

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

**RECEIVED**

**May 02 2022**

**S.C. SUPREME COURT**

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Certiorari to Richland County

Honorable George M. McFaddin, Circuit Court Judge  
\_\_\_\_\_

XAVIER U. BRANNON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-001015  
\_\_\_\_\_

APPENDIX  
\_\_\_\_\_

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1	State of South Carolina	)	In the Court
2	County of Richland	)	Of General Sessions
3	Indictment No.: 2015-GS-40-02875		
4			
5			
6	State of South Carolina,	)	
7	Plaintiff.	)	
8	vs.	)	Transcript of Record
9		)	
10	Xavier Brannon,	)	
11	Defendant.	)	
12	February 13, 2017		
13	Columbia, South Carolina		
14			
15	<u>B E F O R E:</u>		
16	The Honorable R. Knox McMahon, Judge.		
17			
18	<u>A P P E A R A N C E S:</u>		
19	Kathryn Campbell, Assistant Solicitor		
20	Lamar Fyall, Assistant Solicitor		
21	Attorneys for the State		
22	Fielding Pringle, Esquire		
23	John W. Tate, Esquire		
24	Catherine Mubarak, Esquire		
25	Attorneys for the Defendant		
	Brenda J. Sigwald, Circuit Court Reporter		
	To The Honorable R. Knox McMahon		
	P.O. Box 206, Jackson, South Carolina 29831		

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(REPORTER'S NOTE: There were no exhibits  
entered during this hearing.)

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**GUILTY PLEA**

THE COURT: All right. Solicitor.

MR. FYALL: State calls Xavier Brannon.

MS. PRINGLE: May we remain at the table, sir?

THE COURT: As long as I can hear.

MS. PRINGLE: Okay. We'll talk loud.

THE COURT: Thank you very much.

XAVIER BRANNON,

having been duly sworn, testified as follows:

THE COURT: All right. Solicitor.

MR. FYALL: Thank you, Your Honor. This is Xavier Brannon, represented by Ms. Fielding Pringle, John Tate and Catherine Mubarak of the Public Defender's Office. He is here to plead guilty to voluntary manslaughter. The State is recommending a sentence of 15 years.

THE COURT: All right. Thank you. Thank you, Solicitor.

Ms. Pringle, you represent Xavier Brannon?

MS. PRINGLE: Yes, sir.

THE COURT: Have you explained to him the charge, the possible punishment, and his rights, including his right to a jury trial.

MS. PRINGLE: Yes, sir.

THE COURT: And the elements of those charges -- of that charge.

1 MS. PRINGLE: Yes, sir.

2 THE COURT: In your opinion does he understand  
3 those things.

4 MS. PRINGLE: Yes, sir.

5 THE COURT: How does he indicate he intends to plea  
6 to voluntary manslaughter?

7 MS. PRINGLE: Guilty, Your Honor.

8 THE COURT: Thank you.

9 Are you Xavier U. Brannon?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Now speak up for me, please.

12 Before I can accept a plea of guilty, it's  
13 necessary for me to determine if it's being given freely  
14 and voluntarily. Therefore, I need to ask you some  
15 questions. If you do not understand my questions, please  
16 let me know, I'll try to explain them to you. If at any  
17 time you wish to talk to one or all of your attorneys,  
18 please let me know, I will allow you to do so. Do you  
19 understand?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: How old are you?

22 THE DEFENDANT: 25.

23 THE COURT: How much education do you have?

24 THE DEFENDANT: I have my GED.

25 THE COURT: Before you were incarcerated what type

1 of work did you do?

2 THE DEFENDANT: None.

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

5 THE DEFENDANT: No, sir.

6 THE COURT: Are you aware of any physical,  
7 emotional, or nervous problem that keeps you from  
8 understanding what your doing today?

9 THE DEFENDANT: No, sir.

10 THE COURT: You heard your attorney tell me that  
11 she and others, perhaps of your attorneys, have explained  
12 to you the charges, the charge, the elements of the charge,  
13 the possible punishment and your rights, including your  
14 right to a jury trial; is that correct?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: I've been handed up Indictment  
17 2015-GS-40-02875, it basically reads that you did in  
18 Richland County on or about February 22, 2015, aid or abet,  
19 assist or kill the victim, James Nathan with malice  
20 aforethought, either express or implied by means of a  
21 gunshot wound to the head and the victim did die as a  
22 proximate result thereof. That is an indictment for  
23 murder. It appears you're being allowed to plea to -- or  
24 entering a plea to voluntary manslaughter for which you  
25 could receive a sentence of up to 30 years. Do you

1 understand?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Now, Mr. Brannon, When you plead guilty  
4 you give up certain very important constitutional rights.  
5 First you give up your right to remain silent; second, you  
6 give up your right to a jury trial; that is your right have  
7 a jury determine whether or not you are guilty beyond a  
8 reasonable doubt. And third, you give up your right to  
9 confront and be confronted by the witnesses against you.  
10 Do you understand these rights?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you understand that when you plead  
13 guilty you give up these very important constitutional  
14 rights?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Is that what you want to do?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: You understand if you enter a plea of  
19 guilty to voluntary manslaughter, that you will not get a  
20 jury trial?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Understanding then the nature of the  
23 charge of voluntary manslaughter and the potential maximum  
24 sentence of up to 30 years, how do you plea to that charge,  
25 guilty or not guilty?

1 THE DEFENDANT: Guilty.

2 THE COURT: Do you understand that when you plead  
3 guilty you admit the charge that has been made against you?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Mr. Brannon, you may have defenses to  
6 this charge against you, I don't know whether you do or  
7 not. Do you understand that if you plead guilty, you will  
8 waive or give up any defenses you may have to this charge?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: You may have gave an incriminating  
11 statement in this case; I don't know whether you did or  
12 not. If you plead guilty, do you understand that you waive  
13 or give up the right to contest or challenge whether  
14 whatever statement you gave was freely and voluntarily and  
15 given in accordance with your constitutional rights?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Did you commit this offense of  
18 voluntary manslaughter.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Plea negotiations, Solicitor?

21 MR. FYALL: A recommendation of 15 years, Your  
22 Honor. The defendant also has a rioting charge that's  
23 being dismissed.

24 THE COURT: All right. Is that the full and  
25 complete plea negotiations, Ms. Pringle?

1 MS. PRINGLE: It is, Your Honor and we have a  
2 probation matter to take care of today. He's actually  
3 max'd his time out on that and Troy will address that at  
4 the appropriate time. But as far as plea negotiations  
5 between the State and the defense, that is the extent of  
6 it, Your Honor.

7 THE COURT: Is that your understanding,  
8 Mr. Brannon?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you still wish to plead guilty.

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Are you pleading guilty of your own  
13 free will and accord?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Has anyone promised you anything or  
16 held out any hope of reward to get you to plead guilty?

17 THE DEFENDANT: No, sir.

18 THE COURT: Has anyone threatened you or used force  
19 to get you to plead guilty?

20 THE DEFENDANT: No, sir.

21 THE COURT: Has anyone used any pressure or  
22 intimidation to cause you to plead guilty?

23 THE DEFENDANT: No, sir.

24 THE COURT: Have you had enough time to make up  
25 your mind?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: I want to ask you a few questions about  
3 your attorneys. You have Ms. Pringle, Mr. Tate, and  
4 Ms. Mubarak. Are you satisfied with the manner in which  
5 your lawyers have advised you and represented you?

6 THE DEFENDANT: I couldn't ask for anyone better.

7 THE COURT: Excuse me?

8 THE DEFENDANT: I said I couldn't ask for anyone  
9 better.

10 THE COURT: All right. Have you talked with your  
11 lawyers as often and for as long as you feel necessary for  
12 them to properly represent you.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you need anymore time to talk with  
15 your lawyers?

16 THE DEFENDANT: No, sir.

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

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Have your lawyers done everything for  
21 you, you feel like they could have done or should have  
22 done?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Have your lawyers done anything in this  
25 case that you feel like they should not have done?

1 THE DEFENDANT: No, sir.

2 THE COURT: Are you totally and completely  
3 satisfied with your lawyers' services?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: You have any complaints you want to  
6 make about your lawyer, the solicitors, or any police  
7 officers involved in your case?

8 THE DEFENDANT: No, sir.

9 THE COURT: Have you understood my questions?

10 THE DEFENDANT: Yes, sir.

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

13 THE DEFENDANT: No, sir.

14 THE COURT: You understand that you have a right to  
15 appeal your guilty plea and the sentence of the Court and  
16 that you or your lawyers must do so within 10 days?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. Thank you.

19 Solicitor.

20 MR. FYALL: Thank you, Your Honor. There are a few  
21 events that led up to this incident beginning February  
22 17th, 2015 where the defendant was shot out near Gonzales  
23 Gardens. He did not cooperate with law enforcement in that  
24 investigation. We believe that this event was in  
25 retaliation for him being in shot by a rival gang.

1           Several days after that, Your Honor, there was a,  
2 what is called a kick-back party where the defendant and  
3 several other members of his gang were attending. The  
4 victim in this case and other members associated with the  
5 CRIPS showed up at that party and a shootout ensued. That  
6 obviously heightened the tension between the two.

7           Fast forward to February 22, 2015, there was a gang  
8 meeting at Gonzales Gardens. The defendant, three  
9 codefendants, and an individual named Brandon Joseph left  
10 in Mr. Joseph's truck. They can be seen on video, all of  
11 them getting into the truck. The defendant was noticeable  
12 in that video, Your Honor, because of his stature. He was  
13 also still walking from a limp due to the fact that he was  
14 shot in the leg five days before that.

15           They're seen on camera provided by statewide  
16 security systems. We then -- you also see them driving  
17 down Bluff Road. Eventually at the Starlite Estates, Your  
18 Honor, they turn into the main entrance down Avalon Drive,  
19 go all the way past the park and then made a left, made a  
20 right, and then another right onto Windy Drive, Your Honor.

21           At that point, they encountered the victim and  
22 three other individuals. As they approached those  
23 individuals, they made a sharp right turn onto La Clair  
24 Drive and began firing at those individuals, Your Honor.

25           All of them ran. Based on the scene, it's clear

1 that the victim in this case had turned to run and was shot  
2 in the back of the head. No other individuals were struck.  
3 Other people had -- one individual had a bullet hole go  
4 through her front living room window and we believe her  
5 roof.

6 Law enforcement responded to the scene, Your Honor.  
7 As a result, they talked to several individuals and there  
8 was a tip given to Investigator Goggans of the gang task  
9 force providing the tag number of the truck that was used.  
10 That tag number went to Brandon Joseph, who law enforcement  
11 interviewed and he provided the names of the other  
12 individuals involved.

13 All those individuals gave statements with the  
14 exception of the defendant. The defendant said that he was  
15 in Cayce at his girlfriend's house. That later proved to  
16 be false. Another codefendant, Mr. Anderson's fingerprint  
17 was found on that truck, Your Honor, and he was also  
18 arrested. And based on the statements of everyone with the  
19 exception of the defendant implicated him in this charge.  
20 He was also arrested, along with the other evidence, Your  
21 Honor.

22 His prior record: 2010 two counts of SPMJ; 2011,  
23 an ABHAN and strong-armed robbery; 2013, SPMJ, PWID  
24 marijuana and also a trespassing.

25 THE COURT: How many individuals in the vehicle

1 were armed in the truck.

2 MR. FYALL: Four, Your Honor.

3 THE COURT: Did all four fire the weapons they were  
4 armed with.

5 MS. CAMPBELL: Yes, Your Honor.

6 THE COURT: And of those four individuals that were  
7 armed and fired weapons, was ballistics able to determine  
8 what weapon or recover the weapons that were used to commit  
9 the homicide?

10 MS. CAMPBELL: The weapons were not recovered, Your  
11 Honor. Based on the evidence we have, we believe that  
12 Alvin Anderson, a codefendant, fired the shot that proved  
13 to be fatal. That weapon was a revolver, Your Honor. Some  
14 shell casings were recovered, but basically the statements  
15 of who had which gun, we believe that's the weapon that  
16 fired the fatal shot.

17 THE COURT: And the investigation revealed that  
18 Mr. Brannon did not have a weapon, did not have a revolver,  
19 but had a semiautomatic.

20 MS. PRINGLE: Correct, Your Honor.

21 THE COURT: Victim impact?

22 MR. FYALL: Yes, Your Honor.

23 THE COURT: All right. I'll hear from anyone you  
24 would like me to hear from, Solicitor.

25 VICTIM: Your Honor, this has impacted my life

1 tremendously. My child was well mannered and loved  
2 basketball. There were so many coaches and parents that  
3 followed him. He coached and watched younger kids and  
4 helped them play brick ball. He was my youngest son. He  
5 loved making jokes and to laugh. If you had known him, you  
6 would have been friends with him if it wasn't about colors.  
7 I can't sleep at night. I attend counseling weekly to help  
8 to cope with the loss of my son. He was my joy. Thank  
9 you.

10 THE COURT: Thank you. Thank you very much.  
11 Anything further, Solicitor?

12 MS. CAMPBELL: Just a couple of things, Your Honor.  
13 We did consult with the victim and the family before we  
14 recommended this sentence and the -- the voluntary and the  
15 sentencing. Additionally, Your Honor, we just ask that the  
16 defendant actually put on the record who had the revolver;  
17 whether or not he was shooting it; and things of that  
18 nature as far as his role inside of the vehicle.

19 THE COURT: Stand up for me, please.

20 MS. PRINGLE: He is willing to state he did not  
21 have it. He is not going to say who did have it. He will  
22 acknowledge he did not have it. He was not the shooter of  
23 the gun.

24 THE COURT: Mr. Brannon?

25 THE DEFENDANT: Yes, sir. I did not have the

1 weapon that killed Mr. Nathan and I wasn't --

2 THE COURT: Speak up for me, please.

3 THE DEFENDANT: I said I wasn't shooting.

4 THE COURT: Were there four weapons?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Of the four weapons, was there only one  
7 revolver?

8 THE DEFENDANT: Yes, sir.

9 MS. CAMPBELL: And he didn't have the revolver?

10 THE COURT: And you did not have the revolver?

11 THE DEFENDANT: I did not have a revolver.

12 THE COURT: You had a semiautomatic?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Thank you. Anything further,  
15 Solicitor?

16 MS. CAMPBELL: No, sir.

17 THE COURT: Ms. Pringle?

18 MS. PRINGLE: No, sir, Your Honor.

19 THE COURT: I find there is a substantial factual  
20 basis for the guilty plea. The defendant's decision to  
21 enter the plea of guilty to voluntary manslaughter is  
22 freely and voluntarily, knowingly and intelligently made  
23 under the theory of the hand of one is the hand of all. I  
24 further find that he has been represented by three very,  
25 very experienced, competent defense attorneys; that he's

1 had the advice and counsel of each and all of those  
2 attorneys with whom he says he is well and totally  
3 satisfied; and his plea of guilty is accepted.

4 And further, I was handed up an advice of rights  
5 form and have reviewed that form that had been signed by  
6 Mr. Brannon and I would be making a shot in the dark, but  
7 that's Mr. Tate's signature, whether I'm right or wrong  
8 or --

9 MS. PRINGLE: It's me.

10 THE COURT: Well, let's see, well, FPJT -- that's  
11 close.

12 All right. So his plea is accepted.

13 Ms. Pringle?

14 MS. PRINGLE: Thank you, Your Honor. Just briefly,  
15 Judge, present in the courtroom today is Kathy Sykes and  
16 Kelly Sykes and Xavier's father Perry Brannon and his  
17 friend Tracy. I've been representing Xavier for two years  
18 now on this. He was charged in March of 2015.

19 Judge, he -- as he told you, he got his GED. He's  
20 from Columbia, he grew up here. He has four older sisters,  
21 twin siblings, a boy and girl that are younger than him.  
22 He was raised by his dad right here in Columbia. He  
23 doesn't have any children, never been married.

