

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

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Certiorari to Cherokee County

Honorable William A. McKinnon, Circuit Court Judge

—————
ROBERT J. HORD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-000035

—————
APPENDIX
—————

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STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
COUNTY OF CHEROKEE)

THE STATE OF SOUTH)
CAROLINA)
) TRANSCRIPT OF RECORD
-vs-) 2016-GS-11-01618A
) 2016-GS-11-01618
ROBERT JUSTIN HORD,) 2016-GS-11-01268
) 2016-GS-11-01269
DEFENDANT.) 2019-GS-11-00493
) 2019-GS-11-00493A
)
) MARCH 25, 2019
) GAFFNEY, SOUTH CAROLINA

B E F O R E:
THE HONORABLE J. MARK HAYES, II, JUDGE.

A P P E A R A N C E S:
MATTHEW KENDALL, ASSISTANT SOLICITOR
ATTORNEY FOR THE STATE
TRACY RACINE, ATTORNEY AT LAW
ATTORNEY FOR THE DEFENDANT

MICHAEL R. WATTS
CIRCUIT COURT REPORTER

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(NO WITNESSES CALLED)

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NO.	DESCRIPTION	ID.	EV.
(NO EXHIBITS MARKED)			

1 (PROCEEDINGS, MARCH 25, 2019)

2 MR. KENDALL: Robert Hord.

3 THE CLERK: Please raise your right hand.

4 ROBERT JUSTIN HORD, having been first duly sworn,
5 testified as follows:

6 THE DEFENDANT: Yes, ma'am.

7 THE CLERK: You can put your hand down.

8 MR. KENDALL: Your Honor, before the court is Mr.
9 Robert Justin Hord on Indictment 2019-493, True Billed for
10 one count of murder. There is a negotiated sentence in this
11 case, Your Honor, of 30 years.

12 2016-1268 for one count of distribution of
13 methamphetamine, first offense. He's pleading to that
14 charge as indicted. There is a negotiated sentence of
15 15 years to run concurrent.

16 2016-1269 for one count of armed robbery. There
17 is a negotiated sentence of 30 years to run concurrent.

18 2016-1268 for one count of armed robbery. There
19 is a 30 year sentence to run concurrent.

20 And 2016-1618A, one count of use of a firearm
21 during the commission of a violent crime.

22 And I believe there was -- yes, and 2019-493A, use
23 of a firearm during the commission of a violent crime.

24 And, likewise, in both those instances, Your
25 Honor, the negotiated sentence is for five years to run

1 concurrent as well.

2 So the total time -- his maximum time is 30 years
3 on the murder and everything is run concurrent with that.

4 There is restitution on one of the armed
5 robberies, Your Honor, in the amount of \$300 joint and
6 several with Steven Neal. As he indicated on the sentencing
7 sheet, he wishes to -- he agrees to pay that. Should it be
8 an issue, obviously he will be incarcerated, so there won't
9 be typical probation.

10 I don't know if David Potts is here, if he wishes
11 to address the court, but we attempted to locate him. We
12 were unable to make contact. It's obvious he's on the
13 docket this morning.

14 THE COURT: You are Mr. Hord?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And it is your intent to enter a plea
17 to the charges that were just announced?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: How old are you?

20 THE DEFENDANT: 33.

21 THE COURT: How far did you go in school?

22 THE DEFENDANT: 11th.

23 THE COURT: Did you ever obtain a GED?

24 THE DEFENDANT: No, sir.

25 THE COURT: Presently are you married, single,

1 divorced, widowed?

2 THE DEFENDANT: Single.

3 THE COURT: Do you have children?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: How many?

6 THE DEFENDANT: Four.

7 THE COURT: How old is your oldest?

8 THE DEFENDANT: 15.

9 THE COURT: Youngest?

10 THE DEFENDANT: 10.

11 THE COURT: And prior to your arrest did you have

12 a job outside of the home?

13 THE DEFENDANT: Not any more, no, sir.

14 THE COURT: Did you have one prior to your arrest?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: What were you doing?

17 THE DEFENDANT: Pipefitting.

18 THE COURT: Ever serve in the military?

19 THE DEFENDANT: Excuse me?

20 THE COURT: Ever serve in the military?

21 THE DEFENDANT: No, sir.

22 THE COURT: And how long have you been in jail on
23 these charges?

24 THE DEFENDANT: Three years, sir.

25 MS. RACINE: Your Honor, he was arrested March

1 30th, 2016. From that date to this date would be 1.090
2 days.

3 Your Honor, in between there, from May 5th through
4 September 28th of 2016, he did serve a probation revocation,
5 which would only be 944 days. I don't know how you consider
6 the sentencing on that one.

7 So, Your Honor, on the other armed robbery, 1618,
8 he has done 908 days, from September 26th, 2016 to today.

9 THE COURT: So on the murder charge he gets credit
10 for a 1,090?

11 MS. RACINE: Yes, sir, that's my calculation, from
12 arrest date to today.

13 THE COURT: On the distribution he gets 908?

14 MS. RACINE: No, sir, the only one that I
15 calculated at 908 is just the indictment that ends in 1618,
16 the armed robbery. Everything else, Your Honor, should be
17 1,090.

18 THE COURT: Within the last 24 hours have you
19 consumed any type of substance that's adversely affecting
20 your ability to understand what we are doing today?

21 THE DEFENDANT: No, sir.

22 THE COURT: In the past have you ever been treated
23 for any type of substance abuse issues for a drug or alcohol
24 problem?

25 THE DEFENDANT: No, sir.

1 THE COURT: Are you satisfied with the work that
2 your lawyer has done for you?

3 THE DEFENDANT: To be honest, Your Honor, I
4 haven't had a lot of contact with my lawyer since I have
5 been incarcerated. So the contact I have come in contact
6 with her with was pretty much the negotiated plea deal,
7 which is understandable. I just feel like it could have
8 been a lot more done as far as preparing a defense for my
9 case, but other than that I'm satisfied.

10 THE COURT: Do you feel like you need some more
11 time to speak with your lawyer?

12 THE DEFENDANT: No, sir.

13 THE COURT: Has anybody threatened you in any way
14 or promised you anything in order to get you to make your
15 decision to enter the plea?

16 THE DEFENDANT: No, sir.

17 THE COURT: Sir, am I correct in concluding that
18 your decision to enter this plea, that it is a free and
19 voluntary decision?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Sir, I need you to understand that
22 under the law you are presumed innocent of this charge, of
23 these charges, and you do have a right to have a jury trial
24 on any or all of these charges.

25 At any jury trial that would take place it would

1 be the State that has the burden of proof and the State
2 would have to convince all twelve members of a jury that you
3 are, in fact, guilty beyond a reasonable doubt of all of
4 these charges. Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And, sir, do you wish to have a jury
7 trial on any of these charges?

8 THE DEFENDANT: No, sir.

9 THE COURT: Sir, I need for you to understand that
10 there are other very important Constitutional Rights that
11 you are entitled to, but that you have to give up in order
12 to enter a plea. You have to give up your right to confront
13 or cross-examine the State's witnesses. You also have to
14 give up your right to present evidence which you or your
15 lawyer might feel would establish a defense, and you have to
16 give up your right of subpoena, as well as you have to give
17 up your right to remain silent. Do you understand all those
18 rights?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you wish to give them all up?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right. So there is two different
23 dates, March 30th and March 28th, on the armed robberies?

24 MR. KENDALL: On the armed robberies? Yes, sir,
25 Your Honor. There were two separate -- it's two separate

1 offenses for the armed robbery.

2 THE COURT: All right.

3 All right, Mr. Hord, please listen to the
4 solicitor. He's going to provide us with the facts.

5 THE DEFENDANT: Yes, sir.

6 MR. KENDALL: Your Honor, this occurred or began
7 on March 29th, 2016, and began with a dispute over a tattoo
8 kit.

9 At that time there was a tattoo kit that the
10 victim in the case believed that he owned at the house of a
11 Ms. Gallman. It was retrieved by the victim's wife Terri
12 Burden, who put the tattoo supplies in the car of the
13 victim, a Mr. C.J. Burden, who drove away.

14 At that point this defendant, Mr. Hord, as well as
15 Joseph Smith, attempted to locate Mr. Burden, as they were
16 upset that he had taken this tattoo kit. Basically at that
17 point they contacted Steven Neal and Teresa Roberts to come
18 and pick him up. I believe they had give him a tattoo
19 earlier in the evening. Steven was driving and Teresa was
20 in the front passenger seat.

21 In the early morning hours of March 30th, 2016
22 Justin, Steve and Teresa drove to a number of locations here
23 in Cherokee County, including Aunty M's, the Kangaroo -- or
24 excuse me, Auntie M's, Kangaroo, Crystal Kangaroo in attempt
25 to locate them. They ultimately located them kind of near

1 the cement plant on -- at 889 Blacksburg Highway, the
2 concrete plant here in Cherokee County.

3 What happened at that point, Your Honor, and we
4 have slightly different stories going forward at that point
5 is that basically the car Mr. Neal was driving pulled in
6 front of the car that at that time Terri Burden was driving.
7 Immediately prior to the other car pulling in she had been
8 in a discussion with C.J., the ultimate victim in this case.
9 He had bumped his knee on the dash, but basically pulling
10 the cash out of the car.

11 As they pulled in Joseph Smith and Mr. Hord got
12 out of the vehicle and they proceeded to assault Mr. Burden,
13 the victim in the case.

14 Mr. Hord also took out a bag from the back seat of
15 the vehicle that kind of resembled the tattoo kit. I
16 believe it actually came back to be Terri Burden's personal
17 effects. While they were there they continued to kind of
18 hit Mr. Burden, C.J..

19 At that point in time Terri Burden kind of I think
20 in some panic state attempted to maneuver the car around to
21 get out. As she was doing that she pulled forward -- again,
22 there is slightly different stories on this, but it appeared
23 at some point Mr. Burden -- excuse me, Mr. Hord was either
24 hit or forced up against a fence. At that time he drew a
25 pistol, a 9-millimeter pistol, and fired into the

1 passenger's side of the vehicle striking Mr. Burden in the
2 chest area.

3 Prior to this taking place Mr. Smith and Mr. Hord
4 had discussed, you know, the firearm, as well as kind of I
5 think -- I believe the testimony from one of the witnesses,
6 Mr. Smith had talked about how he could wrap a bandana
7 around it to make sure it didn't have fingerprints on it and
8 stuff like that.

9 From that point, after Mr. Burden was shot, he
10 died a very short time later at the hospital here in
11 Cherokee County, and the parties somewhat separated. They
12 both drove away rather quickly. Mr. Hord stayed with Ms.
13 Neal and -- excuse me, Ms. Roberts and Mr. Neal basically
14 the rest of the night.

15 That next morning Mr. Neal had to report to
16 probation. He went to probation, along with Ms. Roberts.
17 Once he came back out he basically talked to -- Ms. Roberts
18 indicated she had to go use the bathroom. She then went
19 inside and told the guard at the front gate to the jail --
20 or, excuse me, to the detention center -- to the sheriff's
21 office, I'm sorry, that, in fact, she had witnessed a murder
22 and Mr. Hord was arrested a short time later. The firearm
23 was found in the vehicle they were driving that day. It
24 matched ballistically both to the bullet jacket, which is
25 the -- it's kind of a copper part of the actual bullet that

1 comes out, as well as to the shell casing, which is, of
2 course, the component that is discharged on the scene. That
3 casing was actually found lodged in the -- under the hood is
4 a fairly accurate definition, but just basically on the car
5 of the victim's vehicle. All that matched back to the gun
6 that was secured. He was placed under arrest at that time.

7 The other witnesses were discussed or talked to
8 him about it. Ms. Burden indicates she believed Mr. Smith
9 had been the shooter in a state of panic. All three of the
10 others indicated Mr. Hord was, in fact, the shooter, as well
11 some other individuals -- or another -- at least another
12 individual who has -- he's talked to subsequently on the
13 case.

14 Mr. Burden subsequently died shortly, if not
15 before it got to the hospital. Was basically pronounced at
16 the hospital. The cause of death from the autopsy was
17 determined to be a gunshot wound to the chest.

18 With regard to the other armed robbery, Your
19 Honor, this actually occurred a few days earlier here in
20 Cherokee County. They went and picked up Mr. Potts and
21 basically -- along with Mr. Neal and Ms. Roberts. They
22 basically drove around and stopped at some of the more
23 remote locations. Mr. Hord got out of the vehicle and
24 basically demanded money and a cellular phone from Mr.
25 Potts, brandishing a firearm, or at least hitting him with

1 the firearm as well. That -- I believe Mr. Potts did not
2 file a report on that until actually after the initial
3 murder took place and said that was -- that was why we have
4 this sort of odd charge on times for that, Your Honor.

5 THE COURT: Now, Mr. Hord, do you believe that as
6 he stated the facts, that the solicitor is substantially
7 correct with those facts?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. And, sir, do you
10 understand that on the armed robbery charges, the possession
11 of a weapon during the commission of a violent crime, both
12 armed robbery charges, that -- and also the murder and the
13 distribution of meth charges, that these are all being
14 presented to me as a negotiated plea?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Therefore, if I accept the pleas, I
17 will be bound by the negotiations and will have to impose
18 the sentences that were announced by the solicitor?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And that is what you want me to do?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Sir, do you understand that the armed
23 robbery charge, that both of those, as well as the murder
24 charge, that they are classified as both violent and
25 most-serious offenses under the law?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And you have been able to talk to your
3 lawyer as to the consequences and ramifications of all those
4 charges being classified as both violent and most serious?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Understanding the consequences and
7 ramifications of those two classifications, as well as the
8 sentences I could impose, do you still wish to enter these
9 pleas?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: You stated to me that -- you seemed to
12 have some reservation about if there could have been a
13 better defense prepared by your lawyer. That causes me to
14 pause, Mr. Hord. Do you not want to go forward with this
15 plea?

16 THE DEFENDANT: I feel like there is enough
17 evidence, sir, to -- you know, to go forward and accept the
18 plea.

19 As far as talking about the plea, we've -- me and
20 my lawyer have discussed it pretty much every time she's
21 came to visit, which is the handful of times. Other than
22 that, you know, there was really never a defense discussed
23 or, you know, planned just in case that I didn't pursue a
24 plea.

25 THE COURT: Do you feel like entering the plea is

1 the best thing to do at this juncture?

2 THE DEFENDANT: I feel that there is enough
3 evidence to convict me, so, yes, sir, I feel like I should
4 take the plea.

5 MR. KENDALL: Prior record, Your Honor?

6 Petty larceny from 2008 --

7 THE COURT: Hold on a second.

8 Do the lawyers want to approach the bench?

9 Hang on.

10 Mr. Hord, you are charged with several charges.

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Now, do you believe that you have a
13 defense to each one of these charges?

14 THE DEFENDANT: I do, sir. I believe that there
15 is -- you know, there is enough evidence to, you know, to
16 prepare a defense for any charge that somebody has. I'm not
17 sure they are able to be the right defense.

18 THE COURT: Right.

19 THE DEFENDANT: And like I said, I'm pretty much a
20 layman in any legal action.

21 THE COURT: But you believe that there is
22 sufficient facts that do exists that a jury would most
23 probably convict you on these charges?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right.

