

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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May 15 2024

S.C. SUPREME COURT

Certiorari to York County

Honorable Walton J. McLeod, IV, Circuit Court Judge

ROBERT C. CRIBB,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001719

APPENDIX

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State of South Carolina.,) In the General Sessions
) Court of York
)
 County of York.) Case No. 2018-GS-46-01919
) 2018-GS-46-01919 (A)
) 2018-GS-46-01919 (B)
 State of South Carolina.,)
)
 Plaintiff.,)
)
 -vs-) Transcript of Record
)
 Robert Cleveland Cribb, Jr.,)
)
 Defendant.)
 _____)

August 24, 2018
 York, South Carolina

B-E-F-O-R-E:

The Honorable Daniel D. Hall, judge.

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 To the Honorable Daniel D. Hall

1

I-N-D-E-X

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E-X-A-M-I-N-A-T-I-O-N

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WITNESSBY:PAGE NO.

4

No witnesses were called to testify.

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
St.1	2 photos/scene incident		P.54
St.2	2 photos/scene incident		P.54
St.3	2 photos/scene incident		P.54
St.4	2 photos/Victim and scene incident. . .		P.54
St.5	2 photos/Victim and scene incident. . .		P.54
St.6	2 photos/scene incident and Defendant		P.54
St.7	2 photos/Defendant.		P.54
St.8	1 photo/Defendant		P.54
Def.1	Psychiatric Eval. By Leonard Mulbry, Jr., M.D., 1-29-18		P.8

Court Reporter's Note: All Exhibits were filed with the
York County Clerk of Court's Office.

1 (COURT IN SESSION FRIDAY, AUGUST 24, 2018 AT 10:28
2 A.M. IN THE MATTER OF STATE VERSUS ROBERT CLEVELAND CRIBB,
3 JUNIOR.)

4 SOLICITOR THOMPSON: Robert Cribb.

5 THE COURT: Will the lawyers approach?

6 (BENCH CONFERENCE OFF THE RECORD AT 10:28 A.M.)

7 THE COURT: We're gonna take a quick five minute
8 break.)

9 (COURT AT EASE AT 10:29 A.M./BACK IN SESSION AT 10:49
10 A.M.)

11 THE COURT: Please be seated.

12 (DEFENDANT, ROBERT CRIBB, ENTERS COURTROOM.)

13 SOLICITOR THOMPSON: May it please the Court, your
14 Honor.

15 THE COURT: Yes, Solicitor.

16 SOLICITOR THOMPSON: *The state of South Carolina*
17 *versus Robert Cribb, Junior.* Mr. Cribb is pleading on
18 Indictments 2018-GS-46-1919 wherein he was originally
19 charged with murder he's pleading guilty to voluntary
20 manslaughter.

21 He's also pleading to the second and third counts of
22 the Indictments which would be 1919(A) and (B). Those are
23 for possession of a weapon during the commission of a
24 violent crime; the first being a firearm and the second
25 being a knife.

1 He's represented by Mindy Lipinski the Senior Public
2 Defender's. Your Honor, there is a Blair issue that we
3 would address first. I believe we are prepared to go
4 forward with that at this time as well. And the only other
5 thing I would say before we do that is that the only
6 recommendation, he's pleading straight up to the voluntary
7 manslaughter. The only other recommendation is that the
8 firearm's charges run concurrent.

9 THE COURT: All right. Thank you.

10 All right, Ms. Lipinski, you represent Mr. Cribb?

11 MS. LIPINSKI: I do, your Honor, and I may kind of go
12 along with it but he is pleading guilty but mentally ill.
13 I don't know that Mr. Thompson stated that. That kind of
14 goes along with the Blair hearing.

15 THE COURT: We'll deal with that.

16 MS. LIPINSKI: I understand that but I do represent
17 Mr. Cribb, your Honor.

18 THE COURT: All right. We'll deal with that, all
19 right. And, Mr. Thompson, and you, have now brought to the
20 attention of the Court there may be some mental issues
21 involved and necessitate a Blair hearing, or at least a
22 finding of the Court on his competency.

23 Let me do this. Mr. Cribb, if you'd stand please.

24 How old are you, Mr. Cribb?

25 MR. CRIBB: Twenty-three.

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

2 MR. CRIBB: To the 9th grade but I got my GED in 2017.

3 THE COURT: Have you ever been treated for any mental
4 or emotional disability?

5 MR. CRIBB: No, sir.

6 THE COURT: All right. If you'd have a seat.

7 All right, tell me what the status or the rational
8 basis for a guilty but mentally ill plea, Ms. Lipinski.

9 MS. LIPINSKI: I'll hand up to the Court, and I've
10 shown -- provided a copy to the State, he was evaluated by
11 Doctor Mulbry who is present in the courtroom today, and
12 also saw Mr. Cribb earlier today, who states that based on
13 his review of the evidence, his interview with Mr. Cribb,
14 his interview with the family, he was taken to PMC just
15 briefly before this, to the emergency room through his
16 family, based on some paranoid and disorganized thoughts
17 that he was expressing to the family.

18 PMC and their ultimate was -- and I'll talk a little
19 about that later -- determined that he didn't need to be
20 admitted but sent him home with some medication and to
21 followup with Catawba Mental Health. Doctor Mulbry
22 diagnosed him originally as suffering from schizophrenia.
23 There's some history of that in his family; his mother
24 suffers from a schizo-effective disorder, and so based on
25 Doctor Mulbry's opinion, and that's the opinion of the

1 report, he lacked his ability to conform his conduct to the
2 law and in his opinion was guilty but mentally ill at the
3 time the event took place.

4 THE COURT: All right. And I had been provided what's
5 been marked as Defendant's Exhibit 1. This appears to be a
6 psychiatric evaluation from Doctor Mulbry; it's been
7 presented to the Court. Doctor Mulbry you've indicated is
8 present.

9 MS. LIPINSKI: Yes, your Honor, he's on the front row.

10 THE COURT: All right. And is it your intention to
11 present some testimony through Doctor Mulbry?

12 MS. LIPINSKI: I wanted him here in the event that the
13 Court wanted to question him for a Blair hearing and just
14 for my benefit in attempting to summarize his report and
15 how they interacted.

16 THE COURT: All right. And some of that may to - I
17 assume to mitigation?

18 MS. LIPINSKI: Yes, your Honor.

19 THE COURT: All right, Mr. Thompson, has the State
20 been provided with a copy of Doctor Mulbry's psychiatric
21 evaluation?

22 SOLICITOR THOMPSON: Yes, we have, your Honor.

23 THE COURT: And does the State have any concerns or
24 objections to the conclusions of Doctor Mulbry? He has
25 indicated on page 21 of his evaluation, and I'll read this

1 on the record: "Mr. Robert Cleveland Cribb, Junior, is a
2 twenty-two year old gentleman seen at the request of his
3 attorney Ms. Lipinski of the York County Public Defender's
4 Office. Mr. Cribb is currently charged with murder and two
5 counts of possession of a weapon during a violent crime.
6 He has a psychiatric diagnosis schizophrenia. It is my
7 opinion to a reasonable degree of medical certainty Mr.
8 Cribb at the time of the alleged acts did have the capacity
9 to distinguish moral and legal right from wrong but lacked
10 the capacity to conform his behavior at the time of those
11 acts.

12 They have presented the psychiatric evaluation and as
13 part of the basis of a guilty but mentally plea where the
14 defense has to prove by a preponderance of the evidence
15 that the defendant was -- at the time of the crime was
16 mentally ill.

17 Do you have any objections to this report or the
18 findings of the report?

19 SOLICITOR THOMPSON: No, your Honor.

20 THE COURT: All right. Defense Exhibit 1 will be part
21 of the record.

22 (WHEREUPON, DEFENDANT'S EXHIBIT NO. 1, IDENTIFIED AND
23 MARKED, RECEIVED INTO EVIDENCE.)

24 THE COURT: Let me talk to Mr. Cribb a little bit
25 more.

1 What I think I'll do is I'm gonna talk to Mr. Cribb a
2 little bit and then at the appropriate time I'll be glad to
3 hear from Doctor Mulbry during mitigation.

4 MS. LIPINSKI: Thank you, your hOnor.

5 THE COURT: Mr. Cribb, you've indicated you had gone
6 to the 9th grade. Are you taking any kind of mediation?

7 MR. CRIBB: Yes, I'm taking Zoloft, Depracote, Cyrquil
8 and Lugentin.

9 THE COURT: And have you taken your medication today
10 or within the past twenty-four hours?

11 MR. CRIBB: Yes, sir.

12 THE COURT: Does that medication affect your ability
13 to understand what you're doing here?

14 MR. CRIBB: No, your Honor.

15 THE COURT: You know what you're doing here?

16 MR. CRIBB: Yes, sir.

17 THE COURT: And again, you've stated to the Court,
18 have you ever been a patient in any type of facility for
19 mental or emotional disability?

20 MR. CRIBB: No, sir.

21 THE COURT: What's the last job you had?

22 MR. CRIBB: I was working with Lacosta as a -- on an
23 assembly line doing parts for eighteen-wheeler
24 transmissions.

25 THE COURT: How long did yo work there?

1 MR. CRIBB: For two weeks.

2 THE COURT: And how long before you were charged with
3 this were you working, had you been working for Lacosta?

4 In other words were you working for Lacoste when you
5 were arrested?

6 MR. CRIBB: No, your Honor. I had just quit.

7 THE COURT: How about before Lacoste? You only worked
8 for them for two weeks. Who did you work for before that?

9 MR. CRIBB: Goodwill in Rock Hill.

10 THE COURT: How long did you work for them?

11 MR. CRIBB: About two to three weeks.

12 THE COURT: What's the longest period of time you've
13 worked in one place?

14 MR. CRIBB: It was a month with Asplundh Tree Expert.

15 THE COURT: Who do you normally live with?

16 MR. CRIBB: My mother.

17 THE COURT: All right, I find that based on the
18 reports submitted, the very thorough report submitted by
19 Doctor Mulbry, the fact that the State and the Defense have
20 no objection to the findings of Doctor Mulbry, and the fact
21 that he's able to clearly and articulately answer my
22 questions today; he's indicated to the Court that he's
23 never been treated in any facility for any mental or
24 emotional disability, he is twenty-three years old, had
25 worked a variety jobs; that there is no indication of any

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1 mental illness affecting his ability to go forward today
2 the Court concurs with -- the Court does find that he is
3 competent under our -- as a result of this short Blair
4 hearing we will go forward with his plea.

5 Anything else we need to put on the record as far as
6 his competency, Ms. Lipinski?

7 MS. LIPINSKI: I spoke with him this morning went over
8 the Rights Waiver with him; I relate that very minor
9 discussions with him does he understand those discussions
10 and didn't have any problem following along with me. I
11 still had Doctor Mulbry step back and talk to him this
12 morning just to also confirm that he was of the same
13 opinion that Mr. Cribb was competent and capable of going
14 forward here today.

15 THE COURT: All right. Thank you. And I'll go
16 through in detail his rights and his -- the Plea Waiver
17 Form, and if there is some issue that would cause alarm for
18 the Court we'll deal with that.

19 All right, Mr. Cribb, you understand what we're doing
20 here today?

21 MR. CRIBB: Yes, your Honor.

22 THE COURT: Let me be sure. The Court has been told
23 that you intend to enter a plea to these charges, and we're
24 gonna talk about it in just a minute, but it's a guilty but
25 mentally ill. Even though it's classified they're called

1 guilty but mentally ill. Practically what that means is if
2 I accept the guilty but mentally ill that you would go to
3 the Department of Corrections; you would be treated for a
4 time in a mental part of the Department of Corrections.
5 Once they determine you are able to function within the
6 system then you would move out of there to a regular
7 population.

8 Is that your understanding of what a guilty but
9 mentally ill plea is?

10 MR. CRIBB: Yes, your Honor.

11 THE COURT: Let me go over your charges with you, Mr.
12 Cribb. I have an Indictment 2000 - it's a three-count
13 indictment, one indictment. That indictment alleges that
14 on or about August the 9th of 2017 here in York County
15 unlawfully and with malice aforethought you were charged
16 with by shooting and or stabbing a Jerry Osler Proctor,
17 Junior, and kill him, and that he -- and his death was a
18 result or the proximate cause by your -- means by which you
19 shot or stabbed him. That occurred here in York County.

20 You're charged with murder. Your lawyer and the
21 Solicitor have negotiated a plea to a voluntary
22 manslaughter. That carries a mandatory minimum from two
23 years up to thirty years in prison. Do you understand what
24 you're charged with on that count and the potential
25 penalty?

1 MR. CRIBB: Yes, your Honor.

2 THE COURT: How do you plead to voluntary
3 manslaughter?

4 MR. CRIBB: I'm not sure, your Honor.

5 THE COURT: Guilty or not guilty?

6 MR. CRIBB: Not guilty.

7 THE COURT: All right. Let me --

8 MS. LIPINSKI: I'm not sure. It's a guilty but
9 mentally ill plea.

10 THE COURT: Yeah, let me handle it this way.

11 All right, Mr. Cribb, guilty but mentally -- mentally
12 ill is not a defense. Do you understand that?

13 MR. CRIBB: Yeah.

14 THE COURT: If you were found to be not guilty by
15 reason of insanity that would be a defense, but being found
16 to be mentally ill is not a defense to the case. Do you
17 understand that?

18 MR. CRIBB: All right.

19 THE COURT: And I don't think that when I ask you the
20 question about how you plead your lawyer and the paperwork
21 indicated that it's a guilty but mentally ill plea, but
22 that in essence is your status that you're mentally ill.
23 But the question still is, are you guilty, or not guilty,
24 of a voluntary manslaughter of a victim Mr. Jerry Proctor?

25 Is that clear?

1 MR. CRIBB: Yes. I'm guilty.

2 THE COURT: All right. Let me ask you again. You've
3 told me that you're guilty. How do you plead to the charge
4 of voluntary manslaughter?

5 MR. CRIBB: Guilty.

6 THE COURT: All right. And the Court notes that he's
7 entering it as guilty and that his lawyer has indicated and
8 the Court's going to accept a guilty but mentally ill plea.

9 Count two indicates that on or about August the 9th of
10 last year while you were committing that crime that you
11 possessed a firearm and you're charged on that count with
12 possession of a firearm during the commission of a violent
13 crime. That carries up to five years. Do you understand
14 what that offense is and what the potential penalty is?

15 MR. CRIBB: Yes, your Honor.

16 THE COURT: How do you plead to that charge, guilty or
17 not guilty?

18 MR. CRIBB: Guilty.

19 THE COURT: Count three alleges that on or about
20 August the 9th of last year while committing the crime, in
21 this particular case of voluntary manslaughter, or stated
22 murder; voluntary manslaughter is a lesser included offense
23 you were armed with and displayed a knife. That also
24 carries up to five years in prison.

25 How do you plead to that charge?

1 MR. CRIBB: Guilty.

2 THE COURT: And you understand when you plead guilty
3 you give up all of your rights and particularly a right to
4 a trial by a jury. Do you understand that?

5 MR. CRIBB: Yes, your Honor.

6 THE COURT: All right, let me talk to you about that.

7 I have a Plea Waiver Form that's been provided to the
8 Court; it outlines your rights, and I'm gonna go over some
9 of those with you. But in fact on this Plea Waiver Form it
10 appears that you have initialed most of the appropriate
11 places by the rights stating that you understood each of
12 these rights. And in fact you signed acknowledging that
13 you understood those rights and you give them up in order
14 to enter your guilty plea; is that correct?

15 MR. CRIBB: Yes, your Honor.

16 THE COURT: And it look like you signed it today; is
17 that right?

18 MR. CRIBB: Yes, your Honor.

19 THE COURT: Do you have any question about any of
20 those rights?

21 MR. CRIBB: No, your Honor.

22 THE COURT: All right, that Plea Waiver Form will be
23 made a part of the record in this case.

24 Let me go over some of those rights and be sure that
25 you understand those. You see nobody can force you to

1 plead guilty or make you plead guilty. That's a decision
2 that you have to make on your own and you have to do it
3 willfully and voluntarily, but when you do that you give up
4 your right to a trial by a jury. You can maintain your
5 innocence or you can simply ask for a trial, and if you
6 did, the State would have to bring their witnesses here in
7 the courtroom and with their evidence they would have to
8 prove your guilt beyond a reasonable doubt.

9 If you had a jury trial you'd be able to be present in
10 the courtroom; you could hear the witnesses that the State
11 brings in and see their evidence. Your lawyer could cross-
12 examine all of those witnesses on your behalf. That's
13 called the right to confrontation. If you had a jury trial
14 you would not have to testify. You wouldn't even have to
15 put up a case. You could if you wish, but if you exercise
16 your right to remain silent, the Court would instruct the
17 jury and tell the jury that they're not to even consider
18 that in determining whether your guilty or not guilty
19 because the Court would tell the jury that you could only
20 be found guilty after the State had proven, with their
21 evidence, that you were guilty beyond a reasonable doubt.

22 In fact it would be twelve jurors there in the jury
23 box and those twelve jurors would have to all unanimously;
24 they would have to altogether agree that you were in fact
25 guilty of these charges before you could be found guilty.

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1 Do you understand those are some of your basic rights
2 in a jury trial?

3 MR. CRIBB: Yes, your Honor.

4 THE COURT: And is it still your desire to plead
5 guilty but mentally ill to each one of these three charges?

6 MR. CRIBB: Yes, your Honor.

7 THE COURT: Let me talk to you about your
8 representation by your lawyer. Have you had plenty of time
9 to talk to Ms. Lipinski about this case and discuss it in
10 detail with her?

11 MR. CRIBB: Yes, your Honor.

12 THE COURT: Has she provided you with information;
13 documents, might be statements, case summaries, incident
14 reports, things that the State is required to give her when
15 you file a Motion for Discovery. Have y'all been able to
16 go over all those?

17 MR. CRIBB: Yes, your Honor.

18 THE COURT: I don't mean to ask you this to embarrass
19 you but I need to know for purposes of this plea, you made
20 it to the 9th grade. Can you read?

21 MR. CRIBB: Yes, your Honor.

22 THE COURT: Were you able to read the documents that
23 she provided?

24 MR. CRIBB: Yes, your Honor.

25 THE COURT: Do you have any complaints about the way

1 your lawyer has represented you?

2 MR. CRIBB: No, your Honor.

3 THE COURT: Has she -- Are you fully satisfied with
4 the way your lawyer has represented you?

5 MR. CRIBB: Yes, your Honor.

6 THE COURT: Are you pleading to these charges today of
7 your own free will?

8 MR. CRIBB: Yes, your Honor.

9 THE COURT: There has been a reduction in the charge
10 from murder to the voluntary manslaughter and it appears
11 that has been a benefit that the State has made in this
12 case; however, you understand that this is also called a
13 straight-up plea where I could give you from anywhere from
14 not only two to thirty years, but I could sentence you to
15 five years twice consecutive so you could get up to forty
16 years for this. Do you understand that?

17 MR. CRIBB: Yes, your Honor.

18 THE COURT: Has there been anything else promised you,
19 you been threatened in any way in order to get you to enter
20 this plea?

21 MR. CRIBB: No, your Honor.

22 THE COURT: I find the decision of this Defendant to
23 enter his plea to this charge to be freely voluntarily and
24 intelligently made with the advice of a competent attorney
25 with whom he is satisfied. Mr. Cribb, your Plea Waiver

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1 Form, and I'm telling you now, if I make an error or if you
2 disagree with the sentence you have a right to an appeal.
3 You normally start that process by notifying your attorney
4 but you have to do that within ten days. Do you understand
5 that?

6 MR. CRIBB: Yes, your Honor.

7 THE COURT: I further find that he's been able to
8 understand the questions that the Court has gone through as
9 part of the plea colloquy; has been over a Plea Waiver Form
10 where he initialed and signed the appropriate places in the
11 Plea Waiver Form; again, I find that he is competent; the
12 Court finds that he is competent to go forward however I do
13 agree with the guilty but mentally ill plea.

14 So, Solicitor, tell me what happened.

15 SOLICITOR THOMPSON: Yes, your Honor. Mr. Hogge will
16 relay the facts to the Court, your Honor.

17 SOLICITOR HOGGE: May it please the Court.

18 Your Honor, on August the 9th of 2017 Robert Cribb was
19 at his residence where he lives at with his mother on 2383
20 Justin Drive in York. Jerry Sonny Proctor, who had a
21 relationship with Cribb's uncle, came over to hang out and
22 watch TV after he picked up some mail from the mail box.
23 It was normal for Proctor to come over form time to time as
24 they all lived close together in the same trailer park.

25 Cribb would later tell officers that he considered

1 Proctor to be a friend. Robert Cribb's mother Crystal Sims
2 had just left the two of them together as she left to pick
3 up a copy of her power bill down here at York Electrical
4 Cooperative. It was a fifteen minute drive away from the
5 residence; when she arrived back home about thirty minutes
6 later police and EMS were already on the scene.

7 Before Crystal Sims returned Cribb's grandmother Linda
8 Hensley had received a call from Cribb that he needed help
9 from his grandfather. The grandfather was not around so
10 Linda and her son Albert Hensley walked over to the trailer
11 and when they entered that is when they say Sonny Proctor
12 dead on the floor in a pool of blood and they immediately
13 called 911.

14 Upon arrival investigators observed the victim's body
15 with various stab wounds and a shotgun wound to the face
16 and right hand. It appeared that Proctor was shot in the
17 Defendant's bedroom and had his hand over the muzzle of the
18 shotgun when it was fired through his head. Blood was
19 spread throughout the house; a further search revealed that
20 the Defendant had attempted to clean up the blood off the
21 floor and had put bloody towels, shorts, and the
22 Defendant's own wallet in the washing machine. A knife was
23 located in the Defendant's bathroom and the shotgun on his
24 bed.

25 When he was interviewed by the police Cribb told the

1 officers that Proctor had attached him by choking him from
2 behind with a phone charger cord that had come in the mail.

3 Cribb said that that was when he began to stab Proctor
4 from behind by swinging backwards at him with the knife.
5 He told officers that at one point either he had dropped
6 the knife or Proctor had somehow gained control of the
7 knife and that is when he grabbed the .12 gauge shotgun
8 from the bedroom and shot Proctor from a distance of four
9 to five feet. He told officers Cribb said that he then
10 called his grandfather for help as what to do.

11 When the police interviewed his mother Crystal Sims
12 she told officers that when she left Cribb and Proctor
13 together they seemed to be doing just fine. And the only
14 thing she was worried about was them smoking marijuana
15 together while she was gone. By all accounts Cribb and
16 Proctor had always gotten along and had a friendly
17 relationship. Sims had also revealed to officers that she
18 had noticed a recent change in Cribb's behavior after he
19 had recently returned from a beach trip with his father.
20 That will be the Defense is going to go into further as to
21 his mental status.

22 But once he returned from that beach trip he seemed
23 more depressed and began drinking heavily. He began to
24 make strange paranoid statements to her that he thought
25 that Proctor was going to kill him and his mother, his

1 grandparents and his uncle, but he wouldn't let that
2 happen. I believe he denied making those statements; that
3 he was more concerned about his father attacking him around
4 that time period.

5 Now his mother was concerned and she and her mother
6 Linda Hensley then took Cribb to Piedmont Medical Center
7 for a mental evaluation. PMC's diagnosis was that he was
8 under a lot of stress prescribed him some Didrex and
9 released him with a referral to Catawba Mental Health which
10 I believe he never followed up on.

11 Investigators were immediately suspicious of Cribb's
12 story of how and why he attacked Proctor. Cribb appeared
13 to have no injuries himself and notably had no ligature
14 marks on his neck as someone who would have been choked
15 from behind that a phone cord would have. The autopsy
16 report also contradicted Mr. Cribb's story. It detailed
17 that Proctor was stabbed in the upper back in a forward and
18 upper motion that could not have resulted from someone
19 flinging a knife behind them at someone who was choking
20 them.

21 And Mr. Proctor also received a second stab wound to
22 his chest. The ultimate cause of death was a close contact
23 shotgun blast of buck shot to the palm of Proctor's right
24 hand which then passed through his hand into his face. It
25 ultimately caused extensive destruction to his brain and he

1 was forty-four years old.

2 THE COURT: All right. Thank you. Any prior record?

3 SOLICITOR HOGGE: No, your Honor.

4 THE COURT: All right. Mr. Thompson, I'll be glad to
5 hear from the victim or anyone who would like to speak on
6 behalf of the State.

7 SOLICITOR THOMPSON: Your Honor, before we do that did
8 you want to qualify with the Defendant is he agreeing with
9 the facts regarding that?

10 THE COURT: Well I find there is a factual basis for
11 the charges. Let me ask you, Mr. Cribb, you've heard what
12 the Solicitor has indicated were the facts of the case. Do
13 you understand those are the facts that they would present
14 at trial?

15 MR. CRIBB: Yes, your Honor.

16 THE COURT: All right. Again, I find that there is a
17 factual basis for his plea to each of the charges.

18 SOLICITOR THOMPSON: Your Honor, some of the victim's
19 family I believe would like to address the Court, and that
20 would be his mother Janell Proctor and his sister Shelly
21 Calhoun.

22 MS. LIPINSKI: Your Honor, can we --

23 THE COURT: No, that would be fine. You all can be
24 seated.

25 Solicitor, this takes a while and all of y'all can be

1 seated as well.

2 SOLICITOR THOMPSON: Thank you, your Honor.

3 THE COURT: Yes, ma'am, if you would tell me your
4 name.

5 A. Janell Proctor.

6 THE COURT: Virginia Proctor?

7 MS. PROCTOR: Janell.

8 THE COURT: Janell Proctor. Ms. Proctor, I'll be glad
9 to hear from you.

10 MS. PROCTOR: This young man took my son's life, my
11 only son, so I will never forget what he's done to my
12 family. It's so much pain.

13 (MS. PROCTOR CRYING.)

14 MS. PROCTOR: I don't get any calls any more for
15 Mother's Day, for my birthday, Christmas or Thanksgiving
16 because this young man took it away from me. I just -- so
17 much -- I never will forget the day they called me and told
18 me my son had been killed. Your Honor, he needs to be put
19 away for a very long time. If he does it to my son he would
20 do it to somebody else. And the pain, the pain it's just
21 so bad. I don't sleep any more. On August the 8th or 9th
22 all of this come right back to me.

23 (MS. PROCTOR CRYING UNCONTROLLABLY.)

24 THE COURT: All right. Thank you, Ms. Proctor.

25 MS. PROCTOR: Just please, he just needs to be put

-25-

1 away for a very long time so no other mother or family has
2 to go through what we went through. The pain is just so
3 bad. Its just so terrible.

4 THE COURT: All right. Thank you, Ms. Proctor. Sorry
5 you have to be here.

6 Yes, ma'am, and your name?

7 A. Shelly Calhoun.

8 THE COURT: Yes, Ms. Calhoun.

9 MS. CALHOUN: I just wanted to start out by saying I'm
10 Sonny's sister Shelly. I wanted Robert to know that my
11 brother didn't deserve this. He was always a friend to
12 you. You know, I don't understand it. You not only took
13 away a son, a brother, or a friend, you took away a
14 thirteen-year-old girl's dad.

15 My brother was just starting to get his life together
16 when you took it from him. You left a hole in our heart
17 that will never heal. You know God says we have to forgive
18 and Robert, I do forgive you, but I feel you should be
19 locked up for the rest of your life so you cannot hurt
20 anyone else the way you have hurt our family and including
21 your family. It's not just our family that's hurting. I
22 know you all are hurting too.

23 I can't hardly say I'm sorry. No one deserves to feel
24 such a loss as we have. I just think, sir, he should be
25 locked up for the rest of his life. I mean if he did this

1 like my momma said, and if it was the first time he did
2 something like this, what would the next time be, you know.
3 And that's just all I have to say.

4 THE COURT: All right. Thank you.

5 SOLICITOR THOMPSON: And as you can see, Judge, it's
6 very difficult on the Proctor family and what you've seen
7 this morning is no different than any time when I've talked
8 with them. They have a difficult time staying composed and
9 being able to as we discussed things because of the group
10 and the pain that they've suffered.

11 I will hand up to the Court State's Exhibits 1 through
12 8 which are a number of photographs mostly at the scene and
13 the Defendant and a couple of the victim, I've shown to the
14 Defense prior to this and would like to make it a part of
15 the Court's record. They are just a few of the things that
16 I want the Court to see.

17 (DOCUMENTS RECEIVED UP BY THE COURT.)

18 SOLICITOR THOMPSON: One of the things the victim's
19 family too I know had wanted to say was what a good man
20 Jerry Proctor was and they called him Sonny. He was
21 always kind and helpful to others and they wanted to make
22 sure the Court knew that as well.

