

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Cherokee County

Honorable Daniel D. Hall, Circuit Court Judge

MARK A. EARLS, JR.

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001413

APPENDIX

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INDEX

INDEX	i
TRIAL TRANSCRIPT DATED FEBRUARY 4, 2019	1
SENTENCING TRANSCRIPT DATED FEBRUARY 5, 2019	52
APPLICATION FOR POST-CONVICTION RELIEF	60
RETURN.....	67
AMENDED APPLICATION FOR POST-CONVICTION RELIEF	85
EVIDENTIARY HEARING TRANSCRIPT DATED AUGUST 11, 2022	95
ORDER OF DISMISSAL.....	168
MOTON TO ALTER OR AMEND	183
RETURN TO MOTION TO ALTER OR AMEND.....	187
ORDER DENYING APPLICANT’S MOTION TO ALTER OR AMEND.....	190
INDICTMENTS	195
SENTENCE SHEETS	201

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

4 THE STATE OF SOUTH)
5 CAROLINA)
6) TRANSCRIPT OF RECORD
7 -vs-) 2015-GS-11-00624
8) 2015-GS-11-00624-A
9 MARK ANTONIO EARLS,) 2015-GS-11-00625
10 JR.,) 2015-GS-11-00626
11)
12 DEFENDANT.) FEBRUARY 4, 2019
13) GAFFNEY, SOUTH CAROLINA
14)

15 (JURY SELECTION AND PLEA OF GUILTY)

16 B E F O R E:

17 THE HONORABLE R. KEITH KELLY, JUDGE. ; And a Jury.
18

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

20 KIMBERLY LESKANIC, DEPUTY ASSISTANT SOLICITOR
21 ATTORNEY FOR THE STATE

22 JENNIFER JORDAN, ASSISTANT SOLICITOR
23 ATTORNEY FOR THE STATE

24 RICHARD WHELCHER, PUBLIC DEFENDER
25 ATTORNEY FOR THE DEFENDANT

MATTHEW CRAFT, ASSISTANT PUBLIC DEFENDER
ATTORNEY FOR THE DEFENDANT

MICHAEL R. WATTS
CIRCUIT COURT REPORTER

INDEX

1

2

3

WITNESSES

PAGE

4

JURY VENIRE -- PAGE 4

5

PLEA OF GUILTY -- PAGE 35

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1	EXHIBITS			
2	NO.	DESCRIPTION	ID.	EV.
3	S-1	VIDEOTAPE	35	
4	S-2	PRE-INTERROGATION WAIVER FORM	35	
5	S-3	TYPED STATEMENT	35	
6	S-4	PHOTOGRAPHS	35	
7	S-5	PHOTOGRAPHS	35	
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

(PROCEEDINGS, FEBRUARY 4, 2019)

THE COURT: Ladies and gentlemen, we are here this afternoon to pick a jury in the first case for trial. It's captioned as the State of South Carolina versus Mark Antonio Earls, Jr..

Mr. Earls is charged by Indictment 2015-00624. In Count I it's alleged that he did, in Cherokee County, South Carolina, on or about May 6th of 2015 commit the crime of murder.

In Count II it is alleged that he did, in Cherokee County, South Carolina, on or about the same date, May 6th of 2015, possess a firearm during the commission of a violent crime.

Ladies and gentlemen, he has entered a plea of not guilty to this indictment. That plea puts the burden on the State of South Carolina to prove his guilt beyond a reasonable doubt.

He is presumed innocent of the allegations contained in this indictment. This indictment is a piece of paper that brings him before the court for trial.

And in the next indictment, 2015-00625, it is alleged that Mr. Mark Antonio Earls did, in Cherokee County, South Carolina, on or about May 6th of 2015, commit the offense of attempted armed robbery.

Again, he is presumed innocent of the allegations

1 contained in this indictment. He has entered a plea of not
2 guilty. That puts the burden on the State of South Carolina
3 to prove him guilty beyond a reasonable doubt.

4 The next indictment is 2015-00626. It is alleged
5 in this indictment that in Cherokee County, South Carolina,
6 on or about May 6th of 2015, he committed the offense of
7 attempted armed robbery.

8 Again, he has entered a plea of not guilty to the
9 indictment and that plea puts the burden on the State of
10 South Carolina to prove his guilt beyond a reasonable doubt.
11 He is presumed innocent of the allegations contained in the
12 indictment, and you will hear me say that more than once
13 this afternoon.

14 Now, ladies and gentlemen, there are certain
15 questions that I am required to ask with regards to the
16 trial of this case. You were previously sworn and you
17 remain under oath at this time.

18 Here are the questions.

19 Is there any member of this panel --

20 Well, let me do this first.

21 Mr. Earls, would you stand, please, sir, and face
22 the jury for just a few seconds?

23 Thank you, sir. You may sit.

24 Is there any member of this jury panel who is now
25 or ever has been related by blood or marriage to Mark

1 Antonio Earls, Jr.? If so, please stand. You were related
2 to him at one time through marriage, or you are now related
3 to him through blood or marriage, please stand.

4 (No response)

5 THE COURT: Is there a member of this panel who
6 has a social or a personal relationship with him? You know
7 him from school, you know him from the same subdivision. I
8 don't know, whatever. You just know him some way or
9 another, please stand.

10 (No response).

11 THE COURT: The following is a list of potential
12 witnesses in this case, which I have somewhere. Here it is.

13 Marcie Queen.

14 Joe Bolin.

15 Blair Dennis.

16 Melvin Alexander.

17 Mike Scruggs.

18 Jeff Sizemore.

19 Donnie Sands.

20 Mike Segina.

21 Sandra Lynn Tessnear.

22 Lyric Morgan.

23 Dr. Janice Ross.

24 Dennis Fowler.

25 Michele Eichenmiller.

1 Kevin Selinsky.

2 Tyler Sturkie.

3 Stephanie Stanley.

4 Lorie Richardson.

5 Jonathan McGill.

6 Brandon Peeler, or 911 personnel.

7 Joshua Parker.

8 Don Ramsey.

9 Chris Skinner.

10 Brian Blanton.

11 Doug Mickel Bolin.

12 Timothy Tate.

13 Jon Fuller.

14 Jonathan Payne.

15 Is there any member of the jury panel who is now
16 or ever has been related to any of the potential witnesses?
17 Not to say all those will testify, but anybody related to
18 any of the potential witnesses in this case, please stand?

19 MS. LESKANIC: Your Honor, number 21 I believe you
20 stated Don Ramsey. It should be Ron Ramsey.

21 THE COURT: 21? I'm sorry, Ron Ramsey. Number
22 21, Ron Ramsey.

23 Any member of the jury panel related by blood or
24 marriage to any of the potential witnesses, please stand.

25 (No response)

1 THE COURT: Any member of the jury panel have a
2 social or a personal relationship with any of the potential
3 witnesses? If so, please stand.

4 Okay. Starting right here.

5 Yes, ma'am, your number?

6 JUROR NUMBER 113: 113.

7 THE COURT: Okay. One? Several?

8 JUROR NUMBER 113: I think it was the first one,
9 Marcie Queen.

10 THE COURT: Yes.

11 JUROR NUMBER 113: She's one of my parents. I
12 teach her daughter.

13 THE COURT: I'm sorry, I can't hear you.

14 JUROR NUMBER 113: She is one of my parents. I
15 teach her daughter.

16 THE COURT: Okay.

17 JUROR NUMBER 113: If it's the one who I'm
18 thinking of.

19 THE COURT: Would that interfere with your ability
20 to be fair and impartial in the trial of this case?

21 JUROR NUMBER 113: No, sir.

22 THE COURT: Ma'am, you may stay. Thank you.

23 Yes, ma'am, your number?

24 MR. WHELCHER: Excuse me, Your Honor. I didn't
25 hear who she was talking about.

1 THE COURT: It's a -- she teaches --

2 JUROR NUMBER 113: Marcie Queen.

3 THE COURT: Marcie Queen.

4 MR. WHELCHEL: Okay.

5 THE COURT: She teaches a child of Marcie Queen.

6 MR. WHELCHEL: Thank you.

7 THE COURT: If it's the same person.

8 Ma'am, your number?

9 JUROR NUMBER 88: Number 88, and just from working
10 at the bank I know several people on the list.

11 THE COURT: Would that interfere with your ability
12 to be fair and impartial?

13 JUROR NUMBER 88: No.

14 THE COURT: Ma'am, you may stay.

15 Yes, ma'am.

16 JUROR NUMBER 13: Number 13. I'm -- I have known
17 Ron Ramsey for a period of time.

18 THE COURT: Would that interfere with your ability
19 to be fair and impartial?

20 JUROR NUMBER 13: No.

21 THE COURT: Ma'am, you may stay.

22 Yes, ma'am.

23 JUROR NUMBER 20: Number 20. I went to school
24 with Brandon Peeler, the 911 operator, but I haven't seen
25 him in 15 or 20 years.

1 THE COURT: Would that interfere with your ability
2 to be fair to the State and defense?

3 JUROR NUMBER 20: No.

4 THE COURT: Ma'am, you may stay. Thank you.
5 Yes, ma'am.

6 JUROR NUMBER 75: 75. Lorie Richardson, I went to
7 school with her, but it wouldn't interfere.

8 THE COURT: It would not interfere with your
9 ability to be fair and impartial. Thank you, ma'am.
10 I'm going to ask the lawyers to introduce
11 themselves.

12 Ladies first.

13 MS. LESKANIC: May it please the court?

14 THE COURT: Yes, ma'am.

15 MS. LESKANIC: Good afternoon. My name is Kim
16 Leskanic. I'm a prosecutor here in Cherokee County and I
17 will be presenting this case, along with my co-counsel
18 Jennifer Jordan.

19 THE COURT: Mr. Whelchel?

20 MR. WHELCHEL: My name is Dick Whelchel. I'm the
21 chief public defender in Cherokee County.

22 Mr. Craft is an assistant public defender for
23 Cherokee County.

24 THE COURT: Is there any member of this jury panel
25 related by blood or marriage or ever has been related by

1 blood or marriage to any of the lawyers in this case? If
2 so, please stand.

3 (No response)

4 THE COURT: Is there any member of the jury panel
5 who has a social or personal relationship with any of the
6 lawyers in this case? If so, please stand.

7 Yes, sir.

8 JUROR NUMBER 121: I believe I remember Ms.
9 Leskanic from church several years ago.

10 THE COURT: Your number, sir?

11 JUROR NUMBER 121: 121.

12 THE COURT: 121.

13 Would that interfere with your ability to be fair
14 and impartial to the State and the defense?

15 JUROR NUMBER 121: No, sir.

16 THE COURT: Sir, you may stay. Thank you.

17 Yes, ma'am.

18 JUROR NUMBER 113: Number 113. Ms. Leskanic, we
19 live in the same neighborhood.

20 THE COURT: All right. Would that interfere with
21 your ability to be fair and impartial in the trial of this
22 case?

23 JUROR NUMBER 113: No, sir.

24 THE COURT: Ma'am, you may stay.

25 Is there anyone -- is there a member of the jury

1 panel who has a family member or a friend who is employed by
2 the Seventh Circuit Solicitor's Office? If so, please
3 stand. A family member or friend employed by the Seventh
4 Circuit Solicitor's Office, please stand.

5 (No response)

6 THE COURT: Is there a member of the panel who has
7 a family member or a friend who is employed by the Seventh
8 Circuit Public Defender's Office? If so, please stand.

9 (No response)

10 THE COURT: Is there a member of the jury panel
11 who has ever been summoned or asked to appear and testify in
12 a case being prosecuted by the Seventh Circuit Solicitor's
13 Office? They needed you as a witness, any kind of case
14 whatever, please stand.

15 (No response)

16 THE COURT: Any member of the jury panel ever been
17 summoned or asked to come and testify in a case that was
18 defended by the Seventh Circuit Public Defender's office?
19 If so, please stand.

20 (No response)

21 THE COURT: Is there any member of the jury panel
22 who has ever sought legal advice from any of these lawyers
23 in this case, please stand? Either it was a Family Court
24 matter, it was a real estate transaction, just had a legal
25 question you wanted to ask. Call them in the grocery store

1 and say let me talk to you about something, any of these
2 lawyers, please stand.

3 (No response).

4 THE COURT: Okay. Is there a member of the jury
5 panel, you, yourself, you, yourself, who has ever been a law
6 enforcement officer, to include, but not limited to,
7 municipal, county, state, federal, DNR, SLED, and military
8 police? Any agency, you, yourself, ever been a law
9 enforcement agency, please stand.

10 (No response).

11 THE COURT: Any member of the jury panel have a
12 family member or a very close friend as a law enforcement
13 officer? I mean really close friend, like see this person
14 every day, or a family member who is law enforcement,
15 currently serve in law enforcement, please stand. I know we
16 got one over here.

17 Starting right here, yes, ma'am, your number?

18 JUROR NUMBER 95: 95.

19 THE COURT: What relation and what agency?

20 JUROR NUMBER 95: My husband, reserve officer for
21 the Cherokee County Sheriff's Department.

22 THE COURT: Would that interfere with your ability
23 to be fair and impartial?

24 JUROR NUMBER 95: No, sir.

25 THE COURT: You may stay.

1 Yes, ma'am?

2 JUROR NUMBER 136: My brother-in-law.

3 THE COURT: Your number, please?

4 JUROR NUMBER 136: 136.

5 THE COURT: 136?

6 JUROR NUMBER 136: Yes.

7 THE COURT: Your brother-in-law. Which agency?

8 JUROR NUMBER 136: Clarendon.

9 THE COURT: Okay. Would that interfere with your
10 ability to be fair and impartial?

11 JUROR NUMBER 136: No.

12 THE COURT: You may stay.

13 Yes, ma'am.

14 JUROR NUMBER 65: My number is 65.

15 My stepdaughter is a police officer in Spartanburg
16 County Sheriff's Department.

17 THE COURT: Would that interfere with your ability
18 to be fair and impartial?

19 JUROR NUMBER 65: No, sir.

20 THE COURT: You may stay.

21 Yes, ma'am.

22 JUROR NUMBER 113: Number 113.

23 My husband is a SLED agent.

24 THE COURT: Yes, ma'am.

25 Would that interfere with your ability to be fair

1 and impartial?

2 JUROR NUMBER 113: No, sir.

3 THE COURT: You may stay.

4 Yes, sir.

5 JUROR NUMBER 18: Number 18.

6 I have several from Cherokee County law
7 enforcement.

8 THE COURT: Would that interfere with your ability
9 to be fair and impartial?

10 JUROR NUMBER 18: No.

11 THE COURT: Sir, you may stay.

12 JUROR NUMBER 119: Juror number 119.

13 I know several of the law enforcement officers.

14 THE COURT: Would that interfere with your ability
15 to be fair and impartial?

16 JUROR NUMBER 119: No, sir.

17 THE COURT: Sir, you may stay.

18 Yes, ma'am.

19 JUROR NUMBER 13: Juror number 13.

20 My first cousin is a police officer with the City
21 of Gaffney.

22 THE COURT: Would that interfere with your ability
23 to be fair and impartial?

24 JUROR NUMBER 13: No, sir.

25 THE COURT: Ma'am, you may stay.

1 Is there any member of the jury panel who has a
2 family member or a friend who is being prosecuted by the
3 Seventh Circuit Solicitor's Office? Not, of course, on this
4 case, but any case whatsoever. Family member or friend
5 that's being prosecuted by the Seventh Circuit Solicitor's
6 Office, please stand.

7 (No response)

8 THE COURT: Any member of the jury panel have a
9 family member or friend that's being represented by the
10 Seventh Circuit Public Defender's Office? If so, please
11 stand.

12 (No response)

13 THE COURT: Okay. I'm going to ask -- I'm going
14 to ask maybe two questions together and please don't answer,
15 but if you need to answer this question, I'm going to ask my
16 bailiff -- they are going to come privately, okay? I'm
17 going to ask maybe two questions together, so nobody knows
18 which question that you are answering.

19 Is there a member of this panel, someone in your
20 family, whether it's a victim of a murder or robbery?
21 That's question number one.

22 Number two, is there a member of this panel,
23 either you or you have a family member who has ever been the
24 victim of a violent crime? Two questions. Okay.

25 I'm going to come off the bench and if you need to

1 answer one of those privately, madam bailiff and the
2 lawyers.

3 (Whereupon, the following were on-the-record bench
4 conferences)

5 THE COURT: If you need to answer.

6 Sir, just come right over here.

7 THE BAILIFF: Number 52, Your Honor.

8 (Juror Number 52 approached the bench)

9 THE COURT: 52. Come on up, sir.

10 JUROR NUMBER 52: Yes, sir. I really didn't
11 understand the question. I have a son that has done time
12 for armed robbery.

13 THE COURT: Okay. And for armed robbery and that
14 was a long time ago?

15 JUROR NUMBER 52: No, he just recently got out.
16 He did ten years.

17 THE COURT: Okay. Would that interfere with your
18 ability to be fair and impartial?

19 JUROR NUMBER 52: Probably.

20 THE COURT: Probably?

21 JUROR NUMBER 52: Yes, sir.

22 THE COURT: 52 is excused from this case.

23 You may have a seat.

24 JUROR NUMBER 52: Sir?

25 THE COURT: Have a seat.

1 (Juror Number 52 returned to the jury venire
2 panel)

3 THE BAILIFF: Number 79, Your Honor.

4 (Juror Number 79 approached the bench).

5 THE COURT: Yes, sir.

6 JUROR NUMBER 79: There is a former -- there is a
7 case right now against a former girlfriend that sexually
8 assaulted my daughter in November of last year.

9 THE COURT: Would that interfere with your ability
10 to be fair and impartial?

11 JUROR NUMBER 79: No, sir.

12 THE COURT: You may stay.

13 (Juror Number 79 returned to the jury venire
14 panel).

15 THE CLERK: Number 4, Your Honor.

16 (Juror Number 4 approached the bench)

17 THE COURT: Yes, ma'am.

18 JUROR NUMBER 4: Yes, sir, my aunt was murdered
19 last year.

20 THE COURT: I'm sorry?

21 JUROR NUMBER 4: My aunt was murdered last year.

22 THE COURT: Would that interfere with your ability
23 to be fair and impartial in this case?

24 JUROR NUMBER 4: Yes, sir.

25 THE COURT: It would?

1 JUROR NUMBER 4: Yes.

2 THE COURT: Number 4 is excused from this case.

3 Okay. Just have a seat.

4 JUROR NUMBER 4: Uh-huh.

5 (Juror Number 4 returned to the jury venire panel)

6 THE CLERK: Number 76, Your Honor.

7 (Juror Number 76 approached the bench)

8 JUROR NUMBER 76: In 2006 I pled to a -- I did a
9 charge and in 2010 I had aggravated assault charges.

10 THE COURT: Well --

11 JUROR NUMBER 76: And I did like two months.

12 THE COURT: Aggravated assault?

13 JUROR NUMBER 76: Assault and battery. Aggravated
14 assault and battery. I'm not really sure. They was all
15 pending charges.

16 THE COURT: Here?

17 JUROR NUMBER 76: Yes, in Gaffney.

18 THE COURT: What is your number?

19 JUROR NUMBER 76: 76.

20 THE COURT: 76.

21 Have you ever been pled out or something?

22 MS. JORDAN: She pled down to Magistrate Court.
23 She did go to the Department of Corrections, but they were
24 each 30-day offenses. That must have ran consecutive to a
25 120-day sentence.

1 THE COURT: Does that not disqualify her?

2 MS. JORDAN: No.

3 (Juror Number 76 returned to the jury venire
4 panel)

5 (Whereupon, the on-the-bench conferences were
6 concluded)

7 THE COURT: Ladies and gentlemen, is there a
8 member of the panel either -- is there a member of the
9 panel, you, yourself, who has been arrested by the Gaffney
10 City Police Department and has a pending charge? If so,
11 please come forward.

12 (No response)

13 (Off the record).

14 (Back on the record).

15 THE COURT: Juror 113, would you please come up
16 for a moment?

17 (Whereupon, Juror Number 113 approached the bench
18 for an on-the-record discussion)

19 THE COURT: The question is whether or not you and
20 your husband have a social media account on Facebook
21 together?

22 JUROR NUMBER 113: No.

23 THE COURT: No?

24 JUROR NUMBER 113: No, sir.

25 THE COURT: Okay. Because that would make you --

1 anyway.

2 JUROR NUMBER 113: No, his is very limited based
3 on his job. He's not allowed to have much of anything.

4 THE COURT: On my job I don't have any. Thank
5 you. You may stay.

6 (Juror Number 113 returned to the jury venire
7 panel)

8 THE COURT: Anything further from the State?

9 MS. LESKANIC: No, Your Honor. Thank you.

10 THE COURT: From the defense?

11 MR. WHELCHEL: No, sir, Your Honor.

12 THE COURT: Okay. It's five and ten?

13 MR. WHELCHEL: Yes, sir.

14 THE COURT: Five and ten. We will pick two
15 alternates.

16 Ready?

17 THE CLERK: Yes, sir.

18 THE COURT: We'll have a jury, Madam Clerk. Five
19 and ten and two alternates.

20 THE CLERK: When I call your name, please come
21 forward. Please bring all your personal belongings with
22 you. You will stand in front of me, face back out to where
23 you can see the clock. If I tell you you are to be seated
24 in the jury box, you will take a seat over here. If I tell
25 you that you have been excused, you will take a seat back

1 where you came from.

2 Juror 63, Dana Horne.

3 What says the State?

4 MS. LESKANIC: Please present the juror.

5 THE CLERK: What says the defense?

6 MR. WHELCHEL: Please seat Ms. Horne.

7 THE CLERK: Please take a seat in the jury box.

8 Juror 106, Laura Phan.

9 What says the State?

10 MS. LESKANIC: Please present the juror.

11 THE CLERK: What says the defense?

12 MR. WHELCHEL: Please excuse Ms. Phan for the

13 trial of this case.

14 THE CLERK: You have been excused.

15 Juror 22, Reba Byars.

16 What says the State?

17 MS. LESKANIC: Please present the juror.

18 THE CLERK: What ways the defense?

19 MR. WHELCHEL: Please excuse Ms. Byars from the

20 trial of this case.

21 THE CLERK: You have been excused.

22 Juror 124, Tonjia Tate.

23 What says the State?

24 MS. LESKANIC: Please excuse the juror from

25 service in this case.

1 THE CLERK: You have been excused.

2 Juror 56, Chacorrian Haney.

3 What says the State?

4 MS. LESKANIC: Please present the juror.

5 THE CLERK: What says the defense?

6 MR. WHELCHEL: I'm sorry, Madam Clerk, What was
7 that number again?

8 THE CLERK: Juror 56, Chacorrian Haney.

9 MR. WHELCHEL: Please seat Ms. Haney.

10 THE CLERK: Please take a seat in the jury box.

11 Juror 88, Lisa McGaha.

12 What says the State?

13 MS. LESKANIC: Please present the juror.

14 THE CLERK: What says the defense?

15 MR. WHELCHEL: Please excuse Ms. McGaha from the
16 trial of this case.

17 THE CLERK: You have been excused.

18 Juror 15, Delores Bonner.

19 What says the State?

20 MS. LESKANIC: Please present the juror.

21 THE CLERK: What says the defense?

22 MR. WHELCHEL: Please seat Ms. Bonner.

23 THE CLERK: Please take a seat in the jury box.

24 Juror 47, Jordan Gans.

25 What says the State?

1 MS. LESKANIC: Please present the juror.

2 THE CLERK: What says the defense?

3 MR. WHELCHEL: Please seat Ms. Gans.

4 THE CLERK: Please take a seat in the jury box.

5 Juror 67, Nolan Humphries.

6 What says the State?

7 MS. LESKANIC: Please present the juror.

8 THE CLERK: What says the defense?

9 MR. WHELCHEL: Please seat Mr. Humphries.

10 THE CLERK: Please take a seat in the jury box.

11 Juror 23, Joy Camp.

12 What says the State?

13 MS. LESKANIC: Please present the juror.

14 THE CLERK: What says the defense?

15 MR. WHELCHEL: Please seat Ms. Camp.

16 THE CLERK: Please take a seat in the jury box.

17 Juror 139, William Worthy.

18 What says the State?

19 MS LESKANIC: Please present the juror.

20 THE CLERK: What says the defense?

21 MR. WHELCHEL: Please seat Mr. Worthy.

22 THE CLERK: Please take a seat in the jury box.

23 Juror 80, Verina Lipscomb.

24 What says the State?

25 MS. LESKANIC: Please present the juror.

1 THE CLERK: What says the defense?

2 MR. WHELCHEL: Please seat Ms. Lipscomb.

3 THE CLERK: Please take a seat in the jury box.

4 Juror 114, Stacy Ruppe.

5 What says the State?

6 MS. LESKANIC: Please present the juror.

7 THE CLERK: What says the defense?

8 MR. WHELCHEL: Please excuse this juror from the
9 trial of this case.

10 THE CLERK: You have been excused.

11 Juror 136, Tammy Wilson.

12 What says the State?

13 MS. LESKANIC: Please present the juror.

14 THE CLERK: What says the defense?

15 MR. WHELCHEL: Please excuse the juror from the
16 trial of this case.

17 THE CLERK: You have been excused.

18 Juror 113, Jessica Ruffner.

19 What says the State?

20 MS. LESKANIC: Please present the juror.

21 THE CLERK: What says the defense?

22 MR. WHELCHEL: Please excuse the juror from the
23 trial of this case.

24 THE CLERK: You have been excused.

25 Juror 96, Darlin Moss.

1 What says the State?

2 MS. LESKANIC: Please present the juror.

3 THE CLERK: What says the defense?

4 MR. WHELCHER: Please excuse Mr. Moss from the
5 trial of this case.

6 THE CLERK: You have been excused.

7 Juror 12, Dylan Blanton.

8 What says the State?

9 MS. LESKANIC: Please present the juror.

10 THE CLERK: What says the defense?

11 MR. WHELCHER: Please seat Mr. Blanton.

12 THE CLERK: Please take a seat in the jury box.

13 Juror 132, Nannie Wiley.

14 What says the State?

15 MS. LESKANIC: Please excuse the juror from
16 service in this case.

17 THE CLERK: You have been excused.

18 Juror 35, Myra Davidson.

19 What says the State?

20 MS. LESKANIC: Please excuse the juror from
21 service in this case.

22 THE CLERK: You have been excused.

23 Juror 65, Meriam Hull.

24 What says the State?

25 MS. LESKANIC: Please present the juror.

1 THE CLERK: What says the defense?

2 MR. WHELCHER: Please seat the juror.

3 THE CLERK: Please take a seat in the jury box.

4 Juror 125, Cynthia Voge.

5 MR. WHELCHER: 125?

6 THE CLERK: 125, yes, sir.

7 What says the State?

8 MS. LESKANIC: Please present the juror.

9 THE CLERK: What says the defense?

10 MR. WHELCHER: Please seat this lady.

11 THE CLERK: Please take a seat in the jury box.

12 Juror 20, Jessica Butler.

13 What says the State?

14 MS. LESKANIC: Please present the juror.

15 THE CLERK: What says the defense?

16 MR. WHELCHER: Please seat Ms. Butler.

17 THE CLERK: Please take a seat in the jury box.

18 The next juror will be alternate number one.

19 Juror 92, Janie Mickles.

20 What says the State?

21 MS. LESKANIC: Please present the juror.

22 THE CLERK: What says the defense?

23 MR. WHELCHER: Please excuse Ms. Mickles from the
24 trial of this case.

25 THE CLERK: You have been excused.

1 Juror 83, Carla Love.

2 What says the State?

3 MS. LESKANIC: Please present the juror.

4 THE CLERK: What says the defense?

5 MR. WHELCHEL: Please seat Ms. Love.

6 THE CLERK: Please take a seat in the jury box.

7 Juror 13, Tammie Blanton.

8 What says the State?

9 MS. LESKANIC: Please present the juror.

10 THE CLERK: What says the defense?

11 MR. WHELCHEL: Please excuse the juror from the
12 trial of this case.

13 THE CLERK: You have been excused.

14 Juror 95, Sherri Morgan.

15 What says the State?

16 MS. LESKANIC: Please present the juror.

17 THE CLERK: What says the defense?

18 MR. WHELCHEL: Please excuse the juror from the
19 trial of this case.

20 THE CLERK: You have been excused.

21 Juror 117, Tracy Sarratt.

22 What says the State?

23 MS. LESKANIC: Please present the juror.

24 THE CLERK: What says the defense?

25 MR. WHELCHEL: Please seat Ms. Sarratt.

1 THE CLERK: Please take a seat in the jury box.

2 THE COURT: Any matters from the State?

3 MS. LESKANIC: No, Your Honor.

4 THE COURT: Any matters from the defense?

5 MR. WHELCHER: No, sir.

6 THE COURT: Thank you.

7 Ladies and gentlemen who were not selected, I can
8 see the disappointment out there. I know that you were so
9 looking forward to serving on the jury this afternoon, the
10 next day or so. There will be another opportunity I'm quite
11 sure. This is the first case up this week, but we are going
12 to need your services all week long. With that I'm getting
13 ready to do a couple of things. Number one, I'm going
14 excuse you and ask you to call that magic number after six
15 p.m. this evening. You have been given a magic number.
16 There will be a recorded message on there about whether or
17 not we need you tomorrow, and if we need you tomorrow, at
18 what time, because sometimes -- let me give you a heads up.
19 Sometimes we don't need you at nine a.m., but we do need you
20 at two p.m., because we might be finishing up something and
21 I'm not going to have you come in and sit at this courthouse
22 when we do not need you. That's inconsiderate and we are
23 not going to do that. We don't roll that way around here.
24 So, anyway, if you will call that magic number after six
25 p.m. there will be some reporting instructions.