1 MR. KENDALL: Prior record?

2 THE COURT: Do you want to approach?

3 (Whereupon, the lawyers approached the bench for
4 an off-the-record discussion)

5 THE COURT: Mr. Hord, I'm going to let you speak
6 with your lawyer just for a moment. I think I understand
7 what you are saying and there is a -- she's -- your lawyer
8 is going to talk to you just for a few moments about
9 pleading under a case under North Carolina v. Alford
10 where -- well, your lawyer can explain it to you and see if
11 that would suit you better, okay?

12 THE DEFENDANT: Okay.

13 THE COURT: Take him out and talk to him.

14 (Off the record).

15 (Back on the record).

16 THE COURT: All right. We will go back on the
17 record in the matter of the State versus Hord.

18 Mr. Hord, you have been able to talk to your
19 lawyer now?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. And does the State have
22 any objection of proceeding under -- taking it as an Alford
23 Plea?

24 MR. KENDALL: No, sir, Your Honor.

25 THE COURT: And you were able to explain to your

1 client the parameters of an Alford plea?

2 MS. RACINE: Yes, Your Honor.

3 THE COURT: All right. And you feel that he
4 understands those and wishes to proceed under that?

5 MS. RACINE: Yes, Your Honor.

6 THE COURT: Okay. All right.

7 Now, Mr. Hord, do you understand that I have
8 already asked you before about waiving your rights, but I
9 just want to go over just a couple of those again.

10 One of the -- in order to enter a plea, part of
11 your Constitutional Rights that you have is that you have
12 the right to present a defense, but by entering a plea you
13 are going to waive your right to present an affirmative
14 defense. Do you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And that is what you want to do is
17 waive your right to present a defense to these charges?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right.

20 So, Mr. Hord, I'm going to ask you as to each one
21 of these.

22 In regards to the murder charge under Indictment
23 2019-11-493, do you believe that the State could produce
24 sufficient evidence to prove your guilt of this charge
25 beyond a reasonable doubt and that if you went to trial, a

1 jury would most probably find you guilty of that charge?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And in regards to the possession of a
4 weapon during the commission of a violent crime associated
5 with that murder charge, do you believe that the State could
6 produce sufficient evidence to prove your guilt of that
7 charge beyond a reasonable doubt and that if you went to
8 trial, a jury would most probably find you guilty of that
9 charge?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And in regards to the armed robbery
12 charge under Indictment 2016-GS-11-1269, do you believe that
13 the State could produce sufficient evidence to prove your
14 guilt of that charge beyond a reasonable doubt and that if
15 you went to trial, a jury would most probably find guilty of
16 that charge?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Sir, with regards to the armed robbery
19 charge under Indictment 2016-GS-11-1618, do you believe that
20 the State could produce sufficient evidence to prove your
21 guilt of that charge beyond a reasonable doubt and that if
22 you went to trial, a jury would most probably find you
23 guilty of that charge?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And in regards to the possession of a

1 weapon during the commission of a violent crime associated
2 with that armed robbery charge, do you believe that the
3 State could produce sufficient evidence to prove your guilt
4 of that charge beyond a reasonable doubt and that if you
5 went to trial, a jury would most probably find you guilty of
6 that charge?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: In regards to the distribution of meth
9 charge, Indictment 2016-11-1268, do you believe that the
10 State could produce sufficient evidence to prove your guilt
11 of that charge beyond a reasonable doubt and that if you
12 went to trial, a jury would most probably find you guilty of
13 that charge?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Now, Mr. Hord, have all of your
16 answers to my questions today been truthful and honest?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Has discovery been shared with the
19 defense?

20 MR. KENDALL: It has, Your Honor.

21 THE COURT: Prior record?

22 MR. KENDALL: Prior record, from 2008, a petit
23 larceny.

24 Driving under suspension from 2011, and a
25 furnishing contraband by means for prisoner from 2011.

1 From 2013, a DUS; a child passenger restraint and
2 an unlawful turning.

3 And I believe that that is it, Your Honor.

4 As a result of this plea, we are also going to be
5 dismissing some charges. There was a -- I did not write the
6 indictment down, but there is a distribution or PWID
7 contraband that is under 18-273 and 274. They are going to
8 be dismissed.

9 And, additionally, the original murder charge was
10 on Indictment 16-1267. This was superceded by another
11 indictment to basically add Count II, the use of a firearm
12 during the commission of a violent crime. That's also going
13 to be dismissed as part of this plea. It's not a -- it's
14 not a separate murder. He didn't kill somebody else. I
15 just -- I just used the superseding indictment on the
16 murder. The contraband and the distribution are -- or PWID
17 are going away as part of the plea agreement.

18 THE COURT: All right.

19 Now, we have got restitution in the amount of \$300
20 to David Potts. Anything else from the victims?

21 MR. KENDALL: No, sir, Your Honor. I don't know
22 if they want a no contact. It would probably be best to ask
23 for a no contact, though he's incarcerated, so I don't know
24 that that's going to have an effect.

25 THE COURT: All right. Anything else from the

1 State?

2 MR. KENDALL: No, sir, Your Honor.

3 THE COURT: Yes, ma'am.

4 MS. RACINE: Thank you, Your Honor, very briefly.

5 I just wanted to kind of go over some things Mr.
6 Hord said for the record. He and I have met extensively
7 over the past two years, Your Honor. He's been -- he has
8 been upset because I have explained to him that under the
9 hand of one, hand of all concept, he's responsible for the
10 actions that he and his co-defendant took.

11 Do you --

12 MR. KENDALL: Could we approach real fast, Your
13 Honor? I'm sorry to interrupt.

14 THE COURT: Yes.

15 (Whereupon, the lawyers approached the bench for
16 an off-the-record discussion)

17 MS. RACINE: And also, Your Honor, he and I did
18 discuss self-defense. I know he said that he didn't feel
19 like I had discussed defenses with him, but he kept saying
20 self-defense over and over and I explained to him that he
21 and his brother were in the process of committing an armed
22 robbery when the murder occurred. That negates the
23 self-defense argument, Your Honor. In the end a man is dead
24 as a result of this incident.

25 Also with regards to prior involvement, Mr.

1 Kendall and I have negotiated. He had agreed to a
2 recommendation, Your Honor, of manslaughter in this case and
3 I spoke with Mr. Hord about that. He refused to take the
4 offer. We went on the record late last year or early this
5 year and he rejected the offer on the record. So, Your
6 Honor, Mr. Kendall and I got back together and talked and
7 came up with this plea deal, which Mr. Hord and I spoke
8 about and he feels it's in his best interests, so I would
9 ask that you please just accept the negotiated sentence.

10 THE COURT: Mr. Hord, do you agree that proceeding
11 with the plea would be in your best interests?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Mr. Hord, is there anything else that
14 you would like to say or want me to know or wish for me to
15 consider?

16 THE DEFENDANT: Your Honor, I'm not perfect. I
17 know I have did a lot of bad things. I'm not going to stand
18 here and ask you for lenience or anything, like most people
19 do. I'm going to accept my responsibility for the bad
20 things that I have done and just try to move forward. I'm
21 sorry if I caused anybody any harm. Thank you.

22 THE COURT: Thank you, Mr. Hord.

23 I'll find that there is a substantial factual
24 basis for the plea.

25 I'll find that the defendant's decision to enter

1 the plea is made freely, voluntarily, knowingly and
2 intellectually by him. Therefore, I will accept the plea.

3 On these cases, on the murder charge --

4 All these sentences will be concurrent sentences.

5 On the murder charge, it's a 30 year sentence.

6 On the accompanying possession of a weapon during
7 the commission of a violent crime, it's a five year
8 sentence.

9 On the armed robbery charge, it is a 30 year
10 sentence.

11 On the accompanying possession of a weapon in the
12 commission of a violent crime, it's a five year sentence.

13 On the armed robbery charge under 1269, that is a
14 30 year sentence.

15 On the distribution of meth charge, that is a 15
16 year sentence.

17 I have indicated that he gets 1,090 days worth of
18 credit on all the charges, except for the possession of
19 weapon during the commission of a violent crime under
20 1618-A, which is 908 days worth of credit.

21 Good luck to you, sir.

22 MR. KENDALL: Thank you, Your Honor.

23 MS. RACINE: Thank you, Your Honor.

24 THE DEFENDANT: Thank you.

25 (END OF REQUESTED TRANSCRIPT OF RECORD

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CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Cherokee County, South Carolina, on the 25th day of March, 2019.

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

NOVEMBER 22, 2019



Michael R. Watts
Circuit Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF Cherokee

Robert Justin Hord #368056

Plaintiff(s)

vs.

State of South Carolina

Defendant(s)

Submitted By: Robert Justin Hord #368056

Address: Lieber Correctional

136 Wilburn Ave.

Ridgeville, S.C. 29472

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

-CP-

019CP-110779

SC Bar #:

Telephone #:

Fax #:

Other:

E-mail:

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

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

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

FILED IN OFFICE OF CLERK OF COURT CHEROKEE COUNTY, S.C. 2019 NOV - 1 AM 11:13 BRAND W. HOBBS

Submitting Party Signature: Robert Justin Hord

Date: 10-13-19

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

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

Date = 10-13-19

019CP-110779
Form 5

State of South Carolina }

County of Cherokee }

Robert Justin Hord #368056 }

V. }

State of South Carolina }

Application For

Post-Conviction Relief

#11. pg. 3: State concisely and in the same order the facts which support each of the grounds set out in question (#10.):

a) Ineffective assistance counsel - Did not maintain contact with me at all in order to properly go over the case, or to prepare any defense for trial. Did not assist me in obtaining any legal books or case material when the county jail did not provide these things also.

b) Counsel waived my right to preliminary hearing without my knowledge or consent.

c) Counsel failed to investigate all available defense for trial, I.E. No corpus delicti to the Armed Robbery offense. The judge lacked the authority to enter sentence for the Armed Robbery also.

: NOTICE :

Please take notice that, the Applicant by enumerating the foregoing allegations and facts hereby does not waive any right to amend, add, or modify other additional grounds for relief and support therefor.

FORM 5

STATE OF SOUTH CAROLINA)
County of Cherokee)
Robert Justin Hord #368056)
Full name and prison number (if any) of Applicant)

IN THE COURT OF COMMON PLEAS

019CP-110779

v.

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEF

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2019 NOV - 1 AM 11:13
BRANDY W. MOBBEE

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lieber Correctional
136 Wilburn Ave. Ridgeville, S.C. 29472
2. Name and location of Court which imposed sentence Cherokee County
Court House 125 E. Floyd Baker Blvd. Gaffney, S.C. 29342
3. Name(s) of co-defendant(s) (if any) Joseph Smith, Steven Neel,
Terresa Roberts
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Murder
 - (b) Armed Robbery
 - (c) Distribution, etc. of methamphetamine
 - (d) Armed Robbery

(c) _____

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

(a) March 25, 2019

(b) 30 year mandatory (plea)

(c) _____

6. Check whether a finding of guilty was made:

✓(a) after a plea of guilty yes (I contacted my lawyer to get trial transcript and lawyer has failed to assist me.)

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

NO

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

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

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) I was not aware of opportunity or terms

(b) of any appeal

(c) _____

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

(a) inaffective assistance counsel

(b) plea counsel waived my right to preliminary hearing without my consent.

(c) Counsel failed to investigate available defense, I. E.; No corpus delicti to offense of armed robbery. Judge lacked authority to enter the sentence for armed robbery

* 11.

State concisely and in the same order the facts which support each of the grounds set out

in (10): Continued on seperate paper and labeled for (a), (b), (c)

(a) plea not entered "intelligently" or knowing because of counsel.

(b) _____

(c) _____

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

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

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

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

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

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

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

NO

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

(a) which grounds have been presented:

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

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

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

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

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

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

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

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

- (a) the name and address of each attorney who represented you:
 - i. Tracy Racine
2764 Pleasant Road #11215
 - ii. Fort Mill, South Carolina 29708-7231
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. _____
 - ii. _____
 - iii. _____

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

section A: Vacation of all sentences and convictions

section B: New trial by jury

section C: Vacation and dismissal of Armed Robbery conviction & sentence

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

NO

STATE OF SOUTH CAROLINA)
County of Cherokee)

VERIFICATION

I, Robert Justin Hord, 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.

Robert Justin Hord

SWORN to and subscribed before me this Oct 29th day of October, 2019.

Leudrean Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

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

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

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

Robert Justin Hord
Applicant

SWORN or affirmed to and subscribed before me this
29th day of October, 2019.

Ludheen Bryant
Notary Public

My Commission Expires: May 26, 2020

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

Robert J. Hord, #368056,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2019-CP-11-00779

**RETURN AND MOTION FOR A
MORE DEFINITE STATEMENT**

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.

2020 MAR -9 AM 9:50
BRANDY W. MABEE

NOW COMES the Respondent, respectfully moving for a more definite statement and submitting its Return to the application for post-conviction relief (hereafter "PCR") filed on November 1, 2019 by Robert J. Hord (hereafter "the Applicant"). Respondent respectfully offers the following in support of its Return:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Cherokee County Clerk of Court. During its September 2016 term, the Cherokee County Grand Jury indicted Applicant for Possession with Intent to Distribute Methamphetamine (2016-GS-11-01268) and Armed Robbery (2016-GS-11-01269). During its December 2016 term, the Cherokee County Grand Jury indicted Applicant for Armed Robbery and Possession of a Weapon During Commission of a Violent Crime (2016-GS-11-01618). During its March 2019 term, the Cherokee County Grand Jury indicted Applicant for Murder (Count One) and Possession of a Weapon During Commission of a Violent Crime (Count Two) (2019-GS-11-00493). Applicant was represented by Tracy Racine, Esquire. Assistant Solicitor Matthew Kendall, Esquire of the Seventh Circuit Solicitor's Office prosecuted the case. On March 25, 2019, Applicant appeared before the Honorable J. Mark Hayes, II, circuit

court judge, and pled guilty as indicted to all offenses with a negotiated sentence of thirty years to run concurrent with restitution of three hundred dollars stipulated to on one of the armed robberies. Judge Hayes sentenced Applicant to thirty years' imprisonment to be served concurrent. Applicant did not pursue a direct appeal.

II. Current Action Before the Court

In his *pro se* PCR application, Applicant alleges he is detained unlawfully for the following reasons (excerpts verbatim):

1. Defense counsel was ineffective because:
 - a. "Did not maintain contact with me at all in order to properly go over the case, or to prepare any defense for trial."
 - b. "Did not assist me in obtaining any legal books or case material when the county jail did not provide these things also."¹
 - c. "Counsel waived my right to a preliminary hearing without my knowledge or consent."
 - d. "Counsel failed to investigate all available defense[s] for trial I.E. no *corpus delecti* to the Armed Robbery offense."
2. The judge committed misconduct when:
 - a. "[He] lacked the authority to enter a sentence for Armed Robbery [but did so anyway]."²

Regarding his request for relief, the Applicant requests "vacation of all sentences and convictions", "new trial by jury", and "vacation and dismissal of Armed Robbery conviction and sentence.

Attached to and incorporated herein are the records of the Cherokee County Clerk of Court regarding the Applicant's case, the Applicant's records from the South Carolina Department of Corrections, the plea transcript, and the current application for relief. Respondent reserves the right to amend this Return upon receipt of additional relevant information.

¹ The allegation against the jail for failure to provide legal books is not properly raised in post-conviction review court.

² This allegation is not a valid post-conviction review allegation.

