

16 Q Okay. Let me direct your attention to page 402 of the
17 trial transcript, and this is during the State's
18 examination of one of the investigators and -- and
19 specifically beginning at line 23. If you would, just take
20 a moment and review the transcript, Mr. McCrea.

21 A Okay.

22 (Brief pause.)

23 A Okay.

24 Q All right. Do you recall at your trial that on page
25 402, the investigator was asked (as read): "And was there

1 any type of deal between the Sheriff's Department and
2 Christopher Briggs concerning him providing you with
3 information?" And the answer was, "No, ma'am."

4 The question was then asked (as read): "Were there
5 any promises made to get him out of jail?" "No."

6 Do you believe that there's a problem with that
7 testimony?

8 A I do.

9 Q All right.

10 MR. BOOZER: Your Honor, at this time -- one moment.

11 Q Mr. McCrea, I'm gonna hand you a copy of a document.
12 If you would, please identify that for me.

13 A It's page 6 of a supplemental report.

14 Q Okay. Is this something that was provided to you in
15 discovery or how did you get this?

16 A Through discovery.

17 Q All right. Is that a true and accurate copy of page 6
18 of that supplemental report?

19 A It is.

20 Q As you received it?

21 A Yes, sir.

22 MR. BOOZER: Your Honor, I'd move to mark this as
23 Applicant's Exhibit 6.

24 MS. COLEMAN: No objection.

25 THE COURT: All right. Thank you.

1 (Marked Applicant's Exhibit No. 6, supplemental report
2 document, in evidence.)

3 Q Mr. McCrea, take a moment and look at that incident
4 report.

5 A Okay.

6 MR. BOOZER: Your Honor, may I approach Your Honor?

7 THE COURT: Yes, sir.

8 MR. BOOZER: Thanks. Your Honor, this is a copy of
9 what the witness is reviewing.

10 (Mr. Boozer hands document to the Court.)

11 THE COURT: Yes, sir.

12 MR. BOOZER: Exhibit 6.

13 Q All right. Mr. McCrea, have you had a moment to
14 review that?

15 A I have.

16 Q Okay. If you're looking at it, on the second -- I'll
17 say second paragraph, but beginning on July 30 -- and this
18 is by Officer Lambert (as read): "On July 30, Investigator
19 Brown, along with Lieutenant Collins and Chief Johnsons,
20 made a letter for Chris Briggs which stated, 'Based on our
21 recent conversation, we believe the ...'" -- which is an
22 error it appears -- "... you have vital information about
23 Cora Brown death. At this point we do not believe that you
24 were the actual shooter, and if you freely and voluntarily
25 provide all of the truthful details surrounding Cora death

1 and pass the polygraph, Chris will be charged with
2 accessory after the fact." The letter went on to say that
3 (as read): "We will talk with the judge and the solicitor
4 to get Chris Briggs leniency on his charge."

5 Okay. So the officers are denying that there was any
6 sort of deal with Mr. Briggs?

7 A They are.

8 Q And were you -- did you have an opportunity to cross-
9 examine Mr. Briggs?

10 A I did not.

11 Q Well, did you -- did you --

12 A Oh, to ---

13 Q -- ask him questions?

14 A Well, I did to ---

15 Q Okay. And did he deny that there was any sort of deal
16 or that he'd been promised anything?

17 A He did.

18 Q Were you ever provided with the letter that is
19 referenced in the supplemental incident report that's
20 marked as Exhibit 6?

21 A I was not.

22 Q All right. And have you and I not attempted to get
23 that from the Solicitor's Office upon request?

24 A We have.

25 Q And have -- have you ever been provided with that?

1 A I have not.

2 Q Okay. Would you have liked to have had whatever that
3 letter may have been in either your cross-examination of
4 the -- Mr. Briggs or of the officers?

5 A Absolutely. Because for the investigators to lie --
6 clearly Investigator Brown, who typed this letter himself -
7 - and then to have Solicitor Barr question him and he
8 states he has no knowledge of it, clearly he perjured
9 himself under oath because this was the deal that he
10 claimed to have no knowledge of 'cause he typed the letter
11 himself.

12 So as a matter of -- common sense would tell you, I
13 mean, clearly he knew about it, but they intentionally and
14 deliberately neglected to give it to me because I would've
15 been able to question him or impeach him for the lies that
16 he's told.

17 Q And is that part of your claim regarding what you feel
18 is investigative misconduct as well as prosecutorial
19 misconduct?

20 A Yes, sir.

21 Q Okay. Now, you've asked that we bring to the Court's
22 attention, on page 3 of -- back to that June 22, 2011
23 hearing before Judge King, where there were some statements
24 that were made by the State. Specifically, on page 3 at
25 line 16, where the Solicitor said (as read): "Your Honor,

1 law enforcement was able to recover a weapon that was
2 indicated by the co-defendant that was used in connection
3 with the murder. Your Honor, the Defendant, Mr. McCrea,
4 was subsequently arrested, I believe March of 2010."

5 Then you wanted to compare that over to page 150 of
6 the trial transcript and page 306 through 308.

7 Do you recall the significance of that trial testimony
8 and why you want to highlight that and compare it?

9 A Repeat that again, please.

10 Q Yes, sir. On page 3 of the June 2 -- or June 22, 2011
11 hearing, you wanted to highlight the statement made by the
12 State (as read): "With the murder weapon being
13 recovered..." with that of testimony at the trial on page
14 150 as well as 306 through 30 -- 308. Let me approach and
15 show you a copy of the transcript so that you get your
16 bearings here.

17 (Mr. Boozer shows transcript document to the witness.)

18 A Okay.

19 Q All right. Is there anything about the gun and the
20 weapon being recovered and the ballistics being
21 inconclusive that you wanted to highlight?

22 A Yes. When the ballistic expert, Mr. Thorow
23 {phonetic}, tested that gun, he stated clearly that his
24 results were inconclusive. And as Ms. Barr questioned him,
25 he stated that -- he testified (as read): "... the Smith

1 and Wesson revolver like he told you. In doing so, he used
2 test specimens from it. That way he know exactly how that
3 gun mark because I test fired it myself. I used comparison
4 microscope with two microscopes side by side. These two
5 microscopes are connected to what they call an "optimal
6 bridge." When I look through the eye pieces, I can see
7 with both the microscopes at the same time.

8 "Basically, what you do is you place the evidence
9 specimen on the left microscope and place your test
10 specimen on the right microscope and then you look through
11 the eye pieces. What you see is two images sitting side by
12 side with a small hairline separating it.

13 "You can rotate each of -- each of the bullets, the
14 cartridge cases individually. You can change the angle
15 from lighting and you can change the magnification.

16 "Basically, what I did was I compared the three
17 bullets and the three evidence specimens that I originally
18 was submitted. I compared them to each other and got
19 explicit result. I was not able to tell if they were all
20 fired by three different firearms due to the amount of
21 damage that was present."

22 Clearly, when he was submitted that Smith and Wesson
23 revolver, he stated he test fired the revolver and compared
24 them to each of the three bullets, test specimens. Once
25 again, it came back with inconclusive results. Clearly

1 that -- the results should be clear from the State
2 solicitor's own ballistic expert who test fired that weapon
3 personally, who has more than 20 years experience in gun
4 ballistic testified under oath that the gun the State
5 witness, Christopher Briggs, led investigators to find, is
6 not the murder weapon used in the crime that I was
7 convicted of.

8 Which only proves that I was convicted by irrelevant,
9 prejudicial evidence, and at no time was I ever in
10 possession of any of the State's evidence against me nor
11 did I have any knowledge of the whereabouts of the evidence
12 the State led -- led investigators to find.

13 Q Okay. Let's move on. I've sent to you, obviously, a
14 copy of the discovery that I was provided with from the
15 Solicitor's Office. And in that discovery, you pulled five
16 photographs of bullets; do you recall that?

17 A I do.

18 Q Mr. McCrea, I'm gonna hand you five separate documents
19 that are photographs. If you would, please identify those
20 for me.

21 A These were the bullets recovered from the victim, I
22 believe, that I received from you February the 8 of 2017, I
23 believe.

24 Q Okay. Is that a true and accurate copy of those
25 photographs as they were provided to you?

1 A Yes, sir.

2 MR. BOOZER: Your Honor, at this time I would move to
3 mark these five photographs collectively as Applicant's
4 Exhibit 7.

5 MS. COLEMAN: Your Honor, I would again just ask that
6 you disregard the handwriting.

7 THE COURT: I will.

8 MS. COLEMAN: Thank you.

9 THE COURT: Thank you.

10 (Marked Applicant's Exhibit No. 7, photographs of
11 bullets, 5 pages, in evidence.)

12 Q Mr. McCrea, the photographs that have been marked as
13 Applicant's Exhibit 7, were you ever provided those prior
14 to the trial?

15 A I was not.

16 Q Had you seen those prior to me delivering them to you?

17 A I have not.

18 Q Okay. When's the first time you saw those?

19 A When you sent them to me dated February the 3, I
20 believe, 2017.

21 Q All right. Would that go along with your claim that
22 you believe the State committed misconduct in withholding
23 evidence?

24 A I do.

25 Q All right. Do you also believe that the State failed

1 to provide you with other items?

2 A Yes, sir.

3 Q All right. Let's -- let's go through those if -- if
4 we can. Would one of those items -- would it be a Roberta
5 Smith statement that you believe was taken on June 28 of
6 2010?

7 A I do.

8 Q All right. Have we asked for that statement?

9 A We have.

10 Q Do you recall what the response was?

11 A Yes, sir. That they don't have copies of ---

12 Q Okay. How do you know a statement was taken on that
13 date of Ms. Smith?

14 A I questioned Investigator Willie Brown during my
15 trial, and I asked him was there any -- was there another
16 transcript of a police interview with Ms. Smith and he
17 stated that there were, June -- June the 23, if I'm not
18 mistaken; and that's what led me to believe that there was
19 another police interview transcript of *Brady* discovery that
20 the Solicitor neglected to give me.

21 Q Okay. So you've never seen any second statement from
22 Ms. Smith.

23 A I have not.

24 Q All right. How about a Kristen {phonetic} Green/Young
25 police interview transcript and police report?

1 A Right. There was another interview with Christine
2 {phonetic} Green/Young. Clearly there was some dialogue,
3 and she stated -- Solicitor Barr stated during her
4 questioning of Ms. Green/Young did she "have a conversation
5 with the deputies from the Williamsburg County Sheriff's
6 Department?" She stated, "Yes."

7 Q Okay. So based on that statement, you believe that
8 there was some sort of either statement or interview or
9 transcript taken of her?

10 A I do.

11 Q Okay. Was one ever provided to you either before the
12 trial or in this PCR process?

13 A It was not.

14 Q How about a Clinton/Dorsey police interview or
15 statement or report?

16 A Yes, sir. There was an -- search warrant affidavit.

17 Q There was s search warrant affidavit?

18 A That --

19 Q Okay. Let --

20 MR. BOOZER: May I approach?

21 THE COURT: Yes, sir.

22 Q Mr. McCrea, I'm gonna hand you a copy of the document
23 that I think you're about to get to.

24 A Okay.

25 Q If you would, take a moment and identify that for me.

1 A It's a search warrant affidavit of consent to search a
2 Mr. Clinton Dorsey's residence dated March the 13, 2009.

3 Q All right. How -- how did you come across this
4 document?

5 A When you sent me a copy January the 5 of 2017. That's
6 when I realized that this was newly discovered evidence.

7 Q Is -- as it is and as you see it right now, is this a
8 true and accurate copy of the document that I provided to
9 you?

10 A It is.

11 MR. BOOZER: I would go ahead and move to mark this as
12 Applicant's Exhibit 8.

13 MS. COLEMAN: No objection.

14 (Marked Applicant's Exhibit No. 8, search warrant
15 document, 1 page, in evidence.)

16 Q All right. Based on that consent to search form, why
17 do you believe there was a statement taken of Mr. Dorsey?

18 A From my understanding, he involved himself by stating
19 that he had sold me a broken two -- broken 32 revolver that
20 was the murder weapon used in this crime. And I knew that
21 there were two people with conflicting stories and
22 statements about two alleged murder weapons allegedly used
23 in this crime that Solicitor Barr could not defend to the
24 jurors because of the contradictions and inconsistencies in
25 both of the witnesses's testimonies. And I would not have

1 remembered that Mr. Dorsey called and talked to
2 investigators around or about March the 13 of 2009 if that
3 search warrant affidavit had not been included in that
4 partial Rule 5 *Brady* motion that I received from you. It
5 was January the 3 of 2017.

6 Mr. --- Mr. Dorsey voluntarily involved himself in
7 this case by calling the Sheriff's Department, telling them
8 that he sold me a broken 32 revolver that was the murder
9 weapon.

10 Now, the statements and the tape-recorded police
11 interview from Clinton Dorsey was vitally important to my
12 defense prior to trial because it would have completely
13 contradicted the State's witnesses's testimony during
14 trial, which would have shown the jurors and the Court that
15 the Applicant was being framed and set up for this crime.