1 Number two, I am going to invite you to stay.
2 You're getting ready to leave, but I'm going to invite you
3 to stay if you would like and the reason is we have open
4 courtrooms in the United States, and in South Carolina, and
5 in Cherokee County, and this courthouse belongs to you.
6 This courtroom, this courthouse, belongs to you. It belongs
7 to the people of Cherokee County, and so you are free to
8 come into your courthouse anytime that you choose, wander
9 around in the courtroom and see what it is that we do. I
10 just have the privilege of working here, but it belongs to
11 you, so if you want to stay, you are already here. If you
12 want to stay and see some of what's going on in the trial of
13 this case, and if you are not involved and you not going to
14 be involved in the trial of this case, you come tomorrow,
15 whatever you would like to do. You are not on this jury.
16 You not required to be here, but I'm inviting you to come.
17 And if not this week, some other time, please come by.
18 Anytime that we are here, you are welcome in my courtroom
19 anytime.

20 With that I'm going to turn you back over to the
21 bailiff and they are going to take you to the jury assembly
22 room.

23 Do you take their badges?

24 THE CLERK: They will keep them, Your Honor.

25 THE COURT: They keep them.

1 Some counties they take them up and some counties
2 they keep them and I think you are going to get to keep
3 yours, but if you want to remain, you certainly may do that.
4 But, otherwise, at this point you are not required to be
5 here. If you would like to leave, we would ask you to leave
6 now and be quietly and orderly, please.

7 (Whereupon, the jury venire panel left the
8 courtroom)

9 THE COURT: Juror number 63, Ms. Horne, where are
10 you? You are not required to do so, but will you serve as
11 the forelady of this jury?

12 JUROR NUMBER 63: Yes.

13 THE COURT: Unless you have objections to that,
14 okay? Tomorrow I will appoint you officially to be the
15 forelady of the jury. I try very hard to alternate between
16 a foreman and a forelady. I was in another county last
17 week. I think we picked six juries last week and I always
18 alternate back and forth, but I need a forelady this time.
19 I'm not bound by that. I just try to be fair, equal
20 opportunity, so if you would be kind enough to serve
21 tomorrow, I would ask you -- I would appoint you, okay?

22 With that, Madam Forelady, and ladies and
23 gentlemen, a little bit different from the rest of the
24 panel. You have been selected to be on this case, so I'm
25 getting ready to excuse you for the afternoon and ask you to

1 be back tomorrow morning in place at about 9:10, okay? I'm
2 here about eight a.m. every morning. The lawyers are here.
3 I previously arranged to take care of a matter promptly at
4 nine o'clock tomorrow morning. I take the bench at nine and
5 I'm pretty punctual about that and this matter is going to
6 take about seven minutes -- six or seven minutes I'm told.
7 I don't want you to be wasting time back there, so I will be
8 expecting you about 9:10, 9:15, okay, at the latest we will
9 bring you in.

10 You want them in here?

11 THE BAILIFF: Side door.

12 THE COURT: Side door.

13 The side door of this building is where they will
14 allow you to come in. The side door. The bailiff will be
15 there to allow you to come in. There is a set of steps
16 behind this wall and you will come up those steps and there
17 is an electric locked door there and they will have to let
18 you in that.

19 Your jury room is behind here and I'm sure he's
20 going to show you, because you are going to go out that way
21 momentarily. You have not seen this area back here, but
22 that's where you will be deliberating and that's where you
23 will be on breaks and so forth and so on. Restrooms, water,
24 coffee, whatever you might need back here, but I'm going to
25 need you about 9:10, 9:12, something like that tomorrow

1 morning. Okay. I will already be here. I have got a
2 little simple matter we're dealing with. Nothing to do with
3 this case. That starts at nine o'clock sharp. It won't
4 take me but just a couple minutes to do that.

5 Do not, do not, I'm telling you do not try to
6 learn anything about this case. Don't go research the
7 Internet. Don't look for old newspaper articles. I know
8 very little about this case. In fact, previously what I
9 know about it is what's here and there is a reason for that.
10 You and I have to learn about this case in this courtroom,
11 okay? So do not try to e-mail, or search on the Internet,
12 or do whatever some of that other stuff is to try to find
13 out anything about the case. That would be most improper,
14 okay?

15 Don't talk about it with anyone else. You don't
16 know anything to talk about, about this case, and don't try
17 to learn anything about it.

18 Okay. Any other things, Ms. Brandy?

19 THE CLERK: No, sir.

20 THE COURT: That's about it.

21 The last thing I have to tell you is that you are
22 now not allowed in the courtroom. Once I excuse you, you
23 are not allowed in the courtroom. I'm going to tell you
24 why. We have matters of law that I have to discuss. I am
25 the judge of the law. I will tell you that tomorrow. The

1 State Constitution makes me the judge of the law and we now
2 have some about an hour and a half or so we are going to
3 talk about some law. It is not proper, it is improper for
4 you to be present during that, because I, as the judge,
5 cannot make a comment on any fact in a case. You are the
6 fact finders, not me, and I cannot make a comment on the
7 facts. I cannot influence you on that, because the law of
8 this state prevents me from having an opinion about a fact
9 in this case. So we are going to spend some time talking
10 about some facts and law and whether or not some rule that's
11 in one of these rule books here applies to the trial of this
12 case and that must be done outside of your presence, so I
13 cannot invite you to come back to the courtroom, okay,
14 because you are on this case.

15 All right. With that, ladies and gentlemen, if
16 you will kindly go with the bailiff out in the back here.
17 He is going to show you where your room will be and answer
18 any questions that you might have and I'll see you tomorrow
19 morning.

20 (The following takes place outside the presence of
21 the jury panel)

22 THE COURT: Okay. What's the first matter we have
23 from the State?

24 MR. WHELCHEL: Your Honor, can we take a break at
25 this point?

1 THE COURT: Yeah. That's a great idea. We have
2 been running now for -- yes, let's take a -- let's take
3 about 15 minutes -- 15, 18 minute break. Let me get some
4 more water, if anybody needs anything, and then we resume.

5 MS. LESKANIC: Thank you, Your Honor.

6 (Whereupon, proceedings were recessed).

7 (Whereupon, proceedings were reconvened).

8 (CD marked as State's Exhibit No. 1 for
9 identification)

10 (Pre-Interrogation Waiver Form marked as State's
11 Exhibit No. 2 for identification).

12 (Types Statement marked as State's Exhibit No. 3
13 for identification).

14 (Photographs marked as State's Exhibit No. 4 for
15 identification).

16 (Photographs marked as State's Exhibit No. 5 for
17 identification)

18 MR. WHELCHEL: Beg the court's indulgence, Your
19 Honor.

20 (Off the record).

21 (Back on the record)

22 THE COURT: We are on the record on Mr. Earls.

23 THE CLERK: Raise your right hand.

24 MARK ANTONIO EARLS, JR., having been first duly
25 sworn, testified as follows:

1 THE DEFENDANT: Yes.

2 THE COURT: Solicitor.

3 MS. LESKANIC: May it please the court, Your
4 Honor.

5 Before you is Mark Antonio Earls, Jr., pleading on
6 four counts off of three indictments.

7 2015-GS-11-624, Count I is for murder. He is
8 pleading guilty as indicted, with a negotiated sentence of
9 30 years.

10 Off of the same indictment, 624, is a True Billed
11 indictment for Count II, possession of a weapon during the
12 commission of a violent crime, that violent crime being
13 murder. He is pleading guilty as indicted with a negotiated
14 sentence of five years concurrent.

15 He is also pleading guilty on Indictment
16 2015-GS-11-625. That is a True Billed indictment for
17 attempted armed robbery. He is pleading as indicted with a
18 negotiated sentence of 20 years concurrent.

19 And, finally, Your Honor, he is pleading guilty on
20 Indictment 2015-GS-11-626, which is a True Billed indictment
21 for attempted armed robbery. He is pleading as indicted
22 with a negotiated sentence of 20 years concurrent with the
23 other indictments.

24 He is represented by Mr. Whelchel on all charges.

25 THE COURT: Sir, you are Mark Antonio Earls, Jr.?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Mr. Earls, I'm going to ask you to
3 speak a little louder into that microphone so my court
4 reporter can capture your voice.

5 Mr. Earls, I'm told that you now wish to change
6 your plea from not guilty to guilty, is that true?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Mr. Earls, Indictment 2015-00626 the
9 State says that you did, in Cherokee County, South Carolina,
10 on or about May 6th of 2015, while armed with a deadly
11 weapon, or while alleging either by action or words that you
12 were armed while using a representation of a deadly weapon,
13 or any object which a person present during the commission
14 of the robbery or attempted robbery reasonably believed to
15 be a deadly weapon feloniously attempted to take goods or
16 monies from the person or presence of Sandra Lynn Tessnear
17 by means of violence, intimidation, or by putting her in
18 fear in violation of state law.

19 That matter was sent to the Grand Jury and a True
20 Bill returned.

21 It is my understanding that are now offering to
22 plead as indicted; it carries from zero to 20 years; it is
23 violent and it is most serious by definition; and you have
24 negotiated, you and your lawyers, both of them, and the
25 Government have negotiated a 20 year concurrent sentence.

1 Is that your understanding?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. In Indictment 2015-0625,
4 the State says that you did, in Cherokee County, South
5 Carolina, on or about May 6th of 2015, while armed with a
6 deadly weapon, or while alleging either by actions or words
7 that you were armed while using a representation of a deadly
8 weapon, or any object which a person present during the
9 commission of the robbery or attempted robbery reasonably
10 believed to be a deadly weapon feloniously attempted to take
11 goods or money from the person or presence of Abelardo
12 Morales Baltazar by means of violence, intimidation, or by
13 putting him in fear in violation of state law.

14 That matter was presented to the Grand Jury and a
15 True Bill returned.

16 Once again, you are offering to plead as indicted.

17 It is violent and it is most serious by
18 definition; it carries with it up to 20 years. Again, you
19 have negotiated with the government for a concurrent 20-year
20 sentence. Do you understand?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Okay. In 2015-0624 the State says
23 that you did, in Count I, in that you did, in Cherokee
24 County, South Carolina, on or about May 6th of 2015,
25 feloniously, willfully, and with malice aforethought kill

1 Abelardo Morales Baltazar by shooting him and that he died
2 as a proximate result thereof in violation of state law.

3 In Count II of the indictment it is alleged that
4 you did, in Cherokee County, South Carolina, on or about May
5 6th of 2015, possess a firearm during the commission of a
6 violent crime as defined by law, that being murder.

7 That matter was presented to the Grand Jury and
8 the Grand Jury returned a True Billed Indictment on July the
9 9th of 2015.

10 It's my understanding, sir, you are desiring now
11 to plead to the indictment as indicted; it is violent, by
12 definition; it is most serious, by definition; it carries a
13 minimum of 30 years, up to life imprisonment without parole.
14 You have negotiated a 30-year sentence on this matter. Is
15 that your understanding?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Mr. Earls, there are certain important
18 Constitutional Rights that you must waive and give up to
19 enter a plea of guilt to these indictments.

20 Sir, you have the right to remain silent under the
21 Federal Constitution. You also have the right to remain
22 silent under the State Constitution. Do you waive and give
23 up that right?

24 (Off the record).

25 (Back on the record)

1 THE DEFENDANT: Yes, sir.

2 THE COURT: You have the right to remain silent.

3 You are now waiving your right to remain silent, which means
4 if I ask you questions, you will have to answer. Do you
5 understand?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Okay.

8 Sir, you have the right to put twelve jurors in
9 that jury box and try your case, and you are aware of that.
10 You have been in this courtroom. Earlier today we picked
11 twelve jurors and two alternates and they have not been
12 sworn, but they are ready to go and will be here tomorrow
13 morning. Do you waive your right to a trial by jury?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Okay. Sir, you have the right to call
16 any witness that you choose to this witness stand to come up
17 and testify for you; and you have the right to
18 cross-examine -- your lawyer will cross-examine or confront
19 witnesses who would testify against you. Do you waive that
20 right?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Okay. Is there something over in that
23 direction that I need to address?

24 THE DEFENDANT: No, sir.

25 THE COURT: Okay.

1 Understanding your rights and having waived them,
2 in Indictment 2015-0624, that is the Count I, murder, how do
3 you plead, guilty or not guilty?

4 THE DEFENDANT: Guilty.

5 THE COURT: On Count II, the firearm, how do you
6 plead, guilty or not guilty?

7 THE DEFENDANT: Guilty.

8 THE COURT: On 2015-0625, that is the armed
9 robbery of Mr. Baltazar, how do you plead, guilty or not
10 guilty?

11 THE DEFENDANT: Guilty.

12 THE COURT: And 2015-0626, the armed robbery of
13 Ms. Tessnear, how to you plead, guilty or not guilty?

14 THE DEFENDANT: Guilty.

15 THE COURT: Do you plead guilty freely?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Intelligently?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Voluntarily?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Okay. Did anyone, such as a family
22 member or a close friend, pressure you or convince you to
23 plead guilty?

24 (Off the record).

25 (Back on the record).

1 MR. WHELCHER: You just tell him you talked to
2 your momma, but she didn't make you plead. That's what he's
3 asking you.

4 THE WITNESS: No, sir.

5 THE COURT: Okay. Well, I want to ask that again.
6 I heard -- I just overheard what your lawyer said.

7 Now, you can talk to your mother. You can talk to
8 all the family members that you want, but it has to be your
9 decision, not their decision.

10 So I now ask you, is it your decision to plead
11 guilty?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Okay. Did anyone -- did anyone
14 promise you anything to get you to plead guilty?

15 THE DEFENDANT: No, sir.

16 THE COURT: Sir, you have two lawyers that have
17 been representing you here today, Mr. Whelcher and Mr.
18 Craft. Have you had a chance to speak with them?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Okay. Have they answered your
21 questions?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Okay. Are you satisfied with their
24 services?

25 THE DEFENDANT: No, sir.

1 THE COURT: Okay. Tell me what -- are you
2 dissatisfied with both of them?

3 THE DEFENDANT: No, sir, just Richard Whelchel.

4 THE COURT: Just Mr. Whelchel?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Okay. What about Mr. Craft? Are you
7 satisfied with his services?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. What is it that you are
10 dissatisfied with Mr. Whelchel?

11 THE DEFENDANT: Mr. Whelchel never prepared a
12 defense in my case, period, since he's been on my case since
13 August of 2018.

14 THE COURT: Okay. Well, has Mr. Craft prepared a
15 defense on your case?

16 THE DEFENDANT: I just met Mr. Craft Friday.

17 THE COURT: All right. Has he gone over the
18 materials with you?

19 THE DEFENDANT: No, sir.

20 THE COURT: He has not?

21 THE DEFENDANT: (Shaking head no).

22 THE COURT: Okay. Do you want more time to talk
23 to your lawyers?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Okay. They have not -- okay.

1 Well --

2 MR. WHELCHER: Beg the court's indulgence.

3 (Off the record).

4 (Back on the record).

5 THE COURT: Your dissatisfaction with Mr.

6 Whelcher, you are satisfied with Mr. Craft and you only met
7 him Friday, I understand that, but, you know, is there some
8 complaint that you have?

9 THE DEFENDANT: No, sir.

10 THE COURT: Well, are you being forced to enter
11 this plea?

12 THE DEFENDANT: No, sir.

13 THE COURT: Has he talked with you about your
14 case?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Did he show the report and the
17 discovery materials?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you still wish to proceed?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Are you sure about that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Please listen to the solicitor.

24 MS. LESKANIC: Thank you, Your Honor.

25 This incident occurred on May 6th of 2015, on

1 Cemetery Alley, which is located here in Cherokee County.
2 Police were called out to a shooting with injuries at that
3 location a little after six p.m. on Wednesday evening.

4 When they arrived at that location they found Mr.
5 Baltazar having suffered two gunshot wounds, slumped over in
6 his pickup truck, and he was deceased at the scene.

7 Officers began their investigation into this case.
8 They spoke with witnesses and they were able to retrieve
9 video from Gaffney Self Storage, which had video cameras set
10 up at Cemetery Alley and in the surrounding area. I have
11 that marked as State's Exhibit 1. I would like to make that
12 video part of the evidence in this plea, Your Honor.

13 From that video officers were able to see two
14 individuals, a female, what appeared to be a male, walking
15 in that alley. It shows the actual attempted robbery of Mr.
16 Baltazar and a Sandra Tessnear, who was a prostitute that
17 had gotten into the vehicle with Mr. Baltazar prior to the
18 shooting, and it showed those two individuals running away
19 after what appeared to be a shooting from the video.

20 Officers then posted still photographs from the
21 video on the Gaffney website page, as well as the Facebook
22 page, and they began to receive tips that it was a Lyric
23 Morgan and Mark Earls who had committed this attempted armed
24 robbery and murder of Ms. Tessnear, as far as the robbery,
25 and Mr. Baltazar of the robbery and the murder.

1 Based upon that information officers found out
2 where they lived, which is here at Limestone Courts in
3 Gaffney. They went out on May the 7th, which was the day
4 after the shooting, to speak with Lyric and to speak with
5 this defendant. They brought both of them to the police
6 station. Lyric gave a confession that she had been with
7 this defendant Mark. They had been in a relationship for a
8 couple of months.

9 Her testimony -- she was going to be a witness for
10 the State, was that during the time they were pretty much
11 inseparable. They had stolen the gun that was used in this
12 case three days prior from Mark's mother's boyfriend, a
13 Mickel Bolin. She told me that they had kicked the door in.
14 They went in and they stole the gun, and that on the day of
15 this Mr. Earls retrieved the gun from a closet in his house.
16 They left the house with the intention of committing a
17 robbery. When they saw Mr. Baltazar and Ms. Tessnear, they
18 picked them as their target, and then they talked about it
19 for awhile.

20 You see them approach the truck. Mr. Earls
21 approaches on the driver's side of the vehicle. Ms. Morgan
22 approaches on the passenger's side of the vehicle. Her
23 testimony, as well as Ms. Tessnear's testimony, that's Ms.
24 Morgan's testimony and Ms. Tessnear's testimony would be
25 that Mark then stated "give me everything that you have

1 got." He pointed the loaded .22 pistol at Mr. Baltazar.
2 According to Lyric Morgan, she remembers seeing Mr. Baltazar
3 sort of reach down. Maybe they thought he had a gun, but at
4 that point Mark made a decision and he pulled the trigger
5 and then he pulled the trigger again.

6 Mr. Baltazar suffered two gunshot wounds. One of
7 those lacerated his lungs and his heart, causing internal
8 bleeding and causing him to die at the scene.

9 When both of them were brought to the police
10 department, Mark was brought there, his mother was allowed
11 to come with him, as well as his mother's boyfriend Mr.
12 Bolin. It's my understanding that his mother was shown the
13 video first and she was able to identify her son on the
14 video as the one who participated in this crime.

15 Mark was then shown the video with law
16 enforcement. I have those officers that were going to
17 testify in the Jackson v. Denno today. Prior to talking
18 with him they filled out a pre-interrogation waiver form,
19 which is marked as State's Exhibit 2, where both he and his
20 mother initialed the statement of rights. They both signed
21 the waiver of rights and then a statement was typed up by
22 Sergeant Sizemore with Gaffney City Police Department at the
23 request of Mr. Earls. He stated that he did not write very
24 well and he asked the officer to type the statement for him.
25 Sergeant Sizemore's testimony would be that he typed that up

1 in the presence of Mark and his mother, turned his computer
2 screen around and typed what he wrote. And in that
3 statement he said "I saw a prostitute jump in the truck with
4 a Mexican. I tried to rob the Mexican and the prostitute.
5 The Mexican put his hands up like he was trying to get the
6 gun. I pulled my hand back and the gun went off. His truck
7 was standing there and I thought that he was going to get
8 out. I shot again. I ran. Lyric went with me. She did
9 not have any weapon."

10 It continues, Your Honor, but that's State's
11 Exhibit 2. It's the pre-interrogation waiver form that is
12 signed by Mr. Earls and by his mother, State's Exhibit 2,
13 and the statement itself signed by Mr. Earls and his mother
14 is State's Exhibit 3.

15 And in preparing for this case, Your Honor, and in
16 preparing for the Jackson v. Denno Hearing we discovered
17 that Mr. Earls, while he was a juvenile, had also been
18 arrested for some breaking into motor vehicle cases, larceny
19 cases. And in those cases he had filled out a
20 pre-interrogation waiver form and given a statement to
21 police. That involved Investigator Donnie Sands, who was
22 also involved in this case. So we would have presented
23 evidence that he was aware of the criminal justice
24 procedure, aware of his rights, how to waive those rights,
25 and the importance and consequences that go along with

1 giving a statement, and both of those instances his mother
2 was present, even though that's not required under the law.

3 After Mark gave his statement to police, they
4 asked him about the gun. He told them that he would take
5 them to the location of the gun, which is on Willow Street
6 in Cherokee County. He stated that he had taken the gun and
7 put it in the woods following the shooting. That's State
8 Exhibit 5 are the two photographs; the first one showing
9 where he had pushed the gun down into the mud, and the
10 second photograph attached to that is where it had been
11 removed from the dirt, Your Honor.

12 Ms. Morgan, who was going to testify for the
13 State, identified that gun, stated that it was the gun that
14 the two of them stole from Mr. Bolin. That was the gun that
15 Mr. Earls had with him on the day of this shooting, and that
16 is the gun that he used to shoot and kill Mr. Baltazar.

17 As I stated, we have the video evidence, Your
18 Honor, that shows the crime being committed.

19 We have Mr. Earls confession to police that they
20 were going out to attempt to rob someone and confessing to
21 the shooting.

22 We have Ms. Morgan, who was going to testify in
23 this case about her involvement and identifying the
24 defendant as her co-defendant.

25 I believe -- and the statement, the amount of

1 time, Your Honor, that would have been presented at the
2 Jackson v. Denno Hearing. The interrogation time was a
3 total of 18 minutes. I think from the start where they get
4 the information at the beginning of the form was a total of
5 22 minutes, but the actual interview time was only
6 18 minutes, and those would essentially be the facts that
7 would be presented by the State at trial.

8 THE COURT: Sir, did you hear what the solicitor
9 told me?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Is that accurate?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: The court accepts your plea as being
14 freely, intelligently and voluntarily given.

15 I understand we were just taking his plea today?

16 MR. WHELCHEL: Yes, sir.

17 THE COURT: Is that correct?

18 MS. LESKANIC: Yes, Your Honor. We would need to
19 notify the victims to see if they would want to be present
20 for sentencing.

21 THE COURT: All right. Okay. All right. The
22 plea has been accepted by the court.

23 MR. WHELCHEL: Are they going to be brought in
24 tomorrow, or just --

25 MS. LESKANIC: We are going to contact them.

1 May we approach for just a moment?

2 THE COURT: Sure.

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

5 THE COURT: Okay. Do we have one other thing.

6 MS. LESKANIC: Your Honor, one other thing I did
7 not hand up to the court. State's Exhibit 4 contains three
8 photographs, still photographs, that came from the video,
9 which is State's Exhibit 1, showing Lyric and Mark walking.
10 Next it shows the robbery and shooting taking place, and
11 then the two of them running off and Ms. Morgan would
12 identify those in court.

13 THE COURT: Okay.

14 Sir, I have accepted the pleas.

15 The State has complied with the Victims' Rights
16 Act and we will be back for sentencing.

17 All right. Thank you.

18 MR. WHELCHER: Thank you, Your Honor.

19 (Whereupon, proceedings were adjourned to February
20 5, 2019)

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

3

4 THE STATE OF SOUTH)
CAROLINA)
5) TRANSCRIPT OF RECORD
-vs-) 2015-GS-11-00624
6) 2015-GS-11-00624-A
MARK ANTONIO EARLS,) 2015-GS-11-00625
7 JR.,) 2015-GS-11-00626
8)
DEFENDANT.) FEBRUARY 5, 2019
9) GAFFNEY, SOUTH CAROLINA

10

(SENTENCING)

11

12

B E F O R E:

13

THE HONORABLE R. KEITH KELLY, JUDGE. ; And a Jury.

14

15

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

16

17 KIMBERLY LESKANIC, DEPUTY ASSISTANT SOLICITOR
ATTORNEY FOR THE STATE

18

19 JENNIFER JORDAN, ASSISTANT SOLICITOR
ATTORNEY FOR THE STATE

20

RICHARD WHELCHER, PUBLIC DEFENDER

21

22 MATTHEW CRAFT, ASSISTANT PUBLIC DEFENDER
ATTORNEY FOR THE DEFENDANT

23

24

25

MICHAEL R. WATTS
CIRCUIT COURT REPORTER

INDEX

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

WITNESSES

PAGE

(NO WITNESSES CALLED)

EXHIBITS

1				
2	NO.	DESCRIPTION	ID.	EV.
3	CT-1	VICTIM'S FAMILY LETTER	55	
4				
5				
6				
7				
8				
9				
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1 (PROCEEDINGS, FEBRUARY 5, 2019)

2 THE COURT: Solicitor?

3 MS. LESKANIC: May it please the court, Your
4 Honor, we were before Your Honor yesterday for the entering
5 of the guilty plea on Mark Antonio Earls.