III. Argument

Ineffective Assistance of Counsel, Generally

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, which the Supreme Court expanded upon through developing the two-pronged test outlined in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel’s performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by the preponderance of the evidence³ that counsel’s actions fell outside of the zone of “reasonableness under prevailing professional norms.” *Strickland*, 466 U.S. at 688. Reasonableness is determined by the “variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant” and the scope limited to facts counsel had available at the time of representation. *Id.* at 689. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel’s performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation

³ As per Rule 71.1(e) SCRPC

may be executed in virtually “countless” ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel’s deficient performance must have prejudiced the applicant so 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. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 295. Realistically, this matters “only in the rarest case” because “[t]he likelihood of a different result must be substantial, not just conceivable.” *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

Here, Applicant alleges Counsel was ineffective for failing to maintain contact, failing to provide legal books and materials, waiving the preliminary hearing without getting consent from Applicant, and failing to investigate and present defenses.

Failure to Maintain Contact

Applicant alleges that Counsel was ineffective for failure to maintain contact with him to “properly go over the case.” “[B]revity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation.” *Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (2012). Applicant must show evidence indicating “how additional preparation or communication would have resulted in a different outcome.” *Id.* See *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (where application failed to show ineffective assistance of counsel based on lack of preparation by neglecting to show evidence of what counsel failed to discover or what defenses counsel could have pursued had he more fully prepared for the case); *Skeen v. State*, 325 S.C. 210, 214-15, 481 S.E.2d 129, 132 (1997) (where applicant failed to show ineffective assistance of counsel when he did not present evidence showing how additional

preparation would have impacted the trial).

Applicant has not stated with specificity any facts regarding this allegation that illustrate how he was prejudiced by the alleged deficiency of Counsel. Thus, more information is needed to determine if this allegation has merit. Consequently, Respondent respectfully requests this Court to require Applicant, through Counsel, to file an amendment with greater specificity regarding claims made in the original application.

Failed to Provide Legal Books

Applicant alleges ineffective assistance of counsel for failure to provide Applicant with legal books and materials. The courts have never found ineffective assistance of counsel for failure to provide applicants with research materials pertinent to their case, nor found this inaction prejudiced an applicant, entitling them to relief. Further, Applicant has made no showing that any withholding of legal materials from him was unreasonable or prejudicial. A more definite statement is needed regarding this matter to ascertain whether or not this claim has merit.

Waiving Preliminary Hearing without Knowledge or Consent

Applicant alleges Counsel was ineffective because he waived Applicant's preliminary hearing without his knowledge or consent. That said, he failed to state with specificity the basis of his allegation, nor provided Respondent with sufficient enough information to determine whether Applicant was prejudiced by Counsel's inaction, if the allegation proves true. Thus, Respondent respectfully requests this Court to require Applicant, through Counsel, to file an amendment with greater specificity regarding claims made in the original application.

Failure to Investigate and Present Defenses

Applicant alleges Counsel was ineffective by failing to investigate an available defense: "[n]o *corpus delecti* to offense of armed robbery."

Strickland makes clear that counsel “has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” 466 U.S. at 691. When highlighting failure to investigate as a ground for a larger ineffective assistance of counsel claim, judicial determination of this claim’s validity is evaluated for “reasonableness [under] all the circumstances” with “a heavy measure of deference to counsel’s judgments” applied. *Id.* That said, counsel is required to, at minimum, “interview potential witnesses and make an independent investigation of the facts and circumstances of the case”, *Ard v. Catoe*, 372 S.C. 318, 331-32, 642 S.E.2d 590, 597 (2007) (quoting *Troedel v. Wainwright*, 667 F.Supp. 1456, 1461 (S.D.Fla.1986), *aff’d*, 828 F.2d 670 (11th Cir.1987)), including aggressively re-examining all the government’s forensic evidence and conducting analyses of all other available forensic evidence.” *Id.* (quoting *American Bar Association Guidelines For The Appointment And Performance Of Defense Counsel In Death Penalty Cases*, reprinted in 31 Hofstra L.Rev. 913, 1015 (2003) (emphasis added)).

That said, counsel is not obligated to “investigate lines of defense that he has chosen not to employ at trial.” *Strickland*, 466 U.S. at 682 (quoting *Washington v. Strickland*, 693 F.2d 1243, 1255 (5th Cir. 1982)). Further, “[w]hen counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough*, 540 U.S. at 5 (citing *Strickland*, 466 U.S. at 690).

Whether failure to assert a defense constitutes deficient performance ultimately hinges on whether failure to explore the decision was a strategic decision. *Strickland*, 466 U.S. at 680. If there is only one line of defense, counsel must conduct a “reasonably substantial investigation” into that line of defense. *Id.* (quoting *Washington v. Strickland*, 693 F.2d at 1252). That said, if there are several lines of defense, counsel may still be effective even if every single line is not

explored. *Id.* “[W]hen counsel's assumptions are reasonable given the totality of the circumstances and when counsel's strategy represents a reasonable choice based upon those assumptions, counsel need not investigate lines of defense that he has chosen not to employ at trial.” *Id.* at 681 (quoting *Washington v. Strickland*, 693 F.2d at 1255). Further, “[w]hen counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough*, 540 U.S. at 5 (citing *Strickland*, 466 U.S. at 690).

Generally speaking, counsel is not ineffective when neglecting to investigate or assert a defense if there was inadequate evidence to support the defense, if the defense did not exist at the time of trial, or another avenue of defense existed. See *McCray v. State*, 317 S.C. 557, 455 S.E.2d 686 (1995) (stating that failure to state an entrapment defense was not ineffective when the applicant denied any wrongdoing); *Arnette v. State*, 306 S.C. 556, 413 S.E.2d 803 (1992) (stating that failing to inform of a defense was not ineffective when there was no evidence at trial that supported the defense); *Robinson v. State*, 308 S.C. 361, 417 S.E.2d 361, 417 S.E.2d 88 (1992) (stating that Counsel was not ineffective when failing to state a defense that was not recognized by the Court until six years later and was just recently acknowledged by the scientific community).

Here, the Applicant shows no facts indicating that any failure to investigate or present a defense on the part of Counsel occurred, let alone was unreasonable. Counsel had no obligation to investigate every conceivable defense available in the case; only to engage in reasonable investigation. The Applicant has made no showing that Counsel's inaction regarding investigating a specific defense fell outside the zone of reasonableness in this case, preventing the Applicant from meeting his burden of proof. That said, even if the allegation is true,

Applicant has not asserted with specificity the basis of his allegation. Consequently, Respondent is unable to ascertain whether or not this argument has merit. Thus, Respondent respectfully requests this Court to require Applicant, through Counsel, to file an amendment with greater specificity regarding claims made in the original application.

That said, the above allegations of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (“Where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court, a question of fact is raised which can only be resolved by an evidentiary hearing.”).

IV. Motion for a More Definite Statement

Respondent moves for a more definite statement regarding the Applicant’s allegations. Applicant alleges that plea counsel was constitutionally ineffective because of failure to communicate, failure to provide legal books, waiving the preliminary hearing without Applicant’s knowledge or consent, and failure to investigate failure to present defenses. That said, it does not explain exactly what Counsel did that constituted ineffective assistance of counsel. Applicant fails to set forth with specificity any facts and circumstances upon the claim is based. The Uniform Post-Conviction Procedure Act requires that applicants must “specifically set forth the grounds upon which the application is based.” Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon applicants to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d

455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). The Supreme Court of South Carolina has provided that:

[M]ere allegations of incompetency or ineffectiveness of counsel will not ordinarily suffice as grounds for a new trial under the Post-Conviction Procedure Act. The bare assertion by the appellant that he was deprived of counsel is insufficient.

Coardes v. State, 262 S.C. 493, 497, 206 S.E.2d 264, 265 (1974).

Furthermore, Rule 8(a), SCRPC, requires all civil pleadings include “a short and plain statement of the facts showing that the pleader is entitled to relief.”

Respondent moves pursuant to Rule 12(e), SCRPC, to require Applicant to provide a more definite statement of his claims. Respondent moves to require Applicant to file an additional amended application well in advance of any evidentiary hearing concerning this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the allegation.

V. Other Allegations Denied

Each and every other allegation in the Applicant’s post-conviction relief application not explicitly admitted, qualified, or explain in this Return is hereby denied by the Respondent.

VI. Assertion of Rights to Notice of Amendments, Experts

The Applicant should raise any claims he intends to raise at the PCR evidentiary hearing well in advance of the hearing. Here, the Applicant’s court appointed attorney is the only individual authorized to file amendments to this application, given his representative capacity, Rule 11(a), SCRPC, and *pro se* filings will not be considered at the PCR hearing. *State v. Devore*, 416 S.C. 115, 123, 784 S.E.2d 690, 694 (Ct. App. 2016) (*pro se* filing is a nullity where person was represented by counsel); *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010) (“Since there is no right to ‘hybrid representation’ that is partially *pro se* and partially by counsel, substantive

documents, with the exception of motions to relief counsel, filed *pro se* by a person represented by counsel are not to be accepted unless submitted by counsel.”).

Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent or, in the alternative, continue the matter to permit adequate time to investigate and address the claims. *See Mangal v. State*, 421 S.C. 85, 805 S.E.2d 568 (2017) (“In most PCR cases, . . . we have refused to excuse the pleading and issue-preservation requirements that apply in all civil cases.”); *Love v. State*, Op. No. 27921 (S.C. Sup. Ct. filed Oct. 2, 2019) (“When analyzing the substance of a proposed amendment and any prejudice the State might suffer, a PCR court should consider all relevant circumstances, including, but not limited to, the timing of the motion, the complexity of the new issue, the degree of surprise to the State, the need for and availability of necessary witnesses to defend against the claim, and whether the substance of the proposed amendment is readily apparent from the underlying plea or trial record.”); *see also* Rules 15(a)-(b), SCRPC (explaining how to amend a pleading). Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless the Court grants leave upon good cause shown. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits withheld until the last minute resulting in undue prejudice to Respondent.

VII. Conclusion

WHEREFORE, Respondent respectfully requests that the Court require Applicant to provide a more definite statement and then hold an evidentiary hearing regarding Applicant’s allegations.

Respectfully submitted,

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Attorney General

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March 5, 2020

State of South Carolina)	
)	
County of Spartanburg)	
Robert J. Hord,)	2019-CP-11-00779
)	
Applicant,)	
)	
v.)	Transcript
)	
The State of SC,)	of
)	
Defendant.)	Post-conviction
)	Relief Hearing
)	
)	
)	
)	
)	
)	
)	

Date: September 17, 2021

Time: 9:45 a.m.

Location: Spartanburg County Courthouse

180 Magnolia St. Spartanburg, SC 29306

Reported by
Amber Payne, CVR

APPEARANCES

Presiding: The Honorable William A. McKinnon

For the Applicant: Rodney Richey, Esq.
Richey and Richey, P.A.
33 Market Point Drive
Greenville, SC 29607

For the Defendant: William Ray, Esq.
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Solicitor's Office
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Greenville, SC 29601

Also Present: Tracy Racine, Esq.

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PROCEEDINGS

MR. RAY: All right. Your Honor, this next one is the matter of, "Robert J. Hord vs. The State of South Carolina." We're here under Case Number 2019-CP-11-00779. Mr. Hord is currently incarcerated in the Department of Corrections.

He was indicted over in Cherokee County back in September of 2016 for possession with intent to distribute methamphetamine and armed robbery. And then in December of that year of 2016, the Grand Jury, again, indicted him for armed robbery, possession of a weapon during the commission of a violent crime. In March of 2019, the Cherokee County Grand Jury indicted him for murder, possession of a weapon during the commission of a violent crime.

He was represented by Ms. Tracy Racine, who is here today, and Assistant Solicitor Matt Kendall prosecuted this case. He appeared before Judge Hayes on March 25th, 2019, and he -- give me just one moment -- he pled guilty as indicted to all of the offenses with a negotiated sentence of 30 years, set to

1 run concurrent along with a restitution of
2 \$300 on one of the armed robberies. Judge
3 Hayes sentenced him to that 30 years to be
4 served concurrently. He did not pursue a
5 direct appeal.

6 In his original allegations raised in his
7 pro se application, he raised pretty general
8 allegations about his attorney's failure to --
9 THE COURT: Mr. Ray, tell me -- so tell me is
10 it -- he -- that one of the charges was murder
11 that he pled to?

12 MR. RAY: That's correct.

13 THE COURT: Murder and then armed robbery and
14 what else?

15 MR. RAY: What we've got, Your Honor, is we've
16 got possession with intent to distribute
17 methamphetamine, armed robbery, armed robbery,
18 again, two possession of a weapon during the
19 commission of a violent crime, and murder.

20 And so he raised some general allegations
21 in his original pro se application. We move
22 for a more definite statement. We haven't
23 received anything in writing, and we would
24 just ask that Mr. Richey provide us with
25 clearly stated allegations. And I do have a

1 packet of the materials that I would like to
2 pass up.

3 THE COURT: Mr. Richey?

4 MR. RICHEY: These allegations raised by the
5 client that counsel failed to investigate the
6 case and failed to present any defenses that
7 he -- that he had and that she failed to
8 investigate a letter by the victim that was
9 favorable to him to his defense.

10 THE COURT: And Mister -- Mr. Hord, I -- this
11 PCR concerns me a lot. You pled guilty to
12 murder and you received the minimum sentence
13 permissible for murder under South Carolina
14 law. Do you understand that?

15 MR. HORD: Yes, sir.

16 THE COURT: And so you understand if you win
17 your PCR, unless you somehow convince the
18 State to drop the murder charge, the best
19 possible outcome is the same sentence?

20 MR. HORD: Yes, sir.

21 THE COURT: So why are -- why do you -- why
22 are you doing a PCR?

23 MR. HORD: I don't feel that I should have
24 been convicted of murder.

25 THE COURT: But you said -- told the judge you

1 did it.

2 MR. HORD: Well, according -- at the time,
3 I -- I told the judge that I'm not admitting
4 guilt. I feel that there's enough --

5 THE COURT: Was it an Alford plea?

6 MR. RICHEY: Yes, sir.

7 MR. RAY: It was.

8 THE COURT: Okay. All right.

9 MR. HORD: -- to convict me. At the time, I
10 was, basically, led to believe that if -- if I
11 went to trial, that I was going to get life
12 without the possibility of parole.

13 THE COURT: Well, you could have.

14 MR. HORD: Well, I was led to believe that,
15 that was indefinite. That's -- there was
16 no -- and then maybe --

17 THE COURT: Again, Mr. Hord --

18 MR. HORD: -- free me.

19 THE COURT: -- I'll proceed. I just want you
20 to understand that you're -- you're -- this is
21 a very dangerous thing to be asking for. You
22 have literally the lowest sentence possible
23 for murder in South Carolina --

24 MR. HORD: Yes, sir.

25 THE COURT: -- and if you grant your -- if I

1 grant your PCR -- if I say you win, then you
2 go back to where you were before with the
3 murder charge still pending. Unless you can
4 convince the State to drop that charge or you
5 go to trial and win, you will get at least 30
6 years, again, on a murder charge --

7 MR. HORD: Yes, sir.

8 THE COURT: -- and it might be a lot more,
9 okay?

10 MR. RICHEY: I call Mr. Hord.

11 MR. HORD: So we hadn't had time to go over
12 anything, as far as --

13 MR. RICHEY: What'd you want?

14 MR. HORD: -- me and my lawyer.

15 MR. RICHEY: Say what?

16 MR. HORD: I mean, as far as me being able to
17 prepare any type of defense or anything, I --
18 me and you hadn't --

19 THE COURT: This isn't -- okay. Wait, wait,
20 wait --

21 MR. RICHEY: Oh.

22 THE COURT: -- just a minute. Hold on. This
23 is not a trial. You've already been
24 convicted. This is your --

25 MR. HORD: Right.

1 THE COURT: -- post-conviction relief
2 proceeding where I understand you're going to
3 -- you will claim that the attorney that
4 represented you before was not an effective
5 attorney.