16 Q Okay. But you -- you've never been provided with any
17 statement, and that's the first time you ever saw that
18 consent to search was when it was provided to you during
19 this PCR matter?

20 A Yes, sir.

21 Q Okay. Is that part of your claim that prosecutorial
22 misconduct was committed?

23 A Yes, sir.

24 Q All right. If you would, looking at the trial
25 transcript, at page 582 and 583, do you recall the State

1 presenting its closing argument first or what was the order
2 that it went? Do you recall?

3 A They -- well, they started and they ended.

4 Q Okay. So they -- they opened and they closed?

5 A They did.

6 Q Okay. Do you believe that there was -- that that was
7 a mistake or an error?

8 A I do.

9 Q Why do you believe that?

10 A Because at no time that I -- well, there was -- at no
11 time was I able to call any witnesses. Solicitor Bar is
12 the one who subpoenaed every witness to trial, and they
13 only gave me two weeks to -- to get things in order to --
14 you know, to defend myself.

15 Q Okay. So you -- you believe because you didn't
16 present any witnesses that you should've been allowed the
17 final closing?

18 MS. COLEMAN: Your Honor ---

19 A I do.

20 MS. COLEMAN: --- I object to that. As a direct
21 appeal issues, that's not proper for PCR.

22 THE COURT: Mr. Boozer, your response?

23 MR. BOOZER: Judge, I think if Mr. McCrea's position
24 is correct that he was entitled to close because he did not
25 present any witness -- witnesses --

1 THE COURT: All right. I'm gonna allow that, Ms.
2 Coleman.

3 Go ahead, sir. Proceed.

4 MR. BOOZER: Thank -- thank you, Your Honor.

5 Q Mr. McCrea, if you would, answer my previous question.

6 A Yeah. 'Cause I never called any witnesses.

7 Q Okay. It -- and is that -- that's part of your claim
8 as -- of prosecutorial misconduct or errors in your trial?

9 A It is.

10 Q All right. Now, you take -- do you take issue with
11 certain statements that were made during the sentencing
12 phase of your trial at pages 36 -- or excuse me, 636 and
13 637?

14 A I need to see that, if I may.

15 Q Of course.

16 (Mr. Boozer hands transcript document to the witness.)

17 Q Take a moment and review the trial transcript at 636
18 through 637.

19 (Brief pause.)

20 A Okay.

21 Q Okay. Do -- do you take certain -- do you take issue
22 with some of those statements that are made by the State?

23 A I do.

24 Q Okay. And specifically, what do you take issue with?

25 A Well, for the Court to neglect to appoint counsel to

1 represent me and being that I have no knowledge of the law,
2 I had no one to properly prepare the -- the order to
3 request a direct review of my case.

4 Q All right. Mr. McCrea, at your -- at your trial, how
5 did you appear? Were you in shackles or -- or how -- were
6 you free to move about the courtroom? Tell us about that.

7 A No. The -- they had me strapped to a chest and back
8 shock device and physical shackles during trial. So it was
9 virtually impossible to move and to --

10 Q Okay. Let's describe that in some detail. Describe
11 for the Court how you were shackled that day -- or all
12 those days for your trial.

13 A There were two leg shackles that would get stuck
14 periodically throughout the trial where the officer had to
15 pull up my pants to unlock the shackles, which -- along
16 with the chest and back shock device, this remote-
17 controlled chest and back shock device.

18 I believe that that was the Solicitors doing to have
19 me restrained to that extent, knowing that I've never had
20 any escapes or threats of escapes ever.

21 Q Let me ask you this: Were you wearing a suit or how
22 were you dressed?

23 A Some days I were [sic] wearing a suit.

24 Q What courtroom were y'all in then?

25 A Kingstree, Williamsburg County Courthouse.

1 Q Okay. And you said you did have on leg shackles?

2 A I did.

3 Q All right. And they were around your ankles or where?

4 A From my ankles up to my calf.

5 Q Okay. And were they metal or describe them.

6 A They were metal.

7 Q All right. Could -- could you hear them when you
8 walked around?

9 A Yes, sir.

10 Q All right. Did they hinder your movements?

11 A Absolutely.

12 Q All right. To your knowledge, were you ever -- do you
13 believe the jury ever saw you in your shackles?

14 A They did. The officer had to, when they would get
15 stuck, literally pull up my pants in front of the jury.

16 Q All right. Could you see the shock device that you've
17 described under your clothing?

18 A No. They had it under my clothes. You couldn't see
19 it, but the officer had the remote control.

20 Q All right. Was there ever any sort of hearing to
21 determine or was there ever -- ever any request made in a
22 hearing to determine whether you should have to wear that?

23 A No.

24 Q All right. Now, flipping back, Mr. McCrea, to the
25 October 12, 2011 transcript, pages 15 through 18 -- have

1 you just review that because I think you wanted an
2 opportunity to address the Court with that.

3 (Brief pause.)

4
5 A Okay.

6 Q All right. Was there anything you wanted to address
7 with the Court, with regard to pages 15 through 18, on the
8 -- of that transcript? And if not, that's okay.

9 A Well, yes. When the -- when I mentioned to the Court
10 that I was representing myself pro se, he stated the fact
11 that I've had three attorneys, but at -- at no time did he
12 ever give me the proper colloquial [sic] of any voir dire
13 in reference to self-representation with eyes open.

14 Q And -- and we've been over that, right? None -- in --
15 in your mind, none of the judges have ever given you any
16 sort of Faretta warnings as you know them now.

17 A That's correct.

18 Q Okay. Mr. McCrea, let me go through and ask you at
19 the time of trial, how old were you?

20 A I believe I was 46 years old then.

21 Q All right. And what was your educational level?

22 A Eighth grade.

23 Q Eighth grade is your last year of school?

24 A Yes, sir.

25 Q All right. And had you ever been involved in a trial

1 before?

2 A No, sir.

3 Q All right. Have you ever represented yourself before
4 this -- this date?

5 A No, sir.

6 Q All right. Were you ever -- through any of the
7 proceeding, were any of your actions ever to delay or
8 manipulate any sort of -- the Court?

9 A No, sir.

10 Q All right. And you weren't trying to delay. In fact,
11 you had wanted a speedy trial; is that right?

12 A Yes, sir.

13 Q All right. Did any judge ever inquire into your
14 background; into your education; into your, sort of, life
15 history when they were relieving any of these lawyers?

16 A They did not.

17 Q How 'bout at trial or prior to trial, such as with
18 Judge Newman?

19 A It did not.

20 Q And -- and not with Judge Young either?

21 A He did not.

22 Q Okay.

23 MR. BOOZER: Beg the Court's indulgence, Your Honor?

24 THE COURT: Yes, sir.

25 (Brief pause.)

1 Q Mr. McCrea, as -- as part of your prosecutorial
2 misconduct claim, to kind of fill in some of the blanks,
3 was there a time, on page 157, that you believe that the
4 Solicitor's Office was vouching for the witnesses? Is --
5 is that something you wanted to raise?

6 A Yeah. Can I see that?

7 Q Yes, sir.

8 (Mr. Boozer hands transcript document to the witness.)

9 Q And we can certainly address it generally. Do you
10 believe the Solicitor's Office was vouching for the
11 witnesses or the credibility of the witnesses?

12 A I do.

13 Q Okay. Why -- why do you believe that?

14 A Because if Solicitor Barr -- which she's been studying
15 law quite some time -- and to actually see -- or review
16 Christopher Briggs's prior police interview transcripts and
17 to review the supplemental reports and to hear her
18 statement during trial, clearly, she knew that he was lying
19 'cause the inconsistencies were clear that he has told
20 several different stories, and at least one of which had to
21 been a -- had to been un-correct.

22 Q Okay. You -- you also wanted to bring to the
23 attention that you believed, on page 177, that the
24 supplemental report -- you describe it as coming in as
25 hearsay during the trial, during the examination of Mr.

1 Briggs. And that would be on lines 2 on through the bottom
2 of 177. Do you recall that?

3 A I do.

4 Q Okay. It -- do you believe that there was hearsay
5 that you believe the Solicitor should not have gotten into
6 during your trial with regard to the supplemental report?

7 A Right. Because to me, a supplemental report's just
8 like a police interview transcript. If he's making
9 statements that are inconsistence [sic] with what his trial
10 testimony is, clearly that -- that's a problem and I
11 should've been able to ---

12 MS. COLEMAN: Your Honor, I ---

13 A --- and I should've been able to address that.

14 MR. COLEMAN: I would object again to these
15 allegations as direct appeal allegations that are improper
16 for PCR.

17 THE COURT: I -- I will agree. Sustained.

18 MS. COLEMAN: Thank you.

19 Q Mr. McCrea, with regard -- you've asked to bring up
20 and -- and address an issue that you describe as Mr. Briggs
21 being in North Carolina and South Carolina; do you recall
22 that?

23 A I do.

24 Q Okay. Specifically, what -- if you would, explain
25 that to the Court in a little bit more detail.

1 A During Mr. Briggs being question by Solicitor Barr, he
2 stated that he had to stay under me to watch my moves, that
3 he didn't trust me. And prior to trial, he stated in a
4 police interview transcript that he did everything to get
5 away from me. He stated that he -- he went to North
6 Carolina to find a job, and on pages 11 and numbers 2 to 4,
7 but he begged me to bring him home. He stated March 31,
8 2010, police interview transcript, page 12, number 17 to
9 23, as we was down there, just the way that I was acting
10 after the incident had him shook. And he said (as read):
11 "'Man, could you please take me home? If you want to come
12 back down there, you are welcome. Just take me home.' I
13 came home and I was working on the beach,'" he stated.

14 He also stated on March 31, 2010 police interview
15 transcripts, at page 13, at number 6 to 11, that (as read):
16 "Vern is a very destructive person. I didn't want to cross
17 him because I didn't know how to take him. That's why I
18 got myself away from him, you know what I'm saying?
19 Because I don't trust that -- I don't trust him." And
20 that's why he got himself away from me.

21 He also stated on March 31, 2010 police interview
22 transcript, page 14, at numbers 11 to 25, and that's why
23 every time he would run into me or something like that, he
24 was always in a rush, that he had to go. He didn't want to
25 have no dealings with me. But his trial testimony was just

1 the opposite of what he said prior to trial.

2 Q Okay. It can -- does that go along again with your
3 allegations of prosecutorial misconduct for presenting a
4 witness who has inconsistent testimony?

5 A Yes, sir. Because she knew that he was lying through
6 his prior police interview transcripts as well as the
7 supplemental reports.

8 Q Okay. I -- I know that you wanted to address -- you
9 -- you've indicated to me you wanted to address DNA
10 fingerprints, glove, ski mask, grocery bag, fanny pack, and
11 unfired bullets. If -- if you would, just kinda tie that
12 in to how it relates to your claims in the case.

13 A Okay. Ms. Catherine {phonetic} Leslie -- the forensic
14 final report for the DNA swab, glove, ski mask, stocking,
15 alleged holster, and of the victim's residence. It's clear
16 by the record that at no time was I ever in possession of
17 any of the State's evidence against me, nor did I have any
18 knowledge of the whereabouts of the State's evidence that
19 Christopher Briggs led investigators to find.

20 Ms. Leslie -- Catherine Leslie, the forensics expert
21 testimony during trial and her final DNA swab report
22 clearly exonerated me with scientific evidence which proved
23 that at no time was I ever in possession of any of this
24 evidence.

25 Q Okay. That's why you believe that's important?

1 A Yes, sir.

2 Q All right. Now, you've also -- you've discussed or
3 want to discuss that you feel like there's an issue with no
4 time being listed on the death certificate?

5 A Yes, sir.

6 Q Okay. If you would, explain why you believe that's
7 important and how it relates to your PCR case?

8 A In order for a Defendant to present an alibi defense
9 for their whereabouts at the time the victim was killed, to
10 me the Coroner should have at least listed an -- an exact
11 or approximate time of death on the report because the time
12 that's missing is an essential element to me proving that I
13 was somewhere else when this crime was committed along with
14 having the opportunity to be able to impeach any alleged
15 witness testimony during trial. So the time that [sic]
16 missing is -- is extremely important.

17 Q Okay. You know, also, obviously we've covered you did
18 not have a preliminary hearing or you did?

19 A I did not.

20 Q Okay. And on page 547 of the transcript, at line 10,
21 the question is asked (as read): "And during Mr. McCrea's
22 preliminary hearing, was he represented by counsel?"

23 Answer: "He was represented by Mr. Charles David Barr."

24 And you objected and it was overruled. Was that --
25 what do you believe is significant about that?

1 A That Solicitor Barr was trying to make it seem as if
2 she followed the procedural requirement when a defendant is
3 requesting his preliminary hearing, and to have an
4 investigator -- to question an investigator who
5 deliberately lie [sic] under oath by stating that he
6 attended a preliminary hearing that never happened, clearly
7 --

8 Q You -- you believe that falls under -- that's sort of
9 your claim for prosecutorial misconduct?

10 A Yes, sir.

11 Q Okay. Now, you've also got an issue that you, of
12 course, raised which is you believe that there were issues
13 with the indictments and how you describe them as being
14 "rubber stamped" and void. If you could, explain that to
15 the Court.