23 And, again, it was a situation in which he was a
24 friend of the victims. They had known each other for some
25 time. He was in a relationship with the victim's uncle who

1 lived just nearby in another trailer nearby. They had
2 spent many an afternoon together over the last several
3 years and this is something that's kind of shocking that
4 this occurred at all. And one of the things that is kind
5 of striking about this case is that there is no explanation
6 as to why. There really is no explanation as to why the
7 Defendant did what he did other than to possibly look at,
8 and I'm sure the Defense will tell you, to look at his
9 mental health to say that the schizophrenia that he suffers
10 from is probably causing him to have some unreasonable
11 notions or ideas in his head.

12 But I would point out that he did a number of things
13 that showed both competence and guilt in the case in what
14 he did and the understanding of what he did being wrong.
15 As Mr. Hogge had pointed out a little earlier as he read
16 through the facts the Defendant's version of the story
17 really doesn't add up with the physical evidence that you
18 see in the case. This murder is actually quite brutal.
19 It's very personal under your face. It's something that
20 was done close, he would have been stabbed prior to the
21 shooting.

22 As Mr. Hogge mentioned, you know, he had received a
23 little padded envelop before he had come over and had a
24 little phone cord in it and the Defendant claimed that he
25 was being strangled to the point that he was passing out

1 before he was able to struggle; reach and grab one of his
2 knives and start reaching back over behind him and stab the
3 victim.

4 However we know that can't be true because as you can
5 see from the photographs he has absolutely no marks
6 whatsoever on his neck. If you're choking someone with a
7 very thin cord like that it would rub some sort of ligature
8 marks or some sort of redness or other aspects that would
9 make it obvious he was being choked.

10 In addition the stab wound comes in an upward angle
11 that's in his upper back and is not something that could
12 have happened from someone stabbing behind and backwards.
13 It's more likely he would have been as he put on his hands
14 and knees with his head down being stabbed with that
15 aspect. Or some other thing that wouldn't be so much in a
16 fight at that point in time.

17 The Defendant had no injuries on his hands to show
18 that he had been in a fight of any sort. He didn't have
19 cuts or bruises; anything of that nature. And where you
20 see in the bedroom and right outside in the hallway to the
21 front door where the victim's body was, its clear that the
22 defendant would have had to have been basically standing in
23 the doorway of his own bedroom with the victim being in the
24 bedroom and on the floor on his hands and knees putting one
25 hand up to try and block the shotgun blast as he looked up

1 because the angle of all of the pellets that go through go
2 into his face and downward they go into the bottom of the
3 wall behind him, and the blood spatter which showed that he
4 was inside the bedroom, so the Defendant literally after he
5 shot him and in an attempt to try and start to cover things
6 up, took the comforter, and I think even by his own
7 admission somewhat partially wrapped the victim to try and
8 -- but ultimately he would have dragged him into that
9 hallway area where he's ultimately lying in the
10 photographs.

11 Then he took towels and tried to clean up the area in
12 the room where he had bled heavily right there in front of
13 the dresser. And you can see those white marks and in one
14 of the pictures it even shows that you can look kind of
15 under the dresser and see a large amount of blood that's
16 streaked from someone trying to wipe it up.

17 I didn't provide photographs of the washing machine
18 but he had taken those towels and put them in the washing
19 machine and he changed his clothes. He washed himself up
20 so that he didn't have blood or anything on himself. As
21 you can see from the photographs of his face that he is not
22 in any way bloody and that he didn't have any blood on his
23 clothing at the time when the police arrived.

24 He immediately afterwards had called for his grand --
25 or not immediately but at some point when I think he

1 decided that he really couldn't hide this called for his
2 grandfather but his grandfather was unavailable so he spoke
3 to his grandmother and that's when he told her he had done
4 something wrong and noticed, I think, one of the themes
5 when he called is that he obviously knows he's done
6 something wrong. But he immediately too tries to say it
7 was self defense and he didn't have a choice that he feared
8 for his life.

9 But there is really absolutely no indication from the
10 other evidence that he truly feared for his life at that
11 time or as to why he would have acted in the way he did.
12 And I think all of this, again, goes to show that he knew
13 he had done something wrong and he knew to try and cover up
14 things that he had done wrong.

15 He's not a -- while he doesn't have a lot of formal
16 education he did get his GED and its obvious that he has a
17 pretty good head on his shoulders as far as knowing things
18 when you hear the interview that the police do with him,
19 He's not a ignorant or stupid young man. He is not in any
20 way someone who seems to have a deficient when he speaks
21 with people, or when he acknowledges things or hears
22 something, he can understand easily what's going on just
23 like anyone else. I think he simply suffers from
24 schizophrenia and that kind of skews some of his other
25 thoughts.

1 But in looking at this case there is always major
2 considerations the Court has and I know one of the things
3 is prior record and he doesn't have, other than being
4 truant and ultimately dropping out of the 9th grade, there
5 was nothing that showed any criminal activity prior to
6 this.

7 But as we look at things and we look at sentencing,
8 one of the main things we also consider is the crime itself
9 and the nature of the crime, the severity of it and the
10 brutality of it. And for his first crime he ended up
11 committing one that was extremely egregious. The brutality
12 is its great. In addition to the stab wound that there was
13 one in the chest that wasn't very deep; I believe like an
14 inch and a half or so, but it hit to the bone and why it
15 didn't go any farther. It was also a couple of slits kind
16 of on the neck that were opened up that didn't go very deep
17 but they were rather large. I think one was a little over
18 two inches and one nearly four inches long on the side of
19 the victim's neck.

20 So there were signs that the Defendant started doing
21 things to the victim that injured him badly before he shot
22 him. But again there is really no clear indication as to
23 why he did this.

24 The major consideration of punishment that I'm asking
25 the Court to look at are mainly two things and one is the

1 complete brutality of this crime. I imagine the last few
2 moments of a few minutes of the victim's life for Sonny
3 Proctor were horrifying, like living through a very gory
4 part of not knowing why someone's attacking you, and
5 someone you feel to be a friend, or someone you feel that
6 would never harm you doing these things to you. And
7 obviously not really fighting back because there is no
8 indication that the defendant was injured in any way. So
9 the horrifying nature of being on the floor after you've
10 been stabbed and then looking up and seeing the shotgun
11 blast that obviously kills you at that point had to be
12 horrifying for Sonny at that point in time. And it was
13 brutal and it was up close and personal.

14 The other aspect I'd like the Court to look at is the
15 future dangerousness of the Defendant. Schizophrenia, and
16 we've dealt with a lot in the court system; I'm sure you
17 have just as I have had. I even have a relative who
18 suffers from schizophrenia and I've seen the decline of him
19 over the years, and it becomes obvious that it doesn't
20 really get better. At times it can be controlled; at times
21 it can be, you know, therapy and things like that help, and
22 medication help, but eventually it does not. And the mind
23 deteriorates and the Defendant has, or the person has the
24 perplibility or any probility toward violence, that shines
25 through and comes out. And I believe that he would be a

1 danger later on in life because I think there's nothing --
2 if this is the first psychotic episode he shows it is about
3 as bad as you can get.

4 I think from here on out his mental abilities in ten,
5 fifteen, twenty years or farther will just be worse. And I
6 think that makes him dangerous because if you can't control
7 your conduct you become someone who is very dangerous
8 because you have occasionally the psychotic thoughts of
9 whether it's suicide or harming other and it would be
10 others that would be maybe friends of yours or people
11 trying to help you. It could be a stranger or it could be
12 anybody.

13 So I point out that the horrific nature of the crime
14 itself, and the fact that he's unlikely to really truly
15 ever be healed from this mental health problem that he
16 suffers from, makes him a future danger and a danger to the
17 community. And even if we were just sentencing on the
18 punishment alone for the violent nature and the awfulness
19 of this crime, that would warrant a very large sentence and
20 would certainly warrant I think the thirty years that he
21 faces on the manslaughter charge which the State has
22 reduced the crime to basically giving him a break in this
23 case, recognizing the mental health issue that he suffers
24 from but that's a huge break.

25 And that alone, as I said the brutality of the crime,

1 the nature of it would be enough for the thirty years. And
2 I think when you add in the fact that he will likely never
3 become better than he is now, and only become worse in
4 later years, that that dangerousness is something the Court
5 should consider as well.

6 As the victim's family said they really don't want to
7 see anyone else go through this again either. And so I
8 would ask the Court to consider that in the sentencing.
9 I'd ask the Court to sentence him to the thirty years that
10 he faces under this plea.

11 THE COURT: All right. Thank you, Mr. Thompson.

12 SOLICITOR THOMPSON: Thank you.

13 THE COURT: Ms. Lipinski.

14 MS. LIPINSKI: May it please the Court, your Honor.

15 I have represented Robert Cribb since this happened.
16 I met with him very shortly after he was arrested. I will
17 tell you that the gentleman you see before you is not
18 necessarily the gentleman I first encountered. I spent the
19 better part of the first two months of my representation of
20 him building up a trust and a level of rapport with him, and
21 during that time he oscillated between being on suicide
22 watch; being in the medical unit; then spending a lot of
23 time in effort to try and deal with his emotions, deal with
24 his remorse and find out what was going on. And I even at
25 that point, just as Mr. Thompson, I think as someone

1 grappled with what really happened here is exactly how Mr.
2 Cribb laid it out, no. But I honestly don't think that the
3 pendulum necessarily shifts to the other way all the way
4 that it was this personal brutal attack that the State
5 would have you believe and I want to talk about a few of
6 those things.

7 What you see in Doctor Mulbry's lengthy report is that
8 about in the days and weeks leading up to this that Mr.
9 Cribb went on a trip with his biological father of whom he
10 had always had a very troublesome relation. It was on
11 again off again. His father has struggled with substance
12 abuse; he's been in trouble with the law. He's had the
13 benefit of an excellent grandfather and some other family
14 members who have tried to give him some tough love and step
15 up to that role in his life. He had a step father who died
16 around the time he dropped out of school who certainly was
17 good for him. But something happened on that trip with his
18 dad or something he saw, or that he encountered, or just
19 whatever. When he got back both his grandmother and mother
20 started seeing a significant change in Robbie.

21 And I think that time element is important in that
22 this isn't somebody who had been normal everyday of their
23 life up until this event and is now trying to latch onto
24 some mental health defense. We know this and we know this
25 from the mother and the grandmother and how they reacted.

1 We know this from the grandfather and how they reacted.
2 And they struggled with what's going on in getting him to
3 tell them more and more about this delusion that he was
4 operating on that his primarily father was out to get him.
5 But he did articulate long before this event happened that
6 he thought his father for very irrational reasons, and
7 certainly nothing the victim would ever do, but that he was
8 fearful that his father was going to hire Sonny and get
9 Sonny to hurt not only himself but his mother and his
10 grandparents.

11 And it had gotten to the point, because this family
12 does have some history with mental health, that they tried
13 to get Robbie to go get help. They talked about a number
14 of options. His mother suffers from schizophrenic
15 disorders; she's been hospitalized before. And they
16 struggle with calling law enforcement and getting law
17 enforcement to put a psych hold on him, but also being
18 fearful of how that encounter with law enforcement might
19 play out. And also realizing that if they could get Robbie
20 to start seeing that his thoughts were disorganized, or ir-
21 relational, or paranoid that he would be more open to the
22 help and treatment he might eventually get.

23 So finally briefly before this they get him to PMC.
24 He's not doing well and you know it's a poor rebel thing to
25 take, and not to Catawba Mental Health when we think Robbie

1 might need counseling, or we think he might need
2 medication, but they end up in the emergency room which we
3 all know is not very well equipped to deal with these kinds
4 of situations and sat there and waited and while they tried
5 to tell them what was going on; as you can imagine you get
6 triaged to the ER and they kind of do an assessment for are
7 you a danger to themselves or are you expressing that
8 you're gonna go out and kill somebody. or are you
9 expressing suicidal thoughts, and he didn't fit either of
10 those two categories. Although they did express some
11 concerns and some notations in the report and basically
12 determine well we only have so many beds upstairs if you're
13 not acute enough for that and sent him home to followup
14 with Catawba Mental Health with a prescription. And that's
15 something this family has struggled with.

16 But as they say they had never seen anything like this
17 and their own experience with schizophrenia their mother
18 had been more self harm than outward harm. And they all
19 sit there and say have PMC, and not to blame PMC, but this
20 isn't a family who didn't go out and try and prevent this,
21 they didn't see those red flags; they didn't see those
22 warning signs, and this isn't something being conjured up
23 on the day of the event to justify a very personal attack.
24 This is something where we have the benefit of hind sight
25 twenty twenty, and knowing what those red flags mean now,

1 versus what they were saying.

2 And his emotions would ebb and flow. There were times
3 they were good there were times they were bad. Even with
4 speaking with the grandmother she related that on the
5 Sunday prior to this that Sonny and Robbie's uncle were
6 coming to dinner and even they said it might not be the
7 best idea. Robbie said some things about Sonny and we know
8 it's not true but you might want to just stay away for a
9 little while; might want to give Robbie a wide berth.

10 But then like no, he knows I don't mean anything to
11 him and came on down anyway. So the family was seeing
12 this, was trying to warn everybody but again, don't really
13 ill equipped to deal with what may lie ahead, and having
14 never seen anything like this before, don't really
15 understand how big these red flags are.

16 So you get to the day in question and it is a very
17 short circuited kind of day. Sonny does call, he ask
18 Robbie you owe me twenty dollars for your cell phone can I
19 come get it. Robbie says yes. They're there for a little
20 while with the mom. The mom says at that point Robbie's
21 having a good day everything seems okay. She's not gonna
22 be down that long, she wants to go to the electric coop and
23 get a copy of her power bill because she needs it for proof
24 to get some other services and stuff like that to kind of
25 keep up her services and does not expect to be gone that

1 long.

2 And what Robbie tells people is that he did believe
3 that Sonny was choking him out; that he was stabbing him
4 from behind; that he eventually got away from him and that
5 he armed himself with a shotgun. And while you hear this
6 bedroom, a dresser, or in a hallway, this is for the most
7 part a single-wide trailer and most of this occurs within
8 maybe -- you can tell from the pictures -- a three to six
9 foot span of space in a very cramped quarters. And I say
10 that because I do think while the Solicitor's office has
11 the benefit of hindsight twenty twenty and going back and
12 second guessing these things and pointing out all the
13 things that are inconsistent with self defense, I do think
14 there are things that do indicate it was self defense.

15 While perhaps irrational or perhaps an over reaction
16 on the part on Mr. Cribb, when he talked to Doctor Mulbry
17 who endorses that yes he was acting paranoid and
18 schizophrenic that day; that his thoughts were not his own
19 that he did not have the ability to over come that; then
20 you look at it it is conceivable. Is it as bad as Mr.
21 Cribb perceived it? Was the threat as severe as Mr. Cribb
22 perceived it? No. But an objector rational not mentally
23 person would have stayed back. The family of Sunny on a
24 better day, even Mr. Cribb himself might say I know that
25 Sonny doesn't, you know, bear a threat to me.

1 But on that particular day it could have been that
2 Sonny did something, said something, came up behind him too
3 close. We do know that he had a phone cord in his hand; he
4 may have just been swinging it as we all swing keys, or
5 whatever, and that was enough to cause Mr. Cribb to panic
6 and react.

7 And the State has done a lot to say well these
8 injuries aren't consistent with this because it's this side
9 and that way. He has very unusual cuts along the side of
10 his neck which very much could have been from Mr. Cribb
11 cutting him from behind. That could have at that point
12 that struggle doesn't stop or it's not going very well if
13 he turns to confront him, and you get these kind of two
14 very shallow -- they call them stab wounds, one's about an
15 inch, the other one's only maybe an inch and a half. This
16 is a house full of, not designed to be malicious murder
17 weapons, but there's a kitchen right there where there were
18 certainly bigger knives. There were other guns in the
19 house certainly could have caused damage without causing
20 this kind of struggle.

21 And that Mr. Proctor not following and meaning to
22 continue to the attack against Mr. Cribb could have
23 conceived that he's not going away, he's still right on top
24 of me, panicked turned and shot the shotgun at such close
25 range without having the benefit of stopping and self

1 evaluating every threat in every moment.

2 And a lot of that does portray that way because if Mr.
3 Cribb truly bore Sonny Proctor any ill will there was not
4 reason for this crime to be that up close and personal. He
5 could have easily -- he knew he was coming that day; he
6 could have waited until he was walking away from the
7 trailer when nobody was around. He could have went into
8 his bedroom when Mr. Proctor was on the couch and returned
9 and never having did it that way.

10 And really what is does see is kind of evidence of
11 that that it is an imperfect self defense case. And I say
12 imperfect because legally I know a reasonable person, an
13 objective person, would not have perceived that Sonny meant
14 Robbie that much harm. But I also know that based on
15 Doctor Mulbry's report, and my own lengthy conversations
16 with Mr. Cribb, that that is what is in his mind, and he's
17 remained consistent about that throughout. He's suffered
18 through some very struggle thing and I've had to kind of
19 help him cope and decode these kind of things as we've gone
20 over the evidence here today.

21 So I do think that there are some things that do know
22 -- and you heard the State say many times we just don't
23 know what happened that day. We know what is in Robbie's
24 head because of what he's telling us but we still don't
25 know exactly what happened. But that doesn't mean that

1 it's this vindictive malicious personal violent attack. In
2 part we know that because Robbie's not that kind of person.

3 This is a kid with no prior record. He doesn't have a
4 write up in school for fighting. He doesn't have a knife,
5 he's not bullying other kids. When you talk to his family
6 they tell you that he's more a victim than a bully; that he
7 gets along with everyone. His grandma will tell you that
8 if she was out in the yard working and Robbie would come
9 out there and help her. None of that that you see in the
10 schizophrenic panic that Mr. Thompson describes about who
11 these people remain violent you usually see these minor
12 events leading up to this.

13 What is fact they do present is that it is more
14 consistent with he is in that age range of eighteen to
15 twenty-five where he could have had this break out session.
16 And because he had not been experiencing these symptoms
17 long, because he was dealing with it on his own because he
18 did not have the benefit of treatment, he did do that.

19 One of the things we look for and Doctor Mulbry and I
20 have even struggled with a long time is is this set -- case
21 his paranoid delusions are that strong. And what we know
22 legally is one of the things that the State possibly always
23 looks for is either they covered it up, and something Mr.
24 Thompson said is oh, he, you know, he covered it up he knew
25 right from wrong.

1 He knew killing Sonny was wrong. He didn't want to do
2 that but he only did it out of self defense. And these
3 acts to cover up the crime are really somebody grappling
4 with that over coming shock of what they have done because
5 he didn't do it. You can see from these pictures he didn't
6 cover anything up. If anything he made the mess bigger.
7 Yes, he put some clothes in the wash but he left a blood
8 trail from his bedroom to the laundry room. He didn't turn
9 it on; he didn't add soap to it. He's not taking a lot of
10 time. There's still blood from one end of his bedroom to
11 the other. What he really did was panic and try and get
12 what was blood off of him, and I am sure freaking him out,
13 and he tried to cover Sonny because he couldn't even face
14 the reality of it and that is it.

15 And then he didn't wait for his mom to come home; he
16 didn't take the body out into the woods or anything like
17 that. He called his grandpa who whenever he's gotten in
18 trouble in his life before his grandpa is who he goes to
19 see. And he said, Granny - I mean Grandpa, and she's like
20 well he's not here right now and they go down there and
21 they find him there. And in her statement, and what law
22 enforcement endorses, he's in the corner crying and that
23 she has to go over there and console him.

24 And as much as Mr. Thompson wants to portray that he's
25 gonna be this evil violent person, he is at all times

1 cooperative with law enforcement. He answers their
2 questions; sits in the back of the car. He's not had any
3 violence while he's going to the jail. They've been able
4 to medicate him. He's been in C Block for the better part
5 of this year. This isn't somebody who was going to
6 struggle with all these things and be a violent person
7 because there is no other diagnoses of sociopath or psycho
8 path that you also see with schizophrenics who normally
9 turnout like this.

10 This is somebody who can appreciate the disease who is
11 intelligent enough to learn from it. But he's also not
12 cunning, he's also not manipulative and he did -- who the
13 family who say we saw all these red flags and comments.

14 This is what I believe to be a very imperfect self
15 defense case which I think deserves some down grade in
16 consequence because he wouldn't have done this otherwise.
17 And brought on by some mental illness. And while Mr.
18 Thompson would like to say that by reducing this from
19 murder to manslaughter they've given him some break, at
20 thirty years they've cut four years off of it. It's time
21 we as a society respect mental health, respect that when
22 families bring people to us in the emergency room and say
23 help that something extraordinary is going on, and that we
24 don't need to give them five days worth of mental health
25 and then tell 'em to follow up; that if you get to that

1 point that that is significant and we need to address it.

2 And we need to train any number of people to step in
3 better and prevent these things. And I'm not saying that
4 to take away from what Mr. Cripp did but I'm saying that to
5 prove that this is not some ill contrived mental health
6 reached by the Defense that's not really there. This is
7 really the underlying rational for why this crime occurred
8 and what happened to it.

9 So in fashioning a sentence what we would ask the
10 Court to do is respect that it really was all be it an
11 imperfect self defense claim, not premeditated, not malice,
12 not something where he lied in wait, not something where he
13 did anything to torture the victim or cause him to suffer
14 or to cause him to suffer pain. All of this took a few
15 seconds of anything to accomplish a crime, the injuries
16 were frantic by their very nature, and give him a
17 reduction in culpability. Understand that that guilty but
18 mentally ill means that because of his mental illness he
19 could not conform his conduct to the law.

20 And what that means in this case is he could not
21 reasonably and objectively evaluate whether or not Sonny
22 truly posed a threat to him and calm his paranoia such that
23 he knew he didn't have to react so irrationally or so
24 harshly.

25 I'd also like for you to give him the benefit that he

1 has no prior criminal record. Not a run in with the law.
2 Not a resizing arrest, not a public disorderly conduct,
3 nothing. His own family say, you know, we wish we'd never
4 sent him off with his daddy. We think if we would have
5 kept him here safer in kind of this family compound, for
6 lack of a better term, and got him the help and everything
7 he would have never posed a threat to anyone. He's for all
8 intense and purposes otherwise a really good kid who really
9 probably is more of a danger to himself than anybody else.

10 So I think based on his lack of prior record, nature
11 of the mental health self defense, the nature of the
12 imperfect self defense that this is a crime more deserving
13 of a sentence in the lower third of a voluntary
14 manslaughter range. If the court feels that he needs
15 supervision, clearly there are options available where he
16 could be required either as a condition of probation or
17 parole following up his sentence to seek out mental health
18 treatment. He's been medically complaint the entire time.
19 There are no indication. and I got the mental health
20 records from the jail, that he wasn't medically complaint.
21 He's done everything they've ask him to do. He's taken his
22 medication; that I think really bad schizophrenics, and I
23 don't think Mr. Cribb is one, usually has some other
24 diagnoses like sociopath or psychopath and also very non-
25 compliant and he's not that way, and just isn't just some

1 cunning manipulative kid. I've spent most of my time
2 explaining the law to him; explaining the facts to him, and
3 while he did get his GED and those type of things, he is
4 also not a sophisticated master mind of any great crime.

5 This is a kid who got over whelmed by his emotions,
6 his mental illness, that disease probably misinterpreted
7 something Sonny did or said in jest or in real and just
8 reacted more out of instinct of fight than anything else.

9 It is regrettable, it is something he has grappled
10 with; it's something he's expressed remorse with since the
11 day I met him. It's something his family has expressed
12 remorse with. They had accepted Sonny into their lives and
13 they're family when a lot of society kind of written Sonny
14 off and wasn't as accepting as him in his relationship with
15 Robbie at some point.

16 They've grappled with losing a friend and losing a
17 son. As Phil Smith likes to say there's pain and hurt on
18 every side of the courtroom. But they know Robbie best,
19 and they know probably his threat of harm better than
20 anybody else beyond the conjecture of the State, and so I
21 would ask the court just to listen to briefly as to
22 sentencing.

23 THE COURT: All right. Thank you.

24 Let me speak just briefly with Mr. Cribb. If you'd
25 stand please.

1 Your lawyer has talked to some degree about self
2 defense and obviously you talked to her about that being a
3 potential defense in the case. Did you understand that?

4 MR. CRIBB: Yes, your Honor.

5 THE COURT: Do you understand by entering your plea
6 today, even though you may have talked to your lawyer in
7 detail about potential self defense, you give that right up
8 and waive that right in order to plead guilty.

9 Do you understand that?

10 MR. CRIBB: Yes, your Honor.

11 THE COURT: In other words you can't raise the issue
12 of self defense once you enter your guilty plea. Has that
13 all been explained to you?

14 MR. CRIBB: Yes, your Honor.

15 THE COURT: All right. Thank you. You can sit down.

16 MS. LIPINSKI: And, your Honor, I meant nothing by
17 characterizing this as an imperfect --

18 THE COURT: Well I understand but the record needs to
19 be clear that he understood that.

20 MS. LIPINSKI: Your Honor, this is Ms. Sims' mom.

21 THE COURT: Yes, ma'am, tell me your name.

22 A. Crystal Sims.

23 THE COURT: Yes, Ms. Sims.

24 MS. SIMS: I'd like to start off by saying Robert is a
25 good person. Growing up he always did what he was told.

1 He was always there to give a helping hand. He is nice and
2 considerate, he never got in any trouble, he never even got
3 a traffic ticket. My son likes to go fishing at his
4 grandparent's house. They have a pond. I remember days
5 and nights when we would go fishing for hours. Robbie is
6 always -- will be a good person. He is sweet, nice, and
7 considerate of others. This would have never happened if
8 he was in his right mind. I ask for mercy of the Court.
9 Please only put him on house arrest and probation if you
10 find it feasible. I need him at home with me, I am
11 disabled and I need Robbie's helping hand.

12 THE COURT: All right. Thank you, Ms. Sims.

13 A. Linda Hensley.

14 MS. LIPINSKI: You have to talk a little louder.

15 THE COURT: All right. Linda?

16 MS. LIPINSKI: Hensley.

17 MS. HENSLEY: Hensley.

18 THE COURT: Yes, Ms. Hensley.

19 MS. HENSLEY: Robert, Robbie, we call him Robbie, he's
20 my grandson. He's a joy to be with. He's never been in
21 any trouble his whole life growing up and he's just not the
22 person that would do something like this. He is -- he
23 ain't never been away from home until they put him in jail.
24 And I fear sending him to prison will influence him in that
25 way in being around all the people that are in jail for bad

1 things. I would be afraid of him being in that environment
2 because he's never been around any violence or . . .

3 But he deserves a break because I don't believe he did
4 this in his right mind. I understand, we've been through
5 the mental health thing with his mother, and I understand
6 some of it to the point that when I started seeing the
7 signs that I wanted to get him to the hospital. And his
8 mother had left to go get a policeman to come and take him
9 to the hospital but I've seen so much on TV about the
10 mentally ill people getting killed because of something
11 they did when the police come to get them that I talked and
12 talked and he finally went to the hospital.

13 And while he was there he didn't really say much or
14 anything and I felt that they should have kept him for
15 observation but they didn't and I blame myself for the fact
16 that they told us or told to us that if there's anything
17 else to lock him up and I just forgot. I'm old and if
18 Robbie goes away for a long time I'm not gonna have him in
19 my life because I've got my own mortality to and I just
20 don't know if I could handle that.

21 He's just always -- he's a good kid. He's -- he's
22 always done what he was told. He never caused trouble.

23 THE COURT: All right. Thank you, Ms. Hensley. Thank
24 you for being here.

25 MS. LIPINSKI: His grandfather would like to say

1 something I believe.

2 THE COURT: Yes, sir, if you'd tell me your name.

3 A. Yes, sir. Albert Hensley, Junior.

4 THE COURT: Yes, Mr. Hensley.

5 MR. HENSLEY: I'd just like to address the Court and
6 state that my grandson was a very good kid. Other than
7 having a little problem with him going to school I never
8 had any problems with him at all. And he was always good
9 with animals, you know, you hear a lot of these people
10 that's real aggressive and violent and everything. They
11 torture animals and stuff like that. You know we got
12 chickens, geese, ducks, horse, mule, hog, all kinds of
13 stuff on my place there and he's never been torturous or
14 hurtful to any of 'em. I own plenty of dogs and cats but
15 he loves all animals.

16 And I'm 69 now and for God's sakes I'd love to see him
17 walk on my property one more time. And we all lost in
18 this, I lost my grandson and a good friend. I loved the
19 hell out of Jerry. But to lock him up forever is not gonna
20 do anybody any good. He needs more mental help than he
21 does anything else because we've been battling my
22 daughter's schizophrenia since '94 and it takes a lot of
23 mental care.