24 Judge, I have been -- Ms. Sykes, Kathy Sykes met  
25 Xavier's family many years ago when he was a youngster

1 through a class that she was taking at Columbia College I  
2 think, and then as part of their class they were -- the  
3 students would become involved with families that needed  
4 some assistance or intervention and Kathy has stayed  
5 involved in his life up until now, so for 20 years or close  
6 to. I have had a tremendous amount of contact with  
7 Ms. Sykes, almost constant contact in recent years -- the  
8 last few months, but certainly regular contact throughout  
9 my representation of Mr. Brannon, and she is heavily  
10 connected to the family.

11 He does have other family members who have been  
12 supporting and have been at prior hearings but who couldn't  
13 be here this morning.

14 Judge, I'm going to let Mr. Tate address a couple  
15 of things regarding Mr. Brannon's background and childhood  
16 in just a minute -- and the probation matter. I just  
17 wanted to say to you, I just -- at some point in this  
18 recently, I asked Kathy if Xavier was right or left-handed  
19 and she just sent me an answer -- of him playing with one  
20 of her young children, playing a game and holding a pen in  
21 his left hand. And what she said in that is, this is the  
22 Xavier we know. And it just really -- when she said that,  
23 Judge, that's the Xavier I know. And I know there is a  
24 different person here. He has a wisdom to him that not  
25 everybody in this situation would have and that's due to

1 some of the things that he coped with when he was younger I  
2 think. But I just wanted to share that with you.

3 He has been an absolutely exemplary client. He is  
4 gentle, easy to deal with, just no problems with him. It  
5 has been a privilege and a pleasure, Your Honor, to  
6 represent him.

7 Judge, Mr. Tate actually knew Mr. Brannon when he  
8 was younger. He's going to share a little bit about that  
9 with you.

10 THE COURT: All right. Thank you. Thank you,  
11 Ms. Pringle.

12 Mr. Tate?

13 MR. TATE: Thank you, may it please the Court, Your  
14 Honor. I first met Xavier when he was about 12 years old.  
15 He was a cancer patient over at Palmetto Health Richland.  
16 Of course, we called it -- down there we called it by a  
17 different name at the time. He came to get chemo where I  
18 volunteered running the waterfront. He was one of my  
19 campers for several years. We also was in a teen group  
20 called Lasting Impressions.

21 When Xavier became involved with other children who  
22 had had cancer, he was a bit of a mentor to those children.  
23 And doctor Rutland has always spoke very highly of him as  
24 our psychosocial director and enjoyed having Brannon as a  
25 camper. I was a little surprised when we came to this

1 professional association.

2 Brannon does -- Xavier does have a couple of  
3 outstanding probation cases I have represented him on.  
4 Your Honor, the max of 36 months of the underlying  
5 sentence, he's done 24 of those months now. He's going to  
6 do a little time after this morning. I've spoke to  
7 Mr. Smith and I think he's fine with just terminating his  
8 probation matter and we'd ask Your Honor to please do that.

9 THE COURT: Thank you. Thank you, Mr. Tate.

10 Anything further, Ms. Pringle?

11 MS. PRINGLE: I think Ms. Sykes wanted to address  
12 the Court, Your Honor.

13 THE COURT: All right. Yes, ma'am, give me your  
14 name, please.

15 MS. SYKES: Katherine Sykes.

16 THE COURT: Speak up for me.

17 MS. SYKES: Yes, sir. My name is Kathy psychs.

18 THE COURT: All right.

19 MS. SYKES: And I did come to know Xavier and his  
20 family when he was five through a mentoring program. It  
21 was actually Columbia International University. And we  
22 fell in love with him and his siblings and his family and  
23 he -- I was consistently involved in his life, as was my  
24 sister who was a teacher in his school throughout the time.

25 Throughout his elementary school years, we lost

1 touch with him and it was during that time that he got  
2 cancer. But fortunately I reentered his life after a lot  
3 of that struggle had happened, getting cancer and having to  
4 drop out of school; living in a neighborhood that -- in  
5 which the odds were against him. So I realize that we are  
6 here today to talk about a loss of life and that is tragic.  
7 All I can tell you is that there is another Xavier than the  
8 one that you've heard about and he is loving and this  
9 entire row of people, plus many more are committed to  
10 nothing but his success and to him becoming who he can be.

11 We understand that he needs to be responsible for  
12 his choices, but if we have anything to do with it when his  
13 sentence is done he will be headed in the right direction.

14 THE COURT: Thank you. Thank you very much.

15 MS. PRINGLE: This is Xavier's father, Mr. Perry  
16 Brannon.

17 MR. BRANNON: How you doing?

18 THE COURT: I'm good. You sir?

19 MR. BRANNON: I apologize to the family and friends  
20 for my son Xavier. To me, I don't see that in him.  
21 Whoever that was, it wasn't him. I've been around him all  
22 his life. I raised him and I know for a fact, it's  
23 something that made him act like that. That's not the  
24 Xavier I raised. He was always beside me with his brother  
25 and sisters. He helped me raise them and I feel deep down

1 inside he's very, very sorry for what happened. I  
2 appreciate you taking into consideration, this is different  
3 than you're seeing him right now.

4 THE COURT: Thank you, thank you very much.

5 Mr. Brannon, anything you'd like to say?

6 THE DEFENDANT: Yes, sir, I would like to apologize  
7 to the victim's family. And I'm sorry for whatever -- for  
8 my role in that and I want them to know that that was not  
9 my intention for that to happen and I hope my daddy can  
10 forgive me. Sorry.

11 THE COURT: Thank you, thank you very much.

12 Anything further, Ms. Pringle?

13 MS. PRINGLE: No, Your Honor, we just ask that you  
14 accept the recommendations. It's sort of a consistent  
15 theme, we have a different person here. He can be a  
16 different person. I think this is the right resolution and  
17 I just ask you to accept the recommendation.

18 THE COURT: Thank you, Ms. Pringle.

19 Anything, Mr. Agent?

20 MR. SCOTT: Your Honor, on both of his charges he's  
21 basically max'd out his prison time and I just suggest we  
22 give him time served and close the probation.

23 THE COURT: All right. I will do that as far as  
24 his probation violation, time served probation -- two  
25 probation cases?

1 MR. SCOTT: Yes, Your Honor.

2 THE COURT: Both probation cases are terminated.  
3 Anything further, Solicitor?

4 MS. CAMPBELL: No, sir.

5 MR. FYALL: No, Your Honor.

6 THE COURT: These are always tragic circumstances  
7 listening to the victim impact, I question that that  
8 statement was made, you wished I could have met him. I  
9 would have liked him. I'm sure I would. I wish I could  
10 have met him too.

11 You know, Mr. Brannon, you handle yourself very  
12 well and very respectfully and you're a very intelligent  
13 young man. You obviously have family support and friends  
14 who are not family. Jesus said who are my brothers and  
15 sisters. But I hope you do use those gifts and talents you  
16 have wisely with the support that you have.

17 2015-GS-40-002875, Xavier U. Brannon, voluntary  
18 manslaughter, defendant is committed to the State  
19 Department of Corrections for a determinate term of 15  
20 years. He is to be given credit for time served pursuant  
21 to 24-13-430 of the South Carolina Code of Laws.

22 Good luck to you Mr. Brannon.

23 Thank you, Ms. Pringle.

24 MS. PRINGLE: Your Honor, would it be possible for  
25 him to hug his family very briefly?

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THE COURT: I will leave that up to security as far as that's concerned. I leave it up to security. I have no objections, but I leave it up to security.

Thank you. Thank you, Solicitor.

Thank you Madam Clerk.

\* \* \* \* \* END OF TRANSCRIPT \* \* \* \* \*

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State of South Carolina )  
County of Aiken ) **Certificate of Reporter**

I, THE UNDERSIGNED, Brenda J. Sigwald, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that I reported the proceedings in the captioned case in the Court of General Sessions in and for the State of South Carolina on 13th day of February, 2017.

I FURTHER CERTIFY that the foregoing pages constitute a true, accurate and complete transcript of said hearing.

I FURTHER CERTIFY that I am neither kin, counsel, nor of interest to any party hereto.

IN WITNESS WHEREOF, I have hereunto set my hand and seal at Aiken County, this 24th day of March, 2017.

*Brenda J. Sigwald*  
\_\_\_\_\_  
Brenda J. Sigwald,  
Court Reporter and Notary Public  
For the State of South Carolina  
My commission expires  
January 4, 2020

FORM 5

STATE OF SOUTH CAROLINA )  
 )  
 County of Richland )  
 )  
Xavier U. Brannon 371454 )  
 Full name and prison number (if any) of Applicant )

IN THE COURT OF COMMON PLEAS

2017CP4007665

v.

State of South Carolina )  
 )  
 )  
 )  
 )

APPLICATION FOR POST-CONVICTION RELIEF

FILED  
 RICHLAND COUNTY  
 2017 DEC 20 PM 4:13  
 JEANETTE W. MCBRIDE  
 C.C. & G.S.

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lee Correctional Institution
2. Name and location of Court which imposed sentence Richland County  
Judicial Center 5<sup>th</sup> Circuit
3. Name(s) of co-defendant(s) (if any) Tyshawwn Anderson, Alvin  
Anderson, Todd Varn Smith
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2015 A 4010 600 334 / voluntary Manslaughter
  - (b) \_\_\_\_\_

(c) \_\_\_\_\_

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

(a) Feb. 13, 2017 15 years

(b) \_\_\_\_\_

(c) \_\_\_\_\_

2017 COPY 2/10/17

6. Check whether a finding of guilty was made:

(a) after a plea of guilty Feb. 13, 2017

(b) after a plea of not guilty \_\_\_\_\_

(c) after a plea of nolo contendere \_\_\_\_\_

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

no

8. If you answered "yes" to (7), list:

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

i. \_\_\_\_\_  
ii. N/A  
iii. \_\_\_\_\_

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

i. \_\_\_\_\_  
ii. N/A  
iii. \_\_\_\_\_

(c) the date of each such result:

i. \_\_\_\_\_  
ii. N/A  
iii. \_\_\_\_\_

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

i. \_\_\_\_\_  
ii. N/A  
iii. \_\_\_\_\_

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) Lawyer did not file one / didn't know I was able to.

(b) \_\_\_\_\_

(c) the disposition thereof:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

N/A

(d) the date of each such disposition:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

N/A

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

N/A

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

no

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

(a) which grounds have been presented:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

N/A

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

N/A

(c) \_\_\_\_\_

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

(a) After Discovered evidence

(b) Sentence Reduction (Lack of Evidence)

(c) \_\_\_\_\_

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

(a) Withheld evidence from Rule 5

(b) Sentence Reduction (Lack of Evidence)

(c) \_\_\_\_\_

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

(a) any petition in a State Court under South Carolina Law? no

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no

(d) any other petitions, motions or applications in this or any other Court? no

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

(a) the specific nature thereof:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. N/A

iv. \_\_\_\_\_

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

i. \_\_\_\_\_

ii. N/A

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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) Found out after plea  
 (b) Lack of evidence  
 (c) \_\_\_\_\_

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

- (a) your arraignment and plea? Fielding Pringle  
 (b) your trial, if any? \_\_\_\_\_  
 (c) your sentencing? \_\_\_\_\_  
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? \_\_\_\_\_  
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?  
 \_\_\_\_\_

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

- (a) the name and address of each attorney who represented you:  
 i. Richland County Public Defender Office  
 \_\_\_\_\_  
 ii. \_\_\_\_\_  
 \_\_\_\_\_  
 iii. \_\_\_\_\_  
 \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:  
 i. Guilty Plea "Fielding Pringle"  
 \_\_\_\_\_  
 ii. \_\_\_\_\_  
 \_\_\_\_\_  
 iii. \_\_\_\_\_  
 \_\_\_\_\_

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

Sentence Reduction for the lack of evidence

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

no

STATE OF SOUTH CAROLINA )

County of Richland County )

VERIFICATION

I, Xavier Brannon #371454, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

SWORN to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
*Notary Public* (L.S.)

My Commission Expires: \_\_\_\_\_

STATE OF SOUTH CAROLINA )

County of )

VERIFICATION

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

Xavier Brannon

SWORN to and subscribed before me this 5th  
day of DEC, 2017

Uniqua Greene (L.S.)  
Notary Public

My Commission Expires: 9-29-2027

FILED  
2017 DEC 20 PM 4: 12  
JEANETTE W. MCBRIDE  
C.C.P. & G.S.

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

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

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

Xavier Brannon  
*Applicant*

SWORN or affirmed to and subscribed before me this  
5th day of Dec., 2017.

Miqua Greene  
*Notary Public*

My Commission Expires: 9-29-2027

FILED  
2017 DEC 20 PM 4:17  
JEANNETTE W. MCBRIDE  
C.C.P. & G.S.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
Xavier U. Brannon, #371454,	)	Case No.: 2017-CP-40-7665
	)	
Applicant,	)	
	)	<b>RETURN AND MOTION TO DISMISS</b>
v.	)	<b>AND FOR A MORE DEFINITE</b>
	)	<b>STATEMENT</b>
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

The State (Respondent), making its Return to the application for Post-Conviction Relief filed on December 20, 2017, would respectfully show this Court:

**I. Procedural History**

Xavier U. Brannon (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. In July 2015, the Richland County Grand Jury indicted Applicant for murder (2015-GS-40-2875). Elizabeth Pringle, Esquire represented Applicant. Assistant Solicitor K. Luck Campbell of the Fifth Circuit Solicitor’s Office prosecuted the case. On February 13, 2017, Applicant appeared before the Honorable R. Knox McMahon, circuit court judge, where he pled guilty to the lesser included offense of voluntary manslaughter. Pursuant to a negotiated sentence, Judge McMahon sentenced Applicant to imprisonment for fifteen years. Applicant did not appeal his conviction or sentence.

**II. Allegations Raised and Relief Sought**

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

1. “After discovered evidence”

2. "Sentence reduction (lack of evidence)"
3. "Withheld evidence from rule 5<sup>1</sup>"

In relief sought, Applicant asked the Court for a sentence reduction for the lack of evidence. Respondent notes that this is not a form of relief that can be granted in post-conviction relief.

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

### **III. Response to Allegation of After Discovered Evidence**

Applicant's first allegation is an allegation of after-discovered evidence. Section 17-27-45(c) of the South Carolina Code of Laws allows for an after-discovered evidence claim to be raised within one year of actual discovery or within one year of when, by the exercise of due diligence, such evidence could have been ascertained. An Applicant requesting a new trial on the basis of such evidence, however, must show that the evidence: (1) is such as would probably change the result if a new trial was held; (2) has been discovered since trial; (3) could not by the exercise of due diligence have been discovered before trial; (4) is material to the issue of guilt or innocence; and (5) is not merely cumulative or impeaching. Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983); Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993). Applicant has failed to set forth with any specificity how this evidence would have affected the outcome if used at trial or why such alleged evidence was not readily discoverable at the time of trial. Before the Court will hold an evidentiary hearing, the Applicant must make a prima facie showing that he is entitled to relief. 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). Applicant has failed to make such a prima facie

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<sup>1</sup> Respondent interprets this allegation as a Brady violation.

showing that he is entitled to relief based on the information set forth and, therefore, he is not entitled to an evidentiary hearing on the matter. Accordingly, this allegation should be summarily dismissed with prejudice.

#### **IV. Response to Allegations of Rule 5 Violations**

Applicant also alleges Brady and Rule 5 violations. Brady requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment. Clark v. State, 315 S.C.385, 388, 434 S.E.2d 266, 268 (1993). Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment. Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. Clark, 315 S.C. at 388, 434 S.E.2d at 268 (citing U.S. v. Bagley, 473 U.S. 667 (1985)).

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

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

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

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

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

#### **V. Any Future Amendments**

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

#### **VI. Request for a More Definite Statement**

Respondent also hereby moves for a more definite statement. Applicant has failed to set forth any facts to “support each ground” or to explain with any specificity whatsoever the facts upon which his claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to “*specifically set forth the grounds upon which the application is based.*” S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent respectfully submits that it is incumbent

upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

**VII. Response to All Other Allegations**

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

**VIII. Request for an Amendment of Application**

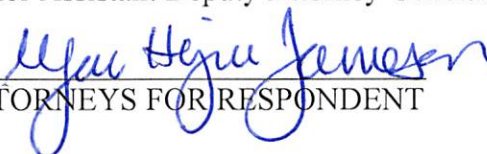
WHEREFORE, Respondent requests that Applicant amend his allegation to include specific facts to support his allegations of newly discovered evidence and a discovery violation. If Applicant fails to do so, Respondent reserves the right to move for dismissal of the application.

