

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

APR 18 2012

S.C. Supreme Court

ORIGINAL

Appeal from Richland County

James R. Barber, III, Circuit Court Judge

ISIAH T. SMITH,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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1 STATE OF SOUTH CAROLINA

PRELIMINARY HEARING

2 COUNTY OF RICHLAND

3

STATE OF SOUTH CAROLINA,

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Plaintiff,

5

vs.

WARRANT NO. J556327

6

ISIAH THOMAS SMITH,

7

Defendant.

COPY

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BEFORE: HONORABLE JUDGE HALL

DATE: May 27th, 2007

14

TIME: 12:45 p.m.

15

LOCATION: Alvin S. Glenn Detention Center

201 John Mark Dial Drive

16

Columbia, SC

17

REPORTED BY: CARRIE M. BEAM

18

Court Reporter

19

20

Computer-Aided Transcription By:

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WALTER MCDANNIELS

being first duly sworn, testified as follows:

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

THE WITNESS: Walter Shawn McDanniels.

EXAMINATION

BY MR. ROGERS:

Q. Sir, can you please tell the Court the probable cause that you had to arrest Isiah Thomas Smith for murder in this case?

A. Yes, I can. On March 5th, 2007, while at here in Richland County, the victim -- the victim is Mr. Bonner, was standing in his front yard, when a white colored Chevrolet Caprice occupied by Terran Clark, Timark Hammond, Rafael Goodwin and Isiah Smith drove by the victim's residence. And while pointing a .12 gauge shotgun, fired several rounds in the direction of Mr. Bodder. Mr. Bodder was shot and subsequently died in his front yard as a result of his injuries.

On March 6th of 2007, the vehicle used during the shooting was recovered, to include the shotgun. The subjects were located and Mirandized, all of which gave a written confession admitting to

hearing May 17, 2007

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1 their participation. I executed a search warrant
2 on the actual vehicle.

3 THE COURT: Hold on one second.

4 Would you please flip that tape?

5 THE CLERK: I believe we're ready for
6 the new tape.

7 THE COURT: Thank you, sir, sorry.

8 THE WITNESS: No problem. Again, on
9 March 6th, 2007, after the confessions were
10 obtained and the vehicle was recovered as well as
11 the shotgun used during the actual shooting, I
12 executed a search warrant on the vehicle. A GPR
13 test was conducted and the results are consistent
14 with the shots being fired from the front passenger
15 window. All the subjects were charged with murder,
16 turned over to the Alvin S. Glenn Detention Center.

17 I'd like to point out for the record
18 that the victim's mother is here, present today.

19 Q. Sir, you said that the murder occurred
20 on March 5th, 2007?

21 A. Yes, sir.

22 Q. Could you spell the victim's last name
23 for me, please?

24 A. B-O, double M, E-R.

25 Q. There was a white Chevy Caprice that

HEARING May 17, 2007

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1 was found on March 6th, the day after?

2 A. Yes, sir.

3 Q. And you also obtained on March 6th a
4 written confession from the Defendant?

5 A. Yes.

6 Q. To her participation in the murder?

7 A. His.

8 Q. I'm sorry. His possession -- his
9 participation in the murder.

10 A. Yes, sir.

11 Q. That confession was given after the
12 defendant was Mirandized?

13 A. Yes, sir.

14 Q. You said you obtained a search warrant
15 of the vehicle before you --

16 A. A search warrant was executed on the
17 vehicle on March 6.

18 Q. Okay.

19 A. The GPR test was done, and the results
20 indicated gun powder residue on the front passenger
21 window, on the outside.

22 MR. ROGER: Thank you, sir. I have no
23 further questions at this time. Please answer any
24 questions opposing counsel has.

25 MR. SUTHERLAND: Please the Court?

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1 THE COURT: Yes, sir.

2 EXAMINATION

3 BY MR. SUTHERLAND:

4 Q. What time was this incident
5 investigated within?

6 A. One moment.

7 Q. Sure.

8 A. This incident occurred at approximately
9 6:40 to 6:45 PM. Correction, that -- the day was
10 -- March 6th was the actual incident and March 7th
11 was when they were apprehended and all the evidence
12 was obtained.

13 Q. Do you know what time -- what time the
14 victim died?

15 A. The victim died on scene March 6th.

16 Q. Did he die instantly?

17 A. Instantly.

18 Q. How many individuals were firing
19 weapons on that day, sir?

20 A. Two.

21 Q. Do you recall who fired first, fired a
22 weapon first?

23 A. Timark Hammond fired the weapon first.
24 The gun was then passed over to your Defendant,
25 Mr. Isiah Thomas, and he fired once.

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1 Q. Okay.

2 A. He fired twice, correction.

3 Q. Do you -- would you know how much time
4 elapsed between the first shot and the second
5 shots?

6 A. I wouldn't know that.

7 Q. Are you aware of the witnesses there,
8 Anthony Britt and Millton Smith; is that correct,
9 sir?

10 A. Yes, sir.

11 Q. Now, they had -- they had written in
12 their statements that the victim fell with the
13 firing of the first shot; is that correct,
14 according to your recollection?

15 A. That is correct, sir.

16 Q. And then the projectile that was
17 recovered was a slug?

18 A. Yes, it was.

19 Q. Are you aware of what kind of
20 ammunition was fired in the -- of the three shots,
21 are you aware of what kind of ammunition was in
22 each one? Were they all three the same, or do you
23 have any information there might have been one
24 shot --

25 A. The only information that we do have is

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1 the actual evidence retrieved from the victim
2 during the autopsy. As to what was in the actual
3 other two rounds, I don't know.

4 Q. Do you know whether or not anyone else
5 was armed at the scene? Any of the witnesses or
6 the victim?

7 A. The investigation didn't reveal the
8 victim as being armed at the time of the shooting.
9 No, sir.

10 Q. Were gunshot residue tests conducted on
11 the witnesses or the victim that you are aware of?

12 A. No, sir. None of the testimony that we
13 received during the investigation indicated that
14 they were armed or that this was a self-defense
15 incident -- related incident, at all.

16 Q. Okay. And the incident location was
17 actually the victim's home? It was his front yard?
18 Is that --

19 A. Yes, it was.

20 Q. Did you get any indication of a motive
21 from your interviewing of the various witnesses?

22 A. Again, further investigation revealed
23 that there had been a prior incident earlier that
24 day involving the Co-Defendant, Rafael Goodwin, and
25 the victim, Mr. Bodder.

1 Q. Would you characterize this incident as
2 being gang related, sir?

3 A. Yes, it was.

4 MR. SUTHERLAND: I beg the Court's
5 indulgence.

6 THE COURT: Yes, sir.

7 BY MR. SUTHERLAND:

8 Q. There were statements taken from all of
9 the Co-Defendants? You testified that they all
10 confessed to their involvement?

11 A. Yes, they did. * Your client gave an
12 initial statement after being Mirandized. He then
13 gave me a second statement, where he clearly
14 states -- when asked, is there anything you wish to
15 change or ask about the statement you gave earlier
16 today, he said yes. Timark shot the first shot and
17 he shot one time, and then I took the gun from him
18 and shot twice. I was in the front seat,
19 passenger's seat, and Timark was sitting behind
20 him.

21 MR. SUTHERLAND: I have no further
22 questions for this witness at this time. No
23 motions, Your Honor.

24 THE COURT: Okay. Bond over.

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(The hearing was concluded at

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3:07 p.m.)

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CERTIFICATE OF REPORTER

I, Carrie M. Beam, Court Reporter, and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 27th day of May, 2007, at Lexington, Lexington County, South Carolina.

Carrie M Beam

Carrie M. Beam

Court Reporter,

My Commission expires

October 24, 2016

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WITNESS/EXAMINATION

WALTER MCDANNIELS

3

EXAMINATION

3

BY MR. ROGERS

EXAMINATION

6

BY MR. SUTHERLAND

CERTIFICATE OF REPORTER

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<p>deceased [1] 44/25 decision [6] 5/24 12/18 12/24 13/1 54/2 55/12 decisions [2] 34/18 34/18 deep [2] 40/12 40/12 deeply [6] 31/7 31/18 33/2 33/6 46/2 46/2 defend [1] 45/24 Defendant [7] 1/19 1/20 1/21 1/22 20/21 21/21 41/14 Defendants [4] 1/10 3/19 22/7 42/9 Defense [1] 53/18 defenses [2] 16/21 17/5 denied [2] 23/18 24/15 Department [9] 29/15 30/7 32/8 36/5 54/8 55/18 55/21 56/1 56/6 depressed [1] 38/10 depression [4] 8/6 8/7 8/18 38/8 DEPUTY [1] 1/17 desire [1] 5/17 Despite [1] 52/21 Detention [2] 35/3 40/23 develop [1] 41/9 developed [2] 23/15 41/23 diagnosed [2] 9/9 40/2 diagnosis [1] 8/2 did [20] 8/21 19/17 20/13 23/20 23/23 24/2 28/8 28/14 33/25 34/1 34/2 38/2 38/2 43/4 45/18 47/1 50/21 51/6 52/15 54/20 didn't [8] 19/15 23/22 23/25 26/11 28/7 36/13 36/25 45/17 different [4] 23/7 30/12 36/8 48/20 dime [1] 53/10 direct [1] 25/9 direction [2] 37/14 37/22 discovery [2] 35/5 37/18 discuss [1] 12/15 discussed [1] 34/14 dispute [4] 22/11 24/19 32/17 39/14 disputes [1] 24/7 disrespect [1] 39/20 disrespected [1] 24/24 distinction [1] 35/14 disturbing [1] 27/22 do [54] 3/20 5/3 5/9 5/14 5/23 5/25 6/3 6/24 7/3 7/8 7/9 8/1 10/19 12/14 13/14 13/20 14/4 14/4 14/19 14/25 15/10 15/16 16/2 16/12 16/20 17/13 18/13 18/25 19/1 23/1 23/5 25/15 25/25 26/2 26/4 26/6 27/3 27/4 27/9 33/3 40/10 41/11 45/17 45/23 48/10 50/18 51/19 52/9 52/10 54/11 54/18 55/10 57/10 57/16 does [6] 10/11 10/13 10/16 26/2 36/2 51/5 doesn't [1] 10/12 doing [9] 11/19 11/25 39/25 43/3 45/6 48/2 48/3 49/12 53/9 don't [27] 16/21 20/15 22/11 23/5 24/14 25/13 26/4 26/8 26/18 26/23 28/18 32/2 37/20 38/15 39/13 44/16 46/5 46/22 48/12 48/17 50/4 50/16 50/20 52/4 53/23 55/3 55/7 done [6] 18/24 26/14 36/24 37/12 54/14 55/6 doubt [3] 16/5 40/10 40/14 down [3] 22/2 35/2 40/16 Drive [1] 20/19 driver [1] 28/17</p>	<p>uriving [1] 21/19 drop [1] 28/9 drugs [1] 7/13 due [5] 10/1 19/13 30/20 30/21 51/17 during [4] 2/4 2/14 15/18 29/12</p> <p>E</p> <p>each [4] 4/10 4/18 41/14 42/24 earlier [1] 38/3 easy [1] 52/12 Eighteen [1] 28/22 either [1] 53/21 elementary [1] 9/11 else [8] 23/5 41/21 42/8 44/2 45/22 46/3 46/8 51/24 emotional [1] 32/3 end [5] 25/22 27/11 27/24 29/14 56/25 enhance [1] 47/19 enough [4] 12/1 12/15 14/13 54/17 entire [2] 51/8 54/7 escalated [1] 33/21 especially [2] 32/7 43/21 ESQ [4] 1/18 1/19 1/20 1/21 evaluated [1] 7/19 even [12] 15/18 16/22 29/19 37/17 37/21 47/3 47/5 47/11 49/16 52/11 52/12 54/24 event [2] 34/7 51/8 events [3] 49/13 53/1 55/9 eventually [2] 41/19 41/21 ever [3] 7/19 37/20 51/21 every [6] 25/21 26/14 30/1 30/18 54/12 54/12 everybody [7] 4/8 23/6 37/9 43/9 43/10 44/2 45/22 everything [6] 10/25 31/12 31/23 35/6 36/4 50/16 evidence [6] 15/18 15/20 17/5 25/8 25/10 57/12 evidentiary [1] 27/13 evil [1] 34/19 exact [1] 39/5 example [2] 47/14 47/19 examples [1] 49/11 excellent [1] 26/14 except [1] 27/21 excuse [1] 36/11 exhibits [1] 2/13 exit [1] 22/3 expected [1] 37/2 explain [1] 23/4 explained [2] 4/19 35/1 explanation [1] 33/12 expressed [1] 36/9 expresses [1] 35/25 extemporaneously [1] 33/23 extend [1] 51/7 extent [2] 13/10 14/25</p> <p>F</p> <p>face [4] 31/10 31/10 31/21 31/21 face-to-face [2] 31/10 31/21 facility [1] 40/24 facing [2] 13/12 55/4 fact [2] 16/6 37/14 factions [1] 24/19 facts [5] 11/6 19/7 32/18 35/15 39/14 factual [1] 53/5 fair [5] 23/17 24/6 24/22 27/2 53/19 fairly [1] 24/4 fairness [3] 29/21 29/25 34/10</p>	<p>falls [1] 22/17 familiar [1] 22/1 families [8] 28/13 28/25 44/6 45/21 52/ 52/9 52/17 54/18 family [39] 21/10 25/20 27/2 28/1 29/24 30/1 30/4 30/16 30/17 31/6 31/8 31/10 31/17 31/19 31/21 33/8 33/10 34/15 36/18 38/23 37/1 37/5 37/10 38/13 38/16 42/1 42/21 43/5 43/5 44/4 44/17 45/8 45/16 47/2 51/8 51/13 51/16 53/4 54/22 far [7] 11/1 24/8 27/5 27/20 35/16 36/5 54/7 February [3] 1/11 3/1 57/15 feel [2] 21/16 31/24 feels [1] 28/11 feet [1] 38/20 fellows [1] 45/15 felt [1] 45/23 few [1] 30/23 field [1] 30/3 Fifth [2] 57/9 57/24 fight [2] 28/16 45/18 fights [1] 33/18 figure [2] 25/14 25/18 finally [5] 24/3 30/19 41/2 41/5 50/25 finances [1] 50/17 find [1] 13/12 fine [5] 25/20 39/8 44/20 46/7 51/11 firearm [1] 20/24 fired [4] 22/10 22/14 22/25 23/2 firing [1] 25/6 first [13] 22/10 22/19 22/25 23/22 23/25 24/2 29/11 33/4 33/25 37/3 39/11 41/18 41/21 fist [2] 28/16 33/18 fit [1] 41/10 Five [1] 44/24 flashed [3] 20/24 20/24 25/3 flashing [1] 35/17 flee [1] 23/12 folks [3] 24/13 38/7 38/16 follow [2] 43/16 47/9 Followed [1] 48/3 follower [3] 43/13 43/15 43/16 followers [1] 45/23 force [1] 55/2 forced [1] 11/13 foregoing [1] 57/10 form [2] 39/24 40/11 forth [2] 24/24 24/25 Fortunately [1] 30/13 forward [3] 4/3 36/2 40/23 found [1] 37/5 four [8] 23/12 23/14 24/3 29/23 46/13 46/17 50/11 50/12 fragile [1] 40/7 frankly [1] 40/21 free [1] 11/19 friend [3] 43/10 43/11 43/12 friends [4] 38/16 41/9 42/1 45/25 front [3] 21/21 22/22 25/17 Frontage [1] 22/6 further [2] 53/6 57/16 future [1] 44/11</p> <p>G</p> <p>gallery [1] 54/23 gang [2] 24/12 37/19 gangs [3] 37/15 37/20 47/12 gave [4] 19/14 19/17 19/19 22/18</p>
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I N D E X O F W I T N E S S E S

(WHEREUPON, no witnesses were called
during these proceedings.)