24 If he'd gotten the care he should have gotten at the
25 hospital; if he'd had insurance they would have kept him

1 for seven days. No, they just give him a pill and pat him
2 on the back and say well take the prescription. Well they
3 hadn't prescribed him medication that they couldn't get for
4 three days because they didn't even have it at any pharmacy
5 around here. They had to order the stuff for him. Okay.
6 He did three more days without it so he's back in the same
7 boat he was before he ever took the same first pill. And
8 it wasn't but just a few days later that he killed Sonny.
9 And I feel sorry for his family and my family, everyone
10 concerned. But something needs to be done with this mental
11 organization we got down here at the hospital because
12 they're the biggest contributor to this. They missed the
13 ball on this and I blame them more than I do anybody.

14 THE COURT: All right. Thank you.

15 Anything else?

16 MS. LIPINSKI: He has a very short letter, your Honor.

17 THE COURT: Mr. Cribb, I'll be glad to hear from you.

18 MR. CRIBB: Your Honorable Judge Hall, first I'd like
19 to apologize to the victim's family. I am truly sorry for
20 what I have done. Please, please forgive me.

21 Second, I would like to apologize to my family and
22 friends. I know it's been difficult for you. I am sorry.
23 You have always cared for me and loved me.

24 Thirdly, I would like to thank my attorney Ms. Mindy
25 Lipinski for her hard work. Judge Hall, I stand before you

1 today with a remorseful heavy heart. My heart is torn in
2 pieces because of that dreadful day. Words can't express
3 what I'm feeling inside. Before this crime took place I
4 had goals that I wanted to achieve. I wanted to further my
5 education and also pursue a career in the military. I hope
6 and pray that one day soon I can accomplish my goals.
7 Again I apologize for my actions. Judge Hall, I am pleading
8 before the court for mercy. Thank you very much.

9 THE COURT: All right. Thank you.

10 MS. LIPINSKI: Thank you, your Honor.

11 THE COURT: Certainly the Court's aware that mental
12 health issues are difficult. They are extremely difficult
13 for the criminal system; however, that's not new to the
14 criminal system, not new to defendant's who appear before
15 the court. Our society had determined a long time ago that
16 the taking of human life is the most egregious event. In
17 this case a crime that can take place and our legislature
18 has deemed what they thought -- what they deemed society
19 believes is appropriate for sentences take all of that into
20 consideration.

21 2018-GS-46-1919 *State versus Robert Cleveland Cribb,*
22 *Junior*, having plead guilty but mentally ill to voluntary
23 manslaughter -- I'm gonna write that guilty but mentally
24 ill on the sentencing sheet -- the sentence that he be
25 committed to the Department of Corrections for a

1 determinent term of 30 years concurrent. Credit for three
2 hundred and eighty days. The sentence on the other two
3 indictments are the same is that he be committed to the
4 Department of Corrections for five years to run concurrent;
5 credit for three hundred and eighty days. Thank you.

6 All right, we're gonna break.

7 (WHEREUPON, STATE'S EXHIBITS NO. 1 THROUGH 8,
8 PREVIOUSLY IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

9 (COURT IN RECESS AT 12:04 P.M.)

10 (END OF TRANSCRIPT OF RECORD.)

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CERTIFICATE OF REPORTER

State of South Carolina

County of York

I, Wanda Nelson, Official Court Reporter for the
 Sixteenth Judicial Circuit for 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 evidence introduced in the trial/hearing of the
 captioned case, relative to appeal, in the Court of General
 Sessions for York County, South Carolina, on the 24th day
 August, 2018.

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

Wanda S. Nelson

Wanda S. Nelson, CVR-M
 Certified Verbatim Reporter,
 Official Court Reporter,
 Notary Public, in and for
 The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: June 27 2019

PSYCHIATRIC EVALUATION**NAME:** Robert Cleveland Cribb, Jr.**DATE OF BIRTH:** [REDACTED]**DATE OF EVALUATION:** January 29, 2018**PRIMARY EXAMINER:** Leonard W. Mulbry, Jr., M.D.

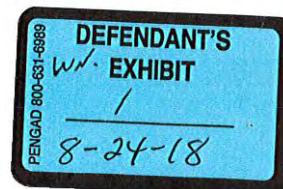
IDENTIFYING DATA: Mr. Robert Cleveland Cribb, Jr. is a 22-year-old gentleman seen at the request of his attorney, Ms. Lipinski of the York County Public Defender's Office. Mr. Cribb is currently charged with Murder and two counts of Possession of a Weapon during a Violent Crime.

OPINION REGARDING CRIMINAL RESPONSIBILITY: **Yes.** It is my professional opinion, to a reasonable degree of medical certainty, that Mr. Cribb at the time of the alleged acts did have the capacity to distinguish moral or legal right from moral or legal wrong and to recognize the particular acts charged as morally or legally wrong.

OPINION REGARDING CAPACITY TO CONFORM: **No.** It is my professional opinion to a degree of medical certainty, that at the time of the alleged acts; Mr. Cribb lacked the capacity to conform his conduct to the requirements of the law.

SOURCES OF INFORMATION:

1. Clinical Psychiatric Evaluation of Mr. Cribb on January 29, 2018, lasting 3.5 hours.
2. Telephone Interview with Linda Helsmley on June 12, 2018, lasting approximately 45 minutes:
3. Telephone Interview with Crystal Simms on June 12, 2018, lasting approximately 40 minutes:
4. Piedmont Medical Center Records for Robert C. Cribb, Jr., dated August 3, 2017
5. Records from York County Detention Center for the period January 16, 2017 to March 14, 2018
6. CD discs (4) (approximately 220 min)
7. Warrant Request, dated August 10, 2017.
8. York County Arrest Warrant 2017A4610201519, RCC, Jr., Murder, dated August 10, 2017.
9. York County Arrest Warrant 2017A4610201520, RCC, Jr., Possession of a Weapon during a Violent Crime, dated August 10, 2017.
10. York County Arrest Warrant 2017A4610201521, RCC, Jr., Possession of a Weapon during a Violent Crime, dated August 10, 2017.
11. York County Sheriff's Office (YCSO) General Sessions Case File Summary by Yeager, R.
12. Case Report Summary by Kiser, R. and Yeager, R.
13. E-mail from Doody, M. to Yeager, R., dated August 10, 2017.
14. E-mail, Ferrara, N. to Yeager, R., dated August 9, 2017.

Robert Cleveland Cribb, Jr.
[REDACTED]

15. Statement by Kinee, T., dated August 9, 2017.
16. E-mail, West, C. to Yeager, R., dated August 9, 2017.
17. Three-year Driver Record, Robert Cleveland Cribb.
18. Global Subject Activity Detail, Robert Cleveland Cribb, Jr., dated August 11, 2017.
19. YCSO Waiver of Rights dated August 9, 2017.
20. YCSO Incident Interview Report by Motz, M. and Moore, F., dated August 9, 2017.
21. York County Forensic Services Unit (YCFSU) Investigator's Report dated August 10, 2017.
22. YCFSU Investigator's Report by West, C., dated October 10, 2017.
23. YCFSU Evidence/Inventory Sheet dated August 9, 2017, three pages.
24. YCSO Evidence/Inventory Sheet dated August 10, 2017.
25. YCSO Evidence/Inventory Sheet dated August 14, 2017.
26. Arrest Record, RCC, Jr., dated August 9, 2017.
27. YCSO Booking Report dated August 9, 2017.
28. York County Detention Center Property Release dated August 10, 2017.
29. YCSO Permission to Search dated August 9, 2017.
30. York County Search Warrant, dated August 14, 2017, records.
31. York County Search Warrant, dated August 14, 2017, cell phone.
32. York County Search Warrant, dated August 14, 2017, cell phone.
33. York County Search Warrant, dated August 14, 2017, records.
34. YCSO Incident Interview Report by Williams, G., dated August 9, 2017.
35. YCSO Incident Interview Report by Williams, G., dated August 9, 2017.
36. YCSO Voluntary Statement by A.J. Hensley, III, dated August 9, 2017.
37. YCSO Voluntary Statement by L. Hemsley dated August 9, 2017.
38. YCSO Incident Interview Report by Williams, G., dated August 9, 2017.
39. YCSO Incident Interview Report by Yeager, R., dated August 9, 2017.
40. Warrant Request, dated August 9, 2017, (2).
41. York Pathology Associates Autopsy Report.
42. DHEC Supplemental Report of Cause of Death dated November 7, 2017.
43. SLED Forensic Services Laboratory Report, blood, Jerry Proctor, dated October 20, 2017.
44. Detail Call for Service Report, dated August 9, 2017.
45. York County Coroner's Office Report dated August 9, 2017.
46. Handwritten Document, unattributed, dated July 26, 2017.
47. E-mail from Collins, M. to Davis, J., dated September 5, 2017.
48. Photographs (2).

DISCLOSURE OF NON-CONFIDENTIALITY: Prior to the evaluation, Mr. Cribb was provided information regarding the purpose and non-confidential nature of the evaluation. He was informed that any information he provided would not be confidential and would be used to prepare a report for his attorney. It was explained that, at his attorney's discretion, the report may be distributed to the solicitor and the judge. He was also informed that the nature of the evaluation did not include a treatment relationship and treatment would not be provided. Mr. Cribb appeared to understand the limits of his confidentiality, signed a Release of Confidentiality Form

and agreed to proceed with the evaluation.

BACKGROUND HISTORY: Mr. Cribb is 22 years old and was born at Gaston Memorial Hospital and has always lived in the York County area. His father, Robert, and mother, Crystal, were never married. He knows his father, but cut off contact after a recent vacation where his father threatened to kill him. Up until that time, however, they carried on at least an amiable relationship, and as a child he lived back and forth between his mother and father. He reported that his father was married to his stepmother, Louisa, "before I was born," but they divorced when Mr. Cribb was about 13 years old. His father "ran a machine," and did production for "Harper." There is no mental illness in the family, but both his father and grandfather have trouble with alcohol and drugs, in his father's case specifically heroin and crack cocaine. He reported there was always arguing in the home between his father and stepmother, and "they were always angry." His father would have physical fights with his uncle, but his father did not physically abuse him.

His mother married Jeff when he was about 2 years old. Jeff worked as a truck driver and then as a superintendent for grading roads. He died when Mr. Cribb was about 16 years old of colon cancer in his late 40s. His mother and grandmother both have schizophrenia and bipolar, and his grandmother had depression. His mother's father had alcohol problems. There is no violence on this side of the family.

He was born by cesarean section due to slow progression of the delivery. He reached his milestones on time, as far as he knows. He had a speech problem when he was very young and had to take speech classes. He described growing up as all right and was the happiest when he was with his mother's parents, with whom he stayed a lot. He had a reasonable relationship with stepfather, but after his stepfather died things with his family got worse, as his mother went back to his father and the family lost everything as his father again became involved in the use of drugs. He reported that they received government checks but that his father would spend that money on drugs, and so he was brought up largely by his mother's parents. He reported no history of neglect, trauma, or abuse.

He had been living with his mother in a trailer on property owned by the family since about 2014, and their lives had stabilized after his mother had a breakdown, was stabilized on medications, and he and she had been living in the trailer since that time.

EDUCATIONAL HISTORY: Mr. Cribb went to Bethany Elementary School, Clover Middle School, and then Clover High School. He left school in the ninth grade because his stepfather was in bad health and his biologic father had taken money for drugs, and there was a lot of emotional stress. He had been sent home from school for emotional problems a number of times. He had been in regular and college prep courses and was an "okay" student. He had never been expelled. He repeated the ninth grade four times due to attendance. He missed school in the ninth grade

primarily due to stomach issues and attributed these to lactose intolerance and IBS (irritable bowel syndrome), but accepted “didn’t care much about school.” There were a number of in-school suspensions for fighting and arguing.

He had been home-schooled when his stepfather got sick, and he quit school, “Mom wanted me to spend more time with my stepdad.” He quit school when his stepfather died.

Mr. Cribb achieved his GED in December 2016 through Rock Hill Adult Education. He has not had any other education or training. He feels that he always got along well with teachers and peers.

VOCATIONAL HISTORY: Mr. Cribb worked at the Aspen Tree Company for about two weeks, but quit when he lost his transportation to work. He had worked at a veterinarian’s office for about a month, but found that he did not like working with animals. He worked at Goodwill for about a month, but “they overworked me.” He worked at Lacoste doing production work for about two weeks, but following the weekend with his father he did not go back to work. He reported that he has never been fired and gets along well with bosses and co-workers. In the future he would like to drive a truck, describing Class B dump trucks, or he would like to go back to school and get more education.

LEGAL HISTORY: Mr. Cribb has no history of legal problems.

RELATIONSHIP HISTORY: Mr. Cribb has never been married and does not have any children and has never had any long-term relationship.

MEDICAL HISTORY: Mr. Cribb does not have any medical problems. His only operations included tonsillectomy and removal of wisdom teeth. He has never had any medical hospitalizations. He has never had any seizures or head injuries.

PSYCHIATRIC HISTORY: Mr. Cribb reported that he has never been in a psychiatric hospital. He is currently taking Risperdal (anti-psychotic) 2 mg, Depakote (anti-convulsant mood stabilizer) 750 mg, Cogentin (for side effects), and Celexa (anti-depressant). He had never had any psychiatric treatment whatsoever until August 2017 when he was treated at Rock Hill Piedmont Hospital because his father threatened to kill him. He reported that he had had a very stressful weekend with his father and his uncle on a visit to Myrtle Beach. He was afraid of his father and could not sleep and broke down in front of his mother. He reported, “I was talking out of my head.” His mother informed his grandmother, who, based on her experience with mental illness, felt that he should go to the emergency room and be treated, and this happened. He was given Zyprexa (anti-psychotic) and referred to Catawba Mental Health, but did not make an appointment and did not go. When asked about his father threatening to harm him he replied, “Dad threatened to kill me...he was going to put a hit on me through a gang called The Sharks...wasn’t

sleeping, thought he would kill me...went for a couple of days without sleep and then a couple of days where I was only sleeping about an hour a day." This vacation took place between July 26 and August 1, 2017, and he reported that his father told him he was going to kill him and put him in the pipe that extends into the ocean from Myrtle Beach. When he returned home he told his mother, then grandmother, and was taken to the hospital.

He went to Rock Hill Piedmont Hospital "about the 5th of August." He thinks that he was given Zyprexa 10 mg and took it twice a day. It did "help the stress." It did not, however, resolve his feelings that his father was going to kill him. He reported his Uncle Roy heard these threats. He did not recall any other symptoms at that time.

At the time he was arrested, he was placed on suicide watch and spent two to three months in the jail in medical being stabilized. He was never given a diagnosis.

He reported he was hearing voices at the time, "People arguing...not sure who, like it was outside my window...not sure what they were saying." He reported being worried that his family was going to get hurt and that something might happen to them. He thought that his stepfather might be a leader of the gang of The Sharks who were out to harm him. He has never had any symptoms or fears like this before this weekend at the beach. He reported at the time of his incarceration that he was suicidal "about my case...felt that I killed somebody and that I should die." He does remember thinking that his family was in danger while he was at the beach and he feels that he was very depressed and his father would not stop arguing. He reported that the auditory hallucinations, however, only occurred after he was incarcerated at the jail, and it took about two months to stabilize him.

When asked about prior depression, he reported that he had depressive symptoms when his stepfather died. These were "very upset with diminished appetite and sleep." He does not remember much about focus, concentration, or energy. He was not suicidal at the time. These symptoms lasted about a month and he did not receive any treatment of any kind.

The next time he has depressive symptoms was when he was at the beach and was afraid of his father. He was not eating, did not sleep "because my dad was threatening to kill me." He and his father and uncle were staying at the Econo Lodge in one room and he was sleeping poorly because he was afraid that his father was going to harm him. He thinks he was awake most all the time for about a week and does not remember any other signs of mental illness, other than fear of his father and The Sharks. He thought that his biologic father was working with The Sharks to have him killed, and he thought he saw his stepfather running with The Sharks, and that he might be a leader. At the time, he remembers diminished energy, appetite, could not sleep. He did not report suicidality or homicidality. He is not suicidal now.

After he was treated by Piedmont with Zyprexa, he reported that the medications helped his fear and he was sleeping about nine to twelve hours a day, but still not eating very much. He still does not remember much about focus or concentration, but he was very tired. He reported no history of visual hallucinations, ideas of reference, or other paranoia, other than what he had already described. He reported that his sleep had been normal up until the time of going to the beach. At the beach, he reported that his father had been abusing heroin, his uncle abusing alcohol, and he had been smoking about a joint a day, which was normal for him.

When asked about anxiety, he reported that he does not feel that he is particularly a worrier normally, more like his grandmother than his mother. He does have some generalized worry, "I worry when Mom goes to the store that she might be in a wreck...I worry about my grandmother all the time, that she might fall down the stairs...I worry about money and having enough money to get food." He is, however, okay driving, using public restrooms, though he does not like it, and he can write checks okay in public, but he prefers not to. He noted, however, "I'm a hermit...a homebody...don't like to go out, don't like crowds, don't like a lot of people." He is not sure how the anxiety affects him on a day-to-day basis.

He reported that currently he is having some nightmares about what happened at the time of his charges and he does wake up screaming and gasping for air. He does not have flashbacks in the daytime, but mostly they occur when he is asleep.

He did report a history of tidiness and orderliness, noting that things have to be in certain ways, such as videogames with videogames and movies with movies, and he likes things to be neat and orderly. If his mother puts them in the wrong place, he goes back and fixes them. He reported that canned goods have to be in one cabinet, "Beans with beans and carrots with carrots and corn with corn." He reported in this closets that "dress clothes have to be in one place and pants in another." If his mother does not keep things in an orderly fashion, "I have to go behind her and straighten it up." He does not have any conflict with his mother over this, he just gets frustrated, and if he cannot fix it "I just let it be." He reported no history of panic attacks.

He reported no history of symptoms of attention deficit or hyperactivity as a child.

Piedmont Medical Center Records for Robert C. Cribb, Jr., dated August 3, 2017: These records indicate that the patient was seen at 6:22 in the evening on the 3rd. Chief complaint was "patient states that he has been stressing. He laughs inappropriately and states he just went cold turkey on his pot smoking habit. He denied SI/HI. Family members report he was paranoid. Family states there are problems with his dad."

They provided the HPI that at 22 his mother brought him in because she thought he was paranoid. She apparently was not available. He got a new job at a truck

assembly line and he did not go to work three days ago. He stated that he just quit smoking marijuana three days ago on a daily marijuana user for five years. He was stressed out because of work and no job, and he was not smoking marijuana and was not having any auditory or visual hallucinations and no suicidal or homicidal ideation and no physical complaints. His blood pressure was 156/96, heart rate 103. He was described as oriented to time, place, person, and situation. Ethanol <10 mg/dL. His urine drug screen was positive for THC, but nothing else. It indicates that they discussed outpatient discharge with Keystone in Catawba. Dr. Brar would like them to write a prescription for five days of Zyprexa Zydis twice a day.

There is an ED triage form dated August 3, 2017, indicating that he had been stressing and was laughing inappropriately, having gone cold turkey on his pot smoking habit. Family members stated that he was paranoid.

There is a Depart Summary for Mr. Cribb dated August 3, 2017, indicating discharge time at 2117, with chief complaint and diagnoses anxiety, THC use disorder, mild abuse. Medication prescribed was olanzapine 5 mg ODT. The emergency care/urgent care note, under psychiatric, indicates, "Nonsuicidal patient is alert and aware, oriented to person, place, and time. Normal mood and affect. No delusional or hallucinatory thinking noted." He was provided with discharge sheets for Generalized Anxiety Disorder, chemical dependency, Cannabis Use Disorder.

Columbia Suicide Severity Rating Scales (CSSRS): Among these records is a form that specifically addresses homicidal thoughts. It notes no hallucinations, some paranoia, no voices, and altercation with father. Under homicidal assessment, it instructs to ask multiple questions, most of which are marked no. There is one marked yes, and this is "homicidal thoughts," with method but without plan or intent, "Person endorses thoughts of homicide and has thought of at least one method during the assessment." It appears that the question to be asked is do you have access to guns or weapons, and this is what is marked yes. They recognized symptoms of psychosis.

There is an Emergency Room Intake Assessment Behavioral Health entered August 3, 2017.

Piedmont Medical Center Nursing Note entered August 3, 2017, indicating a contact between a Psych Intake Nurse and Dr. Brar. It indicates that the counseled patient and mother on Dr. Brar's recommendations. It indicates patient mother states she will retain custody of the key to the patient's gun safe once returning home and will bring back to the emergency room if he is at risk of harming himself or others.

There is a detailed nursing clinical information that the patient was brought by his mother and grandmother for mental health evaluation. Patient stated that he stopped smoking marijuana three days ago and since that time had been anxious and feeling paranoid and was worried that he was going to lose his new job. He

described stressors and a father who struggled with drug addiction. He stated, "I'm stressing out about work because they called a safety meeting yesterday and said that my company is being bought out and I'm scared I'm not gonna not have a job. I guess you could say I'm feeling paranoid. I really want this job, which is why I'm trying to stay clean off marijuana." He indicated history of depression and endorsed symptoms consistent with that. He noted that he was feeling anxiety. He denied a history of paranoid psychosis, auditory hallucinations, or mania, or history of suicide attempts. He denied any history of inpatient or outpatient psychiatric treatment. He indicated that his mother had Schizoaffective Disorder and a paternal grandmother had depression. His blood alcohol levels were negative. He reported that he stopped using marijuana three days ago, but had been smoking for the past five years.

They noted collateral information provided by the patient's mother, Crystal Sims, noting that the patient had been anxious and overly worried since the beginning of the week. She confirmed that he was under a lot of stress due to his new job and due to trying to re-establish a connection with his father, who recently was released from prison. She stated that the patient's father had issues with heroin use. She reported the patient went to the beach last weekend with his father and they did not have a good trip, and that he had not spoken to his father since he arrived back home. She reported that the guns were in a safe within her home and she would retain custody. He endorsed feelings of paranoia, which he described as a fear that he was going to lose his job. He did not appear otherwise paranoid.

Records from York County Detention Center for the period January 16, 2017 to March 14, 2018:

A Follow-Up Progress Note of August 18, 2017, indicates that he wished to stay in medical because he was paranoid, and that the medications were making him feel loopy. His racing thoughts were his biggest concern. He complained of some stiffness in his shoulders, difficulty relaxing. He was noted to be a bit dysphoric and they kept him in medical.

There is a Note removing him from suicide watch on August 23, 2017. It includes a written note indicating that he had been placed on suicide watch the prior week. He did not think his medications were helping him. He was noted to be lethargic, but cooperative.

A Doctor's Orders and Progress Note of September 6, 2017, indicates that he was evaluated for the side effects of medications, though he reported that his mood was getting better. He was noted to be cooperative and felt to be stable. The progress note dated September 6, 2017, indicates assessment for side effects. He felt like he was getting better on the medications.

There is a refill of Zyprexa 10 mg twice a day on September 7, 2017

He was re-evaluated on September 13, 2017, and reported no racing thoughts or evidence of psychosis and was felt to be doing well.

A note of September 20, 2017, indicates that he was on suicide watch, and he indicated that his medications were not working and he was hearing voices and having racing thoughts and was tired. He appeared depressed and blunted.

A Doctor's Note of September 25, 2017, refers to auditory hallucinations and seen by mental health for racing thoughts on Zyprexa and Celexa.

A Progress Note of October 4, 2017, indicates that he was still depressed with racing thoughts and feeling that people were out to get him. He was taking Risperdal and Depakote.

On November 1, 2017, he was requesting to go back to a regular block.

A Progress Note of November 15, 2017, indicates that he was seen on suicide watch, feeling that the medication had stopped working. He was hearing voices arguing. He still was having some stiffness in his neck and shoulders and appeared stiff. They did allow him to come off of suicide watch and monitored him for medication side effects.

In the note of November 22, 2017, he was seen on suicide watch, reporting that the medications were working better, and he came off the suicide watch.

These records include records related to dental care dated November 28, 2017.

There are refills of Risperdal 1 mg twice a day on December 4, 2017.

There is an Internal Medical Notation and Nurse Note dated December 14, 2017, indicating the patient felt edgy and had restless legs. His Depakote was increased to 500 mg in the morning and 250 mg in the evening, and they added Cogentin 0.5 twice a day.

There are refills through the end of 2017, including Zyprexa 10 mg twice a day and Depakote 250 mg twice a day, Celexa 20 mg a day.

There is a note of January 8, 2018, referring to the use of Risperdal 1 mg twice a day and Cogentin 0.5 twice a day and Depakote 750 mg each day.

There is a reference to refilling Celexa 20 mg on January 11, 2018, and an increase on January 29, 2018, to 40 mg each day.

There are multiple medication administration sheets. There is a list of medications, undated, indicating olanzapine 10 mg twice a day, Risperdal 1 mg twice a day,

Depakote 250 mg twice a day, ibuprofen 600 mg three times a day, and Celexa 20 mg in the morning.

There is an Administrative Sheet dated January 16, 2017, indicating placement on suicide watch and a history of hearing voices telling him to hurt himself. There is a clearance from suicide watch on November 22, 2017.

There are Progress Notes dated March 14, 2018, indicating that the patient felt depressed and was unable to sleep for the past three weeks. He was evaluated on March 14, 2018, indicating that he was feeling better. They noted that he was taking Depakote, Celexa, Risperdal, and Cogentin, and that his mother was visiting him weekly. He complained of difficulty with sleep and depressive symptoms.

The Progress Note dated March 14, 2018, indicates that he felt like he was doing better, but having some trouble sleeping. He complained of some depressive symptoms. He was taking Depakote, Celexa, Risperdal, and Cogentin.

SUBSTANCE USE HISTORY: Mr. Cribb reported that he tried alcohol at age 16, but never drank on a regular basis, maybe a bottle of liquor a year. He has never been a daily drinker, but he does drink 2 liters of "Sundrop" on a daily basis. [He reported that Sundrop is a soft drink.] He reported that he does not really care for beer, and in any type of group he usually ends up being the designated driver because he does not drink much.

Mr. Cribb began smoking marijuana at age 15, the heaviest when his stepfather died. At that time, he was smoking about seven joints a week, or about a half an ounce a week. He smokes about a joint or so a day and has been doing so consistently for many years. He reported that he never smoked on a heavy daily basis, but sometimes does feel a little cranky in the morning when he cannot get it. He hides it from his family, but has never had any charges or legal problems, nor does he feel that it has ever impaired his life. He reported no other use of any other substances based on his father's problems with drugs and alcohol.

MENTAL STATUS EXAM: Mr. Cribb was interviewed at the interview at York County Detention Center. He was appropriately and neatly dressed and groomed in correctional attire. He was pleasant, calm, and cooperative throughout the entire evaluation. He did not display any abnormal movements. He described his mood as "all right. Maybe a little more depressed, not sure why...I can't go home." He thought he might have trouble in the winter with his mood and feels like he does better in the springtime because he can get out and go fishing. He reported, however, his sleep does not vary much over the year with seasons.

He appeared generally euthymic, though perhaps a bit tense. His speech was of normal rate, volume, and prosody. His thought processes were linear, goal-direct, and appropriate. His thought content did not suggest suicidality, homicidality,

hallucinations, delusions, paranoia, or unseen others. He did endorse a past history of auditory hallucinations and delusional thinking. His memory and concentration were good. His judgment and insight were good.

On cognitive exam: Mr. Cribb was oriented to time, place, person, and situation. He correctly registered three unrelated items and remembered two of the three after four minutes. He spelled the word "world" correctly, but backward "d-l-o-y-w." He gave good identification of similarities between unrelated items. He named the current and past two Presidents of the United States. He subtracted \$0.65 from \$1.00 and got \$0.25, but recognized that that was five nickels. He recognized the direction to New York was north, but could not name an adjacent body of water that would be present the entire way, naming "a lake." He gave good interpretations of very simple proverbs, but had trouble when they were more complex, such as book by its cover as "don't count your eggs before they hatch." He gave a good answer to a commonsense question. He gave somewhat concrete answers to commonsense questions such as stamps on letters as "to mail them," uniforms for policemen as "show their authority," why we should not tell lies as "one lie leads to another lie," and why we should not get in fights with people smaller than ourselves as "we might hurt them." He subtracted 7 serially from 100 with one error out of five computations.

Telephone Interview with Linda Helmsley on June 12, 2018, lasting approximately 45 minutes: Ms. Helmsley is Mr. Cribb's grandmother. She reported that, to her memory, her grandson was born "too big" and was delivered by C-section. He reached his milestones on time. Mr. Cribb's mother and biologic father were living together, but were not married, and his biologic father, Robert, was very abusive to his mother, both emotionally and physically. This was so severe that his mother, Crystal, moved out and back into the home with her parents and left Robert. Ms. Helmsley reported that Crystal has "bipolar disorder," and started manifesting symptoms in her 20s after her son was born. She does not believe that he had any developmental issues and was a pretty normal child, though his mother was hospitalized a number of times when he was young. She described her grandson as "passive...he was bullied a lot at school." He got reasonably good grades, but in middle school his stepfather, Jeff Simms, died of cancer and this was hard on him. She reported that Crystal "went crazy...went back to Robert and things went bad." She characterized Robert as a drug addict. Her daughter began to have more trouble with drugs. They were all living next door to each other in trailers on one large piece of property. It is her impression that her daughter and Robert were neglectful of Robbie. His grandmother became his payee. She does not know of any trauma or abuse that he, otherwise, ever suffered. She noted that he has speech problems when he was a child and was in speech treatment up through about the sixth grade. He did not do well later in school. He would become "sick" and miss a lot of school. He left school in the ninth grade, but got his GED in June 2017.

