

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

---

APPEAL FROM HORRY COUNTY  
Court of Common Pleas  
J. Cordell Maddox, Jr., Circuit Court Judge

---

Case No. 2012-CP-26-3860

---

Kendrix Corbitt # 348641,

*Petitioner,*

v.

The State of South Carolina,

Respondent.

*2013-002336*

---

**APPENDIX**

---

**WILLIAM ISAAC DIGGS, ESQUIRE**  
**LAW OFFICES OF WILLIAM ISAAC DIGGS**  
1700 Oak Street, Suite D  
Myrtle Beach, SC 29577  
843-626-4243

**ATTORNEY FOR THE PETITIONER**

**JOSHUA L. THOMAS, ESQUIRE**  
**ATTORNEY GENERAL'S OFFICE**  
Post Office Box 789  
Columbia, SC 29000  
803-734-3970

**ATTORNEY FOR RESPONDENT**

## INDEX

Application for Post-Conviction Relief . . . . .	1
Return to the Application for Post Conviction Relief. . . . .	9
Guilty Plea Transcript. . . . .	13
Transcript of Record (Post Conviction Relief Hearing) . . . . .	28
Order denying Post Conviction Relief . . . . .	87
Court records . . . . .	91
SCDC records . . . . .	95
Notice of Appeal . . . . .	98

FORM 5

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )  
 )  
Kendrix Corbitt # 00348641 )  
Full name and prison number (if any) of Applicant. )  
 )  
v. )  
 )  
State of South Carolina )  
 )

IN THE COURT OF COMMON PLEAS

12

3860

APPLICATION FOR  
POST-CONVICTION RELIEF

12 MAY 15 AM 9:45  
CLERK OF COURT

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lee Correctional, 990 Wisacky Highway, Bishopvill, SC 29010
2. Name and location of Court which imposed sentence Court of General Sessions for the Fifteenth Judicial Circuit, 1301 2<sup>nd</sup> Avenue, Conway, South Carolina, 29526
3. Name(s) of co-defendant(s) (if any) \_\_\_\_\_
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) Murder
  - (b) Weapons/Poss. weapon during violent crime
  - (c) \_\_\_\_\_
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) November 10, 2011, Voluntary Manslaughter 15 years

- (b) \_\_\_\_\_  
(c) \_\_\_\_\_
6. Check whether a finding of guilty was made:  
(a) after a plea of guilty X  
(b) after a plea of not guilty \_\_\_\_\_  
(c) after a plea of nolo contendere \_\_\_\_\_
7. Did you appeal from the judgment of conviction or the imposition of sentence?  
No
8. If you answered "yes" to (7), list:  
(a) the name of each Court to which you appealed:  
i. \_\_\_\_\_  
ii. \_\_\_\_\_  
iii. \_\_\_\_\_  
(b) the result in each such Court to which you appealed:  
i. \_\_\_\_\_  
ii. \_\_\_\_\_  
iii. \_\_\_\_\_  
(c) the date of each such result:  
i. \_\_\_\_\_  
ii. \_\_\_\_\_  
iii. \_\_\_\_\_  
(d) if known, citations of any written opinion or orders entered pursuant to such results:  
i. \_\_\_\_\_  
ii. \_\_\_\_\_  
iii. \_\_\_\_\_
9. If you answered "no" to (7), state your reasons for not so appealing:  
(a) Applicant did not appeal because he entered a guilty plea and was informed by everyone that a guilty plea could not be appealed.  
(b) \_\_\_\_\_  
(c) \_\_\_\_\_
10. State concisely the grounds on which you base your allegation that you are being held in

custody unlawfully:

(a) Applicant received the ineffective assistance of counsel at his guilty plea proceeding in violation of the Sixth Amendment to the United States Constitution; and the Corollary provisions of the South Carolina State Constitution.

(b) Newly and / or after discovered evidence.

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

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

(a) (1) Applicant was cut with a knife at the scene of the incident which formed the factual basis for the guilty plea entered in this matter immediately prior to applicant firing his weapon. Investigating police officer(s) observed the knife cut on applicant's arm, however, trial counsel never discussed this evidence with the applicant even though the evidence forms the basis for a plea of self defense to the charge of murder brought in this case against the applicant; (2) Applicant fired two shots into the ground with his weapon after he was cut by the decedant prior to applicant's firing of the gun shots which allegedly killed the decedant. Trial counsel never discussed with the applicant the possibility that applicant was criminally negligent in the firing of his weapon and was therefore guilty only of involuntary manslaughter.;

(b) A third party has written a letter to the Solicitor's office in Horry County admitting that he killed the decedant in this particular matter.

(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) N/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? N/A

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

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

- (a) the name and address of each attorney who represented you:
  - i. T. Kirk Truslow, Esquire 418-B Main Street, Post Office Box 238, North Myrtle Beach, SC 29597

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

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

- i. T. Kirk Truslow, Esquire (for Plea and Sentencing)
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

Withdrawal of the plea and the right to stand trial.

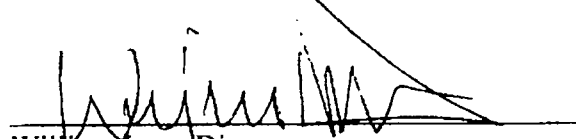
20. Are you now under sentence from any other court that you have not challenged?

\_\_\_\_\_

5

Respectfully submitted,

**LAW OFFICES OF WILLIAM ISAAC DIGGS**

A handwritten signature in black ink, appearing to read 'William Isaac Digs', is written over a horizontal line.

William Isaac Digs  
1700 Oak Street, Suite D  
Myrtle Beach, SC 25977  
843-626-4243

**ATTORNEY FOR THE APPLICANT**

This 20<sup>th</sup> day of April, 2012  
Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA )  
 )  
County of )

VERIFICATION

12

3860

I, Kendrix Corbitt # 00348641, 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.

Kendrix Corbitt

SWORN to and subscribed before me this 19th  
day of April, 2012.

[Signature] (L.S.)  
Notary Public

My Commission Expires: 9-25-2013

CLERK OF COURT  
12 MAY 15 AM 9:44

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

12

3860

I, Kendrix Corbitt # 00348641, 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.

Kendrix Corbitt  
Applicant

SWORN or affirmed to and subscribed before me this  
19~~th~~ day of April, 2012.

[Signature]  
Notary Public

My Commission Expires: 9-25-2013

CLERK OF COURT  
12 MAY 15 AM 9:44

8

TATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )  
 )  
 )  
Kendrix Corbitt, 348641 )  
 )  
 )  
Applicant, )  
 )  
v. )  
 )  
State of South Carolina, )  
 )  
Respondent. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

2012-CP-26-3860

**RETURN**

Respondent, making its Return to the Application for post conviction relief (PCR) filed May 15, 2012, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the October 2011 term of the Horry County Grand Jury for murder (2011-GS-26-3888). Timothy K. Truslow, Esquire, represented Applicant.

On November 10, 2011, the Applicant pled guilty to voluntary manslaughter. The Honorable Thomas W. Cooper sentenced Applicant to fifteen years imprisonment. Applicant did not appeal the conviction or sentence.

Attached herewith and incorporated herein are the records of the Horry County Clerk of Court regarding the subject conviction, and Applicant's SCDC records, and the guilty plea transcript

9

will be forwarded upon receipt. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Applicant received the ineffective assistance of counsel at his guilty plea proceeding in violation of the Sixth Amendment of the United States Constitution; and the Corollary provisions of the South Carolina State Constitution."
2. "Newly and / or after discovered evidence."

III.

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient.

Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

#### IV.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

#### V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

#### VI.

WHEREFORE, having made its Return, the State requests that the Application be denied and the matter dismissed with prejudice.

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Senior Assistant Deputy Attorney General

TYSON ANDREW JOHNSON, SR.  
Assistant Attorney General

By:   
\_\_\_\_\_  
ATTORNEYS FOR RESPONDENT

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

7/19, 2012.

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA, )  
 )  
 PLAINTIFF, )  
 )  
 -VS- )  
 )  
 KENDRIX CORBITT, )  
 )  
 DEFENDANT. )  
 \_\_\_\_\_ )

2011-GS-26-3888  
  
November 10, 2011  
  
TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE THOMAS W. COOPER, JR., JUDGE

APPEARANCES:

SCOTT HUCKS, ESQUIRE  
ATTORNEY FOR THE STATE

CURT TRUSLOW, ESQUIRE  
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS  
CIRCUIT COURT REPORTER

1

**INDEX**

	PAGE
Guilty plea	3
Certificate of Reporter	16

**EXHIBITS**

(NONE)



1 the possible sentence he can receive and his  
2 Constitutional rights including that of a trial. Does he  
3 seem to understand all of those things as far as you  
4 know?

5 MR. TRUSLOW: Yes, Your Honor.

6 THE COURT: Indicates that he wishes to plead  
7 guilty to the charge?

8 MR. TRUSLOW: Yes, sir, Your Honor.

9 THE COURT: Thank you.

10 Mr. Corbitt, when you plead guilty to voluntary  
11 manslaughter, you can receive up to thirty years  
12 imprisonment, do you understand that?

13 DEFENDANT: Yes, sir.

14 THE COURT: Whatever sentence you receive you  
15 must serve at least eighty-five percent of it before  
16 you'll even be considered to be released into the  
17 community. Do you understand that?

18 DEFENDANT: Yes, sir.

19 THE COURT: Voluntary manslaughter is a most  
20 serious offense in the eyes of the law. That means that  
21 you use up today one of the two strikes that the law  
22 gives you for committing more serious offenses. And what  
23 that means is, when you get out of jail, if you ever  
24 commit another most serious offense, you will never get  
25 out of jail. You will die in jail. Do you understand

1 that?

2 DEFENDANT: Yes, sir.

3 THE COURT: When you enter this plea, Mr.  
4 Corbitt, you have to give up certain important  
5 Constitutional rights. You first of all have to give up  
6 your right to remain silent. Under our law, no one can  
7 make you testify against yourself. No one can force you  
8 to admit that you're guilty of a charge, but if you plead  
9 guilty, you have to tell me you're guilty. So you give  
10 up your right to remain silent when you plead guilty. Do  
11 you understand that?

12 DEFENDANT: Yes, sir.

13 THE COURT: You have a right to a jury trial,  
14 to let a jury decide whether you're guilty of this charge  
15 or not. You don't have to try to convince a jury that  
16 you're not guilty. The State has to convince a jury that  
17 you are guilty. All twelve members have to be convinced  
18 beyond a reasonable doubt before they can find you  
19 guilty. But if you plead guilty you don't get a jury  
20 trial. You give up that right. Do you understand that?

21 DEFENDANT: Yes, sir.

22 THE COURT: If you had a trial, Mr. Truslow  
23 would have the right to question the State's witnesses  
24 who would testify against you and you would have the  
25 right to call witnesses of your own to testify for you

7

1 and tell your side of the story. But if you plead  
2 guilty, he doesn't get to question witnesses and you  
3 don't get to call witnesses. You give up that right. Do  
4 you understand that?

5 DEFENDANT: Yes, sir.

6 THE COURT: Have you understood these rights  
7 that I've just explained to you, Mr. Corbitt?

8 DEFENDANT: Yes, sir.

9 THE COURT: Do I need to go over any of them  
10 with you again?

11 DEFENDANT: No, sir.

12 THE COURT: The indictment charges you with  
13 murder. And it says that you did here, in Horry County,  
14 on or about December the 31st of last year, willfully,  
15 feloniously, and with malice aforethought, kill Damian  
16 Pickett by means of shooting him and that he died as a  
17 result of that. You're charged with the crime of murder.  
18 You're being allowed to plead guilty to voluntary  
19 manslaughter. Do you understand the charge of voluntary  
20 manslaughter?

21 DEFENDANT: Yes, sir.

22 THE COURT: How do you plead to that charge?

23 DEFENDANT: Guilty.

24 THE COURT: The State and your attorney have  
25 negotiated a fifteen year sentence. Other than that, has

18

1 anyone promised you anything or held out any hope of  
2 reward to get you to plead guilty to this charge?

3 DEFENDANT: No, sir.

4 THE COURT: Has anyone threatened you or forced  
5 you to make you plead guilty of the charge?

6 DEFENDANT: No, sir.

7 THE COURT: Are you pleading guilty freely and  
8 voluntarily?

9 DEFENDANT: Yes, sir.

10 THE COURT: Are you pleading guilty because you  
11 are, in fact, guilty?

12 DEFENDANT: Yes, sir.

13 THE COURT: Are you satisfied with everything  
14 that Mr. Truslow has done for you as your lawyer?

15 DEFENDANT: Yes, sir.

16 THE COURT: Has he done everything you have  
17 asked him to do?

18 DEFENDANT: Yes, sir.

19 THE COURT: Have you had enough time to talk  
20 with him about this?

21 DEFENDANT: Yes, sir.

22 THE COURT: Have you understood the talks that  
23 you've had with him?

24 DEFENDANT: Yes, sir.

25 THE COURT: Do you need any more time right now

1 to talk with him anymore?