Respectfully submitted,

ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

By:   
ATTORNEYS FOR RESPONDENT

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

5/31, 2018



I N D E X

<u>Witness/Description</u>	<u>Page No.</u>
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Cross-examination by Ms. Klein . . . . .	15
Redirect Examination by Ms. Fennell . . . . .	30
E. Fielding Pringle	
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E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Page No.</u>
C-1	SLED Report . . . . .	3
C-1	SLED Report . . . . .	3

1 (PRIOR TO HEARING, THE FOLLOWING EXHIBITS WERE  
2 STIPULATED TO BY BOTH COUNSELORS.)

3 (SLED REPORT MARKED INTO EVIDENCE AS COURT'S EXHIBIT  
4 NUMBER 1.)

5 (SLED REPORT MARKED INTO EVIDENCE AS COURT'S EXHIBIT  
6 NUMBER 2.)

7 THE COURT: All right, I'm ready, ma'am.

8 MS. KLEIN: Thank you, Your Honor, and may it please  
9 the court? This is the case of *Xavier Brannon v. The State*  
10 *of South Carolina*, docket number 2017-CP-40-7665.

11 Applicant was indicted in July 2015 for murder. On  
12 February 13, 2017, applicant pled guilty to voluntary  
13 manslaughter before Judge McMahon. Pursuant to a  
14 negotiation and recommendation, Judge McMahon sentenced  
15 applicant to fifteen years' imprisonment. He did not  
16 appeal conviction or sentence.

17 This PCR action was filed December 17, 2017, alleging  
18 after-discovered evidence, sentence reduction based on lack  
19 of evidence, and withheld evidence from Rule 5. Applicant  
20 then *pro se* filed an amendment in opposition to the state's  
21 return, where he included additional allegations of  
22 ineffective assistance of counsel and continued with  
23 after-discovered evidence.

24 Applicant is present and is represented by Nancy  
25 Fennell, and, Your Honor, at this time the state is

X. BRANNON - DIRECT EXAMINATION BY MS. FENNELL

4

1 prepared to proceed.

2 THE COURT: All right. Ma'am.

3 MS. FENNELL: Thank you, Your Honor. The applicant  
4 would call Mr. Xavier Brannon to the stand.

5 THE COURT: Okay.

6 XAVIER U. BRANNON, BEING DULY

7 SWORN, TESTIFIES AS FOLLOWS:

8 DIRECT EXAMINATION BY MS. FENNELL:

9 Q. Now, Mr. Brannon, you filed an application for  
10 post-conviction relief. Is that correct?

11 A. Yes.

12 Q. And.

13 (A PAUSE.)

14 Q. Ready? And do you understand that if you are  
15 successful in your application, that you are not  
16 guaranteed, guaranteed to get a lesser sentence? You will  
17 go back to the starting point, and all of the original  
18 charges that were filed and pending against you would come  
19 back. You would essentially start over from scratch with  
20 an opportunity for a new trial. Do you understand that?

21 A. Yes, ma'am.

22 Q. And that there is the possibility that you could  
23 receive a greater sentence if you pursue your application?

24 A. Yes.

25 Q. And based on that, knowing that, you do want to go

1 forward with your application?

2 A. Yes, ma'am.

3 Q. Okay. Thank you. Now, who was your attorney who  
4 represented you on the charges that were brought against  
5 you?

6 A. Ms. Pringle, Fielding Pringle.

7 Q. Okay, and was she appointed to represent you?

8 A. Yes.

9 Q. And when was the first time you met with her? Do you  
10 recall?

11 A. Well, like, I think, like, maybe a month or so after I  
12 got charged, I think.

13 Q. Okay.

14 A. I'm not, I'm not sure the exact time, but I think it  
15 was a little over a month.

16 Q. Okay, and how many -- about how many times did you  
17 meet with her?

18 A. I'm not -- I think it was over, like, four, five  
19 times. I'm not sure.

20 Q. And did you meet with her in person?

21 A. Yes.

22 Q. Did you ever have any phone conversations with her?

23 A. No. Just basically face to face. Everything was --  
24 the only phone, the only phone conversations we had was  
25 after I got sentenced when I was ---

X. BRANNON - DIRECT EXAMINATION BY MS. FENNELL

6

1 THE COURT: Sir, I can't hear you. You need to speak  
2 up or be closer to the microphone, please.

3 A. I said the only, the only phone conversations we had  
4 was after I got sentenced, but everything else was, like,  
5 face to face.

6 Q. Okay, and when you met with Ms. Pringle, what did you  
7 all discuss?

8 A. Well, just getting prepared for trial and basically  
9 just things in my case, the evidence in my case and stuff.

10 Q. Okay. So your goal, you wanted to go to trial?

11 A. Yes, ma'am.

12 Q. And you worked with Ms. Pringle to move forward  
13 towards that goal?

14 A. Yes, ma'am.

15 Q. And so on the day of trial, explain what happened that  
16 you did not go to trial.

17 A. Well, she just -- like, it was just -- it was  
18 different. Like, she said that we were -- they had a offer  
19 and stuff and they -- that was the first offer I ever got  
20 when I got to, to getting -- the day of trial and stuff.  
21 So, it just wasn't -- I didn't know -- I didn't think it  
22 was going to be that. So, I thought we were getting ready  
23 for trial. So, it kind of -- it just threw me off.

24 And she was, like, she just was -- she seemed like she  
25 wasn't ready or she, you know -- and she was, like, I think

1 that was the best thing to do is to take the offer. And  
2 she didn't want to see me get a life sentence and stuff.  
3 So, I was -- I got nervous and I just, I, I took the plea.

4 Q. And so what offer are you referring to?

5 A. Of fifteen years.

6 Q. Okay, and that offer was presented to you on the day  
7 that you were to go to trial?

8 A. Yes, ma'am.

9 Q. And prior to receiving that offer of fifteen years,  
10 you had not received any other offer?

11 A. No.

12 Q. And so up until that point, you were planning on going  
13 to trial?

14 A. Yes.

15 Q. Okay, and had you and Ms. Pringle discussed what your  
16 strategy was going to be at trial?

17 A. Yeah. We just -- like my codefendants' statements and  
18 stuff, just making them not credible and stuff like that.

19 Q. Okay. Okay. So, she had gone over with you the, the  
20 statements that codefendants had provided?

21 A. Yes, ma'am.

22 Q. Okay. Had she gone over all of your discovery with  
23 you?

24 A. Just like that and my -- the video they sent of --  
25 like, the videos. Yeah, we went over that and, and my

X. BRANNON - DIRECT EXAMINATION BY MS. FENNELL

8

1 codefendants' statements, but that was pretty much -- that  
2 was all we went over.

3 Q. Okay. Is there anything else that you think she  
4 should have gone over with you in preparation for trial?

5 A. Yeah. I, I just, I didn't know, like, like, that's --  
6 I just was prepared to go to trial then. I wasn't thinking  
7 about taking a plea but, you know, that's what, that's what  
8 happened, so.

9 Q. Okay, and how long were you -- how long -- how much  
10 time where you provided to consider the offer of fifteen  
11 years?

12 A. I just had that day; they said that if I didn't take  
13 it that day, it was just going to be off the table. So, I  
14 didn't really have much time.

15 Q. Okay, and so despite the fact that you had planned on  
16 going to trial, you entered into a guilty plea?

17 A. Yes, ma'am.

18 Q. Okay. Prior to that when you were discussing going to  
19 trial with Ms. Pringle, what did she tell you was the range  
20 of sentencing that was possible that you would receive?

21 A. Well, I think it was thirty, thirty years to life, I  
22 think. Yeah.

23 Q. Okay. Did she -- was there anything that she told you  
24 on the day of trial that led you to choose to plead guilty?

25 A. Yeah. Just, she said that she didn't, she didn't feel

1 comfortable going, and that she was scared that if I do go  
2 and lose, that I would get a life sentence.

3 Q. And so she, she told you that a potential outcome was  
4 that you were -- would receive a life sentence?

5 A. Yes.

6 Q. Okay, and you have mentioned an issue about the  
7 forensic testing involved in your case. What was your  
8 understanding of the forensic testing results on the day  
9 that you pled guilty?

10 A. I didn't really -- I didn't have -- I didn't know.  
11 Like, I never -- I just knew that it was supposed to be,  
12 like, something about the truck or something. It was that  
13 -- that's all I knew. Like, it was supposed to be gunshot  
14 residue or something in the truck, but I didn't know  
15 anything other than that.

16 Q. Okay. So, Ms. Pringle had gone over with you the fact  
17 that the forensic testing had indicated that there was  
18 gunpowder residue inside the vehicle?

19 A. Yes, ma'am.

20 Q. Okay. Did you discuss anything more about the  
21 forensic testing results?

22 A. No.

23 Q. Okay. Now, you said that she told you you would get a  
24 life sentence if you want to trial?

25 A. Yes. She said that she felt like if I was to go and

X. BRANNON - DIRECT EXAMINATION BY MS. FENNELL

10

1 we lose, that the judge may give me a life sentence.

2 Q. Okay, and did, did her telling you that affect your  
3 decision to plead guilty?

4 A. Yeah, because it scared me, so I didn't know what else  
5 to do. I just -- I thought -- I guess she was advising me  
6 rights, so I just took it.

7 Q. Okay, and you had indicated that, that counsel was  
8 ineffective for advising you to plead guilty on the day of  
9 trial when you had discussed being prepared for trial. How  
10 do you think that her advice to you on that day to plead  
11 guilty was ineffective assistance of counsel?

12 A. Because we -- that wasn't -- like, if she didn't have  
13 me thinking, like, that I was going to take a plea, like,  
14 because I would have -- I don't know. I wouldn't, I  
15 wouldn't have been thinking, like, we were going to trial  
16 or anything because that's what, that's what I was lead to  
17 -- led to think. So, I thought that we were going to trial  
18 then. I didn't expect to have a plea then.

19 Q. Did you feel like you are prepared to go to trial on  
20 the day you were scheduled for trial?

21 A. Yes.

22 Q. Do you feel like Ms. Pringle was prepared to go to  
23 trial on that day?

24 A. I thought she was.

25 Q. Is there any reason that you think she might not have

1     been prepared?

2     A.    Well, no.

3     Q.    Okay.  You also indicate that counsel failed to file a  
4     reconsideration motion for a sentence reduction based upon:

5             Subject matters of the case-in-chief not

6             disclosed to the court at the guilty plea.

7             Did you discuss with Ms. Pringle filing a motion for  
8     reconsideration?

9     A.    No, I don't remember.  I'm not -- I don't remember.

10    We just -- we would -- like, it was no -- it wasn't  
11    discussed to, like, we wasn't going to file any motion like  
12    a PCR or anything.  But when I -- after I got sentenced and  
13    then, like, three months later, that's when she called me  
14    and, and I was -- told me to file for PCR.

15    Q.    And when she told you to file for a PCR, what, what  
16    did she tell you?

17    A.    Just something about the, the gunshot lady that was --  
18    whoever -- she did my gunshot analysis, that she was fired  
19    or something.  So, she just told me to file for it because  
20    she felt like she would have had more to bargain with to  
21    get me a lesser sentence.

22    Q.    Okay.  So, so, at any time after you had that  
23    conversation -- excuse me -- did she file a motion for  
24    reconsideration, or did you discuss that at all?

25    A.    No.

X. BRANNON - DIRECT EXAMINATION BY MS. FENNELL

12

1 Q. Okay. Other than, other than the, the gunshot residue  
2 issue, is there anything else that came to your attention  
3 later that made you think she should have filed a motion  
4 for reconsideration?

5 A. Yeah, because, like, all my codefendants got lesser  
6 sentences than me. And, like, I felt like my role wasn't  
7 no bigger than theirs because we all, we all did the same  
8 thing and they all got lesser sentences. So, I was, like,  
9 why would I get more time when I didn't do it.

10 Q. Okay, and you, you had mentioned notes that you had  
11 received from a codefendant while you were in the county  
12 detention center?

13 A. Yes.

14 Q. What codefendant were you referring to?

15 A. Well, two of them. I got one from Tyshon Anderson  
16 and, and a couple of them Alvin Anderson.

17 Q. Okay, and, and did you discuss those notes with Ms.  
18 Pringle?

19 A. Yes, just not, not much, though. She just said she  
20 would just hold onto them. Just, I guess, like, I think we  
21 would maybe use them in trial because I didn't -- you know,  
22 that's what I thought we were going to do.

23 Q. Okay, and so was there anything in those notes that,  
24 that you feel like should've led you away from entering  
25 into a guilty plea?

1 A. Yeah. They, they were just, they were just talking --  
2 they were saying they were sorry and, like, they just,  
3 they, they were just saying sorry to me. And I was, like,  
4 I didn't understand because they said that they just were  
5 doing whatever they had to do to make it home basically.

6 Q. Okay, and you had opportunity to review the defendants  
7 that -- the statements that codefendants had provided in  
8 the case?

9 A. Yes.

10 Q. And were there conflicting statements provided?

11 A. Yes.

12 Q. Did you discuss that fact with Ms. Pringle?

13 A. We did but not much. Like, they, they -- some of them  
14 wrote statements saying that I was shooting, I wasn't  
15 shooting. They just -- it was -- they weren't -- you know,  
16 they wasn't telling the truth, so.

17 Q. And, and you felt like, based on those statements,  
18 that you should go to trial?

19 A. Yeah, because I didn't -- I felt like I didn't do what  
20 I was being charged with.

21 Q. Okay, and you then said that on the day that you  
22 entered into the guilty plea, that you were scared. Is  
23 there any -- anything, any discussions you had with Ms.  
24 Pringle or anything that led you to become scared that day?

25 A. Yeah. Just saying how much time that if we lose I

X. BRANNON - DIRECT EXAMINATION BY MS. FENNELLS

14

1 could get, and that she felt like my codefendants were just  
2 going to come up there and say anything to save their  
3 selves. And it was going to be hard to convince a jury  
4 because of, like, the, the case, like, and my, and my  
5 background and it being gang related and stuff. So, I just  
6 was nervous. So, I was -- like, I didn't, I didn't want to  
7 get a life sentence.

8 Q. Prior to the day that you entered your plea, had you  
9 discussed with Ms. Pringle the fact that you could get  
10 life?

11 A. No, not, not like -- no, we never talked about it, but  
12 she just -- like, we had, we had talked about just how much  
13 it carries, like the charge, but we never really talked  
14 about it much.

15 Q. So, it wasn't until the day that you were given this  
16 fifteen year offer that you all actually finally discussed  
17 the fact that you could get life?

18 A. Yes.

19 Q. Did Ms. Pringle go over with you if you went to trial  
20 what the state would have to prove?

21 A. Yes, without a -- just without a reasonable doubt and  
22 stuff.

23 Q. Okay, and she had provided you with your discovery  
24 material and had gone over that with you?

25 A. Yes.

1 Q. Okay. Is there anything else that we haven't  
2 discussed already today that you feel like Ms. Pringle  
3 could have done or should have done to effectively  
4 represent you?

5 A. No.

6 MS. FENNELL: I don't have any further questions.  
7 Thank you.

8 THE COURT: Cross, ma'am?

9 MS. KLEIN: Yes, sir.

10 CROSS-EXAMINATION BY MS. KLEIN:

11 Q. Good afternoon, Mr. Brannon. I just have a few more  
12 questions for you. So, you already testified that Ms.  
13 Pringle was appointed to represent you, correct?

14 A. Yes.

15 Q. Was she the only attorney that was appointed to  
16 represent you?

17 A. Well, no. I had two other attorneys when I was -- we  
18 were about to get ready for trial, but she was originally  
19 my only attorney.

20 Q. So, you had -- at one point, you had a team of three  
21 attorneys who were assisting with your defense?

22 A. Yes.

23 Q. Okay, and you testified that you were able to review  
24 the discovery that was provided to those attorneys. Is  
25 that correct?