6 You were kind enough to give us a delay to make
7 contact with the victim's family prior to sentencing. We
8 have been able to make contact with the family. They
9 understand what the negotiated sentence is in this case.
10 They did not wish to be present for the sentencing.
11 However, they did give us a letter and I would like to hand
12 that up and make it part of the court record. We have shown
13 that to the defendant.

14 (Letter From Victim's Family marked as Court
15 Exhibit No. 1 for identification)

16 THE COURT: We will mark that as a Court's
17 Exhibit.

18 MS. LESKANIC: Thank you, Your Honor.

19 THE COURT: Anything further from the State?

20 MS. LESKANIC: Nothing further from the State,
21 Your Honor.

22 THE COURT: Mr. Whelchel.

23 MR. WHELCHER: Your Honor, I have Mr. Earls being
24 in custody for 1,369 days.

25 THE COURT: Say that one more time.

1 MR. WHELCHEL: I have 1,369 days.

2 There is some time he was out on bond and I did
3 not reduce from that. I had forgotten about it because it's
4 been so long since he was originally incarcerated, Your
5 Honor.

6 THE COURT: Do we know how much time he has with
7 credit?

8 MS. LESKANIC: I have not calculated it, Your
9 Honor. You know, he was on home detention for a period of
10 time, but he violated each time he was out there, so the
11 State's position would be that he not receive credit. I
12 would just ask that it be calculated by the Department of
13 Corrections, if that box can be checked.

14 MR. WHELCHEL: He understands. I have informed
15 him he would credit for all the time served and whatever
16 time Your Honor allows him to have, if that was on home
17 detention, Your Honor.

18 Your Honor, I have spoken to Mr. Earls mother.
19 She understands that she can address the court. She has
20 chosen not to. She also understands that, as does Mr.
21 Earls, that it's a negotiated plea, so the sentence was
22 essentially already decided when Your Honor accepted the
23 plea.

24 Mr. Earls, do you have anything that you would
25 like to say to the court?

1 THE DEFENDANT: Yeah, I just want it to be put on
2 the record, the only way that I accepted the plea was
3 because of ineffective assistance of counsel that I received
4 and I didn't feel like I was going to have a fair trial, so
5 I accepted the plea for the 30 years.

6 And to my family, I'm sorry, and I'm sorry for
7 y'all to have been putting the burden and time on y'all to
8 try to get this together.

9 THE COURT: Sir, this court accepted your plea
10 after you said that you were satisfied with their services.
11 I have asked you some questions, but, nonetheless, that's in
12 the record and you can take that up in another courtroom.

13 It is a negotiated sentence, so I'm just imposing
14 what you negotiated with the State.

15 2015-0624, 30 years in the Department of
16 Corrections.

17 Concurrent; credit for time.

18 2015-0626, 20 years at the Department of
19 Corrections.

20 Concurrent; credit for time.

21 And 2015-0625, 20 years.

22 Concurrent; credit for time.

23 Best of luck to you, sir.

24 MS. LESKANIC: I believe there should also be
25 Count II, Your Honor, the possession of a weapon.

1 THE COURT: I'm sorry, I missed it on that sheet.

2 Yes, and it is five years, concurrent.

3 MS. LESKANIC: Thank you, Your Honor.

4 THE COURT: Thanks you.

5 MR. WHELCHEL: Thank you, Your Honor.

6 THE COURT: Yes, sir.

7 (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 5th day of February, 2019.

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

September 26, 2019

Michael R. Watts

Michael R. Watts
Circuit Court Reporter

STATE OF SOUTH CAROLINA

County of CherokeeMath Eads, Jr. 379091

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

● 19CP-10570

APPLICATION FOR

POST-CONVICTION RELIEF

BRANDY W. MCBEE

2019 AUG 15 AM 10:48

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, SCINSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Cherokee County Detention Center
2. Name and location of Court which imposed sentence Cherokee County
125 E. Floyd Baker Blvd. Gaffney, SC 29342
3. Name(s) of co-defendant(s) (if any) Lyric Morgan
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2015-GIS-11-006024 First degree murder
 - (b) (2) Attempted Arm Robberies

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

- (a) Feb. 05. 2019 - mandatory (30) thirty years
 (b) Feb 03 2019 - (20) twenty years
 (c) Feb. 05. 2019 - (5) five years

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty ☒
 (b) after a plea of not guilty ☐
 (c) after a plea of nolo contendere ☐

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

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) Counsel failed to file notice of intent.

(b) _____

(c) _____

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

(a) 6th Amendment, 14 Amendment

(b) _____

(c) _____

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

(a) See attached

(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) Counsel failed to file notice of intent

(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? N/A

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

N/A

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. Richard Welchel
118 Willis Plaza Rd. Gaffney, SC 29340

ii. Matthew Craft
118 Willis Plaza Rd. Gaffney, SC 29340

iii. _____

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

i. Richard Welchel
Arraignment and plea

ii. Matthew Craft
Arraignment and Plea

iii. _____

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

Gulky Plea vacated

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

NO

STATE OF SOUTH CAROLINA)

County of Charleston)

VERIFICATION

I, Mr. Mark Earls Jr, 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.

Mark Earls Jr

SWORN to and subscribed before me this 7
day of Aug, 2009

Debra Eastman
Notary Public

(L.S.)

My Commission Expires: 3/3/2011

1) Applicant ⁶⁶pleads guilty after counsel failed to adequate review discovery evidence, Applicant was deprived due process as a result of counsel's in-effectiveness.

2.) Attorney advised he was going to do a notice of appeal; Prejudice.

3.) Attorney failed to investigate juvenile statute.

4.) Prejudice by attorney advising applicant to "only plead guilty."

5.) Attorney failed to file any pre-trial motions.

6.) Attorney failed to make or exploit any defense in applicant case.

7.) Attorney verbally told applicant he was "not" going to fight for him in trial; Resulted in applicant to plead guilty

8.) Attorney neglected the necessary investigations & preparations of applicant case.

9.) Attorney failed to function as the counsel that the constitution's 6th Amendment guarantees.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHEROKEE) FOR THE SEVENTH JUDICIAL CIRCUIT
)

Mark A. Earls, Jr.,) Case No.: 2019-CP-11-00570
S.C.D.C. No. 379091,)
)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

**RETURN AND MOTION FOR A MORE
DEFINITE STATEMENT
(Counsel Appointed)**

BRANDY W. MCBEE

2019 OCT 24 AM 11:36

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

In response to the application for post-conviction relief filed by Mark A. Earls, Jr.

(Applicant) on August 15, 2019, Respondent would show this Court:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Cherokee County Clerk of Court. Applicant was indicted at the July 2015 term of the Cherokee County Grand Jury for murder and possession of a firearm during the commission of a violent crime (2015-GS-11-00624, Cts. I & II), and two counts of attempted armed robbery (2015-GS-11-00625; -00626). Richard Welchel and Matthew Craft, Esqs., represented Applicant. Kimberly Leskanic and Jennifer A. Jordan, Esqs., of the Seventh Circuit Solicitor's Office, prosecuted the case.

On February 4, 2019, after selecting a jury, Applicant pled guilty as indicted. The Honorable R. Keith Kelly sentenced Applicant to imprisonment for concurrent terms of 30 years for murder, 5 years for the weapon, and 20 years for each count of attempted armed robbery. Applicant did not appeal his plea or sentence.

II. STATEMENT OF THE FACTS

The underlying facts of the crimes for which Applicant is incarcerated were articulated by the State during the plea proceeding as follows:

This incident occurred on May 6th of 2015, on Cemetery Alley, which is located here in Cherokee County. Police were called out to a shooting with injuries at that location a little after six p.m. on Wednesday evening.

When they arrived at that location they found Mr. Baltazar having suffered two gunshot wounds, slumped over in his pickup truck, and he has deceased at the scene.

Officers began their investigation into this case. They spoke with witnesses and they were able to retrieve video from Gaffney Self Storage, which had video cameras set up at Cemetery Alley and in the surrounding area. I have that marked as State's Exhibit 1. I would like to make that video part of the evidence in this plea, Your Honor.

From that video officers were able to see tow individuals, a female, what appeared to be a male, walking in that alley. It shows the actual attempted robbery of Mr. Baltazar and a Sandra Tessnear, who was a prostitute that had gotten into the vehicle with Mr. Baltazar prior to the shooting, and it showed those two individuals running away after what appeared to be a shooting from the video.

Officers then posted still photographs from the video on the Gaffney website page, as well as the Facebook page, and they began to receive tips that it was a Lyric Morgan and Mark Earls who had committed this attempted armed robbery and murder of Ms. Tessnear, as far as the robbery, and Mr. Baltazar of the robbery and the murder.

Based upon that information officers found out where they lived, which is hear at Limestone Courts in Gaffney. They went out on May the 7th, which was the day after the shooting, to speak with Lyric and to speak with this defendant. They brought both of them to the police station. Lyric gave a confession that she had been with this defendant Mark. They had been in a relationship for a couple of months.

Her testimony – she was going to be a witness for the State, was that during the time they were pretty much inseparable. They had stolen the gun that was used in this case three days prior from Mark's mother's boyfriend, a Mickel

Bolin. She told me that they had kicked the door in. They went in and they stole the gun, and that on the day of this Mr. Earls retrieved the gun from a closet in his house. They left the house with the intention of committing a robbery. When they saw Mr. Baltazar and Ms. Tessnear, they picked them as their target, and then they talked about it for awhile.

You see them approach the truck. Mr. Earls approaches on the driver's side of the vehicle. Ms. Morgan approaches on the passenger's side of the vehicle. Her testimony, as well as Ms. Tessnear's testimony, that's Ms. Morgan's testimony and Ms. Tessnear's testimony would be that Mark then stated "give me everything that you have got." He pointed the loaded .22 pistol at Mr. Baltazar. According to Lyric Morgan, she remembers seeing Mr. Baltazar sort of reach down. Maybe they thought he had a gun, but at that point Mark made a decision and he pulled the trigger and then he pulled the trigger again.

Mr. Baltazar suffered two gunshot wounds. One of those lacerated his lungs and his heart, causing internal bleeding and causing him to die at the scene.

When both of them were brought to the police department, Mark was brought there, his mother was allowed to come with him, as well as his mother's boyfriend Mr. Bolin. It's my understanding that his mother was shown the video first and she was able to identify her son on the video as the one who participated in this crime.

Mark was then shown the video with law enforcement. I have those officers that were going to testify in the Jackson v. Denno today. Prior to talking with him they filled out a pre-interrogation waiver form, which is marked as State's Exhibit 2, where both he and his mother initialed the statement of rights. They both signed the waiver of rights and then a statement was typed up by Sergeant Sizemore with Gaffney City Police Department at the request of Mr. Earls. He stated that he did not write very well and he asked the officer to type the statement for him. Sergeant Sizemore's testimony would be that he typed that up in the presence of Mark and his mother, turned his computer screen around and typed what he wrote. And in that statement he said "I saw a prostitute jump in the truck with a Mexican. I tried to rob the Mexican and the prostitute. The Mexican put his hands up like he was trying to get the gun. I pulled my hand back and the gun went off. His truck was standing there and I thought that he was going to get out. I shot again. I ran. Lyric went with me. She did not have any weapon."

It continues, Your Honor, but that's State's Exhibit 2. It's the pre-interrogation waiver form that is signed by Mr. Earls and by his mother, State's

Exhibit 2, and the statement itself signed by Mr. Earls and his mother is State's Exhibit 3.

And in preparing for this case, Your Honor, and in preparing for the Jackson v. Denno hearing we discovered that Mr. Earls, while he was a juvenile, had also been arrested for some breaking into motor vehicle cases, larceny cases. And in those cases he had filled out a pre-interrogation waiver form and given a statement to police. That involved Investigator Donnie Sands, who was also involved in this case. So we would have presented evidence that he was aware of the criminal justice procedure, aware of his rights, how to waive those rights, and the importance and consequences that go along with giving a statement, and both of those instances his mother was present, even though that's not required under the law.

After Mark gave his statement to police, they asked him about the gun. He told them that he would take them to the location of the gun, which is on Willow Street in Cherokee County. He stated that he had taken the gun and put it in the woods following the shooting. That's State Exhibit 5 are the two photographs; the first one showing where he had pushed the gun down into the mud, and the second photograph attached to that is where it had been removed from the dirt, Your Honor.

Ms. Morgan, who was going to testify for the State, identified that gun, stated that it was the gun that the two of them stole from Mr. Bolin. That was the gun that Mr. Earls had with him on the day of this shooting, and that is the gun that he used to shoot and kill Mr. Baltazar.

(Tr. 44-49). The solicitor then made a final summary of the key evidence against Applicant: the video recording of the crime, the confession, and the cooperating co-defendant. (Tr. 49-50). Upon inquiry by the Court, Applicant confirmed the above articulated facts. (Tr. 50, ll. 8-12).

Prior to the presentation of the facts, the plea court thoroughly questioned Applicant regarding his decision to plea. When the plea court asked if anybody had pressured or convinced Applicant to plead guilty, the proceedings were briefly suspended; when proceedings resumed, attorney Whelchel told Applicant: "you just tell him you talked to your mama, but she didn't make you plead. That's what he's asking you." (Tr. 41-42). Upon further inquiry and

explanation by the plea court, Applicant affirmed it was his own decision to plead guilty. (Tr. 42, ll. 5-15).

The plea court then noted Applicant was represented by two attorneys, Welchel and Craft, and Applicant confirmed that they had answered all of his questions. (Tr. 42, ll. 16-22). When the plea court asked if Applicant was satisfied with his attorneys, Applicant replied that he was satisfied with Craft, but not Welchel. (Tr. 42-43). Applicant explained that "Mr. Welchel never prepared a defense in my case, period, since he's been on my case since August of 2018." (Tr. 43, ll. 9-13). When the plea court asked if Craft had prepared a defense, Applicant noted that Craft had only joined his defense team the preceding Friday, and had not gone over the materials with him. (Tr. 43, ll. 14-21). The plea court afforded Applicant additional time to speak with his attorneys, and after a brief break, Applicant indicated he had no further complaint. (Tr. 43-44). Applicant affirmed that "he" had talked with Applicant about the case, and that "he" showed him the discovery materials. (Tr. 44, ll. 13-18). Applicant asserted he still wished to proceed, and when pressed by the plea court, affirmed he was sure. (Tr. 44, ll. 19-22).

Sentencing was delayed one day in order for the State to comply with the Victim's Rights Act. (Tr. 50-51). At sentencing, Applicant informed the plea court that he only accepted the plea offer "because of ineffective assistance of counsel that I received and I didn't feel like I was going to have a fair trial, so I accepted the plea for the 30 years." (Tr. 57, ll. 1-5). The plea court replied that it had accepted the plea only "after you said that you were satisfied with their services" and noted Applicant "can take that up in another courtroom." (Tr. 57, ll. 9-12).

III. CURRENT APPLICATION

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

1. Ineffective assistance of counsel, in that:

- a. "Applicant was plead guilty after counsel failed to adequate review discovery evidence, Applicant was deprived due process as a result of Counsel ineffectiveness."
- b. "Attorney advised he was gone do a notice of appeal; Prejudice."
- c. "Attorney failed to Investigate Juvenile statute."
- d. "Prejudice by attorney advising applicant to 'only plead guilty.'"
- e. "Attorney failed to file any pre-trial motions."
- f. "Attorney failed to make or exploit any defense in applicant case."
- g. "Attorney verbally told applicant he was 'not' going to fight for him in trial; Resulted in Applicant to plead guilty"
- h. "Attorney neglected the necessary investigations & preparations of applicant case."
- i. "Attorney failed to function as the counsel that the constitutions 6th Amendment guarantee's."

Applicant requests relief as follows:

- "Guilty Plea.vacated"

Attached to and incorporated herein are the records of the Cherokee County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea and sentencing transcripts, and the current application for relief.

Respondent reserves the right to amend this Return upon receipt of relevant information.

IV. RESPONSE TO ALLEGATION OF INEFFECTIVE ASSISTANCE OF COUNSEL

Ineffective Assistance of Plea Counsel, Generally

Applicant's allegations of ineffective assistance of counsel are without merit. 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). 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 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. "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/she 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)).

Failure to Review Discovery

Applicant's allegation that his counsels were ineffective in failing to adequately review the discovery is without merit. 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)).

First, Applicant does not offer what, if anything, his attorneys could have discovered had they only spent more time reviewing the discovery disclosed by the State. Second, the record reflects that Applicant previously affirmed that his attorneys discussed the evidence in his case with him and displayed the discovery materials to him. Third, Applicant was aware of his frustrations with attorney Whelchel at the time of the plea proceeding and he pled guilty anyway. Fourth, upon information and belief, Respondent expects counsels can *further* refute this allegation. For all of these reasons, Respondent denies Applicant is entitled to relief by way of this allegation.

Failure to File Notice of Appeal

Applicant alleges that he was denied the right to a direct appeal of his plea and sentence. Though counsel is required to make certain that a defendant is made fully aware of his or her right to appeal after a *trial*, a different standard applies to a guilty plea:

Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea.

Turner v. State, 380 S.C. 223, 224-25, 670 S.E.2d 373, 374 (2008) (citations omitted); see also Roe v. Flores-Ortega, 528 U.S. 470, 480 (2000) (imposing the duty to consult when there is reason to think either that a rational defendant would want to appeal or that the particular defendant reasonably demonstrated interest in doing so); contra Frazer v. South Carolina, 430

F.3d 696 (4th Cir. 2005) (reading Flores-Ortega to mean counsel generally has a duty to consult with his client regarding whether to pursue an appeal). Therefore, in a collateral action attacking a guilty plea, the “bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief.” Jones v. State, 382 S.C. 589, 598, 677 S.E.2d 20, 23-24 (2009) (quoting Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995)); contra Frazer, 430 F.3d at 705.

Where an Applicant reasonably demonstrates an interest in appealing, or where there is a reason to think a rational defendant would want to appeal, and where Counsel fails to either initiate that appeal or comply with Anders procedure, “White permits consideration of the full trial record on [an] issue in conjunction with appellate review of the PCR proceeding under an exception to the prohibition against appellate courts considering appeals in the absence of notice of direct appeal given and timely served.” Smith v. State, 309 S.C. 413, 415, 424 S.E.2d 480, 481 (1992) (citing Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986)).

Respondent lacks sufficient information to admit or deny this allegation at this time. Respondent requests an evidentiary hearing on this ground for relief. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

Failure to Research “Juvenile Statute”

Applicant’s allegation that counsels were ineffective in failing to research the “juvenile statute,” which Respondent interprets to mean the jurisdiction of the circuit court to hear his case, is without merit. Under the statute in effect at the time of Applicant’s offense,¹ trial, and plea, the law defined a “child” or “juvenile” as “a person less than seventeen years of age.” S.C.

¹ Effective July 1, 2019, roughly five months after the start of Applicant’s trial and plea, the Juvenile Justice Code was revised to define a “child” or “juvenile” as “a person less than *eighteen* years of age. The code was further revised to adjust other age-dependent portions of the code to reflect the expanded scope of juvenility.

Code Ann. § 63-19-20(1) (2010). However, excluded from the definition of a “child” or “juvenile” is any “person sixteen years of age or older who is charged with a Class A, B, C, or D felony as defined in Section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more.” Id.

Murder is exempt from the statutory scheme for the categorization of felonies, but a person convicted of murder must be imprisoned for a minimum term of thirty years, and may be imprisoned for the remainder of their natural life. See S.C. Code Ann. § 16-1-10(D) (specifically excluding Murder from the categorization scheme); S.C. Code Ann. § 16-3-20(A) (providing punishment of thirty to life); Miller v. Alabama, 567 U.S. 460 (2012) (providing life incarceration for those under the age of eighteen appropriate only after an individualized hearing which permits the sentence to consider the convicted youth’s age); Roper v. Simmons, 543 U.S. 551 (2005) (death penalty unconstitutional for individuals convicted of crimes committed before they attained eighteen years of age). Murder is a violent crime. S.C. Code Ann. § 16-1-60.

Attempted armed robbery is a Class C felony, punishable by incarceration for up to twenty years. See S.C. Code Ann. § 16-1-90(C) (listing attempted armed robbery as Class C); S.C. Code Ann. § 16-2-20(A)(3) (not more than twenty years). Attempted armed robbery is a violent crime. S.C. Code Ann. § 16-1-60.

Possession of a weapon during the commission of a violent crime is not in and of itself a discrete criminal offense, but rather constitutes a sentence enhancement which must be clearly indicated on the face of the indictment as a separate count, and then proven beyond a reasonable doubt in addition to the underlying violent offense. S.C. Code Ann. § 16-23-490.

Given the murder and attempted armed robberies were committed on May 6, 2015, Applicant was aged sixteen at the time he murdered and attempted to rob the victims. As such,

he was *not* a juvenile under South Carolina law at the time of those crimes. The sentence enhancement for the possession of a weapon during the commission of those crimes would also not trigger any application of the juvenile statutes because it is not a discrete criminal offense, and cannot be considered independently from the underlying violent offenses. For all of these reasons, Applicant was not a juvenile under the law in effect at the time of his trial and guilty plea, and he thus cannot show ineffectiveness of counsel regardless of how his attorneys considered the subject. Accordingly, Respondent denies Applicant is entitled to relief by way of this allegation.

Misadvice to Plead Guilty

Applicant's claim that his attorneys were ineffective in advising him to plead guilty is without merit. A review of the facts articulated by the State and the evidence it was prepared to introduce against Applicant show that any attorney would have been justified, if not obliged, to advise their clients that pleading guilty was a wise course of action. Respondent denies Applicant is entitled to relief by way of this allegation.

Failure to File Pre-Trial Motions

Applicant's claim that his attorneys were ineffective in failing to file pre-trial motions is without merit. First, by pleading guilty Applicant waived his right to raise any defenses or challenge any non-jurisdictional defects. See Whetsell v. State, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981) ("The general rule is that guilty pleas, freely and voluntarily entered, act as a waiver of all non-jurisdictional defects and defenses, including the claims of a violation of a constitutional right prior to the plea."). Second, the opportunity to assert any desired defenses remained ahead of Applicant at the time he changed tracks and opted to plead guilty. Raising defenses unnecessarily prior to trial may not advance a defendant's interests, but rather may do

little more than to give the State additional time and opportunity to prepare an answer to his defenses, or otherwise risk the availability of plea offers favorable to the likely outcome of a trial. Third, Applicant was aware of his frustrations with attorney Whelchel at the time of the plea proceeding and he pled guilty anyway. Accordingly, Respondent denies Applicant is entitled to relief by way of this allegation.

Failure to Prepare a Defense

Applicant's claim that his attorneys were ineffective in failing to prepare a defense is without merit. Similar to allegations of failure to investigate or failure to review, an applicant alleging ineffectiveness from counsel's failure to adequately prepare a defense must show what, if any, defenses could have been prepared. Here, there are no such meritorious defenses. Applicant presents no facts or argument to show what, if anything, his attorneys could have further prepared in his defense, but only broadly asserts that they failed to prepare a defense. Furthermore, as has been repeatedly stated above, Applicant was aware of his frustrations with attorney Whelchel at the time of the plea proceeding and he pled guilty anyway. Accordingly, Respondent denies Applicant is entitled to relief by way of this allegation.

Constructive Abandonment

Applicant's claim that one of his attorneys told him that the attorney would not fight for him at trial is without merit. "[T]he right to the effective assistance of counsel is recognized not for its own sake, but because of the effect it has on the ability of the accused to receive a fair trial." United States v. Cronin, 466 U.S. 648, 658 (1984). Generally speaking, attorneys are presumed competent to provide "the guiding hand that the defendant needs," such that "the burden rests on the accused to demonstrate" a violation of the Sixth Amendment. Id. However, there are "circumstances that are so likely to prejudice the accused that the cost of litigating their

effect in a particular case is unjustified.” Id. Prejudice may be presumed *per se* in three circumstances: (1) when a defendant is completely denied counsel at a critical stage of his or her trial; (2) when there has been a constructive denial of counsel from an attorney’s complete failure to subject the prosecution’s case to meaningful adversarial testing; and (3) when circumstances of trial are such that the likelihood that any lawyer, even a fully competent one, could provide effective assistance is so small that the presumption of prejudice is appropriate without inquiry into the actual conduct of the trial. Nance v. Ozmint, 367 S.C. 547, 551-52, 626 S.E.2d 878, 880 (2006); Cronic, 466 U.S. at 659-60. “A finding of *per se* prejudice under any of these three prongs is ‘an extremely high showing for a criminal defendant to make.’” Nance, 367 S.C. at 552, 626 S.E.2d at 880 (quoting Brown v. French, 147 F.3d 307, 313 (4th Cir. 1998)). Presumption of prejudice as a standard is only used for those cases where counsel fails to “function in any meaningful sense as the Government’s adversary.” Id., 367 S.C. at 552, 626 S.E.2d at 881 (quoting Florida v. Nixon, 543 U.S. 175, 190 (2004)).

A broad reading of Applicant’s claims suggests he intends to assert the second circumstance articulated in Nance v. Ozmint. Upon information and belief the claim is factually untrue and will be refuted by testimony. The record reflects that his attorneys obtained discovery, reviewed the facts of Applicant’s case, discussed the strength of the State’s case against him, and wisely advised him to plead guilty in light of the very strong evidence of his guilt while nonetheless preparing for a long-shot trial. Furthermore, even if Applicant’s claim was true, the fact was known to him at the time of his guilty plea and he failed to raise it to the plea court, despite an evident ability and willingness to properly express his frustrations to the plea court. Accordingly, Respondent denies Applicant is entitled to relief by way of this allegation.

Failure to Investigate

Applicant's claim his attorneys were ineffective in failing to investigate his case is without merit. As repeatedly noted above, an applicant asserting such a claim must demonstrate what, if anything, his attorneys would have found had they spent more time investigating his case; mere speculation is inadequate to sustain a claim for relief. Applicant offers nothing his attorneys could have found. Accordingly, Respondent denies Applicant is entitled to relief by way of this allegation.

Conclusion and Action Requested

Applicant can satisfy neither requirement of the Hill test. However, the allegation 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.").

VI. MOTION FOR MORE DEFINITE STATEMENT

Respondent also hereby moves for a more definite statement. The Uniform Post-Conviction Procedure Act requires the Applicant to "specifically set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50. It is incumbent upon Applicant, *through counsel*, to amend his application where necessary to set forth *specific facts* upon which his allegations are based. See Rule 71.1(d), SCRPC ("Counsel shall insure that all available grounds for relief are included in the application and shall amend the application if necessary."); see also Coardes v. State, 262 S.C. 493, 497, 206 S.E.2d 264, 265 (1974) ("[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 adequate and effective assistance of counsel is insufficient.”). Where an applicant fails to adequately set forth the grounds upon which he seeks relief, the court may at any time prior to entry of judgment “issue orders for amendment of the application or any pleading or motion[.]” S.C. Code Ann. § 17-27-70(a); see also Rule 12(e), SCRCP (permitting a circuit court judge to require a more definite statement when vague or ambiguous pleadings are filed).

Applicant has failed to set forth sufficient facts to "support each ground" or to explain with sufficient specificity the facts upon which his claims are based. Namely, what defenses or facts could have been discovered had his attorneys spent more time investigating and preparing his case?

Therefore, Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which his/ claims are based.

VII. ASSERTION OF RIGHTS TO NOTICE OF AMENDMENTS, EXPERTS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments *will be opposed by the State at an evidentiary hearing* pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP; Mangal v. State, 421 S.C. 85, 805 S.E.2d 568 (2017). All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing.

Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

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 granted leave from the Court upon a showing of good cause. 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 that are withheld until the last minute resulting in undue prejudice to Respondent.

VIII. GENERAL DENIAL

Respondent denies each allegation not expressly admitted, qualified, or explained.

[Conclusion and signature on following page]

IX. CONCLUSION

WHEREFORE, Respondent respectfully requests that this Court grant its motion for a more definite statement as set forth in Section VI, above, and thereafter convene an evidentiary hearing on the allegations of ineffective assistance of counsels.

Respectfully submitted,

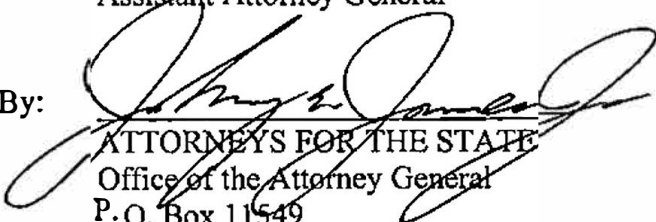
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Attorney General

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Assistant Attorney General

By:


ATTORNEYS FOR THE STATE
Office of the Attorney General
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22 Oct., 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHEROKEE	)	SEVENTH JUDICIAL CIRCUIT
	)	
Mark A. Earls, Jr.,	)	Case No. 2019-CP-11-00570
	)	
Applicant,	)	
	)	
v.	)	AMENDED APPLICATION FOR
	)	POST-CONVICTION RELIEF
	)	
State of South Carolina,	)	
	)	
Defendant.	)	

As required by Rule 71.1(b), SCRCF, this application is in conformity with Form 5 of the SCRCF Appendix of Forms.

1. **Place of Detention:** Applicant is detained in the South Carolina Department of Corrections at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010.
2. **Name and location of Court which imposed sentence:** Cherokee County Court of General Sessions, 125 E. Floyd Baker Blvd., Gaffney, SC, 29342.
3. **Name(s) of co-defendant(s) (if any):** Lyric Morgan
4. **The indictment number(s) upon which and the offenses for which sentence was imposed:**
 - (a) 2015-GS-11-00624 (Murder).
 - (b) 2015-GS-11-00624A (Possession of Firearm During Commission of Violent Crime).
 - (c) 2015-GS-11-00625 (Attempted Armed Robbery).
 - (d) 2015-GS-11-00626 (Attempted Armed Robbery).
5. **The date upon which the sentence was imposed and the terms of the sentence:**
 - (a) February 4, 2019, concurrent sentences listed below.
 - (b) Thirty (30) years imprisonment for the Murder conviction (2015-GS-11-00624).
 - (c) Twenty (20) years imprisonment for both Attempted Armed Robbery convictions

(2015-GS-11-00625 and 2015-GS-00626).

- (d) Five (5) years for the Possession of a Firearm During Commission of Violent Crime (2015-GS-11-00624A).

6. A finding of guilty was made after:

- (a) Guilty plea before the Honorable R. Keith Kelly on February 4, 2019.

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

- (a) No.

8. If you answered “yes” to number (7), list: Not applicable.

9. The name of each Court to which you appealed: Not applicable.

10. The result in each Court to which you appealed: Not applicable.

- (a) **The date of each result:**

- (b) **If known, citations of any written opinions or ordered entered pursuant to such result:**

11. If you answered “no” to number (7), state your reasons for not appealing:

- (a) Plea Counsel did not file a Notice of Appeal, and Applicant did not understand the procedure based on his age.

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

- (a) Plea Counsel denied Applicant’s right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 3 and 14 of the South Carolina Constitution. See S.C. Code § 17-27-20(A)(1), (4), and (6). Plea Counsel’s unreasonably deficient performance prejudiced Applicant because there is a reasonable probability that, but for Counsel’s errors, Applicant would not have pled guilty and went to trial. See *Hill v. Lockhart*, 474 U.S. 52 (1985) (applying the *Strickland v. Washington*, 466 U.S. 668 (1984) standard to guilty plea challenges of ineffective assistance of counsel) (quoting

Strickland, 466 U.S. at 692).

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

- (a) Plea Counsel's acts or omissions of ineffective assistance of counsel include but are not limited to the following allegations:
- (b) All allegations raised by Applicant in the prior pleadings filed in this action are incorporated by reference as if fully set forth verbatim below.
- (c) Applicant did not knowingly, intelligently, or voluntarily plead guilty. See *Boykin v. Alabama*, 395 U.S. 238 (1969); see generally *Brady v. United States*, 397 U.S. 742, 758 (1970) (noting "[g]uilty pleas are no more foolproof than full trials to the court or jury. Accordingly, we take great precautions against unsound results."); *Berry v. State*, 381 S.C. 630, 635, 675 S.E.2d 425, 427 (2009) (finding the difference "between a valid guilty plea and an invalid guilty plea lies in the knowing and voluntary nature of the plea."); *Holden v. State*, 393 S.C. 565, 572-74, 713 S.E.2d 611, 612-15 (2011) (noting "the voluntariness of a guilty plea is not determined by an examination of a specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea, and also from the record of the PCR hearing.").
- (d) Plea Counsel's acts and omissions caused Applicant to feel forced and coerced into pleading guilty. Specifically, Plea Counsel allowed Applicant's mother, Lori Richardson, to coerce him into pleading guilty during a break in the trial by telling him that he would spend the rest of his life in prison (if he did not accept the plea offer). Based on Applicant's age, Applicant felt that his mother's influence forced him to plead guilty by telling him he had no other choice but to plead guilty.

Additionally, Plea Counsel told Applicant that he was not going to fight for him if Applicant proceeded with the trial. Based on this statement, Applicant believed that Counsel would not have subjected the prosecution's case to meaningful adversarial testing because Counsel had failed to adequately prepare for trial and did not have a trial strategy. See generally *United States v. Cronin*, 466 U.S. 648 (1984).

- (e) Applicant detrimentally relied on Plea Counsel's erroneous advice to plead guilty without reviewing his constitutional rights, potential defenses, the entire discovery, or correct sentencing consequences with Applicant. Specifically, Counsel failed to review the video recording, photographs, and ballistics report with him in preparation for trial. See generally *Alexander v. State*, 303 S.C. 539, 542-43, 402 S.E.2d 484, 485-86 (1991) (finding constitutionally defective performance is generally found when defense counsel offers erroneous advice concerning an issue that is central to the defendant's decision to plead guilty, and the petitioner's own testimony that he would have proceeded to trial but for counsel's erroneous advice as to sentencing was "the only evidence in the record on this point" and was sufficient to satisfy the prejudice prong of the *Strickland* test); *Jackson v. State*, 342 S.C. 95, 97—98, 535 S.E.2d 926, 927 (2000) (citing *Alexander* with approval and finding the petitioner satisfied the prejudice prong by simply providing testimony that he would not have pled guilty but for trial counsel's erroneous advice); *Smith v. State*, 369 S.C. 135, 138, 631 S.E.2d 260, 261 (2006) ("The defendant's undisputed testimony that he would not have pled guilty to the charges but for trial counsel's advice is sufficient to prove that defendant would not have pled guilty."); *Ray v. State*, 303 S.C. 374, 376, 401 S.E.2d 151, 153 (1991); *Hinson v. State*, 297 S.C. 456, 457, 377 S.E.2d 338, 339

(1989).

- (f) Plea Counsel's failure to adequately advise Applicant regarding the service of a sentence for a murder conviction. Specifically, Counsel failed to inform Applicant that the mandatory minimum sentence on a murder conviction must be served day-for-day (no parole offense), and instead, erroneously advised Applicant that he would only have to serve eighty-five percent (85%) of his sentence.
- (g) Plea Counsel failed to conduct a reasonable investigation and failed to present all admissible or mitigating evidence in preparation of Applicant's defense (failure to use mitigation evidence to aid negotiations with the Prosecutor). Specifically, Counsel failed to use the mitigation expert's findings to negotiate a better plea offer from the Prosecutor based on Applicant's age. See *Wiggins v. Smith*, 539 U.S. 510 (2003); *Lounds v. State*, 380 S.C. 454, 670 S.E.2d 646 (2008) (holding "while the scope of a reasonable investigation depends on a number of issues, *at a minimum*, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case.") (quotation citation omitted); *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008) (finding "[a] criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State."); *Von Dohlen v. State*, 360 S.C. 598, 607, 602 S.E.2d 738, 743 (2004).
- (h) Plea Counsel failed to advise Applicant about his potential defenses and legal motions. Specifically, Counsel failed to advise Applicant about filing a motion to suppress his statements by arguing that the statements were made involuntarily.

- (i) Plea Counsel failed to discuss the option of moving to withdraw the plea based on Applicant's strong feelings before and after the hearing that he did not want to plead guilty.
14. 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 Federal Habeas Corpus or Post-Conviction Relief? No. Applicant has not previously filed an application for Post-Conviction Relief or Petition for Writ of Habeas Corpus in either state or federal court.
- (c) Any petition in the Supreme Court of the United States for certiorari other than petitions, if any, already specified in number (8)? No.
- (d) Any other petitions motions or applications in this or any other Court? No.
15. If you answered "yes" to any part of number (12), list with respect to each petition, motion, or application:
- (a) The specific nature thereof: Not applicable.
- (b) The name and location of the Court in which each was filed: Not applicable.
- (c) The disposition thereof: Not applicable.
- (d) The date of each such disposition: Not applicable.
16. Has any ground set forth in number (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? No.
17. If you answered "yes" to number (14), identify:
- (a) The grounds which have been presented: Not applicable.
- (b) The proceedings in which each ground was raised: Not applicable.

18. If any ground set forth in number (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) Post-Conviction Relief is the proper forum and remedy for these allegations because the grounds for relief presented in this application are evidence of ineffective assistance of counsel, issues not preserved for appellate review, and/or were not appropriate to raise or were not properly raised on Direct Appeal.
19. Were you represented by an attorney at any time during:
- (a) Your plea hearing? Yes.
- (b) Your trial? Not Applicable.
- (c) Your sentencing? Not Applicable.
- (d) Your appeal, if any, from the judgment of conviction and/or imposition of the sentence? Not Applicable.
- (e) Preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? Yes.
20. If you answered "yes" to one or more parts of number (17), list:
- (a) The name and address of each attorney who represented you:
- (i) Richard Whelchel, 118 Willis Plaza Rd., Gaffney, SC 29340.
- (ii) Matthew Craft, 180 Magnolia Street, Spartanburg, SC 29306.
- (iii) Dayne C. Phillips, 1614 Taylor Street, Suite D., Columbia, SC 29201.
- (b) The proceedings at which each attorney represented you:
- (i) Richard Whelchel represented Applicant at the plea hearing.
- (ii) Matthew Craft represented Applicant at the plea hearing.
- (iii) Dayne C. Phillips is currently representing Applicant on this application for Post-Conviction Relief.

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

Applicant seeks Post-Conviction Relief by vacating his convictions and sentences and remanding the indictments for a new trial based on ineffective assistance of counsel.

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

No. Applicant is not under sentence from any other court.

June 3, 2022

[Verification Page to Follow]

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF **CHEROKEE**)**SEVENTH JUDICIAL CIRCUIT****Mark Earls, Jr.,**)Case No. **2019-CP-1100570**

Applicant,)

v.)

VERIFICATION

State of South Carolina,)

Defendant.)

I, Dayne C. Phillips, Esq., on behalf of my client, **Mark Earls, Jr.**, 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 attached in this application; and that the matters and allegations therein set forth are true.



Dayne C. Phillips
 PRICE BENOWITZ LLP
 1614 Taylor Street, Suite D.
 Columbia, SC 29201
 O: 803-272-4503
 C: 803-807-0234
 F: 803-380-8035
 dayne@pricebenowitz.com

June 3, 2022SWORN to and subscribed before me this 3rdday of JUNE, 2022.

Courtney Powers (L.S.)
 Notary Public

My Commission Expires: MAY 2, 2027

FILED IN THE OFFICE
 CLERK OF COURT
 2022 JUN -6 P 1:11
 BRANDY W. MCCEE
 CHEROKEE COUNTY, SC

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the within and foregoing Amended Application for Post-Conviction Relief by depositing a true and correct copy of the same via first-class mail, postage prepaid, upon all parties as follows:

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June 3, 2022

FILED IN THE OFFICE
 CLERK OF COURT
 2022 JUN -6 P 1:11
 BRANDY W. MCBEE
 CHEROKEE COUNTY, SC

1 STATE OF SOUTH CAROLINA
2 COUNTY OF SPARTANBURG

IN THE COMMON PLEAS
7th JUDICIAL CIRCUIT

3 MARK A. EARLS,

4 Applicant,

5 vs.

CASE NO. 2019-CP-11-00570

6
7 STATE OF SOUTH CAROLINA,

8 Respondent.

9
10 HEARING BEFORE: HONORABLE DANIEL D. HALL

11 DATE: August 11, 2022

12 TIME: 9:40 AM

13 LOCATION: Spartanburg County Judicial Center
14 180 Magnolia Street
15 Spartanburg, SC 29306

16 REPORTED BY: LORA L. McDANIEL,
17 Registered Professional Reporter

18
19 APPEARANCES:

20 ATTORNEYS FOR THE APPLICANT
21 DANE PHILLIPS, ESQ.

22 ATTORNEYS FOR THE RESPONDENT
23 CHELSEY MARTO, ESQ.

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25

MARK EARSL vs. STATE OF SOUTH CAROLINA

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I N D E X

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DIRECT CROSS REDIRECT RECROSS

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WITNESS/EXAMINATION

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MARK EARLS

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BY MR. PHILLIPS

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BY MS. MARTO

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LAURIE RICHARDSON

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BY MR. PHILLIPS

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BY MS. MARTO

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RICHARD WHELCHER

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BY MS. MARTO

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BY MR. PHILLIPS

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MATTHEW CRAFT

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BY MS. MARTO

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BY MR. PHILLIPS

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MARK EARLS

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BY MR. PHILLIPS

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BY MS. MARTO

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CERTIFICATE OF REPORTER Page 73

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APPLICANT EXH. 1, Flash drive

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MARK EARSL vs. STATE OF SOUTH CAROLINA

1 THE COURT: Ms. Marto, if you'll call your first
2 case.

3 MS. MARTO: Yes, Your Honor. Good morning. May it
4 please The Court. We're here today in the case of Mark Earls
5 versus the State of South Carolina, docket number
6 2019-CP-11-00570. My name is Chelsey Marto, and I represent
7 the Respondent.

8 And Mr. Dane Phillips represents the Applicant.
9 He's presently confined in the South Carolina Department of
10 Corrections. He was indicted July 2015 for murder and
11 possession of a firearm during the commission of a violent
12 crime, and two counts of attempted armed robbery.

13 He was represented by Mr. Richard Whelchel, Matthew
14 Craft. And Jennifer Jordan and Kimberly Leskanic prosecuted
15 the case.

16 On February 4, 2019, after selecting a jury, he
17 pled guilty. And pursuant to the negotiated sentences, Judge
18 Kelly sentenced him to 30 years for murder, five years for the
19 weapons possession charge, 20 years for each attempted armed
20 robbery. He did not appeal his plea or sentence.

21 The application was filed August 15, 2019. The
22 return was made October 22, 2019. With that I'll turn it over
23 to Mr. Phillips.

24 THE COURT: Thank you.

25 Mr. Phillips.

MARK EARSL vs. STATE OF SOUTH CAROLINA

1 MR. PHILLIPS: Thank you, Your Honor. Mr. Earls
2 argues that plea counsel denied his right to effective
3 assistance of counsel as guaranteed by the 6th and 14th
4 Amendments to the United States Constitution, Article one,
5 Sections (3) and (14) of the South Carolina Constitution, also
6 citing South Carolina Code Section 17-27-70, Subsection (a)(1),
7 (4) and (6).

8 Specifically, plea counsel's unreasonable deficient
9 performance prejudiced him because there is a reasonable
10 probability that, but for counsel's errors, Applicant wouldn't
11 have plead guilty and would've went to trial citing Hill versus
12 Lockhart, applying the Strickland versus Washington standard to
13 guilty pleas and ineffective assistance of counsel challenges,
14 Your Honor.

15 Specifically, he alleges that he did not knowingly,
16 intelligently, and voluntarily plead guilty under Boykin versus
17 Alabama, United States Supreme Court case, 395 U.S. 238. His
18 allegations are that plea counsel's acts or omissions caused
19 him to be coerced into pleading guilty.

20 Specifically, plea counsel informed and allowed the
21 Applicant's mother at his direction to essentially force him
22 into pleading guilty after he had already proceeded to trial
23 during a break of a pretrial proceeding. Applicant's mother,
24 Laurie Richardson, was put on the phone during this break. By
25 telling him that, if he did proceed to trial, he would be

MARK EARSL vs. STATE OF SOUTH CAROLINA

1 guaranteed to receive life in prison if he did not accept the
2 plea offer.

3 Based on his age and given the circumstances that
4 he had been arrested at the age of 16 years old, had four years
5 at the time he proceeded to trial. I believe he was 20 years
6 old, approximately.

7 Felt that his mother's influence in that phone call
8 during the break of the trial forced him to plead guilty. They
9 had no other choice or to receive a life sentence.

10 Additionally, Applicant alleges that plea counsel
11 told him that, if he proceeded to trial, didn't accept that
12 plea offer, that he wasn't going to fight for him throughout
13 the trial in order to preserve, basically, the issues that he
14 would have with ineffective assistance of counsel.

15 Based on that statement, Applicant believed that
16 counsel wouldn't have been subjected to the -- would not have
17 subjected the prosecution's case to a meaningful adversarial
18 testing 'cause counsel had failed to adequately prepare for
19 trial and did not have a reasonable trial strategy.

20 Applicant alleges that he detrimentally relied on
21 plea counsel's erroneous advice to plea guilty without
22 reviewing all of his Constitutional rights, potential defenses,
23 the entire discovery packet, correct sentencing consequences
24 with him prior to his decision to plea guilty during the
25 beginning of that trial.

MARK EARSL vs. STATE OF SOUTH CAROLINA

1 Specifically, counsel failed to review the video,
2 all video recordings, photographs, and ballistic reports with
3 Applicant in preparation for trial. Citing Alexander v. State,
4 and Jackson v. State, South Carolina court cases.

5 Specifically, next allegation, plea counsel's
6 failure to adequately advise Applicant regarding the service of
7 the sentence of a murder conviction. Specifically, Your Honor,
8 counsel failed to inform Applicant there was a mandatory
9 minimum sentence on a murder conviction that must be served day
10 for day as a nonparole offense. Instead, erroneously, advised
11 him that he would only have to serve 85 percent of that
12 sentence; that he would serve less than the 30 years.

13 Applicant also alleges that plea counsel failed to
14 conduct a reasonable investigation or at least specifically
15 failed to present all admissible or admitting evidence in
16 preparation for Applicant's defense; essentially failed to use
17 mitigation evidence presented by the mitigation specialist,
18 Pamela Leonard, to aide negotiations with the prosecutor.

19 Specifically, counsel failed to use mitigation
20 expert's findings to negotiate -- in an attempt to negotiate a
21 better offer in terms of what was presented with the prosecutor
22 based on Applicant's age and having that mitigation specialist,
23 citing Wiggins v. Smith, as well as Brown v. State, and
24 McKnight v. State.

25 Applicant also alleges that plea counsel failed to

MARK EARSL vs. STATE OF SOUTH CAROLINA

1 advise Applicant about his potential defenses and legal
2 motions; specifically that counsel failed to advise Applicant
3 about filing a motion to suppress his statements by arguing the
4 statements were made involuntarily; specifically reviewing with
5 him that he had the ability to challenge his statements to the
6 police.

7 There was reference in the record to a Jackson v.
8 Denno hearing. There will be or at least it appears there will
9 be testimony that plea counsel informed Applicant that he would
10 not be able to challenge his statement because he signed the
11 Miranda form.

12 Applicant also alleges that plea counsel failed to
13 discuss the option of moving to withdraw the plea based on
14 Applicant's strong feelings before and after the hearing that
15 he did not want to plea guilty. This was a bifurcated type of
16 guilty plea.

17 Initially proceeded to trial. There was a break
18 after some pretrial motions. Applicant ultimately pled guilty.
19 After that, sentencing was delayed to a separate date.

20 In between both before and after the actual plea
21 hearing, not the sentencing hearing, Applicant made clear to
22 plea counsel that he was not happy with pleading guilty, that
23 he wanted to still go to trial. There was no discussion about
24 making a motion to withdraw the plea based on his intent or at
25 least his belief that he involuntarily plead guilty.

MARK EARLS DIR BY MR. PHILLIPS

1 Those are the allegations, Your Honor.

2 THE COURT: Call your first witness.

3 MR. PHILLIPS: Thank you, Your Honor. The
4 Applicant calls himself, Mr. Mark Earls, Jr.

5 THE COURT: Mr. Earls, raise your right hand.

6 MARK EARLS, JR.

7 being first duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. PHILLIPS:

10 Q. Good morning, Mr. Earls.

11 A. Good morning.

12 Q. Could you please explain basically the start of
13 representation. In other words, you had more than one lawyer;
14 is that right?

15 A. That's correct.

16 Q. Who represented you during the course of your case?

17 A. My first representative was Don Thompson. And my
18 second and third representatives was Matthew Craft and Richard
19 Whelchel, which was attorney for my plea arrangement.

20 Q. Do you remember how long Mr. Thompson represented
21 you?

22 A. From 2015 of July to roughly -- I don't know what
23 to say. 2018. I can't remember the month.

24 Q. During that time when Mr. Thompson represented you,
25 why did he ultimately come off your case?

MARK EARLS DIR BY MR. PHILLIPS

1 A. Retired.

2 Q. During the course of his representation, once he
3 ended, you were given another lawyer; is that right?

4 A. That's correct.

5 Q. Was the mitigation specialist already retained when
6 you had Mr. Thompson or after Mr. Thompson?

7 A. With Mr. Thompson.

8 Q. So that mitigation specialist, what was her name?

9 A. Pam.

10 Q. How many times did you meet with her?

11 A. Roughly, four to five times.

12 Q. She met with family members of yours?

13 A. Yes, that's correct.

14 Q. Going to your second counsel, Mr. Whelchel, how
15 many times did you meet with him?

16 A. I would say, roughly, maybe three times. Three or
17 four times.

18 Q. What did you discuss during those meetings?

19 A. He's just telling me -- I was trying to ask him
20 about getting the statements thrown out. He was just telling
21 me that I couldn't because I had signed the form, stuff like
22 that.

23 Q. To be specific again -- we'll take a step back.

24 You said that he said you couldn't challenge your
25 statements. So you're talking about what statements?

MARK EARLS DIR BY MR. PHILLIPS

1 A. Statement that I had made to law enforcement.

2 Q. What specifically did he tell you?

3 A. He told me that I signed the Miranda form. And
4 that means that I had said, it was on the paper, and I couldn't
5 challenge it.

6 Q. What did that mean to you? In other words, what
7 did you think based on what was told to you?

8 A. That the statement couldn't be thrown out. I
9 couldn't challenge the admissibility of the statement.

10 Q. Just to make sure it's clear, why did he say you
11 couldn't challenge it?

12 A. I signed the Miranda.

13 Q. Was there any discussion about filing a motion to
14 suppress or a Jackson v. Denno hearing?

15 A. No, sir.

16 Q. Did you ever hear those words, motion to suppress
17 or Jackson v. Denno hearing?

18 A. No, sir.

19 Q. Again, with those meetings, try to be specific and
20 try to keep it in a chronological order. I know it's been a
21 few years.

22 Ultimately during those meetings -- let's kind of
23 start with the first meeting. You said, approximately, three
24 to four meetings. What happened in that first meeting?

25 A. That first meeting he didn't even know my name.

MARK EARLS DIR BY MR. PHILLIPS

1 And second meeting --

2 Q. What did you talk about the first meeting?

3 A. He was just telling me that -- he was informing me
4 that he was a lawyer on my case.

5 Q. How long did he meet with you?

6 A. Ten minutes.

7 Q. Did you review any evidence?

8 A. No, sir.

9 Q. Did you discuss anything about your Constitutional
10 rights?

11 A. No, sir.

12 Q. Potential defenses?

13 A. No, sir.

14 Q. Now, in the second meeting, what did you discuss?

15 A. Gave me my Rule 5 and just explaining like what a
16 Rule 5 was. That's about it.

17 Q. When you say Rule 5, what actually did he give you?

18 A. He gave me, like, all my paperwork, like
19 statements, statements, the police reports, the autopsy
20 reports. All the stuff that the police was doing like officers
21 get to the scene and like that type of paperwork.

22 Q. How much paperwork would you say you received?

23 A. Like, 63 pages.

24 Q. Did you review it with him? In other words, did
25 y'all discuss it, or did he just gave you a copy?

MARK EARLS DIR BY MR. PHILLIPS

1 A. Gave me a copy. We never discussed it together.

2 Q. Y'all never went through it, discuss page by page
3 what each thing was?

4 A. No, sir.

5 Q. So you were given a copy. Was there anything else
6 during that second meeting that you discussed?

7 A. No, sir.

8 Q. How long did that second meeting last?

9 A. Around, roughly the same time. Ten, 15 minutes.

10 Q. At that point, did you discuss anything regarding
11 potential defenses, trial strategy, anything about what was in
12 that paper discovery?

13 A. No, sir.

14 Q. In the third meeting, approximately, how long did
15 that last?

16 A. Our third meeting, I'd say 20 to 30 minutes.

17 Q. Okay. What did you discuss during that meeting?

18 A. That's when he had the videos. He had some videos
19 from prosecutors. We had reviewed three of the videos. And I
20 took notes. And after that I say roughly like 30, 40 minutes.

21 Q. Okay. With the videos, you said you reviewed three
22 videos. Be specific. What was on those videos?

23 A. Body cam footage of the police officers arriving to
24 the scene and on the scene.

25 Q. The three videos were all body cam videos?

MARK EARLS DIR BY MR. PHILLIPS

1 A. Yes, sir.

2 Q. You never reviewed any other videos?

3 A. No, sir.

4 Q. As far as other discovery, did y'all ever at that
5 point go back through the paper discovery and look at
6 everything?

7 A. No, sir.

8 Q. At any point did you ever go back through the paper
9 discovery and discuss it?

10 A. No, sir.

11 Q. Say that again?

12 A. No, sir.

13 Q. During Mr. Whelchel's representation, did
14 Ms. Robinson come with him anytime?

15 A. Excuse me?

16 Q. Did Ms. Robinson -- excuse me. Did Pamela
17 Leonard -- sorry about that. Did Ms. Pam Leonard come and
18 visit during Mr. Whelchel's representation?

19 A. No, I only met her, was my other attorney, Don
20 Thompson.

21 Q. You never met with Ms. Leonard while Mr. Welchel
22 was representing you?

23 A. I've never seen them together.

24 Q. Did Mr. Whelchel ever discuss anything about
25 Ms. Leonard, basically, her work or investigation as a

MARK EARLS DIR BY MR. PHILLIPS

1 mitigation specialist?

2 A. No, sir.

3 Q. Now, the fourth meeting, how long did that last?

4 A. I guess around the same time, 30 to 40 minutes.

5 Q. This was right before the trial?

6 A. Yes, sir.

7 Q. What did you discuss with him during that?

8 A. How do I go about picking a jury. And the same
9 thing with the videos. I tried to talk to him about the
10 videos. He was just telling me, like, the videos won't help in
11 my defense. He was just telling me things that wouldn't help
12 in my defense.