E X H I B I T S

(WHEREUPON, no exhibits were introduced
during these proceedings.)

1 FEBRUARY 26, 2009

2 MR. MEADORS: The State of South Carolina
3 would call the State versus Timark Hammonds,
4 2008-GS-40-2467.

5 Mr. Hammonds is represented by Mr. I. S. Leevy
6 Johnson.

7 Isiah Smith, 2008-GS-40-2468, represented by
8 Mr. Tivis Sutherland.

9 Rafael Goodwin, 2008-GS-40-2466, represented
10 by Mr. Wes Kirkland.

11 And Terran Clark, 2008-GS-40-2469, represented
12 by Mr. Robert Hood and Pete Strom.

13 Your Honor, all these are Richland County
14 true-billed indictments. They all are indicted for
15 murder. There is a negotiation we'd like to put on
16 the record at the appropriate time.

17 THE CLERK: Would you all please raise your
18 right hands?

19 (All Defendants comply.)

20 THE CLERK: Do you swear or affirm to tell the
21 truth, the whole truth, and nothing but the truth,
22 so help you God?

23 DEFENDANT HAMMONDS: Yes, ma'am.

24 DEFENDANT SMITH: Yes, ma'am.

25 DEFENDANT GOODWIN: Yes, ma'am.

1 DEFENDANT CLARK: Yes, ma'am.

2 THE CLERK: Thank you.

3 THE COURT: As we go forward with this
4 procedure, since there are several of you, I am
5 going to ask you and your attorneys various
6 questions, and I would ask that you respond
7 individually. And of course we will have an
8 opportunity to hear from everybody at the
9 appropriate time.

10 But as to each of the attorneys, just to make
11 sure, I have got Mr. Timark Hammonds with Mr. I. S.
12 Leevy Johnson. Then Isiah Smith with Mr. Tivis
13 Sutherland.

14 MR. SUTHERLAND: Yes, ma'am.

15 THE COURT: And then Rafael Goodwin with Wes
16 Kirkland. And then Mr. Terran Clark with
17 Mr. Robert Hood. Okay.

18 As to each of the attorneys, have you
19 explained to your client the nature of these
20 charges, including the one for which they are
21 indicted for, as well as the one to which they are
22 pleading to today, their maximum possible
23 punishment, as well as their constitutional rights?

24 MR. JOHNSON: Yes, Your Honor.

25 MR. SUTHERLAND: Yes, Your Honor.

1 MR. KIRKLAND: Yes, Your Honor.

2 MR. HOOD: Yes, Your Honor.

3 THE COURT: And do you believe that they have
4 understood your conversations with them?

5 MR. JOHNSON: Yes, Your Honor.

6 MR. SUTHERLAND: Yes, Your Honor.

7 MR. KIRKLAND: Yes, Your Honor.

8 MR. HOOD: Yes, Your Honor.

9 THE COURT: Do you believe that if these cases
10 were to go to trial, that a conviction would be
11 probable under the charge that they are pleading to
12 today?

13 MR. JOHNSON: Yes, Your Honor.

14 MR. SUTHERLAND: Yes, I do, Your Honor.

15 MR. KIRKLAND: Yes, Your Honor.

16 MR. HOOD: Yes, ma'am.

17 THE COURT: And is it your client's desire to
18 plead guilty today?

19 MR. JOHNSON: Yes, Your Honor.

20 MR. SUTHERLAND: It is, Your Honor.

21 MR. KIRKLAND: Yes, Your Honor.

22 MR. HOOD: Yes, ma'am.

23 THE COURT: And do you agree with that
24 decision?

25 MR. JOHNSON: I do, Your Honor.

1 MR. SUTHERLAND: Yes, ma'am.

2 MR. KIRKLAND: Yes.

3 MR. HOOD: I do, Your Honor.

4 THE COURT: Are you aware of any mental or
5 physical limitations affecting their ability to
6 proceed today?

7 MR. JOHNSON: No, Your Honor.

8 MR. SUTHERLAND: None at all.

9 MR. KIRKLAND: None.

10 MR. HOOD: No, Your Honor.

11 THE COURT: Okay. Mr. Timark Hammonds?

12 DEFENDANT HAMMONDS: Yes, ma'am.

13 THE COURT: As indicated by the Solicitor, all
14 of the indictments were for murder, but you will be
15 pleading then to voluntary manslaughter; is that
16 correct?

17 DEFENDANT HAMMONDS: Yes, ma'am.

18 THE COURT: And this is arising out of an
19 incident occurring in Richland County on or about
20 March 6th, 2007, with respect to a Victor Bonner?

21 DEFENDANT HAMMONDS: Yes, ma'am.

22 THE COURT: Which he was killed by gunshot?

23 DEFENDANT HAMMONDS: Yes, ma'am.

24 THE COURT: Okay. And how do you wish to
25 plead with respect to that offense?

1 DEFENDANT HAMMONDS: Guilty.

2 THE COURT: And Mr. Isiah Smith, the same
3 allegations would apply to you. How do you wish to
4 plead?

5 DEFENDANT SMITH: Guilty.

6 THE COURT: And Mr. Rafael Goodwin, how do you
7 wish to plead?

8 DEFENDANT GOODWIN: Guilty.

9 THE COURT: And Mr. Terran Clark, how do you
10 wish to plead?

11 DEFENDANT CLARK: Guilty.

12 THE COURT: And are any of you under the
13 influence of any alcohol, drugs or medication at
14 this time?

15 DEFENDANT HAMMONDS: No, ma'am.

16 DEFENDANT SMITH: No, ma'am.

17 DEFENDANT GOODWIN: No, ma'am.

18 DEFENDANT CLARK: No, ma'am.

19 THE COURT: And have you ever been evaluated
20 for your mental health?

21 DEFENDANT HAMMONDS: Yes, ma'am.

22 THE COURT: And tell me about that, Mr.
23 Hammonds.

24 DEFENDANT HAMMONDS: They put me on medicine,
25 but they have took me off.

1 THE COURT: Okay. And do you know if you had
2 a particular diagnosis of a condition?

3 DEFENDANT HAMMONDS: No, ma'am.

4 THE COURT: Okay. So what were you taking
5 medication for?

6 DEFENDANT HAMMONDS: Depression.

7 THE COURT: Depression?

8 DEFENDANT HAMMONDS: Uh-huh.

9 THE COURT: How long ago were you taking
10 medication?

11 DEFENDANT HAMMONDS: January of this year.

12 THE COURT: That was the last time?

13 DEFENDANT HAMMONDS: Yes, ma'am.

14 THE COURT: Okay. And you haven't taken any
15 since then?

16 DEFENDANT HAMMONDS: No, ma'am.

17 THE COURT: Are you speaking with any
18 counselor or anybody for depression at this time?

19 DEFENDANT HAMMONDS: No, ma'am.

20 THE COURT: And when was the last time that
21 you did that?

22 DEFENDANT HAMMONDS: January.

23 THE COURT: January. And you have been taken
24 off the medication since then?

25 DEFENDANT HAMMONDS: Yes, ma'am.

1 THE COURT: Are you in any way affected in
2 your ability to proceed today?

3 DEFENDANT HAMMONDS: No, ma'am.

4 THE COURT: Okay. Thank you for sharing that
5 information.

6 What about you, Mr. Smith?

7 DEFENDANT SMITH: Yes, ma'am.

8 THE COURT: Okay. Tell me about that.

9 DEFENDANT SMITH: I was diagnosed with ADHD.
10 I was on Ritalin and Choladerall(sic) back in
11 elementary school.

12 THE COURT: Okay. And nothing since then?

13 DEFENDANT SMITH: No, ma'am.

14 THE COURT: Okay. And not under medication or
15 any other substances at this time?

16 DEFENDANT SMITH: No, ma'am.

17 THE COURT: Okay. All right, and you, Mr.
18 Goodwin?

19 DEFENDANT GOODWIN: No, ma'am.

20 THE COURT: And Mr. Clark?

21 MR. HOOD: Yes, ma'am.

22 THE COURT: Okay.

23 MR. HOOD: Mr. Clark suffered a traumatic
24 brain injury in 2005. And since that time he's
25 been under constant care of a neuropsychiatrist and

1 a neurologist due to that traumatic brain injury
2 that he suffered.

3 And tell her the medication that you're on,
4 Terran.

5 DEFENDANT CLARK: Medicine for seizures.

6 MR. HOOD: Tell her what the name of it is.

7 DEFENDANT CLARK: Choladerall(sic).

8 THE COURT: Okay. And when is the last time
9 you took any?

10 DEFENDANT CLARK: Yesterday -- last night.

11 THE COURT: And how does it affect you?

12 DEFENDANT CLARK: It doesn't.

13 THE COURT: Does it make you sleepy or
14 anything?

15 DEFENDANT CLARK: No, ma'am.

16 THE COURT: Does it affect your ability to
17 understand what the Court is saying to you?

18 DEFENDANT CLARK: No, ma'am.

19 THE COURT: Do you understand that you are
20 here for a guilty plea?

21 DEFENDANT CLARK: Yes, ma'am.

22 THE COURT: And you understand the questions
23 that I'm asking you?

24 DEFENDANT CLARK: Yes, ma'am.

25 THE COURT: And you have understood everything

1 I have asked you so far?

2 DEFENDANT CLARK: Yes, ma'am.

3 THE COURT: Okay. Thank you also for sharing
4 that information.

5 All right, the Solicitors are going to give me
6 some information with respect to the facts arising
7 to the case, and you and your attorneys and anyone
8 who wishes to speak on your behalf will have an
9 opportunity to respond as well.

10 But insofar as the plea is concerned, you have
11 pled guilty and I need to ask you some more
12 questions about the plea.

13 Has anyone forced you or threatened you in any
14 way to plead guilty?

15 DEFENDANT HAMMONDS: No, ma'am.

16 DEFENDANT SMITH: No, ma'am.

17 DEFENDANT GOODWIN: No, ma'am.

18 DEFENDANT CLARK: No, ma'am.

19 THE COURT: Are you doing so of your own free
20 will?

21 DEFENDANT HAMMONDS: Yes, ma'am.

22 DEFENDANT SMITH: Yes, ma'am.

23 DEFENDANT GOODWIN: Yes, ma'am.

24 DEFENDANT CLARK: Yes, ma'am.

25 THE COURT: And are you doing so after having

1 enough time to speak with your attorney about the
2 nature of the charges, your maximum possible
3 punishment, and your constitutional rights?

4 DEFENDANT HAMMONDS: Yes, ma'am.

5 DEFENDANT SMITH: Yes, ma'am.

6 DEFENDANT GOODWIN: Yes, ma'am.

7 DEFENDANT CLARK: Yes, ma'am.

8 THE COURT: Are you satisfied with how your
9 attorney has represented you?

10 DEFENDANT HAMMONDS: Yes, ma'am.

11 DEFENDANT SMITH: Yes, ma'am.

12 DEFENDANT GOODWIN: Yes, ma'am.

13 DEFENDANT CLARK: Yes, ma'am.

14 THE COURT: And do you believe that your
15 attorney has spent enough time with you to discuss
16 any issues, concerns and address your questions so
17 that you can make an informed and an intelligent
18 decision about whether you should plead guilty or
19 go to trial?

20 DEFENDANT HAMMONDS: Yes, ma'am.

21 DEFENDANT SMITH: Yes, ma'am.

22 DEFENDANT GOODWIN: Yes, ma'am.

23 DEFENDANT CLARK: Yes, ma'am.

24 THE COURT: So the decision to plead has been
25 in consultation with your attorney, but it is your

1 decision; is that correct?

2 DEFENDANT HAMMONDS: Yes, ma'am.

3 DEFENDANT SMITH: Yes, ma'am.

4 DEFENDANT GOODWIN: Yes, ma'am.

5 DEFENDANT CLARK: Yes, ma'am.

6 THE COURT: Okay. You understand that
7 voluntary manslaughter is considered a most serious
8 offense by category. And by stating that it is a
9 most serious offense, that means that it will be a
10 strike against you. And to the extent that you get
11 any additional most serious or serious offenses,
12 you could find yourself facing life without the
13 possibility of parole.

14 Do you understand that that is a consequence
15 of this plea?

16 DEFENDANT HAMMONDS: Yes, ma'am.

17 DEFENDANT SMITH: Yes, ma'am.

18 DEFENDANT GOODWIN: Yes, ma'am.

19 DEFENDANT CLARK: Yes, ma'am.

20 THE COURT: And do you still wish to plead
21 guilty knowing that that is a consequence of the
22 plea?

23 DEFENDANT HAMMONDS: Yes, ma'am.

24 DEFENDANT SMITH: Yes, ma'am.

25 MR. KIRKLAND: Your Honor --

1 THE COURT: Sure.

2 (Pause.)

3 DEFENDANT GOODWIN: Can you repeat?

4 THE COURT: Do you understand that -- do you
5 still wish to plead guilty knowing that this -- you
6 will have a strike on your record and that is a
7 consequence of this plea?

8 DEFENDANT GOODWIN: Yes, ma'am.

9 DEFENDANT CLARK: Yes, ma'am.

10 THE COURT: Okay. All right. Also with
11 respect to the plea, I understand that there have
12 been negotiations in this matter. And have you had
13 enough time to speak with your attorney about what
14 those negotiations are?

15 DEFENDANT HAMMONDS: Yes, ma'am.

16 DEFENDANT SMITH: Yes, ma'am.

17 DEFENDANT GOODWIN: Yes, ma'am.

18 DEFENDANT CLARK: Yes, ma'am.

19 THE COURT: Do you need any additional time
20 with your attorney at this time?

21 DEFENDANT HAMMONDS: No, ma'am.

22 DEFENDANT SMITH: No, ma'am.

23 DEFENDANT GOODWIN: No, ma'am.

24 DEFENDANT CLARK: No, ma'am.

25 THE COURT: Okay. To the extent that you do,

1 just raise your hand and give me some indication
2 and I'll be happy to give you additional time,
3 okay?

4 At this time the Court will accept the plea.
5 I apologize, I need to advise you of some
6 additional constitutional rights.

7 You understand that you are trying to plead
8 guilty today, but you will give up your
9 constitutional rights, specifically your right to
10 remain silent and to go to a jury trial. Do you
11 understand that?

12 DEFENDANT HAMMONDS: Yes, ma'am.

13 DEFENDANT SMITH: Yes, ma'am.

14 DEFENDANT GOODWIN: Yes, ma'am.

15 DEFENDANT CLARK: Yes, ma'am.

16 THE COURT: Do you understand that at a jury
17 trial your attorneys could have challenged any of
18 the State's evidence before a trial and even during
19 the trial, including trying to suppress or get
20 thrown out certain evidence that they believe was
21 obtained illegally, and you would give up that
22 right if you are pleading today?

23 DEFENDANT HAMMONDS: Yes, ma'am.

24 DEFENDANT SMITH: Yes, ma'am.

25 DEFENDANT GOODWIN: Yes, ma'am.

1 DEFENDANT CLARK: Yes, ma'am.

2 THE COURT: Do you understand that the State
3 has the burden of proof in this case which remains
4 with them throughout the trial, and that is a
5 burden of proof based on a reasonable doubt, and
6 they have to convince 12 jurors that you in fact
7 committed the crime. Are you aware of that?

8 DEFENDANT HAMMONDS: Yes, ma'am.

9 DEFENDANT SMITH: Yes, ma'am.

10 DEFENDANT GOODWIN: Yes, ma'am.

11 DEFENDANT CLARK: Yes, ma'am.

12 THE COURT: And do you understand that the
13 State cannot require you to testify to support
14 their case because it is their burden of proof
15 throughout the trial?

16 DEFENDANT HAMMONDS: Yes, ma'am.

17 DEFENDANT SMITH: Yes, ma'am.

18 DEFENDANT GOODWIN: Yes, ma'am.

19 DEFENDANT CLARK: Yes, ma'am.

20 THE COURT: And do you understand that you
21 don't have to put up any defenses or any witnesses
22 or even testify in your own case, because, as I
23 said, the State always has the burden of proof at
24 trial?