2 DEFENDANT: No, sir.

3 THE COURT: You have ten days from today if you  
4 wish to appeal this plea and your sentence to a higher  
5 court, but you have to file a paper with this court  
6 within ten days if you wish to appeal. Do you understand  
7 that?

8 DEFENDANT: Yes, sir.

9 THE COURT: All right.

10 Mr. Hucks?

11 MR. HUCKS: Yes, sir, Your Honor. On or about  
12 New Year's Eve of this year the Defendant, Mr. Corbitt,  
13 and the victim in this particular case, Mr. Pickett, who  
14 were -- there's some conflicting statements as to whether  
15 they were in the same gang or if Mr. Corbitt was joining  
16 a gang that -- was in the process of joining the gang  
17 that Mr. Pickett was already a member of. They got into  
18 a disagreement at a basketball game. They decided to go  
19 to a park in the Myrtle Beach section of Horry County and  
20 upon arrival they got into a gang-sanctioned fight with  
21 one another. During that fight or shortly thereafter  
22 that fight, Mr. Corbitt went back, picked up a gun and  
23 started shooting it. The victim, Mr. Pickett, attempted  
24 to run away. A bullet from Mr. Corbitt's gun struck him  
25 in the rear hip. And as it did, it went directly up and

20

1 lodged in his heart, killing him. As Your Honor is  
2 aware, the State believes -- we had a brief pre-trial  
3 meeting about it.

4 THE COURT: Right.

5 MR. HUCKS: The State and the Defense have  
6 negotiated extensively on the case and we believe that  
7 there is significant heat of passion here, that the  
8 voluntary manslaughter is the appropriate outcome.

9 THE COURT: All right.

10 MR. HUCKS: The victim's mother is in court and  
11 does wish to address the Court at the appropriate time.

12 THE COURT: All right. Tell me about Mr.  
13 Corbitt's record first of all, and then I'll hear from  
14 the victim.

15 MR. HUCKS: Your Honor, he does not have a  
16 record. He does have a, he does have a possession of a  
17 weapon during a commission of a violent crime charge and  
18 an assault and battery second degree that'll be dismissed  
19 as a result of this plea.

20 THE COURT: In connection with the same  
21 incident?

22 MR. HUCKS: One of them is and the other is  
23 not.

24 THE COURT: All right. I'll be glad to hear  
25 from Mr. Pickett's mother.

1 MS. PICKETT: My name is Cora Belle Pickett.

2 THE COURT: Ms. Pickett.

3 MS. PICKETT: I'm the mother of Damian Corran  
4 Pickett. Your Honor, I miss my son a lot. He was  
5 twenty-one years old. He had left and moved with his  
6 sister to Columbia, South Carolina. He came back in  
7 November, the 15th, on the bus looking for work, trying  
8 to do the right thing. And I know they said that it was  
9 gang related, but my son left the Beach Ball Classic. I  
10 was supposed to be taking my granddaughter back to  
11 Columbia that next morning. To get a call that says they  
12 think they found Damian, I thought he was -- is he in the  
13 hospital? Is he in jail? Where do I need to go pick him  
14 up from? Or to go two blocks away -- where it happened  
15 -- where my mom lived, she moved because his body -- when  
16 she walked out of her apartment complex, she saw his  
17 body. My mother, my brothers, my sisters, done helped me  
18 raise my kids because I'm a single mother. I'm never  
19 going to be the same. I packed up all of my belongings.  
20 I've been there ever since I was a child. Now I'm  
21 leaving. I'm tired. I was tired of looking at him. I'm  
22 forty-five years old. I have never, never had that much  
23 hatred in my life in my heart to take somebody's life.  
24 His youngest brother couldn't even come her this morning.  
25 I couldn't even hold him up to come here this morning to

1 talk about his brother.

2 My son was eight pounds eleven ounces when I gave  
3 birth to him. I worked two jobs to take care of my  
4 family. I didn't ask nobody for nothing. If I could  
5 have been there that night when he took my son, when he  
6 shot that gun, I would have took the bullet for the pain  
7 that my mother and my grandbaby and my daughter and my  
8 sons are going through, my family. I ask you today, sir,  
9 please, please give this young man enough time so he can  
10 have time to think about what he did to my child.

11 Irregardless of whatever we have, a misunderstanding or  
12 whatever it was, it never should have resulted in murder.  
13 My son had a job planned, already given to him, friends  
14 of mine. It's not what you know sometimes when you have  
15 a small record. It's who you know. And a friend of  
16 mine, Greta Parker and Charlie were going to give him a  
17 job cleaning up and painting, whatever he could do  
18 around. He tried, Your Honor. He tried to find a job.

19 This young man -- my son came from the Beach Ball  
20 Classic. They had a misunderstanding. When I was  
21 growing up, you have a fight but you were friends a day  
22 or weeks or so later. But now these young people are  
23 taking so lightly, they no more don't care about nobody.  
24 Parents go to work and they come home, they try to  
25 provide for their family. And I just ask that you give

22

1       this young man enough time that he think about what he  
2       did, because I could never get Damian back. I have to go  
3       and say my piece at his grave. His sister will never be  
4       the same. I see it. And if I had the power, I would  
5       take the pain away from my family members, but I can't.  
6       I simply can't. His mom and dad can go to the prison and  
7       visit. I have to visit my child on 21st Avenue North and  
8       nobody in this courtroom can tell me that's fair. So I  
9       ask that you give him enough time so he'll think about  
10      what he did to my family because I'm going to never be  
11      the same, Your Honor. I'm never going to be the same.

12                THE COURT: Thank you, Ms. Pickett.

13                Mr. Hucks, anything further from the State?

14                MR. HUCKS: Nothing, Your Honor.

15                THE COURT: Thank you. I accept the plea. I  
16      understand what Ms. Pickett has indicated to me. Nobody  
17      can feel her pain except her, and I will address that in  
18      a few moments. But I accept the plea. Mr. Corbitt  
19      understands what he's doing. He's had the service of a  
20      competent lawyer.

21                Mr. Truslow?

22                MR. TRUSLOW: Your Honor, Kendrix is nineteen  
23      years old. His family, he comes from a good family, a  
24      hardworking family. Anytime we've met -- his father  
25      works two jobs. I've been to his home to talk to them

1 about this. He has always expressed remorse for this.  
2 One thing that the mother said is true, this should  
3 absolutely have never happened. Kendrix gets that. His  
4 family's on the back row, Judge, if I could point them  
5 out, his father and mother and brothers. This should  
6 never have happened. What she said in terms of how  
7 things are being worked out in the streets these days,  
8 that's true also. My client kind of grew up in that. In  
9 any given day out there, it's nasty. And he realizes  
10 what he did. I don't think he ever thought in a million  
11 years that that bullet would do what it did. And he's  
12 got to live with that for the rest of his life.

13 We looked at the trial in this case and the issues  
14 and I think we reached a fair agreement on how much time  
15 he should get, given some of the evidentiary issues, some  
16 of the issues with the victim, some of the issues with  
17 the Defendant. And I do think that's fair. But I also  
18 think that it's a significant period of time in prison  
19 where all he's going to have to do is think about what he  
20 did. And that's a lot years and he's going to have to do  
21 that in prison, by himself, and live with this for the  
22 rest of his life, and certainly over the next fifteen  
23 years in a prison cell. And that's what we're here to  
24 do, Judge. We're asking you to accept it.

25 THE COURT: Thank you. Does Mr. Corbitt wish

24

1 to address the court, Mr. Truslow?

2 MR. TRUSLOW: Yes, sir.

3 DEFENDANT: I want to say I'm sorry to his  
4 mama.

5 THE COURT: Okay. She's right back there. You  
6 can tell her that.

7 DEFENDANT: I apologize for what happened to  
8 your son that night.

9 MS. PICKETT: You should said that the day you  
10 shot him.

11 THE COURT: Thank you.

12 All right. Ms. Pickett, you're right, there's no  
13 one in this courtroom who can tell you that what happened  
14 to your son was fair, and there's no one who can feel  
15 your pain except you. Parents aren't supposed to bury  
16 their children. And you're right, as we all agree,  
17 today's young people seem to take human life too lightly.  
18 Too many of them carry guns and they lack the judgment,  
19 the maturity, the good sense that is required if you're  
20 going to arm yourself with any kind of a weapon. And  
21 this is just another one of the tragedies that comes from  
22 that sort of activity. And sometimes there are good  
23 families involved, just like in this case. You know,  
24 this is -- a lot of times these young people are  
25 wandering the street without any parental guidance and

1 without any authority figures at home who try to keep  
2 them straight. But that doesn't appear to be the case in  
3 this instance, and I'm sorry about that.

4 A negotiated plea means that the Court can either  
5 accept the negotiations and pass a sentence that has been  
6 negotiated or it can simply not take the plea and let  
7 come before some other Judge at some other time. There's  
8 no point in my passing this off to some other Judge. I  
9 understand the rationale behind the negotiations. And  
10 while probably neither side is completely satisfied with  
11 them, it appears to be fair, given the considerations  
12 that would flow from a trial of this case and the  
13 uncertainty of an outcome, both to the State and to the  
14 Defendant.

15 Mr. Corbitt, the sentence of the Court is that you  
16 be committed to the State Department of Corrections for a  
17 period of fifteen years. You get credit for any time  
18 you've served. Thank you.

19

20 [END OF REQUESTED TRANSCRIPT OF RECORD]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19

CERTIFICATE OF REPORTER

I, the undersigned Danette P. Hanks, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Horry County, South Carolina, on the 10th day of November, 2011.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

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

July 24, 2010

*Danette P. Hanks*

Circuit Court Reporter

STATE OF SOUTH CAROLINA)  
COUNTY OF Horry )

COURT OF COMMON PLEAS

KENDRIX CORBITT )  
348641 )  
PETITIONER, )

TRANSCRIPT OF RECORD  
12-CP-26-3860

v. )

STATE OF SOUTH CAROLINA, )  
RESPONDENT.)

August 26, 2013  
Conway, South Carolina

**B E F O R E :**

THE HONORABLE J. CORDELL MADDOX, JR., JUDGE

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

WILLIAM I. DIGGS, ESQ.  
Attorney for the Petitioner

JOHSUA L. THOMAS, ESQ.  
Attorney for Respondent

FRANCES BAKIS-RAY, RPR  
Circuit Court Reporter

**INDEX**

	Page
Kendrix Corbitt:	
Direct examination	4
Cross-examination	18
Redirect examination	34
Kirk Truslow:	
Direct examination	36
Cross-examination	
Redirect examination	48
Recross-examination	50

(There were no exhibits submitted.)

29

1 MR. THOMAS: The first case up is Kendrix  
2 Corbitt versus State of South Carolina. It's case  
3 number 2012-CP-26-3860. Mr. Corbitt was indicted in  
4 October of 2011 for murder. He was represented on  
5 that charge by Kirk Truslow. He pled on  
6 November 10th, 2011, to voluntary manslaughter. The  
7 Honorable Thomas W. Cooper, Jr., sentenced him to 15  
8 years. No appeal was filed. This PCR action was  
9 filed on May 15th, 2012. He's represented by Mr.  
10 William Diggs.

11 THE COURT: Can we get him out here.  
12 (Petitioner Corbitt is brought into courtroom.)

13 THE COURT: Hold on just one second.  
14 (Pause.)

15 THE COURT: Okay. If you need more time,  
16 that's fine, obviously I made y'all wait.

17 MR. THOMAS: No, sir, we're fine.

18 THE COURT: All right. You can call your  
19 first witness.

20 MR. DIGGS: Your Honor, we would call  
21 Mr. Corbitt, Kendrick Corbitt.

22 THE COURT: Okay.

23 THE CLERK OF COURT: Please raise your  
24 right hand, place your left hand on the Bible.

25 WHEREUPON,

## PW - K. CORBITT - DIRECT

1                                   **KENDRIX CORBITT,**  
2     having been duly sworn by the Clerk of Court,  
3     testified as follows:

4                   THE COURT: Mr. Corbitt, if you would, she  
5     has to take everything down that you and I both say  
6     and your attorney. Make sure you really speak up.  
7     And I don't know if that mic works; if it does, lean  
8     into it as best you can. Also, would you give us  
9     your full name and spell your last name for the  
10    court reporter.