6 MR. HORD: Right.

7 THE COURT: But this is your chance to present
8 those allegations.

9 MR. HORD: Okay.

10 (WHEREUPON, the applicant was sworn.)

11 THE DEPUTY: Please have a seat.

12 DIRECT EXAMINATION

13 BY MR. RICHEY:

14 Q Sir, will you state your name, please?

15 A Robert Justin Hord.

16 Q Mr. Hord, are you in the Department of Corrections
17 right now?

18 A Yes, sir.

19 Q And -- and are -- are you in there for charges that
20 the solicitor read out -- the -- the Attorney
21 General?

22 A Yes, sir.

23 Q And you believe that your lawyer -- who represented
24 you on these charges?

25 A Tracy Racine.

1 Q Okay. And you believe that she did not properly
2 represent you, correct? If you'll pull your mask
3 so we can hear you.

4 A Yes, sir.

5 Q Okay. And can you briefly tell the Court what
6 supposedly happened? Briefly? This was -- this is
7 an issue -- what -- okay. Go ahead and briefly
8 tell the Court what happened.

9 A As far as?

10 Q Okay. This was -- this was an incident over a
11 tattoo kit, correct?

12 A Yes, sir.

13 Q Okay. Go ahead.

14 A The incident, as you -- as the paper reads, is
15 property that belonged to my brother.

16 Q Uh-huh.

17 A I did not know the victims at all; they were
18 friends of my brother's. Somehow, they ended up
19 with his property, and I give (verbatim) him a ride
20 to go get his property back -- his own belongings
21 back from them. I'm not sure how they ended up
22 with it, but I took him to get his belongings back.
23 There was some words exchanged. I had got out of
24 the car to help him get his belongings. It -- he
25 said it was a couple bags, I guess, clothes and

1 whatnot, tattoo equipment, I believe is what the
2 paper says.

3 Q Uh-huh.

4 A They were -- there's some words exchanged and then
5 the vehicle -- as I was beginning to go back
6 towards the car, the vehicle was put into gear. I
7 looked up, seen the car coming into me, and that's
8 when the gun was presented.

9 Q Then you -- then you shot at the vehicle, right?

10 A Yes, sir.

11 Q And -- and --

12 A It wasn't -- I wasn't -- there was not a aimed --

13 Q Right.

14 A -- decision or anything. It was just a reaction as
15 you can see -- as the --

16 Q Well, your --

17 A -- the paper says.

18 Q -- your position was that you were acting in self-
19 defense, correct?

20 A Yes, sir.

21 Q Okay. Because the vehicle was coming at you,
22 correct?

23 A Yes, sir.

24 Q And when you shot at the vehicle, you weren't
25 shooting at any particular person, correct?

1 A No, sir.

2 Q And -- and you believe that your lawyer
3 should've -- should've had a self-defense in the
4 case, correct? To investigate self-defense?

5 A (Nods head up and down.)

6 Q You've got to answer yes or no.

7 A Yes.

8 Q Okay. Do you believe you acted in self-defense?

9 A At the time, yes, sir.

10 Q Okay.

11 THE COURT: (To Mr. Richey) But hold on. (To
12 the applicant) When you say "at the time," do
13 you not believe that now?

14 THE APPLICANT: Yes. It's just the way he had
15 worded it a minute ago -- the question before
16 then.

17 Q Okay. Were you acting in self-defense?

18 A Yes, sir.

19 Q Okay. And the day that this happened, were you
20 acting in self-defense?

21 A Yes, sir.

22 Q Okay. All right. Did you and your lawyer discuss
23 self-defense in the case?

24 A No. Not at all. I had brought it up to her on
25 more than one occasion, and I was told that --

1 Q Go ahead.

2 A -- with a self-defense claim, that with the armed
3 robbery charge being a part of the murder charge,
4 that it would look like to the State that it was an
5 armed robbery that went bad, and therefore a self-
6 defense claim could not be made.

7 Q So the armed robbery charge you're speaking of was
8 getting the tattoo stuff, correct?

9 A Yes, sir.

10 Q Okay.

11 A My brother's own belongings back.

12 Q Okay. And -- and you -- the -- prior to this case,
13 you received a -- a statement from the victim,
14 correct? In this case, a -- a letter where -- your
15 counsel saw this letter, too, correct?

16 A Yes, sir.

17 Q Okay. And in this --

18 THE COURT: Mr. Richey, just give me real
19 basics. What -- there were multiple people in
20 the car, and what -- how many -- how many were
21 killed?

22 MR. RICHEY: There -- there were a female
23 driver and a male on the passenger side. They
24 backed the car back through all this. He
25 fired a shot and killed the male in the car.

1 THE COURT: The passenger?

2 MR. RICHEY: Yeah. And the female she lived,
3 which is the wife, but it's his position that
4 he fired in self-defense, because the car was
5 being backed up to run over him.

6 THE COURT: Yes, sir.

7 Q That's correct? Is that correct, sir?

8 A Yes, sir. The -- the car was put into gear after
9 there were some words exchanged; and it was put in
10 gear; and I was -- and the cars were in front of
11 each other, one in front and one behind.

12 Q Uh-huh.

13 A I could show you, but my hands are . . . But,
14 anyway, as I was standing near the bumper -- the
15 corner of the bumper of the car, words were getting
16 exchanged louder, and as they were getting louder,
17 I was backing up towards my vehicle, and that's
18 when I looked up and the car was coming towards me.
19 And was -- there was a fence at the crime scene and
20 there should have been pictures of it, but there
21 were no pictures at all from my discovery material.
22 She had actually almost had me pinned in-between
23 the fence and her vehicle. And as the car was
24 about to clip my legs out, that's when the gun was
25 presented.

1 Q Okay. And -- and you talked to your lawyer about
2 this?

3 A Yes, sir.

4 Q And -- and you wanted to bring a self-defense
5 claim? And --

6 A Yes, sir. Self-defense --

7 Q Okay.

8 A -- or manslaughter. I didn't -- there was no
9 malice and --

10 Q Well, tell me why you abandoned the claim and --
11 and entered into this negotiated plea?

12 A Well, like I said before, there was -- there was
13 nothing that my lawyer was doing as far as advising
14 me to do something different to help prepare a
15 defense for me. There was no investigating on her
16 side at all. She didn't go to any hospitals to
17 talk to any, you know, hospital staff or any
18 witnesses that would, you know, maybe take the
19 stand or do a statement. She -- she just refused
20 to go over any of the evidence as far as my
21 material went.

22 Q Well, hold on. When you say "refused to go over
23 any evidence," what does that mean?

24 A It's pretty much exactly what it sounds like.
25 After I finally got my motion of discovery --

1 Q Uh-huh.

2 A -- and tried to contact her multiple times -- at
3 least three or four times -- and told her in
4 letters, you know, we needed to go over -- we need
5 to go over the points of it, that we needed to
6 prepare a defense for it that I thought was going
7 be helpful.

8 Q Okay.

9 A I went over it myself --

10 Q Okay.

11 A -- and pinpointed these subjects to give her --

12 THE COURT: (To the applicant) Well, let --
13 let me stop you a second. Because you --
14 based on what I've heard in court today, you
15 admit that you fired the gun and killed the
16 gentleman in the car, correct? You did say
17 you did it, you weren't aiming at him, and you
18 were doing it in self-defense; is that
19 correct?

20 THE APPLICANT: Yes. The gun went off. There
21 was no --

22 THE COURT: But --

23 THE APPLICANT: -- aiming --

24 THE COURT: But you pulled the trigger?

25 THE APPLICANT: Yes, sir.

1 THE COURT: Okay. So what evidence do you
2 believe that is out there that your attorney
3 didn't uncover that would support your self-
4 defense claim?

5 THE APPLICANT: Well, the evidence as far as
6 the -- the statements from both sides. The
7 statements from the victim's wife.

8 THE COURT: I need you to be specific, though.
9 So there's statements that say what?

10 MR. RICHEY: Can I approach, Your Honor?

11 THE COURT: Yes, sir.

12 Q Sir, can you -- have you seen that before
13 (indicates)?

14 A Yes, sir.

15 Q And what is that?

16 A This is the statement that the wife of the victim
17 wrote.

18 Q She was the driver of the car?

19 THE COURT: (To the applicant) She was the
20 driver of the car? Okay.

21 A Yes, sir.

22 Q Okay. And this -- kind of in your own words,
23 what's she say in that statement?

24 A Basically, that in regards to the death of her
25 husband, she did not feel that there was no intent

1 for murder at all. She did not believe in the
2 event. She believe -- she did believe that in the
3 event of her vehicle being -- pulling forward --

4 MR. RAY: Your Honor, if he's just going to
5 read somebody else's statement, I think that's
6 hearsay.

7 THE COURT: Is this -- well, when --

8 MR. RICHEY: Well --

9 THE COURT: -- when was this statement? Is
10 this a -- it's a recent letter that she's
11 written?

12 MR. RICHEY: No. That was a statement at the
13 time of the incident, and I'm not offering for
14 the truth of the matter.

15 THE COURT: Is it an affidavit?

16 MR. RICHEY: Yes. It's notarized and
17 everything.

18 MR. HORD: Yes, Your Honor.

19 THE COURT: So this is a document that is
20 dated July 13th -- 16th, okay. And it's --
21 what is it being offered for, Mr. Richey?

22 MR. RICHEY: It's an offer to show that there
23 were evidence out there that the counsel could
24 have investigated. We're not offering to say
25 this is true. We're just saying here's a

1 document that was prepared at the time of the
2 case that could --

3 THE COURT: She --

4 MR. RICHEY: -- have been investigated. And
5 we're not offering to say it's the truth.
6 We're just offering it that Counsel should
7 have investigated this letter, and it provides
8 some defense to him.

9 THE COURT: All right. I'll admit it.

10 (WHEREUPON, Applicant's Exhibit No. 1 was
11 marked into evidence.)

12 A There was no photos or anything. The lack of
13 evidence was --

14 Q Well, no. Let's get back to the letter. We're
15 talking about the letter right now.

16 Okay. So in that letter the lady says she
17 believed that you didn't intentionally kill her
18 husband, correct?

19 A Correct.

20 Q And -- and so that's the kind of stuff that you
21 wanted -- would want or have presented, correct?

22 A Correct.

23 Q Did you see that letter at the time you pled? At
24 the time you pled, did you know that letter was
25 there?

- 1 A Yes, sir.
- 2 Q Okay. Did you talk to your client about how that
3 letter affects your case?
- 4 A Yes, sir.
- 5 Q I mean, talk to your lawyer. I think I said
6 client. You did?
- 7 A Yes, sir.
- 8 Q And in those talks, y'all made a decision -- or you
9 made a decision to plead guilty, correct?
- 10 A Yes, sir. The thing I was --
- 11 Q Why is that?
- 12 A The thing I was offered to plead, I was basically
13 led to believe that the way she explained it to me,
14 if I didn't take this plea -- I believe her exact
15 words were, if I didn't take this plea today, I'm
16 going to trial today, and I will get life without
17 parole.
- 18 Q Okay. Well, let me ask you it this way: That
19 letter you have, when did you first see it? It --
20 it wasn't on the day you pled guilty, was it?
- 21 A No. I seen it before then.
- 22 Q Okay. When you saw it before then and y'all talked
23 about it, why -- tell me why you say, "Hey, this is
24 defense. Let's call this lady as a witness, go to
25 trial"? Why didn't you do all that?

1 A Why didn't I?

2 Q Yes, sir.

3 A I made a -- I -- I guess, a -- a statement to her,
4 you know, saying that, you know, she's, basically,
5 on my side for this.

6 Q Right.

7 A The victim's wife is, you know, something needs to
8 be done. Somebody needs to talk to her. She needs
9 to get up here in court. Something. And --

10 Q Okay.

11 A -- because this -- this has got to be -- this has
12 got to help in some way, shape, or form. I mean,
13 she is plainly stating that there was no intent for
14 murder. There was no robbery. There was no --
15 there was nothing taken by force using a weapon, or
16 anything.

17 Q Okay. And -- and that is the best evidence that
18 that you had in this case, correct?

19 A Yes, sir.

20 Q Okay. And so it's your position that the lawyer
21 should have investigated, talked to her, and
22 brought her to court, correct?

23 A Yes, sir.

24 Q Okay. And had she done that, would you have went
25 to a jury trial?

1 A Yes, sir.

2 Q You would have?

3 A Yes, sir.

4 Q Okay.

5 THE COURT: Okay. Let me -- so, the -- the
6 letter says in here, Mr. Hord, what's the --
7 what is -- in your opinion, is the -- the
8 importance of the letter? What does she say?

9 THE APPLICANT: And -- and I'm not a
10 professional. I'm not a lawyer myself. In my
11 opinion as a -- as a citizen, I mean, I -- I
12 would say that the importance of this letter
13 is her plainly stating that there was no
14 intent for murder.

15 THE COURT: Okay. So --

16 THE APPLICANT: There was no -- there was no
17 robbery taking place by force of a -- a
18 weapon, or no robbery intended by any means.
19 The only reason that there was a weapon
20 involved at all was because it was a -- a
21 regrettable reaction to her actions as far as
22 bringing the car -- using the car as a weapon.

23 THE COURT: But --

24 THE APPLICANT: Like I said, I'm not a
25 professional or anything, but --

1 THE COURT: Did she say she was trying to kill
2 you?

3 THE APPLICANT: Well, I mean -- no. She
4 didn't say she was trying to kill me, no.

5 THE COURT: And but that -- your defense is
6 self-defense, and she does not support that
7 defense, correct?

8 THE APPLICANT: Correct.

9 THE COURT: Okay. So then tell me -- but,
10 nevertheless, you think you would have -- tell
11 me, again, you would have gone to trial if she
12 had been available to testify? I'm not -- I'm
13 -- I'm confused as to what would trigger your
14 desire to go to trial.

15 THE APPLICANT: Yes. I feel if --

16 THE COURT: You know -- you have the letter,
17 right? You had it?

18 THE APPLICANT: Right.

19 THE COURT: So if you thought you would be
20 found not guilty with that letter, why didn't
21 you say, "I want to go to trial"?

22 THE APPLICANT: Well, like I said, I -- at the
23 time, I didn't have any legal representation
24 that would, you know, encourage this decision
25 whatsoever. I mean, I -- I'm -- I'm not a

1 lawyer. I don't know anything about the law,
2 you know. And as far as a lawyer standing
3 here beside me, telling me, "This is a good
4 decision; this is a bad decision. Okay. This
5 could be admitted into court. We can use this
6 in court as a defense or anything." None that
7 was discussed with me --

8 THE COURT: And so I --

9 THE APPLICANT: -- at all.

10 THE COURT: Okay. I'm still not -- Mr. Hord,
11 it's your decision to go to trial or not,
12 right?

13 THE APPLICANT: Yes, sir.

14 THE COURT: So you had this letter before,
15 what is different now? Why did you make the
16 decision before you didn't want a trial, and
17 now you're telling me you do? What's the --
18 what's changed?