25 DEFENDANT HAMMONDS: Yes, ma'am.

1 DEFENDANT SMITH: Yes, ma'am.

2 DEFENDANT GOODWIN: Yes, ma'am.

3 DEFENDANT CLARK: Yes, ma'am.

4 THE COURT: But if you were to go to trial you
5 could put up defenses, testimony and other evidence
6 to support your case?

7 DEFENDANT HAMMONDS: Yes, ma'am.

8 DEFENDANT SMITH: Yes, ma'am.

9 DEFENDANT GOODWIN: Yes, ma'am.

10 DEFENDANT CLARK: Yes, ma'am.

11 THE COURT: But you will give up all
12 constitutional rights, whether I have specifically
13 mentioned them or not. Are you willing to do that
14 with respect to this plea today?

15 DEFENDANT HAMMONDS: Yes, ma'am.

16 DEFENDANT SMITH: Yes, ma'am.

17 DEFENDANT GOODWIN: Yes, ma'am.

18 DEFENDANT CLARK: Yes, ma'am.

19 THE COURT: Okay. And have you understood all
20 of my questions to you?

21 DEFENDANT HAMMONDS: Yes, ma'am.

22 DEFENDANT SMITH: Yes, ma'am.

23 DEFENDANT GOODWIN: Yes, ma'am.

24 DEFENDANT CLARK: Yes, ma'am.

25 THE COURT: Has anyone suggested the answers

1 to you?

2 DEFENDANT HAMMONDS: No, ma'am.

3 DEFENDANT SMITH: No, ma'am.

4 DEFENDANT GOODWIN: No, ma'am.

5 DEFENDANT CLARK: No, ma'am.

6 THE COURT: And have you had any promise of
7 any hope of reward or anything specific other than
8 the negotiated sentence in this case?

9 DEFENDANT HAMMONDS: No, ma'am.

10 DEFENDANT SMITH: No, ma'am.

11 DEFENDANT GOODWIN: No, ma'am.

12 DEFENDANT CLARK: No, ma'am.

13 THE COURT: Do you have any complaints against
14 any of the arresting officers, how the Solicitor's
15 Office or any other governmental agency has handled
16 this proceeding or this case?

17 DEFENDANT HAMMONDS: No, ma'am.

18 DEFENDANT SMITH: No, ma'am.

19 DEFENDANT GOODWIN: No, ma'am.

20 DEFENDANT CLARK: No, ma'am.

21 THE COURT: Okay. The Court will accept your
22 plea. And you have ten days to appeal the guilty
23 plea and/or sentence. And if you wish to challenge
24 anything that your lawyer has done, you'll need to
25 do so under a post-conviction relief application in

1 a timely manner. Do you understand those rights?

2 DEFENDANT HAMMONDS: Yes, ma'am.

3 DEFENDANT SMITH: Yes, ma'am.

4 DEFENDANT GOODWIN: Yes, ma'am.

5 DEFENDANT CLARK: Yes, ma'am.

6 THE COURT: Okay. Listen carefully as the
7 Solicitor presents the facts giving rise to the
8 circumstances of the plea, and then you and your
9 attorney and anyone on your behalf will have an
10 opportunity to respond.

11 Mr. Meadors?

12 MR. MEADORS: Your Honor, if I may -- and with
13 all due respect, if you have covered it, I
14 apologize -- all of them gave statements, a series
15 of statements, and I didn't know if you had covered
16 that previously.

17 THE COURT: I did not. Okay. They all gave
18 statements in this case?

19 MR. MEADORS: They all gave statements, yes,
20 ma'am, and just to --

21 THE COURT: Okay.

22 MR. MEADORS: They are giving up their rights
23 to contest those statements. And if you have
24 covered that, I apologize.

25 THE COURT: Sure. That's okay. You

1 understand you give up your right to remain silent
2 and then I also talked to you about any statements
3 or witnesses or anything at trial. You give up
4 that right to challenge anything that the Solicitor
5 is offering in support of the case. You are aware
6 of that?

7 DEFENDANT HAMMONDS: Yes, ma'am.

8 DEFENDANT SMITH: Yes, ma'am.

9 DEFENDANT GOODWIN: Yes, ma'am.

10 DEFENDANT CLARK: Yes, ma'am.

11 THE COURT: Okay.

12 MR. MEADORS: Thank you, Your Honor. If it
13 pleases, Your Honor? This did happen on March 6th
14 of 2007.

15 Judge, on that afternoon, I don't know,
16 approximately 4ish, 4:30, Timark Hammonds, Isiah
17 Smith and Terran Clark were all over at Isiah
18 Smith's house, which I believe is on
19 Drive, Your Honor.

20 Sometime that afternoon they received a call
21 from Mr. Rafael Goodwin. The Defendant Goodwin had
22 told them that the victim in this case, Mr. Victor
23 Bonner, who was 18 years old at the time of his
24 death, had flashed a firearm at him, or flashed a
25 gun with him.

1 At that point, Isiah Smith left his residence
2 and went somewhere in the woods, I believe, and got
3 a shotgun.

4 He then -- he, Isiah Smith, Timark Hammonds
5 and Terran Clark got in Terran Clark's vehicle, put
6 the shotgun initially in the trunk, and then went
7 looking for Victor Bonner.

8 At some point prior to getting to
9 which is the residence of Victor
10 Bonner and his mom and the rest of his family, they
11 stopped the car and got a shotgun out of the back
12 of the trunk.

13 Judge, just to give you an idea, I went out to
14 the scene, if not the day, the day after, just
15 to -- with Shawn, I believe Captain Smith, to get a
16 feel of it, if you will.

17 As they are approaching Terran
18 Clark, it is his car, and I believe it was a
19 Chevrolet Caprice, 1989, white car. He is driving.
20 Behind him, behind the driver's seat in the back is
21 Mr. -- is Defendant, Rafael Goodwin. In the front
22 passenger seat is Isiah Smith. And then in the
23 back of the -- Terran Clark's car is Timark
24 Hammonds.

25 Judge, this is Newcastle area. I know Your

1 Honor is familiar with Columbia. If you are going
2 down I-20 before you get to the Two Notch Road
3 exit, off to the right there you can kind of see
4 part of the community, the Newcastle Community.
5 And is right off that, what I call
6 the Frontage Road in there.

7 The Defendants turned their vehicle up. At
8 that point they saw Victor Bonner and some other
9 individual getting out of a car.

10 At that time Timark Hammonds fired the first
11 shot. I don't think there is any dispute. That is
12 one reason I will get to in a minute that I think
13 his shot, and after a thorough investigation, was
14 the lethal shot. He fired the shotgun out of the
15 vehicle that all of these individuals were in.

16 Victor Bonner is hit by that, hit in the back
17 left shoulder, Judge. He then falls.

18 There is another witness there who gave a
19 statement that said after the first shot, that is
20 when he saw blood coming from Victor. And he was
21 only hit once.

22 The shotgun is then passed to the front, if
23 you will, up to Isiah Smith, who had gotten the
24 shotgun to start with, it was his shotgun. And
25 then at some point after the first shot he fired

1 one or two other shots. I do not believe those hit
2 anybody, but he clearly fired those shots and it
3 was his shotgun.

4 Again, as I will explain in a minute, if we
5 went through -- and I don't know how else to do
6 this -- in an attempt to get justice for everybody,
7 and we tried to kind of put them in different
8 levels, and I think that is why Timark and -- I
9 know that is why Timark Hammonds and Isiah Smith we
10 put One and Two. And I will get to that again in a
11 second.

12 Judge, they then flee, all four of them. We
13 got a statement from a couple of witnesses at the
14 scene. These four individuals were quickly
15 developed as suspects, initially went to the school
16 and interviewed some of them. Initially, it is
17 fair to say most of them lessened their
18 involvement. Some denied totally. But after a
19 couple or three statements from Shawn McDaniels,
20 Captain Smith and others, all of these parties did
21 confess to their involvement.

22 Isiah Smith at first said he didn't shoot, but
23 then later on he said, well, I did shoot, but it
24 was later.

25 Timark Hammonds first said, well, I didn't

1 shoot, Isiah Smith shot, but then he later said,
2 well, I did shoot first.

3 Finally, we got from all four the same basic
4 story, which I think I fairly accurately
5 represented to Your Honor the way it happened.

6 Judge, the -- I guess it is fair to say there
7 was some history involved here. There are disputes
8 how far it goes back. There has been something in
9 the report that it may go back a year or two.

10 You had the Newcastle neighborhood and you had
11 the Trenholm Acres neighborhood.

12 Now, some would put gang names with Newcastle,
13 like Bloods, and Folks with Trenholm Acres. I have
14 no respect and don't believe in that. And they
15 initially -- they denied involvement in it
16 themselves. They said it was just neighborhood to
17 neighborhood. So I will give them credit, I'll say
18 it was just neighborhood to neighborhood. But
19 there obviously was a dispute between two factions
20 there that went back, some say years, at least
21 these individuals say back towards the Fall of
22 2006, and I think that is a fair representation.
23 Maybe a neighborhood party in one neighborhood that
24 got disrespected, and back and forth. Obviously
25 there was a back and forth unfortunately between

1 these young men that led to one of them's death.

2 What initially led to this was the allegation
3 by Mr. Goodwin that Mr. Bonner had flashed a
4 weapon, and that led to these young men getting
5 together and going back the next day, going to
6 Victor Bonner's house and firing these shots.

7 Judge, in addition to their confessions, there
8 was evidence tying them to the car. The car was
9 identified overwhelming I think direct and
10 circumstantial evidence. One of the individuals at
11 the residence had had some prior involvement with
12 these individuals and may have been part of the
13 reason this happened, I don't know.

14 But, Judge, as we get through trying to figure
15 out how to handle this, what to do, Victor Bonner's
16 mama comes into my life, Janice, and her -- she is
17 sitting on the front row -- and her daughter Tina.
18 And we get to try to figure out how to handle this
19 stuff. And it is tough. It is tough on them. It
20 is tough on all this family. They look like fine
21 people out here, every one of them. I mean, it is
22 tough on them. And it is sad that these cases end
23 up with somebody going to the cemetery and somebody
24 going to the penitentiary.

25 And all of us in this room have got to do

1 something about it, all of us. And I care as much
2 as they do, their loved ones, the victim does. I
3 think most of them out there agree with that:
4 We've got to do something. And I don't know what
5 it is.

6 And what we tried to do in this case with
7 these lawyers is try to get to what we thought was
8 just. I don't know if we have. I think we have
9 come close. I hope we have. I certainly want this
10 community to be better. I wish Victor was still
11 here. I wish these young men didn't have to go to
12 jail. But when you make choices in life you have
13 got to pay the consequences. And their lawyers
14 have done an excellent job for every one of them.

15 I want to thank the victim's mama for going
16 along with this, because we wouldn't be here
17 otherwise if she hadn't. She has shown a grace and
18 a mercy I don't know if I could have. And she and
19 I have worked together, cried together, hugged, and
20 she has come to a point I might not have come to.
21 But I want to thank her publicly for this. She
22 knows Victor is in a better place. I'm violating
23 church and state. I don't care. I think he is in
24 a better place too. But she wishes she was with
25 him -- he was with her. And she misses him. And

1 she knows they have got to be punished. But she is
2 being fair. And I hope the rest of that family out
3 there knows that. I think they do. And I think
4 these lawyers know they do.

5 Judge, as far as a couple of other things
6 that -- the pump shotgun or the shotgun that was
7 used, two days before -- and this is where the
8 community has got to get involved, y'all, all of us
9 do -- two days before Mr. Isiah Smith is on -- what
10 is he on -- My Space with the shotgun.

11 We end up getting that shotgun. It is the
12 same shotgun that was used. They admitted to that.
13 So it is a strong evidentiary case. It is a
14 classic hand of one, hand of all case, Judge. It
15 is a textbook hand of one.

16 They all go. They are all there. Clearly
17 Timark Hammonds is the most culpable, Isiah Smith
18 behind him. But they all go there, and I think
19 that is why they are all pleading guilty.

20 Judge, as far as prior records, none of them
21 have a prior record except Mr. Timark Hammonds. He
22 had a juvenile record, a disturbing schools in
23 2005; a probation violation on that on 2006, and
24 that probation was supposed to end on March 27th,
25 2007. So technically he was still on probation in

1 Family Court. Obviously that is moot at this
2 point.

3 Judge, at the appropriate time -- for the
4 record, Judge, our recommendation -- or
5 negotiations, if you would consider them -- and,
6 again, is in Richland County,
7 for the record, if I didn't say that -- Timark
8 Hammonds, a 24-year sentence, Your Honor. We did
9 drop this from murder to manslaughter.

10 Isiah Smith, a range of 18 to 19 years, Your
11 Honor, whatever Your Honor feels appropriate.

12 Rafael Goodwin, we believe, and through the
13 statements and so all these families will know,
14 when he did call them to go over there that I think
15 pretty much all agree that he thought it might just
16 be a fist fight.

17 Terran Clark, the driver here, who happened to
18 have his car there, I don't know if he had been
19 involved with it or not, but he was there, hand of
20 one, hand of all. Ten years on him.

21 Sixteen on Rafael Goodwin.

22 Eighteen to 19 on Isiah Smith.

23 And Timark Hammonds, 24.

24 Your Honor, we worked hard on these. The
25 lawyers have, the families have, the victims have.

1 We would respectfully ask Your Honor to consider
2 those.

3 Judge, I have Shawn McDaniels who wants to say
4 something in a minute, and the victim and/or her
5 daughter would like to speak at the appropriate
6 time when that is.

7 Other than that, I think I have stated the
8 cause of death. And that is all I have. And thank
9 you for your patience today.

10 THE COURT: Okay. Let me hear from
11 Mr. McDaniels first.

12 MR. McDANIELS: Thank you, Your Honor. During
13 the initial phase of the criminal investigation, we
14 were at our wit's end with respect to the Sheriff's
15 Department.

16 We had a series of shooting incidents that had
17 occurred in Richland County where homes were being
18 shot into between these two neighborhoods. And we
19 have had a series of shooting incidents even after
20 this particular unfortunate situation.

21 Once the seriousness -- in all fairness, Your
22 Honor, once the seriousness set into the minds of
23 all four of these young men, they were honest and
24 they were remorseful. And their family members
25 came in. And, again, in all fairness, they were

1 concerned about the victim's family. Every single
2 one of them.

3 I have yet -- and it is rare in my field to
4 meet family members as supportive and concerned --
5 and concerned -- for the other side. And I thought
6 on behalf of the Richland County Sheriff's
7 Department the seriousness of the ongoing shooting
8 issue, shooting -- violent crime issue here within
9 Richland County, I wanted to put that on record
10 that this was as a result of a series of shooting
11 incidents that plagued our county for quite some
12 time. And it has spilled over into different
13 neighborhoods. Fortunately, just as of recently,
14 we have been able to get a handle on that.

15 But I wanted to put it on record that the
16 family, they were just -- they were remorseful with
17 respect to their family members' behavior. And so
18 were they, every single one of them.

19 MR. MEADORS: Your Honor, finally, the cause
20 of death was cardiac arrest due to the internal
21 hemorrhage due to a gunshot wound through the
22 chest.

23 Again, we have a few other victim comments.
24 Other than that, that is all we have at this point.

25 Thank you.

1 THE COURT: Okay. I will let the State
2 continue on with their case.

3 MR. MEADORS: Your Honor, this is Tina Bonner.
4 This is Victor's sister.

5 VICTIM'S SISTER: "This is a statement on
6 behalf of Victor's family. We would like for the
7 judge to know that Victor was and still is deeply
8 loved and missed. Our family will not be the same
9 because of his absence, not being able to hold a
10 face-to-face conversation and have family
11 celebrations without Victor being there. It
12 changes everything."