11                   PETITIONER CORBITT: Kendrix Deon Corbitt,  
12    C-O-R-B-I-T-T.

13                   THE COURT: All right, yes, sir.

14                                   **DIRECT EXAMINATION**

15    BY MR. DIGGS:

16    Q Mr. Corbitt, you are the PCR applicant in this  
17    case; is that correct?

18    A Yes, sir.

19    Q And basically what you're here seeking is the  
20    right to withdraw the plea of guilty that you  
21    entered and to stand trial; is that correct?

22    A Yes, sir.

23    Q All right. Now let me ask you this, do you  
24    remember the date that this particular shooting  
25    supposedly happened?

## PW - K. CORBITT - DIRECT

1 A December 31st.

2 Q Okay, that was back in 2010?

3 A Yes, sir.

4 Q All right. And how old were you at that time?

5 A Eighteen.

6 Q All right. And on that particular evening this  
7 was at the end of the year, correct?

8 A Yes, sir.

9 Q New years the next day?

10 A Yes, sir.

11 Q What were you doing that evening to kind of  
12 celebrate the time of the year and the holidays?

13 A I just went to the Beach Ball Classic.

14 Q Okay, pull that microphone down and can you get  
15 to it?

16 A Yeah, I got it.

17 Q Okay. And tell us again what you were doing?

18 A Went to the Beach Ball Classic.

19 Q The Beach Ball Classic there in Myrtle Beach?

20 A Yes, sir.

21 Q Okay. And do you recall who you were with that  
22 evening?

23 A My girl Shahatta (ph).

24 Q Okay. Now that is the young lady, her last name  
25 is Ballard?

## FW - K. CORBITT - DIRECT

1 A Yes, sir.

2 Q And she was about -- she's your age; is that  
3 correct?

4 A Yes, sir.

5 Q And you were at the Beach Ball Classic and can  
6 you tell us about what time those -- and the Beach  
7 Ball Classic is, describe for us what that is, if  
8 you would?

9 A It's a bunch of basketball games.

10 Q Okay. There are teams from around different  
11 parts of the state or maybe even the country?

12 A Yes, sir.

13 Q And you were there with this young lady and some  
14 other friends?

15 A Yes, sir.

16 Q About what time of the day did this Classic take  
17 place?

18 A It was probably, I think it ended at like 11:00,  
19 10:00.

20 Q In the evening?

21 A At night, yes, sir.

22 Q Okay. Tell us, if you would, what time you got  
23 there and basically how long you stayed at the  
24 basketball games?

25 A I got there probably 9, 9:30.

PW - K. CORBITT - DIRECT

1 Q All right. And did you arrive there with  
2 Ms. Ballard?

3 A No, she came with one of her friends.

4 Q All right. How long did you stay there at the  
5 games?

6 A About an hour, hour-and-a-half.

7 Q Now did anything unusual happen while you were  
8 there watching the games?

9 A Damian and JJ got in an argument.

10 Q Okay, now let's back up a little bit. And I want  
11 you to speak more clearly because I didn't get the  
12 two names? Damian --

13 A And JJ.

14 Q And another fellow named JJ?

15 A Yes, sir.

16 Q They got into an argument there at the arena  
17 Myrtle Beach, the city?

18 A Yes, sir.

19 Q ---complex there? What happened? Can you tell  
20 us what you observed and what occurred at that time?

21 A They was really yelling and putting each others'  
22 fingers in their face and that's it.

23 Q Okay. What happened? Did it lead to anything?  
24 Did it just ---

25 A Yeah, it ---

## PW - K. CORBITT - DIRECT

1 Q ---down the vine, what happened to that?

2 A It led to a fight.

3 Q Okay. And eventually did you leave the arena?

4 A Yes, sir.

5 Q Where did you go?

6 A We went to Freestyle Park.

7 Q Freestyle Park in Myrtle Beach?

8 A Yes, sir.

9 Q And specifically can you tell me what -- is that  
10 located beside Mr. Joe White Avenue?

11 A Yes, sir.

12 Q And who went to Freestyle Park?

13 A It was me, JJ, Damian, it was a lot of other  
14 people. I can't really remember all the others that  
15 was out there.

16 Q All right. About how many people do you recall?

17 A Probably like 15, 16 people.

18 Q Okay. Now did -- what happened when you got to  
19 Freestyle Park? Did the fight continue, were things  
20 settled, what happened if you can recall?

21 A The fight continued. They fall ---

22 Q This is Damian and JJ?

23 A Yes, sir.

24 Q And they're fighting. All right, what did you  
25 see happen at that point?

## PW - K. CORBITT - DIRECT

1 A They was fighting. I tried to step in and break  
2 it up.

3 Q Okay. And why did you do that?

4 A Because JJ was my little cousin.

5 Q Damian?

6 A JJ.

7 Q JJ. All right, and what happened at that point?  
8 Were you able to stop the fight?

9 A Yeah, they stopped and that's when Damian pulled  
10 out his knife.

11 Q All right. Now Damian pulled out a knife. Can  
12 you describe the knife? Did you get a good look at  
13 it or just fleetingly glanced at it, tell us?

14 A Yeah. I glanced at it before I ran.

15 Q Okay. And what happened at that point, did you  
16 just run away?

17 A Naw, I shot at the ground two times.

18 Q Before that did anything happen? What about the  
19 knife, did anything come in play about the knife?

20 A He lunged at me with the knife, sir.

21 Q All right, he lunged at you with the knife and  
22 what happened?

23 A That's when I turned and ran and shot two times  
24 at the ground.

25 Q Did he, was he successful when he lunged at you?

## PW - K. CORBITT - DIRECT

1 A Yeah.

2 Q Did he strike you with the knife?

3 A Yeah, he cut my arm a little bit.

4 Q All right. Now was there any doubt about that?

5 A No, sir.

6 Q You understand what I'm saying? Did the police,  
7 for example, when they came and interviewed you  
8 later and I assume they did ---

9 A Yes, sir.

10 Q Did they, did they see the cut on your arm that  
11 had been made by Damian and the knife that he had?

12 A Yes, sir.

13 Q All right. Now when that happened, now tell  
14 us -- I don't want us to get ahead of ourselves --  
15 what happened at that point when you were hit with  
16 the knife?

17 A That's when I turned and ran and I shot around  
18 two times.

19 Q All right. Now did you make any effort to shoot  
20 any particular person?

21 A No, sir, I shot at the ground.

22 Q And did you intentionally take an effort, make,  
23 undertake an effort not to hit anybody with the  
24 shots?

25 A Yes, sir.

## PW - K. CORBITT - DIRECT

1 Q And to your knowledge did you hit anyone with the  
2 shots?

3 A No, sir.

4 Q Do you recall what kind of gun you had?

5 A 357.

6 Q All right. How long had you owned that weapon?

7 A Probably like six months.

8 Q Now did you hear any other shots that evening as  
9 you were running away?

10 A Yes, sir.

11 Q Could you tell where, was it in the immediate  
12 vicinity?

13 A Yes, sir.

14 Q Within that group of 15 or 16 people at Freestyle  
15 Park?

16 A Yes, sir.

17 Q But what did you do?

18 A I ran.

19 Q Was anyone with you?

20 A Me, like everybody really scattered like when  
21 they was running.

22 Q Okay, all right. Was anyone in particular  
23 running with you?

24 A Me, my co-defendant Mike. Mike was running. He  
25 was in front of me.

## PW - K. CORBITT - DIRECT

1 Q Okay, who was that?

2 A My co-defendant Michael Barr.

3 Q Michael Barr. Did Michael have a gun?

4 A No, sir.

5 Q At least to your knowledge?

6 A At least to my knowledge he didn't.

7 Q He didn't?

8 A No, sir.

9 Q Go ahead and tell me then just briefly where did  
10 you run to and then what happened.

11 A I ran to my Aunt Cinda (ph) house.

12 Q Okay. And she lives near Freestyle Park

13 A Yes, sir.

14 Q And eventually did you -- were you interviewed by  
15 the police at Myrtle Beach about this incident?

16 A Yes, sir.

17 Q And what did you learn from the police, if  
18 anything? What had happened over there at Freestyle  
19 Park?

20 A That somebody died.

21 Q Okay. At that time were you aware that you might  
22 have shot someone?

23 A No, sir.

24 Q All right. You never had any intent to shoot  
25 anybody?

## PW - K. CORBITT - DIRECT

1 A No, sir.

2 Q And you had not -- you didn't have any knowledge  
3 at least until the police came that someone had been  
4 shot?

5 A Yes, sir.

6 Q Didn't have any knowledge of that fact?

7 A No, sir.

8 Q Did you know who it was that was shot?

9 A Yes, sir.

10 Q Who was that?

11 A Damian.

12 Q Damian?

13 A Yes, sir.

14 Q Now he passed as a result of that wound?

15 A Yes, sir.

16 Q Hence, the charge of murder against you by the  
17 Myrtle Beach Police Department, correct?

18 A Yes, sir.

19 Q Now you went out, your family and you hired an  
20 attorney to represent you?

21 A Yes, sir.

22 Q Well known, good, high professional standing in  
23 this area, Mr. Truslow?

24 A Yes, sir.

25 Q All right. And he's here in the courtroom today.

## PW - K. CORBITT - DIRECT

1 And he's a well respected attorney, correct?

2 A Yes, sir.

3 Q Otherwise, you wouldn't have hired him?

4 A Yes, sir.

5 Q I want to talk to you just a little bit about  
6 your discussions with your attorney that led up to  
7 your decision to plead guilty to the manslaughter.  
8 Now we know that manslaughter is a better deal than  
9 murder?

10 A Yes, sir.

11 Q No doubt about that. And you got 15 years.  
12 That's less than 30 you could have gotten. Had you  
13 gone to trial and even if you'd been successful in  
14 getting a manslaughter charge you could have gotten  
15 30 years in that situation?

16 A Yes, sir.

17 Q So we certainly understand that aspect of the  
18 case. But did he to your recollection discuss with  
19 you defenses in the case?

20 A No, sir.

21 Q Did you ever discuss with him the fact that you  
22 had been stabbed with a knife?

23 A No, sir.

24 Q And did you ever volunteer that information to  
25 him?

## PW - K. CORBITT - DIRECT

1 A Yes, sir.

2 Q All right. But it didn't go any further?

3 A No, sir.

4 Q Did anybody, either your attorney or anyone on  
5 his behalf, talk to you about the possibility of  
6 self-defense in the case?

7 A No, sir.

8 Q Or involuntary manslaughter?

9 A No, sir.

10 Q When you pled guilty were you aware of other  
11 possibility or possibilities in terms of possible  
12 legal outcomes other than manslaughter?

13 A No, sir.

14 Q Or murder?

15 A No, sir.

16 Q If you were to have discussions about those  
17 possible outcomes would they play into your decision  
18 about whether or not to plead?

19 A Yes, sir.

20 Q If someone had indicated to you the possibility  
21 of self-defense or involuntary manslaughter, could  
22 you see yourself reasonably going to trial in the  
23 case to have a jury determine what the verdict  
24 should be?

25 A Yes, sir.

## PW - K. CORBITT - DIRECT

1 Q And would you have pled guilty if that discussion  
2 had taken place and those options had been put out  
3 before you?

4 A No, sir.

5 Q All right. You understand that if we win the  
6 case here you can stand trial again for murder?

7 A Yes, sir.

8 Q And you're making a decision here to pursue the  
9 post-conviction relief application even though that  
10 could -- that hurdle could still be facing you in  
11 the event that we win this part of the case?

12 A Yes, sir.

13 Q Now did anyone ever discuss with you the  
14 millimeter, the nature of the wounds that was  
15 received in this case that caused death?

16 A It was 9-millimeter.

17 Q All right. Did you ever discuss that with  
18 Mr. Truslow?

19 A No, sir.

20 Q Did you have a 9-millimeter gun?

21 A No, sir.

22 Q Well, you did own a weapon though, however,  
23 correct?

24 A Yes, sir.

25 Q You did own a weapon. And again, what kind of

## PW - K. CORBITT - DIRECT

1 gun did you have?