16 A Well, there's three alleged indictments that states --
17 or in that -- my memo -- or the State's memo in opposition
18 to my summary judgement motion, and as he stated -- after
19 the assistance [sic] Attorney General stated at the
20 beginning of this hearing that I was -- that the State --
21 September -- the 2008 Williamsburg County Grand Jury true
22 bill indicted the Applicant for murder and possession of a
23 weapon under case No. 2010-GS-45-0135.

24 Then, there's the second indictment that states that
25 (as read): "A Court of General Sessions for Williamsburg

1 County convened on July the 12, 2009, and true billed July
2 the 8 of 2010" under same case No. 2010-GS-45-0135. And
3 this third indictment that alleges (as read): "At the
4 Court of General Sessions, Williamsburg County, convened
5 and true billed on July the 7, 2011," under the same case
6 number. It should be clear to the Court that something is
7 seriously wrong with all three indictments under the same
8 indictment numbers.

9 From my understanding of the rules of court and of
10 civil procedure is that within 90 days, after receipt of an
11 arrest warrant, that the Clerk of Court shall take action
12 on the warrants by, one, preparing an indictment for
13 presentment to the grand jury, which shall be filed with
14 the Clerk of Court and assigned a criminal case number; and
15 only within the same term of court, not a year or two years
16 later. And this is far from the Assistance [sic] Attorney
17 General saying that this is some typographical error or
18 some oversight or some harmless error.

19 And with realizing that something was wrong with those
20 indictments, I decided to file a motion with the Court
21 requesting to have copies of the impanelment document of
22 the recorded proceeding under *Evans v State*, and pursuant
23 to statues 14-7-1700 and 14-7-1720 and 14-7-1770 that
24 entitles me the grand jury's material in which Judge Brian
25 Gibbons granted the Applicant's request on November the 19

1 of 2016.

2 And aside from that, the Solicitor and the Assistance
3 [sic] Attorney General has [sic] intentionally ignored
4 Judge Gibbon's order which has restricted me from mounting
5 a collateral attack on the sufficiency of those three
6 alleged indictments and the testimony before the
7 Williamsburg County Grand Jury.

8 Even though the Assistance [sic] Attorney General
9 opposed my request to have those documents, Judge Gibbons
10 still ordered the State Solicitor's Office and the
11 Assistance [sic] Attorney General to relinquish those
12 impanelable [sic] documents on or before February the 9 of
13 2017, that I still do not have.

14 These three indictments that I'm challenging here
15 today and requesting that the Court instruct the Assistance
16 [sic] Attorney General to explain the inconsistencies in
17 these three indictments -- and that's why I believe that
18 they have been rubber stamped 'cause none of these
19 indictments alleged assault, death, and time and place of
20 assault and death ...

21 And I truly believe that the State Solicitor knowingly
22 employed the use of an unlawful procedure for the return
23 and publication of its true bill indictment. That the
24 State unlawfully impaneled its grand jury outside of the
25 jurisdiction of the Court of General Session and then

1 willfully caused false and misleading information to be
2 printed in its indictment.

3 No indictment may be true billed by a grand jury when
4 the Court -- circuit court lacks jurisdiction. Since the
5 judge -- the grand jury jurisdiction is core extensive with
6 the criminal jurisdiction of the court in which it is
7 impaneled and for what is to make inquiries, the primary
8 question before this Court are [sic] whether the South
9 Carolina Code statute 42-9-210 is jurisdictional in nature
10 and whether it requires that all criminal indictments must
11 be issued through a grand jury panel before the Court of
12 General Session and whether the State, noncompliant with a
13 mandatory indictment procedure and willful acts of perjury,
14 has rendered all judicial proceedings invalid and its
15 indictments void.

16 The facts and the evidence that I just presented to
17 the Court should have established that the State Solicitor,
18 Kimberly Barr, has conspired with several other state
19 judicial personnels [sic] in order to impanel a grand jury
20 outside of the authority of the Court of General Session
21 [sic] to complete a return of an illegal true bill
22 indictment and printed -- published false indictment
23 information. That's my reason.

24 Q Okay. Mr. McCrea, obviously you've waited quite a
25 while to have this hearing. And as we've sat here and gone

1 through your testimony, I think that we have covered
2 everything that needs to be covered as it's been alleged,
3 but I want to make sure. Is -- is there anything that we
4 have not addressed with regard to your allegations of your
5 PCR case?

6 (Brief pause.)

7 A That's pretty much it, Mr. Boozer, but just to state
8 for the record that at no time was I ever given any
9 colloquial [sic] of any voir dire under *Faretta* concerning
10 self-representation. And at no time was there ever an
11 evidentiary hearing with the Court and me in addressing the
12 absent [sic] of counsel for my defense.

13 Q And -- and you're asking this Court to grant your PCR
14 application and have a new trial and have a lawyer
15 appointed or retained to represent you?

16 A Yes, sir.

17 Q Okay. Mr. McCrea, that's all the questions I have.
18 Please answer any that the State may have.

19 THE COURT: All right. We have been at this one hour
20 and fifty minutes. Do we all need a break for
21 approximately 20 minutes? And I say 20 because he needs
22 time to move about, the Defendant, Mr. McCrea.

23 (No response.)

24 THE COURT: So 20 minutes, we'll be back here.

25 Now, Mr. McCrea, I need to remind you, sir, I know you

1 know this, but you are a live witness. You're still under
2 oath. You can't discuss anything with anybody to include
3 your attorney. Do you understand?

4 THE APPLICANT: I do.

5 THE COURT: And we'll be back in 20 minutes.

6 MR. BOOZER: Thank you, Your Honor.

7 THE COURT: And just before we convene or reconvene,
8 may I speak two -- to the two attorneys outside in the
9 hallway?

10 MR. BOOZER: Yes, sir.

11 THE COURT: Let's just do that now, hat way it's done.
12 All right.

13 (Off the record at 12:09 p.m.)

14 (On the record at 12:32 p.m.)

15 THE COURT: Mr. Boozer?

16 MR. BOOZER: Yes, Your Honor?

17 THE COURT: I'm sorry. My question would have been
18 premature. Ms. Coleman?

19 MS. COLEMAN: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MS. COLEMAN:

22 Q Mr. McCrea, I think you've covered most of the
23 testimony for today. So I don't have too many questions
24 for you, but I do have a few. You've obviously spent a lot
25 of time researching your case and becoming familiar with

1 the issues in your case, right?

2 A Yes, ma'am.

3 Q And you did the same thing before your trial, right?

4 A No, ma'am.

5 Q No? Did you spend time in the law library at the
6 prison?

7 A At the prison?

8 Q Uh-huh. Or at the jail, excuse me.

9 A No ma'am.

10 Q No. Did you have access to -- to any -- anyone to
11 discuss your case with?

12 A No, ma'am.

13 Q Okay. And you were represented by several attorneys,
14 right? Obviously we had three attorneys that were
15 appointed to this -- that represented you on this case.

16 A Nah, not several.

17 Q Yeah. Excuse me, three. Did you discuss your case
18 with each of those attorneys?

19 A No, ma'am.

20 Q Not at all?

21 A Well, Mr. Boozer -- I mean -- excuse me. Mr. Anderson
22 was the attorney that sat with me quite often to address
23 some issues in my case.

24 Q Okay. And you testified earlier you met with him more
25 than a dozen times; is that right?

1 A Yes, ma'am.

2 Q Did you discuss possible defenses with him to use at
3 trial?

4 A Yes, ma'am.

5 Q Did you discuss any kind of motions that you might
6 choose to make if -- when you proceeded to trial?

7 A No, ma'am.

8 Q Okay. Did you discuss the arguments you would be
9 making to the jury based on your theory of defense?

10 A He never got into detail actually.

11 Q Okay. Did he review all the discovery with you?

12 A Partially.

13 Q Okay. Did you discuss that with him or ask him any
14 questions about the evidence against you?

15 A Yes. I -- I asked him questions.

16 Q Okay. And you testified earlier that you have an
17 eighth-grade education; is that right?

18 A Yes, ma'am.

19 Q What did you do for a living before you were in
20 prison?

21 A I worked as a maintenance technician.

22 Q Okay. How long did you do that?

23 A Eight years, ten years.

24 Q Does that require any kind of training or
25 certification or anything?

1 A It does.

2 Q Okay. What kind of training is that?

3 A Some electrical work, some HVAC work.

4 Q Did you -- were you employed in any other way before
5 that?

6 A Yeah. I worked for a few factories, paper mills.

7 Q What kind of jobs did you have there?

8 A I was a forklift operator.

9 Q Okay. And does that require any kind of special
10 training or anything?

11 A Yes. You have to take a test and drive it.

12 Q Did you ever get your GED?

13 A No, ma'am.

14 Q Did you ever take any kind of classes in prison or
15 anything?

16 A Yes, ma'am.

17 Q Okay. And how recently was that?

18 A Last year.

19 Q Okay. Had you taken any classes before your trial?

20 A Yes, ma'am.

21 Q Okay. What kind of classes did you take?

22 A Just math, English, science.

23 Q Where did you take those classes?

24 A At Perry Correctional.

25 Q Okay. And about how long did you take them?

1 MR. BOOZER: Objection, Your Honor, to the relevancy
2 of any classes he's taken after this trial.

3 MS. COLEMAN: I believe he testified that was before
4 the trial; is that right?

5 MR. BOOZER: Oh, I'm sorry. I mis -- I misheard it.

6 THE COURT: He said before. Proceed ma'am.

7 Q Okay. And correct -- correct me if I'm wrong. That
8 was before the trial?

9 A Of course not.

10 Q That was after your trial?

11 A Yes.

12 Q At Perry. Okay. Had you taken any classes before
13 your trial?

14 A No.

15 Q Okay. And you testified that you were 47 years old at
16 the time of the trial; is that right?

17 A Age 46.

18 Q 46, excuse me. And you have been convicted of a crime
19 before, correct?

20 A Yes, ma'am.

21 Q Was that a plea or a trial?

22 A It was a plea.

23 Q Okay. And you've been charged with other crimes in
24 the past, right?

25 A I was charged with possession, narcotics.

1 Q Okay. What was the disposition of that case?

2 A I spent -- it was a -- it was a plea deal for eight,
3 suspended after four. I did four years --

4 Q Okay.

5 A -- for the drug charge.

6 Q Were you represented by an attorney on that case?

7 A I was.

8 Q Okay. (Coughs) Excuse me. Were you ever represented
9 by other attorneys on different charges against you?

10 A There were two dismissed charges that were dismissed.

11 Q Okay. And how far did those charges go before they
12 were dismissed? Did you ever prepare them for trial or
13 were they dismissed immediately?

14 A I believe I went to car -- to court on both of those
15 charges for about six months.

16 Q Okay. So you're fairly familiar with the criminal
17 justice system; is that right?

18 A I've been in some trouble.

19 Q And obviously, I mean, you never represented yourself
20 before in trial, but you've kind of seen the inside of a
21 courtroom and seen how they function, right?

22 A Yes, I have been in some trouble. Yes, ma'am.

23 Q Okay. You testified several times throughout these
24 transcripts that obviously this isn't a shoplifting charge,
25 right? This is a murder case, and that's a big deal,

1 right?

2 A Yes, ma'am.

3 Q Okay. So you understood the serious nature of the
4 charges against you?

5 A Well, I'm pretty sure anyone would if they were being
6 charged.

7 Q Okay. The three attorneys that we're discussing today
8 -- Charles Barr, Cezar McKnight, and Hank Anderson -- did
9 any of them ever warn you of what might happen if you had
10 them relieved?

11 A No, ma'am.

12 Q Did they ever say that you might end up stuck
13 representing yourself?

14 A No, ma'am

15 Q Did they ever tell you that representing yourself is
16 not a good idea?

17 A No, ma'am.

18 Q Okay. And you testified earlier that you did not want
19 stand-by counsel; is that correct?

20 A That's correct.

21 Q Okay. Now, at all these motions hearings over the
22 motions to be relieved for your attorneys, the judges
23 commented on the pattern of behavior they were seeing from
24 you; is that right?

25 A Well, I was voicing my displeasure through lies and

1 some deceit.

2 Q Do you remember Judge James telling you that he was
3 concerned with the pattern in your behavior, and you needed
4 to respect your attorneys?

5 A I don't remember.

6 Q Okay. And that was with the Cezar McKnight hearing on
7 December the 6, 2010, if that helps refresh your
8 recollection.

9 Do you remember him warning you that you didn't have
10 your choice of any attorney you wanted, and you needed to
11 be careful in choosing who represents you?

12 A I don't remember.

13 Q Okay. Do you remember Judge King -- when you had a
14 hearing about Hank Anderson being relieved and his motion
15 was denied, do you remember Judge King warning you that you
16 didn't -- you don't have your choice of attorneys, and you
17 needed to respect your attorneys or else you might have to
18 go pro se; do you recall that?