13 Q. Again, at that point in the fourth meeting, did you
14 ever review any other videos than the three body cam videos?

15 A. No, sir.

16 Q. Did you ever review the paper discovery with him?

17 A. No, sir.

18 Q. Now, did he go through, basically, any trial
19 strategy as far as what your potential defense would be?

20 A. No, sir.

21 Q. Any discussion about making legal arguments or
22 pretrial motions?

23 A. No, sir.

24 Q. What did you discuss for 30 or 40 minutes?

25 A. I was asking him could he challenge the

MARK EARLS DIR BY MR. PHILLIPS

1 admissibility of the statement and get it thrown out. He was
2 telling me I couldn't do that. And other potential defenses
3 that I was studying myself from looking at my own case. He was
4 just telling me that there wasn't great defenses for my case.

5 Q. Was there any preparation or discussion about
6 whether you would testify?

7 A. No, sir.

8 Q. I guess to be clear, so there was no explanation --
9 there was no discussion about you having a right not to testify
10 or preparing you to testify. That was something that you were
11 considering?

12 A. No, sir, we never discussed that.

13 Q. As far as the evidence that the prosecution was
14 going to present, was there discussion about that, basically,
15 what your trial would look like?

16 A. No, sir. I can't remember to my knowledge.

17 Q. You tell me is this fair based on what you kind of
18 said. You reviewed the videos again. He answered all your
19 questions that you had about the upcoming trial?

20 A. That's correct.

21 Q. Now, in proceeding to trial, what occurred that
22 morning? Start me at the morning of trial and kind of walk me
23 through what happened.

24 A. Okay. We had picked the jury. Me, Richard
25 Whelchel, and Matthew Craft, had picked a jury. They called

MARK EARLS DIR BY MR. PHILLIPS

1 recess. Upon recess, I was in a holding cell. That's when
2 Richard Whelchel came in there with a phone, had my mom on a
3 phone. My mom, she was crying, being very hysterical. She was
4 like: Take the plea. If not, they're going to give you life.
5 You're going to spend the rest of your time, rest of your life
6 in prison. She was very adamant on me taking a plea.

7 Q. So you picked a jury. Was there any pretrial
8 motions?

9 A. No, sir.

10 Q. The jury selected, and there was a break. At that
11 point you're put in a holding cell?

12 A. That's correct.

13 Q. And at some point while in the holding cell, you
14 said Mr. Whelchel came in and had a cell phone?

15 A. That's correct.

16 Q. It was your mother on the cell phone?

17 A. That's correct.

18 Q. What did she say? Be as specific as possible.

19 A. Said: Baby, take that plea because, if not, you're
20 going to spend the rest of your life in prison. She was
21 crying, saying: Please just take the plea.

22 Q. Did she say anything about kind of why she was --
23 why she believed you would receive life in prison? Did y'all
24 go into anything beyond that?

25 A. She just said that the lawyer told her that I was

MARK EARLS DIR BY MR. PHILLIPS

1 going to get life if I didn't take the plea.

2 Q. Now, what occurred after that phone call?

3 A. Once my mother told me that, phone hung up. I was
4 telling Mr. Whelchel that I was very confused at this time.
5 And he had told me verbally, he was like he was not going to
6 fight for me at trial because it's in my best interest to take
7 the plea instead of going to trial and getting a life sentence.

8 Q. Now, explain that again. What exactly did he tell
9 you?

10 A. Told me that he was not going to fight for me
11 because, at trial, because it's in my best interest to accept
12 the plea and not go to trial and receive a life sentence.

13 Q. What happened after that?

14 A. Back into the courtroom. Roughly five or 10
15 minutes later they came to me and he told me, with a plea
16 paper, told me to accept the plea for 30 years.

17 Q. Now, as far as Mr. Craft's representation, when did
18 you first meet him?

19 A. Mr. Craft, Friday before February 4th. So,
20 roughly, three days before.

21 Q. You meet him the first time Friday before trial.
22 He is second chair. He's backing up Mr. Whelchel?

23 A. Yes, sir.

24 Q. What did you discuss with him?

25 A. He was just tagging along. So I can only talk to

MARK EARLS DIR BY MR. PHILLIPS

1 Mr. Craft in the courtroom when I was in the courtroom.

2 Q. You didn't talk to him on that Friday?

3 A. No, sir.

4 Q. No conversations with him?

5 A. No, sir.

6 Q. In the courtroom, what conversations did you have
7 with him?

8 A. He told me that I would be doing 85 percent of the
9 30. He then proceeded with a calculator, calculating 85
10 percent of 30 years minus the time that I had served. He told
11 me that I had to do, roughly, around 21 years.

12 Q. In terms of that discussion with you, kind of walk
13 me through. What was your mind-set at that point?

14 A. I was just very confused and lost because I ain't
15 had a defense. My lawyer and my mom is telling me to take a
16 plea. I felt like either my mom's giving me the best advice
17 she can, my attorney giving the best advice he can for the law,
18 I thought that was the best thing for me.

19 Q. At that point did you feel like you had any other
20 options?

21 A. No, sir.

22 Q. Why did you feel that way?

23 A. My lawyer already told me verbally that he was not
24 going to fight for me 'cause he feel like I should take a plea.
25 And my mother also told me that it's best for me to take a

MARK EARLS DIR BY MR. PHILLIPS

1 plea. So I just didn't feel like I was going to have a right
2 to a fair trial even with my lawyer voicing his opinion.

3 Q. As far as your mother saying that you would receive
4 life in prison, what effect did that have on you?

5 A. That's my mother, you know. I've been raised by
6 her. So I knew she knew what was in my best interest. When
7 she told me that, I don't have no chance but just to take a
8 plea. That's the only option here.

9 Q. As far as your discussions with Mr. Craft regarding
10 how much you would serve on that murder sentence, what was your
11 mind-set on that?

12 A. That I was going to end up doing 21 years. Roughly
13 around that time. 21 years.

14 Q. Did that influence you at all?

15 A. It didn't help me do nothing.

16 Q. Explain that.

17 A. I mean, it's just, with the 21 years, he told me
18 I'll roughly just be doing 21 years. I guess I kind of
19 accepted that 'cause I already know my lawyer was not going to
20 fight for me, you know. So I was like, well, I'm going to go
21 ahead and accept the plea and just told him 21 years.

22 Q. You believed that's what you would get?

23 A. Yes, sir.

24 Q. There was no discussion otherwise that you had to
25 serve day for day?

MARK EARLS DIR BY MR. PHILLIPS

1 A. No, sir, never.

2 Q. Now, as far as when you were actually doing the
3 plea with the judge and the judge was kind of going through all
4 that with you, the colloquy, talk to me about that as far as
5 that situation.

6 A. Can you ask a specific question.

7 Q. Ultimately the judge notices that you're not paying
8 attention to him and, I guess, staring at someone in the
9 courtroom. Who was that?

10 A. I was looking back into the pew. There was two
11 officers sitting there, and I was looking at them.

12 Q. Why were you doing that?

13 A. That's the two officers that I had tried to get my
14 lawyer to talk to about the admissibility and the voluntariness
15 of the statement.

16 Q. In the course of your plea, there was basically an
17 opportunity at that point where the judge basically could
18 tell -- basically, gave you a moment to decide what you wanted
19 to do because you raised ineffective assistance of counsel
20 during your guilty plea or during the sentencing. I'll go back
21 and confirm.

22 When you raised that issue, why did you say that
23 during the plea?

24 A. Because I was -- the judge asked me was I satisfied
25 with my lawyer. I told him I wasn't.

MARK EARLS DIR BY MR. PHILLIPS

1 He asked me the reason why. And I told him he
2 didn't prepare a defense on my case. With that being, I just
3 felt like I wasn't going to have a fair trial due to
4 ineffective assistance of counsel.

5 Q. When your lawyer brought up in the plea colloquy
6 about telling your momma, not making you plea guilty or
7 something to that nature -- I'll get the exact quote in a
8 second. What was that in reference? How did that come up
9 during the actual plea colloquy?

10 A. The judge asked me did anybody force or coerce me
11 into taking a plea. I asked my lawyer: Should I tell him that
12 you heard my mom just had talked, to help me take this plea.
13 He said: Just tell him that you just talked to your mom, and
14 she didn't influence you to do anything.

15 Q. Now, as far as the ballistics report, kind of
16 taking a step back, did you ever discuss that with
17 Mr. Whelchel?

18 A. No, sir.

19 Q. With Ms. Pam Leonard, again, in building that
20 mitigation, was there any discussion about whether any of that
21 was in the final negotiation, discussed with the prosecutors to
22 try to get them to reduce your sentence at all?

23 A. Repeat the question again.

24 Q. Was there any discussion with Mr. Whelchel about
25 Ms. Pam Leonard's mitigation evidence, about using that in

MARK EARLS DIR BY MR. PHILLIPS

1 terms of your negotiations?

2 A. No, sir.

3 Q. Did you have any discussions about Ms. Pam Leonard
4 and the mitigation packet with Mr. Whelchel?

5 A. Not with Mr. Whelchel.

6 Q. Now, after you had plead guilty and there was a
7 break between your sentencing on a different day, at that point
8 did you make it clear after the plea that you weren't happy
9 with the fact that you made a decision to plead guilty?

10 A. Yes, sir.

11 Q. Be specific about that.

12 A. After the plea was accepted I also told
13 Mr. Whelchel that I didn't want to take the plea. He told me
14 it was already finalized, so I had to go through with it.

15 Q. Was there any discussion about a motion to withdraw
16 the plea?

17 A. No, sir. I didn't even know that's possible.

18 Q. After the sentencing, that was never discussed at
19 any moment?

20 A. No, sir.

21 MR. PHILLIPS: Just a moment, Your Honor.

22 (A pause transpired.)

23 MR. PHILLIPS: No further questions, Your Honor.

24 THE COURT: Ms. Marto.

25 MS. MARTO: Yes, Your Honor.

EARL MARKS CROSS BY MS. MARTO

1 CROSS-EXAMINATION

2 BY MS. MARTO:

3 Q. Good morning, sir.

4 A. Good morning.

5 Q. So you just testified that your mom talked you into
6 pleading; correct?

7 A. Yes, ma'am.

8 Q. But at the plea hearing you told the court that,
9 even though you talked to her, it was your decision; correct?

10 A. No, ma'am.

11 Q. You didn't tell them that?

12 A. No, that's what my lawyer said.

13 Q. I'm looking at page 42 of the plea transcript
14 starting with line five. It says: The Court said: Okay.
15 Well, I want to ask you again. I heard -- I've just overheard
16 what your lawyer said. You can talk to your mother. You can
17 talk to all the family members you want, but it has to be your
18 decision, not their decision. Now, I ask you, is it your
19 decision to plea guilty.

20 And you said: Yes, sir.

21 Do you recall that conversation?

22 A. Yes, ma'am.

23 Q. Why did you tell the court it was your decision?

24 A. My lawyer, he told me I have to -- guess I have to
25 do to make the whole proceeding go through, that I have to

EARL MARKS CROSS BY MS. MARTO

1 answer the questions the correct way for the proceeding to go
2 through so I can get the plea accepted.

3 Q. So you wanted the plea at the time; correct?

4 A. No, I wanted to go to trial.

5 Q. You decided to plea because you were afraid, if you
6 went to trial, you would have to face life in prison; is that
7 correct?

8 A. Yeah, and I didn't have the representation.

9 Q. Now, you stated you were dissatisfied with counsel
10 because he didn't assert a defense; is that correct?

11 A. Yes, ma'am.

12 Q. What defense did you want him to bring up?

13 A. Multiple defenses. Defense of getting my statement
14 suppressed, getting the gun suppressed and just having a
15 defense.

16 Q. Now, was the statement effectively a confession on
17 your part?

18 A. Could you repeat that question.

19 Q. Is the statement you're talking about where you
20 talked to the police and told them your involvement in the
21 incident?

22 A. Could you ask more specific question. I can't
23 comprehend what you're saying.

24 Q. What, in general, did the statement consist of?
25 What was the content of the statement?

EARL MARKS CROSS BY MS. MARTO

1 A. The statement was wrote up by the police officers,
2 who said that I told them the confession and told me to sign
3 it.

4 Q. So the police officer wrote down what you told
5 them?

6 A. No, they wrote the statement up and told me to sign
7 it.

8 Q. Why did you sign it?

9 A. 'Cause, I mean, I'm just 16. I don't know too much
10 was going on with the law. So police officer told me to sign
11 this, I signed it.

12 Q. Are you saying that the police officer just made up
13 the statement all together, or was it based on what you said to
14 them?

15 A. It was made up 'cause I didn't never confess to the
16 murder.

17 Q. Did you bring that to counsel's attention?

18 A. Correct.

19 Q. What was the statement when you said the statement
20 was fabricated?

21 A. Told me that I had signed the statement; so,
22 therefore, it was admissible.

23 Q. Did he say he couldn't challenge it or that he
24 didn't think he would be successful in challenging the
25 statement?

EARL MARKS CROSS BY MS. MARTO

1 A. Just told me that he was not going to challenge it.

2 Q. Did you know that was a possibility of challenging
3 it? Just that he wasn't going to do it?

4 A. No, ma'am. I don't know nothing about the law.

5 Q. Now, the contents from the mitigation specialist,
6 those came about when you were represented by Mr. Thompson;
7 correct?

8 A. Correct.

9 Q. To the best of your knowledge, did Mr. Thompson use
10 that in discussions with the State?

11 A. What are you asking?

12 Q. Was the mitigation specialist's report ever used in
13 negotiations between counsel and the State?

14 A. No, ma'am.

15 Q. So what did Mr. Thompson do with it, to the best of
16 your knowledge?

17 A. I don't know. Ms. Pam, she used to come and see me
18 by herself sometimes. She started it with Don Thompson. Then
19 she would come by herself. So I don't know what her work was.

20 Q. Now, you mentioned you wanted a defense about the
21 gun. What exactly did you want them to do with the gun?

22 A. That was inconclusive. I think that's what it
23 means, inconclusive. I wanted him to suppress the gun.

24 Q. Did you tell Mr. Whelchel that?

25 A. Yes, I told him that.

EARL MARKS CROSS BY MS. MARTO

1 Q. What was his response?

2 A. He said it doesn't make no difference.

3 Q. What do you mean by it doesn't make no difference?

4 A. He told me it's inconclusive. And he told me being
5 inconclusive doesn't mean that it's not the murder weapon; it's
6 just saying they don't know. It's like saying it's not going
7 to be good for our defense.

8 Q. You stated that you never reviewed any of the paper
9 discovery with him; correct?

10 A. Correct. As together, no, we never.

11 Q. Did you ask him to review it with you?

12 A. I asked him a couple questions about my case and my
13 potential defenses that I had came up with myself. He would
14 just shut me down.

15 Q. You shut him down saying they wouldn't be
16 successful at trial?

17 A. Yes, ma'am.

18 Q. Now, you said that both counsel and your mom told
19 you, you would likely spend life in prison if you went to
20 trial; correct?

21 A. Yes, ma'am.

22 Q. Did that aid in your decision to enter the plea?

23 A. Say it again.

24 Q. That aided you in your decision to enter the plea?

25 A. Partially, yes, ma'am.

EARL MARKS CROSS BY MS. MARTO

1 Q. You said that Mr. Craft did the math concerning 85
2 percent; correct?

3 A. Yes, ma'am.

4 Q. Did you say that he said you would only have to
5 serve 21 years of the 30?

6 A. Yes, ma'am.

7 Q. Did the judge ever tell you, you would only have to
8 serve 85 percent?

9 A. No, ma'am.

10 Q. Again, you told the court that you were not happy
11 with Mr. Whelchel; correct?

12 A. Yes, ma'am.

13 Q. You still entered the plea even though you were
14 unhappy?

15 A. Say that again.

16 Q. You still entered the plea even though you were
17 unhappy?

18 A. Yes, ma'am.

19 MS. MARTO: One moment, Your Honor.

20 (A pause transpired.)

21 BY MS. MARTO:

22 Q. Do you recall Mr. Whelchel ever telling you why he
23 wasn't going to fight for you at trial?

24 A. 'Cause it was in my best interest to take a plea.

25 MS. MARTO: No further questions.

MARK EARLS REDIR BY MR. PHILLIPS

1 THE COURT: Mr. Phillips.

2 MR. PHILLIPS: Thank you, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. PHILLIPS:

5 Q. On page 41 of the guilty plea transcript, the judge
6 notes on line 21, he asks you during the colloquy: Did anyone
7 such as family member or close friend pressure you or convince
8 you to plea guilty?

9 It states that it went off the record and went back
10 on the record. What conversation occurred when it went off the
11 record whenever you basically took a break?

12 A. That's when he was clarifying to me to say, tell
13 the judge that you just talked to your mom and me, and we
14 didn't influence you; that you still want to take this plea and
15 go through with the proceeding.

16 Q. When you say he, who are you referring to?

17 A. Mr. Whelchel.

18 Q. On the record, page 42 on line one, Mr. Whelchel is
19 caught on the record and says: You just tell him you talked to
20 your momma. She didn't make you plea. That's what he's asking
21 you. Then your response was: No, sir.

22 A. That's correct.

23 Q. Was that a truthful statement?

24 A. No, sir.

25 Q. Basically, what he's asking you, in other words,

MARK EARLS REDIR BY MR. PHILLIPS

1 when you said no, sir, you were saying in the negative based on
2 what he said. Were you telling the truth then?

3 A. Telling the truth to my lawyer as in did anybody
4 coerce me into taking the plea with my mother?

5 Q. That's right, to your lawyer?

6 A. I wasn't being truthful.

7 Q. In which way?

8 A. Didn't nobody -- didn't -- my mother didn't
9 influence me in taking a plea.

10 Q. Now, again, the judge says: I want to ask you that
11 question again. I just overheard what your lawyer said. Now
12 you can talk to your mother and, basically, go through the same
13 line of questioning that Ms. Marto had with you and said: Is
14 it your decision to plea guilty? You said yes.

15 Ultimately they asked you: Are you satisfied with
16 their services? You answered no.

17 A. That's correct.

18 Q. Why did you answer no?

19 A. I wasn't satisfied with their service.

20 Q. You say you're only dissatisfied with Mr. Whelchel?

21 A. That's correct.

22 Q. And then ultimately the judge asked you, on page
23 43, what are you dissatisfied about?

24 Your response, on line 11: He never prepared a
25 defense in your case, comma, period, comma, since he's only

MARK EARLS REDIR BY MR. PHILLIPS

1 been on my case since August 2018.

2 A. That's correct.

3 Q. That's essentially the testimony you presented here
4 today?

5 A. Yes, sir.

6 Q. Then the judge asked you on page 43, line 17 of the
7 plea hearing transcript: All right. Has he gone over the
8 materials with you? And you replied no, sir.

9 A. That's correct.

10 Q. And then he asked you one more time to talk with
11 your lawyers. You say: Yes, sir.

12 At this point, ultimately, when you decided to
13 plead guilty versus what was just presented to you, explain
14 that thought process.

15 A. Can you repeat the question again.

16 Q. So, ultimately, the judge is asking you: Are you
17 satisfied. You said no. You basically are having that moment
18 of trying to figure out how to explain kind of your
19 decision-making process and said: Do you need more time to
20 speak with your lawyers? You said yes. And they haven't gone
21 over discovery with you based on what you presented to the
22 judge during the plea hearing.

23 What, ultimately, made you go forward with this
24 plea?

25 A. I ain't had no choice but to plea.

MARK EARLS REDIR BY MR. PHILLIPS

1 Q. Why did you feel that way?

2 A. Because my lawyer, he said prepare a defense for my
3 case. He verbally told me that he wasn't going to fight.
4 Plus, my mother telling me to take the plea. I just felt like
5 I had no choice.

6 Q. You felt like you would get life in prison?

7 A. Yes, sir.

8 Q. Why did you feel that way?

9 A. 'Cause I ain't had a defense.

10 MR. PHILLIPS: No further questions, Your Honor.

11 MS. MARTO: Nothing further, Your Honor.

12 THE COURT: The Court does have one question.

13 Mr. Earls, you understand that if The Court grants your
14 petition, you will be back in the same position you were in
15 before the plea where you could still be looking at a life
16 sentence. Has that been explained to you before today?

17 THE WITNESS: Yes, sir.

18 THE COURT: Thank you. You can step down.

19 Call your next witness.

20 (The witness exited the stand.)

21 MR. PHILLIPS: The Applicant calls Ms. Laurie
22 Richardson.

23 THE COURT: Ms. Richardson, if you'll raise your
24 right hand, please.

25 LAURIE RICHARDSON

LAURIE RICHARDSON DIR BY MR. PHILLIPS

1 being first duly sworn, testified as follows:

2 THE COURT: Thank you.

3 MR. PHILLIPS: Thank you, Your Honor.

4 DIRECT EXAMINATION

5 BY MR. PHILLIPS:

6 Q. Good morning, Ms. Richardson.

7 A. Good morning.

8 Q. What's your relationship with Mr. Earls?

9 A. That is my second son.

10 Q. If you could go to that day that he ultimately
11 plead guilty. Tell me how you got involved with it at that
12 moment.

13 A. I had been talking to Mr. Whelchel, like it was hit
14 and miss with him. And then on the day of trial, he explained
15 to me that I needed -- he was still, that Mr. Earls was still
16 saying that he wanted to take it to trial. The jurors had been
17 selected. He has -- he has nothing. By him being young, he
18 can get 30 years. Take a plea for 30 years, he won't have to
19 do the whole 30. He'll get out and he'll still have some life.

20 So he told me: Could you please talk to him
21 because he's not listening to me. So he had me to tell my boy
22 to take the plea for 30 years. Because he was not going to
23 take the plea with just listening to Mr. Whelchel.

24 He wanted to take it to trial all the way.
25 Mr. Whelchel informed me that he would get life in prison.

LAURIE RICHARDSON DIR BY MR. PHILLIPS

1 It's an open and shut case, basically, what he said. Open and
2 shut case.

3 Q. Being specific, how did he explain that he would
4 get life in prison? Best of your memory, what was discussed?

5 A. He said that by them having the murder weapon, and
6 the State, you know, the State had the murder weapon. So
7 everything -- they had enough evidence, you know, to send him
8 to prison. Like I say, it was just open and shut case is,
9 basically, how he said it to me. It was enough evidence to
10 convict him.

11 Q. What did Mr. Whelchel ask you to do?

12 A. He asked me to talk to my son. He would listen to
13 me. He say: He'll listen to you. You're his mother. Explain
14 to him that he's going to get life if he don't take the plea.

15 So I asked my boy, will he take the plea. I told
16 him: I know that he want to go to trial.

17 They had him in the back part of the courtroom in a
18 holding cell. And he was still saying that he wasn't going to
19 take the plea.

20 Mr. Whelchel got me to talk to him. I am the one
21 that told him to take this plea for 30 years. I did not know
22 that he had to do it day for day. I did not know nothing
23 about -- I was just going by the little conversations I had
24 with Mr. Whelchel.

25 As far as anything else, I did not know that he

LAURIE RICHARDSON DIR BY MR. PHILLIPS

1 would have to do the whole 30. I did not know that he could go
2 to trial and maybe get less time.

3 Q. I guess kind of breaking that down. So
4 Mr. Whelchel, he called you on the phone?

5 A. Uh-huh.

6 Q. That's all this conversation happened over the
7 phone?

8 A. All the conversation happened on the phone and once
9 I got to the courthouse. Because on the day that he was to
10 take the plea, Mr. Whelchel called me. The court was like at
11 2:00. Mr. Whelchel called me a little bit after 12:00 and told
12 me that I needed to come to his office. His office was maybe
13 five minutes away. He explained to me that we're going to
14 court at 2:00. He still wanted to take it to trial.

15 And I told him: Well, I'll be there.

16 So I went there. I had a friend to go with me
17 because I couldn't drive. And we got there. He was sitting in
18 the courtroom. He turned around and he looked back at me. And
19 I did him like that (indicating). And asked him: What you
20 going to do?

21 And he just turned around. And when he turned
22 around, he turned back around. I told him. Just simple as
23 that.

24 When the judge asked him, what was he going to do,
25 he looked back at me again. And I'll never forget that look.

LAURIE RICHARDSON DIR BY MR. PHILLIPS

1 He looked back at me. Then he told the judge he was going to
2 take the plea.

3 Q. What did you specifically tell Mark during that
4 phone call?

5 A. I told him -- I don't call him Mark. I have a
6 nickname for him. I told him, I said: Baby, please do this
7 for me. I said: You know, I'm getting older. I want to see
8 you on the outside. I might not be here. I'm not going to be
9 here for you to go do life. I want to see you back on the
10 outside. I don't want you on the inside. Please take these 30
11 years so you can come back home to your momma.

12 I told him: I know I got 30 years left in me to
13 live. I can remember exactly how I told him 'cause I asked him
14 to forgive me every day since he took the plea. I said I know
15 I got 30 years left in me to live. Please take this plea. I
16 begged him to take it.

17 Q. What kind of state were you in whenever you were on
18 the phone call?

19 A. I was more hysterical than I am now because I was
20 already just -- I didn't know what to think. I just didn't
21 know how it was going to happen, what was going to go on in
22 court. I was just numb.

23 And when he had told me that they were going to
24 court, it wasn't like he told me that he was going to court
25 like two or three weeks later so I could prepare myself. It

LAURIE RICHARDSON CROSS BY MS. MARTO

1 was just like, he called me, and tell me: We got to be in
2 court in two hours.

3 So when he told me that I just panicked. I was
4 just panicked. That's all I can say.

5 Q. Is there anything else that occurred during that
6 phone call that I haven't asked about that you think is
7 relevant?

8 A. Other than the fact that Mr. Whelchel said it's
9 nothing he can do for him. He said: It's nothing I can do.

10 When I asked him do he have to take a plea, he
11 said: Or else he do life because there's nothing I can do.

12 MR. PHILLIPS: No further questions, Your Honor.

13 THE COURT: Ms. Marto.

14 CROSS-EXAMINATION

15 BY MS. MARTO:

16 Q. Good morning, ma'am.

17 A. Good morning.

18 Q. So you asked your son to plead; correct?

19 A. Yes, ma'am.

20 Q. Did you ever force him?

21 A. I asked him. Well, I begged him. I'm not going to
22 say I asked. I begged him because I said it to him more than
23 once. I told him: Do it for me.

24 Q. Even when you showed up at the plea hearing, you
25 didn't know what he was going to do; right?

LAURIE RICHARDSON CROSS BY MS. MARTO

1 A. I basically knew he was going to take a plea when
2 he looked back at me.

3 Q. Do you still think it was his decision even though
4 you called him?

5 A. No, ma'am. I think he did it for me. I really do.
6 Basically, I know he did it for me.

7 Q. Because you thought that the case was open and
8 shut; right?

9 A. Yes, ma'am.

10 Q. And that he would face life in prison if he went to
11 trial?

12 A. Yes, ma'am.

13 Q. You thought 30 years was better than life at trial;
14 right?

15 A. Yes, ma'am.

16 Q. You didn't want to see your son in prison for life;
17 right?

18 A. No, ma'am.

19 Q. Now, did you say that you thought he could go to
20 trial and get even less time?

21 A. I said I didn't know if he could go to trial and
22 get less time.

23 Q. Did Mr. Whelchel on the phone tell you that the
24 mandatory minimum for murder is 30 years?

25 A. Yes, he did tell me that. He did say that it was

LAURIE RICHARDSON CROSS BY MS. MARTO

1 30 years, but he didn't say he had to do the whole 30 and that
2 all his charges run consecutive, but he wouldn't have to do the
3 whole 30 years. I mean, if he told me that my boy would've had
4 to do the whole 30 years or life, I mean, I would explain that
5 to him. Because he was a child. So I would have explained it
6 to my child because I know he's the one that had to do the
7 time, not me.