2 A 357.

3 Q Definitely a 357 was not used as the weapon in  
4 this case?

5 A Yes, sir.

6 Q Everyone acknowledges that, is that your  
7 understanding?

8 A Yes, sir.

9 Q And did you ever discuss that with Mr. Truslow?

10 A No, sir.

11 Q That you can recall?

12 A Not that I recall.

13 Q It's been a while. Now we had a discussion about  
14 a letter that had been written.

15 A Yes, sir.

16 Q We don't -- let me put it this way, to your  
17 knowledge that was investigated; is that correct?

18 A Yes, sir.

19 Q After you retained my office?

20 A Yes, sir.

21 Q And it appears that letter was not authentic.

22 Are you aware of that?

23 A Yes, sir.

24 Q Okay. Based on my conversations with your family  
25 and with you, we're not going to pursue that aspect

## PW - K. CORBITT - CROSS

1 of the case. Are you in agreement with that?

2 A Yes, sir.

3 Q All right, because we don't believe that the  
4 letter was authentic. Do you follow what I'm  
5 saying?

6 A Yes, sir.

7 Q And you're in agreement with that?

8 A Yes, sir.

9 Q All right.

10 MR. DIGGS: Your Honor, that's all I have  
11 of the witness at this time.

12 THE COURT: All right.

13 Yes, sir.

14 MR. THOMAS: May it please the Court.

15 THE COURT: Yes, sir.

16 **CROSS-EXAMINATION**

17 BY MR. THOMAS:

18 Q Mr. Corbitt, how many times did you meet with  
19 your attorney before your guilty plea?

20 A Kirk?

21 Q Yes, sir. How many times -- well, yeah, how many  
22 times did you meet with Mr. Truslow?

23 A Maybe three.

24 Q Okay. Three, okay. When you met with him you  
25 talked about the facts that led up to the shooting,

45

## PW - K. CORBITT - CROSS

1 correct?

2 A Not really, I was just taking the money.

3 Q So you never discussed with Mr. Truslow what  
4 happened?

5 A I sat and talked to him about the case I think  
6 one time, two times.

7 Q Okay. And when you sat and talked with him did  
8 he ever tell you about the State's discovery file,  
9 the things that they had, ---

10 A No, sir.

11 Q ---the evidence they had against you?

12 A No, sir.

13 Q You didn't discuss with him any witnesses that  
14 might have seen the shooting?

15 A No, sir.

16 Q And you didn't discuss any, you didn't discuss  
17 the knife wounds that you got?

18 A No, sir.

19 Q Okay. And you say when you met with him you  
20 never discussed -- I mean, what did you talk about  
21 when you met with him?

22 A He told me -- me and my dad went and met with him  
23 he told me -- this was when I had that, got the plea  
24 for 15. He said I should take it because if I  
25 didn't they was going to give me 25. And that was

## PW - K. CORBITT - CROSS

1 pretty much it. Other than that it was just take  
2 the money.

3 Q Okay, so you discussed the plea offer then?

4 A Yeah.

5 Q And you discussed the benefits of the plea offer  
6 versus going to trial?

7 A Yes, sir.

8 Q Okay. And in your mind at that time you  
9 thought -- whose decision was it to plead guilty,  
10 was it your decision to plead guilty?

11 A Yes, sir.

12 Q And when you went to court do you remember when  
13 the solicitor read sort of the facts they had in  
14 your case against you? You stood there and the  
15 solicitor would have said this is what happened  
16 leading up to the shooting, do you remember that?

17 A No, sir.

18 Q Okay. So you don't remember the solicitor  
19 discussing the fact that you and Mr. Pickett got  
20 into a fight?

21 A Me and Mr. Pickett never got into a fight.

22 Q Would it surprise you if I told you that at the  
23 plea hearing the Solicitor's Office said that you  
24 and Mr. Pickett were the individuals that had gotten  
25 into a fight?

## PW - K. CORBITT - CROSS

1 A We wasn't fighting.

2 Q Okay.

3 MR. THOMAS: Your Honor, can I approach?

4 THE COURT: Sure.

5 BY MR. THOMAS:

6 Q Mr. Corbitt, this is a copy of your transcript  
7 from your plea hearing.

8 A Uh-huh.

9 Q Are you familiar with that?

10 A I've never seen it before.

11 Q You've never seen it? This is something a little  
12 more recent you might not have. This is the part  
13 where the State reads the facts against you. You  
14 remember that? Why don't you take a look at that.

15 A (Reads document.)

16 Q Is that starting to ring a bell?

17 A Yes, sir.

18 Q Do you remember that now? Now immediately after  
19 that do you remember saying, do you remember saying  
20 to the solicitor that you agreed with those facts?

21 A No, I took the plea and said -- he said did I  
22 understand about the plea thing and I said, yes.

23 Q And you under-- but you understood at the time  
24 that those were the facts that the State had against  
25 you?

## PW - K. CORBITT - CROSS

1 A They never had the fact that I was even fighting.

2 Q Okay. Let's go back to your discussions with  
3 Mr. Truslow again. Did you ever volunteer to him  
4 the information about the knife?

5 A Yes, sir.

6 Q They said you'd been stabbed with a knife? Did  
7 you ever give him any other sort of invest-- did you  
8 give him any other leads, did you tell him to  
9 investigate anything else, did you give him any  
10 other witnesses to talk to?

11 A No, sir.

12 Q Do you remember, at the plea hearing do you  
13 remember telling the judge that you were satisfied  
14 with Mr. Truslow's representation?

15 A 'Cause I just got, I just, he was like -- what  
16 did he say, he said, uh, do you understand the plea  
17 and do you think Mr. Truslow did what he was  
18 supposed to do. At that time, yes, I thought he did  
19 what he supposed to do.

20 Q Okay. And you also remember telling the judge  
21 you didn't need anymore time to talk to him about  
22 anything, that you were ready to proceed with the  
23 plea right then?

24 A Yes, sir, I talked to him right before I took the  
25 plea.

## PW - K. CORBITT - CROSS

1 Q Okay.

2 MR. THOMAS: Beg the Court's indulgence.

3 THE COURT: Sure.

4 BY MR. THOMAS:

5 Q A couple of quick questions and I'll be done with  
6 you, Mr. Corbitt. Do you remember at the plea  
7 hearing waiving your constitutional right to jury  
8 trial, your right to confront any witnesses against  
9 you, you remember telling the judge you wanted to  
10 waive those rights?

11 A No, sir.

12 Q ---so you don't remember discussing with the  
13 judge at your plea hearing, he said you have the  
14 right to a jury trial, you don't remember talking  
15 about that with the judge?

16 A No, sir, tell you the truth I was drunk when I  
17 came to court.

18 Q Okay.

19 THE COURT: I'm sorry, what did you say?

20 THE WITNESS: I was drunk when I came to  
21 Court.

22 THE COURT: To plead guilty?

23 THE WITNESS: Yeah.

24 BY MR. THOMAS:

25 Q Do you remember the judge asking you if you were

## PW - K. CORBITT - REDIRECT

1 under the influence of any drugs or alcohol?

2 A Yeah, I remember that.

3 Q And what did you tell him?

4 A I told him no.

5 Q Okay. So you lied to the judge ---

6 A Yes, sir.

7 Q ---when you told him you weren't under the  
8 influence of anything?

9 MR. DIGGS: I object to that, Your Honor,  
10 on the basis that simply because he -- well.

11 THE COURT: Yeah, I understand.

12 MR. DIGGS: All right.

13 BY MR. THOMAS:

14 Q But you do remember when the judge asked you if  
15 you were pleading of your own free will freely and  
16 voluntarily, you remember saying yes to that?

17 A Yes, sir.

18 MR. THOMAS: That's all I have, Your  
19 Honor.

20 THE COURT: Okay, anything on redirect?

21 **REDIRECT EXAMINATION**

22 BY MR. DIGGS:

23 Q The rights you waived were those which you  
24 understood existed at that time; is that correct?

25 A At that time.

## PW - K. CORBITT - REDIRECT

1 Q And that's what you intended to waive at that  
2 time?

3 A Yes, sir.

4 Q Okay.

5 MR. DIGGS: That's all I have, Your Honor.

6 THE COURT: All right. Tell me again what  
7 the deal is with the 9-millimeter and 357. Are you  
8 saying that this victim was killed with a  
9 9-millimeter?

10 THE WITNESS: Yes, sir.

11 THE COURT: And you owned a 357?

12 THE WITNESS: Yes, sir.

13 THE COURT: But not a 9-millimeter?

14 THE WITNESS: Not a 9-millimeter.

15 THE COURT: Did you have a 9-millimeter  
16 with you at any time that night?

17 THE WITNESS: No, sir.

18 THE COURT: Did you tell your lawyer or  
19 anyone else that you didn't own the type gun that  
20 killed this victim?

21 THE WITNESS: Yes, sir.

22 THE COURT: You did? Okay, all right.

23 You can step down.

24 Okay. Yes, sir, you can call your next  
25 witness.

## RW - K. TRUSLOW - DIRECT

1 MR. DIGGS: Your Honor, I think that's all  
2 we're gonna call on behalf of the Applicant.

3 THE COURT: Okay. Have you -- the gun  
4 thing is confusing me. I mean, I don't -- well, let  
5 me wait till I hear what they say. All right, yes,  
6 sir.

7 MR. THOMAS: I'm gonna try to address  
8 that, Your Honor.

9 THE COURT: Okay.

10 MR. THOMAS: The State would call Kirk  
11 Truslow.

12 THE COURT: The gun thing and the alcohol  
13 thing is somewhat worrisome to me for what it's  
14 worth.

15 MR. DIGGS: Understandable, Your Honor.

16 THE CLERK OF COURT: Please raise your  
17 right hand, place your left hand on the Bible.

18 WHEREUPON,

19 **KIRK TRUSLOW,**  
20 having been duly sworn by the Clerk of Court,  
21 testified as follows:

22 THE WITNESS: Kirk Truslow, T-R-U-S-L-O-W.

23 **DIRECT EXAMINATION**

24 BY MR. THOMAS:

25 Q Thank you, Mr. Truslow. Just a little background

## RW - K. TRUSLOW - DIRECT

1 information. How long have you been practicing law?

2 A Twenty years.

3 Q And doing criminal law for that entire time or?

4 A Yes.

5 Q You were retained on this case.

6 A That's correct.

7 Q Could you briefly just kind of tell us sort of  
8 what the State's evidence was against the applicant?

9 A A big part of the State's case were confession,  
10 depending whether you want to call it confession or  
11 numerous interviews. One of the hurdles that we had  
12 were that Corbitt had given at least three  
13 interviews and they had changed each three times so  
14 we had to account for the changes. To make a long  
15 story short in summary, we started out with the  
16 victim having a weapon to then the victim not having  
17 a weapon, that he had a small knife that he didn't  
18 find threatening, that he threw at him. The  
19 evidence also consisted -- I went over with the  
20 solicitor -- ballistic issues and where the firearm  
21 bullets were found and they were found in Freestyle  
22 Park. And part of the interview also was Mr.  
23 Corbitt saying that after he threw a knife at him  
24 that he shot twice in the ground. They all started  
25 to run, and they started to fire at the victim as he

RW - K. TRUSLOW - DIRECT

1 was running. So they ran kind of in a semicircle  
2 around to the back of a fenced area to get over, and  
3 there are bullets that kind of trail where they were  
4 running missing until the victim was shot and back  
5 in the hip actually, the upper hip, which  
6 unfortunately traveled up the body. He had a number  
7 of eyewitnesses who were on the scene. And also  
8 bothersome was that apparently what I gathered and  
9 did share with Mr. Corbitt my concern was that  
10 eyewitnesses were beginning to paint a picture where  
11 there was initially a fight between the victim and  
12 JJ I think it was, and that Mr. Corbitt was  
13 attempting to insert himself into the fight and that  
14 some of the other people would pull Mr. Corbitt out  
15 of it, say, no, let them fight and kind of pull him  
16 back, he would kind of do the same thing. There was  
17 evidence as well of a -- and of course, we talked  
18 about the admissibility or not of this, but assuming  
19 that admissibility of it that there was Mr. Corbitt  
20 and the other individuals had robbed a high school  
21 student. They went to meet the high school student  
22 to purchase a 9-millimeter prior to this incident;  
23 and instead of purchasing it, it was robbed or taken  
24 without paying for it. The weapon that Mr. Corbitt  
25 said that he had was never recovered so, you know,

RW - K. TRUSLOW - DIRECT

1 he did talk to me. We talked about the fact that  
2 357 versus the 9-millimeter; however, apparently he  
3 had, in the third interview with police he told them  
4 that he had talked about the different guns involved  
5 and got rid of the gun because he thought it would  
6 help if they didn't have the murder weapon so we had  
7 we had some real damaging things to deal with.