19 THE APPLICANT: Well, to be honest, I just
20 feel like I -- I never -- I -- there wasn't
21 enough fight for -- for my freedom at the
22 time. You know, I've been locked up. If I'm
23 going to do 30 years in the Department of
24 Corrections, I feel like that I -- there
25 should be a little bit more of a fight put up.

1 THE COURT: Is there any information that
2 you've learned? Well, I -- I still am not
3 understanding --

4 THE APPLICANT: I mean, I've learned a little
5 bit about the -- the law. I didn't mean to
6 interrupt you. I've learned a little bit
7 about the law from what I've gathered at the
8 law library, but other than that --

9 THE COURT: Mr. Hord, I guess, I -- I'm still
10 struggling. You're -- at the time, you told
11 the judge you wanted to plead guilty, even
12 though you said you're innocent. You said,
13 "Judge, I want to plead guilty anyway."

14 THE APPLICANT: Yes, sir.

15 THE COURT: And now you're telling me you
16 don't want to do that. In fact, now you're
17 telling me you want a trial, correct?

18 THE APPLICANT: Yes, sir.

19 THE COURT: Why? What is different?

20 THE APPLICANT: Well, I -- I mean,
21 everything's the same, I guess. But I feel
22 that if I could get this woman to come to
23 court on my behalf, and she could be on -- put
24 on the stand -- or any more witnesses to this
25 could be put on the stand, that it could help

1 me. It could help me in some way.

2 THE COURT: Okay.

3 MR. RICHEY: Okay.

4 THE COURT: I'll be honest, I'm still not --
5 I'm not real clear, but I'll -- Mr. Richey, I
6 don't want to take more of your time up.

7 Q So your -- your main -- your main issue with this
8 lawyer is -- is that you believe that she should
9 have done something to encourage you or help you go
10 to trial; is that what you're saying?

11 A Yes, sir.

12 Q Okay. Thank you.

13 MR. RICHEY: (To the applicant) Answer any
14 questions the Attorney General has.

15 CROSS-EXAMINATION

16 BY MR. RAY:

17 Q Mr. Hord, how are you?

18 A All right.

19 Q How many times -- well, when did first meet your
20 attorney?

21 A Ms. Racine?

22 Q Yeah. Ms. Racine.

23 A Not long after being arrested.

24 Q Okay. And she represented you on all these
25 charges?

- 1 A Yes, sir.
- 2 Q Okay. About how many times did you meet with her?
- 3 A I'd say not -- definite counting, maybe three
- 4 times.
- 5 Q Maybe three times?
- 6 A Yes, sir. Three/four.
- 7 Q Okay. What did y'all talk about during those
- 8 meetings?
- 9 A Very little. Pretty much I -- I would suggest
- 10 certain things and it kind of was to no good, you
- 11 know, and no way it was going to make any
- 12 difference on her end.
- 13 Q Okay. And when you say "you suggested certain
- 14 things," what did you suggest?
- 15 A Just doing -- you know, to investigate, you know,
- 16 if -- investigate different people, you know, doing
- 17 some type of footwork.
- 18 Q How many people witnessed this shooting?
- 19 A The shooting? Five/six, including myself.
- 20 Q Okay. And you told her the identity of all these
- 21 people?
- 22 A Well, she already knew from the paperwork.
- 23 Q Okay. The discovery is -- did you have discovery
- 24 in this case?
- 25 A Eventually, yes, sir.

- 1 Q And did she review that stuff with you?
- 2 A No.
- 3 Q No?
- 4 A No.
- 5 Q Okay. Did she tell you what the evidence was
- 6 against you?
- 7 A Yes.
- 8 Q What did she tell you about that?
- 9 A Basically, that I was -- what I was being charged
- 10 with and my bond and, basically, I was looking at
- 11 life without parole in prison.
- 12 Q Okay. She didn't tell you anything about witness
- 13 statements?
- 14 A Yeah. Yeah. My --
- 15 Q She --
- 16 A -- codefendants.
- 17 Q Okay. Did she tell you about physical evidence
- 18 that might be against you?
- 19 A No.
- 20 Q And how did this dispute arise where you ended up
- 21 shooting a person? How did it all begin?
- 22 A Well, it's right there on the paperwork. I mean --
- 23 Q Well, I'm just asking you, in your own words?
- 24 A Well, I just told my lawyer in my own words the
- 25 exact same thing.

1 THE COURT: Mr. Hord, you need to answer the
2 question, please. If it's objectionable, your
3 attorney will object.

4 A I felt my life was in danger by the vehicle pinning
5 me against the fence. The weapon was brought out,
6 discharged.

7 Q Did you aim that gun?

8 A No, sir.

9 Q But you're claiming self-defense, and you didn't --
10 you didn't think you were aiming the gun at the
11 person that was --

12 A No. There was no --

13 Q -- attacking you?

14 A I mean, there was no aiming -- if it was a aim, it
15 would be for the person driving the vehicle, the
16 vehicle that was attacking me; wouldn't you think
17 so?

18 Q I'm just asking you. Did you discuss this -- this
19 statement with your attorney that the wife of the
20 victim made?

21 A Yeah.

22 Q You did?

23 A Yes, sir.

24 Q What did she tell you about it?

25 A That it wouldn't really matter that they -- the

1 solicitor would probably try to say that it was
2 coerced, or she was threatened. That was really
3 it.

4 Q Were you aware of any threats made against this
5 witness?

6 A No, sir.

7 Q No? Now, did y'all -- y'all discuss your other
8 charges, as well, right? Other than the murder?

9 A Yes, sir.

10 Q Was there any discovery you received on those other
11 charges?

12 A Yes, sir.

13 Q And did you discuss all that with your attorney?

14 A Somewhat. Just very little.

15 Q Okay. Did you ask her to do any investigation on
16 those charges?

17 A Yes, sir.

18 Q What did you ask her to do?

19 A To, you know, go over the evidence with me more,
20 check with witnesses, my codefendants, and --

21 Q Did y'all talk about defenses to these other
22 charges?

23 A No.

24 Q No?

25 A There was never any defense plan at all for any of

1 the charges.

2 Q Okay. So no defense other than the self-defense
3 from -- that was your -- your position, right?

4 A Yes, sir.

5 Q But no defense to the distribution of
6 methamphetamine and --

7 A No defense at all --

8 Q Okay.

9 A -- prepared.

10 Q Okay. Did you ever ask for another attorney?

11 A No, sir.

12 Q And did you think about asking for another
13 attorney?

14 A Yes, sir.

15 Q Did you tell the Court at your plea hearing that
16 you were satisfied with your attorney?

17 A I believe I brought it up to the judge that I
18 wasn't happy with her representation.

19 Q Okay. Did you -- do you recall answering any other
20 questions that the judge asked you that day?

21 A If I were -- if I was answering my questions
22 willingly.

23 THE COURT REPORTER: (To the applicant) Can
24 you speak up, please, sir?

25 A If I was answering my questions willingly. If I'd

1 been threatened in any way.

2 Q Okay. And so you have this statement from this
3 witness prior to you entering your plea?

4 A Yes, sir.

5 Q And you knew it existed?

6 A Yes, sir.

7 Q And, yet, you're asked by the Court, on Page 8 of
8 your transcript, if you felt like you needed more
9 time to speak with your attorney. Do you remember
10 saying no to that question?

11 A No. I don't remember saying no. I remember
12 speaking with my attorney.

13 Q Okay. And you were aware you had a right to go to
14 trial?

15 A Yes, sir.

16 Q Just for the record, what was your reasoning for
17 not going to trial?

18 A I felt like I didn't have a fighting chance. I
19 didn't have enough representation to present enough
20 defense for myself at a trial.

21 Q Okay. And you've now changed your mind about that?

22 A I've got to have hope for something.

23 Q Okay. And you're aware that you could be facing up
24 to life in prison for this?

25 A Yes, sir.

1 MR. RAY: (To the Court) Okay. No further
2 questions.

3 THE COURT: Mr. Richey?

4 MR. RICHEY: I just have one question.

5 THE COURT: Yes, sir.

6 REDIRECT EXAMINATION

7 BY MR. RICHEY:

8 Q Just one question. You said that as to a defense,
9 do you believe you had a defense to the armed
10 robbery cases?

11 A Yes, sir.

12 Q Okay. And that defense was what? That the
13 property wasn't --

14 A Yes, sir. It was --

15 Q Go ahead. Tell me what it was.

16 A -- in the letter there that -- the statement that
17 she had wrote.

18 Q Okay. All right. Thank you.

19 MR. RICHEY: (To the Court) No other
20 questions. And that -- that's the --

21 THE COURT: Hold -- hold on one second. Hold
22 on. (To the court reporter) Yes, ma'am?

23 THE COURT REPORTER: Quick question. Sorry.

24 THE COURT: Yes.

25 THE COURT REPORTER: Was this going to be

1 admitted into evidence?

2 MR. RICHEY: Yeah. Applicant's 1.

3 THE COURT: It is -- it is Applicant's 1.

4 THE COURT REPORTER: Oh, okay. Okay. All
5 right. Just wanted to make sure. Thank you.

6 THE COURT: Yes, ma'am.

7 MR. RICHEY: (To the Court) No other
8 questions.

9 THE COURT: Was there any follow-up, Mr. Ray?

10 MR. RAY: Nothing further from the State.

11 THE COURT: All right. You may step down,
12 sir.

13 (WHEREUPON, the applicant was excused.)

14 MR. RICHEY: We call Ms. Tracy Racine.

15 (WHEREUPON, the applicant was sworn.)

16 THE DEPUTY: If you'll have a seat there.

17 DIRECT EXAMINATION

18 BY MR. RICHEY:

19 Q Ma'am, can you state your name, please?

20 A Tracy Racine.

21 Q And, Ms. Racine, do you recall representing Mr.
22 Hord?

23 A I do.

24 Q Okay. And you've been in the courtroom, so you've
25 heard the -- the testimony that's been had so far,

1 correct?

2 A Yes.

3 Q In this case, Mr. Hord alleged that you should have
4 provided a defense of self-defense for him, okay.
5 Can you tell me why you did not pursue that
6 defense?

7 A Well, we talked about it several times, and the
8 letter that he presented, I actually had Ms. Burden
9 write that letter on his behalf. He told me about
10 her. I contacted her. She wrote that letter.
11 After that, she kind of disappeared, and I've
12 called her, never got in contact with her. Her
13 numbers have been disconnected. She wouldn't
14 respond to email. Talked to the solicitor, and he
15 said she would not testify, that she was going to
16 take that statement back; she would not testify at
17 trial.

18 Other than that, I feel like we didn't have a
19 leg to stand on. You can't be at fault in
20 initiating the situation and then claiming self-
21 defense. And in Justin's statement and in his
22 brother's statement, other witness statements, it
23 was pretty clear, they got out of that car, they
24 were armed, they threw open the doors, and they
25 started attacking the people inside that car. They

1 were hitting one of them. It was -- it was a
2 pretty good attack on what was going on inside that
3 car.

4 Q Okay. And you said this letter that you -- you
5 actually got her to write this letter?

6 A Yes. Terri Burden wrote that after I talked to
7 her.

8 Q And this was, like, in July 13, 16. So this is
9 pretty much -- pretty recently after this incident
10 occurred?

11 A Yes.

12 Q Okay. And -- and so did you discuss with Mr. Hord
13 about going to -- to a jury trial?

14 A I did, yes.

15 Q Okay. And did he decide that he did not want to go
16 to a jury trial?

17 A That was his decision.

18 Q Okay. Did -- did you discuss with him his chances
19 of winning a jury trial?

20 A Yes.

21 Q And what was your conclusion or your opinion on
22 that?

23 A Based on what we had in the file and based on the
24 statements of codefendants and -- and others and
25 the evidence, I told him that we would -- I would

1 say 95 percent chance of lose. And if we do lose,
2 he would be facing up to life in prison.

3 Q When you say "codefendants," that -- how many --
4 there was two people involved, him and another guy?

5 A There was him, his brother, and then another couple
6 who were in the car, also.

7 Q Okay. And -- and when you said "statements from
8 the codefendants," did you believe you could have
9 impeached those statements? Well?

10 A I don't really believe I had anything that I could
11 impeach them on.

12 Q Okay.

13 A The statements were pretty consistent among the
14 three other codefendants.

15 Q What -- did you go over the discovery with him?

16 A I did.

17 Q Okay.

18 A Yes.

19 Q And in terms of the armed robbery charge, the
20 property -- this was over a tattoo kit or something
21 like that, right? Do you --

22 A I think it was, yes, something to do with his
23 brother.

24 Q Okay. Did -- was the property his brother's
25 property? Do you know anything about that?

1 A That's what they said. I don't -- I don't know if
2 it ever came out in the end that it was his
3 brother's or if he was mistaken that it was his.

4 Q How often do you recall discussing this with him?

5 A I went back through my notes yesterday, and I met
6 with Mr. Hord April 25th, 2016; September 28th,
7 2016; October 24th, 2016; February 27th, 2017; June
8 12th, 2017, and that's where I gave him his
9 discovery; August 1st, 2017; March 5th, 2018; June
10 15th, 2018; in October 2018; December 14th, 2018,
11 and that's when we took him in front of Judge
12 Hayes, I believe -- it might have been Judge Kelly
13 -- and he rejected the offer of manslaughter that I
14 had gotten for him. He rejected that on the -- on
15 the record. Then, again, I met with him on
16 February 4th, 2019, and then again before his
17 guilty plea on March 25th, 2019.

18 Q Okay. So you say he rejected -- he had a
19 manslaughter offer?

20 A Yes.

21 MR. RICHEY: One moment, Your Honor. No other
22 questions. (To the witness) Answer any
23 questions the Attorney General has for you.

24 THE COURT: Mr. Ray?

25

CROSS-EXAMINATION

1 BY MR. RAY:

2 Q Ms. Racine, how are you?

3 A I'm fine. Thank you.

4 Q Thank you for being here today. When did you first
5 come to meet Mr. Hord?

6 A I had represented him in the past, so Justin and I
7 knew each other before this case started, but I was
8 appointed on April 15th, 2016, on his distribution
9 of meth and on the original murder charge that was
10 eventually dismissed and then directly indicted;
11 and I was, also, appointed December 14th on
12 additional armed robbery charges.

13 Q Okay. And you received the discovery in this case?

14 A I did.

15 Q What did the evidence against Mr. Hord consist of?

16 A There were witness statements -- several different
17 statements in there. There was medical records
18 from the hospital where they took the victim that
19 night. There was -- there were photos from the
20 scene, and I didn't -- I can't give those to him as
21 far as, you know, to disprove. We did look at
22 those photos as part of discovery. And, you know,
23 just general police investigative reports.

24 Q Was he being held in the Detention Center before a
25 trial while you were meeting with him?

1 A He was, yeah. He was -- he was in the Detention
2 Center when I first got appointed, and then he was
3 removed on a probation violation. He left from May
4 5th to September 27th. He was at SCDC --

5 Q Okay.

6 A -- and then he came back, and I met with him the
7 day he came back on September 28th.

8 Q Okay. And during your meetings with him -- I
9 believe if I counted correctly -- you said 11
10 meetings?

11 THE COURT: (To Mr. Ray) That was the Court's
12 count.

13 A Twelve.

14 THE COURT: I thought --

15 THE WITNESS: Oh, okay.

16 THE COURT: I thought that was it.

17 A I've got 12.

18 Q Okay. During these 12 meetings, did you discuss
19 defenses with him?

20 A I did.

21 Q You discussed self-defense?

22 A I did.

23 Q Was that your idea or his idea to pursue self-
24 defense?

25 A Well, it was his idea. I mean, that was something

1 we talked about, and he -- he really believed he
2 did have a good self-defense case. And, at first,
3 I thought maybe he did, too, listening to him. And
4 then the more I got into it, the more -- we went a
5 different direction. I didn't feel like he did,
6 but . . .