19 A I do.

20 Q Okay. And he warned you that if you threatened him in
21 any other way or wrote any other nasty letters that he
22 would be relieved without a hearing, right?

23 A I do.

24 Q And then you wrote a nasty letter telling him that you
25 wanted to represent yourself, right?

1 A The letter wasn't nasty.

2 Q Okay. But you did write him a letter and said that
3 you did not want Mr. Anderson to represent you, correct?

4 A Yeah. Voicing my displeasure.

5 Q Okay. As far as the indictments and the grand jury
6 issues that you testified about today, you didn't raise an
7 objection about these indictments before the jury was sworn
8 at trial, right?

9 A I did.

10 Q Did you? On the record?

11 A I did.

12 Q When did you do that?

13 A I don't know verbatim, but I -- if I had the
14 transcripts in front of me, I could show you where I
15 mentioned to the Court that the indictments were wrong.
16 But he allowed the Solicitor to amend the indictment during
17 trial again. So actually I'm dealing with four indictments
18 instead of three.

19 Q Okay. So you did object to it?

20 A I did.

21 Q Okay. Nothing further. Thank you.

22 THE COURT: Mr. Boozer?

23 MR. BOOZER: No redirect, Your Honor.

24 THE COURT: All right. Mr. McCrea --

25 THE WITNESS: Yes, sir.

DIRECT EXAMINATION BY MS. COLEMAN - CHARLES BARR

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1 THE COURT: -- return to your seat.

2 THE APPLICANT: Thank you, Your Honor.

3 (The witness exits the stand.)

4 THE COURT: Mr. Boozer, any other witnesses?

5 MR. BOOZER: No further witnesses on Applicant's
6 behalf, Your Honor.

7 THE COURT: Yes, sir.

8 MS. COLEMAN: Your Honor, at this time the State would
9 call Charles Barr.

10 THE COURT: Yes, ma'am.

11 CHARLES BARR, having been first
12 duly sworn, testifies as follows:

13 THE BAILIFF: State your name for the record, and
14 spell your last name, please.

15 THE WITNESS: Charles David Barr, B-a-double-r.

16 THE COURT: Proceed, ma'am.

17 MS. COLEMAN: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY MS. COLEMAN:

20 Q Mr. Barr, how long have you been practicing law?

21 A 39 years.

22 Q Okay. And is that primarily criminal defense?

23 A Mostly.

24 Q Okay. Were you ever retained to represent Mr. Levern
25 McCrea?

1 A Yes, ma'am, I was.

2 Q Do you recall when that was?

3 A April 6, 2010.

4 Q Okay. And how did you come to represent him?

5 A I knew his mother, and she contacted me about
6 representing her son.

7

8 Q Okay. How many times did you meet with Mr. McCrea
9 about his case?

10 A I met Mr. McCrea initially when I interviewed him.
11 His mother and -- and -- and one of the other family
12 members went with me over to the Williamsburg County Jail.
13 I met with him in Florence on two occasions, and then I met
14 with him another time in Williamsburg County.

15 Q Okay. Did you ever file any discovery motions in this
16 case?

17 A No, ma'am.

18 Q Okay. Did you represent him in a bond hearing?

19 A I represented him at a bond hearing.

20 Q What was the result of that hearing?

21 A Judge concluded that he was a danger to the community
22 and issued a full order denying bond.

23 Q Why didn't you file any discovery motions?

24 A Because I thought -- I -- I thought it was premature.
25 We hadn't had a preliminary hearing and -- and in -- in

1 some -- in some counties, it's advantageous to file a
2 request for -- to file a Rule 5 motion because they -- they
3 will -- sometimes they get you material before a
4 preliminary hearing, but in Williamsburg County, that's
5 just not -- moreover, in this case, a serious case such as
6 this, they wouldn't have been far enough along with
7 preparing the case to even prepare a response to Rule 5.
8 Of course, you know, it would be supplemented, but I didn't
9 see any -- any advantage in it. More -- and -- and -- and
10 I -- I also knew what was going on in the case in the
11 investigation.

12 Q How did you know that?

13 A I -- I had -- I was given information from -- from --
14 from somebody that was in on the investigation.

15 Q Okay. Did you ever request a preliminary hearing?

16 A Yes, ma'am.

17 Q Okay. And did he ever -- did you ever represent him
18 at a preliminary hearing?

19 A The first preliminary hearing that was scheduled was
20 cancelled at the request of the Sheriff Department. The
21 next time the preliminary hearing was scheduled when --
22 when -- when Mr. McCrea was brought to the preliminary
23 hearing, he came in raising sand with me, and I asked the
24 judge to continue the preliminary hearing to not allow him
25 to testify and to give him enough time to get another

1 lawyer.

2 Q Okay. When were you relieved from this case?

3 A (No response.)

4 Q Or do you recall in general about how long you
5 represented him?

6 A I represented him about -- either eight or nine weeks,
7 I believe.

8 Q Okay. Was there -- was there ever a hearing to have
9 you relieved from the case?

10 A No, ma'am.

11 Q Okay. Was it done by ---

12 A We did it be consent order.

13 Q Consent order. Okay.

14 So there wouldn't be a transcript that would exist
15 from a hearing.

16 A No, ma'am.

17 Q Okay. What circumstances led to your relief from the
18 case?

19 A The -- the -- the -- when -- when Mr. McCrea came in
20 for the preliminary hearing, as I said, he was very upset.
21 And he told me that he had been -- he and -- he and two
22 other jailhouse lawyers had agreed that -- that I should
23 have had the preliminary request -- Rule 5 before he had a
24 preliminary hearing, and talking a lot of trash to me. I -
25 - I don't -- I don't allow my clients to talk to me that

1 way.

2 Q Was it his decision or -- or your decision to be
3 relieved from the case?

4 A Well, he said that he was going to fire me and -- and
5 -- and -- and -- and -- and I guess it was -- the feeling
6 was mutual.

7 Q Did he ever write you any letters?

8 A He wrote me several letters while I was still
9 representing him, and then he wrote me letters after --
10 after I got through representing him.

11 Q Okay.

12 MS. COLEMAN: Your Honor, may I approach the witness?

13 THE COURT: Yes, ma'am.

14 MS. COLEMAN: Thank you.

15 Q I'm going to hand you a document and this is something
16 that you've handed me out of your file today. Do you
17 recognize this document?

18 A Yes, ma'am.

19 Q Okay. And that's a very faint copy of it. We might
20 try to make darker copies later, but what is that document,
21 please?

22 A Well, he -- it's a letter that he -- that he wrote me.
23 I can't -- he -- he filed a fee dispute complaint and then
24 he filed an ethics complaint and -- and I can't remember
25 whether it -- whether it was before he did any of those

1 filings that he wrote me this letter. But it says "June 14
2 of 2010." That's the date that's on the letter.

3 Q Okay. Is that a true and accurate copy of the letter
4 ---

5 A Yes, ma'am.

6 Q --- as you received it?

7 A It certainly is.

8 Q Thank you.

9 MS. COLEMAN: I'll hand that to the reporter, and I
10 would move to enter this as State's Exhibit 1.

11 THE COURT: Mr. Boozer?

12 MR. BOOZER: Your Honor, my client has reviewed the
13 letter, and he indicates he is not certain that this is
14 something that he wrote or the authenticity of it. So he
15 would, therefore, object to it.

16 THE COURT: Ms. Coleman?

17 MS. COLEMAN: And Your Honor, I would just submit this
18 is a letter that Mr. Barr received with Mr. McCrea's name
19 on it.

20 THE COURT: I'll allow it in, ma'am.

21 MS. COLEMAN: Thank you.

22 (Marked State's Exhibit No. 1, letter dated June 14,
23 2010, in evidence.)

24 MS. COLEMAN: And Your Honor, I'll -- I'll take that
25 back just for the record. I don't believe it has Mr.

1 McCrea's name on it.

2 THE COURT: Okay.

3 MS. COLEMAN: But it is from Mr. Barr's file of Mr.
4 McCrea's action. It's in the same handwriting as his other
5 letters, and it is written about his case.

6 THE COURT: All right.

7 MS. COLEMAN: Just to clarify that for the record.

8 THE COURT: Okay. So --

9 MS. COLEMAN: I didn't want to misstate any ---

10 THE COURT: -- you didn't put it in. You did or you
11 did not put it in?

12 MS. COLEMAN: I did.

13 THE COURT: You did put it in.

14 Mr. Boozer?

15 MR. BOOZER: Objection remains, Your Honor, especially
16 since there's no signature on it. She indicated it's the
17 same handwriting. Unless she wants to be qualified as an
18 expert, we -- we remain with our objection.

19 THE COURT: I'm going to allow it in on Mr. Barr's
20 testimony that -- am I correct --

21 THE WITNESS: Yes, sir, I -- it's ---

22 THE COURT: He said he received it. Okay.

23 MS. COLEMAN: Yes.

24 THE COURT: That's the weight I'll give it right now.

25 MS. COLEMAN: Okay. Thank you, Your Honor.

1 MR. BOOZER: Thank you, Your Honor.

2 THE COURT: Proceed.

3 Thank you, Mr. Barr.

4 DIRECT EXAMINATION

5 MS. COLEMAN:

6 Q Mr. Barr, what was the -- the message in this letter
7 that was sent to you?

8 A Well, Mr. McCrea accused me of conspiring with the
9 State. He called me a bastard, and he said that he and his
10 -- he and three dummies -- something 'bout -- whoever that
11 was with him in the jail that -- that he -- he threatened
12 me.

13 Q And you testified that Mr. McCrea had filed a
14 grievance against you?

15 A Yes, ma'am.

16 Q Okay. Do you recall -- that was -- was that after you
17 were relieved or ---

18 A That was ---

19 Q --- before?

20 A That was -- that was after I was relieved.

21 Q Okay. And he filed a fee dispute against you.

22 A Yes, ma'am.

23 Q Okay.

24 MS. COLEMAN: May I approach, Your Honor?

25 THE COURT: Yes, ma'am.

1 Q I'm handing you another document. Do you recognize
2 this?

3 A Yes, ma'am, I do.

4 Q And what is this?

5 A This is my response -- written response to the lawyer
6 who had been assigned the fee -- fee dispute issue.

7 Q Okay. And did you create this document?

8 A Yes, ma'am.

9 Q Okay. And what's the date on the top of that letter?

10 A August 18, 2010.

11 Q Okay. And does this letter characterize the -- your
12 representation of Mr. McCrea?

13 A It characterizes my representation and -- and itemizes
14 all the work that I did --

15 Q Okay.

16 A -- as far as representing him.

17 Q And this is a summary of your ---

18 A Yes, ma'am.

19 Q --- the work you did. Okay. Thank you.

20 MS. COLEMAN: And Your Honor, I would move to
21 introduce this as State's Exhibit No. 2.

22 THE COURT: Mr. Boozer?

23 MR. BOOZER: No objection, Your Honor.

24 (Marked State's Exhibit No. 2, letter dated August 18,
25 2010, in evidence.)

1 Q Mr. Barr, did you ever respond in any way to Mr.
2 McCrea's fee dispute?

3 A I -- I told his mother that I would represent Mr.
4 McCrea on this murder charge for a flat fee of \$15,000.
5 She paid a \$5000 retainer, and I decided to refund her half
6 of her retainer. And Mr. McCrea was not satisfied with
7 that, and I never tried to explain anything to him other
8 than to respond to the official inquiry by the Fee Dispute
9 Resolution Board.

10 Q Do you recall anything else about Mr. McCrea's
11 behavior or relationship with you during your
12 representation?

13 A Our relationship started off pretty good. Quite
14 frankly, I think Mr. McCrea is probably a distant relative.
15 But it -- it started through his mother, but once I got to
16 know him, his -- his -- his personality, the way -- how he
17 -- he -- he talks to lawyers or how he talked to me, I just
18 will -- I would not tolerate representing a client from --
19 I'm glad Mr. McCrea said I want to fire you because I
20 wouldn't have -- I wouldn't have work out with him.

21 Q Okay. Did he ever -- in person, did he ever threaten
22 you in any way?

23 A Not in person.

24 Q Okay. Did you consider his letters to you to be a
25 threat?

1 A Well, he -- he -- he -- he -- he threatened to destroy
2 my business. He said that he had several hundred letters,
3 500, I believe. He accused me of -- he claimed that he had
4 information regarding my use of drugs. Said that he was --
5 he would -- he had dozens of letters ready to go out and
6 send out to organizations, that he would destroy my
7 reputation, that -- I -- I -- I -- you know, I -- I took
8 him seriously for what he said. Not that I really thought
9 that he could do a whole lot, but -- but -- but this kind
10 of stuff could -- it could cause you problems.