8 Now I did talk to him about trial in the  
9 fact that if we're going to trial for murder, in my  
10 experience and I've tried murder cases, you may not  
11 be convicted of murder, you know. But I felt like  
12 with all the evidence we were looking at that we  
13 were looking at more of a voluntary manslaughter  
14 case. Even though they were gonna try it as a  
15 murder, in which case, you know, we went over the  
16 possible penalties for voluntary manslaughter up to  
17 30 years. So by the time we had talked about his  
18 age, some of the other factors that led into the  
19 plea decision actually had to do with the victim in  
20 the case. He was -- he had been involved in some  
21 things that may not be all that good either so I  
22 don't remember -- I don't think he had a violent  
23 record but he was involved in at least allegedly or  
24 had conviction for criminal activities in that  
25 neighborhood and there was also gang issues

## RW - K. TRUSLOW - DIRECT

1 involved. And that combined with his age and some  
2 other issues kind of got it to 15 years which is  
3 probably one of the -- I did recommend that to him.  
4 I thought that was a good resolution to his case  
5 'cause I thought if he came back short on murder and  
6 voluntary manslaughter he could get at least 15, if  
7 not 30 or 25 or 20. But I left that decision up to  
8 him. I mean, I told him that we could have a trial  
9 and I would absolutely give you the best trial that  
10 I could give you and I can't plead guilty for you.

11 Q Okay. And just sort of backing up a little bit.  
12 You -- how much times did you meet with him before  
13 trial?

14 A I would ---

15 Q Ball park number?

16 A I would say five, or five, maybe six. I know we  
17 met at his home one time as well but giving him the  
18 benefit of the doubt I would say five.

19 Q And through your summary of what the State's  
20 evidence was, did you get all that from -- did you  
21 file the standard Rule 5 Brady motions?

22 A Yeah, and they had -- they made a little easier  
23 with this. They put a lot of time into it so we had  
24 DVDs transcribed that were the interviews with all  
25 the different people they spoke with. Both people

RW - K. TRUSLOW - DIRECT

1 that were trying to figure out what happened, the  
2 Beach Ball Classic and how it got to the incident  
3 site in addition to the eyewitnesses and the people  
4 on the scene. I mean, there was some stuff to work  
5 with but it more went towards there it was murder or  
6 not. There were witnesses, at least one I can  
7 remember, that did not want to say that he shot the  
8 victim but he wouldn't say he did not shoot the  
9 victim. He just said I don't know why he did it or,  
10 you know, he was shooting at him, but I don't know,  
11 I didn't see him shoot him, stuff like that but  
12 there were -- there was enough in my mind to get  
13 convicted of voluntary manslaughter and in this day  
14 and age potentially murder. So when we got the plea  
15 all the way doing to 15, that's something that I  
16 brought him and his family in about to discuss and  
17 go over. And he'd been over the interviews; he read  
18 through them. And I think he had -- in fact, I  
19 think I had given him a copy to take with him to  
20 read over interviews.

21 Q So when you met with him, and so when you were  
22 discussing how, the possible outcomes of this case,  
23 did you discuss anything other than the murder and  
24 voluntary manslaughter as possible outcome?

25 A Well, early on maybe in the first two meetings,

RW - K. TRUSLOW - DIRECT

1 the story involving the knife though?

2 A Yeah, yeah. I will volunteer that I do not  
3 remember us, I do not remember looking at the cut on  
4 him for whatever that's worth. And I don't know why  
5 I do remember him telling me about a knife and but  
6 the interviews he had told police that he wasn't  
7 threatened by it and it was thrown at him. I do not  
8 recall him getting hit and that might just be  
9 because how much time has passed, but I do not  
10 remember looking at a wound on him. We did talk  
11 about the knife issue though in terms of  
12 self-defense.

13 Q Okay. And let's fast forward a little bit to the  
14 day of the plea. Did you sort of go through all  
15 this again with him before the plea or had you  
16 pretty much discussed everything you could discuss  
17 by then?

18 A No, I wanted to meet the day before because I  
19 didn't want to have any issues when we got here  
20 because I told him if we were not gonna do that then  
21 we just need to let them know when we get there  
22 we're not gonna do it. We don't need to get there  
23 in a murder case and start having a discussion  
24 whether you're going to plead guilty or not. So the  
25 day before the plea morning he came, I think his

RW - K. TRUSLOW - DIRECT

1 the dialogue between the two of us was that he  
2 didn't, he didn't do anything. So in that respect,  
3 and that was probably before all the discovery had  
4 come in which kind of then cleared up some issues.  
5 You know, I did, I did talk about some defenses.  
6 I'm not gonna tell you we had any extended talk  
7 about self-defense 'cause that wouldn't be true.  
8 That could have happened. I know I mentioned it but  
9 I'm not gonna say we talked extensively about it.  
10 It just deny seem to fit. I think in talking about  
11 the case as much as we did and me explaining  
12 self-defense that he got what we were talking about.  
13 I know we talked about the fact that it could have  
14 been somebody else that actually shot the victim,  
15 and I can remember I spent a long time on it 'cause  
16 that that was the route that I would have taken had  
17 we gone to trial was that it was kind of chaotic and  
18 that, you know, that maybe he got mad and maybe he  
19 shot the ground twice. Maybe he didn't, but you  
20 know, there's a lot of people out there in that  
21 neighborhood, a lot of people have guns, and you  
22 know, perhaps somebody on this side of the group had  
23 also fired at the others when they were running away  
24 and that could have been possible.

25 Q But you, I guess you did discuss his version of

## RW - K. TRUSLOW - DIRECT

1 parents came, at least his father as best as I  
2 recall. And we talked about the plea, it was the  
3 next day. It appeared to that's what he had chosen  
4 to do. When I got there, I met him that morning,  
5 that's what he was there to do.

6 Q And when you met him that morning did he seem to  
7 be under the influence of anything? He look -- did  
8 he seem drunk?

9 A Had he appeared to be impaired or intoxicated I  
10 probably would have brought that up. I mean, I  
11 wouldn't let somebody plead guilty drunk so I have  
12 no recollection of him appearing to be under the  
13 influence. If he says he is or was, I don't know.  
14 Some people can get away with it and not show it as  
15 much as others, but I don't recall thinking that or  
16 having that idea.

17 Q What would you have done if he had appeared to be  
18 intoxicated?

19 A I may have gone to the Solicitor and tried to  
20 come up with another excuse to move it to the next  
21 day. I certainly wouldn't have volunteered why but  
22 told him we need to do it tomorrow.

23 Q So when you met with him on the day of the plea  
24 he seemed prepared to plead guilty. He was ---

25 A Yeah.

## RW - K. TRUSLOW - CROSS

1 Q ---had his faculties about him? He understood  
2 what was going on?

3 A I've had cases where people backed out of pleas.  
4 I've had cases where they had more questions we had  
5 to postpone it or they were just nervous and knew  
6 what they wanted to do, we still had to talk a  
7 little bit before it actually happened. And we  
8 didn't have any issue like that.

9 MR. THOMAS: Beg the Court's indulgence  
10 one second.

11 THE COURT: Sure.

12 MR. THOMAS: Thank you, Mr. Truslow.  
13 Answer any questions Mr. Diggs has.

14 **CROSS-EXAMINATION**

15 BY MR. DIGGS:

16 Q Let me ask you if you can recall with any  
17 specificity the discussions you had about the knife.  
18 Can you tell us how those went and the extent of any  
19 details?

20 A I would say we talked about the knife in the  
21 context as it came in the discovery. That's where  
22 that conversation started, and it really didn't go  
23 past that with any new information from him. I  
24 mean, and in terms of the knife in general as it  
25 relates to self-defense, we did talk about that. We

## RW - K. TRUSLOW - CROSS

1 had talked about it because I was trying to  
2 determine early on we talked about self-defense  
3 because initially we thought the victim had a gun.  
4 So you know, we did talk about self-defense with  
5 that. We also talked about the fact that in a  
6 second interview he had mentioned that the victim  
7 didn't have a gun but he had said pass the strap to  
8 a friend of his, which apparently means give me your  
9 gun which would then put him in, you know,  
10 apprehension of being shot. So we talked about  
11 self-defense in that respect.

12           What I remember about the knife is that  
13 that was -- honestly to this day I'm not certain  
14 that I believe completely what happened with the  
15 knife or if the knife was involved because it was  
16 kind of the third of fourth story, and it went from  
17 pulling a knife and lunging at him to pulling the  
18 knife, it was a small knife not threatening to me  
19 and he threw it at me. So I mean, I don't think  
20 we -- to answer your question is we didn't talk a  
21 lot about that, about the knife.

22 Q Did he ever understand that the knife might have  
23 figured into this particular case in a way that  
24 would be favorable to him?

25 A I can't answer that for him. What I will say is

## RW - K. TRUSLOW - CROSS

1 that from my conversations if I, I mean, I would say  
2 that he did because we talked a lot about why he did  
3 what he did and him feeling threatened trying --  
4 because I thought we were going to have to try this  
5 case; I did not think it was going to be a 15 year  
6 plea offer. So we, you know, we were trying to  
7 figure out which way to go at trial. He did not  
8 want to plead guilty early on. I mean, he wanted a  
9 trial from the getgo; I will give him that. It was  
10 only when it got to that point and it was time to go  
11 to trial or we've gone from 25 or 20 down to 15 that  
12 kind of changed the playing field, I think, for him.

13 Q Now you went through -- tell us about what you  
14 thought the evidence showed in terms of chasing the  
15 victim around the park?

16 A Yeah.

17 Q Did Kendrix ever say he chased the victim around  
18 the park?

19 A No, I didn't mean to say he chased him around. I  
20 meant to say the projection of the firing of the  
21 weapon and where those bullets were located showed a  
22 pattern of, you know, shooting after a moving object  
23 until the fatal shot.

24 Q Did you ever have an expert look at it, somebody  
25 that would ---

## RW - K. TRUSLOW - CROSS

1 A No, did not get to that point. We relied on the  
2 State's evidence.

3 Q Theory that he was chasing?

4 A And photographs and ---

5 Q Okay.

6 A ---common sense.

7 Q All right. But the bottom line is Kendrix never  
8 said he shot at him and followed him as he ran  
9 around the park?

10 A Are you asking me whether Kendrix ---

11 Q Yes.

12 A ---said he shot this man?

13 Q Right, or shot at him?

14 A Just to refresh my memory, Your Honor, as far as  
15 attorney/client privilege in a PCR hearing.

16 THE COURT: Well, y'all approach a minute.  
17 (WHEREUPON, counsel approached the Bench  
18 for an off-the-record discussion.)

19 THE COURT: Just for the record I think  
20 you waived attorney/client privilege by filing the  
21 PCR; but let me just for the abundance of caution,  
22 Mr. Corbitt, do you understand that when you speak  
23 with an attorney that there is an inviolate  
24 privilege basically that unless there's very  
25 specific circumstances, your lawyer can't disclose

1 what you say to him. You understand that?

2 PETITIONER CORBITT: Yes, sir.

3 THE COURT: Now the parties agreed here  
4 once you file your PCR you are waiving your  
5 attorney/client privilege and what your former  
6 attorney is concerned about is answering a question  
7 that might violate that attorney/client privilege.  
8 I just want you to understand that I'm gonna let him  
9 answer unless you strongly object. And if you do,  
10 you need to talk to your lawyer about it right now.

11 (Attorney confers with Petitioner Corbitt.)

12 PETITIONER CORBITT: You can tell him to  
13 answer the question.

14 THE COURT: Pardon?

15 PETITIONER CORBITT: You can tell him to  
16 answer the question.

17 THE COURT: All right. So you understand  
18 you're waiving your right to attorney/client  
19 privilege?

20 PETITIONER CORBITT: Yes, sir.

21 THE COURT: Yes, sir, I think you're  
22 protected for the record.

23 THE WITNESS: All right. The answer to  
24 that question is that we did discuss, and he did  
25 tell me that he shot at the group. I don't

## RW - K. TRUSLOW - CROSS

1 specifically recall him saying, I shot Damian  
2 Pickett so...

3 BY MR. DIGGS:

4 Q Or shot at ---

5 A And that's actually -- and that's actually not  
6 different than, actually not think about it than the  
7 interview that he gave that he shot down when they  
8 started running off and then he started shooting at  
9 them. And ---

10 Q All right.

11 A And I took it to mean he did shoot at Damian  
12 Pickett, but he did not say I shot Damian Pickett.

13 Q Did he ever say he shot at him?

14 A Yeah, he shot at him.

15 Q Your testimony is that your client at that time  
16 stated to you that he did shoot at Damian Pickett?

17 A Let's be fair as possible.

18 Q Okay.

19 A More than one person ran to Damian Pickett so  
20 just to give him the benefit of the doubt that I'm  
21 being clear on what I heard, he shot at them  
22 including Damian Pickett so I'm not gonna say that  
23 he said he singled Damian Pickett out.