7 We -- on the (verbatim) March 5th, 2018, I
8 know we specifically discussed it, because I've got
9 in my notes we talked about self-defense and -- and
10 what that would entail.

11 Q Okay. And your advice to him, based upon the
12 evidence, was that, that would most likely not be a
13 successful defense?

14 A Yes.

15 Q Okay. Were there any other defenses that you
16 discussed with him against these charges?

17 A No. I don't think there -- there was anything else
18 that could possibly even fit.

19 Q Okay. Now, this statement, when did you first see
20 this statement?

21 A Right after it was written. I don't remember the
22 exact date, but she wrote it and then submitted it
23 to the solicitor's office.

24 Q Okay. And you stated that you actually were --
25 were there when she wrote it?

- 1 A I wasn't there when she wrote it, but --
- 2 Q Okay.
- 3 A -- I spoke to her before she wrote it --
- 4 Q Okay.
- 5 A -- and she told me, you know, kind of her version
6 of the events. And I said, "Well, please put that
7 in writing and get it to the solicitor's office,"
8 and she did.
- 9 Q Okay. And Mr. Hord was aware --
- 10 A Yes.
- 11 Q -- of this, and you discussed the potential
12 implications of that?
- 13 A Yes.
- 14 Q Okay. Did you talk with this witness about
15 testifying at trial?
- 16 A I did and then she disappeared on me. She quit
17 taking calls, her numbers were disconnected, and
18 then the solicitor told me that she was not going
19 to testify for Mr. Hord, that she's going to
20 testify for the State.
- 21 Q Okay. So she was actually planning on testifying
22 against Mr. Hord?
- 23 A Yes.
- 24 Q Not in accordance what is written in that document?
- 25 A Correct. She was going to withdraw that statement.

1 Q Okay. And how many other eyewitnesses did you say
2 there were?

3 A I have -- I have a bunch of statements; I would say
4 there's probably a dozen statements or more. This
5 is kind of here --

6 THE COURT REPORTER: Ms. Racine, could you
7 speak up just a little bit, please?

8 THE WITNESS: Oh, yeah -- sorry. I'm actually
9 mumbling to myself right now, trying to pull
10 out stuff from my file.

11 THE COURT REPORTER: That's okay. Thank you.

12 A I would say there's probably 15 different
13 statements. I could pull them all out and go
14 through them if you need me to.

15 Q No. We don't need to go through every one of
16 those. Were, at least, some of these witnesses
17 prepared to testify against him at trial?

18 A Yes.

19 Q Okay. And you discussed that with Mr. Hord?

20 A Yes.

21 Q Okay. Now, did you mention to the Court at his
22 plea hearing that he had -- or he might have
23 believed there was a self-defense argument to be
24 made, or do you recall that coming out?

25 A I don't recall that specifically coming out.

1 Q Okay. Were there any potential leads that he felt
2 like you didn't get an opportunity to -- to follow
3 up on?

4 A I don't think so. We went through -- there were
5 several things missing in the discovery packet. We
6 went down and made a list of everything. I sent it
7 to the solicitor, and we went down through it page-
8 by-page and literally wrote down notes for every
9 single page that we had and what was missing and
10 what we could make copies of. And, you know, I
11 went through that, got it from the solicitor,
12 brought it back to him, and we talked about it.

13 Q Okay. Now, he was offered voluntary manslaughter,
14 I believe --

15 A Yes.

16 Q -- correct? And he rejected that?

17 A Yes.

18 Q Were there any other offers made?

19 A No. That was -- that was it. It was plead guilty
20 to all the charges that he was charged with, and
21 that the murder would be reduced to voluntary, and
22 that was the offer. I tried to go back to the
23 solicitor with a counteroffer. He said, "No." He
24 wouldn't go any lower. And so we talked about it
25 and he decided he didn't take the offer and so we

1 put it on the record in December that he was
2 rejecting that offer.

3 Q Now, did that offer have a negotiated sentence with
4 the --

5 A No. It was just straight-up on voluntary with all
6 of the other charges.

7 Q Okay. And did he ask you to pursue a plea
8 agreement?

9 A Yes. We were trying to negotiate with the
10 solicitor and I was trying to negotiate with Mr.
11 Hord's input and the best I could get him to do
12 would be plead to everything and then drop to
13 voluntary.

14 Q Okay.

15 MR. RAY: Court's indulgence for just one
16 moment, please.

17 Q What was the item that gave rise to the charge of
18 the armed robbery? What were they stealing?

19 A It think it was a tattoo kit.

20 Q Okay. And who did it belong to?

21 A Supposedly, it belonged to Joseph Smith, who was
22 Mr. Hord's brother.

23 Q Okay. Did they go to the scene from another
24 location, or was -- did it all happen in real time,
25 where the guy took the tattoo gun and --

1 A No. They went out hunting for the victim.

2 Q Okay.

3 A They --

4 MR. RAY: (To the Court) No further
5 questions.

6 THE WITNESS: Okay.

7 THE COURT: Mr. Richey?

8 MR. RICHEY: I've just got a couple of
9 questions.

10 REDIRECT EXAMINATION

11 BY MR. RICHEY:

12 Q Ma'am, you -- you talk about this -- I want to ask
13 you about this -- this plea offer that he was
14 offered a voluntary and a straight -- I guess,
15 we'll call "a straight-up plea," correct?

16 A Yes.

17 Q And he was going to do that -- it says in the
18 transcript in front of Judge Hayes, is that where
19 he rejected it, right? In front of Judge Hayes? I
20 think you said that earlier.

21 A I -- I believe it was Judge Hayes; it might have
22 been Judge Kelly. If you'll give me just a minute
23 --

24 Q Take --

25 A -- I'll look in my notes, because I've got them

1 with me. (Reviews documents.)

2 December 14, 2018; it was Judge Kelly.

3 Q Okay. And did you just -- I don't think it's
4 clear. Did you discuss with him the significance
5 of a manslaughter plea versus a murder plea?

6 A Yes.

7 Q That he would do day-for-day on this murder,
8 correct?

9 A Yes.

10 Q And that a manslaughter, he would be eligible for
11 the 85 percent?

12 A Yes.

13 Q And did you discuss with him that -- that a
14 straight-up plea, that he would probably receive
15 less than the maximum? That there was a chance he
16 could receive less than the maximum 30 years?

17 A There is a chance, always, but I didn't expect it
18 to happen given --

19 Q But --

20 A -- the crimes.

21 Q And if he got a 30 it would be less than what he'd
22 get for this murder, correct?

23 A Right.

24 Q Okay. And you explained to him the significance of
25 that, saying, "Hey." Because -- did you explain,

1 also, to him that manslaughter fit kind of what he
2 was saying of what happened? Did you -- you talked
3 to him about that in terms of the plea?

4 A We just talked about the plea offer itself and what
5 that would entail.

6 Q Okay.

7 A Okay.

8 Q Okay.

9 MR. RICHEY: (To the Court) Hold on, Your
10 Honor. Hold on. No other questions.

11 THE COURT: Ms. Racine, if you recall, what --
12 what changed for your client -- rejected a
13 manslaughter plea then later accepted a murder
14 plea? Do you -- do you remember?

15 THE WITNESS: I think he just realized that if
16 he took it to trial he could get convicted of
17 -- to life in prison and --

18 THE COURT: Just having the trial --

19 THE WITNESS: -- he just didn't want to roll
20 the dice.

21 THE COURT: Okay.

22 MR. RICHEY: I'm -- I'm sorry, Judge. I
23 didn't hear your question to her.

24 THE COURT: My -- my question was: If she
25 remembered, what changed his mind from saying

1 he did not want to take a manslaughter plea to
2 saying he did want to take a murder plea? And
3 -- and then, Ms. Racine, if you want to -- if
4 you can --

5 MR. RICHEY: Yeah.

6 THE COURT: -- answer again?

7 THE WITNESS: The best I can remember, it was
8 just simply it was coming up for trial, and he
9 didn't want to risk rolling the dice and
10 getting life. But he had negotiated 30 was
11 what he ended up doing, and had he gone to
12 trial, he would have gotten 30 to life; and
13 there's no telling where it would have fallen
14 in-between there.

15 REDIRECT EXAMINATION CONTINUES

16 BY MR. RICHEY:

17 Q Okay. So, ma'am, I'm confused here. You said that
18 he turned down the manslaughter plea, but decided
19 to accept a murder plea, because he didn't want to
20 go to trial; is that --

21 A At that -- right.

22 Q Okay.

23 A At that point, we -- he -- we and I -- he and I
24 talked --

25 Q Okay.

1 A -- and I explained to him what the consequences
2 were if he took that murder to trial. And he
3 understands, you know, that if he got convicted
4 it's 30 to life. And the offer was a negotiated
5 30, bottom.

6 Q That -- here's what -- that discussion y'all just
7 had --

8 A Uh-huh.

9 Q -- that you said y'all had. Did y'all have that
10 discussion as to the manslaughter versus the murder
11 guilty plea? Did y'all have that same discussion
12 when you're talking about pleading to voluntary,
13 saying, hey, if you plead to voluntary, it's 90 --
14 85 percent; murder is going to be day-for-day? Did
15 you have that discussion with him?

16 A Oh, yes.

17 Q Okay.

18 A Yes. We always -- I always tell my clients that
19 whenever there's something like that -- that 85
20 percent, we always go over that. If they've done
21 this time, if you do this, you get convicted,
22 you've got this much hanging over your head. With
23 your good-time credit, you're looking at this much.
24 To kind of let them see what they're doing when
25 they -- when they choose to do a plea offer, accept

1 it or deny it.

2 Q Okay. Do you -- do you recall making a
3 recommendation for him to accept this voluntary, or
4 no?

5 A Oh, I recommended it, yes.

6 Q Okay. All right.

7 THE COURT: Mr. Ray?

8 MR. RAY: Just briefly, Your Honor.

9 REXCROSS-EXAMINATION

10 BY MR. RAY:

11 Q Whose decision was it to reject that -- that
12 initial plea offer?

13 A Mr. Hord's.

14 Q Whose decision was it to accept the plea offer that
15 was ultimately accepted?

16 A Mr. Hord's.

17 MR. RAY: (To the Court) No further
18 questions.

19 MR. RICHEY: No other questions, Your Honor.
20 No other witnesses.

21 THE COURT: (To Mr. Ray) Any objections to
22 excusing Ms. Racine?

23 MR. RAY: No objection from the State.

24 THE COURT: Mr. Richey?

25 MR. RICHEY: None, Your Honor.

1 THE COURT: Thank you, ma'am.

2 THE WITNESS: Thank you, Your Honor.

3 THE COURT: I appreciate it.

4 (WHEREUPON, the witness was excused.)

5 THE COURT: Mr. Richey?

6 MR. RICHEY: No other witnesses.

7 THE COURT: Okay. Any witnesses from the
8 State?

9 MR. RAY: No, Your Honor. Nothing from the
10 State.

11 THE COURT: Okay. Mr. Richey?

12 CLOSING ARGUMENTS

13 BY MR. RICHEY:

14 MR. RICHEY: Thank you, Your Honor. Your
15 Honor, my client it -- it's his position in
16 this case that -- that the lawyer should have
17 investigated his self-defense claim. He -- he
18 admitted the letter of the lady, and he
19 expected the lawyer to investigate that and
20 call that person as a witness. That is his
21 position at this point.

22 And, in turn, you know, I don't know
23 whether he -- that he understood this plea
24 offer. I think Counsel testified she talked
25 and discussed it with him. I just say that -

1 that he believes the terms of the overall case
2 that the -- that it was -- it was similar to
3 voluntary, not murder --

4 THE COURT: Mr. Richey, let me --

5 MR. RICHEY: I -- I --

6 THE COURT: -- just to protect the record.

7 MR. RICHEY: Okay.

8 THE COURT: Since that came out after your
9 client testified --

10 MR. RICHEY: Yes, sir.

11 THE COURT: -- let's put him back on the stand
12 just for you to ask him about that plea
13 rejection.

14 MR. RICHEY: Okay.

15 THE COURT: And I'll let the State examine
16 him. But I just want to make sure the record
17 is clear on that.

18 MR. RICHEY: Okay.

19 THE COURT: Mr. Hord, you're still under oath,
20 sir.

21 (WHEREUPON, the applicant was recalled to
22 the stand.)

23 FURTHER DIRECT EXAMINATION

24 BY MR. RICHEY:

25 Q Sir, you -- there was a -- there was a offer in

- 1 this case to manslaughter, correct?
- 2 A Yes, sir.
- 3 Q You've got to speak up.
- 4 A Yes, sir.
- 5 Q Okay. Did you and your lawyer discuss that offer?
- 6 A Yes, sir.
- 7 Q Okay. Did -- did she discuss with you the
- 8 significance of it being max 30 and 85 percent
- 9 versus murder being a minimum of 30 day-for-day?
- 10 A Yes. But I did not understand any details as far
- 11 as it being told to me. Like I said, I'm not a
- 12 professional as far as legal work goes. I don't --
- 13 Q No. No. I'm just saying -- I'm just saying, did
- 14 you -- did she tell you that it was 85 percent?
- 15 A I assume she did. I -- I don't --
- 16 Q Okay.
- 17 A -- remember directly.
- 18 Q Okay. Okay. And did --
- 19 A I assume she did.
- 20 Q Okay. And -- and did she tell you that murder was
- 21 day-for-day, meaning you've got to do -- do the
- 22 time, and you've got to do it 365 days a year?
- 23 A Yes, sir.
- 24 Q She told you that?
- 25 A Yes, sir.

1 Q And -- and you turned down this offer?

2 A Yes, sir.

3 Q And why did you turn down this offer?

4 A To my knowledge, the --- with the armed robbery
5 being a part of the murder that -- that's -- I
6 couldn't be -- I -- that I could present that plea
7 bargain to the judge. But to my knowledge, the
8 judge didn't have to accept the plea deal -- the
9 plea deal that was talked about because of the
10 armed robbery being presented with the murder that,
11 that cancels out manslaughter altogether. That
12 there was a -- a robbery gone bad, in which caused
13 the case of the murder.

14 Q Well, who told you that?

15 THE COURT: (To the applicant) Well, I'll be
16 honest, I don't understand what you --

17 MR. RICHEY: Yeah.

18 THE COURT: -- just said.

19 THE APPLICANT: Well, to my knowledge -- I
20 don't understand the way the -- the legal
21 system works at all.

22 Q Well, let me ask you a question. Let me ask a
23 question. I can clarify it.

24 It's your -- your position was, if you -- you
25 could not plead to manslaughter -- that you

- 1 couldn't go in front a judge and voluntarily plead
2 to manslaughter and armed robbery together,
3 correct?
- 4 A Correct.
- 5 Q That was your understanding, right?
- 6 A Correct.
- 7 Q Okay. My question is: Who told you that?
- 8 A (No response.)
- 9 Q Where did you get that information from? Where did
10 you get it from?
- 11 A The "Jailhouse Lawyer Handbook."
- 12 Q Okay. So the jailhouse lawyer told you that?
- 13 A It --
- 14 Q Okay. Did --
- 15 A -- no. Not somebody that's in there, it's a --
16 it's a handbook.
- 17 Q Right. Did -- and so you didn't discuss that with
18 the lawyer prior to turning down this plea
19 agreement?
- 20 A That's what -- there was never a -- a discussion
21 between us to where I understood that.
- 22 Q Okay.
- 23 A She just told me this is the plea agreement, never
24 really --
- 25 Q Let me ask it this way. Let me ask you this way.