X. BRANNON - CROSS-EXAMINATION BY MS. KLEIN

16

1 A. Yes.

2 Q. Okay. When you are reviewing that discovery, were  
3 there any issues that you brought up to Ms. Pringle that  
4 you thought she should investigate further?

5 A. Well, just -- no. The only thing that, like, she felt  
6 that we were -- was, like, was my codefendants' statements  
7 and the video. That's the only thing we really discussed.

8 Q. Okay.

9 A. We, we didn't go, we didn't go over anything else  
10 really.

11 Q. Did you give her, I guess, your perspective on what  
12 happened that day?

13 A. Yes.

14 Q. Would you mind elaborating on what happened that day  
15 in your own words?

16 A. What, what happened?

17 Q. Yes. What, what, what facts gave rise to the, the  
18 murder indictment?

19 A. Well, we, me and my codefendants, we were -- we rode  
20 -- we were riding down to where the murder happened, and  
21 that's when one of my codefendants start shooting, and  
22 that's when, you know, like, everything happened. So,  
23 like, that's what I told her. Like, it just -- everybody  
24 started shooting, and I was nervous. So, that's -- I  
25 didn't know that anybody got killed or anything, so.

1 Q. And had you been shot yourself a few weeks prior to  
2 that incident?

3 A. Yes.

4 Q. Were you -- was the person who was the fatal shooter  
5 in the car the only person with a firearm?

6 A. No.

7 Q. So, there were multiple firearms in the car?

8 A. Yes.

9 Q. Okay, and was this something that you discussed with  
10 Ms. Pringle?

11 A. Yes.

12 Q. All right. Do you remember during the plea hearing  
13 that you had where you waived your constitutional rights  
14 such as your right to a jury trial?

15 A. Yes.

16 Q. Do you remember the judge asking you and clarifying  
17 that by pleading guilty, you would not be able to go  
18 forward with the jury trial?

19 A. Yes.

20 Q. And then do you remember telling him that you  
21 understood that?

22 At that point, you testified that you had wanted to  
23 proceed to trial. Why did you testify that you wanted to  
24 plead if you were wanting a trial at that point?

25 A. Because I was -- she, she made me nervous and I

X. BRANNON - CROSS-EXAMINATION BY MS. KLEIN

18

1 didn't, I didn't know what else to do. So, I didn't --  
2 just took the plea.

3 Q. Okay, and do you remember, going into the plea  
4 hearing, do you remember the judge asked you that you were  
5 going to be waiving your right to remain silent?

6 A. Yes.

7 Q. Okay, and do you remember affirmatively responding to  
8 that?

9 A. Yes.

10 Q. Do you remember telling the judge that you understood  
11 that you were waiving your right to challenge the evidence  
12 against you?

13 A. Yes.

14 Q. And do you remember telling the plea judge that you  
15 were satisfied with your attorney's services?

16 A. Yes.

17 Q. Do you remember telling the judge that you could not  
18 have asked for a better attorney?

19 A. Yes.

20 Q. And at that time, is that how you felt about Ms.  
21 Pringle's representation?

22 A. Yeah. I...

23 Q. Okay. In your application, you allege that Ms.  
24 Pringle was ineffective for advising you to plead guilty  
25 the day that you had been set for trial. So, when did you

1 discuss entering a plea?

2 A. The day of. The day we were about to pick jury.

3 Q. So, the jury hadn't been picked yet?

4 A. No.

5 Q. And what happened? Do you remember if the prosecutor  
6 came up to Ms. Pringle, or how, how were you informed of  
7 the plea deal?

8 A. Well, just I -- they came down, downstairs to talk to  
9 me, and that's when they told me.

10 Q. So when you said they, who are you referring to?

11 A. Her and the other two attorneys that were appointed.

12 Q. Okay. So at some point, Ms. Pringle and your other  
13 two counsel had had a discussion with the solicitors when  
14 they, when they made the plea offer?

15 A. Yes.

16 Q. Okay, and they came and conveyed it to you, and what  
17 conversation did you have at that point?

18 A. Just about she said that they were offering fifteen  
19 years and that she was nervous that if we go, that I will  
20 lose and get life. So, that's all I really remember, and I  
21 just, I got nervous after that and everything else. I  
22 just, just sort of went with it.

23 Q. So at that time, you are facing a murder trial  
24 essentially. You were indicted for murder, correct?

25 A. Yes.

X. BRANNON - CROSS-EXAMINATION BY MS. KLEIN

20

1 Q. And Ms. Pringle had told you that the sentencing range  
2 for that would be thirty years to life?

3 A. Yes.

4 Q. And when you were given the offer of, of fifteen  
5 years, what, what did you think of the offer?

6 A. I didn't, I didn't want to take it. I just -- because  
7 I felt like I didn't, I felt like I didn't do it, so why  
8 should I have to do all that time.

9 Q. So during the plea hearing, I guess -- let me back up.  
10 How did you go from not wanting to take the plea offer to  
11 going on the record and telling the judge that you wanted  
12 the plea deal?

13 A. Just because I was, I was nervous. I didn't -- I felt  
14 like that was really the only option, or if I go, I would  
15 lose and get a life sentence because that's what I was  
16 told.

17 Q. Did you tell Ms. Pringle that you were worried?

18 A. No, I, I didn't. I didn't think to tell her because I  
19 just -- I felt like, I just felt like I couldn't trust them  
20 because it just -- everything changed that day from us  
21 going -- but she had me believe that I was going to trial  
22 and then, then that. So, I didn't know what to think. So,  
23 I just went with, went with everything.

24 Q. So, do you understand that if you had gone to trial,  
25 though, the sentencing range you would have -- being thirty

1 to life, you could have still gotten life. You said you  
2 understood that that was the sentencing range?

3 A. Yes.

4 Q. And so prior to this discussion, you never thought  
5 about the possibilities that you might be sentenced to  
6 life?

7 A. No.

8 Q. And so during the plea hearing when the judge asked  
9 you if you wished to plead, was it your desire to plea at  
10 that time?

11 A. No, not really. I just, I just went with it because I  
12 was nervous and I didn't, I didn't know what else to do. I  
13 never really -- I never been through anything like that  
14 before. So, I just, I just went with it.

15 Q. So at the time of your plea, you didn't want to go  
16 forward to trial, correct, because you were scared you were  
17 going to get life?

18 A. Yes. That's what I was -- that's what I had believed  
19 because that's what I was told.

20 Q. Why did you not tell the plea judge that?

21 A. I don't know. It just, it just was all a blur to me.  
22 I wasn't, I wasn't really thinking.

23 Q. Do you remember telling the judge that you hadn't been  
24 coerced or threatened, or you weren't under any duress to  
25 enter into a plea?

X. BRANNON - CROSS-EXAMINATION BY MS. KLEIN

22

1 A. Yes.

2 Q. And if you're talking about this apprehension that you  
3 felt, why didn't you tell the judge at that point how you  
4 felt about it?

5 A. I don't know. I just was -- like I say, it was a  
6 blur. I just didn't, I didn't know what to think. I just  
7 was ready to leave from out of there because I was -- it  
8 just had me nervous.

9 Q. Okay, and so you testified earlier that that plea  
10 offer was the first offer that you had been given?

11 A. Yes.

12 Q. So, at no point prior to that had you and Ms. Pringle  
13 or any of your other attorneys discussed communications  
14 with the state about a possible negotiated, negotiated  
15 plea?

16 A. No.

17 Q. And you mentioned that you and Ms. Pringle had  
18 reviewed your codefendants' statements and videos. Is that  
19 correct?

20 A. Yes.

21 Q. Okay. So, at the time that -- the day that you showed  
22 up expecting to go to trial, were you under the impression  
23 that there were going to be individuals testifying against  
24 you?

25 A. Well, yes. We didn't, we didn't know, like, who would

1 exactly testify, but, yes, I was.

2 Q. And with regards to your involvement, you told the  
3 court, you admitted to the court that you were not the  
4 individual who fired the fatal shot, correct? Do you  
5 remember that?

6 A. Yes.

7 Q. Do you remember telling the judge that you had fired a  
8 gun, but that's not the gun that killed the individual?

9 A. Yes.

10 Q. And were you indicted for murder under the hand of one  
11 is the hand of all theory?

12 A. I, I was. I guess that's what it was. I'm not sure.

13 Q. Okay. Did you and Ms. Pringle talk about how even  
14 though you had not been the one who fired, you were still  
15 liable for murder, and that's why you were being indicted  
16 for murder?

17 A. No.

18 Q. Okay. Did you and Ms. Pringle discuss how there were  
19 several codefendants who were going to provide conflicting  
20 testimony, as you stated earlier?

21 A. Yeah. We, we talked about, like, just their  
22 statements, but we didn't, we didn't really talk about it  
23 much.

24 Q. And by didn't talk about it much, approximately how  
25 many times do you think you were able to actually have

X. BRANNON - CROSS-EXAMINATION BY MS. KLEIN

24

1 conversations with Ms. Pringle regarding preparation for  
2 your case?

3 A. Maybe, I think, like, four or five times. I'm, I'm  
4 not sure.

5 Q. I think you said that she was appointed to you  
6 approximately a month after you were arrested?

7 A. Yes. That's -- I think that's how long it was before  
8 I got to see her.

9 Q. Okay, and then there was two years between then and  
10 the date of your plea. Is that correct?

11 A. Yes.

12 Q. And so in those two years, you only talked to her  
13 about four or five times?

14 A. Yes.

15 Q. You testified earlier that you didn't feel that she  
16 wasn't prepared to go to trial, correct?

17 A. Yeah.

18 Q. So, she had, in your opinion, she had done what she  
19 needed to do to move to trial that day?

20 A. That's what I was -- that's what I had believed.

21 Q. And you also testified that you did not ask Ms.  
22 Pringle to file a motion for reconsideration. Is that  
23 correct?

24 A. No, I, I didn't. We were -- we talked about, like --  
25 she -- we wasn't filing any motions because after, after I

1 took the time, the fifteen years, she said that she felt  
2 like that was the best I was going to get, and we didn't  
3 talk about filing any kind of motions.

4 Q. So in your application, you raise the issue of her  
5 ineffective assistance for not filing a motion for  
6 reconsideration of the sentence, and then you say  
7 specifically:

8 Based on the subject matters of the case-in-chief  
9 not disclosed to the court at the guilty plea.

10 Can you elaborate on what that means?

11 A. Well, I, I didn't -- I had help filing my PCR, but I  
12 didn't, I didn't know what they meant by that.

13 Q. Okay. So, the issue -- so, you never actually asked  
14 her to file a motion for reconsideration?

15 A. No.

16 Q. Do you feel that she should have filed a motion for  
17 reconsideration?

18 A. Yes.

19 Q. And were you in contact with her after your guilty  
20 plea?

21 A. Just that, just that one time when she called when I  
22 had got to my -- the facility I'm at now and we -- she told  
23 me about filing for PCR. So, that's the only time I, I  
24 talked to her after that.

25 Q. Okay. Well, when did it come to you that you felt she

X. BRANNON - CROSS-EXAMINATION BY MS. KLEIN

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1 should have done this?

2 A. Well, I -- she, she should have told me as soon as she  
3 knew. Like, right after, I guess.

4 Q. For the motion for reconsideration?

5 A. Yes. I felt like, yeah, after she found -- she told  
6 me, well, to file a PCR. I felt like we should file for  
7 that, too.

8 Q. And is that related to the issue with the SLED  
9 analysis, the gunshot residue analysis?

10 A. No. This, this like my -- whatever with my  
11 codefendants getting lesser time and stuff. That's,  
12 that's, that's another reason why I felt like I should get  
13 a reconsideration.

14 Q. Okay. Do you know that codefendants don't necessarily  
15 have to be sentenced to the same amount of time?

16 A. Yes, I, I know that, but I felt like my role was no  
17 bigger than theirs in it, so that's why I felt like I  
18 shouldn't have got any more time than they did.

19 Q. Okay, but you never after this, you having this idea,  
20 you didn't then later tell Ms. Pringle that that should be  
21 the basis. Instead, you filed a PCR, correct?

22 A. Yes. I only talked to her that one time, so I didn't,  
23 I didn't -- like, I didn't know how to file for it. I had  
24 help with it, so.

25 Q. Okay, and then in your application, you also bring up

1 the after-discovered evidence. That is the issue with the  
2 gunshot residue. Do you remember discussing that as an  
3 issue?

4 Okay. Are you aware that there was a second  
5 evaluation of the analysis from the issue at hand?

6 A. Well, I was -- yeah, I was told that today.

7 Q. Okay. So, there was the original investigation  
8 reviewing the gunshot residue particles from inside the  
9 vehicle, and then after that individual was terminated,  
10 they did a second evaluation. Is that your understanding?

11 A. Yeah. Well, I didn't -- yeah, I guess. I didn't know  
12 that until today, but...

13 Q. Would you like to look at the reports? Okay.

14 A. We -- I looked at them.

15 Q. You already looked at them? Okay. So, did you know  
16 that the second review of that analysis found that there  
17 was -- it affirmed the findings of the first investigation?  
18 There was no issues involved.

19 A. Yes.

20 Q. Okay. Do you still believe that that's relevant to  
21 this issue?

22 A. Well, that's what, that's what she told me to file for  
23 when, when I -- when she called me for -- she said that I  
24 should file about that. So, that's what I did.

25 Q. But as of today, knowing that the review of that

X. BRANNON - CROSS-EXAMINATION BY MS. KLEIN

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1 investigation essentially confirmed the findings, do you  
2 still believe that there is a question of the evidence?

3 A. I guess. I'm, I'm not sure because I didn't feel -- I  
4 didn't, I didn't think that it was -- I didn't know  
5 anything about. Like, I just, I just was told to file for  
6 it, so that's what I did.

7 Q. Okay. So essentially to summarize, the second, the  
8 second review of the analysis just found that there were  
9 gunshot residue particles in the car, and you acknowledge  
10 that there were more than one firearms in the car, correct?

11 A. Yes.

12 Q. Okay. Do you remember telling the, the court that you  
13 had a firearm in hand?

14 A. Yes.

15 Q. And that you fired a firearm?

16 A. Yes.

17 Q. Okay. So, essentially the finding was that there were  
18 gunshot residue particles in a car where we all know  
19 everyone fired a gun. So, do you have any issues with that  
20 statement of that evidence?

21 A. No.

22 Q. Okay. All right, and then when you received the plea  
23 offer, you mentioned that you only had that day, and so you  
24 felt -- you were concerned because Ms. Pringle had  
25 expressed that she was worried you were going to go to

1 trial and get life. Is that correct?

2 A. Yes.

3 Q. Did you ask for time to speak with Ms. Pringle further  
4 about it?

5 A. I, I asked could I have some time to think about it.  
6 Like, go back to the jail and just think about everything,  
7 and she told me they say I didn't -- that it was -- I only  
8 had a option to take it that day, or it was going to be off  
9 the table.

10 Q. Okay, and if it was off the table, you would have had  
11 to proceed to trial then, correct?

12 A. Yes.

13 Q. And that's what you initially wanted, correct?

14 A. Yes.

15 Q. So, if you had been -- if you hadn't wanted to plea,  
16 then you would have been able to go forward and proceed in  
17 the way that you initially intended, correct?

18 A. Yes.

19 Q. So, at the time you entered the plea, was that what  
20 you wanted?

21 A. No. I just did it because I was nervous because she  
22 said that if we go, that I could get life. So, I just was  
23 nervous and I, I did. I took the plea.

24 Q. But you never told the court any of this, correct?

25 A. No.

X. BRANNON - REDIRECT EXAMINATION BY MS. FENNELL

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1 Q. The court asked you multiple times if you wanted to  
2 enter a plea, and you said yes, correct?

3 A. Yes.

4 MS. KLEIN: No further questions, Your Honor.

5 THE COURT: Okay. Redirect, ma'am?

6 MS. FENNELL: Yes, Your Honor.

7 REDIRECT EXAMINATION BY MS. FENNELL:

8 Q. Just briefly, Mr. Brannon. You testified that Ms.  
9 Pringle made you nervous. What specifically made you  
10 nervous that day?