13 THE COURT REPORTER: I'm sorry, Your Honor.

14 THE COURT: If she can speak up, please. And
15 slower.

16 VICTIM'S SISTER: "This is a statement on
17 behalf of Victor's family. We would like for the
18 judge to know that Victor was and still is deeply
19 loved and missed. Our family will not be the same
20 because of his absence, not being able to hold a
21 face-to-face conversation and have family
22 celebrations without Victor being there. It
23 changes everything. We know it can't change how we
24 feel or bring Victor back. However, we would
25 request that they are punished for their action."

1 THE COURT: Thank you.

2 MR. MEADORS: Your Honor, I don't think Janice
3 is going to speak, but -- she is very emotional --
4 she is right here. Again, I want to thank them for
5 their patience with us and the way they treated
6 them. I want to thank Joanna and David Ross and
7 Jan Nobles and Nataki Ballard, and especially the
8 Sheriff's Department, Your Honor, Shawn McDaniels.

9 And, Judge, we respectfully ask Your Honor to
10 sentence Timark Hammonds to 24 years, Isiah Smith
11 to 18 or 19 years, Rafael Goodwin to 16 years, and
12 Terran Clark to 10 years.

13 Thank you.

14 THE COURT: Thank you. At this time I'm going
15 to allow the attorneys to make their presentations,
16 and that will include responding to anything that
17 Mr. Meadors has said, if there is any dispute or
18 change in any of those particular facts.

19 All right, Mr. Johnson?

20 MR. JOHNSON: May it please the Court, Your
21 Honor? As you have learned, I represent Timark
22 Hammonds.

23 Your Honor, after appearing in courts of this
24 state for over 40 years, I never get used to these
25 type cases. I know it is routine for lawyers at

1 this stage of mitigation to say that my client is
2 deeply sorry and remorseful for what happened. I
3 do not say that perfunctorily, I say it sincerely.

4 When I first met Timark, he was 18 years of
5 age. And as Mr. McDaniels has indicated, at the
6 very outset he was deeply grieved by what had
7 occurred. And he continues to grieve for
8 Mr. Bonner and his family.

9 And this has not been limited to Timark, it
10 has also been true of Timark's family. His mother
11 and grandparents are here present with him today.

12 I cannot give you any logical explanation
13 about what happened on that occasion. It is true,
14 Your Honor, that originally when these young men
15 assembled at Isaiah's house, it was not their
16 intent to inflict any mortal wounds on Mr. Bonner.
17 Originally, in street parlance, they thought it
18 would be banging, just fist fights.

19 It was precipitated originally by a
20 confrontation between I think Terran and
21 Mr. Bonner. And it escalated.

22 At the time of the actual shooting, that my
23 client just extemporaneously got the gun. Somebody
24 in the car said shoot, and he just reacted.

25 My client did not have the gun when they first

1 got together. He did not go looking for the gun,
2 did not anticipate a gun was involved, and he
3 really, Your Honor, I mean, he really regrets what
4 happens.

5 At the outset, my client was charged with
6 murder. And as a result of intense negotiations
7 since this event with Mr. Meadors -- and we thank
8 him for his professionalism, it has been
9 adversarial negotiations, but I thank him for
10 understanding that this is a case in all fairness
11 that should be a voluntary manslaughter case.

12 I know the conventional thinking is that the
13 shooter is the person who should receive the
14 harshest penalty. I have discussed this with
15 Timark and his family.

16 But, Your Honor, I think that it is incumbent
17 upon us to give these young people who make these
18 bad decisions, these decisions a lot of times are
19 not motivated by ill-will or evil, but by bad --
20 instantaneous bad judgments. And that is what
21 happened in Timark's case.

22 And I'm convinced that this young man has some
23 qualities and some attributes and some
24 characteristics that we can salvage if we could
25 give him a new lease on life.

1 We negotiated this plea. I have explained it
2 to him. I met with Timark down at Alvin Glenn
3 Detention Center. I went over his constitutional
4 rights. I have repeatedly sent him copies of the
5 law. I have sent him copies of the discovery. So
6 everything about this case has been made available
7 to him.

8 And we submit him to the mercy of the Court,
9 Your Honor.

10 And thank you very much.

11 THE COURT: Thank you. And Mr. Smith,
12 Mr. Sutherland on his behalf?

13 MR. SUTHERLAND: May it please the Court, Your
14 Honor? I think maybe the only distinction with the
15 facts as I heard them was that I had believed that
16 this occurred the same day as far as the initial
17 flashing of the gun and then the actual incident
18 itself.

19 With respect to Mr. Smith, he has been in jail
20 721 days. I have known him that long. I have been
21 able to watch him and to see him sort of get onward
22 and upward in the circumstances that he is under.
23 He is highly intelligent. I think the Solicitor's
24 Office can tell you that, I mean, he wrote them a
25 letter, but that, you know, he expresses himself

1 well. He wants to learn. He wants to move
2 forward. And he does want to get on the other side
3 of this tragedy, Your Honor. He intends to take
4 advantage of everything that he can while he is in
5 the Department of Corrections as far as the GED and
6 any trades that he can pick up.

7 He and I have -- all along we have talked
8 about different careers that he might get into. He
9 has expressed to me how he really wants to get out
10 of this neighborhood. You know, we talked about --
11 he knows that I'm an army veteran and he -- excuse
12 me -- he talked about that that might be something
13 he might be interested in, but I told him I didn't
14 think that was possible considering, you know,
15 considering the charge.

16 All I can say is, he is bright. His family is
17 here to support him. And he will come out on the
18 other side of this thing and be a benefit to
19 society, Your Honor.

20 Thank you.

21 THE COURT: Mr. Kirkland?

22 MR. KIRKLAND: Thank you, Judge. Judge, I met
23 Rafael and I have known his family, his uncle, his
24 mama, his grandmother for probably 15 years, done
25 work for them. I didn't know him before this, but

1 it came as a complete shock knowing his family. I
2 never would have expected this.

3 So when I first got involved in this case, I
4 was talking to his mama, I was talking to his dad,
5 other family members, and found out he is an honor
6 student at Spring Valley High School. He tutored
7 other kids.

8 I mean, it is just incredibly tragic, as
9 Mr. Meadors has talked about with everybody in this
10 room, and to the victim and the victim's family.
11 And we've got these lives ruined. He understands
12 what he has done to his life. He understands that
13 completely. He is very intelligent. He was going
14 in a good direction. In fact -- there are
15 certainly allegations that gangs were involved in
16 this, but I'll tell you this, and Officer McDaniels
17 brought this up to my attention I think even before
18 we saw the discovery, my client had on him a book,
19 which was an anti-gang book, a book about not
20 getting in gangs. And I don't believe he ever
21 thought anything would even come close to this
22 because he was headed in the right direction, and
23 now he has got to pay for it, and he knows that.

24 Judge, you've got a negotiated sentence, there
25 is not a whole lot more I can say. I want to just

1 tell you that he has seen some tragedy in his life.
2 He did tell me that he had -- this did come up
3 earlier -- he had to take some antidepressants at
4 one time, but it was before all this occurred. He
5 actually worked at the Wendy's where they had a
6 trial just recently. He worked at that same
7 Wendy's and knew the folks that were killed in that
8 crime and went through depression, missed several
9 months, I believe, of school because he was so
10 depressed. And he took medications.

11 So, Judge, between that and what has occurred
12 here, I mean, it has been very, very traumatic for
13 him and his family.

14 Judge, we ask you to go along with the
15 negotiations. He's got, I don't know how many of
16 these folks from his family and friends, but I
17 would guesstimate maybe close to half of them here
18 supporting him. They are still supporting him,
19 will help him along the way. They will help him
20 get on his feet when he gets out.

21 His mother actually has -- she had them with
22 her which she kept in her purse, she has got
23 several statements from people talking about his
24 character, and whenever we complete this, I would
25 like to get that from her and hand it up to the

1 Court.

2 THE COURT: Okay. And how much credit should
3 he get for time served?

4 MR. KIRKLAND: He has been -- I think they
5 have all been in the exact same amount of time,
6 almost two years.

7 MR. SUTHERLAND: 721, Your Honor.

8 THE COURT: Okay, that's fine. Thank you.
9 All right.

10 MR. HOOD: May it please the Court, Your
11 Honor? First, Judge, we would respectfully request
12 that you go along with the negotiations.

13 Second, Mr. Johnson had stated -- we don't
14 dispute the State's facts -- he had stated that
15 Terran was the one who the victim showed the gun
16 to, and that was Mr. Goodwin, not Mr. Clark. So I
17 wanted to --

18 MR. JOHNSON: That's correct, Your Honor.

19 MR. HOOD: I wanted to clear that up. No
20 disrespect to Mr. Johnson, but I wanted to make
21 sure you understood that.

22 You know, what a tragedy as we stand here.
23 There are no winners in the courtroom today in any
24 way, shape or form. This is a young man who was
25 also an A-B student in school, doing very well.

1 And back in 2005 Terran was in an accident, an
2 automobile accident, and suffered from a diagnosed
3 traumatic brain injury. He spent over a week of
4 his life in a coma. He spent close to two months
5 in Greenville in a special rehab center for someone
6 with this type of traumatic brain injury.

7 And it happened at a very, very fragile time
8 in his life because as we all know that when you
9 come back from that you are never really the same.

10 Do I doubt his competence? In no way, shape
11 or form. From Day Number One Terran looked at me
12 with deep regret, deep sorrow, and he has always
13 admitted his involvement in this case without any
14 doubt or without any hesitation.

15 And when he came back from that, he was
16 struggling. His grades had gone down. He was
17 seeing a neuropsychiatrist, he was seeing a
18 neurologist. And they have been constantly
19 treating him up until the point where he went into
20 Alvin S. Glenn. He is prone to seizures and has
21 significant medical issues that frankly he's not
22 getting the treatment he needs at Alvin S. Glenn
23 Detention Center. We look forward to a new
24 facility that will hopefully get him the medical
25 care that he truly needs under the circumstances he

1 is in.

2 What happens when he comes back in and finally
3 gets reintegrated into a normal life, he went
4 through a lot of anger issues, completely related
5 to the traumatic brain injury. Then they finally
6 were able to get his medicine under control, his
7 life under control, and Terran started to get back
8 to normal. And I think this is a situation of
9 Terran starting to develop friends again and try to
10 fit back in with them.

11 I do want to say -- and I'm glad Investigator
12 McDaniels is here so he can confirm this -- this my
13 understanding of the timeline of the statements
14 that each Defendant gives throughout that day --
15 and, of course, my understanding, of course I'm not
16 there, but they have multiple people trying to
17 interview with multiple investigators, and Terran
18 is the first one who starts to tell the truth.

19 So the truth of what we eventually know today
20 starts coming out of Terran's mouth before anybody
21 else. They all eventually confess, but the first
22 one to really start to tell the truth about how the
23 day developed and what happened was Terran, and I
24 wanted to make sure the Court knew that.

25 His mother is here and stepfather and a whole

1 crew of family and friends and people that love him
2 and care about him, but I wanted to tell you, spend
3 a little bit of time to tell you about who he is
4 and where he has come from.

5 He of course has no prior record, and we would
6 just respectfully request that you go along with
7 the negotiations.

8 THE COURT: Thank you. Anyone else here on
9 behalf of the Defendants, your clients?

10 MR. JOHNSON: Yes, Your Honor.

11 THE COURT: Okay.

12 MR. JOHNSON: Would you hear from his mother?

13 THE COURT: Absolutely.

14 MR. JOHNSON: Thank you, Your Honor. Shannon
15 Hammonds?

16 SHANNON HAMMONDS: Good morning, Your Honor.
17 Good morning, Ms. Simpson.

18 Your Honor, my name is Shannon Hammonds, and I
19 am the mother of Timark Hammonds. I would like to
20 say on behalf of myself -- I would like to say on
21 behalf of my son, my family and myself how so sorry
22 we are to Ms. Janice Simpson for her loss.

23 After the passing of Ms. Simpson's son, I went
24 to Ms. Simpson and we hugged on each other's
25 shoulder and we cried together, and I just want her

1 to know how much mother to mother that I'm so sorry
2 for the loss of her son.

3 And by us doing that, we both knew that our
4 children did not come from a hatred or heartless
5 family, that our children came from a family with
6 values and morals and respect for other people.

7 And I know that my son is not perfect and he
8 has made mistakes in his life. But my son has a
9 heart like me, his mother, and he loves everybody
10 and he wants everybody to be his friend when in
11 reality the only friend he has is in Jesus, that is
12 the only friend he has.

13 And my son was always a follower. And that
14 was something I tried to break him out of, being a
15 follower. But I realize that there is nothing
16 wrong with being a follower as long as you follow
17 the right people.

18 I pray for my son as well as for the other
19 young men who were also involved in this crime. I
20 pray that you give them all a second chance. A
21 prison is not a place for anybody, especially a
22 place to raise a child.

23 So I beg the mercy of the Court that you will
24 have mercy on my son and give him a second chance
25 that you will not allow him to spend half of his

1 life in prison with a chance to prove to you and
2 everybody else that he can be a positive and
3 productive young man who I know is truly, truly
4 sorry for the loss of Ms. Simpson and her family.

5 So, Ms. Childs, this has been a great loss for
6 all of the families, my son, his grandparents, who
7 are here with him. And I severely regret what has
8 happened.

9 I know that my son has to be punished, but,
10 please, I beg the mercy of the Court, allow him to
11 have a sentence so he can have hope for the future.

12 Thank you.

13 MR. JOHNSON: Thank you, Your Honor.

14 THE COURT: Thank you. Anyone on behalf of
15 any other --

16 MR. SUTHERLAND: Your Honor, I don't believe
17 any family members will be able to speak, but he
18 would just like to address the Court at the
19 appropriate time.

20 THE COURT: Sure, that's fine.

21 DEFENDANT SMITH: I just want to apologize for
22 the incident that occurred. You know, we made
23 mistakes. I understand we have to be punished.
24 Five young men had their life messed up, one is
25 deceased. And I apologize. I want to apologize

1 for the time it has taken to get to the bottom of
2 this. And I just ask that you have mercy on us.

3 MR. KIRKLAND: Thank you, Your Honor. My
4 client's mother, Ms. Martha Goodwin, would like to
5 approach.

6 MR. JOHNSON: Your Honor, while they are doing
7 that, Timark wanted to speak. I thought you were
8 going to go to family members.

9 THE COURT: Yes.

10 MR. JOHNSON: Timark?

11 DEFENDANT HAMMONDS: I would just like to say
12 on my behalf --

13 THE COURT: Speak up.

14 DEFENDANT HAMMONDS: I would just like to say
15 on my behalf and the other fellows in this that I
16 want to say sorry to the victim's family. You
17 know, we didn't mean any harm when we went to go do
18 what we did, we just went to go fight, but it
19 turned out that someone had got hurt and accidentally
20 got killed, you know.

21 And I just want to say, like our families and
22 everybody else said, we are not no bad people, we
23 are just followers. We wanted to do what we felt
24 was right and that was going to defend one of our
25 friends, you know.

1 So I just want to say I apologize and I really
2 am sorry, deeply, deeply sorry.

3 THE COURT: Thank you. Then anyone else on
4 behalf of Isiah Smith? Just himself? Okay.

5 MR. SUTHERLAND: I don't believe they are able
6 to speak, Your Honor.

7 THE COURT: That's fine. I just wanted to go
8 in that order. And then anyone else on behalf of
9 Mr. Goodwin?

10 MR. KIRKLAND: Yes, Your Honor.

11 THE COURT: Okay.

12 MR. CORNISH: To the victim's mother, I have
13 four children myself, and I know --

14 THE COURT: And I need you to state your name.

15 MR. CORNISH: Oh, my name is Robert Cornish.
16 I'm a neighbor of Rashaad's grandmother. He grewed
17 up with my kids. So I have four kids myself, so,
18 you know, I know to lose a child before you -- if
19 the child was sick, that would be one thing. Then
20 to lose a child when somebody kills them, that is
21 another thing.