24 Q Did he ever tell you how many shots he fired to  
25 your recollection?

## RW - K. TRUSLOW - CROSS

1 A No, I don't recall that.

2 Q He did admit firing into the ground, did he tell  
3 you that?

4 A He did on one -- yeah, he did tell me that.

5 Q Did he tell you he fired into the ground and at  
6 the crowd?

7 A Yes.

8 Q Yeah.

9 A Now not necessarily at the same time but he has  
10 told me in our meetings that he did shoot down and  
11 there could have been ricochet bullets, something  
12 like that, that hit the guy and he had told me that  
13 he shot at them when they were running away.

14 Q Did he ever say that he when they were running  
15 away and he was shooting at them that he thought he  
16 hit one of them?

17 A Nope.

18 Q Did he ever indicate to you in any way that he  
19 knew someone had been shot and mortally wounded?

20 A Did he indicate that?

21 Q Yeah, and that evening. That we know later when  
22 you found out that was the case.

23 A Yeah, it indicated to me that he left town and  
24 went to the Longs Little River area and ---

25 Q When did he do that?

## RW - K. TRUSLOW - CROSS

1 A Immediately after.

2 Q Immediately after?

3 A Yeah. 'Cause he had ---

4 Q Are you aware of him receiving any information  
5 about this shooting before he left town?

6 A He could have. He could have before he left.

7 Q Do you know -- how did you come into the  
8 knowledge that he left town immediately?

9 A From him. Like I say, I mean, I'm not saying he  
10 didn't stop at a store, I mean. But within, you  
11 know, within -- I don't think he went to any other  
12 destination for any significant period of time. He  
13 went ---

14 Q Did he tell you why he was leaving town?

15 A Yes.

16 Q What was the reason?

17 A Mike Mike had, I think, disposed of the gun  
18 somewhere.

19 Q Repeat that for me.

20 A His friend Mike Mike had disposed of the weapon.

21 Q Okay. Now what weapon are we talking about  
22 there?

23 A Whichever weapon he used and hand to, gave to  
24 Mike Mike.

25 Q So we don't know?

## RW - K. TRUSLOW - CROSS

1 A Right.

2 Q We're totally speculating?

3 A Yeah, speculating on what weapon, right.

4 Q Yes?

5 A It was a 357 or 9-millimeter.

6 Q Well, we know it was a 9-millimeter killed the  
7 victim in the case?

8 A Yes.

9 Q Correct?

10 A Yes.

11 Q Do you have any evidence that Mr. Corbitt stole  
12 the 9-millimeter gun?

13 A The evidence I had was in the file so I have no  
14 personal knowledge of that; but that was reported  
15 and investigated, and it was some kid in high school  
16 who was trying to sell a 9- millimeter.

17 Q Okay.

18 A They met in the mall parking lot.

19 Q Do you have any evidence that showed that  
20 Mr. Corbitt purchased a 9-millimeter?

21 A No, not that he purchased one.

22 Q That he had possession of one?

23 A I don't recall if that evidence showed which of  
24 the three took possession from the kid of the  
25 9-millimeter so it might not have been him.

## RW - K. TRUSLOW - CROSS

1 Q All right. Certainly Kendrix never said that he  
2 had possession of a 9-millimeter; is that correct?

3 A I don't recall him saying that.

4 Q Okay. Did you ever discuss with him the law  
5 regarding involuntary manslaughter?

6 A I don't specifically recall that. I recall  
7 talking about how he could have been involved in  
8 this and not be criminally liable for it. The  
9 self-defense issues, murder, manslaughter, I do not  
10 recall having specific involuntary manslaughter  
11 conversation.

12 Q Is it your testimony that self-defense did fit or  
13 didn't fit, or where does it fall?

14 A Well if, I mean -- well, I'll put it this way. I  
15 mean, it could always fit. I mean, you can bring it  
16 and see if it works. I didn't think it was that  
17 strong because there was evidence that he was  
18 getting in on the fighting, okay, and he's kind of  
19 bringing on some of the stuff going on. We talked  
20 more to the line of a better argument was that he  
21 did not fire the weapon, he did not shoot anybody,  
22 was the better defense.

23 Q All right. I want to focus on now specifically  
24 on what he said and not necessarily what other  
25 people might have said. For example, he might have

## RW - K. TRUSLOW - CROSS

1 been there not fighting. What I want to talk about  
2 is what you specifically discussed with him.

3 A Right.

4 Q And whether or not that included self-defense  
5 based on someone running at him with a knife and  
6 actually cutting him on the arm and firing shots  
7 into the ground that might have ricocheted and caused  
8 the death of this victim. I want you to talk to us  
9 about, if you can, about those conversations that  
10 took place, if they did, and whether or not you felt  
11 like he was given an opportunity to make a decision  
12 about whether or not to rely on those types of  
13 defenses?

14 A My answer is yes. And, you know, when I -- when  
15 you're talking about my conversation with him they  
16 certainly include what other people said because we  
17 were going over what the evidence was gonna be  
18 presented against him.

19 Q Well, I know. What I want to do, I don't want to  
20 talk about what the evidence might have been  
21 elsewhere in the file.

22 A Okay.

23 Q From what other witnesses. I want to talk about  
24 what Mr. Corbitt was telling you what happened?

25 A Uh-huh.

## RW - K. TRUSLOW - CROSS

1 Q And what you were telling him based on what his  
2 explanation of the facts was, okay. Did you talk to  
3 him about the possibility of involuntary  
4 manslaughter?

5 A No, not that I recall.

6 Q Do you think involuntary manslaughter could be  
7 supported under the facts of this case presupposing  
8 firing shots into the ground that would ricochet up  
9 and hit a person?

10 A I don't. I mean, I would not go forward on that.  
11 If you are shooting at people and instead of point  
12 blank ---

13 Q I didn't say ---

14 A ---shooting them it ricochets and hits him, I  
15 mean, I think you're in trouble then.

16 Q All right. But regardless of what your opinion  
17 is about that ---

18 A Right.

19 Q ---you're saying as ---

20 A You're asking my opinion, right?

21 Q I'm asking you as a fact you did not discuss  
22 involuntary manslaughter with him?

23 A No.

24 Q Okay. We're ---

25 A Right, but then you asked me if that would fit or

## RW - K. TRUSLOW - CROSS

1 if I thought that that would, right?

2 Q I don't recall. I know I asked you that with  
3 respect to self-defense.

4 A Okay.

5 Q But summarizing, let me get it clear in my mind,  
6 you don't believe self-defense was possible jury  
7 instruction in this case, or you do?

8 A I think that if we went that route in trial that  
9 he -- that we probably could have got a self-defense  
10 instruction if that's the defense we would have  
11 brought. I think he could have got that. Based  
12 upon if he would have testified in support of that I  
13 think he could have got that instruction.

14 Q You did not discuss with him potential  
15 involuntary manslaughter verdict?

16 A I do not recall discussing that with him.

17 Q All right. But you did discuss voluntary  
18 manslaughter?

19 A Yes.

20 Q All right.

21 MR. DIGGS: I think that's all I have,  
22 Your Honor.

23 THE COURT: Okay. Thank you very much,  
24 Mr. Diggs.

25 MR. THOMAS: Your Honor.

## RW - K. TRUSLOW - REDIRECT

1 THE COURT: Brief redirect examination.

2 **REDIRECT EXAMINATION**

3 BY MR. THOMAS:

4 Q Mr. Truslow, you said the info y'all talked about  
5 the knife after it came up in discovery, did you  
6 review the police reports in discovery? Was there  
7 anywhere in that where he had told the police that  
8 he had injury with a knife?

9 A I have to say I do not remember saying that.

10 Q And did you ever review, did you ever find any  
11 reports or medical files or photographs of his  
12 injury?

13 A No.

14 Q When you say -- you say when he admitted to  
15 shooting at the ground and at the crowd as they were  
16 running away, was that consistent with sort of the  
17 injuries that you saw that the victim had sustained?

18 A It could be consistent with that.

19 Q What was your opinion on the -- how the Solicitor  
20 would have tried to use the information about the  
21 9-millimeter, and did you think that was something  
22 that was going to come up at trial?

23 A Yes, I thought that -- well, one, it would, you  
24 know, be Mr. Corbitt having to take the stand saying  
25 I didn't have a 9-millimeter 'cause the weapon was

## RW - K. TRUSLOW - REDIRECT

1 not located. And then there was an issue that they  
2 uncovered that alleged that Mr. Corbitt and two  
3 others had taken a 9-millimeter from an individual  
4 prior to that.

5 Q And you said you guys did not discuss involuntary  
6 manslaughter. If you had gone to trial and  
7 presented the facts, sort of presented his  
8 testimony, do you think you would have been entitled  
9 to an involuntary manslaughter charge?

10 A Up to the point that we were working on his case  
11 I just, I don't know. It would have depended on --  
12 we were talking about which way to go for trial when  
13 it was determined that we were not going to go to  
14 trial. We, you know, facts could have been  
15 developed or things could have happened at trial  
16 that then would lead to asking for involuntary  
17 manslaughter charge, but we were not starting out  
18 that way.

19 MR. THOMAS: Beg the Court's indulgence.  
20 That's all I have thank you.

21 MR. DIGGS: One followup, Your Honor, if I  
22 may.

23 THE COURT: All right.

24 **RECROSS-EXAMINATION**

25 BY MR. DIGGS:

## RW - K. TRUSLOW - RECROSS

1 Q Mr. Truslow, with respect to you mentioned my  
2 client obtaining a 9-millimeter through someone.  
3 Are you sure about the size of that weapon? Could  
4 it have been a 370?

5 A I just went over my notes and what I had, and I  
6 have 9-millimeter.

7 Q You have 9 millimeter in your notes?

8 A Yeah.

9 Q Do you remember where you got that from?

10 A It would have been through the discovery or one  
11 of the disks, one of the interviews, perhaps  
12 interview with the high school kid would be my  
13 guess.

14 Q All right.

15 MR. DIGGS: That's all I have, Your Honor.

16 THE COURT: Okay.

17 MR. THOMAS: Thank you.

18 THE COURT: Thank you, sir. You can step  
19 down.

20 MR. THOMAS: Your Honor, that's all from  
21 the State.

22 THE COURT: All right. Anything else from  
23 the plaintiff?

24 MR. DIGGS: No, Your Honor.

25 THE COURT: All right. Let me read

1 through the transcript. I'll let you know something  
2 before I leave this week.

3  
4 \* \* \* END OF REQUESTED TRANSCRIPT OF RECORD \* \* \*  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

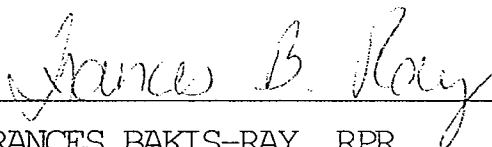
## C E R T I F I C A T E   O F   R E P O R T E R

STATE OF SOUTH CAROLINA )  
COUNTY OF FLORENCE        )

I, FRANCES BAKIS-RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Twelfth Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 10th day of January, 2014.

  
FRANCES BAKIS-RAY, RPR

STATE OF SOUTH CAROLINA )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Kendrix Corbitt, # 3486341, )

Case No. 2012-CP-26-3860

Applicant, )

v. )

**ORDER OF DISMISSAL**

State of South Carolina, )

Respondent. )

HORRY COUNTY  
13 OCT - 1 PM 1:48  
CLERK OF COURT  
WILLIAM I. DIGGS -WARD

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed May 15, 2012. Respondent made its Return on July 19, 2012. The Court convened an evidentiary hearing into the matter on August 26, 2013, at the Horry County Courthouse. Applicant was present at the hearing and represented by William I. Diggs, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General’s Office, represented Respondent.

Applicant testified on his own behalf at the PCR hearing. Applicant’s plea counsel, T. Kirk Truslow, Esquire, also testified. The Court had before it a copy of the plea transcript, the records of the Horry County Clerk of Court, Applicant’s records from the South Carolina Department of Corrections, the application for post-conviction relief, and the return.

**I. PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Horry County Clerk of Court. In October 2011, the Horry County Grand Jury indicted Applicant for murder (2011-GS-26-03888). He was represented by T. Kirk Truslow, Esquire (“plea counsel”). On November 10, 2011, Applicant entered a

80

negotiated plea to voluntary manslaughter. The Honorable Thomas W. Cooper, Jr., sentenced Applicant to confinement for a period of fifteen (15) years. Applicant did not appeal his plea or sentence.