11 A. Saying that if we go and the -- like, my -- like, if  
12 we lose, that I could get a life sentence and, you know, I  
13 just -- it made me nervous. That, that was it. I was just  
14 -- I was really just going with the -- with whatever, you  
15 know. Just take the plea. That was -- that seemed like my  
16 only option.

17 Q. Okay. Was there anything else about her behavior that  
18 day that made you nervous?

19 A. Yes, because she just -- it went from preparing for  
20 trial to that. So, I just, I felt like I didn't have any  
21 help.

22 Q. Okay, and you are relying on her advice to choose to  
23 enter into that guilty plea?

24 A. Yes.

25 Q. Is there anything else that you would like to tell the

1 court?

2 A. No.

3 MS. FENNEL: Thank you.

4 THE COURT: Cross?

5 MS. KLEIN: No, Your Honor.

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

7 (THE WITNESS EXITS THE STAND.)

8 THE COURT: Who's next, ma'am?

9 MS. FENNEL: I have nothing further, Your Honor.

10 THE COURT: Okay. State.

11 MS. KLEIN: Your Honor, the state would call Fielding  
12 Pringle.

13 E. FIELDING PRINGLE, BEING DULY

14 SWORN, TESTIFIES AS FOLLOWS:

15 WITNESS: Fielding Pringle.

16 DIRECT EXAMINATION BY MS. KLEIN:

17 Q. Good afternoon, Ms. Pringle.

18 A. Good afternoon.

19 Q. So, you've heard some testimony regarding your  
20 representation of Mr. Brannon. Can you provide a little  
21 more information about what time after the incident  
22 occurred that you were appointed to represent him?

23 A. It was within a day. I think that his arrest was  
24 March 5; I don't actually have the appointment in front of  
25 me, but it would've been that same day or next day.

F. PRINGLE - DIRECT EXAMINATION BY MS. KLEIN

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1 Q. Do you recall how these charges arose and how Mr.  
2 Brannon came to be arrested?

3 A. I believe he was in jail actually when the warrant was  
4 issued, but I'm not sure I understand your question.

5 Q. So, could you provide, I guess, some facts about the  
6 incident that gave rise to the indictment?

7 A. Well, there was a young man who was in the Starlight  
8 neighborhood standing out on the street. A red truck that  
9 I believe was a Chevrolet truck, if I'm remembering  
10 correctly, with five individuals it later came to be  
11 learned was driving down the street, and there were  
12 gunshots fired from this truck. One of those gunshots  
13 struck Mr. Nathan, I think, in the back of the head, if I  
14 remember correctly. I don't remember exactly how law  
15 enforcement came to determine -- it may have been a tip  
16 that led them to Brandon Joseph, who was the driver. They  
17 ended up going to Brandon Joseph, and I think he was the  
18 first one to give a statement, and he named everyone else  
19 who was in the truck.

20 There was video from Gonzales Gardens, which is where  
21 the -- all of these young man were prior to getting in the  
22 truck. Close in time to the shooting, there was a video  
23 that you could see, I believe, all five of them, including  
24 Mr. Brannon, who had a limp at the time. So, they were  
25 able to verify what Mr. Joseph had told them.

1 I think there was also a camera on Bluff Road, a  
2 street camera of some kind that picked up the truck, and so  
3 that was basically how they got to Mr. Brannon. I think  
4 Mr. Joseph, all of the other codefendants gave statements  
5 pointing fingers, implicating one another. Mr. Brannon did  
6 not give a statement incriminating himself or anyone else,  
7 to my recollection, but that was how he got charged. His  
8 codefendants and then Brandon Joseph, who was never  
9 charged, initially implicated him.

10 Q. And how many times did you meet with Mr. Brannon in  
11 the course of your representation?

12 A. So, this is sort of a complicated answer. I can give  
13 you the dates; it will be under-representative, but I can  
14 give them all to you. We had a database where we kept all  
15 of our jail visits when Mr. Strickler was alive, who was  
16 the previous circuit defender. When he passed, our access  
17 to that database, I'm not able to open it anymore and print  
18 my jail visits. So, what I did was I reconstructed from my  
19 notes as best I could my visits with him.

20 I would have seen him within a few days of his being  
21 arrested. The dates that I have for certain were March 19,  
22 2015; March 29, 2015. There are some undated notes from  
23 March 2015 that look like they were very preliminary, so  
24 they may have actually been prior to the 19th. On 4/3/15,  
25 I had another note that I had seen him, but I also had a

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1 typed note in my file that I had met with him at that point  
2 three to four times. I referenced in this typed note to  
3 look in the database for the dates, but I can't go get  
4 those. I met with him. I have noted dated 4/29/15 and  
5 4/30/15. Honestly, I don't know if I met him both on that  
6 date. I just -- because I have date -- I have notes from  
7 both those dates, but it's possible. 5/14/15 was his  
8 preliminary hearing; 5/21/15, I met with him. 5/29/15,  
9 6/18/15, 8/5/15, 8/22/15, 8/24/15, 9/30/15, 10/14/15,  
10 11/15/11 -- I'm sorry. I'm sorry. 11/10/15, 22/27/16,  
11 2/2/16, 6/2/16, 11/4/16, 11/16/16, 11/30/16, 12/18/16,  
12 1/10/17, 1/31/17, and 2/10/17. Those are the only dates  
13 that I can reconstruct, but like I said, there would have  
14 been more. I just, I can't get to them.

15 Q. And were all of those visits, were they in person,  
16 over the phone?

17 A. Yes, I would have been meeting with him down at the  
18 jail. He was never on bond.

19 THE COURT: Ma'am, how many total visits did you have  
20 through telephone and in person? I tried to keep a count,  
21 but I lost...

22 WITNESS: I, I can count up the total right now.

23 THE COURT: Yes, ma'am.

24 WITNESS: So, there are twenty-two dates, and then  
25 there would be the three to four times that I reference in

1 the 4/3/15 that I'm able to calculate around.

2 THE COURT: Okay. Thank you.

3 WITNESS: So, around twenty-five.

4 THE COURT: Proceed, ma'am.

5 BY MS. KLEIN:

6 Q. And did you discuss the indictments and the elements  
7 of the offense with Mr. Brannon?

8 A. Extensively.

9 Q. Did you discuss the possible sentencing range?

10 A. Yes.

11 Q. And so was it Mr. Brannon's goal from the outset of  
12 your representation to go to trial?

13 A. We were always preparing for trial. We were never  
14 given an offer that was worthy of consideration or ever --  
15 I don't even think we were given an offer. It was a  
16 triable case. There were problems, I thought, with the  
17 state's case, and so we, we were really preparing for trial  
18 the whole time.

19 I don't recall Mr. Brannon -- you know, there was sort  
20 of an understanding that if it were low enough, then sure,  
21 but it was never on the table. So, until the day of trial,  
22 until we were about to start which, unfortunately, is not  
23 uncommon, at least here, but, you know, that is the first  
24 time that that number was ever presented or anything was  
25 ever presented.

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1 Q. And you said there was kind of an understanding. So,  
2 did Mr. Brannon ever indicate that he would be open to a  
3 plea during your representation?

4 A. You know, I, I just don't remember specifically having  
5 those conversations. This was such a -- you know, we  
6 really were preparing for trial, but I am positive we did.  
7 That would have been a natural conversation to have.

8 There was -- you know, there were plenty of things to  
9 be concerned about, and he knew that. He is a smart young  
10 man. We had a lot of conversation. So, you know, I think  
11 that would have always been something we would want to do  
12 if it was good enough but just never -- there wasn't  
13 anything to talk about really at that point.

14 Q. And do you recall receiving all the discovery  
15 necessary from the state?

16 A. Yes.

17 Q. In this case? Did you review that discovery with Mr.  
18 Brannon?

19 A. Yes.

20 Q. And did that include statements by codefendants and  
21 the video that has been mentioned?

22 A. Yes.

23 Q. What was, in your opinion, the issues with the state's  
24 case?

25 A. Well, they had a lot of -- their case was based on

1 witnesses who were not particularly credible in that some  
2 of them were -- you know, had given self-serving  
3 statements. Alvin Anderson, who, I think, indisputably was  
4 the person whose gun actually shot and killed the young man  
5 -- they were all giving self-serving statements, pointing  
6 fingers. Some of them -- I think Mr. Anderson, Alvin  
7 Anderson had read written a note saying, you know, I  
8 gotcha. So, we had stuff to work with there.

9           There were issues that implicated -- Varn Smith was  
10 one of the codefendants, that he had a history with this  
11 young man that more directly connected them.

12           The forensics were not good and were not well done in  
13 this case. The, the shell -- they had not memorialized  
14 anything in terms of shell casings, no photographs or  
15 diagrams, things like that. So, there were, you know,  
16 there were a number of problems. It was a triable case  
17 and, and we were quite ready.

18 Q. Did you discuss possible defenses with Mr. Brannon?

19 A. Yes.

20 Q. Did you discuss the likelihood of success or failure  
21 with him?

22 A. Yes.

23 Q. Do you believe he understood that going to trial led  
24 to the possibility of receiving life?

25 A. Yes. I mean, he -- yes, he knew that. He understood

1 that. That day was when we had that conversation about  
2 that number but, yes, he is a -- we had a lot of  
3 conversations together. He is a smart young man. I had  
4 no, no question that he understood. It was a risk-benefit  
5 analysis and, you know, we talked it through.  
6 Unfortunately, it happened that morning and it was going to  
7 go away, and so it was, you know, it was time pressured.

8 Q. And so with the facts of the case, was it -- was Mr.  
9 Brannon ever, I guess, accused of being the fatal shooter?

10 A. They did not believe that. They believed that it was  
11 the gun that Alvin Anderson had.

12 Q. And so Mr. Brannon was just an individual who  
13 participated by firing another weapon, but it just so  
14 happened that the bullet wasn't the one that was fatal?

15 A. Correct. The state's theory was that four guns were  
16 at play. Four guns were being fired from that truck, and  
17 that the state's case was that the gun that Alvin Anderson  
18 had -- I can't remember the caliber, but that it was --  
19 they were all different calibers, I think, and so they were  
20 able to link it to him.

21 Q. And I believe that in the, in the plea hearing it is  
22 discussed that the fatal gun was a revolver?

23 A. I think that's right.

24 Q. And so did you conduct any additional or independent  
25 investigation into those facts outside of the ballistics

1 issue?

2 A. Well, we, I mean, we did a lot of things. We hired a  
3 crime scene analyst, Robert Trussell. We had meetings with  
4 Brandon Joseph. We went out, saw the truck ourselves, took  
5 photos of the truck. That was not a question, that I went  
6 back and looked to, you know, itemize everything we did,  
7 but, you know, we worked on this case really hard for quite  
8 a while.

9 Q. And it was yourself two other attorneys as well?

10 A. Yes. John Tate and Catherine Mubarack.

11 Q. Do you know what happened with the codefendants'  
12 cases? Had they cooperated?

13 A. I thought Alvin Anderson got twenty-two years. I  
14 heard what Mr. Brannon said. That's contrary to what I  
15 thought. I could be wrong, but that was what I thought  
16 when I had looked. I don't know what happened to the other  
17 codefendants. Brandon Joseph was never charged, of course.

18 The other two were fully cooperating from the start,  
19 were fully cooperating up until trial. We didn't even know  
20 as the day of trial if Alvin Anderson was definitely going  
21 to testify or not, but we knew for a fact the others were,  
22 and they had cooperated from the start.

23 Q. And did you, did you have sufficient time to prepare  
24 this case?

25 A. Yes.

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1 Q. With regards to the timing of the plea, had the jury  
2 already been selected and sworn?

3 A. I think we were about to pick the jury, but if you  
4 told me that we'd already picked the jury, then I wouldn't  
5 contradict you.

6 Q. And so can you discuss what happened when you received  
7 the plea offer from the state?

8 A. We went and talked to him. I think that Kathy Sykes,  
9 who was a mentor of his, was here. You know, we -- I don't  
10 remember how long, but we talked for quite a while about it  
11 and what the risks were and the meaning of, you know, that  
12 number and what he would end up having to do versus what  
13 might happen if we went to trial. Then we came to a  
14 decision.

15 Q. Okay. When you say we came to a decision, was Mr.  
16 Brannon -- did he have the opportunity to ask questions or  
17 express concerns about the plea?

18 A. Yes.

19 Q. Did he ever indicate that he was only taking the plea  
20 because he was afraid of a life sentence?

21 A. No, but, you know, that nervousness was appropriate.  
22 We were starting a trial in which there were some risks for  
23 him. So, you know, I'm sure he was nervous about that;  
24 that would have been appropriate. I was nervous for him  
25 about that.

1 Q. Had he indicated that he did not wish to take the plea  
2 and wanted to proceed to trial, would you have been  
3 prepared to do so?

4 A. Yes. We -- my file is three banker boxes, which I  
5 think I told you and Ms. Fennell, who kindly did not  
6 require me to bring it. But all of my cross-examinations  
7 are written out in my trial notebook. Opening is written;  
8 I even have my closing sketched out, outlined. All of our  
9 pretrial motions were drafted and ready to go. We were  
10 completely ready to go that morning. There was no, no  
11 question about that, and it, you know, it was a case that  
12 -- it was a triable case, and we were, we were prepared.

13 Q. Do you think that taking the plea was in Mr. Brannon's  
14 best interest?

15 A. Yes.

16 Q. Do you think, given the circumstances of the case,  
17 and, I guess, the nature of the county he was in, that he  
18 would have gotten a harsher sentence had he gone to trial?

19 A. Well, he would have gotten at least thirty if he'd  
20 been convicted, and that is all part of just the  
21 risk-benefit analysis, as we all know.

22 Judge McMahon is one of my favorite judges. He was  
23 our chief admin for a while, and one of the great things  
24 about him was he was very forthright about his sentencing  
25 inclinations, and he, he is a stern sentencer. And so that

1 was a fact that I knew and probably shared with him.

2 So, there was a real risk that this young man, in my  
3 opinion, would spend if not his whole life, the better part  
4 of his adult life in prison and -- if he were to be  
5 convicted.

6 I was quite fond of Mr. Brannon. We spent a lot of  
7 time talking. He has a lot of potential; he's a smart  
8 young man. He's been through a lot in his life and, you  
9 know, I didn't want to see that, and I, and I did think  
10 that there was a real possibility that he could see his  
11 life was gone if he were convicted.

12 Q. And so at the time of the hearing, was it Mr.  
13 Brannon's choice to enter the plea?

14 A. Yes. Of course.

15 Q. Was he able to talk to family or anyone to discuss,  
16 you know, the nature of what was going to happen?

17 A. I thought that we met with Ms. Sykes also, but I don't  
18 have specific notes to that effect. So, I don't, I don't  
19 know if that's correct or not.

20 Q. Okay. So, ultimately it was his decision to plead  
21 guilty?

22 A. Absolutely.

23 Q. And did you explain all the constitutional rights that  
24 he would be waiving to him entering the plea?

25 A. Yes.

1 Q. So, he understood the different, you know, evidentiary  
2 waivers and jury trial?

3 A. Yes.

4 Q. Everything included? Okay.

5 COURT REPORTER: Excuse me, Your Honor, I need  
6 everyone to speak up, please.

7 Q. To your knowledge, did anyone put pressure on him to  
8 make him plead?

9 A. Don't think that anyone put pressure on him. I  
10 certainly would have shared with him my opinion that I just  
11 shared with the court.

12 Q. And do you recall during the plea hearing that Mr.  
13 Brannon told the court several times that he wanted to  
14 enter the plea and he was doing so willingly?

15 A. Yes.

16 Q. Do you remember him telling the court that he could  
17 not have had a better attorney, referencing your  
18 representation of him?

19 A. Yes.

20 Q. And did Mr. Brannon -- he, he has testified that some  
21 time after his sentencing, the two of you had a discussion  
22 and you told him he could file for a PCR. Do you remember  
23 that happening?

24 A. So, what I remember is having a phone call with him  
25 after the information about analyst Whitney Barry from SLED

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1 came out. I don't remember telling him that that would be  
2 something to file on a PCR. That doesn't make sense to me.  
3 It would've been something that I think I would have filed  
4 or taken action on if it had been significant or had  
5 changed anything, but it was not, as it turns out.