He was not able to keep jobs very well, but she is not sure why. He has had no long-term relationships. Medically he was in fairly good health, but had stomach problems including lactose intolerance and irritable bowel syndrome. He always had some somewhat strange beliefs and began at about age 20 or 21 with talk about "Bigfoot" living near their pond.

Robbie's father, Robert, was incarcerated in 2017 for 90 days, and they felt that it would be a good idea for Robert and Robbie to get to know one another with a trip to the beach. It was felt the best time to do this was when Robert was getting out of jail because he would be clean. She reported that up until that time Robbie was always nervous and never left home very much. Robbie, Robert, and his Uncle Roy "went to a drug house...then went to his dad's house...then went to the beach." It was her impression that Robert was on drugs, but she does not know whether Robbie took any. When he came back, he was clearly not talking normally. He talked about seeing his deceased stepfather and other people who were deceased on the pier. He talked about smelling death while he was there. He reported that his father told him he was going to kill him and stuff him up a drainpipe and no one would find him. His father would not pay for food or gas, despite the fact that Robbie had done the driving in his grandmother's car. They stopped at an aunt's home on the way home and talked about her having crystals, which he characterized as "red rocks." It is his grandmother's impression that he was mentally stable up until the time that they went to the beach, but came back clearly disturbed. She reported that he has never been the same since. She reported that he did not sleep at all the entire time he was at the beach because "he was afraid that his father would cut his throat."

He was so disturbed when he came back from the beach that his mother, Crystal, took out judicial papers to have him committed to the hospital, but his grandmother stayed with him for a few hours and convinced him to go to Piedmont to be evaluated. He was interviewed alone and "he gets real closed mouth when he gets to the hospital." His grandmother told him he had been acting strange and that perhaps it was the weed. They sent him home with some medications with his mother and referred him to Catawba Mental Health, but Catawba Mental Health could not see him for a day or two and they had trouble getting the medications and he only got the medications sporadically. Robbie would not go to Catawba Mental Health the following week.

On the day of the charges, Robbie called her and asked for his grandfather, "Sonny tried to kill me...I had to stick him to get him off me." She called her son and Crystal, and they all went to the door and found Sonny on the floor and Robbie holding his head and leaning against the wall not saying anything, "It was like he was in a daze." She reported, however, that her daughter, Crystal, had reported to her that Robbie said that Sonny and Brian were trying to kill him. They, in fact, had all come together on Sunday when she made dinner and Robbie told her that he was uncomfortable with Sonny being there, and he seemed frightened of Sonny. Ms. Helmsley reported that her daughter, Crystal, told her that Robbie had been afraid that Brian and Sonny

were going to kill them and they needed to be careful and stay away from Brian and Sonny.

Telephone Interview with Crystal Simms on June 12, 2018, lasting

approximately 40 minutes: Ms. Simms is Mr. Cribb's mother. She reported that he was born a week premature by C-section, but was born without any difficulty and reached his milestones on time. As a child, he was happy and energetic and did well in elementary school and kindergarten, though they wanted to hold him back in the second grade because he had trouble reading. She is not sure why that was. They did not do any testing. He was in speech therapy in elementary school because he had trouble talking, but otherwise was okay. He got along well with other children. She reported there is a family history of mental illness, in that her mother has depression and she has schizoaffective disorder and has had multiple hospitalizations. She reported that there is no history of drug or alcohol problems that he was ever exposed to as a child, other than perhaps her father drank excessively, but does not anymore. She reported that there was no violence in the home when Robbie was growing up, though when he was a small baby his biologic father was physically abusive to her. She does not believe that he ever was traumatized or abused, but that the loss of his stepfather when he was 15 was very traumatic.

He did well in middle school, but in high school began to have problems and did not want to go to school. He did not like school. He had to repeat the ninth grade because he did not pass English and left school in the ninth grade. He achieved his GED last year.

She reported that he has done a number of different jobs working as a veterinarian's assistant, at Goodwill, and at Eaton. His longest job was with a tree service called Aspen for about two months. She does not think he has ever been fired.

He has never had any long-term romantic relationships and he has never been married or had any children.

Medically he had a tonsillectomy when he was a child, but no illnesses. He has irritable bowel syndrome, chronic bronchitis, and gastroesophageal reflux.

She does not believe that he has had significant trouble with drugs, though he has smoked some marijuana.

She reported that he has never been in a psychiatric hospital and has had no psychiatric contacts, other than the one time that he went to Piedmont. She then remembered that he had been assessed at about 7 or 8 years old and "he was okay." In the ER at Piedmont, he was interviewed by himself.

She reported that up until he left for the beach he had never manifest any worrisome symptoms of mental illness, but when he came back he was worried that people, including her, were putting things in his drink and was talking about shark teeth and red rocks. She reported that he went to his father's and Roy's house for about two or three days before going to the beach because he did not want to go to the beach and they wanted him to go. They did go to the beach, and when she called him to see how he was doing he said that he was not having a good time. When he came back, he talked about "smelling death...that his father was going to kill him and put him in a drain pipe." He talked about seeing his stepfather who was deceased on the pier at the bridge, and that while they were coming home his father tried to pull the wheel and crash the car into a truck. She described that in the days after the beach he was crying and "really low. He was talking out of his head...talking low." She is not sure what it was about. She went to Catawba Mental Health to get papers to have him committed, but his grandmother talked him into going Piedmont and they went. They gave him medications and told him to follow up at Catawba. He got one or two pills, but not many, and then refused to take them. He was saying that "Sonny was gonna kill them all...he didn't say why...he was scared of him." She reported that on that Sunday Robbie and Sonny were at her mother's house for dinner and Robbie was scared of Sonny, but did not say anything to her about it. She reported that, when he was taken to the jail initially, he was "seeing demons on the wall."

EVALUATION FOR CRIMINAL RESPONSIBILITY:

Events as described by the record for the day of the charges:

Disc #1 20170809. This disc contains the 911 call that lasts for about 8 minutes. The caller indicated that his nephew stabbed his friend. He identified himself as Mr. Hemsley and that it had just happened and that the victim was not moving. It indicated that his nephew was sitting in the corner, and when asked what happened he replied, "He said he tried to choke him with a cord." He described his nephew as 22 years old and named him as Robbie Cribb. He indicated that the weapon was on the bed.

Also on this disc is an audio interview with Robert Cribb by detectives. Mr. Cribb described having a normal conversation with his uncle's friend, who had stopped by incidentally to pick up the \$25 he was owed, and after a very uneventful visit, while walking out, tried to wrap a cord that had come in a package around Mr. Cribb's neck. Mr. Cribb responded by grabbing a knife, which the victim took away from him. Mr. Cribb took a shotgun and shot him. Mr. Cribb reported that no words were exchanged and that he did not have any reason to believe that the victim was angry with him. There were no negative words back and forth and no reason why he should have done this. He described the situation two or three times. It was then taken down as a statement, which he signed.

Disc #2 contains four police files. First is Ofc. Patrick Williams' car camera in which Mr. Cribb was searched and placed in the car. The second is by Ofc. Michael Doddy. It appears to be a car camera. It provides a view of the front of the trailer with police and rescue personnel coming and going. It lasts for about 50 minutes, as did the first one. The third is by Ofc. Thomas Kinee. It appears to be a body camera and again lasts about 50 minutes. It allows visualization of the arrest and Mr. Cribb being put in the car. There is a conversation in which Mr. Cribb very rationally provided demographic information. He was asked if any drugs or alcohol was used that day, but the answer cannot be heard.

The fourth file is also labeled Michael Doddy and appears to be the officer driving to the scene.

Disc #3 is labeled Michael Doddy and shows him driving to and arriving on the scene and the police officers and emergency personnel. It lasts for about 50 minutes.

Disc#4 also labeled Michael Doddy and is about 30 minutes long. It shows law enforcement working at the scene. Most of the conversations are relatively indistinct. At 1523, there is a short discussion with what appears to be the victim's friend, Mr. Cribb's, uncle, and he gets back in his car about 1524.

YCSO Incident Interview Report by Yeager, R., dated August 9, 2017. In this statement, Crystal Simms indicated that her son, Robert Cribb, went to the beach with his father and they got back last Sunday. He was upset and crying. He was saying things that did not make sense. He was paranoid about people were out to get him and his grandparents and me, his mother. He said he thought Sonny was going to kill James Hensley, III, Linda Hemsley, James Hemsley, Jr., and me, Crystal Sims. He said that he would take care of it first. She and mother, Linda Hemsley, took Robert, Jr. to the hospital in Rock Hill for a mental evaluation. They did not keep him and said he was just stressed out and gave him some Zyprexa. He only took the medication at the hospital, the one pill. He had been drinking every day.

Mr. Cribbs' description of the events of the day of the charges:

Mr. Cribb reported that he had been living in a trailer with his mother at the time and working at Lacoste doing production work for about \$10 an hour, working days. He reported that things were good at home and that his mother and he were getting along well. He reported no symptoms of mental illness. He had some stress related to the fact that he had been called by Eton, who had bought Lacoste, and they had "pulled me and another guy in to a room," and had said that Eton was not happy with Lacoste. He felt that was likely related to the fact that some of the people were not working very hard. This interview had taken place in the middle of July, and he was worried that something might happen to the job. His appetite was okay, but "maybe sleeping a little less because of worry about the job." He was not drinking at

all. He was smoking marijuana, "one to two bowls a day." He was not using any other drugs.

He reported that his father had been in jail and was getting out and wanted to go to the beach. They planned a beach trip with him and his uncle and his father between July 26 and August 1. He had asked for the time off and that had not been a problem, and he and his father and uncle went to the Econo Lodge in Tabor City. They unpacked and went to see Aunt Inez. They went to the family graveyard so that he could learn about his family history and heritage. He reported that Aunt Inez was wearing a shark tooth and he thought that she might be a Shark (part of The Shark gang). He was afraid that she and his father were conspiring against him to hurt him because "I wasn't part of the family...Dad thought Mom had been messing around and he said, 'You're no son of mine.'" He is not sure why his father said that, but he was very upset about it and was very depressed. His father and uncle "bickered about everything nonstop," and his uncle was drinking a lot and his father was using heroin. He is not sure where his father got it. He reported that on the way to the beach the police had pulled them over and had searched his father's backpack, finding spoon and needles, and they had asked him if he wanted his father arrested or just to go to the beach. He said that he did not care and the policeman took the paraphernalia, but did not arrest his father. He reported his father is a serious enough addict that he carries a Narcan shot.

During the weekend they went to the Cherry Grove Pier, where he thought he saw his deceased stepfather in a wheelchair and thought that he might be part of The Sharks gang. He did not say anything to his uncle or father. Subsequently, they all went home and he described his father as angry all the way home, and when they pulled into a gas station to get gas his father pulled at the wheel, which he interpreted as his father trying to kill him. His father was upset, but put \$5 of gas in the tank, but his father "pulled a knife and wanted to fight." He is not sure why. He took his uncle and father to Cramerton and then went home arriving about 8:00 p.m. that night. He worried that night that his father and The Sharks would come to harm him. He talked to his mother about it, but his mother told him that he was safe and not to worry, but he was "in tears and an emotional wreck." Subsequently, his grandmother got involved and she was worried. She and his mother tried to convince him to go to the hospital, which after a few days they finally did, "To them I was stressed out and they gave me some pills and sent me home." He reported that the pills did help the stress and helped him sleep, but he still thought that people were out to kill him and he did not go back to work. He reported that he called his boss and was able to obtain his check for the two weeks that he did work.

After getting home, he was "hanging out," at the house and not going out because he was afraid that people were out to get him. He was playing videogames and watching television. He was sleeping about four hours a night and was not hearing any voices, but he still thought The Sharks were out to get him and that his father was one of them and that his father had paid The Sharks to kill him. He was not

using any drugs and was not smoking marijuana because of his fears. He was not drinking alcohol. He was thinking about trying to get a better job. After the visit to the hospital, he was taking his Zyprexa. In the day or two before the charges, there really were no changes to his routine and he spent most of the day trying to sleep or watch TV. One day he went to a nearby pond and tried to fish. He was trying to get himself back to normalcy and back to his daily routine. He was going to bed about 12:00 and getting up about 5:00 a.m. when he woke up. He estimated that he was sleeping about three or four hours a day.

On the morning of the charges, he got up, took a shower, and let the dog out. He watched TV for a while, but was still worried that The Sharks were going to come get him. His mother was on the couch. He cooked breakfast and watched television, and his mom was on the couch watching television also.

Sonny is his uncle's partner of the past two years. They have a good relationship. They smoke weed together sometimes, but do not do any other drugs. Sonny is supposed to be his friend. Sonny has never made sexual advances. Sonny takes Seroquel from Catawba Mental Health for bipolar. He reported no disagreements, fights, or unhappiness with Sonny. Sonny had called that morning and asked if he could stop by and pick up the \$25 he was owed. He thinks that phone call was about 12:00 or 1:00, and he told Sonny that was fine, that he should come over. He and Sonny were sitting and watching television. His mother had to leave to go get a copy of the power bill. They were not using any alcohol. They were not smoking any marijuana and not doing any drugs. He had no reason to fear Sonny and was not afraid of him at that time. He does not remember what they talked about, and they had done this kind of thing quite often. Sonny would tend to come over when his uncle was at work because he was bored. Sonny got up to leave and said, "I'm going home." He then pulled a cord, probably a charger cord, out of a package that had come and walked up beside Mr. Cribb and "looped it one time around my neck. I thought he might be joking, so I tapped out. I thought he was playing." He learned about tapping out from watching UFC, "I never really knew what it meant." He reported that Sonny pulled on the cord and was choking him ever harder. He stood up and spun, trying to get Sonny off him, "I tried to go out the front door dragging him and I saw the knife...I stabbed behind me over my right shoulder...felt the cord loosen, so I threw him to the ground and the knife was gone, so I grabbed the shotgun and shot him...he was in the hallway lying there. Not sure if he was trying to get up...he was moving when I shot him...shot him in the upper body." He reported that he was shaking and went and got some towels and tried to clean up the blood because it was everywhere and getting on the floor. He wrapped Sonny up and called his grandmother, who came over, "I didn't know what to do, so I called her." I asked why he did not call 9-1-1, and he reported that he did not think of that so he called his grandmother. She came over with his uncle and they were both very upset. His uncle called 9-1-1 on the house phone when Sonny's phone did not work. He reported that he sat in the corner and was crying. I asked why he did not run

away and he reported, "I wanted to face it...I done wrong. I killed someone. I should have been the one lying there, not him, because I wouldn't be here."

He reported that he does not remember what he was thinking, and that he could not believe that it happened. He reported that he was sitting by the wall crying and praying. He was never sure why Sonny tried to wrap the cord around him. Sonny had never done anything like that before, and no one else has ever tried to do anything like that before. He has never had to defend himself before, and he cannot think of any reason why Sonny would want to harm him and it came out of nowhere.

DIAGNOSTIC FORMULATION: Based on the above data, the following is opined regarding Mr. Cribb's psychiatric diagnosis according to the *Diagnostic and Statistical Manual of Mental Disorders, 5th Edition, Text Revision* (DSM-V).

Schizophrenia

The diagnosis 'Schizophrenia' is given provisionally. Mr. Cribb reports no psychiatric symptomology until August 2017 upon returning from a trip and presenting with paranoid, delusional thinking. His description of his thinking at that time is highly consistent with delusional paranoid beliefs. According to his grandmother, he began to have bizarre beliefs about the age of 20 or 21 related to "Bigfoot." Notes from the jail suggest continued treatment with anti-psychotic medications, though the dosages have been reduced.

His behaviors are consistent with a "first break" episode of the onset of Schizophrenia. It, however, follows a period of time when he was at the beach with family members who have significant issues with drugs. If the symptoms with which he presented in August were drug-induced, they would likely have resolved, and the fact that he continues to be symptomatic and is being treated with unpalatable medications suggests that the appropriate diagnosis is Schizophrenia.

The diagnosis Cannabis Use Disorder is considered. Mr. Cribb reports that he smoked about seven joints a week, which is not an amount that would be expected to cause problematic behaviors or psychotic thinking. He noted that he got a little cranky when he could not get it. This is a symptom typically associated with individuals who smoke more heavily but Mr. Cribb may have significant underlying anxiety. He has never had any legal charges and reports no impairment of his general lifestyle due to the use of marijuana. This being the case, the diagnosis of Cannabis Use Disorder cannot be confidently given.

SYNOPSIS:

Mr. Cribb describes the onset of severely paranoid and delusional beliefs during the period of time at the beach with his father and uncle. His description is very consistent with psychotic, delusional thinking. He does not attribute the onset of

these thoughts to the use of substances though his father and uncle were using substances. He denies the use of any marijuana after his return home, but the delusional and paranoid beliefs continued after his return from that trip. He was sleeping about five hours a night.

In her statements, Crystal Simms states that Mr. Cribb after his return from the beach had been making statements that he believed "Proctor was going to kill him, his mother, his grandparents, and his uncle," and stated to her, "He would take care of him before he let that happen." It was based on statements like this that Ms. Simms and her mother took him to Piedmont.

On the Sunday before the day of the charges Mr. Cribb described being fearful of Sonny and being uncomfortable around him at dinner. The family tried to reassure him that there was no danger.

On the day of the charges, he was still experiencing fear that a gang called The Sharks was going to harm him. He reported, however, that when Sonny called that morning he accepted his phone call and told him to come over. He describes a normal interaction between he and Sonny, and they were not drinking alcohol or using any marijuana or other drugs. He reported no reason to fear Sonny and was not afraid of him at the time. They were not smoking marijuana, though they had done so in the past. He described an entirely normal interaction with Sonny, until Sonny got up to leave. He provides a detailed description of Sonny trying to choke him with a charger cord, his trying to "tap out," and his stabbing Sonny in self-defense and subsequently shooting him. Mr. Cribb describes the events of that day in a detailed, well organized and rational manner.

He describes getting towels and trying to clean up the blood, and calling his grandmother. He describes not leaving the scene because "I wanted to face it...I done wrong. I killed someone." He does not describe any other disturbance of thought or paranoid fears related to Sonny when he talked to police, or myself.

Mr. Cribb provided the same rational description of the events that he provided to his grandmother, and then the police shortly after the events occurred.

Mr. Cribb does not indicate that paranoid or delusional beliefs played a role in the events that led to Sonny's death. He provides a rational description of needing to defend himself from being choked by Sonny. He does not describe his acts being based on psychotic thinking and does not describe psychotic thinking in the time surrounding the charges, other than the belief that the "Sharks" were out to get him. He does not express to his family, the police or me that Sonny acted for the "Sharks." He expressed a sense of wrongfulness of the act almost immediately after it occurred.

Ms. Simms, in her statements to police, notes that the victim, Proctor (Sonny), had come by with a cell phone charger in a manila envelope and had been sitting calmly talking to her son when she left the home. They were fine and watching TV.

The police statements indicate that in the bedroom it appeared that Mr. Cribb had attempted to clean blood off the floor and bloody towels, tan shorts, and the defendant's wallet were recovered in the washing machine. Mr. Cribb's attempts to clean the home, and washing of clothing suggests an attempt to obscure what had happened, suggesting a knowledge of wrongfulness of the acts.

When they arrived at the house, they found the victim lying on the floor with a black blanket covering the top half of his body. When they searched Mr. Cribb, they removed a lighter from his pocket.

OPINION REGARDING CRIMINAL RESPONSIBILITY: Yes. It is my professional opinion, to a reasonable degree of medical certainty, that Mr. Cribb at the time of the alleged acts did have the capacity to distinguish moral or legal right from moral or legal wrong and to recognize the particular acts charged as morally or legally wrong. The following supports this opinion:

Mr. Cribb had a history of odd beliefs. When he returned from his visit to the beach with his father and uncle, he clearly described and manifest severely psychotic, delusional, paranoid, beliefs. These persisted after his return from the beach for many days. It appears that these beliefs were so disturbing that he stopped using marijuana. According to family members, he described paranoid beliefs about Sonny planning to harm he and his family. His grandmother describes his discomfort being with Sonny a few days prior to the day of the charges. All of this precipitated his family taking him to the Emergency Room where at least once he alluded to homicidal thoughts without intent or plan. They describe him being fearful of Sonny at dinner on Sunday prior to the charges.

When Sonny came over on the day of the attack, his mother described no disturbed behaviors between her son and Sonny, and that they seemed calm and were watching television. Mr. Cribb did not voice fear of Sonny at that time, nor did he attempt to leave with his mother out of fear.

His description of these events is rational, organized, coherent, and self-protective and does not suggest psychotic thinking. This suggests that Mr. Cribb had capacity to recognize at least legal right from wrong at the time. The attempts to clean and wash clothing are consistent, as is his assertion that he "had done wrong." He has never asserted a moral rightfulness based on fear that he might have been harmed, and consistently described rational self-defense. As such he appears to have had the capacity to distinguish legal and moral right from wrong at that time.

OPINION REGARDING CAPACITY TO CONFORM: No. It is my professional opinion to a degree of medical certainty, that at the time of the alleged acts; Mr. Cribb lacked the capacity to conform his conduct to the requirements of the law. The following supports this opinion:

With the background of Mr. Cribb's paranoid beliefs about people out to kill him and having voiced those beliefs that this applied to Sonny, it is my opinion that these paranoid beliefs played a significant role in the events of the day of the charges. Mr. Cribb describes an overt attack necessitating self-defense, however his response to that attack would likely be excessive and out of proportion based on the fear that Sonny meant to kill him. Mr. Cribb had not been taking his medications as prescribed and his psychotic fears would have been essentially untreated.

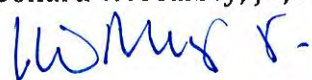
There has been no rational reason given for Sonny's attacking Mr. Cribb but more importantly no rational reason for Mr. Cribb to attack Sonny, or for him to have felt otherwise so threatened as to respond this violently.

SUMMARY: Mr. Robert Cleveland Cribb, Jr. is a 22-year-old gentleman seen at the request of his attorney, Ms. Lipinski of the York County Public Defender's Office. Mr. Cribb is currently charged with Murder and two counts of Possession of a Weapon during a Violent Crime. He has the psychiatric diagnosis Schizophrenia. It is my opinion to a reasonable degree of medical certainty that Mr. Cribb at the time of the alleged acts did have the capacity to distinguish moral and legal right from wrong but lacked the capacity to conform his behavior at the time of those acts.

Respectfully submitted,

 08/09/18

Leonard W. Mulbry, Jr., M.D.

 08/24/18.

STATE OF SOUTH CAROLINA

COUNTY OF YORK

CERTIFIED TRUE COPY

INDICTMENT

2019 APR -5 PM 2:55

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

At a Court of General Sessions, convened on March 22, 2018, the Grand Jurors of York County present upon their oath:

COUNT ONE - MURDER

Robert Cleveland Cribb, Jr. did in York County on or about August 9, 2017, unlawfully and with malice aforethought, either express or implied, kill [REDACTED] by means of shooting and/or stabbing him, and the victim died as a proximate result thereof. The murder occurred at 2383 Justin Drive in York, South Carolina. All in violation of Section 16-3-10, *Code of Laws of South Carolina* (1976), as amended.

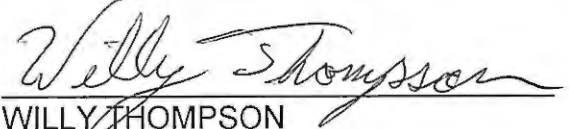
COUNT TWO - POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME

Robert Cleveland Cribb, Jr. did on or about August 9, 2017, while committing the violent crime of Murder, possess a firearm in York County, South Carolina. All in violation of 16-23-490, *Code of Laws of South Carolina* (1976), as amended.

COUNT THREE - POSSESSION OF A KNIFE DURING THE COMMISSION OF A VIOLENT CRIME

Robert Cleveland Cribb, Jr. did on or about August 9, 2017, while committing the violent crime of Murder, visibly display a knife in York County, South Carolina. All in violation of 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.


WILLY THOMPSON
DEPUTY SOLICITOR

WITNESSES

YCSO / Hager

ARREST WARRANT NUMBER

COUNT ONE 2017A4610201519
COUNT TWO 2017A4610201520
COUNT THREE 2017A4610201521

ACTION OF GRAND JURY

TRUE BILL

YML Barreto
Foreperson of Grand Jury
Date: *3-22-18*

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2018-GS-46-01919 /
2018-GS-46-01919a / 2018-GS-46-1919b

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

MARCH 22ND, TERM 2018

THE STATE

VS.

ROBERT CLEVELAND CRIBB, JR

INDICTMENT FOR

COUNT ONE - MURDER
SC Code: § 16-03-0010
CDR Code: 0116

**COUNT TWO - POSSESSION OF A
FIREARM DURING THE COMMISSION OF A
VIOLENT CRIME**

SC Code: § 16-23-0490
CDR Code: 0549

**COUNT THREE - POSSESSION OF A KNIFE
DURING THE COMMISSION OF A VIOLENT
CRIME**

SC Code: § 16-23-0490
CDR Code: 0549

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

Defendant

Robert Cleveland Cribb, Jr.
hereby appear in my own proper person and plead guilty to the within indictment or to
Voluntary Manslaughter & Count 2 & Count 3

Art C. Lutz
Defendant

Witness:

L. Benfield court specialist
C.C.C. PLS. AND G.S.

COUNTY OF YORK

STATE VS.

ROBERT CLEVELAND CRIBB, JR.

AKA:

Race: White

Sex: M

Age: 28

DOB: [REDACTED]

SS#: [REDACTED]

Address: 2383 Justin Drive

City, State, Zip: York, SC 29745

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 ☐ CONVICTED OF or ☒ PLEADSTO: Manslaughter / Voluntary Manslaughter (NLT 2 years to 30 years)

In violation of § 16-03-0050 of the S.C. Code of Laws, bearing CDR Code # 0217

INDICTMENT/CASE#: 2018-GS-46-01919

A/W: 2017A4610201519

Date of Offense: 08/09/2017

S.C. Code §: 16-03-0010

CDR Code #: 0116

JAIL

2019 APR -5 PM 2:54

SENTENCE SHEET

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☐ As indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Willy Thompson 65118
Willy Thompson, Deputy Solicitor SC Bar #

[Signature] Defendant

Marilyn G. Givens 11871
Attorney for Defendant 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 Service 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 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

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Ordered PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be ad. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

Recipient: _____

*Fine: _____ \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 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 \$ 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) \$ \$ _____

TOTAL \$ 125☐ 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: [Signature]

Judge Code: 2753Sentence Date: 8-24-18

Clerk of Court/Deputy Clerk: David Hamilton

Court Reporter: Wanda Nelson

COUNTY OF YORK

STATE VS.

ROBERT CLEVELAND CRIBB, JR.

AKA:

Race: White

Sex: M

Age: 23

DOB: [REDACTED]

SS#: [REDACTED]

Address: 2383 Justin Drive

City, State, Zip: York, SC 29745

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

INDICTMENT/CASE#: 2018-GS-46-01919a

A/W:

2017A4610201520

Date of Offense:

08/09/2017

S.C. Code §:

16-23-0490

CDR Code #:

0549

JAIL

CERTIFIED TRUE COPY
2019 APR - 5 PM 2:55DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

SENTENCE SHEET

TO: Possession Of A Firearm During The Commission Of A Violent Crime ()

In violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☐ CONVICTED OF or☒ PLEADS☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☒ Recommendation by the State.

ATTEST:

Willy Thompson 65118
Willy Thompson, Deputy Solicitor SC Bar #Robert C. Cribb Jr.
DefendantMindy H. Ligon 11871
Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 5 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 Service 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 Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning _____

*Fine: _____ \$ _____

Substance Abuse Counseling ☐

§14-1-206 (Assessments 107.5%) _____ \$ _____

Random Drug/Alcohol Testing ☐§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100

Fine may be pd. in equal consecutive weekly/monthly

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

pmts. of \$ _____ Beginning _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

\$ _____ Paid to Public Defender Fund

§56-1-286 (DUI Breath Test) \$25 \$ _____

Other: _____

Proviso (Public Def/Probation) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

☐ Appointed PD or appointed other counsel,

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

Proviso requires \$500 be paid to Clerk

3% to County (if paid in installments) \$ \$ _____

during probation and shall be collected before

TOTAL \$ 125

any other fees.

Clerk of Court/Deputy Clerk:

David Hamilton

Court Reporter: Wanda Nelson

Presiding Judge:

Judge Code:

Sentence Date:

2753

8-24-18

COUNTY OF YORK

STATE VS.