8 Q. Did Mr. Whelchel indicate to you on the phone that
9 pleading was in his best interest?

10 A. Yes, ma'am.

11 Q. And you thought when you were talking to your son
12 at the time that it was in his best interest?

13 A. Yes, ma'am.

14 MS. MARTO: No further questions.

15 THE COURT: Anything further?

16 MR. PHILLIPS: No, Your Honor.

17 THE COURT: Yes, ma'am, you can step down.

18 Mr. Phillips, call your next witness.

19 (The witness exited the stand.)

20 MR. PHILLIPS: No further questions on behalf of
21 the Applicant.

22 THE COURT: Ms. Marto.

23 MS. MARTO: We could call Mr. Richard Whelchel to
24 the stand.

25 THE COURT: Left hand on the Bible. Raise your

RICHARD WHELCHER DIR BY MS. MARTO

1 right hand.

2 RICHARD WHELCHER

3 being first duly sworn, testified as follows:

4 THE COURT: Thank you. Have a seat.

5 DIRECT EXAMINATION

6 BY MS. MARTO:

7 Q. Morning, sir.

8 A. You're going to have to speak up.

9 Q. Yes, sir. You represented Mr. Earls in his
10 underlying criminal proceeding; right?

11 A. Yes, ma'am.

12 Q. You inherited the case from Mr. Thompson?

13 A. Mr. Thompson retired. I began my tenure as the
14 chief Public Defender in Cherokee County, inherited Mr. Earls'
15 case. I began April 30th of 2018.

16 Q. Do you recall, roughly, how many times you met with
17 Mr. Earls?

18 A. I can't tell you how many times I met with
19 Mr. Earls. It was decidedly more than four. His case was
20 scheduled for trial once before he actually plead.

21 As a matter of fact, when his case was originally
22 scheduled for trial, it was before Judge Cole. And on late
23 Friday afternoon, we were informed of the existence of about
24 six or seven CDs of discovery that had not been turned over to
25 us. So the following Monday, on the following Monday, when we

RICHARD WHELCHER DIR BY MS. MARTO

1 first got to trial, I informed Judge Cole about the recent
2 discovery that we had been given. And he allowed me to have
3 the next two days, that Monday and Tuesday.

4 I spent Monday and Tuesday at the jail with
5 Mr. Earls reviewing that new discovery that we had just been
6 given. He and I had already reviewed the discovery that he had
7 been given by Mr. Thompson. And I believe I probably may have
8 made a copy of it myself just to ensure that all the discovery
9 that I have goes to him.

10 And I know that I made copies of what I had
11 received after the initial pages were given by Mr. Thompson to
12 Mr. Earls. So he was scheduled for trial on two separate
13 occasions.

14 Q. Did you discuss the paper discovery with him?

15 A. Yes, ma'am.

16 Q. Was there any discovery you recall in your
17 possession that you didn't discuss with Mr. Earls?

18 A. No.

19 Q. What was the evidence in the case?

20 A. Well, the primary evidence, Mr. Earls, was his
21 coDefendant.

22 THE COURT: I'm going to ask if you could speak up
23 just a little more.

24 THE WITNESS: Sorry, Your Honor. The primary
25 evidence against Mr. Earls was his coDefendant. I think it was

RICHARD WHELCHER DIR BY MS. MARTO

1 his girlfriend at the time. I had told him all along -- he had
2 said that she's not going to testify against me. And I told
3 him all along that, eventually, they will make an offer that
4 she or her attorney is willing to accept, and they did. She
5 began -- she became willing to testify against him about two
6 weeks before this trial.

7 BY MS. MARTO:

8 Q. Do you recall a statement being given to the
9 police?

10 A. By Mr. Earls?

11 Q. Yes.

12 A. Yes.

13 Q. Was that effectively a confession?

14 A. The State called it a confession. I called it a
15 statement. Had we gone to trial, they would've tried to put
16 that in.

17 I talked to Mr. Earls about that. He knew and I
18 told him that there would have to be a hearing concerning the
19 voluntariness of this statement and the admissibility of this
20 statement; that we would contest that.

21 Q. So you told him that --

22 A. He knew that.

23 Q. Did you tell him what the likelihood of success of
24 contesting would be?

25 A. I told him that, in my experience, if the officers

RICHARD WHELCHER DIR BY MS. MARTO

1 testify the way they normally do and the fact that I think his
2 mother was there, I thought that the statement was going to
3 come in.

4 Q. Do you recall discussion of a gun in this case?

5 A. Yeah.

6 Q. Did you talk about moving to suppress the gun?

7 A. We talked about all of that during the preparation
8 throughout the time. I can't tell you which time it was. We
9 were talking about one thing one time and something else the
10 next time I talked to him.

11 The first time I talked to him was -- I started on
12 April 30th. We had court the very next week.

13 And then I think the week after that I went to the
14 detention center and met with all of the clients I had at the
15 detention center. I did not take discovery 'cause there was
16 about 60 of them. I did not take anybody's discovery with them
17 or with me.

18 All of the clients had received a letter telling
19 them that Mr. Thompson had retired, and I was taking over his
20 case. I wanted them to see me and get to know who I was and
21 that I was their attorney. And I wanted to make early attempts
22 for all of my clients to get to know me somewhat. With 60 of
23 them, I couldn't take -- I decided not to take discovery, just
24 to meet them that way for the first time. That's what he's
25 talking about, our first meeting.

RICHARD WHELCHER DIR BY MS. MARTO

1 Q. Now, Mr. Earls testified that the gun was
2 inconclusive. Is that your recollection?

3 A. Yes.

4 Q. Now, this case was originally going to go to trial;
5 correct?

6 A. Yes, ma'am.

7 Q. What changed that led to Mr. Earls entering a plea?

8 A. I don't recall if the telephone conversation
9 between Mr. Earls and his mother took place in the morning
10 after we picked a jury or in the afternoon. We picked a jury
11 and then we broke. And we were going to start in the
12 afternoon.

13 When we went back, Mr. Craft and I, went back to
14 the holding cell, Mr. Earls asked if he could speak to his
15 mother in person. That's highly unusual to allow somebody into
16 that holding cell, a family member.

17 I went to Judge Kelly and told him that my client
18 wanted to speak with his mother. Judge Kelly and the clerk of
19 court facilitated that meeting. And Mrs. Earls came into the
20 holding cell and met with her son. And she is correct.

21 She pleaded with him to take the deal, and he knew
22 that his sentence range -- and he had known what his sentence
23 range was from the time I was representing him. He knew it, I
24 assumed, when he was represented by Mr. Thompson. He knew it
25 was 30 to life. He knew that it was a minimum 30. I think

RICHARD WHELCHER DIR BY MS. MARTO

1 that was one of the reasons he had said, you know, before that
2 he wanted to go to trial.

3 His mother went in there. He asked to speak to his
4 mother. She went in and talked to him. She cried. And she
5 pleaded with him to take the plea. He decided on his own to
6 take the plea.

7 I went over the questions once I got the sentencing
8 sheets. I went over the questions with him that the judge
9 would ask so that he would know ahead of time what they were.
10 I always do that with any client, whether it's shoplifting plea
11 or a murder plea.

12 I went over those questions and told him what the
13 judge would ask. And told him that it was a negotiated plea,
14 meaning that he and I and the prosecutor, when we present it to
15 the judge, we're asking the judge to accept this as a
16 negotiated plea and to impose the minimum 30-year sentence.

17 Q. Do you recall any plea negotiations with the State?

18 Do you recall discussions about maybe negotiating
19 down to a lesser included?

20 A. There may have been. I can't tell you if there
21 were or there weren't. I don't know. There weren't anything
22 serious on their part, you know. I would've love to have
23 something less than that. It was not forthcoming.

24 Q. They never told you they would be willing to let
25 him plead to voluntary?

RICHARD WHELCHER DIR BY MS. MARTO

1 A. No. If they did, I do not recall it.

2 Q. He plead to the mandatory minimum?

3 A. Yes.

4 Q. Did you ever tell him he would only serve 85
5 percent?

6 A. No. He knew because of the times we had talked
7 before that on these cases it was day for day.

8 Q. Did you discuss pretrial motions with him prior to
9 the trial/plea?

10 A. Yes, I told him it was my practice to make the
11 motions during the trial; that I did not do that pretrial. A
12 lot of times in Cherokee, if you file a pretrial motion, the
13 motion is heard by someone other than the judge who's deciding
14 the case. And I wanted to keep -- I've always wanted to keep
15 those type of motions decided by the same judge.

16 Q. If it proceeded at trial, would you have pursued
17 motions?

18 A. Yes.

19 Q. Do you think that the plea was in his best
20 interest?

21 A. Yes.

22 Q. Did you talk to Mr. Earls about general trial
23 strategy?

24 A. Yes.

25 Q. What was the strategy, if you went to trial, going

RICHARD WHELCHER CROSS BY MR. PHILLIPS

1 to be?

2 A. The strategy going to trial would be try to break
3 the witnesses against him. Mr. Earls was told that he had the
4 ability to testify in his trial. We would've gone over that
5 probably the first time we discussed his discovery.

6 And I tell my clients, whether or not you testify
7 normally is not a decision that's made a month ahead of time.
8 A lot of times they may decide they're going to testify a month
9 ahead of time. Then the trial comes, they see the way the
10 testimony goes, they decide not to testify.

11 I told him you can decide to testify at the last
12 minute after you've heard the State's case, once we start
13 calling any witnesses that we have, and we don't have to call
14 any witnesses. The State has the burden of proving you guilty
15 beyond a reasonable doubt. You're not required to call
16 witnesses. He knew that. And I told him that.

17 I couldn't make that decision for him. Nobody
18 makes that decision. And that the judge would question him as
19 to whether that decision was made by him and him alone.

20 MS. MARTO: No further questions.

21 THE COURT: Any redirect? I'm sorry. Any further
22 questions, Mr. Phillips?

23 MR. PHILLIPS: Yes, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. PHILLIPS:

RICHARD WHELCHER CROSS BY MR. PHILLIPS

1 Q. Good morning.

2 A. Morning.

3 Q. Once you inherited the case from Mr. Thompson and
4 you created a case file, did you prepare notes of the meetings
5 that you had with Mr. Earls?

6 A. I don't make notes. Sometimes I'll make notes on a
7 legal pad like you have. But I don't make specific notes about
8 meetings that I have with clients. If there's something that I
9 want to remember or something that I need to do, prepare a
10 motion or something like that, then I might make a note of it.

11 Q. When you go to the jail and you meet with him and
12 you discuss certain things, you don't make any notes of that?

13 A. I haven't ever.

14 Q. In meeting with him, I guess specifically with the
15 discussion, I understand you explained that first time the
16 reason it was brief was because you were just doing the initial
17 meetings. I understand that. You just inherited a large case
18 load.

19 A. Just an introduction meeting. They had a letter
20 that they didn't know who that guy was.

21 Q. Understood. With these subsequent meetings that
22 you had with him, can you give any approximate dates you met
23 with him and what you discussed during those meetings?

24 A. No. I can't tell you. It would've happened more
25 frequently as his trial approached. I know that we spent those

RICHARD WHELCHER CROSS BY MR. PHILLIPS

1 two days I talked about earlier, whenever all of those CDs that
2 we were given at the last moment.

3 When I'm preparing for a murder case, it's
4 essentially that last week before the trial is, you know, the
5 end-of-the-line preparation.

6 Q. When you say that you reviewed the paper discovery
7 with him, how did you do that? What's your normal process for
8 that?

9 A. Well, he has a copy and I have a copy. And we go
10 through the paper page by page. I tell him, I summarize what
11 it says and ask if he has any questions about this 'cause he
12 did have a copy of it.

13 Q. You specifically remember that meeting with
14 Mr. Earls?

15 A. I can't tell you when it was, but I know that I did
16 it.

17 Q. As far as the videos in the case, again, same
18 thing, do you have any --

19 A. Any date written down, no, but I know that I did
20 it.

21 Q. Now, as far as the ballistics report, can you tell
22 us about that.

23 A. Yeah. When we got it, he was given a copy of it.
24 We went over it.

25 Q. It was favorable?

RICHARD WHELCHER CROSS BY MR. PHILLIPS

1 A. Yeah.

2 Q. What did you discuss with him about that ballistics
3 report since it was favorable?

4 A. The fact that it was really inconclusive which can
5 be argued either way. I told him how they would argue it and
6 how we would argue it.

7 Q. Ultimately, in preparing, I know you provided some
8 background as to his decision to testify. And you said
9 sometimes that's kind of -- you do that kind of, it's one of
10 those, kind of, in-trial decisions. What discussions did y'all
11 have prior to that, prior to that jury selection, the day that
12 you picked the jury, did y'all have about that preparation for
13 him to make that decision?

14 A. I told him when we talked about discovery, when we
15 talked about his case, that he had the opportunity to testify
16 in his own defense and nobody could make him testify. And on
17 the other hand, nobody could keep him from testifying. It was
18 his decision and his decision alone. And that if he testify or
19 didn't testify, the judge would question him as to whether or
20 not he understood that it was his right and his decision. His
21 own.

22 Q. I know you said you don't do pretrial motions; it
23 was kind of a general practice for you up in Cherokee. So
24 there was no -- I guess, as a general practice, you wouldn't
25 have any file written motions?

RICHARD WHELCHER CROSS BY MR. PHILLIPS

1 A. It wasn't in Cherokee. It was my general practice
2 in the entire time that I practiced law. Filed what we called
3 motions. Motions went down a long time ago. You wouldn't know
4 what that is.

5 Q. I don't. So with that being said, in this case,
6 you were going to just wait until the trial, kind of, and how
7 were you going to do that in trial? How were you going to
8 address all the issues? What was your plan for that?

9 A. My plan was, if and when they tried to put in his
10 statement, I would tell the judge we had a matter of law to
11 take up. And he had to determine, once we had that issue, he
12 would send the jury out and tell me whether or not the
13 statement was voluntary.

14 Q. Did you discuss that procedure --

15 A. Yes.

16 Q. -- with Mr. Earls?

17 A. Yes.

18 Q. Again, ultimately, kind of going through the
19 preparation for trial, was there any -- the former attorney,
20 Mr. Thompson, had a mitigation specialist based on his young
21 age at the time of arrest. Did you ever speak with
22 Ms. Leonard?

23 A. Oh, yeah. She was hired -- if I remember
24 correctly, she was hired for the waiver hearing specifically.
25 But she kept talking to him. And it would've been available

RICHARD WHELCHER CROSS BY MR. PHILLIPS

1 had we gone to trial.

2 Q. Now, did you have, as far as the reference of a
3 waiver hearing, did you have a transcript of the waiver
4 hearing?

5 A. I don't know. I don't remember. I didn't do the
6 waiver hearing. That was already done.

7 Q. If there wasn't a waiver hearing done in the case,
8 you were unaware?

9 A. I don't remember. I didn't do a waiver hearing. I
10 thought the waiver hearing had already been done.

11 Q. Was there anything that you found in reviewing
12 Mr. Thompson's file about that issue, about his age and the
13 hiring of a mitigation specialist?

14 A. Only that, that had been done.

15 Q. What had been done?

16 A. That Mr. Thompson had hired -- I forget the lady's
17 name.

18 Q. Pam Leonard?

19 A. Yeah, Pam Leonard.

20 Q. So when you spoke to her, what did she tell you?

21 A. She told me how young he was, how impressionable he
22 was and what she would be willing or could testify to or had
23 testified to. And I hadn't seen her.

24 Q. As far as, kind of in that same vein, was any of
25 that mitigation evidence ever used in his defense as far as

RICHARD WHELCHER CROSS BY MR. PHILLIPS

1 trying to negotiate with a prosecutor to see whether they would
2 consider a voluntary plea based on age, mitigation specialist?

3 A. I may have proffered to them voluntary to see what
4 we could work out. There was never any reception to anything I
5 tried to do to work out a plea on this case.

6 Q. In terms of reviewing the mitigation specialist
7 packet, was there any specific reason why you wouldn't have --
8 or I guess maybe you did. You tell me -- using that to aid
9 negotiations?

10 A. I don't understand.

11 Q. Was there anything compelling in the mitigation
12 packet, any reason why you didn't use it to try to aid in
13 negotiations with the prosecutor?

14 A. They were unwilling. I mean, we talked about that.
15 But they were unwilling, based on the facts of this case, to do
16 anything.

17 Q. The prosecutor's office?

18 A. Exactly.

19 Q. It was a hard line; no negotiations as far as the
20 charge itself?

21 A. (Witness moves head up and down.)

22 Q. Just trying to get clarification with that.

23 Now, as far as his statement, I know you said that
24 you reviewed it with him. You explained that you would
25 challenge it at trial. Did you explain that he would have the

RICHARD WHELCHER CROSS BY MR. PHILLIPS

1 ability to testify at the suppression hearing?

2 A. Yeah.

3 Q. Walk me through that conversation with him about
4 how you would challenge the statement.

5 A. I told him that we would have a hearing concerning
6 the voluntariness and the admissibility of the statement. That
7 hearing would be before the judge, and the State would call
8 their witnesses to testify. And that he would be allowed to
9 testify and testify only about the facts surrounding giving the
10 statement itself. Nothing else at that time. They couldn't
11 ask him about anything else. And that, ultimately, after that
12 testimony was closed, the judge would determine whether or not
13 the statement was going to come in.

14 Q. Your opinion as far as its admissibility, I think
15 you provided on the record that you thought it was definitely
16 going to get admitted?

17 A. I thought it was a good chance. I never tell
18 anybody that something's definitely going to happen at trial.
19 I thought, based on my experience, there was a good chance it
20 was coming in.

21 Q. Did you do any research based on his age with a
22 potential false confession? In other words, the Innocence
23 Project, one of the five major reasons of a wrongful conviction
24 is a false confession, and the highest level of false
25 confessions are in juvenile statements. Did you do any

RICHARD WHELCHER CROSS BY MR. PHILLIPS

1 research into that?

2 A. I may have. I can't tell you any specific cases,
3 case names or anything like that.

4 Q. Would that have been in your case file? I wouldn't
5 have seen anything.

6 A. Not necessarily. May have been something that I
7 did on the computer.

8 Q. Your actual answer would be that you don't know?
9 You can't remember?

10 A. Yeah.

11 Q. As far as you know, you don't remember. You
12 certainly didn't consult with any type of false confession
13 expert --

14 A. No.

15 Q. -- or any of that?

16 Did you ever explain to him that you potentially
17 could go down that road as far as challenging his statement
18 based on his age, expert witnesses?

19 A. He knew that we could do that. I think he had
20 talked to Mr. Thompson about it. And his mother was there
21 also. I think that was one of the reasons that he thought he
22 was going to have a better chance. And that he thought his
23 mother was going to be produced as a witness. And as far as
24 that was concerned, one of the things I remember his mother
25 saying: I love you but I'm not lying for you. Talking about

RICHARD WHELCHER CROSS BY MR. PHILLIPS

1 that.

2 Q. Understood. I guess going to the plea hearing
3 itself or ultimately he proceeds to strike a jury?

4 A. Yeah.

5 Q. There is a break, and you called the mother; is
6 that right?

7 A. That I do not remember. If she says I called her,
8 then that's fine with me. I probably did. I can't remember if
9 I saw her in the courtroom or if I had just planned to call her
10 later that day anyway.

11 Q. Do you have any memory as far as your discussion
12 with her about what happened at that point?

13 A. I told her we picked a jury. We're starting a
14 trial in the afternoon.

15 Q. Anything else?

16 A. Not that I remember.

17 Q. So you would've never told her that you thought he
18 was definitely going to get life?

19 A. No. If and when I would talk to her about the
20 parameters of his sentence, it was always what the parameters
21 were: 30 to life. I have never in my practice during the time
22 I have practiced law to tell somebody, a parent or defendant,
23 how much time they're going to get unless I'm presented with a
24 negotiated plea 'cause I can't do that.

25 Q. Was there any specific -- there wasn't any specific

RICHARD WHELCHER CROSS BY MR. PHILLIPS

1 discussion about asking her to speak with him about pleading
2 guilty?

3 A. She wanted to talk to him. He asked to talk to
4 her. When we got back from break, he asked to talk to her
5 face-to-face. And the judge allowed that to happen. That is
6 when she pleaded with him to take the plea.

7 Q. I guess to be more specific, did you ever ask her
8 to get him to plea guilty?

9 A. No. I asked her to talk to him. He wanted to talk
10 to her. He asked to talk to her.

11 Q. You never asked her specifically that you wanted
12 him to plead guilty, for her to try to convince him to plead
13 guilty?

14 A. No.

15 Q. Now, as far as basically at that point during the
16 plea hearing where you go off the record, what conversation did
17 you have at that point? In other words, the judge asked: Did
18 anybody pressure you or convince you? They go off the record.
19 What happened at that point?

20 A. I think he may have said that he didn't want to
21 disappoint his mother. He didn't want her -- I can't remember
22 exactly what he said.

23 What I told him was: This decision is yours. It's
24 not hers. The judge is asking you: Are you making this
25 decision of your own accord? Is this decision being made by

RICHARD WHELCHER CROSS BY MR. PHILLIPS

1 you freely and voluntarily?

2 Q. Now, when he says that, essentially, that y'all
3 haven't reviewed all the evidence during the plea, at what
4 point -- what was -- as his lawyer and he's saying you're not
5 prepared for a trial and you haven't reviewed the evidence?

6 A. You mean that day?

7 Q. During the plea hearing, yes, sir.

8 A. I don't know. You know, this is second time I've
9 prepared this case for trial. So I don't know what it is.
10 Sometimes when I talk to clients, I am very frank about what I
11 think may happen. And sometimes they don't like that. They
12 perceive -- maybe he perceived it as he's not going to fight
13 for me.

14 He said: You're not going to fight for me.

15 I told him he was wrong.

16 I've had other clients do the same thing. Has
17 nothing to do with whether I'm fighting for him. I think it's
18 incumbent upon me as his attorney to be honest with him and any
19 other client as to what they're looking at.

20 Q. At the sentencing hearing, the transcript of that
21 on page 57, ultimately, one of the things he starts out with
22 once he had an opportunity to address the court, he tells the
23 judge: Yeah, I just wanted it to be put on the record. The
24 only way I accepted the plea was because of ineffective
25 assistance of counsel that I received. I didn't feel like I

RICHARD WHELCHER CROSS BY MR. PHILLIPS

1 was going to have a fair trial so I accepted the plea.

2 Again, at that point, had you ever had any
3 discussions with him prior to -- after the plea hearing? After
4 he plead guilty, what discussions did you have with him?

5 A. I don't think I had any. One of the reasons, if I
6 remember correctly, that he was allowed to be sentenced the
7 following day was that he wanted to see family members.

8 Q. Now -- go ahead.

9 A. That they were brought to the jail or something
10 like that, I think. I can't tell you if I talked to him
11 directly after he did the entry of the plea 'cause it was a
12 term of court. I had other clients were coming up after he
13 entered his guilty plea.

14 Q. Just to take a step back. When you were meeting
15 with Mr. Earls, did you come across the fact -- did he ever
16 spend time for this case in the juvenile detention center?

17 A. Yeah. I think so.

18 Q. Again, in compiling that, was that ever part of the
19 negotiation as far as his age being a factor that you had a
20 mitigation specialist?

21 A. Yeah. I mean, his age was the whole reason that
22 Thompson got the mitigation specialist to begin with, in my
23 opinion.

24 Q. Now, once he said in the sentencing hearing, that
25 he presents this ineffective assistance of counsel, was there

RICHARD WHELCHER CROSS BY MR. PHILLIPS

1 any discussion with him at any point about moving to withdraw
2 the plea? Clearly, he's unhappy.

3 A. No. I didn't know what we could base the motion
4 on. He just said, you know: You're not going to fight for me.
5 He never gave me any specifics that I could put into a motion.
6 I didn't think he could do that at that point.

7 And I told him: Your plea has already been
8 entered. Your plea has already been accepted by the court.
9 This is the sentencing phase of that plea. It would've
10 happened the day before except for the court's largess in
11 allowing this to happen the following day.

12 Q. Now, as far as your trial strategy, you pick a
13 jury. What was the trial strategy?

14 A. Trial strategy was to pick apart their case as best
15 as possible.

16 Q. Now, as far as -- I guess, to be more specific,
17 what was the defense?

18 A. He was not guilty. He didn't do it. They were
19 going to have to prove that he did do it.

20 Q. How were you going to do it?

21 A. Like I just said, cross-examination of State's
22 witnesses; his testimony should he decide to testify.

23 Q. Now, again, I know you've already addressed this
24 part of it. You said you've never said anything in regards to
25 what an exact sentence would be and that he was aware that

RICHARD WHELCHER CROSS BY MR. PHILLIPS

1 there was a mandatory minimum?

2 A. Yes. He knew the range of sentence. He knew the
3 range of sentence from first time I went to talk to him with
4 the discovery. He knew it. I think there may be evidence that
5 he knew it when Mr. Thompson talked to him.

6 MR. PHILLIPS: Just a moment, Your Honor.

7 BY MR. PHILLIPS:

8 Q. Was there ever discussion as far as your opinion
9 that he would get life in prison? Did you ever present that?
10 You said you can be very candid.

11 A. No. I tell all my clients what the range is. I
12 tell them you can get the minimum 30 or you can get life in
13 prison. That decision is ultimately to be made by the judge.
14 A lot of times clients would ask me: Do I have 50/50 chance?
15 Am I going to get this many years?

16 And even on a plea to a breach of trust or
17 something like that: Am I going to get six?

18 I would just tell them: I can't tell you that. I
19 don't know. I can't crawl into a judge's head and tell you
20 what he's going to give you sentence wise.

21 The only time I would tell my clients I know what
22 you're going to get is when I have a negotiated sentence.

23 MR. PHILLIPS: Just a moment, Your Honor.

24 (A pause transpired).

25 MR. PHILLIPS: No further questions.

MATTHEW CRAFT DIR BY MS. MARTO

1 THE COURT: Ms. Marto, any redirect?

2 MS. MARTO: No redirect, Your Honor.

3 THE COURT: Thank you. Mr. Whelchel, you can step
4 down.

5 THE WITNESS: Thank you, Your Honor.

6 (The witness exited the stand.)

7 THE COURT: Ms. Marto, call your next witness.

8 MS. MARTO: Your Honor, the State would call
9 Matthew Craft.

10 THE COURT: Let's take a ten-minute break. This
11 would be a good time for a ten-minute break.

12 (A recess transpired from 1108 a.m. until 11:28
13 a.m.)