## **II. ALLEGATIONS**

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

1. "Applicant received the ineffective assistance of counsel at his guilty plea proceeding..."
  - a. "[T]rial counsel never discussed [evidence of a knife cut on Applicant's arm] with the applicant even though the evidence forms the basis for a plea of self defense ..."
  - b. "Trial counsel never discussed with the applicant the possibility that the applicant was criminally negligent in the firing of his weapon and was therefore guilty of only involuntary manslaughter."

### 2. Newly and/or after discovered evidence

At the PCR hearing, the Applicant proceeded on only the allegations of ineffective assistance of plea counsel for failure to investigate the theory of self defense and for failure to advise of possible defenses or lesser included offenses.

## **III. SUMMARY OF TESTIMONY**

Applicant testified the underlying crime occurred on December 31, 2010, when he was eighteen years of age. On the night in question, Applicant went to a local basketball tournament with some friends. Applicant testified he arrived at the tournament at 9:30 PM and left around 11:00 PM. While there, a fight broke out among various individuals in attendance. Applicant

testified his cousin got into a fight with the victim in this case. The group then went to a nearby park, where the fight resumed. Applicant testified he tried to break up the fight when the victim pulled a knife on him. Applicant testified the victim lunged at him with the knife and cut his arm. Applicant then testified that, in response, he fired a gun into the ground two times while running away. Applicant also testified the crowd scattered and he heard other shots fired. Applicant states he used a .357 caliber handgun the night of the shooting. He alleged he was not aiming for the victim and did not realize he shot someone until the police questioned him.

Applicant further testified he only recalled meeting with plea counsel two or three times. He could not remember if they discussed any possible defenses to the charge. He stated plea counsel did not discuss the knife wound Applicant alleges he sustained just prior to discharging his weapon. He stated they never discussed self-defense or the lesser included charge of involuntary manslaughter. Applicant testified plea counsel never discussed any possible outcomes to trial other than murder and voluntary manslaughter. Applicant further testified that had he known of the availability of self-defense or involuntary manslaughter, such knowledge would have affected his decision to plea. Applicant also testified he did not recall discussing with plea counsel the fact the victim was shot with a nine-millimeter caliber handgun. However, Applicant testified he did not give plea counsel any potential leads to investigate. He further testified that he did not recall reviewing discovery with plea counsel or discussing any possible defenses to the charge. They did discuss the State's plea offer, and plea counsel informed him of the benefits of accepting the plea versus the risks of going to trial. Applicant testified it was his decision to ultimately plead guilty.

On cross-examination, Applicant testified he did not agree with the State's version of events as recited at his plea hearing. Applicant retracted this statement after reviewing the plea transcript. Applicant further alleged he did not remember telling the plea judge he was pleading freely and voluntarily. Applicant was able to recall this statement after reviewing the plea transcript. Applicant testified the reason he could not remember the plea colloquy was because he was drunk the morning of his plea hearing. However, Applicant did recall and admit to telling the plea judge that he was not under the influence of any drugs or alcohol.

Plea counsel testified he met with Applicant five or six times after being retained as counsel, with one meeting held at Applicant's home. Plea counsel testified Applicant initially said he did not fire a weapon during the fight. However, Applicant's story changed after plea counsel reviewed with him the State's responses to plea counsel's Rule 5/Brady motion. The State provided plea counsel with DVDs of interviews police conducted with Applicant. In the first interview, Applicant alleged the victim had a weapon. In the second interview, Applicant stated the victim had a small knife and threw it at Applicant. In a third interview, Applicant refers to getting rid of the alleged murder weapon. One of the interviews also included Applicant stating that he was not threatened by the knife. Plea counsel testified that Applicant admitted to firing his weapon after reviewing the discovery materials with plea counsel. Plea counsel also testified the State's discovery response included witness statements and ballistics reports. Plea counsel indicated the ballistics reports shows two shots fired into the ground and then a trail of bullets in an arc where the victim would have been running when shot. Plea counsel also testified the discovery indicated Applicant was suspected of having robbed a high

school student of a nine-millimeter handgun at some time just prior to the shooting. Plea counsel believed he would have been unsuccessful in having the evidence of Applicant's possession of a nine-millimeter handgun excluded at trial. Furthermore, plea counsel did not recall seeing anything in the discovery materials regarding Applicant's alleged knife wound. However, he testified he did discuss the wound with Applicant and felt that it was consistent with the allegation the victim attacked Applicant.

Plea counsel testified Applicant at first indicated he wanted to go to trial. Plea counsel explained to Applicant that he though the possibility of being convicted of murder was low. However, he told Applicant that a guilty verdict on voluntary manslaughter was very likely. Plea counsel testified he discussed self-defense with Applicant, but that the trial strategy would have been to deny Applicant was the shooter and place blame on an unknown third party.

Plea counsel testified he engaged in negotiations with the State that resulted in an offer of fifteen years for manslaughter. He communicated this offer to Applicant, who made the ultimate decision to accept the offer.

Plea counsel again met with Applicant the morning of the plea. Plea counsel testified he did not detect alcohol on Applicant at that time. He further testified that Applicant did not seem impaired or under the influence. Plea counsel stated he would have not allowed the plea to go forward had he thought Applicant was impaired or not able to proceed.

On cross-examination, plea counsel testified he found Applicant's story about the knife unbelievable. He further testified Applicant eventually admitted to firing his weapon into the group of fleeing people in the park. In light of this admission and the eyewitness testimony, plea

counsel chose not to retain an expert to review the ballistic evidence. Plea counsel also testified Applicant admitted he fled town after having an acquaintance dispose of the handgun. Applicant never admitted to possessing the nine-millimeter handgun used in the killing, but plea counsel stated that Applicant would have to take the stand to refute the State's evidence that he obtained a nine-millimeter handgun in a robbery. Plea counsel testified he told Applicant self-defense was likely not a viable theory, but he would have asked for a self-defense charge at trial. He further testified he would not have asked for an involuntary manslaughter charge because Applicant admitted to shooting into the fleeing crowd.

#### **IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. The Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. The Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003):

##### **A. Ineffective Assistance of Plea Counsel**

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be

relied upon as having produced a just result." Id. at 442, 334 S.E.2d at 814 (citing Strickland v. Washington, 466 U.S. 668 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). Courts presume counsel 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 in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985). Below are the Court's findings in regards to each of Applicant's allegations of ineffective assistance of plea counsel.

The Court finds Applicant's allegation he was denied effective assistance of counsel because of plea counsel's failure to investigate is without merit. Failure to conduct an independent investigation is not *per se* ineffective assistance of counsel, especially where an investigation would not have uncovered any helpful information. See Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998). Here, Applicant has failed to demonstrate that plea counsel could have further investigated the allegation that the victim had a knife prior to the shooting. Specifically, this Court finds that Counsel's testimony is very credible and Applicant's testimony is not credible. Applicant and plea counsel discussed the cut on Applicant's arm. However, Applicant admitted to not providing plea counsel with any leads to investigate in regards to the allegation that the victim attacked Applicant. Furthermore, plea counsel testified that Applicant admitted in a police interview that he was not threatened by the knife. In plea counsel's opinion, Applicant's story about the victim's use of the knife was not a believable story. Thus, plea counsel correctly believed the cut applicant allegedly suffered did not support a theory of self-defense. Furthermore, Applicant provided no testimony as to what further investigation would have uncovered in regards to his self-defense claim. See Jackson v. State, 329 S.C. 345, 349, 495 S.E.2d 768, 770 (1998) (citing Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995)). Therefore, the court finds that plea counsel has articulated a valid reason for not further pursuing the allegation that victim attacked Applicant with a knife. Thus, plea counsel was not deficient. See Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) ("Where, as here, counsel articulates a valid reason for employing certain strategy, such conduct will not be

deemed ineffective assistance of counsel.” (citing Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992))).

Additionally, the Court finds Applicant's allegation of ineffective assistance of counsel because of plea counsel's alleged failure to advise of possible defenses and lesser-included offenses is likewise without merit. Counsel testified he discussed self-defense with Applicant. The Court finds plea counsel's testimony on this point to be credible, and Applicant's to be not credible. Plea counsel further testified that he had no reason to discuss involuntary manslaughter because Applicant admitted to firing his weapon into the fleeing crowd. Therefore, plea counsel was under no obligation to discuss involuntary manslaughter as a lesser included defense. See Arnette v. State, 306 S.C. 556, 557, 413 S.E.2d 803, 804 (1992) (counsel not ineffective for failing to advise of potential defense where no evidence exists to support the defense). Similarly, plea counsel did not discuss involuntary manslaughter because he would not have been able to ask for it at trial. Therefore, plea counsel articulated a valid reason for not advising Applicant of the possibility of involuntary manslaughter. Stokes, 308 S.C. at 548, 419 S.E.2d at 779. Thus, plea counsel was not deficient.

Furthermore, plea counsel provided competent representation in light of the overwhelming evidence against Applicant. Several witnesses gave statements implicating Applicant as having fired shots into the crowd in which the victim was running. Applicant also admits to firing his weapon in a taped interview with the police. The State had evidence Applicant possessed a nine-millimeter handgun at the time of the shooting. Applicant also fled immediately after the shooting. In light of this evidence, plea counsel was correct when he

advised Applicant that a conviction for voluntary manslaughter was highly probable. Therefore, the Court does not agree with Applicant's bare assertion that a further investigation or discussion of possible defenses and lesser included offenses would have affected his decision to plead guilty. See Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009) (applicant must show "something that would have affected counsel's advice to [the applicant] to accept the plea bargain offered or that would have caused [the applicant] to decline to accept it").

### **B. All Other Allegations**

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, the Court finds Applicant failed to present sufficient evidence regarding such allegations.<sup>1</sup> Accordingly, the Court finds Applicant has abandoned any such allegations.

### **V. CONCLUSION**

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

---


<sup>1</sup> Although not raised as an allegation, the Court would also find that Applicant's plea was freely, willingly, knowingly, and voluntarily made. Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 421 (2000) ("To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him." (citing Boykin v. Alabama, 395 U.S. 238 (1969))). Plea counsel credibly testified he discussed the plea in detail with Applicant prior to the plea date. Applicant's unsubstantiated allegation that he was drunk at the time of his plea would not leave him incapable of understanding the consequences of pleading guilty to voluntary manslaughter. Cf. State v. Saxon, 261 S.C. 523, 529, 201 S.E.2d 114, 117 (1973) (holding that intoxication at the time a statement is made does not necessarily render a defendant incapable of comprehending the meaning and effect of his words). The Court finds especially credible plea counsel's testimony that he would not have allowed the plea to go forward had he suspected Applicant was intoxicated.

The Court notes that Applicant must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on the applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED THAT:**

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

AND IT IS SO ORDERED this 23 day of September, 2013.

  
THE HONORABLE J. CORDELL MADDOX, JR.  
Presiding Judge  
Fifteenth Judicial Circuit

Anderson, South Carolina

WITNESSES

V Dorio Myrtle Beach Police Department

*R* DOCKET NO. 2011-GS-26-03888

The State of South Carolina

County of Horry

J. Scott Hucks

11H00083

COURT OF GENERAL SESSIONS

October, 2011 TERM

ARREST WARRANT NUMBER

M348421

CDR: 0116 16-03-0010, 0020

DOA: 1/1/2011

ACTION OF GRAND JURY

~~TRIP~~

Kendrix Deon Corbitt  
B/ M  
1206 Washington St  
Myrtle Beach, SC 29577-3350  
DOB: 1992-08-21  
SSN: 247916799

ATTORNEY: Truslow, T. Kirk

*Boards Case*  
Foreperson of Grand Jury *Case* OCT 27 2011

Date:

VERDICT

Indictment for  
MURDER

*ORIGINAL*

J. Gregory Hembree, Solicitor

Foreperson of Petit Jury

Date:



STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Horry
STATE VS.
Kendrix Deon Corbitt

INDICTMENT/CASE#: 2011GS2603888
A/W#: M348421
Date of Offense: 12/31/2010
S.C. Code §: 16-03-0010, 0020
CDR Code #: 0116

Race: BLACK Sex: M Age: 19
DOB: 08-21-1992 SS#:
Address: Washington St
City, State, Zip: Myrtle Beach, SC 29577-3350
DL#: 101616190 SID#:

SENTENCE SHEET

15715

\*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was
TO: Voluntary Manslaughter (0-30)

CONVICTED OF or PLEADS

in violation of § 16-03-0050 of the S.C. Code of Laws, bearing CDR Code # 0217
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS
Mandatory GPS(CSC) §17-25-45 w/minor 1st or Lewd Act

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

ATTEST: Huck, J. Scott SCB76948 SC Bar#
Kendrix Corbitt Defendant
Attorney for Defendant 66465 SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 15 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable\*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on.
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 P.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to share housing, possess or control a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION:
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/F beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ 25.00 beginning 12/10/26
\$ paid to Public Defender Fund
Other:

Payment Terms:
Set by SCDPPPS

Recipient:

Table with 2 columns: Description and Amount. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 17.9 (Public Def Prob) \$500, § 14-1-217 (Law Enforcement Training) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SC CJA Surcharge) \$5, 3% to County (if paid in installments) \$3.90, TOTAL \$133.90

Appointed PD or appointed other counsel.
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/Deputy Clerk: Melarney Higgins - Hard
Court Reporter: Daxette Parks

Presiding Judge: [Signature]
Judge Code: 054
Sentence Date: 11/10/11

ARREST WARRANT

M-348421

STATE OF SOUTH CAROLINA  
County/  Municipality of

Myrtle Beach

THE STATE 01-10-105164  
against

Kendrix Deon Corbitt

Address: Washington St

Myrtle Beach, SC 29577-3350

Phone: Sex M Race: B Height: 6 SSN: Weight: 195

DL State: SC DL #: 101616190

DOB: 8/21/1992 Agency ORI #: SC0260600

Prosecuting Agency: Myrtle Beach Police Department

Prosecuting Officer: D Pieterse - 5367

Offense: Murder / Murder

Offense Code: 0116

Code/Ordinance Sec: 16-03-0010, 0020

This warrant is CERTIFIED FOR SERVICE in the County/ Municipality of

is to be arrested and brought before me to be dealt with according to the law. The accused (L.S.)