1 When you were talking and when she presented that
2 voluntary manslaughter plea to you, correct? She
3 said, "Hey, the State will let you plead to
4 voluntary," correct?

5 A Correct.

6 Q Okay. When she presented that plea to you, did you
7 tell her, "Hey, I just read this stuff that I can't
8 plead to armed robbery and voluntary at the same
9 time"?

10 A Yes.

11 Q Did you tell her that?

12 A Yes.

13 Q You told her that?

14 A Yes.

15 Q Okay. And what was her response to that?

16 A "Roll the dice and see what you do."

17 Q What was that?

18 A "Roll the dice and see what you get."

19 Q She told you to go forward with the plea?

20 A I mean, that was what was said.

21 Q Okay. All right.

22 MR. RICHEY: (To the applicant) Answer any
23 questions the Attorney General has for you.

24 FURTHER CROSS-EXAMINATION

25 BY MR. RAY:

1 Q Did you reject this plea offer in front of a judge?

2 A No. She had came to me.

3 Q Okay. And was there a record of this happening?

4 Was there a court reporter there?

5 A No.

6 Q Were you in a courtroom?

7 A No. This was in a -- a visitation -- lawyer --

8 Q You were just with your lawyer?

9 A Yeah.

10 Q And you told her what you just told --

11 A Yes, sir.

12 Q -- all of us?

13 A Yes, sir.

14 Q And she told you what? Roll the dice?

15 A Roll the dice and see what happens.

16 Q And what did you take that to mean?

17 A What any layman would do, as far as legal issues

18 goes. It's up in the air, you know. I don't --

19 Q You make a decision.

20 A Yeah. I don't -- I don't know what to do.

21 Q She was telling you to decide whether to take the

22 plea or reject the plea?

23 A Yes, sir.

24 Q Okay. And you rejected the plea?

25 A Yes, sir.

1 Q And you took the one a few months later?

2 A Yes, sir.

3 Q Okay.

4 MR. RAY: No further questions, Your Honor.

5 THE COURT: Mr. Richey?

6 MR. RICHEY: No other questions.

7 THE COURT: Okay. Mr. Hord, you may step
8 down.

9 (WHEREUPON, the applicant was excused.)

10 THE COURT: Mr. Richey, I apologize for
11 interrupting your argument --

12 MR. RICHEY: No.

13 THE COURT: -- I just felt like we needed to
14 get that on record.

15 CLOSING ARGUMENTS

16 BY MR. RICHEY:

17 MR. RICHEY: Yes, sir. And, Your Honor -- and
18 my second thing would be that based off his
19 testimony, now, he read the stuff, but it was
20 his -- he said he didn't understand the -- he
21 didn't understand the plea offer. I guess,
22 that's what he's saying, and, unfortunately
23 for him, he read some stuff down at the jail
24 that was not correct. And I think when the
25 lawyer told him to go for it, or whatever

1 phrase he used, he didn't understand it. So
2 it's his position that the Court consider
3 granting his case off those two issues. Thank
4 you, Your Honor.

5 CLOSING ARGUMENTS

6 BY MR. RAY:

7 MR. RAY: All right. Your Honor, the State's
8 position on this is, as far as failure to
9 investigate witnesses is concerned, his
10 counsel did an excellent job. There were
11 numerous witnesses. She even had one -- the
12 wife of the man that got shot and killed,
13 prepare a statement on -- pretty much on his
14 behalf. She, unfortunately, for Mr. Hord,
15 changed her mind and wasn't going to be
16 present at trial, and that's certainly not his
17 attorney's fault.

18 And then as far as presenting defenses,
19 his self-defense argument's a loser. He even
20 said today he wasn't aiming at the guy he
21 shot, but he's trying to claim self-defense.
22 And he approached the -- the victims and they
23 were committing an armed robbery.

24 There's no deficiency here in Counsel's
25 representation. In fact, she got him a very

1 good plea of murder 30 given these facts.
2 There's no deficiency in -- in Counsel's
3 representation of this man, and there's --
4 also, he's been prejudiced in no way. He --
5 the terms of the -- the plea agreement were
6 explained to him on the record, and as far as
7 the one that we have that was ultimately
8 accepted, she stated that she explained the
9 terms of the one that he rejected. There's no
10 prejudice here.

11 It -- we would just respectfully request
12 that this Court -- this Court deny this
13 application for relief.

14 THE COURT: All right. The Court will take
15 this matter under advisement.

16 MR. RAY: Thank you, Your Honor.

17 (Whereupon the within hearing was
18 concluded at 10:43 a.m.)

19 (*This transcript may contain quoted material.
20 Such material is reproduced as read or quoted
21 by the speaker.)

Applicant's
Hand
9-17-21 JAP

1062

7-13

To Whom it may concern

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2021 SEP 23 AM 11:49
BERNARDY J. WEBER

I Merri Lynn Burden
am writing this statement
of my own free will on
behalf of Joseph Lance Smith
and Robert Justin Dod. In
regards to death of my
husband Carl Francis Burden,
I do not feel it there was
any intent for murder.

I do believe that in the
event of me pulling forward
in too big a hurry to leave
that I put Joe and Justin
in the way of harm and
that the use of the gun
became a reaction to my
action. The result of the
events that occurred is as
best put as I can to describe
it all is "Jacked shit" happened
they wanted the tattoo stuff
and at best wanted it be a
quick grab and go now when
I was used to obtain it

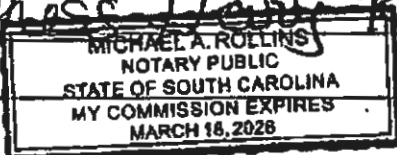
and no harm was done to me except that now I am widowed and those facing murder charges for my husband's death and also were our friends. Due to the fact if found guilty will spend a substantial amount of time in prison. I feel they are of no threat to me and if bond can be set at a more attainable amount I consent. My children have lost our "D" for good if their children can have more time with their dad while waiting on trial it is my in my heart to allow that and "C" (my husband) would agree. Our children knew each other as well. As tragic as my loss is I look more than my husband I lost also my friends.

2062

I choose to see this through that justice is served in so that it is fairly determined what crime was truly committed. My intent was not to run either of them down only to get away. I mistakenly put my car in drive without thinking just reacting but as a result they reacted also without thinking to what may very well be considered self-defense. I attest that is written by me, Terri Lynn Burden in sound mind of my own free will. I have not been paid or promised anything nor have I been forced or threatened in anyway.

Terri Lynn Burden 7-13-16

witness ~~Harry~~ Ralph Meyer



State of South Carolina County of Columbia
 subscribed and sworn to before me this
 13 Day of July, 2016
 by Terri Lynn Burden
 Michael A. Rollins

STATE OF SOUTH CAROLINA)
 COUNTY OF CHEROKEE)
)
 Robert J. Hord, SCDC No. 368056)
)
 Applicant,)
)
 v.)
)
 State of South Carolina)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2019-CP-11-00779

ORDER OF DISMISSAL

FILED IN OFFICE OF
 CLERK OF COURT
 CHEROKEE COUNTY, S.C.
 2021 DEC -3 PM 12:47
 BRANDY W. MOBILE

This matter comes before the Court by way of Applicant Robert Hord's November 1, 2019 application for post-conviction relief. Respondent made its return, moved for a more definite statement, and requested an evidentiary hearing on March 5, 2020. A hearing was convened on September 17, 2021 before the undersigned at the Spartanburg County Courthouse in Spartanburg, South Carolina. Applicant was present at the hearing and represented by Attorney Rodney Richey. Assistant Attorney General William H. Ray, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, Attorney Tracy Racine, also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, the Clerk of Court's records, the plea transcript, and the pleadings. The Court has reviewed the record, observed the witnesses, heard the testimony, and finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. Applicant was indicted for possession with intent to distribute methamphetamine and armed robbery by the Cherokee County Grand Jury at its September 2016 term. (2016-GS-22-01268; -

01269). Applicant was subsequently indicted for armed robbery and possession of a weapon during a violent crime by the Cherokee County Grand Jury at its December 2016 term. (2016-GS-11-01618). Applicant was again indicted for murder and possession of a weapon during the commission of a violent crime by the Cherokee County Grand Jury at its March 2019 term. (2019-GS-11-00493). Applicant was represented by Attorney Tracy Racine and Assistant Solicitor Matthew Kendall, of the Seventh Circuit Solicitor's Office, prosecuted the case. On March 25, 2019, Applicant appeared before the Honorable J. Mark Hayes, II, and entered an *Alford* plea, as indicted, with a negotiated thirty year sentence.¹ Judge Hayes accepted the plea and sentenced Applicant to thirty years' imprisonment, with all sentences set to be served concurrently. Applicant did not pursue a direct appeal.

II. FACTUAL HISTORY

The Assistant Solicitor provided the factual basis for Applicant's guilty plea at his plea hearing:

Your Honor, this occurred or began on March 29th, 2016, and began with a dispute over a tattoo kit.

At that time there was a tattoo kit that the victim in the case believed that he owned at the house of a Ms. Gallman. It was retrieved by the victim's wife Terri Burden, who put the tattoo supplies in the car of the victim, a Mr. C.J. Burden, who drove away.

At that point this defendant, Mr. Hord, as well as Joseph Smith, attempted to locate Mr. Burden, as they were upset that he had taken this tattoo kit. Basically at that point they contacted Steven Neal and Teresa Roberts to come and pick him up. I believe they had give him a tattoo earlier in the evening. Steven was driving and Teresa was in the front passenger seat.

In the early morning hours of March 30th, 2016 Justin, Steve and Teresa drove to a number of locations here in Cherokee County, including Auntie M's, the Kangaroo – or excuse me, Auntie M's Kangaroo, Crystal Kangaroo in attempt to locate them.

¹ *North Carolina v. Alford*, 400 U.S. 25 (1970)

They ultimately located them kind of near the cement plant on—at 889 Blacksburg Highway, the concrete plant here in Cherokee County.

(Tr. 10-14).

III. CURRENT APPLICATION

In Applicant's initial *pro se* application, he alleged he was being held in custody unlawfully for the following reasons:

1. Defense counsel was ineffective because:
 - a. Did not maintain contact with me at all in order to properly go over the case, or to prepare any defense for trial.
 - b. Did not assist me in obtaining any legal books or case material when the county jail did not provide these things also.
 - c. Counsel waived my right to a preliminary hearing without my knowledge or consent.
 - d. Counsel failed to investigate all available defense[s] for trial I.E. no *corpus delecti* to the Armed Robbery offense.
2. The judge committed misconduct when:
 - a. [He] lacked the authority to enter a sentence for Armed Robbery [but did so anyway]

At the outset of the evidentiary hearing, Applicant stated that he was going forward on the following allegations:

1. Ineffective Assistance of Counsel
 - a. Failure to present defenses
 - b. Failure to investigate a favorable letter sent by the victim's wife.

Applicant did not proceed forward on the allegations contained in his initial *pro se* application. Therefore those allegations have been abandoned and waived and will not be addressed elsewhere herein.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the

attorneys. Pursuant to S.C. Code Ann. §17-27-80, this Court makes the following findings based upon all of the probative evidence presented:

Ineffective Assistance of Counsel

In a PCR action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel's performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Applicant must so prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRCP. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons

counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109-10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” *Yarborough*, 540 U.S. at 6; *see also* *Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”). Applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

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

In the context of a guilty plea, Applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant’s right to contest the validity of such a plea is usually, but not invariably, foreclosed. *See Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) (“Solemn declarations in open court carry a strong presumption of verity.

The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible.”). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he or she should be allowed to depart from the truth of his statements. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

Failure to Investigate

“[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation.” *Strickland*, 466 U.S. at 690-91. “In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” *Id.* at 691. “In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel’s judgments.” *Id.*

“The reasonableness of counsel’s actions may be determined or substantially influenced by the defendant’s own statements or actions.” *Id.* “Counsel’s actions are usually based, quite

properly, on informed strategic choices made by the defendant and on information supplied by the defendant." *Id.* "In particular, what investigation decisions are reasonable depends critically on such information." *Id.*

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. *Harris v. State*, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. *Id.* (citing *Davis v. State*, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); *Skeen v. State*, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. *Id.*, 377 S.C. at 75, 659 S.E.2d at 145 (citing *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Applicant asserts that Counsel should have investigated a letter written by the victim's wife, who was in the vehicle with the victim at the time of the shooting, stating that she did not believe Applicant intended to murder anyone. He stated that the letter showed that he did not want to kill anyone. Applicant explained that he spoke with his lawyer about the letter and believed that it showed that the victim's wife was on his side. He stated that he would have gone to trial with this letter, but acknowledged that he ultimately decided to enter his plea. He said that the letter would have provided a defense to the armed robbery charge.

Counsel testified that she was aware of the letter written by the victim's wife. She explained that she had gotten the victim's wife to write the letter recently after the incident but later became

aware that the victim's wife did not intend to testify in accordance with the letter's content. She stated that she had spoken with the victim's wife prior to the letter being written, but the woman disappeared shortly thereafter. She stated that she had received and reviewed all the discovery with Applicant, and did not believe that there was any impeachable material that would support his defense. She stated that the co-defendants all offered consistent statements, and there were numerous other witnesses who were prepared to testify.

This Court finds that Applicant's claims are without merit. The record shows that letter in question was written by the victim's wife at Counsel's request. Without Counsel's performance there likely would be no letter at all. Therefore, Applicant's claim that Counsel's performance was deficient in failing to investigate the letter lacks merit. Counsel was well aware of the letter, and in her professional judgment determined that it would not provide much benefit after its author became unresponsive to the defense. Counsel's performance was not deficient in this regard.

Furthermore, the letter alone would have been of no benefit to Applicant if its author was not willing to testify to its contents at trial. There is nothing in the record that indicates what the victim's wife would have testified to at trial if called. The letter alone would not have refuted all of the other incriminating evidence that likely would have been presented. Applicant explicitly acknowledged this at the plea hearing when he stated that he could likely be convicted. Therefore, he has not met his burden of proving he was prejudiced by counsel's performance. As such, the allegation must be denied and dismissed with prejudice.

Failure to Present Defenses

Applicant alleges that counsel provided ineffective assistance of counsel when she failed to present a defense against his charges. This allegation is without merit.

At the guilty plea hearing Applicant stated that he understood his constitutional rights and wished to waive his right to present a defense. (Tr. 18, 7-18). He stated that he believed there was a defense against the charges, but stated that there was sufficient evidence against him to lead to a conviction should he go to trial. (Tr. 16, 19-24). At the evidentiary hearing he stated that he felt Counsel did not properly represent him because the shooting arose out of self-defense. He stated that he went with his brother to go retrieve his belongings from the victim, approached the vehicle they were in, and then fired the fatal shots after they presented the firearm and the vehicle backed towards them. He stated that this constituted self-defense because he was afraid that the car would back over him or pin him against a wall if he did not shoot. He acknowledge that he pulled the trigger. He stated that he felt as if his life was in danger, but also stated that he did not aim the gun at any specific person when he fired the fatal shots. He stated that his counsel never discussed defenses beyond his self-defense theory, and there was no plan for defending against the charges at trial. He stated that he did not go to trial because he did not believe the representation was adequate to prevail at trial.