6 Q. Did any -- at any time, did Mr. Brannon ask you to  
7 file a motion for reconsideration of the sentence?

8 A. No.

9 Q. Had he done so, would you have filed a motion?

10 A. Yes.

11 Q. Do you believe that the fact that his codefendants may  
12 or may not have gotten a harsher or more lenient sentence  
13 was -- is proper grounds for a motion for reconsideration?

14 A. No.

15 Q. Are the issues with the gunshot residue, would that be  
16 proper grounds for a motion for reconsideration?

17 A. No. Can I back up to the previous question?

18 Q. Sure.

19 A. If the next day all of his codefendants had been  
20 sentenced to five years, then yes, I think it may have been  
21 appropriate to come back at that point perhaps and ask. I,  
22 I don't know because we had agreed to this. I just, I  
23 wanted to clarify because I thought -- I think the question  
24 I was answering was is that appropriate for a PCR, and the  
25 answer to that was no. The gunshot residue issue, it

1 didn't, it just didn't change anything.

2 Q. Okay, and so have you reviewed the original SLED  
3 investigation report of the gunshot residue?

4 A. Yes.

5 Q. Have ---

6 A. That was part of my trial file.

7 Q. Have you reviewed the second report that someone  
8 conducted another analysis of that initial investigation?

9 A. Yes.

10 Q. Okay. Are you aware that it essentially confirmed the  
11 findings of the first report?

12 A. I did.

13 Q. And do you have any -- are you -- do you have any  
14 concerns about that evidence as it related to Mr. Brannon's  
15 case?

16 A. No. The, the second analysis didn't change anything,  
17 but again we knew that guns were fired inside the truck.  
18 There was going to be gunshot residue inside the truck, so  
19 it really didn't -- it just wouldn't have changed anything.

20 Q. Do you believe that you expressing concern about the  
21 possibility of Mr. Brannon getting a life sentence would  
22 outweigh his willingness to enter into a plea of fifteen  
23 years?

24 A. Say that again.

25 Q. Let me rephrase. So, Mr. Brannon has testified that

1 you were concerned, and it was your expression of concern  
2 that he would get a life sentence that made him nervous.  
3 And you have expressed previously during your testimony  
4 that anyone would be nervous at this stage.

5 In -- as an, as an attorney, in your representation,  
6 when you're discussing the possibility of an outcome of a  
7 sentence, do you believe that that would somehow push  
8 someone over the edge to plead to something that they  
9 expressed they didn't want to do?

10 A. No, and I wouldn't have told him that that was what he  
11 was going to get. I would have told him that I was  
12 concerned that he would get a substantial sentence,  
13 concerned that that could be life, concerned because he was  
14 so young. But do I believe that pushed him? No. No. I  
15 think it was volitional. I think he understood it was a  
16 risk-benefit analysis.

17 Q. And it was still in his best interest because he's  
18 only serving fifteen to a lesser included offense. Is that  
19 correct?

20 A. Correct.

21 Q. If you had the opportunity, would you make the same  
22 suggestion today?

23 A. Under the exact same circumstances at the time? Yes.

24 MS. KLEIN: Thank you, Ms. Pringle. I have no further  
25 questions.

1 THE COURT: Cross?

2 CROSS-EXAMINATION BY MS. FENNELLS:

3 Q. Good afternoon, Ms. Pringle.

4 A. Good afternoon.

5 Q. I just have a few questions. Now, you indicated that  
6 you had received some handwritten notes from codefendants  
7 while they were in the county detention center. Do you  
8 recall what those notes were?

9 A. There were notes from -- you know, there were just  
10 notes back and forth. Some were from Alvin. I think he  
11 might have had one from -- I, I don't know. I don't know  
12 who they were, but there were notes back and forth. Some  
13 were from Alvin, and they were just, you know, saying,  
14 like, I've got your back. I'm not going to testify against  
15 you, things like that.

16 Q. And you discussed those notes with Mr. Brannon?

17 A. Yes. Well, he would've given them to me.

18 Q. Okay.

19 A. So, yes, we would have discussed them.

20 Q. And did you discuss what you would've done with those  
21 notes if you went to trial?

22 A. Yes, if the individual who had sent the notes were to  
23 testify. Like I said, we didn't know if Alvin Anderson was  
24 even going to testify.

25 Q. Okay, and did you all discuss that again on the day

1 that Mr. Brannon entered the guilty plea?

2 A. The notes?

3 Q. Yes.

4 A. The notes specifically, I don't know that we discussed  
5 the notes specifically on that day.

6 Q. When you went to Mr. Brannon with the fifteen year  
7 offer, did you all rediscuss any of the evidence that the  
8 state had against him at that point in time?

9 A. I don't specifically recall discussing the state's  
10 evidence. I think that that would have been part of the  
11 conversation in, you know, assessing whether or not this  
12 was a good idea or not. We, of course, would have talked  
13 about that. We would have talked about the codefendants.  
14 We would have talked about the concerns. We would have  
15 talked about, you know, the pros, the cons. So, yes, that  
16 would have been part of the conversation.

17 But you also have to understand we had talked a lot at  
18 that point. He was well aware and an active, engaged  
19 client, and so, you know, he was well aware of what the  
20 state's case was.

21 Q. And you said that you were prepared to go to trial.

22 What was the defense going to be at trial?

23 A. Mere presence essentially. That they rode out there.  
24 And, you know, it's not illegal to be in a car with other  
25 people who, on the spur of the moment, may decide to pull a

1 gun and shoot someone. That he didn't know that that was  
2 going to happen, and, you know, it's essentially a mere  
3 presence defense.

4 Q. And knowing what you know now, is there anything that  
5 you are aware of that would have been the basis for filing  
6 a motion for reconsideration?

7 A. No.

8 Q. Okay, and you never had a discussion with him about  
9 filing a motion for reconsideration?

10 A. No. At that time, I believed he was happy with the  
11 outcome or, you know, there would've been no reason at that  
12 point, but we never had a conversation about doing that.

13 Q. Okay, and did you go over his discovery motion in full  
14 with him?

15 A. Yes.

16 Q. Did you review videos with him?

17 A. Yes. I would have to look back at my notes to tell  
18 you the date, but we would have done that.

19 Q. Okay, and what do you think was the primary concern  
20 evidence-wise with the state's case?

21 A. The biggest problem for him with the defense that we  
22 were pursuing was that he had been shot, I think, five days  
23 prior to this in his neighborhood in Gonzales Garden.  
24 There were codefendants who were going to testify, as we  
25 understood to my recollection, that that was the motivation

1 for riding out to Starlight. There were gang implica --  
2 there were -- the allegation was that he was in a -- in the  
3 Bloods, this other young man was a Crip, and that he had  
4 been shot and that this was being done in retaliation.

5 It was no question he had been shot. He had told  
6 police he shot back at that time, which he have every right  
7 to do, being shot as he was walking down the street. But  
8 we were going to try to exclude that, but if we weren't  
9 able to, then he certainly appeared to have motive to go  
10 out there. It didn't -- it began to seem less coincidental  
11 that he would just be in the truck.

12 So, that, that was the biggest problem for him.  
13 Obviously everybody was situated differently in terms of  
14 their culpability, but I think that that was the biggest  
15 problem in making our case against the state's case.

16 Q. And did you have statements from codefendants saying  
17 that Mr. Brannon was not involved?

18 A. Yes. Yes. I believe -- there are so many statements,  
19 so if you wanted to go back and construct it, we could do  
20 it. It would, it would take some time.

21 Brandon Joseph initially implicates him to the police.  
22 He then, when we met, I believe said he wasn't shooting.  
23 He was helpful ultimately, but they had written statements  
24 from that witness saying that he was. Alvin Anderson, I  
25 believe, had written me a letter saying that, you know, he

1 didn't do it or something that was helpful. But again  
2 there were written statements that they had already given  
3 to law enforcement. So, while we had changes in  
4 statements, we still had to deal with, contend with the  
5 original statements.

6 Q. And you discussed the statements and how you would use  
7 those statements with Mr. Brannon?

8 A. Extensively.

9 Q. Okay, and you feel like he was aware of the defense  
10 you intended to present at trial, as well as the deficiency  
11 in the state's evidence when he pled guilty?

12 A. Yes.

13 Q. And what is Mr. Brannon's educational level?

14 A. I don't recall. I would have to look. I don't  
15 recall; I don't know what his educational level is. He, in  
16 my experience with him, was very intelligent and engaged.  
17 He was a pleasure of a client to have. He was helpful.  
18 So, that was my experience. I don't recall. It probably  
19 was in my mitigation presentation.

20 MS. FENNELL: I don't believe I have any further  
21 questions. Thank you.

22 THE COURT: Redirect?

23 MS. FENNELL: No redirect, Your Honor.

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

25 (THE WITNESS EXITS THE STAND.)

1 THE COURT: State?

2 MS. KLEIN: The state rests.

3 THE COURT: Okay. Do you y'all wish to make some kind  
4 of remarks or?

5 MS. FENNEL: I don't have a closing statement, Your  
6 Honor. I think the testimony speaks for itself.

7 THE COURT: Yeah. I've taken copious notes here on  
8 this.

9 I do find, before I rule -- I may not rule today --  
10 that the attorneys here today each did a very good job, Ms.  
11 Klein and Ms. Fennell, and when I say that, I mean you put  
12 up, you put up your case a lot -- without a lot of fluff,  
13 and you didn't fight each other, which always comes in  
14 handy here.

15 The defendant was well represented today. I will go  
16 ahead and tell you, Mr. Brannon, that at this point -- I  
17 haven't reviewed all my notes, but I will -- I will tell  
18 you at this moment I am not moved to find that you had  
19 incompetent counsel at your guilty plea. I've read your  
20 plea before Judge Knox McMahon. Very thorough. You were  
21 both -- you were engaged and responsive in that process.  
22 However, it's what I like to call a *prima facie* ruling,  
23 subject to rebuttal, changing my mind when I finish. I  
24 honestly cannot find today where Ms. Pringle was deficient  
25 as your attorney, sir.

1           Now, that's not to say that your attorney today was  
2 not good because she didn't possibly get you the results  
3 that you wanted today, but she certainly brought your  
4 petition to court and did a very good job with what I would  
5 call lots of conclusory allegations in your petitions, both  
6 the original and the amended.

7           Now, all of what I've said is subject to change. I  
8 can change my mind by tonight or tomorrow, but you will get  
9 a written ruling from me by email process, all right?  
10 Thank y'all.

11           **--- END OF TRANSCRIPT OF RECORD ---**

**CERTIFICATE**

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 16TH DAY OF JUNE, 2021.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

/S/Elizabeth B. Harris, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

DECEMBER 5TH, 2021

# SOUTH CAROLINA LAW ENFORCEMENT DIVISION

## FORENSIC SERVICES LABORATORY REPORT

NIKKI R. HALEY  
*Governor*



MARK A. KEEL  
*Chief*

Stan Richards  
Richland County Sheriff's Office  
5623 Two Notch Road  
Columbia, SC 29223

**TRACE EVIDENCE**  
July 08, 2016  
SLED LAB: L15-02536  
Your Case No: 1502032622  
Incident Date: 02/22/2015  
[V-Deceased] James Nathan, Jr.

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This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Mark A. Keel, Chief  
South Carolina Law Enforcement Division

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### INTERPRETATION OF RESULTS:

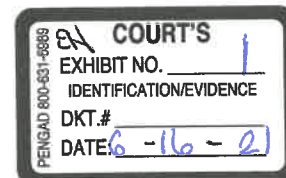
Gunshot residue particles are considered characteristic of primer residue. These particles are microscopic and molten, non-crystalline, particles that contain the elements lead, barium, and antimony.

Particles that are consistent with primer residue are spheroidal/spherical (round) particles with the following compositions:

- Barium, calcium, and silicon
- Antimony and barium
- Lead and antimony
- Lead and barium
- Barium and aluminum
- Lead, barium, calcium, and silicon

Particles that are associated with primer residue are spheroidal/spherical (round) particles with the following compositions:

- Lead
- Antimony
- Barium



CLIA



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P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

SLED LAB No. L15-02536  
July 08, 2016

Page 2 of 3

**ITEMS OF EVIDENCE:**

- Item: 6** One GSR kit from '95 Chevy Silverado submitted as "1995 Chevy Silverado, Red in color, SC: 6947FF; VIN: 9284; possible vehicle used during homicide - GSR kit from inside of vehicle"
- Item: 6.1** One particle lift labeled "Back Seat Below Rear Window"

Item 6.1 was analyzed using Scanning Electron Microscopy with an Energy Dispersive X-Ray Detector (SEM-EDX) for morphology and elemental composition.

**RESULTS:**

No primer (gunshot) residue found.

The absence of gunshot residue on this item is consistent with it not having been in the vicinity of a firearm when it was discharged. A negative result could also occur from circumstances such as cleaning of the item, environmental factors including wind and rain, an intervening object that prevented the deposition of gunshot residue, or excessive debris on the item or sample.

- Item: 6.2** One particle lift labeled "Ceiling Above Rear Window"

Item 6.2 was analyzed using Scanning Electron Microscopy with an Energy Dispersive X-Ray Detector (SEM-EDX) for morphology and elemental composition.

**RESULTS:**

Particles of gunshot residue, particles consistent with gunshot residue, and one particle associated with gunshot residue were found. Gunshot residue can come from being in the vicinity to the discharge of a firearm or coming into contact with a surface that has gunshot residue on it; however, no information can be provided as to the time frame in which these particles were deposited.

CALEA



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SLED LAB No. L15-02536  
July 08, 2016

Page 3 of 3

**Item: 6.3** One particle lift labeled "Ceiling Above Pass Door"

Item 6.3 was analyzed using Scanning Electron Microscopy with an Energy Dispersive X-Ray Detector (SEM-EDX) for morphology and elemental composition.

**RESULTS:**

Particles of gunshot residue and one particle consistent with gunshot residue were found. Gunshot residue can come from being in the vicinity to the discharge of a firearm or coming into contact with a surface that has gunshot residue on it; however, no information can be provided as to the time frame in which these particles were deposited.

**Item: 6.4** One particle lift labeled "Ceiling Above Driver's Door"

Item 6.4 was analyzed using Scanning Electron Microscopy with an Energy Dispersive X-Ray Detector (SEM-EDX) for morphology and elemental composition.

**RESULTS:**

Particles of gunshot residue were found. Gunshot residue can come from being in the vicinity to the discharge of a firearm, or coming into contact with a surface that has gunshot residue on it; however, no information can be provided as to the time frame in which these particles were deposited.

*This report contains the conclusions, opinions and interpretations of the analyst whose signature appears below.*



Whitney K. Berry  
Forensic Scientist

01/15/16



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P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

# SOUTH CAROLINA LAW ENFORCEMENT DIVISION

## FORENSIC SERVICES LABORATORY REPORT

HENRY D. MCMASTER  
*Governor*



MARK A. KEEL  
*Chief*

Stan Richards  
Richland County Sheriff's Office  
5623 Two Notch Road  
Columbia, SC 29223

**TRACE EVIDENCE**  
July 17, 2017  
SLED LAB: L15-02536  
Your Case No: 1502032622  
Incident Date: 02/22/2015  
[V-Deceased] James Nathan, Jr.

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Mark A. Keel, Chief  
South Carolina Law Enforcement Division

### AMENDED

Corrections, amendments, and/or additions to the original report are highlighted.

### INTERPRETATION OF RESULTS:

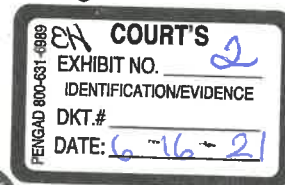
Gunshot residue particles are considered characteristic of primer residue. These particles are microscopic and molten, non-crystalline, particles that contain the elements lead, barium, and antimony.