11 Q Did Mr. McCrea ever express to you any interest in
12 representing himself at trial?

13 A No, ma'am.

14 Q Okay. Did you ever have any discussion with him about
15 being represented by ---

16 A When I got ---

17 Q --- an attorney ---

18 A When I got relieved, it was -- when I asked the judge
19 to continue his preliminary hearing, that was at the
20 beginning of the preliminary hearing. I didn't -- I -- I --
21 - I -- I anticipated that he would be getting another
22 lawyer.

23 Q Okay. And to your knowledge, was he appointed another
24 attorney after you were relieved?

25 A I -- I didn't follow Mr. McCrea's fate. I came

1 through the courtroom one day and I saw him representing
2 himself and I knew what that would lead to.

3 Q Nothing further. Thank you.

4 THE COURT: Mr. Boozer.

5 MR. BOOZER: Just briefly, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. BOOZER:

8 Q Mr. Barr, how are you?

9 A I'm blessed. How are you?

10 Q I'm fine. Thank you.

11 Was this your request to be relieved or Mr. McCrea's
12 or both?

13 A It was both.

14 Q Okay. And you had only represented him for
15 approximately two months, there about?

16 A Close to two months.

17 Q And really, kind of, as you were just indicating,
18 there was no hearing to relieve -- to be relieved from the
19 case; is that right?

20 A I prepared a consent order, I signed it, sent it to
21 him, he signed it, and I got a judge to sign it.

22 Q Okay. It's your recollection that he signed a consent
23 order?

24 A We didn't go -- we didn't have a hearing, and I saw
25 the consent order in my file.

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1 Q Okay. Did you or did any judge, while you were
2 representing him, explain the dangers of proceeding pro se,
3 for not having a lawyer?

4 A No, sir.

5 Q And there was certainly -- wasn't any reason to, was
6 there?

7 A Wasn't no reason.

8 Q Okay. Thank you, Mr. Barr.

9 A Yes, sir.

10 THE COURT: Ms. Coleman?

11 MS. COLEMAN: Just briefly.

12 REDIRECT EXAMINATION

13 BY MS. COLEMAN:

14 Q During your representation of Mr. McCrea, what was
15 your overall impression of his educational level or
16 understanding of the case?

17 A I thought -- I thought Mr. McCrea was -- I thought he
18 understood the issues. He -- I had discussed with him
19 Briggs's potential testimony because I did go to the Briggs
20 bond hearing.

21 And Briggs gave a thorough statement of what he claims
22 took place. He said he and Mr. McCrea went to North
23 Carolina. They got a girlfriend's vehicle. They drove
24 back to Williamsburg County. Mr. McCrea shot the young
25 lady, threw the -- threw the pistol in the -- in the lake,

1 and of course, somebody with the -- with the Sheriff
2 Department had told me what they -- they got divers and
3 went and dived -- went in there and found it.

4 And I told him about it. He understood it.

5 Q Did he seem to understand the -- the seriousness of
6 the charge?

7 A Yes, ma'am.

8 Q Did you discuss defenses with him?

9 A We didn't get that far and -- and -- and I was more
10 concerned with his relationship with Briggs and -- and
11 exactly potentially what -- how that would play into --
12 into -- into his defense because with -- with what I had
13 learned from the Sheriff's Office, Briggs was the only man
14 that could have -- the only eye witness, only witness of
15 any kind to tell the truth.

16 Q Nothing further. Thank you.

17 MR. BOOZER: Nothing further, Your Honor

18 THE COURT: Thank you, Mr. Barr.

19 (The witness exits the stand.)

20 MS. COLEMAN: The State calls Cezar McKnight.

21 CEZAR MCKNIGHT, having been first
22 duly sworn, testifies as follows:

23 THE BAILIFF: State your name for the record, and
24 spell your last name, please.

25 THE WITNESS: My name is Cezar McKnight. Cezar is

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1 spelled C-e-z-a-r; McKnight is spelled M-c-k-n-i-g-h-t.

2 DIRECT EXAMINATION

3 BY MS. COLEMAN:

4 Q Good afternoon, Mr. McKnight.

5 A Good afternoon.

6 Q How long have you been practicing law?

7 A Since 2002. So that would be, what, 16 years?

8 Q Okay. And where are you currently employed?

9 A At the Law Office of Cezar McKnight.

10 Q Okay. How long have you been employed there?

11 A I went into practice on my own in, I believe, 2007.

12 Q Okay.

13 A So that would be 11 years.

14 Q And do you do much criminal defense work?

15 A Not as much as I used to. I used to do a considerable
16 amount. Now, the gravamen of my practice is personal -- is
17 probably personal injury.

18 Q Okay. How did you come to represent Mr. McCrea in
19 this case?

20 A I got appointed to represent Mr. McCrea. I think I
21 need to give some back story so you can understand.

22 So Mr. McCrea approached me about representing him I
23 guess around the time that he and Mr. Barr had their
24 falling out. And you know, we -- we had some preliminary
25 talks, and around that time, I had to have an emergency

1 appendectomy. My -- my appendix ruptured on me, I had to
2 spend about eight days in the hospital, about a month away
3 from my practice. So I -- I don't know what happened then.

4 And then I discovered that I got a notice of
5 appointment from the Court, and so the Court appointed me
6 to represent Mr. McCrea; and that's -- I think that's how
7 it all came about.

8 Q Okay. Did you file any motions to be relieved in this
9 case?

10 A I did.

11 Q Okay. And was there more than one?

12 A Yes, there were two. The -- want me to tell you about
13 the ---

14 Q Go ahead.

15 A --- first one.

16 Q Sure.

17 A Okay. I filed the first motion to be relieved as
18 counsel, quite frankly, Your -- Your Honor, because I felt
19 as if I was getting the short end of the stick. Here it
20 was he originally approached me to represent him, and he
21 runs out and hires a lawyer, pays that lawyer, and is now
22 suddenly indigent. And so my -- my comments to Judge
23 Newman when we were in court when he heard this motion,
24 "Your Honor, it feels unfair because it seems like Mr.
25 Barr's getting all the money and I'm getting all the work."

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1 So Judge Newman then told me, "No, Mr. McKnight. I'm
2 not going to grant your motion to be relieved," and after
3 that, I shook that off and I began to do what I could to
4 vigorously represent Mr. McCrea.

5 Q Okay. When was your second motion to be relieved
6 filed? Do you recall or do you recall filing the motion on
7 November 24 of 2010?

8 A I do.

9 Q Okay. And was there a motions hearing on this?

10 A There was.

11 Q And that was on December 6 of 2010, with Judge James;
12 is that right?

13 A Yes, ma'am.

14 Q Okay. What was the basis of your motion?

15 A My motion was the fact that it was one -- there --
16 there existed such a level of acrimony between myself and
17 my client that we could not effectively communicate. I'd
18 go to the jail initially to visit with Mr. McCrea. We'd
19 talk about the case. We came up with some very good and
20 viable defenses, but then I'd get bombarded with all of
21 this mail that was laced with profanity.

22 He accused me of being in cahoots and conspiring with
23 the Williamsburg County Solicitor's Office. Anybody knows
24 -- that knows me and my style of representation, I ain't
25 ever in cahoots with the Solicitor's Office 'cause usually

1 I try to paint them out to be the bad guy. So for him to
2 suggest that was just really hurtful to me, and beyond
3 that, you know, I'd get letters with all this profanity.
4 At the time, my paralegal was -- she's -- she is a
5 minister, and you know, I can't sit here and tell you that
6 she hadn't heard choice language because I'd probably said
7 in the office; but she could admonish me and I'd straighten
8 up. But we'd just constantly get this barrage of, you
9 know, you're doing this, you're doing that.

10 And so finally, after that, I decided that I needed to
11 file that motion because he just -- he -- he just made it
12 impossible to -- to do that.

13 Q Do you have a copy of any of those letters with you
14 today?

15 A I don't, but I referenced them in my testimony and
16 it's in the transcript that you have because this was back
17 in 2010, and we've moved. I know I have this file, but I
18 did my best to look for this file and I just don't have it.

19 Q Now, so you know -- and also, just let me say this, I
20 mean, and as I said in the transcript, I felt that this was
21 a case that I could win because they -- he laid out some
22 things that were possibly there for his defense that we
23 could get, like letters that basically put him someplace
24 else, specifically a receipt that would put him somewhere
25 else other than the crime. And I do believe at the time

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1 that I -- that I filed a notice of alibi motion as I'm
2 required to.

3 But you know, it -- you just couldn't -- you just
4 could not talk to him. You know, you'd get -- he just made
5 it just totally hard to do, I mean, almost impossible to
6 do.

7 Q Did he ever behave poorly to you in person?

8 A No, because he was in jail.

9 Q Okay.

10 A So -- but the thing about it is I didn't feel
11 comfortable, and I voiced that in the transcript, that with
12 the -- the way he was riding me and the things he was
13 saying, I was worried because when you go to visit someone
14 in the Florence County Detention Center, it's like a
15 quarter-mile walk to where the pods are, okay? And that
16 place -- and it's just all these inmates and one correction
17 officer, and you're in this room by yourself. And I'm 5'5"
18 and he's, like, 6-something. And you can't bring your gun
19 in the back. So if he jumps on me, what am I going to do?

20 So once -- and I -- and I didn't -- you know, I just
21 didn't feel comfortable working with him.

22 Q Did you fear for your physical safety, is that what
23 you're implying?

24 A I had an idea -- I had an idea that it could possibly
25 get that way 'cause he just seemed to have a mercurial

1 temper. He'd -- up and down.

2 Q Now, the letters that we've referenced you said you
3 don't have them today, which is fine. I don't believe they
4 were made a part of the record at the hearing; is that
5 right? I think ---

6 A They weren't. I showed them to Judge James and he
7 mentions them in the transcript and he read the letters;
8 but I didn't move them into evidence because it was
9 essentially myself, Levern, the prosecutor at the time that
10 was there was Ms. Barr, and -- and I believe it was --
11 Doward Harvin was there. He's no longer with the
12 prosecutor -- with the Solicitor's Office.

13 And it's one of those motions where you lay out your
14 facts, the judge makes some inquiries, and he just moves
15 on. And he move -- and he either rules how he's going
16 decide and move on. Pardon me.

17 Q Did you explain the basis for your motion to be
18 relieved to Mr. McCrea?

19 A I did.

20 Q Okay. What was your -- what were your discussions
21 about that?

22 A I told him -- I wrote him and told him that I'm no
23 longer interested in being represented by you -- the way
24 that you -- you've created a -- you created an acrimonious
25 environment, that it's not conducive to -- it's not

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1 conducive to a good attorney/client relationship, and I
2 can't do for you what it is that I need to do.

3 Now, was I not happy that I wasn't being paid? I was.
4 But I value winning because it's more of a value to me -- I
5 looked at it as of more value to me to -- to my practice to
6 say that I got someone acquitted on a murder rather than
7 just I got this money now. So that was gone because my
8 reputation was at stake, and nobody wants to be known as a
9 lawyer that just mills it in. You know, you got to do your
10 best regardless of what it is, and that's what I've always
11 tried to do, particularly with him.

12 Q Did he seem to understand your discussions with him
13 over these issues?

14 A When you say "understand," do you mean do I -- do I
15 believe that he heard it, comprehended it? Yes. Did he
16 agree with it and accept it? No. It was always the way he
17 wanted it to be and nothing else.

18 Q Did you ever explain to him what might happen if you
19 were relieved as counsel?

20 A I did. I always tell my clients that he who
21 represents himself has a fool for a client, and if you go
22 out there on this murder case, you're gonna get hammered.

23 Q Were those pretty much the words you used?

24 A Yes.

25 Q Okay.

1 A What it -- what -- what the level -- no. Actually I
2 used some more colorful language that I'm not going to use
3 in this court, but it got to that level of discussion, you
4 know, because you know, I tried to explain to him look --
5 'cause he wanted us to do all kind -- you know, he came up
6 with these crazy -- I'm like, "You can't do that. That's
7 not how this works."

8 You know, and I told -- you know, and I really told
9 him, I said -- and I remember telling him, I said, "Kim
10 Barr -- Kim's gonna eat you alive. They're not gonna play
11 with you. I know -- I know how this ends," because you
12 know, I've tried a number of cases in the Williamsburg
13 County Solicitor's -- in the Williamsburg County Courthouse
14 with that cadre of solicitors. So I know what the -- you
15 know, I pretty much know what their strengths and
16 weaknesses are and I know what's going to be able to fly
17 and what's not.

18 And you know, we had -- I believe we had a good case
19 that I could muddy the waters enough to get at least one or
20 two of those juries to buy that he -- jurors to buy that he
21 wasn't there if he'd just be nice. And he just -- he just
22 didn't get that.

23 Q Okay. So do you have a specific recollection of
24 warning him that representing himself wouldn't be a good
25 idea?

1 A I do have a specific recollection of that. I do
2 believe it probably -- it was when I was -- I think it was
3 the day that we did the motion that we were in there and I
4 mentioned, I said, "You're gonna be out here on your own
5 and it's not a good thing." I do recall saying that.