Signature of Judge

RETURN

A copy of this arrest warrant was delivered to defendant Kendrix Deon Corbitt on 04/01/2011

Goldstein 416  
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions  
PO Box 677  
1301 2nd Avenue  
Conway, SC 29528

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

County/  Municipality of

Myrtle Beach

Personally appeared before me the affiant being duly sworn deposes and says that defendant Kendrix Deon Corbitt did within this county and state on or about 12/31/2010 State of South Carolina (or ordinance of  County/  Municipality of Myrtle Beach in the following particulars:  
DESCRIPTION OF OFFENSE Murder / Murder

DESCRIPTION OF OFFENSE Murder / Murder

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

On 12/31/10 at 0054hrs Myrtle Beach Police Officers responded to 1044 Futrell Dr. Myrtle Beach, SC in reference to a complaint of a deceased person. Investigation led to the discovery that the deceased had died as the result of being shot. Further investigation into the incident led to identifying the defendant as a suspect. Post Miranda, the Defendant gave statements against his own penal interest admitting that he shot the victim after an altercation with him. In that the Defendant killed a person with malice aforethought, there is probable cause to believe that the Defendant committed the offense of Murder, a violation of SC Code of Law 16-3-10.

Signature of Affiant

STATE OF SOUTH CAROLINA  
County/  Municipality of

Myrtle Beach

Affiant's Address 1101 Oak Street

Affiant's Telephone (843)918-1382

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on or about 12/31/2010 defendant Kendrix Deon Corbitt did violate the criminal laws of the State of South Carolina (or ordinance of  County/  Municipality of Myrtle Beach) as set forth below:

DESCRIPTION OF OFFENSE: Murder / Murder

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable. Sworn to and subscribed before me on 04/01/2011

DeWitt  
Signature of Issuing Judge  
Judge Code: 6841

Judge's Address 1101 Oak Street  
Myrtle Beach, SC 29577-

Judge's Telephone

Issuing Court:  Magistrate  Municipal  Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 06/06/12  
OMCOMITA RELEASE DATE SCREEN C051123

SCDC# > 348641 LOC: LEE  
CORBITT, KENDRIX DEON SCDC CLASSIFICATION...: VIOLENT  
OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY...: N  
SEXUAL PREDATOR...: NOT APP  
DNA STATUS...: COMPLETED  
GPS REQUIREMENT...: N  
PREA DECISION...:

CURRENT SENTENCE: 015-00-000 CONSECUTIVE SENTENCE ...: N  
015-00-000 CURRENT SENT START DATE: 08/30/2011

PROJECTED COMPLETION DATES  
MAXOUT DATE .....: 04/30/2025 CURRENT EWC ..: NOT CURRENTLY EARNING EWC  
YOA SIX YEAR DATE: / / CURRENT EEC ..: NOT CURRENTLY EARNING EEC  
INITIAL PAROLE DATE: 00/00/0000 NEXT PAROLE HEARING DATE: 00/00/0000

TOTAL GT DAYS EARNED .....: 000021 LABOR CREW/WORK PROG DATE: 99/99/9999  
TOTAL EARNED WORK CREDITS ...: 000000 LABOR CREW DISQ REASON:  
TOTAL EDUCATION CREDITS ....: 000000 DRUG DISC W/IN 36 MONTHS  
TOTAL EXTRA EARNED CREDITS ..: 000 SUPERVISED REENTRY DATE...: 00/00/00  
TOTAL SERVICE TIME EARNED ...: 000280 ISS.....:

PFKEYS: 5: HISTORY OF DATE CHANGES

---

4-© 1 Sess-1 167.7.50.33 SCDC1226 3/11

95

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RECORD SUMMARY REPORT DATED 06/06/12

C0511

RBITT, KENDRIX DEON FBI # 640560KD6 SID# SC01980168 SCDC # 348641

OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE

INSTITUTION ...: LEE CORR INST

DORM.....: DAR2137B

SECURITY/CUST.: 3 MINIMUM IN

RACE....:B SEX...:M

CORR INCARC SENT...: 15 YRS 0 MOS 0 DYS

PROJ MAXOUT DATE: 04/30/2025

CENTRAL MONITORING.: YES

PROJ PAROLE DATE: 00/00/0000

SOCIAL SECURITY #...:247916799

EWC JOB...: NO CURRENT JOB

EDUC PGM.: NO CURR EDUC PROGRAM

CURRENT PROGRAM...: NO CURRENT PROGRAM

EWC LEVEL: 0 EEC LEVEL:

AGE...: 19 DATE OF BIRTH...: 8/21/92

ASSIGNMENT...: GENERAL DETAIL UNEM

PREVIOUS NUMBERS:

\*\* NO PREVIOUS NUMBERS \*\*

CURRENT OFFENSES	SENTENCE YRS MOS DYS COUNTY	SENTENCE START V/NV CATEGORY
VOLUNTARY MANSLAUGHTER	15 0 0 Horry	8/30/2011 V 4

CRIMINAL COMMITMENTS OVER 90 DAYS:

\*MISSING PRIORS DATA\*

DETAINERS (HOLD, WANTED, NOTIFY):

\*NO DETAINERS\*

\*NO DETAINERS\*

ESCAPES:

\*NO ESCAPE HISTORY\*

CRIMINAL CHARGES:

\*NO CRIMINAL CHARGES WHILE IN CUSTODY\*

\*NO CRIMINAL CHARGES HISTORY\*

ASSAULTIVE DISCIPLINARIES:

\*NO ASSAULTIVE DISCIPLINARY HISTORY\*

NON-ASSAULTIVE DISCIPLINARIES:

4/30/12 OUT OF PLACE	CONVICTED	ADMIN
4/30/12 DISRESPECT	CONVICTED	ADMIN
4/30/12 REFUSING OR FAILING OBEY	CONVICTED	ADMIN
4/27/12 OUT OF PLACE	CONVICTED	ADMIN
4/27/12 REFUSING OR FAILING OBEY	CONVICTED	ADMIN
4/20/12 USE, POSS NARC, MARIJ, UNAU	CONVICTED	MAJOR
4/20/12 I/M UNDER INFLUENCE/POSS		OTHER
4/20/12 I/M UNDER INFLUENCE/POSS		OTHER
4/12/12 I/M UNDER INFLUENCE/POSS	CONVICTED	ADMIN

HISTORY OF MOVEMENTS:

1/24/12 LEE	INCARCERATED	ADMINISTRATIVE
11/16/11 KIRKLAND	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
NO WORK ASSIGNMENTS *				

HISTORY OF EARNED EDUCATION CREDITS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON
NO SCHOOL ASSIGNMENTS*			

\*\*\*\*\* END OF REPORT \*\*\*\*\*

96

COUNTY OF Horry  
STATE VS.

Kendrix Deon Corbitt

AKA: \_\_\_\_\_

Race: BLACK Sex: M Age: 19

DOB: 08-21-1992 SS#: \_\_\_\_\_

Address: /ashington St

City, State, Zip: Myrtle Beach, SC 29577-3350

DL#: 101616190 SID#: \_\_\_\_\_

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

In disposition of the said indictment comes now the Defendant who was  
TO: Voluntary Manslaughter (0-30)

INDICTMENT/CASE#: 2011GS2603888

A/W#: M348421

Date of Offense: 12/31/2010

S.C. Code § : 16-03-0010, 0020

CDR Code #: 0116

SENTENCE SHEET 15715

CONVICTED OF or  PLEADS

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

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

The charge is:  As Indicted,  Lesser Included Offense.  Defendant Waives Presentment to Grand Jury. \_\_\_\_\_ (defendant's initials)

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

ATTEST: \_\_\_\_\_ SCB76948 x Kendrix Corbitt T. K. [Signature] 66465  
Hucks, J. Scott SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,  
for a determinate term of 15 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment  
of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on: \_\_\_\_\_  
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.  
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-30 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered PTTIP \_\_\_\_\_  
Total \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
Payment Terms: \_\_\_\_\_  
 Set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforcement Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

\_\_\_\_\_ days/hours Public Service Employment  
Obtain GED   
Attend Voc. Rehab. or Job Corp. \_\_\_\_\_  
May serve W/E beginning \_\_\_\_\_  
Substance Abuse Counseling   
Random Drug/Alcohol testing   
Fine may be pd. in equal, consecutive weekly/monthly  
pmts. of \$ 25.00 beginning 12/10/26  
\$ \_\_\_\_\_ paid to Public Defender Fund  
Other: \_\_\_\_\_

Appointed PD or appointed other counsel,  
§ 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Melanie Higgins - Hard  
Reporter: Darvette Hanks

Providing Judge: [Signature]  
Judge Code: 057  
Sentence Date: 11/10/11

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

---

APPEAL FROM Horry COUNTY  
Court of Common Pleas  
J. Cordell Maddox, Jr., Circuit Court Judge

---

Case No. 2012-CP-26-3860

---

Kendrix Corbitt # 348641,

Appellant.

v.

The State of South Carolina,

Respondent.

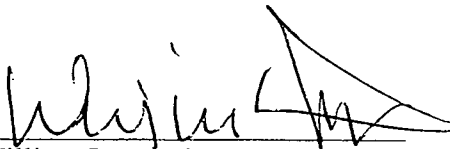
---

**NOTICE OF APPEAL**

---

Kendrix Corbitt appeals the Order Denying and Dismissing the Post-Conviction Relief Application with Prejudice that was entered on September 23, 2013, filed with the Court on October 1, 2013, and written notice of which was received by the undersigned counsel for the Appellant on October 15, 2013.

This 31 day of October, 2013



William Isaac Diggs  
ATTORNEY AT LAW  
1700 Oak Street, Suite D  
Myrtle Beach, SC 29577  
843-626-4243

**ATTORNEY FOR THE APPELLANT**

Other Counsel of Record:

Joshua L. Thomas, Esquire  
Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211-1549  
(803) 734-3970

**ATTORNEY FOR RESPONDENT**

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

---

APPEAL FROM HORRY COUNTY  
Court of Common Pleas  
J. Cordell Maddox, Jr., Circuit Court Judge

---

Case No. 2012-CP-26-3860

---

Kendrix Corbitt # 348641,

Appellant.

v.

The State of South Carolina,

Respondent.

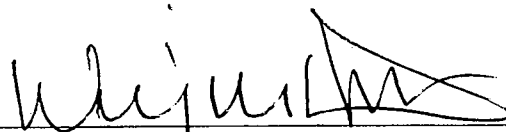
---

**CERTIFICATE OF SERVICE**

---

This is to certify that I have this 31 day of October, 2013, deposited one copy of the Notice on Appeal in the U.S. Postal Service with proper postage prepaid and addressed to opposing counsel at the following address:

Joshua L. Thomas, Esquire  
Assistant Attorney General  
Post Office Box 11549  
Columbia, SC 29211-1549

  
\_\_\_\_\_  
William Isaac Diggs

Myrtle Beach, South Carolina

99