14 THE COURT: Ms. Marto, call your next witness.

15 MS. MARTO: Yes, Your Honor. We would call
16 Mr. Matthew Craft to the stand.

17 MATTHEW CRAFT

18 being first duly sworn, testified as follows:

19 THE COURT: Take the stand, please.

20 DIRECT EXAMINATION

21 BY MS. MARTO:

22 Q. Good morning.

23 A. Good morning.

24 Q. When did you become involved in this case?

25 A. I became involved with Mr. Earls' case about, I'd

MATTHEW CRAFT DIR BY MS. MARTO

1 say about a week, week-and-a-half before it came up for trial.
2 What had happened is Mr. Whelchel indicated he was --
3 originally it was up for trial with Judge Cole. They turned
4 over six to seven disks of video discovery and tape recordings.
5 A quantity of those recordings were not done in an easy-to-use
6 format. The Solicitor's Office uses a program called
7 Watchguard to operate body cameras. And a number of those
8 files were then saved under a completely different file format
9 when they were burned in the Public Defender's Office. They
10 were very hard to access.

11 I ended up helping Mr. Whelchel access those six to
12 seven disks for Judge Cole, just so he could end up reviewing
13 all that footage. After that I offered to help assist and play
14 videos and things like that for the trial because, at that
15 time, he had purchased like a little DVD player from Wal-Mart
16 so he could try to take it down to the jail and show the
17 footage from like the body cams. It didn't work.

18 And at that time Cherokee County did not have a TV
19 set up in the courtroom. That took place shortly after this
20 trial. Actually, used an old fashioned projector. You had to
21 kind of hookup the projector and then hookup the stand-alone
22 speaker and a bunch of different things that way. So I offered
23 to assist in those tech issues in the event that we went to
24 trial.

25 Q. You weren't appointed to represent Mr. Earls?

MATTHEW CRAFT DIR BY MS. MARTO

1 A. No.

2 Q. Did you talk to Mr. Earls about his case before the
3 plea?

4 A. I met with Mark for the first time that Friday
5 before trial started. I was there for the course of that
6 conversation. I introduced myself to Mr. Earls. I let him
7 know that I would be sitting in the trial, assisting with tech
8 issues, that I would be helping out as far as anything else he
9 might need.

10 During the jury selection process I sat with him, I
11 walked him through notes while we were picking the jury, giving
12 him an idea why we were making certain strikes or why we
13 weren't and helped take any notes that he had at that time
14 during the trial.

15 I didn't discuss, as far as the facts of the case
16 were concerned. I kept that largely to Mr. Whelchel. I was
17 familiar with the facts of the case. I could probably still
18 tell you most of them right now. I did not want to further
19 confuse him, giving him multiple -- I certainly didn't want to
20 conflict in the event that what I said at that point would
21 override what Mr. Whelchel said.

22 At that time I had only been with the Public
23 Defender's Office maybe year-and-a-half, and Mr. Whelchel had
24 been practicing for a good deal longer so he had more
25 experience than I did on those matters.

MATTHEW CRAFT DIR BY MS. MARTO

1 Q. Did you ever discuss with Mr. Earls the sentencing,
2 serving maybe 85 percent?

3 A. I did. I think I realize now how that conversation
4 went down and maybe how that went. While we were sitting there
5 at the jury table, we picked the jury. It was the day of
6 trial. We had picked the jury. And at that point in time
7 there was a recess.

8 Mr. Whelchel was in the process of calling
9 Ms. Richardson. Ms. Richardson had told us on Friday that she
10 would be there for court that morning, and she had not shown up
11 that morning. So Mr. Whelchel was concerned because she said
12 she wanted to be there. Mr. Earls was concerned his mother
13 hadn't shown.

14 While we were sitting there, he was asking as far
15 as what sentencing might look like. I had my laptop with me at
16 that time. And the way I explained it was this. It might've
17 been misunderstood. Ordinarily, because he was charged with
18 murder, he was charged with armed robberies, and possession of
19 a weapon charge.

20 Ordinarily for armed robberies, you would serve 85
21 percent of your sentence. I said but that's ordinarily. I
22 said murder is a little bit different. And I used the language
23 that the judge uses because when it comes to a murder charge,
24 you have to be specific. The way they put it, it is violent,
25 it is most serious.

MATTHEW CRAFT CROSS BY MR. PHILLIPS

1 I said you will serve a day-for-day sentence, but I
2 will say you will not serve 30 years in the Department of
3 Corrections. I said you will be entitled to the time that you
4 served at the Cherokee County Detention Center and potentially
5 be entitled to any time you were on the home detention program
6 as well as in the event there was any time served at a juvenile
7 detention center. That can also be considered in cases.

8 I did tell him at that time he would not serve the
9 full 30 years with the Department of Corrections. I don't
10 remember telling him he would serve 21 years. I did tell him
11 from where I was sitting, at that point, he wouldn't serve that
12 full 30 years in the DOC.

13 Q. Again, just to confirm you never told him 85
14 percent for the murder charge; just for the robbery?

15 A. Not that I recall.

16 Q. Just for the robberies?

17 A. Yes.

18 MS. MARTO: No further questions.

19 THE COURT: Mr. Phillips.

20 CROSS-EXAMINATION

21 BY MR. PHILLIPS:

22 Q. Morning, Mr. Craft.

23 A. Morning, Mr. Phillips.

24 Q. So there was a specific discussion about 30 years
25 being mandatory?

MATTHEW CRAFT CROSS BY MR. PHILLIPS

1 A. Yes.

2 Q. Saying it was mandatory minimum?

3 A. Yes, because I put it to him, it was a negotiated
4 sentence. The way we always phrase that or I did when I was
5 with the Public Defender's Office, it was a 30-year mandatory
6 minimum. The judge can't give more than that, the judge can't
7 give less than that. Either he accepts the negotiations or he
8 doesn't.

9 Q. That was in your discussions with the armed robbery
10 where you discussed 85 percent?

11 A. Right. That's why I used the comparison. Armed
12 robberies at that point in time, it carried a potential
13 sentence but didn't necessarily carry the same mandatory
14 minimum with the murder. I tried to spell that out clearly.
15 Apparently, I might have muddied the waters there.

16 Q. You told him that he wouldn't serve the full 30.
17 You were saying, at least in your testimony on direct, it was
18 in context for credit for time served?

19 A. Correct.

20 MR. PHILLIPS: No further questions, Your Honor.

21 MS. MARTO: Nothing further.

22 THE COURT: Mr. Craft, you can step down.

23 THE WITNESS: Thank you, judge.

24 (The witness exited the stand.)

25 THE COURT: Ms. Marto, call your next witness.

MARK EARLS DIR BY MR. PHILLIPS

1 MS. MARTO: The State has no more witnesses, Your
2 Honor.

3 THE COURT: I was approached by Mr. Phillips and
4 Ms. Marto, and I believe we had a bench conference.
5 Mr. Phillips, I believe you requested an opportunity for a
6 reply from your client. And we agreed at the bench; is that
7 where we are, Ms. Marto?

8 MS. MARTO: Yes, Your Honor.

9 THE COURT: No objection to him calling Mr. Earls
10 back for reply?

11 MS. MARTO: No objection, Your Honor.

12 MR. PHILLIPS: Thank you, Your Honor. For the
13 record, the Applicant, wants to add an additional allegation in
14 regards to the fact he was 16 years old and never received a
15 waiver hearing. He believes he was entitled to one under the
16 law. Again, I explained to him, as far as record preservation,
17 we've asked for this reply testimony. We appreciate it, Your
18 Honor.

19 THE COURT: Call Mr. Earls as your witness.

20 MR. PHILLIPS: Thank you, Your Honor.

21 THE COURT: You've been previously sworn. You're
22 under oath, Mr. Earls.

23 THE WITNESS: Yes, sir.

24 DIRECT EXAMINATION

25 BY MR. PHILLIPS:

MARK EARLS DIR BY MR. PHILLIPS

1 Q. Mr. Earls, how old were you when you were arrested?

2 A. Sixteen.

3 Q. At 16 years old, when you first met with Don
4 Thompson, what discussion did he have with you about your age?

5 A. Wasn't no discussion about my age, about me, the
6 fact that I was in juvenile. And he was just telling me the
7 process of getting charged as an adult.

8 Q. When you were arrested, did they take you to DJJ,
9 or did they take you the county detention center?

10 A. The Juvenile Justice.

11 Q. That was the time when Mr. Thompson had hired
12 Ms. Pamela Leonard, and she met with you how many times?

13 A. I can't recall how many times me and Ms. Pam met.

14 Q. More than --

15 A. Definitely more than three, four times. Roughly
16 around there.

17 Q. She interviewed your family?

18 A. Yes, sir.

19 Q. And with that discussion, what all did she ask you
20 about with you being a juvenile?

21 A. Like, basically trying to see what my character
22 was. Evaluate me. Seeing what type of person I was. Asking
23 me questions and seeing how I react to certain questions and
24 things like that. And she went to talk with my family and get
25 my character as well.

MARK EARLS DIR BY MR. PHILLIPS

1 Q. Did you ever have a waiver hearing?

2 A. No, sir, not to my knowledge.

3 Q. Did you ever have any discussions with Mr. Thompson
4 about a waiver hearing?

5 A. Yes, sir.

6 Q. What discussions were they?

7 A. Me being 16 and charged with a violent crime. They
8 was automatically going to waive me up.

9 Q. That was under the law at that time?

10 A. Yes, sir.

11 MR. PHILLIPS: I don't know if we have any
12 objection from the State. I do have a copy of the juvenile,
13 basically, mitigation specialist's records. I could call
14 Mr. Whelchel again just to try to get those in. That was part
15 of the case file that was provided to me from the Public
16 Defender's Office. It also contains DJJ and DSS records that
17 were in the case file.

18 THE COURT: Ms. Marto.

19 MS. MARTO: We'll stipulate to that.

20 THE COURT: Let's have them marked.

21 MR. PHILLIPS: Thank you, Your Honor. Just for the
22 record, it's marked on a flash drive; significant amount of
23 documents.

24 THE COURT: We have a flash drive being marked as
25 the Applicant's Exhibit 1.

MARK EARLS CROSS BY MS. MARTO

1 (APPLICANT EXH. 1, Flash drive, was marked for
2 identification and entered into evidence.)

3 MR. PHILLIPS: Thank you, Your Honor. I have
4 shared that with the Attorney General's Office.

5 No further questions, Your Honor.

6 THE COURT: Somebody is going to need to physically
7 get that into the hands of the clerk of court, who is not here
8 present.

9 THE COURT REPORTER: I think the clerk is back
10 there and I can do that.

11 MR. PHILLIPS: No further questions, Your Honor.

12 THE COURT: Anything further, Ms. Marto?

13 MS. MARTO: Just briefly.

14 CROSS-EXAMINATION

15 BY MS. MARTO:

16 Q. You filed this application stating you received
17 ineffective assistance of counsel by Mr. Whelchel and
18 Mr. Craft; correct?

19 A. Yes, ma'am.

20 Q. Mr. Whelchel or Mr. Craft didn't assume your case
21 until after you turned 18; correct?

22 A. Yes, ma'am.

23 MS. MARTO: No further questions.

24 THE COURT: Thank you. You can step down,
25 Mr. Earls. Anything further?

MARK EARLS CROSS BY MS. MARTO

1 (The witness exited the stand.)

2 MR. PHILLIPS: We would like to recall

3 Mr. Whelchel. It will be brief, Your Honor.

4 Actually now that we have stipulated the case file
5 is admitted, I believe the testimony was that he didn't
6 remember regarding the waiver hearing. I believe the testimony
7 would be duplicative.

8 THE COURT: We're not going to call Mr. Whelchel.
9 Anything further?

10 MR. PHILLIPS: No, Your Honor.

11 MS. MARTO: Nothing further.

12 THE COURT: I'll take this under advisement. I'll
13 issue my ruling by the end of next week.

14 (The hearing was concluded at 11:40 a.m.)

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MARK EARLS CROSS BY MS. MARTO

CERTIFICATE OF REPORTER

I, Lora McDaniel, Registered Professional Reporter
and Notary Public for the State of South Carolina at Large, do
hereby certify that the foregoing transcript is a true,
accurate, and complete record.

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

Witness my hand, I have hereunto affixed my official
seal this 30th day of October, 2023 at Spartanburg, Spartanburg
County, South Carolina.



Lora L. McDaniel,
Registered Professional Reporter
My Commission expires:
August 9, 2026

STATE OF SOUTH CAROLINA)
 COUNTY OF CHEROKEE)
)

Mark A. Earls, Jr., #379091,)
 Applicant,)
)

v.)

State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE SEVENTH JUDICIAL CIRCUIT

Case No.: 2019-CP-11-00570

ORDER OF DISMISSAL

FILED IN OFFICE OF
 CLERK OF COURT
 CHEROKEE COUNTY, S.C.
 2023 MAR 24 A 11:07
 BRANDY W. MCCOY

This matter comes before this Court by way of Applicant's post-conviction relief application filed August 15, 2019. Respondent made its return on October 22, 2019, requesting an evidentiary hearing be convened. An evidentiary hearing was held on August 11, 2022, at the Spartanburg County Courthouse. Dayne Phillips, Esquire, represented Applicant. Assistant Attorney General Chelsey Marto represented Respondent.

Applicant and his mother testified on his own behalf at the evidentiary hearing. Applicant's Mother, Laurie Richardson, and Counsels Richard Whelchel and Matthew Craft, Esquires, also testified. After reviewing all records and evidence before this Court, this Court finds Applicant cannot meet his requisite burden of proof of establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. Findings of fact and conclusions of law are set forth below.

Procedural History

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Cherokee County Clerk of Court. Applicant was indicted at the July 2015 term of the Cherokee County Grand Jury for murder (count one) and possession of a firearm during the commission of a violent crime (count two) (2015-GS-11-00624), and two counts of attempted armed robbery (2015-GS-11-00625 and -00626). Richard Whelchel and Matthew

Craft, Esquires, represented Applicant. Kimberly Leskanic and Jennifer A. Jordan, Esquires, of the Seventh Circuit Solicitor's Office, prosecuted the case. On February 4, 2019, after selecting a jury, Applicant pled guilty as indicted. The Honorable R. Keith Kelly, circuit court judge, sentenced Applicant to thirty years' imprisonment for murder, five years' imprisonment for the weapons charge, and twenty years' imprisonment for each count of attempted armed robbery, sentences running concurrently. Applicant did not appeal his plea or sentence.

Summary of Relevant Facts

On May 6, 2015, police were called out to a shooting with injuries. (Tr. 44-45). When they arrived at that location, they found the deceased victim with two gunshot wounds, slumped over in his pickup truck. (Tr. 45). Officers began their investigation. (Tr. 45).

Video footage was retrieved of two individuals, a female and a male walking in that alley. (Tr. 45). The video showed the attempted robbery of the deceased victim and Sandra Tessnear, who was a prostitute that got into the vehicle with the deceased prior to the shooting. (Tr. 45). It showed the two individuals running away after what appeared to be a shooting. (Tr. 45). Officers posted still photographs from the video on the Gaffney website and Facebook page, ultimately receiving tips that Applicant and Lyric Morgan committed the crimes. (Tr. 45).

The officers found out where they lived and went to their residence the day after the shooting. (Tr. 46). They brought both to the police station, where Lyric, Applicant's girlfriend, gave a confession. (Tr. 46). She stated that they stole the gun three days prior from Applicant's mother's boyfriend. (Tr. 46). She stated that they had kicked the door in, went in, and stole the gun, which Applicant retrieved from a closet in his house. (Tr. 46). They left the house with intending to commit a robbery. (Tr. 46). They identified the victims as their targets. (Tr. 46).

Applicant approached on the driver's side of the vehicle and Lyric approached on the passenger's side. (Tr. 46). Applicant stated "give me everything that you have got." (Tr. 46-47). He pointed the loaded .22 pistol at Mr. Baltazar. (Tr. 47). Lyric stated she saw the deceased victim reach down, possibly for a gun. (Tr. 47). Applicant pulled the trigger and then he pulled the trigger again. (Tr. 47). The deceased suffered two gunshot wounds, one of which lacerated his lungs and his heart, causing internal bleeding and for him to die at the scene. (Tr. 47).

Applicant's mother identified Applicant based upon the video to the police. (Tr. 47). Applicant, in a police statement, said "I saw a prostitute jump in the truck with a Mexican. I tried to rob the Mexican and the prostitute. The Mexican put his hands up like he was trying to get the gun. I pulled my hand back and the gun went off. His truck was standing there and I thought that he was going to get out. I shot again. I ran. Lyric went with me. She did not have any weapon." (Tr. 48).

After Applicant gave his statement to police, they asked him about the gun. (Tr. 49). He told them that he would take them to the location of the gun. (Tr. 49). He stated that he put it in the woods following the shooting. (Tr. 49). The gun was located. Lyric, who was going to testify for the State, identified that gun, stated that it was the gun that the two of them stolen. (Tr. 49).

Current Action Before this Court

In his current PCR application, Applicant alleges he is being held in custody unlawfully because of ineffective assistance of counsel in that:

1. Ineffective assistance of counsel, in that:
 - a. "Applicant was plead guilty after counsel failed to adequate review discovery evidence, Applicant was deprived due process as a result of Counsel ineffectiveness."
 - b. "Attorney advised he was gone do a notice of appeal; Prejudice."
 - c. "Attorney failed to Investigate Juvenile statute."
 - d. "Prejudice by attorney advising applicant to 'only plead guilty.'"
 - e. "Attorney failed to file any pre-trial motions."

- f. "Attorney failed to make or exploit any defense in applicant case."
- g. "Attorney verbally told applicant he was 'not' going to fight for him in trial; Resulted in Applicant to plead guilty"
- h. "Attorney neglected the necessary investigations & preparations of applicant case."
- i. "Attorney failed to function as the counsel that the constitutions 6th Amendment guarantee's."

Applicant, through PCR Counsel, filed an amendment dated June 6, 2022, alleging:

- 1. Applicant did not knowingly, intelligently, or voluntarily plead guilty.
- 2. Applicant felt coerced into pleading.
 - a. Counsel allowed Applicant's mother to coerce Applicant into pleading.
 - b. Counsel told him he would not fight for him if he proceeded to trial.
- 3. Applicant detrimentally relief on Counsel's erroneous advice without reviewing his constitutional rights, potential defenses, discovery, or correct sentencing consequences.
- 4. Counsel failed to properly advise Applicant he would have to serve his sentence day for day.
- 5. Counsel failed to present all mitigation evidence in preparation of Applicant's defense.
 - a. Failure to use mitigation evidence in negotiations.
- 6. Counsel failed to advise Applicant about potential defenses and legal motions.
- 7. Failure to discuss the option of withdrawing the plea.

At the PCR hearing, Applicant proceeded forward on the following allegations:

- 1. Ineffective assistance of counsel.
 - a. Failure to review discovery.
 - b. Failure to explain and pursue pre-trial motions, especially a motion to suppress.
 - c. Failure to mitigate the sentence and use mitigation evidence in negotiations.
 - d. Failure to discuss the option of withdrawing the plea.
 - e. Failure to discuss Applicant's rights and defenses.
 - f. Failure to prepare defense.
 - g. Failure to pursue waiver hearing.
- 2. Invalid plea.
 - a. Applicant's mother coerced him into pleading.
 - b. Counsel Whelchel told Applicant he would not fight for him at trial.
 - c. Applicant was erroneously told he would only have to serve eighty-five percent of his sentence.
 - d. Trial tax.

All other allegations raised in his initial application and amendments are deemed waived and abandoned and, accordingly, will not be addressed in this order.

Summary of the Testimony

Applicant Testimony

Applicant stated that Counsels began representing him after his first attorney, Don Thompson, retired in 2018. He stated that there was a mitigation specialist and they met four or five times. He stated he met with Counsel Whelchel three to four times. He stated they discussed the statements. He stated that he was not told challenging the police statement was an option. He stated that during his first meeting with Counsel Whelchel he told Applicant that he new represented him. He stated they did not discuss his rights or defenses. He stated that at the second meeting he was given his Rule Five and this was explained to him. In the Rule Five were police statements and the police report. He stated that it was sixty-three pages long. He stated that the meeting lasted thirty to forty minutes long. He stated they reviewed the body camera videos and took notes. He stated that they never discussed the paper discovery together. He stated that he met the mitigation specialist while represented by Thompson but never discussed the mitigation specialist materials. He stated that during his fourth meeting with Counsel they picked a jury and reviewed video, which Counsel said were helpful. He stated that Counsels did not mention pretrial motions or evidence. He stated that Counsel Whelchel stated that he did not have a defense. He stated that Counsels answered his questions concerning trial. He stated his mother was on the phone that day, crying and telling him to plead. He stated that Counsel Whelchel said he did not stand a chance at trial and should plead. He stated he talked to Counsel Craft at trial, who said he only had to serve eighty-five percent of his sentence. He stated he thought he only had to serve twenty-one years' when he pled. He stated he wanted to talk to Counsels about the officers regarding the statement. He stated he was not happy with the plea and never talked to Counsels about withdrawing it. He stated he was upset Counsel did not

prepare a defense. He stated that he thought his only options were to plead or spend life in prison.

Richardson Testimony

Richardson testified that Applicant is her second son. She stated the plea was a last-minute decision. She stated that Counsel Whelchel was very hit or miss with communication. She stated Applicant wanted to go to trial but decided to plead to thirty years because Counsels told him he would not have to serve the entire thirty years. She stated Counsel told Applicant to plead.

Counsel Whelchel Testimony

Counsel Whelchel testified that Applicant decided to plead. He stated Applicant discussed the discovery with him. He stated there was never a plea offer made to a lesser-included offense. He stated that they discussed motions they would have pursued if Applicant went to trial. He stated he told Applicant he would have to serve the sentence day for day. He stated Applicant pled to the mandatory minimum. He stated that the strategy at trial would have been to poke holes in the State's case. He stated that Applicant's mother talked to him about pleading. He stated he met with Applicant more than four times. He stated that the evidence against Applicant included his co-defendants testimony and his own confession. He stated they discussed a motion to suppress the statement, which they would have pursued at trial. He stated that Applicant's decision to testify was up in the air. He stated they discussed the ballistics report, which was inconclusive. He stated that no one could make Applicant testify. He stated that he does not do written motions but brings them up in person before the trial judge. He stated he discussed his general practice regarding motions with Applicant. He stated he did not do a waiver hearing because he thought it was already done. He stated that someone else was hired to

do the waiver hearing. He stated that Applicant was young and impressionable. He stated that the State was unwilling to let Applicant plead to voluntary manslaughter. He stated he told Applicant about what would happen at the motion to suppress hearing. He stated he told Applicant there was a good chance of the statement being admitted. He stated he had a phone conversation with Applicant's mother, where he said the jury was picked. He stated Applicant asked to talk to his mother. He stated he never asked Applicant's mother to convince Applicant to plead. He stated it was Applicant's decision to plead.

Counsel Craft Testimony

Counsel Craft testified that he told Applicant he would have to serve his sentence for murder day for day, minus the time he spent in the county jail before being transported to SCDC. He stated that Applicant received a negotiated sentence.

Findings of Fact and Conclusions of Law

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. Before this Court are the Spartanburg County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the plea transcript, and this PCR action's records. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by South Carolina Code Annotated Section 17-27-80 (2003).

Ineffective Assistance of Counsel

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 "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, as explained by the United States Supreme Court 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 a preponderance of the evidence that counsel's actions fell outside of the zone of “reasonableness under prevailing professional norms.” *Strickland*, 466 U.S. at 688. See also Rule 71.1(c), SCRCP (“The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence.”). 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 of the reasonableness inquiry is 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 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 695.

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).

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.

Invalid Plea

In the context of a guilty plea, the applicant must show there is a reasonable probability that, but for ineffective assistance of counsel, he or she would not have pled guilty but, instead, would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Applicant’s right to contest the validity of a plea is usually, but not invariably, foreclosed because of the inherent solemnity and truthfulness included in the guilty plea process. *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.”). Absent valid reasons why the applicant is entitled to depart from previous judicial admissions made at the plea hearing, statements made during the original proceeding remain conclusive. *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)).

For a plea to be valid, the applicant must have been aware of the nature and crucial elements of the offense the maximum and minimum penalties, and the rights he is waiving by accepting the plea. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Roddy v. State*, 339 S.C. 29 (2000). A plea is not knowing or voluntary if a defendant "lacks knowledge of material evidence in the prosecution's possession." *Gibson v. State*, 334 S.C. 515, 523, 514 S.E.2d 320, 324 (1999).

A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." *Roddy v. State*, 339 S.C. at 34, 528 S.E.2d at 421 (citing *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing." *Dalton*, 376 S.C. at 138, 654 S.E.2d at 874 (quoting *Harres v. Leake*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)). Further, "guilty pleas, freely and voluntarily entered, act as a waiver of all non-jurisdictional defects and defenses, including claims of a violation of a constitutional right prior to the plea." *Whetsell v. State*, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981).

This Court finds the plea was entered freely, voluntarily, knowingly, and intelligently. He stated he was pleading to a negotiated thirty years' imprisonment with several other sentences running concurrently. (Tr. 36). He stated he understood the charges, elements, indictments, and sentencing ranges he was pleading to. (Tr. 37-38). He stated he understood violent and most serious distinctions, when applicable. (Tr. 37-38). He stated that he knew he was waiving his rights to remain silent, to proceed to a jury trial, and to call and confront witnesses. (Tr. 39-40).

He stated that he was pleading guilty to all freely and without pressure and coercion. (Tr. 41). He stated that he talked to his mother about pleading, but she did not force him to plead. (Tr. 42). He stated it was his decision to plead and no promises were made. (Tr. 42). He stated he had no complaints about Counsels. (Tr. 44). He stated he talked about the case with Counsels. (Tr. 44). He stated he was not forced into pleading. (Tr. 44). He stated that Counsels went over discovery and wanted to proceed forward with the plea. (Tr. 44). He agreed with the facts as stated by the prosecutor. (Tr. 44-50). Accordingly, the plea was freely, knowingly, intelligently, and voluntarily and cannot be withdrawn now.

Rights

Applicant claims he did not know about the rights waived by entering the plea. This was refuted by the plea transcript and relief is denied accordingly.

Defenses

Applicant claims his plea is not valid because he did not discuss potential defenses with Counsels. Applicant has failed to highlight any specific defense that would have caused him to proceed to trial. Further, the right to present a defense was waived through entry of a valid plea. Accordingly, relief is denied.

Failure to Review Discovery

Applicant claims Counsel was ineffective for failure to share and review discovery. Counsel credibly testified that he reviewed the discovery with Applicant. Applicant has failed to show anything existed in the discovery not shown to him that would have caused him to proceed to trial instead. Accordingly, relief is denied.

Trial Tax

Applicant claims he was coerced into pleading because he was afraid of facing more time

at trial. Being informed that if he went to trial, he would face more time in prison does not rise to the level of coercion and is not enough to render the plea invalid. Accordingly, relief is denied on this ground.

Applicant's Mother

Applicant claims the plea was coerced because Counsels had Applicant's mother talk to him about pleading. In fact, the plea transcript reflects that he spoke with his mother beforehand but she did not coerce him to plead. (Tr. 42). This Court finds that this conversation did not rise to the level of coercion. Accordingly, relief is denied.

Counsel would not Fight

Applicant claims Counsel was ineffective for telling him he would not fight for him at trial. This Court finds this claim not credible or supported by Counsel's testimony about actions taken leading up to the plea. Even so, Applicant has failed to establish prejudice. Relief is denied on this ground.

Pre-Trial Motions

Applicant claims Counsel was ineffective for failure to inform him about his right to pursue pre-trial motions. Counsel credibly testified that he informed Applicant about this, with particular focus on the motion to suppress and how they would likely lose that motion. The right to pursue this motion was waived with entry of an otherwise valid plea. Accordingly, relief is denied.