6 Q Okay. Did he ever tell you that he wanted to
7 represent himself?

8 A He never told me that he wanted to represent himself,
9 no. And I'll say this, he was complimentary because I know
10 that he wanted me because when he was looking -- what
11 happened was when he wanted a court appointed lawyer, he
12 started insisting that it was me. So you know, I was like,
13 wow. So now we get to pick lawyers who -- you know, for
14 indigent clients? I thought it was just something random,
15 but obviously not.

16 Q What was your overall impression of Mr. McCrea's
17 educational background and his understanding of the charges
18 against him?

19 A He's extremely intelligent, too smart for his own
20 good, but he's smart. And I -- and as far as having the
21 capacity to know right and wrong and understand the charges
22 before him and the consequences thereof if he's convicted
23 of, he gets it. The gate's down and the lights are
24 flashing. He knows what -- he -- he understands that
25 clearly.

1 Q Okay. And do you recall filing a motion for speedy
2 trial?

3 A I did because I filed that motion simultaneously with
4 my motion to be relieved as counsel because if -- because
5 something had to happen. Either we were gonna -- either I
6 was gonna not be his lawyer any more, or we were gonna move
7 on and let's get -- let's -- let's have this trial.

8 Q And ultimately you were relieved as counsel, right?

9 A By Judge James, yes, ma'am.

10 Q By Judge James. Okay.

11 Is there anything else in particular that sticks out
12 in your memory about Mr. McCrea?

13 A No.

14 Q Okay. Nothing further. Thank you.

15 THE COURT: Mr. Boozer?

16 MR. BOOZER: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. BOOZER:

19 Q Mr. McKnight, how are you?

20 A Good. How are you?

21 Q Doing fine, thank you. Mr. McKnight, I think you said
22 the two motions to be relieved, these were filed by you.
23 These were not requests by Mr. McCrea?

24 A Neither of them were. No, sir.

25 Q Okay. And obviously, this is sort of a case where you

1 don't really come in with a clean slate with the client
2 'cause you've already kind of got that outstanding issue of
3 you're not getting paid when you think you should be
4 getting paid. Would you agree with that?

5 A No, I wouldn't agree with that because I indicated
6 earlier I put that beside me and I did the best -- and I
7 went on and did the best for my client that I absolutely
8 could.

9 I don't hold grudges -- I mean, understand this -- and
10 I can appreciate what you're suggesting, but I understand
11 full heartedly that this man's life hung in the balance.
12 I'm not gonna let some petty grudge like that and live --
13 and live with the idea that I didn't do my best just
14 because I didn't get some money. I'm not gonna -- I -- I -
15 - I don't do that. I can't.

16 Q But would you agree with me the optics of it, from the
17 client's perspective, is this guy doesn't want to represent
18 me and give me his everything because he's mad 'cause I'm
19 not paying him?

20 A Respectfully, sir, his optics are flawed. He sees
21 everyone as his enemy and noone as his friend.

22 Q But -- but let me ask you that question again: If --
23 if he believes that you're upset because you're not getting
24 paid, don't you think that that would create some tension
25 in the relationship?

1 A (No response.)

2 Q If you've already expressed formerly to the Court, "I
3 don't want to represent him because I'm not getting paid,"
4 don't you think that that's -- puts off on the wrong foot,
5 even if you're intention is to fully represent him?

6 A I can see initially where someone would think that,
7 but after that person sat down with me and -- and saw that
8 I was mapping out a strategy for them for possible
9 acquittal, that those fears would go -- would -- would
10 subside.

11 Q Now, did you visit him when he was over in Florence
12 County?

13 A Yes.

14 Q Okay. And in any of those visits, did he ever
15 physically threaten you?

16 A No.

17 Q All right. And -- and you said sort of the reason
18 that you felt like you could be physically accosted was
19 because of the letters?

20 A Yeah. The tone of the letters were -- they were very
21 antagonistic. They had all kinds of foul language. You
22 know, it -- it -- it's -- it wasn't a Hallmark card. It
23 was you're not doing -- you know, and -- and so it -- and
24 when you get -- and the other thing was it's not just the
25 fact that it was a letter. It was the frequency of the

1 letters. And so I got to a point where -- 'cause you know,
2 you've been -- I've been -- I've -- I've been to this rodeo
3 before where you see all these letters. So you gotta
4 respond because you end up being grieved. Yeah. Like he
5 grieved me.

6 So I took the necessary precautions to make sure that
7 that wouldn't happen, but again, the tone of those letters
8 was such that I didn't feel safe.

9 Now, in -- in person, did he ever do anything to me?
10 No, he did not.

11 Q When -- any of these letters that you're talking
12 about, did you receive any of those letters and then
13 actually go to see him after you'd received some of those
14 letters?

15 A I do believe that I did, but again, like I said, he
16 never threatened me in person. If I said that, I'd be
17 lying.

18 Q Well, was his demeanor different from the way he
19 writes versus the way that you'd sit down and speak to him?

20 A Yeah. It was schizophrenic like that. It would be
21 mean in the mail, and then when you come in person, you're
22 the greatest thing since sliced bread.

23 Q Okay. But the fear that you had of being physically
24 accosted that you presented to the Court during the motion
25 to be relieved, there was nothing that was every verbalized

1 to you or -- or done to you that would make you have that
2 fear. It was just you -- you came to that conclusion based
3 on letters.

4 A Yes. When someone says what they -- if someone says
5 to me what he said to me in those letters, I would
6 interpret that as a warning sign that something potentially
7 could happen to me. Yes.

8 Q Do you -- you felt like you conveyed that to the Court
9 that nothing's ever happened between us, there -- there's
10 been no verbal, physical threat? He's never threatened me,
11 I've never been accosted by him while visiting in Florence
12 down that long hallway by ourselves?

13 A I never communicated -- I don't know that that was
14 communicated to the Court, but what I can say is I never
15 communicated to the Court that something had happened to
16 me. I just laid out that I didn't feel --

17 Q In -- in the transcript -- this is on page 5, but I'll
18 just read it beginning at line 18. This is you addressing
19 the Court (as read): "Honestly, Your Honor, he has a good
20 chance of maybe even being acquitted, but I cannot work in
21 a situation where someone greets me with profanity and I've
22 got to risk going to the detention center and possibly
23 being physically accosted." Does that not sound like that
24 he has, in person, greeted you with profanity or threatened
25 you with some sort of physical accosting or something?

1 A No. Because if you read what I wrote, I said
2 "possibly."

3 Q Okay. But ---

4 A That's me -- that's -- that's me conveying to the
5 Court my sense of fear.

6 Now, sometimes fears can be rationally based,
7 sometimes they can't be. But in my present state of mind,
8 I didn't necessarily feel safe.

9 And what -- and I'm sorry. What page are you on?

10 Q Sure. It's on page -- on page 5, line ---

11 A And ---

12 Q Beginning at line 18.

13 A Okay. Yes, sir. Thank you.

14 Q And you said -- I think you said you specifically told
15 Mr. McCrea that he'd be a fool to represent himself.

16 A Yes.

17 Q Other than that, did you explain to him, "Look, there
18 are things that I do and know about -- such as rules, such
19 as technicalities, such as procedural issues -- that you
20 have to abide by in court that you don't know about if
21 you're representing yourself"? Did you go into that kind
22 of detail with him?

23 A I did not go into that kind of detail.

24 Q Okay. Did -- when you were in court on either of the
25 motions to relieve, did -- did the Court advise him of the

1 dangers of proceeding pro se?

2 A No. Because that wasn't -- that wasn't before the
3 Court. The Court was just there dealing with my motion to
4 be relieved as counsel.

5 Q Okay.

6 MR. BOOZER: Beg the Court's indulgence, Your Honor.

7 THE COURT: Yes, sir.

8 (Brief pause.)

9 Q Did you have any discussion with Mr. McCrea about
10 filing a motion for bond?

11 (Brief pause.)

12 A I think we did, yes. I think we did.

13 Q Did Mr. McCrea ever ask you about contacting Probation
14 and Parole to find out whether he had left Connecticut? Do
15 you recall anything like that?

16 A I don't recall anything about him leaving Connecticut.
17 No, sir. That's not -- and I -- I -- that's me saying I
18 don't recall doesn't mean it didn't happen. I just don't
19 remember that.

20 Q Okay. Thank you, Mr. McKnight. That's all the
21 questions I have.

22 THE COURT: Ms. Coleman?

23 MS. COLEMAN: Nothing further.

24 THE COURT: Thank you, sir.

25 THE WITNESS: Thank you.

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1 (The witness exits the stand.)

2 THE COURT: Ms. Coleman?

3 MS. COLEMAN: And Your Honor, the State would call
4 Hank Anderson.

5 THE COURT: All right.

6 MR. MCKNIGHT: Your Honor, are we free to go?

7 THE COURT: Pardon? Oh, I'm sorry.

8 MS. COLEMAN: No objection, Your Honor.

9 MR. BOOZER: No objection, Your Honor.

10 THE COURT: Have a good day, sir.

11 MR. MCKNIGHT: Thank you.

12 HANK ANDERSON, having been first
13 duly sworn, testifies as follows:

14 THE BAILIFF: State your name for the record, and
15 spell your last name, please.

16 THE WITNESS: Henry Morris Anderson, Jr. My last
17 name's spelled -- Anderson, A-n-d-e-r-s-o-n.

18 DIRECT EXAMINATION

19 BY MS. COLEMAN:

20 Q Mr. Anderson, how long have you been practicing law?

21 A 26 years.

22 Q Okay. Do you do primarily criminal defense?

23 A Yes, ma'am.

24 Q Okay. Where are you employed?

25 A I'm employed at Anderson Law Firm in Florence. I

1 started that law firm in 1998.

2 Q How did you come to represent Mr. McCrea?

3 A I don't know what I did to the Clerk of Court for
4 Williamsburg County, but a lot of times when there was
5 serious case and one of their local lawyers didn't work
6 out, she would appoint me over in Florence County.

7 Q How long did you represent him on the charges?

8 A From December, I think, of 2000 -- 2010, until the end
9 of August, first of September, 2011.

10 Q About how many times did you meet with Mr. McCrea?

11 A I met with Mr. McCrea -- not counting the times that
12 he and I were in court, I met with him 17 times.

13 Q Did you receive any discovery materials from the State
14 or from his prior attorneys?

15 A Yes, I did.

16 Q Okay. To your knowledge, was that a full and complete
17 copy of the discovery?

18 A It was.

19 Q Okay. Was -- was there anything you believed you were
20 missing at the time?

21 A When I would meet with Mr. McCrea and he would ask me
22 a question, a lot of times I would follow up with the
23 Solicitor's Office and ask them if they had it, to please
24 provide it; and they were -- if they had it, they would
25 respond and say, "We've got it. We'll get it to you."

1 So to my knowledge, I had everything.

2 Q Okay. Did you have any trouble with the Solicitor's
3 Office in obtaining materials or discussing the case?

4 A To answer your question, no. Did I get it as quick as
5 I wanted to? No, I didn't, but they -- they gave me
6 everything we asked for.

7 Q Okay. And is that typical or unusual for a criminal
8 case?

9 A That's typical.

10 Q Okay. Did you review the discovery materials with Mr.
11 McCrea?

12 A Yes, ma'am.

13 Q Did he seem to understand the evidence against him?

14 A Yes, ma'am.

15 Q Okay. Did you discuss possible defenses?

16 A Yes, I did.

17 Q And were you preparing for trial?

18 A Yes, I was.

19 Q Okay. Did you discuss strategies and arguments with
20 him?

21 A I did.

22 Q Did he assist in your defense?

23 A Probably too much, but yes, he did.

24 Q Okay. And how would you describe your relationship
25 with him?

1 A I would describe it as very one-sided.

2 Q Okay.

3 A I tried to do everything that I could to -- within the
4 -- the boundaries that we work in to -- to get what he
5 asked me to get; and I tried to get it in a timely manner,
6 give it him, and go over it with him.

7 Q Okay. How did he behave to you in person?

8 A In person, he and I never had a problem; but I got
9 numerous letters saying various things and I was in --
10 working with the State's office, I was lying to him, he no
11 longer wanted my services. It just depended on what month
12 we're talking about.

13 MS. COLEMAN: Your Honor, may I approach the witness?

14 THE COURT: Yes, ma'am.

15 Q Mr. Anderson, I'm going to hand you a copy of a
16 document that you sent to me. Do you recognize this?

17 A Yes.

18 Q What is that document?

19 A That was a letter that I received from Mr. McCrea. He
20 mailed it in February of 2011. It's dated February the 9
21 of 2011.

22 Q Okay. And is that a true and accurate copy of the
23 letter you received from him?

24 A Yes, it is.

25 Q Okay. And if you need a moment to look over that ...

1 A I --

2 Q Okay.

3 A I remember it.

4 Q All right.

5 MS. COLEMAN: I would introduce this as State's
6 Exhibit 3.

7 MR. BOOZER: Your Honor, same objection as before.
8 These are not signed by anyone. So the same authenticity
9 objection.