22 But the thing I wanted to touch on is, I don't
23 know these other three young men, but by seeing the
24 people backing them and the Bibles and the tears, I
25 know it is a lot of concern and grieving in their

1 heart. So I know they did come from a loving
2 family.

3 Not even me, but touching on Rashaad, I know
4 him personally. You know, I saw him grow up. I
5 stayed with them. I have even took him on trips
6 because he was a respectful young man in the
7 neighborhood. I mean, you can go to anybody's
8 house in the neighborhood and ask. If you wanted a
9 respectful young man to follow, it would be
10 Rashaad.

11 My son even started going left and he
12 mentioned gangs. My son started when he got in
13 Lower Richland he started going left, and I used
14 Rashaad as an example because of the level of
15 respect he had for his grandmother. His
16 grandmother could tell him -- I mean, scold him out
17 there. He would never raise his voice. He would
18 never go left. And that made me look at that young
19 man as a young man of an example to enhance young
20 mens in the neighborhood.

21 So then his grades in his school, his grades
22 in school are outstanding. And he left our
23 neighborhood and went to Spring Valley and carried
24 the same attitude, left Spring Valley and went to
25 Greenwood and carried the same attitude.

1 I stayed with his mother. I said, well, you
2 know, how is Rashaad doing. I would ask grandma,
3 how is Rashaad doing? Same report. Followed him
4 all the way through.

5 And then when I heard about this, I said, no,
6 Rashaad got caught up. This ain't really Rashaad.
7 It is not in his heart. As I look into a person's
8 heart, it is not in his heart, it is not in his
9 soul, it is not in his body to be something that
10 reflects a person who would do a crime like this.

11 So, you know, I'm not standing here because I
12 think Rashaad don't need to be punished. Yes, he
13 had a choice. He had a choice not to get in the
14 car. He had a choice not to say -- or make a phone
15 call.

16 So to the grieving mother, yes, she need to
17 have some justice, but I don't think this type of
18 justice for a young man who can be rehabilitated in
19 a way that a person who is just on a crime spree,
20 that is different. He is not that type of person.
21 So he is mannered.

22 I think that, and this is my opinion, you
23 know, you can put him in a program or you can talk
24 to him or you can counsel him for the amount of
25 years you want to give him and he will be the same

1 person that he was in the neighborhood because he
2 is a person that you can reach in his heart. And
3 if you can reach a man's heart, you can reach a
4 man's mind and you'll reach the soul. You can
5 change him. And you can rehabilitate him the way
6 that you can put him back in the community and make
7 him a successful person. And he can help other
8 people who are on a wrong road become successful
9 from his testimony.

10 And I believe those three young mens that is
11 with him can be examples too because they know him.
12 They know that he will not be a leader in doing
13 wrong events because they been around him, and they
14 can testify to it. If they look into their heart
15 and they look at Rashaad, they would tell the truth
16 that he is not a leader, even though he made the
17 phone call, he is not the leader that will initiate
18 something for this magnitude.

19 So I think that -- I heard the sentence say 16
20 years, but I believe if you put him in there he
21 will get institutionalized at 16 years, then you
22 can lose him because he can get caught up in the
23 mix and get transferred here and there, be around
24 people who are criminal minded, then you know what
25 you got, you got another victim, another person you

1 are going to put back out in the street, he going
2 to be criminal minded. He ain't going to -- he is
3 going to be older age, he won't have this hard
4 charge. I don't think that is rehabilitation. I
5 think that is another -- a set-up for another
6 sentence.

7 So that is my opinion. But I love him. I
8 want him to know I love him. That's why I'm here
9 for him. I'm just a neighbor. And I want these
10 young men to know that if it was me to be the
11 judge, I would make you -- I would make all four of
12 y'all be that lady's son. I mean, all four of
13 y'all for the rest of your life, because she got to
14 deal with this the rest of her life. So you should
15 deal with it the rest of your life. Be her son.
16 Be her everything, whatever she need. I don't care
17 if it is finances to building her a new house. You
18 do it.

19 THE COURT: Thank you, sir.

20 MR. KIRKLAND: I don't think Ms. Goodwin wants
21 to speak, but she did bring some character
22 statements.

23 THE COURT: Okay. We will just allow these to
24 be placed in the record. Okay.

25 And then finally on behalf of Mr. Terran

1 Clark. Any other members or anybody --

2 MR. HOOD: I've been talking to his mom a good
3 bit, Judge.

4 THE COURT: Okay.

5 MR. HOOD: She is very nervous. She does not
6 wish to address the Court. She did want me to
7 extend their sincere condolences to the victim's
8 family throughout this entire tragic event. And
9 Terran would like to address you at the appropriate
10 time.

11 THE COURT: Okay, that's fine.

12 DEFENDANT CLARK: I'd like to apologize to the
13 family for my actions I took and also that I'm
14 really sorry for the loss of her son.

15 I would like to apologize to my mother and
16 family for all the pain and stress they had to go
17 through due to this.

18 I would like to apologize to you, Your Honor,
19 for I'm really sorry if I had anything to do with
20 this crime that when I get out, I will not be --
21 you will not see me in your courtroom ever again.

22 MR. HOOD: Thank you, Your Honor.

23 THE COURT: Thank you. Would there be
24 anything on behalf of anyone else?

25 MR. MEADORS: No, thank you. Thank you, Your

1 Honor.

2 THE COURT: All right, just a couple of
3 remarks. Of course we are sorry for the loss to
4 both families. I don't think Mr. Meadors could
5 have said it better when you talked about the
6 victim going to the cemetery and these gentleman
7 going to the penitentiary.

8 I really hope that the neighborhoods and the
9 families have had an opportunity to do the best
10 they can do to heal. I mean, because this is a
11 very tough situation. And even though I see a lot
12 of this daily, it is never easy for me to even be
13 sitting in this spot having to hear and then to
14 pass judgment or sentence on it in any regard.

15 One thing I did want to comment on just simply
16 because of some of the statements by the various
17 families. This case started out as a murder
18 indictment, and I need you all to understand that
19 that is what the Solicitor's intention was to go to
20 trial under the theory of hand of one, hand of all.
21 Despite that Mr. Timark Hammonds was considered a
22 trigger person, that if all these other gentlemen
23 participated they just as well could have been
24 convicted of murder in the hand of one, hand of all
25 theory by participating in the whole scenario that

1 has arisen to these unfortunate events.

2 When we have guilty pleas and people not going
3 to trial, a lot of times there is a lot of
4 negotiations to not put the family through hearing
5 the actual play by play factual scenario and have
6 further grieving going on. So we try to give the
7 persons who are pleading and accepting
8 responsibility before the Court some benefit of
9 doing that without taking the State through the
10 process of resources and the taxpayer's dime on
11 actually going through a trial which may ultimately
12 lead to the result that we already know, which is
13 that they confessed and they have admitted their
14 guilt. So that is why there is some benefit for
15 the plea.

16 When you heard the term negotiated sentence,
17 that meant that the Solicitor as well as the
18 Defense counsel have really worked hard to come to
19 what they believe is fair and reasonable in this
20 case.

21 My only option at this point is either to
22 accept the negotiations or to not accept them,
23 which means if I don't accept them, then the
24 Solicitor will be back to Square One and they could
25 rebring all of these indictments as a murder trial

1 and just proceed along to trial.

2 So it is my decision at this time that I
3 believe that there have been intense negotiations
4 and they are very well respected and appreciated.
5 I thank the officers and the Richland County
6 Sheriff's Department and also just trying to come
7 to the truth as far as they know of the entire
8 matter.

9 I appreciate all the hard work that I know has
10 gone on with respect to the lawyers. I know them
11 all very personally and they all do an outstanding
12 job every time for every client that they have in
13 the courtroom, and I really appreciate the
14 presentations that you've done here on behalf of
15 your clients.

16 You gentlemen, thank you for your remorse. I
17 know that that could never be enough perhaps for
18 the victim, you know, and their families, but I do
19 appreciate your accepting responsibility.

20 And it is my perception that you all did mean
21 that, that it was very heartfelt and very sincere
22 insofar as your apologies to the family.

23 I have a whole gallery of people in this
24 courtroom supporting these gentlemen. I hope even
25 years from now that you will still be there for

1 them and guiding them and constantly, you know,
2 being that force for them and having somebody for
3 them to go to, because we don't need our
4 communities having this type of situation facing
5 day-to-day, but that type of support and the volume
6 that you are here, that has to be done daily, you
7 know, hourly to make sure that we don't have our
8 gentlemen straying in this regard.

9 But because of the events, this is judgment
10 day, and the Court has to do, you know, what my
11 role and responsibility is, and that is that my
12 decision is to accept these negotiations.

13 So for Timark Hammonds, for the offense of
14 voluntary manslaughter for Indictment 2008-GS-40-
15 2467, you are hereby sentenced to the State
16 Department of Corrections for 24 years, giving you
17 credit for the time served of 721 days.

18 For Isiah Smith for Indictment Number
19 2008-GS-40-2468 for the offense of voluntary
20 manslaughter, you are hereby sentenced to the State
21 Department of Corrections for 18 years, giving you
22 credit for time served of 721 days.

23 For Mr. Rafael Goodwin for Indictment Number
24 2008-GS-40-2466 for the offense of voluntary
25 manslaughter, you are hereby sentenced to the State

1 Department of Corrections for 16 years, giving you
2 credit for 721 days served.

3 And then Mr. Terran Clark for the Indictment
4 Number 2008-GS-40-2469 for the offense of voluntary
5 manslaughter, you are hereby sentenced to the State
6 Department of Corrections for 10 years, giving you
7 credit for 721 days served.

8 Thank you, all.

9 MR. MEADORS: Thank you, Your Honor.

10 MR. JOHNSON: Thank you, Your Honor.

11 MR. SUTHERLAND: Thank you, Your Honor.

12 MR. KIRKLAND: Thank you, Your Honor.

13 MR. HOOD: Thank you, Your Honor.

14 (WHEREUPON, the proceedings were concluded.)

15

16

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24

25

(END OF TRANSCRIPT)

2009CP4008 704

STATE OF SOUTH CAROLINA

County of Richland

In the Court of Common Pleas

Isiah Thomas Smith # 333467
Full name and prison number (if any) of Applicant,

vs.

The State of South Carolina
Name of Respondent.

(General Sessions)

APPLICATION FOR
POST-CONVICTION RELIEF

RICHMOND COUNTY
FILED
2009 DEC 21 PM 2:33
JENNIFER M. BRIDGEMAN
CLERK OF COURT

INSTRUCTIONS — READ CAREFULLY

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

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

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

1. Place of detention Lee Correctional Institution

2. Name and location of Court which imposed sentence Richland County General Sessions Court Columbia South Carolina

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

(a) 2008-40-2468 Voluntary Manslaughter

(b) _____

(c) _____

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

(a) Feb. 26, 2009 Cont (1) Eighteen (18) years

(b) _____

(c) _____

5. CHECK whether a finding of guilty was made

- (a) after a plea of guilty Negotiated Sentence
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____

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

No

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

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

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

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

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

(c) the date of each such result:

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

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

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

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

- (a) N/A Counsel did not inform me on appellate rights
- (b) _____
- (c) _____

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

- (a) Ineffective Assistance Counsel
- (b) Constitutional Violation State and United States
- (c) _____

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

- (a) See attachment
- (b) _____
- (c) _____

11. Prior to this application have you filed with respect to this conviction
- (a) any petition in a State Court under South Carolina Law? N/A
 - (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? N/A
 - (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? N/A
 - (d) any other petitions, motions or applications in this or any other Court?
N/A

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

- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (d) the date of each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
N/A

(c) which grounds have been presented:

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

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

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

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) Not in fact or on proper procedure in presenting grounds to Courts
- (b) //
- (c) _____

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

- (a) your arraignment and plea? Yes
- (b) your trial, if any? N/A
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

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

- (a) the name and address of each attorney who represented you
 - i. Tavis C. Sutherland, IV Esq.
1811 Pickens Street Columbia, S.C. 29201
 - ii. _____
 - iii. _____

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

- i. Arraignment and plea; Sentencing
- ii. _____
- iii. _____

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

Sentence and conviction reversed or vacated

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

N/A

STATE OF SOUTH CAROLINA

County of Richland

VERIFICATION

I, Isiah Smith, 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.

Isiah Smith

SWORN to and subscribed before me this 16

day of Dec., 192009

Bruce Dema (L.S.)
Notary Public

My Commission Expires: 5/16/11

RICHLAND COUNTY
FILED
2009 DEC 21 PM 2:33
JEANETTE H. MCBRIDE
C.C.P. & G.S.

APPLICATION TO PROCEED WITHOUT PREPAYMENT 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 therefor.

Isiah Smith
Applicant

SWORN or affirmed to and subscribed before me this

16 day of Dec., 192009

Bruce Dema
Notary Public

My Commission Expires 5/16/11

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

a) Ineffective Assistance Counsel

1. inappropriate investigation of case

A) Proper investigation of case files would've resulted in a different outcome with the plea bargain:

1. Failure to examine statements

2. Failure to contact private investigator

B) Failure to file motions upon clients request

1. Failure to file motions to suppress inadmissible evidence

2. No motions for Bond Hearings filed during the time of clients incarceration (721 days)

2. Failure to inform client of appeals

A. Motion to Reconsider

B. Post Conviction Relief

3. Change of plea bargain

A. Plea bargain was changed upon arriving to court from a negotiated 15-22 years to a negotiated 18-19 years

(b) Constitutional Violation State and United States

1. Violation of Miranda Rights

A. Failure to stop interrogation after being informed of the defendants (Isiah Smith 333407) level of intoxication

B. Failure to restate rights after periods of questioning

C. Failure to file indictments within allowed time limit

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)	
)	
)	2009-CP-400-8926
SMITH Isiah T, # 333407,)	
)	
Applicant,)	
)	
v.)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	
_____)		

The Respondent, making its Return to the application for post conviction relief (PCR) filed December 21, 2009, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was represented by Tivis C Sutherland, Esquire. On February 26, 2009, the Applicant pled guilty and was sentenced by The Honorable J. Michelle Childs. The Applicant had been indicted and/or pled guilty to the following: Murder - (2008-GS-40-2468). According to the South Carolina Department of Corrections, the Applicant is serving a 18 year sentence for "Voluntary Manslaughter."

II.

Attached and/or incorporated herein are the records of the Richland County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend this Return

upon receipt of any relevant materials or submit an amended Return to reflect any amended allegations and/or to provide a more detailed procedural history.

III.

The Respondent interprets each of the Applicant's unspecified allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second,

counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. **Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue.** See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied. The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held. The Respondent will coordinate with the Applicant's attorney who is, according to the Respondent's file, Robert L. Brown, Esquire, Esquire regarding when the hearing should be set.¹

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

BRIAN T. PETRANO
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737
bpetrano@scag.gov

July 20, 2010

¹ See: <http://www.scattorneygeneral.com/inside/pcr.html> for current and archived PCR rosters.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

)
) IN THE COURT OF COMMON PLEAS

2009-CP-400-8926

Isiah T. Smith, 333407

Applicant,

vs

State of South Carolina,

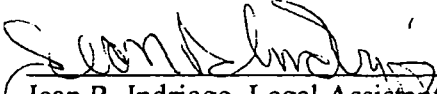
Respondent.

)
)
)
) AFFIDAVIT OF SERVICE BY MAIL
)
)
)
)
)

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

Robert L. Brown, Esquire
Post Office Box 100261
Columbia, South Carolina 29202

DATED this 21st day of July, 2010.