Particles that are consistent with primer residue are spheroidal/spherical (round) particles with the following compositions:

- Barium, calcium, and silicon
- Antimony and barium
- Lead and antimony
- Lead and barium
- Barium and aluminum
- Lead, barium, calcium, and silicon

Particles that are associated with primer residue are spheroidal/spherical (round) particles with the following compositions:

- Lead
- Antimony
- Barium



AN ASCLD/LAB-International ACCREDITED TESTING LABORATORY SINCE 09/19/2014

P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

**ITEMS OF EVIDENCE:**

**Item: 6** One GSR kit from '95 Chevy Silverado submitted as "1995 Chevy Silverado, Red in color, SC: 6947FF; VIN: 9284; possible vehicle used during homicide - GSR kit from inside of vehicle"

Item 6 was originally analyzed using Scanning Electron Microscopy with an Energy Dispersive X-Ray Spectrometry Detector (SEM-EDX) for morphology and elemental composition. This item was not re-analyzed; however, the following results were confirmed through a review of the digital data.

**RESULTS:**

Particles of gunshot primer residue, particles consistent with gunshot primer residue, and one particle associated with gunshot primer residue were confirmed. Gunshot primer residue can come from being in the vicinity to the discharge of a firearm or coming into contact with a surface that has gunshot primer residue on it; however, no information can be provided as to the time frame in which these particles were deposited.

*This report contains the conclusions, opinions and interpretations of the analyst whose signature appears below.*



Lt. Jennifer M. Nates  
Forensic Scientist



STATE OF SOUTH CAROLINA )	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND )	FOR THE FIFTH JUDICIAL CIRCUIT
)	
Xavier U. Brannon, #371454 )	2017-CP-40-7665
)	
Applicant )	
)	
v. )	<b>ORDER OF DISMISSAL</b>
)	
State of South Carolina, )	
)	
Respondent )	
_____ )	

RICHLAND COUNTY  
 FILED  
 2021 AUG 11 AM 11:33  
 COURT CLERK  
 COURT HOUSE  
 COLUMBIA, SC 29201

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Applicant, Xavier U. Brannon on December 20, 2017. Respondent made its return, motion to dismiss, and motion for a more definite statement on May 31, 2018. An evidentiary hearing into the matter was convened on June 16, 2021 at the Richland County Courthouse. Applicant was present at the hearing and represented by Nancy Fennell, Esquire. Yasmeen E. Klein, Esquire, of the South Carolina Attorney General’s Office represented Respondent. At the hearing, Applicant testified on his own behalf. Respondent presented testimony from Elizabeth Pringle, Esquire.

Following a thorough review of the record in its entirety, and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to meet his requisite burden of proof, denies relief, and dismisses this application with prejudice.

**PROCEDURAL HISTORY**

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections. During the July 2015 term, the Richland County Grand Jury indicted Applicant for murder (2015-GS-40-2875). Elizabeth Pringle, Esquire represented

Applicant. Assistant Solicitor K. Luck Campbell of the Fifth Circuit Solicitor's Office prosecuted the case.

Applicant pled guilty to the lesser-included offense of voluntary manslaughter on February 13, 2017, before the Honorable R. Knox McMahon. Pursuant to a negotiated sentence, Judge McMahon sentenced Applicant to fifteen years imprisonment. Applicant did not appeal his conviction or sentence.

### FACTS

The charges stem from an incident that occurred on February 22, 2015, at the Gonzales Gardens (Plea Tr. 11). Approximately five days prior, Applicant was shot in retaliation for a shootout at a rival gang's party. (Plea Tr. 11). On the date of the incident, Applicant and three co-defendants drove to the Gonzales Gardens when they encountered the victim and three other individuals. (Plea Tr. 11). Applicant and his codefendants began firing at the group of individuals when the victim turned to run and was shot in the back of the head. (Plea Tr. 12). Law enforcement responded to the scene and located the owner of the truck used, who provided the names of Applicant and other codefendants involved. (Plea Tr. 12).

### ISSUES RAISED

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

1. "After discovered evidence"
2. "Sentence reduction (lack of evidence)"
3. "Withheld evidence from rule 5"

Applicant submitted a *pro se* amendment to his application on September 27, 2018, adding the following issues:



1. "Applicant was denied the right to effective assistance of counsel guaranteed by the Sixth and Fourteenth Amend to the U.S. Constitution and by Article I, §§ 3 AND 14 of the S.C. Const., during and before the court proceeding to case,"
2. "Supporting facts, trial counsel's performance during the guilt phase was both unreasonable and prejudicial. See Strickland v. Washington, 466 U.S. 668 (1984). Counsel actions and omission included but were not limited to, the following:"
  - a. "Counsel was ineffective for advising me to plead guilty on the day of trial when counsel and I discussed being prepare for trial,"
  - b. "After discovered evidence, the forensic analyst who did the gunpowder residue analysis was terminated for tampering with evidence,"
  - c. "Counsel failure to file a reconsideration motion for a sentence reduction based upon the subject matters of the case in chief not disclosed to the court at the guilty plea."

At the evidentiary hearing, PCR counsel for Applicant proceeded on the allegations raised in the amended application, which encompasses and expands upon the allegations in Applicant's original application.

### SUMMARY OF RELEVANT TESTIMONY

#### *Applicant's testimony*

At the evidentiary hearing, Applicant testified Plea Counsel was appointed and he met with her the first time approximately a month after he was charged. Applicant indicated he and plea counsel met four or time times in person, and had no phone conversations regarding his case. Applicant testified during their meetings he and Plea Counsel discussed the evidence in his case and how to prepare for trial because he wanted to go to trial. Applicant testified Plea Counsel conveyed the plea offer of fifteen years for voluntary manslaughter, which was the first offer he received. He testified they had been preparing for trial and the plea offer "threw him off." Applicant stated he did not believe Plea Counsel was ready for trial and that Plea Counsel told him taking the plea was the best thing because Plea Counsel did not want Applicant to get a life sentence. Applicant testified he became nervous and took the plea. Applicant testified he and Plea Counsel discussed strategy for trial including reviewing the co-defendant's statements, video



evidence, and other evidence related to the case. Applicant claimed he was ready to go to trial and was not thinking about a plea when the offer was made. He testified that he was given one day to consider the offer.

Applicant testified Plea Counsel explained the sentence range and possible exposure of thirty years to life should he go to trial. Applicant stated Plea Counsel told him she did not feel comfortable going to trial because she was concerned if they lost, the Judge may give him a life sentence, which scared him. Applicant stated he thought Plea Counsel was advising him correctly, so he took the plea. Applicant testified he did not fully understand the forensic testing issue but Plea Counsel told him there was gunshot powder residue found in the truck. Applicant claimed that if Plea Counsel had not made him afraid of a life sentence he would have gone to trial. Applicant testified he did not expect to have a plea and on the day of trial he believed counsel was prepared and there was no reason for him to think the day of trial she was not prepared. Applicant stated he did not remember discussing or asking Plea Counsel to file a motion for reconsideration of the sentence. Applicant claimed he thought there should have been a motion because he later learned his co-defendants were serving less time than him.

Applicant stated the next time he talked to Plea Counsel after the plea was approximately three months later when she called him, told him to file an application for post-conviction relief, and mentioned issues with the gunshot residue and an individual from SLED who was fired. Applicant testified his co-defendants got lesser sentences, so he felt his sentence was unfair. Applicant testified he and Plea Counsel discussed notes received from his co-defendants apologizing to him and conflicting statements from the co-defendants. Applicant thought he should go to trial because he felt he did not do what he was charged with. Applicant testified ultimately



he was afraid the day of trial because Plea Counsel said his co-defendants would testify to say anything to save themselves based on the case being gang related.

Applicant testified he and Plea Counsel discussed how much time the charge carried; however, Applicant claimed prior to the plea, he and Plea Counsel never discussed that he may get life, and Plea Counsel never mentioned she thought Applicant may get life. Applicant stated there is nothing else he believes Plea Counsel could have or should have done in her representation.

On cross-examination, Applicant confirmed he reviewed the discovery with Plea Counsel, and gave Plea Counsel his version of the shooting incident. Applicant testified he and his co-defendants drove to where the murder happened and everyone started shooting, but that Applicant did not know someone was killed. Applicant testified Plea Counsel explained that the plea would waive his constitutional rights and right to a jury trial. Applicant testified he remembered responding affirmatively to the plea court's questions about his waiver of rights. Applicant confirmed he told the plea court he was satisfied with his attorney, and expressly telling the court he could not have asked for a better attorney.

Applicant testified the morning of trial Plea Counsel came to him and discussed the plea offer. Applicant said the offer was for fifteen years and Plea Counsel stated she was concerned he would get life because Applicant was facing thirty years to life. Applicant testified he did not want to take the offer because he felt like he did not commit the crime and should not have to serve time. Applicant claimed he told the judge he wanted the deal because he was nervous, despite testifying at the PCR hearing that he did not want to plead. Applicant testified he also did not want to go to trial at the time because he was scared, but he did not want to tell the judge. Applicant acknowledged he told the plea court he was not under any coercion to plead. Applicant was aware of the second forensic analysis performed in his case and after reviewing the report, Applicant



admitted the findings of both reports were the same. Applicant admitted he told the judge during his plea that he had a gun and had fired the gun during the incident. Applicant testified he had no current issues with the evidence.

*Plea Counsel's testimony*

Plea Counsel testified she was appointed the day after Applicant's arrest, and according to her notes, met with Applicant approximately twenty-six times over the course of her representation. Plea Counsel testified she extensively reviewed the elements of the offense, sentence exposure, relevant evidence, and discovery with Applicant. Plea Counsel indicated the goal was to prepare for trial because Applicant was not extended any plea offers from the State. Plea Counsel stated she reviewed the statements, videos, and other information with Applicant in preparation for trial. Plea Counsel testified Applicant knew he could get life, but the day of the plea, they really discussed the number. Plea Counsel stated she had no question Applicant understood life was a possibility but there was a time crunch and the plea offer did not come until that day. Plea Counsel indicated the State's theory was never that Applicant was the fatal shooter, but he was liable under the hand of one hand of all theory. Plea Counsel testified she hired a crime scene analyst, and went out to look at the truck and worked on the case with two other public defenders. Plea Counsel was unsure of the sentences received by the co-defendants but she recalled fatal shooter received twenty-two years. Plea Counsel testified she had sufficient time to prepare for trial. Plea Counsel indicated she went to speak to Applicant about the plea offer, and the two of them discussed risks. Plea Counsel stated Applicant was free to ask questions and never told her that he was nervous about a life sentence. Plea Counsel acknowledged nervousness would be appropriate in Applicant's situation. Plea Counsel also acknowledged she was nervous for Applicant.



Plea Counsel stated she was prepared and ready for trial, as she had pre-trial motions, direct, and cross examination ready. Plea Counsel testified she thought taking the plea was in Applicant's best interest because he would have been facing thirty years at a minimum at trial and the Judge was forthright with his opinion on sentencing. Plea Counsel indicated she discussed this with Applicant and ultimately it was a risk-benefit analysis. Plea Counsel testified the decision to plea was Applicant's alone, but she shared her opinion with him. Plea Counsel stated she did not believe there were proper grounds to file a motion to reconsider Applicant's sentence. Plea Counsel additionally testified the second SLED analysis did not change anything and was a non-issue. Plea Counsel stated the analysis merely confirmed guns were fired within the vehicle so there would be gunshot residue in the vehicle. Plea Counsel affirmed that accepting the plea was Applicant's choice and she would make the suggestion under those circumstances again.

On cross-examination, Plea Counsel acknowledged Applicant received handwritten notes from his co-defendants that she and Applicant discussed. Plea Counsel testified the notes indicated the co-defendants claimed to have Applicant's back. Plea Counsel indicated she and Applicant discussed that if the codefendants testified the notes would be introduced and used against them. Plea Counsel testified the trial strategy was mere-presence, and the plan was to argue Applicant was with people who randomly decided to start shooting. Plea Counsel testified she and Applicant never had a conversation about a motion for reconsideration, and there are not facts to her knowledge that would have formed the basis for a successful motion. Plea Counsel indicated she believed Applicant was happy with the time he got. Plea Counsel testified she and Applicant reviewed all of the discovery together. Plea Counsel stated the biggest problem was that Applicant was shot five days prior, and the co-defendants were going to testify the incident was motivated

by retaliation for Applicant's shooting. Plea Counsel testified this would give Applicant motive and would be a problem in making their case to the jury.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court further had the opportunity to observe the witnesses at the evidentiary hearing and evaluate their credibility, and the Court has weighed their testimony accordingly in its discussion below. This Court finds the combined record of the plea transcript and the testimony and evidence presented at the evidentiary hearing establishes Applicant received effective assistance of counsel, and this application should be denied. Set forth below are the relevant findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code.

### INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Strickland*, 466 U.S. 668. As such, an applicant must overcome this presumption in



order to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel's performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Applicant must so prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRPC. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109-10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." *Yarborough*, 540 U.S. at 6; *see also Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable."). Applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.*, 300 S.C. at 117-18, 386 S.E.2d at 625. "This does not require a showing that counsel's actions 'more likely than not altered the outcome,' but the difference between *Strickland's* prejudice standard and a more-probable-than-not standard is slight and matters 'only in the rarest case.'" *Harrington*, 562 U.S. at 111-12 (quoting *Strickland*, 466 U.S. at 697). "The likelihood of a different result must be substantial, not just conceivable." *Id.* at 112. "The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury." *United States v. Basham*, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

In the context of a guilty plea, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985); *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. *See Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) ("Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible."). Statements made during a guilty plea should be considered conclusive, unless an Applicant presents valid reasons why he or she should be allowed to depart from the truth of his statements. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).



This Court finds Applicant has failed to meet his burden of proving he is entitled to post-conviction relief on any of his allegations of ineffective assistance of counsel. Applicant has failed to prove both deficiency on the part of Plea Counsel and any prejudice therefrom. Therefore, for the reasons stated below, the Court denies relief and dismisses the allegations with prejudice.

**Failure in advising Applicant to plead guilty on the day of trial**

Applicant alleges Plea Counsel was ineffective for advising him to plead guilty the day of trial when he and Plea Counsel had discussed being prepared for trial. This Court finds Applicant failed to meet his burden in proving Plea Counsel was ineffective, and any deficiency suffered therefrom. Rather, this Court finds Plea Counsel credibly testified she and Applicant extensively discussed the risk-benefit analysis of accepting the plea offer rather than going to trial. Plea Counsel credibly testified she met with Applicant approximately twenty-six times during the course of her representation and reviewed all discovery evidence, including conflicting statements and the fact that Applicant's co-defendants may testify against him, with Applicant. Plea Counsel credibly testified Applicant was fully aware of the possible sentence range for the offense, and the burden the State would have to prove at trial. This Court additionally finds credible Plea Counsel's testimony that she was concerned Applicant would receive life due to the implication of retaliation as a motive for the shooting.

Conversely, this Court finds Applicant's testimony he did not want to plea to be not credible. Applicant testified he wished to proceed to trial primarily because he did not feel he should have been charged with the offense. Applicant additionally claimed he pled guilty because he was afraid he would receive a life sentence if he went to trial after Plea Counsel engaged in a risk-benefit analysis with him and shared her opinion regarding the sentence possibilities. Applicant testified he was ultimately afraid to plea and afraid to proceed to trial, but chose what,

at the time, he believed Plea Counsel's correct advice was. The Court notes that Applicant additionally testified there was nothing he believed Plea Counsel should have or could have done to benefit his case. Additionally, the record reflects during the plea hearing Applicant informed the court he could not have asked for a better attorney, which he confirmed during the PCR hearing.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of the plea and the charges against him or her. *Dover v. State*, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991); *see also Boykin v. Alabama*, 395 U.S. 238, 243 (1969) (Courts must make sure defendants have "a full understanding of what the plea connotes and of its consequence. When the judge discharges that function, he leaves a record adequate for any review that may be later sought, and forestalls the spin-off of collateral proceedings that seek to probe murky memories."). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." *Ray*, 310 S.C. at 437, 427 S.E.2d at 174; *see also Wolfe v. State*, 326 S.C. 158, 485 S.E.2d 367 (1997).

To ensure the defendant understands the consequences of his guilty plea, the trial judge "usually questions the defendant about the facts surrounding the crime and punishment that could be imposed." *Dover*, 304 S.C. at 434-35, 405 S.E.2d at 392. However, the trial judge "does not have to direct the defendant's attention to every consequence of his plea provided the record reveals affirmative awareness of the consequences of a guilty plea." *Carter*, 329 S.C. at 362, 495 S.E.2d at 776. In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. *See Harris v. Leeke*, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984). When a defendant pleads guilty on the advice of counsel, the plea may only be

attacked through a claim of ineffective assistance of counsel. *Roscoe*, 345 S.C. at 20, 546 S.E.2d at 419.