Mitigation

Applicant claims Counsel was ineffective for failing to present mitigation evidence in negotiations. Counsel may be found deficient for failing to sufficiently investigate and present mitigating evidence. *See Council v. State*, 380 S.C. 159, 172, 670 S.E.2d 356, 363 (2008)

(finding it unreasonable for counsel not to further investigate the defendant's background and present even minimal mitigating evidence obtained); *Wiggins v. Smith*, 539 U.S. 510, 521 (2003) (finding it unreasonable when Counsel failed to investigate mitigating evidence beyond a couple retained records, including the presentence investigation report and social service records); *Williams v. Taylor*, 529 U.S. 362, 398 (2000) (finding that Counsel was unreasonable for failing to evaluate the totality of available mitigation evidence). An applicant is prejudiced by this deficiency if there is a reasonable probability that a different sentence would have been imposed but for Counsel's failure to investigate and present mitigating evidence. *Council v. State*, 380 S.C. 159, 171, 670 S.E.2d 356, 362 (2008).

Applicant has failed to show that Counsel's approach was unreasonable or that Counsel failed to present any mitigation evidence that would have resulted in a different sentence. Accordingly, relief is denied.

Withdrawing Plea

Applicant claims Counsel was ineffective for failure to withdraw the plea. Applicant admitted he did not ask Counsel for this option. Additionally, Applicant seemingly presented no signs to Counsels that caused them to discuss this option with Applicant. Accordingly, relief is denied.

Eighty-Five Percent Sentence

Applicant claims Counsel was ineffective for telling him he only had to serve eighty-five percent of his sentence to be parole eligible. "It is well settled that parole eligibility is a collateral consequence of sentencing, and that trial counsel need not advise a client of his parole eligibility or ineligibility in order to render effective assistance." *Jackson v. State*, 349 S.C. 62, 64, 562 S.E.2d 475, 476-77 (2002) (citations omitted). "When considering an allegation on PCR that a

guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether information conveyed by the plea judge cured any possible error made by counsel." *Burnett v. State*, 352 S.C. 589, 592, 576 S.E.2d 144, 145 (2003) (citing *Moorehead v. State*, 329 S.C. 329, 496 S.E.2d 415 (1998)).

Counsel Craft credibly testified he would have to serve his sentence day for day with credit for time served. Accordingly, relief is denied.

Waiver Hearing

Applicant claims Counsel was ineffective for failure to hold a waiver hearing. Counsel testified that he thought this hearing was conducted with another attorney. Regardless, Applicant has failed to establish prejudice and relief is denied accordingly.

[conclusion and signature line on following page]

Conclusion

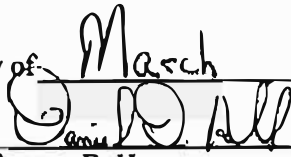
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court notifies Applicant that he must file and serve a notice of appeal within thirty days of receipt by counsel of the judgment entry's written notice to secure 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 the right to 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 Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

IT IS THEREFORE ORDERED:

1. The PCR application be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 21st day of March, 2023.



 DANIEL D. HALL
 Presiding Judge
 Seventh Judicial Circuit

York, South Carolina.

THE STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)
Mark Earls, Jr.,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS

SEVENTH JUDICIAL CIRCUIT

Case No.: 2019-CP-11-00570

**MOTION TO ALTER OR AMEND
PURSUANT TO RULE 59(E), SCRCP**

FILED IN OFFICE
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2023 APR -6 A 11:34
BRANDY W. MCBE

To: **The Honorable Daniel D. Hall**

The Applicant, by and through the undersigned Counsel, moves this Court to alter or amend the Order of Dismissal filed on March 24, 2023, in the above-captioned case pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. Rule 59(e), SCRE; U.S. Const. amends. V, VI, XIV; S.C. Const. art. I, §§ 3 and 14; S.C. Code § 17-27-20(A)(1), (4), and (6). In support of this motion, Applicant submits the following arguments and does not abandon or waive any previous arguments or issues raised in the prior pleadings, proposed orders, and evidentiary hearing in this PCR action:

- (1) Applicant incorporates by reference the issues and arguments raised in the pleadings and through testimony at the evidentiary hearing as if fully set forth verbatim in this motion.
- (2) Respectfully, the procedure followed by this Court denied Applicant an opportunity to have his PCR claims adjudicated by an independent judicial officer in violation of the separation of powers doctrine. See S.C. Art. I, § 8. Specifically, the Court did not provide the State with any basis for denying Applicant's claims other than delegating the responsibility of drafting a proposed order of dismissal (via an email

from the Court's law clerk on August 26, 2022). The Court adopted the State's adversarial proposed Order of Dismissal despite that this independent judicial function cannot be delegated to an executive agency without providing specific instructions and rationale for omitting findings of fact and denying each claim. See *generally Marlar v. State*, 375 S.C. 407, 408, 653 S.E.2d 266 (2007) (holding, "Pursuant to S.C. Code Ann. § 17-27-80 . . . , the PCR judge must make specific findings of fact and state expressly the conclusions of law relating to each issue presented.").

- (3) The Order of Dismissal failed to properly address that Applicant did not knowingly, intelligently, or voluntarily plead guilty.

a) Plea Counsel Whelchel admitted that he did not have any notes for his meetings with Applicant and could not provide any dates for those meetings. He also admitted that he generally does not do pre-trial motions and maintained that he believed the waiver hearing in Family Court had already been done prior to his representation of Applicant. He further conceded that Applicant was young and impressionable and that the phone call with Applicant's mother did occur.

b) Applicant's mother testified Counsel Whelchel told her that Applicant would receive a life sentence if he continued with the trial. She also testified Counsel told Applicant that he did not have to serve the entire thirty (30) year minimum sentence. She further testified that Counsel had her speak with Applicant during a break and that she begged him to plead guilty during an emotional exchange (where she told him he would receive a life

sentence). Notably, Applicant's mother testified that she influenced Applicant's decision to plead guilty.

- c) Applicant testified he did not receive a waiver hearing in Family Court and Plea Counsel did not discuss it with him.
 - d) Applicant testified that Plea Counsel failed to review the video recordings with him in preparation for trial, failed to meet with Mitigation Specialist Pam Leonard (who was retained by Applicant's original counsel), and failed to specifically address his right to challenge the admissibility of his statements to police (motion for suppression of involuntary statements).
 - e) Applicant further testified that Counsel Whelchel told him that he would not "fight" for him at trial (so it was in his best interest to plead guilty) and that Counsel had his mother coerce him into pleading guilty.
 - f) Applicant testified Counsel Craft also told him that he would not have to serve the entire thirty (30) year sentence if he pled guilty.
- (4) The Order of Dismissal failed to address Plea Counsel's failure to discuss the option of moving to withdraw Applicant's guilty plea based on his strong feelings before and after the hearing that he did not want to plead guilty.
 - (5) The Order of Dismissal failed to properly address that Plea Counsel was ineffective in failing to conduct a reasonable investigation and to develop all available, relevant, and admissible or mitigating evidence in preparation of Applicant's defense and that this failure influenced his decision to plead guilty.
 - (6) The Order of Dismissal failed to address whether Plea Counsel's representation was prepared to subject the the prosecution's case to meaningful adversarial

testimony by failing to adequately prepare for trial and not having a trial strategy.

Based on the testimony and evidence presented at the evidentiary hearing, Applicant has established constitutional violations and deprivations that would require post-conviction relief. Specifically, Plea Counsel's unreasonably deficient performance prejudiced Applicant because there is a reasonable probability that, but for Counsel's errors, Applicant would not have pled guilty and went to trial or would have received a reduced sentence. See *Hill v. Lockhart*, 474 U.S. 52 (1985) (applying the *Strickland v. Washington*, 466 U.S. 668 (1984) standard to guilty plea challenges of ineffective assistance of counsel) (quoting *Strickland*, 466 U.S. at 692). Therefore, this Court should reconsider its Order of Dismissal, withdraw that order, enter an Order Granting Applicant Post-Conviction Relief.

CONCLUSION

Based on the foregoing reasons, the undersigned Counsel respectfully requests this Court reconsider the Order of Dismissal, withdraw that order, enter an Order Granting Applicant Post-Conviction Relief allowing him to receive a new trial.

IT IS SO MOVED.

Respectfully submitted,

s/ Dayne Phillips

Dayne C. Phillips, Esq.



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dayne@pricebenowitz.com

April 3, 2023

ATTORNEY FOR THE APPLICANT

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHEROKEE) FOR THE SEVENTH JUDICIAL CIRCUIT
)

Mark A. Earls, Jr.,) Case No.: 2019-CP-11-00570
S.C.D.C. No. 379091,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

**RETURN TO MOTION
TO ALTER OR AMEND**

BRANCH 7, NCCEE
2019 JUN -7 A 8:59

In response to the Motion to Alter or Amend, Respondent would show this Court:

I. PROCEDURE FOR FINAL ORDER

The Order in this case, whether drafted in full or in part by a party, became this Court's Order upon the affixing of Your Honor's signature. Our Supreme Court understands that parties in civil cases—which includes Post-Conviction Relief cases—frequently are asked to draft orders for consideration by the ruling judge. The Court recently noted:

The preparation and finalization of a PCR order is often a collaborative effort. We recognize the prevailing party often prepares a proposed order for the PCR court. *See Hall v. Catoe*, 360 S.C. 353, 365, 601 S.E.2d 335, 341 (2004) (“[I]t is common practice for judges to ask a party to draft a proposed order for the sake of efficiency.”). When counsel for either side prepares the proposed order, the order must include findings of fact and conclusions of law as to all issues raised by an applicant. A copy of the proposed order should be transmitted to opposing counsel. Opposing counsel should promptly review the proposed order and alert preparing counsel and the PCR court as to any deficiencies in the proposed order. Because the PCR judge will ultimately be signing the order, the PCR judge must carefully review the proposed order to ensure it includes appropriate findings of fact and conclusions of law as to all issues raised. Once a proposed order is finalized, signed by the PCR judge, filed, and served upon the parties, the parties should thoroughly review the final order to

make sure all issues raised were adequately addressed as required by section 17-27-80 and Rule 52(a); if they were not, a timely Rule 59(e) motion should be filed, requesting the PCR court to address the appropriate issues.

Fishburne v. State, 427 S.C. 505, 516, 832 S.E.2d 584, 589-90 (2019). This is the procedure utilized by this Court and clearly is playing out as considered by the Supreme Court with the Applicant's filing of his Motion to Alter or Amend. Counsel may not agree with the Order, its findings, and its conclusions. To insinuate this Court did not act as an independent judiciary when it signed the Order after having it under review is disingenuous at best. No executive branch personnel signed the Order. No party signed the Order. The Order was signed by the presiding judge in his role on behalf of the judicial branch. As a result, the Motion to Alter or Amend should be denied as to this ground.

II. FINDINGS AND CONCLUSIONS

The findings and conclusions of this Court's Order are supported by the plea transcript and the testimony from the PCR Hearing. Applicant fails to present any argument regarding issues overlooked or remaining unaddressed by this Court. Instead, he merely argues the Court should rely on different facts—predominantly the self-serving testimony of Applicant and his mother—to reach a different conclusion. He has presented no argument or facts not previously presented to the Court and upon which a different result should be reached.

This Court's Order adequately and appropriately addresses Applicant's claim that his plea was not knowing and voluntary. Specifically, as this Court found, the plea transcript belies any argument that Applicant did not know and understand how he was proceeding or the rights he was waiving. Further, the plea court knew Applicant spoke to his mother and clarified that the discussion did not coerce him to plead guilty, but instead, that he was pleading guilty of his

own decision. (T.42). As a result, this Court's Order should stand finding Applicant failed to meet his burden of establishing his plea was not knowing and voluntarily given.

Additionally, the record refutes the allegation that Counsel was ineffective for failing to prepare and failing to develop a defense. Applicant alleged at the hearing Counsel failed to prepare any defenses or discuss any defense. Applicant maintained Counsel failed to prepare or discuss the ability to suppress the gun or his statement as defenses. Counsel testified he met with Applicant multiple times, including one time shortly after his case had been scheduled for a first trial to discuss discovery. Counsel testified at the hearing that he discussed suppression of the gun as well as suppression of Applicant's statement with him. Additionally, at the plea hearing there was discussion about the impending *Jackson v. Denno* hearing which further bolster's Counsel's statement he had discussed and was prepared to challenge the statement at trial. (T.47-48). As a result, Applicant has not shown how he met his burden of proof.

III. CONCLUSION

WHEREFORE, Respondent respectfully requests that this Court deny the Motion to Alter or Amend and affirm its prior Order of Dismissal.

Respectfully submitted,

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Senior Assistant Deputy Attorney General

By: 

ATTORNEYS FOR THE STATE
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

August 1, 2023

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

Mark A. Earls, SCDC # 379091,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2019-CP-11-00570

**ORDER DENYING APPLICANT'S
MOTION TO ALTER OR AMEND
PURSUANT TO RULE 59(a) SCRC**

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
SEP - 5 A 11:35
BRANDY W. MCREE

This matter comes before this Court by way of Applicant's Motion to Alter or Amend pursuant to Rule 59(a), SCRC, asking this Court to alter or amend its Order of Dismissal denying Applicant post-conviction relief filed March 24, 2023.

PROCEDURAL HISTORY

The records before this court show that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Cherokee County Clerk of Court. Applicant was indicted during the July 2015 term of the Cherokee County Grand Jury for murder (count one), and possession of a firearm during the commission of a violent crime (count 2) (2015-GS-11-00624). Richard Welchel and Matthew Craft, Esquires, represented Applicant. Kimberly Leskanic and Jennifer A. Jordan, Esquires, of the Seventh Circuit Solicitor's Office, prosecuted the case. On February 4, 2019, after selecting a jury, Applicant pled guilty to all charges as indicted. The Honorable R. Keith Kelly, circuit court judge, sentenced Applicant to thirty years' imprisonment for murder, five years' imprisonment for the weapons charge, and twenty years' imprisonment for each count of attempted armed robbery, with the sentences running concurrently. Applicant did not appeal his plea or sentence.

Summary of Relevant Facts

On May 6, 2015, police were called out to a shooting with injuries. (Tr. 44-45). When they arrived at that location, they found the deceased victim with two gunshot wounds, slumped over in his pickup truck. (Tr. 45). Officers began their investigation. (Tr. 45).

Video footage was retrieved of two individuals, a female and a male walking in that alley. (Tr. 45). The video showed the attempted robbery of the deceased victim and Sandra Tessnear, who was a prostitute that got into the vehicle with the deceased prior to the shooting. (Tr. 45). It showed the two individuals running away after what appeared to be a shooting. (Tr. 45). Officers posted still photographs from the video on the Gaffney website and Facebook page, ultimately receiving tips that Applicant and Lyric Morgan committed the crimes. (Tr. 45).

The officers found out where they lived and went to their residence the day after the shooting. (Tr. 46). They brought both to the police station, where Lyric, Applicant's girlfriend, gave a confession. (Tr. 46). She stated that they stole the gun three days prior from Applicant's mother's boyfriend. (Tr. 46). She stated that they had kicked the door in, went in, and stole the gun, which Applicant retrieved from a closet in his house. (Tr. 46). They left the house with intending to commit a robbery. (Tr. 46). They identified the victims as their targets. (Tr. 46).

Applicant approached on the driver's side of the vehicle and Lyric approached on the passenger's side. (Tr. 46). Applicant stated "give me everything that you have got." (Tr. 46-47). He pointed the loaded .22 pistol at Mr. Baltazar. (Tr. 47). Lyric stated she saw the deceased victim reach down, possibly for a gun. (Tr. 47). Applicant pulled the trigger and then he pulled the trigger again. (Tr. 47). The deceased suffered two gunshot wounds, one of which lacerated his lungs and his heart, causing internal bleeding and for him to die at the scene. (Tr. 47).

Applicant's mother identified Applicant based upon the video to the police. (Tr. 47). Applicant, in a police statement, said "I saw a prostitute jump in the truck with a Mexican. I tried

to rob the Mexican and the prostitute. The Mexican put his hands up like he was trying to get the gun. I pulled my hand back and the gun went off. His truck was standing there and I thought that he was going to get out. I shot again. I ran. Lyric went with me. She did not have any weapon.” (Tr. 48).

After Applicant gave his statement to police, they asked him about the gun. (Tr. 49). He told them that he would take them to the location of the gun. (Tr. 49). He stated that he put it in the woods following the shooting. (Tr. 49). The gun was located. Lyric, who was going to testify for the State, identified that gun, stated that it was the gun that the two of them stolen. (Tr. 49).

Current Action Before this Court

In his PCR application, Applicant alleged he is being held in custody unlawfully because of ineffective assistance of counsel in that:

1. Ineffective assistance of counsel, in that:
 - a. “Applicant was plead guilty after counsel failed to adequate review discovery evidence, Applicant was deprived due process as a result of Counsel ineffectiveness.”
 - b. “Attorney advised he was gone do a notice of appeal; Prejudice.”
 - c. “Attorney failed to Investigate Juvenile statute.”
 - d. “Prejudice by attorney advising applicant to ‘only plead guilty.’”
 - e. “Attorney failed to file any pre-trial motions.”
 - f. “Attorney failed to make or exploit any defense in applicant case.”
 - g. “Attorney verbally told applicant he was ‘not’ going to fight for him in trial; Resulted in Applicant to plead guilty”
 - h. “Attorney neglected the necessary investigations & preparations of applicant case.”
 - i. “Attorney failed to function as the counsel that the constitutions 6th Amendment guarantee’s.”

Applicant, through PCR Counsel, filed an amendment dated June 6, 2022, alleging:

1. Applicant did not knowingly, intelligently, or voluntarily plead guilty.
2. Applicant felt coerced into pleading.
 - a. Counsel allowed Applicant’s mother to coerce Applicant into pleading.
 - b. Counsel told him he would not fight for him if he proceeded to trial.
3. Applicant detrimentally relief on Counsel’s erroneous advice without reviewing his constitutional rights, potential defenses, discovery, or correct sentencing consequences.

4. Counsel failed to properly advise Applicant he would have to serve his sentence day for day.
5. Counsel failed to present all mitigation evidence in preparation of Applicant's defense.
 - a. Failure to use mitigation evidence in negotiations.
6. Counsel failed to advise Applicant about potential defenses and legal motions.
7. Failure to discuss the option of withdrawing the plea.

At the PCR hearing, Applicant proceeded forward on the following allegations:

1. Ineffective assistance of counsel.
 - a. Failure to review discovery.
 - b. Failure to explain and pursue pre-trial motions, especially a motion to suppress.
 - c. Failure to mitigate the sentence and use mitigation evidence in negotiations.
 - d. Failure to discuss the option of withdrawing the plea.
 - e. Failure to discuss Applicant's rights and defenses.
 - f. Failure to prepare defense.
 - g. Failure to pursue waiver hearing.
2. Invalid plea.
 - a. Applicant's mother coerced him into pleading.
 - b. Counsel Whelchel told Applicant he would not fight for him at trial.
 - c. Applicant was erroneously told he would only have to serve eighty-five percent of his sentence.
 - d. Trial tax.

Following its review of the testimony and evidence presented at the hearing, this Court found that there were no constitutional deprivations or other errors entitling Applicant to relief and denied and dismissed the application with prejudice. This Court issued a formal order to this effect, signed on March 21, 2023 and filed on March 24, 2023.

On or about April 3, 2023, Applicant served a copy of his Motion to Alter or Amend Pursuant to Rule 59(e) SCRPC, on this Court. Respondent filed a return to the motion on or about August 1, 2023.

After reviewing Applicant's Motion and the State's Return, this Court finds that its fifteen page Order of Dismissal contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976) and Rule 52(a) SCRPC. See also McCray v.

State, 305 S.C. 329, 408 S.E.2d 241 (1991). Having carefully reviewed the entire record in this matter, this Court finds that there is no basis for altering or amending its prior ruling.¹ Therefore, this Court hereby denies the Applicant's Motion in its entirety and affirms the previous Order of Dismissal.

This Court notes that if the Applicant desires to secure appellate review of this Order and the Order of Dismissal, a notice of appeal must be filed and served within thirty days of the service of this Order. Petitioner is directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after a Notice of Appeal has been timely filed.

AND, IT IS SO ORDERED this 24th day of August, 2023



DANIEL D. HALL
Presiding Judge
Seventh Judicial Circuit

York, South Carolina

¹ The Court, in its discretion, has considered this matter based upon the motions submitted by the parties and the post-conviction relief file, since oral argument will not aid the Court in reaching its decision. See Rule 59(f), SCRCP.

WITNESSES

Gaffney Police Dept.

[Signature]

ARREST WARRANT NUMBER

2015A1120200168 (Count One)

2015A1120200170 (Count Two)

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury
Date: 7-9-15

VERDICT

Foreperson of Petit Jury
Date:

15-06-11-00624

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUL 09 2015

TERM

THE STATE

VS.

MARK ANTONIO EARLS, JR.

Indictment for

MURDER AND
POSSESSION
OF FIREARM DURING COMMISSION OF A
VIOLENT CRIME

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.
JUL 9 AM 10 04
BRANDY W. MCBEE

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

INDICTMENT

At a Court of General Sessions, convened on JUL 09 2015, the
Grand Jurors of Cherokee County present upon their oath:

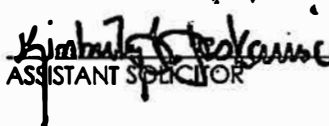
COUNT ONE-MURDER

That Mark Antonio Earls, Jr., did in Cherokee County on or about May 6, 2015, feloniously, willfully, and with malice aforethought, kill one Abelardo Morales Baltazar, by shooting the victim, and that the victim died as a proximate result thereof, all in violation of §16-3-0010, 0020, CODE OF LAWS OF SOUTH CAROLINA, (1976, as amended).

**COUNT TWO-POSSESSION OF FIREARM DURING
COMMISSION OF A VIOLENT CRIME**

That Mark Antonio Earls, Jr., did in Cherokee County on or about May 6, 2015, possess a firearm, during the commission of a violent crime as defined in Code §16-1-60, to wit: MURDER, 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 SHERIFF

WITNESSES

Gaffney Police Dept.

[Signature]

ARREST WARRANT NUMBER

2015A1120200169

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury
Date: 7-9-15

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO: 13-GS-11-00625

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUL 09 2015

TERM

THE STATE

vs.

MARK ANTONIO EARLS, JR.

Indictment for

ATTEMPTED ARMED ROBBERY

SC Code: 16-11-330 (B)

CDR Code: 26

Class FEL/C

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
JUL 9 AM 10 04
BRANDY W. MCBEE

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

INDICTMENT

At a Court of General Sessions, convened on JUL 09 2015, the
Grand Jurors of Cherokee County present upon their oath:

ATTEMPTED ARMED ROBBERY

That Mark Antonio Earls, Jr. did in Cherokee County on or about May 6, 2015, 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 attempt to take goods or monies from the person or presence of Abelardo Morales Baltazar, by means of violence, intimidation, or by putting Abelardo Morales Baltazar in fear, in violation of §16-11-330 (B), 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 SPECTATOR

WITNESSES

Gaffney Police Dept.

[Signature]

ARREST WARRANT NUMBER

2015A1120200174

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury
Date: 7-9-15

VERDICT

Foreperson of Petit Jury
Date:

15-05-11-00626

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUL 09 2015

TERM

THE STATE

vs.

MARK ANTONIO EARLS, JR.

Indictment for

ATTEMPTED ARMED ROBBERY

SC Code: 16-11-330 (B)

CDR Code: 26

Class FEL/C

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
JUL 9 AM 10 04
BRANDY W. MCBEE

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

INDICTMENT

At a Court of General Sessions, convened on JUL 09 2015, the

Grand Jurors of Cherokee County present upon their oath:

ATTEMPTED ARMED ROBBERY

That Mark Antonio Earls, Jr. did in Cherokee County on or about May 6, 2015, 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 attempt to take goods or monies from the person or presence of Sandra Lynn Tessnear, by means of violence, intimidation, or by putting Sandra Lynn Tessnear in fear, in violation of §16-11-330 (B), 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

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Cherokee
STATE VS.

Mark Antonio Earls Jr.

AKA:

Race: BLACK Sex: M Age: 20DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Gaffney SC 29340DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder (30 years to Life)INDICTMENT/CASE#: 2015GS1100624A/W#: 2015A1120200168Date of Offense: 5/6/2015S.C. Code § 16-03-0010; 16-03-0020CDR Code #: 0116

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin 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 Lowd Act)The charge is: ☒ As Indicted ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

LESHANIC, KIM

SCBI6837

SC Bar#

Defendant

Whitelabel, Richard R.
Attorney for Defendant

SCB06037

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 SCDOP.☐ 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 PTUPTotal: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§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/ca	\$
3% to County (if paid in installments)	\$	\$

TOTAL

\$

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA217 (04/2018)

Presiding Judge

Judge Code: 2103Sentence Date: 2/4/19☐ Appointed PD or appointed other counsel,
Proviso requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.CLERK OF COURT
CHEROKEE COUNTY, S.C.

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Cherokee

VS.

Mark Antonio Earls Jr.

AKA:

Race: BLACK Sex: M Age: 20

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State: [REDACTED]

DL#: [REDACTED] /SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Attempted Armed Robbery (0-20 years)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GS1100625

A/W#: 2015A1120200169

Date of Offense: 5/6/2015

S.C. Code § 16-11-0330(B)

CDR Code #: 0026

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-11-0330(B) of the S.C. Code of Laws, bearing CDR Code # 0026

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST-SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45

w/minor 1st or Lowd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

LESKANIC, KIM

SCB16837

SC Bar#

Defendant

Welch, Richard H.
Attorney for Defendant

SCB06057

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 20 days/months/years ☐ 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 SCDCC.☐ 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 S.C. Code §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 SCDPPFS Recipient:

*Fine:

§14-1-206 (Assessments 107.5 %)	\$	
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2993 (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 Court Reporter:

SCCA/217 (04/2018)

Presiding Judge Judge Code: Sentence Date: 2/4/19

plea only: R. Kelly #2165
4 February 2019

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Cherokee

VS.

Mark Antonio Earls Jr.

AKA:

Race: BLACK Sex: M Age: 20

DOB:

Address:

City, State, Zip: Cherokee SC 29540

DL#:

/SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Attempted Armed Robbery [0-20-years]

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GS1100626

A/W#: 2015A1120200174

Date of Offense: 5/6/2015

S.C. Code § : 16-11-0330(B)

CDR Code #: 0026

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-11-0330(B) of the S.C. Code of Laws, bearing CDR Code # 0026

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST-SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lowd Act) ☐ §17-25-45The charge is: ☒ As Indicted ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

KICOKAUM
LESKANIC, KIMSCB16837
SC Bar#

Defendant

Whitchel, Richard H.
Attorney for DefendantSCB06057
SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 20 days/months/years ☐ 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 EmploymentPayment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§14-1-206 (Assessments 107.5 %)	\$	
§14-1-211(A)(1) (Conv. Surcharge)	\$	ST00
§14-1-211(A)(2) (DUI Surcharge)	\$	ST00
§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

\$128.75

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (04/2018)

Brandon L. McBe
W.R. Waters
Plea only: P. Keith Kelly #2165
4 February 2019

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 FundOther:

☐ 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: 2145Sentence Date: 2/4/19

ATTEST COPY
Brandon L. McBe
CLERK OF COURT
CHEROKEE COUNTY, S.C.