ROBERT CLEVELAND CRIBB, JR

AKA:

Race: White

Sex: M

Age: 23

DOB: [REDACTED]

SS#: [REDACTED]

Address: 2383 Justin Drive

City, State, Zip: York, SC 29745

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: Possession Of A Knife During The Commission Of A Violent Crime ()

In violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

INDICTMENT/CASE#: 2018-GS-46-01919b

A/W:

2017A4610201521

Date of Offense:

08/09/2017

S.C. Code §:

16-23-0490

CDR Code #:

0549

JAIL

SENTENCE SHEET

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Willy Thompson, Deputy Solicitor SC Bar # 65118

Defendant

Marilyn Ann Lippert, Attorney for Defendant SC Bar # 11871

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 5 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 Service 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 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

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Ordered PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

Recipient: _____

*Fine: _____ \$ _____

\$14-1-206 (Assessments 107.5%) \$ _____

\$14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 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 \$ 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) \$ \$ _____

TOTAL \$ 125.☐ 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: 2153Sentence Date: 8-24-18

Clerk of Court/Deputy Clerk: _____

Court Reporter: _____

David Hamilton

Wanda Nelson

STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

83

ROBERT CLEVELAND CRIBB, JR. #377495

CIVIL ACTION COVERSHEET

FILED-RECEIVED
2019 APR 5 PM 12:30

2019 - CP - 46 1237

vs.

DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

STATE OF SOUTH CAROLINA

Defendant(s)

(Please Print)

Submitted By: Tommy A. Thomas

Address: 7588 Woodrow Street
Irmo, SC 29063

SC Bar #: 005536

Telephone #: (803) 732-5507

Fax #: (803) 781-4226

Other:

E-mail: thomaslaw@me.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

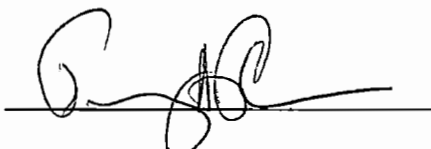
*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☒ This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|---|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199)
_____ | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
☐ Other (299)
_____ | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Other (399)
_____ | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499)
_____ |
| Inmate Petitions
☒ PCR (500)
☐ Sexual Predator (510)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599)
_____ | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Other (799)
_____ | Administrative Law/Relief
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture (840)
☐ Other (899)
_____ | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Administrative Law Judge (980)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999)
_____ |
| Special/Complex /Other
☐ Environmental (600) ☐ Pharmaceuticals (630)
☐ Automobile Arb. (610) ☐ Unfair Trade Practices (640)
☐ Medical (620) ☐ Other (699)
_____ | | | |

Submitting Party Signature:



Date: April 2, 2019

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

FORM 5

FILED-RECEIVED

STATE OF SOUTH CAROLINA

2019 APR -5 PM 12:30

IN THE COURT OF COMMON PLEAS

COUNTY OF YORK

DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SCRobert Cleveland Cribb, Jr #377495
Full name and prison number (if any) of Applicant.

v.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lieber Correctional Institution
2. Name and location of Court which imposed sentence York County General Sessions
3. Name(s) of co-defendant(s) (if any) n/a
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 18GS4601919 Voluntary Manslaughter 30 years
 - (b) 18GS4601919A Firearms provision 5 years
 - (c) 18GS4601919B Firearms provision 5 years
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 8/24/18
 - (b) 8/24/18

- (c) 8/24/17
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty but mentally ill
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. SC Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. 10/16/18
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Order of Dismissal: 10/16/18; remittitur: 11/2/18
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) ineffective assistance of counsel

- (b) involuntary guilty plea
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) _____
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? no
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? no
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (c) the disposition thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (d) the date of each such disposition:

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

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

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

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

no

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

(a) which grounds have been presented:

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

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

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

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

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

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

- (a) your arraignment and plea? yes
- (b) your trial, if any? n/a
- (c) your sentencing? yes

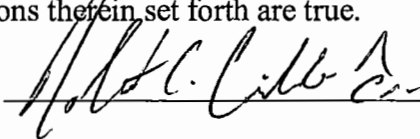
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? n/a
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Mindy H. Lipinski, Esq., York County Public Defender's Office
- ii. Robert Dudek, SC Appellate Defense
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. guilty plea and sentencing
- ii. Appeal
- iii. _____
19. State clearly the relief you seek in filing this application:
new trial
20. Are you now under sentence from any other court that you have not challenged?
no

STATE OF SOUTH CAROLINA

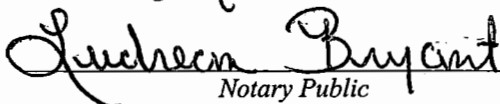
County of York

VERIFICATION

I, Robert C. Cribb, 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.



SWORN to and subscribed before me this 28th
day of March, 2019.

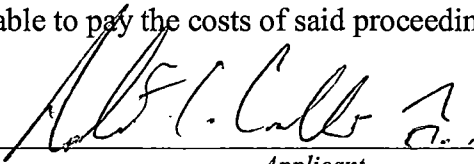
 (L.S.)
Notary Public

My Commission Expires: May 26, 2020

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

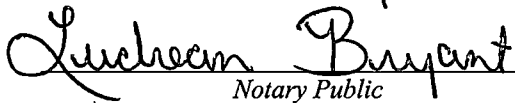
I, Robert C. Cribb, Jr. , hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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



Applicant

SWORN or affirmed to and subscribed before me this
28th day of March, 2018.



Notary Public

My Commission Expires: May 26, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	FOR THE SIXTEENTH JUDICIAL CIRCUIT
	)	
Robert Cleveland Cribb, Jr., #377495	)	2019-CP-46-1237
Applicant,	)	
	)	RETURN AND MOTION FOR
v.	)	MORE DEFINITE STATEMENT
	)	
State of South Carolina,	)	
Respondent.	)	
_____	)	

The State (Respondent), making its Return to the application for post-conviction relief filed on April, 5, 2019, would respectfully show this Court:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. During the March 2018 term, the York County Grand Jury indicted Applicant murder (2018-GS-46-01919), possession of a firearm during the commission of a violent crime (-01919a), and possess of a knife during the commission of a violent crime (-01919b). Assistant Public Defender Mindy H. Lipinski of the Sixteenth Circuit Public Defender's Office represented Applicant. Assistant Solicitors Walter William Thompson, Sr. and Thomas M. Hogge of the Sixteenth Circuit Solicitor's Office prosecuted the case. On August 24, 2018, Applicant appeared before the Honorable Daniel D. Hall and pled guilty but mentally ill to voluntary manslaughter as well as his remaining charges as indicted. Judge Hall sentenced Applicant to thirty years for voluntary manslaughter and five years on each of the weapon offenses; all sentences set to run concurrently. Applicant was also given credit for 380 days. Applicant filed a notice of appeal on August 29, 2018, however, the appeal was dismissed for failure to provide a sufficient explanation for a guilty plea appeal. The remittitur was issued on November 2, 2018.

II. Factual History

On August 9, 2017, Applicant was at his home with his mother (Mother) on Justin Drive

in York County. (GP Tr. 19.) Jerry “Sonny” Proctor (Victim) came by Applicant’s residence to hang out and watch television after picking up his mail. (GP Tr. 19.) Applicant and Victim lived in the same trailer park and it was not uncommon for Victim to stop by and visit Applicant’s residence. (GP Tr. 19.) Applicant told officers he considered Victim a friend. (GP Tr. 19-20.) Mother left the residence for approximately thirty minutes to pick up her power bill. (GP Tr. 20.) While Mother was away, Applicant’s grandmother received a call from Applicant asking for his grandfather and stating that he needed help. (GP Tr. 20.) Applicant’s grandfather was not available, so his grandmother and her son, Albert Hensley, walked over to Applicant’s residence. (GP Tr. 20.) When they arrived at Applicant’s residence they observed Victim deceased on the floor laying in a pool of blood and immediately called 911. (GP Tr. 20.)

Officers arrived on scene and observed various stab wounds to Victim’s body and a shotgun wound to the face and right hand. (GP Tr. 20.) It appeared to officers that Victim was shot in Applicant’s bedroom while his hand was over the muzzle of the shotgun as it was fired. (GP Tr. 20.) Blood was located throughout the residence. (GP Tr. 20.) It appeared to officers that Applicant attempted to clean up the blood as the blood was smeared on the floor, bloody towels, shorts, and Victim’s wallet were found in the washing machine. (GP Tr. 20.) A knife was located in Applicant’s bathroom and the shotgun was located on his bed. (GP Tr. 20.) Applicant told officers Victim had attacked him by choking him from behind with the cord from a phone charger. (GP Tr. 21.) Applicant stated he stabbed Victim from behind by “swinging backwards at him with the knife.” (GP Tr. 21.) Applicant told officers that at some point Victim got the knife and that is when he grabbed the .12 gauge shotgun and shot Victim while he was four or five feet away. (GP Tr. 21.) Applicant then called his grandfather for help. (GP Tr. 21.)

Officers did not believe Applicant’s story as Applicant had no injuries – especially around his neck where Applicant claimed he had been choked from behind with a charger cord. (GP Tr. 22.) Further, the autopsy revealed Victim was stabbed in the upper back in a forward and upper

motion, which did not fit with Applicant's story that he stabbed Victim by flinging the knife behind him as he was being choked by Victim. (GP Tr. 22.) Victim also received a second stab wound to the chest. (GP Tr. 22.) Victim's death was ultimately caused by a close contact shotgun blast that went through the palm of Victim's right hand and into his face causing extensive damage to his brain. (GP Tr. 22.)

Mother told officers Applicant and Victim were fine together and the only thing she worried about when she left them alone was them smoking marijuana while she was gone. (GP Tr. 21.) Mother told officers Applicant and Victim had always gotten along and had a friendly relationship. (GP Tr. 21.) Mother told officers she noted a change in Applicant's behavior after he returned from a beach trip with his father recently. (GP Tr. 21.) Applicant seemed more depressed to Mother and was drinking frequently. (GP Tr. 21.) Applicant began making statements to Mother indicating Victim was going to kill her, his grandparents and him. (GP Tr. 21-22.) Applicant was taken to the Piedmont Medical Center (PMC) for a mental evaluation. (GP Tr. 22.) The diagnosis from PMC was that Applicant was under a lot of stress and was prescribed Didrex and released with a referral to the Catawba Mental Health facility for follow-up, which was never done. (GP Tr. 22.)

III. Current Application

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

1. Ineffective Assistance of Counsel
2. Involuntary Guilty Plea

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

IV. Response to Allegations of Ineffective Assistance of Counsel

Applicant asserts Counsel was constitutionally ineffective but wholly failed to state with any specificity facts to support his general allegations. Based on this, it is impossible for Respondent to discern how exactly Applicant believes Counsel was ineffective. Respondent moves for Applicant, through counsel, to amend this allegation to include sufficient, specific facts to support her claim of ineffective assistance of counsel.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland, 466 U.S. 668. 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, 466 U.S. 668. First, the applicant must prove that counsel’s performance was deficient. Id.; 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.) The 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 the

applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985.)

As discussed above, it is impossible for Respondent to adequately respond to Applicant’s allegation of ineffective assistance of counsel because Applicant has completely failed to provide any specific allegations or facts to support such claims. Respondent requests Applicant, through counsel, provide specific claims and facts to support this vague allegation.

V. Response to Involuntary Guilty Plea

Applicant further alleges he pled guilty but mentally ill involuntarily, however, he has failed to provide any specific facts to support this allegation. In post-conviction relief cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing: (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel’s errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that her guilty plea was induced by ineffective assistance of counsel must prove that counsel’s advice was not “within the competence demanded of attorneys in criminal cases.” Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why she should be allowed to depart from the truth of those statements. Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Respondent submits the record fully supports the knowing and voluntary nature of Applicant's plea. From the outset of the plea both the State and Counsel made it clear to Judge Hall that Applicant was pleading guilty but mentally ill and Counsel provided Judge Hall with a psychiatric evaluation completed by Dr. Leonard Mulbry, Jr. (GP Tr. 4-6.) Knowing Applicant's mental health was at issue, Judge Hall conducted a thorough colloquy with Applicant regarding his decision to enter his guilty but mentally ill plea. During that colloquy, Applicant testified he earned his GED, is able to read, had taken his prescribed medication that day, and understood what he was doing in court. (GP Tr. 6-9, 11.) Dr. Mulbry was present during the proceedings and, as Counsel explained, had even talked to Applicant that morning to ensure Applicant was capable and competent of going forward with his plea hearing. (GP Tr. 11.) Additionally, Applicant went over a plea waiver form with Counsel and the court where he indicated he understood his constitutional rights and was entering his plea freely and voluntarily. Applicant has failed to provide any facts that give rise to this allegation regarding ineffective assistance of counsel and the voluntariness of the plea. This allegation is wholly without merit and completely refuted by the record. Respondent requests Applicant, through counsel, amend his application to provide specific claims and facts to support this vague allegation.

VI. Motion for More Definite Statement

In her application, Applicant fails to set forth with specificity the facts and circumstances upon which her claims of ineffective assistance of counsel and involuntary guilty plea are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965).

Applicant has failed to state with any specificity the specific facts giving rise to these allegations. Additionally, these allegations are not supported by any other additional information in the application. Respondent moves pursuant to Rule 12(e), SCRCP, to require Applicant to provide a more definite statement of her allegations of ineffective assistance of counsel. The Uniform Post-Conviction Procedure Act requires applicants to “specifically set forth the grounds upon which the application is based.” S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Furthermore, Rule 8(a), SCRCP, requires all civil pleadings include “a short and plain statement of the facts showing that the pleader is entitled to relief.” Therefore, Respondent moves to require Applicant to file an amended application well in advance of the hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the application.

VII. Any Future Amendments and Invocation of Discovery Process

Applicant must specify any claims she intends to raise at the 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. All claims should be made well in advance of the evidentiary hearing. Because Applicant has 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), SCRCP.

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. Response to Any and All Other Allegations

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

IX. Request for an Evidentiary Hearing

WHEREFORE, having made its return, the State requests applicant, through his counsel, amend the application to provide the required specificity for his allegation of ineffective assistance of counsel and involuntary guilty plea. Until Applicant files an amended application, Applicant has not shown sufficient cause to warrant an evidentiary hearing on this application and requests a hearing not be schedule until after an amended application is so filed.

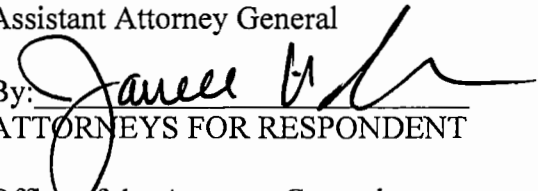
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JANELL H. GREGORY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

7-24-, 2019

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

2019-CP-46-1237

ROBERT C. CRIBB, JR. #377495,
Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,
Respondent.

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

Tommy A. Thomas, Esquire
Post Office Box 88
Irmo, South Carolina 29063

DATED this the 24th day of July, 2019.

Shana Montgomery
Shana Montgomery, Legal Assistant
For Respondent

2019 JUL 30 AM 11:46
DAVID HAMILTON
CLERK
YORK COUNTY, SC

FILED-RECEIVED

FILED-RECEIVED

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
COUNT OF YORK 2019 SEP 24 PM 2:12) CASE NO.: 2019-CP-46-1237

Robert Cleveland Cribb, Jr. #377495)
DAVID HAMILTON)
J.C.C.P. #377495)
YORK COUNTY SC)

Applicant,

) AMENDED POST CONVICTION
) APPLICATION

Vs.

State of South Carolina,

Respondent.

The Applicant above named in the aforementioned matter, through his Attorney, Tommy A. Thomas, respectfully moves to amend his original Post Conviction Relief Application. The Applicant realleges those grounds contained in the original Application for Post Conviction Relief as if fully repeated herein.

That on August 24, 2018, the Applicant plead guilty to Voluntary Manslaughter, Possession of a Weapon during the Commission of a Violent crime. The Court was notified that there was a Blair issue that was going to be addressed at the plea hearing and that he was pleading straight up to the voluntary manslaughter and weapons charges. The only recommendation by the State was that the Firearm charges would run concurrently with the Voluntary manslaughter.

The Applicant suffered severe depression and was under medication while in the County Detention Center. Applicant believes that this medication and his mental illness influenced his decision to accept the plea. That he was unable to knowingly and intelligently enter into the guilty plea.

That the Solicitor made misleading comments in Court especially concerning the Applicant's mental illness. That Dr. Mulbry who performed the psychiatric evaluation

was present in Court. That Dr. Mulbry was not used by Defense counsel to refute the remarks of the Solicitor. The Applicant believes these comments adversely affected his sentencing.

That the Applicant was under the impression that he would get ten (10) to fifteen (15) years. However, he was sentence to a term of thirty (30) years. The Applicant was offered a plea of 0-30 years or 10-25 years. Defense Counsel encouraged him to take the 0-30 with the understanding that his exposure was 10-15 years. That this exposed him to the sentence of thirty (30) years.

That the Applicant is informed and believes that there was a credible issue regarding self-defense that was not properly evaluated and argued on behalf of the Applicant.

That Defense counsel was ineffective for not properly investigating the scene of the crime.

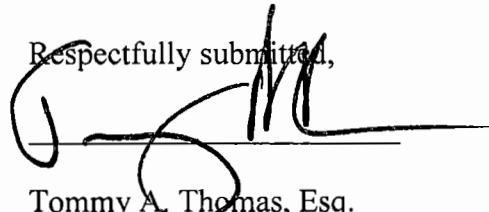
That the Applicant did not get a copy of, nor have an opportunity to review his discovery until three days prior to Court.

Defense Counsel advised him that he could get less time if he pled guilty but mentally ill. That upon being received at the South Carolina Department of Corrections, he realized that the guilty but mental ill plea was going to prevent him from being able to advance in custody levels within the Department of Corrections as well as imposing other restrictions on him.

That the Applicant's plea was not freely, voluntarily, knowingly or intelligently given.

That reserves the right to amend the Application as may become necessary.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Tommy A. Thomas', is written over a horizontal line.

Tommy A. Thomas, Esq.
Attorney for Applicant
P.O. Box 88
Irmo, SC 29063

September 18, 2019

FILED-RECEIVED

STATE OF SOUTH CAROLINA)

COUNTY OF YORK 2019 SEP 24) PM 2:12 IN THE COURT OF COMMON PLEAS

ROBERT C. CRIBB, JR. #377495) DAVID HAMILTON
C.C.C.P. & GS DOCKET NO.: 2019-CP-46-1237YORK COUNTY, SC
Applicant,)

v.)

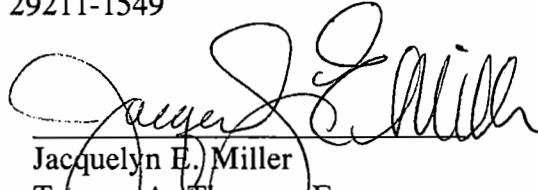
CERTIFICATE OF SERVICE

STATE OF SOUTH CAROLINA,)

Respondent.)

I, Jacquelyn E. Miller, Secretary to Tommy A. Thomas, Esq., certify that I have served a copy of an Amended Post-Conviction Relief Application by depositing a copy of it in the United States Mail, postage prepaid and the return address clearly shown on said envelope to:

Brianna Schill, Esq.
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-1549


Jacquelyn E. Miller
Tommy A. Thomas, Esq.
Attorney at Law
7588 Woodrow Street
P.O. Box 88
Irmo, S.C. 29063
(803) 732-5507

September 18, 2019

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
CASE NO. 2019-CP-46-01237

ROBERT CLEVELAND CRIBB,)
JUNIOR,)
)
Plaintiff,)
)
-vs-)
)
STATE OF SOUTH CAROLINA,)
)
Defendant.)
_____)

TRANSCRIPT OF RECORD

December 8, 2022
York, South Carolina

B E F O R E:

Honorable Walton J. McLeod, IV, Judge

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

Mr. Tommy A. Thomas
Attorney at Law
Attorney for the Plaintiff
Irmo, South Carolina

Mr. Cruise Mitchell
Assistant Attorney General
Attorney for the Defendant
Columbia, South Carolina

Shannon E. McGilberry, CVR-M
Court Reporter

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>
----------------	---------------	--------------	-----------------	-----------------

ROBERT CLEVELAND CRIBB, JUNIOR

Mr. Thomas 4

Mr. Mitchell 16

LEONARD W. MULBERRY (via Webex)

Mr. Thomas 19

Mr. Mitchell 27

MINDY LIPINSKI

Mr. Mitchell 29

Mr. Thomas 36

MATTHEW HOGGE

Mr. Mitchell 41

Mr. Thomas 45

Certificate 54

1 THE COURT: All right. Which case are calling here,
2 Mr. Attorney General?

3 MR. MITCHELL: May it please the Court?

4 THE COURT: Yes, sir.

5 MR. MITCHELL: This is the post-conviction relief
6 matter of Robert Cleveland Cribb, Junior v. State, case
7 number 2019-CP-46-1237 out of York County. Cruise Mitchell
8 on behalf of the State of South Carolina. Applicant is
9 present and represented by counsel, Tommy Thomas.

10 Applicant was indicted at the March, 2018 term of the
11 York County Grand Jury for murder, possession of a firearm
12 during the commission of a violent crime, and possession of
13 a knife during the commission of a violent crime, case
14 number 2018-GS-46-01919.

15 Applicant was represented by Mindy Lipinski, Assistant
16 Solicitor Walter William Thompson and Thomas Matthew Hogge
17 of the Sixteenth Solicitor's Office prosecuted the case.

18 On August 24th, 2018, applicant pleaded guilty but
19 mentally ill to the lesser-included offense of voluntary
20 manslaughter and the rest of his charges as indicted before
21 the Honorable Daniel D. Hall. Judge Hall sentenced
22 applicant to thirty years imprisonment for the voluntary
23 manslaughter charge and concurrent terms of five years on
24 each of the weapons offenses.

25 Applicant filed a timely appeal, but it was dismissed

1 for failure to provide a sufficient explanation for a guilty
2 plea appeal. The remittitur was issued on November 2nd,
3 2018. Applicant timely commenced this PCR action on March
4 26th, 2020 and at this time I'll turn it over to Mr. Thomas.

5 THE COURT: All right. And, Mr. Thomas, obviously,
6 your client is already on the witness stand, so are you --

7 MR. THOMAS: That's correct, Your Honor.

8 THE COURT: All right. Mr. Cribb, would you just raise
9 your right hand?

10 (ROBERT CLEVELAND CRIBB, being first duly sworn, was
11 examined and testified as follows):

12 THE COURT: All right. Witness has been sworn.

13 MR. THOMAS: Your Honor, if it please the Court.

14 THE COURT: Yes, sir. We'll give this a try.

15 MR. THOMAS: All right.

16 DIRECT EXAMINATION

17 ROBERT CLEVELAND CRIBB, JUNIOR, BY MR. THOMAS:

18 Q. Be sure to speak up, Mr. Cribb. Okay?

19 A. Okay.

20 Q. All right. Mr. Cribb, you were arrested when? Do you
21 remember roughly?

22 A. Around August 10th, 2017.

23 Q. Okay. And what kind of charges did you have when you
24 were arrested?

25 A. I was charged with murder and using a weapon during a

- 1 violent crime, two counts.
- 2 Q. All right. And that was a knife and what was the other
- 3 weapon?
- 4 A. A shotgun.
- 5 Q. Shotgun. Okay. And you entered into a plea?
- 6 A. Yes, sir.
- 7 Q. And that plea was for what?
- 8 A. Zero to thirty, guilty but mentally ill.
- 9 Q. And you pled to manslaughter?
- 10 A. Yes.
- 11 Q. Voluntary manslaughter?
- 12 A. Yes.
- 13 Q. And you also pled to the two weapons charges?
- 14 A. Yes.
- 15 Q. And what type of sentence did you receive?
- 16 A. Thirty years run concurrent,---
- 17 Q. All right.
- 18 A. ---with the weapons charges.
- 19 Q. With the weapons charges?
- 20 A. Yes, sir.
- 21 Q. Okay. Now, are you in the South Carolina Department of
- 22 Corrections?
- 23 A. Yes.
- 24 Q. How long have you been in corrections?
- 25 A. Since 2018.

1 Q. Okay.

2 A. September, 2018.

3 Q. And where are you being housed now?

4 A. F10 ICS at Kirkland Correctional Institution.

5 Q. And how about disciplinary history? Do you have any
6 disciplinaries?

7 A. No. I have a interfering with account charge, but that
8 was at Lieber in 2018.

9 Q. Okay.

10 A. And that's why --

11 Q. Do you have any assault or disciplinaries or anything
12 like that?

13 A. No.

14 Q. And are you receiving mental health treatment at SCDC?

15 A. Yes.

16 Q. And what medication, if any, are you taking?

17 A. I take Prozac, Abilify and that's really all I take for
18 the mental health---

19 Q. Okay.

20 A. ---and that's for depression.

21 Q. Are you in counseling?

22 A. Yes.

23 Q. And what level of counseling are you in?

24 A. I see my counselor probably maybe three times a month.

25 Q. Okay. Are you in one of the step-down programs?

1 A. Yes. It's basically a step-down from GPH, Gilliam
2 Psychiatric Hospital.

3 Q. And at what level in the step down are you at?

4 A. I'm at -- I'm going pretty good at the level and I
5 haven't had any disciplinaries, so I'm at level three right
6 now and yeah.

7 Q. I'm sorry. What I'm asking is what -- and I apologize.
8 I'm not familiar with all the different programs. What
9 program level are you at from GPH coming down?

10 A. Immediate care services.

11 Q. Okay; all right. That's what I was asking.

12 A. Okay.

13 Q. Now, you filed a post conviction?

14 A. Yes.

15 Q. And you and I have talked about post-conviction.
16 You're asking that your sentence be set aside?

17 A. Yes.

18 Q. New trial or a new plea?

19 A. I just ask that the sentence be set aside and I be
20 retried.

21 Q. Okay. Now, you understand, and we have spoken about,
22 that there are certain risks associated with that?

23 A. Yes.

24 Q. And you understand that you could potentially go back
25 go for a trial and get more time?

1 A. Yes. I know that and -- but it's -- I don't think I
2 deserved thirty years guilty but mentally ill and---

3 Q. Okay.

4 A. ---it's just -- it's --

5 Q. So understanding that risk, you want to go forward
6 today?

7 A. Yes.

8 Q. All right; okay. Now, you were arrested. Did you make
9 bond?

10 A. No, sir.

11 Q. And so you were in the county detention center?

12 A. Yes, for 380 days.

13 Q. How many days?

14 A. Three hundred and eighty.

15 Q. Okay. Now, did you have a retained lawyer or did you
16 have an appointed lawyer?

17 A. I had a public defender and she was court-appointed
18 lawyer.

19 Q. Okay. And who was that public defender?

20 A. Mindy Lipinski.

21 Q. Now, did you have an opportunity to meet with her?

22 A. Yes, about around six to ten times within that 380
23 days.

24 Q. And you were sentenced prior to the pandemic?

25 A. Yes. I was sentenced 2018, August of 2018.

1 Q. All right. Did your being in the detention center, did
2 that cause any difficulties with meeting with your lawyer?

3 A. It did a little bit, but -- 'cause whenever I first --
4 when everything happened, I stayed in medical unit for
5 thirty months trying to cope with what -- the reality of
6 what happened, so and it's -- I'm sorry. I'm nervous.

7 Q. That's -- no. That's all right. That's
8 understandable. Now, when you met with your attorney, what
9 -- did you talk about your defense, how she was going to
10 defend you and those types of things?

11 A. Yes. She told me there was no self-defense law in
12 South Carolina.

13 Q. She told you what?

14 A. There was no self-defense law in South Carolina.

15 Q. Okay. And did she -- was that what your defense was,
16 was self defense?

17 A. At the time, yes, but she told me no. It was a
18 inconsistent self-defense case.

19 Q. It was -- I'm sorry. I can't -- it's an echo.

20 A. A inconsistent self-defense case.

21 Q. Inconsistent---

22 A. Yes.

23 Q. ---self defense. I got you. Now, how about as far as
24 the discovery? Do you do know what that mean?

25 A. The motion on discovery?

1 Q. Yes, sir.

2 A. Yes. I got that about two or three days before my
3 sentencing.

4 Q. Okay. Did you have an opportunity to go over that with
5 your attorney?

6 A. Yes.

7 Q. Okay. Now, in preparation for trial, what did you and
8 Ms. Lipinski do?

9 A. We decided to go the mental health route, because if I
10 wasn't going to plead guilty, she told me I was going to get
11 life without parole.