Jean R. Indriago, Legal Assistant
For Respondent

State of South Carolina

Court of Common Pleas

County of Richland

2009-CP-40-08926

Isiah T. Smith

:

-VS-

:

TRANSCRIPT OF RECORD

:

The State of South Carolina

:

June 6, 2011

Columbia, South Carolina

B E F O R E:

The Honorable James R. Barber, III, Judge.

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

Jenny A. Draffin, Esquire
Attorney for the Applicant

Brian T. Petrano, Esquire
Robert L. Brown, Esquire
Attorneys for the State

Daphne D. Helms
Circuit Court Reporter

I N D E XWitnessIsiah T. Smith

Direct Examination by Ms. Draffin.....7
 Cross-Examination by Mr. Petrano.....17
 Redirect Examination by Ms. Draffin.....19

Tivis Sutherland

Direct Examination by Mr. Petrano.....21
 Cross-Examination by Ms. Draffin.....27
 Examination by the Court.....31

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>ID.</u>	<u>EV.</u>
P-1	advice of rights form		31

1 **The Court:** We're waiting on Mr. Isiah Smith? What have
2 we got? I didn't think we had but one more. All right. Are
3 we ready to go here?

4 **Ms. Draffin:** Judge Barber, Isiah would like a
5 continuance. Do you want to---

6 **The Court:** No, you need to -- you're his lawyer. You
7 need to explain to me what it is -- you're requesting a
8 continuance on behalf of your client, and I'll hear from you.
9 We don't have hybrid representation. He's not here to talk
10 other than if he's going to testify. You're representing
11 him.

12 **Ms. Draffin:** Okay. I met with Isiah approximately a
13 month ago at Lee County Correctional Institute. We went---

14 **The Court:** Whoa. Whoa. Have a seat, please. Okay.

15 **Ms. Draffin:** Sorry, Your Honor. Isiah and I met
16 approximately a month ago at Lee Correctional Institute in
17 Bishopville. We went through his file. We went through his
18 arguments, what was best, what was, you know, not as good,
19 and it just came up with some questions, and I asked him if
20 he understood the whole procedure. He said that he did. We
21 came up with a slew of questions to ask today. I
22 understood that -- I explained to him that he would be on the
23 stand giving direct examination or I would give direct
24 examination to him. He seemed to understand this at the
25 time.

1 Today he -- the first thing he asked for was for me to
2 ask for a continuance on his behalf because he doesn't feel
3 like we're prepared.

4 **The Court:** Well, do you feel like you're prepared?

5 **Ms. Draffin:** I do feel like I'm prepared, Your Honor.
6 I don't know if there's something new that he would like to
7 speak with me about or not but---

8 **The Court:** I don't know. I'll give you a minute to
9 talk, but I mean---

10 **Ms. Draffin:** Could we have a minute?

11 **Mr. Brown:** Your Honor, I don't know if it would be
12 beneficial. Mr. Petrano and I could -- we could take up the
13 two motions and give them a chance to talk and then come back
14 to it, if that would help Jenny and Mr. Smith get on the same
15 page.

16 **Mr. Petrano:** We haven't actually called the case, so
17 whatever Your Honor wants to do... We're ready.

18 **The Court:** I don't know what that means: We haven't
19 actually called the case. As far as I'm concerned, the case
20 is called.

21 **Mr. Petrano:** Very well, sir.

22 **The Court:** So what is it you're telling me? You want
23 me to send them somewhere else, Mr. Brown?

24 **Mr. Brown:** If it will make Mr. Smith feel more
25 comfortable with going forward today and make Ms. Draffin

1 feel more comfortable as opposed to---

2 **The Court:** Ms. Draffin feels very comfortable about
3 going forward. She's -- I know she's worked hard because
4 y'all indicated last week when you were up here that y'all --
5 she was ready to go and you were going to be there to assist
6 her in any way. I know your background in this kind of work
7 and it's as extensive as probably anybody, so I don't know
8 what Mr. Smith's concerns are, but I will certainly allow him
9 to take a minute and tell her. I don't think we're going to
10 send him out of the courtroom.

11 (Pause in proceedings while Ms. Draffin and Mr. Smith
12 talk off the record.)

13 **The Court:** All right. Ms. Draffin, where are we?

14 **Ms. Draffin:** Judge Barber, I think Isiah feels a little
15 more ready to proceed now. We went over basically what we
16 went over about four weeks ago. It's been -- I went out to
17 Lee County about four weeks ago. It's -- the time has just
18 gone to lapse. I think he's ready to proceed, as am I.
19 Isiah, are you comfortable to go forward?

20 **Mr. Smith:** Yes.

21 **Ms. Draffin:** You're good with what we just spoke about?

22 **Mr. Smith:** Yes.

23 **Ms. Draffin:** Okay. We're ready to proceed, Your Honor.

24 **The Court:** All right. Are you ready, Mr. Petrano?

25 **Mr. Petrano:** Your Honor, I'm just making sure the court

1 reporter can change tapes.

2 **The Court:** Well, she's hungry, so she's going a little
3 slower than she normally does.

4 **Mr. Petrano:** I'll be brief, Your Honor. Thank you.
5 May it please the Court? This is 2009-CP-40-08926. It's a
6 Richland County P.C.R., Mr. Isiah Smith. The P.C.R. was
7 application filed December 21st, 2009. He pled guilty in
8 front of Judge Childs on February 26th, 2009. He was
9 represented by Mr. Tivis Sutherland. For the record, he is
10 present here in the courtroom.

11 He had been indicted by the June 2008 term of the
12 Richard County grand jury, 2008-GS-40-02468. He was indicted
13 for murder, and he pled to voluntary manslaughter. The
14 victim, Victor Bonner. The negotiated sentence: 18 to
15 19 years. He got 18. There was no direct appeal. I'll turn
16 it over to Ms. Draffin. Thank you, Judge.

17 **The Court:** All right. Ms. Draffin, tell me what you
18 want to tell me, please, ma'am.

19 **Ms. Draffin:** Your Honor, we'd like to call Isiah Smith
20 up to the...

21 **The Court:** All right.

22 Isiah T. Smith, after being duly sworn, testified
23 as follows:

24 **The Court:** If you will, have a seat and tell us your
25 full name.

1 A. Mr. Sutherland.

2 Q. How did he come to represent you? Did you pay him?

3 A. He was appointed by the State.

4 Q. He was appointed by the State? And you met with him how
5 many times?

6 A. Several. I can't remember.

7 Q. But more than once?

8 A. Yes.

9 Q. More than twice?

10 A. Yes.

11 Q. More than three times?

12 A. Yes.

13 Q. A couple of times throughout the course of the trial?

14 Okay. What did you talk about with Mr. Sutherland when you
15 met with him?

16 A. I guess really trying to get an understanding of the
17 case.

18 Q. Okay. Did you talk to him about what rights you might
19 have as a defendant?

20 A. Yes.

21 Q. You did? Okay. But you're here today because you filed
22 an application for post-conviction relief, so you're not
23 completely happy with what happened; is that correct?

24 A. Yes.

25 Q. When I met with you about four weeks ago, we talked

1 about all of the things that you've alleged in your
2 application, and we kind of boiled it down to three main
3 topics. The first one was your involuntary plea bargain
4 argument. Do you remember talking with me about that?

5 A. Yes.

6 Q. Okay. So in your discussions with Mr. Sutherland, do
7 you remember that he secured a plea agreement for you for a
8 range of 15 to 22 years? Do you remember that?

9 A. Yes.

10 Q. And were you comfortable with the 15-to-22 range that he
11 secured for you?

12 A. Yes.

13 Q. Okay. You verbally accepted that you would be okay with
14 the 15-to-22-year range; is that right?

15 A. Yes.

16 Q. Okay. At some point the range got narrowed down to 18
17 to 19 years; is that right?

18 A. Yes.

19 Q. And this made you unhappy; right?

20 A. Yes.

21 Q. Were you unhappy because Mr. Sutherland led you to
22 believe that you would get the lower end of the sentence of
23 15 to 22 years?

24 A. Yes.

25 Q. Did he specifically say something to you to make you

1 think that you would get the lower end of that range of
2 years?

3 A. Yes.

4 Q. What did he say?

5 A. He stated that if we was to go in front of a good judge
6 like Judge Goode and Judge Childs that I would get -- I was
7 better at getting 15 than 22.

8 Q. And that's a lot of -- that's a big difference.

9 A. Yes.

10 Q. Fifteen versus 22 years is a big gap in time to you;
11 correct?

12 A. Yes.

13 Q. Isiah, how old are you?

14 A. Twenty-two.

15 Q. How old were you at the time?

16 A. Twenty.

17 Q. So the difference between 22 and 15 years is seven
18 years. That's a big chunk of time to an 18-year-old, isn't
19 it?

20 A. Yes.

21 Q. Okay. Now, when did -- when did the range of years
22 change? So initially he sat -- he sat you down at some point
23 and y'all discussed the 15-to-22-year range, and then it
24 changed to 18 to 19. When did he tell you the second range?

25 A. Once we got inside the courtroom.

1 Q. So you weren't where you were staying. Then you came
2 into the courtroom. It was -- it was game on. That was the
3 day that you were going to go before the judge.

4 A. Yes.

5 Q. And it was a matter of hours that he told you the new
6 range?

7 A. Well, in the -- in the visitation area.

8 Q. In the visitation area?

9 A. He didn't -- he didn't specify any time range. I asked
10 him about it; he didn't specify it. He said we'll do that in
11 the courtroom. When we got in the courtroom, that's when he
12 told me 18 to 19.

13 Q. And this was upsetting to you again because you were
14 expect a different range, and you expected the judge to give
15 you a low end of that range; correct?

16 A. Yes.

17 Q. Is there anything else you want to discuss about your
18 involuntary plea argument that I have missed?

19 A. No.

20 Q. You were just caught off guard at the new range that all
21 of a sudden came to you because you were expecting a
22 different one; correct?

23 A. Yes.

24 Q. Okay. The second thing we talked about four weeks ago
25 is the fact that you made a statement to law enforcement and

1 you believe the statement was a violation of your
2 constitutional rights; is that right?

3 A. Yes.

4 Q. And is this -- when you were arrested and then you gave
5 a statement to police, were you intoxicated?

6 A. Yes.

7 Q. Did the police Mirandize you? Did they say you have the
8 right to remain silent---

9 A. Yes.

10 Q. Anything you say -- they did. And you remember them
11 saying this to you?

12 A. Yes.

13 Q. Okay. Did you understand that when you started speaking
14 and giving them the statement that you were waiving your
15 right to remain silent and that that is one of your
16 constitutional rights, that you don't have to incriminate
17 yourself? Did you understand what you were doing when you
18 made that statement?

19 A. No.

20 Q. And is that because you were intoxicated?

21 A. Yes.

22 Q. Okay. But you do remember giving the statement as you
23 mentioned.

24 A. Yes.

25 Q. And this statement, you think that that was used against

1 you in this -- in this criminal proceeding?

2 A. Yes.

3 Q. Okay. You think that that made the State say, you know,
4 we're going to proceed against Isiah Smith for the crimes
5 that, you know, we've charged him with?

6 A. Yes.

7 Q. Okay. So you don't feel as if you voluntarily waived
8 this right because you didn't really understand what you were
9 doing. Is that correct?

10 A. Yes.

11 Q. Okay. As far as the second issue - we've talked about
12 the violation of your constitutional rights - do you want to
13 say anything else about that as we stand here today?

14 A. No.

15 Q. Okay. The last argument you and I discussed was your
16 right to an appeal. Now, this incident that you were
17 allegedly involved in, this is the first time that you were
18 charged with a violent crime? Isn't that correct?

19 A. Yes.

20 Q. And as I said earlier, you were just 18 years old. Is
21 that also correct?

22 A. Yes.

23 Q. Okay. And have you ever been ordered to a prison
24 sentence or any kind of sentence prior to your alleged
25 involvement in this accident?

1 A. No.

2 Q. Okay. So you weren't really familiar with the process
3 of State prosecution or how a trial works or how a plea is
4 negotiated. Did you understand those things?

5 A. No.

6 Q. Okay. Do you understand what a right to an appeal means
7 now?

8 A. Yes.

9 Q. Did you understand what a right to an appeal meant
10 then---

11 A. No.

12 Q. ---when you were 18 years old?

13 A. No.

14 Q. So when a judge asks you if you understood that right
15 and you want to waive it, you didn't really understand what
16 that meant. Is that right?

17 A. Yes.

18 Q. Okay. Okay. And as we stand here today, what are you
19 asking the Court to do?

20 A. To, one, to take away the conviction and grant me a new
21 trial.

22 Q. So you want him to reverse and vacate your sentence and
23 conviction and start all over, brand-new trial.

24 A. Yes.

25 Q. Okay. You wrote out several arguments in your

1 application for post-conviction relief. I tried to go over
2 as many of them as I thought were your best arguments. Is
3 there something that I missed? Would you like to argue
4 something else today?

5 A. There was also some motions I had to be filed but---

6 Q. Well, one of the motions - and I don't mean to interrupt
7 you - was the motion to suppress any kind of statements you
8 made; correct?

9 A. Yes.

10 Q. And that was really our second argument about waiving
11 your constitutional right to remain silent. If you waive
12 that or if you did not waive that, then you wanted Mr.
13 Sutherland to move to suppress that statement. Correct?

14 A. Yes.

15 Q. Is there something else -- and I didn't mean to
16 interrupt you, but are there other motions that you wanted
17 him to file on your behalf?

18 A. No.

19 Q. Okay. Is there anything else that you think Mr.
20 Sutherland should have done on your behalf during the course
21 of this trial?

22 A. No, not at the moment. No.

23 Q. Okay. Now is your chance, Isiah, if you want to say
24 anything else.

25 A. No, I don't think there's anything else.

1 **Ms. Draffin:** Okay.

2 **Mr. Brown:** Beg the Court's indulgence just a moment,
3 Your Honor.

4 By Ms. Draffin:

5 Q. Okay. Isiah, going back to the first argument about the
6 different ranges, did you feel like you had an option other
7 than the plea that he had secured for you, the 18 to
8 19 years? On that date did you feel like you could just not
9 plead that day or because y'all had gone to all this trouble
10 did you feel compelled to go ahead and plead to the new
11 sentence?

12 A. Yeah. I signed the plea -- the sentence sheet
13 downstairs before we went up to the judge.

14 Q. So when Judge Childs began to ask you all these
15 questions about your involvement, did you feel compelled to
16 do that because you had signed off earlier on something that
17 you -- on a range that you didn't think was going to happen
18 that day in court?

19 A. Yes.

20 Q. Is that right? Okay. Did you -- did Mr. Sutherland
21 tell you that you didn't have to plead that day?

22 A. No. Well, not before -- I mean, not after I signed the
23 sentence sheet. He told me before I signed the sentence
24 sheet that I didn't have to plead.

25 Q. Okay. But afterwards?

1 A. No.

2 Q. You thought it was all locked up, can't change your
3 mind, got to... Okay.

4 **The Court:** Anything further?

5 **Ms. Draffin:** That's all, Your Honor.

6 **The Court:** All right. Mr. Petrano?

7 Cross-Examination

8 By Mr. Petrano:

9 Q. Mr. Smith, you said a few minutes ago that you were
10 intoxicated when you were interviewed by law enforcement?

11 A. Yes.

12 Q. At school?

13 A. No, I was at -- I was interviewed at the police -- at
14 the sheriff's department on Two Notch.

15 Q. And didn't they first come to talk to you when you were
16 at school?

17 A. No, I wasn't going to school during that time.

18 Q. Okay. You were aware and are still aware though that
19 the co-defendants had also given statements?

20 A. Yes.

21 Q. And implicated you.

22 A. Yes.

23 Q. How were you intoxicated?

24 A. Marijuana.

25 Q. How much?

1 A. Maybe two grams.

2 Q. You smoked a couple of joints? A joint?

3 A. Yeah.

4 Q. All right. How long before you met with law
5 enforcement?

6 A. As soon as they came to the door, I had just finished.

7 Q. Okay. Then they brought you back to the police station?

8 A. Yes.

9 Q. And got you a drink, a bite to eat?

10 A. No.

11 Q. How long between the interview and when you had smoked a
12 joint?

13 A. Maybe ten minutes.

14 Q. Okay. Was that the first time you had smoked a joint,
15 sir?

16 A. In my life?

17 Q. Yeah.

18 A. No.

19 Q. You'd smoked marijuana before; right?

20 A. Yes.

21 Q. Did you smoke marijuana and go to school?

22 A. Yes.

23 **Mr. Petrano:** Nothing further. Thank you.