10 THE COURT: Yes, sir. I'll allow it.

11 MS. COLEMAN: Thank you. And Your Honor, I would note
12 on this one at the end, there is a copy of the envelope
13 that the letter was sent in, and it's sent from Leverne
14 McCrea at the Florence County Detention Center.

15 THE COURT: All right.

16 (Marked State's Exhibit No. 3, letter dated 2/9/11, in
17 evidence.)

18 Q Mr. Anderson, I'm handing one more document. Do you
19 recognize this?

20 A I do.

21 Q And what is that?

22 A That's another letter that I received from Mr. McCrea.

23 Q Is there a date on this one?

24 A It was mailed May the 17, 2011. The return envelope
25 is (as read): "Levern McCrea, Florence County Detention

1 Center," and it's addressed to me.

2 Q And is that a true and accurate copy of the letter you
3 received from Mr. McCrea?

4 A It is.

5 Q Okay. Thank you.

6 MS. COLEMAN: I'd move to introduce this as State's
7 Exhibit No. 4.

8 THE COURT: Mr. Boozer?

9 MR. BOOZER: I'm sorry, Your Honor. Let me ...

10 (Ms. Coleman and Mr. Boozer briefly confer.)

11 MR. BOOZER: Your Honor, the same objection to
12 authenticity is it not being signed.

13 THE COURT: I'll allow it.

14 MS. COLEMAN: Thank you.

15 (Marked State's Exhibit No. 4, letter dated 5/17/11,
16 in evidence.)

17 Q Mr. Anderson, do you recall the substance of those
18 letters that you received?

19 A Yes.

20 Q Okay. And what generally was the message he was
21 trying to convey?

22 A That I wasn't doing my job, that I was lying to him,
23 that I was in cahoots with the State, and that I -- just a
24 few other words about me.

25 Q Did he use profanity?

1 A Yes, he did.

2 Q Did you interpret these letters as a threat in any
3 way?

4 A No, I did not.

5 Q No. Okay.

6 Were these two letters part of the basis for your
7 motion to be relieved?

8 A Yes.

9 Q Okay. And do you recall when you filed that?

10 A I filed a motion to be relieved after I received that
11 last letter. I think it -- I filed it either in May or
12 June, and it was heard some time in June.

13 Q Okay. Were these the only two letters you received,
14 or did you get others?

15 A No, I got a lot of others.

16 Q Okay. Why did you choose these two as your basis?

17 A I mean, I -- I've got his letters with me. Those are
18 just two that I picked out, but they're all very similar.

19 Q Okay. Do you recall the -- the motions hearing over
20 your motion on June 22 of 2011, with Judge King?

21 A I do.

22 Q Okay. And you were not relieved at that hearing; is
23 that right?

24 A No, ma'am, I was not.

25 Q Okay. But you did discuss your relationship with Mr.

1 McCrea at ---

2 A I did.

3 Q What was the basis of your argument on your motion at
4 that hearing?

5 A Well, it's been said several times this morning by Mr.
6 McCrea that this was not a shoplifting case, and I
7 basically told Judge King, I said, "Judge, it's -- these
8 cases are hard enough when you and your client get along.
9 It's very hard to defend someone that's constantly
10 questioning you, that's constantly telling you what a piece
11 of whatever you are, that's -- that's saying that you're
12 lying, that you're withholding evidence, that you're
13 working with the State. That's just not a very good
14 environment for someone who is representing you for your
15 life.

16 Q Did you explain the basis of your motion to Mr.
17 McCrea?

18 A I did.

19 Q What were your discussions about that?

20 A He wanted me to be relieved.

21 Q Okay.

22 A He was perfectly fine with it. He told me in several
23 letters that he didn't want to talk to me anymore, that if
24 I didn't relieve myself, he would -- he would file the
25 motion to have me relieved and that he would represent

1 himself.

2 Q Okay. So he expressed to you that he wanted to
3 represent himself?

4 A Yes, he did.

5 Q Okay. Did you ever discuss that with him or warn him
6 of the dangers of representing himself?

7 A I did.

8 Q Okay. Do you have a specific recollection of that?

9 A I specifically wrote him a letter on July the 28 after
10 my motion to be relieved had been denied. It is a two-page
11 letter, and basically I tell him (as read): "I will give
12 you this letter and we can discuss several things. I will
13 also advise you in this letter, as well as face to face
14 when I see you today, that if you write one more letter to
15 me like you wrote on July the 25, 2011, I will ask the
16 Court to relieve me. I will submit an affidavit to Judge
17 King of what I've done as well as what you have done. I
18 will ask him to relieve me. It's my understanding that I
19 will be relieved, and that you will be representing
20 yourself. I'm not telling you this to threaten you. I've
21 told you on more than one occasion that it would help you
22 tremendously if you and could get along. All you tell me
23 is what I'm not doing, what I'm not doing, what I haven't
24 done, and then you'll start cussing at me."

25 And -- and then the letter goes on, but that's

1 basically what I told him on July the 28.

2 Q (Coughs) Excuse me. Did you ever have any kind of
3 discussion with Mr. McCrea about how you were well-trained
4 in the rules and procedure of the courtroom and he was not?

5 A I did.

6 Q And when was that?

7 A I told him when I first met him in December of 2010
8 about my qualifications and what I did for a living and how
9 long I'd been doing it. And then he and I had several more
10 conversations while I was representing him that I thought
11 that I could help him, that I would do an excellent job
12 representing him.

13 Q Did you have any specific discussions about -- in the
14 context of him representing himself at trial, like you were
15 -- you were trained in this and he was not and that's
16 something he should consider if electing to represent
17 himself?

18 A I don't recall any specific instances. I do recall
19 him and I having conversations when he would ask me, "I
20 want X, Y, and Z," and I would tell him, "I cannot -- we
21 cannot get that. That -- that's not something that we can
22 do."

23 Q Okay. What was your impression of Mr. McCrea's
24 educational background and his understanding of the case?

25 A Anytime I meet with a client for an initial interview,

1 I ask a lot of various background questions. I've looked
2 back at my notes from our initial meeting. I asked him how
3 old he was, what his date of birth was, what his
4 educational level was. He told me he had a 12th grade
5 education. I asked him where he'd worked, and he said he'd
6 been in the heating and air business for 20 years.

7 Q So he told you he had a 12th grade education?

8 A Yes, ma'am, he did.

9 Q Did he tell you where he went to high school?

10 A No, ma'am, he did not.

11 Q And is -- is he from South Carolina originally do you
12 recall?

13 A If you will give me a minute, I will tell you.

14 (Brief pause.)

15 A I know when we were going up for the bond hearing, he
16 told me that he -- either he or his mom had land in
17 Williamsburg County. So, yeah. That was one of the
18 questions we had about a flight risk. He also told me that
19 he had been back and forth since 1989.

20 I had numerous contacts with his -- or conversations
21 with a Mrs. Edna, I think, Gagum, G-a-g-u-m. I talked with
22 her a lot about him.

23 He told me that he had a 12th-grade education. Since
24 1987, he lived various places. Mom lives in Kingstree.
25 She owns property in Kingstree. The house was in his mom's

1 name. Then later I wrote a note (as read): "His mom has
2 two houses."

3 His girlfriend lives in Anderson. There's no reason
4 for him to run. Not a flight risk.

5 Q So during your discussions with him about the case,
6 did he seem to understand everything that you discussed
7 with him about preparing defenses and filing motions and
8 things?

9 A Yes, ma'am.

10 Q Okay. So after that hearing with Judge King on June
11 22 of 2011, you were not relieved. What happened after the
12 hearing that led to you being relieved from the case?

13 A I thought he and I were doing pretty good. I met with
14 him on July the 14, I met with him on July the 19, I met
15 with him on July the 22, July the 28, July the 31, August
16 the 8, August the 10, August the 13, August the 19, August
17 the 29. And then we were supposed to have a hearing.

18 I went to Kingstree before the hearing. We did not
19 have the hearing, but then I went back the day -- the next
20 day when we had the hearing. But he wrote me a letter on
21 August the 29 (as read): "Because of your deliberate
22 betrayal to me and my family for the third time, I no
23 longer need your lying assistance. I will now represent
24 myself in my case when the time comes.

25 "Now, you can put in the paperwork to Judge King or

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1 Judge James. I don't give a damn. Or I'll do it myself.
2 You have played with my freedom long enough. You protected
3 Kimberly Barr and the State who is paying you. There are
4 no more warnings, Mr. Anderson."

5 And that letter was dated August the 29 and mailed to
6 me on August the 30.

7 Q Thank you.

8 MS. COLEMAN: And Your Honor, I believe that letter is
9 already a part of the judge's packet. It was attached to
10 the order.

11 THE COURT: It is. It is, ma'am.

12 MS. COLEMAN: Okay.

13 Q So was this letter the basis of Judge King's order
14 relieving you as counsel?

15 A Yes, ma'am.

16 Q Okay. And did you contact Judge King with this letter
17 and -- and ask to be relieved again?

18 A I did.

19 Q Okay. And in Judge King's order, did he find that Mr.
20 McCrea had waived his right to counsel through his
21 behavior?

22 A I believe he did.

23 Q Okay.

24 A I haven't read Judge King's order recently.

25 Q Okay. And that's part of the record.

1 Is there anything else that you recall that sticks out
2 in your memory about Mr. McCrea that you believe is
3 important for today?

4 A No.

5 Q Okay. Nothing further. Thank you.

6 THE COURT: Mr. Boozer?

7 MR. BOOZER: Thank you, Judge.

8 CROSS-EXAMINATION

9 BY MR. BOOZER:

10 Q Mr. Anderson, how you doing?

11 A Good.

12 Q Good. Now, did you -- you didn't interpret any of Mr.
13 McCrea's letters I think you said as threats to you; is
14 that right?

15 A That's correct.

16 Q All right. Did Mr. McCrea ever threaten you at any
17 time during y'all's representation?

18 A No, sir.

19 Q Okay. Was -- would you agree with me that he was --
20 you would characterize it or maybe he was easier to deal
21 with in person than -- than by a letter?

22 A Yes, sir.

23 Q Was his demeanor different in person?

24 A It was.

25 Q Was it better?

1 A Everybody has good days and bad days. Most of the
2 time it was better.

3 Q Okay. Did you advise the Court of that? Did it only
4 seem to be in letters that he would get a little bit angry?

5 A I think I advised the Court that I -- one minute I
6 think we'd be doing great, the next minute I'd get a letter
7 telling me what a piece of trash I was.

8 Q Would you agree with me that -- Judge King, at the
9 hearing that y'all actually appeared at, that he never
10 advised Mr. McCrea of the dangers of proceeding pro se?

11 A I don't believe he specifically advised him of
12 proceeding pro se. I do believe he asked him if he was
13 trained in the law, but I -- and if he wasn't, it'd be his
14 best bet to go -- you know, to have an attorney.

15 Q Okay. But that's -- that's not exactly advising of
16 the dangers of proceeding pro se, is it?

17 A No, sir.

18 Q Okay. And I think you had indicated that you had sent
19 Mr. McCrea a letter, and I couldn't quite hear the date.
20 Was it either June 28 or July 28?

21 A July the 28.

22 Q In that letter, I think that you had indicated that
23 you told him you didn't want to see any more mail like the
24 previous mail or you'd report that back to Judge King; is
25 that correct?

1 A That's correct.

2 Q But in that letter, you certainly didn't advise him of
3 the dangers of pro-se representation or -- or the
4 disadvantages of going forward without a lawyer, did you?

5 A No, sir.

6 Q All right. And in the hearing before Judge King, you
7 would agree that the Court never inquired as to Mr.

8 McCrea's background, his education, his understanding of
9 the law, or anything like that; would you agree with that?

10 A I haven't reviewed that recently. If -- if it's not
11 in the transcript, then yes, sir, I would agree with that.

12 Q Okay. Let me go back to some of the Rule 5 materials.
13 You indicated that the State was giving stuff to you, but
14 it wasn't being done, I guess, as quickly as you would have
15 liked it.

16 A That's correct.

17 Q Okay. Do you recall writing a letter to the
18 Solicitor's Office indicating that you hated to keep
19 bothering him with these requests, but you're greatly
20 concerned that you're not getting anything? This is back
21 in July of 2011. Do you recall that?

22 A I do.

23 Q All right. And you said (as read): "This is
24 certainly no way for me to be able to prepare. It's
25 certainly no way for law enforcement to give me the

1 information. They should have every single thing to you."

2 Do you recall that letter?

3 A I do.

4 Q So you were having some issues getting items; would
5 you agree with me?

6 A I -- I will.

7 Q And do you recall specifically reading or reviewing
8 any sort of supplemental incident report where what's
9 called a "letter of leniency" from Mr. Briggs was discussed
10 or where officers had discussed they had given Mr. Briggs -
11 - written him a letter saying that they'd let him plead to
12 accessory? Do you recall anything like that?

13 A I do not.

14 Q Okay. Do you recall ever getting any sort of actual
15 letter that went from investigators to Mr. Briggs.

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

17 Q All right.

18 MR. BOOZER: Beg the Court's indulgence, Your Honor?

19 THE COURT: Yes, sir.

20 (Brief pause.)