12 Q. Now, did you have a psychological evaluation?

13 A. Yes, I did, by Dr. Mulberry here in the county.

14 Q. Okay. And that's Dr. Mulberry that's here with us
15 today?

16 A. Yes.

17 Q. Okay. And was a report from Dr. Mulberry submitted to
18 the Court?

19 A. Yes. I believe so.

20 Q. Okay. The day that you entered into the plea, was Dr.
21 Mulberry there? Do you remember?

22 A. I know he was there during the sentencing, but I'm not
23 sure about the -- the way that plea works.

24 Q. All right. What I'm interested in is how you decided
25 to enter into the plea rather than the trial? What did you

1 and Ms. Lipinski talk about and how did you reach that
2 decision to accept the plea?

3 A. Because she told me I would get within the lower part
4 of the thirty and it was -- I received the thirty-year
5 maximum sentence.

6 Q. Did you have an idea in your head as far as from
7 talking with Ms. Lipinski what that number could be or that
8 range could be?

9 A. I always heard ten to fifteen years.

10 Q. Okay.

11 A. And she's told my family that, too, whenever the --

12 Q. So did that have a play or was that important in your
13 decision to accept the plea?

14 A. Yes.

15 Q. Okay. And also you decided to plead mentally -- guilty
16 but mentally ill?

17 A. Yes, sir.

18 Q. Okay. And has that benefitted you any in the
19 department of corrections?

20 A. No, because it puts more restrictions on me, being
21 incarcerated than it does without having the label mental
22 health, so --

23 Q. But you have had and are still having some mental
24 health issues?

25 A. Yes.

1 Q. Okay; all right. Do you remember if Dr. Mulberry had
2 found you competent to stand trial? Do you remember that?

3 A. I believe he did.

4 Q. Okay. And you remember the Court, when you did your
5 plea, they went over that about your competency?

6 A. Yes. They went over everything and I was kind of on
7 the fence of not guilty and guilty. You can look at the
8 transcript and you can see where it set that up and I was
9 into taking the guilty plea, because I was told the ten to
10 fifteen years and the solicitor talked the way he talked and
11 said I wouldn't get no better, I'd get worse and --

12 THE COURT: See if you can turn his speaker --
13 your speaker down.

14 MR. THOMAS: Yeah. That's what I was trying --

15 THE COURT: The volume down.

16 MR. THOMAS: I guess I can just turn my volume down.

17 THE COURT: That's right. If you could turn your
18 speakers down, that will help a lot.

19 MR. THOMAS: Until the doctor testifies. I'll show my
20 technology ignorance as well.

21 THE COURT: No; no.

22 MR. THOMAS: All right. That's better. Okay.

23 Now, Your Honor, just for the Court's information, the
24 pages in regards to competency and Dr. Mulberry are pages,
25 basically, six through eight of the transcript.

1 THE COURT: Thank you.

2 MR. THOMAS: Yes, sir.

3 Q. So you understand that when you entered into this plea,
4 and you and I talked about this, what we call a plea
5 colloquy?

6 A. Yes.

7 Q. The Court asked you questions?

8 A. Yes.

9 Q. Okay. And when you were there, did you -- you heard
10 the things that the solicitor said about you?

11 A. Yes, I did and he said I wouldn't get better, I would
12 get worse. He even brung up a family member that he had had
13 that said that mental health does not get better, like he
14 was diagnosed with schizophrenia and the schizoaffective
15 disorder only gets worse, it doesn't get any better---

16 Q. Right.

17 A. ---and it's, I think, and honestly that's a biased
18 opinion.

19 MR. THOMAS: All right. And, Your Honor, just for the
20 Court's information, that -- all of that is pages 32 to 34.

21 Q. And so tell me a little bit about, what kind of picture
22 did the solicitor paint of you and your mental illness?

23 A. He painted me as being a danger to society and I'd be a
24 danger to the community and said I wouldn't get no better
25 and he said, "I think" a lot, so -- in the transcript and he

1 just, basically, throwed me in the fires and kept adding hot
2 coals to it and it's -- my lawyer, Mindy, didn't object to
3 any of it, so --

4 Q. Did he use that or do you remember did he use that to
5 ask the Court to give you the maximum thirty years?

6 A. Yes, he did.

7 Q. Okay. And your sentence is what?

8 A. Thirty years.

9 Q. Thirty years. Okay. Now, let's go back to the plea
10 colloquy where the judge asked you questions about whether
11 you were certain -- giving up certain rights, whether or not
12 you were pleading freely and voluntarily and that, you know,
13 wanted to make sure that you knew what you were doing in
14 regards to entering this plea.

15 A. I'm sorry. Could you repeat that?

16 Q. Okay. The judge asked you questions to make sure that
17 you were entering this plea freely and voluntarily?

18 A. Yes.

19 Q. Okay. And you had the plea colloquy before you heard
20 the solicitor's comments. Is that correct?

21 A. Not necessarily, 'cause I was on the fence at the time
22 of pleading not guilty and guilty.

23 Q. Okay; okay.

24 A. So it was --

25 Q. But had you known that the solicitor was going to say

1 these things and they were going to be unrefuted, would you
2 have entered into the plea?

3 A. No, I wouldn't -- wouldn't have. If I'd known what was
4 going to be said at the time, I would have never entered the
5 guilty plea.

6 Q. Okay. 'Cause you felt like your illness that what he
7 was saying was not true?

8 A. Yes.

9 Q. Okay.

10 MR. THOMAS: Your Honor, if I can beg th Court's
11 indulgence just for a second.

12 THE COURT: Yes, sir.

13 Q. Mr. Cribb, I think those are all the questions that I
14 have for you. You and I talked about this as well, is there
15 anything -- you've been waiting for a long time for this
16 hearing?

17 A. Yes, I have. I have just one little thing I'd like to
18 read and this is why I wouldn't have entered my guilty plea.
19 No, I wouldn't freely, givingly waive my rights to a guilty
20 plea knowingly what would happen during my sentencing
21 happened. If I would have known what the solicitor was
22 going to say and the way Dr. Mulberry, my forensic
23 psychiatrist, wasn't going to be able to talk, I would have
24 never entered my guilty plea. In other words, if I would
25 have known what was going to happen, I would have never pled

1 guilty. I don't feel like the public defender explained it
2 to me enough.

3 Q. Okay; all right. And you don't have anything else you
4 want to say?

5 A. No.

6 Q. Okay.

7 MR. THOMAS: Thank you, Your Honor.

8 THE COURT: All right. Cross-examination. Would you
9 mind using the --

10 MR. MITCHELL: That podium?

11 THE COURT: Yes. Have a seat. Now you get -- the
12 State will be able to ask you some questions on cross-
13 examination. I just want the doctor to be able to hear the
14 questions.

15 MR. MITCHELL: Yes, Your Honor. I understand.

16 CROSS-EXAMINATION

17 ROBERT CLEVELAND CRIBB, JUNIOR, BY MR. MITCHELL:

18 Q. Good morning, Mr. Cribb.

19 A. Morning.

20 Q. You said you met with Ms. Lipinski six to ten times?

21 A. Yes, sir.

22 Q. And y'all went over self defense?

23 A. Yes.

24 Q. And you recall her saying that you have an imperfect
25 self-defense claim?

1 A. Yes. It says it in my transcript. She even said it
2 during the trial or the sentencing. I'm sorry.

3 Q. At the plea hearing, did you tell the judge that you
4 understood that voluntary manslaughter carries a sentence of
5 two to thirty years?

6 A. Yes.

7 Q. And that he could sentence you to thirty years?

8 A. Yes.

9 Q. Do you recall the judge telling you that he could run
10 the weapon charges consecutive and you could be actually
11 sentenced to a total of forty years for all your charges?

12 A. I don't recall that.

13 Q. If you looked at the transcript, would that help you?

14 A. Yes.

15 MR. MITCHELL: Your Honor, may I --

16 (Whereupon, the referenced document was handed to the
17 witness.)

18 THE COURT: You can ask him a question from up close or
19 back far, just don't stand in the middle.

20 MR. MITCHELL: Oh, okay. Yes, sir.

21 Q. Page 18. You see line 14? How it says you can be
22 sentenced up to forty years total?

23 A. Yes.

24 Q. Do you recall telling the judge that you had plenty of
25 time to discuss the case with Ms. Lipinski?

1 A. No, I do not.

2 Q. Would you like to see the trans- -- well, would you say
3 this transcript speaks for itself?

4 A. No, it doesn't.

5 Q. It doesn't?

6 A. No.

7 Q. So you dispute the accuracy of the transcript?

8 A. Yes, sir.

9 Q. Do you recall telling the judge that nobody promised
10 you anything in exchange for your plea?

11 A. Yeah. I remember saying that.

12 Q. When the solicitor was going over the facts of this
13 case, do you recall him telling the judge that he was asking
14 for thirty years due to the brutality of the crime?

15 A. Yes.

16 MR. MITCHELL: No further questions, Your Honor.

17 THE COURT: Redirect?

18 MR. THOMAS: Nothing further, Your Honor.

19 THE COURT: All right. The witness may step down.

20 THE WITNESS: Okay.

21 THE COURT: Will the doctor be your next witness?

22 MR. THOMAS: Yes, Your Honor. The doctor --

23 THE COURT: Okay.

24 MR. THOMAS: Dr. Mulberry will be the next witness.

25 THE COURT: Okay.

1 MR. THOMAS: Doctor, you still with us? Doctor you
2 still with us?

3 DR. MULBERRY: Yes, sir.

4 MR. THOMAS: Okay. Perfect.

5 MR. THOMAS: Your Honor, if it please the Court, we'd
6 call Dr. Mulberry.

7 THE COURT: Very well. I think now you can turn your
8 volume up all the way.

9 MR. THOMAS: Yes, sir.

10 THE COURT: And, hopefully, the court reporter will be
11 able to hear.

12 MR. THOMAS: All right, sir.

13 THE COURT: Okay. Let me turn my camera on here.

14 Dr. Mulberry, can you hear me?

15 DR. MULBERRY: It got a little broken. I could at the
16 very end.

17 MR. THOMAS: Okay.

18 (LEONARD W. MULBERRY, being first duly sworn, was
19 examined and testified as follows):

20 MR. THOMAS: Your Honor, please the Court.

21 DIRECT EXAMINATION

22 LEONARD W. MULBERRY BY MR. THOMAS:

23 Q. Dr. Mulberry, let me ask you just a little bit, if you
24 would, please, to tell us about your education.

25 A. Okay. I have a Bachelor's Degree in Natural Science, a

1 Master's Degree in Neuropharmacology from the University of
2 California, Davis; went to medical school at the University
3 of Kentucky, then did a orthopaedic residency at the
4 University of Arizona, followed by a fellowship in hand and
5 microsurgery at the Indiana Hand Center. I practiced in
6 orthopaedic and microsurgery for about eighteen or nineteen
7 years before going back and doing residency in psychiatry
8 from 2003, I believe, to 2007. I then did a fellowship in
9 forensic psychiatry, those classes through MUSC and I've
10 been practicing forensic psychiatry since about 2008.

11 Q. All right, sir. And have you testified in the courts
12 of South Carolina?

13 A. Yes. I've been sworn in as an expert about sixty or
14 seventy times in State Court, a couple times in Federal
15 Court, a time in Family Court, a couple times in military
16 courts.

17 MR. THOMAS: All right. Your Honor, if it please the
18 Court, we would move at this time to have him admitted as a
19 expert in forensic psychology.

20 MR. MITCHELL: No objection, Your Honor.

21 THE COURT: All Right. This witness will be qualified
22 as a expert in the field of forensic psychiatry--

23 MR. THOMAS: Yes, sir.

24 THE COURT: ---and give opinions in that testimony.

25 MR. THOMAS: Thank you, Your Honor.

1 Q. Dr. Mulberry, you had an opportunity to evaluate, a
2 number of years ago, Mr. Cribb?

3 A. Yes, sir.

4 Q Robert Cribb?

5 A. Yes, sir.

6 Q. All right. And a matter of fact, you prepared what --
7 and was submitted a report in regards to his competency to
8 stand trial?

9 A. I did.

10 Q. All right, sir. And you've heard the testimony today?

11 A. I have.

12 Q. And you had an opportunity to review the transcript
13 from the plea hearing?

14 A. Yes, sir.

15 Q. You were also present at the time of the hearing?

16 A. I was.

17 Q. All right, sir. And let me ask you, if we look at
18 pages 32 through 35 of the transcript, you've had an
19 opportunity to review those pages?

20 A. I have.

21 Q. And this is the, basically, statements by the solicitor
22 in regards to Mr. Cribb?

23 A. Yes, sir.

24 Q. Okay. And, generally, what would your testimony be in
25 regards to these comments that were made by the solicitor?

1 A. My -- just my overall impression was that he had some
2 bad experiences with someone that he knew that had
3 schizophrenia and had formed a -- as we all might, that had
4 led him to some very powerful, emotional beliefs about
5 mental illness and, specifically, schizophrenia.

6 Q. All right, sir. And it appears from his argument that
7 he's asking the Court to sentence Mr. Cribb to thirty years
8 because of his dangerousness?

9 A. Correct.

10 Q. And that he makes comments that -- and bear with me --
11 he makes comments, such as, the mind deteriorates. There is
12 a -- should be, I think, propensity towards violence. Let's
13 see. That his mental abilities in ten, fifteen or twenty
14 years or further will just be worse; that this makes him a
15 danger, because if he can't control his conduct, you become
16 someone who is very dangerous. He talks about future danger
17 to the community and then he says that would warrant a very
18 large sentence and would certainly warrant, I think, the
19 thirty years. Are these comments, in your opinion, are they
20 correct?

21 A. No. The overall impression I came away with from what
22 he said was that he was depicting, and I'll be specific, not
23 just mental illness, but specifically schizophrenia---

24 Q. Yes, sir.

25 A. ---as a progressive, degenerative disease that almost

1 invariably results in decline, worsening and more danger in
2 the future and that's not an accurate statement---

3 Q. Okay.

4 A. ---at all.

5 Q. What has been your experience with -- you've treated
6 people in the past with schizophrenia?

7 A. Oh. Many, many people with schizophrenia. Yes, sir.

8 Q. All right. And what has been your experience treating
9 these individuals with schizophrenia?

10 A. I've treated many individuals in their fifties and
11 sixties who are functioning at a very high level,
12 functioning very well in the community and we can review the
13 literature, we can back this up that with treatment,
14 schizophrenia can be very effectively treated and not
15 necessarily progressive and people do not -- and people do
16 not become more dangerous as a rule over time.

17 Q. Okay. And do you know, by chance, what the propensity
18 for violence with someone with schizophrenia versus just the
19 common population?

20 A. Well, this has been pretty heavily studied and I've
21 gone back and pulled some the literature and reviewed it to
22 make sure my memory remains clear. The studies, and they're
23 extensive, pretty clearly show that major mental illness,
24 and specifically schizophrenia, does provide a small
25 increased risk compared to the general non-mentally ill

1 population.

2 Q. Okay.

3 A. But it's quite small.

4 Q. All right.

5 A. A major factor that is present is risk is substance.

6 Now, the problem is that many people with mental illness

7 also use substances and so you have -- you have to tease

8 those two risk factors apart, but the major risk factors far

9 outweigh through substances (ph.) The most dangerous people

10 out there are people who are abusing substances. Mental

11 illness is a small, is a small risk factor yes, but

12 interestingly, depression and bipolar disorder are felt to

13 be more significant risk factors than schizophrenia and

14 there are an awful lot of depressed people and a fair number

15 of bipolar -- actually, those numbers are roughly comparable

16 between schizophrenia and bipolar -- those, actually, are

17 felt to be higher risk factors than schizophrenia itself

18 and, particularly, if effectively treated, but it does not

19 need to be progressive. Now, people who don't get treated

20 are felt to get worse with time, but treatment very, very

21 strongly mitigates that potential risk and people who are

22 effected -- who are consistently treated tend to do very

23 well, and stay away from drugs and alcohol.

24 Q. And, basically, could participate, if they were

25 incarcerated, in a rehabilitation program?

1 A. Oh, gosh, yes. And, again, yes, there are many people
2 who -- certainly within SCDC, there are a great many people
3 who are very effectively treated within SCDC with
4 schizophrenia, but moreover, they -- people with
5 schizophrenia, with treatment, can function very adequately
6 on their own in society. They tend to do better with a
7 distance. They tend to do better with seeing their -- the
8 doctor on a fairly regular basis. They can be assigned
9 caseworkers, but more importantly, hopefully, family
10 members, but the fact is they do -- they can do very, very
11 well if they are treated.

12 Q. All right. Just a couple of other questions. One,
13 have you had any experience with treating individuals within
14 the Department of Corrections?

15 A. I do. I -- the last sort of part of the last twelve
16 years I worked part time for SCDC. I worked down at
17 Allendale and I've treated -- they -- because it's a fairly
18 quiet institution, they put a number of the older gentlemen
19 down there, many of whom have major mental illness and we
20 very effectively treat them. I can't remember the last time
21 I had to send somebody to GPH.

22 Q. Right. Which is the psychiatric hospital for the
23 Department of Corrections?

24 A. Correct. Yes, sir.

25 Q. Okay. And would it be correct to say that in this case

1 Mr. Cribb should be sentenced to the maximum sentence
2 because of his mental condition and because of his
3 propensity for violence as a result of his condition?

4 A. That's exact -- no. The risk factors, age, young age
5 is actually a risk factor. As people get older, their risk
6 of violence decreases. Schizophrenia alone, again, is a
7 small, but not -- not a large risk factor---

8 Q. Right.

9 A. ---and, again, very importantly, this is not
10 necessarily a progressive, degenerative disease marked by
11 decline. I think those were the words that were used and
12 that is not an accurate depiction.

13 Q. Okay. Dr. Mulberry, I think that I don't -- I'm just
14 trying to make sure that I have covered everything. I don't
15 think that I have any other questions. Oh. I do have one.
16 You were present at the plea hearing?

17 A. Yes, sir.

18 Q. Okay. And had you been asked, could you have addressed
19 this issue before the judge?

20 A. Yes, sir, I could, but I'm kind of glad that I had a
21 chance to go back and review all the literature. That makes
22 me able to speak with great --- a bit more confidence,---

23 Q. Right.

24 A. ---but, yes, sir, I could. I would have said,
25 essentially, the same thing at that time.

1 Q. Had you been asked to at the hearing?

2 A. Yes, sir.

3 MR. THOMAS: All right. Your Honor, I have no further
4 questions.

5 THE COURT: All right. Cross-examination?

6 MR. THOMAS: Thank you, doctor.

7 THE WITNESS: Okay.

8 MR. MITCHELL: Just briefly, Your Honor.

9 CROSS-EXAMINATION

10 LEONARD W. MULBERRY BY MR. MITCHELL:

11 Q. Good morning, Dr. Mulberry.

12 A. Good morning.

13 Q. You testified that there's a small increase in risk of
14 violence for people with schizophrenia?

15 A. Yes, sir. Statistically, there's data -- again, based
16 on all of the literature that we have right now, there does
17 appear to be a small increase compared to non-mentally ill
18 people. Now, again, you're comparing them, but you're
19 lumping depression and bipolar into the mentally ill
20 criteria(ph.), they may skew the numbers to some extent, but
21 if you compare people who are not at all mentally ill to
22 people who have schizophrenia, there is a small increase in
23 violence risk.

24 Q. In your opinion, if a person with schizophrenia has
25 demonstrated a brutal act of violence in the past, is he at

1 risk -- is he at no risk to commit that in the future?

2 A. Is he at no risk?

3 Q. Yes, sir.

4 A. I don't -- I don't -- there's no such thing as no risk.
5 I think we're all at risk.

6 MR. MITCHELL: No further questions, Your Honor.

7 THE COURT: Redirect?

8 MR. THOMAS: No, Your Honor. I have nothing further.

9 THE COURT: All right. Doctor, thank you for
10 appearing. Mr. Thomas, do we need to keep the virtual
11 courtroom open any longer?

12 MR. THOMAS: I do not think so. Dr. Mulberry, thank
13 you so much for your testimony today and we are going to
14 close the portal.

15 THE COURT: All right. Thank you.

16 THE WITNESS: Thank you.

17 MR. THOMAS: Yes, sir. Thank you.

18 THE COURT: Next witness.

19 MR. THOMAS: Your Honor, if it please the Court. That
20 is the applicant's case.

21 THE COURT: All right. State, please call your
22 witness.

23 MR. MITCHELL: The State calls Mindy Lipinski.

24 THE COURT: Very well.

25 (MINDY LIPINSKI, being first duly sworn, was examined

1 and testified as follows):

2 DIRECT EXAMINATION

3 MINDY LIPINSKI BY MR. MITCHELL:

4 Q. Good morning, Ms. Lipinski.

5 A. Good morning.

6 Q. Where were you working at the time that you represented
7 Mr. Cribb?

8 A. When I represented Mr. Cribb I was a Senior Public
9 Defender for the Sixteenth Circuit Public Defender's Office
10 here in York.

11 Q. So you were appointed in this case, not retained?

12 A. Yes.

13 Q. And before his plea hearing, how many times -- do you
14 recall how many times you met with Mr. Cribb?

15 A. I don't recall how many times. I looked at just --
16 there's a digital copy of the file with a notation entries,
17 indicate that it was probably in the neighborhood of ten to
18 twelve.

19 Q. And you would have reviewed discovery with him?

20 A. Yes.

21 Q. And during those discussions, did you discuss the
22 elements of the crime and what the State was required to
23 prove?

24 A. Yes.

25 Q. Now, do you remember there possibly being a self-

1 defense argument here?

2 A. So when Mr. Cribb was arrested, he -- may have told the
3 law enforcement and also told family that he had acted in
4 self defense, that he had blacked out and so that was the
5 story that he gave from the moment, basically, that he
6 started talking. My recollection is after it happened, he
7 called a family member and asked them to come to the home
8 and that they then called 911 and that law enforcement
9 arrived shortly thereafter and so he gave a version of
10 events that the victim had been over there, that they all
11 kind of lived in the same -- in very close proximity to one
12 another, kind of on some family property and that the victim
13 resided with his uncle in adjoining or abutting property and
14 that the victim had called him earlier and said that he was
15 going to the mail to get a phone charger he'd ordered off
16 Amazon and that the defendant, Robbie, owed him, like,
17 twenty dollars. He had paid a bill for him or something
18 like that when he was out of town and could he come by and
19 get it and that he came over and that they were sitting
20 there. I believe the mother was there at the time that the
21 victim arrives and his version was that at some point he
22 said, you know, man, can I get the money from you? The
23 mother had left at that point so there were no other
24 witnesses, and his story was that the victim attacked him,
25 that used the phone charger cord to choke him out, that he

1 panicked, that he was able to grab a knife nearby, that he
2 stabbed him in self defense and that a struggle ensued and
3 that he went and eventually got a shotgun and shot him and
4 so that was kind of always his version of events and a lot
5 of people believe they act in self defense and the issue is,
6 you know, is it something where I think the jury's going to
7 agree that he acted in self defense and that is it something
8 that we could prove and kind of what the solicitor touched
9 on during the plea is that he didn't have any -- you know,
10 they -- he's on body cam talking to law enforcement very
11 shortly after. There's no red marks around his neck,
12 there's no bruising to his neck, there's no -- in the house
13 itself, there's really not any evidence that there was this
14 kind of violent struggle between the two of them that would
15 substantiate that he acted in self defense. He also says
16 that he -- the guy is behind him and that he stabs him from
17 behind and when you look at where the stab wounds are on the
18 victim, it's not -- it's not -- it's not necessarily
19 consistent with that, that that's what transpired, he's got
20 a stab wound to the back, of how he could have gotten that
21 if the victim is, you know, if they're kind of standing in
22 line and the victim's attacking him from behind. So those
23 type things were just of a nature that I didn't feel that
24 one of the problems of self defense, that a reasonable
25 person, you know, would also feel in fear or that they would

1 find Robbie's claim that he was attacked credible and so we
2 went through that and, really, I do believe that Robbie, in
3 his mind, felt like the victim had been out to get him, but
4 that was kind of the basis of the GBMI plea is that this was
5 a result of a psychosis and not necessarily a legitimately
6 held belief and so that was what I felt the evidence
7 suggested and it was more consistent with what we would be
8 able to advance if we were to take the case to trial.

9 Q. So you don't believe that you would have been
10 successful in a self-defense claim in a jury trial?

11 A. No.

12 Q. And so what was your strategy behind pleading guilty
13 but mentally ill?

14 A. So, you know, it is -- there was evidence that Robbie
15 had been ongoing some level of psychosis for some time. He
16 had gone on a trip with his dad that had not ended well.
17 His dad was known to abuse substances and he just kind of
18 came back with some wild stories. He had been having some
19 episodes to the point that the family had, at least once and
20 I think twice, taken him to the emergency room 'cause they
21 were concerned about his mental state and I think hoping
22 that he would be committed and stabilized on medication and,
23 unfortunately, just instead, I think they gave him some
24 anti-anxiety meds and told him to follow up with a doctor,
25 which just didn't happen, but that he had told the family

1 that he had thought that the victim was out to get him or,
2 for some reason, targeting him and for that reason the
3 family had even encouraged the victim on a couple occasions
4 in the weeks or leading up to this to, you know, not come
5 over for dinner or not come over and visit because of kind
6 of how he was and so that was basically what the evidence
7 suggested, was that it -- he was started to develop the
8 onset of schizophrenia. There was a history of mental
9 health in the family and that that's really what transpired.
10 It wasn't this, you know, malicious, vindictive, you know,
11 personal, you know, crime of malice the solicitor presented,
12 but that it was this generally-held psychosis that kind of
13 precipitated this in a less than, you know, pre-meditated
14 murder fashion. I felt that getting the State to
15 acknowledge that mental illness by allowing him to plead
16 guilty but mentally ill would broadcast to the Court that
17 everybody agreed that that was a factor and that was what
18 was transpiring on the day in question. I thought that it
19 would lead to a more lenient sentence and so that was kind
20 of the goal of pleading him GBMI.

21 Q. Do you recall the solicitor making the remarks about
22 how schizophrenia can be worse down the road during the plea
23 hearing?

24 A. Yes. I read the transcript last night again, so yes.

25 Q. So do you remember in -- when it was your turn to

1 address the Court, you refuted those claims?

2 A. Right.

3 Q. Did you ever tell Mr. Cribb that he could get ten to
4 fifteen -- that he would get ten to fifteen years if he pled
5 straight up?

6 A. So my recollection was that I told him that that was
7 our target sentence, was that that's what we would ask the
8 Court for, that I didn't feel that there was any way he was
9 going to get below ten, that I hadn't really ever seen Judge
10 Hall sentence anyone, even in the best of circumstances
11 involving, you know, a homicide of any nature, to less than
12 ten years and so I don't like to kind of dangle false hope
13 out there that, oh, you're going to get two just because
14 that's the mandatory minimum on voluntary and that that
15 would be the kind of target range that I thought it was
16 reasonable to ask for with him, but that always full well
17 that I thought he would be given something for pleading
18 guilty and not putting the family through a trial and that,
19 hopefully, the more strenuous we could present a case in
20 mitigation, his lack of any prior record, he'd never been in
21 any kind of trouble at all. You know, he'd never been in a
22 bar fight. He'd never been in trouble in school that we
23 could find. I think he might have had a blue ticket for
24 something once upon a time, but I mean, this truly was
25 somebody who was, before this, you know, a law-abiding

1 citizen, who the family said rarely left the family property
2 and, you know, did odd jobs around the house and
3 occasionally tried to get a job, but certainly was not a
4 danger to himself or for anyone kind of up until he started
5 experiencing these issues in the weeks leading up to this
6 event. So I told him that was a target range, but obviously
7 explained to him that the full sentencing range was open to
8 the judge.

9 Q. So he was aware that he could face up to---

10 A. He was aware of that.

11 Q. ---thirty years for voluntary man? Okay. So at the
12 time you believed the plea was in Mr. Cribb's best interest?

13 A. He admitted to do it and I didn't feel that a self-
14 defense claim was going to, you know, hit home with a jury,
15 given the facts and that I felt that he would risk -- you
16 know, we weren't going to get voluntary. I don't think it
17 was going to be a voluntary charge at trial, so if we went
18 to trial, it would be murder or nothing or murder, you know,
19 not guilty by reason of self defense. I was concerned
20 we wouldn't even get a self defense charge and so I felt
21 that a voluntary plea was in his best interest.