The Court finds Applicant knew the nature of the charges against him, the terms of the plea agreement, and the consequences of pleading guilty pursuant to the requirements of *Boykin* and *Pittman*. Moreover, this Court finds Applicant has failed to show how Plea Counsel was deficient as Plea Counsel's advice to Applicant regarding the plea offer was reasonable. Plea Counsel accurately advised and informed Applicant of the relevant discovery, strategy, likely testimony from co-defendants, and possible sentence exposure regarding trial, and fairly expressed her opinion that the plea offer was in Applicant's best interest as it significantly lowered his exposure from a minimum thirty-year sentence to fifteen years. Applicant's statement that he did not want to plead guilty or go to trial on the indicted charges are not realities for a criminal defendant. Further, Applicant's assertion he pled guilty due to Counsel's failure to advise him does not reflect the reality of the record – that Applicant chose to plead guilty to avoid a harsher sentence if convicted at trial. Accordingly, Applicant cannot establish he is entitled to relief. *See Goins v. State*, 397 S.C. 568, 726 S.E.2d 1 (2012) (noting an applicant cannot establish prejudice where the defendant did not choose to plead guilty on basis of erroneous advice, but rather on basis of the State's offer to dismiss two charges and recommend a 10-year sentence); *Bennett v. State*, 371 S.C. 198, 203–04, 638 S.E.2d 673, 675 (2006) (“Where there has been a guilty plea, the applicant must prove prejudice by showing that, but for counsel's errors, there is a reasonable probability he would not have pleaded guilty and instead would have insisted on going to trial.”).

Accordingly, this Court finds Applicant has failed to show any deficiency on behalf of Plea Counsel, and has additionally failed to establish any resulting prejudice. The record reflects Applicant ultimately made a beneficial decision, and pled to less time than the mandatory



minimum he would have faced at trial. Therefore, Applicant has failed to meet his burden to prove Plea Counsel was ineffective and this allegation is denied and dismissed with prejudice.

**Failure to file a motion for reconsideration of sentence**

Applicant additionally alleges Plea Counsel was ineffective for failing to file a motion for reconsideration of the sentence. This Court finds this allegation to be without merit, and accordingly, dismisses it with prejudice.

*Strickland* “does not guarantee perfect representation . . . only a ‘reasonably competent attorney.’” *Harrington v. Richter*, 562 U.S. 86, 110 (2011) (quoting *Strickland*, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. *Strickland*, 466 U.S. at 686. Just as there is “no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities.” *Harrington*, 562 U.S. at 110.

During the PCR hearing, Applicant testified he did not remember discussing filing a motion for reconsideration with Plea Counsel. Applicant admitted he never asked Plea Counsel to file a motion for reconsideration and only submitted his post-conviction relief application after speaking with Plea Counsel over the phone and learning his co-defendants received lesser sentences, which he felt was unfair. This Court finds Applicant failed to elaborate any grounds aside from his perceived unfairness of the sentence differences with his co-defendants that he alleges Plea Counsel should have used as a basis for the motion. Ultimately, Applicant acknowledged he never asked Plea Counsel to file a motion despite believing she should have.

This Court additionally finds credible Plea Counsel’s testimony confirming Applicant never asked her to file a motion to reconsider. Plea Counsel credibly testified if Applicant had

asked her to file a motion she would have followed up with him to discuss the grounds for the motion. Plea Counsel testified there were no proper grounds for a motion for reconsideration, and that Applicant was satisfied with the time he received after the plea.

This Court finds Applicant has failed in his burden to establish Plea Counsel was ineffective for failing to file a motion for reconsideration when Applicant never asked Plea Counsel to file, and where Applicant provided no valid grounds for the motion. Plea Counsel's representation and assessment of a lack of proper grounds to support a motion for reconsideration was reasonable and was not ineffective. Applicant has therefore failed to prove any alleged deficiency on behalf of Plea Counsel, or prejudice resulting therefrom. As such, this Court dismisses this allegation with prejudice.

#### AFTER DISCOVERED EVIDENCE

Applicant alleges he is being held in custody unlawfully as a result of newly-discovered evidence. This Court finds this claim is without merit. The Uniform Post-Conviction Procedure Act states a person may institute a PCR action if "there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. § 17-27-20(A)(4). An applicant requesting a new trial based on after-discovered evidence following a guilty plea must show:

(1) [T]he newly discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea; and (2) the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the "interest of justice" requires the applicant's guilty plea to be vacated. In other words, a PCR applicant may successfully disavow his or her guilty plea only where the interests of justice outweigh the waiver and solemn admission of guilt encompassed in a plea of guilty and the compelling interests in maintaining the finality of guilty-plea convictions."

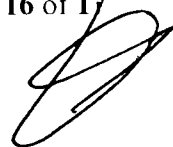
*Jamison v. State*, 410 S.C. 456, 470, 765 S.E.2d 123, 130 (2014).

The alleged after discovered evidence Applicant raised in his application consists of information that the SLED forensic analyst who performed the initial gunshot residue analysis in this case had been terminated for alleged issues with how she handled evidence. At the PCR hearing, both the original and second report conducted by SLED reviewing the analysis were admitted into evidence. The record reflects the second analysis of the gunshot residue confirmed the accuracy of the original analysis. The analysis establishes that gunshot residue particles were found inside the vehicle used during the shooting, consistent with several firearms being discharged during the incident. The Court notes the question of whether guns were fired from within the vehicle was never an issue at the guilty plea. Applicant acknowledged during his plea that he fired a gun along with his co-defendants.

Applicant testified he filed his PCR application on the possibility the evidence was tampered with in his case. Applicant testified he was aware and had the opportunity to review the second report. Thereafter, Applicant acknowledged the second report confirmed the accuracy of the first report, and presented no other significant findings. Applicant admitted with this information, he had no issues with the evidence. This Court therefore finds the claim of after discovered evidence to be moot. Applicant acknowledged there was no existing issue with the evidence, as such, his claim fails to satisfy the *Jamison* standard and warrant relief pursuant to S.C. Code Ann. § 17-27-20(A)(4). Accordingly, this allegation is denied and dismissed with prejudice.

#### CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. The Court



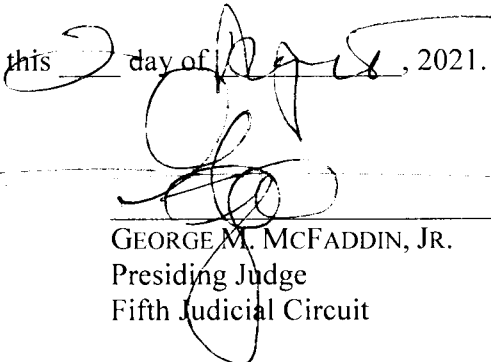
finds Plea Counsel's representation was neither deficient nor prejudicial. The Court finds Applicant knew the meaning and consequences of pleading guilty to the charge against him. The Court further finds Applicant voluntarily pled guilty. His voluntariness is evinced by the plea transcript and testimony given at the PCR hearing.

The Court notes Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. Post-conviction relief is denied and the application for post-conviction relief be dismissed with prejudice; and
2. Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this 2 day of March, 2021.

  
\_\_\_\_\_  
GEORGE M. MCFADDIN, JR.  
Presiding Judge  
Fifth Judicial Circuit

**WITNESSES**

(S) William Gonzalez  
- Richland County Sheriff

**ARREST WARRANT NUMBER**

2015A4010600334

**ACTION OF GRAND JURY**

**TRUE BILL**

*Deavrin Gardner*  
Foreperson of Grand Jury

Date: JUL 16 2015

**VERDICT**

Foreperson of Petit Jury  
Date:

DOCKET NO. 2015GS4002875

The State of South Carolina

County of

Richland

**COURT OF GENERAL SESSIONS**

JULY TERM 2015

42

THE STATE

vs.

Xavier U Brannon

Indictment for  
MURDER / MURDER

SC Code: 16-03-0010  
CDR Code: 0116

After being fully advised  
of my legal rights, I hereby waive  
to the Grand Jury.

Defendant

I, Xavier Brannon  
hereby appear in my own proper person and plead  
guilty to the within indictment or to

Voluntary Manslaughter

X Xavier Brannon  
Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE & CORRECT COPY OF ORIGINAL FILED BY Sherrell L. Williams, C.C.C.P.A.C.E.S. RICHLAND COUNTY SOUTH CAROLINA

SCANNED



STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 COUNTY OF RICHLAND ) FIFTH JUDICIAL CIRCUIT  
 )  
 XAVIER U. BRANNON 371454, ) C/A. #2017-CP-40-7665  
 APPLICANT, )  
 )  
 V. ) - OPPOSITION TO RESPONDENT MOTION  
 ) TO DISMISS PCR FOR MORE DEFINITE  
 STATE OF SOUTH CAROLINA, ) STATEMENT, etc.  
 RESPONDENT. )  
 )

RICHLAND COUNTY  
 FILED  
 2018 NOV 13 PM 4:02  
 JEANNETTE W. MCBRIDE  
 C.C.P. & G.S.

THE ABOVE-NAMED APPLICANT, COMESNOW TO AMEND HIS POST CONVICTION RELIEF APPLICATION WITH THE FOLLOWING MATTERS:

- 1) THE APPLICANT HEREBY AMENDS PARAGRAPHS 10 AND 11 OF HIS APPLICATION TO SPECIFICALLY INCLUDE ALL GROUNDS LISTED IN THE APPLICANT'S APPLICATION FOR POST CONVICTION RELIEF THAT WAS FILED pro se ON DECEMBER 20, 2017.
- 2) IN ADDITION, THE APPLICANT HEREBY AMENDS PARAGRAPH 10 AND 11 AMENDED TO ADD THE FOLLOWING FACTS TO SUPPORT APPLICANT'S GROUNDS:
  - (A) APPLICANT WAS DENIED THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL GUARANTEED BY THE SIXTH AND FOURTEENTH AMEND. TO THE U.S. CONSTITUTION AND BY ARTICLE I, §§ 3 AND 14 OF THE S.C. CONST., DURING AND BEFORE THE COURT PROCEEDING TO CASE,
  - (B) SUPPORTING FACTS, TRIAL COUNSEL'S PERFORMANCE DURING THE GUILT PHASE WAS BOTH UNREASONABLE AND PREJUDICIAL. SEE STRICKLAND V. WASHINGTON, 466 U.S. 668 (1984). COUNSEL ACTIONS AND OMISSIONS INCLUDED BUT WERE NOT LIMITED TO, THE FOLLOWING:
    1. COUNSEL WAS INEFFECTIVE FOR ADVISING ME TO PLEAD GUILTY ON THE DAY OF TRIAL WHEN COUNSEL AND I DISCUSSED BEING PREPARED FOR TRIAL,
    - 2) AFTER DISCOVER EVIDENCE, THE FORENSIC ANALYST WHO DID THE GUNPOWER RESIDUE ANALYSIS WAS TERMINATED FOR TAMPERING WITH EVIDENCE,
    - 3) COUNSEL FAILURES TO FILE A RECONSIDERATION MOTION FOR A SENTENCE REDUCTION BASED UPON SUBJECT MATTERS OF THE CASE IN CHIEF NOT DISCLOSED TO THE COURT AT THE GUILTY PLEA.

SUMMARY

APPLICANT BRANNON EXPLICITLY STATES THAT THE RESPONDENT HAVE TAKEN THE ERRONEOUS LIBERTY TO APPLY STATUS OF LAWS ERRONEOUS, BY MEANS, THE APPLICANT FILED HIS PCR UNDER A pro se MOVES, AND ACCORDINGLY TO THE PCR STATUTE 17-27-20, 30, AND 40, ie al., THE APPLICANT EXERCISE HIS RIGHTS EXCLUSIVELY INVOKING THE ABOVE MENTIONED APPLICABLE LAW STATUTES, etc., THE APPLICANT HAVE A RIGHT IN GENERAL TO EXERCISE FIRST, TO FILE A TIMELY FILED PCR, SECONDLY, TO FILE HIS PCR APPLICATION AND BE APPOINTED A COUNSEL TO REPRESENT HIM IN HIS PCR, AND THIRD AND FINALLY, THE APPLICANT IS ENTITLED TO HAVE HIS APPLICATION AMENDED BY CASE COUNSEL TO CONFORM TO PCR STATUTES REGULATING THE FRAMING OF THE ISSUES AND DISCOVER PURSUANT TO RULE 26, SCRPC., AND FOR THE COUNSEL TO PROCURE ALL NECESSARY FILES TO PROVE THE ISSUES PRESENTED TO THE COURT. HERE IN THE APPLICANT CASE MATTERS, THE RESPONDENT IS BEING TOTALLY VINDICTIVE AND DISRUPTIVE WITH THEIR LEGAL STANCES BECAUSE THE RESPONDENT KNOW GOOD AND WELL APPLICANT IS NOT AN ATTORNEY AND CAN NOT BE HELD UNDER THIS SUCH STATUS, THE CASE COUNSEL HAVE THE EXPERTISE TO LITIGATE APPLICANT'S CASE THROUGH THE COURT PROCESS ATTENDING TO THE EVIDENTIARY MATTER OF APPLICANT CASE. THE RESPONDENT MOTION TO DISMISS APPLICANT'S CASE IS A WASTE OF THE COURT TIME AND BY EVIDENCE THE RESPONDENT IS UTILIZING RESOURCES OF THE COURT ILLEGALLY AND THE COURT SHOULD FIND A SANCTION THAT IS APPROPRIATE TO APPLY AGAINST THE RESPONDENT BECAUSE THIS TYPE OF ACTIONS DONE THE RESPONDENT IS THIS CASE MATTER GOES TOTALLY AGAINST WHAT THE S.C. SUPREME COURT WELL SETTLED LAWS ISSUED BY THE CHIEF JUSTICE IN FEB. AND MARCH OF 2018 REGARDING CONVICTION RELIEF CASE MATTERS, etc.

APPLICANT MOVES TO AMEND HIS PCR APPLICATION AND FURTHER MOVE TO OPPOSE THE RESPONDENT MOTION TO DISMISS TO THE FULLEST EXTENT OF THE LAW, IT IS SAID ON THE 27 DAY OF SEPTEMBER 2018.

SEPTEMBER 27, 2018.

s/ Xavier Brannon  
 XAVIER U. BRANNON  
 990 WISACKY HWY.  
 BISHOPVILLE, SC 29010  
 APPLICANT

LEAH B. MOODY, Esq.  
 COUNSEL FOR APPLICANT  
 DUE RESPONSES,

MEGAN H. JAMESON  
 SAD ATTY GEN.  
 PO BOX 11549  
 COLUMBIA, SC 29211-1549  
 RESPONDENT

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
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 )  
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 )  
 Xavier Brannon, #371454 )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 FIFTH JUDICIAL CIRCUIT  
 C/A NO. 2017-CP-40-7665

**ORDER GRANTING DISCOVERY**


RICHLAND COUNTY  
 FILED  
 2020 FEB 21 AM 11:36  
 COURT REPORTER  
 C.C.P., G.S., & F.C.

This matter is before the Court on Applicant’s Motion for Discovery. Counsel for Applicant seeks an Order granting leave to request Applicant’s file maintained by SLED regarding the underlying criminal investigation of the charges against Applicant. In support of Applicant’s request, counsel for Applicant provided that the purpose of the request was based on alleged tampering with the forensic evidence pertaining to Applicant’s case, as well as information that a SLED employee involved in Applicant’s case was discharged from the agency due to tampering with evidence. Counsel for Respondent did not object to Applicant’s motion.

Based on the foregoing, I find good cause exists pursuant to S.C. Code Ann. § 17-27-150 to grant Applicant’s motion.

IT IS THEREFORE ORDERED that Applicant’s Motion for Discovery is granted.

This 21 day of Feb., 2020.

  
 \_\_\_\_\_  
 D. Craig Brown, Presiding Judge  
 Fifth Judicial Circuit