24 **The Court:** All right. Anything?

25 **Ms. Draffin:** Just a couple of questions.

Redirect Examination

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By Ms. Draffin:

Q. Isiah, how much do you weigh?

A. 135.

Q. How tall are you?

A. 5'8".

Q. Did you feel like because you smoked marijuana it really kind of messed you up that day?

A. Yes.

Q. Because---

The Court: Let me understand this. I don't understand the issue here.

Ms. Draffin: The issue, Your Honor, is that what we're trying to establish---

The Court: That at the time they interviewed him he was -- he claims he was under the influence of some substance and that it affected his ability to understand his rights.

Ms. Draffin: Correct.

The Court: All right.

Ms. Draffin: He didn't fully comprehend that he was waiving---

The Court: But at some point in time he tells the judge: Look, I understand by pleading guilty I give up the right to contest any evidence the State may wish to issue -- to present in this case. Is that correct?

1 **Ms. Draffin:** Yes, Your Honor.

2 **The Court:** He wasn't under the influence at the time he
3 did that, was he?

4 **Ms. Draffin:** I don't believe so.

5 **The Court:** He says he wasn't. So what -- I don't
6 understand the issue.

7 **Ms. Draffin:** Your Honor, Isiah and I just discussed
8 this as one of the better arguments that he has when we were
9 there and that had he not made these statements he wouldn't
10 have felt as if he needed to plead to what he pled. It was
11 just a violation of his constitutional rights, and this is
12 just something that we fleshed out that he wanted to bring up
13 today. Had he not -- but for making these statements, he
14 felt he had incriminated himself to the point where he should
15 plead. That's where we're going with this.

16 **The Court:** All right. Well, anything else?

17 **Ms. Draffin:** That's all, Your Honor.

18 **The Court:** All right. Thank you. You may step down.
19 Anything else, Ms. Draffin?

20 **Ms. Draffin:** No, Your Honor.

21 **The Court:** All right. Mr. Petrano?

22 **Mr. Petrano:** The State calls Mr. Sutherland.

23 Tivis Sutherland, after being duly sworn, testified
24 as follows:

25 **The Witness:** Tivis Sutherland. T-I-V-I-S

1 S-U-T-H-E-R-L-A-N-D.

2 Direct Examination

3 By Mr. Petrano:

4 Q. Mr. Sutherland, just for the record, you've been here
5 throughout the allegations; correct?

6 A. Yes, I have.

7 Q. I'm going to ask you some background questions. Then
8 we'll jump right to the issue.

9 A. Sure. Sure.

10 Q. How long have you been practicing law?

11 A. Seven -- seven, seven and a half years.

12 Q. All right. And about how long had you been practicing
13 at the time you represented Mr. Smith?

14 A. Three to five years.

15 Q. And that experience, was it civil? Criminal?

16 A. It's all criminal.

17 Q. Had you done any marijuana cases before?

18 A. Sure. At that point -- when I left the public
19 defender's office, I had represented approximately a
20 thousand, 1,100 people on charges -- on anything from
21 misdemeanors to murders.

22 Q. That was my next question. You'd done homicides as well
23 prior to that.

24 A. Yes.

25 Q. Did you meet with the applicant?

1 A. Sure. Sure.

2 Q. Did he indicate that he wanted to go to trial or plead
3 or just tell us about that.

4 A. Well, we had -- we talked a lot about the evidence in
5 the case and my perspective on the evidence and took him
6 through everything. He was very attentive. He paid a lot of
7 -- he paid a lot of attention. I imagine we met maybe 15 or
8 so times, but he was very much into the evidence against him
9 and trying to do the best that he could to help himself out
10 and to assist me in defending him.

11 Q. In part of assisting you to defending him, was there
12 ever a discussion to perhaps testify against co-defendants,
13 if that need be?

14 A. Well, that -- that's always a possibility and that's
15 always something that is out there. At that time there were
16 no offers really to anybody to do so, that I recall.

17 Q. And speaking of offers, could you tell us about the plea
18 offers with the State?

19 A. Certainly. Certainly. I had actually told Isiah less
20 than the 15 to 22. What my goal was for him was to try to
21 get 10 to 15 years. When they came with the 15 to 22, I
22 remember 15 to 20, 15 to 22, whatever it actually was. They
23 came to me with that after I had gone to a meeting with the
24 solicitor, Mr. Meadors, and Ms. McDuffie. It was at that
25 point that we were -- they were talking about that sort of

1 range, and I was asking for 10 to 15 years. I went and told
2 Isiah what was going on. I sort of remember in the
3 conversation, you know, 15 was the top end of what I wanted
4 to get for him and I don't have any control over it, but
5 that's really where I saw him in the grand scheme of things.
6 I mean, I understand he discharged a firearm, but I had
7 pretty much at the preliminary hearing and through
8 conversations with investigators on the cases pretty much
9 locked down that he did not fire the fatal shot. They didn't
10 recover, you know, any sort of projectiles or anything other
11 than the one that had pierced Mr. Bonner. So that was
12 telling me that it at least wasn't in the general area where
13 the victim was. But, again, sorry to be off on a tangent,
14 but I went to another meeting, after having spoken with
15 Isiah, where in Mr. Meadors' office I.S. Leevy Johnson, Pete
16 Strom, and Robert Hood were there before I had arrived, and
17 they told me that they had all agreed on a range of 20 to
18 30 years. And I won't say exactly what I said---

19 Q. For the whole bunch?

20 A. For everybody.

21 Q. Okay.

22 A. Part of what I said -- there was an expletive in there,
23 but it included no. Part of what I said was that the driver
24 should get five, and that's just the way that I looked at the
25 case and the evidence and the sliding scale of culpability.

1 And also if the driver were to get five - I think he was
2 Robert Hood's client - then that would be better for --
3 towards what I had hoped for Isiah, the 10 to 15. We sat
4 around, and at one point Mr. Meadors was a little sharp with
5 me, but we ended up with the 18-to-19-year range, and that's
6 when I went up.

7 I went to the courtroom and I told Isiah -- I said,
8 "Listen. You know, we've just been in there and they were
9 talking about 20 to 30. He's willing to negotiate 18 to 19
10 rather than to give us this range. And what happens with the
11 negotiated sentence: You just know what -- you know what
12 you're going to get. I mean, it's either 18 or it's either
13 19. If it's the 15-to-22 range, I mean you could get 22, 21,
14 20." My recollection is I thought it was probably the safest
15 thing to do, but that's the decision -- you know, that's the
16 decision that was made and that's what we went forward with.

17 Q. And just briefly, if you will, kind of walk us through
18 the version of events as you saw it with your dealings with
19 Mr. Smith. I know you had mentioned the car and the shot --
20 I don't think you said shotgun but you said the way the
21 bullets had landed and missed. Just kind of walk us through.

22 A. Of you mean he and I---

23 Q. The crime.

24 A. Oh, okay. Well, there's actually a substantial overlap
25 between this case and another case that I had at that same

1 time. This is a case that actually went to trial. There's
2 no conflict of any kind. It's just the victims are the same
3 group of young men that -- in that other case. And I already
4 had a lot of information on Anthony Britt who was one of the
5 witnesses. I didn't have anything on Milton Smith at that
6 time.

7 But I had spoken with Isiah. I had gone through
8 discovery. Supposedly there was some sort of issue with
9 Victor Bonner and Raphael Goodwin walking down the street,
10 and remember it's been a couple of years since I read this
11 stuff. But Raphael Goodwin is walking down the street, and
12 Victor Bonner I think flashes a firearm or points a firearm
13 at him. Mr. Goodwin goes and calls his friends. They get a
14 shotgun. They ride around, and at some point, you know,
15 Victor is outside of his house with -- I think Anthony Britt
16 and Milton Smith were there.

17 I think Ty Mark Hammond discharged a 12-gauge slug. It
18 went through Mr. Bonner's shoulder, through his lung and
19 through the aorta, and the allegations and what was in my
20 guy's statement was that he fired a shotgun up in the air but
21 that -- he was second. And really the point for me was to
22 try to lock down -- put it on Mr. Leevy Johnson's guy as far
23 as the fatal shooting part and then to argue whatever I was
24 able to argue from that point forward.

25 Q. And ultimately the -- as you stated a couple of minutes

1 ago, the negotiations that worked out were 18 to 19.

2 A. Right.

3 Q. You told that to Mr. Smith before the plea.

4 A. Right, and I wasn't -- I wasn't happy with it. I'm sure
5 I didn't tell him that I was happy with it, but as far as
6 that being the safest result for him, I believed that it was
7 and I still do.

8 Q. Did you see any problem with the statement to the police
9 as far as what has been alleged today as him being high on
10 marijuana?

11 A. I do recall some sort of talk between -- between us
12 about intoxication. I know that I talked to -- I think it
13 was Bryan Godfrey that took the statement and about a number
14 of things. Principally, again, I was trying to lock
15 everybody into Mr. Leevy Johnson's client being the shooter,
16 but I also remember having a conversation about, you know,
17 well, my guy might not have, you know, been in the best
18 mental shape or might have been intoxicated, and he indicated
19 to me that that wasn't the case. And ultimately going to
20 trial, it would be my guy gets up there and says he was
21 intoxicated that -- I mean, I just did this not too long ago.
22 The investigator gets up there and says that he was fine, and
23 then the Court makes a decision.

24 Q. Thank you, sir. Nothing further.

25 A. You're welcome.

1 A. Oh, I'm sure that I did. Typically what I tell people
2 is until you speak into the microphone -- but, I mean, I
3 heard his testimony earlier and that's fine to me, but I do
4 tell my guys that nobody can make you plead or even say
5 anything. That's as far as your right to remain silent, but
6 when you plead guilty, you're talking.

7 Q. Now, you did mention on direct that you were aware of
8 some kind of intoxication level when Isiah was speaking to
9 the police. Is that correct?

10 A. I know he and I had discussed -- had discussed it. I
11 mean, there's -- you know, I just remember things in pictures
12 and I remember us sitting there and it is -- for some reason
13 I was thinking it might be Tequila or something, but that's
14 -- that's fine.

15 Q. And what -- in terms of constitutional rights, what
16 all -- what are the constitutional rights you discussed with
17 Isiah that he has or that he had?

18 A. Well, you got -- you know, when you plead guilty, you're
19 foregoing a trial. You're talking. You know, it's your
20 right to remain silent. It's your right to have me confront
21 and cross-examine witnesses against you. Testify. Not
22 testify. Call people to the stand. Pretty much all of them.

23 Q. What about the right to remain silent when he was
24 speaking with law enforcement?

25 A. Right.

1 Q. Did y'all go over that?

2 A. Well, yeah, that's -- when I was talking earlier about
3 in pretrial where my guy would get up and say that he was
4 intoxicated and the investigator would get up and say that he
5 was not and that, you know, if his will was overborne, that's
6 a decision for the Court to make, so...

7 Q. Okay. In this statement it says, "Weed two hours ago."
8 So when he was being questioned, it appears that he had
9 smoked marijuana approximately two hours before giving this
10 statement, but he then, in fact, signed this waiver of
11 rights.

12 A. Sure.

13 Q. So is it possible that maybe he didn't really know what
14 he was doing when he was signing this, if he had smoked
15 marijuana two hours before signing it?

16 A. I mean, anything is possible. I can't get inside
17 somebody's head. You know, the issue is what's the ruling
18 going to be in trial.

19 Q. Sure. And then I guess my last question is: Did you
20 specifically talk with him about his right to an appeal once
21 the trial...

22 A. What -- there's a litany of things that I always go
23 through. I'm sure with this being a negotiated plea that
24 it's a contract that you work out between yourself and
25 between the State. Either the judge is going to accept it or

1 he's going to reject it, but he's not going to hit you over
2 the head where you would get a sentence that you would -- you
3 have basically bargained for exactly what you're getting.

4 Q. But I guess my question is: Did you specifically talk
5 to him about an appeal?

6 A. About appealing?

7 Q. Correct.

8 A. Beyond general rights to appeal or something, I don't
9 have any specific recollection about talking to him about
10 appealing this case, no.

11 Q. Okay. Tivis, do you recognize -- may I approach?

12 **The Court:** Sure.

13 By Ms. Draffin:

14 Q. Do you recognize the signature of a waiver of his
15 constitutional rights to make the statement? Have you
16 somewhat more or less---

17 A. Yeah. It was actually looking up at the top that was
18 what made me remember it. Yeah---

19 Q. And then---

20 A. Sure.

21 Q. I'm sorry. Down in this corner, that's where it wrote
22 -- it writes, "Weed two hours ago."

23 A. Yes.

24 Q. Do you agree with that?

25 A. Sure.

1 Ms. Draffin: May we submit this into evidence?

2 The Court: You may. Do y'all have any objection?

3 Mr. Petrano: No objection.

4 (Plaintiff's Exhibit 1 was received in evidence.)

5 Ms. Draffin: Thank you, Mr. Sutherland. I think that's
6 all we've got.

7 The Witness: You're welcome.

8 Mr. Petrano: Nothing further.

9 Examination by The Court

10 Q. All right. Mr. Sutherland, when you were discussing the
11 issue of the voluntariness and informed waiver of his giving
12 the statement, did you explain to him that if you went to
13 trial you would attempt to suppress the statement?

14 A. Yes, sir, and as -- when I was talking about the
15 investigator would say one thing and---

16 Q. Well, I understand but---

17 A. Yes, sir.

18 Q. I mean---

19 A. Yes, sir.

20 Q. ---you talked to him about he had that right to go ahead
21 and attempt to suppress it if he wanted to go to trial and
22 ultimately the judge would make that decision.

23 A. Yes, sir.

24 Q. You couldn't guarantee what the decision was or wasn't.

25 A. No, sir. I mean, I had an idea.

1 Q. It would be his word against the investigator's word.

2 A. Yes, sir.

3 Q. All right. And, of course, when the judge -- in the
4 judge's plea soliloquy he told the defendant that he had ten
5 days to appeal it. You were standing there when she said
6 that?

7 A. That's correct, sir.

8 Q. Do you believe he understood everything that was being
9 said there?

10 A. I thought so, Your Honor.

11 Q. He indicated in answering her questions that he
12 understood her questions and that his answers were truthful
13 and complete. Do you remember that?

14 A. Yes, sir, I do.

15 **The Court:** All right. Anything?

16 **Mr. Petrano:** I just have a brief argument.

17 **The Court:** I don't need it. All right. Go ahead.

18 Anything further? Anything from the applicant?

19 **Ms. Draffin:** No, Your Honor. Thank you.

20 **The Court:** Do y'all want to tell me -- I'm still having
21 a hard time understanding the issue of the statement. If
22 y'all want to clue me in that -- that he says that because he
23 made the statement he felt obligated to plead even though he
24 understood that they could attempt to suppress the statement?

25 **Ms. Draffin:** Yes, Your Honor. I think he just felt

1 because he had incriminated himself already that he should go
2 ahead, you know, and go forward with the plea and that, you
3 know, he just didn't comprehend that he was waiving this very
4 big constitutional right which is your right against self-
5 incrimination. And then I guess on the same note I don't
6 know if he felt it, you know, it would have been suppressed
7 at trial, though it should have been. So that's really where
8 we're going with the involuntariness.

9 **The Court:** Wait a minute. Say that again.