22 MR. MITCHELL: No further questions, Your Honor.

23 THE COURT: Cross-examination?

24 MR. THOMAS: Your Honor, please the Court.

25 THE COURT: Yes, sir.

1 MR. THOMAS: Just a couple.

2 CROSS-EXAMINATION

3 MINDY LIPINSKI BY MR. THOMAS:

4 Q. Good morning, Mindy. It's good to see you.

5 A. Good to see you again.

6 Q. Just a couple of questions. So there was no doubt that
7 there was an issue of mental health?

8 A. There was no -- no doubt there was an issue of mental
9 health and a substantial issue of mental health.

10 Q. Substantial. Yeah.

11 A. When we first retained Dr. Mulberry, it really wasn't
12 for the purpose of mitigation at that point. There were
13 some real concerns about McNaughten and competency. While
14 Robbie, you know, didn't graduate high school, but did get
15 his GED, I clearly saw some kind of deficits that were
16 probably more associated with maturity or just immaturity
17 and naivete, but it was enough that I had concerns there.
18 Because he said that he was under the delusion of a mental
19 illness at the time that he was experiencing these psychotic
20 symptoms, there was some real belief that it possibly could
21 rise to the level that he would be not guilty by reason of
22 insanity and so he was really exploring that before sending
23 him down to the Department of Mental Health, 'cause they
24 don't have the best track record of always being as
25 objective and I didn't want him making further statements

1 that could be used by the State if it didn't go there.

2 Q. Right.

3 A. So that was the purpose of retaining Dr. Mulberry and,
4 really, he and I had several long conversations about
5 whether he was NGRI and it was just a mixed bag in terms of
6 the drug use, 'cause it was kind of is it a psychosis -- is
7 it organic psychosis right from the level of the
8 schizophrenia or is it a drug-induced psychosis, which
9 wouldn't rise to the level of NGRI and we both agreed that
10 the thing that really made us not pursue that and that he
11 felt he really couldn't sustain that or wouldn't sustain the
12 challenge by the State was that he covered the body up. He
13 had taken some of his clothes off and put them in a washing
14 machine and they always look for those tell-tale, you know,
15 what did you do to conceal the crime kind of indicators and
16 so we walked away from that.

17 Q. Right; right. Now, so by negotiating the plea for the
18 voluntary manslaughter, you had hoped that in mitigation
19 that you could possibly get something in the range of ten to
20 fifteen?

21 A. Right.

22 Q. Yeah.

23 A. Ten to twenty, but, you know, certainly what I told the
24 family I would ask for is something in the neighborhood of
25 ten to fifteen.

1 Q. Yeah. And something less than thirty?

2 A. Certainly less than thirty.

3 Q. You also had testified that your kind of theory of
4 defense was to use the guilty but mentally ill plea kind of
5 in mitigation to try to get the judge to come back off of
6 that -- off of the thirty?

7 A. Yes.

8 Q. Okay. And the solicitor kind of goes into this comment
9 before the Court about his experience with a relative and
10 then, you know, these things about -- basically, painting
11 the picture that he's got schizophrenia, it's just going to
12 get worse---

13 A. Right.

14 Q. ---and he's going to become more and more violent and
15 he kind of, to me, shifts the thing to say, he needs to get
16 thirty, because he his mentally ill, you know, he does have
17 schizophrenia and the Court needs to protect the public by
18 the longer he can keep him in the Department of Corrections,
19 you know, the better.

20 A. Right.

21 Q. So when that happens, do you think about maybe using
22 Dr. Mulberry? I mean, he's in the -- he's in the audience.

23 A. About use Dr. Mulberry, I believe my concern was that I
24 had seen -- (coughing) I'm sorry.

25 Q. Oh. That's okay.

1 A. That's why I'm trying to drink water. Robbie had been
2 heavily medicated most of the time that we had seen him and
3 that Dr. Mulberry, to put in terms I could understand, was
4 an indication that he truly was suffering from this kind of
5 heightened state of psychosis and that it wasn't substance-
6 abuse related and was organic, was kind of -- if he weren't
7 experiencing that, his level of medication -- he wouldn't
8 tolerate the level of medication he was on.

9 Q. Right.

10 A. That he was on such serious medication, that if he
11 didn't do that, the side effects would actually -- it would
12 kind of come back the other way and so then I remember I
13 wanted him there because I knew the level of medication. I
14 didn't want there to be an issue of competency. I knew that
15 Judge Hall would want kind of somebody saying he's competent
16 today and the thing is when Dr. Mulberry called down to the
17 jail and found out what his dosage was that morning, he came
18 to me and said he had dialed back his medication, so I'm
19 probably not going to be able to go as far as I would
20 otherwise or what we had discussed in terms of his level of
21 psychosis, because the medication aspect wasn't what I felt
22 -- he kind of felt like that foundation for his opinion had
23 been compromised and so we talked about that and I think
24 that just kind of made me somewhat gun shy and then
25 switching and not having him talk about that and then talk

1 about something else, not knowing how that would parlay out,
2 but certainly I think that he could have kind of
3 contradicted that and---

4 Q. Right.

5 A. ---, you know, in retrospect, should have. I don't know
6 that -- I don't know that Judge Hall, who's been around as
7 long as he has, is going to necessarily take, you know,
8 mental health advice from a solicitor over anyone else and
9 so I think had they had a psychiatrist on their side or
10 somebody like that, then I would have felt more motivated to
11 have Dr. Mulberry respond. So perhaps I just didn't feel
12 that the Court was giving that the credence that required
13 that, but certainly in hindsight, having Dr. Mulberry, you
14 know, talk or on any issue, I can see the benefit, but that
15 was my concern at the time.

16 Q. Right; okay. Thank you so much.

17 MR. THOMAS: Your Honor, I have no further questions.

18 THE COURT: All right. Redirect?

19 MR. MITCHELL: None, Your Honor.

20 THE COURT: All right. Witness may step down.

21 THE WITNESS: Thank you, Your Honor.

22 THE COURT: Next witness.

23 MR. MITCHELL: Your Honor, the State would call Mr.
24 Matthew Hogge.

25 (MATTHEW HOGGE, being first duly sworn, was examined

1 and testified as follows):

2 DIRECT EXAMINATION

3 MATTHEW HOGGE BY MR. MITCHELL:

4 Q. Good afternoon.

5 A. Afternoon. Or morning.

6 Q. Yeah. Good morning. Sorry. Will you state your name
7 for the record, please?

8 A. It's Matthew Hogge and that's spelled H-o-g-g-e.

9 Q. Mr. Hogge, where are you employed?

10 A. At the Sixteenth Circuit Solicitor's Office.

11 Q. And were you also employed there during the plea
12 hearing of Mr. Cribb?

13 A. Yes, sir.

14 Q. Do you recall this case?

15 A. Yes, but to be honest, when I walked in this morning,
16 the name didn't strike any bells and I had to go back and
17 look through my notes and so I don't have a perfect
18 recollection, but after looking through the transcript and
19 my notes, I remember it much better after having looked
20 through it than I did this morning.

21 Q. Okay. After reviewing your notes, can you briefly
22 characterize the evidence the State had in this case?

23 A. Sure. So I believe that Mr. Cribb, his mother had left
24 to go to the York Electrical Cooperative to pay a bill of
25 some kind and it took her about fifteen minutes to drive

1 there and drive back and during that brief period of time he
2 killed the victim in this case and he had called someone
3 over to help. I think he had called for his grandfather,
4 but his grandfather wasn't available and so I believe the
5 boyfriend of the victim, along with another family member,
6 came over and they found a pool of blood where Mr. Cribb had
7 tried to clean up the scene. There were lots of towels in a
8 washing machine. When I think about this case, I think
9 about that image of the blood-soaked towels there by the
10 washing machine. And he had -- the victim had placed his
11 hand up and there was a shotgun blast that tore through his
12 hand and then entered his face and I believe he had a stab
13 wound to his back and stab wound to his chest and some small
14 scratches to his neck, but it was a very brutal murder.
15 It's one of the most brutal murders that I have worked in,
16 but that doesn't say much, and that was the thing that stood
17 out to us was how brutal it was and that was something that
18 Mr. Thompson hit on in his arguments to the Court, that just
19 the brutality of this merited a thirty-year sentence. And
20 then also within the case was the issue of his mental
21 health. I believe that just -- not too long before this he
22 had been checked into Piedmont Medical Center, because there
23 were some concerns by the family. He had gone on a trip
24 with his father and during that trip he'd come back, he
25 seemed a little off and he started making comments to his

1 family members that he thought that the victim in this case
2 was going to hurt them and he wasn't going to let him do
3 that and he started making comments about how he was going
4 to stop Sonny from hurting them and they were concerned
5 about that so they checked him into Piedmont Medical Center.
6 They prescribed him anti-psychotic medication and then
7 released him and then we had this brutal murder. So that
8 was probably a longer answer than you wanted, but those were
9 the primary facts.

10 Q. So do you remember there being any evidence that
11 refutes any possible self-defense claim?

12 A. There was no evidence of self defense. I recall in
13 plea negotiations with Ms. Lipinski that she had mentioned
14 this imperfect self defense claim and -- because it clearly
15 was, I mean, I remember hearing her say that and I was
16 thinking if there's imperfect self defense, what is that? I
17 mean, it's just clearly not self defense. There was a phone
18 charger cord that had come in the mail and the defendant had
19 stated that he felt like Sonny -- or he said that Sonny had
20 attacked him with it and that he pulled it around his neck
21 and choked him with it, but there was no evidence of that
22 whatsoever. There were no ligature marks. There were no
23 marks at all on the defendant from what I recall and
24 certainly no reasonable person would have felt that they
25 were in imminent death and, thereby, would have felt it

1 necessary to shoot through someone's hand into their face
2 with a shotgun and then stab them repeatedly. There was
3 nothing that merited what happened in this case.

4 Q. Do you recall Mr. Thompson making arguments to the
5 judge why he should be given thirty years for voluntary man?

6 A. Yeah. So the way that the plea was structured, I gave
7 the facts and then Willie, who was much more senior to me,
8 he spoke to the Court about sentencing and how he felt that
9 this deserved a thirty-year sentence. I recall him speaking
10 at length about how brutal this case was and he said that
11 the brutality of this case alone merits a thirty-year
12 sentence and then he turned to the discussion about his
13 mental health concerns and about how he fears that he is
14 dangerous because of his schizophrenia diagnosis and then
15 after, and what I think was more impactful to the Court, was
16 the testimony of the victim's mother who, you don't read it
17 in the transcript, but she cried and sobbed as she spoke
18 about the fact that Sonny did not deserve this when he was
19 just horribly and brutally murdered.

20 Q. So your main argument in asking for the maximum
21 voluntary man was, one, the brutality of the crime scene
22 and, two, how the victims felt?

23 A. Well, it's -- well, again, it was Willie who was asking
24 for the sentence, but us together, when we would meet with
25 Ms. Lipinski, what always stood out to us was how brutal

1 this was and Mr. Thompson did argue to the Court that a
2 thirty-year sentence was merited because of how brutal it
3 was and he said that that alone merits a thirty-year
4 sentence and then he moved on to what I think was gilding
5 the lily as to this -- the mental health issues of this
6 defendant, how he thinks that he could in the future be more
7 dangerous and then following up on that was the testimony
8 from the victim.

9 MR. MITCHELL: I believe that's all I have for you, Mr.
10 Hogge. Please answer any questions Mr. Thomas has.

11 THE COURT: Cross-examination?

12 MR. THOMAS: Your Honor, please the Court.

13 THE COURT: Certainly.

14 CROSS-EXAMINATION

15 MATTHEW HOGGE BY MR. THOMAS:

16 Q. Good morning.

17 A. Morning.

18 Q. Just a couple of questions. So were you -- you were
19 second chair in this case?

20 A. Yes. I would call myself second chair.

21 Q. Okay; okay. Then it was both of y'all's cases, yours
22 and Mr. Thompson?

23 A. Correct.

24 Q. Now, you spoke about talking with Ms. Lipinski. So
25 y'all were meeting with her to talk about a possible plea

1 deal?

2 A. Correct.

3 Q. Okay.

4 A. I believe -- I came on later on. She had had more
5 interactions with Mr. Thompson---

6 Q. Okay.

7 A. ---and then towards the end as it looked like this
8 thing might be heading towards a trial or heading towards a
9 plea, Willie started to bring me in on those conversations.
10 I remember sitting down with Ms. Lipinski, Ms. Russo, I
11 believe, was there and Mr. Thompson where we were talking
12 about plea deals and how -- Ms. Lipinski was acting for --
13 asking for less and Mr. Thompson wouldn't go along with it.

14 Q. Okay. But finally y'all entered into an agreement on a
15 plea deal for voluntary manslaughter and then a plea, of
16 course, to the two weapons charges?

17 A. Correct.

18 Q. And the voluntary -- correct me if I'm wrong -- is it
19 zero to thirty?

20 A. Zero to thirty. There might be a mandatory minimum.

21 Q. That's what I can't remember.

22 A. I think it's zero to thirty.

23 Q. Okay.

24 A. I'm going to cheat.

25 Q. Yeah.

1 A. I think it's zero to thirty.

2 THE COURT: For the record, to mention, too, it's a max
3 of thirty. We agree on that?

4 MR. THOMAS: Okay; all right.

5 A. Right. The weapon charge would be five years day for
6 day.

7 Q. Okay.

8 A. So that plea would have been five to thirty.

9 Q. All right. So obviously there was some consideration
10 -- because he was charged with murder.

11 A. Correct.

12 Q. So there was some consideration for a plea in which he
13 could have gotten less than thirty?

14 A. Correct.

15 Q. Okay. This was not a negotiated thirty, was it?

16 A. No.

17 Q. Okay. And you said that were not -- it was Mr.
18 Thompson that argued in front of the Court in regards to --
19 for the thirty years?

20 A. Correct.

21 Q. And not you?

22 A. Correct.

23 Q. Okay.

24 MR. THOMAS: Your Honor, I have no further questions.

25 THE COURT: All right. Any redirect?

1 MR. MITCHELL: None, Your Honor.

2 THE COURT: All right. The witness may step down.

3 Next witness?

4 MR. MITCHELL: Your Honor, the State rests.

5 THE COURT: All right. Very well.

6 Mr. Thomas, without going through -- this is your
7 amended post-conviction application. You're still seeking
8 relief on all the grounds noted in your application.
9 Correct?

10 MR. THOMAS: Yes, sir. We did -- and we did discuss,
11 which is a very minor issue, but the offer of the ten to
12 fifteen and that was his -- that was his understanding and
13 that he had been advised, but I think that actually works
14 into the argument in regards to the failure to put Dr.
15 Mulberry up in mitigation and I'll be glad to address that
16 very briefly if you'd like.

17 THE COURT: Sure. Whatever you want to say in brief
18 summation.

19 MR. THOMAS: All right. Your Honor, if it please the
20 Court.

21 THE COURT: Sure.

22 MR. THOMAS: I think -- when I got this case and I read
23 the transcript, I am not a mental health expert. I've had a
24 little bit of exposure to mental health in doing commitment
25 hearings in the early part of my career, but that comment by

1 the solicitor just jumped out at me and that's why I called
2 Dr. Mulberry and the more I thought about it and what I've
3 listened to today, it's kind of a combination of things.

4 I think the State, if they had done a negotiated
5 sentence for thirty, we wouldn't be here. It wouldn't
6 matter what Dr. Mulberry said, but it's not. It's a
7 sentence of -- if it's zero to thirty or thirty years
8 maximum, there's room below that thirty and Ms. Lipinski
9 actually said on the stand that she told him that they were
10 hoping for ten to fifteen.

11 THE COURT: Target range.

12 MR. THOMAS: Right; yeah. And I think that she even
13 said, well, maybe twenty. She was hoping for twenty, but
14 she did say there was a range. That's what he understands
15 and that kind of is why that issue of the plea offer of ten
16 to fifteen bleeds into this one is that it was set up, with
17 the mental health issue in mitigation, for the possibility
18 of the defendant to get less than thirty and that's how -- I
19 think that was her defense strategy. I think that was the
20 purpose of a plea and I think that that was the motivation
21 and what was moving in this case.

22 Then -- and that's what I think we had the prejudicial
23 part of the solicitor's comments, 'cause there's three pages
24 of this and I don't need to go over it. The Court can
25 certainly -- can look at it, but it just goes on and on.

1 He's going to get worse. He's a danger to and we're asking
2 the Court, not only because of the nature of the crime, but
3 we're asking the Court to give him thirty to protect society
4 and that's part of sentencing, one, is protection of the
5 community, protection of the citizens of the State of South
6 Carolina.

7 So she had the doctor there who had done the evaluation
8 and she could have begged the Court's indulgence for a
9 minute or two, talk to Dr. Mulberry and put him up and I
10 think by not doing that it defeats the whole purpose of the
11 plea and the purpose of the plea was defense is hoping for
12 less than thirty, State's hoping for thirty, but there is
13 this thing at play, this mitigation at play that doesn't
14 happen and one of the things that jumped in my mind as we
15 were -- I was listening to the testimony is that he didn't
16 get benefit of the plea bargain.

17 THE COURT: Well, just to go back and forth with you
18 here, I mean--

19 MR. THOMAS: Yes, sir.

20 THE COURT: ---I suspect the State would say, well, he
21 got the benefit of a eighty-five percent versus a day-for-
22 day offense, did he not?

23 MR. THOMAS: Right; right. I agree with that, that he
24 did get that and that, you know, that they said, well, the
25 benefit was that he -- we reduced the murder charge to

1 manslaughter, but I think that's where it comes into the
2 play about the negotiated thirty. If you're going to say he
3 got the benefit of us not seeking life without parole, why
4 not a negotiated thirty. That's the benefit, because you're
5 going to get the maximum for voluntary manslaughter. By
6 leaving it open and by the comments of Ms. Lipinski, it then
7 sets it up for something less than thirty and something in
8 mitigation and I think the solicitor's comments are
9 prejudicial and they pushed the Court over into that thing.

10 THE COURT: Okay.

11 MR. THOMAS: Yes, sir.

12 THE COURT: Any response from the State?

13 MR. MITCHELL: Yes, Your Honor. The State submits the
14 applicant has failed to meet his burden, showing he is
15 entitled to post-conviction relief.

16 Ms. Lipinski was able to negotiate a favorable plea
17 deal where Mr. Cribb was allowed to plead to the lesser-
18 included offense of voluntary manslaughter and, as you know,
19 he was originally indicted for murder, which carries up to a
20 life imprisonment. He was sentenced to thirty years.

21 Furthermore, Mr. Cribb testified at the plea hearing
22 that he understood that the judge could sentence him up to
23 forty years. There was nothing promised to him and Ms.
24 Lipinski testified that although she said she was hoping for
25 a target range, she said that the judge could ultimately

1 sentence him up to the max. So with that, I believe Mr.
2 Cribb was not prejudiced and with regards to the comments by
3 the solicitor, it's purely speculative that the reason the
4 judge sentenced Mr. Cribb to thirty years was due to these
5 comments.

6 Mr. Hogge testified that Mr. Thompson, at the plea
7 hearing, his argument was the absolute brutal nature of this
8 crime. That, in and of itself, should give -- should be
9 enough to get a thirty year max on the voluntary man.

10 Once again, Mr. Cribb knew -- oh. Ms. Lipinski also
11 refuted the comments made by the solicitor after he
12 discussed the mental illness. She -- it's pages of that, it
13 starts on page 43. I'll let you go over that yourself, but
14 she argued that he cooperated with law enforcement, hadn't
15 had any violent background. She also mentions that Mr.
16 Cribb is not prone to violence because there is no other
17 diagnosis of sociopath or any other psychopath that you also
18 see with schizophrenics who normally turn out like this. So
19 she is -- she refuted the comments that the solicitor made,
20 so in that, she was not deficient and, also, there's
21 testimony from Ms. Lipinski that the self defense claim, she
22 didn't believe that it had any merit. She thought a plea
23 deal was going to be in the best interest of Mr. Cribb and
24 her strategy of pleading guilty but mentally ill in order to
25 mitigate, although unsuccessful, was a reasonable strategy

1 for an attorney to make in that situation, given the
2 evidence of the crime and the circumstances.

3 So, Your Honor, the State submits that the applicant
4 should have his post-conviction relief application denied.

5 THE COURT: All right. Anything else?

6 MR. THOMAS: No, Your Honor. Just thanks for the court
7 time.

8 THE COURT: Thank you. I'll take the matter under
9 advisement and communicate with you lawyers in due course.

10 MR. THOMAS: Yes, sir. Thank you so much.

11 MR. MITCHELL: Thank you, Your Honor.

12 (END OF REQUESTED TRANSCRIPT)

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STATE OF SOUTH CAROLINA)
) C E R T I F I C A T E
COUNTY OF YORK)

I, the undersigned Shannon E. McGilberry, official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of the record of all proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of Common Pleas for York County, South Carolina, on the 8th day of December, 2022.

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

In witness whereof, I have hereunto subscribed my name,
this 3rd day of March, 2023.

Shannon E. McGilberry

Shannon E. McGilberry, CVR-M

My Commission Expires:

April 26, 2027

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
)
Robert Cleveland Cribb, SCDC #377495,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE SIXTEENTH JUDICIAL CIRCUIT

Case No. 2019-CP-46-01237

ORDER OF DISMISSAL

FILED-RECEIVED
2023 AUG 25 AM 9:47
ANGIE M. BRYANT
C.C.P. & GS
YORK COUNTY, SC

INTRODUCTION

This matter is before the Court upon an action for post-conviction relief (PCR) commenced by Robert Cleveland Cribb (Applicant) on April 5, 2019. On December 8, 2022, a hearing into the matter was convened before this Court, undersigned Judge Walton J. McLeod, at the Moss Justice Center. Applicant was present and represented by Tommy A. Thomas, Esquire. Assistant Attorney General T. Cruise Mitchell represented the State.

After hearing the testimony at the PCR hearing and upon full review of the record, this Court finds Applicant's allegations regarding ineffective assistance of counsel are without merit. For the reasons discussed below, this Court hereby **DENIES** relief and **DISMISSES** the above captioned Application for Post Conviction Relief with prejudice.

PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections. During its March 2018 term, the York County Grand Jury indicted Applicant for murder (2018-GS-46-01919), possession of a firearm during the commission of a violent crime (-01919a), and possession of a knife during the commission of a violent crime (-01919b). Applicant was represented by Assistant

Public Defender Mindy H. Lipinski. Assistant Solicitors Walter William Thompson, Sr. and Thomas Matthew Hogge of the Sixteenth Circuit Solicitor's Office prosecuted the case.

On August 24, 2018, Applicant appeared before the Honorable Daniel D. Hall, circuit court judge, and pleaded guilty but mentally ill to the lesser included offense of voluntary manslaughter and his remaining charges as indicted. Judge Hall sentenced Applicant thirty years for voluntary manslaughter and five years on each of the weapon offenses.

Applicant filed a timely notice of appeal. The South Carolina Court of Appeals dismissed the appeal for failing to provide a sufficient guilty plea explanation, as required by Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules. The Remittitur was issued on November 2, 2018.

STATEMENT OF FACTS

On August 9, 2017, Applicant was at his home with his mother (Mother) on Justin Drive in York County. (GP Tr. 19.) Jerry "Sonny" Proctor (Victim) came by Applicant's residence to hang out and watch television after picking up his mail. (GP Tr. 19.) Applicant and Victim lived in the same trailer park, and it was not uncommon for Victim to stop by and visit Applicant's residence. (GP Tr. 19.) Applicant told officers he considered Victim a friend. (GP Tr. 19-20.) Mother left the residence for approximately thirty minutes to pick up her power bill. (GP Tr. 20.) While Mother was away, Applicant's grandmother received a call from Applicant asking for his grandfather and stating that he needed help. (GP Tr. 20.) Applicant's grandfather was not available, so his grandmother and her son, Albert Hensley, walked over to Applicant's residence. (GP Tr. 20.) When they arrived at Applicant's residence they observed Victim deceased on the floor laying in a pool of blood and immediately called 911. (GP Tr. 20.)

Officers arrived on scene and observed various stab wounds to Victim's body and a

shotgun wound to the face and right hand. (GP Tr. 20.) It appeared to officers that Victim was shot in Applicant's bedroom while his hand was over the muzzle of the shotgun as it was fired. (GP Tr. 20.) Blood was located throughout the residence. (GP Tr. 20.) It appeared to officers that Applicant attempted to clean up the blood as the blood was smeared on the floor, bloody towels, shorts, and Victim's wallet were found in the washing machine. (GP Tr. 20.) A knife was located in Applicant's bathroom and the shotgun was located on his bed. (GP Tr. 20.) Applicant told officers Victim had attacked him by choking him from behind with the cord from a phone charger. (GP Tr. 21.) Applicant stated he stabbed Victim from behind by "swinging backwards at him with the knife." (GP Tr. 21.) Applicant told officers that at some point Victim got the knife and that is when he grabbed the .12 gauge shotgun and shot Victim while he was four or five feet away. (GP Tr. 21.) Applicant then called his grandfather for help. (GP Tr. 21.)

Officers did not believe Applicant's story as Applicant had no injuries – especially around his neck where Applicant claimed he had been choked from behind with a charger cord. (GP Tr. 22.) Further, the autopsy revealed Victim was stabbed in the upper back in a forward and upper motion, which did not fit with Applicant's story that he stabbed Victim by flinging the knife behind him as he was being choked by Victim. (GP Tr. 22.) Victim also received a second stab wound to the chest. (GP Tr. 22.) Victim's death was ultimately caused by a close contact shotgun blast that went through the palm of Victim's right hand and into his face causing extensive damage to his brain. (GP Tr. 22.)

Mother told officers Applicant and Victim were fine together and the only thing she worried about when she left them alone was them smoking marijuana while she was gone. (GP Tr. 21.) Mother told officers Applicant and Victim had always gotten along and had a friendly relationship. (GP Tr. 21.) Mother told officers she noted a change in Applicant's behavior after

he returned from a beach trip with his father recently. (GP Tr. 21.) Applicant seemed more depressed to Mother and was drinking frequently. (GP Tr. 21.) Applicant began making statements to Mother indicating Victim was going to kill her, his grandparents and him. (GP Tr. 21-22.) Applicant was taken to the Piedmont Medical Center (PMC) for a mental evaluation. (GP Tr. 22.) The diagnosis from PMC was that Applicant was under a lot of stress and was prescribed Didrex and released with a referral to the Catawba Mental Health facility for follow-up, which was never done. (GP Tr. 22.)

CURRENT APPLICATION

Applicant timely commenced this PCR application on April 5, 2019. In his application Applicant alleged he was entitled to relief based on the following grounds:

1. Ineffective Assistance of Counsel
2. Involuntary Guilty Plea

Pursuant to Rule 71.1, SCRCP, Applicant, through PCR counsel, amended his application to include the following allegations:

1. The Applicant suffered severe depression and was under medication while in the County Detention Center. Applicant believes that this medication and his mental illness influenced his decision to accept a guilty plea. That he was unable to knowingly and intelligently enter into the guilty plea.
2. That the Solicitor made misleading comments in Court especially concerning the Applicant's mental illness. That Dr. Mulbry who performed the psychiatric evaluation was present in Court. That Dr. Mulbry was not used by Defense counsel to refute the remarks of the Solicitor. The Applicant believes these comments adversely affected his sentencing.
3. That the Applicant was under the impression that he would get ten (10) to fifteen (15) years. However, he was sentenced to a term of thirty (30) years. The Applicant was offered a plea of 0-30 years or 10-25 years. That this exposed him to the sentence of thirty (30) years.
4. That the Applicant is informed and believes that there was a credible issue regarding self-defense that was not properly evaluated and argued on behalf of the Applicant.
5. That Defense counsel was ineffective for not properly investigating the scene of the crime.

6. That the Applicant did not get a copy of, nor have an opportunity to review his discovery until three days prior to Court.
7. Defense Counsel advised him that he could get less time if he pled guilty but mentally ill. That upon being received at the South Carolina Department of Corrections, he realized that the guilty but mental ill plea was going to prevent him from being able to advance in custody levels within the Department of Corrections as well as imposing other restrictions on him.
8. That Applicant's plea was not freely, voluntarily, knowingly, or intelligently given.

STANDARD OF REVIEW

An applicant may seek PCR upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

The reviewing court applies the two-part test outlined in *Strickland v. Washington* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction. 466 U.S. 668, 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Id.* at 687–88; *accord. Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

The applicant has the burden of establishing both deficiency and prejudice in order to be entitled to relief. *Hughes v. State*, 346 S.C. 554, 558, 552 S.E.2d 315, 317 (2001); Rule 71.1(e), SCRCPP. To prove deficient performance, the applicant must establish that, in light of all the circumstances, the acts or omissions complained of "were outside the wide range of competence" demanded of attorneys in criminal cases. *Strickland*, 466 U.S. at 688. To prove prejudice, the applicant must establish "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." *Id.* Significantly, "the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." *Id.* at 696.

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, *Hill v. Lockhart*, 474 U.S. 52 (1985), extended the two-part *Strickland* test to challenge guilty

pleas based on ineffective assistance of counsel. *See Padilla v. Kentucky*, 559 U.S. 356, 373 (2010) (recognizing that the guilty plea process is a “critical phase of litigation” for purposes of the Sixth Amendment right to effective assistance of counsel). The analysis of counsel’s performance under the first prong of *Strickland* remains unchanged—the applicant must show that counsel’s representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases. *Hill*, 474 U.S. at 58–59; *accord Thompson v. State*, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel’s advice to plead guilty was not “within the competence demanded of attorneys in criminal cases.” *Hill*, 474 U.S. at 56.