21 Q Mr. Anderson, when you were in court at that hearing,
22 do you recall Judge King indicating that if he relieved
23 you, that you would remain as stand-by counsel?

24 A I didn't remember that, but I did recall reading that
25 at a later time.

1 Q Okay. So you -- you've since read that where Judge
2 King -- and this is on page 41 -- says he'd require you to
3 appear pro se and have him -- meaning you -- stand by just
4 to advise with the procedure in the courtroom?

5 A Yes, sir.

6 Q And it says (as read): "Mr. Anderson, do me a brief
7 order to that effect." Do you recall that?

8 A I do.

9 Q Was it your understanding that if you relieved -- if
10 you were relieved in this case, that you would still remain
11 on as stand-by counsel?

12 A At that hearing that was my understanding. Later it
13 was my understanding I was completely relieved.

14 Q Okay. Did -- did you bring to the judge's attention,
15 "Hey, Judge, I think you made a comment that I'd stay on as
16 stand-by counsel"? Did you bring that to the Court's
17 attention?

18 A No, I did not.

19 Q Okay. Certainly it is extremely dangerous for a
20 defendant to go in even without stand-by counsel because
21 there are certain technicalities they have no idea about;
22 is that right?

23 A That's correct.

24 Q Especially if you were stand-by counsel, you could
25 have helped him file the appeal. Wouldn't you have done

1 that?

2 A I would have.

3 Q Okay. And help him serve it and all those types of
4 things?

5 A Yes, sir.

6 Q All right. Thank you, Mr. Anderson.

7 THE COURT: Ms. Coleman?

8 MS. COLEMAN: Nothing further, Your Honor.

9 THE COURT: You may step down, sir.

10 THE WITNESS: And Judge, just like Mr. McKnight, am I
11 free to leave?

12 MR. BOOZER: No objection, Your Honor.

13 MS. COLEMAN: No objection.

14 THE COURT: Yes, sir, you are. Have a good day.

15 THE WITNESS: Thank you, sir.

16 (The witness exits the stand.)

17 THE COURT: May I speak with the two lawyers, please?

18 MR. BOOZER: Yes, sir.

19 MS. COLEMAN: Yes, sir.

20 (Bench conference.)

21 MS. COLEMAN: All right. The State calls Kimberly
22 Barr.

23 THE COURT: All right.

24 KIMBERLY BARR, having been first
25 duly sworn, testifies as follows:

1 THE BAILIFF: State your name for the record, and
2 spell your last name, please.

3 THE WITNESS: Kimberly Barr, B-a-r-r.

4 DIRECT EXAMINATION

5 BY MS. COLEMAN:

6 Q Ms. Barr, thank you for being here today.

7 A Yes, ma'am.

8 Q How long have you been practicing law?

9 A Almost 23 years.

10 Q Okay. And where are you currently employed?

11 A At the Sabb Law Group.

12 Q Okay. Where were you employed before that?

13 A Had essentially two jobs: I was a part-time assistant
14 solicitor in Williamsburg County, and I also worked in the
15 Law Offices of Ronnie Sabb. I resigned from the
16 Solicitor's Office in December of 2016; and I became a law
17 partner with Ronnie Sabb, and we renamed the firm The Sabb
18 Law Group.

19 Q Did you represent the State in the case of Leverne
20 McCrea?

21 A I did.

22 Q Okay. And did you have the case from start to finish?

23 A I did.

24 Q Okay.

25 A Well, I had an assistant solicitor working part-time

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1 in the office as well. His name is Doward Harvin. I think
2 he may have made appearances at either bond hearings or
3 previously scheduled preliminary hearings. But for the
4 most part, I handled the prosecution of that case.

5 Q Okay. About how long did the case take to go to trial
6 and -- and complete -- complete the case?

7 A The victim's body was discovered on or about March the
8 12 of 2009. The -- there was probably about a year delay
9 between the discovery of the body and the issuance of
10 arrest warrants in the case based on the investigation
11 being ongoing.

12 Based upon the record in my file, the Defendant was
13 arrested on or about March the 29 of 2010, so a year and
14 maybe two weeks after the body was discovered.

15 The case was tried during the last week in October of
16 2011. So from the time of the Defendant's arrest until the
17 trial date was probably a year and a half.

18 Q Okay. Mr. McCrea was first represented by Charles
19 Barr. Did you have any conversations with Mr. Barr about
20 his representation on this case?

21 A I'm sure I did, although I may not -- I -- I don't at
22 this instance recall the specifics of those conversations,
23 but it appears that Mr. Barr was present at a bond hearing
24 on May the 14 of 2010. Judge Craig Brown was the presiding
25 judge, and my notes reflect that bond was denied at that

1 time.

2 Q Okay. Did Mr. Barr ever file any discovery motions
3 while he was representing Mr. McCrea?

4 (Brief pause.)

5 A It appears that in April -- I'm sorry. April 12 of
6 2010, I received a letter from Mr. Barr that enclosed a
7 notice of appearance of counsel and also a written notice
8 of motion and motion to set bond. I don't recall ever
9 seeing a Rule 5 or a discovery motion.

10 Q Okay. I think this is a silly question, but I'll ask
11 it: Based on the allegations in the record we have today,
12 Mr. McCrea, over the course of his three attorneys, had
13 accused each of them of conspiring with the State to
14 convict him of this crime. Did you at any time conspire
15 with Mr. Barr to convict his client of this crime?

16 A I did not.

17 Q Okay. Mr. McCrea was then represented by Cezar
18 McKnight. Did Mr. McKnight -- do you recall him filing any
19 discovery motions?

20 A He did. He filed discovery motions, I believe a
21 motion to -- for bond reconsideration, and he also served
22 me with notice of his -- his intent to make an alibi
23 defense.

24 Q Okay. Do you recall releasing discovery materials to
25 him?

1 A To Mr. McKnight?

2 Q Yes.

3 A I did.

4 Q Okay. Do you recall the date or generally off the top
5 of your head when that might have been?

6 A We received the notice of alibi by Mr. McKnight on
7 November 15, 2010, and I'm assuming around that same time
8 we would've also received his motion for disclosure --
9 discovery. I responded to Mr. McKnight's Rule 5 motion on
10 October the 10 of 2010. So he would have served that
11 discovery motion prior to me receiving the notice of alibi.

12 In my response to his Rule 5 request, I disclosed to
13 him Miranda waiver forms reflecting that his client, at the
14 time of his interviews, were -- was -- was advised of his
15 Miranda warnings. I disclosed to him a polygraph report
16 dated August 4, 2009. I believe that might be a polygraph
17 report of the co-defendant, Christopher Briggs. In
18 addition, I gave a transcribed statement that consisted of
19 99 pages to him. That transcribed statement was dated
20 March 25 of 2009. I gave him Mr. McCrea's rap sheet.

21 I advised him that physical evidence would be
22 available for his inspection. Typically, when physical
23 evidence is obtained during the investigation of a case,
24 it's kept at the law enforcement agency for security
25 purposes, obviously, to maintain the chain of custody. So

1 I advised him that those items would be available for his
2 inspection.

3 I advised him that we had a -- we had photographs of
4 the crime scene that we would provide to him upon our
5 receipt of a blank CD. I gave him a copy of the indictment
6 as well as a copy of the two arrest warrants against Mr.
7 McCrea. I gave him a SLED evidence processing report dated
8 April 6, 2009. I gave him a SLED latent prints report
9 dated October 8, 2009. I gave him a SLED firearms report
10 dated 12/23/2009, a slay -- SLED trace evidence report
11 dated April 2, 2009, MUSC autopsy report of the victim
12 dated 3/13/2009, and I gave him a SLED DNA analysis report
13 dated 5/6/2009. And I also served a reciprocal Rule 5
14 motion at that time.

15 Q Thank you. Earlier today Mr. McCrea testified about
16 some photographs of bullets that he claims he never
17 received as part of his discovery. Were those included in
18 that discovery that you turned over?

19 A In terms of the discovery that was turned over to Mr.
20 McKnight at that time, I advised him that we did have
21 photographs, which would include crime scene photographs
22 and autopsy photographs, that were available for him and I
23 -- simply because of the volume of the -- the photographs,
24 I believe they were in excess of 250, that I would copy
25 them onto a disc if he would provide us a blank disc.

1 I saw, in reviewing the file in anticipation of this
2 hearing, that I actually gave Mr. Anderson, Mr. McCrea's
3 subsequent counsel -- I actually burned the CD for him and
4 -- and placed the photographs on those discs and -- and
5 disclosed that to him.

6 Q Okay. So Mr. Anderson did have a copy of those bullet
7 photographs?

8 A Correct. That would've -- the -- the photographs of
9 the bullet would've been a part of the series of
10 photographs taken of the victim's body at autopsy. You
11 will note on the photographs there's a reference to the
12 letters "FA." That stands for "forensic autopsy." And
13 then the number that follows that would reflect the -- the
14 number of autopsies that would've been performed in the
15 year at that time. And so those photographs could've only
16 came from autopsy.

17 Q At the time you turned over the discovery materials to
18 Mr. McKnight, to your knowledge were -- were there any
19 materials that were not included that should have been?

20 A So what typically happens in -- in situations like
21 this we don't get all of our evidence or our discovery
22 materials at one time. It is an ongoing process. I've had
23 a officer describe it best is that even when there's an
24 arrest, the investigation's still ongoing.

25 So there would've been certain things that would not

1 have been available at that time. I think, perhaps, -- I
2 don't know that -- Mrs. Roberta Smith, who was the
3 Defendant's girlfriend at the time, who lived in North
4 Carolina, I don't know that we would've had her transcribed
5 statement at that point.

6 There would've been tests and reports issued by SLED
7 that had not been issued as -- at that time. Several of
8 the SLED reports did not come in until 2011. So they were
9 certain things that we would not have had at the time we
10 first responded to discovery that would've been
11 supplemented as we received the -- that information.

12 Q Okay. As far as Mr. McKnight's representation, I'll
13 ask the question again: Did you ever at any point conspire
14 with Mr. McKnight to convict his client of murder?

15 A I -- I did not.

16 Q Okay. Mr. McCrea was finally represented by Mr.
17 Anderson. You've already testified a bit about him. To
18 your knowledge, did Mr. Anderson receive the discovery from
19 Mr. McKnight or did you give him a new copy of everything
20 or how did that work?

21 A My recollection is that I -- I'd sent discovery to Mr.
22 McKnight at one point, Mr. Anderson at one point, to the
23 Defendant himself when he was Pro se.

24 There were two other lawyers who haven't been
25 mentioned, but I don't think that they necessarily made

1 appearances in this case. There was a William Rivers who
2 was appointed to represent the Defendant at one point in
3 time; and also William Barr, who's a member of the
4 Williamsburg County Bar, was also appointed to represent
5 him at one time.

6 My recollection is that I don't think that I gave Mr.
7 McCrea documents that had already been provided to Mr.
8 Anderson. In addition, we -- I believe -- I believe and
9 don't hold me to it, but I believe I may have sent
10 discovery material to a couple of PCR lawyers --

11 Q Okay.

12 A -- involved in the case.

13 Q Okay. And did Mr. Anderson write you letters or
14 contact your office about receiving the discovery materials
15 in this case?

16 A He did. And of course, I've tried cases against Mr.
17 Anderson previously. He's the ultimate professional. He's
18 also a very zealous advocate, and -- and at one point, it
19 got kind of contentious with us because I -- I told him
20 that I understand and recognize that he has a job to do and
21 I respect that; but he was asking me on behalf of Mr.
22 McCrea for things that were not subject to disclosure.

23 For example, he was asking me to provide him with
24 medical records of the co-defendant's wife on, I'm
25 assuming, some unrelated domestic violence charge between

1 that co-defendant and his wife. He was asking me on behalf
2 of Mr. McCrea for 911 tapes regarding any domestic violence
3 issues between the co-defendant, Mr. Briggs, and his wife.

4 And it was just -- I -- I -- of course I understood
5 that those -- those -- those things were coming from Mr.
6 Anderson on behalf of his client, and essentially, what I
7 told him was that, you know, going forward, you know, he
8 needs to understand what my position would be as far as
9 discovery, that, you know, we're not -- the things that we
10 provide -- that we're required to provide for him under the
11 rules, we'll get them. But we're not required to go out
12 and -- and be his investigators and get for him for Mr.
13 McCrea what Mr. McCrea wanted just because Mr. McCrea
14 wanted it.

15 And so, yes, there was obviously letters -- several
16 letters written by Mr. Anderson to me regarding information
17 that his client wanted. The things that were discoverable,
18 in my view, I disclosed them as they came to me. The
19 things that were not discoverable in my view, I explained
20 to Mr. Anderson that I would not be providing those.

21 Q Okay. And did you also turn over all *Brady* material
22 to him as well?

23 A I did.

24 Q Okay. To your knowledge, was there any *Brady* material
25 that was not turned over that should've been?