10 **Ms. Draffin:** Had Mr. Sutherland moved to suppress this
11 on his behalf, I don't know if he felt comfortable that it
12 would have been suppressed.

13 **The Court:** I think there's a real chance that it might
14 not have been suppressed.

15 **Ms. Draffin:** Yes, Your Honor. Well, that's---

16 **The Court:** And if it hadn't have been suppressed and
17 he'd gone to trial, then you might have had a tough time.

18 **Ms. Draffin:** Yes. Yes, Your Honor. That's basically
19 the argument we were trying to make today.

20 **The Court:** Well, I think he -- I think he clearly
21 understood. If he believed there's a chance that it would
22 not be suppressed, I think he was -- he was on the mark.

23 **Ms. Draffin:** He's a pretty smart guy, so... He passed
24 the G.E.D. recently in the top five percent of all the test-
25 takers in the state, so he's a smart guy.

1 **Mr. Sutherland:** I'm surprised he wasn't the top.

2 **Ms. Draffin:** And Isiah is telling me that Mr.
3 Sutherland told Isiah that the statement would not be
4 suppressed. So it's just again a reason for him to plead---

5 **The Court:** Well, I don't know that...

6 **Ms. Draffin:** ---rather than go to trial. I'm sorry.

7 **The Court:** My guess is is that nobody would ever
8 categorically say that it would not, but the chances are that
9 it might not. Might be something that Mr. Sutherland would
10 have told him, but there's only one person that would know
11 whether it would be suppressed or not. That would be the
12 judge, and the judge -- who was it? Judge Childs?

13 **Mr. Sutherland:** It was Judge Childs. I don't believe
14 we would have tried the case that week, sir, but Judge Childs
15 was the plea judge.

16 **The Court:** She took the plea, but she wasn't going to
17 hear the trial?

18 **Mr. Sutherland:** That's not my understanding. I mean,
19 we had gotten -- I'm certain that I would have had at least
20 three or four weeks before the thing would have actually gone
21 to trial with the point that we were at. I mean, I had
22 everything separated into my little folders and stuff, but,
23 you know, I didn't have my bullet points and all that
24 together for it.

25 **The Court:** Okay. Anything further?

1 **Mr. Petrano:** Just real briefly. The testimony here, I
2 think even his own, he knew it was 18 to 19 before he pled.
3 The plea transcript is clear. He waived. He pled. There's
4 no standard that he needs to be advised of his right to
5 appeal. That's Roe versus Flores-Ortega. For a guilty plea,
6 that is. I'm not talking about a trial.

7 You also see a progeny of cases by the South Carolina
8 Supreme Court. That's Turner I and Turner II. I forget the
9 name of the other one. There's no issue there. And as far
10 as the statement, obviously he waived everything by pleading
11 guilty. The argument is that he would not have waived but
12 for deficient performance by counsel. I don't think there's
13 been any deficiency presented here. He's articulated the
14 correct standard, that it would have been a he said/he said
15 at the actual trial, the officer versus the applicant.

16 I don't think there's been any evidence presented that
17 he was overwhelmed simply because he smoked a joint a couple
18 of hours before. He's admitted to basically being a regular
19 user, I submit, even going to school high. So I don't think
20 that smoking a doobie is going to undo that statement.

21 **The Court:** Smoking a what?

22 **Mr. Petrano:** Smoking a joint, Your Honor. That may be
23 from one of my other cases I read doobie.

24 **Mr. Sutherland:** That's old school.

25 **Mr. Petrano:** Thank you, Judge.

1 **The Court:** All right.

2 **Ms. Draffin:** Your Honor, I would just like to submit
3 that Isiah was 18----

4 **The Court:** You've probably never heard that term, have
5 you? Apparently you run with a better crowd than---

6 **Ms. Draffin:** I do. I do, Your Honor.

7 **The Court:** ---Mr. Petrano. He's sort of a Mafia type.
8 All right.

9 **Ms. Draffin:** I would just like to say: Isiah was
10 18 years old at the time this happened, and I think there's a
11 lot of rights that he did not fully comprehend. I would
12 submit that a young man weighing 135 pounds smoking marijuana
13 would significantly impact his ability to conceptually
14 understand a right that he was waiving and what the
15 implications of that were.

16 **The Court:** All right. Have you got me an expert that
17 says that after smoking a marijuana cigarette two hours
18 earlier you're not capable of understanding something?

19 **Ms. Draffin:** Not at this time, Your Honor, but...

20 **The Court:** Well, this is your chance.

21 **Ms. Draffin:** No, sir, I don't have an expert to say
22 that.

23 **The Court:** All right. Thank y'all. All right. Mr.
24 Sutherland, you may step down.

25 (Whereupon, the proceedings were concluded.)

I, the undersigned Daphne D. Helms, 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 trial of the captioned case, relative to appeal, in the circuit court for Richland County, South Carolina, on the 6th of June, 2011.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

November 15, 2011

A handwritten signature in cursive script that reads "Daphne D. Helms". The signature is written in dark ink and is positioned above a horizontal line.

Daphne D. Helms, court reporter

RICHLAND COUNTY SHERIFF'S DEPARTMENT

ADVICE OF RIGHTS

Name: Isiah Thomas Smith Place: 5623 Tw. North
 Officer: R.A. Miller Date: 03/07/07
G. Gallegos Time: 1245 hrs
G. Minney

YOUR RIGHTS

- / Before we ask you any questions, you must understand your rights.
- / You have the right to remain silent.
- / Anything you say can be used against you in court.
- / You have the right to talk to a lawyer for advice before we ask you any questions, and to have a lawyer with you during any questioning.

If you decide to answer questions now, without a lawyer present, you still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

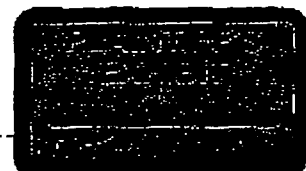
Witness: Albert Gallegos Signed: X Isiah Thomas Smith
 Witness: Gene Minney

WAIVER OF RIGHTS

I have read this statement of my rights and I understand what my rights are. I am willing to talk and answer questions. I understand and know what I am doing. No promises have been made to me and no pressure or coercion of any kind has been used against me.

Witness: Albert Gallegos Signed: Isiah Thomas Smith
 Witness: Gene Minney

CID 02-01



11th grade
 need 2 hrs 45

Applicant pled guilty to voluntary manslaughter. The Honorable J. Michelle Childs sentenced

Applicant to confinement for a period of eighteen (18) years. There was no appeal.

In the PCR application, 2009-CP-40-08926, Applicant alleges:

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

(a) The Public Assistance Council

(b) Constitutional Violation State and United States

(c) _____

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

(a) In adherence

(b) _____

(c) _____

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

Sentence and conviction rescinded or vacated

10. State diversity and in the same order the facts which support each of the grounds set out in (9).
 (a) 2009-CP-40-08926

1. Unprompted investigation of case

A) Proper investigation of case files would've resulted in a different outcome with the per burglary.

1. Failure to examine statement.

2. Failure to conduct private investigation

B) Failure to file motions upon client's request

1. Failure to file motions to suppress inadmissible evidence

2. No motions to hold hearings that during the time of client's incarceration (721 days)

2. Failure to inform client of appeals

A. Motion to Revoke

B. Post Conviction Act

3. Change of per burglary

A. Per burglary was changed upon arriving to court from a negotiated 15-22 years to a negotiated 18-19 years

(b) Constitutional Violation State and United States

1. Violation of Howard Wright

A. Failure to stop interrogation after being advised of the defendant's (Isiah Smith 353167) level of incarceration

B. Failure to restore rights after periods of questioning

C. Failure to file indictments within allowed time limit

However, at the hearing the Applicant only went forward with his allegations of ineffective assistance of counsel based on an involuntary guilty plea, a constitutional right violation, and an allegation that he was unaware of his right to appeal.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 (1985).

The Applicant testified that plea counsel was appointed and they had met more than three (3) times. The Applicant testified that he and his plea counsel did go over his rights. He told this Court that he was comfortable with the original plea of fifteen (15) to twenty two (22) years and was led to believe that he could get fifteen (15) years if he got a good judge. He said that the plea turned into eighteen (18) to nineteen (19) years and he did not discuss this new range with plea counsel until he was in the visiting area before trial. Applicant explained that he was unhappy with the new plea but he did not feel like he had an option to not plea.

The Applicant testified that he was mirandized but he was intoxicated when he gave his statement and didn't understand that he was waving his rights due to his intoxication. He testified that he did not know what his right to appeal was. He said that he was intoxicated on marijuana while at school. The Applicant testified that he signed the sentencing/plea sheet prior to going upstairs and that he wants to start over.

Plea counsel Tivis Sutherland, Esquire testified that he met with Applicant "fifteen (15) or so times." He said that he told the Applicant he was asking for ten (10) to fifteen (15) years with fifteen (15) tops and the State came back with an offer of fifteen (15) to twenty-two (22) years. Plea counsel testified that the Applicant knew he was shooting for fifteen (15) tops but he had not control over it. He said that they ended up with eighteen (18) to nineteen (19) years. Plea counsel further testified that the State wanted twenty (20) to thirty (30) years, and that he thought eighteen (18) to nineteen (19) was safer than fifteen (15) to twenty-two (22). Plea counsel testified that he still believes that eighteen (18) to nineteen (19) years was the safest deal.

Plea counsel testified that the offer turned from fifteen (15) to twenty-two (22) into eighteen (18) to nineteen (19) after a few weeks went by. He also testified that he is sure he told the Applicant that no one can make him plea.

Mr. Sutherland testified that the police statement said "weed two (2) hours ago" but that is not overwhelming. He said that if the case went to trial, it would be the Applicant's word against Investigator Gaffrey's (Sic).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; 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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms," Cherry, 300 S.C. at 117, 385 S.E.2d at 625, (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. As discussed above, the Applicant has failed to carry his burden in this action. Therefore, this Court finds that the application must be denied and dismissed.

Beyond his review of the undisputed procedural history, this Court finds Applicant's testimony is not credible. Plea counsel's testimony is credible. Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that counsel failed to render

reasonably effective assistance under prevailing professional norms. This Court also finds Applicant has failed to prove the second prong of Strickland that he was prejudiced by counsel's performance.

This Court finds that Applicant's testimony was not credible. The Applicant's ineffective assistance of counsel allegation is that his plea was involuntarily entered because he felt he could not back out of the new plea that was offered when he arrived at court. This Court finds that this allegation is conclusively refuted by the record. The Applicant testified that he was not under the influence of any alcohol or drugs. (Plea transcript p. 7, l. 16). Judge J. Michelle Childs informed Applicant of the consequences of pleading to voluntary manslaughter (Plea transcript p. 13, l. 17), and informed him of his right to remain silent as well as his right to a jury trial and other associated jury trial rights. (Plea transcript p. 15, l. 13). Applicant subsequently affirmed that he was guilty (Plea transcript p. 7, l. 5), and that no one promised him anything or threatened or mistreated him in order to get him to plead guilty. (Plea transcript p. 11, l. 16). Applicant stated that he was pleading guilty on his own free will (Plea transcript p. 11, l. 22), and that he was satisfied with the services of his lawyer. (Plea transcript p. 12, l. 11). Further, at the PCR hearing plea counsel credibly testified that he is sure he informed the Applicant that nobody can make him plea.

This Court further finds that Applicant has failed to carry his burden of proving that his guilty plea was not freely and voluntarily entered. The overwhelming evidence in the record and presented through the testimony of the witnesses at the hearing reflects that the plea was knowingly and voluntarily entered. Boykin v. Alabama, 395 U.S. 238 (1969); Vickery v. State, 258 S.C. 33, 186 S.E.2d 827 (1972). Because a guilty plea is a solemn, judicial admission of the

truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63 (1977).

Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566

(4th Cir. 1976). The Applicant showed no reason why he should be allowed to depart from the truth of the statements he made during his guilty plea hearing. This Court finds the Applicant's testimony at the PCR hearing lacked credibility. Therefore, this Court finds that Applicant's guilty plea was freely and voluntarily entered into.

The Applicant's alleged Constitutional rights violation is without merit. The Applicant did testify that he had smoked marijuana two (2) hours before giving the statement and that he didn't know he was waiving his rights due to his intoxication level, but the Applicant has not alleged that his plea was induced by this statement. Absent some showing that the statement motivated the Applicant's plea, the mere assertion that the confession was coerced will not invalidate an otherwise voluntary plea. McMann v. Richardson, 397 U.S. 759, 90 S.Ct. 1441, 25 L.Ed. 2d 763 (1970); United States v. Callahan, 659 F.Supp. 80 (E.D.Pa. 1987), *aff'd* 826 F.2d 1057. Further, at the plea hearing the court informed the Applicant that, by pleading, he was waiving his right to challenge any evidence that the State has to support their case, including any statements given by the Applicant. (Plea transcript p. 20, l. 1-6). Therefore, the Applicant's alleged Constitutional rights violation is without merit.

Finally, the Applicant alleges that he was unaware of his right to appeal. At the plea hearing the court fully and expressly went over the Applicant's right to appeal.

THE COURT: Okay. The Court will accept your plea. And you have ten days to appeal the guilty plea and/or sentence. Do you understand those rights?

DEFENDANT SMITH: Yes, ma'am.

(Plea transcript p. 18, 1-21 - p. 19, 1-3). Statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976). The Applicant showed no reason why he should be allowed to depart from the truth of the statements he made during his guilty plea hearing. This Court finds the Applicant's testimony at the PCR hearing lacked credibility. Therefore, this court finds the Applicant has not met his burden.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Counsel was not deficient in any manner, nor was Applicant prejudiced by counsel's representation. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

Except as discussed above, this Court finds that the Applicant failed to raise the remaining allegations set forth in his application at the hearing and has, thereby, waived them. As to any and all allegations that were or could have been raised in the application or at the hearing in this matter, but were not specifically addressed in this Order, this Court finds Applicant failed to present any probative evidence regarding such allegations. Accordingly, this Court finds that Applicant waived such allegations and failed to meet his burden of proof regarding them. Accordingly, they are dismissed with prejudice. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issue at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

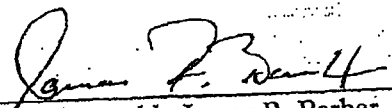
This Court cautions the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the

appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71-1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant and counsel are directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 17 day of August, 2011.


 The Honorable James R. Barber, III
 Presiding Judge
 Fifth Judicial Circuit

Columbia, South Carolina.

135

WITNESSES

✓ (S) McDaniels - RCSD

ARREST WARRANT NUMBER

J556327

ACTION OF GRAND JURY

TRUE BILL

Pamela B. Smith
Foreperson of Grand Jury

Date: JUN 18 2008

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2008-GS-40-2468

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

JUNE TERM 2008

52

THE STATE

vs.

Isiah Smith

Indictment for

MURDER

SC Code: 16-3-10

CDR Code: 0116

Class FEL/EXM(V)

After being fully advised as to my legal rights, I hereby waive present and future rights to the Grand Jury.

Defendant

I *Isiah Thomas Smith*

hereby appear in my own proper person and plead guilty to the within indictment or to

Voluntary Manslaughter

Isiah Smith

Defendant

Witness:

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

CERTIFIED TRUE COPY OF ORIGINAL FILED
James W. ...
C.C.C.P. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

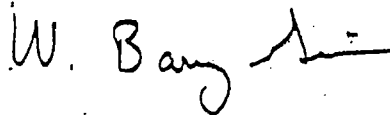
INDICTMENT

At a Court of General Sessions, convened on June 18, 2008, the Grand Jurors of Richland County present upon their oath:

MURDER

That Isiah Smith did in Richland County on or about March 6, 2007, feloniously, willfully and with malice aforethought, kill one Victor Bonner by means of a gunshot wound and that the said victim died as a proximate result thereof. All in violation of SC Code of Laws § 16-3-10

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Warren B. Giese, SOLICITOR