The second, or “prejudice” prong, however, “focuses on whether counsel’s constitutionally ineffective performance affected the outcome of the plea process.” *Id.* Specifically, when an applicant claims counsel’s deficient performance caused him to accept a plea, the applicant “must show that there is a reasonable probability that, but for [plea] counsel’s [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial.” *Id.* at 59. The applicant must further convince the court that a decision to reject the plea bargain would have been rational under the circumstances. *Padilla*, 559 U.S. at 372.

This inquiry “focuses on a defendant’s decisionmaking” and does not turn on the outcome of a defendant’s actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. *Lee v. United States*, 582 U.S. 357, 137 S. Ct. 1958, 1966 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. *Padilla*, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not

whether counsel would have still advised him or her to plead guilty. *Turner v. State*, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

FINDINGS OF FACT & CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After hearing the testimony presented and considering the legal arguments by counsel, as well as the record in this action incorporated by way of the State's return, this Court proceeds to the claims raised in the application and amended application and finds each to be without merit. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

A. Plea Counsel Incorrectly Advised Applicant He Would Be Sentenced to Ten to Fifteen Years Imprisonment¹

Applicant contends Counsel was ineffective for incorrectly advising Applicant he would be sentenced to 10 – 15 years imprisonment if he pleaded guilty. This Court disagrees, and finds Applicant was properly advised of his plea and the consequences thereof. This Court finds credible and persuasive the testimony of Counsel, who presented well-recalled testimony of the advice she communicated to Applicant, including his potential exposure to thirty (30) years imprisonment if he pleaded guilty. Furthermore, Applicant was correctly advised of the consequences he faced during the plea colloquy.

1. PCR Testimony

Applicant testified he pleaded guilty because Counsel informed him he would be sentenced to the lower part of the sentencing range for voluntary manslaughter. (PCR Tr. p. 11). Applicant

¹ Claim 3.

testified he was under the impression he would be sentenced to 10 – 15 years if he pleaded guilty. Applicant testified he informed the plea court he understood he could be sentenced to thirty (30) years for voluntary manslaughter. (PCR Tr. p. 17). When cross-examined on whether he recalled informing the plea court he had plenty of time to discuss the case with Counsel, Applicant testified he did not recall, and subsequently, disputed the accuracy of the guilty plea transcript itself. (PCR Tr. p. 17 – 18).

Counsel testified she informed Applicant 10 – 15 years was their target range and that is what she asked the plea court to consider. However, Counsel testified she explained to Applicant “that the full sentencing range was open to the judge.” (PCR Tr. p. 35). Counsel testified Applicant was aware he could potentially be sentenced to thirty (30) years for voluntary manslaughter. (PCR Tr. p. 35). Counsel testified she hoped, through mitigation, she could possibly get something in the range of 10 – 15 years. (PCR Tr. p. 37). Counsel testified she presented mitigation to the court including Applicant’s lack of any prior record, lack of disciplinaries at school, and the fact he was a law abiding citizen until this incident. (PCR Tr. p. 34). Furthermore, Counsel testified she hoped a plea of guilty but mentally ill would lead to a more lenient sentence. (PCR Tr. p. 33).

2. Guilty Plea Testimony

During the guilty plea hearing, Applicant informed the plea court he understood he could potentially be sentenced to thirty years imprisonment for voluntary manslaughter. (GP Tr. p. 12). The plea judge then explained to Applicant, in great detail, the nature of the plea and the consequences thereof:

The Court: There has been a reduction in the charge from murder to the voluntary manslaughter and it appears that has been a benefit that the State has made in this case; however, you understand that this also called a straight-up plea where I could sentence you to five years twice consecutive so you could get up to forty years for this. Do you understand that?

Mr. Cribb: Yes, your Honor.

(Gp Tr. p. 18).

Furthermore, Applicant testified at the plea hearing he was not promised anything in exchange for the plea. (Gp. Tr. p. 18).

3. Discussion

“[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced.” *Reed v. Becka*, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). Accordingly, because a criminal defendant waives several constitutional rights by pleading guilty, the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Pittman v. State*, 337 S.C. 597, 524 S.E.2d 623 (1999). To be intelligent, a plea must be made by a mentally competent defendant who understands both the charges against him and the consequences of his plea. *Brady v. United States*, 397 U.S. 742, 748 (1970). To be voluntary, a plea must be free of threats or other coercion that would impermissibly distort the defendant’s choice. *Id.* At 755; *see also United States v. Smith*, 440 F.2d 521, 528–529 (7th Cir.) (Stevens, J., dissenting) (explaining that voluntariness relates to the trustworthiness of the admission of guilt and binding character of the waiver of the constitutional protections which would be available to the accused if he elected to stand trial).

The test for determining the validity of a guilty plea is “whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.” *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). The State may properly encourage guilty pleas either by being more lenient to those who enter such pleas, *Brady*, 397 U.S. at 750–53, or by increasing the risks of punishment on those who do not. *Alford*, 400 U.S. at 37 (1970); *cf. United States v. Cox*, 464 F.2d

937, 942 (6th Cir. 1972) (“It is well established that a guilty plea is not rendered invalid because it represents a compromise by defendant, thrusts a difficult judgment upon him, or is motivated by fear of greater punishment.” (citing *Brady*, 397 U.S. 742)). An applicant who enters a plea on the advice of counsel may “only attack voluntary, knowing and intelligent character of the plea by showing that plea counsel’s representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel’s errors, the [applicant] would not have pled guilty, but would have insisted on going to trial.” *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing *Hill*, 474 U.S. 52).

Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights he or she is waiving; the right to a jury trial, the right to confront one’s accusers, and the privilege against self-incrimination. *Boykin*, 395 U.S. at 243. Additionally, the defendant “must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived.” *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999).

“Defendant’s knowing and voluntary waiver of statutory or constitutional right must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant’s counsel, or both.” *State v. Ray*, 310 S.C. 431, 427 S.E.2d 171 (1993). Any possible misconceptions regarding sentencing on a defendant’s part can be “cured by the colloquy during the actual guilty plea hearing.” *Wolfe v. State*, 326 S.C. 158, 164, 485 S.E.2d 367, 370 (1997).

This Court finds Applicant’s allegation he pleaded guilty based on Counsel’s erroneous advice regarding sentencing is without merit. Counsel credibly testified she informed Applicant the requested target sentencing range she would communicate to the plea court was 10 – 15 years.

Counsel further testified she informed Applicant that, although 10 – 15 years was their target range, he could still be sentenced to the maximum of thirty years imprisonment. During the plea hearing, Counsel requested the court to sentence Applicant to the lower third of the sentence in light of several mitigating factors which were properly presented to the court. Despite Counsel's lengthy and compelling mitigation presentation, the plea judge sentenced Applicant to thirty (30) years for voluntary manslaughter. This Court finds that Counsel properly advised Applicant regarding the consequences of his plea and Counsel was **NOT DEFICIENT** in advising applicant of the consequences of his plea.

Even supposing Counsel did erroneously advise Applicant he would be sentenced to 10 – 15 years if he pleaded guilty, his allegation still lacks merit. Applicant testified he pleaded guilty with the hope he would be sentenced in the range of 10 – 15 years; however, Applicant *twice* stated on the record at his guilty plea hearing that he understood he could be given a maximum sentence by pleading guilty. Applicant further informed the plea court he was promised nothing in exchange for the plea. Although Applicant was hoping for a light sentence for pleading guilty, "wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made." Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997).

Accordingly, Applicant's claims pertaining to Counsel's alleged misadvice regarding his sentencing and his subsequent reliance on that misadvice is **DENIED**.

B. Plea Counsel Failed to Properly Evaluate and Argue Self-Defense²

Applicant next contends Counsel failed to properly evaluate and argue self-defense. This Court disagrees, and finds Applicant failed to present any evidence or testimony indicating how further preparation into the claim of self-defense would have affected his decision to plead guilty. This Court finds credible the testimony of Counsel and Assistant Solicitor Hogge (Solicitor Hogge), who both testified a self-defense argument would have likely been unsuccessful at trial considering the evidence in this case. Furthermore, the record of the guilty plea coupled with credible testimony of Counsel demonstrate Counsel adequately evaluated the claim of self-defense.

1. PCR Testimony

Applicant testified he met with Counsel approximately six to ten times. (PCR Tr. p. 8). Applicant testified the defense at trial was going to be self-defense; however, Counsel informed Applicant it was an inconsistent self-defense case. (PCR Tr. p. 9). On cross-examination Applicant testified he went over self-defense with his Counsel. (PCR Tr. p. 16).

Counsel testified she met with Applicant somewhere “in the neighborhood of ten to twelve” times. (PCR Tr. p. 29). Counsel testified she discussed with Applicant the elements of the crimes and what the State was required to prove. (PCR Tr. p. 29). Counsel testified Applicant initially told law enforcement he had acted in self-defense. (PCR Tr. p. 30). Counsel testified Applicant told law enforcement that the victim attacked him by using a cell phone charger cord to choke him out and in an effort to defend himself grabbed a knife and stabbed him in self-defense and “that a struggle ensued and that he went and eventually got a shotgun and shot him.” (PCR Tr. p. 31). Counsel testified there were no red marks around his neck, no bruising to his neck, and there was

² Claim 4.

no evidence of a struggle within the house. (PCR Tr. p. 31). Furthermore, Counsel testified the injuries to victim were not consistent with Applicant's version of events. (PCR Tr. p. 31). Counsel testified she did not feel a jury would find Applicant's story credible, or that a reasonable person would have feared for their life according to Applicant's version of events. (PCR Tr. p. 31-32). Counsel testified she did not believe a jury trial would have been successful. (PCR Tr. p. 32).

Solicitor Hogge testified there was no evidence of self-defense. (PCR Tr. p. 43). Solicitor Hogge testified there was no evidence victim attacked Applicant whatsoever; there were no "marks at all on the defendant... and certainly no reasonable person would have felt that they were in imminent death and, thereby, would have felt it necessary to shoot through someone's hand into their face with a shotgun and then stab them repeatedly." (PCR Tr. p. 43-44).

2. Guilty Plea Testimony

During the guilty plea hearing the following colloquy occurred between the judge and Applicant:

The Court: Do you understand by entering your plea today, even though you may have talked to your lawyer in detail about potential self defense, you give that right up and waive that right in order to plead guilty. Do you understand that?

Mr. Cribb: Yes, your Honor.

The Court: In other words you can't raise the issue of self defense once you enter your guilty plea. Has that all been explained to you?

Mr. Cribb: Yes, you Honor.

(GP. T. p. 48).

3. Discussion

This Court finds Applicant failed to overcome the “strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case.” *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing *Strickland*). Counsel credibly testified she reviewed the evidence in discovery and came to the reasonable conclusion that a self-defense argument at trial would have been unsuccessful. Applicant himself testified that Counsel went over the self-defense claim with him and informed him it was an imperfect self-defense case. Solicitor testified as to what evidence the State would present at trial to rebut any self-defense claim, and it is clear, from the evidence presented, that Counsel exercised reasonable professional judgement in determining self-defense would be unsuccessful at trial. This Court finds Counsel adequately investigated and evaluated the claim of self-defense. Accordingly, this Court finds Counsel was **NOT DEFICIENT** in evaluating the claim of self-defense.

Furthermore, the plea judge properly advised Applicant that by entering a plea of guilty he would be waiving any potential self-defense argument. Applicant asserted he understood he would be waiving that right. This Court finds Applicant waived the right to present a defense. Accordingly, Applicant’s allegation Counsel failed to properly evaluate and argue self-defense is **DENIED**.

C. Applicant Reviewed Discovery Only Three Days Prior to Guilty Plea³

Applicant next contends he was only given an opportunity to review discovery three days prior to his guilty plea. This Court disagrees, and finds Applicant failed to present sufficient

³ Claim 6.

evidence and testimony how additional time to review discovery would have affected his decision to plead guilty.

1. PCR Testimony

Applicant testified he received discovery two or three days prior to his sentencing. (PCR Tr. p. 10). Applicant testified he did have an opportunity to review the discovery with Counsel. (PCR Tr. p. 10). As previously stated, Counsel testified she met with Applicant “in the neighborhood of ten to twelve” times. (PCR Tr. p. 29). Counsel testified they reviewed discovery, went over the elements of the crimes charged, and discussed Applicant’s potential self-defense claim. (PCR Tr. p. 29-30)

2. Guilty Plea Testimony

During the guilty plea hearing the following colloquy occurred between Applicant and the presiding judge:

The Court: Have you had plenty of time to talk to Ms. Lipinski about this case and discuss it in detail with her?

Mr. Cribb: Yes, your Honor.

The Court: Has she provided you with information; documents, might be statements, case summaries, incident reports, things that the State is required to give her when you file a Motion for Discovery. Have y’all been able to go over all those?

Mr. Cribb: Yes, your Honor.

(GP. Tr. p. 18).

3. Discussion

Applicant’s allegation he was not afforded enough time to review discovery is without merit. Applicant testified he reviewed discovery with Counsel. Counsel credibly testified they reviewed discovery, went over the elements of the crimes charged, and discussed potential defenses. Furthermore, Applicant informed the plea court he reviewed discovery with Counsel and

had plenty of time to discuss the case with her. Accordingly, this Court finds Applicant has failed to present any evidence or testimony that demonstrates he would not have pleaded guilty if afforded more time to review the discovery, thus, this allegation is **DENIED**.

D. Plea Counsel Failed to Inform Applicant of Collateral Consequence of Pleading Guilty But Mentally Ill⁴

Applicant next contends Counsel failed to properly advise him of the consequences within the South Carolina Department of Corrections (SCDC) if he pleaded guilty but mentally ill. This Court disagrees, and finds the record from Applicant's guilty plea refutes this allegation. Furthermore, this Court finds the allegation fails as a matter of law.

1. PCR Testimony

Applicant testified his decision to plead guilty but mentally ill has caused him to be subject to certain restrictions at the South Carolina Department of Corrections. (PCR Tr. p. 11). Applicant testified he is still having mental health issues. (PCR Tr. p. 11). Counsel testified there was evidence Applicant "had been ongoing some level of psychosis for some time." (PCR Tr. p. 32). Counsel testified the decision to plead guilty but mentally ill was made to "broadcast to the Court that everybody agreed that that was a factor and that was what was transpiring on the day in question." (PCR Tr. p. 33).

2. Guilty Plea Testimony

During the guilty plea hearing, Counsel informed the Court of the rational basis for the guilty but mentally ill plea; she explained Applicant was diagnosed with schizophrenia which caused him to lack the ability to conform his conduct to the law. (GP. Tr. p. 7).

The plea judge informed Applicant of the consequences of pleading guilty but mentally ill:

⁴ Claim 7. Applicant presented no testimony that Counsel informed him he would get less time if pleaded guilty but mentally ill, so that portion of the claim is not addressed here.

The Court: The Court has been told that you intend to enter a plea to these charges, and we're gonna talk about it in just a minute, but it's a guilty but mentally ill. Even though it's classified they're called guilty but mentally ill. Practically what that means is if I accept the guilty but mentally ill that you would go to the Department of Corrections; you would be treated for a time in a mental part of the Department of Corrections. Once they determine you are able to function within the system then you move out of there to a regular population. Is that your understanding of what guilty but mentally ill plea is?

Mr. Cribb: Yes, your Honor.

(Gp. Tr. p. 12). The Court subsequently found there was a rational basis for the guilty but mentally ill plea. (Gp. Tr. p. 19).

3. Discussion

Applicant's allegation he was not informed of the SCDC restrictions imposed upon him as a result of pleading guilty but mentally ill is without merit. The plea court informed Applicant that he will be placed in a restricted unit until the Department of Corrections determines he can function in the regular population. Applicant stated on the record he understood these consequences. Thus, Applicant was informed by the Court of the potential consequences of pleading guilty but mentally ill. Furthermore, the plea court ruled there was a rational basis for a guilty but mentally ill plea.

Even if Applicant was not informed of the restrictions imposed upon him by SCDC as a result of the plea, "a defendant need not be advised of all collateral consequences of his or her plea in order for the plea to withstand Constitutional scrutiny." *Williams v. State*, 378 S.C. 511, 662 S.E.2d 615 (Ct. App. 2008). Any restriction on his detention imposed upon Applicant for pleading guilty but mentally ill is a collateral consequence he need not be advised. This is because the restrictions are not a matter within the jurisdiction of the trial court, but are determined by the South Carolina Department of Corrections. See *Brown v. State*, 306 S.C. 381, 383, 412 S.E.2d 399, 400–01 (1991) (recognizing that parole eligibility is a collateral consequence because it is not a

matter within the jurisdiction of the trial court, but falls within the province of the Board of Probation, Parole, and Pardon Services).

This Court finds Counsel was not deficient for failing to inform Applicant of the restrictions imposed upon him by the South Carolina Department of Corrections. Accordingly, Applicants allegation is **DENIED**.

E. Counsel Was Ineffective for Failing to Utilize Dr. Mulbry at the Plea Hearing to Rebut Solicitor's Misleading Comments Regarding Applicant's Mental Illness⁵

Applicant next contends Counsel was ineffective for failing to utilize Dr. Mulbry at Applicant's plea hearing to rebut Solicitor's misleading comments regarding Applicant's mental illness. Applicant contends the misleading comments adversely affected his sentence. This Court disagree, and finds Counsel made a reasonable strategic decision in not calling Dr. Mulbry to testify and Counsel adequately rebutted the comments during her mitigation presentation. Furthermore, it is purely speculative that Applicant's sentence was adversely affected by the misleading comments.

1. PCR Testimony

Applicant testified Dr. Mulbry found him competent to stand trial. (PCR Tr. p. 12). Applicant testified Solicitor told the plea court he would not get better when discussing Applicant's mental illness. (PCR Tr. p. 12). Applicant testified Solicitor brought up a family member who was diagnosed with schizophrenia and the disease only got worse. (PCR Tr. p. 13). Applicant testified he believed this was a biased opinion. (PCR Tr. p. 13). Applicant testified Solicitor told plea court he was a danger to society and would not get any better. (PCR Tr. p. 13). Applicant testified Counsel did not object to any of the comments. (PCR Tr. p. 14). Applicant testified he would not have pleaded guilty if he had known what Solicitor was going to say. (PCR Tr. p. 15).

⁵ Claim 2.

Dr. Mulbry testified his impression was Solicitor Thompson was depicting schizophrenia as a “progressive, degenerative disease that almost invariably results in decline, worsening and more danger in the future.” (PCR Tr. p. 22 – 23). Dr. Mulbry characterized these comments as inaccurate. (PCR Tr. p. 23). Dr. Mulbry testified he has treated many individuals who are functioning at a very well in the community and schizophrenia “can be very effectively treated and not necessarily progressive and people do not... become more dangerous as a rule over time.” (PCR Tr. p. 23). Dr. Mulbry testified that extensive studies show schizophrenia does provide a small increased risk of violence compared to the general non-mentally ill population. (PCR Tr. p. 23 – 24). Dr. Mulbry testified that the most dangerous people out there are people who are abusing substances. (PCR Tr. p. 24). Dr. Mulbry testified that people diagnosed with schizophrenia who are consistently treated and stay away from drugs and alcohol tend to do very well. (PCR Tr. p. 24).

Dr. Mulbry testified he has treated a number of individuals at SCDC who were diagnosed with a variety of mental illnesses. (PCR Tr. p. 25). Dr. Mulbry testified that incarcerated individuals with schizophrenia have been effectively treated within SCDC and generally people who are treated with schizophrenia can function very well in society. (PCR Tr. p. 25). Dr. Mulbry testified Solicitor Thompson’s comments that schizophrenia is a progressive, degenerative disease marked by decline is an inaccurate characterization of the disease and he would have testified to that effect had Counsel asked him to. (PCR Tr. p. 26).

Counsel testified she refuted the comments made by Solicitor Thompson during her mitigation presentation. (PCR Tr. p. 34). Counsel testified had concerns about using Dr. Mulbry to refute Solicitor Thompson’s comments. Counsel testified that Dr. Mulbry explained to her that Applicant’s high dosage of medication, and his ability to tolerate it, “was an indication that he

truly was suffering from this kind of heightened state of psychosis and that it wasn't substance abuse related and was organic." (PCR Tr. p. 39). However, Dr. Mulbry dialed back Applicant's dosage the morning of the plea, and Counsel was concerned that if Dr. Mulby were to testify the reduced dosage may come out and potentially undermine Counsel's mitigation surrounding Applicant's mental illness. (PCR Tr. p. 39). Counsel further testified she did not believe Judge Hall was going to take mental health advice from a Solicitor and she did not feel the Court was giving any credence to Solicitor Thompson's comments. (PCR Tr. p. 40).

2. Guilty Plea Testimony

During the guilty plea hearing, Solicitor Thompson made the following comments regarding Applicant's mental health to the Court when arguing for a maximum sentence:

The other aspect I'd like the Court to look at is the future dangerousness of the Defendant. Schizophrenia, and we've dealt with a lot in the court system; I'm sure you have just as I have had. I even have a relative who suffers from schizophrenia and I've seen the decline of him over the years, and it becomes obvious that it doesn't really get better. At times it can be controlled; at time it can be, you know, therapy and things like that help, and medication help, but eventually it does not. And the mind deteriorates and the Defendant has, or the person has the perplibility or any probility [sic] toward violence, that shines through and comes out. And I believe that he would be a danger later on in life because I think there's nothing – if this is the first psychotic episode he shows it is about as bad as you can get.

I think from here on out his mental abilities in ten, fifteen, twenty years, or farther will be worse. And I think that makes him dangerous because if you can't control your conduct you become someone who is very dangerous because you have occasionally the psychotic thoughts of whether its suicide or harming other and it would be others that would be maybe friends of yours or people trying to help you. It could be stranger or it could be anybody.

So I point out that the horrific nature of the crime itself, and the fact that he's unlikely to really truly ever be healed from this mental health problem that he suffers from, makes him a future danger and a danger to the community. And even if we were just sentencing on the punishment alone for the violent nature and the awfulness of this crime, that would warrant a very large sentence and would certainly warrant I think the thirty years that he faces on the manslaughter charge which the State has reduced the crime to basically giving him a break in this case, recognizing the mental health issues that suffers from but that's a huge break.

(GP Tr. p. 32 – 33).

Solicitor Thompson then made the following comments regarding the brutality of the crime in the same argument:

But as we look at things and we look at sentencing, one of the main things we also consider is the crime itself and the nature of the crime, the severity of it and the brutality of it. And for his first crime he ended up committing one that was extremely egregious. The brutality is its great. In addition to the stab wound that there was one in the chest that wasn't very deep; I believe like an inch and a half or so, but it hit to the bone and why it didn't go any farther.

...

The major consideration of punishment that I'm asking the Court to look at are mainly two things and one is the complete brutality of this crime. I imagine the last few moments of a few minutes of the victim's life for Sonny Proctor were horrifying, like living through a very gory part of not knowing why someone's attacking you, and someone you feel to be a friend, or someone you feel that would never harm you doing these things to you. And obviously not really fighting back because there is no indication that the defendant was injured in any way. So the horrifying nature of being on the floor after you've been stabbed and then looking up and seeing the shotgun blast that obviously kills you at that point had to be horrifying for Sonny at that point in time. And it was brutal and it was up close and personal.

...

And that alone, as I said the brutality of the crime, the nature of it would be enough for the thirty years. And I think when you add in the fact that he will likely never become better than he is now, and only become worse in later years, that that dangerousness is something the Court should consider as well.

As the victim's family has said they really don't want to see anyone else go through this again either. And so I would ask the Court to consider that in sentencing. I'd ask the Court to sentence him to the thirty years that he faces under this plea.

(GP Tr. p. 31 – 34).

Counsel presented a lengthy mitigation argument during the plea hearing that included the following rebuttal of Solicitor Thompson's comments regarding Applicant's mental health:

And as much as Mr. Thompson wants to portray that he's gonna be this evil violent person, he is at all times cooperative with law enforcement. He answers their questions; sits in the back of the car. He's not had any violence while he's going to the jail. They've been able

to medicate him. He's been in C Block for the better part of this year. This isn't somebody who was going to struggle with all these things and be a violent person because there is no other diagnoses of sociopath or psycho path that you also see with schizophrenics who normally turnout like this.

This is somebody who can appreciate the disease who is intelligent enough to learn from it. But he's also not cunning, he's also not manipulative and he did - - who the family who say we saw all these red flags and comments.

...

It's time we as a society respect mental health, respect that when families bring people to us in the emergency room and say help that something extraordinary is going on, and that we don't need to give them five days worth of mental health and then tell 'em to follow up; that if you get to that point that that is significant and we need to address it.

(GP Tr. p. 43 – 45).

3. Discussion

Applicant's allegation Counsel was ineffective for failing to call Dr. Mulbry to rebut Solicitor Thompson's misleading comments regarding Applicant's mental health is without merit. Counsel credibly testified she did not call Dr. Mulbry to testify at the plea hearing for two reasons: 1) she did not believe the Plea Court was giving any credence to Solicitor Thompson's arguments regarding mental health, and 2) she was concerned that Dr. Mulbry may testify about Applicant's reduced dosage of medication which could undermine her argument in mitigation that Applicant's mental illness was the root cause of the crime. Instead, Counsel made the strategic decision to rebut Solicitor Thompson's comments herself during her lengthy and compelling mitigation presentation. "Where counsel articulates a valid trial strategy for failing to call an expert witness to testify at trial, such conduct will not be deemed ineffective." *Reeves v. State*, 415 S.C. 366, 377, 782 S.E.2d 747, 752 (Ct. App. 2015) (citing *Legare v. State*, 333 S.C. 275, 281, 509 S.E.2d, 475 (1998)).

Despite Dr. Mulbry's credible testimony at the evidentiary hearing about what he would have testified to in rebuttal, Counsel's decision not to call him was a valid and reasonable strategy.

Counsel believed putting Dr. Mulbry on the stand could lead to unfavorable testimony regarding the dosage reduction of Applicant's medication. This was a valid concern, since the high dosage of Applicant's medication, and his ability to tolerate it, supported Counsel's argument that Applicant's mental illness was the root cause of the crime. Thus, Counsel was **NOT DEFICIENT** in failing to call Dr. Mulbry to rebut Solicitor Thompson's misleading comments regarding Applicant's mental health.

Furthermore, this Court finds Applicant was not prejudiced even if a deficiency existed. Applicant entered into a knowing and voluntary guilty plea where he was allowed to plead guilty to the lesser included offense of voluntary manslaughter. As discussed above, Applicant was fully aware he could be sentenced to thirty (30) years imprisonment for voluntary manslaughter. It is purely speculative that the plea judge sentenced Applicant to thirty (30) years imprisonment because of Solicitor Thompson's remarks regarding schizophrenia. Applicant's mental illness was only part of his argument supporting a maximum sentence. As the record shows, the brutality of the crime and the victim impact statements were used to support an argument for a maximum sentence. Thus, Applicant failed to present sufficient evidence and testimony that he was prejudiced even if a deficiency existed.

Accordingly, this Court finds Applicant's allegation Counsel was ineffective for failing to call Dr. Mulbry to rebut Solicitor Thompson's misleading comments regarding Applicant's mental illness is **DENIED**.

F. Applicant Was Incompetent to Enter a Guilty Plea⁶

Applicant contends his depression and mental illness caused him to be unable to knowingly and voluntarily plead guilty. This Court finds Applicant presented no evidence to support this

⁶ Claim 1

allegation during the evidentiary hearing, thus he has not met his burden entitling him to post-conviction relief on this issue. Notwithstanding the lack of evidence on this claim, the plea court held a *Blair*⁷ hearing and found Applicant competent to stand trial. (GP Tr. p. 11). Furthermore, Applicant testified at his plea hearing that his medication did not affect his ability to understand the proceedings. (GP. Tr. p. 9).

Accordingly, this allegation is **DENIED**.

G. Counsel Failed to Properly Investigate the Crime Scene⁸

Applicant contends Counsel failed to properly investigate the crime scene. Applicant presented no evidence of this allegation at the evidentiary hearing, thus he has not met his burden entitling him to post-conviction relief. Accordingly, this allegation is **DENIED**.

CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. This Court finds Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel's representation. For all the reasons discussed above, this Court finds Applicant freely, knowingly, and voluntarily pleaded guilty. Therefore, this Court **DENIES** relief on all allegations and dismisses this PCR action with prejudice.

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

⁷ *State v. Blair*, 273 S.E.2d 536 (S.C. 1981).

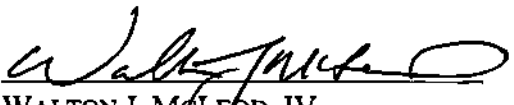
⁸ Claim 5

notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 15 day of August, 2023.


WALTON J. MCLEOD, IV
Presiding Judge
Sixteenth Judicial Circuit

Lexington, South Carolina