At the guilty plea hearing counsel stated that she had explained the hand of one, hand of all concept and that he could be found guilty for the actions of his co-defendant. (Tr. 22, 4-10). She stated that she discussed self-defense with Applicant and had explained to him that it did not fit because "he and his brother were in the process of committing an armed robbery when the murder occurred." (Tr. 22, 17-24). At the evidentiary hearing she stated that the evidence showed that Applicant and his codefendant were armed, went out searching for the victim, opened the doors of their vehicle, and attacked the passengers inside. The self-defense argument was his idea, and upon her review of the evidence she determined that it would not be successful. She noted that there were around a dozen witness statements, and many of them were prepared to testify against

him at trial. She stated that she discussed his right to pursue a jury trial with him and he did not want to take the chance due to the likelihood that he would be convicted and would face life in prison.

This Court finds that Applicant's allegations are without merit. Applicant entered a guilty plea and knowingly waived his right to present a defense against these charges. The record shows that Counsel discussed this right with him, and also discussed the likelihood of succeeding on a self-defense theory at trial. The facts of this case do not support self-defense. Applicant sought out the victim with the intent to rob him, and did actually engage in the armed robbery when the shooting occurred. Counsel's performance was not deficient in advising Applicant of the improbable likelihood of success at trial based upon a self-defense theory of the case.

Furthermore, Applicant cannot show that he has been prejudiced by Counsel's performance because he freely made a knowing and voluntary waiver of his right to present a defense by entering his guilty plea. He expressed his concern at the plea hearing about counsel's performance, the Court engaged him in a colloquy to advise him of his rights, and he nevertheless opted to proceed forward with his plea. He is not entitled to invalidate that solemn declaration of guilt with his present allegation that counsel failed to present a defense. Therefore the application for post-conviction relief must be denied and dismissed with prejudice.

V. CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies 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, 409 S.E.2d 395 (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's attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

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 South Carolina Department of Corrections.

AND IT IS SO ORDERED this 24 day of November, 2021.

[Handwritten Signature] 2761

WILLIAM A. MCKINNON
Presiding Judge
Seventh Judicial Circuit

Spartanburg, South Carolina

RECEIVED

JAN 18 2022

S.C. SUPREME COURT

WITNESSES

Cherokee County Sheriff's Office

[Handwritten Signature]

ARREST WARRANT NUMBER

2016A1110100198

ACTION OF GRAND JURY

TRUE BILL
TRUE BILL

[Handwritten Signature]
Foreperson of Grand Jury

Date: 9-22-16

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 16-GS-11-01268

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

SEP 22 2016

TERM

THE STATE

vs.

ROBERT JUSTIN HORD

Indictment for

POSSESSION WITH INTENT TO
DISTRIBUTE METHAMPHETAMINE

SC Code: 44-53-375

FILED IN THE OFFICE
CLERK OF COURT
2016 SEP 22 A 10:24
BRANDY W. MCBEE
CLERK OF COURT
CHEROKEE COUNTY, SC

A TRUE COPY
[Handwritten Signature]
CLERK OF COURT
CHEROKEE COUNTY, S.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

INDICTMENT

At a Court of General Sessions, convened on SEP 22 2016, the
Grand Jurors of Cherokee County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE METHAMPHETAMINE

That Robert Justin Hord did in Cherokee County on or about March 30, 2016,
possess with intent to distribute, dispense, or deliver, a controlled substance, to-wit:
A quantity of Methamphetamine, a schedule II controlled substance, in violation of
§44-53-375, CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended, such
possession not having been authorized by law.

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



ASSISTANT SOLICITOR

COUNTY OF Cherokee
STATE VS.

Robert Justin Hord

AKA:

Race: WHITE Sex: M Age: 33

DOB: SS#: [redacted]

Address: 587 Rock House Rd.

City, State, Zip: Blacksburg, SC 29702

DL#: SID#:

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Drugs / Distribution, etc. of methamphetamine, 1st (0-15 years) (NEG: 15 years concurrent)

in violation of § 44-53-0375 (B) (1) of the S.C. Code of Laws, bearing CDR Code # 3198

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: KENDALL, MATT SCB77213 SC Bar# Defendant Justin Hord Tracy Racine SCB68415 SC Bar# Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 15 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC. The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135. Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms: Set by SCDPPPS

Recipient:

Table with 3 columns: Description, Amount, Total. Includes items like §14-1-206 (Assessments 107.5%), §14-1-211(A)(1) (Conv. Surcharge) \$100, §14-1-211(A)(2) (DUI Surcharge) \$100, §56-5-2995 (DUI Assessment) \$12, §56-1-286 (DUI Breath Test) \$25, Proviso (Public Def/Probation) \$500, §14-1-212 (Law Enforce. Funding) \$25, §14-1-213 (Drug Court Surcharge) \$150, §50-21-114 (DUI Breath Test Fee) \$50, §56-5-2942(J) (Vehicle Assessment) \$40/ea, 3% to County (if paid in installments) \$ 8.25.

TOTAL \$ 223.25

Clerk of Court/ Deputy Clerk Brandy W. McBeal
Court Reporter: Mike Watts

INDICTMENT/CASE#: 2016GS1101268
A/W#: 2016A1110100198
Date of Offense: 3/30/2016
S.C. Code § : 44-53-0375 (B) (1)
CDR Code #: 3198

SENTENCE SHEET

CONVICTED OF or PLEADS

Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge
Judge Code: 2132
Sentence Date: March 25, 2019

A TRUE COPY
Brandy W. McBeal
CLERK OF COURT
CHEROKEE COUNTY, S.C.

WITNESSES

DOCKING **16-GS-11-01269**

Cherokee County Sheriff's Office

[Signature]

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

FILED IN THE OFFICE
CLERK OF COURT

2016 SEP 22 A 10: 24

BRANDY W. MCBEE
CLERK OF COURT
CHEROKEE COUNTY, SC

COURT OF GENERAL SESSIONS

ARREST WARRANT NUMBER

SEP 22 2016

TERM

2016A1110100287

ACTION OF GRAND JURY

THE STATE

TRUE BILL

vs.

[Signature]
Foreperson of Grand Jury
Date: 9-22-16

ROBERT JUSTIN HORD

VERDICT

Indictment for

ARMED ROBBERY

SC Code: 16-11-330 (A)

CDR Code: 139

Class FEL/A

Foreperson of Petit Jury
Date:

A TRUE COPY
Brandy W. McBee
CLERK OF COURT
CHEROKEE COUNTY, S.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

INDICTMENT

At a Court of General Sessions, convened on SEP 22 2016, the
Grand Jurors of Cherokee County present upon their oath:

ARMED ROBBERY

That Robert Justin Hord did in Cherokee County on or about March 30, 2016,
while armed with a deadly weapon, or while alleging, either by action or words,
he was armed while using a representation of a deadly weapon or any object
which a person present during the commission of the robbery or attempted
robbery reasonably believed to be a deadly weapon, feloniously take from the
person or presence of Terri Lynn Burden, by means of force, violence, and/or
intimidation, goods or monies of Terri Lynn Burden, with intent to deprive the owner
permanently of such property, in violation of §16-11-330 (A), *THE CODE OF LAWS
OF SOUTH CAROLINA*, (1976), as amended.

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



ASSISTANT SOLICITOR

COUNTY OF Cherokee
STATE VS. Robert Justin Hord
AKA:
Race: WHITE Sex: M Age: 33
DOB: SS#:
Address: 587 Rock House Rd
City, State, Zip: Blacksburg, SC 29702-7359
DL#: SID#:

INDICTMENT/CASE#: 2016GS1101269
A/W#: 2016A1110100287
Date of Offense: 3/30/2016
S.C. Code § : 16-11-0330(A)
CDR Code #: 0139

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was
TO: Armed Robbery (10-30 years) (NEG: 30 years concurrent)

CONVICTED OF or PLEADS

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: KENDALL, MATT SCB77213 SC Bar# Justin Hord Defendant Tracy D. Racin SCB68415 SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 30 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:
Set by SCDPPPS

Recipient:

Table with 2 columns: Description and Amount. Includes items like §14-1-206 (Assessments 107.5%), §14-1-211(A)(1) (Conv. Surcharge), §14-1-211(A)(2) (DUI Surcharge), §56-5-2995 (DUI Assessment), §56-1-286 (DUI Breath Test), Proviso (Public Def/Probation), §14-1-212 (Law Enforce. Funding), §14-1-213 (Drug Court Surcharge), §50-21-114 (BUI Breath Test Fee), §56-5-2942(J) (Vehicle Assessment), 3% to County (if paid in installments).

TOTAL \$128.75

Clerk of Court/ Deputy Clerk Brandy W. McBee
Court Reporter: Mike Watts

Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

Appointed PD or appointed other counsel,
Proviso requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge
Judge Code: 2132
Sentence Date: March 25, 2019

A TRUE COPY
Brandy W. McBee
CLERK OF COURT
CHEROKEE COUNTY, S.C.

WITNESSES

Cherokee County Sheriff's Office

[Handwritten Signature]

ARREST WARRANT NUMBER

2016A1110100388 (Count 1)

DIRECT INDICTMENT (Count 2)

ACTION OF GRAND JURY

Mawthyn R. Petty
Foreperson of Grand Jury
Date: 12-15-16

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO.

16-GS-11-01618

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

Dec. 15 2016 TERM

THE STATE

vs.

ROBERT JUSTIN HORD

Indictment for

ARMED ROBBERY AND POSSESSION
OF A WEAPON DURING COMMISSION OF A
VIOLENT CRIME

SC Code: 16-11-330 (A); 16-23-490
CDR Code: 139; 0549
Class FEL/A; FEL\F

FILED IN THE OFFICE
CLERK OF COURT

2016 DEC 15 A 9:46

BRANDY H. MCBEE
CLERK OF COURT
CHEROKEE COUNTY, SC

A TRUE COPY
Brandy H. McBee
CLERK OF COURT
CHEROKEE COUNTY, S.C.

STATE OF SOUTH CAROLINA)
 }
COUNTY OF CHEROKEE)

INDICTMENT

At a Court of General Sessions, convened on Dec. 15 2016, the Grand Jurors of Cherokee County present upon their oath:

ARMED ROBBERY-(COUNT 1)

That Robert Justin Hord did in Cherokee County between March 28, 2016, and April 5, 2016, while armed with a pistol, or other deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, feloniously take from the person or presence of David Allen Potts, Jr, by means of force, violence, and/or intimidation, goods or monies of David Allen Potts, Jr, such goods or monies being described as follows: cash, and cellular phone, with intent to deprive the owner permanently of such property, in violation of §16-11-330 (A), THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.

**POSSESSION OF A WEAPON DURING
COMMISSION OF A VIOLENT CRIME-(COUNT 2)**

That Robert Justin Hord did in Cherokee County between March 28, 2016, and April 5, 2016, possess a firearm, during the commission of a violent crime as defined in Code §16-1-60, to wit: ARMED ROBBERY, in violation of Code §16-23-490. CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.

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


ASSISTANT SOLICITOR

COUNTY OF Cherokee STATE VS.

INDICTMENT/CASE#: 2016GS1101618 A/W#: 2016A1110100388 Date of Offense: 3/28/2016 S.C. Code § : 16-11-0330(A) CDR Code #: 0139

Robert Justin Hord

AKA:

Race: WHITE Sex: M Age: 33

DOB: SS#:

Address: 323 Cleveland Ave.

City, State, Zip: Grover, NC 28073

DL#: SID#:

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was

TO: Armed Robbery (10-30 years) (NEG: 30 years concurrent)

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: KENDALL, MATT SCB77213 SC Bar# Justin Hord Defendant Tracy Racine SCB68415 SC Bar# Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 30 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDoc.

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

Set by SCDPPS

Recipient:

Table with 2 columns: Description and Amount. Rows include §14-1-206 (Assessments 107.5%), §14-1-211(A)(1) (Conv. Surcharge) \$190, §14-1-211(A)(2) (DUI Surcharge) \$100, §56-5-2995 (DUI Assessment) \$12, §56-1-286 (DUI Breath Test) \$25, Proviso (Public Def/Probation) \$500, §14-1-212 (Law Enforce. Funding) \$25, §14-1-213 (Drug Court Surcharge) \$150, §50-21-114 (DUI Breath Test Fee) \$50, §56-5-2942(J) (Vehicle Assessment) \$40/ea, 3% to County (if paid in installments) \$ 3.75

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk Brandy W. McBee Court Reporter: Mike Watts

days/hours Public Service Employment

Obtain GED Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol testing Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender Fund. Other:

Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge Judge Code: 2132 Sentence Date: March 05, 2019

WITNESSES

Cherokee County Sheriff's Office

ARREST WARRANT NUMBER

DIRECT INDICTMENT -- COUNT ONE

DIRECT INDICTMENT- COUNT TWO

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 3-21-19

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 19-GS-11-00493

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

March 21 2019 TERM

THE STATE

vs.

ROBERT JUSTIN HORD

Indictment for

MURDER (COUNT ONE (AND
POSSESSION
OF WEAPON DURING COMMISSION OF A
VIOLENT CRIME (COUNT TWO)

SC Code: 16-03-0010, 0020; 16-23-490

CDR CODE: 116; 0549

CLASS: FEL-EXM; FEL/F

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.

2019 MAR 21 AM 10:59

BRANDY W. MCBEE

A TRUE COPY

CLERK OF COURT
CHEROKEE COUNTY, S.C.

COUNTY OF Cherokee STATE VS.

Robert Justin Hord

INDICTMENT/CASE#: 2019GS1100493
A/W#: 2019GS1100493
Date of Offense: 3/30/2016
S.C. Code § : 16-03-0010; 16-03-0020
CDR Code #: 0116

ANA:
Race: WHITE Sex: M Age: 33
DOB: SS#:
Address: 587 Rock House Rd
City, State, Zip: Blacksburg, SC 29702-7359
DL#: SID#:

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was
TO: Murder / Murder (30-Life) NEG: 30 years concurrent

CONVICTED OF or PLEADS

in violation of § 16-03-0010; 16-03-0020 of the S.C. Code of Laws, bearing CDR Code # 0116
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST
KENDALL, MATT SCB77213 SC Bar#
Tracy Racine SCB68415 SC Bar#
Racine, Tracy D. Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 30 days/months/years of under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135. 1090 days
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:
Set by SCDPPPS

Recipient:

Table with 3 columns: Description, Amount, Total. Includes items like §14-1-206 (Assessments 107.5%), §14-1-211(A)(1) (Conv. Surcharge) \$100, §14-1-211(A)(2) (DUI Surcharge) \$100, §56-5-2995 (DUI Assessment) \$12, §56-1-286 (DUI Breath Test) \$25, Proviso (Public Def/Probation) \$500, §14-1-212 (Law Enforce. Funding) \$25, §14-1-213 (Drug Court Surcharge) \$150, §50-21-114(BUI Breath Test Fee) \$50, §56-5-2942(J) (Vehicle Assessment) \$40/ea, 3% to County (if paid in installments) \$ 3.75.

TOTAL \$ 1278.75

Clerk of Court/ Deputy Clerk Brandy W. McBee
Court Reporter: Mike Watts

Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

Appointed PD or appointed other counsel,
Proviso requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge
Judge Code: 2132
Sentence Date: March 25, 2019

A TRUE COPY
Brandy W. McBee
CLERK OF COURT
CHEROKEE COUNTY, S.C.